Honey, It's All the Buzz: Regulating Neighborhood Beehives

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HONEY, IT’S ALL THE BUZZ: REGULATING NEIGHBORHOOD BEEHIVES

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Abstract: Beekeeping’s popularity has surged in recent years, perhaps culminating in the introduction of the first ever White House bee hive. Local apiaries provide a wide variety of benefits to communities, ranging from pollination services for gardens to producing honey that can be used in a wide array of foods and products. Apiaries are not always welcome in a community, however, perhaps because of their potential to cause a nuisance, or to harm crops or people. Although beekeeping regulation implicates both state and federal concerns, a number of localities have developed unique and practical regulations that promote backyard beekeeping, while maximizing its benefits and minimizing its potential harm. This Article examines those regulations with the hope of aiding land use regulators in developing strategies to promote beekeeping activities.

Introduction

Urban beekeeping, along with other types of sustainable development and green building, has generated quite a buzz in recent years. Since 2009, the White House has maintained a hive of 70,000 bees that produce honey for the presidential kitchen and pollinate the vegetables in First Lady Michelle Obama’s kitchen garden.1 Chicago has its own city-managed apiaries at City Hall, in both city zoos, and in the Garfield Park Conservatory.2 Other cities across the country, including New

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York, Denver, Milwaukee, and Santa Monica, have recently legalized beekeeping.3

Small-scale beekeeping has proven to be especially popular among people looking to obtain more of their food from local sources.4 Urban bees provide important pollination services to community gardens, home vegetable gardens, and fruit trees.5 Some people also believe that honey contributes to a healthy lifestyle by providing a minimally-processed sweetener as an alternative to highly manufactured sugar products, such as high-fructose corn syrup,6 and through its various uses as a homeopathic remedy.7 Additionally, urban beekeeping may help offset the huge losses that commercial bee populations have suffered since the emergence of colony collapse disorder in 2006.8

Small-scale beekeeping bolsters local economies, too. Restaurants benefit by being able to purchase local honey for dishes and cocktails.9


5 See Gross, supra note 4; Williams, supra note 4.

6 See, e.g., Gary Taubes, Is Sugar Toxic?, N.Y. TIMES MAG. (Apr. 13, 2011), http://www.nytimes.com/2011/04/17/magazine/mag-17Sugar-t.html?pagewanted=all (Despite the chemical similarities of different types of sugar-based sweeteners, “high-fructose corn syrup has indeed become ‘the flashpoint of everybody’s distrust of processed foods’”—quoting New York University nutritionist Marion Nestle—and that “refined sugar is making a commercial comeback as the supposedly healthful alternative to this noxious corn-syrup stuff.”)

7 See, e.g., P.C. Molan, The Role of Honey in the Management of Wounds, 8 J. WOUND CARE 415, 415–16 (1999) (examining the antibacterial, antioxidant, and anti-inflammatory properties of honey); Kim Mulford, Jury’s Out on Honey’s Health Benefits, but Buzz Grows, DAILY COMET (Lafourche Parish, La.) (Mar. 28, 2011), http://www.dailycomet.com/article/20110328/WIRE/110329471 (Although medical groups have not recognized apitherapy as a medical treatment, “the buzz about the benefits of the honeybee has been growing, from slurping down honey as a remedy for allergies and colds to injecting bee venom as a treatment for multiple sclerosis and arthritis.”).


9 See, e.g., Emily DeNitto, Locally Grown Food, From Backyard Hive, N.Y. TIMES, July 31, 2011, at WE10 (noting that one local beekeeper’s honey “will be used in their restaurants in such diverse products as vinaigrettes, gelato and pizza dough”).
Further, retail stores are provided with high quality artisanal honeys and beeswax-derived products such as candles, soaps, and cosmetics.\textsuperscript{10} Other products, such as pollen, propolis, and royal jelly, can also be harvested and produced from bees and sold as natural remedies or health supplements.\textsuperscript{11} The popularity of apiculture and bee products has even led to the establishment of bee-themed festivals and tourism events in some communities,\textsuperscript{12} as well as beekeeping and honey-processing classes.\textsuperscript{13}

Despite the benefits and growing popularity of backyard beekeeping, apiaries are not always welcomed by the neighbors. This Article is designed to provide information to land use regulators about the benefits and drawbacks of beekeeping in residential areas, and to offer


strategies for addressing beekeeping activities through local laws and ordinances.

