



Legislation Text

File #: 19-975, Version: 1

CITY COUNCIL AGENDA ITEM

ACTION REQUESTED:

Receive the staff report and consider adopting the proposed resolution establishing an adult use cannabis referendum.

DEPARTMENT: Legal Department

SUBMITTED BY: Michael DiSanto, City Attorney; Pam Gallahue, Ph.D., Director-City Clerk; and Allison Laff, TED Deputy Director

BOARD/COMMISSION REVIEW:

N/A

BACKGROUND:

Adult Use Cannabis

On June 25, 2019, Illinois Gov. J.B. Pritzker signed into law the Cannabis Regulation and Tax Act (CRTA) legalizing and regulating the production, consumption, and sale of cannabis in Illinois. It was approved by both houses by May 31, 2019 and will come into effect January 1, 2020. Under the CRTA, personal possession of up to 30 grams of cannabis is legal for Illinois residents at least 21 years of age, with lower limits for non-residents. The CRTA preserves local zoning authority and directly authorizes municipalities to prohibit (opt-out) or significantly limit the location of cannabis businesses by ordinance. Municipalities have the authority to enact reasonable zoning regulations that are not in conflict with the CRTA. This would include the authority to opt out of either commercial production or distribution (dispensaries) of adult use cannabis within their jurisdiction.

July 16, 2019 City Council Direction

At the July 16, 2019 City Council meeting, Council considered Grassroots Cannabis and Green Thumb Industries' request to begin operating adult use cannabis dispensaries in the City of Naperville as soon as January 1, 2020. The petitioners made presentations to Council and approximately 15 speakers also provided testimony. After approximately 2.5 hours of discussion, Council voted 5-4 to direct staff to bring back to Council an ordinance prohibiting the local retail sale of adult use cannabis.

August 20, 2019 City Council Direction

At the August 20, 2019 City Council meeting, Council held the first reading of an ordinance amending the Naperville Municipal Code to prohibit adult use cannabis business establishments. The petitioner, GTI, made a presentation to Council and approximately 20 speakers also provided testimony. After approximately two hours of discussion, Council directed staff to bring back to Council two options for consideration: (1) the ordinance prohibiting local adult use cannabis business establishments; and (2)

a plan to establish zoning for local adult use cannabis business establishments.

September 3, 2019 City Council Direction

At the September 3, 2019 City Council meeting, Council considered an ordinance prohibiting local adult use cannabis business establishments and a plan to establish zoning for them. Approximately 240 speakers provided testimony and after approximately four hours of discussion, Council voted 6-3 to pass the ordinance prohibiting adult use cannabis business establishments and to direct staff to bring back a report that advises Council concerning including an advisory (non-binding) referenda proposition on a future election ballot.

DISCUSSION:

Referendum Types

Illinois law allows two types of referendum on the ballot; binding and advisory. A binding referendum, if approved by a majority of the voters, has the effect of law and can only be used for matters specifically authorized by statute or the Constitution. Examples of binding referenda propositions allowed by law are whether to impose term limits for City Council members and whether City Council members should be elected by districts or at-large.

Non-binding, or advisory, referenda propositions have no legal affect if passed by the voters, but are often used to gauge the opinion of the community on a public policy issue. City Council has specific statutory authority to place advisory referenda propositions concerning public policy on the ballot. An example of an appropriate advisory referendum proposition is whether the Illinois legislature should pass meaningful pension reform for public safety employees; which City Council placed on the ballot in 2010.

The question of whether the City of Naperville should allow the local retail sale of adult use cannabis would be advisory, non-binding referenda as a cannabis referenda is not specifically authorized by statute or the Constitution.

Placement on the Ballot

Referenda, either advisory or binding, can be placed on the ballot by one of two methods. The first method is initiated via a petition, whereby registered voters in sufficient numbers as required by law sign a petition proposing a specific referenda proposition. The second method is via a resolution passed by a governing body. In the City's case, the City Council may place specific referenda propositions on the ballot by passing a resolution, by a simple majority, authorizing the placement of specific referenda propositions on the ballot.

Timeline for Placement on Ballot

To be eligible for inclusion on a ballot, Governing bodies may adopt a resolution authorizing an advisory referendum not more than one year prior to a regularly scheduled election, but not less than 79 days before said election. The next regularly scheduled election is the March 17, 2020 general primary election.

To establish a referenda proposition on the March 17 ballot, the City Council must adopt a resolution authorizing a specific referenda proposition at last 79 days prior to the election (i.e., on or before December 29, 2019). If City Council targets the November 3, 2020 general election, the City Council must adopt a resolution **after** November 3, 2019 **and on or before** August 16, 2020.

If Council chooses the March 17, 2020 general primary election, staff verified with both DuPage and Will County Clerk's Offices that if there is a referendum on the general primary election ballot, voters will have a choice of: (1) Republican ballot with candidates and referendum; (2) Democrat ballot with candidates and referendum; or (3) non-partisan ballot with referendum only.

Referendum Language

If it is a City Council initiated referendum, the City Council approves the language of the public proposition placed on the ballot. State statute requires referenda propositions to: (1) be one sentence, (2) begin with the word "shall", and (3) be able to be answered by "YES" or "NO." Importantly, Illinois law prohibits the use of City resources or funds to advocate in favor of or against any public referenda propositions.

Recent City of Naperville Referenda Propositions

By way of example, provided below are referenda propositions that have been on recent City of Naperville resident ballots.

November 2, 2010 General Election Propositions

Council Approved Resolution 10-036 (authorized by the Council vote of 7-1)

Shall the City of Naperville amend Section 1-5-1 of the Naperville Municipal Code to limit the number of consecutive terms which one person may serve as councilman to three consecutive full terms and to limit the number of consecutive terms which one person may serve as mayor to three consecutive full terms, to be effective beginning with the election in April, 2011 and applicable only prospectively to those persons elected to the office of councilman at the election in April 2011 and only prospectively to those persons elected to the office of mayor at the election in April 2011, and thereafter?	YES 32,089	NO 12,576
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Council Approved Resolution 10-043 (authorized by the Council vote of 7-1)

Should the Illinois General Assembly and the Governor immediately pass meaningful police and fire pension reform that will reduce the future funding obligation on local taxpayers now that the General Assembly and Governor have reformed the pension systems for all other public employees?	YES 36,435	NO 7,511
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"Naperville Voter Education League" initiated proposition

Shall the city of Naperville elect part of the councilmen at large and part of the councilmen from districts with staggered four year terms and biennial elections?	YES 28,236	NO 14,593
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April 9, 2013 Consolidated Election Proposition

"Yes At Large" initiated proposition

Shall the City of Naperville elect city council at large instead of part of the councilmen at large and part of the councilmen from districts?	YES 10,006	NO 5,042
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November 8, 2016 General Election Propositions

Council Approved Resolution 16-024 (authorized by the Council vote of 9-0)

Should the City of Naperville and the Naperville Township Road District enter into an agreement for combined roadway services as proposed by the Naperville City Council on June 7, 2016 in order to reduce the real estate tax burden on all Naperville Township taxpayers?	YES 60,477	NO 7,336
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Council Approved Resolution 16-025 (authorized by the Council vote of 9-0)

Should a township government be abolished in the City of Naperville when efficiencies and savings in delivery of township services can be demonstrated by either the City of Naperville or another governmental body performing the same services?	YES 52,018	NO 14,052
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Draft Referenda Proposition

Below is a draft of a potential referenda proposition for Council's consideration. Council may accept this language or may edit the language of the proposition via Council consensus (simple majority).

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?	YES ___	NO ___
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Next Steps

Council may consider the information contained within this staff report and direct staff accordingly via a motion from the dais. Three potential options are detailed below. Note that Council may also move to modify the language of the referenda proposition as part of any final action to adopt any enabling resolution.

Option 1: Adopt the attached resolution establishing an adult use cannabis referenda proposition for the March 17, 2020 general primary election; or

Option 2: Direct staff to bring back to the Council on November 5, 2019 (or future Council meeting prior to August 16, 2020), a resolution establishing an adult use cannabis referenda proposition for the November 3, 2020 general election; or

Option 3: No action (no referendum).

FISCAL IMPACT:

Municipalities may enact up to a 3% tax on gross sales of adult use cannabis. There would be a corresponding increase in revenues from the City's home rule sales tax (0.75%) and the local government portion of the state sales tax (1%). According to the CRTA, a local ordinance imposing the local adult use cannabis tax filed with the Illinois Department of Revenue on or before the first day of June, shall be administered and enforced as of the first day of September next following the adoption and filing.