

City of Fayetteville Staff Review Form

2020-1012

Legistar File ID

12/1/2020

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

MaryMcGetrick

11/12/2020

DEVELOPMENT SERVICES (620)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

STAFF RECOMMENDS APPROVAL OF A SHORT-TERM RENTALS ORDINANCE CLASSIFYING THE TYPES OF SHORT-TERM RENTALS AND CREATING REGULATIONS TO PERMIT AND INSPECT THE RENTALS.

Budget Impact:

Account Number		Fund	
Project Number		Project Title	
Budgeted Item?	No	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	No	Item Cost	
Budget Adjustment Attached?	No	Budget Adjustment	
		Remaining Budget	\$ -

V20180321

Purchase Order Number: \_\_\_\_\_

Previous Ordinance or Resolution # \_\_\_\_\_

Change Order Number: \_\_\_\_\_

Approval Date: \_\_\_\_\_

Original Contract Number: \_\_\_\_\_



**TO:** City of Fayetteville City Council

**FROM:** Garner Stoll, Development Services Director

**MEETING DATE:** December 1<sup>st</sup>, 2020

**SUBJECT:** **ADM 20-7000 Administrative Item (Amend Fayetteville Code of Ordinances: Short-term Residential Rentals):** Submitted by the Development Services Department for revisions to the Fayetteville Code of Ordinances for short-term residential rentals.

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**RECOMMENDATION:**

STAFF RECOMMENDS APPROVAL OF A SHORT-TERM RENTALS ORDINANCE CLASSIFYING THE TYPES OF SHORT-TERM RENTALS AND CREATING REGULATIONS TO PERMIT AND INSPECT THE RENTALS.

**RECOMMENDED MOTION:**

*"I move to approve ADM 20-7000 as recommend by City staff."*

**BACKGROUND:**

The short-term rental code amendments were approved by Planning Commission on February 24 of 2020. Staff presented a recommended code change along with alternatives. There were several members of the public at the meeting and a variety of perspectives were shared about how the city should handle short-term rentals. The recommended code amendments in this report have been revised to incorporate the legal recommendations from the City Attorney's office and Planning Commission. The primary revisions from the City Attorney's office included relocating many of the short-term rental requirements from Chapter 163 into Chapter 118, Business Licenses, changing enforcement staff to the Development Services Director, removing the requirement for liability insurance, and clarifying what is required for building inspection.

A short-term rental (STR) is the leasing out of a furnished residential dwelling on a short-term basis, generally less than a month. It is estimated that there are approximately 500-600 STR units in Fayetteville. However, Fayetteville's codes do not have specific rules for STRs and they are classified as hotels/motels in the zoning code. This prevents them from legally operating in a single-family district and there are numerous STRs currently in violation. In July of 2019 the City Council adopted Resolution 172-19 directing staff to study and develop an ordinance for STRs for their consideration.

*Public Input:* As the first step in studying STRs, the City hosted a focus group on August 19, 2019. The focus group represented various perspectives including neighborhood representatives,

concerned citizens, rental owners and managers, and hotel owners. The group was guided by a professional facilitator to identify key issues and recommendations in moving forward with local rules for STRs. On September 30, 2019, the city hosted an open public input meeting which allowed all attendees to provide input in writing and verbally on the issues identified by the focus group. The city staff continued to take comment from the public and elected officials over the last few months. After reviewing the public comment and completing extensive research on many cities' short-term rental codes, the City's consultant on the project, Garver LLC, completed a first draft of revisions to the Fayetteville Code of Ordinance for STRs. This first draft was presented to the same focus group on January 15, 2020 for their review and comment. Staff presented the final draft ordinance, for comment, to the focus group on November 5, 2020

## **DISCUSSION:**

The Development Services Department and their consultant, Garver LLC, have drafted amendments to the Fayetteville Code of Ordinances for short-term residential rentals. The primary issues proposed in the previous revisions include the following:

