



City of Portland
Non-Discrimination in Benefits - Administrative Rules
("Equal Benefits Program Rules")
Effective Date: January 2007
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1 PURPOSE

These rules are intended to:

Establish uniform rules and procedures for implementing the provisions of Portland City Code (PCC) Chapter 3.100.050 – 3.100.056 requiring certain City Contractors to provide the same or equivalent benefits to employees with spouses and employees with domestic partners and to the spouses and domestic partners of employees; and provide clear guidance to entities seeking to comply with these requirements.

2 BUREAUS AFFECTED

All City bureaus, departments or offices.

3 CITY CODE REFERENCES

Portland City Code Chapter 3.100.050 – 3.100.056 – Non-Discrimination in Contracting.

4 POLICY

- 4.1 The City shall not execute a contract exceeding the formal solicitation threshold for goods and services, construction, revenue generating or professional, technical or expert services with a Contractor unless the Contractor has agreed that it will not discriminate in the provision of employee benefits as provided for in Portland City Code 3.100.053 or is otherwise in compliance with these administrative rules.
- 4.2 All contracts exceeding the formal solicitation threshold awarded by the City on or after January 1, 2007 and covered by PCC 3.100.052 shall contain provisions developed by the Bureau of Purchases prohibiting discrimination in the provision of employee benefits, including provisions containing appropriate remedies for the breach thereof as prescribed by PCC 3.100.055, except as may otherwise be provided by this chapter or these rules or procedures.
- 4.3 Beginning March 1, 2008 the rules and procedures apply contract amendments that exceed 12 months and independently trigger the formal thresholds for each type of service. The amendment process shall not be used for the purpose of evading the requirements of PCC Ch. 3.100.050 or these provisions by intentionally reducing the time needed to complete the work or to lessen the additional contract amount in order to avoid triggering the formal threshold amounts. The Purchasing Agent may require the Contractor to comply with the equal benefit requirements if it is found to be in the best interest of the City.
- 4.4 These rules and procedures are intended to provide guidelines, clarification and assistance for implementing the requirements of the City’s Equal Benefits Ordinance.

5 DEFINITIONS

- 5.1 Bureau. “Bureau” means the Bureau of Purchases.

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- 5.2 Contract. “Contract” means all formal solicitation contracts for Public Improvements and Construction Services authorized and executed pursuant to PCC Chapter 5.34, and all formal solicitation contracts for Revenue generating, and Goods and Services authorized and executed pursuant to PCC Chapter 5.33 and all formal solicitation contracts for Professional, Technical and Expert services (PTE) authorized and executed pursuant to PCC Chapter 5.68
- 5.3 Director or Purchasing Agent. “Director” or “Purchasing Agent” means the Director of the Bureau of Purchases, or that person to whom those duties have been properly delegated.
- 5.4 Contractor. “Contractor” means any person or entity, in whatever legal form, that enters into a Contract with the City of Portland.
- 5.5 Domestic Partner. “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 any state or local law authorizing such registration and who is in fact a current domestic partner with the person with whom that person was registered. Any internal employer registry of domestic partnership must not impose more stringent requirements for registration than the requirements adopted by Multnomah County, Oregon.¹
- 5.7 Employee Benefits. “Employee Benefits” or “Benefits” means any plan, program or policy provided by a Contractor to its employees as part of the employer's total compensation package. “Employee Benefits” includes, but is not limited to: pension and retirement benefits; medical, dental and vision plans or other health benefits; bereavement, family medical, parental and other leave policies; disability, life, and other types of insurance; employee assistance programs; memberships or discounts; moving expenses; access to facilities, services and events; travel and relocation expenses; incentive, stock option, and profit sharing plans and other compensation programs; 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 these rules to such benefits may be preempted by federal or state law.²
- 5.8 Non-discrimination in Benefits. “Non-discrimination in Benefits” means the provision of the same or equivalent benefits to employees with spouses and employees with domestic partners, to spouses of employees and domestic partners of employees, and to dependents and family members of spouses and dependents and family members of domestic partners. Non-discrimination in Benefits is further defined by PCC Chapter 3.100.053 and elsewhere within these rules. Non-discrimination in Benefits is also referred to as provision, or implementation, of “equal benefits” elsewhere within these rules.

¹ See Multnomah County Department of Assessment and Taxation web site for information related to Domestic Partnership registration. www.co.multnomah.or.us

² See Section 9: Covered Benefits.

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Comment: All of the examples below describe employer benefits policies that are in compliance with PCC 3.100.050 through 3.100.056. The standard measure of a non-discriminatory benefits policy is **parity** - benefits offered to one group (employees' spouses), must be offered, on equal terms, to the other group (employees' domestic partners):

- 1) FAMILY LEAVE: *Company Q does not offer any healthcare benefits to its employees. The company does allow married employees: time off to care for a sick spouse; family leave to care for the children of his/her spouse (i.e. employee's step-children); bereavement leave upon the death of a family member (including persons related by marriage). Company Q allows the same leave time, on the same terms (i.e. paid or unpaid), for employees with domestic partners. Married employees and employees with domestic partners are equally informed of the availability of this leave time.*
- 2) ACCESS TO INSURANCE: *Company Y offers healthcare benefits to its employees. Spouses of employees are eligible to enroll in the insurance plan but they must pay 100% of the extra premium cost. Domestic partners of employees are also eligible to enroll in the insurance plan and they are required to pay 100% of the extra premium cost. (Note: If the extra premium cost were shared between Company Y and the employee spouse, the same terms must be offered to the employee's domestic partner.*
- 3) NO BENEFITS: *Company X is small and cannot afford to offer any benefits to its employees, married or otherwise. This policy is in compliance with PCC 3.100.050 through 3.100.056 in that there is parity between employees with spouses and employees with domestic partners.*
- 4) NO BENEFITS TO SPOUSES OF EMPLOYEES: *Company Z provides to its employees: travel stipends, medical and dental insurance coverage, gym membership, relocation expenses, and discounts on Company Z merchandise. No benefits are available for the spouses or domestic partners of its employees. This policy is in compliance with PCC 3.100.050 through 3.100.056 in that there is parity between employees with spouses and employees with domestic partners.*

5.9 Cash Equivalent Payment. "Cash Equivalent Payment" means the amount of money paid to an employee by a Contractor who, despite taking all reasonable measures, is unable to end discrimination in benefits.

6 JURISDICTION

6.1 Subcontracts and Subcontractors. The Non-discrimination in Benefits requirement does not apply to subcontracts or subcontractors.

6.2 Location. The Non-discrimination in Benefits requirement applies to a Contractor during the duration of the contract in all of its operations located:

6.2.1 within the City of Portland;

6.2.2 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

6.2.3 elsewhere in the United States where work relating to a City Contract is being performed.

Comment: The following is an example of how PCC 3.100.050 through 3.100.056 applies to companies that have several different locations: Company B has offices in Portland, Boston, and Nashville. Company B enters into a consultant Contract with the City, with all of the consulting work to be performed in its Nashville office. Under its Contract with the City, Company B must practice non-discrimination in benefits in both its Portland and Nashville offices, but is not obligated to do so in its Boston office.

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- 6.3 Nothing in this section shall preclude a Contractor from ending discrimination in benefits throughout its U.S. or International operations. The City encourages Contractors to end discrimination in benefits throughout their U.S. or International operations and commends Contractors that do so.

7 EFFECTIVE DATE

These rules and procedures shall apply to any Contract awarded on or after January 1, 2007. Beginning March 1, 2008 the rules and procedures apply to Revenue generating contracts exceeding \$150,000 and amendments to contracts that exceed 12 months and independently trigger the formal thresholds for each type of service. The amendment process shall not be used for the purpose of evading the requirements of PCC Ch. 3.100.050 or these provisions.

