

Mayor Nolan offered the following ordinance pass third and final reading and moved on its adoption and authorized its publication according to law:

O-11-18

AN ORDINANCE ESTABLISHING RESTRICTIONS ON POLITICAL  
CAMPAIGN DONATIONS BY PERSONS OR ENTITIES CONTRACTING  
WITH THE BOROUGH OF HIGHLANDS

BE IT ORDAINED by the Mayor and Council of the Borough of Highlands, a  
municipal Corporation of the State of New Jersey;

(NEW SECTION)

2-7.5 PUBLIC CONTRACTING REFORM.

(1) Findings.

Certain business entities are exempt from public bidding requirements; and it has become common for business entities to make substantial political contributions to the election campaigns of the local government elected officers who are ultimately responsible for awarding contracts to these business entities. Substantial local political contributions from business entities receiving discretionary contracts from the elected officials who receive such contributions raise reasonable concerns on the part of taxpayers as to their trust in the process of local government, if not the quality or cost of services received. Pursuant to N.J.S.A. 40A:11-51, municipalities have the right to establish limitations on political contributions when such business entities seek non-bid public contracts. The Borough seeks to eliminate a business entity's ability to make political contributions and receive a professional contract with the Borough local official, candidates for local office, or to any political action committee that is organized for the purpose of promoting or supporting local Borough candidates or Borough officeholders and political contributions by immediate family members of the business entity.

The policy of the Borough of Highlands will prohibit political contributions as hereinafter defined to local candidates, local officials or political action committees organized for the purpose of promoting or supporting local Borough candidates or local Borough officeholders by business entities seeking the award of non-bid contracts from the Borough of Highlands.

(2) Prohibition on Awarding Public Contracts to Certain Contributors.

a. Any other provisions of law to the contrary notwithstanding, the Borough of Highlands, its agents or assigns, 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 business entity if that entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, to (i) a campaign committee of any Borough of Highlands candidate or holder of the public office within the Borough having ultimate responsibility for the award of the contract, or to (ii) any Highlands Party Committee, or to (iii) any political action committee that is organized for the purpose of promoting or supporting Borough candidates or Borough officeholders ("hereinafter referred to as "PAC"), within one calendar year immediately preceding the date of the contract or agreement.

b. No professional business entity which enters into negotiations for, or agrees to, any contract or agreement with the Borough of Highlands or any department or agency thereof or of its independent authorities for the rendition of professional services shall knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to any (i) Borough of Highlands candidate or holder of the public office having ultimate responsibility for the award of the contract, or to (ii) any Borough of Highlands Party Committee, or to (iii) any PAC between the time of first communications between that 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.

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

(3) Contributions Made Prior to the Effective Date.

No contribution of money or any other thing of value, including in-kind contributions, made by a professional business entity to any Borough of Highlands candidate for Commissioner, or Borough of Highlands Party Committee or PAC 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 business entity prior to the effective date of this section.

(4) Contribution Statement by Professional Business Entity.

a. Prior to awarding any contract or agreement to procure services with any professional business entity, the Township 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 2. This form shall be in the form as provided under N.J.S.A. 19:44A-20.26.

b. 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.

(5) Penalty.

a. All Borough of Highlands agreements subject to the provisions of this section shall provide that it shall be a breach of the terms of the government contract for a business entity as defined in subsection 2(c) to violate subsection 2 (b) or to knowingly conceal or misrepresent contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution.

b. Any professional business entity as defined in subsection 2(c) who knowingly fails to reveal a contribution made in violation of this section, 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 Borough of Highlands contracts for a period of four (4) calendar years from the date of the violation.

(6) Severability.

If any provision of this law, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this law to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it is

held invalid, shall not be affected thereby, and to this extent the provisions of this law are severable.

(7) Effective Date.

This section shall take effect upon passage and publication in accordance with applicable law and filing with the Secretary of State.

Seconded by Ms. Kane and adopted on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Connelly, Mr. O'Neil, Mr. Francy, Ms. Kane, Mayor Nolan

**NAYES:** None

**ABSENT:** None

**ABSTAIN:** None

**Date:** September 21, 2011 \_\_\_\_\_

**Carolyn Cummins, Borough Clerk**

**Introduction:** August 17, 2011

**Publication:** August 26, 2011

**P.H./Adoption:** September 21, 2011

**Filed W/ Secretary of State:** August 22, 2011 & September 26, 2011

**Publication:** September 30, 2011, Two River Times

I hereby certify this to be a true copy of Ordinance O-11-18 as adopted by the Governing Body of the Borough of Highlands on September 21, 2011.

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**BOROUGH CLERK/DEPUTY CLERK**

