

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-14

Approved: April 9, 2024

Re: Neal Murphy

QUESTION PRESENTED:

The Petitioner, a member of the New Shoreham Town Council, a municipal elected position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in Town Council discussions and voting regarding a proposed ordinance regulating residential short-term rental properties, given that his mother is a short-term rental property owner who would be subject to the ordinance if it passes.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the New Shoreham Town Council, a municipal elected position, is not prohibited by the Code of Ethics from participating in Town Council discussions and voting regarding a proposed ordinance regulating residential short-term rental properties, notwithstanding that his mother is a short-term rental property owner who would be subject to the ordinance if it passes, given that the circumstances herein justify the application of the class exception set forth in R.I. Gen. Laws § 36-14-7(b).

The Petitioner is a member of the New Shoreham Town Council, having been elected to that position in November 2022. He states that the Town Council is preparing to vote on whether to pass an ordinance regulating residential short-term rental properties in the town.¹ The ordinance, which would apply equally to all residential short-term property owners, includes sections addressing the following: registration and inspection of dwelling units; occupancy location, limits, and other requirements; obligations of both short-term rental property owners and renters; the designation of a local representative who is authorized by the owner to, among other things, respond to renter and neighborhood questions or concerns; and the penalty for violations of the ordinance. The Petitioner represents that the fee for registration of each dwelling unit would be set by the Town Council. The Petitioner further represents that, although the amount of the registration fee does not appear in the ordinance, it is likely to be a flat fee of \$250 for all owners of short-term rental properties, of which the Petitioner estimates there are 1,000.

The ordinance states that it shall apply to all rental dwelling units within the town, with the exception of the following: (1) hotels and rooming houses; (2) group homes, community residences and family day care homes; and (3) licensed rental rooms. The Petitioner states that

¹ The Petitioner included a copy of the proposed ordinance with his letter requesting this advisory opinion.

the goal of the ordinance is to provide town officials with a more accurate count of the number of short-term rental properties in the town, including those without realtor involvement; ensure that building safety codes are in place for all short-term rental properties; and to make certain that short-term rental property owners are paying the 1% mandatory annual rental tax that was approved by the General Assembly in 2004. The Petitioner explains that the town currently has no formal way of knowing who is collecting rental income, because rental income disclosure has been left to the discretion of owners. He adds that the town has relied on the honor system for the submission by short-term rental property owners of the 1% mandatory annual rental tax.

The Petitioner states that, in his private capacity, he owns and operates an inn in town. He further states that the inn is open year-round and has ten rooms available to guests. The Petitioner represents that the town's "bed and breakfasts" and inns are specifically excluded from the subject ordinance because they fall under the category of "hotels and rooming houses" which are already subject to registration and regulation. The Petitioner states that his mother owns a house in the town that was purchased in the 1960s. He further states that his mother has rented her house during the same four to five weeks in June and July every year for approximately the last twenty years and plans to continue to do so. The Petitioner adds that his mother does not use a realtor or reservation platform because she rents to the same families every year. The Petitioner states that his mother owns one of the approximately 1,000 short-term rental properties whose owners would be subject to the ordinance if it passes.

The Petitioner represents that the ordinance will soon come before the Town Council for a vote. He further represents that when it does, there will be no discussion about potential revisions to the ordinance, but only a vote taken on whether it should pass in its current form. He states that he would like to participate in the upcoming vote on whether to pass the ordinance.² It is under this set of facts that the Petitioner seeks guidance from the Ethics Commission regarding whether he may do so.

A person subject to the Code of Ethics may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest occurs if a public official has reason to believe or expect that he, any person within his family, his business associate, or any business by which he is employed or which he represents, will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. R.I. Gen. Laws § 36-14-7(a). Additionally, § 36-14-5(d) prohibits a public official from using his position, or confidential information received through his position, to obtain financial gain, other than that provided by law, for himself, any person within his family, his business associate, or a business by which he is employed or which he represents.

² The Petitioner has recused from participation in discussions and decision-making about the proposed ordinance since his telephone conversation with Ethics Commission staff in September 2023. During that telephone conversation, it became clear that the Petitioner had a potential conflict of interest because his mother is the owner of a residential short-term rental property who would be subject to the ordinance if it passes. Without a proposed draft of the ordinance available last September, no analysis could be performed which might have led to an opinion that the class exception applied to allow the Petitioner's participation.

Section 36-14-7(b) of the Code of Ethics, often referred to as the “class exception,” states that a public official will not have an interest which is in substantial conflict with the proper discharge of his official duties if any benefit or detriment accrues to any person within his family “as a member of a business, profession, occupation or group, or of any significant and definable class of persons within the business, profession, occupation or group, to no greater extent than any other similarly situated member of the business, profession, occupation or group, or of the significant and definable class of persons within the business, profession, occupation or group.”

When determining whether particular circumstances justify the application of the class exception, the Ethics Commission considers the totality of those circumstances. Among the important factors to be considered are: 1) the description of the class; 2) the size of the class; 3) the function or official action being contemplated by the public official; and 4) the nature and degree of foreseeable impact upon the class and its individual members as a result of the official action.

The Ethics Commission has previously applied the class exception in a variety of circumstances involving elected officials who were concerned with their ability to participate in discussions and voting on ordinances, legislation, and regulations. For example, in Advisory Opinion 2016-27, the Ethics Commission opined that a member of the Jamestown Town Council could participate in discussions and voting relative to a proposed ordinance that would require residential landlords in Jamestown to file an emergency contact form; complete an annual filing; disclose contact information; potentially pay a filing fee; and face penalties for noncompliance, notwithstanding that the petitioner owned rental property that would be subject to the proposed ordinance. That petitioner owned one of 500 residential rental properties located in Jamestown to which the ordinance would apply equally. See also A.O. 2023-26 (applying the class exception to allow a state representative to participate in General Assembly discussions and voting on proposed legislation that would limit the renewal fee for a pharmacist license to \$250 biennially, notwithstanding that the petitioner was a pharmacist who would be impacted by the legislation, because the class of persons who would be impacted by the legislation, if passed, included all pharmacists seeking renewal of the Rhode Island license, the total number of which was estimated to be between 1,000 and 2,000); A.O. 2018-26 (applying the class exception to allow a member of the Westerly Town Council to participate in discussions and voting relative to the town’s Harbor Management Plan’s mooring regulations imposing a flat yearly mooring rate to all owners, notwithstanding that the petitioner’s spouse owned property with mooring rights, because the financial impact upon the petitioner’s spouse would be the same as that upon the other approximately 700 waterfront property owners with mooring rights).

Here, the class includes all owners of the approximately 1,000 residential short-term rental properties in New Shoreham. The official action being contemplated is the Petitioner’s participation in the discussion and vote on an ordinance which would directly financially impact his mother to no greater extent than any other individual member of the class. The Petitioner represents that the registration fee would likely be \$250 for all property owners. He also states that the ordinance would allow town officials to make certain that all residential short-term rental property owners are paying the 1% mandatory annual rental tax. Accordingly, it is the opinion of the Ethics Commission that the specific facts of this case justify the application of the class exception set forth in § 36-14-7(b) of the Code of Ethics and that the Petitioner may participate in the discussions and voting on the subject ordinance. However, in the unlikely event that the Town

Council's discussions veer into revision of the ordinance in ways that would impact the Petitioner's mother individually, or as a member of a much smaller class or subclass of residential short-term rental property owners, the Petitioner must either recuse from participation or seek additional guidance from the Ethics Commission. Any recusals shall be made consistent with the provisions of R.I. Gen. Laws § 36-14-6.

This Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

§ 36-14-7(b)

Related Advisory Opinions:

A.O. 2023-26

A.O. 2018-26

A.O. 2016-27

Keywords:

Class Exception

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ETHICS COMMISSION
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Sent: Wednesday, March 27, 2024 3:28 PM
To: Radiches, Lynne (ETHICS) <Lynne.Radiches@ethics.ri.gov>
Subject: FW: Short-term Rental

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Lynn – I hope you are well. The Council finally landed on a finalized version of the Short Term Rental Ordinance. I have not been involved in any discussions after discussing with you at the end of 2023.

