FILED

JAN 2 7 2006

SECRETARY OF STATE

ORDINANCE 05-2005

AN ORDINANCE ESTABLISHING CHAPTER IX, ARTICLE III, "REQUIRING CONTRIBUTION DISCLOSURE IN MAJOR ZONING VARIANCE APPLICATIONS" OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF ATLANTIC HIGHLANDS IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY

WHEREAS municipal Master Plans include well thought out, long-term decisions about the development capacity of community; and

WHEREAS municipal Master Plans are implemented through the enactment of local land use ordinances; and

WHEREAS deviations from these local ordinances by way of variances pursuant to N.J.S.A. 40:55D-70d and N.J.S.A. 40:55D-70c as well as exceptions and waivers pursuant to N.J.S.A. 40:55D-51 provide opportunities for significant private gain; and

WHEREAS, the taxpayers and citizens of the Borough of Atlantic Highlands (the "Borough") have a right to expect that the exercise of the duties and responsibilities of their elected municipal officials and the Borough's employees and officials, are not influenced by or in exchange for excessive political contributions; and

WHEREAS openness in government and a fair and impartial variance, waiver and exception application process is crucial to assuring the continuing integrity of the municipal Master Plan, its implementing ordinances and the integrity of the variance application process; and

WHEREAS, the opportunities for such influence also exist with respect to development projects within the municipality, if developers, or the professionals who represent or perform services for developers in connection with development projects within the Borough, are permitted to make substantial political contributions to the election campaigns of the local government elected officials who sit on local zoning boards, or who are responsible for making appointments to local zoning boards, or who are ultimately responsible for Development Agreements, and resolutions relating thereto, entered into by the Borough pursuant to a Redevelopment Plan or the Municipal Land Use Law; and

WHEREAS disclosure of political contributions by property owners, developers and professionals will enhance the borough's existing commitment

to openness in government and provide further guarantees for a fair and impartial variance, waiver and exception application process; and

WHEREAS disclosure of political contributions by property owners, developers and professionals will effectuate the purposes of the Municipal Land Use Law to promote morals and the general welfare;

WHEREAS, it is accordingly found and determined that the paramount public interest in enhancing the Borough's commitment to openness in government, in providing further guarantees for a fair and impartial variance, waiver and exception application process, and in promoting morals and the general welfare through the integrity of the municipal planning process requires the supplementation of the municipal application checklist to mandate the listing of specified political contributions made by property owners, developers and the professionals whose services they use in applications for major variances, waivers and exceptions.

THEREFORE, be it Ordained by the Mayor and Council of the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey as follows:

9- 3.1 Short Title

Contribution Disclosure Ordinance

9-3.2. Definitions:

a. *Application Checklist* – The term "Application Checklist" means the list of submission requirements adopted by ordinance and provided by the municipal agency to a developer pursuant to N.J.S.A. 40:55D-10.3.

b. *Borough* – Shall mean the Borough of Atlantic Highlands as a municipal entity, any elected official, officer, employee, agent, department, board or commission of the Borough of Atlantic Highlands.

c. *Developer*_– The term "Developer" means a developer as defined by N.J.S.A. 40:55D-4, Developer shall mean any individual or Entity who makes any application to the Borough's Planning Board for any subdivision, site plan approval or variance relief, regardless of how minor; or who owns or is the contract purchaser of any property that is the subject of any such application, or who owns or is the contract purchaser of any property located within a designated redevelopment area, regardless of whether the property has been specifically designated as being "in need of redevelopment"; or who engages directly or indirectly

in negotiations with the Borough relating to, or has in fact entered into, a Developer's Agreement pursuant to any Redevelopment Plan or the Municipal Land Use Law, or who owns or is the contract purchaser of, any property that is the subject of, or would directly be affected by a proposed change in zoning or of the Master Plan, and in the case of a Developer who is an individual, his or her spouse and any child living at home, and any Entities of which any of them are principals holding a Five Percent (5%) or greater interest; and in the case of a Developer that is an entity, the term shall also include each and every principal of the said entity who has an ownership interest in excess of Five Percent (5%) in the entity, or in any parent or subsidiary of the entity, and their spouses, if any, and any child living at home;

d. *Developer's Agreement* shall mean any agreement entered into between a Developer and the Borough relating to an application or plan to develop or redevelop property within the Borough of Atlantic Highlands.

e. *Development Matter* shall mean any application for development pending before the Borough Planning Board of the Borough, any application or proposal to change the Borough's zoning regulations or Master Plan, or any proposed development pursuant to a Redevelopment Plan, or any Developer's Agreement. With respect to a Developer, the term "relating to a Development Matter" shall mean that the Developer is the applicant, owner or contract purchaser of property that is the subject of an application for development pending before the Borough Planning Board of the Borough, or of any application or proposal to change the Borough's zoning regulations or Master Plan, or of any application for development pursuant to a Redevelopment Plan or otherwise a party to any Developer's Agreement. With respect to a Development Professional, the term "relating to a Development Matter" shall mean that the Development Professional has rendered or is rendering professional services for a Developer in connection with that Development Matter.

f. *Development Professional* shall mean any licensed professional, including but not limited to attorneys, architects, engineers, surveyors and planners, or any Entity that provides such professional services, who is representing a Developer or who has performed professional services for a Developer relating to a Development
Matter in the Borough of Atlantic Highlands, and any principal owning not less than a Five Percent (5%) interest in the Entity.

g. *Entity* shall mean any corporation, professional corporation, joint venture, general or limited partnership, trust or limited liability company, or subsidiary or parent of any of the foregoing;.

h. *Planning Board* in the Borough of Atlantic Highlands is a combined zoning board of adjustment and planning board and is referred to as the "Planning Board."

