

MUNICIPAL TECHNICAL ADVISORY SERVICE

December 11, 2014

Mr. Shannon Copas
Community Planner
Upper Cumberland Development District
1225 South Willow Avenue
Cookeville, Tennessee 38506

VIA ELECTRONIC MAIL

Dear Mr. Copas:

As a follow up to my November 18, 2014 letter and in response to your further inquiry regarding the regulation of a poultry production house, please be advised that a city may adopt a zoning ordinance or regulation that prohibits poultry production houses within the city limits. Any existing house would be grandfathered in under this provision. If there are houses that are in the process of being built or that are in the planning stages within a city limits, the city could face a challenge if such an ordinance is passed. A court would then have to determine how far along in the "operation" process the production house was at the time that the zoning ordinance was passed.

An example of such a regulation as found in the Oak Hill zoning ordinance follows:

14-231 Limitations on farming

Farming activities, including agriculture and horticulture, may be conducted except that the following are prohibited activities on any lot within the City of Oak Hill:

Dairies; kennels; rabbit, goat, or animal raising activities; hatching, raising, fattening and/or butchering of chickens, pigeons, turkeys, or other poultry; hog and other livestock feeding; and commercial plant nurseries and greenhouses.

Chickens solely used for egg production are allowed and limited to two (2) chickens per lot.

Horses and / or ponies may be kept for personal use only provided there shall be a minimum of two (2) acres of fenced and suitable pasture area available for the first horse and not less than one (1) additional acre of fenced and suitable pasture area available for each additional horse. If additional fenced and suitable pasture area is available on an adjacent lot, proof of such land availability shall be required in writing and recorded with the Davidson County Register of Deeds.

MTAS Legal Consultant Elisha Hodge was consulted in formulating this response.

A copy of my November 18, 2014 letter is enclosed for ease of reference. Please let me know if you have further questions regarding this matter.

Very truly yours,



Jeffrey J. Broughton
Municipal Management Consultant

Cc: Elisha Hodge

November 18, 2014

Mr. Shannon Copas
Community Planner
Upper Cumberland Development District
1225 South Willow Avenue
Cookeville, Tennessee 38506

Dear Mr. Copas:

In response to your question regarding city regulation of poultry production house in Macon, Clay, and Smith Counties, please be advised that Tennessee Code Annotated Title 44, Chapter 18 authorizes a city to put into place zoning regulations to control where these houses can be located.

For purposes of the statute, a poultry production house is defined as any place or premises where chickens are kept for the production of eggs or broilers for resale to processors, wholesalers or retailers.

T.C.A. 44-18-104(a)(1) and (2) provide as follows:

(a) The applicability of zoning requirements is as follows:

- (1) A zoning requirement shall apply to a feedlot, dairy farm or poultry production house with an established date of operation subsequent to the effective date of the zoning requirements;
- (2) A zoning requirement shall not apply to a feedlot, dairy farm or poultry production house with an established date of operation prior to the effective date of the zoning requirement;

Accordingly, any zoning requirement that is enacted - including the prohibition of a poultry production house within the corporate limits – will only apply to a house commencing operations after the effective date of the regulation.

Many Tennessee cities also regulate the domestic use of poultry and fowl in their code or ordinances using their general police powers. A sampling of code provisions from the following cities are enclosed for your information:

- Tullahoma
- Sevierville
- Jackson
- Chattanooga
- South Fulton
- Bartlett

As always, your client should consult with their city attorney in the drafting of any ordinance.

Title 44, Chapter 18 is enclosed for ease of reference.

Mr. Shannon Copas
November 18, 2014
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Legal Consultant Elisha Hodge was consulted in formulating this response. Please let us know if you have further questions regarding this matter.

