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NUISANCE MOST FOWL: THE PROBLEM WITH CHICAGO’S PERMISSIVE LIVESTOCK ORDINANCE AND HOW TO FIX IT

SHELLEY GEISZLER

She’s known as “The Crazy Chicken Lady”, but her real name is Mo Cahill. In 2011, Mo purchased a vacant lot between two apartment buildings in Rogers Park, a diverse neighborhood on Chicago’s northside. Here, in the middle of an urban community with a population density of over 29,000 people per square mile, Mo erected her farm, aptly named Moah’s Ark. From across the street, the farm resembles an overgrown community garden, littered with patio furniture, tools, and plastic bins. Mo’s chicken coop is a converted van; her fowl are named after Supreme Court Justices.

Moah’s Ark gained supporters and detractors, but according to Alderman Joe Moore of Chicago’s 49th Ward, “the issue that really gets people’s blood boiling is the roosters and their crowing . . . .” Indeed, Mo found herself in court, fighting tickets for excessive rooster noise and keeping loose chickens. A judge threw out the lose chickens complaint; the

4. Woodard, supra note 2.
5. Pratt, supra note 1.
6. At the time of publication, Joe Moore is no longer a sitting alderman. See Jonathan Bellew, As Successor Sworn in, Roger’s Park’s Longest Serving Alderman Says Thanks, Reflects on 28 Years, BLOCK CLUB CHI. (May 20, 2019, 7:45 AM), https://blockclubchicago.org/2019/05/20/as-successor-sworn-in-rogers-parks-longest-serving-alderman-says-thanks-reflects-on-28-years/ [https://perma.cc/NUJ8-W67C].
7. Pratt, supra note 1.
8. Id.
noise complaint stood. To accommodate her neighbors, Mo rearranged her breeding and hatching schedules, moved her chickens further from the adjacent apartment buildings, and soundproofed her coop. Undeterred, Mo continues to keep her backyard fowl, and Moah’s Ark thrives in the center of Rogers Park.

Perhaps the most surprising thing about “The Crazy Chicken Lady” is that it is legal to keep roosters in inner-city Chicago. Chicago’s livestock ordinance prohibits keeping animals for slaughter, but otherwise allows residents to raise them for “edible by-products, such as eggs or milk.” The ordinance puts no limit on the type or number of animals a person may keep for this purpose. In a separate ordinance, the city limits excessive animal noise, including:

[H]abitual barking, whining, crying, howling, whimpering, crowing, or loud noise common to an animal’s species that exceeds ten consecutive minutes in duration or occurs intermittently for a significant portion of the day or night, that is louder than average conversational level at a distance of 100 feet or more.

But proving excessive noise under the Chicago ordinance is a high bar:

A citation for a violation of this section may be issued based on either:
(1) personal observation of a violation by any city officer or employee charged with enforcement of this section; or (2) a complaint alleging a violation of this section, signed and sworn to by residents of three different addresses, and specifying the date and time of the violation.

The excessive animal noise ordinance offers no definition for the words “intermittently,” “significant portion,” or “average conversational level.” Furthermore, the ordinance’s designation of the distance “100 feet or more” does not do much to shield residents bothered by inordinate animal noise: the size of an average Chicago lot is 25’ x 125’. Strangely enough, residents who live next door to a rooster, and are likely to be the

9. Id.
10. Id.
11. CHI., ILL., MUN. CODE § 7-12-300 (2019).
13. CHI., ILL., MUN. CODE § 7-12-100 (2019).
14. Id.
most bothered by the noise, have little recourse under the ordinance because they live within 100 feet of the rooster’s crowing.

Meeting the criteria of the excessive animal noise ordinance was probably easy for Mo Cahill’s neighbors, as the large, conspicuous farm generated a lot of attention. But what about the ordinary private citizen unlucky enough to find herself suddenly living next-door to a solitary backyard rooster? Or the neighbor so sleep-deprived and driven to the brink that he decides to take matters into his own hands?

Treating a crowing rooster like any especially noisy barking dog, as Chicago’s excessive animal noise ordinance does, oversimplifies the problem. Unlike a dog that will go indoors and off the premises for walks, a backyard rooster will spend its entire life in the backyard making noise. Roosters crow periodically, regardless of day or night, and for a variety of reasons, not only to welcome the rising sun. In fact, “intermittent for a significant portion of the day or night” accurately characterizes all rooster noise, echoing the language of the ordinance.

What is more, a rooster’s crow averages 130 decibels, with scientists recently determining that the crow can reach 143 decibels.

16. This happened to me, sparking my interest in this topic. During the summer of 2018, my neighbors, a family of four, decided to start keeping chickens. They built a coop along the fence that divided their property from mine. I was unbothered by the prospect of chickens living next-door, giving it very little thought until all of a sudden, I began to hear a rooster crowing at all hours of the day. As it turned out, when my neighbors bought their chickens back from the farm, they got a rooster by mistake. Much to my chagrin, they decided to keep the rooster because their children were attached to it. The rooster crowed between 4:30 AM and 5:15 AM every morning and continued to crow sporadically throughout the day. After a week of little sleep, I approached my neighbors and asked if there was anything to be done about the crowing. My neighbors were conciliatory at first: they tried putting the rooster in a crate in the garage over-night and purchased a collar for the rooster that was intended to act as a muzzle to quiet his crow. Neither of these options were sufficient, and so ensued another couple of weeks with very little sleep. Eventually, my neighbors agreed to take the rooster back to the hatchery from whence he came.

17. A Massachusetts man was charged with 11 counts of malicious killing of a domestic animal after he poisoned his neighbor’s chicken coop, intending to kill their rooster. Billy Baker, Rooster Tange may have led to Chicken Deaths in Carlisle, BOS. GLOBE (Aug. 6, 2014), https://www.bostonglobe.com/metro/2014/08/06/chickens/LBdhUmNvdVye4nCX8tj8WCP/story.html.


19. Scientists believe roosters crow just before dawn because their mean circadian rhythm is 23.7 hours. Tsuyoshi Shimmura & Takashi Yoshimura, Circadian Clock Determines Timing of Rooster Crowing, 23 CURRENT BIOLOGY R231 (2013), https://www.cell.com/action/showPdf?pii=S0960-9822%2813%2900186-3 [\perma.cc/AEQ4-MZAX\] Roosters also crow to protect their territory, alert of danger, when mating, and when in competition with other roosters. All You Need to Know About Rooster Crowing, THE HAPPY CHICKEN COOP: MANAGING YOUR FLOCK (Aug. 31, 2018), https://www.thehappychickencoop.com/rooster-crowing/ [\perma.cc/A6EY-WXDU\].

noise is louder than the rapping of a jackhammer and rivals the din on the deck of an aircraft carrier. In contrast, the world record for the loudest dog bark belongs to a golden retriever and measures 113.1 decibels, the same noise level as a rock concert. After studying the sound levels of rooster’s crows, scientists also sought to understand why roosters do not go deaf from their own crowing. They discovered that when a rooster opens his mouth to crow, a piece of soft tissue covers his ear canal, acting like a “built-in earplug.” Scientists theorize that hens and chicks do not go deaf from the crows because a rooster directs his crowing away from the coop, or where other members of the flock congregate.

It is important to note that while both roosters and hens vocalize, only roosters crow. However, in rare cases, female chickens appear to change genders due to medical conditions like an ovarian cyst or diseased adrenal gland. Chickens are born with both sets of sex organs, and when a hen’s female sex organ is compromised, her male sex organ activates. As a result, the hen will begin secreting androgens, causing it to develop male physical characteristics, including the ability to crow, and to stop laying eggs. The Chicago livestock ordinance allows residents to keep traditional farm animals for their “edible by-products, such as eggs or milk,” but, as discussed in more detail infra Parts I.C and III.A, a rooster is not necessary for a hen to lay an egg. So, under circumstances where a hen effectively becomes a rooster, Chicago ought to treat the hen as a rooster because she no longer produces eggs as required by the ordinance. Under


24. Yirka, supra note 23.


26. Id.

27. Id.

28. CHI., ILL., MUN. CODE § 7-12-300 (2019).

ordinary circumstances, hens cluck at a level similar to human conversation.³⁰

While there are benefits to raising personal livestock, particularly hens,³¹ inner-city Chicago vastly differs from the farming communities of greater Illinois. Part of residing in a city is the practice of living in close proximity with other people, understanding that exercising one’s own bundle of property rights may come at a cost to someone very close by.

Part I of this article examines the history behind Chicago’s livestock ordinance and its evolution in response to the popularity of urban homesteading. It argues that Chicago should prohibit roosters while comparing the Chicago ordinance with similar ordinances in suburban Chicago, as well as other major urban areas that approach livestock more narrowly. Part II argues that Chicago’s excessive animal noise ordinance codifies common-law nuisance but fails to balance the unique rights of urban livestock owners and their non-livestock owning neighbors appropriately. As a result, the ordinance is not a good law. Part III advocates that Chicago’s livestock ordinance ban roosters and be narrowly tailored to regulate noise. In addition, the ordinance should allow for a private right of action for residents affected by their neighbors’ noisy livestock.

I. THE CHICKEN OR THE ORDINANCE?

A. A Brief History of Urban Livestock

Animals and people lived in close proximity and in symbiotic relationship in early American cities. During that time, urbanites relied on animals for food, transportation, and waste management.³² Prior to the Civil War, Cincinnati, Ohio, was known as the meat capital of the country.³³ But during the war, Confederate forces blocked access to Cincinnati, and the meatpacking industry moved west to Chicago.³⁴ Chicago’s proximity to Midwestern farms, its myriad railroad convergences, and its location on

³⁰. Id. at 10,888.
³¹. Id. at 10,891-93.
³³. Daniel Hautzinger, When Chicago Was ‘Hog Butcher to the World’, WTTW (June 21, 2018), https://interactive.wttw.com/playlist/2018/06/21/union-stock-yards [https://perma.cc/VHJ9-6WE5] (“Before Chicago was the meat capital of the world, that role was held by Cincinnati, which in the mid-nineteenth century was known as ‘Porkopolis.’”).
³⁴. Id.
Lake Michigan made it a natural choice. As industrialization progressed and people’s consumption of animals transformed, so did their relationships with them. “To combat nuisances, the services that animals provided for cities had to be untangled from city infrastructure. Reforms to remove animals from cities made up a large part of public authorities’ interventions in urban environments and health during the eighteenth and nineteenth centuries.”

At first, new professions emerged to address concerns over health and sanitation, but eventually, “zoning codified animal agriculture’s exclusion from cities.”

In fact, zoning ordinances limiting farm animals in urban environments laid the foundation for modern city planning. Cities responded to industrialization and population growth with zoning ordinances in order to regulate land use and prevent conflicts. In the early 20th century, the Supreme Court found that a city’s decision to regulate land use through municipal planning was a valid exercise of its police power. Despite the shift to push agriculture out of cities, it was not unheard of for urban families to continue to raise small livestock in cities like Chicago that had no outright ban. For example, “[d]uring World War I, the United States exhorted every person in America to raise chickens.” During World War II, a Louisiana court decided that a rooster’s crowing was not a nuisance, in part, because of the popularity and demand for private citizens to cultivate Victory Gardens in order to support the war effort.

B. The Resurgence of Urban Agriculture

After World War II, and through the latter half of the 20th century, American suburbanization led to a decline in urban livestock, but urban

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35. Id.
36. Eventually, the Union Stockyards came to be known as “The Wall Street of Meat Packing.”
37. Brinkley & Vitiello, supra note 32, at 114.
38. Id.
39. Id.
42. Bouvier, supra note 29, at 10,891.
43. “The time for this action is most inopportune, with . . . the Agricultural Department at Washington urging everyone to raise poultry, eggs, Victory gardens, and other foods . . . If we destroyed the roosters, within a very short time the chicken family would become extinct, and the familiar American breakfast of bacon and eggs would be no more.” Myer v. Minard, 20 So. 2d 72, 76 (La. Ct. App. 1945).
agriculture never entirely disappeared. While zoning operated as a way to push livestock and agriculture out of cities, many cities and suburbs today use zoning ordinances to permit certain types of agriculture, like greenhouses and nurseries, within city limits. These operations usually spring up in industrial areas, or on vacant lots.

In Chicago, social movements and economic interests drive the proliferation of urban agriculture. On the one hand, urban farming grew in response to trends in food consumption and food consciousness: Chicagoans have become increasingly interested in where their food comes from and how it is produced. This cultural shift is likely a response to the wider “locavore” movement, the “key tenet” of which is “eat food—preferably organic—that is grown close to where one lives and is in season.” Many also view urban farming as a solution to address poverty and Chicago’s ongoing battle with food deserts. Urban farms, then, provide underserved communities with fresh produce, create jobs, and foster community pride.
But urban farming in Chicago is also big business: one marketing study anticipates that vertical farming will be “a nearly $4 billion dollar market globally by 2020.”50 Experts speculate that Chicago is becoming the epicenter of the indoor farming industry in part because of the Midwest’s cheap electricity and vacant manufacturing plants.51 Growing food locally with inexpensive LED lighting and solar energy helps meet the demands of the social movements supporting urban agriculture.52

And while livestock never completely vanished from Chicago, the resurgence of urban farming has translated into renewed interest in raising backyard chickens.53 The chickens not only serve as pets but provide their owners with the same benefits common to rural farming. For example, chicken-keepers on Chicago’s Southside say their chickens provide fresh eggs, help compost waste, and offer entertainment.54 Raising chickens also engenders self-sufficiency and gives urban residents a sense that they are playing a role in shaping the food they consume.

C. A Brief History of the Chicago Livestock Ordinance

Historically, Chicago never regulated livestock, except to prohibit animals to be kept by private residents for slaughter.55 In 2007, Alderman Lona Lane attempted to change that. Concerned that backyard chickens attracted rats and disease,56 she proposed an amendment to the municipal code that would ban the keeping and selling of live chickens in residential districts.57 It appears that Alderman Lane’s concerns over sanitation and disease were exaggerated: humans and chickens have lived in close prox-

51. Id.
52. Id.
53. See Bouvier, supra note 29, at 10,889.
55. The Union Stockyards were legal because they were a “licensed establishment” and therefore fell outside the slaughtering prohibition. See CHI., ILL. MUN. CODE § 7-12-300 (2019).
imity for thousands of years and “public health scholars have found that there is no evidence that the incidence of disease in small flocks of backyard hens merits banning hens . . . .” Alderman Lane also complained that residents in her ward were killing chickens as part of ritual sacrifices, but this was already prohibited by the municipal code. Finally, Lane took issue with rooster noise, and with good reason: the year Alderman Lane proposed her amendment, the Chicago Animal Care and Control received 717 nuisance complaints about rooster noise, and only 65 nuisance complaints related to hens.

At the end of 2007, Lane’s amendment was re-referred to the Committee on Health. There, the chicken ban mysteriously died before receiving a vote by the city-council. There are two theories as to why that is the case: (1) diligent efforts by the Chicken Enthusiasts, a “growing network of backyard poultry enthusiasts in & around Chicago” who attended committee meetings, and lobbied their aldermen; and (2) Chicago politics being what they are, a more clandestine and politically connected chicken lobby that enticed powerful council members to kill the proposed ban. Unfazed, Alderman Lane, who represented the 18th Ward (situated on Chicago’s south-west side, roughly 25 miles from Moah’s Ark) then proposed a ban on chickens in just her ward. It, too, went nowhere.

59. Bouvier, supra note 29, at 10,895.
60. Olkon, supra note 59; CHI., ILL. MUN. CODE, supra note 52.
61. Orbach & Joberg, supra note 57.
65. Eng, supra note 12.
67. Id.
Chicago’s livestock ordinance remained unchanged until October 2015, when it was amended explicitly to allow Chicago residents to keep egg and milk-producing animals. The original municipal ordinance read:

No person shall own, keep or otherwise possess or slaughter any sheep, goat, pig, cow or the young of such species, poultry, rabbit, dog, cat or any other animal, intending to use such animal for food purposes.

The modified municipal ordinance reads:

No person shall own, keep or otherwise possess for their own food purposes, or slaughter, any animal; provided, however, that this prohibition shall not apply to edible byproducts, such as eggs or milk, produced by an animal.

The city-council’s adjustment is poorly written: structurally, the exception appears to apply to “animals” that are “edible byproducts,” which is surely not what the city-council meant.

Moreover, the ordinance is extremely broad because it neither expressly prohibits certain animals, nor does it distinguish between types of animals that lay eggs or produce milk, or the genders of such animals. Which invites a curious question: can a Chicago resident keep an elephant for her milk or an ostrich for her eggs? And, although we know in practice it is legal to keep roosters in Chicago, it should not be, even under the current ordinance. Roosters do not lay eggs, nor are they instrumental to the egg-laying process: “[t]he only reason hens require roosters is to fertilize [their] eggs, so that the eggs will hatch chicks.” Roosters therefore fall within the prohibition of the statute because they themselves do not produce “edible byproducts,” nor are they necessary for producing them.

Yet, as it stands today, the roosters of Chicago get a free pass because the ordinance is broad and does not facially exclude them; because no one has attempted to enforce the ordinance against roosters; and because their female partners produce edible byproducts while they peck, preen, and crow their little heads off.

68. Eng, supra note 12.
70. CHI., ILL. MUN. CODE § 7-12-300 (2019).
71. Mo Cahill is case in point.
72. Bouvier, supra note 29, at 10,898 (“In fact, it is likely that every egg you have ever eaten was produced by a hen that never met a rooster”).
73. In the rare case where a hen takes on a rooster’s physical characteristics including the crow, she should also be prohibited under the Chicago ordinance because she no longer lays eggs. See Melina, supra note 25.
D. How the Chicago Ordinance Compares

Chicken ordinances across the country set forth several types of restrictions, alone or in combination: permits and fees, limits on the number of birds allowed, rooster bans, enclosure requirements, nuisance clauses, slaughtering regulations, and distance regulations.74 Some municipalities have devised incredibly unique restrictions on chickens and roosters. In Hopewell, New Jersey, the town’s Right-to-Farm Ordinance allows residents to keep chickens. Roosters, however, are limited to conjugal visits:

[R]oosters may visit the property for the purpose of fertilization so long as there are no more than ten days of visitation per parcel in any twelve-month period, and for no more than five days consecutively, and provided the roosters are certified as healthy by the New Jersey Department of Agriculture.75

In Chicago, there is no limit on the number of chickens or roosters a person may keep. The only clear limits are that private residents may not slaughter their birds and the city’s separate ordinance prohibiting excessive animal noise.76 State law addresses the sale of eggs.77

At 2.7 million residents, Chicago is the largest city in Illinois, and the third largest in the United States.78 But because the city’s ordinance places so few restrictions on chickens, Chicago is unique among her neighbors and among other large American cities. Of the five most populated cities in Illinois, only Rockford has such few restrictions on chickens.79 In contrast, Aurora and Joliet, Illinois’ second and third largest cities, restrict fowl to areas zoned for farming.80 Naperville residents may keep chickens, but they

75. HOPEWELL, N.J., CODE ch. 5-3.4(c) (2019); see Orbach & Joberg, supra note 57, at 27-28.
76. See CHI., ILL., MUN. CODE § 7-12-100 (2019).
79. ROCKFORD, ILL. CODE OF ORDINANCES § 4-2 (2019) (Rockford has no apparent restrictions on keeping chickens except that raising the birds for slaughter is prohibited.); Rockford City, United STATES CENSUS BUREAU, https://www.census.gov/quickfacts/rockfordcityillinois [https://perma.cc/4BZT-TYN4] (last visited Sept. 14, 2019) (Rockford’s estimated population is 146,526.).
80. AURORA, ILL. CODE OF ORDINANCES §§ 9-1, 15 (2019); JOLIET, ILL. CODE OF ORDINANCES § 6-10(c) (2019); Aurora City, Illinois, UNITED STATES CENSUS BUREAU, https://www.census.gov/quickfacts/auroracityillinois [https://perma.cc/3FHI-Y8V6X] (last visited Sept. 14, 2019) (Aurora’s estimated population is 199,602.); Joliet City, Illinois, UNITED STATES CENSUS
are subject to numerous restrictions on their numbers, enclosures, and feed containers; roosters are prohibited. 81

At least twenty Chicagoland suburbs ban keeping chickens and roosters, and another fifteen allow chickens, but restrict their numbers. 82 The theory as to why many of the outlying Chicago suburbs passed livestock bans is that the towns wanted to redefine their images: appearing more modern and urban meant distinguishing themselves from neighboring farm communities. 83 A little ironic, considering that the big city these suburbs most sought to emulate has one of the most liberal livestock ordinances in the country.

Of the five largest American cities, Chicago’s permissive livestock ordinance and lax rooster regulation are wholly unique. Unlike Chicago, New York City banned fowl in the 19th century, but re-allowed it in the early 20th century. 84 New York prohibits roosters, but puts no limits on the number of hens a resident may keep. 85 Los Angeles entertained an outright ban on roosters in 2009, over concerns of cockfighting. 86 As a compromise, the city now allows no more than one rooster per property, subject to narrow exceptions such as education, the film industry, or instances where rooster-owners were grandfathered in under an older ordinance. 87

In Houston, residents may keep chickens, but they are subject to numerous, at times confusing, restrictions. 88 The city’s permitting requirements for residential chickens are very strict: a person with a permit is allowed no more than seven chickens and must present a doctor’s note stating a reason for needing fresh eggs; the chicken structure needs to be 100 feet from any building; a director will inspect the premises; a permit

81. N APERVILLE, I LL. CODE OF ORDINANCES § 10-4-6 (2019) (Requires that fowl be kept in a pen or coop; residents are allowed a maximum of eight chickens, unless prohibited by another zoning ordinance; feed needs to be kept in rodent-proof containers; and there are restrictions on chicken enclosures.); N a p e r v i l l e C ity, I llinois, U NITED STATES CENSUS BUREAU, https://www.census.gov/quickfacts/napervillecityillinois [https://perma.cc/7KXR-WUT8] (last visited Sept. 14, 2019) (Naperville is the fourth largest city in Illinois with an estimated population of 148,304.).

82. E ng., s upra note 12.

83. I d.

84. O rbach & Joberg, s upra note 57, at 30.


86. O rbach & Joberg, s upra note 57, at 6.


can be revoked for health hazard, nuisance, or failing to get an inspection; and if the permit is revoked, the permit holder is entitled to a hearing.89

Houston also prohibits roosters, the ordinance extensively detailing how the city will deal with someone who harbors an illegal rooster: the rooster will be seized and impounded, and the owner may retrieve the rooster once she pays a fine and impound fee.90 The city will release the rooster on the condition that the owner immediately removes the rooster from the city limits.91 Affirmative defenses for keeping a rooster include that the rooster is kept by the government and is participating in a scientific study, or is owned by a medical, educational, or research institution and is in compliance with state law.92 The fact that Houston codifies a procedure for dealing with roosters warns that the city is serious about banning the animal. The restrictive ordinance as a whole sends a deeper message that Houston, as a state actor, intends to involve itself in private urban farming by harshly regulating urban livestock.

Of the five largest American cities, Philadelphia is the most restrictive when it comes to backyard fowl.93 In Philadelphia, chickens are considered farm animals.94 Although chickens are not banned outright, they are so heavily restricted that it is nearly impossible for Philadelphia residents to keep them.95 Chickens may be kept only by those in certain professions such as circus performers or veterinarians.96 They also may be kept for educational purposes or on lots of three or more acres.97

However, similar to the Chicago “chicken enthusiasts” that helped kill the city’s proposed chicken ban, some Philadelphia chicken owners are putting up a fight.98 For example, two women obtained permits with the help of an alderman by declaring they kept their chickens for educational purposes.99 In another instance, a judge threw out $3,000 in chicken-related

89. Id.
90. Id. § 6-38.
91. Id.
92. Id.
93. PHILA., PENN., MUN. CODE, tit. 10 § 10-112 (2019).
94. Id.
95. See id.
96. Id.
97. Id.
99. Id.
citations accrued by one Philadelphia woman. The residents who fight Philadelphia’s restrictive ordinance are all clear that they do not keep roosters. In fact, they believe that misconceptions about which sex does the crowing are partially to blame for the chicken ban.

Although keeping roosters in Chicago is, legally speaking, uncontentious, that is not the case in other parts of Illinois, or the country. While some municipalities restrict chickens and roosters for area-specific purposes, other efforts come out of more general concerns for health and noise regulation. Especially interesting are the comparisons between Chicago and cities like New York, Houston, and Philadelphia that more severely regulate chickens and roosters. These cities do a better job at protecting against excessive animal noise because they ban roosters. Yet in some of these cities, like Philadelphia, the overly restrictive ordinances infringe the property rights of residents who would like to raise hens and quietly enjoy their benefits. As the Philadelphia residents point out, a majority of would-be chicken owners desire the birds for their eggs; they want to raise hens and they have no intention of keeping roosters. The problem with both the restrictive approach in Philadelphia, and Chicago’s extremely liberal approach is the same: there is a failure to balance the rights of livestock owners and their neighbors.

II. NUISANCE AND FOWL

Chicago’s excessive animal noise ordinance codifies common-law nuisance but fails to balance property rights. As a result, the ordinance is not good law. This section discusses the history of nuisance law and its intersection with animal law, citing examples of animal nuisance cases that conduct balancing tests protecting the property owners’ rights on both sides of a nuisance claim.

A. Nuisance

Nuisance law derives from the English common law and dates back to the 12th century. While public nuisance concerns “an interference with
the rights of the community at large,"104 private nuisance relates to disagreements between individual property owners.105 In private nuisance actions, “there is liability only to those who have property rights and privileges in respect to the use and enjoyment of the land affected . . . .”106 For example, a court ruled that three plaintiffs did not have standing in a private nuisance suit against an oil refinery because they were not property owners but “occupants in the homes of relatives [holding] no ownership interest” in the land.107

Plaintiffs in private nuisance cases have the burden of proving that an interference is (1) substantial; (2) intentional or negligent; and, (3) unreasonable.108 In a barking dog case, for example, “[t]he circuit court was charged with the task of balancing these conflicting interests to determine whether the intentional invasion was an unreasonable invasion and, therefore, an actionable private nuisance.”109

Not any mere annoyance qualifies as a nuisance. There must be “a real or appreciable invasion of the plaintiff's interests” because nuisance law “does not concern itself with trifles . . . .”110 Moreover, courts take into account the character of the community where the nuisance claim arises; whether the complained of harm would bother a normal member of the community; and the duration and frequency of the property invasion.111 These factors help the plaintiff establish whether the defendant’s use of her land is intentional or negligent, and unreasonable.112 Courts balance the totality of these factors against the defendant’s property rights.113

At common law, something “offensive, physically, to the senses” creates a nuisance if it causes discomfort and interferes with another’s enjoyment of her property.114 However, courts do not measure nuisance “by the standard of persons of delicate sensibilities and fastidious habits, but by the habits and feelings of ordinary people . . . .”115 For example, an Illinois

106.  Id. § 821E.
109.  Id. at 41.
110.  RESTATEMENT (SECOND) OF TORTS § 821F cmt. c (AM. LAW INST. 1979).
111.  Id. § 821F cmt. e-g.
112.  See id. § 821F cmt. g.
113.  Dobbs, 929 N.E.2d at 39 (A "court must balance the harm done to the plaintiffs against the benefit caused by the defendant’s use of the land and the suitability of the use in that particular location.") (citation omitted).
114.  Wahle v. Reinbach, 76 Ill. 322, 327 (Ill. 1875).
court found that a married couple who lived next to an ice factory did not have a nuisance claim when they complained about the noises emanating from the factory’s delivery trucks. The court determined that these noises, “while vexatious,” were part of the costs of living in an urban area. However, the same couple did have a nuisance claim with respect to the massive sheets of ice that blew off the factory roof and onto their sleeping porch; in that instance, the plaintiffs were deprived material use of their property.

The Illinois Municipal Code grants cities the power to “define, prevent, and abate nuisances.” Municipal ordinances receive a presumption of validity from the courts: as long as the municipal ordinance bears a reasonable relationship to the interests it seeks to protect, courts will uphold the ordinance as a valid exercise of municipal power. Because Illinois grants its municipalities broad power to regulate, a court will typically uphold a nuisance ordinance unless it finds that a city’s “determination that a particular activity is a nuisance is clearly erroneous.” Courts strike down nuisance ordinances if the law is especially unclear about what behavior or nuisance is prohibited, or for other constitutional violations. For example, a court struck down a city’s noise ordinance because it was too vague and gave too much discretionary power to administrative officials.

B. Animal Legal Status and Nuisance

Legally speaking, animals are considered property. Although certain types of laws, such as anti-cruelty laws, protect animals, these legal protections function in alignment with human interests. In her article, Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy, and Property, Ani B. Satz points out that animals that are pets or perform a function for their owners (such as a hen laying eggs) receive greater legal protection than animals of the same species that are not pets or that perform other activities.

117. Id.
118. Id. at 310.
121. Id. at 501; see City of Aurora v. Navar, 568 N.E.2d 978, 984 (Ill. App. Ct. 1991) (“A city has no power to declare that to be a nuisance which is not a nuisance in fact.”).
122. Navar, 568 N.E.2d at 983-84.
no useful function. Compare a backyard hen in Chicago with a rooster in Houston: the hen enjoys legal protection based on her ability to lay eggs, while the rooster faces confiscation like any other illegal contraband. Both are members of the same species, yet one receives greater legal protection based on its location and legally recognized usefulness. And perhaps that legally recognized usefulness translates into more humane treatment in Chicago versus cities that do not protect roosters or hens.

When municipalities regulate animals, they aim to prevent and abate nuisance. Cities regulate animals with licensing, permit, and vaccination requirements, limits on animal numbers, and outright bans. Each of these provisions seeks to curb any negative externalities, such as nuisance, that flow from animal ownership. While disputes between neighbors regarding animals are private nuisance claims, cases involving animals that create offensive odors or sounds that affect the larger community are public nuisance actions. Noise-related animal nuisance cases most commonly arise in the context of barking dogs. Here, courts struggle to develop bright-line rules. Instead, they focus on the plaintiff’s burden as in any private nuisance case: the degree to which the plaintiff is denied enjoyment of her property; the type of evidence the plaintiff provides; and whether the noise, as shown by the evidence, would offend a person of ordinary sensibilities.

The Chicago excessive animal noise ordinance requires that the noise be witnessed by a city officer, or be attested to by three residents who reside at separate addresses. As a result, private citizens who wish to formally complain about a barking dog or a noisy rooster under the ordinance

125. *Id.* at 70-71 (“For example, dogs are protected under state anti-cruelty statutes based on their capacity to suffer. Due to their scientific and educational utility, however, dogs who are not pets are routinely intensively confined and suffer invasive experiments in both laboratory and medical training contexts.”).

126. See, e.g., Kelly Bauer, *All 114 Roosters, Hens Rescued From Southside Cockfighting Ring Have Now Found Homes Thanks To ‘Historic’ Rescue*, BLOCK CLUB CHI. (Jul. 29, 2019, 9:15 AM), https://blockclubchicago.org/2019/07/29/all-114-roosters-hens-rescued-from-south-side-cockfighting-ring-have-now-found-homes-thanks-to-historic-rescue/ [https://perma.cc/WSY6-QSRP] (“While most cities will automatically euthanize birds taken from cockfighting rings, Animal Care and Control paired up with rescue organizations . . . to foster and seek out permanent homes for the chickens so they wouldn’t have to be put down.”).

127. *Id.* at 109-10.

128. *Id.* at 109-10.

129. See Colorado Div. of Wildlife v. Cox, 843 P.2d 662 (Colo. App. 1992) (finding that non-native animals such as red deer, Barbary sheep, and ibex were a public nuisance); State v. Hafner, 587 N.W.2d 177 (N.D. 1998) (upholding conviction of a man who let his hogs run free on a public highway); Patterson v. City of Richmond, 576 S.E.2d 759 (Va. Ct. App. 2003) (finding that barking dogs were a public nuisance).


131. CHI., ILL., MUN. CODE § 7-12-100 (2019).
must present outside affirmations of the noise disruption, and not merely their own evidence. Alternatively, a complainant in Chicago may bring a common law private nuisance claim against a disruptive animal, but the claim runs into much the same hurdles as bringing the complaint under the ordinance. In a private nuisance claim, the complainant must also present evidence to prove not only that the animal noise exists at a level that would offend an ordinary person, but also that she has so suffered as a result of the noise that a court should step in and fashion a remedy.132

C. Balancing in Animal Nuisance Cases

Courts across the country have come down on different sides of the rooster-as-private nuisance issue.133 Because cases involving roosters are relatively rare, this research focused both on nuisance cases involving noisy roosters and barking dogs. Below are two examples of how courts balance competing interests and fashion remedies in these types of animal nuisance cases.

In Lambert v. Matthews,134 a Mississippi case, the plaintiffs sought to permanently enjoin the Lamberts from keeping roosters on their property due to excessive noise and fears that the birds carried disease.135 The parties lived in a “rural residential” area without zoning ordinances or protective covenants that prohibited the Lamberts from keeping roosters.136 As a result, the plaintiffs brought a common law private nuisance action.137 The Lamberts raised their roosters as part of a gamecock operation, and although cockfighting was illegal in Mississippi, the evidence showed that the Lamberts only allowed their birds to fight outside of Mississippi.138 At the time of the trial, the Lamberts had nineteen roosters, but at one time, they had up to 100 hens and roosters on their property.139

133. See Myer v. Minard, 21 So.2d 72, 76-77 (La. Ct. App. 1945) (“Without further proclaiming the cheerful and gallant qualities of the big red rooster, we are convinced beyond a reasonable doubt that the cheery outburst at the break of day cannot be so disturbing as to become a nuisance to a normal person of ordinary sensibilities . . . and that to continue to allow the rooster to crow is not a derogation of the rights of the plaintiffs.”); City of St. Paul v. Nelson, 404 N.W.2d 890, 891-92 (Minn. Ct. App. 1987) (“We find that numerous complaints of a rooster’s frequent crowing at inconvenient hours demonstrates a nuisance.”).
134. 757 So. 2d 1066 (Miss. Ct. App. 2000).
135. Id. at 1068.
136. Id. at 1069.
137. Id. at 1068.
138. Id. at 1068.
court found no evidence that the roosters carried diseases, it did find that “the noise produced by the roosters prevented [plaintiffs] from having full enjoyment and use of their property.” The trial court relied on the neighbors’ testimony, as well as videotaped evidence that demonstrated the extent of the roosters’ crowing. Because the gamecock operation was a hobby, not a source of income for the Lamberts, the chancellor enjoined the Lamberts from keeping more than two roosters on their property.

But the chancellor also found that “the absolute banning of roosters in this setting would be unreasonable.” While the Lamberts objected to the limit on the number of roosters they were allowed to keep, the appeals court upheld the ruling. Citing a Maryland case, the appeals court determined that a specific number was necessary to inform the Lamberts and others of what behavior is permitted, and what must be done to avoid creating a nuisance.

No ordinance prohibited the Lamberts from keeping their roosters so the court conducted a common law balancing test. The noise the Lamberts’ roosters made persisted over a long period of time, substantially interfering with their neighbors’ use of their property. Accordingly, the court recognized that it needed to create a remedy that lessened the noise impact, but also allowed the Lamberts to continue to use their property in the way they wished. The court took into account the fact that the parties all lived on large tracts of land of ten acres or more in a rural area. In this type of a community, the court determined, it was reasonable to permit the Lamberts to keep a finite number of roosters. Therefore, the nature and size of the properties at issue helped the court balance the competing interests and fashion a remedy.

140.  Id. at 1069.
141.  Id.
142.  “[The chancellor] may have relied on testimony that two [roosters] would be sufficient to provide the required rooster services for the number of hens the Lamberts had.” Id. at 1070.
143.  Id.
144.  Id. at 1071.
145.  “The [Maryland] court found that the decree was too vague and that [the lower court] ‘should have specifically pointed out the things that [the defendant] is required to do and to refrain from doing, in order to abate the nuisance which the court found to exist.’” Id. at 1071 (Miss. Ct. App. 2000) (quoting Singer v. James, 100 A. 642 at 644 (Md. 1917)).
146.  RESTATEMENT (SECOND) OF TORTS § 821F cmt. e-g (AM LAW INST. 1979).
147.  See Lambert, 757 So. 2d at 1069.
148.  See id. at 1070.
149.  See id. at 1070 (citing Guarina v. Bogart, 180 A.2d 557, 562 (Penn. 1962)).
150.  See id. at 1071.
151.  Or in the case of the Lamberts, not so quiet, because they could still elect to keep two roosters.
In **People v. Curry Chevrolet**, a New York case brought under an animal noise ordinance, the dispute stemmed from repeated complaints about a car dealership’s guard dogs from neighbor John McDonald. To address problems with theft and vandalism, the dealership began keeping guard dogs. The dogs helped the dealership see a decrease in crime, and after several years, McDonald moved into the property abutting the Curry dealership.

After the dealership implemented numerous measures to decrease the dogs’ barking, McDonald was still annoyed by the noise. Part of the problem was that Mr. McDonald’s property was zoned for residential use, but abutted the dealership, which was zoned for commercial use. The court remarked that “[t]his court responds empathetically and compassionately to the very evident distress of the complainant . . . [But] there are equities on both sides. The Curry people have the right to continue their business and are in an area zoned commercially for such use.” Ultimately, the court required that the dealership remove one of its three dogs; that it regularly check the dog’s anti-bark collars to ensure they were in working condition; that it renew training for the remaining dogs every two years; and that it confer with other local property owners “as to the feasibility of other unthought of ameliorating measures.”

Like the **Lambert** court, the **Curry Chevrolet** court recognized that the defendant had a right to keep animals on its property. It also recognized that the two properties at issue were zoned for different uses, and that McDonald knew that the neighboring property kept guard dogs before he purchased his house. In light of this, and because Curry Chevrolet already complied with a number to remedies to lessen the dogs’ barking, the court was not inclined to completely prohibit the Curry dealership from keeping the guard dogs. Both these cases demonstrate the type of balancing that courts engage in when assessing nuisance. The courts took into account both the distress faced by the complainants, as well as the nature of

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153. *Id.* at 935.
154. *Id.* at 935-36.
155. *Id.* at 936.
156. *Id.* at 938-39.
157. *Id.* at 938.
158. *Id.* at 939.
159. *Id.* at 938 (“When these dogs bark at intruders or what appears to be potential intruders on the outside of the chain link fence, they are demonstrating their training and are barking for the protection and the preservation of their master’s property.”).
160. *Id.* at 939.
the properties, and what amount of noise was reasonable under the circumstances.

Back in Chicago, the excessive animal noise ordinance codifies nuisance law, which in its modern form is a type of balancing doctrine. But the ordinance neglects one crucial point: that cities are inherently different spaces from farms or rural areas. Further, language in the ordinance like “intermittently,” “significant portion,” or “average conversational level” is vague, and because of its witness requirements, the ordinance does little more than replicate a common law nuisance claim. As a result, the excessive animal noise ordinance fails to balance the property rights concerning farm animals in the city. A better ordinance would account for the nature of the community: the fact that Chicago, a city of 2.7 million people, uniquely permits and protects animals not typically found in a city, and not commonly allowed in other urban areas.

III. ENDING ROOSTER GAMES

To preserve property interests, the city should codify nuisance law in its livestock ordinance. The Chicago livestock ordinance should be amended to ban roosters and should be narrowly tailored to better regulate noise. In addition, the ordinance should allow for a private right of action for residents affected by their neighbors’ noisy livestock. In doing so, the city would account for the nature of the community at issue, similar to how the courts in *Lambert* and *Curry Chevrolet* did.161

A. Banning Roosters

As stated previously, treating a rooster like any overzealous barking dog is not the correct approach given that dogs leave their yards while roosters do not; given that an average rooster crow is louder than the record-setting dog bark; and given the close proximity of Chicago homes.162 In granting citizens broad freedom to keep roosters without a clear remedy for neighbors affected by the accompanying noise, the city values the property rights of livestock owners over the rights of their non-livestock owning neighbors.

First, the most glaring reason supporting why the Chicago ordinance should specifically address roosters is that the city already bans them, though the controlling language is confusing and vague. The livestock or-

161. *See id.* at 938; *Lambert v. Matthews*, 757 So. 2d 1066, 1070 (Miss. Ct. App. 2000); *Restatement (Second) of Torts § 821F cmt. e (AM. LAW INST. 1979).*

162. *See supra* notes 15, 18-22 and accompanying text.
ordinance specifies that Chicagoans may keep animals “for eggs or milk,” and roosters are not needed for egg production.\(^{163}\) The only reason to keep a rooster, then, is for the purpose of breeding more egg-laying hens. Nothing in the Chicago livestock ordinance permits keeping any animal specifically for breeding purposes.\(^{164}\) Further, if the city wanted to permit a way for residents to breed their chickens, it could do so by banning roosters except for “conjugal visits” as Hopewell Township, New Jersey does.\(^{165}\) That community’s ordinance effectively cuts down on unnecessary rooster noise while still giving chicken owners an opportunity to propagate their flocks, thereby embodying the balancing inherent in modern nuisance law.\(^{166}\)

Second, Chicago should ban roosters because rooster crowing will virtually always fall within the prohibition of the existing excessive animal noise ordinance. Under that ordinance, “crowing” that “occurs intermittently for a significant portion of the day or night” and “is louder than average conversational level at a distance of 100 feet or more” is prohibited.\(^{167}\) As mentioned, a rooster’s crow averages 130 decibels, and scientists have determined that the crow can reach 143 decibels.\(^{168}\) In contrast, human conversation measures between 50-60 decibels, the same level of hens clucking.\(^{169}\)

The intensity of an unobstructed sound traveling from its origin point obeys the Inverse Square Law.\(^{170}\) The volume of a rooster’s crow from 100 feet away is equal to the power of the sound divided by the area the sound covers. Because sound travels in the shape of a sphere, area is defined by the equation \(4\pi r^2\), where \(r\) is equal to the distance between the source of the sound and the point of interest.\(^{171}\) In other words, \(r\) represents the distance between the rooster and the neighbor who hears its crowing. Applying this
equation, and factoring in a distance of 100 feet as specified by the excessive animal noise ordinance, the sound intensity of an average rooster crow still far surpasses 50-60 decibels, the level of human conversation and the ceiling for animal noise under the ordinance. So, because a rooster’s crow is routinely louder than “conversational level,” even at 100 feet away, any rooster on an average Chicago lot produces the type of intermittent noise prohibited by the excessive animal noise ordinance.

B. Narrowly Tailoring the Livestock Ordinance

In addition, the livestock ordinance should be narrowly tailored to account for animal noise. Aside from banning roosters, the ordinance should specify the number of livestock a resident may keep on her property. Chickens are social animals, so it is important for an ordinance regulating chickens to permit a small flock. However, limiting the number of chickens that any one property owner may keep will not only reduce any risk of bothersome noise or imposition on a neighbor, but it will also serve to balance a livestock owner’s property rights with the rights of her neighbors. Limiting the number of livestock falls in line with the remedy upheld by the court in Lambert. There, the court determined that specifically limiting the Lamberts to keeping two roosters put them on notice as to what conduct created a nuisance.

Another way the city could narrowly tailor its livestock ordinance to prevent noise disturbances is to require a setback for chicken coops and other livestock shelters. Specifying the distance that the animals be kept from any doors or windows other than an owner’s dwelling gives animal owners some flexibility about where they house their animals, while still creating a buffer between the animals and a neighboring home. This will not only reduce noise impact, but it will also put livestock owners on notice of how they must manage their animals. Because the current Chicago live-

172. Inverse Square Law, ENGINEERING TOOLBOX (2005), (last visited Sept. 15, 2019), https://www.engineeringtoolbox.com/inverse-square-law-d_890.html (This website features an Inverse Square Law Calculator calibrated to give solutions in decibels. The user should input the following figures: 130 for $L_p$ [or, the average sound or a rooster’s crow], 1 for $R_1$ [or, 1 foot from the source of sound], and 100 for $R_2$ [or, 100 feet from the rooster, and the distance given in the Excessive Animal Noise ordinance]. The calculation yields a sound intensity of 90 decibels.); see Bouvier, supra note 29, at 10,894.

173. See Bouvier, supra note 29, at 10,917-18 (The author recommends that a chicken ordinance permit at least four chickens because chickens are flock animals that “do not thrive when left alone.”).

174. See supra notes 144-46 and accompanying text.

175. See Bouvier, supra note 29, at 10,918 (“A setback actually ensures that the chickens will be kept at an appropriate distance from neighbors without unduly restricting people who own smaller properties from owning chickens.”).
stock ordinance is so broad, livestock owners have no clear guidelines for how to keep their animals in such a way that respects the property rights of their owners. Human common sense is hit or miss, and to mitigate this reality, the Chicago ordinance should be narrowly tailored to give livestock owners clear guidance on how to keep their animals with as little intrusion as possible.

**C. Creating a Private Right of Action**

Finally, the Chicago livestock ordinance should allow a private right of action for residents bothered by their neighbors’ noisy livestock. This private right of action should be more specific than Chicago’s excessive animal noise ordinance to account for the nature of the animals at issue and should follow the contours of the nuisance law balancing doctrine. It should also specify that the right extends to property owners, including but not limited to leaseholders. This language serves to limit an action to those with a property interest, but explicitly extends it to residents who rent, and instances where individuals live in a residence but do not have a leasehold, such as long-term guests, undocumented immigrants, and tenants without a lease. This also prevents vindictive people from driving around the city and filing noise complaints against anyone who owns livestock.

The private right of action in Chicago’s livestock ordinance, modeled off an ordinance from South Miami, Florida, could be worded as follows:

> Property owners, including but not limited to leaseholders, have a right of action pursuant to this ordinance with respect to excessive animal noise if the animal noise is habitual, frequent, continuous, and/or incessant and is plainly audible from the property line of the premises where the animal is kept.

By explicitly including a private right of action, the ordinance would plainly signal where a livestock owner’s property right ends and a neighbor’s property right begins. Moreover, it would alert those considering keeping livestock that their rights are not limitless, and if their animals are especially noisy, their neighbors have an express right to complain. The amended livestock ordinance would not preempt plaintiffs from bringing a common law nuisance claim, but a claim under the revised ordinance would give courts specific guidance on how to analyze and remedy this unique complaint. A private right of action, coupled with some limitations

176. **South Miami, Fla., Code of Ordinances § 15-101 (2018).**
on livestock ownership, would go a long way to reduce noise, balance property rights, and prevent conflicts between neighbors.

CONCLUSION

Chicago’s resurgence of urban farming and the renewed enthusiasm for keeping chickens are testament to the fact that the lives of humans and animals are inextricably intertwined. Even in twenty-first century America, the debate over whether there is room for farm animals in the big city continues in relatively the same manner it always has. In drafting a liberal livestock ordinance, Chicago sent a message to its citizens that the city welcomes animals and respects residents’ rights to raise them on their properties. But any deference to livestock owners must not come at a great cost to neighbors exercising their own quiet enjoyment of their properties. Property rights encompass ownership and exclusion, but nuisance law mandates balancing when one person’s rights interfere with another’s. Cities like Chicago are vibrant places, where the convergence of the past and present are undeniable. In some instances, this means that age-old notions of property and farming take on new meaning in the twenty-first century.

Chicago need not do away with its livestock ordinance, but it should revise it to explicitly ban roosters, and it should narrowly tailor the ordinance to reflect the reality of living in a city in a densely populated city. Creating a private right of action would put all property owners on notice of what type of livestock noise creates a nuisance. Ultimately, the better the notice surrounding animal noise, the easier it will be for courts to solve any animal disputes arising at Mo Cahill’s farm, in Alderman Lane’s ward, and across the many miles of Chicago skyline between.