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City of Missoula
435 Ryman Street
Missoula MT 59802-4297

Resolution Number 8410

A resolution to vacate public right-of-way being the portion of Ronald Avenue north of the alley adjacent to Lot 1 in Block 12 of Montana Addition and adjacent to Lots 10 & 11 north and south of the ditch in Block 13 of Montana Addition, as well as a portion of South 4th Street East right-of-way, generally the southerly 22 feet of South 4th Street East adjacent to property legally described as Lots 1-8 of Block 12 Montana Addition in Section 22, Township 13 N, Range 19 W, P.M.M., as shown in Exhibit A.

Be it resolved by the City Council of the City of Missoula, Montana.

SECTION I. THAT it is the intention of the City Council of the City of Missoula, Montana, to close and vacate all that portion of right-of-way described below and shown on attached Exhibit A, subject to the seven (7) conditions of approval noted in Section II:

The portion of Ronald Avenue north of the alley adjacent to Lot 1 in Block 12 of Montana Addition and adjacent to Lots 10 & 11 north and south of the ditch in Block 13 of Montana Addition, as well as a portion of South 4th Street East right-of-way, generally the southerly 22 feet of South 4th Street East adjacent to property legally described as Lots 1-8 of Block 12 Montana Addition in Section 22, Township 13 N, Range 19 W, P.M.M.

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

The portion of Ronald Avenue north of the alley adjacent to Lots 1 in Block 12 and Lots 10 & 11 in Block 13 of Montana Addition and the portion of South 4th Street East adjacent to Lots 1 through 8 in Block 12 of Montana Addition, on file and of record in Missoula County, Montana, located in Section 22, Township 13 North, Range 19 West, P.M.M.

FURTHER, that the vacation is contingent upon the approval of the rezoning and the following six (6) conditions of approval for the vacation:

1. The developer shall prepare plans for and construct right-of-way improvements to South 4th Street East, including but not limited to paving, curb, gutter, sidewalks, drainage and storm water facilities, and additional on-street parking, prior to approval of the first building permit on Lots 1 through 8, subject to review and approval of the City Engineer.
2. The developer shall prepare plans for and construct right-of-way improvements within the remaining and vacated portions of Ronald Avenue from South 5th Street East to South 4th Street East, including but not limited to paving, curb, gutter, drainage and storm water facilities, five (5) foot wide sidewalk and seven (7) foot wide boulevard within the Ronald Avenue right-of-way from South 5th Street East to the alley and a five (5) foot wide sidewalk/stairs within a public access easement from the alley north to South 4th Street East through the vacated portion of Ronald Avenue, prior to approval of the first building permit on Lots 1 through 8, subject to review and approval of the City Engineer.
3. The developer shall coordinate with the City of Missoula Parks and Recreation Department to allow staff to harvest all native grasses growing in the South 4th Street East right-of-way proposed to be vacated prior to May 1, 2020.
4. The developer shall secure a contract by April 1, 2020 to relocate those contributing structures (as identified by the Historic Preservation Officer in Attachment A) that have been determined as feasible for relocation, to an off-site location for reuse, subject to review and approval by the City Attorney and the Historic Preservation Officer. The intent is the structures would be relocated by May 1 2020, and the contract shall specify the deadline for relocation of structures. The applicant shall contribute a minimum of \$12,500.00 per structure for each contributing structure that is designated as feasible for relocation, towards the cost of the relocation of the structures if a contract with a party interested in relocation of the structures is secured. In the event the applicant is unable to secure a contract with an interested party to relocate the contributing structures, the developer shall meet the standards outlined in Attachment B provided by the Historic Preservation Officer regarding documentation of the historic resources, deconstruction, and mitigation, prior to demolition permit approval, subject to review and approval by the Historic Preservation Officer.
5. The developer shall address housing affordability by executing a Development Agreement, prior to building permit approval of the first structure that includes a voucher preference for new multi-dwelling rental units or constructing permanently affordable homeownership units, subject to review and approval by the Office of Housing and Community Development. The developer will work with the Office of Housing and Community Development on the terms of the Development Agreement to include appropriate pricing for affordable units for 20% of the dwelling units for purchase rounded up.
6. The developer shall include the following rental restriction in the Development Covenants which shall be filed with the Missoula County Clerk and Recorder for the subject property, prior to the building permit approval of the first structure, subject to review and approval by Development Services: "All dwelling units shall be owner occupied or rented with a minimum 30 day (month-to-month) lease with the option for units to be leased as short term rentals no more than sixty (60) days per calendar year. Parking for all dwelling units shall be provided on-site, including all lease options. This covenant may not be amended or deleted from the Development Covenants without City Council approval."
7. Commercial uses are prohibited on the subject property. The applicant shall file a deed restriction that prohibits commercial uses on the subject property, subject to the review and approval of the City Attorney and Development Services, prior to approval of the first building permit.

WHEREAS, the City Council adopted on the 18th day of November, 2019 Resolution No. 8395 declaring the City Council's intention to close and vacate said right-of-way herein described; and

WHEREAS, the City Council heard, on the 27th day of January, 2020, all matters pertaining to the proposed closing and vacation of said right-of-way as herein described; and

WHEREAS, 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.

FURTHER, 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.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL of the City of Missoula, Montana, that the aforesaid right-of-way as herein before described, be and the same is, hereby closed and vacated subject to the four conditions of approval noted herein and subject to any utility easements over and across said property 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.

PASSED by the City Council of Missoula, Montana, and approved by the Mayor this 27th day of January, 2020.

ATTEST:

/s/ Martha L. Rehbein

Martha L. Rehbein, CMC
City Clerk

APPROVED:

/s/ John Engen

John Engen
Mayor

(SEAL)