Very truly yours,



Jeffrey J. Broughton
Municipal Management Consultant

Cc: Elisha Hodge
Gary Jaeckel
Warren Nevad

West's Tennessee Code Annotated [Currentness](#)

Title 44. Animals and Animal Husbandry

→ [Chapter 18. Feedlots, Dairy Farms and Poultry Production Houses \(Refs & Annos\)](#)

→ [§ 44-18-101. Definitions](#)

As used in this chapter, unless the context otherwise requires:

- (1) "Dairy farm" means any place or premises where one (1) or more cows are kept and from which a part or all of the milk or milk products is provided, sold or offered for sale to a milk plant, transfer station or receiving station;
- (2) "Department" means the department of environment and conservation, and includes any officer, agency or designee of that department;
- (3) "Established date of operation" means the date on which a feedlot, dairy farm or poultry production house commenced operating. If the physical facilities of the feedlot, dairy farm or poultry production house are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent "established date of operation" established as of this date of commencement of the expanded operations, and the commencement of expanded operations shall not divest the feedlot, dairy farm or poultry production house of a previously established date of operation;
- (4) "Established date of ownership" means the date of the recording of an appropriate muniment of title establishing the ownership of realty;
- (5) "Feedlot" means a lot, yard, corral or other area in which livestock are confined, primarily for the purposes of feeding, growing, raising, or birthing prior to slaughter. "Feedlot" does not include areas that are used for the raising of crops or other vegetation upon which livestock are allowed to graze or feed;
- (6) "Livestock" means all equine as well as animals that are being raised primarily for use as food or fiber for human utilization or consumption including, but not limited to, cattle, sheep, swine, goats, and poultry;
- (7) "Materially affects" means prohibits or regulates with respect to the location, or the emission of noise, effluent, odors, sewage, waste or similar products resulting from the operation or the location or use of buildings, machinery, vehicles, equipment or other real or personal property used in the operation of a livestock feedlot, dairy farm or poultry production house;
- (8) "Nuisance" means and includes public or private nuisance as defined either by statute or by the common law;

(9) “Nuisance action or proceeding” means and includes every action, claim or proceeding, whether brought at law, in equity or as an administrative proceeding, that is based on nuisance;

(10) “Owner or operator” means any person who owns, leases, operates, controls or supervises a feedlot;

(11) “Poultry production house” means any place or premises where chickens are kept for the production of eggs or broilers for resale to processors, wholesalers or retailers;

(12) “Regulations” means a resolution by the county legislative body or an ordinance by the governing body of any municipality regulating or prohibiting the normal noises of animals or fowls, the noises in the operation of the equipment, the odors normally associated with any feedlot, dairy farm, or poultry production house, or the preclusion of any animals or fowls from within the city or from within a defined area of the county;

(13) “Rule of the department” means a rule as defined in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, that materially affects the operation of a feedlot, dairy farm, or poultry production house and that has been adopted by the department. Nothing in this chapter shall be deemed to empower the department to make any rule; and

(14) “Zoning requirement” means a regulation or ordinance that has been adopted by a city, county, township, school district, or any special-purpose district or authority, that materially affects the operation of a feedlot, dairy farm or poultry production house. Nothing in this chapter shall be deemed to empower any agency described in this definition to make any regulation or ordinance.

→ **§ 44-18-102. Nuisance**

(a) In any nuisance action or proceeding against a feedlot, dairy farm, or poultry production house brought by or on behalf of a person whose date of ownership of realty is subsequent to the established date of operation of the feedlot, dairy farm or poultry production house, proof of compliance with §§ 44-18-103 and 44-18-104 shall be an absolute defense; provided, that the conditions or circumstances alleged to constitute a nuisance are subject to regulatory jurisdiction in accordance with § 44-18-103 or § 44-18-104.

(b) In any nuisance action or proceeding against a feedlot, dairy farm or poultry production house brought by or on behalf of a person whose date of ownership of realty precedes the established date of operation of the feedlot, dairy farm or poultry production house, but whose actual or proposed use of the realty for residential or commercial purposes is subsequent to the established date of operation of the feedlot, dairy farm or poultry production house, proof of compliance with §§ 44-18-103 and 44-18-104 shall be an absolute defense; provided, that the conditions or circumstances alleged to constitute a nuisance are subject to regulatory jurisdiction in accordance with § 44-18-103 or § 44-18-104.

