

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C14-2022-0140(RCT) – Brentwood Multifamily 2023 Public RC Termination

DISTRICT: 7

ADDRESS: 5401, 5403, and 5407 Clay Avenue; 5402, 5404, 5406 and 5408 William Holland Avenue; and 1705 Houston Street

EXISTING ZONING: CS-MU-V-CO-NP and MF-6-NP

SITE AREA: 2.4412 acres

PROPERTY OWNER: GDC-NRG Brentwood LLC (Adam Moore)

AGENT: Dubois Bryant & Campbell (David Hartman)

CASE MANAGER: Marcelle Boudreaux (512-974-8094,
marcelle.boudreaux@austintexas.gov)

STAFF RECOMMENDATION:

Staff recommends granting a Termination of the Restrictive Covenant.

PLANNING COMMISSION ACTION / RECOMMENDATION:

November 12, 2024: APPROVED RESTRICTIVE COVENANT TERMINATION AS STAFF RECOMMENDED, BY CONSENT.

[A. AZHAR; D. SKIDMORE -2nd] (12-0) G. COX – ABSENT.

CITY COUNCIL ACTION:

December 12, 2024:

RESTRICTIVE COVENANT TERMINATION RECORDING NUMBER:

ISSUES:

None at this time.

CASE MANAGER COMMENTS:

The proposed Restrictive Covenant Termination area is comprised of approximately 2.4412 acres and is located on the east side of Burnet Road, a transit-rich Imagine Austin corridor. The subject area was rezoned from CS-MU-V-CO-NP (general commercial services-mixed

use – vertical mixed use building – conditional overlay – neighborhood plan) combining district, CS-MU-CO-NP (general commercial services- mixed use– conditional overlay – neighborhood plan) combining district and MF-3-NP (multifamily residence (medium density)- neighborhood plan) district to CS-MU-V-CO-NP (general commercial services- mixed use – vertical mixed use building – conditional overlay – neighborhood plan) combining district and MF-6-NP (multifamily residence (highest density) - neighborhood plan) district in 2023. It is currently mostly vacant, with foundations from demolished commercial buildings and associated parking, and two extant residential condominium units.

The C14-2022-0140 rezoning case included a public Restrictive Covenant which specified that development on the property would be subject to the recommendations contained in the Neighborhood Traffic Analysis (NTA) memo, dated February 13, 2023.

The Applicant proposes to terminate the Restrictive Covenant as NTA recommendations are no longer recorded in a public Restrictive Covenant. Further, a new NTA Memo dated October 1, 2024 was prepared by the Transportation and Public Works Department (TPW) for a similar but expanded rezoning request (case no. C14-2024-0110) which issued recommendations to be considered during the site plan review process.

Please refer to Exhibits A (Zoning Map), A-1 (Aerial View) and C (2023 Rezoning Ordinance and Restrictive Covenant).

BASIS OF RECOMMENDATION:

Staff supports the Termination request. A NTA provides essential background information for the Commission and Council to make informed zoning decisions, however, the memo includes recommendations. A new NTA memo dated October 1, 2024 was prepared by the TPW for a similar but expanded rezoning request (case no. C14-2024-0110). The NTA recommendations will be considered during the site plan review process. Therefore, a public Restrictive Covenant is not required for NTA recommendations.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	CS-MU-V-CO-NP, and MF-6-NP	Demolished commercial structures; two residential condominium units
<i>North</i>	NO-MU-NP, SF-3-NP, LO-MU-NP	Small apartments and single family residence uses and single story commercial structures
<i>South</i>	CS-MU-V-CO-NP, GR-MU-CO-NP	Small multi-tenant commercial building and parking with personal improvement service, convenience and restaurant uses
<i>East</i>	SF-3-NP, MF-3-NP, CS-MU-CO-NP	Multifamily apartments, single family residences and vacant single story commercial uses
<i>West</i>	CS, CS-1, CS-MU-V-CO, CS-MU-V	Restaurants (general and limited), personal improvement uses, cocktail lounges, office uses and mixed use multifamily residences