I. Federal Beekeeping and Honey Regulations

Unlike many other agricultural products, there are relatively few federal restrictions on the production and sale of honey. The U.S. Department of Agriculture (USDA) has the authority to restrict the importation of honeybees and certain honeybee products into or through the United States to protect the beekeeping and honey industries from the introduction and spread of diseases, parasites, and undesirable genetic traits. The USDA also has oversight authority over the National Honey Board, a non-regulatory federal board that conducts research, marketing, and promotional programs. In addition, the USDA considers pollinator protection a high-priority area for their research grants.

The USDA and the Food and Drug Administration (FDA) share oversight of honey manufacturing and labeling. Packaged honey bearing any official USDA mark or grade on its label must identify its country of origin. Honey labels must also comply with the FDA’s requirements for nutrition and ingredients labeling. The FDA prohibits adulteration and misbranding of honey products, although there is

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17 HACKETT ET AL., supra note 8.
21 21 U.S.C. § 342 (2006); 21 U.S.C.A. § 343 (West 1999 & Supp. 2011) (defining adulteration and misbranding). Honey products found to be adulterated or misbranded are subject to seizure by the FDA, and violations are punishable by up to one year in prison and/or a fine of up to $1000 with increased penalties for subsequent convictions. 21 U.S.C.A. §§ 333–334 (West 1999 & Supp. 2011). See United States v. “Cal’s Tupelo Blossom U.S. Fancy Pure Honey,” 344 F.2d 288, 289 (6th Cir. 1965) (holding that a booklet and leaflet constituted misbranding of honey because they portrayed honey as a drug and a panacea for various diseases and ailments); United States v. 24 Bottles “Sterling Vinegar & Honey, etc.,” 358 F.2d 157, 159 (2d Cir. 1964) (holding that two books prescribing vinegar and honey for a variety of ailments and a product containing honey and vinegar did not
currently no national purity standard for honey.\textsuperscript{22} Additionally, the FDA has authority to regulate food production facilities and transportation operations to ensure that they use sanitary handling practices.\textsuperscript{23} Pursuant to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, the FDA requires facilities that manufacture, process, or hold honey products to register their facilities, maintain records, and give prior notice of imported shipments.\textsuperscript{24} This Act, however, exempts farms and restaurants from these registration and record-keeping requirements.\textsuperscript{25}

II. STATE BEEKEEPING AND HONEY REGULATIONS

Given the limited scope of federal honey regulations, individual states have broad authority to control beekeeping and honey production activities. In most states, apiaries are subject to registration and inspection requirements intended to prevent the spread of bee diseases and parasites.\textsuperscript{26} These regulations usually include procedures for constituting misbranding because the honey product itself did not have any misleading labeling and there was no evidence that the books were intended to accompany the honey product); United States v. An Article of Food, etc., 550 F. Supp. 15, 18 (W.D. Okla. 1982) (finding a product labeled as “pure raw honey” was misbranded because it fell within the standard for “table syrup” but failed to disclose optional ingredients on the label).


ducting inspections, requirements for moving bees into and out of the state, and provisions relating to quarantines, the seizure of infected or noncompliant hives, and the destruction of diseased bees and contaminated equipment. Other bee regulations include requirements for apiary siting and identification, as well as specific provisions for nuisance apiaries and abandoned apiaries. In a few states, hobbyist apiaries are exempt from general bee regulations.

