

AGENDA

**FLOWER MOUND TOWN COUNCIL
REGULAR MEETING AND WORK SESSION**

5/21/20

**FLOWER MOUND TOWN HALL, 2121 CROSS TIMBERS ROAD
FLOWER MOUND, TEXAS**

6:00 P.M.

An agenda information packet is available online at www.flower-mound.com/AgendaCenter

There will be limited seating in Jody Smith Hall to allow for social distancing

Meeting participants may be asked to wait in the lobby until their name is called

Comments regarding any item on this agenda can be sent to the Mayor/Town Council by
Emailing: Towncouncil@flower-mound.com or Calling: 972.874.6005

Please silence or turn off all electronic devices in Jody Smith Hall

A. CALL REGULAR MEETING TO ORDER

B. INVOCATION

C. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG AND TO THE TEXAS FLAG

"Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible."

D. PUBLIC COMMENT

To speak to Council during public comment, please fill out a [comment form](#).

- Speakers are limited to 3 minutes, a tone will sound at 30 seconds left and when time has expired
- Please state your name and address when speaking

The purpose of this item is to allow the public an opportunity to address the Town Council on issues that are not indicated as a "Public Hearing" on this agenda. Issues regarding daily operational or administrative matters should first be dealt with by calling Town Hall at 972-874-6000 during business hours.

E. ANNOUNCEMENTS

1. Announce recent and upcoming civic and social events.

F. FUTURE AGENDA ITEMS

The purpose of this item is to allow the Mayor and members of Council an opportunity to bring forward items they wish to discuss at a future meeting, with the understanding a consensus of Council is needed in order for that item to be placed on a future agenda and in accordance with the Town Council Agenda Setting Policy (Ord. 65-15).

G. COORDINATION OF CALENDARS

1. A regular meeting is scheduled for Monday, June 1.

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H. CONSENT ITEM

This part of the agenda consists of non-controversial or "housekeeping" items required by law. Items may be removed from Consent by any Councilmember by making such request prior to a motion and vote.

1. Consider approval of the minutes from a regular meeting of the Town Council held on May 18, 2020.

I. ADJOURN REGULAR MEETING

J. CALL WORK SESSION TO ORDER

2. Discuss and receive direction on regulating short-term rentals.

K. CLOSED MEETING

The Town Council to convene into closed meeting pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, for consultation with attorney, as follows:

- a. Consultation with Attorney.

Pursuant to Section 551.071 of the Texas Government Code, the Town Council reserves the right to consult in a closed meeting with its attorney and to receive legal advice regarding any item listed on this agenda.

L. RECONVENE

The Town Council to reconvene into an open meeting to take any action deemed necessary as a result of the closed meeting.

M. ADJOURN WORK SESSION

I do hereby certify that the Notice of Meeting was posted on the bulletin board at the Town Hall for the Town of Flower Mound, Texas, in a place convenient and readily accessible to the general public at all times and said Notice was also posted on the Town's website in accordance with GC Section 551.056 on the following date and time: May 18, 2020, at 3:30 p.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

The Flower Mound Town Hall and Jody Smith Hall are wheelchair accessible. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting by contacting Theresa Scott, Town Secretary, at (972) 874-6076.



TOWN COUNCIL AGENDA ITEM NO. 1

CONSENT ITEM

DATE: May 21, 2020

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on May 18, 2020.

BACKGROUND INFORMATION: The Town Council held a regular meeting on May 18, 2020.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

Proposed Expenditure/(Revenue):

Account Number(s):

Finance Review by: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Draft minutes 5.18.20

DRAFT MOTION: Move to approve as presented in the agenda caption.

Attachment unavailable at the time of packet posting.

This will be added to the packet when draft minutes are ready.



TOWN COUNCIL AGENDA ITEM NO. 2

WORK SESSION ITEM

DATE: May 21, 2020

FROM: Tommy Dalton, Assistant Town Manager

ITEM: Discuss and receive direction on regulating short-term rentals.

BACKGROUND INFORMATION: On February 3, 2020, Town Council denied an ordinance amending the Land Development Regulations (LDR19-0006 – Short-Term Rentals) to create a definition and define the standards and review process for Short-Term Rentals (STR). That ordinance would've required a Specific Use Permit for STRs.

During the Council deliberation, staff was directed to bring back a work session discussion on STRs and discuss adopting a permitting process or a ban.

Attachment 1 is a draft STR permitting ordinance that was prepared following the February 3, 2020, denial of the SUP ordinance. The Town Attorney provided the Council with a confidential attorney-client privileged communication regarding this draft ordinance on February 12, 2020. That communication was resent to the Council for convenience ahead of the work session.

On February 17, 2020, the Council clarified the direction from the February 3, 2020, meeting. The general takeaway was there was interest in implementing a permitting process.

Council requested data on the number of STRs known to be operating. Given the current COVID-19 pandemic potentially skewing data in relation to how many STRs operate in the Town, staff recommends using the data previously provided to Town Council on January 10, 2020, as a more typical indicator of STR activity in the Town. In total, there were six known addresses that operated as an STR. That information was resent to the Council for convenience ahead of the work session.

It's important to note that if the Council decides to move forward with a permitting ordinance, no board feedback is required since the ordinance amends Subpart A (general ordinances), which contain administrative and not legislative ordinances of the Town. The consideration of the attached draft ordinance also does not require a public hearing. However, the Mayor and Council could direct staff to make it a public hearing on the agenda.

ALTERNATIVES/OPTIONS: Staff is seeking direction on regulating STRs. Staff will implement the direction of the Council.

ATTACHMENTS:

1. Draft STR Permitting Ordinance

**TOWN OF FLOWER MOUND, TEXAS
ORDINANCE NO. _____**

AN ORDINANCE OF TOWN COUNCIL THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 18, "BUSINESSES" OF THE TOWN'S CODE OF ORDINANCES, TO CREATE A DEFINITION AND DEFINE THE STANDARDS AND REVIEW PROCESS FOR SHORT-TERM RENTALS; AMENDING APPENDIX A, "FEE SCHEDULE," PROVIDING FOR ADMINISTRATIVE FEES ASSOCIATED WITH PERMITTING AND INSPECTION OF SHORT-TERM RENTAL PROPERTIES; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and,

WHEREAS, the Town Council finds and determines that regulations related to short-term rental uses should be adopted to define short-term rentals, establish standards for operation and appropriate review processes applicable to such uses, and establish commensurate permitting and inspection fees; and,

WHEREAS, the purpose of the regulations set forth herein is to provide a procedure to allow the rental of private residences to visitors on a short term basis, while ensuring that such rental use does not create adverse impacts to residential neighborhoods due to excessive traffic and noise, and, additionally, to ensure that the number of occupants within such rental units do not exceed the design capacity of the structure to cause health and safety concerns, and that minimum health and safety standards are maintained in such units to protect visitors from unsafe or unsanitary conditions; and,

WHEREAS, the Town Council finds that the amendment to Chapter 18, as outlined herein, is in the best interest of the Town of Flower Mound and will promote the health, safety, and general welfare of the citizens of the Town of Flower Mound and the general public.

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

SECTION 1

That Chapter 18 of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to add a new Article XII "*Short-Term Rentals*," which shall read as follows:

“ARTICLE XII. - SHORT-TERM RENTAL**Sec. 18-570. - Purpose of article.**

The purpose of the regulations set forth herein is to provide a procedure to allow the rental of private residences to visitors on a short term basis, while ensuring that such rental use does not create adverse impacts to residential neighborhoods due to excessive traffic, noise, and density and, additionally, to ensure that the number of occupants within such rental units do not exceed the design capacity of the structure to cause health and safety concerns, and that minimum health and safety standards are maintained in such units to protect visitors from unsafe or unsanitary conditions.

Sec. 18-571. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Department shall mean the Building Inspections Department of the Town.

Director shall mean the Building Official of the Town or their designated representative.

Fire Marshal shall mean the Fire Marshal of the Town or their designated representative, including any code official of the Town.

Permit shall mean the permit issued pursuant to the terms of this Article authorizing the operation of a short-term rental.

Short-Term Rental means the rental for compensation, of any residence or residential structure, or a portion of a residence or residential structure, located within a zoning district where the residential use is lawful, for the purpose of overnight lodging for a period of not more than thirty (30) days. A Short-Term Rental is also known as a tourist home or tourist house, but shall not include a hotel, motel, extended stay hotel/motel, boardinghouse, or roominghouse.

Sec. 18-572. – Short-Term Rental Permit Application.

No person shall hereafter advertise, offer to rent or rent, lease, sublease, license or sublicense a residential property within the Town as a short-term rental for which a permit application has not been properly made and filed with the Department, and a permit issued. A permit application shall be made upon forms furnished by the Town for such purpose and shall specifically require the following minimum information:

- (1) The name, address, contact information, and signature of the owner of the premise (or signed owner authorization, on a form provided by the Town);

- (2) The name, address, and phone number of the 24-hour contact;
- (3) The registration number for the Town of Flower Mound Hotel Occupancy Tax as required by Section 18-573 (13), below;
- (4) A parking plan of the premises identifying the location of parking spaces to be used in conjunction with the short-term rental, in relation to the residence;
- (5) A dimensioned floor plan of the proposed short-term rental identifying bedrooms, other living spaces and emergency evacuation routes;
- (6) The name, contact information, and rules for the applicable homeowners' association (HOA), if any;
- (7) Proof of host protection or liability insurance, which shall include the following:
 - a. The Town, its officials, employees, agents and officers shall be named as an "additional insured" on all policies; and
 - b. Each policy shall be endorsed to provide the Town with a minimum of a 30-day notice of cancellation, non-renewal, and/or material change in policy terms or coverage; provided, however, a minimum 10-days' notice shall be required in the event of non-payment of premium;
- (8) A current tax certificate(s) indicating all taxes for the subject property have been paid to the current year (available from Denton Central Appraisal District). Tax statements printed from the DCAD website (pdf) are acceptable in lieu of the original certificate(s);
- (9) A copy of the proposed host rules for the short-term rental; and
- (10) A statement that the owner of the short-term rental complies with and will continue to comply with the standards and other requirements of this article.

Sec. 18-573. – Regulations.

- (a) *Maximum stay.* It shall be unlawful for an owner to rent or lease a short-term rental for a period of more than thirty (30) days.
- (b) *Occupancy.* The maximum number of persons permitted to stay in a short-term rental is limited to two (2) persons per bedroom, plus two (2) additional persons, while not exceeding a total of twelve (12) persons in the

cumulative.

- (c) *Parking restrictions.* Parking is restricted to the number of spaces associated with the residential structure, either the driveway and garage, or by location or number assigned to a specific unit.
- (d) *Life Safety.*
 - (1) The *short-term rental* must be equipped with:
 - a. Working smoke detectors, with a minimum of one on each floor level and one in each room used as a bedroom, as well as a minimum of one working carbon monoxide detector; and
 - b. A minimum of one 2A:10B:C type fire extinguisher (a standard five-pound extinguisher) properly mounted within seventy-five (75) feet of all portions of the structure on each floor.
 - (2) All gas appliances shall be properly ventilated outside the home.
 - (3) Emergency escape openings shall comply with the Town's currently adopted International Residential Code (IRC), with at least one emergency escape opening for each bedroom opening directly to the outdoors.
 - (4) An evacuation plan shall be posted in each bedroom.
 - (5) Any room that does not comply with subsection (d) *Life safety*, of this section shall not be used as a bedroom, and where equipped with a door, shall remain locked at all times when the dwelling is being used as a short-term rental. Any non-compliant bedroom shall not be included in the maximum occupancy calculation for the short-term rental, nor be advertised as a bedroom.
- (e) *Conduct on premises.* Each short-term rental owner and occupant shall comply with all requirements of the Town Code. In addition, the following shall be unlawful:
 - (1) Use of amplified sound, excessive noise or other disturbances outside the short-term rental structure between the hours of 10:00 p.m. and 7:00 a.m. (pursuant to Section 34-181 of the Code) including, but not limited to, the following outside areas: decks, portals, porches, balconies, patios, hot tubs, pools, saunas or spas;
 - (2) Sleeping outdoors;

- (3) Placing, or allowing to be placed, waste or recycling receptacles at the designated pickup location prior to 8:00 a.m. on the day before pickup or failing to remove waste and recycling receptacles by 8:00 a.m. on the day following the designated pickup day (pursuant to Section 34-81 – 82 of the Code);
 - (4) Advertising or promoting a special event, or permitting the advertising or promotion of a special event (including, but not limited to, a banquet, wedding, reception, reunion, bachelor, bachelorette party, concert, or similar activity that would assemble large numbers of invitees) to be held on the premises; and
 - (5) Using or permitting the use of the short-term rental for the purpose of: housing sex offenders; operating a structured sober, recovery or other purpose living home or similar enterprise; selling illegal drugs; selling alcohol or another activity that requires a permit or license under the Alcoholic Beverage Code; or operating as a sexually oriented business.
- (f) *Signage.* On-premise signage advertising or identifying the short-term rental, shall not be permitted.
- (g) *Advertising.* The owner of a short-term rental shall not advertise or promote, or allow another to advertise or promote the short-term rental without including the occupancy limits and parking standards for the listing.
- (h) *Local Contact.* An owner must designate the name and contact information of a local responsible party who can be contacted regarding immediate concerns and complaints from the public. Said individual must be available in person or by phone at all times while occupants are on the premises of the short-term rental. If called, a local responsible party must be able to, and shall be present at the premises, within one (1) hour of receiving a call from the Director. A local responsible party must be authorized to make decisions regarding the premises and its occupants.
- (i) *Occupant Notification Packet.* The owner/operator shall post in a conspicuous location of the dwelling, a packet containing, at a minimum, the following information:
- (1) Maximum number of occupants;
 - (2) Location of required off-street parking, other available parking and prohibition of parking on landscaped areas or on the street;
 - (3) Quiet hours and noise restrictions;

- (4) List of HOA rules, if applicable;
 - (5) 24-hour local contact person and phone number;
 - (6) Property cleanliness requirements;
 - (7) Waste pick-up requirements, including location of waste and recycling receptacles;
 - (8) Flooding hazards and evacuation routes, as well as information on the emergency siren system;
 - (9) Emergency and non-emergency numbers; and
 - (10) Notice that failure to conform to the occupancy and parking requirements constitutes a violation of the Town Code and an occupant or visitor may be cited.
- (j) *Rental agreement notification.* The rental agreement between the owner/operator of the short-term rental and the renter shall include, by attachment, all of the information provided in the occupant notification packet.
- (k) *Changes in ownership.* The purchaser of a short-term rental shall provide the Director with current application materials required by Section 18-572, revised to include any new information associated with the change in ownership, within thirty (30) days of the closing date for the purchase of the short-term rental.
- (l) *Hotel occupancy taxes.* The owner of the short-term rental property shall register with the Town of Flower Mound Finance Department to pay hotel occupancy taxes, prior to the date that the short-term rental permit application is submitted.
- (m) *Request for occupancy history.* Upon request of the Director the owner of a premises used as a short-term rental shall remit, within thirty (30) days, an accounting of all rental activity and the hotel occupancy taxes paid therefor.
- (n) *Right to inspect premises.*
- (1) *Inspections.* The Fire Marshal shall perform periodic inspections of each short-term rental property to ensure compliance with this ordinance and other applicable laws. For the purpose of performing inspections, the fire marshal may enter, examine, and survey, at all reasonable times, all buildings, dwelling units, guest rooms, and the premises used as a short-term rental property. An owner or other

authorized individual may refuse to consent to an inspection conducted by the Fire Marshal. If consent is refused, the Fire Marshal may seek an administrative search warrant authorized by Article 18 of the Texas Code of Criminal Procedure "Search Warrant" and the Town of Flower Mound Code of Ordinances.

- (2) The Town may perform the following inspections:
- a. *Annual fire inspection.* The Fire Marshal may perform annual fire inspections of the short-term rental property.
 - b. *Repeat inspections.* If, upon completion of an inspection, the premises are found to be in violation of one or more provisions of this Section, the Town shall provide written notice of such violation and shall set a re-inspection date. If a property fails to pass an inspection, a re-inspection fee will be charged after the third re-inspection of the premises. A property cannot be occupied as a short-term rental while its status with the Fire Marshal's Office is noted as being in violation.
 - c. *Fire extinguishers.* The owner/operator is responsible for obtaining annual independent inspections of the fire extinguishers in compliance with the Town regulations.
 - d. *Change in ownership inspection.* As part of the change in ownership process for a short-term rental the Fire Marshal shall conduct an inspection to verify compliance with this article.

Sec. 18-574. – Permit term, fees.

- (a) All permits issued under this Article shall be valid for a period of one year from the date of its issuance.
- (b) The fee for permitting of a short-term rental shall be as established in Appendix A of this Code.

Sec. 18-575. – Repeat offenses.

- (a) If the Director finds that the owner, operator or person in control of a short-term rental failed to comply with any requirement of this article, at least twice within a 12-month period, the Director may revoke an existing permit; or may deny an application to renew a permit. No new permit may be sought for the subject property, for a period of 12 months, following a denial or revocation pursuant to this section.

- (b) If a property is the subject of three or more violations of Town Code, state or federal law within the previous 24-month period, the Director may: revoke an existing permit; may deny an application for an original permit; or, may deny an application to renew a permit, based on: (1) the frequency of any repeated violations; (2) whether a violation was committed intentionally or knowingly; and (3) any other information that demonstrates the degree to which the owner or occupant has endangered public health, safety, or welfare. No new permit may be sought for the subject property, for a period of 12 months following the denial or revocation pursuant to this section.
- (c) A permit applicant may appeal the Director's decision to revoke an existing permit or deny an application, in accordance with the process set forth in section 18-576 of this article.

Sec. 18-576. – Appeals.

- (a) The revocation of a permit or the denial of an application for a permit to operate a short-term rental, by the Director, may be appealed to the Town Manager in accordance with the provisions of this section.
- (b) An appeal filed under this section must be filed with the Director no later than the 20th day following the date on which the permit was revoked or denied. The appeal must identify each alleged point of error, facts and evidence supporting the appeal, reasons why the action of the Director should be modified or reversed, and must be sworn.
- (c) The Town Manager or a designee shall, not later than the 10th day after the date the notice of appeal is filed, hear the appeal, and may affirm, modify or reverse a permit revocation or application denial.
- (d) The Town Manager or designee shall give written notice of a decision on an appeal to the appellant.
- (e) An appellant who seeks judicial review of the Town Manager's review on appeal must file a petition with a court of competent jurisdiction not later than the 30th day after receipt of the notice of the decision.

Sec. 18-577. – Enforcement.

- (a) If the owner of the short-term rental property fails or refuses to comply with the standards contained herein, the Town may initiate enforcement action against the property owner including, but not limited to, the immediate issuance of a citation.
- (b) *Prima Facie evidence of a Short-term rental use.* Any advertisement, whether it be online or in print, promoting the availability of a property within

the Town for rent for a period of thirty days (30) or less, shall constitute prima facie evidence of the property’s use as a short-term rental.”

SECTION 2

That Appendix A, “Fee Schedule,” of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to add a fee of \$100.00 for a short-term rental inspection, under the Fire Department Fee Schedule list, to be inserted numerically as (14), and read as follows:

“Appendix A. – Fee Schedule

Fire Department Fee Schedule

- (14) Short-term rental inspection 100.00
- (15) Operational permits annual (maximum of four permits per business) 75.00
- (16) Tent (per tent fee) 50.00
- (17) After hours inspections (per hour or portion of an hour—Minimum 2 hours) 60.00

***”

SECTION 3

That Appendix A, “Fee Schedule,” of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to add a fee of \$200.00 for a short-term rental permit, under the “Chapter 18. Businesses” Schedule list, to be inserted numerically as follows:

“Appendix A. – Fee Schedule

Code Section Number	Description
18-574	Short-term Rental Permit Fee

A nonrefundable fee for administration of the application shall be charged. Such fee shall be paid at the time the application is made and shall not be returned to the applicant, regardless of whether a permit is issued.

Short-term Rental Permit..... \$200.00”

SECTION 4

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the Town of Flower Mound, Texas, as amended, except when the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such code, in which event the conflicting provisions of such ordinances and such code are hereby repealed.

SECTION 5

It is hereby declared to be the intention of the Town Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any section, paragraph, sentence, clause, or phrase of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining sections, paragraphs, sentences, clauses, and phrases of this Ordinance, since the same would have been enacted by the Town Council without the incorporation in this Ordinance of any such unconstitutional section, paragraph, sentence, clause or phrase.

SECTION 6

Any person, firm, or corporation who violates any provision of this Ordinance as adopted by the Town Council of the Town of Flower Mound shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine as provided in Section 1-13 of the Code of Ordinances of the Town of Flower Mound. Each day any such violation or violations exist shall constitute a separate offense and shall be punishable as such.

SECTION 7

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of the Code of Ordinances as amended or revised herein, or any other ordinances affecting the matters regulated herein which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 8

The Town Secretary of the Town of Flower Mound is hereby directed to publish the caption in the official newspaper of the Town of Flower Mound as required by Section 3.07 of the Charter of the Town of Flower Mound.

SECTION 9

This Ordinance shall be in full force and effect from and after the date of its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _ TO _, ON THIS THE ___ DAY OF FEBRUARY, 2020.

APPROVED:

Steve Dixon

Steve Dixon, **MAYOR**

ATTEST:

Theresa Scott

Theresa Scott, **TOWN SECRETARY**