

City of Fayetteville Staff Review Form

2022-0878

Legistar File ID

10/4/2022

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

Britin Bostick

9/16/2022

LONG RANGE PLANNING (634)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approve ADM-2022-0043: Administrative Item: (Amend UDC Chapter 118 – Applicability, Chapter 151 – Definitions, and Chapter 163 – Short-Term Rentals): Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to remove the conditional use permit requirement for type 2 short-term rentals and to repeal a sunset provision in Ordinance No. 6427.

Budget Impact:

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

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # 6427, 6537

Change Order Number: _____

Approval Date: 4/20/21, 02/15/22

Original Contract Number: _____

Comments:



MEETING OF OCTOBER 4, 2022

TO: Mayor; Fayetteville City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director
Fayetteville Planning Commission

FROM: Britin Bostick, Long Range Planning/Special Projects Manager

DATE: September 16, 2022

SUBJECT: **ADM-2022-0043: Administrative Item: (Amend UDC Chapter 118 – Applicability, Chapter 151 – Definitions, and Chapter 163 – Short-Term Rentals):** Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to remove the conditional use permit requirement for type 2 short-term rentals and to repeal a sunset provision in Ordinance No. 6427.

RECOMMENDATION:

City staff and the Planning Commission recommend approval of an amendment to the Unified Development Code amending § 118.01, Applicability in Chapter 118, Business Registry and Licenses; amending § 151.01, Definitions; and amending § 164.26, Short-Term Rentals, to remove the Conditional Use Permit requirement for Type 2 Short-Term Rentals. The recommendation also includes repealing a sunset provision in Ordinance No. 6427, which automatically repeals the regulation of Short-Term Rentals 20 months after the adoption of the ordinance on April 20, 2021.

BACKGROUND:

Short-term rentals are defined in the Fayetteville Unified Development Code (UDC) as, “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.” Short-term rentals are classified as two different types. Type 1 short-term rentals are those where the principal use of the property remains as a full-time residence. Type 2 short-term rentals are defined as, “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.”

On April 20, 2021 the Fayetteville City Council adopted Ordinance No. 6427 to regulate short-term rentals, which followed Resolution 172-19 passed in July 2019 to study such an ordinance. This ordinance established a 6-month start-up period for existing short-term rentals to obtain a business license and set the business license requirements and use conditions specific to short-term rentals. The initial ordinance included a citywide density cap on the number of business licenses that may be issued for type 2 short-term rentals at 2% of the total dwelling units in the Fayetteville city limits. This cap is applied in zoning districts that do not allow hotel or motel uses.

There is currently a citywide cap of 875 business licenses for type 2 short term rentals based on the 2020 U.S. Census estimation of 43,795 housing units. The initial ordinance also established a limit of either 10% or a single unit, whichever is greater, on the total number of dwelling units used as type 2 rentals within a multi-family dwelling complex. Excluded from the multi-family cap are dwellings held separately through condominium association, horizontal property regime, fee simple, or similar ownership structure. Subsequent Ordinances No. 6505 adopted November 16, 2021 and No. 6537 adopted February 15, 2022 extended the start-up period to nine and twelve months, respectively.

Since Ordinance No. 6427 was adopted on April 20, 2021, and as of September 14, 2022, Development Services has:

- Issued 326 business licenses for type 2 short-term rentals
 - 282 are subject to the citywide density cap for a 32.2% usage of the cap
- Issued 75 active business licenses for type 1 short-term rentals
- Denied 104 business license applications for short-term rentals (most of which were denied due to not completing the business license application during the start-up period)
 - Of those denials 84 were for type 2 short-term rental applications
- Received 5 complaints for short-term rentals
- Issued 2 violation notices for short-term rentals

Since the end of the start-up grace period on July 21, 2022 and as of September 14, 2022 Development Services has:

- Received 54 conditional use permit applications for type 2 short-term rentals
- Issued 51 business licenses for short-term rentals, 38 of which are type 2 short-term rentals
- Denied 0 business licenses for short-term rentals

This year as of September 14 the Fayetteville Planning Division has received a total of 83 conditional use permit applications, 54 of which have been submitted for type 2 short-term rentals since July 21. In less than two months, short-term rentals represent 65% of the total number of conditional use permits submitted for 2022, with an average of two conditional use permit applications per Planning Commission meeting in May, June and July and an average of eight applications Per Planning Commission meeting in August and September, which correlates with the end of the short-term rental start-up period.

A sunset clause was included in the initial ordinance approved on April 20, 2021. The clause provided for an automatic repeal of the ordinance regulating short-term rentals within 20 months without action by the Council to repeal the sunset clause. This automatic repeal of the ordinance would take effect on December 20, 2022 if no action is taken by the Council to continue it. Given the enforcement provisions in the ordinance and the majority of short-term rentals being located in residential neighborhoods, continuing the regulation of short-term rentals provides clear expectations for operation and a remedy in the event that the use of a property as a short-term rental violates the adopted standards. If the sunset clause is not extended or if the short-term rental ordinance is not made permanent, this will remove life safety inspections and enforcement tools, render many short term rentals illegal, and likely reduce tax collections.

DISCUSSION:

The purpose of this amendment is to remove the conditional use permit requirement for type 2 short-term rental business licenses, as requirements and review processes are otherwise in place to address the operation of short-term rentals. The citywide density cap provides a limit to the number of businesses licenses for type 2 short-term rentals, and the business license regulations grant administrative authority to revoke approved business licenses if it is found that the conditions of operation are not being met. Additionally, the removal of the requirement for the approval of a conditional use permit (CUP) prior to the issuance of a short-term rental reduces the time and resources allocated by the Planning Division's Development Review staff to these items and allows for a reallocation of time to other customer service and development application review needs, including enforcing adopted ordinance.

Per UDC Sec. 118.01(E)(18), a CUP may not permit more type 2 short-term rentals than is allowed by the city-wide density cap. It should be noted that type 2 short-term rentals in commercial and mixed-use zoning districts where hotels/motels are permitted by right do not contribute to the city-wide density cap. A conditional use permit may also not permit more type 2 short-term rentals in a multi-family dwelling complex than the multi-family density cap allows. Per UDC Section 163.02(C)(3)(c), the Planning Commission considers the following when reviewing CUP requests for type 2 short-term rentals or other conditional uses:

- Compliance with the specific rules governing individual conditional uses
- Ingress to and egress from property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe
- Off-street parking and loading areas where required, with particular attention to ingress and egress, economic, noise, glare, or odor effects of the special exception on adjoining properties and properties generally in the district
- Refuse and service areas, with particular reference to ingress and egress, and off-street parking and loading
- Utilities, with reference to locations, availability, and compatibility
- Screening and buffering with reference to type, dimensions, and character
- Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district
- Required setbacks and other open space
- General compatibility with adjacent properties and other property in the district
- General compatibility with the goals and intent of the city's adopted land-use, transportation, and other strategic plans

Given the scope of review granted to the Planning Commission for CUPs and the requirements in place for a business license to operate a type 2 short-term rental, staff's position is that the business license requirements are sufficient to adequately condition and enforce type 2 short-term rentals. Those requirements are included in UDC Sec. 118.01, attached to this memo.

If the requirements for a business license are not being met for any short-term rental, enforcement provisions are in place to revoke an approved business license. Per UDC Sec. 118.01 (E)(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.” The revocation of a business license may be appealed to the Fayetteville City Council. One reason staff advocates the business license as an enforcement rather than a CUP, is that the revocation of a business license is a more expedient process than that to revoke a CUP. The CUP revocation is described in UDC Sec. 163.14, Revocation or Change of Conditional Use, attached for reference to this memo.

Although the business license approval process requires multiple steps and can take up to a few weeks to complete, the time from application to Planning Commission review of a CUP, approximately six weeks, has been perceived by some potential applicants as a hurdle representing a disincentive for compliance. Anecdotally, potential applicants have communicated to staff that the CUP requirement does not dissuade them from operating a short-term rental, rather that the requirement is a strong incentive to operate a short-term rental without the required approvals until a complaint is submitted.

