

MEMORANDUM

To: Mayor and Council
From: **Rebecca Keefer, City Planner**
Date: November 12, 2013
Subject: Amendments to Chapter 6, Animals

ITEM DESCRIPTION

The attached provisions propose amendments to Chapter 6, Animals, in response to Council's request to remove keeping of companion animal provisions from the Zoning Ordinance.

DISCUSSION

During discussion of the adoption of the Zoning/Land Development rewrite, Council directed staff to propose provisions related to the keeping of companion animals, whereby the provisions regulate animals from the perspective of nuisance. After conducting research on animal nuisance codes nation-wide, staff has modified the accompanying draft to meet the needs of the community. The provisions provide the authority necessary to abate nuisances through code enforcement action while affording residents the flexibility of animal ownership. Staff finds the provisions are more appropriately placed within this chapter, and they establish criteria to regulate the keeping of animals through characteristics considered to be a nuisance.

RECOMMENDATION

Staff recommends adopting the animal nuisance provisions as proposed.

**AN ORDINANCE AMENDING CHAPTER 6 OF THE CITY OF DUNWOODY CODE
BY ADDING ANIMAL-RELATED NUISANCE PROVISIONS**

WHEREAS, the City of Dunwoody is charged with protecting the health, safety and welfare of the citizens of the City; and

WHEREAS, the Mayor and City Council recently revised and readopted the City of Dunwoody Zoning Ordinance where, as part of its provisions, the City revised its use requirements on companion animals in residential districts; and

WHEREAS, in order to afford flexibility of animal ownership to the citizens of the City, and at once provide for the health, safety and welfare of the City, the Mayor and Council desire to implement provisions to prohibit certain animal-related nuisances which can be enforced by the City.

THEREFORE, the Mayor and City Council of the City of Dunwoody hereby ordains as follows:

Section 1: Chapter 6 ("Animals") of the Code of the City of Dunwoody is hereby amended by revising Article II by addition of new Section 6-32 ("Animal Nuisances") to read as follows:

Sec. 6-32. Animal Nuisances.

(a) Purpose.

- (1) The keeping or harboring of any companion animal, as defined in the City of Dunwoody Zoning Ordinance, whether licensed or not, which by its bodily waste odor, unsanitary condition or habitual howling, yelping, barking or other noise disturbs the comfort, peace or quiet of nearby property or which would cause annoyance or discomfort to a reasonable person of normal sensitivity in the area is declared to be a public nuisance and is prohibited. Such nuisance shall be abated in accordance with the procedure set forth in this chapter.
- (2) The purpose of this Section is to provide a procedure for the enforcement of the prohibition of subsection (1) above, as well as provide that every person owning or occupying premises where any companion animal is kept shall keep the place in which such animal is kept in a clean and sanitary condition and free of bodily waste and odor. Any property found to be maintained, used or

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allowed to be maintained or used in violation of this section is declared to be a public nuisance and may be abated pursuant to the procedures set forth in this Section.

- (3) The declaration of a nuisance and the procedures for abatement set forth in this Section shall not be exclusive and shall not in any manner limit or restrict the City from enforcing other city ordinances or abating public nuisances in any other manner provided by law. Further, this chapter shall not preempt or preclude a person from filing a civil lawsuit seeking to abate as a private nuisance an animal that causes annoyance or discomfort to such person by such animal's bodily waste odor, unsanitary condition or habitual howling, yelping, barking or other noise.

(b) Definitions.

As used in this Section, the following words and phrases shall have the following meanings, unless the context shall indicate another or different meaning or intent:

Animal that habitually howls, yelps, barks or makes noise does not include an animal that howls, yelps, barks or makes noise by reason of provocation by a person other than the animal's owner.

Complaint means either:

- (1) A writing in which it is asserted by three or more persons having separate residences in a neighborhood that an animal is a public nuisance by reason of its bodily waste odor, unsanitary condition or habitual howling, yelping, barking or other noise; or
- (2) A writing in which it is asserted by one or more residents in a neighborhood that an animal is a public nuisance by reason of its bodily waste odor, unsanitary condition or habitual howling, yelping, barking, or other noise, and
 - (i) Such resident(s) can demonstrate to the satisfaction of the code compliance official that the resident(s) has made a good faith effort to obtain the signatures of other residents in the neighborhood or can demonstrate that it is not possible to obtain such other signatures, as in the case where there are less than three occupied residences in the neighborhood, and

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- (ii) Such resident(s) has provided to the satisfaction of the code compliance official adequate and competent evidence in support of the claim that the subject animal is a public nuisance.

Owner means the owner, keeper, person or persons having custody, control or possession of an animal.

Public nuisance or *nuisance* means the keeping or harboring of any companion animal, defined in the City of Dunwoody Zoning Ordinance, whether licensed or not, which:

- (a) By habitual howling, yelping, barking or other noise disturbs the peace and quiet of nearby property or which would cause annoyance or discomfort to a reasonable person of normal sensitivity in the area; or
- (b) By its bodily waste odor or other unsanitary condition such as, but not limited to, insect infestation, would cause annoyance or discomfort to a reasonable person of normal sensitivity in the area.

(c) Notice to owner to abate nuisance.

- (1) Whenever a Complaint has been filed with the code compliance official, he/she shall determine whether the Complaint appears to set forth a valid complaint of a public nuisance according to this Section. If the code compliance official determines that the Complaint appears to be valid, he/she shall:
 - (i) Notify the owner that the Complaint has been received; and
 - (ii) Investigate whether the animal in question constitutes a public nuisance by reason of its bodily waste odor, unsanitary condition or habitual howling, yelping, barking or other noise.
- (2) Following such investigation, if the code compliance official determines that the animal in question constitutes a public nuisance by reason of its bodily waste odor, unsanitary condition or habitual howling, yelping, barking or other noise, the code compliance official shall notify the owner that the animal is a public nuisance and that such nuisance must be abated within a reasonable time as determined by the code compliance official.

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- (3) If the owner fails to abate the public nuisance within the time specified by the code compliance official, he/she may issue a citation to the owner for violation of this Section.

(e) Enforcement and penalties.

- (1) *Failure to Comply.* It is unlawful for the owner of an animal that has been deemed to be a public nuisance pursuant to the provisions of this Section to fail to comply with the requirements set forth in this Section. Each day such violation is committed or permitted to continue after notification to cease and desist shall constitute a separate offense and each subsequent violation shall be punishable as provided in the City Code.
- (2) *Ownership of Animals.* Any person convicted in the Dunwoody municipal court of violating or permitting violations of any provision of this Section shall, upon a subsequent conviction, be subject to a mandatory 6-month probationary sentence, that may not be suspended, where one condition of such probation shall be that said person shall be prohibited from keeping or harboring within the City an animal of the type, species, group or family to which the conviction applies (including the animal initially causing the nuisance) for the duration of such probation. Violation of this probationary condition during the probation term shall be cause for revocation of said probation for the duration of the sentence.
- (3) *Violations.* Any person violating or permitting the violation of any provision of this Section shall, upon conviction in municipal court, be guilty of an Ordinance violation and subject to punishment as provided in Section 1-6 of this Code.
- (4) *Enforcement.* Any provision of this Section may be enforced by the police department or the code compliance official.
- (5) *Penalties and Remedies Cumulative.* The penalties and remedies specified herein shall not be exclusive but shall be cumulative with all other remedies at law or in equity. The city may, in its discretion, elect to pursue any one or more of the penalties or remedies provided for herein, in Chapter 22 of this code relating to nuisance abatement, or as otherwise provided by law.

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(f) Exceptions. The provisions contained in this Section shall not apply to:

- (1) Any dog while utilized by any police department or any law enforcement officer in the performance of police work; or
- (2) Any licensed animal service establishment as defined in the Code of Ordinances.

Section 2: This Ordinance shall become effective immediately upon its adoption by the City Council, and incorporated into the Code of the City of Dunwoody, Georgia. This Ordinance hereby repeals any and all conflicting ordinances and amendments.

SO ORDAINED AND EFFECTIVE, this ____ day of _____, 2013.

Approved:

Michael G. Davis, Mayor

Attest:

Approved as to Form:

Sharon Lowery, City Clerk

City Attorney

Seal