



Agenda Cover Memorandum

Meeting Date: March 2, 2020 cpd/033-20

Meeting Type: Committee of the Whole City Council Budget Workshop

Item Title: Approve the Final Reading of a Resolution Providing for and Requiring Submission of Advisory Question of Public Policy Concerning the Allowance of Recreational Cannabis Dispensary Business to Appear on the Ballot of the Electors of the City of Park Ridge, Cook County, Illinois at the November 3, 2020 General Election

Item Type: Transfer Budget Amendment Purchase Order Other

Action Requested: Approval For Discussion Feedback Requested For Your Information

Staff Contact: Adam Simon, City Attorney
Jim Brown, C.P.&D. Director Phone: (847) 318-5296 Email: jbrown@parkridge.us

Background:

An advisory resolution has been prepared by the City's attorneys and is presented here for approval. The resolution was discussed at the Procedures and Relations Committee on 24 February. At that time a motion to add a phrase to the question found in Section 1 of the resolution failed by a vote of 2-4. The vote to approve the resolution, as presented, however, was approved by a vote of 6-0.

Three memoranda from the City Attorney discussing the procedures and implications of an advisory referendum are attached. Additionally, there is a timeline of the City Council's discussions regarding recreational cannabis.

Recommendation:

Approve the Final Reading of a Resolution Providing for and Requiring Submission of Advisory Question of Public Policy Concerning the Allowance of Recreational Cannabis Dispensary Business to Appear on the Ballot of the Electors of the City of Park Ridge, Cook County, Illinois at the November 3, 2020 General Election

Attachment(s), if any:

- A Resolution Providing for and Requiring the Submission of an Advisory Question of Public Policy Concerning the Allowance of Recreational Cannabis Dispensary Businesses to Appear on the Ballot of the Electors of the City of Park Ridge, Cook County, Illinois, at the November 3, 2020 General Election
- City Attorney memorandum, Subject: Talking Points on Recreational Cannabis Advisory Referendum, dated February 20, 2020
- City Attorney memorandum, Subject: Limits on the Number of Referenda on the Ballot in a Single Election, dated February 6, 2020
- City Attorney memorandum, Subject: Advisory Referendum Process and Timeline, Dec 5, 2019
- Timeline of City Council Discussions and Actions Regarding Recreational Cannabis

CITY OF PARK RIDGE

RESOLUTION NO. 2020- _____

A RESOLUTION PROVIDING FOR AND REQUIRING THE SUBMISSION OF AN ADVISORY QUESTION OF PUBLIC POLICY CONCERNING THE ALLOWANCE OF RECREATIONAL CANNABIS DISPENSARY BUSINESSES TO APPEAR ON THE BALLOT OF THE ELECTORS OF THE CITY OF PARK RIDGE, COOK COUNTY, ILLINOIS AT THE NOVEMBER 3, 2020 GENERAL ELECTION

WHEREAS, the City of Park Ridge is an Illinois home rule municipal corporation organized and operating pursuant to Article VII of the Illinois Constitution of 1970; and

WHEREAS, the City is authorized by the Illinois Election Code and the Illinois Municipal Code, 65 ILCS 5/3.1-40-60, as well as its home rule powers, to submit an advisory question of public policy to the voters at an upcoming election; and

WHEREAS, the Illinois General Assembly recently enacted the Cannabis Regulation and Tax Act ("**Act**") which legalized the adult use of cannabis in the State of Illinois; and

WHEREAS, pursuant to the Act, Illinois municipalities have the authority to regulate or prohibit cannabis businesses within their corporate boundaries; and

WHEREAS, the City Council previously enacted an ordinance to prohibit cannabis businesses from locating within the City limits; and

WHEREAS, the City Council desires to further study the issue of cannabis businesses in the City of Park Ridge, and has determined that it is desirable to gather feedback from voters in an advisory referendum; and

WHEREAS, in furtherance thereof, the City Council is proposing the submission of an advisory question of public policy to the voters at the November 3, 2020 general election concerning the allowance of recreational cannabis dispensary businesses in the City limits, as set forth in this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Park Ridge, Cook County, Illinois, pursuant to its home rule authority provided under Article VII of the Illinois Constitution of 1970 as follows:

SECTION 1: The following proposition (“***Proposition***”) shall be submitted to the voters of the City of Park Ridge, Cook County, Illinois at the General Election on November 3, 2020:

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?	Yes	
	No	

SECTION 2: The City 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 City of Park Ridge at the General Election to be held on November 3, 2020.

