

MEMORANDUM

FROM: Peter Brent Regan, Town Solicitor  
TO: Middletown Town Council  
CC: Town Administrator, Shawn J. Brown  
RE: Applying Owner Occupied Tax Rate to Long Term Residential Rental Properties  
DATE: October 1, 2024

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At the September 3, 2024 Town Council meeting, I was directed to explore an ordinance whereby Middletown taxpayers who rent their rental property on a year round basis would be entitled to the owner occupied tax rate on such property. The intent of such an ordinance would be to incentivize landlords to consider renting long term and to “create more year round rentals at a more affordable rate”.

In 2022, the Town amended its Tax Classification ordinance in Section 34.70 of the Town Code to split the Residential Real Estate Class into (a) owner-occupied and (b) non-owner-occupied properties, with separate tax rates for each category. That amendment was based on the authority in RIGL § 44-5-11.8(b)(1)(ii), which provides that “[I]n lieu of a homestead exemption, any city or town may divide this class into non-owner and owner-occupied property and adopt separate tax rates in compliance with the within tax rate restrictions.” That system is currently in effect for the 2024-2025 tax year.

Because state law authorizes municipalities to split the Residential Class into “non-owner” and “owner-occupied” categories, and because a property which is occupied by tenants is not an “owner occupied” property, it is my opinion that the Town cannot enact the proposed ordinance without enabling legislation being passed by the General Assembly. The City of Newport had such legislation enacted in 2022.

RIGL § 44-5-76.1(b) provides as follows:

“In lieu of the city of Newport adopting a homestead exemption authorized by ordinances enacted pursuant to § 44-5-78, the city of Newport may divide the residential real estate in Class Two of this section, into non-owner occupied and owner-occupied properties and adopt separate tax rates in compliance with the restrictions set forth in § 44-5-76.2. The city of Newport, by ordinance or resolution, shall provide rules and regulations, including, but not limited to, governing the division and definition of non-owner and owner-occupied properties.”

In particular, that statute authorized the City to enact rules and regulations governing the division and definition of non-owner and owner-occupied properties. Pursuant to that authority,

the City subsequently added the following language to subsection 4.08.120.A(2)(c)(6) of its Tax Classification ordinance:

“An applicant who is an owner of residential real estate with less than four units may qualify for an owner-occupied residential rate for the subject property if, at the time of application, they rent, and will continue to rent during the then eligibility period, all dwelling units at the subject property to tenants pursuant to a written lease for one year or longer and the dwelling units rented are the principal residences of the tenants of the same. *If the applicant who is the owner of residential real estate with less than four units occupies one of the dwelling units as their principal residence, the applicant may qualify for an owner-occupied residential rate for the subject property if all of the other dwelling units at the subject property are rented at the time of application, and will continue to be rented during the then eligibility period, as the principal residence of tenants pursuant to a written lease of one year or longer.* However, an owner of residential real estate with two units who is a resident and occupies one of the units as their principal residence who does not rent out the second unit but uses it for their own personal use, may qualify for the owner-occupied residential rate if they certify under oath that they will not rent or offer to rent the second unit during any period of time they qualify for and are granted the owner-occupied rate.” (emphasis added).

Subject to certain restrictions, this language allows a taxpayer who rents residential property on a year round basis to have that property taxed at the “owner occupied” rate. If the Council so directs, we can draft enabling legislation for submission to the General Assembly, as well as an amendment to the Town’s Tax Classification ordinance, which would accomplish the same result in Middletown. However, please note that any such ordinance would not be effective until the 2025-2026 tax year.