ORDINANCE NO. ORD-09-0036

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY ADDING CHAPTER 2.73
ESTABLISHING AN "EQUAL BENEFITS ORDINANCE"
REQUIRING CONTRACTORS ON CITY CONTRACTS TO
PROVIDE EMPLOYEE BENEFITS TO THEIR EMPLOYEES
WITH DOMESTIC PARTNERS EQUIVALENT TO THOSE
PROVIDED TO THEIR EMPLOYEES WITH SPOUSES

WHEREAS, employee benefits comprise a significant portion of total
employee compensation; and

WHEREAS, discrimination in the provision of employee benefits between
employees with domestic partners and employees with spouses results in unequal pay
for equal work; and

WHEREAS, the City of Long Beach prohibits discrimination based on
marital status and/or sexual orientation; and

WHEREAS, contractors with the City of Long Beach are required to comply
with the City's nondiscrimination laws; and

WHEREAS, the City Council finds and determines that the public, health,
safety and welfare will be furthered by requiring that public funds be expended in such a
manner as to prohibit discrimination in the provision of employee benefits by City
contractors between employees with spouses and employees with domestic partners,
and between domestic partners and spouses of such employees;

NOW, THEREFORE, the City Council of the City of Long Beach ordains as
follows:

///
Section 1. Chapter 2.73 is added to the Long Beach Municipal Code to read as follows:

Chapter 2.73

EQUAL BENEFITS TO EMPLOYEES OF CITY CONTRACTORS

2.73.010 Title and purpose.

This ordinance shall be known as the "Long Beach Equal Benefits Ordinance". The purpose of this Chapter is to protect the public health, safety and welfare by requiring that public funds be expended in such a manner as to prohibit discrimination in the provision of employee benefits by City contractors between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees.

2.73.020 Definitions.

A. "Contractor" shall mean any person or persons, firm, partnership, corporation, or combination thereof, who enters into a contract with the City.

B. "Domestic partner" shall mean any person who has a currently registered domestic partnership with a governmental body pursuant to state or local law authorizing such registration or with his or her employer or his or her domestic partner's employer.

C. "Non-profit" shall mean a non-profit organization described in Section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c)(3) of that Code, or any nonprofit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.

///
2.73.030 Contractors subject to requirements.

A. The following contractors are subject to this Chapter:

1. For-profit entities which enter into an agreement with the City for public works or improvements to be performed, or for goods or services to be purchased, for an amount of One Hundred Thousand Dollars ($100,000) or more; and

2. For-profit entities which generate Three Hundred Fifty Thousand Dollars ($350,000) or more in annual gross receipts and which occupy City property pursuant to a written agreement for the exclusive use or occupancy of said property for a term exceeding twenty-nine (29) days in any calendar year.

B. The requirements of this Chapter shall only apply to those portions of a contractor's operations that occur (i) within the City; (ii) on real property outside the City if the property is owned by the City or if the City has a right to occupy the property, and if the contractor's presence at that location is connected to a contract with the City; and (iii) elsewhere in the United States where work related to a City contract is being performed. The requirements of this Chapter shall not apply to subcontracts or subcontractors of any contract or contractor.

C. The City Manager or designee will provide a report to the City Council regarding the implementation of this ordinance no later than one year following the effective date of this Ordinance, and will consider among other items, whether the dollar thresholds set forth in subsections (A) and (B) should be modified.

2.73.040 Non-discrimination in provision of benefits.

A. No contractor subject to this Chapter pursuant to Section

2.73.030 shall discriminate in the provision of bereavement leave, family...
medical leave, health benefits, membership or membership discounts, moving expenses, pensions and retirement benefits or travel benefits or in the provision of any benefits other than bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pensions and retirement benefits or travel benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees except as set forth in Subsections 2.73.040.A.1 and 2 below;

1. In the event that the contractor's actual cost of providing a particular benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's actual cost of providing a particular benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall not be deemed to discriminate in the provision of employee benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs.

2. The contractor shall not be deemed to discriminate in the provision of employee benefits if, despite taking reasonable measure to do so, the contractor is unable to extend a particular employee benefit to domestic partners, so long as the contractor provides the employee with a cash equivalent.

B. Provided that a contractor does not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, a contractor may:

1. Elect to provide benefits to individuals in addition to employees' spouses and employees' domestic partners;

2. Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal
equivalent benefits; or

3. Provide benefits neither to employees' spouses nor to employees' domestic partners.

C. A contractor will not be deemed to be discriminating in the provision of benefits where the implementation of policies ending discrimination in benefits is delayed following the first award of a City contract to a contractor after the effective date of this Chapter:

1. Until the first effective date after the first open enrollment process following the date the contract with the City is executed, provided that the contractor submits evidence that it is making reasonable efforts to end discrimination in benefits. This delay may not exceed two (2) years from the date the contract with the City is executed and only applies to benefits for which an open enrollment process in applicable.

2. Until administrative steps can be taken to incorporate nondiscrimination in benefits in the contractor's infrastructure. The timer allotted for these administrative steps shall apply only to those benefits for which administrative steps are necessary and may not exceed three (3) months. An extension of this time may be granted at the discretion of the City Manager upon the written request of a contractor, setting forth the reasons that additional time is required.

