

Memo

To: Members Board of Supervisors
From: Rich Gordon *RG*
Date: 01/30/01
Re: Equal Benefits Ordinance

RECOMMENDATION

That the Board of Supervisors adopts an ordinance adding Chapter 2.93 to the San Mateo County Ordinance Code to provide for the non-discrimination by County contractors in the provision of employee benefits

BACKGROUND

This ordinance was first introduced in November 2000 and unanimously approved at that time. Since November consultation has occurred with representatives of organized labor and with personnel of the City and County of San Francisco where a similar ordinance is in effect. Based on these discussions there are several changes proposed in order to simplify and clarify the draft ordinance. For this reason the ordinance is being re-introduced and the hearing on February 6, 2001 will serve as the first reading of the ordinance.

Changes that have been made to the ordinance include

- The ordinance will apply to contractors with County contracts over \$5,000 regardless of the number of employees. [The previous draft had applied to contractors with fifteen or more employees.]
- Domestic partner is defined to include persons who are registered with the State of California or a similar registry in their state of residence.
- For contractors that are signatory to a collective bargaining agreement the ordinance will become effective for contracts on the effective date of the next collective bargaining agreement.
- Pensions are removed as a benefit to be covered.

- Liquidated damages have been specified at \$2 500 and the Board of Supervisors will be the final decision-maker concerning any penalties imposed under the ordinance

The proposed ordinance requires that contractors with contracts over \$5 000 provide the same benefits to domestic partners registered with the state as are provided to married couples. If the employer cannot provide the benefit, it may provide a cash equivalent. If the provision of the benefit generates excess cost for the employer, this excess cost may be passed on to the employee with the employee's consent. The ordinance also provides for exceptions to be granted under specific circumstances.

San Mateo County has been a leader in efforts at assuring non-discrimination in County contracts and in providing recognition and benefits for the domestic partners of our employees. Enactment of this ordinance would continue this leadership by ensuring non-discrimination by County contractors by also requiring them to provide benefits for domestic partners.

FISCAL IMPACT

There would be no fiscal impact on County funds if this ordinance were adopted. The proposed ordinance would apply to contracts awarded or amended after July 1, 2001, in order to give time to contractors and County departments to prepare for this change.

ORDINANCE NO _____
An Ordinance Adding Chapter 2 93 to the San Mateo Ordinance Code
to Provide for Non-Discrimination by County Contractors in the
Provision of Employee Benefits

WHEREAS, employee benefits routinely comprise a significant proportion of total employee compensation, and

WHEREAS, discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work, and

WHEREAS, County of San Mateo law prohibits discrimination based on marital status and/or sexual orientation; and

WHEREAS, it is the County's intent, through the contracting practices outlined herein, to equalize the total compensation between similarly situated employees with spouses and employees with domestic partners;

NOW THEREFORE, BE IT ORDAINED BY THE COUNTY OF SAN MATEO AS FOLLOWS:

Section 1. There is hereby added to the Ordinance Code of the County of San Mateo a new Chapter 2 93 to read as follows

Chapter 2. 93 County Contracts - Non-Discrimination in Benefits

2.93.010 Definitions.

For the purposes of this chapter,

- A. "Contract" means a legal agreement between the County and a Contractor for public works, consulting, or other services, or for purchase of supplies, material or equipment for which the consideration is in excess of \$5,000.

- B “Contractor” means a party who enters into a Contract with the County
- C “Contract Awarding Authority” means the Board of Supervisors or the individual authorized by the Board of Supervisors to enter into Contracts on behalf of the County
- D. “Domestic Partner” means any person who is registered as a domestic partner with the Secretary of State, State of California registry or the registry of the state in which the employee is a resident
- E. “Employee Benefits” means the provision of any benefit other than pension and retirement benefits provided to spouses of employees or provided to an employee on account of the employee’s having a spouse, including but not limited to bereavement leave; disability, life, and other types of insurance, family medical leave, health benefits; membership or membership discounts; moving expenses, vacation, travel benefits; and any other benefits given to employees, provided that it does not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state law.

