

TO: **MAYOR AND CITY COUNCIL**

THROUGH: *Linda Norris*
LINDA NORRIS, CITY MANAGER

FROM: **VICKIE HARDIN WOODS, DIRECTOR** *VHW*
COMMUNITY DEVELOPMENT DEPARTMENT

SUBJECT: **COUNCILOR MOTION TO AMEND SALEM REVISED CODE CHAPTERS
50 AND 111 REGARDING THE KEEPING OF URBAN CHICKENS**

ISSUE

Shall City Council direct staff to enact the following proposed ordinances to allow for the keeping of urban chickens?

1. Amend SRC Chapter 50 to allow the keeping of up to three hens, subject to certain conditions.
2. Amend SRC Chapter 111 to modify the definition of "livestock," to remove the keeping of chickens, other than for commercial purposes.

RECOMMENDATION

Information only.

BACKGROUND

On May 24, 2010, Council directed staff to bring back an ordinance that allows residents to keep up to three egg laying hens with the following conditions:

- Coops must be licensed and licenses renewed annually;
- Licenses will be purchased & renewed on-line only;
- Licenses will cost \$50 annually;
- Coops will be located no closer than 20' to any residential dwelling;
- Coops will be inspected after completion and again after the third year;
- Inspections will be done by an outside vendor;
- Fines will be assessed for coop conditions that fall outside those stated in the ordinance; \$250 for the first fine, \$500 for the second, and \$750 for the third. After a third violation, the licensee will no longer be allowed to keep chickens.

To implement the proposed ordinances the Council motion would be required to:

1. Modify the definition of "livestock" in the zoning code to eliminate the keeping of chickens from the definition of "livestock," except where the chickens are kept for commercial uses. This change would generally remove chickens from regulation under the zone code.
2. Amend SRC Chapter 50, Property Maintenance Code, to allow up to three hens per residence anywhere in the City, subject to the conditions stated in Council's May 24, 2010 motion.
3. Staff also recommends the following additional requirements be included in the ordinance:
 - a) Roosters, including capons, are prohibited;
 - b) The hens must be kept at all times in chicken coop/facility;
 - c) Coop/facility must meet zone code requirements and building code setbacks for accessory structures;
 - d) Coops must be under 120 square feet in size;
 - e) Coop/facility to be maintained in good condition and not create a nuisance;
 - f) Coop/facility must be located in the rear yard of a residence;

Further, Staff also recommends the alteration of regulations specified in the Council motion to reflect the following changes:

- g) An option for a civil penalty under SRC 20J be provided to ensure a range of enforcement options. On a third violation, a defendant will be prohibited from keeping chickens for 10 years.
- h) Staff will work toward an on-line licensing program, but a modified procedure for on-line or over the counter licensing be implemented until such time as on-line licensing is possible.
- i) The license period will be three years, with a \$50 license payment due each year on the anniversary date. Upon original application and on each renewal date, the coop/facility shall be inspected for compliance with this ordinance.

FACTS AND FINDINGS

1. Regulation of the keeping of chickens in Title IV of the SRC – Health and Sanitation is more efficient and appropriate than regulation through the zone code.
2. The proposed amendments would include specific limitation on the number of chickens, and the location and operation for keeping chickens. Enforcement would occur only if specific regulations included in the ordinance were violated, or coops were found to be unlicensed.
3. Licensing of certain activities is currently processed using the AMANDA computer system. All licenses issued by the City with the AMANDA computer system are subject to additional processing fees that will raise the annual cost of the \$50 license payment to \$67.50.

4. Outside vendors performing coop inspection will be trained and approved by City staff and provided with a comprehensive check list for performing the inspection. A list of approved outside vendors will be provided to applicants. The vendors will not be agents or employees of the City, and will serve only to inspect a proposed chicken coop, and provide a certificate of approval to the applicant.

