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	No. 3AN-25-04570 CI

OPPOSITION TO MOTION TO CONVERT

The Court should deny the Municipality of Anchorage's motion to convert this case to an administrative appeal. Plaintiffs' surviving claim is for declaratory relief regarding the constitutionality of the Municipality's "prohibited camping" law. Requests for declaratory relief are properly considered as original actions, because their adjudication does not require the reconsideration of any administrative decision.

Moreover, converting this case into an administrative appeal would deny Plaintiffs their due process right to be heard. The Municipality's "prohibited camping" law does not afford Plaintiffs or similarly affected parties a hearing prior to an abatement action. Furthermore, administrative appeals do not guarantee a trial de novo. Consequently, under the Municipality's theory, Plaintiffs would receive neither a pre- nor post-deprivation hearing. Such a complete denial of the right to be heard would be an unconstitutional violation of Plaintiffs' right to due process.

Factual Background

Plaintiffs Damen Aguila, Mario Dyer, and Jamie Scarborough have been living

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without consistent housing or shelter for between three and twelve years.[1] In January 2025, they were residing near each other on the right-of-way along the east side of Arctic Boulevard, north of West Fireweed Lane, when their location was selected for a "prohibited camping" abatement by the Municipality.[2] This type of abatement involves the displacement of all persons living at a particular site—enforced on threat of arrest—and the confiscation or destruction of any property they cannot carry with them. The Arctic-Fireweed site was just one of twenty-eight locations that the Municipality abated since July 1, 2024.[3] This abatement regime has left Anchorage's unhoused community in legal limbo, with nowhere permissible to go and forever at risk of further displacement and dispossession by the Municipality.

Following the abatement at Arctic and Fireweed, the Municipality moved to dismiss Plaintiffs' case on mootness grounds. The Court denied that motion and applied the public-interest exception.[4] It reasoned that the declaratory relief claims presented in this case remain justiciable because the challenged Code provisions are not defunct, the issue of their constitutionality would likely otherwise evade review, and the public has an interest in resolving issues regarding the scope of the Municipality's power.[5] The Municipality subsequently moved to convert Plaintiffs' case to an administrative appeal.

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[1] Pls.' Mem. in Supp. of Mot. for TRO Ex. 1, 2, 8.

[2] Pls.' Mem. in Supp. of Mot. for TRO Ex. 1, 2, 8.

[3] Press Release, Mayor's Office, *Mayor LaFrance Celebrates Accomplishments from Year One in Office* (July 1, 2025), https://www.muni.org/Departments/Mayor/PressReleases/Pages/Mayor-LaFrance-celebrates-accomplishments-from-year-one-in-office.aspx.

[4] Order Den. Mot. to Dismiss at *8–9 (dated June 18, 2025).

[5] *Id.*

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Legal Standard

Part VI of the Appellate Rules governs administrative appeals in Alaska courts.[6] The applicability of these rules depends on the function of the claim.[7] Claims for declaratory relief should proceed as original civil actions.[8] Conversely, claims seeking the reversal of an agency decision should proceed as an administrative appeal.[9]

Argument

I. Plaintiffs' surviving claims should proceed as an original action because they are seeking declaratory relief regarding the constitutionality of the Municipal Code.

Plaintiffs' claims for declaratory relief are properly considered as an original action. Per *Owsichek v. State*, claims for declaratory relief are not governed by the Appellate Rules on administrative appeals.[10] Instead, such claims commonly proceed as

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[6] ALASKA R. APP. PROC. Part VI.

[7] *See e.g.*, *Allen v. Sitka*, No. S-394, 2006 WL 2852855, at *4 (Alaska July 31, 2006) ("Whether Appellate Rule 45 [now 602] applies is not determined by labeling a case an appeal or a new proceeding. The essential question is a functional one: Does the claim before the superior court challenge a prior administrative decision? If the answer is affirmative, Appellate Rule [602] applies.") (quoting *Winegardner v. Anchorage*, 534 P.2d 541, 545 (Alaska 1975)).

[8] *Owsichek v. State, Guide Licensing & Control Bd.*, 627 P.2d 616, 619 (Alaska 1981) [hereinafter *Owsichek I*] (holding that plaintiff's declaratory relief claim is not governed by the Appellate Rules on administrative appeals, because it "requires the superior court to review only the statute and regulations and not the [agency's] decision").

[9] *Yost v. State, Div. of Corps., Bus. and Pro. Licensing*, 234 P.3d 1264, 1273–74 (Alaska 2010) ("When a court could not grant the relief requested without reversing the prior agency determination, the claim should be treated as an administrative appeal.").

[10] *Owsichek I*, 627 P.2d at 619. *See also State, Dep't of Transp. & Pub. Facilities v. Fairbanks N. Star Borough*, 936 P.2d 1259, 1261–62 (Alaska 1997) (classifying a suit as an independent action, rather than an appeal, for the purposes of exhaustion because the complaint sought declaratory relief regarding the validity of an ordinance); *Haynes v. State, Com. Fisheries Entry Comm'n*, 746 P.2d 892, 895 (Alaska 1987) (noting that even

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original actions because they require review of the underlying statute and regulations, rather than the agency decision.[11] Courts hearing original actions are well-poised to engage in this type of review.[12]

Here, the Plaintiffs' claims for declaratory relief remain justiciable.[13] These claims require review of the Municipal Code's "prohibited camping" provisions and any associated policies and procedures. As demonstrated in *Owsichek*, such review can be conducted in an original action.[14] Indeed, the superior court reviewed the constitutionality of the Municipality's previous "prohibited camping" law in an original action.[15]

The cases relied upon in the motion to convert are inapposite to the claims presented here. None of the cases it cited involve claims for declaratory relief regarding the constitutionality of a statute or regulation. Instead, these cases consist of narrow challenges to the merits of discrete administrative decisions, such as contract awards,[16]

"a litigant who is barred from appealing an agency decision may nevertheless be able to obtain a declaratory judgment invalidating a regulation under which the agency acted").

[11] *Owsichek I*, 627 P.2d at 619.

[12] For example, the Alaska Supreme Court subsequently reviewed the laws challenged in *Owsichek I* and held them unconstitutional. *See Owsichek v. State, Guide Licensing & Control Bd.*, 763 P.2d 488, 498 (Alaska 1988) [hereinafter *Owsichek II*].

[13] Order Den. Mot. to Dismiss at *8–9 (dated June 18, 2025).

[14] *See Owsichek I*, 627 P.2d at 619 (holding that the plaintiff's declaratory relief claims should proceed as an original action); *Owsichek II*, 763 P.2d at 498 (holding that the statutes and regulations challenged in *Owsichek I* were unconstitutional, and the plaintiff was entitled to declaratory relief).

[15] *See Engle v. Municipality of Anchorage*, No. 3AN-10-7047 Cl (Alaska Super. Ct. Jan. 4, 2011).

[16] *Yost*, 234 P.3d at 1270 (asserting a breach of contract claim and requesting the court to void the related Memorandum of Agreement); *Laidlaw Transit, Inc. v. Anchorage Sch. Dist.*, 118 P.3d 1018, 1022 (Alaska 2005) (challenging a contract award and alleging fraud, defamation, and breach of contract).

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tax assessments,[17] and administrative status classifications in the Department of Corrections.[18] None of these cases challenged the constitutionality of the statutes that precipitated those administrative decisions.

Conversely, here, Plaintiffs' surviving claim is for declaratory relief and concerns the constitutionality of the "prohibited camping" provisions of the Municipal Code. This Court recognized the justiciability of Plaintiffs' constitutional challenges to the Municipal Code in its order denying the motion to dismiss[19] and should proceed to hear them as presented in this original action.

A. *Smith* does not require that constitutional claims be brought in administrative appeals.

The Municipality overstates the Alaska Supreme Court's holding in *Smith v. Anchorage.* In *Smith*, the Court held that administrative appeals are a venue for challenging the constitutionality of such abatements.[20] The Court did not, however, hold that administrative appeals are the *only* available venue. In fact, prior superior courts have long identified original actions as a suitable means of challenging the constitutionality of "prohibited camping" laws.[21] *Smith* does not dispute the viability of

[17] *Fedpac Int'l, Inc. v. State, Dep't of Rev.*, 646 P.2d 240, 240 (Alaska 1982) (seeking review of a tax assessment).

[18] *Carlson v. Renkes*, 113 P.3d 638, 641 (Alaska 2005) (seeking review of the procedures and result of an incarcerated person's administrative classification hearing).

[19] Order Den. Mot. to Dismiss at *8 (dated June 18, 2025) (applying the public interest exception specifically to "the issue of constitutional[ity] of the Municipal Code").

[20] *Smith v. Anchorage*, 568 P.3d 367, 368 (Alaska 2025).

[21] *See e.g.*, *Vaughan, et al., v. Anchorage*, Case No. 3AN-21-07931CI at *4 (Alaska Super. Ct. June 16, 2022) (identifying original actions as a venue to raise constitutional claims, recognizing that "nothing prevents Appellants from addressing these claims

such suits and instead makes explicit note of the superior court's identification of civil suits as an available venue for constitutional claims.[22]

Indeed, before *Smith* was decided, the Municipality itself consistently took the position that an original action was the appropriate—even the only—procedural route to challenge the constitutionality of a "prohibited camping" abatement and its underlying Municipal Code provisions.[23] Now, when Plaintiffs have followed the Municipality's instruction and filed an original action, the Municipality has changed its position and argued that an original action is inappropriate and must be converted to an appeal. The Municipality has not and cannot explain why it has reversed course. The Court should view its sudden change in litigation position with skepticism.

II. Improper conversion to an administrative appeal would risk depriving Plaintiffs of their constitutional right to be heard.

The Due Process Clause requires that Plaintiffs have a meaningful opportunity to be heard.[24] However, the Municipality's theory fails to identify when or where such a

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through direct civil litigation."); Order Denying Mot. for Trial de Novo, *Banks, et al., v. Anchorage*, Case No. 3AN-23-06779 CI at *7–8 (Alaska Super. Ct. March 5, 2024) (identifying original actions as the proper venue for engaging in factual development, noting that plaintiffs' desired fact-finding was "more appropriately suited to an original action in superior court rather than an administrative appeal[.]").

[22] 568 P.3d at 369 (noting the superior court's agreement "with the parties' stipulation that 'a civil suit is an available recourse to address [the individuals'] claims.'").

[23] *See e.g.*, Br. for Appellee at *9, *Smith v. Anchorage*, 568 P.3d 367 (Alaska 2025) (asserting that "[p]arties may properly seek relief in the form of an original civil action."); Appellee's Opp. to Mot. for Trial de Novo at *2, *Banks, et al., v. Anchorage*, Case No. 3AN -23-06779 CI (Alaska Super. Ct. filed June 16, 2023) ("An original action in superior court is the appropriate action to address the Appellants' claims.").

[24] *See Nash v. Matanuska-Susitna Borough*, 239 P.3d 692, 699 (Alaska 2010) ("Article I, section 7 of the Alaska Constitution guarantees the right of due process. Due process in the administrative context does not demand that every hearing comport to the standards a

hearing could occur if this case is converted to an administrative appeal.

The Municipality's motion to convert largely relies on cases where the appellants were afforded an opportunity to be heard at the administrative level.[25] For example, in *Fedpac International Inc. v. State, Department of Revenue*, the agency held a hearing on the challenged tax assessment and issued a nineteen-page decision upholding the assessment.[26] The court subsequently required the appellants to proceed with their case as an administrative action to avoid "reopen[ing] factual issues already litigated in the administrative proceeding."[27]

Conversely, here, it is undisputed that the Municipal Code does not provide any administrative hearing for "prohibited camping" determinations. In 2011, the Anchorage Assembly amended the Code to "entirely eliminate[] the intermediate step of appeal to the administrative hearing office."[28] The effect of this is that Plaintiffs, and others similarly situated, have no opportunity to adjudicate the factual issues underlying the "prohibited camping" Municipal Code determinations and subsequent enforcement actions at the agency level.

Converting this case to an administrative appeal likely would deny Plaintiffs any

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court would follow, but rather that the administrative process afford an impartial decision-maker, notice and the opportunity to be heard, procedures consistent with the essentials of a fair trial, and a reviewable record.").

[25] *See e.g.*, *Fedpac Int'l, Inc.*, 646 P.2d at 240 (referencing the tax-assessment hearing appealed by Fedpac International); *Laidlaw Transit, Inc.*, 118 P.3d at 1024 (referencing the best-interest hearing appealed by Laidlaw Transit Inc.); *Carlson*, 113 P.3d at 640 (referencing the classification hearing appealed by Carlson).

[26] *Fedpac Int'l, Inc.*, 646 P.2d at 240.

[27] *Id.* at 242.

[28] *Smith*, 568 P.3d at 373 (citing Anchorage, Ordinance 2011-52 (Apr. 26, 2011)).

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future opportunity to litigate such factual issues. Administrative appeals generally proceed on the basis of the cold record and do not provide any opportunity to develop evidence through discovery, to present evidence and cross-examine witnesses, or to have an evidentiary hearing or trial. While a court may open an appeal to additional process by ordering a trial de novo,[29] that remedy is not guaranteed and the Municipality has previously opposed motions for trial de novo in abatement appeals, instead arguing that parties should file an original action.[30] If this case is converted to an administrative appeal, therefore, it is highly possible that Plaintiffs would be denied their opportunity for any future factual development—resulting in a total absence of any way to develop their claims.[31] This would be a significant denial of due process.

A. The complete denial of the right to be heard is prejudicial.

The Municipality's claim that "conversion would not prejudice Plaintiffs"[32] is irrelevant and untrue.

The question of prejudice is not doctrinally relevant in a motion to convert to an

[29] *Yost*, 234 P.3d at 1274 ("Although it is rarely warranted, an appellant has a right to a trial de novo 'if an administrative adjudicative procedure does not afford due process.'") (quoting *State v. Lundgren Pac. Const. Co.*, 603 P.2d 889, 895 (Alaska 1979)).

[30] Appellee's Opp. to Mot. for Trial de Novo at *2, *Banks, et al., v. Anchorage*, Case No. 3AN -23-06779 CI (Alaska Super. Ct. filed June 16, 2023) ("[T]he court should deny the motion for a trial de novo . . . . An original action in superior court is the appropriate action to address the Appellants' claims.").

[31] The Municipality may argue that the proceedings on the temporary restraining order constituted a sufficient hearing, but similar claims have already been rejected by this Court. Order Den. Mot. to Dismiss at *8 (dated June 18, 2025) (noting that the five-day adjudication of the temporary restraining order "was not the normal turn around for a case and the Court had to work in an expeditious manner to get that order out").

[32] Def. Mot. to Convert at *4.

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administrative appeal. The question of conversion is purely "a functional one" that considers the nature of the claims at issue in the case.[33] Because this case concerns claims for declaratory relief, the motion to convert should be denied.[34] The Court need not go any further.

But, in fact, conversion *would* be prejudicial to the Plaintiffs by denying them due process. As discussed above, there is no opportunity to obtain an adversarial hearing or any other judicial process regarding "prohibited camping" abatements at the administrative level.[35] And, if this case is converted to an administrative appeal, it is not guaranteed that Plaintiffs would receive such a hearing in the future.[36] It is presumptively prejudicial for a party to be entirely denied the opportunity to be heard in this manner.[37]

The Municipality claims that further factual development is unnecessary[38]; however, this assertion cannot be supported before a hearing has taken place. The Alaska Supreme Court has consistently held that even if a "case apparently presents no factual issues, it is not possible to be certain without a proper hearing."[39] This case must be

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[33] *Allen*, 2006 WL 2852855, at *4 (quoting *Winegardner*, 534 P.2d at 545).

[34] *Owsichek I*, 627 P.2d at 619.

[35] *See Smith*, 568 P.3d at 373 (discussing the elimination of the administrative hearing for "prohibited camping" abatements).

[36] *See Parson v. State, Dep't of Revenue, Alaska Hous. Fin. Corp.*, 189 P.3d 1032, 1038–39 (Alaska 2008) (holding that improper conversion of statutory discrimination claims to an administrative appeal was not harmless error, in part because the Plaintiff was not guaranteed a trial de novo in an administrative appeal).

[37] *Anderson v. Alaska Hous. Fin. Corp.*, 462 P.3d 19, 33 (Alaska 2020) ("We presume prejudice when a party is entirely denied a required opportunity to be heard.").

[38] Def. Mot. to Convert at *4.

[39] *City of N. Pole v. Zabek*, 934 P.2d 1292, 1297–98 (Alaska 1997) (quoting *McCarrey v. Commissioner of Natural Resources*, 526 P.2d 1353, 1357 (Alaska 1974)); *see also Anderson*, 462 P.3d at 34 (reiterating the Court's holding in *Zabek*).

permitted to proceed as an original action, so that the Court can determine whether any factual issues are present and rule on the merits of Plaintiffs' claims for declaratory relief using the full procedures and protections of the Civil Rules.

B. It is immaterial whether an administrative appeal or an original action would be more efficient.

The Municipality also claims that conversion would be more efficient; however, it does not cite any caselaw for the proposition that efficiency is or should be a consideration in conversion decisions.[40] As discussed above, along with ensuring that all litigants receive due process, the only consideration for whether to convert a case to an administrative appeal is the nature of the claims at issue.[41] Because Plaintiffs seek declaratory relief, their case should be allowed to proceed as an original action.[42]

Furthermore, outside the context of conversion, the Alaska Supreme Court has strongly warned against valuing efficiency over the vindication of individuals' constitutional rights:

> To allow expediency to be the basic principle would place the individual constitutional right in a secondary position, to be effectuated only if it accorded with expediency. This would negate our entire theory of constitutional government. The American constitutional theory is that constitutions are a restraining force against the abuse of governmental power, not that individual rights are a matter of governmental sufferance.[43]

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[40] In *Fedpac International Inc*, the Alaska Supreme Court did consider the risk of "duplicate actions." 646 P.2d at 242. However, this concern stemmed, in part, from the level of formality in the administrative hearing at issue. *Id.* at 240, 242. Conversely, here, there is not a risk of creating duplicate hearings because affected parties are not afforded an administrative hearing at all. *See Smith*, 568 P.3d at 373.

[41] *Allen*, 2006 WL 2852855, at *4 (quoting *Winegardner*, 534 P.2d at 545).

[42] *Owsichek I*, 627 P.2d at 619.

[43] *Baker v. City of Fairbanks*, 471 P.2d 386, 394 (Alaska 1970).

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This concern is salient here. Plaintiffs' constitutional rights—including their right to be heard—cannot and should not be made secondary to the Municipality's desire for efficiency. Plaintiffs have yet to receive an evidentiary hearing or discovery on the merits of their claims and they have a right such a hearing via this original action.

Conclusion

The Municipality's motion to convert should be denied because Plaintiffs' claims are for declaratory relief. Plaintiffs do not seek the reversal of a prior agency decision, but rather a legal determination that the challenged Municipal Code provisions are unconstitutional. Such claims can be properly brought as an original civil action. Moreover, conversion would deny Plaintiffs' the opportunity to develop and present a record illustrating the unconstitutionality of the Municipality's "prohibited camping" regime and, in doing so, contravene their due process right to be heard. The court should therefore deny the motion to convert, order the Municipality to file its answer, and set the pretrial calendar.

Dated: August 18, 2025

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CERTIFICATE OF TYPEFACE

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CERTIFICATE OF SERVICE

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