- **Location:** STRs would be allowed by right in all zoning districts where residential dwellings and/or hotel/motel uses are allowed.
- **Type 1 and Type 2 STRs:** There are two types of STRs. Type 1 is a full-time residence and Type 2 is a full-time STR. Type 1's are not subject to density limitations, Type 2's are subject to density limitations in districts where the use is not allowed by right. Type 2's require a conditional use permit when use is not allowed by right.
- **Residency:** A permanent resident does not have to live in the STR dwelling.
- **Occupancy:** Maximum of 2 people per bedroom plus 2, with a maximum of 8 people regardless of the number of bedrooms. A definition of bedroom is included.
- **Permit:** A business license must be obtained prior to operation.
- **Inspection:** Prior to approval of a business license the rental unit must pass a safety and egress inspection conducted by the Fayetteville Building Safety Division. A life safety and egress inspection will verify the basic life safety requirements like fire alarms and basic egress requirements like a door. An inspection is only required for the initial license.
- **Grace period:** 6 months for existing STRs to obtain inspection and business license. If both the inspection and the business license are obtained in the 6 month grace period a conditional use permit will not be required.
- **Special events:** No parties or special events allowed in STRs by right.
- **Parking:** Parking is limited to the maximum number of vehicles as allowed by the underlying zoning district for the residential building on the property.
- **Conditional use permits:** Type 2's require a conditional use permit when the use is not allowed by right in the underlying zoning district.
- **Density limitations:** Density limitations only apply to Type 2 STRs. A city-wide density cap of two percent (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 the following:
  - More Type 2 short-term rentals than what is allowed by the city-wide density cap.
  - More than two (2) dwellings units as Type 2 rentals within a multi-family dwelling complex
  - Individual 2-family, 3 and 4-family buildings that 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.

- Type 2 short-term rentals in commercial and mixed-use zoning districts where hotel/motel are permitted by right shall not count towards the city-wide density cap.
- 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.
- **Fees:** STRs would only be subject to the typical business license and occupancy inspection fees.
- **Exceptions:** Exceptions to the short-term rental code are subject to review as a conditional use permit.

*Request:* Staff requests that the City Council amend chapter 118 of the Business Regulations and chapters 151, 161, 162, and 163 of the Unified Development Code for short-term rentals. The code changes are described above and shown in the attached strikeout-highlight version of the code.

**STAFF RECOMMENDATION:**

**Staff recommends that the City Council approve the code changes as outlined above and in the attached ordinance.**

**BUDGET/STAFF IMPACT:**

N/A

**Attachments/website:**

- Proposed code changes shown in strikeout
- City of Fayetteville short-term rental website  
<http://www.fayetteville-ar.gov/3801/Short-Term-Rentals>

CHAPTER 118: - BUSINESS REGISTRY AND LICENSES

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.

(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 room 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. 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

(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.

(4) 6 Month Start-up Period. After the enactment of the short term rental ordinance, existing short term rental operators shall have 6 months to obtain a business license and be considered in compliance. After the 6 month start-up period, all short term rental units must have a business license to be considered in compliance. To qualify for this exemption as a pre-existing short-term rental, satisfactory proof of operation prior to the enactment date shall be provided to the city including a copy of a back-dated advertisement listing the unit and a copy of a transaction prior to the adoption date documenting that the unit was utilized as a short-term rental. Short-term rentals must also successfully pass an inspection as described in §118.01(E)(9)(e). The City has complete discretion in determining whether such submitted proof is sufficient and satisfactory.

(a) Type 2 short-term rentals seeking a business license or permit under the 6-month start-up period will not be required to obtain a conditional use permit. Any Type 2 short-term rentals submitting a business license or permit after the 6-month grace period shall be required to obtain a conditional use permit prior to the City issuing a business license.

(5) No hosting platform shall facilitate or conduct any booking transaction for a short-term rental in the City without the short-term rental first obtaining and maintaining possession of the requisite business license.

(6) A separate business license shall be required for each dwelling unit used as a short-term rental.

(7) Any change in ownership requires a new or amended business license.

(8) 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.

(9) 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.

(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 Zoning and Development Administrator.

(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. Exceptions to the occupancy standards for short-term rentals may be granted by the Planning Commission as a conditional use permit.
  - (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. No hosting platform or owner/agent may offer, advertise, book, facilitate, or engage in short-term rental activity or advertisement that violates any provision of the short-term rental code.
  - (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 one (1) hour 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 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.
- (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 Zoning and Development Administrator 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 two percent (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.
  - (b) More than two (2) dwellings units as Type 2 rentals within a multi-family dwelling complex.
  - (c) Individual 2-family, 3 and 4-family buildings that 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) Type 2 short-term rentals in commercial and mixed-use zoning districts where hotel/motels are permitted by right shall not count towards the city-wide density cap.

