

# PAY-TO-PLAY REFORM PRESENTATION KIT



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## Thank you for Answering the Call to Service!

The Call to Service is a non-partisan, no-blame movement to inspire citizen leadership and replace New Jersey's culture of corruption and waste with a culture of service and frugality.

The Citizens Campaign has a proven track record of success throughout New Jersey, follow these easy steps laid out in this presentation kit & you will become a successful citizen leader!



## STEP 1: Getting Started: File an OPRA Request with the Clerk

*Find out if your town already has an anti- pay to play policy*

### **Sample public records request:**

Request copies of resolutions or ordinances limiting political contributions by business entities seeking or performing bid or no-bid government contracts.



## STEP 2: Become a Citizen Legislator!

*This free, 30-minute online class will prepare you to make a proposal*

While you are waiting for the OPRA request to be compiled, take the free Citizens Campaign's "Citizen Legislator" class that teaches you how to successfully gain adoption of a law. The class is available online or in person. Visit [www.thecitizenscampaign.com](http://www.thecitizenscampaign.com) for the class and more information about upcoming events.



## STEP 3: Organize and Empower!

*This "Citizen Legislator" class will prepare you to make a proposal*

Invite your friends, family, and colleagues to join you in Answering the Call to Service and reining in wasteful spending. Organize a meet-up, coffee klatch, or conference call, and The Citizens Campaign team will teach you and your friends best practices for making a "Pay to Play Reform" proposal and getting results.

## STEP 4: Make a Proposal

### *Suggested Presentation Statement*

Once you've received the OPRA response and confirmed that your town has not adopted a strong Pay-to-Play Ordinance, you are ready to make a presentation. Pick a date and notify the decision-makers and the media that you are making a proposal. Send an email to the members of the governing body, legal counsel (make sure to CC the media and Citizens Campaign) with a copy of the "Model Pay to Play Reform Ordinance", as well as the date you will be making the presentation. Rally neighbors and representatives from local organizations, businesses and civic groups to join you.



### **Sample Presentation at a Public Meeting.**

Honorable council members and fellow citizens, good evening. My name is \_\_\_\_\_, I live at \_\_\_\_\_.

I am here tonight to present the township council a model public contracting reform. More commonly called pay-to-play reform, this ordinance has been prepared by a team of top legal experts, and advanced by the Citizens' Campaign to effectively end pay-to-play.

For those who are not familiar, pay-to-play is the practice in which large campaign contributions are traded for lucrative government contracts. We have read too many news articles about pay-to-play happening around the state. We don't need to read about it in \_\_\_\_(Municipality)\_\_\_\_, that's why I am presenting this ordinance tonight, so that we can be proactive in preventing pay-to-play from ever happening here.

The model ordinance I am presenting this evening would sever the link between contracts and contributions and would ensure that merit and cost effectiveness drive the contracting process.

In 2006 the Legislature passed legislation enabling local governing bodies to pass strong pay-to-play reform, such as this model. More than 100 municipalities have adopted local pay-to-play protections. I believe it is now our turn.

This ordinance limits contributions by professionals who wish to do business with the town to \$300 to candidates and municipal parties, \$500 to county political parties, and \$2500 in aggregate. No contributions may be made from beginning of negotiations through the completion of a bid or no-bid contract. The ordinance provides for effective enforcement by making the penalty for violating the ordinance a breach of contract. Furthermore, if a contractor tries to get around the law, then a contractor is barred from future contracts for 4 years.

I respectfully submit copies of the model pay to play reform ordinance for your consideration, I hope that the council would be able to place this ordinance on first reading at the next council meeting. By doing so \_\_\_\_(Municipality)\_\_\_\_ will put in place important safeguards and send a message to state leaders that now is time to end pay-to-play and restore integrity to a broken public contracting system

I respectfully ask that you take a leadership role and adopt this important reform. I thank you in advance for consideration of this ordinance.



## Frequently Asked Questions

*Understanding some basic concepts of the Model Pay to Play Reform Ordinance*

While the Citizens Campaign will send someone to meet with the Legal Counsel, Business Administrator or governing body members to discuss the details of the proposal and their current process, there are a few basic questions that you can prepare yourself to answer, if needed:

### 1. What about a person's 1<sup>st</sup> amendment right to contribute?

Our pay-to-play law is constitutional because municipalities have the power to set the conditions of contracts for professional services. In other words, this is not broad campaign finance reform, but public contract reform.

### 2. Can the town limit contributions to the county party committee?

No, towns can't dictate what county parties accept in contributions. But municipalities can set their own standards and refuse to do business with professionals who contribute to the county.

### 3. Can we include developers?

No, regulations pertaining to developers fall under the NJ Land Use law. A separate ordinance is needed, which can be obtained through our office, called the *Redevelopment Pay-to-Play Reform* ordinance.

### 4. Should towns wait for the State legislation?

No, Pay-to-play reform is a simple first-step to reducing the municipal portion of property taxes. Towns have the authority to control how professional service contracts are awarded. By passing this ordinance, contracts would be awarded on merit and cost-effectiveness, and the result is likely to be significantly lower costs.

### 5. The state Pay-to-Play reform law went into effect 1/1/06. Why should a town/county pass this model ordinance when there are already public contracting regulations from the state?

a) The state law established a very loose standard to give out contracts through a "fair and open" process. Any professional that receives a professional service contract through a "fair and open" process, does not have to abide by any contribution limits.

\* Our ordinance sets limits for any professional service contract, including those awarded by a "fair and open" process, as well as bid contracts.

b) The state law only sets limits on contributions to the governing bodies that are awarding the contracts. For example, if a lawyer is giving a contribution to the Democratic mayor of Smallville, then that lawyer couldn't get a contract from Smallville. However, that lawyer could give a contribution to the county Democratic party where Smallville is located. That money can then be funneled down to the mayor of Smallville from the county party.

\* Our ordinance limits contributions to the county and local parties.



**“MODEL PAY TO PLAY ORDINANCE”**  
**A Municipal Ordinance for Pay to Play Protections**  
**for Bid and No-Bid Contracts**

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

**WHEREAS**, pursuant to N.J.S.A. 40:48-2, a municipality is authorized to adopt such ordinances, regulations, rules and by-law 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., 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 holders of a contract can make during the term of a contract; and

**WHEREAS**, in the interest of good government, the Mayor and Governing Body desire to establish a policy that will avoid the perception of improper influence in local elections,

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Governing Body of the (Municipality), in the County of (County), and State of New Jersey, as follow:

**Section 1. Prohibition on Awarding Public Contracts to Certain Contributors.**

- (a) To the extent that it is not inconsistent with state or federal law, the (Municipality) and any of its purchasing agents or departments or instrumentalities of the municipality thereof, as the case may be, shall not enter into any agreement or otherwise contract to procure services from any professional business entity, 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) a campaign committee of any Municipal candidate or holder of public office having ultimate responsibility for the award of a contract, or (ii) to any (Municipality) or (County) County party committee, or (iii) to any political action committee (PAC) that regularly engages in the support of municipal or county elections and/or municipal or county parties, in excess of the thresholds specified in subsection (d) within one calendar year immediately preceding the date of the contract or agreement.
- (b) No professional business entity or vendor who submits a proposal for, enters into negotiations for, or agrees to any professional service contract or contract or agreement in excess of \$17,500 (including non-emergency contracts awarded by 40A:11 *et seq* or the “Fair and Open” Process pursuant to 19:44A-20 *et seq*) with the (Municipality) or any departments thereof, for the rendition of professional services, or goods and 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 (Municipality) candidate or holder of public office having ultimate responsibility for the award of a contract, or (ii) to any (Municipal) or (County) County party committee, or (iii) to any PAC that regularly engages in the support of municipal or county elections and/or municipal or county parties, between the time of first communication between that professional business entity or vendor and the municipality regarding a specific professional services agreement or goods and services agreement, as the case may be, and the later of the termination of negotiations or rejection of any proposal, or the completion of the contract or agreement.
- (c) For purposes of this ordinance, a "professional business entity" and a "vendor" seeking a public contract mean an individual including the individual's spouse, if any, and any child living at home; person; firm; corporation; professional corporation; partnership; organization; or association. The definition of a business entity and vendor includes all principals who own 10% or more of the equity in the corporation

or business trust, partners, and officers in the aggregate employed by the entity or vendor, as well as any subsidiaries directly controlled by the business entity or vendor.

- (d) Any individual meeting the definition of "professional business entity" or "vendor" under this section may annually contribute a maximum of \$300 each for any purpose to any candidate, for mayor or governing body, or \$300 to the (Municipality) party or \$500 to the (County) County party committee or to a PAC referenced in this ordinance, without violating subsection (a) of this section. However, any group of individuals meeting the definition of "professional business entity" or "vendor" under this section, including such principals, partners, and officers of the entity or vendor in the aggregate, may not annually contribute for any purpose in excess of \$2,500 to all (Municipality) candidates and officeholders with ultimate responsibility for the award of the contract, and all (Municipality) or (County) County political parties and PACs referenced in this ordinance combined, without violating subsection (a) of this section.
- (e) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:
  - (1) The (Municipality) Mayor or Governing body, if the contract requires approval or appropriation from the Mayor or Governing body.
  - (2) The Mayor of the (Municipality), 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.

## **Section 2. 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 vendor to any (Municipality) candidate for Mayor or Governing Body, or (Municipality) or (County) County party committee or PAC referenced in this ordinance shall be deemed a violation of this ordinance, nor shall an agreement for property, goods, or services, of any kind whatsoever, be disqualified thereby, if that contribution was made by the professional business entity or vendor prior to the effective date of this ordinance.

## **Section 3. Contribution Statement by Professional Business Entity and Vendor.**

- (a) Prior to awarding any contract or agreement to procure services with any professional business entity and any contract or agreement to procure goods and services from a vendor, the (Municipality) or its purchasing agents and departments, as the case may be, shall receive a sworn statement from the professional business entity or vendor, made under penalty of perjury, that the bidder or offeror has not made a contribution in violation of Section 1 of this ordinance.
- (b) The professional business entity and vendor shall have a continuing duty to report any violations of this ordinance that may occur during the negotiation, proposal process or duration of a contract. The certification required under this subsection shall be made prior to entry into the contract or agreement with the (Municipality), 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 4. Return of Excess Contributions.**

A professional business entity, vendor, or municipal candidate or officeholder, or (Municipality) or (County) County party committee or PAC referenced in this ordinance, 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, the professional business entity or vendor notifies the municipality in writing and seeks and receives reimbursement of the contribution from the relevant municipal candidate or officeholder, (Municipality) or (County) County political party or PAC referenced in this ordinance.

## **Section 5. Exemptions.**

The contribution limitations prior to entering into a contract in Section 1(a) do not apply to contracts which are required by law to be awarded to the lowest bidder.

## **Section 6. Penalty.**

- a) It shall be a breach of the terms of the (Municipality) professional service agreement or agreement for goods or services for a business entity to: (i) make or solicit a contribution in violation of this ordinance; (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit 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 campaign committee of any candidate or holder of the public office of (Municipality); (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 business entity itself, would subject that entity to the restrictions of this ordinance; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of this ordinance; or (viii) directly or indirectly, through or by any other person or means, do any act which would subject that entity to the restrictions of this ordinance.
- b) Furthermore, any professional business entity who violates (a) ii-viii shall be disqualified from eligibility for future (Municipality) contracts 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.

## **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 take effect upon adoption and publication according to law.