Procedural Findings

1. Under SRC 110.070, any amendment to the Salem Zoning Code that amends, supplements, or changes only the text must be initiated either by the City Council or by the Commission by resolution. The Planning Administrator must then fix a date for a public hearing before the Commission and cause notice to be provided as required by the code. No such public hearing has been set regarding this new proposed regulation at this time.
2. ORS 197.610 and OAR 660-018-0020 requires that the Department of Land Conservation and Development receive notification of any proposed amendment to a local land use regulation at least 45 days prior to the first public hearing. No such notice has been sent immediately following the July 12, 2010 City Council meeting.

ALTERNATIVES

In considering the matter the Council may:

1. Take no action. Existing zoning regulations prohibiting the keeping of chickens in most zones would remain in effect.
2. Instruct staff to provide Ordinance Bills to amend SRC 50 and SRC 111 to allow for the keeping of urban chickens under certain conditions and license, and adopt a resolution to initiate the code amendments.
3. Instruct staff to proceed and include additional regulations or alter regulations as presented in the proposed Ordinance Bills, and adopt a resolution to initiate the code amendments.

Options for alteration could include:

Number of chickens allowed; and
Fee amount for license.



Brady Rogers
Compliance Services Administrator

Attachments: A. Draft Ordinance Bill

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Section 1. The following SRC 50.710 is hereby added to SRC Chapter 50:

SRC 50.710. Keeping of Chickens.

(a) Definitions. As used in this section, the following mean:

- (1) Chicken means the common domestic fowl (*Gallus gallus domesticus*) or its young.
- (2) Chicken facility means a combination of a coop and a runway.
- (3) Commercial poultry operation means a farm that raises chickens for sale or the production of eggs for profit.
- (4) Coop means a structure providing roofed shelter for the chickens.
- (5) Hen means an adult female chicken.
- (6) Rooster means a male chicken, and includes a capon.
- (7) Runway means a fully enclosed, fenced area connected to the coop.

(b) Except as provided in subsection, no person shall keep chickens in the City unless a license has been obtained therefor. No license is required for a commercial poultry operation that is an allowed use under the City's land use regulations.

(c) License.

(1) Term; Conditions of License. The license to keep chickens shall be valid for three years from date of issuance, and may be renewed for additional three year terms. Every license shall be subject to the following conditions:

- (A) A maximum of three hens per residence is allowed;
- (B) Roosters are prohibited;
- (C) The chickens shall be confined at all times within a chicken facility;
- (D) No structure that houses chickens, either temporarily or permanently, shall be located within twenty feet of any residence;
- (E) A chicken facility shall comply with the setback requirements of the zone in which it is located;
- (F) A chicken facility, and the premises where the chicken facility is located, shall be maintained in a condition such that the facility or chickens do not produce noise or odor that creates a nuisance for is created on adjoining property.

(2) Application. An application for a license to keep chickens shall include the following:

- (A) The name and mailing address of the person to whom the license will be issued;
- (B) The address where the chickens will be kept, if different from the mailing address;
- (C) A certification by the applicant that the chicken facility meets the standards in this section; and
- (D) Payment of the application fee.

(3) Issuance. The application shall be reviewed by the City to determine if there is any reason why the license should not be issued. If no reason is identified, the applicant shall be notified the application has been

approved and the license issued. If a reason is identified why the license should not be issued, the application shall be denied, and the applicant provided written notice setting forth the reasons.

(4) Renewal.

(A) A licensee may apply for renewal of a license to keep chickens no later than 5:00 p.m. on the license expiration date. The application to renew a license shall be accompanied by a certification by an inspector that the chicken facility meets the standards in this section, together with the license renewal fee.

(B) A renewal application shall be reviewed by the City to determine if there is any reason why the license should not be renewed. If no reason is identified, the applicant shall be notified that the renewal has been approved. The renewal shall be effective as of the expiration date. If a reason is identified why the license should not be renewed, the renewal application shall be denied, and the applicant provided written notice setting forth the reasons.

(C) A late fee shall be charged for any renewal application received after the expiration date. The late fee shall be 50% of the amount of the renewal fee. No renewal shall be granted if the application for the renewal is received more than thirty days after the expiration date.

(5) Grounds for Denial. A application for license to keep chickens or a renewal of a license may be denied for any of the following reasons:

(A) Any untrue, misleading, or incomplete statement made on the application for, or made in connection with, the license.

(B) Failure to comply with the conditions of a license issued pursuant to this section.

(C) Any other activity by the licensee that would present a reasonable doubt about licensee's ability to perform the keep chickens without endangering public health, safety, or welfare.

(6) License Fees. Fees for licenses to keep chickens and renewals shall be set by resolution of the City Council. The fees shall be non-refundable.

(d) Cease and Desist Orders; Permit Revocation; Civil Penalties; Enforcement.

(1) Cease and Desist Orders. When a licensee has violated or continues to violate the terms and conditions of a license to keep chickens issued pursuant to this section, or any other provision of this section, the Director may issue an order that the licensee cease and desist all such violations and command the licensee to immediately comply with all requirements the license or this section, and take such appropriate remedial or preventive action as may be needed to properly address the violation.

(2) Suspension or Revocation of Permit.

(A) The Director may suspend or revoke a license if:

(i) The permit was issued in error;

(ii) Inaccurate, incomplete, or inaccurate information was used to obtain, or is provided to the City in connection

with, the license; or

(iii) The applicant is not complying with the terms of the license, or is violating the provisions of this section;

(B) The Director shall issue a written notice to the licensee specifying the reason for the suspension or revocation and provide a time certain, not to exceed ten days, within which the licensee shall correct the reason for the suspension or revocation. If the licensee corrects the deficiency within such ten day period, the license shall be reinstated.

(3) **Civil Penalty.** Any licensee who fails to comply with the terms and conditions of a license issued pursuant to this section, or any other provision of this section, any licensee who fails to comply with a cease and desist order issued pursuant to this subsection, or any person who keeps chickens without first obtaining the license required by this section, shall be subject to a civil penalty, not to exceed \$2,000 per violation. Each day that a violation continues shall constitute a separate violation.

(4) **Civil Penalties Against Agents.** Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, shall likewise be subject to a civil penalty.

(5) **Reconsideration.** Any person aggrieved by any decision, action, or determination, including cease and desist orders, made by the Director, may seek reconsideration by filing request for reconsideration with the Director within ten days after notice of such decision, action, or determination has been provided to the person. The notice shall setting forth in detail the facts supporting the request for reconsideration. The Director's decision, action, or determination shall remain in effect during such period of reconsideration.

(6) **Appeal.** Any person aggrieved by an action of the Director issuing a cease and desist order, revoking or suspending a license, or who is subject to a civil penalty may appeal such action by filing a notice of intent to appeal with the City Recorder within fifteen business days after notice of the Director's final decision after reconsideration is deemed to have been received by the applicant under SRC 20J.110. The notice of appeal shall satisfy the requirements of SRC 20J.110, and the appeal proceed as a contested case under the procedures established in SRC 20J.240-20J.430. Notwithstanding SRC 20J.270, the Director's decision, action, or determination shall remain in effect during such period of the appeal.

(7) **Injunctive Relief.** The City may seek injunctive relief against any person who has willfully failed to comply with the terms and conditions of a license issued pursuant to this section, or willfully violated any other provision of this section, such relief to be in effect for a period not to exceed ten years.

(8) **Remedies Not Exclusive.** The remedies provided by this subsection are cumulative and not mutually exclusive and are in addition to any other rights, remedies and penalties available to the City under any other provision of law.

(e) Any chickens that are not kept as provided in subsection (c) of this section or in compliance with the terms and conditions of a license issued pursuant to this section shall be deemed a public nuisance under SRC 50.800, and the owner or custodian shall be given thirty days to rectify the conditions creating the public nuisance. If the owner or custodian has not rectified the conditions within thirty days of the date notice is provided, the City may abate the nuisance, as provided in SRC 50.800-50.880.

(f) Violation.

(1) It shall be unlawful to keep chickens in the City, except as authorized by subsection (b) of this section. A violation of this paragraph is a misdemeanor.

