

PUBLIC CONTRACTING REFORM ORDINANCE NO. 1425

Be It Enacted by the Borough of Collingswood

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 awarding professional service contracts or other contracts or agreements, and

Whereas, substantial local political contributions from professionals receiving discretionary contracts from the elected officials who receive such contributions raise reasonable concerns of the part of taxpayers 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 limiting 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 Collingswood will be to set maximum amounts professional business entities may contribute politically beyond which they become ineligible to receive a public professional service contract from the Borough of Collingswood.

SECTION I**Prohibition on Awarding Public Contracts to Certain Contributors**

- (a) Any other provision of law to the contrary notwithstanding, the municipality or any of its purchasing agents or agencies or those of its independent authorities, 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, from any professional business entity, including those awarded pursuant to a "fair and open" process, if that entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, to any Collingswood Borough 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 Collingswood Borough or Camden County party committee, or to any political action committee that regularly engages in the support of borough or county elections and/or borough or county parties (PAC) in excess of the thresholds specified in subsection (c) within one calendar year immediately preceding the date of the contract or agreement.
- (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 or of its independent authorities for the rendition of professional, banking or insurance coverage services or any other consulting services, including those awarded pursuant to a "fair and open" process, shall solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to any Collingswood Borough 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 Collingswood Borough or Camden County party

committee, or to any PAC that regularly engages in the support of borough or county elections and/or borough or county 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

- (c) (i) Subject to the limitations in (ii), Any entity meeting the definition of "professional business entity" under this section may annually contribute a maximum of \$300 for any purpose to each candidate, for mayor or council, or \$300 to each Collingswood Borough party committee, or \$500 to each Camden County party committee, or to a PAC referenced in this ordinance, without violating subsection (a) of this section. However, (ii) any entity 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 a total of \$2,500 to: all Collingswood Borough candidates and officeholders with ultimate responsibility for the award of the contract and all Collingswood Borough or Camden County political parties and PACs referenced in this ordinance combined, without violating subsection (a) of this section.
- (d) For purposes of this ordinance, a "professional business entity" is any entity seeking or performing a public contract for professional, banking or insurance coverage services or any other consulting services and which may be an individual including the individual's spouse, if any, and any child living at home; a person; firm; corporation; professional corporation; partnership; organization; or association. The definition of a business entity includes all principals who own 5% 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.
- (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 Borough of Collingswood Council and the Mayor of the Borough of Collingswood, if the contract requires approval or appropriation from the Council.
 - 2) The Mayor of the Borough of Collingswood, if the contract requires approval of the Mayor, or if a public officer who is responsible for the award of the contract is appointed by the Mayor.

SECTION 2

Contributions Made Prior to the Effective Date

No contribution of money or any other thing of value, including in-kind contributions, made by a professional business entity to any borough candidate for Mayor or Council, or borough 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 professional services, or banking or insurance coverage services or any other consulting 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 offer or has not made a contribution in violation of Section 1 of this ordinance,

- (b) The professional business entity shall have a continuing duty to report any violations of this ordinance 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 officeholder or borough or county party committee or PAC referenced in this ordinance may cure a violation of Section 1 of this ordinance, if, within 30 days after the contribution, the professional business entity notifies the Borough Council in writing and seeks and receives reimbursement of a contribution from the borough candidate or borough or county political party or PAC referenced in this ordinance.

SECTION 5

Penalty

- (a) It shall be a breach of the terms of the Collingswood Borough 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 the public office of Collingswood Borough; (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 if 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; or (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.
- (b) Furthermore, any professional business entity who violates (a) ii-viii shall be disqualified from eligibility for future Collingswood Borough contracts for a period of four calendar years from the date of the violation.

SECTION 6

Severability and Repealer

- (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. The drafters of this ordinance and the voters signing the initiative petition supporting the passage of this ordinance hereby declare that they would have signed the initiative petition supporting the passage of this ordinance and each section and subsection thereof, irrespective of the act that any one or more of the sections, subsections, sentences, clauses or phrases may be declared unconstitutional, invalid, or unenforceable.

(b) All ordinances or parts of ordinances which are inconsistent with any provisions of this ordinance are hereby repealed as to the extent of such inconsistencies.

SECTION 7

Effective Date November 7, 2006 General Election

This ordinance shall become effective twenty (20) days following the earlier of (a) final adoption thereof by the Borough Council of Collingswood Borough or (b) the date on which the passage of this ordinance as a public question is certified pursuant to N.J.S.A. 19:20-9 or other applicable law, and shall be published as required by law.

Chapter 221 Borough Code

