

November 21, 2013

TO: Mayor Krasnoff, Vice-Mayor de Triquet and Members of the City Council

Re: ORDINANCE REAUTHORIZING AN ORDINANCE AMENDING APPENDIX "A" OF THE CHESAPEAKE CITY CODE, ENTITLED "ZONING," SECTION 3-403, 14-101 AND 14-102, TO PERMIT THE KEEPING OF SIX OR FEWER FEMALE CHICKENS IN ALL SINGLE-FAMILY RESIDENTIAL ZONING DISTRICTS.

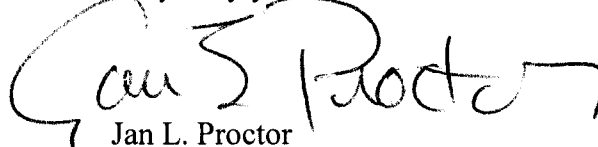
The enclosed ordinance reauthorizes an ordinance adopted by Council on November 20, 2012, which amended Sections 3-403, 14-101 and 14-102 of the Chesapeake Zoning Ordinance to permit the keeping of six or fewer female chickens in single-family residential zoning districts, subject to certain conditions. The ordinance adopted on November 20, 2012, will expire on December 20, 2013 unless reauthorized by Council before the date of expiration.

I have also enclosed the following documents:

1. Memorandum dated November 6, 2013, from Amar Dwarkanath, Deputy City Manager, to the Mayor, Vice-Mayor and the Members of City Council.
2. Memorandum dated November 8, 2013, from Mary Ann Saunders, Assistant to the City Manager to James E. Baker, City Manager.
3. Memorandum dated November 21, 2013, from Jan L. Proctor, City Attorney, to the Mayor, Vice-Mayor and Members of the City Council.

Please advise if you have any questions in this matter.

Very truly yours,


Jan L. Proctor
City Attorney

JLP:hvm

Enclosure

cc: James E. Baker, City Manager
Dolores Moore, City Clerk
Anna D' Antonio, Assistant to the City Manager

AN ORDINANCE REAUTHORIZING AN ORDINANCE AMENDING APPENDIX "A" OF THE CHESAPEAKE CITY CODE, ENTITLED "ZONING," SECTION 3-403, 14-101 AND 14-102, TO PERMIT THE KEEPING OF SIX OR FEWER FEMALE CHICKENS IN ALL SINGLE-FAMILY RESIDENTIAL ZONING DISTRICTS.

WHEREAS, on November 20, 2012, the City Council of the City of Chesapeake adopted an ordinance amending Section 3-403, 14-101 and 14-102 of the Chesapeake Zoning Ordinance ("the Ordinance") to permit the keeping of six or fewer female chickens in single-family residential zoning districts, subject to certain conditions;

WHEREAS, by its terms, the Ordinance will expire on December 20, 2013, unless reauthorized by the City Council before the stated date of expiration; and

WHEREAS, the Council of the City Of Chesapeake finds the public necessity, convenience, general welfare and good zoning practice so requires.

BE IT ORDAINED by the Council of the City of Chesapeake, Virginia that Appendix "A" of the Chesapeake City Code, entitled "Zoning", Sections 3-403, 14-101.C.2 and 14-102.B.7 be reauthorized and reenacted as follows:

ARTICLE 3. – INTERPRETATIONS AND DEFINITIONS

§ 3-403. Definitions.

The following definitions shall be used in the interpretation and administration of this ordinance. The definitions of various terms as presented do not necessarily represent the same definitions as may be found for the same terms in other chapters of the City Code.

Pet. A domesticated animal kept for pleasure as an accessory use in a residential setting. The following animals may be considered pets if they are kept for pleasure and as an accessory use: hamsters, nonvenomous snakes less than six (6) feet long, iguanas, turtles, guinea pigs, domesticated birds kept indoors, ten (10) or fewer rabbits on one lot, fish kept indoors or outdoors in a manner that is accessory to a principal use, as defined and permitted in subsection 14-101.C. of this Code, but shall not be construed to include the keeping or raising of fish for commercial or agricultural purposes. See article 14 of this Code and the definition of "livestock" within this article, regarding specific inclusions and exclusions of livestock and other animals from the definition of "pet."

