



Legislation Text

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ORDINANCE AMENDING AND SUPPLEMENTING TITLE II ADMINISTRATION, CHAPTER 4 GENERAL ADMINISTRATION, SECTION 22C CONTRACTOR PAY-TO-PLAY REFORM, OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, TO REFLECT NEW JERSEY PAY-TO-PLAY LAW.

WHEREAS, the Municipal Council adopted Ordinance 6PSF-a August 1, 2012, to regulate political contributions by contractors seeking to do business with the City of Newark; and

WHEREAS, the Municipal Council desires to amend Ordinance 6PSF-a August 1, 2012, to reflect New Jersey Pay-to-Play Law.

Note: Additions are shown in **bold and underlined** and deletions are shown as ~~strikethrough~~.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

1. Title II Administration, Chapter 4 General Administration, Section 22C Contractor Pay-to-Play Reform, of the Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented is hereby amended as follows:

2:4-22C. CONTRACTOR PAY-TO-PLAY REFORM

2:4-22C.1. Definitions.

As used in this section:

a. **Campaign Committee** shall mean (i) every candidate for the City of Newark elective municipal office; (ii) every candidate committee established by or for the benefit of a candidate for the City of Newark elective municipal office; (iii) every joint candidate committee established in whole or in part by or for the benefit of a candidate for the City of Newark elective municipal office; (iv) every political party committee of the City of Newark; ~~(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 City of Newark municipal or County of Essex elective offices or City of Newark 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. **Contract for professional or extraordinary services** shall mean 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 Section, a **"business entity"** whose contributions are regulated by this Section shall mean: (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 ten (10%) percent 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 One Hundred Thousand (\$100,000.00) Dollars 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 Section; 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).

2:4-22C.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 Newark 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 the City of Newark or a holder of public office having ultimate responsibility for the award of a contract, or (ii) to any City of Newark 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 City of Newark municipal or County of Essex elections and/or City of Newark 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 (1) 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 Newark 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 City of Newark or a holder of public office having ultimate

responsibility for the award of a contract, or (ii) to any City of Newark or County of Essex political committee or political party committee, **during the term of the contract.** 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 section are: (i) a maximum of three hundred (\$300.00) dollars per calendar year each for any purpose to any candidate or candidate committee for mayor or governing body, or six hundred (\$600.00) dollars per calendar year to any joint candidates committee for mayor or governing body, or three hundred (\$300.00) dollars per calendar year to a political committee or political party committee of the City of Newark; (ii) three hundred (\$300.00) dollars maximum per calendar year to a County of Essex political committee or political party committee; and (iii) three hundred (\$300.00) dollars 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 paragraph a. or engaged in negotiations for a contract defined in paragraph a. when such business entity's contribution is aggregated with all "persons" defined in paragraph (d) of "Definitions" above, by virtue of their affiliation to that business entity party, a maximum of two thousand five hundred (\$2,500.00) dollars to all City of Newark candidates, candidate committees, joint candidate committees, and holders of public office having ultimate responsibility for the award of a contract, all City of Newark or County of Essex political committees and political party committees as described herein combined, without violating paragraph a. of this section.

c.d. For the purposes of this Section, the office that is considered to have ultimate responsibility for the award of the contract shall be (i) the City of Newark Mayor or Municipal Council, if the contract requires approval or appropriation from the Mayor or Municipal Council, or (ii) the Mayor of the City of Newark, 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.

d.e. *Rules Regarding Subcontractors.* No person may be awarded a subcontract to perform under a contract subject to this Section, 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 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 Section.

2:4-22C.3. Contributions Made Prior to the Effective Date.

No contribution or solicitation of contributions made prior to the effective date of this Section shall be deemed to give rise to a violation of this section.

2:4-22C.4. Contract Renewal.

No contract subject to this Section may be renewed, extended, or materially modified unless the resulting renewal, extension or modification would be allowable under the provisions of this Section if

it were an initial contract.

2:4-22C.5. 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 City of Newark 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 Subsection 2:4-22C.2 of this Section. The City of Newark, its purchasing agents and departments shall be responsible for informing the Municipal Council that the aforementioned sworn statement has been received and that the business entity is not in violation of this Section, prior to awarding the contract or agreement.

b. A business entity shall have a continuing duty to report to the City of Newark 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 Newark, 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 Municipal Council 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 City of Newark, 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 law.

2:4-22C.6. 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 subsection 2:4-22C.2 of this Section, if, within thirty (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.

2:4-22C.7. Exemptions.

~~The contribution limitations prior to entering into a contract in Subsection 2:4-22C.2a. does 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.~~

2:4-22C.8. Penalty.

a. It shall be a material breach of the terms of a City of Newark 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 Section; (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 recontributed to a candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in City of Newark, or a holder of public office having ultimate responsibility for the award of a contract, or any City of Newark or County of Essex political committee or political party committee, or any PAG; (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 Section; (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 Section; 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 Section.

b. Furthermore, any business entity that violates Subsection 2:4-22C.8 (a) (i-viii) shall be disqualified from eligibility for future City of Newark 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 Section, or who conspires with another person to violate any provision of this Section, or who, with the purpose of promoting or facilitating a violation of this Section, 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 City of Newark.

2:4-22C.9. 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 Section, every person aggrieved by a violation of this Section, or any taxpayer or resident of the City of Newark 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 Section 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 Section.

2:4-22C.10. Severability.

If any provision of this Section, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Section 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 Section are severable.

2:4-22C.11. Indexing.

The monetary thresholds of "Definitions" paragraph d. and subsection 2:4-22C.1c. of this section 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 Northern New Jersey region, rounded to the nearest ten (\$10.00) dollars. The Clerk of the City of Newark 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. (Ord. 6PSF-A, 8-1-12 §10)

2:4-22C.112. Effective Date.

1. This Section shall become effective twenty (20) days following the final adoption thereof by the Municipal Council of the City of Newark and shall be published as required by law. (Ordinance 6PSF-a, codified herein, was adopted August 1, 2012.)

2. If any provision of this ordinance or application thereof to any person(s) or circumstances is adjudged invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the ordinance that can be given effect without the invalidated provision or application and to this end, the provisions of this ordinance are declared severable.

3. This ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

STATEMENT

This Ordinance amends Title II Administration, Chapter 4 General Administration, Section 22C Contractor Pay-to-Play Reform, of the Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented to reflect New Jersey Pay-to-Play Law.