A bee-inspection law was held to be a valid police power regulation in *Graham v. Kingwell*, decided by the Supreme Court of California in 1933. As the court explained:

[T]he act . . . was enacted “to promote the agricultural interests” of the state and “to prevent the introduction and spread of [bee] disease.” Examination of its provisions indicates that they reasonably tend to the accomplishment of this purpose. In order to prevent the transmission of bee diseases from one location to another, provision is made in section 6 of the act for inspection of apiaries by the county inspector, for notice to the owner to eradicate disease, if found, and for the eradi-

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30 E.g., Mont. Code Ann. § 80-6-111 (requiring general apiaries to be at least three miles apart); id. § 80-6-112 (requiring the applicant for a pollination apiary site to own, lease, or rent the property and requiring the property to be used for commercial crop farming); Wyo. Stat. Ann. § 11-7-206 (requiring most apiaries to be at least two miles apart); see North Dakota v. Knoefler, 325 N.W.2d 192, 194, 201 (N.D. 1982) (upholding defendant’s conviction for maintaining an apiary within two miles of another apiary, as prohibited by statute).


34 E.g., Idaho Code Ann. § 22-2510 (exempting hobbyist beekeepers from registration requirements); Mont. Code Ann. § 80-6-114 (exempting hobbyist apiaries from registration requirements and limiting them to five hives).

35 24 P.2d 488, 488–89 (Cal. 1933).
cation of American foulbrood by burning. This same section also declares all diseased apiaries to be public nuisances, makes provision for their abatement by the county inspector in the event the owner, after notice, fails to abate them, reserving to the owner a right to appeal the field inspector’s diagnosis. These and other provisions of the act reasonably tend to promote the bee industry by lessening, if not precluding, the transmission of bee diseases, thereby adding to the welfare and prosperity of the state.^[36]

Restrictions on the importation of bees and bee products were similarly upheld under the state police power in Wyant v. Figy, a Michigan case decided in 1954.^[37] In Trescott v. Conner, a Florida beekeeper who transported his hives to New York each summer challenged a Florida beekeeping law that required him to receive a certificate of health before returning to the state.^[38] The beekeeper argued that the provision limiting such certifications to thirty days was invalid because it did not give him sufficient time to transport his bees between the two states.^[39] The court noted that other beekeepers were able to comply with the provision, and concluded that “the thirty-day requirement is a reasonable one serving the purpose of detecting the possible presence of infection of bees before they are brought into Florida.”^[40]

While inspection laws may be generally valid, apiary inspections conducted randomly and without a warrant may run afoul of the Fourth Amendment.^[41] This issue was raised in a challenge to Ohio’s apiary inspection statute in Allinder v. Ohio.^[42] The U.S. Court Appeals for the Sixth Circuit held that the provision for random, nonconsensual, and warrantless inspections violated apiary owners’ Fourth Amendment rights and did not fall within the administrative search exception.^[43] Missouri’s beekeeping law also requires bee inspectors to have probable cause that an apiary is diseased prior to conducting an

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36 Id. (alteration in original) (citation omitted).
39 Id. at 767.
40 Id.
41 See Allinder v. Ohio, 808 F.2d 1180, 1188 (6th Cir. 1987).
42 Id.
43 Id.
inspection. Nevertheless, most states permit apiary inspections at any time and without a warrant.

States have also attempted to address potential sources of conflict between apiary owners and neighboring crop growers. Apiary owners can sustain significant damages if pesticides are applied to fields where their bees are foraging, but bees can also cause damage to farmers if they are permitted to pollinate seedless crops. Regulatory provisions addressing these conflicts focus primarily on preventive notification systems and rules for apportioning liability.

