

1 **BILL NO. – G-17-11-12**

2 **General Ordinance No. S-_____**

3 **AN ORDINANCE AMENDING CHAPTER 37 OF**
4 **THE FORT WAYNE CODE OF ORDINANCES**
5 **CONCERNING ADMINISTRATION AND**
6 **AWARDING OF**
7 **MUNICIPAL CONTRACTS**

8 Whereas, there appears to be a public perception that individuals and
9 businesses influence the award of City government contracts through contributions
10 made to political candidates, campaigns, and/or other elected officials who are the
11 decision makers with regard to government contracts, and that obtaining said
12 contracts without making such contributions is difficult.

13 Whereas, the Common Council of Fort Wayne has determined there is a need
14 to maintain public confidence in the integrity of decisions in awarding government
15 contracts;

16 Whereas, it is in the public's interest to take formal action to insulate these
17 decisions from the political influence of campaign contributions to or for the benefit
18 of the affected decision-makers;

19 Whereas, the Common Council desires to be a leader in Indiana by
20 establishing higher standards in local government;

21 Whereas, if a contribution is made for the purpose of influencing the
22 selection of a contract, the contributor is seeking to interfere with the merit-based
23 selection process and the contribution creates a conflict of interest between the
24 contributor (whose interest is in being selected) and its prospective client (whose
25 interest is in obtaining the best possible services);

26 Whereas, contracts for municipal services not awarded purely on merit-based
27 selection may potentially lead to inferior management and performance;

1 Whereas, ethical contractors seeking to avoid the perception of participating
2 in pay to play practices may refrain from seeking to do business with the City and
3 this may lessen the pool of qualified contractors willing to do business with the City;
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5 Whereas, pay to play practices as such may exist in the City could lead to the
6 City paying higher fees because the contractor must recoup contributions, or because
7 contract negotiations may not occur on an arm's length basis;
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9 Whereas, such pay to play practices will not stop through voluntary effort
10 because governmental officials who participate may have an incentive to continue to
11 accept contributions for fear of being disadvantaged relative to opponents;
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13 Whereas, this ordinance provides a specific prohibition to ensure that contract
14 selection is based on the merits, not on the amount of money given to a particular
15 candidate for office, while respecting the right of industry participants to participate
16 in the political process;
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18 Whereas, the ordinance takes the form of a restriction on providing
19 compensated services following the making of contributions rather than a prohibition
20 on making contributions in excess of the relevant ceilings;
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22 Whereas, the ordinance is not a restriction on contributions that is applicable
23 to the public but, rather, it is focused exclusively on conduct of those seeking
24 profitable business from governmental agencies;
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26 Whereas, nothing in this ordinance shall impact any individual's or entity's
27 ability to express their First Amendment right to contribute to the campaign of any
28 individual candidate for elected office in any amount permitted by applicable federal
29 and state law, but rather, this ordinance is intended to address the appearance of
30 corruption in the awarding of government contracts by minimizing the risk of a quid
pro quo exchange;

1 Whereas, the ordinance is targeted at those whose contributions raise the
2 greatest danger of quid pro quo exchanges and it covers only contributions to those
3 governmental officials who may be the most likely targets of pay to play
4 arrangements because of their authority to influence the award of business;

5 Whereas, municipalities have the right to establish rules and procedures for
6 contracting with business entities provided such rules and procedures are not
7 otherwise preempted by state and federal Law; and
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9 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON**
10 **COUNCIL OF THE CITY OF FORT WAYNE, INDIANA THAT CHAPTER**
11 **37 OF THE MUNICIPAL CODE OF ORDINANCES IS HEREBY AMENDED**
12 **TO ESTABLISH REGULATIONS EFFECTING THE AWARD OF**
13 **CONTRACTS FOR THE MATERIALS, GOODS, SUPPLIES, EQUIPMENT**
14 **AND SERVICES AS FOLLOWS:**

15 SECTION 1. Chapter 37 of the Municipal Code of Ordinances is hereby
16 amended to add Section 37.28 as follows:

17 § 37.28 PROHIBITION ON AWARDING PUBLIC CONTRACTS
18 TO CERTAIN CONTRIBUTORS

19 (A) Any other provision of law to the contrary notwithstanding,
20 the City or any of its departments or agencies or independent authorities, as
21 the case may be, **"shall not enter into an agreement or otherwise contract**
22 **with"** any **"business entity"** for materials, supplies, equipment, goods or
23 contractual services or any other consulting services, including contracts and
24 agreements awarded, if **within one calendar year immediately preceding**
25 **the date of the contract or agreement** that **"business entity"** has made any
26 contribution of money, or pledge of a contribution, including an in-kind
27 contribution, in **excess** of the amounts specified in I.C. 3-9-2-4 (7) (a
28 provision dealing with "Contributions by Corporations and Labor
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2 Organizations” as it relates to local offices) apportioned in any manner
3 among all City of Fort Wayne candidates for or holders of a public office
4 having ultimate responsibility for the award of the contract, or campaign
5 committee supporting such candidates or officeholders, , or to any City or
6 Allen County party committee, or to any political action committee (PAC)
7 that regularly engages in the support of municipal elections and/or municipal
8 parties.

9 (B) Any other provision of the law to the contrary
10 notwithstanding, the City or any of its departments or agencies or
11 independent authorities as the case may be, **“shall not enter into**
12 **negotiations with or accept bids”** of any nature from any **business entity**
13 for the rendition of materials, supplies, goods, equipment or contractual
14 services or any other consulting services if, **at any time during the**
15 **negotiations or bid process or one (1) calendar year immediately**
16 **preceding the date of the first communications between a business entity**
17 and the City of Fort Wayne regarding a specific contract or agreement, the
18 **“business entity”** has made any contributions of money, or pledge of a
19 contribution, including an in-kind contribution, in **excess** of the amounts
20 specified in I.C. 3-9-2-4 (7) (a provision dealing with “Contributions by
21 Corporations and Labor Organizations” as it relates to local offices)
22 apportioned in any manner among all City of Fort Wayne candidates for or
23 holders of a public office having ultimate responsibility for the award of the
24 contract, or campaign committee supporting such candidates or officeholders,
25 or to any City or Allen County party committee, or to any political action
26 committee (PAC) that regularly engages in the support of municipal elections
27 and/or municipal parties.

28 (C) No **business entity** which enters into negotiations for or
29 agrees to any contract or agreement with the City of Fort Wayne or any of its
30 departments or agencies or independent authorities for the rendition of

1 materials, supplies, goods, equipment or contractual services or any other
2 consulting services, shall make any contribution of money, or pledge of a
3 contribution including an in-kind contribution in **excess** of amounts specified
4 in I.C. 3-9-2-4 (7) (a provision dealing with "Contributions by Corporation
5 and Labor Organizations" as it relates to local offices) apportioned in any
6 manner among all City of Fort Wayne candidates for or holders of a public
7 office having ultimate responsibility for the award of the contract, or
8 campaign committee supporting such candidates or officeholders, or to any
9 City or Allen County part committee, or to any political action committee
10 (PAC) that regularly engages in the support of municipal elections and/or
11 municipal parties, **between the time of first communications** between the
12 **business entity** and the City of Fort Wayne regarding a specific contract or
13 agreement and the later of the termination of negotiations or the **completion**
14 of the contract or agreement.

15 (D) For purposes of this ordinance, a "**business entity**" means and
16 includes any *natural* or *legal* person providing or offering to provide
17 materials, supplies, goods, equipment, or professional services or other
18 consulting services. A *natural* or *legal* person includes *an individual, firm,*
19 *proprietorship, corporation, limited liability company, professional*
20 *corporation, partnership, or any other organization or association.* The
21 definition of **business entity** includes in the aggregate *all officers* of the
22 **business entity**, and all *partners, principals, or others* in the **business entity**,
23 who have any ownership interest or distributive share of seven and one-half
24 percent (7.5 %) or more of the **business entity**, and all *subsidiaries* directly
25 controlled by the **business entity**. An *individual* included in the definition of
26 **business entity** shall also include the *individual's spouse*, if any, and any
27 *child* living in the same household as the individual or spouse.
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1 (E) For purposes of this section, the office or offices considered to
2 have ultimate responsibility for the award of a contract shall be the Mayor,
3 the Common Council and any elected officer of the Council.

