

Special Meeting: July 24, 2023

ORDINANCE NO. 2023- 14

**AN ORDINANCE OF THE
CITY OF FAIRFIELD BAY, ARKANSAS,
TO AMEND THE MUNICIPAL CODE
TO COMPORT WITH ACT 851
OF THE 2023 GENERAL ASSEMBLY, IN PART;
AMENDING TITLE 14 OF THE MUNICIPAL CODE
- ZONING;
AMENDING CHAPTER 14.04 –
ZONING ORDINANCE;
AMENDING SECTION 14.04.03
– DEFINITIONS; AND
AMENDING SECTION 14.04.18
– DISTRICT MP-1 LIGHT INDUSTRIAL DISTRICT;
DECLARING AN EMERGENCY;
AND FOR OTHER PURPOSES**

WHEREAS, The City Zoning Code has long prohibited any use not explicitly allowed in the Zoning Code; and

WHEREAS, The City Zoning Code is designed to meet certain objectives to protect the quiet enjoyment and property values of residential areas, and to allow for growth in a manner that meets zoning requirements, thereby preserving the quality of life in the City of Fairfield Bay as a destination resort and a place of quiet enjoyment for citizens, visitors, vacationers, and other travelers who seek refuge from the noises, commutes, traffic, costs, expenses, and privations of large urban spaces; and

WHEREAS, the City has lost full-time residents in the last two census counts, and lost at least 79 full-time residents as of April 1, 2020, from the counts set forth in the 2010 census; and

WHEREAS, the City of Fairfield Bay has a “new” hotel, which has struggled to meet minimum occupancy requirements (over the course of a year) in order to meet operating expenses and pay down mortgage debt, due, in part, to the Covid-19 pandemic; and

WHEREAS, the City Council has received public comments, public and private complaints, and feedback from municipal officials and members of municipal boards and commissions concerning the new state law, Act 851 of 2023 (Acts of the Arkansas General Assembly) (“Act 851” hereinafter), and those public comments, public and private complaints, and feedback from municipal officials, as well as the requirements of Act 851, necessitate these changes in order to protect the peaceful enjoyment of residential areas, as well as protecting the property values, peace, health, safety, and welfare of the citizens, property owners, voters, visitors, residents, non-residents, and other persons with an interest in the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF FAIRFIELD BAY, ARKANSAS, that the following amendment is made to TITLE 14 of the Municipal Code, by amending Section 14.04.03 (6) of the Municipal Code (additions in *bold italics* and deletions in bold inter-lineations like this [~~deletions~~]) as follows:

SECTION 1: NOT TO BE CODIFIED: The City Council FINDS THE FOLLOWING FACTS relevant to Data Centers and Digital Asset Mining Businesses:

- A. The City Zoning Code prohibits all uses that are not explicitly “permitted” and requires even “permitted” uses to conform to other requirements, such as performance standards, height and area regulations, and parking regulations.
- B. The City Zoning Code is designed to protect the quiet enjoyment of residents, tenants, visitors, and taxpayers in the City of Fairfield Bay.
- C. The City Zoning Code is designed to protect the property values of the City of Fairfield Bay.
- D. The City participated in, and actively encouraged, the development of a hotel in the City, prior to its completion in 2019, so as to expand capacity for visitors, and which encouragement depended in part upon the Zoning Code’s prohibitions and regulations.
- E. The Hotel has had difficulties meeting minimum occupancy requirements to meet overhead and mortgage-related expenses.
- F. The City has lost full-time residents for at least the last two, consecutive, census counts (in 2010 and 2020).
- G. The requirements of Act 851 require the City to allow digital asset mining with the same requirements as applicable to data centers. Arkansas Code Annotated Section 14-1-505 (a)(2) (as amended by Act 851).

H. The term “data center” is not defined in Act 851, although the General Assembly also enacted Act 819 of 2023 concerning Data Centers, which includes a definition of a “qualified data center” in Arkansas Code Annotated Section 26-52-455(a)(4), a set forth in Act 819 of 2023 of the Arkansas General Assembly.

SECTION 2. Chapter 14.04, Section 14.04.03 Definitions, subsection (6), is amended to include the following new terms (in ALL CAPS), with the definition of the new term following the colon, respectively, below:

***DATA CENTER:** a “qualified data center” as defined in Arkansas Code Annotated Section 26-52-455(a)(4) as amended by Act 819 of 2023 (Acts of the Arkansas General Assembly).*

***DIGITAL ASSET MINING BUSINESS:** any digital asset miner (as set forth in Arkansas Code Section 14-1-503 (3) as amended by Act 851 of 2023 (Acts of the Arkansas General Assembly)), provided, however that such digital asset miner also meets the requirements of a “qualified data center” as defined in Arkansas Code Annotated Section 26-52-455(a)(4) as amended by Act 819 of 2023 (Acts of the Arkansas General Assembly). A “home digital asset mining” entity (as set forth in Arkansas Code Section 14-1-503 (6) as amended by Act 851 of 2023 (Acts of the Arkansas General Assembly)) is not encompassed by this term, as used herein.*

***HOME DIGITAL ASSET MINING:** a business use of residential real property, (as set forth in Arkansas Code Section 14-1-503 (6) as amended by Act 851 of 2023 (Acts of the Arkansas General Assembly)), provided, however that the residential real property is owner-occupied during the entire period of any Special Use Permit (as set forth in Arkansas Code Section 14-1-504(c), as amended by Act 851 of 2023 (Acts of the Arkansas General Assembly)). Real property is further constrained to consume no more than one megawatt (1 MW) hours of electricity on an average annual basis for the subject property for operation of the digital asset mining business; and is further constrained to consume no more than 84 kilowatt hours (kWh) of electricity on an average monthly basis for the subject property, in excess of its average monthly*

electricity usage in the calendar year 2022, based upon its electrical bills. Electricity use in excess of the foregoing constraints precludes use of any property for operating a Home Digital Asset Mining business.

SECTION 3. Chapter 14.04, Section 14.04.18 District MP-1 Light Industrial District, Subsection A **Permitted Uses** is amended to include the following new permitted use, below:

7. DATA CENTERS and DIGITAL ASSET MINING BUSINESSES;
provided, however, that the area has not been designated by the City for other uses.

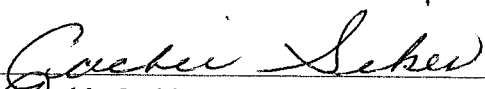
SECTION 4: NOT TO BE CODIFIED: THE MUNICIPAL CODE OF THE CITY OF FAIRFIELD BAY BE, AND IT IS HEREBY, AMENDED ACCORDINGLY. Items set forth above in *bold italics* shall amend the Code.

SECTION 5: NOT TO BE CODIFIED: SUPPLEMENTAL: This Ordinance, and the changes set forth herein, are meant to be supplemental to the Municipal Code, and the Ordinances of the City of Fairfield Bay, and do not repeal any part of the Municipal Code, unless specifically set forth herein by inter-lineation of a specific provision. No Ordinances are repealed by this Ordinance.

SECTION 6: NOT TO BE CODIFIED: **EMERGENCY CLAUSE:** Because of the potential danger to public peace, health, and safety, and in particular as a result of the urgent need for implementation of changes to address Act 851, and its imminent effective date,, in order to provide emergency services and protect the residents from diminution of property values, AN EMERGENCY IS HEREBY DECLARED TO EXIST, and this Ordinance being necessary for the peace, health, safety, and general welfare of the City and its Citizens, IT SHALL BE IN FULL FORCE AND EFFECT at 11:59 pm, on July 31, 2023, and thereafter.

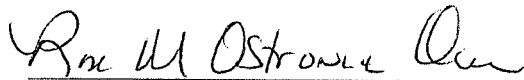
SECTION 7: NOT TO BE CODIFIED: **SEVERABILITY CLAUSE:** If any provision of this Ordinance, or the application thereof, to any person or circumstance, is held invalid for any reason, such invalidity shall not affect other provisions or applications of this Ordinance, which shall be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Dated this 24th Day of July, 2023.



Honorable Jackie Sikes
Mayor, City of Fairfield Bay, Arkansas

Attest:



Rose O. Owen, Recorder-Treasurer

Drafted by:

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Rev: 7/24/23