

Raising Backyard Poultry Without Ruffling Too Many Feathers: How to Comply With Local Regulations and Bylaws and Keep Your Neighbors Happy

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There is nothing like eating a freshly scrambled egg that, just moments before, was sitting cozily beneath a hen. As many readers already know, the taste and quality of an egg laid in someone's backyard is far better than any egg that can be purchased in a grocery store. Indeed, there is also something humbling about the sense of community that is created when food is produced and shared in this way.

Indeed, landowners raising small flocks of poultry have long been a presence throughout the world. In New England colonial times, long before the mass-produced chicken and egg industries took hold in the mid-twentieth century, settlers raised small flocks of poultry for meat, eggs and feathers. During the early 1800's, some family farmers kept small flocks on their properties to provide sustenance for the family as well as to augment the family's income or barter for services. Once vitamin D was discovered in 1922, more New England landowners were able to have flocks of birds year-round. Eventually, however, by the 1950's, oversaturated market conditions and the increasingly cheaper price of retail eggs resulted in most households getting rid of their backyard flocks. (For an interesting online photo exhibit, visit <http://www.foodmuseum.com/exchickenfarmingthenandnow.html> to view the Food Museum's Online Exhibit "Raising Chickens: Then and Now).

Now, for reasons ranging from a strong desire to eat locally sourced foods to concerns about food security to ethnic and cultural traditions, more people are starting once again to raise their own poultry for eggs and/or meat. While the number of individuals raising backyard poultry is largely anecdotal—most communities do not track the number of birds raised by residents—a quick search online suggests that this homesteading trend is growing and here to stay, even in urban and suburban areas. In fact, there are already many online affinity and "how-to" groups available to support the backyard poultry enthusiast: www.thecitychicken.com, www.backyardchickens.com, and <http://urbanchickens.org/>, just to name a few. There are also regional backyard poultry groups to assist new and longtime fans alike, such as the Pioneer Valley Backyard Chicken Association (Western Massachusetts), as well as "Meetup" gatherings (organized online) in many localities throughout the NOFA region and beyond.

But when it comes to raising backyard poultry, whether for eggs or meat, there are some important practical and legal considerations that should be considered before investing time and money into raising one's own food. This is especially true in urban and suburban areas where residents and local authorities may not be as familiar with agriculture and homesteading practices, as well as in any community where regulations for raising backyard poultry are murky, untested or lacking altogether. In those cases, one might have to scramble a few eggs to make an omelet, as the saying goes. But provided that those individuals who wish to raise backyard poultry take some precautionary steps and comply with all applicable laws, rules and regulations, resistance from local authorities and neighbors can be minimized or eliminated altogether in most cases.

Reach Out To Your Neighbors First

Setting aside for the moment the lawfulness of raising birds in any given community (which is discussed below), perhaps the first and most important step for a landowner intending to add some feathered friends to his backyard is first to reach out to neighbors to explain what he plans to do. This step is crucial because too often it is the fear of change and the unknown that motivates neighbors to oppose *any* change in their community—including completely legal land uses—even before they truly understand how such changes will ultimately impact them, if at all. Opponents' fears are typically fueled by ignorance about the land use in question, lack of credible information about how the proposed use will affect the neighborhood, if at all, and/or a general resistance to a use that differs in any way from what presently exists. In the zoning and development context, such opposition is unfortunately what drives "NIMBY"ism (Not In My Back Yard), often to the point where the din of opponents' voices is heard by local officials well before the project can be explained or put into perspective by the proponent. In many cases, it is direct abutters that voice the loudest concerns. Unfortunately, such vocal opposition can also lead to a proposed land use being derailed even before it starts, sometimes even when it is otherwise perfectly legal.

Fortunately, however, in the context of raising backyard poultry, such obstacles can often be minimized or avoided altogether if the landowner approaches her neighbors well before the first hen is scratching the ground. While it is not necessary that every house on the street be contacted, many land use conflicts are usually avoided if the landowner talks to any direct abutters and residents across the street. She should advise her neighbors of her intentions, even if it is a completely lawful use of her property. The conversation should be congenial, educational and non-confrontational. Offering to share eggs from time to time might even be enough of an olive branch for some neighbors to willingly accept that there will soon be backyard poultry living nearby. Many neighbors will be happy to learn that chickens are good foragers of unwanted insects, including those pesky grubs that might otherwise be inclined to ravage the pride and joy of many suburban homeowners, the ubiquitous (and arguably overrated) grass lawn. Any information that the landowner can provide about raising poultry and its generally benign and passive features can help soften even the most resistant neighbor.

In most cases, the main concerns of any neighbor will boil down to one or more of the following: noise, odor, potential for disease and/or attracting vermin (flies, rodents and predators), waste control and impacts on property values. If the landowner will be raising only hens simply for eggs, it is wise to point out that roosters are not necessary. Neighbors will be happy to hear that there will not be any notorious noisemakers among the flock. Additionally, the landowner should mention that there are sanitary and safety "best practices" that will be strictly followed to reduce potential for odor and vermin related issues. One should point out that chicken feed will be stored in secure metal containers, ventilation will be present in bird related structures, water supplies will be kept fresh and there will be a plan for eliminating fecal waste and old bedding in a safe and sanitary manner. Moreover, by having contingency plans during times of travel or extreme weather conditions, neither the birds nor the neighbors will have any reason to squawk. All of these

precautions will help eliminate potential for odors and attracting vermin, and thus reduce sources of potential conflict with neighbors.

Neighbors' concerns about avian flu, *Salmonella*, or other possible diseases can be dispelled by explaining that, given the current probable vectors of avian flu (wild birds) and *Salmonella* (factory farming and lack of proper sanitary practices like handwashing), the likelihood of the backyard flock (and therefore humans) contracting such diseases is minimal. Assure neighbors that, in any event, all necessary precautions will be taken to reduce exposure to wild birds that may carry communicable diseases. Some of these steps are eliminating open air water supplies that might be accessed by wild birds and installing closed roofs on pens to prevent wild bird droppings landing near the flock. Even if you don't want to go so far, as there is little evidence of disease problems from backyard flocks, and least make clear that all federal, state and local laws will be followed to prevent the spread of disease. Make clear that you not only want to protect your birds, but also public health.

Finally, as Robert Frost once penned, "Good fences make good neighbors." Even if a fence or other enclosure for backyard poultry is not technically required by local bylaws/ordinances or other applicable regulations, serious consideration should be given to enclosing the portion of the yard that will become the birds' nesting, feeding and foraging area. Otherwise, there is a risk of attracting unwanted predators to the flock. Moreover, the landowner may run "afowl" of local nuisance laws if any of the birds escape onto neighboring properties and cause damage. This kind of visible preventative measure is often enough to persuade neighbors that they will not be subjected to unwelcome visits from feathered friends (or their foes).

Know and Follow the Local Rules and Regulations

Not only should the backyard poultry owner reach out to neighbors, but he should also contact local officials to determine what rules, if any, apply to raising backyard poultry in the community. Presently, there is a wide spectrum of regulation in the NOFA region. To make matters more confusing, there are also often several *sources* of regulation that may impact the raising of backyard poultry in any one community or on a particular lot. These sources range from zoning bylaws/ordinances, board of health regulations, building codes, wetlands regulations, and animal control guidelines, not to mention state and federal regulations. The prudent landowner should generally become familiar with all of these laws to ensure that they are being followed.

Zoning

Before addressing the practical considerations and inquiries that the landowner should make, it is interesting to highlight some of the widely varied zoning bylaws among the communities within the NOFA region. Some communities have very detailed zoning regulations that expressly limit the number of birds allowed per lot, impose licensing and/or permitting requirements, and/or restrict the location and type of bird-related structures permitted on the lot. For example, in New Haven, Connecticut, the zoning ordinance allows up to six hens (but no roosters) on a lot within certain residential zones, provided that the landowner also abides by the other regulations pertaining to fencing,

housing, screening and property line setbacks, although the ordinance is silent as to whether a permit is required. In Holyoke, Massachusetts, raising chickens is allowed (as an agricultural use) in any zoning district only if the lot is greater than 5 acres; otherwise, chickens can only be raised on a lot smaller than 5 acres (as an accessory use to a dwelling) if the lot is located within the Residential-Agriculture (RA) zone and other setback requirements are met. In Winooski, Vermont, there is a license application/procedure (including two hearings before the Mayor and City Council and an annual registration fee) that must first be completed before the landowner can start raising poultry.

In other communities the regulations may be less detailed or so vague that it becomes less certain exactly what will ultimately be allowed on a particular lot. While it is certainly desirable to know exactly what parameters a landowner should follow, less detailed bylaws sometimes have the unintended but fortunate consequence of creating more wiggle room with town officials. For instance, a bylaw may allow an unspecified number of backyard poultry by special permit. This is the case in Sudbury, Massachusetts, where backyard poultry is allowed by special permit as an accessory use but without any specified maximum number of birds. Regulating poultry in this way allows the zoning board to make a discretionary determination of whether the proposed use is “in an appropriate location and not detrimental to the neighborhood” and that “the proposed use would not be detrimental or offensive to . . . adjoining properties due to the effects of . . . odors . . . noise . . . refuse materials or other visual nuisances”, among other factors. Provided the landowner can convince the zoning board that the size of the flock—which, practically speaking, should be sized appropriately for the lot anyway in order to prevent issues related to overcrowding—will not create these issues, there is a likely chance that the special permit will be allowed. On the other hand, where a bylaw is less than forthcoming and relies on a series of definitions and interrelated (and often conflicting) bylaw provisions and subsections, it is best to speak with the local official (or attorney) to seek guidance and clarification first before bringing birds to the property.

Still, many towns and cities, like Albany, New York, currently have outright bans on the raising of backyard poultry under the current zoning laws or other municipal regulations. Since most communities do not allow for use variances (although some do), residents in these areas will have a difficult time lawfully raising birds. While the unlawful raising of poultry is certainly not advisable for a variety of reasons (i.e. fines and being forced to remove birds immediately if discovered), it does appear that many individuals do carry on with backyard poultry unlawfully and under the radar without any consequence. Much of their success likely hinges on understanding (or unaware) neighbors and the use of good poultry management practices.

Fortunately, there are steps that a committed individual or group can take to repeal these bans, or perhaps further amend and improve the existing laws that do allow backyard poultry, and create zoning laws that are favorable to backyard poultry enthusiasts. For instance, in Massachusetts, the multi-step process to change an existing zoning bylaw or ordinance is governed by state statute, and includes opportunity for public hearings, necessary recommendations by local councils and boards, and ultimately, a vote by city council or town meeting. While these steps may seem onerous, considering the value of

creating the right to raise one's own food in one's backyard, the process is arguably worth the effort. With enough vocal support and public education about the benefits of allowing backyard poultry within the community, and the growing general awareness and appreciation of the virtues of locally sourced food, there is a strong argument to be made by those willing to undertake the effort. Often the end result is positive.

Indeed, this was recently the outcome in Providence, Rhode Island where, up until mid-September 2010, the raising of chickens was prohibited within city limits. Following a months-long and concentrated effort by some of Providence's residents who organized because they wanted the ability to *lawfully* raise poultry (some of the proponents had already been raising birds, albeit illegally), the city now allows one hen per 800 square feet (up to a maximum of six hens) of a residential lot. In Burlington, Vermont, there were ongoing public hearings in late 2010 before the Board of Health, resulting from the request of residents interested in changing the number of birds permissible under the city ordinance (currently it is limited to four birds per lot). As of December 2010, it appears that the issue has been tabled by the Board of Health, but the Board has indicated a willingness to offer a public debate about the raising of chickens when the issue is re-opened at a later time. That the Board is remaining open-minded is encouraging. Efforts are currently underway within NOFA/Mass to outline strategies and create model bylaws that other committed landowners and proponents of backyard poultry can use to effect positive changes in their own communities, so stay tuned.

In any event, considering the wide range of zoning laws pertaining to backyard poultry, the landowner should first consult with the local zoning enforcement officer or zoning board of appeals office to determine whether backyard poultry is permitted under the local zoning bylaw/ordinance. In some communities, the building inspector/department often plays the role of zoning enforcement officer and thus is also a good place to ask questions (although experience suggests that these individuals might not necessarily know all of the pertinent poultry regulations within the municipality, especially if there have not been many individuals seeking to undertake this activity in recent years). Additionally, the zoning bylaws are often available online and can provide insight as to what uses are allowed. Another helpful resource can be found at <http://www.backyardchickens.com/laws/search.php> (although proceed with caution as it might not be current or fully accurate to the extent that it is updated by members of the site only periodically).

In any case, a brief telephone call to the zoning board's office is often the most efficient approach. Once connected with the proper zoning authority, the primary questions to ask are:

- Can poultry be raised in your particular zoning district, and if they can, are there any limits on the number or sex of birds?
- Exactly what use is permissible? Some communities strictly prohibit the *sale* of eggs and/or on-site slaughter of chickens in residential areas, so ask about these uses if they are contemplated.
- Is a special permit or other approval first required and what is required for the application?

- Are there any related requirements or prohibitions (types of bird housing, enclosures, minimum allowable distance to lot lines/other residences, food storage requirements)? Depending on the answers to these questions, additional conversations with other local authorities or boards may be required.

In those rare instances where the zoning bylaw expressly allows the raising of backyard poultry *without* the need for a special permit or other zoning relief (a so-called “as of right” use), provided that the use is undertaken in accordance with specific local guidelines, the landowner is essentially permitted to begin raising his flock on his land. As explained below, however, the landowner should first consult the other relevant local authorities to confirm that there are no other applicable rules and regulations, such as board of health, conservation commission and/or animal control regulations that may apply.

In many cases, the backyard poultry use may be allowed in the zoning district, but first requires a special permit to be approved by the zoning board of appeals or other similar board. If this is the case, there will be a special permit application (and filing fee) that the landowner will have to complete, and there will be a public hearing before the zoning board that will ultimately approve or deny the special permit. In these instances, the landowner should provide as much detailed information as possible to impress upon the local authorities that this undertaking will not be creating a nuisance situation and will be undertaken in accordance with all applicable laws. Similar to neighbors, local boards are much more inclined to react favorably to a proposed use such as backyard poultry if they are convinced there will be no threat to public or environmental health and that the use will not diminish the community’s quality of life. Since the conscientious applicant will have already had the foresight to speak to neighbors before filing the application—thereby hopefully warding off any detractors—it reduces the chance of opponents voicing their concerns at the public hearing and giving the zoning board a reason to deny the permit.

The application fees vary widely among communities. For example, in Jersey City, New Jersey, it appears that the annual license fee is \$25.00, while in Sudbury, Massachusetts, which allows backyard poultry by special permit, the initial application fee is \$100.00, plus a \$25.00 public notice advertising fee; special permit renewals cost \$50.00. In Hamden, Connecticut, the zoning permit application fee (which, according to the Planning Office, is required only once) is \$90.00, but the zoning bylaw also requires submission of a plot plan that depicts the location of fenced enclosures, coop footprints and permissible areas on the lot for the coop; whether this plan must be prepared by a professional land surveyor is not specified in the bylaw but zoning boards typically prefer such plans, thereby possibly adding to the overall application expenses.

Provided that the proposed use meets all of the requirements of the zoning bylaw and there are no credible reasons to deny the permit, the board will be essentially compelled to approve the special permit. It should be noted that in most cases, the approval of a special permit application is somewhat discretionary, so there is a possibility that the board may ultimately deny the permit if it senses that there will be a nuisance or other unfavorable outcome to allowing the use. In any case, the board’s decision can be appealed in the trial court should either the applicant (or the neighbor) not like the ultimate outcome. Whether

filing (or defending) an appeal is worthwhile depends on the emotional and financial resources of the potential parties.

If the special permit has been approved, the landowner should pay particular attention to whether the permit will expire after a period of time or whether there will need to be a re-application at some point in the future. In Sudbury, Massachusetts, for example, the Zoning Board of Appeals granted just two special permits in 2010 for raising backyard poultry. Although there are farms in Sudbury that raise poultry, the residential backyard poultry phenomenon has been somewhat slow to date. According to the ZBA's office, in both cases these permits were valid for only one (1) year, apparently because the ZBA wanted to take a conservative approach in dealing with what is essentially a new type of land use seen within the community. In both cases the permits were subject to renewal following another public hearing at the time the permit was set to expire. This approach allowed the ZBA some wiggle room by creating an opportunity to revisit the issue and determine whether the use was creating any problems that would warrant discontinuance of the use. This past March, the ZBA renewed each of these special permits for five (5) years based on the lack of any problems reported by neighbors. Ideally, these types of examples will encourage others to raise backyard poultry as well as demonstrate to the community and local officials that this type of land use *can* be undertaken without creating any problems.

Building Department, Board of Health, Animal Control & Conservation Commission Regulations

Assuming that the proposed backyard poultry use meets all local zoning requirements and any necessary zoning relief is obtained, the landowner should also check in with the local building department, board of health, animal control officer and conservation commission to ensure that the use will comply with any applicable laws that are not covered by zoning. For example, if a poultry housing structure or enclosure will be sited on the property, the local building code may first require a building permit if the structure meets certain thresholds such as square footage, height, whether it is permanent, moveable or considered an "accessory" structure, if it will have electricity, and its distance from boundary lines. Similarly, some communities require fence permits before installing any type of fencing on the property, even if the fence falls completely within the lot lines.

Moreover, some communities, such as Watertown, Massachusetts, regulate some or all aspects of backyard poultry through their board of health and/or animal control officer rather than through zoning. In Watertown, the Board of Health has its own regulations governing the keeping of animals, which include an application/permit process and a series of explicit guidelines ranging from number of birds permitted per lot size to minimum setback requirements. Even if there are no specific board of health rules pertaining to backyard poultry in a given community, it is a good idea to inquire before it becomes necessary about how to handle diseased or dying birds, proper sanitary disposal of fecal waste, proper food storage, and required inoculations, if any. There may also be strict recordkeeping, inspection and annual licensing requirements mandated by the board of health or animal control officers. Knowing the scope of these regulations in advance will help for planning purposes and avoid unnecessary violations and fines.

In those communities with wetland resource areas, the conservation commission is the best source of information of how to comply with local and state wetlands regulations if all or a portion of the property is located within or near one of these protected resources or a buffer zone. The two primary causes for concern for any backyard poultry enthusiast will be the construction of any structure or alteration of land within a protected resource area, and avoiding any unlawful discharges of pollution (i.e. fecal waste) into the wetland or buffer zone area. A violation (even if unintentional) of wetland protection regulations can result in significant fines for the landowner, so it is important to determine whether the property and the proposed use thereon falls within the regulatory scope of all applicable wetland protection bylaws.

State and Federal Regulations

Finally, while the scope of this article is limited to relevant local regulations for the backyard poultry owner raising birds for his or her own personal use, if anyone is considering selling either poultry or eggs produced from their backyard flock, it is a good idea to check whether any state and/or federal regulations apply. In most cases, backyard poultry owners are raising very small flocks for their own personal consumption of eggs and/or poultry (as opposed to retail sales), and therefore are usually exempt from the inspection requirements under the Federal Poultry Products Inspection Act (PPIA) and Egg Products Inspection Act (EPIA). There is an informative flowchart on the USDA's Food Safety and Inspection Service (FSIS) website that helps determine whether a federal inspection is required for poultry slaughter (http://www.fsis.usda.gov/OPPDE/rdad/FSISNotices/Poultry_Slaughter_Exemption_0406.pdf).

Provided that the slaughter is not in violation of any local health or zoning laws, on-site slaughter is generally not subject to inspection. However, contacting local USDA officials is recommended if any sales of meat (even at farmer's markets) or other types of slaughter/transport are contemplated. With the exception of individuals residing in Vermont (which has its own inspection agency), those living in any of the other NOFA states should visit the FSIS website (www.usda.fsis.gov/Contact_Us/index.asp) to obtain the contact information for the applicable field office to have inspection questions answered. In Vermont, residents should contact the Vermont Agency of Agriculture located in Montpelier (802-828-2426). Moreover, anyone considering selling their eggs either on-site (assuming it is allowed under the zoning bylaw, although retail sales are rarely allowed in residential zones) or at a farmer's market should consult with their state officials to determine whether there are any inspection or labeling requirements related to the sale of eggs. This is because most states have their own statutes and regulations for the sale and labeling of shell eggs. Typically, the state's department of agriculture is the best place to start asking questions.

Nuisance Laws

Once the landowner has determined that raising backyard poultry is allowed on his lot and he has obtained all necessary permits and licenses, it will be important to remain a steward of best poultry practices and attentive to neighbors' quality of life concerns. Even though the use may be fully permissible and permitted, a landowner can still be subject to claims of

nuisance if he does not keep his birds in accordance with applicable laws or the reasonable expectations of the neighborhood. Indeed, most communities have general bylaws that prohibit excessive noise, odors and other similar nuisances. Such conditions can also be the basis of a common law claim of nuisance. There are a few scenarios where this becomes plausible. For example, consider the keeping of one or more roosters in a densely populated urban area. While most bylaws allow hens but prohibit roosters, some bylaws do not expressly forbid the keeping of roosters.

So while the urban landowner may *technically* be permitted to keep roosters on the property, if the noise is excessive, unreasonable and unbearable in relation to the proximity of neighboring property owners, it may create a nuisance situation. On the other hand, this same flock might go virtually unnoticed in a more sparsely populated rural neighborhood. One can see similar situations arising if the odors generated by the keeping of birds (from stagnant water or improperly disposed of waste) create an unbearably malodorous situation that annoys neighbors. Another scenario where a nuisance claim (and possibly trespass or property damage claims) might arise is when birds escape the lot or are not sufficiently enclosed and enter upon a neighboring property. While some neighbors might think it is charming to have hens roaming around their front yard and even beneficial to have some of their grubs eliminated, others might not be so enchanted, especially if their landscaping is damaged.

To prevent any type of nuisance claim from being advanced by neighbors, backyard poultry owners should be sensitive to their neighbors' desires to enjoy their own properties without disturbance. Again, delivering a few dozen fresh eggs from time to time probably does not hurt either.

Be Aware of Private Land Use Controls

In addition to all of the municipal regulations and nuisance issues, there are sometimes *private* land use controls that can dictate whether poultry can be raised on a particular residential lot. This is especially true in *newer* residential suburban subdivisions and townhome communities where there may be enforceable restrictive covenants or homeowners' association bylaws and regulations that restrict the types of uses permitted on one's lot in those neighborhoods. A quick check of these pertinent documents (often referenced in the deed) will advise the landowner of whether backyard poultry is allowed within the subdivision.

Given the intent behind creating these types of homogeneous neighborhoods, it is possible that backyard poultry will be prohibited. In those cases, the landowner should determine whether there is a process for seeking an exception from the homeowners association. As a practical matter, even in those cases where the restrictive covenants have some gray areas or allow for some exceptions, the inherent value and allure for many homeowners buying homes in these types of subdivisions is that they create uniform appearance by regulating certain matters of taste—fence styles, paint colors, limits on outdoor decorations, prohibiting certain types of pets. This creates an environment where there may be resistance by some residents to allowing backyard poultry. Once again, this is where reaching out to neighbors first becomes important.

Closing Thoughts

On the whole, it appears that many landowners hoping to add some hens to their backyard landscape are likely to find that they will be permitted to do so within certain parameters. Indeed, with a little investigative work at town or city hall and some advance reaching out to neighbors, there should not be too many obstacles to overcome before enjoying that first egg salad sandwich. Even in those communities where the local laws have not kept current with the local foods mindset and do not allow backyard poultry at the moment, it is clear that the possibility for change is significant as more and more people come to understand the benefits and truths about raising safe and healthy food in one's own backyard.

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