

The Linking Letter

April 21, 2017

by Anne Scheck

Dear Linking Letter recipients,

*The article below reflects the most recent meeting of the City Council. Once again, the specter of legal risk to the city has been raised as City Councilors and Planning Commissioners address a coding issue. So this next month, in the May issue, The Independent, a small newspaper and publishing companion to **The Linking Letter**, will examine and evaluate the "litigation risk" by marijuana developers that's being invoked. Thank you for reading this "special edition" of **The Linking Letter**. And thank you, most of all, for your citizenship. Anne Scheck*

Legal Risk Revisited As Reason for Zero Buffers of Marijuana In Industrial Zone

Proposed land-use regulations that establish any buffer between marijuana operations and residential areas pose a legal risk to Independence due to the "fairly deep pockets" of developers in this new industry, City Manager David Clyne told the City Council at a special meeting Monday night. Earlier this month, Mr. Clyne had advised the Planning Commission that the City Council favored the no-buffer alternative, citing the risk of liability -- though he clarified for the City Council that he was referring to the council's 4-3 split decision on the issue last year.

"We were not asked to give our opinion in a finalizing way," stated City Councilor Marilyn Morton.

She and Councilor Ken Day both expressed concern that other applications could come before the city while the time-consuming process of land-use changes are pending. The buffers would impact new development by marijuana businesses along the industrial corridor of Stryker and Hoffman roads, though currently there are no marijuana applications for that area other than the processing-and-grow site that already has been approved, according to a report to the mayor by city staff. The Planning Commission will consider maps showing a 100-foot buffering radius in early May, after requesting this information at their last meeting prior to a vote.

Even the 100-foot buffers under consideration by the Planning Commission are an option that, "from the staff perspective, we don't think is warranted," Mr. Clyne told the councilors. Mr. Clyne has never identified the precise source of the looming legal threat to the city -- nor was it pinpointed by the city's former consulting city attorney Lauren Sommers, who reiterated this risk at several meetings. Ms. Sommers reportedly is no longer with the firm contracted by Independence for legal counsel. Any land-use revision is likely to take months from the time it was presented to planning commissioners since it will need to go to City Council, then on to a state office for formal adoption, Mr. Clyne said.