

**CITY OF CYPRESS
AGENDA REPORT**

Item # 14

TO: John B. Bahorski, City Manager
FROM: Andrew J. Tse, Administrative Services Manager
MEETING OF: November 22, 2010
SUBJECT: Animal Control Concerns on Marion Avenue

RECOMMENDATION

It is recommended that the City Council receive and file this report.

BACKGROUND

During the City Council meeting on Monday, November 8, 2010, residents of Marion Avenue brought to the City's attention concerns about animal control, specifically regarding pit bulls and the ability of the City to ban the ownership of such breed of dogs. This report provides an overview of the City's action plan to address the concerns of Marion Avenue residents and to educate the residents on what to do in incidents involving a potentially dangerous animal, and to provide an overview of remedies available to the City under the law.

DISCUSSION

Action Plan

The first step to help mitigate the concerns of Marion Avenue residents is to ensure the public's safety by encouraging all dog owners in the area to keep their dogs properly controlled on their properties or while on a walk as required by law.

Residents are encouraged to contact O.C. Animal Care immediately at (714) 935-6848 when they observe any stray dogs running loose in the neighborhood. In the event a resident witnesses an incident or has a personal experience with an aggressive dog, the resident is encouraged to contact O.C. Animal Care or 911 immediately. O.C. Animal Care has Animal Control Officers in the field 24 hours a day, seven days a week, and works directly with the Cypress Police Department to ensure the safety of our residents.

O.C. Animal Care has found their investigation and compliance processes to be very effective in ceasing issues relating to aggressive dogs threatening the safety of the public. To better serve the residents of Marion Avenue, it is encouraged that residents be vigilant and report any observations or incidents related to vicious dogs to ensure O.C. Animal Care promptly initiates corrective actions.

Going forward, the City's action plan is to work with O.C. Animal Care officials to disseminate information and educate the public on what to do in situations involving potentially dangerous animals. Staff will initiate a public service campaign by posting information on the City's website, Cypress Channel 36, Parks & Recreation brochure, as well as public service announcements to the local media. O.C. Animal Care officers

will canvass the Marion Avenue neighborhood to provide residents with information, hear their concerns, check for unlicensed dogs, identify potential problem dogs, and observe and take corrective action of any incidents.

O.C. Animal Care officials and staff anticipates that this public information campaign should be effective in making the residents aware of the issue and ensure that all incidents are reported timely to O.C. Animal Care for enforcement and corrective action.

Legislative Affect on Local Action

California Health and Safety Code, Section 122331 permits local governments to enact a dog breed-specific ordinance only in regard to mandatory spaying or neutering. The Code section prohibits local governments from passing ordinances declaring specific breeds potentially dangerous or vicious. Below is the applicable verbiage from the Health and Safety Code.

“122331. (a) *Cities and counties may enact dog breed-specific ordinances pertaining only to mandatory spay or neuter programs and breeding requirements, provided that no specific dog breed, or mixed dog breed, shall be declared potentially dangerous or vicious under those ordinances.*

(b) *Jurisdictions that implement programs described in subdivision (a) shall measure the effect of those programs by compiling statistical information on dog bites. The information shall, at a minimum, identify dog bites by severity, the breed of the dog involved, whether the dog was altered, and whether the breed of dog was subject to a program established pursuant to subdivision (a). These statistics shall be submitted quarterly to the State Public Health Veterinarian.”*

The only city in Orange County to have adopted a mandatory spay/neuter law for cats and dogs is the City of Laguna Woods. Laguna Woods' ordinance provides for mandatory spaying/neutering of all cats and dogs six months or older. The ordinance is not breed specific (Attachment A). However, Laguna Woods does have in its municipal code a section pertaining to dangerous and vicious dogs, adopted by reference from the Food and Agricultural Code, § 31601 seq. (Attachment B).

Actions Available to the City Under the Municipal Code

The City of Cypress has a provision pertaining to Dangerous and Vicious Animals in the Municipal Code. The Cypress Municipal Code adopted County of Orange Ordinance 4-1-23 by reference, Title 4, Article 6. – Dangerous and Vicious Animals (Attachment C).

The County Code defines potentially dangerous and vicious dogs as such:

(a) *“Potentially Dangerous Dog” means any of the following:*

1. *Any dog which, when unprovoked, on two separate occasions within the prior 36-month period, engages in any behavior that requires a defensive action by*

any person to prevent bodily injury whether the person and the dog are on or off the property of the owner or custodian of the dog.

- 2. Any dog which, when unprovoked, bites a person causing any injury less severe than a "severe injury." "Severe injury" means any physical injury to a human being that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery.*
- 3. Any dog which, when unprovoked, has killed, seriously bitten, inflicted injury, or otherwise caused injury attacking a domestic animal, horse, or livestock.*

(b)"Vicious Dog" means any of the following:

- 1. Any dog seized as a "fighting animal" under Section 599aa of the Penal Code and upon the sustaining of a conviction of the owner or custodian of a fighting animal as set forth in subdivision (a) of Section 597.5 of the Penal Code.*
- 2. Any dog which, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a human being, whether the person and the dog are on or off the property of the owner or custodian of the dog.*
- 3. Any dog previously determined to be and currently listed as a "potentially dangerous" dog, which, after its owner or keeper has been notified of this determination, continues the behavior of a "potentially dangerous dog" as set forth above, or is maintained in violation of the conditions and restriction placed upon the dog as a "potentially dangerous dog."*

In the event an incident is severe or there is a history of aggression with the same dog(s), O.C. Animal Care may decide to conduct a more in depth investigation that includes interviews with neighbors, victims and witnesses, obtaining medical reports, etcetera to determine whether the dog(s) should be declared potentially dangerous or vicious.

If a declaration is made, the dog's owner is provided his/her right to a hearing allowing them an opportunity to present any evidence that refutes O.C. Animal Care's decision to declare their dog(s) potentially dangerous or vicious. Should O.C. Animal Care's declaration be upheld at the hearing, the owner is charged \$666.00 for the investigation fee. The dog's owner will also be required to obtain and renew annually a permit allowing them to house the dog for \$644.00 and several restrictions will be set in place that the owner must adhere to in order to continue to maintain the dog on their property. These restrictions include requiring the dog owner to place locks and signs on gates, the dog required to be muzzled, and the dog owner required to purchase liability insurance. Unannounced compliance checks are performed on a regular basis to ensure the restrictions are being followed.

If an owner is found to be out of compliance, they may receive a misdemeanor citation, be assessed a non-compliance fee of \$333.00, the dog(s) may be impounded or all of the above. Additionally, should a declared dog be involved in an additional incident of aggression or the owner be found out of compliance with the restrictions, another investigation may be initiated to determine the best course of action in ensuring the dog

will no longer pose a threat to the public and their pets. This may require additional restrictions be added, or that the dog(s) must be euthanized.

Both the Cypress Police Department and the Orange County Fire Authority are notified of the addresses where declared potentially dangerous and vicious dogs are housed to better assist them in their response.

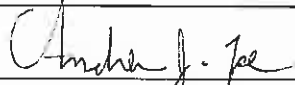
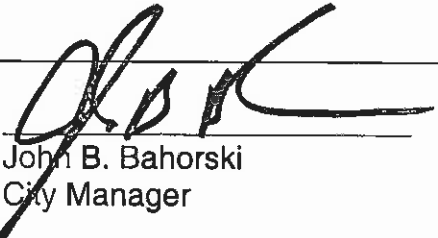
Residents can be assured that O.C. Animal Care and the Cypress Police Department takes very seriously our obligations and duty to investigate incidents that involve the possession and maintenance of potentially dangerous and vicious dogs. The decisions made by O.C. Animal Care on behalf of the residents in the community must ensure the public's health, safety, and welfare.

FISCAL IMPACT

There is no financial impact to the City regarding this item.

LEGAL REVIEW

No legal review is required for this action.

<p>By:  Andrew J. Tse Administrative Services Manager</p>	<p> John B. Bahorski City Manager</p>
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- Attachment A: City of Laguna Woods Municipal Code, Section 5.05.10
- Attachment B: City of Laguna Woods Municipal Code, Section 5.16.010
- Attachment C: City of Cypress Municipal Code, Section 3-1, Article 6

Laguna Woods, California, Code of Ordinances >> Title 5 - ANIMALS >> CHAPTER 5.05. - MANDATORY SPAY AND NEUTER PROGRAM FOR DOGS AND CATS >>

CHAPTER 5.05. - MANDATORY SPAY AND NEUTER PROGRAM FOR DOGS AND CATS

Sec. 5.05.010. - Mandatory spaying, neutering of dogs and cats.

