

URBAN BEEKEEPING: WHAT IS ALL THE BUZZ ABOUT?

BY: CHRISTINE ARENA

FEBRUARY 2010

In the past five years urban agriculture in New York City has been making headlines.¹ Agricultural activities (e.g. gardening, beekeeping, and keeping chickens) that traditionally have been reserved for people residing in

significance thanks to its devoted followers, mostly found on the Internet.¹¹ The volume of Web sites suggests that most urban beekeepers are turning to the Internet for support and advice from fellow enthusiasts.¹²

Just Food is a non-profit organization that describes itself as developing "a just and sustainable food system in the New York City region."¹³ It is one of the biggest proponents of legalizing beekeeping in New York City. It supports beekeeping in New York City because it believes that urban beekeeping benefits "public, economic, and environmental health."¹⁴ It claims the benefits of

City include the Beekeepers Ball¹⁷ and the Beekeepers Rally, events that are hosted by Just Food.¹⁸

New York City, like other major cities, has its own beekeeper's association, which includes a Web site.¹⁹ The New York City Beekeepers Association's Web site is live and accessible to the public despite beekeeping being illegal in New York City. The only indication that the Web site gives that would alert the visitor of the legal status of beekeeping is a tiny disclaimer at the bottom of the page that reads:

*Bees are classified as wild animals under New York City Health Code Section 161 and may not be privately kept without approval of the Department of Health. This organization is dedicated to expanding the knowledge of bees and beekeeping and does not condone or promote the violation of this or any other city ordinance.*²⁰

Other than that small note, the Web site makes it very hard to tell that beekeeping is illegal in New York City. It provides information on membership in the association,²¹ classes on beekeeping,²² and a calendar of events that includes monthly meetings.²³ All of the tools and knowledge needed to succeed in urban beekeeping are provided. The spirit of the Web site, which is to pretend that beekeeping in New York City is not illegal and punishable under New York City Code, is the same approach that many of New York City's citizens have decided to take concerning beekeeping.

apitherapy. Beekeeping has also become the "thing to do" in New York City.

Urban beekeeping is environmentally vital, economical, and educational. These reasons are reflected in the petition that Just Foods is urging New York City beekeepers to sign. It reads: "Beekeeping is a vital practice, one essential to the health of our urban environment and has tremendous potential as a vehicle for economic development and education efforts City-wide."²⁸ There are several more specific reasons for urban beekeeping that fall within the three enumerated ones, including concerns about Colony Collapse Disorder (environmentally vital), supporting the local food movement (economical), and wanting to know the origins of one's food because of food safety concerns (educational). In addition, some urban beekeepers have credited their interest in urban beekeeping to the desire to break the monotony of routine urban life.

(a) Urban beekeeping has environmental benefits.

The environmental benefit of beekeeping stems from honeybees engaging in pollination. Pollination is a very important part of agriculture. In fact, the pollination from honeybees is responsible for producing a third of the nation's diet.²⁹ There is a myriad of crops that require or

benefit from honeybee pollination including almonds, apples, blueberries, cashews, cherries, cucumbers, peaches, pears, pumpkins, raspberries, soybeans, squash, and sunflowers.³⁰ More than 3.5 million acres of those crops depend on honeybees for pollination, which is worth about \$15 billion to the food industry nationwide.³¹

Pollination is particularly important in New York City. Research shows that approximately 15% of the world's foods are produced in areas considered, like New York City, to be urban.³² New York City is no exception to the list of cities producing substantial amounts of food. A study done in New York City that was released in 2009 indicated that 92% of the crops found in New York City community gardens require pollination in order to set fruit or seed.³³ Some of the most popular New York City crops (e.g. sweet peppers, tomatoes, and cucumbers) require pollinators to flourish.³⁴ There are also a number of other crops, such as strawberries, lettuce, and eggplant, that have varying degrees of "positive impact by animal pollination" that are grown in New York City community gardens.³⁵

The same study discussed the importance of bee diversity. There are over 220 different bee species that have been found within New York City limits but only 54 found in New York City community gardens.³⁶ If there were a

greater diversity of bees in the gardens of New York City there would be more types of crops that would be able to produce in greater quantity. Allowing beekeeping in the city would allow a greater diversity of bees to be maintained.

Colony Collapse Disorder (CCD) has recently become a troubling issue affecting bee colonies. It occurs when the adult worker breed population abandons the egg-laying queen bee of a colony.³⁷ This mysterious phenomenon has been occurring throughout the United States. There are many theories but scientists cannot say with certainty what is the main cause; however, most have narrowed it down to three possibilities: pathogens, environmental chemicals, and nutritional stressors.³⁸ In October 2007, thirty-five states reported experiencing CCD.³⁹ CCD is expected to get worse before it gets better, as researchers rush to discover the cause and the remedy.⁴⁰

change could destroy their homes at anytime. One apiculturist⁴¹ in Washington, D.C. even contends that "bees raised in the city often are healthier than those in rural areas" because of the generally decreased use of pesticides within cities.⁴² Another environmental argument that many beekeepers have is that access to local honey is environmentally friendly because it reduces honey's carbon footprint.

(b) Urban beekeeping has economic benefits.

There are collective and individual economic benefits to urban beekeeping. The collective benefit refers to the

Some of the economic benefits of urban beekeeping are entwined with the positive aspects of the local food movement. Many New Yorkers are supporters of local food. They believe that producing and/or purchasing local food is

also one of few pets that can be allowed to roam free and

includes sitting in an office building or cubicle for eight hours a day.⁴⁸ Gardening and tending to chickens and bees breaks the monotony of a standard day. It also allows for

Bee sting therapy is another type of apitherapy. It is believed that the ancient Egyptians used honeybee products to alleviate arthritis.⁵⁵ Since then it has been used to treat many different ailments. Currently, research is being conducted to uncover whether it is suitable to be used to treat certain diseases, such as multiple sclerosis (MS).⁵⁶ Preliminary research indicated a strong possibility that bee sting therapy, also known as bee venom therapy, ease symptoms of other conditions such as chronic fatigue syndrome and tendonitis.⁵⁷

(2) It is cool to keep bees in New York City.

As demonstrated, there are many legitimate reasons to engage in agricultural activities such as beekeeping in New York City. One possibly significant and arguably less legitimate reason remains. Engaging in agricultural activity is the "in" thing to do in New York City. Several social organizations have been established that encourage and cater to those interested in activities such as urban chickens, rooftop gardening, and urban beekeeping.⁵⁸ A significant number of these organizations are primarily interested in urban beekeeping. Such organizations host social events like the Beekeepers Ball⁵⁹ and monthly meetings.⁶⁰ Urban beekeeping has become so trendy that even First Lady Michelle Obama had to have hives brought to the

White House.⁶¹ The Constitution Gardens on the South Lawn of the White House Gardens are now complete with two beehives.⁶² Mrs. Obama uses her honey to present as gifts to foreign dignitaries and the guests of the First Family.⁶³

Although it seems that urban beekeeping is a new phenomenon history tells a different tale. Records indicate that bees have

wasp." The prohibition is contained in the same ordinance that outlaws lions and tigers

addition, he appeared to be in the minority. No bill has since been proposed or considered concerning lifting the ban on beekeeping in New York City.

(III) Prohibiting beekeeping, even in cities, is not the norm.

The legal status of bees in New York City is somewhat unusual. Other parts of New York State, including the city of Rochester, afford protections for beekeepers. The laws governing portions of New York State outside of New York City consider bees to be "agricultural commodities" to be used to produce honey for sale.⁷⁵ Bees are welcome in most parts of New York State, although there are regulations concerning bee diseases and the size of the combs.⁷⁶ Cities similar in size and socioeconomic status to New York City, such as San Francisco and Washington D.C., also allow beekeeping.

Some may think that the disparate treatment of beekeeping between parts of New York State and New York City is due to the fact that beekeeping is considered a livelihood in more rural areas as opposed to just a hobby in the city. However, that assertion carries much less weight than it did in the past. Urban New Yorkers are also using bees as a means of earning a living. Some sell the

honey and products of the bee, whereas others depend on its pollination efforts.

Prohibiting beekeeping in New York City also seems strange when one considers that several other major cities, domestic and abroad, allow beekeeping. San Francisco is a prime example of a recent conversion. Like New York City, San Francisco has a list of animals that are prohibited within San Francisco limits. However, unlike New York City, the law in San Francisco currently explicitly excludes honeybees from that list.⁷⁷ The law pertaining to

(IV) Honeybees are not inherently more dangerous in cities.

honeybees are safe explain that a distinction needs to be made among honeybees and wasps. The two types of insects are often lumped together but in fact each is quite unique and dissimilar to the other. Wasps include yellow jackets and hornets. Both are aggressive insects. Yellow jackets are often confused for honeybees because of their yellow and black coloring. However, they can be distinguished because they do not have the same dense hair covering their body that honeybees do and they do not have hind legs, which honeybees do to carry pollen.⁸⁴ Hornets are social wasps and are capable of engaging a total colony in stinging any potential predators in order to defend their nest.⁸⁵ Hornets can bite and sting at the same time.⁸⁶

On the other hand, honeybees are not aggressive. In fact, only female bees even have stingers and they are reluctant to sting you because once they do they die. When a bee stings a human it leaves the barbed shape stinger with the poison sac attached in the human. The detachment of the stinger eventually causes the death of the bee.⁸⁷ This rarely occurs, though, because bees are so busy working that they usually do not notice human beings. Bees will only sting if they feel personally threatened or a need to defend the colony.⁸⁸

There is one strain of honeybees that are aggressive,
the Africanized honeybee or killer bee, but they are only

other parts of New York? The reason for keeping bees in the city may be the answer. There is a theory that beekeeping in New York City is less legitimate because when engaged in there, it is considered a hobby. It is not a livelihood or commercial enterprise as in more rural areas. The question then becomes whether it is appropriate for the law to treat New York City beekeepers differently because their purpose for beekeeping is not identical to that of other New Yorkers. It is not. New York City citizens have many commendable reasons for keeping bees, which should be recognized by the law. It is not relevant that the number of bees they are working with is significantly less than other New Yorkers. Urban New Yorkers must have a chance to work with the resources they have available to them, including limited space for beekeeping.

(IV) Several courts have addressed the legal issues of
beekeeping.

Beekeepers have been challenged in court in two different ways: through the doctrine of nuisance and through constitutional challenges. Although nuisance suits against beekeepers pose a serious threat, the courts have set a high threshold with specific requirements that neighbors must meet in order to succeed against a beekeeper in a nuisance claim. In addition, there are various ways for beekeepers to minimize the risk of causing a nuisance.

Constitutional challenges to beekeeping, including equal protection, due process, and fourth amendment issues offer varying degrees of protection for beekeepers.

(1) Nuisance and beekeeping.

Even if the City of New York decided to lift the ban on beekeeping there might still be legal impediments for beekeepers in the city. Nuisance complaints and suits may

declaring beekeeping to be a *per se* nuisance is too broad and too general and thus, invalid.

In *Olmsted v. Rich*, the New York Supreme Court reemphasized that it is the responsibility of the court to determine whether the bees in the particular circumstances are causing a nuisance. In the present case, the Court found the disturbance to the neighbor caused by the bees to constitute a nuisance resulting in an irreparable injury.⁹⁶ The Court enumerated the reasons for its holding. It explained, "At certain seasons the plaintiff in the use of his lot and dwelling was, according to the evidence on the part of the plaintiff, very seriously discommoded, and the comfortable enjoyment of the property greatly impaired."⁹⁷ The disturbance caused by the bees in this case was so bad that the premises became unsafe and unfit for habitation, a high standard for proving a nuisance. In the same opinion, the Court declared that the beekeeper's motive was not material in deciding whether the bees constituted a nuisance. In other words, it does not matter if the owner of the bees realizes that they are of a "vicious propensity" just that the condition existed that caused a nuisance.⁹⁸

The New York Supreme Court addressed the issue again in *People v. McOmber* in 1954.⁹⁹ The Court for a second time

explained that bees might become a nuisance if certain factors are present but are not considered a nuisance *per se*. As explained by previous decisions, the Court must make the determination in each individual case. The opinion also provided a description of the duty of beekeepers. It stated that beekeepers are:

Charged with a duty of maintaining them in such a manner that they will not annoy, injure or endanger

The standards for determining whether bees are causing public and private nui

(2) Constitutional challenges and beekeeping.

There are three possible constitutional issues with laws, such as the New York City ordinance, limiting and prohibiting beekeeping. There are potential equal protection, due process, and fourth amendment claims. Each

Courts have also found that statutes and ordinances regulating beekeeping do not violate due process. They have found the regulation of beekeeping to be within the police power. *Graham v. Kingwell*¹⁰⁶ demonstrates the inapplicability of a due process claim. The Court found that due process was inapplicable because destruction of diseased hives did fall within the state's police powers, contrary to the

creature. However, courts have demonstrated a commitment to protecting beekeepers in some capacities, such as in nuisance suits and pertaining to fourth amendment searches. Not only do beekeepers benefit from the high standard set for nuisance claims, but also there are many ways that they can reduce the risk that a neighbor will bring a nuisance claim.

One common nuisance case involves bees being attracted to swimming pools and other sources of water on neighboring property.¹¹⁰ Neighbors do not appreciate the dead bee bodies floating in their pools and fishponds. Bees require water to collect and bring to the hive. A way for a beekeeper to avoid bees wandering in search of water is to provide running water through the hive. At the very least, a water

aggressive.¹¹² The placement of the entrance in the hive is also important. Bottom entrances are recommended over top entrances because the movement of internal parts of the hive can confuse bees trying to enter and exit if the entrance is on the top as opposed to the bottom where it will never be obstructed.¹¹³ In addition, beekeepers should be sure to inspect the colonies at the correct times of day and not after heavy rain.¹¹⁴ Beekeeping manuals also advise maintaining good public relations with the neighbors by offering them honey at Christmas. Educating the neighbors on the benefits of bees and how to distinguish bees from wasps can also help deter them from bringing a nuisance suit.¹¹⁵

(V) Conclusion.

As demonstrated above, the benefits of beekeeping are great. Honeybees pollinate many plants in the United States and even right within New York City. Bee products are very popular and local beekeepers can make a profit from selling the fruits of their labor. In addition, beekeeping offers a relaxing and rewarding activity for the whole family. It is easy to see all of the positive attributes of beekeeping. It's benefits reach entire communities. Nonetheless, beekeeping is illegal in New York City.

The question remains: Is there a reason to treat beekeeping differently in New York City than in other parts New York and the United States? Does it matter why New York City dwellers want to keep bees? Hobby or not, is it a right they are entitled to exercise? When all is said and done, does it matter what New Yorkers reasons are for wanting to keep bees? Can the city find that their mental wellbeing or personal enjoyments are not substantial interests?

These are all questions

There are two main camps on the issue of urban beekeeping - ban it or allow it. However, there is a middle ground option that can be reached that will provide an acceptable solution to both sides. A possible alternative in this case may be licensing beekeepers. The city could implement a program that would give potential beekeepers an opportunity to earn a license or permit to keep bees. The criteria for issuance of such a license or permit could contain requirements that would quash many of the concerns of urban beekeeping opponents. For instance, the city could require that urban beekeepers be properly trained in the handling and care of bees. There could be mandatory inspections of the hives. The city could also limit the amount of bees and the exact locations of beehives. There are other U.S. cities with similar licensing programs.

The most important step to take is to educate the public about how to act around bees and the true, unaggressive nature of bees. Happy bees with well-trained and educated beekeepers pose a weaker threat to humans than wild bees. The City of New York will never be able to fully eradicate the threat of bee stings to those who are allergic, but by allowing licensed beekeepers in the city they are not exasperating it.

It is a fact of life that when an individual or family moves into an urban area, they must sacrifice some of the aspects of rural life. There are certain hobbies that are

1. See, e.g., Urban Agriculture News- The New York Times,
http://topics.nytimes.com/top/reference/timestopics/subjects/a/agriculture/urban_agriculture/index.html (last visited Jan. 22, 2010).

2. See posting of Bao Ong to City Room Blog,
<http://cityroom.blogs.nytimes.com/2009/10/23/> (Oct. 23, 2009, 10:30 EST).

3. See, e.g., Sustainable Table,
<http://www.sustainabletable.org/issues/eatlocal/> (last visited Jan. 19, 2010).

4. There have been several food safety act proposals including the Food Safety Enhancement Act, H.R. 2749, the Food Safety Modernization Act, H.R. 875, the Food and Drug Administration Globalization Act, H.R.759, and the Safe Food, Enforcement, Assessments, Standards, and Targeting Act (FEAST), H.R. 1332.

5. See *supra* note 1.

6. This comment will use the terms "bee" and "honeybee" interchangeably.

7. See Dave Buscema, *Bronx woman keeps family tradition alive tending bees - even though it's illegal*, N.Y. DAILY NEWS, Oct. 18, 2009, available at http://www.nydailynews.com/ny_local/bronx/2009/10/18/2009-10-18_breaking_the_law_to_bee_an_example.html.

8. See, e.g., Joshua Brustein, *Beekeepers Keep the*

<http://www.honeybee.com/beeinfo.htm> (last visited Jan. 22, 2010); Backyard Beekeeping, <http://outdoorplace.org/beekeeping/citybees.htm> (last visited Jan. 22, 2010).

12. *Id.*

13. Just Food, Help Legalize Urban Beekeeping in New

does not exist. Nonetheless, this comment is against the ordinance in principle, if not in practice.

25. Posting of Zaky to The Kitchn, <http://www.thekitchn.com/thekitchn/classes-events-nyc/help-legalize-beekeeping-in-new-york-cityjust-foods-pollinator-week-june-2228-087683> (June 23, 2009, 15:01 EST).

26. Posting of Akops41 to The Kitchn, <http://www.thekitchn.com/thekitchn/classes-events-nyc/help-legalize-beekeeping-in-new-york-cityjust-foods-pollinator-week-june-2228-087683> (June 18, 2009, 10:32 EST).

27. *Winnie the Pooh and the Honey Tree*, The Walt Disney Company (1966).

28. Nadia Johnson, Legalize Beekeeping in NYC! Petition, <http://www.gopetition.com/petitions/legalize-beekeeping.html> (last visited Jan. 22, 2010).

29. Steve Williams, *The Case of the Missing Bees: How scientific sleuths at Penn State are helping to solve the*

41. An apiculturist is one who raises and cares for bees.

42. Dagney Leonard, *Urban beekeeping generates big buzz*, THE PUEBLO CHIEFTAIN ONLINE, Sept. 15, 2009, http://www.chieftain.com/articles/2009/09/15/life/associated_press/doc4aaf0499d5a32200843288.txt.

43. Gibbons Bee Farm and Honey Products, Information about Honey, <http://www.gibbonsbeefarm.com/information.htm> (last visited Jan. 22, 2010).

44. The New York City ban also includes ferrets. 24 RCNY Health Code § 161.01 (b)(4)(2000). See About.com, *Ferrets Banned in New York City*, <http://exoticpets.about.com/cs/ferrets/a/ferretbanNYC.htm>

54. *Id.*

55. See Bee Venom Therapy as Multiple Sclerosis Treatment: Discovery Health, <http://health.discovery.com/centers/althealth/beetherapy/bkgsclerosis.html> (last visited Jan. 22, 2010).

56. *Id.*

57. See Bee Venom Therapy - American Apitherapy Society, <http://www.apitherapy.org/what-is-apitherapy/bee-venom-therapy/> (last visited Jan. 22, 2010).

58. See *supra* notes 11 and 13.

59. Eaton, *supra* note 17.

60. See *supra* note 23.

61. See *e.g.*, The Hive, White House Inspires Beekeepers Across the U.S., <http://www.thehoneybeeconservancy.org/Blog/Entries/2009/3/2>

68. 24 RCNY Health Code § 161.01 (2000).

-
106. Graham v. Kingwell, 24 P.2d. 488 (Cal. 1933).
107. *Id.* at 489.
108. Allinder v. Ohio, 614 F.Supp. 282 (Ohio 1985).
109. *Id.* at 289.
110. *See supra* note 87, at 9.
111. *See* MID-ATLANTIC APICULTURAL RESEARCH & EXTENSION CONSORTIUM, KEEPING BEES IN POPULATED AREAS- TIPS FOR SUBURBAN BEEKEEPERS, Feb. 2000, available at <http://maarec.cas.psu.edu/factsheets.html>.
112. *Id.*
113. *Id.*
114. *Id.!*
115. *Id.*
116. *See* New York City Council, About the City Council, <http://council.nyc.gov/html/about/about.shtml> (last visited Jan. 23, 2010).