PREPARED BY THE COURT

MUNICIPAL COUNCIL OF THE CITY OF TRENTON, Plaintiff, v. MAYOR REED GUSCIORA, Mayor of the City of Trenton, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – MERCER COUNTY DOCKET NO. L-729-22 CIVIL ACTION **ORDER DENYING PLAINTIFF'S APPLICATION FOR PRELIMINARY RESTRAINTS**

THIS MATTER having come before the Court, the Hon. Robert Lougy, A.J.S.C., presiding, on the Verified Compliant in Lieu of Prerogative Writ and Order to Show Cause seeking preliminary restraints filed by Plaintiff Municipal Council of the City of Trenton, represented by Anthony Valenti, Esq., appearing; and the Court having entered an order directing Defendants to show cause why preliminary restraints should not issue; and Defendant Mayor Gusciora, represented by Joshua A. Zielinski, Esq., and Joseph A. Natale, Esq., appearing, having filed opposition; and Plaintiff having filed a reply; and the Court having considered the parties'

pleadings and arguments; and for the reasons as stated below; and for good cause shown;

IT IS on this 19th day of May 2022 **ORDERED** that:

1. Plaintiff's application for an order preliminarily enjoining the Mayor from preventing attorneys and other professionals including, but not limited to Wilentz, Goldman & Spitzer, P.A., from assisting with and taking action requested by City Council for purposes of creating a Redevelopment Agency and the submission of the necessary application to the Local Finance Board and/or any other redevelopment efforts of the City Council is **DENIED**.

2. Plaintiff's application for an order, directing the Mayor to withdraw his objection to Wilentz, Goldman & Spitzer, P.A. assisting and providing services related to the creation of a Redevelopment Agency and the submission of the necessary application to the Local Finance Board and to specifically advise Wilentz, Goldman & Spitzer, P.A. of same is **DENIED**.

3. Plaintiff's application for an order preliminarily enjoining the Mayor from denying City Council the resources of the Administration and/or from preventing the Administration from

providing information or assistance and/or taking action needed and requested by City Council with respect to any pursuit by City Council in the area of redevelopment including that which is related to the creation of a Redevelopment Agency and the submission of the necessary application to the Local Finance Board is **DENIED**.

4. Plaintiff's application for an order preliminarily enjoining the Mayor from taking or causing or allowing any member of his administration to take any action intended to interfere with any efforts of the City Council to create a Redevelopment Agency or pursue redevelopment projects in the City of Trenton is **DENIED**.

5. Plaintiff's application for an order preliminarily enjoining the Mayor from taking or causing or allowing any member of his administration to take any action relating to redevelopment in the City of Trenton except for that which is requested by City Council **is DENIED**.

/s/ Robert Lougy
ROBERT LOUGY, A.J.S.C.

X **OPPOSED**
UNOPPOSED

PURSUANT TO RULE 1:6-2(f), THE COURT PROVIDES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW.

STATEMENT OF FACTS

Plaintiff is the Municipal Council of the City of Trenton ("City Council") operating pursuant to the terms of Plan C of the Faulkner Act, N.J.S.A. 40:69A-1 to -210. Compl. ¶ 1. Defendant Mayor Reed Gusciora is the duly elected Mayor of the City of Trenton. Id. at ¶ 2. The City of Trenton operates under the Mayor-Council form of government pursuant to the Faulkner Act. Id. at ¶ 6.

On February 15, 2022, the City Council adopted Ordinance 21-32, which states:

> The redevelopment functions of the City shall be performed by the City Council with assistance from its designees. The City Council shall exercise the powers of the City as set forth in the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et. seq.). In the event the City Council wants the assistance of the Director of the Department of Housing and Economic Development, the City Council may request same. The City Council may appoint or contract with such professional advisors as may be requested to assist the Council in the Redevelopment Functions.
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> [Id. at ¶ 24.]

Ordinance 21-32 also "repealed section 2-29 of the Trenton City Municipal Code, which previously assigned certain duties and responsibilities to the Trenton City

Department of Housing and Economic Development." Id. at ¶ 25. Ordinance 21-32 was passed over the Mayor's veto by a super majority of the City Council on February 15, 2022. Id. at ¶ 26, Ex. A; Zielinski Certif. ¶ 3, Ex. A.

Included with the Mayor's veto of Ordinance 21-32 was a message expressing the reasons why the Mayor vetoed the ordinance. Zielinski Certif., ¶ 3, Ex. A. That message indicated the Mayor vetoed the ordinance because he believed it would do a disservice to the City of Trenton by duplicating the functions and efforts of the Department of Housing and Economic Development, that the ordinance violates the Faulkner Act, that the ordinance may disrupt numerous redevelopment activities conducted to date by the administration, that the City Council has historically operated as a barrier to other redevelopment activities within the city, and that the ordinance might violate a court order issued in another legal action. Ibid.

As of January 1, 2022, the law firm Wilentz, Goldman & Spitzer, P.A. ("Wilentz Firm") has been retained to "provid[e] legal services and advice in relation to redevelopment efforts." Id. at ¶¶ 36-37. Attorney John Hoffman, along with attorney Everett Johnson, are the primary providers. Id. at ¶ 38. The Wilentz Firm also serves as the Bonding Council for the City of Trenton. Id. at ¶ 39. In practice, the Mayor and the administration issue Requests for Proposals ("RFPs") and select bidders to be awarded contracts. Id. at ¶ 11. The contracts are then

presented to the City Council for approval by resolution. Ibid. This process includes the selection of attorneys. Id. at 12.

The City Council, pursuant to its perceived authority under N.J.S.A. 40A:12A-11, seeks to establish a redevelopment agency. Id. at ¶¶ 40-43. In accordance with N.J.S.A. 40A:12A-11, the creation of a redevelopment agency must comply with the "Local Authorities Fiscal Control Law." Id. at ¶¶ 40-42. This requires an "application to be made to the Local Finance Board within the Division of Local Government Services in the New Jersey Department of Community Affairs (the "Local Finance Board" or "LFB") for its approval of an ordinance authorizing the formation of the agency pursuant to N.J.S.A. 40A:5A-4." Id. at ¶ 42. The City Council asked the Wilentz Firm to apply to the LFB on behalf of the City of Trenton. Id. at ¶ 43. Accordingly, on March 8, 2022, the Wilentz Firm emailed council members and members of the Mayor's administration seeking information related to the LFB application and a proposed resolution authorizing the same. Id. at ¶ 44-45, Ex. H. On March 9, 2022, Councilwoman Vaugh, forwarded the same email to Mayor Gusciora and Shakespearecia Cadet asking them to share the information with all relevant Directors. Id. at ¶ 47, Ex. H. The Mayor responded: "Noted. Thank you." Ibid.

On March 23, 2022, the City Council adopted Resolution R22-93, which authorizes the "preparation and submission" of the LFB application. Id. at ¶ 46,

Ex. I. On April 4, 2022, Everett Johnson, of the Wilentz Firm, informed the City Council that the Mayor is not supportive of the LFB application and "unless the Council and the administration are able to come to a meeting of the minds, [they] will have to recuse [them]selves from being involved in the submission of the application to the Local Finance Board." Id. at ¶ 48, Ex. J. Thus, the application to the LFB has not been submitted. Ibid. On April 4, 2022, the Mayor sent a letter to Council President McBride denying the City Council's request to meet with Directors and Administrators. Id. at ¶¶ 49-50, Ex. K. On April 5, 2022 Councilwoman Vaughn emailed the Mayor seeking clarification regarding the Mayor's decision to not support the City's application. Id. at ¶ 51. She has not received a response. Ibid.

Plaintiff asserts that the Mayor has made his disapproval of the application known "for the purpose of preventing and interfering with the establishment of such redevelopment agency." Id. at ¶ 52. It contends that the Council maintains the authority under the law to create a redevelopment agency, and the Mayor "unlawfully interfered with the authority vested in the City Council." Id. at ¶ 54. Plaintiff states that the Wilentz Firm continues to serve as the bonding counsel for the City of Trenton and it is simply the Mayor's perceived objection to the application that prevents it from submitting the application. Id. at ¶¶ 55-56. Plaintiff further contends that the Mayor's actions indicate that he will block any

law firm from facilitating the creation of a redevelopment agency and deprive the City Council the necessary resources to do so. Id. at ¶¶ 57-58. In support of this assertion, the City Council states that the Mayor issued an RFP on February 18, 2022, soliciting redevelopment plans for City property, after the adoption of Ordinance 21-32. Id. at ¶¶ 60-61, Ex. L. Plaintiff asserts that the actions of the Mayor necessitate declaratory judgment and preliminary and permanent injunctive relief to avoid irreparable harm. Id. at ¶¶ 67-69. At this stage, the Court only reviews the application for preliminary injunctive relief pursuant to Rule 4:52.

Plaintiff argues the following in support of its request for preliminary injunctive relief. It contends that the Mayor continues to block efforts to create a Redevelopment Agency and ignores the City Council's redevelopment authority by unilaterally "pursu[ing] redevelopment projects that have not been authorized nor requested by the City Council." Pl.'s Br. 2.

