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 FOR RECONSIDERATION OR FOR CLARIFICATION

The Municipality respectfully requests that the Court reconsider its Order Denying Motion to Convert to Administrative Appeal. In the alternative, the Municipality respectfully requests that the Court clarify that discovery is inappropriate for any purely facial challenge to the Anchorage Municipal Code's abatement provisions.

Reconsideration is appropriate when the court has "overlooked or misconceived some material fact or proposition of law."[1] In this case, reconsideration is warranted because the Court's Order is based on a misconception of Plaintiffs' Complaint and the procedural history of this case demonstrating that Plaintiffs challenge a particular abatement action.

In denying the motion to convert, the Court's reasoning turned on its conclusion that Plaintiffs' suit only facially challenges an ordinance and presents only a pure question of law. The Court concluded, for example, that "the Complaint does not raise 'factual issues'

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[1] Alaska R. Civ. P. 77(k)(1)(B).

regarding 'an application of the ordinance,' rather it challenges the ordinance itself."[2] And the Court found that "[n]o part of the Complaint can be reasonably construed as asking this Court to evaluate the actual abatement that took place in [February] of 2025."[3] But the history of this case indicates Plaintiffs may not understand their claims to be so limited, and Plaintiffs' invocation of the February 2025 abatement has not been simply "illustrative."[4]

Plaintiffs filed their Complaint and immediately moved for a temporary restraining order and preliminary injunction to "enjoin[] the Municipality of Anchorage from abating the encampment at the right-of-way along the east side of Arctic Boulevard, north of West Fireweed Lane" in February 2025.[5] That is what this case has been about since its inception. Plaintiffs argued that they were likely to succeed on an as-applied challenge to the ordinance and asserted that the reasons the Municipality provided in its posted abatement notices at Arctic and Fireweed were "false or inappropriate" under the circumstances alleged there and did not apply to their particular camp.[6] By attacking the factual basis for the February 2025 abatement, Plaintiffs mounted an as-applied challenge to the Municipality's application of the abatement ordinance to that particular encampment at that particular time.

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2 Order at 4–5; *see also* Order at 5 ("Plaintiffs' request for declaratory and injunctive relief is clearly against the ordinance itself, not any particular abatement executed by the MOA."); 6 ("This case . . . does not appeal a specific abatement.").

3 Order at 6.

4 Order at 6; *see* Compl. at p. 21 (requesting the Court grant "a declaratory judgment declaring that the Municipal Code's 'prohibited camping' regime violates the Alaska Constitution").

5 Mot. for TRO and PI at 1.

6 Mem. in Supp. of Mot. for TRO at 21–24.

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This Court understood Plaintiffs to be challenging concrete abatement actions when the Court denied the Municipality's motion to dismiss this matter as moot after the Fireweed and Arctic abatement was completed. In that order, the Court recognized that the dispute in this case—the abatement at Arctic and Fireweed—was moot because "the conduct was already performed and was exhausted during the course of the proceedings."[7] The Court nevertheless allowed the moot case to proceed because "[a]batements are clearly subject to repetition as there are multiple cases currently dealing with abatements."[8] This Court thus determined that this suit should continue "in order to allow the parties their full proper *appeal*."[9] The Court thus decided previous motions in this case on the understanding that Plaintiffs challenged a concrete abatement action and maintained the moot case because there would be future such abatement actions. This Court overlooked this aspect of the case in denying the motion to convert.

Moreover, in Plaintiffs' opposition to the Municipality's motion to convert, Plaintiffs did not appear to abandon their as-applied challenge. Rather, they stated that their "surviving claim is for declaratory relief."[10] Although Plaintiffs' Complaint frames their request for declaratory relief as one for a judgment "declaring the Municipal Code's 'prohibited camping' regime violates the Alaska Constitution,"[11] Plaintiffs' filings suggest that they intend to seek a declaration as to the constitutionality of the February 2025 abatement.

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7 Order Denying Mot. to Dismiss at 7.
8 Order Denying Mot. to Dismiss at 8.
9 Order Denying Mot. to Dismiss 7 (emphasis added).
10 Pls.' Opp. to Mot. to Convert at 3–5.
11 Compl. at p. 21.

The history of this case, and Plaintiffs' apparent understanding of the scope of their claims, is thus at odds with the Court's conclusion that this suit only presents a facial challenge to the ordinance itself, not an as-applied challenge to the abatement of Plaintiffs' former camps. As the Court recognized, "if Plaintiffs challenge an abatement, regardless of the form of the challenge, they functionally appeal an administrative decision."[12] The Municipality respectfully requests an opportunity for Plaintiffs to clarify, in response to this motion, whether they intend to litigate an as-applied challenge, a purely facial challenge (without challenging the February 2025 abatement), or both. Unless Plaintiffs clarify that they intend to mount a purely facial challenge, with no as-applied attack on the lawfulness of the February 2025 abatement that was the subject of this suit when it began, the Court should reconsider its decision and convert this matter into an administrative appeal.

If the Court decides that reconsideration is inappropriate, the Municipality respectfully requests that the Court specify exactly what claims Plaintiffs may proceed with, and whether discovery is or is not appropriate with respect to such claims. The Municipality submits that no discovery is appropriate where a case avoids conversion to an appeal based on a conclusion that "the Complaint does not raise 'factual issues' regarding 'an application of the ordinance,' rather it challenges the ordinance itself."[13] Courts routinely resolve the merits of a facial challenge without factual development because "a facial challenge means that there is no set of circumstances under which the statute can be applied consistent with

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12 Order at 8–9.

13 Order at 4–5.

the requirements of the constitution."[14] Discovery related to the circumstances of the February 2025 abatement at Arctic and Fireweed would be relevant to the application of the ordinance in *that* instance, not to whether the ordinance is constitutional in *any* instance. As this federal district court in Alaska noted, "a facial challenge to the text of a statute does not typically require discovery for resolution because the challenge focuses on the language of the statute itself."[15] And, as noted above, if Plaintiffs seek discovery into the February 2025 abatement at Arctic and Fireweed, or any other factual matters relating to how abatement is carried out (beyond the face of the ordinance), that would be because their claims are not targeted at pure issues of law involving the face of the ordinance itself but rather at challenging the lawfulness of that particular abatement. And if that were the case, their claims must be channeled for consideration in an administrative appeal from that abatement.

For these reasons, the Municipality respectfully requests that the Court seek clarification from Plaintiffs regarding their understanding of the nature of their challenge to the Municipality's ordinance. And the Municipality respectfully requests that, after receiving clarification from Plaintiffs, the Court either reconsider its decision on the motion to convert this matter to an appeal or clarify that no discovery is necessary and the matter may proceed to dispositive motions addressing the lawfulness of the ordinance on its face.

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[14] *Knolmayer v. McCollum*, 520 P.3d 634, 656 (Alaska 2022) (internal quotation marks omitted); *see also Briggs v. Yi*, No. 3:22-cv-00265-SLG, 2023 WL 2914395, at *5 (D. Alaska Apr. 12, 2023); *Zora Analytics, LLC v. Sakhamuri*, No. 3:13-cv-639-JM WMC, 2013 WL 4806510, at *2 (S.D. Cal. Sept. 9, 2013) ("A facial challenge to a law does not require further facts to be developed because it only constitutes a question of law.").

[15] *Briggs*, 2023 WL 2914395, at *5 (first citing *Gen. Elec. Co. v. Johnson*, 362 F. Supp. 2d 327, 337 (D.D.C. 2005); *and then citing Shelby County v. Holder*, 270 F.R.D. 16, 19 (D.D.C. 2010)).

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Certificate of Service
I certify that on November 25, 2025, I caused to be emailed a true and correct copy of the foregoing to:

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