

**ORDINANCE NO.**

**AN ORDINANCE ADOPTING A PROJECT CONSENT AGREEMENT FOR COMMERCIAL DEVELOPMENT AT 12501 HEWITT LANE, COMMONLY KNOWN AS MARBRIDGE FARMS; PRESERVING PROPERTY LOCATED AT 2636 BLISS SPILLAR ROAD; AND WAIVING CERTAIN REGULATIONS IN CITY CODE CHAPTERS 25-7 AND 25-8.**

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

**PART 1.** The city council makes the following legislative findings:

- (A) Chapter 245 of the Texas Local Government provides that development projects are, with a few exceptions, entitled to be completed under the rules and regulations in effect on the date that the first application for the project is filed.
- (B) Project consent agreements are a tool, authorized by City Code § 25-1-544 (*Project Consent Agreements*), that can be used to: (1) establish regulations for projects where vested rights are unclear; and (2) incentivize projects with clearly established vested rights to achieve greater compliance with current code.
- (C) The Development Services Department (“DSD”), in consultation with the Environmental Officer, has determined that the project consent agreement adopted by this ordinance meets these threshold criteria because:
  - (1) DSD has determined that completion of a commercial project on a 12-acre parcel at 12501 Hewitt Lane would likely be vested to 1984 development regulations once sewer is extended to the property. Currently, because sewer has not been extended to the property, DSD has determined that vested rights to 1984 regulations are limited to completion of a residential project, which could include multiple units.
  - (2) Additionally, the applicant has asserted vested rights to earlier development regulations, based on a plat vacation and concurrent re-subdivision filed with the City of Austin in 1974.
  - (3) To address these competing claims, and achieve greater compliance with current regulations, the project consent agreement adopted by this ordinance relaxes certain provisions of current code to facilitate development of a grocery store use on the Hewitt Lane property, but provides greater environmental protections than would apply if a commercial or residential project were approved under 1984 regulations.

- 1 (4) Additionally, to help offset the impacts of commercial development on  
2 the Hewitt Lane property, the agreement provides for partial  
3 preservation of a nearby parcel at 2636 Bliss Spillar Road that is located  
4 within the Barton Springs Zone, over the Edwards Aquifer Recharge  
5 Zone, and is adjacent to environmentally sensitive features.

6 **PART 2.** Based on the foregoing findings, and on the recommendations of the  
7 Development Services Department and the City’s Environmental Officer, the City  
8 Council approves the following Marbridge Farms Project Consent Agreement.

9 **A. General Conditions & Limitations.**

10 The regulatory waivers authorized under the terms of this ordinance, hereafter  
11 referred to as the Marbridge Farms Project Consent Agreement (“PCA”), shall be limited  
12 to development of a grocery store, with an incidental service station use, and shall be  
13 subject to all other restrictions set forth in the PCA. Following completion of the project,  
14 any further development or redevelopment is subject to the regulations in effect on the  
15 date the development application is submitted and may not utilize the regulatory waivers  
16 authorized by the PCA.

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18 **B. Properties Covered by Marbridge Farms PCA.**

19 The Marbridge Farms PCA includes only the following properties:

- 20 (1) An approximately 41-acre parcel located at 2636 Bliss Spillar Road, as  
21 more specifically described in Exhibit A, which is hereafter referred to  
22 as the “Exchange Tract.”
- 23 (2) An approximately 12-acre property at 12501 Hewitt Lane, as more  
24 specifically described in Exhibit B-1, which is hereafter referred to as  
25 the “Brodie Lane Property.”

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27 **C. Incorporation of Staff Findings.**

28 The following staff reports are incorporated herein as additional findings and  
29 conclusions:

- 30 (1) The October 4, 2016 Memorandum of Rodney Gonzales, Director of the  
31 Development Services Department, to the Zoning & Platting  
32 Commission. *Attached hereto as Exhibit C.*

1 (2) The July 13, 2016 Memorandum of Chuck Lesniak, Environmental  
2 Officer, to Rodney Gonzales, Director of the Development Services  
3 Department. *Attached hereto as Exhibit D.*

4 **D. Regulatory Waivers for Brodie Lane Property.**

5 Except as otherwise provided in this subsection, development of the Brodie Lane  
6 Property is subject to the development regulations in effect on the date a site plan  
7 application for the property is submitted.

- 8 (1) ***Impervious Cover Restrictions.*** Notwithstanding the requirements of  
9 City Chapter 25-8, including Section 25-8-392 (*Uplands Zone*),  
10 maximum impervious cover for development of the Brodie Lane  
11 Property is limited to 7.9 acres.
- 12 (2) ***Critical Water Quality Zone (“CWQZ”).*** Notwithstanding the  
13 requirements of City Chapter 25-8, including Section 25-8-261 (*Critical*  
14 *Water Quality Zone Development*) and Section 2508-262 (*Critical Water*  
15 *Quality Zone Street Crossings*):
- 16 (a) the CWQZ is reduced to approximately 1.7-acres and the  
17 boundaries modified, as depicted in Exhibit B-2;
- 18 (b) a crossing is permitted from Hewitt Lane, in the northwest corner  
19 of the property, and in the interior of the property, both of which  
20 are approximately depicted in Exhibit B-2;
- 21 (c) water quality and detention ponds are permitted within the CWQZ,  
22 but otherwise must comply with all applicable regulations.
- 23 (3) ***Drainage Easements.*** Notwithstanding the requirements of City Code  
24 Chapter 25-7 (*Drainage*), including Section 25-7-152 (*Dedication of*  
25 *Easements and Right-of-Way*), development within the drainage  
26 easement required for the 100-year floodplain is allowed as shown in  
27 Exhibit B-3.
- 28 (4) ***Administrative Variances.*** Notwithstanding the requirements of Section  
29 25-8-42 (*Administrative Variances*), the director may grant a variance to  
30 allow no more than 10 feet of cut and fill under Section 25-8-42 (*Cut*  
31 *Requirements*) and Section 25-8-342 (*Fill Requirements*).

1 (5) ***Heritage Tree Protections.*** The four heritage trees depicted in Exhibit  
2 A-4 must be preserved in accordance with the requirements of Chapter  
3 25-8, Subchapter B (*Tree and Natural Area Protection; Endangered*  
4 *Species*).

5 (6) ***Rights under Section 43.002 of the Texas Local Government Code.***  
6 Based on platting that has occurred to date, subsequent annexation and  
7 zoning of the property will not prohibit construction of a grocery store  
8 and incidental service station use.

9 (7) ***Zoning & Platting Commission (“ZAP”) Recommendation.*** To reflect  
10 ZAP’s motion recommending approval of the PCA, it is noted that no  
11 fuel tanks are allowed within the 100-year floodplain under applicable  
12 floodplain regulations. By specifically noting this requirement, the PCA  
13 does not waive any other applicable floodplain regulations.  
14

15 (E) **Preservation of the Exchange Tract.** As a condition precedent to  
16 developing the Brodie Lane Property under the provisions of Subsection (D), the  
17 applicant must file and record a real property encumbrance preserving the Exchange  
18 Tract in accordance with the provisions of this subsection. The document, which may be  
19 a conservation easement or other appropriate instrument, must be on a form approved by  
20 the Director of the Development Services Department and must be recorded no later than  
21 January 24, 2017.

22 (1) ***Existing Baseline Development.*** For purposes of the Exchange Tract  
23 limitations described in this subsection, the existing baseline  
24 development of the Exchange Tract is limited to the development  
25 described in Exhibit D and may not exceed impervious cover of 2.12  
26 acres or 7.4 percent of net site area, whichever is lesser.

27 (2) ***Restrictions on Development beyond Baseline.*** Development beyond  
28 the existing baseline shall be restricted in accordance with the conditions  
29 set forth in Exhibit D and the exhibits attached thereto, including  
30 prohibition of all new development on the north portion of the property.

31 (3) ***Affirmative Restoration.*** The following restoration shall be required  
32 prior to site plan approval, as depicted in Exhibit D and the exhibits  
33 attached thereto:

- 1 (a) Removal of the existing barn and interior driveway north of the  
2 creek;
- 3 (b) Restoration of the area with native vegetation, in accordance with  
4 applicable City of Austin standards; and
- 5 (c) Installation of a fence along the southern boundary of the Water  
6 Quality Transition Zone.

7 **(F) Expiration of Marbridge PCA.** This subsection establishes expiration  
8 requirements for the PCA and related requirements for site plan review.

9 (1) ***PCA Expiration.*** The PCA expires seven years from the effective date  
10 of Ordinance No. \_\_\_\_\_. In order develop the Brodie Lane  
11 Property in accordance with the regulatory waivers provided under the  
12 PCA, the applicant must submit a site plan application for the grocery  
13 store use prior to the expiration of the PCA.

14 (2) ***Site Plan Extensions.*** Notwithstanding the requirements of Section 25-  
15 5-62 (*Extension of Released Site Plan by Director*) and Section 25-5-63  
16 (*Extension of Released Site Plan by the Land Use Commission*), the  
17 Director or Land Use Commission shall consider whether improvements  
18 to FM 1626 have been completed as a relevant factor in determining  
19 whether to grant an extension.

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21 **PART 3.** This ordinance take effect on \_\_\_\_\_, 2016.

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23 **PASSED AND APPROVED**

24 \_\_\_\_\_, 2016

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Steve Adler  
Mayor

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30 **APPROVED:** \_\_\_\_\_

Anne L. Morgan  
City Attorney

**ATTEST:** \_\_\_\_\_

Jannette S. Goodall  
City Clerk