

**Borough of Highlands
County of Monmouth
R-14-186
Resolution Adopting Guidelines for the use of Electronic
Communication by the Governing Body**

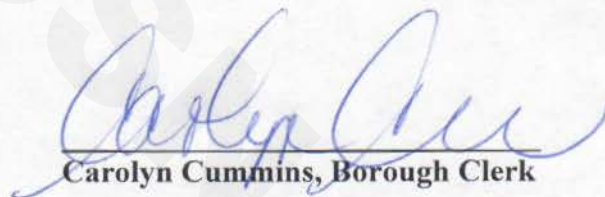
Whereas, the Monmouth County Prosecutor's Office has recommended that all governing bodies adopt guidelines for the use of electronic communication by members of the governing body; and

Whereas, the governing body wishes to adopt such guidelines.

Now, therefore, be it Resolved that the governing body of the Borough of Highlands hereby adopts the attached guidelines for use of electronic communication by the governing body.

	INTRODUCED	SECONDED	AYE	NAY	ABSTAIN	ABSENT
CARD	x		x			
KANE						x
REDMOND			x			
RYAN			x			
NOLAN		x	x			
ON CONSENT AGENDA YES x NO						

DATE: **August 20, 2014**


Carolyn Cummins, Borough Clerk

I hereby certify this to be a true copy of Resolution R-14-186 adopted by the Governing Body of the Borough of Highlands on August 20, 2014.

Borough Clerk/Deputy Clerk

Borough of Highlands

County of Monmouth

Use of Electronic Communication and Devices

August 2014

The Open Public Meetings Act (OPMA), also known as the Sunshine Law, governs, among other things, advance notice of and public participation in public meetings of the Borough Council. The OPMA became effective in 1976 and, at its inception, the routine use of technological devices was certainly not contemplated. To date, there have been no amendments to the OPMA to address these methods of communication. However, said means of communication still fall within the language of the statute.

In evaluating whether the use of digital/electronic communication technology complies with the OPMA, the governing body of the Borough is mindful of the core requirement of the OPMA - that the public has a right to be present at all meetings of public bodies and witness all phases of deliberation, policy formation, and decision making. N.J.S.A. 10:4-7.

Use of communication equipment by members of the governing body to discuss public business has the potential to raise questions about whether a public meeting is taking place because the communications are not observed by the public.

In recognition of these concerns, the Monmouth County Prosecutor's Office issued guidelines concerning the use of electronic communication by elected officials and recommended that governing bodies develop guidelines which comply with the OPMA regarding the use of electronic communications between public officials. In that regard, it is the policy of the governing body of the Borough of Highlands to comply with the following guidelines concerning the use of electronic communication:

- 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 discussion of information related to the business of the Borough is involved. Rather, when electronic communication involves an effective majority of the governing body, such communication should be limited to dissemination of documents or information.
- 2) When electronic communications do include an effective majority of the governing body, such communications should not include any request for a response. In fact, any electronic communication should indicate that there should be no reply or other responsive communication.
- 3) In the rare instance when a response to an electronic communication is necessary, 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 addressees in the electronic communication to avoid even the appearance of impropriety (i.e., responding to the original e-mail with a "reply all" message that was sent to all other members of the

public body). Utilizing a third party, such as the Clerk or Administrator, does not change the requirements of the OPMA.

- 4) "Rolling" email conversations must also be avoided. A "rolling" email occurs when one (1) member of the governing body or a third party contacts other members via email individually to successively discuss or gain opinions on an item of Borough business. This would apply to other forms of electronic communications as well. However, communications between less than an effective majority of the governing body do not violate the OPMA provided the dialogue does not become a "rolling" discussion that results in including an effective majority of the governing body.
- 5) Members of the governing body shall refrain from utilizing any electronic communication device during meetings of the governing body. This includes, but is not limited to smart phones, tablets and other electronic devices with communication capability.