BOROUGH OF HAWORTH

ORDINANCE NO. 15-02

AN ORDINANCE ESTABLISHING REGULATIONS AND RESTRICTIONS FOR ENTITIES AND INDIVIDUALS CONTRACTING WITH THE BOROUGH OF HAWORTH.

WHEREAS, Pay-to-Play reform initiated by the State Legislature in 2005; and

WHEREAS, the Borough of Haworth deems it necessary to follow suit and adopt legislation dealing with Pay-to-Play issues for professional service contracts; and

WHEREAS, pursuant to *N.J.S.A. 40:48-2*, a municipality is authorized to adopt such ordinances, regulations, rules and by laws as necessary and proper for good government, as well as the public health, safety and welfare; and

WHEREAS, the Mayor and Council of the Borough of Haworth takes notice of the State of New Jersey's Best Practices list which includes an adoption of a comprehensive Pay-to-Play Ordinance as a Best Practice; and

WHEREAS, large political contributions from those seeking or performing contracts with a municipality raise reasonable concerns on the part of taxpayers and residents as to their trust in government and its business practices; and

WHEREAS, in the interest of good government, the people and the Mayor

and Council of the Borough of Haworth desire to establish a policy that will avoid the perception of improper influence in public contracting and local elections; and

WHEREAS, it is the policy of the Borough of Haworth to create such an Ordinance which states than an entity which makes political contributions to municipal candidates and municipal political parties, committees and PAC's in excess of certain thresholds shall be limited in its ability to receive public contracts from the Borough of Haworth; and

WHEREAS, pursuant to *N.J.S.A. 40A:11-51*, a municipality is authorized to adopt by Ordinance, measures limiting the awarding of public contracts to entities that have made political contributions and limiting the contributions that the holders of a contract can make during the term of the contract.

NOW THEREFORE BE IT ORDAINED by the Mayor and Council of the Borough of Haworth, County of Bergen, State of New Jersey, as follows:

Section 1. Prohibition on Awarding Public Contracts to Certain Contributors.

A. Any other provision of law to the contrary notwithstanding, the Borough of Haworth or any of its purchasing agents or agencies, departments, instrumentalities or its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract to procure from any entity, professional, banking, insurance coverage or any other consulting services in any amount, or any and all other services not previously mentioned including, but not limited to, the provision of goods in an amount in excess of $17,500.00, including those awarded pursuant to a "fair and open process" if that entity has solicited or

made any contribution of money, or pledge of a contribution, including loans, assumptions of liabilities and in-kind contributions within one (1) calendar year immediately preceding the date of the contract or agreement, to any:

(1) Candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in the Borough of Haworth or any person serving in an elective municipal office in the Borough of Haworth, or

(2) Borough of Haworth political committee or political party committee, or

(3) Continuing political committee or political action committee that engages in or engaged in the support of Borough of Haworth elections and/or Borough of Haworth candidates, candidate committees, joint candidate committees, political committees, political parties, or political party committees (hereinafter collectively "PAC"),

in excess of the thresholds specified in Subsection D of this Section.

B. No entity that enters into negotiations for, or agrees to or enter into, any contract or agreement with the Borough of Haworth or any department or agency thereof or of its independent authorities for the rendition of professional, banking, insurance coverage or any other consulting services in any amount; or any and all other services not previously mentioned including, but not limited to, the provision of goods in an amount in excess of $17,500.00,

including those awarded pursuant to a "fair and open" process shall solicit or make any contribution of money, or pledge of a contribution, including loans, assumptions of liabilities and in-kind contributions to any:

(1) A candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in the Borough of Haworth or any person serving in an elective municipal office in the Borough of Haworth, or

(2) Borough of Haworth political committee or political party committee, or

(3) "PAC", which meets the requirements set forth in Subsection A above,

in excess of the thresholds specified in Subsection D of this Section between the time of first communication between that entity and the Borough of Haworth or any of its departments, instrumentalities, purchasing agents or any independent authorities 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 Ordinance, "entity" means:

(1) An individual or person acting on behalf of an individual, including the individual's spouse, if any, and any child or children, or other person directed by the individual.

(2) Person.

(3) Firm.

(4) Corporation.

(5) Professional corporation.

(6) Partnership.

(7) Sole proprietorship.

(8) Limited liability company.

(9) Limited liability partnership.

(10) Trade or labor union, trade or labor organization, trade or labor association, union, organization, association.

(11) Any political organization organized under 26 U.S.C. §527 that is directly or indirectly controlled by the entity, person or individual, other than a candidate committee, election fund, or political party committee.

(12) Any other legal commercial entity organized under the laws of the State of New Jersey or of any other state or foreign jurisdiction.

