

2
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 businesses
9 influence the award of City government contracts through contributions made to political
10 candidates, campaigns, and/or other elected officials who are the decision makers with
11 regard to government contracts, and that obtaining said contracts without making such
12 contributions is difficult;

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

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

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

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

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

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

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

8 **Whereas**, the ordinance takes the form of a restriction on providing compensated
9 services following the making of contributions rather than a prohibition on making
10 contributions in excess of the relevant ceilings;

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

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

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

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

1 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL
2 OF THE CITY OF FORT WAYNE, INDIANA THAT CHAPTER 37 OF THE
3 MUNICIPAL CODE OF ORDINANCES IS HEREBY AMENDED TO MODIFY
4 REGULATIONS REGARDING THE AWARD OF CONTRACTS FOR THE
5 MATERIALS, GOODS, SUPPLIES, EQUIPMENT AND SERVICES AS
6 FOLLOWS:

7
8 SECTION 1. Section 37.28(C) of the Municipal Code of Ordinances is hereby
9 deleted in its entirety. Sections 37.28(A), (B), (D), (E), (F), (G), (H), (I), and (J) of the
10 Municipal Code of Ordinances are hereby deleted in their entirety and replaced with the
11 following:

12 § 37.28 PROHIBITION ON AWARDING PUBLIC CONTRACTS TO
13 CERTAIN CONTRIBUTORS

14 (A) Any other provision of law to the contrary notwithstanding, the
15 City or any of its departments or agencies, as the case may be, **“shall not enter**
16 **into an agreement or otherwise contract with”** any **“business entity”** for
17 **“professional services”** if within one calendar year immediately preceding the
18 date of the contract or agreement that **“business entity”** has made any
19 contribution of money, or pledge of a contribution, including an in-kind
20 contribution, in **excess** of the amounts specified in I.C. 3-9-2-4 (7) (a provision
21 dealing with “Contributions by Corporations and Labor Organizations” as it
22 relates to local offices) apportioned in any manner among all City of Fort Wayne
23 candidates for or holders of a public office having ultimate responsibility for the
24 award of the contract, or campaign committee supporting such candidates or
25 officeholders, or any City or Allen County party committee supporting such
26 candidates or officeholders, or to any political action committee (PAC) that
27 regularly engages in the support of municipal elections and/or municipal parties in
28 the City of Fort Wayne. If a contract is awarded pursuant to state statute to the
29 lowest responsive bidder this ordinance shall not apply.
30

1 (B) Any other provision of the law to the contrary notwithstanding, the
2 City or any of its departments or agencies as the case may be, “**shall not enter**
3 **into negotiations with or accept bids**” of any nature from any “**business entity**”
4 for “**professional services**” without sending written notification to bidders of the
5 provisions of this ordinance. Such notice shall also inform bidders that the City,
6 its departments and agencies will not enter into an agreement for “**professional**
7 **services**” with any “**business entity**” that is in violation of subparagraph (A) of
8 this ordinance or who has not otherwise complied with this ordinance.
9

10 (C) For purposes of this ordinance, a “**business entity**” means and
11 includes any *natural* or *legal* person providing or offering to provide
12 “**professional services**” to the City of Fort Wayne. A *natural* or *legal* person
13 includes *an individual(s), firm, proprietorship, corporation, limited liability*
14 *company, professional corporation, partnership, or any other organization or*
15 *association*. Each *officer* of the “**business entity**”, and all *partners, principals, or*
16 *others* in the “**business entity**,” who have any ownership interest or distributive
17 share of ten percent (10%) or more of the “**business entity**”, and all *subsidiaries*
18 directly controlled by the “**business entity**.” An *individual* included in the
19 definition of “**business entity**” shall also include the *individual’s spouse*, if any,
20 and any *child* living in the same household as the individual or spouse.
21 Notwithstanding any other provision in the Fort Wayne Code of Ordinances, the
22 term “**professional services**” as used in this Section 37.28 means accounting,
23 architectural, legal, and engineering services.
24

25 (D) For purposes of this section, the office or offices considered to
26 have ultimate responsibility for the award of a contract shall be the Mayor, the
27 Common Council and any elected official for the City of Fort Wayne.
28

29 (E) **Contributions Made Prior to the Effective Date.** Any contract
30 or agreement entered into before the effective date of this ordinance shall not be
31 affected, governed by or in any way in violation of this ordinance. Further, no
32 contribution of money or other thing of value, including in kind contributions,

1 shall be deemed a violation of this ordinance if that contribution was made by the
2 **“business entity”** prior to the effective date of this ordinance.

