

Illegal Fowl: A Survey of Municipal Laws Relating to Backyard Poultry and a Model Ordinance for Regulating City Chickens

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Summary

As the movement toward keeping backyard chickens continues to grow, many cities are facing the decision of whether to allow residents to keep chickens and, if so, how to effectively regulate the practice. A survey of municipal ordinances in the top 100 most populous cities in the United States that concern keeping and raising chickens offers lessons that may be applied to designing a model ordinance. This survey reveals that chickens are, perhaps surprisingly, legal in the vast majority of large cities. The survey also identifies regulatory norms and some effective and less effective ways to regulate the keeping of chickens. A proposed model ordinance, based on the background information and survey results, could be adopted by a city or easily modified to fit a city's unique needs.

So much depends
upon
a red wheel
barrow
glazed with rain
water
beside the white
chickens.

William Carlos Williams, 1923.

The movement toward bringing agricultural practices into the city has continued to expand during the last decade.¹ As we learn more about the problems with our modern commercial agricultural practices—like keeping large numbers of animals crowded in small indoor facilities with little or no access to fresh air or sunlight and growing vast amounts of corn and soy in a monoculture environment to feed those animals²—many city-dwellers are taking it into their own hands to provide solutions.³ Community gardens are increasing in cities across the country.⁴ Market farms and even full-scale urban farms are popping up both in cities where the foreclosure epidemic has caused an abundance of abandoned properties and in cities where property has maintained or even increased in value.⁵ And, farmer's markets have increased exponentially across the country—allowing smaller scale local farmers to directly link to consumers and sell their produce for far above the wholesale amounts they could get from selling through

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1. Kimberly Hodgson et al., *Urban Agriculture: Growing Healthy Sustainable Places*, American Planning Association, Planning Advisory Service, Report No. 563 (Jan. 2011); JANINE DE LA SALLE & MARK HOLLAND, *AGRICULTURAL URBANISM, HANDBOOK FOR BUILDING SUSTAINABLE FOOD & AGRICULTURAL SYSTEMS IN 21ST CENTURY CITIES*, 9-12 (2010).
2. *E.g.*, FOOD, INC. (Magnolia Pictures 2009); MICHAEL POLLAN, *THE OMNIVORE'S DILEMMA: A NATURAL HISTORY OF FOUR MEALS* (2006); ERIC SCHLOSSER, *FAST FOOD NATION: THE DARK SIDE OF THE ALL AMERICAN MEAL* (2002); MARION NESTLE, *FOOD POLITICS: HOW THE FOOD INDUSTRY INFLUENCES NUTRITION AND HEALTH* (2002).
3. *E.g.*, LISA TAYLOR, *YOUR FARM IN THE CITY: AN URBAN DWELLER'S GUIDE TO GROWING FOOD AND RAISING LIVESTOCK* (2011); THOMAS J. FOX, *URBAN FARMING: SUSTAINABLE CITY LIVING IN YOUR BACKYARD*, IN *YOUR COMMUNITY, AND IN THE WORLD* (2011); KELLY COYNE & ERIK KNUTZEN, *THE URBAN HOMESTEAD: YOUR GUIDE TO SELF-SUFFICIENT LIVING IN THE HEART OF THE CITY* (2010); KURT B. REIGHLEY, *THE UNITED STATES OF AMERICANA: BACKYARD CHICKENS, BURLESQUE BEAUTIES, AND HOMEMADE BITTERS* (2010).
4. Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 N.Y.U. J. LEGIS. & PUB. POL'Y 315, 354 (1999-2000).
5. Hodgson, *supra* note 1, at 3-4.

more established channels like supermarkets and convenience stores.⁶

Part of the greater urban agriculture movement involves urban animal husbandry—raising livestock in an urban setting.⁷ While many cities have allowed for bees, goats, and other livestock in the city,⁸ this Article will focus on how cities regulate chickens.⁹ Many people in urban environments are seeking to raise chickens to assert control over their food. This may be in reaction to increasing reports of how large industrial farms raise chickens in abusive and unsanitary settings—settings that not only are unhealthy for the chickens but negatively affect the health of people who live near such farms, as well as anyone who eats the eggs or meat from those chickens.¹⁰ Many people view raising chickens and other urban agricultural practices as a way to combat a broken food system and a way to assert individual political power against the large corporations that control much of our food.¹¹

In response to a growing demand from city-dwellers to raise their own chickens, either as part of a community

garden, urban farm, or just in their own backyard, cities across the country are amending their ordinances to allow for and regulate backyard chickens.¹² This Article will first provide a primer on what a city-dweller should know about chickens. This is especially targeted to city-dwellers who serve as councilpersons, mayors, or law directors and know little or nothing about chickens. Because many municipal officials lack agricultural knowledge, they lack a basis for understanding whether chickens can peacefully co-exist with their constituents in a cosmopolitan area. And, even if officials believe that residents should be able to keep chickens, they may still feel unequipped to figure out how to properly regulate chickens to head off practical concerns with noise, odor, and nuisance.

Many people may be surprised to learn that even in cities where raising chickens is illegal, many people are doing so anyway.¹³ For instance, in a suburb of Cleveland, Jennifer,¹⁴ a young mother of two boys, built a coop in her backyard and bought four chicks.¹⁵ These chicks grew up to be egg-laying hens and family pets before she learned that her city outlawed chickens. The city told her that if she did not get rid of the chickens, she would be subject to continuing expensive citations for violating the city's ordinance. Because both she and her children

6. Patricia E. Salkin & Amy Lavine, *Regional Foodsheds: Are Our Local Zoning and Land Use Regulations Healthy?*, 22 FORDHAM ENVTL. L. REV. 599, 617 (2011); Brandon Baird, *The Pending Farmer's Market Fiasco: Small-Time Farmers, Part-Time Shoppers, and a Big-Time Problem*, 1 KYJEANRL 49, 49-50 (2008-2009). See also Kirk Johnson, *Small Farmers Creating a New Business Model as Agriculture Goes Local*, N.Y. TIMES, July 1, 2012, http://www.nytimes.com/2012/07/02/us/small-scale-farmers-creating-a-new-profit-model.html?_r=1&ref=agriculture.
7. Hogdson, *supra* note 1, at 17. See, e.g., ROBERT & HANNAH LITT, A CHICKEN IN EVERY YARD (2011); HARVEY USSERY, THE SMALL-SCALE POULTRY FLOCK: AN ALL-NATURAL APPROACH TO RAISING BACKYARD AND URBAN CHICKENS (2011); ANDY SCHNEIDER, THE CHICKEN WHISPERER'S GUIDE TO KEEPING CHICKENS, EVERYTHING YOU NEED TO KNOW . . . AND DIDN'T KNOW YOU NEEDED TO KNOW ABOUT RAISING CHICKENS (2011); TARA LAYMAN WILLIAMS, THE COMPLETE GUIDE TO RAISING CHICKENS: EVERYTHING YOU NEED TO KNOW EXPLAINED SIMPLY (2010); JEROME D. BELANGER, THE COMPLETE IDIOT'S GUIDE TO RAISING CHICKENS (2010); CARLEE MADIGAN, THE BACKYARD HOMESTEAD (2009); KIMBERLY WILLIS & ROB LUDLOW, RAISING CHICKENS FOR DUMMIES (2009).
8. E.g., Heather Wooten & Amy Ackerman, *Seeding the City: Land Use Policies to Promote Urban Agriculture*, NATIONAL POLICY & LEGAL ANALYSIS NETWORK TO PREVENT CHILDHOOD OBESITY, 34 (2011); Kailee Neuner et al., *Planning to Eat: Innovative Local Government Plans and Policies to Build Healthy Food Systems in the United States*, FOOD SYSTEMS PLANNING AND HEALTHY COMMUNITIES LAB, UNIVERSITY OF BUFFALO, THE STATE UNIVERSITY OF NEW YORK, 17 (2011).
9. See also Patricia Salkin, *Feeding the Locavores, One Chicken at a Time: Regulating Backyard Chickens*, 34:3 ZONING & PLAN. L. REP. 1 (2011) (briefly surveying chicken laws); Mary Wood et al., *Promoting the Urban Homestead: Reform of Local Land Use Laws to Allow MicroLivestock on Residential Lots*, 37 ECOLOGY L. CURRENTS 68 (2010).
10. See, e.g., Nicholas D. Kristof, *Is an Egg for Breakfast Worth This?*, N.Y. TIMES, Apr. 11, 2012, <http://www.nytimes.com/2012/04/12/opinion/kristof-is-an-egg-for-breakfast-worth-this.html>; Nicholas D. Kristof, *Arsenic in Our Chicken*, N.Y. TIMES, Apr. 4, 2012, <http://www.nytimes.com/2012/04/05/opinion/kristof-arsenic-in-our-chicken.html>.
11. Hugh Bartling, *A Chicken Ain't Nothing but a Bird: Local Food Production and the Politics of Land-Use Change*, LOCAL ENVIRONMENT 17(a) (Jan. 2012). For a different take on the political reasons behind backyard chickens, see Shannon Hayes, *Radical Homemakers: Reclaiming Domesticity From a Consumer Culture* (2005) (asserting that urban farming can be a feminist response to modern urbanization).
12. Sarah Grieco, *Backyard Bees, Chickens, and Goats Approved*, NBCSANDIEGO, Feb. 1, 2012 <http://www.nbcsandiego.com/news/local/Backyard-Bees-Chickens-Goats-Approved-138507104.html>; Michael Cass, *Backyard Chickens Make Gains in Nashville*, THE TENNESSEAN, Jan. 5, 2012, <http://www.healthynashville.org/modules.php?op=modload&name=News&file=article&sid=20163>; Peter Applebome, *Envisioning the End of "Don't Cluck, Don't Tell"*, N.Y. TIMES, Apr. 30, 2009, <http://www.nytimes.com/2009/4/30/nyregions/30town?>; Jessica Bennet, *The New Coop de Ville, the Craze for Urban Poultry Farming*, NEWSWEEK, Nov. 16, 2008, <http://www.thedailybeast.com/newsweek/2008/11/16/the-new-coop-de-ville.img.jpg>. And this movement is not just in the United States; Australia, Canada, and Europe also are experiencing a surge in the number of people keeping backyard hens. See, e.g., *Surge in Backyard Poultry Numbers*, BRITISH FREE RANGE EGG PRODUCERS ASSOCIATION (Jan. 9, 2011), http://www.theranger.co.uk/news/Surge-in-backyard-poultry-numbers_21660.html (last visited Feb. 24, 2012); BACKYARD CHICKENS IN TORONTO, ONTARIO, http://torontochickens.com/Toronto_Chickens/Blog/Blog.html (last visited Feb. 22, 2012) (advocacy group seeking to legalize chickens in Toronto); Chris Mayberry & Peter Thomson, *Keeping Chickens in the Backyard*, DEPARTMENT OF AGRICULTURE AND FOOD, GOVERNMENT OF WESTERN AUSTRALIA (Aug. 2004), http://www.agric.wa.gov.au/content/aap/pou/man/gn2004_022.pdf (last visited Feb. 22, 2012); ANDREA GAYNOR, *HARVEST OF THE SUBURBS: AN ENVIRONMENTAL HISTORY OF GROWING FOOD IN AUSTRALIAN CITIES* (2006); Catharine Higginson, *Living in France-Keeping Chickens*, LIVING FRANCE, <http://www.livingfrance.com/real-life-living-and-working-living-in-france-keeping-chickens-94936> (last visited Feb. 22, 2012).
13. See, e.g., *Where Chickens Are Outlawed Only Outlaws Will Have Chickens*, BACKYARDCHICKENS.COM, <http://www.backyardchickens.com/t/616955/where-chickens-are-outlawed-only-outlaws-will-have-chickens-t-shirt> (last visited Feb. 15, 2012) (forum for people who own chickens illegally); Heather Cann et al., *Urban Livestock: Barriers and Opportunities Faces by Homesteaders in the City of Waterloo*, Dec. 6, 2011, <http://www.wrfoodsystem.ca/studentresearch> (last visited Feb. 22, 2012) (interviewing several people who own chickens illegally in the Waterloo region of Canada).
14. Not her real name.
15. Interview with Jennifer, July 18, 2011 (on file with author).

had grown close to the hens, they did not want to simply dispose of them or give them away. Instead, Jennifer moved to a neighboring city that had recently passed an ordinance legalizing backyard hens and started a chicken cooperative.¹⁶ Now, a group of neighbors take turns caring for the chickens and share the eggs. Neither in the suburb where she started raising the chicks nor in the city where she started the cooperative did neighbors complain about odor, noise, or any other potential nuisance. And the suburb, by prohibiting chickens, lost the opportunity Jennifer was willing to provide to build strong community ties with her neighbors.¹⁷

Instead of moving away, others are seeking to change the law to raise chickens in the city where they already live. For instance, Cherise Walker has been advocating for a new ordinance in her community.¹⁸ Ms. Walker is a veteran of the Iraq war who became interested in hens when she read that keeping chickens can help relieve post-traumatic stress disorder.¹⁹ She subscribes to *Backyard Poultry*—a magazine dedicated to backyard chickens²⁰; she became certified in hen-keeping by the Ohio State University Extension; and, she began assembling the materials to build a coop in her yard. But, she soon learned that her city outlaws hens as dangerous animals, placing them in the same category as lions, tigers, bears, and sharks.²¹ Unwilling to become an outlaw hen-keeper, she, like countless others across the country, is attempting to lobby her mayor and city council-people to educate them about chickens and encourage them to adopt a more chicken-friendly ordinance.²²

Because of the growing popularity of keeping backyard chickens, cities can benefit from well-thought-out ordinances that avert possible nuisance and make it easy and clear for would-be chicken owners to find out what they need to do to comply with the law.

Changing these ordinances, however, is often a contentious issue.²³ It has caused one mayor in Minnesota to say, “there is a lot of anger around this issue for some reason.

More so than the war by far.”²⁴ City leaders are understandably concerned that chickens may cause nuisances.²⁵ They have raised such concerns as decreasing property values²⁶ and increasing greenhouse emissions,²⁷ as well as concerns about excessive clucking and overwhelming odors bothering the neighbors.²⁸ Some express the belief that chickens, and other agricultural practices, simply do not belong in cities.²⁹ The controversy over backyard chicken regulation has been so contentious that at least one law review article uses it as a case study for the Coase theorem to illustrate how we unnecessarily inflate the costs of processes related to legal change.³⁰

In Part I, this Article will discuss the benefits of backyard chickens. Part II will investigate concerns that many people have with keeping chickens in the city. Part III will provide some background about chickens and chicken behavior that municipalities should understand before crafting any ordinance. Part IV will survey ordinances related to keeping chickens in the 100 most populous cities in the United States, identifying regulatory norms and particularly effective and ineffective means of regulation. Finally, Part V will put forward a model ordinance that regulates keeping chickens in an urban setting while providing sufficient regulation to abate nuisance concerns.

16. CLEVELAND, OHIO, CODIFIED ORDINANCES §§205.04, 347.02 (2011).

17. See *infra* Part I.E. (discussing how participating in urban agriculture can increase social connections and civic responsibility).

18. Interview with Jennifer, July 18, 2011 (on file with author).

19. Megan Zotterelli, *Veterans Farming*, THE LEAFLET: NEWSLETTER OF THE CENTRAL COAST CHAPTER OF CALIFORNIA RARE FRUIT GROWERS (July/Aug. 2011), <http://centralcoastfoodie.com/2011/08/veterans-farming/> (noting that the Farmer Veterans Coalition that seeks to link veterans with farming has done so not only to provide veterans with economic opportunities, but because “the nurturing environment of a greenhouse or a hatchery has helped these veterans make impressive strides in their recovery and transition”).

20. *Backyard Poultry Magazine* has been published since 2006 by Countryside Publications, Inc. It currently has a circulation of approximately 75,000 readers. See ADVERTISING INFORMATION FOR BACKYARD POULTRY, <http://www.backyardpoultrymag.com/advertise.html> (last visited Feb. 22, 2012).

21. LAKEWOOD MUN. ORDINANCE §505.18.

22. Interview with Cherise Walker, Mar. 18, 2012 (on file with author).

23. Barak Y. Orbach & Frances R. Sjoberg, *Debating Over Backyard Chickens*, Arizona Legal Studies, Discussion Paper No. 11-02 (Feb. 2012) (listing conflicts in dozens of cities where people were seeking to change ordinances to either legalize or ban chickens); see also Salkin, *supra* note 9, at 1 (describing criticism of efforts to allow chickens in neighborhoods as including “worry that property values will plummet, that chickens will create foul odors and noise, and that they will attract coyotes, foxes, and other pests”).

24. Orbach & Sjoberg, *supra* note 23, at 24.

25. P.J. Huffstutter, *Backyard Chickens on the Rise, Despite the Neighbor's Clucks*, L.A. TIMES, June 15, 2009, <http://articles.latimes.com/2009/jun/15/nation/na-chicken-economy15>.

26. Tiara Hodges, *Cary: No Chickens Yet*, INDYWEEK.COM, Feb. 10, 2012, <http://www.indyweek.com/BigBite/archives/2012/02/10/cary-no-chickens-yet> (last visited Feb. 17, 2012); *Backyard Chickens: Good or Bad Idea*, KVAL.COM, Mar. 3, 2009, <http://www.kval.com/news/40648802.html> (last visited Feb. 17, 2012).

27. Valerie Taylor, *Chickens for Montgomery* (2009), <http://www.scribd.com/doc/16509728/Changing-Your-Citys-Chicken-Laws> (last visited Feb. 17, 2012) (addressing a concern that Montgomery council people voiced about greenhouse gases).

28. Josie Garthwaite, *Urban Garden? Check. Now, Chickens*, N.Y. TIMES, Feb. 7, 2012, <http://green.blogs.nytimes.com/2012/02/07/urban-garden-check-now-chickens/>.

29. Orbach & Sjoberg, *supra* note 23, at 19 (citing one mayor from Franklinton, Louisiana, as stating the “city has changed and grown so much since the original ordinance. We are trying to look to the future. You can’t raise animals or livestock (in the city).”); Barry Y. Orbach & Frances R. Sjoberg, *Excessive Speech, Civility Norms, and the Clucking Theorem*, 44 CONN. L. REV. 1 (2011) (stating that an alderman in Chicago was seeking to ban chickens in part because, “[a]ll things considered, I think chickens should be raised on a farm”); Jerry Kaufman & Martin Bailkey, *Farming Inside Cities*, 13 LANDLINES 1 (2001).

30. See Orbach & Sjoberg, *supra* note 29.

I. The Benefits of Backyard Chickens

In 1920, an elementary school textbook recommended that every family in America keep a small flock of backyard chickens.³¹ The textbook provided that “every family is better off for having a few chickens, provided they are kept out of the garden and at a suitable distance from any house.”³² It noted that of the millions of dollars worth of eggs that were sold each year at that time, comparatively little came from large poultry farms, but came instead “from the hundreds and thousands of farms and town lots where a few chickens and other fowls are kept in order that they may turn to profit food materials that otherwise would be wasted.”³³ The textbook asserted that chickens were a good value because, as scavengers and omnivores, it was relatively cheap to feed them scraps and receive in return fresh eggs. Also, the textbook championed city flocks because chickens eat insects and thus prevent the increase of insect pests.³⁴

The U.S. government was in agreement with the textbook’s advice. During World War I, the United States exhorted every person in America to raise chickens. The U.S. Department of Agriculture (USDA) issued posters with titles like “Uncle Sam Expects You to Keep Hens and Raise Chickens.”³⁵ One such poster encourages chicken ownership by exhorting that “even the smallest backyard has room for a flock large enough to supply the house with eggs.”³⁶ The poster goes on to say that because chickens eat table scraps and require little care, every household should contribute to a bumper crop of poultry and eggs in 1918.³⁷

These recommendations are still valid today, as many are reevaluating the suburbanization of America that occurred after World War II and reincorporating agricultural practices into daily life.³⁸ Keeping domesticated fowl has been a part of human existence for millennia,³⁹ and only in the last century has been seen as something that should be kept separate from the family and the home.⁴⁰ While humanity has long understood the benefits of keeping domesticated chickens, many city-dwellers have lost touch with what

Uncle Sam Expects You To Keep Hens and Raise Chickens



Two Hens in the Back Yard for Each Person in the House Will Keep a Family In Fresh Eggs

EVEN the smallest back yard has room for a flock large enough to supply the house with eggs. The cost of maintaining such a flock is small. Table and kitchen waste provide much of the feed for the hens. They require little attention—only a few minutes a day.

An interested child, old enough to take a little responsibility, can care for a few fowls as well as a grown person.

Every back yard in the United States should contribute its share to a bumper crop of poultry and eggs in 1918.

**In Time of Peace a Profitable Recreation
In Time of War a Patriotic Duty**

For information about methods of Back-Yard Poultry Keeping suited to your location and conditions, write

Your State Agricultural College
or
The United States Department of Agriculture
Washington, D. C.

USDA Poster from Scott Doyon, *Chickens: WWI Solution to Almost Everything, Better Cities & Towns*, Nov. 4, 2011, <http://bettercities.net/news-opinion/blogs/scott-doyon/15562/backyard-chickens-wwi-era-solution-almost-everything> (last visited Feb. 15, 2012).

chickens have to offer. There continue to be many benefits to raising hens. Some of the benefits are apparent—like getting fresh free eggs. Some are less apparent—like hen manure being a surprisingly pricey and effective fertilizer and research findings that urban agricultural practices in general raise property values and strengthen the social fabric of a community. The benefits of keeping hens will be discussed more thoroughly below.

A. Chickens Are a Source of Fresh Nutritious Eggs

The most obvious benefit of keeping chickens in the backyard is the eggs. A hen will generally lay eggs for the first five to six years of her life, with peak production in the first two years.⁴¹ Hens lay more during the spring and summer months when they are exposed to more light because of the longer days.⁴² Hens also lay far more eggs when they are younger, starting off with between 150 to 300 eggs per year depending on the breed and dwindling down by about 20% each year.⁴³ Young hens or pullets often start out lay-

31. WILLIAM THOMPSON SKILLING, *NATURE-STUDY AGRICULTURE* (World Book Co. 1920).

32. *Id.* at 296.

33. *Id.*

34. *Id.*

35. Scott Doyon, *Chickens: WWI Solution to Almost Everything*, *BETTER CITIES & TOWNS*, Nov. 4, 2011, <http://bettercities.net/news-opinion/blogs/scott-doyon/15562/backyard-chickens-wwi-era-solution-almost-everything> (last visited Feb. 15, 2012).

36. *Id.*

37. *Id.*

38. Hodgson, *supra* note 1, at 11-12. See, e.g., ROBERT M. FOGELSON, *BOURGEOIS NIGHTMARES* 168-81 (2005) (noting that backyard poultry-keeping went from being universal and encouraged to being banned as a nuisance when newly developed suburbs aimed toward attracting wealthy residents began instituting policies to ban all household pets in an effort to distinguish themselves from both the urban and rural lower class).

39. Barbara West & Ben-Xiong Zhou, *Did Chickens Go North? New Evidence for Domestication*, 44 *WORLD'S POULTRY SCI. J.* 205-18 (1999). CHRISTINE HEINRICH, *HOW TO RAISE CHICKENS: EVERYTHING YOU NEED TO KNOW* (2007).

40. See, e.g., ANDREA GAYNOR, *HARVEST OF THE SUBURBS* 133 (2006); JANINE DE LA SALLE & MARK HOLLAND, *AGRICULTURAL URBANISM: HANDBOOK FOR BUILDING SUSTAINABLE FOOD & AGRICULTURE SYSTEMS IN 21ST CENTURY CITIES* 23 (2010).

41. LITT, *supra* note 7, at 168-69.

42. *Id.* at 169.

43. *Id.*

ing abnormal-looking or even double-yolked eggs, but as they mature begin laying more uniform eggs.⁴⁴ Although hens can live up to 15 or even 20 years, the average hen's lifespan is between four to eight years, so most hens will lay eggs during most of their life—but production will drop off considerably as they age.⁴⁵

Although some have argued that raising backyard chickens will save money that would have been used to buy eggs over time, this claim is dubious.⁴⁶ It would take many years to recoup the cost of the chickens, the chicken feed, and the coops.⁴⁷ But cost is only part of the equation.

Eggs from backyard hens have been scientifically shown to taste better.⁴⁸ First, they taste better because they are fresher.⁴⁹ Most eggs bought in a grocery store are weeks if not months old before they reach the point of sale.⁵⁰ Recent studies in agriculture science, moreover, demonstrate that if a chicken is allowed to forage for fresh clover and grass, eat insects, and is fed oyster shells for calcium, her eggs will have a deeper colored yolk, ranging from rich gold to bright orange, and the taste of the egg will be significantly fresher.⁵¹

Next, eggs from backyard hens are more nutritious.⁵² Poultry scientists have long known that a hen's diet will affect the nutrient value of her eggs.⁵³ Thus, most commercial hens are subjected to a standardized diet that provides essential nutrients; but even with this knowledge, large-scale operations cannot provide chickens with an optimal diet under optimal conditions.⁵⁴ Tests have found that eggs from small-flock pasture-raised hens actually have a remarkably different nutritional content than your typical store-bought egg—even those certified organic.⁵⁵ This is because backyard chickens can forage for fresh grass and other greens and get access to insects and other more natural chicken food.⁵⁶ The nutritional differences may also be attributed to the fact that hens are less stressed because

they are kept in a more natural environment with exposure to sun, weather, and adequate companionship.⁵⁷ Scientific nutritional analyses have proven that eggs from hens that are kept in small flocks and allowed to forage, when compared with store-bought eggs, have

- 1/3 less cholesterol
- 1/4 less saturated fat
- 2/3 more vitamin A
- 2 times more omega-3 fatty acids
- 3 times more vitamin E
- 7 times more beta-carotene.⁵⁸

Thus, four to six hens can easily provide enough eggs for a typical household and sometimes enough for the neighbors as well. And, the eggs are more nutritious, fresher, and tastier than those available in stores.

B. Chickens Provide Companionship as Pets

Many people who own a small flock of chickens consider their chickens to be pets and a part of their family—just like a dog or a cat.⁵⁹ Chickens have personalities, and many people and children bond with them just like any other pet.⁶⁰ Several forums exist on the Internet where people can trade stories about hen antics⁶¹ or debate what breed of chicken is best for children.⁶² Chicken owners tend to name their hens, and many can easily describe each hen's temperament and personality.⁶³

Perhaps recognizing this, many cities, as shown below, actually regulate chickens as pets—and place no further burden on chicken owners than it would on dog or cat owners.⁶⁴

C. Chicken Manure Is a Surprisingly Valuable Fertilizer

Chicken manure is an excellent and surprisingly valuable fertilizer. Currently, 20-pound bags of organic chicken manure fertilizer can fetch a price of between \$10 and

44. Bernal R. Weimer, *A Peculiar Egg Abnormality*, 2-4:10 *POULTRY SCI.* 78-79 (July 1918).

45. LITT, *supra* note 7, at 173.

46. GAIL DAMEROW, *BACKYARD HOMESTEAD GUIDE TO RAISING CHICKENS* (2011).

47. LITT, *supra* note 7, at 16. William Neuman, *Keeping Their Eggs in Their Backyard Nests*, N.Y. TIMES, Aug. 3, 2009, <http://www.nytimes.com/2009/08/04/business/04chickens.html?pagewanted=all> (acknowledging that backyard chicken enthusiasts do not typically save money by not buying eggs).

48. Klaus Horsted et al., *Effect of Grass Clover Forage and Whole-Wheat Feeding on the Sensory Quality of Eggs*, 90:2 J. SCI. FOOD & AGRIC. 343-48 (Jan. 2010).

49. LITT, *supra* note 7, at 17.

50. *Id.*

51. Horsted et al., *supra* note 48.

52. LITT, *supra* note 7, at 179 (citing Cheryl Long & Tabitha Alterman, *Meet Real Free-Range Eggs*, MOTHER EARTH NEWS, Oct./Nov. 2007, <http://www.motherearthnews.com/Real-Food/2007-10-01/Tests-Reveal-Healthier-Eggs.aspx>; Artemis P. Simopoulos & Norman Salem Jr., *Egg Yolk: A Source of Long-Chain Polyunsaturated Fats in Infant Feeding*, 4 AM. J. CLINICAL NUTRITION 411 (1992) (finding a significant increase in nutrition and significant decrease in harmful fats in small-flock free-range eggs).

53. WILLIAM J. STADELMAN & OWEN J. COTTERILL, *EGG SCIENCE & TECHNOLOGY* 185 (1995).

54. *Id.*

55. LITT, *supra* note 7, at 17.

56. *Id.*; Simopoulos & Salem Jr., *supra* note 52.

57. *Id.*

58. LITT, *supra* note 7, at 179.

59. *Id.* at 4-10.

