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-25-04570CI

ORDER DENYING MOTION TO CONVERT TO ADMINISTRATIVE APPEAL

On August 6, 2025, the Municipality of Anchorage ("Defendant") ("MOA") moved to convert the civil action in the instant case into an administrative appeal.[1] The MOA argued the Motion to Convert to an Administrative Appeal ("Motion") should be granted because: (1) the abatement decision was an administrative decision and the relief sought by Plaintiffs is relief from an administrative act; (2) this Court recognized that an administrative appeal is proper in both this case and in similar abatement challenges; (3) "conversion would serve judicial efficiency and expedite consideration of the merits," and; (4) conversion would not prejudice Plaintiffs.[2]

On August 18, 2025, Damen Aguila, Mario Lanza Dyer, and Jamie Scarborough ("Plaintiffs") opposed the Motion, reasoning that their "surviving claim is for declaratory

[1] Mot. to Convert to an Administrative Appeal.
[2] *Id.* at 1-4.

relief" and conversion to an administrative appeal would deny Plaintiffs of their due process right to be heard.[3]

For the following reasons, Defendant's Motion is **DENIED.**

BACKGROUND

Anchorage Municipal Code ("AMC") identifies "prohibited campsites" as a public nuisance and provides procedures for their abatements ("the ordinance").[4] The AMC characterizes the abatement of prohibited campsites as "final administrative decision[s]" that can be appealed directly to the Superior Court.[5]

In January of 2025, Plaintiffs were unhoused and residing along the east side of Arctic Boulevard, north of West Fireweed Lane, when the MOA executed an abatement of the area as a prohibited campsite.[6]

On February 6, 2025, Plaintiffs filed their Complaint for Injunctive and Declaratory Relief ("Complaint") challenging MOA's abatement regime on the grounds it violates the Alaska Constitution's provisions on due process, cruel and unusual punishment, unreasonable search and seizure, right to privacy, and right to public health and welfare.[7]

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[3] Opp'n to Mot. to Convert.
[4] AMC 15.20.020(B)(15).
[5] AMC 15.20.020(B)(15)(e).
[6] Opp'n to Mot. to Convert at 2.
[7] Compl. for Injunctive and Declaratory Relief at ¶ 6-7 (listing alleged constitutional violations), 20-22 (prayer for relief requesting a declaratory judgment declaring the ordinance unconstitutional).

LEGAL STANDARD

Regardless of form, when a claim functionally challenges the merits of a prior administrative decision it is an administrative appeal and the Rules of Appellate Procedure apply.[8] When the requested relief cannot be granted "without reversing the prior agency determination, the claim should be treated as an administrative appeal."[9]

"The doctrine" of appellate review of administrative action "does not apply" to a complaint that "does not allege any error in an administrative action…"[10] Requests for declaratory relief that "require[] the superior court to review only the statute and regulations and not the [agency's] decision" are not governed by the Appellate Rules and should proceed as original civil actions.[11] Pure questions of law and constitutional challenges fall "within the special expertise" of the Court rather than the agency.[12]

"A right to appeal generally encompasses the right to a record sufficient for appellate review. A record that does not satisfy this purpose must, if possible, be made sufficient so that the right to appeal is not rendered meaningless."[13] Parties have a due process right to be heard in administrative appeals.[14] Within the administrative context, the Due Process clause "does not demand that every hearing comport to the standards a court would follow, but rather that the administrative process afford an impartial decision-maker,

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[8] *Winegardner v. Anchorage*, 534 P.2d 541, 545 (Alaska 1975); *Fedpac Int'l, Inc. v. State, Dep't of Revenue*, 646 P.2d 240, 241 (Alaska 1982) (stating that "if an action in superior court seeks to review a prior administrative decision, it must be treated as an appeal fully subject to the appellate rules").
[9] *Yost v. State, Div. of Corps., Bus. and Pro. Licensing*, 234 P.3d 1264, 1273-74 (Alaska 2010).
[10] *State, Dep't of Transp. & Pub. Facilities v. Fairbanks North Star Borough*, 936 P.2d 1259, 1262 (Alaska 1997).
[11] *Owsichek v. State, Guide Licensing & Control Bd.*, 627 P.2d 616, 619 (Alaska 1981).
[12] *Smith v. Mun. of Anchorage*, 568 P.3d 367, 373 (Alaska 2025) (citing *Griswold v. City of Homer*, 556 P.3d 252, 272 (Alaska 2024)).
[13] *Smith v. Mun. of Anchorage*, 568 P.3d at 374.
[14] *Nash v. Matanuska-Susitna Borough*, 239 P.3d 692, 699 (Alaska 2010).

notice and opportunity to be heard, procedures consistent with the essentials of a fair trial, and a reviewable record."[15]

DISCUSSION

1. *Plaintiffs' Complaint does not functionally challenge an administrative decision.*

The MOA claims that for an original action to survive a motion to convert, it must challenge "the regulations, statutes, or ordinances themselves on legal grounds *wholly unrelated to administrative action*, (such as *ultra vires* or legislative non-delegation claims)…"[16] It argues that the motion to convert should be granted because "Plaintiffs/Appellants do not contend that the abatement ordinance is invalid for a reason *external* to whether application of that ordinance in an administrative action would violate individual constitutional rights."[17]

The MOA misapplies the test described in *State, Department of Transportation and Public Facilities v. Fairbanks North Star Borough* and *Owsichek*: (1) whether the complaint "allege[s] any error in administrative action," and; (2) whether the request for relief requires this Court "consider only the relevant statutes and regulations."[18] While Plaintiffs' Complaint in part challenges the ordinance on the grounds that it may have already resulted in the violation of individual constitutional rights, the Complaint does not raise "factual issues" regarding an "application of the ordinance," rather, it challenges

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[15] *Id.*
[16] Reply in Supp. of Mot. to Convert to Administrative Appeal at 6 (emphasis added).
[17] *Id.*
[18] *State, Dep't of Transp. & Pub. Facilities v. Fairbanks North Star Borough*, 936 P.2d at 1262; *Owsichek v. State, Guide Licensing & Control Bd.*, 627 P.2d at 619.

the ordinance itself.[19] Furthermore, if this Court were to adopt the MOA's reasoning, no law or regulation relating to agency decisions could be challenged as an independent action when the plaintiff claims it violates individual rights protected under our State Constitution.

a. Plaintiffs' Complaint challenges the prohibited campsite ordinance, not an administrative decision.

The MOA argues that conversion is required because Plaintiffs "seek judicial review of and relief from" the administrative abatement itself.[20] MOA's argument primarily rests upon the fact that Plaintiffs: (1) provide personal examples of injuries suffered from prior abatements to describe conditions surrounding abatements generally in Anchorage, and; (2) request injunctive relief from injuries they might suffer should they be subject to a future abatement.[21]

This is a red herring. Plaintiffs include details of their injuries from prior abatements in the Complaint to support their claim that the abatement regime itself is unconstitutional.[22] Plaintiffs request for declaratory and injunctive relief is clearly against the ordinance itself, not any abatement in particular executed by the MOA.[23] Plaintiffs do not, for example, request for the return of confiscated personal property, for compensation for damages caused to personal property, to return to their former campsite

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[19] *State, Dep't of Transp. & Pub. Facilities v. Fairbanks North Star Borough*, 936 P.2d at 1262.
[20] Mot. to Convert to Administrative Appeal at 2.
[21] *Id.*
[22] Compl. at 12-15 (generally describing how the abatement ordinance jeopardizes Plaintiffs' constitutional right to public health and welfare and providing specific examples from Plaintiffs such as lost essential documents, hypothermia, pneumonia, and fire-related injuries).
[23] Compl. at 15-22.

on Arctic and West Fireweed, or for a declaration that the January 2025 (or any other) specific abatement was unlawful.[24]

No part of the Complaint can be reasonably construed as asking this Court to evaluate the actual abatement that took place in January of 2025. Nor is reconsidering an actual abatement necessary for this Court to provide Plaintiffs with their requested relief.[25] Plaintiffs' illustrative application of the alleged unconstitutionality of the ordinance does not alter the nature of their claims or their requested relief.

b. Plaintiffs' claims are distinct from those treated as administrative appeals under relevant caselaw.

The MOA further argues that this Court should convert because doing so would "align the posture of this case with that of other, ongoing abatement challenges" including *Smith* and *Banks v. Municipality of Anchorage.*[26] *Smith* and *Banks* are distinct from the instant case in that they were both initiated as administrative appeals of individual abatements of particular sites on particular dates.[27] This case was initiated as an original civil action and does not appeal a specific abatement. It would be inappropriate to align the posture of this case with others of an entirely different character simply because they both deal with abatements by the MOA.

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[24] *Id.*
[25] *Yost v. State, Div. of Corps., Bus. and Pro. Licensing*, 234 P.3d at 1273-74 (the fact that relief cannot be granted without reversing a prior agency decision supports characterizing an action as an administrative appeal).
[26] Mot. to Convert to Administrative Appeal at 3.
[27] Order on Case Motions #11-14 Re: Appellants' Request for Temporary Restraining Order and Prelim. Inj. at 4, *Smith v. Mun. of Anchorage*, Case No: 3AN-22-06805CI (Alaska Super. Ct. 2022); *Banks v. Mun. of Anchorage*, Case No: 3AN-23-06779CI (Alaska Super. Ct. 2023).

The MOA draws a similar argument from *Owsichek*, claiming that "legal challenges focused on whether a statute or regulation can be lawfully applied *in administrative actions* without violating individual constitutional rights *must* be channeled for appellate review under the appellate rules."[28] The MOA reads *Owsichek* correctly, but misapplies it to Plaintiffs' claims in the instant case.

Similarly to *Smith* and *Banks*, the Plaintiff in *Owsichek* made arguments attacking the underlying validity of the statutes and regulations that permitted an agency to issue a decision, however, he did so to challenge and overturn an administrative decision that caused him injury.[29] Mr. Owsichek requested declaratory and injunctive relief like the Plaintiffs in the instant case, however, Mr. Owsichek requested either damages with his declaratory judgment, or, alternatively, "an injunction compelling the board to issue Owsichek a guide area permit for areas he requested in his 1978 application."[30] Mr. Owsichek also levied a structural challenge to the underlying statute like Plaintiffs in the instant case, however, the Supreme Court allowed this claim for declaratory relief to continue as an original action because it required "the superior court to review only the statute and regulations and not the Guide Board's decision."[31]

In the instant case, Plaintiffs do not request damages or injunctive relief allowing them to return to a campsite from which they were previously abated. Instead, Plaintiffs'

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[28] Reply in Supp. of Mot. to Convert to Administrative Appeal at 4 (emphasis added).
[29] *Owsichek v. State, Guide Licensing & Control Bd.*, 627 P.2d at 618.
[30] *Id.*
[31] Reply in Supp. of Mot. to Convert to Administrative Appeal at 5, (citing *Owsichek v. State, Guide Licensing & Control Bd.*, 627 P.2d at 619).

request for injunctive relief demands the MOA cease from executing any further abatements.[32] Additionally, Plaintiffs' claims for declaratory relief request this Court address constitutional challenges to the ordinance, not an application of the ordinance.[33] Accordingly, *Owsichek* further indicates this Court should deny, not grant, the Motion to convert.

2. *Smith provides appellate jurisdiction over constitutional issues related to administrative appeals under the ordinance, but it does not alter existing precedent regarding claims that challenge the law itself rather than administrative decisions.*

The MOA maintains that because *Smith* allows this Court to consider "constitutional challenges" to abatements under the ordinance via administrative appeal, it "must" treat the instant action "as an appeal fully subject to the appellate rules."[34] The MOA misapplies the holding in *Smith.* While *Smith* clarified that this Court's appellate jurisdiction over the ordinance includes questions of due process, the decision addressed such review of constitutional issues within the scope of determining a particular "campsite's legality," *not* constitutional challenges to the underlying ordinance.[35]

Beyond expanding the issues this Court can consider when adjudicating appeals of abatements under the ordinance, *Smith* did not otherwise alter the existing test: if Plaintiffs challenge an abatement, regardless of the form of the challenge, they

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[32] Compl. at 15-22.
[33] *Id.*
[34] Reply in Supp. of Mot. to Convert to an Administrative Appeal at 2, (citing *Fedpac Int'l, Inc. v. State*, 646 P.2d 240, 241 (Alaska 1982)).
[35] *Smith v. Mun. of Anchorage*, 568 P.3d at 373 (stating that "[t]he question of the campsite's legality encompasses the constitutional due process issues Smith raises…").

functionally appeal an administrative decision.[36] Conversely, if Plaintiffs challenge the ordinance itself, it is not an administrative appeal.[37] Plaintiffs' prayer for relief asks this Court to find that the *ordinance* violates their constitutional rights, not that any prior abatement violated their constitutional rights.[38]

3. Due process concerns are not relevant nor dispositive of the issue of conversion.

The MOA claims that "conversion would serve judicial efficiency and expedite consideration of the merits," without prejudice to the Plaintiffs, because post *Smith* their constitutional claims can be addressed in an administrative appeal and appellate review provides mechanisms for supplementing the record.[39] Plaintiffs argue that the issue of prejudice is not relevant in deciding whether to convert, but even if it were, it would violate their due process right to be heard because the ordinance "does not provide any administrative hearing for 'prohibited camping' determinations," thereby depriving Plaintiffs of meaningful opportunity to adjudicate factual issues.[40]

The prohibited campsite ordinance extends appellate jurisdiction to the Superior Court by law, so there is no need to consider whether there is an existing "record capable of review" in deciding whether it is proper for the Superior Court to hear an administrative appeal.[41] Regardless, the Due Process clause applies to administrative

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[36] *Winegardner v. Anchorage*, 534 P.2d 541, 545 (Alaska 1975).
[37] *Owsichek v. State, Guide Licensing & Control Bd.*, 627 P.2d at 619.
[38] Compl. at 20-22.
[39] Mot. to Convert to Administrative Appeal at 3-4.
[40] Opp'n to Mot. to Convert at 7-9.
[41] AS 22.10.020(d) (establishing Superior Court jurisdiction over agency appeals when the appeal is provided by law); *Smith v. Mun. of Anchorage*, 568 P.3d at 374 (holding that administrative decisions under the ordinance are "presumptively subject to judicial review," and while the right to appeal includes the right to a record sufficient for appellate review, an insufficient record "must, if possible, be made sufficient so that the right of appeal is not rendered meaningless").

appeals and provides for an opportunity to be heard and a right to a reviewable record.[42] The record *must* be cured of deficiencies, if possible, to protect the right to an appeal.[43] It is possible, as Plaintiffs suggest, that they may be denied future requests for a trial de novo.[44] However, the fact that the Court may rule in favor of the Defendant on a future motion neither demonstrates that producing a reviewable record is not possible, nor erases existing procedural safeguards that govern administrative appeals.

Therefore, due process concerns do not exert much influence over this Court's decision to deny the Motion to convert.

CONCLUSION

Plaintiffs' Complaint does not challenge a specific abatement, it challenges the ordinance that gives the MOA authority to execute abatements on constitutional grounds. Because the action does not challenge an administrative decision, the rules of appellate procedure should not apply, and the Motion to convert is **DENIED.**

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 19th day of November, 2025.

Adolf Zeman

ADOLF V. ZEMAN
Superior Court Judge

[42] *Nash v. Matanuska-Susitna Borough*, 239 P.3d 692, 699 (Alaska 2010).
[43] *Smith v. Mun. of Anchorage*, 568 P.3d at 374; *see also Fedpac Int'l, Inc. v. State, Dep't of Revenue*, 646 P.2d 240, 243 (Alaska 1982) (holding that material defects in the record "can be cured by appellate action").
[44] Opp'n to Mot. to Convert at 8 (Plaintiffs cite MOA's Opposition to a Motion for Trial de Novo in the *Banks* case, in which the MOA claims that "an original action in superior court is the appropriate action to address the Appellants' claims." However, in *Banks*, the MOA so argued on the grounds that this Court's subject matter jurisdiction over administrative appeals did not include constitutional issues, before *Smith* clarified jurisdiction is not limited to process surrounding notice and the initiation of abatement proceedings).

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