

3-27-12

ORDINANCE NO. **28594**

An ordinance changing the zoning classification on the following property:

BEING Lot 1A in City Block G/489 located at the northeast corner of Indiana Street and Malcolm X Boulevard; fronting approximately 445.56 feet on the north line of Indiana Street; fronting approximately 242.46 feet on the east line of Malcolm X Boulevard; and containing approximately 2.561 acres,

from Tract A within Planned Development District No. 269 (the Deep Ellum/Near East Side District) to Tract A-1 within Planned Development District No. 269; amending Article 269, "PD 269," of Chapter 51P, "Dallas Development Code: Planned Development District Regulations," of the Dallas City Code to reflect the change of zoning; creating a new Tract A-1 in Section 51P-269.103; adding a new Section 51P-269.104.1; amending use regulations and development standards for Tract A and transfer of development rights regulations in Sections 51P-269.105 and 51P-269.108 of Article 269; deleting the zoning map regulation in Section 51P-269.111; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city plan commission and the city council, in accordance with the Charter of the City of Dallas, the state law, and the ordinances of the City of Dallas, have given the required notices and have held the required public hearings regarding the rezoning of the property described in this ordinance and this amendment to the Dallas City Code; and

WHEREAS, the city council finds that it is in the public interest to change the zoning classification and amend Article 269 as specified in this ordinance; Now, Therefore,

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

SECTION 1. That the zoning classification is changed from Tract A within Planned Development District No. 269 to Tract A-1 within Planned Development District No. 269 on the following property:

BEING Lot 1A in City Block G/489 located at the northeast corner of Indiana Street and Malcolm X Boulevard; fronting approximately 445.56 feet on the north line of Indiana Street; fronting approximately 242.46 feet on the east line of Malcolm X Boulevard; and containing approximately 2.561 acres.

SECTION 2. That Section 51P-269.103, "Establishment of Tracts," of Article 269, "PD 269," of Chapter 51P, "Dallas Development Code: Planned Development District Regulations," of the Dallas City Code is amended to read as follows:

"SEC. 51P-269.103. ESTABLISHMENT OF TRACTS.

The Deep Ellum/Near East Side District is divided into three [~~two~~] tracts: Tract A, Tract A-1, and Tract B. The boundaries of these three [~~two~~] tracts are described in the Exhibit B attached to and made a part of Ordinance No. 19532."

SECTION 3. That new Section 51P-269.104.1, "Exhibits," of Article 269, "PD 269," of Chapter 51P, "Dallas Development Code: Planned Development District Regulations," of the Dallas City Code is added to read as follows:

"SEC. 51P-269.104.1. EXHIBITS.

The following exhibits are incorporated into this article:

- (1) Exhibit 269A: Deep Ellum/Near East Side conceptual plan.
- (2) Exhibit 269B: boundaries of parking subdistricts."

SECTION 4. That Section 51P-269.105, "Use Regulations and Development Standards for Tract A," of Article 269, "PD 269," of Chapter 51P, "Dallas Development Code: Planned Development District Regulations," of the Dallas City Code is amended to read as follows:

“SEC. 51P-269.105. USE REGULATIONS AND DEVELOPMENT STANDARDS FOR TRACTS A AND A-1.

(a) Use regulations. The uses listed in this section are the only uses permitted. Except for current and traditional uses and special uses, the definitions of uses contained in Chapter 51 apply to the uses listed in this section.

(1) Current and traditional uses.

(A) Current uses. This use is defined as a use not listed in this article as a permitted use or a prohibited use which, in the opinion of the director, legally existed on Tracts A and A-1 on June 27, 1984. This use is permitted by right on Tracts A and A-1.

(B) Traditional use. This use is defined as a use not listed in this article as a permitted use or a prohibited use which, in the opinion of the director, did not legally exist on Tracts A and A-1 on June 27, 1984, but which did legally exist on Tracts A and A-1 during the 10-year period between June 27, 1974 and June 27, 1984. A traditional use is permitted by right on the same building sites where it legally existed during the 10-year period, but requires an SUP to locate on any other building site on Tracts A and A-1.

(C) Definitions required. If the director determines that a use is a current or traditional use, he shall define the use as specifically as possible in writing and send a copy of the written definition to both the building official and the city secretary. The city secretary shall keep copies of all definitions received pursuant to this paragraph in the same file with Ordinance No. 19532, as amended.

(2) Special uses. Unless otherwise indicated, the following special uses are permitted by right on Tracts A and A-1:

(A) Auto body rebuilding shop (outside/with screening). This use is defined as a facility for restoring or refinishing auto bodies, with outside display and repair permitted. This use must have a visual screen of at least six feet in height which consists of solid masonry or concrete.

(B) Cold storage, freezer storage, and ice manufacturing establishment. This use is defined as an establishment for the refrigerated storage of ice, dairy products, or foodstuffs and the manufacture of ice, and includes all indoor processes required for or related to the manufacture of ice, dairy products, or foodstuffs.

(C) Commercial mailboxes. This use is defined as an establishment offering mailboxes for rent and private postal services.

(D) Commercial parking garage. Commercial parking garages must comply with the additional requirements in Section 51P-269.110.

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(E) Commercial parking lot [SUP].

(i) An original building that meets the design standards test set out in Subsection (1)(3) of this section may not be destroyed or removed to make room for this use unless:

(aa) the building is structurally unsound; or

(bb) preservation of the building is economically infeasible.

(ii) Commercial parking lots must comply with the additional requirements in Section 51P-269.110.

(F) Drive-in restaurant with sound system [SUP]. This use is defined as an establishment offering food service to customers in automobiles for consumption on the premises, and which uses an outdoor public address or paging system between the hours of 6:30 p.m. and 8:00 a.m.

(G) Drive-in restaurant without sound system. This use is defined as an establishment offering food service to customers in automobiles for consumption on the premises, and which does not use an outdoor public address or paging system between the hours of 6:30 p.m. and 8:00 a.m. This use is permitted by right.

