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Fourth Judicial District, Ada County
Trent Tripple, Clerk of the Court
By: Deputy Clerk - Sims-Douglas, Linda

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CHASIDY DECKER and ROBERT CALACAL, Plaintiffs, vs. CITY OF MERIDIAN, IDAHO, and MAYOR ROBERT SIMISON, in his official capacity, Defendants.	Case No. CV01-22-11962 MEMORANDUM DECISION AND ORDER ON SUMMARY JUDGMENT

Plaintiff Robert Calacal owns a home in Meridian. In return for rent payments, he agreed to let Plaintiff Chasidy Decker live in her mobile tiny home on his property. This arrangement is on hiatus, though, because it violates two Meridian city ordinances. One of them prohibits living in vehicles—including mobile tiny homes—outside an approved recreational vehicle ("RV") park. The other disallows mobile tiny homes as secondary dwellings. In this action against Defendant City of Meridian and its mayor, Defendant Robert Simison, Plaintiffs challenge the constitutionality of these ordinances and Defendants' enforcement practices. Defendants move for summary judgment against Plaintiffs' four claims, while Plaintiffs move for summary judgment on two of those claims. These motions were argued and taken under advisement on February 1, 2024. For the reasons that follow, both motions are denied, except that Defendants are granted partial summary judgment against one claim.

I.

BACKGROUND

On May 18, 2022, Decker moved her mobile tiny home into the grassy side yard of 1926 Leisure Lane in Meridian. (1st Decker Decl. ¶¶ 4–5, 7.)[1] Calacal, who lives in California, had just bought the property as a residence for his son. (1st Calacal Decl. ¶¶ 2–3.)[2] Hoping to generate income to use in paying the mortgage, Calacal had posted a Craigslist ad offering to lease the property's RV hookups for a modest fee, (*id*. ¶¶ 3–4; 1st Decker Decl. ¶¶ 6, 12), leading to a one-year lease agreement, under which Decker would pay Calacal $600 a month plus utilities to live on his property in her mobile tiny home. (2d Calacal Decl. ¶ 4 & Ex. 2.)[3]

This arrangement served Plaintiffs' needs, but it met immediate opposition. The day after Decker parked her mobile tiny home on Calacal's property, a neighbor phoned the Meridian Police Department to report its arrival and ask whether it was lawful to live there in a vehicle. (Negrete Decl. Ex. A[4]; 2d Alban Decl. Ex. 65 at 19:6–12, 40:13–41:1.) In response, Anthony Negrete, a Code Enforcement Officer for the City of Meridian, began an investigation. (Negrete Decl. ¶ 1 & Ex. A.) That same day, Officer Negrete visited Calacal's property, where he encountered Decker and told her that the Meridian City Code prohibited her from living in that location

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[1] Citations to Decker's first declaration refer to the one filed on September 12, 2022.

[2] Citations to Calacal's first declaration refer to the one filed on September 12, 2022.

[3] Citations to Calacal's second declaration refer to the one filed on January 4, 2024.

[4] Citations to the Negrete declaration refer to the one filed on October 5, 2022.

in a mobile tiny home. (*Id.*; 1st Decker Decl. ¶ 13.) He gave Decker ten days to either move her mobile tiny home or stop living in it. (1st Decker Decl. ¶ 14.) And, once he made phone contact with Calacal, Officer Negrete gave him ten days to place Decker's mobile tiny home either on an improved surface or behind a six-foot privacy fence. (1st Calacal Decl. ¶ 5.)

Decker's wasn't the only mobile tiny home Officer Negrete was investigating on Leisure Lane. The same day he began his investigation of 1926 Leisure Lane, Officer Negrete also began investigating another mobile tiny home located at 1928 Leisure Lane. (Belden Decl. Ex. 91, at DEFS007707–08, Jan. 18, 2024.) Unlike Plaintiffs, the owners of 1928 Leisure Lane denied that anyone was living in their mobile tiny home; they said it was only used as a craft house for their children. (*Id.*) Based on his conversations with the owners and their neighbors, Officer Negrete believed them. (Belden Decl. Ex. 95, at 138:3–7, 140:4–141:25, Jan. 18, 2024; *id.* Ex. 88, at 27:19–28:15, Jan. 18, 2024.) But, because that mobile tiny home wasn't on an improved surface, Officer Negrete instructed the owners of the 1928 Leisure Lane that they either needed to move the tiny home onto an asphalt or concrete surface or move it behind a privacy fence—much as he had instructed Calacal. (Belden Decl. Ex. 91, at DEFS007708, Jan. 18, 2024.)

Plaintiffs were surprised to learn that their arrangement was unlawful. In Calacal's neighborhood, RVs and trailers were ubiquitous, some parked in side yards without privacy fences and some Plaintiffs suspected were being used as residences. (1st Decker Decl. ¶ 15; 1st Calacal Decl. ¶ 3.) But, disinclined to simply

accept Officer Negrete's verdict on the arrangement's impropriety, Decker didn't do as Officer Negrete instructed. Instead, she enlisted an activist to contact the Meridian City Council on her behalf, leading to a city attorney confirming that living in her mobile tiny home on Calacal's property was unlawful, though living in it in an RV park would be lawful. (1st Decker Decl. ¶ 17.) So, Decker called RV parks, but they all told her they were full and had long waiting lists. (*Id.* ¶ 18.) Worse, most RV parks—including the only RV park in Meridian—simply don't allow mobile tiny homes anyway.[5] (2d Decker Decl. ¶ 19.)[6] Then the activist put Decker in touch with the *Idaho Statesman*, which ran stories sympathetic to her plight on June 8 and 9, 2022. (*Id.* ¶ 20; Alban Decl. Ex. 54.)

On the morning of June 9—the day Decker's story appeared on the front page of the *Statesman*'s print edition—Officer Negrete ran records checks on the cars parked on Calacal's property. (Alban Decl. Ex. 54; Negrete Decl. Ex. A.) Some had expired registrations. (Negrete Decl. Ex. A.) A few days later, on June 14, Officer Negrete issued to Decker and Calacal documents entitled "Notice of Criminal Violation of Unified Development Code and Order to Abate," threatening to commence misdemeanor prosecutions if they didn't do as the notices demanded. (1st Decker Decl. ¶ 21; 1st Calacal Decl. ¶ 6; Negrete Decl. Ex. A.) Decker received

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[5] The parties agree that the lone RV park in Meridian occupies roughly 0.05% of the land within the city limits. (Belden Decl. Ex. 38, at 30, Jan. 4, 2024.) The park accepts mobile tiny homes for stays not lasting longer than twenty-seven days, but not for long-term residency. (*Id.* Ex. 44, at 38:13–39:9.)

