

# ATTACHMENT “1”

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.

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

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

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

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12 Section 2. The City Clerk shall certify to the passage of this ordinance by  
13 the City Council and cause it to be posted in three (3) conspicuous places in the City of  
14 Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the  
15 Mayor.

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EBO Form to be Attached to Bids/ RFPs

**CERTIFICATION OF COMPLIANCE WITH THE  
EQUAL BENEFITS ORDINANCE**

Section 1. CONTRACTOR/VENDOR INFORMATION

Name: \_\_\_\_\_ Federal Tax ID No.: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_ Fax: \_\_\_\_\_

Section 2. COMPLIANCE QUESTIONS

- A. The EBO is inapplicable to this Contract because the Contractor/Vendor has no employees. \_\_\_\_ Yes \_\_\_\_ No
- B. Does your company provide (or make available at the employees' expense) any employee benefits? \_\_\_\_ Yes \_\_\_\_ No  
(If "yes," proceed to Question C. If "no," proceed to section 5, as the EBO does not apply to you.)
- C. Does your company provide (or make available at the employees' expense) any benefits to the spouse of an employee?  
\_\_\_\_ Yes \_\_\_\_ No
- D. Does your company provide (or make available at the employees' expense) any benefits to the domestic partner of an employee?  
\_\_\_\_ Yes \_\_\_\_ No (If you answered "no" to both questions C and D, proceed to section 5, as the EBO is not applicable to this contract. If you answered "yes" to both Questions C and D, please continue to Question E. If you answered "yes" to Question C and "no" to Question D, please continue to section 3.)
- E. Are the benefits that are available to the spouse of an employee identical to the benefits that are available to the domestic partner of an employee?  
\_\_\_\_ Yes \_\_\_\_ No  
(If "yes," proceed to section 4, as you are in compliance with the EBO. If "no," continue to section 3.)

### Section 3. PROVISIONAL COMPLIANCE

- A. Contractor/Vendor is not in compliance with the EBO now but will comply by the following date:

\_\_\_\_\_ By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor/Vendor submits evidence of taking reasonable measures to comply with the EBO; or

\_\_\_\_\_ At such time that the administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor/vendor's infrastructure, not to exceed three months; or

\_\_\_\_\_ Upon expiration of the contractor's current collective bargaining agreement(s).

- B. If you have taken all reasonable measures to comply with the EBO but are unable to do so, do you agree to provide employees with a cash equivalent? (The cash equivalent is the amount of money your company pays for spousal benefits that are unavailable for domestic partners.)

\_\_\_\_\_ Yes \_\_\_\_\_ No

### Section 4. REQUIRED DOCUMENTATION

At time of issuance of purchase order or contract award, you may be required by the City to provide documentation (copy of employee handbook, eligibility statement from your plans, insurance provider statement, etc.) to verify that you do not discriminate in the provision of benefits.

### Section 5. CERTIFICATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am authorized to bind this entity contractually. By signing this certification, I further agree to comply with all additional obligations of the Equal Benefits Ordinance that are set forth in the Long Beach Municipal Code and in the terms of the contract or purchase order with the City.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_,

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Federal Tax ID No.: \_\_\_\_\_

# ATTACHMENT “4”

Form to be Included in Bids and RFPs

**EQUAL BENEFITS ORDINANCE DISCLOSURE FORM**

As a condition of being awarded a contract with the City of Long Beach ("City"), the selected Contractor/Vendor ("Contractor") may be required during the performance of the Contract, to comply with the City's nondiscrimination provisions of the Equal Benefits Ordinance ("EBO") set forth in the Long Beach Municipal Code section 2.73 et seq. The EBO requires that during the performance of the contract, the Contractor shall provide equal benefits to its employees with spouses and employees with domestic partners. Benefits include but are not limited to, health benefits, bereavement leave, family medical leave, membership and membership discounts, moving expenses, retirement benefits and travel benefits. A cash equivalent payment is permitted if an employer has made all reasonable efforts to provide domestic partners with access to benefits but is unable to do so. A situation in which a cash equivalent payment might be used if where the employer has difficulty finding an insurance provider that is willing to provide domestic partner benefits.

The EBO is applicable to the following employers:

- For-profit employers that have a contract with the City for the purchase of goods, services, public works or improvements and other construction projects in the amount of \$100,000 or more
- For-profit entities that generate \$350,000 or more in annual gross receipts leasing City property pursuant to a written agreement for a term exceeding 29 days in any calendar year

Contractors who are subject to the EBO must certify to the City before execution of the contract that they are in compliance with the EBO by completing the EBO Certification Form, attached, or that they have been issued a waiver by the City. Contractors must also allow authorized City representatives access to records so the City can verify compliance with the EBO.

The EBO includes provisions that address difficulties associated with implementing procedures to comply with the EBO. Contractors can delay implementation of procedures to comply with the EBO in the following circumstances:

- 1) By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor/Vendor submits evidence of taking reasonable measures to comply with the EBO; or

- 2) At such time that the administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor/Vendor's infrastructure, not to exceed three months; or
- 3) Upon expiration of the Contractor's current collective bargaining agreement(s).

Compliance with the EBO

If a Contractor has not received a waiver from complying with the EBO and the timeframe within which it can delay implementation has expired but it has failed to comply with the EBO, the Contractor may be deemed to be in material breach of the Contract. In the event of a material breach, the City may cancel, terminate or suspend the City agreement, in whole or in part. The City also may deem the Contractor an irresponsible bidder and disqualify the Contractor from contracting with the City for a period of three years. In addition, the City may assess liquidated damages against the Contractor which may be deducted from money otherwise due the Contractor. The City may also pursue any other remedies available at law or in equity.

By my signature below, I acknowledge that the Contractor understands that to the extent it is subject to the provisions of the Long Beach Municipal Code section 2.73, the Contractor shall comply with this provision.

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Business Entity Name: \_\_\_\_\_

# ATTACHMENT “5”

## Equal Benefits Ordinance Contract Language

### **ARTICLE \_\_. EQUAL BENEFITS ORDINANCE.**

Unless otherwise exempted in accordance with the provisions of the Ordinance, this Contract is subject to the applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the Long Beach Municipal Code, as amended from time to time.

1. During the performance of this Contract, the Contractor/Consultant certifies and represents that the Contractor/Consultant will comply with the EBO. The Contractor/Consultant agrees to post the following statement in conspicuous places at its place of business available to employees and applicants for employment:  
  
"During the performance of a Contract with the City of Long Beach, the Contractor/Consultant will provide equal benefits to employees with spouses and its employees with domestic partners. Additional information about the City of Long Beach's Equal Benefits Ordinance may be obtained from the City of Long Beach Business Relations Division at 562-570-6200."
2. The failure of the Contractor/Consultant to comply with the EBO will be deemed to be a material breach of the Contract by the City.
3. If the Contractor/Consultant fails to comply with the EBO the City may cancel, terminate or suspend the Contract, in whole or in part, and monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.
4. Failure to comply with the EBO may be used as evidence against the Contractor/Consultant in actions taken pursuant to the provisions of Long Beach Municipal Code 2.93 et seq., Contractor Responsibility.
5. If the City determines that the Contractor/Consultant has set up or used its Contracting entity for the purpose of evading the intent of the EBO, the City may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor/Consultant in actions taken pursuant to the provisions of Long Beach Municipal Code section 2.93 et seq., Contractor Responsibility.