

ORDINANCE NO. 6429

AN ORDINANCE TO AMEND CHAPTER 4.20 "ANIMAL CONTROL" OF THE MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA, BY AMENDING SECTIONS 4.20.082, 4.20.084, 4.20.088, 4.20.120 AND 4.20.132; AND CREATING NEW SECTION 4.20.083 "POTENTIALLY DANGEROUS DOG DESIGNATION."

**BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

SECTION 1. That Chapter 4.20 "Animal Control" of the Municipal Code of Council Bluffs, Iowa, is amended as follows:

4.20.082 Dangerous Animal Designation

The administrative authority or his or her designee may designate an animal to be a dangerous animal under any of the following conditions:

- A. Any animal which is not naturally tame or gentle and which is of a wild nature or disposition and capable of killing, inflicting serious injury, or causing disease among human beings or domestic animals, and having known tendencies as a species to do so;
- B. Any animal which has attacked another animal while at large;
- C. Any animal deemed to be dangerous, per se, shall by operation of law be designated a dangerous animal by the administrative authority or the administrative authority's designee.

4.20.083 Potentially Dangerous Dog Designation

- A. The administrative authority, or the administrative authority's designee, may designate any dog to be a potentially dangerous dog under any of the following circumstances:
 - 1. Chases or approaches a person upon the streets, sidewalks or any other public grounds in a menacing way or with an apparent attitude of attack;
 - 2. When unprovoked, and not at large, inflicts minor injury to a person that does not require medical care;
 - 3. Causes injury, without causing death, to another domestic animal or livestock, with the following exceptions:
 - a. This paragraph shall not apply to feral animals that may be attacked, or;
 - b. This paragraph shall not apply to any dog that attacks another domestic animal that intrudes onto the property where the dog is peaceably located, or any other domestic animal that either torments or attacks the dog causing the dog to defend itself.
- B. Upon notification of a potentially dangerous dog designation, the owner shall make the dog available to Council Bluffs Animal Control to be photographed for identification purposes.
- C. Such designation of "potentially dangerous" may be appealed to the Board of Review pursuant to Chapter 4.20.132 of the CBMC.

- D. The annual license fee for a dog designated as potentially dangerous shall be equal to the fee for a dog with no designation as outlined in the Schedule of Fees.
- E. The owner of a potentially dangerous dog may apply to the Chief Animal Control Officer to have the declaration removed after two years have passed and the owner has met the following conditions:
 - 1. The dog has received no subsequent violations of Chapter 4 of the CBMC; and
 - 2. The owner has complied with all requirements of Chapter 4 of the CBMC;

If the Chief Animal Control Officer finds sufficient evidence that the owner has complied with all requirements of this ordinance, then the application to remove the potentially dangerous declaration shall be approved.

- F. Exceptions – A dog shall not be considered potentially dangerous if, at the discretion of the Chief Animal Control Officer, it is found that:
 - 1. The threat, injury or damage was sustained by a person who was, at the time, committing a willful trespass or other tort upon the premises occupied by the owner of the dog;
 - 2. The dog was tormented, abused, assaulted or otherwise provoked into causing such threat, injury or damage to a person or domestic animal; or
 - 3. The dog was being utilized as part of lawful activity by a law enforcement officer.

4.20.084 Dangerous Dog Designation

- A. The administrative authority or the administrative authority's designee may designate any dog to be a dangerous dog under any of the following circumstances:
 - 1. A dog with a propensity, tendency, or disposition to attack, to cause injury to, or to otherwise endanger the safety of humans or other domestic animals;
 - 2. A dog that the administrative authority or the administrative authority's designee makes a finding that said dog has been running at large or was at large on three occasions in a twelve-month period;
 - 3. Any animal that has been found to be potentially dangerous under Chapter 4 of the CBMC that, after the owner has received notice or personal knowledge of the animal's potentially dangerous designation, the animal, without provocation, bites, attacks or endangers the safety of any person or is found to be at large;
 - 4. A dog that, without provocation, bites or attacks a human being resulting in the need for medical attention;
 - 5. A dog that has, within a 12 month continuous period, caused injury to a domestic animal or livestock on more than one occasion, without causing death; or
 - 6. A dog, that while at large, attacks and kills any domestic animal or livestock.
- B. Upon notification of a dangerous dog designation, the owner shall be required to do the following within 30 days of receiving such designation:
 - 1. If the dog is not currently spayed or neutered, require the dog to receive such procedure;
 - 2. If the dog is not microchipped under the CBMC, require such dog to be microchipped;