[6] Citations to Decker's second declaration refer to the one filed on January 4, 2024.

two notices. (1st Decker Decl. Exs. 3–4; Negrete Decl. Ex. A.) One said that living in her mobile tiny home on Calacal's property violated section 11-3A-20 of the Unified Development Code of the City of Meridian ("UDC"): a prohibition on living in vehicles or trailers—including mobile tiny homes—outside an approved RV park. (1st Decker Decl. Ex. 3; Negrete Decl. Ex. A.) Decker was given until August 1 to cease doing so. (1st Decker Decl. Ex. 3; Negrete Decl. Ex. A.) The other notice said that having vehicles with expired registrations parked in the side yard was an ordinance violation unless they were concealed behind a solid, six-foot-tall fence. (1st Decker Decl. Ex. 4; Negrete Decl. Ex. A.) She had until June 27 to remove the offending vehicles from the side yard or conceal them behind a compliant fence. (1st Decker Decl. Ex. 4; Negrete Decl. Ex. A.) Calacal received one notice, concerning the same alleged violations, plus an additional parking violation. (1st Calacal Decl. Ex. 51; Negrete Decl. Ex. A.) Plaintiffs say that Officer Negrete had never before mentioned any parking violations, though he disputes as much. (1st Decker Decl. ¶¶ 21, 24; 2d Alban Decl. Ex. 64 at 104:15–25, 107:14–23.) Plaintiffs also say that similar parking violations are readily observable elsewhere in the neighborhood. (1st Decker Decl. ¶ 24; 1st Calacal Decl. ¶ 7.)

Decker moved out of her mobile tiny home by the August 1 deadline Officer Negrete set in the violation notices, but she left it on Calacal's property and began living with friends temporarily. (1st Decker Decl. ¶ 25.) Early in the morning on August 2, though, she visited her mobile tiny home to pick up household items and walk her dog. (*Id.* ¶ 26.) She encountered Officer Negrete there, and she says he

angrily confronted her about the *Statesman* article, taking issue with the way she had described events. (*Id.* ¶ 28.) Decker also says he warned her that "officers will be driving up and down this little private drive at all hours of the day and night to ensure no one is living here." (*Id.* ¶ 37.)

Decker asked Officer Negrete why she was being singled out for enforcement when so many of her neighbors also appeared to be living in RVs. (*Id.* ¶ 32.) She says he gave two main responses. (*Id.* ¶¶ 33–34.) One was that Calacal, having just bought the property, wasn't "grandfathered in" to the right to let people live in vehicles or trailers there, although the previous owner could've done exactly that. (*Id.* ¶ 34.) The other is that "even if [Decker] didn't have a tiny home on wheels, [she] still couldn't live on [Calacal's] property in any other accessory dwelling unit because [Calacal] didn't live on the property." (*Id.* ¶ 33.) This response was an evident reference to a provision of section 11-4-3-12 of the UDC. This ordinance regulates secondary dwellings on single-family residential properties like Calacal's, which is zoned R-4, *(e.g., id.* Ex. 3), meaning it is in a medium-low density residential district where single-family dwellings are permitted, UDC § 11-2A-2, -5. Section 11-4-3-12 allows one secondary dwelling "subordinate to a single-family dwelling" on such properties, but "[m]anufactured and mobile homes, and recreation vehicles" may not serve as secondary dwellings and secondary dwellings may not be built on non-owner-occupied properties. UDC § 11-4-3-12.A, -.B, -.H.

As a result of these events, Plaintiffs filed suit against the City of Meridian, Mayor Simison, the Meridian City Council, and Officer Negrete on August 15, 2022.

They asserted five claims arising under the Idaho Constitution: Count 1, a facial challenge to section 11-3A-20 as a violation of Plaintiffs' right to substantive due process under article I, section 13; Counts 2 and 3, as-applied substantive due process challenges by Decker and Calacal, respectively, to that same ordinance; Count 4, a claim that Defendants enforce section 11-3A-20 selectively against new residents, denying Plaintiffs equal protection of the laws in violation of article I, section 2; and Count 5, a claim that Defendants retaliated against Decker for speaking to the *Statesman* in violation of her freedom of speech rights under article I, section 9. (Compl. ¶¶ 112–82.) Declaratory and injunctive relief, as well as nominal damages, were sought on all five claims. (*Id.* Prayer for Relief ¶¶ 1–11.)

Defendants moved to dismiss. Count 1 was dismissed, and the Meridian City Council was dismissed as a defendant on redundancy grounds. The remaining counts survived. Because Defendants persuasively argued that some surviving counts would be moot unless Plaintiffs challenged not only section 11-3A-20 but also all other ordinances barring Decker from living in her mobile tiny home on Calacal's property, the Court agreed to construe the complaint as also challenging section 11-4-3-12. Subsequently, in deciding a separate motion, the Court dismissed the claims against Officer Negrete on technical grounds unrelated to the merits. The remaining defendants, then, are the City of Meridian and Mayor Simison, and the remaining claims are Counts 2 through 5.

On May 30, 2023, Plaintiffs filed an amended complaint. It expressly challenges the constitutionality of both section 11-3A-20 and section 11-4-3-12.

(*See* Am. Compl. 1–49.) And, to avoid having Counts 2 and 3 simply declared moot because Calacal lives in California and therefore can't satisfy section 11-4-3-12's owner-occupancy requirement, the amended complaint alleges that he now co-owns 1926 Leisure Lane with his adult son, who lives there full time. (*Id.* ¶ 23.)

With trial set to begin on April 1, 2024, both sides move for summary judgment. Plaintiffs seek judgment solely on Counts 2 and 3; they think they've mustered enough evidence to prove that the ordinances prohibiting Decker from living in her mobile tiny home outside of an RV park or from using it as a secondary dwelling unit on Calacal's property are irrational—and therefore unconstitutional—as applied to them. Defendants seek summary judgment against Plaintiffs' four surviving claims. As already noted, these motions were argued and taken under advisement on February 1, 2024. They are ready for decision.

II.

LEGAL STANDARD

Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a).

To obtain summary judgment against one of the nonmovant's claims, the movant must show that the evidence doesn't support an element of the claim. *E.g.*, *Holdaway v. Broulim's Supermarket*, 158 Idaho 606, 611, 349 P.3d 1197, 1202 (2015). The movant can do so by offering evidence disproving the element, by demonstrating that the nonmovant is unable to prove the element, or in both ways. *Id.*; *see also* I.R.C.P. 56(c)(1). The movant then is entitled to summary judgment

unless the nonmovant presents "specific facts that demonstrate the existence of a genuine issue for trial"—neither "a mere scintilla of evidence" nor "the slightest doubt as to the facts" will do. *Haight v. Idaho Dep't of Transp.*, 163 Idaho 383, 387, 414 P.3d 205, 209 (2018).

To obtain summary judgment on its own claim, the movant must cite particular parts of the record for proof of the facts that are essential to the movant's position. I.R.C.P. 56(c)(1)(A). If the movant does so, the burden shifts to the nonmovant to prove that a genuine factual dispute must be resolved before judgment can be awarded to the movant. *E.g., Boise Mode, LLC v. Donahoe Pace & Partners Ltd.*, 154 Idaho 99, 104, 294 P.3d 1111, 1116 (2013). To carry that ultimate burden, the nonmovant "may not rest upon mere allegations in the pleadings, but must set forth by affidavit specific facts showing there is a genuine issue for trial." *Id.* (quotation marks omitted).

In either case, the record must be construed in the light most favorable to the nonmovant, and all reasonable inferences must be drawn in the nonmovant's favor. *E.g., id.*; *Holdaway*, 158 Idaho at 610, 349 P.3d at 1201. Nevertheless, "[a] mere scintilla of evidence or only slight doubt as to the facts is not sufficient" for the nonmovant to avoid summary judgment. *E.g.*, *Holdaway*, 158 Idaho at 610, 349 P.3d at 1201 (quoting *AED, Inc. v. KDC Invs., LLC*, 155 Idaho 159, 163, 307 P.3d 176, 180 (2013)).

III.

ANALYSIS

A. Defendants' motion for summary judgment

As just mentioned, Defendants seek summary judgment against Plaintiffs' four remaining claims. Their arguments fall into either of two categories: arguments for dismissal on justiciability-type grounds, and arguments challenging the sufficiency of Plaintiffs' evidence. As it must, the Court begins with the justiciability-type arguments. Then, because those arguments fail to dispose of Plaintiffs' claims, the Court turns to the insufficiency-of-the-evidence arguments.

1. Plaintiffs weren't required to exhaust administrative remedies.

Idaho's Local Land Use Planning Act ("LLUPA") generally requires land-use applicants to exhaust their administrative remedies before seeking court intervention. *See* I.C. §§ 67-6521(d), -6519(6); *Bracken v. City of Ketchum*, ___ Idaho ___, __–__, 537 P.3d 44, 55–56 (2023). A party's failure to exhaust LLUPA's administrative remedies usually "deprives courts of jurisdiction to consider challenges to local land use decisions." *Bracken,* 537 P.3d at 56 (citing *Palmer v. Bd. of Cnty. Comm'rs of Blaine Cnty.*, 117 Idaho 562, 565, 790 P.2d 343, 346 (1990)); *see also White v. Bannock Cnty. Comm'rs*, 139 Idaho 396, 400, 80 P.3d 332, 336 (2003). Pointing to this rule, Defendants argue that Plaintiffs can't challenge the constitutionality of the City's secondary dwelling unit ordinance unless and until they've applied for a secondary dwelling unit permit and the City has taken an adverse action by denying it. (Mem. Supp. Defs.' Mot. Summ. J. 16–30.) This argument is misplaced.

Plaintiffs indeed haven't applied for a permit or requested a variance allowing Decker to use her mobile tiny home as a secondary dwelling unit, but litigants aren't required to exhaust administrative remedies if doing so would be futile. *E.g.*, *Owsley v. Idaho Indus. Comm'n*, 141 Idaho 129, 106 P.3d 455 (2005); *Park v. Banbury*, 143 Idaho 576, 580–81, 149 P.3d 851, 855–56 (2006). It would be futile for Plaintiffs to seek a permit or variance because their desired use is prohibited by law. "[A] public body may not permit a use that is prohibited by an ordinance." *City of Coeur d'Alene v. Simpson* 142 Idaho 839, 845, 136 P.3d 310, 316 (2006) (citing *Cnty. of Ada, Board of Cnty. Comm'rs v. Walter*, 96 Idaho 630, 632, 533 P.2d 1199, 1201 (1975)). The Idaho Supreme Court has explained why:

> The reason a variance may not contravene a provision in a land use ordinance is that the pertinent governing body enacts a land use ordinance in its legislative capacity, but it considers a variance in a quasi-judicial capacity. Thus, a county commission or city council cannot amend a land use ordinance in a variance proceeding.

Id. at 845–46, 136 P.3d at 316–17 (citing *Cooper v. Board of Cnty. Comm'rs of Ada Cnty.*, 101 Idaho 407, 614 P.2d 947 (1980)); *see also City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 909, 693 P.2d 1108, 1111 (Ct. App. 1984) (similar).

The UDC states that mobile homes and recreational vehicles "shall be prohibited for use as a secondary dwelling unit." UDC § 11-4-3-12(H). It also states that "[n]o . . . mobile tiny houses . . . shall be used as a residence or as living quarters except within an approved recreational vehicle park." UDC § 11-3A-20. Because these ordinances flatly prohibit Plaintiffs from using Decker's mobile tiny home as a secondary dwelling unit on Calacal's property, city officials would have

lacked authority to grant Plaintiffs' permit request even if they had submitted one. *E.g.*, *Simpson*, 142 Idaho at 845–46, 136 P.3d at 316–17; *see also Desert Outdoor Advert., Inc. v. City of Moreno Valley*, 103 F.3d 814, 818 (9th Cir. 1996) (finding that plaintiffs had standing to challenge permit requirement even though they hadn't applied for a permit because doing so would have been futile when the applicable ordinance "flatly prohibited" their desired conduct). Consequently, Plaintiffs weren't required to exhaust administrative remedies.

2. Decker has standing to challenge the ordinances at issue.

Defendants say Decker lacks standing to challenge the ordinances at issue because LLUPA only waives the City's sovereign immunity as to "interested parties" that "have an interest in real property which may be adversely affected by the issuance or denial of a permit," which she supposedly lacks. (Mem. Supp. Defs.' Mot. Summ. J. 47.) On similar thinking, Defendants deny that the Declaratory Judgment Act—despite granting a right of action to persons "whose rights, status or other legal relations are affected by a . . . municipal ordinance"—authorizes Decker's claims. (*Id.* at 48) (quoting I.C. § 10-1202). These arguments fail to account for the lease agreement allowing Decker to live in her mobile tiny home on Calacal's property. Unless the lease agreement is void,[7] it gives her a limited interest in Calacal's real property. *E.g.*, *Krasselt v. Koester*, 99 Idaho 124, 125, 578

[7] "[A] contract that cannot be performed without violating applicable law is illegal and void." *AED*, 155 Idaho at 167, 307 P.3d at 184 (quoting *City of Meridian v. Petra Inc.,* 154 Idaho 425, 445, 299 P.3d 232, 252 (2013)).

