

Regular Meeting: May 9, 2022
First Read: May 9, 2022

ORDINANCE NO. 2022- 22

**AN ORDINANCE OF THE
CITY OF FAIRFIELD BAY, ARKANSAS,
TO AMEND THE MUNICIPAL CODE;
AND TO AMEND ORDINANCE NO. 2021-11
AND ORDINANCE NO. 2021-18;
AMENDING TITLE 14 OF THE MUNICIPAL CODE
- ZONING;
AMENDING CHAPTER 14.04 –
ZONING ORDINANCE;
AMENDING SECTION 14.04.19
– SPECIAL USE PERMITS;
AMENDING REQUIREMENTS FOR
APPLICATIONS,
RE-APPLICATIONS,
PER-CAPITA FEES FOR USE,
AND REQUIREMENTS
FOR INSPECTION AFTER COMPLAINT
INVOLVED IN SPECIAL USE PERMITS FOR
USE OF CERTAIN RESIDENTIAL PROPERTY
AS SHORT-TERM RENTAL PROPERTY;
DECLARING AN EMERGENCY;
AND FOR OTHER PURPOSES**

WHEREAS, The City Zoning Code has long prohibited short term rentals in two single-family residential areas, zoned R1-A, and R1-B; and

WHEREAS, the City Council in June of 2021, added to the existing “Special Use Permit” application process an opportunity for applicants in single-family residential areas zoned R1-A and R1-B to obtain temporary special use permits for no more than a year, upon a showing that they had

met certain requirements, and had otherwise overcome the statutory prohibition against short term rentals in single-family residential areas; 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; and

WHEREAS, the City has extensive experience with short term rentals, since the founding of the City was based upon a “time share” community, and there are an excess number of pieces of real property with short-term rentals, time shares, and other short term rental opportunities available; 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 loss of each “full-time resident” from the City of Fairfield Bay is equivalent to the loss of approximately \$1,130.00, per person, annually, in direct support from the State of Arkansas in “turnback” funds; and

WHEREAS, in order to make up for the revenue loss from conversion of a full-time 2-person residential housing unit to a full-time “short-term” rental unit, the City would need to impose a licensing (or other appropriate) fee for special use permits for short term rentals in excess of \$2,260.00 per year, simply to account for the loss of state turnback funds for full-time residents; and

WHEREAS, the conversion of residential properties to short-term rental properties has an adverse effect on the availability and cost of long-term residential rental properties in the City of Fairfield Bay, which also has a detrimental effect on the number of full-time residents and the state turnback funds for those residents; and

WHEREAS, the City of Fairfield Bay has a “new” hotel, which is struggling 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 due, in part, to the excess number of “short term” rental properties available in the City of Fairfield Bay; and

WHEREAS, the minimal “increase” in sales tax revenue from current short-term rentals has not resulted in any net benefit to the City, because there is a surplus of property available for short term rentals (in areas not limited by the Zoning Code), as well as the hotel rooms currently available, so it appears that sales tax revenue has been substituted from one set of properties to another, without any increase in net visitors to the City; and

WHEREAS, the City of Fairfield Bay has previously enacted Ordinances creating Chapter 14.04, creating the Zoning Ordinance in the City, and amended Chapter 14.04 by Ordinance No. 2021-11, as amended by Ordinance No. 2021-19; and

WHEREAS, the City has developed certain experience with Ordinance No. 2021-11 and Ordinance No. 2021-19, concerning special use permits for short term rentals in single-family residential areas; and

WHEREAS, the City recognizes the need to further refine the City-specific requirements for Special Use Permits for the use of certain residential property as Short Term Rentals so as to address issues that have arisen, or been identified, since the 2021 Ordinances were adopted; 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 special use permits process currently in place for short term rentals in single-family residential areas, and those public comments, public and private complaints, and feedback from municipal officials necessitates these changes in order to protect the peaceful enjoyment of single-family 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 14.04.19 (F) of the Municipal Code (additions in *bold italics* and deletions in bold interlineations like this [~~deletions~~]) as follows:

SECTION 1: The City Council FINDS THE FOLLOWING FACTS relevant to single-family residential zoning areas, and any proposed special use permit for a temporary one-year short term rental use:

- A. The City Zoning Code prohibits short term rentals in single family residential areas zoned R1-A and R1-B.
- 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 of Fairfield Bay has extensive experience with short term rentals, because the City was initially created as a “time-share” community, from which the developer hoped that visitors and customers would develop an appreciation for the City, and move from

short term rentals to full-time residential areas, which is one reason why short term rental uses were initially prohibited in single-family residential areas in this City.

- E. There is currently an excess capacity of short-term rental units in the City of Fairfield Bay, when the time-share units, condominiums, and other residentially-zoned areas are included in the inventory.
- F. 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 prohibition on development of short term rental housing in areas zoned single family residential (R1-A and R1-B).
- G. The Hotel has had difficulties meeting minimum occupancy requirements to meet overhead and mortgage-related expenses.
- H. The City has lost full-time residents for at least the last two, consecutive, census counts (in 2010 and 2020).
- I. Loss of full-time residents results in a loss of state "turn back" funds, in an amount no less than \$1,130.00 per person, per year.
- J. The current city "income" from special use permits for short term rentals does not come close to replacing the loss of state turnback funds, on a per capita basis, and on a per residence basis.
- K. The City's experience with sales tax revenue from "short term rental" visitors in single-family residential areas has not replaced the loss of income from full-time residents, based upon state turnback funds lost, alone. Substitution of full-time residents for "short term" rental "visitors" – and vice, versa – normally would not result in a net gain or loss for the City based upon sales tax funds received since July 1, 2021.
- L. The City's application fee for short term rental units in single-family residential areas is currently at least \$2,210.00 short (annually) of replacing state turnback revenue, assuming two-person occupancy of each single-family residence.
- M. The conversion of single-family residential properties to short-term rental special uses has a net negative effect upon the availability and cost of long-term residential rental properties in the City, and likewise has an adverse impact upon the number of full-time residents and state turnback funds associated with full-time residents.

SECTION 2. Chapter 14.04, Section 14.04.19, Special Use Permits, is revised, in part, as follows:

14.04.19 Special Use Permits

F. Uses which may be permitted Any of the following uses may be located in any district by special use permit, subject to any limitations hereinbelow:

* * *

27. Short Term Rentals of Residential Property Zoned R1A and R1B.

One year permits may be granted *to an owner of real property*, subject to the following special conditions:

- a. Fees shall be established by Resolution of the City Council, separately. *Per-capita fees for use shall also be established by Resolution of the City Council, at the occupancy of two persons per bedroom, and two additional persons, maximum occupancy.*
- b. Renewal fees shall be established by Resolution of the City Council, separately.
- c. Notice of any application for a Special Use Permit (Short Term Rental) shall be made in writing to all owners, tenants, and occupants of real property located within seventy-five feet (75') of the property line of the subject property proposed as a Short Term Rental property, on a form letter required by the Planning and Zoning Commission. Notice shall be made by certified mail, and by regular first-class mail, to owners, tenants, and occupants of other properties. Proof of mailing, and tracking information of certified first class mail notice must be provided to the Planning and Zoning Commission prior to approval of the Special Use Permit.
- d. Applicants shall complete an Affidavit, in a form created by the City, and approved by the Planning and Zoning Commission, as it may be amended, from time to time.
 - i. The Affidavit shall require applicant to state, affirmatively, that the applicant has investigated and made a determination that the application for the Special Use Permit for a Short Term Rental does not violate the applicable Covenants and Restrictions for the residential real property at issue.
 - ii. The Affidavit may require applicant to state that they are aware of certain Municipal Code Requirements, and will abide by those Municipal Code requirements.
 - iii. The Affidavit shall provide a telephone number of a "local person" (who shall be a resident of Fairfield Bay, Arkansas, or a person who regularly lives no more than twenty miles from the corporate limits of

- the City of Fairfield Bay), in order to ensure timeliness of response time in the event of an emergency at the subject real property.
- iv. The Affidavit shall require notice of the Municipal Advertising and Promotion Tax, and applicant's agreement to pay the taxes on a monthly basis, because remote sellers and marketplace facilitators do not collect or pay these taxes.
 - v. The Affidavit shall require notice of appropriate sales taxes, including Applicant's agreement to keep payment of sales taxes current, because this responsibility cannot be delegated. Applicant shall either: (a) provide Applicant's State of Arkansas sales tax account number (and other required information), or (b) the names of all authorized "remote sellers" and "marketplace facilitators" that Applicant will rely upon to collect and pay the applicable sales tax to the State of Arkansas. Applicant is, at all times, responsible for payment of applicable sales taxes, and must pay these taxes even where a remote seller or marketplace facilitator erroneously fails to make the correct payment(s).
 - vi. The Affidavit shall require notice of parking limitations, quiet hours, leash laws, use of ATV/UTV's and limitations thereon, and any other matter, and further shall include applicant's agreement to abide by those notices.
 - vii. The Affidavit shall require notice of a special condition on the disposal of trash: that all trash shall be in a container with a lid, securely secured for pick up on the appropriate day of the week, and that applicant shall be responsible for keeping trash disposal under control.
 - viii. The Affidavit shall require applicant to agree that regular mail notice of any complaints shall be sufficient notice to allow the City to terminate the Special Use permit no later than eleven (11) days after regular mail notice of a third complaint, after two previous complaints have been determined to have merit.
 - ix. *The Affidavit shall state that the real property at issue complies with all aspects of the Arkansas*

State Fire Code. The Affidavit shall also acknowledge that, upon a complaint for violation of the Fire Code, the City may require the property to pass an appropriate inspection before any subsequent application for a special use permit for short term rental may be allowed by the City for that real property.

- x. The Affidavit shall acknowledge that the Zoning Code of the City of Fairfield Bay prohibits short-term rentals in areas zoned R1-A and R-1B (single-family residential), and that the applicant has the burden of showing that the proposed short term rental use will not interfere with the quiet enjoyment of other property owners, and further that the short term rental use will not adversely impact property values of those persons owning, possessing, or residing in real property in the neighborhood where the short term rental special use permit application has been made.*

- e. Re-application. After a denial of any application for a special use permit for a short-term rental, Applicant shall be prohibited from using the real property for the purpose of any short-term rental for a period of twelve (12) months from the date of the denial of an application by the City Council. Re-application is prohibited during this twelve-month period. Use of the real property as a short-term rental during this twelve (12) month period shall be a sufficient basis to deny any re-application, without prejudice to any other basis for denial of an application. The twelve-month period prohibiting re-application shall attach to the real property address for which there has been a denial, irrespective of ownership of the real property. If there has been a material change in conditions since the City's last denial of a special use permit application as set forth herein, the City may waive the twelve-month prohibition; Applicant shall have the burden of proving, by clear and convincing evidence, that there has been such a substantial material change in conditions as to merit such a waiver; the City's review is discretionary under this provision and the City's decision shall be presumed to be correct.*

f. Renewals.

Renewals may be made annually. The Planning and Zoning Commission shall be notified of any complaints made to the City, including complaints made to the Police Department and the Building Official, by a report of the Building Official before approval of the renewal, and only on payment of the renewal fee. Renewals are subject to review by the Planning and Zoning Commission, and subsequently by the City Council. Renewals shall not exceed one (1) calendar year from the date of approval.

g. Termination of Special Use Permit for Short Term Rentals.

Special Use Permits for short term rentals are specific to an owner of real property, and expire of their own accord upon change of ownership, whether by sale, foreclosure, or other disposition of the real property.

The City may revoke and terminate a Special Use Permit after the Building Official, or the Police Department, or either of them together, concludes that there have been at least three (3) separate written complaints, at least two of which have merit. Copies of any complaints shall be mailed to the applicant and holder of the Special Use Permit by regular first class mail. The Building Official or the Police Department, or both, shall conduct an appropriate review of the complaint to determine whether it has merit, or whether it has no merit; a copy of the determination (merit or no merit to the complaint) shall also be mailed to the applicant and holder of the Special Use Permit by regular first class mail.

For purposes of the review under this subsection of the Municipal Code, a complaint has merit if it shows any failure to comply with any provision of the Affidavit of the Applicant, including any special conditions therein; or a complaint has merit if it shows any violation of the Municipal Code, including a failure to pay Advertising and Promotion taxes, or State sales taxes. ***Any complaint involving compliance with the Arkansas***

State Fire Code may result in a mandatory inspection by appropriate municipal officials, after municipal review of the complaint made, before any further special use permit application shall be heard by the Planning and Zoning Commission, and the City Council, on the real property subject to a Fire Code violation complaint.

Re-application. After revocation of any special use permit for a short-term rental, Applicant shall be prohibited from using the real property for the purpose of any short-term rental for a period of twelve (12) months from the date of the revocation by the City Council. Re-application is prohibited during this twelve-month period. Use of the real property as a short-term rental during this twelve (12) month period shall be a sufficient basis to deny any re-application, without prejudice to any other basis for denial of an application. The twelve-month period prohibiting re-application shall attach to the real property address for which there has been a denial, irrespective of ownership of the real property. If there has been a material change in conditions since the City's last denial of a special use permit application as set forth herein, the City may waive the twelve-month prohibition; Applicant shall have the burden of proving, by clear and convincing evidence, that there has been such a substantial material change in conditions as to merit such a waiver; the City's review is discretionary under this provision and the City's decision shall be presumed to be correct.

Re-application after revocation or termination of Special Use Permit is allowed ***after expiration of the twelve (12) month period***, but only after remedying any outstanding issues, paying all applicable taxes, and paying a special re-application fee after revocation, in an amount set by the City Council by Resolution, annually, and no less than two hundred dollars (\$200.00). Approval of any such re-application shall further be subject to the normal review of the Planning and Zoning Commission, and subsequently by the City Council.

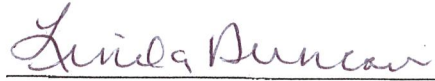
* * * *

SECTION 3: 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. Items set forth as deletions in text interlineated as the example word “~~deletions~~” shall be stricken from the Code and deleted, accordingly.

SECTION 4: 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 interlineation of a specific provision. No Ordinances are repealed by this Ordinance. All provisions of Ordinance No. 2021-11, and Ordinance 2021-19, remain in effect, unless previously repealed or amended by the City Council.

SECTION 5: 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 complaints, observations, and experiences made since June of 2021, for certain special use permits allowing short term rentals for single-family residential properties, 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, 2022, and thereafter. All applications RECEIVED by the City of Fairfield Bay after that date shall be required to comply with the requirements set forth herein. All currently in-force special use permits shall be considered to include any and all changes set forth herein upon the next renewal or re-application set forth herein. The twelve (12) month prohibition on re-application shall apply to any and all re-applications received after 11:59 pm on July 31, 2022.

Dated this ____ Day of June, 2022.



Honorable Linda Duncan
Mayor, City of Fairfield Bay, Arkansas

Attest:



Rose O. Owen, Recorder-Treasurer

Drafted by:

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Rev3: 5/9/22
As amended by Council
On 5/9/22