

LAND DEVELOPMENT & CODE OF ORDINANCES TEXT AMENDMENTS

Round 22-B Backyard Chickens Town Council Meeting August 23, 2012

OVERVIEW

EXECUTIVE SUMMARY

The purpose of this item is to consider a proposed amendment to the Land Development Ordinance prepared in response to a request from Town Council. The proposed amendment has been developed and evaluated for consistency with the Comprehensive Plan, and the opportunity for public review and comment has been provided in accordance with Section 3.4 of the Land Development Ordinance.

At the Town Council meeting of February 9, 2012, two council members sponsored an initiative to have staff revisit the issue of permitting residents of Cary to keep chickens in the back yards of single-family properties. Council asked staff to review potential ordinance changes that would be needed to allow this to occur. Staff presented a report to Town Council on [April 19, 2012](#) which discussed various aspects of this topic, and also raised some questions and alternative regulations. Council agreed to proceed with potential ordinance amendments, discussed major points, and provided direction on the items identified in that assessment.

With that guidance, changes to ordinance language were drafted by the Planning and Police departments. The changes involve amendments to the Town Code of Ordinances as well as the Land Development Ordinance (LDO). Since amendments to the Town Code do not require public hearings, but LDO amendments do, this complete package of amendments will be presented for public hearing and community input.

This topic was presented to Town Council at a public hearing on May 24th, and has been reviewed by the Planning and Zoning Board during June and July. At the Town Council meeting of August 9th, recommendations from staff and the Planning Board were made, and the Council tabled the item for further discussion and consideration of potential, additional changes.

TENTATIVE SCHEDULE

Review and Direction by Town Council	April 19
Town Council Public Hearing	May 24
Planning & Zoning Board Work Session	June 11
Planning & Zoning Board Regular Meeting	July 16
Town Council Action	August 9, 2012
Town Council Action	August 23, 2012
Effective	August 23, 2012

SUMMARY OF PROPOSED CHANGES

Land Development Ordinance Amendments

Several sections of the LDO are proposed to be amended to allow the keeping of hens on residential lots in Cary. Staff has attempted to prepare basic and direct regulations that are simple to administer and will help avoid complicated interpretation or enforcement issues.

Key LDO changes involve the following:

1. Amend the Use Tables in Chapter 5 to allow the keeping of chickens as an “accessory use” to single-family residential living in additional zoning districts. This includes both the general use districts and similar residential districts in the Town Center.
2. Within Sec. 5.3.4, Accessory Uses and Structures, amend subsection (J), Animal Husbandry, and create two categories. The first set covers the R-40 and R-80 zoning districts and retains the ability for property owners to keep an unlimited number of chickens on their lots, subject to very minimal, existing regulations with no permit required. This section also already allows owners of such lots to have other domestic fowl or livestock.
3. Next, also within Sec. 5.3.4, introduce the keeping of chickens on smaller lots. This would allow chickens in the R-20, R-12, R-8, TR, PDD, and MXD districts where the minimum lot size exceeds 6,000 square feet (this is the smallest lot size for single-family, detached lots in the TR district), subject to a series of use-specific standards.
4. Establish standards to require the property owner to obtain an accessory use permit, limit the keeping of a limited number of hens only for personal use, and specify the setback requirements for chicken coops and pens on individual lots.
5. Also provide standards that address the proper management of chicken-keeping activity in an urban environment, including such things as coop construction and handling of animal waste or dead birds.
6. Amend Chapter 12 to add necessary definitions.

Town Code of Ordinances Amendments

Several provisions of the Town Code are proposed to be amended to accommodate this new activity.

1. Change Sec. 6-3 dealing with definitions.
2. Amend Sec. 6-62 such that the keeping of a limited number of chickens per the LDO is not prohibited. Also prohibit the on-site slaughter of chickens.
3. Change Sec. 6-65 so that chickens are not allowed to run at large within the Town.
4. Amend Sec. 6-71 to exclude the normal sounds of chickens (“clucking”) from constituting a nuisance sound and to add that the keeping of any animal in such a manner as to attract rodents, snakes, and the like is a nuisance.
5. Amend Sec. 18-10 related to home composting.

