

ORDINANCE BILL NO. 57-09

AN ORDINANCE RELATING TO CHICKENS; AND MAKING PROVISIONS THEREFOR
The City of Salem ordains as follows:

Section 1. The following is added to SRC Chapter 50, as:

SRC 50.710. Keeping of Chickens.

(a) As used in this section, “chicken” means the common domestic fowl (*Gallus gallus domesticus*) or its young; “coop” means a structure providing roofed shelter for the chickens; “runway” means a fully enclosed, fenced area connected to the coop; and “chicken facility” means the combination of the coop and runway.

(b) Except as otherwise authorized in subsection (c) of this section, or as permitted as a commercial operation, no person shall keep or maintain any chicken or chickens.

(c) Chickens may be kept or maintained, subject to the following conditions:

- (1) There is a maximum of three chickens per residence;
- (2) Roosters are prohibited;
- (3) The chickens shall be confined at all times within a chicken facility;
- (4) The chicken facility complies with the setback requirements of the zone in which it is located, or the chicken facility is located a minimum of ten feet from all adjacent property lines, whichever is the greater distance;
- (5) The chicken facility is maintained in a condition that does not create a nuisance to adjoining property due to noise or odor.

(d) Any chickens that are not kept or maintained as provided in subsection (c) of 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.

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1 **Section 2. Severability.** Each section of this ordinance, and any part thereof, is severable, and
2 if any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of
3 this ordinance shall remain in full force and effect.

4 PASSED by the City Council this _____ day of _____, 2009.

5 ATTEST:

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7 City Recorder

8 Approved by City Attorney:  _____

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10 Checked by: G. Gross; B. Rogers

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TO: **MAYOR AND CITY COUNCIL**
THROUGH: *Linda Norris*
LINDA NORRIS, CITY MANAGER
FROM: **VICKIE HARDIN WOODS, COMMUNITY DEVELOPMENT DIRECTOR** *VHW*
SUBJECT: **AMENDMENTS TO REVISED CODE CHAPTERS 50 AND 111
REGARDING THE KEEPING OF URBAN CHICKENS**

ISSUE

Should the City Council enact:

1. Ordinance Bill No. 55-09, to amend SRC Chapter 111 to modify the definition of "live-stock," thus removing the keeping of chickens, other than for commercial purposes, from regulation in the zoning code.
2. Ordinance Bill No. 56-09, to amend SRC Chapter 50 to allow the keeping of up to four hens (no roosters), under certain limited conditions and the keeping of any number of chickens if located at least 100 feet from any residence, or
3. Ordinance Bill No. 57-09, to amend SRC Chapter 50 to allow the keeping of up to three hens (no roosters), under certain limited conditions.

RECOMMENDATION

Staff recommends the City Council advance both Ordinance Bills No. 55-09 and Ordinance Bill No. 57-09 to second reading for enactment.

BACKGROUND

On September, 14, 2009, a staff report was submitted to council indicating the Salem Planning Commission was recommending to the City Council that an ordinance modifying the definition of "livestock" to exclude chickens, except when being kept for commercial purposes, not be enacted.

That evening, Council directed staff to return with two ordinances, one based on the ordinance considered by the Planning Commission and the other based on the City of Cannon Beach's ordinance regulating chickens.

The two ordinances are summarized as follows:

1. Ordinance Bill No. 55-09 / Considered by Planning Commission: Modifies 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 have the effect of allowing persons to keep chickens throughout the city with no restrictions.
2. Ordinance Bill No. 56-09 / Cannon Beach Regulation of Chickens: Regulates chickens outside the zoning code; allows an unlimited number of chickens to be kept for non-commercial purposes anywhere in the City as long as the chickens are located at least 100 feet from any residence (other than the residence of the owner or

custodian of the chickens). Also allows up to four chickens per residence anywhere in the City under the following conditions:

- a) Roosters are prohibited.
- b) Chickens to be confined at all times in chicken facility.
- c) Facility must meet zoning setbacks
- d) Facility must be a minimum of 15 feet from dwellings adjacent the property.
- e) Facility to be maintained in good condition and not create a nuisance.

Ordinance Bill No. 56-09 would amend SRC Chapter 50, Property Maintenance.

Staff has prepared a third ordinance for Council consideration. Ordinance Bill No. 57-09 incorporates all the provisions of the Cannon Beach ordinance, but limits the number of chickens to three instead of four and does not allow the keeping of more than three chickens under any circumstance, except for commercial purposes as allowed by the zoning code.

FACTS AND FINDINGS

1. Modifying the definition of "livestock," as proposed in Ordinance Bill No. 55-09, would allow persons to keep any number of chickens for noncommercial purposes throughout the City with no restrictions. As with any activity in the City, the keeping of chickens would be regulated by the City's nuisance regulations. Under SRC 50.800, the keeping of chickens activity would be prohibited if the conditions under which they were kept created a public nuisance, i.e.: presented a detriment or menace to the public health, welfare or safety. Enforcement actions would occur based on the specific conditions on a property. The enforcement officer would have to determine that a nuisance exists, after which a correction notice would be issued to abate the nuisance. If the nuisance persisted, an infraction citation would be issued requiring the chicken owner to appear in municipal court. The judge would then determine if the conditions constituted a "public nuisance."
2. Ordinance Bill No. 56-09 would incorporate Cannon Beach's method of regulating chickens in to the "Miscellaneous Violations" section of SRC Chapter 50, the City's property maintenance ordinance. Ordinance Bill No. 56-09 would include specific limitation on the number of chickens, and the location and operation for keeping chickens. Enforcement would be the same as under Ordinance Bill No. 55-09, except that there would be specified objective criteria defined for what constitutes a violation instead of "detriment or menace to public health, welfare or safety."
3. Enacting **only** Ordinance Bill No. 55-09 does not provide enough control over the keeping of chickens in an urban environment.
4. Enacting **only** Ordinance Bill No. 56-09 will create conflict with the existing zoning code, which limits chickens to only the Residential Agricultural Zone.
5. In order to provide a coherent regulation of chickens that is not a land use matter and that will not create confusion with the general public, both ordinances need to be adopted.
5. Ordinance Bill No. 56-09, as proposed, is much broader than limitations discussed at prior Council meetings. Such discussions have focused on keeping the number of chickens to not more than three to five. The Cannon Beach approach allows any number of chickens as long as they are more than 100 feet away from a residence. Ordinance Bill No. 56-09 would place limitations on commercial operations in ways that have not been discussed by the City Council.
6. Ordinance Bill No. 57-09 has been prepared by staff to provide a slightly revised alternative to the Cannon Beach approach. Modifications are:

- A. Changing the number of permitted hens from four to three.
 - B. Eliminating the provision that any number of chickens may be kept if located at least 100 feet from any residence.
 - C. Changing the setback for chicken facilities from "15 feet from a residence" to "ten feet from adjacent property line".
7. Staff recommends enacting Ordinance Bill No. 57-09, rather than Ordinance Bill No. 56-09, based on the facts following facts:
- A. It is more consistent with previous council discussion.
 - B. It maintains current rules on commercial operation.
 - C. It provides ease of enforcement through clear measurements from consistent boundaries.
 - D. It provides adequate community protections.

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. On June 22, 2009, the City Council initiated the proposed amendment with the approval of Resolution No. 2009-63.

The Planning Administrator subsequently set a public hearing for August 18, 2009, and caused notice of the hearing to be published in the newspaper on August 6, 2009, and August 13, 2009. Notice was mailed to every neighborhood organization and to the Boards of Commissioners of Marion and Polk Counties on July 29, 2009.

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. Such notice was sent by regular mail on June 25, 2009.
3. On August 18, 2009, the Planning Commission held a public hearing to receive testimony and consider the proposed amendment. Testimony both in favor and in opposition to the proposed amendments was provided.

Subsequent to the close of the public hearing, the Planning Commission voted to reject a motion to recommend approval of the proposed amendments to the City Council. A summary of the Planning Commission's decision is included as Attachment A.

