

**ALASKA STATE LEGISLATURE**  
**HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE**

February 3, 2015

8:01 a.m.

**MEMBERS PRESENT**

Representative Cathy Tilton, Chair  
Representative Paul Seaton, Vice Chair  
Representative Shelley Hughes  
Representative Benjamin Nageak  
Representative Lora Reinbold  
Representative Harriet Drummond  
Representative Dan Ortiz

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

MUNICIPAL REGULATION OF MARIJUANA PRESENTATIONS

- HEARD

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

HEATH HILYARD, Staff  
Representative Tilton  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided remarks regarding the municipal regulation of marijuana.

LARRY DEVILBISS, Mayor  
Matanuska-Susitna Borough  
Palmer, Alaska

**POSITION STATEMENT:** Provided comments regarding the municipal regulation of marijuana.

NICHOLAS SPIROPOULOS, Borough Attorney  
Matanuska-Susitna Borough  
Palmer, Alaska

**POSITION STATEMENT:** Provided comments regarding the municipal regulation of marijuana.

JIM SYKES, Member  
Matanuska-Susitna Borough Assembly  
Matanuska-Susitna Borough  
Palmer, Alaska

**POSITION STATEMENT:** Provided comments regarding the municipal regulation of marijuana.

DELANA JOHNSON, Mayor  
City of Palmer  
Palmer, Alaska

**POSITION STATEMENT:** Offered testimony regarding the municipal regulation of marijuana from the perspective of a city within an organized borough.

DENNIS WHEELER, Municipal Attorney  
Municipality of Anchorage  
Anchorage, Alaska

**POSITION STATEMENT:** Provided comments regarding the municipal regulation of marijuana.

ERNIE HALL, Member  
Anchorage Assembly  
Municipality of Anchorage  
Anchorage, Alaska

**POSITION STATEMENT:** Provided comments regarding the municipal regulation of marijuana.

## **ACTION NARRATIVE**

[8:01:20 AM](#)

**CHAIR CATHY TILTON** called the House Community and Regional Affairs Standing Committee meeting to order at 8:01 a.m. Representatives Drummond, Seaton, Nageak, Reinbold, Ortiz, and Tilton were present at the call to order. Representative Hughes arrived as the meeting was in progress. Also in attendance was Representative Millett.

### **Municipal Regulation of Marijuana Presentations**

CHAIR TILTON announced that the only order of business would be presentations regarding the municipal regulation of marijuana.

8:03:40 AM

HEATH HILYARD, Staff, Representative Tilton, Alaska State Legislature, informed the committee that prior to this session Representative Tilton was in contact with a number of municipal officials who expressed that some of the initiative language was somewhat vague or unclear regarding how they would have the ability to regulate at the local level. Therefore, Representative Tilton introduced HB 75, which he characterized as largely placeholder legislation. The goal, he explained, is to craft legislation that is responsive to the testimony received from stakeholders. The committee [over the course of a few meetings] will hear from five municipalities and the Alaska Municipal League (AML). The committee will also hear from representatives from the Division of Community & Regional Affairs and the executive director of the Alcoholic Beverage Control (ABC) Board regarding language in Title 4 that may be used as a basis to draft legislation. Mr. Hilyard noted that he has been working with a number of municipal attorneys throughout the state that have been providing background on the issue. He expressed the intent to bring before the committee a comprehensive committee substitute to HB 75 that is responsive to the testimony received.

8:06:42 AM

LARRY DEVILBISS, Mayor, Matanuska-Susitna Borough, began by highlighting that the Matanuska-Susitna Borough has three incorporated cities within the municipality, which creates challenges in terms of the marijuana regulations.

8:08:54 AM

NICHOLAS SPIROPOULOS, Borough Attorney, Matanuska-Susitna Borough, informed the committee that Ballot Initiative 2 failed areawide in the Matanuska-Susitna Borough, but passed in Palmer and Houston, and failed in Wasilla. All the votes, he noted, were fairly close.

