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**Resolution Number \_\_\_\_\_**

**A resolution closing and vacating a portion of Front Street public right-of-way in WJ McCormick's Addition, Blocks 51 & 56 subject to two (2) conditions of approval.**

**WHEREAS**, in response to Petition 10147, the City Council adopted Resolution No. 8652 on December 21, 2022, declaring the City Council's intention to close and vacate the right-of-way described in this resolution; and

**WHEREAS**, on January 9, 2022, the City Council conducted a public hearing and heard all matters pertaining to the proposed closing and vacating of said right-of-way described in this resolution; and

**NOW THEREFORE, BE IT RESOLVED** that the Missoula City Council hereby closes and vacates all that portion of right-of-way legally described above subject to the conditions herein, and shown on the attached Exhibit A, and return the property to unencumbered fee simple ownership by the City as follows;

**SECTION I.** THAT the City Council of the City of Missoula, Montana, closes and vacates all that portion of rights-of-way described below and shown on the attached Exhibit "A":

A tract of land being a portion of Front Street lying northwesterly of the northeasterly prolongation of the southeasterly line of Lot 48 in Block 56 of W.J. McCormick's Addition to the Town of Missoula, a recorded subdivision in Missoula County, Montana and lying between the southwesterly right-of-way line of West Broadway and the northeasterly lines of Block 56 and Block 51 or said W.J. McCormick's Addition to the Town of Missoula, located in the Northeast ¼ of Section 21, Township 13 North, Range 19 West, P.M., M.

**SECTION II.** THAT the vacated right-of-way will revert to and combine with the adjacent private property upon vacation approval and shall attach to the adjacent properties and the titled owner in accordance with Section 70-16-202 of the Montana Code Annotated as follows:

That portion of the Front Street right-of-way lying between West Broadway and Block 51 and Block 56 of W.J. McCormick's Addition will be relinquished to Lots A and B in Block 51 and Lots 48 and 49 in Block 56 of W.J. McCormick's Addition.

**FURTHER**, All easements must be prepared and signed by the property owner in accordance with the timelines identified below. The City will not finalize the vacation by recording the vacation resolution with the Missoula County Clerk and Recorder until all the conditions are met. In the event the conditions are not met, this vacation approval shall be withdrawn, the vacation will be declared null and void and the right-of-way shall be returned to public use.

FURTHER, For any condition of this vacation requiring the City, or a department thereof, to review and approve a submittal, the City shall have discretion to deny approval of the submittal because of concerns related to public health, welfare, safety, and benefit. In the event the City determines public health, welfare, safety, and benefit require disapproval of the submittal, the City shall identify changes that would mitigate the issues identified and allow the submittal to be approved.

FURTHER, In accordance with the Development Agreement already executed, the developer shall obtain City Parks and Recreation Department approval for the design of the Riverfront Trail along the north shore of the Clark Fork River and up to the W Broadway Right-of-Way, through the existing Public Access Easement, without interruption or detour, prior to submittal of the first building permit for construction on the Real Property adjacent to the Riverfront Trail. See the 601 West Broadway Development Agreement for more detailed requirements of the trail.

FURTHER, that the vacation is contingent upon the following:

- 1) Within 90 days of this Resolution being approved by City Council, the developer shall prepare and file a public access easement over all the vacated W Front Street right-of-way (2,628 square feet) to maintain useable connections for all modes of transportation, subject to review and approval of the City of Missoula. This public access easement shall remain in place until the set of conditions identified in (a)-(b) below are completed. Once conditions (a)-(b) below are completed and approved by the City, the City shall file a release of easement document to be filed with the Missoula County Clerk and Recorder's Office clearly releasing any and all claim by the City of Missoula to this easement. This public access easement may be adjusted by mutual agreement of the parties to incorporate motorized and non-motorized transportation and a building footprint through this area if the W Front Street & W Broadway intersection is reconfigured. This public access easement shall incorporate the following terms, as well as the City's commitment to release the easement upon satisfactory completion of the subject to the review and approval by the City Engineer:
  - a) The developer shall prepare and file a minimum 30-foot-wide public access easement located centered on the sanitary sewer line in Front Street, connecting active transportation facilities on W Broadway to active transportation facilities at the proposed round-about at the intersection of W Front Street and Owen Street. The 30-foot-wide public access easement shall be filed prior to removal of the 2,628 square foot temporary access easement and prior to development occurring on the Real Property being vacated, subject to review and approval of the City of Missoula. If timing of the projects are concurrent, this should be coordinated with the adjacent parcels to the east to ensure continuous connectivity. The public access easement may be less than 30-feet in width with City Engineer approval.
  - b) The developer shall construct right-of-way improvements at the W Front Street and W Broadway intersection subject to City Engineer approval. These improvements will be required prior to construction taking place at 601 W Broadway to ensure that W Front Street remains open during 601 W Broadway construction. If adjacent development happens prior to construction at 601 W Broadway, these ROW improvements may not be required. Possible right-of-way improvements may include pedestrian median refuge islands, turn lanes, removal of turn lanes, etc. These improvements must also be approved by Montana Department of

Transportation.

- 2) Within 90 days of this Resolution being approved by City Council, the developer shall prepare and file all necessary utility easements, to be granted to the City of Missoula, subject to review and approval of City Utility Engineering. This entails a 20-foot easement (10 feet either side) centered on any existing and proposed water, sewer, and storm mains, plus 10 feet beyond the fire hydrant. Proposed mains shall include the City's W Broadway Water Main Replacement Project which is planned to connect to the existing water main inside the right-of-way to be vacated. Utility easements may be released if an existing utility is abandoned, removed, or relocated and a new utility easement is granted in lieu of the easements deemed necessary at the time of the street vacation.

**SECTION III.** THAT the City Council, at its regular meeting that was held on the 9<sup>th</sup> day of January 2023 at the hour of 6:00 P.M., in the Council Chambers of the City Hall Building at 140 West Pine Street, Missoula Montana, heard all matters pertaining to the proposed vacation as set out in Section I above.

THAT the property intended to be vacated is subject to any and all utility easements over and across said property in accordance with Section 7-14-4115 of the Montana Code Annotated to continue the installation, maintenance, and repair of any and all public utilities. The property owners benefiting from the vacated right-of-way assume all risk for the installation, placement or construction of any improvement over any easement in which a municipal utility is located and the City shall in no way be liable for any damage to those improvements occasioned by the repair and maintenance of any utilities.

**SECTION IV.** THAT this resolution be noticed and notice of the hearing concerning the vacation of the public right-of-way as described herein be given as provided by law.

**PASSED** by the City Council of Missoula, Montana, and approved by the Mayor this 23<sup>rd</sup> day of January, 2023.

**ATTEST:**

**APPROVED:**

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Martha L. Rehbein, CMC  
City Clerk

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Jordan Hess  
Mayor

(SEAL)

# Exhibit A

