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

MUNICIPALITY OF ANCHORAGE,)
)
Plaintiff,)
)
vs.)
)
DEWEY C. WELLS, SAMANTHA)
WELLS, dba LITTLE DIPPER DINER,)
)
Defendants.)

FILED in the Trial Courts
State of Alaska Third District
OCT 07 2020
Clerk of the Trial Courts
By _____ Deputy

Case No. 3AN-20-07424CI

OPPOSITION TO MOTION TO STAY

Plaintiff Municipality of Anchorage (MOA) opposes the Defendants' motion to stay proceedings in this matter pending their petition for review filed with the Supreme Court. There is no basis pursuant to Alaska R. Civ. P. 62(c) (stay pending review of injunction) for the Court to stay the trial court proceedings. The Petition for Review has no merit, and is unlikely to be granted.¹

Without citing any legal authority, Defendants request that the Court stay all proceedings. The Court should review a request for a stay of an injunction pending a Petition

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¹ Defendants requested that their Petition for Review be taken on an expediated basis. Defendants waited 48 days after the first TRO was granted before filing an expedited Petition for Review of the Court's August 10, 2020 decision. EO-15 expired 29 days prior to Defendants' filing of their Petition for Review on September 28, 2020. That motion has already been denied by the Supreme Court.

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for Review with the same criteria that apply to an injunction: 1) whether the petitioner has raised serious and substantial questions going to the merits of the case, 2) whether the petitioner is faced with irreparable injury unless the injunction is granted, and 3) whether the opposing party will be adequately protected. *Powell v. City of Anchorage*, 536 P.2d 1228, 1229 n. 2 (Alaska 1975); *Keane v. Local Boundary Com'n*, 893 P.2d 1239, 1249 n. 21.

In this case, the Defendants have identified *no* irreparable injury that will be affected if the Court denies their motion to stay. The Mayor's Emergency Order 15 (EO-15) expired August 30, 2020 and the Mayor's Emergency Order 14 v.2 took its place. The alleged injury that Defendants complained about with EO-15 is no longer an issue. The first TRO granted on August 10, 2020 was valid only for 10 days, through August 20, 2020. See Alaska R. Civ. P. 65(b). The MOA applied for an extension of the TRO, which was only valid for the next 10 days until EO-15 expired, which occurred at 11:59 p.m. on Sunday August 30, 2020. There is no pending order that should be "stayed" and Defendants cannot point to any irreparable injury.

Defendants have not raised a serious question on appeal. Defendants' Petition seeks review at the Supreme Court of legal issues that have not yet been addressed by this Court. If Defendants desired to litigate constitutional issues, they could do so at the trial court level first in the form of a substantive motion. Instead, they raised their constitutional questions in the form of a reconsideration motion. Therefore, Defendants have not raised serious and substantial questions going to the merits of the case. Defendants should not be permitted to skip the trial court's consideration and determination of their constitutional questions.

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Finally, when ready, the MOA will file a motion and seek a hearing to determine and finalize the fees imposed against Defendants for their willful violation of EO-15. Such a determination is not an irreparable injury. There is no reason for the trial court proceedings to be stayed on that remaining matter.

The motion to stay the trial court case pending the Petition for Review should be denied.

Respectfully submitted this 7th day of October, 2020.

KATHRYN R. VOGEL
Municipal Attorney

By: /s/ Linda J. Johnson

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Certificate of Service

I certify that on 10/07/2020 I caused to be emailed a true and correct copy of the foregoing to:

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/s/ Cathi Russell
Cathi Russell, Legal Secretary
Municipal Attorney's Office

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Opp. to Motion to Stay
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