

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING CHAPTER 4, "BUSINESS REGULATIONS," OF THE CODE OF ORDINANCES OF THE TOWN OF PROSPER, TEXAS, BY ADDING A NEW ARTICLE 4.11, "SINGLE-FAMILY DWELLING TRANSIENT RENTALS," TO GENERALLY PROHIBIT THE SHORT-TERM RENTAL OF SINGLE-FAMILY DWELLINGS IN THE TOWN; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town of Prosper, Texas ("Town"), is a home-rule municipal corporation duly organized under the laws of the State of Texas; and

WHEREAS, the Town is authorized to adopt and enforce ordinances necessary to protect health, life, and property to preserve good government and the security of its inhabitants; and

WHEREAS, the Town has adopted a comprehensive Zoning Ordinance to regulate the location and use of buildings and land in full accordance with Chapter 211 of the Texas Local Government Code, as amended; and

WHEREAS, the Town's Zoning Ordinance presently does not allow short-term rentals of property; and

WHEREAS, both "guest houses," pursuant to Chapter 3, § 1.4, subpart 45(i), of the Town's Zoning Ordinance, and "residential garage lofts," pursuant to Chapter 3, § 1.4, subpart 46(e), of the Town's Zoning Ordinance, prohibit the lease or rental of those structures; and

WHEREAS, single-family dwelling transient rentals are not currently listed as a permitted or specific use in any Zoning District within the Town and therefore are prohibited under the Town's Zoning Ordinance; and

WHEREAS, throughout the Dallas-Fort Worth Metroplex, including within the Town, there has been a proliferation of single-family dwelling transient rentals within single-family residential areas; and

WHEREAS, single-family dwelling transient rentals are not consistent with the character or nature of single-family residential uses in the Town; are not suitable in residential neighborhoods; are not compatible with residential uses; and the neighborhood adjacency of single-family dwelling transient rentals in residential neighborhoods is or may become harmful; and

WHEREAS, single-family dwelling transient rentals in the Town, with their attendant traffic, parking, noise, and litter issues, along with the influx of non-residents into residential areas, are incompatible with the intent of residential districts in the Town, the desires and expectations of the Town's residents, and are contrary to the long-standing single-family residential character of the community; and

WHEREAS, single-family dwelling transient rentals in residential areas of the Town may pose a risk of an increase in public nuisances, disruption of neighborhoods, and additional code enforcement-related issues; and

WHEREAS, the experience of other local governments in Texas dealing with the short-term rental of properties has shown that enforcement actions are sometimes necessary, as addressed in greater detail at pages 40-41 of the opinion of the Texas Third Court of Appeals in *Zaatari v. City of Austin, Texas*, No. 03-17-00812-CV, ___ S.W.3d ___ (Tex. App.-Austin Nov. 27, 2019), listing a municipality’s ability to address the possible negative effects of short-term rentals, including noise, public urination and defecation, littering, parking, disorderly conduct and public intoxication, among others; and

WHEREAS, in *Zaatari* the Court held at page 40 of its opinion that Austin’s “stated concerns . . . were to reduce the likelihood of short-term rentals [serving] as raucous ‘party houses’ in otherwise quiet neighborhoods and to reduce possible strain on neighborhood infrastructure,” and these are “certainly valid c[municipal] oncerns”; and

WHEREAS, the Town Council has determined that it is a necessity to regulate activities as provided for herein to safeguard the public; and

WHEREAS, moreover, with the onset of the novel coronavirus, and its impact on the residents of the Town and the public health and safety, the short-term rental of property could endanger the residents of the Town be exposing them to individuals who desire to rent who are or may be asymptomatic or experiencing symptoms of the novel coronavirus, without knowing in fact that they are or may be infected by the novel coronavirus.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, THAT:

SECTION 1

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2

From and after the effective date of this Ordinance, Chapter 4, “Business Regulations,” of the Code of Ordinances is hereby amended by adding a new Article 4.11, “Single-Family Dwelling Transient Rentals,” to read as follows:

“ARTICLE 14.11 SINGLE-FAMILY DWELLING TRANSIENT RENTALS

Sec. 14.11.001 Definitions

Single-family dwelling transient rental. The rental or offer for rental of any single-family dwelling or any portion of a single-family dwelling for a period of less than 30 days.

Rental. The renting, bartering, trading, letting or otherwise allowing the use of a single-family dwelling or room or rooms within a single-family dwelling for compensation. This shall not restrict, limit or interfere with any homeowner from participating in a leaseback upon the sale of a single-family dwelling.

Leaseback. An arrangement where the seller of a home leases the home back from the purchaser. In a leaseback arrangement, the specifics of the arrangements are typically made prior or immediately after the sale of the home.

Sec. 14.11.002 Single-family dwelling transient rentals prohibited

All single-family dwelling transient rentals are hereby prohibited and unlawful within the Town of Prosper.”

SECTION 3

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portion of conflicting ordinances shall remain in full force and effect.

SECTION 4

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason, held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town of Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional.

SECTION 5

Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by fine not to exceed the sum of five hundred dollars (\$500.00), and each and every day such violation shall continue shall constitute a separate offense.

SECTION 6

This Ordinance shall become effective after its passage and publication, as required by law.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 25TH DAY OF AUGUST, 2020.

APPROVED:

Ray Smith, Mayor

ATTEST:

Melissa Lee, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney