CITY OF GAUTIER
MEMORANDUM

To: Samantha Abell, City Manager

From: Babs Logan, Planning Technician

Through: Chandra Nicholson, Planning and Economic Development Director

Date: November 12, 2013

Subject: Consideration of an Ordinance Revising Chapter 4 Animals and Fowl of the City of Gautier Code of Ordinances Regarding Animal Control (GPC #13-20-ORD)

REQUEST:

The previous Planning and Economic Development Director directed Staff to draft a revision to the City of Gautier Code of Ordinances regarding animal control within the City. The revision of Chapter 4, Animals & Fowl of the Code of Ordinances includes additional definitions and changes regarding inoculation of dogs and cats for rabies, confinement of animals to premises, running at large, authorized impoundment, feral cats, determination of vicious animals, keeping of vicious animals and keeping of fowl.

BACKGROUND:

At their November 7, 2013 meeting the GPC reviewed the proposed revision and recommended Council approval.

The GPC held duly noticed public hearings on September 5, 2013 and November 7, 2013 regarding the City of Gautier Code of Ordinances Chapter 4 revision.

The GPC's recommendation shall be forwarded to the City Council. The City Council may consider approval after a public hearing based on the relevant support materials, testimony at the public hearing, the GPC recommendation, and the Staff Report.

DISCUSSION:

The attached ordinance revision shows the proposed changes to the Code of Ordinances.

RECOMMENDATION:

The Planning Commission unanimously recommended approval of the revision to the City of Gautier Code of Ordinances. The City Council may:

1. Approve the Planning Commission's recommendation to approve the Ordinance Revision;
2. Approve the Ordinance with Changes to the Revision; or
3. Disapprove the Ordinance Revision.

ATTACHMENTS:

Draft Ordinance for Council

Proposed Ordinance Revision

Existing Ordinance

Staff Report

ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF GAUTIER, MISSISSIPPI, PROVIDING AUTHORITY & INTENT; REVISING CHAPTER 4, ANIMALS AND FOWL OF THE CITY OF GAUTIER CODE OF ORDINANCES; AND SETTING AN EFFECTIVE DATE.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GAUTIER, MISSISSIPPI, THAT THE CODE OF ORDINANCES OF THE CITY OF GAUTIER IS AMENDED AS FOLLOWS:

Section 1. Authority & Intent

A. The Gautier Planning Commission held a public hearing after due public notice and considered this ordinance on Thursday, November 7, 2013. The City Council conducted a public hearing on November 19, 2013.

B. The City Council finds that Chapter 4, Animals and Fowl, of the City of Gautier Code of Ordinances should be more specific in addressing certain regulations regarding animal control.

Section 2. Revision of Chapter 4

Chapter 4 of the City of Gautier Code of Ordinances, is hereby revised per the attached.

Section 3. Conflicts

All ordinances or parts of ordinances in conflict with this ordinance are repealed to the extent of such conflict.

Section 4. Severability

If any word, phrase, sentence, paragraph or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this ordinance are declared severable.

Section 5. Effective Date

This Ordinance shall take effect thirty (30) days after approval by the City Council and signature of the Mayor.

Adopted: _____

_____
Gordon Gollott, Mayor

Attest:

Approved as to form and legal sufficiency.

_____
Cindy Russell, City Clerk

New language is underlined.
Deleted language is ~~stricken~~.

PROPOSED ORDINANCE

SUMMARY OF CHANGES

- The proposed animal control ordinance was placed on the city website from July 22, 2013 through August 2, 2013, and public comments were solicited from the citizens of Gautier. In addition, public comments were allowed at the Planning Commission meeting on September 5, 2013. Only one written comment was received, and no other public comments were made at the Planning Commission meeting.

- This revised ordinance reflects the recommendations made by the Planning Commission at meetings held on September 5, October 3, and November 7, 2013.

ARTICLE I In General (Previously not utilized)
Sec 4-1. Previously Sec. 4-63.
Sec 4-2. Previously Sec. 4-62, and added numerous other applicable definitions.
Sec 4-3. Added maximum fines allowed by municipal judge.
Sec 4-4. Previously Sec. 4-64.
Sec 4-5. Previously Sec. 4-66.
Sec 4-6. Added general owner responsibilities.
Sec 4-7. – 4-10. Reserved.

