



# New Jersey Libertarian Party

Open Government Advocacy Project

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January 5, 2009

Robert Diehl, President and Members  
Edison Township Council  
100 Municipal Boulevard  
Edison, NJ 08817 (via email only to [rmurphy@edisonnj.org](mailto:rmurphy@edisonnj.org))

RE: Ordinance: O.1678-2008 (Amending the rules of procedure)  
Second Reading: January 14, 2009

Dear President Diehl and Members of the Township Council:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project, with the following comments and recommendations regarding the captioned ordinance:

1. A provision should be added under Sec. 2-2.4(h) that precisely defines the term "effective majority." We believe that this is important because Sec 2-2.4(i)(4) permits less than an "effective majority" of the Council to meet together to discuss official business without giving formal notice to the public, recording minutes or abiding by other requirements of the Sen. Byron M. Baer Open Public Meetings Act.

At first blush, it appears that the terms "quorum" and "effective majority" are synonymous. But, consider the following language from Riya Finnegan, LLC v. Township Council Of South Brunswick, 386 N.J.Super. 255, 260-61 (Law. Div. 2006):

At this point, this court feels compelled to address the Open Public Meetings Act. N.J.S.A. 10:4-6 to -21. Although raised at the trial in this matter, none of the parties felt that there was an issue and therefore there was no joinder.

The Board's subcommittee consists of three members of the Planning Board. The Board consists of nine members. N.J.S.A. 40:55D-23. "No action shall be taken at any meeting without a quorum being present." N.J.S.A. 40:55D-9. A quorum of a nine-member board is five members. "All action shall be taken by a majority vote of the members of the municipal agency present at the meeting." N.J.S.A. 40:55D-9. Therefore the "effective

majority," the number of members needed to take action, is three. Any three members present at a meeting to consider the business of the Board would constitute an "effective majority" of the Board.

According to Finnegan, an "effective majority" of the Edison Township Council is three members. This is because a) the Council consists of seven members, b) a quorum of the Council consists of four members, and c) a voting majority of that quorum is three members.

Accordingly, we urge the Council to adopt a rule holding that three members of the Council comprise an "effective majority." This will make it clear that if three members of the Council meet together with an intent to discuss official business, that those three members are assembled as a "public body" that needs to abide by the Open Public Meetings Act.

If the Council doesn't agree with the Finnegan decision (we recognize that is a Law Division case and isn't binding on Edison), then we would still urge the Council to precisely define the term "effective majority" so as to eliminate any confusion.

2. It appears that the proposed change to § 2-2.8(b) which would allow the Council President to remove citizens from a meeting "who make any defamatory, insulting or inflammatory remarks" might run afoul of a speaker's constitutional right to free expression. In 1949, the United States Supreme Court held

[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, . . . is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest. \* \* \* There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.

In Terminiello v. Chicago, 93 L.Ed. 1131, 1134-1135 (1949)

Terminiello's speech, which the Court held to be constitutionally protected, would likely be considered "insulting" or "inflammatory" to the Council president had it been uttered at a Council meeting. According to the Court opinion, Terminiello called Eleanor Roosevelt a communist and made very disparaging remarks about Jews and other non-Christians. See Terminiello v. Chicago, 93 L.Ed. at 1140-1141 (Jackson, J., dissenting). Similar arguments can be made regarding the "personal, impertinent, slanderous [and] boisterous" language contained in § 2-2.14(b).

3. We believe that the part of § 2-2.13(c) that limits a public member's comments to those matters "over which the Council has jurisdiction" conflicts with N.J.S.A. 10:4-12 which requires the Council to let the "public comment on any governmental issue that a member of the public feels may be of concern to the residents of the municipality." We believe that the term "any governmental issue" includes matters over which the Council does not have jurisdiction. For example, while the Council cannot control the rulings of the Municipal Court Judge, we believe that members of the public should not be ruled out of order if they wish to comment upon or publicly criticize the judge's rulings.
4. While the Open Public Meetings Act, specifically N.J.S.A. 10:4-12, permits the Council to "regulate the active participation of the public" at its meetings, we believe that is unwise for the Council to remove the phrase "[u]nless further time is granted by the Council," from Code § 2-2.13(e) because that would apparently *require* the Council to stop a speaker after his or her four or six minutes even if the Council *unanimously* wished for the speaker to continue. We think that the Council should retain the discretion to let a person speak for more the allotted time period if it so chooses.
5. Finally, while admittedly a small point, we see no reason why § 2-2.4(e), which sets forth the matters that need to be taken care of at the annual reorganization meeting, requires the Council to "adopt its rules of order." Since the "Rules of Order" are already established by Ordinance, we don't see any reason for them to be "adopted" at each reorganization meeting.

We appreciate your time and hope that the Council gives serious consideration to our suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read "John Paff", with a large, stylized flourish above the name.

John Paff

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**EXPLANATION:** This Ordinance amends Section 2-2 entitled "Township Council" of Chapter II entitled "Administration" in various respects.

**EDISON TOWNSHIP  
ORDINANCE**

**BE IT ORDAINED,** by the Township Council of the Township of Edison, County of Middlesex, State of New Jersey, that Section 2-2 entitled "Township Council" of Chapter II entitled "Administration" is amended as follows:

**SECTION I.** Subsection 2-2.4 entitled "Council Meetings" is hereby amended by (i) amending paragraphs a., b. and d.; (ii) creating new paragraph f. entitled "Budget Adoption" and (iii) renumbering the remaining paragraphs. The amended subsection shall read as follows:

a. *Regular Meetings.* Regular meetings of the Edison Township Municipal Council shall be held on the second and fourth Wednesday of every month (unless otherwise scheduled by the Municipal Council) and shall be called to order at 7:00 p.m. or such other time as the Council may set by resolution, except that the Council may, by resolution, dispense with one (1) or more meetings[, otherwise scheduled for the months of July and August] as it deems necessary or appropriate. Regular meetings shall be held in the Council chamber or at such other place as may be designated by the Municipal Council by resolution or motion. Any change in venue of regular meetings shall be duly noticed as required by law.

b. *Worksession Meetings.* Worksession meetings of the Edison Township Municipal Council shall be held on Mondays preceding the regular Wednesday meeting of every month at 6:00 p.m. or such other time as the Council may set by resolution except that the Council may, by resolution, dispense with one (1) or more meetings as it deems necessary or appropriate. Worksession shall be held in the Council chambers or at such other place as may be designated by the Township Council by resolution or motion. Any change in venue of worksession meetings shall be duly notices as required by law. By vote of a majority, Council may recess the worksession meeting for not more than fifteen (15) minutes and re-open same at a specified time and date.

c. *Holidays.* When the day fixed for any regular or worksession meeting of the Governing Body falls upon a day designated by law as legal,

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State, national or religious holiday, such meeting shall be held at the same hour on the next succeeding day not a Saturday, Sunday or holiday. Notice should be in the annual notice of worksession and regular meetings.

d. *Special Meetings.*

[1. The Council President shall, when he or she deems necessary, call special meetings of the Township Council; in case of the Council President's neglect, absence or refusal, any four (4) members of the Township Council may call a special meeting at such time and in such place within the Township as they may designate by such notice. In all cases of special meetings, reasonable advance notice (considered to be forty-eight (48) hours, except in the case of emergency) shall be given to all members of the Council or left at their place of residence. Only business specified in the notice or resolution calling for the special meeting may be transacted.]

[2. The request and call for such special meeting shall specify the purpose of the meeting, and no business shall be transacted at any special meeting other than that specified unless all seven (7) members agree to consider business not specified in the call of the meeting.]

[3. Upon the filing of any call for a special meeting, the Township Clerk shall forthwith give notice thereof by telephone or telegraph to each Councilperson, at such place as the latter shall have previously designated for the purpose, and shall also service or cause to be served a written copy of the call upon each Councilperson by giving a copy to him or her personally or by leaving a copy at his or her usual place of abode. The Division of Police shall cooperate with the Township Clerk in effectuating such service of notice.]

The Council President, upon the oral or written approval of a majority of the Council, may call a special meeting of the Council. As provided by N.J.S.A. 40:69A-179, the Mayor may, and upon written request of a majority of the members of the Council, shall, call a special meeting of the Council. In the event of a refusal, inability, or neglect of the Council President or Mayor to call a special meeting deemed necessary by a majority of the members of the Council, such members may themselves call a special meeting. For any special meeting, the call may be oral or written, shall designate the purpose of the special meeting, and no other business shall be considered. Except in case of an emergency designated

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in the call for a special meeting, notice of special meetings shall be given at least two (2) days in advance thereof.

e. *Annual Meeting.* The Township Council shall hold an annual organizational meeting during the first seven (7) days of January in the Township Council chambers or such other place as may be designated by the Township Council by resolution or motion. The specific time and date of the organizational meeting shall be established by resolution of Council during a business meeting in the month of December preceding the organizational meeting. At the organizational meeting, the Township Council shall hear reports, elect one of its members to service as Council President and one (1) of its members to service as Council Vice President for the ensuing year, adopt its rules of order, adopt its meeting schedule for the year, make annual appointments, and transact such other business as properly may be brought before the body. [Notwithstanding this section, in years that are not subsequent to Council elections, the organizational meeting may be held at the time of the Council's first worksession meeting in January.]

f. *Budget Adoption.* The annual budget is to be introduced, approved, amended and adopted by resolution adopted by no less than a majority of the full membership of the Council according to the following general procedures:

- a. Submission by Mayor of recommended budget to Council
- b. Departmental budget presentations
- c. Introduction and approval (first reading, by title) by August 10
- d. Public Advertising
- e. Public Hearing
- f. Amendments and public hearings if required
- g. Adoption by September 20 (subject to the terms of N.J.S.A. 40A:4-10)
- h. Deadlines may be extended by Director of the Division of Local Government Services with the approval of the Local Finance Board.

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- i. Transmission of certified copy to County Board to be made within fifteen (15) days of adoption (N.J.S.A. 40A:4-1 to N.J.S.A. 40A:4-18 included).

[f.] g. *Adjourned Meetings.* Adjourned meetings shall be called to order and held at the time and place appointed by the motion or resolution under which they are held.

[g.] h. *Meetings Open to the Public.* State Statutes provide that all meetings of the Township Council shall be open to the public subject to provisions allowing for executive session discussion. The open public meetings statement shall be read by the Township Clerk at all worksessions, regular and special meetings. The Business Administrator, Attorneys, Clerk and Engineer and such other Township officers or employees, if they be required by general or special order of the Council, shall attend regular or special meetings of the Council. The Mayor may attend meetings of the Council and may take part in discussions of the Council but shall have no vote, except in the case of a tie on the question of filling a vacancy on the Council in which case he may cast the deciding vote.

[h.] i. *Quorums.*

1. A quorum shall be as provided by the Revised Statutes of the State of New Jersey, viz. four (4) Councilpersons. If no quorum exists at any particular meeting, then those assembled shall have the power and are authorized to set a new date and then adjourn. In all cases, reasonable advance notice of the new meeting date shall be given to all members of the Council or left at their place of residence.

2. When a sufficient number of members to constitute a quorum is present, the Council President or the Council Vice President, shall preside, or in the absence of both, the Council member having the longest term of service shall take his or her seat. In the case of two (2) members both having the same term of service the member to preside shall be determined by lot among those having equal longest service. If no member of Council is present one-half (1/2) hour after the appointed time for any meeting, the Clerk shall adjourn the meeting.

[i.] i. *Meetings of the Edison Council, Worksession, Regular or Special.*

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1. Meetings of the Edison Council, worksession, ~~regular~~ special shall be entitled to take precedence over any other use of the Council chamber with the exception of regularly scheduled meetings and work sessions of the Edison Township Planning Board and the Edison Township Zoning Board of Adjustment.

2. The Council may meet at any time in informal conference for discussion and consideration of any Township business or to meet with any officer or employee of the Township or any other person or persons on Township business; provided, however, that notices of such meetings shall first have been communicated to at least two (2) area newspapers and to the public, in accordance with the Revised Statutes of New Jersey. Such conferences may be routinely scheduled, or specially arranged for pressing or emergent business, after notice to public and press have been given as provided in the statutes.

3. All members of the public and press in attendance at such meetings shall be permitted to hear and observe all discussions, decision and actions of the Council, except those matters which are delineated in 7.b(1), (2), (3), (4), (5), (6), (7), (8) and (9) of Chapter 231 of the Public Laws of the Revised Statutes of New Jersey. That portion of a meeting from which the public and the press shall be excluded shall not take place until a resolution is passed at the public portion of the meeting stating the general nature of the subject to be discussed and a sincere estimate of the time and circumstances under which the discussion conducted in closed session can be publicly disclosed.

4. This section shall not apply to any gathering of less than an effective majority of the Council, nor shall it apply to gatherings at conventions or seminars or similar occasions attended or open to all members of three (3) or more similar public bodies.

**SECTION II.** Subclause a. of Subsection 2-2.6 entitled "Regular Meeting; Order of Business" is amended by adding "Resolutions of Recognition" to the meeting agenda. The entry shall read as follows:

- a. The business of each regular meeting shall be conducted in the following manner:
  - 1. Call to order;



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2. Salute to Flag ("Pledge of Allegiance");
3. Roll Call;
4. Reading of Open Public Meetings Act Statement
- [4.] 5 Resolutions of Recognition;
- [5.] 6. Approval of minutes;
- [6.] 7. Mayor's report;
- [7.] 8. Reports from Council committees;
- [8.] 9. Department reports;
- [9.] 10. Ordinance for further consideration and public hearing;
- [10.] 11. Proposed ordinances;
- [11.] 12. Public comments on resolutions;
- [12.] 13. Proposed resolutions;
- [13.] 14. Communications;
- [14.] 15. Oral petitions and remarks;
- [15.] 16. Miscellaneous;
- [16.] 17. Adjournment.

**SECTION III.** Subclause b. of Section 2-2.6 entitled "Regular Meeting; Order of Business" and subclause d. of Subsection 2-2.7 entitled "Work Session Meeting; Order of Business" are hereby amended to read as follows:

The aforesaid order of business at any meeting may be changed by a majority vote of the members of the Township Council present at the meeting. It shall be the Council President's prerogative to modify the agenda to conduct a closed session discussion of the Township Council. The Council President shall publicly announce at the beginning of such meeting any modification of the agenda to conduct such closed session discussion.

**SECTION IV.** Paragraphs a., e. and f. of Subsection 2-2.7 entitled "Worksession Meeting; Order of Business" are amended as follows:

- a. The business of each worksession meeting shall be conducted in the following matter:
  1. Call to order;
  2. Salute to Flag ("Pledge of Allegiance");
  3. Roll Call;
  4. Reading of Open Public Meetings Act Statement;
  5. Approval of minutes;

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- 6. Oral petitions and remarks;
- 7. Mayor's report;
- 8. Reports from Council committees;
- 9. Points of Light;
- [9.] 10. Department reports;
- [10.] 11. Council liaison to the Planning Board;
- [11.] 12. Ordinances for further consideration and public hearing;
- [12.] 13. Proposed ordinances;
- [13.] 14. Proposed resolutions;
- [14.] 15. Communications;
- [15.] 16. Discussion;
- [16.] 17. Closed session\*;
- [17.] 18. Adjournment.

\* It is the Council President's prerogative to determine when a "Closed Session" will occur during the meeting and will publicly announce the decision at the beginning of the meeting.

- e. All worksessions shall end no later than [at 11:00 p.m.] 9:00 p.m. This time may be extended by a two-thirds [majority] vote of the Councilpersons present at the meeting.
- f. All regular meetings shall end no later than [11:00 p.m.] 10:00 p.m. This time may be extended by a two-thirds [majority] vote of the Councilpersons present at the meeting.

SECTION V. Paragraph b. of Subsection 2-2.8 subtitled "Council President; Duties" is amended to read as follows:

- b. The Council President shall, on all occasions, preserve the strictest order and decorum and shall cause the removal of all persons who interrupt the orderly proceedings of the Council or who make any defamatory, insulting or inflammatory remarks.

SECTION VI. Subsection 2-2.10 entitled "Vacancies; Nominations to Authorities, Boards, Commission, Committees and Other Agencies" is hereby amended to read as follows:

Whenever a vacancy shall occur on one (1) of the Township's authorities, boards, commissions or committees, except for those authorities, boards,

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commissions and committees for which the Mayor is the ~~sole~~ appointing authority, nominations to fill the vacancies shall be brought to the attention of the Council in writing at least [three (3)] seven (7) days prior to the Council meeting when action is expected to be taken along with a copy of the candidate's resume. [Information to be provided shall include, at a minimum, the name, address and telephone number of the nominee as well as information concerning his or her suitability to be appointed.] Any applicant seeking to fill a vacancy shall complete the application form entitled "Township of Edison Application For Appointment to Citizen Advisory Boards and Commissions" created by Common Cause of New Jersey, adopted by the Township Council and on file with the Township Clerk's office. Whenever possible, prior consultation with the authority, board, commission or committee that has the vacancy shall occur, and the Councilperson proposing the name shall report on his or her discussions. An interview process for prospective candidates shall be conducted at the discretion of the Council. Under no circumstance shall the nomination and the appointment of a candidate occur simultaneously. [The] All nominations and appointments shall be in accordance with the appropriate statute.

**SECTION VII.** Paragraph h. of Subsection 2-2.12 entitled "Rules of Debate and Decorum" is amended to read as follows:

- h. Every Township Councilperson desiring to speak for any purpose whatsoever shall address the presiding officer, and upon recognition, shall confine himself or herself to the question under debate, avoiding [personalities] personal attacks and indecorous language.

**SECTION VIII.** Paragraphs c. and e. entitled "Manner of Addressing the Council" of Subsection 2-2.13 entitled "Addressing the Council" is amended to read as follows:

- c. *Oral Petitions and Remarks.* Under the heading of "Oral Petitions and Remarks", this portion of the meeting shall be limited to a one (1) hour period unless a majority of the Council seeks to extend the time due to the importance of the issue or issues presented. During this period, any person may address the Council on any matter over which the Council has jurisdiction; provided, however, that preference shall be given to those persons who have notified the

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Clerk in advance within the time required for the preparation of the agenda, or their desire to be heard.

- e. *Manner of Addressing the Council.* Upon recognition from the chair, a person shall proceed to the floor and give his or her name, and address, in an audible tone of voice for the records. [Unless further time is granted by the Council,] [h]He or she shall limit his or her statement to [six (6)] four (4) minutes. Any person may speak only once on each of the categories of business described in paragraphs a., b. and c. above. Each such statement shall be limited to [six (6)] four (4) minutes.

[1. No person shall be recognized to speak again until all persons desiring to speak have spoken once. To the extent possible, the chair will attempt first to recognize persons who have not already spoken under a previous category before recognizing persons who have already spoken at that meeting.]

[2.] 1. Statements shall be addressed to the Council President and not to any member thereof. A Councilperson shall not direct any question to a speaker addressing the Council except through the presiding officer.

[3.] 2. It shall be the duty of the [Council President or the presiding officer] Township Clerk to monitor the [six (6)] four (4) minutes with an appropriate timer and notify the Council President or the presiding officer when the speaker's time has elapsed.

**SECTION IX.** Paragraphs a. and b. of Subsection 2-2.14 entitled "Decorum" are amended to read as follows:

- a. [While the Council is in session the members shall preserve order and decorum and a member shall neither by conversation or otherwise delay nor interrupt the proceedings. A member of the Council shall not disturb any member while speaking or refuse to

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obey the orders of the Council or its presiding officer, except as otherwise provided.]

a. Council Relations. A cooperative attitude along with courtesy and respect between Council members are necessary ingredients for full consideration of adverse viewpoints no matter how strongly held, for smooth transaction of Council business, and for the promotion and preservation of public respect and confidence for the Council. It is, therefore, incumbent upon each Council member to be cooperative, courteous and respectful to other Council members, Directors, municipal officials or professionals hired on behalf of the Township, by their words, behavior, and considerate listening, particularly during controversy, disagreement, or expression of divergent views.

b. Any person making personal, impertinent or slanderous remarks or who becomes boisterous shall be barred by the presiding officer from further attendance at the meeting of the Council. On request of the presiding officer, any individual not in compliance with standards of behavior of Council meetings [may] shall be escorted from the chamber. [Upon presentation of a written request to the presiding officer, through the sergeant of arms, such person may be permitted to reenter the chamber on a majority vote of the Council members present.]

**SECTION X.** This Ordinance shall take effect twenty (20) days after adoption and approval by the Mayor in accordance with N.J.S.A.40:69A-181 (b).