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 FOR RECONSIDERATION OR CLARIFICATION

On August 6, 2025, the MOA moved to convert the underlying civil action into an administrative appeal ("Motion"), reasoning in part that the abatement decision was an administrative decision and the relief sought by Plaintiffs is relief from an administrative act.[1] November 19, 2025, this Court denied the Motion, reasoning that the Complaint challenges the ordinance itself, not an administrative decision.[2] November 25, 2025, the MOA filed a Motion for Reconsideration or for Clarification, requesting this Court reconsider its Order Denying the Motion to Convert to an Administrative Appeal ("Order"), or, alternatively, "clarify that discovery is inappropriate for any purely facial challenge to the Anchorage Municipal Code's abatement provisions."[3]

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

[1] Mot. to Convert to an Administrative Appeal at 1-4.
[2] Order Denying Mot. to Convert to Administrative Appeal.
[3] Mot. for Reconsideration or for Clarification at 1.

BACKGROUND

Anchorage Municipal Code ("AMC") identifies "prohibited campsites" as a public nuisance and provides procedures for their abatements.[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, Damen Aguila, Mario Lanza Dyer, and Jamie Scarborough ("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]

LEGAL STANDARD

1. Motions for Reconsideration

Rule 77(k) sets out the grounds under which "a party may move the court to reconsider a ruling previously decided[.]" Rule 77(k)(1)(i)-(ii) provides that reconsideration may be appropriate, "if in reaching its decision: (i) The court has

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[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 ¶ 6-7 (listing alleged constitutional violations), 20-22 (prayer for relief requesting a declaratory judgment declaring the ordinance unconstitutional).

overlooked, misapplied or failed to consider a statute, decision or principle directly controlling; or (ii) The court has overlooked or misconceived some material fact or proposition of law[.]"

Rule 77(k)(2) further directs, "[t]he motion for reconsideration shall specifically state which of the grounds for reconsideration specified in the prior subparagraph exists, and shall specifically designate that portion of the ruling, the memorandum, or the record, or that particular authority, which the movant wishes the court to consider."

2. *Conversion to Administrative Appeals*

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]

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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*, 568 P.3d at 373 (citing *Griswold v. City of Homer*, 556 P.3d 252, 272 (Alaska 2024)).

DISCUSSION

1. *Plaintiffs' requests for injunctive relief from an abatement before it was executed do not characterize the action as an administrative appeal.*

The MOA claims reconsideration should be granted because this Court misconceived both the Plaintiffs' Complaint and procedural history that "demonstrate[es] that Plaintiffs challenge a particular abatement action."[13] The MOA argues that "since its inception," this case was about challenging a specific abatement in February of 2025, as evidenced by the Plaintiffs moving for a Temporary Restraining Order ("TRO") and preliminary injunction enjoining the MOA from executing the abatement of a campsite on Arctic Boulevard and Fireweed Lane.[14] In moving for the TRO, the Plaintiffs argued that the MOA provided "false or inappropriate" reasons in posted abatement notices.[15] The MOA argues that although the Complaint requests declaratory relief as to the constitutionality of the prohibited camping ordinance itself, the foregoing filings from Plaintiffs "suggest that they intend to seek a declaration as to the constitutionality of the February 2025 abatement."[16]

The MOA further argues that this Court recognized that Plaintiffs challenged concrete abatement actions when it denied the MOA's motion to dismiss on mootness, but allowed the case to proceed nevertheless because "[a]batements are clearly subject to

[13] Mot. for Reconsideration or for Clarification at 1.
[14] *Id.* at 2.
[15] *Id.*
[16] *Id.* at 3.

repetition" and because parties should be allowed "their full proper *appeal*."[17] Referring to this Court's Order Denying the Motion to Dismiss, the MOA states:

> 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. The Court overlooked this aspect of the case in denying the motion to convert.[18]

Plaintiffs contend that the Order correctly identified their claims as requests for declaratory relief against the ordinance, not an abatement.[19] They further argued that while declaratory relief can be granted on facial grounds, it can also be granted on as-applied grounds.[20] Consequently, they contend that an as-applied challenge to the ordinance allows for the use of "categories of circumstances" to present a constitutional challenge to the ordinance.[21]

The MOA interprets the Order on the Motion to Dismiss as indicating that the current action is about challenging the February abatement. Citing *Smith v. Municipality of Anchorage*, the Order on the Motion to Dismiss cites and explains that an abatement could be successfully appealed on constitutional grounds after it has been completed to "restore to the individual the right to camp in the area."[22] This Court further explained, "[f]ollowing this, the Court is within its discretion to continue to hear the current case, in order to allow the parties their full proper appeal and because there is an available

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[17] *Id.* at 3 (quoting Order Denying Mot. to Dismiss at 7-8) (emphasis added)).
[18] *Id.* at 3.
[19] Pl.'s Opp'n to Mot. for Reconsideration or Clarification at 3-4.
[20] *Id.* at 4.
[21] *Id.* (quoting *State v. Am. C. L. Union of Alaska*, 204 P.3d 364, 372 (Alaska 2009)); *see also Id.* at 4-6.
[22] Order Denying Mot. to Dismiss at 7 (citing *Smith v. Mun. of Anchorage*, 568 P.3d 367, 373 (Alaska 2025)).

