



2008 BOROUGH OF DUMONT ORDINANCE

MEMBERS	AYE	NAY	ABSTAIN	ABSENT
CASPARE		✓		
MANNA	✓			
MCQUADE	✓			
STYLIANOU	✓			
ZAMECHANSKY	✓			
MAYOR MCHALE				
TOTALS	4	1		

Ordinance No. 1359
 Date: March 4, 2008
 Page: 1 of 9
 Subject: Amendment to Supplement the Code of the Borough of Dumont by adding Chapter 7B
 Purpose: _____
 Account No. _____
 Contract No. _____
 Dollar Amount: _____
 Prepared By: Eric Bernstein, Esq.

Offered by: Manna
 Seconded by: Stylianou

Certified as a true copy of an Ordinance adopted at the 2nd reading by the Borough of Dumont on the above date at a Regular Meeting by:

Susan Connelly
 Susan Connelly, RMC, Borough Clerk
 Borough of Dumont, Bergen County, New Jersey

AN ORDINANCE TO SUPPLEMENT THE CODE OF THE BOROUGH OF DUMONT BY ADDING CHAPTER 7B TO THE BOROUGH CODE

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF DUMONT THAT:

Section 1. Title. This Chapter shall be known as and may be cited as the "Fairness in Employment and Elective Office Ordinance."

Section 2. Purpose

- A. The purpose of the following provisions of this Chapter is to recognize that the residents of Dumont regard their elected officials with a level of trust that positions or contracts of employment or provision of services within the Borough will be awarded on the basis of merit and qualification and that no position or contract of employment or provision of services within the Borough will be awarded, or consideration for such employment or provision of services will be enhanced, upon the basis of familial, personal or political relationship.
- B. Although professional services contracts and certain other contracts for goods and services are exempt from the competitive bidding requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., the Borough of Dumont deems it appropriate and consistent with the provisions of recently enacted New Jersey Legislation, now codified at N.J.S.A. 19:44A-20.1 et seq., to henceforth award such contracts through a competitive, quality-based, fair and open process, unless a specific determination to the contrary is made by the Borough of Dumont through a duly adopted ordinance or resolution.
- C. Political contributions have a profound impact on government decision making. A conflict of interest may arise between the business of political fund-raising and the business of government in Borough hall and other government-owned premises which may cause a distraction from the people's business. The paramount public interest in a clean accountable government requires preventing this conflict and ensuring the integrity of government decisions by prohibiting political fund-raising on or by the use of public property.

Section 3. Definitions

"Candidate" - means any individual seeking election to a public office of the Federal government, state, county, municipality, school district and/or political organization at an election.

"Contribution" - includes all loans and transfers of money or other thing of value to or by any candidate, elected official or political organization and all pledges or other commitments or assumptions of liability to make any such transfer. Contributions shall be deemed to have been made upon the date when such commitment is made or liability assumed.

"Municipal official, employee, and appointee" - means any person holding elective office in the Borough of Dumont or holding an appointed position in the government of Dumont Borough, or in any agency, commission, board or office thereof, whether the position is full-time or part-time, compensated or uncompensated; and any employee in Dumont Borough government or in any agency, commission, board or office thereof, whether the position is full-time or part-time.

"Political organization" - means any two (2) or more persons acting jointly, or any corporation, partnership or any other incorporated or unincorporated association which is organized to, or

does, aid or promote the nomination, election or defeat of any candidate or candidates for Federal, state, county, municipal or school board office. Political organization includes, but is not limited to, organizations otherwise defined as a "political committee," "joint candidates committee", "legislative leadership committee" and "political action committee."

"Property of the Borough of Dumont" - means buildings, land, vehicles, phones (land-line, cellular and otherwise), fax machines, computers or other office equipment or supplies and other real or personal property owned, leased or controlled by the municipality, except for public roads and open park land.

"Relative" - means, in relationship to the elected official, the spouse, child, stepchild, parent, step-parent, grandchild, step-grandchild, in-law, sibling, child of sibling, or sibling of parent.

"Solicit"- means to seek, by oral or written communication, a contribution, as same is defined herein.

Section 4. Prohibited Promises and Representations

- A. It shall be a violation of this Chapter for an elected official to make promises or representations binding the Borough for expenditure of Borough funds, unless the elected official is acting within the usual course of business of the elected office or under the authority of a duly passed resolution or ordinance by the Borough.
- B. This provision shall not apply to:
- (a) official mayoral action as the Borough of Dumont representative;
 - (b) speeches or reports delivered in the official discharge of duties; and,
 - (c) political/campaign speeches and advertising.

Section 5. Prohibited Transactions

It shall be a violation of this Chapter for an elected official or a relative of the elected official or the Borough Administrator or a relative of the Borough Administrator of any department Head or a relative of the Department Head, as herein defined to knowingly undertake or execute any contract, award or agreement for services or purchase either awarded or granted by the Borough or an agency or instrumentality thereof.