NEIGHBORHOOD PLANNING AREA: Brentwood/ Highland Combined NP

WATERSHED: Shoal Creek Watershed

CAPITOL VIEW CORRIDOR: No

SCENIC ROADWAY: No

SCHOOLS: Austin Independent School District
Elementary: Brentwood Elementary School
Middle: Lamar Middle School
High School: McCallum High School

COMMUNITY REGISTRY LIST:

Austin Independent School District, Austin Neighborhoods Council, Brentwood Neighborhood Assn., Brentwood Neighborhood Plan Contact Team, Friends of Austin Neighborhoods, Homeless Neighborhood Association, Lower District 7 Green, NW Austin Neighbors, North Austin Neighborhood Alliance, Preservation Austin, Shoal Creek Conservancy, Allandale Neighborhood Association

AREA CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-2022-0140 – Brentwood MF rezonings	CS-MU-V-CO-NP, CS-MU-CO-NP, MF-3-NP to CS-MU-V-CO-NP, MF-6-NP	Apvd CS-MU-V-CO-NP, MF-6-NP as staff recommended	Apvd as Commission recommended (5/13/2004)
C14-2012-0097 – Little Woodrow’s Bar and Grill	CS-MU-V-CO-NP to CS-1-MU-V-CO-NP	Apvd CS-1-MU-V-CO-NP as Staff recommended	Apvd 3 rd reading as Commission recommended (2/14/13)
C14-04-0012 – Brentwood/ Highland Neighborhood Plan rezonings	LI-CO to CS-V	To Grant CS-V-CO, with certain prohibited uses, and condition read into record restricting ingress/egress on Ralph Ablanado Drive to emergency and service vehicles	Apvd CS-V-CO with conditions as Commission recommended (11-9-2023).

RELATED CASES:

The subject Restrictive Covenant Termination area received CS-MU-V-CO-NP and MF-6-NP zoning on September 21, 2023 (City File C14-2022-0140, Ord. 20230921-105).

C14-2022-0140 – Rezoned site to CS-MU-V-CO-NP and to MF-6-NP

ADDITIONAL STAFF COMMENTS:

PARD – Planning & Design Review:

Parkland dedication will be required at the time of subdivision or site plan application for new residential units, per City Code § 25-1-601, as amended. Whether the requirement shall be met with fees in-lieu or dedicated land will be determined using the criteria in City Code Title 25, Article 14, as amended. Should fees in-lieu be required, those fees shall be used toward park investments in the form of land acquisition and/or park amenities within the surrounding area, per the Parkland Dedication Operating Procedures § 14.3.11 and City Code § 25-1-609, as amended.

Note that residential units that are certified affordable and income-restricted are exempt from the parkland dedication requirements per City Code § 25-1-601(D)(4).

If the applicant wishes to discuss parkland dedication requirements in advance of site plan or subdivision applications, please contact this reviewer: ann.desanctis@austintexas.gov. At the applicant’s request, PARD can provide an early determination of whether fees in-lieu of land will be allowed.

Site Plan:

Site plan comments will be issued at time of site plan submittal. Please note, all projects seeking to use DB90 benefits must have the zoning as well as the authorization letter from Housing prior to submitting for site plan review.

Austin Transportation Department – Engineering Review:

Existing Street Characteristics:

Name	ASMP Classification	ASMP Required ROW	Existing ROW	Existing Pavement	Sidewalks	Bicycle Route	Capital Metro (within ¼ mile)
Houston St.	Level 1	58’	50’	28’	On north side	No	Yes
William Holland Ave	Level 1	58’	58’	31’	No	No	yes

Clay Ave, VACATED ROW	NA						
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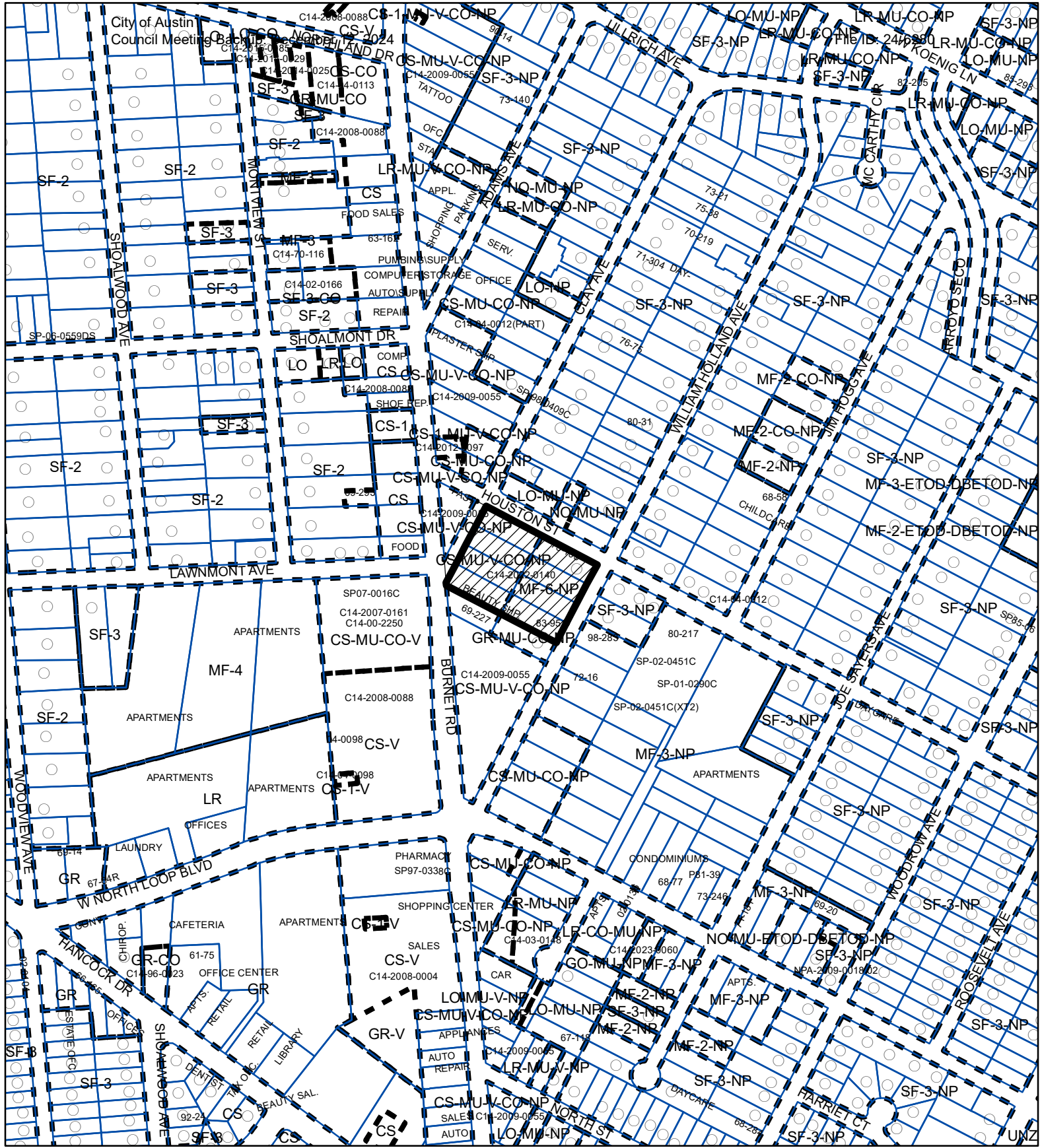
INDEX OF EXHIBITS AND ATTACHMENTS TO FOLLOW:




Exhibit A: Zoning Map

Exhibit A-1: Aerial Map

Exhibit B: Applicant's Summary Letter

Exhibit C: 2023 Rezoning Ordinance and Restrictive Covenant



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

Restrictive Covenant Termination

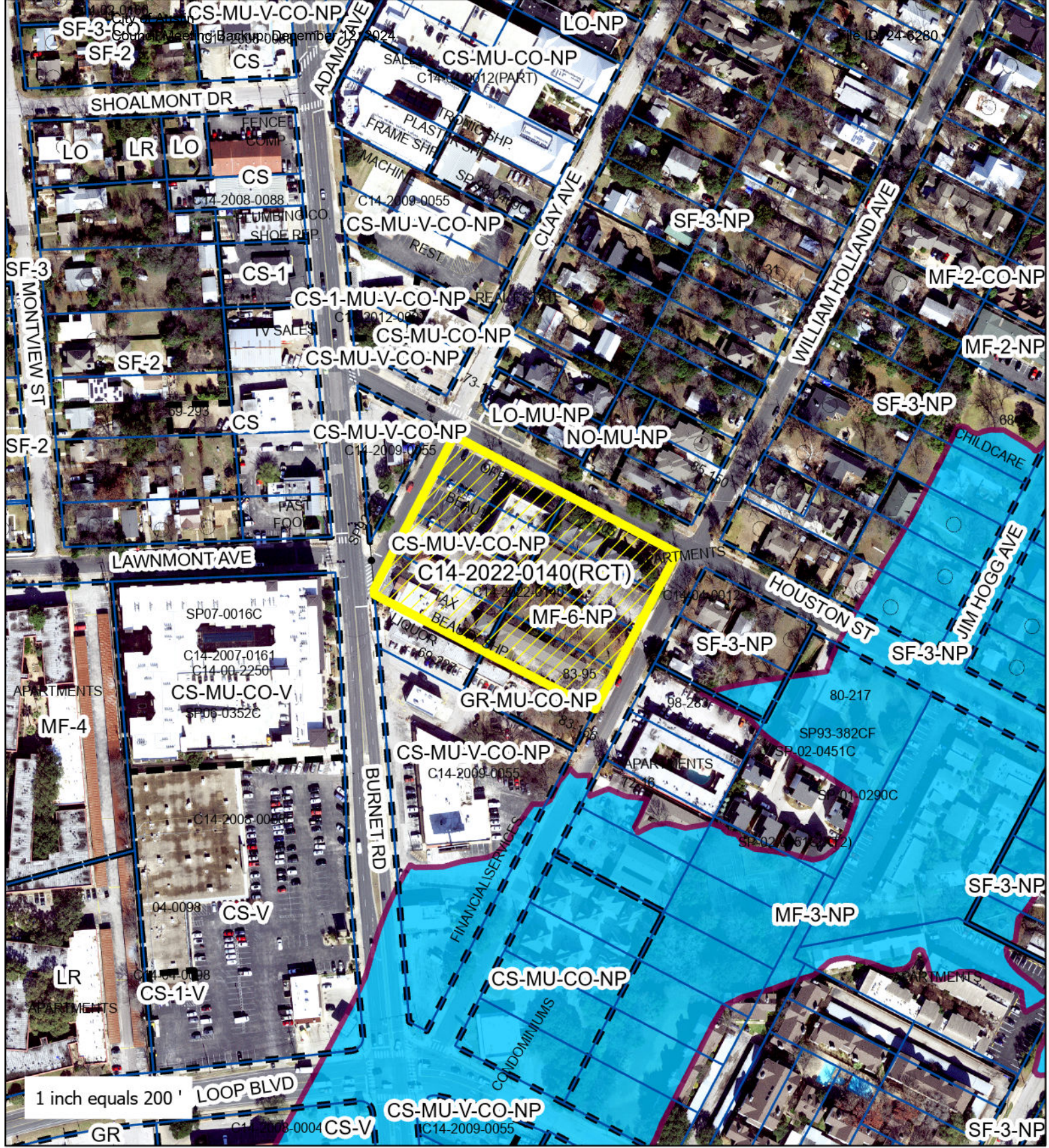
ZONING CASE#: C14-2022-0140(RCT)



1" = 400'

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by the Planning Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



Brentwood Multifamily 2023 Public RC Termination

	SUBJECT TRACT	ZONING CASE#:	C14-2022-0140(RCT)
	ZONING BOUNDARY	LOCATION:	5401, 5403, and 5407 Clay Ave. 5402, 5404, 5406, and 5408 William Holland Ave. 1705 Houston St.
	PENDING CASE	SUBJECT AREA:	2.4412 Acres
	CREEK BUFFER	MANAGER:	Marcelle Boudreaux

This product has been produced by the Housing and Planning Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



David Hartman
(512) 685-3409
dhartman@dbcllp.com
303 Colorado, Suite 2300
Austin, TX 78701
www.dbcllp.com

October 11, 2024

Lauren Middleton-Pratt
Director, Planning Department
City of Austin
6310 Wilhelmina Delco Drive
Austin, Texas 78752

Re: Brentwood Multifamily 2023 Public RC Termination - Restrictive Covenant Termination Application for 2.4412 acres located at 5401, 5403, and 5407 Clay Ave.; 5402, 5404, 5406, and 5408 William Holland Ave.; and 1705 Houston St. ("Property")

Dear Ms. Middleton-Pratt:

We respectfully submit the enclosed Restrictive Covenant Termination application ("RC Termination Application") as representatives of the owner of the above stated Property.