60. See, e.g., Carolyn Bush, *A Chicken Christmas Tale*, BACKYARD POULTRY MAG., Jan. 2010, http://www.backyardpoultrymag.com/issues/5/5-6/a_chicken_christmas_tale.html (describing her pet chickens and mourning one of their deaths); CHICKENVIDEO.COM, <http://www.chickenvideo.com/outlawchickens.html> (last visited July 2, 2012) (collecting stories from people who keep chickens as pets despite their illegality).

61. *Funny, Funny Chicken Antics*, BACKYARDCHICKENS.COM, <http://www.backyardchickens.com/forum/viewtopic.php?id=380593> (last visited July 2, 2012).

62. *What Breeds Are Best for Children to Show in 4-H?*, BACKYARDCHICKENS.COM, <http://www.backyardchickens.com/forum/viewtopic.php?pid=5726813> (last visited July 2, 2012).

63. LITT, *supra* note 7, at 4.

64. See *infra* Part IV.C.1.

\$20.⁶⁵ Poultry waste has long been used as a fertilizer—it provides necessary nutrients for plants and works well as an addition to compost.⁶⁶ Large amounts of uncomposted chicken manure applied directly to a garden will overwhelm or burn the plants, because its nitrogen content is too high.⁶⁷ But, the amount of manure that a backyard flock of four to six hens would produce is not enough to harm the plants and can be beneficial to a home garden, even without first being composted.⁶⁸

A small flock of chickens, moreover, does not actually produce much manure. A fully grown four-pound laying hen produces approximately a quarter-pound of manure per day.⁶⁹ In comparison, an average dog produces three-quarters of a pound per day, or three times as much waste as one hen.⁷⁰ As cities have been able to deal with waste from other pets like dogs and cats with proper regulation, even though there is no market for their waste, cities should be confident that the city and chicken owners can properly manage chicken waste.

D. Chickens Eat Insects

Chickens, like other birds, eat insects such as ants, spiders, ticks, fleas, slugs, roaches, and beetles.⁷¹ Chickens also occasionally eat worms, small snakes, and small mice.⁷² Insects provide protein that the chickens need to lay nutritionally dense eggs.⁷³ Small flocks of chickens are recommended as a way to eliminate weeds, although a chicken does not discriminate between weeds and plants and, if left in a garden for too long, will eat the garden plants as well.⁷⁴ But, because chickens like to eat insects and other garden pests, allowing the chicken occasional and limited access

to a garden can eliminate a need to use chemicals or other insecticides and prevent insect infestations.⁷⁵

E. Chickens Help Build Community

Several studies have found that urban agriculture can increase social connections and civic engagement in the community.⁷⁶ Agricultural projects can provide a centerpiece around which communities can organize and, by doing so, become more resilient.⁷⁷ Building a sense of community is often especially valuable for more marginalized groups—like recent immigrants and impoverished inner-city areas.⁷⁸

Keeping chickens easily fits into the community-building benefit of urban agriculture. Because chickens lay more eggs in the spring and summer, an owner often has more eggs than he can use: neighbors, thus, become the beneficiaries of the excess eggs. Because chickens are still seen as a novelty in many communities, many chicken owners help to educate their neighbors and their communities by inviting them over for a visit and letting neighbors see the coops and interact with the chickens.⁷⁹ Finally, like the example of Jennifer above, keeping chickens can become a community endeavor; many people have formed chicken cooperatives where neighbors band together to share in the work of tending the hens and also share in the eggs.⁸⁰

II. Cities' Concerns With Backyard Hens

Never mind what you think.

The old man did not rush

Recklessly into the coop at the last minute.

The chickens hardly stirred

For the easy way he sang to them.

Bruce Weigl, *Killing Chickens*, 1999.

65. Black Gold Compost Chicken Fertilizer sold for \$13.43 for 20 pounds on Amazon. AMAZON.COM, <http://www.amazon.com/Black-Compost-Chick-Manure-60217/dp/B00292YAQC> (last visited July 2, 2012). Chickety-doo-doo sold for \$47.75 for 40 pounds on EBay. EBAY, <http://www.ebay.com/itm/ws/eBayISAPI.dll?ViewItem&item=260889160166&chlp=false> (last visited Jan. 6, 2012).

66. Adam A. Hady & Ron Kean, *Poultry for Small Farms and Backyard*, UW COOPERATIVE EXTENSION, <http://learning.store.uwex.edu/assets/pdfs/A3908-03>.

67. LITT, *supra* note 7, at 9.

68. *Id.*

69. *Ohio Livestock Manure Management Guide*, OHIO STATE UNIVERSITY EXTENSION, Bulletin 604-06, p. 3, T. 1 2006, <http://ohioline.osu.edu/b604/> (providing that a four-pound laying hen produces 0.26 of a pound per day of manure).

70. Leah Nemiroff & Judith Patterson, *Design, Testing and Implementation of a Large-Scale Urban Dog Waste Composting Program*, 15:4 COMPOST SCI. & UTILIZATION 237-42 (2007) (“On average, a dog produces 0.34 [kilograms (kg)] (0.75 lbs) of feces per day.”).

71. Simopoulos & Salem Jr., *supra* note 52, at 412. Schneider, *supra* note 8, at 15.

72. *Id.*

73. *Id.*

74. John P. Bishop, *Chickens: Improving Small-Scale Production*, Echo technical note, ECHO.NET, 1995, http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CFMQFjAA&url=http%3A%2F%2Fwww.echocommunity.org%2Fresource%2Fcollection%2FE66CDFDB-0A0D-4DDE-8AB1-74D9D8C3EDD4%2FChickens.pdf&ei=39zxT41Sh7etAdSUmY8C&usq=AFQjCNHh0_bkG_5sVmlovgngOXD53A&sig2=_cgyLnv7jDV7hGIVZty89g (last visited July 2, 2012).

75. TARA LAYMAN WILLIAMS, *THE COMPLETE GUIDE TO RAISING CHICKENS: EVERYTHING YOU NEED TO KNOW* 95 (2011).

76. Hodgson, *supra* note 1, at 3 (citing LORRAINE JOHNSON, *CITY FARMER: ADVENTURES IN URBAN FOOD GROWING* (2010), and PATRICIA HYNES, *A PATCH OF EDEN: AMERICA'S INNER CITY GARDENERS* (1996)).

77. Hodgson, *supra* note 1, at 94.

78. *Id.* See also IOWA CONCENTRATED ANIMAL FEEDING OPERATIONS AIR QUALITY STUDY, *Final Report*, IOWA STATE UNIVERSITY AND THE UNIVERSITY OF IOWA STUDY GROUP 148, Feb. 2002, http://www.ehsrc.uiowa.edu/cafo_air_quality_study.html (finding that in rural areas communities where farms were smaller, were owner-operated, and used the labor of the operating family, the community “had a richer civic and social fabric: residents of all social classes were more involved in community affairs, more community organizations served people of both middle and working class background, and there were more local businesses and more retail activity”).

79. LITT, *supra* note 7, at 12-13. See, e.g., Jeff S. Sharp & Molly B. Smith, *Social Capital and Farming at the Rural-Urban Interface: The Importance of Non-farmer and Farmer Relations*, 76 AGRIC. SYS. 913-27 (2003) (finding that communities benefit and agricultural uses have more support when farmers develop social relationships with non-farmers).

80. E.g., Abby Quillen, *How to Share a Chicken or Two*, SHAREABLE: CITIES (Nov. 22, 2009), <http://shareable.net/blog/how-to-share-a-chicken> (last visited Feb. 12, 2012).

A. Noise

The most frequently expressed concern is that hens will be noisy. This may come from associating roosters with hens. Roosters are noisy.⁸¹ Hens are not particularly noisy. While they will cluck, the clucking is neither loud nor frequent.⁸² The clucking of hens is commonly compared to human conversation—both register around 65 decibels.⁸³ By contrast, the barking of a single dog can reach levels well over 100 decibels.⁸⁴

It should also be noted that chickens have a homing instinct to roost and sleep at night. A hen will return to her coop at night and generally fall asleep before or at sundown.⁸⁵ Thus, there should be little concern with clucking hens disturbing a neighborhood at night.

B. Odor

Many people are concerned that chicken droppings will cause odors that reach neighbors and perhaps even affect the neighborhood. These concerns may stem from publicized reports of odors from large poultry operations.⁸⁶ While it is no doubt true that the odors coming from these intensive commercial-scale chicken farms is overwhelming and harmful,⁸⁷ these operations often have hundreds of thousands of chickens in very small spaces.⁸⁸

Most of the odor that people may associate with poultry is actually ammonia. Ammonia, however, is a product of a poorly ventilated and moist coop.⁸⁹ Coop designs for backyard hens should take this into account and allow for proper ventilation. And, if coops are regularly cleaned, there should be little to no odor associated with the hens.⁹⁰

81. *Management of Noise on Poultry Farms*, Poultry Fact Sheet, BRITISH COLUMBIA, MINISTRY OF AGRICULTURE AND FOOD (Aug. 1999), <http://www.agf.gov.bc.ca/poultry/publications/documents/noise.pdf>.

82. *Id.*

83. *Protecting Against Noise*, NATIONAL AG SAFETY DATABASE, THE OHIO STATE UNIVERSITY EXTENSION, <http://nasdonline.org/document/1744/d001721/protecting-against-noise.html> (last visited Feb. 22, 2012) (explaining that a chicken coop and human conversation are both about 65 decibels).

84. Crista L. Coppola et al., *Noise in the Animal Shelter Environment: Building Design and the Effects of Daily Noise Exposure*, 9(1) J. APPLIED ANIMAL WELFARE SCI. 1-7 (2006).

85. Williams, *supra* note 75, at 92. Robert Plamondon, *Range Poultry Housing*, ATTRA 11 (June 2003).

86. E.g., William Neuman, *Clean Living in the Henhouse*, N.Y. TIMES, Oct. 6, 2010, <http://www.nytimes.com/2010/10/07/business/07eggfarm.html?scp=2&sq=large%20chicken%20farms%20and%20odor&st=cse>.

87. Doug Gurian Sherman, *CAFOS Uncovered, The Untold Costs of Animal Feeding Operations*, UNION OF CONCERNED SCIENTISTS, Apr. 2008, http://www.ucsusa.org/assets/documents/food_and_agriculture/cafos-uncovered.pdf; *Iowa Concentrated Animal Feeding Operations and Air Quality Study*, Final Report, IOWA STATE UNIVERSITY AND THE UNIVERSITY OF IOWA STUDY GROUP (Feb. 2002) (finding extensive literature documenting acute and chronic respiratory diseases and dysfunction among poultry workers exposed to complex mixtures of particulates, gases, and vapors within CAFO units).

88. *Id.*

89. *Id.*

90. GAIL DAMEROW, *THE BACKYARD HOMESTEAD GUIDE TO RAISING FARM ANIMALS* 35 (2011) (“A chicken coop that smells like manure or has the pungent odor of ammonia is mismanaged. These problems are easily avoided by keeping litter dry, adding fresh litter as needed to absorb droppings, and periodically removing the old litter and replacing it with a fresh batch.”).

C. Diseases

Two diseases are frequently raised in discussions of backyard hens: avian flu and salmonella. For different reasons, neither justifies a ban on backyard hens.⁹¹

First, with the attention that avian flu has received in the past few years, some have expressed a concern that allowing backyard chickens could provide a transition point for an avian virus to infect humans.⁹² While no one can predict whether this virus will cross over to cause widespread illness or how it might do so, it is important to note that avian flu, right now, would have to mutate for it to become an illness that can spread from person to person.⁹³ Even the H5N1 strain of the virus, a highly pathogenic form that garnered news in the early 2000s because it infected humans, is very difficult for humans to catch and has not been shown to spread from person to person.⁹⁴ And that strain of the virus does not exist in the United States—it has not been found in birds, wild or domestic, in North or South America.⁹⁵

Encouraging a return to more small-scale agriculture, moreover, may prevent such a mutation from occurring. Many world and national governmental health organizations that are concerned with the possible mutation of avian flu link the increased risks of disease to the intensification of the processes for raising animals for food—in other words, large-scale factory farms.⁹⁶ For instance, the Centers for Disease Control and Prevention (CDC) blamed “the intensification of food-animal production” in part on the increasing threat.⁹⁷ The Council for Agricultural Science and Technology, an industry-funded group, created a task force including experts from the World Health Organization, the World Organization for Animal Health, and the USDA, and issued a report in 2006 finding that modern intensive animal farming techniques increase the risk of new virulent diseases.⁹⁸ The report stated “a major impact of modern intensive production systems is that they allow the rapid selection and amplification of pathogens that arise from a virulent ancestor (frequently by

91. Sue L. Pollock et al., *Raising Chickens in City Backyards: The Public Health Role*, J. COMMUNITY HEALTH, DOI: 10.1007/s10900-011-9504-1 (2011) (finding that public health concerns about infectious diseases and other nuisances that might be caused by keeping hens in an urban setting cannot be supported by literature specific to the urban agriculture context and recommending that public health practitioners approach this issue in a manner analogous to concerns over keeping domestic pets).

92. E.g., Orbach & Sjoberg, *supra* note 23, at 29.

93. *Avian Influenza*, USDA, <http://www.ars.usda.gov/News/docs.htm?docid=11244> (last visited July 2, 2012).

94. *Avian Influenza, Questions & Answers*, FOOD AND AGRIC. ORG. OF THE UNITED NATIONS, <http://www.fao.org/avianflu/en/qanda.html> (last visited July 26, 2012).

95. *Id.*

96. Michael Greger, *Bird Flu, A Virus of Our Own Hatching*, BIRDFLUBOOK.COM (2006-2008), <http://birdflubook.com/a.php?id=50> (last visited Feb. 21, 2012) (finding that the Food and Agriculture Organization of the United Nations, the World Health Organization, and the World Organization for Animal Health attribute risk factors for the emergence of new diseases from animals to the increasing demand for animal protein).

97. *Id.*

98. *Id.* (citing *Global Risks of Infectious Animal Diseases*, Council for Agric. Sci. and Tech., Issue Paper No. 28, 2005).

subtle mutation), thus, there is increasing risk for disease entrance and/or dissemination.”⁹⁹ The report concludes by stating, “because of the Livestock Revolution, global risks of disease are increasing.”¹⁰⁰ It is for this reason that many believe that the movement toward backyard chickens and diverse small-scale poultry farming, rather than being a problem, is a solution to concerns about mutating avian viruses.¹⁰¹

Another theory for how an avian flu mutation may occur is that it will first occur in wild birds that could pass it on to domesticated birds.¹⁰² In this case, backyard hens could provide a transition point. For this reason the USDA, rather than advocating a ban on backyard hens, has instead offered some simple-to-follow precautionary procedures for small flock owners: the USDA counsels backyard bird enthusiasts to separate domesticated birds from other birds by enclosing coops and runs, to clean the coops regularly, and to wash their hands before and after touching the birds.¹⁰³

Another illness that causes concern because it can be transferred to humans is salmonella.¹⁰⁴ Chickens, like other common household pets—including dogs, turtles, and caged birds—can carry salmonella.¹⁰⁵ For this reason, the CDC counsels that people should wash their hands after touching poultry, should supervise young children around poultry, and make sure that young children wash their hands after touching chicks or other live poultry.¹⁰⁶

Chickens, like other pets, can get sick and carry disease. But public health scholars have found that there is no evidence that the incidence of disease in small flocks of backyard hens merits banning hens in the city and counsel city officials to regulate backyard hens like they would any other pet.¹⁰⁷

D. Property Values

Another common concern is that keeping backyard chickens will reduce surrounding property values.¹⁰⁸ Several studies, however, have found that agricultural uses within the city actually increase property values.¹⁰⁹ Community gardens increase neighboring property values by as much as 9.4% when the garden is first implemented.¹¹⁰ The property value continues to increase as the gardens become more integrated into the neighborhood.¹¹¹ The poorest neighborhoods, moreover, showed the greatest increase in property values.¹¹² Studies have also found that rent increased and the rates of home ownership increased in areas surrounding a newly opened community garden.¹¹³

Studies concerning pets, moreover, find that apartment owners can charge higher rent for concessions such as allowing pets.¹¹⁴ Thus, accommodating pets has been shown to raise property values.

As of yet, no studies have been done on how backyard chickens in particular affect property values, but given that communities express little concern that other pets, such as dogs or cats, reduce property values, and given research showing that pets and urban agricultural practices can increase them, there is little reason to believe that allowing backyard chickens will negatively affect them.¹¹⁵

E. Slaughter

Some people are concerned that chicken owners will kill chickens in the backyard.¹¹⁶ People are concerned that it may be harmful to children in the neighborhood to watch a chicken being killed and prepared for a meal.¹¹⁷ Others are concerned that backyard slaughtering may be unsanitary.¹¹⁸

First, many who raise chickens keep the hens only for the eggs.¹¹⁹ Most egg-laying breeds do not make for tasty meat.¹²⁰ Many people become attached to their chickens, as they would a cat or a dog, and treat a death

99. *Id.*

100. *Id.*

101. Ben Block, *U.S. City Dwellers Flock to Raising Chickens*, WORLDWATCH INSTITUTE, <http://www.worldwatch.org/node/5900> (last visited Feb. 22, 2012); *Fowl Play, the Poultry Industry's Central Role in the Bird Flu Crisis*, GRAIN, <http://www.grain.org/article/entries/22-fowl-play-the-poultry-industry-s-central-role-in-the-bird-flu-crisis> (last visited Feb. 22, 2012); *Putting Meat on the Table: Industrial Farm Animal Production in America*, A REPORT OF THE PEW COMMISSION ON INDUSTRIAL FARM ANIMAL PRODUCTION (2006), <http://www.ncifap.org/> (last visited Feb. 21, 2012).

102. Rachel Dennis, *CAFOs and Public Health: Risks Associated With Welfare Friendly Farming*, Purdue Univ. Extension, Aug. 2007, https://mdc.itap.purdue.edu/item.asp?itemID=18335#.T_Hjd3CZOOU.

103. *Backyard Biosecurity, 6 Ways to Prevent Poultry Disease*, USDA, May 2004, http://www.aphis.usda.gov/animal_health/birdbiosecurity/biosecurity/basicspoultry.htm (last visited Feb. 21, 2012).

104. *Keeping Live Poultry*, CDC, <http://www.cdc.gov/features/SalmonellaPoultry/> (last visited Feb. 21, 2012).

105. See Shaohua Zhao, *Characterization of Salmonella Enterica Serotype Newport Isolated From Humans and Food Animals*, 41 J. CLINICAL MICROBIOLOGY, No. 12, 5367 (2003) (stating that dogs and pigeons, as well as chickens, can carry salmonella); J. Hidalgo-Villa, *Salmonella in Free Living Terrestrial and Aquatic Turtles*, 119:2-4 VETERINARY MICROBIOLOGY 311-15 (Jan. 2007).

106. *Keeping Live Poultry*, CDC, <http://www.cdc.gov/features/SalmonellaPoultry/> (last visited Feb. 21, 2012).

107. Sue L. Pollock et al., *Raising Chickens in City Backyards: The Public Health Role*, J. COMMUNITY HEALTH, DOI: 10.1007/s10900-011-9504-1 (2011).

108. Salkin, *supra* note 9, at 1.

109. Hodgson, *supra* note 1, at 21.

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. G. Stacy Sirmans & C.F. Sirmans, *Rental Concessions and Property Values*, 5:1 J. REAL ESTATE RES. 141-51(1990); C.A. Smith, *Apartment Rents—Is There a “Complex” Effect*, 66:3 APPRAISAL J. (1998) (finding that average apartment unit commands \$50 more rent per unit by allowing pets).

115. Michael Broadway, *Growing Urban Agriculture in North American Cities: The Example of Milwaukee*, 52:3-4 FOCUS ON GEOGRAPHY 23-30 (Dec. 2009).

116. NEIGHBORS OPPOSED TO BACKYARD SLAUGHTER, <http://noslaughter.org> (last visited Feb. 22, 2012).

117. *Id.*

118. *Id.*

119. LITT, *supra* note 7, at 3 (stating that “the vast majority of backyard chicken keepers regard their chickens as pets and find it unsettling—if not outright upsetting—to consider eating them”).

120. JAY ROSSIER, *LIVING WITH CHICKENS: EVERYTHING YOU NEED TO KNOW TO RAISE YOUR OWN BACKYARD FLOCK 4* (2002).

similarly.¹²¹ Veterinarians, moreover, have avenues for disposing of dead animals that are generally accepted in most communities.¹²²

But, if a person did want to use her chickens for meat, there are other methods for butchering a chicken rather than doing so in the backyard. As part of the local food movement, small-scale butchers have made a comeback in the last few years, and many are particularly interested in locally raised animals.¹²³ Thus, legalizing backyard chickens does not necessarily mean that a city must also legalize backyard chicken slaughtering.¹²⁴

F. Greenhouse Gases

Although worries that chickens will increase greenhouse gases appears to be a bit over the top, at least one city raised this as a concern when contemplating allowing chickens. In Montgomery, Ohio, at least one city council member was fearful that allowing chickens to be raised in the city might contribute to global warming.¹²⁵

While chickens do produce methane as a natural byproduct of digestion just like any other animal (including humans), the amount they produce is negligible in comparison to other livestock. Methane production is a concern largely confined to ruminant animals, such as cows, goats, and buffaloes.¹²⁶ These animals produce a large amount of methane every year because of the way in which they digest carbohydrates.¹²⁷ Cows produce an average of 55 kilograms (kg) per year per cow.¹²⁸ A goat will produce 5 kg per year, a pig 1.5, and a human 0.05.¹²⁹ Chickens, because they are nonruminant animals, and because they are much smaller than humans, produce less than 0.05 kg per year per chicken.¹³⁰

Finally, there is no reason to believe that an urban chicken would cause a net increase in the production of methane. A person who gets her eggs from her pet hen will likely be buying fewer eggs from the supermarket. Thus, there is unlikely to be a net increase in egg consumption, so there is unlikely to be a net increase in chickens. Thus, any

increase in methane production caused by urban chickens is not only negligible, but also likely offset by a decrease in rural chickens.¹³¹

G. Winter Weather

Northern cities may be concerned that their climate is not suitable for chickens. Chickens, however, were bred to thrive in certain climates. There are breeds of chicken that are more suited to warm or even hot climates. And, there are chickens that were bred specifically to thrive in colder weather, such as Rhode Island Reds or Plymouth Rocks.¹³²

While even cold-hardy breeds can be susceptible to frostbite in extreme winter weather, a sturdy coop with some extra insulation and perhaps a hot water bottle on frigid nights can protect the birds from harm.¹³³

H. Running Wild

Of all of the chicken ordinances that this Article will later discuss, it appears that one of the most popular regulations is to prohibit chickens running wild in the streets.¹³⁴ Chickens, like dogs and cats, sometimes escape their enclosures. While it would be irresponsible to presume that no chicken will ever escape its enclosure, city officials can rest assured that chicken keepers do not want to see their hens escape any more than city officials want to see hens running loose on the streets.

For this reason, and also to protect against predators, cities should ensure that chickens are kept in an enclosure at all times.

III. Some Necessary Background on Hens for Developing Urban Hen-Keeping Ordinances

His comb was finest coral red and tall,
And battlemented like a castle wall.
His bill was black and like the jet it glowed,
His legs and toes like azure when he strode.
His nails were whiter than the lilies bloom,
Like burnished gold the color of his plume.

GEOFFREY CHAUCER, *THE CANTERBURY TALES*,
*THE NUN'S PRIEST'S TALE*¹³⁵

121. Jose Linares, *Urban Chickens*, AM. VETERINARY MED. ASS'N WELFARE FOCUS, Apr. 2011, http://www.avma.org/issues/animal_welfare/AWFocus/110404/urban_chickens.asp.

122. *Id.*

123. Elizabeth Keyser, *The Butcher's Back*, CONN. MAG., Apr. 2011, <http://www.connecticutmag.com/Connecticut-Magazine/April-2011/The-Butcher-039s-Back/>.

124. *But see* Simon v. Cleveland Heights, 188 N.E. 308, 310 (Ohio Ct. App. 1933) (holding that a ban on poultry slaughtering applied to a small business butcher violated the Ohio Constitution because it prohibited the conduct of a lawful business).

125. Valerie Taylor, CHICKENS FOR MONTGOMERY (June 2009) <http://www.scribd.com/doc/16509728/Changing-Your-Citys-Chicken-Laws> (last visited July 2, 2012) (responding to city's concerns about increase in greenhouse gases).

126. *See Methane, Sources, and Emissions*, U.S. EPA, <http://www.epa.gov/methane/sources.html> (last visited July 2, 2012).

127. *Id.*

128. Paul J. Crutzen et al., *Methane Production by Domestic Animals, Wild Ruminants, Other Herbivorous Fauna and Humans*, 38B TELLUS B. 271-74 (July-Sept. 1986).

129. *Id.*

130. *Id.*

131. Letter from Brian Woodruff, Environmental Planner Department of Natural Resources, to Cameron Gloss (June 12, 2008), <http://www.scribd.com/doc/16509728/Changing-Your-Citys-Chicken-Laws>.

132. LITT, *supra* note 7, at 119.

133. *Id.*

134. *See infra* Part IV.C.5.a.

135. Ronald Ecker trans., Hodge & Braddock Publishers 1993.

A. Hens Are Social Animals

Chickens are social animals and do better if they are kept in flocks.¹³⁶ Chickens can recognize one another and can remember up to 50 or 60 other chickens.¹³⁷ Because of this, large flocks of chickens, like those found in most intensive farming operations, are socially unstable and can cause aggressive behavior.¹³⁸ In the wild, most flocks form sub-groups of between four to six chickens.¹³⁹

Chickens show affiliative behavior, eating together, preening together, gathering together in small groups if they are given space to do so, and sleeping at the same time.¹⁴⁰ Chickens also learn behaviors from one another—for instance, chickens that watch another trained chicken peck a key to obtain food will learn this task more quickly than other chickens that are not exposed to the behavior.¹⁴¹

Because chickens are flock animals, a chicken left alone generally will not thrive.¹⁴² An isolated hen will often exhibit disturbed and self-destructive behaviors, like chasing its own tail and exhibiting excessive aggression.¹⁴³ Because eating is social behavior, there are some reports that single chickens stop eating or eat less.¹⁴⁴ While scientific studies have yet to prove that a hen feels loneliness,¹⁴⁵ backyard hen enthusiasts are well aware that an isolated hen will often appear depressed or ill.¹⁴⁶

B. The Pecking Order

We often use the term pecking order to describe a hierarchy in a community. The term comes from the tendency for chickens to peck at one another and display aggressive behavior until a hierarchy is established.¹⁴⁷ Once the hier-

archy is established, the aggressive behavior will lessen or even abate until new birds are added to the flock or until a hen mounts a challenge to someone above her in the pecking order.¹⁴⁸

Studies have shown, however, that incidence of pecking is greatly reduced when hens are kept in lower densities.¹⁴⁹ (Feather pecking is often a problem in large-scale chicken farms.)¹⁵⁰ When densities were approximately six or fewer birds per 10 square feet, pecking behaviors abated or were significantly reduced.¹⁵¹

Because a new introduction into the flock will upset the pecking order, some farmers advocate for introducing at least two chicks at a time.¹⁵² This will help spread out the abuse that could be laid on a solitary young hen. It will also more fully upset the pecking order, so that the birds are forced to find a new hierarchy that will include the new birds instead of leaving one isolated hen at the bottom of the flock.¹⁵³

For these reasons, chicken owners should always be allowed to keep, at a minimum, four chickens. This ensures that city regulations do not stand in the way of good flock management: if any hens are lost through injury, illness, or old age, the chicken owner can ensure that the flock never goes below two hens before seeking to add new hens. This will also allow the owner to introduce new hens into the flock two at a time.

C. Chickens and Predators

Backyard hens in a metropolitan area may, in some ways, be better protected from predators than their rural counterparts, because there are fewer predators in the city. The more prevalent chicken predators in the United States—foxes, coyotes, and bobcats—are found less often in the city than they are in more rural areas.¹⁵⁴ Other predators, however, such as hawks and raccoons, are frequently found in the city.¹⁵⁵

These predators are one reason why chickens must have sturdy coops that are designed to protect hens from assault. Chickens have an instinct to return to their coop each night.¹⁵⁶ And most predators are more active at night when

136. MICHAEL C. APPLEBY ET AL., *POULTRY BEHAVIOR AND WELFARE* 35, 77-82 (2004); HEINRICH, *supra* note 39, at 11 (2007).

137. Nicolas Lampkin, *Organic Poultry Production*, Welsh Inst. of Rural Studies 20 (Mar. 1997), available at http://orgprints.org/9975/1/Organic_Poultry_Production.pdf.

138. APPLEBY ET AL., *supra* note 136 (noting that chickens have increased aggression and increased growth of adrenal glands when they come in contact with other chickens they do not know and also noting that chickens are stressed by being kept in large flocks because it is unlikely that birds in large flocks can form a hierarchy: they are instead “in a constant state of trying to establish a hierarchy but never achieving it”).

139. *Id.* at 71; Lampkin, *supra* note 137, at 20.