In the Planning Commission's Long Range Planning Committee meeting on August 18, 2022 the Commissioners noted the sudden increase in the number of CUP applications on the regular meeting agendas and expressed a desire to streamline the review process. Commissioners additionally noted other concerns. These included impacts to neighborhood parking via the use of short-term rentals by large groups with multiple vehicles and whether thresholds for review should be set based on approved business licenses for short-term rentals approaching the citywide density cap. The committee ultimately voted 4-0-1 in favor of forwarding the item to the next available regular meeting.

A further concern that has been expressed by the Planning Commission in recent meetings includes the potential impacts of long-term rentals changing to short-term rentals, and the resulting reduction in available housing. The city's permanent population growth and the growth of student enrollment at the University of Arkansas both play a prominent role in the cost and availability of housing. Evaluating housing supply and demand and the role short-term rentals play in that dynamic is an ongoing task. As CUPs are a tool for reviewing compatibility and do not have the ability to affect the citywide density cap, retaining the CUP requirement would not effectively address this concern about housing. However, staff recognizes that as the school season begins and college athletics serve as a large weekend draw to the city, there are potential seasonal trends to short-term rentals that should be considered. As the citywide cap still has hundreds of available approvals, and as there is financial incentive to owners though increased income typical of a short-term rental, staff's expectation is that economic trends will prove stronger than seasonal trends and continue to result in a large number of short-term rental requests.

At their September 12, 2022 meeting, the Planning Commission evaluated the amendment described above before forwarding to the City Council, recommending approval. Commissioner

Brink made the motion to forward with Commissioner McGetrick providing the second. A vote of 6-2-0 followed. The Commissioners noted a desire to streamline the process and relieve the sudden large number of conditional use requests brought on by the end of the start-up period. The notification aspect of the conditional use permit, however, was viewed as a benefit and the Commissioners discussed whether notification requirements could be applied to the business license review process. The Commissioners expressed a preference for a means of notification to neighboring properties when a short-term rental is in review. Additional concerns included neighborhood destabilization caused by multiple properties on a block being used as short-term rentals, potential impacts to safety if neighborhoods are vacant part of the time, how short-term rentals affect housing affordability, and impacts to adjacent properties. The Commissioners asked to discuss further refinements to type 2 short-term rental requirements in their next Long Range Planning Committee meeting, but ultimately decided to forward the item to City Council acknowledging the timing of the sunset provision and that the Council may want to discuss the proposed amendment and sunset clause in more than one meeting. No public comment was received on the item, but staff did receive one call related to a request for a type 2 short-term rental conditional use permit application prior to the meeting in which the caller also had questions about the proposed amendment.

In summary:

- The conditional use permit requirement in addition to the business license requirement creates a duplicative set of reviews with no apparent gain in enforcement.
- There have been minimal complaints issued to staff since the ordinance regulating short-term rentals was adopted.
- Removing the CUP requirement does not remove the density cap requirement, and enforcement provisions are captured in the business license requirements.
- Planning Commissioners intend to study and discuss the regulation of short-term rentals further, but at this time have forwarded the requested amendment and repeal of the sunset clause to the City Council with a recommendation of approval.

BUDGET/STAFF IMPACT:

N/A

Attachments:

- Proposed Ordinance – Exhibit “A”
 - §118.01, Applicability
 - §151.01, Definitions
 - §164.26, Short-Term Rentals
- Proposed Ordinance Amendment in Strikeout/Highlight
 - §118.01, Applicability
 - §151.01, Definitions
 - §163.18, Short-Term Rentals
- §163.14, Revocation or Change of Conditional Use (for reference, no change proposed)

EXHIBIT 'A'

ADM-2022-0043

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.
- (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.
 - (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.
 - (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) A separate business license shall be required for each dwelling unit used as a short-term rental.
 - (5) Any change in ownership requires a new or amended business license.
 - (6) 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.
 - (7) *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 Development Services Director.
- (8) *License Renewals.* Business licenses for short-term rentals shall be renewed in accordance with Chapter 118 of the Business Regulations (Business Registry and Licenses).
- (9) *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.
- (10) *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.
- (11) *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.
- (12) *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.
- (13) *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.
- (14) *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.
- (15) *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).
- (16) *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. Type 2 short-term rentals in commercial and mixed-use zoning districts where hotel/motels are permitted by right shall not contribute to the city-wide density cap.
 - (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) Where attached residential units are held separately through condominium association, horizontal property regime, fee simple, or similar ownership structure, no cap shall be applied to buildings with attached residential dwellings. Structures of attached residential dwellings where applicants seek more than 10% of total units for licensing as Type 2 rentals shall be evaluated by the Building Safety Director and/or Fire Marshal for adequate fire protection as defined by the adopted Arkansas Fire Prevention Code. Where inadequate fire protection is identified, improvements may be required prior to issuance of a business license.
- (17) *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.
- (18) Short-term rentals must comply with the Unified Development Code including the regulations contained in § 164.25 and must successfully obtain a business license prior to operation.

EXHIBIT 'B'

ADM-2022-0043

164.26 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) *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.
- (8) Short-term rentals must comply with all applicable codes under City Code §118.01 and successfully obtain a business license prior to operation.

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

-
- (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) Twelve (12) Month Start-up Period. After the enactment of the short-term rental ordinance, short-term rental operators shall have twelve (12) months to submit an application for a business license for the operation of a short-term rental. After the twelve (12) 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 twelve (12) 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 apply for such conditional use permit and business license prior to the end of the twelve (12) 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 12-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.~~

~~(d) Applications submitted prior to the end of the 12-month start-up period shall expire sixty (60) days after the start-up period has ended if the business license has not been issued by the City by that time.~~

~~(54)~~ A separate business license shall be required for each dwelling unit used as a short-term rental.

~~(65)~~ Any change in ownership requires a new or amended business license.

~~(76)~~ 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.

~~(87)~~ *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 Development Services Director.
- (~~108~~) *License Renewals.* Business licenses for short-term rentals shall be renewed in accordance with Chapter 118 of the Business Regulations (Business Registry and Licenses).
- (~~119~~) *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.
- (~~1210~~) *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.
- (~~1311~~) *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.
- (~~1412~~) *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.
- (~~1513~~) *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.
- (~~1614~~) *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.
- (~~1715~~) *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).
- (~~1816~~) *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. Type 2 short-term rentals in commercial and mixed-use zoning districts where hotel/motels are permitted by right shall not contribute to the city-wide density cap.
- (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) Where attached residential units are held separately through condominium association, horizontal property regime, fee simple, or similar ownership structure, no cap shall be applied to buildings with attached residential dwellings. Structures of attached residential dwellings where applicants seek more than 10% of total units for licensing as Type 2 rentals shall be evaluated by the Building Safety Director and/or Fire Marshal for adequate fire protection as defined by the adopted Arkansas Fire Prevention Code. Where inadequate fire protection is identified, improvements may be required prior to issuance of a business license.

(1917) *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.

(2018) Short-term rentals must comply with ~~all applicable codes under the~~ Unified Development Code including the regulations contained in §163.18§ 164.26 and must successfully obtain a business license prior to operation.

(Ord. No. 6427 , §§1(Exh. A), 2, 4-20-21; Ord. No. 6505 , §1(Exh. A), 11-16-21; Ord. No. 6521 , §§1, 2, 1-18-22; Ord. No. 6537 , §1(Exh. A), 2-15-22)

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."

