



Agenda Report 2014-06-02-02

Date: May 23, 2014

To: John Kovash, Mayor
Members, West Linn City Council

From: Zach Pelz, AICP, Associate Planner

Through: Chris Kerr, Community Development Director
Chris Jordan, City Manager *CJ*

Subject: Ordinance 1624 – Amending the West Linn Municipal Code and Community Development Code to permit egg-laying chickens in residential zones.

Purpose

The purpose of this amendment is to legally allow egg-laying chickens within residential zones in the City of West Linn, consistent with past practice.

Question(s) for Council:

- Are residential properties in the City of West Linn appropriate hosts for up to five egg-laying hen chickens, pursuant to additional locational and structural standards?

Public Hearing Required:

Yes. Public Hearing was held and closed May 12, 2014.

Background & Discussion:

The City of West Linn has been allowing residents to host hen chickens for at least the last five years following an interpretation of the City's Development Code by a former Planning Director; which treated chickens similarly to cats and dogs and other domestic pets. It was recently determined by the City's legal counsel that this interpretation was difficult to legally defend. The proposed amendment herein codifies the City's past practice of allowing egg-laying hen chickens in certain situations and eliminates the legal liability associated with permitting this practice.

Budget Impact:

- Unknown, likely minimal.

Council Options:

1. Approve the change
2. Deny the change
3. Approve the change with modifications

Staff Recommendation:

- Staff recommends that the City Council approve the change.

Potential Motion:

- Move to approve the change, and permit up to five egg-laying chickens in residential zones in the City of West Linn.

Attachments:

1. Ordinance 1624

ORDINANCE NO. 1624

AN ORDINANCE AMENDING WEST LINN MUNICIPAL CODE (WLMC) CHAPTER 5 AND WEST LINN COMMUNITY DEVELOPMENT CODE (CDC) CHAPTERS 8, 9, 10, 11, 12, AND 13 TO PERMIT RESIDENTS TO OWN AND MAINTAIN EGG-LAYING CHICKENS IN RESIDENTIAL ZONES.

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are ~~bold lined through~~ and additions are **bold underlined**.

WHEREAS, Chapter II, Section 4, of the West Linn City Charter provides:

Powers of the City. The City shall have all powers which the Constitution, statutes and common law of the United States and of this State now or hereafter expressly or implied grant or allow the City, as fully as though this Charter specifically enumerated each of those powers;

WHEREAS, the above referenced grant of power has been broadly interpreted to allow local governments to decide upon the scope of their powers in their charter so that specific statutory authorization is not required for a city to exercise its powers, LaGrande/Astoria v. PERB, 281 Or 137, 142 (1978), aff'd on reh'g 284 Or 173 (1978); and

WHEREAS, the City of West Linn provided legislative notice of its intent to undertake a review of the WLMC and the CDC and propose revisions pursuant to the applicable notice provisions; and

WHEREAS, the proposed CDC amendments meet the criteria for approval of legislative amendments stated in Section 98.100 of the CDC; and

WHEREAS, the proposed CDC amendments are compliant with the goals and policies of the Comprehensive Plan and statewide planning goals; and

WHEREAS, the measures adopted by this Ordinance comply with the state and other governing laws and are reasonably related to the public health, safety and welfare; and

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

SECTION 1. Amendment. Sections 5.400, 5.415, and 5.416 of the West Linn Municipal Code, relating to livestock and Poultry, are amended to read as follows:

5.400 Definitions.

For purposes of Sections 5.400 to 5.530, except where the context indicates otherwise, the following terms shall have the meanings given to them in this section:

Offensive. A condition that impacts the appearance of an area and offends the surrounding neighbors, or is a fire or health hazard. This definition applies to the word "offends."

Person in charge of property. An agent, occupant, lessee, contract purchaser, or person, other than the owner, having possession or control of the property.

Poultry or livestock: alpacas, burros, cattle, emu, fowl, horses, hogs, goats, jennies, jackasses, llamas, mules, ostriches, sheep, and any other farm animal, excluding dogs, cats, and domestic chickens.

Public place. A building, place, or accommodation, whether publicly or privately owned, open and available to the general public.

Surrounding neighbors. Any two people of separate residences of property adjacent to, contiguous with or directly across the street from the offending property or condition.

5.415 Livestock and Poultry.

(1) **Unless specifically permitted by the WLMC or CDC under prescribed conditions, no person shall keep or maintain livestock or poultry within the City.** No person may maintain a pigsty, slaughterhouse or tannery, or permit livestock or poultry owned by him to run at large within the City. ~~This section shall not apply to cats, dogs or other household pets.~~

5.416 Domestic Chickens

(a) Purpose. The following regulations will govern the keeping of domestic chickens and are designed to prevent nuisance conditions that are unsanitary or unsafe.

(b) Domestic chickens are allowed subject to the following restrictions:

- (1) No more than five domestic chickens are allowed for each single-family residence.**
- (2) No roosters shall be allowed.**
- (3) Domestic chickens shall be kept in a secure enclosure at night.**
- (4) Enclosures shall be covered, predator-resistant, well-ventilated, and provide a minimum of 2 square feet per domesticated chicken.**
- (5) Enclosures must be located at least 20 feet from all neighboring residences.**
- (6) Enclosures must be kept in a clean, dry, and sanitary condition at all times, and must be cleaned on a regular basis to prevent offensive odors.**

SECTION 2. Amendment. Section 8.050 of the West Linn Community Development Code, relating to egg-laying chickens, is amended to read as follows:

08.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

The following uses are allowed in this zone under prescribed conditions.

...

4. Agricultural or horticultural use; provided, that no retail or wholesale business sales office is maintained on the premises; and provided, that poultry or livestock, ~~other than normal household pets,~~ shall not be permitted within 100 feet of any residence other than a dwelling on the same lot, nor on a lot of less than one acre, or which has less than 20,000 feet per head of livestock. These uses are subject ~~Subject~~ to the nuisance provisions found in Section 5.400 et. seq. of the West Linn Municipal Code.

SECTION 3. Amendment. Section 9.050 of the West Linn Community Development Code, relating to egg-laying chickens is amended to read as follows:

09.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

The following uses are allowed in this zone under prescribed conditions.

...

4. Agricultural or horticultural use; provided, that no retail or wholesale business sales office is maintained on the premises; and provided, that poultry or livestock, ~~other than normal household pets,~~ shall not be permitted within 100 feet of any residence other than a dwelling on the same lot, nor on a lot of less than one acre, or which has less than 20,000 feet per head of livestock. These uses are subject ~~Subject~~ to the nuisance provisions found in Section 5.400 et. seq. of the West Linn Municipal Code.

SECTION 4. Amendment. Section 10.050 of the West Linn Community Development Code, relating to egg-laying chickens is amended to read as follows:

10.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

The following uses are allowed in this zone under prescribed conditions.

...

4. Agricultural or horticultural use; provided, that no retail or wholesale business sales office is maintained on the premises; and provided, that poultry or livestock, ~~other than normal household pets,~~ shall not be permitted within 100 feet of any residence other than a dwelling on the same lot, nor on a lot of less than one acre, or which has less than 20,000 feet per head of livestock. These uses are subject ~~Subject~~ to the nuisance provisions found in Section 5.400 et. seq. of the West Linn Municipal Code.

SECTION 5. Amendment. Section 11.050 of the West Linn Community Development Code, relating to egg-laying chickens is amended to read as follows:

11.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

The following uses are allowed in this zone under prescribed conditions.

...

5. Agricultural or horticultural use; provided, that no retail or wholesale business sales office is maintained on the premises; and provided, that poultry or livestock, ~~other than normal household pets,~~ shall not be permitted within 100 feet of any residence other than a dwelling on the same lot, nor on a lot of less than one acre, or which has less than 20,000 feet per head of livestock. These uses are subject ~~Subject~~ to the nuisance provisions found in Section 5.400 et. seq. of the West Linn Municipal Code.

SECTION 6. Amendment. Section 12.050 of the West Linn Community Development Code, relating to egg-laying chickens is amended to read as follows:

12.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

The following uses are allowed in this zone under prescribed conditions.

...

5. Agricultural or horticultural use; provided, that no retail or wholesale business sales office is maintained on the premises; and provided, that poultry or livestock, ~~other than normal household pets,~~ shall not be permitted within 100 feet of any residence other than a dwelling on the same lot, nor on a lot of less than one acre, or which has less than 20,000 feet per head of livestock. These uses are subject ~~Subject~~ to the nuisance provisions found in Section 5.400 et. seq. of the West Linn Municipal Code.

SECTION 7. Amendment. Section 13.050 of the West Linn Community Development Code, relating to egg-laying chickens is amended to read as follows:

13.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

The following uses are allowed in this zone under prescribed conditions.

...

7. Agricultural or horticultural use; provided, that no retail or wholesale business sales office is maintained on the premises; and provided, that poultry or livestock, ~~other than normal household pets,~~ shall not be permitted within 100 feet of any residence other than a dwelling on the same lot, nor on a lot of less than one acre, or which has less than 20,000 feet per head of livestock. These uses are subject ~~Subject~~ to the nuisance provisions found in Section 5.400 et. seq. of the West Linn Municipal Code.

SECTION 8. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 9. Savings. Notwithstanding this amendment, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 10. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections **[8-10]**) need not be codified and the City Recorder or his/her designee is authorized to correct any cross-references and any typographical errors.

SECTION 11. Effective Date. This ordinance shall take effect on the 30th day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 2(C) of the City Charter on the 2nd day of June, 2014, and duly PASSED and ADOPTED this _____ day of _____, 2014.

JOHN KOVASH, MAYOR

KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY