

AN ORDINANCE
1427-2008

AN ORDINANCE ADOPTING A CITY CODE OF PUBLIC CONTRACTING

The City is desirous of adopting a Code of Public Contracting and Pay to Play Code on Public Contracting and Play to Pay Reform:

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PERTH AMBOY:

1. Prohibition on Awarding Public Contracts to Certain Contributors.

a. Any other provision of law to the contrary notwithstanding, the City of Perth Amboy, its purchasing agent or those of its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract to procure, without public bid, any service which the City would be permitted to procure on a "no bid" basis pursuant to N.J.S.A. 40A:11-5(l)(a)(i) and 40A:11-5(l)(m) (the "statute") from any professional business entity, if that entity has solicited on behalf of, or made any contribution of money, or pledged a contribution, including in-kind contributions, to a campaign committee of any Perth Amboy municipal candidate or holder of the public office, who would have, or has, ultimate responsibility for the award of the contract, in excess of the thresholds specified in paragraph c., within twelve (12) consecutive months immediately preceding the date of the award of the contract.

b. No professional business entity which enters into negotiations for, or agrees to, any contract or agreement not the subject of public bidding with the City or its independent authorities for the rendition of services described in paragraph a. shall knowingly solicit on behalf of, or make any contribution of money, or pledge of a contribution, including in-kind contributions, to any Perth Amboy candidate or holder of the public office who would have, or has, ultimate responsibility for the award of the contract, between the time of first communications between that professional business entity and the City regarding a specific professional services agreement and the later of the termination of negotiations or the completion of the contract or agreement.

c. (i) Subject to the limitation in (ii) of this paragraph, any entity meeting the definition of "professional business entity" under this section may annually contribute a maximum of four hundred (\$400.00) dollars to each candidate, for Mayor or Council.

d. For purposes of this section, a "professional business entity" is any entity seeking or performing without competitive bidding, a public contract for services permissible under the statute and which includes an individual including the individual's spouse, if any, and any child living at home; a person; firm; corporation; professional corporation; partnership; organization; or association. The definition of a professional business entity includes all principals who own ten (10%) percent or more of the equity in the corporation or business trust, partners, and officers employed by the entity as well as any subsidiaries directly controlled by the business entity.

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

1. The City of Perth Amboy, if the contract requires approval or authorization from the Council.
2. The Mayor of the City of Perth Amboy, if the contract requires approval of the Mayor, or if a public officer who is responsible for the award of contract is appointed by the Mayor.

Contributions Made Prior to the Effective Date of this Section.

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, 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.*

2. Contribution Statement by Professional Business Entity.

a. Prior to awarding any contract or agreement without public bid, any service which the City would be permitted to procure on a "no bid" basis pursuant to the statute to any professional business entity, the City 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 it has not made a contribution in violation of this ordinance.

b. The professional business entity shall have a continuing duty to report any violations of this section 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 City and shall be in addition to any other certifications that may be required by any other provision of law.

3. Return of Excess Contributions.

A professional business entity or local candidate or officeholder in this section may cure a violation of this ordinance if, within thirty (30) days after the general election, the professional business entity notifies the City Council in writing and seeks and receives reimbursement of a contribution from the entity to whom the contribution was made.

4. Penalty.

a. All City agreements with Professional Business Entities shall provide that it shall be a material breach of the terms of the government contract for a professional business entity to violate, or to aid or abet a violation, 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 who knowingly fails to reveal a contribution made in violation of this section, 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 Perth Amboy contracts for a period of forty-eight (48) months from the date on which the violation is finally determined.

5. Prohibition of Entering Into or Amending Redevelopment Agreements with Certain Contributors.

a. Any other provision of law to the contrary any redevelopment entity designated by the City Council excluding the (the "redevelopment entity"), shall not enter into an agreement, amend an agreement, or otherwise contract with any redeveloper for the planning, replanning, construction or undertaking of any redevelopment project, including the acquisition or leasing of any public property in conjunction with the redevelopment of any area within the City of Perth Amboy, ("City") pursuant to the Local Redevelopment and Housing Law, if that redeveloper has made any contribution of money or pledge of a contribution, including in-kind contributions, during the applicable time period as specified below, to a campaign committee of any candidate for City Council municipal office or holder of municipal public office within the City (at the time the contribution was made), having responsibility for arranging, entering into, or approving the redevelopment agreement, or for appointing those who enter into the agreement on behalf of the redevelopment entity or the City. For the purposes of this section, the "applicable time period" shall be i.) for redevelopment areas which have been determined and the redevelopment process begun prior to the effective date of this section* the time period between the date on which the redevelopment entity first seeks Requests For Qualifications ("RFQ") from potential developers to redevelop the property and the date of entering into the redevelopment agreement, or the twelve (12) months prior to entering into the agreement, whichever is longer; or ii.) for proposed redevelopment areas considered subsection to the effective date of this section* from the time period between the date the property(ies) which are the subject of the proposed redevelopment area are included in a memorializing resolution adopted by the Governing Body directing the Planning Board to conduct a preliminary investigation to determine if the site(s) are in need of redevelopment and the date of entering into a redevelopment agreement, or twelve (12) months prior to entering into a redevelopment agreement, whichever is shorter.

b. All redevelopment agreements or amendments thereto entered into by a redevelopment entity shall contain a provision prohibiting redevelopers as defined in paragraph c. from soliciting or making any contribution of money or pledge of a contribution including in-kind contributions, to any candidate for Perth Amboy municipal office or holder of municipal public office within the City (as the time the contribution was made) having responsibility for

arranging, entering into, or approving the redevelopment agreement, or for appointing those who enter into the redevelopment agreements between the time the City or the redevelopment entity first receives a proposal from a prospective redeveloper and the later of the termination of negotiations with the prospective redeveloper or the completion for all matters specified or the completion of all matters specified in the redevelopment agreement. Any redeveloper making a contribution in contradiction of the herein required contract provision shall be in breach of the redevelopment agreement.

c. As defined in N.J.S.A. 40A:12A-3, (the "Act") a "redeveloper" means any person, firm, corporation partnership or limited liability company that shall enter into or propose to enter into a contract with a City or its designated redevelopment entity for the redevelopment or rehabilitation of an area in need of redevelopment, or an area in need of rehabilitation, or any part thereof, under the provisions of the Act, or for any construction or other work forming part of a redevelopment or rehabilitation project. For purposes of this ordinance the definition of a redeveloper includes an individual, including an individual's spouse, and any nonemancipated child living at the same address; firm; corporation; professional corporation; partnership; organization or association, including all principals who own ten (10%) percent or more of the equity in the corporation or business trust, partners and officers employed by the entity as well as any subsidiaries directly controlled by the redeveloper, and excluding sub-contractors or subsidiaries in which the redeveloper has a ten (10%) percent or more ownership interest.

d. For the purposes of this section, the office that is considered to have responsibility for arranging and entering into the redevelopment agreement under the Act shall be:

1. The City of Perth Amboy Council (the "Council") if the Council has designated itself as the redevelopment entity, the redevelopment agreement requires approval or appropriation from the council or a public officer who is responsible for arranging and entering into the redevelopment agreement if that public officer is appointed by Council; or
2. The Mayor of Perth Amboy if the redevelopment agreement requires the approval of the Mayor or a public officer who is responsible for arranging and entering into the redevelopment agreement if that public officer is appointed by the Mayor; or
3. A designated redevelopment entity, if the redevelopment agreement requires the approval of the redevelopment entity.

