

**COMMON COUNCIL OF THE CITY OF AUSTIN, INDIANA**

**ORDINANCE NO. 2023-4**

**AN ORDINANCE VACATING A PORTION OF 6<sup>th</sup> STREET AND PLATTED  
ALLEYWAY IN AUSTIN, INDIANA**

**BE IT HEREBY ORDAINED BY THE CITY COUNCIL FOR THE CITY OF  
AUSTIN, INDIANA:**

1. The DPG SINGLE TENANT INDIANA, LLC (“Petitioner”) owns or controls the property known as 587 W. Main Street, 590 W. Cherry Street, and 572 W. Cherry Street in Austin, Indiana.
2. The Petitioner has filed a petition with the City of Austin requesting the vacation of certain public rights-of-way within the City of Austin for commercial development.
3. The Petitioner is requesting that a portion of South 6<sup>th</sup> Street be vacated that is legally described as:

SITUATED IN THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 4 NORTH, RANGE 6 EAST AND BEING A FORTY FEET IN WIDTH PLATTED SIXTH STREET, IN AUSTIN CANNING COMPANY'S ADDITION TO THE TOWN OF AUSTIN, JENNINGS TOWNSHIP, SCOTT COUNTY, INDIANA, AND RECORDED IN DEED RECORD 16 PAGE 468 OF THE SCOTT COUNTY RECORDER'S RECORDS, THIS DESCRIPTION IS BASED ON A FIELD SURVEY PREPARED BY HREZO ENGINEERING, UNDER THE DIRECT SUPERVISION OF JAMES J. BERTRAM JR. LS #22200012 DATED MARCH 8, 2023, HAVING A JOB NUMBER OF SVY16470:04 WITH THE BASIS OF BEARING FOR THIS DESCRIPTION IS THE INDIANA STATE PLANE, US SURVEY FOOT, GEIOD 18, NAD83 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 260 IN CANNING COMPANY'S ADDITION AND THE NORTH

RIGHT-OF-WAY OF CHERRY STREET AT THE TRUE POINT OF BEGINNING:

THENCE S88°59'32"W, 40.00 FEET TO THE SOUTHEAST CORNER OF LOT 261; THENCE ALONG THE WEST RIGHT-OF-WAY OF SIXTH STREET, N01°00'28"W, 250.00 FEET TO THE NORTHEAST CORNER OF LOT 217 AND THE SOUTH RIGHT-OF-WAY OF MAIN STREET; THENCE ALONG SOUTHERLY RIGHT-OF-WAY OF MAIN STREET, N88°59'32"E, 40.00 FEET TO THE NORTHWEST CORNER OF LOT 218; THENCE RUNNING ALONG THE EAST RIGHT-OF-WAY OF SIXTH STREET, S01°00'28"E, 250.00 FEET TO THE BEGINNING.

CONTAINING 0.230 ACRES OF LAND, MORE OR LESS, SUBJECT TO EASEMENTS, CONDITIONS, RESTRICTIONS, COVENANTS, AND RIGHTS-OF-WAY OF RECORD.

A survey of the area showing the location of the street that is the subject of the request is marked Exhibit "A", attached hereto, and incorporated herein.

4. The Petitioner is also requesting that a portion of a platted alleyway be vacated that is legally described as:

SITUATED IN THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 4 NORTH, RANGE 6 EAST AND BEING A TEN FEET IN WIDTH PLATTED ALLEY AND LYING BETWEEN SIXTH STREET AND FIFTH STREET IN AUSTIN CANNING COMPANY'S ADDITION TO THE TOWN OF AUSTIN, JENNINGS TOWNSHIP, SCOTT COUNTY, INDIANA, AND RECORDED IN DEED RECORD 16 PAGE 468 OF THE SCOTT COUNTY RECORDER'S RECORDS, THIS DESCRIPTION IS BASED ON A FIELD SURVEY PREPARED BY HREZO ENGINEERING, UNDER THE DIRECT SUPERVISION OF JAMES J. BERTRAM JR. LS #22200012 DATED MARCH 8, 2023, HAVING A JOB NUMBER OF SVY16470:04 WITH THE BASIS OF BEARING FOR THIS DESCRIPTION IS THE INDIANA STATE PLANE, US SURVEY FOOT, GEIOD 18, NAD83 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 218 IN CANNING COMPANY'S ADDITION AT THE TRUE POINT OF BEGINNING:

THENCE WITH THE SOUTHERLY LINE OF PROPERTY OWNED BY TEX AND CORA JEAN MURPHY AND DESCRIBED IN INSTRUMENT NUMBER 2008-4615, N88°59'32"E, 120.00 FEET TO THE SOUTHEAST CORNER OF LOT 219; THENCE S01°00'28"E, 10.00 FEET TO THE NORTHEAST CORNER OF LOT 259; THENCE WITH THE NORTHERLY LINE OF PROPERTY OWNED BY TEX AND CORA JEAN MURPHY AND DESCRIBED IN INSTRUMENT NUMBER 2011-1442 & 2013-02022, S88°59'32"W, 120.00 FEET; THENCE ALONG THE EAST RIGHT-OF-WAY OF SIXTH STREET, N01°00'26"W, 10.00 FEET TO THE BEGINNING.

CONTAINING 0.028 ACRES OF LAND, MORE OR LESS, SUBJECT TO EASEMENTS, CONDITIONS, RESTRICTIONS, COVENANTS, AND RIGHTS-OF-WAY OF RECORD.

A survey of the area showing the location of the alleyway that is the subject of the request is marked Exhibit "B", attached hereto, and incorporated herein.


5. That after due and proper notice a timely public hearing was convened and held by the Common Council of the City of Austin, at which time all interested parties were permitted to address the Common Council regarding said vacation petition.
6. That the Common Council of the City of Austin, after due investigation and consideration has determined that the nature and extent of the public use and the public interest to be subserved by the proposed development project is such as to warrant the vacation of that part of the public way or public place as described in paragraphs 3 and 4 and depicted on the exhibits attached hereto.
7. Therefore, the Common Council of the City of Austin, Indiana, does hereby find the above-described public way or public place is no longer required for public use and the public interest will be served by such vacation, and the Common Council of the City of Austin does hereby vacate that portion of the public way or public place as described in

paragraphs 3 and 4 subject to any and all easements, conditions, restrictions, covenants and other rights-of-way of record.


8. This Ordinance and said vacation are contingent upon the Petitioner acquiring 587 W. Main Street, 590 W. Cherry Street, and 572 W. Cherry Street from the current owner. If said property acquisition is not consummated within two (2) years of the recording of this Ordinance, said vacation and this Ordinance is null and void and has no effect.
9. Upon acquisition of the real estate by the Petitioner, the Mayor of the City of Austin is hereby authorized to execute a Quitclaim Deed to the Petitioner, or its designee, effectuating the vacation of the described rights-of-way in paragraphs 3 and 4.
10. This Ordinance shall be in full force and effect from and after its passage and recording according to law.

Passed and adopted this 9<sup>th</sup> day of May 2023.

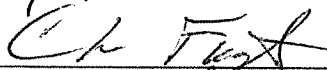
Common Council City of Austin, Indiana

  
\_\_\_\_\_  
Roger Hawkins, Presiding Officer


Attest:

  
\_\_\_\_\_  
Chris Fugate, Clerk-Treasurer

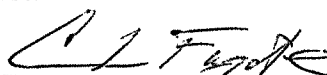
Presented by me to the Mayor of the City of Austin for his approval or veto pursuant to Indiana Code § 36-4-6-15 and 16, on May 9, 2023 at 6:30 p.m.

  
\_\_\_\_\_  
Chris Fugate, Clerk-Treasurer

This Ordinance having been passed by the legislative body and presented to me is approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16(a)(1), on May 9, 2023 at 6:31 p.m.

  
\_\_\_\_\_  
Roger Hawkins, Mayor

Attest:

  
\_\_\_\_\_  
Chris Fugate, Clerk-Treasurer

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. /s/ *Joshua Stigdon*

PREPARED BY: Joshua Stigdon, #29501-72  
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59 E. Wardell St.  
Scottsburg, IN 47170



