

ORDINANCE NO. 2005-3494

AN ORDINANCE OF THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VI, DIVISION 3, BY CREATING SECTION 2-373 THEREOF, ENTITLED "REQUIREMENT FOR CITY CONTRACTORS TO PROVIDE EQUAL BENEFITS FOR DOMESTIC PARTNERS," BY MANDATING THAT CITY CONTRACTORS PROVIDE EQUAL BENEFITS FOR DOMESTIC PARTNERS; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, it is in the best interest of the City to be responsible to the changing needs of society and to treat all persons fairly and equitably; and

WHEREAS, the City recognizes that long-term committed relationships foster economic stability and emotional and physiological bonds; and

WHEREAS, the City has adopted a human rights ordinance and seeks to comply with the full spirit of it.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Miami Beach City Code Chapter 2, Article VI, Division 3, is hereby amended to create a new Section 2-373 thereof, entitled "Requirement for City Contractors to Provide Equal Benefits for Domestic Partners", to read as follows:

ARTICLE VI. PROCUREMENT

DIVISION 3. CONTRACT PROCEDURES

SECTION 2-373. REQUIREMENT 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* mean 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.

(3) Cash Equivalent means the amount of money paid to an employee with a Domestic Partner (or spouse, if applicable) in lieu of providing Benefits to the employee's Domestic Partner (or spouse, if applicable). The Cash Equivalent is equal to the employer's direct expense of providing Benefits to an employee for his or her spouse.

Cash Equivalent. 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 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 51 or more full-time employees on the payroll during twenty (20) or more calendar work weeks in either the current or the preceding calendar year. Work weeks include consecutive and non-consecutive work weeks.

(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 \$100,000.

(7) Domestic Partner shall mean any two (2) 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 Miami Beach.

(8) *Equal Benefits* means 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) All Bids 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 for such Bids.

(2) 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.

(3) 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.

(4) 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.

(5) The Contractor shall provide the City and/or 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 and/or 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.

(6) The Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment:

“During the performance of a Contract with the City of Miami Beach, Florida, the Contractor will provide Equal Benefits to its employees with spouses and its employees with Domestic Partners”.

The posted statement must also include a City contact telephone number which will be provided each Contractor when the Covered Contract is executed.

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

(C) Other Options for Compliance.

Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with this section in the following ways:

1) The Contractor may provide an employee with the Cash Equivalent of such Benefit or 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 subsection (B) of this section. The City Manager or his designee shall, based on submitted evidence, determine whether the Contractor’s failure to provide such Benefit or Benefits precludes such Contractor from entering into a Covered Contract pursuant to the requirements of this section; or

b) Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

2) The Contractor provides benefits neither to employees’ spouses nor to employees’ Domestic Partners.

(D) Applicability.

1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of this section.

2) The requirements of this section shall apply to Contractor's operations as follows:

a) Employees of a Contractor with a Covered Contract who work within the City limits of the City of Miami Beach, Florida; and

b) The Contractor's employees located in the United States, but outside of the City of Miami Beach limits, if those employees are directly performing work on the Covered Contract within the City of Miami Beach.

(E) 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.

5) Failure to comply with this section may subject the Contractor to the procedures set forth in Division 5, entitled "Debarment of Contractors from City Work."

(F) Enforcement.

1) 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, entitled "Debarment of Contractors from City Work."

(G) Non-applicability, Exceptions and Waivers.

1) The provisions of this section shall not apply where:

a) The Contractor provides Benefits neither to employees' spouses nor to employees' Domestic Partners.

b) 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.

c) The Contractor is a governmental entity.

2) The provisions of this section shall not apply to Covered Contracts which involve:

a) The sale or lease of City property.

b) Development agreements entered into pursuant to Chapter 163.3220, Florida Statutes, (the "Florida Local Government Development Agreement"), as same may be amended.

c) The award, pursuant to competitive processes, of CDBG, HOME, SHIP and Surtax Funds administered by the City's Office of Community Development.

d) The award, pursuant to competitive processes, of Cultural Arts Council Grants.

e) The acquisition of professional architectural, engineering, landscape architectural, or survey and mapping services procured pursuant to Chapter 287.055, Florida Statutes (the "Consultants' Competitive Negotiation Act"), as same may be amended.

f) The procurement of life, health, accident, hospitalization, legal expense, annuity insurance, or all or any kinds of other insurance for the officers and employees of the City, and for the dependents of such officers and employees, from a group insurance plan.