Sec. 5.05.020. - Unaltered dog license; requirements.

Sec. 5.05.030. - Denial or revocation of unaltered dog license—Grounds and re-application.

Sec. 5.05.040. - Appeal of denial or revocation of unaltered dog license.

Sec. 5.05.050. - Unaltered cat requirements.

Sec. 5.05.060. - Administrative citation.

Sec. 5.05.070. - Impoundment of unaltered dog or cat.

Sec. 5.05.080. - Effective date.

| Sec. 5.05.010. - Mandatory spaying, neutering of dogs and cats.

- (a) No person may own, keep, or harbor a dog or cat in violation of this section.
- (b) An owner or custodian of an unaltered dog six months or older must have the animal spayed or neutered, or provide a certificate of sterility, or obtain an unaltered dog license in accordance with Section 5.05.020. An owner or custodian of an unaltered cat six months or older must have the animal spayed or neutered, or provide a certificate of sterility, or show compliance with Section 5.05.050.
- (c) The owner or custodian of a cat or dog that is unable to be spayed or neutered without a high likelihood of suffering serious bodily harm or death due to age, infirmity or particular health risks, must obtain written confirmation of that fact from a California licensed veterinarian. The writing must state if the dog or cat may be neutered at some future time. Possession of such document or ability to obtain within fourteen days of either issuance of a citation or impoundment, stating that the animal is unable to be altered at the time of citation or impoundment, shall be sufficient proof of compliance with the requirements of this Chapter.

(Ord. No. 09-03, § 2, 5-20-2009)

| Sec. 5.05.020. - Unaltered dog license; requirements.

An owner or custodian of an unaltered dog over the age of six months must obtain an annual unaltered dog license for the dog. Subject to Section 5.05.030 below, the Animal Services Manager shall issue the license if he or she has determined that all of the following conditions are met:

- (1) The dog is one of the following: a competition dog as defined in Section 5.02.010; a dog used by a law enforcement agency for law enforcement purposes; a qualified service or assistance dog as defined in Section 5.02.010; or a dog which is unable to be spayed or neutered as set forth in Section 5.05.010.
- (2) The owner or custodian has submitted the required application together with all required license fees.

(Ord. No. 09-03, § 2, 5-20-2009)

| Sec. 5.05.030. - Denial or revocation of unaltered dog license—Grounds and re-application.

- (a) The Animal Services Manager may deny or revoke an unaltered dog license for one or more of the following reasons:
 - (1) The applicant or licensee is not in compliance with all of the requirements of Section 5.05.020;
 - (2) The City has received at least two complaints within a 12-month period, verified by the Animal Services Manager, that the applicant or licensee has allowed a dog to run loose or escape, or has

Laguna Woods, California, Code of Ordinances >> Title 5 - ANIMALS >> CHAPTER 5.16. - VICIOUS ANIMALS >>

CHAPTER 5.16. - VICIOUS ANIMALS*

State law reference—Potentially dangerous and vicious dogs, Food and Agricultural Code § 31601 seq.

Sec. 5.16.010. - Dangerous animals at large.

Sec. 5.16.020. - Restraint.

Sec 5.16.030. - "Beware of dog" notices.

Sec. 5.16.010. - Dangerous animals at large.

It shall be unlawful for any person owning or having possession, custody, charge or control of animals known by such person to be dangerous to cause or permit such animals to run loose about said person's premises in a manner endangering any person lawfully entering such premises, or to cause or permit the animals to be unrestrained upon or about any public street, sidewalk, park, schoolyard or property of other persons.

(Ord. No. 00-07, § 2(6.18.010), 10-18-2000)

Sec. 5.16.020. - Restraint.

- (a) Whenever an animal suspected of being vicious is reported, the Animal Services Manager shall investigate the circumstances and, if he finds that such animal has done any of the acts, he shall notify the owner or harbinger in writing, stating all of the facts and circumstances.
- (b) If the Animal Services Manager determines the animal to be vicious, he may order the owner or harbinger to keep such animal within a substantial enclosure or securely attached to a chain or any other type of control which the Animal Services Manager may deem adequate under the circumstances. If such restraint is impossible or impracticable, the animal may be impounded until the owner or harbinger is able to comply with the Animal Services Manager's order.
- (c) If, upon receiving written notification as provided for in this section, the owner or harbinger fails to provide adequate restraint or control of said animal, as ordered by the Animal Services Manager, within a reasonable time, such owner or harbinger shall be liable to prosecution for violation of this section.

(Ord. No. 00-07, § 2(6.18.020), 10-18-2000)

Sec 5.16.030. - "Beware of dog" notices.

Whenever the Animal Services Manager receives a report of a dog with a disposition or propensity to attack or bite any person or animal without provocation, and he determines such animal to be dangerous, he may order the owner to post and keep posted upon the premises where such dog is kept under restraint, as provided in this chapter, a notice containing the words "BEWARE OF DOG." Each letter of said notice shall be not less than two inches in height and the notice will be displayed in plain and conspicuous view. Failure to obey such order in any respect as provided in this section shall render such owner liable to prosecution for violation of this section.

(Ord. No. 00-07, § 2(6.18.030), 10-18-2000)

Cypress Municipal Code

[Up](#) [Previous](#) [Next](#) [Main](#) [Search](#) [Print](#) [No Frames](#)

Chapter 3 ANIMALS AND FOWL**Sec. 3-1. Provisions of county Code of Ordinances adopted—Generally.**

The following provisions of the Codified Ordinances of the County of Orange, as amended, are hereby adopted by this reference and incorporated herein as though set forth in full:

TITLE 4. HEALTH, SANITATION AND ANIMAL REGULATIONS

DIVISION 1. ANIMAL CONTROL, WELFARE AND LICENSE REQUIREMENTS

- Article 1. General
- Article 2. Keeping and Restraint of Dogs and Cats
- Article 3. Rabies Control
- Article 4. Dog Licensing
- Article 5. Cat Registration
- Article 6. Dangerous and Vicious Animals
- Article 7. Animal Impoundment
- Article 8. Animals Running at Large
- Article 9. (Reserved)
- Article 10. Animal Health

(Ord. No. 469, §§ 2, 3, 11-8-71; Ord. No. 585, § 1, 9-27-76.)

Orange County, California, Code of Ordinances >> TITLE 4 - HEALTH SANITATION AND ANIMAL REGULATIONS >> Division 1 - ANIMAL CONTROL, WELFARE AND LICENSE REQUIREMENTS >> ARTICLE 6. - DANGEROUS AND VICIOUS ANIMALS >>

ARTICLE 6. - DANGEROUS AND VICIOUS ANIMALS

Sec. 4-1-94. - Wild, exotic, dangerous and nondomestic animals.

Sec. 4-1-95. - Declaration and possession of vicious or potentially dangerous dog.

Sec. 4-1-96. - Reserved.

Secs. 4-1-97—4-1-104. - Reserved.

Sec. 4-1-94. - Wild, exotic, dangerous and nondomestic animals.

No person shall have, keep, or maintain any wild, exotic, dangerous or nondomestic animal without first applying to and receiving a license from the Director. The Director shall by regulation determine those animals to be covered by this section. The keeping or maintenance of such animals shall also conform to the zoning regulations of Orange County.

The Director shall issue a license to any person for the keeping or maintaining of any wild, exotic, dangerous or nondomestic animal upon receipt of the fee established by the Board of Supervisors and when, in his opinion, such animal may be kept or maintained without endangering its safety and comfort and the safety and comfort of any person or property, provided, however, that the Director may require any such animal to be properly caged or tethered and he may make such additional rules and regulations that may be necessary and proper under the circumstances. He may revoke any such license for the violation of any of the provisions of this division or of any of the rules and regulations adopted pursuant thereto, or when in his opinion the safety or comfort of such animal or any person or property is endangered by the keeping of any such animal. The provisions of section 5-2-19 of these codified ordinances shall govern appeals from the denial or revocation of a license under this section.