(c) The normal noises and appearance of the animals or fowls, the noises in the operation of the equipment or the appearance of the equipment, the odors normally associated with any feedlot, dairy farm or poultry production

house, the appearance of a feedlot, dairy farm or poultry production house, or litter and/or manure additive that is designed to bind soluble phosphorous in conformity with the Tennessee Natural Resources Conservation Service (NRCS) interim conservation practice standard if used by any feedlot, dairy farm or poultry production house, shall not constitute grounds for any nuisance action or proceeding against a feedlot, dairy farm or poultry production house brought by or on behalf of a person whose date of ownership of realty is subsequent to the established date of operation of the feedlot, dairy farm or poultry production house.

→ **§ 44-18-103. Applicability of rules**

(a) This section shall apply to the department's rules except for rules required for delegation of the national pollutant discharge elimination system permit program pursuant to the Federal Water Pollution Control Act, Section 402, Public Law 92-500, [33 U.S.C. 1342](#), as amended.

(b) The applicability of rules of the department, other than those issued under the Tennessee Air Quality Act, compiled in title 68, chapter 201, part 1, shall be as follows:

(1) A rule of the department in effect before April 12, 1979, shall apply to a feedlot, dairy farm or poultry production house with an established date of operation prior to April 12, 1979;

(2) A rule of the department shall apply to a feedlot, dairy farm or poultry production house with an established date of operation subsequent to the effective date of the rule;

(3) A rule of the department adopted after April 12, 1979, shall not apply to a feedlot, dairy farm or poultry production house holding any department permit and having an established date of operation prior to the effective date of the rule; and

(4) A rule of the department adopted after April 12, 1979, shall not apply to a feedlot, dairy farm or poultry production house not previously required to hold a department permit and having an established date of operation prior to the effective date of the rule.

(c) The applicability of rules promulgated under the "Tennessee Air Quality Act," compiled in title 68, chapter 201, part 1, shall be as follows:

(1) A rule of the department or the air pollution control board in effect on April 12, 1979, shall apply to a feedlot, dairy farm or poultry production house with an established date of operation prior to April 12, 1979;

(2) A rule of the department or the air pollution control board shall apply to a feedlot, dairy farm or poultry production house with an established date of operation subsequent to the effective date of the rule; and

(3) A rule of the department or the air pollution control board pertaining to a feedlot, dairy farm or poultry production house adopted after April 12, 1979, shall not apply to any feedlot, dairy farm or poultry production house

having an established date of operation prior to the effective date of the rule.

→ § 44-18-104. Zoning and planning

(a) The applicability of zoning requirements is as follows:

(1) A zoning requirement shall apply to a feedlot, dairy farm or poultry production house with an established date of operation subsequent to the effective date of the zoning requirements;

(2) A zoning requirement shall not apply to a feedlot, dairy farm or poultry production house with an established date of operation prior to the effective date of the zoning requirement;

(3) A zoning requirement that is in effect on April 12, 1979, shall apply to a feedlot, dairy farm or poultry production house with an established date of operation prior to April 12, 1979; and

(4) A zoning requirement adopted by a city shall not apply to a feedlot, dairy farm or poultry production house that becomes located within an incorporated or unincorporated area subject to regulation by that city by virtue of an incorporation or annexation that takes effect after April 12, 1979.

(b) A person shall comply with this section as a matter of law where no zoning requirement exists.

(c) The applicability of regulations shall be as follows:

(1) A regulation shall apply to a feedlot, dairy farm or poultry production house with an established date of operation subsequent to the effective date of such regulation;

(2) A regulation shall not apply to a feedlot, dairy farm or poultry production house with an established date of operation prior to the effective date of the regulation;

(3) A regulation that is in effect on April 12, 1979, shall apply to a feedlot, dairy farm or poultry production house with an established date of operation prior to April 12, 1979; and

(4) A regulation adopted by a city shall not apply to a feedlot, dairy farm or poultry production house that becomes located within an incorporated or unincorporated area subject to regulation by such city by virtue of an incorporation or annexation that takes effect after April 12, 1979.

(d) A person shall comply with this section as a matter of law where no regulation exists.

END OF DOCUMENT

SAMPLE OF CITY CODES REGARDING CHICKENS

TULLAHOMA

10-108. Domestic fowl and other exotic game birds. (1) It shall be unlawful for the owners or others having care and custody of any chickens, ducks, geese and other domestic fowl and exotic game birds to permit same to be at large on any private property, including that of the owners or those having the care and custody of same, or on any public street, highway, alley, park, and other public places and ways within the city.

(2) Such domestic fowl and exotic game birds shall be confined in a coop or fowl house not less than eighteen (18) inches in height. The fowl must be kept within the coop or fowl house at all times. The coop or fowl house must be used for fowl only, and must be well ventilated. The coop or fowl house shall have a minimum of four (4) square feet of floor area for each fowl. The run must be well drained so there is no accumulation of moisture. The coop or fowl house shall be kept clean, sanitary, and free from accumulation of animal excretion and objectionable odors.

The coop or fowl house shall be cleaned daily and all droppings and body excretion shall be placed in a flyproof container (such refuse shall not be placed in containers for city solid waste collection). The coop or fowl house shall be a minimum of twenty-five (25) feet from any property line. All portable coops or fowl houses including, but not limited to, pens, cages, crates, etc., shall not be located closer than twenty-five (25) feet from the side or rear property line.

(3) No more than twenty (20) such fowl or exotic game bird(s) shall be kept or maintained per acre with the number of fowl proportionate to the acreage. In determining the number of domestic fowl permitted, only fowl six (6) months or older in age shall be counted. No domestic fowl or other exotic game birds shall be kept or maintained on a parcel of land less than five (5) acres in total area for one parcel of property.

(4) The raising of domestic fowl and other exotic game birds shall not be permitted within any residential district as defined by the Zoning Ordinance for the City of Tullahoma and the Official Zoning Map for the City of Tullahoma except those parcels located in an R-1, Low Density Residential District, or R-1A and R-1AA Single Family Residential Districts, greater than or equal to five (5) acres in total land area for one parcel of property. The raising of domestic fowl and other exotic game birds shall be permitted in all agricultural districts as defined in the Zoning Ordinance for the City of Tullahoma and the Official Zoning Map for the City of Tullahoma. (1988 Code, § 3-108, as replaced by Ord. #1348, Dec. 2006)

CHATTANOOGA

Sec. 7-74. Keeping or possessing swine, goats or chickens.

(a) It shall be unlawful for any person to keep or possess swine, goats, chickens or roosters within the City on property other than agriculturally zoned land, unless such animals are kept on a tract of land containing five (5) or more contiguous acres. Any such animals must be kept or maintained in a manner which does not constitute a nuisance, including foul or offensive odors. Any person keeping chickens and/or roosters on a tract of land containing two (2) or more contiguous acres prior to December 1, 2005, shall be permitted to continue, provided that such use is not discontinued for thirty (30) or more continuous days.

(b) This section shall not be construed to apply to persons possessing such animals for the purpose of being transported through the City, to such animals being kept and offered for sale at

regularly operated stockyards or slaughterhouses, or which are located temporarily on property for the purpose of controlling kudzu or other invasive plants. This section shall also not apply to Miniature African Pigs or Pot-Bellied Pigs kept as house pets. In the event that the animals are kept for the purpose of controlling kudzu or other invasive plants, the property owner must meet the requirements of Section 7-74(c).

SEVIERVILLE

10-1301. Regulations. It shall be unlawful for any person to erect, place, maintain or continue any pen, coop, yard or other building upon any lot or ground in the city for the purpose of confining or housing any domestic animal or bird unless the same is at least twenty-five feet distant from any dwelling, house, apartment, hotel, restaurant, food or drinking establishment or rooming house, school, church, or any building wherein people are employed and unless the floor or such building or coop is constructed of such material and in such a manner that it can be kept clean and sanitary at all times, and unless the location of such shall be authorized by the board of health. (Ord. #439, Sept. 1982)

10-1302. Buildings and coops. All coops and other buildings wherein domesticated animals and birds are kept shall be provided with flytight bins or other tightly closed receptacles for manure, of dimensions sufficient to contain all accumulations of manure as to prevent its becoming a nuisance. No manure shall be allowed to accumulate on the floor or on adjacent ground. (Ord. #439, Sept. 1982)

SOUTH FULTON

10-102. Keeping near a residence or business restricted. (1) No horse, mule, donkey, cow, goat, sheep, or animal raised shall be kept within the city limits, except in an outlying district where there are not more than three (3) residences, other than that occupied by the owner or occupant of the premises upon which said animals are kept, within a distance of five hundred (500) feet of the structure housing said animal, unless a written permit therefore is issued by the health officer after an inspection of the premises and a finding of fact to the effect that no nuisance will be created thereby. Such permit shall be issued for the keeping of any such animals on any lot in the following two cases: (a) Where such animals were being lawfully kept on such lot prior to the enactment of this chapter; (b) Where such animals were being lawfully kept after the enactment of this chapter in an area, in which there were not three residences within a distance of five hundred (500) feet of the structure enclosing such animals, and subsequently other residences were built bringing the structure housing the animals within a restricted district. Such permit shall be for the term of one year only and shall not be renewed without a reinspection of the premises.

(2) No chicken coop, dove, cote, dog kennel, rabbit warren or other yard structure where animals are kept or where small animals and/or fowls are kept shall be maintained closer than fifty (50) feet to any house, or residence other than that occupied by the owner or occupant of the premises upon which said creatures are kept. Not more than six dogs, cats, rabbits, guinea pigs, ducks, geese or any other small animal or fowls, more than six (6) weeks old, shall be kept on any premises within the city limits, except in an outlying district where there are not more than three (3) residences, other than that occupied by the owner or occupant of the premises upon which said creatures are kept, within a radius of five hundred (500) feet of the structure or area

enclosing said creatures without a permit issued by the health officer after an inspection of the premises and a finding of fact to the effect that no nuisances will be created thereby. Such permit shall be issued for the keeping of any of such creatures on any lot, only in the following two cases: (a) Where such animals were being lawfully kept on such premises prior to the enactment of this chapter; (b) Where such animals or fowls were being lawfully kept on such lot after the enactment of this chapter, in an area in which there were not three (3) residences within five hundred (500) feet of the structure enclosing such animals, and subsequently other residences were built bringing the structure housing said animals within a restricted district. Such permit shall be for the term of one year only and shall not be renewed without a reinspection. (1985 Code, § 3-102)

JACKSON

10-201. Application of chapter. No owner, lessee, tenant, or sub-tenant, of any property, public or private, located within the corporate limits of the city shall keep, maintain, or cause to be kept any horses, mules, donkeys, cattle, swine, chickens, turkeys, ducks, geese, goats, sheep, hares, or similar animals or fowls either domesticated or nondomesticated except under conditions hereinafter set forth in the provisions of this chapter. (1995 Code, § 10-201)

10-202. Where animals to be kept. No animals, fowls or poultry described in § 10-201, shall be kept within a distance of one thousand linear feet (1,000') of any adjacent residence, place of business, industry or establishment within the city, without the approval of the health officer. The health officer shall approve the keeping of animals and fowls on public and private premises only when in his opinion the keeping of such animals and fowls will not injuriously affect the public health and welfare, and in no case will he approve the keeping of animals or fowls within two hundred fifty linear feet (250') of any residence, place of business, industry or establishment. This section shall not apply to small animal hospitals under the direct personal supervision of a licensed veterinarian. (1995 Code, § 10-202)

