

ORDINANCE NO. 36-2005

AN ORDINANCE TO ESTABLISH A POLICY FOR THE AWARDING OF PROFESSIONAL SERVICES CONTRACT (PAY TO PLAY) IN THE CITY OF MARGATE CITY, COUNTY OF ATLANTIC AND STATE OF NEW JERSEY

BE IT ORDAINED by the Commissioners of the City of Margate, County of Atlantic and State of New Jersey as follows;

WHEREAS, professional services 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 elected officials who are ultimately responsible for awarding professional services contracts; 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 the taxpayers as to their trust in the process of local government, and the quality and 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.

NOW, THEREFORE BE IT ORDAINED by the City of Margate, County of Atlantic and State of New Jersey as follows:

SECTION 1. POLICY.

It is the policy of the City of Margate that professional business entities that make political contributions to local elected officials responsible for awarding professional services contracts shall be ineligible to receive a professional services contract from the City of Margate.

SECTION 2. DEFINITIONS:

For purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meanings stated herein unless their use in the text of this Chapter clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- a. Board of Commissioners shall mean the Governing Body of the City of Margate.
- b. Mayor shall mean the Mayor of the City of Margate.
- c. Professional Business Entity shall mean an individual, (including an individual's spouse and any child living at home), any natural or legal person, business corporation, professional corporation, limited liability company, partnership, limited partnership, business trust, organization or association, or other legal commercial entity organized under the laws of this State or any other state or foreign jurisdiction that is seeking a professional services contract with the City of Margate. Professional Business entity also includes all principals who own any percentage 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 N.J.S.A. 40A:11-5(1)(a)(i).

SECTION 3. PROHIBITED CONDUCT:

- a. The City of Margate, 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 contributions of money, or pledge of a contribution, including in-kind contributions, to a campaign committee of any Margate City candidate, or holder of public office in Margate City or Atlantic County party committee, or to any political action committee (PAC) that is organized for the primary purpose of promoting or supporting Margate 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 Margate, its agencies or independent authorities for the rendition of professional, banking or insurance coverage services shall solicit or make any contributions of money, or pledge of a contribution, including in-kind contributions, to any Margate City candidate for the office of City Commissioner or Mayor, or to any Margate City or Atlantic 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 Commissioner of the City of Margate prior to the termination of negotiations with the City for the professional services contract or the completion of the contract.
- c. All City of Margate professional services contracts shall provide that it shall be a breach of the terms of the contract to violate section (b) above 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 Margate for professional services 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 received by, or to make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution.

SECTION 4. 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 Commissioner in the City of Margate, or municipal or county party committee or PAC referenced in this ordinance shall not be deemed a violation of this section, nor 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.

SECTION 5. CONTRIBUTION STATEMENT BY PROFESSIONAL BUSINESS ENTITY

- a. Prior to awarding any professional services contract, including banking or insurance coverage services, to any professional business entity, the City of Margate shall receive a sworn statement from the professional business entity that the professional business entity has not made a contribution in violation of the ordinance.
- b. The professional business entity shall have a continuing duty to report any violations of this ordinance that may occur during the prior to or during the contract. The certification required hereunder shall be

made prior to execution of the contract or agreement with the City of Margate and shall be in addition to any other certifications that may be required by any other provision or law.

SECTION 6. VIOLATIONS AND PENALTIES:

- 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 a contribution, shall be disqualified from contracting with the City of Margate for a period of four (4) years from the date of the violation.
- b. Any person or entity that acts an intermediary to violate or assist in violating any portion of this ordinance shall be subject to a fine not to exceed \$1,000.00 per violation or imprisonment not to exceed 90 days or to a period of community service not to exceed 90 days in the discretion of the Municipal Court Judge.
- c. Any candidate for the office of Mayor or Commissioner who violates any provision of this ordinance shall be subject to a fine not to exceed \$1,000.00 per violation or imprisonment not to exceed 90 days or to a period of community service not to exceed 90 days in the discretion of the Municipal Court Judge.

SECTION 7. SEVERABILITY:

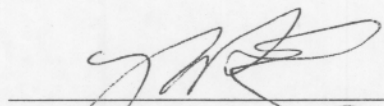
Each section, subsection, sentence, clause and phrase of this ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this ordinance to be unconstitutional, void, or ineffective for any cause or reason, shall not affect any other portion of this ordinance.

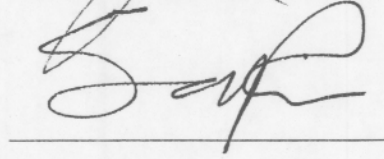
SECTION 8. REPEALER

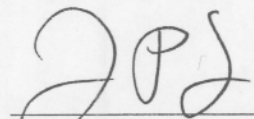
All ordinances or portions thereof inconsistent with this ordinance are repealed to the extent of such inconsistency.

SECTION 9. EFFECTIVE DATE:

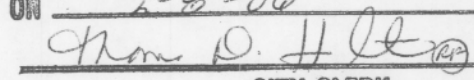
This ordinance shall take effect upon final adoption and publication and in the manner provided by law.







Board of Commissioners of the City of
Margate City, New Jersey

**CERTIFIED AS A TRUE COPY OF AN ORDINANCE
ADOPTED BY THE BOARD OF COMMISSIONERS OF
MARGATE CITY, ATLANTIC COUNTY, NEW JERSEY
ON 2-2-06**


CITY CLERK

Introduction: 11-17-05

Enactment: 12-1-05