



CITY OF CEDAR PARK  
SPECIAL CALLED MEETING OF THE  
PLANNING & ZONING COMMISSION  
**TUESDAY, OCTOBER 1, 2013 AT 6:30 P.M.**  
CEDAR PARK CITY HALL COUNCIL CHAMBERS  
450 CYPRESS CREEK ROAD, BUILDING FOUR, CEDAR PARK, TEXAS 78613

## COMMISSION MEMBERS

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> SCOTT ROGERS, Place 1      | <input type="checkbox"/> NICHOLAS KAUFFMAN, Place 5, Chair    | <input type="checkbox"/> KELLY BRENT, Place 7               |
| <input type="checkbox"/> THOMAS BALESTIERE, Place 2 | <input type="checkbox"/> AUDREY WERNECKE, Place 4, Vice Chair | <input type="checkbox"/> HOLLY HOGUE, Place 6,<br>Secretary |
| <input type="checkbox"/> KEVIN HARRIS, Place 3      |   |   |

1. CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN
2. PLEDGE OF ALLEGIANCE TO THE U.S. AND TEXAS FLAGS
3. CITIZEN COMMUNICATIONS (Not For Items Listed On This Agenda. Three Minutes Each. No Deliberations With Commissioners. Commissioners May Respond With Factual Information.)
4. WORKSHOP
  - A. Consider Presentations and Discussion of the Regulation of Poultry in Residential Districts
  - B. Consider a Recommendation to the City Council Regarding the Regulation of Poultry in Residential Districts
  - C. Consider a Presentation and Discussion on Private Streets and Gated Communities
  - D. Consider a Presentation and Discussion of Zoning Districts and Regulations for Various Care Giving Facilities
5. ADMINISTRATIVE ITEMS:  
*(Commissioners and staff may discuss items related to the Commission's general duties and responsibilities. The Commission may not take a vote.)*
  - A. Director and Staff Comments
  - B. Commissioners Comments
  - C. Request for Future Agenda Items
6. ADJOURNMENT

*The above agenda schedule represents an estimate of the order for the indicated items and is subject to change at any time.*

*All agenda items are subject to final action by the Planning and Zoning Commission.*

*Any item on this posted agenda may be discussed in Executive Session provided it is within one of the permitted categories under Chapter 551 of the Texas Government Code.*

*An unscheduled closed executive session may be held if the discussion of any of the above agenda items concerns the purchase, exchange, lease or value of real property; the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; the deployment or use of security personnel or equipment; or requires consultations with the City Attorney.*

*At the discretion of the Planning and Zoning Commission, non-agenda items may be presented by citizens to the Planning and Zoning Commission for informational purposes; however, by law, the Planning and Zoning Commission shall not discuss, deliberate or vote upon*

*such matters except that a statement of specific factual information, a recitation of existing policy, and deliberations concerning the placing of the subject on a subsequent agenda may take place.*

*The City Attorney has approved the Executive Session Items on this agenda, if any.*

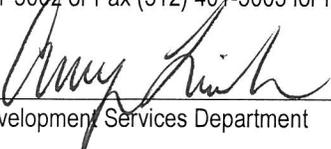
CERTIFICATE

I certify that the above notice of the Special Called Planning and Zoning Commission Meeting of the City of Cedar Park, Texas was posted on the bulletin board of the City of Cedar Park City Hall, 450 Cypress Creek Road, Building Four, Cedar Park, Texas. This notice was posted on:

SEP 27 '13 PM 3:46

\_\_\_\_\_  
*Date Stamped (Month, Day, Year, AM/PM, Time)*

The Cedar Park City Hall Complex Meeting Rooms are wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretative services must be made 48 hours prior to this meeting. Please contact the City Secretary's Office at (512) 401-5002 or Fax (512) 401-5003 for further information.

  
\_\_\_\_\_  
Development Services Department

Notice Removed: \_\_\_\_\_  
*Date Stamped (Month, Day, Year, AM/PM, Time)*

October 1, 2013

*Planning and Zoning Commission*

**Item:  
4A&B**

**MEMORANDUM**

Ordinance Amendment - Chickens in Residential Areas

To: Cedar Park Planning and Zoning Commission  
From: Joe Vining, Interim Director Planning and Development Services, 401-5066,  
[joe.vining@cedarparktexas.gov](mailto:joe.vining@cedarparktexas.gov)

Re: Chickens in Residential Areas

Dear Commissioners:

At the Special Called City Council meeting of September 5, Staff was asked to review the issue of chickens in our residential areas. Specifically, should we expand our existing ordinances to allow chickens in all single family districts or should we leave our ordinances as they are? We were asked to consider this topic in a work session environment in order to facilitate a more objective and technical discussion of the issues. We were not asked to have a public hearing during this work session.

Staff will make an opening general presentation and then we will have individuals representing both sides of the issue make a ten minute presentation of their side. They may have more than one speaker as long as they do not exceed the time limit. After this the Commission will deliberate the question and finally make a recommendation to the Council.

We have included the following items in your packet:

- 1) Cover Memo
- 2) A Memo to the City Manager covering ordinances from our benchmark cities
- 3) Selected pages from our animal control ordinance
- 4) A copy of an article from the American Planning Association on Urban Livestock

The Staff recommendation is to not expand the ordinance provisions to the smaller single family lots.

# Memorandum

---

**To:** Cedar Park City Council  
**CC:** Brenda Eivens, City Manger  
**From:** Kimberly Painter, Management Intern  
**Date:** 8/7/2013  
**Re:** The keeping of chickens and other livestock in residential areas.

---

Hello City Council,

As you know, several residents have expressed an interest in having chickens in residential areas. We have also heard from residents who oppose the allowance of chickens in their neighborhoods. Due to the level of public interest related to this topic, we have compiled some information for you to review.

Attached you will find a list summarizing the currently ordinances in benchmark cities related to the keeping of chickens and other livestock in residential areas. Since there seems to be an interest in residential chickens specifically, after each list of regulations I have summarized the city's residential chicken policy.

As you will see from the findings, there is a wide variety in terms of the stringency of regulations regarding the keeping of fowl and other livestock in residential areas. Cedar Park appears to fall somewhere in the middle in terms of stringency.

Attached you will also find a letter from the Ranch and Brushy Creek HOA which was sent to the Mayor expressing their opposition to the keeping of chickens and other livestock in their neighborhood.

Should you have any questions, after reviewing the attached information, please feel free to contact me for clarification or additional information.

Sincerely,

Kimberly Painter  
Management Intern  
[Kimberly.painter@cedarparktexas.gov](mailto:Kimberly.painter@cedarparktexas.gov)  
(512) 401-5043

# Fowl/Livestock Research

## Overall Summary

Many of our benchmark cities do allow chickens in some capacity but there is quite a bit of variation on the stringency of the ordinances. Sugar Land and North Richland Hills have the strictest regulations of our benchmark cities. Sugar Land only allows chickens in one zoning area (M)-so basically chickens are not allowed in residential areas. North Richland Hills allows chickens only in their AG and S-F-1 districts and stipulates that coops be kept at least 50 feet from the property line. Flower Mound and Pflugerville have the most permissive ordinances involving chickens. Pflugerville has no regulations on chickens other than that no more than 10 animals can be kept without obtaining a commercial permit. In Flower Mound people can have up to 4 chickens in any backyard under an acre as long as the coop is 10 feet from your neighbor's property.

**Other things to note:** While the above notes discuss city ordinances related to livestock and fowl, please note that many **HOAs and private deed restrictions quite possibly have a more stringent policy** on these matters than what is enforced by the City. Several Cedar Park HOAs have expressed that regardless of what restrictions the City settles on, they do not plan to allow chickens in their neighborhoods.

## Georgetown

- Livestock are considered a nuisance if pen/enclosure is within 200 feet of a private residence or 500 feet of any public building within the city limits.
- No person may keep more than 8 hens in a residential zoning district of the City. The hens must be confined within the backyard and the coop cannot be within 20 feet for another's private residence. Written notice of hen ownership and coop location must be provided to the Animal Services Manager.
- The above restrictions do not apply to property zoned Agricultural (A) or Residential Estate (RE) or to veterinary clinics or kennels.
- "Wild and Exotic Animals" (including ostriches, emus, miniature pigs, Vietnamese potbellied pigs...) are prohibited.

**Summary: Chickens ok as long as they are kept at least 20 feet from neighbors and reported to Animal Control.**

## Leander

- Hogs are prohibited.
- May not keep livestock or fowl within 500 feet of water supply wells

- May not keep fowl or livestock within 200 feet of a private residence/dwelling or with 500 feet of a public building.
- The following are exempt from the distance restrictions listed above:
  - A tract or parcel of land that is 3 acres or more.
  - Property zoned as Rural/Agricultural district (R-A-1).
  - Vet hospitals, kennels and temporary shipping pens.

**Summary: Chickens ok as long as they are at least 200 feet away from neighbor's home or 500 feet from public building or water supply.**

### **Flower Mound**

- Fowl, Rabbits and Guinea Pigs must be kept indoors or in a secure pen.
- No more than 4 poultry shall be kept on any lot up to 1 acre. Coops may not be located within 10 feet of any property line
- No roosters allowed on lots less than 1 acre.
- No more than 25 pigeons may be possessed on any premises in the town.
- Livestock (cows, horses etc) shall not be kept on land with a zoning classification that allows lots less than 1 acre in size.
- It is unlawful for anyone other than a vet to keep any live swine in the town except in areas zone or designated for rural or agricultural purposes. However the keeping of no more than 2 Vietnamese potbellied pigs with appropriate documentation are permitted as long as they are no more than 120 pounds and no more than 40 inches from nose to tail and no taller than 20 inches.

**Summary: Chickens ok as long as there are no more the 4 on small sized lot and kept 10 feet from property line.**

### **Sugar Land**

- No swine allowed except in the district zoned M-1.
- The number of livestock (except swine) permitted in any area may not exceed one animal for the first 2 acres and 2 animals for per acre for additional acre over the first 2. This does not apply for areas zoned M-1.
- Fowl must be kept in a secure pen at least 50 feet from any property line.
- It is unlawful to keep fowl on any property zoned other than M. However they may be permitted to public lakes or ponds and on lakes/ponds managed by an organization or company.
- Rabbits must be kept in a secure pen at least 30 feet from any property line.
- It is unlawful to keep more than 6 rabbits over 6 weeks in age per acre and 2 litters less than 6 weeks old on any property zone other than M.

**Summary: Chickens only permitted on areas zoned “M” and even then must be kept 50 feet from property line.**

### **North Richland Hills**

Considered a public nuisance if:

- Chicken coop within 50 feet of a residential structure or inhabited building.
- Keeping, except within enclosures as allowed by zoning, any chickens, pigeons or other fowl.
- Zoning AG and R-1-S allow livestock and fowl. It is restricted to properties for the first acre and one per every full acre after that.
- The R-1-S district is a single family residential district that was specifically planned to allow for the keeping of livestock in a residential setting.

**Summary: Chickens can only be in areas zoned AG or R-S-1 and even there must be 50 feet from neighbors and are restricted based on property size.**

### **Missouri City**

- Swine are only permitted in the SD district and the number shall not exceed one adult (6 months or older) per 1/3 acre for the first 2 acres and 1 adults per acre for each additional acre. No swine are allowed within 2,500 feet of any residence, church, school or business other than that of the owner.
- Cow and horses are not limited in the SD districts. In other districts it is limited to one adult per 1/3 acre for the first 2 acres and 2 adults per acre for each additional acre.
- Fowl and rabbits must be in a pen or enclosure that is 30 feet from any property line.

**Summary: Chickens allowed as long as they are kept 30 feet from the property line.**

### **Pflugerville**

- No restrictions on fowl or livestock in the City.
- No more than 10 animals allowed per residence without a commercial permit.
- No vicious, dangerous or wild animals (i.e.: no lions tigers or bears).

**Summary: Chickens are allowed- up to 10 without a commercial permit.**

### **Pearland**

- No goats or swine allowed in the city with the exception of milch goats. Milch goats must be permitted by animal control (there is a fee) and will be allowed if the place where they are to be kept is at least ¼ acre in size, and such place is at least 150 feet from any residence other than the owners. No more than 1 additional animal per ¼ acre or land.

- No cows allowed on less than 1 acre of land. No more than 1 animal may be kept for each additional acre of land. No cows may be kept within 150 feet of any residence other than the owner's.
- No fowl allowed on any parcel of land less than an acre. Also no more than 100 may be kept per acre of land.
- No fowl may be kept within 150 feet of any residence other than that of the owner.
- No guineas or peafowl allowed in the City.

**Summary: Chickens only allowed on property larger than 1 acre and must be 150 feet from neighbors home.**

### **Round Rock**

- Fowl is ok in residential areas if they are penned and:
  - 50 or more feet from all residences (other than the owner's) and contains no more than 10 fowl
  - 25-50 feet from all residences (other than the owner's) and contains no more than 5 fowl

(The above limitations on fowl do not apply in areas zones AG or SF-R.)

- Livestock (horses, cows, pigs, goats, ostriches, emus etc.) must be kept on at least an acre
- There shall be no more than one unit of livestock for the first acre of land. There shall be no more than one additional unit of livestock for each additional ½ acre of land in the same parcel. Units of livestock are defined as:
  - Horses, mules, llamas and cattle one head=1 unit.
  - Swine one head = ½ unit.
  - Sheep, goat, emu, ostrich and rhea one head= 1/5 unit.
- Livestock shall not be allowed to graze or roam within 50 feet of any residence other than the owner's.
- Barns, stables or corrals may not be located within 150 feet of any residence other than the owner's.
- All livestock must be properly fenced in.
- Animal living spaces must be kept in a manner that does not give off unreasonable offensive odors.

**Summary: Depending on how far the chicken coop is from neighbors home you can have either 5 or 10 chickens in a residential area.**

### **Mansfield**

- No swine allowed in the City.
- A person commits an offense if:
  - More than 4 fowl on ½ acre or less or at a distance closer than 50 feet from any habitation located on another's property.

- More than 10 fowl on ½ -1 acre at a distance closer than 50 feet from any habitation located on another's property.
- 25 or more fowl 1+ acre at a distance closer than 50 feet from any habitation located on another's property.
- Fails to keep fails to keep a duck goose or swan from being at large (city parks exempted)
- Fails to keep chicken, guinea or peafowl in a pen/coop.
- Keeps a rooster w/out written permission from Animal Control Manager
- If fowl are kept within 100 feet of any private water well.
- If the odors/noise are unreasonably offensive.

**Summary: Chickens allowed. Either 4-25 chickens allowed depending on lot size and must be kept 50 feet or more from neighbor's property.**

### Allen

- No swine permitted
- No cows or horses on or premises less than 1/3 acre for each cow or horse kept (or more than can be kept under sanitary conditions). The total number of cows or horses permitted shall not exceed 1 adult per 1/3 acre for the first acre and 2 adults per each additional acre over the first 2.
- No livestock within 150 feet of any residence or occupied building.
- No fowl (chickens, ducks, turkeys, geese, guineas or pigeons) within 150 or any property line.

**Summary: chickens are ok as long as they are kept 150 feet or more from neighbor's property.**

### Cedar Park

- Poultry and other livestock are currently permitted in 4 zoning districts- "RA"(Rural Agricultural) "MH"(Manufactured Homes), "ES" (Estate Lots) and "SF" ( Low Density Single Family).
- Fowl /livestock pens or coops must be at least 25 feet from any property lines.
- In "MH", "ES" and "SF" The property must be at least 1 acre in size to allow poultry and no more than 15 chickens (1 of which may be a rooster) are permitted.
- IN "MH", "ES" and "SF" the property must be at least 1 acre in size to allow livestock and shall be limited to one (1) with an additional one (1) per each additional acre of land.
- In "RA" there are no limitations on number of poultry or livestock.

FYI- While the definition of fowl and livestock vary slightly by city- Cedar Park considers fowl to be: chickens, guineas, laying hens, turkeys, ducks, geese, pheasants, quails, peacocks, emus, and ostriches. Livestock are: horses, cattle, mules, goats, sheep, miniature horses, and other similar animals traditionally raised in an agricultural setting.