6. Contributions Made Prior to the Effective Date.

No contribution of money or any other thing of value, including in-kind contributions, made by a redeveloper to any of the candidates, office holders, or entities shall be deemed a violation of this section nor shall an agreement for redevelopment projects of any kind

whatsoever be disqualified thereby if that contribution or agreement was made by the redeveloper prior to the effective date of this section.*

7. Notice Given by Municipality; Sworn Statement of Redeveloper.

a. It shall be the municipality's continuing responsibility to give notice of this section when the municipality gives notice of redevelopment pursuant to N.J.S.A. 40A:12A-6 and when the municipality adopts a resolution directing the Planning Board to prepare a redevelopment plan and at the time that the municipality adopts the ordinance to implement the redevelopment plan.

b. Prior to arranging a redevelopment agreement being approved by the redevelopment entity or the City with any redeveloper, the City or redevelopment entity shall receive a sworn statement from the redeveloper that the redeveloper has not made any contribution in violation of this section. Furthermore, the redeveloper shall have a continuing duty to report any violations of this section that may occur during the pendency of the redevelopment agreement, and until all specified terms of the agreement have been completed.

8. Contribution Restrictions and Disclosure Requirement Applicability to Consultants.

a. The contribution and disclosure requirements in this section shall apply to all redevelopers as well as professionals, as defined in N.J.S.A. 40A:11-1 et seq., consultants or lobbyists contracted or employed by the redeveloper ultimately designed as the redeveloper to provide services related to the:

1. Lobbying of municipal government officials in connection with the examination of an area and its designation as an area in need of redevelopment or in connection with the preparation, consultation and adoption of the redevelopment plan;

2. Obtaining the designation or appointment as redeveloper;

3. Negotiating the terms of a redevelopment agreement or any amendments or modifications thereto; and/or

4. The performance of professional services in completing the terms of the redevelopment agreement by consultants, lobbyists, or professional; it being understood that nothing herein shall be interpreted to include tradesmen, craftsmen, or other persons licensed in connection with performing construction or construction relate services (e.g. electricians, plumbers, etc.) in this prohibition.

b. It shall be a violation of this section, and shall require immediate termination of the consultant's contract, for a consultant to violate the contribution limits or fail to disclose a contribution as required in this section.

c. A redeveloper who participates in, or facilitates, the circumvention of the contribution restrictions through consultants or professionals shall be deemed to be in violation of this section.

d. All redevelopment agreements or amendments thereto shall include a provision providing for the enforcement of the consultant's termination in the event of a violation of this section.

9. Return of Excess Contributions.

If a redeveloper inadvertently makes a contribution that would otherwise bar it from entering into a redevelopment contract under the terms of this section, or makes a contribution during the duration of a redevelopment contract in violation of this section, the redeveloper may notify the City Council in writing of the contribution and request a full refund from the municipal candidate..

10. Penalty.

a. It shall be a breach of the redevelopment agreement for a redeveloper to: (i) make or solicit a contribution for an entity described in 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 the public office of Perth Amboy (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 redeveloper itself, would subject that entity to the restrictions of this section; (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 section; 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 section.

b. All redevelopment agreements and amendments thereto shall provide that the City or its designated redevelopment entity shall have the authority to impose such fines and penalties, up to and including termination in the event of a breach of the redevelopment agreement.

c. Furthermore, any redeveloper who violates the terms of this ordinance above shall be disqualified from eligibility for future Perth Amboy redevelopment agreements for a period of four (4) calendar years from the date of the violation.

11. Effective Date.

This Ordinance shall take effect immediately upon passage, publication and approval according to law.

12. Provisions.

The provisions of this section shall be severable. In the event that any portion of this section is found to be invalid for any reason by any Court of competent jurisdiction, such judgment shall be limited in its effect only to that portion of the section actually adjudged invalid and shall not be deemed to affect the operation of any other portion thereof, which shall remain in full force and effect.

13. Repealer.

All other ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.)

ATTEST:

Victoria Ann Kubsch
VICTORIA ANN KUBSCH
Assistant City Clerk

APPROVED AS TO FORM:

[Signature]
FRANK G. CAPECE
Director of Law

Peter J. Jimenez
PETER J. JIMENEZ
Council President

APPROVED: *[Signature]* 6/25/08
JOSEPH VAS
Mayor

FILED
SEP - 3 2009
NINA MITCHELL WELLS
SECRETARY OF STATE

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