140. APPLEBY ET AL., *supra* note 136, at 77-79.

141. *Id.* at 79.

142. IAN J.H. DUNCAN & PENNY HAWKINS, *THE WELFARE OF DOMESTIC FOWL & OTHER CAPTIVE BIRDS* 68-69 (2010).

143. D.G.M. WOOD-GUSH, *THE BEHAVIOR OF THE DOMESTIC FOWL* 124 (1971).

144. D.W. Rajecki et al., *Social Factors in the Facilitation of Feeding in Chickens: Effects of Imitation, Arousal, or Disinhibition?*, 32 J. PERSONALITY & SOC. PSYCHOL. 510-18 (Sept. 1975). Martine Adret-Hausberger & Robin B. Cumming, *Social Experience and Selection of Diet in Domestic Chickens*, 7 BIRD BEHAVIOR 37-43 (1987) (finding that isolated young broilers had lower growth rates than those placed with other birds).

145. APPLEBY ET AL., *supra* note 136, at 142 (suggesting that poultry may suffer from loneliness and boredom and that “[c]onsidering the barrenness of many husbandry systems, boredom would seem to be a good candidate for further studies”).

146. See, e.g., *Do Chickens Get Lonely*, BACKYARD POULTRY FORUM (Friday, Feb. 13, 2009), <http://forum.backyardpoultry.com/viewtopic.php?f=5&t=7970419&start=0> (last visited Mar. 4, 2012).

147. Alphaeus M. Guhl, *Social Behavior of the Domestic Fowl*, 71 TRANSACTIONS KAN. ACAD. SCI. (1968). Gladwyn K. Noble, *The Role of Dominance in the*

Social Life of Birds, 56 THE AUK 263 (July 1939).

148. LITT, *supra* note 7, at 122. Alphaeus M. Guhl et al., *Mating Behavior and the Social Hierarchy in Small Flocks of White Leghorns*, 18 PHYSIOLOGICAL ZOOLOGY 365-68 (Oct. 1945).

149. B. Huber-Eicher & L. Audigé, *Analysis of Risk Factors for the Occurrence of Feather Pecking Among Laying Hen Growers*, 40 BRITISH POULTRY SCI. 599-604 (1999) (demonstrating through a study of commercial hen farms in Switzerland that hens were far less likely to feather peck if they were kept in low-density environments and if they had access to elevated perches).

150. *Id.*

151. *Id.*

152. LITT, *supra* note 7, at 122-23.

153. *Id.*

154. See, e.g., Stanley D. Gehrt et al., *Home Range and Landscape Use of Coyotes in a Metropolitan Landscape: Conflict or Coexistence*, J. MAMMALOGY, 1053-55 (2009); Seth P.D. Riley, *Spatial Ecology of Bobcats and Gray Foxes in Urban and Rural Zones of a National Park*, 70(5) J. WILDLIFE MGMT. 1425-35 (2006).

155. WILLIAMS, *supra* note 75, at 88-89.

156. LITT, *supra* note 7, at 71.

the chickens are sleeping in their coops.¹⁵⁷ While there is no guarantee that predators will not find a way to prey on chickens, ensuring that coops are sturdily built with the intention to keep out predators can help ameliorate concerns with predators.¹⁵⁸

D. Roosters Like to Crow

Even city-dwellers who have never met a rooster know that roosters crow. But the popular belief, passed on in children's cartoons, that roosters crow in the morning like an alarm clock to welcome the rising sun is largely a myth. Roosters may crow in the morning, but they also crow in the afternoon or evening or, basically, whenever they feel like it.¹⁵⁹ While the frequency of crowing depends on the breed and the individual rooster, many roosters crow a lot.¹⁶⁰ In fact, because domestic roosters crow so much more frequently than their wild kin, one theory postulates that they were bred over many centuries for loud, long, and frequent crowing because such crowing played an important role in Zoroastrian religious ceremonies.¹⁶¹

Because roosters are noisy and frequently so, cities that have more dense urban environments should consider banning them—at least on smaller lot sizes. Some cities have allowed an exception for “decrowed” roosters¹⁶²: some veterinarians used to offer a “decrowing” procedure that would remove the rooster's voicebox. Because of its high mortality rate—over 50%—veterinarians no longer offer this procedure.¹⁶³ Because this procedure is dangerous and cruel to the rooster, cities that have such an exception should consider amending it so as not to encourage mistreatment of roosters.

E. Hens Don't Need Roosters to Lay Eggs

A common myth is that hens will not lay eggs without a rooster around. This is simply not true; hens do not need roosters to lay eggs.¹⁶⁴ In fact, it is likely that every egg you have ever eaten was produced by a hen that never met a rooster.¹⁶⁵

The only reason that hens require roosters is to fertilize the eggs, so that the eggs will hatch chicks.¹⁶⁶ Because this can be an easier way to propagate a flock, rather than sending away for mail-order chicks, some chicken owners would like to keep a rooster around or at least allow it to visit. To address this concern, at least one city that bans roosters allows “conjugal visits.” Hopewell Town-

ship, New Jersey, allows roosters that are certified disease-free to visit a hen flock for 10 days out of every year.¹⁶⁷ Although news about the township's policy garnered national attention for its quirkiness, it may work as a solution for hen owners seeking to add to their flock without having to buy new chicks.¹⁶⁸

IV. The Current State of Municipal Ordinances Governing Backyard Chickens

Such a fine pullet ought to go
All coiffured to a winter show,
And be exhibited, and win.
The answer is this one has been—

And come with all her honors home.
Her golden leg, her coral comb,
Her fluff of plumage, white as chalk,
Her style, were all the fancy's talk

Robert Frost, *A Blue Ribbon at Amesbury* (1916).

A. Introduction

To determine the current state of chicken legislation in the United States, the laws of the top 100 cities by population, according to the 2000 census are surveyed in this Article.¹⁶⁹ Currently, 94% of these cities allow for chickens in some manner.¹⁷⁰ While many cities impose various restrictions

167. *NJ Town Limits Conjugal Visits Between Roosters & Hens*, HUFFINGTON POST, Apr. 27, 2011, http://www.huffingtonpost.com/2011/04/28/nj-limits-chicken-mating_n_854404.html.

168. Because chick hatcheries have been a source of salmonella, some backyard hen keepers may prefer to propagate their own flock. See, e.g., Serena Gordon, *They're Cute, But Baby Chicks Can Harbor Salmonella*, U.S. NEWS & WORLD REPORT, May 30, 2012, <http://health.usnews.com/health-news/news/articles/2012/05/30/theyre-cute-but-baby-chicks-can-harbor-salmonella>.

169. *Cities With 100,000 or More Population in 2000 Ranked by Population, 2000 in Rank Order*, U.S. CENSUS, <http://www.census.gov/statab/cdb/cit1020.txt> (last visited Jan. 26, 2012).

170. AKRON, OHIO, CODE OF ORDINANCES §92-18 (2011); ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-4-3 (2011); ANAHEIM, CAL., MUN. CODE §18.38.030 (2011); ANCHORAGE, ALASKA, CODE OF ORDINANCES tit. 17, 21 (2011); ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §5.02 (2010); ATLANTA, GA., CODE OF ORDINANCES §18-7 (2011); AUGUSTA-RICHMOND, GA., CODE OF ORDINANCES tit. 4, art. 2 (2007); AURORA, COLO., CODE OF ORDINANCES §14-8 (2011); AUSTIN, TEX., CODE OF ORDINANCES tit. III, ch. 3.1.1 (2011); BALTIMORE, MD., HEALTH CODE §10-312 (2011); BAKERSFIELD, CAL., MUN. CODE §6.08.10 (2011); BATON ROUGE, LA., CODE OF ORDINANCES §14:224 (2011); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007); BOS., MASS., CODE OF ORDINANCES §16-1.8A (2010); BUFFALO, N.Y., CITY CODE §341-11 (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102 (2010); CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011); *id.* ZONING art. 3; CHI., ILL., CODE OF ORDINANCES §17-12-300 (2011); CINCINNATI, OHIO, CODE OF ORDINANCES ch. 701 (2011); CLEVELAND, OHIO, CODIFIED ORDINANCES §205.04, 347.02 (2011); COLORADO SPRINGS, COLO., CITY CODE §6.7.106(D) (2011); COLUMBUS, OHIO, CITY CODE tit. III, ch. 221 (2011); CORPUS CHRISTI, TEX., CODE OF ORDINANCES §§6-153, 6-154 (2011); DALLAS, TEX., CODE OF ORDINANCES §7-1.1 (2011); DENVER, COLO., MUN. CODE §8-91 (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4 (2011); EL PASO, TEX., MUN. CODE §7.24.020 (2011); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22 (2011); FREMONT, CAL., MUN. CODE §3-5803 (2011); FRESNO, CAL., MUN. CODE §§10.201-10.205 (2011); GARLAND, TEX., CODE OF

157. Gehrt, *supra* note 154, at 1053.

158. WILLIAMS, *supra* note 75, at 88-89.

159. HEINRICH, *supra* note 39, at 16.

160. *Id.*

161. APPLEBY ET AL., *supra* note 136, at 36-37.

162. See, e.g., PHOENIX, ARIZ., CITY CODE §8-7(c) (2011).

163. *Small and Backyard Flocks*, KY. U. EXT., <http://www.ca.uky.edu/smallflocks/faq.html#Q31> (last visited Feb. 17, 2012).

164. *Small and Backyard Flocks*, KY. U. EXT., <http://www.ca.uky.edu/smallflocks/faq.html#Q11> (last visited Feb. 17, 2012).

165. *Id.*

166. *Id.*

on keeping chickens through zoning, setbacks, and permitting requirements, only three of the top 100 cities have ordinances that clearly ban the keeping of chickens within city limits: Detroit, Aurora, and Yonkers.¹⁷¹ Three others have unclear ordinances that city officials have interpreted as banning backyard chickens: Grand Rapids, Fort Wayne, and Lubbock.¹⁷² An additional 10 cities, while allowing for chickens, restrict them to either very large lots or only to

agriculturally zoned land.¹⁷³ Because such restrictions will exclude most people within the city from being able to keep hens, if such restrictions are interpreted to be a ban on chickens, then 84% of cities can be considered to allow for chickens.

Within that 84%, there is a wide range of how cities regulate chickens—ranging from no regulation¹⁷⁴ to a great deal of very specific ordinances governing where chickens can be located,¹⁷⁵ how coops must be built,¹⁷⁶ and how often chickens must be fed and coops must be cleaned.¹⁷⁷ Some of these cities also have restrictive setbacks or other regulations that will prohibit some residents from owning chickens—especially residents in multi-family dwellings or who live on small lots in a dense area of the city.¹⁷⁸ As described more fully below, there is no uniformity in the ways that cities regulate chickens; each city's ordinance is unique. Regulations are placed in different areas of a city's codified ordinances. Some regulations are spread throughout the code, making it difficult for a chicken owner to determine how to comply with the city's ordinances. Some cities regulate through zoning, others through animal regulations, and others through the health code.¹⁷⁹ Some cities simply define chickens as pets and provide no regulations at all.¹⁸⁰ Each of these methods of regulation will be explored in more detail below.

Although other surveys of urban chicken laws have been done, no basis was given for the choice of the cities sur-

ORDINANCES §22.14 (2011); GLENDALE, ARIZ., CODE OF ORDINANCES pt. II, art. 5 (2010); GLENDALE, CAL., MUN. CODE §6.04.130 (2011); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011); HIALEAH, FLA., CODE OF ORDINANCES §§10.1, 10.2 (2011); HONOLULU, HAW., REV. ORDINANCES §7-2.5(d) (1990); HOUSTON, TEX., CODE OF ORDINANCES ch. 6, art. II (2010); INDIANAPOLIS, IND., REV. CODE tit. III, ch. 531 (2011); IRVING, TEX., CODE OF ORDINANCES 6-1 (2011) (not regulating chickens at all); JACKSONVILLE, FLA., ORDINANCE CODE tit. XIII, ch. 462, tit. XVII, ch. 656 (2011); JERSEY CITY, N.J., CODE OF ORDINANCES §90-6 (2011); KANSAS CITY, MONT., CODE OF ORDINANCES §14-15 (2011); LAS VEGAS, NEV., MUN. CODE §7.38.050 (2011); LEXINGTON-FAYETTE, KY., CODE OF ORDINANCES §4-10 (2011); LINCOLN, NEB., MUN. CODE §6.04.040 (2011); LONG BEACH, CAL., MUN. CODE §6.20.020 (2011); L.A., CAL., MUN. CODE §§12.01, 12.05-12.09 (2011); LOUISVILLE, KY., METRO CODE ch. 91 (2011); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed); *id.* §7.29; *id.* §9.52; MEMPHIS, TENN., CODE OF ORDINANCES §8-8-1 (2009); MESA, ARIZ., CITY CODE §8-6-21 (2011); MIAMI, FLA., CODE OF ORDINANCES §6-1(b) (2011); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011); MINNEAPOLIS, MINN., CODE OF ORDINANCES §70.10 (2011); MOBILE, ALA., CODE OF ORDINANCES §7-102 (2011); MONTGOMERY, ALA., CODE OF ORDINANCES ch. 4, art. I (2011); *id.* app. C, art. VII; NASHVILLE-DAVIDSON, TENN., MUN. CODE §§8-12-020, 17-16-330 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES pt. II, ch. 18, art. VI (2011); N.Y.C., MUN. CODE §65-23 (1990); NEWARK, N.J., GENERAL ORDINANCES §6:2-30 (2010); NORFOLK, VA., CODE OF ORDINANCES §§4-05, 6.1-7 (2011); OAKLAND, CAL., CODE OF ORDINANCES §6-04-320 (2011); OKLAHOMA CITY, OKLA., MUN. CODE tit. 8, 59 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-266 (2011); PHILA., PA., CODE §10-112 (2011); PHOENIX, ARIZ., CITY CODE §§8-7, 8-10 (2011); PITTSBURGH, PA., CODE OF ORDINANCES §§635.02, 911.04.A.2 (2011); PLANO, TEX., CODE OF ORDINANCES §4-184 (2011); PORTLAND, OR., CITY CODE §13.05.015 (2011); RALEIGH, N.C., CODE OF ORDINANCES §§12-3001, 12-3004 (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011); RIVERSIDE, CAL., CODE OF ORDINANCES §6.04.20 (2011); *id.* tit. 17; ROCHESTER, N.Y., CITY ORDINANCES §§30-12, 30-19 (no date listed); SACRAMENTO, CAL., CITY CODE §9-44-340 (2011); ST. LOUIS, MO., CODE OF ORDINANCES §10.20.015 (2010); ST. PAUL, MINN., §198.02 (2011); ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31 (2011); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109 (2011); SAN DIEGO, CAL., MUN. CODE §42.0709 (2011); SAN FRANCISCO, CAL., HEALTH CODE §37 (2011); SAN JOSE, CAL., CODE OF ORDINANCES tit. 7 (2007); SANTA ANA, CAL., CODE OF ORDINANCES §5.6 (2011); SCOTTSDALE, ARIZ., CODE OF ORDINANCES §4-17 (2011); SEATTLE, WASH., MUN. CODE §23.42.052 (2011); SHREVEPORT, LA., CODE OF ORDINANCES ch. 106 (2011); SPOKANE, WASH., MUN. CODE §17C.310.010 (no date listed); STOCKTON, CAL., MUN. CODE §§6.04.420, 16.80.060 (2011); TACOMA, WASH., MUN. CODE §5.30.010 (2011); TAMPA, FLA., CODE OF ORDINANCES §19.76 (2008); TUCSON, ARIZ., CODE OF ORDINANCES ch. 4, art. VI (2011); TOLEDO, OHIO, MUN. CODE §§505.07(a)(4), 1705.07 (2011); TULSA, OKLA., CODE OF ORDINANCES §200(d)(e) (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.1 (no date listed); WICHITA, KAN., CODE OF ORDINANCES §6.04.157 (2011).

171. AURORA, COLO., CODE OF ORDINANCES §14-8 (2011); DETROIT, MICH., CITY CODE §6-1-3 (2010); YONKERS, N.Y.C., MUN. CODE §65-23 (1990).

172. FORT WAYNE, IND., CODE OF ORDINANCES §157.104 (2011) (banning livestock within the city, even though chickens are not listed in the definition of livestock, the animal control department says that the city interprets chicken as livestock); GRAND RAPIDS, MICH., CODE OF ORDINANCES §8.582 (2010) (“No farm animal shall be kept or allowed to be kept within any dwelling or dwelling unit or within one hundred (100) feet of any dwelling, dwelling unit, well, spring, stream, drainage ditch or drain.”); LUBBOCK, TEX., CITY ORDINANCE §4.07.001 (2011) (permitting chickens “in those areas appropriately permitted by the zoning ordinances of the city” when zoning ordinances are silent).

173. BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007) (restricting chickens to land zoned for agricultural use); CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011); *id.* ZONING art. 3 (restricting to low-density zones and restricting to properties of one acre or more); HIALEAH, FLA., CODE OF ORDINANCES §§10.1, 10.2 (2011) (restricting chickens to land zoned for agricultural use); JACKSONVILLE, FLA., ORDINANCE CODE tit. XIII, ch. 462, tit. XVII, ch. 656 (2011) (restricting chickens to agricultural or low-density residential zones); MONTGOMERY, ALA., CODE OF ORDINANCES ch. 4 art. I (2011); *id.* app. C, art. VII (restricting chickens to agricultural or low-density residential zones); NORFOLK, VA., CODE OF ORDINANCES, app. A, art. II, §4-0.5 (2011) (restricting chickens to properties of five acres or more); OKLAHOMA CITY, OKLA., MUN. CODE tit. 8, 59 (2011) (restricting chickens to properties with one acre or more); PHILA., PA., CODE OF ORDINANCES §10-112 (2011) (restricting chickens to properties with three acres or more); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011) (restricting chickens to properties with one acre or more); VIRGINIA BEACH, VA., CITY CODE §5-545, app. A (2011) (restricting chickens to land zoned for agricultural use).

174. *E.g.*, N.Y.C., MUN. CODE §65-23 (1990) (only regulating chickens if they are kept for sale: “A person who holds a permit to keep for sale or sell live rabbits or poultry shall keep them in coops and runways and prevent them from being at large.”); CHI., ILL., CODE OF ORDINANCES §17-12-300 (2011) (“No person shall own keep, or otherwise possess, or slaughter any . . . poultry, rabbit, dog, cat, or any other animal intending to use such animal for food purposes.”) Chicago's ordinance has been interpreted to allow keeping chickens for eggs. Kara Spak, *Raising Chickens Legal in Chicago, and People Are Crowing About It*, CHI. SUN TIMES, Aug. 13, 2011, <http://www.suntimes.com/news/metro/6942644-418/city-of-chicken-coops.html>; IRVING, TEX., CODE OF ORDINANCES 6-1 (2011) (not regulating chickens).

175. *See infra* V.C.2

176. *See infra* V.C.5.c.

177. *See infra* V.C.5.b.

178. *See infra* V.C.4.

179. *See infra* V.B.

180. *See infra* V.A.

veyed¹⁸¹ and the survey sizes were far smaller.¹⁸² By choosing the largest cities in the United States by population, this survey is meant to give a snapshot of what kind of laws govern the most densely populated urban areas. An understanding of how large cosmopolitan areas approach backyard chickens can help smaller cities determine the best way to fashion an ordinance.¹⁸³

Several aspects of these ordinances will be examined. First, the area within the codified ordinances that the city chooses to regulate chickens will be discussed.¹⁸⁴ Next, regulations based on space requirements, zoning requirements, and setbacks will be examined.¹⁸⁵ After that, the different sorts of sanitation requirements that cities impose will be examined, including looking at how specific or general those requirements are.¹⁸⁶ Then, the coop construction requirements, including how much space a city requires per chicken, will be examined.¹⁸⁷ Next, cities' use of permits to regulate chickens will be evaluated.¹⁸⁸ The Article will then discuss anti-slaughter laws.¹⁸⁹ Finally, the prevalence of banning roosters will be discussed, while noting

that quite a few cities do expressly allow roosters.¹⁹⁰ Examining each aspect of the ordinance piecemeal is designed to provide a thorough overview of ordinances regulating backyard chickens and classification of common concerns. Through this review, regulatory norms will be identified and especially effective, novel, or eccentric regulations will be noted.

Norms and effective regulations will be taken into account in constructing a model ordinance. The most thoughtful, effective, and popular regulations from each of these ordinances will be incorporated into these recommendations. Also, data discussed in the first part of this Article about chickens, chicken behavior, and chicken-keeping will inform the model ordinance.

But, before delving into each of these aspects of the ordinances, some more general impressions from this analysis will be discussed. These more general impressions will include identifying some themes in these regulations based on population size and region.

I. The More Populous the City, the More Likely It Is to Allow for Backyard Chickens

When reviewing the overall results of the survey concerning whether a city allows chickens or bans them, a pattern emerges based on population size. At least among the top 100 cities by population, the smaller the city, the greater the chance that the city will ban chickens. Of the top 10 cities by population, all of them allow for chickens in some way.¹⁹¹ Of those top 10 cities, however, Philadelphia has fairly strict zoning restrictions that only allows chickens in lots of three acres or larger.¹⁹² And, of the top 50 cities by population, only one city bans chickens outright: Detroit.¹⁹³

But in the last 20 of the top 100 cities, four of them ban chickens: Yonkers, Grand Rapids, Fort Wayne, and Lubbock.¹⁹⁴ So, within that subset, only 80% of the cit-

181. See Orbach & Sjöberg, *Debating Backyard Chickens*; Sarah Schindler, *Of Backyard Chickens and Front Yard Garden: The Conflict Between Local Government and Locavores*, 87 TUL. L. REV. (forthcoming Nov. 2, 2012); Patricia Salkin, *Feeding the Locavores, One Chicken at a Time: Regulating Backyard Chickens*, 34:3 ZONING & PLAN. L. REP. 1 (Mar. 2011); Kieran Miller, *Backyard Chicken Policy: Lessons From Vancouver, Seattle, and Niagara Falls*, QSPACE AT QUEENS U. (2011), <http://qspace.library.queensu.ca/handle/1974/6521>; Katherine T. Labadie, *Residential Urban Keeping: An Examination of 25 Cities*, U.N.M. RESEARCH PAPER (2008) http://www.google.com/url?sa=t&rc=t=j&q=&esrc=s&source=web&cd=1&ved=0CE0QFjAA&url=http%3A%2F%2F66.147.242.185%2F-urbanch5%2Fwp-content%2Fuploads%2F2012%2F02%2FOrdinance-research-paper.pdf&ei=f_T5T8jOLCrljgGp5NGKCQ&usq=AFQjCNE-ArE_uYe4XcKDfhMrwS44mOLfQw&sig2=UcWfdU1smpoifnqTiE_vvA; Jennifer Blecha, *Urban Life With Livestock: Performing Alternative Imaginaries Through Small Stock Urban Livestock Agriculture in the United States*, PROQUEST INFORMATION AND LEARNING COMPANY (2007). See also *Chicken L.O.R.E Project: Chicken Laws and Ordinances and Your Rights and Entitlements*, BACKYARD CHICKENS.COM, <http://www.backyardchickens.com/t/310268/chicken-lore-project-find-submit-local-chicken-laws-ordinances> (last visited Feb. 20, 2012) (providing an extensive community-created database of municipal chicken laws).

182. *Poultry 2010, Reference of the Health and Management of Chicken Stocks in Urban Settings in Four U.S. Cities*, USDA, May 2011 (studying the urban chicken population in Denver, Los Angeles, Miami, and New York City).

183. Also, this survey is necessarily frozen in time for publicly accessible ordinances as of December of 2011. This is because at least two cities have already changed their ordinances to allow for more comprehensive and permissive livestock regulations—Pittsburgh and San Diego. Diana Nelson-Jones, *Pittsburgh Urban Chicken Coop Tour to Be Held on Sunday*, PITTSBURGH POST-GAZETTE, June 9, 2011, <http://www.post-gazette.com/pg/11160/1152234-34.stm> (stating that Pittsburgh had amended its ordinances to allow for 3 chickens for every 2,000 square feet of property); Adrian Florino, *San Diego City Council Approves Backyard Chickens, Goats, and Bees*, KPBS, Feb. 1, 2012, <http://www.kpbs.org/news/2012/feb/01/san-diego-city-council-approves-backyard-chickens/>. These ordinances, however, have not yet been codified within the cities code and, thus, are not yet publicly accessible. Although this Article intends to use the most recent ordinances, because of the size of the sample, and because of the scattered news coverage and the significant lag time in updating city codes, the author cannot be sure that other cities have not amended their ordinances. Thus, this study can do no more than provide a snapshot in time for these ordinances.

184. *Infra* V.B.

185. *Infra* V.C.1-4.

186. *Infra* V.C.5

187. *Infra* V.C.5

188. *Infra* V.C.6.

189. *Infra* V.C.7.

190. *Infra* V.C.8.

191. The top 10 cities by population from most populous to least populous: N.Y.C., MUN. CODE §65-23 (1990); L.A., CAL., MUN. CODE §§12.01, 12.05-12.09 (2011); PHILA., PA., CODE §10-112 (2011); CHI., ILL., CODE OF ORDINANCES §17-12-300 (2011); PHOENIX, ARIZ., CITY CODE §8-7, 8-10 (2011); SAN DIEGO, CAL., MUN. CODE §42.0709 (2011); DALLAS, TEX., CODE OF ORDINANCES §7-1.1 (2011); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109 (2011); HOUSTON, TEX., CODE OF ORDINANCES ch. 6, art. II (2010).

192. PHILA., PA., CODE §10-112 (2011).

193. DETROIT, MICH., CITY CODE §6-1-3 (2010).

194. The last 20 of the top 100 cities from most populous to least populous: GLENDALE, ARIZ., CODE OF ORDINANCES pt. II, art. 5 (2010); AKRON, OHIO, CODE OF ORDINANCES §92-18 (2011); GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed); *id.* §7.29; *id.* §9.52; FORT WAYNE, IND., CODE OF ORDINANCES §157.104 (2011); FREMONT, CAL., MUN. CODE §3-5803 (2011); SCOTTSDALE, ARIZ., CODE OF ORDINANCES §4-17 (2011); MONTGOMERY, ALA., CODE OF ORDINANCES ch. 4 art. I (2011); *id.* app. C, art. VII; SHREVEPORT, LA., CODE OF ORDINANCES ch. 106 (2011); LUBBOCK, TEX., CITY CODE §4.07.001 (2011); CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011); *id.* ZONING art. 3; MOBILE, ALA., CODE OF ORDINANCES §7-102 (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4 (2011); GRAND RAPIDS, MICH., CODE OF ORDINANCES §8.582 (2010); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011); YONKERS, N.Y., §65-23 (1990); SPOKANE, WASH., MUN. CODE §17C.310.100 (no date listed); AUGUSTA-

ies allow for chickens. This may go against popular belief that chickens would be more prevalent in bucolic suburbs and less popular in densely populated cosmopolitan areas. Because this survey only includes large urban areas, the percentage of smaller cities, suburbs, and exurbs that allow for chickens is not known. But, based on this limited survey, it appears that more populous cities have largely accepted chickens, and the pursuit of more chicken-friendly legislation has moved to smaller cities and the suburbs.

2. Some Regional Observations

Although it is difficult to draw regional distinctions from a limited set of data, it does appear that the states in what is colloquially called the Rustbelt are more likely to ban chickens. In Michigan, both cities within the top 100, Detroit and Grand Rapids, ban chickens.¹⁹⁵ And in Pennsylvania, similarly, both of its most populated cities, for the most part, ban chickens.¹⁹⁶ Philadelphia only allows chickens on lots of three acres or more—far more than the average lot size in Philadelphia.¹⁹⁷ Pittsburgh, although it recently amended its ordinances,¹⁹⁸ used to allow chickens only on parcels of five acres or more.¹⁹⁹ In either event, in both cities, keeping chickens is limited to property sizes that are far larger than the average for an urban area.

Within the Rustbelt states, Ohio stands out for legalizing chickens. All five of its major cities currently allow for chickens: Akron, Cincinnati, Cleveland, Columbus, and Toledo.²⁰⁰ Columbus and Akron have far more restrictive

ordinances, however. Columbus requires a permit to keep chickens and allows its Health Commissioner discretion over granting and revoking that permit.²⁰¹ Akron requires chickens to be kept at least 100 feet from any dwelling, which will restrict owners of small parcels in densely populated areas from raising chickens.²⁰²

In 2009, Cleveland passed a comprehensive ordinance legalizing chickens and bees.²⁰³ Cleveland allows for one chicken per 800 square feet, which would allow up to six chickens on a standard residential lot.²⁰⁴ Cleveland also has minimal setbacks and detailed coop requirements.²⁰⁵ And Cincinnati and Toledo have even more liberal ordinances, allowing for chickens as long as they do not create a nuisance.²⁰⁶

Virginia also stands out for restricting chickens. All four of Virginia's cities within the top 100 cities by population—Chesapeake, Norfolk, Richmond, and Virginia Beach—restrict chickens to large lots or to lands zoned agricultural.²⁰⁷

B. Where Regulations Concerning Chickens Are Placed Within a City's Codified Ordinances

The survey reveals that there is little consistency in where cities choose to locate chicken regulations within their codified ordinances. Most cities regulate chickens in sections devoted to animals, zoning, health, or nuisances. Each method of regulation will be examined for how often it is used and how effective it is.

