



FOUNDATION

P.O. Box 32159
Newark, NJ 07102

Tel: 973-642-2086
Fax: 973-642-6523

info@aclu-nj.org
www.aclu-nj.org

December 21, 2017

Mayor Deirdre Dillon and Ramsey Borough Council
Ramsey Borough Hall
33 N. Central Avenue
Ramsey, NJ 07446

Via Postal Mail and E-Mail

RE: Borough of Ramsey Ordinance No. 24-2004, Recording of Public Meetings

Dear Mayor Dillon:

I write to inform you that Borough of Ramsey Ordinance No. 24-2004, regarding the recording of public meetings, contains provisions that violate the free speech right and common law right of people to record public meetings. The Mayor and Council should instruct all Ramsey public bodies to immediately cease enforcing this ordinance. The ACLU-NJ further requests that the Mayor and Council take appropriate action to revise the ordinance and implement policies to ensure compliance with the rights protected by the constitution, common law, and Open Public Meetings Act.

The New Jersey Supreme Court has explicitly held that citizens have a right to record public meetings. *Tarus v. Pine Hill*, 189 N.J. 497 (2007). While “public bodies may impose reasonable guidelines to ensure that the recording of meetings does not disrupt the business of the body or other citizens’ right of access,” the Court cautioned that such guidelines cannot be “too restrictive” and that they must be “limited in scope to the stated purpose of preventing disruption.” *Id.* at 516.¹

Section 2 of the ordinance contains a statement of intent which recognizes that the “right of the public to be present at all meetings of public bodies” includes “the right to take still photographs, videotape, and audiotape the proceedings, subject to the requirements set forth herein.” However, the Mayor and Council (hereinafter “Council”) undermine that recognition by imposing overly-restrictive conditions in the remaining paragraphs. These conditions are not limited to the purpose of preventing disruption and, accordingly, are impermissible under *Tarus*. If left in place, they expose the Borough to civil action.

¹ Although the *Tarus* court did not need to reach the constitutional question, there is no doubt that the right to video record a public meeting – like the right to audiotape, take notes, passively listen, actively leaflet, or distribute copies or audiotapes and videotapes – is encompassed within one’s right to obtain or disseminate information, and is therefore covered by the constitutional right to free speech. *See State v. Baird*, 50 N.J. 376, 380 (1967) (recognizing that the freedoms of speech and press include the right to distribute, the right to receive, and the right to read).

Under the requirements of *Tarus*, the following provisions of Ordinance No. 24-2004 are legally infirm:

- Section 3(a), which impermissibly limits videotaping to two devices per meeting.
- Section 3(c), which restricts the location and view of the cameras.
- Sections 4(b), 5(b), and 5(c), which impose impermissible notice requirements for audio and video recordings, and limit video permissions on a first-come-first-served basis.
- Section 6, which impermissibly restricts the movement of recording equipment, regardless of equipment size or disruptiveness.
- Section 7, which impermissibly prohibits all filming of minors.
- Sections 9 and 11, which, respectively, impermissibly require a specific disclaimer before any recording is broadcast and impermissibly penalize the exercise of free speech rights.²

These provisions suggest it is the Borough of Ramsey's view that the public body "allows" members of the public to record meetings. However, as the New Jersey Supreme Court has held, recording public meetings is every citizen's *right*. And restrictions upon that right can only be imposed for very limited purposes and in very limited ways. Through this ordinance, the Borough restricts the rights of attendees far more than our constitution and common law allow.

I. Restrictions That Misapply Spatial Concerns to Unobstructive Cell Phone Cameras or Other Handheld Devices (Sections 3(a), 4(b), 5(b), 5(c), and 6)

Sections 3(a) and 5(c) restrict videorecording to two people, one device each, per meeting and provide that those two allowances will be granted on a first-come-first-served basis. Section 4(b) requires people audiotaping to place a 8 ½ x 11 inch notice beside the recording device, and section 5(b) requires those who wish to videotape to seek advance permission of the Borough Clerk. Section 6 prohibits video or audio equipment from being moved into, out of, or around the meeting room while the public body is in session. None of these provisions make a distinction between cell phone or other unobstructive devices and larger video equipment. All of the above provisions are impermissible with respect to the smaller, unobstructive devices.

The Council may address safety, obstruction, spatial, and other disruption concerns associated with large video cameras that include tripods or wires. However, in today's world, recording via a handheld device has become ubiquitous. Safety, obstruction and other interests are simply not implicated when videotaping occurs through use of unobstructive, non-disruptive cell phones or other handheld devices.³ As the use of such cameras does not create spatial or obstruction

² While the ACLU-NJ objects to sections 9 and 11, I do not address them at length in this letter. Like the other objectionable provisions, their impermissibility derives from the protected nature of the free speech and common law right to record public meetings.

³ The Supreme Court has noted that, given today's technological advances, videotaping is "no more disruptive than pen and paper." *Tarus*, 189 N.J. at 513.

concerns, there is no legitimate reason to impose section 3(a)'s limitation to two people using such cameras per meeting. Indeed, as discussed further below, each person has a right to focus on aspects of the public meeting as they see fit, and thus the Council cannot preclude some persons from videotaping at the meeting simply because it has already permitted a specific number of other attendees to do so. Because a numeric limitation on devices is untenable, so is the provision in section 5(c) that the permissions be granted on a first-come-first-served basis. Similarly, there is no legitimate reason to prohibit, as section 6 does, non-disruptive movement of smaller devices into, out of, or around the meeting room, to the extent members of the public are otherwise free to move in, out of, or around the meeting room themselves.⁴

Finally, assuming a person is recording unobtrusively, there is no legitimate reason for a public body to prevent a member of the public who feels inspired in the moment to videotape a portion of a public meeting from doing so because she or he has not provided advance notice, as section 5(b) currently requires. There is also no reason to potentially chill the exercise of the right to audiorecord by requiring, through section 4(b), the posting of a 8 ½ x 11 inch placard beside the person audiorecording. Indeed, it is quite likely that a matter that was not on the official agenda could arise and prompt individuals' interest in documenting that portion of the meeting; these notice requirements would unconstitutionally preclude such documentation.

II. Restrictions That Mistakenly Assume a Right to Privacy at Public Meetings (Sections 3(c) and 7)

Section 3(c) requires that video cameras may only be located at the back of the meeting room and must be trained on the dais to show a full view of the public body. The provision prohibits zoom-in shots of members of the public body and prohibits any videotaping of the audience or even of those who address the public body. Notwithstanding the restricted view required by 3(c), section 7 further prohibits videotaping any portion of a meeting that involves children. Both of these provisions are impermissible.

There is no reasonable expectation of privacy to not be photographed or videotaped in public, whether one is speaking or simply observing. Just as people may be filmed on a public street, they are also subject to being filmed when attending a public meeting. The New Jersey Supreme Court has held that “[t]hose who attend [public] meetings . . . fully realize that their comments and remarks are being made in a public forum” and “no right of privacy protects a citizen’s public comments.” *Tarus*, 189 N.J. at 513.

This reasoning applies equally to minors who speak or otherwise appear at public meetings. First addressing audio recordings, the Court has stated: “[I]f an individual is willing to stand up and talk in the sometimes volatile setting of a thronged public meeting, at which members of the press are customarily present, that person has little to fear (and much to gain) from the presence of a tape recorder.” *Id.* at 513 (quoting *Belcher v. Mansi*, 569 F. Supp. 379, 383 (D.R.I. 1983)). The Court further noted that the “pervasive use of video cameras at public events evidences a societal

⁴ The Borough can generally impose a policy that handheld cameras cannot be operated in a manner that obstructs others (such as held over one’s head or stretched out in front of someone else).

acceptance of their use in public fora.” *Id.* at 512. Children, and their parents or other guardians, who are “willing to stand up and talk” in public meetings do so at the risk – or protection, as the Court suggests – that their comments will be recorded, just as their silent presence at the meeting can be. The concern expressed by section 7 for the “vulnerability” of children is vague and overbroad and simply cannot justify the total closure of the meeting session to recording because a minor participates in the proceedings. To allow this closure would be to sacrifice the transparency and accountability at the heart of our free speech and free association guarantees and the spirit of the Open Public Meetings Act.

The same language from *Tarus* and underlying constitutional principles apply to physical presence at the meeting by members of the public and individuals on the public body itself. Persons who videotape public meetings may have numerous reasons why they wish to focus their recording on a particular public body member rather than the entire dais (e.g., to better capture that particular member’s reactions to other members’ comments). There are also numerous reasons to capture members of the audience (e.g., to gauge reactions to proposals, to document who is speaking, etc.). Regardless of the reasons, the Council cannot place restrictions on the content of what a person videotapes. Content-based restrictions violate the constitutional right to free speech and free press, as well as the common law right to videotape public meetings without undue government interference. By requiring that the only view the camera may record is that of the full dais, viewed from the back of the room, section 3(c) imposes an impermissible content-based restriction. The Council and other Ramsey public bodies may only impose regulations that prevent disruption; they cannot act as “producer” or “director” of a private citizen’s videotape, as that section would require.

III. Conclusion

On their face, numerous provisions of Ordinance 24-2004 are unlawful. In addition, the ACLU-NJ has received reports that they have been enforced, in practice, to restrict Ramsey residents’ rights. Recent minutes from Council meetings show that these limitations are a standard part of the introduction, including notification that “videotaping of this meeting requires prior request be submitted to the Borough Clerk and permission granted.” Again, especially as it applies to small devices like cellphones, this statement violates the clear mandates of *Tarus* and the free speech rights of Ramsey residents.

Accordingly, the ACLU-NJ requests that the Borough provide written confirmation of the following:

- 1) Confirmation that members of the public may use non-disruptive devices without limitation as to location and view of the camera, and without providing notice.
- 2) Confirmation that members of the public may record (whether via small unobstructive devices or larger devices) any aspect of a public meeting, and are not limited as to where to focus the camera or who the camera captures at the public meeting.

- 3) Confirmation that all Borough of Ramsey public bodies will correct the impression given by past practice by advising those in attendance at their next public meeting about the right of public access to government proceedings, and that this advisement will be reflected in both the published agenda and meeting minutes.

Given the clarity of the law in these areas, I am hopeful that this matter can be amicably resolved. I ask that you advise me by January 11, 2017 of the Borough's position on the above points. Please feel free to contact me at 973-854-1733 or tborden@aclu-nj.org if you wish to discuss this matter further

Sincerely,



Tess Borden
Staff Attorney

Cc: Borough Attorney Peter Scandariato
Borough Clerk Meredith Bendian