SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Josett Banks, et al., Appellants, v. **Municipality of Anchorage,** Appellee.	No. 3AN-23-06779-CI
Joene Atoruk, et al., Appellants, v. **Municipality of Anchorage,** Appellee.	No. 3AN-23-07037-CI

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APPELLANTS' REPLY IN SUPPORT OF OPENING BRIEF

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Anchorage Municipal Code

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AUTHORITIES RELIED UPON

Alaska Constitution

Article I, Section 7

> No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

Article I, Section 12

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Criminal administration shall be based upon the following: the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation.

Article I, Section 14

> The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Anchorage Municipal Code

AMC 8.05.020.H – Sentencing

Offenses under this title shall be designated as class A misdemeanors, class B misdemeanors, or minor offenses and shall be subject to the following punishment upon conviction:

1. Class A misdemeanors are punishable by up to one year in jail and up to a $10,000.00 fine.

2. Class B misdemeanors are punishable by up to six months in jail and up to a $2,000.00 fine.

. . .

AMC 8.45.010 – Trespass

A. A person commits the crime of criminal trespass if the person:

. . .

3. Knowingly enters or remains on public premises or property, or in a public vehicle:

    a. when the premises, property, or vehicle is not open to the public; or
    b. after the person has been requested to leave by someone with the apparent authority to do so.

. . .

D. Violation of this section is a class A misdemeanor.

AMC 8.30.120.A.5 – Failure to Disperse

A. It is unlawful for any person to:

. . .

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5. Knowingly refuse to comply with a lawful order of the police to disperse in a public place when a criminal offense has occurred.

. . .

C. Violation of this section is a class B misdemeanor.

AMC 14.30.080.D – Pre-Hearing Procedures; Discovery

If a party desires discovery prior to the hearing, any request for discovery shall be submitted along with the charging document or request for a hearing and served on the opposing party.

1. If the discovery requested consists of documents, the party receiving the request shall either object in writing or make the requested documents available at least one week prior to the hearing. The hearing date may, upon order of the hearings officer, be extended to provide reasonable time for review of the documents and for additional discovery, if necessary. If an objection is filed with the administrative hearings officer and served on the opposing party, the objecting party shall bring the relevant documents to the hearing to facilitate in camera review and a ruling on the objection.

2. Discovery shall not include depositions or interrogatories unless the administrative hearings officer, upon application of the party seeking such discovery, finds good cause. Good cause shall be such conditions or facts which may be relevant to a material element of the violation which cannot be obtained through any reasonable method other than interrogatories or depositions. An application to require interrogatories shall include the proposed interrogatories. An application for deposition or interrogatories shall set forth what material element of the violation is to be addressed in the deposition or interrogatories and shall explain why the facts sought are not obtainable by other reasonable means. Applications under this subsection shall be served on the opposing party at the time of application.

3. The administrative hearings officer may issue orders pertaining to discovery under this section.

AMC 14.40.010 – Appeals

An appeal may be filed in the superior court for the state within 30 days of issuance of the final decision in a matter. If a request for reconsideration is timely filed, the 30-day period runs from the date of decision after reconsideration or, if reconsideration is denied, from the date the decision denying reconsideration is mailed.

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AMC 14.40.020 – Record on Appeal

A. The record in an appeal shall include the following documents:

   a. All pleadings, motions and intermediate rulings of the administrative hearings officer.

   b. Evidence received or considered.

   c. Stipulations.

   d. A statement of matters officially noticed.

   e. Questions and offers of proof, objections and rulings thereon.

   f. The decision of the administrative hearing officer being appealed.

   The record need not include a transcript of the proceedings unless so designated by either party to the appeal.

B. The administrative hearings officer shall charge the party requesting transcription the cost of transcription, unless otherwise ordered by the superior court.

C. The administrative hearings officer shall, within 40 days of service of notice that the agency is to prepare the record, pursuant to Alaska Rule of Appellate Procedure 604(c), be responsible for preparing and transmitting the record to the superior court.

AMC 15.20.010 – Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

. . .

Camping means use of space for the purpose of sleeping or establishing a temporary place to live including, but not limited to:

1. Erection of a tent, lean-to, hut, or other shelter;
2. Setting up bedding or equipment in such a manner as to be immediately usable for sleeping purposes, whether indoors or outdoors, on or under any structure not intended for human occupancy;
3. Sleeping outdoors with or without bedding, tent, tarpaulin, hammock or other similar protection or equipment; or

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4. Setting up cooking equipment, including a campfire, with the intent to remain in that location overnight.

AMC 15.20.020 – Public Nuisances Prohibited; Enumeration

B. Public nuisances include, but are not limited to, the following acts and conditions:

. . .

15. *Prohibited campsites.* A prohibited campsite is an area where one or more persons are camping on public land in violation of section 8.45.010, chapter 25.70, or any other provision of this Code. A prohibited campsite is subject to abatement by the municipality. The municipal official responsible for an abatement action may accomplish the abatement with the assistance of a contractor, association or organization. Notwithstanding any other provision of this Code, the following procedure may be used to abate a prohibited campsite:

a. Prior to beginning the removal of a prohibited campsite, a notice of campsite abatement shall be posted on or near each tent, hut, lean-to, or other shelter designated for removal, or, if no structure for shelter exists, a notice shall be affixed in a conspicuous place near the bedding, cooking site, or other personal property designated for removal. The notice shall:

i. State the approximate location of the campsite, the code provision under which the campsite is prohibited, and that the campsite may be removed under one of the procedures set forth in subparagraph B.15.b.

ii. State an appeal may be filed with the court, and include the court's address, except this statement is not required where the municipality commences a forcible entry and detainer action under subparagraph B.15.b.iv.

iii. State a notice of intent to appeal may be filed with the municipality, and include the appropriate address, except this statement is not required where the municipality commences a forcible entry and detainer action under subparagraph B.15.b.iv.

iv. State that either an appeal or notice of intent to appeal received before the abatement date will delay abatement pursuant to subparagraph B.15.e.

v. Also be given orally to any persons in or upon the prohibited campsite or who identifies oneself as an occupant of the campsite

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that the campsite is subject to abatement as provided for in the posted notice.

vi. If personal property is to be stored, the notice shall include contact and location information for reclaiming it or disclaiming an interest in the property.