8 COVERED ENTITY

The Contractor must comply with PCC 3.100.050 through 3.100.056. Separate corporate entities, including subsidiaries of the entity that Contracts with the City, are not required to comply with PCC Ch. 3.100. All joint venture members are required to comply with PCC 3.100.050 through 3.100.056.

9 COVERED BENEFITS

A Contractor must end discrimination in all benefits offered to spouses or domestic partners of employees and in all benefits offered to employees because they have a spouse or domestic partner.

10 FULL COMPLIANCE OPTIONS

Contractors are required to be in full compliance with the Equal Benefits Ordinance. Full compliance means providing the same benefits to the domestic partners and spouses of employees. The following employee benefits policies also are in compliance with the requirements of PCC 3.100.050 through 3.100.056:

- 10.1 Full Compliance: Contractor provides benefits to individuals in addition to employees' spouses and employees' domestic partners; or

Comment: 1) Under Section 10.1, a Contractor who provides equal benefits to employees with spouses and employees with Domestic Partners may elect to also provide coverage for additional individuals. For example, Bank of America has a policy that, in addition to spouses and domestic partners, extends some benefits to “other individuals if the relationship with [the employee] is especially close and it would be normal for them to turn to [the employee] for assistance.”

2) Under Section 10.2, a Contractor may elect to provide benefits on a basis unrelated to marital and domestic partner status. For example: ABC Service Provider is a faith-based organization that objects to administering benefits based on domestic partner status. In order to comply with PCC 3.100.050 through 3.100.056, the Contractor may choose to allow ALL employees to designate a member of their household as a recipient of benefits.

- 10.2 Full Compliance: Contractor provides benefits on a basis independent of marital or domestic partner status by allowing all employees to designate a legally domiciled

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member of the employee’s household as being eligible for spousal equivalent benefits;
or

- 10.3 Full Compliance: Contractor does not provide benefits to either employees' spouses or to employees' domestic partners.

11 DELAYED COMPLIANCE

The Director may authorize a Contractor to delay being in full compliance with the Equal Benefits Ordinance as follows:³:

- 11.1 If a Contractor is unable to end discrimination in benefits by the time of Contract Award, the Contractor must provide to employees with a Domestic Partner a Cash Equivalent Payment and must take Reasonable Measures to end such discrimination as soon as possible.
- 11.2 The term “Cash Equivalent Payment” means the amount of money paid by the Contractor for the benefit given to a spouse of a similarly situated employee. To the extent that a Contractor limits the availability of any benefit to the spouses of employees, or vice versa, the availability of a Cash Equivalent Payment may be similarly limited. The Cash Equivalent Payment shall be made either on the same schedule as the City Contractor uses for the benefit given to employees with spouses, or, if no such schedule exists, on another schedule so long as such payment is made no less than once per month. No Cash Equivalent Payment will be required where making such a payment would violate federal or state law.

Comment: 1) The following scenarios are provided as examples of Cash Equivalent Payments for similarly situated employees:

(i) Company Q provides health insurance coverage for its employees, including spousal coverage for married employees. Insurance coverage for an unmarried employee costs Company Q \$100/month. Insurance coverage for a married employee whose spouse is also covered by the plan costs Company X \$150/month. The Cash Equivalent Payment amount due to an employee with a domestic partner is \$50/month.

(ii) Company Z has locations in Dallas, TX and Bridgeport, CT, and offers spousal health insurance to its employees in both locations. Company Z is doing business with the City of Portland such that they are required to comply with PCC 3.100.050 through 3.100.056 in both locations. After taking all reasonable measures, Company Z is still unable to provide health insurance for the domestic partners of its employees in both locations. The Cash Equivalent Payment amount owed to eligible employees is calculated by comparing Company Z’s insurance costs within a single location (i.e. either Bridgeport or Dallas). Therefore, the Cash Equivalent Payment Company Z would pay to its Bridgeport employees would be the difference between the cost of insurance in Bridgeport for an unmarried employee and a married employee whose spouse is also covered; similarly, the Cash Equivalent Payment Company Z would pay to its Dallas employees would be the difference between the cost of insurance in Dallas for an unmarried employee and a married employee whose spouse is also covered.

