

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

DAMEN AGUILA, MARIO LANZA
DYER, AND JAMIE
SCARBOROUGH,

Plaintiffs,

v.

MUNICIPALITY OF ANCHORAGE,

Defendant.

Case No. 3AN-25-04570 CI

**ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY
INJUNCTION**

Plaintiffs' *Motion for Temporary Restraining Order and Preliminary Injunction* is
DENIED.

Issue

Plaintiffs, Damen Aguila, Mario Lanza Dyer, and Jamie Scarborough, are residents of Anchorage who are presently without permanent housing.¹ Plaintiffs filed a *Motion for Temporary Restraining Order and Preliminary Injunction* on February 6, 2025.²

Background

On January 31, 2025, the Municipality of Anchorage posted notices of abatement (“the Notice”) at an encampment on the east side of Arctic Boulevard, north of West

¹ Memorandum in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction at 1.

² *Id.* at 32.

Fireweed Lane (“the Arctic-Fireweed encampment”).³ This Notice gave Plaintiffs ten days to move their belongings.⁴ Any belongings that were not removed after the ten days would be categorized as waste and would be disposed of.⁵ Personal property that the Plaintiffs wish to have stored would be stored by the Municipality for thirty days after the notice date.⁶ In the Notice, the Municipality cited to Anchorage Municipal Code (AMC) 15.20.020B.15., 25.10.060, 25.70.040, and Anchorage Municipal Code of Regulations (AMCR) 25.10.001 as their basis for abatement.⁷

The Plaintiffs argue that the AMC makes it illegal for Plaintiffs to exist and survive in Anchorage by way of their status.⁸ Plaintiffs assert that they are entitled to preliminary relief under either the balance of hardship standard or the probable success on the merits standard.⁹

Legal Standard

I. Preliminary Injunction Standard

The test for preliminary injunction requires the moving party to meet either the balance of hardships or the probable success on merits standard.¹⁰

The balance of hardships test balances “the harm the plaintiff will suffer without injunction against the harm the injunction will impose on the defendant.”¹¹ This requires

³ Memorandum in Support of Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction at 3, 7.

⁴ *Id.* at 7.

⁵ Plaintiffs’ Exhibit 3.

⁶ *Id.*

⁷ *Id.*

⁸ Complaint for Injunctive and Declaratory Relief at 1.

⁹ Memorandum in Support of Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction at 10.

¹⁰ *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014).

¹¹ *Id.*

the Court to find that three factors are present: “(1) the plaintiff must be faced with irreparable harm; (2) the opposing party must be adequately protected; and (3) the plaintiff must raise serious and substantial questions going to the merits of the case; that is, the issues raised cannot be frivolous or obviously without merit.”¹² The rationale behind this test lies in the idea that a plaintiff would be able to prevail “when assessing the irreparable harm to the plaintiff absent an injunction” and the defendant would be able to prevail when “assessing the harm to the defendant from the injunction.”¹³

The probable success on the merits test comes about when the plaintiff’s “threatened harm is less than irreparable or if the opposing party cannot be adequately protected, then we demand of the plaintiff the heightened standard of a clear showing of probable success on the merits.”¹⁴ If the party does show probable success on the merits, “a preliminary injunction may be issued even if the injury from the preliminary injunction may not be adequately indemnified by a bond.”¹⁵

II. Municipal Codes

The Notice of Zone Abatement relied on AMC 15.20.020B.15 as the basis for the abatement.¹⁶ AMC 15.20.020.B.15. prohibits camping “where one or more persons are camping on public land in violation of section 8.45.010, chapter 25.70, or any other

¹² *Id.* (citing *State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270, 1273 (1992) (citations omitted)).

¹³ *Id.*

¹⁴ *City of Kenai v. Friends of Recreation Center, Inc.*, 129 P.3d 452, 456 (Alaska 2006) (*State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005) (citations omitted)).

¹⁵ *Id.* at 457 (citing *N. Kenai Peninsula Rd. Maint. Serv. Area v. Kenai Peninsula Borough*, 850 P.2d 636, 639 (Alaska 1993) (citations omitted)).

¹⁶ Plaintiff’s Exhibit 3.

provision of this Code.¹⁷ AMC 8.45.010 defines criminal trespass.¹⁸ Camping is defined under AMC 15.20.010 as:

[U]se of space for the purpose of sleeping or establishing a temporary place to live including, but not limited to:

1. Erection of a tent, lean-to, hut, or other shelter;
2. Setting up bedding or equipment in such a manner as to be immediately usable for sleeping purposes, whether indoors or outdoors, on or under any structure not intended for human occupancy;
3. Sleeping outdoors with or without bedding, tent, tarpaulin, hammock, or other similar protection or equipment; or
4. Setting up cooking equipment, including a campfire, with the intent to remain in that location overnight.¹⁹

The Municipality's Notice cited to AMC 25.10.060, 25.70.040, and AMCR 25.10.001 as the basis for why the abatement is occurring.²⁰ Under AMC 25.10.060, the Municipality has the power to close a parcel of municipal land in order to "clean or clear the property of litter, garbage, rubbish, junk, or other refuse resulting from prohibited or permitted use", even if the property is normally open to the public.²¹ Furthermore, unless the Municipality has specifically designated an area for camping, under AMC 25.70.040, no person may engage in this activity on municipal land.²² Camping is further defined under AMCR 25.10.001 as "the use of space for the purpose of sleeping or establishing temporary living quarters, including, but not limited to, erection of a tent or other shelter."²³ Furthermore,

¹⁷ AMC 15.20.020.B.15.

¹⁸ AMC 8.45.010.

¹⁹ AMC 15.20.010

²⁰ Plaintiff's Exhibit 3.

²¹ AMC 25.10.060.

²² AMC 25.70.040.

²³ AMCR 25.10.001D.

this code prohibits “[d]ump[ing], abandon[ing], throw[ing], scatter[ing], or burn[ing] litter, garbage, rubbish, or junk.”²⁴

Discussion

The Court appreciates the hardships that face the Plaintiffs and that there is not an easy solution for the policy questions that are inevitably intertwined with this litigation. In following the Supreme Court of the United States in *Grants Pass*, the Court does not have the power for devising responses to these questions, as this is best left in the hands of the legislature.²⁵ The Court’s analysis will be limited to whether or not the Plaintiffs have sufficiently fulfilled the tests for preliminary injunction.²⁶

I. Balance of Hardships Test

The balance of hardships test requires all three factors to be present in order for a plaintiff to succeed.²⁷

The Plaintiffs were given ten days to move their belongings and were given the opportunity to store their belongings, provided that they are in fair and usable condition.²⁸ This does not include “junk, litter, garbage, pallets, and cardboard and items that are spoiled, mildewed, or contaminated with human, biological, or hazardous waste.”²⁹

²⁴ AMC 25.70.040.B.5.

²⁵ See *City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520, 560 (2024) (“Nor can a handful of federal judges begin to match the collective wisdom the American people possess in deciding ‘how to best handle’ a pressing social question like homelessness. The Constitution’s Eighth Amendment serves many important functions, but it does not authorize federal judges to wrest those rights and responsibilities from the American people and in their place dictate this Nation’s homelessness policy.”).

²⁶ See *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014).

²⁷ *Id.*

²⁸ Plaintiffs’ Exhibit 3.

²⁹ *Id.*

Plaintiffs claim that the irreparable harm without the injunction would be “the destruction and/or loss of vital property.”³⁰ The Court finds that since the Plaintiffs were given a timely notice to move their belongings and the Municipality has offered to store the belongings, there was not a guarantee that the property would be destroyed or seized.³¹ Therefore, since there was notice,³² alternatives given by the Municipality, and there was not a guaranteed harm, the Plaintiffs have failed to show that there was an irreparable harm.³³

Because the Plaintiffs have failed to demonstrate irreparable harm, the Court does not need to perform the analysis for the remaining two prongs of the test.³⁴

II. Probable Success on Merits Test

Since the Plaintiffs cannot show that the threatened harm is irreparable, the Court will look to the probability of success on the Plaintiffs’ claims against the Municipal Code.³⁵ The Plaintiffs assert that the Code essentially banishes the Plaintiffs from the Municipality of Anchorage, deprives them of their property without due process, and results in an unconstitutional seizure of their property.³⁶ The Code does not criminalize

³⁰ Memorandum in Support of Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction at 13.

³¹ *Id.* at 15; *see also* Plaintiffs’ Exhibit 3.

³² In addition to the 10-day notice period, once abatement begins, another verbal command to remove property is given and additional time provided for removal. AMC 15.20.020B.15.g.

³³ *Id.*; *see also* Plaintiffs’ Exhibit 3.

³⁴ *See Alswort*, 323 P.3d at 54.

³⁵ *See* AMC 15.20.020.

³⁶ Memorandum in Support of Plaintiffs’ Motion for Temporary Restraining Order and Preliminary injunction at 25-34.

their existence or the Plaintiffs' status as homeless, because they face no criminal penalties for being on the property.³⁷

Furthermore, while the Court recognizes the possibility of this issue being a reoccurring problem, the Plaintiffs are not being banished from Anchorage.³⁸ Since no more than ten areas may be put under abatement at a time, this does not close off the whole of Anchorage to the Plaintiffs, nor are there criminal penalties imposed on the Plaintiffs for remaining in Anchorage.³⁹

While the Court recognizes the difficulty facing the Plaintiffs, this civil code does not banish them from existing in Anchorage. The Municipality chose this area for abatement due to health and safety concerns.⁴⁰ The Municipality has proven that their reasons for choosing this specific area due to several factors, including: the estimated 8,500 pounds of trash produced at the site since November 2024,⁴¹ calls to the Anchorage Police Department reporting different disturbances coming from the camp ranging from trespass to assault,⁴² emails from the neighborhood regarding the impact of the encampment on the surrounding area,⁴³ use of fires at the site, and other health and safety

³⁷ See Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction at 22; *see also* AMC 15.20.020B.15 ("A prohibited campsite is 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. A prohibited campsite is subject to abatement by the municipality.").

³⁸ See Plaintiffs' Exhibit 3 (The abatement is limited to the area highlighted in red); *see also* AMC 15.20.020B.15.b.v(D) ("At any one time, the municipality shall post no more than ten zones to be abated.").

³⁹ *Id.*

⁴⁰ See AMC 25.10.060B.1 ("The municipality's powers explicitly include the right to close any parcel of municipal land, or any portion thereof, which is normally open to the public to access by the public as required to clean and clear the property of litter, garbage, rubbish, junk, or other refuse resulting from prohibited or permitted use.").

⁴¹ Defendant's Exhibit A ("...we cleaned up 1180 lbs. that had slid down the hill onto the sidewalk on Arctic from the camp...a total weight removed from the ALSCO encampment at 8500 lbs."); Defendant's Exhibit C at 4 (photo showing an accumulation of trash at the encampment.).

⁴² See Defendant's Exhibit E at 2

⁴³ See Defendant's Exhibit F 1-11 ("More and more trash litters the hill on Arctic Blvd." "Propane tanks, odds and ends from neighbors' sheds & yards, shopping carts, ½ a hot tub and such have been observed." "...in addition, the

concerns, such as the building of permanent structures that do not follow fire and safety codes.⁴⁴

Additionally, because the Plaintiffs have filed an appeal with the Superior Court, the Municipality is required to store any “usable” personal property that may be left at the abatement site.⁴⁵ The storage requirement is present until the appeal is resolved. Again, because Plaintiffs’ property would be preserved, there is no irreparable harm.

Furthermore, as the Plaintiffs do not have a right to the Municipal land and were given timely notice of the abatement in order to move their property, as well as an opportunity to store their personal property, there is no seizure of property.⁴⁶

The Court finds that the evidence submitted by the Municipality supports its basis for enforcing a civil power to clean any parcel of municipal land, particularly when there are health and safety concerns. For the foregoing reasons, the Court finds that the Plaintiffs have not demonstrated a probable success on the merits.

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hillside below the camps has become the camp tenants’ personal trash can, as they throw mattresses, buckets (full of feces), bicycle parts, blankets, toilet paper-you name it down the hillside.”).

⁴⁴ See Exhibit C at 1-6.

⁴⁵ See AMC 15.20.020B.15.e & f.

⁴⁶ See Plaintiffs’ Exhibit 3; Opposition to Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction at 42.

Conclusion

To the extent additional findings made by the Court when it issued its Decision on Record on February 11, 2025, have been omitted from this written order, those are incorporated by reference herein. The Plaintiffs' *Motion for Temporary Restraining Order and Preliminary Injunction* is **DENIED**.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 13th day of February, 2025.



ADOLF V. ZEMAN
Superior Court Judge

I certify that on 13 February, 2025, a
copy was mailed to:

Ruth Botstein; Helen Malley; Eric Glatf;
Zachary Schwartz; Joseph Busa; Jessica Willoughby
Kyla Lucey, Law Clerk KML