The production, packaging, transportation, labeling, and sale of honey are also heavily regulated in many states. California’s honey production regulations, for example, include the establishment of grade and sampling standards to ensure uniformity among honey products, provisions authorizing the inspection of any facility where honey is produced, stored, transported, or sold, and the seizure of any noncompliant honey. Labeling standards also prohibit products called “imitation honey,” as well as adulteration, mislabeling, the use

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45 Allinder, 808 F.2d at 1182 n.3.
46 See, e.g., Hall v. C & A Navarra Ranch, Inc., 101 Cal. Rptr. 249, 251 (Ct. App. 1972) (holding that the beekeeper may be able to recover damages, even though he failed to comply with the notification requirement when he moved his bees, because the pesticide applicator had actual knowledge of the bees’ location); Lenk v. Spezia, 213 P.2d 47, 53 (Cal. Dist. Ct. App. 1949) (holding that the beekeeper was not entitled to damages because he was notified prior to the pesticide’s application); Brown v. Sioux City, 49 N.W.2d 853, 858–59 (Iowa 1951) (holding the city liable for damage to bees caused by pesticide application at municipal airport); Anderson v. Dep’t of Natural Res., 693 N.W.2d 181, 187 (Minn. 2005) (finding that the beekeeper was entitled to damages because even if the bees were trespassers, a duty arose on the property owner’s behalf if he had actual knowledge or notice of foraging bees).
51 Id. § 29445.
52 Id. § 29447.
53 Id. § 29451.
of misleading label statements, and the use of inappropriate contain-
ers.\textsuperscript{54} Specific standards and labeling requirements are provided for comb honey, crystallized honey, and extracted honey.\textsuperscript{55} Labels also have to comply with place of origin and floral flavor requirements.\textsuperscript{56}

Beyond honey regulations, general agricultural regulations may also impact beekeepers and honey producers. Right to farm laws, for example, often apply to apicultural operations.\textsuperscript{57} Such statutes protect apiaries from liability in cases where neighbors came to the nuisance.\textsuperscript{58} However, not all states consider agriculture to include beekeeping. For example, Michigan’s Right to Farm Act was raised in a case that involved the establishment of an apiary on property that had been used for crop farming prior to its inclusion in a residential district.\textsuperscript{59} Although the defendants claimed that beekeeping was an agricultural use permitted based on the property’s preexisting farm use, the court disagreed, finding instead that an apiary was an unlawful extension of the nonconforming farm and therefore constituted a nuisance per se.\textsuperscript{60} The court also rejected the defendants’ claim that the apiary was protected by Michigan’s Right to Farm Act because the apiary was established after the enactment of restrictive zoning regulations.\textsuperscript{61}

\section*{III. Nuisance Law and Bees}

Bees can create a nuisance if they become aggressive or swarm on neighboring property, but they have not typically been considered a per se nuisance.\textsuperscript{62} Rather, courts addressing whether hives constitute a nuisance look to injuries resulting from the hive owner’s negligence, and the hives’ interference with neighbors’ enjoyment of their property.\textsuperscript{63} In

\textsuperscript{54} \textit{Id.} §§ 29472, 29671–29674, 29677.
\textsuperscript{55} \textit{Id.} §§ 29581–29620.
\textsuperscript{60} \textit{Id.} at 54.
\textsuperscript{61} \textit{Id.} at 55.
\textsuperscript{63} \textit{See, e.g.}, \textit{Arkadelphia}, 11 S.W. at 958 (“Neither the keeping, owning, nor raising of bees is in itself a nuisance. Bees may become a nuisance in a city, but whether they are so or not is a question to be judicially determined in each case.”); \textit{Ferreira v. D’Asaro}, 152 So. 2d 736,
a New York case, for example, a county court determined that while keeping honeybees was generally permissible, the owner still had a “duty of maintaining them in such a manner that they will not annoy, injure or endanger the comfort, repose, health or safety of any considerable number of persons or to render a considerable number of persons insecure in the use of their property . . . .”64 In a Pennsylvania case, a township claimed that a resident’s bees constituted a public nuisance based on neighbors’ complaints about brown spots found on laundry that had been hung out to dry.65 The spots were caused by deposits of the bees’ fecal matter and were only produced during the bees’ first flight of the spring—when they left the hive heavy with wastes built up over the winter months.66 The court ruled, based on these facts, that the brown spots were not a frequent enough annoyance to create a nuisance.67