(H) Drive-through restaurant with sound system [SUP]. This use is defined as any restaurant with direct window service allowing customers in motor vehicles to pick up food for off-premise consumption, and which uses an outdoor public address or paging system between the hours of 6:30 p.m. and 8:00 a.m.

(I) Drive-through restaurant without sound system. This use is defined as any restaurant with direct window service allowing customers in motor vehicles to pick up food for off-premise consumption and which does not use an outdoor public address or paging system between the hours of 6:30 p.m. and 8:00 a.m.

(J) Exhibits or decoration manufacturing, design, sales, or rental establishment. This use is defined as an establishment for the manufacture, design, sales, or rental of exhibits or decorations and includes any indoor processes required for or related to the manufacture of exhibits or decorations.

(K) Food processing, manufacturing, or packaging establishment. This use is defined as an establishment for the manufacture, processing, or packaging of foodstuffs from raw materials.

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(L) Municipal service center. This use is defined as a local government center or development complex for the storage of local government equipment and the distribution and delivery of local government services, and includes any indoor processes required for or related to the delivery of those services.

(M) Rag or paper recycling establishment. This use is defined as an establishment for the recycling of paper or rags, and includes any indoor processes required for or related to the recycling of paper or rags.

(N) Sign manufacturing establishment. This use is defined as an establishment for the manufacturing of signs and includes any indoor processes required for or related to the manufacture of signs.

(O) Soap manufacturing establishment. This use is defined as an establishment for the manufacturing of soap products and includes any indoor processes required for or related to the manufacture of soap.

(P) Sound equipment manufacturing and assembly establishment. This use is defined as an establishment for the manufacturing, fabrication, assembling, and testing of sound equipment and includes any indoor processes required for or related to the manufacture of sound products.

(Q) Tool or machinery manufacturing establishment. This use is defined as an establishment for the manufacturing of tools or machinery, and includes indoor processes required for or related to the manufacture of tools or machinery.

(3) Animal related uses.

(A) Animal clinic without outside run.

(B) Kennel without outside run.

(C) Veterinarian's office.

(4) Bar and restaurant uses.

(A) Bar, lounge, or tavern. [SUP]

(B) Catering service.

(C) Private club. [SUP]

(D) Restaurant with alcoholic beverages and/or entertainment.

(E) Restaurant without drive-in service.

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(5) Commercial uses.

- (A) Appliance fix-it shop.
- (B) Building repair and maintenance shop.
- (C) Computer service center.
- (D) Custom commercial engraving.
- (E) Custom furniture construction, repair, or upholstery shop.
- (F) Custom print shop.
- (G) Design or decorative center.
- (H) Diamond and precious stone sales. [*Wholesale only*]
- (I) Duplication shop.
- (J) Flea market.
- (K) Garden shop, plant sales, or greenhouse.
- (L) Gummed label printing.
- (M) Job printing, lithographer, printing, or blue-printing plant.
- (N) Machine or welding shop [*Includes sheet metal fabrication*].
- (O) Machinery sales and services.
- (P) Plumbing, electrical, air conditioning, and heating shops.
- (Q) Tool and equipment rental [*Inside display only*].
- (R) Venetian blind or window shade repair, assembly, and sales.

(6) Community service uses.

- (A) Community, welfare, or health center.
- (B) Day care center.
- (C) Foster home.

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(D) Post office.

(7) Educational uses.

- (A) Business school.
- (B) College, university, or seminary.
- (C) College, fraternity, or sorority house.
- (D) College dormitory.
- (E) Institution for special education.
- (F) Library, art gallery, or museum.
- (G) Public, denominational, or private school.
- (H) Technical school.

(8) Industrial and manufacturing uses.

- (A) Bedspread, drapes, and headboard manufacturing.
- (B) Clothing manufacturing.
- (C) Corrugated cardboard box fabrication.
- (D) Light fabrication and assembly.
- (E) Manufacturing laboratory. [SUP]

(9) Medical uses.

- (A) Ambulance service.
- (B) Establishment for care of alcoholic, narcotic, or psychiatric patients. [SUP]
- (C) Hospital.
- (D) Medical appliance fitting and sales.
- (E) Medical clinic.
- (F) Medical or scientific laboratory.

- (G) Nursing home.
- (H) Optical shop.
- (I) Residence home for the aged.

(10) Motor vehicle related uses.

- (A) Auto glass, muffler, or seat cover shop.
- (B) Auto parts sales (inside).
- (C) Auto repair garage (inside).
- (D) Auto painting or body rebuilding shop (inside).
- (E) Automobile or motorcycle display, sales, and service (inside).
- (F) Bus or truck repair/parking garage.
- (G) Car wash.
- (H) Engine or motor repair shop.
- (I) Service station.
- (J) Steam cleaning of vehicles and machinery.

(11) Professional, personal service, and custom crafts uses.

- (A) Bank or savings and loan office (with drive-in windows).
- (B) Bank or savings and loan office (without drive-in windows).
- (C) Barber and beauty shop.
- (D) Body piercing studio. *[SUP. Must be located at least 300 feet from all other tattoo studios or body piercing studios. A body piercing studio must be treated as a separate main use, and cannot be an accessory use.]*
- (E) Broadcast or recording studio.
- (F) Commercial cleaning shop.
- (G) Commercial laundry or dry cleaning.

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- (H) Custom cleaning shop.
- (I) Handcraft bookbinding.
- (J) Handcrafted art work studio.
- (K) Health studio.
- (L) Instructional art studio.
- (M) Key shop.
- (N) Laundry or dry cleaning pickup and receiving station.
- (O) Office.
- (P) Photography studio.
- (Q) Safe deposit boxes.
- (R) Self service laundry or dry cleaning.
- (S) Shop repair.
- (T) Tailor, custom sewing, and millinery.

