

RO-04-13

AN ORDINANCE ESTABLISHING THAT A BUSINESS ENTITY WHICH MAKES CERTAIN POLITICAL CONTRIBUTIONS SHALL BE LIMITED IN ITS ABILITY TO RECEIVE PUBLIC CONTRACTS FROM THE TOWNSHIP OF WASHINGTON

WHEREAS, pursuant to N.J.S.A. 40:48-2, the governing body of a municipality may make, amend, repeal, and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law; 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 Township Committee of the Township of Washington desires to establish a policy that will avoid the perception of improper influence in public contracting and local elections; and

WHEREAS, the Township of Washington desires to create such a regulation which states that a Business Entity which makes certain political contributions shall be limited in its ability to receive public contracts from the Township of Washington.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Washington, County of Morris, and State of New Jersey, as follows:

SECTION 1. DEFINITIONS

As used in this ordinance:

Business entity means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction;

Interest means the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate;

Fair and open process means, at a minimum, that the contract shall be: publicly advertised in newspapers or on the Internet website maintained by the Township in sufficient time to give notice in advance of the contract; awarded under a process that provides for public solicitation of proposals or qualifications and awarded and disclosed under criteria established in writing by the Township prior to the solicitation of proposals or qualifications; and publicly opened and announced when awarded. The decision of the Township as to what constitutes a fair and open process shall be final.

Candidate means:

1. An individual seeking election to a public office of this State or of a county, municipality or school or fire district at any election;
2. An individual who shall have been elected or failed of election to an office, other than a party office, for which he or she sought election and who receives contributions and makes expenditures for any of the purposes authorized by N.J.S.A. 19:44A-11.2; and
3. An individual who has received funds or other benefits or has made payments solely for the purpose of determining whether the individual should become a candidate as defined in paragraphs 1 and 2 above.

This definition does not include an individual seeking Federal elective office, or State, county or municipal political party office.

Candidate committee means a committee established by a candidate pursuant to N.J.S.A. 19:44A-9(a) for the purpose of receiving contributions and making expenditures.

Contribution includes every loan, gift, subscription, advance or transfer of money or other thing of value, including any in-kind contribution, made to or on behalf of any candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee and any pledge or other commitment or assumption of liability to make such transfer. For purposes of this Ordinance, any such commitment or assumption shall be deemed to have been a contribution upon the date when such commitment is made or liability assumed. Funds or other benefits received solely for the purpose of determining whether an individual should become a candidate are contributions.

Election means any election in which a public question is to be voted upon by the voters of the State or any political subdivision thereof; and any election for any public office of the State or any political subdivision thereof. It does not include Federal elective office, or State, county or municipal political party office.

SECTION 2. PROHIBITION ON AWARDING PUBLIC CONTRACTS TO CERTAIN CONTRIBUTORS

(a) The Township shall not enter into a contract having an anticipated value in excess of \$17,500, as determined in advance and certified in writing by the Township, with a business entity, except a contract that is awarded pursuant to a fair and open process, if, during the preceding one year period, that business entity has made a contribution that is reportable by the recipient under N.J.S.A. 19:44A-1 et seq. to any municipal committee of a political party in the Township if a member of that political party is serving in an elective public office of the Township when the contract is awarded or to any candidate committee of any person serving in an elective public office of the Township when the contract is awarded.

(b) A business entity that has entered into a contract having an anticipated value in excess of \$17,500 with the Township, except a contract that is awarded pursuant to a fair and open process, shall not make a contribution reportable by the recipient under N.J.S.A. 19:44A-1 et seq., to any municipal committee of a political party in the Township if a member of that political party is serving in an elective public office of the Township when the contract is awarded or to any candidate committee of any person serving in an elective public office of the Township when the contract is awarded, during the term of the contract.

SECTION 3. CONTRIBUTIONS MADE PRIOR TO THE EFFECTIVE DATE

No contribution made prior to the effective date of this Ordinance shall be deemed to give rise to a violation of this Ordinance.

SECTION 4. LIST OF REPORTABLE CONTRIBUTIONS

Prior to awarding any contract, except a contract that is awarded pursuant to a fair and open process, the Township shall require the business entity to which the contract is to be awarded to provide a written certification that it has not made a contribution that would bar the award of a contract pursuant to the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq.

SECTION 5. RETURN OF EXCESS CONTRIBUTIONS

A business entity that is a party to a contract with the Township may cure a violation of Section 2 of this Ordinance, if, within 60 days after the date on which the applicable Election Law Enforcement Commission (ELEC) report is published, said business entity notifies the Township in writing and seeks and receives reimbursement of the contribution from the recipient of such contribution.

SECTION 6. COMPLIANCE WITH STATUTES AND REGULATIONS

Compliance with this Ordinance shall not relieve a business entity of its obligations to comply with the provisions of the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. and any other related statutory or regulatory provisions.

SECTION 7. All Ordinances or parts of Ordinances in conflict or inconsistent with any part of this Ordinance are hereby repealed to the extent that they are in such conflict or inconsistent.

SECTION 8. This Ordinance may be renumbered for codification purposes.

SECTION 9. In the event that any section, part of provision of this Ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so held unenforceable or invalid.

SECTION 10. A copy of this Ordinance shall be filed with the Secretary of State.

SECTION 11. This Ordinance shall take effect immediately upon final passage, approval and publication as provided by law.

ATTEST:

TOWNSHIP OF WASHINGTON
COUNTY OF MORRIS
STATE OF NEW JERSEY

Deborah Burd, Acting Township Clerk

By: _____
Kenneth W. Short, Mayor