

TOWNSHIP OF UPPER

CAPE MAY COUNTY

ORDINANCE

ORDINANCE NO. 012-2012

RE: AN ORDINANCE AMENDING ORDINANCE NO. 010-2012 AND MODIFYING THE STANDARDS 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;

WHEREAS, the Township of Upper previously adopted Ordinance No. 010-2012 which established standards for the award of Professional or Extraordinary Services contracts and now desires to amend said ordinance and standards; 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 amended as follows:

2-9.8 PROFESSIONAL OR EXTRAORDINARY SERVICES CONTRACTS.

- (1) Unchanged.
- (2) Prohibition on Awarding Public Contracts to ~~Certain Contributors~~
  - (a) To the extent that it is not inconsistent with state or federal law, the

FILED  
DEC 11 2012  
KIM GUADAGNO  
SECRETARY OF STATE

Certified as a true copy of Ordinance No. 012-2012 adopted by the Township Committee of the Township of Upper at a regular meeting held on 11-26-12  
 Jeanne L. Heron, Dep. Mun. Clerk

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 within one calendar year immediately preceding the date of the contract or agreement.

(b) Unchanged.

(c) 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.

(d) 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.

(e) Deleted.

(3) Unchanged.

(4) Unchanged.

(5) Unchanged.

(6) Unchanged.

(7) Unchanged.

(8) Unchanged.

(9) Unchanged.

**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:

  
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WANDA GAGLIONE, Township Clerk

  
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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 22<sup>nd</sup> DAY OF OCTOBER, 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 26<sup>th</sup> DAY OF NOVEMBER, 2012 AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEWJERSEY.

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

WANDA GAGLIONE, TOWNSHIP CLERK  
TOWNSHIP OF UPPER

Legislative History:

Introduced: October 22, 2012

Publication: October 26, 2012

Newspaper(s): Press of Atlantic City

Second Reading & Public Hearing: November 26, 2012

Final Adoption: November 26, 2012

Final Publication Date: November 30, 2012

I certify that the foregoing Ordinance was finally adopted by the Township Committee of the Township of Upper on November 26, 2012 and notice of adoption was thereafter published pursuant to law in The Press of Atlantic City on November 30, 2012.

  
WANDA GAGLIONE, Township Clerk