FILED
JUN 11 2007
NINA MITCHELL WELLS
SECRETARY OF STATE

ORDINANCE No. 42 -04

AN ORDINANCE OF THE TOWNSHIP OF MOUNT OLIVE FOR PUBLIC CONTRACTING ("PAY-TO-PLAY") REFORM

BE IT ORDAINED by the Township Council of the Township of Mount Olive, County of Morris, and State of New Jersey, as follows:

Preamble

WHEREAS, professional business entities are exempt from public bidding requirements; and

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, substantial local political contributions from professionals receiving discretionary contracts 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, it is believed pursuant to NJSA 40A:11-5 and NJSA 40:48-2, municipalities have the right to establish rules and procedures for contracting with professional business entities,

THEREFORE, be it ordained by the Township Council of the Township of Mount Olive, County of Morris, as follows:

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 services, including banking services/relationships or insurance coverage 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 a campaign committee of any Mount Olive candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any Mount Olive party committee, or to any political action committee (PAC) that is organized for the primary purpose of promoting or supporting Mount Olive municipal candidates or municipal officeholders in excess of the thresholds specified in subsection (d) within one calendar year immediately preceding the date of the contract agreement.

(b) No professional business entity which enters into negotiations for, or agrees to, any contract or agreement with Mount Olive or any department or agency thereof or of its independent authorities for the rendition of professional, banking or insurance coverage services or any other no-bid consultants shall knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to any Mount Olive candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any Mount Olive party committee, or to any PAC that is organized for the primary purpose of promoting or supporting Mount Olive municipal candidates of municipal officeholders 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.

(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 the mayor or council and $500 to a Mount Olive 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, any not annually contribute for any purpose in excess of $2,500 to all Mount Olive candidates and officeholders with ultimate responsibility for the award of the contract, and all Mount Olive or Morris 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 the ultimate responsibility for the award of the contract shall be:

(1) The Mount Olive Township Clerk

(2) The Mount Olive Council, if the contract requires approval and/or appropriation from the Council.

(3) The Mayor of Mount Olive, 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 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 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 a penalty of perjury that the bidder or offer or 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 of 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 professional business entity or Township candidate or officeholder or municipal 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 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.

Section 5. Penalty

(a) All Mount Olive 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 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 Act, 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 Mount Olive contracts for a period of four calendar years from the date of the violation.

Section 6. Severability and Effectiveness Clause:

If any sentence, paragraph or section of this ordinance, or the application thereof to any persons or circumstances shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any sentence, paragraph or section of this ordinance

shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of this ordinance.

Section 7. **Effective Date:**

This ordinance shall become effective on January 2, 2005.

TOWNSHIP OF MOUNT OLIVE

Steven W. Rattner

Steve Rattner, Council President

Lisa M. Lashway

Lisa Lashway, Municipal Clerk

Introduced:
Adopted: 11/2/04
Veto or Approval:
Final Publication: