

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

DAMEN AGUILA, MARIO LANZA
DYER, and JAMIE SCARBOROUGH,

Plaintiffs,

v.

MUNICIPALITY OF ANCHORAGE,

Defendant.

Case No. 3AN-25-04570CI

**ORDER GRANTING THE MUNICIPALITY OF ANCHORAGE'S
MOTION TO DISMISS**

On February 6, 2025, Plaintiffs filed a Complaint for Injunctive and Declaratory Relief (“Complaint”) in which they claimed Defendant Municipality of Anchorage’s abatement regime violates Alaska’s Constitutional provisions on unreasonable seizure, due process, cruel and unusual punishment, individual right to privacy, and public health and welfare.¹

On January 15, 2026, the Municipality of Anchorage (“the Municipality”) filed a Motion to Dismiss the Complaint (“Motion”).² In its Motion, the Municipality argued that each of Plaintiffs’ constitutional claims fail as a matter of law.³ Plaintiffs opposed on all counts.⁴ The Court held oral argument on the Motion on March 2, 2026.

For the following reasons, the Municipality’s Motion is **GRANTED**.

¹ Compl. at ¶¶ 6-7.

² Mot. to Dismiss.

³ *Id.*

⁴ Pls.’ Opp’n to Mot. to Dismiss.

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Background

1. Plaintiffs' Complaint

Plaintiffs Damen Aguila, Mario Lanza Dyer, and Jamie Scarborough (“Plaintiffs”) allege that “there is an insufficient amount of shelter in Anchorage” for unhoused residents.⁵ They allege that the Municipality is abating camps “at a rapidly increasing rate” regardless of whether shelters or warming centers are available.⁶ They further allege that shelters and warming centers were consistently at capacity in the winter of 2025, leaving Plaintiffs and at least 475 other unhoused residents in Anchorage “no choice but to self-shelter outdoors each night.”⁷ Plaintiffs report, for example, that “[i]n a single week in January, a reported 38 people were turned away from the warming center because there was no room.”⁸

Plaintiffs note that in February of 2025, “Anchorage’s temperatures are steadily holding below 30 degrees and dropping as low as 8 degrees.”⁹ They claim that even temporary deprivation of personal property essential to outdoor survival may result in “detrimental health consequences, and even death among people experiencing homelessness.”¹⁰ Plaintiffs Dyer and Scarborough claim they’ve personally experienced

⁵ Compl. at ¶ 16.

⁶ *Id.* at ¶¶ 3-4.

⁷ *Id.* at ¶ 4; *see also Id.* at ¶¶ 14-18 (explaining that all three Plaintiffs have been turned away from Municipality-provided shelter and were unable to secure transitional housing, and providing an estimated shelter capacity within the City of 532 people and an estimated unhoused population of 3,070); the Court identifies reports cited in Plaintiffs’ Complaint for the purposes of detailing Plaintiffs’ allegations. It did not rely on information outside the pleadings in issuing its order.

⁸ *Id.* at ¶ 17.

⁹ *Id.* at ¶ 29.

¹⁰ *Id.* at ¶¶ 31-34 (citing a State of Alaska Department of Health study noting that “Alaska’s climate poses considerable risk for cold-induced injuries. Hypothermia, resulting from prolonged cold exposure, can lead to systemic dysfunction and death...People without housing [] are particularly vulnerable to cold exposure injuries and

pneumonia and hypothermia while living outdoors, and Plaintiff Scarborough claims he suffered from frostbite and fire-related injuries.¹¹

In the winter of 2025, Plaintiffs were unhoused and living on the Municipality's right-of-way along the east side of Arctic Boulevard, north of West Fireweed Lane.¹² On January 31, 2025, the Municipality noticed the area as a prohibited campsite.¹³ Plaintiffs filed their Complaint six days later, requesting both declaratory and injunctive relief from this Court—Plaintiffs requested the Court enter a preliminary injunction prohibiting the Municipality from abating the encampment on Arctic and West Fireweed and also requested the Court strike down the Municipality's abatement ordinance as unconstitutional.¹⁴

This Court denied Plaintiffs' request for injunctive relief, and the Municipality was permitted to abate Plaintiffs' campsite.¹⁵ Plaintiffs' claims for declaratory relief survived an earlier mootness challenge brought by the Municipality in a prior Motion to Dismiss because "this case clearly falls under the public interest exception."¹⁶ On November 19, 2025, this Court held that Plaintiffs' Complaint is an independent action that brings both facial and as-applied constitutional challenges to the abatement regime.¹⁷ The Court now addresses these constitutional claims in this Order.

associated complications") (citing reports that over 100 people died while living outside in Anchorage from 2023-2024).

¹¹ *Id.* at ¶ 35.

¹² Compl. at ¶¶ 10-12.

¹³ *Id.* at ¶ 19.

¹⁴ *Id.* at ¶¶ 20-22.

¹⁵ Order Denying Pls.' Mot. for Prelim. Inj. (entered 2/13/2025) (a Decision on Record was entered February 11, 2025).

¹⁶ Order Denying Mot. to Dismiss at 9 (entered June 18, 2025).

¹⁷ Order Denying Mot. to Convert to Administrative Appeal.

2. The Municipality of Anchorage's abatement regime

Anchorage Municipal Code (“AMC”) identifies “prohibited campsites” as a public nuisance and provides procedures for their abatements.¹⁸ “Prohibited campsites” are defined as “area[s] where one or more persons are camping on public land” in violation of municipal code.¹⁹ AMC requires the Municipality prioritize the abatement of the following prohibited campsites before others: firstly, campsites “proximate to protected land uses” such as schools, trails, playgrounds and community centers, secondly, campsites with “over 25 tents, huts, lean-tos, or other shelters,” and thirdly, campsites “within one-half mile of any licensed homeless shelter...”²⁰ The abatement of prohibited campsites is otherwise at the discretion of the Municipality.²¹

AMC mandates the Municipality follow specific notice requirements in its execution of a given abatement.²² Notice is required unless “exigent circumstances posing a serious risk to human life and safety exist,” or the campsite is “on public land clearly posted with no trespassing signage, no camping signage, or as not being open to the public[.]”²³

Written notices of abatement must be posted in a “conspicuous place” either on or near shelters designated for removal, or near personal property designated for removal if no structure for shelter exists.²⁴ The notice must identify the location of the campsite, cite

¹⁸ AMC 15.20.020(B)(15).

¹⁹ *Id.*

²⁰ Mot. to Dismiss at 3 (citing AMC 15.20.020(B)(15)(b)).

²¹ *Id.*

²² AMC 15.20.020(B)(15)(a)-(b).

²³ AMC 15.20.020(B)(15)(h)(iii)-(iv).

²⁴ AMC 15.20.020(B)(15)(a).

the code under which it is prohibited, explain when the abatement may take place, and inform campers of their right to appeal.²⁵ The notice must also warn onsite campers that their personal dwellings and other belongings may be removed and include “contact and location information for reclaiming [] or disclaiming an interest in [removed property.]”²⁶ In addition to written notice, municipal officers must give verbal notice of abatement to “any persons in or upon the prohibited campsite or who identifies oneself as an occupant of the campsite” subject to the abatement.²⁷

Within 24 hours of posting a notice of campsite abatement, the municipal officer who posted the notice must inform the Anchorage Health Department, which in turn must notify “community social service agencies within the first work day after receipt of the notice[,]” and also notify community councils within 500 feet of the area, so they might “encourage and accommodate the transition of campsite occupants to housing and the social service community network.”²⁸

The length of the notice period that must elapse before the Municipality can lawfully abate a prohibited campsite depends on the nature of the campsite.²⁹ Plaintiffs primarily challenge the 10-day notice period, which is the longest notice period and applies to any abatements not in danger of wildfire or within 100 feet of protected land

²⁵ AMC 15.20.020(B)(15)(a)(i)-(iv); AMC 15.20.020(B)(15)(b).

²⁶ AMC 15.20.020(B)(15)(a)(i),(vi).

²⁷ AMC 15.20.020(B)(15)(a)(v).

²⁸ AMC 15.20.020(B)(15)(d).

²⁹ AMC 15.20.020(B)(15)(b) (for example, people engaging in prohibited camping on a wildfire danger area receive 24 hours’ notice, and people engaging in prohibited camping within 100 feet of protected land uses receive 72 hours’ notice before the camp may be abated).

uses, as well as zone abatements.³⁰ Zone abatements permit the Municipality to abate all campsites within a “contiguous, reasonably compact” area that is easily identifiable by clear boundaries.³¹ The Municipality may post no more than ten zone abatements in the municipality at a given time.³²

At the time of actual removal, the Municipality must provide additional, final verbal notification of abatement to any individual still present on the prohibited campsite.³³ Individuals physically present at the time of removal must receive “at least” an additional “20 minutes to gather their personal property and disperse from the area.”³⁴ “The responsible municipal official or persons working under their authority shall not prevent individuals claiming personal property from removing that property immediately, unless the personal property is unlawful or otherwise evidence of criminal activity.”³⁵

The Municipality’s abatement regime provides for the temporary storage of personal property removed from a prohibited campsite.³⁶ If previously posted notices are no longer visible or accurate when property is removed from the prohibited campsite, new notices must be posted at the time of removal with information on how to reclaim removed property.³⁷ The Municipality may store this property “in any reasonable

³⁰ AMC 15.20.020(B)(15)(b)(iv)-(v); The Municipality may also post a “notice to quit” commencing a forcible entry and detainer action subject to the procedure required under AS 09.45.060-160.

³¹ AMC 15.20.020(B)(15)(b)(v)(D).

³² *Id.*

³³ AMC 15.20.020(B)(g).

³⁴ AMC 15.20.020(B)(g)(i).

³⁵ AMC 15.20.020(B)(g)(ii).

³⁶ AMC 15.20.020(B)(15)(c).

³⁷ *Id.*

manner” for 30 days.³⁸ If stored property is not claimed within 30 days, the Municipality may dispose of it.³⁹

Unless the property owner provides the Municipality with written notice of intent to appeal the abatement or files an appeal with the Superior Court prior to the expiration of the 10-day notice period, the decision by the Municipality to store property taken at abatement is discretionary.⁴⁰ If a formal appeal or notice to appeal is filed before the notice period elapses, the Municipality must store removed property “until either the appeal is withdrawn, settled, or a decision is issued and any subsequent appeal rights expire.”⁴¹ Notices of abatement are final administrative decisions appealable to the Superior Court within 30 days of its posting, however, if not appealed before expiration of the notice period, removal of the campsite may proceed.⁴²

Legal Standard

A motion to dismiss is warranted under Alaska Civil Rule 12(b)(6) when the pleading fails “to state a claim upon which relief can be granted.”⁴³ Generally, these motions are “viewed with disfavor and ‘unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief,’ the

³⁸ AMC 15.20.020(B)(15)(c).

³⁹ AMC 15.20.020(B)(15)(c)(i) (the Municipality may immediately dispose of personal property deemed to be spoiled, biological or hazardous waste, or “junk, litter, garbage, debris...[etc.,]”); AMC 15.20.020(B)(15)(c)(ii) (weapons, firearms, ammunition and contraband must be delivered to the Anchorage Police Department); AMC 15.20.020(B)(15)(c)(iii) (items eligible for storage must be “readily identifiable” and “in usable condition”).

⁴⁰ AMC 15.20.020(B)(15)(c) (providing that the Municipality “may” store property removed from a prohibited campsite); AMC 15.20.020(b)(15)(e)-(f).

⁴¹ AMC 15.20.020(b)(15)(f).

⁴² AMC 15.20.020(b)(15)(e)-(f).

⁴³ ALASKA R. CIV. P. 12(b)(6).

motion should be denied.”⁴⁴ A claim survives a motion to dismiss when on its face it merely “allege[s] a set of facts consistent with and appropriate to some enforceable cause of action.”⁴⁵ The Court must “liberally construe the complaint and treat all factual allegations in the complaint as true[,]” however, “unwarranted factual inferences and conclusions of law are not considered admitted in resolving the merits” of a motion to dismiss.⁴⁶

Discussion

1. The Municipality's abatement regime does not violate Plaintiffs' right to be free from unreasonable seizures.

Plaintiffs claim 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.”⁴⁷

Plaintiffs do not challenge the ordinance on the grounds that it violates their right to be free from unreasonable searches.⁴⁸

The Municipality argues that no seizure occurs under the ordinance because campers knowingly and voluntarily relinquish any interest in personal property that is left at an abatement site after the notice period elapses.⁴⁹ It further argues that even if the

⁴⁴ *State Dep’t of Health and Soc. Servs., Div. of Fam. & Youth Servs. v. Native Vill. of Curyung*, 151 P.3d 388, 296 (Alaska 2006) (citing *Martin v. Mears*, 602 P.2d 421, 429 (Alaska 1979)).

⁴⁵ *Clemenson v. Providence Alaska Medical Center*, 203 P.3d 1148, 1151 (Alaska 2009).

⁴⁶ *Id.*; *Dworkin v. First National Bank of Fairbanks*, 444 P.2d 777, 779 (Alaska 1968).

⁴⁷ Compl. at ¶ 49.

⁴⁸ *Id.* at ¶¶ 46-49.

⁴⁹ Mot. to Dismiss at 9-10; In support of its argument, the Municipality cites this Court’s order denying Plaintiffs’ motion for a preliminary injunction, which stated that removal of personal property pursuant to the abatement regime is not a seizure of property. *Id.* at 10 (citing Order Denying Mot. for Prelim. Inj. at 8). This Court’s analysis in its Order Denying Plaintiffs’ Motion for a Preliminary Injunction was “limited to whether or not the Plaintiffs [] sufficiently fulfilled the tests for preliminary injunction.” Given the limited purposes of the Order Denying the

Court were to find that a seizure occurred, it is nonetheless reasonable given the limitations and safeguards provided under the abatement ordinance.⁵⁰ Plaintiffs disagree on both points.⁵¹ They argue that “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” because “they have no other options.”⁵² Plaintiffs further argue that presuming abandonment is unreasonable because 10 days is insufficient time for an unhoused person to find another place to live and move all their worldly belongings.⁵³

This Court finds that even if seizures occur under the ordinance, they are reasonable because: (1) Plaintiffs do not have an objectively reasonable expectation of privacy in property on a prohibited campsite at the time of abatement, and; (2) the Municipality’s need to seize property outweighs any potential invasion of Plaintiffs’ privacy. Accordingly, this Court need not address whether seizures occur under the ordinance. Neither does the Court need to determine if property left at an abatement site after the notice period elapses is abandoned because such a determination “is not conclusive of the reasonableness” of a seizure.⁵⁴

Preliminary Injunction, the nature of Plaintiffs’ claims, and the amount of time that has passed since the Motion for Preliminary Injunction has filed, this Court addresses each claim anew without relying on its findings in the Order Denying Motion for Preliminary Injunction. Defendant makes a similar argument with regard to Plaintiffs’ claim of cruel and unusual punishment which this Court also does not entertain for the purposes of this Motion.

⁵⁰ *Id.*

⁵¹ Pls.’ Opp’n to Def.’s Mot. to Dismiss at 13-15.

⁵² *Id.* at 14.

⁵³ *Id.* at 13-15.

⁵⁴ *Smith v. State*, 510 P.2d 793, 796-97 (Alaska 1973) (holding that even though items retrieved by state troopers from a dumpster outside appellant’s dwelling unit were abandoned, the Court nonetheless needed to determine “if appellant can be said to have harbored a ‘reasonable expectation of privacy’ in the dumpster”).

a. Legal standard

Article I, section 14 of the Alaska Constitution protects the people⁵⁵ from “unreasonable searches and seizures” of “their persons, houses and other property, papers, and effects...”⁵⁶ “The primary purpose” of this clause “is to protect personal privacy and dignity against unwarranted intrusion by the State.”⁵⁷ Caselaw interpreting its federal counterpart, the Fourth Amendment of the U.S. Constitution, provides “substantial guidance” to this Court.⁵⁸ However, Alaska’s search and seizure provision “provides broader protection than the Fourth Amendment, especially when it is construed together with the right to privacy provision of article I, section 22.”⁵⁹

A two-step analysis determines whether a seizure is constitutional. First, the Court determines whether “a seizure triggering constitutional protections” occurred, and second, it determines whether the seizure was reasonable.⁶⁰ There is “no exact formula for the determination of reasonableness in connection with a search and seizure and so each case must be decided on its own facts and circumstances.”⁶¹

A warrant is generally required to ensure reasonableness of a search or seizure, unless an exception applies.⁶² Warrantless searches and seizures are presumptively

⁵⁵ *Id.* at 796 (“the Fourth Amendment protects people, not places.”)

⁵⁶ ALASKA CONST. Art. I §14.

⁵⁷ *McKelvey v. State*, 474 P.3d 16, 30 (Alaska Ct. App. 2020) (quoting *Weltz v. State*, 431 P.2d 502, 506 (Alaska 1967)) (internal citations omitted).

⁵⁸ *Majaev v. State*, 223 P.3d 629, 632 (Alaska 2010) (quoting *Anchorage Police Dep’t Employees Ass’n*, 24 P.3d 547, 550 (Alaska 2001)).

⁵⁹ *Blank v. State*, 3 P.3d 359, 368 (Alaska Ct. App. 2000) (reversed on other grounds); *see also Woods & Rohde, Inc. v. State, Dep’t of Labor*, 565 P.2d 138, 150 (Alaska 1977) (holding that article I section 14 encompasses privacy interests in business or commercial premises, in part because the founders “chose to add the phrase ‘and other property’” to this section, and in part because of the constitutional guarantee to privacy in article I, section 22).

⁶⁰ *Majaev v. State*, 223 P.3d at 632.

⁶¹ *Sleziak v. State*, 454 P.2d 252, 256 (Alaska 1969).