RICHMOND, GA., CODE OF ORDINANCES tit. 4, art. 2 (2007); GLENDALE, CAL., MUN. CODE §6.04 (2011); TACOMA, WASH., MUN. CODE §5.30.010 (2011); IRVING, TEX., CODE OF ORDINANCES pt. II, ch. 6 (2011).

195. DETROIT, MICH., CITY CODE §6-1-3 (2010) (prohibits owning farm animals and defines chickens as farm animals); GRAND RAPIDS, MICH., CODE OF ORDINANCES §8.582 (2010) (prohibiting farm animals within 100 ft. of any dwelling unit, well, spring, stream, drainage ditch, or drain. City officials have interpreted this to ban chickens.); *but see* ANN ARBOR, MICH., CODE OF ORDINANCES tit. IX, ch. 107, §9:42 (allowing up to four chickens in single-family or two-family dwellings if a permit is secured and regulations are followed).

196. PHILA. §10-112; PITTSBURGH, PA., CODE OF ORDINANCES §§635.02, 911.04.A.2 (2011).

197. Susan Wachter, *The Determinants of Neighborhood Transformations in Philadelphia Identification and Analysis: The New Kensington Pilot Study*, Spring 2005, THE WHARTON SCHOOL, http://www.google.com/url?sa=t&rcct=j&q=&esrc=s&source=web&cd=1&ved=0CCMQFjAA&url=http%3A%2F%2Fkabaaffiliates.org%2FuploadedFiles%2FKAB_Affiliates.org%2FWharton%2520Study%2520NK%2520final.pdf&ei=X40hT56_OOjCsQLogpyhCQ&usq=AFQjCNH-DYO3ImfVNsESWy6QZ9-79aW87A&sig2=C2IvyXmR7twhy4K5RZYk-A (last visited Jan. 26, 2012) (finding that the average lot size within the New Kensington area of Philadelphia was just over 1,000 square feet).

198. Diana Nelson-Jones, *Pittsburgh Urban Chicken Coop Tour to Be Held on Sunday*, PITTSBURGH POST-GAZETTE, June 9, 2011, <http://www.post-gazette.com/pg/11160/1152234-34.stm> (stating that Pittsburgh had amended its ordinances to allow for three chickens for every 2,000 square feet of property).

199. PITTSBURGH, PA., CODE OF ORDINANCES §911.04(A)(2) (2011).

200. AKRON, OHIO, CODE OF ORDINANCES §92-18 (2011); CINCINNATI, OHIO, CODE OF ORDINANCES ch. 701 (2011); CLEVELAND, OHIO, CODIFIED ORDINANCES §§205.04, 347.02 (2011); COLUMBUS, OHIO, CITY CODE tit. III, ch. 221 (2011); TOLEDO, OHIO, MUN. CODE §§505.07(a)(4), 1705.07 (2011).

201. COLUMBUS §221.05:

The Health Commissioner may grant permission only after it is determined that the keeping of such animals: (1) creates no adverse environmental or health effects; (2) is in compliance with all other sections of this chapter; and (3) in the judgment of the Health Commissioner, after consultation with the staff of the Health Department and with the surrounding occupants of the place of keeping such animals, and considering the nature of the community (i.e., residential or commercial single or multiple dwellings, etc.), is reasonably inoffensive. The health commissioner may revoke such permission at any time for violation of this chapter or may other just cause.

202. AKRON §92-18.

203. CLEVELAND §§347.02 & 205.04.

204. *Id.*

205. *Id.*

206. CINCINNATI §701-17; *id.* §00053-11 (“No live geese, hens, chickens, pigeons, ducks, hogs, goats, cows, mules, horses, dogs, cats, other fowl or any other domestic or non-domestic animals shall be kept in the city so as to create a nuisance, foul odors, or be a menace to the health of occupants or neighboring individuals.”); TOLEDO §§1705.05 & 505.07 (“No person shall keep or harbor any animal or fowl in the City so as to create noxious or offensive odors or unsanitary conditions which are a menace to the health, comfort or safety of the public.”).

207. CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011); *id.* ZONING art. 3 (restricting to low-density zones and restricting to properties of one acre or more); NORFOLK, VA., CODE OF ORDINANCES, app. A, art. II §4-0.5 (2011) (restricting chickens to properties of five acres or more); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011) (restricting chickens to properties with one acre or more); VIRGINIA BEACH, VA., CITY CODE §5-545, app. A (2011) (restricting chickens to land zoned for agricultural use).

I. Animal Control Regulations

Seventy-one of the cities regulate chickens under their animal control ordinances.²⁰⁸ This makes sense, because chickens are animals and this is the natural place for would-be chicken owners to look to make sure that they won't get into legal trouble. Regulating chickens under animal control also leads to fairly easy-to-follow ordinances. Chickens are either allowed, or they are not. And, if there are further regulations concerning lot size, setbacks, or coop requirements, they are usually all in one place.

208. AKRON, OHIO, CODE OF ORDINANCES §92-18 (2011); ANCHORAGE, ALASKA, CODE OF ORDINANCES tit. 17, 21 (2011); AUGUSTA-RICHMOND, GA., CODE OF ORDINANCES tit. 4, art. 2 (2007); AURORA, COLO., CODE OF ORDINANCES §14-8 (2011); AUSTIN, TEX., CODE OF ORDINANCES tit. III, ch. 3.1.1 (2011); ATLANTA, GA., CODE OF ORDINANCES §18-7 (2011); BAKERSFIELD, CAL., MUN. CODE §6.08.10 (2011); BALTIMORE, MD., HEALTH CODE §10-312 (2011); BATON ROUGE, LA., CODE OF ORDINANCES §14:224 (2011); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102 (2010); CINCINNATI, OHIO, CODE OF ORDINANCES ch. 701 (2011); COLORADO SPRINGS, COLO., CITY CODE §6.7.106(D) (2011); CORPUS CHRISTI, TEX., CODE OF ORDINANCES §§6-153, 6-154 (2011); DALLAS, TEX., CODE OF ORDINANCES §7-1.1 (2011); DENVER, COLO., MUN. CODE §8-91 (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4 (2011); DETROIT, MICH., CITY CODE §6-1-3 (2010); EL PASO, TEX., MUN. CODE §7.24.020 (2011); FREMONT, CAL., MUN. CODE §3-5803 (2011); GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011); GLENDALE, ARIZ., CODE OF ORDINANCES pt. II, art. 5 (2010); GLENDALE, CAL., MUN. CODE §6.04 (2011); GRAND RAPIDS, MICH., CODE OF ORDINANCES §8.582 (2010); HIALEAH, FLA., CODE OF ORDINANCES §§10.1, 10.2 (2011); HONOLULU, HAW., REV. ORDINANCES §7-2.5(d) (1990); HOUSTON, TEX., CODE OF ORDINANCES ch. 6, art. II (2010); INDIANAPOLIS, IND., REV. CODE tit. III, ch. 531 (2011); IRVING, TEX., CODE OF ORDINANCES 6-1 (2011); JERSEY CITY, N.J., CODE OF ORDINANCES §90-6 (2011); KANSAS CITY, MO., CODE OF ORDINANCES §14-15 (2011); LAS VEGAS, NEV., MUN. CODE §7.38.050 (2011); LEXINGTON-FAYETTE, KY., CODE OF ORDINANCES §4-10 (2011); LINCOLN, NEB., MUN. CODE §6.04.040 (2011); LONG BEACH, CAL., MUN. CODE §6.20.020 (2011); LOUISVILLE, KY., METRO CODE ch. 91 (2011); MEMPHIS, TENN., CODE OF ORDINANCES §8-8-1 (2009); MIAMI, FLA., CODE OF ORDINANCES §6-1(b) (2011); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011); MINNEAPOLIS, MINN., CODE OF ORDINANCES §70.10 (2011); MOBILE, ALA., CODE OF ORDINANCES §7-102 (2011); MONTGOMERY, ALA., CODE OF ORDINANCES ch. 4, art. I (2011); *id.* app. C, art. VII; NEWARK, N.J., GEN. ORDINANCES §6:2-29 (2010); NEW ORLEANS, LA., CODE OF ORDINANCES pt. II, ch. 18, art. VI (2011); N.Y.C., MUN. CODE §65-23 (1990); NORFOLK, VA., CODE OF ORDINANCES §§4-05, 6.1-7 (2011); OAKLAND, CAL., CODE OF ORDINANCES §6-04-320 (2011); OKLAHOMA CITY, OKLA., MUN. CODE tit. 8, 59 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-266 (2011); PHILA., PA., CODE §10-112 (2011); PHOENIX, ARIZ., CITY CODE §§8-7, 8-10 (2011); PITTSBURGH, PA., CODE OF ORDINANCES §§635.02, 911.04.A.2 (2011); PLANO, TEX., CODE OF ORDINANCES §4-184 (2011); PORTLAND, OR., CITY CODE §13.05.015 (2011); RALEIGH, N.C., CODE OF ORDINANCES §§12-3001, 12-3004 (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011); ROCHESTER, N.Y., CITY ORDINANCES §30-12, 30-19 (no date listed); SACRAMENTO, CAL., CITY CODE §9-44-340 (2011); ST. LOUIS, MO., CODE OF ORDINANCES §10.20.015 (2010); ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31 (2011); ST. PAUL, MINN., §198.02 (2011); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109 (2011); SAN JOSE, CAL., CODE OF ORDINANCES tit. 7 (2007); SANTA ANA, CAL., CODE OF ORDINANCES §5.6 (2011); SCOTTSDALE, ARIZ., CODE OF ORDINANCES §4-17 (2011); STOCKTON, CAL., MUN. CODE §§6.04.420, 16.80.060 (2011); TOLEDO, OHIO, MUN. CODE §505.07(a)(4); TUCSON, ARIZ., CODE OF ORDINANCES ch. 4, art. VI (2011); TULSA, OKLA., CODE OF ORDINANCES §200(d)(e) (2011); VIRGINIA BEACH, VA., CITY CODE §5-545, app. A (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.1 (no date listed); WICHITA, KAN., CODE OF ORDINANCES §6.04.157 (2011); YONKERS, N.Y., §65-23 (1990).

2. Zoning Regulations

Fourteen cities regulate chickens primarily under their zoning laws.²⁰⁹ These cities are much more likely to substantially restrict raising hens.²¹⁰ It also makes it much more difficult for a resident to determine whether he can legally raise chickens. Such a resident must not only determine in what zone chickens may be raised, but he must also determine whether his property falls within that zone. These laws also tend to sow unnecessary confusion. For instance, Lubbock Texas' law on paper would seem to allow for hens, but the city has exploited its vagaries to ban backyard chickens. Lubbock creates a loop within its ordinances by providing within the animal section of its code that chickens are allowed if the zoning ordinance permits it,²¹¹ and then providing in its zoning ordinance that chickens are allowed if the animal code permits it.²¹² The Lubbock city clerk resolved the loop by stating that the city interprets these provisions to entirely ban chickens within the city.²¹³

Finally, cities that regulate chickens primarily through zoning laws do so, presumptively, because they want to restrict raising chickens to certain zones. This, however, can cause unnecessary complications. Raising chickens is not only for residential backyards. Because of declining population and urban renewal projects in many cities, urban farms, market gardens, and community gardens are located in other zones, including business, commercial, and even industrial zones. Each time these farms or gardens would like to add a few chickens, they would have to petition the city for a zoning variance or seek a change in the law. This is not an efficient use of a city's limited resources.²¹⁴

In addition, other regulations pertaining to chickens, such as setbacks, coop construction, or sanitary requirements, can get lost among the many building regulations within the zoning code. Zoning codes are generally written for an expert audience of businesses, builders, and developers, and not for the lay audience that would comprise

209. ANAHEIM, CAL., MUN. CODE §18.38.030 (2011); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007); CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011); *id.* ZONING art. 3; FRESNO, CAL., MUN. CODE §§12-205.1-12-207.5 (2011); GLENDALE, CAL., MUN. CODE §6.04 (2011); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011); JACKSONVILLE, FLA., ORDINANCE CODE tit. XIII, ch. 462, tit. XVII, ch. 656 (2011); L.A., CAL., MUN. CODE §§12.01, 12.05-12.09 (2011); LUBBOCK, TEX., CITY CODE §4.07.001 (2011); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed); *id.* §7.29; SEATTLE, WASH., MUN. CODE §23.42.052; WASH., MUN. CODE OF ORDINANCES §6.04.20 (2011); *id.* tit. 17; *id.* §9.52; SHREVEPORT, LA., CODE OF ORDINANCES ch. 106 (2011); SPOKANE, WASH., MUN. CODE §17C.310.100.

210. Anaheim, Birmingham, Jacksonville, and Lubbock either ban hens altogether or restrict hens to certain zones. See ANAHEIM §18.38.030; BIRMINGHAM §2.4.1; JACKSONVILLE tit. XVIII, ch. 462, tit. XVII, ch. 656; LUBBOCK §4.07.001.

211. LUBBOCK §4.07.001.

212. *Id.* §40.03.3103.

213. See Interview with Lubbock city clerk (on file with author).

214. E.g., Schindler, *supra* note 181, 68-71 (arguing that the movement toward urban agriculture should cause cities to reconsider Euclidean zoning because such zoning no longer serves the needs of the cities and its residents).

chicken owners.²¹⁵ If cities are concerned about raising chickens too near businesses or neighbors, other regulations like setbacks from the street and neighboring properties can ameliorate this concern without having to include the regulation in the zoning code.

Regulations placed within the animal code, as described above, are generally in one place and often within a single ordinance. This leads to a better understanding of the law for chicken owners and, thus, easier enforcement for city officials. Unless the zoning regulations have a subsection devoted specifically to animals, like the ones in Spokane²¹⁶ or Greensboro,²¹⁷ the most sensible place for regulating chickens is within the animal code.

3. Health Code

Another popular place within a municipality's code to regulate chickens is within the health code. Seven cities regulate chickens primarily within the health code.²¹⁸ Many of these, however, have a separate section concerning animals or animal-related businesses within the health code.²¹⁹ Again, unless the code has such a separate section concerning animals, the better place to regulate is within the animal code.

4. Other

Of the remaining cities, there is very little uniformity. Two, Boston and Columbus, regulate through permit sections within their codified ordinances.²²⁰ Because these cities require permits to keep chickens and give a great deal of discretion to city officials to grant or deny permits on a case-by-case basis, locating a chicken regulation within the permit section of the codified ordinance makes sense for those cities. But, as argued later, allowing such discretion is neither a good use of city resources nor a fair and consistent way to regulate chickens.

The only other pattern within these ordinances is that two other cities—Buffalo and Tampa—regulate chickens

under the property maintenance area of the code.²²¹ This is not an ideal place to locate such an ordinance, because potential chicken owners are unlikely to look for chicken regulations there.

Finally, one city—Arlington, Texas—places its chicken regulations in a section of the code entitled sale and breeding of animals.²²² Because backyard chicken owners generally do not raise their chickens for sale, and also likely do not consider themselves to be breeders, this area of the code is not well-suited to this regulation.

C. How Cities Regulate Chickens

1. Chickens Are Defined as Pets or Domestic Animals

Seven cities—Dallas, Indianapolis, Jacksonville, New Orleans, Plano, Raleigh, and Spokane—define chickens as domestic animals or pets, and thus subject them to the same enclosure and nuisance regulations as other domestic animals like cats and dogs.²²³ These cities' ordinances appear to be long-standing and were not recently modified in response to the backyard chicken movement.²²⁴ While many cities may want to more explicitly regulate chickens, this is a workable approach. General nuisance laws already regulate things like odor and noise.²²⁵ While many regulations particular to chickens duplicate nuisance ordinances, it is unclear whether such duplication actually reduces nuisances. More precise requirements on sanitation, coop standards, setbacks, and permits may signal to chicken owners that the city is serious about regulating chickens, protecting neighbors, and protecting the health and well-being of chickens. But, as chickens regain prevalence in urban areas, cities that regulate chickens as pets or domestic animals may find that—through inertia—they have taken the most efficient approach, both in terms of preserving city resources and curbing potential nuisances.

2. Space Requirements

Of the 94 cities that allow for raising chickens, 31 of them impose restrictions based upon how big the property is, either explicitly through lot size requirements, or implicitly through zoning requirements.²²⁶ Of those, 16 cities restrict

215. See Lea S. VanderVelde, *Local Knowledge, Legal Knowledge, and Zoning Law*, IOWA L. REV., May 1990, at 1057 (describing zoning law as "arcane"). Also, the sheer number of law treatises for zoning laws demonstrates that zoning laws require expertise to navigate. *E.g.*, PATRICIA SALKIN, AMERICAN LAW OF ZONING (5th ed. 2012); JULIAN CONRAD JUERGENSMEYER & THOMAS E. ROBERTS, LAND USE PLANNING AND DEVELOPMENT REGULATION LAW (2d ed. 2003); EDWARD H. ZIEGLER JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING (4th ed. 2012).

216. SPOKANE, WASH., MUN. CODE tit. 17C LAND USE STANDARDS, ch. 17C.310 ANIMAL KEEPING (no date listed).

217. GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011).

218. ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-4-3 (2011); CLEVELAND, OHIO, CODIFIED ORDINANCES §§205.04, 347.02 (2011); COLUMBUS, OHIO, CITY CODE tit. III, ch. 221 (2011); MESA, ARIZ., CITY CODE §8-6-21 (2011); SAN DIEGO, CAL., MUN. CODE §42.0709 (2011); SAN FRANCISCO, CAL., HEALTH CODE §37 (2011); TACOMA, WASH., MUN. CODE §5.30.010 (2011).

219. *E.g.*, SAN DIEGO §42.0709; CLEVELAND §§204.04, 347.02; TACOMA §5.3.010.

220. BOS., MASS., CODE OF ORDINANCES §16-1.8A (2010); COLUMBUS tit. III, ch. 221.

221. BUFFALO, N.Y., CITY CODE §341-11 (2009); TAMPA, FLA., CODE OF ORDINANCES §19.76 (2008).

222. ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §5.02 (2010).

223. DALLAS, TEX., CODE OF ORDINANCES §7-1.1 (2011); INDIANAPOLIS, IND., REV. CODE tit. III, ch. 531.101 (2011); JACKSONVILLE, FLA., ORDINANCE CODE §656.1601 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1 (2011); RALEIGH, N.C., CODE OF ORDINANCES §12-3001 (2011); PLANO, TEX., CODE OF ORDINANCES §4-184 (2011); SPOKANE, WASH., MUN. CODE §17C.310.100 (no date listed).

224. *Supra* note 223.

225. Every city surveyed had general nuisance provisions in its code regulating odor and noise.

226. Cities that impose lot size requirements: Anaheim, Cleveland, Fort Wayne, Fremont, Garland, Greensboro, Nashville, Norfolk, Oklahoma, Philadelphia, Phoenix, Pittsburgh, Richmond, Rochester, Stockton, and Tampa. ANAHEIM, CAL., MUN. CODE §18.38.030 (2011); CLEVELAND, OHIO,

based on lot size and 17 restrict based on zoning. This adds up to 33, rather than 31, because two cities restrict based on both lot size and zoning.²²⁷ These restrictions range from draconian, practically banning chickens in most of the city by restricting chickens to extremely large lots,²²⁸ to extremely liberal, allowing up to 30 chickens per 240 square feet—or 30 chickens in an area approximately the size of a large bedroom.²²⁹ As discussed below, an additional 10 cities should be considered unfriendly to keeping hens because, while they do allow chickens under some circumstances, those circumstances are restricted to very large lots or agriculturally zoned land.²³⁰

a. Lot Size Requirements

Of the 15 cities that restrict based on lot size only, six of them restrict chickens to property that is one acre or more: Nashville, Norfolk, Oklahoma City, Philadelphia, Pittsburgh, and Richmond.²³¹ Nashville, Norfolk, and Pittsburgh appear to limit chickens to property of more than five acres, which in any urban area is a practical ban.

Norfolk appears to allow for an exception to the five-acre minimum²³² by allowing a would-be chicken owner to procure a permit to keep hens,²³³ but in practice, the city will not issue this permit to chicken hobbyists.²³⁴ But, as discussed below, Nashville and Pittsburgh have interpreted their restrictive ordinances to allow for chickens on much smaller parcels of property.

In Nashville, the zoning code conflicts with the health code, and the health code apparently won out. The zoning ordinance limits “common domestic farm animals” to a lot size of five acres or more, but the ordinance does not define what qualifies as a common domestic farm animal.²³⁵ Nashville’s health code, by contrast, specifically allows for chickens, as long as they do not create a nuisance.²³⁶ Nashville issued a memorandum in 2009 providing that the Board of Zoning Appeals held that the health code takes precedence over the zoning code.²³⁷ In so holding, the Board allowed a property owner to keep her chickens, because their owner considered them to be pets and the chickens did not create a nuisance.²³⁸

In Pittsburgh, while agricultural uses were limited to property of five acres or more, like Nashville, the code did not specifically define whether raising chickens was considered an agricultural use.²³⁹ Pittsburgh, thus, would allow chicken keepers to seek a variance for raising chickens on property of less than five acres.²⁴⁰ Apparently, though it is not yet codified, Pittsburgh recently made it much easier to raise chickens, and also bees, by allowing up to three hens and two beehives on property of 2,000 square feet or more.²⁴¹

So, both Nashville and Pittsburgh, while appearing to ban chickens, have become chicken-friendly.

The next most restrictive ordinance is in Philadelphia. Philadelphia restricts chickens to property of three acres or more. Philadelphia, however, apparently means it. In Philadelphia, the code specifically defines poultry as a farm animal,²⁴² and only allows farm animals on a parcel of property of three acres or more.²⁴³

CODIFIED ORDINANCES §347.02 (2011); FORT WAYNE, IND., CODE OF ORDINANCES §157.104 (2011); FREMONT, CAL., MUN. CODE §3-5803 (2011); GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011); NASHVILLE-DAVIDSON, TENN., MUN. CODE §17-16-330 (2011); NORFOLK, VA., CODE OF ORDINANCES §§4-05, 6.1-7 (2011); OKLAHOMA CITY, OKLA., MUN. CODE §59-9350(c) (2011); PHILA., PA., CODE §10-112 (2011); PHOENIX, ARIZ., CITY CODE §8-10 (2011); PITTSBURGH, PA., CODE OF ORDINANCES §§635.02, 911.04.A.2 (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011); ROCHESTER, N.Y., CITY ORDINANCES §§30-12, 30-19 (no date listed); STOCKTON, CAL., MUN. CODE §16.80.060 (2011); TAMPA, FLA., CODE OF ORDINANCES §19.76 (2008). Cities that impose zoning restrictions: Bakersfield, Birmingham, Chesapeake, Dallas, Fresno, Glendale, Arizona, Greensboro, Hialeah, Jacksonville, Los Angeles, Madison, Memphis, Montgomery, San Diego, Shreveport, Stockton, and Virginia Beach. BAKERSFIELD, CAL., MUN. CODE tit. 17 (2011); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007); CHESAPEAKE, VA., CODE OF ORDINANCES ZONING art. 3 (2011); DALLAS, TEX., CODE OF ORDINANCES §7-1.1 (2011); FRESNO, CAL., MUN. CODE ch. 12 (2011); GLENDALE, ARIZ., CODE OF ORDINANCES §§5.132 & 5.212 (2011); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011); HIALEAH, FLA., CODE OF ORDINANCES ch. 98 (2011); JACKSONVILLE, FLA., ORDINANCE CODE ch. 656 (2011); L.A., CAL., MUN. CODE §§12.01, 12.05-12.09 (2011); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed); MEMPHIS, TENN., CODE OF ORDINANCES tit. 16 (2009); MONTGOMERY, ALA., CODE OF ORDINANCES, app. C, art. VII (2011); SAN DIEGO, CAL., MUN. CODE §42.0709 (2011); SHREVEPORT, LA., CODE OF ORDINANCES ch. 106 (2011); STOCKTON, CAL., MUN. CODE §§6.04.420, 16.80.060 (2011); VIRGINIA BEACH, VA., CITY CODE §5-545, app. A (2011).

227. GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011); STOCKTON, CAL., MUN. CODE §§6.04.420 & 16.80.060 (2011).

228. *E.g.*, NASHVILLE-DAVIDSON, TENN., MUN. CODE §§8-12-020, 17-16-330 (2011); PHILA., PA., CODE §10-112 (2011).

229. *See* ROCHESTER, N.Y., CITY ORDINANCES §§30-12, 30-19 (no date listed).

230. BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007); CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011); HIALEAH, FLA., CODE OF ORDINANCES §§10.1, 10.2 (2011); JACKSONVILLE, FLA., ORDINANCE CODE §656.331(2011); MONTGOMERY, ALA., CODE OF ORDINANCES ch. 4, art. I (2011); *id.* app. C, art. VII; NORFOLK, VA., CODE OF ORDINANCES, app. A, art. II §4-0.5 (2011); OKLAHOMA CITY, OKLA., MUN. CODE §59-9350 (2011); PHILA., PA., CODE §10-112 (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011); VIRGINIA BEACH, VA., CITY CODE §5-545, app. A (2011).

231. NASHVILLE-DAVIDSON, TENN., MUN. CODE §17-16-330(b) (2011); PITTSBURGH, PA., CODE OF ORDINANCES §§635.02, 911.04.A.2 (2011); PHILA., PA., CODE §10-112 (2011); OKLAHOMA CITY, OKLA., MUN. CODE §59-9350 (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011).

232. NORFOLK, VA., CODE OF ORDINANCES, ZONING ORDINANCE, app. A, §4-05 (2011) (“Except as otherwise noted, there shall be no raising or keeping of . . . poultry, fowl, . . . on less than five acres.”).

233. NORFOLK, VA., CODE OF ORDINANCES §6.1-7 (2011) (allowing for a person wishing to raise poultry to procure a permit issued by the department of public health).

234. Amelia Baker, *Backyard Chickens: Now You’re Clucking*, ALTDAILY, June 2, 2010, <http://www.altdaily.com/features/food/backyard-chickens-now-youre-clucking.html> (providing that the city will only issue permits for sentinel chickens that the city has on surveillance to check for mosquito-borne diseases).

235. NASHVILLE-DAVIDSON §17.16.330(b).

236. *Id.* §8.12.020.

237. Memo from John Cooper, Director Metropolitan Council Office, to All Members of Metropolitan Council (Sept. 1, 2009) (on file with author).

238. *Id.*

239. PITTSBURGH §911.04.

240. Diana Nelson Jones, *Ordinance Changes Bother Keepers of Bees and Chickens*, PITTSBURGH POST GAZETTE, Feb. 8, 2010, <http://www.post-gazette.com/pg/10039/1034293-53.stm>.

241. Diana Nelson Jones, *Pittsburgh Urban Coop Tour to Be Held Sunday*, PITTSBURGH POST GAZETTE, June 9, 2011, <http://www.post-gazette.com/pg/11160/1152234-34.stm>.

242. PHILA. §10-100.

243. *Id.* §10-112.

Oklahoma City and Richmond both require at least one acre. Oklahoma City restricts raising chickens to property that is at least one acre, but apparently if the property owner has one acre, there is no restriction on how many chickens can be kept on that acre.²⁴⁴ Richmond requires 50,000 square feet, or slightly more square footage than the 43,560 square feet in an acre.²⁴⁵

After these, the lot sizes are far more lenient. Two cities, Garland and Stockton, require at least ½ acre.²⁴⁶ Three cities, Fremont, Greensboro, and Phoenix, require between 6,000 and 10,000 square feet, or between a little less than 1/8 to a little less than 1/4 acre.²⁴⁷ And four cities, Anaheim, Cleveland, Rochester, and Tampa, require between 240 to 1,800 square feet, or from not much larger than a shed to about the size of a modern master bedroom.²⁴⁸ So, out of the 15 cities that restrict based on lot size, the majority of them allow most residents to raise backyard chickens.

b. Zoning Requirements

Seventeen cities restrict chickens to certain zones. Of these, three of the cities restrict chickens only to land zoned for agricultural use: Birmingham, Hialeah, and Virginia Beach.²⁴⁹ Three more cities restrict chickens to agricultural or very low-density residential zones: Chesapeake, Jacksonville, and Montgomery.²⁵⁰ Thus, six of the 17 cities confine chickens to so few zones that it excludes the possibility of raising chickens for most families.

The remaining eleven cities, however, while still restricting chickens to certain zones, allow chickens in many or most residential zones.²⁵¹ Dallas only applies zoning

requirements if chickens are being raised for commercial purposes.²⁵² Memphis merely applies different building restrictions for coops depending on the zone.²⁵³ And two cities employ zoning laws to augment the area where chickens are allowed: Cleveland and Stockton specifically allow raising chickens in industrially zoned areas.²⁵⁴

c. Multi-Family Units

Two cities, Minneapolis and Newark, specifically regulate multi-family dwellings such as apartments. Both of these cities require permits, but will not grant one to certain multi-family dwellings. Minneapolis will not grant a permit to someone who lives in a multi-family home with four or more dwelling units.²⁵⁵ Newark will not grant one to anyone living in any multi-family home.²⁵⁶

d. Using Lot Size to Determine the Number of Chickens

Many other cities do not restrict chickens to certain lot sizes, but use lot size to determine how many chickens a property can have. There is no uniformity to these ordinances. Some ordinances set a maximum number of chickens for property of a certain size and under, and then allow for more chickens as the property size increases. For instance, Seattle allows up to eight chickens for lots under 10,000 square, and one more chicken for each additional 1,000 square feet.²⁵⁷ Fremont has an intricate step system, with four chickens for at least 6,000 square feet, six for at least 8,000 square feet, 10 for at least 10,000, 20 for at least ½ acre, and 25 for more than one acre.²⁵⁸ Riverside allows for up to four chickens on property between 7,200 and 40,000 square feet and up to 12 on property 40,000 square feet or more in residentially zoned areas.²⁵⁹

Some cities decide the number of chickens based on zoning. El Paso allows for up to six chickens on land not zoned agricultural.²⁶⁰ Tulsa allows up to six adults and 14 chicks under eight weeks of age on land not zoned agricul-

244. OKLAHOMA CITY §59-8150 (definitions); *id.* §59-9350 (confining to one acre).

245. RICHMOND, VA., CODE OF ORDINANCES §10-88(b) (2011).

246. GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011); STOCKTON, CAL., MUN. CODE §16.80.060 (2011).

247. FREMONT, CAL., MUN. CODE §3-5803 (2011) (6,000 sq. ft.); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011) (7,000 sq. ft.); PHOENIX, ARIZ., CITY CODE §8-7(b) (2011) (10,000 sq. ft.).

248. ANAHEIM, CAL., MUN. CODE §18.38.030 (2011) (1,800 sq. ft.); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02 (2011) (800 sq. ft. for residential, and 400 for commercial); ROCHESTER, N.Y., CITY ORDINANCES §30-12, 30-19 (no date listed) (240 sq. ft.); TAMPA, FLA., CODE OF ORDINANCES §19.76 (2008) (1,000 sq. ft.).

249. BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007); HIALEAH, FLA., CODE OF ORDINANCES §10.1 & 10.2 (2011); VIRGINIA BEACH, VA., CITY CODE §5-545 app. A (2011).

250. CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011); *id.* ZONING art. 3; JACKSONVILLE, FLA., ORDINANCE CODE tit. XIII, ch. 462, tit. XVII, ch. 656 (2011); MONTGOMERY, ALA., CODE OF ORDINANCES app. C, art. VII (2011).

251. BAKERSFIELD, CAL., MUN. CODE §§17.12.010-RS & 17.32.020 (2011) (permitting chickens in agriculture and residential suburban areas); DALLAS, TEX., CODE OF ORDINANCES §7-1.1 (2011) (requiring chickens that are raised for commercial purposes to be on agriculturally zoned land, otherwise chickens are regulated as pets); FRESNO, CAL., MUN. CODE §§12-204.11-12-207.5 (2011) (providing different setbacks depending on zone); GLENDALE, ARIZ., CODE OF ORDINANCES §§5.132 & 5.212 (2011) (restricting poultry to rural residential and suburban residential zones); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011) (allowing chickens as an accessory on single-family detached dwellings on R-3, E-5, R-7, RM-9, RM-12, and RM-18 districts); L.A., CAL., MUN. CODE §§12.01, 12.05-12.09 (2011) (allowing chickens in agricultural and

residential districts including districts zoned A1, A2, RA, RE, RS R1, and RMP); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed); *id.* §7.29; *id.* §9.52 (allowing chickens in both residential and commercial districts); MEMPHIS, TENN., CODE OF ORDINANCES tit. 16, app. A (2009) (applying complex zoning requirements for outbuildings to chicken coops); SAN DIEGO, CAL., MUN. CODE §42.0709 (2011) (using zoning to define different kinds of setbacks, but allowing chickens in most zones); SHREVEPORT, LA., CODE OF ORDINANCES ch. 106 (2011) (allowing poultry raising in residential and agricultural districts by right, and in most other zones through a special exception from the zoning board) STOCKTON, CAL., MUN. CODE §§6.04.420, 16.80.060 (2011) (allowing chickens in residential and industrially zoned areas).

252. DALLAS, TEX., CODE OF ORDINANCES §7-1.1 (2011).

253. MEMPHIS, TENN., CODE OF ORDINANCES tit. 16 (2009).

254. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02 (2011); STOCKTON, CAL., MUN. CODE §16.80.060 (2011).

255. MINNEAPOLIS, MINN., CODE OF ORDINANCES §70.10(c) (2011).

256. NEWARK, N.J., GENERAL ORDINANCES §6:2-33 (2010).

257. SEATTLE, WASH., MUN. CODE §23.42.052(C) (2011).

258. FREMONT, CAL., MUN. CODE §3-5803 (2011).

259. RIVERSIDE, CAL., CODE OF ORDINANCES §17.24 (2011).

260. EL PASO, TEX., MUN. CODE §7.24.020(B) (2011).

tural.²⁶¹ Neither city restricts the amount of chickens on agriculturally zoned land.²⁶²

Instead of using square footage or zoning, many cities divide by acre. These ordinances range between four to 12 chickens for property under ½ acre. For instance, Fort Worth allows for no more than 12 chickens on lots under ½ acre, no more than 20 on lots between ½ and one acre, and no more than 50 on lots of one acre or more.²⁶³ Mesa City allows for 10 rodents or fowl on ½ acre or less, and an additional 10 for each ½ acre, but no longer limits the number of chickens after 2 ½ acres.²⁶⁴ Louisville allows for five chickens on property of less than ½ acre, and no limit above that.²⁶⁵ Arlington provides for four on less than ½ acre, 10 for lots between ½ and one acre, and 25 for lots over one acre.²⁶⁶ And, Charlotte requires a permit and restricts chickens to 20 per acre.²⁶⁷

Des Moines' ordinance employs a similar step system but provides for a mix of other livestock. It allows for no more than 30 of any two species for property less than one acre. For property greater than one acre, one can have a total of 50 animals divided among up to six species.²⁶⁸

Lincoln, Nebraska, has one of the more unique chicken ordinances when it comes to limiting the number, in that it not only provides for a maximum number of chickens, but also a minimum. It also specifies the weight of the chickens. So, for property under one acre, with a permit, a person can have seven to 30 chickens under three pounds, three to 20 chickens between three and five pounds, and two to five chickens between five and 20 pounds.²⁶⁹ It allows chicken owners to double the number for each additional acre. Lincoln's ordinance should be applauded for recognizing that chickens are flock animals and thus require, at least, a minimum of two. It should also be applauded for not penalizing an owner for keeping less than two and only making it unlawful to keep numbers greater than the maximum.²⁷⁰ After all, if it penalized keeping less than a minimum number of chickens, Lincoln might be unique among cities for making it unlawful not to keep chickens.

More problematic are cities that do not allow owners to own a minimum number of four chickens. Several cities allow one chicken per a certain square footage area. Greensboro provides for one chicken for every 3,000 square feet, as long as the area is greater than 7,000 square feet.²⁷¹ Anaheim allows one chicken for each 1,800 square feet, but it does provide that if the calculation results in more than half an animal, the owner can round up to the next whole

animal.²⁷² Tampa provides five per 5,000 square feet. And, Cleveland allows for one chicken for each 800 square feet if residential and each 400 square feet if commercial or industrial.²⁷³ Cleveland, at least, has stated in its ordinance that these square feet requirements are meant to allow six chickens on an average-sized Cleveland lot. While many of these cities provide a small enough chicken to square foot ratio that the average single-family home should be able to accommodate four or more chickens, this method still leaves open the possibility that a chicken owner would be restricted to one or two chickens. An ordinance that allows only one chicken per a certain area does not take into account that chickens are flock animals that do not thrive when left alone.

3. Limit Number of Chickens

Many other cities limit the number of chickens any household can keep, no matter the size of the property. Thirty cities place a simple limit on the number of chickens.²⁷⁴ Of those cities that simply limit the number of chickens, the average number they allow is 12, the median number is nine, and the most popular number is a tie between four and 25.²⁷⁵ The lowest number is Garland and Honolulu with two.²⁷⁶ Somewhat surprisingly, the highest number comes from Jersey City—with 50.²⁷⁷ Jersey City collapses ducks and pigeons within the restriction of 50 fowl.²⁷⁸ Jersey City also requires a permit to keep chickens.²⁷⁹

At least four cities set a maximum number of chickens that can be owned before it is necessary to procure a per-

261. TULSA, OKLA., CODE OF ORDINANCES §200(E) (2011).

262. EL PASO, TEX., MUN. CODE §7.24.020(B); TULSA, OKLA., CODE OF ORDINANCES §200(A).

263. FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(c), (d), (e) (2011).

264. MESA, ARIZ., CITY CODE §8-6-21(A) (2011).

265. LOUISVILLE/JEFFERSON COUNTY METRO CODE §91.011 RESTRAINT (8) (2011).

266. ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §5.02 (2010).

267. CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c)(1), (g) (2010).

268. DES MOINES, IOWA, CODE OF ORDINANCES §18-4 (2011). Des Moines also allows up to two fowl to be kept as pets. *Id.* §18-136.

269. LINCOLN, NEB., MUN. CODE tbl. 6.04.040 (2011).

270. *Id.* §6.04.040(b)(1).

271. GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3(B) (2011).

272. ANAHEIM, CAL., MUN. CODE §18.38.030.050 (2011).

273. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(2) (2011).

274. From lowest to highest: HONOLULU, HAW., REV. ORDINANCES §7-2.5(d) (1990) (two); GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011) (two); PORTLAND, OR., CITY CODE §13.05.015(b) & (e) (2011) (three); SACRAMENTO, CAL., CITY CODE §9.44.860(A)(1) (2011) (three); WICHITA, KAN., CODE OF ORDINANCES §6.04.157 (2011) (three); SAN FRANCISCO, CAL., HEALTH CODE §37 (2011) (four); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5(3) (2011) (four); ST. LOUIS, MO., CODE OF ORDINANCES §10.20.015 (2010) (four); SANTA ANA, CAL., CODE OF ORDINANCES §5.6 (2011) (four); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed); *id.* §7.29; *id.* §9.52 (four); BUFFALO, N.Y., CITY CODE §341-11 (2009) (five); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.815 (2007) (six); EL PASO, TEX., MUN. CODE §7.24.020 (2011) (six); CORPUS CHRISTI, TEX., CODE OF ORDINANCES §6-154 (2011) (six); HOUSTON, TEX., CODE OF ORDINANCES ch. 6, art. II (2010) (seven); AUSTIN, TEX., CODE OF ORDINANCES tit. III, ch. 3.1.1 (2011) (nine); COLORADO SPRINGS, COLO., CITY CODE §6.7.106(D) (2011) (10); PLANO, TEX., CODE OF ORDINANCES §4-184 (2011) (10); GLENDALE, CAL., MUN. CODE §6.04.130 (2011) (12); ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-4-3 (2011) (15); KANSAS CITY, MO., CODE OF ORDINANCES §14-15(f) (2011) (15); MIAMI, FLA., CODE OF ORDINANCES §6-1(b) (2011) (15); LONG BEACH, CAL., MUN. CODE §6.20.020 (2011) (20); TUCSON, ARIZ., CODE OF ORDINANCES §4-56 (2011) (24); FREMONT, CAL., MUN. CODE §3-5803 (2011) (25); SAN DIEGO, CAL., MUN. CODE §42.0708 (2011) (25); BOS., MASS., CODE OF ORDINANCES §16-1.8A (2010) (25); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007) (25); MOBILE, ALA., CODE OF ORDINANCES §7-103 (2011) (25); JERSEY CITY, N.J., CODE OF ORDINANCES §90-6 (2011) (50).

275. *Supra* note 274 and accompanying text.

276. GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011) (two); HONOLULU, HAW., REV. ORDINANCES §7-2.5(d) (1990) (two).

277. JERSEY CITY, N.J., CODE OF ORDINANCES §90-6 (2011).

278. *Id.*

279. *Id.*

mit.²⁸⁰ Wichita allows three chickens, Santa Ana allows four, and San Jose and El Paso both allow up to six.²⁸¹ This appears to be the most workable system, because it takes into account that there are different levels of chicken-keeping in an urban agriculture context. It provides a bright-line rule for people who want small backyard flocks, while still allowing owners of market gardens, urban farms, or chicken cooperatives the opportunity to expand their operations without seeking to change the ordinance. It also conserves city resources by not forcing every would-be chicken owner to procure a permit. Finally, because there is no permit, it saves the city from any obligations to monitor the backyard operation. If any problem arises with a small backyard flock, the city can rely on its nuisance laws, or other setback or coop requirements within the statute to resolve the problem.

Some cities always require a permit, but set a relatively high number of chickens allowed. As noted earlier, with a permit, Jersey City allows up to 50,²⁸² and Boston and Mobile allow up to 25.²⁸³ According to several Bostonians who want chickens, however, Boston does not easily grant this permit.²⁸⁴ Miami allows up to 15 hens with a permit.²⁸⁵

Some cities take a belt-and-suspenders approach and require both a permit and restrict hens to a small number. With a permit, Milwaukee only allows four,²⁸⁶ and Sacramento, three.²⁸⁷

Several other cities, perhaps understanding that the hens may occasionally be used to produce more chickens, allow considerably more chicks than full-grown chickens. Both Miami and Kansas City allow only 15 grown hens, but Miami allows 30 chicks,²⁸⁸ and Kansas City allows 50.²⁸⁹ Tulsa allows seven adults and 14 chicks.²⁹⁰ Colorado Springs allows 10 hens and an unlimited number of chicks.²⁹¹ And Garland, even though it allows only two hens, does not limit the number of chicks less than one-month old.²⁹²

And for pure eccentricity, Houston has the most interesting restriction on the number of chickens. Houston allows up to seven hens if a person can present a written certification from a licensed physician that the person needs “fresh unfertilized chicken eggs for serious reasons

pertaining to said person’s health.”²⁹³ This ordinance was passed in 2010,²⁹⁴ presumably because Houstonites were able to show that fresh eggs help alleviate certain medical ailments.

4. Setbacks

Setbacks are, by far, the most popular way to regulate chickens. Sixty-three cities have some sort of setback requirement in their ordinances. The most popular setback is a setback from a neighboring dwelling: 56 cities require that chickens and chickens coops be kept a certain distance from other residences.²⁹⁵ The next most popular is a setback

293. HOUSTON, TEX., CODE OF ORDINANCES §6-38 (2010).

294. *Id.*

295. AKRON, OHIO, CODE OF ORDINANCES §92-18 (2011) (100 ft.); ANAHEIM, CAL., MUN. CODE §18.38.030.0202 (2011) (50 ft.); ANCHORAGE, ALASKA, CODE OF ORDINANCES §§21.40.060 & 21.40.080 (2011) (25-100 ft.); ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §5.02 (2010) (50 ft.); ATLANTA, GA., CODE OF ORDINANCES §18-7 (2011) (50 ft.); AUSTIN, TEX., CODE OF ORDINANCES §3.2.16 (2011) (50 ft.); BAKERSFIELD, CAL., MUN. CODE §17.12.010 R-S (2011) (50 ft.); BATON ROUGE, LA., CODE OF ORDINANCES §14-224 (c)(1)(b) (2011) (50 ft.); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007) (300 ft. from residence or 100 ft. from any residential structure); BOS., MASS., CODE OF ORDINANCES §16-1.8A, ZONING, art. 8, No. 75 (2010) (100 ft.); BUFFALO, N.Y., CITY CODE §341-11.3 (2009) (20 ft. from door or window); CORPUS CHRISTI, TEX., CODE OF ORDINANCES §6-154 (2011) (100 ft. if not enclosed); DES MOINES, IOWA, CODE OF ORDINANCES §18-4 (2011) (25 ft.); EL PASO, TEX., MUN. CODE §7.24.030 (2011) (30 ft.); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(b) & (f) (2011) (50 ft.); FRESNO, CAL., MUN. CODE §12.207.5 (2011) (40 ft.); GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011) (30 ft.); GLENDALE, CAL., MUN. CODE §6.04.030 (2011) (50 ft. from dwelling or 100 ft. from school or hospital); GLENDALE, ARIZ., CODE OF ORDINANCES pt. II, art. 5 (2010) (100 ft.); GRAND RAPIDS, MICH., CODE OF ORDINANCES §8.582 (2010) (100 ft. from any dwelling unit, well, spring, stream, drainage ditch, or drain); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3(B) (2011) (50 ft.); HIALEAH, FLA., CODE OF ORDINANCES §10.4 (2011) (100 ft.); HONOLULU, HAW., REV. ORDINANCES §7-2.5(d) (1990) (300 ft.); HOUSTON, TEX., CODE OF ORDINANCES §6-31 (2010) (100 ft.); JERSEY CITY, N.J., CODE OF ORDINANCES §90-6 (2011) (25 ft.); KANSAS CITY, MO., CODE OF ORDINANCES §14-15 (2011) (100 ft.); LINCOLN, NEB., MUN. CODE §6.04.040 (2011) (50 ft.); LONG BEACH, CAL., MUN. CODE §6.20.030 (2011) (50 ft.); L.A., CAL., MUN. CODE §§53.58 & 53.59 (2011) (Department of Animal Services promulgated regulations that require chicken coops to be 35 ft. from neighbor’s dwelling and 20 ft. from owner’s dwelling); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed) (25 ft.); MESA, ARIZ., CITY CODE §8-6-21(g) & (h) (2011) (40 ft.); MIAMI, FLA., CODE OF ORDINANCES §6-1(b) (2011) (100 ft.); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5(3)(g)-(j) (2011) (25 ft.); MOBILE, ALA., CODE OF ORDINANCES §§7-88 & 7-103 (2011) (150 ft. if not grandfathered in); NASHVILLE-DAVIDSON, TENN., MUN. CODE §17-16-330(B) (2011) (250 ft.); N.Y.C., MUN. CODE §161.09 (1990) (25 ft.); NEWARK, N.J., GENERAL ORDINANCES §6:2-35 (2010) (20 ft.); OAKLAND, CAL., CODE OF ORDINANCES §6-04-320 (2011) (20 ft.); OKLAHOMA CITY, OKLA., MUN. CODE 59-9350 (2011) (200 ft.); PHOENIX, ARIZ., CITY CODE §8-7 (2011) (80 ft.); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011) (500 ft.); RIVERSIDE, CAL., CODE OF ORDINANCES §6.04.20 (2011); *id.* tit. 17 (50 ft.); ROCHESTER, N.Y., CITY ORDINANCES §30-19(H) (no date listed) (25 ft.); SACRAMENTO, CAL., CITY CODE §9.44.860 (2011) (20 ft.); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109(c) (2011) (100 ft. or 50 ft. with permit); SAN DIEGO, CAL., MUN. CODE §42.0709 (2011) (50 ft.); SAN FRANCISCO, CAL., HEALTH CODE §37(b) (2011) (20 ft. from door or window); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.815 (2007) (20 ft. but more if have more chickens); SANTA ANA, CAL., CODE OF ORDINANCES §5-18 (2011) (100 ft.); SEATTLE, WASH., MUN. CODE §23.42.052(c)(3) (2011) (10 ft.); ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31 (2011) (100 ft. unless have permission from neighbors); STOCKTON, CAL., MUN. CODE §§6.04.420, 16.80.060 (2011) (50 ft.); TACOMA, WASH., MUN. CODE §5.30.010 (2011) (50 ft. unless have permission from neighbors); TAMPA, FLA., CODE OF ORDINANCES §19.76 (2008) (200 ft.); TUCSON, ARIZ., CODE

280. WICHITA, KAN., CODE OF ORDINANCES §6.04.157(a) (2011); SANTA ANA, CAL., CODE OF ORDINANCES §5.6 (2011); SAN JOSE, CAL., CODE OF ORDINANCES tit. 7 (2007); EL PASO, TEX., MUN. CODE §7.24.020 (2011).

281. See *supra* note 280.

282. JERSEY CITY, N.J., CODE OF ORDINANCES §90-7 (2011).

283. BOS., MASS., CODE OF ORDINANCES §16-1.8A, ZONING art. 8 No. 75 (2010); MOBILE, ALA., CODE OF ORDINANCES §7-103 (2011).

284. See, e.g., LEGALIZE CHICKENS IN BOSTON, <http://legalizechickensinboston.org/> (last visited July 5, 2012) (stating that the city of Boston denies chicken permits and seeking a more reasonable legislative solution to regulate chickens in Boston).

285. MIAMI, FLA., CODE OF ORDINANCES §6-1(b) (2011).

286. MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011).

287. SACRAMENTO, CAL., CITY CODE §9.44.860(a)(1) (2011).

288. MIAMI, FLA., CODE OF ORDINANCES §6-1(b) (2011).

289. KANSAS CITY, MO., CODE OF ORDINANCES §14-15(f) (2011).

290. TULSA, OKLA., CODE OF ORDINANCES §200(d), (e) (2011).

291. COLORADO SPRINGS, COLO., CITY CODE §6.7.106(D) (2011).

292. GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011).

from the property line: 20 cities require chickens to be kept away from the neighbor's property, even if the neighbor's actual house is much further away.²⁹⁶ Three cities require a setback from the street.²⁹⁷ Six cities ban chickens from the front yard.²⁹⁸ This adds up to more than 63, because several cities employ more than one kind of setback. Finally, several cities have unique setback requirements that will be discussed later.

a. Setbacks From Neighboring Buildings

Of the 56 cities that require that chickens be kept a certain distance away from neighboring residences,²⁹⁹ the setbacks range from 10³⁰⁰ to 500 feet.³⁰¹ The average of all of the setbacks is 80 feet,³⁰² although only one city, Phoenix, actually has a setback of 80 feet.³⁰³ The median and the mode are both 50 feet.³⁰⁴ The average is higher than both the median and the mode, because several cities that also require large lots, or agriculturally zoned land, also have very large setbacks.³⁰⁵ The mode, the most common set-

back, comprises 17 cities.³⁰⁶ After that, the most popular setbacks are the following:

- Fifteen cities have setbacks of less than 30 feet, with two at 30 feet,³⁰⁷ seven at 25 feet,³⁰⁸ six at 20 feet,³⁰⁹ and one at 10 feet.³¹⁰
- Thirteen cities have setbacks of 100 feet.³¹¹ Of those, three of them allow for smaller setback under certain conditions: St. Petersburg will allow for a smaller setback if the owner seeks permission from neighboring property owners; San Antonio will allow for a smaller setback with a permit; and Corpus Christi will allow for a smaller setback if the coop is enclosed.³¹²
- Seven cities have setbacks of more than 100 feet.³¹³ Of those, Mobile, Alabama, has a 150-foot setback, but allows chicken coops that were built before the ordinance passed to be grandfathered in.³¹⁴ Oklahoma City has a 200-foot setback and, puzzlingly, will waive these setbacks from horses, mules, donkeys, and pigs, but not for chickens.³¹⁵ Oklahoma City also has an additional 400-foot setback for roosters.³¹⁶

Several cities will shrink their setbacks under certain conditions. In what appears to be a thoughtful approach to requiring a neighbor's consent, four cities provide a standard setback, but provide relief from the setback if the owner gets permission from his neighbors to keep chickens.³¹⁷ And one city, San Antonio, as mentioned

OF ORDINANCES §4-57 (2011) (50 ft.); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.7(a) & (b) (no date listed) (50 ft.).

296. ANAHEIM, CAL., MUN. CODE §18.38.030.0202 (2011) (20 ft. from property line); BATON ROUGE, LA., CODE OF ORDINANCES §14-224(c)(1)(b) (2011) (10 ft. from property line); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007) (100 ft. from property line); BUFFALO, N.Y., CITY CODE §341-11.3 (2009) (18 inches from rear lot); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c) (2010) (25 ft. from property line); CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011) (20 ft. from property line); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(B) (2011) (5 ft. from side yard and 18 inches from rear yard); FRESNO, CAL., MUN. CODE §12-206.1 (2011) (100 ft. from property line); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011) (25 ft. from property line); JACKSONVILLE, FLA., ORDINANCE CODE §656.401 (2011) (50 ft. from property line); KANSAS CITY, MO., CODE OF ORDINANCES §14-15(f) (2011) (25 ft. from property line); MONTGOMERY, ALA., CODE OF ORDINANCES ch. 4 art. I (2011); *id.* app. C, art. VII (200 ft. from property line); PLANO, TEX., CODE OF ORDINANCES §3-204 (2011) (5 ft. from property line); PORTLAND, OR., CITY CODE §13.05.015(b) & (e) (2011) (50 ft. from residence or business where food is prepared); RIVERSIDE, CAL., CODE OF ORDINANCES §6.04.20 (2011) (20 ft. from property line); SEATTLE, WASH., MUN. CODE §23.42.052(c)(3) (2011) (10 ft. from property line); TAMPA, FLA., CODE OF ORDINANCES §19.76 (2008) (200 ft. from property line); TULSA, OKLA., CODE OF ORDINANCES §200(d) & (e) (2011) (50 ft., but 100 ft. if zoned agricultural); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.7(a) & (b) (no date listed) (250 ft. unless have neighbor's consent).

297. BAKERSFIELD, CAL., MUN. CODE §17.12.010-RS (2011) (100 ft.); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007) (300 ft.); BOS., MASS., CODE OF ORDINANCES §16-1.8A, ZONING, art. 8, No. 75 (2010) (100 ft.).

298. BUFFALO, N.Y., CITY CODE §341-11.3 (2009); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(B) (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4 (2011); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5(3)(g)-(j) (2011); PHOENIX, ARIZ., CITY CODE §8-7 (2011); SACRAMENTO, CAL., CITY CODE §9.44.860 (2011).

299. *See supra* note 295.

300. SEATTLE, WASH., MUN. CODE §23.42.052(c)(3) (2011).

301. RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011). Since Richmond also requires an acre of land to even own chickens, this setback doesn't exclude any additional would-be chicken owners.

302. *See supra* note 295.

303. PHOENIX, ARIZ., CITY CODE §8-10 (2011) (80 ft. unless have permission from neighbor).

304. *See supra* note 295.

305. BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007) (300 ft.); HONOLULU, HAW., REV. ORDINANCES §7-2.5(d) (1990) (300 ft.); and RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011) (500 ft.).

306. Anaheim; Arlington; Austin; Bakersfield; Baton Rouge; Fort Worth; Glendale, California; Greensboro; Lincoln; Long Beach (but 20 if just had one chicken); Portland; Riverside; San Diego; Stockton; Tacoma; Tucson; Washington.

307. EL PASO, TEX., MUN. CODE §7.24.030 (2011) (30 ft., but only 20 ft. if separated by a fence that is at least six ft.); GARLAND, TEX., CODE OF ORDINANCES §22.14(A) (2011).

308. ANCHORAGE, ALASKA, CODE OF ORDINANCES §§21.40.060 & 21.40.080 (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4(h)(1) (2011); JERSEY CITY, N.J., CODE OF ORDINANCES §90-6 (2011); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011); N.Y.C., MUN. CODE §161.09 (1990) (for poultry market coops only—poultry not intended for sale is not regulated); ROCHESTER, N.Y., CITY ORDINANCES §30-19(H) (no date listed).

309. BUFFALO, N.Y., CITY CODE §341-11.3 (2009); NEWARK, N.J., GENERAL ORDINANCES §6:2-35 (2010); OAKLAND, CAL., CODE OF ORDINANCES §6-04-320 (2011); SACRAMENTO, CAL., CITY CODE §9.44.860 (2011); SAN FRANCISCO, CAL., HEALTH CODE §37 (2011); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.815 (2007) (applying setback to all small animals, not just chickens).

310. SEATTLE, WASH., MUN. CODE §23.42.052(C) (2011).

311. Akron, Atlanta, Boston, Corpus Christi, Glendale, Grand Rapids, Hialeah, Houston, Kansas City, Miami, San Antonio, Santa Ana, St. Petersburg.

312. ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31 (2011) (100 ft. unless have permission from neighbors); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109(c) (2011) (100 ft. or 50 ft. with permit); CORPUS CHRISTI, TEX., CODE OF ORDINANCES §6-154 (2011) (100 ft. if not enclosed).

313. Mobile, Oklahoma, Tampa, Nashville, Birmingham, Honolulu, Richmond.

314. MOBILE, ALA., CODE OF ORDINANCES §7-88(d) (2011) (150 ft. if not grandfathered in), *but see id.* §7-103(d) (allowing for 20 ft. from the property line in a residential area).