(19) *Suspension and Revocation.* If the Zoning and Development Administrator 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 full night, or to more than one part of guests for the same period of time, or otherwise failed to comply with all terms and conditions of this section, the Zoning and Development Administrator 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 Chapter 163.18 and successfully obtain a business license prior to operation.



# Short Term Rentals

Garner Stoll, Development Services Director  
Mary McGetrick, Long Range Planning Manager

City Council Meeting  
December 1, 2020



CITY OF  
**FAYETTEVILLE**  
**ARKANSAS**

# Introduction

- A short-term rental (STR) is the leasing out of a furnished residential dwelling on a short-term basis, generally less than a 30 days.
- Pre-Covid it is estimated that there were approximately 500-600 STR units in Fayetteville.
- Fayetteville's codes do not have specific rules for STRs and they are classified as hotels/motels in the zoning code. This prevents them from legally operating in a single-family district and there are numerous STRs currently in violation.

# General Standards

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**Residency:** A permanent resident does not have to live in the STR dwelling

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**Residential Zoning Districts:** Short-term rentals may be permitted in all zoning districts where residential uses are allowed by right.

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**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.

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**Occupancy:** Maximum of 2 people per bedroom plus 2, with a maximum of 8 people regardless of the number of bedrooms. A definition of bedroom is included.

# General Standards

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**Special events:** No parties or special events allowed in STRs by right

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**Parking:** Parking is limited to the maximum number of vehicles as allowed by the underlying zoning district for the residential building on the property.

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**Short-term rental units:** 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.

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**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

# STR Types - Type 1

**Type 1** is 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.
- Accessory dwelling units (ADUs) as defined in Unified Development Code Chapter 151 shall be considered a Type 1 short-term rental.
- Type 1's are not subject to density limitations.

# STR Types - Type 2

**Type 2** is any short-term (less than 30 days) rental that does not qualify to be a Type 1 rental that the owner lists this property full-time as a short-term rental and has no intention of having permanent residents living at the property.

- A conditional use permit is required prior to use and prior to receiving a business license. Hotel, motel, and existing, licensed Bed and Breakfast entities shall not be considered short-term rentals subject to this section.
- A conditional use permit may NOT permit the following;
  - Individual 2-family, 3 and 4-family buildings that are not a part of a multi-family complex shall have no more than one Type 2 short term rental unit per building complex.
  - More than two dwellings units as Type 2 rentals within a multi-family dwelling complex

# Density Cap

- **Density limitations:** Density limitations only apply to Type 2 STRs. A city-wide density cap of one 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.
- Type 2 short-term rentals in commercial and mixed-use zoning districts where hotel/motel are permitted by right shall not count towards the city-wide density cap.
- 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.

# Grace Period

- After the enactment of the short-term rental ordinance, existing short-term rental operators shall have 6 months to obtain a business license and be considered in compliance.
- After the 6-month start-up period, all short-term rental units must have a business license to be considered in compliance.
- Type 2 short-term rentals seeking a business license or permit under the 6-month start-up period will not be required to obtain a conditional use permit.
- Any Type 2 short-term rentals submitting a business license or permit after the 6-month grace period shall be required to obtain a conditional use permit prior to the City issuing a business license.
- To qualify for this exemption as a pre-existing short-term rental, satisfactory proof of operation prior to the enactment date shall be provided to the city including a copy of a back-dated advertisement listing the unit and a copy of a transaction prior to the adoption date documenting that the unit was utilized as a short-term rental.
- The City has complete discretion in determining whether such submitted proof is sufficient and satisfactory.



# Permitting and Inspection

- A short-term rental within the Fayetteville city limits shall be required to file for the City of Fayetteville Business Registry and License.
- An owner that operates a short-term residential rental shall must apply for and obtain a business license for each individual short-term rental.
- An owner has designated an agent, he owner may serve as their own agent but must be available by phone at all times during guest occupancy, including nights and weekends and able to be present at the property with in one hour.
- Business licensees must be posted conspicuously common area of the short-term rental unit with the City phone number to report a safety complaint.
- A life safety and egress inspection by the City Building Safety Division for the dwelling units required to obtain a Business License

# Thank you!

Mary McGetrick

LONG RANGE PLANNING, CITY OF FAYETTEVILLE



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