

SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

**Damen Aguila, Mario Lanza Dyer,
and Jamie Scarborough,**

Plaintiffs,

v.

Municipality of Anchorage,

Defendant

No. 3AN-25-04570 CI

OPPOSITION TO DEFENDANT’S SECOND MOTION TO DISMISS

The Court should deny the Municipality of Anchorage’s motion to dismiss for failure to state a claim upon which relief can be granted. As it recognized when denying the first motion to dismiss, “the Court is within its discretion to continue to hear the current case . . . *because there is an available remedy.*”¹ Contrary to the Municipality’s assertions,² Plaintiffs seek declaratory relief regarding the constitutionality of the Municipality’s prohibited campsite regime, rather than one abatement.³ It is well within the powers of this Court to grant such relief.

Furthermore, the Municipality’s motion misstates the standard for a 12(b)(6) motion. To survive a 12(b)(6) motion, a “complaint need only allege a set

¹ Order Den. First Mot. to Dismiss at *7 (June 18, 2025) (emphasis added).
² Def’s Second Mot. to Dismiss at *2 (Jan. 15, 2026).
³ Order Den. Mot. for Recon. or Clar. at *6 (Dec. 16, 2025) (“The declaratory relief is lodged against the prohibited camping regime, not the abatement.”); *see also* Order Den. Mot. to Convert at *7–8 (Nov. 19, 2025).

of facts consistent with and appropriate to some enforceable cause of action.”⁴

Plaintiffs’ Complaint alleged facts consistent with six causes of action under the Alaska Constitution. The Municipality should be ordered to answer these claims so that the case can proceed to discovery.

FACTUAL BACKGROUND

Plaintiffs set forth the essential facts in their Complaint. For the purposes of this motion, those facts must be accepted as true⁵ and need not be repeated here. In response to the Municipality, Plaintiffs wish to clarify three factual issues.

First, the Municipality mistakenly asserts that Plaintiffs seek relief regarding the constitutionality of the Arctic-Fireweed abatement.⁶ This is not true. As this Court recognized in its latest order, Plaintiffs’ request for “declaratory relief is lodged *against the prohibited camping regime*, not the abatement.”⁷ “If the Plaintiffs wished to appeal their abatement in February on constitutional grounds, they could have easily done so in their Complaint.”⁸ They did not.

Second, the Municipality’s motion overstates the extent to which the Municipal Code protects against arbitrary enforcement of its “prohibited

⁴ *Torrence v. Blue*, 552 P.3d 489, 492 (Alaska 2024) (quoting *Clemensen v. Providence Alaska Med. Ctr.*, 203 P.3d 1148, 1151 (Alaska 2009)).

⁵ *E.g.*, *DeRemer v. Turnbull*, 453 P.3d 193, 196 (Alaska 2019) (stating that the court “must presume all factual allegations of the complaint to be true and make all reasonable inferences in favor of the non-moving party” when ruling on a 12(b)(6) motion) (quoting *Adkins v. Stansel*, 204 P.3d 1031, 1033 (Alaska 2009)).

⁶ Def’s Second Mot. to Dismiss at *2 (Jan. 15, 2026).

⁷ Order Den. Mot. for Recon. or Clar. at *6 (Dec. 16, 2025) (emphasis added).

⁸ *Id.*

campsite” provision. For example, the Code does not require the Municipality to produce evidence substantiating claims of a public health or safety risk before conducting an abatement; it does not require the Municipality to explain why it selected a site for abatement; nor does it require the Municipality to publicize what site it will select its next abatement.⁹ The Code also fails to provide a right to a hearing *prior to* abatement or any guardrails on criminal enforcement after an abatement. While only ten zones can be noticed for abatement at any given time,¹⁰ the Municipality is unconstrained in its policing of previously abated areas.¹¹

Lastly, the Court’s order on Plaintiffs’ motion for preliminary injunctive relief was “limited to whether or not the Plaintiffs have sufficiently fulfilled *the tests for preliminary injunction.*”¹² This decision was not a final ruling on the merits. And, since this order, Plaintiffs have maintained that their surviving claims are only for declaratory relief regarding the constitutionality of the Municipality’s “prohibited campsite” regime.¹³

The Municipality has yet to answer Plaintiffs’ Complaint. Instead, over the

⁹ See generally AMC 15.20.020.B.15.

¹⁰ AMC 15.20.020.B.15.b.v.D.

¹¹ For example, the Municipality could post a previously abated zone with notices forbidding trespass or use, which would then enable it to remove people immediately on threat of arrest. See AMC 8.45.010.A.2.b.

¹² Order Den. Mot. for Prelim. Inj. at *5 (Feb. 13, 2025) (emphasis added).

¹³ Pls.’ Opp. to First Mot. to Dismiss at *8 (“Plaintiffs’ claims for declaratory relief are justiciable.”); Pls.’ Opp. to Mot. to Convert at *5 (“Plaintiffs’ surviving claim is for declaratory relief[.]”); Pls. Opp. to Mot. for Recon. or Clar. at *1 (“Plaintiffs’ surviving claims . . . seek declaratory relief holding the Municipality’s ‘prohibited camping’ regime unconstitutional[.]”).

past year, it has filed a motion to dismiss for mootness, a motion to convert to an administrative appeal, and a motion for reconsideration or clarification. The Court denied each of these motions.¹⁴ Most recently, the Court recognized that “discovery is appropriate” for Plaintiffs’ challenges to the prohibited campsite regime.¹⁵ This Court should deny the motion to dismiss and require the Municipality to answer the Complaint.

LEGAL STANDARD

Rule 12(b)(6) motions are “viewed with disfavor and should rarely be granted.”¹⁶ To survive a 12(b)(6) motion, a “complaint need only allege a set of facts consistent with and appropriate to some enforceable cause of action.”¹⁷ The Court “must presume all factual allegations of the complaint to be true and make all reasonable inferences in favor of the non-moving party.”¹⁸

When ruling on a 12(b)(6) motion, the court should only consider the content of the complaint.¹⁹ If the court considers additional factual materials outside the pleadings, it must convert the 12(b)(6) motion into a motion for summary judgment and “allow all parties a reasonable opportunity to submit

¹⁴ Order Den. First Mot. to Dismiss (June 18, 2025); Order Den. Mot. to Convert Nov. 19, 2025); Order Den. Mot. for Recon. or Clar. (Dec. 16, 2025).

¹⁵ Order Den. Def’s Mot. for Recon. or Clar. at *8 (Dec. 16, 2025).

¹⁶ *E.g., Larson v. State, Dep’t of Corr.*, 284 P.3d 1, 6 (Alaska 2012) (quoting *Guerrero v. Alaska Hous. Fin. Corp.*, 6 P.3d 250, 253 (Alaska 2000)).

¹⁷ *E.g., Torrence*, 552 P.3d at 492 (quoting *Clemensen*, 203 P.3d at 1151).

¹⁸ *E.g., Adkins*, 204 P.3d at 1033 (quoting *Belluomini v. Fred Meyer of Alaska, Inc.*, 993 P.2d 1009, 1014 (Alaska 1999)).

¹⁹ *Phillips v. Gieringer*, 108 P.3d 889, 892 (Alaska 2005) (citations omitted).

materials pertinent to such a motion” by Rule 56.²⁰

ARGUMENT

I. The Municipality misstates the standard for a 12(b)(6) motion.

As a threshold matter, the Municipality’s appears to conflate the standard for a 12(b)(6) motion with that of summary judgment. It asserts that “[i]t 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.’”²¹ In doing so, the Municipality has essentially framed its motion as one for summary judgment,²² asking the Court to adopt its interpretation of the facts rather than making all reasonable inferences in favor of the Plaintiffs. Such an approach would be improper on a 12(b)(6) motion to dismiss.²³

Conversion to a motion for summary judgment would also be improper here. The Municipality does not present any additional facts in its motion that would necessitate conversion, and the Court has already recognized the need for discovery on Plaintiffs’ claims.²⁴ Consequently, the Court should maintain this

²⁰ *Larson*, 284 P.3d at 7 (citing ALASKA R. CIV. P. 12(b)).

²¹ Def’s Second Mot. to Dismiss at *8 (Jan. 15, 2026) (quoting *Forrer v. State*, 471 P.3d 569, 585 (Alaska 2020)). This quote is not from the standard of review, but rather dicta from the Court’s discussion of whether to convert a motion to dismiss into a motion for summary judgment. 471 P.3d at 584–85.

²² “A party is entitled to summary judgment only if there is no genuine issue of material fact and if the party is entitled to judgment as a matter of law.” *Societe Fin., LLC v. MJ Corp.*, 542 P.3d 1159, 1165 (Alaska 2024) (quotations omitted).

²³ See cases cited *supra* note 18.

²⁴ Order Den. Mot. for Recon. or Clar. at *8 (Dec. 16, 2025).

motion as a motion to dismiss and apply the well-established 12(b)(6) standard.²⁵

II. Plaintiffs adequately pleaded their Complaint to survive the Municipality’s 12(b)(6) motion.

The facts alleged in the Complaint are consistent with six causes of action under the Alaska Constitution’s due process, cruel and unusual punishment, unreasonable seizure, privacy, health, and welfare provisions. Further fact-finding will facilitate adjudication of these claims and precludes dismissal at this time.

Previous courts—both in Alaska and Outside—have recognized the justiciability of comparable causes of action for unhoused plaintiffs who are subject to prohibited campsite abatements or other “anti-camping” laws by their government.²⁶ Indeed, nearly identical due process, cruel and unusual punishment, and unreasonable seizure claims are under consideration in another superior court case, *Banks v. Anchorage*.²⁷ In both *Banks* and here, the courts have recognized

²⁵ *Larson*, 284 P.3d at 6. The Municipality has not asked the Court to convert this motion to a motion for summary judgment, and the Court should not do so. If, however, the Court determines that conversion is necessary, Plaintiffs request notice and the opportunity to submit all pertinent materials as required by Rule 12(b). *Pedersen v. Blythe*, 292 P.3d 182, 184–85 (Alaska 2012) (citing ALASKA R. CIV. P. 12(b)).

²⁶ See generally *Engle v. Anchorage*, No. 3AN-10-7047 CI, Opinion (Alaska Super. Ct. Jan. 4, 2011) (due process rights of unhoused plaintiffs); *Lavan v. City of Los Angeles*, 693 F.3d 1022 (9th Cir. 2012) (due process and unreasonable seizure rights of unhoused plaintiffs); Memorandum Opinion, *Williams v. City of Albuquerque*, No. D-202-CV-2022-07562 (N.M. Dist. Ct. March 18, 2025) (freedom from cruel and unusual punishment for unhoused plaintiffs); *Kitcheon v. City of Seattle*, 2024 WL 5040630, 33 Wash. App. 2d 1025 (2024), *rev. den.*, 569 P.3d 738 (Wash. 2025) (privacy rights of unhoused plaintiffs).

²⁷ No. 3AN-23-06779 CI (Alaska Super. Ct. filed June 16, 2023) (ongoing).

the need for further fact-finding before reaching the merits of plaintiffs' claims.²⁸

A. Plaintiffs have an enforceable procedural due process claim for inadequate notice and lack of predeprivation hearing.

Plaintiffs' Complaint alleges that the Municipality's prohibited campsites regime deprives them of personal belongings essential to their survival "without adequate notice and without individual predeprivation hearings[.]"²⁹ Plaintiffs further allege that the option of Municipal storage is inadequate because "even a temporary deprivation of [essential] property can be life-threatening."³⁰ These facts support a procedural due process claim under Alaska's due process clause, which provides broader protection than its federal analog.³¹

Unhoused plaintiffs have a protected property interest in their personal belongings.³² Indeed, "[t]he fact that the homeless camps often house all of the worldly belongings of the individuals who live in them makes the preservation of the property that much more critical."³³ Such was the case for the Plaintiffs here,

²⁸ See Order Den. Mot. for Recon. or Clar. at *8 (Dec. 16, 2025); *Banks*, No. 3AN-23-06779 CI, Order to Supp. Record at *6 (dated Dec. 31, 2025) (ordering the Municipality to supplement the record before reaching the merits) [Exh. 1].

²⁹ Compl. at *15. See also *id.* at *12.

³⁰ *Id.* at *12.

