

**TOWNSHIP OF WATERFORD
COUNTY OF CAMDEN
STATE OF NEW JERSEY**

ORDINANCE # 2017-4

**ORDINANCE OF THE TOWNSHIP OF WATERFORD, COUNTY OF
CAMDEN AND STATE OF NEW JERSEY REPLACING CHAPTER 212
CAPTIONED POLITICAL CONTRIBUTIONS WITH A NEW CHAPTER
212 CAPTIONED PUBLIC CONTRACTING (“PAY TO PLAY”)**

WHEREAS, Professional Business Entities are exempt from public bidding requirements; and

WHEREAS, it has become common practice for professional business entities to make substantial political contributions to the election campaigns of the local government elected officers who are ultimately responsible for awarding professional services contracts or other contracts or agreements which are not subject to public bidding; and

WHEREAS, substantial local political contributions from professionals receiving discretionary contracts from the elected officials who receive such contributions raise reasonable concerns on the part of taxpayers as to their trust in the process of local government, if not the quality or cost of services received; and

WHEREAS, by virtue of Ordinance No. 2012-9 adopted on July 18, 2012, the Township imposed limits on the amounts of political contributions that professionals can make and remain eligible to compete for the award of Professional Service Contracts; and

WHEREAS, the Township is also concerned that political contributions by professionals to municipal candidates and political parties in Waterford Township should be properly regulated

to insure that the funds contributed are not eligible for transfer to candidates or political committees who are not affiliated with the Township of Waterford; and

WHEREAS, pursuant to P.L.2005, c.271, 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 contributions that the holders of a contract can make during the term of a contract; 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, The Township Committee has deemed it in the best interest of the public health, safety and welfare to amend Chapter 212 of the Code of the Township of Waterford to include a policy that sets maximum amounts that professional business entities may contribute politically beyond which they become ineligible to receive a public professional service contract from Waterford Township.

NOW THEREFORE, be it Ordained by the Mayor and Township Committee of the Township of Waterford, County of Camden, State of New Jersey, as follows:

SECTION 1: Chapter 212 of the Code of the Township of Waterford captioned “Political Contributions” is replaced and supplemented with a new Chapter 212 captioned “Public Contracting” (“Pay to Play”) as follows:

**ARTICLE 1 - Political Contributions by Professional Business Entities;
Transfer of Contributions**

§1. Statement of Public Policy.

The Township of Waterford reaffirms the policy of the Township to set maximum dollar amounts that professional business entities may contribute politically, beyond which they become ineligible

to receive a public professional service contract from the Township of Waterford as well as the Township's policy to prohibit professional business entities which are performing or being paid under existing contracts with the Township from making political contributions in amounts that exceed the Township's limits on political contributions by professionals. The Township also hereby establishes a policy prohibiting the transfer or "wheeling" of political contributions by professionals to candidates of municipal political committees who are not affiliated with the Township of Waterford.

§2. Definitions.

For purposes of this Article, the terms used herein shall be given the broadest possible meaning in order to effectuate the policy objectives stated and adopted. Certain specific terms used shall have the following meanings:

CONTRIBUTING – The act of giving money or providing in-kind contributions to aid a municipal political candidate or any of the political party committees or PACs otherwise referenced in this Article.

CONTRIBUTING POLITICALLY – Shall have the same meaning as "Contributing."

CONTRIBUTIONS – Shall be given the same meaning and use generally utilized by the Election Law Enforcement Commission of the State of New Jersey under the statutes and regulations governing that agency. The term shall include but not be limited to payments or donations of money and in-kind contributions.

PAC OR PACS – The term "PAC" or PACS" are abbreviations for "political action committee" or "political action committees," respectively. The terms refer to organizations that regularly engage in, or whose primary purpose is, the support of municipal elections and/or municipal parties in excess of the thresholds specified in this Article. The foregoing shall be limited to organizations

and entities which support or oppose Waterford Township candidates for Mayor or Township Committee, or which engage in political activities in support or opposition to candidates for Waterford Township Mayor or Waterford Township Committee.

POLITICAL CONTRIBUTIONS – Has the same definition as “contributions,” hereinabove.

PROFESSIONAL BUSINESS ENTITIES – a “professional business entity” seeking a public contract means, individuals and firms engaged in the rendering of legal services, engineering services, survey work, architectural services, planning services, design services, financial consulting and other consulting work, auditing, accounting, appraisal services insurance services and banking. If a professional business entity is an individual, the definition includes the individual and individual’s spouse, if any, and any child living at home, “Professional business entities’ also include firms, corporations, professional corporations, partnerships, business organizations, and/or business associates who provide professional services, where those professional services are exempt from public bidding for public contracts pursuant to the Local Public Contracts Law.

§3. Prohibition of Awarding Public Contracts to Certain Contributors.

(a) Any other provision of law to the contrary notwithstanding, Waterford Township or any of its purchasing agents or agencies or those of its independent authorities, the Planning Board and Zoning Board, as the case may be, shall not enter into an agreement or otherwise contract to procure professional, banking, insurance coverage services or any other consulting services, including those awarded pursuant to a “fair and open” process, from any professional business entity, if that entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, to any Waterford Township municipal candidate or holder of the public office having ultimate responsibility for the award of the contract, or campaign

committee supporting each candidate or officeholder, or to any Waterford Township political party committee or PAC that regularly engages in, or whose primary purpose is the support of municipal elections and/or municipal parties in excess of the thresholds specified in subparagraph (d) within one calendar year immediately preceding the date of the contract or agreement.

(b) No professional business which enters into negotiations for, or agree to, any contract or agreement with the municipality or any department or agency thereof or of its independent authorities for the rendering of professional, banking or insurance coverage services or any other consulting services, including those awarded pursuant to a “fair and open” process, shall solicit or make any contribution of money, or pledge of contribution, including in-kind contributions, to any Waterford Township municipal candidate or holder of the public office having ultimate responsibility for the award of the contract, or campaign committee supporting such candidate or officeholder, or to any Waterford Township political party committee or PAC that regularly engages in, or whose primary purpose is the support of municipal elections and/or municipal parties between the time of first communications between that business entity and Waterford Township regarding a specific professional services agreement and the termination of negotiations or the completion of the contract or agreement, whichever is later.

(c) For purposes of this Ordinance, a "professional business entity" seeking a public contract means an individual, including the individual's spouse, if any, and any child living at home; person; firm; corporation; professional corporation; partnership; organization; or association. The definition of a business entity includes all principals who own 10% or more of the equity in the corporation or business trust, partners, and officers in the aggregate employed by the entity as well as any subsidiaries directly controlled by the business entity.

(d) Any "professional business entity" under this section may annually contribute a maximum of \$2,600 each for any purpose to any candidate for Mayor or Township Committee, or \$7,200 to a Waterford Township political party committee or PAC without violating subsection (a) of this section.

(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 Waterford Township Committee and the Mayor of Waterford Township, if the contract requires approval or appropriation from the Committee.
- (2) The Mayor of Waterford Township, 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.
- (3) The Waterford Township Land Use Planning Board.

(f) Contributions given to members of, or candidates for, another municipal governing body that is engaged in a shared services or joint purchasing agreement with Waterford Township shall not be deemed in violation of this Ordinance nor does the Ordinance preclude the participation of a shared services or joint purchasing agreement on account of such contributions.

§4. Contributions Made Prior to the Effective Date.

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 Township Committee, or Waterford Township political party committee or PAC referenced in this Ordinance shall be deemed a violation of this Ordinance, 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 Ordinance.

§5. Contribution Statement by Professional Business Entity.

(a) Prior to awarding any contract or agreement to procure services, including banking or insurance coverage services, with any professional business entity, the Township or any of its purchasing agents or agencies and the Planning Board as the case may be, shall receive a sworn statement from the professional business entity made under penalty of perjury that the bidder or offeror has not made a contribution in violation of Section 4 of this Ordinance;

(b) The professional business entity shall have a continuing duty to report any violations of this Ordinance 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 Township 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 professional business entity or Township candidate or officeholder or Waterford Township political party committee or PAC referenced in this Ordinance may cure a violation of Section 4 of this Ordinance, if, within 60 days after the date on which the applicable ELEC Report is published, the professional business entity notifies the Township Committee in writing and seeks and receives reimbursement of a contribution from the Waterford Township candidate or municipal or committee or PAC referenced in this Ordinance.

§7. No Wheeling.

A Candidate for Mayor or Township Committee shall not make a contribution to any other candidate committee or municipal party committee not affiliated with the Township of Waterford; nor shall any such candidate accept a contribution from any other candidate committee or municipal party committee not affiliated with the Township of Waterford.

8. Violations and Penalties.

(a) It shall be a breach of the terms of the Waterford Township professional services agreement for a business entity to: (i) make or solicit a contribution in violation of this Ordinance; (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contribution 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 Waterford Township; (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 business entity itself, would subject that entity to the restrictions of this Ordinance; (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 Ordinance; 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 Ordinance.

(b) Any professional business entity who violates subsection (a) above shall be disqualified from eligibility for future Waterford Township contracts for a period of four calendar years from the date of the violation.

ARTICLE II – Award of Professional Services Contract

§1. Statement of Public Policy.

It is the purpose of this Article that, notwithstanding that professional services contracts and certain other contracts for goods and services are exempt from the competitive bidding requirements of

the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., the Township Committee deems it appropriate, and consistent with the provisions of the New Jersey legislation, now codified at N.J.S.A. 19:44A-20.1 et seq., to award such contracts through a competitive, quality-based, fair and open process.

§2. Process for award of professional services contracts.

The Township of Waterford or any agency or instrumentality thereof, shall not enter into a contract including a professional services contract, or such other contract, which is exempt from public bidding requirements, having an anticipated value in excess of \$10,000 as determined by the municipality, agency or instrumentality, 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 as 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 that municipality if a member of that political party is serving in an elected public office of that municipality when the contract is awarded or to any candidate committee of any person serving in an elected public office of that municipality when the contract is awarded. The fair and open process shall be quality-based and shall be as follows:

(a) Professional services may be awarded by virtue of a publicly advertised request for qualification (“RFQ”) and/or request for proposal (“RFP”) which will be issued as one document for those appointments which are made on an annual basis.

(b) For said positions, no contract shall be awarded, unless and until the positions are:

(1) Publicly advertised in newspapers in sufficient time to give notice in advance of the solicitation for contracts;

(2) Awarded under a process that provides for public solicitation of proposals and qualifications;

(3) Awarded and disclosed under criteria established in writing by the Township of Waterford prior to the solicitation of proposals or qualifications; and

(4) Publicly announced when awarded; and as to those RFQs and RFPs which prove to be unsuccessful, the Township Clerk shall retain a copy of same on file for a period of not less than 60 days.

(c) For contracts which arise on an occasional basis, such as appraisers needed for acquisition of farmland and/or open space, as well as title searches, surveying, and similar work associated with same; and comparable assignments, such as planning services needed for Master Plan updates, appraisals, special counsel, special project engineer contracts, etc., professional services contracts may be awarded without following the foregoing provisions, so long as:

(1) The anticipated value does not exceed the threshold of \$10,000 set forth above; and

(2) The Township Administrator makes every effort to solicit at least two proposals for said work.

§3. Emergency exceptions.

Notwithstanding the foregoing, the Township Committee recognizes that the New Jersey Legislature has provided for the occurrence of certain emergencies, and further recognizes that, therefore, the procedure outlined above might not be capable of being achieved in the event of an emergency or similar time constraints. Thus, should a situation arise, and time does not permit resort to this procedure, and the immediate performance of services is necessary, than an award for same may be made in accordance with the provisions of the Local Pubic Contracts Law relating to emergency contracts, and such rules and regulations as may be promulgated, from time to time, by the Township Committee with regard to same. No such emergency contracts, however, may

be awarded without submission to the Township Clerk of a certification establishing a basis for the deviation from the procedures outlined herein.


SECTION 2: This Ordinance shall be filed by the Township Clerk with the Secretary of State in compliance with N.J.S.A. 40A:11-51(c).

SECTION 3. The Table of Contents of Chapter 212 shall be amended as set forth above.

SECTION 4. All Ordinances or parts of Ordinances inconsistent with this Ordinance, are hereby repealed to the extent of such inconsistency only.

SECTION 5. If the provisions of any section, subsection, paragraph, subdivision, or clause of this Ordinance shall be judged invalid by a Court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this Ordinance.

SECTION 6. This Ordinance shall take effect after final adoption and publication as required by law.

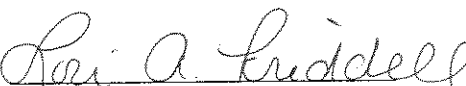

Lori Friddell
Township Clerk


William Richardson, Mayor

Introduced: January 19, 2017
Hearing: February 8, 2017
Adopted: February 8, 2017

Certified to be a true copy of an Ordinance adopted by the Mayor and Township Committee of the Township of Waterford at a regular meeting held on February 8, 2017.

Date: February 8, 2017


Lori A. Friddell, RMC
Township Clerk