



CITY OF WHITEWATER PLAN AND ARCHITECTURAL REVIEW
 COMMISSION
 AMENDED Agenda
 October 8, 2012
 City of Whitewater Municipal Building
 312 W. Whitewater St., Whitewater, Wisconsin
 6:00 p.m.

1.	Call to order and Roll Call.
2.	Hearing of Citizen Comments. No formal Plan Commission Action will be taken during this meeting, although issues raised may become a part of a future agenda. Specific items listed on the agenda may not be discussed at this time; however citizens are invited to speak to those specific issues at the time the Plan Commission discusses that particular item.
3.	Approval of the Plan Commission minutes of: September 10, 2012.
4.	Review proposed Extra-territorial Certified Survey Map for a land division to create two residential lots located on Piper Road for Steve Piper.
5.	Hold a public hearing for the consideration of a conditional use permit to allow for an automotive repair business to be located at 648 S. Janesville Street for David S. Meyer.
6.	Hold a public hearing to consider a change of the City of Whitewater Ordinance regulations, to enact the proposed amendments to the City of Whitewater Municipal Code: Chapter 9, specifically Section 9.06.010 Livestock, addressing an amendment to allow for a permitted use for the keeping of a small number of backyard chickens in Whitewater residential areas.
7.	Review and make recommendation to the City Council for the discontinuation of the abandoned unpaved alley between East North Street and East Main Street West of and adjacent to the Oak Grove Cemetery in the City of Whitewater.
8.	Information Items: a. Update on Zoning Rewrite. b. Possible future agenda items. c. Next regular Plan Commission Meeting – November 12, 2012
9.	Adjournment.

Anyone requiring special arrangements is asked to call the Zoning and Planning Office 24 hours prior to the meeting. Those wishing to weigh in on any of the above-mentioned agenda items but unable to attend the meeting are asked to send their comments to c/o Neighborhood Services Manager, 312 W. Whitewater Street, Whitewater, WI, 53190 or jwegner@whitewater-wi.gov.

The City of Whitewater website is: whitewater-wi.gov

CITY OF WHITEWATER
PLAN AND ARCHITECTURAL REVIEW COMMISSION
Whitewater Municipal Building Community Room
September 10, 2012

**ABSTRACTS/SYNOPSIS OF THE ESSENTIAL ELEMENTS OF THE OFFICIAL
ACTIONS OF THE PLAN AND ARCHITECTURAL REVIEW COMMISSION**

Call to order and roll call.

Chairperson Meyer called the meeting of the Plan and Architectural Review Commission to order at 6:00 p.m.

Present: Greg Meyer, Lynn Binnie, Karen Coburn, Bruce Parker, Jacob Henley, Rod Dalee, Donna Henry (Alternate).

Absent: Cort Hartmann.

Others: Wallace McDonell (City Attorney), Scott Harrington (City Planning Consultant/Vandewalle & Associates).

Hearing of Citizen Comments. Peter Underwood presented to the Plan Commission his upcoming proposal for an ordinance amendment to allow 4 to 6 hens, no roosters, with specific regulations, in residential areas. He stated that many communities are adopting ordinances to allow for urban poultry.

Approval of the Plan Commission Minutes of August 13, 2012. Moved by Binnie and seconded by Parker to approve the Plan Commission minutes of August 13, 2012. Motion approved by unanimous voice vote.

Public hearing for consideration of an amendment to the Conditional Use Permit to replace the approved plan for the sign, with the proposed sign to be located at 234 N. Prince Street for The Element Apartments, CatCon Whitewater LLC. City Planning Consultant Harrington explained that the original sign was one sided and faced the street. The new sign is 2 sided, perpendicular to the street to see both sides, with aluminum panels that are compatible to the aluminum on the building. The original sign was approved with the entire project, as part of the conditional use. The new sign is a little taller but the height and area of the sign meet the requirements of the zoning code. If the sign had not been approved as part of the conditional use permit, the new sign could have been approved administratively.

Board Members voiced concerns: if the bronze/dark brown of the sign will match the building; will there be evergreens in the plantings; and the setback of the sign off the sidewalk.

Planning Consultant Harrington stated that there were no plantings shown on the site plan; and that the sign location was not being moved, just rotated 90 degrees.

Chairperson Meyer opened the public hearing for public comment. There were no comments.

Chairperson Meyer closed the public hearing.

Moved by Binnie and seconded by Coburn to amend the conditional use permit to replace the approved plan for the sign, with the proposed sign to be located at 234 N. Prince Street for The Element Apartments, CatCon Whitewater LLC. subject to the three conditions. Ayes: Binnie, Coburn, Dalee, Parker, Henley, Henry, Meyer. Noes: None. Absent: Hartmann. Motion approved. (See attached Conditional Use Permit Approval for conditions).

Conceptual Review of a proposed rezoning of the property located at 160 S. Whiton Street from R-1 (Single Family Residence) District to R-3 (Multifamily Residence) District for Deborah Zaverl. City Planning Consultant Harrington explained that this is a conceptual review, but that the applicant had originally applied for an amendment to zoning to change the zoning of her property from R-1 to R-3. This is a non-binding discussion. It was explained to her that the Zoning Rewrite Committee was looking into some changes. The Comprehensive Plan would also need to be amended in order to proceed with a rezoning of her property. The applicant feels that her property would not be viable as a single family home. The only interest in her property would be from an investor. Immediately south of her property is zoned R-2. Specific language in the Comprehensive Plan, description of the Central Area Neighborhood, recognizes the R-1, R-2 and R-3 Zoning Districts in the area and the transition between owner occupied and student rentals. The Comprehensive Plan indicates that the area should stay this way, to try to keep the mix in balance and maintain it. The request for R-3 directly countered what was in the Comprehensive Plan, thus the need for a Comprehensive Plan amendment. The Zoning Rewrite Committee is considering an overlay zoning district of the R-2 area which could allow the number of occupants of the home to be the same as the number of original bedrooms in the home. The applicant is looking for some direction.

Chairperson Meyer opened for public comment.

Deborah Zaverl explained her situation. She has lived there for 25 years, raised 3 kids there. The home has 4 bedrooms. She gets along with her neighbors. She has called the police only 3 times since she has lived there, but has called the police twice since she has applied for a possible rezoning. (Once someone was passed out in her yard, and the other time someone was unruly and wrecking things in her fenced in back yard.) She does not feel safe in her house anymore. A single family would not get along surrounded by college rentals. This has been the worst year of all the 25 years she has lived there. Zaverl thanked the Plan Commission for their consideration.

Chairperson Meyer closed public comment.

Plan Commission Members asked about: the occupancy of the neighboring homes; what is allowed under R-3 Zoning; the proposed overlay district allowing as many occupants as bedrooms.

City Attorney McDonnell explained that the R-1 and the R-2 Zoning Districts allow up to 3 unrelated persons per unit. R-3 would allow a maximum of 5 unrelated persons per unit.

Planning Consultant Harrington explained that the overlay district would be allowed on a case by case basis by conditional use, in which a lot of things will be considered such as the number of original bedrooms, parking etc. The proposed overlay district comes just to the south of Zaverl's lot. Her lot faces S. Whiton Street. Most of the R-1 properties face W. Conger Street with a couple exceptions. Her property is different in that it does not connect to W. Conger Street, and maybe it should be considered to change to R-2 and for an overlay district. The difference in a property zoning and how the property is being used is two different things. There is a mix of rental and owner occupancy.

Plan Commission Member Coburn did not want to have the single family areas in buffer zones of the public schools to start shrinking. These areas have the more affordable family homes that are within a walking distance to the schools. A lot of the older homes as rentals are not being kept up.

Plan Commission Member Henry wanted to clarify the overlay district, in that a home cannot be chopped up to make more bedrooms in order to have more occupants.

Plan Commission Member Binnie explained that he is concerned with the comments on the livability of the neighborhood. The change to an R-2 Zoning instead of an R-3 seems more appropriate with the property already adjacent to R-2, but that may not easily satisfy the situation. It would probably be better to address through the Zoning Rewrite than to upzone. His concern is that Conger Street is not entirely rental properties. There are single families living there that want to maintain their status in the neighborhood.

Chairperson Meyer, as a member of the Zoning Rewrite Committee, explained that the whole area is being discussed. He feels there should be at least a 2 or 3 block buffer from the schools, keeping the area single family. There is very little R-1 left in the city. He is concerned of the overlay getting into all the single family areas, what he called the "gray zone".

When asked about the city having leverage as far as designating the purpose of a house, City Attorney McDonell stated that the Zoning Ordinance is what the city goes by. The zoning and whether or not it is owner occupied or rental have nothing to do with each other. One advantage to rezoning to R-2 would be to be able to tear down the house and build a duplex, if a duplex could meet all the requirements on that property.

Plan Commission Member Parker stated that maybe going to an R-2 would help. It would be hard to convert depending on the size of the lot, and not being able to meet the code for parking. There would also be drainage issues. Parker was also concerned about neighborhood preservation and wasn't sure that all the property owners within 300 feet were notified.

Plan Commission Members asked about: adequate police protection of the area, maybe ask for special effort in that area; and the lighting in the area. Parker stated that the only lighting in the area is from the street lights.

Chairperson Meyer stated that there was a lot of time left before the Zoning Code Rewrite will be finished.

Plan Commission Member Henry stated that changing the property and an adjacent one to R-3 Zoning is not the solution. There are a lot of things to consider with an investment such as mortgage, insurance, the constraints of space and parking, etc.

City Attorney McDonell stated that there was to be no decision made by the Plan Commission, that the applicant can use the information given at this meeting to determine how she wants to proceed.

(See the City Planning Consultant Report of September 5, 2012 for more details).

Informational Items:

Zoning Rewrite.

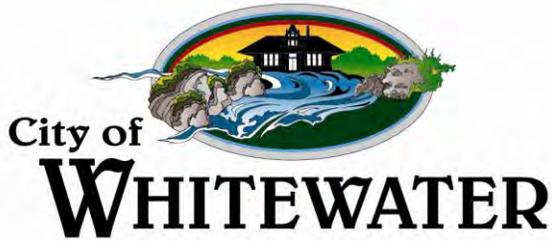
The next meeting of the Zoning Rewrite Steering Committee is scheduled for September 19, 2012 at 6:00 p.m. in the Municipal Building Community Room.

Future agenda items. Possible request for rezone.

Next regular Plan Commission meeting – October 8, 2012.

Moved by Binnie and seconded by Coburn to adjourn the meeting. Ayes: Binnie, Coburn, Dalee, Parker, Henley, Henry, Meyer. Noes: None. Absent: Hartmann. Motion approved. The meeting adjourned at approximately 7:05 p.m.

Chairperson Greg Meyer



Neighborhood Services Department
*Planning, Zoning, Code Enforcement, GIS
and Building Inspections*

www.whitewater-wi.gov
Telephone: (262) 473-0540

CONDITIONAL USE PERMIT

Plan Commission Meeting Date : September 10, 2012
Property Owner: CatCon Whitewater LLC.
Applicant: The Element Apartments, CatCon Whitewater LLC.
Property ID Number: /WUP 00178 (now /A4386 00001)
Property Address: 234 N. Prince Street
Whitewater, WI 53190

REGARDING: An approval for an amendment to the conditional use permit (CUP) to replace the approved plan for the sign, with the proposed sign to be located at 234 N. Prince Street for The Element Apartments, CatCon Whitewater LLC.

Approved subject to the following conditions:

1. There is to be landscaping under the sign that will include some evergreen features.
2. The darker portion of the sign is to be a bronze color to match the overhang of the building.
3. Any modifications to the conditions may be by Staff approval.

This permit was prepared by:

Latisha Birkeland
Neighborhood Services Manager / City Planner



Neighborhood Services Department
*Planning, Zoning, Code Enforcement, GIS
and Building Inspections*

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Telephone: (262) 473-0540

To: City of Whitewater Plan and Architectural Review Commission
From: Latisha Birkeland, Neighborhood Services Manager / City Planner
Meeting Date: 10/8/12
Re: Extraterritorial Jurisdiction Certified Survey Map for parcel number 004-0515-2244-000,
Town of Cold Spring, Jefferson County, Wisconsin.

Summary of Request

Requested Approvals: Mr. Steve Piper is requesting to create two residential lots sized 1.4 and 1.6 acres from a larger agriculture parcel, thus creating a remnant parcel of 32 acres located in Cold Spring Township, Jefferson County, WI.

Location: Parcel number 004-0515-2244-000, Town of Cold Spring, Jefferson County, Wisconsin. Next to 956 N. County Hwy D.

Current Zoning: The two new parcels would be subject to the conditions of A-3 Zoning as determined by Jefferson County.

Description of Use

The reason for this subdivision is for the sale of the newly created two residential lots from agricultural land. The City reviews this subdivision because the location is within the 1.5-mile extraterritorial jurisdiction (ETJ) boundary. This location is outside of the Whitewater Sewer Service Area Boundary. The City does not designate this area for future land use on the Comprehensive Plan. Please see attached map.

The Town Board unanimously approved this preliminary land division at their June 12, 2012 meeting.

Recommendation on CSM

This preliminary CSM complies with all design standards and general provisions of the City Code Section 18.04.048 Extraterritorial subdivisions. I recommend that the Plan and Architectural Review Commission approve the Certified Survey Map with the following requirements:

1. The applicant shall meet all conditions set by Jefferson County for final approval.
2. Final CSM reviewed by City Staff and shall be recorded with Jefferson County.

WOODMAN & ASSOCIATES, S.C.
Professional Land Surveyors

210 MADISON AVENUE
FORT ATKINSON, WISCONSIN 53538
(920) 563-8162
FAX (920) 563-6654

JAMES B. WOODMAN
PROFESSIONAL LAND SURVEYOR

MARK E. ANDERSON
PROFESSIONAL LAND SURVEYOR

September 5, 2012

Latisha Birkeland, Neighborhood Services Manager / City Planner
City of Whitewater
PO Box 178
Whitewater, WI 53190

Dear Latisha:

Enclosed are three (3) copies of a Preliminary Certified Survey Map prepared by us for Steve Piper, 110 Robert Street, Fort Atkinson, WI 53538. Also enclosed is a check for the \$110 review fee.

This proposed CSM will create 2 residential building sites on Piper Road and is within the extraterritorial jurisdiction of the City of Whitewater.

Please place this Preliminary on the next Plan Commission meeting agenda and notify Mr. Piper of the time and date of the meeting.

If the Preliminary is approved, a Final Certified Survey Map will be prepared and submitted for signature.

If you have any questions please let me know.

Sincerely,

WOODMAN & ASSOCIATES, S.C.



James B. Woodman, P.L.S.

JBW:mea

Enclosures

cc: Steve Piper

**JEFFERSON COUNTY
PRELIMINARY REVIEW FOR CERTIFIED SURVEY**

A division of land located in the SE1/4 of the SE1/4 of section 22, Town 5N, Range 15E,
Town of Cold Spring, Jefferson County, Wisconsin, on Parcel Number 004-0515-2244-000

Date Submitted: June 2, 2010

Surveyor: Woodman & Associates, S.C.

Owner: Steve Piper
Address: 110 Robert Street
Fort Atkinson, WI 53538

Address: 210 Madison Avenue
Fort Atkinson, WI 53538

Phone: 920-563-8162

Phone: 920-563-4239

Note to be Placed on Final CSM:
Petition # 2691A-03 Zoning A-3
Check for Subsequent Zoning
Changes with Jefferson County

Intent & Description of Parcel to be Divided:

Sec. 15.04(f) of the Jefferson County Land Division
Subdivision Ordinance requires that the following be
shown:

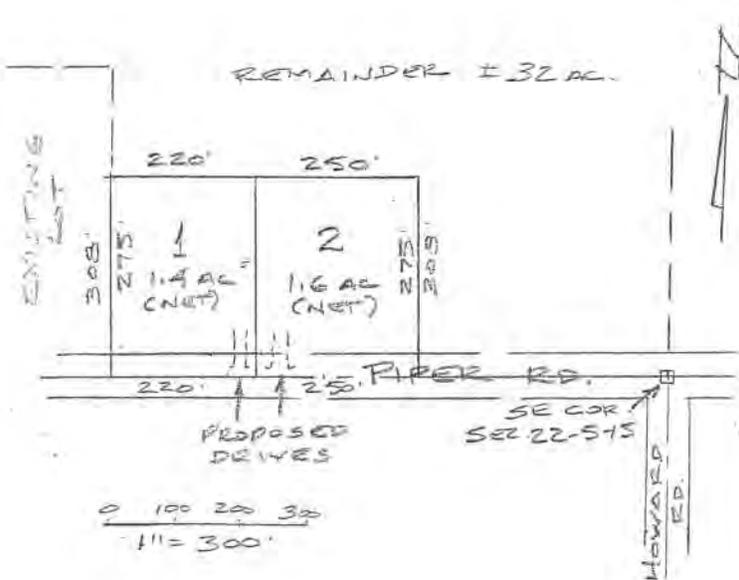
X Rezoning

Allowed Division within Existing Zone
Farm Consolidation [Pre-1975 Home w/
35+ Acres Remaining-See 11.04(f)5]
35+ Acre Lot in A-1 Zone

- Existing buildings, watercourses, drainage ditches and other features pertinent to proper division
- Location of access to public road, approved by the agency having jurisdiction over the road
- All lands reserved for future public acquisition
- Date of the map
- Graphic scale

NOTE:

Area and dimensions of this proposed lot are approximate only and in most cases will vary from the final survey data.



Purpose: Create 2 residential building sites.

Town Board Approval Mark Hoffman Date 7-2-10
(Includes access approval if applicable)
County Highway Approval _____ Date _____
(If Applicable)
Extraterritorial Approval Required for Final CSM Date FK 8-27-10
(If Applicable)
Zoning Office Approval S. Meyer Date 8-23-10

Please submit four copies to Jefferson County Zoning, Room 201, 320 S. Main St., Jefferson, WI 53549

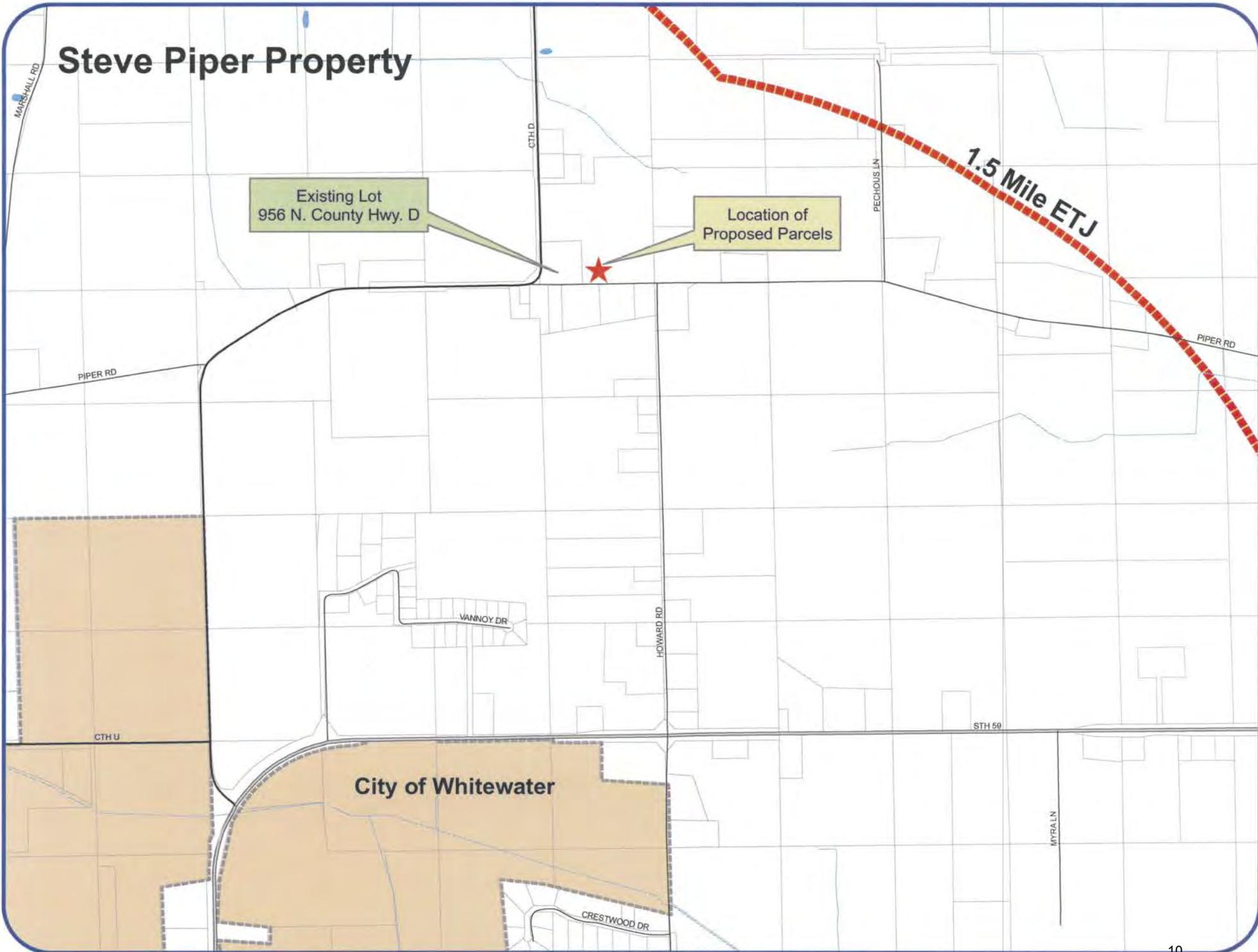
93-125

Steve Piper Property

Existing Lot
956 N. County Hwy. D

Location of
Proposed Parcels

1.5 Mile ETJ



WOODMAN & ASSOCIATES, S.C.

Professional Land Surveyors

210 MADISON AVENUE
FORT ATKINSON, WISCONSIN 53538
(920) 563-8162
FAX (920) 563-6654

JAMES B. WOODMAN
PROFESSIONAL LAND SURVEYOR

MARK E. ANDERSON
PROFESSIONAL LAND SURVEYOR

September 12, 2012

Jefferson County Zoning Department
Attn: Deb Magritz
320 South Main Street
Jefferson, WI 53549



Dear Deb,

We submit for your approval a copy of the Final Certified Survey Map prepared by us for Steve Piper.

Also enclosed is a check in the amount of \$25.00.

We are in the process of obtaining City of Whitewater approval.

Please notify us of your approval or any changes required and we will send the original for signature.

If you have any questions, please let me know.

Sincerely,

WOODMAN & ASSOCIATES, S.C.



James B. Woodman, P.L.S.

JBW:mea

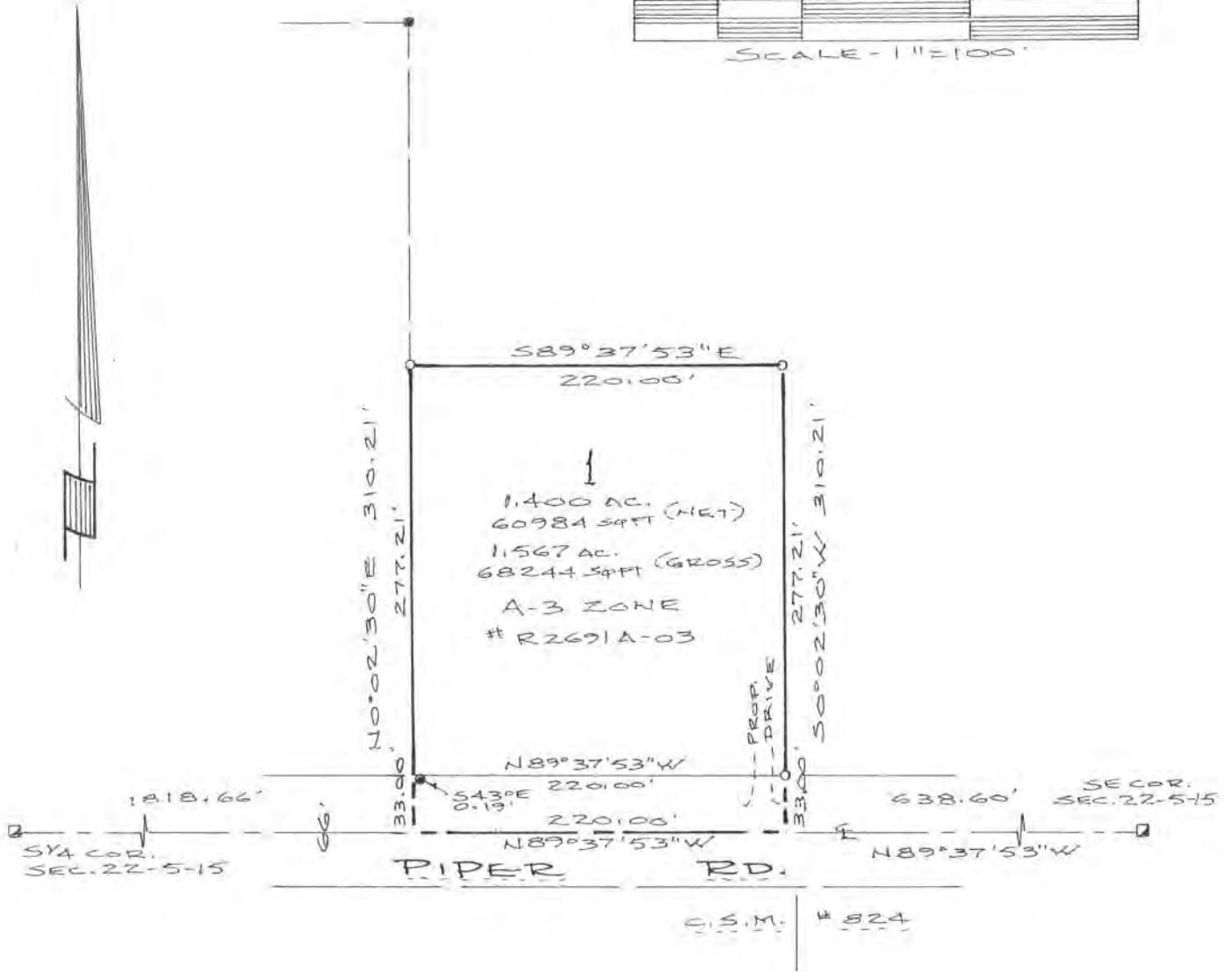
Enclosures

cc: Jefferson County Surveyor

Latisha Birkeland, Neighborhood Services Manager / City Planner City of Whitewater

CERTIFIED SURVEY MAP

Part of the SE¼ of the SE¼ of Section 22, T5N, R15E,
Town of Cold Spring, Jefferson County, WI



- ▣ Found 4" Diameter Aluminum Monument
- Found 1½" Iron Pipe
- Set 1¼"x18" Iron Pipe Weighing 1.13#/ft.

NOTES:

Assumed North referenced to the south line of the SE¼ of Section 22-5-15 bearing N89°37'53"W.

This lot may be subject to any and all easements or agreements either recorded or unrecorded.

Owner / Subdivider:
Steve Piper
110 Robert Street
Fort Atkinson, WI 53538

CERTIFIED SURVEY MAP

Part of the SE¼ of the SE¼ of Section 22, T5N, R15E,
Town of Cold Spring, Jefferson County, WI

SURVEYOR'S CERTIFICATE

I, James B. Woodman, Professional Land Surveyor, hereby certify that in full compliance with Chapter 236.34, Wisconsin Statutes and the subdivision regulations of Jefferson County and by the direction of Steve Piper, owner, this land has been surveyed, divided and mapped under my responsible direction and supervision; that such survey correctly represents all exterior boundaries and the division of the land surveyed; and is part of the SE¼ of the SE¼ of Section 22, T5N, R15E, Town of Cold Spring, Jefferson County, Wisconsin, to-wit:

Commencing at the SE corner of said Section 22; thence N89°37'53"W, along the south line of said SE¼ being the centerline of Piper Road, 638.60 feet to the point of beginning; thence continue N89°37'53"W, along said south line and centerline, 220.00 feet; thence N0°02'30"E, 310.21 feet; thence S89°37'53"E, 220.00 feet; thence S0°02'30"W, 310.21 feet to the point of beginning containing 1.567 acres and subject to a road right of way across the south 33 feet.

Date 9-12-12


James B. Woodman
Professional Land Surveyor S-1239



Approved by the City of Whitewater.

Date _____

Authorized Signature

Approved by the Planning and Zoning Committee of Jefferson County.

Date _____

Authorized Signature

Received for recording this ___ day of _____, 201___, at _____ o'clock ___M. and
recorded in Volume ___ of Certified Surveys of Jefferson County at pages _____.

Document No. _____

Staci Hoffman, Register of Deeds

Certified Survey Map No. _____



Neighborhood Services Department
*Planning, Zoning, Code Enforcement, GIS
and Building Inspections*

www.whitewater-wi.gov
Telephone: (262) 473-0540

To: City of Whitewater Plan and Architectural Review Commission
From: Latisha Birkeland, Neighborhood Services Manager / City Planner
Meeting Date: October 8th, 2012
Re: Requested a Conditional Use Permit to allow automobile repair and service business located at 648 S. Janesville Street.

Summary of Request

Requested Approvals: David Meyer who owns Meyer Auto Supply Inc. is requesting a conditional use permit (CUP) to allow for an automobile repair and service business to be located in his current building.

Location: 648 South Janesville Street

Current Land Use: Automotive and related parts sales

Proposed Use: Same as above and to include automobile repair and service.

Current Zoning: B-1 Community Business District

Proposed Zoning: (no change proposed)

Comprehensive Plan's Future Land Use Designation: North and East: Community Business; West and South: Single Family Residential.

Surrounding Zoning: North, South, East and West: B-1.

Surrounding Land Use: North: Single Family; South and East: Commercial; West: Commercial land

Background:

Each year City Staff sends out inoperable vehicle license renewal applications. Staff brought one to Meyer's Auto Supply, because of the inoperable vehicles sitting on the lot. Mr. Meyer sent it back in. Before approving the license, Staff researched the property. We found out that the Common Council removed the inoperable license permit at the September 5, 1995 meeting; requiring that all inoperable vehicles be removed, terminating the license and not allowing a renewal license as of November 6, 1995. There was a different owner at that time than now.

During our research, we also found out that Meyer's Auto Supply was performing auto repair work and this was the reason for the inoperable vehicles on the lot. Auto repair work is considered a Conditional Use in the B-1 Zoning District. The Plan Commission approved a garage to be built on the property in 1991. This garage was to enclose outdoor storage and to add a neater appearance for the lot. The City has no record of an auto repair use at this location.

Meyer Auto Supply has been performing auto repair work inside of the garage addition. David Meyer is formally requesting a conditional use permit for automobile repair and service.

Proposed Use

Mr. Meyer has indicated in his application that the site will remain the same as it is now. There would be no expansion of the parking area. He is proposing to store up to 10 inoperable vehicles in the rear of the property. There is a fenced in area located in the northwest corner of the building.

There are no proposed changes to signage, staffing, hours of operations, etc.

Recommendation on Conditional Use Permit

As of 2:30 p.m. on 10/3/2012, staff did not receive any public comments.

If the Plan and Architectural Review Commission approves the conditional use permit for Meyer Auto Supply, I recommend the approval be subject to the following conditions:

1. The conditional use permit shall run with the applicant and not the land. If the business is sold, the new owner/operator must return to the Plan Commission for approval of automobile repair and servicing.
2. For any storage of inoperable vehicles on the site, the applicant would need to request that the Common Council consider allowing this property to be eligible for an inoperable vehicle permit.
3. A 6-foot fence to be installed by June 30th, 2013 along the rear and side property lines.

Analysis of Proposed Project

Standard	Evaluation	Comments
Conditional Use Permit Standards (see section 19.66.050 of zoning ordinance)		
The establishment, maintenance, or operation of the conditional use will not create a nuisance for neighboring uses or substantially reduce the values of other property.	Maybe	This area is surrounded by commercial and residential uses. The comprehensive plan indicates that the future use of land is residential to the south and west of this site. There is a large tree buffer in the rear of the property separating this building from future western uses. The City does not have any nuisance complaints on this property.
Adequate utilities, access roads, parking, drainage, landscaping, and other necessary site improvements are being provided.	Yes	Everything has been provided prior to this application.
The conditional use conforms to all applicable regulations of the district in which it is located, unless otherwise specifically exempted in this ordinance [or through a variance].	Yes	Auto repair and servicing is considered a conditional use in the B-1 Zoning District.

Standard	Evaluation	Comments
The conditional use conforms to the purpose and intent of the city master [comprehensive] plan.	Yes	The Comprehensive Plan promotes Community Business uses to serve local and regional shopping and service needs, and generally located in proximity to both residential areas and major traffic routes.
The conditional use and structures are consistent with sound planning and zoning principles.	Yes	Project is consistent with the purpose, character and intent of the future land use classification and zoning district.



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NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

A meeting of the PLAN AND ARCHITECTURAL REVIEW COMMISSION of the City of Whitewater will be held at the Municipal Building, Community Room, located at 312 W. Whitewater Street on the 8th day of October, 2012 at 6:00 p.m. to hold a public hearing for the consideration of a conditional use permit to allow for an automotive repair business to be located at 648 S. Janesville Street for David S. Meyer.

The proposal is on file in the office of the Zoning Administrator at 312 W. Whitewater Street and is open to public inspection during office hours Monday through Friday, 8:00 a.m. to 5:00 p.m.

This meeting is open to the public. COMMENTS FOR, OR AGAINST THE PROPOSED PROJECT MAY BE SUBMITTED IN PERSON OR IN WRITING.

For information, call (262) 473-0540



Latisha Birkeland, Neighborhood Services Manager/City Planner



Neighborhood Services Department
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NOTICE OF PUBLIC HEARING

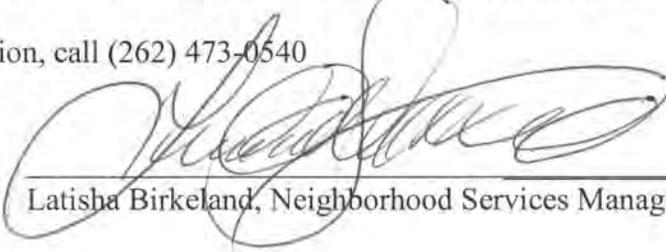
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For information, call (262) 473-0540



Latisha Birkeland, Neighborhood Services Manager/City Planner

/A274400001
FRANK J HALL TRUST
HARRIET E HALL TRUST
647 W HARPER ST
WHITEWATER WI 531900000

/T 00018
MARTIN RODRIGUEZ AVILA
NORMA A MENDEZ
971 W SOUTH ST
WHITEWATER WI 531900000

/T 00020
VALERIE J WILLSON
943 W SOUTH ST
WHITEWATER WI 531900000

/T 00021A
LORI J HEIDENREICH
630 S. JANESVILLE ST
WHITEWATER WI 531900000

/T 00022
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WHITEWATER WI 531900000

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TRUST
645 W HARPER
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/T 00018A
RAYMOND BRITSON
LEAH BRITSON
961 W. SOUTH ST
WHITEWATER WI 531900000

/T 00020A
JOAN D MAASZ TRUST
937 W. SOUTH ST
WHITEWATER WI 531900000

/T 00021B
BRIAN GNATZIG
SANDRA SCHWANZ-GNATZIG
909 W. SOUTH ST
WHITEWATER WI 531900000

/T 00022A
DAVID S MEYER
CHRISTINE M MEYER
424 S PLEASANT ST
WHITEWATER WI 531900000

/A274400002
LYNN A CUNNINGHAM
KAREN M BOYER
683 HARPER ST
WHITEWATER WI 531900000
/T 00019
DLK 953 WEST SOUTH LLC
PO BOX 239
WHITEWATER WI 531900000

/T 00021
JOSE ALFREDO RAMIREZ
YOLANDA RAMIREZ
620 S. JANESVILLE ST
WHITEWATER WI 531900000

/T 00021C
PATRICE M TRAPLEY
923 W SOUTH ST
WHITEWATER WI 531900000

/WUP 00297
WALTON DISTRIBUTING LLC
1005 W MAIN ST
SUITE C
WHITEWATER WI 531900000



Neighborhood Services Department
Planning, Zoning, GIS, Code Enforcement
and Building Inspections

www.whitewater-wi.gov
(262) 473-0143

CONDITIONAL USE PERMIT APPLICATION

Address of Property: 648 S Janesville St.

Owner's Name: David S. Meyer

Applicant's Name: David S. Meyer

Mailing Address: 648 S. Janesville St.

Phone #: (262) 473-4006 Email: _____

Legal Description (Name of Subdivision, Block and Lot of other Legal Descriptions): _____

Existing and Proposed Uses:

Current Use of Property: AUTO Parts STORE + INSTALLATION OF Parts sold

Zoning District: _____

Proposed Use: INSTALLATION OF Parts sold + STORE - Repair

NOTICE: The Plan Commission meetings are scheduled on the 2nd Monday of the month. All complete plans must be in by 4:00 p.m. four weeks prior to the meeting.

Conditions

The City of Whitewater Zoning Ordinance authorizes the Plan Commission to place conditions on approved conditional uses. "Conditions" such as landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, plantation, deed restrictions, highway access restrictions, increased yards or parking requirements may be affected. "Conditional Uses" may be subject to time limits or requirements for periodic review by staff.

STANDARDS FOR REVIEW AND APPROVAL

The Plan and Architectural Commission shall use the following standards when reviewing applications for conditional uses. The applicant is required to fill out the following items and explain how the proposed conditional use will meet the standard for approval.

STANDARD	APPLICANT'S EXPLANATION
A. That the establishment, maintenance, or operation of the Conditional Use will not create a nuisance for neighboring uses or substantially reduce value of other property.	Yes
B. That utilities, access roads, parking, drainage, landscaping, and other necessary site improvements are being provided.	Yes
C. That the conditional use conforms to all applicable regulations of the district in which it is located, unless otherwise specifically exempted by this ordinance.	Yes
D. That the conditional use conforms to the purpose and intent of the city Master Plan.	Yes

**Refer to Chapter 19.66 of the City of Whitewater Municipal Code, entitled CONDITIONAL USES, for more information.

Applicant's Signature: 

Date: 8.22.12

Printed: DAVID S MEYER

TO BE COMPLETED BY THE NEIGHBORHOOD SERVICES DEPARTMENT

- 1) Application was filed and the paid fee at least four weeks prior to the meeting. \$100.00 fee filed on 8-30-12. Received by: Jed Receipt #: 6-010092
- 2) Application is reviewed by staff members.
- 2) Class 1 Notice published in Official Newspaper on 9-27-12.
- 3) Notices of the Public Hearing mailed to property owners on 9-24-12.
- 4) Plan Commission holds the PUBLIC HEARING on 10-8-12. Public comments may also be submitted in person or in writing to City Staff.
- 5) At the conclusion of the Public Hearing, the Plan Commission will make a decision.

ACTION TAKEN:

Condition Use Permit: Granted _____ Not Granted _____ By the Plan and Architectural Review Commission

CONDITIONS PLACED UPON PERMIT BY PLAN AND ARCHITECTURAL REVIEW COMMISSION:

Signature of Plan Commission Chairperson

Date

To Whom it may Concern:

My name is David Meyer. I've owned and operated Meyer Auto Supply Inc. since Sept. 25 1986 and prior to that my Brother was in the Parts Business in the same Building Repairing & Selling Parts. My Business Resides NT 648 S. Janesville St.

Section B: Applicant/Property Owner Cost Obligations

----- To be filled out by the Neighborhood Services Department -----

Under this agreement, the applicant shall be responsible for the costs indicated below. In the event the applicant fails to pay such costs, the responsibility shall pass to the property owner, if different. Costs may exceed those agreed to herein only by mutual agreement of the applicant, property owner, and City. If and when the City believes that actual costs incurred will exceed those listed below, for reasons not anticipated at the time of application or under the control of the City administration or consultants, the Neighborhood Services Director or his agent shall notify the applicant and property owner for their approval to exceed such initially agreed costs. If the applicant and property owner do not approve such additional costs, the City may, as permitted by law, consider the application withdrawn and/or suspend or terminate further review and consideration of the development application. In such case, the applicant and property owner shall be responsible for all consultant costs incurred up until that time.

