NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3679-20

THOMAS MAKUCH, LLC,
d/b/a ACCURATE TOWING
SERVICE AND CHILDS'
WRECKING YARD, INC.,

Plaintiff-Appellant,

v.

TOWNSHIP OF JACKSON,
POLICE CHIEF MATTHEW
KUNZ, and OFFICER TREVOR
CROWLEY,

Defendants-Respondents.

APPROVED FOR PUBLICATION
July 3, 2023
APPELLATE DIVISION

Argued March 21, 2023 – Decided July 3, 2023

Before Judges Messano, Gilson and Rose.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County, Docket No. L-0537-17.

Christina Vassiliou Harvey argued the cause for appellant (Lomurro, Munson, Comer, Brown & Schottland, LLC, attorneys; Eric H. Lubin, of counsel and on the briefs).

Patrick F. Varga argued the cause for respondents Township of Jackson and Police Chief Matthew Kunz (Dasti, Murphy, McGuckin, Ulaky, Koutsouris &

Connors, attorneys; Thomas E. Monahan, of counsel; Patrick F. Varga, on the brief).

Kevin B. Riordan argued the cause for respondent Officer Trevor Crowley (Kevin B. Riordan Esq. LLC, attorneys; Kevin B. Riordan and Gary P. McLean, on the brief).

The opinion of the court was delivered by

GILSON, J.A.D.

This appeal arises out of an action challenging the suspension of a company that had been providing towing services in a municipality. Plaintiff Thomas Makuch LLC d/b/a Accurate Towing Service and Childs' Wrecking Yard, Inc. was on lists of companies, which would be called, on a rotating basis, to provide towing and related services in the Township of Jackson (Township). In 2017, plaintiff was suspended from the Township's lists, and it sued claiming, among other things, that the suspension violated its constitutional rights to due process and equal protection.

The trial court granted summary judgment to defendants (the Township, its chief of police, and a police officer) and dismissed plaintiff's complaint with prejudice. We affirm because the record establishes that plaintiff was accorded the process due its limited right to be on the Township's towing lists and there were no other constitutional violations.

I.

The Legislature, by statute, allows municipalities to regulate the removal of motor vehicles from public and private property by "operators engaged in such practice." N.J.S.A. 40:48-2.49. If a municipality chooses to act, it must enact an ordinance and the ordinance "shall" set forth regulations governing operators and the fees they can charge. Ibid.

The Township enacted Ordinance 06-13, codified as Chapter 388 of its municipal code (Chapter 388), to regulate towing services in its municipality. See Jackson, N.J., Ordinance 06-13 (May 14, 2013). Chapter 388-2 directs the Township's chief of police (Chief) to establish two lists of "persons or firms" which the Township will use to provide towing and wrecking services for abandoned or wrecked vehicles. One list is for light-duty vehicles and that list cannot have more than eight approved towers. The second list is for medium- and heavy-duty vehicles and is limited to three towers. Owners of vehicles are not required to use the towers on the Township's lists. Instead, owners can hire their own towers, but if the Township calls a tower, it must call, on a rotating basis, one of the towers from the lists. See Jackson, N.J., Code § 388-5, -13.

Persons or companies seeking to be on the Township's towing lists must apply annually for a license and pay a fee. See Jackson, N.J., Code § 388-2,

-10. The accompanying application must detail certain information, including the applicant's equipment and capabilities. See Jackson, N.J., Code § 388-3. Applicants must also maintain facilities, including a permanent restroom that complies with the provisions of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 to 12213. See Jackson, N.J., Code § 388-3(H).

The Chief has the authority to select the persons and firms who are placed on the Township's lists. In that regard, Chapter 388-3(P) provides: "After the application has been submitted and been reviewed by the Traffic Services [U]nit, it shall be forwarded to the [Chief] for approval or disapproval by him [or her]." In making the selections, Chapter 388-2 directs that the Chief "shall give first preference to those persons or firms who are presently utilized by the Police Department for this service. All other [applicants] shall be given preference based upon the date" they filed an application.

The towing license issued by the Chief is "nontransferable" and runs from July 1 of each calendar year to June 30 of the next calendar year. See Jackson, N.J., Code § 388-10(A). Chapter 388-5 states:

> The [Chief] shall maintain a weekly revolving list of licensed light-duty wreckers, and a weekly revolving list of licensed heavy-duty wreckers to provide service where needed and shall instruct all duty and investigating officers to utilize said list[s]. Nothing herein shall be construed to prevent the Police

> Department from contacting towing operators out of order from the list[s] for safety reasons or the existence of special circumstances, upon approval of a member of the Traffic Unit or a supervisor.

In overseeing the Township's lists and licenses, the Chief has the power to "establish reasonable rules and regulations governing the inspection and operation of [towers and] wreckers." See Jackson, N.J., Code § 388-11(A). In addition, the Chief has "the power to suspend or revoke a [tower or] wrecker license for violations of safety standards or rules and regulations of operation." See Jackson, N.J., Code § 388-11(B).

Chapter 388-6 to -8 set forth the fees towers can charge for their services. Chapter 388-14 identifies the penalties for violating the ordinance. That subsection states:

> Any person who violates any one or more of the provisions of [Chapter 388] shall be subject to a fine of not more than $1,000 for each separate offense and/or confinement in the Ocean County jail for a period of not more than 90 days. In the case of a continuing violation or violations, a fine of not more than $1,000 may be assessed for each day that said violation or violations are not corrected. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
>
> [Jackson, N.J., Code § 388-14.]

Before 2017, plaintiff had been on the Township's two towing lists for several years. On January 6, 2017, Police Officer Trevor Crowley, who worked in the Traffic Safety Unit, sent a letter notifying plaintiff that it was being suspended from the towing lists. The letter stated:

> Multiple allegations of improper customer billing[,] as well as other Township ordinance violations, have been made against your company, and are currently being investigated by the [Township] Police Department. As such, [plaintiff] is being suspended from both the Light[-]Duty and Heavy[-]Duty towing rotation indefinitely, until such time as the matter is thoroughly investigated.
>
> If you have any questions or concerns, you may contact me at the office.

Shortly after receiving that letter, plaintiff's principal contacted Crowley and met with him. A representative of plaintiff also wrote to the Township's Chief, Administrator, Clerk, and Mayor seeking a more detailed explanation for plaintiff's suspension and to be restored to the lists.

On February 24, 2017, plaintiff filed an action in lieu of prerogative writs against the Township, Chief Matthew Kunz, and Crowley.[1] In essence, plaintiff sought to be restored to the Township's towing lists.

[1] Plaintiff also named other towing companies as defendants in its first complaint, but later dismissed the claims against those defendants.

In March 2017, the Township, through its police department, issued twelve summonses to plaintiff and its principal charging them with violations of Chapter 388. The summonses alleged that plaintiff and its principal had improperly billed for services plaintiff had provided in November 2016.

On April 18, 2017, a search warrant was issued and executed at plaintiff's office in the Township. Thereafter, in July 2017, the Township issued an additional fourteen summonses charging plaintiff with violations of Chapter 388. Those fourteen summonses alleged that plaintiff had overbilled for services it had provided between July 2016 and February 2017.

The summonses were all filed and adjudicated in municipal court. The initial appearance in municipal court occurred on May 4, 2017. Thereafter, the municipal court action was delayed and adjourned for various reasons. In December 2018, plaintiff, through its principal, pled guilty to four violations of Chapter 388 it had committed in August, September, and December 2016. Plaintiff paid roughly $330 in fines and costs for each of those violations, and the remaining charges were dismissed.

The following month, in January 2019, the Township's police department reviewed an application submitted by plaintiff to be placed back on the Township's towing lists and conducted an inspection of plaintiff's facilities.

Following the inspection, plaintiff was restored to the lists. During the next application period, however, plaintiff elected not to reapply to remain on the lists.

While the municipal court action proceeded, plaintiff continued to pursue this action in the Law Division. The parties conducted discovery, and plaintiff dismissed the action in lieu of prerogative writs and amended its complaint several times. In its third amended complaint, plaintiff asserted nine causes of action. Five claims were based on alleged violations of plaintiff's constitutional rights to procedural and substantive due process and equal protection. The remaining claims alleged breaches of contract, conspiracy, tortious interference, arbitrary action, and failure to train and supervise.

In April and May 2021, defendants moved for summary judgment seeking to dismiss all claims asserted in the third amended complaint. Plaintiff opposed those motions and the trial court heard argument. On July 13, 2021, the trial court entered an order granting summary judgment to defendants and dismissing plaintiff's complaint with prejudice. The court supported its ruling with a written statement of reasons.

The trial court focused its analysis on plaintiff's alleged constitutional violations. In addressing plaintiff's procedural due process claims, the trial court

reasoned that it need not decide if plaintiff had a protected property interest in remaining on the Township's towing lists. Instead, the trial court held that plaintiff had been accorded the process due its right. The court pointed out that plaintiff was given notice and had an opportunity to be heard both in the municipal court action and in the action it filed in the Law Division.

Addressing plaintiff's substantive due process claim, the court held that plaintiff should have asserted that claim in the municipal court action and it was barred from raising it in this action. In reaching that conclusion, the trial court pointed out that plaintiff had challenged the constitutionality of the search warrant issued in April 2017 in the municipal court but that court had rejected that constitutional challenge.

Concerning plaintiff's equal protection claims, the trial court reasoned that plaintiff had not established that it was a class of one or that it was subject to selective enforcement. The trial court also found that plaintiff had not established a constitutional claim against the Township under Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978). In Monell and subsequent cases, the U.S. Supreme Court required a plaintiff seeking to impose liability on a municipality for a constitutional violation to identify a municipal policy or custom that caused the plaintiff's alleged injury.

In addition, the trial court found that Crowley was entitled to qualified immunity. In that regard, the court found that there was no evidence that Crowley acted in a clearly unlawful manner in sending the letter suspending plaintiff while the police department investigated allegations of misconduct.

II.

Plaintiff now appeals from the order granting summary judgment to defendants. Initially, we note that plaintiff has not made any arguments concerning its causes of action that were not based on alleged constitutional violations. Those claims were asserted in counts five through nine. Because plaintiff failed to address those claims, we deem them to be abandoned and affirm the summary judgment order dismissing those claims. See Green Knight Cap., LLC v. Calderon, 469 N.J. Super. 390, 396 (App. Div. 2021) (explaining that plaintiff had waived an issue by not raising or briefing it on appeal); N.J. Dep't of Env't Prot. v. Alloway Township, 438 N.J. Super. 501, 505 n.2 (App. Div. 2015).

III.

Plaintiff argues that the trial court erred in dismissing its constitutional claims. Specifically, plaintiff contends that when it was suspended from the towing lists, defendants violated its constitutional rights to procedural due

process, substantive due process, and equal protection. Plaintiff further asserts its equal protection rights were violated by an amendment to Chapter 388, which plaintiff contends affected only it. In addition, plaintiff argues that it presented sufficient evidence to support a claim against the Township under Monell. Finally, plaintiff asserts that Crowley was not entitled to qualified immunity. The record and law do not support any of plaintiff's arguments.

A. Our Standard of Review.

Appellate courts review de novo the grant of summary judgment, applying the same standard as the motion judge. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). That standard requires us to "determine whether 'the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.'" Ibid. (quoting R. 4:46-2(c)). "To decide whether a genuine issue of material fact exists, the trial court must 'draw[] all legitimate inferences from the facts in favor of the non-moving party.'" Friedman v. Martinez, 242 N.J. 449, 472 (2020) (alteration in original) (quoting Globe Motor Co. v. Igdalev, 225 N.J. 469, 480 (2016)). "[The] trial court's interpretation of the law and the legal consequences that flow from established facts are not

entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

B. Procedural Due Process.

The Fourteenth Amendment to the United States Constitution and Article I, Paragraph 1 of the New Jersey Constitution protect individuals from deprivations of life, liberty, and property, without due process of law. See Doe v. Poritz, 142 N.J. 1, 99 (1995). "In examining a procedural due process claim, we first assess whether a liberty or property interest has been interfered with by the State, and second, whether the procedures attendant upon that deprivation are constitutionally sufficient." Ibid.

"The 'property' interest contemplated by the Fourteenth Amendment may take many forms over and above the ownership of tangible property." Nicoletta v. N.J. Dist. Water Supply Comm'n, 77 N.J. 145, 154 (1978) (citing Fuentes v. Shevin, 407 U.S. 67, 86 (1972)). Accordingly, a person may have a property interest in a "benefit." Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 577 (1972). "The chief ingredient of this kind of 'property' interest . . . is a 'legitimate claim of entitlement.'" Nicoletta, 77 N.J. at 154-55 (quoting Roth, 408 U.S. at 577). In other words, "[t]o have a property interest in a benefit, a person clearly

must have more than an abstract need or desire for it. He [or she] must have more than a unilateral expectation of it." Roth, 408 U.S. at 577.

Property interests are not created by the Federal Constitution. Instead, they are created by "existing rules or understandings that stem from an independent source such as state law," ibid., or "mutually explicit understandings," Perry v. Sindermann, 408 U.S. 593, 601 (1972). In deciding whether a state or local statute, ordinance, or regulatory scheme creates a property interest, courts look to see if they substantively limit official discretion. See Town of Castle Rock v. Gonzales, 545 U.S. 748, 756 (2005) (explaining that "a benefit is not a protected entitlement if government officials may grant or deny it in their discretion"); Logan v. Zimmerman Brush Co., 455 U.S. 422, 430 (1982) (noting the "hallmark" of a property interest "is an individual entitlement grounded in state law, which cannot be removed except 'for cause'"); see also Green Genie, Inc. v. City of Detroit, 63 F.4th 521, 526 (6th Cir. 2023) (explaining that "a government benefit, such as a permit, is not a protected entitlement" if officials have discretion to grant or deny it).

No New Jersey cases have addressed whether a municipal towing list confers a property interest protected by constitutional due process. Courts from other state and federal jurisdictions that have examined that issue have held that

the mere establishment of a rotational towing list by a statute or ordinance does not, without more, establish a property interest. See e.g., Maple Ave. Repair Serv., LLC v. Town of North Haven, 924 F. Supp. 2d 392, 397-98 (D. Conn. 2013); Alpha, LLC v. Dartt, 304 P.3d 1126, 1129-31 (Ariz. Ct. App. 2013); Wimer v. Holzapfel, 868 F. Supp. 844, 848 (E.D. Tex. 1994). Instead, those courts have reasoned that the statute or ordinance must create an entitlement and sufficiently restrict official discretion in the maintenance of the towing list. See e.g., PB&J Towing Svc., I&II, LLC v. Hines, 487 F. Supp. 3d 695, 702 (W.D. Tenn. 2020); Holzapfel, 868 F. Supp. at 848; see also Blackburn v. City of Marshall, 42 F.3d 925, 941 (5th Cir. 1995) (noting there is no "right to particular government business or referrals").

The New Jersey statute that authorizes municipalities to regulate towing services does not create a property interest. See N.J.S.A. 40:48-2.49. That statute allows a municipality to adopt an ordinance and provide some general requirements if an ordinance is adopted. The only reference to "due process of law" in the statute is a sentence that provides: "The designation of a municipal officer or agency to enforce the provisions of the ordinance in accordance with due process of law." N.J.S.A. 40:48-2.49(c). That reference to due process, does not relate to the approval of a firm or person to be on the towing list; rather,

it concerns the "enforce[ment of] the provisions of the ordinance." Ibid. In other words, if a municipality enacts an ordinance, the ordinance must set forth the fees a towing operator can charge and "[m]inimum standards of operator performance." Thus, if the towing operator violates the ordinance, the municipality can enforce the ordinance "in accordance with due process of law." N.J.S.A. 40:48-2.49(a) to (c).

We, therefore, look to the Township's ordinance. Chapter 388 does not establish a property interest in placement on the Township's towing lists. Chapter 388 accords a fair amount of discretion to the Chief in selecting firms and persons for the towing lists. That discretion is circumscribed by certain clearly delineated guidelines. N.J.S.A. 40:48-2.49 expressly states that municipal ordinances can only establish regulations that are not discriminatory or exclusionary. In that regard, the statute states that a municipal ordinance "shall set forth non-discriminatory and non-exclusionary regulations governing operators engaged in the business of removing and storing motor vehicles." Ibid.

Once placed on the Township's towing lists, however, Chapter 388 does confer a limited property interest. Chapter 388-11(B) states that the Chief "and the officers of the Traffic Services Unit shall have the power to suspend or

revoke a [tower or] wrecker license for violations of safety standards or rules and regulations of operation." Accordingly, a tower cannot be suspended or removed from the list without cause. While the tower's interest in remaining on the list has some protection, it is a limited interest. Chapter 388 is clear in providing that the towers placed on the list are placed there for one year.

We, therefore, turn to the process that was due plaintiff. "Once it is determined that due process applies, the question remains what process is due." Morrissey v. Brewer, 408 U.S. 471, 481 (1972). "Fundamentally, due process requires an opportunity to be heard at a meaningful time and in a meaningful manner. The minimum requirements of due process, therefore, are notice and the opportunity to be heard." Poritz, 142 N.J. at 106 (citations omitted); see also Goss v. Lopez, 419 U.S. 565, 579 (1975).

"Federal and state courts alike recognize due process as a 'flexible' concept, such that the scope of its procedural protections depends upon the circumstances at issue." N.J. Div. of Child Prot. & Permanency v. V.E., 448 N.J. Super. 374, 397 (App. Div. 2017) (quoting In re R.P., 333 N.J. Super. 105, 112-13 (App. Div. 2000)); see also Zinermon v. Burch, 494 U.S. 113, 127 (1990) (explaining that due process "is a flexible concept that varies with the particular situation"). To determine what process is due, courts weigh several factors: (1)

"the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Mathews v. Eldridge, 424 U.S. 319, 335 (1976). An opportunity to be heard does not always require a formal hearing. See Sea Girt Rest. & Tavern Owners Ass'n, Inc. v. Borough of Sea Girt, 625 F. Supp. 1482, 1490 (D.N.J. 1986) (holding that an ordinance that regulated the hours liquor could be sold, which was enacted after a referendum, comported with due process because it allowed the liquor stores to "be heard" by campaigning against the referendum).

Plaintiff was accorded sufficient notice and an opportunity to be heard concerning its suspension from the Township's towing lists. Chapter 388 expressly informed plaintiff that the Chief and police officers working in the Traffic Services Unit could suspend its towing license. Consistent with that authority, Crowley sent plaintiff a letter informing it that it was being suspended. The letter also told plaintiff that the suspension was being implemented because it was under investigation for violations of the "ordinance." Plaintiff's

representatives then had an opportunity to meet with members of the Township police department. At that time, plaintiff was on notice that it was under investigation for violations of Chapter 388. Within two months, plaintiff and its principal were then served with twelve summonses identifying specific violations. Plaintiff was thereafter accorded a full opportunity to be heard in municipal court concerning those violations. Given the limited nature of plaintiff's annual license, it was accorded all the process it was due.

Plaintiff argues that it was "indefinitely" suspended. The Township's annual towing license made it clear that plaintiff could be reviewed annually. Consequently, the license was not an indefinite or permanent license. Moreover, the Township police had an obligation to protect the public and to ensure that towers were not overbilling for services.

We also reject plaintiff's arguments concerning the time delay in the municipal court. To the extent that plaintiff had a complaint about the delays in municipal court, the appropriate place to make that contention was in municipal court.

C. Substantive Due Process.

"Substantive due process 'protects individuals from the "arbitrary exercise of the powers of government" and "governmental power [. . .] being used for

[the] purposes of oppression.'" Harvard v. State, Judiciary, Atl.-Cape May Vicinage, 460 N.J. Super. 433, 444 (App. Div. 2018) (alterations in original) (quoting Filgueiras v. Newark Pub. Schs., 426 N.J. Super. 449, 469 (App. Div. 2012)). Substantive due process does not, however, "protect individuals from all governmental actions that infringe liberty or injure property in violation of some law." Rivkin v. Dover Twp. Rent Leveling Bd., 143 N.J. 352, 366 (1996) (quoting PFZ Props., Inc. v. Rodriguez, 928 F.2d 28, 31 (1st Cir. 1991)). Instead, it "is reserved for the most egregious governmental abuses against liberty or property rights, abuses that 'shock the conscience or otherwise offend . . . judicial notions of fairness . . . [and that are] offensive to human dignity.'" Ibid. (alteration in original) (quoting Weimer v. Amen, 870 F.2d 1400, 1405 (8th Cir. 1989)). Whether a government official's action "is conscience-shocking is a fact-sensitive analysis and will depend on whether the official['s] conduct is egregious in light of the particular circumstances." Gormley v. Wood-El, 218 N.J. 72, 102-03 (2014); accord County of Sacramento v. Lewis, 523 U.S. 833, 850, 853 (1998).

Plaintiff argues its substantive due process rights were violated because Kunz and Crowley "applied" Chapter 388 in an unlawful manner. In that regard, plaintiff contends Kunz and Crowley knew they were not authorized by Chapter

388 to "indefinitely" suspend plaintiff from the towing lists pending an investigation. According to plaintiff, this evidence created a question of fact as to whether Kunz's and Crowley's conduct was conscience-shocking.

We agree with the trial court's determination that plaintiff was estopped from pursuing its substantive due process claims based on what occurred in municipal court. Nevertheless, we will also consider the merits of plaintiff's argument.

Although Kunz and Crowley both testified that Chapter 388 did not contain explicit language regarding the suspension of a tower pending an investigation, Kunz testified he "believed that [Chapter 388] did in the spirit empower [them] to suspend [plaintiff]." Moreover, at the time of plaintiff's suspension, plaintiff was being investigated for improper billing violations, and Kunz testified it was in the Township's "best interest to suspend [plaintiff] until the matter was vetted" because the Township "[could not] do business with an entity that [was] engaged in criminal conduct." Indeed, plaintiff was issued numerous summonses for violations of Chapter 388 and ultimately pled guilty to four of those summonses. To the extent plaintiff suggests the ordinances were issued only in response to the filing of plaintiff's lawsuit, we reject that argument as unsupported by the record.

In short, the actions of Kunz and Crowley are not conscience-shocking. As our Supreme Court has observed, "the United States Supreme Court is not easily shocked." Rivkin, 143 N.J. at 366 (citing Irvine v. California, 347 U.S. 128, 133 (1954)). Indeed, "the denial of a property right in the context of municipal governance rarely will rise to the level of a substantive due process violation." Ibid.

D. Equal Protection.

"Under the Equal Protection Clause of the Fourteenth Amendment, a state may not 'deny to any person within its jurisdiction the equal protection of laws.'" Felix v. Richards, 241 N.J. 169, 187 (2020) (quoting U.S. Const. amend. XIV § 2). Accordingly, states are required "to generally treat alike 'all persons who are similarly situated.'" Ibid. (quoting State v. Bianco, 103 N.J. 383, 394 (1986)).

"In some circumstances, an equal protection claim can be asserted even when the plaintiff has not alleged discrimination on the basis of membership in a protected class." DiBuonaventura v. Washington Township, 462 N.J. Super. 260, 267-68 (App. Div. 2020) (citing Engquist v. Or. Dep't of Agric., 553 U.S. 591, 598 (2008)). A "class-of-one" claim requires a plaintiff to "show that he or she was (1) intentionally treated differently from other people who are similarly situated, and (2) there is no rational basis for the difference in

treatment." Id. at 268 (citing Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000)); accord Radiation Data, Inc. v. N.J. Dep't of Env't Prot., 456 N.J. Super. 550, 562 (App. Div. 2018).

Plaintiff argues its rights under the Equal Protection Clause were violated because it was intentionally treated differently from other similarly situated towing companies in two ways. First, plaintiff contends other towing companies that had complaints lodged against them were not suspended from the Township's towing lists. Second, plaintiff contends it was the only tower affected by the Township's amendment to Chapter 388, requiring towing companies to have a permanent ADA-compliant bathroom on its premises. The record does not support these arguments.

Plaintiff has not established that it was treated differently from other similarly situated towers. It has not provided sufficient data, statistics, or examples indicating it had been intentionally treated differently from other towers, nor has it provided any certifications from the other allegedly similarly situated towers supporting its contention. Indeed, the record reflects other towers had been removed from the towing lists for noncompliance with Chapter 388. Testimony from one of the Township's councilmembers also directly refutes plaintiff's contention regarding the amendment to Chapter 388. In that

regard, the councilmember explained plaintiff and another tower were both affected by the amendment.

In short, plaintiff has not shown that it was intentionally treated differently from other similarly situated towers. Even if plaintiff had made that showing, it has not demonstrated that there was no rational basis for such treatment.

E. The Claim Under Monell.

Under Monell, a municipality "can be held liable for acts committed by one of its employees or agents, pursuant to a [municipal] policy or custom, that violate the Constitution." Besler v. Bd. of Educ. of W. Windsor-Plainsboro Reg'l Sch. Dist., 201 N.J. 544, 564-65 (2010) (citing Monell, 436 U.S. at 694). "[I]n order for municipal liability to exist, there must be a violation of the plaintiff's constitutional rights." Sanford v. Stiles, 456 F.3d 298, 314 (3d Cir. 2006). Moreover, claimants "must prove that 'action pursuant to official municipal policy' caused their injury." Connick v. Thompson, 563 U.S. 51, 60-61 (2011) (quoting Monell, 436 U.S. at 691).

Plaintiff argues Chapter 388-11 vested policymaking authority with Kunz, and Kunz operated under an "unwritten policy" when he relied on "the spirit" of Chapter 388 to "indefinitely" suspend plaintiff. Plaintiff has failed to establish

a municipal policy or action affecting it. Kunz's alleged actions are insufficient to establish a policy or custom.

Moreover, as we have explained, plaintiff has not suffered a violation of its constitutional rights. Thus, even assuming plaintiff had identified a municipal policy or custom, its claim under Monell fails because it did not suffer a constitutional injury. See Petty v. City of Chicago, 754 F.3d 416, 424-25 (7th Cir. 2014); Stiles, 456 F.3d at 314.

F. Qualified Immunity.

"The affirmative defense of qualified immunity protects government officials from personal liability for discretionary actions taken in the course of their public responsibilities, 'insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Brown v. State, 230 N.J. 84, 97-98 (2017) (quoting Morillo v. Torres, 222 N.J. 104, 116 (2015)). New Jersey's "qualified immunity doctrine tracks the federal standard, shielding from liability all public officials except those who are 'plainly incompetent or those who knowingly violate the law.'" Id. at 98 (quoting Torres, 222 N.J. at 118).

Whether a government official is entitled to qualified immunity is an "issue . . . for the court to determine." Torres, 222 N.J. at 119. In making that

determination, a court must consider "whether: (1) the facts, '[t]aken in the light most favorable to the party asserting the injury[] . . . show the [official's] conduct violated a constitutional right'; and (2) that constitutional 'right was clearly established' at the time that defendant acted." Brown, 230 N.J. at 98 (first and second alteration in original) (quoting Saucier v. Katz, 533 U.S. 194, 201 (2001)).

Plaintiff argues Crowley testified that he did not believe Chapter 388 authorized him or Kunz to "indefinitely" suspend plaintiff pending an investigation. We again reject this argument as a mischaracterization of the deposition testimony. As we have explained, although Crowley acknowledged Chapter 388 did not contain language explicitly providing for the suspension of a tower pending an investigation, Kunz testified he "believed that [Chapter 388] did in the spirit empower [them] to suspend [plaintiff]." Moreover, as we have held, plaintiff did not suffer a constitutional violation.

In addition, the limited property interest conferred by Chapter 388 to towers that have been placed on the towing lists was not a "clearly established" right at the time of plaintiff's suspension. Indeed, plaintiff has not cited, and this court is not aware of, any New Jersey case that has addressed whether a municipal towing list confers a property interest protected by constitutional due

process. See Torres, 222 N.J. at 118 (explaining that "'existing precedent must have placed the statutory or constitutional question' confronted by the official 'beyond debate'" (quoting Plumhoff v. Rickard, 572 U.S. 765, 779 (2014))). In short, Crowley was entitled to qualified immunity because he did not knowingly violate the law. See Brown, 230 N.J. at 98.

IV.

In summary, plaintiff was accorded the process due its limited right to remain on the Township's towing lists. We do not discern any violations of plaintiff's constitutional rights and we reject its due process and equal protection claims, as well as its claim under Monell. We also conclude the trial court correctly determined Crowley was entitled to qualified immunity. Plaintiff's remaining non-constitutional claims were waived because plaintiff did not address those claims.

Affirmed.