Conversely, an Ohio court concluded that a defendant’s beekeeping and honey business constituted a nuisance based on largely undisputed evidence that after the plaintiffs purchased adjacent land, their property was “invaded by an inordinate number of bees . . . which collect[ed] around their doors and windows, in the grass, and near the farm pond, stinging the plaintiffs and their guests on many occasions . . . .”68 Although the defendants argued that liability should be precluded because the plaintiffs came to the nuisance, the court concluded that when the plaintiffs bought their property there was no in-

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66 Id. at 560.
67 Id. at 560–61.
dication that the premises were subject to any nuisance caused by the bees. Rather, it was only after the plaintiffs purchased their land that the defendants increased the scale of their beekeeping operation, and so it could not be said that the plaintiffs should have foreseen the injuries that would be caused by the defendants’ bees.

The location of beehives in relation to adjoining properties is often relevant to the question of nuisance liability. In *Allman v. Rexer*, a Pennsylvania court found that “[i]t is negligence to locate the hives so near a place where persons or animals may be expected to be as to make it appear likely that the bees will be angered by their presence and attack them.” Similarly, a Florida court held that a property owner could be found negligent for maintaining beehives so close to neighboring properties as to create a foreseeable risk of injury from bee stings. However, the Supreme Court of Texas held that the owner of property where beehives are kept has no duty to warn guests about the risks of allergic reactions to bee stings when they are aware of the presence of bees, as the risk of injury to the guests in such a case is obvious.

The ownership of nuisance bees is also a relevant consideration. For example, in a Pennsylvania case the plaintiffs alleged that the defendant’s bees had stung them on their own property. But the court found that the plaintiffs failed to prove liability, as there were other hives kept in the surrounding area, and “no attempt whatsoever was made to trace the flight of the particular bee or bees involved.”

IV. LOCAL BEEKEEPING REGULATIONS

Local governments must be mindful of federal and state regulations in drafting their own bee ordinances, as certain provisions could be subject to preemption. Georgia, for example, expressly precludes a variety of local apiculture regulations:

No county, municipal corporation, consolidated government, or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation, or resolu-
tion prohibiting, impeding, or restricting the establishment or maintenance of honeybees in hives. This Code section shall not be construed to restrict the zoning authority of county or municipal governments.\footnote{Ga. Code Ann. § 2-14-41.1 (2000).}

Agricultural use preemption statutes in some states may also apply to bees and apicultural facilities, as in Illinois, where counties may not ordinarily “impose regulations, eliminate uses, buildings, or structures, or require permits with respect to land used for agricultural purposes, which includes . . . apiculture . . . .”\footnote{55 Ill. Comp. Stat. Ann. § 5/5–12001 (West 2011). This exemption only applies to parcels of land consisting of five or more acres, or those that sell at least $1000 in agricultural products. Id.} Similarly, local governments in New York are prohibited from unreasonably restricting agricultural activities in certified agricultural districts,\footnote{N.Y. Agric. & Mkts. § 305-a (McKinney 2004).} and apiaries are specified as falling within this protection.\footnote{Id. § 301 (McKinney 2004 & Supp. 2011).}

