Received in the Alaska Trial Courts on 01/15/2026.

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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 FOR FAILURE TO STATE A CLAIM

Plaintiffs Damen Aguila, Mario Lanza Dyer, and Jamie Scarborough (collectively "Plaintiffs") challenge the Municipality of Anchorage's ("Municipality") abatement code and its decision to abate their encampment on public property at the intersection of Arctic Boulevard and Fireweed Lane on state constitutional grounds. The Municipality's targeted abatement of prohibited encampments ensures that public land—such as parks, playgrounds, trails, and rights of way—may be used by the public for the purposes to which such land has

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been dedicated. Abatement also protects public land from environmental degradation and accumulations of waste; protects public health; and protects public safety from threats such as fire danger or concentrations of criminal activity. The Municipality follows the abatement process laid out in Anchorage Municipal Code that is fully protective of Plaintiffs' constitutional rights.

None of the constitutional grounds Plaintiffs cite—the Alaska Constitution's seizure, due process, privacy, public health, and public welfare provisions—provides a viable claim against the Municipality. Each claim presents a pure question of law that this Court can address, and dispose of, on a motion to dismiss for failure to state a claim on which relief can be granted.

BACKGROUND

Plaintiffs challenge the constitutionality of the Municipality's abatement of a prohibited encampment on public property at the intersection of Arctic Boulevard and Fireweed Lane in February of 2025. As the Municipality explained in its Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction, Plaintiffs' encampment posed a severe public health and safety threat to plaintiffs, other occupants, and neighbors. Accordingly, on January 31, 2025, the Municipality noticed the Arctic-Fireweed encampment for abatement, and this Court declined to enjoin the abatement because the abatement did not violate Plaintiffs' constitutional rights.

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I. The Municipality Makes Case-by-Case Decisions to Abate Prohibited Camps on Public Property to Protect the Public Interest, with Prior Notice and Property Storage in Appropriate Circumstances.

Anchorage Municipal Code provides that "prohibited campsites" are public nuisances "subject to abatement by the [M]unicipality."[1] Priority is given to abatement of campsites "proximate to protected land uses," including, among other things, the greenbelt trail system, schools, playgrounds, and community centers, large campsites, and campsites near licensed homeless shelters.[2] Otherwise, Code leaves to the discretion of the Municipality decisions regarding how to use limited Municipal resources to abate specific prohibited encampments on public property. When the Municipality decides to abate a prohibited campsite, Code prescribes the procedures the Municipality must use, including how notice must be provided, when and how personal property remaining at a prohibited campsite must be stored, and how individuals may obtain judicial review of abatements.[3]

A. The Municipal Code requires notice before abatement.

Except in "exigent circumstances posing a serious risk to human life and safety,"[4] abatement requires advance notice.[5] Code provides for several different notice periods: among others, 24 hours for wildfire danger areas,[6] 72 hours for campsites near "protected

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1 Anchorage Municipal Code 15.20.020B.15 [hereinafter AMC]. The Anchorage Municipal Code is available at https://library.municode.com/ak/anchorage/codes/code_of_ordinances.

2 AMC 15.20.020B.15b & b.ii.(A).

3 AMC 15.20.020B.15.

4 AMC 15.20.020B.15.h.iii.

5 AMC 15.20.020B.15.a.

6 AMC 15.20.020(B)(15)(b)(i).

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land uses" like trails and playgrounds,[7] and ten days for "zone abatements" (when the Municipality simultaneously abates all campsites within a contiguous area).[8] The most common type of abatement procedure the Municipality uses, and the procedure implicated in this case, provides for 10 days of prior notice before an abatement of a zone of prohibited campsites may commence under AMC 15.20.020B.15.b.v., with options for appellate review and storage of property pending such review.

Code also prescribes in detail the kind of notice the Municipality must provide prior to an abatement. Campsite notices "shall be posted on or near each tent, hunt, lean-to, or other shelter designated for removal."[9] The posted notice must state, among other things, the location of the prohibited encampment on public land, the specific abatement procedure to be used for the prohibited encampment, the means by which a camper may appeal to Superior Court and provide the Municipality notice of an intent to appeal, the consequences of filing such an appeal or an intent to appeal (as discussed below, delay of abatement or storage of property), and the contact information for reclaiming any stored property.[10] Notice shall "[a]lso be given orally to any persons in or upon the prohibited campsite or who identifies oneself as an occupant of the campsite."[11]

When the Municipality abates a zone of prohibited campsites with 10 days of notice, as it did here, the Municipality must post notices around the specified geographic zone

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7 AMC 15.20.020(B)(15)(b)(ii).
8 AMC 15.20.020(B)(15)(b)(v).
9 AMC 15.20.020B.15.a.
10 AMC 15.20.020B.15.a.
11 AMC 15.20.020B.15.a.v.

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"stating all personal property" at the posted campsite or within the posted zone not removed within 10 days after the notice is posted "may be removed and disposed of as waste."[12] Notice of a zone abatement "shall be conspicuously posted under the circumstances and describe in detail the zone to be abated," and "[t]he notices shall be within sight of one another and reasonably maintained for the entire notice period."[13]

In addition to providing written and oral notice to campers, Municipal Code requires notice to the Anchorage Health Department, community social service agencies, and community councils in order to "encourage and accommodate the transition of campsite occupants to housing and the social service community network."[14] In the days leading up to a planned abatement and in the moments an abatement takes place, the Municipality and community partners engage with campers on-site to help people find shelter or housing, access substance abuse treatment, and address injuries and illnesses.

After notice is posted and the prescribed notice period expires, and before an abatement commences, campers are given an additional verbal notice that "the campsite is prohibited and to be removed."[15] Before any property is removed, campers are "given at least 20 minutes to gather their personal property and disperse from the area."[16] Municipal employees and contractors then clean up.

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12 AMC 15.20.020B.15.iv–v.
13 AMC 15.20.020B.15.b.v.(A).
14 AMC 15.20.020B.15.d.
15 AMC 15.20.020B.15.g.
16 AMC 15.20.020B.15.g.i.

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B. Code Provides for Judicial Review and Property Storage.

All abatements are subject to judicial review. "A posted notice" is "a final administrative decision and appeals shall be to the superior court within 30 days from the date the notice of campsite abatement is posted."[17] In an appeal, the superior court has jurisdiction to review the legal sufficiency of the notice of abatement and constitutional questions.[18] If a camper gives the Municipality notice of intent to appeal before the expiration of the abatement notice period, the Municipality may proceed with the abatement if the Municipality stores the appellant's personal property during the pendency of the appeal"[19] Similarly, when the Municipality provides less than 10 days of prior notice before an abatement commences, the Municipality stores for 30 days personal property that remains at a prohibited encampment at the expiration of the notice period.[20]

Where storage of personal property is required by Code, the Municipality must post notice "with contact and location information for reclaiming personal property or disclaiming an interest in it."[21] "Junk, litter, garbage, debris, lumber, [and] pallets" are not stored,[22] but other personal property "in fair and usable condition and readily identifiable as such by persons engaged in removing a prohibited campsite, shall be deemed valuable and

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17 AMC 15.20.020B.15.e.

18 *Smith v. Municipality of Anchorage*, Case No. S-18710, 2025 WL 1352024, at *2–4 (Alaska May 9, 2025).

19 AMC 15.20.020B.15.f.ii.

20 AMC 15.20.020B.15.b.i-iii (allowing for "remov[al] and stor[age]" of property).

21 AMC 15.20.020B.15.c. Although the Code requires individuals reclaiming their property pay a ten-dollar fee, *id.*, the Municipality does not enforce this provision.

22 AMC 15.20.020B.15.c.i.

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eligible for storage."[23] The Code also enumerates items, such as tents, sleeping bags, medication, personal papers, and clothing, which "shall be deemed valuable and eligible for storage."[24] "If no person removes the property" from storage, "the municipality may dispose of the personal property 30 days from the date" notice was first posted.[25]

II. The Arctic-Fireweed Encampment Was Posted for 10-Day Zone Abatement Because It Had Become a Public Health and Safety Hazard.

As the Municipality explained in its Opposition to the Plaintiffs' Motion for Temporary Restraining Order, the Arctic-Fireweed encampment was within 400 feet of an elementary school (a protected land use) and posed public health and safety risks. In brief, the encampment caused an outsized number of calls for service from the Anchorage Police Department and Fire Department, indicating that it was a hub of criminal activity, generated over four tons of trash, including health-hazardous waste like human feces, and cost nearby businesses an estimated $450,000.[26] For these reasons, consistent with the Code, the Municipality prioritized the Arctic-Fireweed encampment for abatement.[27]

III. Plaintiffs Sued and Sought Preliminary Relief, which this Court Denied.

After notice of an impending abatement was posted on January 31, 2025, Plaintiffs initiated this suit and sought a temporary restraining order and preliminary injunction to prevent the Municipality from abating their encampment. This Court denied preliminary relief, concluding that Plaintiffs had not demonstrated probable success on the merits of their

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23 AMC 15.20.020B.15.c.i.i.
24 AMC 15.20.020B.15.c.iii.
25 AMC 15.20.020B.15.c.
26 Municipality's Opposition at 6–10.
27 *See* AMC 15.20.020B.15b. & b.ii.(A).

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claims.[28] The Court concluded that Plaintiffs had not shown probable success on the merits of their claims because "Code does not criminalize their existence or . . . status as homeless," "Plaintiffs are not being banished from Anchorage," "Plaintiffs do not have a right to municipal land" and "there is no seizure of property."[29] The Municipality abated the encampment on February 12, 2025.

Plaintiffs challenge the Municipality's abatement ordinance on five grounds under the Alaska Constitution. They assert that the ordinance provides inadequate process, is void for vagueness, creates a cruel and unusual "banishment regime," violates the prohibition on unreasonable search and seizure, interferes with their privacy, and violates their asserted right to public health and welfare.[30]

LEGAL STANDARD

A motion to dismiss under Civil Rule 12(b)(6) "tests the legal sufficiency of the complaint's allegations."[31] Rule 12 "promot[es] the efficient resolution of cases that can be decided early and without great expense to either side."[32] It is proper for a court to grant a motion to dismiss when a case "presents no material factual dispute and can be resolved purely through the exercise of legal reasoning."[33]

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28 Order Denying Plaintiffs' Motion for Preliminary Injunction, at 6–8.

29 Order Denying Plaintiffs' Motion for Preliminary Injunction, at 6–8.

30 Compl. at ¶¶ 36–57.

31 *Alleva v. Municipality of Anchorage*, 467 P.3d 1083, 1087 (Alaska 2020) (quoting *Dworkin v. First Nat'l Bank of Fairbanks*, 444 P.2d 777, 779 (Alaska 1968)).