151.01 Definitions

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.~~

(Code 1965, §§13A-1; 13B-1; 17B-7(a0, 19-24, 1713-2; App. A, Art. 17; App. B, §1; App. C, Art. 1, §D; Ord. No. 1509, 8-8-66; Ord. No. 1747, 6-20-70; Ord. No. 1790, 3-15-71; Ord. No. 1801, 6-21-71; Ord. No. 1859, 3-20-72; Ord. No. 1893, 12-19-72; Ord. No. 1998, 5-7-74; Ord. No. 2581, 12-4-79; Ord. No. 2697, 1-20-81; Ord. No. 2753, 8-18-81; Ord. No. 2789, 1-18-82; Ord. No. 2934, 8-2-83; Ord. No. 2948, 9-20-83; Ord. No. 3011, 6-5-84; Ord. No. 3024, 8-21-84; Ord. No. 3231, 12-2-86; Ord. No. 4024, §2, 3-28-87; Ord. No. 3298, 10-6-87; Code 1991, §§98.60, 118.01, 150.02, 156.001, 156.065, 158.03, 158.35, 159.04, 160.002, 160.096(A), 160.121, 161.06, 162.02, 163.02; Ord. No. 3551, 6-4-91; Ord. No. 3138, 11-5-85; Ord. No. 3165, 2-4-86; Ord. No. 3699, §2, 4-20-93; Ord. No. 3780, §1, 4-19-94; Ord. No. 3794, §1 5-17-94; Ord. No. 3870, §1, 4-1-94; Ord. No. 3895, 6-20-95; Ord. No. 3901, §1, 2, 7-5-95; Ord. No. 3908, §1, 7-18-95; Ord. No. 3970, §1, 7-18-95; Ord. No. 3913, §1, 8-1-95; Ord. No. 3963, §1, 4-16-96; Ord. No. 3970, §1, 5-7-96; Ord. No. 3971, §1, 5-21-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4113, 8-18-98; Ord. No. 4127, 12-15-98; Ord. No. 4178, 8-31-99; Ord. No. 4226, 2-15-00; Ord. No. 4285, 1-2-01; Ord. No. 4321, 6-19-01; Ord. No. 4340, 10-2-01; Ord. 4714, 6-21-05; Ord. No. 4817, 1-03-06; Ord. No. 4847, 3-7-06; Ord. No. 4855, 4-18-06; Ord. No. 4919, 09-05-06; Ord. No. 4930, 10-03-06; Ord. No. 5028, 6-19-07; Ord. No. 5029, 6-19-07; Ord. No. 5056, 9-04-07; Ord. No. 5128, 4-15-08; Ord. No. 5206, 12-16-08; Ord. No. 5238, 5-5-09; Ord. No. 5296, 12-15-09; Ord. No. 5304, 1-19-10; Ord. No. 5312, 4-20-10; Ord. No. 5313, 4-20-10; Ord. No. 5327, 6-1-10; Ord. No. 5339, 8-3-10; Ord. No. 5352, 9-7-10; Ord. No. 5348, 9-7-10; Ord. No. 5375, 12-21-10; Ord. No. 5453, 10-18-11; Ord. No. 5490, 4-3-12; Ord. No. 5526 9-18-12; Ord. No. 5559, 01-03-13; Ord. No. 5592, 06-18-13; Ord. No. 5634, 11-05-13; Ord. No. 5653, 01-21-14; Ord. No. 5679, 4-15-14; Ord. No. 5735, 1-20-15; Ord. No. 5793, 8-18-15; Ord. No. 5866 , §1, 4-5-16; Ord. No. 5888 , §1, 6-21-16; Ord. No. 5901 , §1, 9-6-16; Ord. No. 5951 , §1, 2-7-17; Ord. No. 5986 , §3, 7-6-17; Ord. No. 6015 , §2, 11-21-17; Ord. No. 6087 , §1, 9-4-18; Ord. No. 6245 , §1, 10-15-19; Ord. No. 6350 , §2(Exh. A), 8-18-20; Ord. No. 6407 §1, 1-19-21; Ord. No. 6427 , §§1(Exh. B), 2, 4-20-21; Ord. No. 6440 , §1, 5-18-21; Ord. No. 6442 , §7(Exh. G), 6-1-21; Ord. No. 6446 , §2(Exh. A), 6-15-21; Ord. No. 6520 , §§1, 2, 1-18-22; Ord. No. 6521 , §3, 1-18-22)

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."

163.18164.26 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) *Twelve-Month Start-up Period.* After the enactment of the short-term rental ordinance, short-term rental operators shall have twelve (12) months to submit an application for a business license. After the twelve (12) 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 twelve (12) 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 apply for such conditional use permit and business license prior to the end of the twelve (12) 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 twelve (12) 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.*~~

~~(d) *Applications submitted prior to the end of the twelve (12) month start-up period shall expire sixty (60) days after the start-up period has ended if the business license has not been issued by the city by that time.*~~

- ~~(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.~~

(98) 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; Ord. No. 6505 , §2(Exh. B), 11-16-21; Ord. No. 6537 , §2(Exh. B), 2-15-22)

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."

163.14 - Revocation Or Change Of Conditional Use

- (A) Upon receipt by the Planning Department of a written complaint by a Fayetteville resident that a holder of a conditional use has substantially violated or is violating any term or condition of the conditional use, the Planning Department shall investigate this complaint to determine if it is substantiated.
- (B) If the Planning and Zoning Administrator determines that the complaint is substantiated, official notification by letter outlining the violation shall be sent to the holder of the conditional use requiring immediate compliance with all conditions and terms of approval of the conditional use and noting the substantiated complaint.
- (C) If the Zoning and Development Administrator determines that the holder has violated the terms of the conditional use and failed to promptly and voluntarily correct its failures, the Zoning and Development Administrator shall refer the existing conditional use to the Planning Commission for its review. After a hearing for all interested persons, the Planning Commission may amend or add conditions to the conditional use, may revoke a conditional use for substantial violations of the existing terms and conditions of the conditional use, or may reaffirm that the holder has complied with all terms of its conditional use.
- (D) Except in extraordinary circumstances, the Zoning and Development Administrator shall not refer any alleged violations of a specific conditional use to the Planning Commission more often than once per year.
- (E) *Periodic Review.* In addition to the consideration of substantial violation provisions of (A), (B), and (C), the Planning Commission may periodically review and reconsider a conditional use permit under the following criteria:
 - (1) Receipt of a petition to review an approved conditional use permit from an adjacent property owner and 50% or more of the property owners within 100 feet of the property boundary on which the conditional use permit has been granted, in a form provided by the Planning Division. The property owners signing the petition must provide the reasons for which they feel reconsideration is warranted and how they are adversely affected by the approved conditional use permit.
 - (2) Upon receipt of a verified petition, the Planning Commission may review the conditional use permit and either approve the conditional use as it exists or modify the conditional use with new or altered conditions to achieve a greater degree of compatibility with adjacent properties.
 - (3) Appeals from the decision of the Planning Commission under this subsection shall follow the requirements of §155 Appeals of the Unified Development Code, for conditional use permits.
 - (4) The right to a periodic review of a conditional use under this subsection may only be exercised five (5) years or longer after the conditional use permit was granted. No periodic review may be conducted more than one (1) time in a five (5) year period.
 - (5) This periodic review procedure is not applicable for wireless communication facilities and vital government facilities.

(Ord. No. 4837, 02-21-06; Ord. No. 5330, 6-15-10)



CITY OF
FAYETTEVILLE
ARKANSAS

CITY COUNCIL MEMO

MEETING OF NOVEMBER 1, 2022

TO: Mayor; Fayetteville City Council
Susan North, Chief of Staff

FROM: Jonathan Curth, Development Services Director
Britin Bostick, Long-Range Planning & Special Projects Manager

DATE: October 26, 2022

SUBJECT: **ADM-2022-0043: Administrative Item: (Amend UDC Chapter 118 – Applicability, Chapter 151 – Definitions, and Chapter 163 – Short-Term Rentals):** Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to remove the conditional use permit requirement for type 2 short-term rentals and to repeal a sunset provision in Ordinance No. 6427.