(2) It shall be unlawful to violate the terms of a permit issued pursuant to subsection (c) of this section. A violation of this paragraph is a violation, and shall be punishable as follows:

(A) \$250 for the first violation.

(B) \$500 for the second violation.

(C) \$750 for the third violation, and the defendant shall be prohibited from obtaining a license to keep chickens for a period of ten years.

(3) Violations of paragraphs (1) and (2) of this section are continuing, and each day the violation continues shall constitute a separate offense.

Section 2. SRC 111.130 is amended to read:

111.130. "L" Definitions.

(a) **Land use action** means a zone change, conditional zone change, variance, adjustment, conditional use approval, specific conditional use approval, planned unit development approval at any stage requiring commission or council action, or any other action requiring discretionary review by an administrative body, including appeals from any of the foregoing.

(b) **Land use proceeding** means a proceeding on a zone change, variance, adjustment, conditional use, specific conditional use, or planned unit development application; a council or commission initiated zone change proceeding; a proceeding to designate zoning classifications for a newly annexed area; or any other proceeding which will result in a land use action unless dismissed.

(c) **Landscaped** means primarily devoted to the planting and preservation of trees, shrubs, lawn and other organic ground cover, together with other natural or artificial supplements to that primary use such as watercourses, ponds, fountains, decorative lighting, benches, arbors, gazebos, bridges, rock or stone arrangements, pathways, sculpture, trellises, and screens.

(d) **Lattice Tower** means a freestanding support structure which consists of a network of crossed metal braces, forming a tower which is usually triangular or square in cross-section.

(e) **Livestock** means:

(1) One or more members of any species of cattle, swine, sheep, goat, poultry, horse or other equine, llama, alpaca or related ruminant, or poultry, excluding chickens, regardless of the purpose for which any of the

foregoing may be kept; and

(2) of any species of rabbit, bee, or fur-bearing animal, or chicken kept for sale, for sale of by-products, for livestock increase, or for value increase.

(f) **Loading space** means an off-street space or bay on the same lot or parcel with a building or complex for the parking of a vehicle while loading or unloading passengers or cargo.

(g) **Lot.** In addition to the meaning given in SRC 63.030, "lot" means any parcel or contiguous unit of lots or other parcels under common or condominium ownership, common life estate, or subject to a common leasehold for a term of at least 99 years.

(h) **Lot area** means the area in square feet or acres (43,560 square feet equals one acre) of a horizontal plane bounded by the vertical extensions of the lot lines.

(i) **Lot coverage** means the percentage of lot area covered by structures other than fences or by other structures no point of which is more than three feet above grade.

(j) **Lot depth** means the horizontal distance between the front and rear lot lines measured at a point halfway between the side lot lines.

(k) **Lot, downhill** means a hillside lot which slopes downhill from the front lot line.

(l) **Lot, interior** means any lot other than a corner lot.

(m) **Lot line** means one of the property lines forming the exterior boundaries of a lot; and includes a condominium unit ownership line where the underlying real property is included in a unit.

(n) **Lot line, front** means:

(1) In the case of any lot having a front lot line designated pursuant to SRC 63.145(e), the line so designated;

(2) In the case of an interior lot having only one street frontage, the lot line separating the lot from the street right of way; and

(3) In the case of any lot not covered by paragraphs (1) or (2) of this subsection, the lot line which the architecturally designed front of the building faces.

(o) **Lot line, interior** means a lot line which is not adjacent to a street.

(p) **Lot line, rear** means:

(1) In the case of any lot having a rear lot line designated or determinable under SRC 63.145(g), the lot line so designated or determined; and

(2) In the case of any other lot, the lot line opposite and most distant from the front lot line.

(q) **Lot line, side** means any lot line which is not a front or rear lot line.

(r) **Lot, uphill** means a hillside lot which slopes uphill from the front lot line.

(s) **Lot width** means the horizontal distance between the side lot lines measured at right angles to the lot depth at a point halfway between the front and rear lot lines.