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Date: August 22, 2019
To: Village President and Board of Trustees
From: [Timothy J. Frenzer](#), Village Manager
Subject: **Discussion of Next Steps Concerning State Law Legalizing Possession and Use of Recreational Cannabis**

Appointment of Judiciary Committee as Special Zoning Committee

Recommended Actions

1. Appoint the Judiciary Committee as a Special Zoning Committee to review amendments to the Zoning Ordinance necessitated by the Illinois Cannabis Regulation and Tax Act, as described in the accompanying memorandum prepared by the Corporation Counsel.
2. Review the options discussed in this memorandum on how to proceed, and provide Staff with additional direction in September.

Overview

In connection with this Agenda item, the Village Board will have received a detailed memorandum from Corporation Counsel Jeffrey Stein, discussing the provisions of the new Illinois Cannabis Regulation and Tax Act ("Act"), which will take effect on January 1, 2020.¹ Mr. Stein's memo explains the provisions of the Act and also explains the permitted scope of municipal regulation. While municipalities may not prohibit the lawful possession of recreational cannabis after January 1, 2020, they do still retain the

¹ 410 ILCS 705, *et seq.*

authority to determine whether or not to permit sale of recreational cannabis at retail, and if so, where and under what limitations as may be allowed under the Act. While not identical, the choices left to the Village under the Act parallel local choices concerning the sale of alcoholic beverages.

Mr. Stein is recommending to the Village Board that, regardless of what next steps the Village Board decides to take, there are amendments to the “Definitions” part of the Zoning Ordinance and other Village Code amendments necessitated by the Act relating to the differentiation between medical cannabis and non-medical cannabis. As any amendment to the Zoning Ordinance requires the Village Board to appoint a Special Zoning Committee to conduct the required public hearing, we recommend that the Village Board appoint the Judiciary Committee as a Special Zoning Committee. The Judiciary Committee will then be authorized to review the Corporation Counsel’s recommendations and submit a report and recommendation to the Village Board in sufficient time to adopt an Ordinance prior to the end of 2019. As the Judiciary Committee reviews matters related to the Liquor Control Ordinance and liquor licensing, it seems the most appropriate standing committee to review this matter.

Aside from the technical amendments to the Zoning Ordinance that need to be done regardless of what approach the Village decides to take regarding the sale of cannabis for recreational purposes, the Village does need to take additional legislative actions to prepare for the Act taking effect. This is the case regardless of whether the Village intends to permit or prohibit the sale of non-medical cannabis. The purpose of this memorandum is to provide some background on the Village’s prior treatment of cannabis and to outline in broad terms the Village’s options going forward.

Prior Treatment of Cannabis in Wilmette

Consistent with the State’s Compassionate Use of Medical Cannabis Pilot Program Act (as discussed in the Corporation Counsel’s memorandum), Wilmette amended its Zoning Ordinance and Village Code in 2014 to provide for the potential sale of medical cannabis.² Although there are no medical cannabis dispensaries in Wilmette, in compliance with State law the Village did amend its Zoning Ordinance to identify the limited area where a dispensary could be located if the State should provide such a license.

Insofar as non-medical, recreational use of cannabis is concerned, possession has been unlawful in Wilmette and statewide. However, Wilmette was one of the first communities in Illinois to “decriminalize” possession of small amounts of cannabis. “Decriminalization” means that, by local ordinance, police may, in their discretion, issue local ordinance tickets for possession of small amounts of cannabis, instead of arresting and charging the offender with a criminal offense under State law. Wilmette authorized local ordinance tickets in 1991, and this provision of the Village Code is still in effect.³

² Ord. 2014-O-1, adopted Jan. 28, 2014.

³ Ord. 91-O-74, adopted Nov. 5, 1991. See Wilmette Village Code (2019), Ch. 12, §12-350, *et seq.*

Options Going Forward

As the Corporation Counsel's memorandum discusses in more detail, the Village essentially has three regulatory paths it may choose from going forward. While the Act preempts considerable municipal authority, it still allows for a municipality to prohibit recreational cannabis dispensaries.

1. Permit the Sale of Cannabis by a Licensed Dispensary

The Village could elect to let the Act take effect here, which would allow a dispensary properly licensed by the State to conduct business in Wilmette. This is the option that Northbrook, for example, is pursuing.

Although the Act will take effect without any action by a municipality, if a municipality wants to permit a dispensary to operate it will still need to adopt a local zoning ordinance amendment identifying the zoning district or districts in which such a business would be permitted to operate, whether it would be a permitted or special use, and any other limitations, such as density standards (*i.e.* limiting how many are allowed and how close to each other they can be located). A local tax ordinance would also need to be adopted. Such ordinances should be in place before the end of 2019.

2. Prohibit the Sale of Recreational Cannabis

The Act does allow a municipality to prohibit dispensaries within its jurisdiction (although possession of lawfully acquired cannabis cannot be prohibited). This is the option that Lake Bluff, for example, is considering.

Prohibiting recreational cannabis dispensaries would require a local ordinance to that effect, adopted prior to the end of 2019. Medical dispensaries cannot be prohibited. Regardless, a local ordinance adopting the new statutory definitions (as recommended by the Corporation Counsel) will still be necessary. It also may be advisable to adopt a local taxation ordinance, even if recreational sale is prohibited, to guard against future State preemption of local regulation or taxation (as occurred with the State preemption of local tobacco taxes).

3. Adopt a Moratorium (Red Flag) Ordinance, Pending Review or Referendum

Another option would be to adopt an ordinance initially prohibiting recreational cannabis dispensaries, either indefinitely or with a sunset clause, with the objective of conducting additional review and gathering more resident input. This amounts to a moratorium on sale of cannabis for recreational use, and are sometimes referred to as "red flag" ordinances. Park Ridge, for example, indicated its intention to adopt a "red flag" ordinance pending the result of an advisory referendum in 2020.

During the moratorium period, the experience of municipalities that decided to allow dispensaries could be evaluated. One concern in that regard is that, depending on the speed of the State's licensing process, there may be some significant time before a

meaningful period of experience occurs. As discussed above in the case of outright prohibition, it will also still be necessary to adopt a local ordinance making the appropriate changes to definitions, and a local taxation ordinance may still be advisable.

In terms of gathering additional public opinion, Park Ridge has indicated its desire to proceed with an advisory referendum. That is consistent with how many municipalities, including Wilmette, dealt with the somewhat comparable issue of going from “dry” to allowing the sale of alcoholic beverages.

Wilmette does have precedent in this regard, in terms of liquor control. In 1974, after about one hundred years of prohibiting the sale of alcoholic beverages, and at the urging of the business community, the Village Board voted to add referendum questions on whether the sale of alcohol should be permitted in Wilmette to the March 1974 Special Election ballot.⁴ The Village Board chose this election because a referendum on the creation of the Regional Transportation Authority (RTA) was also on the ballot (apparently in the belief that there would be strong voter turnout).⁵ The voters’ approval led to the adoption of ordinances legalizing the sale of alcoholic beverages at retail and in restaurants.⁶

The March 20, 2018 Gubernatorial Primary Election included a Cook County-wide referendum question asking voters whether they approved of the legalization of cannabis for recreational use by persons 21 years of age or older.⁷ The results showed that the proposition was approved by a margin of 68% to 32% county-wide (both Chicago and suburban Cook County).⁸ The referendum was also approved by Wilmette voters by an almost identically substantial margin of 67% to 33%.⁹ It should be noted, however, that the referendum question asked if the State of Illinois should legalize “marijuana,” which is not the same as asking whether the retail sale of cannabis should

⁴ The Village Board actually voted to add three referendum questions concerning sale of alcohol: (1) “Shall the sale of alcoholic beverages be permitted in restaurants?” (2) “Shall the sale of packaged alcohol beverages be permitted?” and (3) “Shall the sale of alcoholic beverages be permitted in taverns?” *Minutes of the Special Meeting of the President and Board of Trustees of the Village of Wilmette, Jan. 10, 1974.*

⁵ Bushnell, George D., *Wilmette: A History*, Wilmette Bicentennial Comm’n (2d Ed., 1997), pp. 193-196.

⁶ The canvass of results showed that the question of permitting sale of alcohol in restaurants was approved 5,778 to 3,223, the question of permitting sale at retail was approved 4,596 to 4,242, and the question of sale in taverns was disapproved, 6,694 to 2,007. *Minutes of the Regular Meeting of the President and Board of Trustees of the Village of Wilmette, April 2, 1974.*

⁷ The referendum question was, “Shall the State of Illinois legalize the cultivation, manufacture, distribution, testing, and sale of marijuana and marijuana products for recreational use by adults 21 and older subject to state regulation, taxation and local ordinance?” *Source: Cook County Clerk*

⁸ *Source: Cook County Clerk, Post-Election Report, March 20, 2018.*

⁹ *Source: Cook County Clerk.* It should be noted the Wilmette results are approximate, as the county-wide referendum results are organized by township precinct, and a small portion of Wilmette is included in Northfield Township Precinct 35, in addition to New Trier Township. Precinct 35 totals are included, but it is unknown how many of the 326 votes cast on the referendum are from Wilmette residents. Nevertheless, they cannot materially alter the substantial margin of approval.

be permitted in Wilmette, specifically. The same result may not have been obtained if the referendum question was specific to Wilmette or asked about licensing dispensaries.

Although a public hearing process may and often is also utilized, public hearings also generate comment from participants who self-select, and therefore may not represent an accurate cross-section of public opinion. A referendum would engage a considerably larger sample size of residents, particularly if tied to an election which was expected to have above-average voter turnout. As discussed above, referenda are often used with liquor control issues because such decisions are quality of life/nature of the community issues, as opposed to purely administrative matters. A referendum would also demonstrate whether the apparently overwhelming resident support for legalization of cannabis in 2018 translates into actual support for local dispensaries.

Should the Village choose this option, the next logical election to add such a referendum to would be the November 2020 General Election, as interest in the Presidential election is likely to be very high. Spring primary elections are more problematic, as not all persons want to declare a political affiliation to obtain a ballot, so special non-partisan referendum ballots are required. Additionally, one political party may or may not have as substantial a level of interest in the primary election. Therefore, a general or consolidated election is preferable.

TJF