



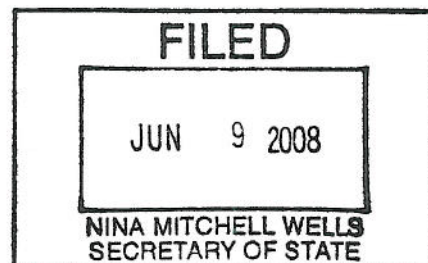
Englewood

P.O. Box 228 • Englewood, N.J. 07631

June 4, 2008

TO: Secretary of State
FROM: City Clerk
RE: "Pay to Play" Ordinance

Enclosed please find City of Englewood Ordinance No. 07-31, adopted by the City Council of the City of Englewood, Bergen County, New Jersey, on November 20, 2007.



NOTICE IS HEREBY GIVEN that the following ordinance was introduced at a Regular Formal meeting of the City Council of the City of Englewood on November 7, 2007 and that said ordinance will be further considered for final passage at a meeting of the City Council to be held in the Municipal Court Room, 73 South Van Brunt Street, Englewood, Bergen County, New Jersey, on November 20, 2007 at 8:00 pm or as soon thereafter as the matter can be heard.

Lenore Schiavelli, RMC/CMC
City Clerk

ORDINANCE NO. 07-31

AN ORDINANCE AUTHORIZING WITHHOLDING NO-BID PUBLIC CONTRACTS FROM POLITICAL CONTRIBUTORS (RESTRICTING PAY TO PLAY)

WHEREAS, it has become common for professional business entities to make substantial political contributions in order to get lucrative contracts, whether directly or through intermediaries and the practice known as wheeling, including but not limited to Municipal and County political organizations, the Bergen County Party Committee, to the election campaigns of local government officers who are ultimately responsible for awarding profession 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 may 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, the City of Englewood endeavors to ensure transparent government; 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; 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, nothing herein contained is intended to impair in any way the right of a professional service provider to exercise Federal and State constitutional rights of free speech;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Englewood, Bergen County, New Jersey, that it is the public policy of the City to refuse public professional service contracts to professional service providers who knowingly make substantial political contributions, as hereinafter defined, in the expectation of being considered for a no-bid contract in excess of \$17,500.00; and

BE IT FURTHER ORDAINED, that Chapter 3 of the Revised General Ordinances of the City of Englewood entitled, "Administrative Practices," is hereby amended and supplemented with new Article 8 entitled "Withholding No-Bid Public Contracts from Political Contributors," as to read in full as follows:

SECTION 1. PROHIBITION ON AWARDING PUBLIC CONTRACTS TO CERTAIN CONTRIBUTORS

(a) Any other provision of law to the contrary notwithstanding, the City and any of its purchasing agents or agencies, its statutory boards and its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract on a no-bid basis to procure services from any professional business entity, if that entity has solicited or made a contribution of money, or pledged a contribution, including in-kind contributions in excess of the thresholds set forth in subsection (d), to a campaign committee of any City candidate or holder of a public office in the City, whether or not that officeholder has the ultimate responsibility for the award of the contract, or to any City or Bergen County party committee, or to any political action committee (PAC) that is organized for the primary purpose of promoting or supporting City candidates or City officeholders, including any State party or legislative leadership committee, if such contribution or pledge is made within two calendar years immediately preceding the date of the municipal decision awarding such contract or agreement on a no-bid basis.

(b) No professional business entity or vendor who submits a proposal for, enters into negotiations for, or agrees to, any contract or agreement on a no-bid basis with the City or any department or agency thereof, or its statutory boards, or its independent authorities, for the rendition of professional, banking or insurance services or any other no-bid consultation services, shall know or make any contribution of money,

contract means an individual including the individual's spouse and any unemancipated child living in the household of such person, a firm, corporation, professional corporation, partnership, limited partnership, limited liability company, unincorporated association or similar organization. The definition of a "business entity" encompasses all principals and partners who own 10% or more of the equity in the business entity and any officers 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" or "vendor" under this section may annually contribute a maximum of \$300 each for any purpose to any candidate, for mayor or governing body, or \$300 to the City of Englewood party committee, or \$500 to the Bergen County party committee or to a PAC or candidate committee 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 City of Englewood candidates and officeholders with ultimate responsibility for the award of the contract and all City of Englewood or Bergen County political parties, candidate committees, and PAC's referenced in this ordinance combined, without violating subsection (a) of this section. The intentional evasion of pay to play through indirect means including the practice of "wheeling" as it is commonly known is expressly prohibited. All professional business or vendor entities engaged in such practice shall be disqualified.

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

- i. The City Council of the City of Englewood, if the contract requires approval or appropriation from the Council.
- ii. The City Manager, if the contract requires approval of the City Manager, or if a public officer who is responsible for the award of a contract is appointed by the City Manager.

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 City candidate for Mayor or Council, or municipal or county party committee or PAC that is organized for the primary purpose of promoting or supporting City candidates or City officeholders, including any State party or legislative leadership committee, 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 Ordinance.

SECTION 3. CONTRIBUTION STATEMENT BY PROFESSIONAL BUSINESS ENTITY

(a) Prior to awarding any contract or agreement to procure services with any professional business entity, including banking or insurance coverage services, the City of Englewood or any of its purchasing agents or agencies, as the case may be, shall receive a sworn statement from the professional business entity made under penalty of perjury that the professional business entity has not made a contribution in violation of Section 1 of this Act.

(b) The professional business entity shall have a continuing duty to report any violations of this Act that may occur during the negotiation or duration of a contract. The certification required under this subsection shall be made prior to entry into the contract or agreement with the City 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 City candidate or officeholder or municipal county party committee or PAC that is organized for the primary purpose of promoting or supporting City candidates or City officeholders may cure a violation of Section 1, if, within 30 days after the general election, the professional business entity notifies the City Council in writing and seeks and receives reimbursement of a contribution from the City candidate or municipal or county political party or PAC or State party or legislative leadership committee.

SECTION 5. PENALTY

- (a) All City professional service agreements shall provide that it shall be a breach of the terms of the government contract for a professional business entity 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 which or 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 City contracts for a period of four (4) calendar years from the date of the violation.

SECTION 6. If any sentence, paragraph or section of this Ordinance, or the application thereof to any persons or circumstances shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any sentence, paragraph or section of this Ordinance shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of this Ordinance.

SECTION 7. All ordinances, codes or parts thereof that are inconsistent with this Ordinance are repealed or otherwise modified.

SECTION 8. This Ordinance shall take effect immediately upon final passage and publication as required by law.

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November 8, 2007
Fee: \$276.08

CITY OF ENGLEWOOD
ORDINANCE NO. 07-31

AN ORDINANCE AUTHORIZING WITHHOLDING NO-BID PUBLIC CONTRACTS FROM POLITICAL CONTRIBUTORS (RESTRICTING PAY TO PLAY)

I HEREBY CERTIFY that the foregoing is a true copy of the title of an Ordinance adopted by the City Council of the City of Englewood, New Jersey on November 20, 2007.

Approved:
Michael Wildes,
Mayor

Attest:
Lenore Schiavelli
RMC/CMC
City Clerk