

Regular Meeting: August 9, 2021  
First Read: August 9, 2021

ORDINANCE NO. 2021-18

**AN ORDINANCE OF THE  
CITY OF FAIRFIELD BAY, ARKANSAS,  
TO AMEND THE MUNICIPAL CODE;  
AND TO AMEND ORDINANCE NO. 2021-11;  
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  
SALES TAXES TO ADDRESS REMOTE SELLERS  
AND MARKETPLACE FACILITATORS  
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 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; and

WHEREAS, the City has developed certain experience with Ordinance No. 2021-11 concerning short term rentals; 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 the issues of “remote sellers” and “marketplace facilitators” such as internet entities which arrange for the rentals of these types of residential properties;

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. 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, subject to the following special conditions:

- a. Fees shall be established by Resolution of the City Council, separately.
- 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, ~~and shall require applicant to provide relevant Arkansas State Sales Tax number and other information,~~ including ~~an 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.

e. 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.

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

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.

Re-application after revocation or termination of Special Use Permit is allowed, 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 2: 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 interlined as the example word "~~deletions~~" shall be stricken from the Code and deleted, accordingly.

SECTION 3: 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 procedures to address "remote sellers" and "marketplace facilitators" of short term 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 immediately upon and after its passage.

Dated this 9 Day of August, 2021.

Linda Duncan

Honorable Linda Duncan  
Mayor, City of Fairfield Bay, Arkansas

Attest:

Rose O. Owen

Rose O. Owen, Recorder-Treasurer

Drafted by:

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