⁶² *United States v. O’Dell*, 483 F.Supp. 3d 757, 761 (D. Alaska 2020).

unreasonable; however, “this presumption may be overcome in some circumstances because ‘the ultimate touchstone of the Fourth Amendment is reasonableness.’”⁶³

Seizures are exempt from the warrant requirement when property is abandoned or where a “diminished expectation of privacy” exists.⁶⁴ When a seizure “is minimally invasive of privacy the reasonableness of the [seizure] is determined by balancing the need [for the seizure] against the invasion that the [seizure] entails.”⁶⁵

b. People engaging in prohibited camping have a diminished expectation of privacy in personal property after the notice period elapses.

When applicable, the Alaska Constitution’s enumerated right to privacy calls for a “liberal interpretation” of protections against unreasonable searches and seizures.⁶⁶ Plaintiffs maintain their unreasonable seizure claim is fortified by the higher level of protection provided by Alaska’s right to privacy clause.⁶⁷ Conversely, the Municipality argues this Court should apply the less stringent balancing test used by the Federal District Court in *Smith v. Municipality of Anchorage* to determine whether a seizure

⁶³ *Kentucky v. King*, 563 U.S. 452, 459 (2011) (quoting *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006)) (internal quotations omitted).

⁶⁴ *Lupro v. State*, 603 P.2d 468, 476 (Alaska 1979) (holding police “could validly seize [a] van under the reasonable assumption that it had been abandoned”); *Beltz v. State*, 221 P.3d 328, 336-37 (Alaska 2009) (quoting *State v. Myers*, 601 P.2d 239, 242 (Alaska 1979) (internal citations omitted)) (“When a police intrusion takes place in a context in which only a ‘diminished expectation of privacy’ exists, such a search must be ‘reasonable’ within the meaning of the Constitution, but may not necessarily be subject to the warrant requirement”).

⁶⁵ *Beltz v. State*, 221 P.3d at 337 (applying the same balancing test for the determining the reasonability of searches that are minimally invasive of privacy to seizures that are minimally invasive of privacy); *see also Smith v. Mun. of Anchorage*, 797 F.Supp 3d 992, 1010 (D. Alaska 2025) (quoting *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1030 (9th Cir. 2012)) (“Assessing the reasonableness of the Municipality’s abatement procedure requires the Court to ‘balance[] the invasion of [Plaintiff’s] possessory interests in [his] personal belongings against the [Municipality’s] reasons for taking the property.’”)

⁶⁶ *State v. Gibson*, 267 P.3d 645, 659 (Alaska 2012) (quoting *Mun. of Anchorage v. Ray*, 854 P.2d 740, 750 (Alaska Ct. App. 1993)) (quoting *Wortham v. State*, 641 P.2d 223, 224–25 n. 2 (Alaska Ct. App. 1982)).

⁶⁷ Pls.’ Opp’n to Def.’s Mot. to Dismiss at 14-15.

under the abatement is reasonable.⁶⁸ This Court finds that the right to privacy is not implicated by seizures under the Municipality's abatement regime, and therefore the balancing test applies.

Two elements are required to establish a reasonable expectation of privacy: "first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'"⁶⁹ What a person "seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."⁷⁰ However, regardless of the place, "[w]hat a person knowingly exposes to the public...is not a subject of Fourth Amendment protection."⁷¹

At oral argument, Plaintiffs claimed that both the nature of the property subject to abatement and the way it is handled by its owners indicates a reasonable expectation of privacy. Plaintiffs explained that because a prohibited campsite can encompass the entirety of a person's belongings, property subject to abatement under the ordinance includes sensitive items such as personal identifying information and medications, as well as precious items such as the physical ashes of a loved one.⁷² The presence of these items at a prohibited campsite, Plaintiffs argue, supports a finding of intent to create a reasonable expectation of privacy.

⁶⁸ Def.'s Mot. to Dismiss at 11.

⁶⁹ *State v. Avery*, 211 P.3d 1154, 1157 n. 4 (Alaska Ct. App. 2009) (quoting *Katz v. United States*, 389 U.S. 347, 361 (1967)).

⁷⁰ *Smith v. State*, 510 P.2d 793, 796 (Alaska 1973).

⁷¹ *Id.*

⁷² At oral argument, Plaintiffs reference the Federal District Court's decision in *Smith*, in which Plaintiff Mr. Smith alleged the Municipality of Anchorage seized and destroyed "his tent, sleeping bag, asthma inhaler medication, tools for work, and his deceased mother's [sic] ashes." *Smith v. Mun. of Anchorage*, 797 F.Supp 3d 992, 1011 (D. Alaska 2025).

Plaintiffs' argument successfully alleges a *subjective* expectation of privacy, but fails to establish an *objective* expectation of privacy general society might find reasonable. While the kinds of the property at issue certainly indicates its importance, the inherent nature of a given piece of property alone is not dispositive of the establishment of an objective expectation of privacy. For example, a reasonable person may imbue a high expectation of privacy to prescription medications stored in a closed purse, but they would not assume the same expectation of privacy in that medication if it were left on the ground at a campsite.

Plaintiffs argue that property present at prohibited campsites upon abatement cannot be presumed to have been left there intentionally, because people living on prohibited campsites rarely have other options.⁷³ There is a fundamental issue with this argument—it requires viewing the circumstances through the Plaintiffs' lens. An objective observer cannot, by viewing items at a prohibited campsite, divine whether the owner's individual circumstances prevent them from relocating their belongings or finding shelter elsewhere. By its very definition, this argument establishes a subjective, but not an objective expectation of privacy.

At oral argument, Plaintiffs also explain that personal property on prohibited campsites may be hidden from public view by various structures. The act of so arranging temporary shelter can establish an objective expectation of privacy to a reasonable third-

⁷³ Pls.' Opp'n to Mot. to Dismiss at 14.

party observer as a matter of law.⁷⁴ However, this argument also fails to implicate Alaska's right to privacy clause because it is objectively unreasonable to expect privacy in personal effects, even when they are hidden from plain view, after receiving notice the property is somewhere it is not legally allowed and will be removed in 10 days.⁷⁵ No reasonable person can receive a notice of abatement then later claim a serious invasion occurred when the Municipality followed through on a clearly issued warning of potential loss of property.

The Court finds that leaving property at a prohibited campsite on public land, where campers had no right to store their belongings in the first place, after receiving 10-days' notice the property will be removed by the Municipality, is objective manifestation of intent to relinquish any expectation of privacy.⁷⁶ After the notice period has elapsed, property left at an abatement site is *knowingly* exposed to the public. Notably, Plaintiffs do not allege, as the plaintiff did in *Young v. State*, that they or other campers intentionally placed their property in a location "that would conceal [its] presence *and*

⁷⁴ *U.S. v. Sandoval*, 200 F.3d 659, 660–61 (9th Cir. 2000) (holding appellant had an objectively reasonable expectation of privacy in items inside his closed tent while camping on public land when it was "unclear whether [appellant] had permission to be there").

⁷⁵ *Smith v. Mun. of Anchorage*, 797 F.Supp.3d 992, 1007–08 n. 81 (D. Alaska 2025) (noting "[c]ourts have routinely held that 'a person has no reasonable expectation of privacy in a temporary structure illegally built on public land, where the person knows that the structure is there without permission and the governmental entity that controls the space has not in some manner acquiesced to the temporary structure'" (quoting *State v. Tegland*, 269 Or. App. 1, 8, 344 P.3d 63, 67 (2015))) (internal quotations and citations omitted).

⁷⁶ The Court notes that while people engaging in prohibited camping facially forfeit any *present* expectation of privacy in their property left at an abatement site, they do not forfeit any *future* expectation of privacy in property that is stored by the Municipality because they have the opportunity to regain full possession and control of this property. However, once either the storage period elapses or the appeal process is complete, it is then objectively unreasonable to find an expectation of privacy in property temporarily stored by the Municipality. Notably, Plaintiffs do not claim in their pleadings that any personal property was stored and then disposed of before the notice period elapsed, so they failed to plead either an as-applied or a facial unlawful seizure claim for property removed by the Municipality.

was not readily accessible to the public[.]”⁷⁷ Accordingly, this Court agrees with the Federal District Court’s decision in *Smith*, which considered the same ordinance and held there is no “reasonable expectation of privacy” after the 10-day notice period elapses.⁷⁸

In summary, after considering the abatement regime as a whole, this Court finds a diminished expectation of privacy in personal property on prohibited campsites at the time of abatement. Therefore, a warrant is not required for any seizure under the ordinance to be reasonable. The Court finds that the balancing test established in *Beltz v. State* determines whether such seizures are reasonable.⁷⁹

c. If seizures occur under the ordinance, they are reasonable because the Municipality’s need to seize personal property at abatements outweighs any invasion caused by the seizure.

Having addressed Plaintiffs’ arguments regarding expectation of privacy and established the applicable standard, the Court turns to the issue of reasonability.