³ See Form: *Delayed Compliance Authorization*. The City shall not enter into a Contract with a Contractor unless the Contractor has received authorization from the Bureau of Purchase to delay implementation of equal benefits pursuant to Section 11. The Contractor is responsible for submitting the *Delayed Compliance Authorization* form to Bureau of Purchases in a timely manner.

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- 11.2 The term “Reasonable Measures” means administrative actions by the Contractor to implement Non-discrimination in Benefits,. The time allotted for these administrative steps shall apply only to those benefits for which administrative steps are necessary and may not exceed three months. An extension of this time may be granted at the discretion of the Director upon the written request of the Contractor.
- 11.3 In the event that Reasonable Measures cannot be implemented within three months then the Contractor may be eligible for a period of additional delay depending on the time it takes to implement the nondiscrimination policy. The following are examples of additional delays that may be authorized:
- 11.3.1 Open Enrollment: The Contractor may receive up to a fifteen (15) month delay from the date the Contract to implement nondiscrimination if additional time is needed to provide an open enrollment period to provide health benefits to their employees with domestic partners. This delay applies to benefits for which an open enrollment process is applicable.

Comment: For purposes of Section 11.3.1, the term "open enrollment process" begins when the Contractor starts planning for, and negotiating with its insurance provider(s) regarding, the benefits to be offered during the next benefits plan year, and ends at the next effective date. The term "open enrollment period" refers to the time when employees are eligible to enroll themselves or others in the Contractor's benefits plan. The term "effective date" refers to the date upon which the next benefits plan year begins;

- 11.3.2 Collective Bargaining: The Contractor may receive an extension until the expiration of a Contractor's current collective bargaining agreement(s) where all of the following conditions have been met:
- 11.3.2.a The provision of benefits is governed by one or more collective bargaining agreement(s); and
- 11.3.2.b The Contractor takes all reasonable measures to end discrimination in benefits by requesting that the Union(s) involved agree to either reopen the agreement(s) in order for the Contractor to take whatever steps necessary to end discrimination in benefits or end discrimination in benefits without reopening the collective bargaining agreement(s); and
- 11.3.2.c In the event that the Contractor cannot end discrimination in benefits despite taking all reasonable measures to do so, and, subject to the Union's approval, the Contractor provides a Cash Equivalent Payment to eligible employees for whom benefits are not available.

12 WAIVERS and NON-APPLICABILITY

- 12.1 Bureaus may submit to the Director a request to waive the Non-Discrimination in Benefit requirements after encouraging Contractors who are not in Full or Delayed Compliance to comply with the Equal Benefits Ordinance. Waiver is permitted in the following situations:

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- 12.1.1 Emergency: When the award of a Contract is necessary to respond to an emergency and the proposed Contractor refuses to comply with the Equal Benefits Ordinance, and rejection of the Contractor would adversely affect the City's interests the initiating bureau must submit a request for a Waiver to the Bureau of Purchases under this provision;
- 12.1.2 Sole source: Whenever it can be established that the proposed Contractor is a “sole source” as defined by City rules and the Contractor refuses to comply with the Equal Benefits Ordinance then the initiating bureau must submit a request for a Waiver from the Bureau of Purchases under this provision. The Contract cannot be executed, nor can work commence until the Waiver has been granted;
- 12.1.3 Public Entity: The Equal Benefit requirement does not apply when the Contractor is a public entity that does not provide equal benefits;
- 12.1.5 Cooperative and Joint Purchases: The Equal Benefit requirement does not apply when the City is purchasing goods and/or services through a cooperative or joint purchasing agreement;
- 12.1.6 Absence of Compliant Contractors: No capable, compliant Contractors are available. Whenever it can be established to the satisfaction of the Bureau of Purchases that no compliant Contractors are capable of providing goods or services that respond to the City's requirements, a Waiver under this provision may be granted; or
- 12.1.7 Unique Circumstances: Whenever unique circumstances exist and application of the Equal Benefits Ordinance would result in extreme hardship to the City.

Comment: The following is an example of when a Waiver under Section 12.1.6 might be necessary: In response to a competitive solicitation process, the Bureau of Purchases receives two Bids or proposals for a particular Contract. Both bidders and/or proposers satisfy all of the City's requirements except for the Non-discrimination in Benefits requirement. The circumstances are such that it is not feasible for the City to delay awarding the Contract in order to allow for another competitive solicitation process. A Waiver of the equal benefits requirement may be granted by the Director under these conditions, provided that a Waiver under this provision is not granted until all reasonable measures to facilitate compliance from an otherwise responsive bidder or proposer have been taken.

- 12.2 Requests for Waivers. Bureaus seeking a waiver shall make a written request for waiver in writing to the Director before the award of the Contract. Waiver forms may be found on the Bureau of Purchases' website.⁴
- 12.2.1 Criteria. The written justification requesting a Waiver must provide information on the following factors:
1. The dollar amount of the Contract and a statement of the scope of work and the goods, tasks, or services to be provided or performed by the Contractor or through the Contract.

⁴ See Form *Equal Benefits Request for Waiver*

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2. An explanation of the situation requiring a Waiver of these requirements.
3. An explanation of the alternatives to a Waiver that were considered by the Bureau, and why each alternative was rejected.
4. A statement indicating whether they anticipate any amendment to the Contract, including the potential scope of work and estimated dollar value of additional work.
5. A description of the steps taken to identify other qualified Contractors and an explanation of the rationale for selecting the Contractor.

12.3 Additional Requirements. Where a bureau seeks to obtain the approval of a Waiver from the Director, the requesting bureau must:

- 12.3.1 Inform the prospective Contractor that the Non-discrimination in Benefits requirement of PCC 3.100.050 through 3.100.056 applies to the Contract in question; and
- 12.3.2 attempt to award any future Contracts for the needed goods, construction, or professional, technical or expert services to a Contractor that does not discriminate in the provision of benefits by developing contacts with other providers who do comply with the Non-discrimination in Benefits requirement of PCC 3.100.050 through 3.100.056 and/or by referring the sole source provider to the Bureau of Purchases so that staff may assist the sole source provider to fully comply with the Non-discrimination in Benefits requirement of PCC 3.100.050 through 3.100.056.

Decisions by the Director to approve or deny Waivers are final.

13 SANCTIONS AND REMEDIES

- 13.1 The Director shall determine and impose appropriate sanctions, and/or remedies for a Contractor's breach of a Contract subject to the requirements of PCC 3.100.050 through 3.100.056 and these rules including, but not limited to:
 - 13.1.1 Rejection of a Contractor's bid;
 - 13.1.2 Debarment of the Contractor from bidding on or being awarded a City contract for a period of up to 3 years or until Contractor is brought into full compliance with the Equal Benefit Requirements, or both; and
 - 13.1.3 Contractual remedies, including, but not limited to, termination of the Contract for default;
 - 13.1.4 Conditioning further work upon remedial action. Where the Director determines that the best resolution of non-compliance would be remedial action by the Contractor, the Director may allow the Contractor to take such action in lieu of Contract termination or debarment. The Director may require the Contractor to provide Cash Equivalent Payments to employees who did not receive equal benefits during the term of the Contract. The Director may

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require other appropriate remedial action, including expedited implementation of equal benefits, provided that any remedial action authorized under this Chapter must be undertaken within sixty (60) days of the date of the finding of non-compliance. Circumstances that would favor remedial action include:

1. where the Contractor’s non-compliance was nominal or unintentional; or
2. where the Contractor believed in good faith that its benefits policies were in compliance with the requirements of PCC Ch. 3.100 and these rules and procedures; or
3. where the Director determines that remedial action is superior to other authorized sanctions or remedies in ensuring the provision of equal benefits to eligible employees, in accordance with the intent of PCC 3.100.050 through 3.100.056.

13. 2 The Director may reject a potential Contractor’s bid or proposal if the Director determines that the proposed Contractor was established, or is being used, for the purpose of evading the requirements or the intent of PCC 3.100.050 through 3.100.056 or these rules.

13.2.1 The Director may examine the corporate structure of the entity to determine whether it has been created for separate, independent and legitimate business reasons, and not for the purpose of evading the requirements or the intent of PCC 3.100.050 through 3.100.056. The factors to be considered in this determination may include but are not limited to:

1. the legal structure of the entity;
2. the degree of control the entity exercises over the provision of benefits;
3. the date the entity was formed; and
4. the role within the entity of the person signing the Contract.

14 EXCESS COSTS

In the event that the actual cost of providing a particular benefit to an employee with a Domestic Partner or an employee's Domestic Partner exceeds that of providing the benefit to an employee with a spouse or to an employee's spouse, or vice versa, the Contractor may condition its provision of equal benefits upon the employee agreeing to pay the excess costs. The excess costs the Contractor may pass on to the employee may include only the actual costs of the benefit for that employee and may not include implementation or administrative costs, any tax consequence to the employer, or additional costs to other employees.

Comment: For example, if a Contractor is able to demonstrate that it is required to pay a higher premium for dental coverage for an employee’s domestic partner than for an employee’s spouse, the Contractor may require the employee to pay the difference between the cost of the premium for the spouse and that for the domestic partner. (Note: This does not include a situation where an increase in the pool of eligible enrollees may have the effect of raising premiums across the board.) By contrast, if, in implementing a new dental plan in order to offer coverage to domestic partners, the Contractor incurred broker’s fees, the employee with a domestic partner cannot be required to pay any portion of this excess cost.

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15 TAXATION

The provision of equal benefits may result in additional income to the employee and may require additional withholding by the Contractor. The City recommends the Contractor consult with its tax advisor in regard to such issues.

16 NOTIFICATION

Notification by a Contractor to its employees regarding the provision of benefits to employees with spouses and employees with domestic partners must be conducted so that all employees are given equal notice of all available benefits.

17 CONTINUATION COVERAGE

The continuation of benefits, including health benefits, must be provided equally to the spouses of employees and the domestic partners of employees, except where otherwise prohibited by law.

18 INVESTIGATIVE AUTHORITY

Upon the Contractor's entry into a Contract with the City or upon the City's receipt of a Contractor's Bid Form, proposal or any other document in which the Contractor asserts its compliance with the Non-discrimination in Benefits requirement, the Director shall have the authority to inspect all supporting evidence reasonably necessary to validate the Contractor's compliance with PCC 3.100.050 through 3.100.056 and these rules. Supporting evidence may include but is not limited to: documentation, reports, and information (including interviews) from Contractors, Contractor employees, and others as necessary. Such investigation may be made subsequent to a report of non-compliance or pursuant to a random audit of a Contractor's employee benefits policies.

A Contractor's failure to provide information requested pursuant to the Director's investigative authority shall be considered a material breach of the Contract and subject the Contractor to sanctions and/or remedies, as authorized by Contract and these rules.

19 REGISTERING A COMPLAINT OF NON-COMPLIANCE

Any person who wishes to register a complaint alleging that a Contractor required to comply with PCC 3.100.050 through 3.100.056 and these rules is not in compliance may do so by contacting the Bureau of Purchases. Complaints must be submitted in writing to: **City of Portland - Equal Benefits Program, Attn: Loretta Young, 1120 SW Fifth Avenue, Suite 750, Portland, OR, 97204, (503) 823-6855**. The Bureau of Purchases may provide a form for the purpose of registering a complaint of non-compliance. To the extent permitted by state law, the City will maintain the confidentiality of all complainants who register a complaint pursuant to this provision (See, ORS Ch. 190, Oregon State Public Records Act). Complainants will have the opportunity to request confidentiality when registering their complaint.

20 LEGISLATIVE AUTHORITY

Nothing in these provisions shall limit the right of the City Council to waive the requirements of PCC 3.100.050 through 3.100.056 or these rules and procedures.