3) Upon the request and written recommendation of the City Manager, the City Commission may, by resolution adopted by a five-seventh (5/7ths) vote of the City Commission, waive compliance of this section under the following circumstances:

a) The Covered Contract is necessary to respond to an emergency, where the existence of an emergency is requested, upon written recommendation of the City Manager, and same is determined by the City Commission. For purposes of waiver under this subsection only, in determining whether there is an emergency, the City Commission may consider the following non-exclusive factors:

- i) The nature of the Covered Contract;
- ii) The length of the Covered Contract;
- iii) The cost of the Covered Contract;
- iv) Whether grants are involved in the Covered Contract and the requirements of those grants
- v) Whether there is a need to have materials, goods, and services furnished immediately and the consequences of a delay in having those materials, goods, and services furnished;
- vi) The monetary consequences if action is not taken immediately;
- vii) Any health, safety, and welfare issues that may be involved.
- viii) Increased labor costs, and scheduling of labor;
- ix) The need to complete work before a strict deadline; or
- x) The impact of delaying one phase or portion of a project on the other phase(s) or portion(s) of the project.

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, and one or more of the Bids received would otherwise have been responsive if compliance with this section would not have been listed as a requirement in the Bid specifications;

d) Where more than one Bid response is received and Bid responses are received from:

- i) one or more bidders that comply with the requirements of this section and are otherwise responsive; and
- ii) one or more bidders that do not or cannot comply with the requirements of this section, but would otherwise have been responsive if compliance with this section would not have been listed as a requirement in the Bid specifications; and
- iii) the Procurement Director's review of the Bids demonstrates that the cost of the Bid (and/or the proposed Covered Contract which may be negotiated for such Bid), as submitted by the lowest responsive bidder which complies with the requirements of this section (or, in the case of a proposal, the proposal of the top-ranked proposer), would be at least five percent (5%), or two hundred fifty thousand dollars (\$250,000) (whichever is less), greater than the lowest responsive bid submitted by the bidder which does not comply with the requirements of this section but would otherwise have been responsive if compliance with this section would not have been listed as a requirement in the Bid specifications (or, in the case of a proposal, where the top-ranked proposer which does not comply with the requirements of this section, but would otherwise have been responsive if compliance with this section would not have been listed as a requirement in the Bid specifications);

then, upon request and written recommendation of the City Manager, the City Commission may, by resolution adopted by a 5/7ths vote of the City Commission, waive compliance of this section, and award the Bid to the lowest bidder (or, if a proposal, to the top ranked proposer) which does not comply with the requirements of this section but would otherwise have been responsive if compliance with this section would not have been listed as a requirement in the Bid specifications.

(H) Consistency with Federal or State Law.

The provisions of this section do not apply where the application of these provisions would violate or be inconsistent with the laws, rules or regulations of federal or state law, or where the application would violate or be inconsistent with the terms or conditions of a grant or contract with the United States of America, the State of Florida, or the instruction of an authorized representatives of any of these agencies with respect to any grant or contract.

(I) 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 non-responsibility finding, issue a non-responsiveness finding,

deny a person or entity pre-qualifications, or otherwise deny a person or entity City business.

(J) Timing of Application.

This section shall be applicable only to Covered Contracts awarded pursuant to Bids which are issued six (6) months from the date when this section becomes effective.

SECTION 2. REPEALER

All ordinances or parts or ordinances in conflict herewith be the same are hereby repealed.

SECTION 3. SEVERABILITY

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. CODIFICATION

It is intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 5. EFFECTIVE DATE

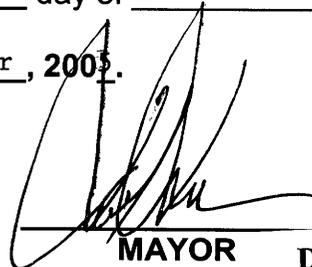
This Ordinance shall take effect the 29th day of October, 2005.

PASSED and ADOPTED this 19th day of October, 2005.

ATTEST:



CITY CLERK Robert Parcher


MAYOR David Dermer

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

 10-10-05
City Attorney Date

**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

An Ordinance (Second Reading) Entitled "Requirement For City Contractors To Provide Equal Benefits For Domestic Partners," By Mandating That City Contractors Provide Equal Benefits For Domestic Partners.

Issue:

Shall the City Commission Adopt the Ordinance?

Item Summary/Recommendation:

The proposed Ordinance is being sponsored by Commissioner Luis Garcia and was prepared at the recommendation of the Neighborhood/Community Affairs Committee.

The City Attorney's Office and the City's Procurement Division worked on the proposed Ordinance which would require certain contractors doing business with the City (as further defined herein) to provide "equal benefits" to their employees, including their employees with domestic partners. The proposed Ordinance was prepared after having reviewed various equal benefits legislation from counties and municipalities in other states, as well as having conducted independent research and legal review. The Ordinance has also been reviewed with representatives of SAVE Dade, including their advisory legal counsel on this issue.

The Mayor and Members of the City Commission at its September 8, 2005 City Commission meeting, approved on first reading the proposed ordinance entitled "Requirement for City Contractors to Provide Equal Benefits for Domestic Partners"(the Ordinance), and the Contract Compliance Specialist position, by a ballot vote of 7-0.

As part of the discussion relevant to the Ordinance and Contracts Compliance Specialist position, the following requests were made by the City Commission and in turn, the Administration conducted its due diligence relative to the issues raised which are addressed in the attached Commission Memo.

Adopt the Ordinance, to be submitted in the Supplemental Agenda, reflecting the Finance & Citywide Projects Committee and the Neighborhood/Community Affairs Committee's requested modifications.

Advisory Board Recommendation:

On September 1, 2005, the Finance and Citywide Projects Committee and the Neighborhood/Community Affairs Committee unanimously moved the item to the full Commission, recommending approval of the proposed Ordinance. The Committees also recommended establishing a ramp-up period for ordinance and the creation of dedicated position for contract compliance issues.

Financial Information:

Source of Funds:	Amount	Account	Approved
1			
2			
3			
4			
Total			

Finance Dept.

City Clerk's Office Legislative Tracking:

Gus Lopez, ext. 6641

Sign-Offs:

Department Director	Assistant City Manager	City Manager
GL <i>[Signature]</i>	PDW	JMG <i>[Signature]</i>

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AGENDA ITEM RSA
DATE 10-19-05

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: October 19, 2005

From: Jorge M. Gonzalez
City Manager

Handwritten signature of Jorge M. Gonzalez.

SECOND READING
PUBLIC HEARING

Subject: **AN ORDINANCE OF THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VI, DIVISION 3, BY CREATING SECTION 2-373 THEREOF, ENTITLED "REQUIREMENT FOR CITY CONTRACTORS TO PROVIDE EQUAL BENEFITS FOR DOMESTIC PARTNERS," BY MANDATING THAT CITY CONTRACTORS PROVIDE EQUAL BENEFITS FOR DOMESTIC PARTNERS; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION

Adopt the Ordinance.

ANALYSIS

The Mayor and Members of the City Commission at its September 8, 2005 City Commission meeting, approved on first reading the proposed ordinance entitled "Requirement for City Contractors to Provide Equal Benefits for Domestic Partners"(the Ordinance), and the Contract Compliance Specialist position, by a ballot vote of 7-0.

As part of the discussion relevant to the Ordinance and Contracts Compliance Specialist position, the following requests were made by the City Commission and in turn, the Administration conducted its due diligence relative to the following issues:

1. Commissioner Simon Cruz requested that the Contracts Compliance Specialist position reflect the enforcement not only of the Ordinance, but also the City's Living Wage Ordinance.

The Administration has prepared the Contracts Compliance Specialist job description with duties and responsibilities that will include enforcement of the requirements set forth in the City's Living Wage Ordinance, Equal Benefits Requirements for Contractors Ordinance, and any other ordinance adopted by the Mayor and City Commission that requires enforcement by the Procurement Division. See attached Contracts Compliance Specialist job description.

2. Commissioner Cruz requested to have penalties in the Ordinance before second reading.

The City Attorney's Office has incorporated the following penalty provisions in the proposed Ordinance:

- The failure of the Contractor to comply with the Ordinance will be deemed to be a material breach of the Covered Contract;
- If the Contractor fails to comply with the Ordinance, 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;
- 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;
- Failure to comply with this section may subject the Contractor to the procedures set forth in Division 5, entitled "Debarment of Contractors from City Work.";
- Monies due or to become due under the Covered Contract may be retained by the City until compliance is achieved; and
- Failure to comply with the requirements of the Ordinance may also subject Contractor to the procedures set forth in the Miami Beach City Code, entitled "Debarment of Contractors from City Work."

3. Commissioner Jose Smith stated that as it relates to the enforcement issue, the City needs to look at creative ways to enforce the Ordinance, and suggested that perhaps another governmental agency, or law schools (i.e., University of Miami and University of New York) as opposed to hiring full-time employee.

The City's Procurement Director explored Commissioner Smith's suggestion with the following entities/individuals:

MIAMI-DADE COUNTY

Marsha Jackman, Director, Department of Business Development, Miami-Dade County. Ms. Jackman also oversees the County's Compliance Division, which oversees the County's Living Wage Ordinance.

Ms. Jackman informed the City's Procurement Director that the Miami-Dade County Commission established a 15-person Living Wage Commission with the purpose of reviewing the effectiveness of the County's Living Wage Ordinance, review certifications submitted by covered employers, review complaints filed by employees and to make recommendations to the County Mayor and the County Commission. And the County's Living Wage Ordinance is enforced by the Compliance Division within the Department of Business Development. The Compliance Division consists of 28 individuals, of which 9 are Contract Compliance Specialist II, and 14 are Contract Compliance Specialist I, and the 5 are support staff positions.

When asked if the County would consider enforcing the City's Living Wage and/or Equal Benefits Ordinance, Ms. Jackman indicated that her office is only familiar with the Living Wage Ordinance. And as it relates to the Living Wage Ordinance, in order for her office to present a recommendation to the County Manager, the County needs to know if the City wants an "aggressive enforcement" process that includes but is not

limited to on-site interviews with employees of all covered employers, or enforcement only when complaints are filed?

If the City desires “aggressive enforcement”, based on the County’s Compliance Division’s existing staff and the volume of current County contracts that fall under the County’s Living Wage Ordinance, coupled with the City’s Living Wage contracts, then the County would need to hire additional staff and all costs associated with enforcement would be part of an inter-governmental agreement with the City.

Should the City desire the County to process and resolve all complaints filed relative to Living Wage, then all costs associated with complaint procedures, sanctions, remedies, and administrative hearing processes would be part of an inter-governmental agreement with the City.

University of Miami

Professor Michael Fischl, University of Miami, School of Law. Professor Fischl had heard about the City’s Equal Benefits Requirements Ordinance but was not aware of the particulars. His area of expertise and study has been the Living Wage Ordinance. Professor Fischl offered suggestions including the establishment of an oversight committee that would make recommendations and review staff reports relative to compliance or lack thereof by vendors. Additionally, Professor Fischl believed that a “specialist” whose job responsibilities would require enforcement of the various ordinances was a good idea.

New York University (NYU)

Professor Paul Sonn, Brennan Center for Justice at NYU School of Law. Professor Sonn informed me that the NYU Center has assisted activists, lawmakers in cities across the country in designing, enacting and defending living wage laws. He is not familiar with Equal Benefits laws, but has done extensive research on Living Wage laws. However, as it relates to enforcement issues, he would defer to his colleague at the University of Massachusetts, Stephanie Luce.

At the time this Commission Memorandum was being finalized, several messages and e-mails were sent to Professor Luce, and Professor Gerald Lopez, NYU School of Law. Any information provided by Professor Lopez or Professor Luce will be submitted as supplemental material.

