ORDINANCE AMENDING CHAPTER II BY ADDING A NEW SECTION 2-79] (RESTRICTIONS ON AWARD OF PROFESSIONAL CONTRACTS) OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF HOLMDEL, COUNTY OF MONMOUTH, AND STATE OF NEW JERSEY

Whereas, professional business entities are exempt from public bidding requirements, and

Whereas, there is the potential for professional business 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, and

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, as well as the quality and cost of services received, 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 professionals entities,

Now, therefore, be it ordained, that the policy of the Township of Holmdel will be to set maximum amounts professional business entities may contribute politically beyond which they become ineligible to receive a public professional service contract from the Township.

SECTION I
Prohibition on Awarding Public Contracts to Certain Contributors

a. Any provision of law to the contrary notwithstanding, the municipality or any of its purchasing agents or agencies or those of its independent authorities shall not enter into an agreement or otherwise contract to procure services from any professional business entity, if that entity has made a contribution, including an in-kind contribution, to a campaign committee of any candidate for Township Committee or to any Holmdel Township municipal or to any county party committee in Monmouth County party committee or to any county party committee in Monmouth County in excess of the thresholds specified in subsection (d) of this section within one calendar year immediately preceding the date of the contract or agreement.

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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 rendition of professional services shall knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to any candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any Holmdel Township municipal committee, or to any county party committee in Monmouth County, which violates subsection 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 a person , firm, corporation, professional corporation, partnership, organization or association authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in particular field. The definition shall include all principals who own 10% or more 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. The definition shall also include any spouse or child living at home, of a principal.

d. Any individual meeting the definition of "professional business entity" under this section may annually contribute a maximum of $250 each for any purpose to any candidate for Township Committee, or $500 to any Holmdel Township municipal committee, or to any county party committee in Monmouth County, 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 having 10% or more ownership interest, partners, and officers of the entity in the aggregate, may not annually contribute for any purpose in excess of $2,500 to all Township Committee candidates and all municipal or county political party committees combined, without violating subsection (a) of this section.

SECTION II.
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 Township Committee, or to any municipal or county party committee, shall be deemed a violation of this section, if that contribution was made by the professional business entity prior to the effective date of this section.

SECTION III
Contribution Statement by Professional Business Entity

a. Prior to awarding any contract or agreement to procure services with any professional business entity, the Township or any of its purchasing 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 I of this Ordinance.

b. The certification required under this section 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. The professional business entity shall have a continuing duty to report any violations of this Ordinance that may occur subsequent to the execution of said sworn statement.

SECTION IV
Return of Excess Contributions

A professional business entity or township candidate or officerholder or municipal or county party committee 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 Committee, in writing, and seeks and receives reimbursement of a contribution from the Township candidate or municipal or county political party.

SECTION V
Penalty

a. All Township of Holmdel professional service agreements shall provide that it shall be a breach of the terms of the government contract for a professional entity as defined in Section I (c) to violate Section I (d).

b. Any professional business entity as defined in Section I (c) who knowingly fails to reveal a contribution made in violation of Section 1 (d) of this ordinance, or directs that a contribution made through another individual to circumvent this ordinance, shall be disqualified from eligibility for future Township contracts for a period of four calendar years from the date of the violation.

SECTION VI
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 law, 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.

SECTION VII
Effective Date

This ordinance shall become effective after final adoption and publication thereof according to law.