

24-O-24

AN ORDINANCE

**Granting a Special Use Permit for A Resale Establishment at 1630
Orrington Avenue in the D3 Downtown Core Development District (JBS
Thrift Co.)**

WHEREAS, the City of Evanston is a home-rule municipality pursuant to Article VII of the Illinois Constitution of 1970; and

WHEREAS, as a home rule unit of government, the City has the authority to adopt legislation and to promulgate rules and regulations that protect the public health, safety, and welfare of its residents; and

WHEREAS, Article VII, Section 6(a) of the Illinois Constitution of 1970, states that the “powers and functions of home rule units shall be construed liberally,” was written “with the intention that home rule unit be given the broadest powers possible” (*Scadron v. City of Des Plaines*, 153 Ill.2d 164, 174-75 (1992)); and

WHEREAS, it is a well-established proposition under all applicable case law that the power to regulate land use through zoning regulations is a legitimate means of promoting the public health, safety, and welfare; and,

WHEREAS, Division 13 of the Illinois Municipal Code (65 ILCS 5/11-13-1, *et seq.*) grants each municipality the power to establish zoning regulations; and,

WHEREAS, pursuant to its home rule authority and the Illinois Municipal Code, the City has adopted a set of zoning regulations, set forth in Title 6 of the Evanston City Code of 2012, as amended (“the Zoning Ordinance”); and

WHEREAS, Luz Garcia, operator of JBS Thrift Co., “the Applicant”, requests approval of a Special Use for a Resale Establishment in the D3 Downtown Core Development District, located at the property commonly known as 1630 Orrington Avenue, legally described and attached by reference herein as Exhibit A, and located in the D3 District; and,

WHEREAS, pursuant to Subsection 6-11-4-3, a Resale Establishment is an allowed Special Use in the D3 Downtown Core Development District; and

WHEREAS, following due and proper publication of notice in Pioneer North, a suburban publication of the Evanston Review, not less than fifteen (15) nor more than thirty (30) days prior thereto, and following written notice to all property owners within 500 feet of the Subject Property, and following the placement of signs on the Subject Property not less than ten (10) days prior thereto, the Evanston Land Use Commission conducted a public hearing on January 10, 2024, in compliance with the provisions of the Illinois Open Meetings Act (5 ILCs 120/1 *et seq.*) on the application for a Special Use Permit for a Resale Establishment, filed as zoning case no. 23ZMJV-0069; and

WHEREAS, the Land Use Commission received extensive testimony, heard public comment, and made findings pursuant to Subsection 6-3-5-10, of the Zoning Ordinance, and by a vote of six (6) “yay” and zero (0) “nays” with three (3) Commissioners absent, recommended City Council approval with conditions of the application for Special Use Permit for a Resale Establishment with the below findings incorporated into the record:

1. Is one of the listed special uses for the zoning district in which the property lies: The Commission stated that a resale shop is listed as a Special Use in D3 Downtown Core District so the standard is met.
2. Complies with the purposes and the policies of the Comprehensive General Plan and the Zoning Ordinance as amended from time to time: The Commission said that the City is looking to fill vacant storefronts and the applicant is someone wishing to start a small business, so the standard is met.
3. Will not cause a negative cumulative effect, when its effect is considered in conjunction with the cumulative effect of various special uses of all types on the immediate neighborhood and the effect of the proposed type of special use upon the City as a whole: The Commission stated that there has been testimony that there is an existing resale shop in the area but due to the nature of the businesses not selling the same items there is no direct competition and the proposed business will be filling a currently vacant storefront, so the standard is met.
4. Does not interfere with or diminish the value of property in the neighborhood: The Commission stated that again going to the point that the proposed resale shop will be going into a vacant space, the standard is met.
5. Is adequately served by public facilities and services: The Commission stated that the resale shop will be going into an existing building, there is no reason to believe that it would not be, so the standard is met.
6. Does not cause undue traffic congestion: There was discussion regarding clothing drop-off being in the rear and asked that a condition be added to keep an eye on that ensure that no drop-offs occur in the front of the business and outside of business hours, so the standard would be met.
7. Preserves significant historical and architectural resources: The Commission stated it does not believe there are any applicable to the project.
8. Preserves significant natural and environmental resources: The Commission said that no changes are being proposed to the site plan, so the standard is met.
9. Complies with all other applicable regulations of the district in which it is located and other applicable ordinances, except to the extent such regulations have been modified through the planned development process or the grant of a variation: The Commission stated that the project complies and anticipates that the business will comply with other regulations such as business licensing, so this standard will be met.

WHEREAS, on February 12, 2024, the Planning and Development (“P&D”) Committee of the City Council held a meeting, in compliance with the provision of the Open Meetings Act and the Zoning Ordinance, received input from the public, carefully considered the findings and recommendation for approval with conditions of the Land use Commission, and recommended to refer the item back to the Land Use

Commission so the staff memo could recognize the neighboring resale establishment;
and

WHEREAS, the Land Use Commission reconsidered the request on February 28, 2024 and determined their January 10, 2024 recommendation and findings with conditions remain valid and referred the item back to the Planning & Development Committee and City Council; and

WHEREAS, on March 11, 2024, the Planning and Development (“P&D”) Committee of the City Council held a meeting, in compliance with the provision of the Open Meetings Act and the Zoning Ordinance, received input from the public, carefully considered the findings and recommendation for approval with conditions of the Land use Commission, and recommended approval thereof by the City Council; and

WHEREAS, at its meetings on March 11, 2024 and March 25, 2024, held in compliance with the Open Meetings Act and the Zoning Ordinance, the City Council considered the recommendation of the P&D Committee, received additional public comment, made certain findings, and adopted said recommendation; and

WHEREAS, it is well-settled law that the legislative judgment of the City Council must be considered presumptively valid (see *Glenview State Bank v. Village of Deerfield*, 213 Ill. App.3d 747) and is not subject to courtroom fact-finding (see *National Paint & Coating Ass’n v. City of Chicago*, 45 F.3d 1124).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:

SECTION 1: The foregoing recitals are found as fact and incorporated herein by reference.

SECTION 2: Pursuant to the terms and conditions of this ordinance, the City Council hereby grants the Special Use Permit, as applied for in zoning case no. 23ZMJV-0069, to allow the operation of one (1) Resale Establishment.

SECTION 3: Pursuant to Subsection 6-3-5-12 of the Zoning Ordinance, the City Council imposes the following conditions on the aforementioned zoning relief granted hereby, being a Special Use Permit for Resale Establishment as requested under zoning case no. 23ZMJV-0069, which may be amended by future ordinance(s), and violation of any of which shall constitute grounds for penalties or revocation of said Special Use Permit pursuant to Subsections 6-3-10-5 and 6-3-10-6 of the Zoning Ordinance:

1. Hours of operation shall not exceed 8am - 9pm, 7 days a week.
2. Employees shall not utilize street parking while working.
3. Deliveries shall occur via the rear entrance outside of rush hour traffic times.
4. Substantial compliance with the documents and testimony on record.
5. Recordation of the special use ordinance with the Cook County Recorder of Deeds is required.
6. The applicant monitors the front entrance to make sure materials are not dumped overnight at that location.

SECTION 4: When necessary to effectuate the terms, conditions, and purposes of this ordinance, "Applicant" shall be read as "Applicant's tenants, agents, assignees, and successors in interest."

SECTION 5: This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

SECTION 6: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7: If any provision of this ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity

shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

SECTION 8: The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

Introduced: _____ March 11, 2024

Approved:

Adopted: _____ March 25, 2024

_____ March 25, 2024

Daniel Biss

Daniel Biss, Mayor

Attest:

Approved as to form:

Stephanie Mendoza

Alexandra B. Ruggie

Stephanie Mendoza, City Clerk

Alexandra Ruggie, Interim Corporation Counsel

EXHIBIT A

LEGAL DESCRIPTION

LOTS 1-4 AND 12-15 IN BLOCK 28 IN VILLAGE, NOW CITY OF EVANSTON, IN
COOK COUNTY, ILLINOIS

PINS:

11-18-305-005-0000

Commonly Known As: 1630 Orrington Avenue, Evanston, IL