STATE OF RHODE ISLAND

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: October 2, 2024)

NARRAGANSETT 2100, INC.; RICHARD GERSTEN; VICTORIA GERSTEN; GARY KOZAK; NEAL PATRICK; and ELIZABETH PAQUELET	:	
Plaintiffs,	:	
	:	
v.	:	**C.A. No. WC-2024-0372**
	:	
TOWN OF NARRAGANSETT; TOWN COUNCIL OF THE TOWN OF NARRAGANSETT; and EWA DZWIERZYNSKI, JILL LAWLER, STEVEN FERRANDI, SUSAN CICILLINE-BUONANNO, and DEBORAH KOPECH, in their official capacities as Members of the Town Council of the Town of Narragansett,	:	
Defendants.	:	

DECISION

TAFT-CARTER, J. Before the Court for Decision is Narragansett 2100, Inc.; Richard Gersten; Victoria Gersten; Gary Kozak; Neal Patrick; and Elizabeth Paquelet's (hereinafter Plaintiffs) Emergency Motion for a Temporary Restraining Order and Preliminary Injunction seeking to enjoin and restrain the enforcement of the short-term rental Ordinance. The Town of Narragansett, Town Council of the Town of Narragansett, and Ewa Dzwierzynski, Jill Lawler, Steven Ferrandi, Susan Cicilline-Buonanno, and Deborah Kopech, in their official capacities as members of the Town Council of the Town of Narragansett (hereinafter Defendants) object to the motion. The Attorney General for the State of Rhode Island entered an appearance as an interested party.

Jurisdiction is pursuant to G.L. 1956 §§ 8-2-13 and 9-30-1 and Rule 65 of the Superior Court Rules of Civil Procedure.

I

Facts and Travel

The Narragansett Town Council enacted the Short-Term Rental Ordinance (the STR ordinance) on May 6, 2024. (STR Ordinance §§ 14-555-599.) The STR ordinance is codified in Article XVII, Chapter 14 of the Narragansett Code of Ordinances. The STR ordinance's stated purposes are to "maintain a strong sense of community," "provide for a diversity of residents," and prioritize local housing in regulating the short-term rental market within the Town of Narragansett. *Id.* at § 14-541(c). As such, the STR ordinance requires that owners of a dwelling unit who rent the dwelling unit for transient occupancy (hereinafter referred to as "hosts") submit an application and pay the required fees prior to renting, operating, advertising, or using a dwelling as a short-term rental. *Id.* at § 14.543(b)(1). In addition, a host must ensure the dwelling complies with occupancy limits and parking requirements, pay an application fee, schedule an inspection with the Building Official, demonstrate general liability insurance on the premises in accordance with the limits set forth in the STR ordinance, and provide any additional information that the "Building Official may deem appropriate to show compliance." *Id*. at §§ 14-546, 547. Further, the STR ordinance limits the number of short-term rental permits issued each year by the Town Council. For the year beginning in September 2024, the total number of short-term rental permits is 1,100. *Id.* at § 14-545(A)(a). The number decreases to 900 short-term rental permits in the year beginning in September 2026. *Id*. at §14-545(A)(c). As of July 2024, there were 1,206 short-term rentals registered in the Town of Narragansett. *See* Mem. in Supp. of Pls' Mot. TRO and Prelim. Inj. (Pls.' Mem.) at 6.

Finally, the STR ordinance, while defining "Short-term Rental" as "[t]he rental or other contractual arrangement for the occupation of a dwelling unit . . . for a period of less than thirty (30) consecutive nights," STR ordinance at § 14-542(e), prohibits short term rentals for any period less than seven consecutive nights. *Id.* at § 14-543(b)(2).

After the enactment of the STR ordinance, the Plaintiffs filed a three count Complaint on July 19, 2024 seeking declaratory judgments that: (1) the STR ordinance is facially unconstitutional and void under the Home Rule Amendment to the R.I. Constitution; (2) the STR ordinance directly conflicts with G.L. 1956 § 42-63.1-14; and (3) the State has "occupied the field" of licensing short-term rentals. The Defendants answered the Complaint on August 29, 2024.

On July 24, 2024 the Plaintiffs filed this Emergency Motion for Temporary Restraining Order and Preliminary Injunction. The Defendants objected on August 16, 2024. The Attorney General for the State of Rhode Island (A.G.) entered an appearance as an interested party on August 27, 2024. The parties entered into a briefing schedule and submitted their respective memoranda.

Oral arguments were heard on September 16, 2024. The Court now renders its decision.

II

Standard of Review

Rule 65 of the Superior Court Rules of Civil Procedure provides the Court with authority to issue a temporary restraining order as well as injunctive relief. "[A]n application for temporary injunctive relief is 'addressed to a trial justice's sound discretion.'" *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)). In determining whether a preliminary injunction should issue, the 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."' *Gianfrancesco v. A.R. Bilodeau, Inc.*, 112 A.3d 703,708 (R.I. 2015) (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, they are only required to make out a prima facie case. *See DiDonato*, 822 A.2d at 181 (citing *Fund for Community Progress*, 695 A.2d at 521). "Prima facie evidence is that amount of evidence that, if unrebutted, is sufficient to satisfy the burden of proof on a particular issue." *Paramount Office Supply Co., Inc. v. D.A. MacIsaac, Inc*., 524 A.2d 1099, 1101 (R.I. 1987) (internal citations omitted). If the moving party can establish a reasonable likelihood of success on the merits and immediate irreparable injury, the court will weigh the equities in 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. *In re State Employees' Unions*, 587 A.2d 919, 925 (R.I. 1991).

III

Analysis

A

Reasonable Likelihood of Success on the Merits

1

Count 1

Home Rule

Count I of the Plaintiffs' Complaint seeks a declaratory judgment that the STR ordinance is facially unconstitutional and void because the Narragansett Town Council exceeded its

legislative authority under the home rule amendment to the Rhode Island Constitution. The Plaintiffs maintain that there is a reasonable likelihood of success on the merits because the STR ordinance licenses short term rentals in the Town of Narragansett, which is a statewide issue, not a local matter. As a result, the STR ordinance is void. The Defendants maintain that the regulation of short-term rentals is not a statewide matter, and therefore, the Town of Narragansett is expressly authorized to enact the STR ordinance under the Home Rule Charter. In the alternative, the Defendants argue that if regulating short-term rentals is a statewide issue, the Town of Narragansett is authorized to regulate short-term rentals either expressly or "by necessary implication" through the Zoning Enabling Act. The Attorney General takes no position on whether the General Assembly has delegated licensing authority to the Town of Narragansett but urges this Court to limit its ruling on the home-rule authority issue to the "specific questions presented by the STR Ordinance." *See* A.G.'s Mem. Re. Pls.' Mot. for TRO (A.G.'s Mem.) at 12.

(i)

General or Local Legislation

In 1951, the home-rule amendment altered the Rhode Island Constitution to empower cities and towns "to legislate with regard to all *local* matters." *Viveiros v. Town of Middletown*, 973 A.2d 607, 611 (R.I. 2009) (quoting *Lynch v. King*, 120 R.I. 868, 903, 391 A.2d 117, 122 (1978)) (emphasis added). As such, "[e]very city and town shall have the power at any time to . . . enact and amend local laws relating to its property, affairs and government not inconsistent with this Constitution and laws enacted by the general assembly in conformity with the powers reserved to the general assembly." R.I. Const. art. 13, § 2. This authority is limited to local matters unless the General Assembly has delegated the authority either expressly or by implication. *Amico's Inc. v. Mattos*, 789 A.2d 899, 903 (R.I. 2002).

Although there is no dispositive list of general versus local matters, our Supreme Court has categorized the following areas as general legislation: "the regulation of police affairs, the conduct of business, *licensing*, education, and elections." *Bruckshaw v. Paolino*, 557 A.2d 1221, 1223 (R.I. 1989) (emphasis added); *see also Newport Amusement Co. v. Maher*, 92 R.I. 51, 56, 166 A.2d 216, 218 (1960) ("Licensing is definitely not a local matter. The power to license has never been exercised by the municipalities of this state as far as we are aware except by express authorization of the legislature."); *State v. Krzak*, 97 R.I. 156, 160, 196 A.2d 417, 420 (1964) ("[T]he general assembly . . . has exclusive jurisdiction of the regulation of businesses by the licensing power."). In such matters, the State maintains sovereignty over the regulation. *Marro v. General Treasurer of City of Cranston*, 108 R.I. 192, 195, 273 A.2d 660, 662 (1971).

When interpreting ordinances, the Court utilizes the same rules of construction as it does when it interprets statutes. *Ruggiero v. City of Providence*, 893 A.2d 235, 237 (R.I. 2006). The Court's task is to "effectuate the intent of the Legislature." *Rhode Island State Labor Relations Board v. Valley Falls Fire District*, 505 A.2d 1170, 1171 (R.I. 1986). This is accomplished by examining the "language, nature, and object of the statute." *Id.* "Absent a contrary intent the words in the [ordinance] must be given their plain and ordinary meaning." *D'Ambra v. North Providence School Committee*, 601 A.2d 1370, 1374 (R.I. 1992) (internal citations omitted). In reviewing a challenged ordinance, the Court begins "with a presumption that a legislative enactment is constitutional," and the burden is on the party challenging the enactment to prove "beyond a reasonable doubt that the challenged enactment is unconstitutional." *State v. Russell*, 890 A.2d 453, 458 (R.I. 2006) (citing to *State ex rel. Town of Westerly v. Bradley*, 877 A.2d 601, 605 (R.I. 2005)).

Furthermore, in determining whether the text of the STR ordinance reveals itself as an ordinance of local or general concern, the Court employs the following variables: (1) when it appears that "uniform regulation throughout the state is necessary or desirable" the matter is within the state domain; (2) whether a matter is "traditionally within the historical domain of one entity"; and most critically, (3) if the action "has a significant effect upon people outside the home rule town or city" the matter is apt to be deemed one of statewide concern. *See Town of East Greenwich v. O'Neil*, 617 A.2d 104, 111 (R.I. 1992); *see also K&W Automotive, LLC v. Town of Barrington*, 224 A.3d 833, 837 (R.I. 2020).

(a)

Desirability of Uniform Regulation of Short-Term Rentals

The STR ordinance licenses and regulates short-term rentals in the Town of Narragansett. STR ordinance at § 14-541(a). In today's world, short-term rentals "are becoming more common with the growth in Internet-based 'house sharing' companies such as 'Airbnb,' 'VRBO,' and 'HomeAway.'" *See* Short term rentals, 5 Rathkopf's *The Law of Zoning and Planning* § 81:11 (4th ed.). The Rhode Island Legislature has expressed a strong interest in the regulation of tourist and transient use properties. *See* § 42-63.1-1 For instance, chapter 63.1 of title 42 is dedicated to promoting and encouraging statewide tourism and development. *See id.* ("The purpose of this chapter is to establish an operating program to promote and encourage tourism, *to coordinate tourism activities within the state*, and to establish a fund to promote and encourage tourism . . . .") (emphasis added). Further, a hotel tax of 5 percent "upon the total consideration charged for occupancy of any space furnished by any hotel, travel packages, or room reseller," G.L. 1956 § 44-18-36.1, is collected from properties offered for tourist or transient use on a hosting platform

as well as from traditional hotels. Section 42-63.1-14(a).[1] The State allocates those funds to entities to "promote and encourage tourism," "to coordinate tourism activities," and "to further economically develop the state by and through tourism activities." Section 42-63.1-4. Given the State's demonstrated interest in promoting tourism and development, and the nexus between short-term rental tax revenue and that interest, clearly the uniform regulation of short-term rental regulation is desirable.

This conclusion is further buttressed by the Special Legislative Commission created to review and provide recommendations for policies that deal with numerous economic and social short-term rental issues. *See* H 6449, Gen. Assemb. (R.I. June 14, 2023). In the 2023 House session, House Resolution H 6449 created the Special Legislative Commission, which released an interim report with its findings to date on April 30, 2024. *See* STR Special Legislative Commission Interim Rep., H.R. 2024 at 2 (R.I. April 30, 2024). In the report, the Commission found that "[t]he State and multiple Rhode Island municipalities have designed and implemented short-term rental registration systems, which are not synchronized with each other leading to inconsistent registrations and confusion between the two systems." *Id*. Further, a report prepared for the Commission by the Rhode Island League of Cities and Towns indicates that as of December 5, 2023, at least ten different cities and towns had unique registration requirements for short-term rentals, while two more were actively engaged in public hearings on the issue. *See* Jordan Day, Special Commission to Study Economic Social Impact of STRs, R.I. League of Cities and Towns

[1] *See also* § 42-63.1-2(12) (defining "tourist or transient" as "any use of a residential unit for occupancy for less than a thirty (30) consecutive day term of tenancy, or occupancy for less than thirty (30) consecutive days of a residential unit leased or owned by a business entity, whether on a short-term or long-term basis, including any occupancy by employees or guests of a business entity for less than thirty (30) consecutive days where payment for the residential unit is contracted for or paid by the business entity").

(Dec. 5, 2023). In addition, the Commission decided to engage with the Department of Business Regulation to "propose a system of coordination between municipal registering systems and the State registration system by October 15, 2024." *See* Interim Rep. (April 30, 2024).

Comprehensive regulations have been held to be desirable when there are differing municipal ordinances in existence. In *K&W Automotive,* our Supreme Court was presented with a similar issue with the enactment of an ordinance banning the sale of tobacco to persons under the age of twenty-one and banning the sale of flavored tobacco entirely. *K&W Automotive, LLC.*, 224 A.3d at 835. There, the Court noted that four nearby municipalities had also enacted their own ordinances regulating the sale of flavored tobacco. *Id.* at 838. "Although patchwork legislation with respect to tobacco products does not raise the same level of immediate safety concerns as did the issue of power lines" the Court opined, it found that there was "nonetheless a legitimate concern that inconsistent regulations respecting tobacco will lead to confusion and decrease compliance with . . . regulations." *Id*. For that reason, the Court in *K&W Automotive* held that a comprehensive, statewide approach to tobacco regulation was desirable, and this standard weighed in favor of statewide concern. *Id*. at 838.

Here, the variable weighs in favor of finding that short-term rental regulation is a matter of statewide concern. The State has an interest in promoting tourism and development through regulating tourist and transient use rentals; and there is a public interest in avoiding a system of patchwork legislation regulating short-term rental registration so that a statewide system of uniform regulation is desirable.

(b)

Historical Domination

Next, the Court considers whether the issue of regulating short-term rentals has historically been within the dominion of one entity. Given the relatively recent rise of online hosting platforms, the history of "[s]hort-term rental properties and home sharing apps [is] better understood by looking at the history of boardinghouses . . . ." Richard W. F. Swor, Long Term Solutions to the Short-Term Problem, Belmont L. Rev. 278, 280 (2018). The General Assembly enacted legislation regulating boarding houses and hotels as early as 1888. 1888-1890 Pub. Laws R.I., ch. 688 § 1 (An Act for the Protection of the Health of Patrons of Hotels and Boarding Houses). In addition, the General Assembly has recently enacted legislation pertinent to short-term rental registration and advertisement. *See* § 42-63.1-14. Like in *K&W Automotive*, where the Court acknowledged that "some municipalities have in fact enacted ordinances relating to the regulation of tobacco," it is true that some municipalities have also enacted ordinances related to short-term rentals. *K&W Automotive*, 224 A.3d at 839. However, "it nonetheless remains true that the state has historically been the entity largely responsible for the regulation of this matter." *Id*.

(c)

Impact Outside of Home-Rule Town

Turning to the third variable, the Court considers the impact of the ordinance on persons outside of the home rule town. Here, the ordinance's registration and compliance requirements only apply to a host in Narragansett. STR ordinance at § 14-543(a). However, according to the report from the Rhode Island League of Cities and Towns, more short-term rentals are located in Narragansett than any other municipality in the State. Jordan Day, STRs in R.I. Reg. and Impact on Municipalities, R.I. League of Cities and Towns (Nov. 8, 2023). As discussed, *see* discussion

supra section (b), the Legislature's interest in promoting tourism statewide, as well as the impact of restricting the State's largest short-term rental market, would have an effect on the surrounding communities. *See K&W Automotive*, 224 A.3d at 839 (where the Court briefly discussed the impact of irregular statewide ordinances and, without providing data or statistics, found that "the potential impact of municipalities across the state enacting their own various regulations would have some significance" on persons outside of the home rule town). The Special Commission has determined that the plethora of short-term rental regulations has led to inconsistencies and confusion, and the impact of this confusion extends beyond the borders of Narragansett. *See* STR Spec. Leg. Comm. Interim Rep., H.R. 2024 at 2 (R.I. April 30, 2024).

The Court concludes that after applying the three *O'Neil* variables to the STR ordinance, short-term rental registration is a matter of statewide concern, and not a purely local issue. The Court will now consider whether the General Assembly has delegated authority to the Town of Narragansett to regulate this matter of statewide concern, and if it has, to determine whether the Town of Narragansett exercised that authority appropriately.

(ii)

Authorization from General Assembly

(a)

General Authority

The Defendants assert that the Legislature delegated the authority to enact the STR ordinance to the Town of Narragansett through the Zoning Enabling Act. *See* Town's Mem. in Supp. of Obj. to Pls.' Mot. Inj. Relief (Defs.' Mem.) at 2. The Plaintiffs argue that the Zoning Enabling Act "does not expressly or impliedly authorize the Town to license short-term rentals," and, in any event, "the STR Ordinance is not a zoning ordinance." *See* Reply Mem. in Further

Supp. of Pls.' Mot. for TRO (Pls.' Reply) at 4. In its memorandum, the Attorney General takes no position on whether the Zoning Enabling Act authorizes the Town of Narragansett to enact the STR ordinance, but stresses that if "the Court find[s] that the Defendants cannot rely on the Zoning Enabling Act as the source of an impliedly delegated licensing authority to support *the particular ordinance in this case,* that would not and does not mean that municipalities cannot regulate short-term rentals through validly enacted zoning ordinances." A.G.'s Mem. at 13.

While the General Assembly may have delegated authority to municipalities through the Zoning Enabling Act to regulate short term rentals,[2] that authority is not present in the case at bar. The Defendants do not have the luxury of applying its authority retroactively. *See, e.g., Primiano v. Town Council of Town of Warren*, 115 R.I. 447, 450, 347 A.2d 414, 415 (1975) (where the Court quashed a town council's decision to revoke a food and beverage license because the town council revoked the license due to failure to comply with the town's building code, and then four months later "amended the minutes of its [] meeting to show that the license was 'lifted' because [Petitioner] violated both the building code and the zoning ordinance").

Clearly, the Town of Narragansett did not enact the STR ordinance in accordance with the Zoning Enabling Act's procedures to amend zoning ordinances. *See* G.L. 1956 § 45-24-53(a). The Zoning Enabling Act requires cities and towns to hold a public hearing, and give notice of that hearing, before zoning ordinances may be adopted, repealed, or amended. *Id*. The notice must clearly "[i]ndicate that adoption, amendment, or repeal of a zoning ordinance is under consideration[.]" *Id.* at § 45-24-53(a)(2). Here, the Defendants insist that the STR ordinance was enacted pursuant to authority granted through the Zoning Enabling Act; however, there is no

[2] *See, e.g. City of Newport v. McGown*, No. N3-2023-0289A, 2024 WL 401590, *1, *4 (R.I. Super. Jan. 26, 2024) (where the court found that restricting short term rentals in residential zones within the city was a valid exercise of the Zoning Enabling Act in order to restrict short-term rentals).

showing that the town council provided public notice concerning a change to the zoning ordinance. In fact, the Report and Recommendation of the Planning Board, provided by the Defendants, states:

> "The enclosed draft will NOT amend the Zoning Ordinance; it will be placed within Chapter 14 of the Town Code which regulates 'Businesses.' As such the Board addressed our primary focus on the proposal's compliance with the Comprehensive Plan coupled with a general analysis of its ability to adequately regulate transient housing rentals." Ex. C, Planning Board R. & R. at 1 (Feb. 27, 2024).

Contrary to the Defendants' assertions, the Planning Board does not appear to have reviewed the STR ordinance through the lens of the Zoning Enabling Act, and the Town of Narragansett did not follow the Zoning Enabling Act's procedures to enact the STR ordinance.

It is without a doubt that the Zoning Enabling Act authorizes cities and towns to "establish and enforce standards and procedures for the proper management and protection of land . . . and to employ contemporary concepts, methods, and criteria in regulating the type, intensity, and arrangement of land uses . . . ." Section 45-24-29(b)(3). This authority is not without limitation. Indeed, our Supreme Court has articulated an important distinction between zoning and licensing regulations as they relate to land use: "licensing law[s] regulate[] the activity taking place on the land," while "zoning regulations govern the use of the land" itself. *Primiano,* 115 R.I. at 450, 347 A.2d at 415. Here, the STR ordinance regulates the activity taking place on the land, not the use of the land itself.

The Defendants rely on a series of recent cases from Newport County to support the claim that the STR ordinance here is constitutionally authorized under the Zoning Enabling Act. *See* Defs.' Mem. at 9. These cases are distinguishable. In *City of Newport v. McGown*, No. N3-2023-0289A, 2024 WL 401590, *1, *3 (R.I. Super. Jan 26, 2024), the challenged short-term rental ordinance restricted "transient guest facilities" in *residential-zoned areas*. There, the city

"determined that short-term rental use [was] akin to allowing commercial uses in residential zones." *Id*. at *4. To remedy the issue, it placed a restriction on short term rentals in residential zones. *Id*. The court determined that the Newport restriction was therefore a valid exercise of its home-rule authority through the Zoning Enabling Act. *Id*.

Importantly, in *McGown*, the ordinance's restriction on short-term rentals was inextricably intertwined with the city's zoning regulations.[3] *Id*. at *3. While the ordinance in *McGown* "limit[ed] the types of uses available *in a particular zone* for various purposes," *id.* at *4 (emphasis added), here, the STR ordinance is not restricted to any particular zones. *See generally*, STR ordinance. In other words, the Newport ordinance permissibly regulates land use in accordance with the Zoning Enabling Act; the Town of Narragansett STR ordinance does not.

A review of the plain language of the STR ordinance supports this finding. First, the Narragansett Town Code of Ordinances contains multiple chapters and appendices. One such chapter is titled "Businesses," while an appendix is titled "Zoning." *See* Narragansett Code of Ordinances, Ch. 14, Appendix A. The STR ordinance is codified in Chapter 14—Businesses. Next, a review of the ordinance itself reveals a single mention of the word "zone" or "zoning." This reference appears in § 14-549(f), and simply states that certain information must be "available for inspection by police, zoning, building, fire, or housing officials . . ." *See* STR ordinance at § 14-549(f). Unlike in other zoning ordinances located in Appendix A, for instance, Section 12-Special Use Permits, the STR ordinance never references decisions or communications between the short-term permit holder and the zoning board of review or the zoning enforcement agency.

[3] *See also, City of Newport v. Chubby Hospitality*, LLC, No. N3-2023-0287A, 2024 WL 401592, *3 (R.I. Super. Jan. 26, 2024) (where the defendant challenged the same ordinance as in *McGown*, and the court found that the restriction on transient guest houses in residentially zoned areas was a valid and constitutional exercise of the Zoning Enabling Act).

The Defendants acknowledge that the ordinance is not codified along existing zoning ordinances, but they describe this fact as a "procedural deficienc[y]." *See* Town's Mem. in Resp, to A.G.'s Mem. (Defs.' Reply) at 4. To be clear, the Court does find that because the STR ordinance was not filed in Appendix A it cannot, under any circumstances, be a zoning ordinance. Rather, the Court finds that the codification of the STR ordinance among the business statutes demonstrates that the Narragansett Town Council did not enact the ordinance with the authority of the Zoning Enabling Act.

(b)

Authority by Necessary Implication

The Defendants also argue that the Town of Narragansett does not need an express grant of authority from the General Assembly to regulate short term rentals, instead, the authority "can be delegated . . . 'by necessary implication.'" Defs.' Mem. at 8 (citing *Maher*, 92 R.I. at 56, 166 A.2d at 218). The Defendants argue that the purpose and intent of the Zoning Enabling Act imbues the Town of Narragansett with implied authority to regulate short-term housing rentals because it "delegates to municipalities the authority to enact '[a]n ordinance . . . that establish[es] regulations and standards relating to the nature and extent of uses of land and structures[.]" Defs.' Mem. at 9 (citing § 45-24-31(72)).

Here, the question is not whether municipalities may regulate short-term rentals through the Zoning Enabling Act, it is whether the STR ordinance enacted by the Town of Narragansett was done so pursuant to authorization from the General Assembly. Even if the Zoning Enabling Act does grant municipalities the power to regulate short-term housing by necessary implication, the Defendants must demonstrate that the STR ordinance was enacted pursuant to the Zoning Enabling Act.

Here the Plaintiffs have demonstrated that (1) the STR ordinance is a matter of statewide concern; (2) municipalities are not authorized to regulate matters of statewide concern absent authorization from the General Assembly; and (3) the General Assembly did not authorize the Town of Narragansett to enact the STR ordinance as it did. As such, the Plaintiffs have demonstrated a reasonable likelihood of success on the merits.

Counts II and III of the Plaintiffs' Complaint advance two alternative theories to show a reasonable likelihood of success on the merits: direct issue preemption and implied field preemption. What the Court will now address is whether the Plaintiffs have made a prima facie showing that the STR ordinance is preempted by state law, assuming, *arguendo*, that the Narragansett Town Council enacted the STR ordinance pursuant to authority from the General Assembly.

2

Count II

Preemption

Even if a local government is authorized to act through home rule or a delegation of authority from the General Assembly, those localities may not enact ordinances that are "preempted" by state law. *Auger*, 44 A.3d at 1229. An ordinance or regulation can be preempted "if it conflicts with a state statute on the same subject . . . . [or] if the Legislature intended that its statutory scheme completely occupy the field of regulation on a particular subject." *Town of Warren v. Thornton-Whitehouse*, 740 A.2d 1255, 1261 (R.I. 1999). In interpreting the potentially conflicting statutes, the Court construes and applies "'apparently inconsistent statutory provisions in such a manner so as to avoid the inconsistency.'" *Such v. State*, 950 A.2d 1150, 1156 (R.I. 2008) (quoting *Kells v. Town of Lincoln*, 874 A.2d 204, 212 (R.I. 2005)).

"A municipal ordinance is preempted by statute 'when either the language in the ordinance contradicts the language in the statute or when the [General Assembly] has intended to thoroughly occupy the field.'" *Auger*, 44 A.3d at 1229 (quoting *Coastal Recycling, Inc. v. Connors*, 854 A.2d 711, 715 (R.I. 2004)). Here, the Plaintiffs argue that "[t]he STR Ordinance is preempted by § 42-63.1-14 (1) because it is in direct conflict with the statute (direct preemption), and (2) because the state has 'occupied the field' of licensing short-term rentals (implied preemption)." Pls.' Mem. at 14. The Defendants argue that the STR ordinance does not directly conflict with § 42-63.1-14, and the General Assembly has not thoroughly occupied the field of short-term rental regulation. Defs.' Mem. at 10, 13. It is the Attorney General's position that "the General Assembly has not 'occupied the field' with respect to short-term rental properties," A.G.'s Mem. at 3, but the Attorney General takes no position on whether the STR ordinance's ban of rentals less than seven nights "rises to the level of a direct and material conflict with § 42-63.1-14(a)." *Id.* at 11. In any event, the Attorney General urges this Court to "focus on conflict preemption rather than field preemption" while addressing these arguments. *Id.* at 8.

(i)

Conflict Preemption

Conflict preemption exists when an ordinance "is 'in direct and material conflict with a state law,'" so that it is "'impossible for a . . . party to comply with both . . . requirements[.]'" *Auger*, 44 A.3d at 1229 (quoting *Town of Glocester v. R.I. Solid Waste Management Corp.*, 120 R.I. 606, 607, 390 A.2d 348, 349 (1978), *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995)). Notwithstanding, "the mere fact that the General Assembly regulates a particular activity does not mean that municipalities cannot impose additional restrictions that address legitimate local concerns." *Krivitsky v. Town of Westerly*, 849 A.2d 359, 363 (R.I. 2004). For instance, in *Auger*,

the Court considered whether a local noise ordinance regulating motor vehicle radio noise was preempted by a related State statute. *Auger,* 44 A.3d at 1229. Although both the statute and the ordinance addressed similar issues, the Court upheld the local ordinance, finding that it was "in furtherance of the objectives of state law, rather than being in conflict with the less exigent provisions of [the state law]." *Id*. at 1230.

The State statute at issue here, § 42-63.1-14, entitled "Offering residential units through a hosting platform," is codified in title 42, State Affairs and Government, chapter 63.1, Tourism and Development. *Id.* The statute defines "short-term rental" as "a person, firm, or corporation's utilization, for transient lodging accommodations, not to exceed thirty (30) nights at a time." Section 42-63.1-14(b). It also states:

> "For any rental property offered for tourist or transient use on a hosting platform that collects and remits applicable sales and hotel taxes in compliance with § 44-18-7.3(b)(4)(i), § 44-18-18, and § 44-18-36.1, cities, towns, or municipalities shall not prohibit the owner from offering the unit for tourist or transient use through such hosting platform, or prohibit such hosting platform from providing a person or entity the means to rent, pay for, or otherwise reserve a residential unit for tourist or transient use." Section 42-63.1-14(a).

The Plaintiffs assert that STR ordinance is in direct conflict with the State statute because the STR ordinance defines "Short-term Rental" as "[t]he rental or other contractual arrangement for the occupation of a dwelling unit by an individual tenant, a family or multiple tenants under a single lease, for residential and/or dwelling purposes, for a period of less than thirty (30) consecutive nights," § 14-542(e), limits short-term rentals to "a period of more than six (6) consecutive nights," § 14-543(b)(2), and prohibits property owners from advertising their property for short-term renting purposes without a Town of Narragansett permit, § 14-549(f). The Defendants argue that the Ordinance does not prohibit property owners from advertising rentals on hosting platforms, instead it "merely requires that anyone who advertises as a short-term rental

must also be in compliance with the STR Ordinance provisions." Defs.' Mem. at 12. The Attorney General takes no position on the issue of direct conflict preemption. A.G.'s Mem. at 11.

Here, the General Assembly's law ensures that an owner[4] shall not be prohibited from offering a residential unit for occupancy on a hosting platform for less than thirty days. Sections 42-63.1-14(a); 42-63.1-14(b). The statute also sets forth the requirements that the "short-term rental property listed for rent on the website of any third-party hosting platform that conducts business in Rhode Island shall be registered with the department of business regulation." Section 42-63.1-14(b). To register with the department of business regulation, the owner must provide the principal place of business, phone number, and e-mail address of the owner or authorized agent, and the property's address, intended use, and number of available rooms. Section 42-63.1-14(d)(1)-(7). The registrant must also indicate whether they rent or own the dwelling. *Id*.

The STR ordinance likewise imposes a series of requirements on short-term rental businesses, as discussed above. *See* STR ordinance. These requirements are not mutually exclusive. *See, e.g.*, *Krivitsky*, 849 A.2d at 363 ("[T]he mere fact that the General Assembly regulates a particular activity does not mean that municipalities cannot impose additional restrictions that address legitimate local concerns."). Here, unless the Town of Narragansett denies hosts the permits they seek—the occurrence of which, at this point, is complete speculation—nothing in the text of the ordinance prevents a business from complying with both regulations. Instead, the STR ordinance's requirements that hosts register their properties with the Town of Narragansett seems to complement the registration and reporting requirements laid out by the Legislature in § 42-63.1-14. *See Auger*, 44 A.3d at 1230 (where the Court determined that the more

[4] Section 42-63.1-2 defines "Owner" as "any person who owns real property and is the owner of record. Owner shall also include a lessee where the lessee is offering a residential unit for 'tourist or transient' use."

stringent local noise ordinance did not conflict with State law even though the State law was "less exigent" than the local provisions).

However, there is an exception: the STR ordinance's prohibition on all rentals less than seven nights directly conflicts with the General Assembly's requirement that owners be permitted to offer short-term rentals on hosting platforms.[5] Section 42-63.1-14(a). The STR ordinance *prohibits* a host from "offer[ing] to rent . . . [a] dwelling unit in the Town as a Short-term Rental without a valid pending application or valid Short-term Rental permit[.]" Section 14-543(b)(1). A host in possession of a Short-term Rental permit is prohibited from renting their property for "fewer than seven (7) nights[.]" *Id*. at § 14-543(b)(2). In order to comply with the STR ordinance, a host in the Town of Narragansett is prohibited from offering an otherwise valid short-term rental on a hosting site for one, two, three, four, five, or six nights.

The Defendants insist that "[t]he registration requirements of the Town do not prohibit Plaintiffs from offering their property for rent on a housing platform that collects and remits applicable sales tax in compliance with § 44-18-1 et seq." *See* Defs.' Reply at 2. The Defendants' position ignores the impact of the "under seven nights ban" on hosts' abilities to advertise their rentals and fails to address the discrepancy between the Legislature's definition of short-term rental and that of the STR ordinance.[6]

[5] Further, it is unclear how a ban on all rentals of less than seven nights advances or furthers the stated policy goal of the ordinance, which is "to maintain a strong sense of community and to provide for a diversity of residents." STR ordinance at § 14-541(c). Instead, a restriction on any rentals of less than a full week has a potential negative impact on the community and housing options during historic and time-honored events: including graduation at the University of Rhode Island, large events or sport games at the Ryan Center, and the Blessing of the Fleet.

[6] The General Assembly defines "short-term rental" as those that do not exceed thirty nights at a time, § 42-63.1-14(b), while the STR ordinance restricts the window to those between seven nights and thirty nights. Section 14-543(b)(2).

Here, because the STR ordinance would prohibit a business owner with a valid rental property, offered for tourist or transient use, from advertising that property on an online hosting service for any period less than seven nights, § 14-543(b)(2) is preempted by § 42-63.1-14. The Plaintiffs therefore have established a prima facie showing as to the issue of direct preemption and have demonstrated a reasonable likelihood of success on the merits.

(ii)

Field Preemption

Field preemption exists when it is "*the expressed intent* of the General Assembly that 'the state control is to be exclusive'" over an entire field of regulation. *Auger*, 44 A.3d at 1230 (quoting *Wood v. Peckham*, 80 R.I. 479, 483, 98 A.2d 669, 671 (1953)). To determine the expressed intent of the Legislature, the Court will look to the plain text of the statute and the underlying regulation—"a clear statement by the Legislature of its intention to pre-empt local legislation" is not required. *See O'Neil*, 617 A.2d at 109. When the General Assembly enacts a "complex regulatory scheme" regulating a statewide issue, that is evidence of an intent to occupy the entire field. See *id.* at 110 (where the Court found that the General Assembly intended to occupy the entire field of public-utilities regulation by vesting exclusive power to regulate public utilities in the Public Utilities Commission and detailing a complex regulatory scheme in the law). Conversely, when the Legislature does not enact a complicated regulatory plan, nor vest exclusive authority over a subject in a singular State agency, that is evidence that the Legislature did not intend to occupy the entire field. *See Auger*, 44 A.2d at 1231 (where the Court found that the Legislature did not intend to occupy the entire field of noise regulation because the existing law was not complex and did not vest exclusive authority in a State agency).

Here, the registration requirements contained in § 42-63.1-14 do not constitute a complex regulatory scheme. For instance, the statute does not vest exclusive authority to regulate short-term housing rentals to a particular State agency, nor does it confer exclusive enforcement or regulatory power on the Department of Business Regulation. *Compare* § 42-63.1-14 (with no provision delegating exclusive power and authority to a State agency), *with O'Neil*, 617 A.2d at 110 (where the Court determined that vesting exclusive power and authority over public utilities to the PUC evinced an intent to occupy the field). Furthermore, the scope of the statute is limited to tourist and transient use *on third party hosting platforms* and does not regulate short-term rentals that are not advertised on a third-party hosting platform. Section 42-63.1-14. Clearly, the statute imposes only an information-based registration requirement that does not convey its intention to occupy the entire field of short-term rental regulation. *See* A.G.'s Mem. at 4. The Court therefore concludes that based on a reading of the clear and unambiguous language of the statute, the General Assembly did not intend to occupy the field.

B

Irreparable Harm

"'A party seeking injunctive relief 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.'" *Finnimore & Fisher Inc. v. Town of New Shoreham*, 291 A.3d 977, 986 (R.I. 2023) (quoting *Nye v. Brousseau*, 992 A.2d 1002, 1010 (R.I. 2010)). "[P]rospective damage to a business's good will and reputation 'is precisely the type of irreparable injury for which an injunction is appropriate.'" *Iggy's Doughboys, Inc.,* 729 A.2d at 705 (internal citations omitted) (finding that the movant demonstrated irreparable harm by showing that it would lose uncertain amounts of business if a competing food-service business was

permitted to operate a take-out window next door); *see also National Lumber & Building Materials Co. v. Langevin*, 798 A.2d 429, 434 (R.I. 2002) (finding that "likelihood of confusion and the probable diversion of business away from the plaintiff as a result of the two companies using two similar business names showed that 'irreparable harm' would result").

Here, the Plaintiffs have demonstrated that if the STR ordinance takes effect, their short-term rental businesses—many of which have been operated for years—will suffer reputational damage and loss of good will. *See* Pls.' Mem. at 20. This goes beyond simply "loss of income." *See* Defs.' Mem. at 18. As the Plaintiffs allege, "Narragansett is a vibrant and popular tourist destination," and many visitors return annually to rent the same properties year after year. Pls.' Mem. at 20. The Plaintiffs allege that if the STR ordinance is enforced, their businesses will lose the good will and positive reputations that they have earned from customers after years of consistent renting. *See id*. For example, renters who have historically reserved a short-term rental for the same weekend each year would find themselves unable to do so under the durational restrictions of the STR ordinance.

The Defendants argue that this harm is speculative because there is no evidence that the Plaintiffs will, in fact, be denied a permit and lose the ability to list their short-term rentals. *See* Defs.' Mem. at 17. But this argument fails to address the "less than seven nights" ban. The STR ordinance's ban on all rentals for less than seven nights is *not* speculative. *See* STR ordinance at § 14-543(b)(2). By enjoining the Plaintiffs from offering their properties for any period less than seven nights, existing customers will not be able to rent weekend properties that they have rented in the past or planned to rent again in the future. Likewise, new and existing customers alike will be unable to rent properties for their desired length of time due to the STR ordinance's ban on rentals for less than seven nights. Therefore, the Plaintiffs have demonstrated irreparable harm.

C

Balance of the Equities

Once the moving party shows a likelihood of success and irreparable injury, "the trial justice should next 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 (internal citations omitted); *see also Rose Nulman Park Foundation. ex. rel. Nulman v. Four Twenty Corp*., 93 A.3d 25, 31 (R.I. 2014).

Here, if the injunctive relief is denied, the Plaintiffs are unable to rent their short-term rentals for any period less than seven nights and will need to comply with the additional requirements of the STR ordinance. If the injunctive relief is granted, the Defendants do not allege any particular hardship. Instead, the Defendants assert that the public interest in general will be harmed if the STR ordinance is not given effect. This contention is unpersuasive. Even without the STR ordinance, the Town of Narragansett is able to ensure the health, safety, and wellness of the community through zoning, building codes, and police power. Further, any short-term rentals advertised on an online hosting platform will need to comply with the State's STR requirements as described in § 42-63.1-14. Absent the STR ordinance, the market for short term rentals and the safety of those rental dwellings will not be unregulated. The equities tip in favor of the Plaintiffs.

D

Status Quo

As a final matter in considering a grant of injunctive relief, a court considers whether granting an injunction will preserve the status quo. *See DiDonato,* 822 A.2d at 181. "It is axiomatic that the office of preliminary injunction is not intended as a final determination of the merits of a

controversy, but that it is intended only to continue, approximately, the status quo until the merits of the cause can be formally adjudicated." *Menard v. Woonsocket Teachers' Guild-AFT 951*, 117 R.I. 121, 128, 363 A.2d 1349, 1353 (1976). Here, the status quo is best preserved by enjoining enforcement of the STR ordinance until the merits of the challenge can be formally adjudicated.

IV

Conclusion

For the reasons stated here, the Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction is granted. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Narragansett 2100, Inc., et al. v. Town of Narragansett, et al.**
CASE NO:	**WC-2024-0372**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**October 2, 2024**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**Stephen D. Lapatin, Esq.** **Daniel J. Procaccini, Esq.**
For Defendant:	**Kathleen M. Daniels, Esq.** **Michael Desisto, Esq.**