

**BOROUGH OF WESTWOOD
NOTICE**

NOTICE IS HEREBY GIVEN that the following Ordinance was introduced and passed on first reading on regular meeting of the Mayor and Council on the 22nd day of April, 2008, and that said Ordinance will be taken up for further consideration for final passage at a regular meeting of the Mayor and Council to be held on the 20th day of May, 2008 at 8:00 p.m. or as soon thereafter as said matter can be reached, at which time and place all persons who may be interested therein will be given an opportunity to be heard concerning same.

Karen Hughes, Borough Clerk
Borough of Westwood

ORDINANCE NO. 08-15

**AN ORDINANCE TO AMEND AND SUPPLEMENT THE
CODE OF THE BOROUGH OF WESTWOOD, BY ADDING A
CHAPTER 3.05 ENTITLED "REGULATION OF CONTRACT
AWARDS"**

WHEREAS, political contributions from professionals exempt from public bidding who receive 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, 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 Governing Body of the Borough of Westwood that it is the public policy of the Borough 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 \$10,000.00; and

BE IT FURTHER ORDAINED, that the Westwood Code is hereby amended and supplemented with a new Article 3.05 entitled "Regulation of Contract Awards", as follows:

SECTION 1.
**PROHIBITION ON AWARDING PUBLIC CONTRACTS TO
CERTAIN CONTRIBUTORS.**

(a) Any other provision of law to the contrary notwithstanding, the Borough 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 Borough candidate or holder of a public office in the Borough, whether or not that officeholder has the ultimate responsibility for the award of the contract, or to any Borough or Bergen County party committee, or to any political action committee (PAC) that is organized for the primary purpose of promoting or supporting Borough candidates or Borough officeholders, if such contribution or pledge is made within one calendar year immediately preceding the date of the municipal decision awarding such contract or agreement on a no-bid basis.

(b) No professional business entity or vender who submits a proposal for, enters into negotiations for, or agrees to, any contract or agreement on a no-bid basis with the Borough 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 knowingly solicit or make any contribution of money, or pledge a contribution, including in-kind contributions, to any Borough candidate or holder of a public office in the Borough, whether or not that officeholder has the ultimate responsibility for the award of the contract, or to any Borough or Bergen County party committee, or to any political action committee (PAC) that is organized for the primary purpose of promoting or supporting Borough candidates or Borough officeholders, between the time of first communication 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" and a "vendor" seeking a public contract means any individual owning ten (10%) per cent or greater interest in the entity 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 Borough of Westwood 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 \$2,500.00 to all Borough of Westwood candidates and officeholders with ultimate responsibility for the award of the contract, and all Borough of Westwood or Bergen County political parties, candidate committees, and PACs 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 governing body of the Borough, if the contract requires approval or appropriation from the Council.

ii. The Borough Administrator of the Borough, if the contract requires approval of the Borough Administrator, or if a public officer who is responsible for the award of a contract is appointed by the Borough Administrator.

SECTION 2. **ANTI-CIRCUMVENTION PROVISION.**

It shall be a breach of the terms of the Borough's professional service agreement or agreement for goods or services for a business entity 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 campaign committee of any candidate or holder of the public office in the Borough of Westwood; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited 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 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 that entity to the restrictions of this ordinance.

SECTION 3. **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 Borough candidate for Mayor or Council, or municipal or county party committee or PAC that is organized for the primary purpose of promoting or supporting Borough candidates or Borough 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 4.
**CONTRIBUTION STATEMENT BY PROFESSIONAL BUSINESS ENTITY AND
PUBLIC OFFICIALS.**

(a) Prior to awarding any contract or agreement to procure services with any professional business entity, including banking or insurance coverage services, the Borough of Westwood 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 Borough and shall be in addition to any other certifications that may be required by any other provision of law.

(c) Any public official voting upon or participating in the solicitation or award of any contract covered hereunder shall, by the act of voting, certify that to the best of said official's knowledge, the vendor or professional in question has not made a contribution in excess of the limits herein provided directly or in violation of Section 2 hereof to any organization described in Section 1 hereof or to any other political organization or P.A.C. which thereafter forwarded a contribution to any organization supporting candidates seeking any elected office in the Borough of Westwood, by pre-arrangement of agreement.

SECTION 5.
RETURN OF EXCESS CONTRIBUTIONS.

A professional business entity or Borough candidate or officeholder or municipal county party committee or PAC that is organized for the primary purpose of promoting or supporting Borough candidates or Borough officeholders may cure a violation of Section 1, if, within 30 days after the general election, the professional business entity notifies the Borough Council in writing and seeks and receives reimbursement of a contribution from the Borough candidate or municipal or county political party or PAC or State party or legislative leadership committee.

SECTION 6.
PENALTY.

(a) All Borough 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 Borough contracts for a period of four (4) calendar years from the date of the violation.

(c) Any contract given in violation of this Section shall be voidable at the option of the Borough.

SECTION 7.
CONFLICTS WITH STATE STATUTES.

If any provision of this Ordinance conflicts with any State statute, the stricter of the two regulations shall apply.

SECTION 8.
SEVERABILITY AND EFFECTIVENESS CLAUSE.

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 9.

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

SECTION 10.

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

Adopted: 5/20/08

Approved:

Attest:

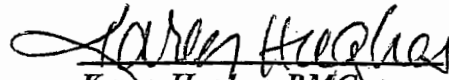
Karen Hughes
Karen Hughes, Borough Clerk

John Birkner, Jr.
John Birkner, Jr., Mayor

**BOROUGH OF WESTWOOD
OFFICE OF THE MUNICIPAL CLERK
PROOF OF PUBLICATION AFFIDAVIT**

DATE: May 29, 2008

As the duly appointed Municipal Clerk for the Borough of Westwood, in the County of Bergen, State of New Jersey, I, Karen Hughes, hereby certify that a Public Notice, of which a copy is attached hereto, was published in The Record newspaper, in the May 28, 2008 issue of said newspaper.


Karen Hughes, RMC
Municipal Clerk

**BOROUGH OF WESTWOOD
NOTICE OF ADOPTION
ORDINANCE #08-15**
PUBLIC NOTICE IS HEREBY GIVEN that Ordinance #08-15, entitled: An Ordinance To Amend And Supplement Chapter 15.12 Entitled: An Ordinance To Amend And Supplement The Code Of The Borough Of Westwood By Adding A Chapter 3.05 Entitled: Regulation Of Contract Awards, was introduced at first reading at a meeting of the Mayor and Council on the 22nd day of April 2008 and that said Ordinance was finally passed on second and final reading at a meeting of the Mayor and Council on the 20th day of May 2008.
BY ORDER OF THE MAYOR AND COUNCIL OF THE BOROUGH OF WESTWOOD
John Birkner, Jr., Mayor
Karen Hughes, Borough Clerk
May 28, 2008 fee: \$20.79 (21) 2340119

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ORDINANCE #08-15**

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