ORDINANCE 06-2005

AN ORDINANCE ESTABLISHING CHAPTER IX –ARTICLE I CONFLICTS OF INTEREST 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, the opportunities for such influence are particularly ripe in certain circumstances, particularly with respect to the award of professional contracts, the granting of change orders on contracts that are publicly bid, and the purchases of goods and services for amounts less than the statutory bid amount, and even in the setting of bid requirements, if vendors are permitted to make substantial political contributions directly, or indirectly through a political action committee, 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 or change orders, or who oversee those responsible for making purchases of goods and services;

WHEREAS, the opportunities for such influence also exist with respect to development projects within the municipality, if developers, or the professionals who represent or perform services for developers in connection with development projects within the Borough, are permitted to make substantial political contributions to the election campaigns of the local government elected officials who sit on local planning and zoning boards, or who are responsible for making appointments to local zoning and planning boards, or who are ultimately responsible for Development Agreements, and resolutions relating thereto, entered into by the Borough pursuant to a Redevelopment Plan or the Municipal Land Use Law;

WHEREAS, the opportunities for such influence also exist with respect to Alcoholic Beverage Control licenses within the municipality, if the holders of those licenses are permitted to make substantial political contributions to the election campaigns of the local government elected officials who make decisions regarding the transfers and renewals of such licenses, the conditions imposed on such licenses, and fines, suspensions or revocations imposed as a result of violations of the regulations governing the use of such licenses;

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, the issuance and renewal of licenses for the sale of alcoholic beverages within the Borough, and to establish rules and procedures relating to application for development and

redevelopment projects, and relating to licenses to sell alcoholic beverages within the Borough;

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 I, Conflicts of Interest, of the Revised General Ordinances of the Borough of Atlantic Highlands, is hereby established with the following provisions, as follows:

Chapter IX, Article I, Conflicts of Interest, is hereby established with the following provisions:

Article I
Conflicts of Interest

9-1.1 Definitions.

For the purposes of this Chapter:

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.*;

Alcoholic Beverage Licensee shall mean any individual or Entity who owns or is negotiating for the purchase of, or has an application pending for a license or permit for the sale of alcoholic beverages within the Borough of Atlantic Highlands, whether or not the license is active, and any person or Entity that is the owner of any property on which the license is currently active, or any property to which an application is pending with the Borough for the place-to-place transfer of the license. In the case of any Alcoholic Beverage Licensee who is an individual, 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 has an ownership interest in excess of Five Percent (5%). In the case of any Alcoholic Beverage Licensee that 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;

Borough shall mean, in addition to the Borough of Atlantic Highlands as a municipal entity, 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.

Developer – The term "Developer" means a developer as defined by N.J.S.A. 40:55D-4, and shall mean any individual or Entity who makes any application to the Borough's Planning Board for any subdivision, site plan approval or variance relief, regardless of how minor; or who owns or is the contract purchaser of any property that is the subject of any such application, or who owns or is the contract purchaser of, any property located within a designated Redevelopment Area, regardless of whether the property has been specifically designated as being "in need of redevelopment"; or who engages directly or indirectly in negotiations with the Borough relating to, or has in fact entered into, a Developer's Agreement pursuant to any Redevelopment Plan or the Municipal Land Use Law, or who owns or is the contract purchaser of, any property that is the subject of, or would directly be affected by a proposed change in zoning or of the Master Plan, and in the case of a Developer who is an individual, his or her spouse and any child living at home, and any Entities of which any of them are principals holding a Five Percent (5%) or greater interest; and in the case of a Developer that 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 in any parent or subsidiary of the entity, and their spouses, if any, and any child living at home;

Developer's Agreement shall mean any agreement entered into between a Developer and the Borough relating to an application or plan to develop

or redevelop property within the Borough of Atlantic Highlands.

Development Matter shall mean any application for development pending before the Borough Planning Board of the Borough, any application or proposal to change the Borough's zoning regulations or Master Plan, or any proposed development pursuant to a Redevelopment Plan, or any Developer's Agreement. With respect to a Developer, the term "relating to a Development Matter" shall mean that the Developer is the applicant, owner or contract purchaser of property that is the subject of an application for development pending before the Borough Planning Board of the Borough, or of any application or proposal to change the Borough's zoning regulations or Master Plan, or of any application for development pursuant to a Redevelopment Plan or otherwise a party to any Developer's Agreement. With respect to a Development Professional, the term "relating to a Development Matter" shall mean that the Development Professional has rendered or is rendering professional services for a Developer in connection with that Development Matter.

Development Professional shall mean any licensed professional, including but not limited to attorneys, architects, engineers, surveyors and planners, or any Entity that provides such professional services, who is representing a Developer or who has performed professional services for a Developer relating to a Development Matter, and any principal owning not less than a Five Percent (5%) interest in the Entity.

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, 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, purchase of tickets, advertisements or the like, directly or indirectly to support any campaign committee or election fund of any candidate for, or holder of the office of, Mayor or Council 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.

Planning Board in the Borough of Atlantic Highlands is a combined zoning board of adjustment and planning board and is referred to as the "Planning Board."

Redevelopment Plan shall mean any plan, or amendment thereto,

adopted by ordinance of the Mayor and Council pursuant to and in accordance with Redevelopment and Housing Law, Chapter 79, P.L. 1992.

Vendor shall mean any individual person or Entity who negotiates, bids or otherwise seeks to enter into an Agreement to Purchase Goods or Services. In the case of any Vendor 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 Vendor 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;

9-1.2 DISCLOSURE OF PERSONAL INTEREST.

Any official or employee who has or may have any interest, direct or indirect, in any measure, indebtedness or action and who participates in discussion with or gives an official opinion to the Borough Council or to any municipal agency, board or authority with respect thereto shall disclose on the record of the Borough Council or agency, board or authority the nature and extent of such interest.

9-1.3 PROHIBITED ACTIVITIES.

a. No elected municipal official appointed municipal official, or municipal employee shall engage in political activity during his or her hours of duty with respect to any candidate.

b. No elected municipal officer, appointed municipal official or municipal employee shall use or permit others to use the facilities of the Borough for the preparation, storage or distribution of campaign material.

c. Nothing in this chapter shall be construed to prevent an elected official from campaigning, or engaging in political activity, at any time.

d. No appointed or elected municipal official or employee shall use or permit others to use the facilities of the Borough for the conduct of private business. With the approval of the Mayor and Council, nonprofit public service and civic organizations shall be allowed to use such Borough facilities as may be deemed appropriate and as may be permitted pursuant to law.

e. No elected municipal official, appointed municipal official or municipal employee shall, without proper legal authorization, disclose

confidential information concerning the property, government or affairs of the Borough, nor shall he/she use such information to advance the financial or other private interest of himself/herself or others.

9-1.4 Ineligibility of Elected Officials to Participate in or Vote on Specific Matters Involving Certain Campaign Contributors

a. Any elected official who has received any Campaign Contribution from any Developer in excess of the limits set forth in Section 9-1.6.b. hereof shall be ineligible to participate in discussions or negotiations relating to, or cast any vote with respect to any Development Matter relating to that Developer.

b. Any elected official who has received any Campaign Contribution from any Development Professional in excess of the limits set forth in Section 9-1.6.b. hereof, shall be ineligible to participate in discussions or negotiations relating to, or cast any vote with respect to any Development Matter with respect to which the Development Professional has performed any professional service.

c. Any elected official who has received any Campaign Contribution from any Alcoholic Beverage Control Licensee in excess of the limits set forth in Section 9-1.6.b. hereof, shall be ineligible to participate in, be kept informed of, or cast any vote with respect to, any application by the Alcoholic Beverage Control Licensee for an alcoholic beverage control license or permit relating to the said Alcoholic Beverage Control Licensee, or with respect to any hearings relating to same, or with respect to any investigations relating to same, or with respect to any local or State enforcement proceedings seeking to impose fines, suspensions or revocations relating to the same;

9-1.5. General Ineligibility of any Elected Official Who Receives Excess County Campaign Contributions or Pass-Through Campaign Contributions to Participate or Vote on Certain Categories of Matters.

Any elected official who has received during the preceding calendar year including during years preceding his or her election, Pass-Through Campaign Contributions from any single source in excess of $1,000, or who has during any of the said preceding year received combined Pass-Through Campaign Contributions from all sources in excess of Twenty Percent (20%) of the total amount of all Campaign Contributions received by that elected official during that same calendar year, shall be ineligible to participate in, or cast a vote on any of the following categories of matters for the reminder of that calendar year and for a period of three additional calendar years following that calendar year;

1. The award of any Agreement for the Sale of Goods or Services to the Borough, and shall be further barred from voting on the grant of change orders with respect to publicly bid contracts or agreements; with

respect to each and every vote as to which the Mayor or member of the Council is ineligible by virtue of this provision, the reasons for the abstention shall be set forth on the record, recorded in the minutes, and noted on the resolution awarding the contract or agreement for the sale of goods and services;

2. Any Development Matter and any appointment to the Planning Board

of the Borough of Atlantic Highlands;

3. Any matter relating to or involving any Alcoholic Beverage Licensee;

9-1.6. Atlantic Highlands and County Campaign Contribution Limits Affecting Vendor Eligibility and Conflicts of Interest.

a. Campaign Contribution limits affecting the eligibility of Vendors, pursuant to Chapter 9-2.2 and 9-2.3 of the Revised General Ordinances of the Borough of Atlantic Highlands, to enter into or be paid pursuant to Agreements for the Purchase of Goods or Services are as follows:

1. Any vendor who is an individual person as defined herein may contribute a maximum of $400 annually each for any purpose to any candidate, for mayor or council, or $500 to Borough of Atlantic Highlands party committee or Monmouth County party committee, or to a PAC referenced in this ordinance, without violating this ordinance.

2. Any vendor who is an Entity as defined herein may not contribute for any purpose in excess of $2,500 annually to all Atlantic Highlands candidates and officeholders who have the ultimate responsibility for the award of a contract, and all Atlantic Highlands or Monmouth County political parties and PACs referenced in this ordinance combined, without violating this ordinance.

b. Campaign Contribution limits affecting the eligibility of elected officials to participate in or vote on specific matters involving Development Matters or Alcoholic Beverage Licensees are as follows:

1. Any candidate for the office of mayor or council who receives a Campaign Contribution in excess of $400 from any Developer or Development Professional during a single calendar year shall be ineligible to vote or participate in matters relating to the said Developer or Development Professional as provided in Section 9-1.4.a. or 9-1.4.b., respectively.

2. Any candidate for the office of mayor or council who receives a Campaign Contribution in excess of $400 from any Alcoholic Beverage Licensee during a single calendar year shall be ineligible to vote or otherwise participate in matters involving the said Alcoholic Beverage Licensee as provided in Section 9-1.4.c.;

The limits set forth in Section 9-1.6.b shall apply jointly to all candidates for mayor and/or council, unless the said candidates maintain entirely separate election fund accounts and run entirely uncoordinated campaigns in which case the limits set forth in Section 9-1.6.b shall apply to each individually-run, uncoordinated campaign.

9-1.7. Contributions Made Prior to the Effective Date

Notwithstanding any term contained herein to the contrary, no Campaign Contributions made prior to the effective date of this Ordinance shall be considered in calculating the campaign contribution limits set forth in Section 9.1-5. or 9-1.6. hereof.

9-1.8. Reporting Obligations of Candidates for Office of Mayor or Council

a. Each and every candidate for the Office of Mayor or Council within the Borough of Atlantic Highlands shall file with the Borough Clerk a true and correct copy of each and every campaign finance report they are required to file with the Election Law Enforcement Commission, and shall do so not later than the date that the said report is due to be filed with the New Jersey Election Law Enforcement Commission.

b. In connection with each campaign report submitted to the Borough Clerk pursuant to subparagraph (a) above, each candidate for the office of Mayor or Council shall attach a supplemental certification, on a form to be provided by the Borough Clerk, pursuant to which the candidate shall certify the following:

1. That he or she has personally inspected the records of contributions made to his or her campaign account or election fund;

2. That the information contained on the attached report is, after due inquiry, accurate in all material respects;

3. Identifying (1) each and every individual who either individually or in combination with his or her spouse, or any child living in the same household, or any corporation, professional corporation, limited liability company or partnership of which any of them are principals owning an interest of Five Percent (5%) or greater, from whom he or she has received a Campaign Contribution cumulatively in excess of $400 during that calendar year; and (2) each and every Pass-Through Campaign

Contribution, regardless of amount, he or she has received from any political action committee, county or municipal committee or political club, or from any election fund relating to any public question or from any election fund of any candidate for an office.

9-1.9. Curing Violations; Return of Excess Contributions

Any Vendor, Developer, Development Professional and Alcoholic Beverage Licensee may cure a Campaign Contribution made in excess of the limits set forth in Sections 9-1.5. or 9-1.6. of this Ordinance, if, within 45 days after the general election during the calendar year in which the excess Campaign Contribution was made, the said Vendor, Developer, Development Professional or Alcoholic Beverage Licensee notifies the Chief Financial Officer and Borough Clerk in writing that it has received a reimbursement of a contribution in excess of that allowed in Sections 9-1.5. or 9-1.6., and by attaching a true and correct copy of the 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 Nolan moved for Final Adoption of this Ordinance. It was seconded by Councilmember Fligor 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