Section 6. Non-Familial Hiring

No relative, as defined in Section 3 of this Chapter, of any Borough elected official of the Borough Administrator or any Borough Department Head, shall, after the effective date hereof, be hired by any Borough department or autonomous agency in any full-time or part-time, summer and/or seasonal position during the elected officials' holding of office.

Section 7. Former Officials

- A. No Borough of Dumont Board, agency, commission or other Borough body shall, for a period of one (1) year subsequent to the completion, resignation, expiration or termination, of a mayoral and/or council members' elected or appointed term of office shall:
- (1) award to a former Borough mayor and/or council member any contract; or,
 - (2) allow a former mayor and/or council member to represent, appear for or negotiate on behalf of any other party before an authority; or,
 - (3) employ any former mayor and/or council member for compensation.
- B. Neither the Borough of Dumont nor any autonomous agency or authority established by the Borough shall be subject to this restriction with respect to the award of any contract which is publicly bid, pursuant to N.J.S.A. 40A:11-1 et seq. or awarded pursuant to a "Fair and Open Process", as defined herein in Section 8, if the governing body shall award a contract to any former Borough mayor and/or council member, for a period of one (1) year after the termination of office of said individual.

Section 8. "Fair and Open Process" - Award of public professional services and other no-bid contracts.

- A. **Process for award of professional services and other no-bid contracts.** The Borough of Dumont, or any agency or instrumentality thereof, shall not enter into a contract, including a professional services contract or such other contract which is exempt from public bidding requirements having an anticipated value in excess of \$17,500, as determined by the Borough of Dumont or any agency or instrumentality, with a business entity, except through a contract that is awarded pursuant to a fair and open process if during the preceding one (1) year period that business entity has made a contribution that is reportable by the recipient under N.J.S.A. 19:44A-1 et seq., to any municipal committee of a political party if a member of that political party is in office as a member of the governing body when the contract is awarded or to any candidate committee of any person serving in an elected public office of the Borough of Dumont when the contract is awarded. The fair and open process shall be quality-based and shall be as follows:
- (1) Professional services may be awarded by virtue of a publicly advertised request for proposals (RFP) which will be issued as one document for those appointments which are made on an annual basis, such as, but not limited to, the positions of: Borough Attorney, Borough Engineer, Borough Planner, Borough Labor Council, Planning Board Attorney, Planning Board Engineer, Zoning Board Attorney, Zoning Board Engineer, and such other statutory and/or ordinance and/or resolution-created public positions.
 - (2) For said positions, no contract shall be awarded unless and until the positions are:

(a) Publicly advertised in newspapers and on the Internet Web site maintained by the Borough at least ten (10) calendar days in advance, which shall be deemed sufficient time to give notice in advance of the solicitation for the contracts;

(b) Awarded under a process that provides for public solicitation of proposals and qualifications including the following:

1. Experience and reputation in the field;
2. Knowledge of the subject matter of the services to be provided to the Borough;
3. Knowledge of the Borough, its affairs and operations;
4. Availability to accommodate any required meetings of the Borough;
5. Compensation proposal;
6. Compliance with the minimum qualifications established by the Borough for the position;
7. Other factors determined to be in the best interest of the Borough, included quoted fees, where applicable.

(c) The ultimate decision to award is decided by the governing body as it deems in its best interests and not subject to appeal.

(d) Awarded and disclosed under criteria established in writing by the Borough of Dumont prior to the solicitation of proposals or qualifications as set forth in this Ordinance;

(e) Publicly announced when awarded; and as to those RFPs which prove to be unsuccessful, the Borough Clerk shall retain a copy of same on file for a period of not less than sixty (60) calendar days.

(3) For contracts which arise on an occasional basis, such as appraisals needed for the acquisition of land and/or open space, as well as title searches, surveying, and similar work associated with same; and comparable assignments, such as planning services needed for Master Plan updates, appraisals, special counsel, special project engineer contracts, etc., professional services contracts may be awarded without following the foregoing provisions, so long as:

(a) The anticipated value does not exceed the \$17,500 threshold as set forth above; and,

(b) The Borough Administrator makes every effort to solicit at least two (2) proposals for said work.

B. Review of RFPs by review committee. A review committee shall be established by the Mayor consisting of not less than two (2) Council members, one (1) of which shall be the Council President, as well as the Mayor, to prepare, process and evaluate any RFP issued pursuant to the professional services contracting procedures set forth above. The review committee shall evaluate the respective qualifications and/or proposals, taking into

consideration the designated qualifications and/or performance criteria, experience, reputation of vendor, quality of services, quoted fee and other relevant factors in making a recommendation of award to the governing body; and the Mayor or designee may, in his/her sole discretion, conduct negotiations with qualified vendors after receipt of proposals, in order to achieve the best possible contract terms and conditions for the Borough and its taxpayers. No contract shall be awarded, however, unless same is authorized by resolution duly adopted in public session by the governing body.

C. Contributions prohibited during term of contract. A business entity that has entered into a contract having an anticipated value in excess of \$17,500 with the Borough of Dumont, or any agency or instrumentality thereof shall not make such a contribution reportable by the recipient under N.J.S.A. 19:44A-1 et seq. to any municipal committee of a political party in the Borough of Dumont if a member of that political party is serving in an elective public office of the Borough of Dumont when the contract is awarded or to any candidate committee of any person serving in an elective public office of the Borough of Dumont when the contract is awarded, during the term of that contract, except a contract that is awarded pursuant to a fair and open process, which permits campaign contributions of a reportable nature to any elective public official.

D. Contribution statement by professional business entity.

- (1) Prior to awarding any contract or agreement to procure services, including banking or insurance coverage services, with any professional business entity, the Borough 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 this Chapter;
- (2) The professional business entity shall have a continuing duty to report any violations of this article 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.

E. Contracts issued without use of the RFP process.

- (1) In circumstances where the Mayor or designee or the governing body determines that the use of the RFP process is not appropriate, such as, but not limited to, contracts with other government agencies, and agreements with public utilities, the Administrator shall use his/her best efforts to obtain at least two (2) quotations for the work and shall require the contractor to fully comply with the provisions of N.J.S.A. 19:44A-20.27.
- (2) No business entity which enters into negotiations for or agrees to enter into any contract or agreement with the Borough of Dumont or any department or agency thereof or of its independent authorities for the rendition of professional, banking or insurance coverage services, or any other consulting services, shall solicit or make any contribution of

money, or pledge of a contribution, including in-kind contributions, to any Borough of Dumont municipal candidate or holder of the public office having ultimate responsibility for the award of the contract, or campaign committee supporting such candidate or officeholder, or to any Dumont Borough party committee, 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. This specifically and only relates to contact dealt with under this specific subsection.

- F. **Emergency exceptions.** Notwithstanding the foregoing, the governing body recognizes that the New Jersey Legislature has provided for certain emergencies and further recognizes that the procedure outlined above might not be capable of being achieved in the event of an emergency or other time constraints. Thus, should a situation arise and time does not permit resort to this procedure, and the immediate performance of services is necessary, then an award for same may be made in accordance with the provisions of the Local Public Contracts Law relating to emergency contracts and such rules and regulations as may be promulgated, from time to time, by the governing body with regard to same. No such emergency contracts, however, may be awarded without a resolution establishing a basis for the deviation from the procedures outlined herein.

Section 9. Political Activity

- A. **Partisan political activity prohibited.** No Borough Officer or Borough employee, who has a fixed or regular borough set work schedule, shall engage in partisan political activity for or on behalf of any individual or political organization during paid working hours. This provision shall not apply to the activities of any elected official during the course of his official duties.
- B. **Solicitation of political contributions on public property prohibited.** No Borough official, employee or appointee may solicit, commit to pay or receive payment of or a commitment to pay any contribution for any candidate, elected official or political organization while in or on the property of the municipality, whether owned or leased, or utilizing the property of the Borough of Dumont, whether owned or leased.
- C. **Prohibited forms of fund-raising.** Prohibited forms of fund-raising shall include, but are not limited to:
- (1) Soliciting or accepting contributions using municipal phones, fax machines and/or computers;
 - (2) Soliciting or accepting contributions using personal telephones while on the property of the Borough of Dumont;

- (3) Soliciting or accepting contributions through the use of publicly owned or leased computers or privately owned or leased personal computers while on the property of the Borough of Dumont;
- (4) Using Borough of Dumont letterhead to solicit or accept contributions;
- (5) Sending correspondence from Borough of Dumont municipal buildings or by the use of municipal services, equipment or postage;
- (6) Face-to-face soliciting of an individual or an owner or representative of a business entity while on the property of the Borough of Dumont;
- (7) Use of automobiles owned or leased by the Borough of Dumont to accept or solicit contributions.

Section 10. Whistleblower provision.

It shall be unlawful for any employee, elected official or appointee to be dismissed, reprimanded, retaliated against or otherwise intimidated for reporting any violations of this Chapter.

Section 11. Enforcement and Penalties.

Each violation of any provision of this Chapter shall be fined not less than \$100.00 nor more than \$2,000.00, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law", N.J.S.A. 2A:58-10 et seq. All reported violations of this Chapter shall be referred to the Borough of Dumont Board of Ethics for review and investigation in accordance with the procedure and disposition set forth in the Code of Ethics, Resolution No. 07-01.


Section 12. Severability/Enforceability

To the extent that any provision hereof is found to be invalid or unenforceable, that provision shall be severed from this Ordinance and render the remainder of said Ordinance effective and enforceable.

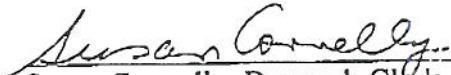
Section 13. Effective Date

This Ordinance shall take effect upon adoption, publication, public hearing and final adoption, publication and any other provisions as required by law.

BOROUGH OF DUMONT


Matthew P. McHale, Mayor

ATTEST:


Susan Connelly, Borough Clerk

Introduced: February 19, 2008
Adopted: March 4, 2008