(U) Tattoo studio. *[SUP. Must be located at least 300 feet from all other tattoo studios or body piercing studios. A tattoo studio must be treated as a separate main use, and cannot be an accessory use.]*

- (V) Taxidermist.
- (W) Temporary construction or sales office.
- (X) Trade center.
- (Y) Travel bureau.

(12) Recreation and entertainment uses.

- (A) Country club with private membership.
- (B) Game court center.

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(C) Inside commercial amusement. *[SUP required for dance halls. SUP required for live music venues. Dance halls and live music venues must be treated as a separate main use, and cannot be an accessory use.]*

(D) Private recreation club or area.

(E) Public park or playground.

(F) Theatre.

(G) Wax museum.

(13) Religious uses.

(A) Church.

(B) Convent or monastery.

(C) Establishment of a religious, charitable, or philanthropic nature.

[SUP]

(D) Rectory.

(14) Residential uses.

(A) Duplex.

(B) Hotel and motel.

(C) Lodging or boarding house. *[SUP]*

(D) Multiple-family.

(E) Single-family.

(15) Retail uses.

(A) Antique shop.

(B) Bakery or confectionery store.

(C) Beverage store.

(D) Book and stationery store.

(E) Camera shop.

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- (F) Cigar, tobacco, and candy store.
- (G) Clothing store.
- (H) Drug store.
- (I) Feed store.
- (J) Florist store.
- (K) Furniture store.
- (L) Hardware or sporting goods store.
- (M) Home improvement center.
- (N) Hobby and art supplies store.
- (O) Liquor store.
- (P) Paint and wallpaper store.
- (Q) Pet shop.
- (R) Retail food store.
- (S) Retail stores other than listed.
- (T) Secondhand store.
- (U) Swimming pool sales and supply.
- (16) Storage and waste disposal uses.
 - (A) Aluminum collection center.
 - (B) Mini-warehouse.
 - (C) Warehouse.
- (17) Transportation uses.
 - (A) Bus passenger shelter.
 - (B) Passenger bus station and terminal.

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(C) Railroad passenger station.

(D) Helistop. *[SUP]*

(18) Utility and service uses.

(A) Electrical energy generating plant.

(B) Electrical substation.

(C) Local utilities.

(D) Telephone exchange, switching, and transmitting equipment.

(19) Accessory uses.

(A) Amateur communication tower.

(B) Community center (private).

(C) Game court (private).

(D) Home occupation.

(E) Occasional sales (garage sales).

(F) Open storage.

(G) Private street or alley.

(H) Swimming pool (private).

(I) Any other use that is customarily incidental to a permitted main use.

(b) Prohibited uses. The following main uses are specifically prohibited on Tracts A and A-1. In the event of a conflict between this subsection and Subsection (a) above, this subsection controls.

(1) Airport or landing field.

(2) Animal pound.

(3) Auto painting or body rebuilding shop (outside/without screening).

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- amended.
- (4) Bail bonding service.
 - (5) Carnival or circus.
 - (6) Cemetery or mausoleum.
 - (7) Class E dance hall, as defined in Chapter 14 of the Dallas City Code, as amended.
 - (8) Commercial stable.
 - (9) Contractor's maintenance yard.
 - (10) Drag strip, go-cart track, or commercial racing.
 - (11) Drive-in theatre.
 - (12) Fairgrounds.
 - (13) Farm or ranch.
 - (14) Halfway house.
 - (15) Hatchery and breeding operations.
 - (16) Helicopter base.
 - (17) Inside salvage and reclamation.
 - (18) Kennel with outside run.
 - (19) Labor hall.
 - (20) Livestock auction pens or sheds.
 - (21) Motor freight hauling and storage.
 - (22) Open storage with visual screening.
 - (23) Open storage without visual screening.
 - (24) Outside commercial amusement.
 - (25) Outside salvage or reclamation.
 - (26) Overnight general purpose shelter.

(27) Pawn shop. *[Certain pawn shops may be allowed to relocate. See Section 51A-4.210(22) of the Dallas City Code, as amended.]*

(28) Permanent concrete or asphalt batching or recycling plant.

(29) Petroleum products storage and wholesale.

(30) Private stable.

(31) Public golf course.

(32) Radio, television, or microwave tower.

(33) Railroad freight terminal.

(34) Railroad team track.

(35) Railroad yard, roundhouse, or shops.

(36) Refuse transfer station.

(37) Rendering plant.

(38) Retail use deriving 10 percent or more of its gross revenue from the sale of firearms. *[A person owning or operating a use selling firearms shall, upon request, supply the building official with any records needed to document the percentage of gross revenue on an annual basis derived from the sale of firearms.]*

(39) Rodeo.

(40) Sand, gravel, or earth sales, and storage.

(41) Sanitary landfill.

(42) Sewage pumping station.

(43) Sewage treatment plant.

(44) Sexually-oriented business, as defined in Chapter 41A of the Dallas City Code, as amended.

(45) Slaughterhouse.

(46) STOL aircraft port.

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- (47) Stone, sand, or gravel mining.
- (48) Temporary concrete or asphalt batching plant.
- (49) U-cart concrete system.
- (50) Water reservoir, well, or pumping station.
- (51) Water treatment plant.
- (52) Zoo.

(c) Maximum building heights. Maximum permitted heights for buildings are:

- and
- (1) 150 feet for buildings having an FAR for residential uses of 1.0 or more;
 - (2) 130 feet for all other buildings.

(d) Special height provision. The following structures located on top of a building may project a maximum of 18 feet above the height specified in Subsection (c):

- (1) A mechanical room that covers no more than one-third of the roof.
- (2) An elevator penthouse that covers no more than one-third of the roof.

(e) Building setback requirements. There are no front, side, or rear yard setback requirements except as may be required under the building and fire codes and other applicable ordinances.

(f) Lot coverage. There are no lot coverage requirements.

(g) Maximum floor area ratio.

- (1) Generally. Maximum permitted FAR is 4.0.
- (2) Bonus provisions. FAR on a building site may be increased from 4.0 to a maximum of 6.0 if:

(A) one additional square foot of floor area for nonresidential use is added for each additional square foot of floor area for residential use; or

(B) the FAR for residential uses on the building site is equal to or greater than 2.0; or

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(C) development rights are transferred to the building site pursuant to Section 51P-269.108 of this article.

(3) In no event may FAR exceed 6.0 regardless of the use mix or transfer of development rights.

(4) For purposes of this article, the floor space of a refrigerated closed storage area in a building is excluded in the calculation of floor area ratio.

(h) Reflective glass. The maximum permitted daylight reflectance of glass used as an exterior building material varies depending on where the glass is used on the building. The daylight reflectance of glass used on the exterior of the first two stories of a building may not exceed 15 percent. The daylight reflectance of exterior glass used above the first two stories of the building may not exceed 27 percent. The above restrictions do not apply to exterior glass that, in the opinion of the director, continues the architectural integrity of an original building.

(i) Off-street loading requirements. Off-street loading for all uses in newly constructed buildings must be provided as required by Section 51-4.303.

(j) Off-street parking requirements.

(1) Number of spaces required. Except as otherwise indicated in this subsection, the number of off-street parking spaces required for uses on Tracts A and A-1 are those required under Chapter 51. The following off-street parking requirements apply to uses as indicated below:

(A) Single-family and duplex uses. None required.

(B) Multiple-family uses. One space per each dwelling unit.

(C) Office uses. No off-street parking spaces are required for the first 2,500 square feet of floor area in a ground level use that has a separate certificate of occupancy if the use is located in an original building. Otherwise, one space for each 385 square feet of floor area.

(D) Retail uses. No off-street parking spaces are required for the first 2,500 square feet of floor area in a ground level use that has a separate certificate of occupancy if the use is located in an original building. Otherwise, one space for each 275 square feet of floor area.

(E) Bar, lounge, or tavern and private club uses. No off-street parking spaces are required for the first 2,500 square feet of floor area in a ground level use that has a separate certificate of occupancy if the use is located in an original building. Otherwise, one space for each 100 square feet of floor area. No parking is required for outside seating. Delta credits, as defined in Section 51A-4.704(b)(4)(A), may not be used to meet the off-street parking requirement.

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(F) Restaurant uses. No off-street parking spaces are required for the first 2,500 square feet of floor area in a ground level use that has a separate certificate of occupancy if the use is located in an original building. Otherwise, one space for each 100 square feet of floor area. No parking is required for outside seating.

(G) Dance hall. One space per 25 square feet of dance floor and one space per 100 square feet of floor area for the remainder of the use. Delta credits, as defined in Section 51A-4.704(b)(4)(A), may not be used to meet the off-street parking requirement.

(H) Library, art gallery, or museum uses. None required.

(I) Handcrafted art work studio uses. None required.

(J) Special uses.

(i) Generally. One space for each 500 square feet of floor area.

(ii) Drive-in restaurant and drive-through restaurant uses. One space for each 50 square feet of floor area; a minimum of 12 spaces is required.

(iii) Commercial parking garage and commercial parking lot uses. No parking spaces are required.

(K) Limited exemption for certain retail-related uses. No off-street parking spaces are required for the first 2,500 square feet of floor area in a ground level retail-related use that has a separate certificate of occupancy if the use is located in an original building (See Section 51P-269.104(b), "Definitions," of this article).

(2) Location of off-street parking.

(A) Definitions. In this subsection:

(i) SPECIAL PARKING includes packed parking, remote parking, and shared parking as those terms are defined in Section 51-4.321.

(ii) WALKING DISTANCE means the distance from the nearest point of the parking lot to the nearest public entrance of the main use, measured along the most convenient pedestrian walkway.

(B) In general. Except as specifically provided in this subsection, required off-street parking must be provided on the lot occupied by the main use.

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(C) Remote parking.

(i) Remote parking may be located on a separate lot that is within the following walking distances of the use served by the remote parking:

(aa) 800 feet if the use served is located in a newly constructed building.

(bb) 1,200 feet if the use served is located in an original building.

(ii) The walking distance for remote parking may be extended by license as set out in Division 51-4.320.

(D) Special parking. Except as expressly modified in this article, the special parking regulations in Division 51-4.320 apply to all uses in Tracts A and A-1. If special parking is used to satisfy off-street parking requirements, an agreement must be signed and filed in accordance with Section 51-4.328. In the event of a conflict between this article and the special parking regulations, this article controls.

(3) Cash in lieu of required parking.

(A) A property owner may make a one-time cash payment in lieu of providing required off-street parking spaces for a use in an original building in accordance with this section. The amount of the payment required is calculated by taking three-fourths of the cost of constructing a parking garage space and multiplying that cost by the number of parking spaces that will not be required by reason of the cash payment.

(B) The cost of a parking garage space is calculated by using the following formula:

National Median Cost/Sq. Ft. x 350 square feet x Dallas Cost Index

where National Median Cost/Sq. Ft. is the national median cost per square foot of a parking space in a parking garage. Both the National Median Cost/Sq. Ft. and the Dallas Cost Index must be derived from the most recent issue of Building Construction Cost Data, published by the Robert Snow Means Company, Inc., of Kingston, Massachusetts, unless another comparable publication is designated by the director.

(4) Parking subdistricts.

(A) Tracts A and A-1 are [~~is~~] subdivided into four parking subdistricts as shown on the map titled "Parking Subdistricts" (Exhibit 269B).

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(B) Payments in lieu of required parking shall be paid to special parking subdistrict accounts and used to finance the construction of parking garages or other parking improvements to serve uses in the parking subdistrict which contains the property for which the payment in lieu of required parking is located, pursuant to the requirements of all applicable rules, regulations, and ordinances of the city.

(5) Parking reduction for proximity to DART stations. The off-street parking requirement for uses located within one-fourth mile of a DART light-rail station may be reduced by 10 percent.

(6) Parking reduction for on-street parking. Except as provided in this subsection, any on-street parking spaces may be counted toward the parking requirement of the use adjacent to the on-street parking space.

(A) An on-street parking space may not be used to reduce the required parking for more than one use, except that an on-street parking space may be used to reduce the combined total parking requirement of a mixed-use project.

(B) An on-street parking space that is not available to the public at all times of the day may only be counted as a partial parking space in proportion to the amount of time that it is available. For example, a parking space that is available to the public only eight hours per day will be counted as one-third of a parking space ($8 \div 24 = \text{one-third}$). The total of the limited availability parking spaces will be counted to the nearest whole number, with one-half counted as an additional space.

(7) Uses may charge for required parking. Section 51A-4.301(a)(8), which requires that required off-street parking must be available as free parking or contract parking on other than an hourly or daily fee basis, does not apply in this district.

(k) Nonconforming uses and structures.

(1) Generally. Except as provided in this subsection, nonconforming uses are not subject to the compliance regulations for nonconforming uses contained in Dallas Development Code Section 51A-4.704(a).

(2) Rebuilding or renovating damaged or destroyed nonconforming structures. A person may repair, renovate, rebuild, or enlarge a nonconforming structure without board of adjustment approval if the work does not increase the degree of nonconformity.

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(3) Automatic termination of nonconforming rights for certain uses.

(A) The city council finds that certain nonconforming uses have an adverse effect on nearby properties. The purpose of this subsection is to eliminate these nonconforming uses and to make them comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(B) The right to operate a nonconforming bar, lounge, or tavern use; nonconforming private club use; nonconforming tattoo studio use; nonconforming body piercing studio use; or nonconforming dance hall shall automatically terminate on December 14, 2007 or one year after the use became nonconforming, whichever is later.

(C) An owner of a nonconforming bar, lounge, or tavern use; nonconforming private club use; nonconforming tattoo studio use; nonconforming body piercing studio use; or nonconforming dance hall may request an extension of the compliance deadline in Subparagraph (B) by filing an application with the director on a form provided by the city for that purpose. The application must be filed at least 30 days before the deadline in Subparagraph (B). If a fee is required, the application shall not be considered filed until the fee is paid. Failure to timely file a complete application for extension shall constitute a waiver of the right to contest the reasonableness of the deadline in Subparagraph (B).

(D) Upon the filing of a complete application for extension, the board of adjustment shall, in accordance with the law, determine whether it is necessary to extend the compliance deadline for the nonconforming use. The board shall consider the factors listed in Section 51A-4.704(a)(1)(D) in determining whether to grant the request for extension.

(E) If, based on evidence presented at the public hearing, the board of adjustment finds that additional time is needed to recoup the owner's actual investment in the use before the use became nonconforming, the board of adjustment shall grant the request for extension and establish a new compliance deadline consistent with its determination of a reasonable amortization period; otherwise, the board of adjustment shall deny the request. If the board of adjustment denies the request, the right to operate the nonconforming use shall automatically terminate on the deadline in Subparagraph (B), or 30 days after the date of the board of adjustment's decision to deny, whichever is later.

(I) Development plan review. The following development plan review procedure applies to Tracts A and A-1:

(1) Preapplication conference. A person desiring to develop property on Tracts A or A-1 should consult with the director to discuss whether the project is consistent with the Deep Ellum/Near Eastside Conceptual Plan and the requirements of this article.

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(2) Review of project by director.

(A) General procedure. Upon receipt of an application for a permit for the construction or exterior modification of any building or structure on Tracts A or A-1, the building official shall refer the application and plans to the director for review to determine whether the project involves an original building, new construction, or renovation, and whether it is residential or nonresidential in character. The director shall also determine the parking requirements for the project and the project's eligibility for incentive programs. The director shall evaluate the project in accordance with the design standards test and prohibitions set forth below. The director shall complete his review within 30 days from the date of submission of the completed application to the building official, or the application shall be deemed to be approved.

(B) Demolition review. Upon receipt of an application for a permit for the demolition of any building or structure on Tracts A or A-1, the building official shall refer the application and plans to the director. All demolition permit requests referred to the director for review in accordance with this subsection must be accompanied by a statement expressing the need for demolition and describing what, if anything, is planned to replace the demolished building. The director shall encourage alternatives to demolition and careful consideration of adaptive reuse of the property. The director shall complete his review within 30 days from the date of submission of the completed application to the building official. After completion of the review by the director, this subsection does not act to delay or prohibit any demolition.

(3) Design standards test and prohibitions. All projects referred to the director for review in accordance with Paragraph (2)(A) above must be evaluated against the test set forth in this subsection. Plans for newly constructed buildings must score at least 65 points for the primary side and at least 50 points for the secondary side. Plans for original buildings must score at least 65 points for the primary side and at least 50 points for the secondary side, or the same score for those sides that the original building scored on the date the completed permit application was submitted, whichever is less. If a building was constructed prior to June 27, 1984, and the remodeling, reconstruction, renovation, or expansion of the building constitutes a continuation of an architectural theme already established for the building, the primary and secondary side will not be required to score more than the same score those sides scored on the date the completed building permit was submitted.

(A) Design points. Design points are awarded to projects in accordance with the following criteria:

(i) Public art or streetscape improvements. (Total possible points = 5) One point is awarded for each one-tenth of a percent of the value of improvements stated in the building permit application that is allocated to public art or to streetscape improvements, but not both, up to a maximum of five points. In order to qualify for public art points, the public art must be visible from a public right-of-way at all times, or located in the first floor lobby of a structure and accessible to the public during normal business hours.

(ii) Elimination of front yard setback. (Total possible points = 20) One point is awarded for each two and one-half percent increment greater than 50 percent of total building facade area that is contained between the following vertical planes:

(aa) The vertical plane passing through the front lot line.

(bb) The vertical plane set back 15 feet from the front lot line and parallel to the plane described in Subparagraph (ii)(aa).

(iii) Tree plantings. If any of the points available for elimination of the front yard setback are not awarded to a project, these unused points may be awarded for planting a large tree of at least a three-inch caliper in the treescape area, according to the following scale:

<u>No. of square feet of treescape area per tree</u>	<u>Points</u>
400 or less	10
484	8
576	6
676	4
784	2

(iv) Awnings and arcades. To qualify for points under this paragraph, an arcade must have a minimum depth of six feet, a minimum height of seven feet, and a maximum height of 20 feet. An awning must have a minimum height of seven feet, and a maximum height of 14 feet. For the purpose of this subparagraph, awning and arcade height is the vertical distance between the ground or pavement directly beneath the awning or arcade and the lowest point of the awning or arcade.

(aa) For newly constructed buildings, one point is awarded for each 10 percent of front lot line linear footage of awning or arcade width. (Total possible points = 10)

(bb) When renovating or remodeling an original building, one point is awarded for each ten percent of front lot line linear footage of awning width. No points are awarded for arcades. (Total possible points = 10)

(cc) When arcades extend over public rights-of-way, the minimum depth requirement of the arcade may be reduced from six feet to the maximum depth permitted under the necessary agreement with the city.

(dd) Sections 43-29, "Awning Posts," and 43-30 "Extending Over Public Property," of the Dallas City Code, as amended, apply in this district. It is the intent of this subparagraph to encourage awnings supported solely by the building to which they are attached, provided the requirements of all applicable ordinances, rules, and regulations are satisfied.

(v) Building materials. (Total possible points = 20) One point is awarded for each three percent increment greater than 40 percent of total building front facade area, excluding openings, incorporating stone, brick, glass block, tile, cast metal, cast stone, concrete masonry (split or polished face only; no unfinished units or cinder block), or a combination of those materials as facade materials.

(vi) Front facade openings. (Total possible points = 20) For purposes of this subparagraph, "front facade" means any facade facing a primary or secondary street. For purposes of awarding design points to a multi-story building under this subparagraph, the percentage of front facade area occupied by doors and windows is determined by averaging the percentages of the first and second stories. Points are awarded for the percentage of front facade occupied by doors and windows in accordance with the following scale:

<u>Percent</u>	<u>Points</u>	<u>Percent</u>	<u>Points</u>
21 or 79	1	31 or 69	11
22 or 78	2	32 or 68	12
23 or 77	3	33 or 67	13
24 or 76	4	34 or 66	14
25 or 75	5	35 or 65	15
26 or 74	6	36 or 64	16
27 or 73	7	37 or 63	17
28 or 72	8	38 or 62	18
29 or 71	9	30 or 61	19
30 or 70	10	40-60	20

(vii) Retail-related uses.

(aa) One point is awarded to both the primary side and the secondary side (if any) of the building for each four percent of first story floor area excluding halls, restrooms, utilities, and other public spaces, allocated to retail-related uses. (Total possible points = 25 for each side)

(bb) In Tract A-1, points are awarded, according to the criteria in the front facade opening standards in Item (vi), if the first story is constructed to a minimum height of 15 feet. The height of the story is measured from the top of the finished floor to the top of the finished floor above or, if there is no floor above, to the midpoint of the vertical dimension of the roof. Points are awarded regardless of whether the floor area is used for retail uses. (Total possible points = 25 for each side)

(cc) One point is awarded to both the primary side and the secondary side (if any) of the building for each 20 percent of basement or second story floor area, excluding halls, restrooms, utilities, and other public spaces, allocated to retail-related uses. (Total possible points = 5 for each side)

(viii) Sidewalk cafes. To qualify for points under this subparagraph, a sidewalk café must have a minimum depth of four feet. Sidewalk cafes must have a minimum three-foot-high railing at the perimeter. A minimum of six feet of open sidewalk must be maintained between the sidewalk café to the curb. For the purpose of this subparagraph, sidewalk café depth is the horizontal distance between the railing and the facade of the adjacent building. One point is awarded for each 20 square feet of sidewalk café. (Total possible points = 10)

(ix) Private license granted.

(aa) The city council hereby grants a non-exclusive revocable license to the owners or tenants (with written consent of the owner) of all property within this district for the exclusive purpose of authorizing use of the public right-of-way for public art, landscaping, awnings, arcades, and sidewalk cafes and other streetscape improvements. An owner or tenant is not required to pay an initial or annual fee for a license for landscaping, although a fee may be charged for issuance of a streetscape improvement permit. An owner or tenant is required to pay an initial and annual fee of \$25 a license for public art, awnings, arcades, and other streetscape improvements, in addition to any fee for issuance of a streetscape improvement permit. An owner or tenant is required to pay an initial and annual fee of \$150 a license for sidewalk cafes, in addition to any fee for issuance of a streetscape improvement permit. This private license will not terminate at the end of any specific time period; however, the city council reserves the right to terminate this license at will, by resolution passed by the city council, at any time such termination becomes necessary. The determination by the city council of the need for termination is final and binding. The city shall become entitled to possession of the licensed area without giving any notice and without the necessity of legal proceedings to obtain possession when, in its judgment, the purpose or use of the licensed is inconsistent with the public use of the right-of-way or when the purpose or use of the license is likely to become a nuisance or threat to public safety. Upon termination of the license by the city council, each owner or tenant shall remove all improvements and installations in the public rights-of-way to the satisfaction of the director of public works and transportation.

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(bb) A property owner or tenant is not required to comply with any streetscape improvement requirement to the extent that compliance is made impossible due to the city council's revocation of a streetscape improvement permit or the revocation of the private license granted under this subsection.

(cc) Upon the installation of streetscape improvements in the public right-of-way, the owners or tenants shall procure, pay for, and keep in full force and effect commercial general liability insurance coverage with an insurance company authorized to do business in the State of Texas and otherwise acceptable to the city, covering, but not limited to, the liability assumed under the private license granted under this subsection, with combined single limits of liability for bodily injury and property damage of not less than \$1,000,000 for each occurrence, and \$2,000,000 annual aggregate. Coverage under this liability policy must be on an occurrence basis and the city shall be named as additional insured. Proof of such insurance must be sent to: Office of Risk Management, City of Dallas, 1500 Marilla, Dallas, Texas 75201, and the policy must provide for 30 days prior written notice to the Office of Risk Management of cancellation, expiration, non-renewal, or material change in coverage. All subrogation rights for loss or damage against the city are hereby waived to the extent that they are covered by this liability insurance policy.

(dd) Each owner or tenant is responsible for maintaining the streetscape improvements and the premises safe and in good condition and repair, at no expense to the city, and the city is absolutely exempt from any requirements to maintain streetscape improvements or make repairs. The granting of a license for streetscape improvements under this subsection does not release the owner or tenant from liability for the installation or maintenance of streetscape improvements in the public right-of-way.

(x) Permit required.

(aa) It is the responsibility of the property owner to apply for and obtain a streetscape improvement permit ("permit") before locating streetscape improvements in the public right-of-way. An application for a permit must be made to the director. The application must be in writing on a form approved by the director and accompanied by plans or drawings showing the area of the public right-of-way affected and the construction and planting proposed.

(bb) Upon receipt of the application and any required fees, the director shall circulate it to all affected city departments and utilities for review and comment. If, after receiving comments from affected city departments and utilities, the director determines that the streetscape improvements proposed will not be inconsistent with and will not unreasonably impair the public use of the right-of-way, the director shall issue the permit to the property owner; otherwise, the director shall deny the permit.

(cc) A permit issued by the director is subject to immediate revocation upon written notice if at any time the director determines that the use of the right-of-way authorized by the permit is inconsistent with or unreasonably impairs the public use of the right-of-way.

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(dd) the issuance of a permit under this section does not excuse the property owner, his agents, or employees from liability in the installation or maintenance of streetscape improvements in the public right-of-way.

(xi) Work in the public right-of-way. Except as otherwise provided for public art and streetscape improvements, all use of the public right-of-way must be approved in accordance with the requirements of Article VI, "License for the Use of Public Right-of-Way," of Chapter 43, "Streets and Sidewalks," of the Dallas City Code, as amended.

(B) Special screening requirements. Except for driveways and accessways at points of ingress and egress, off-street parking for newly constructed buildings that is adjacent to sidewalks, public rights-of-way, or other public areas must be screened. Service areas for newly constructed buildings that are adjacent to sidewalks or open areas intended for pedestrians must be screened, except where the director determines that such screening would:

- (i) not reasonably accomplish any useful purpose; or
- (ii) create a safety hazard.

(C) Facade prohibitions.

- (i) Fluorescent exterior colors are prohibited.
- (ii) Facades incorporating wooden siding, wooden sheets, or extruded metal with openings less than one inch square are prohibited if the area covered by those materials totals more than 50 percent of the total facade area. This restriction does not apply to materials that, in the opinion of the director, would continue the architectural integrity of an original building.
- (iii) Buildings with total facade opening areas of less than 10 percent or more than 90 percent are prohibited.
- (iv) Facades made of more than 80 percent glass, excluding glassblock, are prohibited.

(D) Special lighting requirement. Sodium, mercury vapor, and exposed fluorescent lighting sources must be oriented onto the property they light and generally away from adjacent residential properties.

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(E) Sidewalks. Except as otherwise provided in this subparagraph, sidewalks must be a minimum of eight feet wide. All sidewalks must be clear and unobstructed by any structure or planting within the area of the required eight-foot-width. The requirement of a sidewalk only becomes applicable to a lot when an application is made for a building permit for construction work that results in any increase in street level floor area. In the event the proposed construction increases the street level floor area of an existing main building, the sidewalk width requirement for the portion of the building site that provides street frontage for the existing building is the width available, up to eight feet, between the back of the street curb and the face of the existing main building. In no event should the sidewalk width provisions of this subparagraph be construed to require the relocation of the facade of an existing main building.

(4) Return of application to the building official. Once the director makes his determination and evaluation, he shall refer the permit application, plans, all other relevant information, and his recommendation to the building official. If the director determines that sufficient points have been accumulated under the design standards test and all mandatory provisions of this article have been met, he shall recommend approval. Otherwise, he shall recommend denial. If the recommendation is for denial, the director shall state the grounds for denial in writing to the applicant, and the building official shall not issue the permit unless the director's recommendation is overturned upon appeal. If the recommendation is for approval and the building official determines that all requirements of the construction codes and all other applicable ordinances have been met, the building official shall issue the permit."

SECTION 5. That Paragraph (1) of Subsection (b), "Eligibility for Transfer," of Section 51P-269.108, "Transfer of Development Rights," of Article 269, "PD 269," of Chapter 51P, "Dallas Development Code: Planned Development District Regulations," of the Dallas City Code is amended to read as follows:

"(1) Tracts A and A-1. Development rights in a building site on Tracts A and A-1 may only be transferred to another building site on Tracts A and A-1."

SECTION 6. That Section 51P-269.111, "Zoning Map," of Article 269, "PD 269," of Chapter 51P, "Dallas Development Code: Planned Development District Regulations," of the Dallas City Code is deleted as follows:

~~"[SEC. 51P-269.111. — ZONING MAP.~~

~~PD 269 is located on Zoning Map Nos. J-7 and J-8.]"~~

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SECTION 7. That, pursuant to Section 51A-4.701 of Chapter 51A of the Dallas City Code, as amended, the property description in Section 1 of this ordinance shall be construed as including the area to the centreline of all adjacent streets and alleys.

SECTION 8. That the building official shall not issue a building permit or a certificate of occupancy for a use authorized by this planned development district on the Property until there has been full compliance with this ordinance, the Dallas Development Code, the construction codes, and all other ordinances, rules, and regulations of the City of Dallas.

SECTION 9. That the Exhibit B (property description of Tract A and Tract B) attached to Ordinance No. 19532 is replaced by the Exhibit B attached to this ordinance.

SECTION 10. That a person who violates a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

SECTION 11. That the zoning ordinances of the City of Dallas and Chapter 51P of the Dallas City Code, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 12. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 13. That this ordinance shall take effect immediately from and after its passage and publication, in accordance with the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By 
Assistant City Attorney

Passed MAR 28 2012

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EXHIBIT B

DESCRIPTION OF TRACT A

All of the land area described in EXHIBIT A except the area defined as TRACT A-1 and TRACT B, below.

DESCRIPTION OF TRACT A-1

BEING all of platted Block G/489 Lot 1A.

DESCRIPTION OF TRACT B

BEING part of Blocks 182, G/170 and G3/280, and being more particularly described as follows:

BEGINNING at the intersection of the westerly right-of-way line of Good-Latimer Expressway with the north right-of-way line of Main Street;

THENCE in a westerly direction along the north right-of-way line of Main Street to the intersection of same with the northeast right-of-way line of I.H. 345;

THENCE in a northwesterly direction along the northeast right-of-way line of I.H. 345 to the intersection of same with east right-of-way line of Hawkins Street;

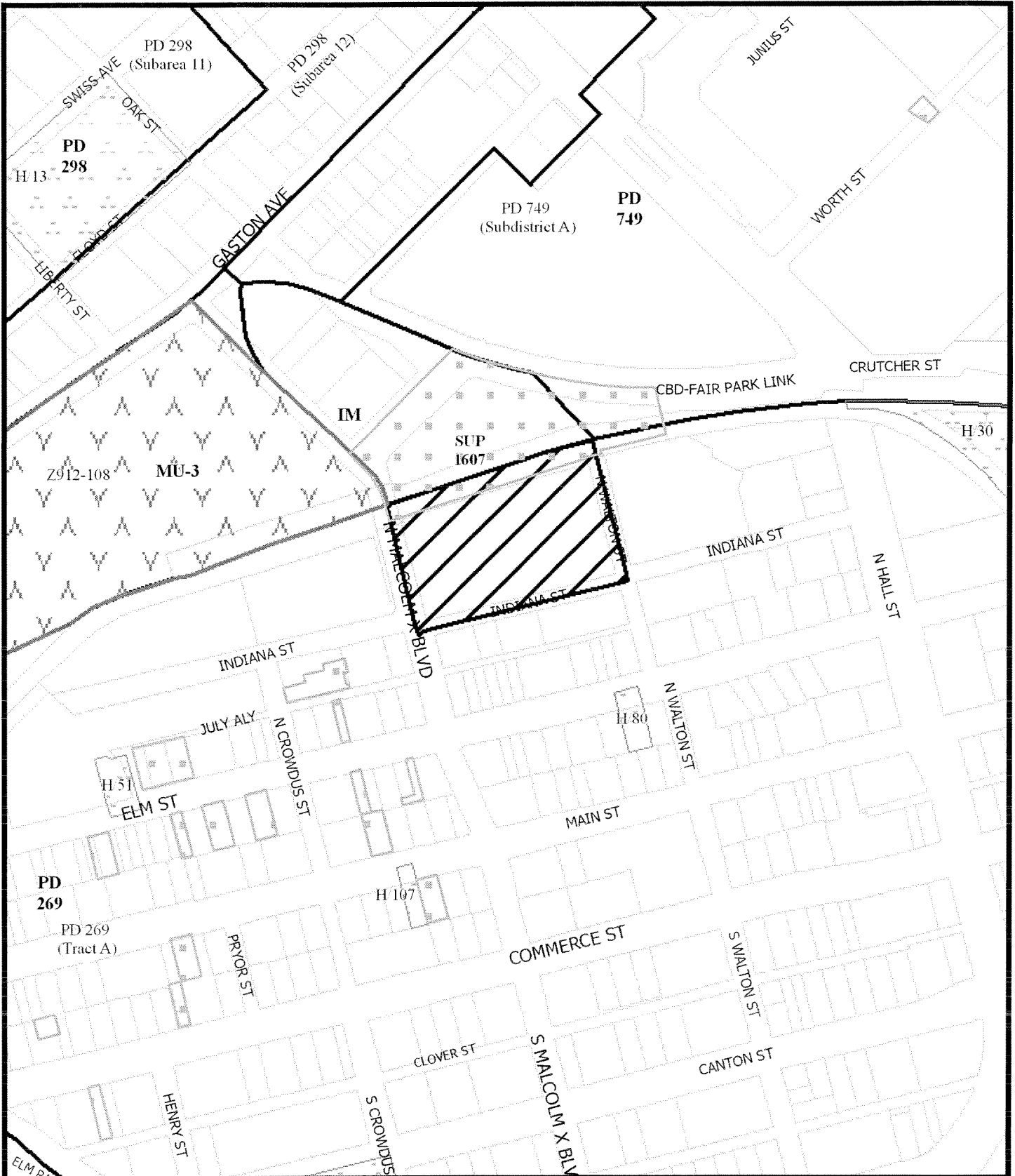
THENCE in a northerly direction along the east right-of-way line of Hawkins Street to the intersection of same with the northwest right-of-way line of a southwest-northeast alley in Block G3/280;

THENCE in a northeasterly direction along the northwest right-of-way line of said alley to the intersection of same with the westerly right-of-way line of Good-Latimer Expressway;

THENCE in a southerly direction along the westerly right-of-way line of Good-Latimer Expressway to the Point of Beginning.

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ZONING AND LAND USE

Case no: Z112-131

Date: 12/1/2011