Plaintiff argues that it is entitled to injunctive relief. First, the City Council and the City of Trenton will experience irreparable harm if relief is not granted. It argues that the Mayor's actions are blocking the creation of a Redevelopment Agency and preventing the City Council from meeting the necessary deadlines set by the LFB. Id. at 6. Furthermore, it asserts that the Mayor is "ignoring the fact that the City Council maintain the authority over redevelopment matters" and

"continues to attempt to direct and control redevelopment projects in the City of Trenton." Ibid.

Second, the facts and the law are settled. Plaintiff opines that the Mayor prevented the Wilentz Firm from submitting the necessary application and he continues to engage in redevelopment projects without the City Council's authority. Id. at 7. Thus, Plaintiff argues, the Mayor is in violation of Redevelopment Law and Ordinance 21-32. It states that under relevant legal precedent, the City Council exercises all legislative and investigative functions and those powers "are to be exercised by ordinance, except for the exercise of those powers that, under [the mayor-council plan] or general law, do not require action by the mayor as a condition of approval for the exercise thereof, and may, therefore, be exercised by resolution." Id. at 8. Plaintiff asserts that as the legislative power in the City of Trenton, it is the "Governing Body" as defined in the Local Redevelopment and Housing Law ("LRHL") and is authorized to determine by resolution the areas in need of redevelopment. Id. at 9 (citing N.J.S.A. 40A:12A-5).

Plaintiff further argues that prior to initiating a redevelopment project, N.J.S.A. 40A:12A-7(a) requires the municipal governing body to adopt a redevelopment plan, which Plaintiff asserts is within its designated powers. Id. at 10. It notes that the City Council maintains authority to act prior to establishment

of a redevelopment entity even though N.J.S.A. 40A:12-8 refers to "the municipality or redevelopment entity." Id. at 11. Based on its presumed authority, Plaintiff adopted Ordinance 21-32 designating all redevelopment functions to the City Council. Ibid. Moreover, Plaintiff asserts that pursuant to N.J.S.A. 40A:12A-11, only the governing body is authorized to create a Redevelopment Agency. Accordingly, the City Council is authorized "to create a body corporate and politic by way of ordinance to serve as a redevelopment agency for the City of Trenton as an instrumentality of the City of Trenton." Id. at 12. Plaintiff, in an effort to establish the Redevelopment Agency, asked the Wilentz Firm to apply to the LFB as required by N.J.S.A. 40A:5A-4. Ibid. Plaintiff argues that as the governing body and redevelopment entity, it has the sole authority to proceed with the application and "engage[] the services of the Wilentz Firm as Redevelopment Counsel…." Id. at 13. As such, Plaintiff contends that the Mayor "has unlawfully interfered with the authority vested in the City Council by both the Redevelopment Law and City Ordinance as well as the resolution adopted by City Council to authorize the preparation and submission of the application to the Local Finance Board." Id. at 16. Additionally, Plaintiff states that there is no actual conflict of interest because the Wilentz Firm continues to provide legal services for the Mayor. Id. at 16. In sum, Plaintiff asserts that Defendant violated the Faulkner

Act by refusing to enforce a duly enacted ordinance and "thwarting the redevelopment efforts…." Id. at 17.

Finally, Plaintiff argues that the balancing of harms favors injunctive relief. It states that the Mayor's actions prevent the City Council from doing what it is statutorily authorized to do and "has caused added harm by causing the City to already miss prior deadlines for getting before the Local Finance Board." Id. at 18. In contrast, the Mayor will not experience harm as his actions are in violation of applicable law. Ibid. Additionally, granting temporary restraints will prevent harm to the public. Ibid. Plaintiff asserts that all the Crowe factors weigh in favor of granting temporary restraints.

In opposition to the order to show cause seeking preliminary injunctive relief, Defendant Mayor Gusciora argues two major points. First, the City Council's request for preliminary injunctive relief improperly seeks permanent, final relief and should therefore be denied. Opp'n Br. 7-11. The Mayor asserts that "if issuance of a preliminary injunction will have the effect of granting the movant all of the relief [sought] upon a final disposition, the application should be denied." Id. at 8. The Mayor contends that that is the case here, noting the order to show cause for preliminary relief seeks the "the exact same relief sought" in the complaint. Id. at 9-10. The only difference between the reliefs sought in the complaint and the order to show cause are those seeking declarations the Mayor

violated Ordinance 21-32 and the LRHL and that no actual conflict of interest exists with respect to any professionals assisting in the creation of the Redevelopment Agency. Id. at 10-11. The Mayor asserts such difference is "simply a repackaged version[] of the shared requests" between the complaint and order to show cause. Id. at 11. Thus, granting the order to show cause would have the effect of granting the City Council the final relief sought in the complaint, disrupting the status quo by permanently enjoining the Mayor from taking redevelopment actions. Ibid. Therefore, the Mayor argues, the order to show cause should be denied and the case should proceed as an action in lieu of prerogative writ. Ibid.

Second, even if the order to show cause is proper, the City Council fails to meet the requirements for preliminary injunctive relief by clear and convincing evidence. Id. at 12-29. On the first Crowe factor, the City Council will not suffer any irreparable injury if an injunction does not issue. The Mayor asserts "the only 'harm' that the City Council alleges is a delay in presenting a redevelopment agency application to the LFB." Id. at 13. The Mayor's objection letter is simply that—an objection—but nowhere does it clearly indicate the Mayor will prevent the City Council from taking redevelopment actions. Id. at 14. Rather, the objection letter only indicates the Mayor's assertion that N.J.S.A. 40:69A-37.1 requires the City Council to meet and communicate with the Mayor directly, not

members of the administration. Id. at 15. Moreover, the City Council fails to explain how any delay or inconvenience in presenting a redevelopment agency application to the LFB threatens immediate and irreparable harm. Ibid. Thus, the City Council's claims of irreparable harm are not imminent, concrete or supported by clear and convincing evidence and are at best speculative. Id. at 15-16.

The City Council also cannot establish any reasonable likelihood of success on the merits. The Mayor argues "the Council's claims conflict with the applicable law and have no support." Id. at 16. The City Council cannot grant itself powers nor take away powers from other branches of government when the Faulkner Act or other law specifically delineate the division of governmental functions. Id. at 18. The Faulkner Act clearly and unambiguously assigns "the mayor is the governing body for purposes of carrying out administrative functions assigned by the law." Id. at 18. Thus, the mayor's powers are broad while the council's powers are more narrowly circumscribed to legislative and investigative powers. Id. at 19. According to the Mayor, the City Council's "reading of the LRHL ignores the [Faulkner Act's] plain language and is inconsistent with the powers granted to the Council under the Faulkner Act." Ibid. Reading the LRHL and the Faulkner Act together, the Mayor argues that the Council has the power to create a redevelopment agency by ordinance. Id. at 20. However, the Local Authorities Fiscal Control Law, N.J.S.A. 40A:5A-4, imposes additional requirements for the

creation of a redevelopment agency: that the municipality must apply to the LFB for approval of the creation of a municipal redevelopment agency before the governing body may adopt an ordinance creating such agency. Id. at 20. But nowhere does the Local Authorities Fiscal Control Law expressly or impliedly authorize the Council to make the application to the LFB. Id. at 21. Thus, the Council is only empowered to adopt an ordinance creating a municipal redevelopment agency, after the LFB approves an application for the creation of the same, and any action taken by the Council beyond this exceeds the limited scope of the Council's redevelopment functions. Ibid. Additionally, the language of the LRHL clarifies that the Council may create the redevelopment agency, but that the redevelopment agency shall serve as an instrumentality of the "municipality" once it is created. Id. at 21-22. In other words, the LRHL does not provide that the "governing body" (i.e., municipal council) is empowered to create, direct and operate any redevelopment agency after its creation. Id. at 22. Pursuant to the division of functions under the Faulkner Act, "[t]he responsibility of the municipality and redevelopment agency under the LRHL to administer redevelopment plans and projects is assigned by law to the Mayor." Id. at 23. Thus, under the clear and unambiguous language of the relevant statutes, "the Council lacks a proper legal basis to prevail on its claims seeking to enjoin the Mayor from taking any action relating to redevelopment in the City." Ibid.

Further, the City Council "is unlikely to prevail on its requests to enjoin the Mayor from (1) objecting to the Council's command that the City's Bond Counsel prepare a redevelopment agency application, and (2) insisting that the Council deal with the Mayor's administration through him . . . [because] [t]o the contrary, both such actions by the Mayor are supported." Id. at 24. Defendant Mayor points to several authorities indicating the appointment of counsel, contact with employees of the administration, all actions and communications concerning the administration of government, and the provision of municipal services are required to be the mayor or the mayor's designee unless otherwise provided by law. Id. at 24-25. For all of these reasons, the Council does not have a reasonable probability of success on the merits of its application.

Moreover, the Council has not established a settled legal basis for its "unripe" claims for injunctive relief. Id. at 25. The Council principally seeks to restrain the Mayor from preventing attorneys or other professionals from assisting with a redevelopment agency application, preventing the Mayor's administration from providing information or assistance regarding redevelopment, taking any action intended to interfere with the Council's redevelopment efforts, or take any action relating to redevelopment outside of what the Council requests. Id. at 25-26. The Mayor contends that all of the restraints pertain to "actions that have not actually occurred, are not imminently occurring, and may not occur at all . . .

[meaning] the Council's claims . . . rest not [on] any settled legal bases, but [rather] on contingent future events . . . [which] are not ripe for adjudication." Id. at 26.

Finally, Defendant Mayor argues a balancing of the hardships weighs in favor of denying Plaintiff's application. The Council has not articulated any cognizable harm in the absence of an injunction. Id. at 28. However, issuance of an injunction would harm the Mayor and Trenton citizens because, not only would it broadly "destroy any balance of power in the City with respect to redevelopment and render meaningless the specific delineations of redevelopment authority under" state laws, but "it would impair any executive and administrative redevelopment efforts that the Administration has facilitated to date, to the detriment of the City's public." Ibid. Therefore, the balance of the hardships weighs in favor of Defendant Mayor.

In reply, Plaintiff City Council asserts that the arguments raised by Defendant Mayor were discussed and decided in previous litigation. First, the nature of injunctive relief requires a party to show a probability of success on the merits and it is expected that the preliminary relief sought will be the same as the ultimate relief. Reply Br. 2. Plaintiff reiterates that it ultimately seeks declaratory judgment and if the Mayor is successful on the merits the actions can be reversed. Id. at 3. Additionally, Plaintiff states that the legal authority cited by Defendant is faulty, distinguishable, and unpersuasive. Id. at 3-4. Second, Defendant Mayor is

blocking the Council's efforts and his objection goes beyond direct contact with his staff. Plaintiff asserts that Defendant Mayor "makes clear his opposition to Council's efforts and intent to prevent, wherever possible, any firm employee or agent of the City from assisting Council." Id. at 5. Plaintiff argues that irreparable harm exists because it maintains authority over redevelopment projects and the Mayor's actions create disorder in the development process. Id. at 5-6. Plaintiff states that the Mayor is judicially estopped from taking his position because he previously argued the same factors as the City Council here in a separate matter that involved redevelopment powers. Id. at 6. Moreover, Plaintiff contends there is irreparable harm because if the relief is not granted all redevelopment efforts will either cease or each branch will engage in its own contradictory efforts. Ibid.

Third, Plaintiff argues that the Mayor "implicitly acknowledged the validity of Ordinance 21-32 in a prior action before this Court." Id. at 7. It asserts that because Defendant Mayor did not contest the validity of Ordinance 21-32 during the pendency of MER-L-857-20, he has waived the ability to do so now. Plaintiff states that Ordinance 21-32 amends the Trenton City Code and attacking the validity of the Ordinance is an impermissible collateral attack and not properly before the Court. Id. at 8. It further argues that the City Council is the "governing body" under LRHL and by enacting Ordinance 21-32, the City Council "has chosen to assume the development responsibilities for itself and is this the City's

redevelopment entity." Id. at 9-10. Even if the Court accepts Defendant's argument that the instrumentality of the municipality controls redevelopment efforts, "the power of that redevelopment agency would still lie with the City Council as Trenton's governing body." Id. at 11. Plaintiff states that under the rules of statutory construction the Court must resolve any inconsistency in favor of the later-enacted LRHL, which grants the City Council the authority to establish a redevelopment agency. Id. at 12. Moreover, Defendant Mayor's interpretation of the Fiscal Control Law "neuters" its ability to create a redevelopment agency as proscribed by the LRHL and renders sections of the law meaningless. Id. at 12-13.

Finally, Plaintiff contends that the Mayor's objections to the City Council's efforts are not just "idle threats" and he is preventing the citizens of Trenton from receiving the benefits of redevelopment. Id. at 13-14. As an additional note, Plaintiff submitted a supplemental argument on May 15, 2022, which states that Defendant Mayor is not permitted to challenge Ordinance 21-32 because the time to do so has passed under Rule 4:69-6.

Plaintiff instituted this action and the present order to show cause (OTSC) under Rule 4:69. "Upon or after the filing of the complaint, the plaintiff may, by order to show cause or motion supported by affidavit, and with briefs, apply for ad interim relief by way of stay, restraint or otherwise as the interest of justice requires, which relief may be granted by the court with or without terms. When

necessary, temporary relief may be granted without notice in accordance with R. 4:52-1." R. 4:69-3. An OTSC is appropriate where a party is seeking any "form of emergent, temporary, interlocutory, or other form of interim relief," such as to stay a civil proceeding. Solondz v. Kornmehl, 317 N.J. Super. 16, 20 (1998) (citing R. 4:52-1 and -2); see Chalom v. Benesh, 234 N.J. Super. 248, 254 (Law Div. 1989). Usually, parties request an OTSC where (1) they seek "entry of an order requiring a party to show cause why a temporary restraint or an interlocutory injunction should not issue," and (2) at the commencement of an action "requir[ing] a defendant to show cause why final judgment should not be entered[,]" often referred to as a "summary action." Waste Mgmt. of New Jersey, Inc. v. Union Cty. Utilities Auth., 399 N.J. Super. 508, 516 (App. Div. 2008). An OTSC, however, may never be instituted for the entry of a permanent injunction. Ibid.; see also Solondz, 317 N.J. Super. at 20-21; Chalom, 234 N.J. Super. at 254 (criticizing an OTSC that provided for ex parte "instant, complete and final relief").

Defendant contends Plaintiff improperly filed an OTSC because the OTSC seeks the same exact relief in the complaint, which is permanent, final relief. This is incorrect. Rule 4:69-3 permits Plaintiff to seek interim relief pending final disposition of the action in lieu of prerogative writ. Here, the OTSC only seeks preliminary restraints on the Mayor and his administration, whereas the prayer for relief in the complaint also seeks permanent injunctive relief. The relief is not the

exact same as Defendant contends. Plaintiff properly applied to to this Court pursuant to Rule 4:69-3 to determine whether Defendant should be preliminarily enjoined from taking actions pending final disposition of the action in lieu of prerogative writ altogether.

In order to secure such extraordinary relief, Plaintiffs must demonstrate that (1) the injunctive relief is necessary to prevent irreparable harm; (2) the legal right underlying the Plaintiffs' claim is settled; (3) the material facts are uncontroverted and demonstrate a reasonable probability of ultimate success on the merits; and (4) the relative hardship to the parties favors granting the relief. Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982). "Each of these factors must be clearly and convincingly demonstrated," Waste Mgmt. of N.J., Inc. v. Union County Utils., 399 N.J. Super. 508, 520 (App. Div. 2008) (citations omitted). "Although it is generally understood that all the Crowe factors must weigh in favor of injunctive relief, a court may take a less rigid view than it would after a final hearing when the interlocutory injunction is merely designed to preserve the status quo." Ibid. (citing Gen. Elec. Co. v. Gem Vacuum Stores, Inc., 36 N.J. Super. 234, 236-37 (App. Div. 1955)). Further, a court must "exercise sound judicial discretion . . . which—when limited to preserving the status quo during the suit's pendency—may permit the court to place less emphasis on a particular Crowe factor if another greatly requires the issuance of the remedy." Ibid. (citations omitted). Where the

case "presents an issue of 'significant public importance,'" the court must "consider the public interest in addition to the traditional Crowe factors." Garden State Equality v. Dow, 216 N.J. 314, 321 (2013) (citing McNeil v. Legis. Apportionment Comm'n, 176 N.J. 484, 486 (2003) (LaVecchia, J., dissenting)); accord Election Law Enf't Comm'n v. DiVincenzo, 445 N.J. Super. 187, 196 (App. Div. 2016).

Plaintiff fails to establish by clear and convincing evidence that it satisfies any of the Crowe factors and the Court therefore denies its application for preliminary restraints.

Plaintiff must first prove by clear and convincing evidence that it will be irreparably harmed in the absence of an injunction, and that the harm is imminent, concrete, and non-speculative. Subcarrier Commc'ns., Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). The likelihood that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm. Delaware River & Bay Auth. v. York Hunter Constr., 344 N.J. Super. 361, 365 (Ch. Div. 2001) (citing Sampson v. Murray, 415 U.S. 61, 90 (1974)). "The availability of adequate monetary damages belies a claim of irreparable injury." Id. at 364-65. "In other words, plaintiff must have no adequate remedy at law." Subcarrier Commc'ns. Inc., 299 N.J. Super. at 638.

Here, Plaintiff fails to establish irreparable harm. Plaintiff seeks to establish a Redevelopment Agency but fails to demonstrate to this Court that preliminary injunctive relief is necessary. Under the status quo, neither party is capable of effectuating Plaintiff's desired outcome without the support of the other. Critically, Plaintiff neglects to show how a future declaratory judgment in its favor would fail to provide the relief it currently seeks. Injunctive relief aims to preserve the status quo during the pendency of the litigation, see Waste Mgmt. of New Jersey, Inc. v. Union Cty. Utilities Auth., 399 N.J. Super. 508, 519-20 (App. Div. 2008), and the status quo at this juncture is stalemate. Moreover, the LFB meets monthly to review applications, and Plaintiff fails to establish how irreparable harm will occur by waiting additional application cycles. The City Council fails to explain how any delay or inconvenience in presenting a redevelopment agency application to the LFB threatens immediate and irreparable harm. Additionally, without prejudice to any parties' arguments to the contrary, this matter does not seem likely to require discovery and may very well be suitable for prompt and dispositive motion practice.

Additionally, the City Council seeks to restrain the Mayor from speculative future conduct, which is not clearly and convincingly irreparable harm. The City Council seeks to restrain the Mayor from preventing attorneys or other professionals from assisting with a redevelopment agency application, preventing

the Mayor's administration from providing information or assistance regarding redevelopment, taking any action intended to interfere with the Council's redevelopment efforts, or take any action relating to redevelopment outside of what the Council requests. All of those restraints pertain to actions that have not actually occurred, and Plaintiff has not produced clear and convincing evidence that such interference by the Mayor will imminently occur. Nothing in the emails or in the Mayor's veto letter objecting to Ordinance 21-32 indicates the Mayor will serve as an obstacle to the Council's responsibilities and functions. Therefore, Plaintiff has not established irreparable harm by clear and convincing evidence.

Second, preliminary injunctive relief such as a temporary restraint should only be granted when the issues raised present a legally settled right. Crowe, 90 N.J. at 133 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 304-05 (E. & A. 1878)). The third factor requires the applicant must demonstrate a reasonable likelihood of success on the merits. Crowe, 90 N.J. at 133. This fact-sensitive analysis "requires a determination of whether the material facts are in dispute and whether the applicable law is settled." Waste Mgmt., 399 N.J. Super. at 528 (citations omitted). In the context of a preliminary injunction:

> doubt about a suit's merits does not entirely preclude the entry of an interlocutory injunction designed to preserve the status quo. So long as there is some merit to the claim, a court may consider the extent to which the movant would be irreparably injured in the absence of pendente lite relief,

> and compare that potential harm to the relative hardship to be suffered by the opponent if an injunction preserving the status quo were to be entered. If these factors strongly favor injunctive relief, the status quo may be preserved through injunctive relief even though the claim on the merits is uncertain or attended with difficulties.
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> [Id. at 535 (citation omitted).]

"Indeed, the point of temporary relief is to maintain the parties in substantially the same condition 'when the final decree is entered as they were when the litigation began.'" Crowe, 90 N.J. at 134 (citing Peters v. Public Service Corp. of N.J., 132 N.J. Eq. 500 (Ch.1942)).

The parties ultimately dispute the allocation authorities over redevelopment between the Council and the Mayor and the extent of that division of power concerning the the particular task of completing and submitting an application to create a redevelopment agency to the LFB. "When interpreting an enabling statute or any other law, a court's obligation is to determine and give effect to the Legislature's intent." N.J. Ass'n of Sch. Adm'rs v. Schundler, 211 N.J. 535, 549 (2012) (citing Allen v. V & A Bros., Inc., 208 N.J. 114, 127 (2011)). Courts must first look to the plain language of the statute. Ibid. (citing DiProspero v. Penn, 183 N.J. 477, 493 (2005)). If the plain language is clear, that is the end of the matter. Ibid. (citing In re Young, 202 N.J. 50, 63 (2010)). If the language is ambiguous, a court may look to extrinsic evidence for guidance. Ibid. (citing Burnett v. Cnty. of

Bergen, 198 N.J. 408, 421 (2009)). Where two possible interpretations exist, the court should adopt the construction that will uphold the law. Adams Newark Theatre Co. v. Newark, 22 N.J. 472, 478 (1956). Municipal ordinances are construed in the same ways as statutes. See Guill v. Hoboken, 21 N.J. 574, 581-582 (1956).

Trenton adopted the mayor-council plan of municipal government under the Faulkner Act. See N.J.S.A. 40:69A-31 to -67.2. Importantly, the Faulkner Act provides:

> For the purpose of the construction of all other applicable statutes, unless the explicit terms and context of the statute require a contrary construction, any administrative or executive functions assigned by general law to the governing body shall be exercised by the mayor, and any legislative and investigative functions assigned by general law to the governing body shall be exercised by the council. Those functions shall be exercised pursuant to the procedures set forth in this plan of government, unless other procedures are required by the specific terms of the general law.
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> [N.J.S.A. 40:69A-32(b); accord Redd v. Bowman, 223 N.J. 87, 97 (2015).]

Thus, the plain language of the Faulkner Act provides the default division of municipal powers, unless the explicit terms and context of another statute requires a different division of powers. See N.J.S.A. 40:69A-32(b); accord Lawrence v. Butcher, 130 N.J. Super. 209, 212 (App. Div. 1974) (citing Kingsley v. Wes

Outdoor Advert. Co., 55 N.J. 336, 339 (1970)) (stating "the well recognized principle of statutory construction that the provisions of a specific statute will prevail over a general statute").

The LRHL governs in part the redevelopment functions of a municipality. Under the LRHL, a "municipal governing body" is authorized to make preliminary investigations and determine that an area is in need of redevelopment, to adopt a redevelopment plan, N.J.S.A. 40A:12A-4(a), and to create a redevelopment agency by ordinance and pursuant to the Local Authorities Fiscal Control Law, N.J.S.A. 40A:12A-11. The LRHL defines a "governing body" as "the body exercising general legislative powers in a county or municipality according to the terms and procedural requirements set forth in the form of government adopted by the county or municipality." N.J.S.A. 40A:12A-3 (emphasis added). Thus, the LRHL authorizes the legislative body of a municipality to investigate and determine an area is in need of redevelopment, adopt a redevelopment plan, and "create" a redevelopment agency by ordinance and pursuant to the Local Authorities Fiscal Control Law.

The Local Authorities Fiscal Control Law ("LAFCL") imposes certain requirements for "creating" a local redevelopment authority. See N.J.S.A. 40A:5A-4. Importantly, the LAFCL requires that "no authority shall be created by any local unit … without the prior approval of the Local Finance Board." N.J.S.A.

40A:5A-4. "Prior to the introduction of an ordinance or the adoption of a resolution to create an authority, the local unit … proposing this creation shall make application to the Local Finance Board for its approval." Ibid. The LAFCL defines "local unit" to mean "a county or municipality which created . . . or which proposes to create . . . [a local] authority." N.J.S.A. 40A:5A-3e. The plain language of N.J.S.A. 40A:5A-4 thus requires a municipality to first apply to the LFB and obtain its approval to create a local redevelopment authority before an ordinance is introduced or a resolution is adopted by the municipal council to create the local redevelopment authority.

While the material facts are uncontroverted, Plaintiff does not establish a well-settled legal right. The parties dispute what it means to for a "municipality" to "create" a local redevelopment authority. The laws cited above offer several interpretations; in fact, the parties each offer differing interpretations. The Council argues that it is responsible for filling out the application and may request information required for the application directly from executive officials without going through the Mayor. On the other hand, the Mayor contends that filling out and submitting the application is implementation of the Council's legislative purposes and falls within the executive's control. The Mayor also argues that even if the City Council can fill out and submit the application, that it must go through the Mayor to request any required information necessary to complete the

application. Another interpretation of the statutes is that both the Council and the Mayor work together to fill out and submit the application. Given the differing interpretations of what it means for a municipality to create a local redevelopment agency under the Faulkner Act, LRHL and LAFCL when read together, it becomes more apparent that Plaintiff's legal rights are unsettled, and Plaintiff cannot clearly and convincingly show a reasonable probability of ultimate success on the merits of its claims.

Finally, the fourth Crowe element requires the court to consider "the relative hardships to the parties in granting or denying relief." 90 N.J. at 134. The court must take into consideration the public interest and status quo. "[I]n some cases, such as when the public interest is greatly affected, a court may withhold relief despite a substantial showing of irreparable injury to the applicant." Waste Mgmt., 399 N.J. Super. at 520-21 (citing Yakus v. United States, 321 U.S. 414, 440 (1944). Courts generally take a less rigid view of the Crowe factors if a stay is designed to preserve the status quo and issued in furtherance of the public interest. Ibid. In the exercise of its equitable powers, the court "may, and frequently do[es], go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." Waste Mgmt. of N.J., Inc. v. Union Cty. Utils. Auth., 399 N.J. Super. 508, 520-21 (App. Div. 2008) (citing Yakus, 321 U.S. at 441).

Plaintiff contends that without temporary restraints it will be unable to exercise its statutory authority and create a Redevelopment Agency. Plaintiff fails to demonstrate that the alleged hardship weighs in favor of granting relief. Plaintiff can apply to the LFB if it receives a favorable outcome in the future. The denial of preliminary injunctive relief does not prohibit Plaintiff from obtaining the relief it seeks.

Because Plaintiff cannot clearly and convincingly establish any of the Crowe factors, the Court denies Plaintiff's application for preliminary restraints.