

File 29398

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March 11, 2011

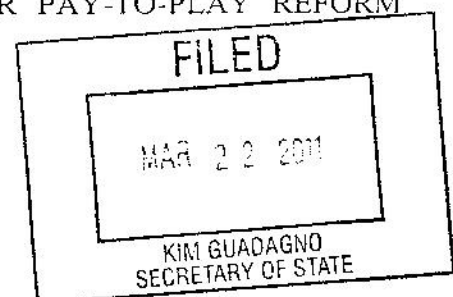
Kim Guadagno, Lt. Governor/Secretary of State  
Office of the Lt. Governor  
Department of State  
State House  
125 W. State Street  
Trenton, NJ 08608

**Re: City of Asbury Park/Revised Pay-to-Play Ordinance**  
Our File No.: 6000-718

Dear Ms. Guadagno:

Please be advised that this firm serves as general counsel to the City of Asbury Park in Monmouth County, New Jersey. In that capacity, and pursuant to N.J.S.A. 40A:11-51, I enclose for filing an original certified copy of Ordinance No. 2969, as approved by the Mayor and City Council on March 2, 2011. The caption of the Ordinance is as follows:

AN ORDINANCE REPEALING ORDINANCE NO. 2681, AND ESTABLISHING NEW REGULATIONS GOVERNING THE EXTENT TO WHICH BUSINESS ENTITIES MAY MAKE POLITICAL CONTRIBUTIONS TO MUNICIPAL CANDIDATES AND MUNICIPAL AND COUNTY POLITICAL PARTIES PRIOR TO THE RECEIPT OF, AND DURING THE TERM OF, PUBLIC CONTRACTS AWARDED BY THE CITY OF ASBURY PARK, NEW JERSEY. (CONTRACTOR PAY-TO-PLAY REFORM ORDINANCE)



*Celebrating Our 81<sup>st</sup> Anniversary*

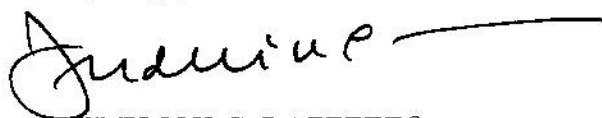
As you will see, the enclosed Ordinance repeals a prior Ordinance (2681) which had established the initial Pay-to-Play regulations for the City of Asbury Park and which was adopted on April 7, 2004.

Please retain the enclosed Ordinance on record with your files concerning the Asbury Park regulations regarding public contracting reform (Pay-to-Play).

Please feel free to contact me should you have any questions about the enclosed or should you require anything further.

Thank you very much.

Very truly yours,



FREDERICK C. RAFFETTO  
A Member of the Firm

FCR:sr

Enclosure

cc: Terence J. Reidy, City Manager (w/enc)  
Stephen M. Kay, City Clerk (w/enc)

ORDINANCE NO. 2969

**AN ORDINANCE REPEALING ORDINANCE NO. 2681, AND ESTABLISHING NEW REGULATIONS GOVERNING THE EXTENT TO WHICH BUSINESS ENTITIES MAY MAKE POLITICAL CONTRIBUTIONS TO MUNICIPAL CANDIDATES AND MUNICIPAL AND COUNTY POLITICAL PARTIES PRIOR TO THE RECEIPT OF, AND DURING THE TERM OF, PUBLIC CONTRACTS AWARDED BY THE CITY OF ASBURY PARK, NEW JERSEY.  
(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. 40:48-2, 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**, 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 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 Asbury Park desire to establish a policy that will avoid the perception of improper influence in public contracting and local elections; and

**WHEREAS**, the City of Asbury Park had previously adopted Ordinance No. 2681 on April 7, 2004, which required public contracting reform and which placed limitations upon the extent of certain political contributions that could be made by professional business entities prior to the receipt of, and during the term of, public contracts awarded by the City of Asbury Park; and

**WHEREAS**, the City of Asbury Park wishes to repeal Ordinance No. 2681, and in its place, to adopt the new regulations which are set forth herein and which provide that a Business

**NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED**, by the City of Asbury Park, in the County of Monmouth and State of New Jersey, that Ordinance No. 2681, adopted on April 7, 2004, is hereby repealed in its entirety.

**BE IT FURTHER ORDAINED**, that the "Revised General Ordinances of the City of Asbury Park, New Jersey," are hereby amended and supplemented in order to incorporate the following provisions:

**DEFINITIONS:**

As used in this Ordinance:

- (a) "Campaign Committee" means (i) every candidate for City of Asbury Park elective municipal office; (ii) every candidate committee established by or for the benefit of a candidate for City of Asbury Park elective municipal office; (iii) every joint candidates committee established in whole or in part by or for the benefit of a candidate for City of Asbury Park elective municipal office; (iv) every political party committee of the City of Asbury Park; (v) every political party committee of the County of Monmouth; and (vi) 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 Asbury Park municipal or Monmouth County elective offices or City of Asbury Park municipal or Monmouth County 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

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 an 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 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 gifts), 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 Asbury Park 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 in 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 unspecifiable 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

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 the City of Asbury Park or a holder of public office having ultimate responsibility for the award of a contract, or (ii) to any City of Asbury Park or Monmouth County political committee or political party committee, or (iii) to any continuing political committee or political action committee that regularly engages in the support of City of Asbury Park municipal or Monmouth County elections and/or Asbury Park municipal or Monmouth County candidates, candidate committees, joint candidates 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, enters into negotiations for, or agrees to any contract or agreement with the City of Asbury Park or any of its departments or instrumentalities, for the rendition of Professional Services or Extraordinary Unspecifiable 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 the City of Asbury Park, or a holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Asbury Park or Monmouth County 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 Unspecifiable Services, and the later of the termination of negotiations or rejection of any proposal, or the completion of the performance or specified

for Mayor or Governing body, or \$500.00 per calendar year to any joint candidates committee for mayor or governing body, or \$300.00 per calendar year to a political committee or political party committee of the City of Asbury Park; (ii) \$500.00 maximum per calendar year to a Monmouth County political committee or political party committee; and (iii) \$500.00 maximum per calendar year to any PAC. However, for each Business Entity party to a contract for Professional or Extraordinary Unspecifiable Services as defined in subparagraph (a) of this section, or engaged in negotiations for a contract defined in subparagraph (a) of this section, 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 \$2,500.00 to all City of Asbury Park candidates, candidate committees, joint candidates committees, and holders of public office having ultimate responsibility for the award of a contract, all City of Asbury Park or Monmouth County 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 City of Asbury Park Mayor or Governing body, if the contract requires approval or appropriation from the Mayor or Governing body, or (ii) the Mayor of the City of Asbury Park, 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.
- (e) Rules regarding subcontractors. No person may be awarded a subcontract to perform under a contract subject to this Ordinance, if the subcontractor would be disqualified by subparagraph (a) of this section from receiving the contract at the time that the subcontract is awarded; nor may any person who would be

professional or extraordinary unspecifiable services that is subject to this Ordinance.

## **SECTION 2 – 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 3 – CONTRACT RENEWAL.**

No contract subject to this Ordinance may be renewed, extended, or materially modified unless the resulting renewal, extension, or modification would be allowable under the provisions of this Ordinance if it were an initial contract.

## **SECTION 4 – CONTRIBUTION STATEMENT BY BUSINESS ENTITY.**

(a) Prior to awarding any contract or agreement to procure "Professional Services" or "Extraordinary Unspecifiable Services" from any Business Entity, the City of Asbury Park or its purchasing agents and departments, as the case may be, shall receive a sworn statement from said Business Entity which is the intended recipient of said contract that he/she/it has not made a Contribution in violation of Section 1 of this Ordinance. The City of Asbury Park, its purchasing agents and departments shall be responsible for informing the City Council that the aforementioned sworn statement has been received and that the Business Entity is not in violation of this Ordinance, prior to awarding the contract or agreement.

