

# Alaska State Legislature

## Senate Majority Leader

Joint Armed Services Committee

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Judiciary Committee

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Resources Committee

State Affairs Committee

Legislative Council

Rules Committee



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## LOCAL OPTION MEMO

### CSSB 30(JUD)

### Marijuana Regulation; Controlled Substances; Crimes; Defenses

During the March 3<sup>rd</sup> Senate Finance meeting, several questions were raised regarding the local option provisions in Senate Bill 30.

#### **Relationship between Cities and Organized Boroughs**

According to the local control provisions in the initiative, AS 17.38.110, a local government may prohibit licensed marijuana establishments through the enactment of an ordinance.

According to AS 29.35.250, a city inside a borough may exercise any power not otherwise prohibited by law. However, if a borough adopts an ordinance to exercise a power on an areawide basis, a city may not exercise the power unless the borough ordinance provides otherwise, or the borough, by ordinance, ceases to exercise the power. In other words, if an organized borough has the power to ban marijuana retail establishments on an areawide basis (different types of boroughs have different areawide powers and it is complicated how they obtain them), no city within that borough can allow retail marijuana establishments.

Unfortunately, the initiative is silent on whether local governments exercise the powers contained within 17.38.110 on an areawide basis or a non-areawide basis. It's clear that a city can "opt out" even if the borough hasn't, but it's far from clear if a city could "opt in" if the borough chooses to prohibit marijuana establishments.

The committee may want to consider adopting language that clarifies this issue: "Except as provided in AS 29, the exercise of the powers authorized by this section by a borough may be exercised only on a nonareawide basis. In this subsection, "nonareawide" means throughout the

area of a borough outside all cities in the borough.” If adopted, this language would serve to limit borough powers regarding marijuana establishments to areas outside city boundaries.

### **Established Villages in Organized Boroughs and the Unorganized Borough**

The initiative defines “local government” as a home rule or general law municipality including boroughs and cities of all classes and unified municipalities. As such, the initiative did not give unincorporated communities in the unorganized borough the ability to prohibit marijuana establishments, despite the initiative giving local governments in the organized borough that ability. This creates a disparity between alcohol and marijuana because provisions in the alcohol statutes allow established villages in the unorganized borough to prohibit alcohol.

Senate Bill 30 contains local option provisions to give those communities the ability to ban marijuana establishments.

It was asked if established villages within organized boroughs have the ability to ban marijuana establishments through a local option election provided for in Senate Bill 30. The answer is no – “established village” is defined as “an area that does not contain any part of an incorporated city or another established village and that is an unincorporated community that is in the unorganized borough and that has 25 or more permanent residents.” This would be a departure from the alcohol local option laws. In Title 4, “established village” is defined to include villages in organized boroughs:

- (9) "established village" means an area that does not contain any part of an incorporated city or another established village and that is
  - (A) an unincorporated community that is in the unorganized borough and that has 25 or more permanent residents; or
  - (B) an unincorporated community that is in an organized borough, has 25 or more permanent residents, and
    - (i) is on a road system and is located more than 50 miles outside the boundary limits of a unified municipality, or
    - (ii) is not on a road system and is located more than 15 miles outside the boundary limits of a unified municipality;

I hope this memo provides clarification and direction to the committee. If you have any questions, please contact Jordan Shilling in my office at (907) 465-5834.