

Urban Henfare: A Model Approach to Keeping Chickens Within Residential Areas

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Over the past decade in North Carolina many municipalities have witnessed a growing public interest in raising chickens within urban areas.¹ This emerging practice, which coincides with the growing popularity of the “local food movement,” has sparked fierce debate amongst city and town councils, homeowners associations, and individual residents.² Common concerns on this subject include issues on zoning, animal noise and nuisance, and whether poultry can be defined as livestock or pets.³ Community responses have ranged from continuing a ban on chickens, as seen in Cary, Garner, and Holly Springs, to minimally structured ordinances, as witnessed by Raleigh and Wake Forest.⁴ The most comprehensive approach to urban poultry keeping belongs to Durham.⁵ By creating a series of specific ordinances and procedures that provide clear guidance to residents interested in keeping chickens, Durham has instituted a sound “pro-chicken” policy that protects the welfare of both birds and homeowners.⁶ Durham’s allowance of chickens stands as a model approach which specifically addresses small flock chicken keeping in accordance with the changing attitudes and needs of its residents.⁷

Although until recently banned within residential areas, chickens were formally added to Durham’s list of permitted animals in 2009.⁸ Durham’s City Council voted 7-0 on Feb. 19, 2009 to amend their Unified Development Ordinance (“UDO”) to permit chickens within city limits.⁹ Under this chicken-specific ordinance City residents must apply for a permit, pay a yearly fee to

¹ Jesse James Deconto, *Chicken Raisers Can Run Afoul of Zoning*, NEWS & OBSERVER, July 17, 2007, at B1, B3.

² *Id.*

³ *Id.*

⁴ Paul Tambasco, *Garner Waits for Decision on Pet Chickens to Hatch*, GARNER CITIZEN, Feb. 18, 2010, <http://www.garnercitizen.com/2010/02/18/garner-waits-for-decision-on-pet-chickens-to-hatch>.

⁵ Matt Saldana, *Durham Says Yes to Backyard Chickens*, INDEP. WKLY., February 19, 2009, at 23.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

the city, and are limited to keeping a maximum of ten hens, with no roosters.¹⁰ Homeowners must apply for a Limited Agriculture Permit, the purpose of which is described by the Council as:

The permit requirement allows on-site enforcement and ensures that chicken owners are aware of the applicable standards. At the request of the Council, the requirement includes notice to neighbors and administrative review if any neighbor objects. The permit fee is the same as the fee for a home occupation permit. A building permit from City-Council Inspections may also be required for a chicken coop as an accessory structure.¹¹

In addition to the permit homeowners must also provide their neighbors with consent forms¹² that reference the Limited Agriculture Permit statutes.¹³ Property owners seeking to keep an urban flock must comply with Plot Plan Requirements as established by the newly amended UDO.¹⁴ These requirements provide information on zoning, structure, and spacing requirements for both pens and coops.¹⁵ The UDO also incorporates elements of animal welfare regarding housing, as regulations specify minimum floor space and lighting per bird in coops, while pens require significant ground space and fencing.¹⁶ Supplemental forms provide information on approved construction materials for pens and coops, including appropriate wire spacing that will adequately protect the birds from predators.¹⁷

Perhaps the most important concept underlying Durham's new chicken ordinance is its specific treatment of chickens as a separate category of animal.¹⁸ This means that homeowners, city inspectors, and animal control officers have clear guidelines on how to approach and handle

¹⁰ DURHAM, N.C. CODE § 3.23 (2009).

¹¹ *Id.*

¹² *Id.*

¹³ DURHAM, N.C. CODE § 3.23, § 5.4.12 (2009).

¹⁴ *Id.* § 5.4.12.

¹⁵ *See id.* §§ 3.23, 5.4.12.

¹⁶ *See id.* § 5.4.12 (B.7).

¹⁷ *Id.*

¹⁸ Saldāna, *supra* note 5, at 23.

personal flocks.¹⁹ Such specific regulations help to eliminate uncertainty regarding what are, or are not, acceptable methods of animal husbandry for chickens.²⁰ The problem of vagueness can be seen in Raleigh’s ordinances regarding chickens.²¹ Raleigh officially allowed urban chicken keeping in 2004 by expanding its definition of domesticated animals to include chickens.²² By subtly shifting the animal’s status from being a “traditional farm animal” to a pet, chickens became permissible because they could be handled under the city’s animal ordinances for pets.²³ Raleigh also changed its definition of “pet” to provide additional support for homeowners by regarding chickens as pets.²⁴ This change in definition is problematic, however, as Raleigh currently offers no other ordinances directed towards chickens.²⁵ This can create significant issues of nuisance, sanitation, and animal welfare because homeowners and animal control officers alike may lack appropriate knowledge and guidance to deal with complaints or problematic situations.²⁶ Such a lack of consistency in dealing with home flocks can result in an abuse of both chickens and homeowners’ rights.²⁷ No recorded cases have yet occurred in Raleigh over urban chicken keeping, perhaps because such issues have been resolved by animal control officers, homeowners associations, or neighborhood discussions.²⁸ The absence of clear regulations, however, still poses a significant risk for allowing misunderstandings that create neighborhood strife and endanger the welfare of home flocks.²⁹

¹⁹ Suzanne Nelson, *Urban Chickens- Backyard Eggs and Fun*, INDEP. WKLY, October 31, 2007, at 41.

²⁰ *Id.*

²¹ RALEIGH, N.C., CODE § 12-3001 et al. (2004).

²² RALEIGH, N.C., CODE § 12-3004 (2004).

²³ HENSIDE THE BELTLINE TOUR D’COOP, <http://hensidethebeltline.blogspot.com> (last visited Nov. 1, 2010).

²⁴ *Id.*

²⁵ *See* § 12-3001 et al.

²⁶ Allisa Irei, *Controversial Urban Chickens Still Roost Around Chicago*, MEDILL, March 9, 2010, at C4.

²⁷ *Id.*

²⁸ Deconto, *supra* note 1, at B1, B3.

²⁹ *Id.*

One example of why Durham's specific regulations for chickens are a better way to regulate urban flocks can be seen with chicken coops.³⁰ Although both cities have ordinances preventing chickens from running loose,³¹ only Durham provides specific information regarding what constitutes a safe, sanitary enclosure for fowl.³² Under Raleigh's ordinances a homeowner may personally determine how best to house their birds, which creates serious risks of chickens being housed in structures that too small to permit adequate movement, or may be so unstable that it leaves the birds vulnerable to predators.³³ This problem is compounded because Raleigh's ordinances seem to allow chickens to be treated like dogs that are kept outdoors.³⁴ Even if a person uses a preexisting dog pen to house their chickens, this may be unsatisfactory for the birds because the wiring may be too large (allowing chickens to become caught in the wire or predators to gain access to the birds), the structure may lack adequate insulation for the birds from the elements, and could be prohibitive towards routine sanitation practices.³⁵ Durham solves these issues of housing by providing homeowners with information regarding zoning and housing requirements.³⁶ The Limited Agriculture Permit contains a form specifying plot plan dimensions which provides clear spacing needs for chicken coops and pens.³⁷ Since homeowners are required to submit a sample plot plan demonstrating how their proposed chicken-keeping area will conform to the permit's requirements, this form eliminates any uncertainty one may have about what constitutes adequately-sized housing.³⁸ It also protects the rights of neighbors by providing clear minimum set-backs for chicken housing, ensuring that

³⁰ N.C. COOP. EXTENSION SERV., KEEPING GARDEN CHICKENS IN NORTH CAROLINA 6-8, 10 (2008).

³¹ RALEIGH, N.C., CODE § 12-3007(a) (2009); DURHAM, N.C. CODE § 6-4 (1982).

³² See DURHAM, N.C. CODE § 5.4.12 (B.7) (2009).

³³ N.C. COOP. EXTENSION SERV., *supra* note 30, at 14.

³⁴ *Id.* at 6-8.

³⁵ *Id.*

³⁶ See DURHAM, N.C. CODE § 5.4.12 (B.7) (2009).

³⁷ *Id.*

³⁸ N.C. COOP. EXTENSION SERV., *supra* note 30, at 10, 14.

chicken enclosures will not infringe on neighboring properties.³⁹ This stands in sharp contrast to Raleigh, where a homeowner is left to guess as to whether their chicken pen must meet size and/or zoning requirements for dog kennels or a freestanding building on their property, or if it is not subject to zoning requirements at all.⁴⁰ A particularly notable aspect of Durham's Plot Plan Requirement form is the City Council's offer of help to homeowners- a homeowner who wishes keep chickens, but is unable to obtain a copy of their plot plan, may contact the Planning Department to receive a scaled copy of their plot plan for use in the application process.⁴¹

Further issues arise when chickens are subjected to ordinances directed towards dogs because chickens, unlike dogs or cats, require very different health and sanitation practices.⁴² These practices include using flooring that keeps the birds' feet dry, providing ample room to prevent cannibalism (a condition brought on by stress caused by overcrowding), and periodic treatment for parasites.⁴³ Raleigh requires dogs and cats to receive yearly vaccinations, be registered, and be kept identified at all times (through a collar with identifying tags).⁴⁴ No such requirements are given for chickens, however, leaving home flock owners confused as to whether their birds are even subject to these regulations.⁴⁵ Durham, by requiring that homeowners renew their chicken permits on a yearly basis, partially addresses these issues.⁴⁶ Although the Limited Agriculture Permit stops short of requiring yearly health inspections, it does enable the City to monitor home flocks in the event that a health or sanitation problem

³⁹ *Id.*

⁴⁰ RALEIGH, N.C., CODE §§ 12-3036 (1959), § 10-2144 (1997).

⁴¹ *See* DURHAM, N.C. CODE § 5.4.12 (B.7) (2009).

⁴² N.C. COOP. EXTENSION SERV., *supra* note 30, at 10-13.

⁴³ *Id.* at 10-15.

⁴⁴ RALEIGH, N.C., CODE § 12-3008 (1980).

⁴⁵ N.C. COOP. EXTENSION SERV., *supra* note 30, at 10-13.

⁴⁶ *See* DURHAM, N.C. CODE § 3.23 (2009).

occurs, and gives animal control officers a standardized way to approach complaints about unsanitary chicken housing.⁴⁷

Protecting the rights of neighbors is yet another major reason why Durham's ordinance on chickens is exemplary.⁴⁸ Other area municipalities, like Raleigh, do not require a homeowner to notify their neighbors regarding their intent to keep chickens.⁴⁹ This can, and does, create conflicts between property owners, as well as homeowners associations.⁵⁰ Durham, in contrast, requires formal notice of consent from all neighbors surrounding the property where the chickens are to be kept.⁵¹ Although it can be argued that requiring formal consent constricts the rights of homeowners to do as they wish with their property, it gives all parties who might be affected by chickens an opportunity to state their concerns.⁵² Any neighbor who objects to living near chickens can request a hearing by the City Council on the subject, giving all interested parties the opportunity to discuss their concerns at length in a constructive manner.⁵³ This allowance for formal discussion and education is intended to help balance conflicting issues through attempting to reach an agreeable settlement in the process.⁵⁴ Durham's consent forms also help to educate homeowners about what they can expect of having chickens in their neighborhood by including copies of the Limited Agriculture Permit's text and accompanying forms.⁵⁵

Although Durham has taken the lead in providing clearly structured regulations for urban chicken keeping, homeowners must still be aware that their neighborhood's restrictive covenants

⁴⁷ *Id.*

⁴⁸ Deconto, *supra* note 1, at B1, B3.

⁴⁹ See RALEIGH, N.C., CODE § 12-3001 et al. (2004).

⁵⁰ Ted Richardson, *Pets or Poultry?*, CARY NEWS, March 30, 2010, at A2.

⁵¹ See DURHAM, N.C. CODE § 3.23 (2009).

⁵² *Id.*

⁵³ See DURHAM, N.C. CODE § 5.4.12 (B.7) (2009).

⁵⁴ Saldāna, *supra* note 5, at 23.

⁵⁵ *Id.*

can prevent them from keeping chickens.⁵⁶ Numerous homeowner’s associations have banned chickens within their specific neighborhoods, despite the larger community’s allowance of them.⁵⁷ This has led to significant tension between homeowners who wish to keep chickens and their neighbors.⁵⁸ The town of Holly Springs recently witnessed such tensions at a town council meeting, after a resident whose homeowner’s association enforced their ban on chickens on them petitioned the council to reconsider permitting chickens. After a contentious council hearing, both the council and the homeowner’s association ruled in favor on continuing a ban on chickens.⁵⁹ Similar issues have been raised not only across North Carolina but across the United States, as the courts have ruled that a homeowner’s ability to raise chickens is subservient to their neighborhood’s restrictive covenants.⁶⁰ This gap between municipal and neighborhood views of chickens is regrettable, although it is to be hoped that success of well-planned “pro-chicken” ordinances, like that of Durham, may convince homeowner’s associations to revise their positions to better serve the needs and considerations of their residents.⁶¹

Urban chicken keeping offers both enjoyment and challenges to local municipalities and their residents.⁶² Although a number of North Carolina communities permit chickens, the most outstanding approach to the issue can be seen in Durham’s new chicken-specific ordinance.⁶³ By instituting a statutory policy that addresses major issues of chicken keeping, such as housing, spacing, noise, and sanitation, Durham has created a series of regulations that provide protection to homeowners, their flocks, and the neighboring area.⁶⁴ Although chickens are also permitted in

⁵⁶ Deconto, *supra* note 1, at B1, B3.

⁵⁷ Richardson, *supra* note 50, at A2.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Buck Hills Falls Co. v. Press, 791 A.2d 392 (Penn. 2002).

⁶¹ Richardson, *supra* note 50, at A2.

⁶² Deconto, *supra* note 1, at B1, B3.

⁶³ Saldāna, *supra* note 5, at 23.

⁶⁴ *Id.*

Raleigh, Raleigh's ordinances lack the strength of Durham's regulations by allowing chickens to be treated under general pet rules.⁶⁵ This vague treatment of home flocks leaves both homeowners and birds at a definite disadvantage, as there are no clear regulations to ensure the preservation of individual property rights and proper animal welfare.⁶⁶ Durham's Limited Agriculture Permit for chickens offers a positive approach to residential chickens that should be treated as a model on the subject for other municipalities.⁶⁷

⁶⁵ See RALEIGH, N.C., CODE § 12-3001 et al. (2004).

⁶⁶ N.C. COOP. EXTENSION SERV., *supra* note 30, at 10.

⁶⁷ Saldāna, *supra* note 5, at 23.