

BOROUGH OF HILLSDALE

ORDINANCE NO. 04-14

**AN ORDINANCE ESTABLISHING A BOROUGH POLICY FOR THE
AWARDING OF PUBLIC PROFESSIONAL SERVICE CONTRACTS**

BE IT ORDAINED by the Mayor and Council of the Borough of Hillsdale that:

WHEREAS, New Jersey Statute permits a governing body to enter a professional service agreement and exempts such agreements from public bidding requirements; and

WHEREAS, it had become common for professional service providers to make substantial political contributions to the election campaigns of the local government elected officials who are ultimately responsible for awarding professional service contracts; and

WHEREAS, substantial local political contributions from professionals receiving discretionary contracts from the elected officials who receive such contributions may raise reasonable concerns on the part of taxpayers as to their trust in the process of local government, if not the quality or the cost of services received; and

WHEREAS, pursuant to N.J.S.A. 40A:11-5 and N.J.S.A. 40:48-2, municipalities have the right to establish rules and procedures for contracting with professional business entities; and

WHEREAS, the Mayor & Council of the Borough of Hillsdale have noted that state and county politicians have recognized this problem but have not taken the appropriate steps to insure that political contributions to election campaigns will not influence the awarding of professional services contracts; and

WHEREAS, it is anticipated that there may be some professional business entities which attempt a legalistic adherence to the letter of the law, rather than the spirit of the

Ordinance. It is the declared intent of the Mayor and Council of this Municipality to remain vigilant to recognize any and all attempts to subvert the underlying purposes for which this Ordinance was adopted. Any professional business entity that may attempt such creative subversion does so at its own peril.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Hillsdale that the policy of the Borough of Hillsdale will be to set maximum amounts professional business entities may contribute politically beyond which they become ineligible to receive a public professional contract from the Borough of Hillsdale.

BE IT FURTHER ORDAINED, that Chapter II entitled "Administration" of the "Revised General Ordinances Borough of Hillsdale" is hereby amended and supplemented in order to establish a Borough policy for the awarding of public professional services contracts as follows:

SECTION 1. Professional Service Contract.

(A) Prohibition on Awarding Public Contracts to Certain Contributors

(1) Any other provision of law to the contrary notwithstanding, the Borough or any of its purchasing agents or agencies or those of its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract to procure services from any professional business entity, if that entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, to a campaign committee of any candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any municipal or county party or political committee in excess of the thresholds specified in subsection (d) within one (1) calendar year immediately proceeding the date of the contract agreement.

(2) No Professional business entity which enters into negotiations for, or agrees to any contract or agreement with the Borough or any department or agency thereof or of its independent authorities for the rendition of professional services shall knowingly solicit or make any contributions of money, or pledge of a contribution, including in-kind contributions, to any candidate or holder of the public office having ultimate responsibility for the award of the contracts, or to any municipal or county party committee, between the time of the first communications between the business entity and the Borough regarding a specific professional services agreement and the later of the termination of negotiations or the completion of the contract or agreement.

(3) For the purposes of this ordinance, a “professional business entity” seeking a public contract means an individual, including the individual’s spouse, if any, and any child living at home; person; firm; corporation; professional corporation; partnership; organization; or association. The definition of a business entity includes all principals who own ten percent (10%) or more the equity in the corporation or business trust, partners, and officers in the aggregate employed by the entity as well as any subsidiaries directly controlled by the business entity.

(4) Any individual meeting the definition of “professional business entity” under this section may annually contribute a maximum of \$400.00 each for any purpose to any candidate, for Mayor & Council, or \$400.00 to any municipal or county party committee without violating subsection (1) of this section. However, any group of individuals meeting the definition of “professional business entity” under this section, including such principals, partners, and officers of the entity in the aggregate, may not annually contribute for any purpose in excess of \$1,600.00 to all municipal candidates

and office holders with the ultimate responsibility for the award of the contract, and all municipal or county political parties combined, without violating subsection (a) of this section.

(5) For the purpose of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:

a. The Governing Body of the Borough of Hillsdale if that contracts requires approval or appropriation from the Governing Body.

B. Contributions Made Prior to the Effective Date. No contributions of money or any other thing of value, including in-kind contributions, made by a professional business entity to any Borough of Hillsdale candidate for Mayor or Borough Council, or Borough of Hillsdale or Bergen County Party Committee shall be deemed a violation of this Section, nor shall an agreement for property, goods, or services, of any kind whatsoever, be disqualified thereby, if that contribution was made by the professional business entity prior to the effective date of this Section.

C. Contribution Statement by Professional Business Entity.

(1) Prior to awarding any contract or agreement to procure services with any professional business entity, the Council or any of its purchasing agents or agencies, as the case may be, shall receive a sworn statement from the professional business entity made under penalty of perjury that the bidder or offeror has not made a contribution in violation of Section A hereof.

(2) The professional business entity shall have a continuing duty to report any violations of this Section that may occur during the negotiation or duration of a contract. The certification required under this subsection shall be made prior to entry into the

contract or agreement with the Borough and shall be in addition to any other certifications that may be required by any other provision of law.

D. Return of Excess of Contributions. A professional business entity, or Borough of Hillsdale candidate or officeholder, or Borough or Bergen County party committee may cure a violation of Section 1 if, within fifteen (15) days after receipt and/or within fifteen (15) days after the general, primary and/or special election, as appropriate and whichever is earlier, the professional business entity notifies the Borough Council in writing and seeks and receives reimbursement of a contribution from the municipal candidate or municipal or Bergen County political party.

E. Penalty.

(1) All Borough of Hillsdale professional service agreements shall provide that it shall be a breach of the terms of the government contract for a professional business entity as defined herein to violate any provision herein.

(2) Any professional business entity, as defined herein who knowingly fails to reveal a contribution made in violation of this Ordinance, or who knowingly makes or solicits contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution, shall be disqualified from eligibility for future municipal contracts for a period of four (4) calendar years from the date of the violation.

SECTION 2. If any provision of this Ordinance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the Ordinance shall not be validated.

SECTION 3. All other Ordinances or parts of Ordinances inconsistent herewith are hereby appealed to the extent of such inconsistencies.

SECTION 4. This Ordinance shall take effect immediately upon final passage and publications as required by law, and shall govern all contracts and professional service agreements commencing thereafter.

APPROVED: July 13, 2004

Marie D. Hanlon, Acting-Mayor

ATTEST:

Robert P. Sandt, RMC
Borough Clerk