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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

APPELLANTS' SUPPLEMENTAL BRIEF ON THE SUPPLEMENTED RECORD

The Municipality's supplemented record illustrates the procedural and constitutional infirmities of its prohibited campsite regime. Its ad hoc approach to the relevant administrative determinations evinced no formal process; failed to consider important factors such as the effects and legality of abatement; and generated no decisional document—each an element required by law. Such procedural inadequacies denote an arbitrary decision-making process.

The supplemented record also demonstrates the unconstitutionality of the Municipality's prohibited campsite regime. It confirms that the Municipality deployed a criminal law enforcement response to coerce Appellants to vacate select public spaces, notwithstanding the lack of legally available alternatives. This repeated and forcible removal from public space constituted de facto banishment in violation of Appellants'

rights to be free from cruel and unusual punishment and to due process. Moreover, nothing in the record refutes the fact that the Municipality confiscated Appellants' personal belongings without providing a predeprivation hearing, adequate notice, or a warrant. Such confiscations violated their rights to procedural due process and to be free from unreasonable property seizures.

The now-complete record confirms that the Court should declare the Municipal Code's prohibited campsite nuisance provision, §15.20.020.B.15, unconstitutional.

ARGUMENT

The right to appeal a prohibited campsite determination "encompasses the right to a record sufficient for appellate review."[1] Pursuant to this Court's December 30, 2025 Order, the Municipality has produced an additional 195 pages of records. This supplement presumably contains all "the information considered by the Municipality in reaching its decisions[.]"[2] The Court should thus infer that no other information was considered by the Municipality in making the challenged prohibited campsite determinations, and the administrative record is now complete.

This completed record confirms that the Municipality's prohibited campsite regime is procedurally and constitutionally infirm. It contains no evidence of a reasoned decision-making process underlying the challenged administrative determinations, and it contains no facts that refute Appellants' constitutional claims. To the contrary, the record

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[1] *Smith v. Anchorage*, 568 P.3d 367, 374 (Alaska 2025).

[2] Order to Supplement the Record at *6 (dated December 30, 2025).

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provides further support for Appellants' arguments.

I. The supplemented record confirms that the Municipality's process for prohibited campsite determinations is procedurally inadequate.

The complete record shows that the challenged prohibited campsite determinations were the result of an ad hoc process that failed to meet minimum legal requirements. Alaska courts reviewing discretionary administrative actions must "ensure that the agency engage[d] in reasoned decision-making, taking into consideration all material facts and issues."[3] At minimum, the record should establish the existence of a reasoned decision-making process that (a) included consideration of "important factors"[4] and (b) resulted in a "decisional document" or other record reflecting the government's reasoning.[5] The record here, however, contains neither.

A. The record shows that the Municipality failed to consider important factors when making its prohibited campsite determinations, resulting in arbitrary outcomes.

When an agency does not consider an "important factor" in its decision-making,

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[3] *Phillips v. Houston Contracting, Inc.*, 732 P.2d 544, 547 (Alaska 1987) (citing *Se. Alaska Conservation Council v. State*, 665 P.2d 544, 548–49 (Alaska 1983)).

[4] *Pacifica Marine, Inc. v. Solomon Gold, Inc.*, 356 P.3d 780, 790 (Alaska 2015) (quoting *Se. Alaska Conservation Council*, 665 P.2d at 548–49).

[5] *Usibelli Coal Mine, Inc. v. State*, 921 P.2d 1134, 1149 (Alaska 1996) (holding that the absence of "a formal, unified decisional document" can only be justified if "the record clearly reflects the reasoning underlying the agency's decision"). *See also Smith*, 568 P.3d at 375 (discussing "the central importance of a decisional document in administrative appeals") (citing *Se. Alaska Conservation Council*, 665 P.2d at 549; *Fields v. Kodiak City Council*, 628 P.2d 927, 933 (Alaska 1981)). For further discussion contrasting this ad hoc process with the Municipality's more formal procedures for other types of nuisance determinations, see Appellants' Reply Brief at *6.

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its final decision must be found arbitrary.[6] The "direct effects of [the agency's] actions"—including the impacts of the agency action on affected parties—are one such factor. [7]

Here, the Municipality failed to consider the "direct effect" of its prohibited campsite determinations and abatements on the people residing at those sites. For example, the Municipality issued its prohibited campsite determination at Cuddy Park less than one month after affirmatively deciding to close its only mass shelter at the Sullivan Arena on May 1, 2023. [Exc. 1; App. 4] Consequently, there was no "adequate shelter space" at the time of the abatement. [8] Nothing in the record shows that the Municipality contended with the practical implications of abatement in the absence of shelter options. Moreover, Appellants' affidavits articulate their foreseeable concerns, as affected parties, that abatement would result in the loss of their essential personal property, the safety of their chosen community, and their ability to access to social services. [Exc. 24–25; 29–30; 34–35; 39–40; 44–45; 49–50; 54–55; 59–60; 64–65] The record fails to show that the Municipality considered these impacts before making the challenged prohibited campsite determinations.

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[6] *Pacifica Marine, Inc.*, 356 P.3d at 790 ("Where an agency fails to consider an important factor in making its decision, the decision will be regarded as arbitrary.") (quoting *Se. Alaska Conservation Council*, 665 P.2d at 548–49).

[7] *See id.* at 790 & 790 n.17 (citing *Arkanakyak v. State*, 759 P.2d 513, 517 (Alaska 1988) (holding that the agency failed to consider an important factor when it did not consider whether language barriers prevented non-English speakers from satisfying license requirements); *State v. 0.644 Acres, More or Less*, 613 P.2d 829, 831–33 (Alaska 1980) (holding that the agency failed to consider an important factor when it did not consider the adverse effect of its airport expansion on neighboring heliport owners)).

[8] Opp. to Mot. for Trial de Novo at *4 (dated Nov. 14, 2023).

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The Municipality also failed to consider the constitutionality of its prohibited campsite determinations and abatements. The legality of a governmental action must be another important factor for an agency to consider to avoid arbitrary decision-making. Here, however, it appears that multiple Municipal employees raised legal concerns, including a Ninth Circuit case holding that the government could not abate a campsite in the absence of adequate shelter. [R. 170, 121–122, 174] Yet the record contains no indication that anyone from the Municipality, including from the Municipal Attorney's office, formally resolved these concerns before the government posted the challenged prohibited campsite notices. The decision to proceed with these determinations, notices, and abatements without first determining their legality evinces an arbitrary decision-making process.

B. The record contains no decisional document or other records articulating the reasoning behind the challenged determinations.

An agency must generate a "decisional document" or other record that "clearly reflects the reasoning underlying the agency's decisions."[9] Such a record serves several purposes, such as facilitating judicial review and ensuring "careful and reasoned administrative deliberation."[10] A decisional document is central to these purposes because the reviewing court can only determine whether an agency action was supported by substantial evidence "by focusing on the relationship between evidence and findings, and

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[9] *Hudak v. Pirate Airworks, Inc.*, No. S-15902, 2015 WL 4880918, at *1 (Alaska June 16, 2015) (quoting *Usibelli Coal Mine, Inc. v. State*, 921 P.2d 1134, 1149 (Alaska 1996)).

[10] *Smith*, 568 P.3d at 375 (quoting *Se. Alaska Conservation Council*, 665 P.2d at 549).

between findings and ultimate action[.]"[11]

Here, no such decisional document or other record clearly reflecting the reasoning behind the challenged prohibited campsite determinations appears to exist. The evidence considered by the Municipality—such as leases, an event permit application, and anonymized complaints[12]—was not paired with any findings, and no findings were paired with the Municipality's ultimate decisions. The record does not include any notes or memoranda weighing the evidence, drawing findings, or concluding from those findings that prohibited campsite determinations were appropriate here. Such gaps in the record illustrate that these determinations were not the product of "careful and reasoned administrative deliberation,"[13] but rather an arbitrary decision-making process.