**Summary: Chickens allowed in 4 of the city's larger lot zoning areas and are limited to 15 chickens that are housed 25 feet from the neighbors.**

**From:** A Lilya <[aelilya@gmail.com](mailto:aelilya@gmail.com)>

**Date:** July 31, 2013, 23:52:50 CDT

**To:** [mayorpowell@cedarparktexas.gov](mailto:mayorpowell@cedarparktexas.gov)

**Cc:** Aneka Lilya <[aelilya@gmail.com](mailto:aelilya@gmail.com)>

**Subject: Statement on poultry (chickens) from the RBC and RBC 3/5 HOA Board of Directors...**

To The Cedar Park City Council:

As representatives of our respective communities, we are strongly opposed to allowing poultry, fowl or any other type of animal other than traditional household pets to be kept, maintained or cared for on single family home properties. They have a high potential to be filth and noise nuisances and they attract a whole string of natural predators, many of which already present a problem for homeowners, such as:

- Neighborhood dogs
- Foxes
- Raccoons
- Feral and domestic cats
- Owls
- Skunks
- Snakes (chicks and eggs)
- Rats

Additionally, providing proper security and shelter for the animals requires construction of cages and coops that are generally unattractive and usually emit an unpleasant odor. Many also consider these cages inhumane.

To ensure our homeowners are not burdened with such an allowance if the City regrettably votes in favor of it, we have written into our Covenants, Convictions and Restrictions a prohibition against keeping, maintaining or caring for pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words.

For the sake of those not protected by Home Owner's Associations, we strongly recommend against the City passing an ordinance allowing these types of animals on single family home properties.

Respectfully Yours,

Vineet Rohatgi, President

On behalf of The Ranch at Brushy Creek HOA Board of Directors

Aneka Lilya, President

The Ranch at Brushy Creek 3/5 HOA Board of Directors

# CHAPTER 2

## ANIMAL CONTROL

### ARTICLE 2.01 ADMINISTRATION AND GENERAL PROVISIONS

#### Sec. 2.01.001 Definitions

Unless specifically defined below, words and phrases used in this chapter shall be construed so as to give them the same meaning as they have in common usage and so as to give these provisions the most reasonable application, and as used herein, the singular shall include the plural and the plural the singular, and the masculine shall include the feminine and the feminine the masculine.

Animal. Any living, nonhuman, domesticated mammal, reptile, amphibian, fish, bird, insect, or arachnid being kept, maintained, fed, or harbored within the city.

Animal control. The animal control division of the police department, including animal control officers and staff.

Animal control officer. An employee or agent of the city, designated by the chief of police, to administer and enforce the licensing, inspection, and enforcement requirements contained within this chapter; the terms shall also include peace officers, code enforcement officers, and such other persons designated by the city to enforce the provisions of this chapter.

At-large.

- (1) Any dog not on its owner's property or the property of another person with such owner's consent which is:
  - (A) Not secured by means of a leash, chain, or other restraint of sufficient strength to control the actions of such dog;
  - (B) Not fully contained within a cage, crate, kennel, or similar enclosure; or
  - (C) Not fully confined to such property by a confinement fence of sufficient height and strength, excluding an electric fence or invisible fence, or by means of a leash, chain, or other restraint of sufficient strength to prevent the dog from escaping the property and so arranged that the dog shall remain upon the property the device is stretched to full length, and with such property owner's consent;
- (2) Any livestock or fowl on its owner's property or the property of another, regardless of consent, if such livestock or fowl is not fully confined as required by [article 2.05](#) of this chapter; or
- (3) Any animal, other than a dog, cat, livestock, or fowl, not on its owner's property or the property of another person with such owner's consent.

Food establishment. As defined by title 25 of the Texas Administrative Code, section 229.162(40), as amended.

Fowl. Any birds belonging to the game fowl, land fowl (Galliformes), or waterfowl (Anseriformes) biological orders, including but not limited to poultry, chickens, guineas, laying hens, turkeys, guineas, ducks, geese, pheasants, quails, peacocks, emus, and ostriches.

Livestock. Domesticated mammals and fowl, other than dogs, cats, ferrets, gerbils, hamsters, mice, pigs, potbellied pigs, rabbits, and common household birds, including but not limited to horses, cattle, mules, goats, sheep, miniature horses, and other similar animals traditionally raised in an agricultural setting.

Microchip or chip. An integrated circuit placed under the skin of an animal for purposes of facilitating identification of the animal.

Municipal court. The City of Cedar Park Municipal Court, including its staff.

Off-leash area. A designated area of a city park facility within which dogs may freely roam in compliance with posted rules for such city park facility and/or area.

Owner. Any person or persons, association, or entity, including any member of owner's immediate family, employee, or agent, having the right of property, care, custody, or control of an animal, who possesses, harbors, or maintains an animal, or who knowingly permits an animal to remain on or about any premises occupied by such person or persons, firm, association, or corporation for a period of three (3) days or more.

Police department. The City of Cedar Park Police Department, including its officers and staff.

Public nuisance or public nuisance animal. Any animal within the city that unreasonably disturbs, annoys, or alarms persons of ordinary sensibility, endangers the public health, safety, or welfare, or substantially interferes with the rights of citizens to quiet enjoyment of life or property, including but not limited to:

- (1) An animal that makes disturbing noises, including but not limited to, continued and repeated howling, barking, whining, meowing, crowing, or other utterances in an excessive, continuous or unreasonable fashion or at unreasonable hours, causing annoyance, disturbance, or discomfort to, or disrupting the quiet enjoyment of neighbors or others in close proximity to the premises where the animal is kept or harbored;
- (2) Any dog in a park or public recreation area, unless the dog is controlled by a leash or similar physical restraint or within a designated off-leash area within a city park facility, in compliance with posted rules at such city park facility and/or off-leash area;
- (3) Any animal that damages any property other than that of its owner;
- (4) Any animal that defecates on any common thoroughfare, street, sidewalk, passageway, road bypass, play area, park or any place where people congregate or walk upon any public property whatsoever, or upon any private property without the permission of the private property owner, if the owner of such an animal that soils, defiles, or defecates on any of the above areas fails to immediately remove the pet feces and droppings and place them in a designated waste receptacle or other suitable waste container;

## **ARTICLE 2.05 KEEPING OF LIVESTOCK AND FOWL\***

### **Sec. 2.05.001 Keeping of livestock**

No person shall possess, harbor, or maintain any type of livestock in any area of the corporate limits of the city that is not zoned such as to permit the keeping of livestock. Where permitted, all livestock weighing twenty (20) pounds or less at maturity shall be contained in a ventilated or open-air cage, pen, coop, or enclosure and be provided adequate shelter from the elements and a minimum of three (3) square feet of covered floor space per animal. All areas within which livestock are kept or harbored shall contain clean water and suitable food accessible to the livestock and placed such that the livestock cannot defile their contents, shall be at all times kept clean and sanitary in accordance with the health and sanitation laws of the state, shall not expose the animal(s) to undue heat or cold, and all cages, pens, coops, and enclosures in which livestock are kept or harbored shall be a minimum of twenty-five (25) feet away from any property lines.

### **Sec. 2.05.002 Keeping of fowl**

No person shall possess, harbor, or maintain any type of fowl in any area of the corporate limits of the city that is not zoned such as to permit the keeping of fowl (see [chapter 11](#) of this code). Where permitted, all fowl shall at all times be confined in a fully enclosed and ventilated or open-air cage, pen, coop, or enclosure and be provided adequate shelter from the elements and a minimum of three (3) square feet of covered floor space per animal sufficient to allow each animal room to move around and stand without crowding each other; however, where permitted on lots of one (1) acre or more, fowl may be kept or harbored free of such confinement, so long as the fowl remains on its owner's lot. All cages, pens, coops, or enclosures and areas within which fowl are kept or harbored shall contain clean water and suitable food accessible to the fowl and placed such that the fowl cannot defile their contents, shall be at all times kept clean and sanitary in accordance with the health and sanitation laws of the state, shall not expose the animal(s) to undue heat or cold, and shall be a minimum of twenty-five (25) feet away from any property lines.

