



TITLE #: 90
Ordinance #: 05-03-23-071

Date: May 3, 2023

ORDINANCE for the Prohibition of Farm Animals within the Corporate Limits of the Town of Cheswold

DESCRIPTION: An ordinance of the Town of Cheswold to prohibit the habitation of farm animals within the corporate limits of the Town.

The ordinance may at times be referred to as the “Animal” Ordinance.

In addition, the ordinance provides a process for determining violations of said ordinance and a procedure to apply penalties for said violations.

Section 1. PURPOSE The purpose of this ordinance is to clarify and specify the types of animals that are generally known as farm animals and will thus be prohibited from habitation within the corporate limits of the Town and to specify that there are no conditions or situations that will permit the housing, feeding or breeding of such animals within the corporate limits of the Town, other than the exception expressed within this Ordinance in Section 8.

In addition, this ordinance supports and additionally clarifies Article 7. Use Regulations of the Land Use Ordinance Table 7-2 Permitted Uses & Structures which states that Agriculture _ Related Uses in Zones, R-2, (1 & 2 Family Residential); R-3, (1, 2, 3 Family & Townhouse Residential); R-5, (Age-Defined Residential); C-1, (Neighborhood Commercial) and C-2, (Highway Commercial), are permitted and prohibited in Zones R-1, (Old Town Residential); R-4, (Manufactured Home & Trailer Park); I-1, (Light Industrial) and I-2, (Heavy Residential).

The Land Use Ordinance provides that Farms, customary and conventional farming operations including the raising of vegetables, flowers, and horticulture materials not to be construed to include commercial poultry and swine production, cattle feeder lots, and fur bearing animals.

Section 2. AUTHORITY TO ACT

The Town Charter of the Town of Cheswold:

- 2.1.1 **Section 4.2.25**, authorizes the Town Council to provide for and preserve the health, peace and safety, cleanliness, ornament, good order and public welfare of the Town and its' inhabitants.
- 2.1.2 **Section 4.2.48**, authorizes the Town Council to make, adopt, and establish, alter and amend all such Ordinances, Regulations, Rules and By-Laws not contrary to the laws of this State and the United States as the Town Council may deem necessary to carry into effect any of the provisions of this Charter or any other law of the State relating generally to municipal corporations or which they may deem proper and necessary for the order, protection, and good government of the Town.

Section 3. APPLICABILITY

This Ordinance shall be applicable to all farm animals, property owners and/or persons within the corporate limits of the Town of Cheswold, whether residential, commercial, retail or wholesale.

This Ordinance shall not apply to domestic animals commonly known as house pets, such as cats, dogs, turtles, etc.

Section 4. DEFINITIONS

As used in this Ordinance, the following terms and words shall have the following meaning/s unless the context clearly indicates that a different meaning is intended:

- 4.1 **Animal** – shall mean and include any and all types of animals, domestic, wild, farm, male and female.
- 4.2 **Code Official** – shall mean the employee who is charged with the administration and enforcement of this Ordinance, or any duly authorized representative.
Farm – an area of land and its buildings used for growing crops and rearing farm animals, typically under the control of one owner or manager.
- 4.3 **Enforcement Officer** – shall mean the employee designated herein or otherwise charged with the responsibilities of administering this Ordinance, or the duly authorized representative by the Town Council of the Town of Cheswold.
- 4.4 **Farm Animal** – shall mean those animals, both male or female, generally known to be kept or raised on a farm. The common ones are goats; pigs; sheep; cattle; camels; buffalo; horses; donkeys; mules; chickens; ducks; turkeys and geese. Some are classified as micro-livestock and include rabbits; cane rats; guinea pigs, etc. They do not refer to domestic animals.

Section 4. DEFINITIONS - "continued"

- 4.5 **Land Use Administrator** – shall mean the person appointed by the Town Council of the Town of Cheswold to represent the Town in all matters concerning land use within the Town and the interpretation of the Land Use Ordinance plus the administration of appeals, plans and applications.
- 4.6 **Manager** – shall mean any person responsible for maintaining or the administration of such property as described by being the possession of an owner and includes the management and upkeep of the animals on said property.
- 4.6 **Owner/s** – shall mean any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the State, County or Municipality as holding title to the property; or otherwise having control of the property and the animals thereupon, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.
- 4.7 **Person** – shall mean and include any natural person, an individual, partnership, voluntary association, society, club, firm, corporation, business trust, or any other group acting as a unit or lease, agent, servant, partner, member, director, officer, or employee or any of them.
- 4.8 **Town Council** – shall mean the six, (6), person governing body of the Town of Cheswold granted by the State of Delaware with the authority and responsibility to approve, deny, change and revise all Ordinances, Resolutions, processes and procedures associated with the administration of governance within the corporate limits of the Town.

