

## **BOROUGH OF EATONTOWN – NOTICE OF ORDINANCE ADOPTION**

NOTICE is hereby given that **Ordinance 02-2023** - Ordinance of the Borough of Eatontown Entitled **"AN ORDINANCE OF THE BOROUGH OF EATONTOWN AMENDING CHAPTER 57 PROFESSIONAL SERVICES, ARTICLE I PROFESSIONAL CONTRACTS AND ARTICLE II, PAY TO PLAY RESTRICTIONS"** was passed after a public hearing at the regular meeting of **1/25/2023** by the Governing Body of the Borough of Eatontown, at 47 Broad Street, Eatontown, NJ 07724. Borough of Eatontown - Julie Martin, RMC, Borough Clerk

### **ORDINANCE 02-2023**

#### **BOROUGH OF EATONTOWN**

#### **COUNTY OF MONMOUTH, STATE OF NEW JERSEY**

#### **AN ORDINANCE OF THE BOROUGH OF EATONTOWN AMENDING CHAPTER 57 PROFESSIONAL SERVICES, ARTICLE I PROFESSIONAL CONTRACTS AND ARTICLE II, PAY TO PLAY RESTRICTIONS**

**WHEREAS**, the New Jersey Legislature enacted a statute and the New Jersey Department of Community Affairs issued guidance to municipalities governing the amount of political contributions which can be made to local entities throughout the State of New Jersey; and

**WHEREAS**, there exists an endless variety of "pay-to-play" ordinances regulating the amount of political contributions which can be made by those seeking to contract with the local entity in many counties and municipalities, and there exists much confusion by those seeking to contract with local entities because of the lack of uniformity in local ordinances and because of the overriding state statute governing the same subject matter; and

**WHEREAS**, the Borough adopted such a local pay-to-play ordinance, Ordinance 2-2009, which is but an example of the confusion which limits political donations to not only Eatontown Borough candidates, but also to any County political party or Political Action Committee or Legislative Leadership Committee throughout the entire State of New Jersey; and

**WHEREAS**, the confusion has resulted in multiple inquiries to determine what unique peculiarities may be present in the Borough's pay-to-play" ordinance and there has been a call for uniform Statewide pay-to-play reform to create an understandable, level playing field; and

**WHEREAS**, the Borough Council believes it is in the best interest of the Borough to avoid the confusion amongst its potential professionals and seeks to enact the a more understandable and less confusing standard consistent with state law.

**NOW THEREFORE BE IT ORDAINED**, by the Borough Council of the Borough of Eatontown, County of Monmouth and State of New Jersey that it hereby amends the Borough Code as follows:

(additions are underlined and deletions are ~~stricken~~)

#### Article I Professional Contracts

##### §57-1 to §57-4-No changes)

#### §57-5 Standard for Fair and Open Process

~~The standard used by the Borough of Eatontown for a "fair and open" process shall be a competitive contracting criteria setting forth factors most advantageous for awarding the contract to the Borough of Eatontown.~~

#### Article II Pay to Play Restrictions

##### §57-6 Prohibition on Awarding Public Contracts to Certain Contributors:

- A. The Borough of Eatontown and any of its purchasing agents or departments or instrumentalities of the Borough thereof, as the case may be, shall not enter into any agreement or otherwise contract to procure services from any "business entity" as defined herein, including those awarded pursuant to any process, including a fair and open process, regardless of the amount of the contact, if such business entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions (as such term is defined within N.J.A.C. 19:25-1.7), in excess of the thresholds specified in Subsection D within one calendar year immediately preceding the Borough's public announcement of or private solicitation of a request for proposals to: (1) Any Borough candidate or holder of a public office having ultimate responsibility for the award of the contract; or (2) Any campaign committee of such a candidate or holder of public office; or (3) Any Borough of Eatontown municipal party. or (4) Any county party committee within the State of New Jersey; or (5) Any candidate committee, state or Borough political party committee, legislative leadership committee, continuing political

~~committee or political action committee (PAC) organized under § 572 of the Internal Revenue Code that is organized for the purpose of supporting Borough candidates or Borough officeholders and/or that has within the last calendar year provided financial or in kind support to Borough of Eatontown municipal elections and/or Borough of Eatontown municipal or Borough parties.~~

- B. No business entity that submits a proposal for or agrees to any contract or agreement (including nonemergency contracts awarded by N.J.S.A. 40A:11 et seq., or the "Fair and Open Process" pursuant to N.J.S.A. 19:44A-20 et seq.) with the Borough or any departments thereof, as the case may be, shall knowingly solicit or make any contribution of money, pledge of contribution, including in-kind contributions (as such term is defined within N.J.A.C. 19:25-1.7) in excess of the thresholds specified in Subsection D, between the time of the first public announcement or private solicitation of a request for proposals, as the case may be, and the later of the awarding of the contract to another proposer, or written withdrawal of the proposal, or, as to the successful applicant, the completion of the contract or agreement, except as permitted in Subsection D, to: (1) Any Borough candidate or holder of public office having ultimate responsibility for the award of the contract; or (2) Any campaign committee of such a candidate or holder of public office; or (3) Any Borough of Eatontown municipal party; or (4) Any county party committee within the State of New Jersey; or (5) Any candidate committee, state or Borough political party committee, legislative leadership committee, continuing political committee or political action committee (PAC) organized under § 527 of the Internal Revenue Code that is organized for the purpose of supporting Borough candidates or Borough officeholders and/or that has within the last calendar year provided financial or in kind support to Borough of Eatontown municipal elections and/or Borough of Eatontown municipal or Borough parties.
- C. [No change]
- D. Any individual meeting the definition of "business entity" under this section may annually contribute a maximum of \$300 each per election for any purpose to any candidate for Borough of Eatontown office or municipal party committees within the Borough of Eatontown; ~~county party committee, and \$300 to any state political party committee, candidate committee or political action committee (PAC) organized under § 527 of the Internal Revenue Code that is organized for the purpose of supporting Borough candidates or Borough officeholders,~~ without violating Subsection A or B of this section. However, any group of individuals meeting the definition of "business entity" under this section, including principals, partners, and officers of the entity in the aggregate, may not contribute for any purpose in excess of \$300 to all Borough of Eatontown candidates and officeholders with ultimate responsibility for the award of the contract, and all municipal or Borough political parties, ~~candidate committees, county political parties, and state political parties, legislative leadership committees, continuing political committee, and/or PACs that are organized for the purpose of supporting Borough candidates or Borough officeholders,~~ without violating Subsection A or B of this section. However, should a "business entity" contribute \$300 to any candidate for Borough of Eatontown office or municipal party committees within the Borough of Eatontown (the "Eatontown Donation"), it may only contribute the difference between the Eatontown Donation and the current New Jersey Election Law Enforcement Commission ("ELEC) standards for donations to county political parties, state political parties, legislative leadership committees, continuing political committee, and/or PACs that are organized for the purpose of supporting Borough candidates or Borough officeholders without violating Subsection A or B of this Section. By way of example, should a "business entity" donate \$300 to a Borough of Eatontown candidate, it may only contribute \$6900 to a county political party (the difference between the Eatontown Donation and the current ELEC limitation for contributions to county political party committees).
- E. [No change]

[No Changes].

**BE IT FURTHER ORDAINED**, that

- A. All other Ordinances or provisions of the Code of the Borough of Eatontown or parts thereof, which are inconsistent with any provisions in this Ordinance, are hereby repealed to the extent of such conflict or inconsistency.
- B. If any provision or portion of this Chapter is held to be unconstitutional, preempted by Federal or State Law or otherwise invalid by any court of competent jurisdiction, the remaining provisions of this chapter shall not be invalidated.
- C. This Ordinance shall take effect upon its passage and publication as required by law.