- A. Application Fee.....\$ 100.00
- B. Expected Planning Consultant Review Cost\$ 600.00
- C. Total Cost Expected of Applicant (A+B)\$ 700.00
- D. ~~25%~~ 25% of Total Cost, Due at Time of Application.....\$ N/A
- E. Project Likely to Incur Additional Engineering or Other Consultant Review Costs? < Yes No

The balance of the applicant's costs, not due at time of application, shall be payable upon applicant receipt of one or more itemized invoices from the City. If the application fee plus actual planning and engineering consultant review costs end up being less than the 25% charged to the applicant at the time of application, the City shall refund the difference to the applicant.

Section C: Agreement Execution

----- To be filled out by the Applicant and Property Owner -----

The undersigned applicant and property owner agree to reimburse the City for all costs directly or indirectly associated with the consideration of the applicant's proposal as indicated in this agreement, with 25% of such costs payable at the time of application and the remainder of such costs payable upon receipt of one or more invoices from the City following the execution of development review services associated with the application.

Signature of Applicant/Petitioner


Signature of Property Owner (if different)

Printed Name of Applicant/Petitioner

Printed Name of Property Owner (if different)

Date of Signature

Date of Signature

10

Janesville St

18 parking

Front Showroom

Repair

auto parts

Gravel Drive
Irregularly
vehicles
less than
10

Fence 25





Walworth County, WI Land Information Division



Property Details

Municipality: CITY OF WHITEWATER
 Parcel Number: /T 00022A
 School District: 6461-SCH WHITEWATER
 Zoning District: CITY OF WHITEWATER

Owner Information

Owner Name: DAVID S MEYER
 Owner Name 2: CHRISTINE M MEYER
 Mailing Address: 424 S PLEASANT ST

WHITEWATER WI, 531900000

2011 Valuation Information

Land: \$60,100.00
 Improvements: \$62,300.00
 Total: \$122,400.00
 Acres: 0.3300
 Fair Market Value: \$125,239.00
 Assessment Ratio: 0.97733
 Mill Rate: 0.0197719

Tax Information

Gross Tax: \$2,686.88	School Credit: \$195.19
First Dollar Credit: \$71.61	Lottery Credit: \$0.00
Special Assessment: \$0.00	Special Charges: \$0.00
Delinquent Utility Charge: \$0.00	Private Forest Crop Taxes: \$0.00
Managed Forest Land Taxes: \$0.00	Woodland Tax Law Taxes: \$0.00
Total Billed: \$2,420.08	

Tax Jurisdictions

STATE OF WISCONSIN \$21.26
 GATEWAY TECHNICAL COLLEGE \$179.43
 CITY OF WHITEWATER \$645.12
 COUNTY OF WALWORTH \$521.97
 SCH WHITEWATER \$1123.91

Elected Officials / Voting Districts

Supervisory District: Jerry Grant (D4)
 State Representative: Evan Wynn (43rd District)
 State Senator: Timothy Cullen (15th District)
 US Representative: Tammy Baldwin (2nd District)
 US Senator: Ron Johnson (R) & Herb Kohl (D)

Special Assessments / Charges

Soil Classification

Soil Type	Soil Name	Acres
PsB	PLANO SILT LOAM, 2 TO 6 PERCENT SLOPES	0.3132
PsA	PLANO SILT LOAM, 0 TO 2 PERCENT SLOPES	0.0096
KyA	SILT LOAM, MOTTLED SUBSOIL VARIANT, 0 TO 2 PERCENT	0.0007

Property Address

648 S JANESVILLE ST WHITEWATER

Legal Description

COM INTER N LN SOUTH ST & NWLYLN JANESVILLE ST, S31D00' W486.93' TO POB, S31D00' W 75', S87D25' W 171.52', N5D36' E90', S85D01' E 201.96' TO POB. TRATT'S ADD. CITY OF WHITEWATER

Disclaimer

The information provided in this property information page is not official information. All official tax information is recorded in the Walworth County Treasurer's Office. To verify tax payment/payoff status, contact the Walworth County Treasurer's Office at 262-741-4251.

T-22A

NOTICE OF HEARING

To: Dennis and Constance Meyer
3471 11th Avenue
Wisconsin Dells, WI 53965

PLEASE TAKE NOTICE that the City of Whitewater Common Council will hear the matter of the renewal of your license to store unoperable vehicles at 648 S. Janesville Street, Whitewater, Wisconsin on September 5, 1995 at 7:30 p.m. at the Irvin L. Young Memorial Library, 431 W. Center Street, Whitewater, Wisconsin.

You are further advised that the City staff will recommend to the Council that your license be renewed for the period of November 6, 1994 to November 6, 1995, but that the license be terminated and not renewed as of November 6, 1995.

You are hereby notified that at the time of said hearing, you will have the right to be personally present and represented by counsel. You will have the right to ask questions concerning the matter. You will have the right to examine any documentary evidence that is presented. You will have the right to respond and challenge any claims made regarding this matter. You will have the right to present witnesses on your behalf. You will also have the right to have a written transcript made at your own expense.

Dated August 3, 1995.



Gary W. Boden
City Manager

Allen, Harrison, Williams, McDonell & Swatek

ATTORNEYS AT LAW

**MARTIN W. HARRISON
WALLACE K. McDONELL**WHITEWATER OFFICE
452 W. MAIN ST.
P.O. BOX 59
WHITEWATER, WI 53190
Telephone
414/473-7800 414/723-4876
FAX No: 414/473-7806

FAX TELEPHONE NUMBER: (414) 473-7906

**ANDREW FARR ALLEN
DAVID C. WILLIAMS
TIMOTHY P. SWATEK**LAKE GENEVA OFFICE
527 CENTER ST.
P.O. BOX 700
LAKE GENEVA, WI 53147
Telephone
414/248-8175
FAX No: 414/248-3154

TELECOPIER COVER LETTER

DATE: August 3, 1995
TO: Bruce Parker, Fax 473-0549
Gary Boden, Fax 473-0509
FROM: Wally
IN RE: Dennis & Constance Meyer

Items being sent: Proposed Notice of Hearing

Total Number of Pages, including this page: 2

If you do not receive all of the pages,
please inform us immediately.

Thank you.

Bruce and Gary:

I am forwarding herewith a proposed Notice of Hearing in regard to the Meyer hearing
on August 15th. Wally*File
648 S. JAMESVILLE ST.*

NOTICE OF HEARING

To: Dennis and Constance Meyer
3471 11th Avenue
Wisconsin Dells, WI 53965

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Dated August 3, 1995.

Gary W. Boden
City Manager

has paid the sum of twenty-five Dollars to the Treasurer of said City, as required by the resolutions and ordinances of the said CITY and complied with all the requirements necessary for obtaining this License.

Now Therefore, By order of the COMMON COUNCIL and by virtue hereof, the said DENNIS MEYER

is hereby licensed and authorized to store up to 15 unoperable vehicles at 648 S. Janesville Street, with proper screening from public view.

for a period of June 21, 1994 - November 6, 1994 subject to all the conditions and provisions of said resolutions and ordinances.

{ CORPORATE SEAL }

Given under my hand and the corporate seal of said City this 21st day of June, 19 94

CITY OF WHITEWATER

Attest: _____ Clerk * _____

*Mayor, President or Chairman.

DENNIS

BECAUSE OF THE TIME THAT HAS
GONE BY AND THE LACK OF FENCING THAT
YOU HAVE NOT DONE THE CITY WILL BE
POLLING YOUR LIC. AND YOU WILL HAVE TO REMOVE
ALL UNLAWFUL AND INOPERATIVE VEHICLES FROM THIS
PROPERTY BY JUNE 1ST. OR HAVE IT SEEN WITH THE FENCE
THAT YOU SAID YOU WOULD INSTALL LAST YEAR.
5-10-95

[Signature]



CITY OF WHITEWATER

Education-Industry-Agriculture

Code Enforcement Director/
Zoning Administrator
P.O. Box 178
Whitewater, Wisconsin 53190

Telephone
FAX

(414)473-0535
473-0549

May 10, 1995

Dennis Meyer
648 S. Janesville Street
Whitewater, WI 53190

RE: Unoperable vehicles located at 648 S. Janesville Street

Dear Dennis Meyer;

Due to the time that has gone by and the lack of required proper screening, the City is pulling your licence for unoperable vehicles. You will have to remove all unlicensed and unoperable vehicles from this property by June 1, 1995 or install the appropriate fencing so all four sides are screened from public view.

Sincerely,

Bruce Parker
Code Enforcement Director/Zoning Administrator

BRP/jw

*Bruce,
Faxed copy
to Audrey.
Fence of parts of
about 13 cars
known*

PLAN COMMISSION AND ARCHITECTURAL
CONTROL BOARD

November 11, 1981
8:00 A.M.

Council Chambers
Armory

M I N U T E S

1. Chairman Smet called the meeting of the Plan and Architectural Control Board to order.

PRESENT: SMET, PLATNER, CLARKE, NOSEK
ABSENT: SHERMAN, STECK

2. Board members considered a referral from Council for a recommendation in the matter of exercising the right-of-first-refusal concerning the sale of a portion of Lot 2, Whitewater Industrial Park, Commercial Avenue by Hawthorn-Melody to Scion, Inc., (Projector-Belt). Following a discussion led by Chairman Smet it was moved by Platner and Nosek to recommend to council not to exercise the right-of-first-refusal and let the sale proceed since the use would not be inconsistent with other uses in the Industrial Park. Motion carried by unanimous roll call vote.
3. Review of exterior design of plans to remodel a single family home into four apartment units and change use, by D.L. Kachel at 429 W. Main St. Building Inspector Parker briefed members on plans. Mr. Kachel had been refused a building permit earlier when he had presented plans for six apartment units. All parking and setback requirements were met. Mr. Kachel was present to answer questions and he was asked about lighting and curbs to prevent cars from encroaching on the Church property at the rear of the residence. Pastor Zelle, Byron Edmundson and Russell Skindingsrude were present representing the First English Lutheran Church. Moved by Nosek to approve exterior design. After discussion Nosek amended motion to include that D.L. Kachel install proper curbing in parking area (north, south and east) to protect church property. Clarke seconded motion and motion passed by a unanimous roll call vote.
4. Members reviewed plans for an addition to a building at 648 S. Janesville St., by Dennis D. Meyer. Mr. Meyer was present and stated that the 40' x 60' addition would match present building as much as possible. All requirements concerning setbacks and parking were met, according to Bruce Parker, Building Inspector. Mr. Meyer stated that much of his outdoor storage would be inside the new addition and this would add to a neater appearance for his auto parts store. Moved by Platner and Clarke to approve the exterior design. Motion passed by a unanimous roll call vote.
5. For the members information the Decision and Order of the Board of Zoning Appeals in the case of Coburn Co., was presented.



Neighborhood Services Department
*Planning, Zoning, Code Enforcement, GIS
and Building Inspections*

www.whitewater-wi.gov
Telephone: (262) 473-0540

To: City of Whitewater Plan and Architectural Review Commission
From: Latisha Birkeland, Neighborhood Services Manager / City Planner
Meeting Date: October 8th, 2012
Re: Review proposed ordinance amendment to allow the keeping of a small number of backyard chickens in Whitewater residential areas.

Summary of Request

Background

A complaint came into the Neighborhood Services Department regarding chickens being housed in a residential area. Staff verified that chickens were located on the applicant's yard and sent a letter asking for the removal of the chickens.

City Code Section 9.06.010 Livestock – "No person shall raise, store or keep livestock within the City on land which is less than two acres in size. "Livestock" includes, but is not limited to sheep goats, horses, cattle or pigs. Livestock does not include dogs or cats. Livestock and poultry raising (except for commercial uses) are identified as a permitted use in the Agriculture Transition District (19.42.020).

Mr. Peter Underwood has applied for a ordinance amendment to allow chickens in the back yard of residential properties. Mr. Underwood has supplied reading materials of poultry in urban areas, ordinance research from other communities and a proposed ordinance for the Plan Commissioners to consider.

Staff has verified the supplied ordinance information and has included an example permit from Lake Mills to consider during the discussion.

Currently, the City knows of two properties that have chickens residing on them. Both properties have been allowed to keep their chickens until an official approval or denial from the Plan Commission and Common Council has been determined.

Recommendation on Ordinance Amendment

As of 3:00 p.m. on 10/3/2012, staff did not receive any public comments.

Allowing chickens in residential areas is becoming more common locally and across the nation. Many communities consider the items below when determining if backyard chickens should be permitted in their community.

If the Plan and Architectural Review Commission recommends an ordinance amendment to allow chickens a permitted use in residential areas to the Common Council, I recommend deciding on the following items:

1. Identify which residential districts that permitting chickens would be allowed.

2. Maximum number of hens (not roosters) that are to be allowed on the property.
 - a. Most research shows limiting backyard chickens to 4- 6 hens is standard.
3. Chicken coop size and type.
 - a. The City Code states that accessory structures shall not be larger than 10% of the side and rear lot area (open space) and in no case shall exceed 800 square feet. Where do coops fit in?
4. Setback of coop from property line.
 - a. Currently accessory structures shall not be closer than five feet to any lot line or ten feet to any alley line. Setting a setback from the property line, and not from neighboring structures, will make the review and enforcement for backyard chickens easier for all residents to understand and allow for consistent enforcement. The Plan Commission may want to consider screening requirements.
5. Permit requirements
 - a. Attached to this report is the application and site plan review for a backyard chicken license from Lake Mills. An application process for backyard chickens will also help define the standards to residents.
6. Do not allow slaughtering.

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Plan and Architectural Review Commission of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, will consider a change of the City of Whitewater Ordinance regulations, to enact the proposed amendments to the City of Whitewater Municipal Code: Chapter 9, specifically Section 9.06.010 Livestock, addressing an amendment to allow for a permitted use for the keeping of a small number of backyard chickens in Whitewater residential areas.

The proposed ordinance changes are on file in the office of the City Clerk and the document is open to public inspection during office hours Monday through Friday, 8:00 a.m. to 5:00 p.m.

NOTICE IS FURTHER GIVEN that the Plan and Architectural Review Commission of the City of Whitewater will hold a public hearing at the Municipal Building Community Room in said City, on Monday, October 8, 2012, at 6:00 p.m. to hear any person for or against said change.

Dated: September 18, 2012

Publish: September 20, 2012 and September 27, 2012 (two times)
in the Whitewater Register

Michele Smith, City Clerk

City of Whitewater
Application for Amendment to Zoning District or Ordinance

IDENTIFICATION AND INFORMATION ON APPLICANT(S):

Applicant's Name: Peter Underwood and Mary Jarosz

Applicant's Address: 1634 W Wildwood Rd, Whitewater WI 53190
Phone # 262-893-7742

Owner of Site, according to current property tax records (as of the date of the application):
Not applicable - request for amendment to city-wide ordinance

Street address of property: Not applicable

Legal Description (Name of Subdivision, Block and Lot or other Legal Description):
Not applicable

Agent or Representative assisting in the Application (Engineer, Architect, Attorney, etc.)

Name of Individual: None

Name of Firm:

Office Address:

Phone:

Name of Contractor:

Has either the applicant or the owner had any variances issued to them, on any property? No
If YES, please indicate the type of variance issued and indicate whether conditions have been complied with.

EXISTING AND PROPOSED USES:

Current Zoning District or Ordinance to be Amended:

9.06.010 - Livestock and 19.42.010 - Permitted Use Land

Proposed Zoning District or Ordinance

We propose an amendment to the current Livestock ordinance to allow, with restrictions, the keeping of a small number of backyard chickens in Whitewater residential areas. Please see the attached model ordinance for consideration.

There are many examples of communities locally and across the nation successfully implementing backyard chicken ordinances. Besides making good pets, keeping chickens is a useful sustainability practice and fits with the notion of obtaining food locally (eggs for personal consumption). Included with this ordinance amendment application is a document showing examples of area and representative city ordinances that allow chickens in residential areas. The Plan and Architectural Review Commission could develop a similar ordinance that meets the needs of our community.

Perceived issues of noise and odor with the keeping of chickens are not a problem with the small number of hens (no roosters) that are permitted in most city ordinances allowing backyard chickens. Included with this ordinance amendment application is an excellent article entitled "Poultry in Urban Areas" written by Cooperative Extension Services of Wisconsin. This document dispels many of the perceived problems associated with keeping backyard chickens. Whitewater city ordinances already include many provisions regarding residential nuisances that should allay the concerns of local home owners and property owners.

Zoning District in which property is located: Not applicable
 Section of City Zoning Ordinance that identifies the proposed land use in the Zoning District in which the property is located: Not applicable

PLANS TO ACCOMPANY APPLICATION

Applications for permits shall be accompanied by drawings of the proposed work, drawn to scale, showing, when necessary, floor plans, sections, elevations, structural details, computations and stress diagrams as the building official may require.

PLOT PLAN

When required by the building official, there shall be submitted a plot plan in a form and size designated by the building official for filing permanently with the permit record, drawn to scale, with all dimension figures, showing accurately the size and exact location of all proposed new construction and the relation to other existing or proposed buildings or structures on the same lot, and other buildings or structures on adjoining property within 15 feet of the property lines. In the case of demolition, the plot plan shall show the buildings or structures to be demolished and the buildings or structures on the same lot that are to remain.

STANDARDS

STANDARD	APPLICANT'S EXPLANATION
<p>A. The proposed amendment for future structure, addition, alteration or use will meet the minimum standards of this title for the district being proposed;</p>	<p>Backyard chicken ordinances often contain detailed wording on structural and set back requirements for chicken containment structures. Any chicken coup built would have to meet these specifications along with any other building code already established by the city.</p>
<p>B. The proposed development will be consistent with the adopted city master plan;</p>	<p>The integration of sustainability strategies is already a defined topic in Whitewater zoning updates. Keeping backyard chickens is first and foremost a sustainability practice and in line with the local food movement. Whitewater supports a growing farmers market and multiple community supported agriculture farms that distribute their shares in the city. Backyard chickens fits in well with these sustainability practices.</p>
<p>C. The proposed development will be compatible with and preserve the important natural features of the site;</p>	<p>Many cities and municipalities large and small have incorporated permissive backyard chicken ordinances without subsequent problems. Examples of representative city ordinances allowing chickens in residential areas are included with this ordinance amendment application.</p>
<p>D. The proposed use will not create a nuisance for neighboring uses, or unduly reduce the values of an adjoining property;</p>	<p>By nearly every measure, chickens are less problematic pets / animals than domestic dogs and cats. Chickens are less noisy and less aggressive than dogs and cats (no roosters to be allowed). Four to 6 hens produce no more waste, odor, or disease potential than typical household pets.</p> <p>An ordinance allowing backyard chickens can be sufficiently detailed to require appropriate chicken enclosures (coup and chicken run) that would only add beauty to the property and would not be problematic for neighbors.</p> <p>Cities across the nation have adopted backyard chicken ordinances without subsequent problems or reduction in property values. Urban agriculture has conversely been thought to enhance property values (see Environmental Law Reporter article for references).</p>

STANDARD	APPLICANT'S EXPLANATION
E. The proposed development will not create traffic circulation or parking problems;	Not applicable
F. The mass, volume, architectural features, materials and/or setback of proposed structures, additions or alterations will appear to be compatible with existing buildings in the immediate area;	The section of a backyard chicken ordinance that deals with chicken enclosures typically details structural and set back requirements in keeping with other accessory structures.
G. Landmark structures on the National Register of Historic Places will be recognized as products of their own time. Alterations which have no historical basis will not be permitted;	Not applicable (there is historical precedent for urban chickens in Whitewater, see 1965 Life Magazine article attached to this application)
H. The proposed structure, addition or alteration will not substantially reduce the availability of sunlight or solar access on adjoining properties.	If necessary, the details of the chicken enclosure requirements can limit the height of the structure, but most chicken coups and fenced areas would be small structures and would not impede sunlight or solar access.

CONDITIONS

The City of Whitewater Zoning Ordinance authorizes the Plan Commission to hold a public hearing and make recommendation to the City Council for the proposed changes (Section 19.69).

Applicant's Signature

Date

APPLICATION FEES:

Fee for Amendment to Zoning or Ordinance: \$200

Date Application Fee Received by City 9-10-12 Receipt No. 6.010089

Received by J. Wegner

TO BE COMPLETED BY CODE ENFORCEMENT/ZONING OFFICE:

Model Backyard Chicken Ordinance for Consideration in Whitewater

Below is a model backyard chicken ordinance or starting point for an ordinance for Whitewater. This suggested ordinance is based on a model ordinance outlined in a detailed September 2012 Environmental Law Institute publication relating to backyard poultry (document attached to Ordinance Amendment Application). The ordinance is intended to reside in the Animal section of a city's Municipal Ordinance.

The following regulations will govern the keeping of chickens and are designed to prevent nuisances and prevent conditions that are unsanitary or unsafe. No person shall keep chickens unless the following regulations are followed:

- a. Number.** No more than 6 hens (optionally 4) shall be allowed for each single-family dwelling.
- b. Setbacks.** Coops or cages housing chickens shall be kept at least 25 feet from the door or window of any dwelling or occupied structure other than the owner's dwelling. Coops and cages shall not be located within 5 feet of a side-yard lot line, nor within 18 inches of a rear-yard lot line. Coops and cages shall not be located in the front yard.
- c. Enclosure.** Hens shall be provided with a covered, predator-proof coop or cage that is well-ventilated and designed to be easily accessed for cleaning. The coop shall allow at least two square feet per hen. Hens shall have access to an outdoor enclosure that is adequately fenced to contain the birds on the property and to prevent predators from access to the birds. Hens shall not be allowed out of these enclosures unless a responsible individual, over 18 years of age, is directly monitoring the hens and able to immediately return the hens to the cage or coop if necessary. Hens may not be kept within a residential dwelling or garage (which the exception of chicks less than 8 weeks of age).
- d. Sanitation.** The coop and outdoor enclosure must be kept in a sanitary condition and free from offensive odors. The coop and outdoor enclosure must be cleaned on a regular basis to prevent the accumulation of waste.
- e. Slaughtering.** There shall be no slaughtering of chickens.
- f. Roosters.** It is unlawful for any person to keep roosters.

Examples of Area & Representative City Ordinances Allowing Chickens in Residential Areas

Jefferson Wisconsin Chicken Ordinance

Max Chickens Allowed	4
Roosters Allowed	No
Permit Required	No
Coop Restrictions	The chickens shall be provided with a covered enclosure and must be kept in the covered enclosure or in a fenced enclosure at all times.
Additional Information	Poultry. A. Resident landowners shall be allowed to keep up to four chickens, provided that: (1) The principal use is a single-family dwelling for the parcel or lot. (2) No roosters or noisy fowl will be kept. (3) No slaughtering of any chickens shall take place within the municipal limits. (4) The chickens shall be provided with a covered enclosure and must be kept in the covered enclosure or in a fenced enclosure at all times pursuant to 113-19 and 113-20 of this Code. (5) No coup, enclosure or pen may be placed within 15 feet from any lot line. B. This article shall take effect after posting and publication, as required by law. C. The adoption of this article shall remove "poultry" as a prohibited accessory use under 300-13B of this Code. Ordinance approved in 2008

Stoughton Wisconsin Chicken Ordinance

Max Chickens Allowed	4
Roosters Allowed	No
Permit Required	Yes
Coop Restrictions	Yes
Additional Information	Description: A maximum of 4 hen chickens are allowed by right on residentially zoned property with a single family, duplex or twin home residential unit including the following requirements: 1. Regulations: a. No person shall keep chickens without a city license. The license must be renewed annually. b. No chicken coop/run shall be closer than 25 feet to any residential structure on an adjacent lot and shall be located within the rear yard. c. All zoning requirements related to accessory structures are exempt for chicken coops/runs that are less than 65 square feet in area except the minimum setback shall be 4 feet from the side and rear lot line. d. Chicken coops/runs that are 65 square feet and larger in area must conform to the accessory structure requirements of the specific zoning district where located. e. Any electrical work requires an electrical permit through the department of planning and development. f. Chicken's shall not be allowed to be kept within a residential dwelling or garage.

Fort Atkinson Wisconsin Chicken Ordinance

Max Chickens Allowed	6
Roosters Allowed	No
Permit Required	No
Coop Restrictions	None found
Additional Information	Sec. 10-5. Restrictions on numbers of domestic animals, fowl or pets. No family shall keep any swine, horses, cattle, sheep, goats or mules, nor more than two rabbits, three dogs, three cats, six chickens, two mink, two ducks, two geese, two doves or two turkeys on any property within the corporate limits of the city; except, the total number of animals, fowl or pets that a family may keep under this section shall not exceed a combination of six.

Green Bay Wisconsin Chicken Ordinance

Max Chickens Allowed	4
Roosters Allowed	No
Permit Required	No
Coop Restrictions	Chickens cannot be kept in a principal structure (home or business) past 8 weeks of age, chickens must be contained and cannot be housed in a front or side yard. Coop must be kept at least 25 ft from any neighboring principal structures.
Additional Information	General Ordinance No. 7-10, section 6.335 (ordinance created May 17th, 2011) states up to four hens (no roosters) per parcel permitted. Must acquire annual license from City Clerk, must keep accessory structure that houses hens at least 25 ft. from neighboring principal structures. Coop cannot be located in front or side yards. General Ordinance No. 7-11, section 8.06 states that birds must be securely contained.

La Crosse Wisconsin Chicken Ordinance

Max Chickens Allowed	5
Roosters Allowed	No
Permit Required	Yes, annual license and fee, with written approval of 50% of neighboring property owners
Coop Restrictions	The chickens shall be provided with a covered enclosure and must be kept in the covered enclosure or a fenced enclosure within the backyard of the property at all times. All chicken coops, yards and other buildings shall be kept in a clean, sanitary condition and free from all objectionable odors and shall be subject to the inspection and approval of the City of La Crosse and the La Crosse County Public Health Department or their agents.
Additional Information	No enclosure shall be located closer than twenty five (25) feet to any residential structure on an adjacent lot.

Sturgeon Bay Wisconsin Chicken Ordinance

Max Chickens Allowed	No limit
Roosters Allowed	Yes, unless noise complaints
Permit Required	No
Coop Restrictions	none

Oshkosh Wisconsin Chicken Ordinance

Max Chickens Allowed	4
Roosters Allowed	No
Permit Required	Yes, annual license and fee, with written approval of 50% of neighboring property owners
Coop Restrictions	Chickens shall be provided an enclosed, predator-proof, insulated enclosure that is adequately ventilated and sufficient in size to allow free movement of the chickens. Enclosures shall measure a minimum of 7 square feet in area or 3 square feet in area per chicken, whichever is greater. Must provided elevated perches and 1 nest box per hen. Enclosures shall be kept in good repair, in a clean and sanitary condition, and free from all objectionable odors. Chickens shall be secured within the enclosure during non-daylight hours. (further details included)
Additional Information	A maximum of four (4) chickens may be kept per residential lot in areas zoned R-1 (Single Family Residence) District or R-2 (Two Family Residence) District provided that all families living in the R-2 property where a chicken license is requested consent to the presence of chickens and written permission/consent from all abutting neighbors property. Slaughter of chickens prohibited.

Sheboygan Wisconsin Chicken Ordinance

Max Chickens Allowed	not stated
Roosters Allowed	Yes
Permit Required	No
Coop Restrictions	Sanitary conditions required
Additional Information	Sec. 18-14. Keeping of fowl. (a) No person shall keep any ducks, geese, pigeons, chickens, birds, or other fowl within the city in any unsanitary condition or within such proximity of dwelling houses or in any manner so as to be a nuisance. (b) The building inspection department shall, upon complaint or on its own initiative, inspect premises upon which fowl are kept and ascertain and determine whether the conditions are unsanitary or if for any reason a nuisance is caused thereby. If the department determines that conditions are unsanitary, or if for any reason a nuisance exists, it shall order the owner or occupant of the premises to abate the nuisance and it shall thereupon be unlawful to keep such fowl on the premises.

New Berlin Wisconsin Chicken Ordinance

Max Chickens Allowed	Up to 4 chickens in a single family dwelling
Roosters Allowed	No
Permit Required	No
Coop Restrictions	No closer than 25 ft to neighboring dwellings and a minimum of five feet from the property line.
Additional Information	The raising of chickens or ducks for personal use shall be considered an accessory use in all single family residential zoning districts, and shall meet the following requirements: Up to a total of 4 chickens and or ducks allowed per single family dwelling No roosters No slaughtering Chickens and or ducks shall be kept within a secure enclosure enclosures shall be located no closer than 25 ft to neighboring dwellings and a minimum of five feet from the property line. Chapter 175-5 states regarding noise nuisance: Noisy animals or fowl. The keeping or harboring of any animal or fowl which by frequent or habitual howling, yelping, barking, crowing or making of other noises shall greatly annoy or disturb a neighborhood or any considerable number of persons within the city.

Madison Wisconsin Chicken Ordinance

Max Chickens Allowed	4 per household
Roosters Allowed	No
Permit Required	Yes
Coop Restrictions	coop must be 25' from neighbors
Additional Information	Madison has not had major problems with resident chickens since its ordinance was passed in 2004, said Patrick Comfert, the city's animal services lead worker. Roosters are illegal in Madison and other cities that allow chickens. Butchering chickens also is illegal. Madison allows up to four hens, which must be confined in a coop. Madison residents must pay \$10 for an annual chicken permit issued by the city treasurer. Coops must be at least 25 feet from neighboring residences. So far this year, 62 permits have been issued by the city, according to the treasurer's office. "What I've noticed is it seems to have opened up neighborhoods," said Comfert. "It's made people come off their porches and be more neighborly. A lot of people share eggs with their neighbors."

Seattle Washington Chicken Ordinance

Max Chickens Allowed	8, more under certain conditions
Roosters Allowed	No
Permit Required	No
Coop Restrictions	Structures housing domestic fowl must be located at least 10 feet away from any structure that includes a dwelling unit on an adjacent lot.
Additional Information	Up to 8 domestic fowl may be kept on any lot in addition to the small animals permitted. On lots greater than 10,000 square feet that include either a community garden or an urban farm, 1 additional fowl is permitted for every 1,000 sq. ft. of lot area over 10,000 sq. ft. in community garden or urban farm use. Roosters are not permitted. Structures housing domestic fowl must be located at least 10 feet away from any structure that includes a dwelling unit on an adjacent lot.

Portland Oregon Chicken Ordinance

Max Chickens Allowed	3 or less without permit
Roosters Allowed	No
Permit Required	No
Additional Information	A person keeping a total of 3 or fewer chickens, ducks, doves, pigeons, pygmy goats or rabbits shall not be required to obtain a specified animal facility permit. Roosters Prohibited. It is unlawful for any person to harbor, keep, possess, breed, or deal in roosters in the City of Portland. The provisions of this Section shall not be construed to prohibit the possession of roosters for commercial purposes.

Evanston Illinois Chicken Ordinance

Max Chickens Allowed	2-6
Roosters Allowed	No
Permit Required	Yes
Coop Restrictions	10 feet away from home, in back yard, and 3 feet from property line. It must be less than 14.5ft in height. It also cannot cover more than 40% of the rear yard.
Additional Information	2-6 hens, no roosters, may be kept in an "accessory structure" (coop/henhouse) They must not attract flies, and must be kept clean. Applicants must register with Illinois Department of Agriculture Livestock Premises Registration and additionally pay a hen coop fee of \$50 after the coop and pen have been erected, but before hens are brought on-site. Additionally, there must be 4 square feet of coop and run per hen, and hens must be able to easily get from coop to run, and be protected from weather and cold. Notice must be given to all neighbors prior to getting the permit. Chickens cannot be slaughtered within city limits.

Chicago Illinois Chicken Ordinance

Max Chickens Allowed	unlimited, but only as pets and for eggs
Roosters Allowed	No
Permit Required	No
Coop Restrictions	Must be of a "humane" and adequate size for the animals, also, must be clean and sanitary
Additional Information	The focus is on maintaining a clean, humane coop, not being a noise nuisance, and not keeping chickens for slaughter.

Ron Kean
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August 22, 2012

Dear Mr. Underwood,

You asked me to offer some thoughts on small urban flocks of poultry, so here are some.

Let me start by telling you a little about my training and experience with poultry. I grew up on a small, diversified farm and we kept a backyard flock of poultry, including chickens, ducks, turkeys and guineas. I have a BS in Animal Science, an MS in Animal Breeding, working with chickens, and have worked with poultry here at the university for more than 19 years. I took numerous classes on poultry husbandry, diseases, and general animal science during my schooling, and have taught several classes here as well.

I will comment briefly on a few topics that often come up when discussing small flocks. I have been somewhat involved with several municipalities as they looked at legalizing these small flocks, so I'll assume you are proposing a similar ordinance (4-6 hens, no roosters, no slaughtering, etc.).

One of the first considerations is usually the risk of disease. While there are several diseases that can possibly be transmitted between chickens and humans, most of them are rare and are not usually a problem. As with any animal, some simple precautions (such as washing your hands after handling them and keeping clean facilities) can be taken to avoid most of these.

Following is a list of potential diseases and some comments about each of them:

Salmonellosis – This is often what people think of when they think of chickens. There are about 2500 different species of *Salmonella* and a few of them can be carried by chickens and can make people sick. The type that usually makes the news (*Salmonella enteritidis* or SE) can be contracted by consuming undercooked eggs or from contamination from raw chicken meat. It can rarely be contracted from contact with fecal material, but a good hand washing with soap after handling any chicken will take care of this. I'd also point out that salmonellosis can be contracted from pet turtles, iguanas, pygmy hedgehogs, etc. as well as dogs and cats.

Psittacosis – This is a bacterial disease that can be contracted from poultry, although it is very rare. It's more commonly carried by cage birds (parrots, etc.) than by poultry. It can be treated with antibiotics.

Tuberculosis – While rare, there have been records of people contracting tuberculosis from birds. Typically, those who are immunocompromised are most at risk. Tuberculosis is not a common disease in poultry.

Histoplasmosis – this is a fungal disease that is actually caused by a soil fungus. It's not carried by birds, but can grow in old poultry or pigeon manure. It's commonly connected with pigeon droppings in church belfries, barns, etc. where these droppings accumulate. As long as a poultry house is cleaned regularly, this should not be an issue at all.

Parasites – Because chickens are not closely related to humans (Class *Aves* vs. Class *Mammalia*), parasites are generally adapted to one or the other. Mites, lice, etc. from birds will not live on humans for more than a few hours. Likewise, internal parasites are typically adapted to the poultry gut and won't be a problem for humans. One protozoa, *Giardia*, can occasionally affect birds and humans. This is more commonly seen in cage birds (parakeets, canaries, etc.). Most hobby flock owners routinely monitor and treat their birds for parasites anyway, in an effort to improve the livelihood of the birds.

Influenza – This has been in the news quite a bit recently, and there has been evidence in some other countries that humans can become infected from chickens. The subtypes that affect humans have not occurred in poultry in the United States for many, many years. The USDA conducts an aggressive program to depopulate flocks that may have other subtypes in an effort to prevent this from happening in the future.

There are a few other viruses that have been transmitted to people in lab conditions, but which are not really concerns in a hobby flock situation.

Some other non-disease issues that are often brought up can also be easily controlled:

Flies – The best way to prevent flies is to keep the litter dry. The eggs and larvae (maggots) need moisture to develop, so if the litter is dry, they will not be an issue. Also, most small flock owners clean out regularly, so manure buildup is not an issue. With a flock size of a few chickens, excess moisture should not be a problem.

Odor – Similar to the issue of flies, odor is seldom a problem if the litter is kept dry. Odor is usually associated with ammonia production, and this will be prevented by keeping the litter dry. Again, with a flock size of a few chickens, I'd be surprised if there is a moisture problem.

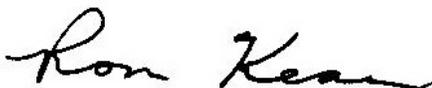
Noise – Roosters crowing can be an annoyance, especially in the early morning! Hens are typically considerably quieter and shouldn't be an issue. Certainly, they should be no more disruptive than a barking dog.

After listing all of these things, I know it sounds horrible, but the risks are really quite minimal. With any animal, there are possible issues, but a list of possible threats from a dog or cat would be at least as long, and probably longer. I think a small flock of hens can make wonderful, if unique, pets in an urban backyard. They also offer some benefits, such as eggs, garden fertilizer, etc., that dogs or cats can't provide.

I have also followed the Madison chicken ordinance fairly closely. I believe it has been in effect for about 9 years, and I have heard of very few complaints over that time. Chickens are kept by a fairly small percentage of the households, but those owners seem to be very happy with their flocks. To my knowledge, their neighbors have not been bothered much either.

If you have any questions, please feel free to contact me.

Sincerely,



Ron Kean
UW-Extension Poultry Specialist

LIFE



YOUNG G.O.P. STAR MAKES A BIG MOVE

Congressman John Lindsay
runs for
Mayor of New York

MAY 28 · 1965 · 35¢



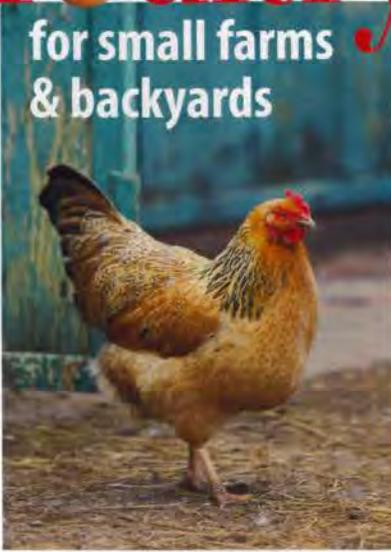
SLOW DOWN; WE LOVE RUDOLPH

Rudolph the red rooster roams the road for quite rational reasons: he needs food; he likes people; he seeks love. Rudolph lives in Whitewater, Wis. and belongs to nobody. By night he jump-flies among the evergreens in Library Park. By day, protected by the city sign put up for his benefit last year, he crosses Main Street, as shown here, for

cracked corn and water. These necessities are provided by a couple of rooster-boosters, the Reverend and Mrs. Jerald Wendt of the First English Lutheran Church. Later in the day, Rudolph, who is now getting fat on all this free food, doubles back to the park and waddles across North Street to talk it over with his girl, Fanny, a white Bantam hen.

Poultry

for small farms
& backyards



Adam A. Hady and Ron Kean

UW
Extension
Cooperative Extension

Poultry in Urban Areas

There has been a significant boom in the number of people interested in raising poultry in the United States. This is true even in urban areas, where keeping chickens poses some challenges that are different from those of raising poultry in rural environments. While many cities and municipalities have restrictions on urban poultry—or prohibit it outright—the strength and popularity of the local foods movement means that in many areas these ordinances are being reconsidered.

Examples of owners successfully raising poultry in urban areas are many; this publication will outline some best practices and look at a few of the challenges that the urban poultry person will need to address to avoid problems that might otherwise occur.

Benefits of raising chickens

There are many benefits to raising poultry; the first that may come to mind is having fresh eggs on hand. However, those who raise poultry enjoy many other benefits as well:

- Just like the family dog, chickens make good pets and can be a source of relaxation and companionship.
- Many people gain a sense of pride and satisfaction from raising well-cared-for, healthy birds.
- Some families find raising poultry is a great way for their children to learn about animal care and responsibility, better understand food systems, and gain a general insight to basic life processes.
- Chickens may help homeowners “go green.” Poultry waste is an excellent source of nutrients for plants, providing many of the key ingredients for composting and keeping fertilizer costs down. Many poultry owners use their birds to keep kitchen waste out of their trash bins, as chickens will eat many vegetables—especially leafy greens—and unseasoned meat scraps. Caution: be sparing with kitchen waste that contains a high amount of salt, as this can cause wet droppings from diarrhea and may have a negative effect on egg production and shell quality.



Problems associated with raising chickens

Providing the proper space, nutrition, and housing are the keys to raising healthy chickens—see *Guide to Raising Healthy Chickens* (A3858-01), available at learningstore.uwex.edu. In addition, owners have to be aware of the potential problems associated with poultry, especially in urban areas. Typically, issues that may arise involve noise, odors, pests, and concerns about disease. Poultry owners must be attentive to and cooperative with their neighbors, who may have a different tolerance for backyard chickens in an urban setting.

Noise and odor

Most animals make noise and have an odor to some degree. Properly provided for, chickens raised in an urban backyard aren't necessarily any noisier or smellier than dogs.