ARTICLE 14. – ACCESSORY USES AND STRUCTURES

§ 14-101. Permitted accessory uses and structures.

C. Uses

2. *On residential property.* The following specific accessory uses are listed as examples of accessory uses permitted in residential districts, subject to the other applicable provisions of this ordinance. To be deemed accessory, such use must be designed and carried out to serve the residential use of that property.

f. Six (6) or fewer female chickens may be kept as an accessory use in all single-family residential zoning districts subject to the following requirements: (i) the chickens shall be housed in a fully enclosed accessory structure that meets the requirements of subsections 14-102.B.1—6. set out below, and (ii) the accessory structure shall be located in a rear yard. Nothing herein shall be construed to permit the slaughtering of chickens on property zoned for residential use. This

~~subparagraph, and all other corresponding provisions, shall expire on December 20, 2013 unless reauthorized by city council.~~

§ 14-102. Accessory use and structure limitations.

B. Residential districts.

7. Enclosures for animals, if otherwise permitted, shall be subject to the following setbacks, except for female chickens as provided for in subsection 14-101.C.2.f.

set out above:

a. If the enclosure is not a stable, pen or kennel, the setback shall be twenty-five (25) feet from any exterior property line; provided, however, that there shall be no setback requirement for the enclosure from the exterior property line in the following circumstances:

- (1) Where all or part of the adjacent lot is located in the A-1 agricultural district;
- (2) Where all or part of the adjacent lot is located in the RE-1 residential district;
- (3) Where no occupied structure is located on the adjacent lot at the time the enclosure for animals is established.

b. If the enclosure is not a stable, pen or kennel, the setback shall be fifty (50) feet from any existing residential building located on an adjacent lot that is zoned exclusively for residential use; provided, however, that no such setback shall be required if the adjacent lot is zoned RE-1 residential district.

c. If the enclosure is a kennel, as defined in this ordinance, a setback of five hundred (500) feet from any lot line of any property zoned or used for residential purposes shall be required; where the structure is soundproofed, the required setback shall be two hundred (200) feet. If such kennel is proposed to be located

closer to property zoned or used for residential purposes, a conditional use permit shall be required for such kennel. No such facility shall be located in the established front yard of any lot.

d. If the enclosure is a stable or pen for livestock, the setback shall be a minimum of one hundred twenty-five (125) feet from any existing inhabited residential structure located on an adjacent lot and a minimum of one hundred (100) feet from any existing habitable accessory building or structure located on an adjacent lot.

An enclosed area keeping any livestock on a lot shall be deemed to be a stable and/or pen if the density of the animals within the area exceeds one (1) animal per ten thousand (10,000) square feet of land. A habitable accessory building or structure shall include pool houses, gazebos, swimming pools, decks, patios, detached guest houses, servant's quarters, and other similar structures as determined by the zoning administrator. Livestock may only be kept on residentially zoned property as an accessory use as provided for in section 14-900 et seq. of this ordinance.

This ordinance is an emergency and will be effective immediately.

ADOPTED by the Council of the City of Chesapeake, Virginia, this ____ day of

_____, 2013.

APPROVED:

Mayor

ATTEST:

Clerk of the Council

MEMORANDUM

TO: The Honorable Mayor and Members of City Council

VIA: Amar Dwarkanath, P.E., Deputy City Manager for Operations

FROM: J.B. Tate, P. E., Director of Development and Permits

DATE: November 6, 2013

SUBJECT: TAZ 12-0-107 Keeping Chickens in the Residential Districts
(Revised to Include Police Department's Data)

On November 20, 2012, City Council approved the attached amendment to the Chesapeake Zoning Ordinance to permit the keeping of six or fewer female chickens in all single-family residential districts. The amendment included a provision that sets an expiration date of December 20, 2013, unless it is reauthorized by City Council prior to that date. This report is being provided to document public input and enforcement activities that have occurred since adoption of this ordinance amendment.