32 *Id.* at 1088.

33 *Forrer v. State*, 471 P.3d 569, 585 (Alaska 2020).

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ARGUMENT

Each of the five constitutional claims Plaintiffs raise in their Complaint fails as a matter of law to state a claim on which relief can be granted and should be dismissed.

I. Cleaning Up Items Left at a Camp After a 10-Day Notice Period Is Not an Unreasonable Seizure of Unabandoned Property.

Plaintiffs assert that "[b]y permitting the routine seizure and destruction of plaintiffs' unabandoned personal property without a warrant the Municipality's abatement policy violates plaintiffs' right to be free from unreasonable seizures."[34] That claim fails because campers abandon their property when they knowingly and voluntarily leave it in an abatement zone despite notice and the opportunity for storage. And, even if that property were not abandoned, its seizure following adequate notice is not unreasonable.

Alaska courts undertake a two-step analysis to assess whether a government actor has engaged in an unreasonable seizure prohibited by article I, section 14 of the Alaska Constitution.[35] First, they consider whether the action at issue constituted a seizure.[36] If so, they ask whether the seizure was unreasonable.[37] Here, the allegations in the complaint do not state a claim for unreasonable seizure.

First, removing abandoned property in an abatement zone after adequate notice is not a seizure. As explained above, the Municipality cleans up prohibited encampments only after providing 10 days of advance posted notice, a 10-day opportunity to remove property

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34 Compl. at ¶ 49.
35 *Majaev v. State*, 223 P.3d 629, 632 (Alaska 2010).
36 *Id.*
37 *Id.*

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campers with to keep, verbal warnings at the commencement of an abatement, and an opportunity to appeal and secure storage of their property.[38] Campers that choose not to avail themselves of any of those opportunities to safeguard any property they intend to keep thereby abandon it. And the Municipality's abatement of any such abandoned property does not "seize" any property interest such campers have not already relinquished.

In Alaska, abandonment can be accomplished by, among other things, leaving property "in a public place where anyone might discover and take possession of the property."[39] The Municipal Code provisions at issue here expressly provide the circumstances under which property is abandoned: "At the expiration of the notice period any personal property in the [noticed abatement] zone may be disposed of as waste."[40] If, notwithstanding the 10-day notice and other warnings, Plaintiffs leave behind property in an abatement zone, they therefore abandon that property and its removal does not constitute a seizure. Indeed, this Court has already concluded as much, holding in the order denying the motion for a preliminary injunction that, "as the Plaintiffs do not have a right to the Municipal land and were given timely notice of the abatement in order to remove their property, as well as an opportunity to store their personal property, there is not seizure of property."[41]

Second, even if campers could somehow keep their property indefinitely on public land without abandoning it, the Municipality would still act reasonably in abating such

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38 AMC 15.20.020B.15.iv–v; AMC 15.20.020B.15.d & e.
39 *Young v. State*, 72 P.3d 1250, 1254 (Alaska Ct. App. 2003).
40 AMC 15.20.020B.15.v.(B).
41 Order Denying Plaintiffs' Motion for Preliminary Injunction, at 8.

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property. Alaska courts "carefully consider and find substantial guidance in cases interpreting the United States Constitution."[42] In a recent case challenging the same Municipal Code provisions at issue here, Chief Judge Gleason of the U.S. District Court for the District of Alaska concluded that the seizure of unabandoned property after notice was reasonable under the Fourth Amendment.[43] "[T]he Municipality acts reasonably when it provides 10 days' advance notice of the abatement and an opportunity to appeal the abatement before a camper's personal property can be destroyed."[44] The Court emphasized that, "[b]y occupying public property intended for other purposes, prohibited campsites interfere with the public's interest in using public property for the public purposes to which it has been dedicated."[45] Abatement thus serves "important government interests" "while providing procedural safeguards to accommodate the interests of homeless individuals in retaining their personal property."[46] And there is no "reasonable expectation of privacy in [an] encampment ten days after a notice of abatement has been issued."[47]

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42 *Majaev*, 223 P.3d at 632 (internal quotation marks and citation omitted).

43 *Smith v. Municipality of Anchorage*, 797 F. Supp. 3d 992, 1010 (D. Alaska 2025). This is consistent with other courts' decisions considering challenges to abatement ordinances. *See Cobine v. City of Eureka*, No. 16-cv-02239, 2016 WL 1730084, at *4 (N.D. Cal. May 2, 2016) (upholding against Fourth and Fourteenth Amendment challenges an abatement with 41-days advance notice and 90-days storage of certain items); *Acosta v. City of Salinas*, No. 15-cv-05415 NC, 2016 WL 1446781, at *2, *5-8 (N.D. Cal. Apr. 13, 2016) (upholding against unspecified constitutional challenge an abatement procedure involving 15-day notice with 90-day storage of certain items); *Proctor*, 310 F. Supp. 3d at 110-11 (14-day notice and 60-day storage of unabandoned property).

44 *Smith*, 797 F. Supp. 3d at 1010.

45 *Id.*

46 *Id.* at 1010–11.

47 *Id.* at 1008.

