

The Independence City

INDEPENDENT

Marijuana Law-Making Forces City Into Uncharted Territory

By Anne Scheck

Will local regulation for cannabis operations in Independence encourage expansion of marijuana businesses -- or limit them? That question has been answered in opposite ways at City Council meetings this winter. To those representing commercial interests, the city's possible land-use rules and business-license restrictions pose a potentially crippling blow. Conversely, some citizens say they fear the laws will be too lax, turning the town into "marijuana-ville."

As history is being made with legal marijuana in Oregon, conflict is erupting over it in Independence. At stake is a source of tax revenue unlike the city has seen before, thanks to a 17% state retail tax on marijuana, from which 10% is being distributed back to cities. And, beginning this summer, that 10% -- generally designated for local law enforcement -- will be based on the number of local licenses the city issues for marijuana-based businesses.

Starting in July, half of the money sent to municipalities will

be based on the number of licenses for production, processing and wholesale operations of marijuana; half will be based on the number of retail licenses, according to a recent report by the League of Oregon Cities. That's a switch from the current population-based system of marijuana-tax allocation.

Additionally, property taxes increase on industrially zoned land when it shifts from agricultural to commercial use. And voters in Independence approved a three percent local sales tax on marijuana this past November, affecting all recreational marijuana sold inside city limits.

Yet additional money for city coffers hasn't been a focal point of the discussion. Instead, members of some city neighborhoods, primarily the Independence airpark community, have objected to the potential effect on quality of life, ranging from traffic and odor to light pollution by marijuana production and grow sites planned along Stryker Road, the city's industrial corridor.

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“As the codes stand now there are no guidelines that protect our community residentially or commercially from a great deal of concerns that could be hazardous as well as dangerous,” asserted Victoria and Larry Kruljac in a recent letter to the city, which was submitted during public testimony.

In their correspondence, the Kruljacs, who live along Stryker, documented alleged code lapses in the heavy industrial zone, including the foul smells that even now waft into their neighborhood from current industry across the road. They called for changes that would “protect our livable environment.”

The Kruljacs are far from alone in their worry. Gary Van Horn, the president of the Independence Airpark Homeowners Association, had asked the City Council – on behalf of the 160-home group – to address these issues this past summer by requesting a moratorium to allow time to develop appropriate planning standards, an action taken by other cities who are grappling with the same issue. In Fairview, for example, a temporary ban prevented marijuana production until new laws could be sorted out. This past spring, Forest Grove took the same action.

However, in September, the city’s consulting attorney, Lauren Sommers, recommended against doing so -- in part, because “it will not change the ultimate outcome” of applicants for marijuana facilities. Some residents found the city’s blunt response so discouraging at that time -- and since

then -- that Ken Hardwick, who heads the Independence State Airport Support Group, told city councilors and planning commissioners at a joint December workshop on the topic that the process “had left a sour taste” in the airpark, a unique subdivision traditionally considered a source of pride by the Independence community and reportedly the city’s largest residential source of property-tax revenue.

By the end of 2016, the city had in place licensing requirements for the new industry, which are slated to go into effect early this year. City officials said they believe the ordinances will curtail the environmental impact, such as claims of “skunk smell,” that have been the basis of many objections. All businesses will have to meet these new guidelines, even those already in operation.

But this threatens to place a new burden on small business owners, said Alex Andrade, owner of *Blackbird Indica*, a medical marijuana dispensary on 10th Street, and *Mia Bella*, a clothing store in downtown Independence.

Small retail stores like *Blackbird Indica* are being swept up in a broad quest to establish local ordinances in one fell swoop -- but she is not a grower, not a processor, not a producer, she pointed out. This past fall, as Independence began taking steps to create marijuana laws, “I got caught up in the crossfire,” she said. For example, “in dispensaries, we are pretty smell-proof” but now she fears she will be asked to install deodorizing

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equipment similar to that required for plant operations, she said. For instance, the city's draft ordinance includes a provision for a ventilation system plan that is prepared by a mechanical engineer licensed in the state.

The city is "taking steps in the wrong direction," by duplicating and extending the reach of state law that already is firmly in place, Ms. Andrade said. Currently, there are 10 different marijuana activities that require registration or a license from the state, according to a legislative report published last month.

Ms. Andrade said she's passed all the regulatory hurdles imposed by the Oregon Liquor Control Commission, the Oregon Medical Marijuana Program and the Oregon Health Authority. "I have complied with everything that was asked of me," she said, even upgrading her surveillance tools beyond what is required by the state. She considers herself as having a "good relationship" with local law enforcement, "so I actually added technology to make it even better," she added.

At a recent conference in Portland by the Oregon chapter of the American Planning Association, city planners and attorneys observed that it is precisely the plight of this kind of small business owner that begs resolution. Under Oregon's "home rule," cities have the ability to set new policies, even on issues already regulated by the state -- as long as the city isn't passing rules that are

"incompatible" with those enacted by the Oregon legislature. As a result of home rule, marijuana law largely is seen as a matter of local control. And, in all court decisions so far, municipal decisions have been upheld -- even when city councils have instituted outright bans, as was done in the little town of Cave Junction.


Even so, reliance on home rule has led to costly litigation. This past October, the city of Cave Junction backed down on its legal battle to continue being affirmed during an appeal. "We kind of got tired of waiting and spending money on it," Councilor Dan Dalegowski told the Grants Pass *Daily Courier*, after he moved for withdrawal from the suit.

The city, he explained to the newspaper, is now opting to move toward allowing cannabis businesses -- to try to get the three percent tax on recreational marijuana. Though the risk of lawsuits often has been cited at Independence City Council meetings, a possibly greater threat looms.

When president-elect Donald Trump assumes office this month, his choice for U.S. Attorney General is Jeff Sessions, currently a U.S. senator from Alabama. Sen. Sessions has been quoted as saying marijuana is a drug that ought not to be legalized. It remains to be seen whether the likely new head of the U.S. Justice Department will impose his views to a degree that could mean significant prosecution of those involved in the sale of marijuana. But it's a good bet this administration will be different.



The Civics Lesson: City Council Seat Vacated in Unprecedented Action

“Please accept my resignation for this position, effective immediately.” In a sentence of less than a dozen words, a recently elected city councilor removed himself from public office before he could be sworn in. Richard King, who landed the City Council position known as #3 by running on the local November ballot, notified the mayor by letter of his decision about 10 days after the vote was tallied, citing relocation as a reason. No one has heard of this happening before – not city councilors of decades past, not planning commissioners from bygone days, not even the city staff member who is responsible for recording the city's local elections. “I think you can call it a rare event,” confirmed Karin Johnson, Independence City Recorder, who has held that post for more than 29 years, first in Amity and now in Independence. State law under the Oregon Revised Statutes – usually just called “ORS” – addresses just this situation, by referring back to the original municipal ballot, where runner-ups often may be found. But that rule applies only to cities that haven't adopted “home rule” authority, which is part of the city charter in an overwhelming number of Oregon's municipalities, including Independence. An application form for aspiring city council members has been used to fill a vacancy at least once before, but councilors could decide to tap a person who has been a successful city volunteer or who has a special skill set they find suited for the tasks ahead – or they could decide to use the application form. 

The Indy Hop *Hummingbirds Beat Big Freeze With Neighborly Help*

Looking more like a shiny Christmas ornament than a tough Independence pioneer, “Anna's Hummingbird” proved its mettle this winter, thriving in a snowy December while other birds flew south for the winter. The flashy lemon-sized bird, sometimes referred to as a “twirly whirly” at Independence Elementary School, usually is seen dipping into flowers to slurp nectar. But when plants withered in the cold snap, the hummingbirds stayed colorfully aloft -- hovering in frosty air, taking warmth from houses – thanks to vigilant bird enthusiasts who kept backyard feeders flowing. That liquid nourishment sustains them when temperatures plunge, explained Barbara Dolan of the Salem Audubon Society, adding that feeders have to be stocked with solutions of “correct proportions of cane sugar and water, no substitutes.” Local resident Vickie McCubbin said she's had frequent hummingbird visitors, “sometimes two at a time, swooping to, in, and around my feeder.” Food availability is a big factor influencing whether a feeding station is shared, explained Michelle Dennehy, spokesperson for the Oregon Department of Fish and Wildlife. Hummingbirds can be defensive of resources, she added. So a plentiful supply of sugar-water is why they seem to politely take turns feeding. From a window, it can seem like birds of a feather flocking together, all in the holiday spirit. 