

TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

ORDINANCE #2023-18

Title: AN ORDINANCE AMENDING CHAPTER 95, REGULATION OF PROFESSIONAL SERVICE CONTRACTS, OF THE CODE OF THE TOWNSHIP OF LOWER TO ENSURE CONSISTENCY WITH THE ENACTMENT OF THE NEW JERSEY ELECTION TRANSPARENCY ACT

WHEREAS, on April 3, 2023, New Jersey Governor Philip Murphy signed the New Jersey Elections Transparency Act, P.L. 2023, C.30, into law which revises the State of New Jersey's campaign finance and pay-to-play laws; and

WHEREAS, the New Jersey Elections Transparency Act reduces the Election Law Enforcement Commission reporting threshold of campaign contributions made to campaign/political committees from \$300 per year to \$200 per calendar year; and

WHEREAS, the New Jersey Elections Transparency Act continues to preclude municipalities from awarding non-fair and open contracts in excess of \$17,500 to individuals and business entities who make reportable campaign contributions in excess of the reporting threshold in excess of \$200 per calendar year; and

WHEREAS, the New Jersey Elections Transparency Act also modifies the maximum amount of permitted campaign contributions to any municipal committee of a political party operating within said municipality from \$7,200 per year to \$14,400 per year, and the maximum amount of permitted campaign contributions to any county committee of a political party from \$37,000 per year to \$75,000 per year; and

WHEREAS, the New Jersey Elections Transparency Act eliminates prohibitions preventing Counties and/or Municipalities from awarding non-fair and open contracts to individuals and business entities making reportable campaign contributions above the \$200 threshold to a political party's county or municipal committee; and

WHEREAS, the Code of the Township of Lower, specifically Chapter 95, Regulation of Professional Service Contracts, sets forth regulations governing reportable campaign contributions which require modification in order to ensure consistency with the provisions of the recently enacted New Jersey Election Transparency Act;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Township Council of the Township of Lower, County of Cape May, State of New Jersey as follows:

Section 1. Chapter 95, Regulation of Professional Service Contracts, is hereby repealed and replaced as follows:

95-1 Definitions.

**BUSINESS ENTITY SEEKING A PUBLIC CONTRACT**

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 aggregate employed by the entity as well as any subsidiaries directly controlled by the business entity.

**PROFESSIONAL BUSINESS ENTITY**

A business entity as defined in this section which provides services by individuals who are required to be professionally licensed under the laws or regulations of this State or which provides "extraordinary unspecifiable services" pursuant to N.J.S.A. 40A:11-5(1)(a)(ii).

**95-2****Prohibition of awarding public contract to certain contributors.**

- A. Any other provision of law to the contrary notwithstanding, the Township of Lower or any of its purchasing agents or agencies or those of its independent authorities, boards or commissions, as the case may be, shall not enter into a non-fair and open contract or agreement to procure services 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 a campaign committee or joint campaign committee of any candidate(s) for, or holder of, the office of Mayor or Council of the Township of Lower in excess of the thresholds specified in Subsection C of this section within one calendar year immediately preceding the date of the contract or agreement.
- B. No professional business entity which enters into negotiations for or agrees to the award of any non-fair and open contract or agreement with the Township of Lower or any department or agency thereof or of its independent authorities, boards or commissions for the provision of professional services shall knowingly solicit or make any contribution of money or pledge of a contribution including in-kind contributions in excess of the thresholds specified in Subsection C of this section to a campaign committee or joint campaign committee of any candidate(s) for, or holder of, the office of Mayor or Council of the Township of Lower between the time of first communications between that business entity and the Township of Lower regarding a specific professional services agreement and the later of the termination of negotiations or the completion of the contract or agreement.
- C. Notwithstanding Subsections A and B above, any individual who is a professional business entity may annually contribute a maximum of \$200 each for any purpose to any campaign committee or joint campaign committee of any candidate(s) for, or holder of, the offices of Mayor or Council of the Township of Lower without violating this § 95-2; provided, however, that no group of individuals meeting the definition of a professional business entity may contribute annually for any purpose in excess of \$5,200 to a campaign committee or joint campaign committee of any candidate(s) for, or holders of, the offices of Mayor or Council without violating § 95-2.
- D. Notwithstanding the foregoing, pursuant to the New Jersey Election Transparency Act, N.J.S.A. 19:44A-1 et seq., individuals and/or business entities which enter into negotiations for or agrees to the award of any non-fair and open contract or agreement with the Township of Lower or any department or agency thereof or of its independent authorities, boards or commissions for the provision of professional services shall not be precluded from entering into a non-fair and open contract or agreement with the Township of Lower for making reportable campaign contributions in excess of the \$200 threshold to any municipal committee of a political party operating within said municipality or to any county committee of a political party per calendar year.

**95-3****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 candidate for, or holder of, the office of Mayor or Council of the Township of Lower shall be deemed a violation of this chapter, nor shall an agreement for services be disqualified thereby, if that contribution or agreement was made by the professional business entity prior to the effective date of this chapter.

**95-4****Contribution statement required by professional business entity.**

- A. Prior to awarding any non-fair and open contract or agreement to procure services with any professional business entity, the Township or any of its purchasing agents or agencies or independent authorities, boards or commissions, as the case may be, shall receive a sworn statement from the professional business entity made under penalty of perjury that the professional business entity has not made a contribution in violation of § 95-2.

- B. Prior to awarding any non-fair and open contract or agreement to procure services with any professional business entity, the Township or any of its purchasing agents or agencies or independent authorities, boards or commissions, as the case may be, shall also receive a sworn statement from the professional business entity made under penalty of perjury disclosing all contributions made by the professional business entity during the immediately preceding 12 months to any New Jersey state, municipal, and/or county political party committees which contributions, when added to any contributions made to any Township of Lower political party committees during the same time period, exceed the sum of \$200.
- C. The professional business entity shall have a continuing duty to report any violations of this Chapter that may occur and to report any additional contributions to New Jersey state, municipal, and/or county political party committees above the amounts set forth in Subsection B of this section during the negotiation or duration of a contract.
- D. The sworn statement required under this section shall be made prior to entry into the non-fair and open 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.

**95-5**

**Penalty.**

- A. All Township of Lower professional service agreements shall provide that it shall be a breach of the terms of the government contract for a professional business entity to violate § 95-2 or to knowingly conceal or misrepresent contributions given or received or to make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution.
- B. Any professional business entity who knowingly fails to reveal a contribution made in violation of § 95-2 or who knowingly makes or solicits contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution shall be disqualified from eligibility for future Township contracts for a period of four calendar years from the date of the violation.
- C. Nothing herein shall be deemed to apply to contributions made to any county or state campaign committee, candidate or officeholder, or to any municipal, county or state political party committee, however, such contributions are subject to the disclosure provision that may apply as set out in § 95-4C.

**95-6**

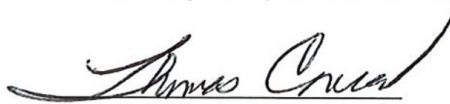
**Procedures to ensure compliance with regulation.**

- A. Neither the Chief Financial Officer nor his or her designee shall issue a certification of availability of funds without first receiving a certification from the Township Manager that the disclosures required by this chapter have occurred and that such disclosures do not violate the contribution limits set forth herein.
- B. No contract or agreement for professional services shall be signed and delivered to any professional business entity without full compliance with this chapter.

**Section 2.** All other ordinances in conflict or inconsistent with this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

**Section 3.** Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remaining portions of this Ordinance shall not be affected thereby and shall remain in full force and effect, and to this end the provision of this Ordinance are hereby declared to be severable.


**Section 4.** This Ordinance shall become effective 20 days after final passage and publication according to law.

  
Thomas Conrad, Councilmember

ABSENT  
Kevin Coombs, Councilmember


  
Roland Roy, Jr., Councilmember

  
David Perry, Deputy Mayor

  
Frank Sippel, Mayor

First Reading: September 18, 2023

Adopted: October 16, 2023

Attest:   
Julie A Picard, Township Clerk