



**2010  
BOROUGH OF DUMONT  
ORDINANCE**

MEMBERS	AYE	NAY	ABSTAIN	ABSENT
CARRICK	✓			
CASPARE		✓		
FREEMAN	✓			
MANNA		✓		
STYLIANOU	✓			
ZAMECHANSKY	✓			
MAYOR MCHALE				
TOTALS	4	2		

Ordinance No. 1411 (revised 7/8/10)  
 Date: July 20, 2010  
 Page: 1 of 6  
 Subject: Public Contracting Reform  
 Purpose: \_\_\_\_\_  
 Account No. \_\_\_\_\_  
 Contract No. \_\_\_\_\_  
 Dollar Amount: \_\_\_\_\_  
 Prepared By: Gregg Paster, Esq.

Offered by: Stylianou  
 Seconded by: Manna

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

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

**ORDINANCE FOR PUBLIC CONTRACTING REFORM**

WHEREAS, local political contributions from those seeking to or performing business with a municipality, raises the perception of concern on the part of taxpayers and residents as to their trust in government contracts;

WHEREAS, pursuant to N.J.S.A. 40:48-2, a municipality is authorized to adopt such ordinances, regulations, rules and by-law 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., 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 holders of a contract can make during the term of a contract; and

WHEREAS, in the interest of good government, the Mayor and Governing Body desire to establish a policy that will avoid the perception of improper influence in local elections; and

WHEREAS, the Borough of Dumont seeks to set a policy setting maximum amounts that professional business entities may contribute to local political campaigns, the exceeding of which shall render such entities ineligible to receive a public professional services contract from the Borough of Dumont.

**NOW, THEREFORE, BE IT RESOLVED** by the Borough Council of the Borough of Dumont, in the County of Bergen, and State of New Jersey, as follow:

**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 Borough of Dumont and any of its purchasing agents or departments or instrumentalities of the municipality thereof, as the case may be, shall not enter into any agreement or otherwise contract to procure services from any professional business entity, including those awarded pursuant to any process including a fair and open process, if such professional business entity has made any contribution of money, including in-kind contributions, to a campaign committee of any Municipal candidate or holder of public office having ultimate responsibility for the award of a contract, or campaign committee supporting such candidate or office holder.
- (b) No professional business entity or vendor who submits a proposal for, enters into negotiations for, or agrees to any professional service contract or contract or agreement (including non-emergency contracts awarded by 40A:11 *et seq* or the "Fair and Open" Process pursuant to 19:44A-20 *et seq*) with the Municipality or any departments thereof, for the rendition of professional services, or goods and services, as the case may be, shall knowingly make any contribution of money, including in-kind contributions, to: (i) any Dumont candidate or holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Dumont party committee between the time of first communication between that professional business entity or vendor and the municipality regarding a specific professional services agreement or goods and services

agreement, as the case may be, and the later of the termination of negotiations or rejection of any proposal, or the completion of the contract or agreement.

- (c) For purposes of this ordinance, a "professional business entity" and a "vendor" seeking a public contract mean an individual including the individual's spouse, if any, and any child living at home; person; firm; corporation; professional corporation; partnership; organization; or association. The definition of a business entity and vendor includes all principals who own 10% or more of the equity in the corporation or business trust, partners, and officers [in the aggregate] employed by the entity or vendor, as well as any subsidiaries directly controlled by the business entity or vendor.
- (d) Any individual meeting the definition of "professional business entity" or "vendor", or a group, organization or committee meeting the definition of a candidate committee, political party committee or continuing political committee under this section may annually contribute a maximum of \$300 each per election cycle, primary and general, for any purpose to any candidate, for mayor or governing body, or \$300 to the Borough of Dumont party without violating subsection (a) of this section, provided the donations are deposited in the applicable candidates' committee account prior to the election for which it is intended. However, any group of individuals meeting the definition of "professional business entity" or "vendor" under this section, including such principals, partners, employees and officers of the entity or vendor, or a group, organization or committee meeting the definition of a candidate committee, political party committee or continuing political committee in the aggregate, may not annually contribute for any purpose in excess of \$5,000 to all Borough of Dumont candidates, political party committees and officeholders with ultimate responsibility for the award of the contract.
- (e) For the purpose of this ordinance, the term 'candidate committee' shall be defined as a committee or fund established by candidates for all elected public offices, whether State, county, municipal, school or fire districts, individuals holding elected office or those engaged in 'pre-candidacy' or 'exploratory' activities prior to formally launching a candidacy. Candidate committee shall include individual and joint candidates committees, but shall not include candidates for federal or political party offices, such as municipal, county or state committees or delegates to national party conventions. The term political party committee shall be defined as the State Committee of a political party organized pursuant to N.J.S.A. 19:5-4; any county committee of a political party organized pursuant to N.J.S.A.

19:5-3 or any municipal committee of any political party organized pursuant to N.J.S.A. 19:5-2. The term continuing political committee shall be defined as any group of two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association, including a political club, political action committee, civic association or other organization which aids or promotes the candidacy of individuals for elective office, or advocates the passage or defeat of public questions appearing on the ballot for general elections.

- (f) Within 10 days after any contribution regulated under this section, the recipient shall advise the Borough Clerk by providing a copy of the contribution instrument, whether check, money order, draft, wire transfer confirmation, in-kind contribution or any other donation, in any amount, with a letter identifying the contributor, his/her employer, nature of the employer's business, business address and telephone contact information. Any contributions made after the 13<sup>th</sup> day prior to a primary or general election shall be so reported within forty eight hours after the said contribution.
- (g) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:
  - (1) The Borough of Dumont Mayor or Governing body, if the contract requires approval or appropriation from the Mayor or Governing body.
  - (2) The Mayor of the Borough of Dumont, 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.

## **Section 2. Contributions Made Prior to the Effective Date.**

No contribution of money or any other thing of value, including in-kind contributions, made by a professional business entity or vendor to any Borough of Dumont candidate for Mayor or Governing Body, or Borough of Dumont or (County) County party committee or PAC referenced in this ordinance shall be deemed a violation of this ordinance, nor shall an agreement for property, goods, or services, of any kind whatsoever, be disqualified thereby, if that contribution was made by the professional business entity or vendor prior to the effective date of this ordinance.

## **Section 3. Contribution Statement by Professional Business Entity and Vendor.**

- (a) Prior to awarding any contract or agreement to procure services with any professional business entity and any contract or agreement to procure goods and services from a

vendor, the Borough of Dumont or its purchasing agents and departments, as the case may be, shall receive a sworn statement from the professional business entity or vendor, made under penalty of perjury, that the bidder or offeror has not made a contribution in violation of Section 1 of this ordinance.

- (b) The professional business entity and vendor shall have a continuing duty to report any violations of this ordinance that may occur during the negotiation, proposal process 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 of Dumont, 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 4. Return of Excess Contributions.**

A professional business entity, vendor, or municipal candidate or officeholder, or Borough of Dumont or (County) County party committee or PAC referenced in this ordinance, may cure a violation of Section 1 of this Ordinance, if, within 30 days after the date on which the applicable ELEC Report is published, the professional business entity or vendor notifies the municipality in writing and seeks and receives reimbursement of the contribution from the relevant municipal candidate or officeholder or Borough of Dumont political party referenced in this ordinance.

#### **Section 5. Exemptions.**

The contribution limitations prior to entering into a contract in Section 1(a) do not apply to contracts which are required by law to be awarded to the lowest bidder.

#### **Section 6. Penalty.**

- (a) It shall be a breach of the terms of the Borough of Dumont professional service agreement or agreement for goods or services for a business entity to:
  - (i) make or solicit a contribution in violation of this ordinance;
  - (ii) knowingly conceal or misrepresent a contribution given or received;
  - (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
  - (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee of any candidate or holder of the public office of Borough of Dumont;
  - (v) 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 business entity itself, would

subject that entity to the restrictions of this ordinance; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage 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, do any act which would subject that entity to the restrictions of this ordinance.

(b) Furthermore, any professional business entity who knowingly violates (a) ii-viii shall be disqualified from eligibility for future Borough of Dumont contracts for a period of eighteen months from the date of the violation.

(b) (c) It shall be a violation of this Ordinance for a Dumont municipal candidate or office holder to: (i) make or solicit a contribution in violation of this ordinance; (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the intent that it will be contributed directly into the account of any candidate or holder of office or to a campaign committee of any candidate or holder of the public office either within or outside of the Borough of Dumont; (v) engage in any exchange of contributions to circumvent the intent of this ordinance; or (vi) directly or indirectly, through or by any other person or means, do any act which would circumvent the restrictions set forth herein or otherwise circumvent the intent of this ordinance.

Any Dumont municipal candidate or office holder who accepts a donation in violation of this section shall return the donation within thirty days of notification, or shall be in violation hereof.

#### **Section 7. 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.

#### **Section 8. Repealer.**

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

**Section 9. Effective Date.**

This Ordinance shall take effect upon adoption and publication according to law.

Matthew P. McHale, Mayor

Susan Connelly, RMC, Borough Clerk

Introduced: June 15, 2010

Adopted: July 20, 2010