

**City of Falcon Heights
Planning Commission Minutes
May 28, 2013**

PRESENT: Commissioners Black, Brown, Gustafson, Minns, Wartick, Council Member Harris, Staff Liaison Jones, City Attorney Soren Mattick.

ABSENT: Commissioner Fite and Council Member Harris (with notice)

The meeting was called to order at 7:02 p.m. by the Chair, Commissioner Black, who noted that a quorum was present.

Public Hearing on an amendment to the City Code allowing and regulating the keeping of chickens.

Planning and Zoning Director Deb Jones introduced the subject of tonight's hearing. The proposed ordinance on the keeping of chickens has already been seen by the Council after a recommendation from the Environment Commission, but it has been referred to the Planning Commission for a recommendation because it amends the Zoning Code (Chapter 113) as well as adding a new Article 4 to Chapter 10, Animals. The Chapter 10 portion of the ordinance would regulate the keeping of chickens - setting standards and requiring permits and inspection - if this use is allowed. The zoning portion of the ordinance actually allows the keeping of chickens in R-1 and R-2 zones. The entire ordinance is available online.

Commissioner Wartick asked if the Chapter 10, Article 4, is within the purview of the Planning Commission. Jones said that if the Planning Commission recommends against even allowing the keeping of chickens as a use, and if the Council follows that recommendation, then all the proposed provisions to be added to the Animal Chapter become moot.

Commissioner Black pointed out that some paragraphs in the Chapter 10 section do pertain to setbacks and other zoning type issues. Jones acknowledged that the Planning Commission could weigh in on those items because they are directly related to the rules for accessory structures.

Commissioner Minns asked if, for a duplex, the other tenant had to approve of one tenant keeping chickens. Jones said the owner must approve, but the approval of the other tenant is not required.

Commissioner Black opened the public hearing. Black cited a letter originally sent to the Council and received by the Commission the morning of the hearing from Melissa Weber-Sanders of 1711 Albert Street N stating concerns about the keeping of chickens and expressing opposition to the ordinance. This was the only public comment received before the hearing.

No one came forward to speak, so the hearing was closed.

Planning Commission Discussion and Action

Jones told the Commission that a quick poll was set up on the website at the request of Mayor Lindstrom for a simple yes/no vote on "chickens in the neighborhood." The poll had expired, and the final result was 154 in favor, 59 opposed. The poll was set up to allow only one vote per computer. She added that the Council "narrowly" (3-2) supported the proposal, which is why it has come to the Planning Commission.

Commissioner Gustafson asked about fees and additional costs to the City. Would the fee be set to cover the costs of administration, inspections, enforcement, etc.? Jones said the ordinance provides for the Council to set the fees in the Fee Schedule. They will make their best estimation of what amount will be revenue-neutral and will look at what is charged in other cities. St. Paul charges over \$100 for the first year of a chicken permit. The City would set up an application packet including educational material for permit applicants. She added that the proposed ordinance was the result of a process similar to last year's Planning Commission work on the special event ordinance - researching other cities and crafting an ordinance for Falcon Heights using the elements of other city ordinances that seem to fit our city. The proposed chicken ordinance contains elements from Stillwater, Eagan and Maplewood.

Commissioner Black pointed out that Commission packet included a map of cities in the metro area that allow or prohibit chickens. (The packet is available on the city website.)

Commissioner Minns asked if the letter from Ms. Weber-Sanders was received by the Council prior to their earlier discussion. Jones said that she had only received it that morning attached to an email. She did not have the email and could not remember the original date, but since the Council had discussed chickens in early March, she did not think they had seen it then. Minns cited concerns about complaints and asked how staff would handle them. Jones said it would probably be similar to the way complaints about animals are already handled.

Commissioner Brown asked how much interest has been expressed by residents in having chickens. Jones said she has personal knowledge of at least half a dozen residents that have approached the City over the years, but she would be very surprised if more than a few households applied to keep chickens. Chickens are a lot of work, she said.

Brown asked if a lot of properties would be eliminated from eligibility due to not having space to meet the setback requirements. Jones said most lots would have room for a small accessory structure. There could be some exceptions, for instance, certain homes that have almost no back yard. Answering a follow-up question, she said the ordinance does not set up special zones where chickens would be allowed or not allowed other than the restriction to R-1 and R-2.

