

MINUTES OF THE COMMON COUNCIL MEETING HELD AT THE GREENFIELD CITY HALL
ON TUESDAY, OCTOBER 16, 2018

The meeting was called to order by Mayor Neitzke at 7:00 p.m.

1. ROLL CALL:	Aldersperson Lubotsky	Present
	Aldersperson Bailey	Present
	Aldersperson Akers	Present
	Aldersperson Saryan	Present
	Aldersperson Kastner	Present

ALSO PRESENT:	Brian Sajdak	City Attorney
	Jeff Katz	Director of Neighborhood Services
	Kristi Johnson	Community Development Manager
	Andrew Stern	Planner
	Jennifer Goergen	City Clerk

2. An opening prayer was given by Pastor Steve Rogers.

3. Pledge of Allegiance

4. It was moved by Aldersperson Kastner, seconded by Aldersperson Saryan, to approve the October 2, 2018 Common Council minutes. Motion carried unanimously.

5. Mayor's Report – None.

6. Aldermanic Reports – Aldersperson Bailey reported the Tree Commission received two grants. One \$10,000 grant paid for 87 trees to be planted near 124th St. and W. Howard Ave. Another grant through the Milwaukee Metropolitan Sewerage District is funding the planting of 17 tamarack trees in Konkel Park.

7. Announcements – Mayor Neitzke said the Greenfield High School drama department will present the play “1984” on November 8, 9 & 10. Aldersperson Lubotsky congratulated the Greenfield High School marching band for placing third at state competition.

At this time, Mayor Neitzke proceeded to Agenda item #12.

8. Citizen Commentary – none

9. 7:05 p.m. Public hearing on Special Use Permit for Smokin Glass, a proposed smokers' supply store, to be located within the existing multi-tenant commercial building at 4649 S. 108th St., submitted by Justin Beese, d/b/a Smokin Glass IV, LLC. (Tax Key No. 609-0033-001)

Community Development Manager Kristi Johnson said the property is zoned C-4 Regional Business District. The City Forester is checking to see if the site is under an approved landscaping plan, which is something the city can continue to enforce. The daily hours of operation would be 9 am to 10 p.m. The

applicant has five similar stores in other communities. Seventy-one off-street parking spaces are required; 69 are provided. Council may waive the remaining parking spaces required.

No one spoke for or against the proposal.

It was moved by Alderperson Akers, seconded by Alderperson Lubotsky, to close the public hearing. Motion carried unanimously.

At this time, Mayor Neitzke proceeded to Agenda Item #11 (Items #6A & 6B).

10. 7:10 p.m. Public hearing on Special Use Permit for Euthymic Health, a proposed CBD oil store, to be located at 7406 W. Layton Ave., submitted by David and Michelle Kyhn, d/b/a Euthymic Health, LLC. (Tax Key No. 604-9964-000)

Ms. Johnson said the property is zoned C-4 Regional Business District. The proposed use is a small retail store for herbal, health and beauty products. They would sell herbal supplements focused on products derived from industrial hemp. They are licensed hemp growers and processors in the state of Wisconsin. Daily hours of operation would be 10 a.m. to 5 p.m.; one to three part-time staff would be employed. Seven off-street parking spaces are required; five are provided. A Best Buy manager has given verbal assent to allowing use of its parking lot. No letters of objection have been received.

Mayor Neitzke said there needs to be a written agreement with Best Buy regarding the parking. He said it is clear the applicant has the legal right to sell his product.

Cathy Kunze, 7010 W. Grange Ave., registered to speak in favor of the proposal. She uses CBD oil to help deal with pain from past injuries, but currently orders it from Colorado. She is excited to have this available locally. This should not be confused with marijuana; it is beneficial for pain relief.

Scott Patterson, 4611 S. Woodland Dr., registered against the proposal, but did not speak.

Amanda Schwantes, 4605 S. Woodland Dr., registered against the proposal. She is not against CBD oil, but she thinks the location is not the best area. That area is very hectic. Motorists are trying to turn left, even though they are not supposed to, or are trying to make U-turns. Will there be signage? Will it conflict with apartment residents from S. Woodland Drive or the behavioral health patients trying to pull out of their driveways? Will there be any lights? The area is not well-lit.

Mayor Neitzke said there is no proposed lighting or signage. He agrees there is a parking issue.

Jeffrey Ek, attorney for Euthymic Health, said he wanted to address the parking issue. His client has permission from Best Buy to use their parking area.

Alderperson Kastner and Mayor Neitzke said written permission from Best Buy was sought by Plan Commission.

Attorney Ek asked for Special Use approval, contingent upon later providing written permission from Best Buy.