KEY ISSUES

Permits and Fees

From a procedural standpoint, property owners will submit the accessory use permit and associated fee to the Town for review and approval prior to locating hens on the property. Fees are established by council as part of the annual budget and are not included in the actual ordinance language. This one-time fee is proposed to be \$50 per application. Although a recurring fee was originally suggested, staff is not recommending the inclusion of an annual fee at this time.

Compliance and Enforcement

To minimize staffing impacts, an inspection of the proposed site for keeping of backyard chickens will not typically be conducted by the Town of Cary as part of the permitting process unless the review of the permit indicates the need to verify information. The Town will inspect and determine compliance with the ordinance on a complaint basis or if staff observation indicates that a violation may be occurring.

FISCAL IMPACT

Staff from both Police and Planning believe that implementation of this program will generate increased demands on both departments. Planners, Zoning Compliance Officers, and Animal Control Officers will need to respond to inquiries, administer the submission and review of applications for permits, track and monitor permits, conduct field inspections, and investigate complaints. While these departments do not currently have excess capacity to take on these additional responsibilities, we cannot accurately predict

resource implications at this time. However, we will monitor the program closely and identify future staffing needs for budget consideration.

STAFF RECOMMENDATION

1. Staff recommends that the Town Council establish the acceptable provisions and approve LDO Amendment Round 22, Item B (Backyard Chickens).
2. Staff recommends that the Town Council approve Option A or Option B related to consistency and reasonableness of the proposed amendment as stated below:

Option A *(recommended if the proposed LDO amendment is approved):*

CONSISTENCY AND REASONABLENESS STATEMENT

LDO Amendment Round 22, Item B (Backyard Chickens)

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: LDO Amendment Round 22, Item B (Backyard Chickens) is consistent with the Comprehensive Plan.

Section 2: Based upon information presented at the public hearings, and based upon the recommendations and detailed information developed by staff and/or the Planning & Zoning Board contained in the staff report, and considering the criteria of Section 3.3.3 of the Town of Cary Land Development Ordinance, LDO Amendment Round 22, Item B (Backyard Chickens) is reasonable and in the public interest.

Approved: *DATE*

Harold Weinbrecht, Jr.
Mayor

Date

Option B *(recommended if proposed LDO amendment is denied):*

CONSISTENCY AND REASONABLENESS STATEMENT

LDO Amendment Round 22, Item B (Backyard Chickens)

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: LDO Amendment Round 22, Item B (Backyard Chickens) is consistent with the Comprehensive Plan.

Section 2: Based upon information presented at the public hearings, and based upon the recommendations and detailed information developed by staff and/or the Planning & Zoning Board contained in the staff report, and considering the criteria of Section 3.3.3 of the Town of Cary Land Development Ordinance, denial of LDO Amendment Round 22, Item B (Backyard Chickens) is reasonable and in the public interest.

Approved: *DATE*

Harold Weinbrecht, Jr.
Mayor

Date

3. Staff recommends that the Town Council amend portions of Sections 6 and 18 of the Town Code of Ordinances, in association with the proposed changes to the Land Development Ordinance, as contained in the staff report for LDO Amendment Round 22, Item B (Backyard Chickens).

SUMMARY OF PROCESS AND ACTIONS TO DATE

Town Council Public Hearing – May 24, 2012

An advertised public hearing was conducted by the Town Council on May 24th. About a dozen speakers addressed the Council, with most speakers in favor of allowing the keeping of backyard hens. Specific comments included the following items:

- Include/don't include a "Neighbor Approval"/Notice Provision
- Take a "hands off approach" and use nuisance laws instead (like Raleigh)
- Allow eight to ten hens instead of six to ensure a sufficient number of egg-laying hens
- \$50 permit fee too high
- Be aware of staffing/resource demands
- The proposed setback provisions are too complicated; allow coops within five feet of all property lines
- Also allow coops and enclosures in side yards
- Specify space/coop design requirements for hens
- Consider a trial period/sunset clause with an assessment period

Before referring the amendments to the Planning & Zoning Board, Town Council discussed several aspects of the proposed regulations. They covered setback provisions, permit requirements, and the issue of outdoor slaughter (with explicit direction given to ensure that no outdoor slaughtering of chickens could occur). They also spent time reviewing the relationship with residential deed restrictions, and acknowledged that allowing this new activity by local ordinance did not supersede private enforcement of more-restrictive covenants that could still preclude this activity.

