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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:

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

3 Chapter 2.73

4 EQUAL BENEFITS TO EMPLOYEES OF CITY CONTRACTORS

5
6 2.73.010 Title and purpose.

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

14
15 2.73.020 Definitions.

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

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

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

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1 2.73.030 Contractors subject to requirements.

2 A. The following contractors are subject to this Chapter:

3 1. For-profit entities which enter into an agreement with
4 the City for public works or improvements to be performed, or for goods or
5 services to be purchased, for an amount of One Hundred Thousand Dollars
6 (\$100,000) or more; and

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

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

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

25
26 2.73.040 Non-discrimination in provision of benefits.

27 A. No contractor subject to this Chapter pursuant to Section
28 2.73.030 shall discriminate in the provision of bereavement leave, family

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

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

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

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

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

27 2. Allow each employee to designate a legally domiciled
28 member of the employee's household as being eligible for spousal

1 equivalent benefits; or

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

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

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

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

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

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

26 b. The contractor takes all reasonable measures to
27 end discrimination in benefits by either requesting that the union(s) involved
28 agree to reopen the agreement(s) in order for the contractor to take

1 whatever steps are necessary to end discrimination in benefits or by ending
2 discrimination in benefits without reopening the collective bargaining
3 agreement(s); and

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

13 D. Employers subject to this Chapter pursuant to Section
14 2.73.030 shall give written notification to each current and new employee of
15 his or her potential rights under this Chapter in a form specified by the City.
16 Such notice shall also be posted prominently in areas where it may be seen
17 by all employees.

18
19 2.73.050 Required contract provisions.

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

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1 2.73.060 Waivers and exemptions.

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

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

6 2. The contractor is a sole source;

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

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

11 5. The contractor is a public entity;

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

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

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

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

26 10. After taking all reasonable measures to find an entity
27 that complies with this Chapter, the City may waive any or all requirements
28 of this Chapter for any contract or bid package advertised and made

1 available to the public, or any competitive or sealed bids received by the
2 City as of the effective date of this Chapter under the following
3 circumstances:

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

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

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

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

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

20
21 2.73.070 Retaliation and discrimination prohibited.

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

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

1 enforcement of this Chapter.

2
3 2.73.080 Employee complaints to City.

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

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

10 C. Any complaints received shall be treated as confidential
11 matters, to the extent permitted by law. Any complaints received and all
12 investigation documents related thereto shall be deemed exempt from
13 disclosure pursuant to California Government Code Sections 6254 and
14 6255.

15
16 2.73.090 Remedies.

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

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

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

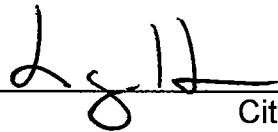
27 3. The City may seek recovery of reasonable attorneys'
28 fees and costs necessary for enforcement of this Chapter.

1 I hereby certify that the foregoing ordinance was adopted by the City
2 Council of the City of Long Beach at its meeting of December 8, 2009, by the
3 following vote:

4
5 Ayes: Councilmembers: Garcia, Lowenthal, DeLong,
6 O'Donnell, Schipske, Andrews,
7 Reyes Uranga, Gabelich, Lerch.

8
9 Noes: Councilmembers: None.

10
11 Absent: Councilmembers: None.

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14
15 
16 _____
17 City Clerk

18 Approved: 12/11/09
19 _____
20 (Date)

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Mayor

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664