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NINA MITCHELL WELLS
SECRETARY OF STATE

TOWNSHIP OF EWING

ORDINANCE NO. 06-19

AN ORDINANCE AMENDING THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF EWING IN THE COUNTY OF MERCER ESTABLISHING "PAY TO PLAY" REFORM CONCERNING THE AWARD OF REDEVELOPMENT CONTRACTS IN THE TOWNSHIP OF EWING

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. provides a mechanism to empower and assist local governments in efforts to promote programs for redevelopment; and,

WHEREAS, N.J.S.A. 40A:12A-8 permits municipalities to enter into contracts with private parties or redevelopers for planning, replanning, construction or undertaking of any project or redevelopment work without public bidding and at such prices and upon such terms as it deems reasonable within areas designated for redevelopment; and,

WHEREAS, the Township has previously and may declare certain areas of the Township to be areas in need of redevelopment under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.; and,

WHEREAS, exceptions to the Open Public Meetings Act, more specifically N.J.S.A. 10:4-12b and N.J.S.A. 40A:12A-8, provide that negotiations for such agreements can be conducted in executive session, provided the full terms of any such agreements are discussed and approved in open session; and,

WHEREAS, political contributions from developers entering into agreements for redevelopment projects approved by the elected officials who receive such contributions raise reasonable concerns on the part of taxpayers and residents as to their trust in the process of local redevelopment, including but not limited to redevelopment decisions on tax abatements, zoning densities, publicly funded infrastructure improvements and acquisition of property rights pursuant to eminent domain; and

WHEREAS, given the potential of negotiating with private parties or redevelopers and entering into contracts with such redevelopers without a formal public bidding process, as permitted by the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., the Township Council concurs with the Administration that it is necessary to establish certain limitations on political contributions which may undermine public confidence in any redevelopment effort; and,

WHEREAS, nothing contained herein shall be interpreted to impair in any way the right of such private parties or redevelopers secured by the First Amendment of the Constitution of the United States of America and further secured by Article 1, Paragraph 6 of the Constitution of the State of New Jersey to exercise its right to freedom of speech and its right to speak, write and publish its sentiments on all subjects.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Ewing that the Revised General Municipal Ordinances of the Township of Ewing be amended to establish a Township policy for the awarding of any contracts with private parties or redevelopers to be engaged in the planning, replanning, construction or undertaking or any project or redevelopment work pursuant to the Local Redevelopment and Housing Law, as follows:

Section 1: Chapter ___, _____, of the Code of the Township of Ewing, is hereby amended as follows:

Article 1. Redevelopment Agreements under the Local Redevelopment and Housing Law

1. Prohibition of entering into or amending redevelopment agreements with certain contributors.

A. Any other provision of law to the contrary notwithstanding, the Township of Ewing 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, amend an agreement, or otherwise contract with any redeveloper for the planning, replanning, construction or undertaking of any redevelopment project, including the acquisition or leasing of any public property in conjunction with the redevelopment of any area within the Township of Ewing pursuant to the Local Redevelopment and Housing Law, if that redeveloper has made any contribution of money or pledge of a contribution, including in-kind contributions, during the applicable time period as specified below, to a campaign committee of any Township of Ewing candidate or holder of public office within the Township of Ewing having responsibility for arranging, entering into, or approving the redevelopment agreement, or for appointing those who enter into the agreement on behalf of the Township of Ewing or; to any municipal political campaign committee (PAC), or to any Mercer County party committee, or to any political action committee which regularly engages in the support of the Township of Ewing municipal campaigns.

For purposes of this section, the "applicable time period" shall be defined as the time period between the date that the property which is the subject of the redevelopment project has been included in a memorializing resolution adopted by the governing body directing the planning board to conduct a preliminary investigation to determine if the site is in need of redevelopment pursuant to and in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., and the date of entering into the redevelopment agreement, or the twelve (12) months prior to entering into the agreement, whichever is shorter.

B. All redevelopment agreements or amendments thereto entered into by the Township of Ewing shall contain a provision prohibiting redevelopers as defined in section C to solicit or make any contribution of money or pledge of a contribution including in-kind contributions, to any Township of Ewing candidate or holder of public office within the Township of Ewing having responsibility for arranging, entering into, or approving the redevelopment agreement, or for appointing those who enter into the agreement on behalf of the Township of Ewing or; to any Township of Ewing political campaign committee, or to any Township of Ewing or Mercer County Party Committee, or to any political action committee (PAC) which regularly engages in the support of municipal elections and/or municipal parties or which engages in the support of the Township of Ewing municipal campaigns, between the time of first communication between that redeveloper and the municipality regarding a redevelopment project and the latter of the termination of negotiations or the completion of all matters specified in the redevelopment agreement.

C. As defined in N.J.S.A. 40A:12A-3, a "redeveloper" means any person, firm, corporation or public body that shall enter into or propose to enter into a contract with a municipality or other redevelopment entity for the redevelopment or rehabilitation of an area in need of redevelopment, or an area in need of rehabilitation, or any part thereof, under the provisions of this act, or for any construction or other work forming part of a redevelopment or rehabilitation project.

For the purposes of this ordinance, a "redeveloper" means an individual, including the individual's spouse, if any, and any child living at home, a person, firm, corporation, professional corporation, partnership, organization, or association, including all principals who own ten percent (10%) or more of the equity in the corporation, professional corporation, partnership, organization, or association, partners and officers in the aggregate employed by the provider as

well as any subsidiaries directly controlled by the redeveloper.

D. For purposes of this section, the office that is considered to have responsibility for arranging and entering into the redevelopment agreement under the Local Redevelopment and Housing Law shall be:

1. The Township Council if the redevelopment agreement requires approval or appropriation from the Council or a public officer who is responsible for arranging and entering into the redevelopment agreement if that public officer is appointed by Council; or

2. The Mayor of the Township of Ewing if the redevelopment agreement requires the approval of the Mayor or a public officer who is responsible for arranging and entering into the redevelopment agreement if that public officer is appointed by the Mayor; or

3. The Ewing Township Redevelopment Agency, if the redevelopment agreement requires the approval of the Agency.

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 redeveloper to any Township of Ewing candidate for Mayor or Council or political action committee shall be deemed a violation of this section nor shall an agreement for redevelopment projects of any kind whatsoever be disqualified thereby if that contribution or agreement was made by the redeveloper prior to the effective date of this section.

3. Notice given by Township; sworn statement of redeveloper.

A. It shall be the Township of Ewing's continuing responsibility to give notice of this Section when the Township gives notice of redevelopment pursuant to N.J.S.A. 40A:12A-6 and when the Township adopts a resolution directing the Planning Board to prepare a redevelopment plan and at the time that the municipality adopts the ordinance to implement the redevelopment plan.

B. Prior to arranging and entering into the redevelopment agreement with any redeveloper, the Township of Ewing or any of its purchasing agents or agencies or independent authorities, as the case may be, shall receive a sworn statement from the redeveloper that the redeveloper has not made any contribution in violation of Section 1(A) above. Furthermore, the redeveloper shall have a continuing duty to report any violations of this ordinance that may occur while arranging and entering into the redevelopment agreement and until all specified terms of the agreement have been completed. The certification required under this subsection shall be made prior to entry into the agreement with the municipality and shall be in addition to any other certifications that may be required by any other provision of law.

4. Return of Excess Contributions.

A redeveloper or municipal 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 redeveloper notifies the Township Council in writing and seeks and receives reimbursement of a contribution from the municipal candidate or municipal or county political party or PAC references in this ordinance.

5. Penalty.

A. It shall be a breach of the terms of the Township of Ewing redevelopment agreement for a redeveloper to: (1) make or solicit a contribution in violation of

this ordinance; (2) knowingly conceal or misrepresent a contribution given or received; (3) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (4) 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 the Township of Ewing; (5) 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 redeveloper itself, would subject that entity to the restrictions of this ordinance; (6) fund contributions made by third parties, including consultants, attorneys, family members and employees; (7) engage in any exchange of contributions to circumvent the intent of this ordinance; or (8) 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 redeveloper who violates A(1) through (8) above shall be disqualified from eligibility for future Township of Ewing redevelopment agreements for a period of four (4) calendar years from the date of the violation.

Article 2. Requiring Contribution Disclosure Statements in Land Use Applications.

1. Definitions:

A. Application Checklist means the list of submission requirements adopted by ordinance and provided by the municipal agency to a developer pursuant to N.J.S.A. 40:55D-10.3.

B. Developer means a developer as defined by N.J.S.A. 40:55D-4, i.e. the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

C. Professional means any person or entity whose principals are required to be licensed by New Jersey law and who supplies legal representation, expert testimony or written reports in support of an application. Professionals shall include both any individuals supplying the representation, testimonies or reports and the firms or entities in which said individuals practice.

D. Contribution means every loan, gift, subscription, advance or transfer of money or other thing of value, including any item of real property or personal property, tangible or intangible (but not including services provided without compensation by individuals volunteering a part or all of their time on behalf of a candidate, committee, or organization), made to or on behalf of any candidate, candidate committee, joint candidates committee, political committee, continuing political committee or political party committee and any pledge, promise or other commitment or assumption of liability to make such transfer. For purposes of reports required under the provisions of the ordinance, any such commitment or assumption shall be deemed to have been a contribution upon the date when such commitment is made or liability assumed.

E. Contribution Disclosure Statement means a list specifying the amount, date and the recipient of any and all contributions made to or on behalf of any candidate, candidate committee, joint candidates committee, political committee, continuing political committee or political party committee of, or pertaining to, the Township of Ewing made up to one year prior to filing the variance application and/or during the pendency of the application process, and required to be reported pursuant to N.J.S.A. 19:44A-1 et seq.

2. General provisions.

A. Disclosure requirements.

1. Any applicant for a variance pursuant to N.J.S.A. 40:55D-70(d) or a variance pursuant to N.J.S.A. 40:55D-70(c) in conjunction with any application for a subdivision not considered a minor subdivision pursuant to local ordinance or a site plan not considered a minor site plan pursuant to local ordinance as well as any application for a subdivision not considered a minor subdivision pursuant to local ordinance or site plan or subdivision not considered a minor site plan pursuant to local ordinance requiring waivers or exceptions pursuant to N.J.S.A. 40:55D-51 shall include in the application Contribution Disclosure Statements for all developers; all associates of said developers who would be subject to disclosure pursuant to N.J.S.A. 40:55D-48.1 or 40:55D-48.2; and all professionals who apply for or provide testimony, plans or reports in support of said variance and who have enforceable proprietary interest in the property or development which is the subject of the application or whose fee in whole or part is contingent upon the outcome of the application. Regardless of whether the owner of the property which is the subject of the variance application falls in any of the categories established in the preceding sentence, the applicant shall include in the application a Contribution Disclosure Statement for said owner.

2. During the pendency of the application process until final site plan approval is granted, any applicant required to comply with this ordinance shall amend its Contribution Disclosure Statements to include continuing disclosure of all contributions within the scope of disclosure requirement of the above paragraph.

B. Inclusion of Contribution Disclosure Statements as an element of the Application Checklist.

1. An Application Checklist ordinance is hereby adopted pursuant to N.J.S.A. 40:55D-10.3 to require that the Contribution Disclosure Statements specified in paragraph A of this article be submitted by the applicant for all applications for variance relief pursuant to N.J.S.A. 40:55D-70(d) as well as for relief pursuant to N.J.S.A. 40:55D-70(c) or N.J.S.A. 40:55D-51 in applications for site plan and subdivision approval not considered to be minor site plans or minor subdivisions pursuant to local ordinance.

2. The Township of Ewing Planning Board and Zoning Board of Adjustment shall amend its Application Checklist for variances pursuant to N.J.S.A. 40:55D-70(d) as well as for relief pursuant to N.J.S.A. 40:55D-70(c) or N.J.S.A. 40:55D-51 in applications for site plan and subdivision approval not considered to be minor site plans or minor subdivisions pursuant to local ordinance to include the Contribution Disclosure Statements specified in paragraph A of this article.

3. An application shall not be deemed complete by the administrative official or accepted for public hearing by the municipal agency until the required Contribution Disclosure Statements are submitted.

C. Availability of Contribution Disclosure Statements.

All Contribution Disclosure Statements shall be available in the office of the Municipal Clerk for public inspection.

D. Intent of Contribution Disclosure Statements.

It is the intent of this ordinance that the Contribution Disclosure Statement shall serve to inform the public and not serve as evidence relevant to the decision criteria for variance applications pursuant to N.J.S.A. 40:55D-70(d) as well as for relief pursuant to N.J.S.A. 40:55D-70(c) or N.J.S.A. 40:55D-51 in applications

for site plan and subdivision approval not considered to be minor site plans or minor subdivisions pursuant to local ordinance.

Section 2. This Ordinance shall take effect after final passage and publication according to law.

STATEMENT

This Ordinance amends the Revised General Municipal Ordinances of the Township of Ewing to establish "pay to play" reform concerning the award of redevelopment contracts in the Township of Ewing.

I, Stephen W. Elliott, Municipal Clerk of the Township of Ewing, hereby certify that the above is a true copy of an Ordinance adopted by the Governing Body of the Township of Ewing at a Regularly Scheduled Meeting of the Municipal Council of the Township of Ewing, County of Mercer, State of New Jersey held on the 14th day of June, 2006.

SEAL

Stephen W. Elliott
Municipal Clerk