

**September 15, 2014**

**To: Mayor Bemrich and City Council**

**From: David Fierke, City Manager**

**Subject: Street Vacation**



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**ACTION: Hold the Second Reading of Vacation of Public Right-of-Way**

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**Background**

Josephson Manufacturing is requesting vacation of that portion of 1<sup>st</sup> Avenue North lying west of North 3<sup>rd</sup> Street and excluding the east approximate 160 feet. See attached map and legal description. Josephson Manufacturing is currently in the process of purchasing the abutting properties and would like to acquire the vacated street as a part of their property. The Company intends to use the vacated street for expansion of their existing business.

**Analysis of Issue**

When analyzing requests for the vacation of public rights-of-way, City Staff and the Plan and Zoning Commission consider the following:

- abutting property owners' access, support and other impacts;
- parking and transportation;
- liability, safety and maintenance;
- existing or proposed utilities and potential city improvement projects; and
- consistency with the City's Land Use Plan.

*Abutting Property Owner Access & Support*

The vacation and disposition of these lands will be contingent upon Josephson Manufacturing acquiring the adjacent property(s) to the north and west of the proposed vacated area; therefore, only those abutting property owners that will remain at the time of vacation and disposition were notified of the request to vacate this public right-of-way.

The neighboring property owner to the southeast of the area proposed for vacation noted concerns with the vacation, as it may inhibit some maneuverability for delivery trucks to their business. Josephson Manufacturing has indicated they are willing to work with the neighboring property owner located to the southeast of the area proposed for vacation, and the abutting property owner with the concern has stated that they are willing to work through their concern with Josephson as well. Josephson has provided a draft easement agreement to be established with the neighboring property owner. To ensure the neighboring property owner's concerns are addressed, this easement will need to be signed prior to recording of the vacation.

*Transportation & Parking Impacts*

Outside of abutting property maneuverability, which is addressed above, no other transportation impacts are anticipated, as the street proposed for vacation has not been used for through access. There are also no anticipated impacts to parking upon the vacation of the street. Upon acquisition of the residential properties to the north, it is anticipated that no parking will be necessary in this area.

#### *Liability, Safety & Maintenance*

Liability and safety are common concerns for emergency response. Upon expansion of Josephson Manufacturing, the Fire Department will require adequate access to the building. City snow removal services will no longer be needed for the area proposed for vacation. Upon Josephson Manufacturing's acquisition of the properties to the north of the vacated area, garbage pick-up will no longer be necessary for 3 of the existing homes currently located to the north of the street.

#### *Utilities and City Improvement Projects*

Each public and private utility was contacted; responses were as follows:

- Mediacom – If no service is needed Mediacom will remove cable within the vacated area. If service is required the applicant will be required to pay relocation costs.
- Frontier Communications – There are some private services within the area proposed for vacation. The applicant would be required to coordinate with Frontier on removal of these or establish any necessary easements.
- Iowa Network Services – No foreseen problems with the vacation.
- Fort Dodge Fire Department – No foreseen issues so long as the road remains open until houses are vacated and removed. Fire access to the exterior of the expansion will be addressed through Site Plan review.
- MidAmerican Energy – Gas and overhead electric facilities are located in the area proposed to be vacated. The applicant would be required to coordinate with MidAmerican on removal of these or establish any necessary easements.
- City Utilities – There may be some City utilities within the vacated area. The applicant would need coordinate removal of existing lines and/or establish easements with the City.
  - No other City improvement projects are currently planned for this site.

#### *Land Use*

The adjacent property to the north is currently zoned Multiple Family Residential (1RM) and the area to the south of the vacated area is zoned Downtown Corridor Sub-District (D-2). Expansion of Josephson Manufacturing would require a rezoning of the vacated area. If the area were rezoned D-2, expansion of an existing manufacturing site in this district will require a Special Exception from the Board of Adjustment.

Upon resolution of the utility concerns and/or obtaining all necessary easements for any utilities that may exist within the area proposed for vacation, and upon resolution of maneuverability concerns by the neighboring property owner through an agreement between the two parties, no negative impacts are foreseen.

#### **Budget Impact**

Right-of-way vacation requests do not typically entail any City expenditures.

**Strategic Plan Impact**

N/A

**Existing Plan Impact**

N/A

**Subcommittee or Commission Review / Recommendation**

The Plan & Zoning Commission considered the request for right-of-way vacation at their meeting on August 12, 2014 and unanimously recommended approval of this request with contingencies, as noted in Staff Conclusions/Recommendations, below.

**Staff Conclusions / Recommendations**

Subject to City Council review, and comments received at the public hearing, staff recommends approval of the public right-of-way vacation request for that portion of 1<sup>st</sup> Avenue North consisting of the area described in the legal description, the vacated lands shall not be disposed to Josephson until the following conditions have been met and all documentation of such is provided to the City:

- Josephson Manufacturing shall obtain ownership of all properties abutting the vacated area to the west and north;
- all access concerns shall be resolved through an agreement with the property owner to the southeast; and
- all utility concerns shall be resolved through removal of existing utilities or recording of easements.

If the above contingencies are not met within a reasonable time, as determined by the City Council, the ROW vacation will be appealed.

**Alternatives**

The alternative would be to not set the public hearing to review the vacation of the public right-of-way as requested by Josephson Manufacturing.

**Implementation and Accountability**

If approved, the public hearing will be set for September 8th. If the vacation request is ultimately approved and the property located to the east and north is purchased by Josephson Manufacturing, the City will dispose of the right-of-way to Josephson Manufacturing.

Signed



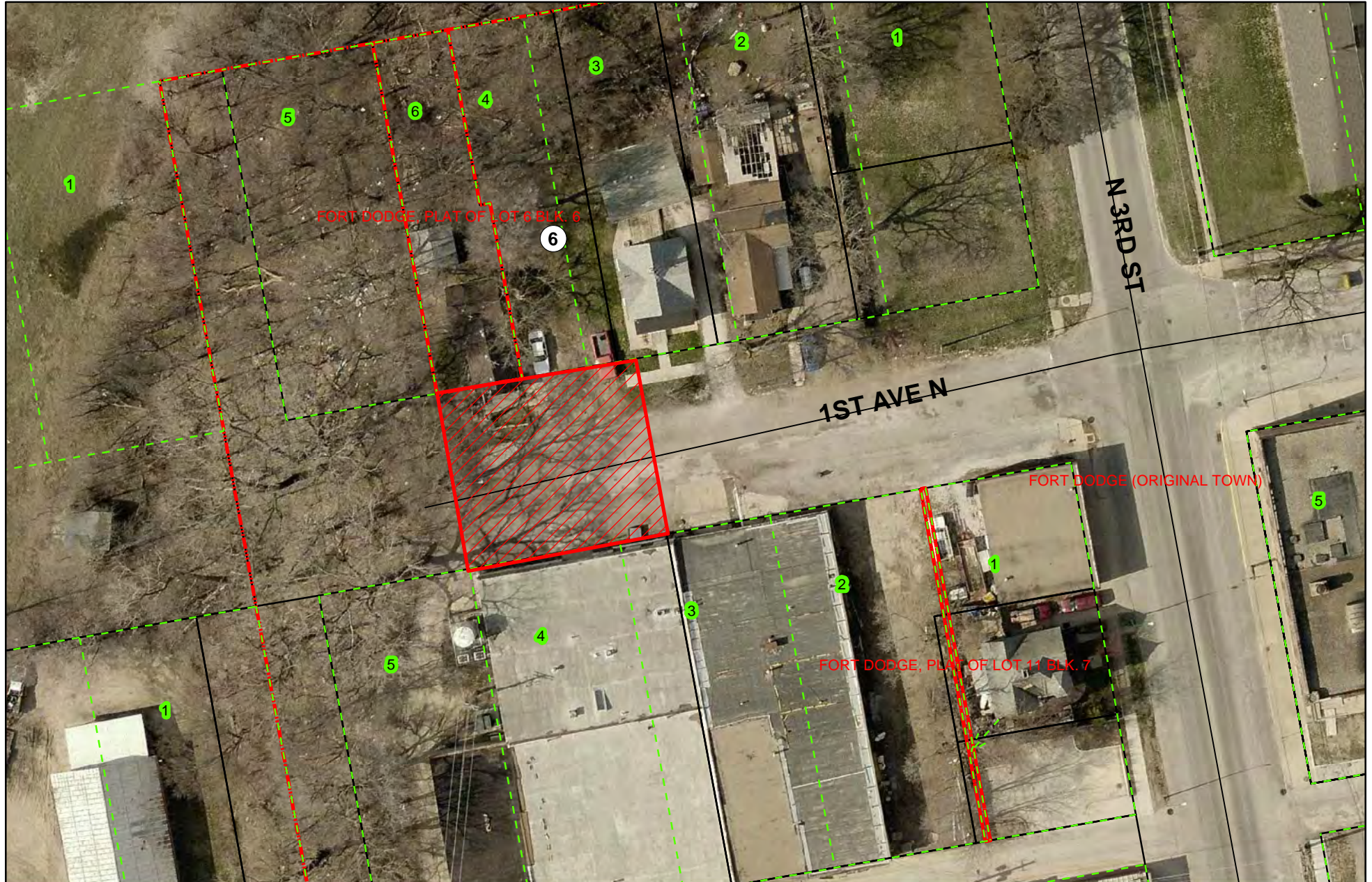
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Carissa Miller  
Senior Planner  
Business Affairs & Community Growth

Approved

\_\_\_\_\_  
David R. Fierke  
City Manager

# Case 2202.14 - 1st Avenue North ROW Vacation Request

DESCRIBED AS THAT PORTION OF 1ST AVENUE NORTH LYING NORTH OF LOT 4 AND THE WESTERLY MEASURED DIMENSION OF 18.96 FEET OF LOT 3, IN BLOCK 7 OF THE ORIGINAL TOWN OF FORT DODGE, IN WEBSTER COUNTY, IA.



50 25 0 50 Feet

Map created 8/18/14  
All locations are approximate.

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Return to Business Affairs & Comm. Growth, 819 1<sup>st</sup> Ave. South, Fort Dodge, Iowa 50501

**ORDINANCE NO. \_\_\_\_\_**

**ORDINANCE PROVIDING FOR THE VACATION OF PUBLIC RIGHT-OF-WAY  
CITY OF FORT DODGE, WEBSTER COUNTY, IOWA**

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FORT DODGE, IOWA:

**SECTION I. PURPOSE.**

The purpose of this Ordinance is to vacate that portion of public right-of-way located in Webster County, Iowa, as described as follows:

THAT PORTION OF 1ST AVENUE NORTH LYING NORTH OF LOT 4 AND THE WEST 18.96 FEET OF LOT 3, ALL IN BLOCK 7 OF THE ORIGINAL TOWN OF FORT DODGE, IN WEBSTER COUNTY, IOWA.

**SECTION II.**

The City Council of the City of Fort Dodge, Iowa, hereby makes the following findings:

1. The above-described portion of public right-of-way is no longer needed for public purposes.
2. The proposed vacation of the above-described portion of public right-of-way will cause no negative impacts.
3. That the adjacent landowner, Josephson Manufacturing, is desirous of obtaining said property.
4. The vacation of the above-described portion of public right-of-way is contingent upon the following:
  - a. Josephson Manufacturing obtaining ownership of all properties abutting the vacated area to the west and north;
  - b. all access concerns shall be resolved through an agreement with the property owner abutting the southeast corner of the vacated area; and
  - c. all utility concerns shall be resolved through removal of existing utilities or recording of easements in relation to existing utilities.

5. If the contingencies noted in Finding 4 (above) are not met within a reasonable time, as determined by the City Council, said vacation of public right-of-way may be repealed.
6. The Public Notice of this intended vacation and the dates, time, and place on which the Council would first consider the vacating Ordinance has been heretofore published, as by law required.

SECTION III.

The public right-of-way, above described, is hereby declared vacated.

SECTION IV.

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION V.

If any Section, provision, or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole, or any Section, provision, or part thereof not adjudged invalid or unconstitutional.

SECTION VI.

This Ordinance shall be in effect after its final passage, approval, and publication, as by law provided. Passed and approved by the City Council of the City of Fort Dodge, Iowa, this \_\_\_\_\_ day of \_\_\_\_\_, AD, 2014.

First consideration \_\_\_\_\_ day of \_\_\_\_\_ 2014.

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Other: \_\_\_\_\_

Second consideration \_\_\_\_\_ day of \_\_\_\_\_ 2014.

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Other: \_\_\_\_\_

Third consideration \_\_\_\_\_ day of \_\_\_\_\_ 2014.

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Other: \_\_\_\_\_

(City Seal)

CITY OF FORT DODGE

BY: \_\_\_\_\_  
Matt Bemrich, Mayor

ATTEST:

\_\_\_\_\_  
Jeff Nemmers, City Clerk