

TOWNSHIP OF CHESTERFIELD

ORDINANCE NO. 2017-5

AN ORDINANCE TO ESTABLISH LIMITATION ON POLITICAL CONTRIBUTIONS AND ESTABLISHING A PROCEDURE FOR THE AWARD OF PROFESSIONAL SERVICE CONTRACTS

WHEREAS, the Local Public Contracts Law, N.J.S.A. 40A:11-1 *et seq.*, authorizes the award of professional service contracts without resort to competitive bidding; and

WHEREAS, pursuant to P.L. 2005, c. 271 (codified at N.J.S.A. 40A:11-51 and 19:44A-20.26), a municipality is authorized to adopt, by Ordinance, measures limiting the award of public contracts to business entities that have made political contributions, and further limiting contributions that the holders of a contract can make during the term of a contract; and

WHEREAS, the Township Committee deems it to be in the best interest of the public to establish a policy which prohibits professional business entities from making political contributions to candidates campaigning for Township Committee, or to Political Action Committees (PACs) associated in any way with elections for Township Committee.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Township Committee of the Township of Chesterfield, County of Burlington and State of New Jersey that the Code of the Township of Chesterfield be and the same is hereby amended at Chapter 39, “Officers and Employees”, to add the following new provisions:

ARTICLE I. NEW ARTICLES AND SECTIONS. The following new Article and Sections are hereby added to the Code of the Township of Chesterfield:

ARTICLE IX. PROFESSIONAL SERVICES CONTRACTS/POLITICAL CONTRIBUTION LIMITATIONS

§ 39-31. Award of Public Professional Services Contracts. It is the purpose of this Section that, notwithstanding that Professional Services Contracts are exempt from the

competitive bidding requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., the Township Committee deems it appropriate, in order to avoid any public perception that Professional Services Contracts are awarded in consideration for, e.g., political contributions or other considerations, that said Contracts, consistent with the already existing custom and procedure of the Township, shall continue to be awarded through a competitive, quality-based, fair and open process.

§ 39-32. Process for Award of Professional Services Contracts. No Professional Services Contracts, as that term is used in the Local Public Contracts Law, shall be awarded after the date of the adoption of this Ordinance, unless the following competitive, quality-based, fair and open process is followed:

- A. Professional Services may be awarded by virtue of a combined publicly advertised Request for Qualifications (“RFQ”) and Request for Proposals (“RFP”) which will be issued as one document for those appointments which are made on an annual basis, such as, but not limited to, the positions of: Township Attorney, Township Engineer, Township Planner, Township Auditor, Planning Board Attorney, Planning Board Engineer, and such similar statutory and/or ordinance public positions.
- B. For said positions, no Contract shall be awarded, unless and until the positions are:
 - 1. publicly advertised in newspapers in sufficient time to give notice in advance of the solicitation for the Contracts;
 - 2. awarded under a process that provides for public solicitation of proposals and qualifications;

3. awarded and disclosed under criteria established in writing by the Township of Chesterfield prior to the solicitation of proposals or qualifications; and
 4. publicly announced when awarded and noticed by way of publication; and as to those RFQ's and RFP's which prove to be unsuccessful, the Municipal Clerk shall retain a copy of same on file for a period of not less than sixty (60) days.
- C. For Contracts which arise on an occasional basis, such as appraisals needed for the acquisition of farmland and/or open space, as well as title searches, surveying, and similar work associated with same; and similar projects of this type, Professional Services shall be awarded only after receipt of publicly advertised RFQ's, after which a limited number of the best qualified vendors would be identified, and proposals would then be solicited therefrom.
- D. A Review of RFP's/RFQ's by Township Committee. The Township Committee shall evaluate any RFQ and/or RFP issued pursuant to the Professional Services Contracting procedures set forth above. The Committee must prepare, prior to a Request for Proposals, a written cost estimate in order to allow for proper evaluation of the fee aspect of Proposals. Moreover, the Committee shall evaluate the respective Qualifications and/or Proposals, taking into consideration the designated qualifications and/or performance criteria, experience, quoted fee and other relevant factors in making an award of the Contract. The Committee may, in its sole discretion, conduct negotiations with qualified vendors after receipt of proposals, in

order to achieve the best possible contract terms and conditions for the Township and its taxpayers.