SECTION 3: This Resolution shall be in full force and effect from and after its passage, approval and publication according to law.

Adopted by the City Council of the City of Park Ridge, Illinois this ___ day of _____, 2020.

VOTE:

AYES: _____

NAYS: _____

ABSENT: _____

Approved by me this
 _____ day of _____, 2020.

 Mayor Marty Maloney

Attest:

 City Clerk



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MEMORANDUM

To: Mayor and City Council
City of Park Ridge

CC: Joe Gilmore, City Manager

From: Adam B. Simon
Julie A. Tappendorf

Subject: Talking Points for Recreational Cannabis Advisory Referendum

Date: February 20, 2020

The City is considering whether to place an advisory referendum on the ballot for the November 2020 General Election. The purpose of this memorandum is to explain the legal constraints on the type of information which can be distributed by the City in relation to such a referendum.

Legal Background

Article VIII, Section 1, of the Illinois Constitution states that “Public funds, property or credit shall be used only for public purposes,” and that units of local government shall expend public funds “only as authorized by law or ordinance.”¹ This rule has been codified in the Election Code, which expressly authorizes units of government to expend public funds in regards to referenda only for the limited purpose of disseminating factual information about the proposition. The Election Code states in relevant part as follows:

“No public funds shall be used to urge any elector to vote for or against any candidate or proposition, or be appropriated for political or campaign purposes to any candidate or political organization. This Section shall not prohibit the use of public funds for dissemination of factual information relative to any proposition appearing on an election ballot.”²

¹ Ill. Const. of 1970, Art. VIII, Sec. 1(a) and (b).

² 10 ILCS 5/9-25.1(b).

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The State Officials and Employees Ethics Act also regulates the use of public resources to further political activities. That law prohibits the use of public resources for most types of political activity, including campaign strategizing, preparation and distribution of campaign literature, referendum polling, and participating in any other prohibited political activity while “on the clock” for one’s government job.³ Therefore, it is important that City officers and employees refrain from using any public funds or resources to “urge any elector to vote for or against” the proposed tax referendum.

Thus, the challenge for the City is to navigate the fine line between information that is factual in nature, and that which crosses the line into political advocacy. Since these rules are rather strict, and these actions can be under close public scrutiny, City officials and employees who want to remain out of trouble with the law are well-advised to take a conservative approach with what they say and do in regards to the referendum, and maintain a strict wall of separation between providing factual information and advocating for or against the referendum. They should also keep a strict wall between what actions they take in their official capacities as City officials, or while “on the clock” as City employees, and the actions they take on their own personal time.

Cannabis Facts

To provide a guide for what City officials can say in relation to the referendum,⁴ here is a list of facts related to the use and sale of recreational marijuana under the Cannabis Regulation and Tax Act, as amended:

1. Who is allowed to use recreational marijuana?

Only adults over the age of 21. A dispensing organization will refuse to sell cannabis to anyone unless the person produces valid identification showing that the person is 21 years of age or older.

2. Can the City prohibit the use of recreational marijuana?

No. No local government may prohibit the use of recreational marijuana by adults so long as the use complies with the terms and conditions of State law.

³ 5 ILCS 430/70-5(a).

⁴ The limitation on advocacy only springs into effect once the proposition is adopted by the City Council and certified to the County Clerk.

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3. Can someone use marijuana at or near a dispensary?

No. The City does not permit the on-site consumption of cannabis at any business within the community. In addition, the use of marijuana in public places is prohibited by State law.

State law grants the City broad authority to authorize and regulate privately-owned businesses where cannabis and cannabis products may be consumed on-site. Possibly similar to hookah lounges, the City may consider whether to allow these "cannabis lounges" and how to exercise their broad authority to regulate this novel use. The City's authority to regulate and license the on-site consumption of recreational cannabis is much broader than its authority over the other operational characteristics of cannabis business establishments licensed by the State.

