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## State AG: Cities can block pot businesses

### Staff and wire reports

Cities and counties can block licensed marijuana businesses from operating within their borders, Washington state's top lawyer said Thursday in a much anticipated legal opinion that complicates the state's efforts to undercut the black market for pot.

Attorney General Bob Ferguson determined that the state's voter-approved measure legalizing recreational marijuana allows local governments to adopt rules that are more strict than those set out in the law — up to and including outright bans.

"Although (the law) establishes a licensing and regulatory system for marijuana producers, processors and retailers in Washington state, it includes no clear indication that it was intended to pre-empt local authority to regulate such businesses," the opinion stated.

The opinion is not legally binding, but considered influential as local governments figure out how to handle pot businesses.

Regulations on the businesses vary from city to city in Skagit County.

Burlington has already established code dictating zoning and other requirements for the businesses.

Burlington Planning Director Margaret Fleek said the state regulations plus a local code that keep businesses 1,000 feet from residential zones limit potential sites to the Burlington Hill Business Park.

Fleek said responses she has been getting from prospective businesses owners indicate landowners have not been willing to lease space there.

Skagit County issued a guiding document Dec. 4 that explained to potential entrepreneurs what zones and locations would be acceptable for the different types of recreational marijuana businesses.

Ryan Walters, county civil deputy prosecuting attorney, said the county did not create new laws for recreational marijuana businesses and does not plan to. Standing developmental regulations were interpreted to apply to marijuana production, processing and retail.

"Skagit County anticipated this is what the attorney general would say because we thought it was well established in law," Walters said. "The guidance document was premised on the idea that we do have authority to regulate these types of businesses."

Mount Vernon has a moratorium on businesses opening there until local regulations are approved by the Mount Vernon City Council, said Mount Vernon Planning Director Rebecca Lowell. The Mount Vernon Planning Commission is expected to review staff recommendations for regulations in February and the City Council could review it the month after, Lowell said.

Anacortes is in a similar situation, holding a moratorium on shops until the planning commission issues recommendations and the Anacortes City Council passes regulations.

In Sedro-Woolley there is a moratorium on producers and processors unless they want to locate in an industrial-zoned area that complies with state regulations, said Sedro-Woolley Planning Director John Coleman. The Sedro-Woolley City Council will soon weigh in on any further regulations, Coleman said.

“It’s nice to know the attorney general agrees. Cities were operating with the understanding they are able to regulate what uses are allowed,” Coleman said.

The issue could land in court. Some applicants for marijuana licenses have indicated that they plan to sue if they’re granted licenses from the state but then barred by local authorities from doing business.

One possible outcome of such a lawsuit could be the state’s pot-regulation scheme being invalidated on the grounds that it conflicts with federal law banning marijuana — even though President Barack Obama’s administration has given states permission to experiment with marijuana regulation.

Washington’s Liquor Control Board, which oversees the new pot industry, requested the legal opinion and was hoping the answer would come out the other way.

Board members have been worried that local bans will restrict access to legal marijuana and make it difficult to funnel pot users into the regulated, taxed market.

In a conference call with reporters, Ferguson said drafters of the measure “could have in a single sentence addressed this issue.”

The lead author of the measure, American Civil Liberties Union of Washington lawyer Alison Holcomb, bristled at that contention.

“The initiative explicitly and specifically gives the Liquor Control Board the task of providing ‘adequate access to licensed sources ... to discourage purchases from the illegal market,’” Holcomb said. “It is hard to see how allowing cities and counties to ban stores does not directly conflict with this provision of the state law.”

Some jurisdictions, including unincorporated Pierce County, Lakewood and Wenatchee, have effective bans on pot businesses, because their local ordinances require businesses to follow state, federal and local law, and marijuana remains illegal under federal law.

Nearly three dozen of the state’s 75 biggest cities, from Redmond to Pullman, have adopted moratoriums of up to a year on marijuana businesses, according to a recent study by a Seattle-based marijuana think tank called

The Center for the Study of Cannabis and Social Policy. Some have been dropping those temporary bans as they adopt zoning regulations for pot-related businesses.

By contrast, in Colorado, the only other state to approve marijuana for recreational use by adults over 21, the law expressly allows local governments to adopt bans. Large swaths of the state have opted out of the legal-pot regime, including Colorado Springs, the state’s second-largest city.

Stewart Estes, a private Seattle attorney who has been enlisted to represent Pierce County should it be sued over its pot business ban, said Ferguson’s opinion was well reasoned and stood “for the unremarkable proposition that cities and counties can regulate illegal activity in their jurisdictions.”

In a written statement, Washington state liquor board Chairwoman Sharon Foster said the opinion would be a disappointment to the majority of voters who approved the law.

“If some local governments impose bans it will impact public safety by allowing the current illicit market to continue,” she said. “It will also reduce the state’s expectations for revenue generated from the legal system we are putting in place.”

Lawmakers are already working on a couple of approaches for boosting access to legal pot.





Ferguson