### **Sec. 2.05.003 Livestock and fowl not to run at-large**

No person shall cause, permit, or allow livestock or fowl to be, and no owner shall fail to prevent their livestock or fowl from being at-large within the city.

**State law references**—Animals running at large on highways, V.T.C.A., Agriculture Code, sec. 143.101 et seq.

### **Sec. 2.05.004 Impoundment of livestock or fowl**

Animal control officers are authorized to impound all livestock or fowl in violation of this chapter, subject to terms and conditions established throughout this chapter. Livestock will be held by a private contractor with the owner being responsible for all impound, transportation, medical treatment, boarding, feeding, and any other expenses incurred in impounding the livestock. All fees and charges must be paid prior to release of the livestock.

### **Sec. 2.05.005 Liability**

If necessary to ensure the public safety and avoid injuries to persons or damage to property, any livestock or fowl that is in danger of entering a public roadway may be tranquilized by an animal control officer, or, if the livestock or fowl cannot be tranquilized or corralled in a timely manner and the circumstances are of an emergent nature, such livestock or fowl may be destroyed by an animal control

officer. Neither the city nor the animal control officer(s) acting under this article shall be liable for damages to or loss of such livestock or fowl.

# Urban Micro-Livestock Ordinances: Regulating Backyard Animal Husbandry

By Jaime Bouvier

While small farm animals never completely disappeared from most cities, a growing number of communities are revisiting their animal control and zoning regulations in response to a renewed interest in chickens, bees, and goats among urban agriculture practitioners and backyard hobbyists.

This article explores how small farm animals (i.e., micro-livestock) can and already do coexist in urban environments, and it examines the regulatory tools cities use to sanction and control backyard animal husbandry. The following sections are intended to serve as a guide for local governments considering legalizing and regulating this budding hobby.

## WHAT IS MICRO-LIVESTOCK?

There is no universal definition of micro-livestock. It often just means small animals—like chickens, ducks, quail, and rabbits. It can also mean breeds that are smaller than average—such as bantam chickens, Nigerian Dwarf goats, or Red Panda cows. Finally, it can mean an animal of what is normally a large breed that just happens to be small. Many international organizations have long championed raising micro-livestock in cities to provide a secure and safe local food source. Because they require less food and water, are often especially hardy breeds, and their small size makes them ideal for small lots, micro-livestock are especially well suited to urban living.

Right now, most attempts to legalize micro-livestock focus on chickens, goats, and bees. Although rabbits are micro-livestock, they have caused less controversy. Perhaps because they are more accepted as pets, they were never made illegal in many cities. Very small pigs, like the pot-bellied pig, have also been accepted in many cities

## Uncle Sam Expects You To Keep Hens and Raise Chickens



U.S. Department of Agriculture

➡ During World War II, the U.S. government framed backyard chicken keeping as a patriotic duty.

as a pet; because they are not being raised for bacon, people don't think of them as livestock. There has been some move to legalize miniature horses as guide animals for the blind and disabled. Other animals, like miniature hogs, cows, or sheep, may also be suitable for city life under the right circumstances, but fewer people are advocating for them.

## A SHORT HISTORY OF URBAN HENS AND OTHER MICRO-LIVESTOCK.

Although micro-livestock never disappeared from cities altogether, they used

to be an accepted and even encouraged part of urban life. For example, during the Victory Garden campaign, when the U.S. government urged American citizens to grow more of their own food to support the war, the government encouraged people to keep and raise chickens.

As it became cheaper and more convenient to buy food from a grocery store, it became less common to see livestock in the city. While many people believe that livestock became illegal because they were a nuisance, there is little evidence that this was the case—especially when just

## ASK THE AUTHOR JOIN US ONLINE!

*Go online during the month of April to participate in our "Ask the Author" forum, an interactive feature of Zoning Practice. Jaime Bouvier will be available to answer questions about this article.*

*Go to the APA website at [www.planning.org](http://www.planning.org) and follow the links to the Ask the Author section. From there, just submit your questions about the article using the e-mail link. The author will reply, and Zoning Practice will post the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of Zoning Practice at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA Zoning Practice web pages.*

### About the Author

Jaime Bouvier is a senior instructor of law and codirector of the Writing and Academic Support Program at Case Western Reserve University School of Law in Cleveland, Ohio. She has also represented state and local governments as well as landowners in zoning and land-use litigation.

a few animals were kept. Instead, exiling livestock was partially a class-based phenomenon. Excluding animals that were seen as productive, that is animals kept for food purposes, was a way to exclude the poor. Animals that came to be viewed as nonproductive, such as dogs and cats, required money to keep and did not have the same associations. By illegalizing behavior associated with the recently rural and poor, a city could present itself as prosperous and progressive.

The desire to exclude the poor is a reason why ordinances making livestock illegal are often found in suburbs and even exurbs where the lot sizes are especially conducive to raising animals. It is also a reason why changing the regulations, even in such suburbs, is often especially contentious.

Now, however, raising livestock is becoming an activity that many young, educated, middle-class people seek out. The association between micro-livestock and poverty is no longer relevant. And distinguishing cities and suburbs from rural occupations is no longer universally seen as a sign of progress. In fact, many view a well-regulated return of micro-livestock to the cities and suburbs as embracing progressive values. And legalizing micro-livestock can actually attract people who seek to live in a place that supports the close-knit communities that this hobby creates.

### MICRO-LIVESTOCK COMMUNITIES

Communities are essential to the micro-livestock movement. They provide much-needed support for people to discuss common problems and share interests.

Many communities began as a few people who already raised chickens, or goats, or bees—in violation of city law. They organized to legalize their animals. One of the leading examples of this is a group called Mad City Chickens in Madison, Wisconsin. Members of the group who kept chickens illegally, the self-described "Chicken Underground," were

Many communities began as a few people who already raised chickens, or goats, or bees—in violation of city law.

generally law-abiding citizens uncomfortable with their outlaw status. They did not understand why raising chickens in a way that did not bother their neighbors should be illegal. In 2004, in response to the group's lobbying efforts, Madison amended its zoning ordinance to allow chickens (and, subsequently, bees in 2012). Their lobbying efforts became the focus of a film, also titled *Mad City Chickens*, and have been a model for other groups seeking to legalize micro-livestock, such as the New York City Beekeepers Association and Seattle's Goat Justice League.

These groups' stories show that many people already keep micro-livestock in cities whether or not they are legal. It also shows that once citizens and city leaders are educated about these animals and shown how

they can, and already do, peacefully coexist in cities, they often will legalize these animals. Finally, it shows that cities are better off reasonably regulating micro-livestock, rather than forcing hobbyists out of their cities or underground.

### CHICKENS, GOATS, AND BEES: BENEFITS

The main benefits to keeping chickens, goats, and bees is not so much to eat the animal itself, though people do eat chickens and goats. The main benefit is to eat the food they produce: eggs, milk, and honey. There is good research to show that backyard eggs are tastier and have more nutrients than store-bought ones. Milk from backyard goats, moreover, tastes better because goat milk does not store or ship well. It is also, arguably, easier to digest for those who cannot drink cow's milk. Goat hair is a prized material for making cashmere and mohair fabric. Manure from these animals is an excellent, and surprisingly pricey, fertilizer. Many people also value these animals for their companionship and become as close to them as they do any other pet. Finally, backyard and hobbyist livestock keepers ensure a diverse and more robust population of animals, ensuring the propagation of breeds that are not valued commercially but may become important if commercial breeds, because of genetic uniformity, become threatened by disease.

Apart from honey, keeping bees in urban areas has two main benefits: pollination services and ensuring an extant bee population. Honeybees pollinate two-thirds of our food crops and in recent years have suffered devastating losses. Some experts assert that these losses are caused or exac-

erbated by the use of pesticides, the stress of constant travel to different farms to pollinate crops, and the lack of plant diversity in rural environments. Thus, hobbyist beekeepers who do not subject their hives to such stressors may prove to be a haven for the continued existence of honeybees.

#### **CHICKENS, GOATS, AND BEES: CONCERNS**

Concerns about chickens and goats generally boil down to three things: odor, noise, and disease. None of these provide a reason to ban hens and does, but roosters can be too noisy and a ratty buck may be too smelly for dense urban environments.

Contrary to popular myth, roosters do not just crow in the morning to greet the rising sun—roosters crow all day. Hens do not need roosters to lay eggs; roosters are only necessary to fertilize the eggs. Hens are generally quiet, but when they do cluck, the resulting noise is about the same decibel level as a quiet human conversation. And, as long as a chicken coop is regularly cleaned and adequately ventilated, a small flock of hens will not be smelly.

Goats, too, are not generally noisy animals. While a goat may bleat, the sound is generally far less than the noise of a barking dog. Some goats, just like dogs or cats, are noisier than others. And, as for odor, female goats (does) and neutered male goats (wethers) do not smell. Male goats (bucks), during the mating season, do smell. The gamy odor of a ratty buck is the smell many associate with goats. While it is necessary for a doe to mate with a buck and deliver a kid to lactate and provide milk, this can be arranged with a stud-buck kept in more rural environs.

Finally, there is the issue of disease. As with any animal, including dogs and cats, disease can be spread through feces. Regular cleaning and straightforward sanitation practices, such as hand washing, can take care of this issue. While concerns about backyard chickens spreading avian flu have surfaced in some communities, the kind of avian flu that can cross over to humans has not yet been found in North America. And neither the Centers for Disease Control nor the Department of Agriculture have asserted that the possibility of bird flu is a reason to ban backyard hen keeping. Public health scholars have concluded that backyard chickens present no greater threat to public health than other more common pets like dogs and cats.

The major objection to honeybees is the fear of being stung. Here, it is important to understand the distinction between bees and wasps. Honeybees are defensive; they will not bother others unless they are threatened. A honeybee's stinger is attached to the entrails, so it will die if it stings. Bees want pollen; they are not interested in human food. Wasps, by contrast, are predatory, can sting repeatedly with little consequence, and are attracted to human food. Many people confuse fuzzy honeybees with smooth-skinned yellow jackets, a kind of wasp that forms papery hives. People do not keep wasps because they are not effective pollinators and do not produce honey.

A connected objection is a fear of a swarm. A swarm is a group of bees traveling to establish a new hive. While a swarm can be intimidating, before bees swarm they gorge on honey to prepare for the trip, which makes them particularly lazy and docile. Unless attacked or bothered, they will follow a scout bee to a new location within a few hours to a day.

§451 et seq.; 21 U.S.C., §1031 et seq.; and 21 U.S.C. §601 et seq.). The FDA requires that all milk be pasteurized, including goat milk (21 C.F.R. §1240.61) and regulates nutrition and information labeling of honey (21 U.S.C. §§342–343). Many of these laws have exceptions for animals and animal products raised for home consumption, but someone who wants to raise eggs, milk, or meat for sale or distribution would need to comply.

Most states have laws regulating the movement of livestock, including chickens, goats, and bees, into and out of the state. To track and attempt to control some diseases associated with livestock and bees, some states either require or encourage keepers of livestock and beekeepers, even backyard hobbyists, to register their premises with the state. Other states only ask to be alerted if a particular disease is found. Many states also have laws regulating the slaughter and sale of any animal used for meat, as well as laws regulating the sale of eggs, milk, and milk products. While these, also, generally have exceptions for home consumption, they will apply to sales. Often state agricultural

## Before drafting an ordinance, local governments should be aware that federal and state laws already regulate livestock.

**AGRICULTURAL BASICS FOR CITIES CONSIDERING LEGALIZING MICRO-LIVESTOCK**  
Chickens and goats require companionship. As a consequence, cities should allow a minimum of four hens and two does. This ensures that the city is not interfering with good animal husbandry practices.

And, while bees never lack for companionship, it is a good idea to allow beekeepers to have more than one hive. This allows the beekeeper to better inspect for and maintain hive health. Cities should not be overly concerned that hives kept too close together will compete for food—honeybees fly up to a three-mile radius from the hive to find pollen.

**FEDERAL AND STATE LAW CONSIDERATIONS**  
Before drafting an ordinance, local governments should be aware that federal and state laws already regulate livestock. The federal government regulates the sale, processing, labeling, and transportation of chickens, eggs, and other meats (21 U.S.C.

extension services will have online information pages describing the regulations and exemptions for hobbyists.

For beekeeping, however, a few states have passed laws that interfere with a local government's ability to regulate. Wyoming, for instance, controls how close together apiaries (an area with one or more beehives) may be located (Wyo. Stat. Ann. §11-7-201). In June 2011, Tennessee preempted all local government ordinances regulating honeybee hives (Tenn. Code. Ann. §44-15-124). And in July 2012, Florida also preempted all local government ordinances regulating managed honeybee colonies or determining where they can be located (Fla. Stat. §§586.055 & 586.10).

#### **COMMON ASPECTS OF URBAN MICRO-LIVESTOCK REGULATION**

In the cities that have recently passed ordinances regulating micro-livestock, the ordinances are all quite different. No standard ordinance has yet been established.



Portland, Oregon, allows up to three pygmy goats in a residential backyard without a permit (§13.05.015.£).

There are, however, many common aspects to these regulations. Most of them limit the number and type of livestock that can be kept in the city, establish setbacks for where the animals can be kept on the property, and require a certain amount of space per animal. Some also require a license.

#### Micro-Livestock Standards

Most cities have not taken a comprehensive regulatory approach to micro-livestock, but appear to allow particular livestock in response to citizen lobbying. Hundreds of cities have legalized chickens in the past few years. And the growing popularity of beekeeping means many cities have also adopted separate ordinances to allow for it. For example, South Portland, Maine (§§3-51 & 3-710; Cary, North Carolina (§5.3.4(I) & (O)); Ypsilanti, Michigan (§§14-13 & 14-171); and Littleton, Colorado (§§10-4-4 & 10-4-14) have recently passed ordinances separately allowing for both chickens and bees.

Some cities make idiosyncratic choices. For example, Ponca City, Oklahoma, allows miniature horses and donkeys, but still bans all other fowl and livestock (§7-3-10). Sebring, Florida, allows two hens and

two pot-bellied pigs (§4-1). And Carson City, Nevada, allows chickens, pigs, rabbits, and bees, but no goats (§§7.02 & 7.13.190).

And some only allow goats. In 2011, Loveland, Ohio, allowed two pygmy goats on residential properties of any size (§505.16). It defines pygmy as a goat no heavier than 60 pounds. The choice of such a light weight is curious, given that many micro-goat breeds weigh more than 60 pounds. Also, many breeds of dogs weigh up to three times as much, but most cities do not restrict the size of dogs. In 2010, Carl Junction, Missouri, allowed just one pygmy goat on a property of any size (§205.200(C)). Because goats are herd animals, this limit encourages poor animal husbandry practices.

Meanwhile, many cities are legalizing a wider variety of livestock. For example, Denver allows up to eight ducks or chickens and up to two dwarf goats and two beehives (§8-91; §11.8.5.1). But it requires 16 square feet of permeable land available to each chicken and 130 square feet for each goat. The city also requires adequate shelter to protect the animals from the elements and from predators. This means that to keep the full complement of eight chickens and two

goats, the yard would have to have approximately 400 square feet of space. For chickens, ducks, and goats, Denver has a 15-foot setback from neighboring structures used for dwelling and requires that the animals be kept in the rear half of the lot. For bees, Denver has a five-foot setback from any property line and requires that hives be kept in the back third of the lot.

Seattle allows up to eight domestic fowl, four beehives, one potbelly pig, and two pygmy goats, or no pig and three pygmy goats, on any lot (§23.42.052). It then employs a step system for additional animals. For lots larger than 20,000 square feet, an additional small animal—which means a dog, cat, or goat, may be kept on the lot. Seattle also allows other farm animals, including cows, horses, or sheep, to be kept on lots that are greater than 20,000 square feet. Seattle allows one of these animals per 10,000 square feet. Also, it has a 50-foot setback from the neighboring property for all farm animals, not including potbelly pigs, fowl, or miniature goats. Finally, Seattle has a separate ordinance that restricts goats to their premises, “except for purposes of transport or when on property other than

that of the miniature goat's owner with the permission of a lawful occupant of that property" (§ 9.25.084(H)).

Cleveland has a slightly more complex ordinance in that it has different regulations for residential and nonresidential districts (§347.02). It also employs a step system, allowing one animal per a certain number of square feet. In residential districts, it allows one hen, duck, rabbit, or similar animal per 800 square feet, and one beehive per 2,400 square feet. The ordinance spells out that a standard residential lot in Cleveland is 4,800 square feet, so most households could keep up to six hens and two beehives. Setbacks for hens are five feet from the side-yard line and 18 inches from the rear-yard line. Setbacks for bees are five feet from the lot line and 10 feet from any dwelling on another parcel. Neither animal is allowed in the front or side yard. Cleveland only allows goats, pigs, sheep, or similar farm animals on lots that have at least 24,000 square feet (i.e., a little more than a half-acre). If a lot is that size or larger, two of these animals will be allowed, with an additional one for each additional 2,400 square feet. Enclosures for these animals must be set back 40 feet from the property line and at least 100 feet from the dwelling of another.

In Cleveland, the nonresidential districts are less restrictive, with one chicken, duck, or rabbit per 400 square feet, one beehive per 1,000 square feet, and one goat, pig, or sheep per 14,400 square feet. This can allow for more intensive operations in less populated areas—and also opens the area to urban farms.

Hillsboro, Oregon, and El Cerrito, California, employ similar step systems. El Cerrito allows three hens as long as the property is at least 4,000 square feet (§7.08.020). Hillsboro allows three hens as long as the property is 7,000 square feet (§6.20.070). Both cities require at least 10,000 square feet to keep goats, but Hillsboro limits goats to two, and El Cerrito does not appear to limit them. El Cerrito, however, does require an administrative use permit to keep goats and allows for a conditional use permit to keep goats on a smaller parcel of land. El Cerrito requires a property of at least 5,000 square feet to keep one beehive. That beehive must be 20 feet from an adjacent dwelling and 10 feet from the property line. Hillsboro allows up to three beehives on any size residential property with a setback of 10 feet from the property line.

Vancouver, Washington, is an example of a less restrictive ordinance (§20.895.050). It allows up to three goats, if they weigh less than 100 pounds, on any size property. It also allows chickens, ducks, geese, or rabbits on any size lot with no numerical restriction. It does provide in the ordinance that the keeping of animals is subject to already existing nuisance requirements.

#### **Roosters and Bucks**

Most of these cities prohibit roosters and male goats (or bucks). Hillsboro prohibits roosters and uncastrated male goats with no exceptions. Seattle also prohibits roosters and uncastrated males but has an exception for nursing offspring that are less than 12 weeks old. Denver does the same but only until they are six weeks old. El Cerrito prohibits roosters but does not say anything about the gender of the goats it allows. And Cleveland has a more complicated system, in that it will allow roosters,

the license on those grounds (§205.04). The department also notifies neighbors about the license application and waits at least 21 days to hear back from them. The director can consider any evidence that the neighbors submit concerning nuisance, unsanitary, or unsafe conditions. To determine whether to grant the license, and any time after the license is granted, the department can inspect the property and enforce any penalties for violating sanitation or nuisance regulations.

Ellensburg, Washington, has an interesting ordinance in that it requires a license for dogs and cats, but does not require a license to keep up to two beehives and four hens (§§5.30.260 & 5.30.310). Seattle, likewise, requires a license for dogs, cats, pigs, and goats, but does not require one for chickens or bees (§9.25.050).

After restricting livestock to property with three acres or more, Pittsburgh amended its ordinance to allow chickens

## Some cities require a permit or license . . . [which] are relatively straightforward and do not allow for much discretion on the part of the official who issues it.

but only on property that is at least one acre in size with a 100-foot setback from the property line for the coop. Cleveland, like El Cerrito, does not say anything about goat gender.

#### **Licensing**

Some cities require a permit or license. Most of these permits are relatively straightforward and do not allow for much discretion on the part of the official who issues it. For instance, Denver requires a livestock or fowl permit to keep chickens or goats but requires no more than the provisions of the ordinance be met and a fee be paid to acquire the license. The city charges \$100 annually for a livestock permit and \$50 annually for a fowl permit.

Cleveland also requires a license. Its health department issues a two-year license to keep any type of livestock, including chickens and bees. In issuing the license the director of public health must consider evidence of "nuisance or conditions that are unsafe or unsanitary" and any "recorded violations" and may deny

and bees in 2011 (§912.07). It allows three hens and two beehives per 2,000 square feet on occupied, residentially zoned lots. It allows one more bird and hive for each additional 1,000 square feet. However, it requires the home owner to seek a special exception to keep livestock as an accessory use (§922.07). The special exception requires the zoning board of adjustment to hold a public hearing, to make findings of fact, and issue a written decision within 45 days of the hearing. This allows it to reevaluate and reweigh all of the concerns with raising chickens and bees in the city, even though the city council had already made the legislative determination and established criteria for when and where it was legal to do so. This puts a substantial burden on each home owner to fully argue the case before each iteration of the board. It also uses up considerable city resources.

#### **COMMON AND LESS COMMON BEE PROVISIONS**

Some cities never made keeping bees illegal, and do not regulate the practice.



Michael Aas

Chicago allows up to five bee colonies in a residential backyard without a permit (§17-17-0270.7).

Among cities that do regulate beekeeping, flyway barriers and a source of fresh water are common requirements. Flyway barriers force bees to fly up over the heads of people so that they do not establish flight paths through a neighbor's property or populated sidewalks, streets, or parks. Bees require water; if a beekeeper does not provide it, bees will frequently use a close source, like a neighbor's pool.

Concerning flyway barriers, Cleveland requires a fence or a dense hedge of at least six feet in height within five feet of the hive and extending at least two feet on either side. However, it does not require a flyway barrier if the hive is at least 25 feet from the property line or on a porch or balcony at least 10 feet from the ground. South Portland, Maine, has a similar flyway barrier standard, but requires it to extend at least 10 feet in each direction. And Carson City, Nevada, requires the flyway barrier to "surround" the hive on any side that is within 25 feet of a property line. Neither South Portland nor Carson City has exceptions for balcony or rooftop hives.

Concerning a water source, Ellensburg, Washington, requires "a consistent source of water . . . at the apiary when bees are

flying unless it occurs naturally. The water may be 'sweetened' with mineral salt or chlorine to enhance its attractiveness." Cleveland requires a freshwater source to be maintained "throughout the day." And Carson City requires water only from April 1 to September 30.

As for less common provisions, Ellensburg, Washington, requires that all hives "consist of moveable frames and

combs." Cleveland prohibits Africanized bees. Africanized bees have only been found in a few southern states; beekeepers, moreover, do not seek to keep Africanized bees. Boise, Idaho, prohibits Africanized bees, as well as wasps and hornets (§11-09-11.03). This is peculiar; people do not keep wasps or hornets because they do not provide honey or pollination services. Boise and Carson City require a queen to be removed if the hive shows "unusually aggressive characteristics." And Carson City requires the new queen to be chosen from "stock bred for gentleness and non-swarming characteristics." Carson City only allows honey to be extracted "where there is no access by bees before, during, or after the extraction process." Carson City also requires any hive found to be diseased to be either "treated so as to completely eradicate the disease" or destroyed at the owner's expense. Finally, both Carson City and Ellensburg provide that abandoned hives are to be considered nuisances.

#### RECOMMENDATIONS

Of the ordinances discussed above, two stand out as potential models: Denver's and Seattle's. These ordinances show that the trend, over time, is to simplify regulations. Local governments seeking to regulate these practices should consider how much they are prepared to spend, in terms of resources, on licensing or monitoring these practices given the relatively small degree of actual nuisance they cause. Governments should also keep in mind that straightforward ordinances following developing norms will be easier to follow and easier to enforce.

Cover image: © iStockphoto.com/Michael Gatewood; design concept by Lisa Barton

#### VOL. 30, NO. 4

**Zoning Practice** is a monthly publication of the American Planning Association. Subscriptions are available for \$95 (U.S.) and \$120 (foreign). W. Paul Farmer, FAICP, Chief Executive Officer; William R. Klein, AICP, Director of Research

**Zoning Practice (ISSN 1548-0135)** is produced at APA. Jim Schwab, AICP, and David Morley, AICP, Editors; Julie Von Bergen, Assistant Editor; Lisa Barton, Design and Production.

