

ORDINANCE NO. 12-05

AN ORDINANCE OF THE CITY OF KEY WEST,
FLORIDA, AMENDING CHAPTER 2 OF THE CODE
OF ORDINANCES ENTITLED "ADMINISTRATION"
BY ADDING SECTION 2-799 TO REQUIRE CITY
CONTRACTORS TO PROVIDE EQUAL BENEFITS TO
DOMESTIC PARTNERS; PROVIDING EXCEPTIONS;
PROVIDING FOR SEVERABILITY; PROVIDING FOR
REPEAL OF INCONSISTENT PROVISIONS;
PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Key West City Commission encourages
equality in all aspects of life; and

WHEREAS, to protect the public health, safety and
welfare, the Key West City Commission desires to require
contractors doing business with the City to provide equal
benefits to domestic partners to the same extent as
provided to an employee's spouse.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY
WEST, FLORIDA:

Section 1: That Section 2-799 of Chapter 2 of the Code of Ordinances is hereby added as follows*:

Sec. 2-799. Requirements For City Contractors to Provide Equal Benefits For Domestic Partners.

(a) Definitions. For purposes of this section only, the following definitions shall apply:

(1) *Benefits* means the following plan, program or policy provided or offered by a contractor to its employees as part of the employer's total compensation package: sick leave, bereavement leave, family medical leave, and health benefits.

(2) *Bid* shall mean a competitive bid procedure established by the city through the issuance of an invitation to bid, request for proposals, request for qualifications, or request for letters of interest.

*(Coding: Added language is underlined; deleted language is ~~struck through~~. Language added for second reading is double-underlined; language deleted for second reading is ~~double struck through~~.)

(3) Cash equivalent means the amount of money paid to an employee with a domestic partner in lieu of providing benefits to the employee's domestic partner. The cash equivalent is equal to the employer's direct expense of providing benefits to an employee for his or her spouse.

The cash equivalent of the following benefits apply:

- a. For bereavement leave, cash payment for the number of days that would be allowed as paid time off for the death of a spouse. Cash payment would be in the form of the wages of the domestic partner employee for the number of days allowed.
- b. For health benefits, the cost to the contractor of the contractor's share of the single monthly premiums that are being paid for the domestic partner employee, to be paid on a regular basis while the domestic partner employee maintains such insurance in force for himself or herself.
- c. For family medical leave, cash payment for the number of days that would be allowed as time off for an employee to care for a spouse who has

a serious health condition. Cash payment would be in the form of the wages of the domestic partner employee for the number of days allowed.

(4) **Contract** means any written agreement, purchase order, standing order or similar instrument entered into pursuant to the award of a bid whereby the city is committed to expend or does expend funds in return for work, labor, professional services, consulting services, supplies, equipment, materials, construction, construction related services or any combination of the foregoing.

(5) **Contractor** means any person or persons, sole proprietorship, partnership, joint venture, corporation, or other form of doing business, that is awarded a bid and enters into a covered contract with the city, and which maintains five (5) or more full-time employees.

(6) **Covered contract** means a contract between the city and a contractor awarded subsequent to the date when this section becomes effective valued at over twenty ~~five~~ thousand dollars (\$20,000) ~~(\$5,000)~~.

(7) **Domestic partner** shall mean any two adults of the same or different sex, who have registered as domestic partners with a governmental body pursuant to state or

local law authorizing such registration, or with an internal registry maintained by the employer of at least one of the domestic partners. A contractor may institute an internal registry to allow for the provision of equal benefits to employees with domestic partner who do not register their partnerships pursuant to a governmental body authorizing such registration, or who are located in a jurisdiction where no such governmental domestic partnership registry exists. A contractor that institutes such registry shall not impose criteria for registration that are more stringent than those required for domestic partnership registration by the City of Key West pursuant to Chapter 38, Article V of the Key West Code of Ordinances.

(8) *Equal benefits* mean the equality of benefits between employees with spouses and employees with domestic partners, and/or between spouses of employees and domestic partners of employees.

(b) Equal benefits requirements.

(1) Except where otherwise exempt or prohibited by law, a Contractor awarded a covered contract pursuant to a bid process shall provide benefits to domestic

partners of its employees on the same basis as it provides benefits to employees' spouses.

(2) All bid requests for covered contracts which are issued on or after the effective date of this section shall include the requirement to provide equal benefits in the procurement specifications in accordance with this section.

