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DEPARTMENT OF
FINANCE

FINANCE ADMINISTRATION

CITY OF SACRAMENTO
CALIFORNIA

October 20, 2004

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City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: AN ORDINANCE ADDING CHAPTER 3.54 TO THE SACRAMENTO CITY CODE, PROHIBITING CITY CONTRACTORS FROM DISCRIMINATING AGAINST EMPLOYEES WITH DOMESTIC PARTNERS IN PROVISION OF EMPLOYEE BENEFITS.

LOCATION AND COUNCIL DISTRICT: All Districts

RECOMMENDATION:

The Law and Legislation Committee recommends that City Council adopt the attached ordinance.

CONTACT: Aaron B. Chong, Sr. Management Analyst, 808-6762

FOR THE COUNCIL MEETING OF: November 4, 2004

SUMMARY:

At the request of City Council Members Steve Cohn and Dave Jones, the Law and Legislation Committee reviewed and now forwards for Committee consideration an ordinance that would require contractors on City contracts to provide employee benefits to their employees with domestic partner benefits equivalent to those provided to their employees with spouses.

The purpose of the proposed "Non-Discrimination in Employee Benefits Ordinance" is to protect and further the public health, safety, convenience, and general welfare by requiring that public funds be expended in a manner so as to prohibit contractors from discriminating between employees with spouses and em-

ployees with domestic partners, and from discriminating between the spouses and domestic partners of such employees, in the provision of employee benefits.

COMMITTEE/COMMISSION ACTION:

This item was brought to the Law and Legislation Committee for consideration and action on September 7, 2004. The Committee unanimously recommended that the item be forwarded to City Council for adoption.

BACKGROUND:

Last December 2003, Council requested that the Law and Legislation Committee look at requiring City contractors to provide for health coverage for domestic partners.

The item was referred to staff for further research. Staff requested additional information from other cities and special agencies that had similar programs. Informational materials were received from the City and County of San Francisco, the San Francisco Redevelopment Agency, the City of Los Angeles, and the City of Oakland.

In addition, staff worked with the City Attorney's office and contacted state legislative staff about State Assembly bills currently being discussed in the legislature that could have an effect on the implementation of an ordinance within the City.

DISCUSSION:

The proposed ordinance jointly introduced by Council Members Cohn and Jones would require contractors on City contracts to provide employee benefits to their employees with domestic partner equivalent to those provided to their employees with spouses.

The intent of the proposed ordinance would be to prohibit the City from entering into contracts or leases with any entity that discriminates in the provisions of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees.

The proposed ordinance would cover all entities that enter into a contract with the City for an amount of \$25,000 or more.

The ordinance would apply to those portions of a contractor's operations that occur:

- Within the City of Sacramento
- On real property outside of the City if the property is owned by the City or if the City has a rights to occupy the property, and

- Elsewhere in the United States at any location where a significant amount of work related to a City contract is being performed. The requirements of this proposed ordinance shall not apply to subcontracts or subcontractors of any contract or contractors.

The ordinance defines “domestic partner” as any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

“Employee Benefits” is defined as 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 offered to employees; provided however, that Employee Benefits shall 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.

If adopted, the proposed ordinance would become effective thirty days from adoption date but the operational date will be April 1, 2005. This would provide staff with sufficient time to revise contracts and procurement documents, prepare Administrative Procedures, train staff and implement the new ordinance.

FINANCIAL CONSIDERATIONS:

Depending on the desire of the City Council on the level of monitoring the proposed ordinance, the cost to the City could be nominal or could range into \$250,000 for 2 FTEs as with other California cities that have multiple staff doing compliance and audits.

Staff has been unable to determine the actual additional costs that have been passed onto other cities since none of the cities or special districts have been able to quantify the additional contract costs, if any, that were submitted with their bid to the cities and special districts.

ENVIRONMENTAL CONSIDERATIONS:

There are no environmental considerations associated with this report.

POLICY CONSIDERATIONS:

As currently written, no additional staff or cost is being proposed to monitor this ordinance.

ESBD CONSIDERATIONS:

There are no ESBD considerations. No goods or services are being purchased at this time.

Respectfully submitted:



Aaron B. Chong
Senior Management Analyst

RECOMMENDATION APPROVED:



ROBERT P. THOMAS
City Manager

ATTACHMENTS:

- 1) **Proposed Non-Discrimination in Benefits Ordinance – Text Page 5**

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL
ON DATE OF _____

**AN ORDINANCE ADDING CHAPTER 3.54 TO THE
SACRAMENTO CITY CODE, PROHIBITING CITY
CONTRACTORS FROM DISCRIMINATING AGAINST
EMPLOYEES WITH DOMESTIC PARTNERS IN
PROVISION OF EMPLOYEE BENEFITS**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Chapter 3.54 is added to the Sacramento City Code, to read as follows:

**CHAPTER 3.54. NON-DISCRIMINATION IN EMPLOYEE BENEFITS
BY CITY CONTRACTORS**

Section 3.54.010 Findings and intent.

Employee benefits comprise a substantial portion of total employee compensation.

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work.

City, state and federal laws prohibit discrimination based on marital status and sexual orientation.

Contractors with the City of Sacramento are required to comply with applicable nondiscrimination laws.

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

DATE ADOPTED: _____

5

It is the City's intent, through the contracting practices outlined herein, to equalize the total compensation paid to similarly situated employees with spouses and employees with domestic partners.

The City Council finds and determines that the public safety, health, convenience, and general welfare will be furthered by requiring that public funds be expended in a manner so as to prohibit contractors from discriminating between employees with spouses and employees with domestic partners, and from discriminating between the spouses and domestic partners of such employees, in the provision of employee benefits.

Section 3.54.020 Title and Purpose.

This chapter shall be known as the "Non-Discrimination in Employee Benefits Code." The purpose of this chapter is to protect and further the public health, safety, convenience, and general welfare by requiring that public funds be expended in a manner so as to prohibit contractors from discriminating between employees with spouses and employees with domestic partners, and from discriminating between the spouses and domestic partners of such employees, in the provision of employee benefits.

Section 3.54.030 Definitions.

For the purposes of this chapter,

A. "Contract" shall mean an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" shall also mean a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this chapter, "exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner. "Contract" shall not include a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit. "Contract" shall also not include excavation, street construction or street use permits, agreements for the use of City right-of-way where a contracting utility has the power of eminent domain, or agreements governing the use of City property that constitutes a public forum for activities that are primarily for the purpose of espousing or

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ORDINANCE NO. _____

DATE ADOPTED: _____

advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or that are primarily recreational in nature.

B. "Contractor" shall mean any person or persons, firm, partnership, corporation, company, or combination thereof, that enters into a Contract with the City. Contractor shall not include a public entity.

C. "Domestic partner" shall mean any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

D. "Employee Benefits" shall mean 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 however, that Employee Benefits shall 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.

Section 3.54.040 Contractors subject to requirements.

A. Contractors that enter into a Contract with the City in an amount exceeding \$25,000.00 are subject to the requirements of this chapter.

B. The requirements of this chapter shall only apply to 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 (iii) elsewhere in the United States at any location where a significant portion of the work related to a Contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any Contract or Contractor.

Section 3.54.050 Non-discrimination in the provision of benefits.

A. The City Manager shall not execute or extend any Contract with any Contractor that discriminates in the provision of Employee Benefits between employees with domestic partners and employees with spouses, or between the domestic partners and spouses of such employees, subject to the following conditions:

(1) In the event the actual cost of providing a certain 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 certain 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 benefits if the Contractor conditions providing such benefit upon the employee's agreeing to pay the excess costs.

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

DATE ADOPTED: _____

(2) In the event a Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the Contractor shall not be deemed to discriminate in the provision of Employee Benefits if the Contractor provides the employee with a cash equivalent.

(3) A Contractor shall not be deemed to be engaging in discrimination in the provision of Employee Benefits if the Contractor provides Employee Benefits neither to employees' spouses nor to employees' domestic partners or on a basis that is unrelated to marital status or domestic partnership status.

B. A Contractor shall not be deemed to be engaging in discrimination in the provision of Employee Benefits when the implementation of policies ending discrimination in Employee Benefits is delayed following the first award of a Contract to a Contractor after the operative date of this chapter:

(1) Until the first effective date after the first open enrollment process following the date the Contract with the City is executed, provided that the Contractor submits evidence that it is making reasonable efforts to end discrimination in Employee Benefits. This delay may not exceed one (1) year from the date the Contract with the City is executed and only applies to Employee Benefits for which an open enrollment process is applicable.

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

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

(a) The provision of Employee Benefits is governed by one or more collective bargaining agreements; and

(b) The Contractor takes all reasonable measures to end discrimination in Employee Benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for the Contractor to take whatever steps are necessary to end discrimination in Employee Benefits or by ending discrimination in Employee 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 measures to do so, the Contractor provides a cash equivalent to eligible employees for whom Employee Benefits are not available. Unless otherwise authorized in writing by the City Manager, this cash equivalent must begin at the time the union(s)

- 4 -

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

DATE ADOPTED: _____

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.

C. Contractors subject to this chapter 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 notices shall also be posted prominently in areas where it may be seen by all employees.

D. Contractors shall treat as confidential to the maximum extent allowed by law or the requirements of Contractor's insurance provider any request by an employee for domestic partner or spousal benefits or any documentation of eligibility for domestic partner or spousal benefits submitted by an employee.

Section 3.54.060 Required Contract provisions.

Every Contract subject to this chapter shall contain provisions requiring compliance with this chapter. Such 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.

Section 3.54.070 Waivers and exemptions.

A. The City Manager may waive the requirements of this chapter under any of the following circumstances:

(1) There is only one prospective Contractor willing to enter into a Contract with the City for use of City property on the terms and conditions established by the City, or the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source and the prospective Contractor is not disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements.

(2) Where, after taking all reasonable measures to find an entity that complies with the requirements of this chapter, the City Manager determines there are no qualified responsive bidders or prospective Contractors who could be certified as being in compliance with the requirements of this chapter and the Contract is for goods, a service or a project that is essential to the City or City residents.

(3) The Contract is necessary to respond to an imminent emergency that endangers the public health or safety.

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

DATE ADOPTED: _____

(4) The Contract involves specialized legal services such that it would be in the best interests of the City to waive the requirement of this chapter.

B. This chapter shall not apply where the requirements of this chapter will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement.

C. This chapter shall not apply to transactions entered into pursuant to cooperative purchasing agreements approved by the City Council or through legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the city.
Section 3.54.080 Retaliation and discrimination prohibited.

A. No Contractor shall retaliate or discriminate against its employee or applicant for employment in his or her terms and conditions of employment by reason of the person's status as an employee or applicant protected by the requirements of this chapter.

B. No Contractor shall retaliate or discriminate against a person in his or her terms and conditions of employment by reason of the person's reporting a violation of this chapter or for prosecuting an action for enforcement of this chapter.

Section 3.54.090 Employee complaints to the City.

A. An employee who alleges violation of this chapter may submit a complaint to the City. The City Manager shall establish a procedure for receiving and investigating complaints and taking appropriate action.

B. The City shall have the power to examine a Contractor's Employee Benefits programs covered by this chapter.

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

Section 3.54.100 Enforcement.

A. The City Manager shall have the authority to adopt rules and regulations establishing standards and procedures for effectively carrying out this chapter.

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

DATE ADOPTED: _____

B. Upon a finding by the City Manager that a Contractor has violated the requirements of this chapter, the City shall have the rights and remedies described in this section, in addition to any rights and remedies provided by law or in equity;

(1) Suspension and/or termination of said Contract for cause;

(2) Repayment of any or all of the Contract amount disbursed by the City;

(3) The City Manager may deem the entity ineligible for future Contracts until all penalties and restitution have been paid in full;

(4) The City Manager may deem the entity ineligible for future Contracts for up to two years.

(5) Imposing a penalty payable to the City in the sum of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this chapter;

C. In the event of any action to enforce this chapter, the City shall be entitled to recover reasonable attorney's fees and costs.

D. An employee claiming violation of this chapter may bring an action in the appropriate division of the Superior Court of the State of California against a Contractor and obtain the following remedies:

(1) Reinstatement, injunctive relief, compensatory damages and punitive damages.

(2) Reasonable attorney's fees and costs.

E. Notwithstanding any provision of this chapter or any other chapter to the contrary, no criminal penalties shall attach for any violation of this chapter.

F. 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.

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

DATE ADOPTED: _____

G. Nothing in this chapter shall be interpreted to authorize a right of action by any person for damages, injunctive relief, or any other remedy against the City for conduct of the City in enforcing or failing to enforce this chapter.

H. Nothing in this chapter shall be construed to waive any immunity afforded to the City by local, state or federal law.

I. This chapter shall not be applied in any manner that would result in a violation of state or federal law.

Section 3.54.110 Severability.

If any of the provisions of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of the chapter are severable.

Section 3.54.120 Operative date.

The provisions of this chapter shall apply to any contract awarded or extended on or after April 1, 2005.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

- 8 -

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

DATE ADOPTED: _____

12