

44-O-24

AN ORDINANCE

**Granting A Special Use Permit for a Tattoo and Body Art Establishment
Located at 530 Kedzie Street, in the C1a Commercial Mixed Use
District (Sweetheart Ink 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, David and Steven Libert are the lessees (“the Applicant”), of the property located at 530 Kedzie Street, legally described herein (the “Subject Property”), attached hereto and incorporated herein as Exhibit A; and

WHEREAS, the Applicant has petitioned the City Council of the City of Evanston, for approval of a Special Use Permit for a Tattoo and Body Art Establishment in the C1a Commercial Mixed Use District pursuant to City Code Section 6-10-3-3, located at the Subject Property (“Special Use”); and

WHEREAS, following due and proper publication of notice in the Pioneer North 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 (“LUC”) conducted a public hearing on March 27, 2024 regarding case no. 24ZMJV-0007 to consider the requested Special Use, at which the Applicant presented evidence, testimony, and exhibits in support of the Special Use, and at which interested parties were provided the opportunity to provide public comment; and

WHEREAS, after having considered the evidence presented, including the exhibits and materials submitted, and public testimony provided, the LUC reviewed the standards for a Special Use pursuant to City Code Section 6-3-5-10 and found that:

1. Is one of the listed special uses for the zoning district in which the property lies: A tattoo and body art establishment is a special use in the C1a commercial mixed use district so the standard is met.
2. Complies with the purposes and the policies of the Comprehensive General Plan and the Zoning Ordinance: A tattoo and body art establishment that utilizes the business space aligns with the goals and standards of the plan, so the standard is met.

3. Does not cause a negative cumulative effect in combination with existing special uses or as a category of land use: The minimal impact standard is met because the store's size and the nature of its offerings suggests that the impact on the neighborhood will be minimal.
4. Does not interfere with or diminish the value of property in the neighborhood: A functioning business does more for property values than an empty storefront and no one has testified against the project, so the standard is met.
5. Is adequately served by public facilities and services: The proposed tattoo and body art establishment will not result in a significant increase in the building's usage compared to its previous use and so the standard is met.
6. Does not cause undue traffic congestion: There is not concern about traffic congestion, so the standard is met.
7. Preserves significant historical and architectural resources: There is no change to the outside of the building so that standard is met.
8. Preserves significant natural and environmental resources: There is no change to the outside of the building so that 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: They will be required to be licensed and monitored through the Health Department which is included as standard language of code and regulation compliance in the final ordinance, so the standard is met.

WHEREAS, after making its findings as set forth herein, the LUC recommended approval of the requested Special Use pursuant to Sections 6-3-5-7 and 6-3-5-10 of the Zoning Ordinance by a vote of eight (8) “yes” votes and zero (0) “no” votes with one (1) absent to the Planning and Development Committee (“P & D Committee”) of the City Council; and

WHEREAS, on April 8, 2024, the P & D Committee held a meeting in compliance with the Illinois Open Meetings Act, received input from the public, carefully considered the findings, and recommendation for approval by the LUC in case no. 24MJV-0007 as outlined herein, concurred with said findings, and recommended approval of the Special Use to the City Council; and

WHEREAS, at its meetings on April 8, 2024 and April 29, 2024, held in compliance with the Open Meetings Act, the City Council considered the aforementioned findings of fact, as amended and outlined herein, and found it appropriate to grant the Special Use as recommended by the LUC and the P & D Committee; 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 City Council has considered the findings and recommendations of the LUC and the P & D Committee and the foregoing recitals are hereby found and adopted as fact with regard to the requested Special Use.

SECTION 2: Based upon the above findings of fact and pursuant to the terms and conditions of this ordinance and Section 6-3-5-8 of the Zoning Ordinance, the City Council hereby grants the Special Use Permit, as applied for in zoning case no. 24ZMJV-0007, to allow the operation of a Tattoo and Body Art Establishment on the Subject Property in the C1a Commercial Mixed Use District.

SECTION 3: Pursuant to Subsection 6-3-5-12 of the Zoning Ordinance, the City Council imposes the following conditions on the Special Use Permit granted hereby, which may be amended by future ordinance(s), 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:

- A. **Substantial Compliance:** The Applicant shall construct the associated improvements to the Subject Property as described herein, as authorized by the terms of this ordinance in substantial compliance with all applicable City Code requirements and the Applicant's testimony and representations to the Land Use Commission, the P&D Committee, and the City Council.
- B. **Recordation:** The Applicant shall, at their cost, record a certified copy of this ordinance, including all Exhibits attached hereto, with the Cook County Clerk's Office, and provide proof of such recordation to the City prior to issuance of a final Certificate of Occupancy.
- C. **Licensing:** All applicable federal, state, and local licensing, certifications, trainings, and inspections for the business and every employee shall be maintained as long as the facility is in operation.
- D. **Hours:** Hours of operation shall not exceed 10 am – 8 pm, seven (7) days per week.
- E. **Parking:** Employees shall not utilize metered street parking while working.

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

SECTION 5: The City Council may, for good cause shown, waive or modify any conditions set forth in this Ordinance without requiring that the matter return for public hearing.

SECTION 6: The Building Official is hereby authorized and directed to issue building permits for the subject property, consistent with the approvals granted herein, provided that all conditions set forth hereinabove have been met and that the proposed construction is in compliance with all other applicable laws and ordinances. This grant of the approvals shall expire and become null and void twenty-four (24) months from the date of passage of this Ordinance unless a building permit to begin

construction in accordance with this Ordinance is applied for within said twenty-four (24)-month time period and construction is continuously and vigorously pursued provided, however, the City Council, by motion, may extend the period during which permit application, construction, and completion shall take place.

SECTION 7: If any provision of this ordinance or application thereof to any person or circumstance is held 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: This ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

SECTION 9: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 10: 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: _____ April 08 _____, 2024

Approved:

Adopted: _____ April 29 _____, 2024

_____ April 29 _____, 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 AND 2 IN KEDZIE AND KENNEY'S ADDITION TO EVANSTON, A
SUBDIVISION IN THE SOUTHEAST $\frac{1}{4}$ OF SECTION 19, TOWNSHIP 41 NORTH,
RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY,
ILLINOIS.

PIN: 11-19-407-001-0000; 11-19-407-002-0000

Commonly Known As: 530 Kedzie Street, Evanston, Illinois