

# MAYOR & COUNCIL AGENDA COVER SHEET

**MEETING DATE:**

June 15, 2009

**CALL TO PODIUM:**

Lisa Holland, Director of Animal Control

**RESPONSIBLE STAFF:**

Lisa Holland, Director of Animal Control

Lynn Board,  
City Attorney

**AGENDA ITEM:**

(please check one)

|                                     |                              |
|-------------------------------------|------------------------------|
| <input type="checkbox"/>            | Presentation                 |
| <input type="checkbox"/>            | Proclamation/Certificate     |
| <input type="checkbox"/>            | Appointment                  |
| <input type="checkbox"/>            | Public Hearing               |
| <input type="checkbox"/>            | Historic District            |
| <input type="checkbox"/>            | Consent Item                 |
| <input checked="" type="checkbox"/> | Ordinance                    |
| <input type="checkbox"/>            | Resolution                   |
| <input type="checkbox"/>            | Policy Discussion            |
| <input type="checkbox"/>            | Work Session Discussion Item |
| <input type="checkbox"/>            | Other:                       |

**PUBLIC HEARING HISTORY:**

(Please complete this section if agenda item is a public hearing)

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| Introduced        |  |
| Advertised        |  |
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| Hearing Date      |  |
| Record Held Open  |  |
| Policy Discussion |  |

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| <b>TITLE:</b>  |
| Introduction of an Ordinance to Amend Chapter 4 of the City Code Entitled "Animals and Fowl" |

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| <b>SUPPORTING BACKGROUND:</b>  |
| City staff and the Animal Control Board have conducted a review of Chapter 4 of the City Code, which has not been updated since 2000, and animal control ordinances from other jurisdictions. Based on this review, staff is recommending amendments to Chapter 4, as detailed in the attached Memorandum. |

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| <b>DESIRED OUTCOME:</b>   |
| Introduce Ordinance; notify public of hearing scheduled for Monday, July 6, 2009. |

MEMORANDUM TO: Mayor and City Council

VIA: Angel Jones, City Manager

FROM: Lisa Holland, Animal Control Director

DATE: June 4, 2009

SUBJECT: Revisions to Gaithersburg City Code  
Chapter 4, Animals and Fowl

Chapter 4, *Animals and Fowl*, has not been amended in its entirety since August 23, 2000. The Animal Control Board conducted a public hearing on November 13, 2007 eliciting citizens' input regarding amendments to Chapter 4. On June 26, 2008 the Board held a work session to discuss those, and other, citizen comments along with Board members' concerns and suggestions arising from the Board's deliberation of the thirty-some cases heard since its inception. Attached are proposed revisions reflecting these views.

In addition to assisting staff in resolving citizens' complaints, these amendments will bring our Code up to date with current legislation in other jurisdictions across in the United States, and possibly set a trend for other municipalities to follow. We believe these amendments will clarify Chapter 4, enhancing animal control service to the community and eventually decreasing the number of public nuisance complaints.

#### Article 1. In General

**Section 4-1. Definitions:** We propose adding definitions for *Attractant*, *Designated rabies vector species*, *Licensed activities*, *Microchip*, *Neutering*, *Quarantine*, *Wild animal* and revising the definition of *Restrain*. This is necessary to clarify proposed amendments, below.

**Sec. 4-3, Cruelty to animals; animal care:** We propose revising this section to make it a Code violation to tether an animal, while preserving the right to certain activities. We have clarified the circumstances under which an animal may be confined.

**Section 4-4, Animal public nuisances; sanitation:** We propose adding "sanitation" to the title. Causing unsanitary conditions is presently included hereunder as creating an Animal public nuisance, while *Sanitation* is presently accorded its own Section 4-6. We

propose curing this redundancy by substituting the entire present Section 4-6 to Section 4-4(b) and deleting the sanitation language presently contained in Section 4-4(a)(4), (5) and (6).

**Section 4-5, Potentially dangerous animals; dangerous animals; attack or guard dogs:** We propose adding to both Sections 4-5(b)(5) and (e)(6) the language, including having the dog neutered and/or microchipped within prescribed time period at owner's expense. The Board already has the authority to order sterilization, Section 4-38(7); we feel that it should be clearly and prominently stated under the sections where this remedy would most likely be employed.

**Section 4-6, Attracting wild animals; rabies vector animals:** This section was formerly *Sanitation*, see discussion under Section 4-4 above. We propose to transfer the sanitation language to Section 4-4(b) where it properly belongs, as an Animal public nuisance. It appears redundant and confusing to have this matter covered in two sections.

This new section, as proposed, is in response to citizens' requests and staff concerns regarding the growing number of residents placing food out to deliberately attract foxes and raccoons. This practice is not only dangerous for residents, it encourages wildlife to lose natural fear of humans thereby increasing the potential spread of the rabies virus. Our proposal preserves the rights of residents to feed certain animals under prescribed conditions, authorizes removal of feeding devices during occurrence of rabies outbreak and excludes the byproduct of normal gardening practices from prohibited "attractants."

**Section 4-8.1 Breeders and litter Permits:** This is a new section and our proposal responds to the increasing number of concerns regarding residents home-breeding puppies under inadequate, unhealthy conditions. Staff has found in more than one occasion malnourished, even dead, dogs resulting. Recognizing the humane need for efforts to decrease the number of unwanted, mistreated dogs and cats, we believe this will discourage residents from attempting to enter the dog breeding business.

**Section 4-13, Enforcement during quarantine:** We propose revising Section (b) making it a Code violation to remove a quarantined animal from quarantine. We have had occasions when a dog, quarantined at owner's home, was taken into public places before the quarantine period ended.

## Article II

### DIVISION 2. ANIMAL CONTROL BOARD

**Section 4-36, Established; members; officers; quorum; voting; meetings:** We propose revising this section to allow the Board to elect its chairperson, as other city committees do, and to establish a quorum for the conduct of business. We propose adding “officers; quorum; voting; meetings” to the Section title to reflect these changes. In addition, staff is recommending that a second alternate position to be created and empowered to sit on the board in the absence of a member representing the Montgomery County Veterinary Medical Association or a member who has training and/or experience in the proper training or care of animals.

**Section 4-38, Administrative remedies, sanctions:** We propose substituting “Neutering or spaying” for “Sterilization,” and added “Implanting a microchip . . .”

I hope this information is helpful as you consider the proposed amendments to Chapter 4 of the City Code. If you have any questions or comments, please contact me at 301-258-6343 or [lholland@gaitthersburgmd.gov](mailto:lholland@gaitthersburgmd.gov)

ORDINANCE NO. \_\_\_\_ -09

AN ORDINANCE TO AMEND CHAPTER 4 OF THE CITY CODE  
ENTITLED "ANIMALS AND FOWL"

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, in public meeting assembled, that certain sections of Chapter 4 of the City Code, are hereby amended to read as follows:

Sec. 4-1. Definitions.

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

*Administrative charge.* Any costs or charges imposed by decision of the animal control board.

*Affidavit.* Written statements, the contents of which are affirmed under the penalties of perjury to be true.

*Animal.* Every nonhuman species of animals, both domestic and wild, including fowls, birds, fish, reptiles, amphibians and rodents. For the purpose of defining a pet shop or commercial kennel, animal shall also include any living creature offered for sale, sold, rented or exchanged as a commercial item to the general public to be raised in captivity.

*Animal boarding place.* Any buildings or land used, designated or arranged for the boarding, breeding or care of dogs, cats, pets, fowl or other domestic animals for profit, not including those animals raised for agricultural purposes.

*Animal control officer.* An employee or agent of the city, designated by the city manager to administer and enforce the licensing, inspection and enforcement requirements contained within this chapter.

*Animal public nuisance.* Any activity prohibited under sections 4-4 and 4-5 of this chapter, which is deemed to exist on any premises, including private and public property or upon any common thoroughfare, sidewalk, passageway, bikepath, play area or common grounds owned by a homeowners association or jointly by the co-owners of a condominium.

*Animal shelter.* Any facility operated by the city, county or a humane society for the temporary care, confinement and detention of animals and for the humane killing and other disposition of animals. The term shall also include any private facility authorized by the city manager or his designee to impound, confine, detain, care for and/or destroy any animal.

*At large.* With the exception of city designated dog exercise areas, an animal shall be deemed to be "at large" if it is either: off the premises of its owner/custodian; on private property other than that of its owner/custodian; or on common grounds owned by a homeowners association or jointly by co-owners of a condominium, and is not on a leash and under the restraint of a responsible person physically capable of exercising effective restraint of such animal.

*Attack or guard dog.* A dog trained to attack only on command or to protect persons or property, and who will cease to attack upon command.

*Attractant.* Any substance which could reasonably be expected to attract a wild animal or animals or does attract a wild animal or animals, including but not limited to, food products, pet food, feed, grain or salt.

*Board.* The animal control board established pursuant to this chapter.

*Cages.* Any interior enclosure of limited space enclosed on the bottom, top and on all four (4) sides by either walls, wire fence material or otherwise in which animals or other creatures are placed for purposes of confinement or display. No cage shall be enclosed entirely by solid walls.

*City.* The City of Gaithersburg, Maryland.

