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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

REPLY IN SUPPORT OF MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Taking the allegations of Plaintiffs' Complaint as true, Plaintiffs have not alleged any viable claims for relief. In brief, Plaintiffs' due process claim fails because abatements do not deprive them of a protected property interest and, even if they did, Code provides notice and an opportunity to be heard. Plaintiffs' unreasonable seizure and privacy claims both fail because, given the ample notice specifically warning property in an abatement zone will be removed and the opportunity to store, an individual who leaves personal property in a zone noticed for abatement abandons it, relinquishing their rights therein.

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Plaintiffs’ novel cruel and unusual punishment and public health and welfare claims also fail because no precedent allows such claims and text and case law strongly counsel against the expansion or creation of rights against the Municipality in this context.

Plaintiffs repeatedly emphasize that this Court should deny the Municipality’s motion and allow discovery, the subjects of which Plaintiffs often leave unspecified, to proceed.¹ But, as discussed in the Municipality’s motion and below, Plaintiffs allegations are not sufficient to state any claim.² No discovery is necessary for this Court to decide pure issues for law; for example, that the text of the Alaska Constitution does not permit a public health and welfare claim against the Municipality, a cruel and unusual punishment claim where there is no criminal punishment, or a due process claim where Code provides adequate notice and an opportunity to be heard. The purpose of a Rule 12(b)(6) motion is to test whether the allegations in the Complaint are legally sufficient to support its claims.³ When tested, Plaintiffs’ allegations fail.

I. Plaintiffs Fail to State a Procedural Due Process Claim.

Plaintiffs assert that “the Municipality’s prohibited campsites regime deprives them of their personal belongings,” in which they have a protected property interest.⁴ But, as the Municipality explained, abatement under Municipal Code do not deprive Plaintiffs of

¹ *E.g.*, Opp. at 2, 6, 7, 9, 13, 15, 17, 19.

² Plaintiffs assert that the Superior Court “recognized the need for further fact-finding” in an administrative appeal of 2023 abatement. Opp. at 6; Ex. 1. In fact, the Superior Court previously rejected the appellants’ request for trial *de novo* in that appeal, concluding it only presented legal issues. Ex. 1 at 4.

³ *Alleva v. Municipality of Anchorage*, 467 P.3d 1083, 1087 (Alaska 2020).

⁴ Opp. at 7.

their interest in their personal property.⁵ Rather, abatements require Plaintiffs to vacate particular parcels of municipal land, to which Plaintiffs do not claim any right. Under Code, Plaintiffs’ personal property is not removed or discarded until there has been 10 days of notice that property left in the abatement zone will be removed, verbal notice of the impending abatement, and an opportunity to store property by notifying the Municipality of their intent to appeal or challenge the abatement (as the Plaintiffs did here).⁶ Due process protections are only triggered when there is a deprivation of an individual interest, so Plaintiffs’ due process claim fails at the threshold.⁷

Even if abatements deprived individuals of protected interests, Code provides adequate process. Plaintiffs insist that the Alaska Constitution’s due process clause requires an individual pre-deprivation hearing.⁸ But “due process does not require any specific type of hearing” as “[t]he necessary opportunity to be heard depends on the nature of the case.”⁹ In *Patrick*, for example, the Alaska Supreme Court found that a transportation inspector’s “informal contact” during an investigation with a taxi licensee provided the licensee with a meaningful opportunity to be heard that satisfied the Alaska Constitution’s due process clause.¹⁰ Here, protections are much stronger. Code provides an appeal process that can be initiated as soon as the Municipality posts notice at least 10 days

⁵ Mot. at 13–15.

⁶ Mot. at 3–6.

⁷ *Anderson v. Alaska Hous. Fin. Corp.*, 462 P.3d 19, 25 (Alaska 2020).

⁸ Opp. at 7.

⁹ *Patrick v. Municipality of Anchorage, Anchorage Transp. Comm’n*, 305 P.3d 292, 299 (Alaska 2013).

¹⁰ *Id.* at 299–300.

in advance of an abatement.¹¹ If an individual initiates that appeal process prior to an abatement, Code ensures their right to property storage for the duration of any appeal, ensuring that their interest in personal property is not impaired unless *after* a hearing occurs.¹² This appeal and storage process is more than sufficient to satisfy the Alaska Constitution’s due process clause. As the Municipality’s motion detailed, *Mathews v. Eldridge* balancing indicates the amount of process owed in this context is at its nadir because there is vanishingly little risk of erroneous deprivation and a strong government interest in returning public property to public use.¹³ Moreover, because Plaintiffs admit that they were camping on a municipal right-of-way, it is hard to imagine what a pre-deprivation hearing would accomplish. Nonetheless, the Municipality provides property storage, which ensures there is no conceivable deprivation of personal property until after an appeal and alleviates Plaintiffs’ concern that they lack a location where they can keep property when abatements require them to remove it from municipal land. Ultimately, Plaintiffs appear to seek a ruling allowing them to keep their personal property on a particular parcel of municipal land until they are given a hearing. But, because they have no right to municipal land, that is not what due process requires.

