

**THE TOWNSHIP OF EWING
COUNTY OF MERCER, NEW JERSEY**

ORDINANCE NO. 23-24

1st Reading 9-26-23

Date to Mayor 10-11-23

2nd Reading &
Public Hearing 10-10-23

Date Returned 10-11-23

Date Adopted:
10-10-23

Date Resubmitted to Council _____

Approved as to Form of Legality

Effective Date:
11-2-23

Township Attorney

AN ORDINANCE AMENDING THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF EWING IN THE COUNTY OF MERCER, CHAPTER 59, PAY-TO-PLAY REGULATIONS, ARTICLES I-III, SECTIONS 1 THROUGH 20 TO ELIMINATE THE LOCAL PAY-TO-PLAY ORDINANCES AND BRING THEM INTO COMPLIANCE WITH N.J.S.A. 19:44A-1 et seq.

First Reading

MEMBER	AYE	NAY	ABSENT	ABSTAIN	MOVE	SECOND
Baxter	X				X	
Keyes-Maloney	X					
Schroth	X					
Steward	X					X
Wollert	X					

Second Reading

MEMBER	AYE	NAY	ABSENT	ABSTAIN	MOVE	SECOND
Baxter			X			
Keyes-Maloney	X				X	
Schroth	X					X
Steward	X					
Wollert	X					

By _____ Date _____ Accepted _____ Rejected _____
Mayor

Reconsidered
By Council _____ Override Vote YEA _____ NAY _____

President of the Council

Municipal Clerk

**THE TOWNSHIP OF EWING
COUNTY OF MERCER, NEW JERSEY**

ORDINANCE NO. 23-24

AN ORDINANCE AMENDING THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF EWING IN THE COUNTY OF MERCER, CHAPTER 59, PAY-TO-PLAY REGULATIONS, ARTICLES I-III, SECTIONS 1 THROUGH 20 TO ELIMINATE THE LOCAL PAY-TO-PLAY ORDINANCES AND BRING THEM INTO COMPLIANCE WITH N.J.S.A. 19:44A-1 et seq.

WHEREAS, on April 3, 2023, Governor Murphy signed N.J.S.A. 19:44A-1 et seq., the Elections Transparency Act (“ETA”) (Bill No. A4372/S2866), into law; and

WHEREAS, the Township and State have an interest in protecting the bidding and procurement process by limiting political contributions and requiring certain disclosures regarding same; and

WHEREAS, the ETA requires that all levels of government throughout the State abolish local pay-to-play ordinances and abide by the ETA for the sake of clarity and uniformity; and

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Township of Ewing, County of Mercer that the Code of the Township of Ewing be amended as follows:

Section 1 Chapter 59, PAY-TO-PLAY REGULATIONS, Articles I- III, PROHIBITION ON AWARDING PUBLIC CONTRACTS TO CERTAIN CONTRIBUTORS, Sections 1 through 20, are hereby amended as follows:

~~Article I Redevelopment Agreements under Local Redevelopment and Housing Law~~

§ 59-1 Compliance with State pay-to-play laws. Prohibition of entering into or amending redevelopment agreements with certain contributors.

Any other provision of law to the contrary notwithstanding the Township or any of its purchasing agents or agencies or those of its independent authorities shall abide by and comply with all requirements set forth in N.J.S.A. 19:44A-1 et seq.

~~A. Campaign contributions.~~

~~(1) Any other provision of law to the contrary notwithstanding, the Township of Ewing or any of its purchasing agents or agencies or those of its independent authorities, as the case may be, shall not enter into an agreement, amend an agreement, or otherwise contract with any redeveloper for the planning, replanning, construction or undertaking of any redevelopment project, including the acquisition or leasing of any public property in conjunction with the redevelopment of any area within the Township of Ewing pursuant to the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.), if that redeveloper has made any contribution of money, pledge of a contribution, including in kind contributions or loans, during the applicable time period as specified below, to a campaign committee of any Township of Ewing candidate or holder of public office within the Township of Ewing having responsibility for arranging, entering into or approving the redevelopment agreement, or for appointing those who enter into the agreement on behalf of the Township of Ewing, or to any candidates' committee, joint candidates' committee, municipal political campaign committee (PAC) or to any Mercer County party committee or to any political action committee which engages in the support of the Township of Ewing municipal campaigns.~~