(3) The city shall not enter into any covered contract unless the contractor certifies that such contractor does not discriminate in the provision of benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees.

(4) Such certification shall be in writing and shall be signed by an authorized officer of the contractor and delivered, along with a description of the contractor's employee benefits plan, to the city's procurement director prior to entering into such covered contract.

(5) The city manager or his/her designee shall reject a contractor's certification of compliance if he/she determines that such contractor discriminates in the provision of benefits or if the city manager or designee determines that the certification was

created, or is being used for the purpose of evading the requirements of this section.

(6) The contractor shall provide the city manager or his/her designee, access to its records for the purpose of audits and/or investigations to ascertain compliance with the provisions of this section, and upon request shall provide evidence that the contractor is in compliance with the provisions of this section upon each new bid, contract renewal, or when the city manager has received a complaint or has reason to believe the contractor may not be in compliance with the provisions of this section. This shall include but not be limited to providing the city manager or his/her designee with certified copies of all of the contractor's records pertaining to its benefits policies and its employment policies and practices.

(7) The contractor may not set up or use its contracting entity for the purpose of evading the requirements imposed by this section.

(c) Mandatory contract provisions pertaining to equal benefits. Unless otherwise exempt, every covered contract shall contain language that obligates the contractor to

comply with the applicable provisions of this section. The language shall include provisions for the following:

(1) During the performance of the covered contract, the contractor certifies and represents that it will comply with this section.

(2) The failure of the contractor to comply with this section will be deemed to be a material breach of the covered contract.

(3) If the contractor fails to comply with this section, the city may terminate the covered contract and all monies due or to become due under the covered contract may be retained by the city. The city may also pursue any and all other remedies at law or in equity for any breach.

(4) If the city manager or his designee determines that a contractor has set up or used its contracting entity for the purpose of evading the requirements of this section, the city may terminate the covered contract.

(d) Enforcement. If the contractor fails to comply with the provisions of this section:

(1) The failure to comply may be deemed to be a material breach of the covered contract; or

(2) The city may terminate the covered contract; or

(3) Monies due or to become due under the covered contract may be retained by the city until compliance is achieved; or

(4) The city may also pursue any and all other remedies at law or in equity for any breach;

(5) Failure to comply with this section may also subject contractor to the procedures set forth in Division 5 of this article, entitled "Debarment of contractors from city work."

(e) Exceptions and waivers.

The provisions of this section shall not apply where:

(1) The contractor does not provide benefits to employees' spouses.

(2) The contractor is a religious organization, association, society or any non-profit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.

(3) The contractor is a governmental entity.

(4) The sale or lease of city property.

(5) The provision of this section would violate grant requirement, the laws, rules or regulations of federal or state law (for example, The acquisition services procured pursuant to Chapter 287.055, Florida Statutes

known as the "Consultants' Competitive Negotiation Act").

(6) Provided that the contractor does not discriminate in the provision of benefits, a contractor may also comply with this section by providing an employee with the cash equivalent of such benefits, if the city manager or his/her designee determines that either:

a. The contractor has made a reasonable yet unsuccessful effort to provide equal benefits. The contractor shall provide the city manager or his/her designee with sufficient proof of such inability to provide such benefit or benefits which shall include the measures taken to provide such benefits or benefits and the cash equivalent proposed, along with its certificate of compliance, as is required under this section.

(7) The city commission waives compliance of this section in the best interest of the city, including but not limited to the following circumstances:

a. The covered contract is necessary to respond to an emergency.

b. Where only one bid response is received.

c. Where more than one bid response is received, but the bids demonstrate that none of the bidders can comply with the requirements of this section.

(f) City's authority to cancel contract. Nothing in this section shall be construed to limit the city's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a nonresponsibility finding, issue a nonresponsiveness finding, deny a person or entity prequalification, or otherwise deny a person or entity city business.

(g) Timing of application. This section shall be applicable only to covered contracts awarded pursuant to bids which are after the date when this section becomes effective.

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

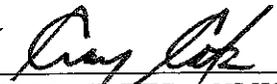
Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 7 day of February, 2012.

Read and passed on final reading at a regular meeting held this 22 day of February, 2012.

Authenticated by the presiding officer and Clerk of the Commission on 23 day of February, 2012.

Filed with the Clerk February 23, 2012.


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK