

**TOWNSHIP OF WATERFORD
COUNTY OF CAMDEN
STATE OF NEW JERSEY**

ORDINANCE #2012-9

**ORDINANCE CREATING A NEW ARTICLE II, ENTITLED "PAY TO PLAY,"
IN CHAPTER 10 OF THE CODE OF THE TOWNSHIP OF WATERFORD
ENTITLED "CONTRACTS, PROFESSIONAL SERVICE"**

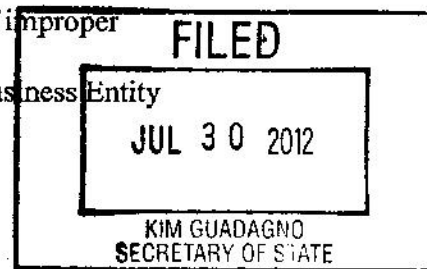
**Establishing That A Business Entity Which Makes Political Contributions To
Municipal Candidates And Municipal Political Parties In Excess Of
Certain Thresholds Shall Be Limited In Its Ability To Receive Public Contracts In
Excess Of \$17,500.00**

WHEREAS, large political contributions from those seeking or performing
Contracts with a municipality raise reasonable concerns on the part of taxpayers and
residents as to their trust in government and its business practices; and

WHEREAS, pursuant to N.J.S.A. 40:48-2, a municipality is authorized to adopt
such ordinances, regulations, rules and by-laws as necessary and proper for good
government, as well as the public health, safety and welfare; and

WHEREAS, pursuant to P.L. 2005, c.271 (codified at N.J.S.A. 40A11-51) a
municipality is authorized to adopt by ordinance, measures limiting the awarding of
public contracts to business entities that have made political contributions and limiting
the contributions that the recipient of such a contract can make during the term of a
contract; and

WHEREAS, in the interest of good government, the people and the Township of
Waterford's desire to establish a policy that will avoid the perception of improper
influence in public contracting and local elections which states that a Business Entity



which makes political contributions to municipal candidates and municipal and county political parties in excess of certain thresholds shall be limited in its ability to receive public contracts from the Township of Waterford.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Township Committee of Township of Waterford, in the County of Camden, and State of New Jersey as follows:

SECTION 1. Chapter 10 of The Code of the Township of Waterford captioned "Contracts, Professional Service" is hereby amended by the addition of Article II, captioned "Pay to Play" to read as follows:

ARTICLE II

Pay to Play

§10-3. DEFINITIONS

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

CAMPAIGN COMMITTEE -- (i) Every candidate for Township of Waterford elective municipal office; (ii) every candidate committee established by or for the benefit of a candidate for Township of Waterford elective municipal office; (iii) every joint candidate committee established in whole or in part by or for the benefit of a candidate for Township of Waterford elective municipal office; (iv) every political party committee of the Township of Waterford; and (v) every political committee, continuing political committee, or other form of association or organization that regularly engages in the support of candidates for the Township of Waterford Municipal elective offices or Township of Waterford Municipal political parties or political party committees. The terms in the foregoing paragraph shall have the meaning prescribed in N.J.A.C. 19:25-1.7.

“CONTRIBUTION -- The meaning prescribed in N.J.A.C. 19:25-1.7. By way of illustration, and not limitation, this definition includes pledges, loans, and in-kind contributions.

CONTRACT FOR PROFESSIONAL OR EXTRAORDINARY SERVICES -- All contracts for “professional services” and “extraordinary unspecifiable services” as such term is used in N.J.S.A. 40A:11-5.

BUSINESS ENTITY -- Whose contributions are regulated by this article: (i) an individual, including the individual’s spouse, and any child/children; (ii) a firm, corporation, professional corporation, partnership, limited liability company, organization, association, and any other manner and kind of business entity; (iii) any person who owns 10% or more of the equity or ownership or income interests in a person or entity as defined in sections (i) and (ii) above and their spouses and child/children; (iv) all partners or officers of such an entity, in the aggregate, and their spouses and child/children; (v) any person, subcontractor, subsidiary, corporation, firm, partnership, limited liability company, organization or association who has received or indefeasibly acquired the right to receive, from a person described in subparagraph (i) above more than \$100,000. in compensation or income of any kind (including, by way of illustration, and not limitation; wages; salaries, sums paid to independent contractors, benefits, dividends, profit-sharing, pension contributions, deferred contributions, stock, stock options or gifts), in any twelve-month period prior to the award of, or during the term of , a contract subject to this article.

§ 10-4. PROHIBITION ON AWARDING PUBLIC CONTRACTS TO CERTAIN CONTRIBUTORS

A. To the extent that it is not inconsistent with state or federal law, the Township of Waterford and any of its departments, instrumentalities or purchasing agents shall not enter into any agreement or otherwise contract to procure “professional services,” as such term is defined at N.J.S.A. 40A:11-2(6) and used at N.J.S.A. 40A:11-5(1)(a)(i), and/or banking, insurance or other consulting service (hereinafter “Professional Services”), nor “extraordinary unspecified services,” as such term is defined at N.J.S.A. 40A:11-2(7) and used at N.J.S.A. 40A:11-5(1)(a)(ii), and/or media, public relations, lobbying, parking garage management or other consulting and/or management service (hereinafter “Extraordinary Unspecified Services”) from any Business Entity if such Business Entity has, within one calendar year immediately preceding the date of the contract or agreement, solicited or made any Contribution in excess of the thresholds specified in Subsection C of this section to (i) a candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in Township of Waterford or a holder of public office having ultimate responsibility for the award of a contract; or (ii) to any Township of Waterford political party committee; (iii) to any continuing political committee or political action committee that regularly engages in the support of the Township of Waterford candidates and elections.

B. No Business Entity who submits a proposal for, enters into, negotiates for, or agrees to any contract or agreement with the Township of Waterford or any of its departments or instrumentalities, for the rendition of Professional Services or Extraordinary Unspecified Services shall, between the time of first communication

between that Business Entity and the municipality regarding a specific agreement for Professional Services or Extraordinary Unspecified Services and the later of the termination of negotiations or rejection of any proposal, or the completion of the performance or specified time period of that contract or agreement, solicit or make, either directly or indirectly, any Contribution in excess of the thresholds specified in Subsection C of this section , to (i) a candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in Township of Waterford, or a holder of public office having ultimate responsibility for the award of a contract;, or (ii) to any Township of Waterford political party committee; or (iii) any Political Action Committee. For purposes of this subsection, an indirect Contribution shall include a Contribution made to a Political Organization (as defined in Subsection F below) that subsequently makes a Contribution to (A) any category of individual or organization described above in phrases (i), (ii) or (iii) of this paragraph; or (B) another Political Organization, which then directly, or through a series of subsequent Contributions to other Political Organizations, makes a Contribution to any category of individual or organization described above in phrases (i), (ii) or (iii) of this paragraph, regardless of whether (1) the Business Entity had knowledge of such Political Organization's or Political Organizations', as the case may be, Contributions; or (2) such Political Organization or Political Organizations, as the case may be, use the funds of the Business Entity in making the contribution or Contributions, as the case may be.

C. The monetary thresholds of this article are: (i) a maximum of \$300 per calendar year for any purpose to any single candidate or candidate committee for Mayor or Governing Body, or \$500 per calendar year to any joint candidates committee for

Mayor or Governing Body, or \$300 per calendar year to a political committee or political party committee of the Township of Waterford; (ii) \$500 maximum per calendar year to any Political Action Committee that regularly engages in the support of Township of Waterford candidates. However, for each Business Entity party to a contract for Professional or Extraordinary Unspecified Services as defined in Subsection A, when such Business Entity's contribution is aggregated with all "persons" defined in "business entity" in § 10-3 above, by virtue of their affiliation to that Business Entity party, a maximum of \$2,500 to all Township of Waterford candidates, candidates committees, joint candidate committees, and holders of public office having ultimate responsibility for the award of a contract, all Township of Waterford political committees and political party committees as described herein 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 the Mayor and Township Committee of the Township of Waterford.

E. Rules regarding subcontractors. No person may be awarded a subcontract to perform under a contract subject to this article if the subcontractor would be disqualified by Subsection A from receiving the contract at the time that the subcontract is awarded. Nor may any person who would be disqualified by Subsection A from receiving the contract perform substantially all of the obligations described in a contract for professional or extraordinary services that is subject to this article.

F. No Waterford Township candidate for Committee shall accept any contribution from any State, County or municipal or other political party or committee,

Political Action Committee, Union or any other association or organization that regularly engages in the support of candidates for elective office (collectively, "Political Organizations" and each, a "Political Organization") to the extent the Political Organization received funds constituting such contribution from another Political Organization or individual and that results in contributions that exceed the contribution thresholds, limits and restrictions set forth in this article. It is the express intent and purpose of this provision to prohibit the practice commonly known as "wheeling".

G. Any Union whose membership has a direct interest in any contract with the Township of Waterford shall be subject to the contribution thresholds set forth in Subsection C above.

§ 10-5. CONTRIBUTIONS MADE PRIOR TO THE EFFECTIVE DATE

No contribution or solicitation of contributions made prior to the effective date of this article shall be deemed to give rise to a violation of this article.

§ 10-6. CONTRACT RENEWAL

No contract subject to this article may be renewed, extended, or materially modified unless the resulting renewal, extension, or modification would be allowable under the provisions of this article if it were an initial contract.

§ 10-7. CONTRIBUTION STATEMENT BY BUSINESS ENTITY

A. Prior to awarding any contract or agreement to procure "Professional Services" or "Extraordinary Unspecified Services" from any Business Entity, the Township of Waterford or its purchasing agents and departments, as the case may be, shall receive a sworn statement from said Business Entity which is the intended recipient of said contract that he/she/it has not made a Contribution in violation of § 10-4 of this

article. The Township of Waterford, its purchasing agents and departments shall be responsible for informing the Township Committee that the aforementioned sworn statement has been received and that the Business Entity is not in violation of this article, prior to awarding the contract or agreement.

B. A Business Entity shall have a continuing duty to report to the Township of Waterford any contributions that constitute a violation of this article that are made during the negotiation, proposal process or the duration of a contract. The Township of Waterford, its purchasing agents and departments shall be responsible for informing the governing body within ten business days after receipt of said report from the Business Entity, or at the next township Committee Meeting following receipt of said report from the Business Entity, or whichever comes first.

C. The certification required under this section shall be made prior to entry into the contract or agreement with the Township of Waterford, or prior to the provision of services or goods, as the case may be, and shall be in addition to any other certifications that may be required by any other provision of law.

§ 10-8. RETURN OF EXCESS CONTRIBUTIONS

A Business Entity that is a party to a contract for Professional Services or Extraordinary Unspecified Services may cure a violation of § 10-4 of this article if, within 30 days after the date on which the applicable ELEC report is published, said Business Entity notifies the municipality in writing and seeks and receives reimbursement of the Contribution from the recipient of such Contribution.

§ 10-9. EXEMPTIONS

The contribution limitations prior to entering into a contract in § 10-4A do not apply to contracts which are awarded to the lowest responsible bidder after public advertising for bids and bidding therefor, within the meaning of N.J.S.A. 40A:11-4, or are awarded in the case of emergency under the N.J.S.A. 40A:11-6. There is no exemption for contracts awarded pursuant to a "Fair and Open Process" under N.J.S.A. 19:44A-20 et seq.

§ 10-10. VIOLATIONS AND PENALTIES

A. It shall be a material breach of the terms of a Township of Waterford agreement or contract for Professional Services or Extraordinary Unspecified Services when a Business Entity that is a party to such agreement or contract has:

- (1) Made or solicited a Contribution in violation of this article;
- (2) Knowingly concealed or misrepresented a Contribution given or received;
- (3) Made or solicited Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution;
- (4) Made or solicited any contribution on the condition or with the agreement that it will be contributed to a candidate, candidate committee or joint committee of any candidate for elective municipal office in the Township of Waterford, or a holder of public office having ultimate responsibility for the award of a contract, or any Township of Waterford political committee or political party committee, or any Political Action Committee;

(5) Engaged or employed 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 professional Business Entity itself, would subject that entity to the restrictions of this article;

(6) Funded contributions made by third parties, including consultants, attorneys, family members and employees;

(7) Engaged in any exchange of Contributions to circumvent the intent of this article; or

(8) Directly or indirectly, through or by any other person or means, done any act which if done directly would subject that entity to the restriction of this article.

B. Furthermore, any Business Entity that violates Subsection A(1) through (8) above shall be disqualified from eligibility for future Township of Waterford contracts for a period of four calendar years from the date of the violation.

C. Any person who knowingly, purposely, or recklessly violates any provision of this article, or who conspires with another person to violate any provision of this article, or who, with the purpose of promoting or facilitating a violation of this article, solicits another person to commit it, or aids or agrees, or attempts to aid another person in planning or committing it, or aids or agrees, or attempts to aid another person in planning or committing it, shall be subject to punishment, including fines and/or imprisonment as set forth in N.J.S.A. 19:44A-22, which penalty provisions shall be utilized by the Township of Waterford in the enforcement of this article.

SECTION 2. SEVERABILITY

If any provision of this Ordinance, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby, and to this extent the provisions of this ordinance are severable.

SECTION 3. REPEALER

All ordinances or parts of ordinances which are inconsistent with any provisions of this ordinance are hereby repealed as to the extent of such inconsistencies.

SECTION 4. EFFECTIVE DATE

This Ordinance shall take effect immediately upon adoption and publication as required by law.

Virginia L. Chandler
Virginia L. Chandler
Township Clerk

Charles Hamilton, Deputy Mayor
Maryann Merlino
Mayor

Introduced: May 9, 2012
Tabled: June 13, 2012
Amended: June 27, 2012
Hearing: July 18, 2012
Adopted: July 18, 2012 (As Amended)

Certified to be a true copy of an Ordinance adopted as amended by the Mayor and Township Committee of the Township of Waterford at a regular meeting held on July 18, 2012.

Date: July 18, 2012

Virginia L. Chandler
Virginia L. Chandler
Township Clerk

ORDINANCE NUMBER 2012-9

NOTICE OF PENDING ORDINANCE

THE ORDINANCE PUBLISHED HEREWITH WAS INTRODUCED AND PASSED UPON FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WATERFORD IN THE COUNTY OF CAMDEN, NEW JERSEY HELD ON MAY 9, 2012 AND SUBSEQUENTLY AMENDED AT A TOWNSHIP MEETING ON JUNE 27, 2012. IT WILL BE FURTHER CONSIDERED FOR FINAL PASSAGE AFTER PUBLIC HEARING THEREON, AT A MEETING OF SAID TOWNSHIP COMMITTEE TO BE HELD IN THE MUNICIPAL BUILDING, 2131 AUBURN AVENUE, ATCO, NEW JERSEY, ON JULY 18, 2012 BEGINNING AT 7:30 PM. DURING THE WEEK PRIOR TO AND UP TO AND INCLUDING THE DATE OF SUCH MEETING, COPIES OF SAID ORDINANCE WILL BE MADE AVAILABLE AT THE CLERK'S OFFICE IN SAID MUNICIPAL BUILDING TO THE MEMBERS OF THE GENERAL PUBLIC WHO SHALL REQUEST SAME.

VIRGINIA L. CHANDLER, RMC
TOWNSHIP CLERK
TOWNSHIP OF WATERFORD

TOWNSHIP OF WATERFORD
COUNTY OF CAMDEN
STATE OF NEW JERSEY

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**Establishing That A Business Entity Which Makes Political Contributions To Municipal
Candidates And Municipal Political Parties In Excess Of Certain Thresholds Shall Be Limited In
Its Ability To Receive Public Contracts In Excess Of \$17,500.00**

Notice is hereby given that the foregoing ordinance was duly adopted as amended by the Township Committee of the Township of Waterford after final reading and public hearing at a Meeting of the Township Committee held on July 18, 2012 in the Municipal Building, 2131 Auburn Avenue, Atco, New Jersey.

VIRGINIA L. CHANDLER, RMC
TOWNSHIP CLERK
TOWNSHIP OF WATERFORD