

THE LINKING LETTER

by Anne Scheck

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Preface: A two-hour executive session by the City Council Tuesday delayed further public discussion of possible marijuana regulations by councilors until next month -- at the earliest.

Question: *Are there other options that place limits on marijuana businesses?*

Oregon's constitutionally-based "home rule" appears to grant cities the right to chart their own course on marijuana regulation, according to two state-wide agencies that have prevailed in what is seen as a test case of the issue.

However, Independence's consulting attorney, Lauren Sommers, questioned the general relevance of "home rule" at a City Council meeting in October, effectively dismissing it as a tool for regulating marijuana.

In a follow-up inquiry, Rob Bovett, legal counsel for the Association of Oregon Counties (AOC) -- which helped win the test case, along with the League of Oregon Cities (LOC) -- said the tactic can make "home rule" a path that's "subject to being litigated." This can be seen as a deterrent by some cities.

So far "home rule" has proven successful for curtailing marijuana sales in Cave Junction, a tiny town in Oregon's Illinois River Valley. The court found that, under "home rule," Cave Junction can limit or deny business licenses to any commercial enterprise that is operating in violation of federal law. "We agree," said Ryan Nolan, city recorder for Cave Junction, when asked to comment on the outcome.

Oregon's constitution given cities the right to largely govern themselves without interference by state authority -- but when local governments make decisions that seem far afield from existing law, this "home rule" can be challenged. A lawsuit was filed against Cave Junction, which had banned recreational marijuana dispensing under its "home rule," and operators of a dispensary contended that the denial violated state law.

This prompted involvement of both the AOC and LOC, which clinched rulings favorable to Cave Junction in two cases. Both are now under appeal. During a break at the last public City Council meeting, Ms. Sommers was asked whether the rulings would apply to Independence. She pointed out that Cave Junction decisions "involved only dispensaries and are being appealed."

At a previous session of the Independence City Council, representatives of prospective owners of local marijuana operations, including Kathy Mollere of Home Equity Properties in Portland, told city officials that investors had shown due diligence in their selection of sites in Independence. Ms. Mollere's comments came after public testimony by residents who asked that the city implement local regulations before allowing businesses to grow and process marijuana.

Councilor Marilyn Morton, who has called for carefully examining the possibility of city-enacted marijuana regulations, indicated that she could not comment on "home rule" authority – or the Cave Junction case – because it would constitute "ex parte" discussion of potentially legally-sensitive information.

The state's "home rule" authority has been cited as a reason for envy by citizen groups in other states. In many other jurisdictions, a counterpoint law known as "Dillon's Rule" compels municipalities to comply with state legislative action regardless of how poorly state law seems to match local needs. Independence's founding documents also have language supporting "home rule" authority, spelled out in Chapter Two of the city charter. –end-

*If you'd like to take a deeper look at the Independence Landing project, pick up an issue of **The Independent**, a small monthly newspaper available & free at the start of each month at **Ovenbird Bakery, The Golden Horse and Elite Tailoring** – on Main Street in downtown*

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