

**City of Salem Planning Board & Salem City Council
Meeting Minutes
Monday, July 29, 2014**

A joint public hearing of the Salem Planning Board and the Salem City Council was held on Monday, June 16, 2014 at 7:00 p.m. at City Council Chambers, City Hall, 93 Washington Street, Salem, Massachusetts.

City Council President Bob McCarthy opened the meeting at 7:05pm.

Roll Call

Planning Board members present were: Chuck Puleo, Kirt Rieder, Dale Yale, Randy Clarke and Bill Griset. Absent: Ben Anderson, Tim Ready, Helen Sides and Matthew Venio.

City Councillors present were: Robert McCarthy, President, William Legault, Elaine Milo, Arthur Sargent, Heather Famico, David Eppley, Josh Turiel, Beth Gerard and Joseph O’Keefe. Thomas Furey arrived in time for the second agenda item. Absent: Todd Siegel.

Also present: Dana Menon, Staff Planner, Cheryl LaPointe, City Clerk, and Pamela Broderick, Planning Board Recording Clerk.

Chair Puleo introduced the members of the Planning Board in attendance.

Agenda

A joint public hearing with the City Council to amend the City of Salem Zoning Ordinance to amend the Table of Uses – NRCC District under Section 8.4.5 to add “3.5 Brewery, Distillery, or Winery with Tasting Room” use, to be allowed by special permit of the Planning Board in the NRCC zoning district.

President McCarthy reminded everyone the City Council and Planning Board recently took up the matter of an ordinance amendment to allow tasting rooms at breweries, distilleries or wineries.

Staff Planner Dana Menon explained it was an oversight the NRCC was not included in the previous public hearing on the proposed ordinance. This does not affect the previously agreed language in the draft ordinance that is going through the notice/approval process; this is simply adding the NRCC to the use table. In the NRCC zone the Planning Board is the special permit granting authority, so businesses seeking this permit would appear before the Planning Board.

President McCarthy opened the hearing for public comment:

Chris Loring, 19 Carlton Street, spoke in favor as the area has appropriate space for this type of business.

Motion and Vote: *Councilor Turiel made a motion to close the public hearing. The vote was unanimous with nine (9) in favor (Mr. Turiel, Mr. LeGault, Ms. Milo, Mr. Sargent, Ms. Famico, Mr. Eppley, Ms. Gerrard and Mr. O’Keefe) and none (0) opposed.*

Motion and Vote: Councilor Turiel made a motion to refer the matter to the Planning Board for their recommendation. The vote was unanimous with nine (9) in favor (Mr. Turiel, Mr. LeGault, Ms. Milo, Mr. Sargent, Ms. Famico, Mr. Eppley, Ms. Gerrard and Mr. O’Keefe) and none (0) opposed.

A joint public hearing with the City Council regarding the proposed amendment to the City of Salem Zoning Ordinance to add a definition for “Urban Agriculture”, “Hens”, “Run”, “Coop”, “Livestock”, and “Customary agricultural, horticultural and floricultural operations” under Section 10; to amend the Table of Principal and Accessory Use Regulations under Section 3.0 to add a new “Urban Agriculture” use, to be allowed by-right in RC, R1, R2, R3, B1, B2, B4, B5, I, and BPD zones; and to add a Section 3.2.7 “Urban Agriculture” under Section 3.2 Accessory Uses.

Ms. Menon presented an overview of the proposed ordinance, reviewed several municipalities including Somerville, Boston, Peabody, Ipswich and Marblehead for reference. Input from health department and zoning officer to develop the draft ordinance.

Key concerns identified during discussion among the City Council and Planning Board:

- The Board of Health will have oversight should any ordinance be passed. Ms. Menon explained a zoning ordinance modification is needed, to be supported by the Board of Health regulations (currently in draft). Specific questions based on the draft regulations should be addressed with the head of the health department.
- The ordinance has been drafted “as of right” for every zone, not “by permit” in some zones. Ms. Menon explained the intent was to manage the issue by defining the parameters (Board of Health regulations, setbacks and other details in the ordinance). If the parameters are well-defined, the permitting process will be stream-lined.
- Language might be tweaked to address concerns or clarifications:
 - Setbacks required at properties with no nearby buildings on adjacent lots.
 - use of mobile coops that chicken owners often move on a seasonal basis (versus fixed accessory structures).
 - Improve the definition of slaughtering (prohibited) versus culling the flock or death of a pet.
 - Section 1 language seems to be focused mostly on the keeping of chickens. Some councilors seemed to express interest in expanding the intent of the ordinance to cover: bee-keeping and rabbits. Other councilors believe the city should move forward for now on the issue of chickens, and add other creatures at a later date as each has its unique care requirements and possible impositions on abutters.
 - Important the language in section 1 defines the allowed purposes are for personal use and/or hobbyists. Bee-keeping for example can be a hobby.
 - Yearly inspections are very important and would like to see language in the ordinance that refers to inspections; further detailed in the regulations.
 - Several councilors acknowledged most chicken-owners (or would be owners) are “doing it right” and there was a desire to respect and protect their rights. Examples of “doing it right” included:
 - Initial and ongoing consultation with abutters and immediate neighborhood

- Sensitivity to scheduling when the chickens are allowed outside, placement of runs and coops.
- Maintain high standards of cleanliness and proper disposal of waste.

City Health Agent Mr. Larry Ramdin confirmed for the Council that he led the effort to draft the Board of Health proposed regulations. The Board of Health members are currently reviewing the draft, and will take up the issue at their next meeting in September. He clarified for the Council the draft regulations were provided to give context to the proposed ordinance, and to demonstrate how the proposed ordinance will likely be regulated. Any regulations will ultimately be revised and approved by the Board of Health under its direct authority.

- In reply to a query, he stated if a resident currently has concerns about livestock; yes, they should contact the city Health Department.
- During the process of developing the regulations for this proposed ordinance, the Board of Health will likely invite comment from the public as is their customary practice.
- After new regulations are adopted, residents with concerns should contact the city Health Department.
- At this time Mr. Ramdin declined to comment on specifics of the draft regulations as the Board of Health has not formally provided input or opinion.
- The question was asked and answered in the affirmative; the Health Department may need at minimum one more staff member to regulate urban agriculture if this ordinance is passed.
- Mr. Ramdin advised the sources he reviewed when drafting the regulations for Board of Health consideration included federal and state regulations with regard to: animal health, animal practices, animal husbandry, Council should rest assured no single city or source was used to draft the regulations to provide Salem with the best possible regulations. Regulations were drafted to address most situations, not single concerns.

Additional key issues discussed by the Council and Planning Board:

- What are the state inspection requirements, and do they supercede anything the city might put in place? Mr. Ramdin advised the state requires the local inspectors to maintain a log of their inspections.

President McCarthy outlined the approval process the proposed ordinance follows: after the Public Hearing is closed, City Council will refer it to the Planning Board for recommendations; the matter will come back to City Council who may choose to adopt or send the matter to committee for further work.

President McCarthy opened the hearing to the public; beginning with those speaking in favor of the ordinance or an aspect of it:

- Kathy Karch; 76 Memorial Drive, spoke in favor of urban agriculture. Issue has the potential to positively impact our city: increase access to locally grown/nutritious food; family food budget supplement; educational opportunity for our children; decrease our carbon footprint.
Suggestions for the draft ordinance:
 - Flesh out the definition of terms by adding: coldframe, aquaponics, roof farms, community farms, commercial farms, greenhouses, hydroponics.
 - Add keeping of bees and rabbits.

- Section 3, 3.2.7 is too focused on the keeping of chickens; not enough of other aspects of urban agriculture.
- Regulation of coops needs to be altered to be permitted in side yards; especially those that do not abut streets. Need to accommodate mobile coops.
- Onsite slaughter must be permitted.
- Front yard gardening of food and medicinal crops needs to be specifically allowed as it generates controversy.
- CJ Karch; 76 Memorial Drive, Chicken owner, spoke in favor. Neighbors are supportive.
- Naomi Cottrell, 55 Warren Street; spoke in favor. OK with chickens but believes the 15-foot setback is a critical necessity. Is a neighbor of chickens, has child with egg allergy. Has had egg debris on her property from the adjacent coop currently situated on the property line. Much of the egg debris carried over by vermin.
- Patrick & Patty Scanlon 42 Dearborn Street; opposed to the trend of raising chickens on small backyard lots. Mr. Scanlon was previously chair of Salem Board of Health. Used regulation 5 of health code to resolve an issue with chickens in south Salem.
 - Our homes are our largest investments—chickens cause odor, noise, etc. and negatively affect quality of life and property values.
 - Recognizes proliferation of urban chickens is a reality. New neighbors erected a coop. He was told by the city they have little recourse and was told to erect a fence. City departments did not offer much help. Neighbors kindly moved the chickens, but held open likelihood chickens might come back.
 - Similar issue on Orchid Street. They are disturbed the city would not support building inspector; “family pet” defies common sense and abutters were not given adequate consideration.
 - This issue needs to be handled more fairly with sound policy. Encouraged additional language to protect property owners on small lots—and city departments should be more responsive to abutters. Supports ordinance wants it strengthened to protect abutters and homeowners.
- Lea Benson, 19 Pickman Street; spoke for modification of ordinance. Her family owned farm in Danvers and had their house in Salem for a reason (no chickens at the house). Encouraged the council to consider health and safety. Being green and sustainability is important. Introduction of a new animal into the Salem eco-system may have unintended consequences. Growing plants help the environment, keeping chickens does not. Chicken waste is filled with salmonella and poses a danger to immune-suppressed individuals. There is not enough distance (setbacks) in the ordinance. Consider what microbes will be introduced and the impact. Look at the data in cities/towns with chickens; is there an increase in disease?
- Susan Patterson, 8 Barton Square; Spoke in favor. Requested the city be careful not to over-regulate. Her animal husbandry experience has been raising quail for release into the wild. Valid points about the need for setbacks and concern for microbes. She urged common sense. Expects to raise chickens someday, must be done “in the right manner” which cannot be legislated.
- Michele Parr, 12 Verdon Street; spoke in favor. She raises chickens. Spoke with her neighbors from the beginning. Her children and their friends are getting a good educational experience. Has never had a problem. Be respectful of neighbors; it can be worked out.
- Cady Goldfield, 37 Moffatt Road; spoke in favor. Recognize importance of working with neighbors. Agrees common sense is called for and encouraged the city not to over-regulate.

- Asked if the yearly inspection by animal control officer (reports to state) would be redundant to Board of Health annual inspection. MDAR (MA department of Agricultural Resources) State requires local animal control agents to keep census on all livestock and report it to the state annually (barn book).
- Local animal control conducts a thorough annual inspection.
- State requires blood tests of poultry/fowls on a regular basis by a poultry inspector.
Good way of ensuring compliance with care and cleanliness standards.

She has been breeding and raising rare Bantam chickens for 45 years, and has lived in south Salem for 20 years with her flocks without incident. She has the express approval and consent of her neighbors. Backyard agriculture is not the same thing as hobbyists or pets. Her credentials include a degree from the Agricultural College of University of Rhode Island where she studied poultry science, game bird management, livestock husbandry and urban management. She offered her expertise to city boards and agencies. She teaches in the environmental horticultural program at North Shore Community College.

- Geoffrey Millar, 20 Abbott Street; Has no chickens, or any interest in having chickens. Spoke in favor. Believes his lot is too small for chickens with the conditions set out in the ordinance, and the parameters of the ordinance are a good thing.
- Marcie Clawson 46 Dearborn Street; spoke in favor. Moved from R2 zone where she was “not allowed” but did have chickens with neighbors’ support. She now lives in R1 where her new neighbors are uncomfortable so she has moved her chickens to another location. Agreed setbacks needed. Disputes between neighbors are a problem—which brought us here. Living with neighbors and accepting differences is vital. Insecticides used by neighbors affect her crop gardening.
- Jim Adams, 5 Manning Street; spoke in favor. 6-foot height on fence is restrictive—should be 8-feet. He builds coops. Privacy fence (stockade) instead of chain link offers more protection to neighborhood.
- Maura Murphy, 70 Dearborn Street; spoke in favor. She has chickens because of her child’s interest. Please use common sense. Her neighbors are supportive and she is respectful of her neighbors.

Members of the public speaking against the ordinance:

- Kristen & Kevin Cordy, 1 Orchard Terrace; spoke against. They are the property owners from the Zoning Board of Appeals hearing (regarding 69 Orchard Street). Thanked their councilor and others who have reached out to hear their concerns. Asked council to consider what happens when neighbors are not getting along and not in agreement. They are now in legal proceedings with their neighbor over this issue. Grievances and comments include:
 - Neighbor’s chicken run now abuts the property line. The coop itself is 5-15 feet from the property line.
 - They are constantly aggrieved by chicken by-products and noise. Cannot open the windows in their home as they are subject to debris; and cannot utilize backyard. Poultry dust creates serious health problems for her husband—this is not visible to the eye but penetrates the lungs.
 - Room for improvements to ordinance language:
 - Definition of “customary agricultural, horticultural and floricultural operations” needs work. What happens if primary use for pet and secondary for profit? ZBA uses broadest definition for defining pets (it only needs a name).

- Ordinance solves one problem and makes another. As currently written, someone could build a goat or sheep house (accessory building) and as long as they consume 50% of the goat's milk, Salem Zoning Ordinance 3.2.1 will not apply.
- Concerned about allowed greenhouse heating plants for personal use (not financial gain) will be allowed closer to the property line than on commercial property.
- Will hens be allowed to breed via rented rooster services?
- Need to tighten the language to prohibit on-site killing. Slaughter is defined as killing for meat; ordinance does not prohibit killing for other purposes (religious, humane culling). Will abutters be expected to witness killing for other purposes?
- Setbacks—15 ft is not sufficient. There are abutters who complained about noise at Zoning Board of Appeals. Need increase in setbacks to a range that is documented to be sufficient (not anecdotal). In their direct experience, 15 feet from the property line is not enough.
- Storage of poultry dust/manure?
- What about abutters who don't have fences to demarcate property lines? Are they expected to erect a fence to protect themselves?
- How will noise nuisance be defined and enforced? A dog that barks all day is easier for an animal control officer to witness.
- Is it reasonable that the only recourse for abutters is to sue in district court?

Additional discussion by the Council and Planning Board:

- Some Councilors expressed concern about allowing the ordinance “by right” across all zones; citing examples of types of residential properties that could pose problems such as multi-family buildings, apartment houses and residences located over retail space.
 - Other Councillors and city staff advised these locations would likely disqualify due to:
 - Owner of the building does not provide approval (required)
 - Setback requirements.
 - Non-conforming residential lots could keep chickens if they met all other requirements.
- Planning Board member Bill Griset offered that raising chickens on a small scale has a place but it may not be consistent with an urban setting. He is supportive of green, sustainability, farm-to-table, etc. but cited the coyote frequently seen in the Willows neighborhood – drawn in part by chickens. Is this good for our children and family pets? This is a balance issue. Not sure chickens belong in urban setting. Raising chickens is not a right of citizenship.
- Planning Board member Randy Clarke sees the coyote regularly too. He is favorably inclined to the proposed ordinance and respects rights of property owners. He stated setbacks are an issue that needs careful consideration.
- Councillor O’Keefe expressed concern about allowing chickens in B1 zoning and does not think apartments/multi family should have chickens.
- Councillor LeGault doesn’t believe owners of these properties will allow chickens and added they generally won’t meet setback requirements. No need to over complicate the issue or over-regulate.
- Councillor Turiel offered we can look to the experience of other communities; and see that chickens and urban agriculture is feasible and of interest to many citizens. Just because a location meets physical limitations doesn’t mean it is appropriate. Need to focus on the process

for approval to provide flexibility. Spoke against defining by zone, owner permission should be adequate to control.

- Councillor Eppley believes a critical issue will be health department regulations – more so than the ordinance. He observed the proposed permitting process provides for a public hearing (and abutter notification). Board of Health can deny a permit.
- Planning Board member Kirt Reider advised setback parameters must be quantifiable and measureable as this is critical for ordinance language and regulation. Diversion of drainage is important –setback distance is not the only issue.

Planning Board Chair Puleo suggested the public hearing stay open to allow more time for the Planning Board to work. They are not comfortable voting so soon (July 31) with only five members, and with so many questions still on the table. More time would also provide City Council and Planning Board with the benefit of Board of Health action on the draft regulations. The Planning Board can discuss the matter publicly at their regular meetings, but the discussion of the Planning Board on this matter is not a public hearing.

As point of procedural clarification, City Clerk Cheryl Lapointe advised that once the joint public hearing is formally closed, if the item has been referred to the Planning Board they must respond within 21 days with a recommendation to City Council. If Council does not close the public hearing tonight they must set a date for the next public hearing.

President McCarthy summarized issues for the Planning Board to consider:

- table use is a big question.
- when considering side and rear setbacks, lot size should be considered which will eliminate many lots.
- Natural predator (coyote) concern is valid, particularly as these are currently protected animals that cannot be killed or trapped/relocated.

President McCarthy recognized one more public comment:

- Jenny Hobbs, 20 Southwick Street - the ordinance needs to address situations where the abutter and proponent are in two different but adjacent zoning districts.

Motion and Vote: Councilor Eppley made a motion to continue the public hearing to the regular City Council Meeting on September 11, 2014. The vote was unanimous with ten (10) in favor (Mr. Turiel, Mr. LeGault, Ms. Milo, Mr. Sargent, Ms. Famico, Mr. Eppley, Ms. Gerrard, Mr. O'Keefe and Mr. Fury) and none (0) opposed.

Old/New Business

None

Adjournment

Motion and Vote: Councilor O'Keefe made a motion to adjourn the meeting. The vote was unanimous with ten (10) in favor (Mr. Turiel, Mr. LeGault, Ms. Milo, Mr. Sargent, Ms. Famico, Mr. Eppley, Ms. Gerrard, Mr. O'Keefe and Mr. Fury) and none (0) opposed.

President McCarthy adjourned the meeting at 9:20pm.

Respectfully submitted,
Pamela Broderick, Recording Clerk

Approved by the Planning Board on 8/7/2014