FILED
MAY - 3 2006
NINA MITCHELL WELLS
SECRETARY OF STATE

ORDINANCE NO. 2006-6

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF METUCHEN BY ADDING A NEW CHAPTER 116, TO BE ENTITLED "LIMITS ON CAMPAIGN CONTRIBUTIONS", WHICH PROVIDES FOR THE POLICY AND PROCEDURE FOR POLITICAL CONTRIBUTIONS AND PUBLIC CONTRACTS IN THE BOROUGH OF METUCHEN

BE IT ORDAINED by the Mayor and Council of the Borough of Metuchen as follows:

Section 1. The Code of the Borough of Metuchen is hereby amended by adding thereto a new chapter, to be Chapter 116, "***LIMITS ON CAMPAIGN CONTRIBUTIONS***", to read as follows:

§116.1 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, from any professional business entity, for $5,000 or more in any one calendar year, if that entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, to the Borough of Metuchen, 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 the Borough of Metuchen or Middlesex 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 rendition of professional, banking or insurance coverage services or any other consulting services shall solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to the Borough of Metuchen, 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 the Borough of Metuchen or Middlesex 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 Borough 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 $300 each for any purpose to any candidate, for mayor or council, or $300 to the Borough of Metuchen or Middlesex 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 the Borough of Metuchen candidates and officeholders with ultimate responsibility for the award of the contract, and to Borough of Metuchen or Middlesex 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 Borough of Metuchen Council and the Mayor of the Borough of Metuchen, if the contract requires approval or appropriation from the Council.

(2) The Mayor of the Borough of Metuchen, 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.

§116-2. 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.

§116-3. 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 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 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.

§116-4. 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 ordinance, if, within 30 days after contribution, 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 or PAC referenced in this ordinance.

§116-5. Penalty

(a) It shall be a breach of the terms of the Borough of Metuchen 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 the Borough of Metuchen; (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 that violates (a) ii-viii shall be disqualified from eligibility for future Borough of Metuchen contracts for a period of four calendar years from the date of the violation.

§116-6. Severability and Effectiveness Clause:

(a) If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

(b) And any ordinance inconsistent with the terms of this ordinance is hereby repealed to the extent of such inconsistency.

Section 2. Effective Date:

This ordinance shall become effective on publication after final adoption.

Introduced: March 20, 2006

Re-introduced with amendments; April 3, 2006

Adopted: April 17, 2006

Veto or Approval: April 18, 2006

Final Publication: April 20, 2006

Certified copy of an ordinance adopted at a regular meeting of the Borough Council of the Borough of Metuchen, Middlesex County, New Jersey, on

April 17, 2006

[SEAL]

B. Lacina

Bozena Lacina, RMC
Borough Clerk