

ORDINANCE 24-08

**AN ORDINANCE OF THE BOROUGH OF KEYPORT
REGULATING THE AWARD OF CONTRACTS**

WHEREAS, The Borough of Keyport regularly needs to procure professional services from professional business entities, and

WHEREAS, professional services are excepted from the Local Public Contracts Law requirements for competitive bidding, pursuant to *N.J.S.A. 40A:11-5(1)(a)(i)*; and

WHEREAS, as a result of professional services being exempt from the competitive bidding requirements of the Local Public Contracts Law, there is a legitimate concern among residents and taxpayers that the awarding of professional service contracts may be influenced by political campaign contributions, thereby calling into question their trust in the process of local government, if not the quality or cost of professional services received, and

WHEREAS, pursuant to P.L. 2005, c.271, a municipality is authorized to adopt by ordinance regulating the award of public contracts to professionals and professional business entities that have made political campaign contributions and limiting the contributions that the holders of a professional service contract may make during the term of a contract; 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 professionals and professional business entities,

NOW THEREFORE BE IT ORDAINED by the Mayor and the Borough Council of the Borough of Keyport that it is the policy of the Borough of Keyport to set maximum amounts that professionals and professional business entities may contribute to political parties and political campaign committees beyond which they become ineligible to enter into a public professional service Contract with the Borough of Keyport.

Section 1: Prohibition on Certain Contractors Making Political Campaign Contributions.

Notwithstanding any other provision of the law to the contrary, no Professional or Professional Business Entity (hereinafter collectively referred to as "Professional") that has entered into a contract with the Borough of Keyport for services that are excepted from the Local Public Contracts Law requirements for competitive bidding, pursuant to *N.J.S.A. 40A:11-5(1)(a)(i)*, including those awarded pursuant to a "fair and open" process pursuant to *N.J.S.A. 19:44A-20.5* (hereinafter referred to as a "Contract"), may make a contribution of money, or pledge of a contribution, including

in-kind contributions, to any candidate for or holder of a Borough of Keyport Public Office that has responsibility for the award of a Contract, or the Campaign Committee of a candidate for or holder of a Borough of Keyport Public Office that has responsibility for the award of a Contract, or to any Borough of Keyport or Monmouth County Political Party Committee, or to any Political Action Committee (PAC) that regularly engages in, or who's majority purpose is the support of candidates for or holders of public office in the Borough of Keyport, in excess of the amount specified in Section 3 during the period commencing one (1) calendar year immediately preceding the date of the Contract and ending upon the completion of the Contract.

Section 2: Prohibition on Awarding Certain Contracts to Persons or Entities Making Political Campaign Contributions.

Notwithstanding any other provision of the law to the contrary, the Borough of Keyport or any of its purchasing agents or agencies or those of its independent authorities, as the case may be, shall not enter into a Contract or otherwise agree to procure any goods or services that are excepted from the competitive bidding requirements as set forth in *N.J.S.A. 40A:11-5(1)*, including those awarded pursuant to a "fair and open" process pursuant to *N.J.S.A. 19:44A-20.5*, from any Professional, if that Professional has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, to any candidate for or holder of a Borough of Keyport public office that has responsibility for the award of the Contract, or the campaign committee of a candidate for or holder of a Borough of Keyport Public Office, or to any Borough of Keyport or Monmouth County Political Party Committee, or to any Political Action Committee (PAC) that regularly engages in, or who's majority purpose is the support of candidates for or holders of public office in the Borough of Keyport in excess of the amount specified in Section 3 during the period commencing one (1) calendar year immediately preceding the date of the Contract and ending upon the completion of the Contract.

Section 3: Maximum Permitted Political Campaign Contributions.

A Professional may contribute a maximum of three hundred dollars (\$300) per election cycle (*N.J.S.A. 19:44A-8(d)* & *N.J.S.A. 19:44A-16(f)*), to any candidate for or holder of a Borough of Keyport Public Office that has responsibility for the award of the contract, or the campaign committee of a candidate for or holder of a Borough of Keyport Public Office, or to any Borough of Keyport or Monmouth County political party committee, or to any Political Action Committee (PAC) that regularly engages in, or who's majority purpose is the support of candidates for or holders of Public Office in the Borough of Keyport. Any group of individuals meeting the definition of Professional under this ordinance, including such principals, partners, and officers of the Professional in the aggregate, may not contribute for any purpose in excess of two thousand five hundred dollars (\$2,500) (*N.J.S.A. 19:44A-8(d)* & *N.J.S.A. 19:44A-16(f)*), to all candidates for or holders of a Borough of Keyport Public Office that has ultimate responsibility for the award of the contract, or the campaign committee of

candidates for or holders of a Borough of Keyport public office, or to any Borough of Keyport or Monmouth County political party committee, or to any Political Action Committee (PAC) that regularly engages in, or who's majority purpose is the support of candidates for or holders of Public Office in the Borough of Keyport, without violating Sections 1 and 2 of this Ordinance.

Section 4: Political Campaign Contributions Made Prior to Effective Date

No contribution of money, or pledge of a contribution, including in-kind contributions made by a Professional to any candidate for or holder of a Borough of Keyport Public Office that has responsibility for the award of the contract, or the campaign committee of a candidate for or holder of a Borough of Keyport Public Office, or to any Borough of Keyport or Monmouth County political party committee, or to any Political Action Committee (PAC) that regularly engages in, or who's majority purpose is the support of candidates for or holders of Public Office in the Borough of Keyport shall be deemed a violation of this section, nor shall an be disqualified thereby, if that contribution was made by the professional business entity prior to the effective date of this ordinance.

Section 5: Return of Excess Contributions

Any candidate for or holder of a Borough of Keyport Public Office that has responsibility for the award of the contract, or the campaign committee of a candidate for or holder of a Borough of Keyport Public Office, or to any Borough of Keyport or Monmouth County political party committee, or to any political action committee (PAC) that regularly engages in, or who's majority purpose is the support of candidates for or holders of Public Office in the Borough of Keyport may cure a violation of Section 1 of this Ordinance, if, within thirty (30) days after the date on which the offending contribution is reported to the New Jersey Election Law Enforcement Commission ("ELEC") pursuant to *N.J.S.A. 19:44A-1 et seq.*, the Professional notifies the Borough Clerk in writing and diligently seeks and receives reimbursement of a contribution from a candidate for or holder of a Borough of Keyport Public Office, or the campaign committee of a candidate for or holder of a Borough of Keyport Public Office, or to any Borough of Keyport or Monmouth County political party committee, or to any political action committee (PAC) that regularly engages in, or who's majority purpose is the support of candidates for or holders of Public Office in the Borough of Keyport, referenced in this ordinance.

Section 5: Definitions

- a) For purposes of this ordinance, a "Professional" seeking a public Contract means any individual, including that individual's spouse and any child living at home; any person; firm; corporation; professional corporation; partnership; organization; or association seeking to enter into a Contract for professional services that are excepted from the Local

Public Contracts Law requirements for competitive bidding, pursuant to N.J.S.A. 40A:11-5(1)(a)(i).

- b) The definition of a Professional all principals, partners or owners who have a one percent (1%) or greater ownership or equity interest in the corporation, organization, association or partnership seeking to enter into a Contract for professional services that are excepted from the Local Public Contracts Law requirements for competitive bidding, pursuant to N.J.S.A. 40A:11-5(1)(a)(i), as well as any subsidiaries directly controlled by the Professional.
- c) For purposes of this section, the office that is considered to have responsibility for the award of the Contract shall be:
 - i. The Borough Council (the "Council") of the Borough of Keyport if the Contract requires approval or appropriation from the Council.
 - ii. The Mayor of the Borough of Keyport (the "Mayor"), if the Contract requires approval of the Mayor, or if a public officer who is responsible for the award of the Contract is appointed by the Mayor.

Section 6: Violation and Penalty

- a) It shall be a violation of the terms of the Borough of Keyport Contract for a Professional to: (i) make or solicit a campaign contribution in violation of this ordinance; (ii) knowingly conceal or misrepresent a campaign contribution given or received; (iii) make or solicit campaign contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any campaign contribution on the condition or with the agreement that it will be contributed to a candidate for or holder of a Borough of Keyport Public Office that has responsibility for the award of the contract, or the campaign committee of a candidate for or holder of a Borough of Keyport Public Office, or to any Borough of Keyport or Monmouth County political party committee, or to any Political Action Committee (PAC) that regularly engages in, or who's majority purpose is the support of candidates for or holders of Public Office in the Borough of Keyport; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any campaign contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of this ordinance; (vi) fund campaign contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of campaign 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) Any Professional who knowingly and purposefully violates any provision of this ordinance shall be disqualified from eligibility for future Borough of Keyport contracts for a period of four (4) calendar years from the date of the violation.

Section 6. 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) And any ordinance inconsistent with the terms of this ordinance is hereby repealed to the extent of such inconsistency.
- c) This Ordinance shall become effective on January 1, 2009 subsequent to upon its final passage and publication as required by law.

Introduced: September 2, 2008

Public Hearing: September 16, 2008

Adoption: September 16, 2008

