

69-O-12

AN ORDINANCE

**Amending Subsection 6-15-14-6 of the Zoning Ordinance,
“Prohibited Uses” in the oCSC Central Street Corridor Overlay District**

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 ordinances 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, which states that the “powers and functions of home rule units shall be construed liberally,” was written “with the intention that home rule units be given the broadest powers possible” (*Scadron v. City of Des Plaines*, 153 Ill.2d 164); 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 1979, as amended, (“the Zoning Ordinance”); and

WHEREAS, on October 26, November 9, and December 14, 2011, and February 8, March 14, April 11, May 9, and June 20, 2012, the Plan Commission held a public hearing, pursuant to proper notice, regarding case no. 11PLND-0081, to consider amendments to the text of Title 6 of the Zoning Ordinance, specifically to Section 6-15-14, "oCSC Central Street Corridor Overlay District"; and

WHEREAS, the Plan Commission received testimony and made written findings pursuant to Subsection 6-3-4-5 of the Zoning Ordinance that the proposed amendment met the standards for text amendments, and recommended City Council approval thereof; and

WHEREAS, at its meetings of July 23 and October 22, 2012, the Planning and Development Committee of the City Council considered and adopted the findings and recommendation of the Plan Commission in case no. 11PLND-0081 and recommended City Council approval thereof; and

WHEREAS, at its meetings of July 23, October 22, and November 12, 2012, the City Council considered and adopted the records and recommendations of the Plan Commission and Planning and Development 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 foregoing recitals are found as fact and incorporated herein by reference.

SECTION 2: Subsection 6-15-14-6 of the Zoning Ordinance is hereby amended to read as follows:

6-15-14-6: PROHIBITED USES: Uses shown in Table 2 shall be prohibited in the indicated sub-area. This prohibition supersedes any permitted uses identified in the base zoning district.

Table 2: PROHIBITED USES	
Sub-area	Prohibited Uses
1	
2	
3	Drive-through facility.
4	Drive-through facility.
5	Drive-through facility.
6	Drive-through facility except at <u>2628 Gross Point Road</u> .
7	Drive-through facility.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: 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 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: 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: October 22, 2012

Approved:

Adopted: November 12, 2012

November 26, 2012

Elizabeth B. Tisdahl
Elizabeth B. Tisdahl, Mayor

Attest:

Approved as to form:

Rodney Greene
Rodney Greene, City Clerk

W. Grant Farrar
W. Grant Farrar, Corporation Counsel