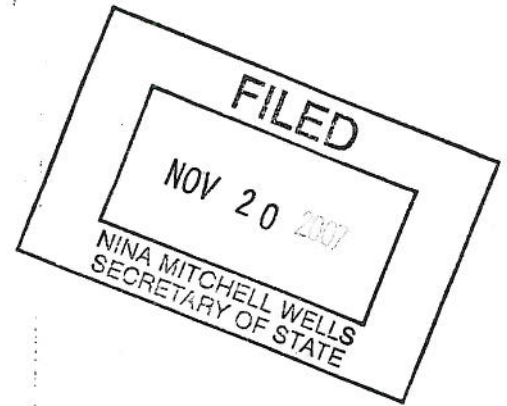


BOROUGH OF EMERSON

ORDINANCE NO. 1320-07

**AN ORDINANCE ESTABLISHING
PAY-TO-PLAY REQUIREMENTS
FOR THE BOROUGH OF EMERSON**



BE IT ORDAINED by the Mayor and Council of the Borough of Emerson, County of Bergen and State of New Jersey, as follows:

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 which are not subject to public bidding; and

WHEREAS, substantial local political contributions from 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, 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, under a practice which has been called "wheeling" professional service providers and other vendors may make contributions to political action committees and/or county campaign committees which would, in turn, forward contributions to local campaigns in an effort to influence the outcome of those campaigns without the requisite transparency that would be present in the event of direct contributions by professionals; and

WHEREAS, the Mayor and Council, have determined that this practice is detrimental to the Borough and its residents; 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 that the policy of the Borough of Emerson will be to set maximum amounts that professional business entities may contribute politically beyond which they become ineligible to receive a public professional service contract from the Borough of Emerson.

Section 1: 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, including those awarded pursuant to a "fair and open" process, from any professional business entity, if that entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contribution, to any municipal candidate of the Borough of Emerson 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 Borough of Emerson party committee, or Bergen County party committee, or to any political action committee (PAC) that regularly engages in, or whose primary purpose is the support of municipal elections and/or municipal parties in excess of the thresholds specified in subsection (d) within one calendar year immediately preceding the date of the contract or agreement.
- (b) Except as permitted in paragraph (d) below, no professional business entity or individual who 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 municipal candidate of the Borough of Emerson 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 Borough of Emerson or Bergen County party committee, or to any political action committee (PAC) that engages in, or who's primary purpose is the support of Emerson's municipal elections and/or Emerson municipal 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.
Professional entities may contribute to the County Party Committee or to any political action committee (PAC) in accordance with applicable laws provided the county party committee or PAC does not, in turn, contribute to Emerson.
- (c) 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 10% 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.

- (d) Any individual meeting the definition of "professional business entity" under this section may annually contribute a maximum of \$600.00 each for any purpose to any candidate, for mayor or governing body, or \$600.00 to the Borough of Emerson party, or \$600.00 to the Bergen County party committee, or to a PAC referenced to this ordinance, 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 Mayor and Council of the Borough of Emerson, if the contract requires approval or appropriation from the Council.
 - (2) The Mayor of Emerson, 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.

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 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: Return of Excess Contributions:

A professional business entity or township candidate or office holder 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 after the date on which the applicable ELEC Report is published, the professional business entity notifies the Township Council in writing and seeks and receives a reimbursement of a contribution from the township candidate or municipal or county political party or PAC referenced in this ordinance.

Section 4: Penalty:

- (a) It shall be a breach of the terms of the Borough of Emerson 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 the Borough of Emerson; (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 Borough of Emerson contracts for a period of three (3) calendar years from the date of the violation.

Section 5: Severability and Effectiveness Clause:

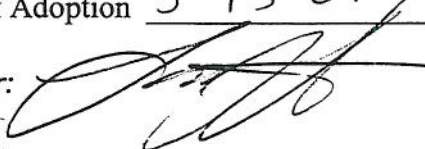
- (a) If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.
- (b) Any ordinance inconsistent with the terms of this ordinance is hereby repealed to the extent of such inconsistency.

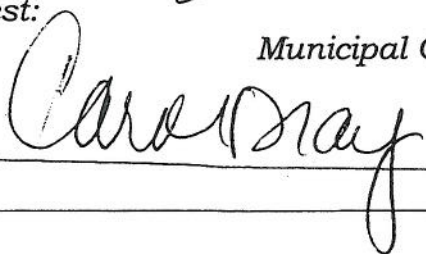
Section 7: Effective Date:

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

COUNCIL	MOVED	SECOND RD.	AYES	NAYES	ABSENT	ABSTAIN
DeSalvo	X		X			
Hoffman			X			
Todd			X			
Loffredo		X	X			
Heyer					X	
Milone			X			

Date of Adoption 5-15-07

Mayor: 

Attest: 
Municipal Clerk

BOROUGH OF EMERSON

ORDINANCE NO. 1320-07

**AN ORDINANCE ESTABLISHING
PAY-TO-PLAY REQUIREMENTS
FOR THE BOROUGH OF EMERSON**

NOTICE is hereby given that the following proposed Ordinance was introduced and passed on first reading at the Regular meeting of the Borough Council of the Borough of Emerson on the 24th day of April 2007, and that said proposed Ordinance will be further considered for final passage at the meeting of said Borough Council to be held on the 15th day of May 2007, at 7:30 p.m.; or as soon thereafter as said matter can be heard at the Municipal Building, Linwood Avenue, Emerson, New Jersey, at which time and place all persons who may be interested therein shall be given an opportunity to be heard concerning same.

BE IT ORDAINED by the Mayor and Council of the Borough of Emerson, County of Bergen and State of New Jersey, as follows:

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 which are not subject to public bidding; and

WHEREAS, substantial local political contributions from 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, 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, under a practice which has been called "wheeling" professional service providers and other vendors may make contributions to political action committees and/or county campaign committees which would, in turn, forward contributions to local campaigns in an effort to influence the outcome of those campaigns without the requisite transparency that would be present in the event of direct contributions by professionals; and

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) 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 10% 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.
- (d) Any individual meeting the definition of “professional business entity” under this section may annually contribute a maximum of \$600.00 each for any purpose to any candidate, for mayor or governing body, or \$600.00 to the Borough of Emerson party, or \$600.00 to the Bergen County party committee, or to a PAC referenced to this ordinance, 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 Mayor and Council of the Borough of Emerson, if the contract requires approval or appropriation from the Council.
 - (2) The Mayor of Emerson, 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.

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 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: Return of Excess Contributions:

A professional business entity or township candidate or office holder 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 after the date on which the applicable ELEC Report is published, the professional business entity notifies the Township Council