AGENDA NO. 17
ORDINANCE NO. O-03-22
TOWNSHIP MEETING DATE – August 26, 2003

ORDINANCE AMENDING CHAPTER V (PERSONNEL), BY ADDING A NEW SECTION 5-22A (RESTRICTIONS ON AWARD OF PROFESSIONAL CONTRACTS) OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF FREEHOLD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY.

BE IT ORDAINED by the Mayor and Township Committee of the Township of Freehold, County of Monmouth and State of New Jersey as follows:

I

Chapter V, Personnel, is hereby amended by adding a new Section, Section 5-22A, Restrictions on Award of Professional Contracts, to read as follows:

5-22A **Restrictions on Award of Professional Contracts.**

5-22A.1 **Preamble**.

Whereas, professional business entities are exempt from public bidding requirements, and

Whereas, there is the potential 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 service contracts, and

Whereas, substantial local political contributions from professionals receiving discretionary contracts from the elected officials who receive such contributions raise reasonable concerns of the part of taxpayers as to their trust in the process of local government, as well as the quality or cost of services received, 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,

Now, therefore, be it ordained, that the policy of the Township will be to set maximum amounts professional business entities may contribute politically beyond which they become ineligible to receive a public professional service contract from the Township.

5-22A.2 **Prohibition on Awarding Public Contracts to Certain Contributors.**

a. Any other provision of law to the contrary notwithstanding, the municipality or any of its purchasing agents or agencies, including all boards and commissions, or any of its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract to procure services from any professional business entity, if that entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions or purchase of tickets, advertisements or the like, which proceeds will be used by or on behalf of or, to a campaign committee of any candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any Freehold Township municipal ~~or county~~ party committee or to any county party committee in Monmouth County, in excess of the thresholds specified in paragraph d. within two calendar years immediately preceding the date of the contract or agreement or during the term of such a contract or agreement.

b. No professional business entity which enters into negotiations for, or agrees to, any contract or agreement with the municipality or any department, board, commission or agency thereof or of its independent authorities for the rendition of professional services shall knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions or purchase of tickets, advertisements or the like, which proceeds will be used by or on behalf of or to 1.) any candidate or holder of the public office having ultimate responsibility for the award of the contract, or to 2.) any Freehold Township municipal party committee, 3.) any county party committee in Monmouth County (unless during the preceding calendar year no contribution of money/ or in kind contribution in an amount sufficient to require reporting on the local campaign election law report has been made to the local candidate or municipal party committee by the county committee to which the professional business entity may have contributed), or 4). any political action committee (unless during the preceding calendar year no contribution of money or in kind contribution in an amount sufficient to require reporting on the local campaign election law report has been made to the local candidate ~~or~~ by the political action committee ~~by the county committee~~ to which the professional business entity may have contributed) between the time of first communications between that business entity and the Township regarding a specific professional services agreement and the later of the termination of negotiations or the completion of the contract or agreement.

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; partner, and officers in the aggregate employed by the entity as well as any subsidiaries directly controlled by the business entity.

d. Any individual meeting the definition of "professional business entity" under this subsection may annually contribute a maximum of $400.00 each for any purpose to any candidate, for Township Committee, or $500.00 to any Freehold Township municipal party committee, county party committee in Monmouth County or political action committee, without violating paragraph a. of this subsection. However, any group of individuals meeting the definition of "professional business entity" under this subsection, including such principals having ten (10%) percent or more ownership interest, partners, and officers of the entity in the aggregate, may not annually contribute for any purpose in excess of $2,500 to all municipal candidates and officeholder with ultimate responsibility for the award of the contract, ~~and~~ as well as all Freehold Township municipal political parties, county political parties in Monmouth County and political action committees combined, if proscribed by paragraph b. of this subsection, without violating paragraph a. of this subsection.

e. For purposes of this subsection, the office that is considered to have ultimate responsibility for the award of the contract shall be the Township Committee. However, the restrictions of this ordinance apply to boards, commissions or agencies of the Township whose appointments of professionals either require the approval of the Township Committee or whose operating funds are subject to appropriation by the Township Committee.

5-22A.3 **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 municipal party committee, county party committee or political action committee 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.

5-22A.4 **Contribution Statement by Professional Business Entity.**

a. Prior to awarding any contract or agreement to procure services with any professional business entity, the Township or any of its purchasing agents or agencies, as they 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 subsection 5-22A.2 hereof and has not made or solicited contributions through intermediaries for the purpose of concealing the source of the contribution(s).

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.

5-22A.5 **Return of Excess Contributions.**

A professional business entity ~~or Township candidate or officeholder or municipal or county party committee~~ may cure a violation of subsection 5-22A.2 hereof, if, within 30 days after the general election, the professional business entity notifies the Township Committee in writing and seeks and receives reimbursement of any contribution in excess of that allowed by subsection 5-22A.2 from the Township candidate, municipal political party, county political party or political action committee.

5-22A.6 **Retroactivity of Future Clarifications Adopted.**

It is anticipated that there may be some professional business entities which determine to attempt a legalistic adherence to the letter, rather than the spirit of this ordinance. It is the declared intent of this municipal governing body to remain vigilant to recognize such attempts to subvert the underlying purposes for which this ordinance was adopted. Any professional business entity which may attempt such creative subversion does so at its peril. If and in the event creative actions are taken in order to defeat the purposes of this Ordinance, it is the intention of the governing body to enact appropriate clarification of this ordinance, which clarification shall be retroactive to the initial effective date of this Ordinance thereby disqualifying such creative professional business entities from serving the Township. Changes to this Ordinance which are not for purposes of clarification, but which are amendments to the provisions hereto, shall become effective upon adoption and publication according to law.

5-22A.7 **Vote Necessary for Ordinance Repeal.**

This ordinance may be repealed only upon four (4) affirmative votes of the governing body.

5-22A.8 **Penalty.**

a. All Township professional service agreements shall provide that it shall be a breach of the terms of the government contract for a professional business entity as defined in subsection 5-22A.2c. & d. to violate subsection 5-22A.2b. or to knowingly conceal or misrepresent contributions given or received, or to make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution.

b. Any professional business entity as defined in subsection 5-22A.2c. and d. who knowingly fails to reveal a contribution made in violation of this ordinance, or who knowingly makes or solicits contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution, shall be disqualified from eligibility for future Township contracts for a period of four calendar years from the date of the violation.

c. Notwithstanding the foregoing paragraphs a. and b., any person or entity who violates any provision of this ordinance shall, upon conviction, be liable for the penalties set forth in Section 6-11 of the Revised General Ordinances of the Township.

5-22A.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 law are severable.

II

All Ordinances and parts of Ordinances inconsistent herewith are hereby repealed.

III

This Ordinance shall take effect upon adoption and publication according to law.

EXPLANATORY STATEMENT:

This Ordinance makes nonsubstantive, clarifying amendments to the Township's "Pay to Play" Ordinance.