



City of Harrisonburg, Virginia

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May 2, 2016

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Consider a recommendation of the proposed revisions to Section 15-2-24 Fowl, Chickens and other Domestic Birds (commonly referred to as the Chicken Ordinance).

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: April 13, 2016

Chair Fitzgerald read the item and asked staff for comments.

Mr. Fletcher said during City Council's September 22, 2015 regular meeting, City Council briefly discussed whether the regulations within City Code Section 15-2-24 Fowl, Chicken and other Domestic Birds—commonly referred to as the “chicken ordinance”—should be revisited and potentially amended. At the end of the discussion, City Council decided to refer this matter to Community Development and Planning Commission (PC) for review. Issues that City Council noted they wanted to explore included: whether the lot size threshold should be reduced; if there should be a “neighbor’s approval” added to the permit process; to explore whether a certain number of permits should be allowed within an implemented trial period; and other options that might not have been discussed during the 2009 debate on this matter.

At the October 14, 2015 regular PC meeting the group discussed how to move forward with becoming fully informed about the ordinance and generally about backyard chicken issues. Eventually PC requested for staff to provide the packet of information that was provided to PC in 2009 when the existing ordinance was discussed and approved. PC also requested for someone considered to be an expert on the topic of avian influenza to come and speak to the group.

During the January 13, 2016 regular PC meeting, Dr. Don Hopson, Regional State Veterinary Supervisor, with the Virginia Department of Agriculture and Consumer Services (VDACS), spoke to the group about avian influenza. After Dr. Hopson’s presentation, a brief discussion occurred related to the virus and generally about backyard chickens. At the end of the discussion, PC decided to further explore the chicken ordinance at their February 10, 2016 regular meeting by taking public input on the specific talking points that City Council requested for PC to consider.

On February 10, 2016, PC held the public input session. For the meeting the Virginia Poultry Federation submitted several comments, one of which included a suggestion to prohibit chickens on properties that were within 1,000 feet of particular poultry facilities. After receiving input from the public and discussing the issue further, at the end of the meeting PC decided for staff to draft amendments to the ordinance based on the following points:

- to eliminate the 2 acre minimum requirement for individuals wanting to keep chickens and thus have no minimum lot size requirement;

- to not require a neighbor waiver;
- to not have a trial period for a certain number of permits;
- to reduce the existing 25-foot setback;
- to prohibit property owners from keeping chickens if their property was within a certain distance from the facilities noted by the Virginia Poultry Federation; and
- to accept the recommendation from the Stormwater Advisory Committee that included for chicken pens to be setback 20 feet from streams, tributaries, ditches, swales, stormwater management facilities, or other storm drainage areas.

For the March 9, 2016 regular meeting, staff prepared the draft ordinance per the recommendations of PC and proposed a few other minor modifications. Staff also provided additional miscellaneous information as well as maps to assist in understanding the impact of the proposed setbacks and the buffer area requested by the Virginia Poultry Federation. At the end of the March meeting, PC requested a few other changes to the ordinance, which are reflected in this submission.

Minutes from the meetings discussed above were attached within the packet.

Per the direction of PC, staff has prepared additional revisions to the chicken ordinance. The changes that are reflected since the March meeting include: 1) that chickens shall not be permitted on any parcel of land that is within 500 feet or less from any poultry processing plant, poultry hatchery, poultry feed mill, poultry truck lot, poultry farm, or from property where facilities are operated by the Virginia Department of Agriculture and Consumer Services (VDACS); and that if any portion of a parcel is located in the prohibited 500-foot buffer from the noted properties, no chickens shall be kept on that parcel; 2) that chicken pens shall be located in the rear yard and to be no closer than five feet from any parcel line; and 3) that all unexplained bird deaths shall be reported to VDACS prior to burial or transport to the county landfill.

There are two things I would like to point out about the 500-foot buffer. There will be situations where someone's property may be made up of three parcels and one of the parcels is impacted by the 500-foot buffer. By the way the ordinance is written the other two parcels would be allowed to house chickens. If the individual decided to vacate the property lines and make it one parcel, they would no longer be allowed to keep chickens. This is just somewhat of an educational component as we move forward with this ordinance. The other thing to think about is that the 500-foot buffer is not a static buffer; what it is today may not be what it is tomorrow. Anytime a new facility is built or enlarged, the buffer will change.

Staff also communicated with the Department of Environmental Quality (DEQ) regarding burial of dead chickens. DEQ noted that our proposed regulations would not conflict with their requirements as they noted that there are no regulations associated with burying pets and that there are no regulations prohibiting routine poultry disposal for routine poultry mortality.

With regard to the disposal of chicken litter and the proposed addition to the ordinance for individuals to be able to dispose of such litter through a bona fide poultry litter service, staff contacted poultry litter services to find out whether they would collect litter that accumulated on residential property in the City. Their responses included that they mainly serve the commercial poultry industry and that they likely would not be interested in coming to a residential property to collect the waste because the amount of waste would probably not be of an amount to make it worth their time.