4. If I vote yes, will the City allow on-site consumption?

Not necessarily. The referendum is only advisory and not binding. Furthermore, the question only asks whether the City should allow the sale of marijuana. Therefore, this issue is not addressed by the proposition.

5. If the referendum passes, what controls can the City enforce to regulate the sale of marijuana?

If the City elects to permit the sale of cannabis, the new law also allows local governments to adopt (1) reasonable zoning ordinances that do not conflict with the Act; and (2) ordinances and rules governing the time, place, manner, and number of cannabis businesses consistent with the Act. Possible regulations include:

- requiring special use permits,
- distance restrictions between cannabis businesses and other sensitive places (e.g. parks, schools, religious institutions, libraries),
- hours of operation (between 6 a.m. and 10 p.m.), or
- caps on the number of cannabis businesses allowed within the City.

However, the City would be unable to regulate these activities in a manner more restrictive than provided in the Act. For example, two cannabis business establishments cannot be closer than 1,500 feet apart and cannot advertise cannabis products closer

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than 1,000 feet from the perimeter of school grounds, a playground, a public park or a public library.

Currently, the City's zoning regulations of medical cannabis dispensaries require a special use permit and are only allowed in the B-3 District.

6. Where will the City allow the sale of recreational marijuana?

We do not know at this time. If the referendum describes support for the sale of recreational marijuana in the City, the City Council can ask the Planning and Zoning Commission to study and prepare zoning regulations for consideration by the City Council. A public hearing will be held before any final decision is made.

7. Can the City levy a tax on the sale of cannabis?

Yes. The City can adopt an ordinance to impose a local tax on the operation of a cannabis dispensary. The rate of tax cannot exceed 3% of the dispensary's gross receipts from the sale of non-medical cannabis. The municipal cannabis sales tax will be collected and enforced by the Department of Revenue. To collect the tax the City must adopt and file a tax ordinance with the Department before April 1 or October 1 for it to become effective on July 1 or January 1, respectively.

The local cannabis sales tax is in addition to any other applicable sales taxes. The regular State and home rule sales tax also apply to the purchase of adult use recreational marijuana. Currently, the City receives a 1% share of the State sales tax and a 1% home rule sales tax on the sale of goods.

8. Can a business open a dispensary if the referendum passes?

No, not yet. The referendum is only advisory and not binding. Before a dispensary can open for business it must first receive a license from the State of Illinois, Department of Financial and Professional Regulation, and zoning approval from the City of Park Ridge. Please see the question #5 about the City's zoning authority.

9. Are other marijuana-related businesses affected by the referendum?

No. The City has enacted a ban against all types of cannabis business establishments, including cultivation centers, craft growers, infusers and transporters. The referendum is only seeking public input about the potential operation of dispensaries in the City.

10. What is the process for a dispensary to sell recreational marijuana?

Before cannabis is dispensed:

- The age of the purchaser shall be verified by checking a government-issued identification card by use of an electronic reader or electronic scanning device to scan the identification;
- The validity of the government-issued identification card must be verified;
- Any appropriate purchaser education or support materials shall be offered; and
- Information must be entered into the state's cannabis electronic verification system, including the dispensing organization's agent's identification number, the dispensing organization's identification number, the amount, type (including strain, if applicable) of cannabis or cannabis-infused product dispensed, and the date and time the cannabis is dispensed.

11. How much marijuana is allowed to be purchased at one time?

A person who is 21 years of age or older and a resident of this State, may possess: (1) 30 grams of cannabis flower; (2) no more than 500 milligrams of THC contained in cannabis-infused product; and (3) 5 grams of cannabis concentrate. Based on these possession limits, a dispensary should not sell more than these quantities in any one transaction.

12. Can a dispensary operate a delivery service?

No. State law prohibits a dispensary from operating a delivery service, selling through vending machines or operating a drive through window.

