

**ORDINANCE NO. 3403**

**INTRODUCED BY: COMMISSIONER THOMAS J. EVANS ON BEHALF OF THE BOARD OF COMMISSIONERS**

**INTRODUCED ON: NOVEMBER 7, 2018**

**PUBLISHED: NOVEMBER 15, 2018**

**PUBLIC HEARING: DECEMBER 4, 2018**

**PUBLISHED: DECEMBER 13, 2018**

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**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 TOWNSHIP OF NUTLEY IN THE COUNTY OF ESSEX**

**(CONTRACTOR PAY-TO-PLAY REFORM ORDINANCE)**

**The Board of Commissioners of the Township of Nutley does hereby Ordain:**

**WHEREAS**, large political contributions from those seeking or performing contracts with a municipality raise reasonable concerns on the part of taxpayers and residents as to their trust in government and its business practices; 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 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 government of the Township of Nutley desire to establish a policy that will avoid the perception of improper influence in public contracting and local elections;

**NOW, THEREFORE, BE IT RESOLVED**, it shall be the policy of the Township of Nutley to create such a regulation which states 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 Township of Nutley; and,

**BE IT ORDAINED** by the Township of Nutley in the County of Essex, and State of New Jersey, as follows:

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**DEFINITIONS**

As used in this ordinance:

- (a) “Campaign Committee” means (i) every candidate for the Township of Nutley elective municipal office; (ii) every candidate committee established by or for the benefit of a candidate for Township of Nutley elective municipal office; (iii) every joint candidate committee established in whole or in part by or for the benefit of a candidate for Township of Nutley elective municipal office; (iv) every political party committee of the Township of Nutley ; (v) every political party committee of the County of Essex; and (vi) every political committee, continuing political committee, or other form of association or organization that regularly engages in the support of candidates for the Township of Nutley municipal or Essex elective offices or Township of Nutley municipal or County of Essex 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 indefeasibly 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

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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, as such term is used in 11 U.S.C. 101(2).

**SECTION 1 – 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 Nutley 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 unspecified 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 service (hereinafter "Extraordinary Unspecified Services") 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 Township of Nutley or a holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Township of Nutley or County of Essex political committee or political party committee, or (iii) to any continuing political committee or political action committee that regularly engages in the support of Township of Nutley municipal or County of Essex elections and/or Township of Nutley municipal or County of Essex candidates, candidate committees, joint candidate committees, political committees, political parties, political party committees, (hereinafter "PAC"), in excess of the thresholds specified in subsection (g) 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 Township of Nutley or any of its departments or instrumentalities, for the rendition of Professional Services or Extraordinary Unspecified Services 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 the Township of Nutley or a holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Township of Nutley or County of Essex

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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 for Professional Services or Extraordinary Unspecified 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 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; Township of Nutley (ii) \$500 maximum per calendar year to a County of Essex 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 Unspecified Services as defined in subparagraph (a), 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 Township of Nutley candidates, candidate committees, joint candidate committees, and holders of public office having ultimate responsibility for the award of a contract, all Township of Nutley or County of Essex 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 Township of Nutley Board of Commissioners, if the contract requires approval or appropriation from the Board of Commissioners, or (ii) the Board of Commissioners of the Township of Nutley, if the contract requires approval of the Board of Commissioners, 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

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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 2 - 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 3 - 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 4 - CONTRIBUTION STATEMENT BY BUSINESS ENTITY**

- (a) Prior to awarding any contract or agreement to procure Professional Services" or Extraordinary Unspecified Services" from any Business Entity, the Township of Nutley 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 1 of this Ordinance. The Township of Nutley, its purchasing agents and departments shall be responsible for informing the Township of Nutley 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 Township of Nutley any Contributions that constitute a violation of this act that are made during the negotiation, proposal process or the duration of a contract. The Township of Nutley, its purchasing agents and departments 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 Township of Nutley 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 Nutley, or prior to the provision of services or goods, as the case may

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be, 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 Unspecified Services may cure a violation of Section 1 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 6 - EXEMPTIONS**

The contribution limitations prior to entering into a contract in Section 1(a) do not apply to contracts which (i) are awarded to the lowest responsible bidder after public advertising for bids and bidding therefor 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 7 - PENALTY**

(a) It shall be a material breach of the terms of a Township of Nutley agreement or contract for Professional Services or Extraordinary Unspecified Services 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 the Township of Nutley, or a holder of public office having ultimate responsibility for the award of a contract, or any Township of Nutley or County of Essex 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,

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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 7 (a) (i-viii) shall be disqualified from eligibility for future Township of Nutley 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 fines and/or imprisonment as fixed by law for violations of the ordinances of the Township of Nutley .

**SECTION 8 - 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 Township of Nutley 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, attorney's fees and costs, arising from or related to a violation of this ordinance.

**SECTION 9 - 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.

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**SECTION 10 – INDEXING**

The monetary thresholds of “Definitions” Section (d) and Section 1(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 New York-Northern New Jersey-Long Island region, rounded to the nearest \$10.00. The Clerk of the Township of Nutley 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 11 - 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 12 - EFFECTIVE DATE**

This Ordinance shall become effective twenty (20) days following the final adoption thereof by the Township of Nutley of the County of Essex and shall be published as required by law.