BACKGROUND:

At their October 4th, 2022 meeting, the City Council considered a Planning Commission recommendation to reaffirm adoption of Fayetteville's short-term rental (STR) requirements. Within the Planning Commission's recommendation is a proposal for an amendment removing the requirement for conditional use permit approval from Type 2 STRs, which are those dwellings utilized primarily for short-term rental, not owner-occupancy or long-term rental. By contrast, Type 1 STRs are occupied by a permanent resident, with renting limited to no more than three months per year.

At the October 18th Council meeting, staff solicited feedback and input from the Council on proactive compliance, increasing enforcement tools, modifying the density cap(s), the requirement for Planning Commission approval of Conditional Use Permits (CUP) for Type 2 STRs, and an extension of the sunset provision. The Council's feedback included a possible extension of the sunset provision for more time to review options and information, keeping the CUP requirement, additional assessment of the administrative aspects of compliance and enforcement, fee increases and more effective enforcement, an adjustment to the density cap for single-family dwellings, and a finer grain approach to the density or concentration of Type 2 STRs.

DISCUSSION:

Given the Council's input at the October 18 meeting, staff observed there are still three primary categories of concern regarding the Type 2 STRs and proposes the following with those three categories discussed at the October 18 meeting: compliance, enforcement, and frequency/concentration.

Compliance

Given the available information that suggests approximately 200 may be operating without the required licensing and approval, compliance achievement is estimated

at two-thirds since the ordinance was passed in April 2020. Should the Council prefer to pursue proactive enforcement of compliance – that is, proactively searching for and contacting potential STR operators who are operating without the required license and approval, staff recommends extending the sunset provision for a minimum of 6 months so that staff can issue an RFP for third party services for compliance support in order to compare third party costs to the costs of additional staffing to support proactive compliance. This would be paired with enforcement as noted below. While requiring more time, this process would allow for a more thorough evaluation of resources needed for compliance, which could then be used to determine appropriate fees or penalties for non-compliance.

When staff reviewed application and licensing fees for STRs in peer cities, including cities in Arkansas that regulate STRs, we found the following:

Little Rock, AR (current ordinance being considered)

- \$150 administrative review fee for currently operating STR-1
- \$100 annual inspection fee for STR-1
- \$500 annual inspection fee for STR-2

Hot Springs, AR

- The initial and subsequent annual fee/occupation tax shall be \$50.00 per person, per year, based on the maximum overnight occupancy authorized by the short-term residential rental business license. For example, the initial and subsequent annual fee/occupation tax for a transient use site with a maximum authorized overnight occupancy of eight shall be \$400.00.
- Annual license fees are due on the first day of business each January. A ten percent late fee shall be assessed on March 1st. A 30 percent late fee shall be assessed on April 1st. Any license that has not been renewed before May 1st shall be deemed to have lapsed. Should any short-term residential rental business license lapse, or not otherwise be renewed in the following calendar year, any subsequent application shall be considered as an initial application, and shall be subject to any and all requirements and conditions of an initial application.

Conway, AR

- \$100 annual application/renewal fee
- Annual license renewal applications must be submitted by January 31st. A ten percent late fee shall be assessed for renewal applications submitted after March 1st. A 30 percent late fee shall be assessed for renewal applications submitted after April 1st. Any license that has not been renewed before May 1st shall be deemed revoke if an application for renewal has not been made before May 1st.

Lawrence, KS

- \$17 annual application fee plus a \$50 inspection fee.

Ashville, NC

- \$208 application permit with \$208 annual renewal

Fort Collins, CO

- \$150 application permit with \$100 annual renewal

Enforcement

Staff has consistently heard throughout this process that there is a substantial gap between the number of complaints received by staff regarding Type 2 STRs and the number of potential violations by Type 2 STR guests. Quickly available options to address this gap include promoting and communicating ways for the community to file a complaint with staff to document issues. Staff is also reviewing existing opportunities to leverage technology to connect police complaints with our STR records to understand how our existing reporting systems may be able to better inform staff on potential violations that are not currently captured via zoning violation complaints.

