To commence the statutory time period for appeals as of right (CPLR 5513(a)), you are advised to serve a copy of this Decision & Order, with notice of entry, on all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

TOWN OF ORANGETOWN, NEW YORK,

Plaintiff,

-against-

ARMONI INN & SUITES, LLC, PALISADES ESTATES EOM, LLC, and JOHNSON KIRCHNER HOLDINGS, LLC,

Defendants.

DECISION & ORDER

No. 032048/2023

Mot. Seq. No. 1

D'ALESSIO, J.

The Town of Orangetown, New York ("Orangetown"), proceeds in this action against: **(1)** Armoni Inn & Suites, LLC ("Armoni"); **(2)** Palisades Estates EOM, LLC ("EOM"); and **(3)** Johnson Kirchner Holdings, LLC ("Kirchner," and collectively, "Defendants"). (*See generally* Doc. 1, "Compl."). Believing that Defendants violated its local zoning law, Orangetown seeks declaratory judgments that Defendants have violated: **(1)** Orangetown Town Code ("OTC"), Ch. 6, § 6-14(C); **(2)** OTC, Ch. 43, § 10.221(a); and **(3)** OTC, Ch. 43, § 10.231(c). (*Id.* ¶¶ 43-60).[1]

Plaintiff commenced this action by filing a Summons and Verified Complaint—along with papers supporting its request for injunctive relief—on May 9, 2023. (*See* Docs. 1-20). The Court,

[1] Orangetown stylizes its request for various stages of injunctive relief as a fourth cause of action. (Compl. ¶¶ 61-83). Temporary restraining orders, preliminary injunctions, and permanent injunctions are not causes of action—they are forms of relief sought based on underlying causes of action. *See Giambrone v. Arnone, Lowth, Wilson, Leibowitz, Adriano & Greco*, 197 A.D.3d 459, 462 (2d Dep't 2021) (finding that the trial court should have dismissed "so much of the fifth cause of action as sought a temporary restraining order and the sixth cause of action, seeking a preliminary injunction . . . because said relief is to be sought in a motion, not as a separate cause of action in the complaint"); *Talking Capital LLC v. Omanoff*, 169 A.D.3d 423, 424 (1st Dep't 2019) (observing that a permanent injunction "is a remedy for an underlying wrong, not a cause of action"); *New Yorker Hotel Mgmt. Co. v. Dist. Council No. 9 N.Y. IUPAT*, 55 Misc. 3d 437, 443 (Sup. Ct. 2017) ("A preliminary injunction is a provisional remedy granted during the pendency of an action. Such a request is not a separate cause of action and should not be asserted in a pleading but rather by motion."); *see also* CPLR 6312(a), 6313(a).

later that same day and after a hearing on the question of temporary relief, issued an Order to Show Cause with a Temporary Restraining Order maintaining the status quo. (Doc. 24, "OTSC"). In accordance with the briefing schedule requested by the parties and approved by the Court: **(1)** Armoni and EOM filed their papers opposing the motion for a preliminary injunction on May 18, 2023;[2] and **(2)** Orangetown filed its reply papers in further support thereof on May 25, 2023. (*See generally* Doc. 36, Docs. 38-65).[3] The Court held oral argument on May 31, 2023.

Upon consideration of all the filings and the arguments heard on the record thus far, for the reasons set forth below, Orangetown's motion for a preliminary injunction is GRANTED.

BACKGROUND

I. Facts Presently in the Record

Orangetown Town Supervisor Teresa M. Kenny ("Kenny") received a telephone call from New York City Mayor Eric Adams ("Adams") on May 5, 2023. (Doc. 5, "Kenny Aff.," ¶ 8; *see also* Compl. ¶ 21). Adams, during that conversation, advised Kenny that New York City intended to move asylum-seeking individuals to an unidentified Orangetown hotel for up to four-months. (Kenny Aff. ¶¶ 9-11, Ex. A; *see also* Compl. ¶¶ 22-23). Christopher Ellis ("Ellis"), New York City's Director of State Legislative Affairs, informed Kenny in another call later that day that the transfer was imminent. (Kenny Aff. ¶ 12; *see also* Compl. ¶ 24). The following day, May 6, 2023, Ellis informed Kenny that the number of individuals transferred from New York City "would be no more than one hundred . . . and that . . . [they] would arrive . . . sometime during the weekend." (Kenny Aff. ¶¶ 13-14; *see also* Compl. ¶ 26). Kenny learned thereafter that the intended location was Orangetown's Armoni Inn & Suites ("Hotel"). (Kenny Aff. ¶ 15; *see also* Compl. ¶ 27).

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[2] The Court notes that the memorandum of law submitted by Armoni and EOM was technically filed just after midnight the following morning. (Doc. 53, "Opp. Mem.").

[3] Kirchner advised, by way of attorney affirmation, that it "does not oppose" the relief sought. (Doc. 37 ¶ 12).

Staff from Orangetown's Office of Building, Zoning, Planning, Administration and Enforcement ("OBZPAE") inspected the Hotel on May 7, 2023. (Doc. 8, "Slavin Aff.," ¶ 22; Doc. 12, "Gordon Aff.," ¶¶ 3-5; *see also* Kenny Aff. ¶ 19; Compl. ¶¶ 30-31). That inspection revealed: (1) queen-size mattresses being replaced with twin-size mattresses; (2) boxes containing various types of personal protective equipment ("PPE"); and (3) boxes with shirts reading, "Supervisor" and/or "Supervisor Social Worker." (Slavin Aff. ¶¶ 27-28; Gordon Aff. ¶¶ 8-13, Exs. A-F; *see also* Compl. ¶¶ 33-36). Hotel staff confirmed during this inspection that the changes and items observed were intended to accommodate the individuals expected from New York City. (Slavin Aff. ¶¶ 23-24, 26; Gordon Aff. ¶¶ 7-8, 14; *see also* Compl. ¶ 37; Doc. 55, "Zitt Reply Aff.," Ex. A (pamphlet advertising "shelter options" with "Double Occupancy Rooms" in Orangeburg, New York)).[3] Hotel staff informed OBZPAE that the expected individuals would use sixty to seventy rooms. (Slavin Aff. ¶ 25; Gordon Aff. ¶ 9; *see also* Compl. ¶ 38). Concluding that the Hotel's intended use under its agreement with New York City would violate local zoning law, OBZPAE issued a Notice of Violation on May 7, 2023. (Slavin Aff. ¶¶ 37-44, Ex. C; *see also* Compl. ¶¶ 39-41). OBZPAE confirmed the next day, May 8, 2023, that—notwithstanding the Notice of Violation—the Hotel's plan to receive individuals from New York City was unchanged. (Gordon Aff. ¶¶ 16-18, 23-26; *see also* Compl. ¶ 42). OBZPAE issued another Notice of Violation on May 9, 2023 outlining various additional violations of the OTC. (Doc. 38, "Batt Aff.," ¶ 11, Ex. 3).

Armoni and EOM concede that, under the terms of a contract with New York City, "the Hotel agreed to rent hotel rooms to provide temporary lodging to" asylum-seeking individuals. (*Id.* ¶ 16; *see also* Opp. Mem. at 6 (explaining that "New York City entered into arrangements with local hotels, including the Hotel" to house individuals)).

[3] The Court notes, for the sake of clarity, that Orangeburg is a municipality within Orangetown.

II. Orangetown's Statutory Scheme

The Hotel is in Orangetown's Community Shopping District ("CS District"). (Slavin Aff. ¶ 19). Operating "[h]otels and motels" are conditional uses of property in the CS District. (Doc. 60, "Slavin Reply Aff.," Ex. A). The Hotel has, since the 1970s, had a certificate of occupancy allowing operation as a "hotel/motel." (Slavin Aff. ¶ 20; *see also* Compl. ¶ 18).[4] The OTC defines "hotel" as "a multiple dwelling used primarily for the purpose of furnishing lodging, with or without meals, for more than 15 transient guests, for compensation." OTC, Ch. 43, § 43-11.2. Although not specifically defined by the OTC, "transient" is defined by the 2020 New York State Building Code, Ch. 2, § 202, as "[o]ccupancy of a dwelling unit or sleeping unit for not more than 30 days." *See* OTC, Ch. 5, § 5-1 (recognizing the applicability of the "New York State Uniform Fire Prevention and Building Code"); *see also* N.Y. Exec. Law § 377; 19 NYCRR §§ 1219, 1221.2.

Orangetown maintains that Adams' statements, Hotel staff's representations, and observations at the Hotel reveal that Defendants are in violation of three specific ordinances.

A. OTC, Chapter 6, Section 6-14

The first provision cited by Orangetown states, in full, that:

> [n]o change shall be made in the *use* or type of occupancy of an *existing building unless* a Certificate of Occupancy authorizing such change shall have been issued by the Building Inspector.

OTC, Ch. 6, § 6-14(C) (emphasis added). "Use" is defined as "any purpose for which buildings or other structures or land may be occupied." OTC, Ch. 43, § 43-11.2.

[4] The Court accepts the sworn statement offered by Orangetown that the Hotel "maintains a Certificate of Occupancy permitting its use as a hotel/motel dating back to the 1970's." (Slavin Aff. ¶ 20). The Court notes, however, that the May 9, 2023 Notice of Violation states that OBZPAE "records indicate Armoni Inn and Suites has not yet obtained a Certificate of Occupancy to occupy and operate the hotel, restaurant or lounge. Armoni has been in Violation of this code since October 26, 2021." (Batt Aff. Ex. 3).

B. OTC, Chapter 43, Section 10.231

The second provision cited by Orangetown directs similarly, *inter alia*, that:

> [n]o change shall be made in the *use* or type of occupancy of an *existing building* . . . *unless* a certificate of occupancy authorizing such change in use . . . shall have been issued by the Inspector.

OTC, Ch. 43, § 10.231(c) (emphasis added).

C. OTC, Chapter 42, Section 10.221

The final provision cited by Orangetown instructs, in relevant part, that:

> "[a] permit is required for . . . [a]ll building uses . . . ."

OTC, Ch. 43, § 10.221(a).

STANDARD OF REVIEW

Applications for preliminary injunctions are governed by Article 63 of the New York Civil Practice Law and Rules. Such relief:

> may be granted . . . where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.

CPLR 6301. This relief "maintain[s] the status quo pending determination of the action," *R&G Brenner Income Tax Consultants v. Fonts*, 206 A.D.3d 943, 944 (2d Dep't 2022), and deciding whether to grant it "lies within the sound discretion of the Supreme Court," *Goldfarb v. Town of Ramapo*, 167 A.D.3d 1009, 1010 (2d Dep't 2018) (internal quotation marks omitted).

Where a town seeks a preliminary injunction based on violation of its zoning laws, it need show *only* a: **(1)** likelihood of success on the merits; and **(2)** balance of equities in its favor. *See*

City of New York v. Beam Bike Corp., 206 A.D.3d 447, 447-48 (1st Dep't 2022); *Town of Carmel v. Melchner*, 105 A.D.3d 82, 91 (2d Dep't 2013); *Town of Oyster Bay v. Baker*, 96 A.D.3d 824, 824 (2d Dep't 2012); *see also* N.Y. Town Law § 268. The burden in this unique scenario requires a town to "come forward with a strong prima facie showing that the defendants are violating its zoning ordinance." *Baker*, 96 A.D.3d at 824 (quoting *Town of Oyster Bay v. Sodomsky*, 154 A.D.2d 455, 455 (2d Dep't 1989)); *see also Town of Islip v. Modica Assocs. of NY 122, LLC*, 45 A.D.3d 574, 575 (2d Dep't 2007) ("To obtain relief, a town must come forward with a strong prima facie showing that the defendants are violating its zoning ordinance." (internal quotation marks omitted)); *Town of Oyster Bay v. Dyott*, 246 A.D.2d 531, 532 (2d Dep't 1998) ("When a municipality demonstrates by a strong prima facie showing that a particular act is in violation of a zoning ordinance, a preliminary injunction enjoining the commission of the act is warranted."); *City of New York v. Cincotta*, 133 A.D.2d 244, 244 (2d Dep't 1987).[5]

ANALYSIS

As the sole issue being adjudicated is whether Orangetown has met the burden for securing a preliminary injunction, the Court considers the showing as to the two required elements.

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[5] In the normal course, should a court grant a preliminary injunction, the movant would be required to give an "undertaking in an amount to be fixed by the court . . . ." CPLR 6312(b). This requirement does not apply here because Orangetown is exempt. *Id.* Orangetown "shall, however, be liable for damages as provided in such provision of law in an amount not exceeding an amount which shall be fixed by the court whenever it would require an undertaking of a private party." CPLR 2512(1). "[T]his provision . . . is not self-executing and if the trial court does not specify the limit on the municipality's liability for damages in the injunction order, there can be no liability if it is ultimately determined that plaintiff was not entitled to the injunction." *Bonded Concrete, Inc. v. Town of Saugerties*, 42 A.D.3d 852, 856 (3d Dep't 2007). Armoni and EOM requested, in a footnote in their opposition brief, that "this Court set a sizeable bond to compensate . . . [the] tremendous monetary and reputation harm sustained by reason of any injunctive relief." (Opp. Mem. at 23 n.8). Assuming, *arguendo*, that such a request was proper and procedurally sufficient, those parties cited no evidence upon which the Court could measure Orangetown's liability in the event that the municipality is unsuccessful on the merits. *Cf. Olympic Ice Cream Co. v. Sussman*, 151 A.D.3d 872, 874 (2d Dep't 2017) ("The amount of the undertaking, however, must not be based upon speculation and must be rationally related to the damages the nonmoving party might suffer if the court later determines that the relief to which the undertaking relates should not have been granted." (internal quotation marks omitted)); *see also Hofstra Univ. v. Nassau Cty., N.Y.*, 166 A.D.3d 863, 865 (2d Dep't 2018); *Ujueta v. Euro-Quest Corp.*, 29 A.D.3d 895, 896 (2d Dep't 2006) ("The Supreme Court providently exercised its discretion in declining to consider the defendants' speculative claims of potential damages."). The request is, therefore, denied.

I. Element No. 1: Likelihood of Success on the Merits

"A cause of action for declaratory relief accrues when there is a bona fide, justiciable controversy between the parties." *Zwarycz v. Marnia Constr., Inc.*, 102 A.D.3d 774, 776 (2d Dep't 2013); *see also* CPLR 3001 ("The supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed."). "To constitute a 'justiciable controversy,' there must be a real dispute between adverse parties, involving substantial legal interests for which a declaration of rights will have some practical effect." *Hernandez v. State*, 173 A.D.3d 105, 109-10 (3d Dep't 2019) (quoting *Chanos v. MADAC, LLC*, 74 A.D.3d 1007, 1008 (2d Dep't 2010)); *see also* Seigel, N.Y. Prac. § 328 (6th ed.) ("Mere apprehensions do not suffice; the preliminary injunction will issue only upon a showing that the defendant's wrongful acts are occurring or are threatened and reasonably likely to occur."). "A declaratory judgment is intended 'to declare the respective legal rights of the parties based on a given set of facts, *not to declare findings of fact*.'" *Touro Coll. v. Novus Univ. Corp.*, 146 A.D.3d 679, 679 (1st Dep't 2017) (quoting *Thome v. Alexander & Louisa Calder Found.*, 70 A.D.3d 88, 100 (1st Dep't 2009) (emphasis added)); *see also Hesse v. Speece*, 204 A.D.2d 514, 515 (2d Dep't 1994) (explaining that "[t]he general purpose of the declaratory judgment is to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation either as to present or prospective obligations" (quoting *James v. Alderton Dock Yards*, 256 N.Y. 298, 305 (1931) (alteration in original)).

The evidence submitted to the Court and legal arguments pressed in the record reveals that: **(1)** the Hotel has a certificate of occupancy allowing it to operate as a hotel; **(2)** the Hotel has entered into an agreement with New York City by which the latter will send to the former no more than one hundred people for no more than four months; **(3)** the Hotel has undertaken changes to

room layouts (i.e., replacing queen-sized mattresses with twin-sized mattresses); **(4)** the Hotel has received assorted materials suggesting the presence of an organized group of individuals (i.e., PPE and shirts reading, "Supervisor" and/or "Supervisor Social Worker"); **(5)** Hotel staff advised OBZPAE that the changes and materials noted were intended to be used in connection with the contract with New York City; **(6)** New York City issued a pamphlet advertising "shelter options" with "Double Occupancy Rooms" in Orangetown; **(7)** the Hotel has not sought to change its classification under the OTC; and **(8)** upon being notified that Orangetown believed the Hotel's actions were violative of the OTC, Hotel staff advised that the plan to meet its obligations under the undisclosed agreement with New York City was unaffected. (Kenny Aff. ¶¶ 8-15; Slavin Aff. ¶¶ 20, 23-28; Gordon Aff. ¶¶ 7-13, 23-26, Exs. A-F; Batt Aff. ¶ 16; Zitt Reply Aff. Ex. A; Slavin Reply Aff. ¶ 10, Ex. C; *see also* Gordon Aff. ¶¶ 14-18; Batt Aff. ¶¶ 15-18).

This evidence, at this early stage, certainly meets the burden of making a strong prima facie showing that Defendants are violating applicable zoning ordinances.[6] Armoni and EOM advance various arguments against this heavy showing, but none of them prevail at this juncture.

A. Counterargument No. 1: The Hotel Will Remain a Hotel, Notwithstanding the Use

The first argument advanced by Armoni and EOM is that "Orangetown's claim that the Hotel is being 'converted' to something other than a hotel is not supported by Orangetown's conclusory speculations or the plain language of the Orangetown Zoning Code." (Opp. Mem. at 10). The Court disagrees. The evidence adduced by Orangetown makes a compelling showing in support of the notion that the Hotel will house individuals beyond thirty days—thereby rendering those individuals more permanent than transient, and the Hotel outside the OTC's definition of "hotel." OTC, Ch. 43, § 43-11.2; 2020 New York State Building Code, Ch. 2, § 202.

[6] The Court notes Kirchner's representation through counsel that it has no knowledge of any agreement with New York City or plans to change the Hotel's traditional use. (Doc. 37 ¶¶ 8-9).

B. Counterargument No. 2: New York State Law Preempts Local Zoning Ordinances

The second argument pressed by Armoni and EOM, along four different theories, avers that Orangetown cannot prevail because its local zoning ordinances are preempted by various aspects of New York State law. (Opp. Mem. at 11-15).

The first theory relies on a New York State Department of Social Services regulation. (Opp. Mem. at 11-13). That regulation provides as follows:

> [a] commercial hotel or motel used as temporary placement pursuant to section 352.3(e) of this Title shall not be considered a shelter for adults, a small-capacity shelter, or a shelter for adult families, so long as such hotel or motel is not used primarily to provide shelter to recipients of temporary housing assistance.

18 NYCRR § 491.2(f). The New York State Office of Temporary Disability ("OTDA"), in 2006, issued an administrative directive referencing the aforementioned regulation and observed that "it is sometimes necessary for local districts to place homeless individuals/families outside of their district," and that the transferee districts may have "more shelters, hotels or other temporary housing facilities available." (Doc. 54, "Soloway Aff.," Ex. 7 at 2). More recently, the OTDA issued an informational statement on its website entitled, "FAQ-Sheltering of Migrants." (*Id.*, Ex. 8). Armoni and EOM insist that these items establish conclusively that "these matters are regulated by the State . . . ." (Opp. Mem. at 12-13).

The second theory cites Governor Hochul's May 9, 2023 Executive Order ("EO28") wherein she directs, *inter alia*:

> Sections 768 and 711 of the Real Property and Proceedings Law, Sections 226-c and 232-a of the Real Property Law, and subdivisions 7, 8, 9, 10 and 13 of section 4 of the Multiple Dwelling Law, to the extent necessary to prevent the creation of a landlord tenant relationship between any individual assisting with the response to the state of emergency or any individual in need of shelter or housing because of the circumstances that led to the state of emergency, and any individual or entity, including but not limited

> to any hotel owner, hospital, not-for-profit housing provider or any other person or entity who provides temporary housing for a period of thirty days or more solely for purposes of assisting int the response to the state of emergency.

(Soloway Aff. Ex. 1 at 2). This pronouncement, according to Armoni and EOM, preempts OTC enforcement because it evinces an intent to "facilitat[e] the immediate availability of temporary lodging facilities . . . ." (Opp. Mem. at 13).

The third theory avers that Orangetown's zoning laws "are preempted by controlling State laws." (Opp. Mem. at 14). This argument relies on two Appellate Division decisions. In the first, *City of New York v. Town of Blooming Grove Zoning Bd. of Apps.*, 305 A.D.2d 673, 674 (2d Dep't 2003), the court concluded that New York City—which owned the land and operated a shelter on it for decades before the municipality sought to impose special conditions—need not comply with those local requirements because "[r]egulation of adult-care facilities has been preempted by the State." In the second, *Cty. of Niagara v. Shaffer*, 201 A.D.2d 786, 787-88 (3d Dep't 1994), the court agreed that the petitioners could not impose additional requirements on those "applying for aid to dependent children, Medicaid or home relief benefits" because it contradicted an explicit directive in the New York State Social Services Law.

The final theory refers to a provision of the New York State Human Rights Law, which provides, in relevant part, that:

> [i]t shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation . . . because of the . . . national origin, citizenship or immigration status . . . of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof . . . .

N.Y. Exec. Law § 296(2)(a). Armoni and EOM maintain that, with the May 7, 2023 Notice of Violation, Orangetown "contradict[ed]" this law and discriminated against individuals who would

be housed at the Hotel because of their national origin or immigration status. (Opp. Mem. at 15). This theory relies upon three appellate court decisions. The first, *Wambat Realty Corp. v. State*, 41 N.Y.2d 490 (1977), rejected a challenge to the Adirondack Park Agency Act (i.e., legislation governing development in the Adirondack Park region). The second, *Consol. Edison Co. of N.Y. v. Town of Red Hook*, 60 N.Y.2d 99 (1983), found preempted by state law a local law attempting to impose additional prerequisites to a power plant site study. The last, *New York City Health & Hosps. Corp. v. Council of the City of N.Y.*, 303 A.D.2d 69 (1st Dep't 2003), found preempted by state law a local law requiring appointment of security guards with specific qualifications.

All four theories, at this point, suffer from underdevelopment and disjointedness. Addressing the arguments sequentially and in short order: **(1)** Armoni and EOM have offered no authority to support the idea that limited agency action (i.e., one regulation, an administrative directive, and an "FAQ" posted on an executive agency's website) establishes preemption over local zoning laws; **(2)** EO28 is silent as to local zoning laws, but references explicitly N.Y. Real Property and N.Y. Real Property and Proceedings Law while temporarily suspending "the creation of a *landlord tenant relationship*;" and **(3)** the precedent cited in support of the last two theories are factually distinguishable. The Court notes further that Armoni and EOM have not stated explicitly the model of preemption undergirding any particular theory.

C. Counterargument Nos. 3 and 4: Enforcing Local Zoning Violates Federal Law

The two final arguments advanced by Armoni and EOM contend that Orangetown's actions violate the U.S. Constitution. (Opp. Mem. at 16-19). The first posits that Orangetown is selectively enforcing the OTC in a way that violates the Equal Protection Clause of the Fourteenth Amendment. (*Id.* at 16-18). The second insists that, by enforcing its zoning laws, Orangetown violates the Supremacy Clause. (*Id.* at 18-19). The glaring problem with these arguments—

notwithstanding any other issue—is that they are, as presented by their proponents, aimed at vindicating the rights of those who would occupy the Hotel under the contract with New York City. (*Id.* at 16 ("Orangetown also cannot success on the merits of its claims because its selective enforcement . . . effectuates discrimination . . . ."), 17 ("The Equal Protection Clause of the Fourteenth Amendment prohibits the enforcement of laws in an effort to discriminate against minority groups . . . ."), 18 (arguing that the individuals "are entitled to the protections of the Equal Protection Clause"), 19 ("Local laws used to restrict an alien's ability to seek shelter are consistently and uniformly held unenforceable.")). The most basic question then, in the Court's view, is whether Armoni and EOM have standing to press these arguments.

"Although there is generally a prohibition on one litigant raising the legal rights of another, the concept of third-party standing allows a third party who has suffered an injury in fact to assert the constitutional rights of others." *New York Cty. Lawyers' Ass'n v. State*, 294 A.D.2d 69, 74 (1st Dep't 2002) (internal citations and quotation marks omitted). Such standing exists:

> when (1) there is a substantial relationship between the party asserting the claim and the rightholder; (2) it is impossible for the rightholder to assert his or her own rights; and (3) the need to avoid a dilution of the parties' constitutional rights.

Fleischer v. New York State Liquor Auth., 103 A.D.3d 581, 583 (1st Dep't 2013); *see also Huth v. Haslun*, 598 F.3d 70, 75 (2d Cir. 2010) (explaining that a plaintiff may proceed on a third-party constitutional claim where there is "(1) injury to the plaintiff, (2) a close relationship between the plaintiff and the third party that would cause plaintiff to be an effective advocate for the third party's rights, and (3) some hindrance to the third party's ability to protect his or her own interests" (internal quotation marks omitted)).

Consideration of these arguments ends almost as quickly as it begins. Notwithstanding the analysis inherent in determining whether any party has third-party standing, neither Armoni nor

EOM have offered any specific argument or explanation as to how they have standing to vindicate the rights of absent third parties.[8] Although this conclusion does not foreclose the ability to develop these arguments at summary judgment, the uncertainty surrounding this fundamental issue cannot overcome Orangetown's strong prima facie showing as to its likelihood of success on the merits.[9]

II. Element No. 2: Balancing of the Equities

As to the other element of this analysis, "[t]he balancing of the equities requires the court to determine the relative prejudice to each *party* accruing from a grant or denial of the requested relief." *Barbes Rest. Inc. v. ASRR Suzer 218, LLC*, 140 A.D.3d 430, 432 (1st Dep't 2016) (citing *Ma v. Lien*, 198 A.D.2d 186, 186-87 (1st Dep't 1993) (emphasis added)).

On the movant's side of the equation, Orangetown seeks to enforce its own local zoning ordinances and prevent the violation thereof. Indeed, there is no suggestion that granting the preliminary injunction sought would prevent the Hotel from operating as it has for decades.[10]

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[8] Insofar as the third-party standing analysis, a putative class action is currently pending in the U.S. District Court for the Southern District of New York against the Rockland and Orange County Executives. That court recently issued an Opinion & Order granting a preliminary injunction preventing Rockland and Orange County from enforcing emergency orders issued vis-à-vis New York City's plan to transport individuals to municipalities around New York State. *Deide v. Day*, No. 23-CV-03954, 2023 WL 3842694 (S.D.N.Y. June 6, 2023). This suggests, of course, that any rightholders can assert their own rights against Orangetown. This Court notes further its agreement with the federal court's thoughtful characterization of this case as one concerning Orangetown's ability "to enforce its own local zoning and occupancy codes . . . ." *Id.* at *7.

[9] Armoni and EOM argue also that Orangetown cannot succeed insofar as it intends to enforce the State of Emergency Order issued by the Rockland County Executive on May 6, 2023 ("Rockland County Order"). (Opp. Mem. at 19-20 (citing OTSC); *see also* Compl. ¶¶ 28-29). Without regard to the federal court's preliminary injunction, even if Orangetown were attempting to enforce the Rockland County Order, it has affirmatively disavowed any attempt to do so. (*See* Doc. 64 at 19 ("The Town, however, does not seek to enforce the Rockland County Order. It only seeks to enforce the Town Code.")). This argument is, therefore, rendered moot.

[10] There are several matters pending in other venues throughout New York State related to New York City's attempts to relocate individuals to other jurisdictions. In one such case involving Defendants and the Hotel's closure by Rockland County, the court issued an Order to Show Cause directing, *inter alia*, that "the Hotel shall be permitted to operate, subject to the existing temporary restraining orders and any further order of this Court . . . ." *Cty. of Rockland v. City of New York*, No. 032065/2023, Doc. 72 (Sup. Ct., Rockland Cty.) (emphasis in original). So far as this Court is aware, the Hotel has, in the wake of that Order to Show Cause, resumed hotel operations. There is no indication that Orangetown intended to close the Hotel *in toto* or prevent its traditional operation and, to that point, the existing temporary restraining order prevents only a change from the building's use as a "hotel" under the OTC.

Conversely, Hotel staff have made clear their preparedness to comply with the terms of the contract with New York City, whether violative of the OTC or not. (*See* Gordon Aff. ¶¶ 16-18, 23-26; *see also* Batt Aff. ¶¶ 15-18 (explaining how changes to room layouts and receipt of materials do not reflect a change in use)). This leaves the unambiguous impression that, should the Court fail to grant the preliminary injunction, Defendants will press ahead with whatever plans they have and any resulting judgment in Orangetown's favor might very well be rendered ineffectual.

On the other side, Armoni and EOM insist that these concerns pale in comparison to the "humanitarian crisis, destruction of a local business, and the trampling on paramount Constitutional and State-law rights." (Opp. Mem. at 21). Notwithstanding the argument's explosive rhetoric, it lacks specificity insofar as how a preliminary injunction would prejudice *Armoni and EOM* aside from some type of contractual interference liability. (*Id.* at 21-22).

Given all the evidence and arguments offered by the parties, the equities favor Orangetown.

CONCLUSION

For the foregoing reasons, Orangetown's request for preliminary injunction is GRANTED. The terms of the temporary restraining order, as outlined in the OTSC, shall remain in effect pending a final adjudication on the merits. Defendants shall file their Answers by June 30, 2023, and the parties shall appear for an in-person Preliminary Conference on July 5, 2023 at 2:00 p.m.

The Court recognizes that this case—and those related matters pending elsewhere—present a unique human element and passionate disagreements on a variety of issues. The conclusions reached herein, however, are guided only by the law and limited to the question of whether Orangetown has met its burden for a preliminary injunction. It has done so. Whether it will prevail at a later stage, on a fully developed record, is a question for another day.

The Clerk of the Court is respectfully directed to terminate Motion Sequence No. 1.

The foregoing constitutes the Decision & Order of this Court.

Dated: New City, New York
June 9, 2023

ENTER:

HON. CHRISTIE L. D'ALESSIO, J.S.C.