

ORDINANCE OF THE CITY OF GLOUCESTER CITY
County of Camden, State of New Jersey
#O-35-2017

**AN ORDINANCE AMENDING PART, CHAPTER 5A (PUBLIC CONTRACTING) AND
CREATING PART 1, CHAPTER 5B,
OF THE CODE OF THE CITY OF GLOUCESTER CITY**

WHEREAS, the Mayor and Common Council of the City of Gloucester, County of Camden and State of New Jersey adopted Ordinance No. O17-2011 as Part 1, Chapter 5B of the Code of the City of Gloucester on November 22, 2011, amended in part on February 16, 2017 Ordinance No. O4-2017 as Part 1, Chapter 5B; and

WHEREAS, professional business entities are exempt from public bidding requirements; and

WHEREAS, it has become common practice for professional business entities to make substantial political contributions to the election campaigns of the local government elected officers who are ultimately responsible for awarding professional services contracts or other contracts or agreements which are not subject to public bidding; and

WHEREAS, substantial local political contributions from professionals receiving discretionary contracts from the elected officials who receive such contributions raise reasonable concerns on the part of taxpayers as to their trust in the process of local government, if not the quality or cost of services received; and

WHEREAS, by virtue of the aforesaid Ordinances the City of Gloucester imposed limits on the amounts of political contributions that professionals can make and remain eligible to compete for the award of Professional Service Contracts; and

WHEREAS, the City of Gloucester is also concerned that political contributions by professionals to municipal candidates and political parties in the City of Gloucester City should be properly regulated to ensure that the funds contributed are not eligible for transfer to candidates or political committees who are not affiliated with the City of Gloucester City; and

WHEREAS, pursuant to P.L. 2005, c.271, 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 contributions that the holders of a contract can make during the term of a contract; and

WHEREAS, pursuant to N.J.S.A. 40A:11-5 and N.J.S.A. 40:48-2, municipalities have the right to establish rules and procedures for contracting with professional business entities; and

WHEREAS, the Mayor and Common Council has deemed it in the best interest of the public health, safety and welfare to amend Part 1 of Chapter 5B and create Chapter 5C of the Code of the City of Gloucester City to include a policy that sets maximum amounts that professional business entities may contribute politically beyond which they become ineligible to receive a public professional services contract from Gloucester City.

NOW, THEREFORE, be it Ordained by the Mayor and Common Council of the City of Gloucester City, County of Camden and State of New Jersey as follows:

SECTION 1: Chapter 5B of the Code of the City of Gloucester City is hereby amended, revised, supplemented and hereby replaced Chapter 5B - "Public Contracting ("Pay-to-Play") Reform" as follows:

Part 1, Chapter 5B - Political Contributions by Professional Business Entities; Transfer of Contributions

§5B-1. Statement of Public Policy.

The City of Gloucester City reaffirms the policy of the City to set maximum dollar amounts that professional business entities may contribute politically, beyond which they become ineligible to receive a public professional service contract from the City of Gloucester City, as well as the City's policy to prohibit professional business entities which are performing or being paid under existing contracts with the City from making political contributions in amounts that exceed to City's limits on political contributions by professionals. The City also hereby establishes a policy prohibiting the transfer or "wheeling" of political contributions by professionals to candidates of municipal political committees who are not affiliated with the City of Gloucester City.

§5B-2. 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:

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 Section.

CONTRIBUTING POLITICALLY – Shall have the same meaning as "Contributing".

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.

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 regularly engage in, or whose primary purpose is, the support of municipal elections and/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 Gloucester City candidates for Mayor or Common Council, or which engage in political activities in support or opposition to candidates for Gloucester City Mayor or Common Council.

POLITICAL CONTRIBUTIONS – Has the same definition as "contributions", hereinabove.

PROFESSIONAL BUSINESS ENTITIES – A "professional business entity" seeking a public contract means, individuals and firms engaged in the rendering of legal services, engineering services, survey work, architectural services, planning services, 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 associations who provide professional services, where those professional services are exempt from public bidding for public contracts pursuant to the Local Public Contract Law.

§5B-3. Prohibition on Awarding Public Contracts to Certain Contributors.

(a) Any other provisions of law to the contrary notwithstanding, Gloucester City or any of its purchasing agents or agencies or those of its independent authorities, the Land Use Board, as the case may be, shall not enter into an agreement or otherwise contract to procure professional, banking, insurance coverage services or any other consulting services, including those awarded pursuant to a “fair and open” process, from any professional business entity, if that entity has solicited or made any contribution of money, or pledge of a 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 Gloucester City 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 agrees to, any contract or agreement with the City or any department or agency thereof or of its independent authorities for the rendering or professional, banking or insurance coverage services or any other consulting services, including those awarded pursuant to a “fair and open” process, shall solicit or make any contributions of money, or pledge of contribution, including in-kind contributions, to any Gloucester City 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 Gloucester City 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 Gloucester City regarding a specific professional services agreement and the termination of negotiations or the completion of the contract or agreement, whichever is later.

(c) For purposes of this Ordinance, a “professional business entity” seeking a public contract means 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 the aggregate employed by the entity as well as any subsidiaries directly controlled by the business entity.

(d) Any “professional business entity” under this section may not annually contribute more than \$2,600.00 each for any purpose to any candidate for Mayor or candidate for Common Council, or \$7,200.00 to a Gloucester City political party committee or PAC without violating subsection (a) of this section.

(e) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:

- (1) Gloucester City Common Council and the Mayor of Gloucester City if the contract requires approval or appropriation from the Council or Mayor;
- (2) The Mayor of Gloucester City 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;
- (3) The Gloucester City Land Use Board.

(f) Contributions given to members of, or candidates for, another municipal governing body that is engaged in a shared services or joint purchasing agreement with Gloucester City 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.

§5B-4. Contributions Made Prior to the Effective Date.

No contributions of money or any other thing of value, including in-kind contributions, made by a professional business entity to any municipal candidate for Mayor or Common Council Candidate, or Gloucester City 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.

§5B-5. 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 City or any of its purchasing agents or agencies, the Land Use Board 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 of a contract. The certification required under this subsection shall be made prior to entry into the contract or agreement with the City and shall be in addition to any other certifications that may be required by any other provision of law.

§5B-6. Return of Excess Contributions.

A professional business entity or City candidate or officeholder or Gloucester City 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 City Committee in writing and seeks and receives reimbursement of a contribution from the Gloucester City candidate or political party committee or PAC referenced in this Ordinance.

§5B-7. No Wheeling.

A candidate for Mayor or Common Council shall not make a contribution to any other candidate committee or municipal party committee not affiliated with the City of Gloucester City; nor shall any such candidate accept a contribution from any other candidate committee or municipal party committee not affiliated with the City of Gloucester City.

§5B-8. Violations and Penalties.

(a) It shall be a breach of the terms of the Gloucester City 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 a 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 Gloucester City; (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 is 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 whom violates subsection (a) above shall be disqualified from eligibility for future Gloucester City contracts for a period of four calendar years from the date of this violation.

SECTION 2: Part 1, Chapter 5C of the Code of the City of Gloucester City is hereby created by adding the following: "Award of Professional Services Contracts."

Part 1, Chapter 5C – Award of Professional Services Contracts

§5C-1. Statement of Public Policy.

It is the purpose of this Article that, notwithstanding that professional services contracts and certain other contracts for goods and services are exempt from the competitive bidding requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., the Mayor and Common Council deems it appropriate, and consistent with the provisions of the New Jersey legislation, now codified at N.J.S.A. 19:44A-20.1 et seq., to award such contracts through a competitive, quality-based, fair and open process.

§5C-2. Process for Award of Professional Services Contracts.

The City of Gloucester City, or any agency or instrumentality thereof, shall not enter into a contract including a professional services contract, or such other contract, which is exempt from public bidding requirements, having an anticipated value in excess of \$10,000.00 as determined by the municipality, agency or instrumentality, with a business entity, except a contract that is awarded pursuant to a fair and open process if, during the preceding one-year period, that business entity has made a contribution that is reportable by the recipient under N.J.S.A. 19:44a-1 et seq., to any municipal committee of a political party in that municipality if a member of that political party is serving in an elected public office of that municipality when the contract is awarded or to any candidate committee of any person serving in an elected public office of that municipality when the contract is awarded. The fair and open process shall be quality-based and shall be as follows:

(a) Professional services may be awarded by virtue of a publicly advertised request for qualification ("RFQ") and/or request for proposal ("RFP") which will be issued as one document for those appointments which are made on an annual basis.

(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 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 City of Gloucester City prior to the solicitation of proposals or qualifications; and

(4) Publicly announces when awarded; and as to those RFQs and RFPs which prove to be unsuccessful, the Municipal clerk shall a copy of same on file for a period of not less than 60 days.

(c) For contracts which arise on an occasional basis, such as appraisers needed or acquisition of farmland and/or open space, as well as title searches, surveying, and similar work associated with same; and comparable assignments, such as planning services needed for Master Plan updates, appraisals, special counsel, special project engineer contracts, etc., professional services contracts may be awarded without following the foregoing provisions, so long as:

- (1) The anticipated value does not exceed the threshold of \$10,000.00 set forth above; and
- (2) The City Administrator makes every effort to solicit at least two proposals for said work.

§5C-3. Emergency Exceptions.

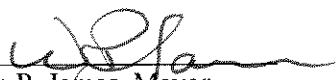
Notwithstanding the foregoing, the mayor and Common Council recognizes that the New Jersey legislature has provided for the occurrence of certain emergencies, and further recognizes that, therefore, the procedure outlined above might not be capable of being achieved in the event of an emergency or similar time constraints. Thus, should a situation arise, and time does not permit to resort to this procedure, and the immediate performance of service 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 may be promulgated, from time to time, by the Mayor and Common Council with regard to same. No such emergency contracts, however, may be awarded without submission to the City Clerk of a certification establishing a basis for the deviation from the procedures outlined herein.

SECTION 3: This Ordinance shall be filed by the City Clerk with the Secretary of State in compliance with N.J.S.A. 40A:11-51(c).

SECTION 4: All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

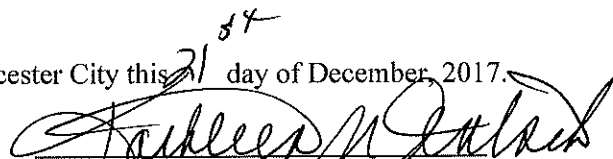
SECTION 5: If the provisions of any section, subsection, paragraph, subdivision, or clause of this Ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this Ordinance.

SECTION 6: This Ordinance shall take effect immediately upon final passage and publication in accordance with law but no sooner than January 1, 2018 and filing with New Jersey Department of State.


William P. James, Mayor

Passed on First Reading: 10/2/2017

Adopted by the Mayor and Common Council of Gloucester City this ²¹ day of December, 2017.

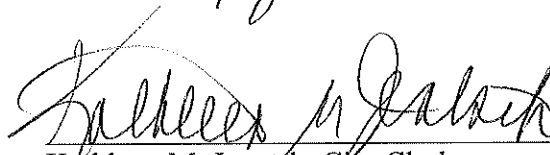

Kathleen M. Jentsch, City Clerk

PUBLIC MEETING

NOTICE is hereby given that the foregoing ORDINANCE was introduced and passed at a meeting of the Common Council of the City of Gloucester City, County of Camden, New Jersey, held on the 2nd day of October, 2017, and will be considered for final passage after a public hearing at a meeting of the Common Council of the City of Gloucester City to be held on the 21st day of December, 2017 at 7:30 pm in the evening prevailing time at 313 Monmouth Street, Gloucester City, New Jersey.


Kathleen M. Jentsch, City Clerk

I hereby certify that the foregoing ORDINANCE was approved for final adoption by the Mayor and Common Council of the City of Gloucester City, County of Camden, State of New Jersey at a regularly scheduled meeting held on the 21st day of Dec 2017


Kathleen M. Jentsch, City Clerk