

**RESOLUTION No. \_\_\_\_\_-2012**

**RESOLUTION ADOPTING POLICY GOVERNING THE USE OF  
ELECTRONIC COMMUNICATIONS BETWEEN  
MUNICIPAL OFFICIALS DISCUSSING MUNICIPAL BUSINESS**

**WHEREAS**, the Open Public Meetings Act (OPMA) defines a meeting as “any gathering whether corporeal or by means of communication equipment, which is attended by, or open to, all of the members of the public body, held with the intent, on the part of the members of the body present, to discuss or act as a unit upon the specific public business of that body.” N.J.S.A. 10:4-8(b), and;

**WHEREAS**, “communication equipment” may include electronic equipment through email, text message, social media, or any other similar device, and;

**WHEREAS**, communication using electronic equipment, among an effective majority of the members of a “public body” as defined by OPMA, held with the intent to discuss or act on public business, that is not open to the public, may violate OPMA

, **WHEREAS**, it is appropriate for the \_\_\_\_\_ of \_\_\_\_\_ to adopt guidelines regarding the use of electronic communications, such as e-mail, text messages, and other forms of electronic communication, when discussing or deliberating upon municipal business;

**WHEREAS**, this need to establish a policy was prompted by recent events that have occurred in Gloucester County, Burlington County, and Bergen County, involving the exchange of e-mail communications by and between elected members of governing bodies, and municipal clerks, managers, administrators, staff and professionals; and

**WHEREAS**, those communications, depending upon the circumstances, can be deemed to be “meetings” under the Open Public Meetings Act, N.J.S.A. 10:4-6, *et seq.* (“The Sunshine Law”); and

**WHEREAS**, it is important for municipal officials to identify the differences between typical communications in which “the business of the municipality is not discussed”, and other forms of communication which might fall under The Sunshine Law; and

**WHEREAS**, the Governing Body of the \_\_\_\_\_ of \_\_\_\_\_ has determined it appropriate to adopt a policy governing the use of electronic communications by municipal officials where the business of the municipality is included within the content of said communications.

**NOW, THEREFORE, BE IT RESOLVED** by the Governing Body of the \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, State of New Jersey, that the following policy is hereby adopted and shall constitute the guidelines to be followed within the \_\_\_\_\_ of \_\_\_\_\_ governing the use of electronic communications by municipal officials, when the business of the Governing Body is intended to be discussed:

1. E-mail 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 municipality is involved.
2. Where e-mail communications do include an effective majority of the governing body, the communications should not include any request for a response. Any e-mail communication should indicate that there should be no e-mail reply or response for communication.
3. In the rare instance when a response to an e-mail is appropriate, the 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 e-mail addressees to avoid even the appearance of circumvention of the Act. 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 e-mail conversations must be avoided. A ‘rolling’ e-mail occurs when one member of the governing body, or a third-party, contacts others via e-mail individually to successively discuss or gain opinions on an item of municipal business. This would apply to other forms of electronic communication as well. However, communications between less than effective majority of the governing body do not violate the OPMA provided the dialogue does not become a ‘rolling’ discussion that ends up including an effective majority of the governing body.
5. To the extent possible, e-mail communications regarding the public business of the Governing Body, when sent by Governing Body members, should

be sent to the Administrator and Municipal Clerk for dissemination to other members of the governing body, professionals, or staff.

6. A member of a 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 email the council to inform them on current issues in the town or items to be placed on a future agenda.

7. This policy is adopted as a (type of municipality) Policy and shall apply to all Agencies and Boards of the municipality that are subject to the Open Public Meetings Act, including, but not limited to, the Planning Board, the Zoning Board of Adjustment, and the Environmental Commission.

8. Copies of this Resolution shall be provided to all elected and appointed officials and to those newly elected or appointed to any municipal agency or body that is subject to the Open Public Meetings Act.