

Ordinance No. 11-04

**ORDINANCE OF THE TOWNSHIP OF MINE HILL FOR  
PUBLIC CONTRACTING (“PAY-TO-PLAY”) REFORM**

Be it Ordained by the Mayor and Council of the Township of Mine Hill, County of Morris, and State of New Jersey, as follows.

**Preamble**

**WHEREAS**, the New Jersey State Legislature has determined that campaign contributions by businesses seeking public contracts must be regulated and has declared the following; and

**WHEREAS**, in our representative form of government, it is essential that individuals who are elected to public office have the trust, respect and confidence of the citizenry; and

**WHEREAS**, all individuals, business, associations, and other persons have a right to participate fully in the political process of New Jersey, including making and soliciting contributions to candidates, political parties and holders of public office; and

**WHEREAS**, when a person or business interest makes or solicits major contributions to obtain a contract awarded by a government agency or independent authority, this constitutes a violation of the public’s trust in government and raises legitimate public concerns about whether the contract has been awarded on the basis of merit; and

**WHEREAS**, the growing infusion of funds donated by business entities into the political process at all levels of government has generated widespread cynicism among the public that special interest groups are “buying” favors from elected officeholders; and

**WHEREAS**, for the purposes of protecting the integrity of government contractual decisions and of improving the public’s confidence in government, it is a compelling interest of this State to prohibit awarding government contracts to business entities which are also contributors to candidates, political parties and the holders of public office; and

**WHEREAS**, there exists the perception that campaign contributions are often made by an individual or business seeking favor with elected officials, thus making elected officials beholden to those contributors; and

**WHEREAS**, although the right of individuals and businesses to make campaign contributions is unequivocal, that right may be limited, even abrogated, when such contributions promote the actuality or appearance of impropriety; and

**WHEREAS**, it is essential that the public have confidence that the selection of contractors is based on merit and not on political contributions made by such contractors and it is essential that the public have trust in the processes by which taxpayer dollars are spent; and

**WHEREAS**, it has long been the public policy of this Township and this State to secure for the taxpayers the benefits of competition, to promote the public good by promoting the honesty and integrity of bidders for public contracts and the system, and to guard against favoritism, improvidence, and extravagance in order to benefit the taxpayers; and

**WHEREAS**, in the procurement process, our public policy grants to the Township broad discretion, taking into consideration all factors, to award a contract to a bidder whose proposal will be most advantageous to the Township; and

**WHEREAS**, the operation of the Township government must be effectively and fairly managed to ensure public order and prosperity, and malfeasance, in whatever form it may take, must be confronted and uprooted; and

**WHEREAS**, the Council has determined it must safeguard the integrity of municipal government procurement by imposing restrictions to insulate the negotiation and award of public contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof; and

**WHEREAS**, 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 and agreements, which practice raises reasonable concerns of the part of taxpayers as to their trust in the process of local government, if not the quality or cost of services received, and

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

**NOW THEREFORE**, be it resolved, that the policy of Mine Hill will be to set maximum amounts business entities may contribute politically beyond which they become ineligible to receive a public contract from Mine Hill.

**Section 1: Definitions**

“**Business Entity**” shall mean any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction.

**Section 2: Prohibition on Awarding Public Contracts to Certain Contributors**

- (a) Any other provision of law to the contrary notwithstanding, the municipality or any of its purchasing agents or agencies, as the case may be, shall not enter into an agreement or otherwise contract to procure services or any material, supplies or equipment, or to acquire, sell, or lease any car or building, from any business entity, if that business entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, to a campaign committee of any Mine Hill candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any Mine Hill party committee, or to any political action committee (PAC) that is organized for the primary purpose of promoting or supporting Mine Hill municipal candidates or municipal officeholders in excess of the thresholds specified in subsection (d) within one calendar year immediately preceding the date of the contract or agreement.
  
- (b) No business entity that enters into negotiations for, or agrees to, any contract or agreement with Mine Hill or any department or agency thereof or of its independent authorities for the provision of any services or any material, supplies or equipment, or to acquire, sell, or lease any car or building shall knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to any Mine Hill candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any Mine Hill party committee, or to any PAC that is organized for the primary purpose of promoting or supporting Mine Hill municipal candidates or municipal officeholders between the time of first communications between that business entity and the Township regarding a specific agreement and the later of the termination of negotiations or the completion of the contract or agreement.

