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MEMORANDUM

TO: House Judiciary Committee



FROM: Brooks W. Chandler

RE: HB 75 Ver. X [29LS035\X- Martin]

DATE: March 23, 2015

Please accept these additional comments on the latest draft of HB 75. These are written from my perspective as the contract municipal attorney for a number of cities in Alaska representative of a wide range of citizens (Nome, Dillingham, Unalaska, Soldotna, Adak, Haines Borough, Whittier, Galena, and Sand Point). These comments are also inspired by my participation with other municipal attorneys in a group which has discussed various drafts of this bill and other marijuana-related legislation. These are not official comments of any of the communities I represent.

HB 75 is not a perfect bill. But through a lot of effort and input from a variety of local government attorneys, legislative staff and initiative sponsors the bill is more “good” than “bad”.

It addresses an obvious issue based on Colorado’s experience by adding substance to the concept of “assist” in regards to personal marijuana grows. The exact language is not word for word what was proposed by the Fairbanks North Star Borough but it is an improvement over a vacuum. Without passage of HB 75 “assist” becomes an instant loophole. In Colorado unregulated commercial growing operations have resulted from claims the growers were “assisting” others in growing the allowed 6 plants for personal use.

HB 75 also fixes another glaring problem with Proposition 2- the illogical reference to the Administrative Procedure Act (AS 44.62) as applicable to local regulations. AS 44.62 by its terms has limited application to local government. It made no sense to reference this chapter in a sentence regarding adoption of local regulations. HB 75 solves this by requiring municipalities to enact ordinances in order to establish local regulations of commercial marijuana facilities. Again the fix is not perfect but in my opinion it does the job.

There remain problems with the bill. In particular the 24 plant "limit" in Section 2. As currently drafted a literal interpretation would allow a single person to grow 24 marijuana plants in "a single dwelling" (and even more perhaps if recreational cabins are considered a separate dwelling). This is not likely what is intended. There are two possible fixes. One is to add the phrase "which is the primary place of residence for at least four adults" after "dwelling". The other is to add the phrase "Unless otherwise provided by ordinance" to the beginning of this sentence. The latter approach allows each incorporated community to decide a plant per dwelling limit for themselves. The existing legislative language would apply in the unorganized borough and by default in any municipality that had not adopted a different limit by ordinance. Municipal attorneys, again based on actual experiences in Colorado, had asked for a standard statewide plant per dwelling limitation. But there is little support for the 24 plant limit reflected in the current draft. If the committee cannot agree to a specific limit leaving this policy decision to those most directly impacted is a logical alternative.

Another issue which may be a source of disagreement among members of the committee is the reference to criminal penalties that appears in Section 9. It is standard for municipalities to have both civil and criminal penalties available for violation of local ordinances. Criminal penalties are part of the landscape of business regulation. This category of penalty typically applies to illegal alcohol sales (including sales to minors); sales tax obligations, taxi regulations, and any number of permit violations. Local governments should have the option to establish criminal penalties for any commercial marijuana store that sells pot to minors. Why anyone would be opposed to this is baffling.

Criminal penalties are so much the norm that in my opinion the omission of the word "criminal" in Proposition 2 does not operate as an implied prohibition on the general authority of an Alaskan municipality to enforce an ordinance through criminal sanctions. If the sponsors of Proposition 2 had wanted to limit local authority to adopt criminal sanctions language similar to the phrase used in 17.38.020 ("shall not be subject to") explicitly banning a criminal penalty for selling marijuana to minors or any other violation of applicable limits on commercial marijuana facilities should have been included in the proposition. That being said it still made sense to include the reference to criminal penalties in HB 75 to remove any doubt on the question. All the municipal attorneys that participated in our informal group agreed this request made sense and that is why this phrase is in HB 75. It is not just a "big city" provision. If this reference is a sticking point, it is better not to adopt any bill at all than to remove the reference to criminal penalties.

On the whole, it makes sense to advance HB 75 to the next step in the legislative process preferably with changes to the per household limit. I hope the committee moves the bill.