ORDINANCE NO. 2004-21

EAST WINDSOR TOWNSHIP
MERCER COUNTY

FILED
JAN 31 2006
SECRETARY OF STATE

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER II, "ADMINISTRATIVE CODE", OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF EAST WINDSOR BY ADDING A NEW SECTION 2.36 ENTITLED "AWARDING OF PROFESSIONAL SERVICES CONTRACTS"

WHEREAS, it has become common 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 or other contracts or agreements which are not subject to public bidding; 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.

NOW, THEREFORE, BE IT RESOLVED, that the policy of the Township of East Windsor will be to set maximum amounts that a professional business entity may contribute to East Windsor Township political campaigns per year, beyond which they become ineligible to receive a public professional service contract from East Windsor Township, unless formal bids are received for such a contract.

SECTION 1. Prohibition on Awarding Public Contracts to Certain Contributors to Political Campaigns

(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 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 any East Windsor Township candidate or holder of public office having substantial influence or responsibility for the award of contracts, or to any Municipal or County party committee, or to any

political action committee (PAC) that is organized for the purpose of promoting or supporting East Windsor Township candidates or officeholders, 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 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 Municipal or County party committee, in excess of the limits specified in subsection (d) between the time of first communications between that business entity and the municipality 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 individual meeting the definition of "professional business entity" under this section may annually contribute a maximum of $400 each for any purpose to any candidate for mayor or council, or $400 to any Municipal or 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 to all municipal candidates and officeholders having substantial influence or responsibility for the award of contracts, and all Municipal or County political parties combined, without violating subsection (b) of this section.

(e) "Professional Services" shall have the same meaning as set forth in the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.

(f) The limitations set forth in (d) shall not apply in the event the subject contract is offered to the lowest responsible qualified bidder after public advertising for bids and quotes, pursuant to the provisions of the competitive contracting requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.

(g) For purposes of this section, the office that is considered to have substantial influence or responsibility for the award of any public contract shall be:

(1) The East Windsor Township Council, if the contract requires approval or appropriation from the Council.

(2) The Mayor of East Windsor Township, if the contract requires approval of the Mayor, or if a public officer who is responsible for the award of a contract is appointed by the Mayor.

SECTION 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 shall be deemed a violation of this Ordinance, 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 3. 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 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 offeror has not made a contribution in violation of Section 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 township and shall be in addition to any other certifications that may be required by any other provision of law.

SECTION 4. Return of Excess Contributions

(a) A professional business entity or township candidate or officeholder or Municipal or County party committee may cure a violation of Section 1 of this Ordinance, 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 or County political party.

(b) A 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 Ordinance if, within 30 days after the general election, the Township candidate or officeholder or Municipal or County party committee or PAC

notifies the municipal clerk in writing and makes reimbursement of the contribution from the business entity referenced in this Ordinance.

SECTION 5. Penalty

(a) All East Windsor Township professional service agreements shall provide that it shall be a breach of the terms of the government contract for a professional business entity as defined in Section 1 (c) to violate Section 1 (b) or to knowingly conceal or misrepresent contributions given or received, or to make or solicit such 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) and (d) 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 township contracts for a period of four calendar years from the date of the violation.

SECTION 6. 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 7. Effective Date

This Act shall take place on April 1, 2005.

ATTEST:

CINDY A. DYE
Municipal Clerk

JANICE S. MIRONOV
Mayor

Adopted: January 11, 2005