Where not subject to preemption, apiaries and related land uses will be subject to generally applicable zoning requirements. Beekeeping, for example, is usually defined as an agricultural use and may be prohibited in residential areas,\footnote{E.g., Ex parte Ellis, 81 P.2d 911, 912 (Cal. 1938) (“There is sufficient recognition in the decided cases that bees may become a nuisance in residential areas . . . [and] the facts appearing herein justify the ordinance prohibiting beekeeping within the city except in the designated areas, and that the ordinance is not unconstitutional for any reason.”); People v. Kasold, 314 P.2d 241, 242 (Cal. Ct. App. 1957) (upholding an ordinance that prohibited beekeeping in residential districts but allowed the activity in other districts subject to restrictions on the density of beehives, because bees were not domesticated animals, and the ordinance was intended to serve the valid police power purpose of protecting people and animals from injuries).} and apiaries will be subject to requirements for nonconforming uses\footnote{See, e.g., Jerome Twp. v. Melchi, 457 N.W.2d 52, 54 (Mich. Ct. App. 1990) (holding that an apiary was an unlawful extension of a nonconforming agricultural operation located in a residential district).} and accessory structures.\footnote{See, e.g., Gilman v. Kent Cnty. Dep’t of Planning, No. C.A. 99A-05-001 HDR, 2000 WL 305341, at *3–4 (Del. Super. Ct. Jan. 28, 2000) (reversing a denial of a variance for an accessory structure to store the property owners’ beekeeping equipment because the adjudicating body applied the wrong legal standard and failed to make specific findings of fact for judicial review).} Some local governments have enacted ordinances specifically pertaining to beekeeping. The following sections discuss common features of these local bee laws.
A. Classification of Bees

Before backyard beekeeping can be permitted, some cities may need to amend their ordinances to clarify that bees are not prohibited wild animals. Last spring, for example, New York City lifted its ban on beekeeping through an amendment to its Health Code that expressly removed non-aggressive honey bees from the list of prohibited “venomous insects.” Similarly, Denver bans the keeping of “wild or dangerous animals,” but specifically states that domesticated honey bees do not fall within the prohibition. In Littleton, Colorado, beekeeping was recently designated an allowable activity in “park [and] open space” districts.

B. Lot Size and Colony Density

One of the most common issues addressed in beekeeping ordinances is the number of hives that owners can keep on their property. Minimum lot sizes for beekeeping and colony density regulations help to ensure that urban and suburban apiaries do not grow so large as to create a nuisance. Limiting the number of hives within urban areas may also be important in order to prevent bee populations from outgrowing the supply of available foraging sites.


Beekeeping is permitted in “all or most zoning districts” in Dayton, Ohio, but the city requires a lot size of at least 7500 square feet for the first hive and an additional 5000 square feet for each additional hive. Fort Collins, Colorado, has implemented a similar plan, basing the number of permitted hives on the acreage of the property. Under the regulations, two colonies can be kept on a tract of land that is less than a quarter of an acre. If the parcel is between a quarter and a half-acre, a beekeeper can have up to four colonies. The next size range covers lots ranging from a half to a full acre, and permits up to six colonies on the property. Eight colonies are permitted on any property larger than an acre, but the ordinance includes an exception for additional colonies when they are set back at least two hundred feet from all property lines.

C. Setbacks

Setbacks, like minimum lot size requirements, are commonly used to decrease the potential nuisance effect of beekeeping operations. Setbacks applying to beekeeping activities vary widely in their length and scope. In Dayton, for example, beehives are required to be at least ten feet from any lot line, ten feet from any dwelling, and at least thirty feet from any public sidewalk or roadway. Additionally, Dayton requires the hive’s entrance to face “away from the property line of the residential lot closest to the beehive.” Larger setbacks are imposed in other cities, as in Tuscaloosa, Alabama, where it is illegal to keep bees

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92 Id. § 4-233(a)(1).