I would like to get a formal review/decision on my preference to be involved in the vote on this. The items that we discussed was the following:

1. I own an Inn, which is open year round and I have 10 rooms. B&B/Inn’s have their own category and require several licenses that are separate from this ordinance, without overlap. – Your unofficial thoughts were that this was not a conflict but until we had the “final” version of the ordinance nothing could be formally reviewed..
2. My mother owns a house on Block Island, which was purchased in the late 60’s. We have rented the same 4/5 weeks in June/July for about 20 years and plan to continue going forward. We do not use a relator nor a reservation platform as we rent to the same people every year.

If you could make some time over the next several weeks to discuss so that we can get a formal review and decision.

Cheers,
Neal

CHAPTER 8: RESIDENTIAL SHORT-TERM RENTALS

§ 8-320. LEGISLATIVE FINDINGS AND INTENT.

The Town Council of the Town of New Shoreham, Rhode Island hereby finds:

- (a) The Constitution of the State of Rhode Island, Article XIII, Section 2, grants to the Town of New Shoreham the power to “enact and amend local laws relating to its property, affairs and government” as long as such local laws are consistent with the Constitution and laws enacted by the General Assembly. This delegation of power includes the police power to enact reasonable legislation to regulate and supervise rental dwelling units in order to protect the public health, safety, and welfare.
- (b) Short-term rentals are the rental, lease, or other contractual arrangement for the occupation or use of a dwelling unit for a term of thirty (30) days or less. Short-term rentals, if properly regulated, can bring benefits to the community, including benefitting the local economy, providing supplemental income to property owners, providing safe and quality rental units to visitors, and improving the available housing stock.
- (c) Simultaneously, short-term rentals, if unregulated, can have negative impacts on the community. Some short-term rentals have been a source of noise, congestion, pollution, and disorderly behavior involving renters and other persons on and near the premises, as well as violations of Town ordinances, including zoning and noise ordinances, and violations of state law. Difficulty contacting owners of short-term rentals, renters exceeding the safe capacity of dwelling units, and excessive amounts of vehicles at short-term rental properties further negatively impact the community. Moreover, shorter rental stays, frequent turnover between renters, and large groups of renters are particularly disturbing in residential neighborhoods. These impacts are harmful to the public health, safety, and welfare.
- (d) By adopting the regulations contained in this chapter, short-term rentals can have a positive effect on the health, safety, and welfare of the community. These regulations will mitigate the disruptive effects that unregulated short-term rentals can have on neighborhoods and the community as a whole, providing a flexible year-round housing stock that allows travelers safe accommodations while contributing to the local economy, and ensuring reasonable regulation of noise, congestion, pollution, disorderly behavior, and other violations of law.

§ 8-321. DEFINITIONS.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

BEDROOM. Any room in a residential structure which is greater than 70 square feet in area, which is susceptible to present or future use as a private sleeping area and which satisfies all of the following requirements: (1) Has at least one window that meets the 4.4

square foot minimum size and all other requirements of the "Rhode Island State Building Code SBC-1 or SBC-2"; (2) Has at least one interior method of entry and egress, excluding closets and bathrooms, allowing the room to be closed off from the remainder of the residence for privacy; and (3) Is a living space that is unrestricted for year-round use. Rooms located below grade that are not recognized as bedrooms by the "Rhode Island State Building Code SBC-1 or SBC-2" are not recognized as bedrooms under this ordinance. Further, see § 8-326(b) for the calculation of a dwelling unit's number of bedrooms.

DWELLING UNIT. A structure or portion thereof providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, and containing a separate means of ingress and egress.

LOCAL REPRESENTATIVE. A person designated on a Registration Form filed under this chapter as the person authorized to receive any process, notice, or demand required or permitted to be served upon the owner of the premises. Said individual shall be physically present in New Shoreham during short-term rental periods, or be a property manager with a physically staffed office in New Shoreham.

REGISTRAR. The Town of New Shoreham Zoning Official or his/her designee.