**Missing and damaged print issues:** Contact Customer Service, American Planning Association, 205 N. Michigan Ave., Suite 1200, Chicago, IL 60601 (312-431-9100 or [customerservice@planning.org](mailto:customerservice@planning.org)) within 90 days of the publication date. Include the name of the publication, year, volume and issue number or month, and your name, mailing address, and membership number if applicable.

Copyright ©2013 by the American Planning Association, 205 N. Michigan Ave., Suite 1200, Chicago, IL 60601-5927. The American Planning Association also has offices at 1030 15th St., NW, Suite 750 West, Washington, DC 20005-1503; [www.planning.org](http://www.planning.org).

All rights reserved. No part of this publication may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the American Planning Association.

Printed on recycled paper, including 50-70% recycled fiber and 10% postconsumer waste.

October 1, 2013

*Planning and Zoning Commission*

**Item:  
4C**

**Ordinance Amendment Proposal – Private  
Streets and Gated Communities**

**STAFF:** Joe Vining, FAICP, Interim Director of Development Services, 512-401-5066,  
[joe.vining@cedarparktexas.gov](mailto:joe.vining@cedarparktexas.gov)

---

In recent months, staff has received interest from developers to build executive level single family subdivisions that are gated and incorporate private streets. Currently, our Subdivision Ordinance permits private streets upon approval of a Planned Development for cluster housing developments or detached condominium projects but does not allow them in traditional single family subdivisions.

Staff will present information regarding proposed revisions to the Private Streets and Gated Communities sections of the Subdivision Ordinance to address:

- 1) Allowing gated communities with private streets in traditional single family subdivisions;
- 2) Private street maintenance; and
- 3) Minor amendments to the private street and gated communities criteria included in Sections 12.14.004 – 12.14.014 to address inconsistencies in the ordinance

A copy of the current ordinance is attached for your reference.

**Ordinance Amendment Proposal – Private  
Streets and Gated Communities**

**ARTICLE 12.14 PRIVATE STREETS AND GATED SUBDIVISIONS**

**Sec. 12.14.001 Use of private streets**

Private streets and alleys in lieu of public streets and alleys shall not be used for conventional residential subdivisions. Private streets and alleys may be considered upon approval of a planned development district for cluster housing developments having at least forty percent (40%) of the developable land area reserved as open space preserve or greenbelt, for detached condominium developments where the land is held in common, and providing that the development complies with the requirements of this article. The term private street shall include alleys, if provided.

**Sec. 12.14.002 Design and construction standards**

(a) Private streets shall be designed in accordance with the design standards of this chapter, and all other applicable standards as prescribed by the City of Cedar Park.

(b) All streets, alleys, sidewalks, drainage ways, water and sewer line and improvements shall be designed, placed and constructed in accordance with the general design standards of the City of Cedar Park, as amended.

**Sec. 12.14.003 Streets excluded**

(a) Streets designated on the transportation master plan as a major arterial or minor arterial shall not be used, maintained or constructed as private streets.

(b) The planning and zoning commission and or the city council may deny the creation of a private street if it makes a finding of fact, based upon the evidence provided, that it would:

- (1) Negatively affect traffic circulation on public streets; or
- (2) Impair access to property either on site or off site of the subdivision; or
- (3) Impair access to or from public facilities including schools, parks and libraries, or
- (4) Delay the response time of emergency vehicles; or
- (5) At their sole discretion.

**Sec. 12.14.004 Homeowners association**

(a) Residential subdivisions developed with private streets shall establish a mandatory homeowners association. The association shall own and be responsible for the maintenance of

October 1, 2013

*Planning and Zoning Commission*

**Item:  
4C**

**Ordinance Amendment Proposal – Private  
Streets and Gated Communities**

the private streets. Lot deeds shall convey membership in the association and provide for the payment of dues and assessments required by the association.

(b) The manager shall be required to maintain and file a fidelity bond. The name of the association's president shall be submitted to the public works department and updated as needed.

(c) The following notice shall appear in bold print on each deed to property in the subdivision, on the plat of the subdivision and on each contract on the sale of land within the subdivision:

Notice: The lots within this subdivision are governed by a homeowners association requiring the payments of fees. Failure to pay fees is subject to attachment of a lien on your property by the association or by the City of Cedar Park.

(d) The association documents shall establish a reserve fund for the maintenance of streets and other improvements, and contain provisions for reliable access to provide city services and to other utility service providers with appropriate identification. The association may not be dissolved, and no portion of the association documents pertaining to this section may be amended without the written consent of the city.

(e) A reserve fund balance report shall be submitted to the public works department annually to ensure that adequate fund reserves are being maintained for future repairs and/or replacement costs of the private streets.

(f) In the event the association fails to maintain the streets in accordance with city standards, the city may repair and maintain the streets and charge the cost to the association. If the association fails to pay for the maintenance cost, after notice to the property owners, the costs shall be filed as a lien on all property within the subdivision.

(g) The association documents shall be reviewed and approved by the city attorney and the director of planning to ensure that they conform to this and other applicable city ordinances, and shall be filed of record prior to the approval of the final plat.

**Sec. 12.14.005 Private streets and easements**

(a) Private streets shall be constructed within a designated separate lot owned by the homeowners association. Every lot shall have frontage on, and access to, said lot in lieu of a public street.

(b) An easement encompassing the lot shall be granted to the city providing unrestricted use of the property for utilities and their maintenance. The right shall extend to all utility providers, including telecommunication companies operating within the city. The easement shall also provide the city with the right of access for any purpose related to the exercise of a governmental

**Ordinance Amendment Proposal – Private  
Streets and Gated Communities**

service of function, including but not limited to fire and police protection, inspection, animal control and code enforcement. The easement shall permit the city to remove any vehicle or obstacle within the lot that impairs emergency access.

**Sec. 12.14.006 Construction and maintenance cost**

The city shall not pay for any portion of the cost of constructing or maintaining a private street.

**Sec. 12.14.007 Utilities**

Water, sewer, drainage facilities, and water meters shall be placed within the “street lot” and shall be dedicated to the city upon final acceptance of the subdivision by the city.

**Sec. 12.14.008 Improvements and inspections**

(a) Developments proposed with private streets shall comply with [article 12.13](#), construction standards, of the comprehensive subdivision ordinance. In lieu of the two-year maintenance bond provided to the City of Cedar Park from the contractor in the amount of one hundred ten percent (110%) of the contract price for the street, such period measured from the date of the issuance of a letter of acceptance by the engineering department, the bond shall be issued to the homeowners association.

(b) The city may periodically inspect private streets and require repairs necessary to insure emergency access.

**Sec. 12.14.009 Signs**

All private traffic signs and markings shall conform to the Texas Manual on Uniform Traffic-Control Devices. The entrances to all private streets shall be marked with a sign stating that it is a private street.

**Sec. 12.14.010 Access provisions**

(a) Guard houses, access control gates and crossarms may be constructed within the “street lot.” All restricted access entrances must be manned 24 hours every day, or provided with an alternative means of ensuring access to the subdivision by the city and other utility service providers with appropriate identification.

(b) If the association fails to maintain reliable access as required to provide city services, the city may enter the subdivision and remove any gate or device, which is a barrier to access at the sole expense of the association, as provided for in the association documents.

**Ordinance Amendment Proposal – Private  
Streets and Gated Communities**

**Sec. 12.14.011 Entrance design standards**

(a) Any private street with an access-control gate shall have a minimum uninterrupted pavement width of twenty-four (24) feet at the location of the access control device. All restricted access gates shall be approved by the fire department and meet access requirements for emergency vehicles.

(b) Overhead barriers shall not be allowed.

(c) Internal storage for three (3) vehicles shall be provided between the right-of-way line and the point of the access control device. An additional setback between the point of the access control device and the access gate shall be required to allow a vehicle which is denied access to safely turn around and exit onto a public street.

(d) On lots adjacent to access gates, screening walls may exceed thirty (30) inches in height, up to a maximum of six (6) feet within the front yard setback of the adjacent lot. Such wall shall be constructed of wrought iron with brick columns. Solid fencing panels shall not be allowed.