8:09:57 AM

MAYOR DEVILBISS related that shortly after the vote, the mayors in [the borough] gathered to determine how to move forward. They immediately realized there were issues with Ballot Measure 2 that needed to be resolved at the state level prior to beginning [to address the initiative at the municipal level]. Following the meeting of the mayors, a town hall meeting was

held to take public testimony. The issues brought forth through the public testimony were included in the resolution, which was forwarded to the committee. He noted that the Matanuska-Susitna Borough Assembly formed an advisory committee to continue to address this issue. He further noted that [the Matanuska-Susitna Borough Assembly] met with Taylor Bickford, Campaign to Regulate Marijuana Like Alcohol, and Bruce Schulte, Coalition for Responsible Cannabis Regulation, which shared some of the same concerns. Most recently, there was a meeting with Lance Kitterling, Alaska State Trooper, who had recently been to Arizona and could provide information as to how the legalization of marijuana was progressing in Arizona. He reminded the committee that the language of Ballot Measure 2 was very similar to that of Arizona's language.

[8:13:33 AM](#)

MR. SPIROPOULOS explained that one of the issues for the Matanuska-Susitna Borough is that it's not a home rule municipality but rather a second class borough, a general law municipality, such as Fairbanks, Ketchikan, Kenai, and Kodiak. The Matanuska-Susitna Borough has cities within its borough, and therefore for the marijuana regulations the question becomes whether the borough's powers extend into the cities within it, an areawide power. Although the law specifies that municipalities can vote to ban growing, processing, testing, and selling of marijuana, further clarification is necessary because it's a planning function. In terms of the planning function, the concern is with regard to land use patterns, impacts, compatibility with surrounding areas, and whether it fits within the comprehensive plan. He pointed out that there are regulations at the local level for alcohol, regarding both package stores and liquor dispensaries. In the Matanuska-Susitna Borough, a conditional use permit is required. Mr. Spiropoulos directed attention to the third Whereas clause of Matanuska-Susitna Borough Resolution 15-006, which express the need for clarification regarding the powers granted to boroughs and cities within those boroughs. He then highlighted that the Matanuska-Susitna Borough is a strong manager form of government, and thus the manager is the day-to-day administrator unlike Fairbanks and Kenai. He related that the Matanuska-Susitna Borough manager's preference is for this to be an areawide power and for the borough to work with the cities. He then provided the example of the sale of fireworks in Houston. The sale of fireworks is a non areawide power, and the situation is one in which Houston allows the sale of fireworks, but the surrounding areas do not. Therefore, the 400,000 people between

Anchorage and the Matanuska-Susitna Borough can go to Houston to purchase fireworks [and take them back to other areas where they may be illegal]. The borough wants to avoid such a situation with marijuana and wants to have some coordination and say in what happens. Although cities may be resistant to [an areawide power], he opined that it could be worked out. Mr. Spiropoulos clarified that the Matanuska-Susitna Borough prefers [that marijuana regulation be an areawide power] and if not, that there be clarification at the legislative level.

[8:17:13 AM](#)

REPRESENTATIVE NAGEAK inquired as to whether each city could make its own rules within its city limits.

MR. SPIROPOULOS specified that the Matanuska-Susitna Borough is requesting clarification on that matter as the initiative is only a broad framework. Specifically, he inquired as to the outcome of a situation in which a city and the borough, both a local government, want to allow limit, restrict, or prohibit the growing, processing, testing, and retail differently for the same area. When looking at it as a land use issue, it's more appropriately an areawide power, he opined. Mr. Spiropoulos stressed that in either case, whether it's viewed as an areawide or non areawide power, clarification is necessary.

[8:18:56 AM](#)

REPRESENTATIVE SEATON asked, drawing a parallel between alcohol and marijuana, whether Mr. Spiropoulos intends for all boroughs to have the ability to dictate whether the communities within the borough are dry, wet, or damp.

MR. SPIROPOULOS opined that alcohol is somewhat different as it and the rules surrounding it have long been present. The numerical limits are set by state law, while the local option goes before voters. The local option for marijuana, however, does not have to go before voters as it can be done by the assembly. In the Matanuska-Susitna Borough, planning powers were delegated to the cities. Therefore, so long as the cities' plans and laws fit within the overall borough comprehensive plan, the borough has delegated to the cities the power to zone, plan, and set permits. The borough reserves the right to take actions if something in the city is impacting major traffic patterns or overall growth and development. He reiterated the need for clarification in this area whether through legislation or the administrative board overseeing marijuana.

8:21:29 AM

CHAIR TILTON reminded the committee that it isn't going to address the criminal aspect of marijuana rather only with regard to the local governing agencies.

8:22:14 AM

REPRESENTATIVE NAGEAK, highlighting that Alaska has had the personal use clause for marijuana since the 1970s, asked whether there will be any change in terms of the possession limits under the initiative.

MR. SPIROPOULOS related his understanding that [the existing possession clause] allows for the possession of four ounces of marijuana in the home, whereas the initiative allows possession of one ounce of marijuana anywhere. This is a new type of business, and the focus for the Matanuska-Susitna Borough will be in terms of land use and business districts.

8:24:30 AM

REPRESENTATIVE ORTIZ inquired as to whether the commercial and zoning laws vary between the communities in the Matanuska-Susitna Borough. If that is the case, then he surmised that each community could have its own rules related to the commercial activity of marijuana.

MR. SPIROPOULOS agreed that if the term local government in the initiative means cities can make their own rules, then potentially every city in the Matanuska-Susitna Borough could have different rules as well as the borough having different rules. He opined that the aforementioned may not be the best path in terms of businesses, land use patterns, commerce, and activity because it could lead to inconsistencies when crossing borders. He informed the committee that the Matanuska-Susitna Borough has delegated to the cities the power to do their local land use and planning. However, the Matanuska-Susitna Borough didn't give the power to subdivide to the cities, it remains with the borough. Furthermore, several years ago the borough revoked the cities' planning powers for power plants to ensure that the rules were consistent as the effects of power plants reach outside of the cities. Although the effects of the sale of fireworks goes well beyond Houston, the borough can't do anything about it since it's a non areawide power.

[8:26:58 AM](#)

REPRESENTATIVE ORTIZ asked whether it would be within the purview of the state to develop a uniform regulation for marijuana that would apply [throughout the state] regardless of how an area is organized or not.

MR. SPIROPOULOS explained that the unorganized boroughs are generally governed by the legislature, and therefore the rules passed by the legislature apply there. The initiative clearly specifies that municipalities can prohibit, limit, and regulate numbers and quantities, which is what the legislature would do for the unorganized areas. How the rules reach into the general law boroughs would be dependent upon the legislature's rules, he opined. He related his understanding that the initiative contemplated that boroughs would retain some authority to limit or prohibit [activities], depending upon the regulations.

[8:28:58 AM](#)

REPRESENTATIVE HUGHES asked if consideration has been given to what might make sense for the division of powers between boroughs and cities for marijuana if the legislature doesn't have an appetite for boroughwide control.

MR. SPIROPOULOS reminded the members of the mayors' meetings during which there was the opportunity to have a dialogue with their citizens and city councils. Therefore, the dialogue has started and hopefully after clear rules are established by the state, the [local governments] can work within those.

[8:32:39 AM](#)

REPRESENTATIVE NAGEAK questioned whether the marijuana issue may be an impetus for unorganized boroughs to organize so that they don't fall under the state's control.

MAYOR DEVILBISS agreed that this issue could be an incentive for an unorganized area to organize.

[8:34:36 AM](#)

MAYOR DEVILBISS, continuing his testimony, expressed the need for the state to clarify what one ounce of marijuana means. Strictly following the initiative language, he surmised that one ounce could include an ounce of raw fiber or an ounce of liquid concentrate. The aforementioned is the definition in Arizona

and it's a problem because one dose of marijuana is 10 milligrams of Tetrahydrocannabinol (THC) while one ounce of liquid concentrate is 28,300 grams of THC. He related that discussions with those who promoted the initiative found that the initiative promoters agreed the aforementioned is an unreasonable range to be included in [the definition] of one ounce of marijuana. Mayor DeVilbiss then suggested the state prohibit non Alaska produced marijuana in order to promote Alaska agriculture and business. He pointed out that there is ambiguity with regard to the per person definition, particularly in terms of the personal use allowance of one ounce of marijuana and six plants. He posed a scenario in which six adults over 21 years of age live in one residence and questioned how the [personal use allowance] would be applied, particularly if some of those residents work on the North Slope and are absent for chunks of time.

[8:37:15 AM](#)

REPRESENTATIVE DRUMMOND inquired as to whether there is a limit on the amount of alcohol one living in the Matanuska-Susitna Borough can possess in their home.

MAYOR DEVILBISS replied no.

[8:37:34 AM](#)

MAYOR DEVILBISS related that although users have said there won't be a problem with the per person rules, he believes there is room for abuse since these are living plants rather than liquid. He then emphasized the need to restrict packaging that entices minors. The state should also differentiate between medicinal and recreational marijuana and industrial hemp in terms of both definition and regulation. Mayor DeVilbiss opined that taxes on the different products should be different. The state, he further suggested, needs to offer minimum standards in terms of contaminants and potency and appropriate labeling.

[8:39:35 AM](#)

MR. SPIROPOULOS stressed the need for a clear definition of the term "public" as the consumption of marijuana in public is prohibited. He pointed out that the Matanuska-Susitna Borough is a second class borough that doesn't have a police department, and thus doesn't perform criminal law enforcement. If the definition is going to be promulgated through an agency, the ABC

Board has a definition of "public" for purposes of this law on its web site. Mr. Spiropolous requested the legislature ensure that agency has the authority to define the language because that isn't entirely clear at this point. However, the Matanuska-Susitna Borough would prefer that the legislature define the term "public."

[8:41:38 AM](#)

REPRESENTATIVE NAGEAK expressed concern with controlling the contaminants in marijuana as well as marijuana that is laced with other drugs.

MAYOR DEVILBISS suggested that the contaminants in marijuana could be addressed in the same manner as with food products such that a minimum level of contaminants are allowed or some contaminants are disallowed. He related his understanding that Colorado has addressed contaminants after the fact by prohibiting the use of butane as an extraction medium as it's a source of explosions.

[8:43:46 AM](#)

JIM SYKES, Member, Matanuska-Susitna Borough Assembly, Matanuska-Susitna Borough, expressed hope that Alaska can learn from the other states who have legalized marijuana. To that end, Mr. Sykes highlighted Eagle County, Colorado, which is a rural community with highly populated areas and rural unpopulated areas similar [to Alaska]. With regard to comments that the industry needs to be small, home grown, and Alaska based, he related his understanding that there is the desire to have a vertically integrated business in which there is growing, manufacturing, processing, and sales in one location. Although the aforementioned may make sense for a very small business, the vertical integration that allows an industrial corporation to enter the market would be a different matter. He then related the need to establish regulations sooner rather than later because the longer it takes to establish regulations, the longer the black market will continue. Mr. Sykes noted that the committee will be provided with an audio file and transcript of the public comments to the [Matanuska-Susitna Borough]. He then directed attention to the membership of the Matanuska-Susitna Borough's proposed Marijuana Advisory Committee, as listed in Resolution 15-007. In closing, Mr. Sykes said he looked forward to working with the legislature and having a good flow of information.

[8:48:30 AM](#)

REPRESENTATIVE DRUMMOND related that after she and her husband visited marijuana dispensaries in Seattle, Washington, she surmised that the largest problem is going to be the cash basis of these systems. Because marijuana is illegal at the federal level, these businesses operate on a cash basis. Washington marijuana dispensaries all use the same sophisticated point of sale (POS) system through which the State of Washington can enter for review. There is no [private information] in terms of customer names because it's a cash system that doesn't accept credit cards or checks. In Alaska, where 63 percent of residents carry guns, a cash-based system needs to be addressed.

MAYOR DEVILBISS pointed out that the Marijuana Advisory Committee includes a member from the financial community in order to address that perspective. However, since it's a federal problem, the issue isn't included in the resolution because he wasn't sure the state could solve that problem.

MR. SYKES informed the committee that during discussions on the banking aspect, he learned there are two state-chartered credit unions in Washington that only do in-state business and contemplate using a two-step process [with marijuana revenue]. North Dakota has its own sovereign bank, which he didn't know what that means. There is at least one state-chartered credit union in Alaska that may or may not be an answer. Mr. Sykes noted his agreement that this aspect needs to be addressed.

[8:51:51 AM](#)

REPRESENTATIVE DRUMMOND described the dispensaries as having heavy metal doors that were pulled down in front of the windows. Although the dispensaries were not in a ghetto-like neighborhood, it looked as if it was in a ghetto neighborhood that needed to arm itself. The surrounding businesses were normal looking without all the visible [heavy security measures of the marijuana dispensaries]. She attributed the cash basis of the marijuana dispensaries as the reason for them being heavily armed. She further related that the marijuana dispensary employees are paid in cash.

[8:52:55 AM](#)

MAYOR DEVILBISS, in response to Chair Tilton, related that the bulk of the testimony [the Matanuska-Susitna Borough Assembly]

received was for the creation of a separate board for the regulation and control of marijuana.

[8:54:14 AM](#)

MAYOR DEVILBISS, concluding his testimony, expressed the need for the state to clarify whether the farm use tax exemption is to include the growth and production of marijuana. He recommended that taxation on the state level be for prevention, treatment, testing, enforcement, and security. He then emphasized the need for the state to establish rules for the unorganized borough as it would impact the borough. Since other states have found infused edible products to be problematic, the state regulations should clearly address the matter. He reiterated earlier testimony relating that the preponderance of testimony the Matanuska-Susitna Borough Assembly heard requested an unlimited number of small vertically integrated operations, for which the assembly asked. The aforementioned is the model that works best for agriculture in Alaska. He related there was general agreement that public advertising shouldn't be allowed if marijuana is being treated like pornography. He then requested the state establish business hours [if the borough cannot]. Mayor DeVilbiss informed the committee that there was the suggestion for the state to consider allowing permits for cultivation facilities four months prior to retail sales. Mayor DeVilbiss emphasized that [the borough] hasn't even discussed commercialization of marijuana as it wants to see the landscape prior to any decisions regard commercialization.

[8:57:45 AM](#)

MR. SPIROPOULOS highlighted the need to consider the Landlord Tenant Act and whether a landlord can tell a tenant he/she can't possess marijuana in the rental. He then reminded the committee that the initiative was put forth as marijuana would be regulated like alcohol. However, there are severe limits on the ability to tax alcohol at the local level such that alcohol can only be taxed by a sales tax that matches the rate. The Matanuska-Susitna Borough, he related, would like to preserve all the local options for taxation. The assembly could then decide how to allocate those tax funds for education or treatment. As the legislature considers definitions, he encouraged the committee to define "assist," particularly in terms of business transporters who "assist" various customers and thus are in possession of more than one ounce of marijuana.

[9:00:00 AM](#)

MR. SPIROPOULOS, in response to Representative Drummond, explained that there is a state law specifying that the only tax that can be levied on alcohol is a sales tax. There is also an Alaska Supreme Court ruling that the sales tax rate [on alcohol] must match the other sales tax rate. In further response to Representative Drummond, Mr. Spiropoulos specified that cities within the Matanuska-Susitna Borough each have a sales tax while the borough has a bed tax of 5 percent that is considered the sales tax for purposes of taxing alcohol.

REPRESENTATIVE DRUMMOND surmised then that Anchorage's tax structure is different since a recent increase in the bed tax was dedicated to the construction of a convention center. All of the sales taxes in Anchorage must be placed before the voters, she noted.

[9:01:50 AM](#)

MR. SYKES informed the committee that those who are considering business models to grow marijuana have encouraged not setting the tax rate too high because it could continue the influence of the black market. There was also the suggestion that if another medical marijuana section of the law is created, the tax rate on it should be addressed because in other states medical marijuana use rose since it was cheaper. The expected need to fund regulations, inspections, enforcement, education, public health, and other aspects of marijuana are upfront costs. Since the state doesn't allow dedicated funds, he suggested that perhaps licensing regulations can address paying for services the state and local governments need to provide to implement the law. He noted that Colorado has had some success in that area. While there is differing opinion as to whether to limit the number of licenses, there is widespread agreement that licenses shouldn't become an economic asset like liquor licenses. In conclusion, he told the committee that the State of Washington is instituting an evaluation process that monitors the effectiveness of the laws they are creating. He further told the committee that Colorado reported decreases in some areas of crime, but increases in medical responses.

[9:04:26 AM](#)

REPRESENTATIVE NAGEAK expressed concern with airport security in Alaska and questioned what happens if a traveler is found in possession marijuana, which is federally prohibited.

MR. SYKES said he didn't know what would happen.

MR. SPIROPOULOS interjected that a lot of that will be driven by federal policymakers, the U.S. attorney general, and the secretary of Homeland Security. He related his understanding that U.S. Attorney General Holder has said he won't substantially interfere with the legal operations in those states that have legalized marijuana. However, banks and air carriers aren't willing to risk their charters. The current nominee for the U.S. Attorney General, Loretta Lynch, has testified in opposition to the legalization of marijuana.

[9:07:59 AM](#)

REPRESENTATIVE SEATON noted that the House Health and Social Services Standing Committee is hearing HB 59 that addresses health and social services issues, including mixing marijuana with other drugs.

[9:08:46 AM](#)

DELANA JOHNSON, Mayor, City of Palmer, speaking from the perspective of a city within an organized borough, informed the committee that cities have police powers. Mayor Johnson emphasized the importance of self-determination of the communities, which she opined is the intent of the reference to local government in the initiative. She then pointed out that cities have health powers within public spaces in terms of smoking, vaping, and other methods of inhalation and those are already covered in city code. Therefore, she encouraged the committee not to allow the borough to change the city's regulations that are already in place.

[9:11:56 AM](#)

REPRESENTATIVE NAGEAK noted that he had received concerns with regard to the municipality overriding what the local government [city/village] had voted in terms of legalization of marijuana.

MAYOR JOHNSON recalled that Palmer voted in support of the legalization of marijuana while most of the borough did not. Mayor Johnson cautioned against broad stroke regulations, particularly for the cities. The cities do have planning powers. In fact, Palmer had planning and zoning powers long before statehood. She opined that no one outside of the city council and planning and zoning understand where sales might be intrusive and what marketing should look like. Speaking

personally, she agreed with the notion of not allowing the marketing of marijuana just anywhere. She expressed the need for cities to have the choice with regard to marijuana. Mayor Johnson opined that a separate board [for the regulation of marijuana] is essential. She pointed out that since cities have police powers and boroughs do not, the finances of the cities will be impacted. Ultimately, no one knows a community as well as those local residents.

[9:15:36 AM](#)

REPRESENTATIVE NAGEAK informed the committee that the North Slope Borough has a boroughwide police force.

MAYOR JOHNSON pointed out that Anchorage is a unified municipality and thus has both city and borough powers as does Sitka and Juneau. She related her understanding that police powers are generally designated to cities, which she opined would be helpful for whomever is making decisions at the borough level.

REPRESENTATIVE NAGEAK related that the only powers cities have in the North Slope Borough are boats, parks, and cemeteries.

MAYOR JOHNSON remarked that the City of Palmer has a number of powers, including planning powers delegated to the city by the borough. She emphasized the importance of local determination, particularly since it's difficult to address the details of various communities from a 10,000 foot level.

[9:18:35 AM](#)

DENNIS WHEELER, Municipal Attorney, Municipality of Anchorage, identified the need to define "public" and "consume in public". The Municipality of Anchorage recently passed an ordinance to address the aforementioned because the assumption is that people will begin to consume on February 24, 2015. Anchorage's ordinance copied the criminal code definition from the state's criminal code with an exception for those things properly permitted or licensed per state or municipal code. He then expressed the need to define the terms "marijuana concentrate" and "marijuana products." With regard to the issues surrounding the number of plants per person per household, Mr. Wheeler related his understanding that in Colorado the medical marijuana [possession] limits were combined with the recreational marijuana [possession] limits, which resulted in a loophole. Additionally, the tax rate for medical marijuana was different

than that for recreational marijuana. Therefore, individuals could have more marijuana plants than they anticipated and the use of medical marijuana increased significantly because of the significant price difference. The aforementioned is why the existing medical marijuana statutes will have to be reviewed as well. He then expressed concern with a cohabitation situation in which multiple individuals have multiple plants that could reach the level of a grow operation. Another area of concern is the term "display" and what it means to display one ounce of marijuana. He noted that there is a provision specifying that marijuana plants can't be grown within public view. If one is allowed to display marijuana, it would seem that open exchanges of marijuana in public places could occur, he surmised, which would need to be addressed.

[9:23:13 AM](#)

MR. WHEELER then turned to the home processing of marijuana, particularly the use of flammable gases. He related his understanding that there were about 30 house fires resulting from individuals trying to use this method of processing marijuana on their kitchen stove. To address the aforementioned, the Municipality of Anchorage is introducing an ordinance to ban [butane processing] locally. He then expressed concern with regard to open containers of marijuana, particularly within a vehicle. He suggested that perhaps open marijuana containers would have to be out of arm's reach of those in the vehicle. Mr. Wheeler then related the need for a public education campaign, such as Colorado's Good to Know campaign, so that people understand the rules. With regard to statewide data collection, he acknowledged that there would be a cost but there needs to be some method of data collection in order to understand what is and is not working well. In regard to taxation, he reiterated the concern with regard to pushing people toward medical marijuana use as was the case in Colorado. Furthermore, when regulations are layered an expense is associated with that and increases the cost of the product, which drives the black market. The black market for marijuana in Colorado is thriving. In fact, two states adjacent to Colorado have sued Colorado because of the amount of marijuana transported out of Colorado and into those states. Therefore, it's a balancing act between the regulations, the costs, and the black market. Mr. Wheeler then turned to the concern surrounding edibles, including the amount of THC, the serving size, packaging, testing, and work environment. With respect to licensing, Colorado has a two-year residency requirement in order to obtain a business license. Although Mr. Wheeler wasn't

sure Alaska could impose a two-year residency requirement, he felt there is merit in [a residency requirement] if the desire is to create a home grown environment.

[9:28:35 AM](#)

MR. WHEELER then turned to the question as to whether marijuana should have its own control board. He opined that there is a need for some state level centralized authority. Generally speaking, the ABC Board model works well, particularly since it allows a local government to protest the issuance of a state level license. He said he has heard discussions about using some of the same ABC Board staff to support the marijuana board, which may have some merit as those existing staff would have experience investigating individual cases, reviewing individual licenses, and processing [licenses]. Using the ABC Board model for a marijuana board would be of particular merit if the model for marijuana incorporates similar concepts from the alcohol model. With regard to the notion of having local advisory boards, Mr. Wheeler pointed out that in the Matanuska-Susitna Valley that would place quite a demand on resources whether it was one local advisory board on one in each local jurisdiction, all the cities and the borough. He opined that it's very difficult to consistently staff advisory boards and there are costs associated with providing support staff. Because the assembly or city council is very accessible in the Matanuska-Susitna Valley, he wasn't convinced an advisory board is necessary. Therefore, he said he was more comfortable with the city council or city assembly addressing issues as they arise. Mr. Wheeler said that he concurred with today's testimony as well as the comments submitted in the Fairbanks North Star Borough letter, particularly with respect to consumption in private clubs and local government control in terms of zoning and land use. The Municipality of Anchorage has local land use powers and with respect to alcohol has a conditional use permit process in which every alcohol license provided by the state must be accompanied by a local conditional use permit that has been approved by the assembly. The Anchorage Assembly can deny the conditional use permit after reviewing how a particular establishment fits in a particular neighborhood. The Municipality of Anchorage, he said, would like to retain its power with respect to conditional use permits.

[9:32:46 AM](#)

REPRESENTATIVE SEATON inquired as to whether the conditional use permit requirement is through the local option or a specific state statute for alcohol licenses.

MR. WHEELER answered that it's part of Title 29 for local government land use powers. He explained that there are conditional use permit processes for all types of land use, alcohol just happens to one of them.

REPRESENTATIVE SEATON surmised then that if the state doesn't prohibit that Title 29 power, the local government would retain it.

MR. WHEELER replied yes, in so much as the initiative doesn't explicitly prohibit the exercise of the power. However, Mr. Wheeler said he prefers [language] that is more direct and explicit such that local government planning powers are retained.

[9:34:07 AM](#)

REPRESENTATIVE REINBOLD asked if Anchorage has reviewed the various fines in Chapter 38 and determined whether they are reasonable or not.

MR. WHEELER explained that when the Municipality of Anchorage adopted a definition of public place in its ordinance, the state fine provisions were also incorporated. Therefore, someone caught consuming marijuana in a public place would face a \$100 citation. Mr. Wheeler didn't recall the assembly commenting on whether that fine [schedule] is high enough or too high but rather would follow it and determine how it works. Although he suspected that the \$100 citation may not be high enough to keep people from consuming in public, he wasn't sure there is the latitude to increase the fine.

[9:36:19 AM](#)

REPRESENTATIVE REINBOLD expressed the need to maintain local control, particularly in terms of Section 3, which read:

The provisions of this Act are independent and severable, and, except where otherwise indicated in text, shall supersede conflicting statutes, local charter, ordinance, or resolution, and other state and local provisions. If any provision of this Act, or the application thereof to any person or circumstance,

is found to be invalid or unconstitutional, the remainder of this Act shall not be affected and shall be given effect to the fullest extent possible.

MR. WHEELER confirmed that he is aware of Section 3 and added that it's not uncommon language. He said that the municipality doesn't want to create conflict that invites litigation. Still, the municipality, to the extent possible, wants to exercise some local control or control either through the recommendation process that is used for alcohol licensing or the ability for the municipality to enact its own provisions not inconsistent with the initiative.

[9:38:20 AM](#)

REPRESENTATIVE DRUMMOND, noting that many of Anchorage's conditional use permit files have been lost, opined that this will provide Anchorage the opportunity to track all of its conditional use permits. She also reiterated her concerns with regard to the cash basis of the marijuana industry.

MR. WHEELER related his understanding that Colorado experienced an increase in crime related to the cash basis of the marijuana industry and is working with state-chartered credit unions to address the reluctance of the banking industry to become involved with the marijuana industry. He then mentioned that armored car carriers initially wouldn't serve marijuana dispensaries, but now are coming around to the idea. Mr. Wheeler agreed with [Representative Drummond's concern] and said he didn't know how to address it since [the cash basis of the marijuana industry] is due to the concern with the federal law and their ability to operate. A further chilling effect could result from the new U.S. Attorney General's comments that she isn't in favor of the legalization of marijuana. Although he said he didn't know how these concerns could be addressed at the local level, he did specify that in terms of land use there would be concerns with regard to security, lighting, and secure doors. However, the aforementioned doesn't address when consumers, employees, or the owner of the establishment leave the establishment. The aforementioned may be a reason to consider where marijuana [dispensaries] should be located to reduce the chances of the aforementioned crimes.

REPRESENTATIVE DRUMMOND opined that it will behoove the legislature to pay close attention to the cash side of the marijuana industry, including the tax payments that will likely also be made in cash.

[9:41:35 AM](#)

ERNIE HALL, Member, Anchorage Assembly, Municipality of Anchorage, informed the committee that the Municipality of Anchorage will continue to follow the leadership of Mr. Wheeler and the municipality's legal department as they continue to do a good job raising red flags. He recalled when the municipality was considering opting-out there was a tremendous amount of testimony that the municipality would be able to develop regulations and collect a lot of tax revenue to solve the state's fiscal gap. However, once the decision was made to opt-in, the messages almost immediately changed to one saying the initiative language shouldn't be changed since the public approved it as it is and the taxes should be kept low enough for [businesses] to operate. Therefore, the local assembly is looking to the state to do a good job and handle the heavy lifting in terms of establishing a good set of state regulations. He then pointed out that the marijuana statute doesn't refer to a license but rather says "register with the state". He expressed concern with regard to the number of licenses that will be issued and the process for licensure. He said he considered Mr. Wheeler's earlier comment about a two-year residency requirement as appropriate. Mr. Hall indicated [his agreement] with an earlier suggestion that people not be allowed to actually own [a marijuana dispensary] license and thus avoid financial value accruing to the license. There is already an issue with this with liquor licenses. The Municipality of Anchorage, he related, is interested in continuing to use its land use and conditional use [powers] as that's how the municipality was able to interject itself in the alcohol process. He emphasized the need for everyone to play by the same rules, which is why the vast majority of [rules and regulations for marijuana] should be addressed at the state level in order to avoid local level confusion while allowing the local governments discretion only with the local conditional use permits. In closing, Mr. Hall said he didn't envy the job before the legislature, but opined that Cynthia Franklin with the ABC Board is definitely an asset. He then expressed his desire to have any regulations put forth by the ABC Board approved by the legislature prior to their implementation.

[9:48:22 AM](#)

REPRESENTATIVE SEATON highlighted the need for the committee to discuss the definition of marijuana in the law, which seems to exclude fiber and such things when growing hemp. The question,

he opined, is whether hemp without THC will be regulated as marijuana or not as it could have some impacts with this dual definition of what is and is not marijuana.

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REPRESENTATIVE DRUMMOND noted that the testing issue wasn't addressed today, which she attributed to the fact that it will likely be heard in the House Health and Social Services Standing Committee in terms of definitions and amounts.

[9:50:49 AM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 9:50 a.m.