

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 5092

**ORDINANCE AMENDING SECTIONS 12-0202, 12-0203, 12-0302, 12-0303, 12-0305 AND
ENACTING SECTIONS 12-0306 THROUGH 12-0316 OF
ARTICLES 12-02 AND 12-03 OF CHAPTER 12 THE FARGO MUNICIPAL CODE
RELATING TO DOMESTIC FOWL, WILD BIRDS AND PETS AND AMENDING
SECTIONS 20-0403 AND 20-1203 OF THE LAND DEVELOPMENT CODE RELATING
TO KEEPING OF CHICKENS AS AN ACCESSORY USE TO HOUSEHOLD LIVING**

WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in accordance with Chapter 40-05.1 of the North Dakota Century Code; and,

WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City shall have the right to implement home rule powers by ordinance; and,

WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict therewith and shall be liberally construed for such purposes; and,

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Amendment.

Sections 12-0302, 12-0303 and 12-0305 of Article 12-03 of Chapter 12 of the Fargo Municipal Code are hereby amended as follows:

12-0302. ~~Distance from dwellings—No domestic fowl to be kept.—Except as permitted in this article, No chickens, geese, ducks, turkeys, pigeons, or other domestic fowl shall under any circumstances be kept within an enclosure within the city at a distance less than 75 feet from any dwelling house without the written consent of the owner or tenants of said dwelling except as may be permitted under the Land Development Code (Chapter 20, Fargo Municipal Code).~~

12-0303. Keeping of domestic fowl as public nuisance--Declaration.— Other than the keeping of any chickens, ducks, geese, turkeys, pigeons, or other domestic fowl; as permitted under the Land Development Code and other than the keeping of chickens under a

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 5092

~~permit as provided by this article, but which cause unpleasant odors, or the noise from which is an annoyance to persons in the vicinity, or which attract vermin, or which are a hazard or danger to the health of persons living nearby, at a distance less than 200 feet from any dwelling house, the keeping of any ducks, geese, turkeys, pigeons or other domestic fowl~~ is declared to be a public nuisance.

12-0305. Unlawful to kill harmless wild birds or to destroy eggs or nests.—Unless otherwise permitted by law, ~~it~~ shall be unlawful for any person to kill or injure or attempt to kill or injure any harmless wild bird as defined in 20.1-01-02, N.D.C.C., within the corporate limits of the city or to injure or destroy the eggs or nest of any such bird within said corporate limits.

Section 2. Enactment.

Sections 12-0306 through 12-0316 of Article 12-03 of Chapter 12 are hereby enacted as follows:

12-0306. Keeping of chickens prohibited without permit.-- Chickens permitted. It is unlawful for any person to own, control, keep, maintain or harbor chickens on any premises within the City unless issued a permit to do so as provided in this section. No permit shall be issued for the keeping or harboring of more than four (4) chickens on any premises. The keeping or harboring of male chickens or roosters is prohibited.

12-0307. Definitions.-- The following definitions shall apply unless the context clearly indicates or requires a different meaning.

- A. “Chicken” means a female chicken or hen.
- B. “At large” means a chicken out of its chicken coop or run, off the premises or not under the custody and control of the owner.
- C. “Chicken coop” means a structure for housing chickens made of wood or other similar materials that provides shelter from the elements.
- D. “Chicken run” means an enclosed outside yard for keeping chickens.
- E. “Person” means for purposes of this article and unless the context suggests otherwise, the resident, property owner, custodian, or keeper or of any chicken and shall include, where the context of the provision allows, any natural person, co-tenancy, partnership, corporation, limited liability company or other form of separate business entity recognized by North Dakota state law.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 5092