10-203. Approval required by health officer to keep animals. The health officer is hereby authorized to prohibit the keeping of animals and fowls described in § 10-201 within the corporate limits of the city when it has been determined that the keeping of such animals and fowls is not in compliance with the provisions included in § 10-202, and/or when in his opinion the keeping of such animals and fowls may prove detrimental to the public health by creating or causing situations conducive to the breeding and attractivity of flies and other injurious and obnoxious insects, the breeding, feeding and harboring of rats, and which may give rise to offensive smells and odors. "Approval" for the maintenance of such animals or fowls may be at the discretion of the health officer. Owners and keepers of such animals and fowls, when specifically notified to dispose of them by the health officer shall comply within twenty (20) days with such notice, or correct all deficiencies in keeping with the standards herein prescribed. (1995 Code, § 10-203)

10-204. Temporary permit for show animals. Persons bringing show animals into the city for the purpose of exhibiting or showing shall apply for a temporary permit to the health officer. The health officer shall have authority to grant such temporary waivers as will, in the opinion of the health officer, not adversely offset the health of the community. No waiver may be granted for more than twenty (20) days. (1995 Code, § 10-204)

10-205. Pen, stables, etc., to be clean. (1) No animals or fowls described in § 10-201 shall be kept in any place in which manure or liquid discharges from such animals or fowls is allowed to

collect or accumulate to any degree of offensiveness. Further, all such manure and liquids shall be at once removed to some proper place of disposal and/or effectively stored between periods of removal in closed containers, which shall provide for the maximum practical fly, rodent and order control.

(2) Stalls, stables, pens, yards and appurtenances in which such animals and fowls are kept shall at all times be maintained in a clean and wholesome condition, so that no offensive odor shall be allowed to escape therefrom, and no rodent, flies or other insects will be able to breed therein or become attracted thereto.

(3) Buildings, pens, yards, and appurtenances constructed for the purpose of housing and impounding animals and fowls shall be located with adequate drainage and constructed so as to facilitate routine cleaning.

(4) This section shall also apply to dogs. (1995 Code, § 10-205)

BARTLETT

10-101. Keeping of poultry or fowl within residential and the corporate limits. (1) It shall be unlawful for any person to engage in any form of commercial poultry or egg business within a residential district of the corporate limits of the City of Bartlett.

(2) A residential district is hereby defined as the land fronting on both sides of a street and extending to the rear lot lines, where, at the time of enactment of the ordinance comprising this section, less than twenty-five percent (25%) of the frontage is used for commercial and industrial purposes within a distance of two hundred (200) feet to a site where a building or structure is proposed to be erected, altered or used for commercial or industrial purposes or the land used for such purposes. If there is an intersecting street within said two hundred (200) feet of such a site, the residential district shall extend only to the street line of such street. In determining the percentage of commercial and industrial frontage in any district, land and buildings used for the following purposes shall be considered as residential frontage:

- (a) Churches, Sunday schools, and other places of worship;
- (b) Public schools, libraries and other public buildings, and public parks and playgrounds;
- (c) Hospitals or sanitariums;
- (d) Vacant land.

(3) It shall be unlawful for any family to keep at any time more than eight (8) hens per family member.

(4) It shall be unlawful for day-old or young poultry to be kept or housed within a residential district as hereinabove defined in excess of the number of twenty-five (25) per family member.

(5) It shall be unlawful for any person to permit poultry or fowls to run at large upon the property of others, or permit buildings, runs, pens, or yards within which such fowls are kept to become dirty and littered to the extent that any they attract flies, become a breeding place for flies, or create an odor that is offensive and inimical to the health and general welfare of the citizens adjacent thereto.

(6) Any person violating any provision of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two dollars (\$2.00) nor more than fifty dollars (\$50.00) for each offense. Each day such violation shall continue shall constitute a separate offense. (Ord. #55-4, Nov. 1955)

10-102. Dog stands, animals, fowl, and pets. Where four (4) or more dogs are kept or boarded on a private or public premises or where other animals, fowl or pets are kept or boarded on a

private or public premise, the owners shall be required to install a concrete area with one or more floor drains. All drains shall be connected to the public sewer. A vertical curb shall be made a part of the floor and the curb shall extend six (6) inches above the floor. (Ord. #83-15, Aug. 1983, modified)