Development & Permits has compiled the following data related to chickens allowed in residential districts:

1. Number of calls in support of chickens in the residential districts - 5
2. Number of calls in opposition of chickens in the residential district - 19
3. Number of service requests concerning chickens on neighboring property - 18
4. Number of violations after investigation of service requests - 11

The most frequently raised concerns in the service requests were about a rooster and/or the number of chickens in violation of the six female chicken limit. There were also several that were concerned about loose chickens and one incident with a dog killing a chicken.

The Police Department has indicated, for the 2013 calendar year to date, a total of 34 chickens were taken in at the City's Animal Services facility (29 were strays picked up by Animal Control Officers and 5 were surrendered by their owners). Of the 34 chickens taken in at Animal Services, 27 were adopted out, 6 were euthanized and 1 was returned to its owner.

It is difficult to determine if chickens are compatible with residential districts based on the data above. A total of eighteen service requests is not particularly a high number relative to other types of zoning violations. However, chickens in residential districts are a new occurrence, and there is likely a small population of this use in residential districts. Because we do not have any idea of the quantity of the residential chicken population, we do not know if eighteen requests represents problems with 100% of the population or 1% of the population. The types of service requests received so far will likely increase as the population of chickens in residential districts increases. We do not have any way to project how much of an increase will occur.

As indicated above, on December 20, 2013, the authority to keep chickens in the residential districts will expire without further action. If this text amendment is placed on an agenda prior to that date, City Council may choose to make the amendment permanent, approve the amendment to allow additional time to gather information, or disapprove the amendment.

It is worth noting, however, that even if the provisions for keeping chickens in the residential districts is ultimately allowed to expire, the residential properties that currently have chickens under the current provisions will be determined to be lawfully nonconforming and will be permitted to continue to keep chickens.

This report is not intended to provide a recommendation to City Council. The previous Department report dated August 28, 2012 is provided for back-up information.

If you need additional information, please do not hesitate to contact me at 382-6263.

JBT

Attachments (2)

C:	James E. Baker, City Manager	Karen Shaffer, Assistant Director of Planning
	Jan Proctor, City Attorney	John T. King, III, Zoning Administrator
	Kelvin Wright, Chief of Police	Kristen Linfante, Office Coordinator

12-0-107

AN ORDINANCE AMENDING APPENDIX "A" OF THE CHESAPEAKE CITY CODE, ENTITLED "ZONING," SECTION 3-403, 14-101 AND 14-102, TO PERMIT THE KEEPING OF SIX OR FEWER FEMALE CHICKENS IN ALL SINGLE-FAMILY RESIDENTIAL ZONING DISTRICTS.

BE IT ORDAINED by the Council of the City of Chesapeake, Virginia, that Appendix "A" of the Chesapeake City Code, entitled "Zoning," Sections 3-403, 14-101.C.2 (adding subsection f.) and 14-102.B.7 be amended and reenacted as follows:

ARTICLE 3. - INTERPRETATION AND DEFINITIONS

§ 3-403. Definitions.

The following definitions shall be used in the interpretation and administration of this ordinance. The definitions of various terms as presented do not necessarily represent the same definitions as may be found for the same terms in other chapters of the City Code.

Pet. A domesticated animal kept for pleasure as an accessory use in a residential setting. The following animals may be considered pets if they are kept for pleasure and as an accessory use: hamsters, nonvenomous snakes less than six (6) feet long, iguanas, turtles, guinea pigs, domesticated birds kept indoors, ten (10) or fewer rabbits on one lot, fish kept indoors or outdoors in a manner that is accessory to a principal use, as defined and permitted in subsection 14-101.C of this Code, but shall not be construed to include the keeping or raising of fish for commercial or agricultural purposes and ~~four (4) or fewer female chickens on a lot zoned RE-1 and kept in an enclosed accessory structure located in accordance with subsection 14-102.B.7.d of this Code.~~ See article 14 of this Code and the definition of "livestock"

within this article, regarding specific inclusions and exclusions of livestock and other animals from the definition of "pet."

ARTICLE 14. - ACCESSORY USES AND STRUCTURES

§ 14-101. Permitted accessory uses and structures.

C. Uses.

2. On residential property. The following specific accessory uses are listed as examples of accessory uses permitted in residential districts, subject to the other applicable provisions of this ordinance. To be deemed accessory, such use must be designed and carried out to serve the residential use of that property.

f. Six or fewer female chickens may be kept as an accessory use in all single-family residential zoning districts subject to the following requirements: (i) the chickens shall be housed in a fully enclosed accessory structure that meets the requirements of section 14-102.B.1 through 6 set out below and (ii) the accessory structure shall be located in a rear yard. Nothing herein shall be construed to permit the slaughtering of chickens on property zoned for residential use. This sub-paragraph, and all other corresponding provisions, shall expire on December 20, 2013 unless reauthorized by City Council.

§ 14-102. - Accessory use and structure limitations.

B. Residential districts.

7. Enclosures for animals, if otherwise permitted, shall be subject to the following setbacks, except for female chickens as provided for in section 14-101.C.2.f set out above:

a. If the enclosure is not a stable, pen or kennel, the setback shall be twenty-five

(25) feet from any exterior property line; provided, however, that there shall be no setback requirement for the enclosure from the exterior property line in the following circumstances:

- (1) Where all or part of the adjacent lot is located in the A-1 agricultural district;
- (2) Where all or part of the adjacent lot is located in the RE-1 residential district;
- (3) Where no occupied structure is located on the adjacent lot at the time the enclosure for animals is established.

b. If the enclosure is not a stable, pen or kennel, the setback shall be fifty (50) feet from any existing residential building located on an adjacent lot that is zoned exclusively for residential use; provided, however, that no such setback shall be required if the adjacent lot is zoned RE-1 residential district.

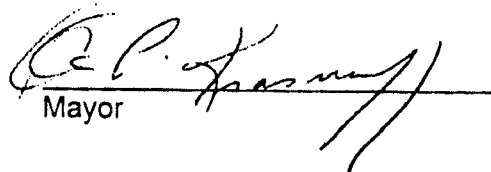
c. If the enclosure is a kennel, as defined in this ordinance, a setback of five hundred (500) feet from any lot line of any property zoned or used for residential purposes shall be required; where the structure is soundproofed, the required setback shall be two hundred (200) feet. If such kennel is proposed to be located closer to property zoned or used for residential purposes, a conditional use permit shall be required for such kennel. No such facility shall be located in the established front yard of any lot.

d. If the enclosure is a stable or pen for livestock, the setback shall be a minimum of one hundred twenty-five (125) feet from any existing inhabited residential structure located on an adjacent lot and a minimum of one hundred (100) feet from any

existing habitable accessory building or structure located on an adjacent lot. An enclosed area keeping any livestock on a lot shall be deemed to be a stable and/or pen if the density of the animals within the area exceeds one (1) animal per ten thousand (10,000) square feet of land. A habitable accessory building or structure shall include pool houses, gazebos, swimming pools, decks, patios, detached guest houses, servant's quarters, and other similar structures as determined by the zoning administrator. Livestock may only be kept on residentially zoned property as an accessory use as provided for in section 14-900 et seq. of this ordinance.

ADOPTED by the Council of the City of Chesapeake, Virginia, this
20th day of November, 2012.

APPROVED:


Mayor

ATTEST:


Clerk of the Council

Department of Development and Permits
Office of Zoning Administration
306 Cedar Road
P.O. Box 15225
Chesapeake, Virginia 23328
Telephone (757) 382-8454
Fax (757) 382-8448

MEMORANDUM

TO: Jennifer White, Senior Planner

FROM: John King, Zoning Administrator

DATE: August 28, 2012

SUBJECT: Proposed Text Amendment Permitting Chickens in Single Family Residential Districts

As requested, the following information represents the position held by the Zoning Administration and Code Compliance divisions of the Department of Development and Permits concerning the referenced text amendment.

As indicated in recent memos forwarded to Council, chickens kept in the urban setting can have a significant negative impact on the quality of life. Chickens can be loud when laying eggs. Their waste can quickly pile up, give off an offensive odor, and be a substantial attractant to rodents. The food (grain) commonly left in open feeders or improperly stored will also attract rodents. If not handled correctly, chickens can be difficult to contain. They are also the frequent target of domesticated dogs and cats as well as fox, possum, and raccoons.

If the proposed text amendment is approved, neighborhood complaints concerning these issues will surely rise. Code compliance inspectors will be tasked with determining if a violation exists. In many cases, the evidence will be subjective in nature and will rarely be agreed upon by the neighboring parties. The inspectors may be requested to determine when an odor becomes offensive, or, when a pile of waste is being "composted" or simply left to accumulate. Complaints about noise or a chicken running free in a neighborhood are particularly hard to detect and enforce. Gaining access to a rear yard, where chickens are kept, to determine the number of chickens could also prove to be difficult.

The approval of the proposed text amendment could result in an increase in neighborhood conflicts. The resulting service requests could prove to be numerous and difficult to resolve. With the recent loss of Code Compliance and Zoning staff positions, an increase in the number, complexity, and variety of violations in the most densely populated areas of the City is not recommended. The Department of Development and Permits, therefore, recommends denial of the proposed text amendment that would permit up to four hens in a single family district. Please contact me at 382-6466 if you need additional information.

MEMORANDUM

TO: James E. Baker, City Manager

VIA: Mary Ann Saunders, Assistant to the City Manager *MAS*

FROM: K. L. Wright, Chief of Police *KLW*

DATE: November 8, 2013

SUBJECT: **Keeping Chickens in Residential Districts**

Attached is a listing of data that includes location, dates, times, and the circumstances by which Animal Services took possession of 35 chickens. This listing contains data beginning April 2013 to present.

Please be aware that originally Animal Services reported 34 chickens for this period, but one was not in the system at the time, and has since been updated to reflect the additional chicken.

All total, 30 chickens were strays that were rounded up by Animal Services personnel and five were brought in and surrendered by residents. Of the 35 chickens, 27 were adopted, seven were euthanized, and one was returned to owner (RTO).

KLW:kgb

Attachment

Chickens 2013

Intake #	Date In	Location	Stray	Brought to Office	Time	Sex	Disposition Date	RTO	Adpt	Euth
1 2013-27	2/14/2013	4545 Backwoods Rd		x	10:30 AM	m	2/21/2013		x	
2 2013-28	2/15/2013	4545 Backwoods Rd		x	10:30 AM	m	2/21/2013		x	
3 2013-29	2/15/2013	4545 Backwoods Rd		x	10:30 AM	m	2/21/2013		x	
4 2013-30	2/15/2013	4545 Backwoods Rd		x	10:30 AM	m	2/21/2013		x	
5 2013-76	3/27/2013	500 Byron St	x		10:45 AM	uk	4/17/2013			x
6 2013-77	3/29/2013	500 Byron St	x		1:05 PM	uk	4/17/2013			x
7 2013-82	4/2/2013	555 Byron St	x		10:00 AM	f	4/11/2013		x	
8 2013-83	4/2/2013	555 Byron St	x		10:00 AM	f	4/11/2013		x	
9 2013-87	4/5/2013	557 Byron St	x		10:38 AM	m	4/17/2013			x
10 2013-92	4/8/2013	555 Byron St	x		10:15 AM	f	4/18/2013		x	
11 2013-95	4/9/2013	555 Byron St	x		10:20 AM	f	4/19/2013		x	
12 2013-98	4/11/2013	500 Byron St	x		9:07 AM	m	4/22/2013			x
13 2013-99	4/18/2013	555 Byron St	x		9:00 AM	f	4/24/2013		x	
14 2013-108	4/12/2013	1400 Cobble Scott Way	x		11:30 AM	f	4/22/2013		x	
15 2013-118	4/16/2013	555 Byron St	x		11:00 AM	f	4/23/2013		x	
16 2013-120	4/17/2013	555 Byron St	x		2:15 PM	f	4/23/2013		x	
17 2013-142	4/25/2013	555 Byron St	x		3:10 PM	f	4/25/2013		x	
18 2013-149	4/27/2013	555 Byron St	x		3:10 PM	f	5/15/2013		x	
19 2013-176	5/3/2013	555 Byron St	x		5:00 PM	f	5/10/2013		x	
20 2013-177	5/3/2013	555 Byron St	x		5:00 PM	uk	5/10/2013		x	
21 2013-178	5/3/2013	555 Byron St	x		5:00 PM	uk	5/10/2013		x	
22 2013-179	5/3/2013	555 Byron St	x		5:00 PM	uk	5/10/2013		x	
23 2013-180	5/3/2013	555 Byron St	x		5:00 PM	uk	5/10/2013		x	
24 2013-181	5/3/2013	555 Byron St	x		5:00 PM	uk	5/10/2013		x	
25 2013-182	5/3/2013	555 Byron St	x		5:00 PM	uk	5/10/2013		x	
26 2013-183	5/3/2013	555 Byron St	x		5:00 PM	uk	5/10/2013		x	
27 2013-184	5/3/2013	555 Byron St	x		5:00 PM	uk	5/10/2013		x	
28 2013-185	5/3/2013	555 Byron St	x		5:00 PM	uk	5/10/2013		x	
29 2013-186	5/3/2013	555 Byron St	x		5:00 PM	uk	5/10/2013		x	
30 2013-204	5/10/2013	555 Byron St	x		10:15 AM	f	5/18/2013		x	
31 2013-205	5/10/2013	555 Byron St	x		10:15 AM	f	5/17/2013		x	
32 2013-206	5/10/2013	555 Byron St	x		10:15 AM	m	5/17/2013			x
33 2013-332	6/22/2013	900 Beaver Dam Rd	x		3:15 PM	f	6/24/2013	x		
34 2013-399	8/17/2013	121 Sherrington Dr	x		8:03 PM	m	9/13/2013			x
35 2013-464	9/11/2013	1632 Great Fork Rd		x	10:47 AM	m	9/11/2013			x

November 21, 2013

TO: Mayor Krasnoff, Vice-Mayor de Triquet and Members of the City Council

Re: Legal Issues Relating to the Keeping of Chickens

During the work session on November 19, 2013, the City Council raised several legal issues relating to the keeping of chickens. Our legal analysis indicates the following responses to the questions raised:

1. Is the City compelled to accept chickens at the animal shelter?

Virginia Code Section 3.2-6546 requires localities to maintain a "pound" for the impoundment of dogs running at large. The pound may also be used to confine other "companion animals" running loose in violation of local ordinances. Pursuant to Section 10-42 of the City Code, an animal control officer may impound fowl that are running loose in the City. This is discretionary with the animal control officer.

2. Are there laws relating to dogs attacking chickens?

Virginia Code Section 3.2-6552 provides that it shall be the duty of any animal control officer who may find a dog in the act of killing or injuring poultry to kill such dog "forthwith." Any other person finding a dog killing or injuring poultry shall have the right to kill such dog on sight. In addition, any court may order the killing of any dog known to be a "confirmed poultry killer." A dog that has killed poultry for the third time shall be considered a "confirmed poultry killer."

3. Have the courts upheld the requirement in Section 14-101 of the Zoning Ordinance that chickens be "housed" in a fully enclosed accessory structure?

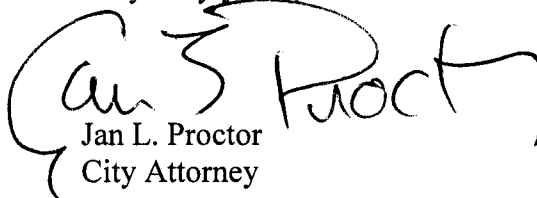
Section 14-101 requires that hens shall be "housed in a fully enclosed accessory structure" located in the rear yard of residential property. The General District Court questioned whether the use of the term "housed" requires that the chickens

always be kept in a fully enclosed accessory structure. The presiding Judge indicated that people upon occasion leave their "houses" and found that so long as chickens are sometimes "housed" in an accessory structure, they could from time to time roam outside the structure within the confines of the residential rear yard. However, since that decision, other Judges of the Court have interpreted the provision differently and held that "housed" means that the chickens stay in the coop.

To remove any ambiguity, the phrase "shall be housed" could be changed to "at all times shall be housed" or similar language.

Please advise if you have any questions or concerns.

Very truly yours,



Jan L. Proctor
City Attorney

JLP:hvm

cc: James E. Baker, City Manager
Dolores Moore, City Clerk
Anna D'Antonio, Assistant