Note under the "Attachments" section below that staff has revised the existing application for keeping chickens and has included it in this submission for your reference. To assist individuals that want to keep chickens, the application provides the email address and website for the VDACS Virginia Livestock Premises Registration. As noted within Section 15-2-24 (c) (10), it is proposed that individuals must

provide verification of the registration with the submitted application. In addition, staff has provided copies of information that we obtained from the United States Department of Agriculture (USDA) website that can be included with the application to keep chickens in the City. The information includes educational resources associated with keeping backyard chickens. Please note that staff has copies of these materials in the Spanish language, but are only including the English versions for this submission.

Other modifications that have come about since the staff report was sent out are associated with how to dispose of chicken litter and deceased chickens. Please see the changes before you regarding the new Sub-section 8, third paragraph now reads "*chicken litter and waste shall be disposed of by composting on site, collected by a bona fide poultry litter service, or bagged and taken to the county landfill*". This has changed over the past couple of days as to whether or not you can bury the chicken litter on site (which we just recently learned from the Department of Environmental Quality that you cannot do.) There was confusion regarding bagging the chicken litter and placing it in the trash. As of today I was provided with the specific code section that it does say that manure and other types of odors shall not be placed in the trash. By any means what is before you in the ordinance is acceptable by all parties.

Planning staff has maintained a neutral position throughout this process and has not offered recommendations on whether the proposed changes should be approved or not. Staff has served as a resource to answer questions regarding implementation of the ordinance from a land use perspective.

Dr. Dilts asked if birds taken to the landfill are incinerated.

Mr. Fletcher said he did not know.

Chair Fitzgerald said within the application it asks for a site layout showing the proposed location of the pen; I am assuming that can be quiet a simple hand drawn sketch.

Mr. Fletcher said yes.

Mr. Colman said how can you enforce a setback when you are working with a sketch?

Mr. Fletcher said that becomes a question for the Animal Control Officer when she is making a site visit. But as is the case with any accessory structure placed on a premise it is a community enforcement mechanism.

Chair Fitzgerald reminded everyone it is a movable pen in some cases.

Mrs. Banks said it is also for information and education purposes. When an applicant comes in to apply, staff can help them with their sketch and discuss with them the five foot setback and where that would be. As well as looking for any stormwater and drainage issues that may be present on the property.

Chair Fitzgerald said some people may read this and feel it is too many hurdles to jump through; however, I feel it is the appropriate amount given the fact that it is somewhat of a risky business we are entering into with the poultry industry where it is in our community. This should not be something that people undertake in a trivial and unthinking kind of way.

Mr. Fletcher said I would like to add something to Mr. Colman's concern about the setback issue and the sketch. For staff it is really no different than any accessory building that does not necessitate a building permit. If you are below 256 square feet in area, you do not need a building permit; however, you must still abide by zoning regulations of a five foot setback. No one goes out to check to ensure the setback is met.

Dr. Dilts said is there a way to ensure that the word gets out to the community that there is actually a process for keeping chickens. Do we need to have some flyers or brochures?

Mr. Fletcher said I am sure we can have something worked up if you would like us to. A lot of the public exposure that this has had – article in the newspaper, facebook and twitter posts. I think it is a good idea to get more information out.

Chair Fitzgerald said the idea would be to get those that are currently keeping chickens “outside” the framework and bring them inside the ordinance regulations.

Mr. Fletcher said there is some faith that if someone already has chickens and if a next door neighbor is aware that the ordinance might move forward, they can always call us with a concern and we, or the Animal Control Officer, can get in contact with the chicken owner to educate them on the regulations.

Mr. Colman said my concern with advertising this more than we are doing right now, is that in some ways it is like encouraging people to do this. I do not think we want to do that.

Chair Fitzgerald said our concern is more that people need to know that they can now keep chickens legally.

Mr. Fletcher said I think Commissioner Dilts’ point is very well taken and we can work with our Public Information Officer to do a public announcement that goes out to all the media sources.

Continuing on, Mr. Fletcher said if the Commission believes this is acceptable and want to move forward with this tonight, I would suggest consider giving staff some leniency toward amending that litter section if we learn something between now and when it goes to City Council. I think the end result is basically the same for this body – whether it goes into the trash or to the landfill and how those things get incorporated. I do want it to be solidified when it goes to Council.

Mr. Way asked where does the \$25 permit fee come from and is it a typical permit fee amount for the City.

Mr. Fletcher said the fee is the same as it is with the current chicken application. As far as fees, you really cannot compare permit fees; they are so different across the board.

Mr. Way said when hurdles were mentioned, I did not want \$25 to be a financial hurdle.

Mr. Fletcher replied I believe \$25 is a reasonable cost. It is kind of like the annual dog license; it works like an honor system that you update your permit each year.

Chair Fitzgerald asked do we need to make a recommendation to accept these revisions.

Mr. Fletcher said I do not know if we even need that. This is not a public hearing; nor is it required of this body to hold a public hearing. You can recommend it as presented and move it forward for Council to take up at their May 10th meeting. I do believe there should be a motion and vote from this body.

Mr. Way said I move to recommend to move this forward to City Council, with the flexibility on the litter element within sub-section 8.

Dr. Dilts seconded the motion.

Chair Fitzgerald asked if there was any further discussion. Hearing none, she called for a voice vote.

All voted in favor of the motion (7-0).

Chair Fitzgerald said thank you to everyone on this issue.

Respectfully Submitted,

Alison Banks

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