Planning & Zoning Board Work Session – June 11, 2012

Staff presented and reviewed the proposed regulations with the Board. One area of discussion related to the distinction between the existing R-40 and R-80 provisions with no limitations versus the proposed requirements for other single-family residential zoning districts. Another concerned riparian buffer requirements and building setbacks. Considerable discussion ensued regarding the location of coops and pen fencing in relation to the property line and required setbacks or fencing requirements if chickens were allowed to roam outside the coop and pen in a fenced yard. Some members expressed concern with the potential for disease, particularly salmonella. There was general agreement that outdoor slaughter should be prohibited. It was suggested that a larger lot size, perhaps 12,000 square feet, be considered, with the ability to expand the program to smaller lots later if there were no significant problems. The idea of requiring notice and/or approval of adjoining neighbors was also discussed.

Changes Between Town Council Public Hearing and Planning & Zoning Board Meeting

In response to the various comments and questions received by July 16th, the draft regulations were suggested to be revised in a number of ways. These changes included:

1. Amend Section 5.3.4(J)(2)(g) to prohibit outdoor slaughter altogether.
2. Add language in Section 5.3.4(J)(2) to exclude coops (which are impervious surface) from being placed in regulated urban transition buffers, regardless of setbacks.
3. Amend Section 5.3.4(J)(2)(d) and (e) to require a consistent 10-foot setback from side and rear property lines for chicken coops and pens, and to require that chickens remain in the pen or coop at all times.

Planning & Zoning Board Meeting – July 16, 2012

Planning and Police staff presented these proposed ordinance amendments to the Planning & Zoning Board at the regular meeting on Monday, July 16th. Board members asked for clarification about several

aspects of the regulations, including the effective date, slaughter of chickens, and future handling of complaints and enforcement. Most discussion surrounded the issues of new chicken enclosures relation to perimeter fencing that might already exist on a lot, and whether slaughter should be totally prohibited anywhere on the site. Staff clarified that there was an error in the staff report and that the ordinance language should have been written to prohibit “outdoor” slaughter per council’s request, not “on-site” slaughter as the board had previously discussed at its work session.

The board considered several potential changes that might limit the keeping of chickens to lots greater than 12,000 square feet instead of 6,000 square feet, and the total prohibition on slaughter, but those amendments were not supported by the full board. Ultimately, the Planning & Zoning Board recommended approval of the proposed LDO and Town Code amendments to permit the keeping of backyard hens by a vote of 9-0, with no outdoor slaughter allowed.

Town Council Meeting – August 9, 2012

Staff and the Planning & Zoning Board chair summarized the history related to this topic and presented their final recommendations to Town Council. Considerable discussion by Council ensued, with the first issue being agreement that any proposed regulations should prohibit slaughter anywhere on the site.

Mrs. Robinson questioned whether the rules provided sufficient protection to adjoining property owners, noting that the number of chickens allowed and the 10-foot setback from property lines were primary areas of concern to her. She also inquired whether design requirements and/or inspections for coops should be included. Mr. Smith raised the idea of requiring neighbor approval as part of the permitting process for coops. Overall, Council members Frantz, Adcock, and Bush supported the proposed ordinance while Mayor Weinbrecht and Council members Smith and Robinson expressed opposition.

Following the discussion, the Council agreed that the ordinance should be tabled and asked staff to return with a more-restrictive set of regulations at the August 23, 2012 meeting.

Town Council Meeting – August 23, 2012

In keeping with Council’s direction, staff offers some changes or options that might make the ordinance more acceptable in light of Council commentary. In general, Council could consider different approaches or combinations of approaches to respond to concerns. For instance, the setbacks for coops and pens could simply be increased to require a greater distance. Or the applicability of the provisions could be changed such that the keeping of backyard chickens is just not available for smaller residential lots like TR (6,000 square foot minimum lot size) or R-8 (8,000 square foot minimum lot requirement). Of course, such changes would preclude certain property owners from having the opportunity to keep backyard hens.

These items are presented in the following table, and the ordinance language within this report has also been amended where such changes could be readily incorporated. The amended language is indicated in double-underlined red text.

Since it was previously agreed that we should keep the regulations as simple as possible to minimize demands on scarce staff time and resources, staff remains opposed to adding provisions that increase administrative or enforcement aspects of this proposed ordinance. Hence, these are not presently reflected in the attached ordinance language.

Item	Council Direction or Concern	Response	Staff Explanation or Comment
1.	Prohibit on-site slaughter.	Included in Sec. 6-62 of the Town Code.	This change causes concern for staff. This provision has been included in the draft amendments to the Town Code but note that the Police Department will need to obtain a search warrant to be able to enforce this provision.
2.	Reduce the allowed number of chickens from six (6) to four (4).	Included.	The number of allowed chickens is discretionary.

3.	Increase protection for adjacent neighbors.	<p>There are a couple of ways this could occur.</p> <p>A. Increase the setback requirement from the recommended 10 feet to a greater dimension, like 15 feet or 20 feet. (For purposes of discussion, staff has increased this distance to 15 feet in the revised draft ordinance.)</p> <p>B. Reduce the number of zoning districts where the keeping of backyard hens would be allowed.</p>	<p>See discussion above in the text of the report.</p> <p>Note that staff did not go back to the original proposal because that relied upon principal building setbacks of the zoning districts; many of the existing side yard setbacks are 10 feet.</p> <p>Also note that side setbacks will be less than typical rear setbacks if a single, uniform setback distance is selected. Council could further opt to have a side yard setback distance and a different (i.e., greater) rear yard setback distance if desired.</p>
4.	Incorporate neighbor approval prior to issuance of an accessory use permit.	Not included.	Increased complexity. Does not account for changes in neighbors over time. There is a question whether such a provision may be included in zoning regulations.
5.	Establish design or construction standards for coops.	Not included.	Increased complexity and administrative responsibility. Acceptable standards would have to be prepared and agreed upon in advance. This would take additional time to determine.
6.	Conduct inspections to ensure proper construction of coops and pens.	Not included.	<p>Construction standards (e.g., type of fencing, size or aesthetic design of coops) were not specified on purpose to maintain simplicity.</p> <p>Staff will rely upon property owner's application materials and submittal to evaluate compliance with the regulations. Inspections are expected to occur in limited situations when there may be unique lot configurations that require an on-site determination. Inspections will also occur in response to complaints as the regulations are enforced.</p>

PROPOSED LAND DEVELOPMENT ORDINANCE TEXT REVISIONS

TABLE 5.1-1: TABLE OF PERMITTED USES - GENERAL USE DISTRICTS (EXCEPT TC & CT)																	
P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use																	
Use Class is listed for determining the type of required perimeter buffers, and is repeated in Section 7.2																	
Use Category	Use Type and [Use Class]	RESIDENTIAL							NON-RESIDENTIAL					MIXED USE OVERLAY DISTRICT		Use-Specific Stds	
		R80	R40	R20	R12	R8	TR	RMF	RR	OI	GC	ORD	I	NC	CC		RC
ACCESSORY USES																	
Accessory Uses	Animal husbandry	A	A	A	A	A	A							A	A	A	5.3.4(J)

TABLE 5.1-2: TABLE OF TOWN CENTER (TC) DISTRICT USES																
P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use																
Use Category		HMxD	MXD	HDR Mid-Rise	MXDR	HDR Garden	MDR	LDR	LDR-12	CB&R	COM	CLI	OFC/INS	INS	OFC/IND	Use Specific Stds

5.3.4 ACCESSORY USES AND STRUCTURES: Accessory Uses and Structures Allowed

(J) Animal Husbandry

For the purpose of ~~the~~ this section the definitions of “chicken,” “domestic fowl” and “livestock” from Chapter 6 of the Town of Cary Code of Ordinances shall apply. ~~following apply:~~
~~Domestic livestock and fowl shall include but not be limited to: chickens, ducks, guinea fowl, turkeys, peacocks, cows, bull, horses, mules, ponies, goat, sheep or llama and the keeping of such animals shall not constitute a public health hazard, safety hazard or nuisance. Animals which are typically kept as household pets shall not be considered domestic livestock or fowl.~~
The keeping of certain domestic livestock and domestic fowl shall be allowed as an accessory use on properties intended for low density residential development (Residential 40 and Residential 80) provided all the following conditions are met.

(1) Residential-80 and Residential-40 Zoning Districts

The keeping of livestock and domestic fowl shall be allowed as an accessory use in the R-40 and R-80 zoning districts with no permit required, provided all of the following conditions are met:

- ~~(1)~~ **(a)** Such animals may not be kept for the express purpose of commercial sale;
- ~~(2)~~ **(b)** Cows, bulls, horses, mules, ponies, burros, llamas or other hooved mammals are limited in quantity per acre in accordance with North Carolina Department of Agriculture guidelines; ~~and~~
- ~~(3)~~ **(c)** Stables for the keeping of hooved mammals may not be erected closer than three hundred (300) feet to any residence on an adjacent property; ~~and~~
- (d)** The keeping of swine is prohibited.

(2) Other Zoning Districts

The keeping of chickens shall be permitted as an accessory use in conjunction with detached, single-family residential uses in the R-20, R-12, R-8, TR, TC-MDR, TC-LDR, TC-LDR-12, PDD and MXD districts where the minimum lot size is 6,000 square feet. Such use shall only occur in accordance with the following:

- (a) Accessory Use Permit Required**
An accessory use permit must be secured in accordance with Section 3.5. The permit application must include a plot plan that shows the location and dimensions of the chicken coop and chicken pen, and their distance from the property lines.
- (b) Number and Type of Chickens Allowed**
The maximum number of female chickens (hens) allowed is ~~six (6)~~ four (4) per lot. No roosters are permitted.
- (c) Personal Use Only**
Eggs, chicks, adult chickens, and processed chickens shall not be sold. Chicken manure and compost using chicken manure shall not be sold or otherwise distributed.
- (d) Chickens Enclosed**
A chicken coop and pen shall be provided, and such coops and enclosures may not include residential structures or garages. Chickens shall be secured in the chicken coop during non-daylight hours. During daylight hours, chickens may be located in the chicken pen ~~and may be located outside of the pen in a securely fenced yard.~~
- (e) Location of Coops, Pens and Tractors**
Chicken coops, pens, and tractors (whether stationary or moveable) shall only be located in rear yards behind the line formed by the back wall of the residence and shall ~~comply with the side and yard setbacks of the applicable zoning district~~ comply with a minimum setback of 15 feet from side and rear property lines. The cumulative area limitations for accessory structures contained in Section 5.3.2(E) are not applicable unless a building permit is required for such an accessory structure.
- (f) Coop and Pen Construction and Design**
The chicken coop, tractor, and/or pen shall be properly designed and constructed to provide adequate security from rodents, wild birds, and predators; sufficient ventilation; and suitable shelter for the hens.
- (g) Chicken Coop and Pen Management**

(i) Maintenance.

The permittee shall ensure that chickens shall have adequate access to feed, clean water, and bedding at all times. The chicken coop, chicken pen, and surrounding area shall be cleaned of hen droppings, uneaten feed, feathers and other waste, and shall be kept in a neat and sanitary condition at all times to preclude odors and aesthetic nuisances. Chicken feed shall be stored in a secure container. ~~Slaughter shall not occur in an outdoor area visible from any adjacent property, public area, or right-of-way. If a chicken dies from causes other than slaughter, it shall be promptly placed into a plastic bag, which shall be closed securely and disposed of with household waste.~~

(ii) Manure and Compost.

Chicken manure shall be disposed of or composted. All stored manure shall be completely contained in a waterproof container. Any compost using chicken manure shall be produced in an enclosed backyard composter and such activity shall comply with the Town Code of Ordinances.

(iii) Slaughter ~~or Disposal of Dead Chickens.~~

~~Outdoor-On-site~~ slaughter shall be prohibited in accordance with the Town Code of Ordinances.

~~Dead chickens.~~ If a chicken dies from causes other than slaughter, it shall be promptly placed into a plastic bag, which shall be closed securely and disposed of with household waste.

12.4 OTHER KEY TERMS DEFINED

Chicken Coop

An enclosed structure for housing or sheltering chickens which contains nesting boxes for the chickens to sit in while laying their eggs as well as perches for the chickens to use while sleeping. Sometimes called a "henhouse."

Chicken Pen

An open-air, outdoor area connected to or surrounding the coop which is surrounded with wire or mesh screening to cage and protect chickens from predators as they range outside the coop.

Chicken Tractor

A small, movable chicken coop used to allow chickens to forage on fresh grass daily.

PROPOSED TOWN CODE OF ORDINANCE TEXT REVISIONS

Sec. 6-3. Definitions.

For the purposes of this chapter, the following words and phrases are defined and shall be construed as set out below, unless it is apparent from the context that a different meaning is intended:

* * *

Animal means every vertebrate nonhuman species of animal, wild or domestic, male or female, including, but not limited to, dogs, cats, livestock and other mammals, domestic fowl, birds, reptiles, amphibians and fish.

* * *

Chicken means any of the common domestic birds or fowl of the species Gallus gallus domesticus whose eggs or flesh are used for food. Also referred to as “poultry.” The female bird is called a “hen.”

* * *

Domestic animal means those species of animals that normally and customarily share human habitat in Wake County and are normally dependent on humans for food and shelter in Wake County, such as, but not limited to cats, dogs, cattle, horses, swine, domestic fowl, sheep and goats.

Domestic fowl shall include, but not be limited to, turkeys, geese, chickens, peacocks, guinea fowl, or ducks.

* * *

Livestock shall include, but shall not be limited to, equine animals, bovine animals, sheep, goats, llamas, and swine as set forth in N.C.G.S. Ch. 68, Art. 3.

Sec. 6-62. Chickens, ducklings, rabbits banned from sale; livestock, domestic fowl generally prohibited and swine.

(a) ***Chickens, ducklings, rabbits banned from sale.*** It shall be unlawful for any person to sell or offer for sale, or permit to be sold or offered for sale, within the corporate limits of the town, baby chickens, baby ducklings, or baby rabbits less than six weeks of age; provided, this section shall not apply to hatcheries raising chickens or ducks expressly for the broiler market or for sale to farms.

(b) ***Livestock and domestic fowl prohibited.*** Livestock and domestic fowl of all descriptions are prohibited ~~in any area~~ within the corporate limits of the town except: ~~these areas zoned for agricultural purposes by the zoning ordinances.~~ as expressly permitted as an accessory use in the Land Development Ordinance, Appendix A of the Town of Cary Code of Ordinances.

(c) On-site slaughter of chickens prohibited. It shall be unlawful for any person to slaughter chickens on any residential property in the town.

~~(c) ***Swine prohibited.*** It is unlawful to maintain, keep or house pigs, hogs or other swine within the corporate limits of the town.~~

~~(d) ***Exceptions.*** Ponies, horses, mules or burros may be stabled within the town limits in areas not zoned for agricultural purposes provided that the stables are at least 300 feet from any residence and that not more than two animals are kept per residence and that not more than two animals are kept per acre of land, and in addition, that, if at any time in the future additional residences are erected less than 300 feet from said stables, the stables, ponies, horses, mules and burros shall be removed.~~

Sec. 6-65. ~~Cats and dogs~~ Domestic Animals at large.

It is unlawful for the owner of any ~~eat or dog~~ domestic animal to allow such animal to be at large in the town or on any town property except that dogs may be unleashed in approved, designated areas inside Town of Cary Dog Parks.

Sec. 6-71. Nuisance animals.

(a) ***Prohibited generally; exceptions.*** It shall be unlawful for any person to own, keep, possess, harbor or maintain an animal in such a manner as to ~~annoy or disturb rights and privileges common to the public or to annoy or disturb persons in the enjoyment of~~

private property unreasonably annoy humans, endanger the life or health of persons or other animals, or substantially interfere with the rights of citizens (other than their owners) to enjoyment of life or property, or otherwise constitute a public nuisance. By way of example and not of limitation, the following activities are hereby declared to be a public nuisance and are, therefore, unlawful:

- (1) Getting into or turning over waste or garbage containers.
- (2) Walking on or sleeping on automobiles of another.
- (3) Damaging the real or personal property of anyone other than its owner.
- (4) Repeatedly being or running at large.
- (5) Being maintained in an unsanitary condition so as to be noxious or offensive to sight or smell.
- (6) Not being confined to a building or secure enclosure while in estrus.
- (7) Being vicious or chasing, snapping at, attacking, or otherwise molesting others including, pedestrians, bicyclists, motor vehicle passengers, or domestic animals.
- (8) Allowing or permitting an animal or animals to make frequent or long continued sounds, including barking, whining, screeching, calling, howling or yowling in an excessive, continuous, habitual or untimely fashion, or to make other noise in such a manner and at such intervals so as to result in a serious annoyance or interference with the reasonable use and enjoyment of neighboring premises ("annoying sound"). Any such sound made by cats or dogs which is made for more than fifteen (15) minutes during any thirty (30) minute period shall be deemed to be an annoying sound. The normal clucking of chickens, kept in accordance with provisions of the Land Development Ordinance, shall not constitute an annoying sound. Any person owning, using or possessing premises affected by an annoying sound ("person annoyed by sounds") shall follow the procedures specified in subsection f. below
- (9) Being housed or restrained less than five feet from a public street, road or sidewalk such that the animal, without provocation, molests, attacks or otherwise interferes with the freedom of movement of persons in a public right of way, or in the discretion of the chief, the location of the animal poses a threat to the general safety, health and welfare of the general public.
- (10) By virtue of number or type, being offensive or dangerous to the public health, safety, or welfare.
- (11) Being diseased or dangerous to the health of the public.
- (12) Being kept in such a manner as to attract excessive insects, pests, rodents, raccoons, snakes, or other wild animals.

- (b) **Complaint and notice.** Except as to (a)(8) above, upon their own initiative or upon receipt of a detailed written and signed complaint being made to the animal control unit by any of the town residents that any person is maintaining a nuisance animal, the animal control unit may cause the owner of the animal or animals in question to be notified that a complaint has been received and may cause the situation complained of to be investigated and a report and findings thereon to be reduced to writing by the investigating animal control officer.
- (c) **Abatement.** If the written findings of the investigating animal control officer indicate that the complaint is justified, then the chief or designee shall cause the owner or keeper of the animal or animals in question to be so notified in writing, served by personal delivery or by certified mail, return receipt requested, and ordered to abate such nuisance within a reasonable time not to exceed seven days after notification, and may issue a citation for the violation. The chief may specify the particular abatement measures that must be taken, which measures may include, but are not limited to, a requirement that the animal be penned, or that a secure enclosure be erected or improved. In the event the owner of the animal is unknown and cannot be ascertained, the notice and order, along with a general description of the animal, shall be published in a local newspaper.
- (d) **Impoundment upon failure to abate.** If any person actually or constructively receiving notice in the manner herein described shall fail or refuse to abate the nuisance upon

order of the chief within the specified time, the chief may cause the animal or animals in question to be seized and impounded in accordance with the provisions of section 6-134.

- (e) **Redemption; destruction.** If the owner shall so request in writing within five days of the impoundment, an animal that has been impounded may be redeemed upon the owner's execution of a written agreement to comply with the abatement order and payment of all sums due hereunder. If no such written request is made, or if such a request is made, but a written agreement to comply with the abatement order is not delivered to the chief within five days of the impoundment, then the animal(s) shall be deemed abandoned and disposed of in accordance with the provisions of section 6-137.
- (f) **Annoying sounds.** A person annoyed by sounds shall follow the procedures specified below.
 - (i) Upon receipt of a detailed written and signed complaint by a person annoyed by sounds, the animal control unit shall provide written notice to the owner or possessor of the premises on which the animal(s) making annoying sounds is maintained ("animal owner") that a complaint has been received about the animal(s)'s annoying sounds. The notice shall detail the complaint and may make suggestions on ways to correct the situation.
 - (ii) Upon receipt of such notice of complaint, the animal owner shall cure the violation. If the violation is not cured, or if a second complaint is made to the animal control unit about the same animal(s) within any six (6) month period, the animal control unit shall cause the animal ~~possessor~~ owner to be served by an order to abate the annoying sounds within a reasonable period of time, not to exceed seven (7) days ("Abatement Order") Such notice shall be served by personal delivery or by certified mail, return receipt requested.
 - (iii) If the original complainant or any other affected person notifies the animal control unit that the animal owner has failed or refuses to abate the annoying sounds as provided in the Abatement Order, the animal control unit shall investigate and may issue a civil citation for the violation in the amount of two hundred dollars (\$200.00). Such citation shall be collected in the manner set forth in section 6-132.
 - (iv) If the annoying sounds continue after issuance of the citation, the complainant should pursue the action by going to the magistrate and filing a summons against the animal ~~possessor~~ owner. Nothing in this section shall prevent a private citizen from bringing an action at any time against an animal ~~possessor~~ owner.

