

CITY OF SALEM
ORDINANCE 1103

**AN ORDINANCE ESTABLISHING THAT A BUSINESS ENTITY WHICH
MAKES POLITICAL CONTRIBUTIONS TO MUNICIPAL CANDIDATES
AND MUNICIPAL POLITICAL PARTIES IN EXCESS OF CERTAIN
THRESHOLDS SHALL BE LIMITED IN ITS ABILITY TO RECEIVE
PUBLIC CONTRACTS FROM THE CITY OF SALEM**

(a/k/a CONTRACTOR PAY-TO-PLAY REFORM ORDINANCE)

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

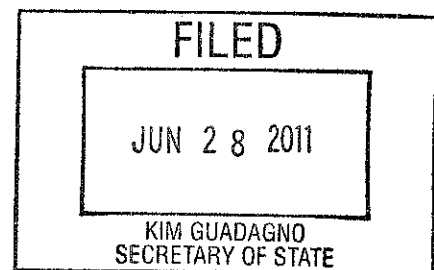
WHEREAS, pursuant to N.J.S.A. 40:28-2, a municipality is authorized to adopt such ordinances, regulations, rules and by-laws as necessary and proper for good government, as well as the public health, safety and welfare; and

WHEREAS, pursuant to P.L.2005, c.271 (codified at N.J.S.A. 40A:11-51) a municipality is authorized to adopt by ordinance, measures limiting the awarding of public contracts to business entities that have made political contributions, and limiting the contributions, and that the recipient of such a contract can make during the term of a contract; and

WHEREAS, in the interest of good government, the people and the government of the City of Salem desire to establish a policy that will avoid the perception of improper influence in public contracting and local elections; and

WHEREAS, it shall be the policy of the City of Salem to create such a regulation which states that a Business Entity which makes political contributions to municipal candidates and municipal political parties in excess of certain thresholds shall be limited in its ability to receive public contracts from the City of Salem;

NOW, THEREFORE, BE IT HEREBY ORDAINED by the Common Council of the City of Salem in the County of Salem and State of New, as follows:



DEFINITIONS

As used in this Ordinance:

(a) "Campaign Committee" means (i) every candidate for City of Salem City elective municipal office; (ii) every candidate committee established by or for the benefit of a candidate for City of Salem City elective municipal office; (iii) every joint candidate committee established in whole or in part by or for the benefit of a candidate for City of Salem City elective municipal office; (iv) every political party committee of the City of Salem City; and (v) every political committee, continuing political committee, or other form of association or organization that regularly engages in the support of candidates for the City of Salem City municipal or City of Salem City municipal political parties or political party committees. The terms in the foregoing paragraph have the meaning prescribed in N.J.A.C. 19:25-1.7.

(b) "Contribution" has the meaning prescribed in N.J.A.C. 19:25-1.7. By way of illustration, and not limitation, this definition includes pledges, loans, and in-kind contributions.

(c) A "contract for professional or extraordinary services" means all contracts for "professional services" and "extraordinary unspecifiable services" as such term is used in N.J.S.A. 40A:11-5.

(d) For purposes of this Ordinance, a "Business Entity" whose contributions are regulated by this ordinance means: (i) an individual including the individual's spouse, and any child/children; (ii) a firm; corporation; professional corporation; partnership; limited liability company; organization; association; and any other manner and kind of business entity; (iii) any person who owns 10% or more of the equity or ownership or income interests in a person or entity as defined in sections (i) and (ii) above and their spouses and child/children; (iv) all partners or officers of such entity, in the aggregate, and their spouses and child/children; (v) any person, subcontractor, subsidiary, corporation, firm, partnership, limited liability company, organization or association who has received or indefeasibly acquired the right to receive, from a person that described in subparagraph (i) above, more than \$100,000.00 in compensation or income of any kind (including, by way of illustration, and not limitation: wages, salaries, sums paid to independent contractors, benefits, dividends, profit-sharing, pension contributions, deferred contributions, stock, stock options or gift(s), in any twelve (12) month period prior to the award of, or during the term of, a contract subject to this ordinance; and (vi) all persons who are an "affiliate" of a Business Entity as defined in sections (i), (ii) and (v) above, as such term is used in 11 U.S.C. 101(2).