13. Can a dispensary sell alcohol?

No. A dispensary is prohibited from selling any product that contains alcohol except for tinctures no larger than 100 ml. A cannabis tincture is an alcohol-based liquid extract which can be taken orally or with food.

MEMORANDUM

To: P&R COW Committee, City of Park Ridge

From: Julie Tappendorf & Adam Simon, City Attorneys

Subject: Limits on the Number of Referenda on the Ballot in a Single Election

Date: February 6, 2020

At the last P&R Committee of the Whole meeting, the Committee discussed the potential placement of an advisory referendum on the ballot for the November election relating to the location of cannabis businesses in the City. A question arose as to the “priority” of public questions on a ballot given the statutory restriction that only three ballot questions be on the ballot at the same election. This memorandum discusses that statutory limitation.

Public questions (also known as referenda) can either be binding or advisory. A binding question has legal effect if it is approved. An example of a binding question is a ballot question that asks the voters to authorize a municipality to become home rule. An advisory question, on the other hand, has no legal effect – it simply raises a question of public policy to the voters. The City has been discussing an advisory question on the issue of cannabis businesses in Park Ridge.

As a general rule, public questions can be initiated in one of two ways. For example, an advisory referendum like the one being discussed by the City can be initiated either by the City Council or by the filing of a petition signed by a certain number of City registered voters.

Regardless of whether the referenda is binding or advisory or petition-initiated or City-initiated, Section 28-1 of the Election Code limits the number of public questions on any one ballot in a respective political subdivision (i.e., in the City) to three. The statute did *exclude* certain specified public questions from the 3 public question cap. For example, certain township and county referenda are excluded from the cap on 3 public questions, as are back door referenda and property tax cap referenda. But all other referenda, regardless of legal effect and regardless of how they are initiated that are proposed to be placed on the ballot in the City would count towards the 3 referenda cap.

Courts have made it clear that this is a “first-come, first-served” rule. In other words, the first 3 public questions filed with the election authority will be the questions allowed on the ballot. As a practical matter, government-initiated referenda questions often take priority simply because they are easier to initiate – they only require approval by the corporate authorities prior to filing rather than a petition-initiated question that requires proponents to obtain the statutorily required number of signatures before filing.

In sum, except for the very limited exclusions set out in the statute, all public questions, regardless of legal effect or method of initiation, will count towards the “rule of 3” cap on the number of public questions that will be on the ballot in a political subdivision at a particular election.



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MEMORANDUM

To: Mayor and City Council
City of Park Ridge

Cc: Joe Gilmore, City Manager

From: Adam B. Simon

Subject: Advisory Referendum Process and Timeline

Date: December 5, 2019

At the last City Council meeting, there was discussion about the placement of an advisory referendum on the ballot to ask City voters whether they prefer for the City to permit cannabis business establishments to operate within the City. There were questions about the process and timing for placement of a referendum on the ballot for the upcoming General Election that takes place on November 3, 2020. This memorandum provides a brief summary of the referendum process and a timeline for placing an advisory referendum on the General Election ballot.

Referendum Process

An advisory referendum can be initiated in one of two ways. Citizens can circulate petitions for signature by City voters to place an advisory referendum on the ballot. 10 ILCS 5/28-6.

Alternatively, the City Council can adopt a resolution to place an advisory referendum on the ballot. 65 ILCS 5/3.1-40-60 (reprinted below).

Sec. 3.1-40-60. 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.

This memorandum addresses the process for a City-initiated referendum.

To initiate a referendum by resolution, the City Council must approve the resolution by majority vote of the City Council. The resolution must be approved not less than 79 days prior to the election at which the proposition is to be presented to the voters. The resolution should specify at which election the referendum will be on the ballot and contain the form of the ballot question.

The form of the ballot question must be decided prior to adopting the resolution. Once approved by resolution, the ballot question cannot be changed.

Not less than 68 days before the election, the City Clerk must certify the referendum to the County. The certifications shall include the form of the public question to be placed on the ballot, the date on which the public question was initiated by the adoption of a resolution or ordinance, and a certified copy of any resolution or ordinance requiring the submission of the public question.

An advisory referendum question is not binding in any way, and has no legal effect on the City's authority to establish regulations governing the operation of cannabis business establishments.

It is important to note that no more than 3 referenda can be on a ballot in the City. The City may need to consider whether there are other government bodies with overlapping voter jurisdiction with City voters that may be considering a referendum at the same election. Only the first 3 referenda that are certified to the County will be placed on the ballot. At least one referendum is already scheduled for the November 3, 2020 General Election – the statewide constitutional referendum on the graduated income tax.

Advisory Referendum Question

I recommend the form of the question be simple, straightforward and asked in the positive so it is easy to understand that “yes” means “yes.” Below is a proposed form of the question.

“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?”

Timeline for November 3, 2020 General Election

If the City wants to place an advisory referendum on the ballot for the November 3, 2020 general election, the following deadlines are applicable:

August 17, 2020 (79 days preceding the election)¹: Last day for the City Council to adopt a resolution to place an advisory referendum on the ballot.

Based on the City Council's meeting schedule, the August 17, 2020 City Council meeting is the last meeting at which the City Council can adopt a resolution initiating a referendum question for the November 3 primary election. To be safe, the City Council should consider adopting the

¹ Technically, 79 days preceding the General Election is Saturday, August 15, 2020. However, the election code permits the adoption of a resolution the first business day next following a State holiday, Saturday or Sunday.

resolution on or before the August 3, 2020 City Council meeting to avoid any disputes related to the weekend deadline.

August 26, 2020 (68 days preceding the election): Last day for the City Clerk to certify the advisory referendum to the County.

September 3, 2020 to October 23, 2020 (10-60 days preceding the election): County Clerk must publish notice of any referendum question within this time period.

October 23, 2020 (not less than 10 days preceding the election): City Clerk must post a copy of the notice of the referendum at City Hall. County Clerk must post a copy of the notice at the County Clerk's office.

November 3, 2020: Date of general election.

One question presented during the last Council meeting is whether there is any time that is too early to initiate an advisory referendum. The statute does not express any such limitation. However, the City may consider the restrictions which apply to using public resources to advocate for or against a referendum. As you know, the City cannot expend public funds to advocate for or against a ballot proposition, but it can disseminate factual information. This restriction only applies once the referendum has been authorized. Before the City Council adopts the resolution to authorize the advisory referendum, the restriction on the use of public resources does not apply.

If you have any follow up questions, please direct them to Joe Gilmore so that the City Attorney can address them during office hours and be prepared to answer the questions during a meeting.

Timeline of City Council Discussions and Actions Regarding Recreational Cannabis

(thru March 2, 2020)

- July 1, 2019 - Overview of recreational cannabis discussion at City Council meeting
- August 12, 2019 – Regulation of recreational cannabis discussed at COW meeting. Results of a ballot referendum from 2018 were forwarded to the COW for this discussion. COW directs staff to conduct an informal poll, on the City website, regarding desirability of recreational cannabis establishments
- September 23, 2019 – Results of City poll discussed at COW meeting. Additionally, the first reading of an ordinance amending the Municipal Code to opt out of recreational cannabis establishments approved by a vote of 4-2.
- October 7, 2019 – The final reading of an ordinance amending the Municipal Code to opt out of recreational cannabis passed by a vote of 4-3. [Note: there were several motions to amend.]
- November 14, 2019 – Public hearing before Planning & Zoning Commission on amendments to prohibit recreational cannabis establishments.
- December 2, 2019 – First reading of an ordinance to amend zoning code to prohibit recreational cannabis establishments passed by City Council. Aldermen requested information on referendum procedures and timeline.
- December 16, 2019 – Final reading of an ordinance to amend zoning code to prohibit recreational cannabis establishments passed by City Council.
- January 27, 2020 – Discussion of potential advisory referendum at COW meeting. Aldermen desired to see draft question.
- February 3, 2020 – Presentation and discussion of a draft question for potential advisory referendum regarding the establishment of recreational cannabis businesses in the City.
- February 24, 2020 – Draft resolution for an advisory referendum approved by P&R Committee.
- March 2, 2020 – Vote to approve resolution for an advisory referendum as an action agenda at City Council meeting.