Sec. 6-132. Enforcement.

- (a) **Purpose.** The town council's determination is that it is important to enforce vigorously and effectively this chapter's provisions. The council makes the following findings to accomplish the objective of vigorous and effective enforcement of these provisions that:
 - (1) A current town license tag and a rabies inoculation tag are vital for public health, for the ability of the animal control unit to carry out its functions, for the protection of the owner and for the protection of the animal and, therefore, must be complied with. The owner of an animal, particularly a dog, has a very serious obligation of ownership and a duty to the citizens of Cary to comply with town licensing and rabies inoculation requirements.
 - (2) The presence of a domestic animal ~~dog or cat~~ at large often creates substantial anxieties and concerns for people for safety and free movement; and, therefore, the owner has an obligation to the citizens of Cary to see that their domestic animals ~~dogs and cats~~ do not go at large.
- (b) **Methods of town.** When there is a violation of this chapter, the chief may take one or more of the following courses of actions set forth in this section. The chief may cause a complaint to be filed legal or any action to be brought on behalf of the town and may

collect any amount for outstanding costs, fees or penalties assessed or imposed pursuant to this chapter. Any such action shall be cumulative and shall not be deemed as a bar to or a waiver of the right to institute any other civil or criminal proceeding for a violation of this chapter.

(1) Civil penalties.

- a. Violations of section 6-73 or 6-105 (failure to have town license or rabies tag):
Penalty: \$20.00 for failure to have current town license; \$50.00 for failure to have current inoculation.
- b. Violation of section 6-65 (domestic animal at large). The issuance of a citation for a violation of Code section 6-65, (domestic animal at large) like other ordinances concerning animals, is directed toward and against the owner of the animal. The purpose of the issuance of a citation is to affect the conduct of the owner of an animal by seeking to have an owner responsibly maintain restraint and confinement of the animal. To encourage responsible conduct, an owner shall be subject to escalating penalties for each violation of this section by the owner, whether the animal is the same animal, a different animal or various animals belonging to the owner. Each violation of Code section 6-65 shall subject the owner to an increased citation penalty:

Offense	Penalty
1 st	\$ 20.00 fine
2 nd	50.00 fine
3 rd	75.00 fine
4 th	100.00 fine
5 th	250.00 fine and seizure of animal

Sec. 18-10. Home composting.

- (a) Home composting is a means of reducing the solid waste generated in the residential community. It is allowed in residential zoning districts when done as provided for in this section, by the owner or the occupant of the residential property upon which the home composting takes place. Home composting shall not be done by any business, commercial, industrial or institutional entity.
- (b) Waste materials being composted must be generated on the property where the composting takes place.
- (c) Composting activity shall not occur within 25 feet of any structure which is used for dwelling purposes.
- (d) Materials being composted, which may attract animals such as dogs, cats, skunks, opossums or raccoons, shall be protected in such a manner so as to prevent access to the composting material by such animals.
- (e) Materials being composted shall not include human body waste; fecal wastes from dogs, cats, and other household pets; or meat or dairy waste products. Fecal wastes from chickens being kept in accordance with the provisions of the Land Development Ordinance may be composted.
- (f) Composting activity shall not create any condition where the material being composted may be blown from the residential lot upon which the composting is taking place.
- (g) Composting activity shall not create any condition which is conducive to the existence and breeding of rodents or insects or otherwise create a condition which is hazardous to the health of the citizens.
- (h) Composting activity shall not produce any odor whatsoever which is offensive to individuals living in the vicinity. That odor shall not be detectable by an odor detection and measurement device when such device is used on an adjacent lot. If composting is being done on a property on which more than one dwelling exists, the composting shall not create any detectable odor which offends the other inhabitants on the property.