

ORDINANCE NUMBER O- 20002 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 16 2010

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 43, SECTIONS 22.4301, 22.4302, 22.4303, 22.4304, 22.4305, 22.4306, 22.4307 AND 22.4308, TITLED "EQUAL BENEFITS ORDINANCE."

WHEREAS, the City awards taxpayer-funded contracts to various entities for provision of goods and services, construction of public works, and for use of real property; 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 intends to bring the City's contracting practices in line with its non-discrimination policy and to promote a policy of "equal pay for equal work" for City contracts by requiring that the City contract only with entities that provide equal benefits to employees with spouses and employees with domestic partners; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the *City* of San Diego, as follows:

Section 1. That Chapter 2, Article 2, of the San Diego Municipal Code is amended by adding Division 43, titled "Equal Benefits Ordinance," to read as follows:

**Division 43: Equal Benefits Ordinance**

**§ 22.4301 Title and Purpose**

This Division shall be known as the "Equal Benefits Ordinance." The purpose of this Division is to protect and further the public health, property, and welfare by requiring that the City contract only with *contractors* that offer the same

employment benefits to employees with spouses and employees with *domestic partners*.

§ 22.4302 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

*Benefits* means all remuneration other than wages, salary, bonuses, commissions, and stock options offered to an employee as part of the employee's total compensation package, including bereavement leave, family leave, no-additional-cost services, health and medical benefits, employee discounts, memberships or membership discounts, moving expenses, pension and retirement benefits, transportation and travel benefits, and any other employment or fringe benefits.

*Cash Equivalent* means the amount of money paid to an employee with a *domestic partner* in lieu of providing *benefits* to the employee's *domestic partner*. The *cash equivalent* is equal to the direct expense to the employer of providing *benefits* to an employee for his or her *domestic partner* or the direct expense to the employer of providing *benefits* for the dependents and family members of an employee with a *domestic partner*.

*City* means the City of San Diego, its organizational subdivisions, agencies, offices, commissions, or boards, but does not include independent agencies, such as the Housing Authority, Redevelopment Agency, and the Retirement Board.

*Contract* means any agreement between the *City* and another party for provision of goods, services, consultant services, grants from the *City*, leases of *City* property, or construction of public works.

*Contractor* means any person or persons, firm, partnership, corporation, joint venture, or any combination of these, that enters into a *contract* with the *City*.

*Contractor* does not include subcontractors.

*Domestic partners* means any two adults, of the same or different sex, who have registered as domestic partners with a governmental entity pursuant to state or local law authorizing such registration, or with an internal registry maintained by the employer of at least one of the *domestic partners*.

*Equal benefits* means equality of *benefits* between employees with spouses and employees with *domestic partners*, between spouses of employees and *domestic partners* of employees, and between dependents and family members of employees with spouses and dependents and family members of employees with *domestic partners*.

**§ 22.4303 Application**

This Division shall apply to any *contract* entered into, awarded, amended, renewed, or extended on or after January 1, 2011. This Division shall apply to:

- (a) A *contractor's* operations located within the *City's* geographical limits, regardless of whether there are employees at those locations performing work on a *contract*.
- (b) A *contractor's* operations on real property located outside of the *City's* geographical limits if the property is owned by the *City* or the *City* has a right

to occupy the property, and if the *contractor's* presence at or on that property is connected to a *contract*.

- (c) The *contractor's* employees located outside of the *City* limits but in the United States, if those employees are performing work on the *contract*.

**§ 22.4304 Equal Benefits Requirements**

- (a) The *City* shall not execute, award, or amend any *contract* with any *contractor* that discriminates in the provision of *benefits* between employees with spouses and employees with *domestic partners*, between spouses of employees and *domestic partners* of employees, or between dependents and family members of spouses and dependents and family members of *domestic partners*, or with any *contractor* that discriminates in the provision of these *benefits* based on the gender or sexual orientation of the spouses or *domestic partners*.
- (b) *Contractors* shall notify employees of their *equal benefits* policy at the time of hire and during open enrollment periods, and shall post a copy of the following statement in a conspicuous manner in an area frequented by employees:

During the performance of a contract with the City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners.

The posted statement shall also include a *City* contact telephone number which will be provided each *contractor* when the *contract* is executed, awarded, or amended.

- (c) *Contractors* shall give the *City* access to documents and records sufficient for the *City* to verify compliance with this Division.

- (d) A *contractor* shall not use a separate contracting entity to evade the requirements of this Division.
- (e) *Contracts* shall include a provision stating that failure to maintain *equal benefits* is a material breach of the *contract*.
- (f) *Contracts* shall include a provision requiring *contractors* to certify that *contractor* will maintain *equal benefits* for the duration of the *contract*.

**§ 22.4305 Other Options for Compliance**

As an alternative to providing *equal benefits*, a *contractor* may do either of the following:

- (a) Provide an employee with the *cash equivalent* if the *City* determines that either:
  - (1) The *contractor* has made a reasonable, yet unsuccessful effort to provide *equal benefits*; or
  - (2) Under the circumstances, it would be unreasonable to require the *contractor* to provide *equal benefits*.
- (b) Provide *benefits* neither to employees' spouses nor to employees' *domestic partners*.

**§ 22.4306 Administration**

The Mayor shall promulgate rules and regulations as may be necessary for the implementation of this Division.

**§ 22.4307 Violations and Penalties**

- (a) It is unlawful for any *contractor* to knowingly submit any false information to the *City* regarding *equal benefits* or *cash equivalent* associated with the execution, award, amendment, or administration of any *contract*.

- (b) If a *contractor* violates the terms of a *contract* regarding *equal benefits* or *cash equivalent* and fails to cure such violation within a reasonable time after receiving written notice from the *City*, the *City* may cancel, terminate, or suspend the *contract* in whole or in part, in addition to any other remedies or actions provided in the *contract* or this Code.

§ 22.4308 Exceptions

This Division does not apply to:

- (a) *Contracts* with a *sole source* or another *agency*, as defined in Section 22.3003.
- (b) *Cooperative procurement contracts*, as defined in Section 22.3003.
- (c) *Contracts* with a *contractor* that is subject to a collective bargaining agreement in effect prior to January 1, 2011.
- (d) *Contracts* for gifts or donations to the *City*.
- (e) *Contracts* where the application of this Division would violate or be inconsistent with the laws, rules, or regulations of federal or state law.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Nathan Siegers  
Deputy City Attorney

NS:mb  
10/01/10  
10/19/10 Revised  
Or.Dept:Council-Dist3  
O-2011-17

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego,  
at its meeting of NOV 9 2010<sup>th</sup>

ELIZABETH S. MALAND, *City Clerk*

By   
Deputy City Clerk

Approved: 11-16-10  
(date)

  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

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JERRY SANDERS, Mayor