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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**

**THIRD JUDICIAL DISTRICT AT ANCHORAGE**

| | | |
|---|---|---|
| DAMEN AGUILA, MARIO LANZA DYER, and JAMIE SCARBOROUGH, | ) | |
| Plaintiffs, | ) | |
| vs. | ) | |
| MUNICIPALITY OF ANCHORAGE, | ) | |
| Defendant. | ) | |
| | ) | Case No. 3AN-25-04570CI |

**MOTION TO DISMISS**

Defendant Municipality of Anchorage moves to dismiss this case as moot. Plaintiffs Damen Aguila, Mario Dyer, and Jamie Scarborough ("Plaintiffs") brought this suit to prevent the zone abatement of prohibited encampments on municipal land where Plaintiffs allegedly resided. The Municipality has now completed that abatement, and there is no longer any live dispute among the parties for this Court to resolve.

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## FACTUAL BACKGROUND

Plaintiffs filed this suit late in the day on Thursday, February 6, 2025, seeking injunctive and declaratory relief against the Municipality's then-impending zone abatement of prohibited encampments on municipal right-of-way at the intersection of Arctic Boulevard and West Fireweed Lane, where Plaintiffs allegedly resided, which was scheduled to commence the following Monday.[1] On the same day they filed their complaint, Plaintiffs moved for a temporary restraining order and preliminary injunction against the then-impending abatement and separately sought expedited consideration of that motion. The Municipality opposed expedited consideration the next day, on Friday, February 7, 2025, and the Municipality defended the lawfulness of the challenged abatement and opposed Plaintiffs' request to enjoin the abatement on Tuesday, February 11, 2025.

In an oral ruling from the bench at 4 p.m. on Tuesday, February 11, 2025, followed by a written decision on February 13, this Court denied Plaintiffs' requests for a temporary restraining order or preliminary injunction and allowed the abatement to proceed.[2] This Court recognized that Plaintiffs' suit implicated "policy questions" that are "best left in the hands" of the appropriate policymakers, not the Court.[3] The Court determined that Plaintiffs would not be irreparably harmed by complying with the abatement notice and removing their property from the abatement zone (or permitting the Municipality to temporarily store their property).[4] And the Court concluded that Plaintiffs had no likelihood of success on the

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[1] Complaint 8, 20-21.
[2] Order Denying Plaintiffs' Mot. for Preliminary Injunction (Feb. 13, 2025).
[3] *Id.* at 5.
[4] *Id.* at 5-6.

merits of their legal challenges to the abatement of the prohibited encampment.[5] The Court explained that the Municipality "does not criminalize [Plaintiffs'] existence or the Plaintiffs' status as homeless."[6] Instead, this Court explained, "[t]he Municipality chose this [particular] area for abatement due to health and safety concerns," including very large quantities of uncontained trash, criminal activity in and around the encampment, and fire risk associated with Plaintiffs' structures.[7] The Court upheld the Municipality's "civil power" to abate this parcel of public land in light of these health and safety concerns.[8] The Court held that "Plaintiffs do not have a right to the Municipal land" at issue, that Plaintiffs were "given timely notice" and opportunities to protect movable property they wished to retain, and there thus would be "no seizure of property" left behind in the abatement area after the expiration of the notice period.[9] The Court thus concluded that "the Plaintiffs have not demonstrated a probable success on the merits," and the Court permitted the abatement to proceed.[10]

The abatement concluded on Wednesday, February 12, 2025, with the storage of any of Plaintiffs' property left behind in the abatement area that was eligible for storage under AMC 15.20.020B.15.c.[11] Plaintiffs are no longer encamped in the abatement area and are

[5] *Id.* at 6-8.
[6] *Id.* at 6-7.
[7] *Id.* at 7.
[8] *Id.* at 8.
[9] *Id.*
[10] *Id.*
[11] Municipality's Ex. A, Miller Aff. ¶¶ 5-6.

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not encamped in any other area of municipal land for which there is any posted notice of impending abatement.[12]

## LEGAL STANDARD

As the Alaska Supreme Court has explained, Superior Courts should "decide cases only when a plaintiff has standing to sue and the case is ripe and not moot."[13] A court generally does not consider issues "where the facts have rendered the legal issues moot."[14] A claim is moot if "it has lost its character as a present, live controversy or if the party bringing the action would not be entitled to any relief even if it prevails."[15]

A court may continue to hear a moot case only if the issue falls within a narrow exception, such as the public interest exception to mootness.[16] Courts consider three factors in determining whether the public interest exception applies:

> (1) whether the disputed issues are capable of repetition;
> (2) whether the mootness doctrine, if applied, may repeatedly circumvent review of the issues; and
> (3) whether the issues presented are so important to the public interest as to justify overriding the mootness doctrine.[17]

"These factors are 'not strictly determinative in and of themselves' and the determination of whether to review a moot issue is left to this court's discretion."[18]

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[12] *Id.* at ¶¶ 7-8.
[13] *Young v. State*, 502 P.3d 964, 969 (Alaska 2022) (quotation marks omitted).
[14] *Clark v. State, Dep't of Corr.*, 156 P.3d 384, 387 (Alaska 2007) (quotation marks omitted).
[15] *Mullins v. Local Boundary Com'n,* 226 P.3d 1012, 1017 (Alaska 2010) (quotation marks and footnote omitted).
[16] *Id.* at 1018.
[17] *Id*.
[18] *Clark*, 156 P.3d at 387.

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## PLAINTIFFS' CHALLENGE TO THE COMPLETED ABATEMENT IS MOOT

Plaintiffs initially had standing to bring their constitutional challenges to the Municipality's abatement procedures, and those challenges were ripe at the time they were brought, because Plaintiffs alleged they were residing in a prohibited encampment that had been noticed for then-impending abatement. Plaintiffs contended that they should not be required to leave a specific parcel of municipal right-of-way at the intersection of Arctic Boulevard and West Fireweed Lane.[19] They asked this Court for injunctive and declaratory relief against the then-impending abatement; specifically, to prohibit the Municipality from abating the right-of-way and permit Plaintiffs to remain on the right-of-way with their personal property.[20] But this Court denied such relief and allowed the abatement to proceed. The abatement has now been completed.[21] The injunctive and declaratory relief against the abatement is thus no longer relevant because the Municipality has already abated the area, and Plaintiffs have already left the right-of-way. There is no longer any live controversy among the parties regarding the constitutionality of any impending abatement affecting Plaintiffs, and no occasion for this Court to issue any of the requested relief. Plaintiffs' claims are thus moot.

Plaintiffs may argue that, although the controversy they brought before this Court is now moot, the public interest exception to the mootness doctrine should apply. This

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[19] Complaint 8, 20-21.
[20] *Id.*
[21] Municipality's Ex. A, Miller Aff. ¶¶ 5-6.

doctrine, however, is inapplicable to this case. A large number of unknown contingencies stand in the way of the circumstances that led to this lawsuit from recurring.

As the Court acknowledged in its ruling, the Municipality makes its abatement decisions on a case-by-case basis, and each abatement is founded on a distinct set of facts.[22] The factual circumstances here—proximity to an elementary school, garbage spilling down a steep hill to block a public sidewalk, the construction of decks and structures with woodstoves, to name a few—are unlikely to recur in this exact combination, involving these exact Plaintiffs.[23] Plaintiffs may obtain shelter at the congregate or non-congregate shelter supplied by the Municipality through contractors, where there is regular turnover. They may obtain shelter through personal connections or private charity. Even if they were to not obtain an offer of shelter through those means, there is no information in the record regarding where Plaintiffs may reside, and speculation regarding whether the Municipality may or may not abate any particular parcel of municipal land is just that: speculation. Just as Plaintiffs could not have hoped to establish standing to challenge an abatement at Arctic and Fireweed before that abatement was publicly noticed, Plaintiffs could not now establish standing to challenge the speculative possibility that, wherever they may happen to set up a new encampment in the future in the event they continue to fail to obtain alternate shelter, the Municipality might eventually abate such an encampment in the future. There is thus no basis on this record to conclude that these particular Plaintiffs will imminently face another abatement.

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[22] Order at 7.
[23] *See generally* Municipality's Opp. to TRO Ex. C, F.

Nor would the claims presented here evade judicial review even if Plaintiffs were to again face abatement of a prohibited encampment on public property. The 10-day zone abatement process at issue here does not have a timeline that is "inherently so restrictive as to thwart judicial review, especially given our courts' practice of dealing with [such] issues expeditiously."[24] As the history of this very case illustrates, the Superior Courts are well-positioned to hear claims like Plaintiffs and determine whether to issue injunctive relief against an impending abatement. This Court did so in less than five days in this case, and sophisticated counsel for Plaintiffs could give a future court even greater time for consideration if they file an original action farther in advance of the close of the notice period. There is nothing stopping counsel for Plaintiffs from again seeking to challenge the lawfulness of any future noticed abatement. Accordingly, even if Plaintiffs' challenges were "capable of repetition, future incarnations of the issue are unlikely to be rendered moot before any court can review them."[25]

In sum, nothing in the application of the mootness doctrine to Plaintiffs' case indicates that the issues they raised will ever—much less repeatedly—circumvent judicial review.

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[24] *Young*, 502 P.3d at 970.
[25] *Id.* at 971.

## CONCLUSION

For all those reasons, Plaintiffs' claims are moot and should be dismissed.

Respectfully submitted this 26th day of February, 2025.

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*The Municipality consents to service via e-mail to courtdocs@muni.org, with courtesy copies to the individual attorney addresses listed above.*

Certificate of Service
I certify that on 02/26/2025, I caused to be emailed
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