(b) A Business Entity shall have a continuing duty to report to the City of Asbury Park any Contributions that constitute a violation of this act that are made during the negotiation, proposal process or the duration of a contract. The City of Asbury Park, its purchasing agents and departments shall be responsible for informing the governing body within ten (10) business days after receipt of said report from the Business Entity, or at the next Council



(c) The certification required under this subsection shall be made prior to entry into the contract or agreement with the City of Asbury Park, or prior to the provision of services or goods, as the case may be, 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 that is a party to a contract for Professional Services or Extraordinary Unspecified Services may cure a violation of Section 1 of this Ordinance, if, within thirty (30) days after the date on which the applicable ELEC report is published, said Business Entity notifies the municipality in writing and seeks and receives reimbursement of the Contribution from the recipient of such Contribution.

#### **SECTION 6 – EXEMPTIONS.**

The contribution limitations prior to entering into a contract in Section 1(a) do not apply to contracts which (i) 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 (ii) are awarded in the case of emergency under N.J.S.A. 40A:11-6. There is no exemption for contracts awarded pursuant to a "Fair and Open Process" under N.J.S.A. 19:44A-20, et seq.

#### **SECTION 7 – PENALTY.**

(a) It shall be a material breach of the terms of a City of Asbury Park agreement or contract for Professional Services or Extraordinary Unspecifiable Services when a Business Entity that is a party to such agreement or contract has: (i) made or solicited a Contribution in violation of this Ordinance; (ii) knowingly concealed or misrepresented a Contribution given or received; (iii) made or solicited Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) made or solicited any

holder of public office having ultimate responsibility for the award of a contract, or any City of Asbury Park or Monmouth County political committee or political party committee, or any PAC; (v) engaged or employed 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 professional Business Entity itself, would subject that entity to the restrictions of this Ordinance; (vi) funded contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engaged in any exchange of Contributions to circumvent the intent of this Ordinance; or (viii) directly or indirectly, through or by any other person or means, done any act which if done directly would subject that entity to the restrictions of this Ordinance.

- (b) Furthermore, any Business Entity that violates Section 7(a)(i-viii) shall be disqualified from eligibility for future City of Asbury Park contracts for a period of four (4) calendar years from the date of violation.
- (c) Any person who knowingly, purposely, or recklessly violates any provision of this Ordinance, or who conspires with another person to violate any provision of this Ordinance, or who, with the purpose of promoting or facilitating a violation of this Ordinance, solicits another person to commit it, or aids or agrees, or attempts to aid another person in planning or committing it, shall be subject to punishment including fines and/or imprisonment as fixed by law for violations of the Ordinances of the City of Asbury Park.

#### **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

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.

**BE IT FURTHER ORDAINED**, that if any provision of this Ordinance, or the application of 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.

**BE IT FURTHER ORDAINED**, that all other Ordinances or parts of Ordinances which are inconsistent with any provisions of this Ordinance are hereby repealed as to the extent of such inconsistencies.

**BE IT FURTHER ORDAINED**, that this Ordinance shall become effective immediately upon final passage and publication as required by law.

**BE IT FURTHER ORDAINED**, that following final passage and publication of this Ordinance, a certified copy thereof shall be filed with the office of the Secretary of State of New Jersey.

I, STEPHEN M. KAY, City Clerk of the City of Asbury Park, Monmouth County, New Jersey, DO HEREBY CERTIFY the foregoing to be a true and exact copy of ORDINANCE NO. 2969 which was finally adopted by the City Council at a meeting held on the 2nd day of March, 2011.

CERTIFIED BY ME THIS 3rd DAY OF March, 2011.

  
STEPHEN M. KAY, CITY CLERK