



# CITY OF HAYWARD

Hayward City Hall  
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## Cover Memo

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**DATE:** September 15, 2015

**TO:** Mayor and City Council

**FROM:** Development Services Director

### **SUBJECT**

Amendments to Hayward's Livestock Regulations Related to Keeping of Chickens and Other Fowl

### **RECOMMENDATION**

That the City Council reviews and provides input on this report.

### **SUMMARY**

In response to General Plan policy that encourages access to healthy foods, and related to current trends and practices in other jurisdictions, the City is considering updating its livestock regulations (Section 10-1.2735.e of the Hayward Municipal Code) to encourage more keeping of chickens in residential areas in Hayward. This work session before City Council and another work session scheduled before the Planning Commission on September 17 will provide an opportunity to take public comment and receive feedback and direction on this topic. Issues that have been previously identified by staff and the public, including during an August 18 public meeting at City Hall, include:

- The lack of a distinction between small livestock, such as chickens and ducks, and large livestock, such as cattle and horses, means that the setback standards for small livestock may be in excess of what is needed to ensure compatibility with nearby residences, and are certainly in excess of current industry standards. Current regulations require a forty foot separation between a chicken coop and any residence.
- The current requirement and process for a discretionary administrative use permit to keep chickens is overly burdensome and costly, and requires unnecessary staff time, and does not provide certainty for applicants.
- The public noticing requirement that all property owners and residents within 300 feet of a parcel where chickens are proposed to be kept is seen as excessive.

Staff has identified two alternatives to the current permit process, which are detailed in this report. The first would simplify the permit process to reduce cost and processing time both for applicants and staff. The second alternative would eliminate the requirement for a permit process altogether and consider 'domestic livestock,' which would be defined as four or fewer hens, as similar to pets in terms of impact and processing. Both alternatives would also accompany changes to design and performance standards.

## BACKGROUND

The City has received numerous inquiries from residents, including during the General Plan Update process, regarding the keeping of domestic livestock in residential backyards, and staff has determined that current regulations would prohibit a typical single-family residence in the City from legally keeping such animals. Many residents have also expressed that the current administrative use permit application fee of \$500 is cost prohibitive.

On August 18, the City hosted a public meeting to provide residents the opportunity to provide feedback on current regulations and potential code changes. There were 20 community members in attendance and all who spoke supported encouraging the keeping of chickens on residential properties. Staff provided an overview of current regulations and facilitated a discussion among attendees on what process would be preferred and what design and performance standards are necessary to ensure that the keeping of chickens on a residential lot does not cause a nuisance to neighboring properties. The consensus among attendees at the meeting was that the current permit process is excessively costly and time-consuming, that a great number of properties in the City already have chickens without permits, that many cities have “easier” regulations compared with Hayward, and that there is little to be gained by requiring *any* permit process. Of the attendees who responded to a survey activity during the meeting, none indicated that they would like to see current regulations maintained, two indicated that they would like to see the permit process made simpler, and 15 indicated that they would like to see the City remove the requirement for a permit in its entirety.

Participants in the community meeting also expressed that current standards for livestock are excessive. The 40 foot minimum setback from a residence would prevent any of the participants at the meeting from having chickens. Participants also expressed that the current requirement of 200 square feet of open area per bird is much more than is needed. For four chickens, that requirement would equal to 800 square feet, where most single-family backyards are 1,000 square feet in size. Not only does this take up most of a typical backyard, it also makes it more difficult for a chicken keeper to manage the animals.

Some participants expressed a deep concern for declining bee populations and would like the City to evaluate current regulations for beekeeping. Current City code prohibits beekeeping in all zones except for the Agriculture District and the Flood Plain District. Many other cities in the Bay Area are revising regulations for bee keeping, most recently Pleasanton, which now allows for up to two hives on properties developed with a single-family residence. Specific standards were added to help reduce potential impacts to neighbors, including language to prevent a property from having hives if a neighbor within 100 feet is allergic to bee stings.

In addition to the community meeting, staff has recently received multiple calls and emails from citizens regarding the keeping of chickens on residential properties. Many residents have expressed concern that roosters could be permitted as part of this ordinance and that they would be opposed to any such attempt. In response, staff will recommend that roosters be specifically prohibited as part of the ordinance amendments. There were also multiple calls from residents who had previously had issues with chickens on neighboring properties in the past. Multiple residents expressed that they had experienced issues with rodents, noise, and smell as a result of improper practices of some of their neighbors who had chickens. Residents who have experienced issues with chickens on neighboring lots expressed that a blanket prohibition is more effective at removing nuisances than allowing chickens with lesser restrictions. Some residents expressed concern that if an ongoing but intermittent nuisance is

present, the City may only be able to force removal if the nuisance is documented at the time of an inspection.

In terms of complaints, the City's Animal Services Division received 61 complaint calls relating to chickens between January 1, 2015 and August 31, 2015. Of those calls, 11 (18%) were for properties where only hens were present, 15 (25%) were for properties where only roosters were present, and 35 (57%) were for properties where there were a combination of hens and roosters. The majority of calls are based on either noise or odor issues resulting from the improper handling of the birds.

## DISCUSSION

### *Current Process and Standards*

The City of Hayward Municipal Code currently does not distinguish between small livestock and large livestock in terms of permit requirements and operational standards. As a result, if a resident would like to keep chickens on a property in the Single-Family Residential District (RS) or the Residential-Natural Preservation District (RNP), they are required to obtain a \$500 Administrative Use Permit (AUP). Staff must process such applications according to the processes set forth in the Municipal Code, which requires making findings in support of the AUP and notification of the owners, residents and businesses on neighboring parcels within 300 feet of the property where chickens are proposed. Section 10-1.2735e of the Municipal Code/Zoning Ordinance also sets operational standards for livestock and requires a 40-foot separation between a coop and any residence, as well as a 20-foot separation between a coop and any property line. These distances are impossible to meet for most properties developed as single-family residences in the City. As such, applicants must request an administrative reduction in these requirements in order to qualify to keep chickens, or simply, do not seek a permit to do so. Again, beekeeping in residential zones is specifically prohibited.

In terms of nuisance abatement, the City currently has two options to bring a site into compliance. The first, and currently most often utilized method, is to rely on the Zoning Ordinance requirement for an Administrative Use Permit, which most chicken owners do not obtain prior to bringing chickens onto a site. Faced with the requirement of an Administrative Use Permit or removing the chickens, most owners will remove the chickens. The City also can utilize the language of the General Regulations section of the Municipal Code to abate a nuisance. That section contains language which prohibits a livestock owner from keeping animals in a way that generates an unpleasant odor, creates an excessive noise, or attracts rodents by improperly storing feed. The City's animal regulations also prohibit an animal keeper from causing an excessive noise; this section is often used for dog owners who do not appropriately limit the barking of their animals.

Code Enforcement does not issue a fee for an initial inspection to determine if a violation or nuisance is present. However, if a violation is not corrected by a second inspection, a fee of \$622 is levied. Subsequent violations by the same property owner within a 12 month period carry an automatic fine of \$1,451.

### *Permitting*

Alternative One: Zoning Conformance Permit - In this alternative, the Zoning Ordinance would be amended to create a new sub-definition for 'domestic livestock,' which would include the keeping of up to four hens, ducks, pigeons, or similar fowl, as determined by the Planning Director. The use tables for the zones where a single-family residence is a permitted use would be amended to allow 'domestic livestock'

as a secondary use to a single-family residence, subject to the approval of a Zoning Conformance Permit (current fee of \$210) and only for properties developed with only one single-family residence. An in-law unit would not disqualify a property from meeting this requirement. All other livestock, including the keeping of more than four chickens, would continue to require approval of an Administrative Use Permit.

The benefit of this approach is that by requiring a permit, staff would have the opportunity to meet with applicants and provide copies of design and performance standards, as well as tips and education materials, to ensure that applicants are properly informed about the requirements and good practices for keeping such animals. Also, by requiring a permit, the City retains the ability to revoke the permit if an applicant is not able to remain in compliance. Language could also be added to prevent the approval of a Zoning Conformance Permit for domestic livestock if a prior permit was revoked within six months from the application date. This would prevent residents from continuing to keep livestock if there is evidence of improper practices or if a nuisance is caused. In contrast, without such language a resident could continue to keep chickens if they successfully abate a nuisance, even if the issue appears again later after inspections are complete.

The drawback of this approach is that it places a regulatory and financial burden on residents who would like to keep chickens and an administrative burden on staff. This could be reduced by creating a streamlined permit process, similar to the process for Home Occupations, wherein an applicant would only need to file a self-certification form to obtain a permit. Such form would detail all of the requirements for the keeping of chickens and would explain that a permit will be revoked if a nuisance is caused. By limiting staff involvement to recording the certification form, impact to residents should be reduced and processing cost can be limited. As a result, the fee for such a permit could be reduced. If staff processing is reduced to fifteen minutes, the cost of the permit would be reduced to \$52.50.

Alternative Two: No permit required - This alternative is similar to alternative one, except no permit would be required. The benefit to this approach is that it would not require existing or future chicken owners to obtain a permit from the City, eliminating staff involvement on the front end and related to enforcement, and the regulatory and financial burden placed on residents. Many residents expressed that the keeping of chickens is an evolving practice, and some indicated that requiring a permit which dictates the placement of a coop is inconsistent with some new practices, such as movable coops, where the location is not static.

In this approach, the City would retain its ability to enforce the Municipal Code and require that a nuisance is abated. Repeat offenders would face increased fines, as stipulated in the Master Fee Schedule. The only real limitation of not requiring a permit is that without a permit requirement, the City cannot prohibit chickens from being kept on properties where a nuisance was previously being caused. If a permit is required, the City can add language to prevent reissuance of a permit if a prior permit was revoked within six months of the application for the new permit. Without such language, property owners could continue to keep chickens on a site once a nuisance is abated, even if the nature of the nuisance was severe and compliance was difficult to achieve.

Regardless of whether a permit is required to keep chickens, staff envisions developing a handout with tips on keeping chickens and posting it on the City's website, distributing it to various homeowners' associations and the public. There are also various websites devoted to helping residents to raise chickens, including [www.backyardchickens.com](http://www.backyardchickens.com) <<http://www.backyardchickens.com>>.

### ***Standards***

Current standards require a coop or other enclosure for the animals and set a minimum distance of 40 feet from any residence and 20 feet from any property line. This separation requirement is appropriate for extremely large lots where large livestock are proposed, but is seen as excessive by many residents and staff. Participants at the August 18 community meeting were split on the issue of separation from a home, with eight indicating that a setback from a home of 10 to 12 feet is appropriate while five participants indicated that a lower setback in the range of 0 to 5 feet is acceptable. Staff recommends that a minimum separation between a coop and a residence on the same lot be set at six (6) feet, while the minimum separation between a coop and any neighboring residence be set at 20 feet. These separations can be met easily by placing a coop near the center of a typical single-family backyard in the city, which often measures 50 feet wide and 20 feet deep. In terms of separation from property lines, participants in the community meeting were supportive of not requiring any separation or requiring a separation of only a few feet. Staff recommends a minimum property line setback of five (5) feet. Coops exceeding 120 square feet would typically require a permanent foundation and a building permit. City code already requires that a coop be located behind the principal structure on a lot.

Standards would only apply to the coop which houses the birds. Other related areas, such as chicken runs, would not be subject to setback requirements. City code currently requires 200 square feet of open area per animal and is silent on the amount of area required inside a coop per animal. This language would be revised to require nine square feet of open area per bird, or 25 square feet in total, whichever is greater. The requirements for the coop would be expanded to require four square feet of indoor area per bird. These standards are consistent with established best practices, as found on [www.backyardchickens.com](http://www.backyardchickens.com) <<http://www.backyardchickens.com>>.

### ***Additional Revisions***

The primary intent of this ordinance has been to update the City's regulations for the keeping of chickens. However, as was found in public outreach, there are additional activities which some members of the public are interested in pursuing in residential zones. Some activities, such as the raising of racing pigeons in small numbers, are similar in nature to the keeping of chickens, and would be processed in a similar fashion through whichever alternative is selected.

Beekeeping has been discussed as another potential activity to potentially be allowed through this code update. Beekeeping would require the development of new standards to ensure compatibility in residential zones, but many local cities, such as Pleasanton, have recently adopted ordinances to allow the practice in residential zones without requiring a permit, subject to specific standards. An article from February when the Pleasanton City Council adopted the new beekeeping regulations is found at: [http://www.independentnews.com/news/beekeeping-now-allowed-in-pleasanton/article\\_79a0b8c6-bd0e-11e4-b42f-cfe4dffc384b.html](http://www.independentnews.com/news/beekeeping-now-allowed-in-pleasanton/article_79a0b8c6-bd0e-11e4-b42f-cfe4dffc384b.html) . Pleasanton's regulations include requiring a permit and notification of neighbors within 100 feet (including not issuing a permit if a neighbor has a medical issue associated with bee stings), requiring a beekeeper to live on the property, requiring hives to be located at least five feet away from property lines and in backyards, and limiting hives to four feet in height. With the Council's direction, staff can integrate Municipal Code revisions relating to beekeeping into this ordinance amendment. Alternatively, such code change can be explored at a later time.

### ***General Plan Policy***

The proposed amendments are consistent with the General Plan in that the livestock regulations promote economic development while preserving an aesthetic quality citywide. There are two relevant General Plan policies, which are identified below:

*HQL-3.1 Access to Healthy Foods: The City shall strive to ensure that all residents are within walking distance of sources of fresh and healthy foods (e.g., grocery stores, healthy corner stores, farmers' markets, and community gardens).*

Reducing regulatory barriers to the keeping of chickens on residentially zoned properties would allow more residents to pursue this activity. The keeping of chickens provides for immediate access to fresh eggs and provides more certainty with respect to the humane treatment of the birds and the type of feed and supplements that are provided to the animals.

*HQL-9.1 Resiliency: The City shall strive to create a strong and resilient community and region that can withstand or accommodate change and respond to challenges.*

Food prices are subject to market demands and supply constraints, and changes in food prices can have a severe impact on residents in the City, particularly those with limited incomes. Keeping chickens can provide a stable price for eggs, which is a primary source of protein for many individuals. Producing more food locally also enhances the overall resiliency of the City by providing an alternative food source for residents in the event of a disruption in food supply due to a natural disaster or other event.

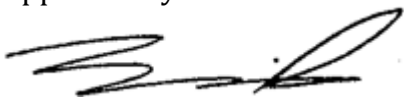
## **NEXT STEPS**

Staff will incorporate input from the City Council and Planning Commission, as well as suggestions from the public, to develop a draft for the update to the Livestock Regulations for the City of Hayward. The regulations will be presented at noticed public hearings to the Planning Commission and City Council for consideration of adoption later this year.

*Prepared by:* Michael Christensen, Assistant Planner

*Recommended by:* David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

Attachment I

Attachment I: City of San Diego Informational Handout

Attachment II

Attachment II: Permit Processes of Neighboring Jurisdictions