

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BONTA, LLC,

*Plaintiff,*

v.

CITY OF MARYSVILLE, a municipal  
corporation,

*Defendant.*

CASE NO. 2:18-cv-01544-BJR

ORDER GRANTING DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT  
AND DENYING PLAINTIFF’S MOTION  
FOR SUMMARY JUDGMENT

**I. INTRODUCTION**

This matter involves a dispute between Plaintiff Bonta, LLC (“Bonta”) and the City of Marysville, Washington (the “City”) over local zoning codes and their application to commercial property owned by Bonta. The case was removed to this Court because, in addition to its state law claims, Bonta alleges violations of the Due Process and Equal Protection clauses of the Fourteenth Amendment to the U.S. Constitution. Before the Court are both the City’s and Bonta’s Motions for Summary Judgment. Dkt. No. 22 and 25. Having reviewed the motions, oppositions thereto, the record of the case, and the relevant legal authorities, the Court will grant the City’s motion as to the federal law claims and deny Bonta’s motion as to those same claims. Having done so, the Court declines to exercise supplemental jurisdiction over the remaining state law claims and dismisses them without prejudice. The reasoning for the Court’s decision follows.

## II. BACKGROUND

1 At issue is property located at 1217 1<sup>st</sup> Street, Marysville, WA 98270 (the “Property”).  
2  
3 Bonta owns the Property and leases it to Kodiak Industrial Solutions, LLC (“Kodiak”), which runs  
4 a spray-on coating business. Dkt. No. 22 at 3–4; Dkt. No. 25 at 4. Bonta has owned the Property  
5 since 2012 and, after running a business there for some time, sold the business and began leasing  
6 out the Property instead. Kodiak executed a lease with Bonta on September 11, 2017.

7 The Property is located in Marysville’s Downtown Commercial zone. On November 27,  
8 2017, Kodiak applied to the City for a business license, describing its business as “specialty coating  
9 applicator and industrial cleaning contractor.” Dkt. No. 22 at 4. At the time, Kodiak described its  
10 use of the Property to the City as a “base for employees where material and equipment would be  
11 stored.” *Id.* at 14 (quoting Dkt. No. 28-10 at 2). From there, Kodiak explained, “an employee  
12 arrives at the beginning of their shift to get whatever materials are needed for the specific jobs they  
13 have for that day, load the materials into the company vehicle, and depart.” *Id.* Based on this  
14 description, the City determined that storage was the only thing the property would be used for  
15 and classified the business as “Contractor’s Office and Storage Yard.” *Id.* at 4, 14.

16 Pursuant to that classification, Kodiak was required to comply with local Marysville  
17 Municipal Code (“MMC”) § 22C.020.070(30), which provides:

18  
19  
20 Outdoor storage of materials or vehicles must be accessory to the primary building  
21 area and located to the rear of buildings. Outdoor storage is subject to an approved  
22 landscape plan that provides for effective screening of storage, so that it is not  
23 visible from public right-of-way or neighboring properties.

24 MMC § 22C.020.070(30) (“Outdoor Storage Provision”).

25 According to the City, both Kodiak and Bonta are currently in violation of the Outdoor  
Storage Provision because “[t]here is substantial outdoor storage (of several trucks and other

1 supplies). It is not in the rear of the building. There is no approved landscape plan. And this is  
2 visible from virtually every direction.” Dkt. No. 22 at 2. Bonta, for its part, does not dispute that  
3 there is noncomplying storage at the Property. *See* Dkt. No. 25 at 4. Instead, it claims that the  
4 storage should be permitted as a “historical non-conforming use” of the Property) and further  
5 alleges that the City treats its property different from two nearby properties, which similarly store  
6 vehicles and storage outside without shielding them from the public right-of-way. *Id.* at 4–5.

7  
8 The City first attempted to work with Kodiak to bring its business into compliance. Dkt.  
9 No. 22 at 5. The City issued Kodiak a temporary permit to allow it to operate through May 1,  
10 2018, and later extended the permit to July 1, 2018 when Kodiak requested additional time to  
11 relocate its business. *Id.*

12 Bonta, however, in an effort to assist its tenant, filed an appeal of the Marysville Director  
13 of Community Development’s April 4, 2018 administrative ruling that Kodiak could continue its  
14 business only if it complied with the Outdoor Storage Provision. Dkt. No. 22 at 5. On August 29,  
15 2018, an administrative hearing was held before a Hearing Examiner, who issued a Decision  
16 against Bonta on September 20, 2018. Dkt. No. 1-2 at 3; Dkt. No. 22 at 8. Bonta appealed this  
17 decision to the Superior Court for the State of Washington under Washington’s Land Use Petition  
18 Action (“LUPA”), RCW Ch. 36.70C. Dkt. No. 22 at 8.

19  
20 Additionally, around this time, Bonta submitted numerous record requests to the City for  
21 information related to the Property, with which it maintains the City has still not fully complied.  
22 Dkt. No. 25 at 5–6. Along with its Land Use Petition, Bonta filed a complaint alleging four causes  
23 of action: (1) Void For Vagueness under the United States Constitution and Washington State  
24 Constitution; (2) Violation of the Equal Protection Clause under the United States Constitution  
25

1 and Washington State Constitution; (3) Violation of Washington Public Records Act, RCW 42.56,  
2 *et seq.*; and (4) Intentional Interference with Business Expectancy. Dkt. No. 1-2 at 9–12.

3 The matter was removed from Superior Court citing Bonta’s invocation of 42 U.S.C. §  
4 1983. Dkt. No. 1-1. On October 4, 2019 both parties moved for Summary Judgment. Dkt. Nos.  
5 22 and 25.

### 6 III. LEGAL STANDARD

7 Summary Judgment is appropriate where “there is no genuine dispute as to any material  
8 fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56. “A fact is  
9 ‘material’ if it might affect the outcome of the case.” *California Expanded Metal Prod. Co. v.*  
10 *Klein*, 396 F. Supp. 3d 956, 967 (W.D. Wash. 2019) (citing *Anderson v. Liberty Lobby, Inc.*, 477  
11 U.S. 242, 248 (1986)). A dispute is “‘genuine’ only if there is sufficient evidence for a reasonable  
12 fact finder to find for the non-moving party.” *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992  
13 (9th Cir. 2001); *see also Anderson*, 477 U.S. at 248 (“a material fact is ‘genuine,’ . . . if the evidence  
14 is such that a reasonable jury could return a verdict for the nonmoving party.”). Finally, a movant  
15 is entitled to judgment “as a matter of law” where the nonmoving party “has failed to make a  
16 sufficient showing on an essential element of her case with respect to which she has the burden of  
17 proof.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

18 The movant bears the initial burden of showing there is no genuine issue of material fact  
19 and that they are entitled to prevail as a matter of law. *See Massachusetts Bay Ins. Co. v. Walflor*  
20 *Indus., Inc.*, 383 F. Supp. 3d 1148, 1156 (W.D. Wash. 2019) (citing *Celotex*, 477 U.S. at 323).  
21 “[W]hen simultaneous cross-motions for summary judgment on the same claim are before the  
22 court, the court must consider the appropriate evidentiary material identified and submitted in  
23  
24  
25

1 support of both motions, and in opposition to both motions, before ruling on each of them.” *Fair*  
2 *Hous. Council of Riverside Cty., Inc. v. Riverside Two*, 249 F.3d 1132, 1134 (9th Cir. 2001); *see*  
3 *also Massachusetts Bay Ins.*, 383 F. Supp. 3d at 1156. In such circumstances, the Court “rule[s]  
4 on each party's motion on an individual and separate basis, determining, for each side, whether a  
5 judgment may be entered in accordance with the Rule 56 standard.” *Tulalip Tribes of Washington*  
6 *v. Washington*, 783 F.3d 1151, 1156 (9th Cir. 2015) (quoting 10A Charles Alan Wright, Arthur R.  
7 Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2720 (3d ed. 1998)); *see also Las*  
8 *Vegas Sands, LLC v. Nehme*, 632 F.3d 526, 532 (9th Cir. 2011) (“the court must consider each  
9 party's evidence, regardless under which motion the evidence is offered”).

11 **IV. DISCUSSION**

12 **A. Bonta’s Motion for Summary Judgment**

13 *1. Void for Vagueness*

14 Bonta’s complaint asserts a cause of action for “void for vagueness, under the Fourteenth  
15 Amendment to the United States Constitution” seeking a declaration that the Outdoor Storage  
16 Provision is unconstitutional. Dkt. No. 1-2 at ¶ 9–10. Bonta moves for summary judgment on this  
17 claim. *See* Dkt. No. 25 at 8–9. The City opposes and claims that the Outdoor Storage Provision  
18 is sufficiently clear, and that Bonta has failed to show otherwise. *See* Dkt. No. 22 at 9–12; Dkt.  
19 No. 31 at 3–5.

20 The complaint appears to challenges the regulation’s use of the words “storage,”  
21 “vehicles,” and “parking,” claiming they are “impermissibly vague and ambiguous.” Dkt. No. 1-  
22 2 at 10. Bonta’s motion for summary judgment, however, does little to elaborate on this cause.  
23 Instead, in its section entitled “Downtown Commercial Code is Unconstitutionally Vague,” it  
24  
25

1 states that the City’s zoning code “violates the Washington and Federal Constitutions” and then  
2 provides a number of conclusory statements that do not address any of the words which it  
3 challenged in its complaint. *See* Dkt. No. 25 at 8–9. Thus, broadly, Bonta’s complaint appears to  
4 be that the code fails to provide a clear standard to apply.

5 “It is a basic principle of due process that an enactment is void for vagueness if its  
6 prohibitions are not clearly defined.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); *see*  
7 *also* *Edge v. City of Everett*, 929 F.3d 657, 664 (9th Cir. 2019). But, “[c]ondemned to the use of  
8 words, we can never expect mathematical certainty from our language,” *Grayned*, 408 U.S. at 110,  
9 and thus, “perfect clarity and precise guidance have never been required even of regulations that  
10 restrict expressive activity.” *United States v. Williams*, 553 U.S. 285, 304 (2008) (quoting *Ward v.*  
11 *Rock Against Racism*, 491 U.S. 781, 794 (1989)).

13 This doctrine incorporates two related requirements. *See* *Edge*, 929 F.3d at 664. First,  
14 “laws [must] give the person of ordinary intelligence a reasonable opportunity to know what is  
15 prohibited, so that he may act accordingly.” *Grayned*, 408 U.S. at 108; *see also* *Connally v.*  
16 *General Const. Co.*, 269 U.S. 385, 391 (1926) (“a statute which either forbids or requires the doing  
17 of an act in terms so vague that men [or women] of common intelligence must necessarily guess  
18 at its meaning and differ as to its application violates the first essential of due process of law”).  
19 Second, a law must “provide explicit standards for those who apply them” in order to avoid  
20 “arbitrary and discriminatory enforcement.” *Grayned*, 408 U.S. at 108; *see also* *Tucson Woman’s*  
21 *Clinic v. Eden*, 379 F.3d 531, 555 (9th Cir. 2004) (internal citations removed) (“[a] law is  
22 unconstitutionally vague if it fails to provide a reasonable opportunity to know what conduct is  
23 prohibited, or is so indefinite as to allow arbitrary and discriminatory enforcement”).  
24  
25

1            “[E]conomic regulation is subject to a less strict vagueness” than criminal laws, *Vill. of*  
2 *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982), but the “vagueness  
3 analysis still applies to such regulation,” *Chalmers v. City of Los Angeles*, 762 F.2d 753, 757 (9th  
4 Cir. 1985); *see also BJP, L.L.C. v. Kitsap Cty.*, No. 10-5678, 2011 WL 3298661, at \*7 (W.D.  
5 Wash. Aug. 1, 2011). Additionally, “greater tolerance” is afforded to “enactments with civil rather  
6 than criminal penalties” and laws that do not “inhibit the exercise of constitutionally protected  
7 rights” are held to a less stringent standard than ones that do. *Flipside*, 455 U.S. at 498–99.

8            First, Bonta fails to provide sufficient evidence to support its claim. The sole evidence  
9 provided to support its void for vagueness claim is two email chains from an associate planner  
10 employed by the City. *See* Dkt. No. 25 at 9 (relying on Dkt. No. 28-10); Dkt. No. 33 at 18–19  
11 (relying on Dkt. No. 28-9 and Dkt. No. 28-10). The first chain, Bonta claims, shows an  
12 inconsistency in the application of the City’s zoning code because the city planner appears to  
13 represent to a potential buyer of the Property that it may be “legal non-conforming,” *i.e.*, that it  
14 was grandfathered into permissible noncompliance with the Outdoor Storage Provision, whereas  
15 in the case before the Court the City now claims it is not legal non-conforming. Dkt. No. 33 at  
16 18–19 (relying on Dkt. No. 28-9). In the second email, Bonta avers that the city planner, while  
17 emailing with other city employees, first suggested that Kodiak’s business was not permitted  
18 downtown under the zoning code, but “less than 24 hours later,” the same employee offered a  
19 different categorization of Kodiak’s business which would be permitted. Dkt. No. 25 at 9 (relying  
20 on Dkt. No. 28-10); *see also* Dkt. No. 33 at 2 (“The City’s own efforts to interpret its code illustrate  
21 that the code contains no ascertainable standards for adjudication, as illustrated by the City’s  
22 inability to confidently or consistently interpret the code.”).

1 The city planner's emails, however, do not support Bonta's challenge to the Outdoor  
2 Storage Provision. The first clearly shows that the city planner told the prospective purchaser that  
3 the Property *used to be* legal non-conforming, but that under current zoning code, if the previous  
4 use was "discontinued or abandoned for a period of 12 consecutive months or more," then the  
5 Property would lose its non-conforming status. Dkt. No. 28-9 at 2. The city planner makes no  
6 affirmative conclusion on the status of the Property and clearly states, "I would likely need to  
7 contact the building owner to determine when the previous tenant actually stopped operating."  
8 Dkt. No. 28-9 at 2.

10 The second email chain merely shows that the city planner was inquiring as to what the  
11 classification might be, not having as of yet decided. Dkt. No. 28-9 at 2-3. She enquires if "there  
12 were not any conversations that [she was] not aware of that may have given them permission to  
13 operate this type of business at the location." *Id.* at 3. Later, however, she follows up explaining  
14 to her co-workers that she has spoken with a representative from Kodiak, who has explained their  
15 business. Based on that explanation, she states that "I suppose, based on his description of  
16 activities, we could categorize it as a Contractors' office and storage yard," which is the  
17 determination later designated, but that the categorization is "subject to the outdoor storage of  
18 materials/vehicles being accessory to the primary building area and located to the rear of buildings,  
19 and an approved landscape screening plan." *Id.* at 2.

21 Thus, neither email chain shows either a vagueness in the ordinance itself nor in the  
22 application of the zoning code as a whole. In fact, neither email even addresses the Outdoor  
23 Storage Provision specifically, nor its use of the terms "storage," "vehicles," and "parking." Both  
24 email chains show no indeterminacy, merely a city planner's process of applying the zoning code  
25



1 in her day-to-day work.

2 Having determined that Bonta has failed to produce evidence of vagueness, the Court  
3 determines that there is no suggestion that the ordinance itself, or the words “storage,” “vehicles,”  
4 and “parking,” would leave a person of ordinary intelligence without a reasonable guide to what  
5 is prohibited. In fact, the statute is quite clear as to the actions it prohibits. Further, those  
6 prohibitions do not extend so far as to permit arbitrary enforcement. Instead, it applies only to  
7 certain defined categories of business, in certain defined zones, and provides a clear means of  
8 compliance (an “approved landscape plan” that hides the storage from public rights-of-way).

9  
10 Thus, as the ordinance is not facially vague and Bonta provides no support for its claim,  
11 the Court will deny its Motion for Summary Judgment.

12 *2. Equal Protection*

13 Next, Bonta advances a cause of action for a “violation of the Equal Protection Clause  
14 under the United States Constitution.” Dkt. No. 1-2 at 10. The complaint, rather vaguely, asserts  
15 that “[t]he land use provisions as applied to the Property, Bonta, and Bonta’s tenant(s) are  
16 unconstitutional in that the city has acted arbitrary and capricious manner.” *Id.* Bonta now moves  
17 for Summary Judgment on its claim. *See* Dkt. No. 25 at 10–11. The City opposes the motion.  
18 Dkt. No. 22 at 12–15; Dkt. No. 31 at 5–8.

19  
20 Bonta’s motion claims that “the City clearly violated the Washington and Federal  
21 Constitutions by acting arbitrarily and capriciously in its application and enforcement of the land  
22 use provisions of the code when it permitted others to use their properties in a manner that clearly  
23 violates current codes applicable to the [Downtown Commercial] zone.” Dkt. No. 33 at 2–3. The  
24 sole evidence for Bonta’s alleged Equal Protection violation is that the City has permitted two  
25

1 nearby properties to store vehicles and storage in a manner Bonta is prohibited from doing. *See*  
2 *id.* at 19; *see also* Dkt. No. 25 at 5, 10–11.

3 The Supreme Court has recognized a “class of one” cause of action for plaintiffs alleging  
4 they have been “intentionally treated differently from others similarly situated and that there is no  
5 rational basis for the difference in treatment.” *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564  
6 (2000). The bar is extremely high and “must be enforced with particular rigor in the land-use  
7 context because zoning decisions ‘will often, perhaps almost always, treat one landowner  
8 differently from another.’” *Cordi-Allen v. Conlon*, 494 F.3d 245, 251 (1st Cir. 2007) (quoting  
9 *Olech*, 528 U.S. at 565 (Breyer, J. concurring)). Thus, “to succeed on its ‘class of one’ claim,  
10 [Bonta] must allege that the City: (1) intentionally (2) treated [Bonta] differently than other  
11 similarly situated property owners (3) without a rational basis.” *Bldg. 11 Inv'rs LLC v. City of*  
12 *Seattle*, 912 F. Supp. 2d 972, 983 (W.D. Wash. 2012) (citing *Willowbrook*, 528 U.S. at 564; *North*  
13 *Pacifica LLC v. City of Pacifica*, 526 F.3d 478, 486 (9th Cir. 2008)).

15 In order to meet this standard, a plaintiff must show “an extremely high degree of similarity  
16 between themselves and the persons to whom they compare themselves.” *Hood Canal Sand &*  
17 *Gravel, LLC v. Brady*, 129 F. Supp. 3d 1118, 1125 (W.D. Wash. 2015) (quoting *Ruston v. Town*  
18 *Bd. for the Town of Skaneateles*, 610 F.3d 55, 59 (2d Cir. 2010)); *see also Haglund v. Sawant*, No.  
19 17-1614, 2018 WL 2216154, at \*4 (W.D. Wash. May 15, 2018), *aff'd*, 781 F. App'x 586 (9th Cir.  
20 2019). Additionally, local governments “generally have broad discretion when it comes to the  
21 enactment of land use and zoning laws and regulations.” *Waimea Bay Assocs. One, LLC v. Young*,  
22 438 F. Supp. 2d 1186, 1190 (D. Haw. 2006), *aff'd sub nom.* *Waimea Bay Assocs. One, LLC v.*  
23 *Thielen*, 264 F. App'x 561 (9th Cir. 2008); *see also Schad v. Borough of Mount Ephraim*, 452 U.S.

1 61, 68 (1981) (“The power of local governments to zone and control land use is undoubtedly broad  
2 and its proper exercise is an essential aspect of achieving a satisfactory quality of life in both urban  
3 and rural communities.”). Plaintiffs bear the burden of establishing that without a rational basis  
4 they have been intentionally treated differently from others similarly situated. *Thornton v. City of*  
5 *St. Helens*, 425 F.3d 1158, 1167 (9th Cir. 2005) (citing *SeaRiver Mar. Fin. Holdings, Inc. v.*  
6 *Mineta*, 309 F.3d 662, 679 (9th Cir. 2002)).

7 Here, Bonta identifies two “similarly situated” properties. The first is the “old Welco  
8 property,” located at 1218 1st Street down the street from the Bonta Property, which Bonta claims  
9 was vacant for some time before the City purchased it in 2016. “Since the City took ownership,”  
10 Bonta avers, “the property has consistently been used to store construction trucks, machines and  
11 materials, which is not a historical non-conforming use, and is completely visible from public  
12 right-of-way and neighboring properties.” Dkt. No. 25 at 5; *see also* Dkt. No. 33 at 6.

14 According to the City, it purchased the Welco property “with the intention of using it to  
15 stage construction vehicles for freeway improvements” which is a temporary use, terminating  
16 when construction is completed. Dkt. No. 22 at 13. This is a completely different use from the  
17 “Contractor’s Office” into which Kodiak falls. *Id.* As the City asserts, “[i]t is a different use and  
18 purpose.” *Id.* Further, the City asserts, the properties were treated exactly the same. As the City  
19 claims, “both properties received a temporary permit for the storage. The only difference is that  
20 Kodiak’s permit has” now expired. *Id.* at 14. Bonta fails to refute or even address the  
21 dissimilarities pointed out by the City. *See generally* Dkt. No. 33 at 6, 19 (merely repeating its  
22 claim that the City’s use of the property “would clearly be in violation of the current codes  
23 applicable to the [Downtown Commercial] zoned properties”).  
24  
25

1 The Court, therefore finds that the Welco property does not constitute an instance of  
2 disparate treatment. First, Bonta has failed to demonstrate that the properties are in fact similarly  
3 situated. Bonta has also failed to demonstrate that the City intentionally dissimilarly zoned the  
4 properties or enforced the Outdoor Storage Provision. *See N. Pacifica LLC*, 526 F.3d at 486 ([a]  
5 class of one plaintiff must show that the discriminatory treatment ‘was intentionally directed just  
6 at him, as opposed . . . to being an accident or a random act’”) (quoting *Jackson v. Burke*, 256 F.3d  
7 93, 96 (2d Cir. 2001)).

8 The second property Bonta points to as evidence of inequitable treatment is the New  
9 Baptist Church, located at 114 Beach Ave. *See* Dkt. No. 25 at 5. Bonta claims that the Church  
10 “purchased property across the alley to the north of the Bonta Property in 2007” and now parks  
11 buses at the property. *Id.* Bonta claims this shows inequitable treatment as the parking lot “is not  
12 adjacent to the Church” and “not a historical non-conforming use” but that the City “has allowed  
13 the Church to use it as a parking lot for its buses and occasional storage containers for almost a  
14 decade.” *Id.*

15 The City responds that the Church does indeed have two buses and a storage container but  
16 that “[t]hese are accessory uses to the church, as they are subordinate and incidental to the primary  
17 use, *i.e.*, church activities.” Dkt. No. 22 at 14. Bonta does not contest this difference, and instead  
18 merely reiterates its conclusory claim of disparate treatment. *See* Dkt. No. 33 at 6.

19 Similar to the Welco property, it is clear that the Bonta Property and the Church are not  
20 similarly situated. The underlying purposes and uses of each building are facially dissimilar,  
21 providing numerous rational bases for treating the properties differently. One basis provided by  
22 the City, for example, is the frequency and primacy of the outdoor storage. As the City points out,  
23  
24  
25

1 the Church's use of parking is only ancillary to its primary purpose and limited to a small number  
2 of buses and occasional outdoor storage. By contrast, the City points out that Kodiak's primary  
3 purpose for using the Bonta Property is for storage of commercial vehicles and equipment, which  
4 "directly contradicts the code itself." Dkt. No. 22 at 14. Bonta, for its part, has provided no  
5 evidence to show that the properties are similar in nature. *See Thornton*, 425 F.3d at 1168  
6 ("Evidence of different treatment of unlike groups does not support an equal protection claim.").

7  
8 Bonta, therefore, has failed to present any evidence to support its claim for an Equal  
9 Protection violation. Based on the foregoing, the Court will deny Bonta's Motion for Summary  
10 Judgment.

11 **B. The City's Motion for Summary Judgment**

12 The City moves for summary judgment in its own right on Bonta's Void for Vagueness  
13 and Equal Protection claims, arguing that Bonta has failed to meet its burden to establish its claims.  
14 Dkt. No. 22 at Dkt. 9–12, 12–15. As established above, Bonta has failed to establish a prima facie  
15 case for either claim. As such, the Court will grant the City's Motion for Summary Judgment as  
16 to both claims.

17  
18 **C. Remaining Claims**

19 Bonta's remaining invocation of federal law is for "[a]n award of Bonta's costs and  
20 reasonable attorney's fees pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988." Dkt. No. 1-2 at  
21 13; *see also* Dkt. No. 25 at 1–2 (only mention of § 1983 in summary judgment motion is "Bonta  
22 seeks summary judgment and the granting of an order . . . award[ing] [] Bonta's costs and  
23 reasonable attorney's fees pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988").

24 Both statutes require Bonta to show an actual deprivation of a protected constitutional right.  
25


1 See 42 U.S.C. § 1983 (“[e]very person who, under color of any statute . . . subjects . . . any citizen  
2 of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the  
3 Constitution and laws . . .); 42 U.S.C. § 1988(b) (“[i]n any action or proceeding to enforce a  
4 provision of [list of civil rights statutes], the court, in its discretion, may allow the prevailing party,  
5 other than the United States, a reasonable attorney's fee as part of the costs”). As Bonta has not  
6 prevailed on any of its federal law claims, there are no grounds to grant such fees.

7  
8 The remainder of Bonta’s claims are state law claims. The Court will decline to exercise  
9 supplemental jurisdiction over the state law claims and dismisses them without prejudice. 28  
10 U.S.C. § 1367; *see also Wade v. Reg'l Credit Ass'n*, 87 F.3d 1098, 1101 (9th Cir. 1996) (“Where  
11 a district court dismisses a federal claim, leaving only state claims for resolution, it should decline  
12 jurisdiction over the state claims and dismiss them without prejudice.”).

13 **V. CONCLUSION**

14 For the foregoing reasons, the Court hereby GRANTS Defendant’s motion for summary  
15 judgment, Dkt. No. 22, and DENIES Plaintiff’s motion for summary judgment, Dkt. No. 25, and  
16 DISMISSES Plaintiff’s federal claims with prejudice and Plaintiff’s state claims without prejudice.  
17

18  
19 DATED this 14<sup>th</sup> day of November, 2019.

20   
21 BARBARA J. ROTHSTEIN  
22 UNITED STATES DISTRICT JUDGE  
23  
24  
25