ORDINANCE 07-2005

AN ORDINANCE ESTABLISHING CHAPTER IX, ARTICLE II, "RESTRICTIONS ON THE AWARDING OF PROFESSIONAL CONTRACTS" OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF ATLANTIC HIGHLANDS

WHEREAS, the taxpayers and citizens of the Borough of Atlantic Highlands (the "Borough") have a right to expect that the exercise of the duties and responsibilities of their elected municipal officials and the Borough's employees and officials, are not influenced by or in exchange for excessive political contributions;

WHEREAS, professional business entities are exempt from public bidding requirements and opportunities for influence exist with respect to the award of professional contracts, if these professional business entities are permitted to make substantial political contributions directly, or indirectly through political action committee or county committee accounts or through the campaign accounts of candidates in other jurisdictions, to the election campaigns of the local government elected officials who are ultimately responsible for the awarding of such contracts;

WHEREAS, pursuant to NJSA 40A:11-5 and NJSA 40:48-2, municipalities have the right to establish rules and procedures governing the conduct of their elected officials, employees and officers, and governing the contracting with persons and entities doing business with the Borough with or without out public bid;

WHEREAS, the taxpayers and citizens of the Borough of Atlantic Highlands (the "Borough") have a right to keep abreast of the actions and decisions of their municipal officials in the performance of their official duties, and to monitor their expenditures of taxpayer dollars, and to expect that the exercise of the duties and responsibilities of their elected municipal officials and the Borough's employees and officials, are not influenced by or in exchange for political contributions;

NOW, THEREFORE, BE IT ORDAINED by the Borough of Atlantic Highlands, County of Monmouth, New Jersey, that Chapter IX, Article II "Restrictions on the Awards of Professional Contracts" is hereby established with the following provisions:

9-2. RESTRICTIONS ON AWARD OF PROFESSIONAL CONTRACTS

9-2.1 Definitions.
For the purposes of this section:

Agreement to Purchase Goods or Services shall mean any agreement for the rendering of professional services to or on behalf of the Borough and any agreement whether by contract or purchase order, for the sale of any goods or non-professional services to the Borough, as defined herein, and without regard to whether the said agreement or contract is awarded pursuant to and in accordance with the open public bidding requirements of NJSA, 40A:11-5, *et seq.*;

Borough shall mean the Borough of Atlantic Highlands as a municipal entity, and any elected official, officer, employee, agent, department, board or commission of the Borough of Atlantic Highlands;

*Campaign Contribution*_– The term "Campaign Contribution" shall mean any contribution to an Atlantic Highlands political campaign, Monmouth county political campaign, and/or Pass-Through campaign contribution as defined herein, whether in the form of money, service (with or without compensation), or pledge, loan, gift, subscription, advance or transfer of money or other thing of value, including any item of real property or personal property, tangible or intangible including without limitation, any in-kind contributions, or purchases of tickets, advertisements or the like, directly or indirectly, made to or on behalf of any candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or any elected or appointed official. "Campaign Contribution" also includes any pledge, promise or other commitment or assumption of liability to make such transfer. For purposes of reports required under the provisions of the ordinance, any such commitment or assumption shall be deemed to have been a contribution upon the date when such commitment is made or liability assumed.

Entity shall mean any corporation, professional corporation, joint venture, general or limited partnership, trust or limited liability company, or subsidiary or parent of any of the foregoing;

Pass-Through Campaign Contributions shall mean any contribution, whether in the form of money, free service or pledge, including without limitation, any in-kind contributions, or purchases of tickets, advertisements or the like, directly or indirectly, to support any political campaign committee or election fund of any candidate for, or holder of any elected office of the Borough, or to any municipal or party committee or political club or organization within the Borough, that is received from the election fund or other campaign account of any elected official or candidate for any office other than mayor or council of the Borough, or from any county political organization, county campaign committee or political action committee or fund within or without the County of Monmouth.

Professional Business Entity shall mean any individual person or Entity who, negotiates, bids or otherwise seeks to enter into an Agreement to Purchase Goods or Services as defined herein. In the case of any Professional business entity who is an individual person, the term shall also include the individual's spouse, if any, and any child living at home, as well as any Entity by whom any of them are employed or in which any of them have an ownership interest in excess of five percent (5%). In the case of any Professional Business Entity who is an Entity, the term shall also include each and every principal of the said Entity who has an ownership interest in excess of five percent (5%) in the Entity, or any parent or subsidiary of the Entity, and their spouses, if any, and any child living at home;

9-2.2 Prohibition on Awarding Contracts for the Sale of Goods or Services to Certain Campaign Contributors

Any other provision of law to the contrary notwithstanding, the Borough shall not enter into any Agreement to Purchase Goods or Services, or make any payment pursuant to any such Agreement with any Professional Business Entity that has solicited or made any Campaign Contribution in excess of the limits specified in Chapter 9-1.6. of the Revised General Ordinances of the Borough of Atlantic Highlands, during the three-year period immediately preceding the date of the contract or agreement, or during the term of any such Agreement to

Purchase Goods or Services;

9-2.3 Limits on Political Campaign Contributions by Vendors to the Borough

No Professional Business Entity shall knowingly solicit on behalf of, or make any Campaign Contribution in excess of the limits specified in Chapter 9-1.6. of the Revised General Ordinances of the Borough of Atlantic Highlands during the time in which negotiations are pending for, or during the term of, any Agreement to Purchase Goods or Services.

9-2.4 Party Responsible For the Award of an Agreement to Purchase Goods and Services

For purposes of this section, the office that is considered to have ultimate responsibility for the award of an Agreement to Purchase Goods and Services shall be the Borough Council, as defined in Chapter 1-2 of the Revised General Ordinances of the Borough of Atlantic Highlands. However, the restrictions of this ordinance apply to all boards, commissions or agencies of the Borough whose appointments of professionals either require approval of the Borough Council or whose operating funds are subject to appropriation by the Borough Council.

9-2.5 Professional Business Entities to Certify Their Compliance With The Borough's Restrictions on Campaign Contributions; Obligation is Continuing

Prior to issuing any purchase order or awarding to any professional business entity an Agreement to Purchase Goods and Services, or making any payment pursuant to the same, or granting any change order in connection therewith, the Borough shall require that the Professional Business Entity first certify by way of submitting a sworn statement to the Borough's Director of Purchasing as defined in Chapter 2.50.4 of the Revised General Ordinances of the Borough of Atlantic Highlands, in language to be approved by the Borough Attorney, in which the entity shall verify that it has not knowingly made any Campaign Contribution in excess of the limits set forth in Chapter 9-1.6. of the Revised General Ordinances of the Borough of Atlantic Highlands, and that it has not otherwise violated Chapter 9-2.3 hereof. This certification shall be in addition to any other certification that may be required by any other provision of law. The Borough shall keep the original of each such sworn statement on file. Notwithstanding anything contained herein to the contrary, the professional business entity shall have a continuing duty to report immediately to the Borough any Campaign Contributions made in violation of this Section that occur during any time that an Agreement to Purchase Goods or Services is in effect, or that occur during pending negotiations or bidding by the Professional Business Entity to enter into such an Agreement.

9-2.6 Professional Business Entity Who Refuses to Certify Their Compliance With The Borough's Restrictions on Campaign Contributions or Knowingly Submits a False Certification

In addition to such other penalties as may be provided by law, any Professional Business Entity who, after reasonable notice of the consequences thereof, refuses or otherwise fails to provide the certification required herein, or who

knowingly files a false certification, shall be disqualified from eligibility for future Agreements to Purchase Goods or Services with the Borough until such time as the Mayor and Council adopt a resolution determining that the Professional Business Entity may be eligible or otherwise should be paid for services rendered or goods sold to the Borough. Any Professional Business Entity may appeal to the Mayor and Council from a determination by the Borough as being disqualified.

9-2.7 Contributions Made Prior to the Effective Date

Notwithstanding any term contained herein to the contrary, no Professional Business Entity shall be required to report Campaign Contributions made prior to the effective date of this Ordinance, and the Borough in determining the entity's eligibility pursuant to this Section shall consider no such Campaign Contributions.

9-2.8 Curing Violations; Return of Excess Contributions

Any Professional Business Entity may cure a Campaign Contribution made in excess of the limits set forth in Chapter 9-1.6. of the Revised General Ordinances of the Borough of Atlantic Highlands, within 45 days after the general election during the calendar year in which the excess Campaign Contribution was made. The said entity shall notify the Borough in writing that it has received a reimbursement of a contribution in excess of that allowed in Chapter 9-1.6. of the Revised General Ordinances of the Borough of Atlantic Highlands, and by attaching a true and correct copy of the cancelled check received in reimbursement.

BE IT FURTHER ORDAINED, that provisions of this Ordinance shall be severable. If any provision of this Ordinance, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this law to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it held invalid, shall not be affected thereby, and to this extent the provisions of this law are severable.

BE IT FURTHER ORDAINED, that all other ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistencies.

BE IT FURTHER ORDAINED, that this ordinance shall take effect upon adoption and publication according to law.

Council member Ladiana introduced this Ordinance and, after First Reading, moved for approval. It was seconded by Council member Fligor and approved by the following vote.
AYES: Council members Archibald, Fligor, Ladiana, Niles, Nolan and Spatola
NAYS:

The Second Reading, Public Hearing and possible adoption is scheduled for March 23, 2005.

I, Dwayne M. Harris, Acting Municipal Clerk of the Borough of Atlantic Highlands, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Governing Body at its meeting held February 23, 2005.
WITNESS my hand and the Seal of the Borough of Atlantic Highlands this 24th day of February 2005.

Dwayne M. Harris

SECOND READING AND FINAL ADOPTION: PASSED March 23, 2005
After a Public Hearing and Second Reading, Councilmember Fligor moved for Final Adoption of this Ordinance. It was seconded by Councilmember Ladiana and adopted by the following vote.

AYES: Council members Archibald, Fligor, Ladiana, and Nolan
NAYS:

I, Dwayne M. Harris, Acting Municipal Clerk of the Borough of Atlantic Highlands, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Governing Body at its meeting held March 23, 2005.
WITNESS my hand and the Seal of the Borough of Atlantic Highlands this 24th day of March 2005.

Dwayne M. Harris

DATE OF MAYOR'S APPROVAL: March 28, 2005

Peter E. Donoghue, Mayor

CERTIFIED COPY

DWAYNE M. HARRIS
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 1/29/2009