Commissioner Black pointed out that the requirement that the chicken coop be a minimum of 20 feet from the house on an adjacent lot might put the chicken owner out of compliance if the neighbors added on to their house. Jones said she would assume it would work like any other nonconformity that becomes nonconforming after it exists, due to some change. State law allows such nonconformities to be kept, but she would have to check that there is not

some difference in this case. Jones acknowledged that it was possible that this situation could arise if a chicken owner built their coop far enough forward of the rear property line.

In response to a question from Commissioner Gustafson, Jones confirmed that the proposed ordinance does not require neighbor approval. He also asked about the prohibition against slaughtering chickens. Jones said she felt this was basically an esthetic choice and that most cities which allow chickens prohibit slaughter. You can't slaughter other animals either. There are probably resources easy to find for those who seek this service.

Wartick pointed out a potential inconsistency between the references to the coop structure itself and the accessory pen. Is the 20 foot separation from the house next door intended to keep all chickens at least 20 feet from the neighboring house (i.e. the pen) or does it just apply to the roofed coop structure? Paragraph 8 does require both the coop and the fenced pen to be 20 feet from the neighboring structure. Evidently this would include any mobile pen the owner uses to move the chickens around the property.

Commissions had further discussion about the interaction of Paragraphs 8 and 11, regarding the confinement of chickens under various circumstances, for instance, attended or unattended. Again, the question came up regarding how much weight the Planning Commission's recommendations might have regarding measures proposed for Chapter 10. Commissioner Black asked for more background, saying that debating Chapter 10 provisions is not of any use unless the use is allowed in the end, so the first priority is coming to a recommendation on the use itself.

Jones said that she had left out much background for the sake of brevity but would be glad to expand on the history of discussion in the Environment Commission, which she also staffs. The Environment Commission took up this subject about a year ago, invited guest speakers and researched other cities. Jones said she felt that Commission's interest is part of a general movement taking place in urban areas all over the country in which people are seeking options to live healthier lives and reduce the consumption of fossil fuel. It is a sustainability movement, in line with the interests of the Environment Commission. They spent months studying the issue and researching chicken ordinances - similar to the Planning Commission's work on the front porch and special event issues in 2011 and 2012.

Commissioner Black enumerated other issues brought up in the letter from Ms. Weber-Sanders - noise, odor, predators, and setbacks. He said he found the letter persuasive and shares those concerns. He feels Stillwater is so different a city from Falcon Heights that something based on their ordinance isn't necessarily good for a city like Falcon Heights with small lots. He does not favor having chickens next door.

Minns pointed out that one household with chickens affects as many as five properties around it, and those neighbors have no say. Brown countered that neighbors have no say about dogs on a neighbor's property either, and dogs can be annoying. There are a lot of things we don't get to weigh in on that happen on our neighbors' property. He said he has some concern about the wording but not ready to disapprove in general. Gustafson pointed out that there is a permit involved and that permits can be revoked if people are "not good neighbors." Black said things can be difficult to manage once they are allowed; the time to anticipate those difficulties is up front. Jones said that though she did not anticipate that many people would apply for permits, she did not know how much staff time each permit

would consume. It is a legitimate concern. Commissioners continued to discuss enforcement, staff time and related issues.

Jones said the Commission has three options: (1) recommend not adopting the ordinance, (2) recommend adopting the ordinance as written, and (3) recommend adopting with certain conditions. Commissioners agreed that it is not useful to consider the language issues that have been brought up without having a consensus to adopt in the first place. The Chair asked for a motion, up or down.

Brown move, Minns seconded, to recommend approval of some ordinance allowing chickens. There was no discussion. The vote was 3 in favor, 2 opposed. When it clear that the motion was not on the ordinance as proposed but for whether or not to recommend some ordinance, one Commissioner changed his vote, and it was 4 in favor, 1 opposed.

The Commission then went on to consider conditions on their recommendation. Jones reviewed the concerns she had heard in the prior discussion. First, there was a need for more clarity in 10-35 (8) regarding the separation from the house on the adjoining property. Second, there was some question about the meaning and intent of 10-35 (11) regarding the amount of free movement chickens could have outside of their pen, with or without the owner's supervision. These are both "zoning-type" provisions. Commissioners took up discussion of these provisions.