b. A notice of campsite abatement shall identify whether it is a 24-hour wildfire danger area notice, 72-hour notice, 15-day campsite notice, ten-day zone notice, or notice to quit; and the subsequent abatement activities of the municipality shall comply with the respective procedure for removal of a prohibited campsite and the personal property thereon:

i. Twenty-four hours' notice, wildfire danger area abatement. When a municipal burn ban is in effect, the municipality may post a wildfire danger area with notices describing the area in which prohibited campsites may be abated after 24 hours by removal and storage of personal property. Notices shall be posted in accordance with subsec. 15.20.020B.15.b.v.(A).

ii. Seventy-two hours' notice, protected land use. After verbal notice to an apparent occupant of a prohibited campsite within 100 feet of protected land uses the municipality may post the prohibited campsite with a notice stating all personal property not removed within 72 hours of the date and time the notice is posted may be removed and stored. For the purposes of this section:

A. Protected land uses shall include: paved greenbelt and major trail systems (including but not limited to Coastal, Chester Creek, Ship Creek, Campbell Creek); schools; playgrounds; habilitative care facilities; the Harry J. McDonald Memorial Center; community centers; neighborhood recreation centers; and athletic fields.

B. The separation distance shall be measured from the lot line of the protected land use to the nearest illegal camp structure.

iii. Seventy-two hours' notice. The municipality may post a prohibited campsite with a notice stating all personal property not removed within 72 hours of the date and time the notice is posted may be removed and stored.

iv. Fifteen days' notice, campsite abatement. The municipality may post a prohibited campsite with a notice stating all personal property not removed within 15 days of the date and time the

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notice is posted may be removed and disposed of as waste, unless sooner claimed or disposal authorized by the owner. At the expiration of this 15-day period the personal property may be disposed of as waste if no person has either given notice or removed property in accordance with this section.

v. Ten days' notice, zone abatement. The municipality may post a zone or campsite area with notice stating all personal property in or around the posted zone at the end of ten days of the date and time the notice is posted may be removed and disposed of as waste, unless sooner claimed or disposal authorized by the owner.

A. Notice shall be conspicuously posted under the circumstances and describe in detail the zone to be abated. The notices shall be within sight of one another and reasonably maintained for the entire notice period.

B. At the expiration of the notice period any personal property in the zone may be disposed of as waste if no person has either given notice or removed the property in accordance with this section.

C. Tents, structures, and associated personal property placed in the zone after notices were posted shall be stored pursuant to subparagraph B.15.c.

D. Zones shall be contiguous, reasonably compact, identifiable areas with boundaries that are recognizable landmarks, clear transition areas between developed and undeveloped lands, or physical features of development such as roads, rights-of-way cleared of trees, paved trails, utility lines, private property yards or fences, or named structures. At any one time, the municipality shall post no more than ten zones to be abated.

E. If the action to physically remove the campsite is not commenced by the municipality within ten days of the removal date provided in the notice, the municipality shall repost notice before abatement may occur. Nothing shall prohibit the municipality from posting notice that the removal in a zone or campsite area will occur over a period of several days.

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vi. Forcible entry and detainer action. The municipality may post a "notice to quit" and commence a forcible entry and detainer action in court consistent with the procedures of AS 09.45.060—09.45.160 and Alaska Rule of Civil Procedure 85. At the conclusion of the eviction hearing, the court shall include in its decision the date after which personal property remaining on the premises may be presumed abandoned and disposed of by the municipality.

c. Storage of personal property removed from a prohibited campsite. The municipality may store in any reasonable manner the personal property removed from a prohibited campsite. At the time of removal a notice shall be posted at the location, unless previously posted notices are still visible and accurate, with contact and location information for reclaiming personal property or disclaiming an interest in it. If no person removes the property, the municipality may dispose of the personal property 30 days from the date a notice in paragraph B.15.b. was posted. If the person(s) in possession of the personal property at the time it was removed or the prohibited campsite posted identify it and disclaim any interest, the personal property may be disposed of immediately. If a person reclaims stored personal property, it shall be released upon payment of an administrative fee not to exceed ten dollars. For purposes of this section, the following criteria applies:

i. Junk, litter, garbage, debris, lumber, pallets, cardboard not used to store other personal items, and items that are spoiled, mildewed, or contaminated with human, biological or hazardous waste shall not be stored and may be disposed of summarily.

ii. A weapon, firearm, ammunition or contraband, as those terms are defined in section 7.25.020, shall be delivered to the Anchorage Police Department and processed in accordance with chapter 7.25.

iii. If not subject to paragraph i. or ii. above, the following items, when in fair and usable condition and readily identifiable as such by persons engaged in removing a prohibited campsite, shall be deemed valuable and eligible for storage:

A. Tents and similar self-contained shelter,
B. Sleeping bags,
C. Tarps,
D. Toiletries and cosmetics,

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E. Clocks and watches,
F. Medication,
G. Personal papers and identification,
H. Photographs,
I. Luggage, backpacks and other storage containers,
J. Books and other reading materials,
K. Radios, audio and video equipment,
L. Generators,
M. Cooking equipment in clean condition,
N. Shoes and clothing, and
O. Property stored in a manner that reasonably suggests the owner intended to keep it.

d. Within 24 hours after posting the notice of campsite abatement or of zone abatement, the municipal official responsible for posting is directed to inform the director of the Anchorage Health Department, or a designee, of the notice posting and prohibited campsite or zone location, and the Anchorage Health Department is directed to provide written or electronic notification to community social service agencies within the first work day after receipt of the notice. The community council(s) containing or within 500 feet of the area shall also be notified of a pending zone abatement. The purpose of the notices under this subsection is to encourage and accommodate the transition of campsite occupants to housing and the social service community network, and report zone abatement activities to affected communities. Failure of notice under this subsection shall not invalidate the abatement. To facilitate these purposes, the notice will include:
   i. The location of the camp;
   ii. The date for removal; and
   iii. An estimate of the number of structures to be removed and of the number of residents of the camp or zone.

e. Appeal procedure. A posted notice of campsite abatement is a final administrative decision and appeals shall be to the superior court within 30 days from the date the notice of campsite abatement is posted, in accordance with the Alaska court rules. If the owner or person in possession of personal property at the time the notice is posted responds in writing to the municipality prior to expiration of a ten-day notice of the owner's intention to appeal the campsite abatement to the superior court, the municipality shall not remove the personal property until at

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least 30 days have passed from the date the notice was first posted, except as provided in subparagraph B.15.f.ii.

f. Before abatement, the responsible municipal official shall verify whether an intention to appeal or an appeal of the notice of campsite abatement was filed within the applicable time period. If no timely appeal was filed removal of the campsite may proceed. If an appeal was timely filed:
    i. Abatement of the campsite area is stayed until the appeal is withdrawn, settled, or a decision is issued and any subsequent appeal rights expire; provided that:
    ii. At any time after the expiration of the notice period, the municipality may remove personal property and store it until either the appeal is withdrawn, settled, or a decision is issued and any subsequent appeal rights expire. Storage of personal property and its release shall be in accordance with subparagraph B.15.c.
g. At the time removal is to begin, if any individuals are present at the campsite, they shall be verbally notified the campsite is prohibited and to be removed. Prior to actual removal:
    i. The individuals shall be given at least 20 minutes to gather their personal property and disperse from the area; and
    ii. The responsible municipal official or persons working under their authority shall not prevent individuals claiming personal property from removing that property immediately, unless the personal property is unlawful or otherwise evidence of criminal activity.
h. Exceptions:
    i. Nothing in this section shall prevent a peace officer from conducting an investigation, search, or seizure in a manner otherwise consistent with the state and federal constitutions, or federal, state or local law.
    ii. Nothing in this section shall prevent lawful administrative inspection or entry into a prohibited campsite, nor prevent clean-up of any items not listed in subparagraph c.iii., or of garbage, litter, waste or other unsanitary or hazardous conditions on public land at any time.
    iii. Where exigent circumstances posing a serious risk to human life and safety exist, the abatement of a campsite may proceed without prior notice. Personal property removed under this

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paragraph shall be stored in accordance with subparagraph B.15.c., to the extent reasonable and feasible under the circumstances.

iv. When the public land where a prohibited campsite is located is clearly posted with no trespassing signage, no camping signage, or as not being open to the public, including posting of closed hours, the abatement of the campsite may proceed without additional notice, and after the occupants of the prohibited campsite are provided at least one hour to remove their personal property. Personal property removed under this exception may only be disposed of in accordance with chapter 7.25 or subparagraph B.15.c.

i. The right of action provided in section 15.20.130D. is not available when the public nuisance is a prohibited campsite located on public property.

j. The municipality and its employees or agents shall not be liable for damages as a result of an act or omission in the storage, destruction, disposition or release of property under this subsection B.15., but this does not preclude an action for damages based on an intentional act of misconduct or an act of gross negligence. The municipality and its employees or agents shall not be liable in any case release of property to a person when the personal property lacks affirmative marks identifying its owner.

AMC 15.20.120.B. – Enforcement Actions and Appeal Procedures

An enforcement order shall identify the violator and the property where the public nuisance is located, briefly describe the nature of the public nuisance, and list the provisions of this chapter that have been violated. The enforcement order shall require the abatement of the public nuisance within no less than 15 days of service of the enforcement order, or the violator shall be subject to specified fines, penalties, costs and other remedies for each violation of this chapter, and for each day the violation continues. If a significant public health hazard exists, clean-up may be required less than 15 days from the date of service. The enforcement order shall inform the violator that if the public nuisance is not abated within the designated time period, and the violator does not enter into a written compliance agreement with the department which extends the abatement deadline, the municipality may abate the violation and assess the abatement costs and any administrative fees to the violator or violators, who are all jointly and severally liable.

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The enforcement order shall also give notice that if the violator commits a similar offense within one year of service of the enforcement order, even if the similar type of public nuisance occurs on a different property parcel, the violator shall be subject to enhanced fines, penalties, costs and other remedies, as provided for in this chapter. A description of the Administrative Hearing Office appeal procedure shall also be provided with the enforcement order.

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ARGUMENT

The Municipality of Anchorage cannot defend the core infirmity at the center of its "prohibited campsite" law: There is nowhere an unhoused and unsheltered person can overnight in Anchorage without being defined by the Municipality as a criminal[1] and without creating a "public nuisance."[2] Moreover, the Municipality's nuisance determination practices and appeal provisions denied Appellants a meaningful opportunity to challenge the same. The law is constitutionally infirm on its face and as enforced against Appellants, violating their rights to due process, to be free from cruel and unusual punishment, and to be free from unreasonable seizure of their property. The discretionary system of law enforcement the Municipality claims for itself—applied to a distinct subset of Anchorage's resident population—would sit outside the justice system all other residents rely on, in violation of their constitutional rights.

In its Appellee's Brief, the Municipality attempts to divert the Court's attention. It asserts that compliance with specific *notices* is simple [Ae. Br. 17, 25], without addressing the impossibility of complying with the law giving rise to those notices. It asserts that Appellants are free to pursue constitutional claims through original action [Ae. Br. 3, 11, 17], without sharing that, elsewhere, it argues that original actions become moot once abatement takes place.[3] It portrays the Municipality's enforcement decisions

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[1] AMC 8.45.010 – Trespass.

[2] AMC 15.20.020.B.15 – Prohibited campsites.

[3] Def.'s Mot. to Dismiss, *Aguila v. Anchorage*, Case No. 3AN-25-04570 CI at *1 (Alaska Super. Ct. filed Feb. 6, 2025) (seeking the dismissal of an original action challenging the constitutionality of an abatement and the Municipality's prohibited campsite law because "[t]he Municipality has now completed that abatement").

as the product of carefully considered "case-by-case determinations" [Ae. Br. 20], without speaking to the lack of transparency, predictability, or documented procedures informing those determinations. Indeed, it seeks to shield review of that process behind a veil where no meaningful judicial review is available. And it portrays its enforcement actions as merely "cleaning-up" public land [Ae. Br. 3], without properly addressing the property rights at stake or the implications of forcibly displacing people under threat of arrest.

None of this misdirection can withstand scrutiny. The Municipality cannot refute that unhoused people exist in Anchorage. It cannot refute that its laws make it a crime and a nuisance for unhoused residents to shelter themselves on public land, even when there is no alternative.[4] It cannot refute that it has the means to "clean up" public land without dispossessing or dispersing people.[5] And it cannot refute that the Alaska Constitution protects the rights of all persons, irrespective of where they call home. Accordingly, Appellants appeal to this Court to declare the Municipality's "prohibited campsites" law unconstitutional on its face and as applied to Appellants in June 2023.

I. This Court has the power and duty to reach Appellants' constitutional claims.

The Municipality's jurisdictional arguments are fatally flawed. In text and as a constitutional duty, this Court has subject-matter jurisdiction over constitutional claims

[4] *See, e.g.*, Appx. 4 (AR No. 2023-188(S-1), As Amended, Approved June 6, 2023).

[5] If provided the opportunity for fact-finding, Appellants would show that the Municipality has, in fact, engaged in "clean-up" of prohibited campsites, including those subject to these consolidated appeals, without dispossessing people of their belongings and without dispersing them from those locations.

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raised in administrative appeals of campsite nuisance determinations.[6]

A. The Municipality's position on subject-matter jurisdiction is inconsistent with the text and intent of the Municipal Code.

Before 2011, appeals of prohibited campsite determinations were directed to the Office of Administrative Hearings (OAH). That office does not have jurisdiction over constitutional claims, but it does offer an adjudicative hearing structure for disputes arising under the Municipal Code.[7] Then, in early 2011, a superior court ruled that the campsites law violated plaintiffs' procedural due-process rights,[8] and the Municipality subsequently amended the Code.[9] Among other changes, the revised Code eliminated the ability for campsite litigants to appeal to OAH and—unique among public nuisances—instead provided that a "posted notice of campsite abatement is a final administrative decision and appeals shall be to the superior court."[10] The Code contains no language limiting the substantive scope of the superior court's review; thus, per the Code's plain language, the superior court's review appears to be coextensive with its full adjudicative power, including to hear constitutional claims. The logical inference is that this was the legislature's intent. But now the Municipality takes the untenable position that the Code

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[6] *See also* Appendix 29 for the ACLU of Alaska's brief as amicus curiae in *Smith v. Anchorage*, S-18710, for arguments thoroughly refuting the Municipality's position.

[7] Prior to adoption of AO No. 2011-52, as amended, (April 26, 2011), AMC 15.20.020.B.15.h. provided that prohibited campsite determinations were final and therefore appealable to the superior court either (a) "if a campsite occupant [did] not file a notice of appeal . . . with the municipal administrative hearing office" or if (b) such an appeal was made and "the administrative hearing officer affirm[ed] the notice of campsite abatement"). Appx. 61, 67.

[8] *Engle v. Muni. of Anchorage,* No. 3AN-10-7047 Cl (Alaska Super. Ct. Jan. 4, 2011).

[9] AO No. 2011-52, as amended, (April 26, 2011). Appx. 61, 67.

[10] AO No. 2011-52, as amended, (April 26, 2011). Appx. 61, 67.

does the opposite, implicitly limiting this Court's power and preventing it from adjudicating constitutional challenges to campsite abatement notices. This position defies the text of the Code and is unsupported by logical arguments as to why it would be so.

B. The superior court has a duty to strike down laws that violate the Alaska Constitution.

Not only do Alaska superior courts possess statutory authority over constitutional claims and defenses, they have an affirmative duty to exercise that authority. Alaska's courts have "not only the power but the duty to strike down laws that violate our constitution."[11] In the corrections context, for example, a robust body of law has been developed to ensure constitutional review, even when appeals are not provided by statute.[12] Similarly, here, the Constitution requires that the judiciary have the authority and a workable procedural mechanism for ensuring the constitutionality of the Municipal Code and its enforcement. This is consistent with the Code's provision that the superior court exercise jurisdiction over abatement appeals.

C. An adjudicative proceeding is not required for appellate review of constitutional claims.

The Municipality mistakenly relies on *Welton v. Department of Corrections* to stand for the proposition that there can be no appellate review of constitutional claims absent adjudicative proceedings. [Ae. Br. 15-16] As Appellants explained in their Motion for Trial

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[11] *Dep't of Educ. & Early Dev. v. Alexander*, 566 P.3d 268, 277 (Alaska 2025).

[12] *See, e.g.*, *McGinnis v. Stevens*, 543 P.2d 1221 (Alaska 1975); *Dep't of Corr. v. Kraus*, 759 P.2d 539 (Alaska 1988); and their progeny. As *Kraus* noted, "In *McGinnis v. Stevens*, we . . . concluded that while the inmate has no automatic right of appeal to the courts of Alaska, judicial review is available where fundamental constitutional rights are alleged to be abridged in disciplinary proceedings." 759 P.2d at 540 (internal citations and quotation marks omitted).

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de Novo briefing,[13] *Welton* examined the conditions in which superior courts can review administrative decisions for constitutional issues when *no appeal provision* exists in statute.[14] In stark contrast, the Code explicitly provides for appeal to superior court here.[15] The Municipality cannot cite its failure to provide a reviewable adjudicative process as ground for limiting this Court's ability to conduct that review.

II. The purported "case-by-case" decision-making the Municipality touts to defend its prohibited campsite law is indicative of its unconstitutionality.

The one-sided, closed-door nature of the Municipality's abatement decisions is symptomatic of the lack of due process the Municipality affords Appellants—and illustrates why robust judicial review is constitutionally required. The Municipality lauds its abatement decisions as "targeted" "case-by-case determinations" that are "based on an internal assessment of available resources and the threats" posed at particular sites. [Ae. Br. 17-20; *see also* Ae. Br. 1, 2, 4, 23, 27, 42] But the Municipality also appears to argue that these individualized decisions can be made in secret; based on considerations never explained to the persons affected, the public, or the court; and wholly insulated from judicial review. This violates the due process rights of those subject to campsite abatement.

A. Prohibited campsite enforcement decisions are not protected by executive privilege.

The Municipality mistakenly conflates policy-making with policy-enforcing to

[13] *See* Appellants' Reply in Supp. of Trial de Novo at 5 (filed Oct. 26, 2023) (citing AS 44.62.330(a)).

[14] *Welton v. State, Dep't of Corr.*, 315 P.3d 1196, 1197 (Alaska 2014).

[15] AMC 15.20.020.B.15.e ("[A]ppeals shall be to the superior court[.]").

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suggest that something akin to executive privilege[16] explains the paltry administrative records it produced and the lack of a discernable enforcement process. Specifically, it tries to justify its spare administrative records as the product of "internal" decision-making, a protected preserve for "executive" "policymakers." [Ae. Br. 16, 44] The Municipality suggests that it wields unique, unreviewable power in this one domain—as to determinations of "prohibited campsite" public nuisances only—without attempting to justify the unique distinction. Determinations as to all other public nuisances are appealable to OAH.[17] Pre-hearing procedures include discovery production.[18] Upon an adverse final decision by OAH, a party may appeal to the superior court,[19] for which the Municipal Code summarizes the minimum documents to be included in the record.[20] Other than unsupported allusions to an internal, executive decision-making privilege, no explanation is given for *why* the record the Municipality produced here is so spare—a record that, as to all other public nuisances, would be unsuitable for either OAH procedures or appeals to superior court.

