

General Ordinance No. S-

**AN ORDINANCE AMENDING CHAPTER 37 OF
THE FORT WAYNE CODE OF ORDINANCES
CONCERNING DISCLOSURES IN AWARDING OF
MUNICIPAL CONTRACTS**

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

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

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

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

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

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

Whereas, ethical contractors seeking to avoid the perception of participating in pay to play practices may refrain from seeking to do business with the City and this may lessen the pool of qualified contractors willing to do business with the City;

Whereas, pay to play practices as such may exist in the City could lead to the City paying higher fees because the contractor must recoup contributions, or because contract negotiations may not occur on an arm's length basis;

Whereas, such pay to play practices will not stop through voluntary effort because governmental officials who participate may have an incentive to continue to accept contributions for fear of being disadvantaged relative to opponents;

Whereas, this ordinance provides a specific disclosures to ensure that contract selection is based on the merits, not on the amount of money given to a particular candidate for office, while respecting the right of industry participants to participate in the political process;

Whereas, the ordinance takes the form of a disclosure in seeking certain compensated services following the making of contributions rather than a prohibition on making contributions in excess of the relevant ceilings;

Whereas, the ordinance is not a restriction on contributions that is applicable to the public but, rather, it is focused exclusively on conduct of those seeking profitable business from governmental agencies;

Whereas, nothing in this ordinance shall impact any individual's or entity's ability to express their First Amendment right to contribute to the campaign of any individual candidate for elected office in any amount permitted by applicable federal and state law, but rather, this ordinance is intended to address the appearance of corruption in the awarding of government contracts by minimizing the risk of a quid pro quo exchange;

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

Whereas, municipalities have the right to establish rules and procedures for contracting with business entities provided such rules and procedures are not otherwise preempted by state and federal Law;

Whereas, the Common Council of Fort Wayne has previously adopted G-17-11-12, An Ordinance Amending Chapter 37 of the Fort Wayne Code of Ordinances Concerning Administration and Awarding of Municipal Contracts;

Whereas, Mayor Tom Henry, in vetoing said Ordinance G-17-11-12 by operation of law, expressed the need to address the philosophical and ideological views of said Ordinance, and requested the Common Council's assistance in reworking the Ordinance; and

Whereas, this Ordinance is introduced to accomplish the ideological and philosophical issues justifiably raised by G-17-11-12 without running afoul of state and federal laws;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA THAT CHAPTER 37 OF THE MUNICIPAL CODE OF ORDINANCES IS HEREBY AMENDED TO ESTABLISH REGULATIONS EFFECTING THE AWARD OF CONTRACTS FOR THE MATERIALS, GOODS, SUPPLIES, EQUIPMENT AND SERVICES AS FOLLOWS:

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

§ 37.28 PROHIBITION ON AWARDING PUBLIC CONTRACTS TO
CERTAIN CONTRIBUTORS

(A) Any other provision of law to the contrary notwithstanding, the City or any of its departments or agencies or independent authorities, as the case may be, “**shall not enter into an agreement or otherwise contract with**” any “**business entity**” for materials, supplies, equipment, goods or contractual services or any other consulting services, including contracts and agreements awarded, if **within one calendar year immediately preceding the date of the contract or agreement** that “**business entity**” has made any contribution of money, or pledge of a contribution, including an in-kind contribution, in **excess** of the amounts specified in I.C. 3-9-2-4 (7) (a provision dealing with “Contributions by Corporations and Labor Organizations” as it relates to local offices) apportioned in any manner among all City of Fort Wayne candidates for or holders of a public office having ultimate responsibility for the award of the contract, or campaign committee supporting such candidates or officeholders, , or to any City or Allen County party committee, or to any political action committee (PAC) that regularly engages in the support of municipal elections and/or municipal parties, **without first having disclosed any such excess amounts.**

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

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

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

(D) For purposes of this ordinance, a “**business entity**” means and includes any **natural** or **legal** person providing or offering to provide materials, supplies, goods, equipment, or professional services or other consulting services. A **natural** or **legal** person includes *an individual, firm, proprietorship, corporation, limited liability company, professional corporation, partnership, or any other organization or association*. The definition of **business entity** includes in the aggregate *all officers* of the **business entity**, and all *partners, principals, or others* in the **business entity**, who have any ownership interest or distributive share of seven and one-half percent (7.5 %) or more of the **business entity**, and all *subsidiaries* directly controlled by the **business entity**. An *individual* included in the definition of **business entity** shall also include the *individual’s spouse*, if any, and any *child* living in the same household as the individual or spouse.

(E) For purposes of this section, the office or offices considered to have ultimate responsibility for the award of a contract shall be the Mayor, the Common Council and any elected officer of the Council.

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

(G) **Contribution Statement by Business Entity.** Prior to entering into negotiations, and/or submitting a formal bid through any bid process utilized by the City or any of the City departments, and prior to entering into any contract or agreement with a **business entity** to procure its contractual services, goods, materials, equipment, or supplies, the City or its departments, agencies or independent authorities, as appropriate, shall obtain from the **business entity** a sworn statement made under penalty of perjury that the **business entity**, including in the aggregate all covered principals, partners, officers and subsidiaries, **fully disclosing any and all** contributions as outlined in subsections (A) and (B) of this ordinance. The effectiveness of any award of a contract or agreement covered by this ordinance shall be conditioned upon satisfactory compliance with this requirement.

(H) **Return of Excess Contributions.** A **business entity**, candidate, officeholder, candidate committee, party committee or PAC may cure a violation of this ordinance if, within 30 days after the contributions made by the **business entity** in excess of those specified in subsections (A), (B), or C of this ordinance, the Common Council is notified of the violation in writing and the amount of the contribution in excess of the limits specified in subsections (A), (B), or (C) is returned to the **business entity**.

(I) **Other Prohibited Conduct; Penalty.**

(1) It shall be a violation of this ordinance to: (i) make a contribution in violation of this ordinance; (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make any contribution to a campaign committee, City or Allen County party committee, or to a PAC on the condition or with the agreement that it will be contributed to a candidate or campaign committee of any candidate for Fort Wayne office or any holder of Fort Wayne office in violation of this ordinance; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant will make any contribution, which if made by the **business entity** itself would subject the **business entity** to the restrictions of this ordinance; (vi) fund contributions made by third parties, including consultants, attorneys, family members and employees, in violation of this ordinance; (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 the **business entity** to the restrictions of this ordinance.

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

(3) Any **business entity** which violates this ordinance also shall be disqualified from eligibility for future Municipal contracts for a period of four (4) calendar years from the date of the violation.

J. **Severability.** If any provision of this ordinance, or the application of any such provision to any person or circumstance, 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 for which it is held invalid, shall not be affected thereby, and to this extent the provisions of this ordinance are severable.

SECTION 2. That the City is directed to take all action necessary and proper for the implementation of this Ordinance.

SECTION 3. After passage and any and all necessary approval by the Mayor and any and all publication required, this ordinance shall have an effective date of January 1, 2018.

Michael A. Barranda, Council Member

APPROVED AS TO FORM AND LEGALITY