315. OKLAHOMA CITY, OKLA., MUN. CODE §59-9350(F) & (I) (2011).

316. *Id.* §59-9350(H).

317. LAS VEGAS, NEV., MUN. CODE §7.38.050 (2011) (300 ft. without permission); PHOENIX, ARIZ., CITY CODE §8-10 (2011) (80 ft. without permission); ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31(d) (2011) (100 ft. without permission); TACOMA, WASH., MUN. CODE §§5.30.010 & 5.30.030 (2011) (50 ft. without permission).

above, will shrink its 100-foot setback to 50 feet if a permit is secured.³¹⁸

Two cities do not frame the setback as from a neighboring residence or building, but more specifically to a door or a window of the building. Both Buffalo and San Francisco have a 20-foot setback from any door or window of a building.³¹⁹

Several cities define the setback more broadly than a neighboring dwelling, and include schools, hospitals, and other businesses within the setback.³²⁰ Grand Rapids, Michigan, however, goes further; it has a 100-foot setback from any “dwelling unit, well, spring, stream, drainage ditch or drain.”³²¹ This, in effect, bans all chickens within the city.

b. Setbacks From Property Line

Twenty cities mandate setbacks from the property line;³²² those setbacks range from 18 inches³²³ to 250 feet.³²⁴ The average setback is 59 feet, but no city actually has such a setback. The closest are Jacksonville and Tulsa, which both have a setback of 50 feet.³²⁵ Again, a few cities with very large setbacks are raising the average.³²⁶ The median set-

back is 25 feet.³²⁷ And the mode, or most popular, setback is tied at either 20³²⁸ or 25 feet.³²⁹

Washington, D.C., which has the largest setback at 250 feet, allows relief from this setback if the owner has his neighbor’s consent to keep chickens.³³⁰

c. Setbacks From the Street

Three cities require chickens to be kept away from the street: Bakersfield, Birmingham, and Boston.³³¹ All of these setbacks are relatively large, ranging from 100 to 300 feet. Presumably, this is to stop chickens from being kept in the front yard or on a corner lot from a vantage point where passersby can easily see the coop. Bakersfield, provides a specific setback for corner lots, requiring that chicken coops be kept at least 10 feet away from the street side of a corner lot.³³² Another way that cities do this, perhaps more effectively, is by simply barring chickens from front yards, as six cities do.³³³

d. Other Kinds of Setbacks

While many ordinances exclude the owner’s house from the definition of a dwelling,³³⁴ two cities provide a separate setback requirement for an owner’s own dwelling. Atlanta requires chickens to be kept at least five feet away from an owner’s own house,³³⁵ and Los Angeles requires that the chickens be kept at least 20 feet away from the owner’s house.³³⁶

Three cities do not provide for explicit setbacks, but leave each setback up to some city official’s discretion. In Wichita, the chief of police can examine the property and determine the setback.³³⁷ In St. Paul, it is up to the Health Inspector’s discretion.³³⁸ And, in Fremont, it is the Animal Services Supervisor who has discretion.³³⁹

318. SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109 (2011).

319. BUFFALO, N.Y., CITY CODE §341-11 (2009); SAN FRANCISCO, CAL., HEALTH CODE §37 (2011).

320. *E.g.*, FORT WORTH, TEX., CODE OF ORDINANCES §11A-22 (2011); GLENDALE, CAL., MUN. CODE §6.04.130 (2011).

321. GRAND RAPIDS, MICH., CODE OF ORDINANCES §8.582(2) (2010).

322. ANAHEIM, CAL., MUN. CODE §18.38.030.0202 (2011) (20 ft. from property line); BATON ROUGE, LA., CODE OF ORDINANCES §14-224(c)(1)(b) (2011) (10 ft. from property line); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007) (100 ft. from property line); BUFFALO, N.Y., CITY CODE §341-11.3 (2009) (18 inches from rear lot); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c) (2010) (25 ft. from property line); CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011) (20 ft. from property line); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(B) (2011) (5 ft. from side yard and 18 inches from rear yard); FRESNO, CAL., MUN. CODE §12-206.1 (2011) (100 ft. from property line); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011) (25 ft. from property line); JACKSONVILLE, FLA., ORDINANCE CODE §656.401 (2011) (50 ft. from property line); KANSAS CITY, MO., CODE OF ORDINANCES §14-15(f) (2011) (25 ft. from property line); MONTGOMERY, ALA., CODE OF ORDINANCES ch. 4 art. I (2011); *id.* at app. C, art. VII (200 ft. from property line); PLANO, TEX., CODE OF ORDINANCES §3-204 (2011) (5 ft. from property line); PORTLAND, OR., CITY CODE §13.05.015(b) & (e) (2011) (50 ft. from residence or business where food is prepared); RIVERSIDE, CAL., CODE OF ORDINANCES §6.04.20 (2011) (20 ft. from property line); SEATTLE, WASH., MUN. CODE §23.42.052(c)(3) (2011) (10 ft. from property line); TAMPA, FLA., CODE OF ORDINANCES §19.76 (2008) (200 ft. from property line); TULSA, OKLA., CODE OF ORDINANCES §200(d) & (e) (2011) (50 ft., but 100 ft. if zoned agricultural); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.7(a) & (b) (no date listed) (250 ft. unless have neighbor’s consent).

323. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02 (2011); BUFFALO, N.Y., CITY CODE §341-11.3 (2009).

324. WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.7 (no date listed) (250 ft. setback without consent of neighbors).

325. JACKSONVILLE, FLA., ORDINANCE CODE §656.401 (2011) (50 ft. from property line); TULSA, OKLA., CODE OF ORDINANCES §200(d), (e) (2011).

326. TULSA, OKLA., CODE OF ORDINANCES §200(d), (e) (2011) (200 ft.); TAMPA, FLA., CODE OF ORDINANCES §19.76 (2008) (200 ft.); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.7(a) & (b) (no date listed) (250 ft.).

327. CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c)(1), (f) (2010); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3 (2011); KANSAS CITY, MO., CODE OF ORDINANCES §14-15 (2011).

328. ANAHEIM, CAL., MUN. CODE §18.38.030.0202 (2011); CHESAPEAKE, VA., CODE OF ORDINANCES ch. 10 (2011); RIVERSIDE, CAL., CODE OF ORDINANCES §6.04.20 & tit. 17(2011).

329. *See supra* note 327.

330. WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.7(b) (no date listed).

331. BOS., MASS., CODE OF ORDINANCES §16-1.8A, ZONING, art. 8, No. 75 (2010); BAKERSFIELD, CAL., MUN. CODE §17.12.010-RS (2011); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007).

332. BAKERSFIELD, CAL., MUN. CODE §17.12.010-RS (2011).

333. BUFFALO, N.Y., CITY CODE §341-11.3 (2009); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(B) (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4 (2011); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5(3)(i) (2011); PHOENIX, ARIZ., CITY CODE §8-7 (2011); SACRAMENTO, CAL., CITY CODE §9.44.860 (2011).

334. *E.g.*, AUSTIN, TEX., CODE OF ORDINANCES §3.2.16 (2011) (50 ft.); ANAHEIM, CAL., MUN. CODE §18.38.030.0202 (2011).

335. ATLANTA, GA., CODE OF ORDINANCES §18-7 (2011).

336. L.A., CAL., MUN. CODE §§53.58 & 53.59 (2011) (Department of Animal Services promulgated regulations requiring coops to be 20 ft. from owner’s dwelling).

337. WICHITA, KAN., CODE OF ORDINANCES §6.04.173(c) (2011).

338. ST. PAUL, MINN., §198.05 (2011).

339. FREMONT, CAL., MUN. CODE §3-5803 (2011).

Finally, St. Louis wins for the most eccentric setback. It doesn't have any setbacks for neighboring buildings, or the property line, but it does require that chickens be kept out of the milking barn.³⁴⁰

5. Coop Requirements

Many cities regulate how the chicken coop should be built and maintained. There is a broad range in these regulations, and no two ordinances are alike. Some simply decree that it is unlawful for chickens to run at large, and thus implicitly mandate that the coop be constructed in a secure enough way so that chickens can't easily escape. Some appear to look out for animal welfare by decreeing that chickens should be provided adequate food, water, and shelter in sanitary conditions. And, some appear to try to proactively head off any potential problems by regulating the dimensions of the coop, how it must be built, and exactly how often it must be cleaned. First, some of the more common elements in these statutes will be explored. Then, more unique elements will be discussed.

a. No Running at Large

First, 33 cities prohibit chickens particularly or animals in general from running at large.³⁴¹ Most of those cities simply prohibit chickens from running at large, but some provide for a little more nuance. For instance, Cincinnati does not allow chickens to run at large "so as to do damage to gardens, lawns, shrubbery or other private property."³⁴² So, presumably, a chicken could run free, as long as it didn't damage anything. Five cities, instead of making it unlawful to run at large, provide that the chicken must be kept enclosed in the coop and

not allowed to escape.³⁴³ And two cities, Richmond and Stockton, frame it in terms of trespass and do not allow chicken trespassers.³⁴⁴ In any event, all of these statutes imply that a coop, minimally, must be constructed so that the birds cannot escape.

b. Coops Must Be Clean and Sanitary

Forty-six cities impose some sort of cleaning requirements on chicken owners.³⁴⁵ While many cities have cleaning requirements that apply to any animal,³⁴⁶ these cities ordinances are, for the most part, specific to chickens.

Nearly all of these ordinances mandate that the chicken coop be kept in a clean and sanitary condition and free from offensive odors. The degree to which each city regulates this, however, varies. Most cities have a variation on a general requirement that the coop be clean or sani-

343. BUFFALO, N.Y., CITY CODE §341-11.3 (2009); CLEVELAND, OHIO, CODIFIED ORDINANCES §603.01 (2011); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(c)(3) (2011); FRESNO, CAL., MUN. CODE §10.205 (2011); LOUISVILLE, KY., METRO CODE §91.001 NUISANCE (2011).

344. RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011) (providing that fowl may not trespass); STOCKTON, CAL., MUN. CODE §6.04.130 (2011) (fowl [shall not] to run or go upon the public or private premises of any other person, firm, or corporation; or upon any park or public street or highway within the city).

345. ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-2-2 (2011); AUSTIN, TEX., CODE OF ORDINANCES §10-5-21 (2011); BATON ROUGE, LA., CODE OF ORDINANCES §14:224(c)(1)(c) & (d) (2011); BUFFALO, N.Y., CITY CODE §341-11.3(C) (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102 (2010); CHICAGO, ILL., CODE OF ORDINANCES §7-12-290(b) (2011); CINCINNATI, OHIO, CODE OF ORDINANCES ch. 701-35 (2011); DALLAS, TEX., CODE OF ORDINANCES §7-3.2 (2011); DENVER, COLO., MUN. CODE §8-92 (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4(h) (2011); EL PASO, TEX., MUN. CODE §7.24.030 (2011); FORT WAYNE, IND., CODE OF ORDINANCES §91.017 (2011); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(h) (2011); FRESNO, CAL., MUN. CODE §10.203 (2011); GARLAND, TEX., CODE OF ORDINANCES §22.17 (2011); GLENDALE, ARIZ. MUN. CODE §25-24 (2010); GLENDALE, CAL., MUN. CODE §6.04.020 (2011); HOUSTON, TEX., CODE OF ORDINANCES §6-36 (2010); IRVING, TEX., CODE OF ORDINANCES §6-6 (2011); JERSEY CITY, N.J., CODE OF ORDINANCES §90-8 (2011); KANSAS CITY, MO., CODE OF ORDINANCES §§14-18 & 14-19 (2011); LAS VEGAS, NEV., MUN. CODE §7.36.050 (2011); LINCOLN, NEB., MUN. CODE §6.04.050 (2011); LONG BEACH, CAL., MUN. CODE §6.20.070 (2011); MEMPHIS, TENN., CODE OF ORDINANCES §8-8-1 (2009); MESA, ARIZ., CITY CODE §8-6-22 (2011); MIAMI, FLA., CODE OF ORDINANCES §6-1 (2011); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011); MOBILE, ALA., CODE OF ORDINANCES §7-103 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1 (2011); NEWARK, N.J., GENERAL ORDINANCES §6:2-35 (2010); OMAHA, NEB., CODE OF ORDINANCES §6-261 (2011); PHOENIX, ARIZ., CITY CODE §8-7(d) (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88(d) (2011); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109 (2011); SAN DIEGO, CAL., MUN. CODE §42.0709 (2011); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.755 (2007); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b) (2011); SCOTTSDALE, ARIZ., CODE OF ORDINANCES §4-18 (2011); ST. PAUL, MINN., §198.04-05 (2011); ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31(c) (2011); TOLEDO, OHIO, MUN. CODE §1705.07 (2011); TUCSON, ARIZ., CODE OF ORDINANCES §4-58 (2011); TULSA, OKLA., CODE OF ORDINANCES §200(d), (e) & 406 (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.10-13 (no date listed); WICHITA, KAN., CODE OF ORDINANCES §6.04.174 (2011).

346. *E.g.*, ANCHORAGE, ALASKA, CODE OF ORDINANCES §17.10.030 (2011); ATLANTA, GA., CODE OF ORDINANCES §18-8 (2011); FREMONT, CAL., MUN. CODE §3-5600 (2011); MONTGOMERY, ALA., CODE OF ORDINANCES §4-3 (2011); NORFOLK, VA., CODE OF ORDINANCES §6.1-2 ADEQUATE SHELTER (2011); PLANO, TEX., CODE OF ORDINANCES §4-51 (2011); TAMPA, FLA., CODE OF ORDINANCES §19.77 (2008).

340. ST. LOUIS, MO., CODE OF ORDINANCES §11.46.410 (2010).

341. AKRON, OHIO, CODE OF ORDINANCES §92.01 (2011); ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-4-3(D) (2011); ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §5.02(e) (2010); BUFFALO, N.Y., CITY CODE §341-11.3 (2009); CINCINNATI, OHIO, CODE OF ORDINANCES §701-33 (2011); CLEVELAND, OHIO, CODIFIED ORDINANCES §603.01 (2011); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(c)(3) (2011); FRESNO, CAL., MUN. CODE §10.205 (2011); GARLAND, TEX., CODE OF ORDINANCES §22.03 (2011); INDIANAPOLIS, IND., REV. CODE §531.102 (2011); IRVING, TEX., CODE OF ORDINANCES §6-2 (2011); LAS VEGAS, NEV., MUN. CODE §7.36.030 (2011); LEXINGTON-FAYETTE, KY., CODE OF ORDINANCES §4-10 (2011); LONG BEACH, CAL., MUN. CODE §6.20.080 (2011); LOUISVILLE, KY., METRO CODE ch. 91.001 NUISANCE (2011); MEMPHIS, TENN., CODE OF ORDINANCES §8-8-2 (2009); MESA, ARIZ., CITY CODE §8-6-21(I) (2011); MIAMI, FLA., CODE OF ORDINANCES §6-2 (2011); NEWARK, N.J., GENERAL ORDINANCES §6:2-34 (2010); OAKLAND, CAL., CODE OF ORDINANCES §6-04-200 (2011); NORFOLK, VA., CODE OF ORDINANCES §6.1-7 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-263 (2011); PITTSBURGH, PA., CODE OF ORDINANCES §635.02 (2011); RALEIGH, N.C., CODE OF ORDINANCES §12-3004 (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011); ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31(b) (2011); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.750 (2007); SPOKANE, WASH., MUN. CODE §10.24 (no date listed); STOCKTON, CAL., MUN. CODE §6.04.130 (2011); TACOMA, WASH., MUN. CODE §5.30.020 (2011); TOLEDO, OHIO, MUN. CODE §505.10 (2011); TUCSON, ARIZ., CODE OF ORDINANCES §4-55 (2011); WICHITA, KAN., CODE OF ORDINANCES §6.04.173 (2011).

342. CINCINNATI, OHIO, CODE OF ORDINANCES §701-33 (2011).

tary.³⁴⁷ Most cities also expressly prohibit odors or offensive odors.³⁴⁸

Some cities are a little more explicit and require that the coop be cleaned regularly or routinely.³⁴⁹ Some cities go further and require the coop to be clean at all times.³⁵⁰ And some cities regulate precisely how often the coop must be cleaned. Houston is the most fastidious. In Houston, the coop must be cleaned once per day, limed once every other day, and all containers containing chicken manure must be properly disposed of once per week.³⁵¹ Milwaukee also requires coops to be cleaned daily and additionally “as is necessary.”³⁵² The next two most fastidious cities, Des Moines and Santa Ana, require that the coop be cleaned at least every other day.³⁵³ Seven cities require that the coop be cleaned at least twice a week.³⁵⁴ And another four cities require that the coop be cleaned at least once a week.³⁵⁵ And, splitting the difference, Jersey City requires the coop to be cleaned once a week from November to May, and twice a week from May to November.³⁵⁶

Many cities also have a particular concern with either flies or rodents. Fourteen cities specify that attracting flies will be a nuisance.³⁵⁷ Cities that specifically mention flies

within their ordinances are congregated mostly in the South or the Southwest.³⁵⁸ Several mandate that chicken feed or chicken waste be kept in fly-tight containers.³⁵⁹ Miami requires that a chicken’s droppings be treated to destroy fly maggots before it can be used as fertilizer.³⁶⁰ Mesa has four cleaning requirements all designed to keep flies away: (1) droppings must be removed twice weekly; (2) “fowl excreta” must be stored in fly-tight containers; (3) water and feed troughs must be kept sanitary; and (4) food and food waste must be kept in a fly-proof container—all explicitly “to prevent the breeding of flies.”³⁶¹

Kansas City’s concern with flies will stand in the way of keeping hens for eggs that would meet organic standards; it mandates the use of insecticide by providing that “all structures, pens or coops wherein fowl are kept or permitted to be shall be sprayed with such substances as will eliminate such insects.”³⁶² Because chickens eat insects, and because the protein they gain from eating those insects has a beneficial effect on the nutritional value of their eggs, this regulation stands at odds with a reason many people are interested in keeping backyard hens.

Glendale, California, appears to be the most concerned about flies, going so far as to mandate that the owner adhere to impossible building requirements. Glendale requires chickens to be kept in a fly-proof enclosure; it defines fly-proof quite specifically as “a structure or cage of a design which prevents the entry therein or the escape therefrom of any bee, moth or fly.”³⁶³ Because a chicken must enter into and exit from its enclosure, and because one would want the chicken to have access to fresh air and sunlight, such a structure presents itself as an architectural impossibility.

Ten cities are particularly concerned with rats.³⁶⁴ Of these cities, several are concerned about both flies and rats.³⁶⁵ Most of these cities simply mandate that the coop be free of rats,³⁶⁶ but three cities require that food be kept

347. *E.g.*, AUSTIN, TEX., CODE OF ORDINANCES §10-5-21 (2011); FRESNO, CAL., MUN. CODE §10.203 (2011); LONG BEACH, CAL., MUN. CODE §6.20.070 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-261 (2011); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109 (2011); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.755 (2007); TOLEDO, OHIO, MUN. CODE §1706.07 (2011); WICHITA, KAN., CODE OF ORDINANCES §6.04.174 (2011).

348. *E.g.*, AUSTIN, TEX., CODE OF ORDINANCES §10-5-21 (2011); CINCINNATI, OHIO, CODE OF ORDINANCES §701-35 (2011); DALLAS, TEX., CODE OF ORDINANCES §7-3.2 (2011); FORT WAYNE, IND., CODE OF ORDINANCES §91.017 (2011); FRESNO, CAL., MUN. CODE §10.203 (2011); GARLAND, TEX., CODE OF ORDINANCES §22.17 (2011); KANSAS CITY, MO., CODE OF ORDINANCES §§14-18 & 14-19 (2011); LAS VEGAS, NEV., MUN. CODE §7.36.050 (2011); LINCOLN, NEB., MUN. CODE §6.04.050 (2011); MIAMI, FLA., CODE OF ORDINANCES §6-1 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-261 (2011); ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31(c) (2011); TOLEDO, OHIO, MUN. CODE §1705.07 (2011); WICHITA, KAN., CODE OF ORDINANCES §6.04.174 (2011).

349. *E.g.*, BATON ROUGE, LA., CODE OF ORDINANCES §14:224(c)(1)(c) & (d) (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1 (2011); TULSA, OKLA., CODE OF ORDINANCES §§200(d), (e) & 406 (2011).

350. *E.g.*, BUFFALO, N.Y., CITY CODE §341-11.3 (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c) (2010).

351. HOUSTON, TEX., CODE OF ORDINANCES §6-36 (2010).

352. MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011).

353. DES MOINES, IOWA, CODE OF ORDINANCES §18-137 (2011); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b) (2011).

354. GARLAND, TEX., CODE OF ORDINANCES §22.17 (2011); GLENDALE, ARIZ. MUN. CODE §25-24(h) (2010); IRVING, TEX., CODE OF ORDINANCES §6-6 (2011); MESA, ARIZ., CITY CODE §8-6-22 (2011); MIAMI, FLA., CODE OF ORDINANCES §6-1 (2011); PHOENIX, ARIZ., CITY CODE §8-7(d) (2011); SCOTTSDALE, ARIZ., CODE OF ORDINANCES §4-18 (2011).

355. ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-2-2(B)(1) (2011); LINCOLN, NEB., MUN. CODE §6.04.050 (2011); NEWARK, N.J., GENERAL ORDINANCES §6:2-35 (2010); SAN DIEGO, CAL., MUN. CODE §42.0709 (2011).

356. JERSEY CITY, N.J., CODE OF ORDINANCES §90-8(C) (2011).

357. AUSTIN, TEX., CODE OF ORDINANCES §10-5-21 (2011); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(h) (2011); GARLAND, TEX., CODE OF ORDINANCES §22.17 (2011); GLENDALE, CAL., MUN. CODE §6.04.040 (2011); HOUSTON, TEX., CODE OF ORDINANCES §6-36 (2010); KANSAS CITY, MO., CODE OF ORDINANCES §14-19 (2011); LAS VEGAS, NEV., MUN. CODE §7.36.050 (2011); LINCOLN, NEB., MUN. CODE §6.04.050 (2011); MESA, ARIZ., CITY CODE §8-6-23 (2011); MIAMI, FLA., CODE OF ORDINANCES §6-1 (2011); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.755 (2007); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b) (2011); SCOTTSDALE,

ARIZ., CODE OF ORDINANCES §§4-17 & 4-18 (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.11-13 (no date listed).

358. *See supra* note 357.

359. HOUSTON, TEX., CODE OF ORDINANCES §6-36 (2010); MESA, ARIZ., CITY CODE §8-6-23 (2011); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b) (2011).

360. MIAMI, FLA., CODE OF ORDINANCES §6-1 (2011).

361. MESA, ARIZ., CITY CODE §8-6-23 (2011).

362. KANSAS CITY, MO., CODE OF ORDINANCES §14-15(d) (2011).

363. GLENDALE, CAL., MUN. CODE §6.04.040 (2011).

364. BUFFALO, N.Y., CITY CODE §341-11.13(B)(8) (2009); CINCINNATI, OHIO, CODE OF ORDINANCES §§604.17 & 00053-11 (2011); DENVER, COLO., MUN. CODE §8-92 (2011); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(h) (2011); KANSAS CITY, MO., CODE OF ORDINANCES §14-15 (2011); LAS VEGAS, NEV., MUN. CODE §7.36.050 (2011); MOBILE, ALA., CODE OF ORDINANCES §7-103 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1 (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011); SCOTTSDALE, ARIZ., CODE OF ORDINANCES §4-17 (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.12 & 902.13 (no date listed).

365. *E.g.*, CINCINNATI, OHIO, CODE OF ORDINANCES §§604.17 & 00053-11 (2011); KANSAS CITY, MO., CODE OF ORDINANCES §14-15 (2011); LAS VEGAS, NEV., MUN. CODE §7.36.050 (2011); MOBILE, ALA., CODE OF ORDINANCES §7-102 (2011); SCOTTSDALE, ARIZ., CODE OF ORDINANCES §§4-17 & 4-18 (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.12 (no date listed).

366. CINCINNATI, OHIO, CODE OF ORDINANCES §00053-11 (2011); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(d) (2011); KANSAS CITY, MO., CODE OF ORDINANCES §14-15 (2011); LAS VEGAS, NEV., MUN. CODE

within a rat-proof container.³⁶⁷ Denver appears to have the same antipathy toward rats as Glendale does toward flies. Denver requires that chickens be kept in a rat-proof building. A rat-proof building is one that is made with no “potential openings that rats could exploit and built with “material impervious to rat-gnawing.”³⁶⁸ While an opening for a rat would necessarily be bigger than an opening for a fly, because chickens will still have to enter and exit the structure, Denver appears to demand similarly impossible architecture.

c. Coop Construction Requirements

Thirty-seven cities regulate the construction of the chicken coop.³⁶⁹ Like the cleaning regulations, many of these cities’ ordinances are not particular to chickens, but cover any structure meant to house an animal.³⁷⁰ But, as demonstrated below, most specifically regulate chicken coops.

Most of these ordinances require that chickens be kept within an enclosure, and many add that the enclosure must

be secure.³⁷¹ Some further require that the enclosure keep animals protected from inclement weather.³⁷² Outside of this, however, there is no consistency to these statutes.

Of the cities that have promulgated shelter requirements specific to chickens, nine of them mandate that each chicken be given a specific amount of space.³⁷³ Of these cities, the average amount of space per chicken is five square feet, although no city actually mandates that.³⁷⁴ The median amount of space per chicken is four square feet. The mode, or most popular amount, is also four square feet.³⁷⁵ The next most popular is between two and two-and-one-half square feet.³⁷⁶ Cleveland requires 10 square feet per chicken, but specifies that this is for the outdoor run, not for the enclosed coop.³⁷⁷ Rochester also takes the difference between a chicken coop and a chicken run into account and requires at least four square feet per chicken in both the coop and the run.³⁷⁸ Long Beach does not give a particular square footage per chicken, but requires that each coop be at least twice as big as the bird.³⁷⁹

Instead of regulating coop size so specifically, some cities require that the coops not be cramped or overcrowded.³⁸⁰ Others state that the coop should be big enough for the chicken to move about freely,³⁸¹ or have space to stand,

§7.36.050 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1 (2011); SCOTTSDALE, ARIZ., CODE OF ORDINANCES §4-17 (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.12 & 902.13 (no date listed).

367. BUFFALO, N.Y., CITY CODE §341-11.3 (2009); DES MOINES, IOWA, CODE OF ORDINANCES §18-4(h) (2011); RICHMOND, VA., CODE OF ORDINANCES §10-88 (2011).

368. DENVER, COLO., MUN. CODE §§40.41 & 40.51 (2011).

369. ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-2-2 (2011); ANCHORAGE, ALASKA, CODE OF ORDINANCES §17.05.010 (2011); ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §1.01 SECURE ENCLOSURE (2010); ATLANTA, GA., CODE OF ORDINANCES §18-7 (2011); AUSTIN, TEX., CODE OF ORDINANCES §3-2-11 (2011); BALTIMORE, MD., HEALTH CODE §10-409 (2011); BUFFALO, N.Y., CITY CODE §341-11.3 (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c) (2010); CINCINNATI, OHIO, CODE OF ORDINANCES §00053-11 (2011); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(a)(1)(D) & (E) (2011); COLORADO SPRINGS, COLO., CITY CODE §6.7.106(D) (2011); CORPUS CHRISTI, TEX., CODE OF ORDINANCES §6-154 (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-3(h) (2011); FRESNO, CAL., MUN. CODE §10.205 (2011); GLENDALE, CAL., MUN. CODE §6.04.040 (2011); HOUSTON, TEX., CODE OF ORDINANCES §6-36 (2010); IRVING, TEX., CODE OF ORDINANCES §6-1 SHELTER (2011); JERSEY CITY, N.J., CODE OF ORDINANCES §90-8 (2011); KANSAS CITY, MO., CODE OF ORDINANCES §14-15 (2011); LINCOLN, NEB., MUN. CODE §6.04.050 (2011); LONG BEACH, CAL., MUN. CODE §6.20.100 (2011); LOUISVILLE, KY., METRO CODE §91.001 RESTRAINT (2011); MADISON, WIS., CODE OF ORDINANCES §28.08 (no date listed); MOBILE, ALA., CODE OF ORDINANCES §7-88 (2011); MONTGOMERY, ALA., CODE OF ORDINANCES §4-161 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1 (2011); NORFOLK, VA., CODE OF ORDINANCES §6.1-2 (2011); OKLAHOMA CITY, OKLA., MUN. CODE §8-96(c) & (e) (2011); PLANO, TEX., CODE OF ORDINANCES §4-1 SECURE ENCLOSURE & SHELTER (2011); ROCHESTER, N.Y., CITY ORDINANCES §30-19 (no date listed); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-9 (2011); SAN JOSE, CAL., CODE OF ORDINANCES §§7.20.020 & 7.60.760 (2007); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b) (2011); SEATTLE, WASH., MUN. CODE §23.42.052(c)(3) (2011); TACOMA, WASH., MUN. CODE §17.01.010 (2011); TUCSON, ARIZ., CODE OF ORDINANCES §4-3(2) (c) (2011); TULSA, OKLA., CODE OF ORDINANCES §406 (2011).

370. ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-2-2 (2011); ANCHORAGE, ALASKA, CODE OF ORDINANCES §17.05.010 (2011); ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §1.01 SECURE ENCLOSURES (2010); BALTIMORE, MD., HEALTH CODE §10-409 (2011); IRVING, TEX., CODE OF ORDINANCES §6-1 (2011); MOBILE, ALA., CODE OF ORDINANCES §7-15 (2011); MONTGOMERY, ALA., CODE OF ORDINANCES §4-161 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1 (2011); NORFOLK, VA., CODE OF ORDINANCES §6.1-2 (2011); PLANO, TEX., CODE OF ORDINANCES §4-1 (2011); TUCSON, ARIZ., CODE OF ORDINANCES §4-3(2)(c) (2011).

371. *E.g.*, ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-2-2 (2011); ANCHORAGE, ALASKA, CODE OF ORDINANCES §17.05.010 (2011); ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §1.01 SECURE ENCLOSURES (2010); ATLANTA, GA., CODE OF ORDINANCES §18-7 (2011); AUSTIN, TEX., CODE OF ORDINANCES §3-2-11 (2011); BUFFALO, N.Y., CITY CODE §341-11.3 (2009); DES MOINES, IOWA, CODE OF ORDINANCES §18-3(h) (2011); GLENDALE, CAL., MUN. CODE §6.04.040 (2011); IRVING, TEX., CODE OF ORDINANCES §6-1 (2011); KANSAS CITY, MO., CODE OF ORDINANCES §14-15 (2011); LOUISVILLE, KY., METRO CODE §91.001 (2011); MADISON, WIS., CODE OF ORDINANCES §28.08 (no date listed); MONTGOMERY, ALA., CODE OF ORDINANCES §4-161 (2011); NORFOLK, VA., CODE OF ORDINANCES §6.1-2 (2011); PLANO, TEX., CODE OF ORDINANCES §4-1 (2011); TACOMA, WASH., MUN. CODE §17.01.010 (2011).

372. *E.g.*, NORFOLK, VA., CODE OF ORDINANCES §6.1-2 (2011) (providing that a shelter must protect “each animal from injury, rain, sleet, snow, hail, direct sunlight”); PLANO, TEX., CODE OF ORDINANCES §4-1 (2011) (providing that fowl should be housed in a “structure that is capable of providing cover and protection from the weather”); TULSA, OKLA., CODE OF ORDINANCES §406 (2011) (“Natural or artificial shelters appropriate to the local climatic conditions for the particular species of animal or fowl shall be provided for all animals or fowl kept outdoors.”).

373. ATLANTA, GA., CODE OF ORDINANCES §18-7(1)(d) (2011) (2 sq. ft.); BUFFALO, N.Y., CITY CODE §341-11.3(B)(3) (2009) (2 sq. ft.); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c) (2010) (4 sq. ft.); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(D) & (E) (2011) (10 sq. ft.); COLORADO SPRINGS, COLO., CITY CODE §6.7.106(D) (2011) (4 sq. ft.); LONG BEACH, CAL., MUN. CODE §6.20.100 (2011) (twice the size of the fowl); MOBILE, ALA., CODE OF ORDINANCES §7-88 (2011) (15 sq. ft.); ROCHESTER, N.Y., CITY ORDINANCES §30-19 (no date listed) (4 sq. ft.); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b)(3) (2011) (2.5 sq. ft.).

374. *See supra* note 373.

375. CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c) (2010); COLORADO SPRINGS, COLO., CITY CODE §6.7.106(D) (2011); ROCHESTER, N.Y., CITY ORDINANCES §30-19 (no date listed).

376. ATLANTA, GA., CODE OF ORDINANCES §18-7(1)(d) (2011); BUFFALO, N.Y., CITY CODE §341-11.3(B)(3) (2009); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b)(3) (2011).

377. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(D) & (E) (2011).

378. ROCHESTER, N.Y., CITY ORDINANCES §30-19 (no date listed).

379. LONG BEACH, CAL., MUN. CODE §6.20.100 (2011).

380. *E.g.*, CINCINNATI, OHIO, CODE OF ORDINANCES §701-35 (2011).

381. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(D) (2011).

turn around, and lie down.³⁸² Des Moines is unique, in that it looks to state or national standards for the coop size, providing that “such enclosures shall be of sufficient size to house the number of animals or fowl permitted by state or national standards.”³⁸³

Some cities also mandate how large the coop can be. The coop sizes also lack uniformity—both Buffalo and Cleveland provide that the coop can be no larger than 32 square feet, but Cleveland will allow the coop to be up to 15 feet high, while Buffalo caps height at seven feet.³⁸⁴ Seattle allows for up to 1,000 square feet and caps the height at 12 feet.³⁸⁵ Finally, Charlotte is the only city that provides for a minimum height by requiring the coops to be at least 18 inches high.³⁸⁶

Other requirements that turn up in more than one city is that the coop’s floor be impervious,³⁸⁷ the coop be adequately ventilated,³⁸⁸ and the coop be kept dry or allow for drainage.³⁸⁹ Some cities mandate that the enclosure protect the chickens from predators.³⁹⁰ And, Buffalo, Cleveland, and Colorado Springs require that the chickens have access to an outdoor run.³⁹¹

Two cities stand at odds on the issue of keeping chickens within solid walls. Baltimore prohibits chickens from being confined in a cage entirely of solid walls,³⁹² while Corpus Christi, to avoid large setbacks, requires that chickens be confined entirely within solid walls.³⁹³

And some cities have entirely unique ordinances. Irving is concerned with protecting chickens from inclement weather; it requires protection from the direct rays of the

sun when the temperature is over 90 degrees and protection from direct exposure to wind when the temperature is below 50 degrees.³⁹⁴ Jersey City’s ordinance stands out for its thoughtfulness.³⁹⁵ It requires that the coop contain windows if possible, that the coop be white-washed or painted, and that the coop contain removable perches and nests, so that they can be cleaned on a regular basis.³⁹⁶ Rochester does not allow fowl to be kept in a cellar.³⁹⁷ And San Antonio requires that the coop be built so that the chicken’s feet do not fall through the floor.³⁹⁸

d. Giving Authority Over Coop Requirements to a City Official

Instead of legislating coop requirements through City Council, four cities delegate to some other city official. San Francisco requires the coop structure to be approved by the Department of Health³⁹⁹; Washington, D.C., assigns it to the Director of the Department of Human Services.⁴⁰⁰ Columbus requires its Health Commissioner to approve the structure.⁴⁰¹ St. Louis allows its Animal Health Commissioner to set standards for coop construction.⁴⁰² And finally, Rochester mandates that the coop will, at all times, be subject to inspection and subject to the orders of its Chief of Police.⁴⁰³

e. Feed and Water Requirements

Eleven cities are concerned that chickens receive enough food and water.⁴⁰⁴ Most of these simply mandate that chickens receive adequate or sanitary food and water, but three of the cities show special concern with the chicken’s welfare. Long Beach and Los Angeles require chickens to be given water every 12 hours.⁴⁰⁵ Memphis and Omaha require that the chickens not only be given sufficient food but also “wholesome” food and water.⁴⁰⁶ And Buffalo requires that chickens be fed only through an approved

382. LONG BEACH, CAL., MUN. CODE §6.20.100 (2011) (providing that animals must have enough space to stand in a naturally erect position); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1(a)(2) (2011); PLANO, TEX., CODE OF ORDINANCES §4-1 SECURE ENCLOSURE & SHELTER (2011); TUCSON, ARIZ., CODE OF ORDINANCES §4-3(2)(c) (2011).

383. DES MOINES, IOWA, CODE OF ORDINANCES §18-3(h) (2011).

384. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(D) (2011); BUFFALO, N.Y., CITY CODE §341-11.3(B)(7) (2009).

385. SEATTLE, WASH., MUN. CODE §23.42.052(c)(3) (2011).

386. CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c) (2010).

387. *E.g.*, ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §1.01 SECURE ENCLOSURE (2010); GLENDALE, CAL., MUN. CODE §6.04.040 (2011); LINCOLN, NEB., MUN. CODE §6.04.050 (2011) (requiring that, if a coop is less than 7,500 square feet, that the flooring be made of hard surface material); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1(a)(1) (2011); PLANO, TEX., CODE OF ORDINANCES §4-1 SECURE ENCLOSURE & SHELTER (2011); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b)(2) (2010) (providing that the “floors of every such building shall be smooth and tight”).

388. *E.g.*, BUFFALO, N.Y., CITY CODE §341-11.3(B)(7) (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c) (2010); JERSEY CITY, N.J., CODE OF ORDINANCES §90-8 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1(a)(1) (2011); PLANO, TEX., CODE OF ORDINANCES §4-1 SECURE ENCLOSURE & SHELTER (2011).

389. *E.g.*, JERSEY CITY, N.J., CODE OF ORDINANCES §90-8 (2011); NEW ORLEANS, LA., CODE OF ORDINANCES §18-2.1(a)(1) (2011); SANTA ANA, CAL., CODE OF ORDINANCES §5.6(b)(2) (2011).

390. BUFFALO, N.Y., CITY CODE §341-11.3(B)(3) & (4) (2009); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(D). *See also* Nashville-Davidson, Memo from John Cooper, Director Metropolitan Council Office, to All Members of Metropolitan Council (Sept. 1, 2009) (on file with author) (providing that coops must be kept in a predator-proof enclosure).

391. BUFFALO, N.Y., CITY CODE §341-11.3(B)(1) (2009); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(D) & (E) (2011); COLORADO SPRINGS, COLO., CITY CODE §6.7.106(D) (2011).

392. BALTIMORE, MD., HEALTH CODE §10-409 (2011).

393. CORPUS CHRISTI, TEX., CODE OF ORDINANCES §6-154 (2011).

394. IRVING, TEX., CODE OF ORDINANCES §6-1 SHELTER (2011).

395. JERSEY CITY, N.J., CODE OF ORDINANCES §90-8 (2011).

396. *Id.*

397. ROCHESTER, N.Y., CITY ORDINANCES §30-19 (no date listed).

398. SAN ANTONIO, TEX., CODE OF ORDINANCES §5-9 (2011).

399. SAN FRANCISCO, CAL., HEALTH CODE §37(b) (2011).

400. WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.7(c) (no date listed).

401. COLUMBUS, OHIO, CITY CODE §221.05(b) (2011).

402. ST. LOUIS, MO., CODE OF ORDINANCES §10.20.016 (2010).

403. ROCHESTER, N.Y., CITY ORDINANCES §30-19 (no date listed).

404. BATON ROUGE, LA., CODE OF ORDINANCES §14:224(c)(1)(d) (2011); BUFFALO, N.Y., CITY CODE §341-11.3(B)(9) (2009); CHICAGO, ILL., CODE OF ORDINANCES §7-12-290(b) (2011); CINCINNATI, OHIO, CODE OF ORDINANCES §701-35 (2011); LONG BEACH, CAL., MUN. CODE §6.20.090 (2011); L.A., CAL., MUN. CODE §53.46 (2011); MEMPHIS, TENN., CODE OF ORDINANCES §8-8-1 (2009); MESA, ARIZ., CITY CODE §8-6-23(C) (2011); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011); MONTGOMERY, ALA., CODE OF ORDINANCES §4-161 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-261 (2011).

405. LONG BEACH, CAL., MUN. CODE §6.20.090 (2011); L.A., CAL., MUN. CODE §53.46 (2011).

406. MEMPHIS, TENN., CODE OF ORDINANCES §8-8-1 (2009); OMAHA, NEB., CODE OF ORDINANCES §6-261 (2011).

trough and prohibits feeding them through scattering food on the ground.⁴⁰⁷

6. Permit Requirements

Thirty-eight cities require a permit to keep chickens under certain circumstances.⁴⁰⁸ Like all of the other regulations, there is very little consistency. Eleven cities require permits for more than a maximum number of chickens.⁴⁰⁹ The average number the city allows before requiring a permit is seven. The average is high because San Diego allows up to 20 chickens before seeking a permit.⁴¹⁰ The median is five and the mode, with three cities, Saint Louis, Santa Ana and Spokane, is four. Two cities, El Paso and San Jose, allow for six.⁴¹¹ And, two cities, Portland and Wichita allow for three.⁴¹² Two cities require a permit if one seeks

to place the chickens within the legislated setbacks.⁴¹³ And one city, Riverside, only requires a permit if one wants to keep roosters.⁴¹⁴

The remaining 24 cities require a permit to keep chickens under all circumstances.⁴¹⁵ Permit renewal periods and fees also differ substantially among cities. Of the cities that require permits to keep chickens in all circumstances, there is little agreement for how long these permits should last or how much they should cost. At least 10 of them require permit holders to renew annually.⁴¹⁶ Two have an initial term of one year, but then either allow or require five-year permits after that.⁴¹⁷ Cleveland has a biennial permit.⁴¹⁸ Mobile allows for the permit to remain valid until revoked by the health officer.⁴¹⁹ And several simply don't specify how long the permit will last.⁴²⁰

There is also a lot of variety among cities in where to go to get the permit. Cleveland, Columbus, Omaha, and Norfolk grant the public health departments the authority to grant permits⁴²¹; Newark gives it to the Director of the Department of Child and Family Well-Being⁴²²; Sacramento to the Animal Care Services Operator⁴²³; Tacoma

407. BUFFALO, N.Y., CITY CODE §341-11.3(B)(9) (2009).

408. BALTIMORE, MD., HEALTH CODE §10-312 (2011); BOS., MASS., CODE OF ORDINANCES §16-1.8A (2010); BUFFALO, N.Y., CITY CODE §341-11.4 (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102 (2010); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(i) & (j) (2011); COLUMBUS, OHIO, CITY CODE §221.05 (2011); DENVER, COLO., MUN. CODE §8-91 (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4(i), (j) (2011); EL PASO, TEX., MUN. CODE §§7.24.020 & 7.24.050 (2011); FREMONT, CAL., MUN. CODE §3-5803 (2011); HOUSTON, TEX., CODE OF ORDINANCES §6-38 (2010); JERSEY CITY, N.J., CODE OF ORDINANCES §90-7 (2011); KANSAS CITY, MO., CODE OF ORDINANCES §14-15(h) (2011); LINCOLN, NEB., MUN. CODE §6.04.070 (2011); MADISON, WIS., CODE OF ORDINANCES §9.52 (no date listed); MIAMI, FLA., CODE OF ORDINANCES §6-1(b) (2011); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011); MINNEAPOLIS, MINN., CODE OF ORDINANCES §70.10 (2011); MOBILE, ALA., CODE OF ORDINANCES §7-102 (2011); NEWARK, N.J., GENERAL ORDINANCES §6:2-30 (2010); NORFOLK, VA., CODE OF ORDINANCES §6.1-7 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-266 (2011); PHILA PLANO, TEX., CODE OF ORDINANCES §4-81 (2011); PORTLAND, OR., CITY CODE §13.05.015 (2011); RIVERSIDE, CAL., CODE OF ORDINANCES §17.206.020 (2011); ROCHESTER, N.Y., CITY ORDINANCES §§30-12 & 30-15 (no date listed); SACRAMENTO, CAL., CITY CODE §§9.44.870 & 9.44.880 (2011); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109(c) (2011); SAN DIEGO, CAL., MUN. CODE §42.0713 (2011); SAN FRANCISCO, CAL., HEALTH CODE §37(d) (2011); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.700 (2007); SANTA ANA, CAL., CODE OF ORDINANCES §§5.6 & 23.42.051(B) (2011); SPOKANE, WASH., MUN. CODE §17C.310.100 (no date listed); ST. LOUIS, MO., CODE OF ORDINANCES §10.20.015(c) (2010); ST. PAUL, MINN., §198.02 (2011); TACOMA, WASH., MUN. CODE §5.30.010 (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §§902.1 & 902.3-4 (no date listed); WICHITA, KAN., CODE OF ORDINANCES §6.04.157 (2011).

409. EL PASO, TEX., MUN. CODE §7.24.020 (2011) (requiring permit if more than six); LINCOLN, NEB., MUN. CODE §6.04.040 (2011) (requiring permit if more than 5, if fowl weigh over five pounds and more than 20 for fowl between three and five pounds); PLANO, TEX., CODE OF ORDINANCES §4-81 (2011) (requiring permit if more than 10); PORTLAND, OR., CITY CODE §13.05.015(E) (2011) (requiring permit if more than three); SAN ANTONIO, TEX., CODE OF ORDINANCES §5-109(c) (2011) (requiring permit if more than five); SAN DIEGO, CAL., MUN. CODE §42.0713 (2011) (requiring permit if more than 25); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.700(A) (2007) (requiring permit if more than six); SANTA ANA, CAL., CODE OF ORDINANCES §5.6 (2011) (requiring permit if more than four); SPOKANE, WASH., MUN. CODE §§17C.310.100 & 10.20.015(c) (no date listed) (requiring permit if more than four); ST. LOUIS, MO., CODE OF ORDINANCES §10.20.015(c) (2010) (requiring permit if more than four); WICHITA, KAN., CODE OF ORDINANCES §6.04.157 (2011) (requiring permit if more than three).

410. SAN DIEGO, CAL., MUN. CODE §42.0713 (2011).

411. EL PASO, TEX., MUN. CODE §7.24.020 (2011); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.700(A) (2007).

412. PORTLAND, OR., CITY CODE §13.05.015(E) (2011); WICHITA, KAN., CODE OF ORDINANCES §6.04.157 (2011).

413. KANSAS CITY, MO., CODE OF ORDINANCES §14-15(h) (2011) (requiring permit if want to be within setback); TACOMA, WASH., MUN. CODE §5.30.010 (2011) (requiring permission from city clerk to put coop within setback).

414. RIVERSIDE, CAL., CODE OF ORDINANCES §17.206.020 (2011).

415. BALTIMORE, MD., HEALTH CODE §10-312 (2011); BOS., MASS., CODE OF ORDINANCES §16-1.8A (2010); BUFFALO, N.Y., CITY CODE §341-11.4 (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102 (2010); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(i) & (j) (2011); COLUMBUS, OHIO, CITY CODE §221.05 (2011); DENVER, COLO., MUN. CODE §8-91 (2011); DES MOINES, IOWA, CODE OF ORDINANCES §18-4(i), (j) (2011); FREMONT, CAL., MUN. CODE §3-5803 (2011); HOUSTON, TEX., CODE OF ORDINANCES §6-38 (2010); JERSEY CITY, N.J., CODE OF ORDINANCES §90-7 (2011); MADISON, WIS., CODE OF ORDINANCES §9.52 (no date listed); MIAMI, FLA., CODE OF ORDINANCES §6-1(b) (2011); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011); MINNEAPOLIS, MINN., CODE OF ORDINANCES §70.10 (2011); MOBILE, ALA., CODE OF ORDINANCES §7-102 (2011); NEWARK, N.J., GENERAL ORDINANCES §6:2-30 (2010); NORFOLK, VA., CODE OF ORDINANCES §6.1-7 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-266 (2011); ROCHESTER, N.Y., CITY ORDINANCES §§30-12 & 30-15 (no date listed); SACRAMENTO, CAL., CITY CODE §§9.44.870 & 9.44.880 (2011); SAN FRANCISCO, CAL., HEALTH CODE §37(d) (2011); ST. PAUL, MINN., §198.02 (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §§902.1 & 902.3-4 (no date listed).

416. BUFFALO, N.Y., CITY CODE §341-11.4 (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(a) (2010); FREMONT, CAL., MUN. CODE §3-5906 (2011); JERSEY CITY, N.J., CODE OF ORDINANCES §90-7 (2011); LINCOLN, NEB., MUN. CODE §6.04.110 (2011); MADISON, WIS., CODE OF ORDINANCES §9.52 (no date listed); NEWARK, N.J., GENERAL ORDINANCES §6:2-30 (2010); OMAHA, NEB., CODE OF ORDINANCES §6-271 (2011); ROCHESTER, N.Y., CITY ORDINANCES §30-15 (no date listed); ST. PAUL, MINN., §198.04 (2011); WASH., D.C., MUN. REGULATIONS FOR ANIMAL CONTROL §902.3 (no date listed).

417. KANSAS CITY, MO., CODE OF ORDINANCES §14-15(h) (2011); MINNEAPOLIS, MINN., CODE OF ORDINANCES §70.10 (2011) (five-year period offered as a choice).

418. CLEVELAND, OHIO, CODIFIED ORDINANCES §205.04 (2011).

419. MOBILE, ALA., CODE OF ORDINANCES §7-102 (2011).

420. *E.g.*, NORFOLK, VA., CODE OF ORDINANCES §6.1-7 (2011); PLANO, TEX., CODE OF ORDINANCES §4-81 (2011); SANTA ANA, CAL., CODE OF ORDINANCES §5.6 (2011); TACOMA, WASH., MUN. CODE §5.30.010 (2011).

421. CLEVELAND, OHIO, CODIFIED ORDINANCES §205.04 (2011); COLUMBUS, OHIO, CITY CODE §221.05 (2011); OMAHA, NEB., CODE OF ORDINANCES §6-266 (2011); NORFOLK, VA., CODE OF ORDINANCES §6.1-7 (2011).

422. NEWARK, N.J., GENERAL ORDINANCES §6:2-30 (2010).

423. SACRAMENTO, CAL., CITY CODE §9-44-870 (2011).

to the City Clerk⁴²⁴; and Boston to the Inspectional Services Department.⁴²⁵ Most cities, however, do not state in the ordinance by what means a person actually procures a permit.⁴²⁶

Three cities use the permit process to make sure that would-be chicken owners have the consent of their neighbors. St. Paul, Minnesota, requires that an applicant show, through written consent, that 75% of the owners or occupants of property within 150 feet have given permission for the chickens.⁴²⁷ Las Vegas requires written consent of neighbors within 350 feet.⁴²⁸ Buffalo and Milwaukee also requires written consent from adjacent landowners to secure a permit.⁴²⁹ Riverside, California, allows residents to keep hens without a permit, but requires a permit, with written permission from the neighbors, to keep more than six roosters.⁴³⁰

Finally, some cities use the permitting schemes to ensure that chicken owners comply with a long list of regulations. For instance, Buffalo has set forth a labyrinthine process for securing a “chicken license.”⁴³¹ It requires the license seeker to provide his name, address, number of chickens sought, and the location of the coop. The city then notifies neighboring landowners with property within 50 feet of the applicant’s property of the application and allows them to provide written comments. The city also notifies the mayor and City Council. If the city clerk does not receive any comments, the clerk can issue a license for up to five hens. But if anyone lodges a negative comment, then the permit goes to City Council and Council must determine, after taking in the entire record before it, if the city will grant the license. If the Council approves it, it goes to the mayor, who has the power to veto it; if he does so—it would require a 2/3 majority at the following Council meeting to

pass.⁴³² If the permit is granted, then the Animal Control Officer must inspect the coop before the licensee is actually allowed to get chickens.⁴³³ Then, the licensee has to procure a separate license from the building department to build the chicken coop.⁴³⁴

And then Buffalo requires similar procedures for renewing the license each year. Each license automatically expires on June 1. From May 1 to June 1, the city opens up a comment period for anyone to complain about licensed chickens. The City Council is to consider all of these comments and any rebuttals to them before deciding whether to renew the license. The City Council can also revoke the license at any time if it hears any complaints about the licensee.⁴³⁵

This licensing scheme appears designed to ameliorate concerns that the city will be overwhelmed with complaints. But the resources the city puts into this process and the time it is requiring councilmembers and the mayor to put into it if a single person registers a negative comment must far outweigh any resources the city would be using to prosecute rogue chickens owners.

Many cities also charge fees for these permits. Because many cities do not list their fees on any publicly accessible website, it is difficult to draw strong conclusions on the norm for how much a city charges. But, 14 cities’ fees were identified.⁴³⁶ Three of the 14 charged an initial fee, Milwaukee charged a \$25 initial fee, Minneapolis \$50, and St. Paul \$72.⁴³⁷ Thirteen cities, including Minneapolis and St. Paul, charged annual fees.⁴³⁸ The fees ranged from specifying that the permit would be free to \$50 per year. The average annual fee was \$29, although no city charged that amount. The median fee and the mode are both \$25 per year. Two cities legislated late charges into the statute, Lincoln has a \$25 late fee,⁴³⁹ and Madison charges \$5 if a permit is renewed late.⁴⁴⁰ Finally, Minneapolis gives a \$50 discount from the annual fee if a licensee renews for five years, instead of paying \$40 a year, one can pay \$150 for a five-year period.⁴⁴¹

424. TACOMA, WASH., MUN. CODE §5.30.010 (2011).

425. BOS., MASS., CODE OF ORDINANCES §16-1.8A (2010).

426. *E.g.*, CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(a) (2010) (providing that the “bureau” will issue the permit.); JERSEY CITY, N.J., CODE OF ORDINANCES §90-7 (2011) (providing that the “licensing issuing authority” will grant the permit).

427. ST. PAUL, MINN., §198.04(b) (2011):

The applicant for any permit required under the provisions of section 198.02 shall provide with the application the written consent of seventy-five (75) percent of the owners or occupants of privately or publicly owned real estate within one hundred fifty (150) feet of the outer boundaries of the premises for which the permit is being requested or, in the alternative, proof that applicant’s property lines are one hundred fifty (150) feet or more from any structure. However, where a street separates the premises for which the permit is being requested from other neighboring property, no consent is required from the owners or occupants of property located on the opposite side of the street. Where a property within one hundred fifty (150) feet consists of a multiple dwelling, the applicant need obtain only the written consent of the owner or manager, or other person in charge of the building.

428. LAS VEGAS, NEV., MUN. CODE §7.38.050 (2011).

429. BUFFALO, N.Y., CITY CODE §341-11.2 (2009) (“No chicken hens shall be allowed without the express written consent of all residents residing on property adjacent to that of the applicant.”); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5 (2011) (Before a permit is issued for the keeping of chickens, the applicant shall obtain the written consent of the owner of the property where the chickens shall be kept and owners of all directly or diagonally abutting properties, including those across an alley.”)

430. RIVERSIDE, CAL., CODE OF ORDINANCES §6.05.020 (2011).

431. BUFFALO, N.Y., CITY CODE §341-11.4 (2009).

432. BUFFALO, N.Y., CITY CHARTER §3-19.

433. BUFFALO, N.Y., CITY CODE §341-11.4 (2009).

434. *Id.*

435. *Id.*

436. BUFFALO, N.Y., CITY CODE §341-11.1(G) (2009) (\$25 annual fee); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(a) (2010) (\$50 annual fee); DENVER, COLO., MUN. CODE §8-91 (2011) (\$50 annual fees as listed on city website at <http://www.denvergov.org/FrequentlyAskedQuestionsandRelatedLinks/tabid/434759/Default.aspx>); JERSEY CITY, N.J., CODE OF ORDINANCES §90-7 (2011) (\$25 annual fee); LINCOLN, NEB., MUN. CODE §6.04.090 (2011) (\$50 annual fee with a \$25 late fee); MADISON, WIS., CODE OF ORDINANCES §9.52 (no date listed) (\$10 annual fee with a \$5 late fee); MILWAUKEE, WIS., CODE OF ORDINANCES §60-7 (2011) (\$35 initial fee); MINNEAPOLIS, MINN., CODE OF ORDINANCES §70.10(f) (2011) (\$50 initial fee and \$40 annual fee); MOBILE, ALA., CODE OF ORDINANCES §7-102 (2011) (specifies that permits are free); NEWARK, N.J., GENERAL ORDINANCES §6:2-31 (2010) (\$10 annual fee); ROCHESTER, N.Y., CITY ORDINANCES §30-16 (no date listed) (\$37 annual fee); ST. LOUIS, MO., CODE OF ORDINANCES §10.20.013(f) (2010) (\$40 annual fee); ST. PAUL, MINN., §198.04(c) (2011) (\$72 initial fee and \$25 annual fee); WICHITA, KAN., CODE OF ORDINANCES §6.04.157 (2011) (\$25 annual fee).

437. *Supra* note 436 and accompanying text.

