

O-12-17

ORDINANCE OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF GLOUCESTER, CAMDEN COUNTY, NEW JERSEY TO PROMOTE TRANSPARENCY AND PROHIBIT THE AWARD OF PROFESSIONAL SERVICE CONTRACTS TO CERTAIN CAMPAIGN CONTRIBUTORS AND DIRECTING PROFESSIONAL SERVICE CONTRACTS BE AWARDED PURSUANT TO A FAIR AND OPEN PROCESS AND REQUIRING DISCLOSURE OF CONTRIBUTIONS MADE BY PROFESSIONAL SERVICE CONTRACTORS OF THE TOWNSHIP OF GLOUCESTER

An Ordinance to Promote Transparency in Government, Contract Reform, a Fair and Open Process and to Promote Disclosure of contributions to candidate campaign funds, PAC's and Super PAC's.

WHEREAS. The Township Council of the Township of Gloucester recognize that political contributions from those seeking or performing contracts with the Township of Gloucester raise reasonable concerns on the part of taxpayers and residents as to their trust in government and its business practices; and,

WHEREAS. N.J.S.A. 19:44A-20.4 et seq. (known as Pay-to-Play legislation) prohibits a local government entity from awarding a contract to a vendor who has made a political contribution unless awarded to the lowest responsible bidder and or pursuant to a Fair and Open Process, and

WHEREAS. The Township of Gloucester has followed the mandates of N.J.S.A. 19:44A-20.4 et seq. and awards contracts pursuant to a Fair and Open Process, and

WHEREAS. The Township Council of the Township Council are aware of the practice of contributions being made to campaign fund accounts known and described as "Super PAC's", that avoid public disclosure and transparency, and

WHEREAS. Pursuant to N.J.S.A. 19:44A-20.4 et seq. and N.J.S.A. 40A:11-51, a municipality is permitted to adopt by ordinance measures to limit the award of public contracts to business entities that have solicited or made political contributions defined under the relevant statutes, and

WHEREAS. The Township Council of the Township of Gloucester desire to establish a Township policy that will promote transparency, disclosure and public awareness of business entities which make political contributions to municipal candidates in excess of certain thresholds established by the Laws of the State of New Jersey and this Ordinance, and establishes a requirement of full disclosure to include contractors who have made contributions to Super PACs.

NOW, THEREFORE, BE IT RESOLVED, it shall be adopted by the Township Council of the Township of Gloucester that a Business Entity which makes political contributions to municipal candidates and municipal political parties in excess of certain thresholds shall be limited in its ability to receive public contracts from Gloucester Township.

SECTION I

DEFINITIONS

As used in this ordinance:

- (a) "Campaign Committee" means (i) every candidate for Gloucester Township elective municipal office; (ii) every candidate committee established by or for the benefit of a candidate for Gloucester Township elective municipal office; (iii) every joint candidate committee established in whole or in part by or for the benefit of a candidate for Gloucester Township elective municipal office; (iv) every political party committee for Gloucester Township ; (v) every political committee, continuing political committee, or

other form of association or organization that regularly engages in the support of candidates for Gloucester Township municipal elective offices or Gloucester Township municipal political parties or political party committees. The terms in the foregoing paragraph have the meaning prescribed in N.J.A.C. 19:25-1.7.

- (b) "Contribution" has the meaning prescribed in N.J.A.C. 19:25-1.7. By way of illustration, and not limitation, this definition includes pledges, loans, and in-kind contributions.
- (c) A "contract for professional or extraordinary services" means all contracts for "professional services" and "extraordinary unspecifiable services" as such term is used in N.J.S.A. 40A:11-5.
- (d) For purposes of this Ordinance, a "Business Entity" whose contributions are regulated by this ordinance means: (i) an individual including the individual's spouse, and any child/children; (ii) a firm; corporation; professional corporation; partnership; limited liability company; organization; association; and any other manner and kind of business entity; (iii) any person who owns 10% or more of the equity or ownership or income interests in a person or entity as defined in sections (i) and (ii) above and their spouses and child/children; (iv) all partners or officers of such an entity, in the aggregate, and their spouses and child/children; (v) any person, subcontractor, subsidiary, corporation, firm, partnership, limited liability company, organization or association who has received or infeasibly acquired the right to receive, from a person described in subparagraph (i) above, more than \$100,000.00 in compensation or income of any kind (including, by way of illustration, and not limitation: wages, salaries, sums paid to independent contractors, benefits, dividends, profit-sharing, pension contributions, deferred contributions, stock, stock options or gifts), in any twelve (12) month period prior to the award of, or during the term of, a contract subject to this ordinance; and (vi) all persons who are an "affiliate" of a Business Entity as defined in sections (i), (ii) and (v) above.

