

PRINT-VIEW RECORD(S)

Next Record

LA CITY PROPOSAL

Record 1 of 8

DOCID

99-0908

STATUS

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CHNGDATE

5/26/99

TITLE

COMPARABLE EMPLOYEE BENEFITS - DOMESTIC PARTNERS

AUTHOR

Goldberg Mover 1999 / Galanter

SUBJECT

Mo - The City of Los Angeles currently has contracts for goods and services with hundreds of independent contractors employing thousands of workers. Because the City of Los Angeles receives the benefit of these employees' labor and in keeping with the City's commitment to equality of opportunity and treatment in the workplace, the City only enters into contracts with businesses that agree not to discriminate in their employment practices based on the "race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status or medical condition" of their respective employees.

In 1996-97, the City and County of San Francisco enacted measures recognizing that employee benefits constitute a significant part of employee compensation, and that discrimination based on marital status in the provision of such benefits results in unfair disparities among similarly situated workers (SF Administrative Code Chapter 12B). Accordingly, San Francisco limits eligibility for city contracts to those applicants for contracts which agree to provide comparable benefits to all of their similarly situated employees; in most instances, this involves provision of benefits to employees with domestic partners that are comparable to the benefits provided to employees with spouses. The San Francisco ordinance imposing this limitation was challenged in federal court and in April 1998, it was upheld in relevant part. *Air Transport Ass'n v. City and County of San Francisco*, 992 F.Supp.1149,76 Fair Empl.Prac.Cas. (BNA) 1008.

Recognizing that "unmarried couple constitute an increasing proposition of American households, including those within Los Angeles County", and that a mechanism for allowing couples to give public notice to their relationships will provide a valuable service both to the persons in those relationships and to society generally, the County of Los Angeles is establishing a countywide public registry of domestic partnerships for those who live or work within Los Angeles County.

In light of the number of unmarried couples who live and work within Los Angeles, and in keeping with the City of Los Angeles' longstanding commitment to workplace equity, it would be appropriate for the City of Los Angeles to consider expanding the scope of Section 10.8.2 of the LAAC to forbid discrimination based upon marital status in the provision of employee benefits, in order to insist that companies which receive the benefit of city contracts cease this form of unfair employment discrimination. The countywide registry of domestic partnerships will assist in the successful implementation of such an ordinance.

Prior to enactment of such an ordinance, however, City staff should analyze the impact of such a proposal and present a report to the City Council for its consideration.

THEREFORE MOVE that the City Council request the CAO and CLA to prepare and present a report to the City Ccl within 45 days analyzing the projected impact of a City policy that would require all contractors, subcontractors, lessees and sublessees that either provide goods or services to the City of Los Angeles or enjoy the use of City-owned real property to offer comparable employee benefits to those of their employees with domestic partners as they offer to their employees with spouses.

FURTHER MOVE that the City Ccl request that the City Attorney prepare and present an ordinance for consideration concurrently with the above report which would require all contractors, subcontractors, lessees and sublessees that either provide goods or services to the City of Los Angeles or enjoy the use of City-owned real property to offer comparable employee benefits to those of their employees with domestic partners as they offer to their employees with spouses, similar in effect to San Francisco Administrative Code Chapter 12B

5-21-99 - Ref to Personnel Comt

DATEREC

5/21/99

ACTIONS

5-21-99 - This days Ccl session - File to Cal Clk for placement on next available Ccl agenda

PERSONNEL COMMITTEE, SPECIAL MEETING

MONDAY, AUGUST 16, 1999

ROOM 315, CITY HALL - 1:30 PM
200 NORTH MAIN STREET, LOS ANGELES, CA 90012

MEMBERS: COUNCILMEMBER JACKIE GOLDBERG, Chair
COUNCILMEMBER MARK RIDLEY-THOMAS
COUNCILMEMBER MIKE FEUER

(Sandra L. Grange - Legislative Assistant - 213-485-4836)

Note: Assistive listening devices are available at the meeting; upon 24 hour advance notice, other accommodations, such as sign language interpretation, and translation services will be provided. Contact the Legislative Assistant listed above for the needed services. TDD available at (213) 485-4735.

FILE NO.	SUBJECT
	(1)
99-0908	Motion (Goldberg-Galanter) relative to an analysis by the City Administrative Officer and Chief Legislative Analyst on the projected impact of a City policy that would require all contractors, subcontractors, lessees and sublessees that either provide goods or services to the City or enjoy the use of City-owned real property to offer comparable employee benefits to those of their employees with domestic partners, as they offer to their employees with spouses, drafting of an appropriate ordinance and related matters.

Fiscal Impact Statement Submitted: No.

DISPOSITION _____

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Single . . . But Not Alone

AASP

American Association for Single People

Promoting the well being and civil rights of single adults and domestic partners

Thursday, August 26, 1999

LA Considers Proposal to Make City Contractors Offer DP Benefits

According to a report in Frontiers News Magazine, Los Angeles City Councilwoman Jackie Goldberg has introduced a motion to expand the city contractor nondiscrimination law to include "domestic partnerships."

The measure would require that all companies doing more than \$5,000 worth of business with the city offer their unmarried employees domestic partners benefits comparable to those they offer to married spouses.

The proposal, which would be patterned after San Francisco's Equal Benefits Ordinance and would apply to same-sex and opposite-sex couples, was heard in a council committee on Aug. 16. At the meeting, Goldberg and Councilman Mike Feuer directed city staff to review a report on the first two years of the San Francisco policy and return in September with a detailed proposal for Los Angeles.

To qualify under Goldberg's preliminary proposal, domestic partners would have to be registered with Los Angeles county.

In the current benefits program for city employees, only about 3 percent of Los Angeles city workers, the majority of whom are heterosexual, take advantage of the benefits. The city's cost for benefits has increased less than 1.5 percent since the policy began.

Court upholds rule requiring unmarried or divorced parents to pay for child's college education

According to an Associated Press story, the Missouri Supreme Court has upheld the constitutionality of a law allowing judges to require unmarried or divorced parents to pay child support and educational expenses for their children until they graduate from college or turn 22.

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

je
Date: October 25, 1999
To: The City Council
From: William T Fujioka, City Administrative Officer *WTF*
Ronald F. Deaton, City Legislative Analyst *RFL/RAK*
Subject: **IMPACT OF ~~DOMESTIC PARTNER~~ BENEFITS ORDINANCE UPDATE**
EQUAL

BY _____ CITY CLERK
RECEIVED

99 OCT 25 PM 1:28

RECEIVED
CITY CLERK'S OFFICE

On August 16, 1999, the Personnel Committee considered a joint report from the City Administrative Officer and Chief Legislative Analyst on the projected impact of a City policy that would require all contractors, subcontractors, lessees and sublessees (collectively referred to as contractors) to provide the same benefits to their employees with domestic partners as they provide to employees with spouses (C.F. 99-0908). Committee members requested additional information as to the types of benefits and coverage provided by current City contractors and their feedback regarding the proposed policy. Staff was also asked to review the "Two-Year Report on the San Francisco Equal Benefits Ordinance" and to report back with any relevant findings.

SURVEY RESULTS

A survey was conducted of City contractors known to provide employee benefits. They were extracted from a database used by the Living Wage unit which is considered the best list of contractors in the City. The size of the companies surveyed range from one employee to 1,951 employees. The survey sought information on the types of benefit plans, including health and retirement benefits and levels of coverage offered to employees. It also asked about domestic partner benefits coverage to determine how many companies already offer it and to obtain information on the cost of providing such a program. In addition, the survey obtained information on medical and dental premiums for employee only coverage as well as coverage for employee and spouse/domestic partner.

Of 152 surveys, 52 contractors responded, which is a response rate of 34%. Of those that responded to the survey, 12 (23%) currently offer domestic partner benefits. Only one of those has a domestic partner benefits policy that applies to same-sex couples only. Nine (17%) of the respondents offer benefits to employees only, 27 (52%) offer benefits to spouses and/or family members, two (3.8%) do not provide any benefits at all and two respondents did not provide sufficient information (see table).

	Employee + Domestic Partner/Spouse	Employee + Spouse	Employee Only	No Benefits
No.	12	27	9	2
% of total no. of respondents	23%	52%	17%	3.8%

A little more than half (52%) of the respondents also provide retirement benefits and/or additional plans such as disability, employee assistance program (EAP), life, and accidental death and dismemberment (AD&D) insurance. Less than half (48%) of the respondents provide a dental insurance plan.

Of the 27 respondents that provide medical benefits to spouses, 11 (21%) require the employee to pay for the additional cost to cover his/her spouse, 12 (23%) share the cost with their employees to cover a spouse, and 5 contractors (9.6%) pay for the full premium amount for spouse coverage.

Medical Insurance Cost Estimates

To obtain cost estimates of adding domestic partner medical benefits, staff examined the surveys from contractors that do not provide domestic partner coverage but provide a medical subsidy that covers part or all of the medical premium for spouse coverage. That includes 17 contractors from the survey. Contractors did not provide data regarding the cost of other benefit plans such as retirement and provided insufficient data on dental insurance plans. Therefore, those costs were not available.

Based upon the survey group, the average cost to add each domestic partner is as follows:

Size of company (no. of employees)	Weighted avg. annual cost per spouse/domestic partner
1-25	\$2,100
26-100	N/A (employee paid plans only in survey group)
more than 100	\$2,174

Staff estimates that 3% of the employee population within a company participates in domestic partner benefits, which is the participation rate experienced at the City as well as the City and County of San Francisco. The estimated cost for an employer

would be 3% of the workforce of the employer multiplied by the weighted average annual cost per employee.

The cost estimates do not include administrative costs that would be associated with administering and adding a new benefit. The long term effects on premium rates and employers' cost will depend on the enrollment and claims experience of the insurance plans from adding domestic partners. The financial impact on contractors can be mitigated by allowing them to pass on the additional costs, wholly or in part, to the covered employees.

A majority (67%) of the contractors that currently provide domestic partner benefits contribute to the cost of covering a domestic partner. These contractors indicated that the cost of providing domestic partner benefits was the same as the cost for providing spouse coverage. It is unclear how many employees are participating in the programs.

The survey covered only a portion of the total number of contractors and contractors that provide employee benefits. Therefore, the survey results may not be an accurate indicator of the full fiscal impact of the domestic partner ordinance (DPO). However, based on our assumptions, it does provide a best guess with the limited information available.

Contractors' Reaction

In the survey, the contractors were asked to share their comments and concerns about the proposed DPO. Many were in support of the policy. Two contractors even gave suggestions on how to implement the DPO from their experience with the City and County of San Francisco. Some contractors indicated that there would be no opposition to the DPO as long as it did not result in higher premiums. A small group opposed the DPO for either moral reasons or because of their lack of knowledge about domestic partner benefits.

TWO-YEAR REPORT ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE

Background

The City and County of San Francisco amended Chapter 12B of its Administrative Code in June 1997, to prohibit any agency of the City from entering into or amending any contract or lease with any contractor that discriminates in the provision of employee benefits (health benefits, retirement, bereavement leave, membership discounts, travel benefits, etc.). The Code requires that its contractors may not discriminate between employees with domestic partners and employees with spouses and/or between the

domestic partners and spouses of employees. It applies to contractors with whom the City does more than \$5,000 of business per year and it does not include subcontractors or sub-lessees.

The Human Rights Commission completed a two-year report on August 12, 1999, on the progress of the policy. The report did not include any economic data on the policy's fiscal impact. However, it did provide statistical data on the number of contractors that are in compliance as well as the number of waivers and exceptions that have been granted by the Commission.

