



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: October 12, 2011 REPORT NO: 11-130

ATTENTION Rules, Open Government and Intergovernmental Relations Committee
Agenda of October 12, 2011

SUBJECT: Equal Benefits Ordinance Fiscal Year 2011 Annual (6-month) Report

REFERENCE: Equal Benefits Ordinance: San Diego Municipal Code Chapter 2, Article 2,
Division 43

REQUESTED ACTION:

Accept report and consider proposed modifications to the Equal Benefits Ordinance to enhance clarity.

STAFF RECOMMENDATION:

Accept report and modify the Equal Benefits Ordinance to enhance clarity.

BACKGROUND:

This report describes implementation and administration of the Equal Benefits Ordinance [EBO] during its first six months (January 1, 2011 – June 30, 2011) in Fiscal Year 2011. The EBO, in order to promote a policy of “equal pay for equal work,” requires the City to contract only with entities that do not discriminate in the provision of benefits between employees with spouses and employees with domestic partners. The ordinance was adopted by a unanimous City Council vote in October 2010 and applies to contracts as they are awarded, amended, renewed, or extended on or after January 1, 2011.

For reference, text of the Equal Benefits Ordinance is included as Attachment A, *San Diego Municipal Code* [SDMC] *Chapter 2, Article 2, Division 43*. A one-page summary of EBO applicability and requirements is provided as Attachment B, *Equal Benefits Ordinance Synopsis*.

EXECUTIVE SUMMARY:

The Equal Benefits Ordinance became effective On January 1, 2011. Efficient cooperation among City departments and targeted outreach to the contracting community resulted in a smooth transition within a brief timeframe. A consistent EBO clause is included in all City agreements. During this six-month reporting period, 302 contractors submitted *EBO Certification of Compliance* forms (see Attachment C) for 352 agreements. No employee complaints have been received to date. The intent of the EBO could be better achieved if certain modifications were made to its language, as discussed below.

EBO PROGRAM IMPLEMENTATION

EBO implementation was coordinated by the Administration Department using Living Wage Program resources. Several steps were taken by staff to implement the EBO:

- Researched various municipalities' methods of EBO administration.
- Established City of San Diego EBO Program.
- With City Attorney's Office, developed EBO contract clause, *Rules Implementing the EBO* (see Attachment D), and *EBO Certification of Compliance* form.
- With Purchasing & Contracting Department, ensured inclusion of new EBO contract clause in agreements, identified requests for bids that required addendums, and adapted processes to receive *EBO Certification of Compliance* forms.
- With the Department of Information Technology, uploaded easily-navigable, dedicated EBO web pages with all documents, forms, FAQs, sample policies, clear instructions, and contact information.
- Prepared and distributed EBO handouts; conducted staff trainings.
- Set up methods to efficiently review and track *EBO Certification of Compliance* forms.

EBO PROGRAM ADMINISTRATION

EBO Tasks

EBO Program administrative tasks include:

- Review of submitted *EBO Certification of Compliance* forms for completeness; when necessary, contact with firms to resolve incompleteness.
- Record maintenance of *EBO Certification of Compliance* forms, categorized by selected method of compliance.

- Assistance to departments in determining when EBO exceptions apply.
- Response to inquiries from contractors, potential bidders, and the general public.

The City of San Diego’s EBO Program is complaint-driven. That is to say, a contractor must self-affirm compliance with the Ordinance prior to award, however, documentation is not required to be submitted. The City retains the right of access to documents and records sufficient for the City to verify compliance. Such documentation may include copies of personnel manuals, insurance policies, and employee records.

EBO Compliance Statistics

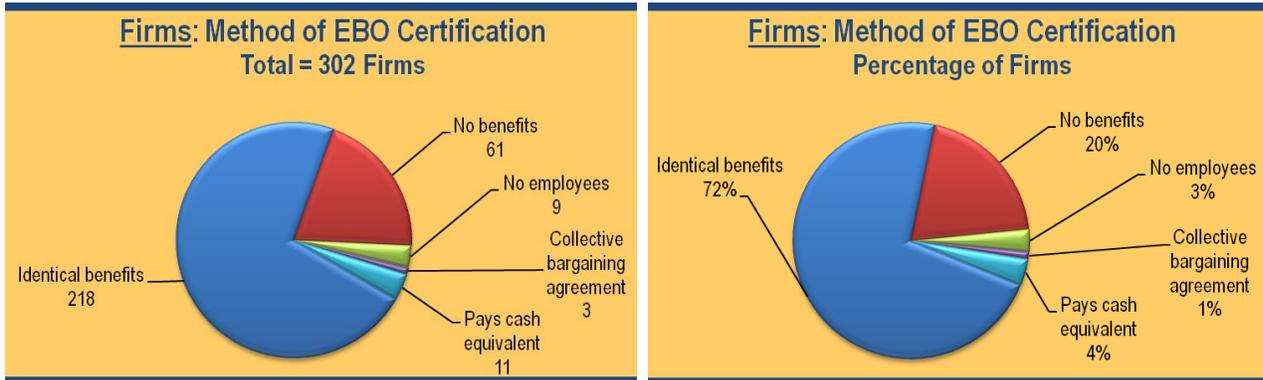
A firm may comply with the EBO in one of the following ways:

- Identical benefits –** Provides the same benefits to employees with spouses and employees with domestic partners and their respective families. *SDMC §22.4304(a)*
- No benefits –** Provides benefits neither to employees’ spouses nor to employees’ domestic partners. *SDMC §22.4305(b)*
- No employees –** Has no employees.
- Collective bargaining agreement –** Contracts with a contractor that is subject to a collective bargaining agreement in effect prior to January 1, 2011. *SDMC §22.4308(c)*
- Cash equivalent –** Offers employees with a domestic partner a cash amount equal to employer’s expense of providing benefits for domestic partner and dependents/family. *SDMC §22.4305(a)*

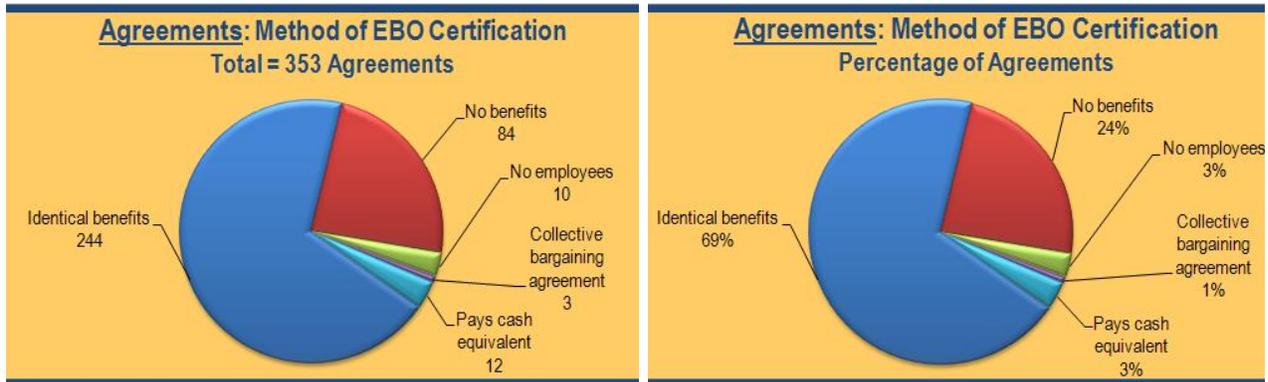
During this six-month period, the City received 353 *EBO Certifications of Compliance* from 302 firms:

<u>Compliance Method Indicated</u>	<u>Firms</u>		<u>Certifications</u>	
Identical benefits	218	72%	244	69%
No benefits	61	20%	84	24%
No employees	9	3%	10	3%
Collective bargaining agreement	3	1%	3	1%
Cash equivalent	11	4%	12	3%
TOTALS:	302		353	

Nearly three-quarters of firms that entered into agreements with the City during this period provide equal benefits to their employees; one-fifth of firms provide no benefits to spouses or domestic partners; 3% of firms have no employees; 1% of firms are under collective bargaining agreements; and 4% of firms offer employees with registered domestic partners a cash equivalent option. The firms' methods of EBO certification is shown below:



Twenty-seven firms entered into more than one agreement with the City during this reporting period. When calculated by *EBO Certification of Compliance* for each agreement, 69% indicated compliance by providing identical benefits; 24% indicated no benefits were provided for spouses or domestic partners; 3% indicated there were no employees; 1% indicated the occurrence of a collective bargaining agreement; and 3% indicated employees with domestic partners were offered a cash equivalent option. The method of EBO compliance for agreements is shown below:



Opportunities for EBO Clarification

During the initial implementation period for the EBO, two concerns were raised; each could be addressed and resolved through modifications to the text of the Ordinance.

1) Applicability of the EBO to Non-profit Corporations.

Discussion: Although the EBO was intended to apply to non-profit organizations with City agreements, a confluence of Municipal Code sections defeats this intention:

- SDMC §22.4308(a) states, “This Division does not apply to Contracts with a sole source or another agency, as defined in Section 22.3003.”
- SDMC §22.3003 contains these definitions:

Agency includes the State of CA, counties, districts public authorities, joint power agencies, public non-profit corporations, and any other public or quasi-public entity that the Council may designate by resolution.

Sole Source means the recipient of the *award* of a *public works contract*, *consultant* agreement, or *contract* without competitive selection or bidding.

- SDMC §22.3222 states (in part), “The City Manager may enter contracts for Services with any Agency or with any non-profit organization qualified under Section 501(c)(3) of the Internal Revenue Code without Council action...”

Cumulatively, these sections allow a non-profit corporation to be excepted from compliance with the EBO.

Proposed solution: Modify SDMC §22.4302 to include a definition of non-profit corporation and modify SDMC §22.4308(a) to clarify that the EBO applies to non-profit corporations.

2) Domestic Partner Definition.

Discussion: The current definition in SDMC §22.4302 states: “*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.”

This definition may be overly broad and may not define “domestic partners” with the clarity necessary to ensure the intended fairness. The proposed solution includes parameters stated in California’s legal definition (see Attachment E, *California Family Code Section 297*).

