

RESOLUTION R-38-2012

RESOLUTION OF THE MAYOR AND COMMITTEE OF THE TOWNSHIP OF ELK,
COUNTY OF GLOUCESTER, STATE OF NEW JERSEY ADOPTING AN
OPEN PUBLIC MEETINGS ACT POLICY

WHEREAS, pursuant to the December 14, 2011 Order of the Honorable Georgia M. Curio, A.J.S.C., the Township of Elk was instructed to implement a written Open Public Meetings Act ("O.P.M.A.") Policy in consultation with Plaintiff's counsel; and

WHEREAS, the attached O.P.M.A. Policy has been reviewed by Plaintiff's counsel, and is further consistent with the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq.; and

WHEREAS, it is the public policy of this Township and the State to ensure the right of its citizens to have adequate notice of and the right to attend all meetings of public bodies; and

WHEREAS, it is in the best interests of the residents of the Township of Elk that the Mayor and Committee adopt the O.P.M.A. Policy in the form and manner attached hereto.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Elk, County of Gloucester and State of New Jersey as follows:

- 1. The Open Public Meetings Act Policy attached hereto is formally adopted by the Mayor and Committee of the Township of Elk.
- 2. A copy of this Policy shall be distributed to each elected official, Township official and Board Member upon adoption hereof.
- 4. This Resolution shall be effective immediately.

ADOPTED at a Regular Meeting of the Elk Township Committee held March 1, 2012.

TOWNSHIP OF ELK

BY: Philip A. Barbaro, Jr.
PHILIP A. BARBARO, JR., Mayor

ATTEST:

Debora R. Pine
DEBORA R. PINE, Township Clerk

ROLL CALL VOTE				
COMMITTEE	AYES	NAYS	ABSTAIN	ABSENT
Pantaleo	✓			
Sammons	✓			
Spring	✓			
Swanson				✓
Barbaro	✓			

CERTIFICATION

I hereby certify that the above resolution is a true copy of a resolution adopted by the Township Committee of the Township of Elk, County of Gloucester, State of New Jersey, at a meeting held by the same on March 1, 2012 in the Elk Township Municipal Building, 667 Whig Lane Road, Monroeville, New Jersey.

Debora R. Pine
Township Clerk

Policy

Open Public Meetings Act

Policy Administrator: Municipal Clerk

Authority: N.J.S.A. 10:4-6

Effective Date: Upon adoption by Mayor and Committee

Approved By: Mayor and Committee

POLICY:

A. **DECLARATION OF POLICY:** It is the policy of the Township of Elk Committee to comply with the provisions of the "Open Public Meetings Act", N.J.S.A. 10:4-6, et seq. In this Act, the Legislature declared that the right of the public to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decision making of public bodies is vital to the enhancement and proper functioning of the democratic process; that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society, and thereby declared it to be a public policy of this State to insure the right of its citizens to have adequate notice of and the right to attend all meetings of public bodies at which any business affecting the public is discussed or acted upon in any way would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion.

B. **The pertinent elements of the Open Public Meetings Act, N.J.S.A. 10:4-6, are:**

1. All meetings of public bodies in New Jersey must be open to the public unless the closure is specifically permitted by law. If a meeting by members of a public body is closed to the public, the reason given must be one specifically authorized under the law.
2. A public body is group of two or more persons, empowered as a voting body or public fund-spending body to perform a public governmental function.
3. A public meeting is one held by a public body at any level of government – state, county or local- with the intent to discuss or act as a body on public business. A meeting may be in person, by telephone conference call or by other means of electronic communication.
4. Advisory bodies are not subject to the Open Public Meetings Act, such as when the Mayor meets with department heads. However, if an advisory body has the

power to eliminate options available to a decision-making body, it too becomes subject to the law.

5. It is not necessary that a meeting result in some action; mere discussion of public matters is enough to make a meeting public.

6. **Public Notice:** Every public body must publish its meeting schedule by Jan. 10 or within seven (7) days of its annual organization meeting, whichever is later. A 48-hour written notice must also be given for any regular, special, adjourned or unscheduled meeting giving the time, date, location, and as complete an agenda as known at the time of the notice. The notice must be prominently posted in a public place, usually in the municipal building and delivered to at least two (2) previously designated newspapers. Exceptions to public meeting notice requirements are:

a. Emergency meetings, which may be called by a three-quarters vote, may be held only if substantial harm to the public interest would result from a delay and the need for the meeting could not have reasonably be foreseen. Whenever possible, the body must provide at least 48-hour notice. Discussion must be limited to the matter which prompted the emergency meeting.

b. Closed or Executive sessions.

C. **CLOSED SESSIONS:** Closed or "executive" sessions may be held without public notice, or during the course of a public meeting, provided that the subject matter is covered by one or more of the following legal exemptions:

1. Matters made confidential by state, federal law or rule by court.
2. Disclosure would result in an unwarranted invasion of individual privacy, unless the person affected consents in writing.
3. Disclosure would impair the body's right to receive federal or state funds.
4. Collective bargaining.
5. Lease or acquisition of property, setting of banking rates, investment of public funds if disclosure would harm the public interest.
6. Investigations into violations of law.
7. Strategies to protect public security.
8. Pending, ongoing or anticipated litigation or contract negotiation, including attorney-client privilege. The threat of litigation must be more than theoretical for this exemption to apply.
9. Personnel matters affecting employees of the public bodies, unless all parties request or consent to a public hearing. Prior to discussion of personnel, affected

employees must be given notice, known as a Rice notice, which gives the employee the right to request a public hearing.

10. Proceedings that could result in a suspension, civil penalty, or loss of a license or permit.

Closed sessions are limited to discussion; all formal actions must be made in open, regardless of subject matter.

Prior to any closed session, the body must adopt a resolution stating the general nature of the subject to be discussed and the time when the subject matter can be disclosed. The precise nature of the matter discussed may be withheld until the need for the closed session has passed.

D. **MINUTES:** Minutes must be kept of closed sessions. The minutes should start with a statement of the time, place and manner of notice, or in the case of an emergency meeting, a statement sufficient to satisfy the emergency meeting notice requirements. Minutes should show, at a minimum, the names of the members present and the subjects considered. Minutes must be promptly made available once the necessity of the closed session has passed. The Minutes shall be a general summary of the matters discussed, as well as a description of the exception (Paragraph C above) of the subject matter permitting a Closed Session.

E. **ELECTRONIC COMMUNICATIONS BY MUNICIPAL OFFICIALS:** The use of electronic communications by municipal officials includes the use of emails, text messaging, instant messaging and any of the like. When the business of the governing body is intended to be discussed:

1. Electronic communications should, as far as practicable, not include an effective majority of the governing body and should never include an effective majority of the governing body where a discussion of information related to the business of the Township is involved.
2. Where electronic communications do not include an effective majority of the governing body, such communications should not include any request for a response. Any electronic communication should indicate that there should be no electronic communication reply or response for communication.
3. In the rare instance when a response to an electronic communication is appropriate, such response must not involve any decision-making or deliberative function of the governing body or otherwise address public business as contemplated by the OPMA. Further, the response shall not be made to the entire list of electronic communication addressees to avoid even the appearance of circumvention of the OPMA. The use of the "Reply-All" function should be avoided and any response should be limited to a response to the sender only, such as the Administrator, Clerk or Attorney.

4. Rolling electronic communication conversations must be avoided. A "rolling" electronic communication occurs when one member of the governing body, or a third-party, contacts others via electronic communication individually to successively discuss or gain opinions on an item of Township business. This would apply to other forms of electronic communication as well. However, electronic communications between less than the effective majority of the governing body do not violate the OPMA provided that the dialogue does not become a "rolling" discussion that ends up including an effective majority of the governing body.

5. To the extent possible, electronic communications regarding the public business of the governing body, when sent by governing body members, should be sent to the Administrator and Township Clerk for dissemination to other members of the governing body, professionals and staff.

6. A member of the public body, or a third party, may communicate electronically with an effective majority of the public body if the communication is of a purely informational nature. For example, an administrator may electronically communicate with the Committee to inform them of current issues in the township or items to be placed on a future agenda.

7. Public officials should refrain from using private electronic communication accounts to discuss public business.

This Policy is adopted as the Township Policy and shall apply to all Agencies and Boards of the Township of Elk that are subject to the Open Public Meetings Act, including but not limited to the combined Planning and Zoning Board of Adjustment and Environmental Commission.

A copy of this Policy shall be distributed to each elected official, Township Official and Board Member upon adoption.