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Prohibition of nuisances to neighborhood. All large livestock shall be kept in such a manner so as to prohibit the creation of a nuisance as to the abutting or adjoining property owner or the general neighborhood in which they are kept. Said nuisances shall include, but not be limited to noise, odor, attraction of or breeding grounds for flies, mosquitoes, and other insects.

(Ord. No. 19, § 1(a), 10-6-87)

Sec. 4-37. - Keeping of small livestock.

Small livestock is defined as rabbits, chinchillas, and other small caged animals and shall only be allowed to be kept on any property in the city under the following conditions:

(1)

Required area. No small livestock shall be kept on any property having less than seven thousand (7,000) square feet. Closed sheds or garages (as for raising chinchillas) are not restricted except as pertains to zoning ordinance.

(2)

Small livestock to be caged. All small livestock shall be properly caged so as to prohibit their running at large.

(3)

Proximity to opening of dwelling. No small livestock in outside cages shall be kept in such a manner so as to allow their being closer than thirty-five (35) feet from the nearest door, window, or other opening of a neighbor's dwelling.

(Ord. No. 19, § 1(b), 10-6-87)

Sec. 4-38. - Keeping of fowl.

Fowl shall only be allowed to be kept on any property in the city under the following conditions:

(1)

Required area. No fowl shall be allowed on any premises of less than twenty thousand (20,000) square feet, and ten (10) fowl shall be allowed to be kept on premises of twenty thousand (20,000) square feet. Five (5) additional fowl shall be allowed for each additional five thousand (5,000) square feet.

(2)

Fowl to be fenced. All fowl shall be properly fenced so as to prohibit their running at large, and shall be confined as is set out above.

(3)

Proximity to opening of dwelling. No fowl shall be kept in such a manner so as to allow their being closer than thirty-five (35) feet from the nearest door, window, or other opening of a neighbor's dwelling.

(4)

Fowl to be kept in safe and sanitary environment. All fowl shall be kept in a safe and sanitary environment that is not detrimental to the health and well-being of said fowl.

(5)

Prohibition of nuisances to neighborhood. All fowl shall be kept in such a manner so as to prohibit the creation of a nuisance as to the abutting or adjoining property owner or the immediate neighborhood in which they are kept. Said nuisances shall include, but not be limited to noise, odor, attraction of or breeding grounds for flies, mosquitoes and other insects.

(Ord. No. 19, § 1(c), 10-6-87)

Sec. 4-39. - Variances allowed on space requirements.

(a)

Amount of variance. Variances may be allowed on space requirements provided, however, that a variance not to exceed twenty (20) percent of the square footage requirements of this article, as above set out in section 4-36(1) and section 4-38(1) may be allowed on petition properly presented to the Gautier Planning Commission and approved by the planning commission and the mayor and city council of the city upon just cause or reason being shown as to why said variance should be granted.

(b)

How variance obtained. A petition for variance as set out in the preceding paragraph should be accompanied by an affidavit from the petitioner, giving the names and addresses of the adjoining property owners, within five hundred (500) feet which should be presented to the planning commission of the city together with the filing fee as established by said planning commission, and notice thereof and hearing thereon shall be conducted insofar as practical along the same lines as a request for rezoning.

(Ord. No. 19, § 1(d), 10-6-87)

Sec. 4-40. - Permit required.

All persons desiring to keep livestock or fowl in the city shall first apply to the city clerk's office. Provided, however, that all owners of livestock or fowl at this time

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are hereby granted one hundred twenty (120) days after the effective date of this article to apply for said permit.

(Ord. No. 19, § 1(e), 10-6-87)

Secs. 4-41—4-60. - Reserved.

ARTICLE IV. - DANGEROUS ANIMAL CONTROL

Sec. 4-61. - Short title

Sec. 4-62. - Definitions.

Sec. 4-63. - Jurisdiction.

Sec. 4-64. - Appointment of animal control officer.

Sec. 4-65. - Duties of the municipal court judge.

Sec. 4-66. - Duties of the animal control officer.

Sec. 4-67. - Responsibility of owner of classified animal.

