



**MEETING OF OCTOBER 3, 2023**

**TO:** Mayor Jordan and City Council

**THRU:** Holly Hertzberg

**FROM:** Kit Williams, City Attorney

**DATE:**

**SUBJECT: AN ORDINANCE TO AMEND § 118.05 PENALTY (B) CITY SERVICES TERMINATION TO ADD AN ADDITIONAL SUBSECTION (2) TO PROVIDE A PROCEDURAL DUE PROCESS HEARING OPPORTUNITY FOR UNLICENSED TYPE 2 SHORT TERM RENTALS PRIOR TO WITHHOLDING CITY SERVICES**

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**RECOMMENDATION:**

**BACKGROUND:**

**DISCUSSION:**

**BUDGET/STAFF IMPACT:**

**ATTACHMENTS:** Procedural Due Process Hearing Provided to Type 2 Short Term Rentals (#3), City Services Termination Current Law (#4), Signed Agenda Request Holly Hertzberg (#5)



# City of Fayetteville, Arkansas

113 West Mountain Street  
Fayetteville, AR 72701  
(479) 575-8323

## Legislation Text

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**File #:** 2023-1122

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**AN ORDINANCE TO AMEND § 118.05 PENALTY (B) *CITY SERVICES TERMINATION TO ADD AN ADDITIONAL SUBSECTION (2) TO PROVIDE A PROCEDURAL DUE PROCESS HEARING OPPORTUNITY FOR UNLICENSED TYPE 2 SHORT TERM RENTALS PRIOR TO WITHHOLDING CITY SERVICES***

AN ORDINANCE TO AMEND §118.05 PENALTY (B) CITY SERVICES TERMINATION TO ADD AN ADDITIONAL SUBSECTION (2) TO PROVIDE A PROCEDURAL DUE PROCESS HEARING OPPORTUNITY FOR UNLICENSED TYPE 2 SHORT TERM RENTALS PRIOR TO WITHHOLDING CITY SERVICES

**WHEREAS**, a previously licensed Short Term Rental whose license has been suspended or revoked after being provided an opportunity for a procedural due process hearing may have its city services including water, sewer, and solid waste withdrawn from the business premises, and

**WHEREAS**, numerous Type 2 short term rentals appear to be illegally operating without obtaining a business license, but should also be provided an opportunity for a procedural due process hearing prior to its city services being withdrawn from the business premises.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends § 118.05 (B) *City Services Termination* by placing all existing language in a new subsection (B)(1) and enacting a new subsection (B)(2) as follows:

“(2) A Type 2 Short Term Rental operator who does not have a valid and legal business license for the Type 2 Short Term Rental and who has not already been afforded an opportunity for a procedural due process hearing pursuant to § 118.01 (E)(17) shall be sent a letter to the address of the suspected Type 2 Short Term Rental in which it is stated that the operator or owner may request a procedural due process hearing prior to withholding city services in not less than five (5) nor more than ten (10) business days. If such due process hearing is requested by the owner or operator prior to the expiration of ten (10) business days, such hearing shall be promptly scheduled. The Chief of Staff shall hear evidence from City staff and others that the subject Type 2 Short Term Rental does not have a valid current license and has been operating the Short Term Rental in violation of the *City Code*. The owner or operator may then explain and/or provide evidence disputing the City’s allegations or explaining why city services should not be withheld from the property. The Chief of Staff may then recommend to the Mayor whether or not city services should be withheld from the premises of the Type 2 Short Term Rental and what could be done by the owner/operator of the premises to obtain city services at this location again. The Mayor

may then order the withholding of all city services including water, sewer and solid waste from the premises and property.”



OFFICE OF THE  
CITY ATTORNEY

## DEPARTMENTAL CORRESPONDENCE



Kit Williams  
*City Attorney*

Blake Pennington  
*Assistant City Attorney*

Jodi Batker  
*Paralegal*

TO: **Mayor Jordan**  
**City Council**  
Kara Paxton, City Clerk/Treasurer

CC: **Susan Norton**, Chief of Staff  
**Paul Becker**, Chief Financial Officer  
**Tim Nyander**, Utilities Director

FROM: **Kit Williams**, City Attorney

A handwritten signature in blue ink, appearing to read "Kit Williams", with a long horizontal flourish extending to the right.

DATE: **September 14, 2023**

RE: **Procedural Due Process Hearing Provided to Type 2 Short Term Rental Operator/Owner prior to Termination of City Services**

The majority of operating Type 2 Short Term Rental operators in Fayetteville have now been properly inspected and licensed. However, it appears that numerous Type 2 Short Term Rentals operating in Fayetteville have failed to apply for or be granted a business license nor have passed the health/safety inspection of their rentals. Because these businesses are operating illegally (violation of our zoning law, our business license law, and our Type 2 Short Term Rental law), they are subject to the withholding of city services: water, sewer, solid waste upon the order of the Mayor.

A licensed Short Term Rental operator who the Development Services Director reasonably believes should have its license suspended or revoked is entitled to an opportunity to request a procedural due process hearing conducted by the Chief of Staff to review such proposed action. An owner/operator of a Type 2 Short Term Rental who has never been licensed, nor inspected pursuant to the legal requirements of a Fayetteville Code is operating illegally and probably not constitutionally required to be afforded an opportunity to a procedure or process hearing.



Nevertheless to try to ensure no business (Type 2 Short Term Rental) would have city services withheld from the business premises without good and proper reason, the City Attorney's Office and Ordinance Review Committee recommend any such operator who has not already received an opportunity to request a procedural due process hearing should be provided with such an opportunity prior to the withholding of city services. That is what this proposed code amendment would require.

I should note that this would be an administrative procedure rather than a criminal prosecution which could result in fines. This administrative procedure does not involve any possible fines, but only the administrative penalty of withholding city services for illegally operating a business. This administrative procedure is much faster and more efficient than criminal prosecution. This efficient process which complies with procedural due process is advisable because there may be over one hundred Type 2 Short Term Rentals still illegally operating which have never obtained a business license nor complied with the Type 2 Short Term Rental requirements including the health/safety inspection of their premises.