

LOCAL LAW NO “A” FOR 2015

A LOCAL LAW OF THE COUNTY OF ALBANY TO BE KNOWN AS THE “STOP PAY TO PLAY LOCAL LAW”

Introduced: 2/9/15

By Mss. Benedict, Busch and Lockart:

BE IT ENACTED BY THE LEGISLATURE OF THE COUNTY OF ALBANY AS FOLLOWS:

WHEREAS, large political contributions from those seeking or currently performing business with the County (“Pay-to-Play”) may raise concerns on the part of taxpayers and residents as to their trust in government contracts; and

WHEREAS, it has become common for some individuals or entities to make substantial political contributions to individuals holding elective County office who are ultimately responsible for awarding contracts for County business; and

WHEREAS, it is important to foster public confidence in governmental operations by preventing any actual, or even any perception of, corruption; and

WHEREAS, the Albany County Legislature desires to set forth a policy establishing maximum dollar amounts that professional business entities may contribute politically, beyond which they become ineligible to receive a public contract from the County of Albany.

NOW THEREFORE, BE IT ENACTED, by the Legislature of Albany County, New York, as follows:

Section 1. Title.

This Local Law shall be known by and may be cited as the “Pay-to-Play Local Law”.

Section 2. Definitions.

The terms listed below shall have the following meanings for purposes of this local law:

a) “**County**” means the County of Albany or any department, board, executive division, institution, office, branch, bureau, commission, agency, legislature or other division or part thereof.

(b) “**County Elected Official**” means the County Executive, a County Legislator, a Coroner, the County Clerk, the District Attorney, the Sheriff, or the County Comptroller.

(c) **“Contract”** for purposes of this local law means any agreement or contract, including any amendment or modification thereto, excluding Project Labor Agreements, with the County of Albany as defined in this Section 2 (a) for:

- (i) the rendition of any services or work;
- (ii) the sale or lease of any land or building except for real property acquired by the County via a tax sale or tax foreclosure procedure pursuant to Article 10 or Article 11 of the New York State Real Property Tax Law;
- (iii) a grant, loan or loan guarantee.

(d) **“Professional Business Entity”** means an individual including the individual’s spouse, if any, and any child living at home; person; firm; corporation; professional corporation; partnership; organization; union; limited liability company; or association in the rendering of any work contracted through the County. The definition of a Professional Business Entity includes all principals who own 10% or more of the equity in the company, corporation or business trust, partners, officers in the aggregate, as well as any subsidiaries directly controlled by the Professional Business Entity.

(e) **“In-kind contributions”** shall include:

- (i) Goods and services offered free of charge; and
- (ii) Goods and services offered at less than the usual and normal charge; and
- (iii) Payments by a third party for goods and services rendered to a candidate or political committee.

(f) **“In-kind contributions Value”** shall be determined as follows:

- (i) Goods: (such as equipment supplies, facilities and mailing lists) are valued at their normal purchase or rental price.
- (ii) Services (such as advertising, printing or consulting) are valued at the prevailing commercial rate at the time the services are rendered (i.e., the amount that was paid or would have been paid for the services).
- (iii) Discounts are valued at the amount discounted (i.e., the difference between the usual and normal charge and the amount paid)

Section 3. Campaign Contribution Limits.

a). No Professional Business Entity which contracts with the County shall make a monetary or in-kind contribution in excess of \$150.00 per annum to:

- 1) An individual who holds the position of Albany County Legislator or is a candidate for said position, if that contract must be approved or voted on by such individual; or
- 2) A committee controlled by such individual.

b). No Professional Business Entity which contracts with the County shall make a monetary or in-kind contribution in excess of \$250.00 per annum to:

- 1) An individual who holds the position of County Executive, a County Legislator, a Coroner, the County Clerk, the District Attorney, the Sheriff, or the County Comptroller or who is a candidate for said position, if that contract must be approved or voted on by such individual; or
- 2) A committee controlled by such individual.

Section 4. Campaign Contributions made prior to the Effective Date.

