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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

DALE ENGLE, for and on behalf of)
himself and all others similarly situated,)

Plaintiff,)

vs.)

) Case No. 3AN-10-_____ CI

MUNICIPALITY OF)
ANCHORAGE, and MARK MEW, in)
his official capacity as Chief of)
Police for the Anchorage Police)
Department)

Defendants.)
_____)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION AND SUMMARY OF CLAIMS

COMES NOW Dale Engle, by and through counsel, the American Civil Liberties Union of Alaska Foundation (ACLU), and pursuant to Alaska Civil Rule 65, moves this Court for an injunction against the defendants, the Municipality of Anchorage and Mark Mew, the Chief of Police for the Anchorage Police Department, and seeks declaratory relief stating that Anchorage Municipal Code (AMC) § 15.20.020 is facially unconstitutional and as applied to the plaintiff.

1 1. Plaintiff respectfully moves to enjoin the unlawful seizure and
2 destruction, by the defendants, their employees, and their agents, of the plaintiff’s
3 personal property during sweeps of homeless camps, and to declare
4 unconstitutional the municipal ordinance authorizing the seizure and destruction
5 of his personal property without affording any due process or obtaining a warrant.
6

7 2. This is a class action stemming from the pattern, practice, and
8 official policy of the Municipality of Anchorage to confiscate and destroy the
9 property of Anchorage’s homeless residents, including Mr. Engle’s. Taking the
10 sleeping bags and tents from homeless campers, who often have nowhere else to
11 go, deprives the poorest among us of the few possessions they have—possessions
12 vital to survival in Anchorage’s climate. In other cases, irreplaceable souvenirs
13 of better times in the life of a homeless person: a letter from a now-dead child or
14 parent, military medals, a photo album from a wedding. These sorts of priceless
15 sentimental items have been “disposed of as waste” or seized as lacking any
16 “reasonably recognizable . . . apparent utility.” AMC 15.20.020(B)(15)(a)(i) &
17 (b)(ii), respectively.
18

19 3. Before the 2009 amendments to AMC 15.20.020, the Municipality
20 had previously allowed 24 hours of posted notice prior to seizure of any property.
21 Now, however, police officers are only to allow 12 hours of notice prior to
22 seizure.
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1 4. For a homeless person, this inadequate period of notice provides no
2 relief for someone who may not be present during the twelve hours when notice is
3 posted or during the seizure of their property. It is entirely possible for notice to
4 be posted in the morning while a homeless camper is away searching for
5 employment, looking for food, or attempting to find better shelter during
6 inclement weather. It is equally possible for that same homeless camper to return
7 twelve hours later—only to find all of his few remaining possessions taken and
8 destroyed.
9

10 5. Even if a homeless person has actually received twelve hours of
11 notice, however, he is never afforded any opportunity to argue that his campsite is
12 not located on public land. Indeed, defendants have never provided any
13 opportunity for the plaintiff, or other similarly situated homeless persons, to
14 object to the seizure of their property.
15

16 6. The defendants have likewise never provided any opportunity for
17 the plaintiff, or other similarly situated homeless persons, to reclaim personal
18 property after it has been seized by the defendants. Instead, the seized property
19 has been summarily thrown away as waste.
20

21 7. Plaintiff, on his own behalf and on behalf of all other similarly
22 situated persons in the Municipality of Anchorage, claim that the defendants’
23 amended ordinance, as well as their practices of intentionally taking and
24 destroying the homeless’ personal property, violate their state constitutional rights

1 by depriving homeless persons of their property without due process of law, as
2 well as effecting unreasonable searches and seizures without a warrant.

3 8. Plaintiff seeks preliminary and permanent injunctive relief, on
4 behalf of himself and other similarly situated homeless persons in the Anchorage
5 community, enjoining the defendants from taking or destroying homeless
6 persons' property without reasonable notice or an opportunity to be heard, and in
7 so doing violating their state constitutional rights.
8

9 **JURISDICTION AND VENUE**

10 9. This is a complaint for declaratory and injunctive relief brought
11 pursuant to AS 09.40.230 and AS 22.10.020. Venue is proper under
12 AS.22.10.030 and Rule 3 of the Alaska Rules of Civil Procedure.
13

14 **PARTIES**

15 10. Dale Engle is a resident of the Municipality of Anchorage and at all
16 relevant times herein was and now is homeless. Mr. Engle is a disabled veteran
17 who lived in a campsite near upper Muldoon Road. He has in the past and
18 intends in the future to engage in open-air camping within the Municipality of
19 Anchorage.
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21 11. Defendant Municipality of Anchorage is a municipal corporation,
22 duly organized and existing under the laws of the State of Alaska.
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1 property remaining at the campsite is collected in garbage bags by the ARBRA
2 volunteers and thrown away.

3 17. During these sweeps of homeless camps, the ARBRA volunteers
4 act at the direction of police officers from the Anchorage Police Department.
5 Officers from the Anchorage Police Department identify which campsites will be
6 torn down and what property should be thrown away. Volunteers from ARBRA
7 actually take the property and dispose of it, acting at the officers' direction.
8

9 18. Since the summer of 2009 and the deaths of eighteen homeless
10 people around the city, more media attention has been focused on the issue of
11 homelessness. *See, e.g.,* William Yardley, "Homeless Deaths Rise, and
12 Anchorage Copes," *N.Y. Times*, Oct. 25, 2009, at A14, *available at*
13 <http://www.nytimes.com/2009/10/25/us/25detox.html>.
14

15 19. In July of 2009, the Municipality formally codified its earlier
16 practices of clearing out homeless camps, by amending AMC 15.20.020, which
17 allows for the Anchorage Police Department to direct persons in clearing out the
18 area's homeless camps with twelve hours' notice. That is, homeless persons are
19 given notice that they must leave their encampment on public property within the
20 next twelve hours. If they do not comply, the police will consider the remaining
21 property to be abandoned and may thereafter take it away to be destroyed. AMC
22 15.20.020(B)(15)(c).
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1 20. The public nuisances ordinance for the Municipality was amended
2 to include camping on public property. AMC 15.20.020(B)(15). The ordinance
3 authorizes the seizure of property without a warrant, without providing for any
4 opportunity to challenge the seizure, and without an opportunity to reclaim the
5 property. *Id.* (“Personal property remaining at the illegal campsite after the 12-
6 hour notice period and the 20-minute wait period expire is abandoned and may be
7 disposed of as waste.”).

9 21. In September of 2009, the Anchorage Police Department and
10 ARBRA volunteers cleared out a homeless camp near St. Mary’s Episcopal
11 Church. In so doing, many of the affected homeless persons had their tents and
12 sleeping bags seized at the direction of the police and thrown away. Some dispute
13 remains as to whether the camp lay on public property or on the private grounds
14 of the church.

16 22. By the next month, officers from the Anchorage Police Department
17 visited another homeless camp near Reeve Boulevard. Colloquially known as
18 “Veterans’ Ridge,” the police gave notice to the homeless residents on the night
19 of October 15th that stated: “[i]n accordance with Anchorage Municipal Code
20 8.45 [sic] you are ordered to vacate this property within ~~24~~ 12 hours. If you do
21 not vacate, your property will be seized and taken away for disposal.”

1 23. AMC 8.45.005 et seq. relates to the Municipality’s criminal
2 ordinances against trespassing and is not the Municipality’s July 2009 amended
3 nuisance ordinance.

4 24. This ordinance, along with others, was frequently used before the
5 July 2009 amendments to AMC 15.20.020 as the police officers’ justification to
6 raid homeless camps.

7 25. On October 19th, 2009—four days after the twelve-hour time period
8 listed on the notice given by the Anchorage Police Department—the Municipality
9 conducted another raid on the Reeve Boulevard homeless camp. Without any
10 warrant, the officers, or agents of the officers, entered the homeless persons’
11 dwellings and seized some of the residents’ tents.

12 26. Those homeless persons living at the Veterans’ Ridge campsite
13 would be defined as “unsheltered,” meaning that they regularly sleep in places
14 not designed for human habitation. See “A Look at Homelessness in Alaska,”
15 *supra* ¶13, at 2.

16 27. Despite the fact that the few possessions these unsheltered homeless
17 residents had were all that they had to survive, their tents were identified by the
18 police as having “no value,” and hence, should not be stored so that affected
19 persons might later retrieve their seized belongings. See Lisa Demer, “Mountain
20 View Homeless Camp Cleared Out,” *Anchorage Daily News*, October 20, 2009,
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1 available at <http://www.adn.com/2009/10/19/979537/mountain-view-homeless->
2 [camp-cleared.html](http://www.adn.com/2009/10/19/979537/mountain-view-homeless-camp-cleared.html).

3 28. Prior to this event, the Veterans' Ridge campsite had existed for
4 several years. The development of the camp was known to both the Municipality
5 and ARBRA. Its development had even been publicly encouraged and promoted
6 by Ed O'Neill, the president of ARBRA and an agent of the municipality as it
7 relates to the disposal of property from these campsites.
8

9 29. In the spring of 2009, Mr. Engle's sleeping bag, tent, and various
10 personal items were taken from his campsite and disposed of by Anchorage
11 police officers or people acting at their direction. Mr. Engle has had his property
12 taken by the Anchorage Police Department, or people acting at their direction,
13 from other campsites on numerous earlier occasions dating back several years.
14 One of these events was a 2006 incident wherein his military medals were
15 summarily bagged up by ARBRA volunteers and later destroyed.
16

17 30. These raids have also been conducted intermittently around various
18 Anchorage homeless camps throughout the winter. *See, e.g.,* Ashton Goodell,
19 "Storyteller Takes Look at Anchorage's Homeless" (KTUU television broadcast
20 Mar. 8, 2010), available at <http://www.ktuu.com/Global/story.asp?S=12106819>
21 (showing, among other things, police officers posting notices to vacate as
22 described in paragraphs 16, 19, and 22, as well as a police officer temporarily
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1 detaining a homeless resident and searching his soda cup to determine if it
2 contained alcohol).

3 31. No warrants were ever procured to authorize the police officers'
4 search through homeless residents' dwellings or the seizures of their property.

5 32. No opportunity to be heard concerning the deprivation of their
6 personal property rights was ever provided for the affected homeless residents.

7 33. No opportunity to retrieve the confiscated personal property was
8 ever afforded to any of the homeless residents.

9 34. Defendants' policies and practices have resulted, and will continue
10 to result in, irreparable injury to the plaintiff. Plaintiff has no adequate remedy at
11 law to redress or prevent the wrongs done to him and his already-destroyed
12 property by the defendants. Moreover, the defendants' actions and public
13 statements indicate that they intend to continue the aforementioned unlawful
14 practices.

15 35. Defendants have established a policy and practice of confiscating
16 and destroying the personal property of the plaintiff's, as well as the personal
17 property of similarly situated homeless persons, without adequate notice or any
18 opportunity to be heard, and will continue to implement this policy until
19 restrained by an injunctive decree of this Court.

20 36. As a direct and proximate result of the defendants' unlawful
21 practices, plaintiff has suffered, and will continue to suffer—by further depriving
22

1 him, as well as other similarly situated homeless persons in Anchorage, of already
2 limited resources and the destruction of property such as clothing, bedding, and
3 personal belongings. This has resulted in leaving Anchorage's most vulnerable
4 residents without the essential personal belongings necessary for shelter, health,
5 and well-being during the harshest seasons of the year.

6 **CLAIMS FOR RELIEF**

7 **First Claim for Relief** 8 **(Denial of Plaintiff's Constitutional Right to Due Process of Law under the** 9 **Alaska Constitution, Article 1, § 7)**

10 37. Plaintiff re-alleges and incorporates herein paragraphs 1 through 36,
11 as though they were fully set forth.

12 38. The Alaska Supreme Court has "consistently held that, except in
13 emergencies, due process requires the State to afford a person an opportunity for
14 a hearing *before* the State deprives that person of a protected property interest."
15 *Hoffman v. State, Dep't of Commerce & Econ. Dev.*, 834 P.2d 1218, 1219
16 (Alaska 1992) (citing *Graham v. State*, 633 P.2d 211, 216 (Alaska 1981)).

17 39. Additionally, the supreme court has noted that "[t]he crux of due
18 process is [an] opportunity to be heard and the right to adequately represent one's
19 interests." *Matanuska Maid, Inc. v. State*, 620 P.2d 182, 192 (Alaska 1980).

20 40. Twelve-hour notice is completely inadequate for a homeless person
21 to reasonably be expected to discover the notice and to find another location for
22 his personal effects. Moreover, the Municipality currently has no practices in
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1 place to separate or store for later retrieval personal items that are clearly owned
2 and are indeed valuable. Instead, the Municipality elects to summarily seize and
3 destroy *all* of the remaining personal property in each encampment. Such a
4 policy “creates not just the risk, but the certainty of erroneous deprivation.”
5 *Kincaid v. Fresno*, 2006 WL 3542732, at *38 (E.D. Cal. Dec. 8, 2006).

6
7 41. Fundamental notions of due process dictate that homeless people
8 should have some opportunity to dispute the sweeping language of AMC
9 15.20.020, which summarily concludes that the unattended property of a
10 homeless person may be “disposed of as waste” if past the twelve-hour deadline.
11 AMC 15.20.020(B)(15)(a)(i). Even if a homeless person is present and seeks to
12 claim his property, however, police officers under the ordinance may still
13 summarily confiscate personal property that they believe lacks “apparent utility.”
14 AMC 15.20.020(B)(15)(b)(ii). Good faith disputes could easily arise concerning
15 (1) whether the encampment is actually on public property, (2) whether there has
16 been any permissive use, or (3) whether a homeless person’s property actually
17 has any “apparent utility.” AMC 15.20.020(B)(15)(b)(ii).

18
19 42. Defendants’ aforementioned policies and practices thus result in the
20 provision of insufficient notice and a complete denial of any pre- or post-
21 deprivation opportunity to be heard—*some* balance of which is constitutionally
22 required under *Mathews v. Eldridge*, 424 U.S. 319 (1976). The United States
23 Supreme Court has consistently held that “individuals whose property interests
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1 are at stake are entitled to ‘notice and an opportunity to be heard.’” *Dusenbery v.*
2 *United States*, 534 U.S. 161, 167 (2002) (citations omitted). The Court has also
3 held that “the right to notice and an opportunity to be heard ‘must be granted at a
4 meaningful time and in a meaningful manner.’” *Fuentes v. Shevin*, 407 U.S. 67,
5 72 (1972) (citations omitted).

6 43. Defendants’ aforementioned policies and practices thus violate the
7 plaintiff’s right to due process of law under Article 1, § 7 of the Alaska
8 Constitution, as the policies and practices afford no meaningful opportunity to be
9 heard and provide either no notice or unreasonable notice in manner and time.

11 **Second Claim for Relief**
12 **(Denial of Plaintiff’s Constitutional Right Against Unreasonable Searches**
13 **and Seizure under the Alaska Constitution, Article 1, § 14)**

14 44. Plaintiff re-alleges and incorporates herein paragraphs 1 through 36,
15 as though they were fully set forth.

16 45. The Municipality’s policies and practices regarding the homeless
17 effect seizures of homeless persons’ property. This completely undermines the
18 people’s right to be “secure in their . . . effects” as guaranteed by Article I,
19 Section 14 of the Alaska Constitution.

20 46. Because “Alaska’s search and seizure clause is stronger than the
21 federal protection [afforded by] . . . the Fourth Amendment,” *Anchorage Police*
22 *Dep’t Employees Ass’n v. Municipality of Anchorage*, 24 P.3d 547, 550 (Alaska
23 2001), Defendants’ aforementioned policies and practices result in the
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1 unreasonable and warrantless seizure of the plaintiff's personal property and, in
2 some instances, the warrantless search of his residence.

3 47. As was stated in *Pottinger v. City of Miami*, 810 F. Supp. 1551,
4 1573 (S.D. Fla. 1992), "the property of homeless individuals is due no less
5 protection under the [F]ourth [A]mendment than that of the rest of society."

6 48. Individuals camping on public property have a constitutionally
7 cognizable expectation of privacy in their tents under the Fourth Amendment.
8 See *United States v. Gooch*, 6 F.3d 673, 677 (9th Cir. 1993).

9 49. The tactic of seizing and destroying the property of the homeless on
10 public property and from camps is not a new one, and federal courts have
11 generally disapproved of the seizure and destruction of the property of the
12 homeless as "abandoned." See, e.g., *Kincaid*, 2006 WL 3542732, at *38 ("Here,
13 the process provided by the City is constitutionally inadequate, particularly in
14 light of the fact that the City is seizing from homeless people the very necessities
15 of life: shelter, medicine, clothing, identification documents, and personal effects
16 of unique and sentimental value."); *Justin v. City of Los Angeles*, 2000 WL
17 1808426, at *13 (C.D. Cal. Dec. 5, 2000) (issuing a temporary restraining order
18 against "[c]onfiscating the personal property of the homeless when it has not been
19 abandoned and destroying it without notice"); *Pottinger*, 810 F. Supp. at 1573;
20 but see *Love v. City of Chicago*, 1996 WL 627614, at *5 (N.D. Ill. Oct. 25, 1996)
21 ("If a person has something valuable, such as a wallet, personal documents or
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1 something of sentimental value, and chooses not to carry it on his person, the
2 chance will always exist that it will disappear or be taken because life is not risk-
3 free.”).

4 50. Plaintiff was at all relevant times the owner of the confiscated and
5 destroyed personal property as previously alleged. His property was never
6 “abandoned” under Alaska law. *See Brooks Range Exploration Co., Inc. v.*
7 *Gordon*, 46 P.3d 942, 946 (Alaska 1973) (“Abandoned property’ is property
8 whose owner has manifested an intention to relinquish all title, possession, or
9 claim to the property.”). Consequently, the plaintiff remains entitled to possess
10 the comparatively few possessions that he actually owns.

12 51. The Municipality may not treat property as abandoned simply
13 because the owner has not yet removed it in the time the government has allotted.
14 *See, e.g., A & W Smelter and Refiners, Inc. v. Clinton*, 146 F.3d 1107, 1111 (9th
15 Cir. 1998).

17 52. Defendants’ aforementioned policies and practices violate the
18 plaintiff’s right to be free from unreasonable searches and seizures under Article
19 1, § 14 of the Alaska Constitution.

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21 **PRAYER FOR RELIEF**

22 Plaintiff seeks and is entitled to the following forms of relief:

23 53. That the Court assume jurisdiction over this matter;

24 54. That the Court award plaintiff declaratory and injunctive relief;

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55. That the Court declare that the recently amended provisions of AMC 15.20.005 et seq. violate the Alaska Constitution and are therefore void;

56. That the Court issue a preliminary and permanent injunction restraining defendants, their agents, employees, assigns and all persons acting in concert or participating with them, from enforcing the unconstitutional provisions of AMC 15.20.020.

57. That the Court declare that the plaintiff is a “constitutional” and/or a public interest litigant under AS 09.60.010(c) and Alaska Civil Rule 82;

58. That the Court award plaintiff his full reasonable costs and attorneys’ fees incurred during this litigation, under the applicable court rules and other provisions of law concerning the award of such costs and attorney’s fees to public interest litigants enforcing constitutional rights; and

59. That the Court grant any other and further relief as may be justly and appropriately provided in light of the evidence presented to the Court.

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WHEREFORE plaintiff respectfully requests that the Court enter judgment in his favor on the claims made and for the relief requested by this Complaint.

DATED this 28th day of April, 2010.

Respectfully Submitted,

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