

*Office of
Gretchen McCarthy
Registered Municipal Clerk
Extension 236*

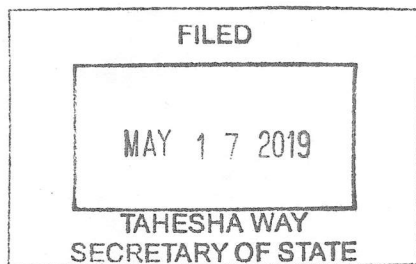
May 14, 2019

Ms. Tahesha Way, Esq.
New Jersey Secretary of State
P.O. Box 300
Trenton, NJ 08625

Dear Secretary of State Way,

Pursuant to N.J.S.A. 40A11-51(c), enclosed please find a copy of Ordinance #1957-19, adopted by the Mayor and Council of the Borough of Middlesex, County of Middlesex, New Jersey.

Please do not hesitate to contact me should you need anything further.



Very truly yours,

Gretchen McCarthy, RMC
Borough Clerk

ORDINANCE #1957-19

AN ORDINANCE AMENDING CHAPTER 12 OF THE CODE OF THE BOROUGH OF MIDDLESEX, COUNTY OF MIDDLESEX, STATE OF NEW JERSEY, ENTITLED "CONTRACTS" TO CLARIFY THE RESTRICTIONS CONCERNING PERMISSIBLE CAMPAIGN CONTRIBUTIONS BY ENTITIES CONTRACTING WITH THE BOROUGH

WHEREAS, the Borough Council of the Borough of Middlesex seeks to amend Chapter 12 of the Municipal Code of the Borough of Middlesex to amend and expand the provisions thereof; and

WHEREAS, the purpose of these amendments is to foster fair and open competition in the contracting process as contemplated under the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., transparency in the redevelopment process as contemplated under the Local Housing and Redevelopment Law, N.J.S.A. 40A:12A-1 et seq., to ensure public confidence in the Borough's contracting process under both the Local Public Contracts Law and the Local Housing and Redevelopment Law, to avoid any appearance of impropriety and public cynicism that can arise when the timing between political contributions and contracting around the aforementioned statutes with any entity seeking to do business with the Borough closely coincide, and to ensure that the substantial powers conferred on the Borough by both aforementioned statutes are exercised in a manner free of outside influence and in the best interest of the residents of the Borough; and

WHEREAS, the Borough is authorized to undertake these amendments pursuant to the ordinance power conferred thereon in N.J.S.A. 40:48-2 and in the provisions of N.J.S.A. 40A:11-1 et seq., the Local Public Contracts Law, and N.J.S.A. 40A:12A-1 et seq., the Local Housing and Redevelopment Law;

BE IT ORDAINED, by the Borough Council of the Borough of Middlesex in the County of Middlesex, State of New Jersey, that Chapter 12 of the Municipal Code of the Borough of Middlesex, County of Middlesex, State of New Jersey, is hereby amended as follows:

Section I

Chapter 12 of the Code of the Borough of Middlesex, presently entitled "Contracts," shall be retitled as "Political Contributions."

Section II

Article I of Chapter 12 of the Code of the Borough of Middlesex, presently entitled "Political Contributions," shall be retitled as "Purpose and Definitions."

Section III

Section 12-1 of the Code of the Borough of Middlesex, presently entitled "Definitions," is hereby retitled as "Purpose" and hereby replaced in its entirety as follows:

It shall be the purpose of this Chapter to foster fair and open competition in the contracting

process as contemplated under the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., transparency in the redevelopment process as contemplated under the Local Housing and Redevelopment Law, N.J.S.A. 40A:12A-1 et seq., to ensure public confidence in the Borough's contracting process under both the Local Public Contracts Law and the Local Housing and Redevelopment Law, to avoid any appearance of impropriety and public cynicism that can arise when the timing between political contributions and contracting around the aforementioned statutes with any entity seeking to do business with the Borough closely coincide, and to ensure that the substantial powers conferred on the Borough by both aforementioned statutes are exercised in a manner free of outside influence and in the best interest of the residents of the Borough.

Section IV

Section 12-2 of the Code of the Borough of Middlesex, presently entitled "Contract and Contribution Restrictions," shall be retitled as "Definitions" and replaced in its entirety as follows:

As used in this Chapter, the following terms shall have the meanings indicated herein:

- A. Agreement shall be defined as any agreement, contract or other instrument incorporated and executed pursuant to any provision of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., including, but not limited to redeveloper agreements pursuant to N.J.S.A. 40A:12A-9 and payments in lieu of taxes pursuant to N.J.S.A. 40A:12A-40. The term "agreement" shall also be defined as long-term tax abatements pursuant to N.J.S.A. 40A:21-1 and short-term tax abatements pursuant to N.J.S.A. 40A:22-1.
- B. Borough shall be defined as the Borough of Middlesex in the County of Middlesex, State of New Jersey, and any of its independent agencies or instrumentalities.
- C. Business entity shall mean 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 business entity includes all principles who own 10 percent or more equity in the corporation or business trust, partners, and officers in the aggregate employed by the entity as well as any subsidiary directly controlled by the business entity.
- D. Candidate shall be defined as (1) an individual seeking election to a public office of the State or of a county, municipality or school district at an election; except that the term shall not include an individual seeking party office; (2) an individual who shall have been elected or failed of election to an office, other than a party office, for which he sought election and who receives contributions and makes expenditures for any of the purposes authorized by section 17 of N.J.S.A. 19:44A-11.2 during the period of his service in that office; and (3) an individual who has received funds or other benefits or has made payments solely for the purpose of determining whether the individual should become a candidate as defined in paragraphs (1) and (2) of this subsection
- E. Contribution shall be defined as include all loans and transfers of money or any other thing of value, including in kind contributions to any candidate, candidate committee, joint candidates committee, political committee, continuing political

committee, political party committee or legislative leadership committee and all pledges or other commitments or assumptions of liability to make any such transfer; and for purposes of reports required under the provisions of this Part shall be deemed to have been made upon the date when such commitment is made or liability assumed.

- F. County political party committee shall be defined as any county committee of a political party, as organized pursuant to N.J.S.A. 19:5-3.
- G. Municipal Office shall be defined as Mayor of the Borough of Middlesex and/or member of the Borough Council of the Borough of Middlesex, and Candidate for Municipal Office shall be defined as a candidate for one of the aforementioned offices.
- H. Municipal political party committee shall be defined as any municipal committee of a political party as organized pursuant to N.J.S.A. 19:5-2.
- I. Professional Business Entity shall be defined as any business entity as defined by paragraph c. of this section that provides services by individuals who are required to be professionally licensed under the laws or regulations of this State.
- J. Redeveloper shall be defined as any person, firm, corporation, limited liability entity, partnership, sole proprietorship, or any other business entity howsoever incorporated, or public body that shall enter into or propose to enter into a contract or enter into an agreement (as defined in this Part) with the Borough or other redevelopment entity for the redevelopment or rehabilitation of an area in need of redevelopment, or an area in need of rehabilitation, or any part thereof, under the provisions of this N.J.S.A. 40A: 12A-1 et seq. the Local Housing and Redevelopment Law, or for any construction or other work forming part of a redevelopment or rehabilitation project. The term "redeveloper" shall also include any business entity employed by or under agreement with a redeveloper to provide goods or services related to: 1) obtaining the designation or appointment as redeveloper by the Borough; 2) negotiating the terms of a redevelopment agreement with the Borough, or any amendments or modifications thereto; 3) lobbying of the Borough and/or its officers in connection with the examination of an area and its designation as an area in need of redevelopment or in connection with the preparation, consultation and adoption of a redevelopment plan; or 4) performing the terms of a redevelopment agreement with the Borough. The term "redeveloper" shall also include any person or individual holding a 10% or greater ownership stake in any business entity, howsoever constituted, that shall enter into or propose to enter into a contract or agreement as contemplated herein. The term "redeveloper" shall also include any principle, partner, or officer of any business entity, howsoever constituted, that shall enter into or propose to enter into a contract or agreement as contemplated herein.
- K. Redevelopment shall be defined as the clearance, replanning, development and redevelopment; the conservation and rehabilitation of any structure or improvement, the construction and provision for construction of residential, commercial, industrial, public or other structures and the grant or dedication of spaces as may be appropriate or necessary in the interest of the general welfare for streets, parks, playgrounds, or other public purposes, including recreational and other facilities incidental or appurtenant thereto, in accordance with a redevelopment plan.

