

**BOROUGH OF PENNINGTON  
ORDINANCE 2007-3**

**AN ORDINANCE AMENDING PART I OF THE CODE OF THE BOROUGH OF PENNINGTON, CONCERNING ADMINISTRATION, AND PROHIBITING CERTAIN POLITICAL CONTRIBUTIONS BY PROFESSIONAL BUSINESS ENTITIES AWARDED PROFESSIONAL SERVICE CONTRACTS BY THE BOROUGH**

**WHEREAS**, contracts for services with professional business entities are exempt from public bidding requirements under the New Jersey Local Public Contracts Law;

**WHEREAS**, Borough Council of the Borough of Pennington has determined that in order to maintain public confidence in the integrity of decisions awarding such contracts it is in the public interest to take formal action to insulate these decisions from the political influence of campaign contributions to or for the benefit of affected decisionmakers;

**WHEREAS**, Borough Council embraces the legal restrictions imposed on political contributions by the New Jersey Local Pay-To-Play Law, N.J.S.A. 19:44A-20.5, effective January 1, 2006, and it seeks to enhance these restrictions with respect to contributions by professional business entities;

**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 provided such rules and procedures are not otherwise preempted by State law;

**NOW, THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Pennington, that Part I of the Code of the Borough of Pennington, concerning Administration, is hereby amended by the adoption of a new Article II establishing regulations affecting the award of contracts to professional business entities, as follows:

1. Prohibition of Awarding Public Contracts to Certain Contributors

(a) Any other provision of law to the contrary notwithstanding, the Borough or any of its departments or agencies or independent authorities, as the case may be, shall not enter into an agreement or otherwise contract with any professional business entity for professional, banking, insurance coverage services or any other consulting services, including contracts and agreements awarded pursuant to a process permitted as a “fair and open” process under the New Jersey Local Pay-to-Play Law, if within one calendar year immediately preceding the date of the contract or agreement that entity has solicited or made any contribution of money, or pledge of a contribution, including an in-kind contribution, in excess of the amounts specified in subsection (d), to any Borough municipal candidate for or holder of the public office having ultimate responsibility for the award of the contract, or campaign committee supporting such candidate or officeholder, or to any Borough or Mercer County party committee, or to any political action committee (PAC) that regularly engages in the support of municipal elections and/or municipal parties.

(b) No professional business entity which enters into negotiations for or agrees to any contract or agreement with the Borough or any of its departments or agencies or independent authorities for the rendition of professional, banking or insurance coverage services or any other consulting services, including contracts and agreements awarded pursuant to a process permitted as a “fair and open” process under the New Jersey Local Pay-to-Play Law, shall solicit or make any contribution of money, or pledge of a contribution, including an in-kind contribution, to any Borough municipal candidate for or holder of the public office having ultimate responsibility for the award of the contract, or campaign committee supporting such candidate or officeholder, or to any Borough or Mercer County party committee, or to any political action committee (PAC) that regularly engages in the support of municipal elections and/or municipal parties, 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) For purposes of this ordinance, a “professional business entity” means and includes any natural or legal person providing or offering to provide professional, banking, insurance coverage services or other consulting services. A natural or legal person includes an individual, firm, proprietorship, corporation, professional corporation, partnership, or any other organization or association. The definition of “business entity” includes in the aggregate all officers of the entity, all partners in the entity, all principals of the entity who own ten percent (10%) or more of the profits or assets of the entity or ten percent (10%) of the stock in the case of a business entity that is a for-profit corporation, and all subsidiaries directly controlled by the entity. An individual included in the definition of business entity or professional business entity shall also include the individual’s spouse, if any, and any child living in the same household as the individual or spouse.

(d) A “professional business entity” may in any calendar year contribute, without violating subsection (a) of this section, a maximum of \$300 each for any purpose to any candidate for mayor or council, or \$300 each to any Borough party committee, or \$500 each to any Mercer County party committee or PAC referenced in this ordinance. However, any individual or entity or group of individuals or entities constituting a “professional business entity” under this section, including in the aggregate all covered principals, partners, officers and subsidiaries of the entity, may not in any calendar year contribute more than \$2,500 to all Borough candidates and officeholders with ultimate responsibility for the award of the contract and all Borough and Mercer County party committees and all covered PACs combined.

(e) For purposes of this section, the office or offices considered to have ultimate responsibility for the award of a contract shall be the Mayor and the Borough Council.

## 2. Contributions Made Prior to the Effective Date

No contribution of money or other thing of value, including an in-kind contribution, shall be deemed a violation of this ordinance, nor shall the efficacy of any contract or agreement be thereby affected, if that contribution was made by the professional business entity prior to the effective date of this ordinance.

## 3. Contribution Statement by Professional Business Entity

(a) Prior to entering into any contract or agreement with a professional business entity to procure its services, including professional, banking, insurance coverage or consulting services, the Borough or its departments, agencies or independent authorities, as appropriate, shall obtain from the professional business entity a sworn statement made under penalty of perjury that the professional business entity, including in the aggregate all covered principals, partners, officers and subsidiaries, has not made a contribution in violation of this ordinance. The effectiveness of any award of a contract or agreement covered by this ordinance shall be conditioned upon satisfactory compliance with this requirement.

(b) The professional business entity shall have a continuing duty to report any violation of this ordinance that may occur during the negotiation or duration of a contract.

## 4. Return of Excess Contributions

A professional business entity, candidate, officeholder, candidate committee, party committee or PAC may cure a violation of this ordinance if, within 30 days after the prohibited contribution, the Borough Council is notified of the violation in writing and the prohibited contribution is returned to the professional business entity.

## 5. Other Prohibited Conduct; Penalty

(a) It shall be a violation of this ordinance to: (i) make or solicit a contribution in violation of this ordinance; (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a candidate or campaign committee of any candidate for Borough office or any holder of Borough office; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant will make or solicit any contribution, which if made or solicited by the business entity itself would subject the 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 of 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 the entity to the restrictions of this ordinance.

(b) All professional services agreements and other contracts for covered services between a professional business entity and the Borough or its departments, agencies or independent authorities, as appropriate, shall provide by operation of law that it shall be a material breach of the agreement for the business entity to engage in conduct prohibited by this ordinance.

(c) Any professional business entity which violates this ordinance also shall be disqualified from eligibility for future Borough contracts for a period of four calendar years from the date of the violation.

## 6. Severability

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If any provision of this ordinance, or the application of any such provision to any person or circumstance, 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 for which it is held invalid, shall not be affected thereby, and to this extent the provisions of this ordinance are severable.

7. Effective Date

This ordinance shall take effect upon passage and publication as provided by law.

Introduced: February 5, 2007

Advertised: \_\_\_\_\_

Public Hearing: \_\_\_\_\_

Adoption: \_\_\_\_\_

Final Publication: \_\_\_\_\_

ATTEST:

APPROVED:

\_\_\_\_\_  
Elizabeth Sterling, Borough Clerk

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Anthony Persichilli, Mayor