438. *Id.*

439. LINCOLN, NEB., MUN. CODE §6.04.090 (2011).

440. MADISON, WIS., CODE OF ORDINANCES §9.52 (no date listed).

441. MINNEAPOLIS, MINN., CODE OF ORDINANCES §70.10(g) (2011).

7. Slaughtering

Thirteen cities regulate slaughtering⁴⁴²; however, of those, only six ban slaughtering altogether.⁴⁴³ Three cities, Buffalo, Charlotte, and Pittsburgh, allow chickens to be slaughtered, but require that it not occur outdoors or in a public place.⁴⁴⁴ Cleveland allows a chicken to be slaughtered on site, but only if it is meant to be consumed on the occupant's premises.⁴⁴⁵ San Francisco requires that any slaughter occur in an "entirely separate" room than the one that fowl occupy.⁴⁴⁶ Rochester requires a poulturer's license to both keep chickens and slaughter them.⁴⁴⁷ And, Glendale, in keeping with its aversion to rats described above, only allows for slaughter if it occurs in a rat-proof structure.⁴⁴⁸

Several other cities only ban slaughter if a person is killing another's chickens without permission.⁴⁴⁹ Chesapeake is particularly concerned with dogs killing chickens. Chesapeake mandates compensation of no more than \$10 per fowl, if a dog or hybrid dog kills a chicken.⁴⁵⁰

Finally, several cities stand directly opposed concerning the killing of chickens for animal sacrifice. Chicago's ordinance banning the slaughter of chickens is directed toward chickens killed for animal sacrifice; it provides in the ordinance that this "section is applicable to any cult that kills (sacrifices) animals for any type of ritual, regard-

less of whether or not the flesh or blood of the animal is to be consumed."⁴⁵¹ Wichita, however, while banning the slaughter of chickens, states that the ordinance does not apply "to the slaughter of animals as part of religious practices."⁴⁵² And, Los Angeles expressly allows slaughter both for food and religious purposes.⁴⁵³

8. Roosters

Many cities that allow for hens ban roosters. Twenty-six cities prohibit roosters.⁴⁵⁴ Of these cities, four have exceptions: Phoenix will allow a rooster only if it is incapable of making vocal noises⁴⁵⁵; Rochester and San Jose will allow roosters under four months of age⁴⁵⁶; and Sacramento only prohibits roosters on developed lots used exclusively for residential purposes.⁴⁵⁷ Fort Wayne does not say anything about roosters, but its ordinance effectively bans them by defining poultry only as "laying hens."⁴⁵⁸

Many cities, instead of banning roosters altogether impose very large setbacks for roosters, require a larger property size for roosters, or relegate roosters to agriculturally zoned land. Four cities require relatively large setbacks for roosters: Cleveland requires 100-foot setbacks⁴⁵⁹; Kansas City, 300 feet⁴⁶⁰; Oklahoma City, 400 feet⁴⁶¹; and Glendale, California, requires 500 feet.⁴⁶² Wichita will also allow for roosters if they are more than 500 feet from any residentially zoned lot.⁴⁶³ Three cities require greater

442. BUFFALO, N.Y., CITY CODE §341-11.3(d) (2009); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c)(4) (2010); CHI., ILL., CODE OF ORDINANCES §17-12-300 (2011); CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(h) (2011); GLENDALE, CAL., MUN. CODE §8.48.020 (2011); MADISON, WIS., CODE OF ORDINANCES §2809(9)(b)(6) (no date listed); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5(3)(b) (2011); Nashville-Davidson, Tenn. Memo from John Cooper, Director Metropolitan Council Office, to All Members of Metropolitan Council (Sept. 1, 2009) (on file with author); PITTSBURGH, PA., CODE OF ORDINANCES §911.04.A.2 (2011); ROCHESTER, N.Y., CITY ORDINANCES §30-12 (no date listed); SACRAMENTO, CAL., CITY CODE §9.44.860 (2011); SAN FRANCISCO, CAL., HEALTH CODE §37(d)(5) (2011); WICHITA, KAN., CODE OF ORDINANCES §6.04.175(p) (2011).

443. CHI., ILL., CODE OF ORDINANCES §17-12-300 (2011) ("No person shall own, keep or otherwise possess, or slaughter any sheep, goat, pig, cow or the young of such species, poultry, rabbit, dog, cat, or any other animal, intending to use such animal for food purposes."); MADISON, WIS., CODE OF ORDINANCES §2809(9)(b)(6) (no date listed) ("No person shall slaughter any chickens."); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5(3)(b) (2011); ("No person shall slaughter any chickens."); Nashville-Davidson, Tenn. Memo from John Cooper, Director Metropolitan Council Office, to All Members of Metropolitan Council (Sept. 1, 2009) (on file with author); SACRAMENTO, CAL., CITY CODE §9.44.860 (2011) ("No hen chickens shall be slaughtered on any developed lot used exclusively for residential purposes."); WICHITA, KAN., CODE OF ORDINANCES §6.04.175(p) (2011) (prohibiting slaughtering "on residentially zoned lots or lots utilized for residential purposes").

444. BUFFALO, N.Y., CITY CODE §341-11.3(d) (2009) ("There shall be no outdoor slaughtering of chicken hens."); CHARLOTTE, N.C., CODE OF ORDINANCES §3-102(c)(4) (2010); (providing that any slaughter "shall be done only in a humane and sanitary manner and shall not be done open to the view of any public area or adjacent property owned by another"); PITTSBURGH, PA., CODE OF ORDINANCES §911.04.A.2 (2011) ("Killing or dressing of poultry raised on the premises shall be permitted if conducted entirely within an enclosed building.");

445. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(h) (2011).

446. SAN FRANCISCO, CAL., HEALTH CODE §37(d)(5) (2011).

447. ROCHESTER, N.Y., CITY ORDINANCES §30-12 (no date listed).

448. GLENDALE, CAL., MUN. CODE §8.48.020 (2011).

449. AKRON, OHIO, CODE OF ORDINANCES §92.03 (2011); AUSTIN, TEX., CODE OF ORDINANCES §3-2-61 (2011); PHOENIX, ARIZ., CITY CODE §8-3 (2011).

450. CHESAPEAKE, VA., CODE OF ORDINANCES §10-19 (2011).

451. CHI., ILL., CODE OF ORDINANCES §17-12-300 (2011) (but exempting Kosher slaughtering from this ordinance).

452. WICHITA, KAN., CODE OF ORDINANCES §6.04.175(p) (2011).

453. L.A., CAL., MUN. CODE §53.67 (2011).

454. BUFFALO, N.Y., CITY CODE §341-11.1(d) (2009); COLORADO SPRINGS, COLO., CITY CODE §6.7.110(A) (2011); FORT WAYNE, IND., CODE OF ORDINANCES ch. 157 (2011); FRESNO, CAL., MUN. CODE §§12-204.11 & 12-205.1 & 12-206.1 (2011); GARLAND, TEX., CODE OF ORDINANCES §22.14 (2011); LAS VEGAS, NEV., MUN. CODE §7.38.050(a)(2) (2011); LINCOLN, NEB., MUN. CODE §6.04.041 (2011); LONG BEACH, CAL., MUN. CODE §6.20.050 (2011); MIAMI, FLA., CODE OF ORDINANCES §6-1(b)(2) (2011); MADISON, WIS., CODE OF ORDINANCES ch. 28 (no date listed); MILWAUKEE, WIS., CODE OF ORDINANCES §78-6.5(3)(a) (2011); N.Y.C., HEALTH CODE §§161.19(a) & 161.01(b)(11) (1990); NEWARK, N.J., GENERAL ORDINANCES §6:2-36 (2010); OAKLAND, CAL., CODE OF ORDINANCES §6.04.320 (2011); PHOENIX, ARIZ., CITY CODE §8-7(c) (2011); PORTLAND, OR., CITY CODE §13.10.010 (2011); ROCHESTER, N.Y., CITY ORDINANCES §30-19 (no date listed); SACRAMENTO, CAL., CITY CODE §9.44.860(B) (2011); ST. PAUL, MINN., §198.03 (2011); ST. PETERSBURG, FLA., CODE OF ORDINANCES §4-31(e) (2011); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.820 (2007); SANTA ANA, CAL., CODE OF ORDINANCES §5-6.5 (2011); SEATTLE, WASH., MUN. CODE §23.42.052(c)(2) (2011); STOCKTON, CAL., MUN. CODE §6.04.440 (2011); TUCSON, ARIZ., CODE OF ORDINANCES §4-59 (2011); WICHITA, KAN., CODE OF ORDINANCES §6.04.171 (2011).

455. PHOENIX, ARIZ., CITY CODE §8-7(c) (2011). Removing a roosters vocal chords was routinely done by vets many years ago. But because of the extremely high mortality rate (over 50%) most vets will no longer perform this procedure. See *Small and Backyard Flocks*, KY. U. EXT., <http://www.ca.uky.edu/smallflocks/faq.html#Q31> (last visited July 8, 2012).

456. ROCHESTER, N.Y., CITY ORDINANCES §30-19 (no date listed); SAN JOSE, CAL., CODE OF ORDINANCES §7.60.820 (2007).

457. SACRAMENTO, CAL., CITY CODE §9.44.860(B) (2011).

458. FORT WAYNE, IND., CODE OF ORDINANCES ch. 157 (2011).

459. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(c) (2011).

460. KANSAS CITY, MO., CODE OF ORDINANCES §14-15(f) (2011).

461. OKLAHOMA CITY, OKLA., MUN. CODE §59-9350(c), (d) (2011).

462. GLENDALE, ARIZ., CODE OF ORDINANCES pt. II, art. 5 (2010) (multiple provisions in zoning code relating to roosters).

463. WICHITA, KAN., CODE OF ORDINANCES §6.04.171 (2011).

acreage for roosters: Cleveland requires at least one acre⁴⁶⁴; Baton Rouge requires two acres⁴⁶⁵; and Fremont California allows one rooster for ½ acre, and two roosters for more than one acre.⁴⁶⁶ Three cities, Anaheim, Arlington, and Dallas, relegate roosters to agriculturally zoned land.⁴⁶⁷

Many cities do not ban roosters but have noise regulations that would effectively cause any rooster to be a nuisance, at least a rooster that crows.⁴⁶⁸

Finally, nine cities expressly allow for roosters.⁴⁶⁹ Most of these cities, however, limit the number of roosters allowed. Three cities allow for only one rooster.⁴⁷⁰ Two cities allow for two roosters.⁴⁷¹ El Paso allows for up to three roosters with a permit.⁴⁷² And Riverside allows up to six and only requires a permit to keep seven or more roosters.⁴⁷³ San Diego and San Francisco allow for unlimited roosters; however, San Francisco animal control authorities stated that they do not recommend that San Franciscans keep roosters due to the number of complaints they have received concerning roosters.⁴⁷⁴

And, winning the award for most eccentric rooster ordinance is the city that allows roosters conjugal visits. While this city is not within the top 100 surveyed, Hopewell Township, New Jersey, as discussed above, allows roosters that are certified disease-free to visit a hen flock for 10 days out of every year.⁴⁷⁵

464. CLEVELAND, OHIO, CODIFIED ORDINANCES §347.02(b)(1)(c) (2011).

465. BATON ROUGE, LA., CODE OF ORDINANCES §14-224(b) (2011).

466. FREMONT, CAL., MUN. CODE §3-5803 (2011).

467. ANAHEIM, CAL., MUN. CODE §18.38.030.050 (2011); ARLINGTON, TEX., ORDINANCES GOVERNING ANIMALS §5.02(f) (2010); DALLAS, TEX., CODE OF ORDINANCES §7-7.3 (2011).

468. *E.g.*, ANCHORAGE, ALASKA, CODE OF ORDINANCES §17.10.015 (2011); BAKERSFIELD, CAL., MUN. CODE §6.04.230 (2011); COLUMBUS, OHIO, CITY CODE §2327.14(A) (2011) (“No person shall keep or harbor any animal which howls, barks, or emits audible sounds that are unreasonably loud or disturbing and which are of such character, intensity and duration as to disturb the peace and quiet of the neighborhood or to be detrimental to life and health of any individual.”); CORPUS CHRISTI, TEX., CODE OF ORDINANCES §31-2 (2011); GREENSBORO, N.C., CODE OF ORDINANCES §30-8-11.3(B) (2011) (“No poultry animals that make sounds clearly audible off-site are permitted.”); LEXINGTON-FAYETTE, KY., CODE OF ORDINANCES §4-12 (2011); NASHVILLE-DAVIDSON, TENN., MUN. CODE §8.12.010 (2011) (“It is unlawful for any person to keep any animal, dog, bird or fowl which, by causing frequent or loud continued noise, disturbs the comfort or repose of any person in the vicinity.”); RALEIGH, N.C., CODE OF ORDINANCES §12-5007 (2011); ST. LOUIS, MO., CODE OF ORDINANCES §15.50.040 (2010).

469. ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-4-3 (2011); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007); EL PASO, TEX., MUN. CODE §7.24.020(B)(1) (2011); FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(c)(2) (2011); L.A., CAL., MUN. CODE §53.71 (2011); LOUISVILLE, KY., METRO CODE §91.001 (2011); RIVERSIDE, CAL., CODE OF ORDINANCES §6.05.010 (2011); SAN DIEGO, CAL., MUN. CODE §42.0708 (2011); SAN FRANCISCO, CAL., HEALTH CODE §37 (2011).

470. ALBUQUERQUE, N.M., CODE OF ORDINANCES §9-2-4-3 (2011); L.A., CAL., MUN. CODE §53.71 (2011); LOUISVILLE, KY., METRO CODE §91.001 (2011).

471. FORT WORTH, TEX., CODE OF ORDINANCES §11A-22(c)(2) (2011); BIRMINGHAM, ALA., ZONING ORDINANCE §2.4.1 (2007).

472. EL PASO, TEX., MUN. CODE §7.24.020(B)(1) (2011).

473. RIVERSIDE, CAL., CODE OF ORDINANCES §§6.05.010 & 6.05.020 (2011).

474. SAN DIEGO, CAL., MUN. CODE §42.0708 (2011); SAN FRANCISCO, CAL., HEALTH CODE §37 (2011); Interview with San Francisco animal control (on file with author).

475. *NJ Town Limits Conjugal Visits Between Roosters & Hens*, HUFFINGTON POST, Apr. 27, 2011, http://www.huffingtonpost.com/2011/04/28/nj-limits-chicken-mating_n_854404.html (last visited July 8, 2012).

V. Model Ordinance

A. Reasons Behind the Choices in the Model Ordinance

Because many cities are recognizing that keeping chickens in the city should be allowed, but would like to regulate it properly so that the city can stop any nuisances before they arise, a model ordinance is provided below. Through surveying the ordinances of the most populous American cities, many types of regulatory schemes have already been identified and discussed. While different regulatory schemes may work better for different kinds of cities, depending on the density and variety of their residential, commercial, and industrial neighborhoods, the model ordinance provided should be easy to adapt to any city. First, each section of the model ordinance will be described and the reasons for choosing the regulation will be set out. Then, the model ordinance will be set out in full.

1. Chickens Should Be Regulated in a Unified Ordinance Within the Section Concerning Animals

Most cities regulate chickens within the animal code. This also appears to be the best option for where to place regulations affecting chickens within a city’s codified ordinances. This is the natural place for a person to look to see if the city allows chickens. By placing the regulation within the animal code, it also allows for all of the regulations affecting chickens to be in one place. This will help a chicken owner to more easily find and follow the city’s law.

If a city still wishes to incorporate zoning restrictions within a chicken ordinance, the city can easily do so within the unified ordinance located within the animal section by restricting chickens to certain zones. And if a city wishes to require a permit to keep chickens, the permit requirement may also easily be placed in a unified ordinance.

2. Chickens Should Be Limited to a Small Flock

A chicken ordinance should allow for at least four chickens. Because chickens are flock animals, they do not thrive when left alone. And, because chickens enforce a dominant social order by harassing new chicks, it is always best to introduce at least two chicks to a new flock. By allowing a minimum of four chickens, the city does not leave a chicken owner in a position of having to leave a hen in a solitary environment if another chicken dies. It also allows the chicken owner to introduce at least two new chicks to an existing flock of two.

The model ordinance sets out a maximum of six chickens. This number is still below the average number of chickens allowed in most cities, but is sufficient to keep a balanced backyard flock. Six hens will allow plenty of eggs for the hen-keepers, while still allowing an owner to keep

hens that no longer produce many eggs but are still valued by the owner for their companionship.

Cities may want to consider allowing even more chickens. Allowing more chickens will allow owners to keep chickens that are no longer producing eggs. Chicken owners who raise hens for eggs may feel pressured to rid themselves of older hens when they are faced with limitations on their flock.⁴⁷⁶ This has raised concerns in some areas that those chickens will burden animal shelters.⁴⁷⁷ Allowing a slightly larger flock may help to alleviate any burden.

3. Lot Size Should Not Be Restricted

The majority of cities do not require a specific lot size before a person can keep chickens. Lot size restrictions, moreover, often do little more than prohibit the majority of city residents from keeping hens. The concern that cities are mainly addressing through lot size, that of making sure that chickens are not located too close to neighbors, can better be addressed through setbacks.

For this reason, the model ordinance does not restrict through lot size. If a city has a wide variety of lot sizes, however, a city may wish to allow more hens for larger lot sizes. The city, for instance, can legislate a maximum number of chickens for lot sizes of ½ acre or below, and then increase the number of chickens for larger lot sizes.

4. Setbacks

Because there is a universal concern with keeping chickens too close to neighbors, a setback, rather than lot size, provides the best solution for this concern. A setback actually ensures that the chickens will be kept at an appropriate distance from neighbors without unduly restricting people who own smaller properties from owning chickens. The model ordinance proposes a setback of 25 feet from the doors or windows of any dwelling or occupied structure other than the owner's dwelling. This setback is less than the median setback of 80 feet and the most popular setback of 50 feet, but is in line with the setbacks of many cities that have recently amended their ordinances. A setback of 25 feet is far enough that any noise or odor from the hens should not cause nuisance to the neighbors, while allowing homeowners in smaller properties to keep hens. The addition of requiring the setback to be from doors or windows also allows more flexibility for where a coop can be placed, while still ensuring that it will not annoy neighbors.

Setbacks from a neighboring residence make sense because it can be assumed that no one wants someone keeping any pet, including chickens, very close to their house. A setback from the property line, however, may make less sense depending on where on the property chickens are kept. While a neighbor may be concerned that his neigh-

bor does not build a coop abutting his property that is also right next to a frequently used patio or deck, these sorts of setbacks may also overreach. For instance, these setbacks may require a coop to be located far from a little-used or overgrown part of a neighbor's property. It may also require the coop to be located far from an area of the neighbor's property where a garage or shed already provides a barrier. For these reasons, setbacks from property lines should be employed with care. But, it is understandable that a neighbor would not want a coop built directly next to a frequently used area of the yard, nor does a neighbor want to be responsible for cleaning errant droppings. For this reason, the model ordinance proposes minimal setbacks from property lines along the lines of the newly passed ordinances in Cleveland and Buffalo, of five feet from the side yard and 18 inches from the rear yard line.

Finally, the model ordinance provides that chickens may not be kept in the front yard. Because most cities are justifiably concerned that easily accessible chickens will attract vandalism, theft, or pranks, or possibly cause neighborhood dogs to behave in a predatory manner, instead of setting elaborate setbacks from the street, it is more efficient and more clear to simply ban chickens from the front yard.

5. Sanitation Requirements

The model ordinance requires that the coop and outdoor enclosure be kept in a sanitary condition and free from offensive odors. It also requires that the coop and outdoor enclosure be cleaned on a regular basis to prevent the accumulation of animal waste. The model ordinance does not go into further detail because more stringent cleaning requirements will be difficult to police and impossible to enforce. A city inspector will be able to tell if a coop is clean and odor-free when inspecting the coop. Unless the city inspector monitors a coop closely with daily visits, the inspector will be unable to tell if an owner cleaned it daily, or every other day, or weekly. It is unlikely that any city inspector would want to devote that much time to surveillance of chicken coops.

Also, because there are several different methods for cleaning a coop, and there continue to be new innovations in chicken-keeping and maintenance (witness the evolution of cat litter over the past few decades), legislating one particular method of cleaning might foreclose more efficient, more sanitary, and more attractive cleaning options. The city's concern is with sanitation and odor. Thus, the city should address its regulations to these concerns, rather than to more specific cleaning methods.

Concerns with flies will also be taken care of through requiring clean and odor-free coops and enclosures. As flies are attracted to waste, any problem with flies should be eliminated through requiring a sanitary coop. Rats are attracted to easily procured food. If the city is particularly concerned with rats, it may add that chicken feed be kept in a rat-proof container. But this regulation appears

476. E.g., Kim Severson, *When the Problems Come Home to Roost*, N.Y. TIMES, Oct. 22, 2009, <http://www.nytimes.com/2009/10/23/dining/23sfdine.html>.

477. *Id.*

unnecessary in light of the fact that many people keep dog and cat food in bulk, as well as food for their own consumption, without regulations that the food be kept in a rat-proof container. There is no logical basis for the belief that rats will be more attracted to chicken feed than other food. If a city is concerned that feed scattered on the ground will attract rats, instead of legislating a rat-proof container for keeping the feed, a city may be better off following Buffalo's lead by prohibiting feed from being scattered on the ground and requiring chickens to be fed from a trough.

6. Enclosures

The model ordinance provides specific requirements for coops and outdoor runs. It also requires that hens should remain in the coop or outdoor run at all times, except when an adult is directly supervising the hen.

First, the model ordinance requires a covered, predator-proof coop or cage that is well-ventilated and designed to be easily accessed for cleaning. It also requires that the coop provide at least two square feet per hen. Finally, it requires that the birds have access to an outdoor run that is adequately fenced to contain the birds on the property and prevent predators from access to the birds. This ordinance is designed to address the city's concerns with odor, with the chicken's well-being, and with not attracting predators looking for an easy meal. The ordinance allows for only two square feet per hen to give each hen adequate space, but also to allow for a smaller coop size that can help to keep birds warm in the winter. The ordinance avoids giving too many instructions on building a coop that could preclude future innovations in coop design.⁴⁷⁸ If the city, however, wants to prohibit coops over a specific dimension, or will waive a building permit for coops under a specific dimension that are not permanent structures, the city can easily insert such a provision here.

The model ordinance also provides that chickens should not be allowed out of their coops, except when supervised by an adult. This addresses a city's concern with chickens running free on the streets while also recognizing that owners will need to remove hens from the coop and run occasionally to clean the areas, to inspect a bird more closely, or to allow a chicken to briefly roam the yard or garden to forage for fresh greens.

7. Slaughtering

The model ordinance prohibits slaughtering chickens outdoors. Because many people are concerned that neighbors or neighbors' children will accidentally witness a bird being killed and are also concerned with the lack of hygiene in backyard butchering, this regulation is included in the ordinance. Also, because most backyard hen enthusiasts are raising hens for eggs and companionship, and not for meat, most will not object to this regulation.

8. Roosters

The model ordinance prohibits roosters. It does so because roosters are noisy and are much more likely to bother neighbors than hens. Because, as discussed above, most backyard hen enthusiasts are interested in eggs, and roosters are not necessary to egg production, prohibiting roosters will not likely meet with much objection.

Because bringing in a rooster on occasion can help to cheaply and easily propagate a flock, cities may explore rooster "conjugal visits," like Hopewell township has done. While the township's regulation attracted press because of its eccentricity, it was a thoughtful solution to the practical effects of banning roosters. Most hen owners, however, are willing to add to their flocks through other means where they can be better assured of procuring only female fowl.

9. Permits

The model ordinance, following the ordinances of many other cities, does not require a permit, as long as the ordinance is followed. Because chickens are novel to many communities, city officials naturally want to closely monitor how well owners are maintaining their flocks. But, regulating through a permitting or licensing process, dedicating a city official to overseeing it, and maintaining the records that such a process will require appears to be an inefficient use of city resources. It is also expensive for owners to pay permitting fees on an annual basis and is a barrier to entry to keeping chickens to those with low or modest incomes. The fees that some cities charge, over \$50 annually, effectively prohibit poorer people from owning chickens.

The permitting process, moreover, does not necessarily give the city more control. If the city prohibits hens unless its ordinance is followed, it can enforce its laws in the same way that it enforces its laws against errant dog, cat, or bird owners. Requiring a permit, thus, appears to provide an unnecessary, inefficient, and expensive layer to the process of legalizing hens.

The model ordinance does require a permit, however, if the chicken owner puts forth a proposal for why she should not have to comply with the city's regulations—for instance if the owner wishes to keep more than the maximum amount of hens, wishes to keep hens in a multi-family dwelling, wishes to keep hens on a parcel of land that is unconnected to a dwelling, or wishes to keep a rooster.

478. Many companies sell commercially made coops, runs, and chicken tractors (portable enclosed structures that allow the owner to move the chickens around the yard) with novel designs. See, e.g., *Say Hello to the Brand New Eglu Go*, OMLET, http://www.omlet.us/products_services/products_services.php?cat=Eglu+Go (last visited July 25, 2012) (offering a plastic portable chicken coop and run designed for two chickens); *Chicken Coops*, SHEDS UNLIMITED, <http://www.shedsunlimited.net/portable-chicken-runs-and-coops-for-sale.html?gclid=CKXzvd2ruLECFEDQAodeCIAkw> (last visited July 25, 2012) (offering Amish-built chicken coops and runs); CHICKENSALOON.COM, <http://chickensaloon.com/?gclid=COLs7qysuLECFYS6KgodGBAAsw> (last visited July 25, 2012); THE GREEN CHICKEN COOP, <http://www.greenchickencoop.com/> (last visited July 25, 2012).

This permit is set up to allow people to keep chickens within setbacks, or to allow for more intensive chicken-keeping for urban agricultural uses, perhaps on an urban farm or market garden. As urban agriculture gains support and becomes more prevalent in the city, this will allow for people who wish to keep more chickens, or keep a rooster, as part of a market garden a set path for doing so without seeking to amend the ordinance. The permit process is designed to allow for more flexibility within the ordinance, while still laying down firm standards that all chicken owners must follow.

B. Model Ordinance

Below is a model ordinance designed for a city to either adopt or use as a starting point when deciding whether to allow hens in the city and how to regulate them:

- (a) **Purpose.** The following regulations will govern the keeping of chickens and are designed to prevent nuisances and prevent conditions that are unsanitary or unsafe. No person shall keep chickens unless the following regulations are followed:
- a. **Number.** No more than six (6) hens shall be allowed for each single-family dwelling.
 - b. **Setbacks.** Coops or cages housing chickens shall be kept at least twenty-five (25) feet from the door or window of any dwelling or occupied structure other than the owner's dwelling. Coops and cages shall not be located within five (5) feet of a side-yard lot line, nor within eighteen (18) inches of a rear-yard lot line. Coops and cages shall not be located in the front yard.
 - c. **Enclosure.** Hens shall be provided with a covered, predator-proof coop or cage that is well-ventilated and designed to be easily accessed for cleaning. The coop shall allow at least two square feet per hen. Hens shall have access to an outdoor enclosure that is adequately fenced to contain the birds on the property and to prevent predators from access to the birds. Hens shall not be allowed out of these enclosures unless a responsible individual, over 18 years of age, is directly monitoring the hens and able to immediately return the hens to the cage or coop if necessary.
 - d. **Sanitation.** The coop and outdoor enclosure must be kept in a sanitary condition and free from offensive odors. The coop and outdoor enclosure must be cleaned on a regular basis to prevent the accumulation of waste.
 - e. **Slaughtering.** There shall be no outdoor slaughtering of chickens.
 - f. **Roosters.** It is unlawful for any person to keep roosters.
- (b) **Permit.** A permit shall not be required if the above regulations are followed. If a person wishes to keep more than the maximum allowed number of hens, wishes to keep hens within the setback required, wishes to keep hens in a multi-family dwelling, wishes to keep hens on a parcel of land that is unconnected to a dwelling, or wishes to keep a rooster, a permit will be required. An application for a permit must contain the following items:
- a. The name, phone number, and address of the applicant.
 - b. The size and location of the subject property.
 - c. A proposal containing the following information.
 - i. The number of hens the applicant seeks to keep on the property.
 - ii. A description of any coops or cages or outdoor enclosures providing precise dimensions and the precise location of these enclosures in relation to property lines and adjacent properties.
 - iii. The number of roosters the applicant seeks to keep on the property.
 - d. If the applicant proposes to keep chickens in the yard of a multi-family dwelling, the applicant must present a signed statement from any and all owners or tenants of the multi-family dwelling consenting to the applicant's proposal for keeping chickens on the premises.
 - e. If the applicant proposes to keep more chickens than allowed in the above ordinance or wishes to keep a rooster, the applicant must present a signed statement from all residents of property adjacent to or within 50 feet of the applicant's property consenting to the applicant's proposal for keeping chickens on the premises. If the applicant proposes to keep chickens within a required setback, the applicant must present a signed statement from all residents of the property affected by that setback.
- (c) **Permit Renewal.** Permits will be granted on an annual basis. If the city receives no complaints regarding the permit holder's keeping of chickens, the permit will be presumptively renewed and the applicant may continue to keep chickens under the terms and condition of the initial permit. The city may revoke the permit at any time if the permittee does not follow the terms of the permit, if the city receives complaints regarding the permit holder's keeping of chickens, or the city finds that the permit holder has not maintained the chickens, coops, or outdoor enclosures in a clean and sanitary condition.