~~(2) For purposes of this section, the "applicable time period" shall be defined as the time period between the date that the property which is the subject of the redevelopment project has been included in a memorializing resolution adopted by the governing body directing the Planning Board to conduct a preliminary investigation to determine if the site is in need of redevelopment pursuant to and~~

~~in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., and the date of entering into the redevelopment agreement, or the 12 months prior to entering into the agreement, whichever is shorter.~~

~~**B.** All redevelopment agreements or amendments thereto entered into by the Township of Ewing shall contain a provision prohibiting redevelopers as defined in Subsection **C** to solicit or make any contribution of money, pledge of a contribution including in kind contributions or loans to any Township of Ewing candidate or holder of public office within the Township of Ewing having responsibility for arranging, entering into or approving the redevelopment agreement, or for appointing those who enter into the agreement on behalf of the Township of Ewing, or to any Township of Ewing political campaign committee or to any Township of Ewing or Mercer County party committee, candidates' committee, joint candidates' committee or to any political action committee (PAC) which engages in the support of municipal elections and/or municipal parties or which engages in the support of the Township of Ewing municipal campaigns, between the time of first communication between that redeveloper and the municipality regarding a redevelopment project and the latter of the termination of negotiations or the completion of all matters specified in the redevelopment agreement.~~

~~**C.** Terms defined.~~

~~(1) As defined in N.J.S.A. 40A:12A-3, a "redeveloper" means any person, firm, corporation or public body that shall enter into or propose to enter into a contract with a municipality or other redevelopment entity for the redevelopment or rehabilitation of an area in need of redevelopment or an area in need of rehabilitation, or any part thereof, under the provisions of this act, or for any construction or other work forming part of a redevelopment or rehabilitation project.~~

~~(2) For the purposes of this article, a "redeveloper" means an individual, including the individual's spouse, if any, and any child living at home; a person, firm, corporation, professional corporation, partnership, organization or association, including all principals who own 10% or more of the equity in the corporation, professional corporation, partnership, organization, or association, partners and officers in the aggregate employed by the provider as well as any subsidiaries directly controlled by the redeveloper.~~

~~**D.** For purposes of this section, the office that is considered to have responsibility for arranging and entering into the redevelopment agreement under the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.) shall be:~~

~~(1) The Township Council, if the redevelopment agreement requires approval or appropriation from the Council, or a public officer who is responsible for arranging and entering into the redevelopment agreement, if that public officer is appointed by Council;~~

~~(2) The Mayor of the Township of Ewing, if the redevelopment agreement requires the approval of the Mayor, or a public officer who is responsible for arranging and entering into the redevelopment agreement, if that public officer is appointed by the Mayor; or~~

~~(3) The Ewing Township Redevelopment Agency, if the redevelopment agreement requires the approval of the Agency.~~

~~§ 59-2 Contributions made prior to effective date.~~

~~No contribution of money or any other thing of value, including in-kind contributions, made by a redeveloper to any Township of Ewing candidate for Mayor or Council or to any political action committee shall be deemed a violation of this section, nor shall an agreement for redevelopment projects of any kind whatsoever be disqualified thereby if that contribution or agreement was made by the redeveloper prior to the effective date of this article.~~

~~§ 59-3 Notice given by Township; sworn statement of redeveloper.~~

~~A. It shall be the Township of Ewing's continuing responsibility to give notice of this article when the Township gives notice of redevelopment pursuant to N.J.S.A. 40A:12A-6 and when the Township adopts a resolution directing the Planning Board to prepare a redevelopment plan and at the time that the municipality adopts the ordinance to implement the redevelopment plan.~~

~~B. Prior to arranging and entering into the redevelopment agreement with any redeveloper, the Township of Ewing or any of its purchasing agents or agencies or independent authorities, as the case may be, shall receive a sworn statement from the redeveloper that the redeveloper has not made any contribution in violation of § 59-1A above. Furthermore, the redeveloper shall have a continuing duty to report any violations of this article that may occur while arranging and entering into the redevelopment agreement and until all specified terms of the agreement have been completed. The certification required under this subsection shall be made prior to entry into the agreement with the municipality and shall be in addition to any other certifications that may be required by any other provision of law.~~

~~§ 59-4 Return of excess contributions.~~

~~A redeveloper or municipal candidate or officeholder or municipal or county party committee or PAC referenced in this article may cure a violation of § 59-1 of this article, if, within 30 days after the general election, the redeveloper notifies the Township Council in writing and seeks and receives reimbursement of a contribution from the municipal candidate or municipal or county political party or PAC referenced in this article.~~

~~§ 59-5 Breaches of agreement enumerated; disqualification of developer.~~

~~A. It shall be a breach of the terms of the Township of Ewing redevelopment agreement for a redeveloper to:~~

- ~~(1) Make or solicit a contribution in violation of this article;~~
- ~~(2) Knowingly conceal or misrepresent a contribution given or received;~~
- ~~(3) Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;~~
- ~~(4) 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 a public office of the Township of Ewing;~~
- ~~(5) 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 redeveloper itself would subject that entity to the restrictions of this article;~~
- ~~(6) Fund contributions made by third parties, including consultants, attorneys, family members and employees;~~

~~(7) Engage in any exchange of contributions to circumvent the intent of this article;
or~~

~~(8) Directly or indirectly, through or by any other person or means, do any act which
would subject that entity to the restrictions of this article.~~

~~B. Furthermore, any redeveloper who violates Subsection A(1) through (8) above shall be
disqualified from eligibility for future Township of Ewing redevelopment agreements for
a period of four calendar years from the date of the violation.~~

~~§ 59-6 Contribution disclosure statement.~~

~~No redevelopment contract shall be entered without submission by the redeveloper of a
contribution disclosure statement. For purposes of this article, "contribution disclosure
statement" means a list specifying the amount, date and recipient of any and all contributions
made to or on behalf of any candidate, candidates' committee, joint candidates' committee,
political committee, continuing political committee or political party committee of, or pertaining
to, the Township of Ewing, up to two years prior to filing a redevelopment or variance
application and for two years after the completion of the redevelopment project.~~

~~§ 59-7 Definitions.~~

~~As used in this article, the following terms shall have the meanings indicated:~~

~~APPLICATION CHECKLIST~~

~~The list of submission requirements adopted by ordinance and provided by the municipal
agency to a developer pursuant to N.J.S.A. 40:55D-10.3.~~

~~CONTRIBUTION~~

~~Every loan, gift, subscription, advance or transfer of money or other thing of value,
including any item of real property or personal property, tangible or intangible (but not
including services provided without compensation by individuals volunteering a part or
all of their time on behalf of a candidate, committee or organization), made to or on
behalf of any candidate, candidates' committee, joint candidates' committee, political
committee, continuing political committee or political party committee and any pledge,
promise or other commitment or assumption of liability to make such transfer. For
purposes of reports required under the provisions of the 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.~~

~~CONTRIBUTION DISCLOSURE STATEMENT~~

~~A list specifying the amount, date and the recipient of any and all contributions made to
or on behalf of any candidate, candidates' committee, joint candidates' committee,
political committee, continuing political committee or political party committee of or
pertaining to the Township of Ewing made up to one year prior to filing the variance
application and/or during the pendency of the application process and required to be
reported pursuant to N.J.S.A. 19:44A-1 et seq.~~

~~DEVELOPER~~

~~A developer as defined by N.J.S.A. 40:55D-4, i.e., the legal or beneficial owner or
owners of a lot or of any land proposed to be included in a proposed development,
including the holder of an option or contract to purchase, or other person having an
enforceable proprietary interest in such land.~~

~~PROFESSIONAL~~

~~Any person or entity whose principals are required to be licensed by New Jersey law and
who supplies legal representation, expert testimony or written reports in support of an~~

application. Professionals shall include both any individuals supplying the representation, testimonies or reports and the firms or entities in which said individuals practice.