City contractors may comply with the Equal Benefits Ordinance in the following ways:

- ▶ By offering employee benefits that do not discriminate between spouses and domestic partners.
- ▶ By offering no employee benefits that extend to spouses or domestic partners (or to employees because they have a spouse or domestic partner).
- ▶ By carrying no employees on their payroll.

Waivers and exceptions may also be made in certain instances. Contractors are provided waivers and exceptions when:

- ▶ There is only one source for a needed good or service or only one party with an interest in real property.
- ▶ There is an emergency that threatens the public health or safety.
- ▶ A public entity offers the City needed goods or services of a quality or accessibility that is unavailable from another source.
- ▶ There are multiple sources for a needed good, service or interest in real property but none is willing to comply.
- ▶ A transaction entered into through a bulk purchasing arrangement established by a governmental or regional entity would actually reduce the City's purchasing costs and would be in the City's best interest.

Experience

San Francisco estimates that 30,000 domestic partners have taken advantage of the domestic partner ordinance through the programs offered by City contractors. There are 2,300 City contractors offering domestic partner benefits. As of June 30, 1999, 8,005 contractors submitted compliance paperwork to the San Francisco Human Rights Commission. Of those, 5,510 are finalized. 5,101 (92.73%) have been found to be in compliance. 400 (7.27%) are out of compliance. Of those complying with the Equal Benefits Ordinance (5,001), 46% comply by offering nondiscriminatory benefits, 33% comply by offering no employee benefits, and 21% comply because they have no employees.

In the first 13 months of implementation of the Equal Benefits Ordinance (June 1, 1997 through June 30, 1998), San Francisco City departments have requested 1,474 waivers. 617 were approved. During the 2nd year of implementation (July 1, 1998- June 30, 1999), City departments requested a total of 1,393 waivers, of which 389 were approved.

Some businesses experienced difficulties in the provision of medical benefits when the Equal Benefits Ordinance was enacted in San Francisco. To resolve this problem, the San Francisco Chamber of Commerce developed a group insurance plan which was made available to any member businesses, regardless of their size. To further assist contractors, the Human Rights Commission maintains a list of insurance providers willing to offer domestic partner coverage to their customers. The list has over 100 carriers and reflects carriers in all 50 states and the District of Columbia.

Legal Decisions

As previously reported there have been numerous lawsuits challenging the legality of San Francisco's policy. In *Air Transportation Association (ATA), et. al. v. City and County of San Francisco, et. al.*, the Court placed jurisdictional limitations on San Francisco and held that the City could no longer apply the ordinance to a contractor's nationwide operations. The Court also ruled that where the City acts as a regulator, the ERISA guidelines preempt the ordinance. After attempts to file an injunction failed with respect to non-ERISA benefits, United Airlines announced that it would be offering domestic partner benefits and would limit benefits to opposite-sex couples for employees in San Francisco.

Two other challenges have been made. One lawsuit, involving an electrical contracting business that alleged it was denied a contract because of their refusal to comply with the ordinance was voluntarily dismissed. The Court upheld the ordinance in another lawsuit that alleged that the company was denied a contract because its anti-gay beliefs prohibited it from complying with the ordinance.

November 3, 1999

Mr. Coleman,

Please accept my apology for the delay in mailing this packet. The City Attorney needed to correct a typo in one ordinance. I was able to salvage mostly existing copies, therefore I won't invoice you.

Would suggest you check periodically re: Council scheduling status. If you have any questions, I can be reached at 213-485-5732.

Rhoda Lukjanic



JAMES K. HAHN
CITY ATTORNEY

WRITER'S DIRECT DIAL: (213) 485-4096
FAX: (213) 485-6560
TTY:

Office of the City Attorney
Los Angeles, California

REPORT NO. R 99 - 0 3 4 7
OCT 28 1999

REPORT RE:

**AN ORDINANCE AMENDING SECTION 22.359.1
OF THE LOS ANGELES ADMINISTRATIVE CODE**

RECEIVED
CITY CLERK'S OFFICE
99 OCT 28 AM 11:00
BY _____
CITY CLERK

The Honorable City Council
of the City of Los Angeles
Room 615, City Hall
Los Angeles, California 90012

Honorable Members:

Pursuant to your instructions, we have prepared and transmit herewith, approved as to form and legality, an Ordinance amending Section 22.359.1 of the Los Angeles Administrative Code to add the enforcement of the Equal Benefits Ordinance to the powers and duties of the Office of Contract Compliance.

Very truly yours,

JAMES K. HAHN, City Attorney

By 

LESLIE E. BROWN
Assistant City Attorney

LEB:lh

#49092

AN EQUAL EMPLOYMENT OPPORTUNITY — AFFIRMATIVE ACTION EMPLOYER

1800 CITY HALL EAST • 200 N. MAIN STREET • LOS ANGELES, CA 90012-4131 • (213) 485-6370

ORDINANCE NO. _____

An ordinance amending Section 22.359.1 of the Los Angeles Administrative Code to add the enforcement of the Equal Benefits Ordinance to the powers and duties of the Office of Contract Compliance.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS**

Section 1. Section 22.359.1 of the Los Angeles Administrative Code is hereby amended by adding the following subsection:

(8) To ensure that each contractor doing business with the City complies with the equal benefits requirements applicable to their contract.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, by a vote of not less than two-thirds of all of its members, at its meeting of

J. MICHAEL CAREY, City Clerk


By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

JAMES K. HAHN, City Attorney

By  _____
LESLIE E. BROWN
Assistant City Attorney

File No. _____



JAMES K. HAHN
CITY ATTORNEY

Office of the City Attorney
Los Angeles, California

WRITER'S DIRECT DIAL: (213) 485-4096
FAX: (213) 485-6560
TTY:

REPORT NO. R 99 - 0 3 4 4
OCT 28 1999

REPORT RE:

DRAFT OF EQUAL BENEFITS ORDINANCE

RECEIVED
CITY CLERK'S OFFICE
99 OCT 28 AM 10:59
BY CITY CLERK

The Honorable Personnel Committee of the City Council
Room 615, City Hall
200 North Main Street
Los Angeles, California 90012

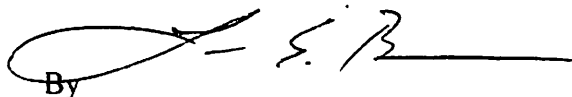
(Council File No. 99-0908 - transmitted herewith.)

Honorable Members:

Pursuant to your instructions, we have prepared and transmit herewith for your consideration a discussion draft of an ordinance adding Section 10.8.2.1 to the Los Angeles Administrative Code, entitled the "Equal Benefits Ordinance." The ordinance provides for the mandatory inclusion of a provision in all City contracts, valued in excess of \$5,000.00, prohibiting discrimination in the payment of benefits between employees of City contractors and subcontractors with spouses and employees of City contractors and subcontractors with domestic partners. In accordance with the instructions from the Committee, the draft ordinance incorporates language substantially similar to that found in the Equal Benefits Ordinance enacted by the City and County of San Francisco which has been placed within the framework of existing Los Angeles Administrative Code provisions pertaining to City contracts.

Very truly yours,

JAMES K. HAHN, City Attorney


By

LESLIE E. BROWN
Assistant City Attorney

LEB:lh

#49091

AN EQUAL EMPLOYMENT OPPORTUNITY — AFFIRMATIVE ACTION EMPLOYER

1800 CITY HALL EAST • 200 N. MAIN STREET • LOS ANGELES, CA 90012-4131 • (213) 485-6370

ORDINANCE NO. _____

An ordinance adding Section 10.8.2.1 to the Los Angeles Administrative Code to provide that City contractors and sub-contractors shall not discriminate in the provision of employee benefits between employees with spouses and employees with domestic partners.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Sections 10.8.2.1 is hereby added to the Los Angeles Administrative Code to read as follows:

Sec. 10.8.2.1 Equal Benefits Ordinance.

a. All Contracts: Equal Benefits Clause.

No contracting agency of the City, or any department thereof, acting for or on behalf of the City, shall execute or amend any contract with any contractor that discriminates in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits as well as any benefits other than bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, or a internal registry maintained by the contractor, subject to the following conditions. In the event that the contractor's 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 agreeing to pay the excess costs. In addition, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a cash equivalent.

b. Applicability.

The requirements of this Section shall apply to (i) any of a contractor's operations within Los Angeles; and (ii) a contractor's operations on real property outside of Los Angeles owned by the City or which the City has a right to occupy if the contractor's presence at that location is connected to a contract with the City; (iii) where the work is being performed by a contractor for the City within the United States.

c. Mandatory Provisions Pertaining to Equal Benefits.

Every contract or subcontract with, or on behalf of the City of Los Angeles for which the consideration is in excess of \$5,000 shall contain the following provisions which shall be designated as the Equal Benefits Provisions of such contract or subcontract:

"A. During the performance of this contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative that the contractor and each subcontractor hereunder will provide equal benefits to its employees with spouses and employees with domestic partners.

1. The contractor or subcontractor agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Equal Benefits Provisions of this contract, and on their or either of their request to provide evidence that it has or will comply therewith.

C. The failure of any contractor or subcontractor to comply with the Equal Benefits Provisions of this contract may be deemed to be a material breach hereof. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor or subcontractor in accordance with the provisions of Section 22.359.3 of the Los Angeles Administrative Code.

D. Upon a finding duly made that the contractor or subcontractor has breached the Equal Benefits Provisions of this contract, this contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor or subcontractor is an irresponsible bidder pursuant to the provisions of Section 386 of the Los Angeles City Charter. In the event of such determination, such contractor or subcontractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he shall establish and carry out a program in conformance with the provisions hereof.

E. Notwithstanding any other provisions of this contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.

F. The Office of Contract Compliance shall promulgate rules and regulations and forms for the implementation of the Equal Benefits Provisions of this contract. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.

G. Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

H. The equal benefits requirements of this section shall not apply to collective bargaining agreements in effect prior to the effective date of this ordinance. Amendments, extensions or other modifications of such collective bargaining agreements, occurring subsequent to the effective date of this ordinance, shall incorporate the equal benefits requirements of this ordinance."

d. Enforcement.

In accordance with Division 22, Chapter 13, Article 10, of this Code, the Board of Public Works, Office of Contract Compliance is responsible for the enforcement of the equal benefits requirements, as referenced in this section, or as otherwise required, of all City contracts. In enforcing this requirement, the

Office of Contract Compliance will monitor, inspect, and investigate to insure that the contractor is acting in compliance with the equal benefits requirements of such City contracts. Each awarding authority shall cooperate to the fullest extent with the Office of Contract Compliance in their enforcement activities.

1. The failure of any contractor or subcontractor to comply with the equal benefits provisions of a contract may be deemed to be a material breach of the contract subject to the procedures and penalties set forth in this section, below.

e. Non-applicability, Exceptions and Waivers.

(1) The Office of Contract Compliance shall waive the requirements of this Section under the following circumstances:

A. Whenever the Office of Contract Compliance finds, upon the advice of the awarding authority, that 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 that 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 currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

B. If the contracting department, board or commission certifies in writing to the Office of Contract Compliance that the contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Section capable of responding to the emergency is immediately available; provided that such certification must be made prior to the final approval of the contract.

C. Where the City Attorney certifies in writing to the Office of Contract Compliance that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Section.

(2) This Section shall not apply where the prospective contractor is a public entity and the Office of Contract Compliance finds that goods, services, construction services for a public work

or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract are not available from another source, or that the proposed contract is necessary to serve a substantial public interest;

(3) This Section shall not apply where the contracting officer finds that the requirements of this Section 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, provided that the contracting officer has made a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to authorize application of this Section.

(4) Upon the request of a potential contractor or upon the contracting officer's own initiative, after taking all reasonable measures to find an entity that complies with the law, the contracting officer may waive any or all of the requirements of this Section for any contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the date of the enactment of this ordinance under the following circumstances:

A. Where the contracting officer determines that there are no qualified responsive bidders or prospective contractors who could be certified as being in compliance with the requirements of this Section and that the contract is for goods, a service or a project that is essential to the City or City residents; or

B. Where the contracting officer determines that transactions entered into pursuant to bulk purchasing arrangements through federal, state or regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or

C. Where the contracting officer determines that the requirements of this Section would result in the City's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Section, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Section.

D. The waiver authority granted to contracting officers in this section 10.39.3(d) shall be subject to the requirements that:

(i) All proposed waivers must be submitted to the Office of Contract Compliance and the City Clerk. All proposed waivers must set forth the reasons the contracting officer is requesting the waiver, what steps were taken to find an entity that complies with this Section and why the waiver does not defeat the intent of this Section, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Section. Such waivers shall be subject to the prior approval of the Office of Contract Compliance, who shall take action approving or denying a proposed waiver within 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30 days the Office of Contract Compliance has taken no action on the proposed waiver the waiver shall be deemed approved. The City Clerk shall list the notice of the proposed waiver on the the next available Council agenda; and

(ii) Contracting officers report to the Office of Contract Compliance whenever such a waiver is granted within 5 days of granting the waiver; and

(iii) For any contract subject to approval by the Council, the contracting officer shall state in the approving resolution whether any waiver under this section has been or is proposed to be granted for that contract; and

(iv) The Office of Contract Compliance shall conduct quarterly comprehensive reviews of the use of the waiver authority by departments and shall make a report to the Council. Contracting officers who have exercised waiver authority under this section in the previous quarter must appear before a Council committee and report on their use of such waiver authority. If the Council finds

abuse of waiver authority by a department under this section, either as a result of a report of the Office of Contract Compliance or upon its own initiative, the Council may by resolution transfer that waiver authority for that department to the Office of Contract Compliance, to be exercised by the Office of Contract Compliance upon recommendation of the contracting officer under any or all of the circumstances enumerated in this section.

E. Nothing in this section shall limit the right of the City to waive the provisions of this Article.

(5) This Section shall not apply to (i) the investment of trust moneys or agreements relating to the management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:

A. No person, entity or financial institution doing business in the City which is in compliance with this Section is capable of performing the desired transaction(s); or

B. The City will incur a financial loss which in the opinion of the Treasurer would violate his or her fiduciary duties.

This subparagraph (5) shall be subject to the requirement that City moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Section.

(6) The General Manager of the Department of Water and Power may waive the requirements of this Section where the contractor is providing wholesale or bulk water or power, the conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or load scheduling, as required for assuring reliable services in accordance with good utility practice, to or on behalf of the Department of Water and Power; provided that the purchase of same may not practically be accomplished through the City's standard competitive bidding procedures; and further provided that this exemption shall not apply to contractors or franchisees providing direct, retail services to end users within the City of Los Angeles.

(7) The equal benefits requirements of this section shall not apply to any contracts, executed or amended prior to January 1, 2000 or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the City, prior to January 1, 2000, unless and until such contracts are amended after January 1, 2000, and would otherwise be subject to this Section.

f. Severability.

If any provision of this section is declared legally invalid by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, by a vote of not less than two-thirds of all of its members, at its meeting of

_____.

J. MICHAEL CAREY, City Clerk

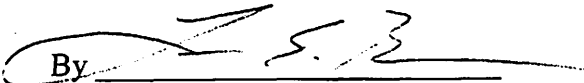
By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

JAMES K. HAHN, City Attorney

By  _____
LESLIE E. BROWN
Assistant City Attorney

File No. _____