Sec. 4-68. - Confiscation of classified animal.

Sec. 4-69. - Offenses.

Sec. 4-70. - Violations; penalties.

Sec. 4-71. - Participation by local municipalities.

Sec. 4-72. - Fees.

Sec. 4-61. - Short title

This article shall be known and may be cited as the "**Dangerous Animal Control Ordinance.**"

(Ord. No. 121, § 1, 8-8-00)

Sec. 4-62. - Definitions.

As used in this article, the term:

Animal control officer means an individual or individuals selected by the city manager to aid in the administration and enforcement of the provisions of this article.

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Governing authority means the governing body or official in which the legislative powers of the city are vested.

Dangerous animal **means any animal that, according to the records of the appropriate authorities:**

(1) Has without provocation inflicted an unprovoked severe injury upon a human being or another domestic animal on public or private property; or

(2) Aggressively bites, attacks, or endangers the safety of humans or other domestic animals without provocation after the animal has been classified as a potentially dangerous animal and after the owner has been notified of such classification.

(3) **Any dog which is entirely or partially comprised of the following breeds: Pit Bull and Rottweiller. The following may also be included based on the animal control officer's evaluation on any occasion in which a complaint has been made: Chow, Sitka, German Shepard.**

Owner means any natural person or any legal entity, including but not limited to, a corporation, partnership, firm or trust owning, possessing, harboring, keeping, or having custody or control of a dangerous animal or potentially dangerous animal within this municipality.

Potentially dangerous animal **means any animal with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to otherwise threaten the safety of human beings or any other domestic animal that when unprovoked:**

(1) **Inflicts bites upon a human being on public or private property; or**

(2) **Chases or approaches a human being while the victim is upon the street, sidewalks, any public grounds or the victim's private property in a vicious or terrorizing manner in an apparent attitude of attack.**

Proper enclosure **means an enclosure for keeping a dangerous animal or potentially dangerous animal while on the owner's property securely**

confined indoors or in a securely enclosed and locked pen, fence, or structure located to the rear of the housing structure suitable to prevent entry of young children and designed to prevent the animal from escaping. Any such pen or structure shall have secure sides and a secure top, and, if the animal is enclosed within a fence, all sides of the fence shall be to prevent the animal from jumping over, and the bottom of the fence shall be constructed or secured in such a manner as to prevent the animal's escape either from over or from under the fence. Any such enclosure shall also provide protection from the elements for the animal.

Records of an appropriate authority means records of any state, county, or municipal law enforcement agency; records of any county or municipal animal control agency; records of any county board of health; records of any federal, state, or local court; or records of an animal control officer provided for in this article.

***Severe injury* means any physical injury that results in broken bones or lacerations requiring multiple sutures or cosmetic surgery or a physical injury that results in death.**

(1)

An animal that inflicts an injury upon a person when the animal is being used by a law enforcement officer to carry out the law enforcement officer's official duties shall not be considered a dangerous animal or potentially dangerous animal within the meaning of this article. An animal shall not be a dangerous animal or a potentially dangerous animal within the meaning of this article if the injury inflicted by the animal was sustained by a person or other animal who, at the time, was committing a willful trespass or other tort or was tormenting, abusing, or assaulting the animal or had in the past been observed or reported to have tormented, abused or assaulted the animal or was committing or attempting to commit a crime.

(Ord. No. 121, § 2, 8-8-00; Ord. No. 124(a), § 1, 4-3-01)

Sec. 4-63. - Jurisdiction.

The jurisdiction for the enforcement of this article shall be within the boundaries of the city.

(Ord. No. 121, § 3, 8-8-00)

Sec. 4-64. - Appointment of animal control officer.

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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. **The city manager may designate the duties of animal control officer to the police department.**

(Ord. No. 121, § 4, 8-8-00)

Sec. 4-65. - Duties of the municipal court judge.

When the municipal court judge receives a request for a hearing as provided for in this article, it shall schedule such hearing within twenty-one (21) days after receiving the request. The animal control officer shall notify the animal owner in writing by certified mail of the date, time and place of the hearing, and such notice shall be mailed to the animal owner at least ten (10) days prior to the date of the hearing. At the hearing, the owner of the animal shall be given the opportunity to testify and present evidence, and in addition thereto, the municipal court judge shall receive such other evidence and hear such other testimony as the governing authority may find reasonably necessary to make a determination either to sustain, modify, or overrule the animal control officer's classification of the animal as provided for within this article.

Within ten (10) days after the date of the hearing, the municipal court judge shall notify the animal owner in writing by certified mail of its determination of the matter. If such determination is that the animal is a dangerous animal or a potentially dangerous animal, the notice shall specify the date upon which that determination is effective.

(Ord. No. 121, § 5, 8-8-00)

Sec. 4-66. - Duties of the animal control officer.

(a)

Each animal control officer shall make such investigations and inquiries as may be necessary to identify dangerous animals and dangerous animal owners within the animal control officer's jurisdiction.

(b)

When an animal control officer classifies an animal as a dangerous animal or reclassifies a potentially dangerous animal as a dangerous animal, the animal control officer shall notify the animal's owner in writing by certified mail to the owner's last known address of such classification or reclassification. Such notice shall be complete upon its mailing.

(1)

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Procedures for classification:

a.

As applied to the owners of potentially dangerous animals, the procedure as provided for in this article must be carried out as a necessary condition for the enforcement of the provisions of this article against such owners.

b.

When a dangerous animal or a potentially dangerous animal is classified as such, the animal control officer shall notify the animal owners of such classification.

c.

The notice to the owner shall make the following requirements:

1.

The notice shall be in writing and mailed by certified mail to the owner's last known address;

2.

The notice shall include a summary of the animal control officer's findings that formed the basis for the animal's classification as a dangerous or potentially dangerous animal;

3.

The notice shall be dated and shall state that the owner, within fifteen (15) days after the date shown on the notice, has a right to request a hearing of the animal control officer's determination that the animal is a dangerous animal or potentially dangerous animal;

4.

The notice shall state that the hearing, if requested, shall be held before and conducted by the municipal court;

5.

The notice shall state that if a hearing is not requested, the animal control officer's determination that the animal is a dangerous animal or a potentially dangerous animal will become effective for all purposes under this article on the date specified in the notice, which shall be after the last day on which the owner has a right to request a hearing;

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6.

The notice shall include a form to request a hearing before the municipal court.

d.

When it has been determined that an owner possesses a dangerous or potentially dangerous animal, the animal control officer shall issue a certificate of registration to the owner of such animal, if the owner presents to the animal control officer or the animal control officer otherwise finds sufficient evidence of compliance with the duties prescribed for the owner within this article.

e.

An animal control officer is authorized to make whatever inquiry is deemed necessary to insure compliance with the provisions of this article.

f.

The police department shall cooperate with the animal control officer in enforcing the provisions of this article.

(Ord. No. 121, § 6, 8-8-00)

Sec. 4-67. - Responsibility of owner of classified animal.

(a)

The owner of an animal which has been classified as a dangerous animal or a potentially dangerous animal shall meet the following requirements:

(1)

A proper enclosure to confine the dangerous animal or potentially dangerous animal shall be provided; and

(2)

The posting of the premises where the dangerous animal or potentially dangerous animal is located with a clearly visible sign warning that there is a dangerous animal on the property and containing a symbol designed to inform children of the presence of a dangerous animal.

(b)

In addition to the requirements set out above, the owner of a dangerous animal shall present to the animal control officer evidence of:

(1)

A policy of insurance in the amount of at least fifteen thousand dollars ($15,000.00), issued by an insurer authorized to transact business in this state, insuring the owner of the dangerous

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animal against liability for any personal injuries inflicted by the dangerous animal; or

(2)

A surety bond in the amount of fifteen thousand dollars ($15,000.00) or more, issued by a surety company authorized to transact business in this state, payable to any person or persons injured by the dangerous animal.

(c)

The owner of a dangerous animal or potentially dangerous animal shall notify the animal control officer within twenty-four (24) hours if the animal is on the loose, is unconfined, has attacked a human, has died, or has been sold or donated. If the animal has been sold or donated, the owner shall also provide the animal control officer with the name, address, and telephone number of the new owner of the animal.

(Ord. No. 121, § 7, 8-8-00)

Sec. 4-68. - Confiscation of classified animal.

(a)

An animal deemed to be a dangerous animal shall be immediately confiscated by the animal control officer or by a law enforcement officer and other person authorized by the animal control officer if:

(1)

The owner of the animal does not secure the liability insurance or bond required by this article, or

(2)

The animal is not validly registered as required by this article, or

(3)

The animal is not maintained in a proper enclosure in violation of this article; or

(4)

The animal is outside a proper enclosure in violation of this article.

(b)

A potentially dangerous animal shall be confiscated in the same manner as a dangerous animal if the animal is:

(1)

Not validly registered as required by this article, or

(2)

Not maintained in a proper enclosure provided by this article; or

(3)

is outside a proper enclosure in violation of this article.

(c)

Any animal that has been confiscated under the provisions of this section shall be returned to its owner after a hearing on the matter is concluded by the municipal court judge or upon the owner's compliance with the provisions of this article and upon the payment of reasonable confiscation costs, which costs shall be determined and set by the animal control officer and approved by the mayor and council. In the event the owner has not complied with the provisions of this article within fifteen (15) days of the date the animal was confiscated, said animal will be destroyed in an expeditious and humane manner.

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(Ord. No. 121, § 8, 8-8-00)

Sec. 4-69. - Offenses.

It shall be unlawful for an owner to have or possess within this state a dangerous animal or a potentially dangerous animal without authority for the animal control officer issued in accordance with the provisions of this article.

(Ord. No. 121, § 9, 8-8-00)

Sec. 4-70. - Violations; penalties.

(a)

The owner of a dangerous animal who violates the applicable provisions of this article, or whose dangerous animal is subject to confiscation under this article, shall be guilty of a misdemeanor and fined two hundred and fifty dollars ($250.00) for a first offense. In addition to any confinement that might be imposed for a conviction under this subsection, for the second conviction a fine of not less than five hundred dollars ($500.00) shall be imposed, and for a third or subsequent conviction a fine of not less than seven hundred and fifty dollars ($750.00) shall be imposed.

(b)

The owner of a potentially dangerous animal who violates the applicable provisions of this article, or whose potentially dangerous animal is subject to confiscation under this article, shall be guilty of a misdemeanor and fined two hundred and fifty dollars ($250.00) for a first offense. In addition to any confinement that might be imposed for a conviction under this subsection, for the second conviction a fine of not less than five hundred dollars ($500.00) shall be imposed, and for a third or subsequent conviction a fine of not less than seven hundred and fifty dollars ($750.00) shall be imposed.

(Ord. No. 121, § 10, 8-8-00)

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Sec. 4-71. - Participation by local municipalities.

Nothing contained in this article shall prevent the governing authority of the city from contracting with local municipalities or counties to establish joint animal control boards, and/or joint animal control officers.

(Ord. No. 121, § 11, 8-8-00)

Sec. 4-72. - Fees.

The governing authority of the city may establish an annual fee, in addition to regular animal licensing fees, to register dangerous animals and potentially dangerous animals as required by this article.

Gautier Planning Commission

Regular Meeting Agenda

November 7, 2013

GPC #13-20-ORD

VI. OLD BUSINESS

A. LEGISLATIVE

1. CONSIDER A REVISION OF CHAPTER 4 OF THE CITY OF GAUTIER CODE OF ORDINANCES REGARDING ANIMAL CONTROL (STAFF) (GPC 13-20-UDO)

CITY OF GAUTIER
STAFF REPORT

To: Chairman and Members, Planning Commission

From: Babs Logan, Planning Technician

Through: Chandra Nicholson, Planning and Economic Development Director

Date: October 31, 2013

Subject: Consideration of an Ordinance Revising Chapter 4 Animals and Fowl, of the City of Gautier Code of Ordinances Regarding Animal Control. GPC Case #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 and keeping of vicious animals.

At the September 5th Planning Commission meeting Staff was directed to make several changes to the proposed revision of the Animals & Fowl Ordinance that was presented and to bring the revised version to them at the October 3rd meeting for further review. There was no meeting on October 3rd due to lack of a quorum. The meeting was rescheduled for November 7th.

BACKGROUND:

Staff has found that the ordinance regarding animals and fowl needs to be more specific regarding the regulations for inoculating dogs and cats for rabies, confinement of animals to premises and their running at large, determination of vicious animals, keeping of vicious animals, etc.

At the September 5th Planning Commission meeting Staff was directed to also include revisions regarding the keeping of fowl.

The Amendment Process
Section 4.20 of the City's Unified Development Ordinance (UDO) establishes the procedure to amend the City's Unified Development Ordinance. The Gautier Planning Commission (GPC) shall review a proposal for an amendment and shall make an advisory recommendation to the City Council as to the need and justification for the change.

After due public notice and a recommendation by the Planning Commission, the City Council shall hold a public hearing to consider the adoption of this ordinance amendment. 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.

Following an advertised public hearing by the GPC on September 5th and another public hearing on November 7th, the Ordinance to revise Chapter 4 of the City of Gautier Code of Ordinances will be considered for approval by the City Council.

DISCUSSION:

Staff researched codes for neighboring cities before proposing revisions to the Animal and Fowl Ordinance. Staff also placed the proposed revisions to the ordinance on the website and requested input from citizens.

This item was tabled at the September 5th Planning Commission meeting for Staff to incorporate the changes made by the Commissioners and for the City Attorney to review the proposed ordinance further and advise whether the Commission should recommend limiting the number of dogs allowed at a residence and/or how it should be worded.

Attached is the revised proposed ordinance revision for Chapter 4 of the City of Gautier Code of Ordinances.

RECOMMENDATION:

Staff recommends approval of the attached proposed ordinance revisions. The Commission may:

1. Recommend that City Council Approve the Ordinance Revisions; or
2. Recommend that City Council Disapprove the Ordinance Revisions.

ATTACHMENTS:

Proposed Ordinance
Ordinance for Council

SUMMARY OF CHANGES

- Added all the recommendations of the Planning Commission from the meeting September 5, 2013 and discussion on October 3, 2013.
- Bold and Underlined material reflects text changes since October 3, 2013 discussion.

ARTICLE I In General

Sec 4-1 was previously 4-2.
Sec 4-2 was previously 4-1.
Sec 4-3 was previously 4-14.
Sec 4-4 was 4-64 original Gautier Ordinance.
Sec 4-5 was previously 4-15.
Sec 4-6 was previously 4-10 plus added material.
Sec 4-7 – 4-10 Reserved.

ARTICLE II Dogs, Cats and Other Animals

Sec 4-11 was previously 4-3.
Sec 4-12 was previously 4-4.
Sec 4-13 was previously 4-5.
Sec 4-14 was previously 4-6 waiting on city attorney recommendation
Sec 4-15 was previously 4-7.
Sec 4-16 was previously 4-8.
Sec 4-17 was previously 4-13 added ear tipping, etc.
Sec 4-18 was previously 4-9.
Sec 4-19 was previously 4-10 changed to original Gautier Ordinance 4-24.
Sec 4-20 – 4-25 Reserved.

ARTICLE III Vicious Animals/Dogs

Sec 4-26 was previously 4-61 original Gautier Ordinance
Sec 4-27 was previously 4-11.
Sec 4-28 was previously 4-12.
Sec 4-29 was previously 4-68 original Gautier Ordinance
Sec 4-30 was previously 4-69 original Gautier Ordinance
Sec 4-31 was previously 4-70 original Gautier Ordinance
Sec 4-32 - 4-35 Reserved.

ARTICLE IV Livestock and Fowl

Sec 4-36 was previously 4-16.
Sec 4-37 was previously 4-17.
Sec 4-38 was previously 4-18.
Sec 4-39 was previously 4-19 changed per PC recommendation
Sec 4-40 was previously 4-20.
Sec 4-41 was previously 4-21.
Sec 4-42 Violation added new text