3
4 **(F) Contribution Notification and Statement to Business Entity.**

5 Prior to a **“business entity”** entering into negotiations, and/or submitting a formal
6 bid through any bid process utilized by the City or any of the City departments to
7 provide **“professional services,”** the City, its departments or agencies, as
8 appropriate, shall notify the **“business entity”** of its obligations to comply with
9 this ordinance. Prior to the award of a contract or agreement covered by this
10 ordinance, the City, its departments or agencies shall obtain from the **“business**
11 **entity”** a sworn statement made under penalty of perjury that the **“business**
12 **entity”** and its covered principals, partners, officers and subsidiaries have not
13 made a contribution or contributions which would prohibit the City from
14 contracting with the **“business entity.”**

15
16 **(G) Return of Excess Contributions.** A **“business entity,”**

17 candidate, officeholder, candidate committee, party committee or PAC may cure a
18 violation of this ordinance if, within one (1) year after the contributions made by
19 the **“business entity”** in excess of those specified in subsections (A) or (B) of this
20 ordinance, the Common Council or Mayor is notified of the violation in writing
21 and the amount of the contribution in excess of the limits specified in subsections
22 (A) or (B) is returned to the **“business entity.”**

23
24 **(H) Other Prohibited Conduct; Penalty.**

25
26 (1) It shall be a violation of this ordinance to: (i) make a
27 contribution in violation of this ordinance; (ii) knowingly conceal or
28 misrepresent a contribution given or received; (iii) make contributions
29 through intermediaries for the purpose of concealing or misrepresenting
30 the source of the contribution; (iv) make any contribution to a campaign
31 committee, City or Allen County party committee, or to a PAC on the
32 condition or with the agreement that it will be contributed to a candidate

1 or campaign committee of any candidate for Fort Wayne office or any
2 holder of Fort Wayne office in violation of this ordinance; (v) engage or
3 employ a lobbyist or consultant with the intent or understanding that such
4 lobbyist or consultant will make any contribution, which if made by the
5 **“business entity”** itself would subject the **“business entity”** to the
6 restrictions of this ordinance; (vi) fund contributions made by third parties,
7 including consultants, attorneys, family members and employees, in
8 violation of this ordinance; (vii) engage in any exchange of contributions
9 to circumvent the intent of this ordinance; or (viii), directly or indirectly,
10 through or by any other person or means, do any act which would subject
11 the **“business entity”** to the restrictions of this ordinance.

12
13 (2) All **“professional services”** agreements between a **“business**
14 **entity”** and the City of Fort Wayne, its departments or agencies, as
15 appropriate, shall provide by operation of law that it shall be a material
16 breach of the agreement for the **“business entity”** to engage in conduct
17 prohibited by this ordinance.

18
19 (3) Upon a **“business entity’s”** first violation of this ordinance,
20 the City shall send a written warning to the **“business entity”** notifying it
21 of the excess contribution. The **“business entity”** shall have one (1) year
22 from the date of the written warning to cure the violation as set forth in
23 subparagraph (G). If the violation is not cured within one (1) year, the
24 **“business entity”** shall be disqualified from eligibility for future contracts
25 with the City of Fort Wayne for a period of one (1) year from the date of
26 expiration of the cure period. For any subsequent violations of this
27 ordinance, the **“business entity”** shall be immediately disqualified from
28 eligibility for future contracts with the City of Fort Wayne for a period of
29 one year of the date of the violation. If a **“business entity”** is debarred
30 from City work under this section they may file an appeal with the Fort
31 Wayne City Controller within thirty (30) days of the determination.
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(I) **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 be effective upon passage.

John Crawford, Council Member

Jason Arp, Council Member

APPROVED AS TO FORM AND LEGALITY

Joseph G. Bonahoom, City Council Attorney