This RC Termination Application is submitted to terminate the public Restrictive Covenant covering 2.4412 acres recorded on September 26, 2023, under Document No. 2023110030 of the Official Public Records of Travis County, Texas ("2023 RC"). The 2023 RC was recorded in connection with a related zoning case that was approved via Ordinance No 20230921-105 ("2023 Zoning Case") that covered the same Property as the 2023 RC. The 2023 RC provides that development of the Property is subject to the recommendations contained in the Neighborhood Traffic Analysis memorandum dated February 13, 2023 ("2023 NTA").

In July 2024 we submitted a DB90 zoning application assigned Case #C14-2024-110 ("2024 Zoning Case") covering 2.96 acres that encompasses the Property. City staff has issued a Neighborhood Traffic Analysis memorandum dated October 1, 2024 ("2024 NTA") in connection with the 2024 Zoning Case. Therefore, this RC Termination Application seeks to terminate the 2023 RC so that the development of the Property will no longer be encumbered by the old 2023 NTA, to allow for development of the Property in accordance with the 2024 Zoning Case and the related new 2024 NTA.

If you have any questions about this application or need additional information, please do not hesitate to contact me at your convenience.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'David Hartman', is written over a light blue horizontal line.

David Hartman

cc: Marcelle Boudreaux, Planning Department (via electronic delivery)
Joi Harden, Planning Department (via electronic delivery)

ORDINANCE NO. 20230921-105

AN ORDINANCE REZONING AND CHANGING THE ZONING MAP FOR THE PROPERTY LOCATED AT 5401, 5403, AND 5407 CLAY AVENUE, 1705 HOUSTON STREET, AND 5402, 5404, 5406, AND 5408 WILLIAM HOLLAND AVENUE, IN THE BRENTWOOD/HIGHLAND COMBINED NEIGHBORHOOD PLANNING AREA, FROM GENERAL COMMERCIAL SERVICES-MIXED USE-VERTICAL MIXED USE BUILDING-CONDITIONAL OVERLAY-NEIGHBORHOOD PLAN (CS-MU-V-CO-NP) COMBINING DISTRICT, GENERAL COMMERCIAL SERVICES-MIXED USE-CONDITIONAL OVERLAY-NEIGHBORHOOD PLAN (CS-MU-CO-NP) COMBINING DISTRICT, AND MULTIFAMILY RESIDENCE MEDIUM DENSITY-NEIGHBORHOOD PLAN (MF-3-NP) COMBINING DISTRICT TO GENERAL COMMERCIAL SERVICES-MIXED USE-VERTICAL MIXED USE BUILDING-CONDITIONAL OVERLAY-NEIGHBORHOOD PLAN (CS-MU-V-CO-NP) COMBINING DISTRICT ON TRACT 1 AND MULTIFAMILY RESIDENCE HIGHEST DENSITY-NEIGHBORHOOD PLAN (MF-6-NP) COMBINING DISTRICT ON TRACT 2.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The zoning map established by Section 25-2-191 of the City Code is amended to change the base district from general commercial services-mixed use-vertical mixed use building-conditional overlay-neighborhood plan (CS-MU-V-CO-NP) combining district, general commercial services-mixed use-conditional overlay-neighborhood plan (CS-MU-CO-NP) combining district, and multifamily residence medium density-neighborhood plan (MF-3-NP) combining district to general commercial services-mixed use-vertical mixed use building-conditional overlay-neighborhood plan (CS-MU-V-CO-NP) combining district on Tract 1 and multifamily residence highest density-neighborhood plan (MF-6-NP) combining district on Tract 2, on the property described in Zoning Case No. C14-2022-0140, on file at the Planning Department, as follows:

Tract 1

LOTS 1, 2, 3, and 4, BLOCK 5, BROADACRES, a subdivision in Travis County, Texas, according to the map or plat thereof as recorded in Volume 3, Page 135, of the Plat Records of Travis County, Texas,

and

Tract 2

LOT 6, BLOCK 5, BROADACRES, a subdivision in Travis County, Texas, according to the map or plat thereof as recorded in Volume 3, Page 135, of the Plat Records of Travis County, Texas, SAVE AND EXCEPT that portion conveyed to the City of Austin by deed recorded in Volume 4742, Page 1893, of the Official Public Records of Travis County, Texas; and

LOT 7, BLOCK 5, BROADACRES, a subdivision in Travis County, Texas, according to the map or plat thereof as recorded in Volume 3, Page 135, of the Plat Records of Travis County, Texas, SAVE AND EXCEPT the East 5 feet of Lot 7, as conveyed to the City of Austin by deed recorded in Volume 3713, Page 1252, of the Official Public Records of Travis County, Texas; and

LOT 8, BLOCK 5, BROADACRES, a subdivision in Travis County, Texas, according to the map or plat thereof as recorded in Volume 3, Page 135, of the Plat Records of Travis County, Texas, SAVE AND EXCEPT the East 5 feet of Lot 8, as conveyed to the City of Austin by deed recorded in Volume 12338, Page 470, of the Official Public Records of Travis County, Texas; and

LOT 9, BLOCK 5, BROADACRES, a subdivision in Travis County, Texas, according to the map or plat thereof as recorded in Volume 3, Page 135, of the Plat Records of Travis County, Texas, SAVE AND EXCEPT the East 5 feet of Lot 9, as conveyed to the City of Austin by deed recorded in Volume 3563, Page 1186, of the Official Public Records of Travis County, Texas;

(Tract 1 and Tract 2 respectively, collectively, the “Property”),

locally known as 5401, 5403, and 5407 Clay Avenue, 1705 Houston Street, and 5402, 5404, 5406, and 5408 William Holland Avenue in the City of Austin, Travis County, Texas, generally identified in the map attached as **Exhibit “A”**.

PART 2. The Property within the boundaries of the conditional overlay combining district established by this ordinance is subject to the following conditions:

(A) The following uses are prohibited uses on the Property:

- | | |
|---------------------------------|--|
| Agricultural sales and services | Campground |
| Commercial blood plasma center | Drop-off recycling collection facility |
| Equipment repair services | Equipment sales |
| Kennels | Outdoor entertainment |
| Outdoor sports and recreation | Vehicle storage |

(B) The following uses are conditional uses of the Property:

- Construction sales and services

PART 3. Except as specifically restricted under this ordinance, Tract 1 may be developed and used in accordance with the regulations established for the general commercial services (CS) base district, mixed use (MU) combining district, and other applicable requirements of the City Code, and Tract 2 may be developed and used in accordance with the regulations established for the multifamily residence highest density (MF-6) base district and other applicable requirements of the City Code.

PART 4. Except as specifically modified by this ordinance, the Property is subject to Ordinance No. 040513-33A that established zoning for the Brentwood Neighborhood Plan.

PART 5. This ordinance takes effect on October 2, 2023.

PASSED AND APPROVED

_____, September 21, 2023

§
§
§

Kirk Watson
Mayor

APPROVED: _____
Anne L. Morgan
City Attorney

ATTEST: _____
Myrna Rios
City Clerk



5 pgs 2023110030

Zoning Case No. C14-2022-0140

RESTRICTIVE COVENANT

OWNER: GDC-NRG BRENTWOOD, LLC.,
A TEXAS LIMITED LIABILITY COMPANY

OWNER ADDRESS: 7 Jackson Walkway
Providence, RI 02903

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which are acknowledged.

PROPERTY: 5401, 5403, and 5407 Clay Avenue, 1705 Houston Street, and 5402, 5404, 5406, and 5408 William Holland Avenue, City of Austin, Travis County, Texas, said 2.4412 acres being more particularly described by **Exhibit "A"** incorporated into this restrictive covenant.

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant ("Agreement"). These covenants and restrictions shall run with the land and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. Development on the Property is subject to the recommendations contained in the Neighborhood Traffic Analysis ("NTA") memorandum from the Transportation Development Services division of the Austin Transportation Department dated February 13, 2023. The NTA memorandum shall be kept on file at the Department.
2. If any person or entity shall violate or attempt to violate this Agreement, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such Agreement, to prevent the person or entity from such actions, and to collect damages for such actions.
3. If any part of this Agreement is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Agreement, and such remaining portion of this Agreement shall remain in full effect.
4. If at any time the City of Austin fails to enforce this Agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

- 5. This Agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the Owner of the Property, or a portion of the Property, subject to the modification, amendment, or termination at the time of such modification, amendment, or termination.


EXECUTED this the 20 day of September, 2023.

OWNER:

**GDC-NRG BRENTWOOD, LLC,
A TEXAS LIMITED LIABILITY COMPANY**

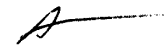
By: GD Brentwood, LLC,
a Delaware limited liability company
its manager

By: Gilbane Development Company,
a Rhode Island corporation
its manager

By: 
Adam Moore,
Vice President

**THE STATE OF TEXAS §
COUNTY OF TRAVIS §**

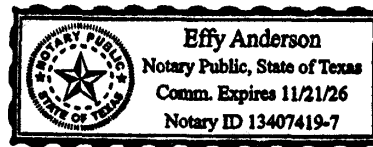
This instrument was acknowledged before me on this the 20 day of September 2023, by Adam Moore, Vice President of Gilbane Development Company, a Rhode Island corporation, the manager of GD Brentwood, LLC, a Delaware limited liability company, manager of GDC-NRG Brentwood, LLC, a Texas limited liability company, on behalf of said corporation. Am



Notary Public, State of Texas

APPROVED AS TO FORM:

Name: _____
Assistant City Attorney
City of Austin



After Recording, Please Return to:
City of Austin
Law Department
P. O. Box 1088
Austin, Texas 78767
Attention: H. Bonds, Paralegal

Exhibit A

Legal Description

Tract A:

Lots 1 and 2, Block 5 of BROADACRES Subdivision, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in/under Volume 3, Page 135 of the Map/Plat Records of Travis County, Texas.

Tract B:

Lots 3 and 4, Block 5, of BROADACRES, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 3, Page 135, of the Plat Records of Travis County, Texas.

Lot 8, Block 5, BROADACRES, an addition to the City of Austin, Travis County, Texas, according to the map or plat thereof recorded in Volume 3, Page 135, of the Plat Records of Travis County, Texas; SAVE & EXCEPT the East 5 feet of Lot 8, conveyed to the City of Austin by Deed in Volume 12338, Page 470, Real Property Records of Travis County, Texas.

Tract C:

Lot 7 and 9, Block 5, BROADACRES, an addition to the City of Austin, Travis County, Texas, according to the map or plat of record in Volume 3, Page 135, of the Plat Records of Travis County, Texas; SAVE & EXCEPT the East 5 feet of Lot 7 conveyed to the City of Austin by Deed recorded in Volume 3713, Page 1252, Deed Records of Travis County, Texas; and SAVE & EXCEPT the East 5 feet of Lot 9, conveyed to the City of Austin by Deed recorded in Volume 3563, Page 1186, Deed Records, Travis County, Texas.

Lot 6, Block 5, BROADACRES, an addition to the City of Austin, Travis County, Texas, according to the map or plat thereof recorded in Vol. 3, Page 135, Plat Records, Travis County, Texas; SAVE & EXCEPT that portion conveyed to the City of Austin for street purposes in Volume 4742, Page 1893 of the Deed Records of Travis County, Texas.

RETURN

CITY OF AUSTIN LAW DEPARTMENT
ATTN H. BONDS, PARALEGAL
P.O. BOX 1088
AUSTIN, TX 78767



**FILED AND RECORDED
OFFICIAL PUBLIC RECORDS**

Dyana Limon-Mercado

**Dyana Limon-Mercado, County Clerk
Travis County, Texas**

2023110030

Sep 26, 2023 01:04 PM

Fee: \$42.00

GARZAV