Plaintiffs argue that seizures under the ordinance are unreasonable because they are permitted without a warrant.⁸⁰ Plaintiffs do not expound on this argument, but assert that the Court “should permit this case to proceed to discovery before reaching the merits of Plaintiffs’ unreasonable seizure claims under our state constitution.”⁸¹

⁷⁷ *Young v. State*, 72 P.3d 1250, 1254 (Alaska Ct. Appeals 2003) (emphasis added) (holding that a police officer could not open crumpled up tissues without a warrant because the Appellant placed them beneath the door of a locked closet, and therefore, Appellant did not abandon the tissues).

⁷⁸ *Smith v. Municipality of Anchorage*, 797 F. Supp. 3d 992, 1008–10 (D. Alaska 2025) (declining to address the issue of abandonment of property because the reasonableness of the seizure is clear and dispositive of the issue)

⁷⁹ *Beltz v. State*, 221 P.3d 328, 336–37 (Alaska 2009) (holding that a warrant was not needed to search and seize items included with garbage that were “set out for routine street-side collection...even given Alaska’s explicit right to privacy.”)

⁸⁰ Compl. at ¶ 49.

⁸¹ Pls.’ Opp’n to Def.’s Mot. to Dismiss at 15.

Because this Court holds that there is a diminished expectation of privacy in property on prohibited campsites after the notice period elapses, the Court applies the balancing test in *Beltz* and weighs the need for the seizure against the invasion it entails.

This Court finds that if seizures occur under the ordinance, any invasion they may cause is outweighed by Municipality's need to seize property at prohibited campsites. The balancing test weighs in favor of the Municipality because the resulting invasion to privacy interests is secondary to the Municipality's need to preserve public health and safety and manage its property for public use. The Municipality explains that its ability to abate prohibited campsites:

[E]nsures 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 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.⁸²

To be clear, this Court does not hold that the need for the seizure outweighs the invasion of the seizure because the *effect* of an abatement on people experiencing homelessness in Anchorage is less significant than the Municipality's interest in abatement, but because the invasion of an abatement is substantially reduced by the diminished expectation of *privacy* in property at the time of removal. On account of the ordinance's extensive provisions on notice and temporary storage, as well as the fact that Plaintiffs and those similarly situated have no right to camp on Municipal property in the

⁸² Mot. to Dismiss at 1-2.

first place, the invasion to possessory property interests posed by this abatement regime is significantly less severe than, for example, a seizure completed without notice.⁸³

The Court recognizes that, as alleged by Plaintiffs, prohibited encampments often encompass all their personal effects and lively possessions. To put it plainly, people experiencing homelessness in Anchorage could lose everything they own except the clothes on their back should their property be left at a prohibited campsite at the time of abatement. Additionally, given the nature of both the property and the Plaintiffs, the seizure could deprive Plaintiffs of items used for basic survival and protection from the elements.

The Court does not turn a deaf ear to these allegations. However, the constitutional right to be free from unreasonable searches and seizures does not exist to protect people from resulting practical consequences of the seizure, rather, it exists to protect a person's "privacy and dignity" from unwarranted infringement by the state.⁸⁴ This Court finds that pursuant to the balancing test in *Beltz*, the ordinance adequately protects both the privacy and dignity of those subject to abatements through its provisions on notice, appeal, temporary storage of property, and activation of local resources to assist people experiencing homelessness.

⁸³ *Kitchoon v. Seattle*, 2024 WL 5040630 at *13 (Wash. Ct. App. 2024), *rev. den.*, 569 P.3d 738 (Wash.2025) (holding that "indiscriminate and standardless removal" of encampments violated peoples' enumerated right to privacy in part because no written notice was required for certain abatements unrelated to public health or safety).

⁸⁴ *McKelvey v. State*, 474 P.3d 16, 30 (Alaska Ct. App. 2020) (quoting *Weltz v. State*, 431 P.2d 502, 506 (Alaska 1967)) (internal citations omitted).

Plaintiffs argue, in part, that the abatement regime permits unreasonable seizure of personal property because “they have no other options[]” aside from sleeping outside.⁸⁵ They argue that often no legal option is available because the unhoused population in Anchorage exceeds the Municipality’s shelter capacity.⁸⁶ Should this Court find that the Municipality cannot abate prohibited campsites on public land when there is no available shelter, the practical effect would prevent the Municipality from abating prohibited campsites entirely, or, require the Municipality to first procure sufficient shelter.

This Court is not at liberty to compel the Municipality to build and secure sufficient shelter to meet the needs of the unhoused population within Anchorage. Neither can it order the Municipality designate land as a legal campground for unhoused residents. The solutions to the issues presented by the unavailability of shelter in the Municipality present policy questions and lie squarely upon the shoulders of legislative bodies. This Court is limited to stress testing the abatement regime for compliance with constitutional principles. With regard to the clause prohibiting the unreasonable seizure of property from the people, this Court finds that the Municipality’s abatement regime passes that test.

2. The Municipality’s abatement regime neither violates Plaintiffs’ substantive nor procedural due process rights.

The Municipality argues that Plaintiffs fail to present a due process claim because the abatement regime does not deprive them of a protected interest and it is not

⁸⁵ Pls.’ Opp’n to Def.’s Mot. to Dismiss at 14.

⁸⁶ Compl. at ¶¶ 14-18.

unconstitutionally vague.⁸⁷ Plaintiffs disagree, arguing that the ordinance provides insufficient notice and opportunity to be heard, and is unconstitutionally vague.⁸⁸ This Court finds for the Municipality, because even assuming a deprivation occurs under the abatement regime, it does not violate Plaintiffs' due process rights. This Court also finds that the ordinance is not unconstitutionally vague because it clearly describes the prohibited conduct.

a. The Municipality's abatement ordinance provides an adequate notice period and pre-deprivation right to be heard.

Plaintiffs claim the abatement regime violates their due process rights because it provides inadequate notice and no opportunity to contest the veracity of an abatement prior to the deprivation of property interests.⁸⁹ The Municipality argues that no deprivation of personal property interest occurs under the ordinance because people engaging in prohibited camping receive "adequate notice and opportunity to protect their property interests by removing any personal belongings prior to the abatement."⁹⁰ The Municipality further argues that even if Plaintiffs "retained cognizable interests in property they declined to remove from the noticed abatement area," abatement of said area does not violate due process because the risk of erroneous deprivation is slight and outweighed by important government interest in public health and safety.⁹¹

⁸⁷ Def.'s Mot. to Dismiss at 12.

⁸⁸ Pls.' Opp'n to Def.'s Mot. to Dismiss at 7-13.

⁸⁹ *Id.* at 7-8.

⁹⁰ Def.'s Mot. to Dismiss at 14 (For example, "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.")

⁹¹ *Id.* at 15-17.

i. Legal standard for procedural due process claims

Article 1, Section 7 of the Alaska Constitution provides that “[n]o person shall be deprived of life, liberty, or property without due process of law.”⁹² “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.’”⁹³

When assessing whether an administrative action violates the due process clause of the Alaska Constitution, we use the framework established by the United States Supreme Court in *Mathews v. Eldridge*. We 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.⁹⁴

Alaska’s Due Process Clause requires “some sort of pre-termination hearing” prior to the deprivation of a protected interest.⁹⁵ “The only exceptions to this pre-termination hearing requirement are in emergency situations or when public health, safety, or welfare require[s] summary action.”⁹⁶ However, the type of pre-deprivation opportunity to be heard is “not fixed in form[,]” nor does it “require any specific type of hearing.”⁹⁷ The necessary opportunity to be heard prior to deprivation of an individual interest “depends on [both] the nature of the case” and the application of the factors established in *Mathews*.⁹⁸

⁹² ALASKA CONST. Art. I § 7.

⁹³ *Anderson v. Alaska Hous. Finance Corp.*, 462 P.3d 19, 25 (Alaska 2020) (quoting *Dennis O. v. Stephanie O.*, 393 P.3d 401, 405 (Alaska 2017)) (internal quotation marks omitted).

⁹⁴ *Copeland v. Ballard*, 210 P.3d 1197, 1203–04 (Alaska 2009).

⁹⁵ *Anderson v. Alaska Hous. Finance Corp.*, 462 P.3d at 29.

⁹⁶ *Brandner v. Providence Health & Serv. — Washington*, 394 P.3d 581, 589 (Alaska 2017) (internal citation and quotation marks omitted).

⁹⁷ *Patrick v. Mun. of Anchorage, Anchorage Transp. Comm’n*, 305 P.3d 292, 299 (Alaska 2013) (quoting *Boddie v. Connecticut*, 401 U.S. 371, 378-79 (1971)).

⁹⁸ *Id.*

- ii. *Engle indicates the Municipality's current abatement regime conforms with, not violates, due process.*

Citing *Engle v. Municipality of Anchorage*, Plaintiffs claim the notice period is inadequate because it is not enough time for unhoused people “to gather their belongings and find another place to live[.]”⁹⁹ In *Engle*, the Superior Court found that a 5-day notice period prior to abatement posed a risk of erroneous deprivation that outweighed the Municipality’s interest in public safety, health, and welfare because “the private interest affected and the risk of harm are both high[.]” and “other statutes and Code sections identified by the parties generally provide a longer period before seizing or inferring abandonment of the property.”¹⁰⁰

This Court notes several distinctions between the instant case and *Engle*: (1) the ordinance challenged in the instant case provides a notice period twice as long as the notice period challenged in *Engle*, (2) the ordinance challenged in *Engle* provided only a 2-day automatic stay following an administrative hearing officer’s ruling,¹⁰¹ (3) the Court in *Engle* gave weight to evidence showing mental health and substance abuse disorders were common amongst the unhoused population in Anchorage,¹⁰² whereas the Plaintiffs in the instant case did not provide similar evidence or allegations, (4) the ordinance challenged in *Engle* had “no provision...for storage of property found at an abated

⁹⁹ Pls.’ Opp’n to Def.’s Mot. to Dismiss at 8-9.

¹⁰⁰ Opinion at 18, 20, *Engle v. Mun. of Anchorage*, Case No.: 3AN-10-07047C1 (Alaska Super. Ct. 2010).

¹⁰¹ *Id.* at 8.

¹⁰² *Id.* at 11 (“[w]ho the Plaintiffs are informs what due process is required.”); *Id.* at 11-15 (describing mental health and substance abuse disorders prevalent in Anchorage’s unhoused population); *Id.* at 21 (considering Plaintiffs’ or other unhoused individual’s status as “a chronic inebriate and/or mentally ill” when finding the 5-day notice period violated their due process rights).

campsite,”¹⁰³ and (5) the ordinance in the instant case requires the Municipality to notify social service providers of scheduled abatements so that they might facilitate the delivery of services, whereas the ordinance in *Engle* did not.

While the Court in *Engle* did not determine the exact length of notice period required by due process, it articulated that a notice period longer than five days “would enable Plaintiffs to gather their belongings and find another place to live, either through the help of social service agencies or independently.”¹⁰⁴ Notably, in this case, the ordinance provides a 10-day notice period and directs social services providers to the prohibited campsite prior to abatement to assist people with their transitions.

Ultimately, after reviewing comparable sections of AMC and state statutes that provide for the disposal of property after a given notice period, the Court in *Engle* held that “the State and Municipality typically provide individuals with a minimum of 10 to 15 days before classifying property as abandoned, even if that property is ultimately deemed waste and is destroyed.”¹⁰⁵ Here, the notice period meets the minimum length suggested by municipal code, state statute, and the Court in *Engle*.

The abatement regime at issue in this case provides substantially more protections for Plaintiffs’ property interests than the ordinance at issue in *Engle*. Accordingly, *Engle* indicates to this Court that the current regime, which incorporates a 10-day notice period, a 30-day deadline to appeal, and defined provisions on the storage of property, likely conforms with, not violates, the Due Process Clause.

¹⁰³ *Id.* at 23.

¹⁰⁴ *Id.* at 20.

¹⁰⁵ *Id.* at 18.

- iii. *The Municipality's abatement regime provides sufficient notice to people living on prohibited campsites prior to abatement.*

The Court applies the *Mathews* factors to the notice requirements of the abatement regime and finds that they do not violate Plaintiffs' due process rights. Here, similar to *Engle*, the private interest at stake is of great magnitude and weighs heavily against important government interests. The risk of erroneous deprivation, however, is present, but considerably less concerning because of the safeguards in place. Regarding the value of additional safeguards, it is unclear to this Court what additional protections the Municipality could provide that would further reduce the risk of erroneous deprivation. Plaintiffs argue that the notice period inadequately protects their personal property interests, while simultaneously alleging that there is nowhere for them to go. Preventing the Municipality from enforcing its prohibited camping ordinance entirely until broader policy issues regarding homelessness and housing are solved presents both a great cost and administrative burden.

Firstly, assuming Plaintiffs do not forfeit their property rights, this Court finds that few private interests rise to a similar level of magnitude as those alleged by Plaintiffs, namely, their physical safety and preservation of life, in addition to personal property interests.¹⁰⁶

Secondly, the Court recognizes the ordinance as structured presents a risk of potential erroneous deprivation. If the Municipality were to improperly abate a prohibited campsite, people living at the encampment would be separated from their property, even

¹⁰⁶ *Infra* 2-3 (Plaintiffs' Complaint).

when they exercise their right to an appeal, if they fail to physically move all their belongings to a new location within 10-days. As a practical matter, both the means and the timeline of the appeal mechanism nearly guarantee that removal of property will proceed regardless of whether an appeal is filed.¹⁰⁷

As explained by both Plaintiffs and this Court, it's incredibly unlikely that the Superior Court would be able to prevent the removal of property, let alone rule on the merits of an abatement notice in a matter of days.¹⁰⁸ Additionally, because the Municipality confiscates all firearms, weapons, and paraphernalia, and may dispose of any items it finds not to be in good working order, not all of an appellant's property may be stored; campers subject to an improper abatement who are successful on appeal could nevertheless be deprived of their property permanently. Notably, such an as-applied challenge was not alleged in this case.

However, the ordinance considerably mitigates the risk of any erroneous deprivation of these rights. An abatement may not proceed without the Department of Health mobilizing social service agencies to assist people living at the site. People living on prohibited campsites have 10 days to move their property. People storing their property on prohibited campsites receive extensive and repetitive notice and opportunity to move their items. They receive an additional, final opportunity to prevent the loss of property on the day of the abatement. Additionally, while the appeal provision doesn't

¹⁰⁷ AMC 15.20.020(B)(15)(e)-(f).

¹⁰⁸ Pls.' Opp'n to Def.'s Mot. to Dismiss at 8 (citing Order Denying First Mot. to Dismiss at 8 (entered June 18, 2025)) (noting that the notice period requires the court "to work in an expeditious manner" that is "not a normal turn around for a case").

guarantee erroneous deprivation will not occur, it does guarantee that property owners who file an appeal may only experience a temporary deprivation of the property Plaintiffs characterize as essential, such as tents and sleeping bags if they fail to remove those items.¹⁰⁹ Plaintiffs who exercise their right to appeal can recover said essential property from municipal storage.

Longer notice periods could be provided at minimal administrative and cost burden to the Municipality, but it's unclear under the facts presented how much additional notice would serve to further mitigate those risks, and Plaintiffs' fail to inform this Court as to what amount of additional notice would be adequate if the 10-days' notice is insufficient. Under the facts alleged, seemingly no amount of notice would be sufficient because Plaintiffs claim there is nowhere for them to move themselves and their possessions.

The dilemma posed by Plaintiffs is real, but it implies that the Municipality should either provide a place for unhoused people to camp legally or refrain from abating prohibited campsites when shelters are at capacity. So limiting the Municipality's use of abatements would be an extreme measure that hamstring its ability to further interests in public safety and welfare and restoring public use to dedicated public property. Even if this Court were at liberty to order the Municipality to ensure adequate shelter is available before abating prohibited campsites, it would be difficult to justify in light of the great costs and existing protections aiming to prevent the loss of essential property.

¹⁰⁹ AMC 15.20.020(B)(c)(i)-(iii) (including tarps, sleeping bags, tents, generators, cooking equipment, shoes, and clothing, in fair condition, in the list of property eligible for storage).

To summarize, while the alleged private interests at stake in this case are compelling and erroneous deprivation is technically possible, this Court finds that the risk of erroneous deprivation is low in light of robust procedural protections provided under the ordinance. Additionally, while the Municipality could provide a longer notice period, it is unclear how long that notice period should be or if it would even further mitigate the risk of erroneous deprivation. Other safeguards the Municipality could hypothetically provide are either unidentifiable or so extreme that their costs outweigh any potential to bolster existing protections to Plaintiffs' property rights. Therefore, the notice period passes the *Mathews* test and survives Plaintiffs' due process constitutional challenge.

iv. *The Municipality's abatement regime provides an adequate opportunity to be heard prior to the removal of property from prohibited campsites.*

Plaintiffs argue that the appeal mechanism in the ordinance violates due process because it fails to afford them with an opportunity to contest the veracity of the abatement prior to the Municipality taking their property.¹¹⁰ Plaintiffs claim that the Alaska Constitution requires a pre-deprivation hearing, which misstates the law.¹¹¹ The Due Process Clause requires a pre-deprivation opportunity to be heard, but it need not be a hearing.¹¹² As previously stated, "[t]he necessary opportunity to be heard depends on the nature of the case; it is 'not fixed in form.' We look to the test set forth by the United States Supreme Court in *Mathews* to determine the requirements of due process[.]"¹¹³

¹¹⁰ Pls.' Opp'n to Def.'s Mot. to Dismiss at 8.

¹¹¹ *Id.*

¹¹² *Patrick v. Mun. of Anchorage, Anchorage Trans. Comm'n*, 305 P.3d 292, 299 (Alaska 2013).

¹¹³ *Id.*

The Court first considers the nature of prohibited campsite abatements.

Abatements under the ordinance involve removing persons and property from public land, on which people have no right to camp and store their belongings. Abatements are completed only after people engaging in prohibited camping are put on notice and given an opportunity to leave. Accounting for the nature of an abatement, the Court finds that it is not entirely inappropriate for the ordinance to permit the Municipality to remove and store property in good working condition during the appeal process. Conversely, if the ordinance permitted the Municipality to destroy personal property it deemed to be “junk” from a place where the owner otherwise had legal right to store it, it would likely be inappropriate to allow its removal before an appeal was complete.

Applying the *Mathews* factors, this Court finds that Plaintiffs’ due process pre-deprivation right to be heard is not violated by the ordinance. The Court again acknowledges that the structure of the appeal process under the ordinance could present a legitimate risk of deprivation of property interests before an appellant can effectively challenge an abatement. But, as explained above, the abatement regime and appeal process as structured most likely presents a categorical temporary deprivation of some property, as well as a categorical permanent deprivation (disposal) of other property prior to completion of the appeal process.

This weighs in favor of Plaintiffs under the *Mathews* test. However, for the same reasons as stated above, the risk is substantially mitigated, and also outweighed by the Municipality’s interests. The cost and administrative burden required for the Municipality

to provide its own expedited review of notices of abatement further tips the balancing test in favor of the Municipality.

b. The Municipality's abatement ordinance is not unconstitutionally vague.

Plaintiffs also bring a substantive due process claim, arguing that the abatement regime is void for vagueness because it fails to inform them as to where they should remove their property.¹¹⁴ They note that under the current regime, there is no legal place in Anchorage for them to go when shelters and warming centers are full, and they are frequently at capacity, effectively making it “impossible to conform their conduct to such a law without leaving the Municipality entirely.”¹¹⁵

The Municipality claims the ordinance passes both the civil and criminal tests for unconstitutional vagueness because the ordinance clearly states the circumstances under which it applies and provides clear notices.¹¹⁶ Plaintiffs argue the ordinance fails the criminal test for vagueness because it does not sufficiently put Plaintiffs on notice as to how to conform their conduct to law, and because “the discretionary use of police power raises concerns of uneven or discriminatory enforcement.”¹¹⁷

i. Legal standard for impermissible vagueness

A person may be deprived of their constitutional right to due process when a law is impermissibly vague.¹¹⁸ A statute is impermissibly vague when “it fails to give adequate notice to the ordinary citizen of what is prohibited and [] its indefinite contours

¹¹⁴ Pls.’ Opp’n to Def.’s Mot. to Dismiss at 10.

¹¹⁵ *Id.*

¹¹⁶ Def.’s Reply to Opp’n to Mot. to Dismiss at 5-6; Def.’s Mot. to Dismiss at 17-18.

¹¹⁷ Opp’n to Def.’s Mot. to Dismiss at 11.

¹¹⁸ *Williams v. State, Dept. of Revenue*, 895 P.2d 99, 105-106 (Alaska 1995).

confer unbridled discretion on government officials and thereby raise the possibility of uneven and discriminatory enforcement.”¹¹⁹ The standard for impermissible vagueness depends on the nature of the statute.¹²⁰ Statutes that do not involve First Amendment rights, prohibit any conduct, and neither “give rise to [] prosecutorial action in a criminal context nor a civil enforcement action where a litigant may be at risk of losing an important right” are subject to the civil standard for vagueness, which merely requires “legislative language which is not so conflicting and confused that it cannot be given meaning in the adjudication process.”¹²¹

Statutes that may lead to criminal action or deprive a person of an important right in a civil action are subject to the following, more stringent standard:

First, a statute may not be so imprecisely drawn and overbroad that it “chills” the exercise of first amendment rights. The second consideration is that in order to be consistent with notions of fundamental fairness a statute must give adequate notice of the conduct that is prohibited. The final element in an analysis of statutory vagueness is whether the statute's imprecise language encourages arbitrary enforcement by allowing prosecuting authority undue discretion to determine the scope of its prohibitions.¹²²

ii. *The abatement regime clearly describes prohibited conduct and does not encourage arbitrary enforcement.*

Parties disagree as to whether the civil or criminal test should apply in determining whether the ordinance is unconstitutionally vague. The Municipality claims that the civil

¹¹⁹ *Marks v. City of Anchorage*, 500 P.2d 644, 646 (Alaska 1972).

¹²⁰ *Williams v. State, Dept. of Revenue*, 895 P.2d at 105-106.

¹²¹ *Id.* at 105.

¹²² *Id.* (citing *State v. Rice*, 626 P.2d 104, 109 (Alaska 1981)) (quoting *Holton v. State*, 602 P.2d 1228, 1235-36 (Alaska 1979)).

test applies because the personal property is not implicated unless it remains on the abatement site after completion of notice period and final warning.¹²³ Plaintiffs assert that the criminal standard applies because the law gives rise to prosecutorial action. Namely, they argue that enforcement of the prohibited camping regime can lead to criminal prosecution for trespass and failure to comply with an order to disperse.¹²⁴

The Municipality's abatement regime passes the test for unconstitutional vagueness under both standards. The Court agrees with the Municipality's characterization of the abatement ordinance as clearly stating the circumstances under which it applies and requires notice.¹²⁵ Plaintiffs claim the municipal code is unconstitutionally vague not because it fails to provide sufficient notice of the prohibited conduct, but because it fails to provide any guidance as to how to *conform* their conduct to the law, in particular when there is no legal place for them to find shelter.¹²⁶

The idea that a statute can violate due process rights on grounds of vagueness when it is clear but impossible to achieve is not novel, although it is not well-established.¹²⁷ Plaintiffs' argument is premised on precedent protecting people from criminal enforcement, however, they cannot be criminally prosecuted for violating the prohibited camping ordinance, which is classified as a public nuisance under civil municipal code.¹²⁸ At oral argument, Plaintiffs again rely on a case that struck down

¹²³ Def.'s Reply to Opp'n to Def.'s Mot. to Dismiss at 6.

¹²⁴ Opp'n to Mot. to Dismiss at 10-11.

¹²⁵ Def.'s Mot. to Dismiss at 17-18; *infra* 6-9 (describing the ordinance's provisions in detail).

¹²⁶ Pls.' Opp'n to Def.'s Mot. to Dismiss at 11.

¹²⁷ Michael J. Zydney Mannheimer, *Vagueness as Impossibility*, 98 Tex. L. Rev. 1049, 1097-1100 (2020) (citing authorities as early as the 15th but no later than the 20th century).

¹²⁸ Pls.' Opp'n to Def.'s Mot. to Dismiss at 11.

criminal code on due process grounds. In that case, the Alaska Supreme Court so held because the challenged criminal laws presented a dilemma under which it was impossible not to subject oneself to further criminal liability.¹²⁹ Here, the same principles of strict construction and leniency within the criminal context do not apply.¹³⁰

Accordingly, the Municipality's argument that it does not need to "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[,]” stands.¹³¹ The Municipality's abatement ordinance need not provide Plaintiffs with instructions and the means by which they might comply. It need only clearly describe the prohibited conduct so Plaintiffs are on notice as to how to prevent the loss of property. This Court notes that Plaintiffs do not challenge the precision of the ordinance's definition of prohibited conduct and its consequences and holds that the language is sufficiently clear.

Plaintiffs argue that the ordinance provides broad discretionary police powers, presenting opportunity for unfair and uneven enforcement.¹³² This is a conclusion of law this Court is not obligated to accept on a motion to dismiss. Conversely, the ordinance places definite and clear limitations on zone abatements, what camps can be abated, and provides a justifiable prioritization of the abatement of some camps over others based on the public health and safety concerns and proximity to shelter. Because of these provisions in the ordinance, and Plaintiffs' failure to allege facts to the contrary, their

¹²⁹ *Gudmundson v. State*, 822 P.2d 1328, 1332-33 (Alaska 1991).

¹³⁰ *Id.*

¹³¹ Def.'s Reply to Pls.' Opp'n to Mot. for Summ. J. at 7.

¹³² Opp'n to Def.'s Mot. to Dismiss at 11.

argument that the ordinance will result in discriminatory enforcement fails as a matter of law.

Plaintiffs essentially claim the ordinance is unconstitutionally vague because, in effect, it forces them to find another place to illegally camp where they may be subject to further abatement. The issue here appears to be with the Municipality's use of abatements when shelters are at max capacity—an issue necessarily intertwined with questions regarding the allocation of resources. These are policy questions for the Municipality, not justiciable controversies for the Court.

3. The Municipality's abatement ordinance does not violate Alaska's constitutional prohibition on cruel and unusual punishment.

Plaintiffs claim 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.”¹³³ Plaintiffs concede that the Alaska Supreme Court has not addressed the question of whether banishment is a cruel and unusual punishment, but argue that banishment should be found unconstitutional on these grounds because the Court of Appeals rejected it as “unnecessary and restrictive.”¹³⁴ Plaintiffs further explain that the prohibition on cruel and unusual punishment should apply here because Alaska’s Constitutional clause on cruel and unusual punishment includes offenses that “still connote criminal conduct” even if they do not result in incarceration.¹³⁵ Plaintiffs claim the ordinance connotes

¹³³ Pls.’ Opp’n to Def.’s Mot. to Dismiss at 12.

¹³⁴ *Id.* at 12-13.

¹³⁵ *Id.* at 12 (quoting *Baker v. Fairbanks*, 471 P.2d 386, 402 (Alaska 1970)).

criminal conduct “[b]ecause the definition of a ‘prohibited campsite’ relies explicitly on Anchorage’s Penal Code[.]”¹³⁶

The Municipality argues that Alaska’s cruel and unusual punishment clause does not apply to the ordinance because it applies only to post-conviction criminal matters.¹³⁷ It further explains that merely “cross-referenc[ing] a criminal law to define a term” does not render a violation of a civil ordinance a criminal violation.¹³⁸ Lastly, it claims that even if Alaska’s cruel and unusual punishment clause applied, “banishment is not a possible result of the Municipality’s abatement code.”¹³⁹

a. Legal standard

Article 1, Section 12 of the Alaska Constitution provides that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”¹⁴⁰ Alaska’s cruel and unusual punishment provision aligns with its federal counterpart in that it applies only to criminal matters.¹⁴¹

b. Alaska’s cruel and unusual punishment clause does not apply to the prohibited camping ordinance, and the abatement regime does not result in “banishment.”

Plaintiffs cite *Baker v. City of Fairbanks* and *Resek v. State* to support their claim that Alaska’s cruel and unusual punishment clause applies to the Municipality’s ordinance providing for the abatement of prohibited campsites.¹⁴² However, in *Baker*, the

¹³⁶ Pls.’ Opp’n to Def.’s Mot. to Dismiss at 12.

¹³⁷ Def.’s Mot. to Dismiss at 19.

¹³⁸ Def.’s Reply to Pls.’ Opp’n to Mot. to Dismiss at 8.

¹³⁹ *Id.*

¹⁴⁰ ALASKA CONST. Art. 1 § 12.

¹⁴¹ *Paxton v. Gavlak*, 100 P.3d 7, 13 (Alaska 2004); *City of Grants Pass, Oregon v. Johnsons*, 603 U.S. 520, 541-42 (2024).

¹⁴² Pls.’ Opp’n to Def.’s Mot. to Dismiss at 12 (quoting *Baker v. Fairbanks*, 471 P.2d 386, 402 (Alaska 1970)).

Alaska Supreme Court defined the category of criminal prosecutions for the purpose of determining the right to jury trial, and, in *Resek*, the Alaska Supreme Court applied this definition of criminal prosecution to the right to counsel under the same Article 1, Section 11.¹⁴³ Alaska Courts have yet to expand the scope of criminal matters to which the cruel and unusual punishment clause applies. To do so here would require extraordinary legal justification Plaintiffs fail to present.

Even if this Court were to extend the definition of criminal offenses from *Baker* to Alaska's cruel and unusual punishment clause, it still would not apply to the ordinance at issue. The Alaska Supreme Court defined "criminal prosecutions" under Article 1 Section 11 as:

[I]ncluding (1) offenses for which a *direct penalty* may be incarceration, (2) offenses which may result in the loss of a valuable license, and (3) offenses for which the fine imposed is heavy enough to indicate criminality, because such a fine could be taken as a gauge of the ethical and social judgments of the community.¹⁴⁴

Firstly, a person who violates the prohibited camping ordinance cannot receive criminal charges for violating the ordinance, rather, the criminal charges would stem from violation of the municipal code on criminal trespass. No criminal charges can be brought as "*a direct penalty*" for offending the prohibited camping ordinance. Secondly, violation of the ordinance does not result in the loss of a valuable license. Thirdly, no

¹⁴³ *Baker v. Fairbanks*, 471 P.2d 386, 402 (Alaska 1970); *Resek v. State*, 706 P.2d 288, 291 (Alaska 1985) (citing *Alexander v. City of Anchorage*, 490 P.2d 910, 913 (Alaska 1971)).

¹⁴⁴ *Resek v. State*, 706 P.2d 288, 291 (Alaska 1985) (citing *Baker v. Fairbanks*, 471 P.2d 386, 402 n.29 (Alaska 1970)) (emphasis added).

finer are imposed for violation of the ordinance. Therefore, under *Baker*, the cruel and unusual punishment clause does not apply to the ordinance at issue.

Furthermore, Plaintiffs' argument that this Court should consider banishment to be cruel and unusual punishment prohibited by Article 1, Section 12 of the State Constitution relies heavily on *Edison v. State*, in which the Alaska Court of Appeals held that a condition of probation prohibiting the appellant from entering the city of Marshall for one year was "unnecessary and restrictive."¹⁴⁵ Even if this Court were to find that the cruel and unusual punishment clause applies to banishment, *Edison* does not justify a finding that banishment occurs under the ordinance. Here, the ordinance exclusively prohibits Plaintiffs from camping on public land. They are not banished from any use of public land, nor are they banished from the Municipality of Anchorage. Lastly, the provision of the ordinance limiting the number of zone abatements that may be noticed at a given time effectively prevents banishment as a potential outcome.

This Court finds that Plaintiffs failed to establish that Alaska's cruel and unusual punishment clause applies to banishment, but even presuming they did, the Municipality's abatement regime does not result in banishment. Therefore, Plaintiffs fail to plead a claim for cruel and unusual punishment for which relief can be granted.

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¹⁴⁵ *Edison v. State*, 709 P.2d 510, 512 (Alaska Ct. App. 1985).

4. *Plaintiffs fail to plead a ripe claim for violation of their constitutional right to privacy.*

Plaintiffs claim that the Municipality's abatement regime "practically guarantees an invasion of privacy and loss of vital documents for the vast majority of people subject to abatement" because storage is offered only to "the limited group of people who notify the Municipality of their intent to appeal *prior* to the abatement."¹⁴⁶ Plaintiffs assert 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."¹⁴⁷ The Municipality contends that papers left at an abatement site after the notice period elapses are abandoned, thereby extinguishing any remaining expectation of privacy.¹⁴⁸ It also argues that Plaintiffs' Complaint does not allege that any information was, or is likely to be inadvertently disclosed, and so the claim is not ripe.¹⁴⁹

a. *Legal standards*

Article 1, Section 22 of the Alaska Constitution provides that "[t]he right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section."¹⁵⁰ Because the State Constitution's right to privacy is explicit, its protections are necessarily more robust and broader in scope than those of the implied federal right to privacy.¹⁵¹ However, "the right to privacy is neither absolute nor

¹⁴⁶ Pls.' Opp'n to Def.'s Motion to Dismiss at 15-16.

¹⁴⁷ *Id.*

¹⁴⁸ Def.'s Mot. to Dismiss at 22-23.

¹⁴⁹ *Id.* at 22.

¹⁵⁰ ALASKA CONST. Art. 1 § 22.

¹⁵¹ *State v. Planned Parenthood of Alaska*, 171 P.3d 577, 581 (Alaska 2007).

unconditional, and still may be overcome by a statute enacted for compelling reasons using means that are narrowly tailored to achieve the statute's objectives."¹⁵²

Alaska maintains "a general leniency toward the ripeness threshold for maintaining an action."¹⁵³ However:

The ripeness doctrine requires a plaintiff to claim that either a legal injury has been suffered or that one will be suffered in the future. Our primary concern is whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all.¹⁵⁴

- b. *Plaintiffs' claim for violation of their right to privacy is not ripe because no violation is alleged and it's uncertain that any alleged violation will occur.*

Plaintiffs argue that their Complaint "was filed prior to the Arctic-Fireweed abatement[,]" so could they not allege facts about an event that had not yet occurred.¹⁵⁵ They assert that 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."¹⁵⁶ However, Plaintiffs have had over a year to amend their Complaint and provide the Court with information regarding any violations that might have occurred at the February abatement of Arctic and West Fireweed. None have been identified.

Additionally, in their Complaint, Plaintiffs allege that "[Plaintiff] Mr. Dyer, for example, has previously lost essential documents during an abatement."¹⁵⁷ Notably,

¹⁵² *Doe v. Dep't of Public Safety*, 444 P.3d 116, 127 (Alaska 2019).

¹⁵³ *Larson v. State*, 254 P.3d 1073, 1078 (Alaska 2011).

¹⁵⁴ *Eng v. Alaska Dep't of Public Safety*, 557 P.3d 1198, 1206 (Alaska 2024) (internal citations and quotations omitted).

¹⁵⁵ Pls.' Opp'n to Def.'s Second Mot. to Dismiss at 16

¹⁵⁶ *Id.*

¹⁵⁷ Compl. at ¶ 30.

Plaintiffs claim that Mr. Dyer previously lost an essential document during an abatement. They do not allege that the Municipality removed the document, stored the document, destroyed the document, or that any personal information was actually compromised as a result of the Municipality's actions.

Additionally, Plaintiffs make no allegations to support that inadvertent disclosure or destruction of protected identifying information has, or will occur under the ordinance. They support their claim by noting that no protections are in place to prevent such inadvertent disclosure, but do not explain the Municipality's duty to do so or how that duty is unfulfilled.

Practically speaking, with regard to personal documentation, the Court sees no reason why Plaintiffs would not be able to protect their personal information by removing it before the notice period elapses. The Court is less sympathetic to Plaintiffs' argument that 10 days is not enough time to protect personal identifying information, considering it is typically small, lightweight, and easy to carry on one's person.

Furthermore, under the ordinance, property removed from prohibited campsites is either (1) disposed of or (2) temporarily stored by the Municipality before it is reclaimed, or, ultimately disposed of. The disposal of documents and personal identifying information certainly prevents its misuse or inadvertent disclosure. Regarding potential misuse or inadvertent disclosure of personal information while it is in municipal storage, Plaintiffs only support for this claim is that the system "practically guarantees an invasion of privacy and loss of vital documents for the vast majority of people subject to

abatement.”¹⁵⁸ This is a conclusion of law this Court is not obligated to admit for the purposes of acting on a motion to dismiss.

Therefore, without potentially looking to information outside the pleadings. Plaintiffs’ claim for violation of their right to privacy is non-justiciable for lack of ripeness.

- c. *Even assuming their claim is ripe, the Municipality’s abatement regime does not violate Plaintiffs’ right to privacy.*

Plaintiffs rely on *Kitcheon v. City of Seattle*, a Washington Court of Appeals case, in making their argument that the Municipality’s abatement regime violates the Alaska Constitution’s provision on the individual right to privacy.¹⁵⁹ In *Kitcheon*, Plaintiffs challenged city administrative rules that allowed *immediate* removal of “people, tents, personal property, garbage, debris or other objects related to an encampment that: are in a City park or on a public sidewalk; interfere with the pedestrian or transportation purposes of public rights-of-way; or interfere with areas that are necessary for or essential to the intended use of a public property or facility.”¹⁶⁰ The rules did not require any advance notice or prior offer of alternative shelter before removal.¹⁶¹

In *Kitcheon*, the Washington Court of Appeals held on summary judgment that the removal of persons and property from encampments was “facially unconstitutional” pursuant to Washington’s enumerated constitutional right to privacy.¹⁶² The Court

¹⁵⁸ Pls.’ Opp’n to Def.’s Mot. to Dismiss at 16.

¹⁵⁹ *Id.* at 15.

¹⁶⁰ *Kitcheon v. Seattle*, 2024 WL 5040630 at *1 (Wash. Ct. App. 2024) (quoting FAS 17-01, section 3.4).

¹⁶¹ *Id.*

¹⁶² *Id.* at *2.

reasoned that Seattle’s “indiscriminate and standardless removal” of “intimate personal information” was “not carefully tailored to meet a legitimate government goal.”¹⁶³

Even overlooking the jurisdiction, *Kitchen* holds little influence over the privacy claim in the instant case because the abatement regimes differ so dramatically as to not be comparable. The City in *Kitchen* could execute abatements, including the seizure and destruction of personal property and papers, without notice or opportunity to recover those papers. Here, the ordinance provides significant protections in the quality of notice provided and length of notice period that must elapse before abatement can occur.

Plaintiffs provide only non-binding and minimally persuasive legal authority in support of their right to privacy claims. As previously explained, this Court holds that Plaintiffs’ privacy rights are not implicated under the ordinance. The ordinance furthers an important government goal while adequately protecting privacy rights.

5. The Municipality’s abatement regime does not violate Alaska’s constitutional provisions on public health and welfare.

Plaintiffs claim that enforcement of the abatement regime when there is no available shelter “endanger[s] their health and welfare” in violation of the health and welfare clauses of the Alaska Constitution.¹⁶⁴ Plaintiffs argue that Article VII rights are affirmative rights that both “impose a duty upon the government and confer an individual right upon Alaskans.”¹⁶⁵ The Municipality argues that (1) Plaintiffs’ health and welfare claims are nonjusticiable political questions that are unenforceable against the

¹⁶³ *Id.* at *13.

¹⁶⁴ Pls.’ Opp’n to Def.’s Mot. to Dismiss a 16-17.

¹⁶⁵ *Id.* at 17.

Municipality, and (2) no right to live on Municipal land can be implied from the public health and welfare provisions.¹⁶⁶

a. Legal standard

Article VII, Section 4 of the Alaska Constitution provides that “[t]he legislature shall provide for the promotion and protection of public health.”¹⁶⁷ Article VII section 5 provides that “[t]he legislature shall provide for public welfare.”¹⁶⁸

This Court has both the authority and the duty to infer fundamental rights not expressly enumerated in the State Constitution when 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.”¹⁶⁹

b. Alaska’s constitutional provisions on health and welfare do not create protected individual rights that are enforceable in this case.

The Municipality argues that “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.”¹⁷⁰ However, the Municipality misrepresents Plaintiffs’ claims on these grounds, which primarily relate to the confiscation of property they need

¹⁶⁶ Def.’s Motion to Dismiss at 23-28.

¹⁶⁷ ALASKA CONST. Art. VII § 4.

¹⁶⁸ ALASKA CONST. Art. VII § 5.

¹⁶⁹ *Baker v. Fairbanks*, 471 P.2d 386, 401-02 (Alaska 1970).

¹⁷⁰ Def.’s Mot. to Dismiss at 26.

to protect themselves from the elements.¹⁷¹ Plaintiffs' personal health and welfare are obviously implicated under the facts alleged in this case, the issue is whether the State Constitution's provisions on health and welfare are implicated.

The Municipality argues that the plain language of the health and welfare clauses "give direction to the state legislature; they do not create individual rights."¹⁷² Both the Alaska Supreme Court and the District Court of Alaska have held that clauses in the Alaska Constitution that explicitly direct the legislature to undertake a policy without expressly providing an enumerated right do not provide a cause of action for declaratory relief.¹⁷³ The Municipality explains that because the health and welfare clauses are directives to a legislative body, judicial review of the abatement regime to the extent that it either meets or fails to meet its directive "is plainly a nonjusticiable political question that must be rejected as a matter of law..."¹⁷⁴

Plaintiffs argue that this Court should apply similar reasoning as in *Hootch v. Alaska State-Operated School System*, in which the Alaska Supreme Court held that Article VII Section 1, providing that "[t]he legislature shall by general law establish and maintain a system of public schools open to all children of the State[,]" both imposes a duty upon the state legislature *and* confers an individual right to education enforceable against municipalities.¹⁷⁵ However, the Alaska Supreme Court first inferred the right to

¹⁷¹ Pls.' Opp'n to Def.'s Mot. to Dismiss at 18 ("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.")

¹⁷² Def.'s Mot. to Dismiss at 23.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 25.

¹⁷⁵ Opp'n to Def.'s Mot. to Dismiss at 17.

public education in *Bresse v. Smith*, which, although in part grounded in Article VII, largely relied upon the Article I “right to be let alone” in finding a student had the personal right to express themselves through their hairstyle absent a compelling government interest.¹⁷⁶

To date, the Alaska Supreme Court has not held the health and welfare clauses to provide an individual right similar to those provided under Article I, and it is difficult to infer one relying on *Hootch* and *Breese* alone. Additionally, Plaintiffs fail to identify how their alleged right to public health and welfare under these circumstances are “within the intention and spirit of our local constitutional language.”¹⁷⁷ Therefore, this Court finds that Plaintiffs failed to establish that Alaska’s health and welfare clauses provide for enforceable, individual rights applicable to this case as a matter of law.

Conclusion

Plaintiffs present a compelling set of allegations outlining the lack of available shelter in Anchorage and the potentially dire consequences of even a temporary deprivation of property for people experiencing homelessness. While Alaska’s Constitution is comparatively more generous than others with regard to individual rights, generally speaking, it permits government infringement on these rights when it is justified.

The Municipality’s abatement regime includes robust safeguards that sufficiently protect the rights of individuals who may find themselves subject to an abatement,

¹⁷⁶ *Breese v. Smith*, 501 P.2d 159, 168-73 (Alaska 1972).

¹⁷⁷ *Baker v. Fairbanks*, 471 P.2d 386, 401-02 (Alaska 1970).

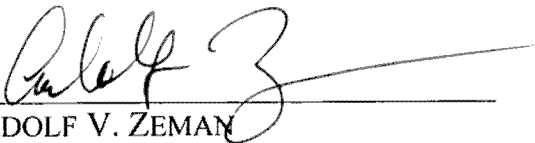
including parameters for written and verbal notice, a 10-day notice period, a mechanism to challenge the abatement and trigger temporary storage of essential personal property in fair condition, the opportunity to reclaim property from storage, and notification to the Department of Health and nearby community councils to connect people on the proposed abatement site with access to resources.

In light of the articulated restraints on the Municipality and protections afforded to Plaintiffs, this Court holds that the ordinance governing the abatement of prohibited campsites in Anchorage passes Plaintiffs' constitutional challenges as a matter of law.

For the aforementioned reasons, the Municipality's Motion is **GRANTED**.
Plaintiffs' Complaint is accordingly dismissed.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 22nd day of May, 2026.


ADOLF V. ZEMAN
Superior Court Judge

Alaska Trial Courts

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Case Number: 3AN-25-04570CI

Case Title: AGUILA, DAMEN VS. MUNICIPALITY OF ANCHORAGE

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