

BOROUGH OF GARWOOD

ORDINANCE NO. 24-16

Adopted: _____

Introduced:	
Motion:	
Seconded:	

Public Hearing:	
Motion:	
Seconded:	

AN ORDINANCE AMENDING THE BOROUGH CODE OF THE BOROUGH OF GARWOOD BY REPEALING CHAPTER 74, ENTITLED "CONTRACTORS".

WHEREAS, the Borough of Garwood (the "Borough") has previously adopted Chapter 74, which sets forth restrictions on the political contributions of contractors; and

WHEREAS, N.J.S.A. 40A:11-51 has been repealed, and pursuant to state statute and local finance laws the Borough must repeal any local pay-to-play ordinances or resolutions originally authorized by N.J.S.A. 40A:11-51; and

WHEREAS, the Council seeks to repeal Chapter 74; and

NOW, THEREFORE, BE IT ORDAINED by the governing body of the Borough of Garwood that Chapter 74 (Contractors) of the Borough Code of the Borough of Garwood is hereby repealed as follows (additions underscored, deletions ~~struck through~~):

§ 74-1 Definitions.

~~[Adopted 11-27-2012 by Ord. No. 012-15]~~

As used in this article, the following terms shall have the meanings indicated:

BUSINESS ENTITY

~~For purposes of this article, a business entity whose contributions are regulated by this article means:~~

- ~~A. An individual, including the individual's spouse, and any child/children;~~
- ~~B. A firm; corporation; professional corporation; partnership; limited liability company; organization; association; and any other manner and kind of business entity;~~
- ~~C. Any person who owns 10% or more of the equity or ownership or income interests in a person or entity as defined in Subsections A and B above and their spouses and child/children;~~
- ~~D. All partners or officers of such an entity, in the aggregate, and their spouses and child/children;~~
- ~~E. 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 Subsection A above, more than \$100,000 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 month period prior to the award of, or during the term of, a contract subject to this article; and~~
- ~~F. All persons who are an affiliate of a business entity as defined in Subsections A, B and E above, as such term is used in 11 U.S.C. 101(2).~~

CAMPAIGN COMMITTEE

- ~~A. Every candidate for Borough of Garwood elective municipal office;~~
- ~~B. Every candidate committee established by or for the benefit of a candidate for Borough of Garwood elective municipal office;~~
- ~~C. Every joint candidates committee established in whole or in part by or for the benefit of a candidate for Borough of Garwood elective municipal office;~~
- ~~D. Every political party committee of the Borough of Garwood;~~

- E. ~~Every political party committee of the County of Union; and~~
- F. ~~Every political committee, continuing political committee, or other form of association or organization that regularly engages in the support of candidates for the Borough of Garwood municipal or County of Union elective offices or Borough of Garwood municipal or County of Union political parties or political party committees.~~
- G. ~~The terms in the foregoing paragraph have the meaning prescribed in N.J.A.C. 19:25-1.7.~~

CONTRACT FOR PROFESSIONAL OR EXTRAORDINARY SERVICES

All contracts for "professional services" and "extraordinary unspecifiable services" as such terms are used in N.J.S.A. 40A:11-5.

CONTRIBUTION

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.

§ 74-2 Prohibition on awarding public contracts to certain contributors.
[Adopted 11-27-2012 by Ord. No. 012-15]

A. ~~To the extent that it is not inconsistent with state or federal law, the Borough of Garwood 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:~~

- (1) ~~A candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in the Borough of Garwood or a holder of public office having ultimate responsibility for the award of a contract; or~~
- (2) ~~Any Borough of Garwood or County of Union political committee or political party committee; or~~
- (3) ~~Any continuing political committee or political action committee that regularly engages in the support of Borough of Garwood municipal or County of Union elections and/or Borough of Garwood municipal or County of Union candidates, candidate committees, joint candidates committees, political committees, political parties, political party committees, (hereinafter "PAC"), in excess of the thresholds specified in Subsection C 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 Borough of Garwood 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:~~

- (1) ~~A candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in the Borough of Garwood, or a holder of public office having ultimate responsibility for the award of a contract; or~~
- (2) ~~Any Borough of Garwood or County of Union political committee or political party committee; or~~
- (3) ~~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 article are:~~

- (1) ~~A maximum of \$200 per calendar year each for any purpose to any candidate or candidate committee for mayor or governing body, or \$400 per calendar year to any joint candidates committee for mayor or governing body, or \$200 per calendar year to a political committee or political party committee of the Borough of Garwood;~~
- (2) ~~Maximum of \$400 per calendar year to a County of Union political committee or political party~~

committee; and

~~(3) — Maximum of \$400 per calendar year to any PAC. However, for each business entity party to a contract for professional or extraordinary unspecified services as defined in Subsection A, or engaged in negotiations for a contract defined in Subsection A, when such business entity's contribution is aggregated with all "persons" defined in the definition of "business entity" in § 74-1 above, by virtue of their affiliation to that business entity party, a maximum of \$2,000 to all Borough of Garwood candidates, candidate committees, joint candidates committees, and holders of public office having ultimate responsibility for the award of a contract, all Borough of Garwood or County of Union 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:~~

~~(1) — The Borough of Garwood Mayor or governing body, if the contract requires approval or appropriation from the Mayor or governing body; or~~

~~(2) — The Mayor of the Borough of Garwood, 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.~~

~~E. — Rules regarding subcontractors. No person may be awarded a subcontract to perform under a contract subject to this article, if the subcontractor would be disqualified by Subsection A from receiving the contract at the time that the subcontract is awarded. Nor may any person who would be disqualified by Subsection A from receiving the contract perform substantially all of the obligations described in a contract for professional or extraordinary services that is subject to this article.~~

~~§ 74-3 Contributions made prior to effective date [Adopted 11-27-2012 by Ord. No. 012-15]~~

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

~~§ 74-4 Contract renewal. [Adopted 11-27-2012 by Ord. No. 012-15]~~

~~No contract subject to this article may be renewed, extended, or materially modified unless the resulting renewal, extension, or modification would be allowable under the provisions of this article if it were an initial contract.~~

~~§ 74-5 Contribution statement by business entity. [Adopted 11-27-2012 by Ord. No. 012-15]~~

~~A. — Prior to awarding any contract or agreement to procure professional services or extraordinary unspecified services from any business entity, the Borough of Garwood 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 § 74-2 of this article. The Borough of Garwood, its purchasing agents and departments shall be responsible for informing the Mayor and Council that the aforementioned sworn statement has been received and that the business entity is not in violation of this article, prior to awarding the contract or agreement.~~

~~B. — A business entity shall have a continuing duty to report to the Borough of Garwood any contributions that constitute a violation of this act that are made during the negotiation, proposal process or the duration of a contract. The Borough of Garwood, its purchasing agents and departments shall be responsible for informing the governing body within 10 business days after receipt of said report from the business entity, or at the next Mayor and Council meeting following receipt of said report from the business entity, or whichever comes first.~~

~~C. — The certification required under this section shall be made prior to entry into the contract or agreement with the Borough of Garwood, 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.~~

~~§ 74-6 Return of excess contributions.
[Adopted 11-27-2012 by Ord. No. 012-15]~~

~~A business entity that is a party to a contract for professional services or extraordinary unspecified services may cure a violation of § 74-2 of this article, 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.~~

~~§ 74-7 Exemptions.
[Adopted 11-27-2012 by Ord. No. 012-15]~~

- ~~A. The contribution limitations prior to entering into a contract in § 74-2A do not apply to contracts which:~~
- ~~(1) 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~~
 - ~~(2) Are awarded in the case of emergency under N.J.S.A. 40A:11-6.~~
- ~~B. There is no exemption for contracts awarded pursuant to a fair and open process under N.J.S.A. 19:44A-20 et seq.~~

~~§ 74-8 Violations and penalties.
[Adopted 11-27-2012 by Ord. No. 012-15]~~

~~A. It shall be a material breach of the terms of a Borough of Garwood agreement or contract for professional services or extraordinary unspecified services when a business entity that is a party to such agreement or contract has:~~

- ~~(1) Made or solicited a contribution in violation of this article;~~
- ~~(2) Knowingly concealed or misrepresented a contribution given or received;~~
- ~~(3) Made or solicited contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;~~
- ~~(4) 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 Borough of Garwood, or a holder of public office having ultimate responsibility for the award of a contract, or any Borough of Garwood or County of Union political committee or political party committee, or any PAC;~~
- ~~(5) 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 article;~~
- ~~(6) Funded contributions made by third parties, including consultants, attorneys, family members, and employees;~~
- ~~(7) Engaged in any exchange of contributions to circumvent the intent of this article; or~~
- ~~(8) 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 article.~~

~~B. Furthermore, any business entity that violates § 74-8A(1) through (8) shall be disqualified from eligibility for future Borough of Garwood contracts for a period of four calendar years from the date of the violation.~~

~~C. Any person who knowingly, purposely, or recklessly violates any provision of this article, or who conspires with another person to violate any provision of this article, or who, with the purpose of promoting or facilitating a violation of this article, 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 Borough of Garwood.~~

~~§ 74-9 Citizens' private right of action.
[Adopted 11-27-2012 by Ord. No. 012-15]~~

~~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 article, every person aggrieved by a violation of the ordinance, or any taxpayer or resident of the Borough of Garwood 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 article 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 article~~

BE IT FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provisions so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective; and

BE IT FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict; and

BE IT FURTHER ORDAINED, that this Ordinance shall take effect after final passage and publication in accordance with applicable law.

ATTEST:

APPROVED:

Catherine D. Cameron, R.M.C.
Borough Clerk

Jennifer Blumenstock, Mayor

RECORDED VOTE

INTRODUCTION:

ADOPTION

**COUNCILWOMAN BOTO
COUNCILMAN FOLEY
COUNCILMAN LAZAROW
COUNCILWOMAN NOLDE
COUNCILWOMAN SALMON
COUNCIL PRESIDENT KEARNEY**