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

Josett Banks, Kyla Friedenbloom, and Kristine Shawanokasic, Appellants, v. Municipality of Anchorage, Appellee.	)	Case No. 3AN-23-06779 CI
Joene Atoruk, Heather Wolfe Aragon, Leonly Fratis III, Seone Lima, Darrell Dean Miller, Beulah Moto, Lillian Sheakley, Gregory Michael Smith, Tracy Lynn Thompson, Della L. Tunkle, Larry C. Tunley, Brian Keith Vaughan, and Lucille Jane Williams, Appellants, v. Municipality of Anchorage, Appellee.	)	Case No. 3AN-23-07037 CI

ORDER TO SUPPLEMENT THE RECORD

Appellants Josett Banks, Kyla Friedenbloom, Kristine Shawanokasic, Joene Atoruk, Heather Wolfe Aragon, Leonly Fratis III, Seone Lima, Darrell Dean Miller, Beulah Moto, Lillian Sheakley, Gregory Michael Smith, Tracy Lynn Thompson, Della L. Tunkle, Larry C. Tunley, Brian Keith Vaughan, and Lucille Jane Williams (collectively, "Appellants") appeal the Municipality of Anchorage's (the "Municipality") abatement actions.

This consolidated appeal concerns the constitutionality of the Municipality's procedures for the removal of prohibited campsites and the abatement of unhoused campers. Appellants appeal the Municipality's abatement and related notices posted at Cuddy Park on May 24, 2023 and near Davis Park in east Anchorage on June 22, 2023. Appellants argue that Anchorage Municipal Code (AMC) 15.20.020(B)(15) violates Appellants' due process rights under Article I, Section 7 of the Alaska Constitution and the Fifth and Fourteenth Amendments of the United States Constitution. Appellants further argue that the Municipality's notices of abatement and abatement violated Appellants' due process rights under Article I, Section 7 of the Alaska Constitution and the Fifth and Fourteenth Amendments of the United States Constitution, and violated Article I, Section 14 of the Alaska Constitution and the Fourth Amendment of the United States Constitution, protecting against unreasonable search and seizure. Finally, Appellants argue that AMC 15.20.020(B)(15) violates their rights against cruel and unusual punishment under Article I, Section 12 of the Alaska Constitution.

On July 31, 2023, the Municipality transmitted the record underlying its decision to post notice of abatement and abate Cuddy Park.[1] The record is 23 pages in total and consists of a spreadsheet listing the structures in the abatement zone; a copy of the May 24, 2023 abatement notice; a June 5, 2023 letter from the

[1] Transmittal of Agency R. (July 31, 2023).

American Civil Liberties Union with notices of intent to appeal; thirteen notices of intent to appeal; and three Municipality personal item storage forms.[2]

On August 29, 2023, the Municipality transmitted the record underlying its decision to post notice of abatement for Mountainview Snowdump and Davis Park.[3] That record is three pages in total and consists of a spreadsheet listing the camps in the Davis Park and Mountainview Snowdump and indicating that the abatement plans had been cancelled; and copies of the two abatement notices.[4]

Both spreadsheets include the following columns: posting date, posting time, area description, rationale for abatement, number of camps, closure/opening date, cleaning start date, cleaning end date, # structures, # people, outreach date, # outreach forms, # shelter beds available on posting date, notes, and done.[5]

On October 26, 2023, Appellants filed a Motion for Trial De Novo, arguing that the agency records are inadequate for appellate review and that the lack of an adequate record warranted a trial de novo. When the Municipality filed its opposition to the motion, the Municipality argued that this Court lacks subject matter jurisdiction to consider the constitutional claims Appellants raised in the appeal. The Municipality argued that the Appellants were "correct that a larger record is needed to address constitutional claims of homeless camp abatements."[6]

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[2] Banks R. 1-23.
[3] Transmittal of Agency R. (Aug. 29, 2023).
[4] Atoruk R. 1-3.
[5] Banks R. 1, Atoruk R. 1.
[6] Opp. at 2 (Nov. 14, 2023).

The Municipality conceded that there is not a sufficient record for review to address the questions raised under *Martin v. Boise*[7] and its progeny. In the Order Denying Motion for Trial De Novo, the Court noted that the parties appear to agree that the current record on appeal is insufficient to address Appellants' constitutional claims.

In May 2025, in *Smith v. Municipality of Anchorage*, the Alaska Supreme Court concluded that the superior court has jurisdiction over substantive appeals of campsite abatement decisions, beyond a review of an abatement notice's legal sufficiency.[8] The Alaska Supreme Court also concluded that constitutional due process issues raised within a campsite abatement appeal are "proper subjects for judicial review on appeal."[9]

Following the Alaska Supreme Court's decision in *Smith v. Municipality of Anchorage*, the Court invited supplemental briefing from the parties on that decision's impact on this appeal. Both parties filed supplemental briefing on May 30, 2025. Oral argument was held on July 9, 2025. Having considered the written briefing, oral argument, and the record on appeal, the Court now orders the Municipality to supplement the record.

Appellants ask the Court to order the Municipality to supplement the administrative record before addressing Appellants' constitutional claims.

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[7] 902 F.3d 1031 (9th Cir. 2018), *opinion amended and superseded on denial of reh'g*, 920 F.3d 584 (9th Cir. 2019).
[8] *Smith v. Mun. of Anchorage*, 568 P.3d 367, 370-73 (Alaska 2025).
[9] *Id.* at 373.

Appellants argue that their right to appeal includes the right to a record that is sufficient for appellate review. Appellants argue that the record is not limited to the posted notice and should be supplemented with "all documents and other materials relevant to the challenged 'prohibited campsite' determinations and abatements."[10] Appellants' position is that the Municipality should supplement the record with all decisional documents, rental agreements, leases, and any other justifications relied upon in selecting the abatement sites, in addition to other records.[11]

The Municipality disagrees and now asserts that the existing record is adequate for appellate review by the Court. The Municipality relies on the language in the *Smith* decision for its position that "the substance of each abatement decision is reflected in the notice's language," and therefore the abatement notices are adequate reflections of the Municipality's abatement decisions.[12]

The "record on appeal from an administrative agency 'consists of the original papers and exhibits filed with the administrative agency' . . . [and] information considered by the agency in reaching its decision."[13] In *Smith*, the Alaska Supreme Court noted that the superior court has discretion in deciding

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[10] Appellants' Supp. Briefing at 3.
[11] *Id.* at 4-5.
[12] *Smith*, 568 P.3d at 371 ("And while the notice may not contain the full extent of the decision-making that preceded it, the substance of the decision is reflected in the notice's language.").
[13] *PLC, LLC v. State*, 484 P.3d 572, 581 (Alaska 2021) (quoting Alaska R. App. P. 604(b)(1)(A)).

whether the existing administrative record is adequate for purposes of appellate review.[14] The Alaska Supreme Court discussed some of the options available to the superior court when dealing with a potentially inadequate record, including "(1) ordering the Municipality to supplement the record, (2) remanding the case to the Municipality for further proceedings, and (3) conducting a trial de novo."[15]

Here, the existing administrative record is inadequate for purposes of meaningful appellate review. The existing record does not include the information considered by the Municipality in reaching its decisions. Such information is necessary for the Court to decide the constitutional issues raised.

The Municipality must supplement the record with the information considered by the Municipality in reaching its decisions by **January 28, 2026**.

Any supplemental briefing, limited to 15 pages in length, must be filed within 20 days of the supplemental record. Any supplemental response from the Municipality, limited to 15 pages in length, must be filed within 20 days of Appellants' supplemental briefing. Appellants' reply, limited to 10 pages in length, must be filed within 15 days of the Municipality's supplemental briefing.

DATED at Anchorage, Alaska this 30th day of December, 2025.

Yvonne Lamoureux
Superior Court Judge

[14] *Smith*, 568 P.3d at 376.
[15] *Id.*

Alaska Trial Courts

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