



**2019
BOROUGH OF DUMONT
ORDINANCE**

MEMBERS	AYE	NAY	ABSTAIN	ABSENT
CHAE	✓			
ENGLESE	✓			
LaBRUNO	✓			
MANNA	✓			
ROSSILLO	✓			
STEWART	✓			
MAYOR KELLY				
TOTALS	6			

Ordinance No. 1565

Date: June 11, 2019

Page: 1 of 10

Subject: Fair and Open Process

Purpose: Replace Chapter 13

Dollar Amount: _____

Prepared By: Marc Leibman, Esq.

Offered by: Stewart

Seconded by: Manna

Certified as a true copy of an Ordinance Adopted on 2nd Reading by the Governing Body of the Borough of Dumont on the above date at a Public Meeting by:

Susan Connelly

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

**AN ORDINANCE ADOPTING/UPDATING THE FAIR AND OPEN PROCESS
PURSUANT TO N.J.S.A. 19:44A-20.5 FOR AWARDED
PROFESSIONAL SERVICE CONTRACTS REPLACING BOROUGH CODE
CHAPTER 13**

Article I Fairness in Employment and Elective Office

[Adopted 3-4-2008 by Ord. No. 1359]

§ 13-1 Title.

This article shall be known as and may be cited as the "Fairness in Employment and Elective Office Ordinance."

§ 13-2 Purpose.

A.

The purpose of the following provisions of this article 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 New Jersey Legislation, 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.

D.

This Article requires disclosure by professionals and specified vendors of Contributions in in lower amounts then that required by N.J.S.A. 19:44A-20.1 et. seq. and NJSA 40A:11-1 et. seq. in order to promote greater transparency then required by New Jersey State law.

§ 13-3 Definitions.

As used in this article, the following terms shall have the meanings indicated:

CANDIDATE

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.

BUSINESS ENTITY

Means 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 any other state or foreign jurisdiction.

MUNICIPAL OFFICIAL, EMPLOYEE AND APPOINTEE

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

Any two 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

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

In relationship to the elected official, the spouse, child, stepchild, parent, stepparent, grandchild, step-grandchild, in-law, sibling, child of sibling, or sibling of parent.

SOLICIT

To seek, by oral or written communication, a contribution, as same is defined herein.

§ 13-4 Prohibited promises and representations.

A.

It shall be a violation of this article 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:

(1)

Official Mayoral action as the Borough of Dumont representative;

(2)

Speeches or reports delivered in the official discharge of duties; and

(3)

Political/campaign speeches and advertising.

§ 13-5 Prohibited transactions.

It shall be a violation of this article 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.

§ 13-6 Nonfamilial hiring.

No relative, as defined in § **13-3** of this article, 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 unless a waiver is granted by the Borough in the form a resolution adopted by the governing body. This provision shall not apply to summer counselors.

§ 13-7 Former officials.

A.

No Borough of Dumont board, agency, commission or other Borough body shall, for a period of one year subsequent to the completion, resignation, expiration or termination, of a Mayoral and/or Council member's elected or appointed term of office:

(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 board; or

(3)

Employ any former Mayor and/or Council member for compensation.

B.

Neither the Borough of Dumont nor any autonomous agency, board 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.

§ 13-8 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 as codified in N.J.S.A. 19:44A-20.4 et. seq. 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 qualifications (RFQ) 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, Joint Land Use Board Attorney, Joint Land Use 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 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 (or Board/Authority/Commission) 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 article;

(e)

Publicly announced when awarded; and as to those RFQs which prove to be unsuccessful, the Borough Clerk shall retain a copy of same on file for a period of not less than 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 proposals for said work.

B.1

Review of RFQs by review committee. A review committee shall be established by the Mayor consisting of not less than two Council members, one of which shall be the Council President, as well as the Mayor, to prepare, process and evaluate any RFQ 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.

B.2 With respect to autonomous boards, authorities, and committees, RFQ's may be reviewed by a sub-committee selected by the chairperson of the board, authority or committee under the same criteria as set forth in B.1

C.

Contributions 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 report any such contribution made to a Dumont Candidate, Dumont Political Organization or Dumont Municipal Official in excess of \$100.00 to the Borough Clerk within 7 business days of making such a contribution.

D.

Submission of a contribution statement by professional Business Entity setting forth all contributions in excess of \$100 made to a Dumont Candidate, Dumont Political Organization or Dumont Municipal Official in the Borough of Dumont.

(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 article;

(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 RFQ process.

(1)

In circumstances where the Mayor or designee or the governing body determines that the use of the RFQ 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 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^{III} 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.

§ 13-9 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.

§ 13-10 Whistleblower protection.

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 article.

§ 13-11 Violations and penalties.

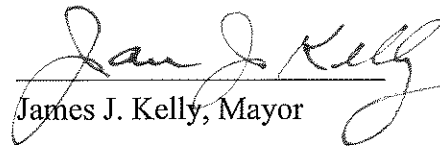
Any Business Entity determined by the Borough Business Administrator to have willingly and knowingly violated the provisions of this Article shall be served with notice of such violation by the Borough Business Administrator and terminated. Such a Business Entity may, within five (5) days of receipt of such notice, request a hearing by the Mayor and Council. The Mayor and Council shall take such evidence as they deem appropriate and determine if the violation was willingly and knowingly made, and if so, the termination shall be final, otherwise the termination shall be rescinded.

§ 13-12 Severability; enforceability.

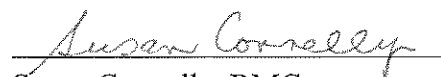
To the extent that any provision hereof is found to be invalid or unenforceable, that provision shall be severed from this article and render the remainder of said ordinance effective and enforceable.

This Ordinance shall become effective upon final passage and publication as required by law.

BOROUGH OF DUMONT


James J. Kelly, Mayor

ATTEST:


Susan Connelly, RMC
Municipal Clerk

Introduced: May 21, 2019

Adopted: June 11, 2019