One concern frequently mentioned when talking about raising poultry in the city is that chickens will crow early in the morning or that a flock will be unusually loud. In fact, only roosters crow, and they can crow at any time of the day. Because of this, many municipalities have banned roosters from urban settings or placed restrictions, such as limiting the number of

roosters allowed. In addition to restrictions on roosters, many ordinances restrict the total number allowed in a flock as well.

There are many ways to help muffle the sounds that chickens make during the course of the day. Insulation will reduce the amount of sound coming from the chicken coop. For chicken coops with outdoor "runs," or areas where chickens can exercise, partial fences and landscaping such as small shrubs and bushes can help reduce sound as well as enhance the appearance of the housing.

Proper lighting is an important part of noise control as well. Birds are active when there is light, so a coop that allows you to control both natural and artificial light means you will have greater control over when the birds are active and more likely to make noise. Keep in mind that to get the most out of egg production, chickens need 14 to 16 hours of natural or artificial light per day.

Odors are another source of concern in urban environments, where neighbors are usually close to one another. Most poultry odor is associated with ammonia produced in poorly ventilated and moist coops. The solution is to properly ventilate the housing area, which will help keep the bedding dry. You may need to consider dehumidification during times of high humidity and other seasonal weather conditions.

Pest management and control

Controlling flies and other insects is very important to all poultry producers, but may have an even larger impact in an urban area. The best way to prevent flies is to keep the litter dry, as fly eggs and larvae (maggots) need moisture to develop. Keeping the pens clean will reduce problems with flies and insects; most small flock owners clean out their coops regularly, so manure buildup is not an issue. During certain times of the year or under particular weather conditions, however, traps or chemical control may be necessary.

Rodents can be another problem. Storing your feed securely and using feeders that minimize waste will reduce issues associated with rodents. Proper coop design and keeping the area immediately surrounding the coop free of weeds and grass will help keep rodents at a distance as well.

Concern about disease

As with any animal they share a space with, there is always the chance of humans picking something up from their backyard chickens. For example, some diseases found in other common household pets such as caged birds and reptiles can also be found in poultry. What follows is a short list of diseases that **could** be transmitted from birds to humans. However, the risks are very low when poultry is kept in a healthy and clean environment.

Salmonellosis: This is often what people think of when they have a concern about chickens and disease. There are about 2,500 different species of *Salmonella*; a few of them can be carried by chickens and potentially make people sick. The one that usually makes the news (*Salmonella enteritidis*, or SE) can be contracted by consuming undercooked eggs or from contamination from raw chicken meat. Only rarely will contact with fecal material lead to infection, and a good hand washing with soap after handling any chicken will take care of this. The same risk and remedy applies to other pets, including dogs, turtles, iguanas, and pygmy hedgehogs.



Influenza: There has been evidence in **some other countries** that chickens can transmit the influenza virus to humans. In the United States, the specific subtypes of the virus that affect humans have not been found in poultry for many years. However, the influenza virus can occasionally mutate from one subtype to another. In order to prevent future outbreaks, the USDA conducts an aggressive program to depopulate flocks that may have these other influenza subtypes, even if they aren't highly pathogenic.

Psittacosis: This bacterial disease can be contracted from poultry, although such occurrences are very rare. Caged birds such as parrots are more common carriers of psittacosis. If infection occurs, the disease can be treated with antibiotics.

Tuberculosis: While rare, there have been cases of people contracting tuberculosis from birds, although is not a common disease in poultry. Typically, people with a compromised immune system are most at risk.

Histoplasmosis: This fungal disease is actually caused by a soil fungus. While birds are not carriers, histoplasmosis can grow in old poultry or pigeon manure and is commonly connected with church belfries, barns, and other places where droppings accumulate. As long as a poultry house is cleaned regularly, this should not be an issue.

Parasites: Because chickens belong to the class *Aves* and humans to the class *Mammalia*, poultry and people are not closely related. Thus, there is little risk from the spread of parasites, which generally adapt to a specific class. Mites and lice from birds, for example, will not live on humans for more than a few hours. Likewise, internal parasites that are adapted to the poultry gut typically won't be a problem for humans. One protozoa, *Giardia*, can occasionally affect both birds and humans, although this is more commonly seen with caged birds such as parakeets and canaries. Most hobby flock owners routinely monitor and treat their birds for parasites nonetheless, to keep them healthy.

Other issues to consider

There are other issues specific to raising poultry in urban settings that you should consider before deciding to raise chickens or allowing chickens to be raised in your community.

Waste disposal

To safely keep poultry in an urban environment, you must have a secure plan regarding the disposal of poultry waste. If you have a waste storage container, make sure that it can be sealed and is rodent-proof. Composting poultry waste has become popular; homeowners have many options for purchasing or building compost bins. Poultry waste, which has a high nitrogen component, should not be directly applied to young and growing plants for fear of nitrogen burn. After it is composted, however, poultry waste makes for a safe, stable, odor-free fertilizer.

Can you have poultry in your town?

If you are thinking of keeping chickens in your city or town, the first thing to do is to check with your local officials to see if zoning or municipal ordinances limit or prohibit the raising of poultry, as is the case in many cities. Common restrictions include the distance between poultry housing and the lot line, the number and types of poultry that can be kept, and the need for permits and/or inspections.

Across the country, many groups are working with their municipalities to make it legal to raise poultry in areas where it was previously prohibited. If your city or municipality does not allow this, there are many resources to draw upon that will help your community decide whether an ordinance change is advisable. Keeping poultry in urban settings can be a contentious issue, so keep the following guidelines in mind:

- Be respectful of all positions
- Refer to poultry as pets and not livestock
- Start small and stay organized
- Be willing to educate neighbors, friends, and community members
- Include both the pros and cons of urban poultry and be prepared to provide ideas and solutions to concerns that people have
- Do your research and know your local resources



Developing rules and best practices

For communities that do allow backyard poultry, establishing good rules and best practices is the best way to protect citizen rights and property. A good system of regulation means poultry keepers will have the freedom to raise poultry while governmental bodies will have the tools necessary to minimize and settle any conflicts that arise. For more information on best practices, contact your county extension office:

UW-Extension, Cooperative Extension website (with links to county extension websites): www.uwex.edu/CES/



Housing

When selecting housing for your chickens, consider the following factors:

- The location of the enclosure: Where is it in relation to nearby residences?
- The size of the enclosure: Does the housing provide the proper space?
- The design of the enclosure: Is there adequate protection from the weather and predators?
- The appearance of the enclosure: Does it fit into the surroundings? Is it well maintained?

Raising poultry in any setting is fun and rewarding. By taking your neighbors and the community into consideration, you can successfully enjoy raising poultry in an urban setting.

Resources

University of Wisconsin-Extension resources

"Egg Safety and the Backyard Flock," available at: foodsafety.wisc.edu

Guide to Raising Healthy Chickens (A3858-01): learningstore.uwex.edu

Main poultry education website: www.uwex.edu/ces/animalscience/poultry/resources.cfm

Pasture Poultry Ark (A3908-02): learningstore.uwex.edu

Polk County home composting information: polk.uwex.edu/hort/Composting.html

Producing Poultry on Pasture (A3908-01): learningstore.uwex.edu

Richland County poultry website: Richland.uwex.edu/ag/Poultrylinks.html

Other resources

Mad City Chickens: www.madcitychickens.com

North Carolina Extension small flock management resources: www.ces.ncsu.edu/depts/poulsci/tech_manuals/small_flock_resources.html

University of Kentucky small and backyard flocks: www.ca.uky.edu/smallflocks

Urban Chickens: urbanchickens.org

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Photo credits: Shingled roof coop (page 1) and Carl Wacker with his Buff Orpington hen Shasha (page 2) courtesy of Kristy Hanselman; chicken run (page 3) courtesy of David Lovell.

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Odor – Similar to the issue of flies, odor is seldom a problem if the litter is kept dry. Odor is usually associated with ammonia production, and this will be prevented by keeping the litter dry. Again, with a flock size of a few chickens, I'd be surprised if there is a moisture problem.

Noise – Roosters crowing can be an annoyance, especially in the early morning! Hens are typically considerably quieter and shouldn't be an issue. Certainly, they should be no more disruptive than a barking dog.

After listing all of these things, I know it sounds horrible, but the risks are really quite minimal. With any animal, there are possible issues, but a list of possible threats from a dog or cat would be at least as long, and probably longer. I think a small flock of hens can make wonderful, if unique, pets in an urban backyard. They also offer some benefits, such as eggs, garden fertilizer, etc., that dogs or cats can't provide.

I have also followed the Madison chicken ordinance fairly closely. I believe it has been in effect for about 9 years, and I have heard of very few complaints over that time. Chickens are kept by a fairly small percentage of the households, but those owners seem to be very happy with their flocks. To my knowledge, their neighbors have not been bothered much either.

If you have any questions, please feel free to contact me.

Sincerely,



Ron Kean
UW-Extension Poultry Specialist

Illegal Fowl: A Survey of Municipal Laws Relating to Backyard Poultry and a Model Ordinance for Regulating City Chickens

by Jaime Bouvier

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Summary

As the movement toward keeping backyard chickens continues to grow, many cities are facing the decision of whether to allow residents to keep chickens and, if so, how to effectively regulate the practice. A survey of municipal ordinances in the top 100 most populous cities in the United States that concern keeping and raising chickens offers lessons that may be applied to designing a model ordinance. This survey reveals that chickens are, perhaps surprisingly, legal in the vast majority of large cities. The survey also identifies regulatory norms and some effective and less effective ways to regulate the keeping of chickens. A proposed model ordinance, based on the background information and survey results, could be adopted by a city or easily modified to fit a city's unique needs.

So much depends
upon
a red wheel
barrow
glazed with rain
water
beside the white
chickens.

William Carlos Williams, 1923.

The movement toward bringing agricultural practices into the city has continued to expand during the last decade.¹ As we learn more about the problems with our modern commercial agricultural practices—like keeping large numbers of animals crowded in small indoor facilities with little or no access to fresh air or sunlight and growing vast amounts of corn and soy in a monoculture environment to feed those animals²—many city-dwellers are taking it into their own hands to provide solutions.³ Community gardens are increasing in cities across the country.⁴ Market farms and even full-scale urban farms are popping up both in cities where the foreclosure epidemic has caused an abundance of abandoned properties and in cities where property has maintained or even increased in value.⁵ And, farmer's markets have increased exponentially across the country—allowing smaller scale local farmers to directly link to consumers and sell their produce for far above the wholesale amounts they could get from selling through

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1. Kimberly Hodgson et al., *Urban Agriculture: Growing Healthy Sustainable Places*, American Planning Association, Planning Advisory Service, Report No. 563 (Jan. 2011); JANINE DE LA SALLE & MARK HOLLAND, *AGRICULTURAL URBANISM, HANDBOOK FOR BUILDING SUSTAINABLE FOOD & AGRICULTURAL SYSTEMS IN 21ST CENTURY CITIES*, 9-12 (2010).
2. *E.g.*, FOOD, INC. (Magnolia Pictures 2009); MICHAEL POLLAN, *THE OMNIVORE'S DILEMMA: A NATURAL HISTORY OF FOUR MEALS* (2006); ERIC SCHLOSSER, *FAST FOOD NATION: THE DARK SIDE OF THE ALL AMERICAN MEAL* (2002); MARION NESTLE, *FOOD POLITICS: HOW THE FOOD INDUSTRY INFLUENCES NUTRITION AND HEALTH* (2002).
3. *E.g.*, LISA TAYLOR, *YOUR FARM IN THE CITY: AN URBAN DWELLER'S GUIDE TO GROWING FOOD AND RAISING LIVESTOCK* (2011); THOMAS J. FOX, *URBAN FARMING: SUSTAINABLE CITY LIVING IN YOUR BACKYARD*, IN *YOUR COMMUNITY, AND IN THE WORLD* (2011); KELLY COYNE & ERIK KNUTZEN, *THE URBAN HOMESTEAD: YOUR GUIDE TO SELF-SUFFICIENT LIVING IN THE HEART OF THE CITY* (2010); KURT B. REIGHLEY, *THE UNITED STATES OF AMERICANA: BACKYARD CHICKENS, BURLESQUE BEAUTIES, AND HOMEMADE BITTERS* (2010).
4. Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 N.Y.U. J. LEGIS. & PUB. POL'Y 315, 354 (1999-2000).
5. Hodgson, *supra* note 1, at 3-4.

more established channels like supermarkets and convenience stores.⁶

Part of the greater urban agriculture movement involves urban animal husbandry—raising livestock in an urban setting.⁷ While many cities have allowed for bees, goats, and other livestock in the city,⁸ this Article will focus on how cities regulate chickens.⁹ Many people in urban environments are seeking to raise chickens to assert control over their food. This may be in reaction to increasing reports of how large industrial farms raise chickens in abusive and unsanitary settings—settings that not only are unhealthy for the chickens but negatively affect the health of people who live near such farms, as well as anyone who eats the eggs or meat from those chickens.¹⁰ Many people view raising chickens and other urban agricultural practices as a way to combat a broken food system and a way to assert individual political power against the large corporations that control much of our food.¹¹

In response to a growing demand from city-dwellers to raise their own chickens, either as part of a community

garden, urban farm, or just in their own backyard, cities across the country are amending their ordinances to allow for and regulate backyard chickens.¹² This Article will first provide a primer on what a city-dweller should know about chickens. This is especially targeted to city-dwellers who serve as councilpersons, mayors, or law directors and know little or nothing about chickens. Because many municipal officials lack agricultural knowledge, they lack a basis for understanding whether chickens can peacefully co-exist with their constituents in a cosmopolitan area. And, even if officials believe that residents should be able to keep chickens, they may still feel unequipped to figure out how to properly regulate chickens to head off practical concerns with noise, odor, and nuisance.

Many people may be surprised to learn that even in cities where raising chickens is illegal, many people are doing so anyway.¹³ For instance, in a suburb of Cleveland, Jennifer,¹⁴ a young mother of two boys, built a coop in her backyard and bought four chicks.¹⁵ These chicks grew up to be egg-laying hens and family pets before she learned that her city outlawed chickens. The city told her that if she did not get rid of the chickens, she would be subject to continuing expensive citations for violating the city's ordinance. Because both she and her children

6. Patricia E. Salkin & Amy Lavine, *Regional Foodsheds: Are Our Local Zoning and Land Use Regulations Healthy?*, 22 FORDHAM ENVTL. L. REV. 599, 617 (2011); Brandon Baird, *The Pending Farmer's Market Fiasco: Small-Time Farmers, Part-Time Shoppers, and a Big-Time Problem*, 1 KYJEANRL 49, 49-50 (2008-2009). See also Kirk Johnson, *Small Farmers Creating a New Business Model as Agriculture Goes Local*, N.Y. TIMES, July 1, 2012, http://www.nytimes.com/2012/07/02/us/small-scale-farmers-creating-a-new-profit-model.html?_r=1&ref=agriculture.
7. Hogdson, *supra* note 1, at 17. See, e.g., ROBERT & HANNAH LITT, A CHICKEN IN EVERY YARD (2011); HARVEY USSERY, THE SMALL-SCALE POULTRY FLOCK: AN ALL-NATURAL APPROACH TO RAISING BACKYARD AND URBAN CHICKENS (2011); ANDY SCHNEIDER, THE CHICKEN WHISPERER'S GUIDE TO KEEPING CHICKENS, EVERYTHING YOU NEED TO KNOW . . . AND DIDN'T KNOW YOU NEEDED TO KNOW ABOUT RAISING CHICKENS (2011); TARA LAYMAN WILLIAMS, THE COMPLETE GUIDE TO RAISING CHICKENS: EVERYTHING YOU NEED TO KNOW EXPLAINED SIMPLY (2010); JEROME D. BELANGER, THE COMPLETE IDIOT'S GUIDE TO RAISING CHICKENS (2010); CARLEE MADIGAN, THE BACKYARD HOMESTEAD (2009); KIMBERLY WILLIS & ROB LUDLOW, RAISING CHICKENS FOR DUMMIES (2009).
8. E.g., Heather Wooten & Amy Ackerman, *Seeding the City: Land Use Policies to Promote Urban Agriculture*, NATIONAL POLICY & LEGAL ANALYSIS NETWORK TO PREVENT CHILDHOOD OBESITY, 34 (2011); Kailee Neuner et al., *Planning to Eat: Innovative Local Government Plans and Policies to Build Healthy Food Systems in the United States*, FOOD SYSTEMS PLANNING AND HEALTHY COMMUNITIES LAB, UNIVERSITY OF BUFFALO, THE STATE UNIVERSITY OF NEW YORK, 17 (2011).
9. See also Patricia Salkin, *Feeding the Locavores, One Chicken at a Time: Regulating Backyard Chickens*, 34:3 ZONING & PLAN. L. REP. 1 (2011) (briefly surveying chicken laws); Mary Wood et al., *Promoting the Urban Homestead: Reform of Local Land Use Laws to Allow MicroLivestock on Residential Lots*, 37 ECOLOGY L. CURRENTS 68 (2010).
10. See, e.g., Nicholas D. Kristof, *Is an Egg for Breakfast Worth This?*, N.Y. TIMES, Apr. 11, 2012, <http://www.nytimes.com/2012/04/12/opinion/kristof-is-an-egg-for-breakfast-worth-this.html>; Nicholas D. Kristof, *Arsenic in Our Chicken*, N.Y. TIMES, Apr. 4, 2012, <http://www.nytimes.com/2012/04/05/opinion/kristof-arsenic-in-our-chicken.html>.
11. Hugh Bartling, *A Chicken Ain't Nothing but a Bird: Local Food Production and the Politics of Land-Use Change*, LOCAL ENVIRONMENT 17(a) (Jan. 2012). For a different take on the political reasons behind backyard chickens, see Shannon Hayes, *Radical Homemakers: Reclaiming Domesticity From a Consumer Culture* (2005) (asserting that urban farming can be a feminist response to modern urbanization).
12. Sarah Grieco, *Backyard Bees, Chickens, and Goats Approved*, NBCSANDIEGO, Feb. 1, 2012 <http://www.nbcsandiego.com/news/local/Backyard-Bees-Chickens-Goats-Approved-138507104.html>; Michael Cass, *Backyard Chickens Make Gains in Nashville*, THE TENNESSEAN, Jan. 5, 2012, <http://www.healthynashville.org/modules.php?op=modload&name=News&file=article&sid=20163>; Peter Applebome, *Envisioning the End of "Don't Cluck, Don't Tell"*, N.Y. TIMES, Apr. 30, 2009, <http://www.nytimes.com/2009/4/30/nyregions/30town?>; Jessica Bennet, *The New Coop de Ville, the Craze for Urban Poultry Farming*, NEWSWEEK, Nov. 16, 2008, <http://www.thedailybeast.com/newsweek/2008/11/16/the-new-coop-de-ville.img.jpg>. And this movement is not just in the United States; Australia, Canada, and Europe also are experiencing a surge in the number of people keeping backyard hens. See, e.g., *Surge in Backyard Poultry Numbers*, BRITISH FREE RANGE EGG PRODUCERS ASSOCIATION (Jan. 9, 2011), http://www.theranger.co.uk/news/Surge-in-backyard-poultry-numbers_21660.html (last visited Feb. 24, 2012); BACKYARD CHICKENS IN TORONTO, ONTARIO, http://torontochickens.com/Toronto_Chickens/Blog/Blog.html (last visited Feb. 22, 2012) (advocacy group seeking to legalize chickens in Toronto); Chris Mayberry & Peter Thomson, *Keeping Chickens in the Backyard*, DEPARTMENT OF AGRICULTURE AND FOOD, GOVERNMENT OF WESTERN AUSTRALIA (Aug. 2004), http://www.agric.wa.gov.au/content/aap/pou/man/gn2004_022.pdf (last visited Feb. 22, 2012); ANDREA GAYNOR, *HARVEST OF THE SUBURBS: AN ENVIRONMENTAL HISTORY OF GROWING FOOD IN AUSTRALIAN CITIES* (2006); Catharine Higginson, *Living in France-Keeping Chickens*, LIVING FRANCE, <http://www.livingfrance.com/real-life-living-and-working-living-in-france-keeping-chickens-94936> (last visited Feb. 22, 2012).
13. See, e.g., *Where Chickens Are Outlawed Only Outlaws Will Have Chickens*, BACKYARDCHICKENS.COM, <http://www.backyardchickens.com/t/616955/where-chickens-are-outlawed-only-outlaws-will-have-chickens-t-shirt> (last visited Feb. 15, 2012) (forum for people who own chickens illegally); Heather Cann et al., *Urban Livestock: Barriers and Opportunities Faces by Homesteaders in the City of Waterloo*, Dec. 6, 2011, <http://www.wrfoodsystem.ca/studentresearch> (last visited Feb. 22, 2012) (interviewing several people who own chickens illegally in the Waterloo region of Canada).
14. Not her real name.
15. Interview with Jennifer, July 18, 2011 (on file with author).

had grown close to the hens, they did not want to simply dispose of them or give them away. Instead, Jennifer moved to a neighboring city that had recently passed an ordinance legalizing backyard hens and started a chicken cooperative.¹⁶ Now, a group of neighbors take turns caring for the chickens and share the eggs. Neither in the suburb where she started raising the chicks nor in the city where she started the cooperative did neighbors complain about odor, noise, or any other potential nuisance. And the suburb, by prohibiting chickens, lost the opportunity Jennifer was willing to provide to build strong community ties with her neighbors.¹⁷

Instead of moving away, others are seeking to change the law to raise chickens in the city where they already live. For instance, Cherise Walker has been advocating for a new ordinance in her community.¹⁸ Ms. Walker is a veteran of the Iraq war who became interested in hens when she read that keeping chickens can help relieve post-traumatic stress disorder.¹⁹ She subscribes to *Backyard Poultry*—a magazine dedicated to backyard chickens²⁰; she became certified in hen-keeping by the Ohio State University Extension; and, she began assembling the materials to build a coop in her yard. But, she soon learned that her city outlaws hens as dangerous animals, placing them in the same category as lions, tigers, bears, and sharks.²¹ Unwilling to become an outlaw hen-keeper, she, like countless others across the country, is attempting to lobby her mayor and city council-people to educate them about chickens and encourage them to adopt a more chicken-friendly ordinance.²²

Because of the growing popularity of keeping backyard chickens, cities can benefit from well-thought-out ordinances that avert possible nuisance and make it easy and clear for would-be chicken owners to find out what they need to do to comply with the law.

Changing these ordinances, however, is often a contentious issue.²³ It has caused one mayor in Minnesota to say, “there is a lot of anger around this issue for some reason.

More so than the war by far.”²⁴ City leaders are understandably concerned that chickens may cause nuisances.²⁵ They have raised such concerns as decreasing property values²⁶ and increasing greenhouse emissions,²⁷ as well as concerns about excessive clucking and overwhelming odors bothering the neighbors.²⁸ Some express the belief that chickens, and other agricultural practices, simply do not belong in cities.²⁹ The controversy over backyard chicken regulation has been so contentious that at least one law review article uses it as a case study for the Coase theorem to illustrate how we unnecessarily inflate the costs of processes related to legal change.³⁰

In Part I, this Article will discuss the benefits of backyard chickens. Part II will investigate concerns that many people have with keeping chickens in the city. Part III will provide some background about chickens and chicken behavior that municipalities should understand before crafting any ordinance. Part IV will survey ordinances related to keeping chickens in the 100 most populous cities in the United States, identifying regulatory norms and particularly effective and ineffective means of regulation. Finally, Part V will put forward a model ordinance that regulates keeping chickens in an urban setting while providing sufficient regulation to abate nuisance concerns.

16. CLEVELAND, OHIO, CODIFIED ORDINANCES §§205.04, 347.02 (2011).

17. See *infra* Part I.E. (discussing how participating in urban agriculture can increase social connections and civic responsibility).

18. Interview with Jennifer, July 18, 2011 (on file with author).

19. Megan Zotterelli, *Veterans Farming*, THE LEAFLET: NEWSLETTER OF THE CENTRAL COAST CHAPTER OF CALIFORNIA RARE FRUIT GROWERS (July/Aug. 2011), <http://centralcoastfoodie.com/2011/08/veterans-farming/> (noting that the Farmer Veterans Coalition that seeks to link veterans with farming has done so not only to provide veterans with economic opportunities, but because “the nurturing environment of a greenhouse or a hatchery has helped these veterans make impressive strides in their recovery and transition”).

20. *Backyard Poultry Magazine* has been published since 2006 by Countryside Publications, Inc. It currently has a circulation of approximately 75,000 readers. See ADVERTISING INFORMATION FOR BACKYARD POULTRY, <http://www.backyardpoultrymag.com/advertise.html> (last visited Feb. 22, 2012).

21. LAKEWOOD MUN. ORDINANCE §505.18.

22. Interview with Cherise Walker, Mar. 18, 2012 (on file with author).

23. Barak Y. Orbach & Frances R. Sjoberg, *Debating Over Backyard Chickens*, Arizona Legal Studies, Discussion Paper No. 11-02 (Feb. 2012) (listing conflicts in dozens of cities where people were seeking to change ordinances to either legalize or ban chickens); see also Salkin, *supra* note 9, at 1 (describing criticism of efforts to allow chickens in neighborhoods as including “worry that property values will plummet, that chickens will create foul odors and noise, and that they will attract coyotes, foxes, and other pests”).

24. Orbach & Sjoberg, *supra* note 23, at 24.

25. P.J. Huffstutter, *Backyard Chickens on the Rise, Despite the Neighbor's Clucks*, L.A. TIMES, June 15, 2009, <http://articles.latimes.com/2009/jun/15/nation/na-chicken-economy15>.

26. Tiara Hodges, *Cary: No Chickens Yet*, INDYWEEK.COM, Feb. 10, 2012, <http://www.indyweek.com/BigBite/archives/2012/02/10/cary-no-chickens-yet> (last visited Feb. 17, 2012); *Backyard Chickens: Good or Bad Idea*, KVAL.COM, Mar. 3, 2009, <http://www.kval.com/news/40648802.html> (last visited Feb. 17, 2012).

27. Valerie Taylor, *Chickens for Montgomery* (2009), <http://www.scribd.com/doc/16509728/Changing-Your-Citys-Chicken-Laws> (last visited Feb. 17, 2012) (addressing a concern that Montgomery council people voiced about greenhouse gases).

28. Josie Garthwaite, *Urban Garden? Check. Now, Chickens*, N.Y. TIMES, Feb. 7, 2012, <http://green.blogs.nytimes.com/2012/02/07/urban-garden-check-now-chickens/>.

29. Orbach & Sjoberg, *supra* note 23, at 19 (citing one mayor from Franklinton, Louisiana, as stating the “city has changed and grown so much since the original ordinance. We are trying to look to the future. You can’t raise animals or livestock (in the city).”); Barry Y. Orbach & Frances R. Sjoberg, *Excessive Speech, Civility Norms, and the Clucking Theorem*, 44 CONN. L. REV. 1 (2011) (stating that an alderman in Chicago was seeking to ban chickens in part because, “[a]ll things considered, I think chickens should be raised on a farm”); Jerry Kaufman & Martin Bailkey, *Farming Inside Cities*, 13 LANDLINES 1 (2001).

30. See Orbach & Sjoberg, *supra* note 29.

I. The Benefits of Backyard Chickens

In 1920, an elementary school textbook recommended that every family in America keep a small flock of backyard chickens.³¹ The textbook provided that “every family is better off for having a few chickens, provided they are kept out of the garden and at a suitable distance from any house.”³² It noted that of the millions of dollars worth of eggs that were sold each year at that time, comparatively little came from large poultry farms, but came instead “from the hundreds and thousands of farms and town lots where a few chickens and other fowls are kept in order that they may turn to profit food materials that otherwise would be wasted.”³³ The textbook asserted that chickens were a good value because, as scavengers and omnivores, it was relatively cheap to feed them scraps and receive in return fresh eggs. Also, the textbook championed city flocks because chickens eat insects and thus prevent the increase of insect pests.³⁴

The U.S. government was in agreement with the textbook’s advice. During World War I, the United States exhorted every person in America to raise chickens. The U.S. Department of Agriculture (USDA) issued posters with titles like “Uncle Sam Expects You to Keep Hens and Raise Chickens.”³⁵ One such poster encourages chicken ownership by exhorting that “even the smallest backyard has room for a flock large enough to supply the house with eggs.”³⁶ The poster goes on to say that because chickens eat table scraps and require little care, every household should contribute to a bumper crop of poultry and eggs in 1918.³⁷

These recommendations are still valid today, as many are reevaluating the suburbanization of America that occurred after World War II and reincorporating agricultural practices into daily life.³⁸ Keeping domesticated fowl has been a part of human existence for millennia,³⁹ and only in the last century has been seen as something that should be kept separate from the family and the home.⁴⁰ While humanity has long understood the benefits of keeping domesticated chickens, many city-dwellers have lost touch with what

**Uncle Sam Expects You
To Keep Hens and Raise Chickens**

**Two Hens in the Back Yard for Each Person
in the House Will Keep a Family
In Fresh Eggs**

EVEN the smallest back yard has room for a flock large enough to supply the house with eggs. The cost of maintaining such a flock is small. Table and kitchen waste provide much of the feed for the hens. They require little attention—only a few minutes a day.

An interested child, old enough to take a little responsibility, can care for a few fowls as well as a grown person.

Every back yard in the United States should contribute its share to a bumper crop of poultry and eggs in 1918.

**In Time of Peace a Profitable Recreation
In Time of War a Patriotic Duty**

For information about methods of Back-Yard Poultry Keeping suited to your location and conditions, write

**Your State Agricultural College
or
The United States Department of Agriculture
Washington, D. C.**

This Poster Issued by the Publisher

USDA Poster from Scott Doyon, *Chickens: WWI Solution to Almost Everything, Better Cities & Towns*, Nov. 4, 2011, <http://bettercities.net/news-opinion/blogs/scott-doyon/15562/backyard-chickens-wwi-era-solution-almost-everything> (last visited Feb. 15, 2012).

chickens have to offer. There continue to be many benefits to raising hens. Some of the benefits are apparent—like getting fresh free eggs. Some are less apparent—like hen manure being a surprisingly pricey and effective fertilizer and research findings that urban agricultural practices in general raise property values and strengthen the social fabric of a community. The benefits of keeping hens will be discussed more thoroughly below.

A. Chickens Are a Source of Fresh Nutritious Eggs

The most obvious benefit of keeping chickens in the backyard is the eggs. A hen will generally lay eggs for the first five to six years of her life, with peak production in the first two years.⁴¹ Hens lay more during the spring and summer months when they are exposed to more light because of the longer days.⁴² Hens also lay far more eggs when they are younger, starting off with between 150 to 300 eggs per year depending on the breed and dwindling down by about 20% each year.⁴³ Young hens or pullets often start out lay-

31. WILLIAM THOMPSON SKILLING, *NATURE-STUDY AGRICULTURE* (World Book Co. 1920).

32. *Id.* at 296.

33. *Id.*

34. *Id.*

35. Scott Doyon, *Chickens: WWI Solution to Almost Everything*, *BETTER CITIES & TOWNS*, Nov. 4, 2011, <http://bettercities.net/news-opinion/blogs/scott-doyon/15562/backyard-chickens-wwi-era-solution-almost-everything> (last visited Feb. 15, 2012).

36. *Id.*

37. *Id.*

38. Hodgson, *supra* note 1, at 11-12. See, e.g., ROBERT M. FOGELSON, *BOURGEOIS NIGHTMARES* 168-81 (2005) (noting that backyard poultry-keeping went from being universal and encouraged to being banned as a nuisance when newly developed suburbs aimed toward attracting wealthy residents began instituting policies to ban all household pets in an effort to distinguish themselves from both the urban and rural lower class).

39. Barbara West & Ben-Xiong Zhou, *Did Chickens Go North? New Evidence for Domestication*, 44 *WORLD'S POULTRY SCI. J.* 205-18 (1999). CHRISTINE HEINRICH, *HOW TO RAISE CHICKENS: EVERYTHING YOU NEED TO KNOW* (2007).

40. See, e.g., ANDREA GAYNOR, *HARVEST OF THE SUBURBS* 133 (2006); JANINE DE LA SALLE & MARK HOLLAND, *AGRICULTURAL URBANISM: HANDBOOK FOR BUILDING SUSTAINABLE FOOD & AGRICULTURE SYSTEMS IN 21ST CENTURY CITIES* 23 (2010).

41. LITT, *supra* note 7, at 168-69.

42. *Id.* at 169.

43. *Id.*

ing abnormal-looking or even double-yolked eggs, but as they mature begin laying more uniform eggs.⁴⁴ Although hens can live up to 15 or even 20 years, the average hen's lifespan is between four to eight years, so most hens will lay eggs during most of their life—but production will drop off considerably as they age.⁴⁵

Although some have argued that raising backyard chickens will save money that would have been used to buy eggs over time, this claim is dubious.⁴⁶ It would take many years to recoup the cost of the chickens, the chicken feed, and the coops.⁴⁷ But cost is only part of the equation.

Eggs from backyard hens have been scientifically shown to taste better.⁴⁸ First, they taste better because they are fresher.⁴⁹ Most eggs bought in a grocery store are weeks if not months old before they reach the point of sale.⁵⁰ Recent studies in agriculture science, moreover, demonstrate that if a chicken is allowed to forage for fresh clover and grass, eat insects, and is fed oyster shells for calcium, her eggs will have a deeper colored yolk, ranging from rich gold to bright orange, and the taste of the egg will be significantly fresher.⁵¹

Next, eggs from backyard hens are more nutritious.⁵² Poultry scientists have long known that a hen's diet will affect the nutrient value of her eggs.⁵³ Thus, most commercial hens are subjected to a standardized diet that provides essential nutrients; but even with this knowledge, large-scale operations cannot provide chickens with an optimal diet under optimal conditions.⁵⁴ Tests have found that eggs from small-flock pasture-raised hens actually have a remarkably different nutritional content than your typical store-bought egg—even those certified organic.⁵⁵ This is because backyard chickens can forage for fresh grass and other greens and get access to insects and other more natural chicken food.⁵⁶ The nutritional differences may also be attributed to the fact that hens are less stressed because

they are kept in a more natural environment with exposure to sun, weather, and adequate companionship.⁵⁷ Scientific nutritional analyses have proven that eggs from hens that are kept in small flocks and allowed to forage, when compared with store-bought eggs, have

- 1/3 less cholesterol
- 1/4 less saturated fat
- 2/3 more vitamin A
- 2 times more omega-3 fatty acids
- 3 times more vitamin E
- 7 times more beta-carotene.⁵⁸

Thus, four to six hens can easily provide enough eggs for a typical household and sometimes enough for the neighbors as well. And, the eggs are more nutritious, fresher, and tastier than those available in stores.

B. Chickens Provide Companionship as Pets

Many people who own a small flock of chickens consider their chickens to be pets and a part of their family—just like a dog or a cat.⁵⁹ Chickens have personalities, and many people and children bond with them just like any other pet.⁶⁰ Several forums exist on the Internet where people can trade stories about hen antics⁶¹ or debate what breed of chicken is best for children.⁶² Chicken owners tend to name their hens, and many can easily describe each hen's temperament and personality.⁶³

Perhaps recognizing this, many cities, as shown below, actually regulate chickens as pets—and place no further burden on chicken owners than it would on dog or cat owners.⁶⁴

C. Chicken Manure Is a Surprisingly Valuable Fertilizer

Chicken manure is an excellent and surprisingly valuable fertilizer. Currently, 20-pound bags of organic chicken manure fertilizer can fetch a price of between \$10 and

44. Bernal R. Weimer, *A Peculiar Egg Abnormality*, 2-4:10 *POULTRY SCI.* 78-79 (July 1918).

45. LITT, *supra* note 7, at 173.

46. GAIL DAMEROW, *BACKYARD HOMESTEAD GUIDE TO RAISING CHICKENS* (2011).

47. LITT, *supra* note 7, at 16. William Neuman, *Keeping Their Eggs in Their Backyard Nests*, N.Y. TIMES, Aug. 3, 2009, <http://www.nytimes.com/2009/08/04/business/04chickens.html?pagewanted=all> (acknowledging that backyard chicken enthusiasts do not typically save money by not buying eggs).

48. Klaus Horsted et al., *Effect of Grass Clover Forage and Whole-Wheat Feeding on the Sensory Quality of Eggs*, 90:2 J. SCI. FOOD & AGRIC. 343-48 (Jan. 2010).

49. LITT, *supra* note 7, at 17.

50. *Id.*

51. Horsted et al., *supra* note 48.

52. LITT, *supra* note 7, at 179 (citing Cheryl Long & Tabitha Alterman, *Meet Real Free-Range Eggs*, MOTHER EARTH NEWS, Oct./Nov. 2007, <http://www.motheearthnews.com/Real-Food/2007-10-01/Tests-Reveal-Healthier-Eggs.aspx>; Artemis P. Simopoulos & Norman Salem Jr., *Egg Yolk: A Source of Long-Chain Polyunsaturated Fats in Infant Feeding*, 4 AM. J. CLINICAL NUTRITION 411 (1992) (finding a significant increase in nutrition and significant decrease in harmful fats in small-flock free-range eggs).

53. WILLIAM J. STADELMAN & OWEN J. COTTERILL, *EGG SCIENCE & TECHNOLOGY* 185 (1995).

54. *Id.*

55. LITT, *supra* note 7, at 17.

56. *Id.*; Simopoulos & Salem Jr., *supra* note 52.

57. *Id.*

58. LITT, *supra* note 7, at 179.

59. *Id.* at 4-10.

60. See, e.g., Carolyn Bush, *A Chicken Christmas Tale*, BACKYARD POULTRY MAG., Jan. 2010, http://www.backyardpoultrymag.com/issues/5/5-6/a_chicken_christmas_tale.html (describing her pet chickens and mourning one of their deaths); CHICKENVIDEO.COM, <http://www.chickenvideo.com/outlawchickens.html> (last visited July 2, 2012) (collecting stories from people who keep chickens as pets despite their illegality).

61. *Funny, Funny Chicken Antics*, BACKYARDCHICKENS.COM, <http://www.backyardchickens.com/forum/viewtopic.php?id=380593> (last visited July 2, 2012).

62. *What Breeds Are Best for Children to Show in 4-H?*, BACKYARDCHICKENS.COM, <http://www.backyardchickens.com/forum/viewtopic.php?pid=5726813> (last visited July 2, 2012).

63. LITT, *supra* note 7, at 4.

64. See *infra* Part IV.C.1.

\$20.⁶⁵ Poultry waste has long been used as a fertilizer—it provides necessary nutrients for plants and works well as an addition to compost.⁶⁶ Large amounts of uncomposted chicken manure applied directly to a garden will overwhelm or burn the plants, because its nitrogen content is too high.⁶⁷ But, the amount of manure that a backyard flock of four to six hens would produce is not enough to harm the plants and can be beneficial to a home garden, even without first being composted.⁶⁸

A small flock of chickens, moreover, does not actually produce much manure. A fully grown four-pound laying hen produces approximately a quarter-pound of manure per day.⁶⁹ In comparison, an average dog produces three-quarters of a pound per day, or three times as much waste as one hen.⁷⁰ As cities have been able to deal with waste from other pets like dogs and cats with proper regulation, even though there is no market for their waste, cities should be confident that the city and chicken owners can properly manage chicken waste.

D. Chickens Eat Insects

Chickens, like other birds, eat insects such as ants, spiders, ticks, fleas, slugs, roaches, and beetles.⁷¹ Chickens also occasionally eat worms, small snakes, and small mice.⁷² Insects provide protein that the chickens need to lay nutritionally dense eggs.⁷³ Small flocks of chickens are recommended as a way to eliminate weeds, although a chicken does not discriminate between weeds and plants and, if left in a garden for too long, will eat the garden plants as well.⁷⁴ But, because chickens like to eat insects and other garden pests, allowing the chicken occasional and limited access

to a garden can eliminate a need to use chemicals or other insecticides and prevent insect infestations.⁷⁵

E. Chickens Help Build Community

Several studies have found that urban agriculture can increase social connections and civic engagement in the community.⁷⁶ Agricultural projects can provide a centerpiece around which communities can organize and, by doing so, become more resilient.⁷⁷ Building a sense of community is often especially valuable for more marginalized groups—like recent immigrants and impoverished inner-city areas.⁷⁸

Keeping chickens easily fits into the community-building benefit of urban agriculture. Because chickens lay more eggs in the spring and summer, an owner often has more eggs than he can use: neighbors, thus, become the beneficiaries of the excess eggs. Because chickens are still seen as a novelty in many communities, many chicken owners help to educate their neighbors and their communities by inviting them over for a visit and letting neighbors see the coops and interact with the chickens.⁷⁹ Finally, like the example of Jennifer above, keeping chickens can become a community endeavor; many people have formed chicken cooperatives where neighbors band together to share in the work of tending the hens and also share in the eggs.⁸⁰

II. Cities' Concerns With Backyard Hens

Never mind what you think.

