

TOWNSHIP OF UPPER

CAPE MAY COUNTY

ORDINANCE

ORDINANCE NO. 010-2012

**RE: AN ORDINANCE ESTABLISHING A POLICY FOR THE AWARDING OF PROFESSIONAL OR EXTRAORDINARY SERVICES CONTRACTS PURSUANT TO THE STATE OF NEW JERSEY'S "PAY TO PLAY" LEGISLATION**

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. 40A:11-51) 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 Committee of the Township of Upper desire to establish a policy that will avoid the perception of improper influence in public contracting and local elections;

WHEREAS, it shall be the policy of the Township of Upper to create such a regulation which states that a Business Entity which makes political contributions to municipal candidates and municipal parties in excess of certain thresholds shall be limited in its ability to receive public contracts from the Township of Upper; and,

NOW, THEREFORE, BE IT ORDAINED by the Township of Upper, in the County of County of Cape May, and State of New Jersey, as follows:

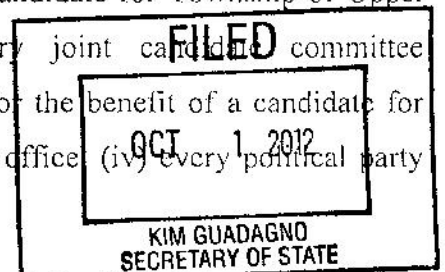
**SECTION 1:** Chapter II, Section 9.8 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, is hereby adopted as follows:

**2-9.8 PROFESSIONAL OR EXTRAORDINARY SERVICES CONTRACTS.**

(1) Definitions

As used in this ordinance:

- (a) "Campaign Committee" means (i) every candidate for Township of Upper elective municipal office; (ii) every candidate committee established by or for the benefit of a candidate for Township of Upper 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 Upper elective municipal office; (iv) every political party



Certified as a true copy of Ordinance No. 010-2012 adopted by the Township Committee of the Township of Upper at a regular meeting held on 9-24-12.  
*Paula...*

committee of the Township of Upper; 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 Upper municipal elective offices or Township of Upper municipal political parties or political party committees. The terms in the foregoing paragraph have the meaning prescribed in N.J.A.C. 19:25-1.7.

- (b) "Contribution" has 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.
- (c) A "contract for professional or extraordinary services" means all contracts for "professional services" and "extraordinary unspecifiable services" as such term is used in N.J.S.A. 40A:11-5.
- (d) For purposes of this Ordinance, a "Business Entity" whose contributions are regulated by this ordinance means: (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 subparagraphs (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 \$100,000.00 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 (12) month period prior to the award of, or during the term of, a contract subject to this ordinance; and (vi) all persons who are an "affiliate" of a Business Entity as defined in subparagraphs (i), (ii) and (v) above, as such term is used in 11 U.S.C. 101(2).

(2) 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 Upper 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 solicited or made any Contribution to (i) a candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in Township of Upper or a holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Township of Upper political committee or political party committee, in excess of the thresholds specified in subparagraph (c) below within one calendar year immediately preceding the date of the contract or agreement.

- (b) No Business Entity who submits a proposal for, enters into negotiations for, or agrees to any contract or agreement with the Township of Upper or any of its departments or instrumentalities, for the rendition of Professional Services or Extraordinary Unspecified Services shall knowingly solicit or make any Contribution, to (i) a candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in Township of Upper, or a holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Township of Upper political committee or political party committee 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.
- (c) The monetary thresholds of this Ordinance are a maximum of \$300 per calendar year each for any purpose to any 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 Upper. However, for each Business Entity party to a contract for Professional or Extraordinary Unspecified Services as defined in subparagraph (1)(a), or engaged in negotiations for a contract defined in subparagraph (1)(a), when such Business Entity's Contribution is aggregated with all "persons" defined in subparagraph (1)(d) of "Definitions" above, by virtue of their affiliation to that Business Entity party, a maximum of \$2,500 to all Township of Upper

candidates, candidate committees, joint candidate committees, and holders of public office having ultimate responsibility for the award of a contract, all Township of Upper political committees and political party committees as described herein combined, without violating subparagraph (a) of this paragraph.

- (d) For purposes of this Ordinance, the office that is considered to have ultimate responsibility for the award of the contract shall be (i) the Township Committee, if the contract requires approval or appropriation from the Governing body, or (ii) the Mayor, 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.
- (e) Rules regarding subcontractors. No person may be awarded a subcontract to perform under a contract subject to this Ordinance, if the subcontractor would be disqualified by subparagraph (a) from receiving the contract at the time that the subcontract is awarded. Nor may any person who would be disqualified by subparagraph (a) from receiving the contract perform substantially all of obligations described in a contract for professional or extraordinary services that is subject to this ordinance.

### (3) Contributions Made Prior to the Effective Date

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

### (4) Contract Renewal

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

### (5) 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 Upper 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 paragraph (2) of this Ordinance. The Township of Upper, 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 ordinance, prior to awarding the contract

or agreement.

- (b) A Business Entity shall have a continuing duty to report to the Township of Upper any Contributions that constitute a violation of this act that are made during the negotiation, proposal process or the duration of a contract. The Township of Upper, its purchasing agents and departments shall be responsible for informing the governing body within ten (10) 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 paragraph shall be made prior to entry into the contract or agreement with the Township of Upper, 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.

(6) 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 paragraph (2) of this Ordinance, 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.

(7) Exemptions

The contribution limitations prior to entering into a contract in paragraph (2)(a) do not apply to contracts which (i) 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 (ii) are awarded in the case of emergency under 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.

(8) Penalty

- (a) It shall be a material breach of the terms of a Township of Upper agreement or contract for Professional Services or Extraordinary Unspecified Services when a Business Entity that is a party to such agreement or contract has: (i) made or solicited a Contribution in violation of this Ordinance; (ii) knowingly concealed or misrepresented a Contribution given or received; (iii) made or solicited Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) made or solicited any Contribution on the condition or with the agreement that it will be re-contributed to a

candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in Township of Upper, or a holder of public office having ultimate responsibility for the award of a contract, or any Township of Upper political committee or political party committee; (v) 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 Ordinance; (vi) funded contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engaged 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, done any act which if done directly would subject that entity to the restrictions of this Ordinance.

- (b) Furthermore, any Business Entity that violates paragraph (8)(a)(i-viii) shall be disqualified from eligibility for future Township of Upper contracts for a period of four (4) calendar years from the date of the violation.
- (c) Any person who knowingly, purposely, or recklessly violates any provision of this ordinance, or who conspires with another person to violate any provision of this ordinance, or who, with the purpose of promoting or facilitating a violation of this ordinance, solicits another person to commit 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 fixed by law for violations of the ordinances of the Township of Upper.

(9) Citizens Private Right of Action

In addition to any rights that were heretofore available, or which may hereafter be available, to citizens, taxpayers, or associations, to challenge violations of this ordinance, every person aggrieved by a violation of the ordinance, or any taxpayer or resident of the Township of Upper has the right, consistent with the Rules of Court, to file charges in a court of competent jurisdiction, and/or to pursue a civil action for a violation of this ordinance in a court of competent jurisdiction, and to seek and obtain declaratory, injunctive, or other legal or equitable relief, including but not limited to, attorneys fees and costs, arising from or related to a violation of this ordinance.

**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 upon final adoption and publication as required by law.

**SECTION 5: CODIFICATION:** This Ordinance shall be codified in the Upper Township Code at the section referenced to above.

ATTEST:

  
BARBARA L. YOUNG, Deputy Twp. Clerk

  
RICHARD PALOMBO, Mayor

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 10<sup>th</sup> DAY OF SEPTEMBER, 2012 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 24<sup>th</sup> DAY OF SEPTEMBER, 2012 AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEWJERSEY.

BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

BARBARA L. YOUNG, DEPUTY TWP. CLERK  
TOWNSHIP OF UPPER



Legislative History:

Introduced: September 10, 2012

Publication: September 13, 2012

Newspaper(s): Press of Atlantic City

Second Reading & Public Hearing: September 24, 2012

Final Adoption: September 24, 2012

Final Publication Date: September 27, 2012

I certify that the foregoing Ordinance was finally adopted by the Township Committee of the Township of Upper on September 24, 2012 and notice of adoption was thereafter published pursuant to law in The Press of Atlantic City on September 27, 2012.

  
BARBARA L. YOUNG, Deputy Township Clerk