Plaintiffs also assert that the ten days is an inadequate notice period.¹⁴ When considering whether notice is adequate for due process, Alaska courts apply the same

¹¹ AMC 15.20.020B.15.e (appeal permitted within 30 days of the date of the notice of campsite abatement is posted).

¹² AMC 15.20.020B.15.f.ii.

¹³ Mot. at 15–16.

¹⁴ Opp. at 9.

Mathews balancing that the Municipality discussed in its motion.¹⁵ Applying the same test to the exact provisions at issue here, the U.S. District Court for the District of Alaska found that “the Municipality’s abatement procedures provide the due process that the Constitution requires: namely, adequate notice (here, 10 days before the abatement commences) and an opportunity to protect one’s personal property from destruction by relocating it or by seeking judicial review.”¹⁶ As the Municipality explained (and the federal court reaffirmed), there is a strong government interest in restoring public property to the uses for which that property has been dedicated.¹⁷ And although Plaintiffs have an interest in their personal property, ten days of notice is sufficient to minimize the risk of erroneous deprivation. Recognizing this, courts routinely uphold as constitutional abatement provisions with similar amounts of prior notice.¹⁸

II. The Municipality’s Abatement Provisions Are Not Unconstitutionally Vague.

The Municipality’s abatement provisions are not constitutionally vague regardless of whether they are analyzed as civil or criminal provisions. Plaintiffs assert that “the prohibited campsite law can result in civil enforcement actions that implicate important rights” and that the criminal vagueness standard therefore applies.¹⁹ But, rights related to

¹⁵ *Heitz v. State, Dep’t of Health & Soc. Servs.*, 215 P.3d 302, 307 (Alaska 2009).

¹⁶ *Smith v. Municipality of Anchorage*, 797 F. Supp. 3d 992, 1012 (D. Alaska 2025).

¹⁷ Mot. at 15–16; *Smith*, 797 F. Supp. 3d at 1012–13.

¹⁸ See *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 v. District of Columbia*, 310 F. Supp. 3d 107, 110–11 (D.D.C 2018) (14-day notice and 60-day storage of unabandoned property).

¹⁹ Opp. at 11.

personal belongings and personal papers are not implicated in an abatement unless an individual does not remove property from an abatement zone after ten days, verbal notice, and the opportunity to appeal.²⁰ If an individual leaves property on municipal land after these warnings, the individual has abandoned that property and relinquished any rights therein.²¹ The more lenient standard for analyzing vagueness of civil laws, which the abatement provisions of Code easily meet, thus applies here.²²

Even assuming the standard for criminal statutes applies here, the abatement provisions are not unconstitutionally vague. To determine whether a criminal statute is vague, Alaska courts “consider whether there is a history or a strong likelihood of arbitrary enforcement and uneven application,” and next “determine whether the [statute] provides adequate notice of prohibited conduct.”²³ Neither consideration suggests Code is vague here. Beginning with the second consideration, the language of the law is clear and definite and thus provides adequate notice of the conduct it prohibits, as the Municipality explained.²⁴ Plaintiffs do not argue to the contrary.²⁵ Indeed, in their Complaint, they demonstrate they know exactly what they must do when an abatement is noticed.²⁶ Instead, they fault Code for not providing affirmative guidance on where individuals may camp.

²⁰ Mot. at 9–10.

²¹ Mot. at 10.

²² As the Municipality will address below, the abatement provisions of Code are not comparable to criminal statute and do not create any offense.

²³ *Dep’t of Revenue v. Nabors Int’l Fin., Inc.*, 514 P.3d 893, 899 (Alaska 2022) (alterations in original).

²⁴ Mot. at 17–18.

²⁵ *See Opp.* at 11–12.

²⁶ *Compl.* at ¶ 5.

But Code need not specify a parcel of municipal land permanently open to camping to pass constitutional muster; it only must provide adequate notice of that which it prohibits.

With respect to the first consideration, the specific and definite language of Municipality’s abatement provisions guards against arbitrary enforcement.²⁷ Moreover, this is the rare case in which the ordinance specifies enforcement priorities, further preventing the possibility of arbitrary enforcement.²⁸ The Municipal Code is not vague as it gives individuals fair notice of prohibited conduct and its clear requirements and enforcement priorities forestall any concern of arbitrary enforcement.