remedy."[23] Additionally, Plaintiffs' request for injunctive relief did in fact address the February abatement.[24]

However, the MOA overlooks one crucial detail: Plaintiff's Complaint does not demand this Court restore their right to camp in the area that was abated in February after their request for a TRO and preliminary injunction was denied.[25] If that were in fact the case, the MOA would be correct in its conclusion that the instant action challenges an administrative decision. However, the declaratory relief demanded in the Complaint does not seek to appeal the abatement near Arctic Boulevard and Fireweed Lane, thereby restoring Plaintiffs' right to camp on the site.[26] The declaratory relief is lodged against the prohibited camping regime, not the abatement.[27]

Requests for a stay on Municipal acts *before* they take place cannot, and should not be construed by this Court as an *appeal* for said acts after they are completed. Because the abatement already took place, the potential for injunctive relief has been exhausted.[28] The fact that Plaintiffs requested a TRO and preliminary injunction against the abatement of a particular campsite does not alter the relief requested by the remaining claims in the Complaint. If Plaintiffs wished to appeal their abatement in February on constitutional grounds, they could have easily done so in their Complaint.

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[23] Order Denying Mot. to Dismiss at 7.
[24] Compl. for Inj. and Declaratory Relief at 20 (requesting this Court bar the MOA "from abating *Plaintiffs' campsites* or otherwise forcing them to relocate…") (emphasis added)).
[25] *Id.* at 15- 20 (requesting declaratory relief against "the Municipality's abatement policy" and "the Municipality's practice of abating encampments").
[26] *Id.*
[27] *Id.*
[28] Order Denying Mot. to Dismiss at 7.

2. *Discovery is appropriate for an as-applied challenge to the prohibited camping ordinance.*

The MOA asks the Plaintiffs to clarify "whether they intend to litigate an as-applied challenge, a purely facial challenge (without challenging the February 2025 abatement), or both."[29] The MOA also requested that this Court "specify exactly what claims Plaintiffs may proceed with, and whether discovery is or is not appropriate with respect to such claims[,]" if it decides against reconsideration.[30]

In its Motion, the MOA argued 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.'"[31] Citing a United States District Court case, the MOA further argues that discovery regarding the February 2025 abatement is not relevant because "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."[32]

Plaintiffs assert that "[b]oth facial and as-applied rulings are possible here," "Courts routinely allow claims to proceed under both standards throughout the course of litigation," and as-applied challenges require exploration of fact patterns to determine under what circumstances a law may be unconstitutional.[33] Plaintiffs further argue that claims "alleg[ing] violations of fundamental rights often warrant extensive factual

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[29] Mot. for Reconsideration or Clarification at 4.
[30] *Id.*
[31] *Id.* (quoting Order Denying Mot. to Convert to Administrative Appeal at 4-5) (emphasis added).
[32] *Id.* at 5 (quoting *Briggs v. Yi*, No. 3:22-cv-00265-SLG, 2023 WL 2914395, at *5 (D. Alaska Apr. 12, 2023)).
[33] Pl.'s Opp'n to Mot. for Reconsideration or Clarification at 4-6.

development…in part, because substantial constraints on fundamental rights are subject to strict scrutiny."[34]

This Court used overly restrictive language when it stated that the Complaint does not raise "factual issues" regarding an application of the ordinance. In so ordering, it overlooked the possibility of an as-applied challenge to the prohibited camping ordinance, and implied that factual development was not necessary for Plaintiffs to bring their claims. An as-applied challenge to the ordinance requires Plaintiffs use facts from specific abatements to present the circumstances under which a regime may be found unconstitutional. Therefore, discovery is appropriate for an as-applied facial challenge to the prohibited camping regime, and the Court will not limit the scope of discovery at this time.[35]

CONCLUSION

For the foregoing reasons, Defendants Motion for Reconsideration or for Clarification is **DENIED.**

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 16th day of December, 2025.

ADOLF V. ZEMAN
Superior Court Judge

[34] *Id.* at 7-8 (quoting *Doe v. Dep't of Pub. Safety*, 444 P.3d 119, 125 (Alaska 2019)) (citing *Breese v. Smith*, 501 P.2d 159, 172 (Alaska 1972) (requiring "hard facts" as opposed to "lay opinion testimony, unsupported by figures or statistics" to establish a compelling government interest)).

[35] Rules of discovery should be broadly construed. Relevance for discovery purposes includes evidence "reasonably calculated to lead to the discovery of admissible evidence." *See* ALASKA R. CIV. P. 26(b)(1); *Lee v. State*, 141 P.3d 342, 347 (Alaska 2006) (quoting *Hazen v. Mun. of Anchorage*, 718 P.2d 456, 461 (Alaska 1986)); *Ayuluk v. Red Oaks Assisted Living, Inc.*, 201 P.3d 1183, 1204 (Alaska 2009).

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