



Atlantic County

Department of Law

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County Executive

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Equal Employment Opportunity
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609/343-2231 FAX: 343-2164

Thursday, January 10, 2008

Nina Mitchell Wells
Secretary of State
125 W. State Street
PO Box 300
Trenton, NJ 08625-0300

RE: Atlantic County Pay-to-Play Ordinance

Dear Ms. Wells:

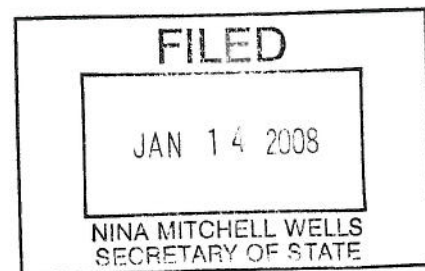
Enclosed for filing is a certified copy of Ordinance #10 entitled "An Ordinance for Public Contracting ("Pay to Play") Reform" adopted by the **Atlantic County Board of Chosen Freeholders** on September 25, 2007.

Sincerely,

Betty Ann Bittel
First Assistant County Counsel

BAB:ks

Enclosure



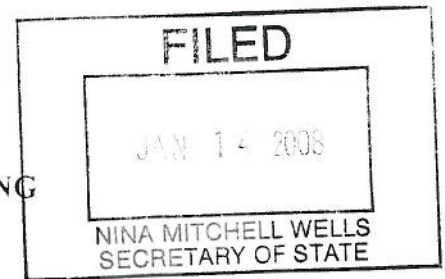
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ORDINANCE NO. 10, 2007
AN ORDINANCE FOR PUBLIC CONTRACTING
("PAY-TO-PLAY") REFORM



WHEREAS, large political contributions from those seeking or currently performing business with the County, raise reasonable concerns on the part of taxpayers and residents as to their trust in government contracts; and

WHEREAS, it has become common for individuals/entities to make substantial political contributions to persons holding elective County office who are ultimately responsible for awarding professional service contracts which are not subject to public bidding; and

WHEREAS, pursuant to P.L. 2005c.271 the County is authorized to adopt ordinances limiting the award of public contracts to professional business entities that have made political contributions and may limit contribution amounts that professional business entities can make during the term of a contract; and

WHEREAS, in the interest of good government, the County desires to set maximum amounts that professional business entities may contribute politically beyond which they become ineligible to receive a contract from the County; and

WHEREAS, the County governing body has determined that the flow of excess political contributions into Atlantic County from sources located outside Atlantic County via a process known as wheeling is likely to be a corrupting influence on the political process in Atlantic County; and

WHEREAS, the governing body of Atlantic County desires to curb the process known as wheeling by placing limits on the amounts of political contributions that a candidate for elective County office may receive;

NOW, THEREFORE, BE IT ORDAINED by the Board of Chosen Freeholders of the County of Atlantic as follows:

Section 1. Definition of Terms

The terms listed below shall have the following meanings for purposes of this ordinance:

Professional Business Entity – a “professional business entity” 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 professional business entity 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 professional business entity. This definition shall include a provider of extraordinary unspecifiable services as defined in N.J.S.A. 40A:11-5(1)(a), but shall exclude non-profit corporations

under Internal Revenue Code (IRC), Section 501(c)(3), and their officers and board members.

Elective County Office – means the offices of County Executive, members of the Atlantic County Board of Chosen Freeholders, Atlantic County Clerk, Atlantic County Sheriff and Atlantic County Surrogate.

Section 2. Prohibition on Awarding Public Contracts to Certain Contributors

- (a) To the extent that it is not inconsistent with State or Federal Law, Atlantic County or any of its purchasing agents, departments or instrumentalities of the County thereof, as the case may be, will not enter into any agreement or otherwise contract to procure professional, banking, insurance coverage services or any other consulting services provided by a licensed professional, including those awarded pursuant to any process including a fair and open process, if such professional business entity has solicited or made any contribution of money or pledge of a contribution, including in-kind contributions to (i) any campaign committee of any candidate for elective County office or to the current holders of any elective County office, or (ii) to any Atlantic County party committee or (iii) to any municipal party committee within Atlantic County, or (iv) to any candidate committee, state, or county political party or any Political Action Committee (PAC) that is engaged in the financial or in kind support of candidates for elective Atlantic County offices, County elections and/or Atlantic County political parties in excess of the threshold specified in subsection (c) within one calendar year immediately preceding the date of the contract or agreement.
- (b) No professional business entity who submits a proposal for; enters into negotiations for or agrees to any contract or agreement including those awarded by a “fair and open process” pursuant to N.J.S.A. 19:44A-20 et seq. for the rendition of professional services as the case may be, shall knowingly solicit or make any contribution of money, pledge of contribution, including in kind contributions to: (i) any campaign committee of any candidate for elective County office or to the current holder of any elective County office or (ii) to any Atlantic County party committee or (iii) to any municipal party committee within Atlantic County or (iv) to any candidate committee, state or county political party or Political Action Committee (PAC) that is engaged in the financial or in kind support of candidates for Atlantic County elective County office, County elections and/or Atlantic County political parties between the time of first communication between that professional business entity and the County regarding a specific professional services agreement and the latter of the termination of negotiations or rejection of any proposal or the completion of the contract or agreement.
- (c) Anyone meeting the definition of “professional business entity” under this section may annually contribute a maximum of \$300 each or up to the amount of reportable contributions as may from time to time be established by the Election

Law Enforcement Commission (ELEC) for any purpose to any candidate for elective County office or current office holder, or \$500 to any Atlantic County party committee, or municipal party committee within Atlantic County, or to a single or joint campaign account of a candidate committee, state or county political party or 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 to all candidates for elective County offices and to officeholders with ultimate responsibility for the award of the contract, and all County and state political parties, municipal party committees within Atlantic County and PACs referenced in this ordinance combined, without violating subsection (a) of this section.

(d) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:

(1) The County Executive and members of the County Board of Chosen Freeholders, if the contract requires approval or appropriation from the Freeholder Board.

Section 3. 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 candidate for elective county office or to any county party committee, municipal party committee, state or County political party, candidate committee or PAC referenced in this ordinance shall be deemed a violation of this section, nor shall an agreement for property 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. The disclosure requirements of this ordinance shall not apply to contracts awarded subsequent to the effective date if the Request for Proposal process was initiated prior to the effective date.

Section 4. Contribution Statement by Professional Business Entity

(a) Prior to awarding any contract or agreement to procure services, including but not limited to banking, insurance services or other professional type services, the County or any of its purchasing agents or agencies shall receive a sworn statement from the professional business entity under penalty of perjury that the entity has not made a contribution in violation of section 2 of this ordinance. This statement shall be in addition to the disclosure requirements as required by N.J.S.A. 19:44A-20.8.

The professional business entity under penalty of perjury will make the statement that it has not knowingly made a contribution in violation of the ordinance hereof and has not made or solicited contributions through intermediaries, third parties,

immediate relatives, or Political Action Committees for the purpose of concealing the source of the contribution. A professional business entity that files an incorrect Public Disclosure Statement will have its contract with Atlantic County declared null and void and will be disqualified from being awarded any contract for a period of four (4) years.

- (b) Pursuant to P.L. 2005, C.271 ten days prior to awarding any contract or agreement to procure Professional Services with any professional business entity, including those awarded pursuant a “fair and open process”, the County or its purchasing agent or agencies, as the case may be, shall receive a completed Atlantic County Public Disclosure Statement form and provide that for public review at the County Clerk’s office. The Atlantic County Public Disclosure Statement shall list all of the political contributions by the professional business entity to any State, County or municipal committee of a political party; any legislative leadership committee; or any candidate committee of a candidate for, or holder of, an elective office of Atlantic County; or of another elective office within Atlantic County; or of a legislative district which includes all or part of Atlantic County; or any continuing political committee for a period of 12 months prior to the contract year being entered into, noting the candidate or campaign committee, the amount and date, and the nature of the contribution.
- (c) The professional business entity shall have a continuing duty to report any violations of this ordinance 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 County and shall be in addition to any other certifications that may be required by any other provision of law. At a minimum, completion of the Public Disclosure Statement will be an annual requirement of the professional business entity.

Section 5. Return of Excess Contributions

A professional business entity may cure a violation of Section 2 of this ordinance, if, within 30 days after the date on which the applicable ELEC report is published, the professional business entity notifies the Clerk of the Board of Chosen Freeholders in writing and seeks and receives reimbursement of a contribution from the relevant candidate for elective County office or the office holder, or candidate committee, state or County political party or PAC referenced in this Ordinance.

Section 6. Exemption

The contribution limits specified within this Ordinance do not apply to contracts awarded pursuant to a public bid or competitive contract process pursuant to State law or to those contracts awarded as emergency contracts when the public exigency requires the immediate emergency services as determined by resolution of the Freeholder Board after finding those facts which support a conclusion of imminent danger to the health and welfare of the Atlantic County citizenry.

Section 7. Penalty

- (a) It shall be a breach of the terms of the County professional services agreement for a professional business entity to: (i) make or solicit a contribution in violation of this ordinance; (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee of any candidate or holder of any elective County office; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of this ordinance; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of this ordinance; or (viii) directly or indirectly, through or by any other person or means, do any act which would subject that entity to the restrictions of this ordinance. The purpose and intent of the aforementioned prohibition is to prevent entities from circumventing the requirements of this ordinance by working or operating with or through third parties.
- (b) Furthermore, any professional business entity who violates Section 7(a)(ii-viii) shall be disqualified from eligibility for future County contracts for a period of four calendar years from the date of the violation.
- (c) Any professional business entity who violates Section 7(a)(i) shall have its contract with Atlantic County declared null and void at the option of the governing body, unless the violation is cured as provided for in Section 5.

Section 8. Prohibition Against Candidate Receipt of Certain Contributions.

- (a) No candidate or candidate committee for any elective County office in Atlantic County shall accept a contribution from a county committee of a political party, other than the county committee of the county in which the candidate or candidates reside, in excess of \$2,600 per election.
- (b) No candidate or candidate committee for any elective County office in Atlantic County shall accept any monetary or in-kind contribution in excess of \$2,600 per election, directly or indirectly, from a county political party committee if such county political party committee has received any contribution in excess of \$2,600 at any time during the preceding twelve months from a county political party committee, a municipal political party committee, a candidate committee, a continuing political committee, or a PAC organized under §527 of the Internal Revenue Code, located outside of Atlantic County.

- (c) No candidate or candidate committee for any elective County office in Atlantic County shall accept a contribution from a state political party in excess of \$2,600 per election.
- (d) No candidate or candidate committee for any elective County office in Atlantic County shall accept a contribution from a legislative leadership committee in excess of \$2,600 per election.
- (e) No candidate or candidate committee for any elective County office in Atlantic County shall accept a contribution from a continuing political committee or PAC organized under § 527 of the Internal Revenue Code in excess of \$2,600 per election.
- (f) No candidate or candidate committee for any elective County office in Atlantic County shall accept a contribution from another candidate committee, other than from a candidate committee located in at least part of Atlantic County, in excess of \$2,600 per election.
- (g) No candidate or candidate committee for any elective County office in Atlantic County shall accept a contribution from a municipal political party committee, other than a municipal political party committee of a municipality located in Atlantic County, in excess of \$2,600 per election.
- (h) No candidate or candidate committee for any elective County office in Atlantic County shall accept any monetary or in-kind contribution, in excess of \$2,600 per election, directly or indirectly, from a municipal political party committee located in Atlantic County, if such municipal political party committee has received any contribution in excess of \$2,600 at any time during the preceding twelve months from a county political party committee, a municipal political party committee, a candidate committee, a continuing political committee, or a PAC organized under § 527 of the Internal Revenue Code, located outside of Atlantic County.
- (i) Any candidate or candidate committee for elective County office in Atlantic County who has taken contributions in excess of those outlined in Section 8(a)-(h) of this Ordinance shall be subject to a fine of up to \$500 per violation for a first offense and up to \$500 per violation and/or 30 days in the county jail for a subsequent offense pursuant to N.J.S.A. 40:41A-101. Enforcement of this ordinance shall be brought by a citizen complaint which may be filed in any municipal court in Atlantic County with jurisdiction over the alleged violator.

Section 9. Incorporation by Reference:

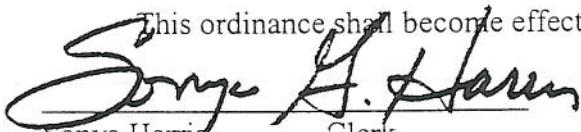
- (a) The regulatory and penalty provisions of this Ordinance shall be incorporated by reference into all Atlantic County contracts for professional services and extraordinary unspecifiable services.

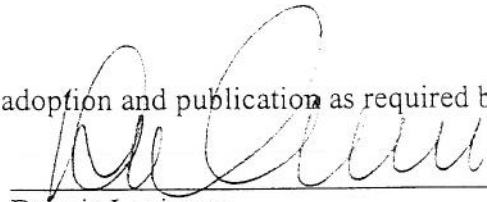
Section 10. Severability and Effectiveness Clause:

- (a) If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.
- (b) Any ordinance inconsistent with the terms of this ordinance is hereby repealed to the extent of such inconsistency.

Section 11. Effective Date:

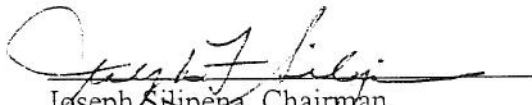
This ordinance shall become effective upon adoption and publication as required by law.

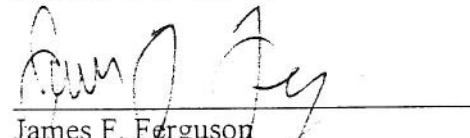

Sonya Harris, Clerk
Board of Chosen Freeholders


Dennis Levinson
County Executive

Dated:

APPROVED AS TO FORM:


Joseph Silipe, Chairman
Board of Chosen Freeholders


James F. Ferguson
County Counsel

CLERK OF THE BOARD OF CHOSEN FREEHOLDERS

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed first reading at a meeting of the Board of Chosen Freeholders of the County of Atlantic held on Tuesday, September 11, 2007 and said Ordinance will be further considered for passage and adoption at the public meeting held thereon at a meeting of the Board of Chosen Freeholders to be held at 201 Shore Road, Stillwater Building, Northfield, NJ on Tuesday, September 25, 2007.

LAJFFC Citizens Campaign\090507 Ord for public contracting-pay to play

NOTICE OF PUBLIC MEETING
SEP 25 2007