TOWNSHIP OF EVESHAM

ORDINANCE NO. 32-12-2010

AN ORDINANCE OF THE TOWNSHIP OF EVESHAM REVISING EXISTING LIMITS ON POLITICAL CONTRIBUTIONS BY PROFESSIONALS AND AMENDING THE TOWNSHIP CODE

WHEREAS, the Township of Evesham, since 2005, has established a fair and open process for procuring the services of professionals, including attorneys, planners, and engineers; and

WHEREAS, in 2007 the Township imposed limits on the amounts of political contributions that professionals can make and remain eligible to compete for the award of professional service contracts; and

WHEREAS, in 2009 the Township fundamentally changed the process by which members of the Township Council are elected, by moving the date for Council elections from the month of May, when those elections are non-partisan in nature, to the month of November, when members of the Council are elected as members of political parties; and

WHEREAS, the Township is also concerned that political contributions by professionals to municipal candidates and political parties in Evesham should be properly regulated to ensure that the funds contributed are not eligible for transfer to municipal candidates or municipal political committees who are not affiliated with the Township of Evesham;

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Evesham, County of Burlington, State of New Jersey as follows:

SECTION 1. STATEMENT OF TOWNSHIP POLICY:

The Township of Evesham reaffirms the policy of theTownship to set maximum dollar amounts that professional business entities may contribute politically, beyond which they become ineligible to receive a public professional service contract from the Township of Evesham, as well as the Township's policy to prohibit professional business entities which are performing or being paid under existing contracts with the Township from making political contributions in amounts that exceed the Township's limits on political contributions by professionals. The Township also hereby establishes a policy prohibiting the transfer or 'wheeling' of political contributions by professionals to candidates or municipal political committees who are not affiliated with the Township of Evesham.

SECTION 2. DEFINITIONS:

For purposes of this Ordinance, the terms used herein shall be given the broadest possible meaning in order to effectuate the policy objectives stated and adopted. Certain specific terms used shall have the following meanings:

A. *Contributions*: shall be given the same meaning and use generally utilized by the Election Law Enforcement Commission of the State of New Jersey under the statutes and regulations governing that agency. The term shall include but not be limited to payments or donations of money and in-kind contributions.

B. *Contributing*: is defined as the act of giving money or providing in-kind contributions to aid a municipal political candidate or any of the political committees or political entities otherwise referenced in this ordinance

C. *Contributing politically*: shall have the same meaning as *Contributing*

D. *PAC or PACs:* The terms "PAC" or "PACs" are abbreviations for "political action committee" or "political action committees", respectively. The terms refer to organizations that regularly engage in, or whose primary purpose is the support of municipal elections and/or municipal parties in excess of the thresholds specified in this ordinance. The foregoing shall be limited to organizations and entities which support or oppose Evesham Township candidates for Mayor or Township Council, or which engage in political activities in support or opposition to candidates for Evesham Township Mayor or Evesham Township Council.

E. *Political contributions*: has the same definition as *Contributions*, hereinabove

F. *Professional Business Entities*: For purposes of this ordinance, a "professional business entity" seeking a public contract means individuals and firms engaged in the rendering of legal services, engineering services, survey work, architectural services, planning services, design services, financial consulting and other consulting work, auditing, accounting, appraisal services, insurance services and banking. If a professional business entity is an individual, the definition includes the individual and the individual's spouse, if any, and any child living at home. "Professional business entities" also include firms, corporations, professional corporations, partnerships, business organizations, and/or business associations who provide professional services, where those professional services are exempt from public bidding for public contracts pursuant to the Local Public Contracts Law. As it relates to corporations, business trusts, partnerships, and subsidiaries directly controlled by a business entity, the definition of a business entity includes all principals who own 10% or more of the equity in the corporation or business trust, and includes all partners and officers in the aggregate employed by the entity and by any subsidiaries directly controlled by the business entity.

SECTION 3. PROHIBITION ON AWARDING PUBLIC CONTRACTS TO CERTAIN CONTRIBUTORS:

The following prohibitions are imposed upon those individuals or entities seeking professional, banking or insurance contracts with the Township of Evesham:

(a) Any other provision of law to the contrary notwithstanding, the municipality or any of its purchasing agents or boards, commissions or committees or agencies or those of its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract to procure services, including banking services/relationships or insurance coverage services, 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 a campaign committee of any Township of Evesham candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any Township of Evesham political party committee, or to any municipal political action committee (PAC) as defined in Section 2(d) 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 or boards, commissions or committees thereof or of its independent authorities for the rendition of professional, banking or insurance coverage services or any other no-bid consultants shall knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to any Township of Evesham candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any Township of Evesham political party committee, or to any municipal political action committee (PAC) as defined in Section 2(d) between the time of first communications between that business entity and the Township 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" 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 "professional business entity" under this section may annually contribute a maximum of $2600.00 each for any purpose to any candidate, for mayor or council, or $7200.00 to the Township of Evesham party committees, or $7200.00 to a PAC referenced in this ordinance, 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 the Township Council of the Township of Evesham, if the contract requires approval or appropriation from the Council.

SECTION 4. 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 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 5. ACKNOWLEDGEMENT STATEMENT BY TOWNSHIP OF EVESHAM MUNICIPAL CANDIDATES OR MUNICIPAL OFFICEHOLDERS:

All Township of Evesham municipal candidates or municipal officeholders shall sign an acknowledgement statement at the time of submission of candidacy petitions to the Township of Evesham Clerk that they have received a copy of the Township of Evesham's Ordinance for Public Contracting ("Pay-to-Play") Reform.

SECTION 6. 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 township or any of its purchasing agents or agencies or boards, commissions or committees, as the case may be, shall receive a certification from the professional business entity made that the bidder or offer or 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 township and shall be in addition to any other certifications that may be required by any other provision of law.

SECTION 7. RETURN OF EXCESS CONTRIBUTIONS:

A professional business entity or township candidate or officeholder or municipal or county party committee or PAC referenced in this ordinance may cure a violation of Section 1 of this Act, if, within 30 days after the general election, the professional business entity notifies the Township Council in writing and seeks and receives reimbursement of a contribution from the township candidate or municipal political party or PAC referenced in this ordinance.

SECTION 8. NO WHEELING:

A candidate for Mayor or Council shall not make a contribution to any other candidate committee or municipal party committee not affiliated with the Township of Evesham, nor shall any such candidate accept a contribution from any other candidate committee or municipal party committee not affiliated with the Township of Evesham.

SECTION 9. PENALTY:

(a) It shall be a breach of the terms of the Evesham Township 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 Evesham Township; (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) Furthermore, any professional business entity who knowingly and willfully violates (a) ii-viii shall be disqualified from eligibility for future Evesham Township contracts for a period of five calendar years from the date of the violation.

SECTION 10. FILING OF ORDINANCE WITH SECRETARY OF STATE:

This Ordinance shall be filed by the Township Clerk with the Secretary of State in compliance with N.J.S.A. 40A:11-51(c).

SECTION 11. 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 12. CODIFICATION:

This ordinance shall be placed in Chapter 27 of the Township Code and shall be enforced in addition to the "Fair and Open" provisions contained therein and not as a substitute therefor.

SECTION 13. EFFECTIVE DATE:

This ordinance shall become effective twenty calendar days from the second reading of the ordinance and adoption by the Township Council of the Township of Evesham.