

ORDINANCE #02-2009

ORDINANCE ADOPTING SPECIAL PAY-TO-PLAY
RESTRICTIONS FOR PROFESSIONAL SERVICE
CONTRACTS, EXTRAORDINARY
UNSPECIFIABLE SERVICE CONTRACTS AND DEVELOPERS
AND RE-DEVELOPERS

WHEREAS, substantial political contributions from those seeking to or performing business within the Borough of Eatontown raise reasonable concerns on the part of taxpayers and residents as to their trust in government contracts; and

WHEREAS, the Legislature adopted Pay to Play Legislation, P.L.2005, c.271., which affirmed that municipalities are authorized to adopt by ordinance measures limited the awarding of public contracts to business entities that have made political contributions and limited the contributions that the holders of a contract can make during the term of a contract; and

WHEREAS, pursuant to P.L. 2005, c.271., business entities receiving no-bid contracts are required to submit a list of political contributions that were made by the business entity during the preceding 12-month period; and

WHEREAS, the Council of the Borough of Eatontown hereby declares that upon the effective date of this ordinance all professional and extraordinary unspecifiable service contracts shall be subject to the restrictions contained herein; and

WHEREAS, it has become more frequent for developers and redevelopers to make substantial 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 development and/or redevelopment agreement; and

WHEREAS, political contributions from developers entering into agreements for

development and/or redevelopment projects approved by the elected officials who receive such contributions raises 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 into agreements with redevelopers for 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 designated 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, provided the full terms of any such agreements are discussed and approved in open session; and

WHEREAS, the Borough of Eatontown has declared, or in the future may declare, certain areas to be “Areas in Need of Redevelopment” under the Local Redevelopment and Housing Law, and may adopt a Redevelopment Plan; and

WHEREAS, given the potential of negotiating with private developers and/or

redevelopers and the entering into developer agreements upon receipt of land use approvals pursuant to the Municipal Land Use Law or agreements with 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, the policy of the Borough of Eatontown will be to create such a regulation which states that any entity or individual seeking to enter into a developers agreement, a redevelopment agreement or amendment thereto, or is otherwise seeking to obtain rights to develop pursuant to a redevelopment agreement and who makes political contributions to Borough of Eatontown elected officials and/or candidates for local office, and local and Borough political committees, will be ineligible to enter into such agreements, or receive such rights from the Borough of Eatontown; and

WHEREAS, in the interest of good government, the Borough Council of the Borough of Eatontown desires to establish a policy that will avoid the perception of improper influence in awarding government contracts.

NOW, THEREFORE, IT IS HEREBY ORDAINED, by the Municipal Council of the Borough of Eatontown, County of Monmouth and State of New Jersey that Code of the Borough of Eatontown is supplemented by the addition of Chapter 235 entitled “Pay-to-Play Restrictions” which includes the following:

§235-1. Prohibition on Awarding Public Contracts to Certain Contributors.

(a) The Borough of Eatontown and any of its purchasing agents or departments or instrumentalities of the Borough thereof, as the case may be, shall not enter into any agreement or otherwise contract to procure services from any “business entity” as defined herein, including

those awarded pursuant to any process, including a fair and open process, regardless of the amount of the contact, if such “business entity” has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions (as such term is defined within N.J.A.C. 19:25-1.7), in excess of the thresholds specified in subsection 1(d) within one calendar year immediately preceding the Borough’s public announcement of or private solicitation of a request for proposals, to:

(i) Any Borough candidate or holder of a public office having ultimate responsibility for the award of the contract, or

(ii) any campaign committee of such a candidate or holder of public office, or

(iii) any Borough of Eatontown municipal party, or

(iv) any county party committee within the State of New Jersey, or

(v) any candidate committee, state or Borough political party committee, legislative leadership committee, continuing political committee or political action committee (PAC) organized under §572 of the Internal Revenue Code, that is organized for the purpose of supporting Borough candidates or Borough officeholders and/or that has within the last calendar year provided financial or in-kind support to Borough of Eatontown municipal elections and/or Borough of Eatontown municipal or Borough parties.

(b) No “business entity” that submits a proposal for, or agrees to any contract or agreement (including non-emergency contracts awarded by N.J.S.A. 40A:11 *et seq.* or the “Fair and Open Process” pursuant to N.J.S.A. 19:44A-20 et seq.) with the Borough or any departments thereof, as the case may be, shall knowingly solicit or make any contribution of money, pledge of contribution, including in-kind contributions (as such term is defined within N.J.A.C. 19:25-1.7) in excess of the thresholds specified in subsection 1(d), between the time of the first public announcement or private solicitation of a request for proposals, as the case may be, and the later

of the awarding of the contract to another proposer, or written withdrawal of the proposal, or, as to the successful applicant, the completion of the contract or agreement, except as permitted in section 1(d) to:

(i) any Borough candidate or holder of public office having ultimate responsibility for the award of the contract, or

(ii) any campaign committee of such a candidate or holder of public office, or

(iii) any Borough of Eatontown municipal party; or

(iv) any county party committee within the State of New Jersey; or

(v) any candidate committee, state or Borough political party committee, legislative leadership committee, continuing political committee or political action committee (PAC) organized under §527 of the Internal Revenue Code, that is organized for the purpose of supporting Borough candidates or Borough officeholders and/or that has within the last calendar year provided financial or in-kind support to Borough of Eatontown municipal elections and/or Borough of Eatontown municipal or Borough parties.

(c) For purposes of this ordinance, a “business entity” seeking a public contract means:

(i) any professional or provider of extraordinary unspecifiable services as defined in N.J.S.A. 40A:11-5(1)(a), and

(ii) 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 1% or more of the equity in the corporation, limited liability company (“LLC”), business trust, partnership, and/or limited liability partnership and any officers duly appointed and/or employed by corporations and or LLCs., as well as any subsidiaries directly controlled by the business entity.

(iii) A “business entity” does not include not-for-profit organizations or their officers or board members.

(d) Any individual meeting the definition of “business entity” under this section may annually contribute a maximum of \$300 each for any purpose to any candidate for Borough of Eatontown office, municipal party committees within Borough of Eatontown, county party committee, and \$300 to any state political party committee, candidate committee or political action committee (PAC) organized under §527 of the Internal Revenue Code, that is organized for the purpose of supporting Borough candidates or Borough officeholders, without violating subsection (a) or (b) of this section. However, any group of individuals meeting the definition of “business entity” under this section, including principals, partners, and officers of the entity in the aggregate, may not contribute for any purpose in excess of \$300 to all Borough of Eatontown candidates and officeholders with ultimate responsibility for the award of the contract, and all municipal or Borough political parties, candidate committees, county political parties, and state political parties, legislative leadership committees, continuing political committee, and/or PACs that is organized for the purpose of supporting Borough candidates or Borough officeholders, without violating subsection (a) or (b) 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 the Borough of Eatontown and any of its political subdivisions, or any individual who is responsible for the award of a contract and is appointed by the Borough of Eatontown, including the Borough Council and the Mayor.

§235-2. Contributions Made Prior to the Effective Date.

This ordinance does not apply retroactively. Political contributions, whether monetary or “in-kind,” made prior to the effective date of this ordinance shall not be deemed to be a violation of this ordinance.

§235-3. Disclosure & Contribution Statement by Professional Business Entity and Provider of Extraordinary Unspecifiable Services.

(a) Any business entity seeking a contract with the Borough shall file the disclosure statements as required by P.L. 2005, c.271 (“Chapter 271 Disclosure Forms”), which must be filed no later than ten days prior to the awarding of a contract or agreement to procure services. The Borough or any of its purchasing agents or agencies, as the case may be, shall maintain a copy of all Chapter 271 Disclosure Forms and such documents shall be subject to the requirements of the Open Public Records Act.

(b) The “business entity” will make the statement knowing that under penalty of perjury that it has not made a contribution in violation of the Ordinance hereof and has not made or solicited contributions through intermediaries, third parties, immediate relatives, candidate committees, or Political Action Committees for the purpose of concealing the source of the contributor(s).

(c) Filing an incorrect Chapter 271 Disclosure Form may be deemed a breach of the contract and shall result in the “business entity” being debarred from being awarded any Borough contract for a period of one year.

(d) The “business entity” shall have a continuing duty to report any violations of this Ordinance that may occur during the duration of a contract. The certification required under this subsection shall be made prior to entry into the contract or agreement with Borough of Eatontown and shall be in addition to any other certifications that may be required by any other provision of law. At a minimum, completion of the Chapter 271 Disclosure Statement will be an annual requirement of the “business entity.”

(e) The annual Disclosure Form shall be filed within twenty (20) days following each anniversary of the proposal, if for a multi-year agreement.

§235-4. Prohibition of entering into and/or amending development and/or redevelopment agreements with certain contributors.

(a). Any other provision of law to the contrary notwithstanding, the Borough of Eatontown 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 developer and/or redeveloper, as defined in subsection (c). below, for the planning; replanning, construction or undertaking of any development and/or redevelopment project including the acquisition or leasing of any public property in conjunction with the redevelopment of any area within the Borough of Eatontown pursuant to the Local Redevelopment and Housing Law and/or the Municipal Land Use Law, if that developer and/or redeveloper has knowingly solicited or made any contribution of money, pledge of contribution, including in-kind contributions (as such term is defined within N.J.A.C. 19:25-1.7) in excess of the thresholds specified in Section 1(d) above, within one calendar year immediately preceding the date of entering into the developers agreement, redevelopment agreement, amended agreement, or contract (hereinafter "agreement"), except as permitted in Section 1(d) above to:

- (i) any Borough candidate or holder of public office having ultimate responsibility for the award of the contract, or
- (ii) any campaign committee of such a candidate of holder of public office, or
- (iii) any Borough of Eatontown municipal party committee; or
- (iv) any county party committee within the State of New Jersey; or
- (v) any candidate committee, state political party committee, legislative leadership committee, continuing political committee or political action committee (PAC) organized under §527 of the Internal Revenue Code, that is organized for the purpose of supporting Borough

candidates or Borough officeholders and/or that has within the last calendar year provided financial or in-kind support to Borough of Eatontown municipal elections and/or Borough of Eatontown municipal or Borough parties.

(b). All Developer Agreements or amendments thereto and/or Redevelopment Agreements entered into by the Borough of Eatontown shall contain a provision prohibiting developers and/or redevelopers, as defined in subsection (c) below, to solicit or make any contribution in excess of the thresholds specified in Section 1 subsection (d) above.

(c). A “developer” or "redeveloper" means any person, firm, corporation, partnership, limited liability company, organization, association, or public body that shall enter into or propose to enter into an agreement with a municipality or other redevelopment entity for the development of property pursuant to the Municipal Land Use Law, redevelopment or rehabilitation of an area in need of redevelopment, or an area in need of rehabilitation, or any part thereof, under the provisions of the Local Redevelopment and Housing Law, or for any construction or other work forming part of a development or redevelopment or rehabilitation project. For the purposes of this section the definition of a developer or redeveloper includes all principals who own one percent (1%) or more of the equity in the corporation or business trust, partners, and officers in the aggregate employed by the developer and/or redeveloper as well as any affiliates or subsidiaries directly controlled by the developer or redeveloper. Spouses and any child/children shall also be included.

§235-5. Contribution Statement of Developers and/or Redevelopers; Notice given by Municipality.

(a). Prior to arranging and entering into a Developer’s Agreement or Redevelopment Agreement with any developer or redeveloper, the Borough of Eatontown or any of its purchasing agents or agencies or independent authorities, as the case may be, shall receive a sworn statement from the

developer or redeveloper that the developer or redeveloper has not made any contribution in violation of Section 1, subsection (d) above. The Borough of Eatontown, through any appropriate redevelopment agent, agency, officer, authority, or department, shall be responsible for informing the Mayor and the Borough Council that the aforementioned sworn statement has been received and that the developer or redeveloper is not in violation of this Ordinance, prior to entering into any Developer's Agreement or Redevelopment Agreement. Furthermore, the developer or redeveloper shall have a continuing duty to report any violations of this chapter that may occur while arranging and entering into the Developer's Agreement or redevelopment agreement, and until all specified terms or time period of the agreement have been completed. 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.

(b). It shall be the Borough's continuing responsibility to give notice of this Ordinance to all developers who file any application with the municipality, its land use boards and/or any of its political subdivisions, including but not limited to the Planning Board or Zoning Board, to develop any tract of land within the municipality and/or when the municipality gives notice of redevelopment pursuant to 40A:12A-6 and/or when the municipality adopts a ordinance directing the Planning Board to prepare a redevelopment plan and at the time that the municipality adopts the ordinance to implement the redevelopment plan.

§235-6. Contribution restrictions and disclosure requirement applicability to consultants.

(a). The contribution and disclosure requirements in this chapter shall apply to all developers and/or redevelopers as well as professionals, consultants or lobbyists contracted or employed by the developer and/or redeveloper including those ultimately, designated by the developer/redeveloper to provide services related to the: (i) 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 the redevelopment plan; (ii) obtaining the designation or appointment as redeveloper; (iii) negotiating the terms of a developer's agreement or redevelopment agreement or any amendments or modifications thereto; and (iv) performing the terms of a developer's agreement or redevelopment agreement.

(b). It shall be a breach of the consultant's contract with the developer and/or redeveloper, and shall require immediate termination, for a consultant to violate the contribution limits and disclosure requirements in this ordinance.

(c). A developer or redeveloper who participates in, or facilitates, the circumvention of the contribution restrictions through consultants or professionals shall be deemed to be in breach of its approvals with the land use board and/or the Borough.

§235-7. Return of Excess Contributions.

A "business entity," developer, or redeveloper, or Borough of Eatontown candidate or officeholder, or municipal, county or state party committee, candidate committee, legislative leadership committee, continuing political committee or PAC referenced in this ordinance, may cure a violation of Section 1 of this Ordinance, if, within 30 days after the applicable ELEC report, the "business entity" notifies the Borough of Eatontown in writing and seeks and receives reimbursement of the contribution from the relevant candidate or officeholder, municipal or county political party, state political party, candidate committee, legislative leadership committee, continuing political committee, or PAC referenced in this ordinance.

§235-8. Penalty and Anti-Circumvention Provision.

(a) It shall be a breach of a contract with Borough of Eatontown for a "business entity," developer or 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 a contribution through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition of or with the agreement that it will be contributed to a campaign committee of any candidate or holder of public office of the Borough of Eatontown; (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 or solicited by the “business entity” itself, would violate this ordinance; (vi) fund contributions made by third parties, including consultants, attorneys, family members and employees; (vii) engage in any exchange of contribution to circumvent the intent of this ordinance; or (viii) directly or indirectly, through of by any other person or means do any act which would violate this ordinance.

(b) Furthermore, any “business entity,” developer or redeveloper that violates § 8(a)ii-viii shall be debarred from eligibility for future Borough of Eatontown contracts or for entering into a developers agreement or redevelopment agreement for a period of one (1) calendar year from the date of the violation.

§235-9. Anti-Wheeling Restrictions.

(a) No candidate committee for any candidate for Borough of Eatontown office shall accept a contribution from a Borough of Eatontown municipal party in excess of \$300 per election.

(b) No candidate committee for any candidate for Borough of Eatontown shall accept a contribution from a county political party in excess of \$300 per election.

(c) No candidate committee for any candidate for Borough of Eatontown shall accept a contribution from a state political party in excess of \$300 per election.

(d) No candidate committee for any candidate for Borough of Eatontown office shall accept a contribution from a legislative leadership committee in excess of \$300 per election.

(e) No candidate committee for any candidate for Borough of Eatontown shall accept a contribution from a continuing political committee or PAC organized under §527 of the Internal Revenue Code in excess of \$300 per election.

(f) No candidate committee for any candidate for Borough of Eatontown office shall accept a contribution from another candidate committee, other than from a candidate committee located in at least part of Borough of Eatontown, in excess of \$300 per election.

(g) Any candidate or candidate committee who has taken contributions in excess of those outlined in Section 8(a)-(f) of this Ordinance shall be subject to a fine not exceeding \$2,000 per violation, pursuant to N.J.S.A. 40:49-5.

§235-10. Severability.

If any provision of this Ordinance, or the application of any such provision to any person or circumstances, shall be held invalid by a court of the United States or this State, or by any administrative agency of the United States or this State, the remaining provisions shall remain in effect.

§235-11. Repealer.

This ordinance supplements, but does not supersede the contribution disclosure requirements, under P.L. 2004, c 19, s.7 amended P.L. 2005, c. 51, s. 15 (N.J.S.A. 19:44A-20.8) and P.L. 2005, c. 271, s. 2 (N.J.S.A. 19:44A-20.26), for contracts awarded through other than a fair and open process. All ordinances or parts of ordinances that are inconsistent with any provisions of this ordinance are hereby repealed to the extent of such inconsistencies.

§235-12. Incorporation by Reference.

The regulatory and penalty provisions of this Ordinance shall be incorporated by referenced into all Borough of Eatontown contracts for professional services and extraordinary unspecifiable services and developer's agreements and redevelopment agreements.

§235-13. Filing with Secretary of State.

The Clerk of the Borough of Eatontown shall file a certified true copy of this Ordinance with the Secretary of State, in accordance with N.J.S.A. 40A:11-51(c).

§235-14. Effective Date.

This ordinance shall take effect in accordance with law.

DATE INTRODUCED: 2/11/09

DATE ADOPTED: 3/11/09

APPROVED:

GERALD J. TARANTOLO, MAYOR

ATTEST:

KAREN R. SIANO, MMC, BOROUGH CLERK

State regulations promulgated by the New Jersey Election Law Enforcement Commission

(“ELEC”) define “in-kind contribution” as follows:

“In-kind contribution” means a contribution of goods or services received by a candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee, which contribution is paid for by a person or entity other than the recipient committee, but does not include services provided without compensation by an individual volunteering a part of or all of his or her time on behalf of a candidate or committee.

N.J.A.C. 19:25-1.7.

Specifically, an in-kind service or contribution is a non-cash input donated to a candidate or campaign organization that gives some value to the recipient. The contribution can be anything from tangible goods, such as donated bumper stickers, to intangible donations, such as personal services or office space. Personal services provided on a voluntary basis, however, such as campaign volunteers, are not in-kind contributions.