F. “Premises” means, for purposes of this article only, a lot as defined by §20-1202.

12-0308. Permit.-- No person shall maintain a chicken coop or chicken run unless granted a permit by the city auditor. The permit shall be subject to all the terms and conditions of this article and any additional conditions deemed necessary by the city auditor to protect public health, safety and welfare. The city auditor shall issue said permit for a period not to exceed one year, subject to annual renewal thereof. The initial permit shall automatically expire at the end of the initial calendar year and, thereafter, renewals of said permit shall extend for calendar-year periods. The necessary permit application may be obtained from the city auditor. Included with the completed application must be a scaled diagram that indicates the location of any chicken coop and chicken run, and the approximate size and distance from adjoining structures and property lines, the number of chickens to be maintained at the premises, and a statement that the applicant/permittee will at all times keep the chickens in accordance with this ordinance and all the conditions prescribed by the city auditor, or modification thereof, and failure to obey such conditions will constitute a violation of the provisions of this section and grounds for cancellation of the permit. To the extent a chicken coop or run is intended to be moveable, the scaled diagram shall indicate the area or areas into which they may be located should the permit be granted. No permit shall be issued for an incomplete application. Prior to issuance of an applicant's initial permit by the city auditor, the applicant must allow the city to inspect the applicant's proposed chicken coop and chicken run as installed and the city's inspector must approve the installation. A permit for the keeping of chickens may be revoked or suspended by the city auditor for any violation of this section following written notice or, upon request for renewal, the renewal permit may be refused by the city auditor. The permittee may appeal the revocation, suspension or refusal of renewal of the permit by timely request for a hearing before the city health officer. The request for hearing must be either postmarked or received in the city auditor's office within seven (7) days of the date of the notice. The city health officer shall hold a hearing on the permittee's request for hearing and shall render a decision on the matter after said hearing. The decision of the health officer may be further appealed to the board of city commissioners by filing a timely notice of appeal of the decision of the health officer with the city auditor. The notice of appeal must be either postmarked or received in the city auditor's office within seven (7) days of the date of the decision of the health officer.

12-0309. Confinement.-- Every person who owns, controls, keeps, maintains, or harbors chickens must keep them confined at all times in a chicken coop and chicken run and may not allow the chickens to run at large. Chickens may be allowed out of their coop

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 5092

and run under direct supervision by an adult and so long as the chickens are not allowed to run at large.

12-0310. Chicken Coops and Chicken Runs.--

(a) Except as set forth in this section, chicken coops and runs, as accessory structures, must comply with the setback requirements set forth in Section 20-0403. Chicken coops and chicken runs may not be located within the front yard, and are subject to a three (3) foot setback from any adjacent premises. All chicken coops must be a minimum of four (4) square feet per chicken in size, may not exceed ten (10) square feet per chicken in size and may not exceed six (6) feet in total height from adjacent ground level. Attached fenced-in chicken runs must have a minimum of 10 square feet per chicken, including the chicken coop and may not exceed 20 square feet per chicken and fencing may not exceed six (6) feet in total height from adjacent ground level. Chicken runs may be enclosed with wood or woven wire materials or a combination thereof. Chicken feed must be kept in metal predator proof containers. Chicken manure may be placed in yard compost piles. To the extent the setback provisions of Section 20-0403 conflict with the setback or other provisions of this section, the setback or other provisions herein shall apply.

(b) Chicken coops must either be:

- (i) Elevated with a clear open space of at least twenty-four (24) inches between the ground surface and framing/floor of the coop; or,
- (ii) The coop floor, foundation and footings must be constructed using rodent resistant construction.

(c) Chicken coops are not allowed to be located in any part of a home or garage that is attached to a home. A chicken coop may be attached to a detached garage, detached shed or other structure that is not attached to a dwelling or any other structure that includes sleeping, cooking, eating or sanitation facilities, or any combination thereof, and so long as there is a physical separation between the chicken coop and run and the space used and occupied for non-chicken-keeping-related purposes.

(d) Chickens must be secured in a chicken coop from sunset to sunrise each day.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 5092

(e) With respect to chickens owned or kept pursuant to a permit issued pursuant to this article, the slaughter and breeding of chickens on any premises within the city is prohibited.

12-0311. Conditions and Inspections.-- No person who owns, controls, keeps, maintains, or harbors chickens shall permit the premises where the chickens are kept to be maintained in an unhealthy, unsanitary or noxious condition or to permit the premises to be in such condition that noxious odors are carried to adjacent public or private property. Any chicken coop or chicken run authorized by permit under this section may be inspected at any reasonable time by the animal control officer, law enforcement officer, public health official or other employee or agent of the city. A person who has been issued a permit shall submit the same for examination upon demand by the animal control officer, law enforcement officer, public health official or other employee or agent of the city.

12-0312. Private Restrictions and Covenants on Property. -- Notwithstanding the issuance of a permit by the City, private restrictions and/or covenants on the use of property shall remain enforceable and take precedence over a permit. Private restrictions include but are not limited to deed restrictions, condominium master deed restrictions, neighborhood association by-laws, covenant declarations and deed restrictions. A permit issued to a person whose premises are subject to private restrictions and/or covenants that prohibit the keeping of chickens is void. The interpretation and enforcement of the private restriction is the sole responsibility of the private parties involved.

12-0313. Refusal to Grant or Renew Permit. -- The city auditor may refuse to grant or renew a permit to keep or maintain chickens for failure to comply with the provisions of this section, submitting an inaccurate or incomplete application, if the conditions of the permit are not met, if a nuisance condition is created, or if the public health and safety would be unreasonably endangered by the granting or renewing of such permit.

12-0314. Removal of chicken coop and chicken run. -- Any chicken coop or chicken run constructed or maintained on any premises shall be immediately removed from said premises after the suspension, expiration or termination of the permit for said premises, or shall be removed if the chicken-keeping activities have been discontinued or abandoned. Chicken-keeping activities shall be deemed to have been discontinued or

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 5092

abandoned if an annual renewal chicken-keeping permit is not obtained by a permittee by the last day of February each year.

12-0315. Violation – keeping of chickens without permit. -- Any person who owns, controls, keeps, maintains or harbors chickens in the city of Fargo without obtaining or maintaining a current permit or after a permit has been suspended or revoked shall be guilty of an infraction.

Section 4. Amendment.

Sections 12-0202 and 12-0203 of Article 12-02 of Chapter 2 are hereby amended as follows:

12-0202. Rabbits and guinea pigs.--No rabbits or guinea pigs shall be kept within an enclosure within the city ~~at a distance less than 300 feet from any dwelling house without the written consent of the owner or tenant of said dwelling.~~

12-0203. Unlawful to keep farm animals within city limits-- Public nuisance--Exceptions.-- It shall be unlawful for the owner or owners of any farm animal mentioned in § 12-0213 to allow the same to be kept within the limits of the city, except that such farm animals may be kept on property which is classified as “AG-Agricultural District” under the ~~zoning ordinances~~ Land Development Code (Fargo Municipal Code, Chapter 20) of the city of Fargo. It shall further be unlawful to allow any such farm animal to run at large on the streets, avenues, alleys, parks, or public grounds of the city, or to be tethered or staked out on the streets, parks, or public grounds of the city, or to be tethered or staked in such a manner as to go upon any street, sidewalk, crosswalk, or public ground within the city. Any such animals found within the corporate limits of the city except on property zoned with an “AG-Agricultural District” ~~zoning classification as herein provided,~~ are declared to be public nuisances. This section shall not apply to the owners of any farm animals kept as a part of any state educational institution or the owners of any farm animals temporarily exhibited at any fair or agricultural exhibition, provided said animals are stabled and cared for in a sanitary manner approved by the health department.

Section 5. Amendment.

Sections 20-0403 of Article 20-04 of Chapter 20 is hereby amended as follows:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 5092

§20-0403 Accessory Uses

* * *

E. Keeping of Chickens

The keeping of chickens authorized by a city permit in accordance with article 12-03 shall not be considered an agricultural use but, rather, shall be considered an accessory use to household living. [See also §20-1203.G, Agricultural use category.]

Section 6. Amendment.

Sections 20-1203 of Article 20-12 of Chapter 20 is hereby amended as follows:

§20-1203. Use Categories.

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C. Residential Use Categories

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2. Household Living

a. Characteristics

Household Living is characterized by the residential occupancy of a dwelling unit by a household. Tenancy is arranged on a month-to-month or longer basis. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see the Retail Sales and Service and Community Service categories).

b. Accessory Uses

Accessory uses commonly associated with Household Living are recreational activities, raising of pets, hobbies and parking of the occupants' vehicles. Home occupations are accessory uses that are subject to additional regulations (See Sec. 20-0403). The keeping of chickens authorized by a city permit under article 12-02 shall be considered an accessory use to household living. In SR-0 districts, the keeping of one or more horses shall be an acceptable use provided it is accessory to household living and provided that the following criteria are met:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 5092

- (1) There shall be a minimum of two (2) acres for one horse, and an additional acre for every additional horse kept on the property;
- (2) The number of horses permitted shall be based on the size of the portion of the lot to be used as an animal enclosure;
- (3) In subdivisions created prior to January 1, 2000, no structure intended for housing said animals shall be closer than 100 feet from any lot line; otherwise, no structure intended for housing said animals shall be closer than 200 feet from any lot line;
- (4) All manure and other animal wastes shall be removed and disposed of properly on a regular basis; and
- (5) The residential use area shall be separated from the area to be used as an animal enclosure by a fence, and the entire animal enclosure area shall be fenced to prevent escape and subsequent damage to adjacent property. Furthermore, in SR-0 districts, the keeping of one or more animals other than horses shall be a Conditional Use, subject to the procedures of Sec 20-0909. In evaluating such a Conditional Use, in addition to any other appropriate factors, the decision-maker shall consider the detrimental impact of keeping of such animals in comparison to the impact of the keeping of one or more horses.

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G. Other Use Categories

1. Agriculture

a. Characteristics

Agriculture includes activities that primarily involve raising, producing or keeping plants or animals.

b. Accessory Uses

Accessory uses include dwellings for proprietors and employees of the use and animal training.

c. Examples

Examples include breeding or raising of fowl or other animals; dairy farms; stables; riding academies; kennels or other animal boarding places; farming, truck gardening, forestry, tree farming; and wholesale plant nurseries.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 5092

d. Exceptions

- (1) Uses involved in the processing of animal or plant products are classified as Manufacturing and Production.
- (2) Livestock auctions are classified as Wholesale Sales.
- (3) Plant nurseries that are oriented to retail sales are classified as Retail Sales and Service.
- (4) Uses that meet the definition “animal confinement” shall not be considered “agriculture” for the purpose of determining required zoning.
- (5) Residential uses that include the keeping of up to one horse per two (2) acres of lot shall not be considered “agriculture” for the purpose of determining required zoning and will be an acceptable accessory use in SR zoning districts which were zoned Ag-P2 (as defined by the Stanley Township’s zoning ordinance, or similar township or county zoning), prior to the extension of the City’s extraterritorial zoning jurisdiction to the subject property.
- (6) The keeping of chickens authorized by a city permit under article 12-02 shall not be considered an agricultural use but, rather, shall be considered an accessory use to household living.

* * * *

Section 7. Penalty.

A person who willfully violates this ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$1,000; the court to have power to suspend said sentence and to revoke the suspension thereof.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 5092

Section 8. Transitional Period. Persons who are keeping chickens within the city as of the effective date of this ordinance shall have a period of sixty (60) from and after the effective date to bring themselves into conformance with the provisions of this ordinance.

Section 9. Effective Date. This ordinance shall be in full force and effect from and after its passage and approval and publication.

/s/
Timothy J. Mahoney, Mayor

(SEAL)

Attest:

/s/
Steven Sprague, City Auditor

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| First Reading: | 4-10-17 |
| Second Reading: | 4-24-17 |
| Final Passage: | 4-24-17 |
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