- (c) For purposes of this ordinance, a “business entity” means an individual, including the individual's spouse, if any, and any child living at home; any person, firm, corporation, professional corporation, partnership, organization, or association. The definition of a business entity includes all principals who own 10% or more of 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.
- (d) Any individual meeting the definition of “business entity” under this section may annually contribute a maximum of \$400 each person for any purpose to any candidate for mayor or council, or \$500 to a Mine Hill party committee, or to a PAC that is organized for the primary purpose of promoting or supporting Mine Hill municipal candidates or municipal officeholders referenced in this ordinance, without violating subsection (a) of this section. Any group of individuals meeting the definition of “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 \$2,500 to all Mine Hill candidates and officeholders with ultimate responsibility for the award of the contract, and all Mine Hill or Morris County political parties and PACs referenced in this ordinance combined, without violating subsection (a) of this section.
- (e) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:
  - (1) The Mine Hill Council, if the contract requires approval or appropriation from the Council; or
  - (2) The Mayor of Mine Hill, if the contract requires approval of the Mayor, or if a public officer who is responsible for the award of a contract is appointed by the Mayor.

### **Section 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 business entity to any municipal candidate for Mayor or Council, or municipal or county party committee or PAC referenced in this ordinance 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.

#### **Section 4: Contribution Statement by Business Entity**

- (a) Prior to awarding any contract or agreement to procure services or any material, supplies or equipment, or to acquire, sell, or lease any car or building, including banking or insurance coverage services, with any business entity, the Township or any of its purchasing agents or agencies, as the case may be, shall receive a sworn statement from the business entity, made under penalty of perjury, that the bidder or offeror has not made a contribution in violation of Section 2 of this Act;
- (b) The business entity shall have a continuing duty to report any violations of this Act 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 Township and shall be in addition to any other certifications that may be required by any other provision of law.

#### **Section 5: Return of Excess Contributions**

A business entity or Township candidate or officeholder or municipal party committee or PAC referenced in this ordinance may cure a violation of Section 2 of this Act, if, within 30 days after receiving notice of such violation, the business entity notifies the Township Council in writing and seeks and receives reimbursement of a contribution from the Township candidate or municipal political party or PAC referenced in this ordinance.

#### **Section 6: Penalty**

- (a) All Mine Hill public contracts shall provide that it shall be a breach of the terms of the public contract for a business entity as defined in Section 1 to violate Section 2 or to knowingly conceal or misrepresent contributions given or received, or to make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution.
- (b) Any business entity as defined in Section 1 who knowingly fails to reveal a contribution made in violation of this Act, 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 Mine Hill contracts for a period of four calendar years from the date of the violation.

**Section 7. Severability and Effectiveness Clause:**

If any sentence, paragraph or section of this ordinance, or the application thereof to any persons or circumstances shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any sentence, paragraph or section of this ordinance shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of this ordinance.

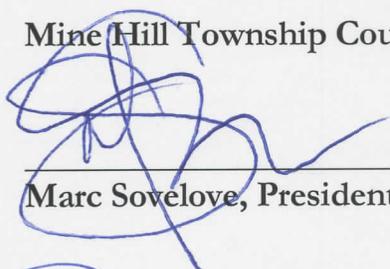
**Section 8. Effective Date:**

This ordinance shall take effect immediately upon final passage, approval and publication as required by law.

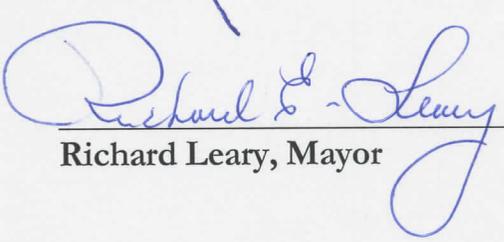
**I HEREBY CERTIFY** this to be a true copy of an Ordinance introduced by the Township Council of the Township of Mine Hill at a duly convened meeting held on September 23 \_\_\_\_\_, 2004.

Adopted: December 2, 2004

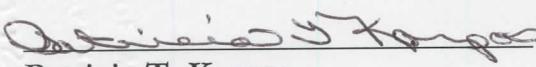
Mine Hill Township Council

  
\_\_\_\_\_  
Marc Sovelove, President

Approved: December 3, 2004

  
\_\_\_\_\_  
Richard Leary, Mayor

Attest:

  
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Patricia T. Korpos  
Municipal Clerk