

CITY OF GAINESVILLE
Office of the City Attorney

Memorandum

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TO: Honorable Mayor and City Commissioners**DATE:** September 25, 2000**FROM:** Patricia M. Carter, Sr. Assistant City Attorney**SUBJECT:** Nuisance Animals

RECOMMENDATION: The City Commission authorize the City Attorney to draft and the Clerk of the Commission to advertise, an amendment to Section 5-2 of the Code of Ordinances relating to public nuisance animals to allow for abatement of nuisances.

The City Commission referred to the Public Safety Committee the issue of noise and odor problems associated with the keeping of several dogs and macaws by a property owner in a residential neighborhood. The Public Safety Committee, after taking public comments on the issue, asked this office to draft an ordinance that would address the problem as a public nuisance issue rather than as a limit on the number of dogs that could be kept.

During the subsequent Public Safety Committee meeting on August 22, the committee discussed proposed changes to section 5-2 of the Code of Ordinances. The changes provide that the City Attorney may file suit to abate a nuisance when there are specific problems related to the keeping of animals that adversely affect nearby residents' rights to "quiet enjoyment" of their property. These problems include noise, odor, animals running at large or molesting or biting people. At that meeting, the committee asked that the provision on molesting or biting "pedestrians or bicyclists" be broadened. The proposed change reads "molesting or biting any person, unless that person is trespassing on the property of the owner or keeper of the animal, or unless that person provokes the animal." The suggested changes are attached.

Additionally, it was suggested that the City Manager be authorized to enter into an interlocal agreement with Alachua County to be able to use the services of the Animal Control staff if a judge ordered an animal removed from a residence. The City Manager has since informed me that there already is an agreement in place.

Section 5-2. Animals as a public nuisance.

(1) No owner or keeper of any animal shall permit the animal to become a public nuisance. The following can become ~~shall be considered~~ a public nuisance and the owner or keeper of the animal can be cited for any instance of:

- (a) An animal found to be at large ~~more than three times in a six-month period.~~
- (b) An animal damaging, or depositing fecal matter on, the property of others.
- (c) An animal molesting or biting any person, unless that person is trespassing on the property of the owner or keeper of the animal or that person provokes the animal. a pedestrian or bicyclist.
- (d) An animal creating odors that are detectable and offensive to a person of reasonable sensibilities on nearby property, or attracting flies detected on nearby properties.
- (e) An animal attacking another domestic animal.
- (f) An animal making sounds that are a violation of Chapter 15 of this Code (Noise).

(2) Repeated instances of violations of subsection (1) adversely affect the rights of nearby residents to the quiet enjoyment of their property and therefore constitute a public nuisance. To this end:

- (a) If there are two or more citations given for violation of any of the subsections (1)(a) through (f) within a 12-month period on the same premises, the city attorney, if there are reasonable grounds for the action, is authorized to seek an injunction in the name of the City from the appropriate court to abate the nuisance.
- (b) Adjudication of guilt, withholding of adjudication, or plea of no contest (including, but not limited to, payment of fine) in a 12-month period for two violations of any of the subsections (1)(a) through (f) on the same premises, plus a third such citation within the 12-month period, shall be presumptive evidence of a public nuisance. However, the judge may find a public nuisance without such presumptive evidence based on other evidence presented.
- (c) The judge may fashion an injunction that will abate the particular nuisance being found, up to and including removal of one or more animals from the premises.
- (d) This remedy shall be in addition to any other penalties provided by this Code of Ordinances or the Alachua County ordinance on Animal Control.