

TOWN OF EDGEWOOD
RESOLUTION NO. 2012-23

A Resolution Providing for Rules Governing the Conduct of Meetings of the Governing Body of the Town of Edgewood

WHEREAS, the governing body recognizes the need for rules of procedure for the efficient and effective conduct of meetings of the governing body of the Town of Edgewood; and

WHEREAS, State law specifically provides that the governing body has the authority to promulgate rules of conduct to govern proceedings before it; and

WHEREAS, the governing body has determined that the public interest supports the promulgation of such rules of conduct.

NOW, THEREFORE, be it resolved by and through the Town's governing body as follows:

A. DEFINITIONS.

For purposes of this Resolution, the terms set forth below shall be defined as follows:

1. "Chair" means the Mayor, the Mayor Pro Tem or any other member of the governing body lawfully charged with conducting a meeting of the governing body.

2. "Clerk-Treasurer" means the Town Employee serving as Clerk-Treasurer for the Town of Edgewood.

3. "Council Member" means any duly elected or appointed member of the governing body of the Town of Edgewood, including the Mayor.

4. "Quasi-judicial public hearing" means any public hearing required under State law to be held by the governing body to adjudicate individual rights or responsibilities, including specifically but not limited to zoning decisions, appeals from zoning decisions, subdivision plat approvals, or personnel matters, provided that this does not include matters related to approval of proposed contracts, agreements, or purchases by the governing body.

5. "Speaker" means any person who is recognized by the Chair to speak at a meeting, whether a Council Member, the Clerk-Treasurer, the Town Attorney, an employee, staff member, committee member or other person associated with Town government, or a member of the public.

6. "Town Attorney" means the attorney hired by the Town to provide legal counsel.

B. PROVISION OF RULES GOVERNING THE CONDUCT OF MEETINGS GENERALLY.

1. The provisions of this Resolution shall be applied with common sense in order to effect the purpose of this Resolution. The policy of the Town of Edgewood is that meetings of the governing body shall be conducted in a professional and courteous manner without personal attacks.

2. Council Members are expected to be personally present at all meetings of the governing body of the Town of Edgewood. In the event it is otherwise difficult or impossible for the Council Member to attend the meeting in person, Council Members may participate in meetings of the governing body by means of a conference telephone or other similar communications equipment, provided that the requirements of the Open Meetings Act, NMSA (1978), § 10-15-1, et seq. are met.

3. The agenda for meetings of the governing body shall be set as provided by previously adopted Resolutions of the Council.

4. The Chair shall have the primary authority and responsibility to determine whether discussion at a meeting of the governing body is proceeding properly within the scope of items set forth in the agenda for that meeting.

5. Any person wishing to participate as a Speaker at a meeting of the governing body shall first ask to be recognized by the Chair.

6. The Chair shall have authority to determine the order in which Speakers shall be recognized and determine when discussion on a matter appears to have concluded, subject to the other provisions of this Resolution.

7. Should the Chair determine that any Speaker is or will be addressing matters that are not properly within the scope of items set forth in the agenda, or is otherwise in violation of this Resolution, the Chair is authorized to declare the Speaker out of order.

8. Should the Chair determine that any discussion addresses matters that are not properly within the scope of items set forth in the agenda, has concluded, or is otherwise in violation of this Resolution, the Chair is authorized to declare further discussion on said subject out of order.

9. Any Speaker who is determined to be out of order by the Chair shall cease speaking immediately upon said determination. If any discussion is determined by the Chair to be out of order, said discussion shall immediately cease.

10. A Council Member other than the Chair may seek to allow a Speaker to resume speaking or to reopen a discussion after the Chair has ruled the Speaker or discussion is out of order by making a motion to reopen discussion. The Speaker may resume speaking or discussion

may be resumed if said motion is seconded and a majority of the quorum present vote in favor of the motion.

11. Multiple motions to reopen discussion are not favored. Upon denial of a motion to reopen discussion, discussion may be reopened (a) at a subsequent meeting where the matter at issue is properly included on the agenda, and (b) upon a showing by a Council Member that additional facts or circumstances exist to justify reopening discussion. After a Council Member has explained the grounds to reopen discussion under this subsection, the governing body shall vote whether to reopen discussion or to table the agenda item. A majority of the quorum present shall determine whether to reopen discussion under this subsection.

12. A Council Member, the Clerk Treasurer, or the Town Attorney may seek a determination that a Speaker or discussion is out of order by bringing the matter to the attention of the Chair by raising a Point of Order. The Chair shall then determine whether the Point of Order is well taken or not well taken and shall determine whether a Speaker is out of order.

13. The Chair shall recognize any Council Member who wishes to speak, unless under the circumstances said Council Member's speech would be out of order under or otherwise in violation of this Resolution.

14. If the Clerk-Treasurer, the Town Attorney, an employee, staff member, committee member or other person associated with Town government asks to be recognized on a matter involving that individual's area of special knowledge or expertise, or work on behalf of the Town, that person shall be recognized, unless the Chair determines that the proposed Speaker would be out of order under or otherwise in violation of this Resolution.

15. Members of the general public who ask to speak shall be recognized to speak during appropriate portions of a meeting of the governing body. This includes specifically (a) individuals who have been invited to present information to the governing body with regard to particular agenda items, (b) members of the public during public comment segments of the agenda, (c) members of the public when a proper motion has been made and passed to allow public comment, and (d) members of the public at hearings on a proposed ordinance after a motion is properly made and seconded by the governing body to approve said ordinance and prior to the vote on said proposed ordinance.

16. Notwithstanding the provisions of subsection 14, the Chair retains authority to determine that a member of the public who wishes to participate as a Speaker is out of order or otherwise in violation of this Resolution. The provisions of subsection 14 do not apply to Quasi-judicial public hearings, which shall be governed as provided by Section D, below.

17. In any procedural matter not otherwise covered by this Resolution, the most current edition of Robert's Rules of Order shall apply, provided such rules will be interpreted in a common sense fashion to effect the purpose of this Resolution.

C. PROVISION OF RULES GOVERNING MOTIONS BY COUNCIL MEMBERS.

1. When an agenda item contains a provision for action to be taken by the governing body, it shall be the prerogative of Council Members to make proper motions for action related to that agenda item. Motions framed in the positive, so that an affirmative vote will serve to approve a proposed action, are generally preferred over motions framed in the negative, unless particular circumstances dictate otherwise.

2. Unless specifically provided otherwise by State law, Town ordinance, or this Resolution, the Mayor shall refrain from making a motion as the Chair. When the Mayor is not authorized to make a motion directly, the Mayor may request as the Chair that some other Council Member place a motion on an action item before the governing body. Upon the Chair's determination that reasonable discussion has completed on a pending motion, and in the absence of a proper motion to reopen discussion, the Chair shall call for a vote. A proper motion to reopen discussion shall be decided before any additional discussion or action takes place.

3. A motion on an action item may be withdrawn by the Council Member who made the motion at any time before it is seconded. After it has been seconded a motion may be withdrawn with the consent of a majority of the quorum present.

4. During the time that a motion that has been made and seconded is pending, no other motion shall be recognized by the Chair, other than a motion to amend the pending motion or a motion to reopen discussion as provided in subsection 2.

5. Friendly amendments to a pending motion shall be allowed upon the consent of the Council Member who made the motion, and said consent shall constitute a seconding of the motion as amended thereby.

6. Other amendments to a pending motion shall be allowed if seconded and if a majority of the quorum present affirmatively votes to allow the amendment. Such an affirmative vote shall have no effect other than to amend the motion on the floor, and shall not constitute a vote to approve either the original motion nor the amended motion.

7. Whenever the governing body has voted upon a matter listed in the agenda, it shall be presumed that further discussion by a Speaker regarding that matter is out of order. Provided, however, that this provision shall not limit the prerogative of a Council Member to propose an alternative motion unless upon Motion by the Chair, a majority of the quorum present determine said alternative motion to be out of order.

D. PROVISION OF RULES GOVERNING THE CONDUCT OF QUASI-JUDICIAL PUBLIC HEARINGS.

1. When a matter comes before the governing body for determination that, under State law, is to be determined by the governing body acting in a quasi-judicial capacity, only

Council Members, the Town Attorney, or witnesses who are determined by the Chair to have testimony relevant to the matter under consideration shall be qualified to participate as Speakers in that matter.

2. The Rules of Evidence shall not apply to the conduct of such hearings, provided that the governing body shall base its decision on evidence that constitutes adequate factual grounds to support its decision under applicable law. Comments by Speakers who are properly determined to be out of order shall not be relied upon as grounds upon which the governing body bases its decision.

3. All witnesses shall be required to take an oath as provided by law.

4. The Chair shall be responsible for the general conduct of proceedings on matters to be heard under this Section, provided that in the Chair's discretion the Town Attorney may provide advice to the Chair regarding the procedures to be followed.

5. If a party to the matter at issue is represented by an attorney at the meeting, the attorney of that party may conduct a direct examination of any witness presenting testimony in support of the party's position, provided that the Chair retains the authority to exercise reasonable control over the manner, extent, and subject of such questioning and testimony so long as the party is reasonably able to place into evidence the facts necessary to support its position.

6. If a party is not represented by an attorney, a witness who wishes to present testimony on behalf of that party shall be allowed to present in narrative form the facts which, to the witness' personal knowledge, support that party's position. Provided, however, that the Chair retains authority to exercise reasonable control over such testimony.

7. Following the completion of direct testimony by any witness as provided above, Council Members or, at the Chair's discretion, the Town Attorney shall be allowed to ask such additional questions as may be reasonably necessary to allow the governing body to reach its decision. Provided, however, that the Chair retains authority to exercise reasonable control over such questioning and testimony.

8. Following questioning by the Council Members and/or the Town Attorney, any other party who has a legally cognizable interest in the matter shall be allowed to ask questions of the witness. An attorney representing the cross-examining party may conduct such questioning on behalf of the cross-examining party. Provided, however, that the Chair retains authority to exercise reasonable control over such questioning and testimony.

9. Following any questioning by the party, the party's attorney, Council Members, the Town Attorney, and another party or that party's attorney, further questions will be allowed only upon a determination by the Chair that such questions are reasonably necessary to allow for a full and fair determination of the matter at hand.

10. In addition to testimony, a party with a legally cognizable interest in a matter to be determined shall be allowed to present other evidence, including maps, plans, photographs, or other physical evidence that may reasonably aid the governing body in making a full and fair determination of the matter at hand. Provided, however, that the Chair retains authority to exercise reasonable control over the presentation of such evidence.

11. The Chair may require a party wishing to present physical evidence to provide testimony sufficient to establish that the evidence is genuine and relates to the matter to be determined. A Council Member or the Town Attorney may, by point of order, request the Chair to require the presentation of such foundational evidence.

12. After a party with a legally cognizable interest in the matter to be determined has completed the presentation of evidence in support of its position, any other party with a legally cognizable interest in said matter shall be allowed to present its evidence. The Chair shall determine the order of the parties presenting evidence.

13. Rebuttal evidence shall be allowed upon request of a party if it is determined by the Chair that said evidence is necessary to a full and fair determination of the matter at issue.

14. After the presentation of all evidence to be presented upon the matter to be determined under this Section, any party having a legally cognizable interest in the outcome of the hearing, or that party's attorney, shall be allowed to make a closing statement. At the Chair's discretion, the Town Attorney may also present a summary of the facts and law in evidence before the governing body in order to aid it in reaching a full and fair determination of the matter at issue. The Chair retains authority to exercise reasonable control over closing statements.

15. Upon the presentation of all evidence and closing statements, the matter shall be decided in a manner consistent with the Open Meetings Act. If the governing body engages in further public discussion prior to voting on the matter at hand, the Chair shall not recognize members of the public as competent Speakers in such discussion.

16. Provisions of Section B and C above that are not inconsistent with the provisions of Section D shall also apply to quasi-judicial public hearings, including specifically (a) the obligation of Speakers to comply with a determination by the Chair that they are out of order, (b) the prerogative of Council Members or the Town Attorney to raise a point of order, and (c) provisions regarding the making of motions. A Council Member other than the Chair may seek to override a determination made by the Chair pursuant to Section D of this Resolution.

E. CONDUCT OF CLOSED MEETINGS.

1. When a meeting is closed pursuant to the Open Meetings Act, no discussion shall take place during the closed session other than regarding the matter or matters identified in the motion to go into closed session.

2. No vote shall take place during closed session unless otherwise authorized by the Open Meetings Act, except that the governing body may take a procedural vote to reopen discussion should the Chair determine that a Speaker or discussion in the closed session is out of order. Provisions of Section B and C above that are not inconsistent with the provisions of Section E of this Resolution and/or the Open Meetings Act shall also apply to Section E.

3. If a procedural motion takes place in closed session, the fact that a motion occurred in closed session shall be reported to the public when the governing body resumes open session and the motion and roll-call vote thereon shall be recorded in the minutes of the governing body. The obligation to report the occurrence of a procedural motion occurring during closed session shall not include an obligation to report details regarding the discussion that, under the Open Meetings Act, were properly allowed to take place in closed session.

F. ENFORCEMENT AND PENALTIES.

1. Should any Speaker violate the provisions of this Resolution, said Speaker shall be subject to public reprimand upon a majority vote of the Council. Said reprimand shall be recorded in the minutes of the governing body.

2. Should a commissioned law enforcement officer be present at a meeting of the governing body, the Chair is authorized to request that said officer act as the sergeant at arms in cases where it appears to the Chair that assistance is required to restore order. A sergeant at arms is authorized to use lawful force to remove a Speaker from a meeting if the Speaker refuses to comply with a lawful directive of the sergeant at arms.

3. If a Council member violates this Resolution in such a manner or with such frequency that said violation or violations constitute a violation of the Town's Code of Ethics or of State law, the governing body may take appropriate action in addition to or instead of issuing a public reprimand. Such action may include but is not limited to referring the matter to a hearing officer as provided by the Ethics Code.

4. Nothing herein shall constitute a waiver of any other remedies as may be provided by law for misconduct occurring during a meeting of the governing body, including contractual remedies or remedies provided by the personnel ordinance.

This Resolution supersedes Resolution No. 2005-12.

PASSED, APPROVED and ADOPTED this 7th day of NOVEMBER, 2012.



Brad E. Hill, Mayor

ATTEST:



Estefanie B. Muller, CMC, Clerk-Treasurer