- L. Redevelopment project shall be defined as any work or undertaking pursuant to a redevelopment plan; such undertaking may include any buildings, land, including demolition, clearance or removal of buildings from land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and administrative, community, health, recreational, educational, and welfare facilities.

Section V

Article II of Chapter 12 of the Code of the Borough of Middlesex is hereby created and shall be entitled as "Restrictions on Contributions by Business Entities"

Section VI

A new section shall be inserted into the Municipal Code of the Borough of Middlesex as 12-3, and shall be entitled as "Prohibition of Award" and shall contain the following provisions:

- A. Notwithstanding any other provision of this code or any other law to the contrary, the Borough shall not enter into an agreement or otherwise contract to procure goods or services from any business entity or professional business entity where the transaction is not required to be publicly bid under the Local Public Contracts Law and where the value of said contract exceeds \$17,500, if that entity has solicited or made any contribution of money or pledge of contribution, including in-kind contributions, to any candidate for municipal office in the Borough or to any Borough of Middlesex municipal political party committee or County of Middlesex county political party committee in excess of the thresholds specified in Paragraph C below within one calendar year immediately preceding the commencement of negotiations for the contract or agreement.
- B. Notwithstanding any other provision of this code or any other law to the contrary, no business entity or professional business entity which enters into negotiations for, or agrees to, any contract or agreement with the Borough for the provisions of goods or services where the transaction is not required to be publicly bid under the Local Public Contracts and where the value of the transaction exceeds \$17,500, shall knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to any candidate for municipal office in the Borough, or to any Borough of Middlesex municipal political party committee or County of Middlesex county political party committee, in excess of the thresholds specified in Paragraph C below between the time of first communications between that entity and the Borough regarding a specific contract or agreement and the later of the termination of negotiations or the completion of the contract or agreement.
- C. Any individual meeting the definition of "business entity" or "professional business entity" under Section 12-2 of this Chapter may annually contribute a maximum of \$300 each for any purpose to any candidate for municipal office in the Borough, or \$300 to any municipal or county party committee, without violating Paragraphs A and B or this section.

Section VII

A new section shall be inserted into the Municipal Code of the Borough of Middlesex as 12-4, shall be entitled as "Contribution Statement Required" and shall contain the following provisions :

- A. Prior to awarding any contract or agreement subject to the requirements of this Article, the Borough shall receive a sworn statement from the business entity or professional business entity made under penalty of perjury that the entity has not made an contributions in violation of Section 12-3 hereof
- B. The business entity or professional business entity shall have a continuing duty to report any violation of this subsection that may occur during the negotiation or duration of the contract. The certification required under this Section 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 provision of law.

Section VIU

A new section shall be inserted into the Municipal Code of the Borough of Middlesex as 12-5, and shall be entitled as "Return of Excess Contributions" and shall contain the following provisions:

A business entity of professional business entity, candidate for municipal office in the Borough, or municipal or county political party committee may cure a violation of Section 12-3 hereof if, within thirty (30) days after the pertinent election, the entity notifies the Borough in writing and receives or transmits, as applicable, reimbursement of a contribution from the candidate or municipal or county political party committee.

Section IX

A new section shall be inserted into the Municipal Code of the Borough of Middlesex as 12-6, and shall be entitled as "Contribution Made Prior to the Effective Date" and shall contain the following provisions:

No contribution of money or any other thing of value, including in-kind contributions, made by a business entity or professional business entity to any candidate for municipal office in the Borough or to a municipal political party committee or a county political party committee, shall be deemed a violation of this Chapter, nor shall an agreement for property, goods, or services of any kind whatsoever, be disqualified thereby, if that contribution was made prior to the effective date of this Chapter.

Section X

A new section shall be inserted into the Municipal Code of the Borough of Middlesex as 12-7, and shall be entitled as "Breach of Contract and Disqualification of Contractor" and shall contain the following provisions:

- A. All Borough contracts for goods or services that are exempt from the public bidding requirements of the Local Public Contracts Law and that exceed \$17,500 shall provide that it shall be a breach of the terms of the contract for a business entity or a professional business entity 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 contributions.
- B. Any business entity or professional business entity that knowingly fails to reveal a

contribution made in violation of this subsection or that knowingly makes or solicits contributions through intermediaries for the purposes of concealing or misrepresenting the source of this contribution, shall be disqualified from eligibility for future Borough contracts for a period of four calendar years from the date of the determination of the violation and shall have any contract with the Borough then in effect immediately terminated.

Section XI

Article III of Chapter 12 of the Code of the Borough of Middlesex is hereby created and shall be entitled as "Restrictions on Contributions by Redevelopers."

Section XII

A new section shall be inserted into the Municipal Code of the Borough of Middlesex as 12-8, shall be entitled as "Prohibited Contributions," and shall contain the following provisions:

- A. The Borough shall not enter into an agreement or otherwise contract with any redeveloper for the planning, replanning, construction or undertaking of any redevelopment project, including the conveyance or leasing of any public property in conjunction with the redevelopment of an area within the Borough, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., if that redeveloper has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, to any candidate for municipal office in the Borough, or to any Borough of Middlesex municipal political party committee or County of Middlesex county political party committee in excess of the threshold specified in this Article within one calendar year immediately preceding the commencement of negotiations for the contract or agreement.
- B. No redeveloper that enters into negotiations for, or agrees to, any contract or agreement with the Borough for the planning, replanning, construction or undertaking of any redevelopment project, including the conveyance or leasing of any public property in conjunction with the redevelopment of an area within the Borough, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., shall knowingly solicit or make any contribution of money, or pledge of contribution, including in-kind contributions, to any candidate for municipal office in the Borough of Middlesex, or to any Borough of Middlesex municipal political party committee or County of Middlesex county political party committee, in excess of the threshold specified in this Article, between the time of the first communications between that redeveloper and the Borough regarding a specific contract or agreement and the later of the termination of negotiations or the completion of the contract or agreement.
- C. No redeveloper that enters into negotiations for, or agrees to, any contract or agreement with the Borough for a payment in lieu of taxes agreement pursuant to N.J.S.A. 40A:12A-40, a long-term tax abatement pursuant to N.J.S.A. 40A:21-1, a short-term tax abatement pursuant to N.J.S.A. 40A:22-1, or any other agreement, contract or instrument intended to alter the tax obligation or liability of redevelopment project, shall knowingly solicit or make any contribution of money, or pledge of contribution, including in-kind contributions, to any candidate for municipal office in the Borough of Middlesex, or to any Borough of Middlesex municipal political party committee or County of Middlesex county political party committee, in excess of the threshold specified in this Article, from the time

of referral of the redevelopment project, or any portion or element thereof, by the governing body to the Planning Board of the Borough of Middlesex pursuant to N.J.S.A. 40A :12A-4(a)(l) until such time the rights and obligations or any agreement executed hereunder have been discharged.

- D. Any individual or entity meeting the definition of "redeveloper" under this Part may annual contribute a maximum of three hundred (\$300) dollars each for any purpose to any candidate for municipal office in the Borough of Middlesex, or to any Borough of Middlesex municipal political party committee or County of Middlesex county political party committee, without violating Subsections A, B, or C of Section 12-8 of the Municipal Code of the Borough of Middlesex. In addition, any group of individuals meeting the definition of 'redeveloper ' under this Part, including such principles, partners and officers of the redeveloper in the aggregate, may not annually contribute for any purpose in excess of three hundred (\$300) dollars to all candidates for municipal office in the Borough of Middlesex, or to any Borough of Middlesex municipal political party committee or County of Middlesex county political party committee, without violating Subsections A, B, or C of Section 12-8 of the Municipal Code of the Borough of Middlesex.
- E. The limitations set forth in this Article shall not apply in the event the subject agreement is awarded to the redeveloper after public bidding undertaken in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., or the Local Lands and Buildings Law, N.J.S.A. 40A:12-1 et seq.
- F. No contribution of money or any other thing of value, including in-kind contributions, made by a redeveloper to any candidate for municipal office in the Borough of Middlesex or to any Borough of Middlesex municipal political party committee or County of Middlesex county political party committee, shall be deemed a violation of this subsection, nor shall an agreement for a redevelopment project, of any kind whatsoever, be disqualified thereby, if that contribution was made by the redeveloper prior to the introduction date of this ordinance.
- G. A redeveloper, candidate for municipal office in the Borough of Middlesex, Borough of Middlesex municipal political party or County of Middlesex county political party committee may cure a violation of this Article if, within thirty (30) days of the receipt of the contribution by the candidate for municipal office in the Borough of Middlesex, Borough of Middlesex municipal political party or County of Middlesex county political party committee, the redeveloper notifies the Borough Council of the Borough of Middlesex in writing, and seeks and receives reimbursement of the contribution for the candidate for municipal office in the Borough of Middlesex, Borough of Middlesex municipal political party or County of Middlesex county political party committee who received the contribution within the aforementioned thirty (30) day period .

Section XIII

A new section shall be inserted into the Municipal Code of the Borough of Middlesex as 12-9, shall be entitled as "Disclosure," and shall contain the following provisions:

- A. Prior to entering into or approving any agreement with any redeveloper, the Borough shall receive a sworn statement from the redeveloper made under penalty of perjury that the

redeveloper has not made any contributions in violation of this Article.

- B. The redeveloper shall have a continuing duty to report any violation of this subsection that may occur during the negotiations or duration of the any agreement as defined in this Article. The statement required under this subsection shall be made prior to entry into the redevelopment agreement with the Borough and shall be in addition to any other statement or certifications that may be required by law.

Section XIV

A new section shall be inserted into the Municipal Code of the Borough of Middlesex as 12-9, shall be entitled as "Violations and Penalties," and shall contain the following provisions:

- A. All Borough agreements subject to the limitations set forth in this Article shall provide that it shall be a breach of the terms of the agreement for a redeveloper to violate this subsection 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 redeveloper who knowingly fails to reveal a contribution made in violation of this Article, or that knowingly makes or solicits contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contributions, shall be disqualified from eligibility for future Borough redevelopment agreements for a period of four (4) calendar years from the date of the determination of the violation and shall have any agreement with the Borough then in effect immediately terminated.

Section XV

All ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section XVI

If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to this section, paragraph, subdivision, clause or provision and the remainder of this Ordinance shall be deemed valid and effective.

Section XVII

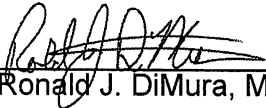
This ordinance shall take effect upon adoption and publication in the manner required by New Jersey general law.

I Hereby Certify that the above Ordinance was introduced by the Governing Body of the Borough of Middlesex, at a meeting of said Borough Council on March 26, 2019.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Dan Parenti, Council Member
SECONDER: Jack Mikolajczyk, Council Member
AYES: Madden, Rex, Carr, Parenti, Dotey, Mikolajczyk

ATTEST:


CLERK OF THE BOROUGH OF MIDDLESEX


Ronald J. DiMura, Mayor

INTRODUCED: March 12, 2019

DATE OF PUBLICATION:
OF INTRODUCTION March 15, 2019

ADOPTED: March 26, 2019

DATE OF PUBLICATION
OF ADOPTION:

