FILED
JAN 3 1 2006
SECRETARY OF STATE

ORDINANCE 136-04

AN ORDINANCE CREATING AMENDING CHAPTER II (ADMINISTRATION)

BE IT ORDAINED by the Township Committee of the Township of Upper Freehold, County of Monmouth and State of New Jersey, as follows.

Whereas, political contributions from professionals receiving discretionary contracts from the elected officials who receive such contributions raise concerns of the part of taxpayers as to their trust in the process of government and possibly the quality and/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 business entities therefore, we establish the following policy for Upper Freehold Township and prohibit the appointment of/or entering into any contracts with a professional business entity that made contributions (directly or indirectly through a third party such as a Political Action Committee), to the election (or post-election) of any candidate (elected or not) for Township Committee.

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

Section I: 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, including all boards and commissions, or any 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, including

banking services/relationships or insurance coverage/services if that entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions or purchase of tickets, advertisements or the like which proceeds will be used by or on behalf of or, to a campaign committee of any candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any upper Freehold Township municipal party committee or to any county party committee in Monmouth County, in excess of the thresholds specified in paragraph (d) within **three calendar years** immediately preceding the date of the contract or agreement or during the term of such a contract or agreement.

b. No professional business entity including banking services/relationships or insurance coverage/services which enters into negotiations for, or agrees to, any contract or agreement with the municipality or any department, board, commission 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 or purchase of tickets, advertisements or the like, which proceeds will be used by or on behalf of or to 1) any candidate or holder of the public office having ultimate responsibility for the award of the contract, or to 2) any Upper Freehold Township municipal party committee, 3) any county party committee in Monmouth County (unless during the preceding calendar year no contribution of money or in kind contribution in an amount sufficient to require reporting on the local campaign election law report has been made to the

local candidate or municipal party committee by the county committee to which the professional business entity may have contributed) , or 4) any political action committee (PAC) (unless during the preceding calendar year no contribution of money or in kind contribution in an amount sufficient to require reporting on the local campaign election law report has been made to the local candidate by the political action committee to which the professional business entity may have contributed) 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. Nothing herein will bar any contribution to any party county committee or political action committee if that entity does not contribute any money or in-kind contribution sufficient to require reporting on the local campaign election law report that has been made to the local candidate by the political action committee or county organization to which the professional business entity may have contributed. A PAC is an organization existing for the primary purpose of promoting or supporting (Municipality) municipal candidates or municipal office holders in excess of the thresholds specified in subsection (d) within one calendar year immediately preceding the date 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 2% or more of the equity in the corporation or business trust; partner, 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 subsection may annually contribute a maximum of $50.00 each for any purpose to any candidate for Township Committee, or $50.00 to any Upper Freehold Township municipal party committee, county party committee in Monmouth County or political action committee, without violating paragraph (a) of this subsection. However, any group of individuals meeting the definition of ""professional business entity" under this subsection, including such principals having two (2%) percent or more ownership interest, partners, and officers of the entity in the aggregate, may not annually contribute for any purpose in excess of $500.00 to all municipal candidates and officeholder with ultimate responsibility for the award of the contract, as well as all Upper Freehold Township municipal political parties, county political parties in Monmouth County and political action committees combined, if proscribed by paragraph (b) of this subsection, without violating paragraph (a) of this subsection.

e. For purposes of this subsection, the office that is considered to have ultimate responsibility for the award of the contract shall be the Township Committee. However, the restrictions of this ordinance apply to boards, commissions or agencies of the Township whose appointments of

professionals either require the approval of the Township Committee or whose operating funds are subject to appropriation by the Township Committee.

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 or Township Committee, or municipal party committee, county party committee or political action 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 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 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 offer or has not made a contribution in violation of Section I, subsection a, hereof, and has not made or solicited contributions through intermediaries for the purpose of concealing the source of the contribution(s).

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 IV: Return of Excess Contributions.

A professional business entity may cure a violation of Section I, subsection a., hereof, if, within 30 days after the general election, the professional business entity notifies the Township Committee in writing and seeks and receives reimbursement of any contribution in excess of that allowed by this Ordinance from the Township candidate, municipal political party, county political party or political action committee.

Section V: Retroactivity of Future Clarifications Adopted.

It is anticipated that there may be some professional business entities which determine to attempt a legalistic adherence to the letter, rather than the spirit of this ordinance. It is the declared intent of this municipal governing body to remain vigilant to recognize such attempts to subvert the underlying purposes for which this ordinance was adopted. Any professional business entity which may attempt such creative subversion does so at its peril. If and in the event creative actions are taken in order to defeat the purposes of this Ordinance, it is the intention of the governing body to enact appropriate clarification of this ordinance, which clarification shall be retroactive to the initial effective date of this Ordinance thereby disqualifying such creative professional business entities from serving the Township. Changes to this Ordinance which are not for purposes of clarification, but which are

amendments to the provisions hereto, shall become effective upon adoption and publication according to law.

Section VI: Penalty.

a. All 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 this Ordinance, or to knowingly conceal or misrepresent contributions given or received, or to make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution.

b. Any professional business entity as defined in this Ordinance who knowingly fails to reveal a contribution made in violation of this ordinance, or who knowingly makes or solicits contributions through intermediaries or 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.

c. Notwithstanding the foregoing paragraphs (a) and (b), any person or entity who violates any provision of this ordinance shall, upon conviction, be liable for the penalties set forth in Section 1-5, of the Revised General Ordinances of the Township.

Section VII: Severability.

If any provision of this ordinance, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this ordinance 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.

All Ordinances and parts of Ordinances inconsistent herewith are hereby repealed.

This Ordinance shall take effect upon adoption and publication according to law.

Approved on First Reading: August 19, 2004

Approved, Passed & Adopted: September 2, 2004

DATED: September 2, 2004

John A. Mele

ATTEST:

Barbara L. Bascom, RMC/CMC
Administrator/Clerk

CERTIFICATION
I HEREBY CERTIFY THE ABOVE TO BE A TRUE COPY OF ORDINANCE 186-04 **ADOPTED BY THE UPPER FREEHOLD TOWNSHIP COMMITTEE AT A MEETING HELD** 2/2/04