

AN ORDINANCE AMENDING AND SUPPLEMENTING THE REVISED GENERAL ORDINANCES OF THE CITY OF OCEAN CITY TO ESTABLISH A POLICY FOR THE AWARDING OF PROFESSIONAL SERVICE CONTRACTS (PAY TO PLAY)

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OCEAN CITY, COUNTY OF CAPE MAY, STATE OF NEW JERSEY AS FOLLOWS:

WHEREAS, professional service contracts are exempt from public bidding requirements pursuant to N.J.S.A. 40A:11-5(1)(a)(i); 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; and

WHEREAS, substantial local political contributions from professionals receiving discretionary contracts from the elected officials who receive such contributions raise reasonable concerns of 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

NOW, THEREFORE BE IT ORDAINED by the City of Ocean City, County of Cape, State of New Jersey,

Section 1. Policy.

It is the policy of the City of Ocean City to create regulations stating that a professional business entity which makes political contributions to elected officials who are responsible for awarding professional service contracts shall be ineligible to receive a public professional service contract from the City of Ocean City.

Section 2. Chapter II, Section 2.2 shall read as follows:

2.2.1 Definitions.

- (a) City Council shall mean the Governing Body of the City Ocean City.
(b) Mayor shall mean the Mayor of the City of Ocean City
(c) Professional Business Entity shall mean an individual, including an individual spouse and any child living at home, person, firm, corporation, professional corporation, partnership, organization or association that is seeking a professional services contract with the City of Ocean City. The definition of a professional business entity also 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) Professional Services Contract shall mean those contracts awarded for professional services as defined by N.J.S.A. 40A: 11-2(6) and 40A:11-5(1)(a)(i). [Attachment #1]

2.2.2 Prohibition on Awarding Professional Service Contracts to Certain Contributors.

- (a) The City of Ocean City its agencies or its independent authorities, shall not enter into an agreement or otherwise contract to procure professional services, including banking services/relationships or insurance 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 Ocean City candidate, or holder of public office in Ocean City, or to any City of Ocean City or Cape May County party committee, or to any political action committee (PAC) that is organized for the primary purpose of promoting or supporting Ocean City municipal candidates or municipal officeholders, 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 professional services contract with the City of Ocean City, its agencies or independent authorities for the rendition of professional, banking or insurance coverage services shall solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to any Ocean City candidate for the office of City Council or Mayor, or to any Ocean City or Cape May County party committee, or to any PAC that is organized for the primary purpose of promoting or supporting candidates for the office of Mayor or Council of the City of Ocean City between the first communication between the business entity and Ocean City regarding a specific professional services contract and the later of the termination of negotiations with the City for the professional services contract or the completion of the contract.
- (c) All Ocean City professional service contracts shall provide that it shall be a breach of the terms of the contract to violate Section 2.2.2 or to 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.
- (d) All requests for proposals sent by the City of Ocean City for professional service contracts shall provide that it shall be a breach of the terms of the contract for a professional business entity to violate any portions of this ordinance or to conceal or misrepresent contributions given to or received by, or to make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution.

2.2.3. Contributions Made Prior to the Effective Date.

Any contribution of money or any other thing of value, including in-kind contributions, made by a professional business entity to any candidate for the office of Mayor or Council in the City of Ocean City, or municipal or county party committee or PAC referenced in this ordinance shall not be deemed a violation of this section, as shall any agreement for property, goods, or services of any kind whatsoever, if that contribution was made by the professional business entity prior to the effective date of this section.

2.2.4. Contribution Statement by Professional Business Entity.

- (a) Prior to awarding any professional services contract, including banking or insurance coverage services, with any professional business entity, the City of Ocean City or agencies, as the case may be, shall receive a sworn statement from the professional business entity that the bidder has not made a contribution in violation of Section 2.2.2 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 City of Ocean City and shall be in addition to any other certifications that may be required by any other provision of law.

2.2.5. Penalty

- (a) Any professional business entity, who fails to reveal a contribution made in violation of this Ordinance, or who 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 City of Ocean City contracts for a period of four calendar years from the date of the violation.
- (b) Any person who acts as an intermediary to violate, or assists others in violating , any portions of this ORDINANCE shall be subject to a fine not to exceed \$1,250 per violation or imprisonment not to exceed ninety (90) days, or to community service for a period not to exceed ninety (90) days, in the discretion of the Municipal Court Judge.
- (c) Any candidate for the office of Mayor or City Council who violates any provision of this Ordinance shall be subject to a fine of \$1,250 per violation, or imprisonment not to exceed ninety (90) days , or community service not to exceed ninety (90) days, in the discretion of the Municipal Court Judge.

2.2.6 Severability.

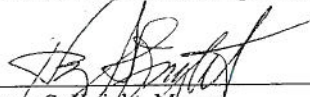
If any porion of this ordinance is declared to be invalid by a court of competent jurisdiction, it shall not affect the remaining portions of the ordinance which shall remain in full force and effect.

2.2.7 Repealer

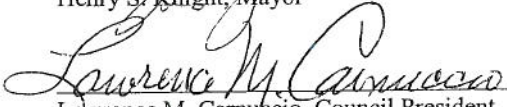
All ordinances or portions thereof inconsistent with this ordinance are repealed to the extent of such inconsistency.

2.2.8 Effective Date.

This Ordinance shall take effect in the time and manner prescribed by law.



Henry S. Knight, Mayor

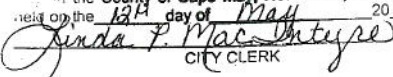


Lawrence M. Carnuccio, Council President

The above Ordinance was passed by the Council of Ocean City, New Jersey, at a meeting of said Council held on the **28th** day of **April, 2005**, and was taken up for a second reading and final passage at a meeting of said Council held on the **12th** day of **May, 2005** in Council Chambers, City Hall, Ocean City, New Jersey, at 7:00 o'clock in the evening.



Cindy Griffith, City Clerk

CLERK'S CERTIFICATE
I hereby certify that the foregoing is a true copy of a Resolution adopted by the City Council of the City of Ocean City, New Jersey at a meeting held on the 12th day of May, 2005.


Linda P. MacIntyre
CITY CLERK