3. Designate all public entrances to the property where the dog resides to be marked with "dangerous dog" signs or other similar signage with a minimum signage dimension of 10 inches by 8 inches, and lettering no less than 2 inches in height;
4. Allow for Council Bluffs Animal Control to photograph the dog for identification purposes;
5. Proof of a minimum \$500,000 dangerous animal liability insurance policy covering the residing property of the animal, with such proof to be sent directly from the insurance company to Council Bluffs Animal Control and a requirement on the part of the policyholder to immediately notify Council Bluffs Animal Control if there is any lapse or discontinuation of the policy;;
6. Construction of an outdoor kennel area on the residing property of the animal that meets the following requirements:
 - a. Setback of at least 10 feet from the property line;
 - b. Minimum of 32 square feet total space;
 - c. Sides of at least 6 feet in height imbedded into the ground no less than 12 inches or secured to a concrete slab;
 - d. Secure, attached enclosed top;
 - e. Door capable of being locked;
 - f. All material used for enclosure to be constructed of a minimum 11 gauge wire, with openings in the enclosure not to exceed 2 inches.

- C. Such designation of "dangerous" may be appealed to the Board of Review pursuant to Chapter 4.20.132 of the CBMC.
- D. The annual license fee for a dog designated as dangerous shall be equal to twice the amount of the fee for a dog with no designation as outlined in the Schedule of Fees.
- E. No dog designated as dangerous by this ordinance shall be allowed to roam upon the property of the owner without being tethered or leashed and under the supervision of an individual 18 years of age or older.
- F. In the event that a dog designated as dangerous by this ordinance is transported, walked, exercised or otherwise taken off the private property of the owner, such dog shall be tethered by a fixed length leash no longer than four feet and be appropriately muzzled to prevent any bite or shall be transported in a secure transportation container or kennel.
- G. The owner of a dangerous dog may apply to the Chief Animal Control Officer to have the declaration removed after three years have passed and the owner has met the following conditions:
 1. The dog has received no subsequent violations of Chapter 4 of the CBMC;
 2. The owner has complied with all requirements of Chapter 4 of the CBMC; and
 3. The owner provides proof of successful completion of a behavior modification program administered by a Certified Pet Dog Trainer (CPDT), Certified Dog Behavior Consultant (CDBC), or Veterinary Behaviorist certified through the American College of Veterinary Behaviorists (ACVB).

If the Chief Animal Control Officer finds sufficient evidence that the owner has complied with all requirements of this ordinance, then the application to remove the dangerous declaration shall be approved.

H. Exceptions – A dog shall not be considered dangerous if, at the discretion of the Chief Animal Control Officer, it is found that:

1. The threat, injury or damage was sustained by a person who was, at the time, committing a willful trespass or other tort upon the premises occupied by the owner of the dog;
2. The dog was tormented, abused, assaulted or otherwise provoked into causing such threat, injury or damage to a person or domestic animal; or
3. The dog was being utilized as part of lawful activity by a law enforcement officer.

4.20.088 Irresponsible Animal Ownership

A. An animal owner is deemed to be an irresponsible animal owner, for purposes of this ordinance, if the owner receives a violation of either 4.20.030 or 4.20.140(J) of the CBMC on one occasion within a two year period.

B. An animal owner is deemed to be an irresponsible animal owner, for purposes of this ordinance, if the owner receives any other violation of Chapter 4 of the CBMC on two separate occasions within a two year period.

