FILED
OCT 30 2007
NINA MITCHELL WELLS
SECRETARY OF STATE

ORDINANCE NO. 2007-2926

AN ORDINANCE ESTABLISHING "PAY TO PLAY" AND WHEELING REGULATIONS IN THE TOWNSHIP OF MIDDLETOWN

WHEREAS, substantial political contributions from those seeking to or performing business with a township raise considerable concerns on the part of taxpayers and residents as to their trust in government; and

WHEREAS, pursuant to P.L. 2005, c. 271, a municipality is authorized to adopt by ordinance measures limiting the awarding of public contracts to business entities that have made political contributions and limiting the contributions that the holders of a contract can make during the term of the contract; and

WHEREAS, licensed establishments also seek to influence Township decision making with respect to applications for licensure in the Township of Middletown under the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.; and

WHEREAS, substantial local political contributions from professionals and licensed establishments receiving discretionary contracts or approvals 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, if not the quality or 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 professional business entities; and

WHEREAS, in the absence of action on the part of the Governor and majority party in the State Legislature and due to the recent history of contributions made to candidates for Middletown Township Committee and to Middletown Township political party committees by entities from outside of the County; and

WHEREAS, in the interests of good government, the Township Committee desires to establish a policy that will avoid the perception of improper influence in local elections.

NOW, THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Middletown, Monmouth County, and the State of New Jersey, the Code of the Township of Middletown (1996) be amended to add the following:

SECTION 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, including those awarded pursuant to a "fair and open" process, from any professional business entity or licensed establishment if that entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, in excess of the thresholds specified in subsection (d) within one calendar

year immediately preceding the date of the contract or agreement to:

i. any Township of Middletown municipal candidates committee; or

ii. a municipal political party committee supporting such candidate in Middletown Township, or

iii. any other candidate committee, municipal political party committee, county political party committee, legislative leadership committee, state political party committee, continuing political committee or political action committee that has made or received any reportable contribution to or from (i) or (ii) above during the same time period.

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, including those awarded pursuant to a "fair and open" process, shall solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, in excess of the thresholds specified in 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 for agreement to:

i. any Township of Middletown municipal candidates committee; or

ii. a municipal political party committee supporting such candidate in Middletown Township, or

iii. any other candidate committee, municipal political party committee, county political party committee, legislative leadership committee, state political party committee, continuing political committee or political action committee that has made or received any reportable contribution to or from (i) or (ii) above during the same time period.

c. For purposes of this ordinance "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 governing body, $500 to a Township of Middletown political party committee, $500 to the Monmouth County party committee, or to a political action committee 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 Township of Middletown candidates and all Township of Middletown or Monmouth County political party committees and political action committees referenced in this ordinance combined, without violating subsection (a) or (b) of this section.

Section 2. Contribution Statement by Professional Business Entities.

a. Prior to awarding any contract or agreement to procure services, including banking or insurance coverage services, with any professional 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 officer 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 3. Prohibition on contributions by licensed establishments.

a. No licensed establishment or applicant for a liquor license shall knowingly solicit or make any contribution of money, or pledge or a contribution, including in-kind contributions or purchase of tickets, advertisements or the like, to any candidate or holder or the public office in the Township of Middletown, or to any municipal political party committee or county committee who is to make a contribution to a candidate in violation of this article.

b. For purposes of this article, a "licensed establishment" means any person or entity holding or applying for any license in the Township of Middletown under the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., and shall include a person, firm, corporation, partnership, organization, or association with any ownership interest in any alcoholic beverage license regulated by the Township of Middletown. This definition shall include an individual including the individual's spouse, if any, and any child living at home; all members, partners, shareholders, officers, directors, trustees, subsidiaries or related entities of any licensed establishment or applicant for a license.

Section 4. Contribution statement by licensed establishment or applicant.

a. Prior to awarding any license to an applicant or renewal of a liquor license held by any licensed establishment, the Township shall receive a sworn statement from the applicant or licensed establishment, under penalty of perjury, that the applicant or licensed establishment has not made a contribution in violation of Section 4 hereof and has not made or solicited contributions through intermediaries for the purpose of concealing the source of the contribution(s).

b. The applicant or licensed establishment shall have a continuing duty to report any violations of this article that may occur. The certification required under this subsection shall be in addition to any other certifications that may be required by any other provision of law.

Section 5. Wheeling Restrictions.

a. No candidate committee for any candidate for Middletown Township Committee shall accept a contribution from a county committee of a political party, other than the county committee of the county in which the candidate or candidates reside, in excess of $500 per election.

b. No candidate committee for any candidate for Middletown Township Committee shall accept a contribution from a state political party in excess of $500 per election.

c. No candidate committee for any candidate for Middletown Township Committee shall accept a contribution from a legislative leadership committee in excess of $500 per election.

d. No candidate committee for any candidate for Middletown Township Committee shall accept a contribution from a continuing political committee or PAC in excess of $500 per election.

e. No candidate committee for any candidate for Middletown Township Committee shall accept a contribution from another candidate committee, other than from a candidate committee located in at least part of Monmouth County, in excess of $500 per election.

f. No candidate committee for any candidate for Middletown Township Committee shall accept a contribution from a municipal political party committee, other than a municipal political party committee of a municipality located in Monmouth County, in excess of $500 per election.

Section 6. Penalties and Non-Circumvention Provision.

a. It shall be a breach of the terms of the Township of Middletown professional service agreement for a business entity or licensed establishment to: (i) make or solicit a contribution in violation of this ordinance; (ii) knowingly conceal or misrepresent a contribution in violation of this ordinance; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contributions on the condition or with the agreement that it will be contributed to a campaign committee of any candidate or holder of the public of the Township of

Middletown; (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. Any applicant for a liquor license or licensed establishment who knowingly makes a contribution or who fails to reveal a contribution made in violation of this article, 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 holding or applying for any liquor license in the Township of Middletown or otherwise sanctioned pursuant to the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.

c. Furthermore, any professional business entity of licensed establishment that violates (a) ii-viii shall be disqualified from eligibility for future Township of Middletown contracts or approval for licensure pursuant to ABC regulations for a period of three calendar years from the date of violation.

Section 7. Return of Excess Contributions

A professional business entity, licensed establishment, 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 the contribution, the entity notifies that Township Committee 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.

Section 8. 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 Committee, 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.

Section 9. Severability.

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.

Section 10. Repealer.

Any ordinance inconsistent with the terms of this ordinance is hereby repealed to the extent of such inconsistency.

Section 11. Effective Date.

This ordinance shall become effective January 1, 2008 upon passage and publication in accordance with law.

PASSED FIRST READING: July 16, 2007

PASSED AND APPROVED: August 20, 2007

ATTEST:

HEIDI R. ABS, CLERK

GERARD P. SCHARFENBERGER, MAYOR

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