SECTION II

CONTRACTS AWARDED PURSUANT TO A FAIR AND OPEN PROCESS

- (a) All contracts or agreements to procure "Professional services" as defined by N.J.S.A. 40A:11-2(6) and Extraordinary Unspecifiable Services as defined by N.J.S.A. 40A:11-22(7) shall be awarded pursuant to a Fair and Open Process.

SECTION III

PROHIBITION ON AWARDING PUBLIC CONTRACTS TO CERTAIN CONTRIBUTORS

- (a) To the extent that it is not inconsistent with state or federal law, Gloucester Township and any of its departments, instrumentalities or purchasing agents and authorities shall not enter into any agreement or contract with a Business Entity; or otherwise contract to procure "Professional Services" contrary to Section II above; or otherwise contract to procure "Extraordinary Unspecified Services" contrary to Section II above; or enter into an agreement or contract from any Business Entity if such Business Entity has solicited or made any Contribution to (i) a candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in Gloucester Township or a holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Gloucester Township political committee or political party committee, or (iii) to any continuing political committee or political action committee that regularly engages in the support of Gloucester Township municipal elections and/or Gloucester Township municipal candidates, candidate committees, joint candidate committees, political committees, political parties, political party committees, (hereinafter "PAC"), in excess of the thresholds specified in subsection (c) within one calendar year immediately preceding the date of the contract or agreement.
- (b) No Business Entity who submits a proposal for, enters into negotiations for, or agrees to any contract or agreement with Gloucester Township or any of its departments or instrumentalities, shall knowingly solicit or make any Contribution, to (i) a candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in Gloucester Township, or a holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Gloucester Township political

committee or political party committee, or (iii) any PAC between the time of first communication between that Business Entity and the municipality regarding a specific agreement, and the later of the termination of negotiations or rejection of any proposal, or the completion of the performance or specified time period of that contract or agreement.

- (c) The monetary thresholds of this Ordinance are: (i) a maximum of \$300 per calendar year each for any purpose to any candidate or candidate committee for mayor or governing body, or \$500 per calendar year to any joint candidates committee for mayor or governing body, or \$300 per calendar year to a political committee or political party committee of the Gloucester Township; (ii) \$500 maximum per calendar year to any PAC or Super PAC. However, for each Business Entity party to a contract, or engaged in negotiations for a contract defined in subparagraph (a), when such Business Entity's Contribution is aggregated with all "persons" defined in subparagraph (d) of "Definitions" above, by virtue of their affiliation to that Business Entity party, a maximum of \$2,500 to all Gloucester Township candidates, candidate committees, joint candidate committees, and holders of public office having ultimate responsibility for the award of a contract, all Gloucester Township political committees and political party committees as described herein combined, without violating subsection (a) of this section.
- (d) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be (i) the Gloucester Township Mayor or Council, if the contract requires approval or appropriation from the Mayor or Governing body, or (ii) the Mayor of the Gloucester 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.
- (e) Rules regarding subcontractors. No person may be awarded a subcontract to perform under a contract subject to this Ordinance, if the subcontractor would be disqualified by paragraph (a) from receiving the contract at the time that the subcontract is awarded. Nor may any person who would be disqualified by paragraph (a) from receiving the contract perform substantially all of obligations described in a contract for professional or extraordinary services that is subject to this ordinance.

SECTION IV

CONTRIBUTIONS MADE PRIOR TO THE EFFECTIVE DATE

No Contribution or solicitation of contributions made prior to the effective date of this Ordinance shall be deemed to give rise to a violation of this Ordinance.

SECTION V

CONTRACT RENEWAL

No contract subject to this ordinance may be renewed, extended, or materially modified unless the resulting renewal, extension, or modification would be allowable under the provisions of this ordinance if it were an initial contract.