B. The Municipality elects not to conduct a deliberative process that meets its procedural due process obligations.

The inadequate process the Municipality has created to enforce this area of law is

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[16] *See, e.g.*, *Doe v. Alaska Superior Ct., Third Jud. Dist.*, 721 P.2d 617, 625 (Alaska 1986) (in applying the federal executive privilege doctrine to the office of the governor, explaining the rationale as "the need to encourage candid opinions and debate among government officials during the decision-making process").

[17] AMC 15.20.120.

[18] AMC 14.30.080.D.

[19] AMC 14.40.010.

[20] AMC 14.40.020.

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entirely of its own making. Having first eliminated a role for OAH, it now engages in closed-door administrative procedures that are so threadbare that hardly any agency record is created. [Exc. 69-70] It then points to this admittedly "spare" record to argue that such a record "does not facilitate adjudication" of Appellants' challenge. [Ae. Br. 16] By this reasoning, the Municipality holds the power to evade judicial review of its decision-making processes by simply engaging in secret decision-making processes and refraining from creating a reviewable record. Such willful avoidance cannot justify having nothing suitable for judicial review; indeed, the lack of any discernable municipal safeguards or transparency highlights the crucial need for robust judicial review.

The Municipality's failure to conduct a reviewable decision process raises critical due process concerns. As discussed below, Alaska's Due Process Clause requires the government to provide a pre-deprivation hearing before confiscating someone's property. "The hearing required need not be an elaborate one."[21] At minimum, however, the Municipality cannot engage in secret, one-sided determinations before confiscating someone's possessions.[22] It must provide a reviewable process for campsite determinations and include an opportunity for affected parties to be heard in that process.

III. The Municipality cannot justify its failure to provide a pre-deprivation hearing.

Alaska law requires a pre-deprivation hearing before the government can

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[21] *Frontier Saloon, Inc. v. Alcoholic Bev. Control Bd.,* 524 P.2d 657, 661 (Alaska 1974).

[22] *Cf. Heitz v. State, Dep't of Health & Soc. Servs*., 215 P.3d 302, 308 n.30 (Alaska 2009) (noting that "due process does not require a full-scale hearing in every situation . . . [but] fair resolution of disputed facts can rarely be obtained by secret, one-sided determinations") (quotations and citations omitted).

confiscate someone's property.[23] The Municipality claims that no such hearing is needed because Appellants had the opportunity for storage and advance notice of forthcoming abatement and seizure [Ae. Br. 43–45]; but neither of these is an exception to the hearing requirement. While exceptions exist for "emergency situations" and when "public health, safety, and welfare require[s] summary action,"[24] the Municipality provides no substantiated evidence that such circumstances existed here.

A. Appellee fails to contend with the relevant Alaska jurisprudence.

The Municipality's exclusive reliance on federal caselaw to justify the lack of a pre-deprivation hearing, [Ae. Br. 43–44, 43 n.137 (internally citing to federal caselaw)] fails to address the explicitly higher burden the Alaska Constitution places on the government.[25] "Although a post-deprivation hearing often is sufficient under the U.S. Constitution when the government engages in a deprivation of property . . . *the Alaska Constitution requires more*. Under the Alaska Constitution, 'before the state may deprive a person of a protected property interest there must be a hearing.'"[26]

Indeed, Alaska jurisprudence requires a pre-deprivation hearing even if the property deprivation at issue is only temporary. In the context of temporarily suspending a driver's license for refusing to perform a breathalyzer test, for example, the Alaska

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[23] *Brandner v. Providence Health & Servs.-Washington*, 394 P.3d 581, 589 (Alaska 2017) (citing and quoting *Graham v. State*, 633 P.2d 211, 216 (Alaska 1981)).
[24] *Id.* at 589.
[25] *See, e.g.*, *id.* (recognizing that Alaska courts "have consistently held that before the state may deprive a person of a protected property interest there must be a hearing") (quoting *Graham*, 633 P.2d at 216).
[26] *Anderson v. Alaska Hous. Fin. Corp*., 462 P.3d 19, 29–30 (Alaska 2020) (quoting *Brandner*, 394 P.3d at 589) (emphasis added).

Supreme Court held that the plaintiff had a right to a "meaningful hearing before the state could suspend her license," observing that "we have consistently held that before the state may deprive a person of a protected property interest there must be a hearing."[27] Here, temporarily storing Appellants' important property—keeping it at an undisclosed location, recoverable only at the government's convenience—is analogous.[28] It constitutes a property deprivation, if only a temporary one, and warrants a pre-deprivation hearing.

B. Being afforded time to attempt to avoid the deprivation does not substitute for a hearing as to whether the deprivation is warranted.

Neither notice nor the ability to avoid a property deprivation relieves the Municipality of its obligations to provide a pre-deprivation hearing. In *Anderson v. Alaska Housing Finance Corporation*, the Alaska Supreme Court held that a government actor was still required to provide a pre-deprivation hearing before foreclosing on a mortgage where the mortgagor received over a month's notice and had the ability to avoid foreclosure by paying the amount in default.[29] The same holds here, including that the property at stake is one's "interest in his home."[30]

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[27] *Graham*, 633 P.2d at 216 (citing *Etheredge v. Bradley*, 502 P.2d 146 (Alaska 1972); *Frontier Saloon, Inc.*, 524 P.2d 657) (holding that, although the Appellant "did have a constitutional right to a meaningful hearing before the state could suspend her driver's license," her attorney had waived that right).

[28] Here, when the Municipality placed Appellants' personal belongings in storage during the abatement at Cuddy Park in June 2023, their property was confiscated, held at an undisclosed location, not reclaimable on weekends, and required access to a telephone to coordinate its return. Banks R. 18–20 (Cuddy Park storage form).

[29] 462 P.3d 19, 30 (Alaska 2020).

[30] *Anderson*, 462 P.3d at 27.