- E. Emergency Exceptions. Notwithstanding the foregoing, the Township Committee recognizes that the New Jersey Legislature has provided for the occurrence of certain emergencies, and further recognizes that, therefore, the procedure outlined above, might not be capable of being achieved in the event of an emergency or similar time constraints. Thus, should such a situation arise, and time does not permit resort to this procedure, and the immediate performance of services is necessary, then an award for same may be made in accordance with the provisions of the Local Public Contracts Law relating to emergency contracts, and such rules and regulations as made be promulgated, from time to time, by the Township Committee with regard to same. No such emergency contracts, however, may be awarded without submission to the Township Clerk of a certification establishing the basis for the deviation from the procedures outlined herein.

§ 39-33. Political Contributions by Professional Business Entities; Transfer of Contributions.

- A. Statement of Public Policy.

The Township of Chesterfield reaffirms the policy of the Township to prohibit professional business entities seeking a public professional services contract from Chesterfield Township from making political contributions to candidates campaigning for Township Committee, or to Political Action Committees (PACs) associated in any way with elections for Township Committee. Business entities that choose to contribute politically shall be prohibited from

receiving professional services contracts from the Township of Chesterfield during the calendar year in which said contribution is made.

§ 39-34. Definitions.

For purposes of this Article, the terms used herein shall be given the broadest possible meaning in order to effectuate the policy objectives stated and adopted. Certain specific terms used shall have the following meanings:

- A. Contributing - The act of giving money or providing in-kind contributions to aid a municipal political candidate or any of the political party committees or PACs otherwise referenced in this Article.
- B. Contributing Politically - Shall have the same meaning as "Contributing."
- C. Contributions - Shall be given the same meaning and use generally utilized by the Election Law Enforcement Commission of the State of New Jersey under the statutes and regulations governing that agency. The term shall include but not be limited to payments or donations of money and in-kind contributions.
- D. PAC or PACS - The term "PAC" or "PACS" are abbreviations for "political action committee" or "political action committees," respectively. The terms refer to organizations that either regularly engage in, or whose primary purpose is, the support of candidates in general or municipal elections and/or political or municipal parties in excess of the thresholds specified in this Article. The foregoing shall be limited to organizations and entities which support or oppose Chesterfield Township candidates for Township Committee, or which engage in political activities in support or opposition to candidates for Chesterfield Township Committee.

- E. Political Contributions - Has the same definition as "contributions," hereinabove.
- F. Professional Business Entities - a "professional business entity" seeking a public contract means, individuals and firms engaged in the rendering of services, engineering services, survey work, legal services, architectural services, planning design services, financial consulting and other consulting work, auditing, accounting, appraisal services insurance services and banking. If a professional business entity is an individual, the definition includes the individual and individual's spouse, if any, and any child living at home; "Professional business entities" also include firms, corporations, professional corporations, partnerships, business organizations, and/or business associates who provide professional services, where those professional services are exempt from public bidding for public contracts pursuant to the Local Public Contracts Law. 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.

§ 39-35. Prohibition of Awarding Public Contracts to Certain Contributors.

- A. Notwithstanding the provisions any other of law to the contrary, Chesterfield Township and any of its purchasing agents or agencies or the Planning Board, as the case may be, shall not enter into a professional services contract having an anticipated value in excess of \$17,500.00, as determined in advance, except a contract pursuant to a "fair and open" process, with 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 any Chesterfield Township municipal candidate or holder of the public office having ultimate responsibility for the award of the contract, or campaign committee supporting each candidate or officeholder, or to any Chesterfield Township political party committee or PAC that regularly engages in, or whose primary purpose is the support of municipal elections and/or municipal parties in excess of the thresholds specified in subparagraph (D) within one calendar year immediately preceding the date of the contract or agreement.

- B. No professional business which enters into negotiations for, or agree to, any contract or agreement with the municipality or any department or agency thereof or of its independent authorities for the rendering of professional services, with an anticipated value in excess of \$17,500.00, except those awarded pursuant to a "fair and open" process, shall solicit or make any contribution of money, or pledge of contribution, including in-kind contributions, to any Chesterfield Township 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 Chesterfield Township political party committee or PAC that regularly engages in, or whose primary purpose is the support of municipal elections and/or municipal parties between the time of first communications between that business entity and Chesterfield Township regarding a specific professional

services agreement and the termination of negotiations or the completion of the contract or agreement, whichever is later.

