

CITY OF SOMERVILLE
ORDINANCE NO. 2013-____
In Board of Aldermen_____

**AN ORDINANCE REGULATING “PAY-TO-PLAY” PUBLIC CONTRACTING AND
CAMPAIGN CONTRIBUTIONS FOR MUNICIPAL ELECTED OFFICE**

Be it ordained by the Board of Aldermen, in session assembled, that the Code of Ordinances of the City of Somerville is hereby amended by adding the following provisions:

NOW THEREFORE BE IT ORDAINED AS FOLLOWS;

Section I. Definitions.

(a) Applicant. A Person who has filed an application with the City of Somerville or any City-Related Agency in any of the following situations:

(i) seeking to enter into a Contract, except where that contract is required by law to be awarded to the lowest bidder,

(iii) seeking to acquire real estate from the City or any City-Related Agency,

(iv) seeking Financial Assistance from the City, or

(v) seeking employment with the City, by contract or otherwise, union or non-union, civil service or non-civil service.

(b) City Employee. Any individual currently employed with the City, by contract or otherwise, union or non-union, civil service or non-civil service.

(c) City-Related Agency. All departments of the City, as well as any authorities and quasi-public corporations that receive appropriations from the City, such as the Somerville Redevelopment Authority.

(d) Contractor. A Person who has entered into a Contract with the City or any City-Related Agency.

(e) Contribution. A donation of money or of in-kind goods and services as further defined in Massachusetts General Laws Chapter 55, Section 1.

(f) Financial Assistance. Any grant, loan, tax incentive, bond financing proceeds used to purchase land or fund expenses for improvements made to land or real estate, or other form of assistance that is realized by or provided to a Person in the amount of five thousand dollars (\$5,000) or more through the authority or approval of the City or a City-related Agency, including but not limited to Tax Increment Financing (TIF) aid, District Improvement Financing (DIF) aid, industrial development bonds, , or Community Development Block Grant (CDBG) aid.

(g) Contract. A contract for goods or services to which the City or a City-related Agency is a party, regardless of whether the contract was required to be competitively procured under Massachusetts procurement law.

(h) Person. An individual, corporation, limited liability company, partnership, association, joint venture, political action committee, special interest group, or any other legal entity.

(i) Lobbyist Entity. An entity providing lobbyist services, consisting of at least one municipal agent, including a foreign or domestic corporation, association, sole proprietor, partnership, limited-liability partnership or company, joint-stock company, joint venture or any other similar business formation.

(j) Municipal Agent. A firm, company, partnership or person who for monetary compensation or its equivalent does any act to influence the decision of any City official where such decision concerns permitting, or the amendment, adoption, defeat, postponement or enforcement related thereto, legislation or the adoption, defeat or postponement of a standard, rate, rule, enforcement or regulation pursuant thereto, or any act to communicate directly with a City official to influence a decision concerning policy or procurement, or a firm, company or partnership which employs individuals for such purposes. The term "municipal agent" shall include a person who, as part of his/her regular and usual business or professional activities and not simply incidental thereto, attempts to influence any such decision, whether or not any compensation in addition to the salary for such activities is received for such services; provided, however, that for the purposes of this definition a person shall be presumed to engage in activity covered by this definition in a manner that is simply incidental to his/her regular and usual business or professional activities if he/she engages in any activity or activities covered by this definition for not more than 50 hours during any reporting period or receives less than \$5,000 during any reporting period for any activity or activities covered by this definition, or a firm, company or partnership who employs individuals for such purposes.

Section II. Mandatory Disclosure for Applicants

A. Before the City may enter into any Contract with an Applicant as defined in Section I (a) 1, the Applicant must file a complete Mandatory Disclosure Form with the contracting entity.

B. At the time that an Applicant submits a bid or submits a response to a request for proposals in connection with the acquisition of real estate owned by the City or a City-related Agency, the Applicant must file a complete Mandatory Disclosure Form with the City Agency seeking to dispose of the property. If the Applicant is otherwise seeking to acquire real estate from the City or from a City-related Agency, then the Applicant must submit a complete Mandatory Disclosure Form prior to obtaining title to such real estate.

C. At the time the Applicant files an application for Financial Assistance, the Applicant must file a complete Mandatory Disclosure Form with the City Agency that would provide such Financial Assistance.

D. At the time an Applicant files an application for employment with the City, the Applicant must file a complete Mandatory Disclosure Form with the Personnel Department if the Applicant has made a contribution as described in this section. E. Such Mandatory Disclosure Form shall be open to and available for inspection to the public. Such Form shall be signed under the pains and penalties of perjury by the Applicant and shall include the following information:

(i) The name, address, telephone number of the applicant and of all of its principals, officers, directors, shareholders in excess of 10% and managing agent to the extent applicable,

(ii) All Contributions made by the Applicant during the four years prior to the Application to any person who was a candidate for elective office in the City of Somerville by stating the name, date and amount of each such contribution. The attribution rules of Section III below shall apply to the Contributions that must be disclosed.

(iii) The names, business addresses and phone numbers of all subcontractors that the Applicant intends to use on the contract and the amount or percentage to be paid to such subcontractor.

(iv) A certification by the Applicant that if the Applicant is awarded the item that is

applied for under Sections A.B.C. or D. above in this section, that the Applicant and anyone attributed to the applicant or any subcontractor used on the contract shall not make any contribution in any calendar year in an amount in excess of \$250 to any individual incumbent or to any individual candidate for elective office for the next four calendar years following the award of the item, or for the duration of the term of any Contract, whichever is longer.

III. Attribution Rules

A. Where a Person is an individual, any Contributions made by the individual, a relative of the Person or any member of said Person's immediate family within the third degree of consanguinity or affinity. The terms "relative", "immediate family", "consanguinity" and "affinity" shall have the meanings as set forth in the city's ethics ordinance, Ord. Sec. 15-1.

