


Legal Memorandum

To: Mayor and Common Council

Cc: Jason Gilman, City Planner; Teri Lehrke, City Clerk

From: Stephen F. Matty, City Attorney 

Date: March 9, 2017

Re: Proposed changes to various animal control ordinances: 17-0088 (chickens); 17-0089 (bees); 17-0106 (public nuisance); 17-0113 (livestock)

Various proposed changes to the above-mentioned ordinances have been introduced for your consideration. For the following reasons, the Legal Department recommends that the ordinances be denied.

1. The animal ordinances should require licenses, not eliminate them.

When an animal owner fails to comply with the requirements of the ordinance or creates a public nuisance, one option to enforcement is to revoke, suspend or non-renew the owner's license. Without a license, the activity of owning the animal becomes unlawful and can be an effective enforcement mechanism.

Here, the proposed changes to the chicken-keeping ordinance proposes to eliminate the license requirement. Likewise, the beekeeping and livestock ordinances do not require a license at all. Accordingly, the City's ability to protect and improve its neighborhoods would be substantially limited under these proposals.

2. The Coulee Region Humane Society does not handle chickens.

In a recent communication with the Humane Society, our office learned that the Humane Society does not handle chicken complaints. The proposed ordinance places enforcement with the Humane Society. Accordingly, there is a disconnect between responsibilities and enforcement.

3. Additional protections should be in place for neighbors who do not want to be exposed to such traditionally non-urban animals.

Protection by Supermajority Vote

In previous conversations about these ordinances, it was discussed that many citizens do not want to be exposed to these types of animal keeping activities of their neighbors. For example, a family with a child having an allergy to bee stings would not want a neighbor keeping bees. The current ordinances do not allow flexibility or neighbor concerns to be voiced prior to commencement of the animal activity.

The Common Council should consider allowing an opportunity for neighbor objections to the proposed activity. If a certain threshold of neighbors objects to the proposed activity at a particular location, then the Common Council should consider only allowing the activity after a supermajority vote.

Protection with Insurance

Some homeowner insurance policies will not cover exotic animals. It is possible that the above-mentioned non-traditional animal keeping activities will not be protected under such a policy. When one of these exotic animals within an urban setting causes injury to a neighbor (e.g. bee sting causing anaphylactic shock or rooster attacking a pet or small child) will there be insurance available to cover the injury and damages? Will the animal keeper be able to cover the expense? While a dog bite from the family pet might be covered under homeowner's policy, the exotic pets are more likely to be excluded.

4. The ordinances make no differentiation between animal keeping for personal or commercial activities.

One rationale advanced for the proposed ordinances is to allow persons to grow their own food. At what point, however, does the activity cross the line from a personal activity to commercial one? If an owner keeps bees and chickens to harvest and sell honey or poultry at a farmer's market, then it appears that certain zoning districts should prohibit the activity. The Common Council may wish to consider amending the ordinances to allow these animal keeping activities only for personal use.

5. The slaughtering of animals requires additional oversight.

Additional regulations are needed when it comes to slaughtering animals. Past experience from the City's storm water utility has found butchered animal remains within the storm sewer catch basins. Likewise, slaughtered animal remains should not be disposed of in the sewer system or by use of a garbage disposal. Additionally, animal waste can also create public health problems.

Here, the proposed amendment makes it lawful to slaughter chickens. Previously, this act was prohibited. The other proposed animal ordinances are silent on the issue as well as animal waste disposal. Failing to prescribe health and safety requirements will result in unnecessary risks.

Conclusion

For the reasons stated above, the Legal Department recommends the proposed ordinances be denied.