III. Plaintiffs’ Cruel and Unusual Punishment Claim Fails Because Plaintiffs Are Not Criminally Punished or “Banished.”

Plaintiffs fail to state a claim under the Alaska Constitution’s cruel and unusual punishment clause because that clause applies only where there is criminal punishment and because Code does not give the Municipality the power to “banish” anyone from Anchorage. Plaintiffs assert that being subject to an abatement should be considered a “criminal offense” to which the cruel and unusual punishment clause applies because the abatement code references Anchorage’s penal code for the definition of a “prohibited

²⁷ Mot. at 17–18; compare *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) (striking down a criminal ordinance where the generality of the ordinance’s language placed “unfettered discretion” in the hands of the police); *Marks v. City of Anchorage*, 500 P.2d 644, 649 (Alaska 1992) (concluding an ordinance “peppered with indefinite words,” that “depending on the arresting officer’s temperament” could be subject to uneven enforcement was vague).

²⁸ AMC 15.20.020B.15.b.

campsite.”²⁹ That a civil ordinance cross-references a criminal law to define a term does not indicate that an individual subject to an abatement has engaged in criminal conduct.

Moreover, whether being subject to an abatement is a “criminal offense” under Alaska law is not the point. Although Alaska’s cruel and unusual punishment clause is broader than its federal analog, case law is clear that, like its federal analog, the cruel and unusual punishment clause of the Alaska Constitution only applies where criminal *punishment* is at issue. In rejecting a cruel and unusual punishment clause argument in a child support dispute, the Alaska Supreme Court explained that any “claim of cruel and unusual punishment lacks merit, because child support is not bail, a fine, or punishment, and Article I, section 12 of the Alaska Constitution only applies to criminal matters.”³⁰ Likewise, in *Grants Pass*, the U.S. Supreme Court explained 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.”³¹ Here, because abatement does not carry any fine or criminal punishment, the cruel and unusual punishments clause does not apply.

Even if the cruel and unusual punishment clause applied here, the Court should not expand the concept of “banishment,” which Plaintiffs’ Complaint invokes, to this context. Banishment is not a possible result of the Municipality’s abatement code. Code precludes

²⁹ Opp. at 12.

³⁰ *Paxton v. Gavlak*, 100 P.3d 7, 13 (Alaska 2004).

³¹ *City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520, 541–42 (2024) (internal quotation marks, citation, and alterations omitted).

the abatement of more than 10 “contiguous, reasonably compact” zones at once.³² And, as this Court has recognized, as result of this limitation, it is impossible that the Municipality could “banish” anyone from Anchorage by exercising its zone abatement power.³³

Moreover, zone abatements are not comparable to the kind of broad area restrictions that the Alaska Court of Appeals has found are not reasonably related to rehabilitation in the post-conviction context.³⁴

IV. Plaintiffs Fail to State an Unreasonable Seizure Claim.

Plaintiffs failed to state a claim for unreasonable seizure because the facts they allege are not consistent with such a claim.³⁵ Plaintiffs argue that they allege sufficient facts because their “Complaint asserts that the Municipality’s ‘prohibited campsite’ law facilitates the confiscation of their unabandoned property.”³⁶ But asserting the conclusion that property is unabandoned in a Complaint does not make it so. The removal of Plaintiffs’ property in an abatement zone after significant notice is not a seizure under the Alaska Constitution because leaving property unattended in a zone where posted notice explains that property will be removed and storage is available manifests a legal intent to abandon it.³⁷ Plaintiffs insist that “the mere act of leaving property outside [in a noticed abatement zone] cannot be reasonably taken as an intent to abandon their items—they have

³² AMC 15.20.020B.15.b.v.(D).

³³ Order Denying Plaintiffs’ Motion for Preliminary Injunction, at 7 (“[T]he 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.”).

³⁴ Mot. at 20–21.

³⁵ *Kollodge v. State*, 757 P.2d 1024, 1026 (Alaska 1988).

³⁶ Opp. at 13.

³⁷ Mot. at 9–10.

no other options.”³⁸ At the very least, Code provides one other option—storage—in the exact circumstances here, where an individual challenges the abatement.³⁹

Even assuming there was a seizure here, “the 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.”⁴⁰ Plaintiffs assert that because the Alaska Constitution’s protection against unreasonable seizures is broader than the federal Constitution’s, this Court should not adopt Chief Judge Gleason’s reasonableness analysis.⁴¹ But they do not address the Municipality’s argument that the broader scope of the Alaska constitutional protection does not undermine the federal court’s application of the same balancing test that applies under the Alaska Constitution.⁴² That Alaska courts have indicated in other contexts that the Alaska Constitution’s protection against unreasonable seizure is broader in scope than the U.S. Constitution’s does not indicate that the federal court’s reasonableness analysis is not apt here.

V. Abatements Do Not Result in the Invasion of the Privacy of One’s Sensitive Personal Information.

Plaintiffs’ right-to-privacy claim rests on the assertion that the Municipality “summarily confiscate[s]” sensitive personal information when it abates prohibited campsites.⁴³ However, by law, the Municipality does not “summarily confiscate” anything;

³⁸ Opp. at 14.
³⁹ AMC 15.20.020B.15.e.
⁴⁰ *Smith v. Municipality of Anchorage*, 797 F. Supp. 3d 992, 1010 (D. Alaska 2025).
⁴¹ Opp. at 14–15.
⁴² Mot. at 11–12.
⁴³ Compl. at ¶ 53.

it provides individuals 10 days of advanced notice that they must remove all property from a zone noticed for abatement and an opportunity to store property, including personal papers, for the duration of any appeal. If, after all, an individual leaves personal papers on municipal land, they manifest the intent to abandon it and relinquish their rights in it. Code therefore does not result in the violation of any privacy right.

Plaintiffs point to a Washington case related to Seattle’s laws as an example of a court permitting the type of claim they assert here.⁴⁴ But, in that case, plaintiffs challenged the removal of their camps as “obstructions/hazards,” where no notice at all was required prior to an encampment’s removal.⁴⁵ Such no-notice removals simply cannot be compared to the Municipality’s abatements. Where the Municipality’s notice and storage provisions protect against the disclosure of private information by allowing individuals to safeguard their property by removing or storing it, Seattle’s laws permitted city officials to remove encampments immediately, precluding the protection of property.⁴⁶ Thus, unlike Seattle’s removals, abatements do not result in an invasion of privacy. Even if they did, there are strong government interests in abatement as discussed and Code is sufficiently tailored to avoid the invasion of privacy given its notice and storage requirements.

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⁴⁴ Opp. at 15.

⁴⁵ *Kitcheon v. Seattle*, Case No. 85583-2-I, 2024 WL 5040630, at *3–4 (Wash. Ct. App. Dec. 9, 2024).

⁴⁶ *Id.*

VI. Plaintiffs’ Novel Health and Welfare Claims Are Not Enforceable Against the Municipality.

Like other “the legislature shall” provisions of the Alaska Constitution, the health and welfare provisions are not justiciable and not enforceable against the Municipality.⁴⁷ Further, there is no basis to infer any non-enumerated fundamental right, which Plaintiffs do not dispute and therefore concede.⁴⁸

In their Opposition, Plaintiffs assert that because “Article VII’s health and welfare provisions present a question of first impression to the Court,” the Court “should have the benefit of considering them in the context of a concrete factual scenario before reaching the merits.”⁴⁹ But, when faced with a pure question of law as the Court is here, it cannot defer ruling. The “concrete scenario” is set by the facts Plaintiffs allege, which the Court takes as true. Additionally, Plaintiffs’ exhortation that the Court wait for more facts ignores the Municipality’s argument, which focused exclusively on the text of Article VII, sections 4 and 5 and the fact that the Municipality, not the State, is the defendant here. As the Municipality argued, assuming for the sake of argument that Article VII’s public health and welfare provision provided affirmative and enforceable rights, those rights would run against the State, not the Municipality.

Plaintiffs do not address the plain language of sections 4 and 5. Rather, they focus on case law “interpreting Article VII” and assert that the rights within that Article contain

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⁴⁷ Mot. at 23–26.
⁴⁸ Mot. at 26–29; Opp. at 16–19.
⁴⁹ Opp. at 17.

“a unique dual aspect.”⁵⁰ But the case law interpreting Article VII, *section 1* (the education provision) Plaintiffs cite does not apply to all of Article VII. Although the Alaska Supreme Court has been clear that “Article VII, s. 1 was a constitutional mandate for pervasive state authority in the field of education” and “guarantees all children of Alaska a right to public education,”⁵¹ the Alaska Supreme Court has never found that same “dual aspect” which respect to sections 4 and 5 of Article VII, which are at issue here. Indeed, as the Municipality explained in its Motion to Dismiss, except for the education clause, courts have uniformly held that “the legislature shall” provisions of the Alaska Constitution do not create enforceable rights.⁵² Further, the Alaska Supreme Court has explained that contingent historical factors—that is, the prior existence of a public education system in Alaska that segregated Alaska Natives from other Alaskans and legislative history showing an intent to create a unified system—caused it to find a dual aspect in the Alaska Constitution’s education provision.⁵³ No similar history with respect to the public health and welfare provisions exists here.

CONCLUSION

For these reasons, the Court should dismiss Plaintiffs’ Complaint.

Respectfully submitted this 5th day of February, 2026.

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⁵⁰ Opp. at 17.

⁵¹ *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.3d 793, 799 (Alaska 1975) (internal quotation marks and citation omitted).

⁵² Mot. at 24–25.

⁵³ *Hootch*, 536 P.2d 800–01.

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Certificate of Service

I certify that on February 5, 2026, I caused to be served via TrueFiling a true and correct copy of the foregoing to:

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