Proposed solution: Modify SDMC §22.4302 to include the following definition: “*Domestic partners* means any two adults in a relationship pursuant to the requirements for filing as domestic partners under California Family Code Section 297 and who are registered 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.”

FISCAL CONSIDERATIONS: There is no additional cost for the City of San Diego associated with the EBO. Employers are affected only if they pay for dependent costs, and, usually, cost for dependent coverage is the responsibility of the employee, not the employer. Dependent insurance costs are the same whether for a married spouse or a domestic partner.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None regarding this report.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: The City has posted detailed information regarding the EBO on the City’s website including the Municipal Code text, *Rules Implementing the EBO*, all forms and notices (some in Spanish), and sample policies. A brochure summarizing EBO requirements is available. Equal Benefits Program staff presented at Purchasing & Contracting Department workshops entitled “How to Do Business with the City” and Engineering & Capital Projects Department’s “Annual Potential Bidders Conference.”

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Key stakeholders for the EBO are the City of San Diego citizens, contractors for the City and the employees of those contractors. The City’s Equal Benefits Ordinance Program employs efficient methods to provide information about the Equal Benefits Ordinance, monitor and track compliance with ordinance requirements, and assist contractors in meeting their obligations.

Official version signed by

Official version signed by

Debra Fischle-Faulk, Director
Administration Department

Wally Hill
Assistant Chief Operating Officer

- Attachment A: San Diego Municipal Code Chapter 2, Article 2, Division 43
- Attachment B: Equal Benefits Ordinance Synopsis
- Attachment C: Equal Benefits Ordinance Certification of Compliance form
- Attachment D: Rules Implementing the Equal Benefits Ordinance
- Attachment E: California Family Code Section 297

Article 2: Administrative Code**Division 43: Equal Benefits Ordinance***(“Equal Benefits Ordinance” added 11-16-2010 by O-20002 N.S.)***§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*.

(Added 11-16-2010 by O-20002 N.S.; effective 12-16-2010.)

§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*.

(Added 11-16-2010 by O-20002 N.S.; effective 12-16-2010.)

§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*.

(Added 11-16-2010 by O-20002 N.S.; effective 12-16-2010.)

§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*.

(Added 11-16-2010 by O-20002 N.S.; effective 12-16-2010.)

§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*.

(Added 11-16-2010 by O-20002 N.S.; effective 12-16-2010.)

§22.4306 Administration

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

(Added 11-16-2010 by O-20002 N.S.; effective 12-16-2010.)

§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.

(Added 11-16-2010 by O-20002 N.S.; effective 12-16-2010.)

§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.

(Added 11-16-2010 by O-20002 N.S.; effective 12-16-2010.)



EQUAL BENEFITS ORDINANCE

COMPLETE INFORMATION for the City of San Diego's Equal Benefits Ordinance including Municipal Code text, detailed *Rules Implementing the EBO*, Frequently Asked Questions, sample policies, and forms can be found on the City's website at:

[www.sandiego.gov/
administration/programs/equalbenefits/](http://www.sandiego.gov/administration/programs/equalbenefits/)

or contact the Equal Benefits Manager: (619) 533-3948 phone
(619) 533-3220 fax

APPLICABILITY: The EBO applies to all contracts awarded, renewed, or extended after January 1, 2011.

- **Covered:** All agreements for goods, services, public works construction, consultant services, grants from the City, and leases of City property.
- **Not covered:** Subcontracts, sole source contracts, government agency contracts, gifts, contracts where EBO applicability would be inconsistent with or violate federal or state regulations.

REQUIREMENTS of the EBO allow the City to contract only with entities that do not discriminate in the provision of benefits between employees with spouses and employees with domestic partners .

- A contractor must offer the same benefits to employees with spouses and employees with domestic partners for the duration of the contract.
- Prior to award, a contractor must submit an *EBO Certification of Compliance* form, signed under penalty of perjury.
- A contractor must notify employees of their equal benefits policy at time of hire and during open enrollment periods and must post an *EBO Notice to Employees* in an area frequented by employees.
- Upon request, a contractor must allow authorized City representatives access to documents and records to confirm EBO compliance.

COVERED EMPLOYEES: A contractor must offer equal benefits to:

All employees at contractor's operations—

- within City limits, regardless of whether employees perform work on the contract.
- on City owned or occupied property outside City limits, if contractor's presence there is connected to the contract.

Only employees who work on the City contract—

- if employees are located outside City limits but in the U.S.

DOMESTIC PARTNER means two adults, of the same or different sex, registered as domestic partners with a government entity or an employer's internal registry.

BENEFITS include:

- medical, dental, vision insurance;
- pension, retirement, 401(k) plans;
- family, parental, bereavement leave;
- childcare, employee assistance programs;
- discounts, credit union memberships;
- travel or relocation expenses; and
- any other benefit.

COLLECTIVE BARGAINING AGREEMENTS in effect prior to January 1, 2011, are not covered by the EBO. However, a contractor must agree to provide other benefits equally and propose to incorporate EBO requirements when the collective bargaining agreement is renegotiated.

CITY OF SAN DIEGO

RULES IMPLEMENTING THE EQUAL BENEFITS ORDINANCE

Effective date February 15, 2011

EQUAL BENEFITS PROGRAM

Administration Department

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Phone: (619) 533-3948 Fax: (619) 533-3220

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Appendix: **Equal Benefits Ordinance Notice and Forms:**

EBO Notice to Employees (English, Spanish)

EBO Certification of Compliance

EBO Employee Complaint Form (English, Spanish)

RULES IMPLEMENTING THE EQUAL BENEFITS ORDINANCE

The purpose of these Rules Implementing the Equal Benefits Ordinance [Rules] is to provide guidance for contractors to comply fully with the requirements of the City of San Diego's Equal Benefits Ordinance, Chapter 2, Article 2, Division 43 of the San Diego Municipal Code (SDMC) [the Equal Benefits Ordinance or simply "EBO"]. These Rules are intended as an administrative aide to carry out the intent of the EBO and should not be construed to extend, modify, or otherwise alter the substantive provisions of the EBO.

A. DEFINITIONS

Definitions set forth in the EBO are incorporated into these Rules:

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, 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 partner 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.

B. APPLICABILITY OF EBO

- 1. Effective Date.** The EBO applies to any contract entered into, awarded, amended, renewed or extended on or after January 1, 2011, unless the EBO does not apply based on exceptions described in SDMC §22.4308(a-e) and Section C, 1-8 of these *Rules*.
- 2. Contract Provisions.** When the EBO applies, each contract shall include:
 - a. A provision requiring contractors to certify that the contractor will maintain equal benefits for the duration of the contract; and
 - b. A provision stating that failure to maintain equal benefits is a material breach of the contract.
- 3. Jurisdiction.**
 - a. Contractors subject to the EBO shall extend equal benefits to:
 - (1) All employees –
 - (a) At operations within the City’s geographical limits, regardless of whether employees at these locations perform work on the contract; and
 - (b) At operations outside of the City’s geographical limits on City owned or occupied property if the contractor’s presence at or on that property is connected to a contract.
 - (2) Only employees who perform work on the City contract – if employees are located outside of the City’s geographical limits but in the United States.
 - b. The EBO does not apply to subcontractors.
 - c. The entity that enters into a contract with the City is the entity that shall comply with the EBO. Separate corporate entities, including parents and subsidiaries of the entity that contracts with the City, are not required to comply with the EBO. In the case of a joint venture, all joint venture members are required to comply with the EBO.
 - d. Nothing in the EBO precludes a contractor or subcontractor from extending equal benefits to all employees, and in fact, the City encourages contractors to end discrimination in benefits throughout their operations and commends contractors who do so.
- 4. Evasion of EBO Requirements Prohibited.** A contractor shall not use a separate contracting entity to evade requirements of the EBO.
- 5. Final Authority.** The Director of Administration has the final authority in determining

whether an agreement is subject to the EBO.

C. EXCEPTIONS

The EBO does not apply to:

1. **Subcontracts** or subcontractors.
2. **Sole Source Contracts**, defined in SDMC §22.3003 as a public works contract, consultant agreement, or contract awarded without competitive selection or bidding.
3. **Contracts with another agency**, defined in SDMC §22.3003 as the State of California, counties, districts, public authorities, joint power agencies, public non-profit corporations, and any other public or quasi-public entity that the Council may designate by resolution.
4. **Cooperative procurement contracts**, defined in SDMC §22.3003 as a contract entered into by the Purchasing Agent and another agency to obtain goods or services or an agency contract utilizing a bidding process that complies with City requirements.
5. **Federal or State Preclusions**. Contracts subject to federal or state law or regulations that preclude applicability of the EBO.
6. **Collective Bargaining Agreement Prior to January 1, 2011**. Contracts with a contractor subject to a collective bargaining agreement in effect prior to January 1, 2011.
7. **Contracts for gifts or donations** to the City.
8. **Violate Federal or State laws**. Contracts where compliance with the EBO would violate or be inconsistent with Federal or State laws, rules, or regulations.

D. CONTRACTOR REQUIREMENTS

A contractor with an agreement subject to the EBO shall comply with all requirements of the EBO and these *Rules*.

1. **Submit Certification of EBO Compliance**. Prior to award of contract, a contractor shall submit to the City a *Certification of EBO Compliance*, signed under penalty of perjury, affirming that the contractor will abide by the terms of the EBO and these *Rules* and will provide equal benefits as required by the contract. The *Certification of EBO Compliance* form is included in the Appendix to these *Rules*.
 - a. A contractor may affirm compliance with the EBO in the following situations:
 - (1) Benefits available to an employee's spouse are equal to benefits available to an employee's domestic partner.
 - (2) No benefits are available to the spouse of an employee or the domestic partner of

an employee.

- (3) The contractor has no employees.
 - (4) The contractor has a collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.
 - (a) When the collective bargaining agreement is renegotiated, the contractor shall propose to the union to incorporate EBO requirements so all benefits provided to employees with spouses are also extended to employees with domestic partners.
 - (b) The contractor must establish policies to provide benefits in accordance with EBO requirements for those benefits not strictly governed by a collective bargaining agreement (such as bereavement leave).
- b. A contractor may request to pay a cash equivalent to comply with the EBO. The City may allow a contractor to provide a cash equivalent as an alternative to providing equal benefits if the City determines that either (1) the contractor has made 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.
- (1) The contractor shall submit correspondence to the Equal Benefits Manager requesting to comply with the EBO through payment of a cash equivalent to affected employees and shall include supporting documentation to demonstrate that contractor has made a reasonable effort to provide equal benefits or that under the circumstances it would be unreasonable to require contractor to provide equal benefits.
 - (2) The contractor shall amend policies to extend benefits to domestic partners for which a cash equivalent is not available (such as bereavement leave) and shall notify employees of the availability of a cash equivalent, in accordance with Section D, 2c(1-3) of these *Rules*.
- 2. Provide Equal Benefits.** A contractor shall provide equal benefits to employees with spouses and employees with domestic partners; spouses of employees and domestic partners of employees; and dependents and family members of spouses and dependent and family members of domestic partners.
- a. Such benefits are defined as all remuneration other than wages, salary, bonuses, commissions, and stock options offered to an employee as part of a total compensation package, including but are not limited to health and medical benefits; pension and retirement benefits; family leave; bereavement leave; transportation and travel benefits; moving expenses; employee discounts; memberships or membership discounts; no-additional-cost services; and any other employment or fringe benefit.
 - b. If a contractor does not offer a benefit to an employee with a spouse, that same

- benefit is not required to be extended to employees with domestic partners.
- c. As an alternative to providing equal benefits, a contractor may provide an employee with a cash equivalent if all of the following three conditions are met:
- (1) The contractor submits correspondence to the Equal Benefits Manager requesting to comply with the EBO through payment of a cash equivalent and includes supporting documentation. Such supporting documentation may include relevant information concerning:
 - (a) Availability of domestic partner coverage where the contractor has operations subject to the EBO.
 - (b) Whether the contractor contacted its current carrier or any other carriers to obtain domestic partner coverage.
 - (c) Type of coverage available under the contractor's current carrier compared to coverage provided if domestic partner coverage were added.
 - (d) Existence of federal, state or other law which precluded the contractor from providing equal benefits.
 - (e) Any other factors relevant to the contractor's efforts to provide equal benefits.
 - (2) In the sole determination of the Director of Administration:
 - (a) The contractor has made a reasonable, yet unsuccessful, effort to provide equal benefits; or
 - (b) Under the circumstances, it would be unreasonable to require the contractor to provide equal benefits.
 - (3) As a condition of approval, the contractor agrees to:
 - (a) Pay employees with domestic partners the cash equivalent of all benefits made available to spouses of employees.
 - (b) Amend policies to extend benefits to domestic partners for which a cash equivalent is not available (such as bereavement leave).
 - (c) Provide employees with a memorandum notifying them of the availability of the cash equivalent if they have domestic partners to whom equal benefits are not provided.
- d. The EBO requires the City to contract only with entities that do not discriminate in the provision of benefits:
- (1) Between domestic partners and spouses of employees;

- (2) Between dependents and family members of employees with spouses and dependents and family members of employees with domestic partners;
 - (3) Between employees with spouses and employees with domestic partners; and
 - (4) Based on the gender or sexual orientation of the spouses or domestic partners.
- e. A contractor may verify the existence of a domestic partnership or marriage to the extent such verification is undertaken equally for employees with domestic partners and employees with spouses.
- f. Other issues:
- (1) Excess costs.
 - (a) If the actual cost to provide a benefit to an employee with a domestic partner exceeds the cost of providing the benefit to an employee with a spouse, or vice versa, a contractor may condition provision of equal in that particular case upon the employee agreeing to pay the excess costs.
 - (b) Excess costs the contractor may pass on to the employee shall include only actual benefit costs for that employee and shall not include implementation or administrative expenses, any tax consequence to the contractor, or additional costs to other employees.
 - (2) Taxation.
 - (a) Withholding of income tax from an employee for income associated with provision of benefits is permissible to the extent the taxation is required by state or federal law.
 - (b) Nothing in these Rules is intended to require a contractor take any action that would jeopardize the tax-qualified status of a retirement plan.
 - (3) Continuation of benefits, including health benefits, shall be provided equally to the spouses of employees and domestic partners of employees, except where otherwise prohibited by law.
 - (4) Information gathered in the course of administration of benefits shall be respected as confidential and shall be disclosed only as necessary in the course of administration of benefits or as required by law.
- 3. Notify Employees of EBO Policy.** Notification by a contractor to its employees regarding the provision of benefits to employees with spouses and employees with domestic partners shall be conducted so that all employees are given equal notice of all available benefits.

- a. At a minimum, a contractor shall notify employees of their equal benefits policy at the time of hire and during open enrollment periods. Upon request, copies of such notifications shall be provided to the City for review to determine EBO compliance.
- b. A contractor 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, the contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. For further information, contact the City of San Diego Equal Benefits Program at (619) 533-3948.”

For convenience, a contractor may use the *EBO Notice to Employees* in the Appendix to these *Rules*.

- c. A contractor shall update all employee policy manuals to include statements of their equal benefits policy. Upon request, copies of such manuals shall be provided to the City for review to determine EBO compliance. Sample policies are provided on the City’s website at www.sandiego.gov.

4. Provide City Access to Records. A contractor subject to the EBO shall allow authorized City representatives access to documents and records to monitor EBO compliance and investigate EBO complaints.

- a. At its sole discretion, the City may conduct reviews to determine contractor compliance with EBO requirements.
- b. Upon request, a contractor shall submit documentation sufficient in the City’s determination to demonstrate compliance with the EBO. Requirements for EBO compliance and examples of acceptable documentation for various benefit types are as follows:

(1) Health, Dental, Vision, or Dependent Life Insurance; Employee Assistance Program.

(a) Requirements for EBO compliance:

(i) Access to insurance or employee assistance shall be the same for spouses and domestic partners and their dependents.

(ii) Domestic partner shall be defined as any person whose partnership is currently registered with a governmental body pursuant to state or local law or with an internal registry maintained by the employer of at least one of the domestic partners.

(iii) There shall be no requirements for proof of relationship or waiting periods that are not also applied to married couples.

- (iv) If continuation coverage is available to spouses and stepchildren, the insurer should confirm that COBRA-like continuation coverage is available to domestic partners and their children.
- (b) Acceptable documentation shall include:
 - (i) Basic Plan Document's cover page, eligibility section, and other relevant sections; or
 - (ii) A statement (letter or email) from insurance provider confirming that spouses and domestic partners receive equal coverage in contractor's specific plan.
- (2) Retirement, pension, 401(k).
- (a) Requirement for EBO compliance: any retirement or savings plan shall offer distribution options that are the same for spouses and domestic partners.
 - (b) Acceptable documentation shall include:
 - (i) Summary Plan Description cover page and distribution section; or
 - (ii) Basic Plan Document; or
 - (iii) Adoption Agreement of plan.
- (3) Bereavement Leave, Family Leave, Parental Leave, Relocation and Travel, Company Discounts, Credit Union, Childcare.
- (a) Requirements for EBO compliance:
 - (i) Domestic partner shall be defined as any person whose partnership is currently registered with a governmental body pursuant to state or local law or with an internal registry maintained by the employer of at least one of the domestic partners.
 - (ii) Where the term "spouse" is used, the term "domestic partner" shall be included.
 - (iii) If the bereavement leave policy allows time off from work because of the death of a spouse, it shall also allow for time off because of the death of a domestic partner. The definition of "immediate family" shall be defined in the bereavement leave policy, and if it includes in-laws, the equivalent members of a domestic partner's family shall be explicitly included.
 - (b) Acceptable documentation shall include Employee Handbook section(s) regarding benefits policies.

- (4) Other benefits – a firm offering other benefits must specify those benefits and provide documentation sufficient to demonstrate such benefits are offered equally.
- c. Failure to submit documents in a timely manner or allow access to work sites as requested may be deemed as noncompliance with the EBO. In addition to remedies provided for by the EBO, such noncompliance may result in a recommendation that the contractor's agreements be terminated and/or payments to the contractor be withheld until documentation is submitted and access is provided.
 - d. Documents and information obtained in the course of administration of the EBO become City records. Disclosure is subject to provisions and limitations of the California Public Records Act. Consistent with the Public Records Act, documents and information obtained during the course of an investigation or inquiry shall remain confidential while the investigation or inquiry is ongoing.

E. ADMINISTRATIVE RECORDKEEPING AND REPORTS

1. **EBO Administrative Records.** The Director of Administration shall maintain a list of contractors subject to the EBO and records of all EBO compliance reviews and EBO complaint investigations with findings and results.
2. **Report to Council.** The Director of Administration may provide special reports and recommendations to the City Council on significant issues of interest regarding the EBO.

F. MONITORING AND INVESTIGATION

These Rules will augment the City's normal and customary procedure for administering its contracts.

1. **EBO Contract Language.** The Equal Benefits Manager shall assist departments to ensure standard EBO contract language is incorporated into all subject agreements.
2. **Contractor Monitoring.** The Equal Benefits Manager shall monitor operations of contractors subject to the EBO to ensure compliance by reviewing documentation and, if necessary, conducting site visits and employee interviews. The Equal Benefits Manager may review the provision of equal benefits by a contractor as part of site visits. A contractor shall cooperate with the Equal Benefits Manager when a meeting, site visit, or documentation is requested. Cooperation includes providing:
 - a. Full access to the work site for employer and employee interviews.
 - b. Copies of documentation to assist in determining if a contractor is providing or has provided the wages and benefits required by the EBO. Acceptable documentation is described in Section D, 4b(1-4) of these *Rules*.
3. **Investigation in Response to Specific Concerns or Complaints.** Whether based upon a complaint or otherwise, the City shall initiate an investigation when there is a specific concern or complaint about a contractor. If an allegation of noncompliance with the EBO

is received, the City shall initiate an investigation pursuant to these *Rules*.