ARTICLE II Dogs, Cats and Other Animals
Sec 4-11. Previously Sec. 4-21, reduced age of dog/cat for initial vaccination and changed rabies vaccination from annual to every three year requirement. (State Statute and Animal Health Regulation).
Sec 4-12. Previously Sec 4.21, added means of identification to determine ownership.
Sec 4-13. Previously sections 4-25 and 4-28.
Sec 4-14. Added limited number of dogs and cats without prior approval.
Sec 4-15. Previously Sec. 4-22.
Sec 4-16. Previously Sec. 4-22, added impoundment procedures and new fees.
Sec 4-17. Added not previously addressed.
Sec 4-18. Added State Statute requirement.
Sec 4-19. Previously Sec. 4-24.
Sec 4-20. – 4-25. Reserved.

ARTICLE III Vicious Animals/Dogs (Changed name from Dangerous Dog and Potentially Dangerous Dog to Vicious Animal/Dog (same as County and Ocean Springs)
Sec 4-26. Previously Sec. 4-61.
Sec 4-27. Previously Sec. 4-66.
Sec 4-28. Previously Sec. 4-67, added stronger requirements.
Sec 4-29. Previously Sec. 4-68.
Sec 4-30. Previously Sec. 4-69.
Sec 4-31. Previously Sec. 4-70.
Sec 4-32. - 4-35. Reserved.

PROPOSED ORDINANCE

ARTICLE IV Livestock and Fowl

Sec 4-36. Previously Sec. 4-31.
Sec 4-37. Previously Sec. 4-36.
Sec 4-38. Previously Sec. 4-37.
Sec 4-39. Previously Sec. 4-38, changed per Planning Commission recommendation to only allow a total of ten fowl and strengthened requirements for fowl to be fenced.
Sec 4-40. Previously Sec. 4-39.
Sec 4-41. Previously 4-40.
Sec 4-42. Added permit may be revoked or violation referred to municipal court.
Sec 4-43. – 4-45. Reserved

PROPOSED ORDINANCE

Chapter 4

ANIMAL CONTROL

Article I. In General, §§ 4-1 – 4-10
Article II. Dogs, Cats, and Other Animals, §§ 4-11 – 4-25
Article III. Vicious Animal/Dog Control, §§ 4-26 – 4-35
Article IV. Livestock and Fowl, §§ 4-36 – 4-45

ARTICLE I. IN GENERAL

Sec. 4-1. - Application.

This chapter shall apply to all areas within the city limits of Gautier, Mississippi.

Sec. 4-2. - Definitions.

For the purposes of this chapter, the following words and phrases shall have the meaning respectively ascribed to them:

Animal means any live vertebrate creature, domestic or wild, except human beings.

Animal control officer means any person designated by the city to enforce the provisions of this chapter.

Animal shelter means the facilities operated by Jackson County, Mississippi, for the purpose of caring for animals and/or impounding animals under the authority of state law or ordinances.

At large means any animal off the premises of the owner or custodian and not under the control of the owner, custodian or other person by leash, lead, cord, rope, chain, crate, bridle, cage or other physical means of restraint sufficient in strength to control the animal.

Breed-specific legislation. No part of this chapter shall be used to target dogs by specific breed or mix.

Charge means entrusted with the duty and/or responsibility of care and control of an animal.

Cruelty means an overt act committed with the intent to harm or needlessly kill a domesticated animal or committed out of depraved indifference for the animal's well-being, including but not limited to torture, maiming, beating, or otherwise committing violence that causes injury or death.

Custodian means a person who has been given charge over an animal.

Feral animal means any domestic animal, which has escaped for a substantial period of time from the care of an owner or custodian and is existing in a wild state.

Humane manner means the method in which an animal is required to be cared for, including, but not limited to, adequate ventilation, heat, sanitary shelter that provides protection from the weather, food and clean water, veterinary care consistent with generally accepted practices considering the animal's size, species, and breed.

Injury means the breaking of skin, which results in bleeding, caused by an animal bite or bites.

Law enforcement officer means the officers of the Gautier Police Department, including but not limited to animal control officers.

Neglect means an overt act involving failure to provide for animal health or safety, including but not limited to failure to provide adequate food, water, shelter, exercise, or necessary veterinary care to an animal or to adequately confine an animal in a manner appropriate to its species, breed, age, and condition.

Neutered means rendered permanently incapable of reproduction.

Nuisance animal means any animal which:

(1) Damages property of a person other than the owner.
(2) Barks, whines, squeals, bleats, or howls in an excessive, lengthy, or untimely manner; or
(3) Frequently defecates or urinates on property of one other than the owner.

Owner means:

(1) Any person having a property right in an animal;
(2) The custodian of an animal;
(3) Any person who keeps or harbors an animal; and/or

(4) Any person who knowingly permits an animal to remain on any premises occupied by said person over which said person has substantial control.

Excepted from the definition of owner in the immediately preceding subsections (2), (3), and (4) are veterinarians, veterinary hospitals, commercial animal boarding businesses, commercial animal grooming businesses and the animal shelter.

Owner's real property means any real property owned or leased by the owner or owners of the animal.

Performing animal exhibition means any authorized display, act, or event, other than a circus, in which performing animals are used.

Person means any human being, corporation, partnership, association, organization, or institution.

Provocation means the act of teasing, irritating, abusing, assaulting, exciting, stimulating, or tormenting an animal to the point of aggression.

Restraint means the condition of having an animal under control by securing said animal by leash, lead, cord, rope, chain, bridle, crate, or cage.

Severe injury means any physical injury that results in a death, broken bone(s), multiple sutures, disfiguring lacerations, or which require surgery that were caused by an animal bite or bites.

Veterinary hospital means any establishment operated by a licensed veterinarian for surgery, diagnosis and treatment of diseases and injuries to animals.

Vicious animal means any animal, except dogs, that constitutes a physical threat to human beings or other animals.

Vicious dog means:

(1) A dog that without provocation has:

a. Inflicted injury on a human being.

b. Killed or inflicted severe injury upon a domestic animal or livestock, when not on the offending dog owner's real property;

c. Approached a human being when not on the offending dog owner's real property in a menacing and/or terrorizing manner and/or an apparent attitude of attack.

(2) A dog owned or harbored, primarily or in part, for the purpose of dog fighting, or other fighting or any dog trained for fighting; or

(3) A dog that has shown a propensity, tendency, or disposition to attack, unprovoked, a human being.

Notwithstanding the provisions of the foregoing definition of a vicious dog, no dog may be considered a vicious dog if:

(1) An injury or severe injury is sustained by a human being and at the time of such injury, the dog was being provoked.

(2) An injury or severe injury is sustained by a human being who at the time of such injury was committing a willful trespass, or other tort, upon the premises owned or leased by the owner of the dog.

(3) The dog was protecting a human being within the immediate vicinity of the dog from an unjustified attack.

(4) The dog is a police dog that was engaged in the performance of its duties at the time of the act.

Sec. 4-3. - Violations; penalties.

Unless another penalty is set forth herein for a specific violation in this chapter, any person who shall violate any provision of this animal control ordinance, or fail to comply with any of the requirements thereof, shall be guilty of a misdemeanor and any person found guilty of such violation shall, upon conviction, be fined for each violation not more than one thousand dollars ($1,000.00), or imprisoned for not more than three (3) months, or both, plus all court costs.

Sec. 4-4. - Appointment of animal control officer.

The city manager shall designate an individual or individuals to carry out the duties of an animal control officer as provided for in this article. The city manager may further assign the additional duties of animal control officer to any officer or employee of the city who is subject to the jurisdiction of the governing authority.

Sec. 4-5. - Enforcement.

(a) It shall be the duty of animal control officers and/or law enforcement officers to enforce the provisions of this chapter.

(b) It shall be a violation of this chapter for any person to interfere with or hinder an animal control officer and/or law enforcement officer in the performance of their duties, or to release or attempt to release any animal in said officers' custody.

(c) Animal control officers and/or law enforcement officers having probable cause to believe a person has violated this chapter may file a complaint or affidavit in municipal court or other court of competent jurisdiction against said person. Said officers may issue citations in the enforcement of this chapter to any person the officer(s) have probable cause to believe has violated this chapter, with the citation designating the offense(s) charged and requiring the person so charged to appear before such courts on a specified date to answer the charges contained therein.

Sec. 4-6. – General Responsibilities of Owner(s).

(a) The owner of every domesticated animal including, but not limited to, cats and dogs, shall;

(1) Comply with the standards set out next in this section and all other provisions of this chapter.

(2) Provide their animals with proper food, water, shelter and protection from the weather.

(3) Exercise proper care and control of their animal(s).

(4) Prevent animal(s) from becoming a public nuisance as defined in section 4-2,

(b) It shall be unlawful for animal pens or enclosures where animals are kept to be in an unclean, filthy, or unsanitary condition. All animal pens or enclosures and other places where dogs, cats or other animals are kept shall be cleaned daily by removal of all feces and offensive matter and by suitable cleansing and disinfecting as often as may be necessary. Reasonable efforts shall be made to keep yards, pens, premises, and animals free of insect infestation.

(c) Owner(s) shall remove any fecal matter deposited by such animals on public property, walks, streets, or private property of another.

(d) Food supplies shall be stored in rodent-proof containers. Food and water containers shall be kept clean, and litter and bedding materials shall be changed as often as necessary to prevent an odor nuisance.

(e) No owner of an animal shall abandon the animal or fail to provide appropriate veterinary treatment, if ill.

(f) No owner shall intentionally poison any animal, except vermin.

(g) No owner shall intentionally allow or promote any fight between animals, on his/her real property or on property under his/her possession or control.

(h) No owner shall leave an animal unattended inside a motor vehicle when such action is harmful or potentially harmful to such animal. If the owner of such vehicle is not available and cannot be found or refuses to prevent such harm or potential harm, an animal control officer or a police officer shall be authorized to remove such animal from the vehicle and to utilize any reasonable method to effect such removal.

(i) No one shall be allowed to bring a dog of any type within 150 feet of any parade route or other permitted public event regardless of whether or not the dog is leashed and muzzled. This restriction shall not apply to properly certified service animals, or dogs that are actually in the parade or featured in the public event, or dogs located on fenced real property immediately adjacent to parade routes, or the venue of the public event.

Sec. 4-7. – 4-10 Reserved.

PROPOSED ORDINANCE

ARTICLE II. Dogs, Cats and Other Animals

Sec. 4-11. - Inoculating dogs and cats for rabies.

Every person in the city who owns or has in his or her possession, any dog and/or cat of the age of three (3) months or over shall have and keep such dog and/or cat inoculated against rabies, pursuant to Title 41, Chapter 53, Section 1 of the Mississippi Code of 1972, as amended, and the rules and regulations promulgated by the Mississippi State Board of Health. All inoculations must be done by either a licensed veterinarian or other competent person granted a permit to administer a rabies vaccine by the state board of health, pursuant to Title 41, Chapter 53, Section 5 of the Mississippi Code of 1972, as amended. The Mississippi State Department of Health Regulations further require that all dogs and cats shall be vaccinated against rabies at three months of age, re-vaccinated one year later and every three years thereafter, using a rabies vaccine approved as providing a 3-year immunity. A violation of section 4-11 of this chapter shall be punished in accordance with the penalties set out in Title 41, Chapter 53, Section 13 of the Mississippi Code of 1972, as amended.

Sec. 4-12. - Tags for dogs and cats.

Dog and cat owners shall ensure that their dog or cat carries identification at all times in the form of microchip, tag, or other means to allow easy determination of the owners. It is the duty of the owner of any dog or cat to require said dog and/or cat to wear at all times a metal tag that is stamped with the serial number of its rabies vaccination, and also stamped with the year in which the dog and/or cat was inoculated. A violation of this section shall be punished in accordance with the penalties set out in Title 41, Chapter 53, Section 13 of the Mississippi Code of 1972, as amended.

Sec. 4-13. - Confinement to premises.

(a) No animal shall be kept or confined in any place where food, water, shelter and protection from the weather are not sufficient for the good health of such animal. No animal shall be kept in such place or condition as to become a nuisance, because of noise, odor, filth, or contagion of disease.

(b) An owner of an animal shall confine said animal to his/her real property, unless said animal is under restraint or participating in a licensed performing animal

exhibition. It shall further be the duty of all owners and custodians to keep such animals under control to prevent such animal from:

(1) Trespassing on another's property.
(2) Being a nuisance animal.
(3) Being a danger to persons.
(4) Being a danger to property.

(c) An owner of a vicious dog or vicious animal shall confine such animal in accordance with section 4-28 of this chapter.

(d) Every female dog or cat in heat shall be confined in such a manner as to prevent from coming in contact with a male dog or cat, respectively, except for intentional breeding purposes.

(e) Underground fences are not sufficient to contain unsupervised dogs in the area designated as the front yard. Property owners will maintain a clear path to the home's main entrance to accommodate deliveries and authorized workers.

(f) No person shall, at any time, fasten, chain, tether, or tie any dog or cause such dog to be fastened, chained, tethered, or tied to a stationary object while such dog is on the dog owner's property, on the property of the dog owner's landlord, or on the property of the person having possession, charge, custody, or control of such dog unless such restraint consists of a chain, leash, wire cable, or similar restraint attached to a swivel or pulley which shall be located as to keep the dog exclusively on the secured premises. Tieouts shall be so located as to keep the dog secure and shall not be able to become entangled with other objects, and shall be of sufficient length to allow free and full time access to water, food and shelter. Collars used to attach a dog to a tieout shall not be of a choke type. No tieout shall employ a restraint that is less than ten (10) feet in length.

(g) Failure to comply with the terms of this section of the article shall require the dog owner or the person having possession, charge, custody, or control of such dog to:

(1) Provide a fenced yard, of sufficient height to prevent the dog from escaping from the enclosure for the dog with adequate space for exercise of at least one hundred (100) square feet, or

(2) Provide an enclosure for such dog of at least one (1) square foot of area for every pound of body weight of the dog. Such enclosure shall be constructed of chain link or similar type material with all four (4) sides enclosed. The enclosure shall be of sufficient height to prevent the dog from escaping from the enclosure. A portion of the enclosure shall be covered with material sufficient to provide the dog with shade and protection from the weather.

Sec. 4-14 - Overcrowded, unsanitary conditions and offensive odors.

It shall be unlawful for any person to keep more than five dogs or five cats or an aggregate of five dogs and cats at a single location within the city, with the exception that kittens or puppies born to a cat or dog kept at any such location may be kept for not more than five months from birth. A request for more than five (5) dogs, over the age of six (6) months, must be approved by the City Council through the Conditional Use-Major process.

It shall be a violation of this chapter for any person to keep or harbor an animal in a manner that:

(a) Is overcrowded.

(b) Is unsanitary; and/or

(c) Produces offensive odors, which move off the owner's premises.

Sec. 4-15. - Running at large.

It shall be unlawful for any owner and/or custodian of any animal to allow such animal to run at large upon the streets, sidewalks, alleys, or other public property, or property of another. An animal running at large may be impounded in accordance with section 4-16 of this chapter.

Sec. 4-16. - Impoundment authorized.

(a) Impoundment for "at large" animals.

(1) Animals running at large may be pursued, caught and impounded by animal control officers and law enforcement officers. Said animals shall be held for a minimum of five (5) days, unless the animal is so diseased or seriously injured that it should be immediately and humanely destroyed, or unless the owner of the animal redeems the animal within the five (5) days by paying all fees that have accrued and receiving custody of the animal. Said fees are not in lieu of any fine or penalty provided by law.

(2) The fees for redemption of an impounded animal include:

a. Feeding per day: $8.00

Plus,

b. Impoundment fee:

1. First occurrence: $20.00
2. Second occurrence: $25.00
3. Third and any subsequent occurrences: $50.00

Fees subject to change as determined by Jackson County Animal Shelter