Section 5 WORD USAGE and INTERPRETATION

4.1 As used in this Ordinance, the following terms shall have the specified meaning:

- 5.1 **Gender** – shall mean and include male, female and neuter.
- 5.2 **Includes** - shall mean that there is no limit to a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.
- 5.3 **May** – shall mean permissive.
- 5.4 **May not** – shall mean that there is a prohibitory effect in place and shall state a prohibition.
- 5.5 **Must** – shall mean mandatory.
- 5.6 **Shall** – is to be construed as being mandatory.
- 5.7 **Tense** – shall mean words used in the past or present tense include the future as well.

Section 6. DESCRIPTION OF PROHIBITED ACTION/ACTIVITY

No owner, person or manager under any conditions, situations or circumstances keep, maintain, or breed any farm animal as described in Section 4 – Definitions or any animal commonly known as a farm animal within the corporate limits of the Town of Cheswold, unless specifically permitted by Section 9 of this Ordinance – Exceptions.

Section 7. DETERMINATION OF PROHIBITED ACTION/ACTIVITY

It shall be the sole responsibility of the Code Official of the Town of Cheswold to determine if an animal is classified as a farm animal and thus prohibited.

Section 8 - DESCRIPTION of PROCESSES REQUIRED to ENFORCE ORDINANCE

The following procedure shall be employed to enforce the requirements and restrictions of this Ordinance:

- 8.1 As part of his/her regular work assignments the Code Official/Code Enforcement Officer shall regularly scan properties within the corporate limits of the Town of Cheswold to ensure compliance with the Land Use Ordinances, Property Maintenance requirements and approved Ordinances associated with property maintenance.
- 8.2 If the Code Official/Code Enforcement Officer should note through visual or audio observation that farm animals may be housed, maintained or being bred upon a property within the corporate limits of the Town of Cheswold, the Code Official/Enforcement Officer shall have full and complete authority to notify the offending owner/manager of the violation of this Ordinance.
- 8.3 Notice of the violation shall be presented to the property owner/manager through a written notice submitted through certified mail and must include a statement that all farm animals must be removed from the Town of Cheswold property within 30 days of receipt of the written notice.
- 8.4 Failure to remove such farm animals within the specified 30 day period, will result in the processing of violation fees to the property owner/manager.
- 8.5 Should the owner/manager not comply with the removal of noticed farm animals within 30 days of the receipt of notice to do so, the Town of Cheswold will arrange for the removal of any and all such farm animals, without further notice to the property owner/manager.
- 8.6 If it should become necessary for the Town of Cheswold to remove farm animals from the property of an owner/manager at cost to the Town, the property owner will be assessed the cost of such removal plus a \$250.00 fine for failure to comply and a 10% administrative fee of the total involved cost.
- 8.7 Subsequent violations will be at a cost of \$500.00 per each violation plus the cost of animal removal and a 10% administrative fee of the total involved cost.

Section 9 – APPEAL PROCESS

Each property owner/manager shall have the right to appeal the written notice requiring removal of farm animals from his/her property/properties. The appeal process shall be as follows:

9.1 Property owner/manager must submit a written request to halt farm animal removal procedure within the 30 day period of receipt of certified notice from the Town of Cheswold Code Official.

9.2 The appeal must be submitted to the Land Use Administrator of the Town of Cheswold.

9.3 The appeal must include:

9.3.1 Property Owner's Name

9.3.2 Property Owner's Town of Cheswold Address

9.3.3 Property Owner's Mailing Address

9.3.4 Property Owner's Phone Number

9.3.5 Property Owner's Email Address

9.3.6 Property Manager's Information *(if applicable)*

9.3.6.a Name

9.3.6.b Address

9.3.6.c Phone Number

9.3.6.d E-Mail Address

9.4 Farm Animal Information

9.4.1 Type of Animals

9.4.2 Number of Animals

9.4.3 Housing Type used for Animals

9.4.4 Any and all pertinent information that will assist the Administrator in reaching a decision concerning the appeal.

Section 10 - EXCEPTIONS

An exception to this Ordinance is granted to Mr. & Mrs. Jose & Fidelina Aponte, residing at 246 Main Street, Cheswold, Delaware 19936 for the ownership, housing and breeding of chickens. Such exception is granted as a result of the ownership, housing and breeding occurring before the inception and approval of this Ordinance.

Should Mr. & Mrs. Aponte cease to own, house and breed chickens after the approval and adoption of this Ordinance, their exception will immediately cease.

Should Mr. & Mrs. Aponte sell or transfer ownership of their property to another owner, their exception shall immediately cease.

Additionally, an exception is granted to the western end of property owned by Evans Jarrell, LLC located at 1070 Eddie Evans Lane and it is also identified as Map ID 3-03-04600-01-0300-000 for the housing and breeding of chickens, ducks and geese. Such exception is granted as a result of the ownership, housing and breeding occurring before the inception and approval of this Ordinance.

Should Evans Jarrell, LLC, cease to own, house and breed chickens after the approval and adoption of this Ordinance, their exception will immediately cease.

Should Evans Jarrell, LLC, sell or transfer ownership of their property to another owner, their exception shall immediately cease.

Section 11. VIOLATION FEES

Any person violating any of the provisions of this ordinance shall for each such offense be punished by a fine of the following schedule:

11.1 First Offense: Failure to comply after 30 days - \$250.00 + cost of animal removal + 10% administrative fee of total cost

11.2 Each Subsequent Offense: \$500.00 per each offense + cost of animal removal + 10% administrative fee of total cost

Section 12 Severability

If any provision of this Ordinance or any application of this Ordinance to any particular entity or circumstance shall be deemed invalid, such invalidity shall not affect any other provision or application of this Ordinance, which may otherwise be given effect and to this end the provisions of this Ordinance are hereby declared to be severable.

Section 13. EFFECTIVE DATE

This Ordinance and the rules, regulations, provisions, requirements, orders, administration and management and matters established and adopted hereby shall take effect and be in full force and effect immediately and after the date of its final passage and adoption.

Section 14.

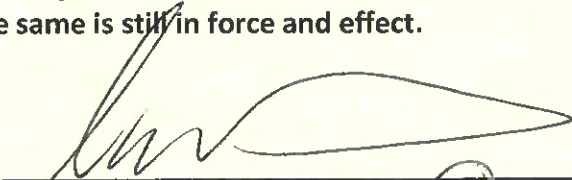
PASSAGE of ORDINANCE

Whereas, the Town Council of the Town of Cheswold, approved Resolution 09-22-23-116, on November 6, 2023, and then properly posted and held a Public Hearing on January 8, 2024, at 5:00 p.m., in the Cheswold Town Hall, at 691 Main Street, Cheswold, DE 19936, to receive public comment on this Ordinance; and

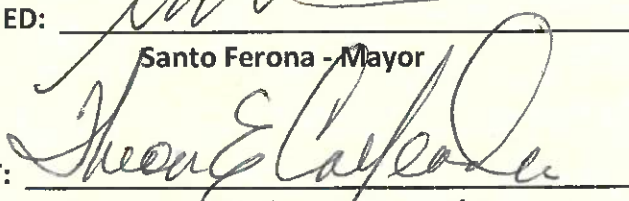
Whereas, there was not any negative or adverse public comments made against the said Ordinance, at the above mentioned Public Hearing; and

Whereas, the Town Council at their regularly scheduled Town Council meeting, on January 8, 2024, held at 5:30 p.m., in the Cheswold Town Hall, at 691 Main Street, Cheswold, DE 19936, voted unanimously to approve this Ordinance; and

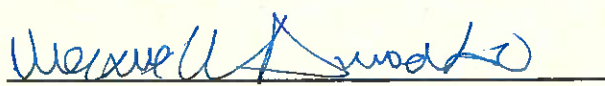
I, Santo Feronea, Mayor of the Town of Cheswold, do hereby certify that the foregoing is a true and correct copy of the Resolution passed by an affirmative majority vote of all elected members of the Town Council of Cheswold at a regularly scheduled Town Council Meeting, held on, Monday, January 8, 2024, at which a quorum was present and voting throughout, and that the same is still in force and effect.

CERTIFIED: 
Santo Feronea - Mayor

Date: January 8, 2024

ATTEST: 
Theon E. Callender - Secretary/Treasurer

Date: January 8, 2024

Agreed: 
Vice-Mayor Maxwell Amoako

Date: January 8, 2024

Ordinance No: 05-03-23-071

Date: 05-03-2023

Agreed: Judith Johnson
Councilperson Judith Johnson

Date: January 8, 2024

Agreed: Mark Moxley
Councilperson Mark Moxley

Date: January 8, 2024

Agreed: Robin Ridgway
Councilperson Robin Ridgway

Date: January 8, 2024

NOTARIZED: Shadina Jones
Shadina Jones – Town Clerk

Date: January 8, 2024

Primary Sponsor: Secretary/Treasurer Theon E. Callender

Introduction: May 3, 2023

READINGS & REVIEWS:

Introduction to Council via E-Mail

May 3, 2023

Forwarded for Attorney Review

May 3, 2023

1st Council Reading

June 5, 2023

Attorney Review

June 6, 2023 via Phone Call

2nd Council Reading/1st Public Reading

July 10, 2023

3rd Council Reading/2nd Public Reading

August 7, 2023

4th Council Reading/3rd Public Reading

November 6, 2023

Resolution for Public Hearing

December 4, 2023

Public Hearing

January 8, 2024

Council Vote

January 8, 2024

REVISION LOG

<u>Revision Date</u>	<u>REVISION REASON</u>
06/27/2023	Draft revised to add reference to Land Use Ordinance & additional Exception