

ORDINANCE NO.

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2
3 AN ORDINANCE OF THE CITY COUNCIL OF THE
4 CITY OF LONG BEACH AMENDING THE LONG BEACH
5 MUNICIPAL CODE BY ADDING CHAPTER 2.73
6 ESTABLISHING AN "EQUAL BENEFITS ORDINANCE"
7 REQUIRING CONTRACTORS ON CITY CONTRACTS TO
8 PROVIDE EMPLOYEE BENEFITS TO THEIR EMPLOYEES
9 WITH DOMESTIC PARTNERS EQUIVALENT TO THOSE
10 PROVIDED TO THEIR EMPLOYEES WITH SPOUSES
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12 WHEREAS, employee benefits comprise a significant portion of total
13 employee compensation; and

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

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

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

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

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

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

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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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

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

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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.

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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

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
19 2.73.070 Retaliation and discrimination prohibited.

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

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

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1 2.73.080 Employee complaints to City.

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

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

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

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14 2.73.090 Remedies.

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

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

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

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

27 B. Notwithstanding any provision of this Chapter or any other
28 Chapter to the contrary, no criminal penalties shall attach for any violation of

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I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 20__, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor

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

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REDLINE

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

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

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

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

17 2.73.040 Non-discrimination in provision of benefits.

18 A. No contractor subject to this Chapter pursuant to Section 2.73.030 shall
19 discriminate in the provision of bereavement leave, family medical leave, health benefits,
20 membership or membership discounts, moving expenses, pensions and retirement
21 benefits or travel benefits or in the provision of any benefits other than bereavement
22 leave, family medical leave, health benefits, membership or membership discounts,
23 moving expenses, pensions and retirement benefits or travel benefits between
24 employees with domestic partners and employees with spouses, and/or between the
25 domestic partners and spouses of such employees except as set forth in Subsections
26 2.73.040.A.1 and 2 below;

27 1. In the event that the contractor's actual cost of providing a particular
28 benefit for the domestic partner of an employee exceeds that of providing it for the

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

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

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

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

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

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

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

23 1. Until the first effective date after the first open enrollment process
24 following the date the contract with the City is executed, provided that the contractor
25 submits evidence that it is making reasonable efforts to end discrimination in benefits.

26 This delay may not exceed two (2) years from the date the contract with the City is
27 executed and only applies to benefits for which an open enrollment process is applicable.

28 2. Until administrative steps can be taken to incorporate

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

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

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

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

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

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

27
28 2.73.050 Required contract provisions.

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

7
8 2.73.060 Waivers and exemptions.

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

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

13 2. The contractor is a sole source;

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

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

18 5. The contractor is a public entity;

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

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

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

26 9. The contract involves investment of trust moneys or agreements
27 relating to the management of trust assets, City moneys invested in U.S. government
28 securities or under pre-existing investment agreements, or the investment of City moneys

1 where no person, entity or financial institution doing business with the City which is in
2 compliance with this Chapter is capable of performing the desired transactions or the City
3 will incur financial loss if the requirements of this Chapter are enforced;

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

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

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

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

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

23
24 2.73.070 Retaliation and discrimination prohibited.

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

28 B. No employer shall retaliate or discriminate against a person in his or her

1 terms and conditions of employment by reason of the person reporting a violation of this
2 Chapter or for prosecuting an action for enforcement of this Chapter.

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4 2.73.080 Employee complaints to City.

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

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

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

15
16 2.73.090 Remedies.

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

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

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

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

28 B. Notwithstanding any provision of this Chapter or any other Chapter to the

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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.