



## Legislation Text

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### *Department of Community Development*

**Reference:** Urban Agriculture Code Amendment

**To:** Mayor Richard N. McLean and Members of City Council

**Through:** Manuel Esquibel, City Manager

**Prepared By:** Aja Tibbs, Long Range & Historic Preservation Planner

**Date Prepared:** February 13, 2015

### **PURPOSE**

To amend the Municipal Code in order to adopt new regulations for urban agriculture practices and to remove various conflicting provisions and centralize all animal related regulations within Chapter 6, Animals., of the Municipal Code.

### **BACKGROUND**

The origination of zoning across the nation in the early and mid-1900's sought to separate and categorize uses in order to address nuisances and unsightly conflicts that arose in urban areas. However, it is common that these regulations established a black and white line in areas which were actually quite gray. As a result, communities have been working for many years to determine how best to consider gray areas, and address them so that they are appropriately mixed in urban areas. For example, commercial and residential uses are typically separated or buffered between each other because of conflicts that arise with noise generation, hours of operation, traffic, etc. At the same time, certain examples of mixed use units support each other and bring an atmosphere that is desired by many. Staff has also found this to be the case with certain agricultural uses. The establishment of zoning regulations within Brighton pushed almost all animals (pets being the exception) into agricultural properties. However, over time, staff has found that limited agricultural uses can promote healthier eating and food production, education to future generations, and with certain guidelines, would not have the same negative impacts that were originally assumed.

Therefore, staff presented some basic guidelines at a joint Planning Commission and City Council Study Session meeting held on Tuesday, May 27, 2014. With a general understanding of the benefits to these uses and the basic regulations to be pursued, staff was given direction to proceed. As a result, the following information is a basic summary of the use types, and the draft regulations in order to re-establish these uses within urban neighborhoods.

### **POULTRY KEEPING**

In general, other municipalities regulate small animals differently. The greatest variation can be found in the regulations of chickens, as many cities have amended their codes to specifically permit hens within residential zones. Out of eight surrounding communities, four of them specifically permit hens (two of them also permit additional bird types) within city limits. Others regulate all poultry as livestock and limit them to agricultural or public lands. The municipalities that do permit chickens have regulations to address the concerns that might arise with keeping poultry in urban and suburban environments. These regulations typically include a maximum number of animals, location, setbacks, and size of poultry coops and runs, cleanliness, prohibition of males (roosters and toms), care, slaughter, and permitting or licensing requirements.

Currently, the Municipal Code allows up to four domestic ducks, rabbits, doves, or pigeons in residential zone districts. Chickens, turkeys, geese and guinea fowl are not addressed. However, staff has historically interpreted the regulations to allow birds similar to ducks (such as female chickens and turkeys) to be permitted, while noisier animals (such as geese, toms and roosters) are considered a nuisance and prohibited. Care for these animals has historically been addressed

under Article 6-4 Division 6 Care and Treatment of Animals of the Municipal Code, which requires that water, shelter, vet care, etc., shall be provided for all animals.

Based on the above information from surrounding communities and coordination with other City departments, a proposal has been drafted to allow female chicken hens and/or ducks of any combination in certain residential, park and open space zone districts, which is consistent with the types of poultry that have been permitted in the past. The proposed regulations also clarify that doves and pigeons kept outside are similarly required to meet the new poultry keeping requirements, but that those kept inside are considered caged birds and, instead, are considered small animal pets as further described in Section 6-4-440 Accumulation of Animals. While staff originally intended to additionally permit the keeping of turkeys, the city's animal control officers have requested that they be removed from the list of permitted poultry. This request is based off of nuisance complaints for people keeping turkeys in the past, and because they tend to prefer roosting in trees and are more capable of flying outside of a fenced area.

Also note that the proposal would increase the previous quantity of four hens by permitting two additional birds (up to six total). Staff did this in order to be more consistent with the quantities permitted in other communities, and because two additional birds are still easily kept in a coop that is reasonably sized for residential properties. Lastly, additional regulations were included to address general care of the birds, as well as proper maintenance and upkeep of their shelters.

### **APICULTURE (BEEKEEPING)**

It is important to first distinguish that beekeeping is established for the purpose of keeping the common domestic honey bee (*apis mellifera*). This species vastly differs from the wasp, yellow jacket or hornet. Unlike other species, the honey bee stinger is attached to their entrails and a sting will kill them instantly, which inherently produces a more docile breed much less likely to sting than their relatives. The honeybee works relentlessly to provide its keepers with a fresh and unprocessed sweetener, and to pollinate a majority of our fruits and vegetables.

Similarly to small animals, municipalities regulate this use differently. Again four municipalities permit the use, while four do not. (*Note: they are not necessarily the same four communities that permit poultry keeping.*) Only one of those four requires a permit or license for the use, but all have regulations to address concerns. Regulation regarding beekeeping is generally more comprehensive and technically complex. They cover issues related to hive density, hive structure and design, access to a water source, queen selection, setbacks, location, and flyways.

Apiaries are currently prohibited in all zone districts except the Agricultural Residential (A/R) zone district, which has a minimum lot size of 35 acres. There are no regulations in the Code to address the operation or act of this use type besides its listing in the table of uses.

In consideration of this use, staff received expertise from the Brighton Bee Club, and internal staff departments to draft regulations which would permit bee hives based on the size of the property on which they would be located. In addition, the regulations are written to address good practices which ensure appropriate health and safety measures needed to keep the use from becoming a nuisance to surrounding property owners. In general, the regulations address the location of the hive, the bee species and type of queen, working the hive, and maintenance of the hive.

Overall, if the drafted regulations are adopted, they will permit limited urban agriculture uses as well as establish the minimum basic requirements necessary to ensure that these practices do not create a nuisance or hazard to surrounding residents of the use. They are not written to be entirely inclusive of all needs and practice types, but enough to protect the health and safety of persons practicing urban agriculture and the community they are a part of.

### **URBAN AGRICULTURE - GENERAL REGULATIONS**

In addition to the regulations described above, some general provisions and parameters were established for the regulations as a whole. First, the intent of these regulations is to encourage responsible poultry keeping and beekeeping (apiculture) practices within residential, urban environments. They are not intended to impact agricultural or commercial practices such as farms or large animal operations (such as dairy and poultry farms); instead, the regulations are to supplement these practices in urban and suburban areas. Therefore, the regulations note that the practices shall only occur on single family detached properties which are occupied by a current resident, or certain parks or open spaces as permitted by the City. It shall also be the caretaker or "custodians" responsibility to obtain written ownership (i.e., consent) if they rent the property.

Also at the request of our animal control, code enforcement, and police officers, the regulations do not require the custodian to obtain a permit to practice urban agriculture. While a permit process can help staff to track the use it is difficult for officers to verify and track in the field. It is easier and more consistent for them to simply understand the regulations and check for compliance while they are responding to calls throughout the community. Furthermore, in order to encourage urban agriculture and macro food production in our community, staff believe that not requiring permits would simplify and encourage urban agriculture practices.

### **SUMMARY**

During the drafting and consulting process, staff worked with other City departments to determine how the new regulations might best be written and enforced. For enforcement and clarification purposes, staff has proposed that various animal regulations within Chapter 17., the Land Use and Development Code be primarily moved into Chapter 6., Animals. A breakdown of the code sections and their proposed amendments has been listed below to help visualize how the amendments work as a whole.

Below is a general outline of the proposed code amendments (*please refer to the attached draft Ordinance for the specific code revisions*):

#### **Chapter 6. Animals.**

- Several definitions are added or modified to address new regulations for urban agriculture and include bees within the animal regulations.
- Clucking and calling are added as noises that might create a nuisance. This provides animal control the authority to address unreasonable noise levels that might occur with inappropriate poultry keeping.
- Regulations regarding guard dogs were removed from the Land Use and Development Code, and added to the Animals section of the Code at Article 6-4-320 (which also regulated guard dogs). *Note: No additional standards are proposed - they are simply being moved from one section of the code to another.*
- Clarification that animal feces may not be deposited in an On-site Wastewater Treatment System (OWTS). This request has been made the Tri-County Health Department and rarely applies to city properties which are typically served by City wastewater services.
- The total accumulation of animals was modified to remove poultry from the description of pets (only cats, dogs and rabbits now apply to the limit of 4 per person or household). The allowance of 10 small additional animals was also modified to include caged birds which are kept indoors.
- Regulations were added to address the total accumulation of livestock animals. These regulations were removed from the agricultural zone district standards found in the Land Use and Development Code. The accumulation regulations are also generally consistent with regulations established by both Adams and Weld counties for agricultural properties.
- Addition of Division 10. Urban Agriculture, which permits poultry keeping and beekeeping within certain provisions for single family detached properties and parks and open space properties.

#### **Chapter 17. Land Use and Development Code.**

**Article 17-12. Definitions:** Definitions were modified to ensure that urban agriculture practices do not qualify as the keeping of livestock, and that small animal enclosures are not considered barns or stables.

**Article 17-16. Defining and Application of District Regulations:** Sections 17-16-20. RE Rural Estate; 17-16-240 A/R - Agricultural/ Residential; and 17-16-250 - Agricultural Estate were edited to remove accumulation regulations for large animals, which regulations were inserted into Chapter 6. Animals.

**Article 17-24. Performance Standards:** Section 17-24-20. Animals and Household Pets, and Section 17-24-30. Guard Dogs., were removed entirely. Instead, these regulations were added to Chapter 6. Animals.

**Article 17-32. Table of Uses:** Minor edits were made to delete "Apiculture" from the list of accessory uses and insert "Urban Agriculture" as a new accessory use. Urban Agriculture is listed as a use-by-right in all zone districts in which single family detached housing is permitted.

### **PUBLIC COMMENT**

Public notice of the City Council public hearing was published in the *Brighton Standard Blade* for not less than 15 days before the City Council meeting (published February 11, 2015). No public comment has been received as of February 13, 2015.

### **PLANNING COMMISSION**

The Planning Commission held a public hearing on February 3<sup>rd</sup> to review the proposed Code amendments to Chapter 17., the Land Use and Development Code. Following the public hearing, the Commission voted unanimously to make a recommendation of approval to the City Council for the proposed Code amendments as drafted. A copy of the Resolution has been attached for reference.

**OPTIONS FOR COUNCIL CONSIDERATION**

- Approve the Ordinance as drafted at first reading;
- Approve the Ordinance with changes at first reading; or
- Deny the Ordinance as drafted at first reading

**ATTACHMENTS**

- Ordinance (Draft) with Exhibits
- Planning Commission Resolution 15-02 with Exhibits