ORDINANCE NO.: 2015-18

AN ORDINANCE AMENDING AND SUPPLEMENTING THE BOROUGH CODE OF THE BOROUGH OF ALLENHURST ESTABLISHING THAT A BUSINESS ENTITY WHICH MAKES POLITICAL CONTRIBUTIONS TO MUNICIPAL CANDIDATES IN EXCESS OF CERTAIN THRESHOLDS SHALL BE LIMITED IN ITS ABILITY TO RECEIVE PUBLIC CONTRACTS FROM THE BOROUGH OF ALLENHURST

The Board of Commissioners of the Borough of Allenhurst does hereby Ordain:

WHEREAS, substantial local political contributions from business entities receiving discretionary contracts from the elected officials who receive such contributions 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:11-51, municipalities have the right to establish limitations on political contributions when such business entities seek non-bid public contracts; and

WHEREAS, in the interest of good government, the people and the government of the Borough of Allenhurst desire to establish a policy that will avoid the perception of improper influence in public contracting and local elections; and

NOW, THEREFORE, BE IT ORDAINED, that it shall be the policy of the Borough of Allenhurst to create a regulation which states that a Business Entity which makes political contributions to Borough of Allenhurst municipal candidates and/or Borough of Allenhurst municipal political parties, in excess of certain thresholds, shall be limited in its ability to receive non-bid public contracts from the Borough of Allenhurst; and

BE IT ORDAINED by the Borough of Allenhurst, as follows:

2-13. Pay to Play Ordinance

The Mayor and Commissioners of the Borough of Allenhurst does hereby Ordain and establish that the policy of the Borough of Allenhurst will prohibit political contributions, as hereinafter defined, to local Borough of Allenhurst candidates, local officials of political action committees organized for the purpose of promoting or supporting Local Borough of Allenhurst Candidates or Local Borough of Allenhurst parties, by business entities seeking the award of non-bid contracts from the Borough of Allenhurst.

2-13.1 Prohibition on Awarding Public Contracts to Certain Contributors

(a) To the extent that it is not inconsistent with state or federal law, the Borough of Allenhurst and any of its departments, instrumentalities or purchasing agents

shall not enter into any agreement or otherwise contract to procure "professional services" as such term is defined at N.J.S.A. 40A:11-2(6) and used at N.J.S.A. 40A:11-5(1)(a)(i) and/or banking, insurance or other consulting service (hereinafter "Professional Services"), nor "extraordinary unspecified services" as such term is defined at N.J.S.A. 40A:11-2(7) and used at N.J.S.A. 40A:11-5(1)(a)(ii) and/or media, public relations, lobbying, parking garage management or other consulting and/or management service from any Business Entity if such Business Entity has solicited or made any Contribution to (i) a candidate for public office of the Borough of Allenhurst, or a candidate committee or joint candidates committee of any candidate for elective municipal office in Borough of Allenhurst or a holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Borough of Allenhurst political committee or Borough of Allenhurst political party committee, or (iii) to any political action committee that is organized for the purpose of promoting or supporting Borough of Allenhurst candidates or Borough of Allenhurst officeholders (hereinafter referred to as "PAC"), in excess of the thresholds specified in subsection (d) 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 Borough of Allenhurst or any department or agency thereof or of its independent authorities for the rendition of professional services shall knowingly solicit or make any excess contribution of money, or pledge of a contribution, including in-kind contributions, to any (i) Borough of Allenhurst candidate or holder of the public office having ultimate responsibility for the award of the contract, or to (ii) any Borough of Allenhurst Party Committee, or to (iii) any PAC 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 "business entity" seeking a public contract means an individual including the individual's spouse, if any, and any child living at home; person; firm; limited liability company; 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.

(d) The monetary thresholds of this Ordinance are: (i) a maximum of $300 per calendar year each for any purpose to any candidate or candidate committee for Mayor or Commissioner, or $500 per calendar year to any joint candidates committee for Mayor or Commissioner, or $300 per calendar year to a political committee or political party committee of the Borough of Allenhurst; (ii) $500 maximum per calendar year to any Borough of Allenhurst "PAC". However, for each Business Entity party to a contract for Professional or Extraordinary Unspecified Services as that term is defined in the Local Public Contracts Law, engaged in negotiations for a contract defined in subparagraph (a), when such

Business Entity's Contribution is aggregated with all "persons" described in subparagraph (c) above, by virtue of their affiliation to that Business Entity, a maximum of $2,500 to all Borough of Allenhurst candidates, Borough of Allenhurst candidate committees, joint Borough of Allenhurst candidate committees, and holders of public office having ultimate responsibility for the award of a contract, all Borough of Allenhurst political committees and Borough of Allenhurst political party committees as described herein combined, without violating subsection (a) of this section.

2-13.2 Exemptions

The contribution limitations prior to entering into a contract in Section 1 above do not apply to contracts which (i) are awarded to the lowest responsible bidder after public advertising for bids and bidding therefor within the meaning of N.J.S.A. 40A:11-4, or (ii) are awarded in the case of emergency under N.J.S.A. 40A:11-6.

2-13.3 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 of Allenhurst candidate for Commissioner, or Borough of Allenhurst Party Committee or PAC 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 business entity prior to the effective date of this ordinance.

2-13.4 Contribution Statement by Professional Business Entity

(a) Prior to awarding any contract or agreement to procure services with any professional business entity, the Borough 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 bidder or offer or has not made a contribution in violation of Section l of the Act. Said form shall be in the form as provided under N.J.S .A. 19:44A-20.26.

(b) The professional business entity shall have a continuing duty to report any violations of this Section 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.

2-13.5 Return of Excess Contributions

A professional business entity, or Borough candidate or officeholder or Borough of Allenhurst Committee or PAC may cure a violation of Section I of this Act, if, within thirty (30) days after the election, the professional business entity notifies the Mayor and Commissioners, in writing, and seeks and receives reimbursement of a contribution from the Borough of Allenhurst candidate or officeholder, Borough of Allenhurst Political Party, or PAC.

2-13.6 Penalty

(a) All Borough of Allenhurst agreements subject to the provisions of this ordinance shall provide that it shall be a breach of the terms of the government contract for a business entity as defined in Section 1(c) to violate Section 1(b) or to knowingly conceal or misrepresent contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution.

(b) Any professional business entity as defined in Section 1(c) 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 of Allenhurst contracts for a period of four calendar years from the date of the violation.

2-13.7 Severability

If any provision of this law, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Jaw to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this law are severable.

2-13.8 Effective Date

This Ordinance shall become effective twenty (20) days following the final adoption thereof by the Board of Commissioners of the Borough of Allenhurst and shall be published as required by law.

APPROVED: November 10, 2015
ADOPTED: December 8, 2015