

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

Josett Banks, Kyla Friedenbloom, and	)	
Kristine Shawanokasic,	)	
Appellants,	)	
v.	)	Case No. 3AN-23-06779 CI
	)	
Municipality of Anchorage,	)	
Appellee.	)	
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,	)	Case No. 3AN-23-07037 CI
Appellants,	)	
v.	)	
	)	
Municipality of Anchorage,	)	
Appellee.	)	

ORDER AFFIRMING ABATEMENT ACTIONS

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. Appellants filed their Opening Brief on December 9, 2024, along with a Motion to Supplement the Statement of Points on

Appeal. The Municipality filed its Appellee Brief on April 2, 2025. Appellants filed a reply on May 7, 2025. Following the Alaska Supreme Court’s decision in *Smith v. Municipality of Anchorage*,¹ the Court invited supplemental briefing from the parties on that decision’s impact on this consolidated appeal. Both parties filed supplemental briefing on May 30, 2025. Oral argument was held on July 9, 2025.

On December 30, 2025, the Court issued an Order to Supplement the Record. The Municipality submitted a supplemental record on January 28, 2026. Appellants filed a supplemental brief on February 17, 2026. The Municipality filed a supplemental brief on March 4, 2026. Appellants filed a reply brief on March 19, 2026.

Having considered the written briefing, oral argument, and the record on appeal, the Court affirms the Municipality’s abatement decisions.

I. BACKGROUND

This consolidated appeal concerns the constitutionality of the Municipality’s procedures for the removal of prohibited campsites and the abatement of unhoused campers.² 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

¹ 568 P.3d 367 (Alaska 2025).

² See AMC 15.20.020(B)(15).

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 searches and seizures.³ 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.

A. Anchorage Municipal Code

The AMC designates "prohibited campsites" as public nuisances and provides a detailed set of procedures that the Municipality can use to address them, including abatement by the Municipality.⁴ A public nuisance prohibited campsite is defined as "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."⁵ A violation of section 8.45.010 includes committing the crime of criminal trespass by "knowingly enter[ing] or remain[ing] on public premises or property . . . when the premises [or] property is not open to the public."⁶ A

³ Appellants' Mot. to Supp. the Statement of Points on Appeal at 2.

⁴ AMC 15.20.020(B)(15).

⁵ AMC 15.20.020(B)(15).

⁶ AMC 8.45.010(A)(3)(a).

violation of chapter 25.70 includes the prohibited conduct of camping on municipal land in areas that are not specifically designated for such use.⁷

The Municipality is required to post notice of an impending abatement before any physical removal of people or property.⁸ There are four different notice periods depending on the area that is subject to abatement: 24 hours for wildfire danger areas,⁹ 72 hours for campsites near protected land uses like trails and playgrounds,¹⁰ ten days for campsite abatements,¹¹ and ten days for “zone abatements” (when the Municipality simultaneously abates all campsites within a contiguous area).¹²

When the Municipality posts an abatement notice, the AMC requires that the notice include: the approximate location of the campsite, the code provision under which the campsite is prohibited, and a warning that the campsite may be removed.¹³ The notice must also state that an appeal may be filed with the court, that a notice of intent to appeal may be filed with the Municipality, and that either an appeal or notice of intent to appeal will delay abatement.¹⁴ Oral notice must be given to any individual in the prohibited campsite that is subject to abatement.¹⁵ In addition, if personal property is to be stored, the notice must include the contact

⁷ AMC 25.70.040(A)(1).

⁸ AMC 15.20.020(B)(15)(a).

⁹ AMC 15.20.020(B)(15)(b)(i).

¹⁰ AMC 15.20.020(B)(15)(b)(ii).

¹¹ AMC 15.20.020(B)(15)(b)(iv).

¹² AMC 15.20.020(B)(15)(b)(v).

¹³ AMC 15.20.020(B)(15)(a)(i).

¹⁴ AMC 15.20.020(B)(15)(a)(ii)-(iv).

¹⁵ AMC 15.20.020(B)(15)(a)(v).

and location information for reclaiming or disclaiming any personal property stored.¹⁶

At issue in this case are zone abatements that require ten days' notice prior to abatement. Zone abatement notices must state that "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."¹⁷ The notice must also be "conspicuously posted under the circumstances" and "describe in detail the zone to be abated."¹⁸

Once notice of a zone abatement has been posted, "[t]ents, structures, and associated personal property placed in the zone after notices were posted shall be stored [by the Municipality]."¹⁹ The AMC provides that "the [M]unicipality may store in any reasonable manner the personal property removed from a prohibited campsite."²⁰ The AMC provides a list of items that are deemed valuable and eligible for storage.²¹ If no person claims any of the personal property in storage after 30 days from the date notice was posted, the Municipality may dispose of that personal property.²²

¹⁶ AMC 15.20.020(B)(15)(a)(vi).

¹⁷ AMC 15.20.020(B)(15)(b)(v).

¹⁸ AMC 15.20.020(B)(15)(b)(v)(A).

¹⁹ AMC 15.20.020(B)(15)(b)(v)(C).

