

SEP - 3 2009

NINA MITCHELL WELLS  
SECRETARY OF STATE

ORDINANCE NO. 27 -2005

**ORDINANCE OF THE BOROUGH OF POINT PLEASANT,  
COUNTY OF OCEAN, STATE OF NEW JERSEY, PROVIDING  
REFORM OF PUBLIC CONTRACTING AND LIMITING  
POLITICAL CONTRIBUTIONS**

WHEREAS, the Borough Council of the Borough of Point Pleasant, County of Ocean, State of New Jersey, is of the opinion that the public interest would be best served by reforming the practice whereby professional business entities are awarded no bid professional service contracts and limiting the amount which may be contributed to the candidates for public office in the Borough of Point Pleasant; and

WHEREAS, the United States Supreme Court has recognized in the matter of Buckley v. Valeo, 424 U.S. 1 (1974) that it is a constitutionally protected right of individuals to make financial contributions to candidates for elective office, subject to certain reasonable limitations; and

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

WHEREAS, professional business entities make 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, local political contributions from professionals receiving discretionary contracts from the elected officials who receive such contributions raise reasonable concerns of the part of taxpayers and the public as to their trust in the process of local government, if not the quality or cost of services received, 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 Point Pleasant will be to set maximum amounts professional business entities may contribute to local political candidates, party organizations, and candidate committees

beyond which they become ineligible to receive a public professional service contract from the Borough of Point Pleasant as follows:

**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, 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, from any professional business entity, if that entity has made any contribution of money, or pledge of a contribution, to any Borough of Point Pleasant municipal candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any Borough of Point Pleasant campaign committee supporting such candidate or officeholder, or to any Borough of Point Pleasant party committee, in excess of the thresholds specified in subsection (c) within one calendar year immediately preceding the date of the contract or agreement.

(b) No professional business entity which enters into negotiations for, or agrees to any contract or agreement with the municipality or any department thereof for the rendition of professional, banking or insurance coverage services or any other consulting services shall solicit or make any contribution of money, or pledge of a contribution, to any Borough of Point Pleasant municipal candidate or holder of the public office having ultimate responsibility for the award of the contract, or Borough of Point Pleasant candidate campaign committee supporting such candidate or officeholder, in excess of the thresholds specified in subsection (c) 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.

(c) (i) Subject to the limitations of (ii), any entity meeting the definition of "professional business entity" under this section may contribute a maximum of \$500 per election for any purpose to each Borough of Point Pleasant candidate committee for the office of mayor or council, or any Borough of Point Pleasant party committee referenced in this ordinance, without violating subsection (a) of this section. If such Borough of Point Pleasant candidate committee is a joint candidate committee then the maximum contribution shall be \$500 per election per candidate. However, (ii) any entity meeting

the definition of "professional business entity" under this section, including such principals, partners, and officers of the entity in the aggregate, may not contribute for any purpose in excess of a total of \$3,000 per election to: all Point Pleasant Borough candidates and officeholders with ultimate responsibility for the award of the contract and all Point Pleasant Borough political party committees referenced in this ordinance combined, without violating subsection (a) of this section.

(d) For purposes of this ordinance, a "professional business entity" is any entity seeking or performing a public contract for professional, banking or insurance coverage services or any other consulting services and which may be an individual including the individual's spouse, if any, and any child living at home; a 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.

(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 office of Borough of Point Pleasant Council member and the Mayor of the Borough of Point Pleasant, if the contract requires approval or appropriation from the Council.

2) The Mayor of the Point Pleasant Borough, 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 2: Contributions Made Prior to the Effective Date**

No contribution of money or any other thing of value made by a professional business entity to any municipal candidate for Mayor or Council, or municipal party 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 professional business entity prior to the effective date of this section.

### **SECTION 3: Contribution Statement by Professional Business Entity**

(a) Prior to awarding any contract or agreement to procure professional services, or banking or insurance coverage services or any other consulting services, with any professional business entity, the Borough of Point Pleasant or any of its purchasing agents, as the case may be, shall receive a sworn statement from the professional business entity made under penalty of perjury that the bidder or offeror has not made a contribution in violation of Section 1 of this ordinance.

(b) The professional business entity shall have a continuing duty to report any violations of this ordinance that may occur during the negotiation or duration of the contract. The certification required under this subsection shall be made prior to entry into the contract or agreement with the Borough of Point Pleasant 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 or Borough candidate or officeholder or municipal party committee referenced in this ordinance may cure a violation of Section 1 of this ordinance, if, within 30 days after the contribution, the professional business entity notifies the Borough Council in writing and seeks and receives reimbursement of a contribution from the candidate, candidate committee or municipal party committee referenced in this ordinance.

### **SECTION 5: Penalty**

(a) It shall be a breach of the terms of the Borough of Point Pleasant professional service agreement for a business entity to: (i) make a contribution in violation of this ordinance; (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make any contribution on the condition or with the agreement that it will be contributed to a Borough of Point Pleasant candidate committee, public office holder of the Borough of Point Pleasant or municipal party committee; (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 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 or making of any 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 that violates (a) ii-viii shall be disqualified from eligibility for future Borough of Point Pleasant contracts for a period of four calendar years from the date of the violation.

#### SECTION 6: Severability and Repealer

(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.

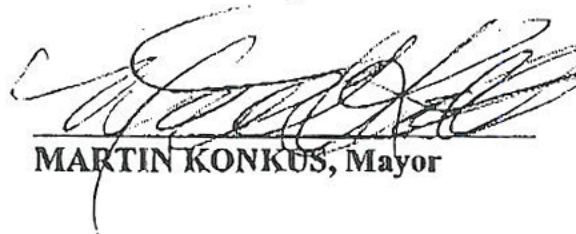
#### SECTION 7: Effective Date

This ordinance takes effect after second reading and publication as required by law.

ATTESTED TO BY:

  
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DAVID A. MAFFEI, Clerk/Administrator

APPROVED:

  
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MARTIN KONKUS, Mayor

#### NOTICE

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was introduced and passed by the Borough Council of the Borough of Point Pleasant on first reading at meeting held on the 15<sup>th</sup> day of November, 2005. The Ordinance will be considered for second and final reading at a meeting of the Borough Council which is scheduled for the 6<sup>th</sup> day of December 2005, at 8:00 p.m., or as soon thereafter as the matter may be reached, at the Municipal Building located at 2233 Bridge Avenue, Point Pleasant, New Jersey, at which time the public is invited to ask questions, raise objections, or provide public comment with regard to the proposed adoption of this Ordinance.

  
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DAVID A. MAFFEI, Clerk/Administrator