ALTERNATIVES

In considering the matter the Council may:

1. Advance both Ordinance Bills No. 55-09 and Ordinance Bill No. 57-09 to second reading for enactment, or
2. Take no action. Existing zoning regulations prohibiting the keeping of chickens in most zones would remain in effect, or
3. Advance both Ordinance Bills No. 55-09 and Ordinance Bill No. 56-09 to second reading.



Glenn Gross
Planning Administrator



Brady Rogers
Compliance Services Administrator

Attachment A: Planning Commission Recommendation (Dated: August 18, 2009)

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ISSUE: Proposed Amendments to Salem Revised Code (SRC) Chapter 111 (Definitions) modifying the definition of "livestock" to exclude the keeping of chickens from being considered as keeping livestock, except when they are being kept for commercial purposes (CA09-4)

DATE OF DECISION: August 18, 2009

APPLICANT: City of Salem

PURPOSE OF REQUEST:

Should the City amend SRC Chapter 111 (Definitions) to modify the definition of "Livestock" to exclude the keeping of chickens from being considered as keeping livestock, except when they are kept for commercial purposes?

ACTION:

The Planning Commission rejected a motion, by a 4 to 3 vote, to recommend approval to the City Council the proposed amendment to Salem Revised Code (SRC) Chapter 111 (Definitions) modifying the definition of "livestock" to exclude the keeping of chickens from being considered as keeping livestock, except when they are kept for commercial purposes.

The Planning Commission's action to not recommend the proposed amendment is based upon the following Findings:

1. Currently, the keeping of livestock is allowed only within City's EFU (Exclusive Farm Use) and RA (Residential Agriculture) zones. Under the proposed amendment the keeping of livestock would remain as an allowed use within those zones, but the keeping of chickens for non-commercial purposes would no longer be included within the definition of livestock and therefore would no longer be regulated under the provisions of the zoning code. Instead, separate corresponding amendments to the SRC would be brought forward for City Council consideration placing the keeping of chickens under the provisions of Title IV (Health and Sanitation) of the Salem Revised Code.
2. SRC Chapter 110 (Zoning), specifically SRC Chapter 110.020, provides that the intent and purpose of the zoning code is:
 - (a) To codify the primary regulatory instrument with which to implement the comprehensive plan;
 - (b) To promote and to protect the public health, safety, and general welfare of the community;
 - (c) To classify by zone all property in such a manner as to reflect its present suitability for particular uses, and to provide a process whereby property may be reclassified to reflect other suitable uses consistent with the comprehensive plan and changing conditions and community values; and
 - (d) To provide sanctions for violations of the provisions of the zoning code.
3. The existing definition of "livestock" regulating the keeping of poultry and other animals through the provisions of the zoning code is consistent with the intent and purpose of the zoning code and is appropriate for the protection of quality of life.

The proposed amendment to the definition of "livestock" to exclude the keeping of chickens, except when kept for non-commercial purposes, would remove regulation of such activity from

the zoning code and allow the keeping of chickens where they currently are not allowed; resulting in potential impacts to quality of life contrary to the intent and purpose of the zoning code.

4. Public testimony received illustrated that pets which are already allowed and widely accepted as domestic animals cause problems between neighbors and that it is difficult for the City to deal with the complaints. The addition of chickens, which are not generally accepted as urban pets, will infringe on those neighbors who are not as supportive of the keeping of chickens.
5. Adoption of the proposed amendment includes the potential of creating additional conflict between neighbors in the form of private lawsuits should individuals choose to keep chickens on their property, as would be allowed under the proposed amendment, but unknowingly in violation of private Conditions, Covenants, and Restrictions (CC&R's) that may be applicable to their property precluding such activity.
6. The proposed amendment does not address the appropriateness of excluding one type of poultry from the definition of livestock, therefore allowing them to be kept within residential zones, while other similar birds such as ducks would still be prohibited.

Planning Commission Vote:

YES 3 (Budke, Levin, Lewis) NO 4 (Dorn, Gallagher, Goss, Smith)