

City Clerk File No. Ord. 09-096
Agenda No. 3.E 1st Reading
Agenda No. 4.E 2nd Reading & Final Passage



ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 09-096

REDEVELOPMENT PAY-TO-PLAY REFORM ORDINANCE

TITLE:

COUNCIL offered and moved adoption of the following Ordinance:

WHEREAS, it has become more frequent for developers, sometimes at the request of candidates for local elected office or political party officials, to make substantial political contributions to the election campaigns for local government offices, and to the political parties which support them; and

WHEREAS, the local government officials are, once elected, responsible for deciding the terms of a redevelopment agreement; and

WHEREAS, political contributions from developers entering into agreements for redevelopment projects approved by the elected officials who receive such contributions raise reasonable concerns on the part of taxpayers and residents as to their trust in the process of local redevelopment, including but not limited to redevelopment decisions on tax abatements, zoning densities, publicly funded infrastructure improvements, and acquisition of property rights pursuant to eminent domain; and

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.* provides a mechanism to empower and assist local governments in efforts to promote programs for redevelopment; and

WHEREAS, N.J.S.A. 40A:12A-8 allows municipalities or a designated redevelopment entity to enter into agreements with redevelopers for planning, re-planning, construction or undertaking of any project or redevelopment work without public bidding and at such prices and upon such terms as it deems reasonable within areas designated for redevelopment; and

WHEREAS, N.J.S.A. 40A:12A-11 provides that redevelopment entities are instrumentalities of the municipality; and

WHEREAS, both the exceptions to the Open Public Meetings Act, more specifically N.J.S.A. 10:4-12b and N.J.S.A. 40A:12A-8, provide that negotiations for such agreements can be conducted in executive session, provided the full terms of any such agreements are discussed and approved in open session; and

WHEREAS, the City of Jersey City has previously or may declare certain areas of Jersey City to be Areas in Need of Redevelopment under the Local Redevelopment and Housing Law, and has or may adopt a Redevelopment Plan; and

WHEREAS, given the potential of negotiating with private parties or redevelopers and the entering into agreements with such redevelopers without a formal public bidding process, as permitted by the Local Redevelopment and Housing Law, it is necessary to establish certain limitations on political contributions which may undermine public confidence in any redevelopment effort; and

WHEREAS, the restriction against local political contributions contained herein does not impair in any way the remaining opportunities for such redevelopers to speak, write and publish their sentiments about local elections and candidates or to volunteer or associate with campaigns of their own choosing; and

THEREFORE, be it ordained by the Council of the City of Jersey City, in the County of Hudson and State of New Jersey, that the policy of the City of Jersey City will be to create such a regulation which states that any entity or individual seeking to enter into a redevelopment agreement or amendment thereto, or is otherwise seeking to obtain rights to develop pursuant to a redevelopment agreement, who makes political contributions to Jersey City elected officials and local and county political committees, will be ineligible to receive such agreements, or rights from the City of Jersey City.

SECTION 1 - PROHIBITION OF ENTERING INTO OR AMENDING REDEVELOPMENT AGREEMENTS WITH CERTAIN CONTRIBUTORS

(a) Any other provision of law to the contrary notwithstanding, the City of Jersey City or any of its purchasing agents or agencies or those of its independent authorities, as the case may be, shall not enter into an agreement, amend an agreement, or otherwise contract with any redeveloper, as defined in section (c) below, for the planning, re-planning, construction or undertaking of any redevelopment project, including the acquisition or leasing of any public property in conjunction with the redevelopment of any area within the City of Jersey City pursuant to the Local Redevelopment and Housing Law, if that redeveloper has made any "contribution" (as such term is defined at N.J.A.C. 19:25-1.7, which definition includes loans, pledges, and in-kind contributions) (hereinafter "contribution"), to (i) a candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in Jersey City or a holder of public office having ultimate responsibility for arranging, entering into, or approving the redevelopment agreement, or for appointing those who enter into the agreement on behalf of the City of Jersey City, or (ii) to any Jersey City or Hudson County political committee or political party committee, or (iii) to any continuing political committee or political action committee that regularly engages in the support of Jersey City municipal or Hudson County elections and/or Jersey City municipal or Hudson County candidates, candidate committees, joint candidate committees, political committees, political parties, political party committees, (hereinafter "PAC"), during the applicable time period which, for purposes of this section, shall be defined as *three (3) * months prior to applying to enter* into the redevelopment agreement, amended agreement, or contract (hereinafter "agreement").

(b) All redevelopment agreements or amendments thereto entered into by the City of Jersey City shall contain a provision prohibiting redevelopers, as defined in section (c) below, to solicit or make any contribution to (i) a candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in Jersey City or a holder of public office having ultimate responsibility for arranging, entering into, or approving the redevelopment agreement, or for appointing those who enter into the agreement on behalf of the City of Jersey City, or (ii) to any Jersey City or Hudson County political committee or political party committee, or (iii) to any "PAC", between *application to enter into* a redevelopment project and the later of * the termination of negotiations or rejection of any proposal, or the completion of all matters or time period specified in the redevelopment agreement.

(c) As defined in N.J.S.A. 40A:12A-3, a "redeveloper" means any person, firm, corporation, partnership, limited liability company, organization, association, or public body that shall enter into or propose to enter into an agreement with a municipality or other redevelopment entity for the redevelopment or rehabilitation of an area in need of redevelopment, or an area in need of rehabilitation, or any part thereof, under the provisions of this act, or for any construction or other work forming part of a redevelopment or rehabilitation project. For the purposes of this ordinance the definition of redeveloper also includes all principals who own ten percent (10%) or more of the equity in the corporation or business trust as well as partners and officers of the redeveloper and any affiliates or subsidiaries directly controlled by the redeveloper. Spouses and any child/children shall also be included.

(d) For the purposes of this section, the office that is considered to have responsibility for arranging and entering into the redevelopment agreement under the Act shall be (i) the Jersey City City Council if the redevelopment agreement requires approval or appropriation from the Council or a public officer who is responsible for arranging and entering into the redevelopment agreement if that public officer is appointed by the Council, or (ii) the Mayor of Jersey City if the redevelopment agreement requires the approval of the Mayor or a public officer who is responsible for arranging and entering into the redevelopment agreement if that public officer is appointed by the Mayor, or (iii) a designated redevelopment entity, if the redevelopment agreement requires the approval of the redevelopment entity.

SECTION 2 - CONTRIBUTIONS MADE PRIOR TO THE EFFECTIVE DATE

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

SECTION 3 - CONTRIBUTION STATEMENT OF REDEVELOPER; NOTICE GIVEN BY MUNICIPALITY

(a) Prior to arranging and entering into the redevelopment agreement with any redeveloper, the City of Jersey City or any of its purchasing agents or agencies or independent authorities, as the case may be, shall receive a sworn statement from the redeveloper (i) that the redeveloper has not made any contribution in violation of Section 1(a) above and (ii) that all persons or entities representing or in the employ or acting as an agent of the redeveloper have agreed to be bound by the terms of this Ordinance. The City of Jersey City, through any appropriate redevelopment agent, agency, officer, authority, or department, shall be responsible for informing the City Council that the aforementioned sworn statement has been received and that the

redeveloper is not in violation of this ordinance, prior to awarding the agreement. Furthermore, the redeveloper shall have a continuing duty to report any violations of this ordinance that may occur while arranging and entering into the redevelopment agreement, and until all specified terms or time period of the agreement have been completed. The certification required under this subsection shall be made prior to entry into the agreement with the municipality and shall be in addition to any other certifications that may be required by any other provision of law.

(b) It shall be the municipality's continuing responsibility to give notice of this Section when the municipality gives notice of redevelopment pursuant to 40A:12A-6 and when the municipality adopts a resolution directing the planning board to prepare a redevelopment plan and at the time that the municipality adopts the ordinance to implement the redevelopment plan.

SECTION 4 - DISCLOSURE REQUIREMENT APPLICABILITY TO CONSULTANTS

(a) The contribution and disclosure requirements in this Ordinance shall apply to all redevelopers as well as professionals, consultants or lobbyists contracted or employed by the business entity ultimately designated as the redeveloper to provide services related to the: (i) lobbying of government officials in connection with the examination of an area and its designation as an area in need of redevelopment or in connection with the preparation, consultation and adoption of the redevelopment plan; (ii) obtaining the designation or appointment as redeveloper; (iii) negotiating the terms of a redevelopment agreement or any amendments or modifications thereto; and (iv) performing the terms of a redevelopment agreement.

(b) It shall be a breach of the consultant's contract, and shall require immediate termination, for a consultant to violate the contribution limits and disclosure requirements in this Ordinance.

(c) A redeveloper who participates in, or facilitates, the circumvention of the contribution restrictions through consultants, professionals or agents shall be deemed to be in breach.

SECTION 5 - RETURN OF EXCESS CONTRIBUTIONS

A redeveloper or municipal candidate or officeholder or municipal or county party committee or "PAC" referenced in this ordinance may cure a violation of Section 1 of this Act, if, within 30 days after the date on which the applicable ELEC report is published, the redeveloper notifies the Municipal Council in writing and seeks and receives reimbursement of a contribution from the recipient of such contribution.

SECTION 6 - PENALTY

(a) It shall be a breach of the terms of the Jersey City redevelopment agreement for a redeveloper 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 contributions 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 candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in Jersey City, or a holder of public office having ultimate responsibility for arranging, entering into, or approving the redevelopment agreement, or for appointing those who enter into the agreement on behalf of the City of Jersey City, or any Jersey City or Hudson County political committee or political party committee, or any "PAC"; (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 redeveloper 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) Furthermore, any redeveloper who violates (a) ii-viii shall be disqualified from eligibility for future Jersey City redevelopment agreements for a period of four calendar years from the date of the violation.

SECTION 7 - 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 Ordinance are severable. The drafters of this Ordinance, the persons signing the petition in support of this Ordinance, and the persons who cast votes in favor of the Ordinance, declare that they would have supported the Ordinance and each section, subsection, sentence, clause, phrase, or provision or application thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses, phrases, or provisions or applications thereof may be held invalid.

SECTION 8 - REPEALER

All ordinances or parts of ordinances which are inconsistent with any provisions of this Ordinance are hereby repealed as to the extent of such inconsistencies.

SECTION 9 - EFFECTIVE DATE

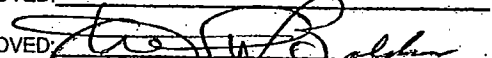
This Ordinance shall become effective twenty (20) days following the final adoption thereof by the Municipal Council of the City of Jersey City.

APPROVED AS TO LEGAL FORM


Corporation Counsel

APPROVED:

APPROVED:


Asst. Business Administrator

Certification Required ☐

Not Required ☐

Ordinance of the City of Jersey City, N.J.

ORDINANCE NO. Ord. 09-096

TITLE: 3.E. AUG 12 2009 4.E. SEP 09 2009

Redevelopment Pay-to Play Reform Ordinance.



RECORD OF COUNCIL VOTE ON INTRODUCTION AUG 12 2009 7-0											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	ABSENT		
KENNY	✓			FULOP	✓			FLOOD	✓		
LOPEZ	✓			RICHARDSON	✓			VEGA, PRES.	ABSENT		

✓ Indicates Vote JOHN SEBOROWSKI AARON MORRILL SEVERIN WILLIS LAURA SKOLAN N.V.-Not Voting (Abstain)
YVONNE BALZER DAVID NORMAN JASON BURG JEFF KAPLOWITZ
JERRY DeCICCO ARNOLD WILLIAMS CATHERINE GRIMM BECKY HOFFMAN

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING SEP 09 2009 9-0											
Councilperson SOTTOLANO moved, seconded by Councilperson BRENNAN to close PH.											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
KENNY	✓			FULOP	✓			FLOOD	✓		
LOPEZ	✓			RICHARDSON	✓			VEGA, PRES.	✓		

✓ Indicates Vote LEON GREEN EMILIO D'ELIA DANIEL LEVIN N.V.-Not Voting (Abstain)
ANDREW HUBSCH MIKE PELLAGRINI SEBASTIAN BERNHEIM
PHILIP CARRINGTON CYNTHIA HADJIYANNIS

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY SEP 09 2009											
Councilperson RICHARDSON moved to amend* Ordinance, seconded by Councilperson BRENNAN & adopted 8-0-1											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
KENNY	✓			FULOP	✓			FLOOD	ABSTAIN		
LOPEZ	✓			RICHARDSON	✓			VEGA, PRES.	✓		

✓ Indicates Vote N.V.-Not Voting (Abstain)

RECORD OF FINAL COUNCIL VOTE SEP 09 2009 8-0-1											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
KENNY	✓			FULOP	✓			FLOOD	ABSTAIN		
LOPEZ	✓			RICHARDSON	✓			VEGA, PRES.	✓		

✓ Indicates Vote N.V.-Not Voting (Abstain)

Adopted on first reading of the Council of Jersey City, N.J. on

AUG 12 2009

Adopted on second and final reading after hearing on

SEP 09 2009

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on SEP 09 2009

Robert Byrne, City Clerk
Robert Byrne, City Clerk

APPROVED:

Mariano Vega, Jr.
Mariano Vega, Jr., Council President

Date: SEP 09 2009

APPROVED:

Jerramiah T. Healy
Jerramiah T. Healy, Mayor

Date: SEP 14 2009

Date to Mayor SEP 10 2009

*Amendment(s):

IN ITALICS

SECT. 7- NOW SEVERABILITY

SECT. 8- NOW REPEALER

SECT. 9- NOW EFFECTIVE DATE

**CERTIFICATION OF COMPLIANCE WITH THE CITY OF JERSEY CITY
CONTRACTOR PAY-TO-PLAY REFORM ORDINANCE 08-128 ADOPTED
ON SEPTEMBER 3, 2008**

PART I - Vendor Affirmation

The undersigned, being authorized and knowledgeable of the circumstances, does hereby certify that _____ (name of business entity) has not made any reportable contributions in the **one-year period preceding _____ (date City Council awards contract) that would be deemed to be violations of Section One of the City of Jersey City's Contractor Pay-to-Play Reform Ordinance 08-128 (attached hereto) and that would bar the award of this contract. I further certify that during the term of the contract _____ (name of business entity) will not make any reportable contributions in violation of Ordinance 08-128.

PART II - Signature and Attestation:

The undersigned is fully aware that if I have misrepresented in whole or part this affirmation and certification, I and/or the business entity, will be liable for any penalty permitted under law.

Name of Business Entity: _____

Signed _____ Title: _____

Print Name _____ Date: _____

Subscribed and sworn before me
this ____ day of _____, 2____.
My Commission expires:

(Affiant)

(Print name & title of affiant) (Corporate Seal)

****Pursuant to Section 2 of Ordinance 08-128, no contributions or solicitation of contributions made prior to the effective date Ordinance 08-128 (September 23, 2008) shall be deemed to be a violation of the Ordinance.**

City Clerk File No. Ord. 08-128

Agenda No. INITIATIVE PETITION 1st Reading

Agenda No. 4.A. 2nd Reading & Final Passage



ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE

offered and moved adoption of the following ordinance:

CITY ORDINANCE **08-128**

TITLE:

An ordinance establishing that a Business Entity which makes political contributions to municipal candidates and municipal and county political parties in excess of certain thresholds shall be limited in its ability to receive public contracts from the City of Jersey City (CONTRACTOR PAY-TO-PLAY REFORM ORDINANCE)

The Municipal Council of the City of Jersey City does hereby ordain:

WHEREAS, large political contributions from those seeking or performing contracts with a municipality raise reasonable concerns on the part of taxpayers and residents as to their trust in government and its business practices; and

WHEREAS, pursuant to N.J.S.A. 40:48-2, a municipality is authorized to adopt such ordinances, regulations, rules and by-laws as necessary and proper for good government, as well as the public health, safety and welfare; and

WHEREAS, pursuant to P.L.2005, c.271 (codified at N.J.S.A. 40A:11-51) 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 the contributions that the recipient of such a contract can make during the term of a contract; and

WHEREAS, in the interest of good government, the people and the government of the City of Jersey City desire to establish a policy that will avoid the perception of improper influence in public contracting and local elections;

NOW, THEREFORE, BE IT RESOLVED, it shall be the policy of the City of Jersey City to create such a regulation which states that a Business Entity which makes political contributions to municipal candidates and municipal and county political parties in excess of certain thresholds shall be limited in its ability to receive public contracts from the City of Jersey City; and

BE IT ORDAINED by the City of Jersey City, in the County of Hudson, and State of New Jersey, as follows:

DEFINITIONS

As used in this ordinance:

- (a) "Campaign Committee" means (i) every candidate for City of Jersey City elective municipal office; (ii) every candidate committee established by or for the benefit of a candidate for City of Jersey City elective municipal office; (iii) every joint candidate committee established in whole or in part by or for the benefit of a candidate for City of Jersey City elective municipal office; (iv) every political party committee of the City of Jersey City; (v) every political party committee of the County of Hudson; 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 Jersey City municipal or Hudson county elective offices or City of Jersey City municipal or Hudson county 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,

An ordinance establishing that a Business Entity which makes political contributions to municipal candidates and municipal and county political parties in excess of certain thresholds shall be limited in its ability to receive public contracts from the City of Jersey City (CONTRACTOR PAY-TO-PLAY REFORM ORDINANCE)

- (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) A "contract for professional or extraordinary services" means 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 Ordinance, a "Business Entity" whose contributions are regulated by this ordinance means: (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 10% 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 \$100,000.00 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 ordinance; 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).

SECTION 1 - PROHIBITION ON AWARDING PUBLIC CONTRACTS TO CERTAIN CONTRIBUTORS

- (e) To the extent that it is not inconsistent with state or federal law, the City of Jersey City 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 Jersey City or a holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Jersey City or Hudson County political committee or political party committee, or (iii) to any continuing political committee or political action committee that regularly engages in the support of Jersey City municipal or Hudson County elections and/or Jersey City municipal or Hudson County 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 calendar year immediately preceding the date of the contract or agreement.
- (f) No Business Entity who submits a proposal for, enters into negotiations for, or agrees to any contract or agreement with the City of Jersey City 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 Jersey City, or a holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Jersey City or Hudson County political committee or political party committee, 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.
- (g) The monetary thresholds of this Ordinance are: (i) a maximum of \$300 per calendar year each for any purpose to any candidate or candidate committee for mayor or governing body, or \$500 per calendar year to any joint candidates committee for mayor or governing body, or \$300 per calendar year to a political committee or political party committee of the City of Jersey City; (ii) \$500 maximum per calendar year to a Hudson County political committee or political party committee; and (iii) \$500 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 subparagraph (a), or engaged in negotiations for a contract defined in subparagraph (a), when such Business Entity's Contribution is aggregated with all "persons" defined in subparagraph (d)

An ordinance establishing that a Business Entity which makes political contributions to municipal candidates and municipal and county political parties in excess of certain thresholds shall be limited in its ability to receive public contracts from the City of Jersey City (CONTRACTOR PAY-TO-PLAY REFORM ORDINANCE)

of "Definitions" above, by virtue of their affiliation to that Business Entity party, a maximum of \$2,500 to all City of Jersey City candidates, candidate committees, joint candidate committees, and holders of public office having ultimate responsibility for the award of a contract, all City of Jersey City or Hudson County political committees and political party committees as described herein combined, without violating subsection (a) of this section.

- (h) For 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 Jersey City Mayor or Governing body, if the contract requires approval or appropriation from the Mayor or Governing body, or (ii) the Mayor of the City of Jersey 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.
- (i) Rules regarding subcontractors. No person may be awarded a subcontract to perform under a contract subject to this Ordinance, 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 ordinance.

SECTION 2 - CONTRIBUTIONS MADE PRIOR TO THE EFFECTIVE DATE

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

SECTION 3 - CONTRACT RENEWAL

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

SECTION 4 - CONTRIBUTION STATEMENT BY BUSINESS ENTITY

- (j) Prior to awarding any contract or agreement to procure Professional Services" or Extraordinary Unspecified Services" from any Business Entity, the City of Jersey City 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 Section 1 of this Ordinance. The City of Jersey City, its purchasing agents and departments shall be responsible for informing the City Council that the aforementioned sworn statement has been received and that the Business Entity is not in violation of this ordinance, prior to awarding the contract or agreement.
- (k) A Business Entity shall have a continuing duty to report to the City of Jersey City 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 Jersey City, 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 City Council meeting following receipt of said report from the Business Entity, or whichever comes first.
- (l) The certification required under this subsection shall be made prior to entry into the contract or agreement with the City of Jersey City, 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.

SECTION 5 - 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 Section 1 of this Ordinance, 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.

SECTION 6 - EXEMPTIONS

The contribution limitations prior to entering into a contract in Section 1(a) do 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.*

An ordinance establishing that a Business Entity which makes political contributions to municipal candidates and municipal and county political parties in excess of certain thresholds shall be limited in its ability to receive public contracts from the City of Jersey City (CONTRACTOR PAY-TO-PLAY REFORM ORDINANCE)

SECTION 7 - PENALTY

- (m) It shall be a material breach of the terms of a City of Jersey City 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 Ordinance; (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 re-contributed to a candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in Jersey City, or a holder of public office having ultimate responsibility for the award of a contract, or any Jersey City or Hudson County political committee or political party committee, or any PAC; (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 Ordinance; (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 Ordinance; 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 Ordinance.
- (n) Furthermore, any Business Entity that violates Section 7 (a) (i-viii) shall be disqualified from eligibility for future City of Jersey City contracts for a period of four (4) calendar years from the date of the violation.
- (o) Any person who knowingly, purposely, or recklessly violates any provision of this ordinance, or who conspires with another person to violate any provision of this ordinance, or who, with the purpose of promoting or facilitating a violation of this ordinance, 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 Jersey City.

SECTION 8 - 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 ordinance, every person aggrieved by a violation of the ordinance, or any taxpayer or resident of the City of Jersey City 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 ordinance 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 ordinance.

SECTION 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 Ordinance are severable. The drafters of this Ordinance, the persons signing the petition in support of this Ordinance, and the persons who cast votes in favor of the Ordinance, declare that they would have supported the Ordinance and each section, subsection, sentence, clause, phrase, or provision or application thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses, phrases, or provisions or applications thereof may be held invalid.

COMMITTEE OF PETITIONERS pursuant to N.J.S.A. 40:69A-186

James Carroll, 44 Terrace, Jersey City, New Jersey 07307
Steven Fulop, 76 Essex Street, Jersey City, N.J. 07302
Daniel Levin, 228 ½ Third Street, Jersey City, NJ 07302
Aaron Morrill, 209 Washington Street, Jersey City, N.J. 07302
Shelly Skinner, 286 Pavonia, Jersey City, N.J. 07302

SECTION 10 - REPEALER

All ordinances or parts of ordinances which are inconsistent with any provisions of this Ordinance are hereby repealed as to the extent of such inconsistencies.

An ordinance establishing that a Business Entity which makes political contributions to municipal candidates and municipal and county political parties in excess of certain thresholds shall be limited in its ability to receive public contracts from the City of Jersey City (CONTRACTOR PAY-TO-PLAY REFORM ORDINANCE)

SECTION 11 - INDEXING

The monetary thresholds of "Definitions" Section (d) and Section 1(c) of this ordinance 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 New York-Northern New Jersey-Long Island region, rounded to the nearest \$10.00. The Clerk of the City of Jersey City 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.

SECTION 12 - EFFECTIVE DATE

This Ordinance shall become effective twenty (20) days following the final adoption thereof by the Municipal Council of the City of Jersey City and shall be published as required by law.

APPROVED AS TO LEGAL FORM

APPROVED: _____

Corporation Counsel

APPROVED: _____
Business Administrator

Certification Required ☐

Not Required ☐

Ordinance of the City of Jersey City, N.J.

ORDINANCE NO. 4.A. Ord. 08-128

TITLE:

An ordinance establishing a Business Entity which makes political contributions to municipal candidates and municipal and county political parties in excess of certain thresholds shall be limited in its ability to receive public contracts from the City of Jersey City (Contractor Pay-to-Play Reform Ordinance)



INITIATED BY PETITION CERTIFIED AUGUST 20, 2008

RECORD OF COUNCIL VOTE ON INTRODUCTION											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO				GAUGHAN				BRENNAN			
SPINELLO				FULOP				FLOOD			
LIPSKI				RICHARDSON				VEGA, PRES.			

✓ Indicates Vote
 JAMES F. WADDLETON
 BRET SCHUNDLER
 STEVE DAVISON
 TOM WILEN
 AARON MORRILL
 RAYLIE VUNKEL
 TOM GIBBONS
 SHELLEY SKINNER
 JAMES CARROLL
 SEBASTIAN BERNHEIM
 HEATHER TAYLOR
 DANIEL LEVIN
 N.V.-Not Voting (Abstain)

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
SPINELLO	✓			FULOP	✓			FLOOD	✓		
LIPSKI	✓			RICHARDSON	✓			VEGA, PRES.	✓		

✓ Indicates Vote
 DAN FALCON
 ANTHONY MORELLI
 ANDREW HUBSCH
 MAHALEY BOWLES
 YVONNE BALCER
 N.V.-Not Voting (Abstain)

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO				GAUGHAN				BRENNAN			
SPINELLO				FULOP				FLOOD			
LIPSKI				RICHARDSON				VEGA, PRES.			

✓ Indicates Vote
 N.V.-Not Voting (Abstain)

RECORD OF FINAL COUNCIL VOTE											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
SPINELLO	✓			FULOP	✓			FLOOD	✓		
LIPSKI	✓			RICHARDSON	✓			VEGA, PRES.	✓		

✓ Indicates Vote
 N.V.-Not Voting (Abstain)

Initiated by Petition Certified August 20, 2008

Adopted on second and final reading after hearing on

SEP 03 2008

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on SEP 03 2008

Robert Byrne
 Robert Byrne, City Clerk

APPROVED:

Mariano Vega, Jr.
 Mariano Vega, Jr., Council President

Date: SEP 03 2008

APPROVED:

Jeremiah T. Healy
 Jeremiah T. Healy, Mayor

Date: SEP 04 2008
 Date to Mayor: SEP 04 2008

*Amendment(s):

BUSINESS ENTITY DISCLOSURE CERTIFICATION
FOR NON-FAIR AND OPEN CONTRACTS
Required Pursuant To N.J.S.A. 19:44A-20.8
CITY OF JERSEY CITY

Part I – Vendor Affirmation

The undersigned, being authorized and knowledgeable of the circumstances, does hereby certify that the <name of business entity> has not made and will not make any reportable contributions pursuant to N.J.S.A. 19:44A-1 et seq. that, pursuant to P.L. 2004, c. 19 would bar the award of this contract in the one year period preceding (date of award scheduled for approval of the contract by the governing body) to any of the following named candidate committee, joint candidates committee; or political party committee representing the elected officials of the <name of entity of elected officials> as defined pursuant to N.J.S.A. 19:44A-3(p), (q) and (r).

Steven Fulop 2021	Mira Prinz-Arey for Council
Friends of Amy DeGise	Friends of Richard Boggiano
Friends of Joyce Watterman	Friends of Yousef J. Saleh
Friends of Daniel Rivera	Solomon for Council 2021
Ridley for Council	Friends of Frank Gilmore

Part II – Ownership Disclosure Certification

☐ I certify that the list below contains the names and home addresses of all owners holding 10% or more of the issued and outstanding stock of the undersigned.

Check the box that represents the type of business entity:

☐ Partnership ☐ Corporation ☐ Sole Proprietorship ☐ Subchapter S Corporation
☐ Limited Partnership ☐ Limited Liability Corporation ☐ Limited Liability Partnership

Name of Stock or Shareholder	Home Address

Part 3 – Signature and Attestation:

The undersigned is fully aware that if I have misrepresented in whole or part this affirmation and certification, I and/or the business entity, will be liable for any penalty permitted under law.

Name of Business Entity: _____

Signature of Affiant: _____ Title: _____

Printed Name of Affiant : _____ Date: _____

Subscribed and sworn before me this ____ day of _____, 2____.

My Commission expires:

(Witnessed or attested by)

(Seal)

BUSINESS ENTITY DISCLOSURE CERTIFICATION
FOR NON-FAIR AND OPEN CONTRACTS
Required Pursuant To N.J.S.A. 19:44A-20.8
<NAME OF CONTRACTING AGENCY>

The following is statutory text related to the terms and citations used in the Business Entity Disclosure Certification form.

“Local Unit Pay-To-Play Law” (P.L. 2004, c.19, as amended by P.L. 2005, c.51)

19:44A-20.6 Certain contributions deemed as contributions by business entity.

5. When a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity.

19:44A-20.7 Definitions relative to certain campaign contributions.

6. As used in sections 2 through 12 of this act:

“business entity” means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction;

“interest” means the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate;

Temporary and Executing

12. Nothing contained in this act shall be construed as affecting the eligibility of any business entity to perform a public contract because that entity made a contribution to any committee during the one-year period immediately preceding the effective date of this act.

~~~~~

**The New Jersey Campaign Contributions and Expenditures Reporting Act (N.J.S.A. 19:44A-1 et seq.)**

**19:44A-3 Definitions.** In pertinent part...

p. The term "political party committee" means the State committee of a political party, as organized pursuant to R.S.19:5-4, any county committee of a political party, as organized pursuant to R.S.19:5-3, or any municipal committee of a political party, as organized pursuant to R.S.19:5-2.

q. The term "candidate committee" means a committee established pursuant to subsection a. of section 9 of P.L.1973, c.83 (C.19:44A-9) for the purpose of receiving contributions and making expenditures.

r. the term "joint candidates committee" means a committee established pursuant to subsection a. of section 9 of P.L.1973, c.83 (C.19:44A-9) by at least two candidates for the same elective public offices in the same election in a legislative district, county, municipality or school district, but not more candidates than the total number of the same elective public offices to be filled in that election, for the purpose of receiving contributions and making expenditures. For the purpose of this subsection: ...; the offices of member of the board of chosen freeholders and county executive shall be deemed to be the same elective public offices in a county; and the offices of mayor and member of the municipal governing body shall be deemed to be the same elective public offices in a municipality.

**19:44A-8 and 16 Contributions, expenditures, reports, requirements.**

*While the provisions of this section are too extensive to reprint here, the following is deemed to be the pertinent part affecting amounts of contributions:*

“The \$300 limit established in this subsection shall remain as stated in this subsection without further adjustment by the commission in the manner prescribed by section 22 of P.L.1993, c.65 (C.19:44A-7.2)

# C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

## Public Agency Instructions

This page provides guidance to public agencies entering into contracts with business entities that are required to file Political Contribution Disclosure forms with the agency. **It is not intended to be provided to contractors.** What follows are instructions on the use of form local units can provide to contractors that are required to disclose political contributions pursuant to N.J.S.A. 19:44A-20.26 (P.L. 2005, c. 271, s.2). Additional information on the process is available in Local Finance Notice 2006-1 ([www.nj.gov/dca/lgs/lfn/lfnmenu.shtml](http://www.nj.gov/dca/lgs/lfn/lfnmenu.shtml)).

1. The disclosure is required for all contracts in excess of \$17,500 that are **not awarded** pursuant to a “fair and open” process (N.J.S.A. 19:44A-20.7).
2. Due to the potential length of some contractor submissions, the public agency should consider allowing data to be submitted in electronic form (i.e., spreadsheet, pdf file, etc.). Submissions must be kept with the contract documents or in an appropriate computer file and be available for public access. **The form is worded to accept this alternate submission.** The text should be amended if electronic submission will not be allowed.
3. The submission must be **received from the contractor and** on file at least 10 days prior to award of the contract. Resolutions of award should reflect that the disclosure has been received and is on file.
4. The contractor must disclose contributions made to candidate and party committees covering a wide range of public agencies, including all public agencies that have elected officials in the county of the public agency, state legislative positions, and various state entities. The Division of Local Government Services recommends that contractors be provided a list of the affected agencies. This will assist contractors in determining the campaign and political committees of the officials and candidates affected by the disclosure.
  - a. The Division has prepared model disclosure forms for each county. They can be downloaded from the “County PCD Forms” link on the Pay-to-Play web site at [www.nj.gov/dca/lgs/p2p](http://www.nj.gov/dca/lgs/p2p). They will be updated from time-to-time as necessary.
  - b. A public agency using these forms **should edit them to properly reflect the correct legislative district(s)**. As the forms are county-based, **they list all legislative districts in each county. Districts that do not represent the public agency should be removed from the lists.**
  - c. Some contractors may find it easier to provide a single list that covers all contributions, regardless of the county. These submissions are appropriate and should be accepted.
  - d. The form may be used “as-is”, subject to edits as described herein.
  - e. The “Contractor Instructions” sheet is intended to be provided with the form. It is recommended that the Instructions and the form be printed on the same piece of paper. The form notes that the Instructions are printed on the back of the form; where that is not the case, the text should be edited accordingly.
  - f. The form is a Word document and can be edited to meet local needs, and posted for download on web sites, used as an e-mail attachment, or provided as a printed document.
5. It is recommended that the contractor also complete a “Stockholder Disclosure Certification.” This will assist the local unit in its obligation to ensure that contractor did not make any prohibited contributions to the committees listed on the Business Entity Disclosure Certification in the 12 months prior to the contract. (See Local Finance Notice 2006-7 for additional information on this obligation) A sample Certification form is part of this package and the instruction to complete it is included in the Contractor Instructions. **NOTE: This section is not applicable to Boards of Education.**

# C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

## Contractor Instructions

Business entities (contractors) receiving contracts from a public agency that are NOT awarded pursuant to a "fair and open" process (defined at N.J.S.A. 19:44A-20.7) are subject to the provisions of P.L. 2005, c. 271, s.2 (N.J.S.A. 19:44A-20.26). This law provides that 10 days prior to the award of such a contract, the contractor shall disclose contributions to:

- any State, county, or municipal committee of a political party
- any legislative leadership committee\*
- any continuing political committee (a.k.a., political action committee)
- any candidate committee of a candidate for, or holder of, an elective office:
  - of the public entity awarding the contract
  - of that county in which that public entity is located
  - of another public entity within that county
  - or of a legislative district in which that public entity is located or, when the public entity is a county, of any legislative district which includes all or part of the county

The disclosure must list reportable contributions to any of the committees that exceed \$300 per election cycle that were made during the 12 months prior to award of the contract. See N.J.S.A. 19:44A-8 and 19:44A-16 for more details on reportable contributions.

N.J.S.A. 19:44A-20.26 itemizes the parties from whom contributions must be disclosed when a business entity is not a natural person. This includes the following:

- individuals with an "interest" ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit
- all principals, partners, officers, or directors of the business entity or their spouses
- any subsidiaries directly or indirectly controlled by the business entity
- IRS Code Section 527 New Jersey based organizations, directly or indirectly controlled by the business entity and filing as continuing political committees, (PACs).

When the business entity is a natural person, "a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity." [N.J.S.A. 19:44A-20.26(b)] The contributor must be listed on the disclosure.

Any business entity that fails to comply with the disclosure provisions shall be subject to a fine imposed by ELEC in an amount to be determined by the Commission which may be based upon the amount that the business entity failed to report.

The enclosed list of agencies is provided to assist the contractor in identifying those public agencies whose elected official and/or candidate campaign committees are affected by the disclosure requirement. It is the contractor's responsibility to identify the specific committees to which contributions may have been made and need to be disclosed. The disclosed information may exceed the minimum requirement.

The enclosed form, a content-consistent facsimile, or an electronic data file containing the required details (along with a signed cover sheet) may be used as the contractor's submission and is disclosable to the public under the Open Public Records Act.

The contractor must also complete the attached Stockholder Disclosure Certification. This will assist the agency in meeting its obligations under the law. **NOTE: This section does not apply to Board of Education contracts.**

\* N.J.S.A. 19:44A-3(s): "The term "legislative leadership committee" means a committee established, authorized to be established, or designated by the President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly or the Minority Leader of the General Assembly pursuant to section 16 of P.L.1993, c.65 (C.19:44A-10.1) for the purpose of receiving contributions and making expenditures."



# C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

Required Pursuant To N.J.S.A. 19:44A-20.26

**This form or its permitted facsimile must be submitted to the local unit  
no later than 10 days prior to the award of the contract.**

## Part I - Vendor Information

|              |  |        |      |
|--------------|--|--------|------|
| Vendor Name: |  |        |      |
| Address:     |  |        |      |
| City:        |  | State: | Zip: |

The undersigned being authorized to certify, hereby certifies that the submission provided herein represents compliance with the provisions of N.J.S.A. 19:44A-20.26 and as represented by the Instructions accompanying this form.

Signature

Printed Name

Title

## Part II - Contribution Disclosure

Disclosure requirement: Pursuant to N.J.S.A. 19:44A-20.26 this disclosure must include all reportable political contributions (more than \$300 per election cycle) over the 12 months prior to submission to the committees of the government entities listed on the form provided by the local unit.

☐ Check here if disclosure is provided in electronic form.

| Contributor Name | Recipient Name | Date | Dollar Amount |
|------------------|----------------|------|---------------|
|                  |                |      | \$            |
|                  |                |      |               |
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☐ Check here if the information is continued on subsequent page(s)

## C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

Page \_\_\_\_ of \_\_\_\_

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**LFN 2006-7**

**March 7, 2006**

# Local Finance Notice

Jon S. Corzine  
Governor

Susan Bass Levin  
Commissioner

Susan Jacobucci  
Director

## Contact Information

### Director's Office

V. 609.292.6613  
F. 609.292.9073

### Local Government Research

V. 609.292.6110  
F. 609.292.9073

### Financial Regulation and Assistance

V. 609.292.4806  
F. 609.984.7388

### Local Finance Board

V. 609.292.0479  
F. 609.633.6243

### Local Management Services

V. 609.292.7842  
F. 609.633.6243

### Authority Regulation

V. 609.984.0132  
F. 609.984.7388

### Mail and Delivery

101 South Broad St.  
PO Box 803

Trenton, New Jersey  
08625-0803

Web: [www.nj.gov/dca/lgs](http://www.nj.gov/dca/lgs)

E-mail: [dlgs@dca.state.nj.us](mailto:dlgs@dca.state.nj.us)

## Distribution

Municipal and Freeholder Clerks  
Authority Executive Directors  
Fire District Commissioners  
Local Procurement Officials

## Pay-to-Play Laws Update March 2006

Since Chapters 19 (2004) and 271 (2005) took effect in early January 2006, the Division of Local Government Services has continued to work with public agencies<sup>1</sup> implementing the laws. This Local Finance Notice supplements previous Notices and provides additional information and guidance to assist public agencies to comply with the laws.

The Notice covers four subjects:

- A. Political Contribution Disclosures (Chapter 271)
- B. Public Exigencies (Chapter 19)
- C. Clarifications (both laws)
- D. Frequently Asked Questions (Chapter 19)

Local officials with responsibility for public contracting and their legal counsel should carefully review this material. The Division is providing guidance and all material should be reviewed, paying careful attention to its applicability to local circumstances. Public agencies should consult with legal counsel on action the agency takes, including but not limited to the preparation and completion of forms.

Over the next few months Division staff will be delivering Pay-to-Play presentations throughout the State. The schedule and contact information for these presentations is posted on the Division's Pay-to-Play website, along with all other pay-to-play documents at [www.nj.gov/dca/lgs/p2p](http://www.nj.gov/dca/lgs/p2p).

The Division will continue to address new issues and provide periodic guidance as necessary. The Frequently Asked Questions section of the website will be updated regularly.

Local officials with questions are urged to review the Local Finance Notices and Frequently Asked Questions sections of the website. Questions can be sent via e-mail to [lpcl@dca.state.nj.us](mailto:lpcl@dca.state.nj.us).

Finally, the Division has received many requests from local officials for sample fair and open "Request for Proposals/Qualifications" documents. To assist local officials in exchanging information, officials interested in "sharing"

<sup>1</sup> For the purpose of this Notice, a public agency is any government entity subject to the pay-to-play laws, as may be applicable to the circumstance.

their RFP's for use by other public agencies can submit them to the Division. The Division will then post them in the GovConnect Local Procurement Document Library so local procurement officials can access and download them.<sup>2</sup>

Documents can be e-mailed (Word format preferred, though we will also post PDF) to [lpcl@dca.state.nj.us](mailto:lpcl@dca.state.nj.us). The Division will not review or endorse any submissions; users must review documents for applicability and consistency with local procedures and the laws.

### **A. Political Contribution Disclosure**

The Division has developed model Political Contribution Disclosure (PCD) forms for use by public agencies (including boards of education) covered by N.J.S.A. 19:44A-20.26 (P.L. 2005, c.271, s2). The material includes instructions to vendors and a PCD form designed to meet statutory requirements.

The Division's Pay-to-Play website has individual forms for each county listing the names of public agencies with elected officials affected by the disclosure requirements. The forms also include public agency and vendor instructions.

The following notes will assist local officials in using the forms:

1. Public Agency Instructions: Officials should carefully review these instructions. It addresses a range of issues that must be considered when using the forms. It is very important that the user edit the County List to properly display the public agency's Legislative District. This will vary from agency to agency.
2. The Instructions allow submission of PCD forms in electronic form. If allowed by the agency (and the Division encourages their use if desired by contractors, if only as a space-saving tool), the cover sheet must be completed, signed, and kept on file. The agency should take care to properly store the electronic submission in the file (regardless of how submitted, it should be filed on magnetic media and stored with the contract documents).
3. Users should carefully review all the sample forms and edit them as necessary to ensure they do not conflict with any local practice, organization structure, or local process. Changes should be carefully reviewed to ensure they do not compromise the statutory disclosure requirements.
4. County specific forms can be downloaded in MS Word format from the website.
5. Users who require a different file format should contact the Division at [lpcl@dca.state.nj.us](mailto:lpcl@dca.state.nj.us). RTF versions are available upon request.

These forms can be used immediately.

### **Verification of Disclosure**

To receive a non-fair and open contract, a contractor must file with the agency a Business Entity Disclosure Certification (Certification) certifying that the contractor did not make a contribution that would bar award of the contract, and a Political Contribution Disclosure listing contributions. As both forms are relevant to pay-to-play compliance, the contracting agent (or other appropriate individual) is obligated to review the forms to ensure that PCD disclosures are not inconsistent with the Certification.

In other words, the PCD must be reviewed to ensure that no listed contributions were made to the local party committee or candidate committee during the previous 12 months by individuals barred from

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<sup>2</sup> Enrollment procedures for the Local Procurement role of GovConnect can be found at [www.nj.gov/dca/surveys/ppsurvey.htm](http://www.nj.gov/dca/surveys/ppsurvey.htm)

making reportable contributions. Since the agency has both forms, it has an **inherent obligation** to verify that they are consistent.

There is an important difference between the two laws that must be taken into account during this review. The PCD includes contributors that **are not** barred from making reportable contributions: i.e., a contribution from a partner with less than 10% ownership (or a spouse) must be reported on the PCD, **but** the contribution is not barred under Chapter 19 (only someone with 10% ownership or more is barred from contributing).

It is strongly recommended that recipients of non-fair and open contracts also complete the standard Stockholder Disclosure Certification ("Chapter 33," used in public bidding). This is useful because the Stockholder form defines interest in the same manner as Chapter 19 and the PCD does not include the relationship of contributor or percentage of ownership. The Stockholder Disclosure can be checked to verify if a contributor to a local party committee or candidate committee listed on the PCD would bar the contractor from receiving the contract.

To summarize, the recommended practice for Political Contribution Disclosures is as follows:

1. Vendors must file a PCD with the agency at least 10 days prior to award of a non-fair and open contract.
2. Vendors should also file a Stockholder Disclosure Certification with the PCD.
3. The contracting agent (or other appropriate individual) should review the PCD to see if anyone made contributions to the political and candidate committees listed on the Business Entity Disclosure Certification.
4. If any contributions are found, review the Stockholder Disclosure Certification to determine if the contributor is listed. If the person owns more than 10%, the business is barred from being awarded the contract and the agency attorney should be consulted on what steps to take.

## **B. Public Exigencies and Chapter 19**

A provision of Chapter 19 at N.J.S.A. 19:44A-20.12 allows the State Treasurer to waive the provisions of Chapter 19 in cases of a "public exigency." The procedure is memorialized in an early January 2006 memorandum from the State Treasurer to the Director of the Division of Local Government Services which continues until it is amended by subsequent action of the Treasurer. The memo can be viewed under "Public Exigency" on the website. The procedures also apply to county colleges.

The process addresses two elements: emergencies and "other exigencies." The procedures follow below.

### **1. Emergencies**

- a. When a contracting unit experiences an emergency that meets the requirements of law, a waiver of Chapter 19 is automatically granted, as long as the requirements of the Local Public Contracts Law, specifically N.J.S.A. 40A:11-6 and the rules at N.J.A.C. 5:34-6.1, are met.
- b. The first requirement that must be met is there must be an emergency that affects the public health, safety, or welfare which requires the immediate delivery of goods or performance of services.

- c. Secondly, the determination of the emergency must be made pursuant to a “chain of command” of designated local officials which ensures oversight of the decision-making process (N.J.A.C. 5:34-6.1)
- d. Within 30 days after the declaration of the emergency, the agency must file a report of the emergency on a form developed by the Director. The Emergency Procurement Report form is on the Pay-to-Play website.
- e. Contracts stemming from the formal declaration of an emergency by the Governor are automatically covered under the law and do not require the filing of a report with the Director.

## 2. Other Public Exigencies

The other public exigency involves a contract for specific goods or services that:

- a. Must be provided by a specific vendor; and,
- b. The timing of the procurement does not make compliance with the Chapter 19 fair and open process practical or possible; and
- c. The procurement is consistent with the intentions of pay-to-play laws.

An example of this would be a procurement where the goods or services are only available from a single source and either local policy or vendor action prevents or stymies application of the law. In these cases, the public agency can request approval from the Treasurer.

The procedure requires the agency to file a request for approval of a Public Exigency Waiver of Chapter 19 with the Director of the Division of Local Government Services. The Director will review the request and forward a recommendation to the State Treasurer. The Treasurer will review the request and Director’s recommendation and make a determination which will be sent to the agency. The form is available on the pay-to-play website.

## C. Clarifications

Since the law took affect on January 1, 2006, the Division has consulted with the Division of Law to resolve a number of implementation issues. While some remain unresolved, the following guidance may assist local officials in applying the law to local circumstances.

### 1. Amendments to professional service contracts executed prior to 1/1/06

Modifications to professional service contracts which were originally executed prior to 1/1/06 and now require action by the governing body trigger adherence to pay-to-play. Given the variety of circumstances where contract modifications may be necessary (i.e., increases in litigation cost, changes on a construction project requiring additional engineering work) applying the provisions of a fair and open process or non-fair and open process pursuant to local policies may seem perplexing.

Regardless of the circumstances, modifications must be based on a fair and open or non-fair and open process (see also aggregation procedures below). In most cases, executing a non-fair and open contract may be the most practical, unless policies adopted by the agency do not allow that alternative. In those cases, the only alternative is a fair and open procurement, which should include evaluation criteria which references the value of familiarity with both the contract and the work being done. While this effort may offset the practicality of the process, the law offers no specific alternative.

The circumstances under which contract modifications are necessary cannot be predicted, particularly in those cases where public agencies use non-fair and open contracts. In these cases, it is prudent for

the agency to advise their existing professional services contractors that if they make reportable contributions after 1/1/06 they may be barred from a contract change or extension. A problem would arise because a contractor who cannot certify that they have made no reportable contributions in the previous twelve months is barred from executing a contract amendment under a non-fair and open process.

In addition, contract amendments initiated by the governing body will now require a contractor to meet the requirements of submitting a Chapter 271 Political Contribution Disclosure filing as part of that modification.

An exception to this limitation may occur if there is a bona fide emergency allowing the immediate award of a modification (see Section B above).

## **2. Choices of legal newspapers**

While State law limits choices and rates of official newspapers, there is often competition for the service in a given territory. In addition, the practice of some municipalities or laws may provide individual boards of a single agency (i.e., planning and zoning boards, board of health, and governing body) the authority to choose its own newspaper, within the parameters of State law. Each such agency can make its own decision on using a fair and open or non-fair and open process.

It is the value of the contract to the entity making the decision, not the public agency as a whole that drives the contracting process. For example, a Planning Board and Zoning Board, each with statutory authority to enter into contracts, routinely spend approximately \$10,000 a year in legal advertising. In this case, the decision of each board to choose its newspaper does not involve pay-to-play because each contract is less than \$17,500. At the same time, if the Township Council spends \$20,000 a year, the decision of the Council is subject to pay-to-play procedures. The awards do not involve aggregating amounts between agencies.

## **3. Perishable Food Purchases**

A number of public agencies routinely purchase perishable foods from vendors on a periodic quotation basis (it is an exception to bidding). The non-fair and open process may be the most practical way to enter into these contracts. In those agencies where governing bodies have decided only to use a fair and open process, local officials may want to consider the following (or appropriate variations) procedures:

- a. If immediate purchases are necessary, consider the use of the emergency procedure described above, and continue with quotation practices. Given local circumstances, it may be appropriate to use the Chapter 271 Political Contribution Disclosure waiver under the "substantially completed" guidance of the Governor's Statement upon Signing, while at the same time diligently pursuing award of fair and open contracts.
- b. The Request for Proposals should include the following criteria:
  - i. Solicit fair and open contracts with a two-year term and allow for a two-year contract extension.
  - ii. The contracts should be specified as being open-ended, with prices to be solicited periodically and when goods are needed.
  - iii. The terms and conditions of those proposals should set appropriate vendor qualifications.

- iv. The criteria for award of the contract should permit contracts to be awarded to all bidders that meet all terms and conditions.
- c. Open-ended contracts can be awarded to all qualified vendors. The contracting agent can periodically solicit quotations and issue purchase orders as necessary. Political Contribution Disclosures are required of all vendors awarded contracts.

#### **4. Chapter 271, Section 3 Reporting**

The Division has consulted with the Election Law Enforcement Commission concerning the "Section 3" report required under Chapter 271 (N.J.S.A. 19:44A-20.27). This section requires vendors that receive more than \$50,000 in public contracts to annually report political contributions to ELEC.

ELEC has advised the Division that vendors do not have to file reports until ELEC develops and adopts rules. Once those rules are adopted, public agencies will be advised of their effect, with further guidance on the role and responsibilities of public agencies provided at that time. It is likely that these rules will not go into effect until the end of the year, requiring reporting for 2006 contributions sometime in 2007.

Thus, until then, no action concerning the Section 3 report is required by public agencies. Previously issued guidance on advising vendors about the disclosure in contracts can continue to be applied.

#### **5. Confidential Law Enforcement Purchases**

A number of counties and local police departments have inquired about purchasing "special equipment for confidential investigation" that are exempt from public bidding when approved by the Attorney General (through the Division of Criminal Justice). Applying the public award provisions of Chapter 19 would be contrary to the public policy behind the bidding exception.

The Department of Law and Public Safety is currently working with the State Treasurer to develop procedures to provide relief for this scenario. A resolution is expected shortly. Agencies with immediate needs for such equipment should work through their County Prosecutor for specific actions to take pending resolution of the issue.

#### **6. Contract Amendments, Aggregation and Pay-to-Play**

Of ongoing concern to public agencies is how to apply pay-to-play provisions when a contract with a vendor originally estimated to fall below the \$17,500 threshold proves incorrect and the contract needs to be increased over \$17,500. The original guidance recommended that public agencies borrow the principles of the "aggregation rules" of N.J.A.C. 5:34-8.2 et seq. This remains in affect and should be applied in the following manner:

To help public agencies apply the aggregation principle, the following guide can be used as appropriate to specific agency circumstances (and should include consultation with legal counsel accordingly):

- If the amount of additional work brings the total contract value to less than \$20,125 (\$17,500 plus 15%), the purchasing agent can award the contract as if the award were less than \$17,500. This is based on principles found in the Local Public Contracts Law Rules allowing flexibility under these circumstances.
- If the additional work brings the total contract over \$20,125 the following principles should be applied:



- If the additional work and any work of the same nature are anticipated in the following year, which would result in a total contract value of less than \$35,000, the governing body should decide via resolution to apply pay-to-play or not to apply it. If they decide to apply it, they must make their own decision concerning a fair and open or non-fair and open approach.
- If the additional work and any work of the same nature is anticipated in the following year results in a total contract in excess of \$35,000, pay-to-play principles of fair and open or non-fair and open apply.

If contract amendments result in a conclusion to apply a non-fair and open process, the contractor will be required to file a Business Entity Disclosure Certification (pursuant to Chapter 19) and a Political Contribution Disclosure (for all covered agencies). Boards of Education are not required to have the vendor file the Business Entity Disclosure Certification.

### **D. Frequently Asked Questions**

The following are new Frequently Asked Questions and answers. A consolidated FAQ has been posted on the [Pay-to-Play website](#) (including these questions). All FAQ's should be carefully reviewed; they include information that may be applicable to all agencies.

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Q. If professional services are contracted through a fair and open process, is the 40A:11-5(b) public notice after award required?

No. The use of a fair and open process is synonymous with the purpose of the public bidding. The fair and open process satisfies the intended public purpose by requiring the publication of a notice after a professional services contract is awarded without public bidding.

Q. Are grants awarded by a governing body considered contracts under the law? For example: Workforce Investment Board [WIB] job training grants, non-profit housing grants, or Community Development Block Grants.

Generally yes, as most grants follow a process that meets the fair and open criteria; the non-fair and open process is also available for those that do not meet the fair and open standard.

Grants to individuals or payments to businesses on behalf of individuals for social services (i.e., housing, medical support) are not covered as they are not made to businesses.

Q. How does Pay-to-Play affect land and building transactions?

The Local Lands and Buildings Law (N.J.S.A. 40A:12-1 et seq.) provides a fair and open process for selling land. When the law is followed, no additional action is needed.

Acquisition of property:

- A State program (i.e., Farmland Preservation or Garden State Trust) that provides a public process for identifying and choosing parcels is considered fair and open.
- When a specific parcel is desired for other purposes, the government unit can apply for exigency approval if fair and open or non-fair and open processes are not practicable.

Q. Public agencies that are health care providers such as public hospitals or long-term care facilities can participate in cooperative purchasing programs with other health care organizations or non-

profit organizations pursuant to N.J.S.A. 30:9-87. Are contracts made under that statute, such as purchases through the New Jersey Hospital Association (NJHA), considered fair and open?

Yes. The Division has reviewed the procedures used by the NJHA and its cooperative purchasing partner and find that they meet the substantive requirements of the fair and open process. To ensure compliance, however, the public agency should include a web link on its website linking to bid calendar information on the website of the contractor conducting the procurement process ([www.novationco.com/suppliers/bids.asp](http://www.novationco.com/suppliers/bids.asp)). This procedure does not eliminate the responsibility of the public agency to publish notices of award pursuant to N.J.S.A. 30:9-88.

Q. If a contract is awarded to procure a single good does the term of the contract extend beyond delivery? Does this change if the contract includes a service agreement?

No. The term of a contract for a specific item expires when that item is accepted, even if the item carries a warranty period as provided by the manufacturer. If there is a separate agreement or rider to the contract that establishes an ongoing maintenance or service agreement then the term of the contract will expire with the expiration of the service agreement.

Q. Are there specific wording requirements for fair and open contract award resolutions, i.e., must they include specific language, similar to that which would be done for "non-fair and open" contracts?

It is advisable that language such as "Whereas, the contract was awarded through a fair and open process, pursuant to N.J.S.A. 19:44A-20.4 et seq." be included in the award resolution, however this is not a requirement. A special resolution is not required.

Q. Are Political Contribution Disclosure Statements required for banks, insurance companies, and public utilities, as they are exempt from Chapter 19 non-fair and open requirements?

Because PCDs reflect contributions made by partners, boards of directors, spouses, etc., they **are required** when contract awards are made to **insurance companies and banks**. For banks, a contract is effectively awarded when the governing body passes a resolution designating the bank as an official depository. The PCD would be required 10 days prior to the passage of a depository designation resolution. Bank resolutions made in January 2006 would not be covered by this provision given when the law took effect; but would be required for any designations after that time.

PCDs are **not** required for **regulated public utility** services, as the agency is required by the Board of Public Utilities to use a specific utility. The governing body does not "award" a contract to the utility, as the agency has no choice but to use the company. This exception does not apply to non-regulated public utility services, such as generated energy (not tariffed), or long-distance phone services where other procurement practices are used.

Approved: Susan Jacobucci, Director

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