~~§ 59-8 Disclosure requirements.~~

~~A. Any applicant for a variance pursuant to N.J.S.A. 40:55D-70(d) or a variance pursuant to N.J.S.A. 40:55D-70(e) in conjunction with any application for a subdivision not considered a minor subdivision pursuant to local ordinance or a site plan not considered a minor site plan pursuant to local ordinance as well as any application for a subdivision not considered a minor subdivision pursuant to local ordinance or site plan or subdivision not considered a minor site plan pursuant to local ordinance requiring waivers or exceptions pursuant to N.J.S.A. 40:55D-51 shall include in the application contribution disclosure statements for all developers; all associates of said developers who would be subject to disclosure pursuant to N.J.S.A. 40:55D-48.1 or 40:55D-48.2; and all professionals who apply for or provide testimony, plans or reports in support of said variance and who have enforceable proprietary interest in the property or development which is the subject of the application or whose fee in whole or part is contingent upon the outcome of the application. Regardless of whether the owner of the property which is the subject of the variance application falls in any of the categories established in the preceding sentence, the applicant shall include in the application a contribution disclosure statement for said owner.~~

~~B. During the pendency of the application process until final site plan approval is granted, any applicant required to comply with this article shall amend its contribution disclosure statements to include continuing disclosure of all contributions within the scope of disclosure requirement of the above subsection.~~

~~§ 59-9 Inclusion of contribution disclosure statements as element of application checklist.~~

~~A. An application checklist ordinance is hereby adopted pursuant to N.J.S.A. 40:55D-10.3 to require that the contribution disclosure statements specified in § 59-8 of this article be submitted by the applicant for all applications for variance relief pursuant to N.J.S.A. 40:55D-70(d) as well as for relief pursuant to N.J.S.A. 40:55D-70(e) or N.J.S.A. 40:55D-51 in applications for site plan and subdivision approval not considered to be minor site plans or minor subdivisions pursuant to local ordinance.~~

~~B. The Township of Ewing Planning Board and Zoning Board of Adjustment shall amend its application checklist for variances pursuant to N.J.S.A. 40:55D-70(d) as well as for relief pursuant to N.J.S.A. 40:55D-70(e) or N.J.S.A. 40:55D-51 in applications for site plan and subdivision approval not considered to be minor site plans or minor subdivisions pursuant to local ordinance to include the contribution disclosure statements specified in § 59-8 of this article.~~

~~C. An application shall not be deemed complete by the administrative official or accepted for public hearing by the municipal agency until the required contribution disclosure statements are submitted.~~

~~§ 59-10 Availability of contribution disclosure statements.~~

~~All contribution disclosure statements shall be available in the office of the Municipal Clerk for public inspection.~~

~~§ 59-11 Intent of contribution disclosure statements.~~

~~It is the intent of this article that the contribution disclosure statement shall serve to inform the public and not serve as evidence relevant to the decision criteria for variance applications pursuant to N.J.S.A. 40:55D-70(d) as well as for relief pursuant to N.J.S.A. 40:55D-70(e) or~~

~~N.J.S.A. 40:55D-51 in applications for site plan and subdivision approval not considered to be minor site plans or minor subdivisions pursuant to local ordinance.~~

~~§ 59-12 Contracts exceeding bid threshold.~~

~~Any other provision of law to the contrary notwithstanding and except as provided in Articles I and II above, the Township or any of its purchasing agents or agencies or those of its independent authorities, as the case may be, shall not enter into an agreement or other contract which exceeds the bid threshold set forth in N.J.S.A. 40A:11-3 to procure any goods, professional, banking, insurance coverage services or any other consulting services from any professional business entity if that entity has solicited or made any contribution of money, pledge of a contribution, including in-kind contributions, or loans to any Township of Ewing 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 Township of Ewing or Mercer County party committee, candidates' committee, joint candidates' committee or to any political action committee (PAC) that engages in the support of municipal elections and/or municipal parties in excess of the thresholds specified in § 59-14 within one calendar year immediately preceding the date of the contract or agreement, unless the goods or services are procured through the public bidding process pursuant to N.J.S.A. 40A:11-4 or the competitive contracting process pursuant to N.J.S.A. 40A:11-4.1.~~

~~§ 59-13 Restrictions on soliciting or making contributions.~~

~~No professional business entity which enters into negotiations for or agrees to any contract or agreement with the municipality or any department or agency thereof or of its independent authorities for the furnishing of goods or rendition of professional, banking or insurance coverage services or any other consulting services shall solicit or make any contribution of money, pledge of a contribution, including in-kind contributions, or loans to any Township of Ewing 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 Township of Ewing or Mercer County party committee, candidates' committee, joint candidates' committee, or to any political action committee (PAC) that engages in the support of municipal elections and/or municipal parties between the time of first communications between that business entity and the Township regarding any contract and the later of the termination of negotiations or completion of the contract or agreement.~~

~~§ 59-14 Limit on contributions.~~

~~Any individual meeting the definition of "professional business entity" under this chapter may annually contribute a maximum of \$300 N.J.S.A. 19:44A-1 et. seq. to each for any purpose to any candidate, for Mayor or council, or \$500 to the Township of Ewing or Mercer County party committee, candidates' committee, joint candidates' committee or to a political action committee (PAC) that engages in the support of municipal elections and/or municipal parties, without violating § 59-12 of this article.~~

~~§ 59-15 Professional business entity.~~

~~For purposes of this article, 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.~~

~~§ 59-16 Responsibility for Township contract award.~~

~~For purposes of this article, the office that is considered to have ultimate responsibility for the award of the contract shall be:~~

~~A. The Township of Ewing Council and the Mayor of the Township of Ewing, if the contract requires approval or appropriation from the Council.~~

~~B. The Mayor of the Township of Ewing, 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.~~

~~§ 59-17 Contributions made prior to 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 Council, or Township of Ewing or Mercer County party committee or PAC referenced in this article, shall be deemed a violation of this article, 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 article.~~

~~§ 59-18 Contribution statement by professional business entity.~~

~~A. Prior to awarding any contract or agreement to procure services pursuant to § 59-13, including banking or insurance coverage services, with any professional business entity, the Township of Ewing or any of its purchasing agents or agencies, as the case may be, shall receive a sworn statement from the professional business entity, made under penalty of perjury, that the bidder has not made a contribution in violation of § 59-12.~~

~~B. The professional business entity shall have a continuing duty to report any violations of this article that may occur during the negotiation or duration of a contract. The certification required under this section shall be made prior to entry into the contract or agreement with the Township of Ewing and shall be in addition to any other certifications that may be required by any other provision of law.~~

~~§ 59-19 Return of excess contributions.~~

~~A professional business entity or Township of Ewing candidate or officeholder or Township of Ewing or Mercer County party committee or PAC referenced in this article may cure a violation of § 59-12 if, within 30 days after contribution, the professional business entity notifies the Township of Ewing Council in writing and seeks and receives reimbursement of a contribution from the Township candidate or municipal or county political party or PAC referenced in this article.~~

~~§ 59-20 Breaches of contract; disqualification of business entity.~~

~~A. It shall be a breach of the terms of Township of Ewing public contracts for a business entity to:~~

~~(1) Make or solicit a contribution in violation of this article;~~

~~(2) Knowingly conceal or misrepresent a contribution given or received;~~

~~(3) Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;~~

~~(4) 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 the Township of Ewing;~~

~~(5) Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution that, if made or~~

~~solicited by the business entity itself, would subject that entity to the restrictions of this article;~~

~~(6) Fund contributions made by third parties, including consultants, attorneys, family members and employees;~~

~~(7) Engage in any exchange of contributions to circumvent the intent of this article;
or~~

~~(8) Directly or indirectly, through or by any other person or means, do any act which would subject that entity to the restrictions of this article.~~

~~**B.** Furthermore, any professional business entity that violates this article, except in the case of a cure as provided in § 59-19, shall be disqualified from eligibility for future Township of Ewing contracts for a period of two calendar years from the date of violation.~~

Section 2 Severability. Should any section, clause, sentence, phrase or provision of this article be declared unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this article.

Section 3 Repealer. All prior ordinances or parts of the same inconsistent with any provisions of this article are hereby repealed to the extent of such inconsistency.

Section 4 Effective Date. This ordinance shall take effect upon final adoption and publication in accordance with law.