3. Until the expiration of a contractor's current collective bargaining agreement(s) where all of the following conditions have been met:

   a. The provision of benefits is governed by one or more collective bargaining agreement(s); and

   b. The contractor takes all reasonable measures to end discrimination in benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for the contractor to take
whatever steps are necessary to end discrimination in benefits or by ending
discrimination in benefits without reopening the collective bargaining
agreement(s); and

c. In the event that the contractor cannot end
discrimination in benefits despite taking all reasonable measure to do so,
the contractor provides a cash equivalent to eligible employees for whom
benefits are not available. Unless otherwise authorized, in writing by the
City Manager, this cash equivalent payment must begin at the time the
union(s) refuse to allow the collective bargaining agreement(s) to be
reopened, or in any case no longer than three (3) months from the date the
contract with the City was executed. This cash equivalent payment shall not
be required where it is prohibited by federal labor law.

D. Employers subject to this Chapter pursuant to Section
2.73.030 shall give written notification to each current and new employee of
his or her potential rights under this Chapter in a form specified by the City.
Such notice shall also be posted prominently in areas where it may be seen
by all employees.

2.73.050 Required contract provisions.

Every contract subject to this Chapter shall contain provisions
requiring it to comply with the provisions of this Chapter as they exist on the
date when the contractor entered the contract with the City or when such
contract is amended. Such contract provisions may include but need not be
limited to the contractor's duty to promptly provide to the City documents
and information verifying its compliance with the requirements of this
Chapter and sanctions for noncompliance.
2.73.060 Waivers and exemptions.

   A. The City may waive the requirements of this Chapter where
   the City Manager makes one or more of the following findings:

   1. Award of a contract or amendment is necessary to
      respond to an emergency;

   2. The contractor is a sole source;

   3. The contractor is a non-profit entity as defined in
      Section 2.73.020, above;

   4. Non compliant contractors are capable of providing
      goods or services that respond to the City’s requirements;

   5. The contractor is a public entity;

   6. The requirements of this Chapter are inconsistent with
      a grant, subvention or agreement with a public agency;

   7. The City is purchasing through a cooperative or joint
      purchasing agreement;

   8. The contract involves specialized legal services such
      that it would be in the best interests of the City to waive the requirements of
      this Chapter, as determined by the City Attorney;

   9. The contract involves investment of trust moneys or
      agreements relating to the management of trust assets, City moneys
      invested in U.S. government securities or under pre-existing investment
      agreements, or the investment of City moneys where no person, entity or
      financial institution doing business with the City which is in compliance with
      this Chapter is capable of performing the desired transactions or the City will
      incur financial loss if the requirements of this Chapter are enforced;

   10. After taking all reasonable measures to find an entity
      that complies with this Chapter, the City may waive any or all requirements
      of this Chapter for any contract or bid package advertised and made
available to the public, or any competitive or sealed bids received by the
City as of the effective date of this Chapter under the following
circumstances:

a. There are no qualified responsive bidders or
prospective contractors who comply with this Chapter and the contract is for
goods, a service or a project that is essential to the City or City residents; or

b. The requirements of this Chapter would result in
the City's entering into a contract with an entity that was set up, or is being
used for the purpose of evading the intent of this Chapter.

B. The requirements of this Chapter shall not be applicable to
contracts executed or amended prior to the effective date of this Chapter, or
to bid packages advertised and made available to the public, or any
competitive or sealed bids received by the City prior to the effective date of
this Chapter, unless and until such contracts are amended after the effective
date of this Chapter and would otherwise be subject to this Chapter.

C. The City Manager or designee may issue regulations from
time to time implementing the provisions of this ordinance.

D. The City Manager shall report to the City Council annually on
the status of waivers and exemptions.

2.73.070 Retaliation and discrimination prohibited.

A. No employer shall retaliate or discriminate against an
employee in his or her terms and conditions of employment by reason of the
person's status as an employee protected by the requirements of this
Chapter.

B. No employer shall retaliate or discriminate against a person in
his or her terms and conditions of employment by reason of the person
reporting a violation of this Chapter or for prosecuting an action for
enforcement of this Chapter.

2.73.080 Employee complaints to City.

A. An employee who alleges violation of any provision of the requirements of this Chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.

B. The City shall have the power to examine contractors' benefit programs covered by this Chapter.

C. Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code Sections 6254 and 6255.

2.73.090 Remedies.

A. Upon a finding by the City Manager that a contractor has violated the requirements of this Chapter, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided at law or in equity.

1. The City Manager shall be authorized to terminate said contract and bar the contractor from bidding on future contracts with the City for three (3) years from the effective date of the contract termination.

2. In the City Manager's sole discretion, a contractor found to have willfully violated the requirements of this Chapter may be required to pay liquidated damages.

3. The City may seek recovery of reasonable attorneys' fees and costs necessary for enforcement of this Chapter.
B. Notwithstanding any provision of this Chapter or any other
Chapter to the contrary, no criminal penalties shall attach for any violation of
this Chapter.

C. No remedy set forth in this Chapter is intended to be exclusive
or a prerequisite for asserting a cause of action to enforce any rights
hereunder in a court of law. This Chapter shall not be construed to limit an
employee's right to bring a common law cause of action for wrongful
termination.

D. Nothing in this Chapter shall be interpreted to authorize a right
of action against the City.

Section 2. The City Clerk shall certify to the passage of this ordinance by
the City Council and cause it to be posted in three (3) conspicuous places in the City of
Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the
Mayor.
I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of December 8, 2009, by the following vote:

Ayes: Councilmembers: Garcia, Lownethal, DeLong,

O'Donnell, Schipske, Andrews,

Reyes Uranga, Gabelich, Lerch.

Noes: Councilmembers: None.

Absent: Councilmembers: None.

City Clerk

Approved: 12/8/09 (Date) Mayor
ATTACHMENT "2"