



Borough of Fair Lawn
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JOANNE M. KWASNIEWSKI, RMC, CMC, MMC
MUNICIPAL CLERK

MARILYN B. BOJANOWSKI, RMC
ASSISTANT MUNICIPAL CLERK

July 10, 2006

Department of State
Attn: Charlene Woner
P.O. Box 300
Trenton, New Jersey 08625

Re: Fair Lawn Pay to Play Ordinance

Dear Miss Woner:

In accordance with State regulations enclosed is a copy of Ordinance 2056-2006 which prohibits the Mayor and Council of the Borough of Fair Lawn awarding no-bid public contracts to political contributors. This ordinance was of Fair Lawn adopted at their meeting on June 27, 2006.

Very truly yours,


Joanne M. Kwasniewski, RMC/CMC/MMC
Municipal Clerk

cc: Joseph Valenti, Bureau Chief

/jmk



ORDINANCE NO. 2056-2006

AN ORDINANCE TO AMEND AND SUPPLEMENT THE CODE OF THE BOROUGH OF FAIR LAWN 2000, BY ADDING TO CHAPTER 2 ENTITLED "ADMINISTRATION, DEPARTMENTS AND BUDGET AND FISCAL PROCEDURES" NEW ARTICLE XXI ENTITLED "WITHHOLDING NO-BID PUBLIC CONTRACTS FROM POLITICAL CONTRIBUTORS".

PREAMBLE

WHEREAS, professional business entities are exempt from public bidding requirements under the New Jersey Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.; and

WHEREAS, it has become common for professional business entities to make substantial political contributions, whether directly or through intermediaries, including but not limited to the Bergen County Party Committee, to the election campaigns of local government officers who are ultimately responsible for awarding professional service contracts or other contracts or agreements which are not subject to public bidding; and

WHEREAS, local political contributions from professionals receiving discretionary contracts from the elected officials who receive such contributions may 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, nothing herein contained is intended to impair in any way the right of a professional service provider to exercise federal and State constitutional rights of free speech;

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Fair Lawn that it is the public policy of the Borough to refuse public professional service contracts to professional service providers who knowingly make substantial political contributions, as hereinafter defined, in the expectation of being considered for a no-bid contract; and

BE IT FURTHER ORDAINED, that Chapter 2 entitled "Administration, Departments and Budget and Fiscal Procedures" is hereby amended and supplemented with new Article XXI entitled "Withholding No-Bid Public Contracts from Political Contributors", as follows:

SECTION 1

PROHIBITION ON AWARDING PUBLIC CONTRACTS TO CERTAIN CONTRIBUTORS.

- (a) Any other provision of law to the contrary notwithstanding, the Borough and any of its purchasing agents or agencies, its statutory boards, and its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract on a no-bid basis to procure services, including banking services or insurance coverage services, from any professional business entity, if that entity has solicited or made any contribution of money, or pledged a contribution, including in-kind contributions, to a campaign committee of any Borough candidate or holder of a public office in the Borough, whether or not that officeholder has the ultimate responsibility for the award of the contract, or to any Borough or Bergen County party committee, or to any political action committee (PAC) that is organized for the primary purpose of promoting or supporting Borough candidates or Borough officeholders, including any State party or legislative leadership committee, if such contribution or pledge is made within two calendar years immediately preceding the date of the municipal decision awarding such contract or agreement on a no-bid basis.
- (b) No professional business entity that enters into negotiations for, or agrees to, any contract or agreement on a no-bid basis with the municipality or any department or agency thereof, or its statutory boards, or its independent authorities, for the rendition of professional, banking or insurance services or any other no-bid consultation services, shall knowingly solicit or make any contribution of money, or pledge a contribution, including in-kind contributions, to any Borough candidate or holder of a public office in the Borough, whether or not that officeholder has the ultimate responsibility for the award of the contract, or to any Borough or Bergen County party committee, or to any political action committee (PAC) that is organized for the primary purpose of promoting or supporting Borough candidates or Borough officeholders, including any State party or legislative leadership committee, between the time of first communication between that business entity and the Borough 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, and any unemancipated child living in the household of such person, a firm, corporation, professional corporation, partnership, limited partnership, limited liability company, unincorporated association or similar organization. The definition of a “business entity” encompasses all principals and partners who own 10% or more of the equity in the business entity, and any officers employed by the entity, as well as any subsidiaries directly controlled by the business entity.
- (d) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:
 - i. The governing body of the Borough, if the contract requires approval or appropriation from the Council.
 - ii. The Mayor of the Borough, 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 or county party committee or PAC that is organized for the primary purpose of promoting or supporting Borough candidates or Borough officeholders, including any State party or legislative leadership committee, 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 Ordinance.

SECTION 3 CONTRIBUTION STATEMENT BY PROFESSIONAL BUSINESS ENTITY

- (a) Prior to awarding any contract or agreement to procure services with any professional business entity, including banking or insurance coverage services, the Borough of Fair Lawn 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 professional business entity 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 Borough 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 Borough candidate or officeholder or municipal county party committee or PAC that is organized for the primary purpose of promoting or supporting Borough candidates or Borough officeholders may cure a violation of Section 1, if, within 30 days after the general election, the professional business entity notifies the Borough Council in writing and seeks and receives reimbursement of a contribution from the Borough candidate or municipal or county political party or PAC or State party or legislative leadership committee.

SECTION 5 PENALTY

- (a) All Borough professional service agreements shall provide that it shall be a breach of the terms of the government contract for a professional business entity

to violate Section 1 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 which or who knowingly fails to reveal a contribution made in violation of this Ordinance, 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 Borough contracts for a period of four (4) calendar years from the date of the violation.

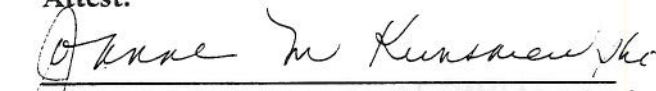
SECTION 6 SEVERABILITY AND EFFECTIVENESS CLAUSE:

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. All ordinances, codes or parts thereof that are inconsistent with this Ordinance are repealed or otherwise modified.

SECTION 8. This Ordinance shall take effect upon passage and publication as required by law.

Attest:


Joanne M. Kwasniewski, RMC/CMC/MMC
Municipal Clerk

Approved:


Martin Etler, Mayor

Introduced: June 13, 2006

Adopted: June 27, 2006



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