The definition of an entity includes all principals who own ten (10%) percent or more of the equity, profits, assets, shares, stocks, ownership or income interests in the corporation, partnership, firm, or company or business trust, partners, shareholders and officers in the aggregate employed by the entity, as well as any subsidiaries directly or indirectly controlled by the entity, person or individual.

D. The monetary thresholds of this Ordinance are:

(1) A maximum of $275.00 per calendar year each for any purpose to any candidate or candidate committee for elective municipal office in the Borough of Haworth or any holder of elective municipal office in the Borough of Haworth, or $275.00 per calendar year to any joint candidates committee for elective municipal office in the Borough of Haworth, or $275.00 per calendar year to any political committee or political party committee of the Borough of Haworth; and

(2) $275.00 maximum per calendar year to any "PAC" which meets the requirements set forth in Subsection A above.

However, any individual or group of persons meeting the definition of entity provided in Subsection C above shall not annually contribute for any purpose in excess of $2,500.00 to all Borough of Haworth candidates, candidate committees, joint candidates committees, and holders of elective municipal office, and all Borough of Haworth political committees and political party committees and all "PACs" which meet the requirements set forth in subsection A above, combined without violating Subsections A and/or B above.

Section 2. Anti-Circumvention Provisions.

It shall be a material breach of the terms of the Borough's professional service agreement or agreements for goods or services for an entity to:

A. Make or solicit a contribution in violation of this Ordinance.

B. Knowingly conceal or misrepresent a contribution given or received.

C. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution.

D. Make or solicit any contribution on the condition or with the agreement that it will be re-contributed to a candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in the Borough of Haworth, or any holder of elective municipal office in the Borough of Haworth, or any Borough of Haworth political committee or political party committee, or any "PAC".

E. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution which, if made or solicited by the entity itself, would subject that entity to the restrictions of this Ordinance.

F. Find contributions made by third parties, including consultants, attorneys, family members, and employees.

G. Engage in any exchange of contributions or circumvent the intent of this Ordinance.

H. Directly or indirectly through, or by any other person or means, do any act which would subject that entity to the restrictions of this Ordinance.

Section 3. Contributions Made Prior To The Effective Date.

No contribution or solicitation of contributions made prior to the effective date of this Ordinance shall be deemed to give rise to a violation of this Ordinance.

Section 4. Contribution Statement By Entity.

Prior to awarding any contract or agreement to procure professional, banking, insurance coverage, or any other consulting services in any amount or any and all other services not previously mentioned including, but not limited to, the provision of goods in an amount in excess of $17,500.00 with any entity, the Borough or any of its purchasing agents or agencies, departments, instrumentalities, or independent authorities, as the case may be, shall receive a

sworn contribution disclosure statement from the entity detailing all reportable political contributions made within the immediately preceding twelve (12) months and certifying under penalty of perjury that all reportable political contributions are set forth and that he/she/it has not made a contribution in violation of Section 1 of this Ordinance.

The Borough of Haworth, or its employees, agents, or authorities, shall be responsible for informing the Mayor and Borough Council, and simultaneously posting said contribution disclosure statement on the Borough website, informing all that the entity is not in violation of this Ordinance. The entity shall have a continuing duty to report any violations of this Ordinance that may occur during the negotiation or duration of a contract.

Section 5. Penalty.

Any entity which violates any of the provisions of this Ordinance shall be disqualified from eligibility for any and all future contracts with the Borough of Haworth, its departments, instrumentalities, purchasing agents or any independent authority created thereby for a period of five (5) calendar years from the date of the violation. In addition, in the event an entity is determined to have violated the provisions of this Ordinance and currently has an agreement or contract with the Borough, the Mayor and Council shall have the discretion to terminate the agreement or contract prior to its ending date.

Section 6. Exemptions.

The contribution limitations applicable under this Ordinance shall not apply

to contracts which are awarded to the lowest responsible bidder after public advertising for bids and bidding therefor within the meaning of *N.J.S.A. 40A:11-4*, or are awarded in the case of emergency under *N.J.S.A. 40A:11-6.*

Section 7. Severability.

If any section, sentence or any other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not effect, impair or invalidate the remainder of this Ordinance but shall be confined in its effect to the section, sentence or other part of this Ordinance directly involved in the controversy which such judgment shall be rendered.

Section 8. Inconsistent Ordinances Repealed.

All ordinances or parts or ordinances which are inconsistent with the provisions of this ordinance are hereby repealed, but only to the extent of such inconsistencies.

Section 9. Effective Date.

This Ordinance shall take effect after publication thereof and final passage as required by law.

JOHN SMART, Mayor

ANN E. FAY, RMC Borough Clerk

Introduced: March 10 , **2015**
Adopted: April 14, 2015
Approved: April 14, 2015