Alderson Kastner suggested the certificate of occupancy could be withheld until the written permission for parking at Best Buy was provided.

David Kyhn said cannabinoid oil (CBD) oil from the hemp plant is what would be sold. It has many medicinal qualities.

Alderson Saryan asked if it is medicinal, why isn't it sold at Walgreens? And if it is, why is a separate store needed?

Mr. Kyhn said he is not certain of the content of CBD oil sold by other retailers. The label doesn't specify the contents. Their product will be a quality product and all of the information and ingredients will be listed on the label.

The level of THC has to be specified on the label, Attorney Ek said. This is a product you cannot get high from, because of the levels of THC. This is a therapeutic, legitimate product.

Michelle Kyhn said they want to focus on a premium product. CBD is regulated at the state level. They will sell products they know, which they have grown themselves or have visited the farms and tested to make certain everything is what it says it is. Other products may not be what they claim to be. For example, it might be only empty tea oil, which is a carrier oil. She said someone who tested products labeled CBD oil has found either a lower level of THC than listed on the product, or there were contaminants and other substances mixed in.

Mr. Kyhn said they will work with UW-Parkside to test products. The state has tested their products.

Alderson Saryan asked if there is no minimum legal age as to who can purchase hemp products?

Mr. Kyhn said he would not sell to customers under age 18.

Mayor Neitzke said there is no legal mechanism to prevent sales to minors.

Alderson Saryan said she would vote against it.

Alderson Lubotsky said would they sell the oil drops and paste? The response was yes, different forms would be sold.

Alderson Lubotsky asked if they would sell marijuana if the state approves it? No, not without the city's approval, Mr. Kyhn said. That is a different, huge process, and the state would have to set all of the parameters if that were to occur.

Alderson Lubotsky asked about the average price. It varies according to the milligrams, Mr. Kyhn said. It ranges from \$50 to \$100 dollars, Ms. Kyhn said.

Alderson Lubotsky said someday it may be covered under insurance as a prescription medicine.

Mayor Neitzke said he believes marijuana is coming to Wisconsin. The first step is to create a place to grow it, then create a distribution channel, and then to start backing into it a little bit at a time. There is

clearly a ton of money to be made and tax revenue to be made by expanding the use of marijuana beyond these oils. Whoever is in this business stands to make a lot of money – possibly large pharmaceutical or tobacco companies or large agricultural businesses with licenses to grow it. However, the only issue for the city to look at tonight is the site plan and landscaping and parking.

It was moved by Alderperson Lubotsky, seconded by Alderperson Kastner, to close the public hearing. Motion carried unanimously.

At this time, Mayor Neitzke proceeded to Agenda Item #11 (Items 7A & 7B.)

COMMON COUNCIL TO TAKE ACTION ON THE FOLLOWING COMMITTEE REPORTS:

11. Plan Commission meeting held on September 11, 2018 (Kastner)

#6A & 6B It was moved by Alderperson Kastner, seconded by Alderperson Lubotsky, to approve a Special Use Permit and a Site Plan for Smokin Glass, a proposed smokers' supply store, to be located within the existing multi-tenant commercial building at 4649 S. 108 Street, subject to Plan Commission and staff comments. Tax Key No. 609-0033-001.

Applicant Justin Beese said the store would sell tobacco accessories, such as papers and pipes. They also carry hookah tobacco, but everything is tobacco-free and nicotine-free. They do not sell e-cigarettes, e-juice or CBD oil. Customers have to be 18 to enter the store.

On a roll call vote, motion carried unanimously.

At this time, Mayor Neitzke proceeded to Agenda Item #19a.

#7A & 7B It was moved by Alderperson Kastner, seconded by Alderperson Lubotsky, to approve a Special Use Permit and Site Plan for Euthymic Health, a proposed CBD oil store, to be located at 7406 W. Layton Avenue, subject to Plan Commission and staff comments, and the applicant providing written confirmation from Best Buy that Best Buy will allow parking on their site. Tax Key No. 604-9964-000. On a roll call vote, the motion carried 4-1, with Alderpersons Lubotsky, Bailey, Akers and Kastner voting yes, and Alderperson Saryan voting no.

At this time, Mayor Neitzke proceeded to Agenda Item #19b.

12. Plan Commission meeting held on October 9, 2018

Item #5A, 5B & 5C Approve a Planned Unit Development Amendment, Site, Landscaping and Architectural Plans, and a Signage Appeal for an expansion to Children's Hospital of Wisconsin, Greenfield Clinic, an existing medical clinic located at 3365 S. 103 Street, subject to Plan Commission and staff comments, with applicant to work with City staff on landscaping/ screening along the west property line, speak with neighboring property owners overall, and work with neighboring properties on screening. Tax Key No. 524-8986-025 – to be placed on the **NEXT AGENDA**.