II. The record confirms the unconstitutionality of the Municipality's prohibited campsite regime.

None of the evidence contained in the supplemented record refutes Appellants' constitutional challenges to the appealed prohibited campsite determinations or the Municipality's overall prohibited campsite regime.

A. The record confirms that the Alaska Constitution's criminal law protections apply to the Municipality's prohibited campsite regime.

A threshold question with respect to Appellants' claims is whether criminal-law

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[11] *Smith*, 568 P.3d at 375 (quoting *Fields*, 628 P.2d at 933).

[12] The supplemented record includes what appear to be anonymized complaints by local residents regarding the encampments. [R.131–152; 185–218] It is unclear if any were submitted by the same individual(s); how many were submitted by politically prominent persons; or if any were afforded greater weight than others.

[13] *See Smith*, 568 P.3d at 375 (quoting *Se. Alaska Conservation Council*, 665 P.2d at 549).

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constitutional protections apply to the Municipality's prohibited campsite regime. [At. Br. 13–21; Reply Br. 13–18] The supplemented record confirms that they do, by shedding additional light on the extent to which the Municipality comingles enforcement of the challenged prohibited campsite nuisance code with criminal law enforcement.

The Anchorage Police Department (APD) appears to play a prominent role in determining what locations constitute prohibited campsites. For example, APD represented the Municipality in its meeting with Joint Base Elmendorf-Richardson (JBER) "regarding illegal camps on JBER's Davis Park and snow dump properties[.]" [R. 31] This meeting evidently precipitated the Municipality's final decision to abate these sites. [R. 33] The selection of APD to represent the Municipality in this meeting—rather than the Municipal Attorney or the Real Estate Department[14]—is indicative of the criminal-law approach the Municipality has adopted for its prohibited campsite decisions.

The supplemented record also suggests a persistent effort by APD officers to disperse people from encampment spaces. For example, an apparent outreach worker stated that "individuals staying [at an encampment] were concerned that APD was going to make them move, because they stated APD has already been 'harassing' them the past couple of days." [R. 179] Another apparent outreach worker reported that "APD chased off the people camping in automobiles[.]" [R. 178] These reports, if substantiated, would

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[14] The Real Estate Department previously appeared to be JBER's point-of-contact regarding lease compliance. [R.30 (the first email from JBER to the Municipality reporting the encampments at Davis Park and the Snow Dump, dated May 18, 2023, and addressed to Tiffany Briggs, an employee in the Municipality's Real Estate Department)].

support Appellants' arguments that the structure of the challenged nuisance code[15] and the Municipality's methods of enforcement serve to achieve a criminal law enforcement end: namely, to remove alleged trespassers—not just their belongings—from public land.[16] As such, the Alaska Constitution's criminal legal provisions must apply.[17]

B. The record confirms that Appellants' only legal recourse to prohibited camping is leaving Anchorage altogether.

The supplemented record confirms that the Municipality's prohibited campsite regime essentially forces people experiencing unsheltered homelessness to choose between (a) facing a constant threat of displacement or arrest and (b) leaving Anchorage entirely. Such a banishment regime violates the Appellants' constitutional rights to due process, to be free from cruel and unusual punishment, and to liberty. [At. Br. at 21–35]

The Municipality does not dispute that the Municipal Code provides no legal place for unsheltered people to go in the absence of indoor shelter. Instead, it asserts that that fact is immaterial because the Municipality can only notice a limited number of locations for zone abatement at one time, [Ae. Br. at 27–28], and affected parties will always "have

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[15] For a more in-depth discussion of how the prohibited campsite nuisance provisions of the Municipal Code rely on criminal law, see Appellants' Opening Brief at 15–18.

[16] Such quasi-trespass enforcement can easily lead to formal trespass enforcement. Indeed, Appellant Brian Vaughan was arrested and charged with criminal trespass after he was found at the Davis Park Snow Dump site following a June 2025 abatement. *See Anchorage v. Vaughan*, 3AN-25-05801CR (filed Sept. 11, 2025); *Anchorage v. Vaughan*, 3AN-25-06541CR (filed Oct. 9, 2025).

[17] *See Baker v. Fairbanks*, 471 P.2d 386, 402 (Alaska 1970) (defining criminal offenses to include "offenses which, even if incarceration is not a possible punishment, still connote criminal conduct in the traditional sense of the term").

notice and opportunity to protect their interest in their unabandoned property." [Ae. Br. at 29] This defense fails as a matter of law—because where a law fails to describe how one can conform one's behavior to it, that law is void for vagueness [At. Br. 26–28; Reply Br. 15–17]—and, as the supplemented record illustrates, it fails as a matter of fact.

The supplemented record reveals that, in addition to noticing the relevant sites for zone abatement, the Municipality posted "Closed to the Public" signs in a neighboring location as part of its prohibited campsite enforcement regime. [R. 177 (email from Parks and Recreation requesting "Closed to Public" signs)]. The following month, the Municipality posted similar signs throughout at least three other expansive areas. [Exc. 19–21]. These signs explicitly asserted the government's right to remove personal property "without additional notice." [Exc. 19–21] Thus, contrary to its assertions, the Municipality sought to prevent people experiencing homelessness from self-sheltering on far more public land than the limited number of sites it posted for zone abatement, and adequate notice was not guaranteed.[18]

C. The record neither establishes a compelling interest in prohibited campsite abatements nor demonstrates that abatement is the least restrictive means of achieving such an interest.

Nothing in the supplemented record justifies the Municipality's infringement upon

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[18] The record also indicates these land closures were conducted without the requisite factual findings. The posted signs reference Chapter 15 of the Municipal Code. [Exc. 19–21] It is Chapter 25, however, that authorizes the Municipality to close public land, upon "a written finding that it is in the public interest to do so." AMC 25.10.060.B.1 (empowering the Municipality "to close any parcel of municipal land" for cleaning); AMC Reg. 25.10.003 ("The director may close to public use any use area upon a written finding that it is in the public interest to do so."). No such finding is in the record here.

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Appellants' freedom of movement. This freedom is a part of the fundamental right to travel[19] and warrants strict scrutiny.[20] [At. Br. at 32–35; Reply Br. at 18–19] In its past briefing, the Municipality declined to conduct strict scrutiny analysis as to either the challenged prohibited campsite determinations or the underlying law. [Ae. Br. 30] Consequently, it has yet to establish a compelling government interest or show that abatement is the least restrictive means of achieving that interest. Regardless, the record fails to provide sufficient evidence for the Municipality to meet that burden now.[21]

Had the Municipality asserted a compelling interest in public health or safety [*see* Ae. Br. 36], such an interest would not be substantiated by the record here. Absent from this record are, for example: reports by the Anchorage Health Department as to the impact of the encampments on the health of unsheltered people or on other residents; logs as to the quantity, frequency, or types of APD arrests made at the encampments; logs of 311 or 911 calls made by neighboring residents regarding the encampments; or reports by Anchorage Parks and Recreation as to the condition of the encampments. The supplemented record would thus fail to help the Municipality establish that the challenged prohibited campsite determinations and its overall prohibited campsite regime

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[19] *Treacy v. Anchorage*, 91 P.3d 252, 264–65 & 264–65 n.52–55 (Alaska 2004).

[20] *Doe v. Dep't of Pub. Safety*, 444 P.3d 116, 125 (Alaska 2019) ("[W]hen a law substantially burdens a fundamental right, the State must articulate a compelling state interest that justifies infringing the right and must demonstrate that no less restrictive means of advancing the state interest exists.").

[21] *See id.* (placing the burden on the government to articulate a compelling interest and demonstrate that there are no less restrictive means for advancing that interest).

are motivated or justified by a compelling interest in public health and safety.

Similarly, the record would not help the Municipality establish that prohibited campsite abatement is the least restrictive means of achieving such interests. On the contrary, the record suggests that the Municipality was aware of multiple alternatives to prohibited campsite abatement. For example, the Municipality could and did provide portable sanitation services, including restrooms and a dumpster, at known encampments.[22] [R. 122; R. 172] The record also indicates that Municipal personnel suggested exploring other options, such as a "year-round low barrier shelter" and "Sanctioned Camps," meaning locations "where people can legally be if they do not have access to private property[.]" [R. 27, 112–113] The record produced by the Municipality fails to establish the inadequacy of these less restrictive alternatives.[23]

D. The record confirms that prohibited campsite determinations are made without meeting the requirements of the Due Process Clause.

As a matter of law, Appellants maintained a protected property interest in their personal belongings,[24] necessitating heightened procedural due process protections—

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[22] While the supplemented record indicates that there were subsequently concerns about individuals self-sheltering in the restrooms, [R. 125–126], there is no evidence of such concerns with the other sanitation services.

[23] *See Matter of Lila B.*, 568 P.3d 1, 7 (Alaska 2025) ("Although the State is not required to 'prove the unavailability of every imaginable alternative,' *it must explore less restrictive alternatives and demonstrate why they are inadequate*.") (quoting *Matter of Sergio F.*, 529 P.3d 74, 80 (Alaska 2023)) (emphasis added).

[24] *Engle v. Anchorage*, No. 3AN-10-7047 Cl, Order at *19 (Alaska Super. Ct. Jan. 4, 2011) (classifying an unhoused person's interest in their personal property "as an interest of sufficient importance to warrant constitutional protection") (quotations omitted).

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including a predeprivation hearing—under Alaska's Due Process Clause. [At. Br. 38; Reply Br. 12–13] The supplemented record introduces no evidence justifying the lack of a predeprivation hearing or suggesting that the Municipality would have been unduly burdened by providing a longer notice period.

i. The record contains no evidence to justify the lack of a predeprivation hearing.

The Municipality does not provide an opportunity for a hearing *prior to* prohibited campsite abatements despite the state constitutional requirement for such a hearing.[25] [At. Br. 36–40; Reply Br. 7–12] The supplemented record confirms that neither of the exceptions to this hearing requirement—for (a) "emergency situations" or (b) when "public health, safety or welfare require[s] summary action"—apply here.[26]

On the contrary, the record indicates that the challenged prohibited campsite determinations were made in response to contracts the Municipality entered at least five months prior. [R. 27 ("We . . . hav[e] to abate these camps due to the land leases and prior event commitments.")]; R. 157–161 (Special Event Application dated 1/27/2023); R. 37–75 (JBER Davis Park Lease dated 12/23/2016); R. 76–109 (JBER Snow Dump Lease dated 11/1/2019)]. The record further shows that the Municipality knew people were

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[25] Unlike its federal analog, Alaska's Due Process Clause *requires* the government to provide a hearing before it deprives someone of a constitutionally protected property interest. *Anderson v. Alaska Hous. Fin. Corp.*, 462 P.3d 19, 29 (Alaska 2020) (citing *Brandner v. Providence Health & Servs.–Wash.*, 394 P.3d. 581, 589 (Alaska 2017). This hearing "need not be elaborate to comport with due process." *Id.* at 32.

[26] *Anderson*, 462 P.3d at 29–30 (quoting *Brandner*, 394 P.3d at 589) (discussing the exceptions to the Alaska Constitution's predeprivation hearing requirement).

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living at these locations as early as March 30, 2023. [R. 169] Months- and years-old contracts do not constitute an "emergency" warranting immediate action.

Similarly, the record does not indicate an emergent public health or safety threat requiring summary action. Instead, the most detailed report of a public safety concern as to the Cuddy Park encampments appears to be an email sent to the Municipality by a neighboring organization on May 8, 2023. [R. 171] The Municipality's response the following day stated that they could not abate because "the municipality does not have vacant shelter capacity to offer." [R. 170] Nothing in the supplemental record appears to explain the Municipality's change of reasoning shortly thereafter, other than apparent pressure in light of the event scheduled for June. [R. 174 (email from then-Mayor Dave Bronson, dated May 12, 2023, stating that "We are getting queries from some assembly members concerning abatement policy in that area [Cuddy Park] for this event. Please note, these Assembly members are insistent that this event happen without problems. I agree.")] Political pressure, however, does not constitute an emergency or a public health, safety or welfare issue requiring summary action.

ii. The record contains no evidence that the Municipality would be unduly burdened by providing a longer notice period.

The record contains no evidence that would indicate that providing Appellants additional notice would have been unduly burdensome on the Municipality.[27] In fact, the

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[27] *Engle*, No. 3AN-10-7047 Cl, Opinion at *20 ("[T]here is no evidence that increasing the notice period would impose a significant administrative burden on the Municipality[.]").

record shows that the Municipality was aware of the encampments in Cuddy and Davis Parks for months before it made its prohibited campsite determinations. [R. 169]

The Municipality received the permit application for the Sundown Solstice Festival in Cuddy Park in January 2023. [R. 161] And it became aware of the relevant encampment in March 2023 at the latest. [R. 169] The record fails to explain why the Municipality waited until late May to notice the area for a prohibited campsite abatement, let alone how it would have been significantly burdened by posting notice earlier and providing a longer notice period.

Similarly, the record contains no evidence showing that the Municipality would have been unduly burdened by giving more notice at Davis Park and the Snow Dump. It signed a lease with JBER in 2016 for Davis Park and a second lease in 2019 for the Snow Dump. [R. 41, 80] Per the record, the Municipality was aware of the relevant encampments since at least March 2023.[28] [R. 169] The record contains no explanation as to why the Municipality waited until June 2023 to notice these locations or why they needed to be abated within ten days.

E. The supplemented record confirms that the Municipality seizes unsheltered people's unabandoned property without a warrant.

The record does not include a warrant for the property that the government seized

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[28] In fact, the Municipality was likely aware of these encampments for much longer. The facts of *Smith v. Anchorage* and its precursor *Vaughan v. Anchorage* indicate that the Municipality also noticed Davis Park for prohibited campsite abatements in 2022 and 2021. *Smith*, 568 P.3d at 368 (discussing June 2022 abatement of Davis Park); *Vaughan et al. v. Anchorage*, No. 3AN-21-07931CI, Order Dismissing Appeal for Lack of Subject-Matter Jurisdiction at *1 (discussing August/September 2021 abatement of Davis Park).

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from Appellants as part of the abatement at Cuddy Park. As Appellants discussed in their Opening and Reply Briefs, such a warrantless seizure of individuals' unabandoned property violates the U.S. and Alaska Constitutions. [At. Br. 45–49; Reply Br. 19–20]

CONCLUSION

The supplemented record establishes five key facts. First, the Municipality reached its prohibited campsite determinations through an ad hoc process that failed to consider important factors or to produce a decisional document. Second, its prohibited campsite enforcement regime relied on the threat of criminal law enforcement to remove unsheltered people from public spaces. Third, the challenged determinations were made in response to foreseeable conflicts with preexisting contracts, not an emergent health or safety crisis. Fourth, the Municipality knew of these conflicts well before it noticed either location for abatement. And fifth, the Municipality did not provide Appellants with a hearing or serve a warrant prior to depriving them of their property during its prohibited campsite abatement at Cuddy Park.

The supplemented record thus illustrates the constitutional infirmities of the Municipality's prohibited campsite regime. Accordingly, the Court should declare Anchorage Municipal Code § 15.20.020.B.15 unconstitutional. In the alternative, if the Court concludes that it requires additional facts before it can rule on the merits of Appellants' claims, a trial de novo may be appropriate.

Dated: February 17, 2026

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On February 17, 2026, a true and correct copy of the foregoing Supplemental Brief on the Supplemented Record was served on:

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