

STATE OF RHODE ISLAND

WASHINGTON, SC.

SUPERIOR COURT

[Filed: June 23, 2021]

FINNIMORE & FISHER INC. d/b/a ISLAND
MOPED, MILES-UN-LTD., INC., ALDO'S
MOPEDS, INC., THE MOPED MAN, INC.,
and OCEAN STATE BIKES, INC.,
Plaintiffs,

v.

TOWN OF NEW SHOREHAM, through
ANDRE BOUDREAU, SVEN RISOM,
MARTHA BALL, KEITH STOVER, and
MARK EMMANUELLE, in their capacities as
Members of the Town Council of the Town of
New Shoreham,
Defendant.

C.A. No. WC-2021-0129

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WASHINGTON
SUPERIOR COURT
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DECISION

TAFT-CARTER, J. Before this Court for decision is Finnimore & Fisher Inc. d/b/a Island Moped (Island Moped), Miles-Un-Ltd., Inc., Aldo's Mopeds, Inc., The Moped Man, Inc., and Ocean State Bikes, Inc.'s (collectively, Plaintiffs) Motion for Preliminary Injunction. The Defendant—the Town of New Shoreham, through Andre Boudreau, Sven Risom, Martha Ball, Keith Stover, and Mark Emmanuelle, in their capacities as members of the Town Council of the Town of New Shoreham (collectively, the Town)—objects to Plaintiffs' motion. The Court granted Plaintiffs' Motion for Temporary Restraining Order on April 14, 2021. Hearings on the Plaintiffs' Motion for Preliminary Injunction were held on May 4, 5, 20, and June 3, 2021. Jurisdiction is pursuant

to G.L. 1956 §§ 8-2-13 and 9-30-1, as well as Rule 65 of the Superior Court Rules of Civil Procedure.

I

Facts and Travel

The Court, after having reviewed the testimony and evidence presented at hearing, makes the following findings of fact:

The Plaintiffs are all businesses that rent motorized scooters, known as “mopeds,” in the Town of New Shoreham. *See* Hr’g Tr. 97:19-98:4, May 4, 2021. Over the years there has been a substantial increase in ferries and boats coming to New Shoreham. *Id.* at 16:19-22. As a result, the volume of people visiting the Town has soared. *Id.* at 16:19-22, 35:24-36:4. While the number of mopeds in New Shoreham has remained the same, the increase in vacationers has resulted in a rise of motorized and unmotorized vehicles. *See id.* at 16:22-25. Thus, the New Shoreham roads are more congested with vehicular and pedestrian traffic. *Id.* at 16:25-17:1, 35:20-22. During the summer months, the increase of traffic on the roadways creates chaos. *Id.* at 17:2-3.

Former Police Chief Vincent Carlone credibly testified at hearing that there is a need in New Shoreham for a larger police presence during the summer months. *Id.* at 11:20-25. He explained that he undertook a community-based approach to policing. *Id.* at 10:3-5. He made efforts to collaborate and gain trust with the community. *Id.* at 10:3-11:3, 28:14-18. Additionally, the police department has forged bonds with the owners of the moped rental businesses. *Id.* at 15:12-18. The owners of the moped rental companies, according to former Police Chief Carlone, have been very cooperative with the police and have partnered with the department to keep operations as safe as possible. *Id.* at 15:16-16:13. For example, the moped owners purchased and installed street signs that warned vehicles of sharp turns at dangerous corners and had their

employees sweep sand from road shoulders to avoid accidents. *Id.* at 15:24-16:9. The moped owners hired a security guard who rode on a moped to take post in different areas to prevent mopeds from traveling into dangerous areas, including dirt roads. *Id.* at 28:3-9. The moped owners and police continuously shared ideas with one another to prevent serious accidents. *Id.* at 27:22-25.

The installation of signage and sweeping of the roads are improvements supported by two different traffic reports. First, a road safety audit report performed in December 2016 contained a number of moped-related improvement recommendations including educating tourists about road conditions, steepness, horizontal/vertical geometry, and debris on the road. *Id.* at 77:20-23. There were also recommendations to inspect and sweep the pavement roads on a regular basis, install curve warning signs and consider enacting ordinances for helmet use. *Id.* at 77:23-78:2. In addition, these recommendations were supported by Maureen Chlebek, a certified professional traffic operations engineer. (Pls.' Ex 3, at 6.) She concluded that moped drivers are often inexperienced and have difficulty navigating New Shoreham's roadways. *Id.* She recommended that appropriate warning signage be maintained and installed at horizontal and vertical curves, that the roadways be routinely cleared of debris and sand, and that the other recommendations from the road safety audit report be implemented. *Id.*

In the downtown area, Weldon's Way is particularly congested. (Hr'g Tr. 38:17-19, May 4, 2021; Hr'g Tr. 72:21-74:20, May 5, 2021; Pls.' Ex 6.) This is true especially during the summer between 9:00 a.m. and 10:00 a.m. (Hr'g Tr. 74:21-24, May 5, 2021.) It is during these hours that multiple ferries arrive into the harbor carrying visitors and vehicles. *Id.* at 75:1-8. In addition, delivery trucks arrive to New Shoreham around noontime. *Id.* at 85:4-5. The police department has been working to reduce the congestion on Weldon's Way. *Id.* at 78:16-18. Specifically, certain

food distributors have been contacted and asked to find alternative delivery routes. *Id.* at 77:24-79:6.

Despite the congestion between 9:00 a.m. and 10:00 a.m., the uncontradicted data demonstrates that from 2015 through 2020, 3 out of 168 moped crashes occurred between 9:00 and 10:00 a.m., in the morning. (Hr'g Tr. 75:19-76:1, May 4, 2021; Pls.' Ex 3, at 4-5.) In fact, a safety analysis demonstrated that over the past six years the highest number of reported moped-related crashes occurred between 12:00 p.m. and 1:00 p.m. (Pls.' Ex. 3, at 4.) The total number of moped crashes over these six years was thirty-one. *Id.* In addition, 75% of the reported moped crashes occurred between 10:00 a.m. and 4:00 p.m. *Id.* at 6.

To undertake their safety analysis, Ms. Chlebek and her team considered the roadway systems in New Shoreham, reviewed 168 moped-related crash reports, sorted through that data, and then looked for trends.¹ (Hr'g Tr. 64:21-25, May 4, 2021.) Of these 168 moped-related accidents, there were eighty-nine suspected injuries, forty-one non-incapacitating injuries, and nineteen incapacitating injuries.² *Id.* at 73:25-74:12; Pls.' Ex. 3, at 4. The crash data also revealed that 66% of the moped crashes were single-vehicle crashes, 21% involved a moped crashing with another motor vehicle, and 7% involved a moped crashing into a parked car. (Hr'g Tr. 75:1-5, 86:20-22, May 4, 2021; Pls.' Ex. 3, at 4.) Ms. Chlebek was unable to determine whether the crashes were alcohol related because the reports did not contain that data. *Id.* at 72:8-14.

¹ Despite Ms. Chlebek requesting crash reports for all accidents police reported from 2016 through 2020, as of May 4, 2021, she had only received crash reports for moped-related accidents. (Hr'g Tr. 67:9-20, May 4, 2021.) Ms. Chlebek testified that, as a result, her company was "not able to make the relevance of how many of the total crashes were related to the mopeds." *Id.* at 68:4-5.

² Ms. Chlebek explained that a suspected injury is where there is some obvious form of injury such as a bruise but does not necessarily require medical treatment. (Hr'g Tr. 73:8-11, May 4, 2021.) Non-incapacitating injury is an injury such as a laceration that would require medical treatment but then the patient can continue normal life. *Id.* at 73:11-14. An incapacitating injury is one that leaves the victim unable to do activities they could do prior to the accident. *Id.* at 73:14-16.

There are four moped companies operating along Weldon's Way. (Hr'g Tr. 39:14-16, May 4, 2021.) The companies perform instructional demonstrations with customers on Weldon's Way. *Id.* at 39:10-13. Michael Finnimore, owner and operator of Island Moped, testified that renters are first given a tutorial explaining the operation of the moped and thereafter the renter operates the moped on a gravel lot. *Id.* at 106:21-107:6, 108:12-19. Once the demonstration on the gravel lot is complete, Mr. Finnimore asks whether the renter would be comfortable driving on Weldon's Way to become more familiar with the vehicle. *Id.* at 114:16-19. Typically, 50% of renters practice on Weldon's Way. *Id.* at 114:21. This allows the renter to practice operating the moped on the road. *Id.* at 114:24-115:4. Mr. Finnimore believes that the in-person demonstration is more valuable than a training video or moped quiz. John Leone, owner of Aldo's Mopeds, Inc., testified to similar practices. He credibly testified that at his moped rental shop in Martha's Vineyard, there is a video that plays on a loop. Notwithstanding, he indicated that the renters often do not pay attention to it.

These practice rides on Weldon's Way are discouraged by the police department. *Id.* at 41:18-21. Despite that, they continue as has been observed by the Town Manager, Maryanne Crawford, and former Police Chief Vincent Carlone. *Id.* at 40:11-14; Hr'g Tr. 5:13-18, May 5, 2021. The former Police Chief noted that he personally had never issued any citations for illegal U-turns on Weldon's Way. (Hr'g Tr. 40:17-19, May 4, 2021.)

Mr. Finnimore also testified to various safety measures his rental company undertakes before allowing a renter to operate a moped on Town roads. For example, it is required that every renter wears a helmet. *Id.* at 103:24-25. To demonstrate that this is done, the company has the renter review and initial an agreement that indicates he or she was informed that they must wear a helmet. *Id.* at 104:3-4. Additionally, a sticker is placed on every helmet and moped indicating that

helmets must be worn. *Id.* at 104:4-5. Mr. Finnimore explained that he requires renters to initial the rental agreement concerning mandatory helmets. This is required because in the past when a renter was stopped for not wearing a helmet, the renter would often tell police that the information was never given by the moped staff. *Id.* at 103:24-104:10.

By all accounts, the summer of 2020 was different than other summers in New Shoreham. *Id.* at 31:15-25. In the past, New Shoreham had been a “family destination,” but in the summer of 2020, there were many more younger people visiting New Shoreham.³ *Id.* at 31:19-22. The credible evidence established that with respect to moped accidents, the number increased from fifty-two in 2019 to sixty-seven during 2020. (Aff. New Shoreham Town Manager at 1.) Doctor Thomas Warcup, who is the medical director at Block Island Health Services, Inc., testified that out of the 6,000 admissions to the Block Island Medical Center, sixty-seven were for moped-related injuries. *See also* Def.’s Exs. E, F. He noted that failure to wear a helmet as well as protective footwear was a “significant factor to level of injury.” (Def.’s Ex. E.) Additionally, eleven out of the fifty-one air transports that occurred in 2020 were for moped-related injuries.⁴ (Def.’s Exs. E, F.) Sadly, there was also one alcohol-related moped fatality in August of 2020. (Aff. New Shoreham Town Manager at 1; Hr’g Tr. 55:21-56:3, 58:15-18, May 4, 2021.)

Mr. Finnimore also testified to the effect a reduction of the number of hours would have on his business. Specifically, he testified that a one-hour reduction of rental and operational hours

³ As former Police Chief Carlone stated, “there’s nothing wrong with” younger people coming to New Shoreham, “[b]ut they behave differently than families do, which they require a different level of policing than families do.” (Hr’g Tr. 31:22-25, May 4, 2021.)

⁴ Doctor Warcup testified that whenever an individual requires a CAT scan, they need to be transported from New Shoreham. He also testified that when he is presented with an individual who has been consuming alcohol, he cannot rely on that individual’s judgment to inform him of the individual injuries, so they must be transported from New Shoreham in order to have a CAT scan. Approximately 20 to 25% of the patients he sees have consumed alcohol.

in the morning from 9:00 a.m. to 10:00 a.m. would affect 47% of his business. (Hr'g Tr. 140:20-22, May 4, 2021.) Mr. Finnimore explained that he analyzed the percentage of business he generates from early hour rental specials based on reservations, and approximately 47% of his rentals come from that time. *Id.* at 151:5-9. He clarified that this was not a percentage of revenue loss, but rather it is a percentage of customers he stands to lose if the hours of rental and operation were reduced by one hour in the morning. *Id.* at 150:23-25.

As a result of these issues, the Town, according to Ms. Crawford, sought to improve the safety and quality of life in New Shoreham with respect to mopeds and the injuries that were being sustained and the impact on the Block Island Medical Center. (Hr'g Tr. 10:13-16, May 5, 2021.) While Doctor Warcup testified to the disruption of the practice due to moped accidents, the uncontradicted evidence demonstrates that only 67 out of 6,000 admissions were moped related. Furthermore, Doctor Warcup testified that a number of the injuries were due to inadequate gear, including lack of proper footwear or not wearing a helmet. Approximately 30% to 40% of patients he saw were not wearing a helmet at the time of their injuries.

Amended and Second Amended Ordinances

Pursuant to Rhode Island Law, the Town had previously enacted an ordinance regulating the rental of mopeds (Ordinance). (Am. Compl. ¶ 16, Ex. 3.) Each year, the Town issues licenses for the following summer to the Plaintiffs and Plaintiffs rent out their mopeds pursuant to the terms of the license. *Id.* ¶¶ 11-12. By November 19, 2020, all Plaintiffs had submitted their applications for licenses for the 2021 season. *Id.* ¶ 13, Ex. 1.

On February 3, 2021, at a workshop, the Town discussed amending the Ordinance. *Id.* ¶ 28. At 12 p.m. on March 4, 2021, the Town voted to approve an amended ordinance (Amended Ordinance). (Pls.' Ex. 4.) The Amended Ordinance changed three sections of the Ordinance. *Id.*

As to § 8-78, Application, the Amended Ordinance added a requirement for a site plan mapping a “vehicle proficiency area” where renters could practice and that the applicant’s off-season storage plan comply with state law.⁵ *Id.* at 1. For § 8-88, Hours of operation, the Amended Ordinance changed the hours during which mopeds may be rented from 9:00 a.m. to 6:00 p.m. to 10 a.m. to 6:00 p.m. *Id.* This amendment also altered the operational hours of the mopeds from 9:00 a.m. to 8:00 p.m. to 10:00 a.m. to 6:00 p.m. *Id.* As for § 8-90, Safety, the Amended Ordinance added language that (1) specifically requires the licensee to ensure that no passenger ride in front of the driver; (2) requires the licensee to instruct a person renting about proper operation, show a training video, issue a questionnaire, and administer a supervised test drive; and (3) precludes the licensee from allowing a person visibly intoxicated from driving.⁶ *Id.* at 1-2. The amendment also added

⁵ The amendment to § 8-78, related to licensing applications, added the following specific language:

“b. The vehicle proficiency area shall be identified by submitting a site plan, drawn to an acceptable engineering scale and containing: parcel identification (Tax Assessor’s Map and Lot); ownership; zoning classification; and identification of the exact location on the premises and a GIS map of the premises where the applicant proposes to operate a vehicle proficiency area where renters practice using the vehicle before going on to state or Town roads.

“c. The applicant’s plan for the off-season storage of vehicles that complies with state law and Town ordinances.” (Pls.’ Ex. 4, at 1.)

⁶ In Part “a” of the Safety Ordinance, § 8-90, the amendment added the following language: “Each licensee shall ensure that no person renting a motorized bicycle, motorized tricycle, or motorized scooter shall carry any passenger in front of the driver.” (Pls.’ Ex. 4, at 2.)

Furthermore, the amendment to § 8-90, related to Safety, included two additional subparts:

“B. Each licensee shall be responsible for instructing each person renting a motorized bicycle, motorized tricycle or motor scooter in the proper operation of the vehicle, in the form of presenting a comprehensive training video, followed by a questionnaire on best operational practices and relevant Town ordinances. Each licensee shall administer a supervised test drive to each person renting a motorized

language stating: “In addition, violations of this ordinance as well as any other Town ordinance or state law or regulation, may result in suspension, revocation, and/or non-renewal of a licensee’s license.” *Id.* at 2. Each amendment took “effect upon passage.” *Id.*

At 7 p.m., on the same day that the Town approved the Amended Ordinance, the Town voted to issue Plaintiffs their licenses for the 2021 season. (Am. Compl. ¶ 31.) The licenses were sent out on March 15, 2021. (Pls.’ Mem. at 3.) The Plaintiffs filed their Complaint on March 17, 2021. On March 26, 2021, Plaintiffs moved for a temporary restraining order and injunctive relief to prevent the enforcement of the Amended Ordinance. On April 14, 2020, after a hearing on April 7, 2021, this Court granted Plaintiffs’ Motion for a Temporary Restraining Order.

On May 19, 2021, the Town further amended the Amended Ordinance (Second Amended Ordinance). (Def.’s Ex. K.) The Second Amended Ordinance deleted the language of § 8-90, requiring the licensee to ensure that no passenger ride in front of the driver of the moped, and replaced it with the following: “Each licensee shall instruct any person renting a [moped] that no passenger shall be carried in front of the driver.” *Id.* at 2. The Second Amended Ordinance also changed Part C of § 8-90 to say that “No licensees may rent [mopeds] to any person who at the time of rental is visibly intoxicated.” *Id.* This amendment also took “effect upon passage.” *Id.*

Hearings were held by this Court on May 4, 5, 20 and June 3, 2021 to consider Plaintiffs’ motion for a preliminary injunction preventing the enforcement of the Amended Ordinance and

bicycle, motorized tricycle or motor scooter on the licensee’s premises, or on premises obtained for such purposes.

“C. Pursuant to Rhode Island General Laws § 31-27-2, it is unlawful for any person to operate any vehicle in the state while under the influence of any intoxicating liquor or drugs. No licensee may allow a person who is visibly intoxicated to operate or to be a passenger upon a motorized bicycle, motorized tricycle or motor scooter.” *Id.*

Second Amended Ordinance. Prior to the hearings, the parties filed memoranda in support of their respective positions. At the hearings, the parties presented evidence and several witnesses. The Court now renders its Decision.

II

Standard of Review

Rule 65 of the Superior Court Rules of Civil Procedure provides the Court the ability to grant temporary injunctive relief, and the decision to grant or deny injunctive relief is left to the sound discretion of the trial justice. *Hagenberg v. Avedisian*, 879 A.2d 436, 441 (R.I. 2005). In determining whether a preliminary injunction should issue, a trial justice must consider:

“whether the moving party (1) has a reasonable likelihood of success on the merits, (2) will suffer irreparable harm without the requested injunctive relief, (3) has the balance of the equities, including the possible hardships to each party and to the public interest, tip in its favor, and (4) has shown that the issuance of a preliminary injunction will preserve the status quo.” *Vasquez v. Sportsman’s Inn, Inc.*, 57 A.3d 313, 318 (R.I. 2012) (quoting *Iggy’s Doughboys, Inc. v. Giroux*, 729 A.2d 701, 705 (R.I. 1999)).

A party need not “establish ‘a certainty of success[;]’ rather, ‘we require only that [it] make out a prima facie case.’” *DiDonato v. Kennedy*, 822 A.2d 179, 181 (R.I. 2003) (quoting *Fund for Community Progress v. United Way of Southeastern New England*, 695 A.2d 517, 521 (R.I. 1997)). “Prima facie evidence is [considered the] amount of evidence that, if unrebutted, is sufficient to satisfy the burden of proof on a particular issue.” *Paramount Office Supply Company, Inc. v. D.A. MacIsaac, Inc.*, 524 A.2d 1099, 1101 (R.I. 1987) (citing *Nocera v. Lembo*, 121 R.I. 216, 218, 397 A.2d 524, 526 (1979)). If the moving party can establish a likelihood of success on the merits and an immediate irreparable injury, the Court should examine the equities of the case by analyzing the hardship to the moving party if the injunction is not granted, the hardship to the nonmoving

party if the injunction is granted, and the public interest in granting or denying the injunction. *Id.* at 1102 (citing *In re State Employees' Unions*, 587 A.2d 919, 925 (R.I. 1991)).

III

Analysis

A

Reasonable Likelihood of Success on the Merits

1

Constitutional Claims

Prior to addressing Plaintiffs' arguments, this Court will address the Town's argument that the Plaintiffs cannot establish a likelihood of success on the merits because they cannot prove beyond a reasonable doubt that the legislative enactments are unconstitutional. (Def.'s Suppl. Mem. at 2.) The Town suggests that this Court address Plaintiffs' constitutional claims in order to rule on Plaintiffs' motion for preliminary injunction. Plaintiffs argue that Defendant is mistaken because the threshold issue is whether the Town had the power to enact and enforce the Amended and Second Amended Ordinances under its statutorily prescribed powers enumerated in G.L. 1956 § 31-19.3-5. (Pls.' Suppl. Mem. at 2.)

"It is a steadfast principle of our jurisprudence 'not to pass on questions of constitutionality unless adjudication of the constitutional issue is necessary.'" *Andrews v. Lombardi*, 233 A.3d 1027, 1034 (R.I. 2020) (quoting *State v. Lead Industries Association, Inc.*, 898 A.2d 1234, 1238 (R.I. 2006)). In fact, the "constitutional rule of strict necessity long has been recognized in this jurisdiction" and has "[m]ost often . . . manifested itself in our reluctance to adjudicate constitutional questions when a case is capable of decision upon other, non-constitutional grounds." *Lead Industries Association, Inc.*, 898 A.2d at 1239. "Such necessity is not shown when

other grounds for decision are present[.]” *Pontbriand v. Sundlun*, 699 A.2d 856, 869 n.20 (R.I. 1997) (citing *State v. McGoff*, 517 A.2d 232, 235 (R.I. 1986); *State v. Berberian*, 80 R.I. 444, 445, 98 A.2d 270, 270-71 (1953)).

Here, the instant matter can be decided on grounds that are non-constitutional. In order to establish a likelihood of success on the merits, Plaintiffs are not obligated to show a “certainty of success”; rather, they need only to “make out a prima facie case.” *DiDonato*, 822 A.2d at 181. The Plaintiffs’ claims rely on the assertion that the Town did not have the authority to enact the Amended and Second Amended Ordinances because they were not “reasonable,” as required under § 31-19.3-5. This requires the Court to perform a statutory construction analysis and/or statutory interpretation to determine what is reasonable under the statute and whether the enacted ordinances meet this standard. Therefore, this Court will not reach the constitutional issues at this time because Plaintiffs’ motion for preliminary injunction can be decided on other grounds. *See Lead Industries Association, Inc.*, 898 A.2d at 1238-39.

2

Statutory Construction

Plaintiffs argue that § 31-19.3-5 enumerates six categories that the Town may regulate related to mopeds: fees, maximum number of licenses, rental hours, driver’s license requirements, and annual inspection. (Pls.’ Mem. at 8.) Plaintiffs contend that the Amendments regulate items far beyond these enumerated categories and that the legislature intended that all items outside of the enumerated items be excluded in accordance with the rules of statutory construction. *Id.* The Town counters that the enumerated items in § 31-19.3-5(b) constitute a suggested, but non-exclusive, list of areas the Town may regulate regarding mopeds. (Def.’s Mem. at 16, 17.) Further,

the Town argues that if the Town were limited to these categories of regulation, the other provisions of the statute would be meaningless. *Id.*

a

New Shoreham Moped Statute: §§ 31-19.3-1, et seq.

Pursuant to § 31-19.3-1, the General Assembly declared that “it is in the interest of public health, safety, and welfare that the rental of motorized bicycles, motor scooters and motorized tricycles in the town of New Shoreham be supervised, regulated, and controlled in accordance with the provisions of” chapter 19.3 of Title 31. Section 31-19.3-5 expressly empowers the Town to enact “reasonable ordinances establishing procedures and standards for licensing, supervision, regulation, and control” of mopeds. The provision further enumerates certain issues that these ordinances are permitted to address. *See* Section 31-19.3-5. Specifically, under this section, “[A]n ordinance enacted pursuant to this section may:

- “(1) Establish a fee to be charged for the issuance or renewal of any license for the rental of motorized bicycles, motor scooters and/or motorized tricycles the holder of the license is authorized to rent or lease and shall not exceed the sum of forty dollars (\$40.00) per motorized bicycle, motor scooters or motorized tricycle.
- “(2) Establish a maximum number of licenses which may be granted for the rental of motorized bicycles, motor scooters and/or motorized tricycles.
- “(3) Establish hours during which motorized bicycles, motor scooters and/or motorized tricycles may be rented.
- “(4) Establish a maximum number of motorized bicycles, motor scooters and/or motorized tricycles which a license holder may rent or lease under the license.
- “(5) Provide that no motorized bicycle, motor scooters or motorized tricycle shall be rented or leased in the town of New Shoreham unless the operator thereof has a valid license issued under the provisions of § 31-10-1, or a similar license issued by a state other than Rhode Island.
- “(6) Require all motorized bicycles, motor scooters and/or motorized tricycles to pass inspection annually and be issued a certificate by a duly authorized state inspection facility indicating that the vehicle has passed inspection to be conducted at inspection agencies which shall be created and governed by rules and regulations promulgated by the department of revenue.” Section 31-19.3-5(b).

Additionally, in § 31-19.3-4, the General Assembly delegated to the Town Council certain powers related to the licensing process, including the power to:

“require, with the application or otherwise, information relating to the applicant’s solvency, financial standing, insurance coverage, or any other matter which the town council may deem pertinent to safeguard the public interest, all of which shall be considered by the council in determining the fitness of the applicant to be licensed pursuant to this chapter.” Section 31-19.3-4(a).

b

General vs. Specific Provisions

Section 5 of the New Shoreham Moped Statute contains both a general and a specific provision. *See* Section 31-19.3-5. Paragraph (a) of the statute contains a broad provision allowing the Town of New Shoreham (the Town) to “enact reasonable ordinances” that establish “procedures and standards for the licensing, supervision, regulation, and control of the rental of motorized bicycles, motor scooters and motorized tricycles.” Section 31-19.3-5(a). However, paragraph (b) enumerates what an ordinance pursuant thereto may require. Section 31-19.3-5(b).

Rhode Island law governing the construction and effect of statutes recognizes that where a “general provision” is in conflict with a “special provision relating to the same or to a similar subject” the Court must construe the provisions “if possible, so that effect may be given to both; and in those cases, if effect cannot be given to both, the special provision shall prevail and shall be construed as an exception to the general provision.” G.L. 1956 § 43-3-26. When looking at two provisions, “every attempt should be made to construe and apply them so as to avoid the inconsistency.” *Park v. Ford Motor Company*, 844 A.2d 687, 694 (R.I. 2004) (quoting *Asadoorian v. Warwick School Committee*, 691 A.2d 573, 580 (R.I. 1997)).

In *Park*, the Supreme Court held that the specific provision under the Deceptive Trade Practices Act allowing for the Court to have jurisdiction over “any ascertainable loss” by the

consumer trumped the “amount in controversy” threshold set forth in the general jurisdictional provision of G.L. 1956 § 8-2-14(a). *Park*, 844 A.2d at 694. The Supreme Court, relying on the instructions set forth in § 43-3-26, ruled that “the two provisions [were] irreconcilable and [could not] both be given effect,” and therefore “the specific legislation prevails and is to be construed as an exception to the more general legislation. *Id.*”

“Moreover, it is an accepted rule of statutory construction that ‘an express enumeration of items in a statute indicates a legislative intent to exclude all items not listed.’” *Terrano v. State, Department of Corrections*, 573 A.2d 1181, 1183 (R.I. 1990) (quoting *Murphy v. Murphy*, 471 A.2d 619, 622 (R.I. 1984)). However, “[a]lthough this principle is an aid, it should be used cautiously to further rather than defeat legislative intent.” *Murphy*, 471 A.2d at 622; *see also Volpe v. Stillman White Co.*, 415 A.2d 1034, 1036 (R.I. 1980)

The Superior Court followed this principle when previously construing the statute at issue here, § 31-19.3-5. *See Miles-Un-Ltd., Inc. v. Town of New Shoreham*, No. C.A. 86-173, 1986 WL 732854 (R.I. Super. Sept. 2, 1986). In *Miles-Un-Ltd.*, the Town enacted an ordinance pursuant to § 31-19.3-5, requiring applicant for licenses to obtain insurance coverage for the operators of the rented mopeds with that coverage being “not less than \$50,000 coverage for property damage per accident, \$100,000 personal injury per person and \$300,000 per accident.” *Miles-Un-Ltd.*, 1986 WL 732854, at *1. This ordinance was more stringent than the coverage requirements established by state law for owners of rental vehicles. *Id.* at *2 (citing § 31-34-1). The Superior Court in that case noted that “Rhode Island follows the rule of statutory construction which states that an express enumeration of items in a statute indicates a legislative intent to exclude all items not listed.” *Id.* at *3 (citing *Murphy*, 471 A.2d at 622). Thus, the Court held that “[a]ccording to this rule, the Legislature intended to exclude the establishment of minimum insurance requirements when it set

forth in § 31-19.3-5 what an ordinance enacted pursuant thereto may require. Therefore, the Town was not authorized by § 31-19.3-5 to establish minimum insurance requirements.” *Id.* at *3.

In *Narragansett Indian Tribe v. State*, 110 A.3d 1160, 1165 (R.I. 2015), the Supreme Court recognized the following principle:

“Where a statute contains a grant of power enumerating certain things which may be done and also a general grant of power which, standing alone, would include these things and more, the general grant may be given full effect if the context shows that the enumeration was not intended to be exclusive.” *Narragansett Indian Tribe*, 110 A.3d at 1165 (quoting 2A Norman J. Singer and Shambie Singer, *Sutherland Statutory Construction* § 47:26 at 451 (7th ed. 2014, Nov. 2020 Update)).

In that case, the Supreme Court was construing the Casino Act which referenced article 6, section 15 of the Rhode Island Constitution, and explicitly provided that the state “shall have full operational control” and have the “authority to make all decisions about all aspects of the functioning of the business enterprise[.]” *Id.* (quoting G.L. 1956 § 42-61.2-2.1(c)). The same subsection of the Casino Act then lists specific aspects over which the state has authority; however, prior to the list, the statute contained the language “including, without limitation.” Section 42-61.2-2.1(c). The Supreme Court held that this specific list did not “limit the broad grant of power because it is clear that by employing the language ‘including, without limitation,’ the specific enumerations are not intended to be the exclusive aspects over which the state has control.” *Narragansett Indian Tribe*, 110 A.3d at 1165. The Court went on to say that this was “bolstered by the fact that the Casino Act contains a clause which provides that the state shall ‘[h]old all other powers necessary and proper to fully effectively execute and administer the provisions of’ the Casino Act.” *Id.* at 1166 (quoting § 42-61.2-2.1(c)(9)).

It is clear that this Court “must first attempt to construe the two provisions to give effect to both.” *Park*, 844 A.2d at 694 (“The clear preference is for the court to construe the statutes so that

both may be given effect.”). When construing a statute, the Court must “establish and effectuate the intent of the Legislature.” *Wayne Distributing Co. v. Rhode Island Commission for Human Rights*, 673 A.2d 457, 460 (R.I. 1996). Additionally, “[a] statute should be interpreted so that effect is given to all its provisions, so that no part will be inoperative, superfluous, or insignificant.” *City of Newport v. Gullison Family Trust*, No. C.A. N300-193, 2002 WL 220782, at *3 (R.I. Super. Jan. 24, 2002).

Additionally, “[i]t is well established that cities and towns have limited power ‘to enact ordinances, except [by virtue of] those powers from time to time delegated to them by the Legislature.’” *State ex. rel. Town of Richmond v. Roode*, 812 A.2d 810, 813 (R.I. 2002) (quoting *Hawkins v. Town of Foster*, 708 A.2d 178, 181 (R.I. 1998)). “It is also well settled ‘that a legislative grant of municipal power to exercise a portion of the state’s sovereignty should be strictly construed[.]’” *Id.* (quoting *Berrand v. Di Carlo*, 111 R.I. 509, 512, 304 A.2d 658, 660 (1973)). “A local ordinance . . . may not change or enlarge upon the specific authority contained in the state enabling legislation.” *Gullison Family Trust*, 2002 WL 220782, at *2.

Here, § 31-19.3-5 contains both a broad grant of power in paragraph (a) and then enumerates in paragraph (b) what an ordinance pursuant to paragraph (a) may require. This language in the statute is distinguishable from the language in the Casino Act. The Casino Act outlines the list and states “including, without limitation.” *See Narragansett Indian Tribe*, 110 A.3d at 1165. Since the qualifying language concerning the enumerated list is missing here, there is a clear indication that the legislative intent is to exclude all items not listed. Thus, this Court is required to follow a strict reading of “a legislative grant of municipal power to exercise a portion of the state’s sovereignty” this Court is required to follow. *See State ex. rel. Town of Richmond*,

812 A.2d at 813. Therefore, the Town is limited to enacting ordinances within the six prescribed areas enumerated in the statute. *See* Section 31-19.3-5(b).

c

Reasonable under the Statute

The Town has the authority to “enact *reasonable* ordinances establishing procedures and standards for the licensing, supervision, regulation, and control of the rental of [mopeds].” Section 31-19.3-5(a) (emphasis added). Under its plain meaning definition, reasonable means “[f]air, proper, or moderate under the circumstances.” Black’s Law Dictionary, *Reasonable*, (11th ed. 2019); *see also* 5 Eugene McQuillan, *The Law of Municipal Corporations* § 18.6 (3d ed.) (“[T]he reasonableness of an ordinance, while a question of law, depends on the particular facts in each case.”). “Thus, reasonableness has been said to mean what is fairly appropriate in view of the conditions and not necessarily what is best.” McQuillan, *supra*, § 18.6.

Having decided that the enumerated list in paragraph (b) was intended to be an exclusive list, this Court is mindful that the preference is for two provisions to be read in harmony to give effect to both paragraphs. *See Park*, 844 A.2d at 694. Based on the plain meaning definition of reasonable, these two paragraphs can be read in harmony. Following the rules of statutory construction, the enumerated list limits the areas that the Town can enact reasonable ordinances. *See Murphy*, 471 A.2d at 622. Thus, if an ordinance falls outside one of the enumerated categories then consequently, the ordinance is not reasonable. If the ordinance does fall into one of the six enumerated categories, it must be reasonable. A provision is reasonable if it meets the definition of being fair and appropriate considering the circumstances.

Analysis of the Amended and Second Amended Ordinances

a

Section 8-78 Application

Section 8-78 of the Amended Ordinance added specific language requiring moped owners to submit: (1) a site plan with various requirements “where the applicant proposes to operate a vehicle proficiency area where renters practice using the vehicle before going onto state or Town roads”; and (2) a plan for off-season storage of vehicles. (Pls.’ Ex. 4, at 1.) The Town argues that it was simply acting in a legislative capacity when enacting these amendments because the statute expressly allows for the Town to require information the Town “may deem pertinent to safeguard the public interest[.]” (Def.’s Mem. at 9.) The Town also argues that off-season storage is a safety issue due to the “gasoline, oils, and other hazardous liquids/chemicals that are associated with the storage of mopeds.” *Id.* at 10.

The New Shoreham Moped Statute specifically delegates certain powers to the Town related to the license application:

“The town council may require, with the application or otherwise, information relating to the applicant’s solvency, financial standing, insurance coverage, *or any other matter which the town council may deem pertinent to safeguard the public interest*, all of which shall be considered by the council in determining the fitness of the applicant to be licensed pursuant to this chapter.” Section 31-19.3-4(a) (emphasis added.)

Giving the words of the statute their plain and ordinary meaning, this grant of power is particularly far reaching as to the information the Town may require an applicant to produce, so long as it is “pertinent to safeguard the public interest.” *State v. Morrice*, 58 A.3d 156, 160 (R.I. 2013) (“When

the language of the statute is clear and unambiguous, it is our responsibility to give the words of the enactment their plain and ordinary meaning.”).

Here, taking the latter requirement of § 8-78 first, it is clear that requiring an applicant to produce a plan for the off-season storage of vehicles would not be included in “information relating to ... any other matter which the town council may deem pertinent to safeguard the public interest.” Section 31-19.3-4(a). As the Town points out, this storage plan would relate to the potentially hazardous liquids or chemicals and thus would relate to public safety. Therefore, there is clear authority for the Town to enact this specific amendment.

The other requirement provides that applicants must submit a site plan identifying “parcel identification,” “ownership,” “zoning classification,” and “identification of the exact location on the premises and a GIS map of the premises where the applicant proposes to operate a vehicle proficiency area where renters practice using the vehicle before going onto state or Town roads.” (Pls.’ Ex. 4, at 1.) The credible testimony demonstrated that there are clear traffic concerns relating to the renters practicing on Weldon’s Way as the street is already filled with other activity such as trucks, bicycles and pedestrians. *See, e.g.*, Hr’g Tr. 6:11-15, May 5, 2021. Further, Mr. Finnimore credibly testified that a practice area is important to test the skills of the renters before they ride onto the Town roads. This allows the owner to observe the renter’s behavior and determine whether the renter is capable of operating the moped on the Town roads. (Hr’g Tr. 110:19-111:2, May 4, 2021.) Given the concern for traffic and the importance of a practice area, having applicants identify a vehicle proficiency area is information clearly related to “safeguard[ing] the public interest.” Section 31-19.3-4(a).

Therefore, because both the amendments to § 8-78 is information that the Town “may deem pertinent to safeguard the public interest,” Plaintiffs have failed to establish a *prima facie* case as

to this section. Section 31-19.3-4(a). Plaintiffs have not established a reasonable likelihood of success on the merits as to § 8-78, because the statute authorized the Town to require this information for licensee's applications. *Id.*

b

Section 8-88 Hours of Operation

In § 8-88 of the Amended Ordinance, the Town reduced the hours of rental and operation of mopeds. (Pls.' Ex. 4, at 1.) Specifically, the Town reduced the rental hours from 9:00 a.m. to 6:00 p.m. to 10:00 a.m. to 6:00 p.m. and the operation hours from 9:00 a.m. to 8:00 p.m. to 10:00 a.m. to 6:00 p.m. *Id.* The Town argues that it had authority to enact these amendments because one of the enumerated items contained in Section 5 of the New Shoreham Moped Statute allows for the Town to enact an ordinance to establish the rental hours. *See* Section 31-19.3-5(b)(3). The Town contends that it reduced the rental and operation hours in an attempt to reduce the time of day that rental moped operators would be consuming alcohol and driving under difficult nighttime conditions. (Def.'s Mem. at 6.) The Town also argues that it was attempting to reduce traffic congestion which overlaps with when morning deliveries are made in New Shoreham. *Id.*

The statute expressly allows for the Town to “[e]stablish hours during which motorized bicycles, motor scooters and/or motorized tricycles may be rented.” Section 31-19.3-5(b)(3). This grant of legislative power to the Town is to be “strictly construed.” *See State ex. rel. Town of Richmond*, 812 A.2d at 813. However, the Court is also mindful that it should not “construe a statute to reach an absurd result.” *Mendes v. Factor*, 41 A.3d 994, 1002 (R.I. 2012). Further, the statutory principle that the enumerated list in the statute is exclusive is an aid to this Court and “should be used cautiously to further rather than defeat legislative intent.” *Murphy*, 471 A.2d at 622.

Here, while the New Shoreham Moped Statute expressly allows for the Town to enact an ordinance that establishes rental hours for the mopeds, the Court finds that Plaintiffs have established a *prima facie* case that the amendment is unreasonable. Section 31-19.3-5(b)(3). Specifically, the ordinance is not fair and appropriate because the record is void of any evidence demonstrating that this one-hour reduction will address safety and traffic concerns. In fact, the crash data demonstrates that of the 168 moped-related accidents that occurred over six years, only three accidents occurred between 9:00 and 10:00 a.m., in the morning. (Hr’g Tr. 75:19-76:1, May 4, 2021; Pls.’ Ex 3, at 4-5.)

Additionally, the absence of operational hours for mopeds in the enumerated statutory list further leads this Court to conclude that the Amended Ordinance is unreasonable. *See* Section 31-19.3-5(b). First, the credible testimony shows that noontime is the heaviest traffic flow with the delivery trucks. (Hr’g Tr. 87:7-13, May 5, 2021.) Further, Ms. Chlebek’s report credibly demonstrates that the highest number of moped crashes over six years occurred between 12:00 p.m. and 1:00 p.m. (Pls.’ Ex. 3, at 4.) There is no credible evidence to support the Town’s hypothesis that by reducing the hours of operation of mopeds from 9:00 a.m. to 8:00 p.m. to 10:00 a.m. to 6:00 p.m. would cure any of the traffic issues. In fact, the evidence is quite to the contrary. The number of mopeds is fixed and 75% of the crashes occurred between 10:00 a.m. and 4:00 p.m. *Id.* at 6.

Second, it is patently unreasonable for the Town to place liability onto the moped owners for a violation of the operational hours. According to the Amended Ordinance and Second Amended Ordinance, “[V]iolations of this ordinance as well as any other Town ordinance or state law or regulation, may result in suspension, revocation, and/or non-renewal of a licensee’s license.” (Pls.’ Ex. 4, at 2.) While the Town argues that limiting the operational hours will prevent

moped renters from consuming alcohol and then driving, those operational hours are not within the control of the moped owners once the moped has left the rental store. Thus, it is unreasonable for the Town to place the liability for an operator's noncompliance upon the Plaintiffs.

Looking at the purpose of the New Shoreham Moped Statute, the General Assembly wanted to "afford protection against the increasing number and severity of accidents involving [mopeds], the noise, and the traffic congestion that their presence creates," as well as protect "the interest of the public health, safety and welfare." Section 31-19.3-1. However, based on the credible evidence before this Court, including the hours of congestion being highest at noon, the highest number of accidents occurring between 12:00 p.m. and 1:00 p.m., 75% of the moped-related accidents occurring between 10:00 a.m. and 4:00 p.m., that only 67 out of the 6,000 admissions to the Block Island Medical Center were for moped-related injuries, the Court is not persuaded that the reduction of hours in either moped rental or operations will resolve the safety concerns. (Hr'g Tr. 87:7-13, May 5, 2021; Pls.' Ex. 3; Def.'s Exs. E, F.) The Town argued that the reduction of operational hours from 8:00 p.m. to 6:00 p.m. would assist in navigating difficult nighttime conditions; however, there was no testimony provided concerning these nighttime conditions.

Therefore, Plaintiffs have established, on a *prima facie* basis, a reasonable likelihood of success on the merits that the Town did not have the authority to enact an ordinance reducing the rental and operational hours because that section of the Amended Ordinance is not fair and appropriate given the circumstances. *See Murphy*, 471 A.2d at 622; *Miles-Un-Ltd.*, 1986 WL 732854, at *4.

Section 8-90 Safety

Following the enactment of the Second Amended Ordinance, § 8-90 includes the requirements that: (1) a licensee instruct renters that no person renting a moped carries any passenger in front of the driver; (2) a licensee ensure that all passengers wear a helmet; (3) each licensee is responsible for instructing a person renting a moped in the form of a training video, issuing a questionnaire on best operational practices and ordinances, and conducting a test drive; and (4) a licensee may not rent a moped to any person who at the time of rental is visibly intoxicated. (Def.'s Ex. K.) This section also states that a licensee's violation of the ordinance or any other Town ordinance or state law or regulation may result in suspension or revocation of the license. *Id.* The Town argues that the requirements concerning where a passenger sits, the passengers' helmets, and not renting to someone who is visibly intoxicated are consistent with state law. (Def.'s Mem. at 10-11.) As for the training requirements, the Town argues that this amendment is to improve the training and reduce accidents and injuries. *Id.* at 12.

None of the requirements in § 8-90 relate to any of the specifically enumerated powers set forth in § 31-19.3-5(b). However, the Town points to the "Purpose" section of the enabling statute, which reads:

"The general assembly recognizes the importance of establishing procedures and standards for the supervision and regulation of the rental of motorized bicycles, motor scooters and motorized tricycles in the town of New Shoreham. The establishment of these procedures and standards is declared to be a reasonable exercise of the police power of the general assembly and necessary to afford protection against the increasing number and severity of accidents involving motorized bicycles, motor scooters and motorized tricycles, the noise, and the traffic congestion that their presence creates within the town. The general assembly further declares that it is in the interest of the public health, safety, and welfare that the rental of motorized bicycles, motor scooters and motorized tricycles

in the town of New Shoreham be supervised, regulated, and controlled in accordance with the provisions of this chapter.”
Section 31-19.3-1.

Because the requirements in § 8-90 are not included in the six categories enumerated in the New Shoreham Moped Statute, this Court concludes that the Second Amended Ordinance is unreasonable. *See Murphy*, 471 A.2d at 622. However, once again this Court is mindful that this principle should be applied cautiously. *Id.* Mr. Finnimore expressed that he was concerned about the Second Amended Ordinance because he thought it could be used as a weapon to take away his license. Specifically, having to “ensure” that a passenger wears his or her helmet is not something that the moped owners can control once the renters leave the premises. Mr. Finnimore stated that it is the practice that renters initial an agreement indicating they were instructed to wear a helmet in addition to the stickers on helmets and vehicles indicating the same. Furthermore, visibly intoxicated individuals are denied rentals. Clearly, there is no control over an individual’s behavior after leaving the premises. This requirement would, in effect, make a moped rental company the insurer of the behavior of the client.

The credible evidence indicates that education or instruction to renters is important as many moped drivers are inexperienced. (Hr’g Tr. 90:9-21, May 4, 2021.) However, no evidence has been presented to rebut or contradict the credible evidence that a video would not benefit or improve public safety. Rather, the credible testimony shows that where a video plays on loop, renters do not pay attention to it. Additionally, Mr. Finnimore indicated that an in-person demonstration was the most valuable method to educate a renter on how to operate the moped. *Id.* at 131:21-25.

In addition, there are state laws that mandate where a passenger sits, that helmets be worn, and that a person cannot operate a vehicle under the influence. *See* G.L. 1956 §§ 31-10.1-6; 31-

27-2. While the Town argues that the Second Amended Ordinance mirrors state law, it is the passenger who would be responsible for violating the state law, but it would be the moped owner who is ultimately responsible for violating the Second Amended Ordinance. The severe consequence of violation includes a possible loss of the license to rent mopeds. The ultimate consequence is unfair, inappropriate, and unreasonable under the circumstances. In essence, the Town is requiring that the moped owners are potentially liable for things not in their control. Additionally, despite the Town's concern, the clear and credible evidence does not lead this Court to conclude that the moped safety efforts enacted by the Town Council will cure the issues at the Medical Center. First, the Town Council failed to address Dr. Warcup's concern relating to protective footwear. Second, of the 6,000 admissions to the Block Island Medical Center in 2020, only sixty-seven were moped related. (Def.'s Exs. E, F.)

Therefore, the Plaintiffs, on a *prima facie* basis, have established a likelihood of success on the merits that the Town did not have the authority to enact the Second Amended Ordinance because it is not fair and appropriate under the circumstances given that the Ordinance requires Plaintiffs be responsible for activities outside of their control, and there has been no evidence that a quiz or video would improve safety compared to in-person demonstrations. Having decided that the Plaintiffs have established a likelihood of success on the merits under this argument, the Court will not address the other arguments presented by Plaintiffs.

B

Irreparable Harm

Having decided that the Plaintiffs established, on a *prima facie* basis, a reasonable likelihood of success on the merits that the Town did not have the authority to regulate the rental and operational hours under § 8-88 and the Second Amended Ordinance, the analysis will continue

only for those two sections. The second element Plaintiffs must demonstrate is that they will suffer immediate irreparable harm for which there is no adequate remedy at law. *Brown v Amaral*, 460 A.2d 7, 10 (R.I. 1983) (citing *Rhode Island Turnpike & Bridge Authority v. Cohen*, 433 A.2d 179, 182 (R.I. 1981)). Plaintiffs argue that their businesses will suffer irreparable harm if they are not granted injunctive relief. (Pls.' Mem. at 10.) Plaintiffs contend that due to the Town enacting the amendments one month prior to the 2021 season, they "run a very real risk of being unable to operate[.]" *Id.* at 11. The Town argues that the Plaintiffs cannot form a basis for a claim of irreparable harm because their complaint clearly demonstrates that Plaintiffs' injuries are perceived monetary damages. (Def.'s Mem. at 17.) After the hearings, the Town argued that the Plaintiffs demonstrated no evidence of harm other than potential loss of revenue.

A party seeking a preliminary injunction "must demonstrate that it stands to suffer some irreparable harm that is presently threatened or imminent and for which no adequate legal remedy exists to restore that plaintiff to its rightful position." *Nye v. Brousseau*, 992 A.2d 1002, 1010 (R.I. 2010) (quoting *National Lumber & Building Materials Co. v. Langevin*, 798 A.2d 429, 434 (R.I. 2002) (internal citation omitted)). "Irreparable injury must be either 'presently threatened' or 'imminent'; injuries that are prospective only and might never occur cannot form the basis of a permanent injunction." *Id.* (quoting *National Lumber & Building Materials Co.*, 798 A.2d at 434 (internal citation omitted)).

Our Supreme Court has recognized that a loss of income "may cause disruptions in [an employee's] everyday economic affairs." *In re State Employees' Unions*, 587 A.2d at 926. However, the Court recognized that "a complaint relating to lost income is, in its essence, a claim for money damages." *Id.* In order to constitute irreparable harm, an injury must have "no adequate legal remedy." *Nye*, 992 A.2d at 1010. Thus, solely monetary harm cannot be irreparable harm

because an adequate legal remedy does exist, those being monetary damages. *See In re State Employees' Unions*, 587 A.2d at 926.

Here, Plaintiffs have demonstrated irreparable harm because they stand to lose their licenses as well as the reputation of their businesses if they are not granted a temporary injunction. If the moped owners are cited for violations of the Second Amended Ordinance for things outside their control, this could ruin their multi-decade businesses' good will and reputation. In fact, the Rhode Island Supreme Court has "previously explained, 'prospective damage to a business's good will and reputation is precisely the type of irreparable injury for which an injunction is appropriate.'" *Gianfrancesco v. A.R. Bilodeau, Inc.*, 112 A.3d 703, 711 (R.I. 2015) (quoting *Iggy's Doughboys, Inc.*, 729 A.2d at 705) (internal quotations omitted)). Therefore, Plaintiffs have satisfied this element.

C

Balancing of Equities

Plaintiffs argue that the balance of equities also favors them because they have been operating their businesses and working with the Town for decades and through the amendments, the Town is seeking to restrict Plaintiffs from operating their businesses. (Pls.' Mem. at 11.) Plaintiffs assert that the hardship to them is clear—they will be denied full and beneficial use of their licenses which would restrict their business operations. *Id.* at 12. The Town, however, asserts that the balancing of equities lies in favor of the public health, safety, and welfare. (Def.'s Mem. at 18.)

Once the moving party has demonstrated a likelihood of success on the merits as well as irreparable harm, the court must consider "the equities of the case by examining the hardship to the moving party if the injunction is denied, the hardship to the opposing party if the injunction is

granted and the public interest in denying or granting the requested relief.” *Fund for Community Progress*, 695 A.2d at 521; *see also In re State Employees’ Unions*, 587 A.2d at 925 (“[T]he relief which is sought must be weighed against the harm which would be visited upon the other party if an injunction were to be granted.”). The Court must also be cognizant of “the practicality of imposing the desired relief.” *In re State Employees’ Unions*, 587 A.2d at 927. Finally, the Court is mindful of our Supreme Court’s comments in *Fund for Community Progress* that in considering the equities,

“the hearing justice should bear in mind that ‘the office of a preliminary injunction is not ordinarily to achieve a final and formal determination of the rights of the parties or of the merits of the controversy, but is merely to hold matters approximately in status quo, and in the meantime to prevent the doing of any acts whereby the rights in question may be irreparably injured or endangered.’” 695 A.2d at 521 (quoting *Coolbeth v. Berberian*, 112 R.I. 558, 564, 313 A.2d 656, 659 (1974)).

The Town has asserted that the balance of equities clearly lies in the favor of public health, safety and welfare but has not demonstrated any hardships the Town would suffer if Plaintiffs’ motion were granted. An injunction enjoining the enforcement of the Amended Ordinance on operational hours and the Second Amended Ordinance still allows for the Town to regulate mopeds in a reasonable manner, as the previously enacted Ordinance would remain in place. The Plaintiffs, on the other hand, stand to suffer from losing their licenses, and potentially their livelihoods, if their injunction is denied.

The Court must also determine whether the granting of injunctive relief would adversely affect the public interest. Generally, if a party is otherwise entitled to injunctive relief and the injunction would not negatively affect the public interest, the injunction may be issued. 43A C.J.S. *Injunctions* § 95 (2020). Here, there is a strong public interest in keeping the roads safe for all traffic in New Shoreham. However, granting the injunction will not negatively affect the public

interest because the Town has not demonstrated how the regulation of operational hours and the Second Amended Ordinance would improve road safety. Thus, Plaintiffs have satisfied this element because the balance of equities lie in their favor and granting the injunction would not negatively impact the public interest.

D

Preservation of Status Quo

Finally, in considering whether to grant an injunction, a court must consider whether the injunction will adequately preserve the status quo. *See DiDonato*, 822 A.2d at 181. The purpose of an injunction is to “hold matters approximately in status quo, and in the meantime to prevent the doing of any acts whereby the rights [of the parties] . . . may be irreparably injured or endangered.” *Coolbeth*, 112 R.I. at 564, 313 A.2d at 659.

Here, this element is clearly satisfied. Mr. Finnimore demonstrated that he already has procedures in place that are valuable to preparing moped renters to drive on the road, including informing them to wear a helmet. Granting Plaintiffs’ motion for preliminary injunction would preserve the status quo because the original ordinance would remain in place.

IV

Conclusion

For the reasons stated above, the Plaintiffs’ Motion for Preliminary Injunction is granted in part and denied in part. Specifically, the Town is enjoined from enforcing § 8-88 of the Amended Ordinance and from enforcing the Second Amended Ordinance. For these aspects, the Town should proceed under the original Ordinance. Such a conclusion on Plaintiffs’ Motion, however, has no bearing on the ultimate disposition of the parties’ rights and obligations pending the conclusion of the underlying dispute.

Counsel shall submit an order consistent with this Decision.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: Finnimore & Fisher Inc., et al. v. Town of New Shoreham, et al.

CASE NO: WC-2021-0129

COURT: Washington County Superior Court

DATE DECISION FILED: June 23, 2021

JUSTICE/MAGISTRATE: Taft-Carter, J.

ATTORNEYS:

For Plaintiff: Mark J. Hagopian, Esq.; Elizabeth M. Noonan, Esq.

For Defendant: Katherine A. Merolla, Esq.; Mark T. Reynolds, Esq.

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