Should the Council prefer to pursue proactive enforcement of code violations related to STRs, staff recommends extending the sunset provision for a minimum of 6 months so that staff can issue an RFP for third party services for enforcement support in order to compare third party costs to the costs of additional staffing to support proactive enforcement. This would be paired with compliance as noted above. While requiring more time, this process would allow for a more thorough evaluation of staff time needed for enforcement, which could then be used to determine appropriate fees or penalties. As a note, compliance and enforcement could be separated in the RFP to give the Council options on whether to pursue staff-supported compliance and enforcement or third-party support, or a combination of the two.

When staff reviewed penalties for noncompliance regarding STRs in peer cities, including cities in Arkansas that regulate STRs, we found the following:

Little Rock, AR (current ordinance being considered)

- No financial penalty proposed

Hot Springs, AR

- \$1,000 for the first offense or violation
- \$2,000 for the second offense or violation
- \$4,000 for each subsequent offense or violation
- If a prohibited action continuous in respect to time, the fine or penalty for allowing the continuance shall be \$500 for each day it is unlawfully continued

- In addition, the City Manager or his/her designee may also order the disconnection of municipal water service to any person, firm or corporation who violates any provision of the City's building and development codes. This includes, but is not limited to, failure to secure proper permits, failure to obtain required inspections and/or commencement of operations, business or structure occupancy prior to issuance of a certificate of occupancy.

Conway, AR

- No financial penalties in the ordinance

Eureka Springs, AR

- \$250 per day fine for illegal operation with each 24 hour of rental being a separate violation

Lawrence, KS

- \$500 minimum fine with adjudication and a maximum \$2,500 for each unlawful act.
- "Habitual Violators", or those operators having more than three license revocations, shall lose the right to operate short-term rentals in Lawrence.

Ashville, NC

- \$500 per day fine for illegal operation (compared with \$100 per day under general municipal penalty).

Fort Collins, CO

- \$3,000 maximum fine under a general municipal penalty along with any additional penalties deemed appropriate to address specific short-term rental violations.
- Revocation of a license renders a property ineligible for short-term rental for one year.

Frequency/Concentration

The initial recommendation to the Council by both staff and the Planning Commission was to remove the CUP requirement for Type 2 STRs. One aspect of that recommendation was the consistent finding by staff in favor of compatibility based on the criteria set forward for review of CUPs. Conditional use compatibility is currently framed to evaluate ingress and egress, parking, trash, utilities, screening, general compatibility with adjacent properties and general compatibility with the goals and intent of the city's plans, including land use and transportation plans. As in most cases residential dwellings meet these set criteria for evaluation, the Planning Commission has relied on input from neighbors to identify compatibility concerns when making their decisions on CUPs for Type 2 STRs. Given the Council's feedback and ongoing discussions with the Planning

Commission via their Long Range Planning Committee, staff proposes an alternate approach to the evaluation of compatibility from what was proposed in the September 16 memo:

- Staff proposes that the CUP requirement could be kept for properties in residential zoning districts, or zoning districts that exclude commercial uses by right, as the primary compatibility concerns have been within residential neighborhoods. Properties in commercial or mixed-use zoning districts could either continue to have the CUP requirement if there remain concerns about the concentration of STRs being an issue of compatibility, or properties in commercial and mixed use zoning districts could only be required to obtain a business license, which would not include a public hearing and compatibility review.
- Additionally, staff proposes to add language to UDC Sec. 163.18 – Short-Term Rentals to include concentration or proximity of Type 2 STRs in neighborhoods as a criteria for evaluating compatibility, with the intent to respond to concerns expressed by the community that a high concentration of Type 2 STRs within a neighborhood is more like the operation of a hotel or motel, which are not generally permitted in residential neighborhoods, and less like the traditional residential uses allowed by right. If the Council agrees, this would provide needed policy guidance to staff and the Planning Commission for evaluating compatibility with the review of a CUP. Additional criteria can include availability of on- or off-street parking as it relates to proposed number of bedrooms and the presence of pedestrian infrastructure such as sidewalks.