

ORDINANCE NO. 2023-01

AN ORDINANCE REGULATING THE OWNERSHIP AND KEEPING OF CHICKENS IN THE CITY OF PERRY, KANSAS AND REPEALING ALL ORDINANCES IN CONFLICT THEREWITH.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PERRY, KANSAS:

SECTION 1. There shall hereafter be an additional Article added to Chapter II of the Code of the City of Perry. Such Article shall be Article 4 and shall be entitled: CHICKENS.

SECTION 2. Section 2-401 shall be added to the Code and shall read as follows: "PERMIT. Any person wishing to keep chickens within the City limits of Perry shall file an application to do so with the City Council. The application fee shall be \$25.00. Such application will then be reviewed by the City Council who will either grant or deny the permit. Upon approval of the application, the requesting party shall pay the City \$75.00 as an inspection fee before constructing a henhouse. After review of plans by the city to ensure compliance with the city code, zoning regulations, setbacks, etc. the applicant shall build the structure which shall be inspected for the issuance of a building permit. Citizens who own chickens shall be required to re-apply annually for a chicken permit on January 15th of each year. There shall be a renewal fee annually of \$10.00. An approved chicken permit shall allow the owner thereof to own no more than six (6) chickens. Permits are non-transferable and shall not run with the land. Permits will be granted only for property whose primary use is for a single-family dwelling or a two-family dwelling. In the event of a lessor/lessee or landlord/tenant relationship, the owner of the property shall always apply for a permit. Permits will only be granted if all of the requirements of this Section are met."

SECTION 3. Section 2-402 shall be added to the Code and shall read as follows: "GENDER OF CHICKENS. Only female chickens shall be allowed within the city, with no limitation on species. Roosters shall not be permitted."

SECTION 4. Section 2-403 shall be added to the Code and shall read as follows: "HENHOUSE. Henhouses shall be provided for all chickens kept within the city and shall be designed to provide safe and healthy living conditions for the chickens while minimizing the adverse impacts to other residents. The henhouse shall be a minimum of three (3) square feet in size per chicken, up to six (6) chickens. All henhouses shall be well maintained. All henhouse structures shall be enclosed on all sides and have a roof and doors. All henhouse access doors must be able to be shut and locked at night. Windows and vents must be covered with predator-proof and bird-proof wire containing less than one (1) inch openings."

SECTION 5. Section 2-404 shall be added to the Code and shall read as follows: "CHICKEN PENS. Enclosed chicken pens shall be provided for all chickens kept within the city. The pen shall be a minimum of three (3) square feet in size per chicken. Such pens must be made of sturdy wire fencing, aviary netting or solid roofing. If wire fencing is used, it must be approved chicken wire. All chicken pens must be at least four (4) feet tall in height."

SECTION 6. Section 2-405 shall be added to the Code and shall read as follows: "LOCATION OF HENHOUSES AND CHICKEN PENS AND CONSENT OF NEIGHBORING PROPERTIES. No henhouse or chicken pen shall be located closer than ten (10) feet to any property line or any adjacent property and may not be within any setbacks required by City ordinance or zoning regulation. All henhouses and chicken pens must be located at least twenty (20) feet from the nearest neighbor's residence. All henhouses and chicken pens shall be located in the backyard of the residence at issue. "Backyard," as used in this Section, shall mean that area of a lot that is located between the back of a house and the rear property line. The permit application shall require that any person wishing to keep chickens within the City of Perry must have signatures of all property owners within forty (40) feet of the henhouse or chicken pen structure. This shall be measured from the closest property line to the henhouse or chicken pen. Signatures of all neighboring property owners must be gathered on an annual basis, as a part of the permitting process, and it will not be assumed by the City that any neighboring property owner is agreeable to the allowance of chickens without an updated, yearly signature and date on every annual permit."

SECTION 7. Section 2-406 shall be added to the Code and shall read as follows: "SANITARY CONDITIONS. All henhouses and chicken pens shall be kept clean, dry, odor-free and in a sanitary condition at all times. All henhouses and chicken pens shall also be constructed and repaired to prevent rats, mice or other rodents from being underneath or within such structures. All feed and other items associated with the keeping of chickens that are likely to attract or to become infested with or infected by rats, mice or other rodents shall be protected so as to prevent rats, mice or other rodents from gaining access to or coming into contact with them. All henhouses and chicken pens may be inspected at any time throughout the permit year by the Public Officer."

SECTION 8. Section 2-407 shall be added to the Code and shall read as follows: "MANURE. Provision must be made for the storage and removal of chicken manure. All stored manure shall be covered by a fully-enclosed structure with a roof or lid over the entire structure. All manure not properly stored and not used for composting or fertilizing on the premises shall be removed."

SECTION 9. Section 2-408 shall be added to the Code and shall read as follows: "LOCATION OF CHICKENS; SLAUGHTERING. Chickens must be kept within a henhouse or a chicken pen at all times. No chickens may be slaughtered within the limits of the city."

SECTION 10. Section 2-409 shall be added to the Code and shall read as follows: "RUNNING AT LARGE PROHIBITED. It shall be unlawful for any person to allow or permit a chicken or chickens of any kind to run or be at large at any time in the City. For the purposes of this Section, the term "at large" shall be defined to include those times during which any chicken shall not be confined or kept in pens sufficiently strong or constructed to keep such chicken on the premises of their owner or keeper."

SECTION 11. REVOCATION AND DENIAL OF PERMIT. A permit to keep chickens within the City may be denied or revoked by the City Council where there is a risk to public health

or safety or for any violation or failure to comply with any provisions of this Article.

SECTION 12. NOTICE. Any person, corporation, partnership, association or other entity found by the City Council to be in violation of any provision of this Ordinance or any such person, corporation, partnership, association or other entity who has been denied a permit or had a permit revoked, shall be served a notice of such violation, denial or revocation. The notice shall be served on the owner or agent of the owner of the property at issue by restricted mail or by personal service, or if the property is unoccupied and the owner is a nonresident of the city, then by mailing the notice by restricted mail to the last known address of the owner.

SECTION 13. SAME; CONTENTS. The notice shall state the condition(s) which is/are in violation of the provisions of this Ordinance. The notice shall also inform the person, corporation, partnership association or other entity that:

- (a) He, she or it shall have 10 days from the date of serving the notice to abate the condition(s) in violation of the provisions of this Ordinance; or
- (b) He, she or it has 10 days from the date of serving the notice to request a hearing before the governing body as provided by Section 16 of this Ordinance;
- (c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided in this Ordinance and/or abatement of the condition(s) by the city as provided by this Ordinance.

SECTION 14. FAILURE TO COMPLY; PENALTY. Should the person, corporation, partnership association or other entity fail to comply with the notice to abate the conditions that are in violation of this Article or request a hearing, the City may file a complaint in the Municipal Court against such person, corporation, partnership, association or other entity and upon conviction of any violation of provisions of this Article, such person, corporation, partnership, association or other entity, as appropriate, may be fined in an amount not to exceed \$500.00 or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense. If a permit is revoked for failure to comply with the terms of this Article, the property owner will not be allowed to apply for another permit for chickens for at least one (1) calendar year from the revocation of their permit. If a property owner has its permit revoked a second time for failure to comply with the terms of this Article and fails to cure that noncompliance, the permit will be revoked for at least a three (3) year period from the date of the second revocation.

SECTION 15. ABATEMENT. In addition to, or as an alternative to prosecution as provided in herein, the City Council may seek to remedy violations of this Ordinance in the following manner: If a person to whom a notice has been sent pursuant to section this Ordinance has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified herein, the City Attorney may present a resolution to the governing body for adoption, authorizing the City Council or other agents of the city to abate the conditions causing the violation at the end of 10 days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the violating conditions were located as provided in this Ordinance. A copy of the resolution shall be served upon the person in violation in one of the following ways:

- (a) Personal service upon the person in violation;
- (b) Service by restricted mail; postage prepaid, return receipt requested; or
- (c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the City Council and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such conditions exist.

SECTION 16. HEARING. If a hearing is requested within the 10-day period as provided in Section 13, such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the City Council before the governing body. The hearing shall be held by the governing body as soon as possible after filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body. The hearing need not be conducted according to any formal rules of evidence. Upon conclusion of the hearing, the governing body shall record its determination of the matter by means of adopting a resolution and serving the resolution upon the person in the manner provided in Section 15.

SECTION 17. COSTS ASSESSED. If the city abates any conditions in violation of this Article, the cost of abatement, including attorney's fees, shall be charged against the lot or parcel of ground on which the violating conditions were located. The city clerk shall, at the time of certifying other taxes to the county clerk, certify the costs as provided in this Ordinance. The county clerk shall extend the same on the tax roll and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid.

SECTION 18. REPEAL OF CONFLICTING ORDINANCES. Any ordinance or parts of ordinances of the City of Perry, Kansas, in conflict herewith are hereby repealed.

SECTION 19. This ordinance shall take effect and be in force from and after its publication in the official city newspaper as provided by law.

PASSED by the Council this 8th day of February, 2023.

APPROVED by the Mayor this _____ day of February, 2023.

CLAY MCHARDIE, Mayor

ATTEST:

VICKI WALBRIDGE, City Clerk