

ORDINANCE BILL NO. 19-10

AN ORDINANCE RELATING TO KEEPING OF URBAN CHICKENS; ADDING SRC
50.710, AND AMENDING SRC 111.130

The City of Salem ordains as follows:

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) Approved inspector means a person who has received training by the City on the standards for chicken facilities contained in this section, and has received a certificate therefor.

(2) Chicken means the common domestic fowl (*Gallus gallus domesticus*) or its young.

(3) Chicken facility means a combination of a coop and a runway.

(4) Commercial poultry operation means a farm that raises chickens for sale or the production of eggs for profit.

(5) Coop means a structure providing roofed shelter for the chickens.

(6) Hen means an adult female chicken.

(7) Rooster means a male chicken, and includes a capon.

(8) Runway means a fully enclosed, fenced area connected to the coop.

(b) Except as provided in this section, 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) **Terms; Conditions of License.** The license to keep chickens shall be valid for three years from the 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;

1 (D) No structure that houses chickens, either temporarily or permanently, shall
2 be located within twenty feet of any residence;

3 (E) A chicken facility shall comply with the setback requirements of the zone in
4 which it is located;

5 (F) A chicken facility, and the premises where the chicken facility is located,
6 shall be maintained in a condition such that the facility or chickens do not produce
7 noise or odor that creates a nuisance for adjoining property.

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

10 (A) The name and mailing address of the person to whom the license will be
11 issued;

12 (B) The address where the chickens will be kept, if different from the mailing
13 address;

14 (C) A certification by an approved inspector that the chicken facility meets the
15 standards in this section; and

16 (D) Payment of the application fee.

17 **(3) Issuance.** The application shall be reviewed by the City to determine if there is
18 any reason why the license should not be issued. If no reason is identified, the
19 applicant shall be notified that the application has been approved and the license
20 issued. If a reason is identified why the license should not be issued, the application
21 shall be denied, and the applicant shall be provided written notice setting forth the
22 reasons.

23 **(4) Renewal.**

24 (A) A licensee may apply for renewal of a license to keep chickens no later than
25 5:00 p.m. on the license expiration date. The application to renew a license shall
26 be accompanied by a certification by an approved inspector that the chicken
27 facility meets the standards in this section, together with the license renewal fee.

28 (B) A renewal application shall be reviewed by the City to determine if there is
29 any reason why the license should not be renewed. If no reason is identified, the
30 applicant shall be notified that the renewal has been approved. The renewal shall

1 be effective as of the expiration date. If a reason is identified why the license
2 should not be renewed, the renewal application shall be denied, and the applicant
3 provided written notice setting forth the reasons.

4 (C) A late fee shall be charged for any renewal application received after the
5 expiration date. The late fee shall be fifty percent of the amount of the renewal
6 fee. No renewal shall be granted if the application for the renewal is received
7 more than thirty days after the expiration date.

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

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

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

14 (C) Failure to provide the certification by an approved inspector that the chicken
15 facility meets the standards in this section.

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

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

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

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

28 **(2) Suspension or Revocation of Permit.**

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

30 (i) The permit was issued in error;

1 (ii) Inaccurate, misleading, or incomplete information was used to obtain, or is
2 provided to the City in connection with, the license; or

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

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

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

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

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

26 (6) **Appeal.** Any person aggrieved by an action of the Director issuing a cease and
27 desist order, revoking or suspending a license, or who is subject to a civil penalty may
28 appeal such action by filing a notice of intent to appeal with the City Recorder within
29 fifteen business days after notice of the Director's final decision after reconsideration
30 is deemed to have been received by the applicant under SRC 20J.110. The notice of

1 appeal shall satisfy the requirements of SRC 20J.110, and the appeal shall proceed as
2 a contested case under the procedures established in SRC 20J.240-20J.430.

3 Notwithstanding SRC 20J.270, the Director's decision, action, or determination shall
4 remain in effect during such period of the appeal.

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

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

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

18 **(f) Violation.**

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

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

24 **(A)** \$250 for the first violation.

25 **(B)** \$500 for the second violation.

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

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

30 **Section 2.** SRC 111.130 is amended to read:

1 **SRC 111.130. "L" Definitions.**

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

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

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

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

20 **(e) Livestock** means:

21 (1) One or more members of any species of cattle, swine, sheep, goat, poultry, horse
22 or other equine, or llama, alpaca or related ruminant, or poultry, excluding chickens,
23 regardless of the purpose for which any of the foregoing may be kept; and

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

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

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

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

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

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

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

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

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

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

16 (1) In the case of any lot having a front lot line designated pursuant to SRC
17 63.145(e), the line so designated;

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

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

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

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

24 (1) In the case of any lot having a rear lot line designated or determinable under SRC
25 63.145(g), the lot line so designated or determined; and

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

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

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

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

PASSED by the City Council this _____ day of _____, 2010.

ATTEST:

City Recorder

Approved by City Attorney: _____ 

Checked by: 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*

BY B. ROGERS

SUBJECT: AMENDMENTS TO REVISED CODE CHAPTERS 50 AND 111
REGARDING THE KEEPING OF URBAN CHICKENS

ISSUE

Should the City Council enact Ordinance Bill No. 19-10 to amend SRC Chapter 50 to allow the keeping of up to three chickens, no roosters, under certain limited conditions, with required license; and amend SRC Chapter 111 to modify the definition of "livestock", thus removing the keeping of chickens, other than for commercial purposes, from regulation in the zoning code?

RECOMMENDATION

Staff recommends the City Council advance Ordinance Bill No. 19-10 to second reading for enactment; and set a date for a public hearing on this ordinance.

BACKGROUND

On July 12, 2010, an information staff report was presented to council with an attached draft ordinance. After consideration and debate council directed staff to return with a future report and ordinance based on the draft ordinance.

The original proposal combined with staff recommendations from the July 12, 2010 information staff report is summarized as follows:

1. Regulates chickens outside the zoning code. Allows up to three chickens per residence anywhere throughout the city under the following conditions:
 - a) Chicken coop/facilities must be licensed.
 - b) Roosters are prohibited.
 - c) Chickens to be confined at all times in chicken coop/facility.
 - d) Coop/facility must meet zoning and building code setbacks.
 - e) Coop/facility must be a minimum of 20 feet from all dwellings.
 - f) Coop/facility must be less than 120 square feet in size.
 - g) Coop/facility must be located in the rear yard of a residence.
 - h) Facility to be maintained in good condition and not create a nuisance.
 - i) 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 able to keep chickens.

2. Amends SRC 111.130(e) to exclude chickens from the defined list of outright "Livestock" in Salem Revised Code, and include chickens in the defined list of animals that can be kept for personal use and by-products.

FACTS AND FINDINGS

1. Modifying SRC 50 Property Maintenance Chapter as proposed in Ordinance Bill No. 19-10 will allow any residence to have up to three hens and no roosters with the appropriate license and under certain conditions. Enforcement actions would occur through the Property Maintenance Code.
2. Modifying the definition of "livestock" as proposed in Ordinance Bill No. 19-10 would intend to allow the keeping of chickens for noncommercial purposes throughout the city. The modification of this definition will prevent the two chapters of Salem Revised Code from being in conflict.
3. At the July 12, 2010 council meeting a question was raised about the definition of yards. It was staff's intent to require chicken coop/facilities to be placed in rear yards only. The definition of rear yard as used under Salem Zone Code can be found under SRC 111.260(c), and reads "A yard extending across the full width of the lot between the most rear main building and the rear lot line."
4. At the July 12, 2010 council meeting public testimony was given requesting that the chicken coop/facility not be required to be twenty feet from the home of the chicken owner; that only adjacent dwellings require the twenty foot setback of the coop/facility.

Staff recommends and plans to administratively regulate the ordinance under the following additional terms and conditions in addition to the specifications of the ordinance.

5. Fines for violation of the ordinance be set at the listed progressive levels, with the option of civil a penalty under SRC 20J.
6. 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.
7. Inspections of the coop/facilities are to be performed by an outside vendor at the chicken owner's expense. 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.
8. 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.
9. 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.

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. Council and/or the Planning Administrator must then fix a date for a public hearing before council and cause notice to be provided as required by the code.
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. Notice to the DLCDC was received on July 16, 2010. This will allow the council and/or Planning Administrator to fix a date for a public hearing to take place on or after August 31, 2010. The first available council session after that date is September 13, 2010.



Brady Rogers
Compliance Services Administrator

Attachment A: Ordinance Bill No. 19-10

August 16, 2010
9.1 (a)

To: Salem City Council

From: Barbara Palermo, Chickens In The Yard

Date: August 11, 2010

To save time and avoid confusion at the upcoming meeting, I'm providing you with our group's response to the August 9th Future Report in advance.

We are grateful for your willingness to reconsider the issue and we are optimistic that a fair and reasonable chicken-keeping ordinance will be passed shortly. We also appreciate all the effort that you and your staff have put into this.

There have been several revisions to the proposed ordinance in recent weeks. As a result, it has substantially deviated from the additional "sideboards" we initially discussed. On August 16th we will be asking that the following points be changed to reflect our original agreement.

1. Coop proximity to chicken-owner's house: There should be no distance requirement between the coop and the chicken-owner's house (except that it can't be connected to the residence). The coop/facility should be at least 20' from residential dwellings on *adjacent properties* to minimize any impact on neighbors, but chicken-owners should be allowed to keep their pets close by.

2. Fees: We originally agreed to a \$50 fee the first year and \$25 to renew the permit every year after that. We were told the reason for the fee is to cover the cost of the inspection by an outside vendor. However, the most recent version of the ordinance requires a \$67.50 fee every year, *plus* the cost of the inspection on top of that. We believe this is very unreasonable. Most cities do not charge people for keeping chickens and those that do, have a much more reasonable fee:

Bend – \$100 permit gets you four hens (not three) – that's 250 more eggs per year, and it's a one-time fee.

Gresham – \$50 permit is good for two years.

Portland – \$31 permit is required *only* if you wish to keep more than three hens.

3. Inspections: We originally agreed to an initial inspection and a follow-up inspection two years later. Now, inspections are required annually. We think two inspections are adequate.

4. Coop Size: The previous Future Report (dated July 12th) stated that "coops" must be no larger than 120 square feet. The definition of "coop" is a roofed shelter, so this requirement did not include the attached chicken run (I verified this with Brady Rogers). However, the August 9th Future Report states that the "coop/facility" must be no larger than 120 square feet. The definition of "coop/facility" includes the chicken run. There should be no limit to the size of the wire pen used for exercising the birds, as it is not a building.

Please feel free to contact me with questions. Thank you for your time and attention to this matter.



1313 Main Street
Dallas, OR 97338

July 22, 2010

To Whom It May Concern:

I have been involved in providing baby chicks to local residents since 1997. Over that time, we have sold more than 20,000 newly hatched pullets. One might assume that some of those reside in Salem.

Annually, we host Chick Day, The Poultry Event of the Year, on the first Saturday in April. This is a family event, where children accompany parents or grandparents to see, hold, and perhaps pick up some chickens for their family flock. Those same families come back year after year in a ritual that has become a rite of spring. Unlike livestock, chickens are relatively easy to keep in the most basic of structures, allowing even young children to experience the simple act of caring for another living being while developing an appreciation for our food supply.

Although many would question the motives behind an organization that claims to know what's best for Salem from 3000 miles away, let me address some of the concerns raised by those folks in Vermont. This comes from experience, not theory.

Most hatcheries guarantee 90% accuracy in sexing chicks. I have found that the better hatcheries exceed 95% overall. Just this morning, a customer mentioned to me that he had gotten one rooster in the batch of 24 chicks he had purchased this year. I consider that ratio typical. For those who want full assurance of their chicken's sex there are several popular breeds whose gender is linked to the color of the feathers, making identification straight forward and positive.

In our area, unwanted hens or the few roosters that sneak through are easily dealt with by posting on our public bulletin board or on Craigslist. Roosters are usually passed on to those who butcher chickens to feed their families. There is no shortage of people who can use a fresh, young meat bird. We've observed this for years among the less fortunate. It has recently broadened to include anyone who wants to feel more connected to their food supply.

I'm pleased to be a resident of Dallas, which earlier this year overwhelmingly approved residents' right to keep up to five hens inside the city. I recently spoke with City Council President Brian Dalton, who explained that their decision was based upon a *presumption of competence* of those who wish to keep chickens responsibly. If a few residents prove incompetent to do so, the city will deal with resolving those issues at that time. What an inspiring thought, that citizens should be allowed the opportunity to prove they can act responsibly before being treated otherwise.

Seven months into Dallas's new chicken code, I have heard no one crying for its amendment or repeal. Few of us are surprised.

Regards,

Jon Hendersen
President

503-831-1222