

**CITY OF NEWARK
DELAWARE
CITY COUNCIL
PUBLIC HEARING
NOTICE**

January 27, 2020 - 7:00 P.M.

Pursuant to Section 402.2 of the City Charter of the Code of the City of Newark, Delaware, notice is hereby given of a public hearing at a regular meeting of the Council in the Council Chamber at the Municipal Building, 220 South Main Street, Newark, Delaware, on Monday, January 27, 2020 at 7:00 p.m., at which time the Council will consider for Second Reading and Final Passage the following proposed Ordinances:

- ✓ Bill 20-01 An Ordinance Amending Chapter 5, Animals, Code of the City of Newark, Delaware, To Allow a Partial Exemption from the Chapter for Agricultural and Farm Related Uses for Properties Comprising Ten (10) or More Acres
- Bill 20-02 An Ordinance Amending Chapter 13, Finance, Revenue and Taxation, Code of the City of Newark, Delaware, To Allow a Partial Agricultural and Farm Taxation as Permitted in New Castle County Pursuant to 9 Del. C. §8328 et seq. for Agricultural and Farm Related Uses for Properties Comprising Ten (10) or More Acres
- Bill 20-03 An Ordinance Amending Chapter 14, Fire Prevention, Code of the City of Newark, Delaware, to Amend the Chapter Title and Adopt the 2018 International Fire Codes with Amendments

Renee K. Bensley, CMC
City Secretary

Advertised: **Newark Post** – January 17, 2020

BILL NO. 20-01
1st Reading: 01/13/2020
2nd Reading: _____

CITY OF NEWARK
DELAWARE

ORDINANCE NO. 20- ____

An Ordinance Amending Chapter 5, Animals, Code of the City of Newark, Delaware, To Allow a Partial Exemption from the Chapter for Agricultural and Farm Related Uses for Properties Comprising Ten (10) or More Acres

THE COUNCIL OF THE CITY OF NEWARK HEREBY ORDAINS:

That Chapter 5, Animals, Code of the City of Newark, Delaware, be hereby amended in the following respects:

AMENDMENT 1: Amend Section 5-3, Keeping of vicious, exotic, wild, or farm animals and wild fowl prohibited, by adding the underscored text as follows as a new subsection (d):

“(d) Notwithstanding any provision in this Chapter to the contrary, properties of ten (10) acres or more that qualify for an agricultural tax exemption pursuant to Chapter 13, Section 13-16, keeping and harboring farm animals as defined under Section 5-1, shall be exempt from the requirements of Sections 5-3 and 5-4 of this Chapter with a special use permit, as provided in Article XX, Section 32-78, and subject to all other requirements herein.”

MOTION for Acceptance as First Reading on January 13, 2020.

by Council Member Markham.

Second Reading and Final Passage on _____, 2020.

VOTE: ___ to ___.

Mayor

Attest:

City Secretary

Approved as to Legality & Form:


City Solicitor





**CITY OF NEWARK
DELAWARE**

January 3, 2020

TO: Mayor and Members of Council

VIA: Tom Coleman, City Manager 

FROM: Mary Ellen Gray, AICP, Planning and Development Director 
Michael Fortner, Planner II 

RE: ORDINANCE AMENDING CHAPTER 5 – ANIMALS, BY ADDING PARTIAL EXEMPTION FROM CHAPTER FOR AGRICULTURAL AND FARM RELATED USES FOR PROPERTIES OF TEN (10) ACRES OR MORE WITH A SPECIAL USE PERMIT.

The Planning & Development has prepared the following report amending *Chapter 5 – Animals, Section 5-3 – Keeping vicious, exotic, wild, or farm animals and wild fowl prohibited*, to allow for a partial exemption of restrictions on farm animals for parcels used as such under the proposed Chapter 32 – Zoning, Article IV, Section 32-9(b)(13) with a special use permit.

The report gives a brief background, reviews our current requirements, and provides a recommendation on an ordinance.

Background and Research

The Planning and Development Department was approached by the trustee of the property at 751 Paper Mill Road, who is interested in annexing his 14 acre +/- property into the City to receive sewer and water. The property owner expressed interest in keeping the property in his family and operating it as a small farm with agriculture and raising animals. After a comprehensive review, the Planning and Development Department determined that agriculture uses were compatible with residential uses, as well as important to the community's sustainability. As a result, the Department prepared a report to the Planning Commission to recommend that Council adopt an amendment to the Zoning Code to permit "Agricultural, horticultural, and forest land uses" in the RH, RT, and RS zoning districts for parcels at least 10 acres in size. In order to provide the benefit to Newark property owners to allow for the full operation of farm uses, the Planning & Development Department sought to amend the City's Code to allow Council, with a special use permit, to exempt restrictions on farm animals and number of animals owned for qualifying properties.

Current Requirements

Section 5-1- Definitions define "Farm animals" as follows:

"Farm animal shall mean any animal or fowl commonly found on a farm including, but not limited to, chickens, roosters, ducks, geese, emus, ostriches, all species of pigs/hogs, donkeys, mules, horses, cattle, goats, sheep, llamas, oxen, or any other animal or fowl suitable for slaughter or for the production of milk, eggs, fiber, or feathers."

Section 5-3 puts restrictions on the types of animals that may be owned or kept within city-limits, including farm animals.

"Sec. 5-3. - Keeping of vicious, exotic, wild, or farm animals and wild fowl prohibited.

- (a) No person shall possess, own, harbor, or care for, whether as a pet or for any other purpose, vicious, exotic, wild, or farm animals or wild fowl as defined in this chapter within the boundaries of the city unless specifically exempted by this chapter.*
- (b) The following animals shall be exempt from this section:*
 - (1) Wild animals, fowl, and fish that may be purchased from a licensed commercial pet shop or dealer and are exempted from permit requirements by a State of Delaware veterinarian as authorized by Title 3, Del.C., Chapter 72.*
 - (2) Animals kept or harbored at licensed zoos or accredited educational institutions that are used in the course of instruction or research and licensed as required by the Delaware State Code.*
 - (3) With approval of the chief of police, animals that are used for temporary display and licensed as required by the Delaware State Code.*
 - (4) Farm animals as defined in this chapter may be possessed, owned, harbored, or cared for under the following conditions:*
 - a. The property where the animal(s) is kept must be a minimum of four acres;*
 - b. The property must be properly fenced to contain such animal(s); and*
 - c. The restriction on the number of animals allowed as specified in Section 5-4 of this chapter shall apply.*
- (c) Any person convicted of a violation of this section shall pay a mandatory minimum fine of not less than \$250 for the first offense, not less than \$500 for the second offense, and not less than \$750 for each subsequent offense."*

Section 5-4 restricts the number of animals allowed, regardless of use.

"Sec. 5-4. - Restriction on the number of animals allowed.

- (a) It shall be unlawful for any person to possess, own, harbor, or care for more than six animals within the city except that a litter of puppies, kittens, or other young animals which may be kept for a period of time not exceeding five months from birth. The intent of this section is to restrict the number of animals to six within any household or other location unless otherwise exempted. The animal control officer or police officer is authorized to remove animals to reduce the number to that which is authorized by this ordinance.*
- (b) Pet fish are excluded from this subsection.*
- (c) This section shall not apply to any establishment where animals are kept in a licensed pet shop for commercial sale or boarding by a licensed facility or at licensed zoos or accredited educational institutions.*
- (d) Any person convicted of a violation of this section shall pay a mandatory minimum fine of not less than \$250.00 for the first offense, not less than \$500.00 for the second offense, and not less than \$750.00 for each subsequent offense."*

Methodology

To amend the City Code to provide an exemption for farm animals on properties used for agricultural and farm related uses under Chapter 32 – Zoning, Article IV, Section 32-9(b)(13), the Planning Department suggests the following change to the City Code of the City of Newark by adding to Chapter 5 Animals, Section 5-3(4)d. to read as follows:

- d. Notwithstanding any provision in this Chapter to the contrary, properties of ten (10) acres or more that qualify for an agricultural tax exemption pursuant to Chapter 13, Section 13-16, keeping and harbor farm animals as defined under Section 5-1 of this chapter, shall be exempt from the requirements of Sections 5-3 and 5-4 of this Chapter with a special use permit, as provided in Article XX, Section 32-78, and subject to all other requirements herein.*

Department Comments

1. The Planning and Development Department has done a survey of all properties currently within the City of Newark municipal boundary and found a total of eight (8) parcels zoned RH, RT, or RS, that meet the minimum size requirement of ten acres:
 - a. 0 Gravenor Lane (Vacant)
 - b. 300 W. Main Street (Newark Country Club)
 - c. 292 W. Main Street (First Presbyterian Church)

- d. 220 Casho Mill Road (Downes Elementary School)
 - e. 193 W. Park Place (West Park Elementary School)
 - f. 151 Capitol Trail (Private residence)
 - g. 2001 Patriot Way (Newark Charter School – Elementary and Middle)
 - h. 200 McIntire Drive (Newark Charter School – High School)
2. Within the current City of Newark Planning Areas in the Comprehensive Development Plan V for annexation, the following parcels have New Castle County zoning compatible with RT, RH, and RS, and meet the minimum size requirements of ten acres:
- a. 1 Welsh Tract Road (Welsh Tract Baptist Church)
 - b. 381 W. Chestnut Hill Road (Vacant)
 - c. 0 Paper Mill Road (Vacant)
 - d. 465 Paper Mill Road (Private residence)

There are multiple parcels not currently in Planning Areas that could be eligible in the future for annexation that meet the minimum requirements. Exhibit “A” shows parcels within the current City of Newark municipal boundary that are zoned RH, RT, and RS and are at least 10 acres in size (shown in green), as well as properties outside the City, adjacent or near the municipal boundary, that are currently at least 10 acres and have a low-density residential zoning.

3. The Planning and Development Department believes that amending the City Code to provide a partial, Council approved, exemption on the types and number of animals owned on qualifying agricultural properties would advance the vision of the Comprehensive Development Plan V as a “Sustainable Community” by allowing for a full range of traditional farm uses , and encouraging sustainable food production practices.
4. The Police Department and Animal Control Division does not oppose or object to the change. The Planning and Development Department will forward all special use permit applications for agricultural uses, along with requests on the types and numbers for farm animals the property owner requests to keep and harbor, through the Subdivision Advisory Committee review process, as well as to the Police Department so that the Animal Control division can provide comments and recommendation to Council through the Planning and Development Departments report.
5. There were no other applicable staff comments from the Subdivision Advisory Committee.

Planning and Finance Staff Recommendation

Planning and Development recommends that Council approve the amendment to Chapter 5, Section 5-3(4)d. as follows:

- d. Notwithstanding any provision in this Chapter to the contrary, properties of ten (10) acres or more that qualify for an agricultural tax exemption pursuant to Chapter 13, Section 13-16, keeping and harbor farm animals as defined under Section 5-1, shall be exempt from the requirements of Sections 5-3 and 5-4 of this Chapter with a special use permit, as provided in Article XX, Section 32-78, and subject to all other requirements herein.*

Recommended Motion

I move that Council amend Chapter 5- Animals, Section 5-3(4)d. of the City Code as outlined in the Planning and Development Department's memo dated January 3, 2020.

Planning and Development Department Exhibit "A"

