

BOROUGH OF EMERSON
COUNTY OF BERGEN
NOTICE OF INTRODUCTION

1641-21

Introduced: November 23, 2021

**AN ORDINANCE TO AMEND CHAPTER 79, PURCHASING,
§ 79-3 D PROHIBITION ON AWARDING PUBLIC CONTRACTS TO CERTAIN CONTRIBUTORS.**

NOTICE IS HEREBY GIVEN that the following proposed Ordinance was introduced and passed on first reading at the Regular meeting of the Borough Council of the Borough of Emerson on the 23rd day of November, 2021, and that said proposed Ordinance will be further considered for final passage at the meeting of said Borough Council to be held on the 7th day of December, 2021 at 7:30 p.m., or as soon thereafter as said matter can be heard at the Municipal Building, Linwood Avenue, Emerson, New Jersey, at which time and place all persons who may be interested therein shall be given an opportunity to be heard concerning same.

Article I
(Reserved)

§ 79-1 **(Reserved)**

Article II
Professional Service Contracts

§ 79-2 **Maximum amount policy.**

The policy of the Borough of Emerson will be to set maximum amounts that professional business entities may contribute politically beyond which they become ineligible to receive a public professional service contract from the Borough of Emerson.

§ 79-3 **Prohibition on awarding public contracts to certain contributors.**

- A. Any other provision of law to the contrary notwithstanding, the municipality or any of its purchasing agents or agencies or those of its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract to procure professional banking, insurance coverage services or any other consulting services, including those awarded pursuant to a fair and open process, from any professional business entity, if that entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contribution, to any municipal candidate of the Borough of Emerson or holder of the public office having ultimate responsibility for the award of the contract, or campaign committee supporting such candidate or officeholder, or to any Borough of Emerson party committee, or Bergen County party committee, or to any political action committee (PAC) that regularly engages in, or whose primary purpose is the support of municipal elections and/or municipal parties in excess of the thresholds specified in Subsection **D** within one calendar year immediately preceding the date of the contract or agreement.

- B. Except as permitted in Subsection D below, no professional business entity or individual who enters into negotiations for, or agrees to, any contract or agreement with the municipality or any department or agency thereof or of its independent authorities for the rendition of professional, banking or insurance coverage services or any other consulting services, including those awarded pursuant to a fair and open process, shall solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to any municipal candidate of the Borough of Emerson or holder of the public office having ultimate responsibility for the award of the contract or campaign committee supporting such candidate or officeholder, or to any Borough of Emerson or Bergen County party committee, or to any political action committee (PAC) that engages in, or who's primary purpose is the support of municipal elections and/or municipal parties between the time of first communications between that business entity and the Borough regarding a specific professional services agreement and the later of the termination of negotiations or the completion of the contract or agreement.
- C. For purposes of this article, a "professional business entity" seeking a public contract means an individual including the individual's spouse, if any, and any child living at home; person; firm; corporation; professional corporation; partnership; organization; or association. The definition of a "business entity" includes all principals who own 10% or more of the equity in the corporation or business trust, partners, and officers in the aggregate employed by the entity as well as any subsidiaries directly controlled by the business entity.
- D. Any individual meeting the definition of "professional business entity" under this section may **annually per election cycle as defined by NJSA 19:1.1 and NJSA 19:2-1 and NJSA 19:2-3** contribute a maximum of \$600 each for any purpose to any candidate, for mayor or governing body, or \$600 to the Borough of Emerson party committee, or \$600 to the Bergen County party committee, or to a PAC referenced to this article, 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 Mayor and Council of the Borough of Emerson, if the contract requires approval or appropriation from the Council.
 - (2) The Mayor of Emerson, 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.

§ 79-4 Contributions made prior to effective date.

No contribution of money or any other thing of value, including in-kind contributions, made by a professional business entity to any municipal candidate for Mayor or Council, or municipal or county party committee or PAC referenced in this article shall be deemed a violation of this section, nor shall an agreement for property, goods, or services, of any kind whatsoever, be disqualified thereby, if that contribution was made by the professional business entity prior to the effective date of this section.

§ 79-5 Return of excess contributions.

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

A professional business entity or Borough candidate or office holder or municipal or county party committee or PAC referenced in this article may cure a violation of § 79-3 of this article, if, within 30 days after the date on which the applicable ELEC Report is published, the professional business entity notifies the Borough Council in writing and seeks and receives a reimbursement of a contribution from the Borough candidate or municipal or county political party or PAC referenced in this article.

§ 79-6 **Violations and penalties.**

A. It shall be a breach of the terms of the Borough of Emerson professional service agreement for a business entity to:

- (1) Make or solicit a contribution in violation of this article;
- (2) Knowingly conceal or misrepresent a contribution given or received;
- (3) Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- (4) 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 the Borough of Emerson;
- (5) 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 article;
- (6) Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- (7) Engage in any exchange of contributions to circumvent the intent of this article; or
- (8) Directly or indirectly, through or by any other person or means, do any act which would subject that entity to the restrictions of this article.

B. Furthermore, any professional business entity who violates Subsection **A(1)** through **(8)** shall be disqualified from eligibility for future Borough of Emerson contracts for a period of three calendar years from the date of the violation.

ATTEST:

Jane Dietsche, RMC
Borough Clerk

Danielle DiPaola
Mayor