Ordinance No. 2007-#05

AN ORDINANCE AMENDING CHAPTER 11 – ADMINISTRATION OF THE REVISED ORDINANCES OF THE BOROUGH OF RINGWOOD TO INCLUDE PAY TO PLAY RULES AND REGULATIONS

BE IT ORDAINED by the Mayor and Council of the Borough of Ringwood, County of Passaic, State of New Jersey, as follows:

Preamble

WHEREAS, professional business entities are exempt from public bidding requirements; and

WHEREAS, it has become common for professional business entities to make substantial political contributions to the election campaigns of the local government elected officers who are ultimately responsible for award professional service contracts or other contracts or agreements which are not subject to public bidding; and

WHEREAS, substantial local political contributions from professionals receiving discretionary contracts from the elected officials who receive such contributions raise reasonable concerns on the part of the tax payers as to their trust in the process of local government, if not the quality or cost of services received; and

WHEREAS, pursuant to P.L. 2005, c. 271, a municipality is authorized to adopt by ordinance measures limited the awarding of public contracts to business entities that have made political contributions and limiting the contributions that the holders of a contract can make during the term of a contract; and

WHEREAS, pursuant to N.J.S.A. 40A:11-5 and N.J.S.A. 40:48-2, municipalities have the right to establish rules and procedures for contracting with professional business entities.

NOW, THEREFORE, BE IT RESOLVED that the policy of the Borough of Ringwood will be to set maximum amounts that professional business entities may contribute politically beyond which they become ineligible to receive a public professional service contract from the Borough of Ringwood.

Section 1. Prohibition on Awarding Public Contracts to Certain Contributors

(a) Except as established by subsection (d), the municipality or any of its purchasing agents or agencies, as the case may be, shall not enter into an agreement or otherwise contract to procure professional, banking, insurance coverage services or any other consulting services, including those awarded pursuant to a "fair and open" process, from any professional business entity, if that entity has made any contribution of money, or pledge of a contribution, including in-kind contributions, to any Ringwood municipal candidate or holder of the public office having ultimate responsibility for the award of the contract, or campaign committee supporting such candidate or officeholder, or to any Ringwood or Passaic County political party committee, or to any political action committee (PAC) that regularly engages in the support of municipal elections and/or municipal parties in excess of the thresholds specified in subsection (d) within one calendar year immediately preceding the date of the contract or agreement or has solicited such contribution of money or pledge of a contribution of money including in-kind contributions regarding the same.

(b) No professional business entity which enters into negotiations for, or agrees to, any contract or agreement with the municipality or any department or agency thereof for the rendition of professional, banking or insurance coverage services or any other consulting services, including those awarded pursuant to the "fair and open" process, shall make any contribution of money, or pledge of a contribution, including in-kind contributions, to any Ringwood municipal candidate or holder of public office having ultimate responsibility for the award of the contract, or campaign committee supporting such candidate or officeholder, or to any Ringwood or Passaic County political party committee, or to any political action committee (PAC) that regularly engages in the support of municipal elections and/or municipal parties between the time of first communications between that business entity and the Borough regarding a specific professional services agreement and the later of the termination of negotiations or the completion of the contract or agreement nor shall said professional business entity solicit for the contribution, or pledge of a contribution, including in-kind contributions regarding the same.

(c) For purposes of this ordinance, a "professional business entity" seeking a public contract means an individual including the individual's spouse, if any, and any child living at home; person; firm; corporation; professional corporation; partnership; organization; or association. The definition of a business entity includes all principals who own 10% or more of the equity in the corporation or business trust, partners and officers in the aggregate employed by the entity as well as any subsidiaries directly controlled by the business entity.

(d) Any individual or professional meeting the definition of "professional business entity" under this section may annually contribute a maximum of $300 each for any purpose to any candidate, for Mayor or Governing Body, or $300 to the Borough party, or $500 to the Passaic County party committee, or to a PAC referenced in this ordinance, without violating subsection (a) of this section. However, any group of individuals meeting the definition of "professional business entity" under this section, including such principals, partners, and officers of the entity in the aggregate, may not annually contribute for any purpose in excess of $2,500 to all Ringwood candidates and officer holders with ultimate responsibility for the award of a contract, and all Ringwood or Passaic County political parties and PACs referenced in this ordinance combined, without violating subsection (a) of this section.

(e) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:

(1) The Ringwood Council and the Mayor of Ringwood, if the contract requires approval or appropriation from the Council.

(2) The Mayor of Ringwood, if the contract requires approval of the Mayor, or if a public officers who is responsible for the award of a contract is appointed by the Mayor.

Section 2. Contributions Made Prior to the Effective Date

No contributions of money or any other thing of value, including in-kind contributions, made by a professional business entity to any municipal candidate for Mayor or Council, or municipal or county party committee or PAC referenced in this ordinance shall be deemed a violation of this section, nor shall an agreement for property, goods or services, of any kind whatsoever, be disqualified thereby, if that contribution was made by the professional business entity prior to the effective date of this section.

Section 3. Contribution Statement by Professional Business Entity

(a) Prior to awarding any contract or agreement to procure services, including banking or insurance coverage services, with any professional business entity, the Borough or any of its purchasing agents or agencies, as the case may be, shall receive a sworn statement from the professional business entity made under penalty of perjury that the bidder or offeror has not made a contribution in violation of Section 1 of thisOrdinance;

(b) The professional business entity shall have a continuing duty to report any violations of this Act that may occur during the negotiation or duration of a contract. The certification required under this subsection shall be made prior to entry into the contract or agreement with the Borough and shall be in addition to any other certifications that may be required by any other provision of law.

Section 4. Return of Excess Contributions

A professional business entity or Borough candidate or office holder or municipal or county part committee or PAC referenced in this ordinance may cure a violation of Section 1 of this ordinance, if, within 30 days after the date on which the applicable ELEC Report is published, the professional business entity notified the Borough Council in writing and seeks and received reimbursement of a contribution from the Borough candidate or municipal or county political party or PAC referenced in this ordinance.

Section 5. Nature of the Violations

(a) It shall be a breach of the terms of the Ringwood professional service agreement for a business entity to: (i) make or solicit a contribution in violation of this ordinance; (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee of any candidate or holder of public office of Ringwood; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which is made or solicited by the business entity itself, would subject that entity to the restrictions of this ordinance; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of this ordinance; (viii) directly or indirectly, through or by any other person or means, do any act which would subject that entity to the restrictions of this ordinance.

Section 6. Penalties

(b) Furthermore, any professional business entity who violates (a) ii-viii shall be disqualified from eligibility for future Ringwood contracts for a period of four calendar years from the date of the violation.

Section7. Severability and Effectiveness Clause:

(a) If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

And any ordinance inconsistent with the terms of this ordinance is hereby repealed to the extent of such inconsistency.

Section 8. Effective Date:

This ordinance shall become effective 20 days after adoption.

Introduced: March 13, 2007

Adopted: March 27, 2007

Joanne Atlas

JOANNE ATLAS, MAYOR

Kelley A. Rohde

KELLEY A. ROHDE
MUNICIPAL CLERK