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5 (F) **Contributions Made Prior to the Effective Date.** Any
6 contract or agreement entered into before the effective date of this ordinance
7 shall not be affected, governed by or in any way in violation of this
8 ordinance. Further, no contribution of money or other thing of value,
9 including in kind contributions, shall be deemed a violation of this ordinance
10 if that contribution was made by the **business entity** prior to the effective
11 date of this ordinance. Notwithstanding the foregoing, any **business entity**
12 which is a party to a contract with the City of Fort Wayne, or any of its
13 departments, agencies, or independent authorities prior to the effective date
14 of this ordinance which contract remains in existence subsequent to the
15 effective date of this ordinance, shall be subject to subsection (C) of this
16 ordinance as to any contributions made after the effective date of the
17 ordinance, and prior to the termination or completion of the contract.

18 (G) **Contribution Statement by Business Entity.** Prior to
19 entering into negotiations, and/or submitting a formal bid through any bid
20 process utilized by the City or any of the City departments, and prior to
21 entering into any contract or agreement with a **business entity** to procure its
22 contractual services, goods, materials, equipment, or supplies, the City or its
23 departments, agencies or independent authorities, as appropriate, shall obtain
24 from the **business entity** a sworn statement made under penalty of perjury
25 that the **business entity**, including in the aggregate all covered principals,
26 partners, officers and subsidiaries, has not made a contribution or
27 contributions which would prohibit the City from negotiating with and/or
28 contracting with the **business entity** as outlined in subsections (A) and (B) of
29 this ordinance. The effectiveness of any award of a contract or agreement
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1 covered by this ordinance shall be conditioned upon satisfactory compliance
2 with this requirement.
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6 (H) **Return of Excess Contributions.** A **business entity**,
7 candidate, officeholder, candidate committee, party committee or PAC may
8 cure a violation of this ordinance if, within 30 days after the contributions
9 made by the **business entity** in excess of those specified in subsections (A),
10 (B), or C of this ordinance, the Common Council is notified of the violation
11 in writing and the amount of the contribution in excess of the limits specified
12 in subsections (A), (B), or (C) is returned to the **business entity**.

13 (I) **Other Prohibited Conduct; Penalty.**
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15 (1) It shall be a violation of this ordinance to: (i) make a
16 contribution in violation of this ordinance; (ii) knowingly conceal or
17 misrepresent a contribution given or received; (iii) make contributions
18 through intermediaries for the purpose of concealing or
19 misrepresenting the source of the contribution; (iv) make any
20 contribution to a campaign committee, City or Allen County party
21 committee, or to a PAC on the condition or with the agreement that it
22 will be contributed to a candidate or campaign committee of any
23 candidate for Fort Wayne office or any holder of Fort Wayne office in
24 violation of this ordinance; (v) engage or employ a lobbyist or
25 consultant with the intent or understanding that such lobbyist or
26 consultant will make any contribution, which if made by the **business**
27 **entity** itself would subject the **business entity** to the restrictions of
28 this ordinance; (vi) fund contributions made by third parties,
29 including consultants, attorneys, family members and employees, in
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1 violation of this ordinance; (vii) engage in any exchange of
2 contributions to circumvent the intent of this ordinance; or (viii),
3 directly or indirectly, through or by any other person or means, do any
4 act which would subject the **business entity** to the restrictions of this
5 ordinance.

6 (2) All professional services agreements and other contracts
7 for covered services between a **business entity** and the City of Fort
8 Wayne or its departments, agencies or independent authorities, as
9 appropriate, shall provide by operation of law that it shall be a
10 material breach of the agreement for the **business entity** to engage in
11 conduct prohibited by this ordinance.

12 (3) Any **business entity** which violates this ordinance also
13 shall be disqualified from eligibility for future Municipal contracts for
14 a period of four (4) calendar years from the date of the violation.
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17 J. **Severability.** If any provision of this ordinance, or the
18 application of any such provision to any person or circumstance, shall be held
19 invalid, the remainder of this ordinance to the extent it can be given effect, or
20 the application of such provision to persons or circumstances other than those
21 for which it is held invalid, shall not be affected thereby, and to this extent
22 the provisions of this ordinance are severable.

23 **SECTION 2.** That the City is directed to take all action necessary and
24 proper for the implementation of this Ordinance.
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1 **SECTION 3.** After passage and any and all necessary approval by the
2 Mayor and any and all publication required, this ordinance shall have an effective
3 date of January 1, 2018.
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6 _____
 John Crawford, Council Member
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8 _____
 Jason Arp, Council Member
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10 APPROVED AS TO FORM AND LEGALITY
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13 _____
 Joseph G. Bonahoom, City Council Attorney
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