B. Where a Person is not an individual but a corporation, partnership or limited liability corporation, then any Contributions made by any of its officers, directors, members, managers, principles, shareholders in excess of 10% or any of its employees.

IV. Eligibility

A. No Applicant shall be entitled to obtain the award of any of the items applied for as referenced in section II, if such Applicant, including those who would be attributed to the Applicant under Sec. III above or any subcontractor used on a contract, has made a total contribution of more than \$250.00 to any individual candidate for office in the City of Somerville or incumbent in either the calendar year of the application or the calendar year preceding the application. Provided, however, that the restriction of eligibility with regard to contributions made prior to the year preceding the application shall not apply to any contributions made in the calendar year preceding the adoption of this ordinance and shall only go forward beginning with the year of adoption of the ordinance. No contribution made prior to the effective date of this Ordinance shall be deemed to give rise to a violation or penalty under this Ordinance.

B. No contract may be renewed, extended, or materially amended, unless the resulting renewal, extension, or amendment, would be allowable under the provisions of this ordinance if it were an initial contract.

C. The Applicant and anyone attributed to the Applicant under Section III and any subcontractor used on the contract shall not make any contribution to any incumbent or to any candidate for elective office in the City of Somerville in excess of \$250 per year for the next four calendar years following the award of the item, or for the duration of the term of any Contract, whichever is longer.

V. Solicitation of Contributions from City Employees

A. No incumbent or any candidate for elective office in the City of Somerville shall solicit, directly or indirectly, a contribution from a City Employee or employee organization which represents employees of the City as defined in MGL c. 150E.

B. This section shall not prohibit an incumbent or any candidate for elective office in the City of Somerville from soliciting contributions from a City Employee or employee organization which represents employees of the City as defined in MGL c. 150E if the solicitation is part of a solicitation made to a significant segment of the public that may include City Employees, and the solicitation does not otherwise violate this ordinance.

C. Nothing in this section prohibits a City Employee or employee organization which represents employees of the City as defined in MGL c. 150E from making a contribution to a candidate or incumbent, and nothing in this section prohibits a candidate or incumbent from accepting a contribution from a City employee.

V. Lobbying

Registration of lobbyists.

A. Each municipal agent and lobbyist entity shall file an annual disclosure statement with the City Clerk. The annual disclosure shall be completed not later than January 15 for the prior year.

B. A client retaining the services of a municipal agent or lobbyist entity shall also file an annual disclosure statement with the City Clerk on forms prescribed and provided by the City Clerk. The annual registration shall be completed not later than January 15 for the prior year.

C. Each municipal agent and lobbyist shall notify the City Clerk within thirty (30) days of the date of hiring or engagement as to any matter before the City or City-Related Agency.

Municipal agent standards.

A. On or before the 15th day of July, every municipal agent appearing on the docket shall render to the City Clerk an itemized statement, under oath, listing all campaign contributions as defined in MGL c. 55, § 1, all expenditures, and the total amount thereof, incurred, contributed or paid during the reporting period in the course of his/her employment as a municipal agent and all expenditures made for or on

behalf of City officials and City employees incurred or paid during the reporting period, except that the municipal agent shall not be required to report such expenditures not in the course of his/her employment made for or on behalf of the immediate family of such municipal agent or a relative within the third degree of consanguinity of the municipal agent or City employee or of his/her spouse or the spouse of any such relative; and except that in the case of all expenditures, the municipal agent shall not be required to itemize the expenditures of any one day in which the amount incurred or paid did not total \$35 or more. Such itemized accounting shall include, but not be limited to, specific expenditures for meals, gifts, transportation, entertainment, advertising, public relations, printing, mailing and telephone; and shall also include the names of the payees and the amount paid to each payee; and shall further include the names of the candidate or political committee to whom or to which the contribution was made, the amount and date of each contribution, and the names of City employees and officials for whom payments have been made. B. Every municipal agent shall include in the statement required by this section a list of all matters the municipal agent acted to promote, oppose or influence during the reporting period in the course of his/her employment.

VI. Recommendations

No individual holding elected office in the city of Somerville shall make a written or verbal reference in support of or in opposition to an Applicant seeking employment with the City, unless said individual supervised or managed the Applicant in the course of any prior employment.

VII. Penalties

The City shall deny the award of any of the items referenced in Section II as sought by an Applicant if it is found that an Applicant made a material misstatement on the Mandatory Disclosure Form or if the Applicant fails to comply with the provisions of Section II.E(iv) above. If a contract is awarded, it shall be a material breach of the terms of any Contract where an Applicant which is a party to such Contract made any contribution in violation of this Ordinance. For all other violations, the Applicant or City Employee shall be fined for each violation of this Ordinance in accordance with Section 1-11. The enforcing authority shall be the City Ethics Commission or Auditor.

VII. Refund of Contribution.

An Applicant may cure a violation of this ordinance if, within 30 days after the date on which of an applicable report is filed which contains a contribution in violation of this ordinance, the Applicant seeks and receives a refund of a contribution from the incumbent or any candidate for elective office in the City of Somerville, or political committee for such incumbent or candidate.

VIII. This Ordinance shall be interpreted and applied consistent with all applicable federal and state laws and regulations.

Be it further ordained by the Board of Aldermen, Section 1-11(b) of the Code of Ordinances is hereby amended by inserting the following language providing for penalties:

<u>Offense</u>	<u>Fine</u>	<u>Enforcing Personnel</u>
“Pay-to-Play” and Campaign Contribution Ordinance	\$300 per offense	City Ethics Commission, Auditor

Approved:

President
Board of Aldermen