RENTER. Any and all individuals occupying a dwelling unit under the terms of a short-term rental arrangement, including any and all guests of renters.

SHORT-TERM RENTAL. The rental, lease, or other contractual arrangement for the occupation or use of a dwelling unit for a term of thirty (30) days or less.

§ 8-322.APPLICABILITY.

The provisions of this chapter shall apply to all rental dwelling units within the Town of New Shoreham except (1) hotels and rooming houses, (2) group homes, community residences, and family day care homes, and (3) licensed Rental Rooms (*see* Town Zoning Ordinance § 509).

§ 8-323.REGISTRATION AND INSPECTION.

- (a) All dwelling units which are let, leased, rented, or otherwise occupied, in whole or in part, by a renter for rental and/or dwelling purposes for a period of thirty (30) days or less under a short-term rental shall be registered by the owner with the Registrar before any renter occupies the premises.
- (b) Each dwelling unit shall be registered annually.
- (c) On or before December 31st of each year, the owner of the dwelling unit shall file a completed Registration Form with the Registrar, along with the filing fee. Registrations, once issued, shall be valid for a one-year period from January 1st to December 31st of the following year. If the dwelling unit is registered during the calendar year, the registration shall be valid until December 31st of that same year.

- (d) The Registrar shall only accept completed Registration Forms, containing all of the information required by § 8-324 and, if required, § 8-326.
- (e) Upon registration, the dwelling unit shall be subject to inspection by the Zoning Official and/or Fire Chief, or their designees. The occurrence of inspections shall be within the discretion of said officials. The purpose of inspections is to determine the occupancy limit of the dwelling unit pursuant to § 8-326 of this chapter and to determine if smoke and carbon monoxide/dioxide detectors are installed.
- (f) Upon registration, the Registrar shall issue a “Registration Number” to the owner for inclusion in all public rental postings (i.e.: AirBnB, VRBO, rental websites, advertisements, etc.) for the dwelling unit.

§ 8-324.REGISTRATION FORM.

The Registration Form shall contain the following:

- (a) Street address of the dwelling unit, including plat and lot number, and fire number;
- (b) Total number of bedrooms within the dwelling unit (calculated according to § 8-326);
- (c) Occupancy limit of the dwelling unit (calculated according to § 8-326);
- (d) Name, mailing address, and telephone number of the owner;
- (e) Name, mailing address, and telephone number of the local representative (if different from the owner); and
- (f) Certification by the owner that the dwelling unit (1) is equipped with smoke and carbon monoxide/dioxide detectors, (2) has adequate parking available, and (3) all rental housing taxes for the dwelling unit have been paid.

§ 8-325.FEE.

The fee for registration of each dwelling unit under this chapter shall be set by the town council and kept on file with the town clerk. Said fee shall not be pro-rated for registrations during the calendar year. Said fee is necessary to offset the cost of implementing and overseeing compliance with this chapter.

§ 8-326.OCCUPANCY LOCATION, LIMITS, AND OTHER REQUIREMENTS.

- (a) Short-term rentals are only permitted in a dwelling unit, or a portion thereof, by renter(s) or occupant(s) for residential purposes. No provision in this chapter shall be construed as permitting short-term rentals where said rental is prohibited by zoning ordinance or other applicable law.

- (b) The maximum occupancy for the dwelling unit shall be two (2) persons per bedroom. The number of bedrooms shall not exceed the number of bedrooms supported by the design load of the property's septic system (on-site wastewater treatment system, or "OWTS"), if any. If requested by the Registrar, the owner shall provide records and/or information that the Registrar deems reasonably sufficient to determine the number of bedrooms and the number of bedrooms for which the OWTS is rated. For the purpose of calculating occupancy, a person is defined as an individual who is at least three (3) years of age.

§ 8-327.OWNER'S OBLIGATIONS.

- (a) Notice to Renters. All short-term rental agreements shall state that the renter may be held legally responsible for any violations of law committed by the renter or by other occupants or guests while at the premises, including violations of the laws and ordinances pertaining to noise, disorderly conduct, disturbance of the peace, appropriately managing pets, parking, and dwelling occupancy limits.
- (b) Renter's Information. The owner and/or local representative shall obtain accurate and up-to-date information, including the names, home addresses, and phone numbers of the renters, the date of the rental period, and the model, year, color and vehicle registration of all motor vehicles used by such renters. The owner and/or local representative shall maintain this information throughout the term of the short-term rental and for ninety (90) days thereafter, and shall make this information available to Town officials who are lawfully investigating or prosecuting any offense reasonably believed to involve one or more of the renters.
- (c) Posting of Information. The owner shall post, in plain view and in a conspicuous place within the dwelling unit, a notice, in a form to be compiled by the Town and made available upon request by the Office of the Registrar, containing:
- a. A web address where relevant information, as determined by the town council, may be posed online, including, relevant ordinances related to short-term rentals, noise, parking, open containers, and dog restraints;
 - b. The maximum number of occupants permitted to stay in the dwelling unit and notice that failure to conform to the occupancy limit is a violation of this chapter and is subject to a fine of up to \$ 200.00 per day;
 - c. The street address of the dwelling unit;
 - d. The fire number, which shall also be posted in a conspicuous place outside of the dwelling unit;
 - e. The number of and location of smoke and carbon monoxide/dioxide detectors;
 - f. The name and telephone number of the local representative or owner; and

g. The telephone number for the New Shoreham Police Department.

- (d) Public Rental Postings. A valid Registration Number shall be included in all public rental postings (i.e.: AirBnB, VRBO, rental websites, other rental advertisements, etc.) for the dwelling unit. Further, said public rental posting shall not advertise occupant capacity beyond that permitted by this chapter.

§ 8-328. RENTERS' OBLIGATIONS.

Renters under a short-term rental, may be held legally responsible, subject to the penalties contained in §8-330, for any violations of law committed by the renter or the renter's guests while at the premises, including violations of any provisions of this chapter and/or any applicable town ordinance or state law.

§ 8-329. LOCAL REPRESENTATIVE.

- (a) The owner shall designate on the Registration Form an individual who shall be physically present in New Shoreham during short-term rental periods, or a property manager with a physically staffed office in New Shoreham, as the owner's local representative, who shall be authorized to receive any process, notice, or demand required or permitted to be served upon the owner of the premises. The owner may be designated as the local representative, if he or she is physically present in New Shoreham during short-term rental periods.
- (b) The local representative must be authorized by the owner to respond to renter and neighborhood questions or concerns. The local representative shall serve as the initial contact person if there are questions or complaints regarding the use of the dwelling for short-term rentals. The local representative shall respond to inquiries from town officials, including, but not limited to the police department, promptly, but in no event longer than two (2) hours from the time of inquiry, to ensure that the use of the dwelling unit complies with the requirements of this chapter, as well as all other town ordinances and state laws.
- (c) The failure of the local representative to respond to inquiries from town officials promptly (as set forth in subsection "b") more than once during the term of the annual registration shall be considered a violation of this chapter.
- (d) The owner may change the designation of the local representative from time to time by filing an amended Registration Form including the name, address, and telephone number of the new local representative. Failure to notify the town of any change in the local representative shall constitute a violation of this chapter.

§ 8-330. ENFORCEMENT; PENALTY FOR VIOLATIONS.

- (a) Violation of any provision of this chapter shall constitute a violation subject to the penalties in this section.

- (b) Violations shall be enforceable through issuance of a citation by either the police department or the zoning official. Citations may be served in person, by regular mail, postage prepaid, or by electronic mail to the owner or local representative.
- (c) The owner, renters, and/or renter's guests shall be liable for compliance with this chapter, including, but not limited to, rental term limits, occupancy limits, and other requirements.
- (d) Violations shall be heard and adjudicated by the Town of New Shoreham Warden's Court.
- (e) Any violation of the provisions of this chapter shall be subject to a fine of not more than \$200.00 per day for each day the violation continues.

§ 8-331.IMPLEMENTATION.

This chapter shall take effect upon passage, provided, however, that enforcement of violations shall be stayed until January 1, 2025.