

## ORDINANCE 7-08

### AN ORDINANCE AMENDING CHAPTER XXV OF THE ORDINANCES OF THE BOROUGH OF KEYPORT TO PROHIBIT CAMPAIGN CONTRIBUTIONS UNDER CERTAIN CIRCUMSTANCES

**WHEREAS**, it had become more frequent for developers, sometimes at the request of candidates for local elected office or political party officials, to make political contributions to the election campaigns for local government offices, and to the political parties which support them; and

**WHEREAS**, the local government officials are, once elected, responsible for deciding the terms of a redevelopment agreement; and

**WHEREAS**, political contributions from developers entering into agreements for redeveloping projects approved by the elected officials who receive such contributions raise reasonable concerns on the part of taxpayers and residents as to their trust in the process of local redevelopment, including but not limited to redevelopment decisions on tax abatements, zoning densities, publicly funded infrastructure improvements, and acquisition of property rights pursuant to eminent domain; and

**WHEREAS**, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* provides a mechanism to empower and assist local governments in efforts to promote programs for redevelopment; and

**WHEREAS**, *N.J.S.A. 40A:12A-8* allows municipalities or a designated redevelopment entity to enter in agreements with redevelopers of planning, replanning, construction or undertaking of any project or redevelopment work without public bidding and at such prices and upon such terms as it deems reasonable within areas designed for redevelopment; and

**WHEREAS**, *N.J.S.A. 40A:12A-11* provides that redevelopment entities are instrumentalities of the municipality; and

**WHEREAS**, both the exceptions to the Open Public Meetings Act, more specifically *N.J.S.A. 10:4-12b*, and *N.J.S.A. 40A:12A-8* provide that negotiations for such agreements can be conducted in executive session, provide the full terms of any such agreements are discussed and approved in open session; and

**WHEREAS**, the Borough of Keyport has previously or may in the future declare certain areas of the Borough to be areas in Need of Redevelopment under the Local Redevelopment and Housing Law, and has or may in the future adopt a Redevelopment Plan; and

**WHEREAS**, given the potential of negotiating with private parties or redevelopers and the entering into agreements with such redevelopers without a formal public bidding process, as permitted by the Local Redevelopment and Housing Law, it is necessary to establish certain limitations on political contributions which may undermine public confidence in any redevelopment effort; and

**WHEREAS**, *N.J.S.A. 40A:11-51* authorizes municipalities to regulate by ordinance public contracting with regard to campaign contributions that may be made pursuant to P.L. 1973, c. 83, and

**WHEREAS**, the restriction against local political contributions contained herein does not impair in any way the remaining opportunities for such redevelopers to speak, write and publish their sentiments about local elections and candidates or to volunteer or associate with campaigns of their own choosing.

**NOW THEREFORE BE IT ORDAINED** by the Mayor and Borough Council of the Borough of Keyport, in the County of Monmouth and State of New Jersey, that the Borough of Keyport hereby amends Chapter XXV of the Ordinances of the Borough of Keyport to create a new Article 4 to make ineligible any entity or individual seeking to

enter into a redevelopment agreement or amendment thereto or is otherwise seeking to obtain rights to develop pursuant to redevelopment agreement, who makes political contributions to Keyport elected officials and local and county political committees.

**Section 1: Redevelopment Agreements under the Local Redevelopment and Housing Law**

**I. Prohibition of entering into or amending redevelopment agreements with certain contributors**

(a) Any other provision of law to the contrary notwithstanding, the Borough of Keyport 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, amend an agreement, or otherwise contract with any redeveloper for the planning, re-planning, construction or undertaking of any redevelopment project, including the acquisition or leasing of any public property in conjunction with the redevelopment of any areas within the Borough of Keyport pursuant to the Local Redevelopment and Housing Law, if that redeveloper has made any "contribution" as such term is defined at *N.J.A.C. 19:25-1.7*(hereinafter "contribution"), during the applicable time period as specified below, to;

1. the campaign committee of any Keyport candidate for, or holder of public office within the Borough of Keyport, having responsibility for arranging, entering into, or approving the redevelopment agreement, or for appointing those who enter into the agreement on behalf of the Borough of Keyport, or
2. to any Keyport campaign, candidate and/or committee, to a campaign committee of to any municipal political campaign committee, or to any Keyport political party committee, or to any political action committee which financially supports candidates for Keyport municipal elections and/or Keyport municipal parties or which engages in the support of Keyport municipal campaigns, or
3. to any Monmouth County Party Committee, provided said Monmouth County Party Committee has subsequently made a contribution of an equivalent amount to any candidate, elected official or committee listed in (1) and (2) above.

(b) For purposes of this section, the "applicable time period" shall be defined as the time period between the date that a developer deposits money with the Borough to pay for professional services employed by the Borough for the review of an application for the development of property and the later of the termination of negotiations or the completion of all matters specified in the redevelopment agreement pursuant to and in accordance with the New Jersey Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*

(c) All redevelopment agreements or amendments thereto entered into by the Borough of Keyport shall contain a provision prohibiting redevelopers as defined in section (d) to solicit or make any contribution to any candidate, person or committee set forth in section (a), during the applicable time period.

(d) As defined in *N.J.S.A. 40A:12A-3*, a "redeveloper" means any person, firm, corporation or public body that shall enter into or propose to enter into a contract with a municipality or other redevelopment entity for the redevelopment or rehabilitation of any area in need of redevelopment, or an area in need of rehabilitation, or any part thereof, under the provisions of this act, or for any construction or other work forming part of a redevelopment or rehabilitation project. For the purposes of this ordinance, the definition of a redeveloper includes all principals who own ten percent (10%) or more of the equity in the corporation or business trust, partners, and officers in the aggregate employed by the provider as

well as any affiliates or subsidiaries directly controlled by the redeveloper. Spouses and adult children at home shall also be included.

(e) For the purposes of this section, the office that is considered to have responsibility for arranging and entering into a redevelopment agreement:

1. The Borough of Keyport Council if the redevelopment agreement requires approval or appropriation from the Council or a public officer who is responsible for arranging and entering into the redevelopment agreement if that public officer is appointed by Council; or
2. The Mayor of the Borough of Keyport if the redevelopment agreement requires the approval of the Mayor or a public officer who is responsible for arranging and entering into the redevelopment agreement if that public officer is appointed by the Mayor; or
3. Members of a designated redevelopment entity, if the redevelopment agreement requires the approval of the redevelopment entity.

## **II. Contributions Made Prior to the Effective Date**

No contribution of money or any other thing of value, including in-kind contributions, made by a redeveloper to any person, candidate or committee set forth in section 1(a) shall be deemed a violation of this section nor shall an agreement for redevelopment project of any kind whatsoever be disqualified thereby if that contribution or agreement was made by the redeveloper prior to the effective date of this ordinance.

## **III. Notice given by Municipality; Sworn Statement of Redeveloper**

- (a) It shall be the municipality's continuing responsibility to give notice of this Section when the municipality gives notice of redevelopment pursuant to *N.J.S.A. 40A:12A-6* and when the municipality adopts a resolution directing the planning board to prepare a redevelopment plan and at the time that the municipality adopts the ordinance to implement the redevelopment plan.
- (b) Prior to arranging and entering into the redevelopment agreement with any redeveloper, the Borough of Keyport or any of its purchasing agents or agencies or independent authorities, as the case may be, shall receive a sworn statement from the redeveloper that the redeveloper has not made any contribution in violation of section 1(a) above. Furthermore, the redeveloper shall have a continuing duty to report any violations of this ordinance that may occur while arranging and entering into the Redevelopment Agreement and until all specified terms of the agreement have been completed.
- (c) The certification required under this Subsection shall be made prior to entry into the agreement with the municipality and shall be in addition to any other certifications that may be required by any other provision of law.

## **IV. Contribution Restrictions and Disclosure Requirement Applicability to Consultants**

- (a) The contribution and disclosure requirements in this Ordinance shall apply to all redevelopers as well as professionals, consultants or lobbyists contracted or employed by the business entity ultimately designated as the redeveloper to provide services related to the:
  - 1) Lobbying of government officials in connection with the examination of an area and its designation as an area in need of redevelopment or in connection with the preparation, consultation and adoption of this redevelopment plan.
  - 2) Obtaining the designation or appointment as redeveloper;
  - 3) Negotiating the terms of a redevelopment agreement or any amendments or modifications thereto.

- 4) Performing the terms of a redevelopment agreement; and
- (b) It shall be a breach of the consultant's contract, and shall require immediate termination, for violation(s) of this Ordinance.
- (c) A redeveloper who participates in, or facilitates, the circumvention of the contribution restrictions through consultants or professionals shall be deemed to be in breach.

#### IV. Return of Excess Contributions

A redeveloper or any person, candidate or committee set forth in section 1(a) may cure a violation of Section 1 of this Ordinance, if, within 30 days after the general election, the redeveloper notifies the Municipal Council in writing and seeks and receives or makes a reimbursement of a contribution from the municipal candidate or municipal or county political party or continuing political committee referenced in this Ordinance.

#### V. Penalty

- (a) It shall be a breach of the terms of the Borough of Keyport's Redevelopment Agreement for a redeveloper 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 the Borough of Keyport; (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 redeveloper 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 redeveloper who violates this section shall be disqualified from eligibility for future Borough of Keyport Redevelopment Agreements for a period of four (4) calendar years from the date of the violation.

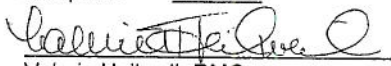
**BE IT FURTHER ORDAINED**, that the provisions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgment shall be limited in its effect only to the portion of the Ordinance actually adjudged invalid and shall not be deemed to affect the operation of any other portion thereof, which shall remain in full force and effect.

**BE IT FURTHER ORDAINED**, that this ordinance shall take effect immediately upon final passage and publication in accordance with the law.

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

Introduced: 2/4/08 Public Hearing: 2/19/08

Adopted: 2/19/08

  
Valerie Heilweil, RMC  
Borough Clerk, Borough of Keyport



Robert Bergen, Mayor  
Borough of Keyport

Date:

