

AN ORDINANCE OF THE CITY OF BRIGANTINE
LIMITING CERTAIN POLITICAL CONTRIBUTIONS

WHEREAS, large political contributions from those seeking or currently performing business with the City of Brigantine may raise concerns on the part of taxpayers and residents as to the process of awarding governmental contracts; and

WHEREAS, the possibility exists that political contributions may be made to the campaign fund of individuals holding elective office in the City of Brigantine who are ultimately responsible for awarding contracts, some of which are not subject to public bidding; and

WHEREAS, pursuant to State law, the City of Brigantine is authorized to adopt ordinances limiting the award of public contracts to certain business entities that have made political contributions and may further limit the contribution amount that certain business entities may make during the term of the contract; and

WHEREAS, in the interest of good government, governmental responsibility and transparency, the City of Brigantine wishes to set a maximum amount that certain business entities may contribute; and

WHEREAS, a process known as "wheeling" where the flow of excess political contributions into the City of Brigantine from sources located outside of the City of Brigantine and outside of Atlantic County may have a corrupting influence on the political process in the City of Brigantine; and

WHEREAS, the City of Brigantine wishes to advance the interest of good government and prevent wheeling and other potential abuses of political contributions to candidates for elective office in the City of Brigantine.

NOW, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGANTINE IN THE COUNTY OF ATLANTIC AND STATE OF NEW JERSEY AS FOLLOWS:

SECTION I: Definitions. The terms listed below shall have the following meanings for the purpose of this ordinance:

- a. Professional Business Entity - a professional business entity means an individual, including the individual spouse, if any, and any child living at home; person; firm; corporation; professional corporation; partnership; organization or association. The definition of a professional business entity includes all principles who own 10% or more of the equity in the corporation or business trust, partners, and officers in the aggregate employed by the entity as well as any subsidiaries directly controlled by the professional business entity. This definition shall include a provider of extraordinary unspecifiable services as defined in N.J.S.A. 40A:11-5(1)(a), but shall exclude non-profit corporations under Internal Revenue Code, Section 501(c)(3) and their officers and Board members.
- b. Elected Municipal Office - means the Office of the Mayor or any Councilperson in the City of Brigantine.

SECTION II: Prohibition On Awarding Public Contracts To Certain Contributors.

- a. To the extent that it is not inconsistent with State or Federal law, the City of Brigantine or anyone acting on its behalf including Purchasing Agents, department heads or others, as the case may be, will not enter into any agreement or otherwise contract to procure professional, banking, insurance coverage services or any other consulting services provided by a licensed professional,

including those awarded pursuant to any process including a fair and open process, if such professional business entity has solicited or made any contribution of money or pledge of a contribution, including in kind contributions to (i) any campaign committee of any candidate for elective office in the City of Brigantine or to the current holders of any elective office in the City of Brigantine, or (ii) to any party committee of any candidate for elective office in the City of Brigantine, or (iii) to any municipal party committee of any candidate for elective office within the City of Brigantine, or (iv) to any candidate, committee, state, or county political party or any political action committee that is engaged in the financial or in kind support of candidates for elective offices in the City of Brigantine which is in excess of the threshold specified in subsection © of this section within one (1) calendar year immediately preceding the date of the contract or agreement. Since this ordinance is adopted part way through the 2011 calendar year, the same shall only be applicable to contributions made on or subsequent to January 1, 2012.

- b. No professional business entity who submits a proposal for; enters into negotiations for or agrees to any contract or agreement including those awarded by a "fair and open process" pursuant to N.J.S.A. 19:44A-20 et seq. for the rendition of professional services as the case may be, shall knowingly solicit or make any contribution of money, pledge of contribution, including in kind contributions to; (i) any campaign committee for any candidate for elective office in the City of Brigantine or any campaign committee of any current holder of elective office in the City of Brigantine, or (ii) to any party committee of a candidate for elective office in the City of Brigantine or an individual holding elective office in the City of Brigantine, or (iii) to any municipal party committee of any candidate for elective office in the City of Brigantine or any person serving an elective office in the City of Brigantine, or (iv) to any candidate committee, state or county political party or political action committee that is engaged in the financial or in kind support of candidates for elective office in the City of Brigantine between the time of the first communication between that professional business entity and the county regarding a specific professional services agreement and the later of the termination of negotiations or rejection of any proposal or the completion of the contract or agreement.
- c. Notwithstanding anything to the contrary herein, anyone meeting the definition of professional business entity under this section may annually contribute a maximum of \$300.00 each or up to the amount of reportable contributions as may from time to time be established by the Election Law Enforcement Commission for any purpose to any candidate for elective office or current office holders or the amount of \$500.00 to any party committee operating on behalf of or supporting any candidate for elective office or person holding elective office within the City of Brigantine. The above limitation is a limitation applicable to each candidate for elective office or candidate in the City of Brigantine however, any group of individuals meeting the definition of professional business entity under this section, including such principles, partners and officers of the entity in the aggregate, may not annually contribute for any purpose in excess of \$2,500.00 to all candidates for elective office in the City of Brigantine or to office holders in the City of Brigantine, combined.

SECTION III: 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 or to any holder of elective office in the City of Brigantine or to any party committee or municipal party committee of any candidate to

elective office or office holder in the City of Brigantine or any political action committee as set forth in this ordinance shall be deemed a violation and shall serve as any type of disqualifier if that contribution was made by the professional business entity prior to January 1, 2012. #9

SECTION IV: Contributions Statement by Professional Business Entity

- a. Prior to awarding any contract or agreement to procure services, including but not limited to banking, insurance services or other professional type services, the City of Brigantine or those acting on its behalf shall receive a sworn statement from the professional business entity under the penalty of perjury that the entity has not made a contribution in violation of Section II of this ordinance. This statement shall be deemed satisfied if the entity in question makes the disclosures required pursuant to N.J.S.A. 19:44A-20.8. If any contract is in excess of one year, a statement must be filed each year.
- b. In accordance with State law, 10 days prior to awarding any contract or agreement to procure professional services with any professional business entity, including those awarded pursuant to a fair and open process, the City of Brigantine or those acting on its behalf shall receive a completed disclosure statement in conformance with State law which shall be available for public review at the City Clerk's Office. The political disclosure statement shall list all of the political contributions by the professional business entities to any candidate for an elective office, or office holder in Brigantine, or any municipal committee of the political party or any pact acting on their behalf or any candidate committee of any candidate for elective office in the preceding period of 12 months was in violation of State law or this ordinance noting the candidate or campaign committee, the amount and date, and the nature of the contribution.
- c. 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. Disclosure required pursuant to this ordinance shall be made prior to entry into the contract or agreement.

SECTION V: Return Of Excess Contributions

A professional business entity may cure a violation of this ordinance, if, within 30 days after the date on which the applicable ELEC report is published, the professional business entity notifies the City Manager of the City of Brigantine, in writing, and seeks and receives reimbursement of a contribution from the relevant candidate for elective office or office holder, or candidate committee or political action committee.

SECTION VI: Exemption

The contribution limits specified within this ordinance do not apply to contracts awarded pursuant to a public bid or competitive contract process pursuant to State law or to those contracts awarded as emergency contracts pursuant to the policy and procedures as set forth in the Code of the City of Brigantine.

SECTION VII: Violations/Penalties

- a. It shall be a violation of this ordinance to: (I) make or solicit a contribution in violation of this ordinance; (ii) knowingly conceal or misrepresent a contribution given or received, or (iii) make or solicit contributions to intermediaries or other third parties for the purpose of concealing or misrepresenting the source of the contribution or otherwise attempting to circumvent the requirements of this ordinance, (iv) 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 business entity itself, would subject that entity to the restrictions of this ordinance, (v) fund contributions made by third parties, including consultants, attorneys, family members, and employees, (vi) engage in any exchange of contributions to circumvent the intent of this ordinance, or (vii) 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. The purpose and intent of the aforementioned prohibition is to prevent entities from circumventing the requirements of this ordinance by working or operating with or through third parties, (viii) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee of any candidate or holder of any elected City official. #9

- b. Any professional business entity who violates section (a) above shall have its contract with the City of Brigantine declared null and void at the option of the Governing Body, unless the violation is cured as provided for in Section V. Further, any professional business entity who violates Section VII(a)ii-viii or files a fraudulent vendors affirmation shall be disqualified from eligibility for future Brigantine contracts for a period of four (4) calendar years from the date of the violation.

**SECTION VIII: Prohibition Against Candidate Receipt
Of Certain Contributions**

- a. No candidate or candidate committee for any elective office in the City of Brigantine shall accept a contribution from a municipal committee of the local party, other than the municipal committee in the City of Brigantine in excess of \$2,600.00 per election.
- b. No candidate or candidate committee for any elective office in the City of Brigantine shall accept any monetary or in kind contribution in excess of \$2,600.00 per election, directly or indirectly, from any municipal political party committee if such municipal political party committee has received any contribution in excess of \$2,600.00 at any time during the preceding 12 months from any municipal political party committee, a candidate committee, a continuing political committee or PAC organized under Section 527 of the Internal Revenue Code, which are located outside of Brigantine.
- c. No candidate or candidate committee for any elective office in the City of Brigantine shall accept a contribution from a State political party in excess of \$2,600.00 per election.
- d. No candidate or candidate committee for any elective office in the City of Brigantine shall accept a contribution from a Legislative leadership committee in excess of \$2,600.00 per election.
- e. No candidate or candidate committee for any elective office in the City of Brigantine shall accept a contribution from a continuing political action committee or PAC organized under Section 527 of the Internal Revenue Code in excess of \$2,600.00 per election.
- f. No candidate or candidate committee for any elective office in the City of Brigantine shall accept a contribution from another candidate committee, other than from a candidate committee located in the City of Brigantine, in excess of \$2,600.00 per election.
- g. No candidate or candidate committee for any elective office in the City of Brigantine shall accept a contribution from a municipal political party committee, other than municipal political party committee in the City of Brigantine in excess of \$2,600.00 per election.

h. No candidate or candidate committee for any elective office in the City of Brigantine shall accept any monetary or in kind contribution, in excess of \$2,600.00 per election, directly or indirectly, from a municipal political party committee located in the City of Brigantine, if such municipal political party committee has received any contribution in excess of \$2,600.00 at any time during the preceding 12 months from a county political party committee, a municipal political party committee, a candidate committee, a continuing political committee or a PAC organized under Section 527 of the Internal Revenue Code, located outside of the City of Brigantine.

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I. Any candidate or candidate committee for any elective office in the City of Brigantine who has taken contributions in excess of those outlined in this section of this ordinance, shall be subject to a fine of up to \$500.00 per violation for a first offense and up to \$1000.00 per violation for any subsequent offense and/or 30 days in the jail for subsequent offense pursuant to N.J.S.A. 40:41A-101. The enforcement of this ordinance shall be brought by a citizen complaint which must be filed in any municipal court of the City of Brigantine or other municipal court with jurisdiction over the alleged violator.

SECTION IX: Incorporation By Reference

a. A statement explaining existence of this ordinance shall be incorporated into any and all ordinances or resolutions awarding professional services contracts or extraordinary unspecifiable services that were not subject to public bidding. The responsibility to incorporate the same shall be that of the City Clerk.

SECTION X: Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, invalid, or unenforceable by a body of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

SECTION XI: Repealer

All Ordinances or portions thereof inconsistent with this Ordinance are hereby repealed to the extent of said inconsistency.

INTRODUCTION _____ 2011
 ADOPTION _____ 2011

MAYOR PHILIP J. GUENTHER

ATTEST:

LYNN SWEENEY, RMC, City Clerk