The core of the discussion came down to where the chickens should be when the owner is not physically with them and the status of the mobile pen and when it should be used. And does this ordinance allow the chickens to run free in a fenced back yard when the owner is present, or do they need additional confinement - say in a mobile pen - even when the owner is present? Brown said he would be more comfortable requiring unattended chickens to be either in their coop or in their pen (as in paragraph 12), not in a mobile pen. He would leave up to the Council how to restrict attended birds.

Minns felt that the "exercise yard" phrasing was also confusing, and that there should be no additional distinction for an "exercise yard" as separate from the back yard.

Jones apologized for a side comment but she wanted to point out that 10-34 requires sketches and plans from any applicant for a chicken permit, so applicants would have to "jump through some hoops" to get a permit in the first place. She said she didn't want the Commission or the public to skip over those requirements. She said that the Commission's role in the Chapter 10 portion of the ordinance is a little different from conditional recommendations made on other ordinances because that is outside the zoning chapter but she felt the Commission has some valid concerns and that the Council would be glad to have those communicated.

Minns said he felt that whatever the City adopted most residents would behave responsibly and be good neighbors, but there could be residents who would not be serious about doing it right and would cause problems, no matter how it was written. Hopefully enforcement measures would make sure they did not keep chickens long. But it would not be possible to eliminate every such possibility up front. He was not opposed to recommending some form of the ordinance.

After further discussion, Commissioners were satisfied that 10-35 (8) applies to the roofed coop and the permanent pen and does not include any mobile pen, and therefore the paragraph can stand, requiring these structures to be a minimum of 20 feet from a dwelling on an adjacent property. Commissioners had some suggested changes to 10-35(11)

Commissioners returned to a concern raised earlier by Commissioner Minns that there is no limit to the maximum size of a chicken coop. Would residents be able to build a very large structure and would staff have the discretion to limit that size? Jones said that if it were allowed by the code, staff would have to allow it. All other zoning requirements would apply however - lot coverage and the accessory structure restrictions in Section 113-240. She read aloud the 113-240(k), Standards for utility structures. This mostly fits coops except it sets a minimum size of 35 square feet, which would be very large for a chicken coop. The best practices in the educational materials applicants would have to read would recommend a much smaller size, but those best practices are not in our ordinance. Black said we are dealing with a new kind of accessory structure here. Jones said staff would feel more comfortable processing permits without the ambiguity.

Commissioners seemed disinclined to add some amendment to 113-240 and asked if their concerns could be communicated to the Council. Jones said yes, though if they felt the size issue is enough of a concern to imperil the effectiveness of staff in administering the ordinance, they might want to reconsider their earlier motion. No Commissioner felt that level of concern.

The consensus on the recommended change to 10-35(11) is that it should read:

Chickens must be kept in the roofed structure or attached pen whenever they are unattended by the keeper; but when attended by the keeper, the chickens are allowed in a mobile pen or in a completely fenced exercise yard.

Minns moved, Brown seconded, that the Commission recommend adoption of the ordinance with the amendment to 10-35(11) as stated above. The vote was 4 in favor, 1 opposed.

Jones said she would let the City Administrator know that the Commission has concerns about the application of Section 113-240. If amendment is required later, this may need another public hearing.

Approval of Minutes: The minutes for February 26, which had been tabled, were approved. The minutes for April 23 were approved with minor corrections.

Information and Announcements:

Jones gave an update on the Hermes site. The Council acted on May 22 to approve all three zoning measures. Various approvals are still needed from the Metropolitan Council and Ramsey County. Construction is expected to start later this year. She said a lot of people have heard about this redevelopment and very excited about it, especially those working with related programs at the University.

Movie in the Park is coming up in June, with an opportunity to camp out. This is the third year of the program. Camping space needs to be reserved in advance.

Commissioner Black asked if there are any funding issues that might slow down the Hermes site redevelopment. Jones said that the housing component will be financed by tax credit financing, and that the financial picture had changed to the point that they would have to go 100% affordable, but she had heard there was a lot of interest from funding agencies. The City has been assured that both components of the development will remain on the tax rolls.

The Planning Commission still has a vacancy.

ADJOURNMENT: The meeting was adjourned at 9:16 p.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Deborah Jones". The signature is written in a cursive, flowing style.

Deborah Jones, Staff Liaison