



# Township of Bernards

1 Collyer Lane, Basking Ridge, NJ 07920  
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## ORDINANCE #1854

An Ordinance of the Township of Bernards in Somerset County,  
State of New Jersey to be Known as Public Contract Reform  
"Bernards Township Pay-to-Play" Ordinance

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

**WHEREAS**, it has become common in New Jersey for certain business and 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 which are not subject to public bidding; and

**WHEREAS**, substantial local political contributions from businesses and professionals receiving discretionary contracts from the elected officials who receive such contributions raise reasonable concerns on 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**, on January 1, 2006, P.L. 2004, c. 19, known as the "New Jersey Local Unit Pay-to-Play" law (N.J.S.A. 19:44A-20.4 *et seq.*) took effect; and

**WHEREAS**, said state law requires that all contracts with a value over \$17,500 be awarded pursuant to certain specified processes; and

**WHEREAS**, on January 5, 2006, Governor Richard J. Codey signed into law P.L. 2005, c. 271 which permits municipalities to adopt their own pay-to-play policies; and

**WHEREAS**, the Bernards Township Committee desires to supplement the provisions of P.L. 2004, c. 319 and P.L. 2005, c. 271, to adopt more stringent requirements than state law;

**WHEREAS**, pursuant to P.L. 2005, c. 271, N.J.S.A. 40A:11-8 and N.J.S.A. 40:48-2, municipalities have the right to establish rules and procedures for contracting with businesses and professional business entities;



**NOW THEREFORE BE IT ORDAINED** by the Township Committee of the Township of Bernards, County of Somerset, State of New Jersey as follows:

1. The policy of the Township of Bernards will be to prohibit businesses and professional business entities from making any contributions politically or they will become ineligible to receive a contract when the value of the transaction exceeds \$17,500 to provide goods or other professional services from the Township of Bernards which is not subject to bidding.
2. Chapter II entitled "Administration" of the Bernards Township General Ordinances is hereby amended to add new Section 34 entitled "Ban Against Pay-to-Play", as follows:

**§2-34.1 Purpose, Findings, Definitions.**

- a. It shall be the purpose of this ordinance to foster fair and open competition in the contracting process; to avoid the appearance of corruption and public cynicism that can arise when the timing between contributions and the issuance of public contracts for goods and services closely coincides; and to eliminate the appearance of buying contracts for goods and services through campaign contributions.
- b. The Township Committee finds:
  1. Certain individuals and business and professional business entities that provide goods and services to local governments are exempt from the requirements of public bidding;
  2. It is common in New Jersey for certain individuals and business and professional business entities that provide goods and services to local governments to make substantial political contributions to the election campaigns of the officials who ultimately determine the award of contracts for such goods or services, either directly to the candidate or through municipal political parties;
  3. The practice of some local government officials in New Jersey to award discretionary contracts to individuals or business and professional business entities that have made substantial campaign contributions to those officials or to municipal political parties raises reasonable concerns on the part of taxpayers as to the quality and cost of the services received under such discretionary contracts and creates distrust of government processes; and
  4. Local governments are authorized, under the provisions of P.L. 2005, c. 271, N.J.S.A. 40:48-2 and of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., to establish rules and procedures for contracting with the providers of goods and services when those contracts are exempt from the public bidding requirements set forth in said law.
- c. As used herein,

1. Business entity shall mean any natural or legal person, business corporation, professional services corporation, limited liability corporation, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of the State of New Jersey or of any other state or foreign jurisdiction.
2. Candidate shall have the same meaning as set forth in N.J.S.A. 19:44A-3 as applied to those persons that seek election to public office in Bernards Township.
3. Contribution shall have the same meaning as set forth in N.J.S.A. 19:44A-3d as applied to those persons that seek election to public office in Bernards Township.
4. Political committee shall have the same meaning as set forth in N.J.S.A. 19:44A-3i as applied to those persons that seek election to public office in Bernards Township.
5. Professional business entity shall mean any business entity as defined in subparagraph c.1. of this subsection that provides services by individuals who are required to be professionally licensed under the laws or regulations of the State of New Jersey.
6. Township shall mean the Township of Bernards in Somerset County, New Jersey, its officers, employees, officials, boards, commissions, committees and subcommittees.

**§2-34.2 Prohibition on Awarding Public Contracts to Certain Contributors.**

- a. Any other provision of law to the contrary notwithstanding, the Township of Bernards 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 goods, professional, banking, insurance coverage services or any other consulting services, from any business or professional business entity, when the transaction is not required to be bid publicly and when the value of the transaction exceeds \$17,500, if the entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, to any Township candidate or holder of Township public office having ultimate responsibility for the award of the contract, or campaign committee supporting such candidate or officeholder, or to any Township party committee, or to any political committee that regularly engages in the support of municipal elections and municipal parties within one calendar year immediately preceding the date of the contract or agreement.
- b. No business entity or 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 provision of goods or the rendition of professional, banking or insurance coverage services or any other consulting services, when the transaction is not required to be bid publicly and when the value of the transaction exceeds \$17,500, shall solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to any Township municipal candidate or holder of the public office having ultimate responsibility for the award of the contract, or campaign committee supporting such candidate of officeholder, or to any Township party committee,

or to any political committee that regularly engages in the support of Township municipal elections and municipal parties between the time of first communications between that business entity and the Township regarding a specific contractual agreement or professional services agreement and the later of the termination of negotiations or the completion of the contract or agreement.

- c. For purposes of this ordinance, when a business or professional business entity is a natural person, a contribution by that person's spouse or child residing therewith, shall be deemed to be a contribution by the business or professional business entity. When a business or professional business entity is other than a natural person, a contribution by: all principals, partners, officers, or directors of the business or professional business entity or their spouses; any subsidiaries directly or indirectly controlled by the business or professional business entity; or any political organization organized under Section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business or professional business entity, shall be deemed to be a contribution by the business or professional business entity.
- d. Any individual meeting the definition of "business entity" or "professional business entity" under this section shall not annually contribute for any purpose to any candidate, for Mayor or Township Committee, or to the Township party committee or to a Township political committee referenced in this ordinance. Any group of individuals meeting the definition of "business entity" or "professional business entity" under this section, including such principals, partners and officers of the entity in the aggregate, shall not annually contribute for any purpose to any Township candidates and officeholders with ultimate responsibility for the award of a contract, and all Township political parties and committees 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 Township Committee, if the contract requires approval or appropriation from the Committee.
  - 2. The Planning Board or Zoning Board of Adjustment, if the contract requires approval by those boards.
- f. The provisions of this section shall not apply to a contract when a public emergency requires the immediate delivery of goods or services.

### **§2-34.3 Contributions Made Prior to the Effective Date**

No contribution of money or any other thing of value, including in-kind contributions, made by a business entity or professional business entity to any municipal candidate for Township Committee, or municipal party or political committee 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 business or professional business entity prior to the effective date of this ordinance.

**§2-34.4 Contribution Statement by Professional or Business Entity**

- a. Prior to awarding any contract or agreement to procure goods or services, including banking or insurance coverage services, when the transaction is not required to be bid publicly and when the value of the transaction exceeds \$17,500, with any professional or business entity, the Township or any of its purchasing agents or agencies, as the case may be, shall receive a sworn statement from the business entity or professional entity made under penalty of perjury that the entity has not made a contribution in violation of Section 2 of this Ordinance.
- b. The business entity or professional business entity shall have a continuing duty to report any knowing or intentional 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 Township and shall be in addition to any other certifications that may be required by any other provision of law, state or otherwise.

**§2-34.5 Return of Excess Contributions**

A business entity or professional business entity or township candidate or officeholder or municipal party or political committee referenced in this Ordinance may cure a violation of Section 2 of this Ordinance, if, within 30 days after a contribution is made, the business or professional business entity notifies the Township Committee in writing and seeks and receives reimbursement of a contribution from the township candidate or municipal party or political committee referenced in this Ordinance.

**§2-34.6 Penalty.**

- a. It shall be a breach of the terms of a Township contractual or professional service agreement for a business entity or professional 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 the Township; (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 or professional 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) directly or indirectly, through or by any other person or means, of any act which would subject that entity to the restriction of this Ordinance.
- b. Furthermore, any business entity or professional business entity who knowingly and intentionally violates this Ordinance shall be disqualified from eligibility for future Township contracts for a period of one calendar year from the date of the violation.

All other ordinances in conflict or inconsistent with this ordinance are hereby repealed, to the extent of such conflict or inconsistency. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Township of Bernards, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Revised General Ordinances of the Township of Bernards are hereby ratified and confirmed, except where inconsistent with the terms hereof.

If any article, section, subsection, paragraph, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect, and to this end the provisions of this ordinance are hereby declared severable.

This ordinance shall take effect immediately upon final passage and publication according to law.

Pursuant to P.L. 2005, c. 271, the Township Clerk shall upon adoption of this Ordinance file a certified true copy with the Secretary of State. The Clerk shall also provide a copy of this Ordinance upon adoption to the Municipal Clerks in Somerset County.

**TOWNSHIP OF BERNARDS  
PUBLIC NOTICE**

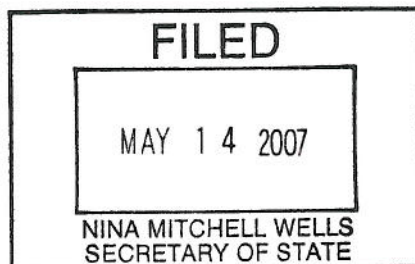
**Ordinance #1854** was introduced and passed on first reading by the Township Committee of the Township of Bernards in the County of Somerset on 1/24/06 and then ordered to be published according to law/ It will be further considered for final passage and adoption at a public hearing held at a meeting of the Township Committee at the Municipal Building, 1 Collyer Lane, Basking Ridge, NJ in said township on 2/28/06 at 7:30 P.M., when and where, or at such time and place to which said meeting may be adjourned, all persons interested will be given an opportunity to be heard concerning said ordinance. A complete text of this ordinance is available in the Office of the Municipal Clerk, 1 Collyer Lane, Basking Ridge, NJ, from 8:30 A.M. to 4:30 P.M., Monday through Friday. Copies are also available via e-mail from dszabo@bernards.org.

By Order of the Township Committee  
Denise Szabo, Municipal Clerk

**TOWNSHIP OF BERNARDS  
Public Notice**

Notice is hereby given that Bernards Township Ordinance #1854 was introduced and passed on first reading at a meeting of the Township Committee, on 1/24/06, and was passed on final reading and adopted following a public hearing thereon at a regular meeting of the Governing Body of the Township of Bernards on 2/28/06.

Denise Szabo  
Municipal Clerk



This ordinance would prohibit any business entity or professional that procures goods, services or contracts from the Township without the formal bid process from making "any" contribution whatsoever in the prior calendar year. It is thus more restrictive than the State law that permits reportable contributions to be made. The ordinance also applies to a broader category of persons, not just 10% interest owners in the entity but to all partners and directors as well even without an owner interest.

John Belardo  
Township Attorney