- C. No entity, including those whose Contracts which are secured under a fair and open process, may make any amount of monetary contribution during any election cycle to any candidate for Township Committee without violating this Chapter. No entity, including those whose Contracts which are secured under a fair and open process, may make any amount of monetary contribution to a Chesterfield Township political party Committee or PAC without violating this Chapter.
- D. Contributions given to members of, or candidates for, another municipal governing body that is engaged in a shared services or joint purchasing agreement with Chesterfield Township shall not be deemed in violation of this Ordinance nor does the Ordinance preclude the participation of a shared services or joint purchasing agreement on account of such contributions.

§ 39-36. 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 municipal candidate for Township Committee, or Chesterfield Township political party committee or PAC referenced in this Ordinance shall be deemed a violation of this Ordinance, 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 Ordinance.

§ 39-37. Contribution Statement by Professional Business Entity.

- A. Prior to awarding any contract or agreement to procure services, including banking or insurance coverage services, with any professional business entity, the Township or any of its purchasing agents or agencies and the Planning Board as the case may be, shall receive a sworn statement from the professional business entity made under penalty of perjury that the bidder or offeror has not made a contribution in violation of this Ordinance.
- B. The professional business entity shall have a continuing duty to report any violations of this Ordinance that may occur during the negotiation or duration of a contract. The certification required under this subsection shall be made prior to entry into the 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.

§ 39-38. Return of Excess Contributions.

A professional business entity or Township candidate or officeholder or Chesterfield Township political party committee or PAC referenced in this Ordinance may cure a violation of this Ordinance, if, within 60 days after the date on which the applicable ELEC Report is published, the professional business entity notifies the Township Committee in writing and seeks and receives reimbursement of a contribution from the Chesterfield Township candidate or municipal or committee or PAC referenced in this Ordinance.

§ 39-39. No Wheeling.

A Candidate for Township Committee shall not make a contribution to any other candidate committee or municipal party committee not affiliated with the Township of

Chesterfield; nor shall any such candidate accept a contribution from any other candidate committee or municipal party committee not affiliated with the Township of Chesterfield.

§ 39-40. Violations and Penalties.

- A. It shall be a breach of the terms of the Chesterfield Township professional services agreement for a business entity to: (i) make or solicit a contribution in violation of this Ordinance; (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contribution through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) 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 Chesterfield Township; (v) 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 business entity itself, would subject that entity to the restrictions of this Ordinance; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage 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, do any act which would subject that entity to the restrictions of this Ordinance.
- B. Any professional business entity who knowingly violates subsection (a) above shall be disqualified from eligibility for future Chesterfield Township contracts for a period of four calendar years from the date of the violation.

ARTICLE II. REPEALER, SEVERABILITY AND EFFECTIVE DATE.

- A. Repealer. Any and all Ordinances inconsistent with the terms of this Ordinance are hereby repealed to the extent of any such inconsistencies.
- B. Severability. In the event that any clause, section, paragraph or sentence of this Ordinance is deemed to be invalid or unenforceable for any reason, then the Township Committee hereby declares its intent that the balance of the Ordinance not affected by said invalidity shall remain in full force and effect to the extent that it allows the Township to meet the goals of the Ordinance.
- C. Effective Date. This Ordinance shall take effect upon proper passage in accordance with the law.

CHESTERFIELD TOWNSHIP COMMITTEE

Introduced: May 25, 2017

Adopted:

RECORD OF VOTE													
INTRODUCTION							ADOPTION						
TWP COMMITTEE	AYE	NAY	NV	AB	ORD	SEC	TWP COMMITTEE	AYE	NAY	NV	AB	ORD	SEC
S Davis	X						S Davis						
A Katz	X						A Katz						
R LoCascio	X					X	R. LoCascio						
R Romeu	X				X		R Romeu						
J Liedtka	X						J Liedtka						
X – Indicates Vote NV – Not Voting AB – Absent ORD – Motion SEC - Seconded													