

URBAN BEEKEEPING: WHAT IS ALL THE BUZZ ABOUT?

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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 more rural environments have caught the attention of many New York City residents. One of the most interesting and controversial agricultural activities to appeal to New York City residents is urban beekeeping.²

There are many possible reasons for the enhanced desire of New York City residents to engage in agricultural activities such as beekeeping. Some of those reasons include the rise in popularity of local food movements,³ the increase in new food safety initiatives,⁴ and the increased awareness of the environmental and economic benefits of producing one's own foods. It also seems that what started as an interest of a few has turned into a full-blown social phenomenon.⁵ Beekeeping has become unbelievably popular in New York City even though an ordinance prohibits beekeeping within city limits.

This comment will: (I) explore New York City residents' reasons for wanting to keep honeybees, (II) describe the New York City ordinance that prohibits beekeeping, (III) demonstrate that prohibiting bees within a city is not common, (IV) debunk the myth that bees are

more dangerous in urban environments, and (V) explain the courts' treatment of beekeeping, including nuisance actions. Analysis of those four areas will demonstrate why the law treats agricultural activity in rural and urban areas differently and why that precedent should no longer bind urban beekeeping.

(I) Many New York City residents welcome bees.⁶

The underground world of urban beekeeping has been in existence for over ten years. It began in 1999 when Mayor Giuliani's administration convinced the Health Department to add bees to the list of "wild animals" banned from New York City.⁷ Since then, the number of New York City residents interested in maintaining bees, in spite of the ban, has steadily increased. This comment will demonstrate that although there are many reasons for the increased popularity of urban beekeeping, the two major reasons are that it provides various benefits and that it is trendy.

Recent news stories have brought much attention to the rebellious world of New York City beekeepers and their qualms with the prohibition of beekeeping in the City of New York.⁸ These stories are in competition with the many others that discuss agricultural activities in the city such as urban chickens⁹ and rooftop gardening.¹⁰ Nonetheless, beekeeping has maintained a place of

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 beekeeping include the development of small businesses, support of local food production (via pollination), and the education of youth in agriculture and sales and marketing. Additionally, it asserts that the legalization of beekeeping will cause it to be conducted in a safer manner, since beekeepers would be subject to inspection and oversight by government officials.¹⁵

Just Food is one of many Web sites advocating various agricultural activities within the city, including beekeeping. It is also one of many that urge New Yorkers to sign a petition to legalize beekeeping in New York City.¹⁶ Other demonstrations of support for beekeeping in New York

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.

If you were to search the web or speak with a beekeeper in New York City it would seem almost as if no ordinance prohibiting beekeeping exists.²⁴

Although there are many urban New Yorkers who are in favor of urban beekeeping, it must be noted that not all New York City citizens have welcomed the recent interest. Many are confused over what the "craze" is all about. They feel that urban beekeepers are "insanely selfish"²⁵ and those who are allergic to bee stings "would prefer to keep [their] epipens unused."²⁶ Those citizens of New York City support the ban and hope that urban beekeepers will be defeated in their attempt to get it struck from the books. Some New Yorkers simply do not want to risk having potentially dangerous insects in their city. Those citizens echo the sentiments of Winnie the Pooh who exclaimed, "You never can tell with bees."²⁷

(1) New York City: Urban beekeeping has many benefits.

There are a myriad of reasons for the recent interest in urban beekeeping in New York City. One such reason is the many benefits that it offers, both to individuals and the community. There are also many aspects of urban beekeeping that offer sweet incentives to city residents, such as serving as a means of relaxation and for use in

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

An additional environmental argument concerns the health of the bees themselves. Some urban beekeepers feel it is their duty to provide bees with a safe place to produce their honey because the city might otherwise be dangerous and unwelcoming for them. Bees that are not kept in controlled and maintained beehives must fend for themselves in local parks. Other animals or extreme climate

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 access to local honey that city dwellers will have if urban beekeepers are 1) able to maintain their beehives and 2) able and willing to sell their honey. Many New York City residents would prefer local honey to an imported product because they know where it is coming from and may even prefer the taste. Bee pollen, and in turn honey, tastes differently depending on where it comes from and the crops the bees are able to pollinate.⁴³ The individual benefit is to those who produce the honey. Either they benefit by not having to purchase honey from a third party or by the profit generated from sells of their honey.

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 beneficial to society as a whole but also contend that buying local benefits the individual consumer. The argument is that if foods have fewer miles to travel and the middleman is eliminated that they will cost less.

(c) Urban beekeeping has educational benefits.

Keeping honeybees offers many educational opportunities. Children who are raised in urban environments are often denied educational experiences available to children in rural areas. Although it is true that urban children have the opportunity to learn about many animals, including dogs, cats, rabbits, hamsters, and other "household" pets, they are denied the particular pleasures of bees.⁴⁴ Bees are especially fun and beneficial to learn about because they are unique. Bees are one of few insects that society will sometimes personify as cute and fun as demonstrated by movies like "Bee Movie" and then number of humans dressed as bees on Halloween. In addition, bees are more than just pets that need to be tended. They give back to their owners in the form of honey. They are

also one of few pets that can be allowed to roam free and will return to their owners at the end of the day.

The final educational reason for beekeeping is based on the growing desire to know where one's food comes from, and, if possible, to begin providing it for oneself. It is a trend that has recently become very popular in New York City.⁴⁵ This cannot occur without education. One must have the proper knowledge and resources to ascertain the origin of their food, the benefits of buying it locally, and how to produce it at home. The interest in local food is most likely in response to the onslaught of recent food contaminations scares. In the last few years, there have been food safety concerns regarding spinach, pistachios, and cookie dough.⁴⁶ It is such a serious crisis that President Obama established the Food Safety Working Group, headed by Secretary of Agriculture Tom Vilsack and Food and Drug Administration Commissioner Margaret Hamburg, to address and eradicate the growing food safety concerns.⁴⁷

(d) Urban beekeeping has additional benefits.

There are two reasons for urban beekeeping that do not seem to fit into any of the three enumerated reasons as drawn from Just Foods' petition. The first is the escape from the everyday routine, which for most urban New Yorkers

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 exposure to sunlight and a chance to conduct manual labor. This concept is directly correlated with the idea that some urban beekeepers credit the peacefulness and tranquility of bees as the reason for their interest.⁴⁹ Another, unrelated reason for beekeeping is the attractive smell of the honeycombs.⁵⁰

The second reason for beekeeping that is not an economic, environmental or educational reason is apitherapy. Apitherapy, or bee therapy, is the medicinal use of products derived from honeybees.⁵¹ Many people became aware of this concept when Burt's Bees⁵² products hit the market. Although Burt's Bees products are not considered medicinal, they have spurred the popularity of bee-derived ingredients in products such as lip balms, lotions, and soap. Consumers of such product claim that they have unique attributes that make them superior to products lacking them.⁵³ Honeybee products such as royal jelly, bee pollen, bee propolis and honey contain vitamins, amino acids, and proteins. Nothing needs to be added to them to enhance the product and so many consumers appreciate that that they are natural.⁵⁴

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 been present in Long Island, New York⁶⁴ since 1670. In fact, the Western Hemisphere is the second oldest region to have bees, even though bees are not native to it.⁶⁵ During the early 1900s, beehives were allegedly kept inside Radio City Music Hall and the Museum of Natural History.⁶⁶ However, around 1956, the number of bees is believed to have dwindled and it is unclear why or how they have risen since.⁶⁷ Arguably, it is natural to have bees in New York City since they have been there for so long. However, clearly New York City is not the same place it was in 1670.

(II) A New York City ordinance prohibits the keeping of
bees.

New York City Code prohibits beekeeping.⁶⁸ The 2000 ordinance declares, "No person shall sell or give to another person, possess, harbor or keep . . . all venomous insects, including, but not limited to, bee, hornet and

wasp." The prohibition is contained in the same ordinance that outlaws lions and tigers within city limits.⁶⁹ The ordinance does not directly address the cultivating of bees for agricultural or environmental purposes, but bans all bees from the city.⁷⁰ It is clear that the objective of the ordinance is to protect city residents from wild and potentially dangerous animals. It is unclear whether it was intended to include honeybees in the ban. The penalty for violating the ordinance can be up to \$2,000.⁷¹

The illegal status of beekeeping is not consistent with the case law on the matter. In 1954, *People v. McOmber* held that the "keeping or raising of bees is not in and of itself unlawful business."⁷² The Court did state, however, that there is a duty imposed on beekeepers that can result in a permanent injunction if the duty is abdicated.⁷³ Common law appears to protect beekeeping outside violations of the enumerated duties of beekeepers. This concept is important to the discussion of nuisance law and urban beekeeping that has yet to be discussed.

Brooklyn Councilmen David Yassky was one New York politician who supported lifting the ban. Yassky was quoted with saying, "If [beekeeping is] done by people who know what they are doing, it's a safe enterprise."⁷⁴ However, he left office in December 2009, before his bill passed. In

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 beekeeping in San Francisco also differs from that of New York State because it does not impose any specific regulations on beekeeping in San Francisco.⁷⁸

Rochester, a city in Western New York, attempted to pass an ordinance prohibiting bees within city limits in 1901.⁷⁹ A judge set aside the ordinance after a local apiarist refused to stop keeping bees. The National Beekeepers Association defended the man and won the claim for him.⁸⁰ This is just one example of how beekeeping has been protected in the greater New York area for over 100 years.

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

Clearly, there are many reasons to want to keep bees in New York City. In addition, beekeeping is not only permitted but also encouraged in rural New York through Right to Farm laws.⁸¹ Nonetheless, the law continues to prohibit beekeeping in New York City. Why?

The most obvious and simple explanation is the fact that honeybees are considered dangerous. That is New York City's Health Department's reason for maintaining the ban.⁸² Bees sting and can severely injure and even kill those with allergies. Common sense seems to indicate that honeybees are even more dangerous in an urban environment than in a rural area since there are more people for them to injure. In addition, because it is a smaller, more densely crowded area, the bees can theoretically do more damage in less time.

Those worries are unfounded. In reality, there is no evidence to date of honeybees being particularly problematic in the city. Honeybees may even be considered safer pets than the most common pet, dogs. Over 5 million dog bites are reported each year.⁸³

There are many explanations for why honeybees are not as dangerous as thought to be. People who insist that

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 found in the Southwestern United States.⁸⁹ Even so, Africanized honeybees do not "fly out in angry swarms to attack innocent victims" as they are often portrayed as doing in films and literature.⁹⁰ They only attack in defense of their home.⁹¹

There is a valid concern for people who are allergic to honeybee stings. However, a study in Australia found, "Allergies to penicillin cause more deaths than bee venom and individuals in Australia have a greater likelihood of being killed by lightning than by bee venom."⁹² In addition, there are several ways for beekeepers to decrease the chance of their bees stinging. They can avoid stimuli that have been shown to cause more bee stings such as dark clothes, noise, vibrations, and some odors. They can also use a smoker. A smoker is a device that produces smoke, which calms the bees. Another bee sting prevention tip is to select a "quieter stock" of bees, as in less aggressive bees.⁹³

Bees are clearly misunderstood. They are thought to be vicious insects that will attack without provocation, which is blatantly untrue. If bees are not more dangerous in the city then what reason is there to ban them there and not in

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 thwart beekeeping. Nonetheless, there are preventative measures that beekeepers can take to keep themselves out of court.

Several courts of the United States have addressed the issue of bees, the protections that beekeepers are entitled to, and the duty imposed on beekeepers. Beekeeping is an issue that has come before the courts since as early as 1889.⁹⁴ The courts have decided several very important points concerning litigating nuisance suits against beekeepers.

State common law has declared that bees are not to be considered nuisances *per se*. The Supreme Court of Arkansas in *City of Arkadelphia v. Clark* first decided this in 1889.⁹⁵ The Court held that bees can *become* a nuisance but the determination is to be made on a case-by-case basis by the courts. The Court went on to hold that any law

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 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 and that if he omits to do so, he is subject to indictment for the crime of maintaining a public nuisance.¹⁰⁰

The aforementioned pertains to public nuisances. When considering private nuisances, the courts tend to focus on three matters: (1) how close the hives are to the complainant's property, (2) how many hives are in question, and (3) how often the bees sting or cause the complained of harm.¹⁰¹ A public nuisance would occur if many members of the public were suffering because of the beekeeping, whereas a private nuisance would be an individual, such as a neighbor, bringing the action.

The standards for determining whether bees are causing public and private nuisances generally remain the same today. There are several problems with the application of either nuisance standard in a city, however. It would be extremely difficult to obtain information on how many people in New York City have legitimate bee allergies or issues. Since people living in the city live so close to one another there would be a very large number of citizens that could possibly be in danger if a beehive exists. One other problem that may exist concerning nuisance claims in New York City is proving that the defendant's bees are the culprits. If there are several beekeepers within a relatively close proximity it may be almost impossible to determine which bees are responsible.

Nonetheless, nuisance offers protection to neighbors of beekeepers against excessive disruption caused by bees. If a court finds that a beehive is causing a nuisance it can issue an injunction and force the owner to remove or relocate the bees. The success of a claim against a bee owner is going to depend on the amount of evidence that can be obtained and the expertise of the lawyer. The protections offered by nuisance bolster the argument that lifting the ban on beekeeping in New York City is feasible.

(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 will be discussed in turn, although only fourth amendment claims appear to have any merit.

There have been several cases involving statutes and administrative rules regulating beekeeping. In every case, the courts found that no classifications were created that violated equal protection as guaranteed by the U.S. Constitution. *State v. Knoefler* is a great example of such a case.¹⁰² In that case, a statute required a 2-mile distance between commercial apiaries. The constitutionality of the statute was challenged on the grounds that it protected established apiaries and therefore, limited competition.¹⁰³ The court rejected the plaintiff's contention that classifications based on ownership of bees were wealth based and determined that the proper standard of review was the rational basis test.¹⁰⁴ The Court found that the statute was rationally related to the purpose of preventing honey raiding and bee diseases and so it upheld the statute.¹⁰⁵

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 contentions of the plaintiff.¹⁰⁷ Litigants can claim a violation of due process when the state is acting within its police power in matters affecting the public health, safety, and welfare.

Searching an apiary without a warrant is illegal. It is true that there is less protection for commercial establishments than for private homes, but that does not give the police unlimited freedom.¹⁰⁸ The Court addressed this issue in *Allinder v. Ohio*. It found that the intrusiveness of searching beehive structures triggered the fourth amendment's warrant requirement.¹⁰⁹

(3) Urban beekeepers can be protected from litigation.

It appears that the ordinance prohibiting beekeeping within New York City would be upheld if challenged in court. It is within the police power to protect the citizens of New York City from a potentially dangerous

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 source should be kept in close proximity to the hive on the owner's property. Keeping bees out of neighbor's property is also easy if a high fence or bushes are erected around the hives. This causes the bees to have to fly higher in the sky, over the neighbor's property.¹¹¹

There are several other considerations that the beekeeper must provide in order to ensure a happy hive and no nuisance suits. The location of the colony is an important factor. The beehive should be kept in the sun because bees in the shade have been found to be more

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 for the legislature. The legislature's role is to pass laws that reflect the wants and needs of the constituents, in this case, the people of the city of New York. The ordinance prohibiting bees in New York City was passed by the New York City Council and so represents the voice of the people.¹¹⁶ If banning bees is no longer what the people want then they must speak to their local representatives to urge that changes be implemented. In order for beekeepers and bee enthusiasts to persuade neighbors and non-bee lovers, they must educate them on the joys and safety of urban beekeeping. The legislature should seriously consider lifting the ban, as it is not only the will of the people, but an act that will benefit the entire city.

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 simply not conducive to urban life; however, beekeeping is not one of them. Beekeeping is an activity that can be safely conducted in an urban area. It is an agricultural activity that benefits plants and foods that grow within the city. A balancing of the benefits of urban beekeeping with the dangers it presents indicates a stronger basis for permitting urban beekeeping rather than prohibiting it. The benefits are plentiful and the risks are minimal.

New York City should be joining the fight to keep honeybees alive. Colony Collapse Disorder is a serious and impending problem. The decline of the honeybee population affects us all. In addition, the city should support the local food movement. It is something that a lot of New York City citizens feel strongly about. The laws and ordinances in effect in the city should reflect the desires of the people. They should enable the citizens to live their lives in the manner that they chose. The ban on beekeeping in New York City is keeping many New York City residents from an activity that they desire to participate in and are entitled to enjoy. New York City should lift the ban on urban beekeeping as soon as possible.

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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 Lid On*, N.Y. TIMES, June 19, 2009, available at http://www.nytimes.com/2009/06/21/nyregion/21ritual.html?_r=1.
 9. See, e.g., Posting of Katherine Goldstein to Huffington Post, *Urban Chickens: The Latest Trend in New York City*, http://www.huffingtonpost.com/2009/09/02/urban-chickens-the-latest_n_274987.html (Sept. 2, 2009 9:48 EST).
 10. See, e.g., Marian Burros, *Urban Farming, A Bit Closer to the Sun*, N.Y. TIMES, June 16, 2009, available at <http://www.nytimes.com/2009/06/17/dining/17roof.html>.
 11. See, e.g., Bee Source, <http://www.beesource.com/> (last visited Jan. 22, 2010); Beekeeping, Urban Style,

<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 York City, <http://www.justfood.org/bees/> (last visited Jan. 19, 2010).

14. *Id.*

15. *Id.*

16. *See, e.g.*, Posting of Gerry Gomez Pearlberg to Global Swarming Honeybees, <http://globalswarminghoneybees.blogspot.com/> (Feb. 2, 2009); Go Petition, Legalize Beekeeping in NYC Petition, <http://www.gopetition.com/> (last visited Jan. 19, 2010).

17. *See* Post of Tressa Eaton to Serious Eats New York, <http://newyork.seriousseats.com/2009/06/> (June 23, 2009, 14:25 EST).

18. *See supra* note 13.

19. New York City's Beekeepers Association, <http://www.nyc-bees.org/index.html> (last visited Jan. 22, 2010).

20. *Id.*

21. *See* New York City Beekeepers Association, <http://www.nyc-bees.org/membership.html> (last visited Jan. 22, 2010).

22. *See* New York City Beekeepers Association, <http://www.nyc-bees.org/classes.html> (last visited Jan. 22, 2010).

23. *See* New York City Beekeepers Association, <http://www.nyc-bees.org/calendar.html> (last visited Jan. 22, 2010).

24. There are no recorded instances of the City of New York charging a resident with violating the ordinance. It appears as if even the City pretends as if the ordinance

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 mystery*, PENN STATE AGRIC., Winter/Spring 2008, at 22.

30. *Id.*

31. *Id.*

32. Kevin C. Matteson and Gail A. Langellotto, *Bumble Bee Abundance in New York City Community Gardens: Implications for Urban Agriculture*, CITIES AND THE ENV'T, Jan. 2009, <http://escholarship.bc.edu/cate/vol2/iss1/5/>.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. Ann N. Coenen-Davis, *The Mystery of the Disappearing Honeybee: Will the Government Funding and Regulation Save this Important Pollinator?* 14 DRAKE J. AGRIC. L. 175, 178 (2009).

38. Williams, *supra* note 29, at 20.

39. Coenen-Davis, *supra* note 37, at 179.

40. Williams, *supra* note 29, at 25.

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> (information on ferrets and New York City's reasons for banning them).

45. Brustein, *supra* note 8.

46. AUTHOR OMITTED, *The Food Safety Enhancement Act: Adjusting Food Safety Procedures for the 21st Century*, FDLI UPDATE, Sept./Oct. 2009, at 56 (on file with author).

47. See President's Food Safety Working Group, <http://www.foodsafetyworkinggroup.gov/> (last visited Jan. 22, 2010).

48. Brustein, *supra* note 8.

49. *Id.*

50. *Id.*

51. What is Apitherapy? - American Apitherapy Society, <http://www.apitherapy.org/what-is-apitherapy/> (last visited Jan. 22, 2010).

52. See About Us - Burt's Bees, <http://www.burtsbees.com/c/story/> (last visited Jan. 22, 2010). Burt's Bees is a company that produces "natural, Earth-friendly personal care products," many of which are made from bee products.

53. See The Benefits of Bee Products, <http://www.bhia.org/articles/specialty-products/benefitsofbeeproducts.html> (last visited Jan. 22, 2010).

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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/2009/3/23_Obama_family_joins_the_growing_ranks_of_Americans_engaged_in_the_emerging_backyard_beekeeping_movement.html (last visited Jan. 22, 2010).
62. *From the South Lawn, a Sweet Smell of Honey*, NEW YORK TIMES, video available at http://www.nytimes.com/interactive/2009/11/04/us/politics/20091104_BEES_SS1/index.html?ref=dining (last visited Jan. 22, 2010).
63. Posting of Eddie Gehman Kohan to Obama Foodorama: Honey From White House Beehive is Part of First Lady Michelle Obama’s Gifts for G20 Spouses, <http://obamafoodorama.blogspot.com/2009/09/honey-from-white-house-beehive-is-part.html> (Sept. 25, 2009, 3:38 EST).
64. Long Island, New York is a suburb of New York City.
65. Everett Oertel: History of Beekeeping in the United States, <http://maarec.cas.psu.edu/bkCD/HBBiology/history.htm> (last visited Jan. 22, 2010).
66. Brustein, *supra* note 8.
67. *Id.*

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68. 24 RCNY Health Code § 161.01 (2000).
69. § 161.01 (b)(2)
70. § 161.01 (b) (12)
71. *See, e.g.,* Karn Dhingra, *Outlaw Beekeepers*, NYC24, 2009, <http://www.nyc24.org/2009/independent/story14/>.
72. 206 Misc. 465, 133 N.Y.S.2d 407 at 411 (1954).
73. *Id.* at 4.
74. Frank Lombardi, *City politicians pitch return to beekeeping in New York City*, NEW YORK DAILY NEWS, June 23, 2009, available at http://www.nydailynews.com/ny_local/2009/06/24/2009-06-24_pols_pitch_return_of_the_bees_to_nyc.html.
75. N.Y. AGRIC. & MKTS. LAW § 293 (2004).
76. N.Y. AGRIC. & MKTS. LAW § 173 (2007).
77. San Francisco Health Code § 51, available at www.sfbee.org/pdfs/MunicipalCodes.pdf.
78. *See, e.g.,* San Francisco Beekeepers Association, *Beekeeping*, <http://www.sfbee.org/Beekeeping.html> (last visited Jan. 23, 2010).
79. *See* A.I. ROOT AND E.R. ROOT, *THE ABC AND XYZ OF BEE CULTURE* 462 (Kessinger Publisher, LLC 2005) (1947).
80. *Id.*
81. N.Y. AGRIC. & MKTS. LAW §§ 300-310 (2004).
82. *See, e.g.,* Suzanne Ma, *NYC Beekeepers Swarm City Hall to Protest Bee Ban*, HUFFINGTON POST, June 23, 2009, available at <http://www.huffingtonpost.com/2009/06/23/nyc-beekeepers-swarm-city n 219702.html>.
83. Ann Hoevel, *U.S. is a nation of 360 million - pets*, CNN, Mar. 14, 2006, <http://www.cnn.com/2006/US/03/10/modern.pets/index.html>.
84. *See* eBeeHoney.com, *Yellow Jackets and other wasps*, <http://www.ebeehoney.com/beeid.html> (last visited Jan. 23, 2010).

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85. *Id.*
86. *Id.*
87. Government of New South Wales, Inquiry into Bee Keeping (Aug. 2000) 8-9, available at <http://www.dpi.nsw.gov.au/agriculture/livestock/honey-bees/general-public/urban-areas>.
88. *Id.* at 8.
89. See Living With Bugs, Honey Bees, <http://www.livingwithbugs.com/bee.html> (last visited Jan. 23, 2010).
90. MID-ATLANTIC APICULTURAL RESEARCH & EXTENSION CONSORTIUM, BEES ARE BENEFICIAL, Feb. 2000, available at <http://maarec.cas.psu.edu/factsheets.html>.
91. *Id.*
92. See *supra* note 84, at 8.
93. *Id.* at 9.
94. See *infra* notes 95 and 96.
95. City of Arkadelphia v. Clark, 11 S.W. 957 (Ark. 1889).
96. Olmsted v. Rich, 6 N.Y.S. 826 (1889), at 830.
97. *Id.*
98. *Id.*
99. People v. McOmer, 133 N.Y.S.2d 407 (1954).
100. *Id.* at 469-470.
101. See, e.g., Ferreira v. D'Asaro, 152 So.2d 736 (Fla. App. D3 1963), Olmsted v. Rich, and People v. McOmer.
102. State v. Knoefler, 279 N.W.2d 658 (N.D. 1979).
103. *Id.* at 660.
104. *Id.* at 663.
105. *Id.* at 665.

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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).