No contribution or money or any other thing of value, including in-kind contributions, made by a professional business entity to those individuals or entities set forth in Section 3 shall be deemed a violation of this section, be disqualified thereby, if that contribution was made by the professional business entity prior to the effective date of this local law. The disclosure requirements shall not apply to contracts awarded subsequent to the effective date if the Request for Proposal process was initiated prior to the effective date.

Section 5. Contribution Statement by Professional Business Entity.

A Professional Business Entity, under penalty of perjury, shall submit a statement with its Contract submittal/response (hereinafter "Contribution Statement") that it has not knowingly made a contribution in violation of the local law hereof during the four (4) years preceding such sworn statement, and has not made or solicited contributions through intermediaries, third parties, or immediate relatives for the purpose of concealing the source of the contribution during that same four (4) year time period.

Section 6. Review of NYS Board of Elections Disclosure Statements.

a) Sixty days prior to awarding a Contract, the Albany County Director of Purchasing shall review the New York State Disclosure Statements filed by County Elected Officials, and candidates for such offices, for the past four (4) years to determine whether the Professional Business Entity has contributed to such individual's campaign in an amount in excess of the campaign contribution limits set forth in Section 3 of this local law.

b) In the event it is found that such Professional Business Entity has exceeded the threshold campaign contribution limits, the Director of Purchasing shall notify the Professional Business Entity that it has exceeded the campaign contribution limits as provided for in this local law. The Professional Business Entity will have thirty (30) days to cure the defect by requesting that the excess contributions be returned immediately. Proof of receipt of the return of such excess contributions must be submitted to the Director of Purchasing at least five (5) business days prior to the awarding of the Contract.

In the event, that proof of return of the excess contributions funds are not submitted by the Professional Business Entity within the timeframes set forth

herein, then the Professional Business Entity's proposal or application will be rejected by the Commissioner of General services.

Section 7. Professional Business Entity "Doing Business with the County of Albany" Database.

The County Executive's office shall, on a biannual basis, in January and July, compile a list, based on the County's records, listing those Professional Business Entities doing business with the County, as of those months, with this list being made available for public viewing in the office of the Albany County Director of Purchasing.

Section 8. Exemption.

The contribution limitations specified in this Local Law do not apply to Contracts which must be awarded to the lowest bidder pursuant to New York State Law, to sole source providers, or for those Contracts awarded as emergency agreements when the public exigency requires the immediate emergency services as determined by an Executive Order or Resolution of the Albany County Legislature.

Section 9. Violations/Penalty.

a) A professional business entity that files a false sworn Contributions Statement will have its Contract with Albany County declared null and void and will be disqualified from being awarded any Contract with the County for a period of four years from the date of the filing of the false sworn Contributions Statement. Also, the matter shall be referred to the Albany County District Attorney for prosecution.

b) The Professional Business Entity shall have a continuing duty to report any violations of this law that may occur during the negotiation, proposal process or duration of a Contract. Any Professional Business Entity which violates Section 3 of this local law shall be in material breach of the terms of the Contract, and the County Attorney shall seek damages against the Professional Business Entity as provided for in said Contract.

c) Any Professional Business Entity which violates Section 3 of this local law shall be disqualified from eligibility for the submission of proposals or applications for future Contracts for a period of four calendar years from the date of such violation.

Section 10. Incorporation by Reference.

The regulatory and penalty provisions of this local law shall be incorporated by reference into the Albany County Procurement Policy and all Albany County Contracts as defined in Section 2 (c) of this local law.

Section 11. SEQRA Determination

It is hereby determined that this Local law is an Unlisted Action that will not have a significant effect on the environment and, therefore, no other determination or procedure under the New York State Environmental Quality Review Act (“SEQRA”) is required.

Section 11. Severability

If any provision of this Local Law is held invalid, such invalidity shall not affect the remaining provisions of the Local Law which shall remain effective absent the invalid provision, and to this end, the provisions of the Local Law are declared to be severable.

Section 12. Effective Date.

This local law shall be effective ninety (90) days subsequent to filing in the Office of the Secretary of State.

Referred to Law Committee. 2/10/15