



**SPECIAL TOWN BOARD MEETING REGARDING
TOWNSHIP GOVERNMENT, RESOLUTION REGARDING
ADVISORY REFERENDUM SUBMISSION, AND
RESOLUTION REGARDING GENERAL ASSEMBLY
LEGISLATIVE ACTION**

NOTICE IS HEREBY GIVEN

To the legal voters and residents of the Town of Evanston in the County of Cook and State of Illinois, a meeting having previously been called for by the Town Board in Open Session on November 29, 2011, the Board having fixed the time of adjournment and reconvening of the Town Board to December 5, 2011, that a Special Meeting of said Town Board will take place on:

Monday, December 5, 2011
During the hour of 7:00 p.m. in
The City Council Chamber – 2nd Floor
2100 Ridge Avenue, Evanston, IL 60201

For the transaction of miscellaneous business of the said Town, will proceed to hear and consider the objects of this special meeting presented below as items two (2) through five (5), and decide on such measures as may, pursuant to law, come before the meeting; and especially to consider and decide the following:

1. Reconvening the Board/Call to Order – Town Clerk, Rodney Greene
2. Old Business
3. Consideration of Resolution 4T-R-11, Adoption of a Resolution for an Advisory Referendum on a Public Policy Question Regarding the Town Board and Possible Dissolution of Evanston Township, and Directing the Town Clerk to Certify the Public Question with the Cook County Clerk.
4. Consideration of Resolution 5T-R-11, Adoption of a Resolution Calling for the Illinois General Assembly to Amend the Township Code and Other Necessary Statutes so as to Clearly Permit the Lawful Dissolution of Coterminous Evanston Township.
5. New Business/Other Business
6. Adjournment

**For the Adjourned and Reconvened Town Board Meeting of December 5, 2011
Business of the Town Board, Resolution 4T-R-11, 5T-R-11
For Action**



Memorandum

To: Members of the Evanston Town Board
From: W. Grant Farrar, Town Board Attorney
Subject: Dissolution of Coterminous Evanston Township
Date: December 5, 2011

Recommended Action:

Staff submits for consideration Resolution 4T-R-11, calling for an advisory referendum question to be submitted to the electors of Evanston Township to permit them to determine whether the Evanston Town Board should continue to pursue the issue of dissolving Evanston Township; and 5T-R-11, calling for the Illinois General Assembly to amend the Township Code and other necessary statutes so as to clearly permit the lawful dissolution of coterminous Evanston Township.

Funding Source:

n/a

Summary:

Suggested Amendments to Illinois Law Which Provide for the Dissolution of Evanston Township

The Township Code fails to speak to the unique circumstances of the coterminous Evanston Township. Recent prior opinions more fully discussed the conflicts amongst various Illinois statutes regarding township organization and dissolution. Article 25 of the Township Code speaks to the "Discontinuance of Township Organization". "Discontinuance" is synonymous with "dissolution". With the state of Illinois law unsettled regarding the issue of the mechanism for dissolution, as well as what would happen if the township electors voted to dissolve the township, seeking a legislative remedy from Springfield may be a prudent course of action.

Recognizing that the Illinois Constitution and the applicable Illinois statutes could comprehensively address the issue of dissolving Evanston Township, the Town Board may consider asking its state elected officials to amend state law to provide clear authority for a referendum question to be submitted to the township electors. Suggested language regarding this would amend the Township Code and the Public Aid Code. The language set forth in Resolution 5T-R-11 is only a suggestion, as any

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amendments to state law are properly drafted by the General Assembly's Legislative Reference Bureau. The suggested language is set forth in Resolution 5T-R-11.

With these legislative amendments, state law would be clarified regarding the dissolution of the township, and would recognize the one-of-a-kind status that the coterminous Evanston Township has by harmonizing state law regarding same. Amending the Public Aid Code would ensure continuity regarding the General Assistance functions currently provided by the Township.

Legislative History:

The Town Board convened numerous meetings in 2011, all properly noticed under the Township Code and the Open Meetings Act, to consider the interrelated questions of township governance, budget, and dissolution.

The Law Department, in its capacity as legal counsel to the Evanston Town Board, submits the following Resolutions pursuant to direction received at the November 29, 2011 meeting.

Alternatives:

n/a

Attachments:

Resolutions 4T-R-11, 5T-R-11

4T-R-11

A RESOLUTION

CALLING FOR AN ADVISORY REFERENDUM QUESTION TO BE SUBMITTED TO THE ELECTORS OF EVANSTON TOWNSHIP TO PERMIT THEM TO DETERMINE WHETHER THE EVANSTON TOWN BOARD SHOULD CONTINUE TO PURSUE THE ISSUE OF DISSOLVING EVANSTON TOWNSHIP

NOW BE IT RESOLVED BY THE TOWN BOARD OF THE TOWN OF EVANSTON, COOK COUNTY, ILLINOIS:

WHEREAS, the City of Evanston and Evanston Township are coterminous, and the Township is a blended unit of local government within the City, with the City Council sitting as the Town Board and exercising all powers vested in it by law, 60 ILCS 1/15-50, 60 ILCS 1/80-5; and

WHEREAS, Article VII, Section 5 of the Illinois Constitution provides:

Townships may be consolidated or merged, and one or more townships may be dissolved or divided, when approved by referendum in each township affected.

; and

WHEREAS, Article VII, Section 11(a) of the Illinois Constitution provides:

Proposals for actions which are authorized by this Article or by law and which require approval by referendum may be initiated and submitted to the electors by resolution of the governing board of a unit of local government or by petition of electors in the manner provided by law.

; and

WHEREAS,) of Article VII, Section 11(b) of the Illinois Constitution provides:

Referenda required by this Article shall be held at general elections, except as otherwise provided by law. Questions submitted to referendum shall be adopted if approved by a majority of those voting on the question unless a different requirement is specified in this Article.

; and

WHEREAS, The Election Code states in pertinent part:

Any such public question may be initiated by the governing body of the unit of local government by resolution or by the filing with the clerk or secretary of the governmental unit of a petition signed by a number of qualified electors equal to or greater than 10% of the number of registered voters in the governmental unit, requesting the submission of the proposal for such action to the voters of the governmental unit at a regular election.

10 ILCS 5/28-7.

; and

WHEREAS, pursuant to 60 ILCS 1/80-80, the Town Board may authorize that an advisory question of public policy be placed on the ballot at the next regularly scheduled election to be held in the township; and

WHEREAS, pursuant to 60 ILCS 1/30-25, the electors of the township may give directions for the exercise of their corporate powers; and

WHEREAS, in the *Zemaitis v. DuPage County Board of Election Commissioners* case, 1989 WL 69263, (N.D. Ill. 1989), while recognizing Illinois law to be “unsettled” regarding the issue of township dissolution, the Court held that the Election Code is narrowly tailored to allow voters in a respective township to decide dissolution for themselves. *Id.* See also *Send Township Officials Packing v. DuPage County Election Commission*, 95 MR 750 (18th Jud. Cir. 1996); and

WHEREAS, the First Appellate District of Illinois stated that Article VII, Section 5 of the Illinois Constitution specifies “...that resident electors of any particular

township may vote to abolish that form of government within their locality.” *Smith v. Town of Proviso*, 13 Ill.App.3d 519, 527 (1st Dist. 1973).

WHEREAS, the Illinois Supreme Court in the past recognized that township dissolution issues are unresolved in light of the General Assembly’s obligation to resolve contradictions associated with township dissolution questions. See *Springfield Lakeshore Improvement Ass’n v. City of Springfield*, 62 Ill.2d 173 (1976); and

WHEREAS, as of the date of adoption of this resolution, there is no legislative pronouncement by the General Assembly which clearly addresses the mechanism for dissolving a coterminous township in Cook County; and

WHEREAS, in an effort to obtain clarity on these issues, the Town Board previously sought through Illinois State Senator Jeff Schoenberg an Attorney General Opinion from Attorney General Lisa Madigan requesting clarification of these issues. Such opinion has not been issued as of the date of adoption of this resolution; and

WHEREAS, state policy generally favors ballot access. See *McGuire v. Nogaj*, 146 Ill.App.3d 280 (1st Dist. 1986). See also *Bloomington Township v. City of Bloomington*, 303 Ill.App.3d 615 (4th Dist. 1999); and

WHEREAS, in the case of coterminous Evanston Township, the legislative arm of the Township is the Town Board, and the Board has the constitutional and statutory authority to adopt this resolution; and

WHEREAS, principles of ballot access viewed in conjunction with the constitutional and statutory authorities cited herein authorize the matter of Township dissolution to be ultimately considered and passed upon by the corporate authorities of

Evanston Township, the registered voters in Evanston (the electors of the Township); and

WHEREAS, sufficient constitutional and statutory authority exists for the Town Board to approve a Resolution authorizing an advisory public policy question regarding Town Board consideration of township dissolution to appear on the ballot; and

WHEREAS, it is well-settled law in Illinois that the legislative judgment of the legislative bodies in units of local government must be considered presumptively valid. See *Glenview State Bank v. Village of Deerfield*, 213 Ill.App.3d 747; and

WHEREAS, under the separation-of-powers doctrine, courts must respect units of local government, such that the Town Board's mandate in adopting this resolution calling for this referendum is entitled to high deference. See *Board of Education of Dolton School District 149 v. Miller*, 349 Ill.App.3d 806 (1st Dist. 2004); *Moore v. Grafton Township*, 2011 WL 3524417 (2nd Dist. 2011); and

WHEREAS, the Town Board convened numerous meetings in 2011, all properly noticed under the Township Code and the Open Meetings Act, to consider the interrelated questions of township governance, budget, and dissolution; and

WHEREAS, all persons desiring to be heard on the subject matter of this Resolution were heard, testimony was taken, legislative findings made, a voluminous legislative Record created, and this matter was exhaustively considered by the Town Board of the Township of Evanston, Cook County, Illinois; and

WHEREAS, the Evanston Town Board determined that it is advisable and necessary to hear directly from the electors of the Township on the issue of whether the Township should be dissolved or not, and if the electors approve of the ballot

proposition and determine that the Board should pursue this issue, the Board may abide by that direction; and

WHEREAS, the Town Board directed the Town Board Attorney to draft this Resolution to incorporate the debate and discussion had on this issue as expressed at all meetings on this issue, and in particular, the November 29, 2011 Town Board meeting; and

WHEREAS, the Town Board determined that in its adoption of this resolution and in its exercise of this discretionary act, it is in the best interests of the residents of Evanston Township to have the opportunity to vote upon this public question in order to express their view as to whether coterminous township government in Evanston Township might be dissolved, and whether it approves of the Town Board pursuing that issue. See also *Hill v. Butler*, 107 Ill.App.3d 721 (4th Dist. 1982) (Fundamental basis of township government is the right of citizens to participate directly in government).

NOW THEREFORE, BE IT RESOLVED BY THE TOWN BOARD OF EVANSTON TOWNSHIP, COOK COUNTY, ILLINOIS, as follows:

SECTION 1: Pursuant to Section 50-45 of the Township Code, and the Election Code, the proposition in substantially the following form shall be submitted to the electors of Evanston Township, for approval by a majority of the electors in the township voting on the question, at the March 20, 2012 General Primary Election, the referendum in such election to be conducted and notice thereof given in the manner provided by general election law:

Should the Evanston Town Board continue to pursue the issue of dissolving Evanston Township?	YES	
	NO	

SECTION 2: That this Resolution 4T-R-11 shall be in full force and effect from and after its passage and approval in the manner provided by law.

SECTION 3: The terms and provisions of this Resolution shall be liberally construed so as to effectuate the purposes set forth in the recitals to this Resolution. Each and every recital and legislative finding regarding this Resolution is to be construed and interpreted severally.

SECTION 4: That the foregoing findings and recitals contained herein, as well as the meeting minutes and legislative Record regarding the issue of township dissolution, are found as fact and incorporated herein by reference. The findings, recitals, and legislative Record are declared to be prima facie evidence of the law of Evanston Township and the City of Evanston, and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 5: That if any provision of this Resolution or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Resolution is severable.

SECTION 6: That the Township Clerk shall, and is hereby ordered and directed to, certify this Resolution and the proposition as set forth herein to the Cook County Clerk by 12:00 p.m. December 9, 2011 to ensure that this proposition is placed on the March 20, 2012 ballot.

Approved:

_____, 2011

Elizabeth B. Tisdahl, Mayor;
Member, Town Board of the Town of
Evanston

Attest:

Approved as to form:

Town Clerk

W. Grant Farrar, Town Board Attorney

5T-R-11

A RESOLUTION

CALLING FOR THE ILLINOIS GENERAL ASSEMBLY TO AMEND THE TOWNSHIP CODE AND OTHER NECESSARY STATUTES SO AS TO CLEARLY PERMIT THE LAWFUL DISSOLUTION OF COTERMINOUS EVANSTON TOWNSHIP

NOW BE IT RESOLVED BY THE TOWN BOARD OF THE TOWN OF EVANSTON, COOK COUNTY, ILLINOIS:

WHEREAS, the City of Evanston and Evanston Township are coterminous, and the Township is a blended unit of local government within the City, with the City Council sitting as the Town Board and exercising all powers vested in it by law, 60 ILCS 1/15-50, 60 ILCS 1/80-5; and

WHEREAS, Section 5 of Article VII of the Illinois Constitution provides:

Townships may be consolidated or merged, and one or more townships may be dissolved or divided, when approved by referendum in each township affected.

; and

WHEREAS, in the *Zemaitis v. DuPage County Board of Election Commissioners* case, 1989 WL 69263, (N.D. Ill. 1989), the Court recognized Illinois law to be “unsettled” regarding the issue of township dissolution. See also *Send Township Officials Packing v. DuPage County Election Commission*, 95 MR 750 (18th Jud. Cir. 1996);

WHEREAS, the First Appellate District of Illinois stated that Article VII, Section 5 of the Illinois Constitution specifies “...that resident electors of any particular

township may vote to abolish that form of government within their locality.” *Smith v. Town of Proviso*, 13 Ill.App.3d 519, 527 (1st Dist. 1973).

WHEREAS, the Illinois Supreme Court in the past recognized that township dissolution issues are unresolved in light of the General Assembly’s obligation to resolve contradictions associated with township dissolution questions. See *Springfield Lakeshore Improvement Ass’n v. City of Springfield*, 62 Ill.2d 173 (1976); and

WHEREAS, the Township Code fails to speak to the special circumstances regarding coterminous Evanston Township; and

WHEREAS, as of the date of adoption of this resolution, there is no legislative pronouncement by the General Assembly which clearly addresses the mechanism for dissolving coterminous Evanston township in Cook County; and

WHEREAS, in an effort to obtain clarity on these issues, the Town Board previously sought through Illinois State Senator Jeff Schoenberg an Attorney General Opinion from Attorney General Lisa Madigan requesting clarification of these issues. Such opinion has not been issued as of the date of adoption of this resolution; and

WHEREAS, P.A. 97-0611 signed by Governor Quinn in August 2011 provides for voter referendums to abolish township road districts in Cook County, with townships assuming the powers of the road district. While this bill does not apply to Evanston as there is no township road district, it is an indication of the fact that the General Assembly has considered and approved of combining and dissolving certain township functions in Cook County; and

WHEREAS, in the case of coterminous Evanston Township, the legislative arm of the Township is the Town Board, and the Board has the constitutional and statutory authority to adopt this resolution; and

WHEREAS, it is well-settled law in Illinois that the legislative judgment of the legislative bodies in units of local government must be considered presumptively valid. See *Glenview State Bank v. Village of Deerfield*, 213 Ill.App.3d 747; and

WHEREAS, under the separation-of-powers doctrine, courts must respect units of local government, such that the Town Board's mandate in adopting this resolution calling for General Assembly action is entitled to high deference. See *Board of Education of Dolton School District 149 v. Miller*, 349 Ill.App.3d 806 (1st Dist. 2004); *Moore v. Grafton Township*, 2011 WL 3524417 (2nd Dist. 2011); and

WHEREAS, the Town Board convened numerous meetings in 2011, all properly noticed under the Township Code and the Open Meetings Act, to consider the interrelated questions of township governance, budget, and dissolution; and

WHEREAS, all persons desiring to be heard on the subject matter of this Resolution were heard, testimony was taken, legislative findings made, a voluminous legislative Record created, and this matter was exhaustively considered by the Town Board of the Township of Evanston, Cook County, Illinois; and

WHEREAS, the Town Board has determined that in its adoption of this resolution and in its exercise of this discretionary act, it is in the best interests of the residents of Evanston Township to obtain legislative clarification and pronouncement from the General Assembly regarding the lawful process of dissolving coterminous Evanston Township.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN BOARD OF EVANSTON TOWNSHIP, COOK COUNTY, ILLINOIS, as follows:

SECTION 1: That the Town Board hereby finds and declares that relevant state statutes affecting Evanston Township should be amended to provide clear authority for a referendum question to be submitted to the township electors regarding township dissolution. By adopting this Resolution, the Town Board hereby states that it intends to submit the following suggested amendments to Illinois state law to the elected state officials representing the Township. The Board will also request said elected officials to introduce legislation in the Illinois House and/or Illinois Senate which will incorporate said amendments, and to otherwise take all necessary steps to ensure such amendments are enacted into law during the 98th General Assembly session.

This suggested language is as follows:

Article 25. The Township Code is amended by adding Section 25-30 as follows:

(65 ILCS 1/25-30 new)

Section 6-133. Petition and Referendum to discontinue and abolish township organization in coterminous Evanston Township, Cook County Illinois. By resolution, the board of trustees of coterminous Evanston Township, located in Cook County, Illinois, may submit a proposition to discontinue and abolish the township to the electors of that township at a general election or consolidated election in accordance with the general election law. The ballot shall be in substantially the following form:

Shall Evanston Township be discontinued and abolished with all the rights, powers, duties, assets, property, liabilities, obligations, and responsibilities being assumed by the City of Evanston?

In the event that a majority of the electors voting on such proposition are in favor thereof, then the township shall be abolished by operation of law effective on January 1 of the calendar year immediately following the calendar year in which the proposition was approved by the electors.

On the effective date of discontinuance and abolishment, all the rights, powers, duties, assets, property, liabilities, obligations, and responsibilities of the township shall by

operation of law vest in and be assumed by the City of Evanston. On that date, the township supervisor and the township assessor of the abolished township shall cease to hold office, such terms having been terminated. Thereafter, the City shall exercise all duties and responsibilities of the township supervisor as provided in the Illinois Township Code and the Illinois Public Assistance Code. Thereafter, the City shall exercise all duties and responsibilities of the township assessor as provided in the Illinois Property Tax Code. The City of Evanston City Council may enter into an intergovernmental agreement or contract with Cook County or the State of Illinois to administer general assistance and property assessment duties for services under its jurisdiction. The City of Evanston City Council shall assume all taxing authority of the township abolished under this section. For purposes of distribution of revenue, the City of Evanston shall assume the powers, duties, and obligations of the township. If township organization is discontinued in Evanston Township, the records of the township shall be deposited in the City of Evanston's City Clerk's office. The City of Evanston City Council may close up all unfinished business of Evanston Township and sell and dispose of any of the property belonging to the township for benefit of the inhabitants of the City of Evanston."

Article 7. The Public Aid Code is amended by adding Section 12-3.1 as follows:

(305 ILCS 5/12-3.1)

Sec.12-3.1. Local governmental unit/City of Evanston. Upon the discontinuance of township organization in Evanston Township, Cook County, Illinois, the City of Evanston shall provide funds for and administer the public aid program provided by Article VI.

SECTION 2: That this Resolution 5T-R-11 shall be in full force and effect from and after its passage and approval in the manner provided by law. The Town Board hereby authorizes and directs the City Manager of the coterminous City of Evanston, and any necessary City staff, to assist the Town Board in implementing and carrying out the purpose and terms of this Resolution.

SECTION 3: The terms and provisions of this Resolution shall be liberally construed so as to effectuate the purposes set forth in the recitals to this Resolution. Each and every recital and legislative finding regarding this Resolution is to be construed and interpreted severally.

SECTION 4: That the foregoing findings and recitals contained herein, as well as the meeting minutes and legislative Record regarding this issue, are found as fact and incorporated herein by reference. The findings, recitals, and legislative Record are declared to be prima facie evidence of the law of Evanston Township and the City of Evanston, and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 5: That if any provision of this Resolution or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Resolution is severable.

SECTION 6: That the Township Clerk shall, and is hereby ordered and directed to, attest this Resolution.

Approved:

_____, 2011

Elizabeth B. Tisdahl, Mayor;
Member, Town Board of the Town of
Evanston

Attest:

Approved as to form:

Town Clerk

W. Grant Farrar, Town Board Attorney