93 Id. § 4-233(a)(2).

94 Id. § 4-233(a)(3).

95 Id. § 4-233(a)(4)–(5).


98 Id.
within one hundred fifty feet of any school, public park, or playground, or within three hundred feet of any residential property line.99 San Diego requires that beehives must be located at least one hundred feet from any public roadway.100

D. Flyway Barriers

Some ordinances require beekeepers to install a “flyway barrier,” which is usually a solid fence, wall, or dense line of hedges.101 These structures raise the flight path of bees leaving the hive, thereby limiting their interactions with nearby residents.102 Fort Collins requires six-foot tall flyway barriers spanning ten feet along the property line in both directions, unless the adjoining property is undeveloped for at least twenty-five feet past the property line.103 Dayton requires that if a hive is within ten feet of a rear or side property line, six-foot fencing must be constructed and must extend at least twenty feet on either side of the hive.104 The requirement will be waived, however, if the hive is placed on a porch or balcony that is at least ten feet off the ground and at least ten feet from the property line.105

E. Access to Water

It is important for beekeepers to provide water for their bees so that they do not congregate at swimming pools, pet water bowls, bird-baths, and other water sources on neighboring properties.106 Requirements to this effect have been enacted in New York City107 and Dayton,


101 See, e.g., Littleton, Colo., City Code § 10-4-14(d); Pittsburgh, Pa., Zoning Code §§ 911.04.A.2(b) (6), 912.07.B(12).


105 Id.


Ohio. Beekeeping associations in many other municipalities have proposed similar requirements. While some ordinances include only a general requirement, San Diego’s bee ordinance specifies that the water source must be within ten feet of the apiary.

### F. Permits and Registration Requirements

Some bee ordinances include registration requirements. In New York City, for example, beekeepers must provide information regarding the number and location of their hives in order to obtain registration from the New York City Department of Health. Local registration requirements might raise preemption issues, however, as many states have enacted comprehensive apiary registration laws.

### G. Apiary Identification Signs

In San Diego, beekeepers must erect a sign “prominently displayed on the entrance side of the apiary stating, in black letters not less than one inch in height on a background of contrasting color, the name of the owner or person in possession of the apiary, his address, and telephone number.” Fort Collins also requires that apiary owners “conspicuously post” signs with their name and contact information. Other cities have enacted similar requirements.

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112 See supra note 26 and accompanying text.
113 San Diego, Cal., Mun. Code § 44.0411.
H. Fire Safety Regulations

When harvesting honey, beekeepers typically fill the hives with smoke to subdue the bees.\textsuperscript{116} Cities may impose restrictions on smokers because they create an obvious fire hazard.\textsuperscript{117} San Diego, for example, requires the apiary controller to maintain a firebreak at least thirty feet wide in all directions around the apiary.\textsuperscript{118} Within this firebreak, the first ten feet from the apiary must be kept free of combustible material and any vegetation must be six inches or shorter.\textsuperscript{119} Vegetation up to a foot tall is permitted in the remaining twenty feet.\textsuperscript{120} San Diego also requires the apiary controller to maintain basic fire-fighting materials, such as shovels, fire extinguishers, and hoses.\textsuperscript{121} Additionally, the bee smoker must be completely extinguished by water prior to transportation, or it must be placed in a securely fastened metal container.\textsuperscript{122}

CONCLUSION

Designing effective beekeeping ordinances requires local governments to address concerns about nuisances, but they must also be aware of beekeepers’ complaints that local regulations are too strict and that state laws, general zoning requirements, and nuisance liability are sufficient to ensure the safe and sanitary operation of beehives.\textsuperscript{123} When the proper balance is struck between these competing interests, beekeeping ordinances can become an important part of a city’s urban agriculture regulations.

\begin{footnotes}
\item[117] Id.
\item[118] San Diego, Cal., Mun. Code § 44.0413(a).
\item[119] Id.
\item[120] Id. § 44.0413(b).
\item[121] Id. § 44.0414(a)–(b).
\item[122] Id. § 44.0415(b)–(d).
\item[123] See, e.g., Ikimulisa Livingston, Mind Your Own Bees-Ness, NYC!, N.Y. Post, July 16, 2011 at 7; Mario Moretto, Keepers Bee-Moan South Portland Ordinance, Forecaster (Maine) (June 29, 2011), http://www.theforecaster.net/content/s-south-portland-beekeeping-ordinance-070111.
\end{footnotes}