The owner or custodian of such animal shall give written notice to the Director prior to the transfer, trade or barter of such animal or its progeny.

(Ord. No. 2836, § 7, 5-6-75; Ord. No. 2908, § 1, 5-4-76)

Sec. 4-1-95. - Declaration and possession of vicious or potentially dangerous dog.

(a) *General Provisions.*

- (1) If the Director has cause to believe that a dog is a "vicious dog or potentially dangerous dog" within the meaning of section 4-1-23, he or she may tentatively find and declare such dog a "vicious dog or potentially dangerous dog."
- (2) Upon tentatively finding and declaring that a dog is a "vicious dog or potentially dangerous dog," the Director shall notify the owner and/or custodian in writing of his or her tentative finding and declaration.
- (3) The notice shall inform the owner and/or custodian of such dog that he or she may request a hearing in writing before the Director within five (5) working days of receipt of such notice to contest the tentative finding and declaration. Any such hearing shall be requested and conducted as provided in subsection (d) of this section.
- (4) Failure of the owner and/or custodian to request a hearing pursuant to subsection (a)(3) of this section shall result in the declaration becoming final.
- (5) The possession or maintenance of a "vicious dog or potentially dangerous dog," or the allowing of any such dog to be in contravention of this division, is hereby declared to be a public nuisance. The director is hereby authorized and empowered to impound and/or abate any "vicious dog or potentially dangerous dog" independently of any criminal prosecution or the results thereof by any

means reasonably necessary to ensure the health, safety and welfare of the public, including, but not limited to, the destruction of the dog or by the imposition upon the owner and/or custodian of specific reasonable restrictions and conditions for the maintenance of the dog. The restrictions and conditions may include but are not limited to:

- a. Obtaining and maintaining liability insurance in the amount of one hundred thousand dollars (\$100,000.00) against bodily injury or death or damage to property and furnishing a certificate or proof of insurance by which the Director shall be notified at least ten (10) days prior to cancellation or nonrenewal or, at the owner's or custodian's option, the filing with the Director of proof of a bond in the amount of one hundred thousand dollars (100,000.00), to be able to respond in damages.
 - b. Requirements as to size, construction and design of the dog's enclosure.
 - c. Location of the dog's residence.
 - d. Requirements as to type and method of restraints and/or muzzling of the dog.
 - e. Photo identification or permanent marking of the dog for purposes of identification.
 - f. Requirements as to the posting of a warning notice or notices conspicuous to the public warning persons of the presence of a vicious dog.
 - g. Payment of a fee or fees as established by resolution of the Board of Supervisors to recover the costs of enforcing the provisions of [this] article 6, division 1 of title 4 of this Code as applied to the regulation of vicious dogs.
- (b) *Notification of Right to Hearing.* At least five (5) working days prior to impoundment and/or abatement, the owner or custodian shall be notified in writing of his or her right to request a hearing in writing to determine whether grounds exist for such impoundment and/or abatement. If a hearing is requested, the impoundment and/or abatement hearing may be held in conjunction with the hearing provided for in subsection (a) of this section. If the owner or custodian requests a hearing prior to impoundment and/or abatement, no impoundment and/or abatement shall take place pending decision by the Director following a hearing, except as provided in subsection (c) of this section. Pending such impoundment and/or abatement hearing and decision by the Director, the Director may order the owner or custodian to keep the dog within a substantial enclosure or securely attached to a chain or other type of control which the Director may deem necessary under the circumstances. The Director may also order the owner or custodian to post and keep posted upon the premises where such dog is kept under restraint, a warning notice pending such impoundment and/or abatement hearing and decision by the Director. The form, content and display of such notice shall be specified by the Director. Any hearing under this subsection shall be conducted in accordance with subsection (d) of this section.
- (c) *Immediate Impoundment.* When, in the opinion of the Director, immediate impoundment is necessary for the preservation of animal or public health, safety or welfare, or if the dog has been impounded under other provisions of this Code or State law, the preimpoundment hearing shall not be required; however, the owner or custodian shall be given written notice allowing five (5) working days from receipt of such notice to request in writing an abatement hearing. If requested, a hearing shall be held within five (5) working days of receipt of the request by the Director and the dog shall not be disposed of prior to the decision of the Director following such hearing. A hearing under this subsection shall be conducted in accordance with subsection (d) of this section except as otherwise indicated. If, after five (5) working days following receipt of such notice, no written request for a hearing is received from the owner or custodian, the dog in question shall be disposed of under applicable provisions of law.
- (d) *Request for and Conduct of Hearings.* Except as otherwise provided in subsection (c) of this section, the Director shall conduct a hearing within fifteen (15) days following receipt of a written request from the owner or custodian requesting a hearing under this section, and notice of the time, date and place thereof shall be mailed to the person requesting the hearing at the address given in the hearing request, at least ten (10) days prior to said hearing. The Director may appoint a hearing officer to take evidence, summarize the evidence presented and report his or her findings and recommendations based on such evidence to the Director, or the Director may personally conduct the hearing.