**Sec. 12.14.012 Waiver of services**

The subdivision final plat, property deeds and property owner association documents shall note that certain city services shall not be provided on private streets. Among the services, which will not be provided, are: street maintenance, routine police patrols, enforcement of traffic and parking ordinances and preparation of accident reports. Depending on the characteristics of the proposed development other services may not be provided.

**Sec. 12.14.013 Petition to convert to public streets**

(a) The homeowners association documents shall allow the association to request the city to accept private streets and alleys and the associated property as public streets and right-of-way upon written notice to all association members and upon the favorable vote of fifty-one percent (51%) of the membership.

(b) In no event shall the city accept private streets as public unless said streets have been maintained to city standards. Should the city elect to accept private streets as public, the city may inspect the private streets and assess the lot owners for the expense of needed repairs concurrent with the city's acceptance of the streets and alleys.

(c) The city shall be the sole judge of whether repairs are needed. The city may also require, at the association's expense, the removal of guard houses, access-control devices, landscaping or other aesthetic amenities located within the street lot. The association documents shall provide for the city's right to such assessment. Those portions of the association documents pertaining to

October 1, 2013

*Planning and Zoning Commission*

**Item:  
4C**

**Ordinance Amendment Proposal – Private  
Streets and Gated Communities**

the subject matter contained in this section shall not be amended without the written consent of the city.

**Sec. 12.14.014 Hold harmless**

(a) Language shall be placed on the subdivision final plat whereby the homeowners association, as owner of the private streets and appurtenance, agrees to release, indemnify, defend and hold harmless the city, any governmental entity and public utility for damages to the private street occasioned by the reasonable use of the private street by the city, governmental entity or public utility; for damages and injury (including death) arising from the condition of said private street; for damages and injury (including death) arising out of the use by the city, governmental entity or public utility of any restricted access gate or entrance; and for damages and injury (including death) arising out of any use of the subdivision by the city, government entity or public utility.

Further, such language shall provide that all lot owners shall release the city, governmental entities and public utilities for such damages and injuries. The indemnification contained in this paragraph apply regardless of whether or not such damages and injury (including death) are caused solely by the negligent act or omission of the city, governmental entity or public utility, or their representative officers, employees or agents.

(b) The homeowners association shall provide general liability insurance in the amount of not less than \$300,000 per occurrence and \$500,000 aggregate. Such insurance shall protect the homeowners association and City of Cedar Park from any claim, suit or demand resulting from any activity by the city within the subdivision, including the operation, maintenance or repair of water, sewer and drainage facilities. The insurance shall be occurrence based and name the City of Cedar Park an additional insured. The insurance shall not include any exclusions that would deny coverage from the operation of sewer lines.

(c) A signed certificate of insurance, satisfactory to the city, showing compliance with the requirements of this section shall be furnished to the City of Cedar Park at the time all improvements are accepted by the city. Such certificate shall provide thirty-day written notice to the City of Cedar Park prior to the cancellation or modification of any insurance referred to therein. Language shall be placed on the subdivision final plat indicating that a signed certificate of insurance shall be furnished to the city which complies with article.

**Sec. 12.14.015 Gated communities**

(a) Residential subdivisions may have gated access provided they comply with all of the following criteria:

October 1, 2013

*Planning and Zoning Commission*

**Item:**

**4C**

**Ordinance Amendment Proposal – Private  
Streets and Gated Communities**

- (1) The gated community is comprised of not more than ten percent (10%) of the total lot count of a residential subdivision having five hundred (500) or more lots, as shown on its concept plan or preliminary plan.
- (2) All common areas, common improvements, and all utilities within the gated areas shall be privately owned and maintained. The engineering/services department will approve the installation of a master water and wastewater meter(s) to serve all residents in the gated areas and the HOA will be billed as an individual customer for all properties in the gated section.
- (3) No off-site stormwater may be conveyed through the gated areas.
- (4) No off-site utilities may be included in the development within the gated areas. No lift stations may be located within the gated areas.
- (5) The requirements of [subsections \[sections\] 12.14.004](#), and 12.04.010–014 [[12.14.010–12.14.014](#)] shall apply .

October 1, 2013

*Planning and Zoning Commission*

**Item:**

**Ordinance Amendment Proposal – Zoning  
Districts and Regulations for Long Term Care  
Giving Facilities**

**4D**

**STAFF:** Joe Vining, FAICP, Interim Director of Development Services, 512-401-5066,  
[joe.vining@cedarparktexas.gov](mailto:joe.vining@cedarparktexas.gov)

---

The City's zoning ordinance identifies a number of types of long term care giving facilities that are somewhat residential in nature. The definitions for these facilities often overlap and do not always align with definitions at the state level. In addition, there is some apparent inconsistency regarding the zoning districts in which they are permitted.

Staff will present information regarding proposed revisions to the Zoning Ordinance to address:

- 1) Overlapping definitions for various long term care giving facilities;
- 2) Overlapping long term care giving facility uses in the table of permitted uses; and
- 3) Appropriate permitted zoning designations for long term care giving facilities

A copy of the current ordinance is attached for your reference.

October 1, 2013

*Planning and Zoning Commission*

**Item:  
4D**

**Ordinance Amendment Proposal – Zoning  
Districts and Regulations for Long Term Care  
Giving Facilities**

**ARTICLE 11.02 ZONING DISTRICTS AND REGULATIONS**

**Sec. 11.02.341 Zoning District Chart Residential Districts**

P Permitted

Use*	RA	MH	ES	SF	SF-1	SF-2	SF-3	TH	CD	DP	MF	MU
Assisted Living Facility								P	P	P	P	
Extended Care Facility										P	P	
Group Home				P	P	P	P					

**Sec. 11.02.342 Zoning District Chart Nonresidential Districts**

P Permitted by Right      C Conditional Use Permit      S Special Use Permit

Use	TO	TC	GO	LR	GR	CS	HC	H	BD	PS	LI	GI	HI	OSG	OSR	MU
Convalescent, Nursing Homes			P													
Extended Care Facilities, Nursing Homes			P													
Intermediate Care Facility								P								
Long Term Care Facility								P								

**ARTICLE 11.12 DEFINITIONS**

Assisted living facility: The use of a site for three (3) or more dwelling units designed and marketed specifically for persons sixty (60) years of age or older, the physically handicapped, or both, with common dining facilities and amenities.

October 1, 2013

*Planning and Zoning Commission*

**Item:**

**Ordinance Amendment Proposal – Zoning  
Districts and Regulations for Long Term Care  
Giving Facilities**

**4D**

*Convalescent, nursing home:* The use of a facility for the provision of bed care and in-patient services for persons requiring regular medical attention. This use excludes the provision of surgical or emergency medical services and the provision of care for alcoholism, drug addiction, mental disease, or communicable disease.

*Extended care facility:* A long-term facility or a distinct part of a facility licensed or approved as a convalescent or nursing home, infirmary unit of a home for the aged, or governmental medical institution.

*Group Home:* To qualify as a group home, an entity must provide the following services to persons with disabilities who reside in the home: 1) food and shelter, 2) personal guidance, 3) care, 4) habitation services, 5) supervision.

A group home must be a community based residential home operated by the Texas Department of Mental Health and Mental Retardation. The home must have not more than six (6) persons with disabilities and two supervisors residing in the home at the same time. The limitation on the number of persons with disabilities applies regardless of the legal relationship of those persons to one another. The home may not be established within one-half (1/2) mile of an existing group home.

For purpose of this definition, “person with a disability” means a person whose ability to care for himself, perform manual tasks, learn, work, walk, see, hear, speak, or breathe is substantially limited because the persons has: an orthopedic, visual, speech, or hearing impairment; Alzheimer’s disease; presenile dementia; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; autism; or emotional illness.

*Intermediate care facility:* A facility that provides, on a regular basis, personal care, including dressing and eating and health-related care and services, to individuals who require such assistance but who do not require the degree of care and treatment that a hospital or skilled nursing facility provides.

*Long term care facility:* An institution or part of an institution that is licensed or approved to provide health care under medical supervision for twenty-four (24) or more consecutive hours to two or more patients who are not related.

*Nursing home:* See Extended Care Facilities.