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12-02-04

AN ORDINANCE FOR PUBLIC CONTRACTING IN THE BOROUGH OF OCEANPORT, COUNTY OF MONMOUTH, STATE OF NEW JERSEY.

BE IT ORDAINED by Mayor and Council of the Borough of Oceanport, County of Monmouth, and State of New Jersey, as follows;

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 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 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*, read; municipalities have the right to establish rules and procedures for contracting with professional business entities;

NOW THEREFORE, be it ordained, that the policy of the Borough of Oceanport will be set maximum amounts professional business entities may contribute politically beyond which they become ineligible to receive a public professional service contract from the Borough of Oceanport.

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 to 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 Borough of Oceanport candidate or holder of the public office having ultimate responsibility for the award of the

contract, or to any Borough of Oceanport or County of Monmouth party committee, or to any political action committee (PAC) that is organized for the primary purpose of promoting or supporting the Borough of Oceanport 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 or agreement.

- (b) No professional business entity which enters into negotiations for, or agrees to, any contract or agreement with the municipality or any department or agency thereof or of its independent authorities for the rendition of professional, banking or insurance coverage services or make any contribution of money, or pledge of a contribution, including in-kind contributions, to any Borough of Oceanport candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any Borough of Oceanport or Monmouth County party committee, or to any PAC that is organized for the primary purpose of promoting or supporting the Borough of Oceanport municipal candidates or 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 or 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 \$300.00 each for any purpose to any candidate, for mayor or council, or \$400.00 to the Borough of Oceanport or Monmouth County 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, may not annually contribute for any purpose in excess of \$2,500.00 to all Borough of Oceanport candidates and officeholders with ultimate responsibility for the award of the contract, and all Borough of Oceanport or Monmouth County political parties and PACs referenced in this Ordinance combined, without violating subsection (a) of this section.

- (e) Child shall be defined herein as a child or legally adopted son or daughter under the age of eighteen (18) years of age.
- (f) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:
 - (1) The Borough of Oceanport Council, if the contract requires approval or appropriation from the Council.
 - (2) The Mayor of the Borough of Oceanport, if the contract requires approval of the Mayor, or if a public officer who is responsible for the award of the 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 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 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 or duration of the 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 of officeholder or municipal or county 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 received 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 Borough of Oceanport professionals 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 Borough of Oceanport contracts for a period of four calendar years from the date of violation.

Section 6: SEVERABILITY AND EFFECTIVENESS CLAUSE

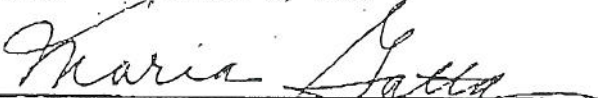
If any sentence, paragraph or section of this Ordinance, or the application thereof to any persons or circumstances shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any sentence, paragraph or section of this ordinance shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of this ordinance.

Section 7: EFFECTIVE DATE

This Ordinance shall take effect following final passage and publication as provided by law.

Approved:

Date: December 2, 2004


 MARIA GATTA, MAYOR