At the hearing each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses, impeach any witness, and to rebut the evidence against him or her. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant or unduly repetitious evidence shall be excluded.

Within fifteen (15) days following the conclusion of the hearing, the Director shall determine, on all the evidence

presented to him or her, or on the summary of evidence and findings of fact and recommendations of the person holding the hearing, whether any designation, impoundment and/or abatement under this section should be rescinded or amended. Within five (5) working days following such decision, the Director shall notify in writing the person requesting the hearing of his or her determination as to any issue as to which the hearing was requested.

- (e) *Change of Circumstances.* In the event of changed circumstances, the Director may amend or rescind any abatement and/or impoundment imposed pursuant to subsection (a)(5) of this section. Any such revision to the abatement and/or impoundment due to changed circumstances shall be subject to the same notice, hearing and other procedural requirements as required for imposing an initial abatement and/or impoundment set forth in subsections (b), (c) and (d) of this section.
- (f) *Change of Ownership, Custody and/or Residence.* Owners of a vicious dog or potentially dangerous dog who sell or otherwise transfer the ownership, custody or residence of the dog shall at least ten (10) days prior to the sale or transfer, inform the Director in writing of the name, address and telephone number of the new owner, custodian and/or residence and the name and description of the dog. The owner shall, in addition, notify the new owner or custodian in writing of the details of the dog's record, terms and conditions of maintenance and provide the Director with a copy thereof containing an acknowledgment by the new owner or custodian of his or her receipt of the original. The Director shall notify the new owner or custodian in writing of any different or additional restrictions or conditions imposed pursuant to subsection (a)(5) of this section as a result of the change of ownership, custody or residence. The imposition of any such different or additional restrictions or conditions shall be subject to the same notice, hearing and other procedural requirements as required for imposing an initial abatement and/or impoundment set forth in subsections (b), (c) and (d) of this section.
- (g) *Possession Unlawful.* It is unlawful to have custody of, own or possess a vicious dog or potentially dangerous dog within the meaning of section 4-1-23 unless it is restrained, confined or muzzled so that it cannot bite, attack or cause injury to any person.
- (h) *Declared Vicious Dog or Potentially Dangerous Dog.* It shall be unlawful for the owner and/or custodian of a dog declared vicious or potentially dangerous pursuant to subsection (a) to fail to comply with any requirements or conditions imposed pursuant to subsection (a)(5) of this section. If a vicious or potentially dangerous dog escapes, the owner and/or custodian shall immediately notify the Director and make every reasonable effort to recapture it.

The Director shall have the discretion, in any event, to directly petition the court to seek a determination whether or not the dog in question should be declared potentially dangerous or vicious. The Director shall follow the procedures set forth in Food and Agriculture Code Sections 31621 and following for this purpose.

(Ord. No. 2836, § 7, 5-6-75; Ord. No. 2908, § 1, 5-4-76; Ord. No. 3693, § 3, 3-22-88; Ord. No. 98-15, § 33, 12-8-98)

Sec. 4-1-96. - Reserved.

Editor's note—

Section 2 of Ord. No. 2908, adopted May 4, 1970, repealed former § 4-1-96, pertaining to confinement of vicious animals, and derived from Ord. No. 2836, § 7, adopted May 6, 1975.

Secs. 4-1-97—4-1-104. - Reserved.