2.93.020 Discrimination in the provision of benefits prohibited

(a) No Contractor on a County Contract shall discriminate in the provision of Employee Benefits between an employee with a domestic partner and an employee with a spouse, subject to the following conditions:

1. In the event that the Contractor’s actual cost of providing a particular 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 particular benefit to 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 Employee Benefits if the Contractor conditions providing such benefit upon the employee's agreement to pay the excess costs

2. The Contractor shall not be deemed to discriminate in the provision of Employee Benefits if, despite taking reasonable measures to do so, the Contractor is unable to extend a particular employee benefit to domestic partners, so long as the Contractor provides the employee with a cash payment equal to the Contractor's cost of providing the benefit to an employee's spouse.

(b) The Board of Supervisors may waive the requirements of this Chapter when it determines that it is in the best interests of the County. The County Manager may waive the requirements of this chapter for Contracts not needing the approval of the Board of Supervisors where waiver would be in the best interests of the County for such reasons as follows:

1. Award of a Contract or amendment is necessary to respond to an emergency,
2. The Contractor is a sole source;
3. No compliant Contractors are capable of providing goods or services that respond to the County's requirements;
4. The requirements are inconsistent with a grant, subvention or agreement with a public agency,

5. The County is purchasing through a cooperative or joint purchasing agreement,

(c) Contractors should submit requests for waivers of the terms of this Chapter to the Contract Awarding Authority for that Contract, or in the case of Contracts approved by the Board, the County Manager

(d) The Contract Awarding Authority, or in the case of Contracts approved by the Board, the County Manager, may reject an entity's bid or proposals, or terminate a Contract, if the Contract Awarding Authority determines that the entity was set up, or is being used, for the purpose of evading the intent of this Chapter

(e) No Contract Awarding Authority shall execute a Contract with a Contractor unless such Contractor has agreed that the Contractor will not discriminate in the provision of Employee Benefits as provided for in this Chapter.

2.93.030 Application of Chapter.

The requirements of this Chapter shall only apply to those portions of a Contractor's operations that occur (i) within the County, (ii) on real property outside of the County if the property is owned by the County or if the County has a right to occupy the property, and if the Contractor's presence at that location is connected to a Contract with the County, and (iii) elsewhere in the United States where work related to a County Contract is being performed. The requirements of this Chapter shall not apply to subcontracts or subcontractors of any contract or Contractor.

2.93.040 Powers and duties of the County Manager.

The County Manager's office shall have the authority to

(a) Adopt rules and regulations, in accordance with this Chapter and the Ordinance Code of the County of San Mateo, establishing standards and procedures for effectively carrying out this Chapter.

(b) Receive notification from employees of Contractors regarding violations of this Chapter

(c) Determine and recommend to the Board of Supervisors for final decision the imposition of appropriate sanctions for violation of this Chapter by Contractors including, but not limited to

1. Disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 5 years, and
2. Contractual remedies, including, but not limited to termination of contract
3. Liquidated damages in the amount of \$2,500.

(d) Examine Contractors' benefit programs covered by this chapter;

(e) Impose other appropriate contractual and civil remedies and sanctions for violations of this chapter,

(f) Allow for remedial action after a finding of non-compliance, as specified by rule;

(g) Perform such other duties as may be required or which are necessary to implement the purposes of this Chapter.

2.93.050 Date of Application

The provisions of this Chapter shall apply to any Contract awarded or amended on or after July 01, 2001, provided that if the Contractor is then signatory to a collective bargaining agreement, this Chapter shall only apply to any Contract with that Contractor which is awarded

or amended after the effective date of the next collective bargaining agreement

Section 2 Severability The provisions of this ordinance are declared to be separate and severable If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, finds any provision of this ordinance to be invalid or unenforceable as to any person or circumstance, such offending provision shall, if feasible, be deemed to be modified to be within the limits of enforceability or validity However, if the offending provision cannot be so modified, it shall be null and void with respect to the particular person or circumstance, and all other provisions of this ordinance in all other respects, and the offending provision with respect to all other persons and all other circumstances, shall remain valid and enforceable

Section 3. This ordinance shall take effect and be in force 30 days after its enactment.