The old man did not rush

Recklessly into the coop at the last minute.

The chickens hardly stirred

For the easy way he sang to them.

Bruce Weigl, *Killing Chickens*, 1999.

65. Black Gold Compost Chicken Fertilizer sold for \$13.43 for 20 pounds on Amazon. AMAZON.COM, <http://www.amazon.com/Black-Compost-Chick-Manure-60217/dp/B00292YAQC> (last visited July 2, 2012). Chickety-doo-doo sold for \$47.75 for 40 pounds on EBay. EBAY, <http://www.ebay.com/itm/ws/eBayISAPI.dll?ViewItem&item=260889160166&chlp=false> (last visited Jan. 6, 2012).

66. Adam A. Hady & Ron Kean, *Poultry for Small Farms and Backyard*, UW COOPERATIVE EXTENSION, http://learning_store.uwex.edu/assets/pdfs/A3908-03.

67. LITT, *supra* note 7, at 9.

68. *Id.*

69. *Ohio Livestock Manure Management Guide*, OHIO STATE UNIVERSITY EXTENSION, Bulletin 604-06, p. 3, T. 1 2006, <http://ohioline.osu.edu/b604/> (providing that a four-pound laying hen produces 0.26 of a pound per day of manure).

70. Leah Nemiroff & Judith Patterson, *Design, Testing and Implementation of a Large-Scale Urban Dog Waste Composting Program*, 15:4 COMPOST SCI. & UTILIZATION 237-42 (2007) (“On average, a dog produces 0.34 [kilograms (kg)] (0.75 lbs) of feces per day.”).

71. Simopoulos & Salem Jr., *supra* note 52, at 412. Schneider, *supra* note 8, at 15.

72. *Id.*

73. *Id.*

74. John P. Bishop, *Chickens: Improving Small-Scale Production*, Echo technical note, ECHO.NET, 1995, http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CFMQFjAA&url=http%3A%2F%2Fwww.echocommunity.org%2Fresource%2Fcollection%2FE66CDFDB-0A0D-4DDE-8AB1-74D9D8C3EDD4%2FChickens.pdf&ei=39zxT41Sh7etAdSUmY8C&usq=AFQjCNHh0_bkG_5sVmlovgngOXD53A&sig2=_cgyLnv7jDV7hGIVZty89g (last visited July 2, 2012).

75. TARA LAYMAN WILLIAMS, *THE COMPLETE GUIDE TO RAISING CHICKENS: EVERYTHING YOU NEED TO KNOW* 95 (2011).

76. Hodgson, *supra* note 1, at 3 (citing LORRAINE JOHNSON, *CITY FARMER: ADVENTURES IN URBAN FOOD GROWING* (2010), and PATRICIA HYNES, *A PATCH OF EDEN: AMERICA'S INNER CITY GARDENERS* (1996)).

77. Hodgson, *supra* note 1, at 94.

78. *Id.* See also IOWA CONCENTRATED ANIMAL FEEDING OPERATIONS AIR QUALITY STUDY, *Final Report*, IOWA STATE UNIVERSITY AND THE UNIVERSITY OF IOWA STUDY GROUP 148, Feb. 2002, http://www.ehsrc.uiowa.edu/cafo_air_quality_study.html (finding that in rural areas communities where farms were smaller, were owner-operated, and used the labor of the operating family, the community “had a richer civic and social fabric: residents of all social classes were more involved in community affairs, more community organizations served people of both middle and working class background, and there were more local businesses and more retail activity”).

79. LITT, *supra* note 7, at 12-13. See, e.g., Jeff S. Sharp & Molly B. Smith, *Social Capital and Farming at the Rural-Urban Interface: The Importance of Non-farmer and Farmer Relations*, 76 AGRIC. SYS. 913-27 (2003) (finding that communities benefit and agricultural uses have more support when farmers develop social relationships with non-farmers).

80. E.g., Abby Quillen, *How to Share a Chicken or Two*, SHAREABLE: CITIES (Nov. 22, 2009), <http://shareable.net/blog/how-to-share-a-chicken> (last visited Feb. 12, 2012).

A. Noise

The most frequently expressed concern is that hens will be noisy. This may come from associating roosters with hens. Roosters are noisy.⁸¹ Hens are not particularly noisy. While they will cluck, the clucking is neither loud nor frequent.⁸² The clucking of hens is commonly compared to human conversation—both register around 65 decibels.⁸³ By contrast, the barking of a single dog can reach levels well over 100 decibels.⁸⁴

It should also be noted that chickens have a homing instinct to roost and sleep at night. A hen will return to her coop at night and generally fall asleep before or at sundown.⁸⁵ Thus, there should be little concern with clucking hens disturbing a neighborhood at night.

B. Odor

Many people are concerned that chicken droppings will cause odors that reach neighbors and perhaps even affect the neighborhood. These concerns may stem from publicized reports of odors from large poultry operations.⁸⁶ While it is no doubt true that the odors coming from these intensive commercial-scale chicken farms is overwhelming and harmful,⁸⁷ these operations often have hundreds of thousands of chickens in very small spaces.⁸⁸

Most of the odor that people may associate with poultry is actually ammonia. Ammonia, however, is a product of a poorly ventilated and moist coop.⁸⁹ Coop designs for backyard hens should take this into account and allow for proper ventilation. And, if coops are regularly cleaned, there should be little to no odor associated with the hens.⁹⁰

C. Diseases

Two diseases are frequently raised in discussions of backyard hens: avian flu and salmonella. For different reasons, neither justifies a ban on backyard hens.⁹¹

First, with the attention that avian flu has received in the past few years, some have expressed a concern that allowing backyard chickens could provide a transition point for an avian virus to infect humans.⁹² While no one can predict whether this virus will cross over to cause widespread illness or how it might do so, it is important to note that avian flu, right now, would have to mutate for it to become an illness that can spread from person to person.⁹³ Even the H5N1 strain of the virus, a highly pathogenic form that garnered news in the early 2000s because it infected humans, is very difficult for humans to catch and has not been shown to spread from person to person.⁹⁴ And that strain of the virus does not exist in the United States—it has not been found in birds, wild or domestic, in North or South America.⁹⁵

Encouraging a return to more small-scale agriculture, moreover, may prevent such a mutation from occurring. Many world and national governmental health organizations that are concerned with the possible mutation of avian flu link the increased risks of disease to the intensification of the processes for raising animals for food—in other words, large-scale factory farms.⁹⁶ For instance, the Centers for Disease Control and Prevention (CDC) blamed “the intensification of food-animal production” in part on the increasing threat.⁹⁷ The Council for Agricultural Science and Technology, an industry-funded group, created a task force including experts from the World Health Organization, the World Organization for Animal Health, and the USDA, and issued a report in 2006 finding that modern intensive animal farming techniques increase the risk of new virulent diseases.⁹⁸ The report stated “a major impact of modern intensive production systems is that they allow the rapid selection and amplification of pathogens that arise from a virulent ancestor (frequently by

81. *Management of Noise on Poultry Farms*, Poultry Fact Sheet, BRITISH COLUMBIA, MINISTRY OF AGRICULTURE AND FOOD (Aug. 1999), <http://www.agf.gov.bc.ca/poultry/publications/documents/noise.pdf>.

82. *Id.*

83. *Protecting Against Noise*, NATIONAL AG SAFETY DATABASE, THE OHIO STATE UNIVERSITY EXTENSION, <http://nasdonline.org/document/1744/d001721/protecting-against-noise.html> (last visited Feb. 22, 2012) (explaining that a chicken coop and human conversation are both about 65 decibels).

84. Crista L. Coppola et al., *Noise in the Animal Shelter Environment: Building Design and the Effects of Daily Noise Exposure*, 9(1) J. APPLIED ANIMAL WELFARE SCI. 1-7 (2006).

85. Williams, *supra* note 75, at 92. Robert Plamondon, *Range Poultry Housing*, ATTRA 11 (June 2003).

86. E.g., William Neuman, *Clean Living in the Henhouse*, N.Y. TIMES, Oct. 6, 2010, <http://www.nytimes.com/2010/10/07/business/07eggfarm.html?scp=2&sq=large%20chicken%20farms%20and%20odor&st=cse>.

87. Doug Gurian Sherman, *CAFOS Uncovered, The Untold Costs of Animal Feeding Operations*, UNION OF CONCERNED SCIENTISTS, Apr. 2008, http://www.ucsusa.org/assets/documents/food_and_agriculture/cafos-uncovered.pdf; *Iowa Concentrated Animal Feeding Operations and Air Quality Study*, Final Report, IOWA STATE UNIVERSITY AND THE UNIVERSITY OF IOWA STUDY GROUP (Feb. 2002) (finding extensive literature documenting acute and chronic respiratory diseases and dysfunction among poultry workers exposed to complex mixtures of particulates, gases, and vapors within CAFO units).

88. *Id.*

89. *Id.*

90. GAIL DAMEROW, *THE BACKYARD HOMESTEAD GUIDE TO RAISING FARM ANIMALS* 35 (2011) (“A chicken coop that smells like manure or has the pungent odor of ammonia is mismanaged. These problems are easily avoided by keeping litter dry, adding fresh litter as needed to absorb droppings, and periodically removing the old litter and replacing it with a fresh batch.”).

91. Sue L. Pollock et al., *Raising Chickens in City Backyards: The Public Health Role*, J. COMMUNITY HEALTH, DOI: 10.1007/s10900-011-9504-1 (2011) (finding that public health concerns about infectious diseases and other nuisances that might be caused by keeping hens in an urban setting cannot be supported by literature specific to the urban agriculture context and recommending that public health practitioners approach this issue in a manner analogous to concerns over keeping domestic pets).

92. E.g., Orbach & Sjoberg, *supra* note 23, at 29.

93. *Avian Influenza*, USDA, <http://www.ars.usda.gov/News/docs.htm?docid=11244> (last visited July 2, 2012).

94. *Avian Influenza, Questions & Answers*, FOOD AND AGRIC. ORG. OF THE UNITED NATIONS, <http://www.fao.org/avianflu/en/qanda.html> (last visited July 26, 2012).

95. *Id.*

96. Michael Greger, *Bird Flu, A Virus of Our Own Hatching*, BIRDFLUBOOK.COM (2006-2008), <http://birdflubook.com/a.php?id=50> (last visited Feb. 21, 2012) (finding that the Food and Agriculture Organization of the United Nations, the World Health Organization, and the World Organization for Animal Health attribute risk factors for the emergence of new diseases from animals to the increasing demand for animal protein).

97. *Id.*

98. *Id.* (citing *Global Risks of Infectious Animal Diseases*, Council for Agric. Sci. and Tech., Issue Paper No. 28, 2005).

subtle mutation), thus, there is increasing risk for disease entrance and/or dissemination.”⁹⁹ The report concludes by stating, “because of the Livestock Revolution, global risks of disease are increasing.”¹⁰⁰ It is for this reason that many believe that the movement toward backyard chickens and diverse small-scale poultry farming, rather than being a problem, is a solution to concerns about mutating avian viruses.¹⁰¹

Another theory for how an avian flu mutation may occur is that it will first occur in wild birds that could pass it on to domesticated birds.¹⁰² In this case, backyard hens could provide a transition point. For this reason the USDA, rather than advocating a ban on backyard hens, has instead offered some simple-to-follow precautionary procedures for small flock owners: the USDA counsels backyard bird enthusiasts to separate domesticated birds from other birds by enclosing coops and runs, to clean the coops regularly, and to wash their hands before and after touching the birds.¹⁰³

Another illness that causes concern because it can be transferred to humans is salmonella.¹⁰⁴ Chickens, like other common household pets—including dogs, turtles, and caged birds—can carry salmonella.¹⁰⁵ For this reason, the CDC counsels that people should wash their hands after touching poultry, should supervise young children around poultry, and make sure that young children wash their hands after touching chicks or other live poultry.¹⁰⁶

Chickens, like other pets, can get sick and carry disease. But public health scholars have found that there is no evidence that the incidence of disease in small flocks of backyard hens merits banning hens in the city and counsel city officials to regulate backyard hens like they would any other pet.¹⁰⁷

D. Property Values

Another common concern is that keeping backyard chickens will reduce surrounding property values.¹⁰⁸ Several studies, however, have found that agricultural uses within the city actually increase property values.¹⁰⁹ Community gardens increase neighboring property values by as much as 9.4% when the garden is first implemented.¹¹⁰ The property value continues to increase as the gardens become more integrated into the neighborhood.¹¹¹ The poorest neighborhoods, moreover, showed the greatest increase in property values.¹¹² Studies have also found that rent increased and the rates of home ownership increased in areas surrounding a newly opened community garden.¹¹³

Studies concerning pets, moreover, find that apartment owners can charge higher rent for concessions such as allowing pets.¹¹⁴ Thus, accommodating pets has been shown to raise property values.

As of yet, no studies have been done on how backyard chickens in particular affect property values, but given that communities express little concern that other pets, such as dogs or cats, reduce property values, and given research showing that pets and urban agricultural practices can increase them, there is little reason to believe that allowing backyard chickens will negatively affect them.¹¹⁵

E. Slaughter

Some people are concerned that chicken owners will kill chickens in the backyard.¹¹⁶ People are concerned that it may be harmful to children in the neighborhood to watch a chicken being killed and prepared for a meal.¹¹⁷ Others are concerned that backyard slaughtering may be unsanitary.¹¹⁸

First, many who raise chickens keep the hens only for the eggs.¹¹⁹ Most egg-laying breeds do not make for tasty meat.¹²⁰ Many people become attached to their chickens, as they would a cat or a dog, and treat a death

99. *Id.*

100. *Id.*

101. Ben Block, *U.S. City Dwellers Flock to Raising Chickens*, WORLDWATCH INSTITUTE, <http://www.worldwatch.org/node/5900> (last visited Feb. 22, 2012); *Fowl Play, the Poultry Industry's Central Role in the Bird Flu Crisis*, GRAIN, <http://www.grain.org/article/entries/22-fowl-play-the-poultry-industry-s-central-role-in-the-bird-flu-crisis> (last visited Feb. 22, 2012); *Putting Meat on the Table: Industrial Farm Animal Production in America*, A REPORT OF THE PEW COMMISSION ON INDUSTRIAL FARM ANIMAL PRODUCTION (2006), <http://www.ncifap.org/> (last visited Feb. 21, 2012).

102. Rachel Dennis, *CAFOs and Public Health: Risks Associated With Welfare Friendly Farming*, Purdue Univ. Extension, Aug. 2007, https://mdc.itap.purdue.edu/item.asp?itemID=18335#.T_Hjd3CZOOU.

103. *Backyard Biosecurity, 6 Ways to Prevent Poultry Disease*, USDA, May 2004, http://www.aphis.usda.gov/animal_health/birdbiosecurity/biosecurity/basicspoultry.htm (last visited Feb. 21, 2012).

104. *Keeping Live Poultry*, CDC, <http://www.cdc.gov/features/SalmonellaPoultry/> (last visited Feb. 21, 2012).

105. See Shaohua Zhao, *Characterization of Salmonella Enterica Serotype Newport Isolated From Humans and Food Animals*, 41 J. CLINICAL MICROBIOLOGY, No. 12, 5367 (2003) (stating that dogs and pigeons, as well as chickens, can carry salmonella); J. Hidalgo-Villa, *Salmonella in Free Living Terrestrial and Aquatic Turtles*, 119:2-4 VETERINARY MICROBIOLOGY 311-15 (Jan. 2007).

106. *Keeping Live Poultry*, CDC, <http://www.cdc.gov/features/SalmonellaPoultry/> (last visited Feb. 21, 2012).

107. Sue L. Pollock et al., *Raising Chickens in City Backyards: The Public Health Role*, J. COMMUNITY HEALTH, DOI: 10.1007/s10900-011-9504-1 (2011).

108. Salkin, *supra* note 9, at 1.

109. Hodgson, *supra* note 1, at 21.

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. G. Stacy Sirmans & C.F. Sirmans, *Rental Concessions and Property Values*, 5:1 J. REAL ESTATE RES. 141-51(1990); C.A. Smith, *Apartment Rents—Is There a “Complex” Effect*, 66:3 APPRAISAL J. (1998) (finding that average apartment unit commands \$50 more rent per unit by allowing pets).

115. Michael Broadway, *Growing Urban Agriculture in North American Cities: The Example of Milwaukee*, 52:3-4 FOCUS ON GEOGRAPHY 23-30 (Dec. 2009).

116. NEIGHBORS OPPOSED TO BACKYARD SLAUGHTER, <http://noslaughter.org> (last visited Feb. 22, 2012).

117. *Id.*

118. *Id.*

119. LITT, *supra* note 7, at 3 (stating that “the vast majority of backyard chicken keepers regard their chickens as pets and find it unsettling—if not outright upsetting—to consider eating them”).

120. JAY ROSSIER, *LIVING WITH CHICKENS: EVERYTHING YOU NEED TO KNOW TO RAISE YOUR OWN BACKYARD FLOCK 4* (2002).

similarly.¹²¹ Veterinarians, moreover, have avenues for disposing of dead animals that are generally accepted in most communities.¹²²

But, if a person did want to use her chickens for meat, there are other methods for butchering a chicken rather than doing so in the backyard. As part of the local food movement, small-scale butchers have made a comeback in the last few years, and many are particularly interested in locally raised animals.¹²³ Thus, legalizing backyard chickens does not necessarily mean that a city must also legalize backyard chicken slaughtering.¹²⁴

F. Greenhouse Gases

Although worries that chickens will increase greenhouse gases appears to be a bit over the top, at least one city raised this as a concern when contemplating allowing chickens. In Montgomery, Ohio, at least one city council member was fearful that allowing chickens to be raised in the city might contribute to global warming.¹²⁵

While chickens do produce methane as a natural byproduct of digestion just like any other animal (including humans), the amount they produce is negligible in comparison to other livestock. Methane production is a concern largely confined to ruminant animals, such as cows, goats, and buffaloes.¹²⁶ These animals produce a large amount of methane every year because of the way in which they digest carbohydrates.¹²⁷ Cows produce an average of 55 kilograms (kg) per year per cow.¹²⁸ A goat will produce 5 kg per year, a pig 1.5, and a human 0.05.¹²⁹ Chickens, because they are nonruminant animals, and because they are much smaller than humans, produce less than 0.05 kg per year per chicken.¹³⁰

Finally, there is no reason to believe that an urban chicken would cause a net increase in the production of methane. A person who gets her eggs from her pet hen will likely be buying fewer eggs from the supermarket. Thus, there is unlikely to be a net increase in egg consumption, so there is unlikely to be a net increase in chickens. Thus, any

increase in methane production caused by urban chickens is not only negligible, but also likely offset by a decrease in rural chickens.¹³¹

G. Winter Weather

Northern cities may be concerned that their climate is not suitable for chickens. Chickens, however, were bred to thrive in certain climates. There are breeds of chicken that are more suited to warm or even hot climates. And, there are chickens that were bred specifically to thrive in colder weather, such as Rhode Island Reds or Plymouth Rocks.¹³²

While even cold-hardy breeds can be susceptible to frostbite in extreme winter weather, a sturdy coop with some extra insulation and perhaps a hot water bottle on frigid nights can protect the birds from harm.¹³³

H. Running Wild

Of all of the chicken ordinances that this Article will later discuss, it appears that one of the most popular regulations is to prohibit chickens running wild in the streets.¹³⁴ Chickens, like dogs and cats, sometimes escape their enclosures. While it would be irresponsible to presume that no chicken will ever escape its enclosure, city officials can rest assured that chicken keepers do not want to see their hens escape any more than city officials want to see hens running loose on the streets.

For this reason, and also to protect against predators, cities should ensure that chickens are kept in an enclosure at all times.

III. Some Necessary Background on Hens for Developing Urban Hen-Keeping Ordinances

His comb was finest coral red and tall,
And battlemented like a castle wall.
His bill was black and like the jet it glowed,
His legs and toes like azure when he strode.
His nails were whiter than the lilies bloom,
Like burnished gold the color of his plume.

GEOFFREY CHAUCER, *THE CANTERBURY TALES*,
*THE NUN'S PRIEST'S TALE*¹³⁵

121. Jose Linares, *Urban Chickens*, AM. VETERINARY MED. ASS'N WELFARE FOCUS, Apr. 2011, http://www.avma.org/issues/animal_welfare/AWFocus/110404/urban_chickens.asp.

122. *Id.*

123. Elizabeth Keyser, *The Butcher's Back*, CONN. MAG., Apr. 2011, <http://www.connecticutmag.com/Connecticut-Magazine/April-2011/The-Butcher-039s-Back/>.

124. *But see* Simon v. Cleveland Heights, 188 N.E. 308, 310 (Ohio Ct. App. 1933) (holding that a ban on poultry slaughtering applied to a small business butcher violated the Ohio Constitution because it prohibited the conduct of a lawful business).

125. Valerie Taylor, CHICKENS FOR MONTGOMERY (June 2009) <http://www.scribd.com/doc/16509728/Changing-Your-Citys-Chicken-Laws> (last visited July 2, 2012) (responding to city's concerns about increase in greenhouse gases).

126. *See Methane, Sources, and Emissions*, U.S. EPA, <http://www.epa.gov/methane/sources.html> (last visited July 2, 2012).

127. *Id.*

128. Paul J. Crutzen et al., *Methane Production by Domestic Animals, Wild Ruminants, Other Herbivorous Fauna and Humans*, 38B TELLUS B. 271-74 (July-Sept. 1986).

129. *Id.*

130. *Id.*

131. Letter from Brian Woodruff, Environmental Planner Department of Natural Resources, to Cameron Gloss (June 12, 2008), <http://www.scribd.com/doc/16509728/Changing-Your-Citys-Chicken-Laws>.

132. LITT, *supra* note 7, at 119.

133. *Id.*

134. *See infra* Part IV.C.5.a.

135. Ronald Ecker trans., Hodge & Braddock Publishers 1993.

A. Hens Are Social Animals

Chickens are social animals and do better if they are kept in flocks.¹³⁶ Chickens can recognize one another and can remember up to 50 or 60 other chickens.¹³⁷ Because of this, large flocks of chickens, like those found in most intensive farming operations, are socially unstable and can cause aggressive behavior.¹³⁸ In the wild, most flocks form sub-groups of between four to six chickens.¹³⁹

Chickens show affiliative behavior, eating together, preening together, gathering together in small groups if they are given space to do so, and sleeping at the same time.¹⁴⁰ Chickens also learn behaviors from one another—for instance, chickens that watch another trained chicken peck a key to obtain food will learn this task more quickly than other chickens that are not exposed to the behavior.¹⁴¹

Because chickens are flock animals, a chicken left alone generally will not thrive.¹⁴² An isolated hen will often exhibit disturbed and self-destructive behaviors, like chasing its own tail and exhibiting excessive aggression.¹⁴³ Because eating is social behavior, there are some reports that single chickens stop eating or eat less.¹⁴⁴ While scientific studies have yet to prove that a hen feels loneliness,¹⁴⁵ backyard hen enthusiasts are well aware that an isolated hen will often appear depressed or ill.¹⁴⁶

B. The Pecking Order

We often use the term pecking order to describe a hierarchy in a community. The term comes from the tendency for chickens to peck at one another and display aggressive behavior until a hierarchy is established.¹⁴⁷ Once the hier-

archy is established, the aggressive behavior will lessen or even abate until new birds are added to the flock or until a hen mounts a challenge to someone above her in the pecking order.¹⁴⁸

Studies have shown, however, that incidence of pecking is greatly reduced when hens are kept in lower densities.¹⁴⁹ (Feather pecking is often a problem in large-scale chicken farms.)¹⁵⁰ When densities were approximately six or fewer birds per 10 square feet, pecking behaviors abated or were significantly reduced.¹⁵¹

Because a new introduction into the flock will upset the pecking order, some farmers advocate for introducing at least two chicks at a time.¹⁵² This will help spread out the abuse that could be laid on a solitary young hen. It will also more fully upset the pecking order, so that the birds are forced to find a new hierarchy that will include the new birds instead of leaving one isolated hen at the bottom of the flock.¹⁵³

For these reasons, chicken owners should always be allowed to keep, at a minimum, four chickens. This ensures that city regulations do not stand in the way of good flock management: if any hens are lost through injury, illness, or old age, the chicken owner can ensure that the flock never goes below two hens before seeking to add new hens. This will also allow the owner to introduce new hens into the flock two at a time.

C. Chickens and Predators

Backyard hens in a metropolitan area may, in some ways, be better protected from predators than their rural counterparts, because there are fewer predators in the city. The more prevalent chicken predators in the United States—foxes, coyotes, and bobcats—are found less often in the city than they are in more rural areas.¹⁵⁴ Other predators, however, such as hawks and raccoons, are frequently found in the city.¹⁵⁵

These predators are one reason why chickens must have sturdy coops that are designed to protect hens from assault. Chickens have an instinct to return to their coop each night.¹⁵⁶ And most predators are more active at night when

136. MICHAEL C. APPLEBY ET AL., *POULTRY BEHAVIOR AND WELFARE* 35, 77-82 (2004); HEINRICH, *supra* note 39, at 11 (2007).

137. Nicolas Lampkin, *Organic Poultry Production*, Welsh Inst. of Rural Studies 20 (Mar. 1997), available at http://orgprints.org/9975/1/Organic_Poultry_Production.pdf.

138. APPLEBY ET AL., *supra* note 136 (noting that chickens have increased aggression and increased growth of adrenal glands when they come in contact with other chickens they do not know and also noting that chickens are stressed by being kept in large flocks because it is unlikely that birds in large flocks can form a hierarchy: they are instead “in a constant state of trying to establish a hierarchy but never achieving it”).

139. *Id.* at 71; Lampkin, *supra* note 137, at 20.

140. APPLEBY ET AL., *supra* note 136, at 77-79.

141. *Id.* at 79.

142. IAN J.H. DUNCAN & PENNY HAWKINS, *THE WELFARE OF DOMESTIC FOWL & OTHER CAPTIVE BIRDS* 68-69 (2010).

143. D.G.M. WOOD-GUSH, *THE BEHAVIOR OF THE DOMESTIC FOWL* 124 (1971).

144. D.W. Rajecki et al., *Social Factors in the Facilitation of Feeding in Chickens: Effects of Imitation, Arousal, or Disinhibition?*, 32 J. PERSONALITY & SOC. PSYCHOL. 510-18 (Sept. 1975). Martine Adret-Hausberger & Robin B. Cumming, *Social Experience and Selection of Diet in Domestic Chickens*, 7 BIRD BEHAVIOR 37-43 (1987) (finding that isolated young broilers had lower growth rates than those placed with other birds).

145. APPLEBY ET AL., *supra* note 136, at 142 (suggesting that poultry may suffer from loneliness and boredom and that “[c]onsidering the barrenness of many husbandry systems, boredom would seem to be a good candidate for further studies”).

146. See, e.g., *Do Chickens Get Lonely*, BACKYARD POULTRY FORUM (Friday, Feb. 13, 2009), <http://forum.backyardpoultry.com/viewtopic.php?f=5&t=7970419&start=0> (last visited Mar. 4, 2012).

147. Alphaeus M. Guhl, *Social Behavior of the Domestic Fowl*, 71 TRANSACTIONS KAN. ACAD. SCI. (1968). Gladwyn K. Noble, *The Role of Dominance in the*

Social Life of Birds, 56 THE AUK 263 (July 1939).

148. LITT, *supra* note 7, at 122. Alphaeus M. Guhl et al., *Mating Behavior and the Social Hierarchy in Small Flocks of White Leghorns*, 18 PHYSIOLOGICAL ZOOLOGY 365-68 (Oct. 1945).

149. B. Huber-Eicher & L. Audigé, *Analysis of Risk Factors for the Occurrence of Feather Pecking Among Laying Hen Growers*, 40 BRITISH POULTRY SCI. 599-604 (1999) (demonstrating through a study of commercial hen farms in Switzerland that hens were far less likely to feather peck if they were kept in low-density environments and if they had access to elevated perches).

150. *Id.*

151. *Id.*

152. LITT, *supra* note 7, at 122-23.

153. *Id.*

154. See, e.g., Stanley D. Gehrt et al., *Home Range and Landscape Use of Coyotes in a Metropolitan Landscape: Conflict or Coexistence*, J. MAMMALOGY, 1053-55 (2009); Seth P.D. Riley, *Spatial Ecology of Bobcats and Gray Foxes in Urban and Rural Zones of a National Park*, 70(5) J. WILDLIFE MGMT. 1425-35 (2006).

155. WILLIAMS, *supra* note 75, at 88-89.

156. LITT, *supra* note 7, at 71.

the chickens are sleeping in their coops.¹⁵⁷ While there is no guarantee that predators will not find a way to prey on chickens, ensuring that coops are sturdily built with the intention to keep out predators can help ameliorate concerns with predators.¹⁵⁸

D. Roosters Like to Crow

Even city-dwellers who have never met a rooster know that roosters crow. But the popular belief, passed on in children's cartoons, that roosters crow in the morning like an alarm clock to welcome the rising sun is largely a myth. Roosters may crow in the morning, but they also crow in the afternoon or evening or, basically, whenever they feel like it.¹⁵⁹ While the frequency of crowing depends on the breed and the individual rooster, many roosters crow a lot.¹⁶⁰ In fact, because domestic roosters crow so much more frequently than their wild kin, one theory postulates that they were bred over many centuries for loud, long, and frequent crowing because such crowing played an important role in Zoroastrian religious ceremonies.¹⁶¹

Because roosters are noisy and frequently so, cities that have more dense urban environments should consider banning them—at least on smaller lot sizes. Some cities have allowed an exception for “decrowed” roosters¹⁶²: some veterinarians used to offer a “decrowing” procedure that would remove the rooster's voicebox. Because of its high mortality rate—over 50%—veterinarians no longer offer this procedure.¹⁶³ Because this procedure is dangerous and cruel to the rooster, cities that have such an exception should consider amending it so as not to encourage mistreatment of roosters.

E. Hens Don't Need Roosters to Lay Eggs

A common myth is that hens will not lay eggs without a rooster around. This is simply not true; hens do not need roosters to lay eggs.¹⁶⁴ In fact, it is likely that every egg you have ever eaten was produced by a hen that never met a rooster.¹⁶⁵

The only reason that hens require roosters is to fertilize the eggs, so that the eggs will hatch chicks.¹⁶⁶ Because this can be an easier way to propagate a flock, rather than sending away for mail-order chicks, some chicken owners would like to keep a rooster around or at least allow it to visit. To address this concern, at least one city that bans roosters allows “conjugal visits.” Hopewell Town-

ship, New Jersey, allows roosters that are certified disease-free to visit a hen flock for 10 days out of every year.¹⁶⁷ Although news about the township's policy garnered national attention for its quirkiness, it may work as a solution for hen owners seeking to add to their flock without having to buy new chicks.¹⁶⁸

IV. The Current State of Municipal Ordinances Governing Backyard Chickens

Such a fine pullet ought to go
All coiffured to a winter show,
And be exhibited, and win.
The answer is this one has been—

And come with all her honors home.
Her golden leg, her coral comb,
Her fluff of plumage, white as chalk,
Her style, were all the fancy's talk

Robert Frost, *A Blue Ribbon at Amesbury* (1916).

A. Introduction

To determine the current state of chicken legislation in the United States, the laws of the top 100 cities by population, according to the 2000 census are surveyed in this Article.¹⁶⁹ Currently, 94% of these cities allow for chickens in some manner.¹⁷⁰ While many cities impose various restrictions

167. *NJ Town Limits Conjugal Visits Between Roosters & Hens*, HUFFINGTON POST, Apr. 27, 2011, http://www.huffingtonpost.com/2011/04/28/nj-limits-chicken-mating_n_854404.html.

168. Because chick hatcheries have been a source of salmonella, some backyard hen keepers may prefer to propagate their own flock. See, e.g., Serena Gordon, *They're Cute, But Baby Chicks Can Harbor Salmonella*, U.S. NEWS & WORLD REPORT, May 30, 2012, <http://health.usnews.com/health-news/news/articles/2012/05/30/theyre-cute-but-baby-chicks-can-harbor-salmonella>.

169. *Cities With 100,000 or More Population in 2000 Ranked by Population, 2000 in Rank Order*, U.S. CENSUS, <http://www.census.gov/statab/cdb/cit1020.txt> (last visited Jan. 26, 2012).

170. AKRON, OHIO, CODE OF ORDINANCES §92-18 (2011); ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-4-3 (2011); ANAHEIM, CAL., MUN. CODE §18.38.030 (2011); ANCHORAGE, ALASKA, CODE OF ORDINANCES tit. 17, 21 (2011); ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §5.02 (2010); ATLANTA, GA., CODE OF ORDINANCES §18-7 (2011); AUGUSTA-RICHMOND, GA., CODE OF ORDINANCES tit. 4, art. 2 (2007); AURORA, COLO., CODE OF ORDINANCES §14-8 (2011); AUSTIN, TEX., CODE OF ORDINANCES tit. III, ch. 3.1.1 (2011); BALTIMORE, MD., HEALTH CODE §10-312 (2011); BAKERSFIELD, CAL., MUN. CODE §6.08.10 (2011); BATON ROUGE, LA., CODE OF ORDINANCES §14:224 (2011); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007); BOS., MASS., CODE OF ORDINANCES §16-1.8A (2010); BUFFALO, N.Y., CITY CODE §341-11 (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102 (2010); CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011); *id.* ZONING art. 3; CHI., ILL., CODE OF ORDINANCES §17-12-300 (2011); CINCINNATI, OHIO, CODE OF ORDINANCES ch. 701 (2011); CLEVELAND, OHIO, CODIFIED ORDINANCES §205.04, 347.02 (2011); COLORADO SPRINGS, COLO., CITY CODE §6.7.106(D) (2011); COLUMBUS, OHIO, CITY CODE tit. III, ch. 221 (2011); CORPUS CHRISTI, TEX., CODE OF ORDINANCES §§6-153, 6-154 (2011); DALLAS, TEX., CODE OF ORDINANCES §7-1.1 (2011); DENVER, COLO., MUN. CODE §8-91 (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4 (2011); EL PASO, TEX., MUN. CODE §7.24.020 (2011); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22 (2011); FREMONT, CAL., MUN. CODE §3-5803 (2011); FRESNO, CAL., MUN. CODE §§10.201-10.205 (2011); GARLAND, TEX., CODE OF

157. Gehrt, *supra* note 154, at 1053.

158. WILLIAMS, *supra* note 75, at 88-89.

159. HEINRICH, *supra* note 39, at 16.

160. *Id.*

161. APPLEBY ET AL., *supra* note 136, at 36-37.

162. See, e.g., PHOENIX, ARIZ., CITY CODE §8-7(c) (2011).

163. *Small and Backyard Flocks*, KY. U. EXT., <http://www.ca.uky.edu/smallflocks/faq.html#Q31> (last visited Feb. 17, 2012).

164. *Small and Backyard Flocks*, KY. U. EXT., <http://www.ca.uky.edu/smallflocks/faq.html#Q11> (last visited Feb. 17, 2012).

165. *Id.*

166. *Id.*

on keeping chickens through zoning, setbacks, and permitting requirements, only three of the top 100 cities have ordinances that clearly ban the keeping of chickens within city limits: Detroit, Aurora, and Yonkers.¹⁷¹ Three others have unclear ordinances that city officials have interpreted as banning backyard chickens: Grand Rapids, Fort Wayne, and Lubbock.¹⁷² An additional 10 cities, while allowing for chickens, restrict them to either very large lots or only to

agriculturally zoned land.¹⁷³ Because such restrictions will exclude most people within the city from being able to keep hens, if such restrictions are interpreted to be a ban on chickens, then 84% of cities can be considered to allow for chickens.

Within that 84%, there is a wide range of how cities regulate chickens—ranging from no regulation¹⁷⁴ to a great deal of very specific ordinances governing where chickens can be located,¹⁷⁵ how coops must be built,¹⁷⁶ and how often chickens must be fed and coops must be cleaned.¹⁷⁷ Some of these cities also have restrictive setbacks or other regulations that will prohibit some residents from owning chickens—especially residents in multi-family dwellings or who live on small lots in a dense area of the city.¹⁷⁸ As described more fully below, there is no uniformity in the ways that cities regulate chickens; each city's ordinance is unique. Regulations are placed in different areas of a city's codified ordinances. Some regulations are spread throughout the code, making it difficult for a chicken owner to determine how to comply with the city's ordinances. Some cities regulate through zoning, others through animal regulations, and others through the health code.¹⁷⁹ Some cities simply define chickens as pets and provide no regulations at all.¹⁸⁰ Each of these methods of regulation will be explored in more detail below.

Although other surveys of urban chicken laws have been done, no basis was given for the choice of the cities sur-

ORDINANCES §22.14 (2011); GLENDALE, ARIZ., CODE OF ORDINANCES pt. II, art. 5 (2010); GLENDALE, CAL., MUN. CODE §6.04.130 (2011); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011); HIALEAH, FLA., CODE OF ORDINANCES §§10.1, 10.2 (2011); HONOLULU, HAW., REV. ORDINANCES §7-2.5(d) (1990); HOUSTON, TEX., CODE OF ORDINANCES ch. 6, art. II (2010); INDIANAPOLIS, IND., REV. CODE tit. III, ch. 531 (2011); IRVING, TEX., CODE OF ORDINANCES 6-1 (2011) (not regulating chickens at all); JACKSONVILLE, FLA., ORDINANCE CODE tit. XIII, ch. 462, tit. XVII, ch. 656 (2011); JERSEY CITY, N.J., CODE OF ORDINANCES §90-6 (2011); KANSAS CITY, MONT., CODE OF ORDINANCES §14-15 (2011); LAS VEGAS, NEV., MUN. CODE §7.38.050 (2011); LEXINGTON-FAYETTE, KY., CODE OF ORDINANCES §4-10 (2011); LINCOLN, NEB., MUN. CODE §6.04.040 (2011); LONG BEACH, CAL., MUN. CODE §6.20.020 (2011); L.A., CAL., MUN. CODE §§12.01, 12.05-12.09 (2011); LOUISVILLE, KY., METRO CODE ch. 91 (2011); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed); *id.* §7.29; *id.* §9.52; MEMPHIS, TENN., CODE OF ORDINANCES §8-8-1 (2009); MESA, ARIZ., CITY CODE §8-6-21 (2011); MIAMI, FLA., CODE OF ORDINANCES §6-1(b) (2011); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011); MINNEAPOLIS, MINN., CODE OF ORDINANCES §70.10 (2011); MOBILE, ALA., CODE OF ORDINANCES §7-102 (2011); MONTGOMERY, ALA., CODE OF ORDINANCES ch. 4, art. I (2011); *id.* app. C, art. VII; NASHVILLE-DAVIDSON, TENN., MUN. CODE §§8-12-020, 17-16-330 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES pt. II, ch. 18, art. VI (2011); N.Y.C., MUN. CODE §65-23 (1990); NEWARK, N.J., GENERAL ORDINANCES §6:2-30 (2010); NORFOLK, VA., CODE OF ORDINANCES §§4-05, 6.1-7 (2011); OAKLAND, CAL., CODE OF ORDINANCES §6-04-320 (2011); OKLAHOMA CITY, OKLA., MUN. CODE tit. 8, 59 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-266 (2011); PHILA., PA., CODE §10-112 (2011); PHOENIX, ARIZ., CITY CODE §§8-7, 8-10 (2011); PITTSBURGH, PA., CODE OF ORDINANCES §§635.02, 911.04.A.2 (2011); PLANO, TEX., CODE OF ORDINANCES §4-184 (2011); PORTLAND, OR., CITY CODE §13.05.015 (2011); RALEIGH, N.C., CODE OF ORDINANCES §§12-3001, 12-3004 (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011); RIVERSIDE, CAL., CODE OF ORDINANCES §6.04.20 (2011); *id.* tit. 17; ROCHESTER, N.Y., CITY ORDINANCES §§30-12, 30-19 (no date listed); SACRAMENTO, CAL., CITY CODE §9-44-340 (2011); ST. LOUIS, MO., CODE OF ORDINANCES §10.20.015 (2010); ST. PAUL, MINN., §198.02 (2011); ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31 (2011); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109 (2011); SAN DIEGO, CAL., MUN. CODE §42.0709 (2011); SAN FRANCISCO, CAL., HEALTH CODE §37 (2011); SAN JOSE, CAL., CODE OF ORDINANCES tit. 7 (2007); SANTA ANA, CAL., CODE OF ORDINANCES §5.6 (2011); SCOTTSDALE, ARIZ., CODE OF ORDINANCES §4-17 (2011); SEATTLE, WASH., MUN. CODE §23.42.052 (2011); SHREVEPORT, LA., CODE OF ORDINANCES ch. 106 (2011); SPOKANE, WASH., MUN. CODE §17C.310.010 (no date listed); STOCKTON, CAL., MUN. CODE §§6.04.420, 16.80.060 (2011); TACOMA, WASH., MUN. CODE §5.30.010 (2011); TAMPA, FLA., CODE OF ORDINANCES §19.76 (2008); TUCSON, ARIZ., CODE OF ORDINANCES ch. 4, art. VI (2011); TOLEDO, OHIO, MUN. CODE §§505.07(a)(4), 1705.07 (2011); TULSA, OKLA., CODE OF ORDINANCES §200(d)(e) (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.1 (no date listed); WICHITA, KAN., CODE OF ORDINANCES §6.04.157 (2011).

171. AURORA, COLO., CODE OF ORDINANCES §14-8 (2011); DETROIT, MICH., CITY CODE §6-1-3 (2010); YONKERS, N.Y.C., MUN. CODE §65-23 (1990).

172. FORT WAYNE, IND., CODE OF ORDINANCES §157.104 (2011) (banning livestock within the city, even though chickens are not listed in the definition of livestock, the animal control department says that the city interprets chicken as livestock); GRAND RAPIDS, MICH., CODE OF ORDINANCES §8.582 (2010) (“No farm animal shall be kept or allowed to be kept within any dwelling or dwelling unit or within one hundred (100) feet of any dwelling, dwelling unit, well, spring, stream, drainage ditch or drain.”); LUBBOCK, TEX., CITY ORDINANCE §4.07.001 (2011) (permitting chickens “in those areas appropriately permitted by the zoning ordinances of the city” when zoning ordinances are silent).

173. BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007) (restricting chickens to land zoned for agricultural use); CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011); *id.* ZONING art. 3 (restricting to low-density zones and restricting to properties of one acre or more); HIALEAH, FLA., CODE OF ORDINANCES §§10.1, 10.2 (2011) (restricting chickens to land zoned for agricultural use); JACKSONVILLE, FLA., ORDINANCE CODE tit. XIII, ch. 462, tit. XVII, ch. 656 (2011) (restricting chickens to agricultural or low-density residential zones); MONTGOMERY, ALA., CODE OF ORDINANCES ch. 4 art. I (2011); *id.* app. C, art. VII (restricting chickens to agricultural or low-density residential zones); NORFOLK, VA., CODE OF ORDINANCES, app. A, art. II, §4-0.5 (2011) (restricting chickens to properties of five acres or more); OKLAHOMA CITY, OKLA., MUN. CODE tit. 8, 59 (2011) (restricting chickens to properties with one acre or more); PHILA., PA., CODE OF ORDINANCES §10-112 (2011) (restricting chickens to properties with three acres or more); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011) (restricting chickens to properties with one acre or more); VIRGINIA BEACH, VA., CITY CODE §5-545, app. A (2011) (restricting chickens to land zoned for agricultural use).

174. *E.g.*, N.Y.C., MUN. CODE §65-23 (1990) (only regulating chickens if they are kept for sale: “A person who holds a permit to keep for sale or sell live rabbits or poultry shall keep them in coops and runways and prevent them from being at large.”); CHI., ILL., CODE OF ORDINANCES §17-12-300 (2011) (“No person shall own keep, or otherwise possess, or slaughter any . . . poultry, rabbit, dog, cat, or any other animal intending to use such animal for food purposes.”) Chicago's ordinance has been interpreted to allow keeping chickens for eggs. Kara Spak, *Raising Chickens Legal in Chicago, and People Are Crowing About It*, CHI. SUN TIMES, Aug. 13, 2011, <http://www.suntimes.com/news/metro/6942644-418/city-of-chicken-coops.html>; IRVING, TEX., CODE OF ORDINANCES 6-1 (2011) (not regulating chickens).

175. *See infra* V.C.2

176. *See infra* V.C.5.c.

177. *See infra* V.C.5.b.

178. *See infra* V.C.4.

179. *See infra* V.B.

180. *See infra* V.A.

veyed¹⁸¹ and the survey sizes were far smaller.¹⁸² By choosing the largest cities in the United States by population, this survey is meant to give a snapshot of what kind of laws govern the most densely populated urban areas. An understanding of how large cosmopolitan areas approach backyard chickens can help smaller cities determine the best way to fashion an ordinance.¹⁸³

Several aspects of these ordinances will be examined. First, the area within the codified ordinances that the city chooses to regulate chickens will be discussed.¹⁸⁴ Next, regulations based on space requirements, zoning requirements, and setbacks will be examined.¹⁸⁵ After that, the different sorts of sanitation requirements that cities impose will be examined, including looking at how specific or general those requirements are.¹⁸⁶ Then, the coop construction requirements, including how much space a city requires per chicken, will be examined.¹⁸⁷ Next, cities' use of permits to regulate chickens will be evaluated.¹⁸⁸ The Article will then discuss anti-slaughter laws.¹⁸⁹ Finally, the prevalence of banning roosters will be discussed, while noting

that quite a few cities do expressly allow roosters.¹⁹⁰ Examining each aspect of the ordinance piecemeal is designed to provide a thorough overview of ordinances regulating backyard chickens and classification of common concerns. Through this review, regulatory norms will be identified and especially effective, novel, or eccentric regulations will be noted.

Norms and effective regulations will be taken into account in constructing a model ordinance. The most thoughtful, effective, and popular regulations from each of these ordinances will be incorporated into these recommendations. Also, data discussed in the first part of this Article about chickens, chicken behavior, and chicken-keeping will inform the model ordinance.

But, before delving into each of these aspects of the ordinances, some more general impressions from this analysis will be discussed. These more general impressions will include identifying some themes in these regulations based on population size and region.

I. The More Populous the City, the More Likely It Is to Allow for Backyard Chickens

When reviewing the overall results of the survey concerning whether a city allows chickens or bans them, a pattern emerges based on population size. At least among the top 100 cities by population, the smaller the city, the greater the chance that the city will ban chickens. Of the top 10 cities by population, all of them allow for chickens in some way.¹⁹¹ Of those top 10 cities, however, Philadelphia has fairly strict zoning restrictions that only allows chickens in lots of three acres or larger.¹⁹² And, of the top 50 cities by population, only one city bans chickens outright: Detroit.¹⁹³

But in the last 20 of the top 100 cities, four of them ban chickens: Yonkers, Grand Rapids, Fort Wayne, and Lubbock.¹⁹⁴ So, within that subset, only 80% of the cit-

181. See Orbach & Sjöberg, *Debating Backyard Chickens*; Sarah Schindler, *Of Backyard Chickens and Front Yard Garden: The Conflict Between Local Government and Locavores*, 87 TUL. L. REV. (forthcoming Nov. 2, 2012); Patricia Salkin, *Feeding the Locavores, One Chicken at a Time: Regulating Backyard Chickens*, 34:3 ZONING & PLAN. L. REP. 1 (Mar. 2011); Kieran Miller, *Backyard Chicken Policy: Lessons From Vancouver, Seattle, and Niagara Falls*, QSPACE AT QUEENS U. (2011), <http://qspace.library.queensu.ca/handle/1974/6521>; Katherine T. Labadie, *Residential Urban Keeping: An Examination of 25 Cities*, U.N.M. RESEARCH PAPER (2008) http://www.google.com/url?sa=t&rc=t=j&q=&esrc=s&source=web&cd=1&ved=0CE0QFjAA&url=http%3A%2F%2F66.147.242.185%2F-urbanch5%2Fwp-content%2Fuploads%2F2012%2F02%2FOrdinance-research-paper.pdf&ei=f_T5T8jOLCrljgGp5NGKCQ&usq=AFQjCNE-ArE_uYe4XcKDfhMrwS44mOLfQw&sig2=UcWfdU1smpoifnqTiE_vvA; Jennifer Blecha, *Urban Life With Livestock: Performing Alternative Imaginaries Through Small Stock Urban Livestock Agriculture in the United States*, PROQUEST INFORMATION AND LEARNING COMPANY (2007). See also *Chicken L.O.R.E Project: Chicken Laws and Ordinances and Your Rights and Entitlements*, BACKYARD CHICKENS.COM, <http://www.backyardchickens.com/t/310268/chicken-lore-project-find-submit-local-chicken-laws-ordinances> (last visited Feb. 20, 2012) (providing an extensive community-created database of municipal chicken laws).

182. *Poultry 2010, Reference of the Health and Management of Chicken Stocks in Urban Settings in Four U.S. Cities*, USDA, May 2011 (studying the urban chicken population in Denver, Los Angeles, Miami, and New York City).

183. Also, this survey is necessarily frozen in time for publicly accessible ordinances as of December of 2011. This is because at least two cities have already changed their ordinances to allow for more comprehensive and permissive livestock regulations—Pittsburgh and San Diego. Diana Nelson-Jones, *Pittsburgh Urban Chicken Coop Tour to Be Held on Sunday*, PITTSBURGH POST-GAZETTE, June 9, 2011, <http://www.post-gazette.com/pg/11160/1152234-34.stm> (stating that Pittsburgh had amended its ordinances to allow for 3 chickens for every 2,000 square feet of property); Adrian Florino, *San Diego City Council Approves Backyard Chickens, Goats, and Bees*, KPBS, Feb. 1, 2012, <http://www.kpbs.org/news/2012/feb/01/san-diego-city-council-approves-backyard-chickens/>. These ordinances, however, have not yet been codified within the cities code and, thus, are not yet publicly accessible. Although this Article intends to use the most recent ordinances, because of the size of the sample, and because of the scattered news coverage and the significant lag time in updating city codes, the author cannot be sure that other cities have not amended their ordinances. Thus, this study can do no more than provide a snapshot in time for these ordinances.

184. *Infra* V.B.

185. *Infra* V.C.1-4.

186. *Infra* V.C.5

187. *Infra* V.C.5

188. *Infra* V.C.6.

189. *Infra* V.C.7.

190. *Infra* V.C.8.

191. The top 10 cities by population from most populous to least populous: N.Y.C., MUN. CODE §65-23 (1990); L.A., CAL., MUN. CODE §§12.01, 12.05-12.09 (2011); PHILA., PA., CODE §10-112 (2011); CHI., ILL., CODE OF ORDINANCES §17-12-300 (2011); PHOENIX, ARIZ., CITY CODE §8-7, 8-10 (2011); SAN DIEGO, CAL., MUN. CODE §42.0709 (2011); DALLAS, TEX., CODE OF ORDINANCES §7-1.1 (2011); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109 (2011); HOUSTON, TEX., CODE OF ORDINANCES ch. 6, art. II (2010).

192. PHILA., PA., CODE §10-112 (2011).

193. DETROIT, MICH., CITY CODE §6-1-3 (2010).

194. The last 20 of the top 100 cities from most populous to least populous: GLENDALE, ARIZ., CODE OF ORDINANCES pt. II, art. 5 (2010); AKRON, OHIO, CODE OF ORDINANCES §92-18 (2011); GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed); *id.* §7.29; *id.* §9.52; FORT WAYNE, IND., CODE OF ORDINANCES §157.104 (2011); FREMONT, CAL., MUN. CODE §3-5803 (2011); SCOTTSDALE, ARIZ., CODE OF ORDINANCES §4-17 (2011); MONTGOMERY, ALA., CODE OF ORDINANCES ch. 4 art. I (2011); *id.* app. C, art. VII; SHREVEPORT, LA., CODE OF ORDINANCES ch. 106 (2011); LUBBOCK, TEX., CITY CODE §4.07.001 (2011); CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011); *id.* ZONING art. 3; MOBILE, ALA., CODE OF ORDINANCES §7-102 (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4 (2011); GRAND RAPIDS, MICH., CODE OF ORDINANCES §8.582 (2010); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011); YONKERS, N.Y., §65-23 (1990); SPOKANE, WASH., MUN. CODE §17C.310.100 (no date listed); AUGUSTA-

ies allow for chickens. This may go against popular belief that chickens would be more prevalent in bucolic suburbs and less popular in densely populated cosmopolitan areas. Because this survey only includes large urban areas, the percentage of smaller cities, suburbs, and exurbs that allow for chickens is not known. But, based on this limited survey, it appears that more populous cities have largely accepted chickens, and the pursuit of more chicken-friendly legislation has moved to smaller cities and the suburbs.

2. Some Regional Observations

Although it is difficult to draw regional distinctions from a limited set of data, it does appear that the states in what is colloquially called the Rustbelt are more likely to ban chickens. In Michigan, both cities within the top 100, Detroit and Grand Rapids, ban chickens.¹⁹⁵ And in Pennsylvania, similarly, both of its most populated cities, for the most part, ban chickens.¹⁹⁶ Philadelphia only allows chickens on lots of three acres or more—far more than the average lot size in Philadelphia.¹⁹⁷ Pittsburgh, although it recently amended its ordinances,¹⁹⁸ used to allow chickens only on parcels of five acres or more.¹⁹⁹ In either event, in both cities, keeping chickens is limited to property sizes that are far larger than the average for an urban area.

Within the Rustbelt states, Ohio stands out for legalizing chickens. All five of its major cities currently allow for chickens: Akron, Cincinnati, Cleveland, Columbus, and Toledo.²⁰⁰ Columbus and Akron have far more restrictive

ordinances, however. Columbus requires a permit to keep chickens and allows its Health Commissioner discretion over granting and revoking that permit.²⁰¹ Akron requires chickens to be kept at least 100 feet from any dwelling, which will restrict owners of small parcels in densely populated areas from raising chickens.²⁰²

In 2009, Cleveland passed a comprehensive ordinance legalizing chickens and bees.²⁰³ Cleveland allows for one chicken per 800 square feet, which would allow up to six chickens on a standard residential lot.²⁰⁴ Cleveland also has minimal setbacks and detailed coop requirements.²⁰⁵ And Cincinnati and Toledo have even more liberal ordinances, allowing for chickens as long as they do not create a nuisance.²⁰⁶

Virginia also stands out for restricting chickens. All four of Virginia's cities within the top 100 cities by population—Chesapeake, Norfolk, Richmond, and Virginia Beach—restrict chickens to large lots or to lands zoned agricultural.²⁰⁷

B. Where Regulations Concerning Chickens Are Placed Within a City's Codified Ordinances

The survey reveals that there is little consistency in where cities choose to locate chicken regulations within their codified ordinances. Most cities regulate chickens in sections devoted to animals, zoning, health, or nuisances. Each method of regulation will be examined for how often it is used and how effective it is.

RICHMOND, GA., CODE OF ORDINANCES tit. 4, art. 2 (2007); GLENDALE, CAL., MUN. CODE §6.04 (2011); TACOMA, WASH., MUN. CODE §5.30.010 (2011); IRVING, TEX., CODE OF ORDINANCES pt. II, ch. 6 (2011).

195. DETROIT, MICH., CITY CODE §6-1-3 (2010) (prohibits owning farm animals and defines chickens as farm animals); GRAND RAPIDS, MICH., CODE OF ORDINANCES §8.582 (2010) (prohibiting farm animals within 100 ft. of any dwelling unit, well, spring, stream, drainage ditch, or drain. City officials have interpreted this to ban chickens.); *but see* ANN ARBOR, MICH., CODE OF ORDINANCES tit. IX, ch. 107, §9:42 (allowing up to four chickens in single-family or two-family dwellings if a permit is secured and regulations are followed).

196. PHILA. §10-112; PITTSBURGH, PA., CODE OF ORDINANCES §§635.02, 911.04.A.2 (2011).

197. Susan Wachter, *The Determinants of Neighborhood Transformations in Philadelphia Identification and Analysis: The New Kensington Pilot Study*, Spring 2005, THE WHARTON SCHOOL, http://www.google.com/url?sa=t&rcct=j&q=&esrc=s&source=web&cd=1&ved=0CCMQFjAA&url=http%3A%2F%2Fkabaaffiliates.org%2FuploadedFiles%2FKAB_Affiliates.org%2FWharton%2520Study%2520NK%2520final.pdf&ei=X40hT56_OOjCsQLogpyhCQ&usq=AFQjCNH-DYO3ImfVNsESWY6QZ9-79aW87A&sig2=C2IvyXmR7twhy4K5RZYk-A (last visited Jan. 26, 2012) (finding that the average lot size within the New Kensington area of Philadelphia was just over 1,000 square feet).

198. Diana Nelson-Jones, *Pittsburgh Urban Chicken Coop Tour to Be Held on Sunday*, PITTSBURGH POST-GAZETTE, June 9, 2011, <http://www.post-gazette.com/pg/11160/1152234-34.stm> (stating that Pittsburgh had amended its ordinances to allow for three chickens for every 2,000 square feet of property).

199. PITTSBURGH, PA., CODE OF ORDINANCES §911.04(A)(2) (2011).

200. AKRON, OHIO, CODE OF ORDINANCES §92-18 (2011); CINCINNATI, OHIO, CODE OF ORDINANCES ch. 701 (2011); CLEVELAND, OHIO, CODIFIED ORDINANCES §§205.04, 347.02 (2011); COLUMBUS, OHIO, CITY CODE tit. III, ch. 221 (2011); TOLEDO, OHIO, MUN. CODE §§505.07(a)(4), 1705.07 (2011).

201. COLUMBUS §221.05:

The Health Commissioner may grant permission only after it is determined that the keeping of such animals: (1) creates no adverse environmental or health effects; (2) is in compliance with all other sections of this chapter; and (3) in the judgment of the Health Commissioner, after consultation with the staff of the Health Department and with the surrounding occupants of the place of keeping such animals, and considering the nature of the community (i.e., residential or commercial single or multiple dwellings, etc.), is reasonably inoffensive. The health commissioner may revoke such permission at any time for violation of this chapter or may other just cause.

202. AKRON §92-18.

203. CLEVELAND §§347.02 & 205.04.

204. *Id.*

205. *Id.*

206. CINCINNATI §701-17; *id.* §00053-11 (“No live geese, hens, chickens, pigeons, ducks, hogs, goats, cows, mules, horses, dogs, cats, other fowl or any other domestic or non-domestic animals shall be kept in the city so as to create a nuisance, foul odors, or be a menace to the health of occupants or neighboring individuals.”); TOLEDO §§1705.05 & 505.07 (“No person shall keep or harbor any animal or fowl in the City so as to create noxious or offensive odors or unsanitary conditions which are a menace to the health, comfort or safety of the public.”).

207. CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011); *id.* ZONING art. 3 (restricting to low-density zones and restricting to properties of one acre or more); NORFOLK, VA., CODE OF ORDINANCES, app. A, art. II §4-0.5 (2011) (restricting chickens to properties of five acres or more); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011) (restricting chickens to properties with one acre or more); VIRGINIA BEACH, VA., CITY CODE §5-545, app. A (2011) (restricting chickens to land zoned for agricultural use).

I. Animal Control Regulations

Seventy-one of the cities regulate chickens under their animal control ordinances.²⁰⁸ This makes sense, because chickens are animals and this is the natural place for would-be chicken owners to look to make sure that they won't get into legal trouble. Regulating chickens under animal control also leads to fairly easy-to-follow ordinances. Chickens are either allowed, or they are not. And, if there are further regulations concerning lot size, setbacks, or coop requirements, they are usually all in one place.

208. AKRON, OHIO, CODE OF ORDINANCES §92-18 (2011); ANCHORAGE, ALASKA, CODE OF ORDINANCES tit. 17, 21 (2011); AUGUSTA-RICHMOND, GA., CODE OF ORDINANCES tit. 4, art. 2 (2007); AURORA, COLO., CODE OF ORDINANCES §14-8 (2011); AUSTIN, TEX., CODE OF ORDINANCES tit. III, ch. 3.1.1 (2011); ATLANTA, GA., CODE OF ORDINANCES §18-7 (2011); BAKERSFIELD, CAL., MUN. CODE §6.08.10 (2011); BALTIMORE, MD., HEALTH CODE §10-312 (2011); BATON ROUGE, LA., CODE OF ORDINANCES §14:224 (2011); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102 (2010); CINCINNATI, OHIO, CODE OF ORDINANCES ch. 701 (2011); COLORADO SPRINGS, COLO., CITY CODE §6.7.106(D) (2011); CORPUS CHRISTI, TEX., CODE OF ORDINANCES §§6-153, 6-154 (2011); DALLAS, TEX., CODE OF ORDINANCES §7-1.1 (2011); DENVER, COLO., MUN. CODE §8-91 (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4 (2011); DETROIT, MICH., CITY CODE §6-1-3 (2010); EL PASO, TEX., MUN. CODE §7.24.020 (2011); FREMONT, CAL., MUN. CODE §3-5803 (2011); GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011); GLENDALE, ARIZ., CODE OF ORDINANCES pt. II, art. 5 (2010); GLENDALE, CAL., MUN. CODE §6.04 (2011); GRAND RAPIDS, MICH., CODE OF ORDINANCES §8.582 (2010); HIALEAH, FLA., CODE OF ORDINANCES §§10.1, 10.2 (2011); HONOLULU, HAW., REV. ORDINANCES §7-2.5(d) (1990); HOUSTON, TEX., CODE OF ORDINANCES ch. 6, art. II (2010); INDIANAPOLIS, IND., REV. CODE tit. III, ch. 531 (2011); IRVING, TEX., CODE OF ORDINANCES 6-1 (2011); JERSEY CITY, N.J., CODE OF ORDINANCES §90-6 (2011); KANSAS CITY, MO., CODE OF ORDINANCES §14-15 (2011); LAS VEGAS, NEV., MUN. CODE §7.38.050 (2011); LEXINGTON-FAYETTE, KY., CODE OF ORDINANCES §4-10 (2011); LINCOLN, NEB., MUN. CODE §6.04.040 (2011); LONG BEACH, CAL., MUN. CODE §6.20.020 (2011); LOUISVILLE, KY., METRO CODE ch. 91 (2011); MEMPHIS, TENN., CODE OF ORDINANCES §8-8-1 (2009); MIAMI, FLA., CODE OF ORDINANCES §6-1(b) (2011); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011); MINNEAPOLIS, MINN., CODE OF ORDINANCES §70.10 (2011); MOBILE, ALA., CODE OF ORDINANCES §7-102 (2011); MONTGOMERY, ALA., CODE OF ORDINANCES ch. 4, art. I (2011); *id.* app. C, art. VII; NEWARK, N.J., GEN. ORDINANCES §6:2-29 (2010); NEW ORLEANS, LA., CODE OF ORDINANCES pt. II, ch. 18, art. VI (2011); N.Y.C., MUN. CODE §65-23 (1990); NORFOLK, VA., CODE OF ORDINANCES §§4-05, 6.1-7 (2011); OAKLAND, CAL., CODE OF ORDINANCES §6-04-320 (2011); OKLAHOMA CITY, OKLA., MUN. CODE tit. 8, 59 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-266 (2011); PHILA., PA., CODE §10-112 (2011); PHOENIX, ARIZ., CITY CODE §§8-7, 8-10 (2011); PITTSBURGH, PA., CODE OF ORDINANCES §§635.02, 911.04.A.2 (2011); PLANO, TEX., CODE OF ORDINANCES §4-184 (2011); PORTLAND, OR., CITY CODE §13.05.015 (2011); RALEIGH, N.C., CODE OF ORDINANCES §§12-3001, 12-3004 (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011); ROCHESTER, N.Y., CITY ORDINANCES §30-12, 30-19 (no date listed); SACRAMENTO, CAL., CITY CODE §9-44-340 (2011); ST. LOUIS, MO., CODE OF ORDINANCES §10.20.015 (2010); ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31 (2011); ST. PAUL, MINN., §198.02 (2011); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109 (2011); SAN JOSE, CAL., CODE OF ORDINANCES tit. 7 (2007); SANTA ANA, CAL., CODE OF ORDINANCES §5.6 (2011); SCOTTSDALE, ARIZ., CODE OF ORDINANCES §4-17 (2011); STOCKTON, CAL., MUN. CODE §§6.04.420, 16.80.060 (2011); TOLEDO, OHIO, MUN. CODE §505.07(a)(4); TUCSON, ARIZ., CODE OF ORDINANCES ch. 4, art. VI (2011); TULSA, OKLA., CODE OF ORDINANCES §200(d)(e) (2011); VIRGINIA BEACH, VA., CITY CODE §5-545, app. A (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.1 (no date listed); WICHITA, KAN., CODE OF ORDINANCES §6.04.157 (2011); YONKERS, N.Y., §65-23 (1990).

2. Zoning Regulations

Fourteen cities regulate chickens primarily under their zoning laws.²⁰⁹ These cities are much more likely to substantially restrict raising hens.²¹⁰ It also makes it much more difficult for a resident to determine whether he can legally raise chickens. Such a resident must not only determine in what zone chickens may be raised, but he must also determine whether his property falls within that zone. These laws also tend to sow unnecessary confusion. For instance, Lubbock Texas' law on paper would seem to allow for hens, but the city has exploited its vagaries to ban backyard chickens. Lubbock creates a loop within its ordinances by providing within the animal section of its code that chickens are allowed if the zoning ordinance permits it,²¹¹ and then providing in its zoning ordinance that chickens are allowed if the animal code permits it.²¹² The Lubbock city clerk resolved the loop by stating that the city interprets these provisions to entirely ban chickens within the city.²¹³

Finally, cities that regulate chickens primarily through zoning laws do so, presumptively, because they want to restrict raising chickens to certain zones. This, however, can cause unnecessary complications. Raising chickens is not only for residential backyards. Because of declining population and urban renewal projects in many cities, urban farms, market gardens, and community gardens are located in other zones, including business, commercial, and even industrial zones. Each time these farms or gardens would like to add a few chickens, they would have to petition the city for a zoning variance or seek a change in the law. This is not an efficient use of a city's limited resources.²¹⁴

In addition, other regulations pertaining to chickens, such as setbacks, coop construction, or sanitary requirements, can get lost among the many building regulations within the zoning code. Zoning codes are generally written for an expert audience of businesses, builders, and developers, and not for the lay audience that would comprise

209. ANAHEIM, CAL., MUN. CODE §18.38.030 (2011); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007); CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011); *id.* ZONING art. 3; FRESNO, CAL., MUN. CODE §§12-205.1-12-207.5 (2011); GLENDALE, CAL., MUN. CODE §6.04 (2011); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011); JACKSONVILLE, FLA., ORDINANCE CODE tit. XIII, ch. 462, tit. XVII, ch. 656 (2011); L.A., CAL., MUN. CODE §§12.01, 12.05-12.09 (2011); LUBBOCK, TEX., CITY CODE §4.07.001 (2011); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed); *id.* §7.29; SEATTLE, WASH., MUN. CODE §23.42.052; WASH., MUN. CODE OF ORDINANCES §6.04.20 (2011); *id.* tit. 17; *id.* §9.52; SHREVEPORT, LA., CODE OF ORDINANCES ch. 106 (2011); SPOKANE, WASH., MUN. CODE §17C.310.100.

210. Anaheim, Birmingham, Jacksonville, and Lubbock either ban hens altogether or restrict hens to certain zones. See ANAHEIM §18.38.030; BIRMINGHAM §2.4.1; JACKSONVILLE tit. XVIII, ch. 462, tit. XVII, ch. 656; LUBBOCK §4.07.001.

211. LUBBOCK §4.07.001.

212. *Id.* §40.03.3103.

213. See Interview with Lubbock city clerk (on file with author).

214. E.g., Schindler, *supra* note 181, 68-71 (arguing that the movement toward urban agriculture should cause cities to reconsider Euclidean zoning because such zoning no longer serves the needs of the cities and its residents).

chicken owners.²¹⁵ If cities are concerned about raising chickens too near businesses or neighbors, other regulations like setbacks from the street and neighboring properties can ameliorate this concern without having to include the regulation in the zoning code.

Regulations placed within the animal code, as described above, are generally in one place and often within a single ordinance. This leads to a better understanding of the law for chicken owners and, thus, easier enforcement for city officials. Unless the zoning regulations have a subsection devoted specifically to animals, like the ones in Spokane²¹⁶ or Greensboro,²¹⁷ the most sensible place for regulating chickens is within the animal code.

3. Health Code

Another popular place within a municipality's code to regulate chickens is within the health code. Seven cities regulate chickens primarily within the health code.²¹⁸ Many of these, however, have a separate section concerning animals or animal-related businesses within the health code.²¹⁹ Again, unless the code has such a separate section concerning animals, the better place to regulate is within the animal code.

4. Other

Of the remaining cities, there is very little uniformity. Two, Boston and Columbus, regulate through permit sections within their codified ordinances.²²⁰ Because these cities require permits to keep chickens and give a great deal of discretion to city officials to grant or deny permits on a case-by-case basis, locating a chicken regulation within the permit section of the codified ordinance makes sense for those cities. But, as argued later, allowing such discretion is neither a good use of city resources nor a fair and consistent way to regulate chickens.

The only other pattern within these ordinances is that two other cities—Buffalo and Tampa—regulate chickens

under the property maintenance area of the code.²²¹ This is not an ideal place to locate such an ordinance, because potential chicken owners are unlikely to look for chicken regulations there.

Finally, one city—Arlington, Texas—places its chicken regulations in a section of the code entitled sale and breeding of animals.²²² Because backyard chicken owners generally do not raise their chickens for sale, and also likely do not consider themselves to be breeders, this area of the code is not well-suited to this regulation.

C. How Cities Regulate Chickens

1. Chickens Are Defined as Pets or Domestic Animals

Seven cities—Dallas, Indianapolis, Jacksonville, New Orleans, Plano, Raleigh, and Spokane—define chickens as domestic animals or pets, and thus subject them to the same enclosure and nuisance regulations as other domestic animals like cats and dogs.²²³ These cities' ordinances appear to be long-standing and were not recently modified in response to the backyard chicken movement.²²⁴ While many cities may want to more explicitly regulate chickens, this is a workable approach. General nuisance laws already regulate things like odor and noise.²²⁵ While many regulations particular to chickens duplicate nuisance ordinances, it is unclear whether such duplication actually reduces nuisances. More precise requirements on sanitation, coop standards, setbacks, and permits may signal to chicken owners that the city is serious about regulating chickens, protecting neighbors, and protecting the health and well-being of chickens. But, as chickens regain prevalence in urban areas, cities that regulate chickens as pets or domestic animals may find that—through inertia—they have taken the most efficient approach, both in terms of preserving city resources and curbing potential nuisances.

2. Space Requirements

Of the 94 cities that allow for raising chickens, 31 of them impose restrictions based upon how big the property is, either explicitly through lot size requirements, or implicitly through zoning requirements.²²⁶ Of those, 16 cities restrict

215. See Lea S. VanderVelde, *Local Knowledge, Legal Knowledge, and Zoning Law*, IOWA L. REV., May 1990, at 1057 (describing zoning law as "arcane"). Also, the sheer number of law treatises for zoning laws demonstrates that zoning laws require expertise to navigate. *E.g.*, PATRICIA SALKIN, AMERICAN LAW OF ZONING (5th ed. 2012); JULIAN CONRAD JUERGENSMEYER & THOMAS E. ROBERTS, LAND USE PLANNING AND DEVELOPMENT REGULATION LAW (2d ed. 2003); EDWARD H. ZIEGLER JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING (4th ed. 2012).

216. SPOKANE, WASH., MUN. CODE tit. 17C LAND USE STANDARDS, ch. 17C.310 ANIMAL KEEPING (no date listed).

217. GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011).

218. ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-4-3 (2011); CLEVELAND, OHIO, CODIFIED ORDINANCES §§205.04, 347.02 (2011); COLUMBUS, OHIO, CITY CODE tit. III, ch. 221 (2011); MESA, ARIZ., CITY CODE §8-6-21 (2011); SAN DIEGO, CAL., MUN. CODE §42.0709 (2011); SAN FRANCISCO, CAL., HEALTH CODE §37 (2011); TACOMA, WASH., MUN. CODE §5.30.010 (2011).

219. *E.g.*, SAN DIEGO §42.0709; CLEVELAND §§204.04, 347.02; TACOMA §5.3.010.

220. BOS., MASS., CODE OF ORDINANCES §16-1.8A (2010); COLUMBUS tit. III, ch. 221.

221. BUFFALO, N.Y., CITY CODE §341-11 (2009); TAMPA, FLA., CODE OF ORDINANCES §19.76 (2008).

222. ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §5.02 (2010).

223. DALLAS, TEX., CODE OF ORDINANCES §7-1.1 (2011); INDIANAPOLIS, IND., REV. CODE tit. III, ch. 531.101 (2011); JACKSONVILLE, FLA., ORDINANCE CODE §656.1601 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1 (2011); RALEIGH, N.C., CODE OF ORDINANCES §12-3001 (2011); PLANO, TEX., CODE OF ORDINANCES §4-184 (2011); SPOKANE, WASH., MUN. CODE §17C.310.100 (no date listed).

224. *Supra* note 223.

225. Every city surveyed had general nuisance provisions in its code regulating odor and noise.

226. Cities that impose lot size requirements: Anaheim, Cleveland, Fort Wayne, Fremont, Garland, Greensboro, Nashville, Norfolk, Oklahoma, Philadelphia, Phoenix, Pittsburgh, Richmond, Rochester, Stockton, and Tampa. ANAHEIM, CAL., MUN. CODE §18.38.030 (2011); CLEVELAND, OHIO,

based on lot size and 17 restrict based on zoning. This adds up to 33, rather than 31, because two cities restrict based on both lot size and zoning.²²⁷ These restrictions range from draconian, practically banning chickens in most of the city by restricting chickens to extremely large lots,²²⁸ to extremely liberal, allowing up to 30 chickens per 240 square feet—or 30 chickens in an area approximately the size of a large bedroom.²²⁹ As discussed below, an additional 10 cities should be considered unfriendly to keeping hens because, while they do allow chickens under some circumstances, those circumstances are restricted to very large lots or agriculturally zoned land.²³⁰

a. Lot Size Requirements

Of the 15 cities that restrict based on lot size only, six of them restrict chickens to property that is one acre or more: Nashville, Norfolk, Oklahoma City, Philadelphia, Pittsburgh, and Richmond.²³¹ Nashville, Norfolk, and Pittsburgh appear to limit chickens to property of more than five acres, which in any urban area is a practical ban.

Norfolk appears to allow for an exception to the five-acre minimum²³² by allowing a would-be chicken owner to procure a permit to keep hens,²³³ but in practice, the city will not issue this permit to chicken hobbyists.²³⁴ But, as discussed below, Nashville and Pittsburgh have interpreted their restrictive ordinances to allow for chickens on much smaller parcels of property.

In Nashville, the zoning code conflicts with the health code, and the health code apparently won out. The zoning ordinance limits “common domestic farm animals” to a lot size of five acres or more, but the ordinance does not define what qualifies as a common domestic farm animal.²³⁵ Nashville’s health code, by contrast, specifically allows for chickens, as long as they do not create a nuisance.²³⁶ Nashville issued a memorandum in 2009 providing that the Board of Zoning Appeals held that the health code takes precedence over the zoning code.²³⁷ In so holding, the Board allowed a property owner to keep her chickens, because their owner considered them to be pets and the chickens did not create a nuisance.²³⁸

In Pittsburgh, while agricultural uses were limited to property of five acres or more, like Nashville, the code did not specifically define whether raising chickens was considered an agricultural use.²³⁹ Pittsburgh, thus, would allow chicken keepers to seek a variance for raising chickens on property of less than five acres.²⁴⁰ Apparently, though it is not yet codified, Pittsburgh recently made it much easier to raise chickens, and also bees, by allowing up to three hens and two beehives on property of 2,000 square feet or more.²⁴¹

So, both Nashville and Pittsburgh, while appearing to ban chickens, have become chicken-friendly.

The next most restrictive ordinance is in Philadelphia. Philadelphia restricts chickens to property of three acres or more. Philadelphia, however, apparently means it. In Philadelphia, the code specifically defines poultry as a farm animal,²⁴² and only allows farm animals on a parcel of property of three acres or more.²⁴³

CODIFIED ORDINANCES §347.02 (2011); FORT WAYNE, IND., CODE OF ORDINANCES §157.104 (2011); FREMONT, CAL., MUN. CODE §3-5803 (2011); GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011); NASHVILLE-DAVIDSON, TENN., MUN. CODE §17-16-330 (2011); NORFOLK, VA., CODE OF ORDINANCES §§4-05, 6.1-7 (2011); OKLAHOMA CITY, OKLA., MUN. CODE §59-9350(c) (2011); PHILA., PA., CODE §10-112 (2011); PHOENIX, ARIZ., CITY CODE §8-10 (2011); PITTSBURGH, PA., CODE OF ORDINANCES §§635.02, 911.04.A.2 (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011); ROCHESTER, N.Y., CITY ORDINANCES §§30-12, 30-19 (no date listed); STOCKTON, CAL., MUN. CODE §16.80.060 (2011); TAMPA, FLA., CODE OF ORDINANCES §19.76 (2008). Cities that impose zoning restrictions: Bakersfield, Birmingham, Chesapeake, Dallas, Fresno, Glendale, Arizona, Greensboro, Hialeah, Jacksonville, Los Angeles, Madison, Memphis, Montgomery, San Diego, Shreveport, Stockton, and Virginia Beach. BAKERSFIELD, CAL., MUN. CODE tit. 17 (2011); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007); CHESAPEAKE, VA., CODE OF ORDINANCES ZONING art. 3 (2011); DALLAS, TEX., CODE OF ORDINANCES §7-1.1 (2011); FRESNO, CAL., MUN. CODE ch. 12 (2011); GLENDALE, ARIZ., CODE OF ORDINANCES §§5.132 & 5.212 (2011); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011); HIALEAH, FLA., CODE OF ORDINANCES ch. 98 (2011); JACKSONVILLE, FLA., ORDINANCE CODE ch. 656 (2011); L.A., CAL., MUN. CODE §§12.01, 12.05-12.09 (2011); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed); MEMPHIS, TENN., CODE OF ORDINANCES tit. 16 (2009); MONTGOMERY, ALA., CODE OF ORDINANCES, app. C, art. VII (2011); SAN DIEGO, CAL., MUN. CODE §42.0709 (2011); SHREVEPORT, LA., CODE OF ORDINANCES ch. 106 (2011); STOCKTON, CAL., MUN. CODE §§6.04.420, 16.80.060 (2011); VIRGINIA BEACH, VA., CITY CODE §5-545, app. A (2011).

227. GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011); STOCKTON, CAL., MUN. CODE §§6.04.420 & 16.80.060 (2011).

228. *E.g.*, NASHVILLE-DAVIDSON, TENN., MUN. CODE §§8-12-020, 17-16-330 (2011); PHILA., PA., CODE §10-112 (2011).

229. *See* ROCHESTER, N.Y., CITY ORDINANCES §§30-12, 30-19 (no date listed).

230. BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007); CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011); HIALEAH, FLA., CODE OF ORDINANCES §§10.1, 10.2 (2011); JACKSONVILLE, FLA., ORDINANCE CODE §656.331(2011); MONTGOMERY, ALA., CODE OF ORDINANCES ch. 4, art. I (2011); *id.* app. C, art. VII; NORFOLK, VA., CODE OF ORDINANCES, app. A, art. II §4-0.5 (2011); OKLAHOMA CITY, OKLA., MUN. CODE §59-9350 (2011); PHILA., PA., CODE §10-112 (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011); VIRGINIA BEACH, VA., CITY CODE §5-545, app. A (2011).

231. NASHVILLE-DAVIDSON, TENN., MUN. CODE §17-16-330(b) (2011); PITTSBURGH, PA., CODE OF ORDINANCES §§635.02, 911.04.A.2 (2011); PHILA., PA., CODE §10-112 (2011); OKLAHOMA CITY, OKLA., MUN. CODE §59-9350 (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011).

232. NORFOLK, VA., CODE OF ORDINANCES, ZONING ORDINANCE, app. A, §4-05 (2011) (“Except as otherwise noted, there shall be no raising or keeping of . . . poultry, fowl, . . . on less than five acres.”).

233. NORFOLK, VA., CODE OF ORDINANCES §6.1-7 (2011) (allowing for a person wishing to raise poultry to procure a permit issued by the department of public health).

234. Amelia Baker, *Backyard Chickens: Now You’re Clucking*, ALTDAILY, June 2, 2010, <http://www.altdaily.com/features/food/backyard-chickens-now-youre-clucking.html> (providing that the city will only issue permits for sentinel chickens that the city has on surveillance to check for mosquito-borne diseases).

235. NASHVILLE-DAVIDSON §17.16.330(b).

236. *Id.* §8.12.020.

237. Memo from John Cooper, Director Metropolitan Council Office, to All Members of Metropolitan Council (Sept. 1, 2009) (on file with author).

238. *Id.*

239. PITTSBURGH §911.04.

240. Diana Nelson Jones, *Ordinance Changes Bother Keepers of Bees and Chickens*, PITTSBURGH POST GAZETTE, Feb. 8, 2010, <http://www.post-gazette.com/pg/10039/1034293-53.stm>.

241. Diana Nelson Jones, *Pittsburgh Urban Coop Tour to Be Held Sunday*, PITTSBURGH POST GAZETTE, June 9, 2011, <http://www.post-gazette.com/pg/11160/1152234-34.stm>.

242. PHILA. §10-100.

243. *Id.* §10-112.

Oklahoma City and Richmond both require at least one acre. Oklahoma City restricts raising chickens to property that is at least one acre, but apparently if the property owner has one acre, there is no restriction on how many chickens can be kept on that acre.²⁴⁴ Richmond requires 50,000 square feet, or slightly more square footage than the 43,560 square feet in an acre.²⁴⁵

After these, the lot sizes are far more lenient. Two cities, Garland and Stockton, require at least ½ acre.²⁴⁶ Three cities, Fremont, Greensboro, and Phoenix, require between 6,000 and 10,000 square feet, or between a little less than 1/8 to a little less than 1/4 acre.²⁴⁷ And four cities, Anaheim, Cleveland, Rochester, and Tampa, require between 240 to 1,800 square feet, or from not much larger than a shed to about the size of a modern master bedroom.²⁴⁸ So, out of the 15 cities that restrict based on lot size, the majority of them allow most residents to raise backyard chickens.

b. Zoning Requirements

Seventeen cities restrict chickens to certain zones. Of these, three of the cities restrict chickens only to land zoned for agricultural use: Birmingham, Hialeah, and Virginia Beach.²⁴⁹ Three more cities restrict chickens to agricultural or very low-density residential zones: Chesapeake, Jacksonville, and Montgomery.²⁵⁰ Thus, six of the 17 cities confine chickens to so few zones that it excludes the possibility of raising chickens for most families.

The remaining eleven cities, however, while still restricting chickens to certain zones, allow chickens in many or most residential zones.²⁵¹ Dallas only applies zoning

requirements if chickens are being raised for commercial purposes.²⁵² Memphis merely applies different building restrictions for coops depending on the zone.²⁵³ And two cities employ zoning laws to augment the area where chickens are allowed: Cleveland and Stockton specifically allow raising chickens in industrially zoned areas.²⁵⁴

c. Multi-Family Units

Two cities, Minneapolis and Newark, specifically regulate multi-family dwellings such as apartments. Both of these cities require permits, but will not grant one to certain multi-family dwellings. Minneapolis will not grant a permit to someone who lives in a multi-family home with four or more dwelling units.²⁵⁵ Newark will not grant one to anyone living in any multi-family home.²⁵⁶

d. Using Lot Size to Determine the Number of Chickens

Many other cities do not restrict chickens to certain lot sizes, but use lot size to determine how many chickens a property can have. There is no uniformity to these ordinances. Some ordinances set a maximum number of chickens for property of a certain size and under, and then allow for more chickens as the property size increases. For instance, Seattle allows up to eight chickens for lots under 10,000 square, and one more chicken for each additional 1,000 square feet.²⁵⁷ Fremont has an intricate step system, with four chickens for at least 6,000 square feet, six for at least 8,000 square feet, 10 for at least 10,000, 20 for at least ½ acre, and 25 for more than one acre.²⁵⁸ Riverside allows for up to four chickens on property between 7,200 and 40,000 square feet and up to 12 on property 40,000 square feet or more in residentially zoned areas.²⁵⁹

Some cities decide the number of chickens based on zoning. El Paso allows for up to six chickens on land not zoned agricultural.²⁶⁰ Tulsa allows up to six adults and 14 chicks under eight weeks of age on land not zoned agricul-

244. OKLAHOMA CITY §59-8150 (definitions); *id.* §59-9350 (confining to one acre).

245. RICHMOND, VA., CODE OF ORDINANCES §10-88(b) (2011).

246. GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011); STOCKTON, CAL., MUN. CODE §16.80.060 (2011).

247. FREMONT, CAL., MUN. CODE §3-5803 (2011) (6,000 sq. ft.); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011) (7,000 sq. ft.); PHOENIX, ARIZ., CITY CODE §8-7(b) (2011) (10,000 sq. ft.).

248. ANAHEIM, CAL., MUN. CODE §18.38.030 (2011) (1,800 sq. ft.); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02 (2011) (800 sq. ft. for residential, and 400 for commercial); ROCHESTER, N.Y., CITY ORDINANCES §30-12, 30-19 (no date listed) (240 sq. ft.); TAMPA, FLA., CODE OF ORDINANCES §19.76 (2008) (1,000 sq. ft.).

249. BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007); HIALEAH, FLA., CODE OF ORDINANCES §10.1 & 10.2 (2011); VIRGINIA BEACH, VA., CITY CODE §5-545 app. A (2011).

250. CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011); *id.* ZONING art. 3; JACKSONVILLE, FLA., ORDINANCE CODE tit. XIII, ch. 462, tit. XVII, ch. 656 (2011); MONTGOMERY, ALA., CODE OF ORDINANCES app. C, art. VII (2011).

251. BAKERSFIELD, CAL., MUN. CODE §§17.12.010-RS & 17.32.020 (2011) (permitting chickens in agriculture and residential suburban areas); DALLAS, TEX., CODE OF ORDINANCES §7-1.1 (2011) (requiring chickens that are raised for commercial purposes to be on agriculturally zoned land, otherwise chickens are regulated as pets); FRESNO, CAL., MUN. CODE §§12-204.11-12-207.5 (2011) (providing different setbacks depending on zone); GLENDALE, ARIZ., CODE OF ORDINANCES §§5.132 & 5.212 (2011) (restricting poultry to rural residential and suburban residential zones); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011) (allowing chickens as an accessory on single-family detached dwellings on R-3, E-5, R-7, RM-9, RM-12, and RM-18 districts); L.A., CAL., MUN. CODE §§12.01, 12.05-12.09 (2011) (allowing chickens in agricultural and

residential districts including districts zoned A1, A2, RA, RE, RS R1, and RMP); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed); *id.* §7.29; *id.* §9.52 (allowing chickens in both residential and commercial districts); MEMPHIS, TENN., CODE OF ORDINANCES tit. 16, app. A (2009) (applying complex zoning requirements for outbuildings to chicken coops); SAN DIEGO, CAL., MUN. CODE §42.0709 (2011) (using zoning to define different kinds of setbacks, but allowing chickens in most zones); SHREVEPORT, LA., CODE OF ORDINANCES ch. 106 (2011) (allowing poultry raising in residential and agricultural districts by right, and in most other zones through a special exception from the zoning board) STOCKTON, CAL., MUN. CODE §§6.04.420, 16.80.060 (2011) (allowing chickens in residential and industrially zoned areas).

252. DALLAS, TEX., CODE OF ORDINANCES §7-1.1 (2011).

253. MEMPHIS, TENN., CODE OF ORDINANCES tit. 16 (2009).

254. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02 (2011); STOCKTON, CAL., MUN. CODE §16.80.060 (2011).

255. MINNEAPOLIS, MINN., CODE OF ORDINANCES §70.10(c) (2011).

256. NEWARK, N.J., GENERAL ORDINANCES §6:2-33 (2010).

257. SEATTLE, WASH., MUN. CODE §23.42.052(C) (2011).

258. FREMONT, CAL., MUN. CODE §3-5803 (2011).

259. RIVERSIDE, CAL., CODE OF ORDINANCES §17.24 (2011).

260. EL PASO, TEX., MUN. CODE §7.24.020(B) (2011).

tural.²⁶¹ Neither city restricts the amount of chickens on agriculturally zoned land.²⁶²

Instead of using square footage or zoning, many cities divide by acre. These ordinances range between four to 12 chickens for property under ½ acre. For instance, Fort Worth allows for no more than 12 chickens on lots under ½ acre, no more than 20 on lots between ½ and one acre, and no more than 50 on lots of one acre or more.²⁶³ Mesa City allows for 10 rodents or fowl on ½ acre or less, and an additional 10 for each ½ acre, but no longer limits the number of chickens after 2 ½ acres.²⁶⁴ Louisville allows for five chickens on property of less than ½ acre, and no limit above that.²⁶⁵ Arlington provides for four on less than ½ acre, 10 for lots between ½ and one acre, and 25 for lots over one acre.²⁶⁶ And, Charlotte requires a permit and restricts chickens to 20 per acre.²⁶⁷

Des Moines' ordinance employs a similar step system but provides for a mix of other livestock. It allows for no more than 30 of any two species for property less than one acre. For property greater than one acre, one can have a total of 50 animals divided among up to six species.²⁶⁸

Lincoln, Nebraska, has one of the more unique chicken ordinances when it comes to limiting the number, in that it not only provides for a maximum number of chickens, but also a minimum. It also specifies the weight of the chickens. So, for property under one acre, with a permit, a person can have seven to 30 chickens under three pounds, three to 20 chickens between three and five pounds, and two to five chickens between five and 20 pounds.²⁶⁹ It allows chicken owners to double the number for each additional acre. Lincoln's ordinance should be applauded for recognizing that chickens are flock animals and thus require, at least, a minimum of two. It should also be applauded for not penalizing an owner for keeping less than two and only making it unlawful to keep numbers greater than the maximum.²⁷⁰ After all, if it penalized keeping less than a minimum number of chickens, Lincoln might be unique among cities for making it unlawful not to keep chickens.

More problematic are cities that do not allow owners to own a minimum number of four chickens. Several cities allow one chicken per a certain square footage area. Greensboro provides for one chicken for every 3,000 square feet, as long as the area is greater than 7,000 square feet.²⁷¹ Anaheim allows one chicken for each 1,800 square feet, but it does provide that if the calculation results in more than half an animal, the owner can round up to the next whole

animal.²⁷² Tampa provides five per 5,000 square feet. And, Cleveland allows for one chicken for each 800 square feet if residential and each 400 square feet if commercial or industrial.²⁷³ Cleveland, at least, has stated in its ordinance that these square feet requirements are meant to allow six chickens on an average-sized Cleveland lot. While many of these cities provide a small enough chicken to square foot ratio that the average single-family home should be able to accommodate four or more chickens, this method still leaves open the possibility that a chicken owner would be restricted to one or two chickens. An ordinance that allows only one chicken per a certain area does not take into account that chickens are flock animals that do not thrive when left alone.

3. Limit Number of Chickens

Many other cities limit the number of chickens any household can keep, no matter the size of the property. Thirty cities place a simple limit on the number of chickens.²⁷⁴ Of those cities that simply limit the number of chickens, the average number they allow is 12, the median number is nine, and the most popular number is a tie between four and 25.²⁷⁵ The lowest number is Garland and Honolulu with two.²⁷⁶ Somewhat surprisingly, the highest number comes from Jersey City—with 50.²⁷⁷ Jersey City collapses ducks and pigeons within the restriction of 50 fowl.²⁷⁸ Jersey City also requires a permit to keep chickens.²⁷⁹

At least four cities set a maximum number of chickens that can be owned before it is necessary to procure a per-

261. TULSA, OKLA., CODE OF ORDINANCES §200(E) (2011).

262. EL PASO, TEX., MUN. CODE §7.24.020(B); TULSA, OKLA., CODE OF ORDINANCES §200(A).

263. FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(c), (d), (e) (2011).

264. MESA, ARIZ., CITY CODE §8-6-21(A) (2011).

265. LOUISVILLE/JEFFERSON COUNTY METRO CODE §91.011 RESTRAINT (8) (2011).

266. ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §5.02 (2010).

267. CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c)(1), (g) (2010).

268. DES MOINES, IOWA, CODE OF ORDINANCES §18-4 (2011). Des Moines also allows up to two fowl to be kept as pets. *Id.* §18-136.

269. LINCOLN, NEB., MUN. CODE tbl. 6.04.040 (2011).

270. *Id.* §6.04.040(b)(1).

271. GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3(B) (2011).

272. ANAHEIM, CAL., MUN. CODE §18.38.030.050 (2011).

273. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(2) (2011).

274. From lowest to highest: HONOLULU, HAW., REV. ORDINANCES §7-2.5(d) (1990) (two); GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011) (two); PORTLAND, OR., CITY CODE §13.05.015(b) & (e) (2011) (three); SACRAMENTO, CAL., CITY CODE §9.44.860(A)(1) (2011) (three); WICHITA, KAN., CODE OF ORDINANCES §6.04.157 (2011) (three); SAN FRANCISCO, CAL., HEALTH CODE §37 (2011) (four); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5(3) (2011) (four); ST. LOUIS, MO., CODE OF ORDINANCES §10.20.015 (2010) (four); SANTA ANA, CAL., CODE OF ORDINANCES §5.6 (2011) (four); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed); *id.* §7.29; *id.* §9.52 (four); BUFFALO, N.Y., CITY CODE §341-11 (2009) (five); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.815 (2007) (six); EL PASO, TEX., MUN. CODE §7.24.020 (2011) (six); CORPUS CHRISTI, TEX., CODE OF ORDINANCES §6-154 (2011) (six); HOUSTON, TEX., CODE OF ORDINANCES ch. 6, art. II (2010) (seven); AUSTIN, TEX., CODE OF ORDINANCES tit. III, ch. 3.1.1 (2011) (nine); COLORADO SPRINGS, COLO., CITY CODE §6.7.106(D) (2011) (10); PLANO, TEX., CODE OF ORDINANCES §4-184 (2011) (10); GLENDALE, CAL., MUN. CODE §6.04.130 (2011) (12); ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-4-3 (2011) (15); KANSAS CITY, MO., CODE OF ORDINANCES §14-15(f) (2011) (15); MIAMI, FLA., CODE OF ORDINANCES §6-1(b) (2011) (15); LONG BEACH, CAL., MUN. CODE §6.20.020 (2011) (20); TUCSON, ARIZ., CODE OF ORDINANCES §4-56 (2011) (24); FREMONT, CAL., MUN. CODE §3-5803 (2011) (25); SAN DIEGO, CAL., MUN. CODE §42.0708 (2011) (25); BOS., MASS., CODE OF ORDINANCES §16-1.8A (2010) (25); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007) (25); MOBILE, ALA., CODE OF ORDINANCES §7-103 (2011) (25); JERSEY CITY, N.J., CODE OF ORDINANCES §90-6 (2011) (50).

275. *Supra* note 274 and accompanying text.

276. GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011) (two); HONOLULU, HAW., REV. ORDINANCES §7-2.5(d) (1990) (two).

277. JERSEY CITY, N.J., CODE OF ORDINANCES §90-6 (2011).

278. *Id.*

279. *Id.*

mit.²⁸⁰ Wichita allows three chickens, Santa Ana allows four, and San Jose and El Paso both allow up to six.²⁸¹ This appears to be the most workable system, because it takes into account that there are different levels of chicken-keeping in an urban agriculture context. It provides a bright-line rule for people who want small backyard flocks, while still allowing owners of market gardens, urban farms, or chicken cooperatives the opportunity to expand their operations without seeking to change the ordinance. It also conserves city resources by not forcing every would-be chicken owner to procure a permit. Finally, because there is no permit, it saves the city from any obligations to monitor the backyard operation. If any problem arises with a small backyard flock, the city can rely on its nuisance laws, or other setback or coop requirements within the statute to resolve the problem.

Some cities always require a permit, but set a relatively high number of chickens allowed. As noted earlier, with a permit, Jersey City allows up to 50,²⁸² and Boston and Mobile allow up to 25.²⁸³ According to several Bostonians who want chickens, however, Boston does not easily grant this permit.²⁸⁴ Miami allows up to 15 hens with a permit.²⁸⁵

Some cities take a belt-and-suspenders approach and require both a permit and restrict hens to a small number. With a permit, Milwaukee only allows four,²⁸⁶ and Sacramento, three.²⁸⁷

Several other cities, perhaps understanding that the hens may occasionally be used to produce more chickens, allow considerably more chicks than full-grown chickens. Both Miami and Kansas City allow only 15 grown hens, but Miami allows 30 chicks,²⁸⁸ and Kansas City allows 50.²⁸⁹ Tulsa allows seven adults and 14 chicks.²⁹⁰ Colorado Springs allows 10 hens and an unlimited number of chicks.²⁹¹ And Garland, even though it allows only two hens, does not limit the number of chicks less than one-month old.²⁹²

And for pure eccentricity, Houston has the most interesting restriction on the number of chickens. Houston allows up to seven hens if a person can present a written certification from a licensed physician that the person needs “fresh unfertilized chicken eggs for serious reasons

pertaining to said person’s health.”²⁹³ This ordinance was passed in 2010,²⁹⁴ presumably because Houstonites were able to show that fresh eggs help alleviate certain medical ailments.

4. Setbacks

Setbacks are, by far, the most popular way to regulate chickens. Sixty-three cities have some sort of setback requirement in their ordinances. The most popular setback is a setback from a neighboring dwelling: 56 cities require that chickens and chickens coops be kept a certain distance from other residences.²⁹⁵ The next most popular is a setback

293. HOUSTON, TEX., CODE OF ORDINANCES §6-38 (2010).

294. *Id.*

295. AKRON, OHIO, CODE OF ORDINANCES §92-18 (2011) (100 ft.); ANAHEIM, CAL., MUN. CODE §18.38.030.0202 (2011) (50 ft.); ANCHORAGE, ALASKA, CODE OF ORDINANCES §§21.40.060 & 21.40.080 (2011) (25-100 ft.); ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §5.02 (2010) (50 ft.); ATLANTA, GA., CODE OF ORDINANCES §18-7 (2011) (50 ft.); AUSTIN, TEX., CODE OF ORDINANCES §3.2.16 (2011) (50 ft.); BAKERSFIELD, CAL., MUN. CODE §17.12.010 R-S (2011) (50 ft.); BATON ROUGE, LA., CODE OF ORDINANCES §14-224 (c)(1)(b) (2011) (50 ft.); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007) (300 ft. from residence or 100 ft. from any residential structure); BOS., MASS., CODE OF ORDINANCES §16-1.8A, ZONING, art. 8, No. 75 (2010) (100 ft.); BUFFALO, N.Y., CITY CODE §341-11.3 (2009) (20 ft. from door or window); CORPUS CHRISTI, TEX., CODE OF ORDINANCES §6-154 (2011) (100 ft. if not enclosed); DES MOINES, IOWA, CODE OF ORDINANCES §18-4 (2011) (25 ft.); EL PASO, TEX., MUN. CODE §7.24.030 (2011) (30 ft.); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(b) & (f) (2011) (50 ft.); FRESNO, CAL., MUN. CODE §12.207.5 (2011) (40 ft.); GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011) (30 ft.); GLENDALE, CAL., MUN. CODE §6.04.030 (2011) (50 ft. from dwelling or 100 ft. from school or hospital); GLENDALE, ARIZ., CODE OF ORDINANCES pt. II, art. 5 (2010) (100 ft.); GRAND RAPIDS, MICH., CODE OF ORDINANCES §8.582 (2010) (100 ft. from any dwelling unit, well, spring, stream, drainage ditch, or drain); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3(B) (2011) (50 ft.); HIALEAH, FLA., CODE OF ORDINANCES §10.4 (2011) (100 ft.); HONOLULU, HAW., REV. ORDINANCES §7-2.5(d) (1990) (300 ft.); HOUSTON, TEX., CODE OF ORDINANCES §6-31 (2010) (100 ft.); JERSEY CITY, N.J., CODE OF ORDINANCES §90-6 (2011) (25 ft.); KANSAS CITY, MO., CODE OF ORDINANCES §14-15 (2011) (100 ft.); LINCOLN, NEB., MUN. CODE §6.04.040 (2011) (50 ft.); LONG BEACH, CAL., MUN. CODE §6.20.030 (2011) (50 ft.); L.A., CAL., MUN. CODE §§53.58 & 53.59 (2011) (Department of Animal Services promulgated regulations that require chicken coops to be 35 ft. from neighbor’s dwelling and 20 ft. from owner’s dwelling); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed) (25 ft.); MESA, ARIZ., CITY CODE §8-6-21(g) & (h) (2011) (40 ft.); MIAMI, FLA., CODE OF ORDINANCES §6-1(b) (2011) (100 ft.); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5(3)(g)-(j) (2011) (25 ft.); MOBILE, ALA., CODE OF ORDINANCES §§7-88 & 7-103 (2011) (150 ft. if not grandfathered in); NASHVILLE-DAVIDSON, TENN., MUN. CODE §17-16-330(B) (2011) (250 ft.); N.Y.C., MUN. CODE §161.09 (1990) (25 ft.); NEWARK, N.J., GENERAL ORDINANCES §6:2-35 (2010) (20 ft.); OAKLAND, CAL., CODE OF ORDINANCES §6-04-320 (2011) (20 ft.); OKLAHOMA CITY, OKLA., MUN. CODE 59-9350 (2011) (200 ft.); PHOENIX, ARIZ., CITY CODE §8-7 (2011) (80 ft.); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011) (500 ft.); RIVERSIDE, CAL., CODE OF ORDINANCES §6.04.20 (2011); *id.* tit. 17 (50 ft.); ROCHESTER, N.Y., CITY ORDINANCES §30-19(H) (no date listed) (25 ft.); SACRAMENTO, CAL., CITY CODE §9.44.860 (2011) (20 ft.); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109(c) (2011) (100 ft. or 50 ft. with permit); SAN DIEGO, CAL., MUN. CODE §42.0709 (2011) (50 ft.); SAN FRANCISCO, CAL., HEALTH CODE §37(b) (2011) (20 ft. from door or window); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.815 (2007) (20 ft. but more if have more chickens); SANTA ANA, CAL., CODE OF ORDINANCES §5-18 (2011) (100 ft.); SEATTLE, WASH., MUN. CODE §23.42.052(c)(3) (2011) (10 ft.); ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31 (2011) (100 ft. unless have permission from neighbors); STOCKTON, CAL., MUN. CODE §§6.04.420, 16.80.060 (2011) (50 ft.); TACOMA, WASH., MUN. CODE §5.30.010 (2011) (50 ft. unless have permission from neighbors); TAMPA, FLA., CODE OF ORDINANCES §19.76 (2008) (200 ft.); TUCSON, ARIZ., CODE

280. WICHITA, KAN., CODE OF ORDINANCES §6.04.157(a) (2011); SANTA ANA, CAL., CODE OF ORDINANCES §5.6 (2011); SAN JOSE, CAL., CODE OF ORDINANCES tit. 7 (2007); EL PASO, TEX., MUN. CODE §7.24.020 (2011).

281. *See supra* note 280.

282. JERSEY CITY, N.J., CODE OF ORDINANCES §90-7 (2011).

283. BOS., MASS., CODE OF ORDINANCES §16-1.8A, ZONING art. 8 No. 75 (2010); MOBILE, ALA., CODE OF ORDINANCES §7-103 (2011).

284. *See, e.g.*, LEGALIZE CHICKENS IN BOSTON, <http://legalizechickensinboston.org/> (last visited July 5, 2012) (stating that the city of Boston denies chicken permits and seeking a more reasonable legislative solution to regulate chickens in Boston).

285. MIAMI, FLA., CODE OF ORDINANCES §6-1(b) (2011).

286. MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011).

287. SACRAMENTO, CAL., CITY CODE §9.44.860(a)(1) (2011).

288. MIAMI, FLA., CODE OF ORDINANCES §6-1(b) (2011).

289. KANSAS CITY, MO., CODE OF ORDINANCES §14-15(f) (2011).

290. TULSA, OKLA., CODE OF ORDINANCES §200(d), (e) (2011).

291. COLORADO SPRINGS, COLO., CITY CODE §6.7.106(D) (2011).

292. GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011).

from the property line: 20 cities require chickens to be kept away from the neighbor's property, even if the neighbor's actual house is much further away.²⁹⁶ Three cities require a setback from the street.²⁹⁷ Six cities ban chickens from the front yard.²⁹⁸ This adds up to more than 63, because several cities employ more than one kind of setback. Finally, several cities have unique setback requirements that will be discussed later.

a. Setbacks From Neighboring Buildings

Of the 56 cities that require that chickens be kept a certain distance away from neighboring residences,²⁹⁹ the setbacks range from 10³⁰⁰ to 500 feet.³⁰¹ The average of all of the setbacks is 80 feet,³⁰² although only one city, Phoenix, actually has a setback of 80 feet.³⁰³ The median and the mode are both 50 feet.³⁰⁴ The average is higher than both the median and the mode, because several cities that also require large lots, or agriculturally zoned land, also have very large setbacks.³⁰⁵ The mode, the most common set-

back, comprises 17 cities.³⁰⁶ After that, the most popular setbacks are the following:

- Fifteen cities have setbacks of less than 30 feet, with two at 30 feet,³⁰⁷ seven at 25 feet,³⁰⁸ six at 20 feet,³⁰⁹ and one at 10 feet.³¹⁰
- Thirteen cities have setbacks of 100 feet.³¹¹ Of those, three of them allow for smaller setback under certain conditions: St. Petersburg will allow for a smaller setback if the owner seeks permission from neighboring property owners; San Antonio will allow for a smaller setback with a permit; and Corpus Christi will allow for a smaller setback if the coop is enclosed.³¹²
- Seven cities have setbacks of more than 100 feet.³¹³ Of those, Mobile, Alabama, has a 150-foot setback, but allows chicken coops that were built before the ordinance passed to be grandfathered in.³¹⁴ Oklahoma City has a 200-foot setback and, puzzlingly, will waive these setbacks from horses, mules, donkeys, and pigs, but not for chickens.³¹⁵ Oklahoma City also has an additional 400-foot setback for roosters.³¹⁶

Several cities will shrink their setbacks under certain conditions. In what appears to be a thoughtful approach to requiring a neighbor's consent, four cities provide a standard setback, but provide relief from the setback if the owner gets permission from his neighbors to keep chickens.³¹⁷ And one city, San Antonio, as mentioned

OF ORDINANCES §4-57 (2011) (50 ft.); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.7(a) & (b) (no date listed) (50 ft.).

296. ANAHEIM, CAL., MUN. CODE §18.38.030.0202 (2011) (20 ft. from property line); BATON ROUGE, LA., CODE OF ORDINANCES §14-224(c)(1)(b) (2011) (10 ft. from property line); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007) (100 ft. from property line); BUFFALO, N.Y., CITY CODE §341-11.3 (2009) (18 inches from rear lot); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c) (2010) (25 ft. from property line); CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011) (20 ft. from property line); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(B) (2011) (5 ft. from side yard and 18 inches from rear yard); FRESNO, CAL., MUN. CODE §12-206.1 (2011) (100 ft. from property line); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011) (25 ft. from property line); JACKSONVILLE, FLA., ORDINANCE CODE §656.401 (2011) (50 ft. from property line); KANSAS CITY, MO., CODE OF ORDINANCES §14-15(f) (2011) (25 ft. from property line); MONTGOMERY, ALA., CODE OF ORDINANCES ch. 4 art. I (2011); *id.* app. C, art. VII (200 ft. from property line); PLANO, TEX., CODE OF ORDINANCES §3-204 (2011) (5 ft. from property line); PORTLAND, OR., CITY CODE §13.05.015(b) & (e) (2011) (50 ft. from residence or business where food is prepared); RIVERSIDE, CAL., CODE OF ORDINANCES §6.04.20 (2011) (20 ft. from property line); SEATTLE, WASH., MUN. CODE §23.42.052(c)(3) (2011) (10 ft. from property line); TAMPA, FLA., CODE OF ORDINANCES §19.76 (2008) (200 ft. from property line); TULSA, OKLA., CODE OF ORDINANCES §200(d) & (e) (2011) (50 ft., but 100 ft. if zoned agricultural); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.7(a) & (b) (no date listed) (250 ft. unless have neighbor's consent).

297. BAKERSFIELD, CAL., MUN. CODE §17.12.010-RS (2011) (100 ft.); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007) (300 ft.); BOS., MASS., CODE OF ORDINANCES §16-1.8A, ZONING, art. 8, No. 75 (2010) (100 ft.).

298. BUFFALO, N.Y., CITY CODE §341-11.3 (2009); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(B) (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4 (2011); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5(3)(g)-(j) (2011); PHOENIX, ARIZ., CITY CODE §8-7 (2011); SACRAMENTO, CAL., CITY CODE §9.44.860 (2011).

299. *See supra* note 295.

300. SEATTLE, WASH., MUN. CODE §23.42.052(c)(3) (2011).

301. RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011). Since Richmond also requires an acre of land to even own chickens, this setback doesn't exclude any additional would-be chicken owners.

302. *See supra* note 295.

303. PHOENIX, ARIZ., CITY CODE §8-10 (2011) (80 ft. unless have permission from neighbor).

304. *See supra* note 295.

305. BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007) (300 ft.); HONOLULU, HAW., REV. ORDINANCES §7-2.5(d) (1990) (300 ft.); and RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011) (500 ft.).

306. Anaheim; Arlington; Austin; Bakersfield; Baton Rouge; Fort Worth; Glendale, California; Greensboro; Lincoln; Long Beach (but 20 if just had one chicken); Portland; Riverside; San Diego; Stockton; Tacoma; Tucson; Washington.

307. EL PASO, TEX., MUN. CODE §7.24.030 (2011) (30 ft., but only 20 ft. if separated by a fence that is at least six ft.); GARLAND, TEX., CODE OF ORDINANCES §22.14(A) (2011).

308. ANCHORAGE, ALASKA, CODE OF ORDINANCES §§21.40.060 & 21.40.080 (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4(h)(1) (2011); JERSEY CITY, N.J., CODE OF ORDINANCES §90-6 (2011); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011); N.Y.C., MUN. CODE §161.09 (1990) (for poultry market coops only—poultry not intended for sale is not regulated); ROCHESTER, N.Y., CITY ORDINANCES §30-19(H) (no date listed).

309. BUFFALO, N.Y., CITY CODE §341-11.3 (2009); NEWARK, N.J., GENERAL ORDINANCES §6:2-35 (2010); OAKLAND, CAL., CODE OF ORDINANCES §6-04-320 (2011); SACRAMENTO, CAL., CITY CODE §9.44.860 (2011); SAN FRANCISCO, CAL., HEALTH CODE §37 (2011); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.815 (2007) (applying setback to all small animals, not just chickens).

310. SEATTLE, WASH., MUN. CODE §23.42.052(C) (2011).

311. Akron, Atlanta, Boston, Corpus Christi, Glendale, Grand Rapids, Hialeah, Houston, Kansas City, Miami, San Antonio, Santa Ana, St. Petersburg.

312. ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31 (2011) (100 ft. unless have permission from neighbors); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109(c) (2011) (100 ft. or 50 ft. with permit); CORPUS CHRISTI, TEX., CODE OF ORDINANCES §6-154 (2011) (100 ft. if not enclosed).

313. Mobile, Oklahoma, Tampa, Nashville, Birmingham, Honolulu, Richmond.

314. MOBILE, ALA., CODE OF ORDINANCES §7-88(d) (2011) (150 ft. if not grandfathered in), *but see id.* §7-103(d) (allowing for 20 ft. from the property line in a residential area).

315. OKLAHOMA CITY, OKLA., MUN. CODE §59-9350(F) & (I) (2011).

316. *Id.* §59-9350(H).

317. LAS VEGAS, NEV., MUN. CODE §7.38.050 (2011) (300 ft. without permission); PHOENIX, ARIZ., CITY CODE §8-10 (2011) (80 ft. without permission); ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31(d) (2011) (100 ft. without permission); TACOMA, WASH., MUN. CODE §§5.30.010 & 5.30.030 (2011) (50 ft. without permission).

above, will shrink its 100-foot setback to 50 feet if a permit is secured.³¹⁸

Two cities do not frame the setback as from a neighboring residence or building, but more specifically to a door or a window of the building. Both Buffalo and San Francisco have a 20-foot setback from any door or window of a building.³¹⁹

Several cities define the setback more broadly than a neighboring dwelling, and include schools, hospitals, and other businesses within the setback.³²⁰ Grand Rapids, Michigan, however, goes further; it has a 100-foot setback from any “dwelling unit, well, spring, stream, drainage ditch or drain.”³²¹ This, in effect, bans all chickens within the city.

b. Setbacks From Property Line

Twenty cities mandate setbacks from the property line;³²² those setbacks range from 18 inches³²³ to 250 feet.³²⁴ The average setback is 59 feet, but no city actually has such a setback. The closest are Jacksonville and Tulsa, which both have a setback of 50 feet.³²⁵ Again, a few cities with very large setbacks are raising the average.³²⁶ The median set-

back is 25 feet.³²⁷ And the mode, or most popular, setback is tied at either 20³²⁸ or 25 feet.³²⁹

Washington, D.C., which has the largest setback at 250 feet, allows relief from this setback if the owner has his neighbor’s consent to keep chickens.³³⁰

c. Setbacks From the Street

Three cities require chickens to be kept away from the street: Bakersfield, Birmingham, and Boston.³³¹ All of these setbacks are relatively large, ranging from 100 to 300 feet. Presumably, this is to stop chickens from being kept in the front yard or on a corner lot from a vantage point where passersby can easily see the coop. Bakersfield, provides a specific setback for corner lots, requiring that chicken coops be kept at least 10 feet away from the street side of a corner lot.³³² Another way that cities do this, perhaps more effectively, is by simply barring chickens from front yards, as six cities do.³³³

d. Other Kinds of Setbacks

While many ordinances exclude the owner’s house from the definition of a dwelling,³³⁴ two cities provide a separate setback requirement for an owner’s own dwelling. Atlanta requires chickens to be kept at least five feet away from an owner’s own house,³³⁵ and Los Angeles requires that the chickens be kept at least 20 feet away from the owner’s house.³³⁶

Three cities do not provide for explicit setbacks, but leave each setback up to some city official’s discretion. In Wichita, the chief of police can examine the property and determine the setback.³³⁷ In St. Paul, it is up to the Health Inspector’s discretion.³³⁸ And, in Fremont, it is the Animal Services Supervisor who has discretion.³³⁹

318. SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109 (2011).

319. BUFFALO, N.Y., CITY CODE §341-11 (2009); SAN FRANCISCO, CAL., HEALTH CODE §37 (2011).

320. *E.g.*, FORT WORTH, TEX., CODE OF ORDINANCES §11A-22 (2011); GLENDALE, CAL., MUN. CODE §6.04.130 (2011).

321. GRAND RAPIDS, MICH., CODE OF ORDINANCES §8.582(2) (2010).

322. ANAHEIM, CAL., MUN. CODE §18.38.030.0202 (2011) (20 ft. from property line); BATON ROUGE, LA., CODE OF ORDINANCES §14-224(c)(1)(b) (2011) (10 ft. from property line); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007) (100 ft. from property line); BUFFALO, N.Y., CITY CODE §341-11.3 (2009) (18 inches from rear lot); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c) (2010) (25 ft. from property line); CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011) (20 ft. from property line); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(B) (2011) (5 ft. from side yard and 18 inches from rear yard); FRESNO, CAL., MUN. CODE §12-206.1 (2011) (100 ft. from property line); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011) (25 ft. from property line); JACKSONVILLE, FLA., ORDINANCE CODE §656.401 (2011) (50 ft. from property line); KANSAS CITY, MO., CODE OF ORDINANCES §14-15(f) (2011) (25 ft. from property line); MONTGOMERY, ALA., CODE OF ORDINANCES ch. 4 art. I (2011); *id.* at app. C, art. VII (200 ft. from property line); PLANO, TEX., CODE OF ORDINANCES §3-204 (2011) (5 ft. from property line); PORTLAND, OR., CITY CODE §13.05.015(b) & (e) (2011) (50 ft. from residence or business where food is prepared); RIVERSIDE, CAL., CODE OF ORDINANCES §6.04.20 (2011) (20 ft. from property line); SEATTLE, WASH., MUN. CODE §23.42.052(c)(3) (2011) (10 ft. from property line); TAMPA, FLA., CODE OF ORDINANCES §19.76 (2008) (200 ft. from property line); TULSA, OKLA., CODE OF ORDINANCES §200(d) & (e) (2011) (50 ft., but 100 ft. if zoned agricultural); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.7(a) & (b) (no date listed) (250 ft. unless have neighbor’s consent).

323. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02 (2011); BUFFALO, N.Y., CITY CODE §341-11.3 (2009).

324. WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.7 (no date listed) (250 ft. setback without consent of neighbors).

325. JACKSONVILLE, FLA., ORDINANCE CODE §656.401 (2011) (50 ft. from property line); TULSA, OKLA., CODE OF ORDINANCES §200(d), (e) (2011).

326. TULSA, OKLA., CODE OF ORDINANCES §200(d), (e) (2011) (200 ft.); TAMPA, FLA., CODE OF ORDINANCES §19.76 (2008) (200 ft.); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.7(a) & (b) (no date listed) (250 ft.).

327. CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c)(1), (f) (2010); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011); KANSAS CITY, MO., CODE OF ORDINANCES §14-15 (2011).

328. ANAHEIM, CAL., MUN. CODE §18.38.030.0202 (2011); CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011); RIVERSIDE, CAL., CODE OF ORDINANCES §6.04.20 & tit. 17(2011).

329. *See supra* note 327.

330. WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.7(b) (no date listed).

331. BOS., MASS., CODE OF ORDINANCES §16-1.8A, ZONING, art. 8, No. 75 (2010); BAKERSFIELD, CAL., MUN. CODE §17.12.010-RS (2011); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007).

332. BAKERSFIELD, CAL., MUN. CODE §17.12.010-RS (2011).

333. BUFFALO, N.Y., CITY CODE §341-11.3 (2009); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(B) (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4 (2011); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5(3)(i) (2011); PHOENIX, ARIZ., CITY CODE §8-7 (2011); SACRAMENTO, CAL., CITY CODE §9.44.860 (2011).

334. *E.g.*, AUSTIN, TEX., CODE OF ORDINANCES §3.2.16 (2011) (50 ft.); ANAHEIM, CAL., MUN. CODE §18.38.030.0202 (2011).

335. ATLANTA, GA., CODE OF ORDINANCES §18-7 (2011).

336. L.A., CAL., MUN. CODE §§53.58 & 53.59 (2011) (Department of Animal Services promulgated regulations requiring coops to be 20 ft. from owner’s dwelling).

337. WICHITA, KAN., CODE OF ORDINANCES §6.04.173(c) (2011).

338. ST. PAUL, MINN., §198.05 (2011).

339. FREMONT, CAL., MUN. CODE §3-5803 (2011).

Finally, St. Louis wins for the most eccentric setback. It doesn't have any setbacks for neighboring buildings, or the property line, but it does require that chickens be kept out of the milking barn.³⁴⁰

5. Coop Requirements

Many cities regulate how the chicken coop should be built and maintained. There is a broad range in these regulations, and no two ordinances are alike. Some simply decree that it is unlawful for chickens to run at large, and thus implicitly mandate that the coop be constructed in a secure enough way so that chickens can't easily escape. Some appear to look out for animal welfare by decreeing that chickens should be provided adequate food, water, and shelter in sanitary conditions. And, some appear to try to proactively head off any potential problems by regulating the dimensions of the coop, how it must be built, and exactly how often it must be cleaned. First, some of the more common elements in these statutes will be explored. Then, more unique elements will be discussed.

a. No Running at Large

First, 33 cities prohibit chickens particularly or animals in general from running at large.³⁴¹ Most of those cities simply prohibit chickens from running at large, but some provide for a little more nuance. For instance, Cincinnati does not allow chickens to run at large "so as to do damage to gardens, lawns, shrubbery or other private property."³⁴² So, presumably, a chicken could run free, as long as it didn't damage anything. Five cities, instead of making it unlawful to run at large, provide that the chicken must be kept enclosed in the coop and

not allowed to escape.³⁴³ And two cities, Richmond and Stockton, frame it in terms of trespass and do not allow chicken trespassers.³⁴⁴ In any event, all of these statutes imply that a coop, minimally, must be constructed so that the birds cannot escape.

b. Coops Must Be Clean and Sanitary

Forty-six cities impose some sort of cleaning requirements on chicken owners.³⁴⁵ While many cities have cleaning requirements that apply to any animal,³⁴⁶ these cities ordinances are, for the most part, specific to chickens.

