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GEORGE WINNE (1937-1969)
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April 5, 2007

Regular/Certified Mail
Department of State
Office of Laws and Commissions
125 W. State Street
P.O. Box 300
Trenton, New Jersey 08625

Re: Filing of PayTo Play Ordinance

Dear Sir/Madam:

Please be advised this office represents the Borough of Ho-Ho-Kus. Enclosed please find Certified Ordinance # 924 establishing Chapter 47A of the Code of the Borough of Ho-Ho-Kus entitled "Public Contracting Pay to Play Reform". The ordinance is being sent for filing in accordance with P.L.2005, Chapter 271.

Very truly yours,

WINNE, DOOLEY & BOLE, P.C.

Edna J. Jordan

By: Edna J. Jordan

EJJ:so
Encl.
cc: Laura Borchers-Municipal Clerk

SO H603 Ltr

FILED
APR 11 2007
NINA MITCHELL WELLS
SECRETARY OF STATE

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SECRETARY OF STATE

BOROUGH OF HO-HO-KUS

ORDINANCE NO. 924

AN ORDINANCE TO ESTABLISH CHAPTER 47A OF THE CODE OF THE BOROUGH OF HO-HO-KUS ENTITLED "PUBLIC CONTRACTING PAY TO PLAY REFORM"

BE IT ORDAINED, by the Mayor and Council of the Borough of Ho-Ho-Kus, County of Bergen and State of New Jersey as follows:

WHEREAS, professional business entities are exempt from public bidding requirements;

WHEREAS, it has become common for professional entities to make substantial political contributions to the election campaigns of the local government elected officers who are ultimately responsible for awarding professional service contracts or other contracts or agreements which are not subject to public bidding;

WHEREAS, substantial local political contributions from professionals 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, if not the quality or cost of services received;

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;

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;

NOW, THEREFORE, BE IT RESOLVED, that the policy of the Borough of Ho-Ho-Kus will be to set maximum amounts that professional business entities may contribute politically beyond which they become ineligible to receive a public professional service contract from Ho-Ho-Kus (sometimes referred to as the Municipality or Ho-Ho-Kus);

Section 47A-1. **Prohibition on Awarding Public Contracts to Certain Contributors**

(a) Any other provision of law to the contrary notwithstanding, the municipality or any of its purchasing agents or agencies or those of its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract to procure professional, banking, insurance coverage services or any other consulting services, including those awarded pursuant to a "fair and open" process, from any professional business entity, if that entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions to any Ho-Ho-Kus municipal candidate 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 Ho-Ho-Kus or Bergen County party committee, or to any political action committee (PAC) that regularly engages in the support of municipal elections and/or municipal parties 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 municipality or any department or agency thereof or of its independent authorities for the renditions of professional, banking or insurance coverage services or any other consulting services, including those awarded pursuant to a "fair and open" process, shall solicit or make any contribution of money, or pledge of a contribution, including in-kind

contributions to any Ho-Ho-Kus municipal candidate 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 Ho-Ho-Kus or Bergen 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 Municipality regarding a specific professional services agreement and the latter of the termination of negotiations or the completion of the contract or agreement.

(c) For purposes of this ordinance, a "professional business entity" seeking a public contract means an individual including the individual's spouse, if any, and any child living at home; person; firm; 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) Any individual meeting the definition of "professional business entity" under this section may annually contribute a maximum of $300.00 each for any purpose to any candidate for mayor or governing body, or $300.00 to the municipal party committee, or $500.00 to the Bergen County party committee, or to a PAC referenced in this ordinance, without violating subsection (a) of this section. However, any group of individuals meeting the definition of "professional business entity" under this section, including such principals, partners, and officers of the entity in the aggregate, may not annually contribute for any purpose in excess of $2,500.00 to all Ho-Ho-Kus candidates and officeholders with ultimate responsibility for the award of the contract, and all municipal or Bergen County political parties and PACs referenced in this

ordinance combined, without violating subsection (a) of this section.

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

(1) The Ho-Ho-Kus Council and the Mayor of Ho-Ho-Kus, if the contract requires approval or appropriation from the Council.

(2) The Mayor of Ho-Ho-Kus, if the contract requires approval of the Mayor, of if a public officer who is responsible for the award of a contract is appointed by the Mayor.

Section 47A-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 municipal candidate for Mayor or Council, or municipal or county party committee or PAC referenced in this ordinance 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 section.

Section 47A-3. **Contribution Statement by Professional Business Entity**

(a) Prior to awarding any contract or agreement to procure services, including banking or insurance coverage services, with any professional business entity, the Municipality 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 this entity or officer has not made a contribution in violation of Section 47A-1 of this Ordinance.

(b) The professional business entity shall have a continuing duty to report any violations of this Ordinance 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 Municipality and shall be in addition to any other certifications that may be required by any other provision of law.

Section 47A-4. **Return of Excess Contributions**

A professional business entity or municipal candidate or officeholder or municipal or county party committee or PAC referenced in this ordinance may cure a violation of Section 47A-1 of this ordinance, if, within thirty (30) days after contribution, the professional business entity notifies the Municipal Council in writing and seeks and receives reimbursement of a contribution from the municipal candidate or municipal or county political party or PAC referenced in this ordinance.

Section 47A-5. **Penalty**

(a) It shall be a breach of the terms of a professional service agreement 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 of Ho-Ho-Kus; (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;

(b) Any professional business entity who violates (a) i-viii shall be disqualified from eligibility for future Ho-Ho-Kus contracts for a period of four (4) calendar years from the date of violation.

Section 47A-6. **Repealer**

All other ordinances of the Borough, or parts thereof, which are in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 47A-7. **Severability**

If any section, subsection, paragraph, sentence, clause, phrase, or word contained in this ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance, which shall remain in full force and effect and to this end the provisions of this ordinance are hereby declared to be severable.

Section 47A-8. **Effective Date**

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

I, Laura Borchers, Clerk of the Borough of Ho-Ho-Kus, Bergen County, New Jersey do hereby certify the attached to be a true copy of an ordinance adopted by the Mayor and Council on March 27, 2007

Laura Borchers