

**ORDINANCE NO. 2006-01 (989)
BOROUGH OF LAVALLETTE
COUNTY OF OCEAN
STATE OF NEW JERSEY**

Preamble

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

WHEREAS, it has become common for professional business entities to make or be asked to make 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 which are not subject to public bidding; and,

WHEREAS, local political contributions from professionals receiving discretionary contracts from the elected officials who receive such contributions raise reasonable concerns on the part of the taxpayers as to their trust in the process of local government; 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 ORDAINED by the Borough Council and the Borough of Lavallette, County of Ocean, State of New Jersey, that the policy of the Borough of Lavallette will be to set maximum amounts that professional business entities may contribute politically beyond by which they become ineligible to receive a public professional contract from the Borough of Lavallette.

Section 1: Prohibition on Awarding Public Contracts to Certain Contributors

- (a)(1) Any other provisions of law to the contrary notwithstanding, the Borough of Lavallette, shall not enter into an agreement or otherwise procure professional, banking, insurance coverage and/or any other consulting services, from any professional business entity, if that entity has made any contribution of money including in-kind contributions, to any Lavallette 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 Lavallette Borough 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 (c) within one (1) calendar year immediately proceeding the date of the contract; or,

- (2) No professional business entity which enters into negotiations for, or agrees to, any contract or agreement with the Borough of Lavallette for the rendering of professional, banking, insurance coverage or any other consulting services shall make any contribution of money, including in-kind contributions, to any Lavallette 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 Lavallette Borough party committee, or to any political action committee (PAC) that regularly engages in the support of municipal elections and/ or municipal parties. No contribution shall be made in excess of Section (1)(c) below.
- (b) 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 any of the equity in the corporation or business or partnership, trust, partners, and officers in the aggregate employed by the entity as well as any subsidiaries directly controlled by the business entity.
- (c) Any individual meeting the definition of "professional business entity" under this section may annually contribute a maximum of \$300 each for any purpose to any and every candidate for mayor or council, or \$500 to the Lavallette Borough party committee, or to a PAC referenced in this ordinance, without violating subsection (a)(1) or (a)(2) of this section.
- (d) For purposes of this section, the office is considered to have ultimate responsibility for the award of the contract shall be:
- (1) The Lavallette Borough Council and the Mayor of the Lavallette Borough, if the contract requires approval or appropriation from the Council,
 - (2) The Mayor of the Borough of Lavallette, if the contract requires approval of the Mayor, or if a public officer who is responsible for the award of a contract is appointed by the Mayor.
- (e) No professional business entity shall make a contribution to a County political party or organization at least thirty (30) calendar days prior to any contribution being made by said organization to a candidate for public office campaign fund in that same year.
- (f) All provisions of Section 1 are subject to the provisions of Section 2 of this Ordinance below.

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 municipal candidate for Mayor or Council, or municipal 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 Ordinance.

Section 3: Contribution Statement by Professional Business Entity

- (a) Prior to awarding any contract or agreement to procure services, including but not limited to banking or insurance coverage services, with any professional business entity, the Borough shall receive a sworn statement from the professional business entity made under penalty or perjury that the bidder or offeror 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 Section shall be made prior execution of a 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 municipal or county party committee or PAC referenced in this Ordinance may cure a violation of Section 1 of this Ordinance, if, within (30) days excluding Sundays, after contribution and award of a contract, the professional business entity notifies the Borough Council in writing and seeks and receives reimbursement of a contribution from the Borough candidate or municipal political party or PAC referenced in this Ordinance.

Section 5: Penalty

- (a) It shall be a breach of the terms of the Borough of Lavallette professional service agreement for a business entity to: (i) make a contribution in violation of this Ordinance; (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make contributions through intermediaries for the purpose of concealing or misrepresenting the sources of the contribution; (iv) make 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 Lavallette; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make any contribution, which if made by the business entity itself would subject that entity to the restrictions of this Ordinance; (vi) fund contributions to be 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; and/or, (viii) directly or indirectly, through or by any 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 for eligibility for future Lavallette Borough contracts for a period of two (2) calendar years for the date of the violation.

Section 6: Severability and Effectiveness Clause

- (a) If any section, subsection, sentence, clause or phrase of this ordinance 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.
- (b) Any Ordinance inconsistent with the terms of this Ordinance is hereby repealed to the extent of such inconsistencies.

NOW, THEREFORE, BE IT FURTHER ORDAINED that:

This Ordinance shall take effect immediately upon its enactment after second reading and publication as required by law and:

Within five (5) calendar days after its passage, Sundays excepted, the Ordinance shall be presented to the Mayor by the Borough Clerk. The Mayor shall, within ten (10) calendar days after receiving the Ordinance, Sundays excepted, either approve the Ordinance by affixing his signature thereto or return it to the Council with objections thereto in its entirety or any item or part thereof. No Ordinance or any item or part thereof shall take effect without the Mayor's approval, unless the Mayor fails to return the Ordinance to the Council, as prescribed above, or unless the Council, upon consideration of the Ordinance following its return, shall, by a vote of two-thirds (2/3rds) of all the members of Council, resolve to override the veto.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed by the Borough Council on first reading at a meeting held on the 15th day of February 2006. It was further considered for second reading and final passage at a Caucus/Regular Meeting of the Borough Council held on the 20th day of March 2006 at 7:00 pm at the Council Chambers in the Municipal Building Complex located at 1306 Grand Central Avenue, Lavallette, New Jersey at which time and place persons desiring to be heard upon the same were given the opportunity to be heard.

Said Ordinance was duly adopted on the 20th day of March 2006 and shall take effect upon publication as required by law.

Christopher F. Parlow
CHRISTOPHER F. PARLOW
ACTING BOROUGH CLERK
BOROUGH OF LAVALLETTE

Thomas J. Walls
MAYOR THOMAS J. WALLS

FILED
SEP - 3 2009
NINA MITCHELL WELLS
SECRETARY OF STATE

As amended

Walls	Moved	Second	Aye	Nay	Abstain	Absent
Ardito		✓	✓			
Lamb			✓			
Brown			✓			
Wenzel			✓			
Zalom			✓			
LaCicero	✓		✓			