

IN CONSIDERATION:

“OPTING OUT” OF THE SALE OF RECREATIONAL MARIHUANA IN THE CITY OF BERKLEY UNDER THE MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT (MRTMA)

At the November 19th City Council meeting, the City Council received and reviewed the First Reading of a draft ordinance to exercise the “opt out” provision of Proposal 1 approved by Michigan, and Berkley, voters. After voting to move to a Second Reading of the ordinance, the City Council was contacted by a number of Berkley residents with questions on how opting out would impact our community.

Did the City Council pass this ordinance?

No. All City ordinances are approved under a minimum two-step process. A First Reading is the City Council’s first opportunity to review the text of the proposed draft, discuss the topic, hear from the public, ask staff for clarification, and, if they so choose, make any desired changes. The City Council can then vote to move it forward to a Second Reading and possible adoption. While the First Reading of the proposed ordinance was very successful in jumpstarting a community conversation on the sale of recreational marihuana in Berkley, there is no requirement to move immediately to a Second Reading or adoption.

What about the money the City will miss out on by opting out?

This, by far, has been the most frequently asked question. There will be two forms of sales tax levied on the sale of recreational marihuana: the state’s regular 6% sales tax and a 10% excise tax. Berkley will receive its regular allocation of the sales tax revenue regardless of whether recreational marihuana sales occur in the City. A portion of the 10% excise tax first goes to the state’s Licensing and Regulatory Affairs (LARA) to fund their oversight of the new law, which is being estimated at about \$2.5 million annually. For the first two years, \$20 million must be devoted to clinical studies of the use of marihuana in the treatment and the prevention of suicide in U.S. service veterans.

The remainder of the funds will be allocated to Michigan Transportation Fund (35%), State School Aide Fund (35%), Counties (15%), and Municipalities (15%). Across all Counties and Municipalities, the total percentage will be 15% but the revenue will be allocated on a proportional basis. This means if there were 1,000 licensed dispensaries across Michigan and Berkley had 10 of them, the City would receive 1% of the 15% of funds left over after the State is made whole and clinical studies are fully funded. Assuming recreational marihuana to be a billion dollar industry, the chart to the right illustrates the revenue that would be allotted to the City.

Would this ordinance ban the personal use of marihuana in Berkley?

The proposed ordinance would prohibit only the sale of recreational marihuana in the City limits. The new law allows individuals age 21 and older to openly possess a small amount of marihuana and marihuana concentrate on their person, and possess and grow a larger amount of marihuana at their residence. Proposal 1 permits a municipality to “completely prohibit” or “limit the number of marihuana establishments” by establishing a recreational marihuana ordinance. Under the language of Proposal 1, Berkley must act on this topic specifically and cannot rely upon past ordinances or resolutions regarding medical marihuana. The proposed ordinance also has no effect on the use, possession, or cultivation of medical marihuana.

Why is this ordinance being considered so quickly after the election?

The purpose of the ordinance is to regulate recreational marihuana in the same manner as alcohol. When the state develops its framework for recreational marihuana sales, Berkley will automatically be subject to it. Adopting an ordinance to “opt out” now will allow the City to locally determine the proper location, number, and manner in which marihuana businesses operate in Berkley. Currently, if the City did not “opt out,” any number of marihuana establishments with a state license could open anywhere in Berkley that’s zoned commercial.

Would an “opt out” be permanent under the proposed ordinance?

By a simple majority, the City Council can vote at any time to reconsider the ordinance and allow marihuana establishments to operate in Berkley. In the course of reviewing the proposed ordinance during the November 19th meeting, the City Council discussed revisiting the sale of recreational marihuana once the State develops its framework for licensing. Moving forward, the City Council could decide to fully “opt in” or partially “opt in” and develop its own set of restrictions over and above the state’s regulations.

Where can I learn more about Proposal 1?

Visit the [Michigan Municipal League](http://www.mml.org) website at www.mml.org. The Berkley City Council also plans to hold a Town Hall meeting in February 2019 to gather more feedback from the public.

TAX REVENUE PROJECTIONS FOR MUNICIPALITIES UNDER MRTMA

Annual Gross Retail Sales	\$1,000,000,000
Applicable Excise Tax Rate	10%
Amount of Excise Tax Fund	\$100,000,000
Allocation for LARA and Veterans’ Health Research until 2022	-\$22,500,000
Remainder left to be divided among Road, Education, Counties, and Municipalities	\$77,500,000
Percentage Allocated to Municipalities	15%
Amount Available for Municipalities	\$11,625,000
Revenue for 1 percent of facilities or retail establishments in municipality	\$116,250