

City of Fayetteville Staff Review Form

2021-0828

Legistar File ID

11/2/2021

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Jonathan Curth

10/15/2021

DEVELOPMENT REVIEW (630)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

An ordinance to amend §118, Business Registry and Licenses & §163.18, Short-Term Rentals to extend the Short-Term Rental Start-Up Period from six months to nine months.

Budget Impact:

Account Number	Fund									
Project Number	Project Title									
Budgeted Item? <u> No </u>	<table border="0" style="width: 100%;"> <tr> <td style="width: 60%;">Current Budget</td> <td style="width: 10%;">\$</td> <td style="width: 30%; text-align: right;">-</td> </tr> <tr> <td>Funds Obligated</td> <td>\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td>Current Balance</td> <td>\$</td> <td style="text-align: right;">-</td> </tr> </table>	Current Budget	\$	-	Funds Obligated	\$	-	Current Balance	\$	-
Current Budget	\$	-								
Funds Obligated	\$	-								
Current Balance	\$	-								
Does item have a cost? <u> No </u>	<table border="0" style="width: 100%;"> <tr> <td style="width: 60%;">Item Cost</td> <td style="width: 10%;">\$</td> <td style="width: 30%; text-align: right;">-</td> </tr> <tr> <td>Budget Adjustment Attached? <u> No </u></td> <td>\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td>Remaining Budget</td> <td>\$</td> <td style="text-align: right;">-</td> </tr> </table>	Item Cost	\$	-	Budget Adjustment Attached? <u> No </u>	\$	-	Remaining Budget	\$	-
Item Cost	\$	-								
Budget Adjustment Attached? <u> No </u>	\$	-								
Remaining Budget	\$	-								

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF NOVEMBER 2, 2021

TO: Mayor; Fayetteville City Council

THRU: Susan Norton, Chief of Staff

FROM: Jonathan Curth, Development Services Director

DATE: October 15, 2021

SUBJECT: **§118, Business Registry and Licenses & §163.18, Short-Term Rentals**
(Amend Fayetteville Code of Ordinances: Short-Term Rental Start-Up Period):
Submitted by the Development Services Department for revisions to the Fayetteville Code of Ordinances to extend the Short-Term Rental Start-Up Period from six months to nine months.

RECOMMENDATION:

City staff recommend approving an ordinance to amend §118, Business Registry and Licenses and §163.18, Short-Term Rentals, extending the Start-Up Period from six months to nine months, as shown in the attached Exhibit 'A'.

BACKGROUND:

During review and consideration of Fayetteville's short-term rental ordinance, a six-month start-up period was adopted. This period expires on November 21, 2021, after which Type 2 short-term rentals, where properties are not occupied by a permanent resident, must receive conditional use permit approval from the Planning Commission. The start-up period was intended to afford Type 2 short-term rental operators six months where the required business license could be applied for and issued without the fee and public hearing associated with a conditional use permit. To date, staff has received 240 applications, of which 69 have been approved. Of these 199 are for Type 2 short-term rentals, with 59 having been approved.

DISCUSSION:

During the first several months of the start-up period, staff established a process for reviewing and inspecting short-term rental units. Many applicants were not prepared to provide the requisite insurance and ownership documents while others proposed units that did not meet the life-safety standards established by the Building Safety Division. Addressing these issues has taken weeks or months in many instances. Given the large number of applications still in review, totaling over 70% of the total received, staff recommends affording applicants and staff additional time through a three month extension of the start-up period, for a total of nine months.

Further, staff has planned an update for the City Council, where current application and approval numbers can be provided along with specific issues or concerns raised by applicants.

An extended start-up period will afford the opportunity to consider these issues and potentially amend the short-term rental ordinance prior to the end of the start-up period.

BUDGET/STAFF IMPACT:

NA

Attachments:

- Exhibit 'A'
- Proposed Ordinance Amendment in Strikethrough/Highlight
- Short-term Rental Inspection Checklist

118.01 Applicability

...

- (E) *Short-Term Rentals.* A residential dwelling unit, portion of a dwelling unit, or bedroom within a residential dwelling unit, leased and/or rented to a guest(s), for a period of less than thirty consecutive (30) days.

...

- (4) *Nine-Month Start-up Period.* After the enactment of the short-term rental ordinance, short-term rental operators shall have nine (9) months to obtain a business license and be considered in compliance. After the nine-month start-up period, all short-term rental units must have a business license to be considered in compliance.
- (a) Persons seeking to operate a short-term rental within nine months of the enactment of this Code section shall be granted a conditional use permit for such short-term rental without having to pay a fee or have a hearing before the Planning Commission. The conditions for such permit shall be full compliance with all terms and requirements of Chapter 118, Business Registry and Licenses, this section, and all other requirements of the Fayetteville Code including timely and full payment of all hotel, motel, and restaurant taxes to the city. Revocation of the business license shall also revoke the conditional use permit granted by this subsection.
 - (b) Persons seeking to operate a Type 2 short-term rental who have failed to obtain such conditional use permit and business license prior to the end of the nine-month start-up period shall be required to follow normal procedures and apply to the Planning Commission to request a conditional use permit which will be issued or denied pursuant to the Planning Commission's decision pursuant to §163.18(2)(a).
 - (c) Type 1 and 2 short-term rentals seeking a business license or permit under the 9-month start-up period which are currently operating in 2-, 3- and 4-unit buildings in which more than one (1) unit is being used as a short-term rental may obtain a business license for all currently operating short-term rentals.

...

(Ord. No. 6427 , §§1(Exh. A), 2, 4-20-21)

Editor's note(s)—Ord. No. 6427 , § 2, adopted April 20, 2021, "determines that this ordinance and all amendments to Code sections ordained or enacted by this ordinance shall automatically sunset, be repealed, terminated, and become void twenty (20) months after the passage and approval of this ordinance, unless prior to that date, the City Council amends this ordinance to repeal this sunset, repeal and termination section."

163.18 Short-Term Rentals

(A) *General Standards.*

...

- (7) *Nine-Month Start-up Period.* After the enactment of the short-term rental ordinance, short-term rental operators shall have nine (9) months to obtain a business license and be considered in compliance. After the nine-month start-up period, all short-term rental units must have a business license to be considered in compliance.
- (a) Persons seeking to operate a short-term rental within nine (9) months of the enactment of this Code section shall be granted a conditional use permit for such short-term rental without having to pay a fee or have a hearing before the Planning Commission. The conditions for such permit shall be full compliance with all terms and requirements of Chapter 118, Business Registry and Licenses, this section, and all other requirements of the Fayetteville Code including timely and full payment of all hotel, motel, and restaurant taxes to the city. Revocation of the business license shall also revoke the conditional use permit granted by this subsection.
 - (b) Persons seeking to operate a Type 2 Short-term rental who have failed to obtain such conditional use permit and business license prior to the end of the nine-month start-up period shall be required to follow normal procedures and apply to the Planning Commission to request a conditional use permit which will be issued or denied pursuant to the Planning Commission's decision pursuant to §163.18(2)(a).
 - (c) Type 1 and 2 short-term rentals seeking a business license or permit under the nine-month start-up period which are currently operating in 2-, 3- and 4-unit buildings in which more than one (1) unit is being used as a short-term rental may obtain a business license for all currently operating short-term rentals.

...

(Ord. No. 6427 , §§1(Exh. E), 2, 4-20-21)

Editor's note(s)—Ord. No. 6427 , § 2, adopted April 20, 2021, "determines that this ordinance and all amendments to Code sections ordained or enacted by this ordinance shall automatically sunset, be repealed, terminated, and become void twenty (20) months after the passage and approval of this ordinance, unless prior to that date, the City Council amends this ordinance to repeal this sunset, repeal and termination section."

118.01 Applicability

(A) *General Businesses.*

- (1) All businesses, institutions, corporations, LLCs, LLPs, partnerships, non-profit associations or corporations, sole proprietorships or other non-governmental entities with a physical address or which operates either a legally permitted home occupation or a short-term rental within the Fayetteville city limits shall be required to file for the City of Fayetteville Business Registry and License. A covered business or entity with multiple physical addresses in Fayetteville must obtain a separate business license for each such business address.
- (2) In addition, any person or non-governmental entity who has or should have a sales tax permit and operates out of a physical address within Fayetteville shall be required to file for the City of Fayetteville Business Registry and License.
- (3) In addition, any person or non-governmental entity who is engaged in any trade or occupation which requires federal or state licenses and who operates out of a physical address within Fayetteville shall be required to file for the City of Fayetteville Business Registry and License.

(B) *Religious Entities.* Churches and other religious institutions are exempt from this chapter unless they are performing functions like daycare that must be licensed by the state or that generate revenue upon which state sales or use taxes must be paid. The city business license shall not be required for the religious entity but only for those functions that require a state license or upon which state sales or use taxes must be paid.

(C) *Minors Exempt.* No individual under eighteen (18) years of age shall be required to register or obtain a business license. Minors are prohibited from leasing, advertising, managing or any other activity involved in STRs unless they are an emancipated minor.

(D) *Individual Landlords Renting Less Than Three (3) Dwelling Units Exempt.* An individual landlord, not operating as a corporation, LLC, LLP, or other business entity, who rents out less than three (3) dwelling units, and no commercial, industrial, or institutional unit, site or building shall be exempt from this chapter. However, a landlord that operates a short-term residential rental shall not be exempt and must apply for and obtain a business license for each individual short-term rental.

(E) *Short-Term Rentals.* A residential dwelling unit, portion of a dwelling unit, or bedroom within a residential dwelling unit, leased and/or rented to a guest(s), for a period of less than thirty consecutive (30) days.

- (1) *Short-Term Rental, Type 1.* A short-term rental where the principal use of the property remains as a full-time residence. The occupants or owner rent their primary residence as a short-term rental. A copy of the Homestead Tax Credit or long-term lease agreement for the subject property is required to be classified as a Type 1 rental. The occupant or owner must occupy the residence for nine (9) months of the year. Accessory dwelling units (ADUs) as defined in Unified Development Code Chapter 151 shall be considered a Type 1 short-term rental.
- (2) *Short-Term Rental, Type 2.* A short-term rental that is not occupied by a permanent resident. The owner lists this property full-time as a short-term rental and has no intention of having permanent residents living in the property. A conditional use permit is required for a Type 2 short-term rental prior to the city issuing a business license, except as defined in §118.01(E)(4).
- (3) *License Required.* No dwelling unit in the city shall be used as a short-term rental unless:
 - (a) The owner of the dwelling unit or operator of the short-term rental possess a valid and current business license for the dwelling unit, and fully complies with all legal requirements and duties imposed herein with respect to each and every short-term rental; and

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- (b) The owner has designated an agent, where said agent fully complies with all legal requirements and duties imposed herein with respect to every short-term rental. The owner may serve as their own agent.
 - (c) The owner of the dwelling unit or operator of the short-term rental provides proof of a valid and current homeowners insurance rider policy which fully covers each unit when operated as short-term rental unit.
- (4) ~~Six~~ **Nine**-Month Start-up Period. After the enactment of the short-term rental ordinance, short-term rental operators shall have ~~six~~ **nine** (~~6~~**9**) months to obtain a business license and be considered in compliance. After the ~~6~~**nine**-month start-up period, all short-term rental units must have a business license to be considered in compliance.
- (a) Persons seeking to operate a short-term rental within ~~six~~ **nine** months of the enactment of this Code section shall be granted a conditional use permit for such short-term rental without having to pay a fee or have a hearing before the Planning Commission. The conditions for such permit shall be full compliance with all terms and requirements of Chapter 118, Business Registry and Licenses, this section, and all other requirements of the Fayetteville Code including timely and full payment of all hotel, motel, and restaurant taxes to the city. Revocation of the business license shall also revoke the conditional use permit granted by this subsection.
 - (b) Persons seeking to operate a Type 2 short-term rental who have failed to obtain such conditional use permit and business license prior to the end of the ~~six~~ **nine**-month start-up period shall be required to follow normal procedures and apply to the Planning Commission to request a conditional use permit which will be issued or denied pursuant to the Planning Commission's decision pursuant to §163.18(2)(a).
 - (c) Type 1 and 2 short-term rentals seeking a business license or permit under the ~~6~~**nine**-month start-up period which are currently operating in 2-, 3- and 4-unit buildings in which more than one (1) unit is being used as a short-term rental may obtain a business license for all currently operating short-term rentals.
- (5) A separate business license shall be required for each dwelling unit used as a short-term rental.
- (6) Any change in ownership requires a new or amended business license.
- (7) If any required contact information changes for the associated business license, the person to whom the license was issued shall immediately notify the Development Services Department in writing.
- (8) *License Application.* The application for a business license shall include at minimum, the following information from applicants:
- (a) The property owner's information including legal name, mailing address, immediate contact phone number, and immediate contact E-mail address.
 - (b) Information for the dwelling unit subject to the application, inclusive of the physical street address assigned by the city.
 - (c) The type and total number of dwelling units located on the lot of record containing the dwelling unit subject to the application.
 - (d) If the owner is not their own agent, the owner designated agent's information including legal name, mailing address, immediate contact phone number and immediate contact E-mail address.
 - (e) Documentation of approval of a life safety and egress inspection by the City Building Safety Division for the dwelling unit subject to the application.