C. A violation of paragraphs A and B above shall be defined as the following:

1. Paying an animal enforcement fee ticket issued by an animal control officer;
2. Admitting/pleading to a citation of municipal infraction;
3. Failing to appear for a citation of municipal infraction; or
4. Being found guilty of a citation of municipal infraction after a trial.
5. In the event that an animal owner violates any provision of Chapter 4 of the CBMC within the same two period after being designated an irresponsible animal owner, all animals may be confiscated and disposed of at the discretion of the administrative authority, and no animal licenses shall be issued to anyone at the irresponsible animal owner's residence for a period of thirty-six (36) months.

No person designated as an irresponsible animal owner shall sell or otherwise transfer ownership of any animal to another person residing at the same address.

4.20.120 Keeping Of Vicious Animals Prohibited - Proceedings To Determine - Seizure And/Or Destruction Authorized

A. No person shall keep, shelter, or harbor for any reason within the city, a vicious animal as defined herein, except as provided in CBMC 4.20.130.

B. The administrative authority or the administrative authority's designee may designate any animal to be a vicious animal under any of the following circumstances:

1. Any animal which has attacked or bitten any person without provocation on two occasions;

2. An animal which has attacked and caused significant or catastrophic injury, or death, to any person;
 3. Any animal that has been found to be dangerous under Chapter 4 of the CBMC that, after the owner has received notice or personal knowledge of the animal's dangerous designation, the animal, without provocation, bites, attacks or endangers the safety of any person or found to be at large;
- C. This decision may, however, be appealed to the board of review, by presenting a written notice of appeal to the administrative authority within ten (10) days after receiving written notice of said decision. If the decision of the board of review is appealed to the District Court of Iowa, an appeal bond in an amount set forth in the current schedule of fees shall be paid to and held by the animal shelter pending the outcome of the appeal.
- D. The administrative authority, in his or her discretion or upon receipt of a complaint alleging that a particular animal is a vicious animal may, when said animal does not meet the criteria set out in paragraph B of this section, initiate proceedings to declare such animal a vicious animal as defined in CBMC 4.20.020 Paragraph Y. Said proceeding shall be conducted by the board of review. The person, firm, or corporation owning, keeping, sheltering, or harboring the animal in question shall be given not less than twenty-four (24) hours written notice of the time and place of said hearing. Said notice shall set forth the description of the animal in question, and the basis for the allegation of viciousness, and shall also indicate that if the animal is determined to be vicious, the owner shall have three days to have the animal destroyed and present proof thereof. The notice shall be served upon any adult residing at the premises where the animal is located, or may be posted on the premises if no adult is present to accept service.
- E. If an animal meets the criteria set forth in paragraph B above or, if after hearing, the board determines that an animal is vicious, the administrative authority shall order the person, firm, or corporation owning, sheltering, harboring or keeping the animal to cause it to be destroyed in a humane manner. The order shall immediately be served upon the individual or entity against whom issued in the same manner as the notice of hearing. If the order is not complied with within three days of its issuance, the administrative authority shall cause the animal to be destroyed.
- F. Failure to comply with an order issued pursuant hereto shall constitute a misdemeanor and shall be subject to the penalty provisions of CBMC 8.02.020.
- G. Every order issued pursuant to the provisions of this section shall include a copy of CBMC 4.20.120.
- H. Any animal found at large which displays vicious tendencies may be processed as a vicious animal pursuant to the foregoing, unless the animal is so vicious that it cannot safely be apprehended, in which case the administrative authority shall immediately destroy it, or unless its ownership is not ascertainable, in which case the administrative authority shall destroy it after three days impoundment.
- I. Any animal which is alleged to be vicious and which is under impoundment or quarantine at the animal shelter or a veterinary facility shall not be released to the owner, but shall continue to be held at the expense of the owner pending the outcome of the hearing.

- J. All costs of such impoundment or quarantine shall be paid by the owner, regardless of whether or not the animal is determined to be vicious.

4.20.132 Administrative Appeal Procedure

The following process shall apply to the appeal of any actions or declarations of the community development or his/her designee pursuant to this chapter.

- A. Any individual or entity desiring to appeal an order issued by the director of community development to the board of review may do so by filing a written notice of appeal with the director of community development within ten (10) days after notification of the director's order. The notice of appeal shall state the grounds for such appeal, shall be delivered personally or by certified mail to the director of community development, and shall include a \$100 non-refundable processing fee.
- B. Within ten (10) days of receiving the written notice of appeal, the administrative authority shall set the date for the hearing of the appeal. Said hearing shall be not less than five days nor more than thirty-six (36) days from the date that the hearing date is set.
- C. Notice of the hearing may be personally served on the owner, a duly designated representative, the owner's attorney, or an adult member of the owner's household. Notice may also be served by first-class U.S. mail to the address listed on the notice of appeal at least five days prior to the hearing date.
- D. The hearing on appeal shall be open to the public and conducted informally. The rules of evidence shall not strictly apply.
- E. The city may be represented before the board by the city attorney's office or the director of community development. The owner may represent him or herself or may be represented by an attorney.
- F. The city shall have the burden to prove by a preponderance of the evidence that the action of the administrative authority or his or her designee should be affirmed.
- G. Each party will be given the opportunity to present their side of the matter, including the presentation of witnesses and exhibits. Any exhibits given to the board members to examine shall become part of the permanent record and will not be returned to the party submitting the same. At the conclusion of the parties' presentations, the board may make a determination or may take the matter under advisement. Ultimately, the board of review, by majority vote of those present and voting, may affirm, modify or reverse the determination of the administrative authority.
- H. The proceedings before the board shall be recorded by one of the following methods:
 - 1. Electronic audio or video recording, certified court reporter, or extensive notes of the testimony kept by a person designated by the board.
- I. The decision of the board shall be deemed final upon the announcement of the vote of the board at an open meeting of the board. The decision does not have to be reduced to writing, but

shall be noted in the minutes of the board's meeting. If the order is reduced to writing, it shall still be deemed to have been the final order of the board at the time of announcement.

- J. The final decision of the board may be appealed in the district court of Iowa in accordance with the provisions of the Iowa Administrative Code. If such an appeal is undertaken, and the animal is being held in the custody of the city, then an appeal bond in the amount set forth in the current schedule of fees shall be paid to and held by the Council Bluffs animal control division pending the outcome of the appeal.
- K. Upon finalization of the appeal, the animal control division shall utilize the appeal bond to pay the animal shelter for costs associated with boarding and care of the animal(s) in question. Remaining funds, if any, shall be returned to the owner. The owner shall be responsible for all remaining fees and costs associated with board and keep that is in excess of the amount of the appeal bond.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

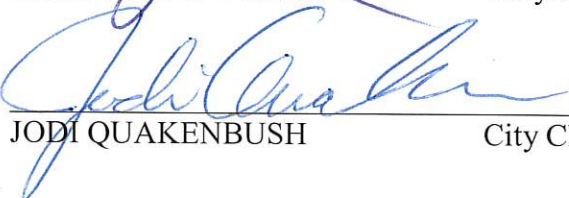
SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED
AND
APPROVED

October 12, 2020.


MATTHEW J. WALSH Mayor

Attest: 
JODI QUAKENBUSH City Clerk

First Consideration: 9-28-20
Second Consideration: 10-12-20
Public Hearing: N/A
Third Consideration: Waived

Council Communication

Department: City Clerk
Case/Project No.:
Submitted by:

Resolution 20-218 Amended
ITEM 6.A.

Council Action: 10/12/2020

Description

Resolution to vacate and dispose of Michigan Avenue right of way abutting Lots 39 through 52, Raymona Subdivision.

Background/Discussion**Recommendation****ATTACHMENTS:**

Description	Type	Upload Date
Staff Report	Other	10/5/2020
Resolution 20-218 amended	Resolution	10/7/2020

City Council Communication

Department: Community Development Case #SAV-20-006 Applicant: Jerrid Jefferis 1030 Wright Road Bay #1 Council Bluffs, IA 51503 Property Owner: Shoppes at Manawa, LLC 19900 Custer Lane Council Bluffs, IA 51503 Brandy Fisher 8947 North Dinino Court Waddell, AZ 85355	Resolution of Intent No. _____ Resolution to Dispose No. _____	Resolution of Intent: 08/24/2020 Resolution to Dispose: 09/14/2020 Planning Commission: 08/11/2020
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Subject/Title

Request: Public hearing on the request of Jerrid Jefferis, representing Shoppes at Manawa LLC, to vacate and dispose of Michigan Avenue right-of-way abutting properties legally described as Lots 39 through 52, Raymona Subdivision.

Location: East of property address as 1030 Wright Road, Council Bluffs, Iowa 51503

***On September 14, 2020, the Council Bluffs City Council approved Resolution No. 20-218 which vacated and disposed of the subject Michigan Avenue right-of-way legally described above. As a condition of approval, an easement was supposed to be retained to allow for perpetual access and maintenance of existing utilities within said vacated right-of-way. This easement was inadvertently omitted from the approved resolution, and City staff is requesting that City Council approve a corrected resolution that includes this easement language. ***

Background/Discussion

The Community Development Department has received an application from Jerrid Jefferis, representing Shoppes at Manawa, LLC, requesting to vacate and dispose of Michigan Avenue right-of-way abutting properties legally described as Lots 39 through 52, Raymona Subdivision. The subject Michigan Avenue right-of-way measures 35 feet wide by 280 feet in length and is unimproved. The applicant has requested this vacation so that they can utilize the vacated right-of-way area to develop new contractor shop buildings on property they own at the northwest corner of the intersection of South 9th Street and Wright Road, legally described as Lots 46 through 52, and Lots 69 through 75, Raymona Subdivision.

On August 25, 2003 the City Council amended the adopted *Policy and Procedures for Alley, Street and Right-of-way Vacations*. The objectives of the amended Policy are as follows:

1. *To provide due process and citizen participation in the application and review process for vacations.*

There are two property owners with land that abuts the subject Michigan Avenue right-of-way, as follows:

North – Undeveloped land owned by Shoppes at Manawa, LLC (legally described as being part of Lots 20-22, and all of Lots 39 through 42, Raymona Subdivision), and Brandy K. Fisher (legally described as part of Lots 16 through 18, and all of Lots 43 through 45, Raymona Subdivision).

South – Undeveloped land owned by Shoppes at Manawa, LLC (legally described as Lots 46 through 52, and Lots 69 through 75, Raymona Subdivision).

All abutting property owners were mailed petitions asking if they are in favor of/opposed to the vacation request and if they were willing to/not willing to purchase the portion of Michigan Avenue adjacent to their property, if vacated. Responses to these petitions are summarized in Comment #10 below.

2. *To ensure that no property owner is deprived of required and reasonable access.* The subject Michigan Avenue right-of-way abuts three parcels of land which are comprised of multiple existing lots of record. All three parcels have access to either Veterans Memorial Highway, South 9th Street, Wright Road, or a combination thereof. However, since these parcels contain individually platted lots of record the proposed vacation request presents a situation where several of these lots (Lots 39 through 44, and Lots 47 through 52, Raymona Subdivision) will become “land locked” if the vacation is approved. In order to prevent this type of situation from occurring the abutting land owners must replat their existing lots of record along with their portions of Michigan Avenue, if vacated, into new parcels of land. The replat would need to occur concurrent with the City selling the right-of-way to the adjacent landowners. The abutting landowners could partner together and have one final plat created that shows each individual property owner re-plating their landholdings into a new parcel, or each abutting owner can pursue their own replat separately. As part of the replat the adjacent property owners could also work together and establish cross access easements for vehicular traffic over the vacated right-of-way, and stormwater management.

The Community Development Department has advised each abutting property owner of the need to replat their properties if this vacation request is approved. The applicant has started the process of preparing a final plat to consolidate their landholdings and portions of Michigan Avenue right-of-way into two larger parcels of land. Ms. Brandy Fisher has agreed to replat her lots into one parcel of land and is currently weighing her options on how best to proceed with the replat.

3. *To discourage the creation and eliminate or reduce existing dead-end alleys, streets or other rights-of-way.* The proposed request will eliminate a dead-end right-of-way as the Westerly 320 feet of Michigan Avenue was previously vacated and disposed of by City Council in September 1990 by Ordinance No. 4958.
4. *To reduce or eliminate hazardous and dangerous traffic conditions.* The subject right-of-way is unimproved and is not used for vehicular and/or pedestrian traffic.
5. *To protect all existing and proposed public utilities located in the right-of-way and to maintain necessary utility easements.* All City Departments and utilities were notified of the request. The following responses were received:
 - Council Bluffs Permits and Inspections Division stated they have no comments for the vacation request.
 - Council Bluffs Fire Department stated they have no comments for the vacation request.
 - Council Bluffs Public Works stated they have no issues with the vacation request and confirmed there are no existing sanitary and/or storm sewer utilities within said Michigan Avenue right-of-way.
 - Council Bluffs Parks and Recreation Department stated they have no comments for the vacation request.
 - Council Bluffs Water Works stated they have an existing water main within the subject Michigan Avenue right-of-way and that an easement must be reserved for maintenance purposes.
 - MidAmerican Energy stated they have no utilities in the subject Michigan Avenue right-of-way.
 - Cox Communication stated they have no issues or concerns with the vacation request.
6. *To maintain appropriate right-of-way width to ensure that an adequate pedestrian and vehicular circulation system is retained.* The subject right-of-way is unimproved and not being used for pedestrian and/or vehicular circulation.

7. *To discourage the vacation of a portion of an existing alley, street or other right-of-way.* As previously stated, the Westerly 320 feet of Michigan Avenue was vacated and disposed of by City Council in September 1990 by Ordinance No. 4958. This request is to vacate and dispose of the remaining 280 feet of Michigan Avenue right-of-way.
8. *To assist in the implementation of the goals and objectives of the Comprehensive Plan.* The request is consistent with the local access and circulation objectives stated in Chapter 6, Transportation of the Bluffs Tomorrow: 2030 Plan (comprehensive plan).
9. *To reduce the City's maintenance liability on previously vacated right-of-way parcels from public improvement projects and various lots acquired through delinquent taxes or assessments.* Not applicable.
10. *To establish an equitable price for surplus public property.* All abutting property owners were notified about the proposed vacation. The following responses were received:
 - Shoppes at Manawa, LLC stated they are in favor of the vacation request and are willing to purchase the portion of Michigan Avenue right-of-way that abuts their property for the sum of \$1,325.00.
 - Brandy Fisher stated she is in favor of the vacation request and is willing to purchase the portion of Michigan Avenue that abuts her property for the sum of \$345.00.

Recommendation

The Community Development Department recommends approval to vacate and dispose of Michigan Avenue right-of-way abutting properties legally described as Lots 39 through 52, Raymona Subdivision, City of Council Bluffs, Pottawattamie County, Iowa, subject to the following conditions:

1. An easement shall be retained over the subject right-of-way for utility access and maintenance purposes;
2. All portions of the subject right-of-way shall be disposed of to an abutting property owner(s); and
3. The vacation shall not become effective and deeds for the vacated Michigan Avenue right-of-way shall not be granted until such time each abutting property owner receives final plat approval from the City to replat their existing lots of record along with their portion of vacated Michigan Avenue right-of-way into new parcels of land.

Public Hearing

Staff speaker for the request:

1. Christopher Gibbons, Planning Manager, City of Council Bluffs, 209 Pearl Street, Council Bluffs, IA 51503

Speakers in favor: None

Speakers against: None

Planning Commission Recommendation

The Planning Commission recommended approval to vacate and dispose of Michigan Avenue right-of-way abutting properties legally described as Lots 39 through 52, Raymona Subdivision, City of Council Bluffs, Pottawattamie County, Iowa, subject to the following conditions:

1. An easement shall be retained over the subject right-of-way for utility access and maintenance purposes;
2. All portions of the subject right-of-way shall be disposed of to an abutting property owner(s); and
3. The vacation shall not become effective and deeds for the vacated Michigan Avenue right-of-way shall not be granted until such time each abutting property owner receives final plat approval from the City to replat their existing lots of record along with their portion of vacated Michigan Avenue right-of-way into new parcels of land.

VOTE: AYE 10 NAY 0 ABSTAIN 0 ABSENT 1 VACANT 0 Motion: Carried
Attachments
Attachment A: Location and Zoning Map
Prepared by: Christopher Gibbons, AICP, Planning Manager, Community Development Department