

20-O-15

AN ORDINANCE

**Amending the Text of the Zoning Ordinance by Enacting a New
Section 6-15-17, "oDM Dempster-Main 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 2012, as amended, ("the Zoning Ordinance"); and

WHEREAS, on June 11, 2014, November 12, 2014, and February 11, 2015, the Plan Commission held a public hearing, pursuant to proper notice, regarding case no. 14PLND-0045 to consider amendments to the text of the Zoning Ordinance, to create a new overlay zoning district known as the "oDM Dempster-Main Overlay District;" and

WHEREAS, the Plan Commission received testimony and made findings pursuant to Section 6-3-4-6 of the Zoning Ordinance and recommended City Council approval thereof; and

WHEREAS, at its meeting of March 23, 2015, the Planning and Development Committee of the City Council considered and accepted the findings and recommendation of the Plan Commission in case no. 14PLND-0045 and recommended City Council approval thereof; and

WHEREAS, at its meetings of March 23, 2015 and April 13, 2015, the City Council considered and adopted the record and recommendation of the 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 hereby found as fact and incorporated herein by reference.

SECTION 2: The Zoning Ordinance is hereby further amended by the enactment of a new Section 6-15-17 thereof, "oDM Dempster-Main Overlay District," to read as follows:

6-15-17: oDM DEMPSTER-MAIN OVERLAY DISTRICT

6-15-17-1: PURPOSE STATEMENT:

The purpose of the oDM Dempster-Main Overlay District is to preserve the existing character of the two traditional neighborhood-oriented business districts near the Dempster Street and Main Street CTA Stations. The intent of the oDM Dempster-Main Overlay District is to sustain and encourage a healthy mix of uses with diverse, unique, small scale, pedestrian-oriented retail shops, services and restaurants serving the needs of surrounding residents and visitors.

6-15-17-2: DESIGNATION OF OVERLAY DISTRICT:

The oDM Dempster-Main Overlay District shall be designated by the City Council and shown as an overlay to the underlying Zoning Districts with the designation "oDM" on the City Zoning Map cited in Section 6-7-2 of the Zoning Ordinance.

6-15-17-3: APPLICATION OF OVERLAY DISTRICT:

Any property located within the oDM District shall retain its original Zoning District designation and shall gain the additional designation of the oDM District. The provisions of this Section 6-15-17 shall serve as a supplement to the regulations of the underlying District and the entirety of the Zoning Ordinance. Where a conflict exists between the provisions of this Section 6-15-17 and those of the underlying Zoning District and/or the rest of the Zoning Ordinance, this Section shall control.

6-15-17-4: PERMITTED USES:

The permitted uses for the oRD district shall be as follows:

- (A) Any use listed as permitted or special in the underlying base zoning district, except office and financial institution uses located on the ground floor. This exception supersedes any permitted uses identified in the underlying zoning district.

6-15-17-5: ADDITIONAL SPECIAL USES:

In addition to all special uses permitted in the underlying district, the following uses are allowed as a Special Use:

- A) Office (located on the ground floor).
- B) Financial Institution (located on the ground floor).

6-15-17-6: NONCONFORMING USES:

Every lawfully existing Use rendered nonconforming by this Section 6-15-17 may continue to operate pursuant to the provisions of Chapter 6 of the Zoning Ordinance.

SECTION 3: Section 6-7-1(H) of the Zoning Ordinance is hereby amended to include the following:

oDM	Dempster-Main overlay district
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SECTION 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: 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 6: This ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

SECTION 7: 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 23, 2015

Approved:

Adopted: April 13, 2015


April 15, 2015



Elizabeth B. Tisdahl, Mayor

Attest:

Approved as to form:


Rodney Greene, City Clerk (118)


W. Grant Farrar, Corporation Counsel