*City manager.* City manager or his designee.

*Commercial enterprise.* Any establishment, the primary function of which is the sale of any product, service or commodity.

*Commercial kennel.* Includes any animal boarding place or other establishment for the commercial breeding of dogs or cats or the boarding, grooming, sale or training of dogs or cats for which a fee is charged; provided, that animal hospitals maintained by a licensed veterinarian as part of the practice of veterinary medicine for the treatment of animals shall not be considered "commercial kennels."

*Compartments.* An enclosure of limited space, enclosed on the bottom, top and all four (4) sides by either solid walls or otherwise, and constructed in the same manner as a cage but with access into an enclosed exercise area.

*County.* Montgomery County, Maryland.

*Cross-tethering.* A manner of securing an animal firmly by tying the animal from at least two (2) different directions.

*Cruelty.* Any act or omission prohibited under section 4-3.

*Designated rabies vector species.* Vectors are animals capable of carrying disease pathogens from an animal to another. The rabies vector species are animals suspected of being rabies carriers and are chosen by the state of MD every year and specified in writing on all government agencies' State Wildlife permits.

*Dangerous animal.* Any animal deemed hereunder to constitute a physical threat to human beings, domestic animals or livestock by virtue of specific training or demonstrated behavior. Any animal which, without provocation, has bitten or attacked a human being or other domestic animal or livestock shall be *prima facie* presumed dangerous.

*Disposition.* Adoption, quarantine, voluntary or involuntary custodianship or placement, or euthanasia humanely administered to an animal; or placement or sale of an animal to the general public; or removal of an animal from any pet shop or commercial kennel to any other location.

*Fowl.* Chickens, turkeys, pheasants, quail, guineas, geese, ducks, pigeons and other similar feathered animals regardless of age or sex which are kept on residential premises.

*Healthful.* A condition appropriate to the particular species of animal involved, which is hygienic and conducive to the maintenance of the animal's well being and to the prevention of disease.

*Impoundment.* The taking into custody of an animal by the city manager, animal control officer, the city police department, or any authorized representative thereof.

*Keeper.* Any person, association or corporation, or employee or agent thereof maintaining any facility regulated by this article, other than a pet shop or commercial kennel licensee.

*Licensed activity.* An activity authorizing or contemplating restraint as an element of enjoyment of the activity, such as using a campground or participating in canine training.

*Microchip.* A tiny computer chip which has an identification number programmed into it and is encapsulated within a biocompatible material providing a permanent, positive identification which cannot be lost, altered or intentionally removed.

*Municipal infraction citation.* A civil citation issued pursuant to the provisions of Article 23A of the Annotated Code of Maryland.

*Muzzle.* A device constructed of strong, soft material or of metal, designed to fasten over the mouth of an animal to prevent said animal from biting any person or animal. The muzzle must be made and used in a manner that will not cause injury to the animal or interfere with its vision or respiration.

*Neutering.* Sterilization of an animal by castration (male) or spaying (female).

*Notice of violation.* An administrative notice issued by the city manager or his designee, the animal control officer, animal control board or a police officer, charging violation of this chapter.

*Owner.* Any person having temporary or permanent custody of, possessing, keeping, having charge of, sheltering, harboring,

exercising control over, or having property rights to, any animal covered by this chapter. The term "owner" shall include the keeper of an animal, even if said keeper has no property interest in the animal. A parent or guardian of a minor child who comes within this definition shall also be deemed to be the owner of the animal. Owner shall not include any animal shelter or the city when it has the care, custody or control of an animal.

*Pet shop.* Any establishment maintained separately or in connection with another commercial enterprise which offers to sell, trade or exchange any species of live animals.

*Pet supply store.* Any establishment maintained as part of a pet shop or separately therefrom, that sells or offers to sell, pet supplies, equipment or food and sells no type of animal except tropical fish.

*Potentially dangerous animal.* Any animal deemed hereunder to have chased, menaced or otherwise threatened a person or other domestic animal, or has been observed at large three (3) or more times during a twelve (12) month period.

*Prohibited animal.* Any live monkey, alligator, crocodile, caiman, raccoon, skunk, fox, bear, sea mammal, or poisonous snake; any member of the cat family other than the domestic cat; any dangerous animal; any animal which, by virtue of its species, would require a standard of care and control greater than that required for customary or traditional household pets sold by licensed commercial pet shops; any domestic farm animal including, but not limited to, horses, cattle, pigs and sheep.

*Provocation.* An action or behavior of an animal is provoked when the action or behavior is:

- (1) In response to current or previous tormenting, teasing, abuse, threat, or assault by a person or animal;
- (2) In response to pain or injury;
- (3) To protect the animal, its offspring, or other animals in the same household; or
- (4) Directed against a person who is:
  - a. Not lawfully present where the action or behavior occurs;
  - b. Injuring, threatening or endangering the animal's owner or another person in the vicinity; or
  - c. Damaging or unlawfully entering the property, household, or enclosure where the animal is harbored.

*Quarantine.* : A restraint upon the activities or communication of an animal designed to prevent the spread of disease or pests. A state of enforced isolation, either at home or at an approved location, to provide for a period of observation so that the animal suspected of being involved in a bite, scratch, or exposure can be observed to determine if there is any danger of the animal transmitting the rabies virus.

*Respondent.* Any person charged in a notice of violation or a petition of violating any provision of this chapter.

~~*Restrained.* Any animal secured by a leash or lead under the control of a responsible person or securely enclosed within the real property limits of its owner.~~ Restricting an unattended animal with chain, rope, tether, leash, cable or other device that attaches to a stationary object or trolley system.

*Rodent and insect proof.* A state or condition not conducive to the entry, feeding, harboring or breeding of non-domesticated rodents and/or insects.

*Sanitary.* A condition of good order and cleanliness precluding the probability of disease transmission.

*Tattooing.* Any permanent marking by means of indelible or permanent ink with a number, or any other permanent, acceptable method of identification.

*Ventilation.* A reasonable health method of air entry, circulation and air filtration.

*Veterinary hospital.* Any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of diseases and injuries of animals.

*Violation.* Any breach or noncompliance with any requirement, provision or regulation contained in this article. Violations shall be classified as:

(1) *Class A violations.* Those violations, actions or omissions which endanger or impair the health, safety or physical well-being of animals or persons, or the treatment of animals, or any misrepresentation in connection with such violations. Class A violations shall also include the operation of a pet shop or commercial kennel without a license required by this article, or operating under a suspended or revoked license.

(2) *Class B violations.* Any other violation, action or omission, not constituting a Class A violation, including, but not limited to, the provision or maintenance of facilities, equipment, supplies and records relating to the pet shop or commercial kennel or any conduct relating to the comfort of animals or persons, as well as the maintenance or cause of an animal nuisance.

*Wild animal.* Any designated rabies vector species or other mammal which is not normally domesticated in the City of Gaithersburg, including but not limited to, deer, foxes, coyotes, opossums, raccoons, skunks, ground hogs.

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Sec. 4-3. Cruelty to animals; animal care.

(a) A person must not:

- (1) Willfully, without justification kill, wound, injure, torture, assault, threaten, torment, mutilate, run down with a vehicle, beat, overload, or otherwise abuse an animal;
  - (2) Poison a domestic animal, or leave a poisonous or harmful substance with the intent to harm a domestic animal;
  - (3) Create circumstances that are likely to harm a domestic animal;
  - (4) Abandon a domestic animal; or
  - (5) Subject an animal to conditions detrimental to the animal's health or welfare.
- (b) An owner must provide the following sanitary and humane conditions for an animal:
- (1) Enough wholesome, palatable, nutritious food to maintain the animal in good health. At least one (1) feeding a day, unless otherwise prescribed by veterinary or other professionally recognized practice.
  - (2) Clean, potable water available at all times in a clean and sanitary receptacle appropriate for the animal and positioned to prevent spillage.
  - (3) Except while the animal is transported or in other conditions the city or board determines are humane, a living environment:
    - a. Where the animal can stand full height, stretch out, turn around, lie down, and make normal postural adjustments comfortable;
    - b. That provides fresh air by natural or mechanical means appropriate to maintain the animal's normal temperature; and
    - c. That is not a cage enclosed by solid walls.
  - (4) Exercise and freedom of movement necessary to maintain the animal's good health.
  - (5) No person shall tether, fasten, chain, tie, or restrain an unattended dog, or cause such dog to be tethered, fastened, chained, tied, or restrained, to a dog house, tree, fence, or any other stationary object. Nothing in this paragraph shall be construed to prohibit a person from reasonably restraining a dog for short periods, considering weather and relevant conditions, or while using accommodations that are associated with a licensed activity, or from walking a dog with a hand held leash. For a dog on a tether or chain, the tether or chain shall be at least fifteen (15) feet or five (5) times the length of the dog's body, positioned to prevent tangling and/or hanging.
    - a. ~~Any tethered dog shall wear a properly fitted harness or buckle type collar.~~
    - b. ~~It shall be unlawful to tether, chain or fasten any animal in such a manner as to permit it to be off the owner's property, or upon any public sidewalk or street or to leave it~~

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property.

~~c. It shall be unlawful to tether, chain or fasten an animal in such a manner as to prevent it from reaching shelter, food and water.~~

~~d. Any animal that is tethered for more than ten (10) hours at a time must be removed from the tether and allowed to exercise.~~

(6) Access to sufficient shade from the sun.

(7) For a domestic animal (other than livestock) kept outdoors, access to weather proof shelter appropriate for the animal's species, breed, age, and physical condition.

(8) For a dog kept outdoors in severe weather, a shelter with at least three (3) sides; a roof; a solid floor; a door, flexible windproof flap, or offset entrance; and dry bedding (such as cedar chips, hay, or straw) to provide insulation. Weather is severe when the temperature is below 45 degrees Fahrenheit, during a storm, when the city declares that animals should be inside because of hot or cold temperatures, or during a winter weather advisory issued for the Gaithersburg area.

(9) Immediate veterinary care for an ill or injured animal.

(10) Regular cleaning of any indoor or outdoor enclosure to remove excreta and debris that could promote disease, odor, or danger to the animal.

(11) Appropriate grooming for an animal with a hair coat, to prevent severe matting, filth accumulation, or skin disease.

(c) A person must not promote, stage, hold, manage, conduct, or attend an illegal game, exhibition, contest, or fight of one or more animals or between animals and humans, or set free any animal for chasing or racing. This paragraph does not apply to an otherwise lawful, humane sporting activity, such as hunting and chasing small game with dogs, or any other humane activity approved by the City Manager or designee.

(d) The owner of a domestic animal must not abandon the animal on any property, including the owner's own property.

(e) A person must not offer, sell, barter, or give away baby chickens, ducklings, or other fowl under three (3) weeks old or rabbits under two (2) months old to dye or otherwise change the natural color of the animal. A breeder or store engaged in the business of selling baby chickens, ducklings, or other fowl may sell or display these animals in proper facilities for commercial breeding and raising.

(f) A person must not sell, give away, or barter any domestic dog or cat under eight (8) weeks old unless the animal is accompanied by its dam. This paragraph does not apply to the surrender of an

animal to the animal control officer, an animal control shelter, or a benevolent organization.

(g) A person must not confine, or ~~allow~~ encourage another to confine, an animal in a motor vehicle in a manner that exposes the animal to danger from temperature extremes, inadequate ventilation, lack of food or drink, or other conditions likely that could reasonably be expected to cause suffering, injury, or death to the animal. A person must not transport a dog in the back of a pick-up truck unless the dog is ~~cross-tethered and~~ housed in a wire crate of suitable size, and suitably secured.

(h) The driver of a vehicle that kills or injures a domestic animal must render reasonable assistance to the animal and make a reasonable effort to locate the owner of the animal. If the driver cannot locate the owner or custodian, the person must notify the city animal control division or the police department as soon as practicable.

(i) Whenever it becomes necessary, in order to protect any animal from neglect or cruelty, any animal control officer, police officer or other authorized representative of the city having a reasonable belief that an animal is neglected or being treated cruelly, may enter into and upon any place in which the animal is impounded or confined, and supply it with necessary food, water and attention so long as it there remains, or if necessary for the health of the animal, may remove the animal without being liable, civilly, to any person for such action.

**Sec. 4-4. Animal public nuisances; sanitation.**

(a) It shall be unlawful for any person to keep any animal including, but not limited to, dogs, cats, fowl, domestic pigeons or rabbits, on any property located within the corporate limits of the city when the keeping of such animal constitutes a nuisance, or a menace to public health or safety. The term "animal public nuisance" shall be deemed to include, but not be necessarily limited to, any animal that:

(1) Is at large, or permitted to run at large within the city, or is off the owner's/custodian's property including any animal which is tied or left unattended in a public area when the owner/custodian is not in the immediate vicinity;

(2) Is deemed to be a dangerous animal under this title;

(3) Makes disturbing noises, including, but not necessarily limited to, continued and repeated howling, barking, whining or other utterances causing unreasonable annoyance, disturbance or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored;

~~(4) Causes unsanitary or annoying conditions by virtue of size or number of such animals maintained in a single location, or by~~

~~adequacy of the housing facilities;~~

~~(5) Is allowed to soil, defile or defecate on any public property, common thoroughfare, sidewalk, passageway, bikepath, play area or common grounds owned by a homeowners association or jointly by the co-owners of a condominium, or any place where people congregate or walk, or upon any private property other than that of the owner/custodian, unless all such feces and unsanitary matter is immediately removed and disposed of in a sanitary and lawful manner;~~

~~(6) Is allowed to accumulate waste matter on the owner/custodian's property or the property of others in a manner which causes or creates an unhealthy, unsanitary, dangerous or otherwise offensive environmental condition.~~

(b) Sanitation:

(1) No person owning, harboring, keeping or in charge of any dog, cat or other animal shall cause, suffer or allow such dog, cat or other animal to soil, defile or defecate on any public property or upon any common thoroughfare, sidewalk, passageway, bikepath, play area, or common grounds owned jointly by the members of a homeowners or condominium association, or any place where people congregate or walk or upon any private property other than that of the owner or custodian, unless such person immediately removes and disposes of all feces deposited by such animal by the following methods:

(i) Collection of the feces by appropriate implement and placement in a paper or plastic bag or other container; and

(ii) Removal of such bag or container to the property of the animal owner or custodian and disposal thereafter in a manner as otherwise may be permitted by law.

(2) No person owning, harboring or keeping or in charge of any dog, cat or other animal shall permit any waste matter from the animal to collect and remain on the owner's or custodian's property, or the property of others so as to cause or create an unhealthy, unsanitary, dangerous or offensive living condition on the owner's or custodian's property, or to abutting property of others.

(3) No person owning, harboring, keeping or in charge of any dog, cat or other animal shall cause unsanitary dangerous or offensive conditions by virtue of the size or number of animals maintained at a single location or due to the inadequacy of the facilities.

(b<sub>c</sub>) In the event that any owner or custodian of any dog or other animal creating an animal nuisance is not readily accessible, the

city may take the animal into protective custody, impound it, and request the owner or custodian to retrieve the animal.

**Sec. 4-5. Potentially dangerous animals; dangerous animals; attack or guard dogs.**

(a) Potentially dangerous animals. The city manager or designee may deem any of the following to be a potentially dangerous animal:

(1) Any animal that chases, approaches in a threatening manner or otherwise menaces a person or another domestic animal in a manner exhibiting an aggressive or attack demeanor;

(2) Any animal with a known propensity, tendency, or disposition to attack, without provocation, persons or other domestic animals in a manner which threatens the health and safety of such persons or other domestic animals;

(3) Any animal which has either been observed by an animal control officer or otherwise determined to be at large, or which has been impounded by the city, on three (3) separate occasions within the immediately preceding twelve (12) month period;

(4) Any animal that is deemed to be under an investigation, by the city manager or his designee, prompted by an affidavit of complaint which contains: a description of the animal; a discussion of alleged activity; including date, time and place of alleged activity; identifies the animal's owner and address; and which is properly executed by one or more residents;

(5) Notwithstanding the above, no animal shall be deemed potentially dangerous if the alleged activity is determined to have been directed toward: (i) a person or persons causing, or who have caused in the past, the animal to be tormented, abused, assaulted or otherwise teased in a provocative manner or; (ii) a person or persons committing or attempting to commit a crime.

(b) The owner(s) of any animal deemed potentially dangerous shall:

(1) Keep the animal inside of the owner's residence or in a secure enclosure which will prevent direct contact between him and the public and other animals;

(2) When the animal is restrained by a leash, ensure that the leash does not exceed six (6) feet in length and is under the effective control of a person eighteen (18) years or older who is physically capable of restraining said animal;

(3) Provide the city manager or his designee with a current photograph of the animal;

- (4) Install caution signs on property warning of the potential dangerous animal; and
  - (5) Comply with any and all other requirements set forth by the city manager or his designee, including having the dog neutered and/or microchipped within prescribed time period at the owner's expense.
- (c) Failure to comply with these directives shall constitute grounds for permanent removal of said animal from the city.
- (d) Dangerous animals. The city manager or designee may deem any animal dangerous which:
- (1) Bites a person, including persons on owner's property at owner's express or implied invitation;
  - (2) Kills, mauls, maims or otherwise inflicts severe injury to a domestic animal when not on owner's property;
  - (3) Notwithstanding the above, no animal shall be deemed dangerous if the alleged activity is determined to have been directed toward: (i) a person or persons causing, or who have caused in the past, the animal to be tormented, abused, assaulted or otherwise teased in a provocative manner or; (ii) person or persons committing or attempting to commit a crime.
- (e) The owner(s) of any animal deemed dangerous shall:
- (1) Confine said animal securely indoors on owner's property, or outdoors on owner's property in a securely enclosed, locked pen or structure, suitable to prevent the entry of young children and to prevent the animal from escaping. Such pen or structure shall have minimum dimensions of five (5) feet by ten (10) feet, appropriate height for the size and type of said animal and secure sides and top. Absent a bottom attached to sides of said pen or structure, the sides shall be in the ground to a depth of at least two (2) feet, and said pen or structure shall provide suitable protection for the animal from the elements; except when muzzled and restrained by a leash not exceeding six (6) feet in length and under the effective control of a person eighteen (18) years or older who is physically capable of restraining the animal;
  - (2) Provide the city manager or designee with a current photograph of the animal and cause the animal to be tattooed, for positive identification;
  - (3) Install caution signs on property warning of the dangerous animal;
  - (4) Immediately notify the city manager or designee in the event that: (i) said animal becomes loose or unconfined; (ii) said animal should attack a person or other domestic animal; or (iii) said animal has died, been sold or given away. In the event said animal has been sold or given away, original owner(s) shall provide the city manager or designee with a copy of written

notification to new owner(s) that, should said animal thereafter continue to be kept within the city, said new owner(s) are required to comply fully with this chapter and any other orders or directives relating to the animal issued by the city;

(5) Allow city manager or designee to inspect the premises upon proper notice in order to ensure compliance with these requirements; and

(6) Comply with any and all other requirements set forth by the city manager or designee, including having the dog neutered and/or microchipped within prescribed time period at the owner's expense.

(f) Failure to comply with these directives shall constitute grounds for permanent removal of said animal from the city.

(g) Every owner of an attack dog shall keep such dog confined in a building, compartment or other enclosure; provided, that any such enclosure is completely surrounded by a fence at least six (6) feet in height and shall be topped with an anti-climbing device constructed of angled metal braces with at least three (3) strands equally separated barbed wire stretched between them. All anti-climbing devices shall extend inward at an angle of not less than forty-five (45) degrees or more than ninety (90) degrees when measured from the perpendicular. The area of confinement shall have all gates and entrances thereto securely closed and locked, and all fences properly maintained and escape proof.

(h) The provisions of this section shall not apply to dogs owned or controlled by government law enforcement agencies.

#### **Sec. 4-6. Attracting wild animals; rabies vector animals.**

(a) It is unlawful for a person to use an attractant or otherwise to engage in any activity or behavior that is intended to attract, to encourage the tameness of or to otherwise encourage any wild animal or any designated rabies vector species to be unafraid of human activity.

(b) Attractants may be placed solely for the purpose of feeding wild birds and small mammals if placed in feeding devices or structures at a sufficient height or design to prevent access by deer or rabies vector animals.

(c) Feed that is deposited by natural vegetation or found solely as a result of normal agricultural or gardening practices is not a prohibited attractant.

(d) The city manager or designee may from time to time require the temporary removal of such structures and devices during a high incidence of rabies or otherwise to protect the health, safety and welfare of residents.

~~Sanitation.~~

~~(a) No person owning, harboring, keeping or in charge of any dog, cat or other animal shall cause, suffer or allow such dog, cat or other animal to soil, defile or defecate on any public property or upon any common thoroughfare, sidewalk, passageway, bikepath, play area, or common grounds owned jointly by the members of a homeowners or condominium association, or any place where people congregate or walk or upon any private property other than that of the owner or custodian, unless such person immediately removes and disposes of all feces deposited by such animal by the following methods:~~

~~(1) Collection of the feces by appropriate implement and placement in a paper or plastic bag or other container; and~~

~~(2) Removal of such bag or container to the property of the animal owner or custodian and disposal thereafter in a manner as otherwise may be permitted by law.~~

~~(b) No person owning, harboring or keeping or in charge of any dog, cat or other animal shall permit any waste matter from the animal to collect and remain on the owner's or custodian's property, or the property of others so as to cause or create an unhealthy, unsanitary, dangerous or offensive living condition on the owner's or custodian's property, or to abutting property of others.~~

~~(c) No person owning, harboring, keeping or in charge of any dog, cat or other animal shall cause unsanitary dangerous or offensive conditions by virtue of the size or number of animals maintained at a single location or due to the inadequacy of the facilities.~~

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**Sec. 4-8.1. Breeders and Litter Permits.**

(a) Every person who resides within the city who intentionally or accidentally permits the breeding of single dog or cat or makes a single dog or cat available for breeding shall obtain a breeders permit. Such permit shall be obtained from a person designated by the city manager to issue such permit. Permit fees shall be set by resolution of the city council.

(1) Each permit authorizes the whelping of no more than one litter per female dog or cat in any 12-month period.

(2) Female dogs and cats may only be bred when they are at least 2 years of age and are no older than 6 years in age, and each mother dog or cat must be micro-chipped and maintain adequate body weigh before and after whelping.

(b) Every person who fails to obtain a breeders permit who is in possession of a litter of puppies or kittens shall obtain a litter permit within 10 days of the birth of said animals. Such permit shall be obtained from a person designated by the city manager to issue

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council.

(c) Failure to obtain a permit under this Section shall constitute a municipal infraction with a fine in an amount set by resolution of the city council and may result in the seizure and impoundment of the female dog or cat and litter.

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Sec. 4-13. Enforcement during quarantine.

(a) The animal control officer shall immediately place any animal which has been bitten or scratched by an animal suspected of carrying the rabies virus into strict isolation pursuant to state law and board of health regulation. The owner shall be responsible for all costs associated with the isolation. If necessary to protect public health and safety, the animal control officer may humanely destroy an animal which has been bitten or scratched by an animal suspected of carrying the rabies virus after due notice to the animal's owner.

(b) An owner directed to quarantine an animal at home shall not remove said quarantined animal from such place of quarantine for any reason until the period of quarantine established by the animal control office has ended. The animal control officer must impound, at the owner's expense, and may destroy or otherwise dispose of an animal found at large during a quarantine.

(c) A person must surrender an animal subject to quarantine when the animal control officer orders the animal impounded or destroyed.

\* \* \* \* \*

**Sec. 4-36. Established; members; officers; quorum; voting; meetings.**

(a) There is hereby established a city animal control board, which shall consist of five (5) members appointed by the mayor subject to confirmation by city council, ~~one of whom the city council shall appoint as chairperson.~~ Two (2) members shall be representatives of the Montgomery County Veterinary Medical Association, or shall have training and/or experience in the proper training or care of animals, one (1) member shall be from the business community, and two (2) members shall be from the public at large. In addition, there shall be ~~one~~ two alternative members who shall be appointed by the mayor subject to confirmation by the city council, who shall be empowered to sit on the board in the absence of any member of the board. One alternate member shall be from the public at large, and shall be empowered to sit on the board in the absence of any

business community. One alternate member shall be a representative of the Montgomery County Veterinary Medical Association, or shall have training and/or experience in the proper training or care of animals, and shall be empowered to sit on the board in the absence of any member representing the Montgomery County Veterinary Medical Association or a member who has training and/or experience in the proper training or care of animals. In the absence of the alternate, the council may designate a temporary alternate. The board shall annually elect one of its members to serve as chairperson, and may elect a vice-chairperson, each to serve at the pleasure of the board. Three (3) members of the board shall constitute a quorum for the transaction of business, and a majority vote of those present shall be sufficient to enable the board to take official action in fulfillment of its duties hereunder.

(b) The term of each member shall be three (3) years except that the initial terms of members of the board shall be staggered as prescribed by the city council at the time of appointment so as to provide for the vacating of not more than two (2) members of the board annually. Each member shall continue to serve or until a successor is appointed.

(c) Meetings and hearings of the board shall be held on weekday evenings, whenever practicable. The board shall meet at times other than scheduled hearing dates on request of the chairperson, or otherwise as may be necessary to fulfill the board's duties and responsibilities.

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**Sec. 4-38. Administrative sanctions and remedies.**

As part of any order issued pursuant to this chapter, the board shall have the authority to order the following administrative sanctions and remedies:

- (1) Obedience training of the animal(s) in question;
- (2) Muzzling of an animal while off the property of the owner;
- (3) Confinement of the animal indoors;
- (4) Confinement of the animal in a secure enclosure;
- (5) Reduction of the number of animal(s) kept at any one location;
- (6) Removal of an animal from the custody of the animal's owner or custodian in cases of neglect or cruelty;
- (7) ~~The sterilization of an animal~~ Neutering or spaying of an animal;
- (8) Implanting a microchip in an animal;
- (89) A ban on maintaining other animals in the city;

(910) Any other measure or sanction designed to eliminate a violation, prevent future violations, or protect the health and safety of the public.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2009 by the City Council of Gaithersburg, Maryland.

\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this \_\_\_\_ day of \_\_\_\_\_, 2009. APPROVED by the Mayor of the City of Gaithersburg, this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the \_\_\_\_ day of \_\_\_\_\_, 2009 and that the same was approved by the Mayor of the city of Gaithersburg on the \_\_\_\_ day of \_\_\_\_\_, 2009 This ordinance will become effective in accordance with the provisions of this ordinance.

\_\_\_\_\_  
Angel L. Jones, City Manager

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| <b>Boldface</b>                          | <i>Heading or defined term.</i>                            |
| <u>Underlining</u>                       | <i>Added to existing law by original bill.</i>             |
| <del>Single strikethrough</del>          | <i>Deleted from existing law by original bill.</i>         |
| <u>Double underlining</u>                | <i>Added by Amendment.</i>                                 |
| <del>Double boldface strikethrough</del> | <i>Deleted from existing law or the bill by amendment.</i> |

\* \* \*

*Existing law unaffected by bill.*