It was moved by Alderperson Kastner, seconded by Alderperson Lubotsky, to approve the following:

Item #6 Approve a Site, Landscaping and Architectural Plans for Elizabeth Residences Greenfield, a new construction Community Based Residential Facility, to be located at 9633 and 9721 W. Cold Spring Road, subject to Plan Commission and staff comments, and with the addition of a future pedestrian path that would connect to S. 92nd Street and S. 99th Street. Tax Key No. 607-9981-004.

Item #8A & 8B Approve a Special Use Review and a Site Plan for Little Light of Mine, an existing daycare located at Faith Bible Church at 4175 S. 112 Street, subject to Plan Commission and staff comments. Tax Key No. 566-9982-001.

Item #9 Approve a Site, Landscaping and Architectural Plans for a remodel of Olive Garden, an existing business located at 4760 S. 76 Street, subject to Plan Commission and staff comments. Tax Key No. 617-0085-001.

Item #11 Approve a Certified Survey Map to combine two existing lots located at 4262 S. 108 Street, subject to Plan Commission and staff comments. Tax Key No. 567-9971-004.

On a roll call vote, motion carried unanimously.

13. Finance and Human Resources Committee meeting held on October 10, 2018

It was moved by Alderperson Saryan, seconded by Alderperson Kastner, to approve the following:

Item #3 Approve a wage scale for the position of Working Foreman.

Item #4 Approval of 2019 & 2020 Agreement for July 4th Fireworks display at Konkel Park for \$22,250 per year.

Item #5 Approve an audit service agreement for a 5 year contract with Baker Tilly Virchow Krause, LLP for the basic financial statements of the City of Greenfield.

Item #6 Approve Memorandum of Understanding between the Greenfield Health Department and Clement Manor related to a Closed Point of Dispensing.

Item #7 Approve contract between Community Advocates, Inc., and the Greenfield Health Department (and Healthiest Greenfield Coalition) related to 2019 Partnering for Success grant funding.

Item #8 Approve contract between the State of Wisconsin Department of Health and Family Services and the Greenfield Health Department related to 2019 Opioid Harm Prevention Program grant funding.

Item #9 Approve contract between Community Advocates, Inc., and the Healthiest Greenfield Coalition related to 2019 State Targeted Response grant funding.

Item #11 Approve disbursements in the amount of \$1,845,100.57.

Item #12 Approve mileage of \$1,118.83.

Motion carried unanimously.

At this time, Mayor Neitzke proceeded to Agenda item #9.

14. City Clerk's Report

- a. It was moved by Alderperson Lubotsky, seconded by Alderperson Saryan, to adopt Resolution No. 3661:

RESOLUTION NO. 3661

RESOLUTION APPOINTING ADDITIONAL ELECTION OFFICIALS
FOR 2018-2019

WHEREAS, Wis. Stats. 7.30(4)(a) require the governing body to appoint election officials no later than the last regular meeting in December of each odd-numbered year for the 2018-2019 election cycle; and

WHEREAS, appointments were made at that time, but it has become necessary to appoint additional Election Inspectors and Election Registration Officials (EROs) to fill open positions at the polls;

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Greenfield confirms the additional Election Inspectors and Election Registration Officials (EROs) for the 2018-2019 election cycle.

PASSED AND ADOPTED by the Common Council of the City of Greenfield on the 16th day of October, 2018.

APPROVED:

Michael J. Neitzke, Mayor

ATTEST:

Jennifer Goergen, City Clerk

Motion carried unanimously.

City Clerk Jennifer Goergen announced early absentee voting would be held Oct. 22 – Nov 2, Monday through Friday, from 8 a.m. to 5 p.m., at City Hall in Room 100. Mayor Neitzke announced referendum materials were forwarded to everyone and would be mailed out by the end of the week.

15. Appointments to various committees and commissions:

- a. Mayor appointments, confirmed by Council:

- (1) One member to the Zoning Board of Appeals for a term to expire 5/1/20 (formerly Donald Kopp) (CC 10/2/18) – to be placed on the **NEXT AGENDA**

- (2) Two alternate members to the Board of Review for a term to expire 5/1/23 (newly created positions) - to be placed on the **NEXT AGENDA**

b. **Mayor appointments:**

- (1) One alternate member to the Zoning Board of Appeals for a term to expire 5/1/21 (formerly Denise Kunz) (CC 9/18/18, CC 10/2/18) - to be placed on the **NEXT AGENDA**

16. It was moved by Alderperson Lubotsky, seconded by Alderperson Kastner, to approve issuance of an operator license to the following:

Ahnert, Chelsey M.-1420 E. Warnimont Ave.
Fuchs, Frank R.-4240 S. Victoria Cir.
Ricker, Linda A.-565 W. Riverwood Dr.

Rubio-Cortes, Danielle M.-2241 S. 26th St.
Stawicki, Ian A.-3201 W. Birchwood Ave.

Motion carried unanimously.

17. It was moved by Alderperson Lubotsky, seconded by Alderperson Kastner, to approve the transfer of the Combination “Class B” Fermented Malt Beverage & Liquor License from 7401 W. Barnard Ave to 8625 W. Sura Lane for Outback Steakhouse of Florida LLC. Motion carried unanimously.

A representative from the Outback said the old location will operate until Nov. 27 and the new location will open Dec. 5.

18. It was moved by Alderperson Akers, seconded by Alderperson Bailey, to approve the change of agent from Tony J. Rasmussen to Justin L. Kreutz, 2429 N. Weil St., for Wisconsin Fine Wines & Spirits LLC, 8700 W. Sura Ln., on its Reserve Combination “Class B” Fermented Malt Beverage & Liquor License (Total Wine Spirits Beer & More). Motion carried unanimously.

At this time, Mayor Neitzke proceeded with Agenda Item #19c.

19. Department of Neighborhood Services

- a. It was moved by Alderperson Kastner, seconded by Alderperson Lubotsky, to adopt Resolution No. 3659:

RESOLUTION NO. 3659

SPECIAL USE PERMIT FOR SMOKIN GLASS, A PROPOSED SMOKERS’ SUPPLY STORE, TO BE LOCATED WITHIN THE EXISTING MULTI-TENANT COMMERCIAL BUILDING AT 4649 S. 108 ST., SUBMITTED BY JUSTIN BEESE, D/B/A SMOKIN GLASS IV, LLC. (TAX KEY NO. 609-0033-001)

WHEREAS, Justin Beese, d/b/a Smokin Glass IV, LLC, duly filed with the City Clerk an application for a Special Use Permit, pursuant to Sec. 21.04.0603, Sec. 21.04.0700 and Sec. 21.08.0103 of the Municipal Code, to establish a smokers’ supply store at 4649 S. 108 St.; and,

WHEREAS, after due notice, a public hearing was held by the Common Council on October 16, 2018, at 7:05 p.m., in the Common Council Chambers to consider the application; and,

WHEREAS, the Common Council, having carefully considered the evidence presented at the public hearing and the following pertinent facts noted:

1. The applicant, Justin Beese, d/b/a Smokin Glass IV, LLC, owns Smokin Glass IV, LLC, N6921 Patri Rd., Manawa, WI 54949.
2. The property is owned by Forest Homes Investors, 401 E. Kilbourn Ave., Ste. 201, Milwaukee, WI 53202.
3. Smokin Glass IV, LLC will lease 4649 S. 108 St., a tenant space located within a multi-tenant commercial building at 4631-4649 S. 108 St., Greenfield, Milwaukee County, Wisconsin, more particularly described as follows:

Lots 2, 3, 4 and 5 of Block 1 of Valley View Heights, a recorded subdivision, plus the East 1/2 of a vacated alley adjacent on the West, all being a part of the Southeast 1/4 of Section 19, Township 6 North, Range 21 East, in the City of Greenfield, Milwaukee County, Wisconsin.

Tax Key No. 609-0033-001

Said land being located at 4631-4649 S. 108 St.

4. The applicant is proposing to establish a smokers' supply store, occupying approximately 1,650 sq. ft. within the existing multi-tenant commercial building.
5. The aforesaid premise is zoned C-4 Regional Business District under the Zoning Ordinance of the City of Greenfield, which permits tobacco stores as a Special Use, pursuant to Sec. 21.04.0603, Sec. 21.04.0700 and Sec. 21.08.0103 of the Municipal Code.
6. The subject property is located on the west side of the Hwy 100 commercial corridor, north of W. Layton Ave. Properties to the north, east and south are developed as commercial; properties to the east are developed as residential.
7. The proposed development should not adversely contribute to traffic volumes or traffic flow in the area.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Greenfield that the application of Justin Beese, d/b/a Smokin Glass IV, LLC, to establish a smokers' supply store at 4649 S. 108 St., be, and is hereby granted on the following grounds:

That the establishment, maintenance and operation of the proposed use, with the imposition of certain conditions hereinafter set forth, reasonably satisfies the standards set forth in Sec. 21.04.0603 and Sec. 21.08.0103 of the Municipal Code, so as to permit the issuance of a special use permit as therein provided.

