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**Council Bill Number:** 112928

**Ordinance Number:** 119748

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AN ORDINANCE related to contracts; creating a new Seattle Municipal Code Chapter 20.45 requiring contractors on City contracts to provide employee benefits to their employees with domestic partners equivalent to those provided to their employees with spouses.

**Status:** Passed As Amended

**Note:** APEX Program ordinance.

**Vote:** 9-0

**Date filed with the City Clerk:** 1999/11/24

**Date of Mayor's signature:** 1999/11/23 ([about the signature date](#))

**Date introduced/referred to committee:** 1999/10/04

**Committee:** Public Safety, Health & Technology

**Sponsor:** PODLODOWSKI

**Committee Recommendation:** Pass

**Index Terms:** EMPLOYEE-BENEFITS, DOMESTIC-PARTNERS, CONTRACTS, CONSULTANT-CONTRACTS

**Electronic Copy:** [PDF scan of Ordinance No. 119748](#)

**Reference:** Related: Res 28004, 28085; Amends: Ord 110733, 118696

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**Text:**

AN ORDINANCE related to contracts; creating a new Seattle Municipal Code Chapter 20.45 requiring contractors on City contracts to provide employee benefits to their employees with domestic partners equivalent to those provided to their employees with spouses.

WHEREAS, employee benefits routinely comprise between 30 and 40 percent 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, Seattle law prohibits discrimination based on marital status and/or sexual orientation; and

WHEREAS, contractors with the City of Seattle are required to comply with the City's nondiscrimination laws; and

WHEREAS, it is the City'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 CITY OF SEATTLE AS FOLLOWS:

Section 1. There is hereby added to the Seattle Municipal Code a new Chapter 20.45 to read as follows:

Chapter 20.45 City Contracts - Non-Discrimination in Benefits

20.45.010 Definitions. For the purposes of this chapter,

A. "Contract" means a contract for public works, consulting, or supplies, material, equipment or services as set forth in SMC Ch. 3.18.800 et seq., estimated to cost Thirty Three Thousand Dollars (\$33,000.00) or more in 1999, consistent with the competitive threshold requirements of, and as adjusted pursuant to, Seattle Municipal Code Sections 3.18.840 and 3.114.140.

B. "Contract awarding authority" means the City officer, department, commission, employee, or board authorized to enter into or to administer contracts on behalf of the City.

C. "Department" means the Executive Services Department.

D. "Director" means the Executive Services Department Director.

E. "Domestic Partner" means any person who is registered with his/her employer as a domestic partner, or, in the absence of such employer- provided registry, is registered as a domestic partner with a governmental body pursuant to state or local law authorizing such registration. Any internal employer registry of domestic partnership must comply with criteria for domestic partnerships specified by rule by the Department.

F. "Employee benefits" means the provision of bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefits given to employees, provided 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.

#### 20.45.020 Discrimination in the provision of benefits prohibited.

A. No contractor on a City 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 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 employee benefits if the contractor conditions providing such benefit upon the employee agreeing 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 equivalent.

B. Other options for compliance allowed.

Provided that a contractor does not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, a contractor may:

1. Elect to provide benefits to individuals in addition to employees' spouses and employees' domestic partners;
2. Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent benefits; or
3. Provide benefits neither to employees' spouses nor to employees' domestic partners.

C. Requirements inapplicable under certain conditions.

The Director may waive the requirements of this chapter where:

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 City's requirements;
  4. The contractor is a public entity;
  5. The requirements are inconsistent with a grant, subvention or agreement with a public agency;
  6. The City is purchasing through a cooperative or joint purchasing agreement;
- D. Requests for waivers of the terms of this Chapter are to be made to the Department by the contract awarding authority in a manner prescribed by the Department. Decisions by the Department to issue or deny waivers are final.
- E. The Director may reject an entity's bid or proposal, or terminate a contract, if the Director determines that the entity was set up, or is being used, for the purpose of evading the intent of this Chapter.
- F. 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.
- G. All contracts awarded by the City shall contain provisions developed by the Department prohibiting discrimination in the provision of employee benefits, including provisions containing appropriate remedies for the breach thereof as prescribed by SMC Ch. 20.45.040, except as exempted by this chapter or rule.

#### 20.45.030 Limitations.

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

#### 20.45.40 Powers and duties of the Director.

The Executive Services Department Director shall have the power to:

- A. Adopt rules and regulations, in accordance with this chapter and the Administrative Code of The City of Seattle (SMC Chapter 3.02), establishing standards and procedures for effectively carrying out this chapter;
- B. Determine and impose appropriate sanctions and/or liquidated damages for violation of this chapter by contractors including, but are not limited to:
  1. Disqualification of the contractor from bidding on or being awarded a City contract for a period of up to 5 years; and
  2. Contractual remedies, including, but not limited to, liquidated damages and termination of the contract.
- C. Examine contractor's benefit programs covered by this chapter;
- D. Impose other appropriate contractual and civil remedies and sanctions for violations of this chapter;
- E. Allow for remedial action after a finding of non-compliance, as specified by rule.

F. Perform such other duties as may be required by ordinance or which are necessary to implement the purposes of this chapter.

20.45.050 Effective date.

The provisions of this chapter shall apply to any contract awarded on or after September 30, 2000.

Section 2. On October 1, 2001, the Department will present to the Council a status report on the implementation of these provisions. This status report will include options for expanding the provisions to cover additional City contracts, including but not limited to employee benefits, franchise, concessions, and contracts under the formal competitive bid threshold, and will specifically outline alternative program options and associated resource requirements.

Section 3. Consistent with the Copernicus project objectives of improving and streamlining our contracting processes while still pursuing important social and economic policies of the City, the Department will evaluate the provisions of the new "Boost" program, this "Non-Discrimination in Benefits" ordinance, and the "City Contracts -Prevention of Discrimination Ordinance (SMC Ch. 20.44) in order to recommend ways to harmonize the various rules, processes and legislation with each other and with existing rules, processes and legislation related to contracting. By September 30, 2000, the Department will present to the Council a proposal for reducing time and cost of contracting, from a baseline established in December of 1999. On October 1, 2001, the Department's status report to Council on implementation and possible expansion of the provisions of this Chapter will include documentation of further contract processing efficiencies.

Section 4. 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 5. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 1999, and signed by me in open session in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 1999. \_\_\_\_\_ President \_\_\_\_\_ of the City Council

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 1999. \_\_\_\_\_ Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 1999. \_\_\_\_\_ City Clerk November 22, 1999

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