Nearly all of these ordinances mandate that the chicken coop be kept in a clean and sanitary condition and free from offensive odors. The degree to which each city regulates this, however, varies. Most cities have a variation on a general requirement that the coop be clean or sani-

343. BUFFALO, N.Y., CITY CODE §341-11.3 (2009); CLEVELAND, OHIO, CODIFIED ORDINANCES §603.01 (2011); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(c)(3) (2011); FRESNO, CAL., MUN. CODE §10.205 (2011); LOUISVILLE, KY., METRO CODE §91.001 NUISANCE (2011).

344. RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011) (providing that fowl may not trespass); STOCKTON, CAL., MUN. CODE §6.04.130 (2011) (fowl [shall not] to run or go upon the public or private premises of any other person, firm, or corporation; or upon any park or public street or highway within the city).

345. ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-2-2 (2011); AUSTIN, TEX., CODE OF ORDINANCES §10-5-21 (2011); BATON ROUGE, LA., CODE OF ORDINANCES §14:224(c)(1)(c) & (d) (2011); BUFFALO, N.Y., CITY CODE §341-11.3(C) (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102 (2010); CHICAGO, ILL., CODE OF ORDINANCES §7-12-290(b) (2011); CINCINNATI, OHIO, CODE OF ORDINANCES ch. 701-35 (2011); DALLAS, TEX., CODE OF ORDINANCES §7-3.2 (2011); DENVER, COLO., MUN. CODE §8-92 (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4(h) (2011); EL PASO, TEX., MUN. CODE §7.24.030 (2011); FORT WAYNE, IND., CODE OF ORDINANCES §91.017 (2011); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(h) (2011); FRESNO, CAL., MUN. CODE §10.203 (2011); GARLAND, TEX., CODE OF ORDINANCES §22.17 (2011); GLENDALE, ARIZ. MUN. CODE §25-24 (2010); GLENDALE, CAL., MUN. CODE §6.04.020 (2011); HOUSTON, TEX., CODE OF ORDINANCES §6-36 (2010); IRVING, TEX., CODE OF ORDINANCES §6-6 (2011); JERSEY CITY, N.J., CODE OF ORDINANCES §90-8 (2011); KANSAS CITY, MO., CODE OF ORDINANCES §§14-18 & 14-19 (2011); LAS VEGAS, NEV., MUN. CODE §7.36.050 (2011); LINCOLN, NEB., MUN. CODE §6.04.050 (2011); LONG BEACH, CAL., MUN. CODE §6.20.070 (2011); MEMPHIS, TENN., CODE OF ORDINANCES §8-8-1 (2009); MESA, ARIZ., CITY CODE §8-6-22 (2011); MIAMI, FLA., CODE OF ORDINANCES §6-1 (2011); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011); MOBILE, ALA., CODE OF ORDINANCES §7-103 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1 (2011); NEWARK, N.J., GENERAL ORDINANCES §6:2-35 (2010); OMAHA, NEB., CODE OF ORDINANCES §6-261 (2011); PHOENIX, ARIZ., CITY CODE §8-7(d) (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88(d) (2011); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109 (2011); SAN DIEGO, CAL., MUN. CODE §42.0709 (2011); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.755 (2007); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b) (2011); SCOTTSDALE, ARIZ., CODE OF ORDINANCES §4-18 (2011); ST. PAUL, MINN., §198.04-05 (2011); ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31(c) (2011); TOLEDO, OHIO, MUN. CODE §1705.07 (2011); TUCSON, ARIZ., CODE OF ORDINANCES §4-58 (2011); TULSA, OKLA., CODE OF ORDINANCES §200(d), (e) & 406 (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.10-13 (no date listed); WICHITA, KAN., CODE OF ORDINANCES §6.04.174 (2011).

346. *E.g.*, ANCHORAGE, ALASKA, CODE OF ORDINANCES §17.10.030 (2011); ATLANTA, GA., CODE OF ORDINANCES §18-8 (2011); FREMONT, CAL., MUN. CODE §3-5600 (2011); MONTGOMERY, ALA., CODE OF ORDINANCES §4-3 (2011); NORFOLK, VA., CODE OF ORDINANCES §6.1-2 ADEQUATE SHELTER (2011); PLANO, TEX., CODE OF ORDINANCES §4-51 (2011); TAMPA, FLA., CODE OF ORDINANCES §19.77 (2008).

340. ST. LOUIS, MO., CODE OF ORDINANCES §11.46.410 (2010).

341. AKRON, OHIO, CODE OF ORDINANCES §92.01 (2011); ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-4-3(D) (2011); ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §5.02(e) (2010); BUFFALO, N.Y., CITY CODE §341-11.3 (2009); CINCINNATI, OHIO, CODE OF ORDINANCES §701-33 (2011); CLEVELAND, OHIO, CODIFIED ORDINANCES §603.01 (2011); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(c)(3) (2011); FRESNO, CAL., MUN. CODE §10.205 (2011); GARLAND, TEX., CODE OF ORDINANCES §22.03 (2011); INDIANAPOLIS, IND., REV. CODE §531.102 (2011); IRVING, TEX., CODE OF ORDINANCES §6-2 (2011); LAS VEGAS, NEV., MUN. CODE §7.36.030 (2011); LEXINGTON-FAYETTE, KY., CODE OF ORDINANCES §4-10 (2011); LONG BEACH, CAL., MUN. CODE §6.20.080 (2011); LOUISVILLE, KY., METRO CODE ch. 91.001 NUISANCE (2011); MEMPHIS, TENN., CODE OF ORDINANCES §8-8-2 (2009); MESA, ARIZ., CITY CODE §8-6-21(I) (2011); MIAMI, FLA., CODE OF ORDINANCES §6-2 (2011); NEWARK, N.J., GENERAL ORDINANCES §6:2-34 (2010); OAKLAND, CAL., CODE OF ORDINANCES §6-04-200 (2011); NORFOLK, VA., CODE OF ORDINANCES §6.1-7 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-263 (2011); PITTSBURGH, PA., CODE OF ORDINANCES §635.02 (2011); RALEIGH, N.C., CODE OF ORDINANCES §12-3004 (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011); ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31(b) (2011); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.750 (2007); SPOKANE, WASH., MUN. CODE §10.24 (no date listed); STOCKTON, CAL., MUN. CODE §6.04.130 (2011); TACOMA, WASH., MUN. CODE §5.30.020 (2011); TOLEDO, OHIO, MUN. CODE §505.10 (2011); TUCSON, ARIZ., CODE OF ORDINANCES §4-55 (2011); WICHITA, KAN., CODE OF ORDINANCES §6.04.173 (2011).

342. CINCINNATI, OHIO, CODE OF ORDINANCES §701-33 (2011).

tary.³⁴⁷ Most cities also expressly prohibit odors or offensive odors.³⁴⁸

Some cities are a little more explicit and require that the coop be cleaned regularly or routinely.³⁴⁹ Some cities go further and require the coop to be clean at all times.³⁵⁰ And some cities regulate precisely how often the coop must be cleaned. Houston is the most fastidious. In Houston, the coop must be cleaned once per day, limed once every other day, and all containers containing chicken manure must be properly disposed of once per week.³⁵¹ Milwaukee also requires coops to be cleaned daily and additionally “as is necessary.”³⁵² The next two most fastidious cities, Des Moines and Santa Ana, require that the coop be cleaned at least every other day.³⁵³ Seven cities require that the coop be cleaned at least twice a week.³⁵⁴ And another four cities require that the coop be cleaned at least once a week.³⁵⁵ And, splitting the difference, Jersey City requires the coop to be cleaned once a week from November to May, and twice a week from May to November.³⁵⁶

Many cities also have a particular concern with either flies or rodents. Fourteen cities specify that attracting flies will be a nuisance.³⁵⁷ Cities that specifically mention flies

within their ordinances are congregated mostly in the South or the Southwest.³⁵⁸ Several mandate that chicken feed or chicken waste be kept in fly-tight containers.³⁵⁹ Miami requires that a chicken’s droppings be treated to destroy fly maggots before it can be used as fertilizer.³⁶⁰ Mesa has four cleaning requirements all designed to keep flies away: (1) droppings must be removed twice weekly; (2) “fowl excreta” must be stored in fly-tight containers; (3) water and feed troughs must be kept sanitary; and (4) food and food waste must be kept in a fly-proof container—all explicitly “to prevent the breeding of flies.”³⁶¹

Kansas City’s concern with flies will stand in the way of keeping hens for eggs that would meet organic standards; it mandates the use of insecticide by providing that “all structures, pens or coops wherein fowl are kept or permitted to be shall be sprayed with such substances as will eliminate such insects.”³⁶² Because chickens eat insects, and because the protein they gain from eating those insects has a beneficial effect on the nutritional value of their eggs, this regulation stands at odds with a reason many people are interested in keeping backyard hens.

Glendale, California, appears to be the most concerned about flies, going so far as to mandate that the owner adhere to impossible building requirements. Glendale requires chickens to be kept in a fly-proof enclosure; it defines fly-proof quite specifically as “a structure or cage of a design which prevents the entry therein or the escape therefrom of any bee, moth or fly.”³⁶³ Because a chicken must enter into and exit from its enclosure, and because one would want the chicken to have access to fresh air and sunlight, such a structure presents itself as an architectural impossibility.

Ten cities are particularly concerned with rats.³⁶⁴ Of these cities, several are concerned about both flies and rats.³⁶⁵ Most of these cities simply mandate that the coop be free of rats,³⁶⁶ but three cities require that food be kept

347. *E.g.*, AUSTIN, TEX., CODE OF ORDINANCES §10-5-21 (2011); FRESNO, CAL., MUN. CODE §10.203 (2011); LONG BEACH, CAL., MUN. CODE §6.20.070 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-261 (2011); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109 (2011); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.755 (2007); TOLEDO, OHIO, MUN. CODE §1706.07 (2011); WICHITA, KAN., CODE OF ORDINANCES §6.04.174 (2011).

348. *E.g.*, AUSTIN, TEX., CODE OF ORDINANCES §10-5-21 (2011); CINCINNATI, OHIO, CODE OF ORDINANCES §701-35 (2011); DALLAS, TEX., CODE OF ORDINANCES §7-3.2 (2011); FORT WAYNE, IND., CODE OF ORDINANCES §91.017 (2011); FRESNO, CAL., MUN. CODE §10.203 (2011); GARLAND, TEX., CODE OF ORDINANCES §22.17 (2011); KANSAS CITY, MO., CODE OF ORDINANCES §§14-18 & 14-19 (2011); LAS VEGAS, NEV., MUN. CODE §7.36.050 (2011); LINCOLN, NEB., MUN. CODE §6.04.050 (2011); MIAMI, FLA., CODE OF ORDINANCES §6-1 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-261 (2011); ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31(c) (2011); TOLEDO, OHIO, MUN. CODE §1705.07 (2011); WICHITA, KAN., CODE OF ORDINANCES §6.04.174 (2011).

349. *E.g.*, BATON ROUGE, LA., CODE OF ORDINANCES §14:224(c)(1)(c) & (d) (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1 (2011); TULSA, OKLA., CODE OF ORDINANCES §§200(d), (e) & 406 (2011).

350. *E.g.*, BUFFALO, N.Y., CITY CODE §341-11.3 (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c) (2010).

351. HOUSTON, TEX., CODE OF ORDINANCES §6-36 (2010).

352. MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011).

353. DES MOINES, IOWA, CODE OF ORDINANCES §18-137 (2011); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b) (2011).

354. GARLAND, TEX., CODE OF ORDINANCES §22.17 (2011); GLENDALE, ARIZ. MUN. CODE §25-24(h) (2010); IRVING, TEX., CODE OF ORDINANCES §6-6 (2011); MESA, ARIZ., CITY CODE §8-6-22 (2011); MIAMI, FLA., CODE OF ORDINANCES §6-1 (2011); PHOENIX, ARIZ., CITY CODE §8-7(d) (2011); SCOTTSDALE, ARIZ., CODE OF ORDINANCES §4-18 (2011).

355. ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-2-2(B)(1) (2011); LINCOLN, NEB., MUN. CODE §6.04.050 (2011); NEWARK, N.J., GENERAL ORDINANCES §6:2-35 (2010); SAN DIEGO, CAL., MUN. CODE §42.0709 (2011).

356. JERSEY CITY, N.J., CODE OF ORDINANCES §90-8(C) (2011).

357. AUSTIN, TEX., CODE OF ORDINANCES §10-5-21 (2011); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(h) (2011); GARLAND, TEX., CODE OF ORDINANCES §22.17 (2011); GLENDALE, CAL., MUN. CODE §6.04.040 (2011); HOUSTON, TEX., CODE OF ORDINANCES §6-36 (2010); KANSAS CITY, MO., CODE OF ORDINANCES §14-19 (2011); LAS VEGAS, NEV., MUN. CODE §7.36.050 (2011); LINCOLN, NEB., MUN. CODE §6.04.050 (2011); MESA, ARIZ., CITY CODE §8-6-23 (2011); MIAMI, FLA., CODE OF ORDINANCES §6-1 (2011); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.755 (2007); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b) (2011); SCOTTSDALE,

ARIZ., CODE OF ORDINANCES §§4-17 & 4-18 (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.11-13 (no date listed).

358. *See supra* note 357.

359. HOUSTON, TEX., CODE OF ORDINANCES §6-36 (2010); MESA, ARIZ., CITY CODE §8-6-23 (2011); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b) (2011).

360. MIAMI, FLA., CODE OF ORDINANCES §6-1 (2011).

361. MESA, ARIZ., CITY CODE §8-6-23 (2011).

362. KANSAS CITY, MO., CODE OF ORDINANCES §14-15(d) (2011).

363. GLENDALE, CAL., MUN. CODE §6.04.040 (2011).

364. BUFFALO, N.Y., CITY CODE §341-11.13(B)(8) (2009); CINCINNATI, OHIO, CODE OF ORDINANCES §§604.17 & 00053-11 (2011); DENVER, COLO., MUN. CODE §8-92 (2011); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(h) (2011); KANSAS CITY, MO., CODE OF ORDINANCES §14-15 (2011); LAS VEGAS, NEV., MUN. CODE §7.36.050 (2011); MOBILE, ALA., CODE OF ORDINANCES §7-103 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1 (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011); SCOTTSDALE, ARIZ., CODE OF ORDINANCES §4-17 (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.12 & 902.13 (no date listed).

365. *E.g.*, CINCINNATI, OHIO, CODE OF ORDINANCES §§604.17 & 00053-11 (2011); KANSAS CITY, MO., CODE OF ORDINANCES §14-15 (2011); LAS VEGAS, NEV., MUN. CODE §7.36.050 (2011); MOBILE, ALA., CODE OF ORDINANCES §7-102 (2011); SCOTTSDALE, ARIZ., CODE OF ORDINANCES §§4-17 & 4-18 (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.12 (no date listed).

366. CINCINNATI, OHIO, CODE OF ORDINANCES §00053-11 (2011); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(d) (2011); KANSAS CITY, MO., CODE OF ORDINANCES §14-15 (2011); LAS VEGAS, NEV., MUN. CODE

within a rat-proof container.³⁶⁷ Denver appears to have the same antipathy toward rats as Glendale does toward flies. Denver requires that chickens be kept in a rat-proof building. A rat-proof building is one that is made with no “potential openings that rats could exploit and built with “material impervious to rat-gnawing.”³⁶⁸ While an opening for a rat would necessarily be bigger than an opening for a fly, because chickens will still have to enter and exit the structure, Denver appears to demand similarly impossible architecture.

c. Coop Construction Requirements

Thirty-seven cities regulate the construction of the chicken coop.³⁶⁹ Like the cleaning regulations, many of these cities’ ordinances are not particular to chickens, but cover any structure meant to house an animal.³⁷⁰ But, as demonstrated below, most specifically regulate chicken coops.

Most of these ordinances require that chickens be kept within an enclosure, and many add that the enclosure must

be secure.³⁷¹ Some further require that the enclosure keep animals protected from inclement weather.³⁷² Outside of this, however, there is no consistency to these statutes.

Of the cities that have promulgated shelter requirements specific to chickens, nine of them mandate that each chicken be given a specific amount of space.³⁷³ Of these cities, the average amount of space per chicken is five square feet, although no city actually mandates that.³⁷⁴ The median amount of space per chicken is four square feet. The mode, or most popular amount, is also four square feet.³⁷⁵ The next most popular is between two and two-and-one-half square feet.³⁷⁶ Cleveland requires 10 square feet per chicken, but specifies that this is for the outdoor run, not for the enclosed coop.³⁷⁷ Rochester also takes the difference between a chicken coop and a chicken run into account and requires at least four square feet per chicken in both the coop and the run.³⁷⁸ Long Beach does not give a particular square footage per chicken, but requires that each coop be at least twice as big as the bird.³⁷⁹

Instead of regulating coop size so specifically, some cities require that the coops not be cramped or overcrowded.³⁸⁰ Others state that the coop should be big enough for the chicken to move about freely,³⁸¹ or have space to stand,

§7.36.050 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1 (2011); SCOTTSDALE, ARIZ., CODE OF ORDINANCES §4-17 (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.12 & 902.13 (no date listed).

367. BUFFALO, N.Y., CITY CODE §341-11.3 (2009); DES MOINES, IOWA, CODE OF ORDINANCES §18-4(h) (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011).

368. DENVER, COLO., MUN. CODE §§40.41 & 40.51 (2011).

369. ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-2-2 (2011); ANCHORAGE, ALASKA, CODE OF ORDINANCES §17.05.010 (2011); ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §1.01 SECURE ENCLOSURE (2010); ATLANTA, GA., CODE OF ORDINANCES §18-7 (2011); AUSTIN, TEX., CODE OF ORDINANCES §3-2-11 (2011); BALTIMORE, MD., HEALTH CODE §10-409 (2011); BUFFALO, N.Y., CITY CODE §341-11.3 (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c) (2010); CINCINNATI, OHIO, CODE OF ORDINANCES §00053-11 (2011); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(a)(1)(D) & (E) (2011); COLORADO SPRINGS, COLO., CITY CODE §6.7.106(D) (2011); CORPUS CHRISTI, TEX., CODE OF ORDINANCES §6-154 (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-3(h) (2011); FRESNO, CAL., MUN. CODE §10.205 (2011); GLENDALE, CAL., MUN. CODE §6.04.040 (2011); HOUSTON, TEX., CODE OF ORDINANCES §6-36 (2010); IRVING, TEX., CODE OF ORDINANCES §6-1 SHELTER (2011); JERSEY CITY, N.J., CODE OF ORDINANCES §90-8 (2011); KANSAS CITY, MO., CODE OF ORDINANCES §14-15 (2011); LINCOLN, NEB., MUN. CODE §6.04.050 (2011); LONG BEACH, CAL., MUN. CODE §6.20.100 (2011); LOUISVILLE, KY., METRO CODE §91.001 RESTRAINT (2011); MADISON, WIS., CODE OF ORDINANCES §28.08 (no date listed); MOBILE, ALA., CODE OF ORDINANCES §7-88 (2011); MONTGOMERY, ALA., CODE OF ORDINANCES §4-161 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1 (2011); NORFOLK, VA., CODE OF ORDINANCES §6.1-2 (2011); OKLAHOMA CITY, OKLA., MUN. CODE §8-96(c) & (e) (2011); PLANO, TEX., CODE OF ORDINANCES §4-1 SECURE ENCLOSURE & SHELTER (2011); ROCHESTER, N.Y., CITY ORDINANCES §30-19 (no date listed); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-9 (2011); SAN JOSE, CAL., CODE OF ORDINANCES §§7.20.020 & 7.60.760 (2007); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b) (2011); SEATTLE, WASH., MUN. CODE §23.42.052(c)(3) (2011); TACOMA, WASH., MUN. CODE §17.01.010 (2011); TUCSON, ARIZ., CODE OF ORDINANCES §4-3(2) (c) (2011); TULSA, OKLA., CODE OF ORDINANCES §406 (2011).

370. ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-2-2 (2011); ANCHORAGE, ALASKA, CODE OF ORDINANCES §17.05.010 (2011); ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §1.01 SECURE ENCLOSURES (2010); BALTIMORE, MD., HEALTH CODE §10-409 (2011); IRVING, TEX., CODE OF ORDINANCES §6-1 (2011); MOBILE, ALA., CODE OF ORDINANCES §7-15 (2011); MONTGOMERY, ALA., CODE OF ORDINANCES §4-161 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1 (2011); NORFOLK, VA., CODE OF ORDINANCES §6.1-2 (2011); PLANO, TEX., CODE OF ORDINANCES §4-1 (2011); TUCSON, ARIZ., CODE OF ORDINANCES §4-3(2)(c) (2011).

371. *E.g.*, ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-2-2 (2011); ANCHORAGE, ALASKA, CODE OF ORDINANCES §17.05.010 (2011); ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §1.01 SECURE ENCLOSURES (2010); ATLANTA, GA., CODE OF ORDINANCES §18-7 (2011); AUSTIN, TEX., CODE OF ORDINANCES §3-2-11 (2011); BUFFALO, N.Y., CITY CODE §341-11.3 (2009); DES MOINES, IOWA, CODE OF ORDINANCES §18-3(h) (2011); GLENDALE, CAL., MUN. CODE §6.04.040 (2011); IRVING, TEX., CODE OF ORDINANCES §6-1 (2011); KANSAS CITY, MO., CODE OF ORDINANCES §14-15 (2011); LOUISVILLE, KY., METRO CODE §91.001 (2011); MADISON, WIS., CODE OF ORDINANCES §28.08 (no date listed); MONTGOMERY, ALA., CODE OF ORDINANCES §4-161 (2011); NORFOLK, VA., CODE OF ORDINANCES §6.1-2 (2011); PLANO, TEX., CODE OF ORDINANCES §4-1 (2011); TACOMA, WASH., MUN. CODE §17.01.010 (2011).

372. *E.g.*, NORFOLK, VA., CODE OF ORDINANCES §6.1-2 (2011) (providing that a shelter must protect “each animal from injury, rain, sleet, snow, hail, direct sunlight”); PLANO, TEX., CODE OF ORDINANCES §4-1 (2011) (providing that fowl should be housed in a “structure that is capable of providing cover and protection from the weather”); TULSA, OKLA., CODE OF ORDINANCES §406 (2011) (“Natural or artificial shelters appropriate to the local climactic conditions for the particular species of animal or fowl shall be provided for all animals or fowl kept outdoors.”).

373. ATLANTA, GA., CODE OF ORDINANCES §18-7(1)(d) (2011) (2 sq. ft.); BUFFALO, N.Y., CITY CODE §341-11.3(B)(3) (2009) (2 sq. ft.); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c) (2010) (4 sq. ft.); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(D) & (E) (2011) (10 sq. ft.); COLORADO SPRINGS, COLO., CITY CODE §6.7.106(D) (2011) (4 sq. ft.); LONG BEACH, CAL., MUN. CODE §6.20.100 (2011) (twice the size of the fowl); MOBILE, ALA., CODE OF ORDINANCES §7-88 (2011) (15 sq. ft.); ROCHESTER, N.Y., CITY ORDINANCES §30-19 (no date listed) (4 sq. ft.); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b)(3) (2011) (2.5 sq. ft.).

374. *See supra* note 373.

375. CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c) (2010); COLORADO SPRINGS, COLO., CITY CODE §6.7.106(D) (2011); ROCHESTER, N.Y., CITY ORDINANCES §30-19 (no date listed).

376. ATLANTA, GA., CODE OF ORDINANCES §18-7(1)(d) (2011); BUFFALO, N.Y., CITY CODE §341-11.3(B)(3) (2009); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b)(3) (2011).

377. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(D) & (E) (2011).

378. ROCHESTER, N.Y., CITY ORDINANCES §30-19 (no date listed).

379. LONG BEACH, CAL., MUN. CODE §6.20.100 (2011).

380. *E.g.*, CINCINNATI, OHIO, CODE OF ORDINANCES §701-35 (2011).

381. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(D) (2011).

turn around, and lie down.³⁸² Des Moines is unique, in that it looks to state or national standards for the coop size, providing that “such enclosures shall be of sufficient size to house the number of animals or fowl permitted by state or national standards.”³⁸³

Some cities also mandate how large the coop can be. The coop sizes also lack uniformity—both Buffalo and Cleveland provide that the coop can be no larger than 32 square feet, but Cleveland will allow the coop to be up to 15 feet high, while Buffalo caps height at seven feet.³⁸⁴ Seattle allows for up to 1,000 square feet and caps the height at 12 feet.³⁸⁵ Finally, Charlotte is the only city that provides for a minimum height by requiring the coops to be at least 18 inches high.³⁸⁶

Other requirements that turn up in more than one city is that the coop’s floor be impervious,³⁸⁷ the coop be adequately ventilated,³⁸⁸ and the coop be kept dry or allow for drainage.³⁸⁹ Some cities mandate that the enclosure protect the chickens from predators.³⁹⁰ And, Buffalo, Cleveland, and Colorado Springs require that the chickens have access to an outdoor run.³⁹¹

Two cities stand at odds on the issue of keeping chickens within solid walls. Baltimore prohibits chickens from being confined in a cage entirely of solid walls,³⁹² while Corpus Christi, to avoid large setbacks, requires that chickens be confined entirely within solid walls.³⁹³

And some cities have entirely unique ordinances. Irving is concerned with protecting chickens from inclement weather; it requires protection from the direct rays of the

sun when the temperature is over 90 degrees and protection from direct exposure to wind when the temperature is below 50 degrees.³⁹⁴ Jersey City’s ordinance stands out for its thoughtfulness.³⁹⁵ It requires that the coop contain windows if possible, that the coop be white-washed or painted, and that the coop contain removable perches and nests, so that they can be cleaned on a regular basis.³⁹⁶ Rochester does not allow fowl to be kept in a cellar.³⁹⁷ And San Antonio requires that the coop be built so that the chicken’s feet do not fall through the floor.³⁹⁸

d. Giving Authority Over Coop Requirements to a City Official

Instead of legislating coop requirements through City Council, four cities delegate to some other city official. San Francisco requires the coop structure to be approved by the Department of Health³⁹⁹; Washington, D.C., assigns it to the Director of the Department of Human Services.⁴⁰⁰ Columbus requires its Health Commissioner to approve the structure.⁴⁰¹ St. Louis allows its Animal Health Commissioner to set standards for coop construction.⁴⁰² And finally, Rochester mandates that the coop will, at all times, be subject to inspection and subject to the orders of its Chief of Police.⁴⁰³

e. Feed and Water Requirements

Eleven cities are concerned that chickens receive enough food and water.⁴⁰⁴ Most of these simply mandate that chickens receive adequate or sanitary food and water, but three of the cities show special concern with the chicken’s welfare. Long Beach and Los Angeles require chickens to be given water every 12 hours.⁴⁰⁵ Memphis and Omaha require that the chickens not only be given sufficient food but also “wholesome” food and water.⁴⁰⁶ And Buffalo requires that chickens be fed only through an approved

382. LONG BEACH, CAL., MUN. CODE §6.20.100 (2011) (providing that animals must have enough space to stand in a naturally erect position); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1(a)(2) (2011); PLANO, TEX., CODE OF ORDINANCES §4-1 SECURE ENCLOSURE & SHELTER (2011); TUCSON, ARIZ., CODE OF ORDINANCES §4-3(2)(c) (2011).

383. DES MOINES, IOWA, CODE OF ORDINANCES §18-3(h) (2011).

384. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(D) (2011); BUFFALO, N.Y., CITY CODE §341-11.3(B)(7) (2009).

385. SEATTLE, WASH., MUN. CODE §23.42.052(c)(3) (2011).

386. CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c) (2010).

387. *E.g.*, ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §1.01 SECURE ENCLOSURE (2010); GLENDALE, CAL., MUN. CODE §6.04.040 (2011); LINCOLN, NEB., MUN. CODE §6.04.050 (2011) (requiring that, if a coop is less than 7,500 square feet, that the flooring be made of hard surface material); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1(a)(1) (2011); PLANO, TEX., CODE OF ORDINANCES §4-1 SECURE ENCLOSURE & SHELTER (2011); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b)(2) (2010) (providing that the “floors of every such building shall be smooth and tight”).

388. *E.g.*, BUFFALO, N.Y., CITY CODE §341-11.3(B)(7) (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c) (2010); JERSEY CITY, N.J., CODE OF ORDINANCES §90-8 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1(a)(1) (2011); PLANO, TEX., CODE OF ORDINANCES §4-1 SECURE ENCLOSURE & SHELTER (2011).

389. *E.g.*, JERSEY CITY, N.J., CODE OF ORDINANCES §90-8 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1(a)(1) (2011); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b)(2) (2011).

390. BUFFALO, N.Y., CITY CODE §341-11.3(B)(3) & (4) (2009); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(D). *See also* Nashville-Davidson, Memo from John Cooper, Director Metropolitan Council Office, to All Members of Metropolitan Council (Sept. 1, 2009) (on file with author) (providing that coops must be kept in a predator-proof enclosure).

391. BUFFALO, N.Y., CITY CODE §341-11.3(B)(1) (2009); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(D) & (E) (2011); COLORADO SPRINGS, COLO., CITY CODE §6.7.106(D) (2011).

392. BALTIMORE, MD., HEALTH CODE §10-409 (2011).

393. CORPUS CHRISTI, TEX., CODE OF ORDINANCES §6-154 (2011).

394. IRVING, TEX., CODE OF ORDINANCES §6-1 SHELTER (2011).

395. JERSEY CITY, N.J., CODE OF ORDINANCES §90-8 (2011).

396. *Id.*

397. ROCHESTER, N.Y., CITY ORDINANCES §30-19 (no date listed).

398. SAN ANTONIO, TEX., CODE OF ORDINANCES §5-9 (2011).

399. SAN FRANCISCO, CAL., HEALTH CODE §37(b) (2011).

400. WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.7(c) (no date listed).

401. COLUMBUS, OHIO, CITY CODE §221.05(b) (2011).

402. ST. LOUIS, MO., CODE OF ORDINANCES §10.20.016 (2010).

403. ROCHESTER, N.Y., CITY ORDINANCES §30-19 (no date listed).

404. BATON ROUGE, LA., CODE OF ORDINANCES §14:224(c)(1)(d) (2011); BUFFALO, N.Y., CITY CODE §341-11.3(B)(9) (2009); CHICAGO, ILL., CODE OF ORDINANCES §7-12-290(b) (2011); CINCINNATI, OHIO, CODE OF ORDINANCES §701-35 (2011); LONG BEACH, CAL., MUN. CODE §6.20.090 (2011); L.A., CAL., MUN. CODE §53.46 (2011); MEMPHIS, TENN., CODE OF ORDINANCES §8-8-1 (2009); MESA, ARIZ., CITY CODE §8-6-23(C) (2011); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011); MONTGOMERY, ALA., CODE OF ORDINANCES §4-161 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-261 (2011).

405. LONG BEACH, CAL., MUN. CODE §6.20.090 (2011); L.A., CAL., MUN. CODE §53.46 (2011).

406. MEMPHIS, TENN., CODE OF ORDINANCES §8-8-1 (2009); OMAHA, NEB., CODE OF ORDINANCES §6-261 (2011).

trough and prohibits feeding them through scattering food on the ground.⁴⁰⁷

6. Permit Requirements

Thirty-eight cities require a permit to keep chickens under certain circumstances.⁴⁰⁸ Like all of the other regulations, there is very little consistency. Eleven cities require permits for more than a maximum number of chickens.⁴⁰⁹ The average number the city allows before requiring a permit is seven. The average is high because San Diego allows up to 20 chickens before seeking a permit.⁴¹⁰ The median is five and the mode, with three cities, Saint Louis, Santa Ana and Spokane, is four. Two cities, El Paso and San Jose, allow for six.⁴¹¹ And, two cities, Portland and Wichita allow for three.⁴¹² Two cities require a permit if one seeks

to place the chickens within the legislated setbacks.⁴¹³ And one city, Riverside, only requires a permit if one wants to keep roosters.⁴¹⁴

The remaining 24 cities require a permit to keep chickens under all circumstances.⁴¹⁵ Permit renewal periods and fees also differ substantially among cities. Of the cities that require permits to keep chickens in all circumstances, there is little agreement for how long these permits should last or how much they should cost. At least 10 of them require permit holders to renew annually.⁴¹⁶ Two have an initial term of one year, but then either allow or require five-year permits after that.⁴¹⁷ Cleveland has a biennial permit.⁴¹⁸ Mobile allows for the permit to remain valid until revoked by the health officer.⁴¹⁹ And several simply don't specify how long the permit will last.⁴²⁰

There is also a lot of variety among cities in where to go to get the permit. Cleveland, Columbus, Omaha, and Norfolk grant the public health departments the authority to grant permits⁴²¹; Newark gives it to the Director of the Department of Child and Family Well-Being⁴²²; Sacramento to the Animal Care Services Operator⁴²³; Tacoma

407. BUFFALO, N.Y., CITY CODE §341-11.3(B)(9) (2009).

408. BALTIMORE, MD., HEALTH CODE §10-312 (2011); BOS., MASS., CODE OF ORDINANCES §16-1.8A (2010); BUFFALO, N.Y., CITY CODE §341-11.4 (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102 (2010); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(i) & (j) (2011); COLUMBUS, OHIO, CITY CODE §221.05 (2011); DENVER, COLO., MUN. CODE §8-91 (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4(i), (j) (2011); EL PASO, TEX., MUN. CODE §§7.24.020 & 7.24.050 (2011); FREMONT, CAL., MUN. CODE §3-5803 (2011); HOUSTON, TEX., CODE OF ORDINANCES §6-38 (2010); JERSEY CITY, N.J., CODE OF ORDINANCES §90-7 (2011); KANSAS CITY, MO., CODE OF ORDINANCES §14-15(h) (2011); LINCOLN, NEB., MUN. CODE §6.04.070 (2011); MADISON, WIS., CODE OF ORDINANCES §9.52 (no date listed); MIAMI, FLA., CODE OF ORDINANCES §6-1(b) (2011); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011); MINNEAPOLIS, MINN., CODE OF ORDINANCES §70.10 (2011); MOBILE, ALA., CODE OF ORDINANCES §7-102 (2011); NEWARK, N.J., GENERAL ORDINANCES §6:2-30 (2010); NORFOLK, VA., CODE OF ORDINANCES §6.1-7 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-266 (2011); PHILA PLANO, TEX., CODE OF ORDINANCES §4-81 (2011); PORTLAND, OR., CITY CODE §13.05.015 (2011); RIVERSIDE, CAL., CODE OF ORDINANCES §17.206.020 (2011); ROCHESTER, N.Y., CITY ORDINANCES §§30-12 & 30-15 (no date listed); SACRAMENTO, CAL., CITY CODE §§9.44.870 & 9.44.880 (2011); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109(c) (2011); SAN DIEGO, CAL., MUN. CODE §42.0713 (2011); SAN FRANCISCO, CAL., HEALTH CODE §37(d) (2011); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.700 (2007); SANTA ANA, CAL., CODE OF ORDINANCES §§5.6 & 23.42.051(B) (2011); SPOKANE, WASH., MUN. CODE §17C.310.100 (no date listed); ST. LOUIS, MO., CODE OF ORDINANCES §10.20.015(c) (2010); ST. PAUL, MINN., §198.02 (2011); TACOMA, WASH., MUN. CODE §5.30.010 (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §§902.1 & 902.3-4 (no date listed); WICHITA, KAN., CODE OF ORDINANCES §6.04.157 (2011).

409. EL PASO, TEX., MUN. CODE §7.24.020 (2011) (requiring permit if more than six); LINCOLN, NEB., MUN. CODE §6.04.040 (2011) (requiring permit if more than 5, if fowl weigh over five pounds and more than 20 for fowl between three and five pounds); PLANO, TEX., CODE OF ORDINANCES §4-81 (2011) (requiring permit if more than 10); PORTLAND, OR., CITY CODE §13.05.015(E) (2011) (requiring permit if more than three); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109(c) (2011) (requiring permit if more than five); SAN DIEGO, CAL., MUN. CODE §42.0713 (2011) (requiring permit if more than 25); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.700(A) (2007) (requiring permit if more than six); SANTA ANA, CAL., CODE OF ORDINANCES §5.6 (2011) (requiring permit if more than four); SPOKANE, WASH., MUN. CODE §§17C.310.100 & 10.20.015(c) (no date listed) (requiring permit if more than four); ST. LOUIS, MO., CODE OF ORDINANCES §10.20.015(c) (2010) (requiring permit if more than four); WICHITA, KAN., CODE OF ORDINANCES §6.04.157 (2011) (requiring permit if more than three).

410. SAN DIEGO, CAL., MUN. CODE §42.0713 (2011).

411. EL PASO, TEX., MUN. CODE §7.24.020 (2011); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.700(A) (2007).

412. PORTLAND, OR., CITY CODE §13.05.015(E) (2011); WICHITA, KAN., CODE OF ORDINANCES §6.04.157 (2011).

413. KANSAS CITY, MO., CODE OF ORDINANCES §14-15(h) (2011) (requiring permit if want to be within setback); TACOMA, WASH., MUN. CODE §5.30.010 (2011) (requiring permission from city clerk to put coop within setback).

414. RIVERSIDE, CAL., CODE OF ORDINANCES §17.206.020 (2011).

415. BALTIMORE, MD., HEALTH CODE §10-312 (2011); BOS., MASS., CODE OF ORDINANCES §16-1.8A (2010); BUFFALO, N.Y., CITY CODE §341-11.4 (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102 (2010); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(i) & (j) (2011); COLUMBUS, OHIO, CITY CODE §221.05 (2011); DENVER, COLO., MUN. CODE §8-91 (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4(i), (j) (2011); FREMONT, CAL., MUN. CODE §3-5803 (2011); HOUSTON, TEX., CODE OF ORDINANCES §6-38 (2010); JERSEY CITY, N.J., CODE OF ORDINANCES §90-7 (2011); MADISON, WIS., CODE OF ORDINANCES §9.52 (no date listed); MIAMI, FLA., CODE OF ORDINANCES §6-1(b) (2011); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011); MINNEAPOLIS, MINN., CODE OF ORDINANCES §70.10 (2011); MOBILE, ALA., CODE OF ORDINANCES §7-102 (2011); NEWARK, N.J., GENERAL ORDINANCES §6:2-30 (2010); NORFOLK, VA., CODE OF ORDINANCES §6.1-7 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-266 (2011); ROCHESTER, N.Y., CITY ORDINANCES §§30-12 & 30-15 (no date listed); SACRAMENTO, CAL., CITY CODE §§9.44.870 & 9.44.880 (2011); SAN FRANCISCO, CAL., HEALTH CODE §37(d) (2011); ST. PAUL, MINN., §198.02 (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §§902.1 & 902.3-4 (no date listed).

416. BUFFALO, N.Y., CITY CODE §341-11.4 (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(a) (2010); FREMONT, CAL., MUN. CODE §3-5906 (2011); JERSEY CITY, N.J., CODE OF ORDINANCES §90-7 (2011); LINCOLN, NEB., MUN. CODE §6.04.110 (2011); MADISON, WIS., CODE OF ORDINANCES §9.52 (no date listed); NEWARK, N.J., GENERAL ORDINANCES §6:2-30 (2010); OMAHA, NEB., CODE OF ORDINANCES §6-271 (2011); ROCHESTER, N.Y., CITY ORDINANCES §30-15 (no date listed); ST. PAUL, MINN., §198.04 (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.3 (no date listed).