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This Court should adopt the federal district court's persuasive reasoning. The Fourth Amendment and article I, section 14 of the Alaska Constitution are identical in all respects relevant to this case. The Alaska Constitution's addition of "and other property" to the list of property subject to the requirement of reasonable searches and seizures indicates the state constitutional right is "broader *in scope*," but does nothing to alter the test regarding what makes a seizure reasonable.[48] And, as to the constitutional reasonableness of the Municipality's abatement ordinance, the federal court correctly and persuasively concluded that, balancing the Municipality's important government interests and campers' interests in their property, seizure of property left in an abatement zone is reasonable, especially in light of the lengthy advance notice campers receive.

II. The Municipality's Abatement Code Comports with Due Process.

Plaintiffs assert that the Municipality violates their due process rights in two ways. First, they allege that "[b]y taking, discarding, and/or destroying people's property without adequate notice and without individual predeprivation hearings, the Municipality's abatement policy violates the due process rights of its unhoused residents."[49] And, second, they claim that the abatement code is "void for vagueness."[50] Those claims fail for the same reasons their unreasonable-seizure argument fails: the Municipality provides clear and lengthy advance notice that tells campers who wish to keep their property how they may do so: by removing it from a specific abatement area or securing storage.

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48 *Woods & Rohde, Inc. v. State, Dep't of Lab.*, 565 P.2d 138, 150–51 (Alaska 1977) (emphasis added).

49 Compl. at ¶ 39.

50 Compl. at ¶ 40.

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A. 10-Days' Notice, Appeal Rights, and Property Storage Provide Adequate Opportunity for Campers to Protect Their Property.

Plaintiffs' procedural due process claim should be dismissed as a matter of law. Abatements do not deprive Plaintiffs of any protected property interest. Rather, they only require Plaintiffs to remove their property from a particular piece of municipal land, which they do not own, lease, or rent. Plaintiffs are free to keep their property if they wish to. If Plaintiffs leave property behind in an abatement zone after the end of the notice period, they thereby abandoned their interest in such property when the abatement commences, as explained above. In any event, the Municipal Code's 10-day period of pre-abatement notice and opportunity for property removal or storage adequately protects any interest Plaintiffs may have in retaining unabandoned property.

"A due process claimant must prove the existence of state action and the deprivation of an individual interest of sufficient importance to warrant constitutional protection."[51] The abatement of the encampment at Arctic and Fireweed did not deprive Plaintiffs of any protected property interest. Plaintiffs do not allege that they own, lease, or rent the right-of-way noticed for abatement. Indeed, in their Complaint, Plaintiffs acknowledge the encampment was in the Municipality's "right-of-way."[52] Accordingly, the only property interest potentially at stake in their due process claim is their personal property.[53]

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51 *Anderson v. Alaska Hous. Fin. Corp.*, 462 P.3d 19, 25 (Alaska 2020) (internal quotation marks and citation omitted).

52 Compl. at ¶¶ 10–12.

53 Compl. at ¶¶ 26, 28, 39.

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But the abatement of the encampment at Arctic and Fireweed did not deprive Plaintiffs of an interest in their personal property. Rather, it required them to vacate that parcel of land and remove any personal property they did not intend to abandon. And the Municipal Code and the abatement notices gave Plaintiffs adequate notice and opportunity to protect their property interests by removing any personal belongings prior to the abatement. Plaintiffs do not allege that they received less than the 10 days of advance notice required by Code before the abatement actions were scheduled to begin. Nor do Plaintiffs allege that the posted notice failed to comply with the requirement in Code to specifically warn that any property left in the abatement zone after 10 days would be subject to disposal (absent an appeal) or would be stored (if an appeal were filed or notice of intent to appeal or sue were given, as occurred here). Plaintiffs do not dispute that they actually received that notice. To the contrary, Plaintiffs referenced the notice in their Complaint, which was filed before the abatement was even scheduled to begin.[54] Plaintiffs thus had actual knowledge of what they would have to do to protect their interest in personal property they did not wish to abandon: either remove those possessions from the abatement area themselves or, with the filing of an appeal, allow the Municipality to store eligible possessions until they retrieved them. Plaintiffs thus had every opportunity to protect their property interests. And if Plaintiffs failed to protect those interests by leaving personal property on public land noticed for abatement after the expiration of the notice period then, as explained above, they

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54 Compl. at ¶ 19.

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abandoned any interest in that property—as this Court has already held in rejecting the motion for a preliminary injunction.[55]

In any event, even assuming Plaintiffs retained cognizable interests in property they declined to remove from the noticed abatement area, the Municipality's abatement of such property would not violate due process. "When assessing whether an administrative action violates the due process clause of the Alaska Constitution, [Alaska courts] use the framework established by the United States Supreme Court in *Mathews v. Eldridge*."[56] This framework requires that courts "weigh: (1) the private interest at stake; (2) the risk of an erroneous deprivation of the private interest and the value of additional safeguards; and (3) the government interest—noting particularly the cost and administrative burdens entailed by additional procedural protections" to determine the process owed.[57] Although people have an interest in unabandoned personal property, there is only a slight risk of erroneous deprivation where Code provides significant notice of impending abatements and every opportunity to remove any property from an abatement zone or secure storage by appealing. It is only if Plaintiffs fail to take advantage of 10 days of notice, final verbal notice, and an opportunity to appeal, that there is a risk of deprivation at all—and with so many safeguards in place, no such deprivation would be "erroneous" at all. As this Court explained in denying

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55 Order Denying Plaintiffs' Motion for Preliminary Injunction, at 8 ("[A]s the Plaintiffs do not have a right to the Municipal land and were given timely notice of the abatement in order to remove their property, as well as an opportunity to store their personal property, there is not seizure of property.").

56 *Copeland v. Ballard*, 210 P.3d 1197, 1203–04 (Alaska 2009) (citing *City of Homer v. State, Dep't of Natural Res.,* 566 P.2d 1314, 1319 (Alaska 1977)).

57 *Copeland*, 210 P.3d at 1204; *see also Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976).

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the motion for a preliminary injunction, "because Plaintiffs' property would be preserved, there is no irreparable harm."[58] Just so.

On the other side of the ledger, there are significant government interests at stake. As the federal district court recently observed at the motion to dismiss stage in a case raising identical due process issues under *Mathews v. Eldrige*, "[b]y occupying public property intended for other purposes, prohibited campsites interfere with the public's interest in using public property for the public purposes to which it has been dedicated."[59] Therefore, "courts have routinely recognized that these are important government interests served by the removal of prohibited encampments and personal belongings from public lands."[60] Balancing the private and government interests and minimal risk of erroneous deprivation, the *Mathews* test tilts strongly in favor of upholding the Municipality's abatement procedure. As the federal district court has already held with regard to a materially identical claim on a materially identical motion to dismiss, the Municipality's "procedures provide both an opportunity for campers to retain their possessions by removing them from the abatement zone and—contrary to [Plaintiffs'] assertions—a meaningful opportunity for campers contest the abatement and prevent the destruction of their personal property."[61] Plaintiffs "do[] not explain how a pre-abatement hearing would meaningfully reduce the risk of erroneous deprivation in light of the Municipality's existing procedures."[62] That reasoning

58 Order Denying Plaintiffs' Motion for Preliminary Injunction, at 8.
59 *Smith*, 797 F. Supp. 3d at 1010.
60 *Id.*
61 *Id*. at 1012–13.
62 *Id.* at 1013.

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applies with full force here and compels dismissal as a matter of law for failure to state a claim.

B. Municipal Code Provides Fair Notice of the Conduct that Could Result in Abatement.

Further, the Municipal Code's abatement provisions are not impermissibly vague in violation of the Alaska Constitution's due process clause. To withstanding a vagueness challenge, a civil statute like the one at issue here need only use "legislative language which is not so conflicting and confused that it cannot be given meaning in the adjudication process."[63] The legislative language at issue here easily meets that standard.

The abatement ordinance clearly states the circumstances in which it applies: "a prohibited campsite is an area where one or more persons are camping on public land in violation of," among other things, AMC chapter 12.70, which prohibits camping on municipal land not designated for such use.[64] The ordinance further makes clear that "[a] prohibited campsite is subject to abatement by the municipality," at the discretion of the responsible municipal officials.[65] In contrast to most laws, the ordinance even specifies which prohibited encampments will be prioritized for abatement, including, among other things, "those proximate to protected land uses," such as the greenbelt trail system, schools, playgrounds, and community centers, and those "those with over 25 tents, huts, lean-tos, or other shelters."[66] When a zone of campsites is selected for abatement, the Code requires very

63 *Dep't of Revenue v. Nabors Int'l Fin., Inc.*, 514 P.3d 893, 900 (Alaska 2022) (internal quotation marks and citations omitted).

64 AMC 15.20.020B.15.

65 *Id.*

66 AMC 15.20.020B.15.b & b.ii.(A).

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clear notices instructing campers exactly what is required of them to avoid destruction of their property within a posted abatement zone: remove their property from the specified abatement area before the abatement begins, or secure property storage by appealing.[67] As a result, not only is the Code easily capable of being given meaning in the adjudication process, but campers are on very clear notice about what they will have to do to safeguard their property if a prohibited encampment is noticed for abatement.

Contrary to Plaintiffs' allegations, the abatement provisions stand in sharp contrast to the type of anti-vagrancy laws Plaintiffs invoke in their Complaint. In the vagueness cases Plaintiffs cite,[68] the U.S. Supreme Court and Alaska Supreme Court struck down criminal laws that prohibited conduct using such vague language that potential defendants were not on adequate notice of what was expected of them. In *Papachristou v. City of Jacksonville*, the U.S. Supreme Court struck down an ordinance that criminalized "prowling by auto" and "loitering," noting that the generality of the ordinance's language failed to give "fair notice" of what would count as prowling or loitering.[69] Similarly, in *Marks v. City of Anchorage*, the Alaska Supreme Court declared void-for-vagueness a criminal, disorderly conduct statute that was "peppered with indefinite words," such as "tumultuous behavior" that "fail[ed] to give adequate notice of what conduct is prohibited."[70] The Municipality's abatement ordinance is not comparable.

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67 AMC 15.20.020B.15.b.v.(B) ("At the expiration of the notice period any personal property in the zone may be disposed of as waste if no person has either given notice or removed the property in accordance with this section.").

68 Compl. at ¶ 40 n. 31.

69 405 U.S. 156, 162 (1972).

70 500 P.d 644, 653 (Alaska 1972).

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III. The Municipality's Abatement Ordinance Does Not Criminally Punish or "Banish" Anyone from Anchorage.

Plaintiffs allege that "[t]he Municipality's practice of abating encampments of people experiencing homelessness without telling them where they may lawfully exist constitutes a banishment regime," which "is a form of cruel and unusual punishment."[71] That claim fails as a matter of law. Alaska's cruel and unusual punishment clause applies to criminal matters, and there is no compelling reason to expand it here. Nor are Plaintiffs "banished" from Anchorage when the Municipality abates a specific encampment.

As an initial matter, the Alaska Constitution's prohibition on cruel and unusual punishment, "Article I, section 12 . . . only applies to criminal matters."[72] This is consistent with the U.S. Supreme Court's decision in *Grants Pass v. Johnson*, which concluded that "Eighth Amendment's prohibition against 'cruel and unusual punishments' . . . has always been considered, and properly so, to be directed at the method or kind of punishment a government may impose for the violation of criminal statutes."[73] As the Court of Appeals has stated, "[f]or the most part, [Alaska courts] have interpreted the Alaska prohibition on cruel and unusual punishment in line with its federal counterpart. . . ."[74] Here, where both the federal and state constitutional provisions have been consistently applied only to criminal matters, there is no compelling reason to diverge from federal law on this point. And, as this Court has previously concluded, "[t]he Code does not criminalize [Plaintiffs'] existence or

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71 Compl. at ¶¶ 44–45.

72 *Paxton v. Gavlak*, 100 P.3d 7, 13 (Alaska 2004).

73 *City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520, 541–42 (2024) (internal quotation marks, citation, and alterations omitted).

74 *Fletcher v. State*, 532 P.3d 286, 306 (Alaska Ct. App. 2023).

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the Plaintiffs' status as homeless, because they face no criminal penalties for being on the property."[75] Accordingly, the prohibition on cruel and unusual punishment is inapplicable here and Plaintiffs' claim fails as a matter of law.

In any event, even if Article I, section 12 were to apply here, the Municipality's abatement of prohibited campsite would not constitute "banishment" from Anchorage. As this Court has already noted, in rejecting this same claim on the merits when denying a motion for a preliminary injunction, "the Plaintiffs are not being banished from Anchorage. Since no more than ten areas may be put under abatement at a time, this does not close off the whole of Anchorage to the Plaintiffs, nor are there criminal penalties imposed on the Plaintiffs for remaining in Anchorage."[76] Code is express that "[a]t any one time, the municipality shall post no more than ten zones to be abated."[77] And, in practice, the Municipality notices far fewer zones. Therefore, no "banishment" occurs when the Municipality abates a prohibited encampment.

Further, the concept of "banishment" has only been applied by Alaska courts in the post-conviction context and should not be applied here.[78] For example, in *Edison v. State*, an individual successfully challenged a condition of probation which required him to obtain court permission before entering a village.[79] The Court of Appeals found the restriction was not reasonably related to the underlying offense of driving while intoxicated, unnecessarily

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75 Order Denying Plaintiffs' Motion for Preliminary Injunction, at 6–7.
76 Order Denying Plaintiffs' Motion for Preliminary Injunction, at 7.
77 AMC 15.20.020.B15.b.v.(D).
78 *See Edison v. State*, 709 P.2d 510 (Alaska 1985); *Bryan v. State*, Case No. A-4504, 1993 WL 13156671 (Alaska Ct. App. 1993).
79 709 P.2d 510 (Alaska 1985).

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severe and restrictive, and not reasonably related to rehabilitation.[80] This reasoning underscores that the concept in Alaska is specific to the post-conviction context and does not fit here, where there is no criminal punishment and no city-wide banishment arising from a specific abatement.

If the Court were to apply the concept here, another case, *Oyoghuk v. Municipality of Anchorage*, is much more readily comparable.[81] There, the Court of Appeals upheld a condition of probation preventing an individual sentenced for soliciting for prostitution that prohibited the individual from being within a two-block radius of a particular intersection where the offense leading to conviction had taken place.[82] If anything, the Municipality's abatement of prohibited camping in a "contiguous, reasonably compact identifiable area"[83] as provided by Code is comparable to the restriction at issue in *Oyoghuk*, which involved the immediate vicinity of a particular intersection, and is unlike the village-wide restriction in *Edison*.

IV. The Municipality's Abatements Do Not Violate the Right to Privacy in Personal Papers.

Separately, Plaintiffs allege that "[b]y failing to adopt procedures to protect against the inadvertent disclosure or destruction of personal information during an abatement, the Municipality's abatement policy violates Plaintiffs' constitutional right to privacy."[84] In particular, they assert that "[u]nhoused persons' personal property often includes documents

80 *Id.* at 512.
81 641 P.2d 1267 (Alaska Ct. App. 1982).
82 *Id.* at 1269–71.
83 AMC 15.20.020.B15.b.v.(D).
84 Compl. at ¶ 53.

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with sensitive personal information such as social security cards and birth certificates" and that "[t]he summary confiscation of this property is not carefully tailored to meet any legitimate governmental goal."[85]

First, the Complaint does not allege that the Municipality actually confiscated or inadvertently disclosed personal information or was even likely to do so. Instead it alleges that because one Plaintiff "lost essential documents during a[] [previous] abatement," "Plaintiffs fear that these documents would be summarily confiscated, resulting in the disclosure of their private information."[86] Ripeness "requires a plaintiff to claim that either a legal injury has been suffered or that one will be suffered in the future."[87] Plaintiffs' claim, as alleged, is a "mere hypothetical question" that should not be addressed.[88]

Second, as with any other item of personal property, and as previously explained, Plaintiffs have significant notice and the ability to secure, rather than abandon, any personal papers before a zone abatement. Moreover, Code provides Plaintiffs the option to store their personal papers when they challenge an abatement as they did here, as "personal papers and identification" are among the items eligible for storage in Code.[89] Therefore, even assuming Plaintiffs alleged that their personal papers were indeed disposed of as waste during the Municipality's abatement of their encampment, Plaintiffs had 10 days to secure their personal information against disposal and the risk of inadvertent disclosure. In the same way

85 Compl. at ¶ 53.
86 Compl. at ¶ 30.
87 *Brause v. State, Dep't of Health & Soc. Servs.*, 21 P.3d 357, 359 (Alaska 2001).
88 *Id.*
89 AMC 15.20.02015.c.iii.(G).

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Plaintiffs relinquish the property interest in their possessions by abandoning them in the abatement zone after 10 days' notice, they destroy any legitimate expectation of privacy in personal papers that are similarly abandoned following considerable notice.[90]

V. Plaintiffs' Public Health and Welfare Claims Are Nonjusticiable and Fail as a Matter of Law.

Plaintiffs allege that "[b]y depriving people experiencing homelessness of the property they need to survive living outdoors in Alaska without providing them with shelter or an alternate place to go, the Municipality is directly endangering their health and welfare" in violation of sections 4 and 5 of Alaska Constitution, article VII.[91] Those novel claims fail as a matter of law. These provisions do not create judicially enforceable rights. Indeed, they do not address the Municipality at all. And there is no basis on which to create a new, implied fundamental right to camp on Plaintiffs' preferred piece of municipal property dedicated to other purposes.

A. The Alaska Constitution's Protections Related to Public Health and Welfare Are Not Justiciable or Enforceable Against the Municipality.

Alaska Constitution, Article VII, sections 4 and 5 mandate that "[t]he legislature shall provide for the promotion and protection of public health" and that "[t]he legislature shall provide for public welfare." By their plain language, these provisions give direction to the state legislature; they do not create individual rights that are enforceable—much less individual rights that are enforceable against the Municipality. Comparison to other

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90 *See Jones v. Jennings*, 788 P.2d 732, 738 (Alaska 1990) (listing the existence of a "legitimate expectation that the materials or information will not be disclosed" as one of three elements of the test applying Alaska's constitutional right to privacy).

91 Compl. at ¶ 57.

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constitutional provisions that do create individual rights underscores this point. Article I, section 14, for example, provides that "[t]he right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section." The framers of Alaska's Constitution thus knew how to, and did, explicitly include individual rights in other provisions, even where they were also directing the legislature to undertake an action to implement such rights. The framers' intentional decision to not include any similar language here must be given effect.

Courts have understood as much. In past cases involving similar "[t]he legislature shall" directives in the Alaska Constitution, the Alaska Supreme Court and other courts have noted that the provisions "explicitly direct[] the legislature" to undertake a particular policy.[92] Accordingly, courts have declined to grant relief in cases seeking to enforce those provisions. For example, the Alaska Supreme Court refused to grant relief with respect to Article XIII's direction to the state legislature to manage natural resources, concluding that "[d]eclaratory judgment about the *legislature's* article VIII duties would do little more than restate the constitutional provisions while leaving the legislature to resolve how the State should fulfill those duties for the maximum benefit of Alaskans collectively."[93] Similarly,

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[92] *Sagoonick v. State*, 503 P.3d 777, 798 (Alaska 2022) (discussing Article VIII, section 2's command that "[t]he legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State . . . ."); *Bakalar v. Dunleavy*, 580 F. Supp. 3d 667, 690 (D. Alaska 2020) (noting that Article XII, § 6's direction that "[t]he legislature shall establish a system under which the merit principle will govern the employment of persons by the State" "merely requires the legislature" to act); *cf. Abood v. League of Women Voters of Alaska*, 743 P.2d 333, 337 (Alaska 1987) (concluding that Article II, § 12's direction that "[t]he houses of each legislature shall adopt uniform rules of procedure" is "an express textual commitment of authority" to the legislature).

[93] *Sagoonick*, 503 P.3d at 802.

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in a case involving the Alaska Constitution's direction that "[t]he legislature shall establish a system under which the merit principle will govern the employment of persons by the State," the U.S. District Court for the District of Alaska concluded that "the constitutionally protected merit principle and the statute implementing it does not provide Plaintiff with an independent cause of action against the State."[94] Rather, the Court explained, "[t]he constitution itself merely requires the legislature to 'establish a system under which the merit principle will govern the employment of persons by the State.'"[95]

Crucially, in both cases, the courts located the responsibility for effectuating the constitutional policy embodied in the "the legislature shall" provisions in the state *legislature*, as the text of the Constitution provides, and not a State court or a State administrative or executive body—nor, even farther afield, in a municipality. And the framers' decision not to create in this context individually enforceable rights against the State—much less against a municipality—comports with the absence of any historical tradition suggesting an intent to empower people to camp without authorization on whatever portion of municipal land they may prefer, regardless of whether that land is dedicated to other purposes and the landowner chooses to remove the encampment.

To the extent Plaintiffs may be arguing that these constitutional clauses mandate judicial second-guessing of abatement decisions alongside any and every other government action that a plaintiff may allege would their health or welfare, that is plainly a nonjusticiable political question that must be rejected as a matter of law for reasons the Alaska Supreme

94 *Bakalar v. Dunleavy*, 580 F. Supp. 3d 667, 690 (D. Alaska 2020).

95 *Id.* (quoting Alaska Con., Art. XII, § 6)).

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Court has provided in closely related contexts where the Constitution assigns constitutional policymaking to the legislature rather than courts. "Plaintiffs ask the judicial branch to establish constitutional common law controlling State policy about" all public health and welfare, and "plaintiffs ask [this Court] to jettison the constitutional mandate that the legislature" make those policy decisions," but courts must not "disrespecting our coordinate branches of government by supplanting their policy judgments with our own normative musings" on such topics.[96] That same reasoning compels dismissal here. The Court should therefore dismiss Plaintiffs' claim based on the Alaska Constitution's public health and welfare provisions because they do not provide individual rights, much less rights judicially enforceable against the Municipality.

B. A Right to Live Indefinitely on Municipal Land Cannot Be Implied from the Alaska Constitution's Public Health and Welfare Provisions.

Finally, there is no basis in these constitutional directions to the legislature regarding public health and welfare to infer any non-enumerated, fundamental constitutional right to camp in Plaintiffs' preferred portions of municipal land dedicated to other purposes. The Alaska Supreme Court has developed fundamental rights not explicitly mentioned in the Constitution if it "find[s] such fundamental rights and privileges to be within the intention and spirit of our local constitutional language and to be necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage."[97] Further, the Alaska Supreme Court has stated that "the history and tradition of a right in Alaska are

96 *Sagoonick*, 503 P.3d at 796.

97 *Baker v. City of Fairbanks,* 471 P.2d 386, 401–02 (Alaska 1970).

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important because they help to determine whether the right falls within the intention and spirit of our constitution."[98]

A right to camp indefinitely on a particular piece of municipal land of one's choosing is not a fundamental right or privilege "within the intention and spirit of our local constitutional language." Nor is such a right "necessary for civilized life and ordered liberty." Indeed, the establishment of such a right would be antithetical to those principles.

As explained, the language of the Alaska Constitution is unambiguous: it provides a direction to the state legislature to provide for health and welfare. Nothing in that clear and simple language suggests an individual right to live on municipal land is within the Alaska Constitution's spirit or intention.

Further, the right to live indefinitely on one's chosen parcel of municipal land is not necessary for civilized life and ordered liberty. Indeed, it disrupts it by threatening public safety and health and interfering with the public uses for which municipal land is dedicated in favor of a few individuals' private use. As the U.S. District Court in the District of Alaska recently held as a matter of law on a motion to dismiss, "[a]bating prohibited camping helps ensure that parks, trails, playgrounds, open spaces, secluded woods, sidewalks, streets, and other rights of way can be used for the public purposes to which those properties have been dedicated."[99]

This case stands in contrast to the few cases in Alaska jurisprudence in which the Alaska Supreme Court has reached the weighty decision to recognize an implied

98 *Sampson v. State*, 31 P.3d 88, 94 (Alaska 2001).

99 *Smith v. Municipality of Anchorage*, 797 F. Supp. 3d 992, 1013 (D. Alaska 2025).

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fundamental right not expressly mentioned in the Constitution. For instance, in recognizing the right to an abortion as a fundamental right encompassed within Alaska's right to privacy, the Alaska Supreme Court explained that "[a] woman's control of her body, and the choice whether or when to bear children, involves the kind of decision-making that is necessary for civilized life and ordered liberty" and that the Court's prior decisions regarding contraception "support the further conclusion that the right to an abortion is the kind of fundamental right and privilege encompassed within the intention and spirit of Alaska's constitutional language."[100] The Supreme Court has recognized a fundamental right to make decisions about medical treatment for similar reasons.[101]

While those cases and others "collectively set the framework for recognizing fundamental rights of personal autonomy implicit in our constitution," the Alaska Supreme Court has been clear that "the history and tradition of a right in Alaska are important because they help to determine whether the right falls within the intention and spirit of our constitution."[102] That a purported right can be framed as an aspect of one's personal autonomy is not enough.[103]

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100 *Valley Hosp. Ass'n, Inc. v. Mat-Su Coalition for Choice*, 948 p.2d 963, 968–69 (Alaska 1997) (internal quotation marks and citation omitted).

101 *Myers v. Alaska Psychiatric Inst.*, 138 P.3d 238, 246 (Alaska 2006) (concluding the right to refuse psychotropic medication is a fundamental right); *Gray v. State,* 525 P.2d 524, 528 (Alaska 1974) (right to privacy "shields the ingestion of food, beverages or other substances").

102 *Sampson v. State*, 31 P.3d 88, 94 (Alaska 2001).

103 *Id.* at 94–95 (rejecting the contention that physician-assisted suicide is a fundamental right); *Ravin v. State*, 537 P.2d 494, 502 (Alaska 1975) (concluding that consumption of marijuana is not a fundamental right).

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Here, no case and nothing in our history and tradition even remotely hints at any historical or legal support for the proposition that the general right of personal autonomy incorporates a right to live indefinitely on any particular piece of municipal land. Further, a purported right to live on municipal land does not implicate the same kind of autonomous decision-making with respect to one's body at issue with reproductive and medical decision-making. The Court should therefore resist any invitation to develop a novel right to indefinitely live on municipal land, without any textual foundation or grounding in the longstanding traditions of ordered liberty.

CONCLUSION

For the foregoing reasons, each of Plaintiffs' claims fails as a matter of law. The Court should dismiss the Complaint in its entirety and enter final judgment.

Respectfully submitted this 15th day of January, 2026.

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