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MAR:dh
12-14-10

AN ORDINANCE ESTABLISHING THAT A BUSINESS ENTITY WHICH MAKES POLITICAL CONTRIBUTIONS TO MUNICIPAL CANDIDATES AND MUNICIPAL AND COUNTY POLITICAL PARTIES IN EXCESS OF CERTAIN THRESHOLDS SHALL BE LIMITED IN ITS ABILITY TO RECEIVE PUBLIC CONTRACTS FROM THE CITY OF CAMDEN (CONTRACTOR PAY-TO-PLAY REFORM ORDINANCE)

WHEREAS, large political contributions from those contractors seeking or performing contracts with a municipality raise reasonable concerns on the part of taxpayers and Camden residents as to their trust in government and its business practices; and

WHEREAS, pursuant to N.J.S.A. 40:48-2, the City of Camden is authorized to adopt such ordinances, regulations, rules and by-laws as necessary and proper for good government, as well as the public health, safety and welfare; and

WHEREAS, pursuant to P.L. 2005, c.271 (codified at N.J.S.A. 40A:11-51) 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 recipient of such a contract can make during the term of a contract; and

WHEREAS, in the interest of good government, the people and the City of Camden desire to establish a policy that will avoid the perception of improper influence in public contracting and local elections; now, therefore

BE IT ORDAINED, it shall be the policy of the City of Camden to create such a regulation which states that a Business Entity that makes political contributions to municipal candidates and municipal and county political parties in excess of certain thresholds shall be limited in its ability to receive public contracts from the City of Camden.

BE IT FURTHER ORDAINED, by the City of Camden, in the County of Camden, and State of New Jersey, as follows:

SECTION 1. DEFINITIONS

As used in this Ordinance:

(a) **"Campaign Committee"** means (i) every candidate for City of Camden elective municipal office; (ii) every candidate committee established by or for the benefit of a candidate for City of Camden elective municipal office; (iii) every joint candidate committee established in whole or in part by or for the benefit of a candidate for City of Camden elective municipal office; (iv) every political party committee of the City of Camden; (v) every political party committee of the County of Camden; and (vi) every political committee, continuing political committee, political action committee ("PAC") or other form of association or organization that regularly engages in the support of candidates for the City of Camden or Camden County elective offices or City of Camden or Camden County political parties or political party committees. The terms in the foregoing Section 1(a) shall 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 Unspecifiable Services"** means all contracts for "professional services" and "extraordinary unspecifiable services" as such terms are 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; business corporation; professional services corporation; partnership; limited liability company; business trust, organization; association; and any other manner and kind of legal commercial entity organized under the laws of the State of New Jersey or any foreign jurisdiction; (iii) any person, their spouses and child/children, or entity that owns 10% or more of the equity or ownership or income interests in an organization or entity as defined in subsections (i) and (ii) above; (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 subsection (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 subsections (i), (ii) and (v) above, as such term is defined in 11 U.S.C. 101(2).

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 City of Camden and any of its departments, instrumentalities or purchasing agents shall not enter into any agreement or otherwise contract to procure “professional services” as such term is defined at N.J.S.A. 40A:11-2(6) and used at N.J.S.A. 40A:11-5(1)(a)(i) and/or banking, insurance or other consulting service (hereinafter “Professional Services”), nor “extraordinary unspecifiable services” as such term is defined at N.J.S.A. 40A:11-2(7) and used at N.J.S.A. 40A:11-5(1)(a)(ii) and/or media, public relations, lobbying, parking garage management or other consulting and/or management services (hereinafter “Extraordinary Unspecifiable Services”) from any Business Entity if such Business Entity has solicited or made any Contribution to a Campaign Committee in excess of the thresholds specified in Section 2(c) below 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 the City of Camden or any of its departments or instrumentalities, for the rendition of Professional Services or Extraordinary Unspecifiable Services shall knowingly solicit or make any Contribution to a Campaign Committee between the time of first communication between that Business Entity and the City of Camden regarding a specific contract or agreement for Professional Services or Extraordinary Unspecifiable Services, 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 City Council, or \$500 per calendar year to any joint candidates committee for Mayor or City Council, or \$300 per calendar year to a political committee or political party committee of the City of Camden; (ii) \$500 maximum per calendar year to a Camden County political committee or political party committee; and (iii) \$500 maximum per calendar year to any PAC. However, for each Business Entity party to a contract for Professional or Extraordinary Unspecifiable Services as defined in Section 2(a), or engaged in negotiations for a contract defined in Section 2(a), when such Business Entity’s Contribution is aggregated with all “persons” defined in Section 1(d) above, by virtue of their affiliation to that Business Entity party, a maximum of \$2,500 to all City of Camden candidates, candidate committees, joint candidate committees, and holders of public office having ultimate responsibility for the award of a contract, all City of Camden or Camden County political committees and political party committees as described herein combined, without violating Section 2(a).

(d) For purposes of this Section 2, the office that is considered to have ultimate responsibility for the award of the contract shall be (i) the City of Camden Mayor and/or City Council, if pertinent State law and the contract requires approval or appropriation from the Mayor and/or City Council, or (ii) the Mayor of the City of Camden, if pertinent State law and 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 Section 2(a) from receiving the contract at the time that the subcontract is awarded. Nor may any person who would be disqualified by Section 2(a) from receiving the contract perform substantially all of obligations described in a contract for Professional or Extraordinary Unspecifiable Services that is subject to this Ordinance.

SECTION 3. 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 4. 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 5. CONTRIBUTION STATEMENT BY BUSINESS ENTITY

(a) Prior to awarding any contract or agreement to procure Professional Services or Extraordinary Unspecifiable Services from any Business Entity, the City of Camden or its purchasing agents and departments, 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 2 of this Ordinance. The City of Camden and its purchasing agents shall be responsible for informing the City Council 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 City of Camden any Contributions that constitute a violation of this act that are made during the negotiation, proposal process or the duration of a contract. The City of Camden and its purchasing agents shall be responsible for informing the City Council within ten (10) business days after receipt of said report from the Business Entity, or at the next City Council meeting following receipt of said report from the Business Entity, or whichever comes first.

(c) The certification required under this Section 5(c) shall be made prior to entry into the contract or agreement with the City of Camden, 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 State or federal law.

SECTION 6. 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 Section 2 of this Ordinance if, within 30 days after the date on which the applicable State Election Law Enforcement Commission ("ELEC") report is published, said Business Entity notifies the City of Camden in writing and seeks and receives reimbursement of the Contribution from the recipient of such Contribution.

SECTION 7. EXEMPTIONS

The contribution limitations prior to entering into a contract in Section 2(a) 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, or (ii) are awarded in the case of emergency under N.J.S.A. 40A:11-6. There is no exemption for contracts awarded pursuant to a "Fair and Open Process" under N.J.S.A. 19:44A-20 et seq.

SECTION 8. INDEXING

The monetary thresholds of "Definitions" Section 1(d) and Section 2(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-Wilmington-Atlantic City area, rounded to the nearest \$10.00. The Municipal Clerk of the City of Camden 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 9. PENALTY

(a) It shall be a material breach of the terms of a City of Camden contract or agreement for Professional Services or Extraordinary Unspecifiable Services when a Business Entity that is a party to such contract or agreement 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 Camden, or a holder of public office having ultimate responsibility for the award of a contract, or any Camden or Camden County political committee or political party committee, or any 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 professional Business Entity itself, would subject that entity to the restrictions of this Ordinance; (vi) funded contributions made by third parties, including consultants, attorneys, 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.

(b) Furthermore, any Business Entity that violates Section 8(a)(i-viii) shall be disqualified from eligibility for future City of Camden contracts for a period of four (4) calendar years from the date of the violation.

(c) 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 applicable fines and/or imprisonment as fixed by law for violations of the Ordinances of the City of Camden.

SECTION 10. 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 City of Camden has the right, consistent with the Rules of Court, to file charges in a court of competent jurisdiction, and/or to pursue a civil action for a violation of this Ordinance in a court of competent jurisdiction, and to seek and obtain

declaratory, injunctive, or other legal or equitable relief, including but not limited to, attorneys fees and costs, arising from or related to a violation of this Ordinance.

