

CITY OF SAN DIEGO

RULES IMPLEMENTING THE EQUAL BENEFITS ORDINANCE

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EQUAL BENEFITS PROGRAM

202 C Street, M.S. 8A, San Diego, CA 92101
Phone: (619) 533-3948 Fax: (619) 533-3220

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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 in a relationship pursuant to the requirements for filing as domestic partners under California Family Code section 297 and 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 Purchasing & Contracting Department 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. Contracts with a sole source** or with the State of California, counties, districts, public authorities, joint power agencies, and any other public entity. This exception does not apply to non-profit organizations or nonprofit corporations awarded a contract per SDMC §23.3210.
- 3. Cooperative procurement contracts**, defined in SDMC §22.3003 as (a) a contract resulting from the joint and cooperative purchase of goods or services by the City and one or more *agencies*, or (b) a contract between a contractor and one or more *agencies*, or agencies thereof, that allows other *agencies* to use the terms, conditions, and pricing of the original *contract for goods* or *contract for services*.
- 4. Federal or State Preclusions.** Contracts subject to federal or state law or regulations that preclude applicability of the EBO.
- 5. 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.
- 6. Contracts for gifts or donations** to the City.
- 7. 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. Certify EBO Compliance.** In accordance with the City of San Diego's General Contract Terms and Provisions, by signing a contract, a contractor certifies that contractor is aware of and will comply with the Equal Benefits Ordinance and other City-mandated clauses for the duration of the contract.
 - 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 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 Purchasing & Contracting Director:
 - (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 one of two adults in a relationship pursuant to the requirements for filing as domestic partners under California Family Code section 297 and 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.
- (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 Purchasing & Contracting Director shall maintain records of contracts subject to the EBO and records of all EBO compliance reviews and EBO complaint investigations with findings and results.
2. **Report to Council.** The Purchasing & Contracting Director 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 Purchasing & Contracting Director may consider the contractor to be out of compliance with the EBO. In addition to remedies provided in the EBO, the Purchasing & Contracting Director 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 Purchasing & Contracting Director 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 Purchasing & Contracting Director 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 Purchasing & Contracting Director 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 Purchasing & Contracting Director 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 Purchasing & Contracting Director.
- 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.

City of San Diego

**EQUAL BENEFITS ORDINANCE
NOTICE AND FORMS**

The notice and form 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)

FORM:

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 8A, San Diego, CA 92101
Phone (619) 533-3948 Fax (619) 533-3220

**EMPLOYEE COMPLAINT FORM
FORMULARIO DE QUEJAS**



Send form to:

**CITY OF SAN DIEGO
EQUAL BENEFITS PROGRAM**
202 C Street, MS 8A, 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: