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3:4

ORDINANCE 2015-007

AMENDING TITLE 6 OF THE MUNICIPAL CODE AND DIVISION II OF THE ZONING AND COMMUNITY DEVELOPMENT CODE AND CHAPTER 6 OF THE MUNICIPAL CODE AS IT RELATES TO THE REGULATION OF BACKYARD CHICKENS

WHEREAS, it is necessary for the City to update the development code to ensure that it is clear, consistent, and current; and

WHEREAS, the Planning Commission helped guide the development of proposed amendments after public outreach and opportunity for public input; and

WHEREAS, the substantive changes specifically seek to allow the raising of backyard chickens in the residential zones, establishing proper licensure procedures for their care and compatibility with other residential uses in the neighborhoods; and

WHEREAS, the City Council believes it is in the best interest of the health, safety and welfare of the citizens of Sherwood to establish regulations concerning raising backyard chickens; and

WHEREAS, the Planning Commission conducted a public hearing on July 14, 2015, and provided a recommendation to the City Council for the proposed Municipal and Zoning and Community Development Code amendments that regulates backyard chickens, and that recommendation was against approving such amendments; and

WHEREAS, the analysis and findings within the Planning Commission recommendation are identified in Attachment 1 of the City Council Staff Report; and

WHEREAS, the attached Exhibit A to this ordinance reflects the code amendments; and

WHEREAS, the City Council held public hearings on September 15, 2015 and October 20, 2015 and determined that the proposed changes to the Municipal and Development Code met the applicable Comprehensive Plan criteria and continued to be consistent with regional and state standards.

NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1: Findings. After full and due consideration of the application, the Planning Commission recommendation, the record, findings, and evidence presented at the public hearings, the Council adopts the findings of fact attached as Attachment 1 and determines that the text of the Municipal Code Title 6 and Sherwood Zoning and Community Development Code shall be amended as documented in Exhibit A.

Section 2: Approval. The proposed amendments for Plan Amendment (PA) 15-03 identified in Exhibit A are hereby **APPROVED**.

Section 3: Manager Authorized. The Planning Department and City Manager are hereby directed to take such action as may be necessary to document this amendment, including notice of adoption to DLCDC and necessary updates to Chapters 6 and 16 of the Municipal Code in accordance with City ordinances and regulations.

Section 4: Applicability. The amendments to the City of Sherwood Zoning and Community Development Code approved by this Ordinance apply to all land use applications submitted after the effective date of this Ordinance.

Section 5: Effective Date. This ordinance takes effect 30 days after passage and approval by the City Council.

Duly passed by the City Council this 20th day of October 2015.

Krisanna Clark, Mayor

Date

Attest:

Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Brouse	_____	_____✓
Harris	_____✓	_____
Kuiper	_____✓	_____
King	_____	_____✓
Henderson	_____	_____✓
Robinson	_____	_____✓
Clark	_____✓	_____

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Proposed Code Amendment **Revised** **Draft Language** October 9, 2015

Proposed 1st Draft language additions are identified in Blue underline

Revised 2nd Draft is identified in Green Double Underline and any recommended language to be removed language is red strikethrough.

MUNICIPAL CODE TITLE 6-ANIMALS

Chapter 6.03 ~~Backyard~~ Chickens

6.03.010 Purpose: Residents of the City may be allowed to keep chickens, subject to the requirements of this Chapter.

6.03.020. Number of Chickens Licensed

- A. Up to three (3) hens are allowed on properties at least ~~5,000~~ 7,000 square feet in size.
- B. Up to five (5) hens are allowed on properties at least 10,000 square feet in size.
- C. No roosters are allowed within the City.
- D. Chicks up to 12 weeks old are allowed indoors and are not subject to the limitations of (A) and (B) above.

6.03.030. Location Requirements

- A. Chickens are only allowed on property that is occupied by a detached single-family dwelling.
- B. Chickens are only allowed on property that is the principal residence of the owner of the chickens.
- C. Chickens and chicken enclosures are not to be located in any area between the primary dwelling and the front property line.
- D. Chicken enclosures must be at least ten (10) feet from the property line and at least twenty-five (25) feet from any abutting dwelling unit.

Exhibit A

6.03.040. Ongoing Conditions of License

A. Chicken Enclosures

1. Chickens must be kept within a secure enclosure at night. During daylight hours, chickens must be kept within a secure enclosure unless under direct supervision within a fenced yard.
2. Allowing chickens to enter adjoining properties is prohibited.
3. Enclosures must be kept clean, dry, in good repair and not cause an odor that is unreasonably offensive or annoying to residents within the immediate vicinity.
4. Enclosures must be designed to prevent the entry of rodents and predators and must effectively contain and protect the chickens.
5. Enclosures must be designed so that they are not a breeding place or likely breeding place for rodents, flies or other pests.

B. Chickens must be kept for personal, non-commercial use only. No person may sell eggs or engage in chicken breeding or fertilizer production for commercial purposes.

6.03.050 Procedure for Obtaining a Chicken License

A. In a residential zone, a resident who wants to raise chickens per the requirements of this Chapter must ~~obtain a~~ apply for a license, ~~and~~ demonstrate compliance with the above criteria, and pay a processing fee. The City will issue a license after determining compliance with ~~this Chapter 6.03.020 and 6.03.030.~~

B. Tenants and renters of property are permitted to keep chickens only with the written permission of the property owner ~~and~~ included with the license ~~request~~ application.

~~C. Within 14 days following the approval of a license application, the City will provide written notice by first class mail to all property owners immediately abutting the license holder's property. The notice must contain the name and address of the license holder's contact information for persons to seek information or file complaints.~~

C. Licenses issued under this chapter are issued to a specified individual for the keeping of chickens on specified property where the individual resides, are non-transferable, and are valid for a period of five (5) years. Licenses may be renewed for successive five (5) year terms.

D. Neighbor Notice Requirements

1. The City will provide written notice within fourteen (14) calendar days of issuance of a license by first class mail to all property owners and known residents immediately abutting the license holder's property.

2. Contents of Neighborhood Notice

a. Name and address of the license holder.

b. A copy of this chapter.

c. Contact information for City enforcement of this chapter and the process for filing complaints.

d. The current dollar amounts for penalties for violations of this chapter.

6.03.060 Penalties: ~~Violations of this section are classified as a Class C violation punishable by up to a two hundred fifty dollar (\$250) fine.~~

The provisions of this chapter are in addition to and not in lieu of any other requirements imposed under any other code provision, City ordinance, law or regulation having application in the City. If a conflict occurs with another code provision or regulation, the most restrictive provision or regulation shall apply.

A. Violation of this Chapter constitutes a Class C violation, except that keeping of chickens without a license is a Class A violation.

B. Each violation of a separate provision of this Chapter shall constitute a separate violation, and each day that a violation of this chapter is committed or permitted to continue constitutes a separate violation.

C. In addition to any other remedy provided by law, a person that commits more than two violations of this Chapter within any six-month period may have his or her license revoked for up to one year. During the period in which a license is revoked under this subsection, no other resident of a dwelling in which a person whose license has been revoked resides may be licensed to keep chickens under this chapter.

6.03.070 Rules

The City Manager is authorized to adopt rules to implement this chapter.

Chapter 6.04 Dogs (existing)

Title 16 Sherwood Zoning and Development Code
Chapter 16.12 - RESIDENTIAL LAND USE DISTRICTS

	VLDR	LDR	MDRL	MDRH	HDR
COMMERCIAL					
• Raising of Animals other than Household Pets ⁵	C	C	C	C	C
CIVIC					
• Public Recreational Facilities ⁶	P	P	P	P	P

⁵ Except for a limited number of chickens as licensed under Title 6-Animals, Chapter 6.03. Chickens.

⁶ Includes, but is not limited to parks, playfields, sports and racquet courts, but excludes golf courses.

Recommendation

The Planning Commission held a Public Hearing on July 14, 2015 to consider draft code amendments concerning raising a limited number of chickens in residential neighborhoods. The Commission deliberated over the proposed language and discussed the various restrictions that could be imposed. The Commission considered the information discussed during the public outreach efforts including the online survey conducted during April and May 2015 and the public testimony provided at the hearing.

Based on the information before them, the Commission recommended denial of the proposed Code Amendments. The Commission recommended denial based on the lack of public support for the proposed amendments through the public hearing process and the corresponding citizens' comments against the proposal. The Commissioners were persuaded by people testifying about their concern about the diseases that may result and the difficulty in enforcing community standards through the current code enforcement process.

Overall, the Commission wanted to make sure that enough people were aware of the proposal before making any changes and that any amendments adequately reflected the community's desires and considered all of the livability issues surrounding raising chickens. They did not believe that they could make that recommendation based on the public testimony presented at hearing as it primarily in opposition to any change to the current regulations concerning backyard chickens.

The Code Amendments reviewed by the Planning Commission are attached as Exhibit A.

Proposal:

The City proposes to amend **Title 6 Animals** and **Title 16, Zoning and Community Development Code** of the Municipal Code to regulate backyard chickens in the residential zones. The proposal includes amendments that allow a certain number of chickens based on the size of the lot. The regulation requires chicken enclosures to be maintained and kept a certain distance from the property lines, as well as adjacent homes. An applicant would apply for a license and adjacent property owners would be notified when a license was granted.

I. OVERVIEW

- A. Applicant: This is a City-initiated text amendment.
- B. Location: The proposed amendment is to the text of the Sherwood Municipal Code Title 6 (Animals) and Title 16 (Zoning and Development Code) and applies citywide to all property zoned residential.
- C. Review Type: The proposed text amendment requires a Type V review that involves public hearings before the Planning Commission and City Council. The Planning Commission considered the matter on July 14, 2015. The Council hearing is scheduled for September 1, 2015. The Council will make a final decision whether to approve, modify, or deny the proposed language. The Oregon Land Use Board of Appeals would consider any appeal of the City Council's decision relating to this matter.

D. Public Notice and Hearing: Notice on the proposed amendment was published in *The Times* on July 9, 2015 and published in the July 2015 edition of the Gazette. Notice was also posted in five public locations around town and on the web site on June 24, 2015 for the Planning Commission. Notice was published in *The Times* on September 3 and 10, 2015 for the City Council hearing.

E. Review Criteria

The required findings for the Plan Amendment are identified in Section 16.80.030 of the Sherwood Zoning and Community Development Code (SZCDC).

F. Background

The City Council directed the Planning Commission to review the code language pertaining to backyard chickens in the spring of 2015. The Planning Commission held a work session on May 12, 2015. They reviewed the proposed amendments from 2010, compared other jurisdictions' regulations, and considered the most recent local backyard chicken online survey results (over 548 responses at the time of the work session). The Commission discussed the proposed code language during the work session and made some updates based on the survey results and new information. The Planning Commission discussed that residents wishing to raise backyard chickens should fill out an application, pay a processing fee, and agree to adhere to the city regulations. Once approved, staff will notify the property owners who reside near the resident who wishes to raise chickens. They concluded that with those changes, the recommended backyard chicken regulations were ready for public hearing.

The online survey was available for participation from April to May 2015 and ultimately 598 responses were received. The full results are attached as Exhibit E.

The proposed Backyard Chicken Code Amendments include the following rules:

- Allowing up to 3 hens on single family detached lots at least 5,000 square feet in size
- Allowing up to 5 hens on single family detached lots at least 10,000 square feet in size
- Chicken enclosures must be at least 10 feet from any property line and cannot be in the front yard
- Chicken enclosures must be at least 25 feet from any abutting dwelling unit

The purpose of the proposed amendments is to allow residents to raise a limited number of backyard chickens through a licensing process with the City and mitigate any issues through Code compliance. Nearby property owners and residents would be notified that a license has been issued for a particular property.

II. PUBLIC COMMENTS

Staff published an article in the June/July Sherwood Archer describing the proposed amendments. Staff published notice in the July 2015 edition of the Gazette and in the July 9, 2015, *The Times*. Notice was also posted in five public locations around town and on the web site on June 24, 2015. Notices was again published in the Times on September 3 and 10 in advance of the City Council hearing. Since that date, staff received the following comments.

Joyce Osborne, 23650 SW Platanus Place, submitted comments via email indicating that she was concerned about the ability of some residents to maintain chicken enclosures over time. She also expressed concern over the ambiguity of the Code language to determine whether a neighbor's coop had deteriorated to the point to be considered a "nuisance" under the terms of the existing nuisance ordinance and proposed language. Her comments are attached as Exhibit B.

Steven Hunt, 16958 SW Richen Park Circle, submitted comments via email indicating that he was not in favor of allowing roosters, but encouraged legislation that limited the number of chickens to no more than five hens that required a permit. He also indicated support for a process to make sure that any residents who have a complaint regarding chickens have appropriate recourse when a neighbor's coop was not being properly maintained. His comments are attached as Exhibit C.

Terry Miller, submitted a *Citizen's View* to the ***Sherwood Gazette*** and requested that the editorial comments be submitted to the Planning Commission. Mr. Miller indicated a concern about introducing backyard chickens into residential neighborhoods and that chickens will likely encourage raccoons, coyotes and other "varmints and rodents" into the neighborhoods. He thought that the ten-foot buffer between residences and the chicken enclosures were not far enough to avoid the sounds and smells of the chickens. He also thought that the City's online survey did not accurately reflect a majority opinion concerning backyard chickens and that more time was required to accurately find out how the entire community feels about chickens. His comments are attached as Exhibit D.

Terry Miller and Carole Miller, Sherwood residents testified at the July 14, 2015 hearing and conveyed their concerns with raising backyard chickens in the residential zone with the concerns described above. Terry Miller submitted additional written testimony and are attached as Exhibit H.

Robert J. Claus, Sherwood resident testified at the hearing and expressed his concern that the local government should not control any regulations concerning backyard chickens and was akin to not allowing people to raise exotic birds in their private residence.

Staff Response:

The public comments received thus far reflect the differing points of view that the Commission considered when making a recommendation concerning backyard chickens. Staff recommends that any proposed Code language balance the community's desire for allowing backyard chickens with the concerns addressed in the comments submitted. It is also apparent that the licensing process will need to be clear for the residents wishing to raise chickens and those that will live near those that keep them.

III. AGENCY COMMENTS

Staff sent notice to the Department of Land Conservation and Development on May 27, 2015. They have not commented.

Staff discussed the proposed code amendments with Bill Collins, Sherwood Police Department Code Enforcement Officer. He indicated support for clearer descriptions and penalties found directly within the new proposed Chapter 6.03, Backyard Chickens, rather than by reference to Chapter 9.44 Nuisance. Staff revised the proposed code amendments based on this discussion, adding penalty provisions as well as describing the owner's responsibility for maintaining the chicken enclosures in a sanitary and safe manner. The revised proposed code amendments are attached as Exhibit F.

Chief Groth, Sherwood Police Department, offered his assessment of the provisions via email dated July 7, 2015. His comments are attached as Exhibit G.

IV. PLAN AMENDMENT REQUIRED FINDINGS

The applicable Plan Text Amendment review criteria are 16.80.030.A and C.

16.80.030. A - Text Amendment Review

An amendment to the text of the Comprehensive Plan shall be based upon the need for such an amendment as identified by the Council or the Commission. Such an amendment shall be consistent with the intent of the Comprehensive Plan, and with all other provisions of the Plan and Code, and with any applicable State or City statutes and regulations.

Consistency with State Statutes and Regulations

Raising backyard chickens for eggs has become popular in the region over the past decade. Communities across the metro region have established different policies and rules concerning raising chickens in a residential zone. The City's current regulations do not distinguish chickens from other farm-type animals and anyone wishing to raise a few chickens in any residential zone is required to obtain a conditional use permit. This has been cost prohibitive for many residents and staff is not aware of any conditional use permit applications for raising chickens in the past eight years. However, the Code Compliance Officer has responded to complaints of residents raising chickens without a permit over the years.

The Planning Commission evaluated backyard chicken rules in 2010 during the Development Code Clean Up project in 2010-2011, which included public outreach and made a recommendation to Council who decided at the time, to table the issue. At the March 17, 2015 meeting, the City Council directed the Planning Commission to look at this issue again, consider input from the public and propose recommend changes to the rules concerning backyard chickens.

Consistency with the Sherwood Comprehensive Plan

While this specific proposal does not include changes to the text of the Comprehensive Plan, it is a proposal that would amend language of a document that implements the Comprehensive Plan and is reviewed in that light. There do not appear to be any comprehensive plan requirements that would conflict with the proposed code language, as the Comprehensive Plan does not address or comment on specific types of land uses, like raising a limited number of chickens but rather identifies policy goals for the more general residential land uses. The proposed language continues to implement the Land Use goals and policies as they apply to Residential land uses.

Consistency with Statewide Planning Goals

Because the comprehensive plan policies and strategies are not changing and the Comprehensive Plan has been acknowledged by the State, there are no known conflicts with this text change.

Allowing a certain number of chickens in the residential zone has been discussed at several public work sessions over the past several years and most recently on May 12, 2015. Staff has been available to discuss the proposed changes with the public and invited public comments throughout the current discussion. An online survey was available for people to express their opinion concerning chickens and 598 responses had been collected. The responses are attached as Exhibit E. As a whole, the proposed amendments are consistent with Goal 1 (Citizen Participation) and Goal 2 (Land Use Planning).

The applicable Statewide Planning Goals include:

Goal 1 (Citizen Involvement)

Staff utilized the public notice requirements of the Code to notify the public of this proposed plan amendment. The City's public notice requirements have been found to comply with Goal 1 and therefore, this proposal meets Goal 1.

FINDING: Based on the above discussion, the applicant satisfies this planning goal.

Goal 2 (Land Use Planning)

FINDING: The proposed amendment, as demonstrated in this report is processed in compliance with the local, regional and state requirements.

Goal 3 (Agricultural Lands)

Goal 4 (Forest Lands)

Goal 5 (Natural Resources, Scenic and Historic Areas and Open Spaces)

Goal 6 (Air, Water and Land Resources Quality)

Goal 7 (Areas Subject to Natural Hazards)

Goal 8 (Recreational Needs)

Goal 9 (Economic Development)

Goal 10 (Housing)

Goal 11 (Public Facilities and Services)

Goal 12 (Transportation)

FINDING: The proposed amendments do not affect the functional classification of any transportation facility within the City, and are therefore considered to be consistent with the "Transportation Planning Rule" which implements Goal 12.

Goal 13 (Energy Conservation)

Goal 14 (Urbanization)

Goal 15 (Willamette River Greenway)

Goal 16 (Estuarine Resources)

Goal 17 (Coastal Shorelands)

Goal 18 (Beaches and Dunes)

Goal 19 (Ocean Resources)

FINDING: As discussed above in the analysis, there is an identified need for the proposed amendments in order to clarify the process for raising chickens in Sherwood and amending the Sherwood Zoning and Community Development Code to reflect these changes. The proposed amendments are consistent with the Comprehensive Plan and applicable City, regional and State regulations and policies should the Council approve the text amendment.

16.80.030 C - Transportation Planning Rule (TPR) Consistency

- A. Review of plan and text amendment applications for effect on transportation facilities. Proposals shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with OAR 660-12-0060 (the TPR). Review is required when a development application includes a proposed amendment to the Comprehensive Plan or changes to land use regulations.**
- B. "Significant" means that the transportation facility would change the functional classification of an existing or planned transportation facility, change the standards implementing a functional classification, allow types of land use, allow types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility, or would reduce the level of service of the facility below the minimum level identified on the Transportation System Plan.**
- C. Per OAR 660-12-0060, Amendments to the Comprehensive Plan or changes to land use regulations which significantly affect a transportation facility shall assure that**

allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan.

FINDING: The proposed amendments are not tied to any one development application and do not affect the functional classification of any street. The proposed amendments will have no measurable impacts on the amount of traffic on the existing transportation system; therefore, this policy is not applicable to the proposed amendment.

V. ATTACHMENTS

- A. First Draft of the Text Amendment dated June 10, 2015
- B. Comments from Joyce Osborne dated June 23, 2015
- C. Comments from Steve Hunt dated June 30, 2015
- D. Comments from Terry Miller as written in the Sherwood Gazette published on July 1, 2015
- E. Tabulated online survey responses concerning backyard chickens
- F. Second Draft of the Text Amendment July 7, 2015
- G. Comments from Chief Jeff Groth, Sherwood Police Department dated July 7, 2015
- H. Additional Testimony from Terry Miller, dated July 10, 2015