SECTION 11. 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. The drafters of this Ordinance and the City Councilpersons who vote in favor of this Ordinance declare that they would have supported the Ordinance and each section, subsection, sentence, clause, phrase, or provision or application thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses, phrases, or provisions or applications thereof may be held invalid.

SECTION 12. 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 13. EFFECTIVE DATE

This ordinance shall take effect twenty (20) days after its final passage and publication as provided by law.

SECTION 14. FILING ORDINANCE WITH SECRETARY OF STATE

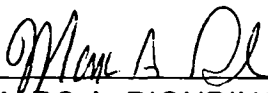
Pursuant to N.J.S.A. 40A:11-51c, upon adoption, the Municipal Clerk shall file a true copy of this Ordinance with the State Secretary of State's Office.

BE IT FURTHER ORDAINED, that pursuant to N.J.S.A. 52:27BBB-23 and N.J.S.A. 40:69A-41, a true copy of this Ordinance shall be forwarded to the Mayor, who shall have ten (10) days from the receipt thereof to approve or veto this Ordinance. Additionally, pursuant to N.J.S.A. 52:27BBB-23, a true copy of this Ordinance shall be forwarded to the State Commissioner of Community Affairs, who shall have ten (10) days from the receipt thereof to approve or veto this Ordinance, and the action by the Commissioner regarding this Ordinance shall supersede any action by the Mayor on the same Ordinance. All notices of approval or veto shall be filed in the Office of the Municipal Clerk.


DEBORAH PERSON-POLK

Dated: December 14, 2010

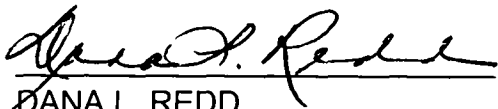
The above has been reviewed
and approved as to form.



MARC A. RIONDINO
City Attorney



FRANCISCO MORAN
President, City Council

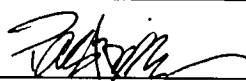


DANA L. REDD
Mayor

FIRST READING: DECEMBER 14, 2010

SECOND READING: JANUARY 11, 2011

ADOPTED: JANUARY 11, 2011

ATTEST: 

LUIS PASTORIZA
Municipal Clerk

Francisco Moran
President
Councilperson, 3rd Ward

Dana M. Burley
Councilperson, 1st Ward

William Spearman
Councilperson, 2nd Ward

Luis A. Lopez
Councilperson, 4th Ward



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Curtis Jenkins
Vice-President
Councilperson-at-Large

Marilyn Torres
Councilperson-at-Large

Deborah Person-Polk
Councilperson-at-Large

Jason Asuncion, Esq.
Counsel-To-Council

Luis Pastoriza, R.M.C.
Municipal Clerk

Elesha M. Johnson, R.M.C.
Deputy Municipal Clerk

MEMORANDUM

DATE: January 18, 2011
TO: Dana L. Redd, Mayor
FROM: Elesha M. Johnson, Deputy Municipal Clerk
RE: **Ordinance Final Passage – (MC-4588)**

ORDINANCE ESTABLISHING THAT A BUSINESS ENTITY WHICH MAKES POLITICAL CONTRIBUTIONS TO MUNICIPAL CANDIDATES AND MUNICIPAL AND COUNTY POLITICAL PARTIES IN EXCESS OF CERTAIN THRESHOLDS SHALL BE LIMITED IN ITS ABILITY TO RECEIVE PUBLIC CONTRACTS FROM THE CITY OF CAMDEN (CONTRACTOR PAY-TO-PLAY REFORM ORDINANCE)

In accordance with Rule XIX of the Administrative Code of the City of Camden (Rules of Procedure governing the City Council), I am delivering to you the attached ordinance adopted by City Council at a **REGULAR** meeting held on **January 11th, 2011**. Said article provides that "each ordinance shall be returned by the Mayor to the Municipal Clerk after the Mayor has affixed his / her signature thereto or after the expiration of **ten (10) days** from the date of its delivery to the Mayor in any event".

OFFICE OF THE MAYOR

Received by: *[Signature]* Date: 1-19-11
Date of Approval: 1-24-11

EMJ/ej
file