BE IT FURTHER RESOLVED that said Special Use Permit is granted subject to the following conditions:

1. Site and Landscaping Plans. The grant of this Special Use Permit is subject to and conditioned upon the Site and Landscaping Plan and all other applicable conditions approved by the Plan Commission on September 11, 2018 and by the Common Council on October 16, 2018. No alteration or modification of the approved plan shall be permitted without approval by the Common Council.
2. Building Plans and Fire Codes. The grant of this Special Use is subject to building plans being submitted to and approved by the Inspection Services Division and by the Fire Department.
3. Hours of Operation. The allowable hours of operation for Smokin Glass will be Monday – Sunday, 9:00am – 10:00pm.
4. Off-Street Parking. The proposed smokers' shop business requires eight (8) parking stalls. The remaining multi-tenant commercial/office uses, occupying the remainder of the multi-tenant commercial building require 63 off-street parking stalls, for a total of 71 required off-street parking spaces. Sixty-nine (69) off-street parking stalls are expected to be provided on site. The Common Council may waive the parking shortage.
5. Signage. Signage shall be in compliance with the City's Signage Ordinance. Any building window signage shall not exceed twenty-five (25) percent of the net glazed front window area per business premises. Rope/LED trim lighting shall not be allowed.
6. Public Nuisance. In accordance with Chapter 11 of the Municipal Code, Public Nuisances are prohibited. Public Nuisances include blighted properties due to an accumulation thereon of junk or other unsightly debris. Enforcement and abatement of public nuisances, including revocation of the Special Use Permit, may take place after three (3) or more nuisance activities have occurred at a premise on separate days during a one hundred and eighty (180) day period.
7. Marketing Displays. The use of pennants, special lighting, flags, streamers or other signage typically temporary in nature, hanging, floating or attached to a structure or vehicle shall not be permitted.
8. Outdoor Lighting. All outdoor lighting fixtures shall be shielded in such a manner that no light splays from the property boundaries. Full-cut off fixtures and or house side shields utilized to minimize light splay. Rope/LED trim lighting is not permitted.
9. Litter. Employees shall inspect the area and the immediate vicinity and pick up litter on a daily basis.
10. Refuse Collection. All refuse to be provided by a commercial hauler. All refuse, recyclables and other waste material shall be screened from view by the existing fence/enclosure provided on site.
11. Pest Control. Exterior pest control shall be maintained at all times and pest control problems shall be addressed immediately.

12. Pagers, Intercoms. The use of outdoor pagers, intercoms, or speakers shall not be permitted on site as surrounding land use consists of residential uses.
13. Noxious Odors, Etc. The use shall not emit foul, offensive, noxious or disagreeable odors, gases, or effluvia into the air. Mechanical systems shall be maintained to efficiently remove noxious odors.
14. Pollution. The use shall not cause any noxious or unwholesome liquid or substance or any dirt, mud, sand, gravel, or stone refuse or other materials to be deposited upon any public right of way or flow into any sanitary sewer, storm sewer, or water supply system, or onto adjacent properties.
15. Deliveries and Refuse Pickup. The property will be required to abide by the City of Greenfield health/public nuisance rules per Chapter 12 of the Municipal Code. Because there is a residential neighborhood adjacent to the site, delivery operations and refuse pick up shall only be permitted during daytime hours. These functions shall not be permitted between the hours of 9:00 p.m. and 7:00 a.m.
16. Expiration of Special Use Permit. Any special use approved by the Common Council shall lapse and become null and void one (1) year from and after that approval if the use has not commenced, construction is not underway, or the owner has not obtained a valid building permit. An extension of these time limitations may be granted without a public hearing by the Common Council by resolution reauthorizing the special use in accordance with the following criteria:
 - A. The applicant requesting the extension shall complete a planning application available from the Community Development Division and shall submit a \$350.00 special use permit review/amendment fee.
 - B. A written explanation for the extension of time shall accompany the planning application along with a timeline/schedule for obtaining necessary permits, zoning, state and municipal approvals and a target date for construction start;
 - C. The request for extension shall be submitted within sixty (60) days of the expiration of the special use permit;
 - D. The extension, if granted, shall be valid for a period of six (6) months. If no building permit has been issued and construction has not commenced within six (6) months from and after the extension has been granted, the special use shall become null and void.
17. Miscellaneous.
 - A. Applicants are advised that the foregoing conditions are reasonably necessary to protect the public interest and to secure compliance with the standards and requirements specified in Sec. 21.04.0603 and Sec. 21.08.0103 of the Municipal Code; that the issuance of the special use is expressly subject to compliance with said conditions.
 - B. The use, as granted herein, is subject to applicants' compliance with all other state and local laws and regulations which may be applicable to the proposed use of the real estate in question.

C. The special use, as granted herein, shall run with the land and benefit and restrict all future owners and occupants of the property, unless the use shall lapse or be terminated and the use will not be altered or extended (including structural alterations and/or additions) without the approval of the Common Council, following public hearing, all as provided in Sec. 21.04.0603 and Sec. 21.08.0103 of the Municipal Code.

18. Lapse. If the applicant does not meet all of the terms and conditions set forth in this grant of a special use within one year of the granting thereof, then the Special Use Permit shall lapse and become null and void and the applicant shall forfeit any right to use the property as conferred by the Special Use Permit. The failure of the applicant to meet the terms and conditions of the Special Use Permit shall subject the permit to being declared void by the Common Council after notice to the applicant and a hearing before the Common Council. Upon a finding by the Common Council on the matter, the applicant and/or any interested person may make comments regarding the matter to the Common Council prior to the Common Council's next regular meeting following the hearing recommendation. Upon the Common Council's finding that the Special Use Permit has lapsed and become void, the applicant shall cease all operations at the property.

19. Termination of Special Use. If the person or entity granted the special use violates, allows or suffers the violation of the ordinances of the City of Greenfield, the State of Wisconsin or the United States on the premises covered by the special use, then the special use may be terminated.

20. Acknowledgement. That the applicants sign an acknowledgment that he/she/they has/have received these terms and conditions and will abide by them.

The undersigned applicant agrees to the terms and conditions and has agreed that the grant of the Special Use Permit is conditioned on meeting the terms and conditions of this resolution.

Justin Beese, d/b/a Smokin Glass IV, LLC

Representative of Forest Homes Investors

Provided to applicant on the
_____ day of _____, 2018

Community Development Manager

PASSED AND ADOPTED by the Common Council of the City of Greenfield on the 16th day of October, 2018.

APPROVED:

Michael J. Neitzke, Mayor

ATTEST:

Jennifer Goergen, City Clerk

On a roll call vote, motion carried unanimously.

At this time, Mayor Neitzke proceeded to Agenda Item #10.

19b. It was moved by Alderperson Kastner, seconded by Alderperson Lubotsky, to adopt Resolution No. 3660:

RESOLUTION NO. 3660

SPECIAL USE PERMIT FOR EUTHYMIC HEALTH, LLC, A PROPOSED CBD OIL STORE, TO BE LOCATED AT 7406 W. LAYTON AVE., SUBMITTED BY DAVID AND MICHELLE KYHN, D/B/A EUTHYMIC HEALTH, LLC
(TAX KEY NO. 604-9964-000)

WHEREAS, David and Michelle Kyhn, d/b/a Euthymic Health, LLC, duly filed with the City Clerk an application for a Special Use Permit, pursuant to Sec. 21.04.0603, Sec. 21.04.0700 and Sec. 21.08.0103 of the Municipal Code, to establish a CBD oil retail store at 7406 W. Layton Ave.; and,

WHEREAS, after due notice, a public hearing was held by the Common Council on October 16, 2018, at 7:10 p.m., in the Common Council Chambers to consider the application; and,

WHEREAS, the Common Council, having carefully considered the evidence presented at the public hearing and the following pertinent facts noted:

1. The applicant, David and Michelle Kyhn, d/b/a Euthymic Health, LLC, own the property through KE Properties, LLC, which has offices at 9875 S. Franklin Dr., Suite 200, Franklin, WI 53132.
2. Euthymic Health, LLC will occupy approximately 400 sq. ft. of the multi-tenant commercial building located at 7406 W. Layton Ave., Greenfield, Milwaukee County, Wisconsin, more particularly described as follows:

The East 78.68 feet of the West 629.42 feet of the South 276.85 feet of the Southwest ¼ Section 22, Township 6 North, Range 21 East, in the City of Greenfield, Milwaukee County, Wisconsin, excepting therefrom those parts taken for public right-of-way.

Tax Key No. 604-9964-000

Said land being located at 7406 W. Layton Ave.

3. The applicant is proposing to establish a CBD oil store within the existing multi-tenant commercial building.
4. The aforesaid premise is zoned C-4 Regional Business District under the Zoning Ordinance of the City of Greenfield, which permits All Other Miscellaneous Store Retailers as a Special Use, pursuant to Sec. 21.04.0603, Sec. 21.04.0700 and Sec. 21.08.0103 of the Municipal Code.

5. The subject property is part of an area along the W. Layton Ave. corridor that is developed for commercial uses. Properties to the north are developed as a multi-family residential. Properties to the south are developed as commercial and single-family residential. Properties to the east and west are developed as commercial.

