

**TOWN OF FAIRFAX
COUNCILMEMBER REPORT**

To: Mayor and Town Council

Meeting Date: June 1, 2011

From: Vice Mayor Hartwell-Herrero

Subject: Discussion/Consideration of revising the Town Code to allow the use of a home hobbyist bee keeping for personal use and directing staff to return to Town Council on July 13, 2011 with amendment

It is beneficial to our community to keep honeybees for the sake of pollination and to protect against the decline of pollinators. Without honeybees we would be left with only grains and roots on the dinner table. Barriers preventing backyard bee hobbyists are outdated and prevent open discussion of best practices. Most stings attributed to bees are actually from yellow jackets and other wasps.

Current situation -Per Town Code sections 17.076.030(A), 17.080.030(A) and 17.084.030(A), agricultural uses (staff currently interprets this to include bee keeping) in residential zones requires a Use Permit. The fee for a Use Permit is \$813.00

§ 17.076.030 CONDITIONAL USES AND STRUCTURES.

Conditional uses and structures in the RS-7.5 zone are as follows:

(A) Agricultural uses, including crop and tree farming and viticulture, but not including the raising of animals or fowl for commercial purposes or the sale of any products on the premises;

§ 17.080.030 CONDITIONAL USES AND STRUCTURES.

Conditional uses in the RS-6 zone are as follows:

(A) Agricultural uses, including crop and tree farming and viticulture, but not including the raising of animals or fowl for commercial purposes or the sale of any products on the premises;

§ 17.084.030 CONDITIONAL USES AND STRUCTURES.

The following are conditional uses in the RD 5.5-7 zone:

(A) Agricultural uses, including crop and tree farming and viticulture, but not including the raising of animals or fowl for commercial purposes or the sale of any products on the premises

While the Town of Fairfax does NOT have a definition for "Agricultural uses" the county code is "**Agriculture (land use)**. The breeding, raising, pasturing, and grazing of livestock, for the production of food and fiber; the breeding and raising of **bees**, fish, poultry, and other fowl; and the planting, raising, harvesting and producing of agricultural, aqua cultural, horticultural and forestry crops." This definition seems to include having fruit trees or vegetable gardens and it seems extreme to require a use

permit for any home scale agricultural uses. Guidelines like the ones we have for the keeping of fowl are a better way to save staff time and get compliance.

The Town of Fairfax does have specific code regarding the keeping of fowl-

§ 6.16.050 FOWL; PERMITTED LOCATION.

It is unlawful for any person to keep or cause or permit to be kept or fed, within 25 feet of any window or door of any residence or dwelling within the town, any pigeon, dove, chicken, duck, turkey, goose or other fowl, or to permit any such fowl to enter or remain in any creek or standing water or to run or go upon the premises of any other person within the town.

(Prior Code, § 6.16.040)

State government code has strict guidelines and ordinances governing professional apiary activity in section 29000 of the **California FOOD AND AGRICULTURAL Code** and has exemptions for nine or less hives.

Throughout the region:

BEEKEEPING RULES

Rules on beekeeping vary throughout Marin County. Here's how some jurisdictions come down on the issue:

- Allowed for residential uses, provided a permit is obtained: San Rafael, Tiburon, Fairfax, Sausalito.
- Allowed, except for commercial uses (honey sales): Novato.
- Not allowed: Mill Valley.
- No regulations: Larkspur, San Anselmo, county of Marin.

In the News:

Resident's beehive has Corte Madera neighborhood abuzz

By Jessica Bernstein-Wax

Marin Independent Journal

Posted: 05/14/2011 05:24:00 PM PDT

Nicole Perullo had a beehive installed in her Corte Madera backyard last month so she could teach her three young children about ecology and boost the health of her vegetable garden. But last week a letter arrived from Corte Madera officials, saying a neighbor had complained about the bees — as well as her three pet chickens — and hives aren't allowed on her street anyway.

Perullo, who got her hive on April 1, said she had no idea beekeeping was illegal in her neighborhood on Prince Royal Drive.

"To me, that's something so natural that it didn't even occur to me that you would need a permit," Perullo said. "When I posted it on the Marin BUZZ (the Marin County Beekeepers email list), everybody was in shock and everybody started getting scared. A lot of people didn't know, and they're experienced beekeepers."

At a time of growing interest in backyard beekeeping, the rules in Marin County are all over the books, in some cases confusing local officials and keepers alike.

Corte Madera allows beekeeping in only certain districts with a conditional-use permit, as Perullo discovered; hers isn't one of them.

San Rafael, Tiburon, Fairfax and Sausalito let residents throughout their municipalities keep bees if they obtain a permit, which can be costly. Larkspur, San Anselmo and the county of Marin have no rules on their books regulating beekeeping, and Novato allows it so long as it's for noncommercial purposes.

Mill Valley technically doesn't permit apiaries, according to a city law first passed in 1943. Nonetheless, a number have existed throughout the city over the years, including on public property.

"With regard to the ordinance, I don't know if it's ever been enforced," Parks Superintendent Rick Misuraca said, noting that a resident recently asked the Mill Valley City Council to update its laws to allow beekeeping.

"Considering (Sudden) Colony Collapse, it's probably a good idea," he said, referring to a nationwide syndrome that has threatened to wipe out America's honey bees. "Bees are important."

Tim Ezekiel, a 54-year-old Fairfax resident and member of the Marin County Beekeepers, said he has been researching rules in municipalities around Marin since learning of Perullo's troubles.

"A lot of people just want to say, 'Don't ask. Don't tell,' but I tend to want to make it right so I don't get in trouble later down the road," said Ezekiel, who has nine hives around the county. "It's fear factor. If anyone's ever seen a swarm and been terrified, they don't want bees next door."

Marin Bee Co. co-owner Bill Tomaszewski said he selected Carniolan honey bees for Perullo's hive because they're "bred to be very gentle; they're really very nice bees."

"Honey bees have a bad rap," Tomaszewski said. "Honey bees don't go around stinging people because when they sting someone, they die. Honey bees are vegans. The only thing they're interested in is nectar and pollen."

Tomaszewski noted that he has hives in busy environments around the Bay Area, such as Kent Middle School, the Google campus in Mountain View and on the San Francisco Chronicle's roof. Honey bees, which have been declining in recent years, provide an indispensable service

pollinating human food crops like almonds and apples and, in a residential environment, help gardens flourish all over neighborhoods, he said.

"This whole danger of people getting worried about, oh my God, we're going to get stung and they're going to kill us, really it's from bad horror movies from the '70s," Tomaszewski said. Since learning of Corte Madera's rules, Perullo has been petitioning town officials to get them changed, meeting with councilwomen Diane Furst and Carla Condon. She plans to speak during council discussion of the issue at an annual planning session on Tuesday and is prepared to raise money to finance town research on a possible ordinance amendment.

"These things that are not considered household pets you can only have in the larger lot district, and even then you need a conditional-use permit," Bell said. "(Perullo) couldn't even apply. If you're not in the R-1-C, you can't even apply."

Bell said Perullo has until June 1 to reply to the letter he sent her last week. In the meantime, he's expecting direction from the Town Council on Tuesday. If the council decides not to have town employees research the matter, Bell said Perullo or anyone else could file a zoning ordinance amendment request, which would cost about \$2,000.

Meanwhile, Diane Fafoutis, Perullo's next-door neighbor, said she filed the complaint with town officials because she's allergic to bee stings and is concerned about the presence of a hive right next to her property.

"I can tell you I have been stung before, and I ended up in the emergency room," Fafoutis said. "Having the beehives in this dense population is ridiculous. ... Even children, if they get stung, it can kill them."

If Corte Madera amends its ordinance to allow beekeeping, the town could be liable if someone gets stung, she asserted.

Fafoutis noted that she believes bee companies have a commercial interest in promoting the insects and that she is afraid to go near her fruit trees, which abut Perullo's property, lest she get stung.

Neighbor Stan Damas, who lives across the street, said he doesn't feel strongly either way about the hive but is hopeful it will help out some bees.

"They need a place to go, and I think (Perullo's) doing it as a help to bees," said Damas, a retired San Francisco police officer. "I would assume they're not going to come over and get me."

Contact Jessica Bernstein-Wax at jbernstein-wax@marinij.com

MODEL BEEKEEPING ORDINANCE:

For Florida (Local and Municipal) Governments

Whereas, honey bees are beneficial to mankind and to Florida in particular, by providing agricultural fruit and vegetable pollination services in tandem with home garden vegetable and fruit production and by furnishing honey, beeswax and other useful products; and

Whereas, Florida is among the leading states in honey production and honey bee assisted agricultural products throughout the United States and the World; and

Whereas, domestic strains of honey bees have been selectively bred for desirable traits, including gentleness, honey production, reduced swarming, pollination attributes and other characteristics which are desirable to foster and maintain; and

Whereas, gentle strains of honey bees can be maintained within populated areas in reasonable densities to fill the ecological niche and exclude unwanted and undesirable races of bees, without causing a nuisance if the honey bees are properly located, carefully managed and maintained:

Now, Therefore, Be It Ordained and Enacted By

Name of Governmental Entity

Section 1. That the finding contained in the preamble of this ordinance is hereby adopted as a part of this ordinance.

Section 2. That Chapter No. (Health) of the Code of Ordinances,

_____, Florida, is hereby amended by adding a new article No., which reads as follows:

Definitions:

As used in this article, the following words and terms shall have the meanings ascribed in this section unless the context of their usage clearly indicates another meaning:

1. Apiary means the assembly of one or more colonies of bees at a single location.
2. Beekeeper means a person who owns or has charge of one or more colonies of bees.
3. Beekeeping equipment means anything used in the operation of an apiary, such as hive bodies, supers, frames, top and bottom boards and extractors.
4. Colony or hive means an aggregate of bees consisting principally of workers, but having, when perfect, one queen and at time many drones, including brood, combs, honey and the receptacle inhabited by the bees.
5. Honey bee means all life stages of the common domestic honey bee, *Apis mellifera* species.
6. Tract means a contiguous parcel of land under common ownership.
7. Undeveloped property means any idle land that is not improved or actually in the process of being improved with residential, commercial, industrial, church, park, school or governmental facilities or other structures or improvements intended for human use occupancy and the grounds maintained in association therewith. The term shall be deemed to include property developed exclusively as a street or highway or property used for commercial agricultural purposes.

Certain Conduct Declared Unlawful

(a) The purpose of this article is to establish certain requirements of sound beekeeping practices, which are intended to avoid problems that may otherwise be associated with the keeping of bees in populated areas.

(b) Notwithstanding compliance with the various requirements of this article, it shall be unlawful for any beekeepers to keep any colony or colonies in such a manner or of such disposition as to cause any unhealthy condition, interfere with the normal use and enjoyment of human or animal life of others or interfere with the normal use and enjoyment of any public property or property of others.

Hive Registration

All honey bee colonies shall be registered with the Florida Department of Agriculture and Consumer Services.

Hive Type

All honey bee colonies shall be kept in Langstroth-type hives with removable frames, which shall be kept in sound and usable condition.

Fencing of Flyways

In each instance in which any colony is situated within 25 feet of a public or private property line of the tract upon which the apiary is situated, as measured from the nearest point on the hive to the property line, the beekeeper shall establish and maintain a flyway barrier at least 6 feet in height consisting of a solid wall, fence, dense vegetation or combination thereof that is parallel to the property line and extends 10 feet beyond the colony in each direction so that all bees are forced to fly at an elevation of at least 6 feet above ground level over the property lines in the vicinity of the apiary.

Water

Each beekeeper shall ensure that a convenient source of water is available to the bees at all times during the year so that the bees will not congregate at swimming pools, pet watering bowls, bird baths or other water sources where they may cause human, bird or domestic pet contact.

General Maintenance

Each beekeeper shall ensure that no bee comb or other materials are left upon the grounds of the apiary site. Upon their removal from the hive, all such materials shall promptly be disposed of in a sealed container or placed within a building or other bee-proof enclosure.

Queens

All colonies shall be maintained with marked queens. In any instance in which a colony exhibits unusual aggressive characteristics by stinging or attempting to sting without due provocation or exhibits an unusual disposition toward swarming, it shall be the duty of the beekeeper to promptly re-queen the colony with another marked queen. Queens shall be selected from European stock bred for gentleness and non-swarming characteristics.

Colony Densities

(a) It shall be unlawful to keep more than the following number of colonies on any tract within the city, based upon the size or configuration of the tract on which the apiary is situated:

1. one quarter acre or less tract size – 2 colonies,
2. more than one-quarter acre but less than one-half acre tract size— 4 colonies.
3. more than one-half acre but less than one acre tract size – 6 colonies.
4. one acre or larger tract size – 8 colonies,
5. regardless of tract size, where all hives are situated at least 200 feet in any direction from all property lines of the tract on which the apiary is situated, there shall be no limit to the number of colonies.
6. regardless of tract size, so long as all property other than the tract upon which the hives are situated, that is within a radius of at least 200 feet from any hive, remains undeveloped property, there shall be no limit to the number of colonies.

(b) In addition to State of Florida Apiary Inspection Law regarding identification of honey bee hives: the beekeeper shall conspicuously post a sign setting forth his/her name and phone number. It is a defense against prosecution under this subsection that a colony is kept upon the same tract upon which the owner resides.

(c) Unless marked in accordance with subsection (a) it shall be presumed for purposes of this article that the beekeeper is the person or persons who own or otherwise have the present right of possession and control of the tract upon which a hive or hives are situated. The presumption may be rebutted by a written agreement authorizing another person to maintain the colony or colonies upon the tract setting forth the name, address, and telephone number of the other person who is acting as the beekeeper.

Inspection

Each Florida Apiary shall be inspected and a report issued by an authorized representative of the Department at such intervals as the Department deems best for detection of honey bee pests and unwanted races of honey bees. Compliance

(a) Upon receipt of information that any colony situated within the city is not being kept in compliance with this article, the director shall cause an investigation to be conducted. If he finds that grounds exist to believe that one or more violations have occurred he shall cause a written notice of hearing to be issued to the beekeepers.

(b) The notice of hearing shall set forth:

1. the date, time, and place at which the hearing will be conducted
2. the violation(s) alleged
3. that the beekeeper may appear in person or through counsel, present evidence, cross examine witnesses and request a court reporter as provided by Rule No. _____ of the

City council's Rule of Procedure, and

4. that the bees may be ordered destroyed or removed from the City if the hearing officer finds that they have been kept in violation of this article.

Notice shall be given by certified United States mail or personal delivery. However, if the health officer is unable to locate the beekeeper, then the notice may be given by publication one time in a newspaper of general circulation at least five days before the date of the hearing.

(c) The hearing shall be conducted by the director or a health officer that he may designate. The burden shall be on the city to demonstrate by a preponderance of credible evidence that the colony or colonies have in fact been kept in violation of this article. If the hearing officer finds that the colony or colonies have been kept in violation of this article, then he may order that the bees be destroyed or removed from the city, not to exceed 20 days and that bees not thereafter be kept upon the tract for a period of two years. In instances where the hearing officer finds that the violations were not intentional and that the beekeeper has employed corrective actions that will probably be effective to cure the violations alleged, then he may issue a warning in lieu of ordering the bees destroyed or removed. Upon failure of the beekeeper to comply with the order, the health officer may cause the bees to be destroyed and the hives structures to be removed. In each instance in which a bee colony is destroyed, all usable components of the hive structure that are not damaged or rendered unhealthy by the destruction of the bees shall upon the beekeeper's request be returned to the beekeeper, provided that the beekeeper agrees to bear all transportation expenses for their return.

(d) The decision of the hearing officer may be appealed in accordance with the provision of Rule

No. _____ of the City Council's Rules and Procedures by filing a notice of appeal with the city secretary within 10 days following the date that the hearing officer announces his decision, or if the decision is not announced at the conclusion of the hearing, then within 15 days following at the date that the hearing officer places written notice of his decision in the mail to the beekeeper. An appeal shall not stay in the hearing officer's decision, and it shall not be the responsibility of the beekeeper to remove the bees from the city pending the determination of the appeal.

(e) The provisions of this section shall not be construed to require the conduct of a hearing for the destruction of (1) any bee colony not residing in a hive structure intended for beekeeping or (2) any swarm of bees or (3) any colony residing in a standard or man-made hive which,

by virtue of its condition, has obviously been abandoned by the beekeeper.

Section 3. If any provisions, section, subsection, sentence, clause or phrase of this ordinance or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this ordinance are declared to be servable for the purpose.

Section 4. This ordinance shall become effective at _____ (hour) on _____ (date).

Section 5. There exists a public emergency requiring that this ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this ordinance shall be passed finally on such date and shall take effect as provided in Section 4, above.