

DRAFT ORDINANCE No.

Require certain contractors on City contracts to provide employee benefits to their employees with domestic partners equivalent to those provided to their employees with spouses. (Ordinance; amend Title 3, add Code Chapter 3.XX)

The City of Portland ordains:

Section 1. The Council finds:

1. Employee benefits routinely comprise between 30 and 40 percent of total employee compensation.
2. Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work.
3. The City of Portland, pursuant to PCC ch 4.02 and 23.01, prohibits discrimination based, among other traits, on marital status and/or sexual orientation.
4. Contractors with the City of Portland are required to comply with the City's nondiscrimination laws, pursuant to PCC ch 3.100.
5. It is the City's intent, through the contracting practices outlined herein, to equalize the total compensation between similarly situated employees with spouses and employees with domestic partners.
6. Thirteen (13) public agencies within the United States have adopted similar provisions as of March 1, 2005, including San Francisco (City, County and other agencies), Berkeley, CA; State of California; King County, WA; City of Los Angeles, CA; Minneapolis, MN; Oakland, CA; City and County of San Francisco; San Francisco Redevelopment Agency; San Francisco County Transportation Authority; San Mateo County, CA; Seattle, WA; Transbay Joint Powers Authority (CA); and Tumwater, WA.
7. Legal authority for similar provisions has been upheld by rejection on appeal of S.D. MYERS, INC. V CITY & COUNTY OF SAN FRANCISCO (02-16480) by the Ninth U.S. Circuit Court of Appeals on July 29, 2003

NOW, THEREFORE, the Council directs:

- a. City Code Title 3 is amended by adding Chapter 3.XX as set forth in Exhibit A attached hereto and incorporated herein by reference.
- b. To give adequate time for awareness about the ordinance and compliance, the provisions of Chapter 3.xx shall apply to any contract awarded on or after July 31, 2006.
- c. Any new contract for work that will not be complete prior to December 31, 2006, but awarded before July 31, 2006, shall consider including the provisions set forth in Chapter 3.XX.
- d. The Bureau of Purchases will present to the Council a status report on the implementation of Chapter 3.XX on July 31, 2007. This status report will include options for expanding the provisions to cover additional City contracts, including but not limited to employee benefits, franchise, concessions, and contracts under the formal competitive bid threshold, and will specifically outline alternative program options and associated resource requirements.

Passed by Council,
Commissioner Sam Adams
Prepared by Jesse Beason
XXX, 2005

GARY BLACKMER
Auditor of the City of Portland
By
Deputy

DRAFT CHAPTER 3.XX
NONDISCRIMINATION IN BENEFITS
(Added by Ordinance No. #####,
effective _____, 2005.)

Sections:

- 3.XX.010 Purpose.
- 3.XX.020 Definitions.
- 3.XX.030 Discrimination in the provision of benefits prohibited.
- 3.XX.040 Limitations.
- 3.XX.050 Power and duties of the Director
- 3.XX.060 Severability

3.XX.020 Purpose.

3.XX.020 Definitions.

As used in this Chapter unless the context requires otherwise:

- A. "Bureau" means the Bureau of Purchases.
- B. "Contract" means a contract for public works, consulting, or supplies, material, equipment or services estimated to cost XXXXX Dollars (\$XXXXX) or more in 2005, consistent with the competitive threshold requirements of, and as adjusted pursuant to, Portland City Code Sections (Inflation adjustment sections).
- C. "Director" means the Bureau of Purchases Director.
- D. "Domestic Partner" means any person who is registered with his/her employer as a domestic partner, or, in the absence of such employer-provided registry, is registered as a domestic partner with a governmental body pursuant to state or local law authorizing such registration. Any internal employer registry of domestic partnership must comply with criteria for domestic partnerships specified by rule by the Bureau.
- E. "Employee benefits" means the provision of bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefits given to employees, provided that it does not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state law.
- F. "Purchasing Agent" means the City officer, Bureau, commission, employee, or board authorized to enter into or to administer contracts on behalf of the City.

3.XX.030 Discrimination in the provision of benefits prohibited.

- A. No contractor on a City contract shall discriminate by policy or practice in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse, subject to the following conditions:
 - 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 measures 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. Other options for compliance allowed. 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. Requirements inapplicable under certain conditions. The Director may waive the requirements of this chapter where:
 - 1. Award of a contract or amendment is necessary to respond to an emergency;
 - 2. The contractor is a sole source;
 - 3. No compliant contractors are capable of providing goods or services that respond to the City's requirements;
 - 4. The contractor is a public entity;
 - 5. The requirements are inconsistent with a grant, subvention or agreement with a public agency;
 - 6. The City is purchasing through a cooperative or joint purchasing agreement;
- D. Requests for waivers of the terms of this Chapter are to be made to the Bureau by the Purchasing Agent in a manner prescribed by the Bureau. Decisions by the Bureau to issue or deny waivers are final.
- E. The Director may reject an entity's bid or proposal, or terminate a contract, if the Director determines that the entity was set up, or is being used, for the purpose of evading the intent of this Chapter.
- F. No Purchasing Agent shall execute a contract with a contractor unless such contractor has agreed that the contractor will not discriminate in the provision of employee benefits as provided for in this chapter.
- G. All contracts awarded by the City shall contain provisions developed by the Bureau prohibiting discrimination in the provision of employee benefits, including provisions containing appropriate remedies for the breach thereof as prescribed by PCC Ch. 3.XX.040, except as exempted by this chapter or rule.

3.XX.040 Limitations.

The requirements of this Chapter only shall apply to those portions of a contractor's operations that occur (i) within the City; (ii) on real property outside of 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.

3.XX.050 Powers and duties of the Director.

The Director of the Bureau of Purchases shall have the power to:

- C. Adopt rules and regulations, in accordance with this chapter and the Administrative Code of The City of Portland (PCC 3.02), establishing standards and procedures for effectively carrying out this chapter;
- D. Determine and impose appropriate sanctions and/or liquidated damages for violation of this chapter by contractors including, but are not limited to:
 - 1. Disqualification of the contractor from bidding on or being awarded a City contract for a period of up to 5 years; and
 - 2. Contractual remedies, including, but not limited to, liquidated damages and termination of the contract.
- E. Examine contractor's benefit programs covered by this chapter;
- F. Impose other appropriate contractual and civil remedies and sanctions for violations of this chapter;
- G. Allow for remedial action after a finding of non-compliance, as specified by rule.
- H. Perform such other duties as may be required by ordinance or which are necessary to implement the purposes of this chapter.

3.XX.060 Severability.

The provisions of this ordinance are declared to be separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, finds any provision of this ordinance to be invalid or unenforceable as to any person or circumstance, such offending provision shall, if feasible, be deemed to be modified to be within the limits of enforceability or validity. However, if the offending provision cannot be so modified, it shall be null and void with respect to the particular person or circumstance, and all other provisions of this ordinance in all other respects, and the offending provision with respect to all other persons and all other circumstances, shall remain valid and enforceable.