

CODE ENFORCEMENT

Chickens and Pigs and Goats, Oh My!

By David Wesner, Corporation Counsel, Danville, Illinois

In my many years of serving Danville, Illinois, I have not had to deal directly with an issue that other municipal lawyers may have already had the pleasure of handling. I am talking about farm animals kept within the municipality. Several years prior to becoming the Danville City Attorney (which goes back almost 20 years), I heard that the then-City Attorney had the luck of dealing with a pet that had run afoul of the neighbors. That pet was a pot-bellied pig. It was a notorious case that brought chuckles to most who remember it (except for the owners who had to move the animal out of town ... although that was never confirmed). What got me thinking about that case was the passage by a nearby municipality of an ordinance allowing backyard chickens. My Mayor indicated that he has had various requests for such a provision, and I recall the issue being brought up a couple of times over the years. He is now looking to look into whether our council desires to address the matter. So, I have begun thinking about the possible issues and the ordinance changes that would need to be made.

The main provision we have in place is in our animal regulation ordinance. The regulation indicates that it is unlawful to maintain any animal which is not a companion animal and which would generally be found on a farm. One would think that the definition of "companion animal" clearly describes the commonly understood meaning of that term, typically a dog or cat. However, my ordinance indicates that it is any animal commonly considered to be—or to be used as–a pet, and includes dogs, cats and horses. That definition would suggest that as long as I intend on a pot-belly pig being my pet, I should be able to keep it. I decided to check our zoning code to see if it contained any provisions that might relate to the keeping farm animals in a residential area.

I was surprised by what I found. My zoning code indicates that general agriculture is allowed in a single-family low density and single-family medium density zoning district. When I looked at what may be encompassed by "general agriculture," I found that agriculture is related to uses consistent with growing of farm or garden crops and animal or poultry husbandry. The zoning code provides that commercial livestock and poultry facilities can only be located in an industrial zoning district. But, this limitation would not apply to personal use of these types of animals. So, again, the zoning code would suggest that keeping certain animals in a residential area may be allowed. Thankfully, I have not had yet anyone question or push this issue.

In addition to the ordinances described above, I found a couple of others that would control certain aspects of keeping animals on a residential property. Our animal regulation ordinance prohibits the keeping of a "public nuisance" animal. A public nuisance animal is any animal that unreasonably annoys humans, endangers health, or substantially interferes with the rights of other citizens or the enjoyment of life or liberty. It includes animals that make disturbing noises. Admittedly, I have never lived on a farm or kept chickens. But my sense is that neighbors are likely to complain about the activity, noise and smell that comes with keeping any farm animal, including poultry. Our property maintenance code provides that all exterior property areas shall be maintained in a clean, sanitary and safe condition. Our general nuisance ordinance provides that it is a violation to allow property where animals are kept to become nauseating, foul or offensive. Lastly, our general noise ordinance provides certain examples of what would be considered violations. One section describes that it is a violation for anyone to keep any animal, bird, or fowl which by causing frequent or long continued noise disturbs the comfort or repose of any person in the vicinity. Unfortunately, I have prosecuted ordinance violations for a significant number of years and can easily see how these provisions would be used by residents to harass their neighbors merely for possessing chickens, regardless of whether they are truly a problem. If my municipality moves in the direction of allowing backyard chickens, I am going to have to review these ordinances to determine if any amendments would be needed to avoid neighbors merely harassing other neighbors.

If my municipality does move to allow backyard chickens, I will be tasked with putting together appropriate regulations of that activity. In my quick review of how other municipalities have handled the issue, I have seen regulations governing the number of chickens allowed, the area where pens may be placed, how the pens should be constructed, and, the cleanliness of the area where the chickens and pens are kept. I believe these regulations are reasonable and

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volved. How do you allocate your time?
Allocation of time is a difficult and fluid issue. I often think I would drown in projects without the wonderful attorneys at my firm that function as my assistant city attorneys and do most of the drafting and research necessary to respond to the city on a timely basis. Most days, my to-do list starts with the phone calls I get on my drive to the office. No two days are the same and there is never a dull moment.

Most of my time is spent in meetings or on phone calls with city management staff, talking through issues that don't have easy answers or projects that need to be scoped or reviewed. I spend the majority of my time these days working on utility issues – water and sewer issues, including rate setting, and finance issues. In addition I spend a lot of my time on land use and planning issues. Most recently, as the clients approach the election season, I have been working on structuring taxes that will be placed on the ballot and reviewing other ballot and election issues. In addition, I am very involved in litigation regarding the legality of the way water and sewer fees are structured.

ML: That's a broad spectrum, plenty wide to have generated some notable moments. What are some of the successes you're most proud of?
Thanks to Davis, California's desire to conserve the farm land adjacent to the city, I drafted what I think was the first, or one of the first, agricultural preservation ordinances in the country. This ordinance required new development to obtain preservation easements on two acres of land for every one acre that was to be developed. The city holds conservation easements on most of this property, and the fee interest in others. This ordinance, together with an open space tax ordinance that the voters approved by more than a two-thirds vote, has resulted in the preservation of 5,000 acres of farm and open space lands in the area around Davis. I also helped develop and draft an affordable housing inclusionary zoning ordinance that has provided land for much-needed affordable housing projects and developer-built affordable units in the city over the last 25 years.

I have also worked on numerous cable franchise renewals and cell facility matters that have provided added value to my public clients. For example, I have negotiated several fiber optic institutional networks for cities and other agencies that are currently in place and are providing broadband services to the agencies. Some of the public agency clients that I have assisted in siting cell towers or other facilities have been receiving rental income that has helped them to whether the recession.

Lately I have been working on greenhouse gas reduction and energy issues that are extremely interesting. For example, I have been working on energy conservation requirements for new development and net zero energy development standards. In addition, the City of Davis has begun a review of electricity service and costs to determine, after due diligence, whether it wishes to become a publicly owned utility and acquire the existing electrical facilities from the incumbent investor owned utility.

ML: So you continue to be involved in leading-edge issues. May we assume you'd recommend the municipal law route to other attorneys?
I would encourage attorneys who are interested in public service to consider working for cities and counties. The work is extremely challenging, offering both the ability to assist local agencies in reaching their policy goals and helping create facilities and services to improve the lives of citizens within the jurisdiction. In addition, even after practicing in this area for 30 years, there continue to be questions posed that have not arisen before and have no easy answers, creating a continual challenge to provide practical and constructive advice to city clients.

ML: Parting thoughts?
When I drive or bike around the City of Davis, where I have been city attorney for more than 25 years, I marvel at the many projects and facilities that I have assisted the city in creating and implementing. I think the day-to-day work that has helped the city over the years is truly rewarding as I look back to see if I have helped to make a difference.

-Thank you, Harriet. ML

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beneficial. Further, I believe that responsible owners will understand the need for some reasonable regulation of the activity and likely comply without hesitation. The problem will arise with those owners who get the chickens just for fun and really have no concept of how to keep and maintain them properly.

Another issue that has come to mind with backyard chickens is the issue of slaughter. I understand that chickens may only lay eggs for a finite time frame. Once that time period ends and the chickens no longer provide eggs to the owner, what if the owner wants to slaughter the birds for meat? The distinct possibility of an owner desiring an allowance for that activity brings another set of circumstances and problems to address. Hopefully we will gain enough input and information from those interested in the activity to address all of the issues that might arise.

As I get geared up to work on backyard chickens, my mind turns to the future and whether I will also be looking at potbellied pigs and goats. Hmmm... food for thought (so to speak).

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cation? Two important reservations about unquestionably accepting a sworn application for later certification as a business record: First, even a truthful applicant could be relying in good faith on information from others. Second, virtually every document submitted to a government raises a risk of criminal penalties for the submitter if the document contains material falsehoods – the oath (or certificate under penalty of perjury) really adds no additional assurance of veracity.

What if the sworn application includes a statement that the applicant has personal knowledge of the facts in the application? As a practical matter, I think this is as close as we can expect to get to providing an assurance of "personal knowledge," unless the custodian has reason to doubt the accuracy of either the statement of personal knowledge or the truth of substantive matters stated in the application.[5] The form of the record cannot substitute for the custodian