³¹ The Municipality's procedural due process argument partially relies on a recent federal case, see Def's Second Mot. to Dismiss at *16–17 (citing *Smith v. Anchorage*, 797 F. Supp. 3d 992, 1010 (D. Alaska 2025)); however, Alaska's due process clause requires greater procedural protections than the federal one. *E.g.*, *Anderson v. Alaska Hous. Fin. Corp.*, 462 P.3d 19, 29–30 (Alaska 2020).

³² See *Engle*, No. 3AN-10-7047 CI, Opinion at *19.

³³ *Id.* (citing *Pottinger v. Miami*, 810 F. Supp. 1551, 1573 (S.D. Fla. 1992) ("[T]he City's interest in having clean parks is outweighed by the more immediate interest of the plaintiffs in not having their personal belongings destroyed.")).

who feared that the abatement would result in the loss of their tent, tarps, and winter clothing because these items would either be placed in Municipal storage or summarily destroyed.³⁴ The realities of these property deprivations will be born out in discovery.

The Alaska Constitution requires the government to provide a hearing before depriving someone of a protected property interest.³⁵ The Municipality's prohibited campsite law does not provide such a hearing. While unhoused litigants could move for an emergency hearing, as Plaintiffs did here, this is not always a viable alternative. As this Court noted in its order denying the first motion to dismiss, the short notice window for zone abatements requires courts "to work in an expeditious manner" to hold a hearing within a matter of days.³⁶ This is "not the normal turn around for a case[.]"³⁷ Plaintiffs' Complaint and the history of this case thus set forth adequate facts to support a procedural due process claim based on the lack of a statutorily mandated hearing prior to abatement.

Plaintiffs have also pleaded that the Municipality's prohibited campsite law fails to provide adequate notice before depriving Plaintiffs of their essential property. In *Engle v. Anchorage*, the superior court held that five days was an

³⁴ Compl. at *12.

³⁵ *Anderson* 462 P.3d at 29 ("Under the Alaska Constitution, 'before the state may deprive a person of a protected property interest there must be a hearing.'") (quoting *Brandner v. Prov. Health & Servs.—Wash.*, 394 P.3d 581, 589 (Alaska 2017)).

³⁶ Order Den. First Mot. to Dismiss at *8 (June 18, 2025).

³⁷ *Id.* at *8.

inadequate notice period, in part, because it was not enough time for unhoused individuals to “gather their belongings and find another place to live[.]”³⁸ The same is true here. The Municipality asserts that its prohibited campsite regime “gave Plaintiffs adequate notice and opportunity to protect their property interests by removing any personal belongings prior to the abatement.”³⁹ However, the Municipality fails to say where Plaintiffs should remove their property to. Under the current legal regime, there is no place in Anchorage where it would be lawful for indigent, unhoused people like Plaintiffs to take themselves and their personal belongings when shelters and warming centers are full.

The Municipality has not articulated a strong government interest in its current notice period. In its motion, the Municipality asserts its interests in *conducting* prohibited campsite abatements writ large; however, it has articulated no concrete governmental interest in having a short, ten-day notice period. Indeed, as in *Engle*, “there is no evidence that increasing the notice period would impose a significant administrative burden on the Municipality[.]”⁴⁰ Robust fact-finding will aid the Court in balancing Plaintiffs’ protected property interest in their essential belongings with any purported administrative burden on the Municipality. For the purposes of this motion, however, Plaintiffs have alleged sufficient facts to support a procedural due process claim for inadequate notice.

³⁸ *Engle*, No. 3AN-10-7047 CI, Opinion at *20.

³⁹ Def’s Second Mot. to Dismiss at *14 (Jan. 15, 2026).

⁴⁰ *Engle*, No. 3AN-10-7047 CI at *20.

B. Plaintiffs have an enforceable substantive due process claim because the prohibited campsite law is unconstitutionally vague.

Plaintiffs' Complaint asserts that the Municipal Code fails to tell them where they *could* go without violating its prohibited campsite law, which broadly prohibits "sleeping or establishing a temporary place to live" on any public land.⁴¹ Plaintiffs contend that it is impossible to conform their conduct to such a law without leaving the Municipality entirely.⁴² These alleged facts support Plaintiffs' claim that the prohibited campsite law is void for vagueness.

The Municipality incorrectly applies the civil standard to Plaintiffs' claim. When deciding whether to apply the criminal standard for vagueness, Alaska courts consider whether the law will "give rise to prosecutorial action in a criminal context . . . [or] a civil enforcement action where a litigant may be at risk of losing an important right[.]"⁴³ If either is true, the criminal standard applies. Under the criminal standard, a statute is impermissibly vague if "it fails to give adequate notice to the ordinary citizen of what is prohibited" and "its indefinite contours . . . raise the possibility of uneven and discriminatory treatment."⁴⁴

The criminal standard should be applied here. Enforcement of the Municipality's prohibited campsite law can give rise to criminal prosecutions,

⁴¹ Compl. at *1 (citing AMC 15.20.010; AMC 15.20.020.B.15).

⁴² *Id.* at *1, *8–10.

⁴³ *Cf. Williams v. State, Dep't of Revenue*, 895 P.2d 99, 105 (Alaska 1995).

⁴⁴ *Marks v. Anchorage*, 500 P.2d 644, 646 (Alaska 1972).

including for criminal trespass and failure to comply with an order to disperse.⁴⁵

Additionally, the prohibited campsite law can result in civil enforcement actions that implicate important rights, including individuals' protected property interests in their possessions and fundamental right to privacy. These are precisely the types of rights that necessitate the criminal-law standard.⁴⁶

Under this heightened standard, Plaintiffs have a viable vagueness claim. Plaintiffs' Complaint alleges that they lack adequate notice about how to conform their conduct to the law so as to avoid criminal enforcement.⁴⁷ Plaintiffs are unaware of any location in which they can sleep or otherwise exist within Anchorage where they would not be at risk of abatement for "prohibited camping." The Municipality contends that the Code gives Plaintiffs notice about what to do "if a prohibited encampment is noticed for abatement";⁴⁸ however, the Code fails to give adequate guidance on where Plaintiffs can exist in Anchorage where they will not be subject to abatement in the first place. Moreover, the decision to abate is "at the discretion of the responsible municipal officials."⁴⁹ This discretionary use of police power raises concerns of uneven or discriminatory

⁴⁵ A "prohibited campsite" is partially defined using the crime of trespass, AMC 15.20.020.B.15, and abatements are accompanied by an order to disperse. AMC 15.20.02.B.15.g.i. Failure to comply is a criminal offense. AMC 8.30.010.A.6.

⁴⁶ *See Williams*, 895 P.2d at 105 n.14 (collecting cases).

⁴⁷ Compl. at *10.

⁴⁸ Def's Second Mot. to Dismiss at *18 (Jan. 15, 2026).

⁴⁹ Def's Second Mot. to Dismiss at *17 (Jan. 15, 2026), As discussed previously, the Municipal Code places few constraints on the Municipality's exercise of its prohibited campsite abatement power *See supra* text accompanying n.9.

enforcement. As such, Plaintiffs have alleged adequate facts to support an enforceable cause of action for vagueness.

C. Plaintiffs have an enforceable cruel and unusual punishment claim because the prohibited campsite regime constitutes de facto banishment.

Plaintiffs' Complaint asserts that the Municipality's prohibited campsite law essentially banishes people experiencing homelessness from Anchorage by relentlessly abating their living spaces without ever telling them where they can legally exist.⁵⁰ These are sufficient facts to allege a cruel and unusual punishment claim under the Alaska Constitution.

Contrary to the Municipality's assertions, Alaska's cruel and unusual punishment clause is broader than its federal analog.⁵¹ In Alaska, criminal offenses "include offenses which, even if incarceration is not a possible punishment, *still connote criminal conduct*["]."⁵² Because the definition of a "prohibited campsite" relies explicitly on Anchorage's Penal Code, the offense of inhabiting a "prohibited campsite" connotes criminal conduct.⁵³ While the Alaska Supreme Court has yet to address the question of whether banishment is a form of cruel and

⁵⁰ Compl. at *3, *8–10, *17.

⁵¹ See *Fletcher v. State*, 532 P.3d 286, 308 (Alaska App. 2023) (addressing whether Alaska's Cruel and Unusual Punishment provision "requires greater procedural protections" than its federal analog and concluding that it does).

⁵² *Baker v. Fairbanks*, 471 P.2d 386, 402 (Alaska 1970) (concerning the right to a jury trial); see also *Resek v. State*, 706 P.2d 288, 291 (Alaska 1985) (extending the *Baker* definition to other provisions of Article I of the Alaska Constitution).

⁵³ See AMC 15.20.020.B.15 (citing AMC 8.45 [Criminal Trespass]).

unusual punishment, the Alaska Court of Appeals has roundly rejected it as “unnecessarily severe and restrictive.”⁵⁴ While a single abatement notice may be comparable to the area restriction contemplated in *Oyoghuk v. Anchorage*,⁵⁵ the underlying prohibited campsite law operates to ban people experiencing homelessness from self-sheltering on all public lands in Anchorage.

The Municipality claims that it notices “far fewer” than ten zones for abatement at any given time.⁵⁶ Such details regarding how the Municipality enforces its prohibited campsite law—including how many locations it notices at a time and how it polices the locations it has already abated—are not in the record for this motion. The Court should permit Plaintiffs’ claim to proceed to discovery before making a factual determination about whether enforcement of the prohibited campsite law does or does not constitute a banishment regime.

D. Plaintiffs have an enforceable unreasonable seizure claim because the prohibited campsite law authorizes the confiscation of their personal property without a warrant.

Plaintiffs’ Complaint asserts that the Municipality’s “prohibited campsite” law facilitates the confiscation of their unabandoned personal property without a warrant, because any property they cannot personally transport is either disposed

⁵⁴ *Edison v. State*, 709 P.2d 510, 512 (Alaska App. 1985) (overturning a probation condition that banned the probationer from an entire town).

⁵⁵ *See* Def’s Second Mot. to Dismiss at *21 (citing *Oyoghuk v. Anchorage*, 641 P.2d 1267 (Alaska Ct. App. 1982) (upholding a two-block radius area restriction)).

⁵⁶ Def’s Second Mot. to Dismiss at *20.

of or placed in Municipal storage.⁵⁷ These are sufficient facts for stating an unreasonable seizure claim under the Alaska Constitution, which is more protective than its federal analog, particularly when privacy rights are at stake.⁵⁸

Plaintiffs maintain in their Complaint that their personal property is unabandoned.⁵⁹ Under the Alaska Constitution, “[a]bandonment occurs *only* when the property owner has *discarded* the property—that is, done something to objectively manifest the intent to give up any and all expectation of privacy in the property, now and in the future.”⁶⁰ The Municipality implies that failing to remove one’s belongings by a noticed abatement date meets this intent requirement. But such an inference of intent is not objectively reasonable in this context. When a person is living outside and has nowhere to transport or store their belongings, the mere act of leaving property outside cannot reasonably be taken as an intent to abandon their items—they have no other options.

Because Alaska’s Constitution “provide[s] greater protection to the citizens of this State than they would otherwise have under the Fourth Amendment,”⁶¹ this

⁵⁷ Compl. at *11–12, *17.

⁵⁸ *Brown v. State*, 182 P.3d 624, 633 (Alaska Ct. App. 2008).

⁵⁹ Compl. at *17.

⁶⁰ *Young v. State*, 72 P.3d 1250, 1253 (Alaska Ct. App. 2003) (emphasis changed).

⁶¹ *Brown*, 182 P.3d at 633. For example, Alaska courts will interpret Alaska’s Constitution more broadly in instances where the federal caselaw “fails to adequately safeguard our citizens’ right to privacy” or “unjustifiably reduces the incentive of police officers to honor citizens’ constitutional rights.” *Id.* (quoting *Joseph v. State*, 145 P.3d 595, 605 (Alaska App. 2006)).

Court should not adopt federal courts’ unreasonable seizure analysis.⁶² Rather it should permit this case to proceed to discovery before reaching the merits of Plaintiffs’ unreasonable seizure claims under our state constitution.

E. Plaintiffs have an enforceable privacy cause of action because the prohibited campsite law fails to provide adequate protections against the destruction of essential personal documents.

The Complaint alleges that Plaintiffs lost essential personal documents in prior abatements and feared similar types of property loss in the Arctic-Fireweed abatement.⁶³ Plaintiffs consequently have a viable cause of action 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.”⁶⁴

Other state courts have recognized similar causes of action for unhoused plaintiffs. Most recently, the Washington Court of Appeals held that Seattle’s encampment sweep policy violated Washington Constitution’s privacy provision because encampments “encompass intimate personal information” of unhoused individuals, which is at risk of removal or destruction during a sweep.⁶⁵ The Municipality’s abatement policy carries similar risks. While it offers storage to the limited group of people who notify the Municipality of their intent to appeal *prior*

⁶² Def’s Second Mot. to Dismiss at *11 & 11 n.43 (collecting federal cases).

⁶³ Compl. at *12–13.

⁶⁴ Compl. at *18.

⁶⁵ *Kitcheon v. Seattle*, 2024 WL 5040630 at *13 (Wash. Ct. App. 2024), *rev. den.*, 569 P.3d 738 (Wash. 2025).

to abatement, all others are at risk of having their personal papers confiscated or destroyed during the abatement.⁶⁶ Such a system practically guarantees an invasion of privacy and loss of vital documents for the vast majority of people subject to abatement. Plaintiffs maintain that the Municipality’s current abatement procedures are inadequate to protect the significant privacy interests at stake.

The Municipality’s ripeness arguments on this issue are unpersuasive.⁶⁷ Plaintiffs’ Complaint was filed prior to the Arctic-Fireweed abatement. Plaintiffs could not allege facts about an event that had not occurred. After discovery, the Court will have opportunity to examine the factual record of this abatement to determine whether it resulted in the loss of any vital documents and whether the procedures for protecting such documents are inadequate.

F. Plaintiffs have an enforceable health and welfare claim because the Municipality’s prohibited campsite enforcement directly increases their risk of harm, including cold-exposure injury.

Plaintiffs’ Complaint alleges that enforcement of the prohibited campsite law when there is no available shelter or identified place for people to go “directly endanger[s] their health and welfare.”⁶⁸ Abatement results in the destruction and removal of essential property Plaintiffs need to survive including tents, tarps, and winter clothing. Without this property, Plaintiffs are at increased risk of prolonged exposure to the elements and, by extension, cold-related injuries like pneumonia,

⁶⁶ AMC 15.20.020.B.15.e (guaranteeing storage only for those who file an appeal).

⁶⁷ Def’s Second Mot. to Dismiss at *22.

⁶⁸ Compl. at *19–20; *see also id.* at *13–15.

hypothermia, and frostbite.⁶⁹ These are adequate facts for asserting a cause of action under Alaska’s health and welfare provisions.

It would be premature to dismiss these claims before discovery. Article VII’s health and welfare provisions present a question of first impression to the Court. Consequently, the Court should have the benefit of considering them in the context of a concrete factual scenario before reaching the merits.⁷⁰ For example, analysis of these claims would benefit from further details regarding the injuries Plaintiffs sustained as a result of Municipal abatements, as well as evidence from the Municipality regarding its asserted interests in such abatement actions.

The limited caselaw interpreting Article VII further indicates that Plaintiffs have an enforceable cause of action. “The Alaska Constitution, unlike the United States Constitution, provides *affirmative rights* to its citizens in the areas of health, education, and welfare.”⁷¹ These rights are housed in Article VII⁷² and possess a unique “dual aspect.”⁷³ Article VII provisions impose a duty upon the government and confer an individual right upon Alaskans.⁷⁴

⁶⁹ Compl. at *12, *14–15.

⁷⁰ *Cf. Sands ex rel. Sands v. Green*, 156 P.3d 1130, 1133–34 (Alaska 2007) (noting that the case involved “a question of first impression,” which was revealed and resolved in the context of a “concrete factual scenario”).

⁷¹ *Recall Dunleavy v. State, Div. of Elections*, 3AN-19-10903 CI at *15 (Alaska Super. Ct. Jan. 14, 2020) (emphasis added).

⁷² ALASKA CONST. Art. VII, §§1, 4–5.

⁷³ *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 799 (Alaska 1975) (discussing *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971); *Breese v. Smith*, 501 P.2d 159, 167 (Alaska 1972)).

⁷⁴ *Hootch*, 536 P.2d at 799.

While Article VII caselaw regarding the scope of the government’s duty has largely concerned the state,⁷⁵ the caselaw regarding individual rights has also involved local entities. Indeed, the first case to recognize that the Education Clause “guarantees all children of Alaska a right to public education” was filed against a local school district for a school-specific policy.⁷⁶ Just as a local school cannot pass a policy which impedes a child’s ability to access education in the absence of a compelling government interest, the Alaska Constitution must, at minimum, prohibit municipalities from taking actions that directly harm the health and welfare of their residents without a compelling reason.

The Municipality falsely asserts that Plaintiffs claim an affirmative “right to live indefinitely on municipal land[.]”⁷⁷ This is not the case.⁷⁸ Plaintiffs claim the prohibited campsite regime violates their fundamental rights to health and welfare, which are provided for by Article VII of the Alaska Constitution. Plaintiffs allege that these rights are infringed when the government confiscates the property that Plaintiffs need to shelter themselves from the elements without giving them an alternate place to go.⁷⁹ Policies that impair constitutionally enumerated rights

⁷⁵ *E.g.*, *Hootch*, 536 P.2d at 799.

⁷⁶ *Breese*, 501 P.2d at 167.

⁷⁷ Def’s Second Mot. to Dismiss at *26–30.

⁷⁸ Order Den. Mot. for Recon. or Clar. at *6 (“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.”).

⁷⁹ Compl. at *19–20.

must be subject to strict scrutiny.⁸⁰ Consequently, the Municipality must demonstrate that it has a compelling governmental interest in conducting prohibited campsite abatements irrespective of whether there is shelter. Such a demonstration cannot be made prior to discovery.⁸¹

III. The Court has recognized the availability of meaningful relief.

The Municipality attempts to analogize the relief sought in this case to recent natural resource litigation;⁸² however, Plaintiffs’ requested relief is far more concrete. In *Forrer v. State*, the Alaska Supreme Court upheld the state’s motion to dismiss claims for declaratory relief brought under Article VII on the reasoning that it “would not clarify and settle legal relations between the parties.”⁸³ The Court found that declaratory relief would neither protect Forrer from future injury nor clarify the constitutional obligations of the government.⁸⁴

Here, by contrast, “there is an available remedy.”⁸⁵ A declaratory judgment from this Court holding the Municipality’s prohibited campsite regime unconstitutional, either facially or as applied, would clarify legal relations between

⁸⁰ *Doe v. Dep’t of Pub. Safety*, 444 P.3d 116, 126 (Alaska 2019) (“[A]n explicitly enumerated right . . . should generally be considered fundamental[.]”); *id.* (applying strict scrutiny to laws that burden fundamental rights).

⁸¹ *Breese*, 501 P.2d at 172 (requiring “hard facts” as opposed to “lay opinion testimony, unsupported by figures or statistics” to establish a compelling government interest).

⁸² Def’s Second Mot. to Dismiss at *24–25 (citing *Sagoonick v. State*, 503 P.3d 777, 798 (Alaska 2022)).

⁸³ 579 P.3d at 70–73 (discussing *Sagoonick*, 503 P.2d 777).

⁸⁴ 579 P.3d at 72.

⁸⁵ Order at Den. First Mot. to Dismiss at *7.

the parties. It would compel the Municipality to cease a particular action; it would protect Plaintiffs, and others similarly situated, from experiencing comparable rights violations in the future; and it would instruct the Municipality on the constitutional bounds of its abatement regime.

CONCLUSION

Under the well-established 12(b)(6) standard, the Municipality's motion to dismiss should be denied. The Municipality's enforcement of its prohibited campsite ordinance results in the loss of essential property that protects Plaintiffs from the harsh elements of an Alaskan winter and leaves them exposed with no safe place to go. In doing so, it violates their fundamental rights under Alaska's Constitution, which is frequently more protective than its federal counterpart.

This Court can grant meaningful relief to the Plaintiffs in the form of a declaratory judgment on the constitutionality of the Municipality's prohibited campsite regime. Such a judgment would vindicate the Plaintiffs' fundamental rights as Alaskans and provide meaningful direction to the Municipality about how to bring its laws into compliance with our Constitution. For these reasons, the Court should deny the Municipality's motion, order the Municipality to file its Answer to Plaintiffs' Complaint, and calendar a scheduling conference.

Dated: January 29, 2026

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CERTIFICATE OF SERVICE

On January 29, 2026 a true and correct copy of the foregoing Opposition to the Defendant's Second Motion to Dismiss was served on:

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