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

JOSETT BANKS, et al.,	)	
	)	
Appellants,	)	
	)	
vs.	)	Case No. 3AN-23-06779CI
	)	
MUNICIPALITY OF ANCHORAGE,	)	
	)	
Appellee.	)	
	)	
JOENE ATORUK, et al.,	)	
	)	
Appellants,	)	
	)	
vs.	)	
	)	
MUNICIPALITY OF ANCHORAGE,	)	
	)	Consolidated:
Appellee.	)	Case No. 3AN-23-07037CI

APPELLEE'S SUPPLEMENTAL BRIEFING REGARDING *SMITH*

The Municipality submits this supplemental brief regarding "the impact of" *Smith v. Municipality of Anchorage*, -- P. 3d -- , 2025 WL 1352024 (Alaska 2025), "on the issues raised in these consolidated appeals."[1] *Smith* helps clarify the scope of review, the scope of the record, the available remedies and standing, and the lawfulness of the abatement code.

1. *Jurisdiction*. *Smith* held that "the intended scope of review" in an appeal of an abatement notice to superior court under AMC 15.20.020B.15 "include[es] whether …

[1] Order (May 12, 2025).

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the campsite is illegal," and "the question of the campsite's legality encompasses … constitutional due process issues."[2] In light of *Smith*, the Municipality no longer contends that consideration of Appellants' constitutional arguments exceeds the scope of review permitted by the current ordinance as construed by the Alaska Supreme Court.[3]

2. *Record*. *Smith* empowered this Court with "discretion in deciding how best to ensure that it has a record sufficient for appellate review."[4] Proceeding on the basis of the existing record is one of the options set out in *Smith*, and the Alaska Supreme Court has already decided not to disturb this Court's exercise of its sound discretion not to expand the record here.[5] This Court has correctly determined that the record here is sufficient to determine the pure issues of law Appellants present: "Appellants' claims present disputed legal issues not factual issues."[6] That remains true and the law of the case.

The record here explains the date and time of posting and abatement, the number of campsites, their location on public land, and the rationale for abatement (compliance with a lease, compliance with a rental agreement, and compliance with posted signs).[7] Appellants do not dispute those facts or that their encampments were properly subject to abatement under code. *Smith* casts no doubt on the sufficiency of this record. To the contrary, *Smith* noted that "the substance of the decision" can be "reflected in the notice's language."[8] Like the notices in *Smith*, the notices here explain that this is "not a legal area for storage or

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[2] *Smith*, 2025 WL 1352024, at *6.
[3] *See* Appellee's Brief 12-17.
[4] *Smith*, 2025 WL 1352024, at *8.
[5] Order, S-18993 (April 17, 2024) (denying petition for review).
[6] Order at 5 (Feb. 5, 2024).
[7] *Banks* Record at 1, *Atoruk* Record at 1.
[8] *Smith*, 2025 WL 1352024, at *4.

shelter" and that the area is "subject to abatement."[9] *Smith* thus supports this Court's exercise of its sound discretion in concluding that the existing record is adequate to review Appellants' purely legal arguments on appeal.

3. *Standing*. *Smith* also discusses the potential remedies available on appeal in a way that indicates Appellants here lack the adversity and remediability necessary to establish standing. The *Banks* Appellants seek review of an abatement that occurred at Cuddy Park two years ago. They do not explain how they have any remaining "personal stake in the controversy" and do not explain how they would "be entitled to any relief even if [they] prevail,"[10] given that the abatement was not stayed, it finished two years ago, and they claim no legal right of occupancy of that specific parcel.

Smith focuses the scope of this appeal (and thus potential remedies) on the specific "decisional document" underlying the particular administrative action at issue.[11] *Smith* indicates that an appellant can secure review of the constitutional sufficiency of the abatement process and the factual sufficiency of the abatement decision (where such arguments are preserved) by considering, for example, whether the Municipality owns or controls the property at issue or if, instead, the property is private and not subject to abatement.[12] And *Smith* indicates that "a successful appeal" on such grounds, leading to vacatur of the administrative decision at issue, "could presumably restore to the individual the right to camp in the area the Municipality claimed was subject to abatement" even if an

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[9] *Banks* Record at 2; *Atoruk* Record at 2-3.
[10] *Ulmer v. Alaska Rest. & Beverage Ass'n (ARBA)*, 33 P.3d 773, 776 (Alaska 2001).
[11] *Smith*, 2025 WL 1352024, at *8.
[12] *Id.* at *6 (holding that scope of appellate review includes whether "the campsite is illegal").

abatement is not stayed in advance.[13] Appellants here raise no argument regarding any legal right to occupy the specific public lands at issue here. Appellants thus fail to explain how, under *Smith*, vacatur of the unstayed and long-since-completed abatement in *Banks* could give them any relief from any injuries allegedly arising from that abatement.

The *Atoruk* Appellants also lack standing. That appeal challenges an abatement at Davis Park and the Snow Dump that was cancelled before it occurred.[14] As a result, the *Atoruk* Appellants never suffered any personal injury at all relating to the challenged (and unimplemented) administrative decision at issue in this record.[15]

4. *Merits*. In addressing the purely procedural questions of the scope of appellate review and the sufficiency of the record, *Smith* did not directly address the merits of any constitutional issues. *Smith* thus did not call into question the reasonableness of the Municipality's abatement process. Nor did it depart from the uniform case law upholding similar abatement procedures. If this Court reaches the merits of Appellants' constitutional arguments, this Court should reject them for the reasons provided in the Appellee Brief. [16]

To the extent *Smith* is relevant to the merits of this appeal at all, *Smith* supports the lawfulness of the Municipality's abatement procedures in two ways. First, *Smith* makes clear

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[13] *Smith*, 2025 WL 1352024, at *4.
[14] *See Atoruk* Record at 1; MOA Opposition to Motion for Expedited Consideration 2-3 (filed July 3, 2023).
[15] *See City of Valdez v. RCA*, 548 P.3d 1067, 1076 (Alaska 2024) ("To have standing, a challenger must … "be factually aggrieved by the decision."); *Native Vill. of Chignik Lagoon v. Dep't of Health & Soc. Servs., Off. of Children's Servs.*, 518 P.3d 708, 717 (Alaska 2022) ("[A]ppellate courts have an obligation to be sure that standing exists and to raise, sua sponte if need be, any deficiency." (cleaned up)).

The Municipality recently announced that it intends to abate Davis Park and the Snow Dump on June 17, 2025. *See* Zachariah Hughs, Anchorage Daily News (May 29, 2025), https://www.adn.com/alaska-news/anchorage/2025/05/29/large-homeless-camp-in-davis-park-will-be-cleared-in-mid-june-anchorage-mayor-says/. That separate administrative decision is supported by a separate record, is independently subject to judicial review in a new appeal by an appropriate litigant and is not at issue here.
[16] *See* Appellee Brief at 17-49.

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that the only matters at issue in a civil administrative appeal from an abatement decision are the matters that arise from the abatement itself: "what more is there to abatement besides the removal of personal property from a prohibited campsite?"[17] *Smith* thus cuts against Appellants' attempt to improperly expand the scope of this appeal of a discrete administrative decision to include consideration of hypothetical other abatements or application of the separate trespass provisions of the criminal code in hypothetical criminal proceedings—proceedings that, if they were to occur, would themselves be independently subject to judicial review. Second, *Smith* recognizes that the current abatement code, by creating an opportunity for an administrative appeal in this Court upon the posting of a final abatement notice, "cut out the intermediate step of an administrative hearing" before abatement (which was previously called for under an earlier version of code) "and, in essence, let the courts handle it."[18] *Smith* thus forecloses Appellants' contention here that the code affords no opportunity at all for a pre-abatement hearing of any kind. To the contrary, *Smith* recognizes that the Superior Court can hear motions to stay an impending abatement. Indeed, Superior Courts may do so on an expedited timeline, where appropriate—just as another Superior Court in this District recently decided, and denied, a preliminary injunction in an original action before an abatement began.[19]

CONCLUSION

For all these reasons and those already briefed, this Court should dismiss the appeals or affirm the constitutionality of the Municipality's abatement code.

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[17] *Smith*, 2025 WL 1352024, at *4.
[18] *Id.* at *4-5.
[19] *Aguila v. Mun. of Anchorage*, No. 3AN-25-04570CI (Alaska Super. Ct. Feb. 13, 2025).

Respectfully submitted this 30th day of May, 2025.

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Certificate of Service
I certify that on May 30, 2025, I caused to be emailed a true and correct copy of the foregoing to:

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