4. **Employer's Failure to Reasonably Cooperate.** If a contractor fails to produce requested documentation, fails to allow access to the work site or the employees for interviews, or otherwise unreasonably fails to cooperate, the Director of Administration may consider the contractor to be out of compliance with the EBO. In addition to remedies provided in the EBO, the Director of Administration may request payments to the contractor be withheld until the contractor cooperates.

G. ENFORCEMENT

1. **Notice to Employer of EBO Violations.** Whether based upon a complaint or otherwise, if the Director of Administration determines that a contractor is not providing equal benefits as required by the contract, the Equal Benefits Manager shall issue a written notice to the contractor that the violation is to be corrected within 30 days.
2. **Remedies.** If a contractor has not demonstrated within 30 days that it has substantially cured any material violation of the EBO and no resolution is imminent, the Equal Benefits Manager upon approval from the Director of Administration shall initiate one or more of the following:
 - a. Request the Purchasing Agent to declare a material breach of the contract and exercise its contractual remedies including but not limited to termination of the contract and the return of monies paid by the City for services not rendered.
 - b. Recommend debarment under Article 2, Chapter 2, Division 8 of the San Diego Municipal Code.
 - c. Request a determination of non-responsibility under Article 2, Chapter 2, Division 32 of the San Diego Municipal Code.

H. EMPLOYEE COMPLAINT PROCESS

1. **Employee Complaints.** An employee who alleges violation of any provision of the EBO by an employer may report such acts to the Equal Benefits Manager and, at the employee's discretion, exhaust available employer internal remedies. An employee making a complaint regarding an employer's compliance with the EBO may submit the complaint in writing to the Equal Benefits Manager, on the *EBO Employee Complaint Form*, included in the Appendix to these *Rules*.
2. **Confidentiality of Information during Investigation.** Consistent with the California Public Records Act, information and records obtained by the City in the course of its complaint investigations, including identity of complainants and witnesses, shall be considered confidential and exempt from public disclosure during the course of the investigation.
3. **Investigation of Employee Complaints.** Upon receipt of an employee's written complaint, the City shall investigate and address any alleged violation of EBO

requirements or contractual equal benefits requirements. Upon conclusion of the investigation, the Equal Benefits Manager shall notify the employee of the results.

- 4. Resolution of Investigation into Employee Complaints.** The City will attempt to complete an investigation into an employee's complaint within 30 to 60 days. If the investigation is not complete within 60 days, the Equal Benefits Manager shall notify the employee of the status of the investigation and provide regular status reports to the employee every 30 days until the investigation is completed.
- 5. Submission of Additional Information after Completion of Investigation.** At completion of an investigation, the Equal Benefits Manager upon approval from the Director of Administration will notify the complainant and the contractor, if appropriate, of the investigation results.
 - a. Either the complainant or the contractor may request reconsideration of the Equal Benefits Manager's investigation findings. Such request for reconsideration shall be based solely on discovery of new information, which, along with the written reconsideration request, shall be submitted to the Equal Benefits Manager, within 30 days of receiving notice of the findings.
 - b. If the request for reconsideration and new information is received before the 30 day deadline, the Equal Benefits Manager upon approval from the Director of Administration will re-evaluate the original complaint and notify the employee and the employer the result of the reconsideration.
 - c. If the request for reconsideration and the new information is submitted after the 30 day deadline, the discretion of whether to reopen the investigation shall lie solely with the Director of Administration.
- 6. Payment of Amounts Due to Employees.** If corrective payments are required to be paid to an employee in order to comply with the equal benefits requirement in the contract, the contractor shall pay the entire amount due to the employee in one payment within the time period required by the City in its notice to the contractor.

APPENDIX

City of San Diego

**EQUAL BENEFITS ORDINANCE
NOTICE AND FORMS**

The notice and forms listed below are approved by the City for use in conjunction with these *Rules*. The Notice is provided for convenience; when these *Rules* refer to the use of a form, only the current version included in this Appendix may be used.

NOTICE:

Equal Benefits Ordinance Notice to Employees (English, Spanish)

FORMS:

Equal Benefits Ordinance Certification of Compliance

Equal Benefits Ordinance Employee Complaint Form (English, Spanish)



EQUAL BENEFITS ORDINANCE

ORDENANZA DE BENEFICIOS EQUIVALENTES

NOTICE TO EMPLOYEES

This employer is a contractor with the City of San Diego and is subject to the Equal Benefits Ordinance.

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

FOR MORE INFORMATION

For more information or to obtain a complaint form if you believe your rights are being violated, please contact:

AVISO PARA EMPLEADOS

Este empleador es contratista de la Ciudad de San Diego y está sujeto a la Ordenanza de Beneficios Equivalentes.

Durante el término del contrato con la Ciudad de San Diego, el contratista proporcionará beneficios equivalentes a sus empleados casados y a sus empleados con parejas cohabitantes.

PARA MAYOR INFORMACION

Para más información o para obtener un formulario de quejas si usted considera que sus derechos han sido violados, por favor llame:

CITY OF SAN DIEGO
EQUAL BENEFITS PROGRAM
 202 C Street, MS 9A, San Diego, CA 92101
 Phone (619) 533-3948 Fax (619) 533-3220

For additional information, contact:

CITY OF SAN DIEGO

EQUAL BENEFITS PROGRAM

202 C Street, MS 9A, San Diego, CA 92101

Phone (619) 533-3948 Fax (619) 533-3220

EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE



COMPANY INFORMATION

Company Name:	Contact Name:
Company Address:	Contact Phone:
	Contact Email:

CONTRACT INFORMATION

Contract Title:	Start Date:
Contract Number (if no number, state location):	End Date:

SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

The Equal Benefits Ordinance [EBO] requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply:

- Contractor shall offer equal benefits to employees with spouses and employees with domestic partners.
 - Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance programs; credit union membership; or any other benefit.
 - Any benefit not offered to an employee with a spouse, is not required to be offered to an employee with a domestic partner.
- Contractor shall post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods.
- Contractor shall allow City access to records, when requested, to confirm compliance with EBO requirements.
- Contractor shall submit *EBO Certification of Compliance*, signed under penalty of perjury, prior to award of contract.

NOTE: This summary is provided for convenience. Full text of the EBO and its Rules are posted at www.sandiego.gov/administration.

CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION

Please indicate your firm's compliance status with the EBO. The City may request supporting documentation.

- I affirm **compliance** with the EBO because my firm (*contractor must select one reason*):
 - Provides equal benefits to spouses and domestic partners.
 - Provides no benefits to spouses or domestic partners.
 - Has no employees.
 - Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.

- I request the City's approval to pay affected employees a **cash equivalent** in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.

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. [San Diego Municipal Code §22.4307(a)]

Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by the City.

Name/Title of Signatory	Signature	Date
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FOR OFFICIAL CITY USE ONLY

Receipt Date:	EBO Analyst:	<input type="checkbox"/> Approved	<input type="checkbox"/> Not Approved – Reason:	
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EMPLOYEE COMPLAINT FORM
FORMULARIO DE QUEJAS



Send form to:

CITY OF SAN DIEGO
EQUAL BENEFITS PROGRAM
202 C Street, MS 9A, San Diego, CA 92101
Phone (619) 533-3948 Fax (619) 533-3220

EQUAL BENEFITS ORDINANCE REQUIREMENTS
ORDENANZA DE BENEFICIOS EQUIVALENTES

This ordinance requires a contractor to offer the same benefits to employees with spouses and employees with domestic partners.

Esta ordenanza requiere que el contratista proporcione beneficios equivalentes a sus empleados casados y a sus empleados con parejas cohabitantes.

This ordinance applies only to a company with a City of San Diego contract entered into after January 1, 2011. This ordinance does not apply to subcontractors.

Esta ordenanza sólo aplica contratistas con contratos con la Ciudad de San Diego efectuados después del 1 de Enero 2011. Esta ordenanza no aplica a subcontratistas.

COMPANY INFORMATION
INFORMACIÓN SOBRE LA COMPAÑÍA

Company Name:

Nombre de la Compañía:

Company Address:

Dirección de la Compañía:

Company Phone:

Teléfono de la Compañía:

Work Site Address:

Sitio de Trabajo:

EMPLOYEE INFORMATION
INFORMACIÓN SOBRE EL EMPLEADO

Your Name:

Su Nombre:

Address:

Dirección:

Telephone number

Home:

Work:

*Número de teléfono**Residencia:**Trabajo:*

Please name or describe your employer's contract subject to the City of San Diego's Equal Benefits Ordinance:

Por favor nombre o describa el contrato sujeto a Ciudad de San Diego Ordenanza de Beneficios Equivalentes:

EMPLOYEE COMPLAINT
QUEJA DE EMPLEADO

Use reverse side if needed
Use el reverso si requiere de mas espacio

Signature · *Firma del Empleado*

Date · *Fecha*

FOR OFFICIAL CITY USE ONLY
PARA LA OFICINA DE LA CIUDAD SOLAMENTE

Date of Receipt:

EBO Analyst:

Contract Number:

CALIFORNIA FAMILY CODE

SECTION 297

297. (a) Domestic partners are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.
- (b) A domestic partnership shall be established in California when both persons file a Declaration of Domestic Partnership with the Secretary of State pursuant to this division, and, at the time of filing, all of the following requirements are met:
- (1) Both persons have a common residence.
 - (2) Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity.
 - (3) The two persons are not related by blood in a way that would prevent them from being married to each other in this state.
 - (4) Both persons are at least 18 years of age.
 - (5) Either of the following:
 - (A) Both persons are members of the same sex.
 - (B) One or both of the persons meet the eligibility criteria under Title II of the Social Security Act as defined in 42 U.S.C. Section 402(a) for old-age insurance benefits or Title XVI of the Social Security Act as defined in 42 U.S.C. Section 1381 for aged individuals. Notwithstanding any other provision of this section, persons of opposite sexes may not constitute a domestic partnership unless one or both of the persons are over the age of 62.
 - (6) Both persons are capable of consenting to the domestic partnership.
- (c) "Have a common residence" means that both domestic partners share the same residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return.