

ORDINANCE # 967-06

AN ORDINANCE AMENDING AND SUPPLEMENTING ORDINANCE # 841-03
REGULATING POLITICAL CONTRIBUTIONS IN THE BOROUGH OF
SAYREVILLE, COUNTY OF MIDDLESEX, STATE OF NEW JERSEY

WHEREAS, pursuant to N.J.S.A. 40:48-2, a municipality is authorized to adopt such ordinances, regulations, rules and by-laws as necessary and proper for good government, as well as the public health, safety and welfare; and

WHEREAS, in the interest of good government, the Mayor and Council desire to establish a policy that will avoid the perception of improper influence in local elections; and

WHEREAS, it has become more frequent for business entities, including developers to make substantial political contributions to local elected officials and/or local party officials, their campaign committees and/or their supporting political parties; and

WHEREAS, local government officials are responsible for negotiating the content and the award of all public contracts for goods and/or services including redevelopment; and

WHEREAS, political contributions from potential contractors of all kinds including redevelopers to local elected officials raise concerns on the part of taxpayers and local residents as to trusting the process that gives rise to the award of public contracts including redevelopment agreements that may include issues related to tax abatements, zoning densities, publicly funded infrastructure improvements and the local government's exercise of eminent domain; and

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. encourages the redevelopment process by allowing municipal governments or a designated redevelopment agency to award no bid contracts for redevelopments at such prices and upon such terms decided upon between the municipality and the redeveloper at N.J.S.A. 40A:12-8; and

WHEREAS, N.J.S.A. 40A:12A-11 provides that a redevelopment entity is an instrumentality of the municipality; and

WHEREAS, negotiations for public contracts not subject to the public bidding process, including redeveloper agreements are both exceptions to the Open Public Meetings Act, specifically N.J.S.A. 10:4-12b and N.J.S.A. 40A:12A-8 and therefore such negotiations may be discussed in closed session provided that the full terms and conditions of such agreements are discussed and approved at public session; and

ENTR'D & PASSED 1st READING 10-13-06
ADVERTISED ACCORDING TO LAW 10-23-06
ADOPTED ON 2nd & FINAL READING 10-26-06
ADVERTISED ACCORDING TO LAW
Shirley F. ...
MUNICIPAL CLERK

WHEREAS, given all of the foregoing circumstances it is necessary to establish limitations on political contributions that may undermine the public's confidence in the underlying fairness of any contract award including redevelopment agreements.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Sayreville, in the County of Middlesex and State of New Jersey that the Revised General Ordinances of the Borough of Sayreville, specifically special Ordinance # 841-03, An Ordinance Regulating Contributions is hereby amended and supplemented as follows:

Section 1. Prohibition on Awarding Public Contracts to Certain Contributors. (a) To the extent that it is not inconsistent with state or federal law, the Borough of Sayreville (the "Borough") and any of its purchasing agents, departments, and instrumentalities as the case may be, shall not enter into any agreement or otherwise contract to procure services from any professional business entity or procure services or goods from any vendor, if such professional business entity or vendor has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, to (i) a campaign committee of any Borough candidate or holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Borough or Middlesex County party committee, or (iii) to any political action committee (PAC) that is organized for the purpose of promoting or supporting Borough municipal candidates or municipal officeholders, in excess of the thresholds specified in subsection (d) within one calendar year immediately preceding the date of the contract or agreement.

(b) No professional business entity or vendor who submits a proposal for, enters into negotiations for, or agrees to any contract or agreement with the Borough or any departments thereof, for the rendition of professional services, or goods and services, as the case may be, shall knowingly solicit or make any contribution of money, pledge of contribution, including in-kind contributions, to: (i) any Borough candidate or holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Borough or Middlesex County party committee, or (iii) to any PAC that is organized for the purpose of promoting or supporting Borough municipal candidates or municipal officeholders, between the time of first communication between that professional business entity or vendor and the Borough regarding a specific professional services agreement or goods and services agreement, as the case may be, and the later of the termination of negotiations or rejection of any proposal, or the completion of the contract or agreement.

(1) For the purposes of this ordinance a professional business entity shall also include any contractor and/or redeveloper as that term is defined under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. that seeks to enter into any contract whatsoever with the Borough of Sayreville or any entity, agency or public authority created by the Borough of Sayreville under the laws of the State of New Jersey as may be revised and amended. The proscriptions set forth hereunder shall also apply to any professional, consultant or lobbyist contracted and/or employed by any contractor and/or redeveloper, for the purpose of rendering and/or performing any services, or providing any goods

that may arise under any aspect of a contract and/or redevelopment agreement including any lobbying of government officials that may precede or arise from any contract or redevelopment agreement and/or any anticipated contract or redevelopment agreement as set forth in Section 8 hereunder. No professional business entity as defined in this paragraph shall make any contribution in contravention of this Ordinance between the time that the property that is the subject of the redevelopment project has been included in a memorializing resolution adopted by the Borough of Sayreville directing the Planning Board to conduct a preliminary investigation to determine if the site is in need of redevelopment in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. and the date of entering the redevelopment agreement, or the twelve (12) months prior to entering into the redevelopment agreement, whichever period is shorter.

(c) For purposes of this ordinance, a "professional business entity" and a "vendor" 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 and vendor 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 or vendor, as well as any subsidiaries directly controlled by the business entity or vendor.

(d) Any individual meeting the definition of "professional business entity" or "vendor" under this section may annually contribute a maximum of \$400 each for any purpose to any candidate, for mayor or council, or \$500 to the Sayreville Borough or Middlesex County party committee or to a PAC referenced in this ordinance, without violating subsection (a) of this section. However, any group of individuals meeting the definition of "professional business entity" or "vendor" under this section, including such principals, partners, and officers of the entity or vendor in the aggregate, may not annually contribute for any purpose in excess of \$2,500 to all Sayreville Borough candidates and officeholders with ultimate responsibility for the award of the contract, and all Sayreville Borough or Middlesex County political parties and PAC's referenced in this ordinance combined, without violating subsection (a) of this section.

(e) For purposes of this ordinance, all prohibitions and limitations on contributions to a "Borough candidate or holder of public office having ultimate responsibility for the award of a contract" shall be applicable, in the case of dual office-holding, to contributions to or for the benefit of the dual officeholder regardless of office.

(f) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:

(1) The Borough of Sayreville Council, if the contract requires approval or appropriation from the Council.

(2) The Mayor of the Borough of Sayreville, 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 or vendor to any Sayreville Borough candidate for Mayor or Council, or Sayreville Borough or Middlesex County party committee or PAC referenced in this ordinance shall be deemed a violation of this ordinance, 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 or vendor prior to the effective date of this ordinance.

Section 3. Contribution Statement by Professional Business Entity and Vendor. (a) Prior to awarding any contract or agreement to procure services with any professional business entity and any contract or agreement to procure goods and services from a vendor, the Borough or its purchasing agents and departments, as the case may be, shall receive a sworn statement from the professional business entity or vendor, made under penalty of perjury, that the professional business entity or vendor has not made a contribution in violation of Section 1 of this ordinance.

(b) The professional business entity and vendor shall have a continuing duty to report any violations of this ordinance that may occur during the negotiation, proposal process or duration of a contract. The certification required under this subsection shall be made prior to entry into the contract or agreement with the Borough of Sayreville, or prior to the provision of services or goods, as the case may be, 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, vendor, or Borough candidate or officeholder, or Borough or Middlesex County party committee or PAC referenced in this ordinance, may cure a violation of Section 1 of this Ordinance, if, within 30 days after a cited violation hereunder, the professional business entity or vendor notifies the Borough Council in writing and seeks and receives reimbursement of the contribution from the relevant Borough candidate or officeholder, Borough or Middlesex County political party or PAC referenced in this ordinance.

Section 5. Limitation on Employee Contributions. (a) To the extent that it is not inconsistent with state or federal law, no Borough employee shall knowingly solicit or make any contribution of money, pledge of contribution, including in-kind contributions, to; (i) any Borough candidate or holder of public office, or (ii) to any Borough or Middlesex County party committee, or (iii) to any PAC that is organized for the purpose of promoting or supporting Borough municipal candidates or municipal officeholders, in excess of the thresholds specified in subsection (d) of Section 1.

Section 6. Disclosure Required on Major Subdivision and Site Plan Applications. At the time of filing an application for major subdivision and site plan approval, all applicants therefor shall also file with the Borough of Sayreville Zoning Board of Adjustment or Planning Board, as the case may be, a disclosure under penalty of perjury, setting forth the amounts of all contributions to (i) any Borough candidate or holder of public office, or (ii) to any Borough or Middlesex

County party committee, or (iii) to any PAC referenced in this ordinance, made by such applicant within two calendar years of the date of such application.

Section 7. Penalty. (a) All Sayreville Borough professional service agreements, vendor contracts or other contracts and/or agreements of any nature whatsoever, including all redevelopment agreements shall provide that it shall be a breach of the terms of the government contract for a professional business entity or vendor to violate Section 1 or to knowingly conceal or misrepresent contributions given or received, or to make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution.

(b) Any professional business entity or vendor as defined in Section 1 who knowingly fails to reveal a contribution made in violation of this Ordinance, or who knowingly makes or solicits contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution, shall be disqualified from eligibility for future Sayreville Borough contracts, agreements, or provisions of goods and services, for a period of four (4) calendar years from the date of the violation.

Section 8. Contribution Restrictions and Disclosure Requirement Applicability to Consultants.

(a) The contribution and disclosure requirements in this Ordinance shall apply to all professional business entities 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 the redevelopment plan or any other Borough public contract;

(2) Obtaining the designation or appointment as redeveloper or any other contractor or vendor;

(3) Negotiating the terms of any contract and/or redevelopment agreement or any amendments or modifications thereto; and/or

(4) Performing the terms of any contract and/or any redevelopment agreement.

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

(c) A professional business entity that participates in, or facilitates, the circumvention of the contribution restrictions through consultants or professionals shall be deemed to be in breach.

Section 10. Return of Excess Contributions. A redeveloper or municipal 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 and deemed not to be in breach, if within 30 days of filing the applicable New Jersey Election Law Enforcement Commission (ELEC) report, the redeveloper notifies the Municipal Council in writing and seeks and receives reimbursement of a contribution from the municipal candidate or municipal or county political party or PAC referenced in this Ordinance.

(b) Furthermore, any professional business entity, including a redeveloper that violates any proscription set forth hereunder shall be disqualified from eligibility for future Borough of Sayreville redevelopment agreements for a period of four (4) calendar years from the date of the violation.

Section 11. Severability. If any provision of this Ordinance, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Ordinance are severable.

Section 12. Repealer. All other ordinances or parts of ordinances inconsistent with this ordinance are repealed to the extent of such inconsistency.

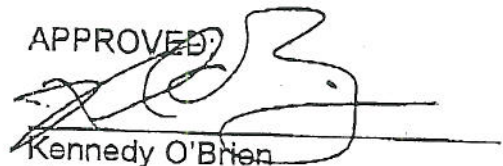
Section 13. Effective Date. This Ordinance shall take effect upon adoption and publication according to law.


Councilman Pollando


ATTEST:


Theresa A. Farbaniec, R.M.C.
Municipal Clerk

APPROVED:


Kennedy O'Brien
Mayor

APPROVED AS TO FORM:


Brian M. Hak, Esq., Borough Attorney