P.2d 240, 241 (1978) ("A lease is a particular kind of contract wherein . . . [t]he lessee has both contract rights and a limited ownership interest in the real property.") (internal citations omitted). It isn't void if the ordinances at issue are unconstitutional, and the ordinances cannot be presumed constitutional in determining standing. Decker's rights or other legal relations are affected by the ordinances at issue, so she has standing to challenge their constitutionality, despite not owning the affected real property.

3. Plaintiffs can proceed with their selective-enforcement and retaliation claims in Officer Negrete's absence.

Defendants argued in their opening brief, without any citation to authority, that because Idaho doesn't recognize a "Monell claim," Officer Negrete's dismissal prevents Plaintiffs from continuing with the selective-enforcement claim in Count 4 and the retaliation claim in Count 5. (*See* Mem. Supp. Defs.' Mot. Summ. J. 8.) Defendants evidently refer to the United States Supreme Court's opinion in *Monell v. Department of Social Services*, which held that municipalities aren't vicariously liable under 42 U.S.C. § 1983 for their employees' unconstitutional conduct and, instead, are liable as a result of such conduct only if it resulted from their own customs or policies. 436 U.S. 658, 694–95 (1978). During the hearing, Defendants reiterated this argument, citing *Rehms v. City of Post Falls,* No. 2:22-CV-00185-DCN, 2024 WL 278210 (D. Idaho Jan. 25, 2024), for the proposition that they can't be vicariously liable under Idaho law for Officer Negrete's conduct.

Monell and *Rehms* have, however, no obvious bearing on this case. Both deal with municipal liability under 42 U.S.C. § 1983, but this case doesn't involve any

section 1983 claims. Nor could it. Plaintiffs' claims arise exclusively under the Idaho constitution. Section 1983 doesn't provide a means of enforcing state constitutional rights. *E.g.*, *Lovell By and Through Lovell v. Poway Unified Sch. Dist.*, 90 F.3d 367, 370 (9th Cir. 1996) (explaining that section 1983 is only concerned with rights secured by the federal constitution). And because Idaho law has no analog to section 1983, *Monell* and *Rehms* can have but a weak connection to this case unless an Idaho appellate court has applied their reasoning to state constitutional claims in some fashion. If such a decision exists, the Court is unaware of it.

Further, even if the Court agrees with the underlying premise that Defendants aren't automatically liable for the unconstitutional conduct of all city employees, nothing in the facts or circumstances of this case leads the Court to believe that Officer Negrete was doing anything other than acting within the course and scope of his employment during the events giving rise to Counts 4 and 5. After all, the City continues to stand by his enforcement actions. So, unless Defendants come forward with a factual and legal basis for determining that they aren't vicariously liable for Officer Negrete's conduct, Counts 4 and 5 won't be dismissed simply because Officer Negrete is no longer a defendant in this case.

4. Plaintiffs weren't required to file a notice of tort claim.

During the hearing, Defendants argued for the first time that Counts 4 and 5 must be dismissed because Plaintiffs didn't serve a pre-suit notice of claim under the Idaho Tort Claims Act ("ITCA"). *See* I.C. §§ 6-902(7), -906. In response,

Plaintiffs argued that the ITCA doesn't apply to their claims because they are only seeking nominal damages, and even if the ITCA does apply, the City waived its protections by failing to raise this argument sooner.

In general, the ITCA waives the sovereign immunity of the State and its political subdivisions against suits arising from wrongful acts or omissions of employees acting within the course and scope of their employment, with the waiver applying only "where the governmental entity if a private person or entity would be liable for money damages under the laws of the state of Idaho." I.C. § 6-903(1). But the State and its political subdivisions don't have sovereign immunity when constitutional violations are alleged, *Tucker v. State*, 162 Idaho 11, 17–18, 394 P.3d 54, 60–61 (2017), so Plaintiffs need not look to the ITCA for a waiver of sovereign immunity. Further, the Idaho Supreme Court recently held that state statutes, including the ITCA, "cannot limit a plaintiff's right to recover against a municipality's unconstitutional acts." *Bradbury v. City of Lewiston*, 172 Idaho 393, ___, 533 P.3d 606, 627 (2023), *reh'g denied* (Aug. 22, 2023). For these reasons, Plaintiffs weren't required to serve on the City a notice of claim under the ITCA before filing suit.

5. The as-applied challenges state a cognizable constitutional injury.

Defendants contend that Counts 2 and 3 must be dismissed because Plaintiffs don't base their claims on a cognizable constitutional injury. (*E.g.,* Defs.' Reply Supp. Mot. Summ. J. 2–7.) Citing *Moon v. North Idaho Farmers Association*, 140 Idaho 536, 540–542, 96 P.3d 637, 641–43 (2004), Defendants say any claim that the

ordinances at issue infringe on Plaintiffs' rights to possess and use their real property is necessarily a takings claim under Idaho law, but Plaintiffs cannot state a prima facie regulatory takings claim because they haven't been totally deprived of the use of their real property. (*Id.* at 3–5.) Counts 2 and 3 don't, however, allege a regulatory taking. Count 2 alleges that sections 11-3A-20 and 11-4-3-12 are unconstitutional as applied to Decker because they have "forc[ed] her into homelessness" without rationally promoting a legitimate governmental interest, (Am. Compl. ¶¶ 163–87), and Count 3 alleges that those same ordinances are unconstitutional as applied to Calacal because they limit his use of his property without rationally promoting a legitimate governmental interest, (*id.* ¶¶ 188–98).

As the Court has already recognized, Counts 2 and 3 state valid substantive due process claims. (Mem. Decision & Order 19–21, Nov. 7, 2022.) *Moon* doesn't eviscerate the distinction between takings claims and substantive due process claims under Idaho law, as Defendants seem to suggest it does. *See* 140 Idaho at 540–542, 96 P.3d at 641–43; *see also Simpson,* 142 Idaho at 854, 136 P.3d at 325 ("[D]ue process and takings claims are different animals."); *Lingle v. Chevron U.S.A. Inc.,* 544 U.S. 528, 543 (2005) (explaining that due process claims probe the underlying validity of a regulation, whereas takings claims probe whether a property owner is entitled to compensation). So, the Court has no reason to undo its prior determination that Counts 2 and 3 allege a cognizable constitutional injury.

Defendants also challenge the sufficiency of Plaintiffs' evidence in support of Counts 2 and 3. That challenge overlaps substantially with Plaintiffs' motion for summary judgment. The Court will take it up in section III.B, *infra*.

6. The selective-enforcement claim survives summary judgment.

Count 4 alleges that the City is selectively enforcing its parking and traveling-living-quarters ordinances against new residents in violation of article 1, section 2 of the Idaho Constitution. (Am. Compl. ¶¶ 199–239.) Specifically, Plaintiffs contend that Officer Negrete investigated and enforced the City's parking and traveling-living-quarters ordinances differently against them because he knew that Calacal had recently acquired 1926 Leisure Lane and mistakenly believed that grandfathered rights terminate with a change in property ownership. (*See id*.) Plaintiffs allege that, because of this mistaken belief, Officer Negrete ignored clearly visible code violations elsewhere on Leisure Lane while stridently enforcing the code against them. Defendants say Count 4 fails as a matter of law because Plaintiffs haven't come forward with admissible evidence of other individuals living in traveling living quarters or demonstrated that Officer Negrete wouldn't have enforced the code against them absent a discriminatory purpose. (Defs.' Reply Supp. Mot. Summ. J. 10–11.)

To survive summary judgment, Plaintiffs need at least some evidence of "a deliberate plan of discrimination based upon some improper motive like race, sex, religion, or some other arbitrary classification." *Anderson v. Spalding*, 137 Idaho 509, 514, 50 P.3d 1004, 1009 (2002). Put differently, Plaintiffs must have evidence

"that they have intentionally been singled out and treated differently based on a distinction that fails the rational basis test." *Terrazas v. Blaine Cnty. ex rel. Bd. of Comm'rs*, 147 Idaho 193, 205, 207 P.3d 169, 181 (2009) (citing *Simpson,* 142 Idaho at 853, 136 P.3d at 324); *Anderson*, 137 Idaho at 514, 50 P.3d at 1009. Treating certain individuals differently based on a misunderstanding of the law can amount to an arbitrary or irrational classification for equal-protection purposes. *E.g.*, *Christian Sci. Reading Room Jointly Maintained v. City & Cnty. of San Francisco*, 784 F.2d 1010 (9th Cir.), *amended on other grounds*, 792 F.2d 124 (9th Cir. 1986) (holding that airport policy violated equal protection because it was based on incorrect assumption that airport previously committed constitutional violations). So, given that nonconforming use rights run with the land, *e.g., O'Connor v. City of Moscow*, 69 Idaho 37, 202 P.2d 401 (1949), Count 4 will survive summary judgment if Plaintiffs have evidence that Officer Negrete enforced code differently against them because Calacal was a recent purchaser but his neighbors were not.

On this point, Plaintiffs have marshaled enough evidence to proceed to trial. According to Plaintiffs, there are broken-down racecars, shipping containers, RVs, and an assortment of other vehicles parked on unimproved surfaces elsewhere on Leisure Lane. (1st Decker Decl. ¶¶ 24, 49–65; 1st Calacal Decl. ¶ 7.) Plaintiffs took pictures of these supposed violations and put them in evidence. (*See* Index Exs. Supp. Mot. Prelim. Inj. Exs. 5–50.) Pointing to these other seeming violations, Decker asked Officer Negrete why he was singling her out for enforcement action, and she says he told her that Calacal didn't have grandfathered rights because he

had recently purchased his property. (1st Decker Decl. ¶¶ 32, 34.) Her recollection is loosely corroborated by Officer Negrete's Rule 30(b)(6) deposition testimony for the City, during which he noted his belief that nonconforming use rights terminate upon a change of ownership and Calacal had none because he had recently purchased 1926 Leisure Lane.

Though Officer Negrete appears to misunderstand how nonconforming use rights operate, this misunderstanding matters only if it caused him to treat Plaintiffs differently than similarly situated individuals. According to Defendants, Plaintiffs were subjected to enforcement efforts because the City, having limited resources, focuses its enforcement efforts on citizen complaints, (Ooi Decl. ¶¶ 2–4), and Officer Negrete engaged with Plaintiffs because Calacal's neighbor reported Decker's mobile tiny home, (Belden Decl. Ex. 88, at 29:5–8, Jan. 18, 2024). This fact severely undermines the notion that the City enforced its ban on traveling living quarters against Plaintiffs for a discriminatory or irrational purpose, but Plaintiffs have marshaled just enough evidence to survive summary judgment.

During the Rule 30(b)(6) deposition, Officer Negrete testified that he doesn't initiate investigations only in response to formal citizen complaints; he may also begin an investigation if he notices ordinance violations while otherwise engaged in his duties. (*Id.* Ex. 95, at 65:11–25.) In line with this characterization, Officer Negrete testified that had he noticed any other ordinance violations on Leisure Lane while he was investigating Plaintiffs, he would have dealt with those violations too. (*Id.* Ex. 95, at 168:15–170:2.) But, as just mentioned, it remains

undisputed that there were numerous shipping containers and vehicles parked on unimproved surfaces, as well as RVs with their slides out and utility cords connected to residences,[8] at other properties on Leisure Lane during the timeframe at issue in this case. And, when Officer Negrete was asked during his deposition whether he had noticed any broken-down racecars and shipping containers next door to 1926 Leisure Lane, he said no, but even if he had, "that area . . . is conforming and nonconforming. So some of those properties are conforming and nonconforming." (*Id.* Ex. 95, at 169:25–170:6.)

Because Officer Negrete's answer tends to suggest that he may have ignored clearly visible ordinance violations on Leisure Lane for reasons related to his misunderstanding of nonconforming use rights, and because that misunderstanding may have caused Plaintiffs to receive notices of violation for behaviors that their neighbors were likewise engaged in, Count 4 survives summary judgment.

7. The retaliation claim survives summary judgment in part.

Count 5 alleges that Defendants retaliated against Plaintiffs after Decker exercised of her free-speech rights by talking to a reporter with the *Statesman*, violating article 1, section 9 of the Idaho Constitution. (Am. Compl. ¶¶ 240–64.) Specifically, Plaintiffs say that once Officer Negrete became aware of Decker's

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[8] As the Court previously observed, that other RVs with their slides extended or utility cords connected to residences could be found on Leisure Lane is but weak evidence that other people on Leisure Lane were violating the City's ban on traveling living quarters. (Mem. Decision & Order 32–33, Nov. 7, 2022.) Be that as it may, Defendants have not rebutted Decker's testimony that she pointed out these other violations to Officer Negrete.

comments to the *Statesman*, he (1) intensified his investigation into her mobile tiny home relative to his investigation into the mobile tiny home located at 1928 Leisure Lane, *(id*. ¶¶ 246–49), (2) cited Plaintiffs for parking violations he hadn't previously warned them about, contrary to his customary practice, (*id*. ¶¶ 252–53), and (3) berated Decker for her comments to the *Statesman*, leaving her in tears, (*id*. ¶ 256). To prevail on this claim, Plaintiffs must prove that they were engaged in a constitutionally protected activity, that Defendants' actions "would chill a person of ordinary firmness from continuing to engage in the protected activity," and that Plaintiffs' engagement in the protected activity was a substantial or motivating factor in Defendants' conduct. *E.g., Capp v. Cnty. of San Diego*, 940 F.3d 1046, 1053 (9th Cir. 2019).[9]

In pursuing their motion to dismiss, Defendants argued that Count 5 should be dismissed because Plaintiffs didn't plead and prove the absence of probable cause for the notices of violation they received, citing *Nieves v. Bartlett*, 139 S. Ct. 1715 (2019). (Defs.' Mem. Supp. Mot. Dismiss 13–14.) The Court expressed skepticism that *Nieves'*s probable-cause analysis applied in a case involving neither an arrest nor a prosecution. (Mem. Decision & Order 25–26, Nov. 7, 2023.) But the Court left the question of *Nieves*'s applicability undecided because its no-probable-cause requirement doesn't apply when plaintiffs allege that the enforcement actions taken

[9] As the Court previously noted, Idaho follows federal First Amendment precedents when interpreting and applying article I, section 9 of the Idaho Constitution. *State v. Hammersley,* 134 Idaho 816, 819, 10 P.3d 1285, 1288 (2000), *overruled on other grounds by State v. Poe*, 139 Idaho 885, 88 P.3d 704 (2004).

against them aren't usually taken against similarly situated individuals. (*See id.*) (citing *Nieves*, 139 S. Ct. at 1727.)

Against this backdrop, the parties seem to agree that *Nieves* governs the disposition of Count 5, and they point to *Richards v. Department of Building Inspection of City & County of San Francisco,* No. 20-CV-01242-JCS, 2021 WL 5415254 at *7–11 (N.D. Cal. Nov. 19, 2021), a case applying *Nieves*—on the parties' express invitation—in the permit-revocation context. (*See* Reply Supp. Defs.' Mot. Summ. J. 12.) But, disagreeing with Plaintiffs about which way *Nieves* cuts, Defendants continue to argue that Count 5 should be dismissed because Plaintiffs haven't shown that probable cause for Officer Negrete's enforcement actions was lacking, (*e.g., id.* at 11–13), while Plaintiffs continue to argue that, despite the presence of probable cause, Officer Negrete's enforcement actions against them aren't usually taken against similarly situated individuals, (Opp'n Defs.' Mot. Summ. J. 43–47). In addition, Defendants argue that Count 5 fails regardless of *Nieves* because Plaintiffs haven't shown that their speech was actually chilled by Officer Negrete's conduct. (Mem. Supp. Defs.' Mot. Summ. J. 15–16.)

Taking Defendants' latter argument first, it doesn't matter whether Plaintiffs' speech was actually chilled by the City's enforcement actions. Instead, Plaintiffs must establish that Defendants intended to interfere with the exercise of their free-speech rights. *E.g.*, *Autotek, Inc. v. Cnty. of Sacramento*, No. 216CV01093KJMCKD, 2020 WL 4059564, at *8 (E.D. Cal. July 20, 2020) (citing *Mendocino Env't Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999)). This

is "[b]ecause it would be unjust to allow a defendant to escape liability for a First Amendment violation merely because an unusually determined plaintiff persists in his protected activity." *Mendocino Env't Ctr.,* 192 F.3d at 1300. Thus, that Plaintiffs continued to speak to the press after Officer Negrete took allegedly retaliatory enforcement actions is not a bar to Count 5.

As for Defendants' probable-cause argument, however, the Court agrees with it in part. Because both sides ask the Court to apply *Nieves*'s probable-cause standard, and because the Court generally agrees with *Richards* that there isn't a clear reason why *Nieves* should be restricted to retaliatory-arrest or -prosecution cases, *Richards,* 2021 WL 5415254 at *8 n.8, the Court holds that Plaintiffs must prove either that (i) probable cause for their notices of violation was lacking, or (ii) they received these notices despite that similarly situated individuals rarely do. *See Nieves*, 139 S. Ct. at 1725, 1727. Applying this standard, the Court finds that Plaintiffs have failed to establish that Officer Negrete's conduct was retaliatory insofar as the traveling-living-quarters violation is concerned, though it may have been retaliatory as to the alleged parking violations.

i. Traveling-living-quarters violation

On June 14, 2022, Plaintiffs received notices of violation threatening them with criminal prosecution if they didn't stop using a recreational vehicle as a residence in violation of section 11-3A-20. (Negrete Decl. Ex. A.) Again, Plaintiffs don't dispute that Officer Negrete had probable cause to issue these notices. Instead, Plaintiffs contend that he ceased to be "informal and flexible" with them

about a compliance date after he learned about the forthcoming *Statesman* article on or about June 2, 2022. More specifically, Plaintiffs think Officer Negrete was handling his investigation of their mobile tiny home in substantially the same way as his investigation of 1928 Leisure Lane's mobile tiny home but sharp differences emerged after he learned that Decker had spoken to the press. But, even viewing Plaintiffs' evidence in the light most favorable to them, they haven't demonstrated that they were treated differently than similarly situated individuals.

Plaintiffs make much of the fact that Office Negrete only took photos of 1928 Leisure Lane's mobile tiny home from a public roadway, where he couldn't visually confirm whether it was connected to the residence's utilities, though he went to greater lengths to investigate Plaintiffs, including by going onto their neighbor's property to get a better view of Decker's mobile tiny home. (Opp'n Defs.' Mot. Summ. J. 45.) They also complain that Officer Negrete was willing to speak to the relatives of the owners of 1928 Leisure Lane, but he wasn't willing to talk to Jason Jones, Decker's friend and mobile-tiny-home advocate, because he was a third party. (*Id*. at 44–45.) Finally, Plaintiffs say that though Officer Negrete had agreed to follow up at both Leisure Lane addresses on June 10, 2022, and promised that "if there was forward progress . . . [he] would extend more time," (*id*. at 43) (citing Negrete Decl. Ex. A, at 2–3), he instead closed his investigation into 1928 Leisure Lane and issued notices of violation only to Plaintiffs.

The fundamental problem with these arguments, though, is that Plaintiffs lack evidence that anyone ever lived in the mobile tiny home at 1928 Leisure Lane.

When Officer Negrete first visited that property, he noticed that the mobile tiny home was on an unimproved surface but couldn't tell whether it was being lived in. (Belden Decl. Ex. 91, at DEFS007707–08, Jan. 18, 2024.) He contacted the owners, and they assured him that no one was living in it—instead, it was used as a craft house for the owners' kids. (*Id.*) By contrast, when Officer Negrete first visited 1926 Leisure Lane, Decker admitted she was living in the mobile tiny home. (Negrete Decl. Ex. A.) So, from the beginning, Officer Negrete knew someone was living in the mobile tiny home at 1926 Leisure Lane, but it was never clear to him that anyone was living in the mobile tiny home at 1928 Leisure Lane. (Belden Decl. Ex. 95, at 138:3–7, 140:4–141:25, Jan. 18, 2024.) This alone justifies his allegedly disparate treatment of these two properties. Moreover, the owners of 1928 Leisure Lane came into compliance by moving their mobile tiny home behind a privacy fence on or about June 2—about a week before Officer Negrete's planned follow-up date of June 10. (*Id.* Ex. 91, at DEFS007708.) But again, by contrast, Plaintiffs offer no evidence that they were either in compliance or making "forward progress" as of June 10. Officer Negrete didn't issue the notices of violation until after that date. (Negrete Decl. Ex. A.)

Without evidence that someone was living in the mobile tiny home at 1928 Leisure Lane[10] (or, for that matter, in any other traveling living quarters outside of

[10] The only evidence in the record is to the contrary. Calacal's neighbor testified that she had never observed anyone living in the mobile tiny home at 1928 Leisure Lane. (Belden Decl. Ex. 88, at 27:19–28:5, Jan. 18, 2024.)

an RV park), and without evidence that the City had reason to know of other traveling-living-quarters violations, Plaintiffs can't establish that they were issued notices of traveling-living-quarters violations "when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been." *Nieves,* 139 S. Ct. at 1727. Consequently, Plaintiffs can't prevail on their retaliation claim insofar as traveling-living-quarters violations are concerned. Officer Negrete had probable cause to take enforcement action against them, and they don't qualify for an exception to *Nieves*'s no-probable-cause requirement. Summary judgment is granted against Count 5 insofar as it is based on Officer Negrete's issuance of a notice of a traveling-living-quarters violation.

ii. Parking violations

The Court reaches a different conclusion as to the notices of parking violations issued to Plaintiffs on June 14, 2022. During the Rule 30(b)(6) deposition, Officer Negrete testified that he rarely issues notices for vehicle violations because he prefers to handle those matters informally by first speaking with the owners and giving them a grace period before taking any enforcement action. (Belden Decl. Ex. 93, at 293:11–295:23, Jan. 18, 2024.) In addition, as already discussed in conjunction with Plaintiffs' selective-enforcement claim, Officer Negrete testified that he would have addressed any other code violations on Leisure Lane had he noticed them. (*Id.* Ex. 95, at 168:15–170:2.) With this in mind, Officer Negrete drove by 1926 Leisure Lane on June 9—the same day the *Statesman* published an article sympathetic to Plaintiffs and one day before the agreed-upon

compliance date of June 10—to run vehicle registrations and take note of the various vehicle violations on the property. (Negrete Decl. Ex. A, at 3–4.) Then, when Officer Negrete issued notices of violation to Plaintiffs on June 14, they included parking violations that Plaintiffs say he had never spoken with them about. (*See id*. Ex. A, at 31–32; 1st Decker Decl. ¶¶ 21–24.)

Because Plaintiffs received notices of parking violations that are allegedly quite commonplace along Leisure Lane, (1st Decker Decl. ¶¶ 21–24; Index Exs. Supp. Mot. Prelim. Inj. Exs. 5–50), and because Plaintiffs have presented at least some evidence that Officer Negrete may have broken from his standard practice by issuing these notices, Plaintiffs need not satisfy *Nieves*'s no-probable-cause requirement to survive summary judgment insofar as Count 5 is based on the issuance of notice of parking violations.

B. Plaintiffs' motion for partial summary judgment

Plaintiffs seek summary judgment on Counts 2 and 3, their as-applied challenges to the ordinances at issue, contending they have enough evidence to prove that the ordinances are irrational insofar as they flatly prohibit Decker from living in her mobile tiny home on Calacal's property. Defendants also move for summary judgment on these claims, arguing that the ordinances serve legitimate government purposes and must therefore be upheld.

Zoning ordinances are "presumed valid until the contrary is shown." *Dry Creek Partners, LLC, v. Ada Cnty. Comm'rs,* 148 Idaho 11, 18, 217 P.3d 1282, 1289 (2009) (quoting *State v. Clark,* 88 Idaho 365, 377, 399 P.2d 955, 962 (1965)). They

are valid unless shown to be arbitrary, capricious, or discriminatory, *id*. at 19, 217 P.3d at 1290 (citing *Ready–To–Pour, Inc. v. McCoy,* 95 Idaho 510, 514, 511 P.2d 792, 796 (1973)), requiring that they bear "no substantial relationship to the public health, safety, morals, and general welfare." *Id*. (quoting 101A C.J.S. *Zoning & Land Planning* § 25 (2009)). In deciding whether an ordinance is reasonable, courts should consider "all the existing circumstances or contemporaneous conditions, the objects sought to be obtained, and the necessity or lack thereof for its adoption." *Cole-Collister Fire Prot. Dist. v. City of Boise*, 93 Idaho 558, 562, 468 P.2d 290, 294 (1970). "Where there is a basis for a reasonable difference of opinion, or if the validity of legislative classification for zoning purposes is debatable, a court may not substitute its judgment for that of the local zoning authority." *City of Lewiston v. Knieriem*, 107 Idaho 80, 83, 685 P.2d 821, 824 (1984).

Aware of the sizable hurdle they face in having any of the City's zoning ordinances declared unconstitutional as applied to them, Plaintiffs attack the reasonableness of sections 11-3A-20 and 11-4-3-12 on several fronts. First, recognizing that the Idaho Supreme Court has already upheld zoning ordinances that restrict mobile homes to certain quarters of a city so long as those restrictions don't amount to a "total ban," *Knieriem*, 107 Idaho at 85, 685 P.2d at 826, Plaintiffs argue that section 11-3A-20 does indeed impose a total ban on living in mobile tiny homes within the City. This is because, as noted, section 11-3A-20 makes it illegal to use a "mobile tiny house[]. . . as a residence or as living quarters except within an approved recreational vehicle park," UDC § 11-3A-20, but the only RV park in

Meridian doesn't accept mobile tiny homes for long-term stays, (Belden Decl. Ex. 44 at 38:13–39:9). Even if someone wanted to open a new RV park that could accept mobile tiny homes, Plaintiffs say that only three percent of the City's undeveloped property is zoned such that RV parks are allowed, whether outright or as a conditional use. (*See* Mem. Supp. Pl.'s Mot. Partial Summ. J. 9.) Making matters worse, Plaintiffs think this near-total ban is solidified by section 11-4-3-12(H), which flatly prohibits property owners from using mobile tiny homes as secondary dwelling units. *See* UDC § 11-4-3-12(H) (providing that "[r]ecreational vehicles shall be prohibited for use as a secondary dwelling unit."); UDC § 11-1A-1 (defining "recreational vehicle" to include mobile tiny homes).

Second, Plaintiffs argue that no legitimate government interest is rationally furthered by these restrictions. As important context, in *Knieriem*, the Idaho Supreme Court held that mobile homes could be restricted to particular zones when the city imposed those restrictions to "protect residential property values, to preserve the intent of the city's comprehensive plan, and to promote the general safety and welfare of . . . its residents." *Knieriem,* 107 Idaho at 83–84, 685 P.2d at 824–25 (internal quotation marks omitted). Seeking to establish that none of these approved government purposes are actually promoted by sections 11-3A-20 and 11-4-3-12, Plaintiffs argue that Decker's mobile tiny home is both perfectly safe, having been built according to the Recreational Vehicle Industry Association ("RVIA") standards, (*see* Chatterton Decl. ¶¶ 63–64, 88–90), and aesthetically unobjectionable, such that it does not compromise surrounding property values.

Indeed, one of the City's Rule 30(b)(6) designees agreed that the placement of Decker's mobile tiny home on Calacal's property doesn't adversely impact surrounding property values or the character of Leisure Lane. (Belden Decl. Ex. 41, at 171:3–8, Jan. 4, 2024.) Further, Plaintiffs' expert witnesses opine that Decker's mobile tiny home could potentially be inspected and permitted as a secondary dwelling unit, if not for the City's flat prohibition on so using mobile tiny homes. (*See* Chatterton Decl. ¶¶ 104–123; Belden Decl. Ex. 46, at 26:3–27:7, 38:8–23, 155:6–56:11, 159:18–62:11, 170:8–20, 211:7–20, Jan. 4, 2024.)

The Court generally finds Plaintiffs' "total ban" argument unconvincing. Though the City has only one RV park, and that one RV doesn't even accept mobile tiny homes, *Knieriem* doesn't stand for the proposition that municipalities must affirmatively ensure that space in which to live in RVs is *actually available*; instead, under *Knieierm*, city zoning codes must make it *possible* for market actors to provide that space. In *Knieriem*, the claimants complained that they were prevented from using a mobile home on their property—which wasn't zoned for an RV park—and few available lots would have allowed them to live in their mobile home elsewhere in Lewiston. 107 Idaho at 82–85, 685 P.2d at 823–26. The Idaho Supreme Court ruled against them because the City of Lewiston's zoning code allowed mobile home parks, subdivisions, and planned unit developments in roughly fifty percent of the city. (*See id.*) As *Knieriem* explains, "A city need not provide the lots or finance construction of subdivisions to assure that any particular person can buy one; the city merely has to provide the mechanism." *Id.*

at 85, 685 P.2d at 826. In Meridian, RV parks are permissible in roughly twenty percent of the City. (*See* Belden Decl. Ex. 28, at 10, Jan. 4, 2024.) That's because RV parks are fully allowed in C-G zones, which comprise nearly thirteen percent of the City, and conditionally allowed in I-L and R-40 zones, which comprise another seven percent of the City. (*See id*.; Belden Decl. Ex. 38, Jan. 4, 2024.) Though these figures are significantly smaller than those at issue in *Knieriem*, the disparity isn't so great as to demand a different outcome than the one in *Knieriem*. There simply isn't a "total ban" on living in mobile tiny homes in Meridian.

That said, Plaintiffs have raised a colorable question as to *why* the City flatly prohibits mobile tiny homes from ever being lived outside of an RV park, even in circumstances where a property owner is willing to jump through the regulatory hurdles of having a mobile tiny home approved as a secondary dwelling unit. And, in response to Plaintiffs' challenge, Defendants have struggled to articulate an explanation as to the legitimate governmental purposes served by sections 11-3A-20 and 11-4-3-12.

Defendants' position appears to be that these ordinances promote the health and welfare of the City's residents because they help the City anticipate each parcel's water, sewer, and other utility needs. (*See, e.g*., Thomas Decl. Ex. 3, at 97:23–100:4, Jan. 4, 2024; *id*. Ex. 4, at 193:9–95:2; Belden Decl. Ex. 38, at 22–27.) Simply put, the City needs to know how many people are living on each parcel so that utility services don't become overwhelmed. *(See id*.) Similarly, the City wants to ensure that its building codes are followed so that structures are safe and

fit for habitation. (*E.g.*, Belden Decl. Ex. 38, at 26–27, Jan. 4, 2024.) As legitimate as these purposes are, it is unclear why the City considers mobile tiny homes unacceptable as secondary dwelling units. In other words, though it is readily apparent why the City requires property owners to seek a permit before adding a secondary dwelling unit that may increase the number of residents living on a given residential lot, the significance of whether that unit is constructed on a foundation or instead is on wheels hasn't really been explained. Some of the City's witnesses have testified that it would be possible to inspect and permit mobile tiny homes to potentially obviate these concerns, but city inspectors currently don't do so because mobile tiny homes simply may not be used as secondary dwelling units. (*Id.* Ex. 46, at 38:8–23, 155:6–56:11, 159:18–60:10, 161:20–62:11, 170:8–20, 211:7–20; *see also id.* Ex. 41, at 91:8–20 (explaining that, where secondary dwelling units are concerned, the City doesn't allow for alternative compliance).

None of this is to say that Defendants' health and safety concerns can't be legitimate purposes for sections 11-3A-20 and 11-4-3-12. But, considering that Defendants have expressly disclaimed that these ordinances serve aesthetic purposes, (*id.* Ex. 38, at 10), the Court needs to better understand the nature of the City's health and safety rationale in this context. Because this is, at bottom, a reasonableness determination, and because the parties hotly dispute whether these ordinances truly advance any health and safety objectives, Counts 2 and 3 must be resolved in a trial setting.

Accordingly,

IT IS ORDERED that Plaintiffs' motion for partial summary judgment is denied.

IT IS FURTHER ORDERED that Defendants' motion for summary judgment is granted in part, in that Count 5 is limited to the notion that Defendants engaged in retaliatory enforcement of parking ordinances. It is otherwise denied.

Jason D. Scott 3/1/2024 3:27:41 PM

Jason D. Scott
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that on March 1, 2024, I served a copy of this document as follows:

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