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

JOSETT BANKS, et al.,)

Appellants,)

vs.)

MUNICIPALITY OF ANCHORAGE,)

Appellee.)

Case No. 3AN-23-06779CI

JOENE ATORUK, et al.,)

Appellants,)

vs.)

MUNICIPALITY OF ANCHORAGE,)

Appellee.)

Consolidated:
Case No. 3AN-23-07037CI

**MUNICIPALITY OF ANCHORAGE’S SUPPLEMENTAL BRIEF REGARDING
SUPPLEMENTAL RECORD**

Abatements of prohibited campsites are a constitutional and essential means to ensure public health and safety and return municipal lands to their dedicated purposes. The Municipality’s Supplemental Record underscores that abatements serve these important

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public purposes, confirms the rationales the Municipality articulated in the original record for the planned abatements of Davis and Cuddy Parks in 2023, and confirms the Municipal Code’s constitutionality. Nothing in the Supplemental Record affects the proper analysis of Appellants’ constitutional claims. Rather, the Supplemental Record demonstrates that, consistent with the original record filed in this case, the Municipality posted notice to abate (but did not actually abate) Davis Park in order to comply with the terms of its lease with Joint Base Elmendorf-Richardson (“JBER”) and abated prohibited camps at Cuddy Park in order to facilitate the safe use of the park for a concert for which the park had been rented. For all the reasons discussed in the Municipality’s Appellee Brief, the abatement notices, the abatement of camps at Cuddy Park, and the Municipal Code’s abatement provisions are constitutional.

Appellants do not show otherwise. Instead, nearly three years into this appeal, after full briefing on the merits and oral argument, they assert for the first time that the Municipality’s determination to abate prohibited encampments in Davis and Cuddy Parks was arbitrary. Appellants waived this argument—which fails in any event—long ago. Once Appellants turn to the constitutional arguments properly preserved in their principal briefing, their arguments with respect to the record only highlight the weakness of their claims.

I. The Supplemental Record Confirms the Municipality Planned to Abate Davis and Cuddy Parks to Restore the Parks to their Dedicated Purposes, which Courts Routinely Recognize Is an Important Government Interest.

The Supplemental Record confirms that the Municipality planned the abatements of Davis and Cuddy Park to restore those parks to their dedicated (and contracted-for) uses. The Municipality noticed a planned abatement of Davis Park after a representative of JBER

contacted Michael Braniff, the Director of Parks and Recreation, via email to “request[] the Muni’s assistance in removing illegal camps located within Davis Park and the Mt[.] View snow dump leased area due to safety conditions for the public and JBER personnel.” [Supp. R. 24, *see also* Supp. R. 30, 33] Although JBER styled this as a request, removal of prohibited campsites is mandatory under with Municipality’s lease with JBER, which requires the Municipality “ensure that the snow disposal site is kept clear of trash and homeless camps” and that “[t]he Municipality will also provide trash and homeless camp removal for a neighboring parcel of JBER-controlled land.” [Supp. R. 26, 109]. As internal communications within the Municipality show, JBER’s request came after “continued issues with civilians gaining access to the base via this park.” [Supp. R. 27; *see also* Supp. R. 32 (discussing “incursion from Davis to JBER”)] Ultimately, the Municipality planned to abate camps at Davis Park and the snow dump to restore the areas to their dedicated uses, which are limited by the Municipality’s contract with JBER. Further, the planned abatement served public health and safety because it sought to eliminate trespasses from these areas onto military land with active runways.

The Municipality similarly abated Cuddy Park to restore that park to a use for which the park was dedicated: allowing a renter to safely host an outdoor concert at which roughly 7,000 attendees were expected. [Supp. R. 154; *see also* Supp. R. 157–168 (special event application)] Prior to the scheduled concert, campers at Cuddy Park posed public health and safety concerns to themselves and others. Prohibited camping at Cuddy Park resulted in fires [Supp. R. 178–9], vandalism, safety concerns at nearby businesses, associated security costs, [Supp. R. 171], and unsanitary conditions [Supp. R. 171]. Moreover, the removal of 70

structures and tents was necessary to make the park space available for musicians, vendors, and large audiences. [Supp. R. 183]

Courts routinely recognize that returning municipal lands to their dedicated purposes, as the Municipality did here, is an important government interest.¹ Chief Judge Gleason of the U.S. District Court recently rejected seizure and procedural due process challenges to this same abatement code, emphasizing the important government interest that abatements serve. In concluding that seizure of personal property left in a zone noticed for abatement was reasonable and that the Code satisfied due process, Judge Gleason noted that “the abatement of prohibited camping on public property such as parks serves legitimate public interests” because “[b]y occupying public property intended for other purposes, prohibited campsites interfere with the public’s interest in using public property for the public purposes to which it has been dedicated.”² That logic applies with equal force here, as the Municipality explained in its principal brief in these appeals. And the Supplemental Record only reinforces that conclusion.

II. The Supplemental Record Does Not Change the Proper Legal Analysis or Support Appellants’ Arguments.

As explained above, the Supplemental Record confirms what was already apparent from the originally filed record: that the Municipality planned the two abatements at issue here for important government interests: to return the Municipal property to the purpose to

¹ *Smith v. Municipality of Anchorage*, 797 F. Supp.3d 992, 1010 (D. Alaska 2025) (“Other courts have routinely recognized that these are important government interests served by the removal of prohibited encampments and personal belongings from public lands.”) (collecting cases).

² *Id.* 1010, 1013 (D. Alaska 2025).

which it had been dedicated. Because the original record already accurately disclosed the bases for the two abatements at issue here, the supplement only reinforces the analysis already set out in the Municipality’s principal briefing. Nothing in the supplement calls that analysis into question. And nothing in the supplement supports Appellants’ arguments.

First, Appellants insist that the Anchorage Police Department’s (“APD”) involvement in certain meetings prior to abatement “is indicative of a criminal-approach” to civil abatement decisions.³ But the record is clear that the Municipality’s Parks and Recreation Department, which at the time of the planned abatement of Davis Park in 2023 was headed by Michael Braniff, led the process for determining whether and when to abate prohibited camps and made the final decision here. [Supp. R. 24] In any event, APD consultation regarding civil abatement does not make civil abatement a criminal enforcement mechanism, any more than consulting with APD before citing the owner of a vacant and abandoned building under other provisions of the civil code would convert that civil process into a criminal one.

In a footnote, Appellants point out that one Appellant was charged with criminal trespass after he returned to a zone from which his prohibited camp had been abated.⁴ That separate charge for trespass under a separate criminal statute only highlights that the civil abatements challenged here are an alternative, civil enforcement mechanism that the Municipality can choose (and here did choose) even where a criminal penalty could also potentially apply. As in *Nabors*, the use of a civil enforcement option (there, tax assessment

³ Supp. Br. at 7.

⁴ Supp. Br. at 8 n. 16.

and demand for payment of owing taxes and here, abatement) rather than a criminal penalty (there, a criminal charge of tax evasion and here, trespass) required the application of more lenient, civil law standards.⁵ The availability, but *non-use*, of criminal law mechanisms to remove campers from public lands only underscores that abatements are civil mechanisms and must be treated as such. If any Appellants wish to challenge any specific application of separate, criminal laws to them, they may do so in a case properly presenting that issue (such as in a criminal prosecution). An appeal from a civil abatement decision is not the proper venue to address separate criminal actions.

Second, the Supplemental Record does not show that Appellants' only recourse to prohibited camping is to leave Anchorage altogether. Indeed, the Supplemental Record shows the opposite: that the abatements at issue here were only abatements of two specific zones of prohibited encampments, not abatements of all municipally owned parcels of land throughout the entire city. The asserted presence of "Closed to Public" signs on certain parcels of Municipal land does not change that fact, contrary to Appellants' suggestion.⁶ Banishment from Anchorage via civil abatement is not possible as a matter of law under Code because no more than 10 "contiguous, reasonably compact" zones may be simultaneously noticed for abatement.⁷ And, like any other Anchorage resident, Appellants

⁵ *Dep't of Revenue v. Nabors Int'l Finance, Inc.*, 514 P.3d 893, 900 (Alaska 2022).

⁶ Supp. Br. at 9.

⁷ AMC 15.20.020B.15.b.v.(B). NB. Although Appellants argue banishment, at least one Appellant publicly acknowledges that, following an abatement, he merely establishes a prohibited camp in a different location. See Hannah Flor, *Anchorage clears its 2 largest homeless encampments*, Alaska Public Media (June 18, 2025), <https://alaskapublic.org/news/anchorage/2025-06-18/anchorage-clears-its-2-largest-homeless-encampments>. Following the July 2025 abatement of Davis Park, Appellant Brian

may seek any private or publicly-available housing option,⁸ stay with a friend, or seek inpatient behavior health or substance abuse treatment.

Third, the Municipality does not need to show a compelling interest in an abatement or that an abatement is the least restrictive means of accomplishing that interest because the Municipality has not restricted Appellants' fundamental right to travel whatsoever, and nothing in the Supplemental record changes that analysis. As noted, these abatements affected two specific parcels. They thus did not preclude Appellants from "dwell[ing] within" Alaska or moving about within the state.⁹ Rather, these abatements required individuals remove a prohibited campsite from two particular parcels of public property, and nothing in the Supplemental Record supports the existence of any fundamental right to indefinitely occupy a particular piece of public property.

Fourth, Appellants assert that "the supplemented record introduces no evidence justifying the lack of a pre-deprivation hearing or suggesting that the Municipality would

Vaughan confirmed to the Anchorage Daily News that he continues to live "in the woods" in Anchorage, "had no plans to leave," and intended to salvage materials to build an insulated structure. Zachariah Hughes, *Is Anchorage Mayor LaFrance's approach to homelessness working?*, Anchorage Daily News (August 1, 2025), <https://www.adn.com/alaska-news/anchorage/2025/08/01/is-anchorage-mayor-lafrances-approach-to-homelessness-working/>.

⁸ See MOA Safety Net Shelter & Crisis System, Muni.org, <https://www.muni.org/Departments/health/HousingAndHomelessness/Documents/MOA%20Safety%20Net%20Shelter%20%26%20Crisis%20System%20FINAL.pdf>. Public reporting reflects that, after a recent abatement, "around 50 people, some of whom had been living outdoors for years, accepted spots in local shelters or treatment programs." Zachariah Hughes, *Is Anchorage Mayor LaFrance's approach to homelessness working?*, Anchorage Daily News (August 1, 2025), <https://www.adn.com/alaska-news/anchorage/2025/08/01/is-anchorage-mayor-lafrances-approach-to-homelessness-working/>.

⁹ *United States v. Wheeler*, 254 U.S. 281, 293 (1920); see also Supp. Br. at 29.

have been unduly burdened by providing a longer notice period” and that the record lacks evidence justifying the asserted lack of pre-deprivation hearing.¹⁰ But it is *Appellants* who bear the burden of making out their constitutional challenges. And Appellants fail to identify what, on this record, would be accomplished by additional pre-abatement process. Indeed, as the Supplemental Record here makes clear, no amount of additional pre-abatement process would negate the cited bases for these abatements: to return Municipal property to the contracted-for purposes to which it had been dedicated. In any event, as discussed, abatements do not cause any deprivation of property.¹¹ Appellants can utilize the storage right provided by Code when they appeal an abatement or remove their own property themselves from the noticed abatement area. By doing so, Appellants ensure that they can have a hearing before any property deprivation occurs. And although Code does not permit Appellants to store their personal property on abated municipal land after an abatement, Appellants do not assert any right to do so, nor do they have one.

With respect to the notice period, the question is whether the notice is adequate, not how burdened the Municipality would be by providing more-than-adequate notice.¹² And, as the Municipality’s Appellee Brief detailed, Code’s 10-day notice period is more than

¹⁰ Supp. Br. at 11–13.

¹¹ See *supra* at 5; Appellee Br. at 41–43.

¹² *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (“The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it.”) (cleaned up); *State, Dep’t of Health & Soc. Servs. v. Valley Hosp. Ass’n, Inc.*, 116 P.3d 580, 583 (Alaska 2005) (“Alaska has adopted the three-part balancing test outlined in *Mathews v. Eldridge* to determine whether administrative proceedings satisfy due process.”).

adequate. Indeed, it is substantially more generous than the notice periods repeatedly upheld in other cases.¹³

Because the Supplemental Record only confirms the legitimate government interests the Municipality articulated for its planned abatements, nothing in the Supplemental Record changes how this Court should approach the constitutional questions at the heart of this appeal. Accordingly, the Court should affirm the Municipality's actions.

III. Appellants Waived their Arbitrary and Capricious Arguments, Which Fail on the Merits in Any Event.

A. Nearly *three* years into this appeal, after the parties already completed briefing on the merits and presented oral argument, Appellants now assert for the first time that the Municipality's decisions to abate Davis and Cuddy Parks are arbitrary under administrative law standards. From its inception and throughout multiple rounds of briefing and oral argument on trial *de novo*, the Alaska Supreme Court's *Smith* decision, the merits, and a citation of supplemental authority, this appeal has focused *solely* on the constitutional dimensions of the Municipality's abatement code. Appellants' new claim that the Municipality's decisions to abate are arbitrary and capricious under administrative law standards was not included in Appellants' Statement of Points on Appeal and Appellants did not move to supplement these points.¹⁴

Crucially, nothing in the Supplemental Record was necessary for Appellants to discover and assert their newfound arbitrariness theory. The rationales for abatement

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¹³ Appellee Br. at 34–42.

¹⁴ Statement of Points (filed June 16, 2023).

discussed in the Supplemental Record, and which Appellants now seek to challenge as arbitrary, were already supplied in the original record. Further, Appellants' new arguments almost exclusively rely on their own affidavits, which were filed as part of their Except of Record over two years ago on December 9, 2024.¹⁵ The only aspect of the Supplemental Record that Appellants cite in service of their arbitrariness argument is their assertion that the record fails to show that the Municipality considered the legality of abatement because the Supplemental Record does not contain protected attorney work-product and attorney-client privileged communications.¹⁶ But Appellants could have said the same thing about the original record years ago and chose not to do so. Accordingly, the Appellate Rules and considerations of fairness squarely foreclose the introduction of an entirely new legal theory at this late date. Moreover, the Appellate Rules and Alaska Supreme Court are clear that arguments raised for the first time in a reply are waived.¹⁷ This rule should apply with greater force to arguments first raised in *supplemental* briefing. The Court should therefore not consider Appellants' novel claims at this late stage.

B. In any event, these novel arguments fail on the merits. Throughout this appeal, the Municipality has maintained that abatements are necessary to return public property to its dedicated purposes. Contrary to Appellants' assertions, and as previously discussed, rationales consistent with this purpose are reflected in decisional documents that Appellants

¹⁵ Supp. Br. At 4 (citing Excerpts of Record).

¹⁶ Supp. Br. at 5.

¹⁷ Alaska R. App. P. 212(c)(3) (stating that the reply brief "may raise no contentions not previously raised in either the appellant's or appellee's briefs."); Alaska R. App. P. 601(c) (confirming the applicability of Part Two of the Appellate Rules to any point not addressed by Part Six); *see e.g., Willoya v. State, Dep't of Corr.*, 53 P.3d 1115, 1126 (Alaska 2002).

have had for years. With respect to the abatement of Cuddy Park, the spreadsheet the Municipality originally identified as its decisional document clearly stated that the park would be abated in order to allow a concert event, for which the park had been rented, to go ahead. [Atoruk R. 1] Similarly, the document clearly stated that Davis Park was noticed for abatement to comply with the terms of the Municipality’s lease with JBER. [Banks R. 1] Nothing of relevance has changed in the years since, and, as explained above, the Supplemental Record only confirms these rationales.

Appellants cite to inapplicable cases interpreting the Alaska Administrative Procedures Act, which applies in relevant part only to administrative proceedings in state agencies.¹⁸ Here, Municipal Code creates a right to a direct judicial appeal from the Municipality’s discretionary, civil enforcement decisions with respect to public nuisances.¹⁹ In *Smith*, the Alaska Supreme Court held that the intended scope of review in such an appeal includes “whether (i) the campsite is illegal and (ii) all the property found thereon may be disposed of as waste forthwith” and encompasses constitutional issues.²⁰ Nothing in the plain text of Municipal code authorizing appeal, or in the Supreme Court’s interpretation of that code, would stretch judicial review to encompass whether the a court thinks the

¹⁸ AS 44.62.305.

¹⁹ AM 15.20.020B.15.e (“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.”); *see also Smith v. Municipality of Anchorage*, 568 P.3d 367, 373 (Alaska 2025) (noting that the Anchorage Assembly amended Municipal Code to “entirely eliminat[e] the intermediate step of appeal to the administrative hearing officer, replacing it with a direct appeal to superior court”).

²⁰ *Smith*, 568 P.3d at 373.

Municipality gave adequate explanation for its purely discretionary decision to abate. The Alaska Supreme Court has consistently warned that judicial review of an enforcement decision “committed to executive discretion . . . is not subject to the control or review of the courts” so long as “the exercise of that discretion within constitutional bounds.”²¹ For example, in *Yankee*, the Alaska Supreme Court declined to review an executive decision not to take action to enforce a potential violation of Juneau’s land use code because the court “would not be in a position to second-guess [the director’s] discretionary exercise of enforcement authority” and because “this enforcement discretion is due more judicial deference when an agency functions to protect the public in general, as contrasted with providing a forum for the determination of private disputes.”²² Moreover, “when a matter falls within an area traditionally recognized as within an agency’s discretionary power, courts are less inclined to intrude than when the agency has acted in a novel or questionable fashion.”²³ Here, as in *Yankee*, the Municipality exercised enforcement authority under the public nuisance chapter of its environmental protection code to protect the public in general. Such an exercise of discretion to protect public safety and health is well within the core of traditionally recognized municipal powers. No authority requires the Municipality to explain why it exercises its enforcement discretion to abate any other kind of nuisance prohibited by Code, and there is nothing about this particular kind of nuisance that requires a different

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²¹ *Yankee v. City & Borough of Juneau*, 407 P.3d 460, 465 (Alaska 2017) (internal quotation marks and citation omitted).

²² *Id.* at 466–67.

²³ *Id.* at 465.

rule. The Court should therefore decline to give itself the extra-textual authority to sit in review here of the Municipality's enforcement decisions.

Even if this Court concluded this was the rare case in which it is appropriate to “inquire into the basis of an agency’s decision to assure that it is in conformity with law and that it is not so capricious or arbitrary as to offend due process,” the Municipality’s abatement decisions pass muster.²⁴ As discussed throughout the Municipality’s briefing, there is no due process issue here. The Municipality’s decision was in conformity with law as there is no dispute that “one or more persons [were] camping on public land in violation of” Code and were thus subject to abatement.²⁵ Additionally, the decisions were not so arbitrary or capricious as to offend due process. As discussed, in the case of Davis Park, the Municipality planned an abatement in conformance with its contract with the landowner, JBER. And, in Cuddy Park, the Municipality abated prohibited campsites because they occupied public land that had been rented to a promoter to hold a large, outdoor concert. It is not arbitrary or capricious to exercise enforcement authority to comply with the terms of a lease or ensure the fulfilment of a contract. Appellants’ concerns that the Municipality did not consider “foreseeable concerns” such as the possibility of lost property and that individuals would potentially be separated from their chosen community do not call those conclusions into question.²⁶

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24 *Id.*
25 AMC 15.20.020B.15.
26 Supp. Br. at 4.

Finally, even applying the inapplicable standards Appellants cite, the abatement decisions are not arbitrary. Although the decisional documents are brief, they clearly reflect the reasoning underlying the agency’s decisions and its consideration of relevant factors. The Excel sheets identify that Davis Park would be abated to comply with the terms of the JBER lease and that Cuddy Park would be abated to facilitate a permitted concert. Plus, the sheets note that each encampment respectively included total of 103 and 70 structures or tents, well above the 25-tent threshold to trigger prioritized enforcement under Code. Given the straightforward reasoning underlying these decisions, the decisional documents’ brevity does not render these actions arbitrary.

Appellants fault the decisional documents for failing to contend with the potential effects of abatement, such as the potential loss of property and potential impacts on their ability to access social services. But deciding where to exercise civil abatement powers is for the municipality’s elected leadership, not for Appellants or for this Court. In any event, as explained, campers have every opportunity to safeguard or store their property. Also, Municipal Code requires the Municipal notify the Anchorage Health Department and community social service agencies so that social services can be provided.²⁷ Consideration of the issues Appellants cite is already built into the abatement scheme in Municipal Code, and nothing in Code requires that the Municipality re-address those issues every time it decides to return a specific parcel of public land to its lawfully dedicated public use.

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²⁷ AMC 15.20.020B.15.d.

Appellants then protest that “the record contains no indication that anyone from the Municipality, including the Municipal Attorney’s Office” addressed legal concerns before these abatements were noticed.²⁸ The Municipal Attorney Office’s internal deliberations with respect to the legality of the Municipality’s action are not included in the record for the obvious reason that any such communications, memoranda, and the like are attorney-client privileged or attorney work product. Although the Alaska Supreme Court has not addressed this issue, it is a well-established principle of administrative law that “privileged materials are not part of the administrative record in the first instance” and the agency is not required to produce a privilege log.²⁹ In any event, the concern as to legality that Appellants identify was based on a now-overturned Ninth Circuit opinion. [Supp. R. 170 (mentioning *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2019), *abrogated by City of Grants Pass v. Johnson*, 603 U.S. 520 (2024))]. So, as a matter of law, there was no legal obstacle.

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For these reasons and all the reasons addressed in the Municipality’s Appellee Brief, the Court should affirm the Municipality’s actions.

Respectfully submitted this 4th day of March, 2026.

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²⁸ Supp. Br. At 5.

²⁹ *ASSE Int’l, Inc. v. Kerry*, Case No. SACV-1400534-CJCJ (PRX), 2018 WL 3326687, at *2–3 (C.D. Cal. Jan. 3, 2018); *see also Am. Petroleum Tankers Parent, LLC v. United States*, 952 F. Supp. 2d 252, 265 (D.D.C. 2013)

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Municipality's Supplemental Brief Regarding Supplemental Record
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