417. KANSAS CITY, MO., CODE OF ORDINANCES §14-15(h) (2011); MINNEAPOLIS, MINN., CODE OF ORDINANCES §70.10 (2011) (five-year period offered as a choice).

418. CLEVELAND, OHIO, CODIFIED ORDINANCES §205.04 (2011).

419. MOBILE, ALA., CODE OF ORDINANCES §7-102 (2011).

420. *E.g.*, NORFOLK, VA., CODE OF ORDINANCES §6.1-7 (2011); PLANO, TEX., CODE OF ORDINANCES §4-81 (2011); SANTA ANA, CAL., CODE OF ORDINANCES §5.6 (2011); TACOMA, WASH., MUN. CODE §5.30.010 (2011).

421. CLEVELAND, OHIO, CODIFIED ORDINANCES §205.04 (2011); COLUMBUS, OHIO, CITY CODE §221.05 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-266 (2011); NORFOLK, VA., CODE OF ORDINANCES §6.1-7 (2011).

422. NEWARK, N.J., GENERAL ORDINANCES §6:2-30 (2010).

423. SACRAMENTO, CAL., CITY CODE §9-44-870 (2011).

to the City Clerk⁴²⁴; and Boston to the Inspectional Services Department.⁴²⁵ Most cities, however, do not state in the ordinance by what means a person actually procures a permit.⁴²⁶

Three cities use the permit process to make sure that would-be chicken owners have the consent of their neighbors. St. Paul, Minnesota, requires that an applicant show, through written consent, that 75% of the owners or occupants of property within 150 feet have given permission for the chickens.⁴²⁷ Las Vegas requires written consent of neighbors within 350 feet.⁴²⁸ Buffalo and Milwaukee also requires written consent from adjacent landowners to secure a permit.⁴²⁹ Riverside, California, allows residents to keep hens without a permit, but requires a permit, with written permission from the neighbors, to keep more than six roosters.⁴³⁰

Finally, some cities use the permitting schemes to ensure that chicken owners comply with a long list of regulations. For instance, Buffalo has set forth a labyrinthine process for securing a “chicken license.”⁴³¹ It requires the license seeker to provide his name, address, number of chickens sought, and the location of the coop. The city then notifies neighboring landowners with property within 50 feet of the applicant’s property of the application and allows them to provide written comments. The city also notifies the mayor and City Council. If the city clerk does not receive any comments, the clerk can issue a license for up to five hens. But if anyone lodges a negative comment, then the permit goes to City Council and Council must determine, after taking in the entire record before it, if the city will grant the license. If the Council approves it, it goes to the mayor, who has the power to veto it; if he does so—it would require a 2/3 majority at the following Council meeting to

pass.⁴³² If the permit is granted, then the Animal Control Officer must inspect the coop before the licensee is actually allowed to get chickens.⁴³³ Then, the licensee has to procure a separate license from the building department to build the chicken coop.⁴³⁴

And then Buffalo requires similar procedures for renewing the license each year. Each license automatically expires on June 1. From May 1 to June 1, the city opens up a comment period for anyone to complain about licensed chickens. The City Council is to consider all of these comments and any rebuttals to them before deciding whether to renew the license. The City Council can also revoke the license at any time if it hears any complaints about the licensee.⁴³⁵

This licensing scheme appears designed to ameliorate concerns that the city will be overwhelmed with complaints. But the resources the city puts into this process and the time it is requiring councilmembers and the mayor to put into it if a single person registers a negative comment must far outweigh any resources the city would be using to prosecute rogue chickens owners.

Many cities also charge fees for these permits. Because many cities do not list their fees on any publicly accessible website, it is difficult to draw strong conclusions on the norm for how much a city charges. But, 14 cities’ fees were identified.⁴³⁶ Three of the 14 charged an initial fee, Milwaukee charged a \$25 initial fee, Minneapolis \$50, and St. Paul \$72.⁴³⁷ Thirteen cities, including Minneapolis and St. Paul, charged annual fees.⁴³⁸ The fees ranged from specifying that the permit would be free to \$50 per year. The average annual fee was \$29, although no city charged that amount. The median fee and the mode are both \$25 per year. Two cities legislated late charges into the statute, Lincoln has a \$25 late fee,⁴³⁹ and Madison charges \$5 if a permit is renewed late.⁴⁴⁰ Finally, Minneapolis gives a \$50 discount from the annual fee if a licensee renews for five years, instead of paying \$40 a year, one can pay \$150 for a five-year period.⁴⁴¹

424. TACOMA, WASH., MUN. CODE §5.30.010 (2011).

425. BOS., MASS., CODE OF ORDINANCES §16-1.8A (2010).

426. *E.g.*, CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(a) (2010) (providing that the “bureau” will issue the permit.); JERSEY CITY, N.J., CODE OF ORDINANCES §90-7 (2011) (providing that the “licensing issuing authority” will grant the permit).

427. ST. PAUL, MINN., §198.04(b) (2011):

The applicant for any permit required under the provisions of section 198.02 shall provide with the application the written consent of seventy-five (75) percent of the owners or occupants of privately or publicly owned real estate within one hundred fifty (150) feet of the outer boundaries of the premises for which the permit is being requested or, in the alternative, proof that applicant’s property lines are one hundred fifty (150) feet or more from any structure. However, where a street separates the premises for which the permit is being requested from other neighboring property, no consent is required from the owners or occupants of property located on the opposite side of the street. Where a property within one hundred fifty (150) feet consists of a multiple dwelling, the applicant need obtain only the written consent of the owner or manager, or other person in charge of the building.

428. LAS VEGAS, NEV., MUN. CODE §7.38.050 (2011).

429. BUFFALO, N.Y., CITY CODE §341-11.2 (2009) (“No chicken hens shall be allowed without the express written consent of all residents residing on property adjacent to that of the applicant.”); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011) (Before a permit is issued for the keeping of chickens, the applicant shall obtain the written consent of the owner of the property where the chickens shall be kept and owners of all directly or diagonally abutting properties, including those across an alley.”)

430. RIVERSIDE, CAL., CODE OF ORDINANCES §6.05.020 (2011).

431. BUFFALO, N.Y., CITY CODE §341-11.4 (2009).

432. BUFFALO, N.Y., CITY CHARTER §3-19.

433. BUFFALO, N.Y., CITY CODE §341-11.4 (2009).

434. *Id.*

435. *Id.*

436. BUFFALO, N.Y., CITY CODE §341-11.1(G) (2009) (\$25 annual fee); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(a) (2010) (\$50 annual fee); DENVER, COLO., MUN. CODE §8-91 (2011) (\$50 annual fees as listed on city website at <http://www.denvergov.org/FrequentlyAskedQuestionsandRelatedLinks/tabid/434759/Default.aspx>); JERSEY CITY, N.J., CODE OF ORDINANCES §90-7 (2011) (\$25 annual fee); LINCOLN, NEB., MUN. CODE §6.04.090 (2011) (\$50 annual fee with a \$25 late fee); MADISON, WIS., CODE OF ORDINANCES §9.52 (no date listed) (\$10 annual fee with a \$5 late fee); MILWAUKEE, WIS., CODE OF ORDINANCES §60-7 (2011) (\$35 initial fee); MINNEAPOLIS, MINN., CODE OF ORDINANCES §70.10(f) (2011) (\$50 initial fee and \$40 annual fee); MOBILE, ALA., CODE OF ORDINANCES §7-102 (2011) (specifies that permits are free); NEWARK, N.J., GENERAL ORDINANCES §6:2-31 (2010) (\$10 annual fee); ROCHESTER, N.Y., CITY ORDINANCES §30-16 (no date listed) (\$37 annual fee); ST. LOUIS, MO., CODE OF ORDINANCES §10.20.013(f) (2010) (\$40 annual fee); ST. PAUL, MINN., §198.04(c) (2011) (\$72 initial fee and \$25 annual fee); WICHITA, KAN., CODE OF ORDINANCES §6.04.157 (2011) (\$25 annual fee).

437. *Supra* note 436 and accompanying text.

438. *Id.*

439. LINCOLN, NEB., MUN. CODE §6.04.090 (2011).

440. MADISON, WIS., CODE OF ORDINANCES §9.52 (no date listed).

441. MINNEAPOLIS, MINN., CODE OF ORDINANCES §70.10(g) (2011).

7. Slaughtering

Thirteen cities regulate slaughtering⁴⁴²; however, of those, only six ban slaughtering altogether.⁴⁴³ Three cities, Buffalo, Charlotte, and Pittsburgh, allow chickens to be slaughtered, but require that it not occur outdoors or in a public place.⁴⁴⁴ Cleveland allows a chicken to be slaughtered on site, but only if it is meant to be consumed on the occupant's premises.⁴⁴⁵ San Francisco requires that any slaughter occur in an "entirely separate" room than the one that fowl occupy.⁴⁴⁶ Rochester requires a poulterer's license to both keep chickens and slaughter them.⁴⁴⁷ And, Glendale, in keeping with its aversion to rats described above, only allows for slaughter if it occurs in a rat-proof structure.⁴⁴⁸

Several other cities only ban slaughter if a person is killing another's chickens without permission.⁴⁴⁹ Chesapeake is particularly concerned with dogs killing chickens. Chesapeake mandates compensation of no more than \$10 per fowl, if a dog or hybrid dog kills a chicken.⁴⁵⁰

Finally, several cities stand directly opposed concerning the killing of chickens for animal sacrifice. Chicago's ordinance banning the slaughter of chickens is directed toward chickens killed for animal sacrifice; it provides in the ordinance that this "section is applicable to any cult that kills (sacrifices) animals for any type of ritual, regard-

less of whether or not the flesh or blood of the animal is to be consumed."⁴⁵¹ Wichita, however, while banning the slaughter of chickens, states that the ordinance does not apply "to the slaughter of animals as part of religious practices."⁴⁵² And, Los Angeles expressly allows slaughter both for food and religious purposes.⁴⁵³

8. Roosters

Many cities that allow for hens ban roosters. Twenty-six cities prohibit roosters.⁴⁵⁴ Of these cities, four have exceptions: Phoenix will allow a rooster only if it is incapable of making vocal noises⁴⁵⁵; Rochester and San Jose will allow roosters under four months of age⁴⁵⁶; and Sacramento only prohibits roosters on developed lots used exclusively for residential purposes.⁴⁵⁷ Fort Wayne does not say anything about roosters, but its ordinance effectively bans them by defining poultry only as "laying hens."⁴⁵⁸

Many cities, instead of banning roosters altogether impose very large setbacks for roosters, require a larger property size for roosters, or relegate roosters to agriculturally zoned land. Four cities require relatively large setbacks for roosters: Cleveland requires 100-foot setbacks⁴⁵⁹; Kansas City, 300 feet⁴⁶⁰; Oklahoma City, 400 feet⁴⁶¹; and Glendale, California, requires 500 feet.⁴⁶² Wichita will also allow for roosters if they are more than 500 feet from any residentially zoned lot.⁴⁶³ Three cities require greater

442. BUFFALO, N.Y., CITY CODE §341-11.3(d) (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c)(4) (2010); CHI., ILL., CODE OF ORDINANCES §17-12-300 (2011); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(h) (2011); GLENDALE, CAL., MUN. CODE §8.48.020 (2011); MADISON, WIS., CODE OF ORDINANCES §2809(9)(b)(6) (no date listed); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5(3)(b) (2011); Nashville-Davidson, Tenn. Memo from John Cooper, Director Metropolitan Council Office, to All Members of Metropolitan Council (Sept. 1, 2009) (on file with author); PITTSBURGH, PA., CODE OF ORDINANCES §911.04.A.2 (2011); ROCHESTER, N.Y., CITY ORDINANCES §30-12 (no date listed); SACRAMENTO, CAL., CITY CODE §9.44.860 (2011); SAN FRANCISCO, CAL., HEALTH CODE §37(d)(5) (2011); WICHITA, KAN., CODE OF ORDINANCES §6.04.175(p) (2011).

443. CHI., ILL., CODE OF ORDINANCES §17-12-300 (2011) ("No person shall own, keep or otherwise possess, or slaughter any sheep, goat, pig, cow or the young of such species, poultry, rabbit, dog, cat, or any other animal, intending to use such animal for food purposes."); MADISON, WIS., CODE OF ORDINANCES §2809(9)(b)(6) (no date listed) ("No person shall slaughter any chickens."); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5(3)(b) (2011); ("No person shall slaughter any chickens."); Nashville-Davidson, Tenn. Memo from John Cooper, Director Metropolitan Council Office, to All Members of Metropolitan Council (Sept. 1, 2009) (on file with author); SACRAMENTO, CAL., CITY CODE §9.44.860 (2011) ("No hen chickens shall be slaughtered on any developed lot used exclusively for residential purposes."); WICHITA, KAN., CODE OF ORDINANCES §6.04.175(p) (2011) (prohibiting slaughtering "on residentially zoned lots or lots utilized for residential purposes").

444. BUFFALO, N.Y., CITY CODE §341-11.3(d) (2009) ("There shall be no outdoor slaughtering of chicken hens."); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c)(4) (2010); (providing that any slaughter "shall be done only in a humane and sanitary manner and shall not be done open to the view of any public area or adjacent property owned by another"); PITTSBURGH, PA., CODE OF ORDINANCES §911.04.A.2 (2011) ("Killing or dressing of poultry raised on the premises shall be permitted if conducted entirely within an enclosed building.");

445. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(h) (2011).

446. SAN FRANCISCO, CAL., HEALTH CODE §37(d)(5) (2011).

447. ROCHESTER, N.Y., CITY ORDINANCES §30-12 (no date listed).

448. GLENDALE, CAL., MUN. CODE §8.48.020 (2011).

449. AKRON, OHIO, CODE OF ORDINANCES §92.03 (2011); AUSTIN, TEX., CODE OF ORDINANCES §3-2-61 (2011); PHOENIX, ARIZ., CITY CODE §8-3 (2011).

450. CHESAPEAKE, VA., CODE OF ORDINANCES §10-19 (2011).

451. CHI., ILL., CODE OF ORDINANCES §17-12-300 (2011) (but exempting Kosher slaughtering from this ordinance).

452. WICHITA, KAN., CODE OF ORDINANCES §6.04.175(p) (2011).

453. L.A., CAL., MUN. CODE §53.67 (2011).

454. BUFFALO, N.Y., CITY CODE §341-11.1(d) (2009); COLORADO SPRINGS, COLO., CITY CODE §6.7.110(A) (2011); FORT WAYNE, IND., CODE OF ORDINANCES ch. 157 (2011); FRESNO, CAL., MUN. CODE §§12-204.11 & 12-205.1 & 12-206.1 (2011); GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011); LAS VEGAS, NEV., MUN. CODE §7.38.050(a)(2) (2011); LINCOLN, NEB., MUN. CODE §6.04.041 (2011); LONG BEACH, CAL., MUN. CODE §6.20.050 (2011); MIAMI, FLA., CODE OF ORDINANCES §6-1(b)(2) (2011); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5(3)(a) (2011); N.Y.C., HEALTH CODE §§161.19(a) & 161.01(b)(11) (1990); NEWARK, N.J., GENERAL ORDINANCES §6:2-36 (2010); OAKLAND, CAL., CODE OF ORDINANCES §6.04.320 (2011); PHOENIX, ARIZ., CITY CODE §8-7(c) (2011); PORTLAND, OR., CITY CODE §13.10.010 (2011); ROCHESTER, N.Y., CITY ORDINANCES §30-19 (no date listed); SACRAMENTO, CAL., CITY CODE §9.44.860(B) (2011); ST. PAUL, MINN., §198.03 (2011); ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31(e) (2011); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.820 (2007); SANTA ANA, CAL., CODE OF ORDINANCES §5-6.5 (2011); SEATTLE, WASH., MUN. CODE §23.42.052(c)(2) (2011); STOCKTON, CAL., MUN. CODE §6.04.440 (2011); TUCSON, ARIZ., CODE OF ORDINANCES §4-59 (2011); WICHITA, KAN., CODE OF ORDINANCES §6.04.171 (2011).

455. PHOENIX, ARIZ., CITY CODE §8-7(c) (2011). Removing a roosters vocal chords was routinely done by vets many years ago. But because of the extremely high mortality rate (over 50%) most vets will no longer perform this procedure. See *Small and Backyard Flocks*, KY. U. EXT., <http://www.ca.uky.edu/smallflocks/faq.html#Q31> (last visited July 8, 2012).

456. ROCHESTER, N.Y., CITY ORDINANCES §30-19 (no date listed); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.820 (2007).

457. SACRAMENTO, CAL., CITY CODE §9.44.860(B) (2011).

458. FORT WAYNE, IND., CODE OF ORDINANCES ch. 157 (2011).

459. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(c) (2011).

460. KANSAS CITY, MO., CODE OF ORDINANCES §14-15(f) (2011).

461. OKLAHOMA CITY, OKLA., MUN. CODE §59-9350(c), (d) (2011).

462. GLENDALE, ARIZ., CODE OF ORDINANCES pt. II, art. 5 (2010) (multiple provisions in zoning code relating to roosters).

463. WICHITA, KAN., CODE OF ORDINANCES §6.04.171 (2011).

acreage for roosters: Cleveland requires at least one acre⁴⁶⁴; Baton Rouge requires two acres⁴⁶⁵; and Fremont California allows one rooster for ½ acre, and two roosters for more than one acre.⁴⁶⁶ Three cities, Anaheim, Arlington, and Dallas, relegate roosters to agriculturally zoned land.⁴⁶⁷

Many cities do not ban roosters but have noise regulations that would effectively cause any rooster to be a nuisance, at least a rooster that crows.⁴⁶⁸

Finally, nine cities expressly allow for roosters.⁴⁶⁹ Most of these cities, however, limit the number of roosters allowed. Three cities allow for only one rooster.⁴⁷⁰ Two cities allow for two roosters.⁴⁷¹ El Paso allows for up to three roosters with a permit.⁴⁷² And Riverside allows up to six and only requires a permit to keep seven or more roosters.⁴⁷³ San Diego and San Francisco allow for unlimited roosters; however, San Francisco animal control authorities stated that they do not recommend that San Franciscans keep roosters due to the number of complaints they have received concerning roosters.⁴⁷⁴

And, winning the award for most eccentric rooster ordinance is the city that allows roosters conjugal visits. While this city is not within the top 100 surveyed, Hopewell Township, New Jersey, as discussed above, allows roosters that are certified disease-free to visit a hen flock for 10 days out of every year.⁴⁷⁵

464. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(c) (2011).

465. BATON ROUGE, LA., CODE OF ORDINANCES §14-224(b) (2011).

466. FREMONT, CAL., MUN. CODE §3-5803 (2011).

467. ANAHEIM, CAL., MUN. CODE §18.38.030.050 (2011); ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §5.02(f) (2010); DALLAS, TEX., CODE OF ORDINANCES §7-7.3 (2011).

468. *E.g.*, ANCHORAGE, ALASKA, CODE OF ORDINANCES §17.10.015 (2011); BAKERSFIELD, CAL., MUN. CODE §6.04.230 (2011); COLUMBUS, OHIO, CITY CODE §2327.14(A) (2011) (“No person shall keep or harbor any animal which howls, barks, or emits audible sounds that are unreasonably loud or disturbing and which are of such character, intensity and duration as to disturb the peace and quiet of the neighborhood or to be detrimental to life and health of any individual.”); CORPUS CHRISTI, TEX., CODE OF ORDINANCES §31-2 (2011); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3(B) (2011) (“No poultry animals that make sounds clearly audible off-site are permitted.”); LEXINGTON-FAYETTE, KY., CODE OF ORDINANCES §4-12 (2011); NASHVILLE-DAVIDSON, TENN., MUN. CODE §8.12.010 (2011) (“It is unlawful for any person to keep any animal, dog, bird or fowl which, by causing frequent or loud continued noise, disturbs the comfort or repose of any person in the vicinity.”); RALEIGH, N.C., CODE OF ORDINANCES §12-5007 (2011); ST. LOUIS, MO., CODE OF ORDINANCES §15.50.040 (2010).

469. ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-4-3 (2011); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007); EL PASO, TEX., MUN. CODE §7.24.020(B)(1) (2011); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(c)(2) (2011); L.A., CAL., MUN. CODE §53.71 (2011); LOUISVILLE, KY., METRO CODE §91.001 (2011); RIVERSIDE, CAL., CODE OF ORDINANCES §6.05.010 (2011); SAN DIEGO, CAL., MUN. CODE §42.0708 (2011); SAN FRANCISCO, CAL., HEALTH CODE §37 (2011).

470. ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-4-3 (2011); L.A., CAL., MUN. CODE §53.71 (2011); LOUISVILLE, KY., METRO CODE §91.001 (2011).

471. FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(c)(2) (2011); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007).

472. EL PASO, TEX., MUN. CODE §7.24.020(B)(1) (2011).

473. RIVERSIDE, CAL., CODE OF ORDINANCES §§6.05.010 & 6.05.020 (2011).

474. SAN DIEGO, CAL., MUN. CODE §42.0708 (2011); SAN FRANCISCO, CAL., HEALTH CODE §37 (2011); Interview with San Francisco animal control (on file with author).

475. *NJ Town Limits Conjugal Visits Between Roosters & Hens*, HUFFINGTON POST, Apr. 27, 2011, http://www.huffingtonpost.com/2011/04/28/nj-limits-chicken-mating_n_854404.html (last visited July 8, 2012).

V. Model Ordinance

A. Reasons Behind the Choices in the Model Ordinance

Because many cities are recognizing that keeping chickens in the city should be allowed, but would like to regulate it properly so that the city can stop any nuisances before they arise, a model ordinance is provided below. Through surveying the ordinances of the most populous American cities, many types of regulatory schemes have already been identified and discussed. While different regulatory schemes may work better for different kinds of cities, depending on the density and variety of their residential, commercial, and industrial neighborhoods, the model ordinance provided should be easy to adapt to any city. First, each section of the model ordinance will be described and the reasons for choosing the regulation will be set out. Then, the model ordinance will be set out in full.

1. Chickens Should Be Regulated in a Unified Ordinance Within the Section Concerning Animals

Most cities regulate chickens within the animal code. This also appears to be the best option for where to place regulations affecting chickens within a city’s codified ordinances. This is the natural place for a person to look to see if the city allows chickens. By placing the regulation within the animal code, it also allows for all of the regulations affecting chickens to be in one place. This will help a chicken owner to more easily find and follow the city’s law.

If a city still wishes to incorporate zoning restrictions within a chicken ordinance, the city can easily do so within the unified ordinance located within the animal section by restricting chickens to certain zones. And if a city wishes to require a permit to keep chickens, the permit requirement may also easily be placed in a unified ordinance.

2. Chickens Should Be Limited to a Small Flock

A chicken ordinance should allow for at least four chickens. Because chickens are flock animals, they do not thrive when left alone. And, because chickens enforce a dominant social order by harassing new chicks, it is always best to introduce at least two chicks to a new flock. By allowing a minimum of four chickens, the city does not leave a chicken owner in a position of having to leave a hen in a solitary environment if another chicken dies. It also allows the chicken owner to introduce at least two new chicks to an existing flock of two.

The model ordinance sets out a maximum of six chickens. This number is still below the average number of chickens allowed in most cities, but is sufficient to keep a balanced backyard flock. Six hens will allow plenty of eggs for the hen-keepers, while still allowing an owner to keep

hens that no longer produce many eggs but are still valued by the owner for their companionship.

Cities may want to consider allowing even more chickens. Allowing more chickens will allow owners to keep chickens that are no longer producing eggs. Chicken owners who raise hens for eggs may feel pressured to rid themselves of older hens when they are faced with limitations on their flock.⁴⁷⁶ This has raised concerns in some areas that those chickens will burden animal shelters.⁴⁷⁷ Allowing a slightly larger flock may help to alleviate any burden.

3. Lot Size Should Not Be Restricted

The majority of cities do not require a specific lot size before a person can keep chickens. Lot size restrictions, moreover, often do little more than prohibit the majority of city residents from keeping hens. The concern that cities are mainly addressing through lot size, that of making sure that chickens are not located too close to neighbors, can better be addressed through setbacks.

For this reason, the model ordinance does not restrict through lot size. If a city has a wide variety of lot sizes, however, a city may wish to allow more hens for larger lot sizes. The city, for instance, can legislate a maximum number of chickens for lot sizes of ½ acre or below, and then increase the number of chickens for larger lot sizes.

4. Setbacks

Because there is a universal concern with keeping chickens too close to neighbors, a setback, rather than lot size, provides the best solution for this concern. A setback actually ensures that the chickens will be kept at an appropriate distance from neighbors without unduly restricting people who own smaller properties from owning chickens. The model ordinance proposes a setback of 25 feet from the doors or windows of any dwelling or occupied structure other than the owner's dwelling. This setback is less than the median setback of 80 feet and the most popular setback of 50 feet, but is in line with the setbacks of many cities that have recently amended their ordinances. A setback of 25 feet is far enough that any noise or odor from the hens should not cause nuisance to the neighbors, while allowing homeowners in smaller properties to keep hens. The addition of requiring the setback to be from doors or windows also allows more flexibility for where a coop can be placed, while still ensuring that it will not annoy neighbors.

Setbacks from a neighboring residence make sense because it can be assumed that no one wants someone keeping any pet, including chickens, very close to their house. A setback from the property line, however, may make less sense depending on where on the property chickens are kept. While a neighbor may be concerned that his neigh-

bor does not build a coop abutting his property that is also right next to a frequently used patio or deck, these sorts of setbacks may also overreach. For instance, these setbacks may require a coop to be located far from a little-used or overgrown part of a neighbor's property. It may also require the coop to be located far from an area of the neighbor's property where a garage or shed already provides a barrier. For these reasons, setbacks from property lines should be employed with care. But, it is understandable that a neighbor would not want a coop built directly next to a frequently used area of the yard, nor does a neighbor want to be responsible for cleaning errant droppings. For this reason, the model ordinance proposes minimal setbacks from property lines along the lines of the newly passed ordinances in Cleveland and Buffalo, of five feet from the side yard and 18 inches from the rear yard line.

Finally, the model ordinance provides that chickens may not be kept in the front yard. Because most cities are justifiably concerned that easily accessible chickens will attract vandalism, theft, or pranks, or possibly cause neighborhood dogs to behave in a predatory manner, instead of setting elaborate setbacks from the street, it is more efficient and more clear to simply ban chickens from the front yard.

5. Sanitation Requirements

The model ordinance requires that the coop and outdoor enclosure be kept in a sanitary condition and free from offensive odors. It also requires that the coop and outdoor enclosure be cleaned on a regular basis to prevent the accumulation of animal waste. The model ordinance does not go into further detail because more stringent cleaning requirements will be difficult to police and impossible to enforce. A city inspector will be able to tell if a coop is clean and odor-free when inspecting the coop. Unless the city inspector monitors a coop closely with daily visits, the inspector will be unable to tell if an owner cleaned it daily, or every other day, or weekly. It is unlikely that any city inspector would want to devote that much time to surveillance of chicken coops.

Also, because there are several different methods for cleaning a coop, and there continue to be new innovations in chicken-keeping and maintenance (witness the evolution of cat litter over the past few decades), legislating one particular method of cleaning might foreclose more efficient, more sanitary, and more attractive cleaning options. The city's concern is with sanitation and odor. Thus, the city should address its regulations to these concerns, rather than to more specific cleaning methods.

Concerns with flies will also be taken care of through requiring clean and odor-free coops and enclosures. As flies are attracted to waste, any problem with flies should be eliminated through requiring a sanitary coop. Rats are attracted to easily procured food. If the city is particularly concerned with rats, it may add that chicken feed be kept in a rat-proof container. But this regulation appears

476. *E.g.*, Kim Severson, *When the Problems Come Home to Roost*, N.Y. TIMES, Oct. 22, 2009, <http://www.nytimes.com/2009/10/23/dining/23sfdine.html>.

477. *Id.*

unnecessary in light of the fact that many people keep dog and cat food in bulk, as well as food for their own consumption, without regulations that the food be kept in a rat-proof container. There is no logical basis for the belief that rats will be more attracted to chicken feed than other food. If a city is concerned that feed scattered on the ground will attract rats, instead of legislating a rat-proof container for keeping the feed, a city may be better off following Buffalo's lead by prohibiting feed from being scattered on the ground and requiring chickens to be fed from a trough.

6. Enclosures

The model ordinance provides specific requirements for coops and outdoor runs. It also requires that hens should remain in the coop or outdoor run at all times, except when an adult is directly supervising the hen.

First, the model ordinance requires a covered, predator-proof coop or cage that is well-ventilated and designed to be easily accessed for cleaning. It also requires that the coop provide at least two square feet per hen. Finally, it requires that the birds have access to an outdoor run that is adequately fenced to contain the birds on the property and prevent predators from access to the birds. This ordinance is designed to address the city's concerns with odor, with the chicken's well-being, and with not attracting predators looking for an easy meal. The ordinance allows for only two square feet per hen to give each hen adequate space, but also to allow for a smaller coop size that can help to keep birds warm in the winter. The ordinance avoids giving too many instructions on building a coop that could preclude future innovations in coop design.⁴⁷⁸ If the city, however, wants to prohibit coops over a specific dimension, or will waive a building permit for coops under a specific dimension that are not permanent structures, the city can easily insert such a provision here.

The model ordinance also provides that chickens should not be allowed out of their coops, except when supervised by an adult. This addresses a city's concern with chickens running free on the streets while also recognizing that owners will need to remove hens from the coop and run occasionally to clean the areas, to inspect a bird more closely, or to allow a chicken to briefly roam the yard or garden to forage for fresh greens.

7. Slaughtering

The model ordinance prohibits slaughtering chickens outdoors. Because many people are concerned that neighbors or neighbors' children will accidentally witness a bird being killed and are also concerned with the lack of hygiene in backyard butchering, this regulation is included in the ordinance. Also, because most backyard hen enthusiasts are raising hens for eggs and companionship, and not for meat, most will not object to this regulation.

8. Roosters

The model ordinance prohibits roosters. It does so because roosters are noisy and are much more likely to bother neighbors than hens. Because, as discussed above, most backyard hen enthusiasts are interested in eggs, and roosters are not necessary to egg production, prohibiting roosters will not likely meet with much objection.

Because bringing in a rooster on occasion can help to cheaply and easily propagate a flock, cities may explore rooster "conjugal visits," like Hopewell township has done. While the township's regulation attracted press because of its eccentricity, it was a thoughtful solution to the practical effects of banning roosters. Most hen owners, however, are willing to add to their flocks through other means where they can be better assured of procuring only female fowl.

9. Permits

The model ordinance, following the ordinances of many other cities, does not require a permit, as long as the ordinance is followed. Because chickens are novel to many communities, city officials naturally want to closely monitor how well owners are maintaining their flocks. But, regulating through a permitting or licensing process, dedicating a city official to overseeing it, and maintaining the records that such a process will require appears to be an inefficient use of city resources. It is also expensive for owners to pay permitting fees on an annual basis and is a barrier to entry to keeping chickens to those with low or modest incomes. The fees that some cities charge, over \$50 annually, effectively prohibit poorer people from owning chickens.

The permitting process, moreover, does not necessarily give the city more control. If the city prohibits hens unless its ordinance is followed, it can enforce its laws in the same way that it enforces its laws against errant dog, cat, or bird owners. Requiring a permit, thus, appears to provide an unnecessary, inefficient, and expensive layer to the process of legalizing hens.

The model ordinance does require a permit, however, if the chicken owner puts forth a proposal for why she should not have to comply with the city's regulations—for instance if the owner wishes to keep more than the maximum amount of hens, wishes to keep hens in a multi-family dwelling, wishes to keep hens on a parcel of land that is unconnected to a dwelling, or wishes to keep a rooster.

478. Many companies sell commercially made coops, runs, and chicken tractors (portable enclosed structures that allow the owner to move the chickens around the yard) with novel designs. See, e.g., *Say Hello to the Brand New Eglu Go*, OMLET, http://www.omlet.us/products_services/products_services.php?cat=Eglu+Go (last visited July 25, 2012) (offering a plastic portable chicken coop and run designed for two chickens); *Chicken Coops*, SHEDS UNLIMITED, <http://www.shedsunlimited.net/portable-chicken-runs-and-coops-for-sale.html?gclid=CKXzvd2ruLECFEDQAodeCIAkw> (last visited July 25, 2012) (offering Amish-built chicken coops and runs); CHICKENSALOON.COM, <http://chickensaloon.com/?gclid=COLs7qysuLECFYS6KgodGBAAsw> (last visited July 25, 2012); THE GREEN CHICKEN COOP, <http://www.greenchickencoop.com/> (last visited July 25, 2012).

This permit is set up to allow people to keep chickens within setbacks, or to allow for more intensive chicken-keeping for urban agricultural uses, perhaps on an urban farm or market garden. As urban agriculture gains support and becomes more prevalent in the city, this will allow for people who wish to keep more chickens, or keep a rooster, as part of a market garden a set path for doing so without seeking to amend the ordinance. The permit process is designed to allow for more flexibility within the ordinance, while still laying down firm standards that all chicken owners must follow.

B. Model Ordinance

Below is a model ordinance designed for a city to either adopt or use as a starting point when deciding whether to allow hens in the city and how to regulate them:

- (a) **Purpose.** The following regulations will govern the keeping of chickens and are designed to prevent nuisances and prevent conditions that are unsanitary or unsafe. No person shall keep chickens unless the following regulations are followed:
- a. **Number.** No more than six (6) hens shall be allowed for each single-family dwelling.
 - b. **Setbacks.** Coops or cages housing chickens shall be kept at least twenty-five (25) feet from the door or window of any dwelling or occupied structure other than the owner's dwelling. Coops and cages shall not be located within five (5) feet of a side-yard lot line, nor within eighteen (18) inches of a rear-yard lot line. Coops and cages shall not be located in the front yard.
 - c. **Enclosure.** Hens shall be provided with a covered, predator-proof coop or cage that is well-ventilated and designed to be easily accessed for cleaning. The coop shall allow at least two square feet per hen. Hens shall have access to an outdoor enclosure that is adequately fenced to contain the birds on the property and to prevent predators from access to the birds. Hens shall not be allowed out of these enclosures unless a responsible individual, over 18 years of age, is directly monitoring the hens and able to immediately return the hens to the cage or coop if necessary.
 - d. **Sanitation.** The coop and outdoor enclosure must be kept in a sanitary condition and free from offensive odors. The coop and outdoor enclosure must be cleaned on a regular basis to prevent the accumulation of waste.
 - e. **Slaughtering.** There shall be no outdoor slaughtering of chickens.
 - f. **Roosters.** It is unlawful for any person to keep roosters.
- (b) **Permit.** A permit shall not be required if the above regulations are followed. If a person wishes to keep more than the maximum allowed number of hens, wishes to keep hens within the setback required, wishes to keep hens in a multi-family dwelling, wishes to keep hens on a parcel of land that is unconnected to a dwelling, or wishes to keep a rooster, a permit will be required. An application for a permit must contain the following items:
- a. The name, phone number, and address of the applicant.
 - b. The size and location of the subject property.
 - c. A proposal containing the following information.
 - i. The number of hens the applicant seeks to keep on the property.
 - ii. A description of any coops or cages or outdoor enclosures providing precise dimensions and the precise location of these enclosures in relation to property lines and adjacent properties.
 - iii. The number of roosters the applicant seeks to keep on the property.
 - d. If the applicant proposes to keep chickens in the yard of a multi-family dwelling, the applicant must present a signed statement from any and all owners or tenants of the multi-family dwelling consenting to the applicant's proposal for keeping chickens on the premises.
 - e. If the applicant proposes to keep more chickens than allowed in the above ordinance or wishes to keep a rooster, the applicant must present a signed statement from all residents of property adjacent to or within 50 feet of the applicant's property consenting to the applicant's proposal for keeping chickens on the premises. If the applicant proposes to keep chickens within a required setback, the applicant must present a signed statement from all residents of the property affected by that setback.
- (c) **Permit Renewal.** Permits will be granted on an annual basis. If the city receives no complaints regarding the permit holder's keeping of chickens, the permit will be presumptively renewed and the applicant may continue to keep chickens under the terms and condition of the initial permit. The city may revoke the permit at any time if the permittee does not follow the terms of the permit, if the city receives complaints regarding the permit holder's keeping of chickens, or the city finds that the permit holder has not maintained the chickens, coops, or outdoor enclosures in a clean and sanitary condition.

Backyard Chicken License Application and Site Plan

Name (print) Jane Doe Phone 920-555-5555

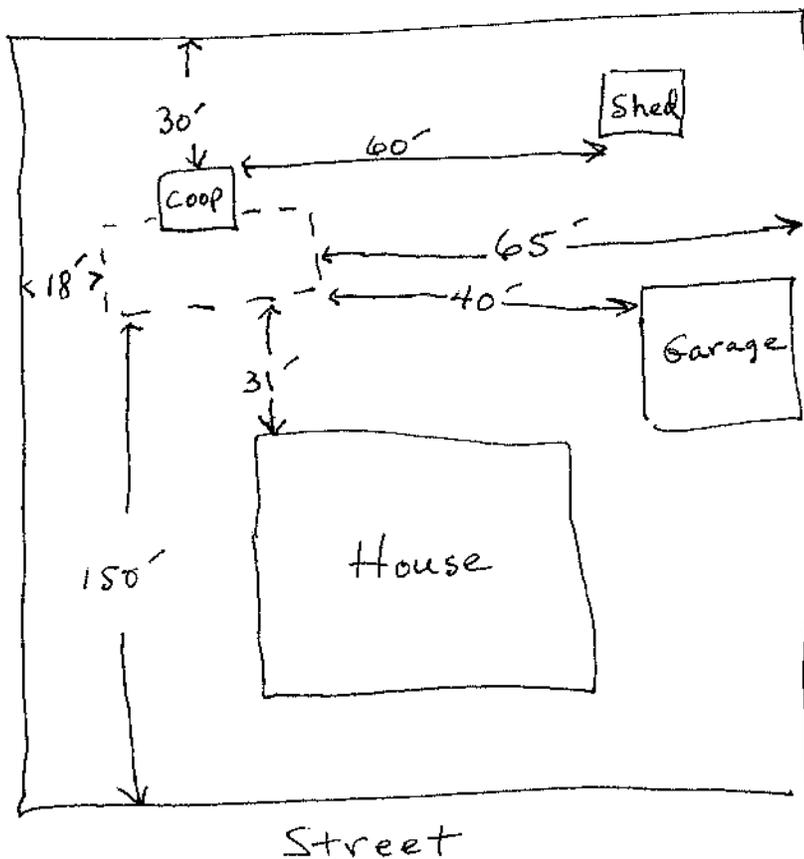
Address 200 Water Street, Lake Mills, WI 53551 Number of hens 6

E-mail jdoe@doe.com Date of Application March 19, 2012

1. Total square feet of covered and fenced enclosure: 340(Sq Ft) Square feet of covered enclosure alone 64(Sq Ft)
2. Distance of enclosure to nearest adjoining property's lot line (>15 feet) 18 feet

Use the area below to sketch chicken keeping site. Include distances from lot lines, structures (house, garage, shed), fences/barriers, pools, etc. (See www.ci.lake-mills.wi.us for additional information.)

(Sample) 200 Water St.



Building Inspector Site Plan Approval? Y N Date _____, BI Signature: _____

Issue Date _____ Clerk _____ License Number _____ Permit Fee \$ _____

**NOTICE OF HEARING CONCERNING THE DISCONTINUANCE OF
ABANDONED UNPAVED ALLEY BETWEEN EAST NORTH STREET AND
EAST MAIN STREET WEST OF AND ADJACENT TO THE OAK GROVE
CEMETERY**

NOTICE

PLEASE TAKE NOTICE that on November 6, 2012, at 6:30 P.M., at the City of Whitewater Municipal Building Community Room located at 312 W. Whitewater Street, Whitewater, Wisconsin, the Common Council of the City of Whitewater will hold a public hearing on and consider a resolution discontinuing the abandoned unpaved alley between East North Street and East Main Street West of and adjacent to the Oak Grove Cemetery in the City of Whitewater.

All utility easements and any easements for existing utilities are being retained by the City of Whitewater.

Detailed plans of said discontinuance are available at the offices of the City of Whitewater Municipal Clerk located at 312 W. Whitewater Street, Whitewater, Wisconsin.

Michele R. Smith, City of Whitewater Clerk

(Note to Publisher: Publish on October 11, 2012, October 18, 2012, and October 25, 2012.)