SECTION 1 – PROHIBITION ON AWARDING PUBLIC CONTRACTS TO CERTAIN CONTRIBUTORS

(a) To the extent that it is not inconsistent with state or federal law, the City of Salem and any of its departments, instrumentalities or purchasing agents shall not enter into any

agreement or otherwise contract to procure "professional services" as such term is defined at N.J.S.A. 40A:11-2(6) and used at N.J.S.A. 40A:11-5(1)(a)(i) and/or banking, insurance or other consulting service (hereinafter "Professional Services"), nor "extraordinary unspecified services" as such term is defined at N.J.S.A. 40A:11-2(7) and used at N.J.S.A. 40A:11-5(1)(a)(ii) and/or media, public relations, lobbying, parking garage management or other consulting and/or management service (hereinafter "Extraordinary Unspecified Services") from any Business Entity if such Business Entity has solicited or made any Contribution to: (i) a candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in Salem City or a holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Salem City political committee or political party committee, or (iii) to any continuing political committee or political action committee that regularly engages in the support of Salem City municipal elections and/or Salem City municipal candidates, candidate committees, joint candidate committees, political committees, political parties, political party committees, (hereinafter "PAC"); in excess of the thresholds specified in subsection (c) within one calendar year immediately preceding the date of the contract or agreement.

(b) No Business Entity who submits a proposal for, or enters into negotiations for, the rendition of Professional Services or Extraordinary Unspecified Services shall knowingly solicit or make any Contribution, to (i) a candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in Salem City, or a holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Salem City political committee or political party committee, or (iii) any PAC between the time of first communication between that Business Entity and the municipality regarding a specific agreement for Professional Services or Extraordinary Unspecified Services, and the later of the termination of negotiations or rejection of any proposal, or the completion of the performance or specified time period of that contract or agreement.

(c) The monetary thresholds of this Ordinance are: (i) a maximum of \$300 per calendar year each for any purpose to any candidate or candidate committee for mayor or governing body, or \$500 per calendar year to any joint candidates committee for may or governing body, or \$300 per calendar year to a political committee or political party committee of the City of Salem City; and (ii) \$500 maximum per calendar year to any PAC. However, for each Business Entity party to a contract for Professional or Extraordinary Unspecified Services as defined in subparagraph (a), or engaged in negotiations for a contract defined in subparagraph (b), when such Business Entity's Contribution is aggregated with all "persons" defined in subparagraph (d) of "Definitions" above, by virtue of their affiliation to that Business Entity party, a maximum of \$2,500 to all City of Salem City candidates, candidate committees, joint candidate committees, and holders of public office having ultimate responsibility for the award of a contract, all City of Salem City political committees and political party committees as described herein combined, without, violating subsection (a) of this section.

(d) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be (i) the Mayor of the City of Salem or City Council as the Governing body, if the contract requires approval or appropriation from the Mayor or Governing body, or (ii) the Mayor of the City of Salem , if the contract requires

SECTION 8 – CITIZENS PRIVATE RIGHT OF ACTION

In addition to any rights that were heretofore available, or which may hereafter be available, to citizens, taxpayers, or associations, to challenge violations of this ordinance, every person aggrieved by a violation of the ordinance, or any taxpayer or resident of the City of Salem has the right, consistent with the Rules of Court, to file charges in a court of competent jurisdiction, and/or to pursue a civil action for a violation of this ordinance in a court of competent jurisdiction, and to seek and obtain declaratory, injunctive, or other legal or equitable relief, including but not limited to, attorneys fees and costs, arising from or related to a violation of this ordinance.

SECTION 9 – SEVERABILITY

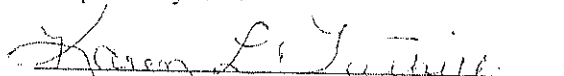
If any provision of this Ordinance, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby, and to this extent the provisions of this Ordinance are severable. The drafters of this Ordinance, the persons signing the petition in support of this Ordinance, and the persons who cast votes in favor of the Ordinance, declare that they would have supported the Ordinance and each section, subsection, sentence, clause, phrase, or provision or application thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses, phrases, or provisions or applications thereof may be held invalid.

SECTION 10 – REPEALER

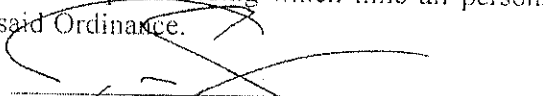
All ordinances, or parts of ordinances, which are inconsistent with any provisions of this Ordinance is hereby repealed to the extent of such inconsistencies.

SECTION 11 – EFFECTIVE DATE

This Ordinance shall become effective twenty (20) days following the final adoption thereof by the City Council and shall be published as required by law.


KAREN TUTHILL, Council President

NOTICE is hereby given that the foregoing Ordinance was introduced and passed at the meeting of the Common Council of the City of Salem on February 7, 2011 and further said Council will hold a hearing and consider said ordinance for final passage at a meeting to be held on March 7, 2011, at 7:00 p.m. at the Salem City Municipal Building which time all persons interested may appear for or against the passage of said Ordinance.


TOM SMITH, City Clerk