²⁰ AMC 15.20.020(B)(15)(c).

²¹ AMC 15.20.020(B)(15)(c)(iii).

²² AMC 15.20.020(B)(15)(c).

A posted notice of a campsite abatement is considered a final administrative decision.²³ The abatement procedure specifies that any appeal of an abatement decision “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.”²⁴ If an intent to appeal to the superior court is provided to the Municipality within ten days of the abatement notice-posting, the Municipality shall not remove the appellant’s personal property for at least 30 days from the date the notice was first posted.²⁵ If an appeal is 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 issued and any subsequent appeal rights expire.²⁶

B. Abatements and Notice Postings

The Appellants in this case are unhoused residents of Anchorage who occupied campsites in Municipality parks. On May 24, 2023, the Municipality posted Notice of Zone Abatement signs in and around Loussac Library, Cuddy Park, & Old Archive Site (hereinafter “Cuddy Park”).²⁷ Between June 4-18, 2023, the Municipality abated the campsites that remained in that zone.²⁸ On June 5,

²³ AMC 15.20.020(B)(15)(e).

²⁴ AMC 15.20.020(B)(15)(e).

²⁵ *See* AMC 15.20.020(B)(15)(e).

²⁶ AMC 15.20.020(B)(15)(f)(i), (ii).

²⁷ Banks R. 2.

²⁸ Banks R. 1.

2023, thirteen of the unhoused residents filed notices of intent to appeal the Municipality’s abatement decision.²⁹ Three of those individuals—the Banks Appellants—appealed the Municipality’s abatement decision. On June 16, 2023, the Banks Appellants filed this appeal.

On June 23, 2023, the Municipality posted a Notice of Zone Abatement sign for an area from McCarey to Boniface roads and Mountain View Drive to Glenn Highway (hereinafter “Mountainview Snowdump”).³⁰ Around the same day, the Municipality posted another Notice of Zone Abatement sign for Davis Park, N. Pine Street to McPhee Ave. to Mountain View Drive (hereinafter “Davis Park”).³¹ On June 28, 2023, thirteen unhoused residents—the Atoruk Appellants—appealed the Municipality’s abatement decision.³² The Municipality ultimately removed the signs at Davis Park and Mountainview Snowdump and cancelled abatement plans in those areas.³³

C. Agency Records

On July 31, 2023, the Municipality transmitted the record underlying its decision to post notice of abatement and abate Cuddy Park.³⁴ The record is 23 pages in total and includes the following: a spreadsheet listing the structures in the abatement zone; a copy of the May 24, 2023 abatement notice; a June 5, 2023

²⁹ Banks R. 5-17.

³⁰ Atoruk R. 2.

³¹ Atoruk R. 3.

³² Appellants’ Brief, Exc. 67-68.

³³ Atoruk R. 1.

³⁴ Transmittal of Agency R. (July 31, 2023).

letter from the American Civil Liberties Union with notices of intent to appeal; thirteen notices of intent to appeal; and three Municipality personal item storage forms.³⁵

On August 29, 2023, the Municipality transmitted the record underlying its decision to post notice of abatement for Mountainview Snowdump and Davis Park.³⁶ That record is three pages in total and includes: 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 notice signs.³⁷

On January 28, 2026, the Municipality filed a supplemental record to include the information considered by the Municipality in reaching its decisions. The Municipality submitted an additional 195 pages consisting of emails regarding the abatements, a copy of the Department of the Air Force lease to the Municipality at JBER, the Special Event Application for a three-day music festival in Cuddy Park in June 2023, and correspondence regarding prohibited campsites.

II. JURISDICTION AND STANDARD OF REVIEW

The superior court has jurisdiction to act as an intermediate appellate court and review appeals from administrative agencies. Under Alaska Statute 22.10.020(d), the superior court has jurisdiction “in all matters appealed to it from

³⁵ Banks R. 1-23.

³⁶ Transmittal of Agency R. (Aug. 29, 2023).

³⁷ Atoruk R. 1-3.

a[n] . . . administrative agency when appeal is provided by law.”³⁸ The Alaska Supreme Court has held that this statutory grant of jurisdiction includes appeals from municipal agencies, including substantive appeals of campsite abatement decisions.³⁹ The Alaska Supreme Court has concluded that there is “nothing in the ordinance or in the language of the posted notice that purports to restrict the right to appeal to the notice’s legal sufficiency.”⁴⁰ 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.”⁴¹

The Alaska Supreme Court has recognized four standards of review for superior court review of administrative decisions: (1) the substantial evidence test applies to an agency’s factual findings, (2) the reasonable basis test applies to questions of law involving agency expertise, (3) the substitution of judgment test applies to questions of law not involving agency expertise, and (4) the reasonable and not arbitrary test applies to an agency’s interpretation of its own regulations.⁴²

For constitutional claims that are outside of the agency’s expertise, the reviewing court typically applies the substitution of judgment test, which allows the court to “substitute its own judgment for that of the agency’s, even if the

³⁸ AS 22.10.020(d).

³⁹ *Smith v. Mun. of Anchorage*, 568 P.3d 367, 370-73 (Alaska 2025) (holding that the superior court’s jurisdiction is not limited to the legal sufficiency of the posted notice).

⁴⁰ *Id.* at 372.

⁴¹ *Id.* at 373.

⁴² *State, Dep’t of Health & Soc. Servs. v. N. Star Hosp.*, 280 P.3d 575, 579 (Alaska 2012); *Gottstein v. State, Dep’t of Nat. Res.*, 223 P.3d 609, 620 (Alaska 2010).

agency's decision had a reasonable basis in law.”⁴³ In administrative appeals, questions of due process present constitutional issues that are reviewed *de novo*.⁴⁴

III. ANALYSIS

Appellants argue that the Municipality's abatement code is unconstitutional facially and as applied to Appellants. Appellants argue that AMC 15.20.020(B)(15) violates Appellants' procedural and substantive due process rights. Appellants argue that the Municipality's campsite abatement was an unreasonable seizure of Appellants' personal property. Appellants also argue that the abatement code is properly analyzed under a criminal framework, is void for vagueness, and violates their rights against cruel and unusual punishment under the Alaska Constitution.

The Municipality argues that AMC 15.20.020(B)(15) should not be analyzed under a criminal law framework. The Municipality also argues that the abatement code is constitutional because it provides for reasonable notice and opportunity to safeguard property and does not amount to criminal punishment.

A. Agency Record

After the Court issued an Order to Supplement the Record, the Municipality submitted a supplemental record. The record, as supplemented, is adequate for purposes of appellate review.

⁴³ *Earth Res. Co. v. State, Dep't of Revenue*, 665 P.2d 960, 965 (Alaska 1983).

⁴⁴ *McGlinchy v. State, Dep't of Nat. Res.*, 354 P.3d 1025, 1029 (Alaska 2015).

Appellants challenge the constitutionality of the Municipality's abatement code. The Court finds that the notices in the record are reasonable explanations of the Municipality's decision to post notice of campsite abatements. The record for each of the challenged abatements states the date and time of posting and abatement, the number of campsites, their location, and the rationale for abatement.⁴⁵ The supplemental record includes the information considered by the Municipality in reaching its decisions. The basis for agency action is clear.⁴⁶

The Court has already determined that a trial de novo is not warranted to address the legal issues that are on appeal. In its previous order, the Court explained how more information would not necessarily enable Appellants to succeed in the appeal or cure their alleged due process violations.⁴⁷

Because the Court finds that the agency record is adequate for appellate review, it will proceed in its analysis on the merits of Appellants' claims.

B. Procedural Due Process

Appellants argue that the Municipality's abatement code violates their rights to due process for failure to offer a pre-deprivation hearing. Appellants argue that the lack of an opportunity to be heard prior to abatement fails to meet the due process requirements under the standard established by the United States

⁴⁵ Banks R. 1; Atoruk R. 1.

⁴⁶ See *Southeast Alaska Conservation Council, Inc. v. State*, 665 P.2d 544, 549 (Alaska 1983) (suggesting remand if the basis for agency action is unclear, but ultimately concluding that remand was unnecessary because the Director's written decision and trial evidence made the underlying reason for the sale clear).

⁴⁷ See Order Denying Mot. for Trial de Novo.

Supreme Court in *Mathews v. Eldridge*.⁴⁸ Appellants claim that they have a protected interest in retaining possession of their personal property and protecting themselves from the elements. Further, Appellants argue that the Municipality's claimed interests in public health and safety are not substantiated and do not outweigh the risk of erroneous deprivation of Appellants' protected interests.

The Municipality argues that Appellants do not have a protected interest at stake and therefore there is no due process violation. More specifically, the Municipality argues that Appellants do not have a right to the land on which they are camping nor to store their property on that land. The Municipality argues that it has a substantial governmental interest in public health and safety, restoration of public lands, and protection against cold weather exposure, which outweighs any interest asserted by Appellants. In addition, the Municipality argues that to the extent some form of a hearing is required, that requirement can be satisfied without a formal pre-deprivation hearing.⁴⁹

Article I, Section 7 of the Alaska Constitution provides that “[n]o person shall be deprived of life, liberty, or property, without due process of law.” In Alaska, “the ‘crux of due process is the opportunity to be heard and the right to adequately represent one’s interests.’”⁵⁰ If a party has “the opportunity to present

⁴⁸ 424 U.S. 319, 335 (1976).

⁴⁹ Oral Arg. (citing to *Patrick v. Mun. of Anchorage, Anchorage Transp. Comm’n*, 305 P.3d 292, 299-300 (Alaska 2013)).

⁵⁰ *Marathon Oil Co. v. State, Dep’t of Nat. Res.*, 254 P.3d 1078, 1087 (Alaska 2011) (quoting *Groom v. State, Dep’t of Transp.*, 169 P.3d 626, 635 (Alaska 2007)).

[their] arguments,” this is adequate for due process.⁵¹ So long as a party is able to exercise the right to appeal, there is “no prejudice to [the party] and hence no denial of due process.”⁵²

For determining whether the Municipality’s abatement procedures violate Appellants’ procedural due process rights under the Alaska Constitution, the Court considers the three-factor test outlined by the United States Supreme Court in *Mathews v. Eldridge*.⁵³ That test, which has been adopted by the Alaska Supreme Court, weighs “(1) the private interest at stake; (2) ‘the risk of an erroneous deprivation’ of the private interest and the value of additional safeguards; and (3) the government interest—noting particularly the cost and ‘administrative burdens’ entailed by additional procedural protections.”⁵⁴

The District Court of Alaska addressed a similar due process claim in *Smith v. Municipality of Anchorage* and applied the same test.⁵⁵ The District Court held that “even accepting that Mr. Smith has a substantial interest in retaining his personal property . . . the Municipality’s abatement procedures provide the due process that the Constitution requires: namely, adequate notice (here, 10 days before the abatement commences) and an opportunity to protect one’s personal

⁵¹ *Id.*

⁵² *Matanuska Maid, Inc. v. State*, 620 P.2d 182, 192 (Alaska 1980).

⁵³ 424 U.S. at 335; *see Copeland v. Ballard*, 210 P.3d 1197, 1203-04 (Alaska 2009) (“When assessing whether an administrative action violates the due process clause of the Alaska Constitution, we use the framework established by the United States Supreme Court in *Mathews v. Eldridge*.”).

⁵⁴ *Copeland*, 210 P.3d at 1204 (quoting *City of Homer v. State, Dep’t of Nat. Res.*, 566 P.2d 1314, 1319 (Alaska 1977)); *Mathews*, 424 U.S. at 335.

⁵⁵ *Smith v. Mun. of Anchorage*, 797 F. Supp. 3d 992, 1011-13 (D. Alaska 2025).

property from destruction by relocating it or by seeking judicial review.”⁵⁶ The District Court, applying the *Mathews* test, held that “Mr. Smith has not shown that there is a ‘risk of an erroneous deprivation’ through the procedures set forth in AMC 15.20.020 and has not identified the probable value of any ‘substitute procedural safeguards.’”⁵⁷ The District Court emphasized the Municipality’s substantial interest in abating prohibited campsites to help ensure that “parks, trails, playgrounds, open spaces, secluded woods, sidewalks, streets, and other rights of way can be used for the public purposes to which those properties have been dedicated.”⁵⁸ This Court agrees with the analysis set forth in *Smith v. Municipality of Anchorage*.

Regarding the first factor in the *Mathews* analysis, the Court does not find that Appellants have a private interest at stake here. While Appellants have protected interests in their own personal property, such a right does not extend to permanently store that property on public land. Appellants cite to *Engle v. Municipality of Anchorage* to support their argument that unhoused people have a significant interest in their personal property.⁵⁹ But that case does not go so far as to establish a right for Appellants to permanently keep their personal property on public land. The AMC specifies what constitutes a prohibited campsite and

⁵⁶ *Id.* at 1012.

⁵⁷ *Id.*

⁵⁸ *Id.* at 1013.

⁵⁹ See *Engle v. Mun. of Anchorage*, No. 3AN-10-7074 CI at *19 (Alaska Superior Ct. Jan. 4, 2011) (discussing the significant interest unhoused people maintain in their personal property).

explains that prohibited campsites are subject to abatement and removal of personal property by the Municipality. Nowhere does AMC 15.20.020(B)(15) afford Appellants the right to keep their property on public land.

Turning to the second *Mathews* factor, the Court finds that there is no risk of erroneous deprivation of Appellants' personal property given the procedural safeguards that exist in the code.⁶⁰ The Municipality is required to post notice of a pending campsite abatement, which must state the details of when and where the abatement will occur, "the means by which a camper may file an appeal to state court, the consequences of filing such an appeal (delay of abatement or storage of property), and how to reclaim any stored property after an abatement."⁶¹ As articulated by the District Court of Alaska, "[t]hese procedures provide both an opportunity for campers to retain their possessions by removing them from the abatement zone and . . . a meaningful opportunity for campers to contest the abatement and prevent the destruction of their personal property."⁶² The Appellants in this case received adequate notice and opportunity to be heard. The Court finds that Appellants do not face a risk of erroneous deprivation of their personal property.

Because Appellants do not have a private interest at stake and because there is no risk of erroneous deprivation by the Municipality's abatement actions, the

⁶⁰ See *Smith*, 797 F. Supp. 3d at 1012-13.

⁶¹ *Id.* at 1012 (citing AMC 15.20.020(B)(15)(a), (b)(iv), and (b)(v)).

⁶² *Id.* at 1012-13.

Court does not find a procedural due process violation. The Court also reiterates that the Municipality has a “substantial interest in abating prohibited camps.”⁶³ Here, the Municipality listed the rationale for abatement at Cuddy Park as “Summer Solstice Concert Event – Area is rented.”⁶⁴ The Municipality anticipated roughly 7,000 attendees for a three-day outdoor event at Cuddy Park in June 2023.⁶⁵ The Municipality had approved the special event, and abated the prohibited camps in order to facilitate the safe use of the space for the public.⁶⁶

The Municipality listed the rationale for abatement at Davis Park and Mountainview Snowdump as “We are abating to meet the terms of the lease we have with the landowner (JBER).”⁶⁷ JBER requested the Municipality to remove the “illegal camps located within the Davis park and Mt View snow dump leased area due to safety conditions for the public and JBER personnel.”⁶⁸ The Municipality has an interest in complying with the terms of its lease, in addressing the safety concerns raised by the landowner, and in ensuring that the public has continued use of the property.

Weighing the three factors together, the Court concludes that Appellants do not demonstrate that the Municipality’s abatement procedures violate their

⁶³ *Id.* at 1013.

⁶⁴ Banks R. 1.

⁶⁵ R. 154.

⁶⁶ *See also* R. 171.

⁶⁷ Atoruk R. 1.

⁶⁸ R. 24-26; *see also* R. 27, 30, 33.

procedural due process rights under Article I, Section 7 of the Alaska Constitution or the Fourteenth Amendment of the United States Constitution.

C. Substantive Due Process

Appellants argue that the Municipality's abatement code is unconstitutional as applied to them because it deprives them of their fundamental right to travel, to move about, and to remain in public places in Anchorage. Appellants also argue that the abatement code prohibits Appellants from sheltering themselves on any public land, which infringes on their fundamental freedom of movement and the freedom to remain. Appellants argue that the Municipality's abatement procedures are subject to strict scrutiny, and that the Municipality cannot establish a compelling government interest or that abatements are the least restrictive means to further any asserted interest.

The Municipality argues that the right to intrastate travel does not confer the right to indefinitely occupy a particular piece of public property. The Municipality also argues that because there is no fundamental liberty interest at stake in this case, the Municipality is not required to satisfy strict scrutiny on this matter.

The Alaska Supreme Court has recognized that the right to intrastate travel is fundamental, but has not addressed the scope of the right.⁶⁹ The United States Supreme Court has held that “an individual’s decision to remain in a public place

⁶⁹ *Treacy v. Mun. of Anchorage*, 91 P.3d 252, 265 (Alaska 2004).

of his choice is as much a part of his liberty as the freedom of movement.”⁷⁰ In Alaska, “[t]he general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.’ But if a classification impinges a fundamental right or disadvantages a suspect class, the ordinance is subject to strict scrutiny.”⁷¹

The Court does not find that the Municipality’s abatement procedures under AMC 15.20.020(B)(15) violate Appellants’ right to intrastate travel, to move about, or to remain in public places. The prohibited campsite provisions of the Anchorage Municipal Code do not limit Appellants’ ability to travel within the State or within Anchorage. The code also “does not exact a penalty for moving within the state or prohibit homeless persons from living on the streets of [Anchorage]. Nor does it make it more difficult for people to migrate from state to state.”⁷² The Court is not aware of any caselaw that extends an individual’s right to remain in public places as a right to remain indefinitely on a given piece of public land. Because Appellants have not met their burden in establishing a fundamental liberty interest in permanently residing on public lands, strict scrutiny does not apply.

⁷⁰ *City of Chicago v. Morales*, 527 U.S. 41, 54 (1999).

⁷¹ *Treacy*, 91 P.3d at 264 (quoting *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985)).

⁷² See *City of Seattle v. McConahy*, 86 Wash. App. 557, 571-72 (Wash. Ct. App. 1997) (finding that Seattle’s sitting ordinance does not implicate the right to travel).

Under the more lenient standard, the Court finds that the prohibited campsite provisions of the AMC are rationally related to the Municipality's interests in environmental protection, public health and safety, and returning public property to public use by all of the public. It is reasonable for the Municipality to have procedures and enforcement mechanisms such as those in AMC 15.20.020(B)(15) in order to advance those interests. Accordingly, the Court concludes that AMC 15.20.020(B)(15) does not violate Article I, Section 7 of the Alaska Constitution or the Fourteenth Amendment of the United States Constitution.

D. Unreasonable Seizure

Appellants argue that the Municipality's prohibited campsite code threatens to seize Appellants' property without a warrant. Appellants argue that the Alaska Constitution provides additional protection because it expands the federally protected category of "houses" under the Fourth Amendment of the United States Constitution to more broadly encompass "houses and other property." Further, Appellants assert that the Municipality's destruction of homeless persons' personal property is considered an unreasonable seizure under the Ninth Circuit's standard established in *Lavan v. City of Los Angeles*.⁷³ Appellants argue that the

⁷³ 693 F.3d 1022, 1030 (9th Cir. 2012) ("[B]y seizing and destroying Appellee's unabandoned legal papers, shelters, and personal effects, the City meaningfully interfered with Appellee's possessory interest in that property. No more is necessary to trigger the Fourth Amendment's reasonableness requirement.").

Municipality has not demonstrated a compelling governmental interest in seizing homeless persons' property and cannot satisfy strict scrutiny.

The Municipality argues that any property left behind in a prohibited campsite is considered abandoned and is not subject to Fourth Amendment protections. The Municipality asserts that because it removes property left in a prohibited encampment 10 days after posting notice and gives advance notice and an opportunity to remove any personal property prior to abatement, the Municipality does not interfere with campers' possessory interests in their property. The Municipality also cites to the Alaska Superior Court's decisions in *Aguila v. Municipality of Anchorage*, where the court concluded that the Municipality's abatement regime does not violate the right to be free from unreasonable seizures.⁷⁴

Article I, Section 14 of the Alaska Constitution protects individuals from unreasonable searches and seizures: "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." This provision closely resembles that of the Fourth Amendment of the United States Constitution, but also goes beyond the language by protecting "persons, houses and *other property*, papers, and

⁷⁴ Order Denying Pl.'s Mot. for Prelim. Inj., *Aguila v. Mun. of Anchorage*, No. 3AN-25-04570 CI at 8 (Alaska Superior Ct., Feb. 13, 2025); Order Granting the Municipality of Anchorage's Motion to Dismiss, *Aguila v. Mun. of Anchorage*, No. 3AN-25-04570 CI at 10-20 (Alaska Superior Ct., May 22, 2026).

effects.”⁷⁵ Under federal caselaw, a “seizure” of property occurs when there is some meaningful interference with an individual’s possessory interests in that property.⁷⁶ The United States Supreme Court has held that the destruction of property is considered a seizure under the Fourth Amendment.⁷⁷

Federal courts, including the Ninth Circuit, have held that “warrantless searches or seizures of abandoned property do not violate the Fourth Amendment.”⁷⁸ The Alaska Supreme Court has held that property is considered abandoned when its “owner has manifested an intention to relinquish all title, possession, or claim to the property.”⁷⁹

In *Smith*, the District Court of Alaska declined to reach the issue of whether property left at a prohibited campsite was abandoned, and concluded that “the Municipality acts reasonably when it provides 10 days’ notice of the abatement and an opportunity to appeal the abatement before a camper’s personal property can be destroyed.”⁸⁰ “Assessing the reasonableness of the Municipality’s abatement procedure requires the Court to “balance[] the invasion of [Appellants’] possessory interests in [their] personal belongings against the [Municipality’s] reasons for taking the property.”⁸¹

⁷⁵ Alaska Const. art. I, § 14 (emphasis added).

⁷⁶ *Lavan*, 693 F.3d at 1027 (quoting *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)).

⁷⁷ *United States v. Jacobsen*, 466 U.S. 109, 124-25 (1984).

⁷⁸ *United States v. Baker*, 58 F.4th 1109, 1116 (9th Cir. 2023); see also *Proctor v. District of Columbia*, 310 F. Supp. 3d 107, 114 (D.D.C. 2018).

⁷⁹ *Brooks Range Exploration Co., Inc. v. Gordon*, 46 P.3d 942, 946 (Alaska 2002).

⁸⁰ *Smith*, 797 F. Supp. 3d at 1010.

⁸¹ *Id.* (citing *Lavan*, 693 F.3d at 1030).

Here, the Court does not find that Appellants abandoned their property. There are not facts sufficient to support the Municipality's argument that Appellants manifested an intent to relinquish their rights or claims over their property. The Court agrees with Appellants that the mere act of leaving property outside or in an abatement zone does not necessarily establish an intent to abandon those items.

However, the Court does not find that the Municipality unreasonably interfered with Appellants' personal property, or that the Municipality's abatement code facially threatens to unreasonably seize campers' property. The Court finds that the Municipality has legitimate reasons for abating prohibited campsites on public property.⁸² Appellants do have valid interests in their personal belongings, but there is procedural recourse available within AMC 15.20.020(B)(15) that allows Appellants to maintain their property throughout the abatement process.⁸³ Appellants can remove their property prior to its destruction at the close of the abatement notice period. Appellants can also file an intent to appeal to delay the abatement, allowing for more time to remove their belongings, or opt to have their property stored by the Municipality.

⁸² *See id.* (concluding that the abatement of prohibited camping on public property serves legitimate public interests and that these interests are "served by the removal of prohibited encampments and personal belongings from public lands").

⁸³ *See id.* at 1011 ("The ordinance codified at AMC § 15.20.020 serves these government interests while providing procedural safeguards to accommodate the interests of homeless individuals in retaining their personal property.").

Because the Municipality has not unreasonably interfered with Appellants' property, and because Appellants can take active steps to remove or store their property, the Court does not find that the Municipality's abatement procedures violate Article I, Section 14 of the Alaska Constitution or the Fourth Amendment of the United States Constitution.

E. Criminal Constitutional Protections

Appellants argue that the Municipality's abatement code should be analyzed using criminal constitutional protections. Appellants argue that the Municipality relies on criminal code to decide whether a nuisance exists and whether to enforce an abatement, and therefore the Municipality treats abatement as a criminal enforcement tool. Appellants argue that the abatement code creates a "*de facto* banishment regime" and should be analyzed under a strict criminal law framework.

The Municipality disputes Appellants' banishment argument and asserts that because the Municipality is limited to posting no more than ten abatements at any one time, Appellants are still able to live elsewhere in Anchorage.⁸⁴ The Municipality argues that it is improper to analyze a civil code under a criminal legal framework, and the Court's analysis of Appellants' claims should be under the more lenient civil standard.

⁸⁴ See AMC 15.20.020(B)(15)(b)(v)(D).

The Alaska Supreme Court defines “criminal prosecutions” in the context of the right to a jury trial to “include offenses which, even if incarceration is not a possible punishment, still connote criminal conduct in the traditional sense of the term.”⁸⁵ Excluded from this definition are “relatively innocuous offenses as violations which relate to the regulation of property, sanitation, building codes, fire codes, and other legal measures which can be considered regulatory rather than criminal in their thrust, so long as incarceration is not one of the possible modes of punishment.”⁸⁶

The Alaska Supreme Court has also held that a heightened criminal framework may in some instances be appropriate for reviewing “a civil enforcement action where a litigant may be at risk of losing an important right because the litigant’s conduct did not meet a certain standard.”⁸⁷ Examples of losing an important right that may warrant a heightened analysis include the loss of a medical license or loss of parental rights.⁸⁸

Here, the Court does not find it appropriate to analyze the abatement code using a criminal law framework. Campsite abatements are regulatory in nature, not criminal. The Municipality responds to a prohibited campsite violation by providing notice and giving individuals the opportunity to remove their property

⁸⁵ *Baker v. City of Fairbanks*, 471 P.2d 386, 402 (Alaska 1970).

⁸⁶ *Id.* (noting in a footnote that “[a] heavy enough fine might also indicate criminality because it can be taken as a gauge of the ethical and social judgments of the community”).

⁸⁷ *Williams v. State, Dep’t of Revenue*, 895 P.2d 99, 105 (Alaska 1995).

⁸⁸ *Id.* at 105 n.14.

from the public land or to provide notice of an intent to appeal the abatement. The Municipality has expressed that its interest in abating prohibited campsites is motivated by sanitation reasons, the restoration of public lands, and to support the regulatory nature of the Municipality's enforcement. The Court finds that a violation of AMC 15.20.020(B)(15) is considered one of the "innocuous offenses" discussed by the Alaska Supreme Court in *Baker v City of Fairbanks* and is excluded from the definition of criminal prosecutions.⁸⁹ Moreover, incarceration is not a possible mode of punishment for violating AMC 15.20.020(B)(15). In addition, enforcement of the abatement code does not result in banishment, particularly in light of the ten-zone abatement limitation set forth in AMC 15.20.020(B)(15)(b)(v)(D). The fact that the Anchorage Police Department is involved with enforcement of the abatement code does not alter the Court's analysis.

The Court does not find that Appellants are "at risk of losing an important right."⁹⁰ As discussed above, Appellants do not have a protected interest in keeping their personal property on public lands, and any right they do have to be on public lands does not qualify for heightened criminal protection under *Williams*.⁹¹

⁸⁹ 471 P.2d at 402.

⁹⁰ See *Williams*, 895 P.2d at 105.

⁹¹ See *id.*

In analyzing the Municipality’s abatement procedures under the more lenient standard for civil enforcement actions, and for the reasons discussed below, the Court does not find that the abatement code is unconstitutionally vague or a violation of one’s rights against cruel and unusual punishment.

1. The abatement code is not unconstitutionally vague.

Appellants argue that the abatement code is void for vagueness because it (1) fails to provide notice of how to conform one’s conduct to the law, and (2) invites arbitrary enforcement of the prohibited campsite laws against unhoused persons.

The Municipality argues that the abatement code is not unconstitutionally vague because it is clear about what actions are prohibited. The Municipality argues that this is evident in Appellants’ affidavits, which show that Appellants know what they must do in order to comply with a posted abatement notice.

The Alaska Supreme Court has held that the due process vagueness standard for a civil statute with a framework that provides for criminal penalties depends on the statute’s “primary enforcement mechanism.”⁹² For example, in *Lazy Mountain Land Club v. Matanuska-Susitna Borough Board of Adjustment & Appeals*, the Alaska Supreme Court held that “a local ordinance defining ‘junkyard/refuse area’ for conditional land-use permits was an economic

⁹² See *Dep’t of Revenue v. Nabors Int’l Finance, Inc.*, 514 P.3d 893, 900 (Alaska 2022); see also *Lazy Mountain Land Club v. Matanuska-Susitna Borough Bd. of Adjustment & Appeals*, 904 P.2d 373, 384 n.61 (Alaska 1995).

regulation subject to a less strict vagueness test . . . despite the regulatory scheme providing criminal penalties for violations.”⁹³ In *Department of Revenue v. Nabors International Finance, Inc.*, the Alaska Supreme Court found that the tax statute at issue was subject to the more lenient vagueness standard because a corporation “may be required to pay taxes owed but would not be subject to criminal penalties” unless there was intentional tax evasion.⁹⁴ The more lenient standard requires “legislative language which is not so conflicting and confused that it cannot be given meaning in the adjudication process.”⁹⁵

Here, the primary enforcement mechanism for AMC 15.20.020(B)(15) is civil, not criminal. When there is a violation of the prohibited campsite provision, the Municipality posts notice of abatement and impending removal of property on public land. The Municipality gives campers the opportunity to appeal, and the ability to temporarily store their property.⁹⁶ Criminal punishment is not the Municipality’s primary enforcement mechanism and no misdemeanor charges were issued in this case. There is no indication that the abatement code is primarily enforced through criminal penalties. In addition, the Court finds that under the lenient vagueness standard, AMC 15.20.020(B)(15) “is not so conflicting and confused that it cannot be given meaning in the adjudication

⁹³ *Nabors*, 514 P.3d at 900 (referencing *Lazy Mountain Land Club*, 904 P.2d at 382-84 n.61 (Alaska 1995)).

⁹⁴ *Id.*

⁹⁵ *Id.* (citing *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498 (1982)).

⁹⁶ AMC 15.20.020(B)(15)(a)(iii), (c).

process.”⁹⁷ Finally, the Court notes that the agency record related to the specific abatements challenged in these cases reflects that the Municipality’s enforcement of the code is not arbitrary. The Municipality provided detailed specific reasons setting forth why it enforced the code when it did at the locations posted.

2. The abatement code does not amount to cruel and unusual punishment.

Appellants argue that the Municipality’s abatement policies amount to inhuman and barbarous treatment and are “so disproportionate as to be ‘shocking the sense of justice.’”⁹⁸ Appellants argue that Anchorage’s trespass and prohibited campsite laws are overbroad, establish a city-wide area restriction, and fail to protect Appellants under the Alaska Constitution’s cruel and unusual punishment clause. Appellants further argue that Alaska’s protections against cruel and unusual punishment are broader than its federal analog discussed by the United States Supreme Court in *City of Grants Pass, Oregon v. Johnson*.⁹⁹

The Municipality argues that Appellants’ arguments are foreclosed by the United States Supreme Court decision in *Grants Pass* and Alaska caselaw restricting the applicability of criminal law in civil matters. The Municipality also argues that Appellants have not carried their burden to show that the elements of cruel and unusual punishment under relevant Alaska caselaw have been met.

⁹⁷ *Nabors*, 514 P.3d at 900.

⁹⁸ Appellants’ Brief at 30 (citing *Ex parte Kemmler*, 136 U.S. 436, 447 (1980)).

⁹⁹ 603 U.S. 520 (2024).

Article I, Section 12 of the Alaska Constitution, Criminal Administration, provides as follows:

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.

The Alaska Supreme Court has “interpreted the Alaska prohibition on cruel and unusual punishment in line with its federal counterpart.”¹⁰⁰ However, the Alaska Supreme Court has also noted that “the Alaska Constitution’s prohibition on cruel and unusual punishments might potentially be construed more broadly than its federal counterpart.”¹⁰¹

While the Alaska Constitution is capable of affording greater protections than its federal counterpart, the Alaska Supreme Court has not specifically addressed the extent of protections against cruel and unusual punishment under Article I, Section 12 compared to the Eighth Amendment of the United States Constitution. The Alaska Supreme Court held in *Fletcher v. State* that the Alaska Constitution provides greater protection than the Eighth Amendment narrowly in the context of juvenile criminal sentencing protections.¹⁰² In *Paxton v. Gavlak*, the Alaska Supreme Court rejected a claim of cruel and unusual punishment in a case involving child support “because child support is not bail, a fine, or punishment,

¹⁰⁰ *Fletcher v. State*, 532 P.3d 286, 306 (Alaska 2023).

¹⁰¹ *Id.* (internal quotations omitted).

¹⁰² *Id.* at 308.

and Article I, section 12 of the Alaska Constitution only applies to criminal matters.”¹⁰³ Given the lack of Alaska caselaw extending Article I, Section 12 of the Alaska Constitution to civil matters, combined with the United States Supreme Court decision in *Grants Pass*,¹⁰⁴ the Court does not find that the abatement code violates Article I, Section 12 of the Alaska Constitution or amounts to cruel and unusual punishment.

IV. CONCLUSION

For the foregoing reasons, the Court affirms the Municipality’s abatement decisions.

DATED at Anchorage, Alaska this 18th day of September 2026.



Yvonne Lamoureux
Superior Court Judge

¹⁰³ *Paxton v. Gavlak*, 100 P.3d 7, 13 (Alaska 2004).

¹⁰⁴ *See* 603 U.S. at 543-47 (holding that City ordinances which prohibit camping on public property and provide for consequences in the form of civil fines or criminal prosecution for trespass do not constitute cruel and unusual punishment when applied to individuals experiencing homelessness).

Alaska Trial Courts

Certificate of Distribution

Case Number: 3AN-23-06779CI

Case Title: BANKS, JOSETT VS. MUNICIPALITY OF ANCHORAGE

The Alaska Trial Courts certify that the Order Affirming Abatement Actions was distributed to:

Recipient	Servicing Method	Distribution Date
Eric Glatt	Email	09/18/2026 08:10:36 AM
Nicholas Mendolia	Email	09/18/2026 08:10:36 AM
Joseph Busa	Email	09/18/2026 08:10:36 AM
Jessica Willoughby	Email	09/18/2026 08:10:36 AM