

ORDINANCE NO. 2011-05

30116

**AN ORDINANCE OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX,
AND STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING
CHAPTER 3, "ADMINISTRATION OF GOVERNMENT," OF THE REVISED
GENERAL ORDINANCES OF THE TOWNSHIP OF ANDOVER WITH THE
ADDITION OF ARTICLE XXIX ENTITLED "AWARDING OF PUBLIC
PROFESSIONAL SERVICE AND VENDOR CONTRACTS"**

WHEREAS, the residents of the Township of Andover (the "Township") have a right to expect that the exercise of the duties and responsibilities of their elected municipal officials and the Township's employees and officials, are not influenced by political contributions; and

WHEREAS, pursuant to N.J.S.A. 40A:11-5 and N.J.S.A. 40:48-2, municipalities have the right to establish rules and procedures for contracting with professional business entities; and

WHEREAS, nothing contained herein shall be interpreted to impair in any way the right of a professional service provider secured by the First Amendment of the Constitution of the United States of America and further secured by Article 1, Paragraph 6 of the Constitution of the State of New Jersey to exercise its right to freedom of speech and its right to speak, write and publish sentiments on all subjects.

NOW THEREFORE BE IT ORDAINED, by the Township Committee of the Township of Andover, in the County of Sussex, and State of New Jersey, that the policy of the Township of Andover will be to create such a regulation which states that a professional service provider or vendor which makes political contributions beyond a certain amount to elected officials who are responsible for awarding professional services contracts shall be ineligible to receive a public professional service and/or vendor contract from the Township of Andover.

SECTION 1. Chapter 3, Administration of Government, of the Revised General Ordinances of the Township of Andover is hereby supplemented with the addition of Article XXIX entitled, Awarding of Public Professional Service and Vendor Contracts, to read as follows:

ARTICLE XXIX Awarding of Public Professional Service and Vendor Contracts.

§3-99 Definitions.

As used in this Article:

Agreement to purchase goods or services shall mean an agreement for the purchasing of goods to or on behalf of the Township and any vendor contracts for the procurement of goods or services not considered "professional" as defined in the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., above the public bid threshold that may be established from time to time by the State of New Jersey, and without regard to whether the said agreement or contract is awarded pursuant to and in accordance with the "Fair and Open" procedures as established in the "Pay-to-Play" Law, N.J.S.A. 19:44A-20.4, et seq.

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KIM GUADAGNO
SECRETARY OF STATE

Agreement for professional services shall mean an agreement for the rendering of professional services to or on behalf of the Township, as defined herein, and without regard to whether the said agreement or contract is awarded pursuant to and in accordance with the "Fair and Open" procedures as established in the "Pay-to-Play" Law, N.J.S.A. 19:44A-20.4, et seq.

Campaign contribution shall mean Andover campaign contribution, County campaign contribution and/or pass-through campaign contribution as defined herein.

County campaign contribution shall mean any contribution, whether in the form of money, free service or pledge, including without limitation any in-kind contributions, or purchases of tickets, advertisements or the like, directly or indirectly, to any County level political organization or County level campaign committee or fund within the County of Sussex; the term "directly or indirectly" as used herein shall further mean and include any campaign contributions made through intermediaries or third-parties for the purpose of concealing the source of the contributions(s).

Entity shall mean any corporation, professional corporation, joint venture, general or limited partnership, trust or limited liability company, or subsidiary or parent of any of the foregoing.

Ineligible vendor shall mean any vendor who has during the preceding three-year period made campaign contributions in excess of the limits set forth in Section 3-101 of the Revised General Ordinances of the Township of Andover.

Ineligible vendor list shall mean a list of ineligible vendors maintained by the Township Administrator or his designee of the Township in accordance with the provisions of this Chapter.

Pass-through campaign contributions shall mean any contribution, whether in the form of money, free service or pledge, including without limitation any in-kind contributions, or purchases of tickets, advertisements or the like, directly or indirectly, to any campaign committee or election fund of any candidate for, or holder of the office of Township Committee of the Township, or to any municipal or party committee or political club or organization within the Township, that is received from the election fund or other campaign account of any elected official or candidate for any office other than Township Committee of the Township, or from any County political organization, County campaign committee or political action committee or fund within or without the County of Sussex.

Township shall mean the Township of Andover as a municipal entity, and any elected official, officer, employee, agent department, board or commission of the Township of Andover.

Vendor shall mean any individual person or entity who either negotiates, bids or otherwise seeks to enter into an agreement to purchase goods or services as defined herein. In the case of any vendor who is an individual person, the term shall also include the individual's spouse, if any, and any child living at home, as well as any entity by whom any of them are employed or in which any of them have an ownership interest in excess of ten (10%) percent. In the case of any vendor who is an entity, the term shall also include each and every principal of the said entity who has an ownership interest in excess of ten (10%) percent in the entity, or any parent or subsidiary of the entity, and their spouses, if any, and any child living at home.

Vendor's certification of eligibility shall mean a certification in lieu of affidavit pursuant to which each vendor shall list each and every Andover campaign contribution and each County campaign contribution the vendor has made during the preceding year.

Andover campaign contribution shall mean any contribution, whether in the form of money, free service or pledge, including without limitation any in-kind contributions, or purchases of tickets, advertisements or the like, directly or indirectly, to any campaign committee or election fund of any candidate for, or holder of the office of, Mayor or Council of the Township, or to any municipal or party committee or political club or organization within the Township; the term "directly or indirectly" as used herein shall further mean and include any campaign contributions made through intermediaries or third-parties for the purpose of concealing the source of the contribution(s).

§3-100 Prohibition on Awarding Contracts for Goods or Services to Certain Campaign Contributors.

The Township shall not enter into any agreement for any professional service or for the purchase of goods or other services with any vendor that has made any campaign contribution in excess of the limits specified in Section 3-101 of the Revised General Ordinances of the Township of Andover, during the one (1) year period immediately preceding the date of the agreement, or during the term of any such agreement.

This section shall apply to all professional services contracts, with the exception of (D) and (E) below, and to all contracts for the purchase of goods and other services with the exception of the following items:

- (A) Contracts that are awarded as a result of open public bidding as set forth under the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.;
- (B) Contracts that are offered to the lowest, responsible, qualified bidder after public advertising for bids and quotes, pursuant to the provisions of the competitive contracting requirement of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.;
- (C) Contracts with an anticipated aggregate value less than \$17,500;
- (D) Contracts that are awarded due to certain public exigencies pursuant to N.J.S.A. 19:44A-20.12;
- (E) Contracts with any New Jersey Government and/or Federal Government Agencies;
- (F) Contracts with banking institutions, insurance and public utility companies that are regulated by State restrictions on political contributions; and
- (G) Contracts the Township enters into for the purchase and acquisition of open space.

§3-101 Andover and County Contribution Limits Affecting Vendor Eligibility and Conflicts of Interest.

a. Campaign contribution limits affecting the eligibility of vendors, pursuant to subsections 3-100 and 3-102, to enter into or be paid pursuant to agreements for the purchase of goods or services are as follows:

1. The maximum combined amount of Andover campaign contributions that may be made by a vendor during any election cycle shall not exceed three hundred (\$300.00) dollars.
2. The maximum amount of County level campaign contributions that may be made by a vendor shall not exceed three hundred (\$300.00) dollars during any election cycle to either party.

§3-102 Limits on Political Campaign Contributions by Vendors to the Township.

No vendor shall knowingly solicit on behalf of, or make any campaign contribution in excess of the limits specified in Section 3-101 herein during the pendency of any such negotiations for, or during the term of, any agreement to purchase goods or services.

§3-103 Vendors to Certify Their Compliance with the Township's Restrictions on Campaign Contributions; Obligation is Continuing.

Prior to issuing any purchase order or awarding to any vendor an agreement for the sale of goods and services, or making any payment pursuant to the same, or granting any change order in connection therewith, the Township's Administrator, or his/her designee, shall require that the vendor submit the required forms adopted by the State of New Jersey in conjunction with the State's existing "Pay-to-Play" law, in which the vendor shall verify that it has not knowingly made any campaign contribution in excess of the limits set forth in Section 3-101 of the Revised General Ordinances of the Township of Andover. The Township Administrator or his/her designee shall keep the original of each such certification of vendor eligibility on file. Notwithstanding anything contained herein to the contrary, the vendor shall have a continuing duty to report immediately to the Township Administrator or his/her designee any campaign contributions made in violation of this section that occur during any time that an agreement for the sale of goods or services is in effect, or that occur during the pendency of any negotiations or bidding by the vendor to enter into such an agreement.

§3-104 Vendor Who Refuses to Certify Its Eligibility or Knowingly Submits a False Certification of Eligibility Shall Be Declared to be an Ineligible Vendor.

In addition to such other penalties as may be provided by law, any vendor who, after ten (10) days notice of the consequences thereof, refuses or otherwise fails to provide the certification required herein, or who knowingly files a false vendor's certification of eligibility, shall be designated by the Township Administrator or his/her designee as an ineligible vendor, and shall be promptly included on the ineligible vendor list maintained pursuant to Section 3-105 hereof and shall thereafter be prohibited from entering or continuing any agreement for the sale of goods or services with the Township, and from receiving any payment pursuant to such an agreement for a period of three (3) years from the date the vendor is designated as ineligible.

§3-105 Township Administrator to Maintain a List of Ineligible Vendors.

The Township Administrator or his/her designee shall prepare and at all times maintain a list of vendors who are, by virtue of the provisions of this section, ineligible to enter into an agreement for the sale of goods or services with the Township. The Administrator or his/her designee shall prepare this list based upon information obtained from the submission of the required forms from the vendors pursuant to section 3-103. The Township Administrator or his/her designee shall update the list of ineligible vendors within ten (10) business days of the receipt of any certifications or information as required in this section.

§3-106 Contributions Made Prior to the Effective Date.

Notwithstanding any term contained herein to the contrary, this Ordinance shall not consider campaign contributions made prior to September 1, 2011, and no such campaign contributions shall be considered by the Township Administrator or his/her designee in determining a vendor's eligibility pursuant to this section.

§3-107 Curing Violations; Return of Excess Contributions.

Any Vendor may cure a Campaign Contribution made in excess of the limits set forth in subsection 3-101 of this Act, if, the said Vendor notifies the Administrator or his/her designee of the Township in writing that it has received a reimbursement of a contribution in excess of that allowed in subsection 3-101 and by attaching a true and correct copy of the check received in reimbursement within sixty (60) days of making such contribution.

SECTION 2. All ordinances of the Township of Andover which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 3. If any section, subsection, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid by any court or competent jurisdiction, such decision shall not affect the remaining portion of this ordinance.

SECTION 4. This Ordinance may be renumbered for purposes of codification.

SECTION 5. This Ordinance shall take effect immediately upon final passage, approval and publication as required by law.

SECTION 6. A copy of this Ordinance shall be immediately filed with the Secretary of State of the State of New Jersey.

ATTEST:


Vita Thompson, Clerk

TOWNSHIP OF ANDOVER
COUNTY OF SUSSEX
STATE OF NEW JERSEY

By: 
Phil Boyce, Mayor

INTRODUCED: May 09, 2011

ADOPTED: May 23, 2011

EFFECTIVE DATE: May 27, 2011