i. *Redevelopment Plan* shall mean any plan, or amendment thereto, adopted by ordinance of the Mayor and Council pursuant to and in accordance with Redevelopment and Housing Law, Chapter 79, P.L. 1992.

j. *Campaign Contribution*_– The term "Campaign Contribution" shall mean any contribution to an Atlantic Highlands political campaign, Monmouth county political campaign, and/or Pass-Through campaign contribution as defined herein, whether in the form of money, service (with or without compensation), or pledge, loan, gift, subscription, advance or transfer of money or other thing of value, including any item of real property or personal property, tangible or intangible including without limitation, any in-kind contributions, or purchases of tickets, advertisements or the like, directly or indirectly, made to or on behalf of any candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or any elected or appointed official. "Campaign Contribution" also includes any pledge, promise or other commitment or assumption of liability to make such transfer. For purposes of reports required under the provisions of the ordinance, any such commitment or assumption shall be deemed to have been a contribution upon the date when such commitment is made or liability assumed.

k. *Contribution Disclosure Statement*_– The term "Contribution Disclosure Statement" means a list specifying the amount, date, and the recipient of any and all Campaign Contributions made to or on behalf of any candidate, candidate committee, joint candidates committee, political committee, continuing political committee or political party committee of, or pertaining to, this municipality, made up to one year prior to filing the variance application and/or during the pendency of the application process, and required to be reported pursuant to N.J.S.A. 19:44A-1 et seq. *The "Contribution Disclosure Statement" shall be provided as a required document with any application for a major zoning variance application.*

9-3.3 General Provisions:

1. Disclosure Requirements

a. Any applicant for a variance pursuant to N.J.S.A. 40:55D-70(d) or a variance pursuant to N.J.S.A. 40:55D-70c in conjunction with any application for a subdivision not considered a minor subdivision pursuant to local ordinance or a site plan not considered a minor site plan pursuant to local ordinance as well as any application for a subdivision not considered a minor subdivision pursuant to local ordinance or site plan not considered a minor site plan pursuant to local ordinance requiring waivers or exceptions pursuant to N.J.S.A. 40:55D-51 shall include in the application Contribution Disclosure Statements for all Developers; all associates of said Developers who would be subject to disclosure pursuant to N.J.S.A. 40:55D-48.1 or 40:55D-48.2; and all **Development** Professionals who apply for or provide testimony, plans, or reports in support of said variance and who have an enforceable proprietary interest in the property or development which is the subject of the application or whose fee in whole or part is contingent upon the outcome of the application. Regardless of whether the owner of the property, which is the subject of the variance application, falls in any of the categories established in the preceding sentence, the applicant shall include in the application a Contribution Disclosure Statement for said owner.

b. During the pendency of the application process until final site plan approval is granted, any applicant required to comply with this ordinance shall amend its Contribution Disclosure Statements to include continuing disclosure of all Contributions within the scope of disclosure requirement of the above paragraph.

c. Contribution Disclosure Statements as defined in 9-3.2.a. shall be included as an element of the "Application Checklist" submitted with an application for variances pursuant to N.J.S.A. 40:55D-70(d), as well as for relief pursuant to N.J.S.A. 40:55-D-70(c) or N.J.S.A. 40:55D-51 in applications for site plan and subdivision approval not considered to be minor site plans or minor subdivisions pursuant to local ordinance.

d. An application shall not be deemed complete by the administrative official or accepted for public hearing by the borough until the required Contribution Disclosure Statements are submitted.

e. All Contribution Disclosure Statements shall be available in the office of the Planning Board Secretary for review by any member of the public.

2. Intent of the Disclosure Statement

It is the intent of this ordinance that the Disclosure Statement shall serve to inform the public and not serve as evidence relevant to the decision criteria for variance applications pursuant to N.J.S.A. 40:55D-70(d) as well as for relief pursuant to N.J.S.A. 40:55D-70c or N.J.S.A. 40:55D-51 in applications for site plan and subdivision approval not considered to be minor site plans or minor subdivisions pursuant to local ordinance.

BE IT FURTHER ORDAINED, that provisions of this Ordinance shall be severable. 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 law to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it held invalid, shall not be affected thereby, and to this extent the provisions of this law are severable.

BE IT FURTHER ORDAINED, that all other ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistencies.

BE IT FURTHER ORDAINED, that this ordinance shall take effect upon adoption and publication according to law.

Council member Ladiana introduced this Ordinance and, after First Reading, moved for approval. It was seconded by Council member Fligor and approved by the following vote.
AYES: Council members Archibald, Fligor, Ladiana, Niles, Nolan and Spatola
NAYS:

The Second Reading, Public Hearing and possible adoption is scheduled for March 23, 2005.

I, Dwayne M. Harris, Acting Municipal Clerk of the Borough of Atlantic Highlands, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Governing Body at its meeting held February 23, 2005.
WITNESS my hand and the Seal of the Borough of Atlantic Highlands this 24th day of February 2005.

Dwayne M. Harris

SECOND READING AND FINAL ADOPTION: PASSED March 23, 2005
After a Public Hearing and Second Reading, Councilmember Fligor moved for Final Adoption of this Ordinance. It was seconded by Councilmember Ladiana and adopted by the following vote.

AYES: Council members Archibald, Fligor, Ladiana, and Nolan
NAYS:

I, Dwayne M. Harris, Acting Municipal Clerk of the Borough of Atlantic Highlands, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Governing Body at its meeting held March 23, 2005.
WITNESS my hand and the Seal of the Borough of Atlantic Highlands this 24th day of March 2005.

Dwayne M. Harris

DATE OF MAYOR'S APPROVAL: March 28, 2005

Peter E. Donoghue, Mayor

CERTIFIED COPY

DWAYNE M. HARRIS
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 1/29/2009