6. The proposed development should not adversely contribute to traffic volumes or traffic flow in the area.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Greenfield that the application of David and Michelle Kyhn, d/b/a Euthymic Health, LLC, to establish a CBD oil retail store, to be located at 7406 W. Layton Ave., be, and is hereby granted on the following grounds:

That the establishment, maintenance and operation of the proposed use, with the imposition of certain conditions hereinafter set forth, reasonably satisfies the standards set forth in Sec. 21.04.0603 and Sec. 21.08.0103 of the Municipal Code, so as to permit the issuance of a special use permit as therein provided.

BE IT FURTHER RESOLVED that said Special Use Permit is granted subject to the following conditions:

1. Site and Landscaping Plans. The grant of this Special Use Permit is subject to and conditioned upon the Site Plan and all other applicable conditions approved by the Plan Commission on September 11, 2018 and by the Common Council on October 16, 2018. No alteration or modification of the approved plan shall be permitted without approval by the Common Council.
2. Building Plans and Fire Codes. The grant of this Special Use is subject to building plans being submitted to and approved by the Inspection Services Division and by the Fire Department.
3. Hours of Operation. The allowable hours of operation for Euthymic Health, LLC will be 10:00am – 5:00pm, seven (7) days/week.
4. Off-Street Parking. The entire building, under the category of “Miscellaneous retail stores,” requires off-street seven (7) parking stalls. Five (5) off-street parking stalls are to be provided on site. The Common Council may waive the parking shortage.
5. Signage. Signage shall be in compliance with the City’s Signage Ordinance. Any building window signage shall not exceed twenty-five (25) percent of the net glazed front window area per business premises. Rope/LED trim lighting shall not be allowed.
6. Public Nuisance. In accordance with Chapter 11 of the Municipal Code, Public Nuisances are prohibited. Public Nuisances include blighted properties due to an accumulation thereon of junk or other unsightly debris. Enforcement and abatement of public nuisances, including revocation of the Special Use Permit, may take place after three (3) or more nuisance activities have occurred at a premise on separate days during a one hundred and eighty (180) day period.
7. Marketing Displays. The use of pennants, special lighting, flags, streamers or other signage typically temporary in nature, hanging, floating or attached to a structure or vehicle shall not be permitted.

8. Outdoor Lighting. All outdoor lighting fixtures shall be shielded in such a manner that no light splays from the property boundaries. Full-cut off fixtures and or house side shields utilized to minimize light splay. Rope/LED trim lighting is not permitted.
9. Litter. Employees shall inspect the area and the immediate vicinity and pick up litter on a daily basis.
10. Refuse Collection. All refuse to be provided by a commercial hauler. All refuse, recyclables and other waste material shall be screened from view by the existing fence/enclosure provided on site.
11. Pest Control. Exterior pest control shall be maintained at all times and pest control problems shall be addressed immediately.
12. Pagers, Intercoms. The use of outdoor pagers, intercoms, or speakers shall not be permitted on site as surrounding land use consists of residential uses.
13. Noxious Odors, Etc. The use shall not emit foul, offensive, noxious or disagreeable odors, gases, or effluvia into the air. Mechanical systems shall be maintained to efficiently remove noxious odors.
14. Pollution. The use shall not cause any noxious or unwholesome liquid or substance or any dirt, mud, sand, gravel, or stone refuse or other materials to be deposited upon any public right of way or flow into any sanitary sewer, storm sewer, or water supply system, or onto adjacent properties.
15. Deliveries and Refuse Pickup. The property will be required to abide by the City of Greenfield health/public nuisance rules per Chapter 12 of the Municipal Code. Because there is a residential neighborhood adjacent to the site, delivery operations and refuse pick up shall only be permitted during daytime hours. These functions shall not be permitted between the hours of 9:00 p.m. and 7:00 a.m.
16. Expiration of Special Use Permit. Any special use approved by the Common Council shall lapse and become null and void one (1) year from and after that approval if the use has not commenced, construction is not underway, or the owner has not obtained a valid building permit. An extension of these time limitations may be granted without a public hearing by the Common Council by resolution reauthorizing the special use in accordance with the following criteria:
 - A. The applicant requesting the extension shall complete a planning application available from the Community Development Division and shall submit a \$350.00 special use permit review/amendment fee.
 - B. A written explanation for the extension of time shall accompany the planning application along with a timeline/schedule for obtaining necessary permits, zoning, state and municipal approvals and a target date for construction start;
 - C. The request for extension shall be submitted within sixty (60) days of the expiration of the special use permit;

D. The extension, if granted, shall be valid for a period of six (6) months. If no building permit has been issued and construction has not commenced within six (6) months from and after the extension has been granted, the special use shall become null and void.

17. Miscellaneous.

A. Applicants are advised that the foregoing conditions are reasonably necessary to protect the public interest and to secure compliance with the standards and requirements specified in Sec. 21.04.0603 and Sec. 21.08.0103 of the Municipal Code; that the issuance of the special use is expressly subject to compliance with said conditions.

B. The use, as granted herein, is subject to applicants' compliance with all other state and local laws and regulations which may be applicable to the proposed use of the real estate in question.

C. The special use, as granted herein, shall run with the land and benefit and restrict all future owners and occupants of the property, unless the use shall lapse or be terminated and the use will not be altered or extended (including structural alterations and/or additions) without the approval of the Common Council, following public hearing, all as provided in Sec. 21.04.0603 and Sec. 21.08.0103 of the Municipal Code.

18. Lapse. If the applicant does not meet all of the terms and conditions set forth in this grant of a special use within one year of the granting thereof, then the Special Use Permit shall lapse and become null and void and the applicant shall forfeit any right to use the property as conferred by the Special Use Permit. The failure of the applicant to meet the terms and conditions of the Special Use Permit shall subject the permit to being declared void by the Common Council after notice to the applicant and a hearing before the Common Council. Upon a finding by the Common Council on the matter, the applicant and/or any interested person may make comments regarding the matter to the Common Council prior to the Common Council's next regular meeting following the hearing recommendation. Upon the Common Council's finding that the Special Use Permit has lapsed and become void, the applicant shall cease all operations at the property.

19. Termination of Special Use. If the person or entity granted the special use violates, allows or suffers the violation of the ordinances of the City of Greenfield, the State of Wisconsin or the United States on the premises covered by the special use, then the special use may be terminated.

20. Acknowledgement. That the applicants sign an acknowledgment that he/she/they has/have received these terms and conditions and will abide by them.

The undersigned applicant agrees to the terms and conditions and has agreed that the grant of the Special Use Permit is conditioned on meeting the terms and conditions of this resolution.

David Kyhn, d/b/a Euthymic Health, LLC

Michelle Kyhn, d/b/a Euthymic Health, LLC

Provided to applicant on the _____ day of _____, 2018

Community Development Manager

PASSED AND ADOPTED by the Common Council of the City of Greenfield on the 16th day of October, 2018.

APPROVED:

Michael J. Neitzke, Mayor

ATTEST:

Jennifer Goergen, City Clerk

On a roll call vote, motion carried 4-1, with Alderpersons Lubotsky, Bailey, Akers and Kastner voting yes and Alderperson Saryan voting no.

At this time, Mayor Neitzke proceeded to Agenda Item #14a.

19c. It was moved by Alderperson Kastner, seconded by Alderperson Akers, to approve the Outdoor Special Event (OSE) application for an event to be held at Konkel Park at 5151 W. Layton Ave., June 14 & 15, 2019.

Mayor Neitzke said another sponsor is replacing the Beer, Bacon and Blues event.

Motion carried unanimously.

20. City Attorney's Report

- a. Common Council did not go into closed session pursuant to Wisconsin Statutes, Section 19.85(1)(b), & (f) to consider the issuance of an operator license to Brittney L. Armbruster, Luis A. Cerda, or Ryan M. Katzung due to the following:
 - (1) Brittney L. Armbruster was not in attendance.
 - (2) Luis A. Cerda was not in attendance.
 - (3) Ryan M. Katzung was not in attendance.
 - (4) It was moved by Alderperson Akers, seconded by Alderperson Lubotsky, to go into closed session at 7:45 p.m. pursuant to Wisconsin Statutes, Section 19.85(1)(e) to discuss a potential amendment to contract with John's Disposal Services, Inc. for trash/recycling collection. On a roll call vote, motion carried unanimously.
- b. It was moved by Alderperson Akers, seconded by Alderperson Kastner, to adjourn closed session and reconvene into open session at 8:02 p.m. Motion carried unanimously.

- c-e. It was moved by Alderperson Kastner, seconded by Alderperson Lubotsky, to deny the issuance of an 2018-2019 operator license to the following:

Brittney L. Armbruster

Luis A. Cerda

Ryan M. Katzung

Motion carried unanimously.

- f. Decision regarding potential amendment to contract with John's Disposal Services, Inc. for trash/recycling collection - staff was advised to "proceed as directed."

- g. ~~Adjourn closed session and reconvene into open session~~ (already done)

21. Items for future agenda - none

22. It was moved by Alderperson Lubotsky, seconded by Alderperson Kastner, to adjourn the meeting at 8:06 p.m. Motion carried unanimously.

Jennifer Goergen, City Clerk

Minutes transcribed by Sheryl Hartman, Deputy Clerk
Distributed: October 22, 2018