



New Jersey Libertarian Party

Open Government Advocacy Project

John Paff, Chairman

P.O. Box 5424

Somerset, NJ 08875-5424

Phone: 732-873-1251 - Fax: 908-325-0129

Email: lpsmc@pobox.com

June 22, 2009

Hon. Karen McCoy Oliver, Mayor and members of the
Hillside Township Council
Liberty & Hillside Ave
Hillside, NJ 07205

(via fax to 973-926-9232)

Dear Mayor and Council Members:

I write both individually and in my capacity as Chair of the New Jersey Libertarian Party's Open Government Advocacy Project to express my concern over the fact that the Hillside Township has yet to implement Ordinance O-08-025. As you are aware, this ordinance, which was enacted on September 8, 2008 and took effect in January 2009, requires the Township government to take certain actions to foster openness and transparency.

Please consider this letter notice that unless the Township immediately complies with the Ordinance, I will file suit in Superior Court to require compliance. Note that ¶ 14 of the Ordinance obligates the Township to pay my costs and attorney fees if I prevail.

I specifically ask that the Council discuss this matter either at tonight's caucus meeting or tomorrow night's regular meeting. Since this is "anticipated litigation" it would be appropriate to discuss it in closed session. It is my hope that the Township is willing to comply without need for litigation.

Please promptly inform me of what the Council plans to do to bring itself into compliance with its Ordinance. If I don't hear from you within the next ten days, I will file suit without further notice.

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,

John Paff

HILLSIDE TOWNSHIP
MUNICIPAL BUILDING
1409 LIBERTY AVENUE
HILLSIDE, NEW JERSEY 07205

Christine C. Burgess
Township Attorney
July 1, 2009

VIA TELECOPIER
(908) 325-0129
Mr. John Paff
New Jersey Libertarian Party
P.O. Box 5424
Somerset, New Jersey 08875-5424

Dear Mr. Paff:

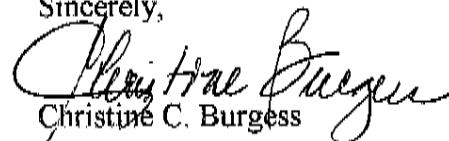
I have reviewed your letter dated June 22, 2009. Please be advised that the Township Council took further action on the issue you raised and at its regular meeting on June 23, 2009 undertook a first reading of the enclosed Ordinance Number 0-09-022.

Furthermore, at its reorganization of government meeting held this evening, the Township Council voted to appoint Councilperson Shelley Ann Bate to head the committee implementing the new procedures.

If you have any additional questions with respect to this Ordinance, please do not hesitate to contact me or Councilperson Bate.

In addition, the Township Clerk has informed me that she has responded to your request for documents in correspondence advising you that the documents you have requested are copied and informing you of the requisite charges for same.

Sincerely,


Christine C. Burgess

Enclosure
cc: Ms. Shelley Ann Bate

**TOWNSHIP OF HILLSIDE
COUNTY OF UNION, STATE OF NEW JERSEY**

Ordinance Number -0-09-022

**AN ORDINANCE AMENDING CHAPTER 4, ARTICLE II, §4-3.31
"OPEN PUBLIC MEETINGS AND OPEN PUBLIC RECORDS", ¶ N
"EFFECTIVE DATE AND SCOPE."**

WHEREAS, given the strains upon the Federal, State and Local Governmental agencies during the continuing global financial and economic crises, the Township Council recognizes the serious fiscal constraints under which it must operate in order to responsibly discharge its duties; and

WHEREAS, it has become clear that the expected implementation of this unprecedented Ordinance 0-08-025, also referred to as the Open Public Meetings and Open Public Records ordinance, will require the expenditure of substantial sums of money by the Township; and

WHEREAS, further delaying the implementation of the Ordinance beyond May 2009 will enable the Township representatives, including the incoming Mayor, to provide input into and to further evaluate the manner and timing in which the various components of the Ordinance are to be financed and implemented so as to ensure that the Township is not overburdened with unreasonable, irresponsible or unanticipated costs in the next and subsequent fiscal years.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Hillside in the County of Union, State of New Jersey, that the Township of Hillside Code is hereby amended as follows:

1. Chapter 4, Article II, §4-3.31 "Open Public Meetings and Open Public Records", ¶ N "Effective date and scope" only, as follows:

§ 4-3.31 Open Public Meetings and Open Public Records:

.....

N. Effective date and scope. This act shall take effect on the 365th day after enactment and shall be published as required by law. Minutes, agendas, resolutions and enacted ordinances created on or taking effect after January 1, 2000, but before the effective date of this section shall be made available to the public on the Internet within 180 days after the effective date.

.....

2. Severability. Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase. If any portion of this Ordinance, or its application to any person or circumstances, shall be adjudged or otherwise determined to be invalid, unconstitutional, void, or ineffective for any cause or reason, such determination shall not affect the remaining provisions of this Ordinance, and the application of such remaining provisions shall not be affected thereby and shall remain in full force and effect, and to this end, the provisions of this Ordinance are severable.

3. This Ordinance is not meant to repeal any provisions of the Code other than those designated herein, but to add to its requirements, and all Ordinances or parts thereof inconsistent or in conflict with the provisions of this Ordinance are repealed only to the extent of such inconsistency or conflict.

This Ordinance shall take effect 20 days after final passage and publication as provided by law.

FIRST
READING: June 23, 2009

ADOPTED: _____

Council President

ATTEST:

Township Clerk, Janet Vlajsavljevic, R.M.C

Approved

Vetoed and returned to the Township Clerk with the following statement of
objections: _____

Date

Karen D. McCoy Oliver, Mayor

Ordinance Number 0-08-025

AN ORDINANCE AMENDING THE TOWNSHIP CODE AT CHAPTER 4 ("ADMINISTRATION OF GOVERNMENT"), ARTICLE II, ADDING § 3-3.31. ("OPEN PUBLIC MEETINGS AND OPEN PUBLIC RECORDS").

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Hillside in the County of Union, State of New Jersey, that the Township of Hillside Code (the "Code") is hereby amended as follows:

1. Chapter 4 of the Code entitled "ADMINISTRATIVE OF GOVERNMENT" shall be supplemented at Article II, by adding §4-3.31 which shall read as follows:

ARTICLE II

§4-3.31. Open Public Meetings and Open Public Records.

2. Findings: The people of the Township of Hillside find that good government depends on knowledgeable citizens who have broad access to government meetings and who have ready and inexpensive access to a wide range of government information. Such access enables them to participate fully in public affairs, help determine governmental priorities and to hold their public officials accountable. Inadequate or delayed public access to meetings and information allows corruption to flourish undetected and unpunished. Government secrecy allows backroom deals to set public policy in the interest of the few rather than the many.

It is therefore the policy of Hillside Township to (a) promptly make agendas, minutes, resolutions, ordinances, and certain other records promptly available to the public on the Internet and on cable television (b) have meaningful electronic versions of other government records available at an affordable cost, (c) make photocopies and other records available at an affordable cost (d) to open more meetings of government officials to the public, (e) to increase the opportunities for public participation at all government meetings and to make such participation more meaningful and (f) to otherwise endeavor to make the Township of Hillside' government a model of openness and transparency. It is understood, accepted and intended by the people of the Township of Hillside that this Act will impose responsibilities upon the Township's officials and employees greater than what is required by the Open Public Meetings Act and the Open Public Records Act.

3. Scope: This Act shall apply to the Township Council and to all authorities, boards, commissions, committees or other instrumentalities created by or within the Township, any multi-member committees or subcommittees within them, and all duly constituted advisory boards and bodies. Such shall be referred to as "bodies."

4. Meetings: All meetings of bodies shall be open to the public and subject to the adequate notice and other provisions of the Open Public Meetings Act and this Act, and the public may be excluded from meetings only when permitted by N.J.S.A. 10:4-12(b). All meetings of all bodies shall be conducted in accordance with the most recent edition of Robert's Rules of Order except when special rules of procedure, which were previously adopted and filed with the Clerk, hold otherwise.

5. Notice: Advance public notice of all bodies' regular, special or rescheduled meetings, but not emergency meetings called in accordance with N.J.S.A. 10:4-9, shall be given at least three (3) business days prior to the meeting and shall include the time, date, location and to the extent known, the agenda of the meeting, and shall accurately state whether formal action may or may not be taken.

6. Public Participation: A general public comment session shall be provided near the beginning of each public meeting of each body. Each person wishing to speak shall be provided with 10 minutes, and the length of the public comment session shall be one hour provided there are sufficient speakers to fill this time. The length of the public comment session may be extended beyond one hour in the body's discretion. Separate public comment sessions shall be provided prior to final action being taken on any matter and each person wishing to speak shall be provided with ten minutes and shall limit his or her comments to the matter at hand.

7. Closed meetings: Any resolution authorizing any meeting from which the public is excluded, in addition to the provisions of N.J.S.A. 10:4-13, shall (a) describe the topic or topics to be discussed or acted upon as specifically as possible without undermining the purpose for holding the nonpublic meeting; (b) state the precise legal basis or bases for excluding the public; and (c) be read aloud at the public meeting at which it is passed.

8. Recording meetings: The Clerk or his or her designee shall sound record all meetings of all bodies, including emergency meetings and meetings to which the public is excluded, and shall retain the recordings for a period of six years. Any member of the public may also make his or her own audio or video recordings of any public meeting unless the body holding the meeting can demonstrate that the recording is unduly disruptive. Within eighteen (18) months after the effective date of this Act, the Clerk shall have established a system under which the audio recordings of all meetings occurring after implementation of the system shall be maintained as electronic files that can be listened to using generally available computer hardware and software. All sound recordings maintained by the Clerk shall be public records, except that recordings of nonpublic meetings may be redacted to the same extent as the minutes of those meetings.

The Township Clerk or his or her designee shall cablecast "live" each caucus, regular and special meeting of the Township Council via the municipal cable television channel.

9. Minutes: Meeting meetings shall be comprehensive and shall report the identity of every member of the public who spoke and a synopsis of what was said. Minutes of public meetings shall be publicly available in draft form, and marked as such, within five (5) business days after the meeting. Minutes of nonpublic meetings shall be publicly available in draft form, and marked as such, within ten (10) business days after the meeting, except that text may be excised or redacted from the minutes only to the extent necessary to prevent the purposes of the nonpublic meeting from being undermined. Every redaction shall be accompanied by a

written, detailed explanation sufficient to enable the public to assess the applicability of the privilege or protection asserted. Minutes shall be approved at the following meeting.

10. Periodic review of nonpublic meeting minutes: Each body shall, in April and October, review its nonpublic meeting minutes and determine whether the passage of time or the occurrence of events permit public disclosure of matter previously redacted or excised from the body's nonpublic meeting minutes and sound recordings. The results of each review shall be announced at a public meeting immediately after the review takes place and shall be recorded in the minutes of that meeting.

11. Records to be made available on the Internet: The Township shall cause an Internet site to be created. The Internet site shall contain the material specified in this Act and shall be laid out in a logical, intuitive manner. No password or user name shall be required and no other restriction imposed that would prevent a user from accessing the information on the site anonymously and at no cost. No record on the Internet site shall be removed prior to the time, if any, when the corresponding non-Internet version of that record is permitted by law to be destroyed. Items in subsections a through e below shall be made available in Microsoft Word, HTML and text-searchable PDF versions. Listings and rosters shall be made available in HTML and Microsoft Excel versions. All other documents, unless otherwise indicated, shall be scans of the paper versions converted into PDF format. The following records, created or maintained by any body shall be made available to the public on the Internet site as follows:

- a) All official advertisements as that term is defined by N.J.S.A. 35:1-1 et seq. shall be made available on the Internet site at the same time they are distributed to the newspapers designated to receive such advertisements.
- b) All meeting notices, as provided for in section 5 above, shall be made available on the Internet site at least three (3) business days prior to the meeting
- c) All proposed resolutions and proposed ordinances and revisions thereto shall be made available on the Internet site in draft form, and designated as such, within five (5) business days after they are approved as to form by the Township attorney, but not less than 24 hours before the public meeting at which they will be first considered or discussed. Resolutions and ordinances passed or enacted shall be designated as such and made available on the Internet site within 48 hours after being passed or enacted with their titles arranged in chronological order with hyperlinks to each resolution or ordinance.
- d) All meeting minutes shall be prepared and shall be made available on the Internet site within the time periods set forth in section 9 above. If the minutes as approved are identical to the draft version, the draft designation on the Internet site shall be replaced with a designation indicating that the minutes are approved within three (3) business days after approval. Otherwise, the draft version of the minutes shall remain and the approved version, designated as such, shall be made available on the Internet within three (3) business days after approval. Revised versions of nonpublic meeting minutes shall be made available on the Internet site within three (3) business days after the decision to disclose previously redacted matter.
- e) An up-to-date compilation of the Township's Ordinances. Hyperlinks shall also be provided to text-searchable PDF versions of any non-proprietary documents that are adopted by reference in any Ordinance.
- f) A list of nonpublic meetings for which minutes have not yet been entirely disclosed to the public shall be made available on the Internet site. Each such nonpublic meeting listed on the Internet site shall be linked to the resolution required by the Open Public Meetings Act authorizing the executive or closed session.
- g) All Financial Disclosure Statements filed with the Township pursuant to the Local Government Ethics Law, 40A:9-22.1 et seq.
- h) A current roster of all Local Government Officers of the Township as that term is defined by Local Government Ethics Law, 40A:9-22.1 et seq. The roster shall list each officer's full name, position, office telephone number and email address, term expiration date, annual remuneration as reported to Internal Revenue Service for the most recent calendar year and a recent photograph. Email addresses, while visible to web site visitors, shall be masked to attempt to defeat automated processes used by spammers to harvest email addresses listed on the Internet.
- i) A current roster, updated at least monthly, of the members of each body providing the full name of the member and term expiration date.
- j) A current roster of the names and addresses, updated at least quarterly, of the officers and members of the Township's municipal committees of political parties as that term is defined by Title 19 of the New Jersey Statutes.
- k) A listing of each Tort Claim made against the Township, or any of its officers, employees or bodies. Each listing shall be made available to the public on the Internet within three (3) business days after filing. Each listing shall include (i) the name and address of the claimant, (ii) the names and titles of any employees or officials who are alleged to have caused the injury or loss; (iii) the date and place of the event or transaction giving rise to the claim; (iv) the general description of the injury, damage or loss, as specified by N.J.S.A. 59:8-4(d), or a summary if the description contained in the claim exceeds 250 words.
- l) Exports of all data files containing full, unencrypted and password unprotected data from the Township's financial/ accounting software program or suite of programs as well as descriptions of each field of data within each data table so that members of the public experienced in relational databases can access, query and produce reports on the exported data files with generally available database software, such as Microsoft Access. The exported data files shall suppress fields containing sensitive

data, such as social security numbers. However, a detailed description of the suppressed data shall be provided for each suppressed field. Updated data files, including activity through the end of the current month, shall be made available on the Internet site monthly, in the same format, by no later than the tenth day of the following month. Also available on the Internet site shall be a listing of URL links to third party websites whose owners have notified the Clerk that their websites offer programming that permits members of the public to search, query or generate financial reports derived from the data files.

12. Information to be Available in Electronic Format: The Administrator, Clerk, and other public officers shall arrange the electronic (i.e. computerized) government records under his or her control so that electronic copies of the records' data can be promptly and inexpensively provided to the public on widely used media and in meaningful formats that can be accessed through widely used and publicly available computer hardware and software. For any electronic records that contain data that may be lawfully disseminated to the public as well as data that may be lawfully restricted from public view, methods shall be developed to allow the public data to be easily separated from the confidential data. Within ninety days after the effective date of this Ordinance and annually thereafter, each person subject to this section shall file a report with the Clerk setting forth an inventory of the classes of records under his or her control and his or her progress in complying with this section and such reports will be public records.

13. Fee for Photocopies and other Records: The fee for providing photocopies of records, including police reports and computer printouts, shall be five cents per copy. The fee for audio tapes, video tapes and CD-ROMs shall be one dollar, two dollars and one dollar apiece, respectively. Copies of maps shall be available at one dollar per square foot or part thereof. If any record is requested to be sent through the mail, cost of postage shall be added to the fee. If any record is requested to be faxed to any recipient within the United States, a cost of five cents per page shall be added to the fee. Any other records shall be made available at the cost of production, not including time and overhead expenses. All fees shall be prepaid before the record is issued. Nothing herein is intended to prevent the Clerk from assessing a higher charge when (a) the actual cost of production (i.e. the materials and supplies used to make a copy of the record, not including the cost of labor or other overhead expenses associated with making the copy) exceeds the fees provided for by this subsection, or (b) a special service charge is authorized by the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

14. Enforcement: Any person who prevails in a civil action to enforce any provision of this Act, or whose complaint is instrumental in obtaining relief, shall be entitled to costs and a reasonable attorney fee, as determined by the Court, to be paid by the Township of Hillside.

15. Effective Date and Scope: This Act shall take effect on the 120th day after enactment and shall be published as required by law. Minutes, agendas, resolutions and enacted ordinances created on or taking effect after January 1, 2000 but before the effective date of this Act shall be made available to the public on the Internet within one hundred eighty days after enactment.

16. Construction: This act is remedial and shall be liberally construed to effectuate its findings and purposes.

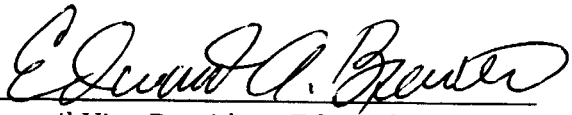
17. Saving Clause: If any portion of this Act shall be declared to be unconstitutional, invalid or inoperative, in whole or in part, by a court of competent jurisdiction, such portion shall, to the extent that it is not unconstitutional, invalid or inoperative, remain in full force and effect, and no such determination shall be deemed to invalidate the remaining portions of this Act.

18. Repealer: All ordinances inconsistent with the provisions of this Act are repealed to the extent of such inconsistency.

FIRST

READING: August 19, 2008

ADOPTED: September 8, 2008


Council Vice President Edward A. Brewer

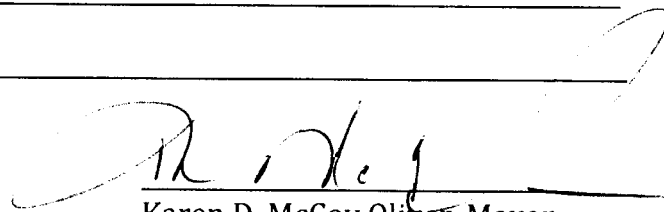
ATTEST:


Deputy Township Clerk, Diane Rowe

Approved

Vetoed and returned to the Township Clerk with the following statement of objections:

9/10/08
Date


Karen D. McCoy Oliver, Mayor