

ORDINANCE NO. 23-11

AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HANOVER ESTABLISHING REGULATIONS GOVERNING 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, ALL IN ACCORDANCE WITH THE PAY-TO-PLAY REGULATIONS AT P.L. 2004, c.19 AND P.L. 2005, c.271

WHEREAS, large political contributions from those seeking to or performing business with a municipality, raise reasonable concerns on the part of taxpayers and residents as to their trust in government contracts; 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 for the preservation of the public health, safety and welfare; 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 the contributions that the holders of a contract can make during the term of a contract; and

WHEREAS, in the interest of good government, the Township Committee desire to establish a policy that will avoid the perception of improper influence in local elections.

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

SECTION 1. Definitions.

- a) For purposes of this Ordinance a "Candidate Committee" shall mean any Candidate Committee or Joint Candidate Committee established for the candidacy to any elected office in the Township of Hanover pursuant to NJ.S.A 19:44A-1 et seq. and any New Jersey Election Law Enforcement Commission regulations promulgated thereto, NJ.A.C 19:25-1.1 et seq.
- b) For purposes of this Ordinance a "Political Party Committee" shall mean any Political Party Committee established pursuant to NJ.S.A 19:5-2 in the Township of Hanover and any New Jersey Election Law Enforcement Commission regulations promulgated thereto, NJ.A.C 19:25-1.1 et seq.
- c) For purposes of this Ordinance a "Continuing Political Committee" shall be defined as per the New Jersey Election Law Enforcement Commission regulations set forth at NJ.A.C 19:25-1.1 et seq.
- d) For purposes of this Ordinance a "professional business entity" shall mean an individual, firm, corporation, partnership, limited liability partnership, limited

liability company, any and all labor unions (which shall include labor unions affiliated with the Township of Hanover and labor unions not affiliated with the Township of Hanover) or other entity contracting with the Township of Hanover.

"Professional business entity" shall also mean, refer to and include all individuals who own 10% or more of the equity in the entities described in the preceding sentence, including their spouses and children living in the same residence. Thus, individuals with 10% or more ownership of or equity in a business entity may not avoid the contributions limitations by contracting with the Township of Hanover in his or her individual name.

- e) For purposes of this Ordinance the "Township of Hanover" shall mean the municipality of Hanover, and all agencies, boards, utilities, authorities, departments and instrumentalities thereof.

SECTION 2. Prohibition on Awarding Public Contracts to Certain Contributors.

(a) To the extent that it is not inconsistent with state or federal law, the Township of Hanover shall not enter into any agreement or otherwise enter into a contract for professional services or extraordinary unspecifiable services with any professional business entity and/or contracts with labor unions if such professional business entity has made any contribution of money, or pledge of a contribution, including reportable in-kind contributions, in excess of the thresholds specified in subsection (b) within one calendar year immediately preceding the date of such contract or agreement to:

- (i) a Campaign Committee of any municipal candidate or holder of public office in the Township of Hanover having ultimate responsibility for the award of a contract, or
- (ii) to any municipal Political Party Committee organized in the Township of Hanover, or
- (iii) to any Continuing Political Committee that regularly engages in the support of municipal elections in the Township of Hanover and/or municipal Political Party Committees organized in the Township of Hanover.

(b) Any professional business entity under this section shall be permitted, without violating subsection (a) to:

- i) annually contribute a maximum of \$300 to the Candidate Committee of any municipal candidate or holder of public office in the Township of Hanover, and/or

- ii) annually contribute a maximum of \$300 to a Political Party Committee organized in the Township of Hanover, and/or
- iii) annually contribute \$500 to a Continuing Political Committee subject to this Ordinance.

Notwithstanding the limitations set forth above, any professional business entity under this section may not annually contribute in the aggregate in excess of \$2,500 to all Candidate Committees, Political Party Committees and Continuing Political Committees referenced in this Ordinance combined without violating this Ordinance.

(c) For purposes of this section, the officials considered to have ultimate responsibility for the award of the contract shall be the Township's Business Administrator/Township Clerk acting in his or her capacity as the Qualified Purchasing Agent or the Township Committee, if the contract requires approval or appropriation from the governing body.

SECTION 3. Contributions Made Prior to the Effective Date.

No contribution of money or any other thing of value, including reportable in-kind contributions, made by a professional business entity subject to this Ordinance to any Candidate Committees, Political Party Committees, and Continuing Political Committees referenced in this Ordinance shall be deemed a violation of this Ordinance if that contribution was made by the professional business entity prior to the effective date of this Ordinance.

SECTION 4. Contribution Statements by Professional Business Entity.

(a) Prior to awarding any contract or agreement to procure professional services or extraordinary unspecifiable services having an anticipated value in excess of \$17,500.00, as determined in advance and certified in writing by the Township's Qualified Purchasing Agent, except a contract that is awarded pursuant to a fair and open process, the business entity which is the intended recipient of said contract shall file the following sworn certifications with the Township that said entity has not made a contribution in violation of Section 2. of this Ordinance:

1. A Business Entity Disclosure Certification for Non-Fair and Open Contracts Pursuant to N.J.S.A. 19:44A-20.8;
2. A Chapter 271 Political Contribution Disclosure Form Required Pursuant to N.J.S.A. 19:44A-20.26; and
3. A Stockholder Disclosure Certification Pursuant to N.J.S.A. 19:44A-20.7.

- (b) The professional business entity shall have a continuing duty to report to the Township of Hanover any contributions that constitute a violation of this Ordinance that are made during the duration of the contract. The certification required under this subsection shall be made prior to entry into the contract with the Township of Hanover, and shall be in addition to any other certifications that may be required by any other provision of law.

SECTION 5. Return of Excess Contributions.

A business entity that is a party to a contract for professional services or extraordinary unspecifiable services may cure a violation of this Ordinance, if, within thirty (30) days after the date on which the applicable Election Law Enforcement Commission Report is published, including the filing of the relevant contribution, the professional business entity notifies the Township in writing and seeks and receives reimbursement of the contribution from the recipient of such contribution.

SECTION 6. Exemptions.

- (a) This Ordinance shall only apply to professional services and extraordinary unspecifiable services contracts.
- (b) The contribution limitations set forth in Section 2. shall not apply to contracts which are awarded to the lowest responsive and responsible bidder after public advertising for bids, and bidding therefor within the meaning of N.J.S.A. 40A:11-4. or, are awarded in the case of emergency under N.J.S.A. 40A:11-6. There is no exemption, however, for contracts awarded pursuant to a "Fair and Open Process" under N.J.S.A. 19:44A-20 et seq.

SECTION 7. Penalty.

- (a) It shall be a breach of the terms of the Township of Hanover professional services or extraordinary unspecifiable services agreement to knowingly and intentionally: (i) make or solicit a contribution in violation of this Ordinance; (ii) 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 Candidate Committee of any candidate or holder of the public office of Township of Hanover; (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) Furthermore, any individual or professional business entity that violates (a) i-vii shall be disqualified from eligibility for future Township of Hanover contracts for a period of four calendar years from the date of the violation.
- c) Any person who knowingly, purposely, or recklessly violates any provisions of this Ordinance, or who conspires with another person to violate any provision of this Ordinance or, who, with the purpose of promoting or facilitating a violation of this Ordinance, solicits another person to commit it, or aids or agrees, or attempts to aid another person in planning or committing it, shall be subject to punishment including fines and/or imprisonment as fixed by law for violations of the Ordinances of the Township of Hanover.

SECTION 8. Severability.

If any section, paragraph, subsection, clause or provision of this Ordinance shall be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole or any part thereof.

SECTION 9. 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 10. Effective Date.

This ordinance shall take effect in accordance with law.

TOWNSHIP COMMITTEE
TOWNSHIP OF HANOVER
COUNTY OF MORRIS
STATE OF NEW JERSEY

DATE OF INTRODUCTION: August 11, 2011
DATE OF ADOPTION: September 8, 2011

NOTICE OF INTRODUCTION

NOTICE IS HEREBY GIVEN, That the foregoing Ordinance was submitted in writing at a meeting of the Township Committee of the Township of Hanover, in the County of Morris and State of New Jersey, held on the 11th day of August, 2011, introduced and read by title and passed on first reading and the Governing Body will further consider the same for second reading and final passage thereof at a meeting to be held on the 8th day of September, 2011, at 8:30 o'clock in the evening prevailing time, at the Municipal Building, 1000 Route 10, Whippany, in said Township of Hanover, at which time and place a public hearing will be held thereon by the Governing Body and all persons and citizens in interest shall have an opportunity to be heard concerning same.

JOSEPH A. GIORGIO, TOWNSHIP CLERK
TOWNSHIP OF HANOVER
COUNTY OF MORRIS
STATE OF NEW JERSEY

DATED: August 18, 2011