



## Law Department

**SUBJECT:** Retail Cannabis Moratorium and Referendum (2<sup>nd</sup> Memo)

**MEETING DATE:** July 14, 2020

**TO:** President and Village Board of Trustees

**FROM:** [Jeffrey M. Stein](#), Assistant Village Manager/Corporation Counsel  
[Erik Hallgren](#), Assistant Village Manager  
[Alex Arteaga](#), Management Analyst

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### **Background**

At the last Village Board meeting held on June 23, 2020, a memorandum and brief presentation providing an update on cannabis regulations imposed by Cook and Lake County municipalities was given. In addition, information in regards to the current financial status and potential future financial impacts was also provided.

As provided for in the timeline, July 14 will be the second of three planned discussions on this topic. This memorandum is intended on providing the Village Board with updated information that was requested at the previous meeting as well as recommended (and alternative) referendum language.

### **Discussion**

Since the last meeting on this topic took place, the Corporation Counsel was asked to provide additional information in regards to adverse impacts and financial projections. In addition, the Corporation Counsel was requested to provide more detail about the State imposed regulations enacted to guard against the sale of cannabis to underage individuals. Finally, the main discussion and the only decision points that need to be made are if there will be a referendum and the language it will contain so a resolution can be voted on at the July 28 Village Board meeting.

### **Financial Components and Projections**

At the last Village Board meeting, the Corporation Counsel presented that the Village would receive approximately \$22,000 from the state from the 8% statewide tax imposed upon the sale of recreational cannabis. The Corporation Counsel incorrectly stated that this was "year to date" when instead it is the annual projection based on revenues received to date and estimates from the Illinois Municipal League (IML).

## *Neighboring Communities*

During the presentation it was discussed that Evanston projects its annual income to be approximately \$250,000, per their budget documents. There was an inquiry about the taxation components of that projected amount. Per Evanston's response to our inquiry, Evanston's local taxation amount of 5.25% (1% state tax, 1.25% Home Rule Tax, 3% cannabis tax) is what is used to make up the \$250,000 projected amount. This estimates \$4.76 million in sales for one dispensary.

In addition to Evanston, Oak Park projected \$200,000 based upon the 3% cannabis tax only (this does not take into account their home rule tax or 1% sales tax). However, Oak Park has reduced that projection to \$100,000 due to the impact the pandemic may have upon cannabis sales. The updated projection of \$100,000 estimates \$3.33 million in sales for one dispensary.

## Adverse Impacts

In addition to the financial inquiries, there was a question about the specifics of what was considered an "adverse impact." In order to ensure there was no confusion, Management Analyst Alex Arteaga reached out to multiple municipalities (including additional municipalities outside of Cook and Lake Counties) that have a dispensary operating within their boundaries and asked the following in regards to adverse impacts:

1. Were there any citations issued for illegal sales of cannabis?
2. Was there any increase in citations or other enforcement actions for underage possession of cannabis?
3. Was there an increase in police reports in the surrounding areas of the dispensary?
4. Were there any other impacts in the surrounding areas of the dispensary?

The municipalities indicated that:

1. There has been no enforcement action taken for illegal sales of cannabis. Romeoville indicated citations have decreased since cannabis has been legalized.
2. There was no reportable increase in enforcement of underage cannabis sales.
3. There was no reportable increase in any additional criminal activity or calls for service in the surrounding areas of the dispensary. However, Romeoville did indicate that their dispensary was looted during the periods of civil unrest.
4. Multiple municipalities reported increased vehicular traffic and parking issues when their respective dispensaries first opened.

## State Regulations

The Corporation Counsel received a request to provide the Village Board with some of the regulations that the State imposes upon dispensaries when it comes to guarding against illegal sales. A few of the relevant regulations are listed below.

1. Dispensaries are prohibited from selling cannabis to anyone through a drive-through, vending machine or via delivery.
2. Operating hours are allowed between 6:00 a.m. and 10:00 p.m. local time.
3. The dispensary must have surveillance equipment and point of sale equipment in operation during the time any sales are to be made.
4. The dispensary must have two people working in the dispensary at a time.
5. The age of the customer (who must be over 21) must be verified by an employee checking a government issued identification card by use of an electronic reader or scanner. The reader will verify the validity of the ID.
6. All sales are recorded and entered into a statewide database. This information includes the scanned ID, the employee making the sale, what was sold, and the date and time of sale.

The above are just some of the more relevant regulations that are listed to demonstrate the regulations in place to guard against the sale of cannabis to a minor.

## Referendum

At the last Village Board meeting, the Village staff indicated that proposed referendum language would be provided for the Village Board to consider. Below is not only recommended language, but also some other language options for discussion purposes.

### *General Referenda Process*

An advisory referendum, which is what is being proposed in regards to the sale of cannabis, can be initiated by either citizen action (through the petition process) or the Village Board can adopt a resolution to place such a referendum on a ballot. The latter is the method in which the Village Board is considering putting a referendum on the ballot for the November 2020 election. Section 5/3.1-40-60 of the Illinois Municipal Code states:

Advisory referenda. By a vote of the majority of the members of the city council, the council may authorize an advisory question of public policy to be placed on the ballot at the next regularly scheduled election in the municipality. The city council shall certify the question to the proper election authority, which must

submit the question at an election in accordance with the Election Code.<sup>1</sup> 65 ILCS 3.1-40-60

To place a referendum on the ballot, a majority of the Village Board must pass a resolution, which must be approved not less than 79 days prior to the election in which the question is to appear on the ballot. An advisory question is not binding and has no legal effect on the Village's ability to allow or restrict cannabis uses within the Village limits.

It is important to note that only a total three advisory referenda questions can be placed upon the ballot for each jurisdiction. The first three certified questions, that are relevant to the jurisdiction, shall be placed on the ballot and all others thereafter will not appear on the ballot. Essentially, this is first come, first serve.

*Advisory Referendum Question Language:*

There has been a request for the Corporation Counsel to provide sample language and a recommendation as to what language may appear on the ballot in November. While there are no legal restrictions as the actual language to be used in the referendum, it is important to keep in mind the purpose of the question. That purpose is to obtain information and data about how the voting population of the Village feels about the sale of cannabis within the Village limits. Therefore, the simpler the question asked, the better the voting population will understand the question and be able to vote in a way that truly demonstrates the voter's position on the subject.

For reference, the Village submitted three questions of public policy, on a arguably similar issue, in 1974 in regards to the sale of alcohol. Those three questions were as follows:

- (1) "Shall the sale of alcoholic beverages be permitted in restaurants?"
- (2) "Shall the sale of packaged alcohol beverages be permitted?"
- (3) "Shall the sale of alcoholic beverages be permitted in taverns?"

These questions are simple in that they ask about what should be permitted and where. However, one difference between the sale of alcohol and the sale of cannabis is that the Village does not have the authority to determine what types of cannabis products can be sold as it can with alcoholic beverages.

Accordingly, with the goal of keeping the question simple, using past Village language as a model and the constraints of what can be regulated, the recommended question is as follows:

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<sup>1</sup> While this section of the Illinois Municipal Code states "city council," Section 5/3.1-45-5 of the Illinois Municipal Code states that boards of trustees shall exercise the same powers and perform the same duties as the city council in cities.

**“Shall the retail sale of adult use recreational cannabis be permitted within the Village of Wilmette at a business licensed by the State of Illinois?”** This language is similar to and modeled after the City of Park Ridge’s proposed referendum.

*Alternative Language used in other Municipalities*

Alternative language used in other municipalities addressed the type of businesses differently than the proposed language above. Some municipalities specifically address the business as a “dispensary.” This may be problematic for the voter who may not be familiar with the term “dispensary” and as such that language may cause some voter confusion.

Other alternative language also did not limit the referendum question to the retail sale of cannabis, but rather the operation of cannabis business establishments. This question is much broader than a question about the retail sale of cannabis, as cannabis business establishments also include the manufacturing and growing components of the cannabis industry. These are not uses that the Village has been inclined to allow within its limits based on previous discussions.

Finally, other alternative language asked the question in the negative. It asked if the municipality should “prohibit” the sale of cannabis. This language is not recommended because a “yes” vote would necessarily mean one is against the sale of cannabis, while a “no” vote would be in favor of the sale of cannabis. As recommended, asking the question in the affirmative will equate a “yes” vote with supporting the sale of cannabis and a “no” vote with opposing the sale of cannabis.

*Language from other Municipalities*

For reference purposes, please see the chart below which provides either used or proposed referendum language from other municipalities throughout the State

<b>Municipality</b>	<b>Current Status</b>	<b>Referendum Language</b>
Naperville	Referendum approved.	Shall the city of Naperville, in light of state legislation legalizing the possession, consumption, and sale of recreational adult use cannabis, allow the sale of recreational adult use cannabis within its jurisdiction?
O’Fallon	Referendum approved.	Shall the City of O’Fallon allow adult-use cannabis business establishments within the city limits of O’Fallon including the corresponding taxation and legislation?

Park Ridge	Referendum to be held in November.	Shall the City of Park Ridge allow the retail sale of adult use recreational cannabis products at dispensary businesses licensed by the state of Illinois?
Northlake	Referendum approved.	Shall the City of Northlake allow cannabis businesses to operate within the City of Northlake?
Lemont	Referendum rejected.	Shall the Village of Lemont, in Counties of Cook, Will and DuPage, Illinois, allow the operation of a recreational cannabis (marijuana) dispensary within its jurisdiction?
Rosemont	Referendum approved.	Shall the Village of Rosemont, Cook County, Illinois, allow cannabis dispensaries to operate within the boundaries of the Village of Rosemont?
Westchester	Referendum approved.	Shall the Village of Westchester prohibit the location of adult-use cannabis dispensing organizations within the Village of Westchester?
Cicero	Referendum approved.	Should the sale of cannabis and cannabis products for recreational use by adults 21 and older be allowed at licensed dispensaries within the Town of Cicero?

### **Timeline**

Unless the Village Board determines that a referendum is not the appropriate vehicle for determining whether cannabis dispensaries should be permitted in Wilmette, the following timeline will be followed:

- July 14 - Presentation of suggested referendum language
- July 28 - Adoption of resolution placing a referendum on the November 2020 ballot

Regardless of the outcome of the referendum, additional actions will be required to either make the restrictions imposed by the moratorium permanent or determine the appropriate zoning districts for retail cannabis dispensaries.

### **Budget Impact**

There may be an increase in revenue should dispensaries be allowed and one or more dispensaries are operating within the Village limits.

### **Documents Attached**

1. Draft resolution approving a referendum to be placed on the November 2020 general election ballot
2. June 23, 2020 Memorandum

**RESOLUTION NO. 2020-R-XX**

**A RESOLUTION PROVIDING FOR AN REQUIRING THE SUBMISSION OF AN  
ADVISORY QUESTIONS OF PUBLIC POLICY CONCERNING THE ALLOWANCE  
OF RECREATIONAL CANNABIS SALES TO APPEAR ON THE BALLOT OF THE  
ELECTORS OF THE VILLAGE OF WILMETTE, COOK COUNTY, ILLINOIS AT  
THE NOVEMBER 3, 2020 GENERAL ELECTION**

**WHEREAS**, the Village of Wilmette, Cook County, Illinois (the “Village”) is a home rule municipal corporation as provided in Article VII, Section 6 of the 1970 Constitution of the State of Illinois and, pursuant to said constitutional authority, may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

**WHEREAS**, the Village is authorized pursuant to its Home Rule authority as well as by the Illinois Election Code and the Illinois Municipal Code, to submit an advisory question of public policy (“referendum”) to the voters at an election; and

**WHEREAS**, pursuant to the Illinois Cannabis Regulation and Tax Act (410 ILCS 705/1-1 *et. seq.*)(“Act”), which took effect on January 1, 2020, individuals over the age of 21 will be allowed to lawfully possess and consume cannabis; and

**WHEREAS**, the Village adopted Ordinance 2019-O-63 on October 22, 2019, which amended the Village Code in regards to the possession and consumption of cannabis within the Village, but determined that public input was desired for the evaluation process for the allowance or prohibition of cannabis sales within the Village; and

**WHEREAS**, the Village Board has determined that an advisory referendum to be placed on the November 2020 election ballot will be one effective method of obtaining public input; and

**WHEREAS**, the Village staff is directed to place a resolution authorizing such an advisory referendum, in compliance with the Illinois Election Code, at the appropriate Village

Board meeting to ensure the placement of the proposed referendum upon the ballot at the November 2020 election; and

**NOW, THEREFORE, BE IT RESOLVED** by the President and Board of Trustees of the Village of Wilmette as follows:

**SECTION ONE:** The above recitals are incorporated into this section one as if fully set forth.

**SECTION TWO:** The following proposition (“Proposition”) shall be submitted to the voters of the Village of Wilmette, Cook County, Illinois at the General Election on November 3, 2020.

Shall the retail sale of adult use recreational cannabis be permitted within the Village of Wilmette at a business licensed by the State of Illinois?	Yes	
	No	

**SECTION THREE:** The Village Clerk is hereby directed to file and certify the Proposition to the proper Election Authorities including the County Clerk of Cook County, along with a signed and sealed original of this Resolution, in a timely manner so that the above Proposition shall be submitted to the voters of the Village of Wilmette at the General Election to be held on November 3, 2020.

**SECTION FOUR:** This Resolution shall be in full force and effect from and after its passage as provided by law.

**ADOPTED** by the President and Board of Trustees of the Village of Wilmette, Illinois, on the 28<sup>th</sup> day of **July 2020** according to the following roll call vote:

**AYES:** None.

**NAYS:** None.

**ABSTAIN:** None.

**ABSENT:**      None. \_\_\_\_\_

\_\_\_\_\_  
Village Clerk

**Approved on July 28, 2020**

\_\_\_\_\_  
Village President

Attest:

\_\_\_\_\_  
Village Clerk