SECTION VI

DISCLOSURE STATEMENT BY BUSINESS ENTITY

- (a) Prior to awarding any contract or agreement from any Business Entity, the Township of Gloucester or its purchasing agents and departments, and authorities as the case may be, shall receive a sworn statement from said Business Entity which is the intended recipient of said contract that he/she/it has not made a Contribution in violation of Section III of this Ordinance. The Township of Gloucester, its purchasing agents and departments, and authorities shall be responsible for informing the Clerk of the Township of Gloucester that the aforementioned sworn statement has been received and that the Business Entity is not in violation of this ordinance, prior to awarding the contract or agreement.
- (b) A Business Entity shall have a continuing duty to report to the Clerk of the Township of Gloucester any Contributions that constitute a violation of this act that are made during the negotiation, proposal process or the duration of a contract. The Clerk of the Township of Gloucester, its purchasing agents and departments and authorities shall be

responsible for informing the governing body within ten (10) business days after receipt of said report from the Business Entity, or at the next Town Council meeting following receipt of said report from the Business Entity, or whichever comes first.

- (c) The certification required under this subsection shall be made prior to entry into the contract or agreement with the Township of Gloucester, or prior to the provision of services or goods, as the case may be, and shall be in addition to any other certifications that may be required by any other provision of law.
- (d) The certification required under this subsection shall be a continuing obligation during the term of the contract or services being provided.
- (e) The certification required under this subsection shall include a disclosure, for transparency, contributions being made to campaign fund accounts known and described as "Super PAC's".

SECTION VII

RETURN OF EXCESS CONTRIBUTIONS

A Business Entity that is a party to a contract may cure a violation of Section III of this Ordinance, if, within 30 days after the date on which the applicable ELEC report is published, said Business Entity notifies the municipality in writing and seeks and receives reimbursement of the Contribution from the recipient of such Contribution.

SECTION VIII

EXEMPTIONS

- (a) Contract prohibition and contribution limitations prior to entering into a contract as established by this ordinance do not apply to contracts which (i) are awarded to the lowest responsible bidder after public advertising for bids and bidding therefore within the meaning of N.J.S.A. 40A:11-4, (ii) are awarded in the case of emergency under N.J.S.A. 40A:11-6. or (iii) contracts awarded pursuant to a "Fair and Open Process" under N.J.S.A. 19:44A-20 et seq.
- (b) Contributions given to members of, or candidates for, another governing body that is engaged in a shared services or joint purchasing agreement with Gloucester Township shall not be deemed a violation of this ordinance nor does this ordinance preclude the participation in a shared services or joint purchasing agreement on account of such contributions.

SECTION IX

PENALTY

- (a) It shall be a material breach of the terms of a Gloucester Township agreement when a Business Entity that is a party to such agreement or contract has: (i) made or solicited a Contribution in violation of this Ordinance; (ii) knowingly concealed or misrepresented a Contribution given or received; (iii) made or solicited Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) made or solicited any Contribution on the condition or with the agreement that it will be re-contributed to a candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in Gloucester Township, or a holder of public office having ultimate responsibility for the award of a contract, or any Gloucester Township political committee or political party committee, or any Super PAC; (v) engaged or employed 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) funded contributions made by third parties, including consultants, professionals, family members, and employees; (vii) engaged 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, done any act which if done directly would subject that entity to the restrictions of this Ordinance; or failed to disclose contributions made to a Super PAC as defined by this ordinance.
- (b) Any person who knowingly, purposely, or recklessly violates any provision 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 Gloucester Township.

SECTION X

CITIZENS PRIVATE RIGHT OF ACTION

In addition to any rights that were heretofore available, or which may hereafter be available, to citizens, taxpayers, or associations, to challenge violations of this ordinance, every person aggrieved by a violation of the ordinance, or any taxpayer or resident of the Gloucester Township has the right, consistent with the Rules of Court and Laws of the State of New Jersey.

SECTION XI

SEVERABILITY

If any provision of this Ordinance, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby, and to this extent the provisions of this Ordinance are severable.

SECTION XII

INDEXING

The monetary thresholds of "Definitions" Section (d) and Section III(c) of this ordinance shall be increased effective March 1 of each calendar year by the percentage increase, in the prior calendar year, of the consumer price index for all urban consumers (CPI-U) for the Philadelphia region, rounded to the nearest \$10.00. The Clerk of Gloucester Township shall, by no later than April 1 of each calendar year, prepare and publish the revised thresholds on the official municipal website and in an official municipal newspaper.

SECTION XIII

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 XIV

EFFECTIVE DATE

This Ordinance shall become effective twenty ^{*calendar*} (20) days following the final adoption thereof by the Council of the Township of Gloucester and shall be published as required by law.

Introduced: July 9, 2012

Adopted:

ATTEST:

PRESIDENT OF COUNCIL

TOWNSHIP CLERK

MAYOR