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- (f) Proof of application for remittance of hotel, motel and restaurant tax to the City of Fayetteville, and verification that all sales, use, and hotel, motel and restaurant taxes are current.
 - (g) Any additional data as deemed necessary or desirable for permit approval by the Development Services Director.
- (10) *License Renewals.* Business licenses for short-term rentals shall be renewed in accordance with Chapter 118 of the Business Regulations (Business Registry and Licenses).
- (11) *Legal Duties of License Holders.* An owner possessing a short-term rental license shall comply at all times with the following requirements:
- (a) *Occupancy.* Short-term rentals shall be subject to, and may not exceed, the occupancy limits approved with the business license.
 - (b) *Advertisements.* A short-term rental shall not be advertised if it violates occupancy, density, safety, and any of the other provisions of the Fayetteville Code. No short-term rental unit shall be advertised prior to having obtained a business license and the business license number shall be included in the advertisement listing.
 - (c) *Information and Posting.* Business licensees shall provide to guests and post conspicuously in the common area of the short-term rental unit the city phone number to report a safety complaint.
- (12) *Owner or Agent Accessibility.* The property owner shall ensure that they or a designated agent are available at all times during guest occupancy, including nights and weekends, in order to facilitate compliance with this section. For the purposes of these regulations, 'availability' means that the owner or agent is accessible by telephone, and, able to be physically present at the short-term rental within three (3) hours of being contacted.
- (13) *Guest Records.* The owner shall maintain summary guest registration records, which shall contain the actual dates of occupancy, total number of guests per party per stay, and the rate(s) charged, but shall not contain any personally identifiable information about guests. Such records shall be maintained for three (3) years and shall be provided to the City upon request.
- (14) *Health and Safety.* The owner shall ensure that each dwelling unit governed by this section complies with the applicable provisions of the Unified Development Code Chapter 173, Building Regulations.
- (15) *Criminal Activity.* The owner shall timely report any known or reasonably suspected criminal activity by a guest to the Fayetteville Police Department within twelve (12) hours maximum.
- (16) *Taxes and Fees.* Except for those instances in which a hosting platform bears the responsibility for collecting and remitting taxes and fees applicable to short-term rentals, the property owner shall timely remit in full Fayetteville Hotel, Motel and Restaurant tax and other applicable local, state, and federal taxes and city fees owed in connection with any short-term rental. The failure of a hosting platform to collect and remit taxes and fees shall not relieve an owner of the obligation to pay taxes and fees owed pursuant to this section.
- (17) *Authorization to Occupy, Use, and Operate.* Authorization to operate a short-term rental may be granted by the Development Services Director through the issuance of a City of Fayetteville Business Registry and License (Business License).
- (18) *Density For Type 2 Short-Term Rentals.* A city-wide density cap of 2% of all dwelling units in the Fayetteville city limits may be utilized as Type 2 rentals. Total dwelling units are determined from current United States Census Bureau and/or American Community Survey numbers, whichever number is higher. A conditional use permit may not permit:
- (a) More Type 2 short-term rentals than what is allowed by the city-wide density cap.

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- (b) More than 10% or a single unit whichever is greater; of total dwelling units as Type 2 rentals within a multi-family dwelling complex.
 - (c) Individual 2-, 3- and 4-family buildings that are owned by the same person or entity and are not a part of a multi-family complex shall have no more than one (1) Type 2 short-term rental unit per building complex.
 - (d) Density of Type 2 short-term rentals shall not be limited in commercial and mixed-use zoning districts where hotel/motels are permitted by right,
- (19) *Suspension and Revocation.* If the Development Services Director has reason to believe that any of the grounds specified in §118.03(A) of the Fayetteville Code exist, or that any rental unit was rented for less than one (1) full night, or to more than one (1) part of guests for the same period of time, or otherwise failed to comply with all terms and conditions of this section, the Development Services Director may suspend or revoke the short-term rental's business license pursuant to the procedures detailed in §118.03 and in §118.04 of the Fayetteville Code.
- (20) Short-term rentals must comply with all applicable codes under Unified Development Code §163.18 and successfully obtain a business license prior to operation.

(Ord. No. 6427 , §§1(Exh. A), 2, 4-20-21)

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163.18 Short-Term Rentals

(A) *General Standards.*

- (1) *Residential Zoning Districts.* Short-term rentals may be permitted in all zoning districts where residential uses are allowed by right.
- (2) *Commercial and Mixed Use Zoning Districts.* Short-term rentals may be permitted in all zoning districts where hotel/motel uses are permitted by right and shall not count towards the Type 2 short-term rental density cap in these districts except in multi-family buildings as specified in Chapter 118 of the Fayetteville City Code.
- (3) *Occupancy.* Maximum of two (2) people per bedroom, plus two (2), for the entire unit when operated as a short-term rental.
- (4) *Parking.* Parking is limited to the maximum number of vehicles as allowed by the underlying zoning district for the residential building on the property.
- (5) Special events are not permitted in a short-term rental. Example of special events include, but are not limited to, weddings, receptions, anniversaries, private parties, fundraisers and business seminars.
- (6) Short-term rental units are allowed in any structure established as a permanent residential dwelling including an accessory dwelling unit. No recreational vehicle, trailer, other vehicle or structure not classified as a permanent residential dwelling may be used as a short-term rental.
- (7) ~~Six~~**Nine**-Month Start-up Period. After the enactment of the short-term rental ordinance, short-term rental operators shall have ~~six~~**nine** (~~6~~**9**) months to obtain a business license and be considered in compliance. After the ~~6~~**nine**-month start-up period, all short-term rental units must have a business license to be considered in compliance.
 - (a) Persons seeking to operate a short-term rental within ~~six~~**nine** (~~6~~**9**) months of the enactment of this Code section shall be granted a conditional use permit for such short-term rental without having to pay a fee or have a hearing before the Planning Commission. The conditions for such permit shall be full compliance with all terms and requirements of Chapter 118, Business Registry and Licenses, this section, and all other requirements of the Fayetteville Code including timely and full payment of all hotel, motel, and restaurant taxes to the city. Revocation of the business license shall also revoke the conditional use permit granted by this subsection.
 - (b) Persons seeking to operate a Type 2 Short-term rental who have failed to obtain such conditional use permit and business license prior to the end of the ~~6~~**nine**-month start-up period shall be required to follow normal procedures and apply to the Planning Commission to request a conditional use permit which will be issued or denied pursuant to the Planning Commission's decision pursuant to §163.18(2)(a).
 - (c) Type 1 and 2 short-term rentals seeking a business license or permit under the ~~6~~**nine**-month start-up period which are currently operating in 2-, 3- and 4-unit buildings in which more than one (1) unit is being used as a short-term rental may obtain a business license for all currently operating short-term rentals.
- (8) *Exceptions.* Exceptions to the short-term rental standards, except proposals that would exceed the city-wide density maximum, may be granted by the Planning Commission as a conditional use permit.
- (9) Short-term rentals must comply with all applicable codes under City Code §118.01 and successfully obtain a business license prior to operation.

(Ord. No. 6427 , §§1(Exh. E), 2, 4-20-21)

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Short-Term Rental Inspection Checklist

- Must have smoke alarms, either battery operated (w/radio feature preferred) or interconnected hard wired, on every floor level, in every bedroom, and outside of bedrooms per the Arkansas Fire Prevention Code Vol III.
- Carbon monoxide detectors shall be installed and in working order if gas is present in the home or attached garage. The detector must be placed near the source of gas and/or the garage entrance per the Arkansas Fire Prevention Code Vol III.
- Portable space heaters are a minimum 3 feet from combustible materials and not used for primary heat source.
- Extension cords are in good condition, used safely, not under carpets, or across walking areas. (Not allowed for permanent wiring)
- All escape routes are clear of obstructions and easily accessible.
- All sleeping areas have egress windows or a door directly to the outside.
- The furnace has been inspected in the past year and filter replaced. Keep copy of invoice near the equipment for inspection purpose.
- The fireplace chimney has been inspected and cleaned yearly.
- Need portable fire extinguishers visible on each floor and up to date.
- Electrical panels shall be labelled.
- All plugs in kitchen, bathrooms, and within 6' of water source must be GFCI protected.
- Decks and balconies must be in good working order.
- Handrails and guardrails must be installed and in good working order where required by the Arkansas Fire Prevention Code Vol III.
- Address must be displayed in contrasting colors and facing the street.
- All gas, water, and electrical must have shutoffs in place.