C. Emergency conditions that can excuse the pre-deprivation hearing requirement are not present here.

Exceptions to the pre-deprivation hearing requirement—i.e., emergency situations—are reserved for "truly unusual" circumstances.[31] Referring to federal caselaw, the Alaska Supreme Court observed that "summary seizure of property to collect the internal revenue of the United States, to meet the needs of a national war effort, to protect against the economic disaster of a bank failure, and to protect the public from misbranded drugs and contaminated food" constitute sufficiently unusual circumstances.[32] Such circumstances are not present here. The sole reasons in the record for the challenged abatements are "Summer Solstice Concert Event- Area is rented" and "We are abating to meet the terms of the lease we have with the landowner (JBER)." [Exc. 69, 70] To the extent the Municipality would contend that either constituted an emergency situation, it has failed to meet its burden. Indeed, it has not even shared the implied rental agreement or the mentioned lease. The Court cannot and should not simply accept the Municipality's word that—based upon secret government deliberations that were evidently not documented and that it believes cannot be reviewed by any court—it correctly determined the existence of an emergency justifying the deprivation of Appellants' property without a hearing. Instead, Appellants are entitled to a fair, open, and reviewable process before their property may be confiscated by the government.

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[31] *State, Dep't of Nat. Res. v. Greenpeace, Inc.*, 96 P.3d 1056, 1065 (Alaska 2004) (quoting *Fuentes v. Shevin*, 407 U.S. 67, 90 (1972))

[32] *Greenpeace, Inc.*, 96 P.3d at 1065 (quoting *Fuentes*, 407 U.S. at 91–92).

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D. The Municipality has not substantiated its claimed interests in the public health and safety.

Although the administrative record points to a lease and a permitting issue as justifications for abatement rather than any health or safety concerns, the Municipality now makes sweeping claims that it possesses "a vital interest in abating prohibited encampments" without pointing to any record evidence to support its contentions. [Ae. Br. 48] Instead, it relies, *inter alia*, on a 2017 Assembly Ordinance that invokes "public health and safety issues" without elaboration and a 2017 Assembly Memorandum that relies on an unattributed hearsay statements that "residents 'feel unsafe near and sometimes threatened by the people occupying the illegal campsites.'" [Ae. Br. 36 n.119] Nothing in the record substantiates either of these claims.[33] Absent evidence of public health and safety issues at Davis Park and Cuddy Park in June 2023, the Court cannot excuse the Municipality's failure to provide a pre-deprivation hearing.

The dark irony of the Municipality's assertion that its campsite abatement measures promote public health and safety is its apparent lack of regard for the *negative* health and safety consequences of abatement for the people living in such locations. The Municipality cannot exclude people experiencing homelessness from its definition of "the

[33] Similarly, the Municipality's introduction of recent comments by one Appellant, Gregory Smith, concerning his alleged unwillingness to subject himself to the conditions required of one specific transitional housing program, are inappropriate for consideration in this case. [Ae. Br. 28, n.94] While courts can take judicial notice of public records, *see State v. Arctic Vill. Council*, 495 P.3d 313, 323 n.26 (Alaska 2021) (taking judicial notice of public records and statements by local officials regarding the COVID-19 pandemic), judicial notice is inappropriate for the statements of private actors even if made on the record, *see Jones v. State*, 215 P.3d 1091, 1099 (Alaska App. 2009) ("[T]he truth of evidence received in another court case (as opposed to the fact that the evidence was offered) is not a proper subject of judicial notice.").

public." As a California court recently observed, "people experiencing homelessness are members of the community, and their interests, too, must be included in assessing the public interest."[34] Here, in assessing whether the Municipality's actions serve public health and welfare, the Court must consider the effects of the Municipality's actions on unhoused persons sheltering themselves with no legal, suitable alternatives.

IV. The asserted public interests do not outweigh Appellants' protected property interests and do not justify a ten-day notice period.

Even if properly established, the interests asserted by the Municipality would not outweigh Appellants' interest in maintaining control of their life-saving possessions for due process notice purposes. While federal law does not govern Alaska's due process hearing requirement, Alaska courts do look to federal law to determine whether notice is constitutionally adequate.[35] Specifically, Alaska courts apply the *Mathews v. Eldridge* balancing test as to notice, which weighs three factors: the private interest involved; the risk of erroneous deprivation due to the procedures used; and the government interest.[36]

The Municipality's brief misapplies *Mathews* by undervaluing the private property interest at stake. *Engle v. Anchorage* stands for the proposition that unhoused people maintain a significant interest in their personal property, which often amounts to all they

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[34] *See* Order and Preliminary Injunction, *Tyson v. City of San Bernadino*, Case No. 5:23-cv-01539 at *14 (W. Dist. Cal., Jan. 12, 2024). For the court's convenience, a courtesy copy of this case is attached at Appendix 71 (quoted language at Appx. 84).

[35] *Heitz*, 215 P.3d at 307.

[36] *See id.*; *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976).

own.[37] This property interest is not "sharply diminished"—as the Municipality would have it—by the abatement procedures used (i.e., the availability of storage and notice). [Ae. Br. 46] The government's procedures *only* go to the second factor of the *Mathews* test.[38] The Court is not directed to consider these procedures under the first factor, which the Municipality suggests would deflate the private interest at stake.

When the three *Mathews* factors are properly balanced, it becomes clear that ten days' notice violates due process. [At. Br. 40-45] Appellants have a protected property interest in their personal possessions; a longer notice period would ensure that they are not erroneously deprived of that property; and, as discussed above, the Municipality has failed to provide adequate evidence of the purported public health and safety interests at stake. Indeed, all other nuisance abatements evidently receive fifteen days' notice.[39] The Municipality has failed to provide an adequate reason for shortening the notice period for "prohibited campsites," particularly given the countervailing property interests at stake.

V. The Municipality's characterization of its "prohibited campsite" laws as purely civil enforcement is factually and doctrinally false, with implications as to what constitutional protections apply.

The distinction between criminal and civil laws is not as convenient as the Municipality would have it. Its assertions that the alleged offenses at issue here are civil

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[37] *Engle,* No. 3AN-10-7047 Cl at *19. Federal caselaw applying the *Mathews v. Eldridge* balancing test does not dispute the importance of this private interest. *See e.g.*, *Mitchell v. City of Los Angeles*, No. CV1601750SJOGJSX, 2016 WL 11519288, at *5 (C.D. Cal. Apr. 13, 2016); *De-Occupy Honolulu v. City & Cnty. of Honolulu*, No. CIV. 12-00668 JMS, 2013 WL 2285100, at *6 (D. Haw. May 21, 2013); *Kincaid v. City of Fresno*, No. 106CV-1445 OWW SMS, 2006 WL 3542732, at *38 (E.D. Cal. Dec. 8, 2006).

[38] *See Engle*, No. 3AN-10-7047 Cl at *19.

[39] *See* AMC 15.20.120 (requiring at least 15 days before the abatement of a public nuisance).

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because of where they are codified or because of the types of punishment available are neither factually accurate nor doctrinally determinative. [Ae. Br. 19–20] This, in turn, informs the tests this Court needs to apply in its analyses of the Due Process Clause's void-for-vagueness doctrine and of the Cruel and Unusual Punishment Clause. Under each, criminal-law constitutional protections are warranted.

A. The Municipal Code's prohibited campsite nuisance regime is inseparable from criminal law.

As a factual matter, "prohibited campsite" nuisance abatement inherently carries the possibility—and, at times, the reality—of criminal punishment. First, a nuisance determination turns on the existence of criminal and finable offences. [At. Br. 16–17] Second, the Code requires the issuance of orders to disperse at the time of abatement.[40] Failure to comply with such an order is a Class B misdemeanor.[41] Criminal law enforcement is incorporated into both the determination that this nuisance exists and its abatement. This is not just theoretical. At least one Appellant has been prosecuted for failure to comply with such an order.[42] And, as recently as yesterday, the Mayor continued tying campsite abatement to criminal law prosecution, testifying in part, "We're increasing abatement efforts in cleanup of our parks and green spaces. Anchorage isn't a free for all. . . . We now have a fully staffed prosecutor's division here at the Municipality. No one has the right to make people feel unsafe or unwelcome on public

[40] AMC 15.20.020.b.15.g.

[41] This offense is punishable by up to six months in prison and up to a $2,000 fine. AMC 8.30.120.A.5; AMC 8.05.020.H.2.

[42] *Muni. of Anchorage v. Vaughan*, Case No. 3AN-21-07345CR (Alaska Super. Ct. Oct. 1, 2021) (regarding criminal charges brought against Appellant Brian Vaughan).

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land."[43] Prohibited campsite determinations and abatements are squarely within the reach of the constitutional protections enumerated below.

B. The Municipality misconstrues the criminal vagueness standard.

When deciding whether to apply the criminal vagueness standard, Alaska courts consider whether the "statute at issue will give rise to prosecutorial action in a criminal context . . . [and/or] a civil enforcement action where a litigant may be at risk of losing an important right."[44] If so, the criminal standard applies. Here, the Municipality's "prohibited campsite" laws have given rise to criminal prosecutions for failure to comply with an order to disperse. Additionally, these laws result in civil enforcement actions that implicate important rights, including individuals' protected property interests in their possessions and fundamental liberty interests in their right to travel. These are precisely the types of rights that necessitate the heightened, criminal-law standard.[45]

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[43] Municipality of Anchorage Meetings, *Assembly Regular – May 6, 2025*, YOUTUBE (May 6, 2025), https://youtu.be/DxRrYqINgUQ, at 00:38:03 ("We're increasing abatement efforts in cleanup of our parks and green spaces. Anchorage isn't a free for all. It's not acceptable for anyone to stay indefinitely on public land. Large encampments aren't safe for anyone, not for the people living in them and not for the neighborhood. To anyone who exploits vulnerable people, commits crimes, or threatens public safety, we will bring a law enforcement response and we will enforce our laws to the greatest extent. I want to note that we now have a fully staffed prosecutor's division here at the Municipality. No one has the right to make people feel unsafe or unwelcome on public land or to put their neighbors in danger. Our parks, trails, and public spaces must be safe and accessible for all.").

[44] *Cf. Williams v. State, Dep't of Revenue*, 895 P.2d 99, 105 (Alaska 1995) (holding that the criminal vagueness standard did not apply to the Workers' Compensation Act, in part, because it did not provide for criminal prosecution or risk the loss of an important right).

[45] *See Williams*, 895 P.2d at 105 (citing *Storrs v. State Medical Board*, 664 P.2d 547 (Alaska 1983) (loss of medical license [a protected property interest]); *R.C. v. State, DHSS*, 760 P.2d 501, 505–06 (Alaska 1988) (loss of parental rights [a fundamental liberty interest]).

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The Municipality misapplies the holding of *Department of Revenue v. Nabors Finance International, Inc.* to argue that the civil vagueness standard governs here.[46] In *Nabors*, the Alaska Supreme Court applied the civil standard to a law that was capable of civil or criminal enforcement, because "criminal penalties are assessed *only for willful evasion of* [the law]"[47] In contrast, the Municipality's "prohibited campsite" law can result in criminal penalties for willful *or* involuntary violations, as the Code prohibits unhoused people from sheltering themselves on any public land. Consequently, it is impossible for unhoused people to make a good faith effort to comply with this law and avoid criminal prosecution.

Asserting that "[r]emaining on public property becomes the crime of misdemeanor trespass under the Municipality's criminal code *only in certain circumstances* as enforced by police officers *in case-by-case determinations*" [Ae. Br. 27] fails to address the fact that anywhere Appellants might go to shelter themselves, they have no way of knowing what those "certain circumstances" might be or how individual officers might make those "case-by-case determinations." Nor does it say how an unhoused person can avoid such enforcement. This is the exact type of "unbridled discretion on government officials" that the void-for-vagueness doctrine was designed to prevent.[48] Because intentional or

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[46] 514 P.3d 893, 900 (Alaska 2022).

[47] *Nabors*, 514 P.3d at 900. *See also id.* (reasoning that a "corporation attempting in good faith to comply with" that the law may be subject to civil enforcement, but they would not experience criminal enforcement).

[48] *Marks v. City of Anchorage*, 500 P.2d 644, 646 (Alaska 1972); *also id.* at 651 (citing

unintentional violations of the Municipality's "prohibited campsite" law carry the risk of criminal punishment, and because that criminal punishment is carried out on a highly discretionary basis, the Municipal Code's "prohibited campsite" provisions are unconstitutionally vague.

C. *Grants Pass* does not "categorically foreclose" Appellants' claims under Alaska's Cruel and Unusual Punishment Clause.

The Municipality overstates the import of *City of Grants Pass v. Johnson* when it argues that *Grants Pass* forecloses all cruel and unusual punishment claims and that there is no compelling reason for the Alaska Constitution to provide broader protection. [Ae. Br. 26] Neither assertion is true. In the wake of *Grants Pass*, state courts have continued to review the constitutionality of prohibited campsite laws under state Cruel and Unusual Punishment Clauses. Most recently, a New Mexico court upheld such claims, reasoning that its state constitution provides greater protections than its federal analog.[49] As explained in the opening brief, the same is true of Alaska's Constitution when, as here, (1) the relevant federal caselaw is based on federalism considerations that are inapplicable to state courts and (2) the state has an established tradition of requiring heightened protections.[50] The *Grants Pass* decision was rooted in principles of federalism

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Shuttlesworth v. City of Birmingham, 382 U.S. 87, 90 (1965) which held that a law is void for vagueness if it "does not provide for government by clearly defined laws, but rather for *government by the moment-to-moment opinions of a policeman on his beat*.") (emphasis added) (quotations omitted)).

[49] Memorandum Opinion, *Williams v. City of Albuquerque*, No. D-202-CV-2022-07562 at *10 (N.M. Dist. Ct. March 18, 2025). For the court's convenience, a courtesy copy of this case is attached at Appendix 87.

[50] *See e.g.*, *Fletcher v. State*, 532 P.3d 286, 308-09 (Alaska App. 2023).

that are inapposite to state courts.[51] And, as already shown, making it a crime to self-shelter in any location in Anchorage is an "unnecessarily severe and restrictive" punishment. [At. Br. 31] Because Anchorage's trespass and "prohibited campsite" laws are overbroad—establishing a city-wide area restriction—they together fail to protect Appellants under the Alaska Constitution's Cruel and Unusual Punishment Clause.[52]

VI. A banishment regime need not be enforced as such to violate Appellants' substantive right not be deprived of their liberty without due process.

The Appellee's Brief mischaracterizes Appellants' liberty argument as turning on the "proposition that there is a fundamental right to indefinitely occupy a particular piece of public property of one's choosing." [Ae. Br. 29-30] Appellants make no such claim. Rather, the broad, sweeping nature of the Municipality's "prohibited campsite" law—which prohibits Appellants from sheltering themselves on any public land—infringes on their fundamental freedom of movement and the freedom to remain, both of which are encompassed in their right to travel.[53] The campsite law violates Appellants' right to travel because it denies them *any* place they may legally reside. This infringement is not dissimilar from two "campsite" bans that were held unconstitutional by Washington

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[51] *City of Grants Pass v. Johnson*, 603 U.S. 520, 521 (2024) (invoking "essential considerations of federalism"); *see also Williams*, No. D-202-CV-2022-07562 at *8-9.

[52] In the probation context, more specific area restrictions have been found to pass constitutional muster. *See Oyoghok v. Muni. of Anchorage*, 641 P.2d 1267, 1269–70 (Alaska App. 1982) (upholding a two-block radius area restriction). The Municipality could adopt such specificity as to its "prohibited campsite" laws by, for example, designating specific areas where people can self-shelter, or more narrowly specifying where people cannot self-shelter. It cannot, however, simply decree that there is no place in Anchorage where self-sheltering individuals can lawfully exist when no suitable alternatives are available.

[53] *Treacy v. Municipality of Anchorage*, 91 P.3d 252, 264-65 (Alaska 2004).

courts.[54] Those courts reasoned that unhoused litigants' right to travel protects them from overbroad laws that "make it impossible for homeless persons to live within the city."[55] By imposing a sweeping, broad ban on "prohibited campsites" in Anchorage, the Municipal Code similarly makes it impossible for Appellants to lawfully live in Anchorage, violating their right to travel.[56]

VII. The Municipality misclassifies Appellants' property as "abandoned" in its unreasonable seizure analysis.

The Municipality's assertion that people situated like Appellants "abandon" their property by not removing it by a noticed date fails for two reasons. [Ae. Br. 32-34] First, by denying unhoused persons anywhere they can legally move their property, the Municipality places an impossible burden on Appellants, forcing them into an endless cycle, to be repeated at times and locations of the Municipality's arbitrary choosing. Second, Appellants property was not abandoned. "Abandonment occurs *only when the property owner has discarded the property*—that is, done something to objectively

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[54] *E.g.*, Findings of Fact, Conclusions of Law, and Order, *City of North Bend v. Bradshaw*, Case No. Y123426A at *2, *6 (Muni. Ct. Issaquah, Wash. Jan. 13, 2015) (holding that a local law that banned "camping in any park or other publicly owned property" violated plaintiffs' right to travel); Memorandum Decision, *Everett v. Bluhm et al.,* No. CRP 7006 at *4 (Muni. Ct. Everett, Wash. Jan. 12, 2016) (holding that a local law that banned "'camping' in any park, on any street, or in any publicly owned parking lot or publicly owned area" violated plaintiffs' right to travel). For the court's convenience, courtesy copies of these cases are attached at Appendix 97 and 109.

[55] Both cases relied on an observation made in *City of Seattle v. McConahy* that "sweeping ordinances . . . may also be so broad that they violate the right to travel if they make it impossible for homeless persons to live within the city." 937 P.2d 1133, 1141 (Wash. Ct. App. 1997) (citing *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla.1992)).

[56] As explained above, this infirmity could be cured in multiple ways, such as by restricting "prohibited campsites" in fewer parts of Anchorage or allowing self-sheltering in enough locations to meet the needs of Appellants.

manifest the intent to give up any and all expectation of privacy in the property, now and in the future."[57] The Municipality implies that failing to remove one's belongings by a noticed abatement date is the equivalent of such an objective, manifest intent. [Ae. Br. 32-33] But such an inference of intent to discard is not objectively reasonable in this context. When a person is living outside and has nowhere indoors to store their belongings, the mere act of leaving property outside cannot reasonably be taken as an intent to abandon their items, since they have no other options.

CONCLUSION

As shown above and in Appellants' Opening Brief, the Municipality's "prohibited campsite" law violates Appellants' rights to substantive and procedural due process, as to both property and liberty; to be free from unreasonable seizures; and to be free from cruel and unusual punishment. As such, Appellants request that this Court declare the Municipality's "prohibited campsite" law unconstitutional.

Dated: May 7, 2025

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[57] *Young v. State*, 72 P.3d 1250, 1253 (Alaska App. 2003).

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On May 7, 2025, a true and correct copy of the foregoing Reply Brief was served on:

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