4. Commissioner Richard Steinberg asked if the False Claims Ordinance can be changed, so that if someone is asking the City for payment based on a contract that they are supposed to pay a living wage or provide for domestic partner benefits, and they are not adhering the requirements of said Living Wage or Equal Benefits Ordinances, then that would trigger the False Claims Ordinance.

The City Attorney’s Office has reviewed the False Claims Ordinance, and, the current version would not apply with regard to enforcement of the proposed Equal Benefits Ordinance and, other ordinances such as the Living Wage Ordinance. An amendment to the False Claims Ordinance would be required which, upon request by the City Commission, the City Attorney’s Office would prepare.

5. Commissioner Smith requested to know what the potential fiscal impact would be if the City Commission exercised the waiver provisions set forth in the Ordinance.

The Commission Memorandum presented to the City Commission on September 8, 2005, informed the Mayor and City that if the proposed Ordinance was enacted five years ago, the fiscal impact would have been \$2,149,887.56. This estimated fiscal impact was based on applying the requirements of the proposed Ordinance to the contracts awarded by the City over the past five years, without any waiver considerations. The potential fiscal impact if the City Commission had exercised the waiver provisions set forth in the Ordinance is reduced from \$2,149,887.56 to \$366,119.56. The significant difference is in large part attributable to one contract – the North Shore Park and Youth Center which shows a difference between the low bidder who is not compliant, and the second low bidder who is compliant, of \$1,652,768.

FISCAL IMPACT

Determining the five-year fiscal impact of the proposed Ordinance beyond the cost associated with aforementioned Contract Compliance Specialist position is extremely difficult when one considers the variables of the proposed Ordinance (i.e. applicability, exemptions, and waiver provisions). However, the Administration applied survey results to the bid results of the last five years' contract awards to determine the impact of the proposed Ordinance. In other words, if the proposed Ordinance was enacted five years ago, what would the fiscal impact have been? Based on the above, had the Ordinance been in place, the additional cost to the City would have been in excess of \$2 million.

The following are the bid results *if* the Ordinance applied at the time of award (looking back five years):

- (1) Total number of contracts awarded that the results were applied to:..... 174
- (2) Total number/percentage of contractors who provide or offer equal benefits to all employees including individuals in a domestic partnership 129 (74%)
- (3) Total number/percentage of contractors who would not provide or offer equal benefits to all employees including individuals in a domestic partnership..... 17 (10%)
- (4) Total number/percentage of contracts exempted..... 28 (16%)
- (5) Fiscal Impact Without Waiver \$2,149,887.56
- (6) Fiscal Impact With City Commission Waiver \$366,119.56

The fiscal impact in subsection (5) above, was calculated by comparing the lowest and best bids which did not meet the requirement of the proposed Ordinance (in terms of offering equal benefits to employees with domestic partners), versus the next lowest and best bids that did meet the requirements of the Ordinance (i.e., offered equal benefits to employees with domestic partners).

BACKGROUND

Pursuant to the request of Commissioner Luis Garcia, the Mayor and City Commission passed and adopted on July 28, 2004, Ordinance No. 2004-3451, which amended Chapter 62 of the Miami Beach Code entitled "Human Relations" by adding Article IV thereto to provide for Registered Domestic Partnerships for those wishing to register who meet eligibility requirements, and granting certain rights including health care visitation and health care decisions, among other rights.

At the direction of the Neighborhood/Community Affairs Committee, the City Attorney's Office and the City's Procurement Division worked on the proposed Ordinance which would require certain contractors doing business with the City (as further defined herein) to provide "equal benefits" to their employees, including their employees with domestic partners.

The attached Ordinance, entitled "Requirement for City Contractors to Provide Equal Benefits for Domestic Partners" (and which may hereinafter also be referred to as the Ordinance) was prepared by the City Attorney's Office and the Administration after having reviewed various equal benefits legislation from counties and municipalities in other states, as well as having conducted their own independent research and legal review. The Ordinance has also been reviewed with representatives of SAVE Dade, including their advisory legal counsel on this issue, and incorporates their comments and/or revisions.

On September 1, 2005, the Finance and Citywide Projects Committee and the Neighborhood/Community Affairs Committee (the "Committees"), held a joint meeting to discuss the proposed Ordinance.

The Committees listened to a presentation from Raul Aguila, First Assistant City Attorney, which provided an analysis of the major points of the proposed Ordinance. Additionally, the Committees listened to a presentation from Gus Lopez, Procurement Director, which provided the results of surveys issued to more than 2,800 vendors, and information relative to potential fiscal impact.

Commissioner Steinberg requested that the "cash equivalent" option for compliance be further reviewed and/or modified to ensure that the applicability requirements are consistent. Additionally, Commissioner Steinberg recommended as part of the waiver provisions, some consideration for the City Commission to waive the requirements of the proposed Ordinance, should the City Commission determine it is in the City's best economic interest.

The Committees unanimously moved the item to the full Commission, recommending approval of the proposed Ordinance. The Committees also recommended establishing a ramp-up period for ordinance and the creation of dedicated position for contract compliance issues.

Commissioner Garcia and Ms. Pena thanked the Committees for supporting the proposed Ordinance.

PROPOSED EQUAL BENEFITS ORDINANCE SUMMARY

The foregoing analysis provides a summary of the major points of the proposed Ordinance:

1) What is the intent of the Ordinance?

The proposed Ordinance will require certain contractors doing business with the City of Miami Beach, who are awarded a contract pursuant to competitive bids, to provide "Equal Benefits" to their employees with Domestic Partners, as they provide to employees with spouses.

2) How are "Equal Benefits" defined and what kind of "Benefits" does the Ordinance cover?

"Equal Benefits" means that contractors doing business with the City who are covered by the Ordinance shall be required to provide the same type of benefits that they offer to employees and their spouses, to employees with Domestic Partners.

The type of "Benefits" defined by the Ordinance and which **may** be offered by a contractor include: sick leave, bereavement leave, family medical leave, and health benefits.

The "Benefits" defined in the Ordinance are the same type of benefits that the City provides to Domestic Partners of City employees, pursuant to Section 62-128 of the City Code].

Notwithstanding the definition of "Benefits" in the Ordinance, to comply with the Ordinance a Contractor is not required to provide all the above-described benefits. Contractors are only required to offer the same type of Benefits they offer to their employees with spouses, to employees with Domestic Partners. Additionally, a Contractor who offers no benefits to employees or their spouses, would not be required to offer any benefits to employees with Domestic Partners (and would still be in compliance with the Ordinance).]

3) Who is considered a "Domestic Partner" under the Ordinance?

A "Domestic Partner" shall mean any two (2) adults of the same or different sex who have registered as domestic partners with a government 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.

4) What type of Contracts and/or which Contractors are covered by the Ordinance?

The Ordinance only applies to the following:

- competitively bid City contracts (bids, RFP's, RFQ's, RFLI's, etc.).
- contracts valued at over \$100,000.
- contractors who maintain 51 or more full time employees on their payrolls during 20 or more calendar work weeks in either the current or the preceding calendar year.
- contractors covered by the Ordinance are only required to comply as to employees who: 1) either work within the City limits of the City of Miami Beach; or 2) the contractor's employees located in the United States, but outside of the City limits,

only if those employees are directly performing work on the City contract (covered by the Ordinance).

5) In what cases does the Ordinance not apply?

The provisions of the Ordinance do not apply where:

- the City contract has been entered into prior to the effective date of the Ordinance (including renewal terms contained in such contracts).
- the City contract is not competitively bid.
- the City contract is valued at less than \$100,000.
- the contractor has less than 51 employees.
- the contractor does not provide Benefits either to employees' spouses or to employees' Domestic Partners.
- 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.
- the contractor is another government entity.

The following City contracts are not covered by the Ordinance:

- contracts for sale or lease of City property.
- Development Agreements.
- contracts/grants for CDBG, HOME, SHIP, and Surtax funds administered by the City's Office of Community Development
- Cultural Arts Council grants
- contracts for professional A/E, landscape A/E, or survey and mapping services procured pursuant to Chapter 287.055, Florida Statutes ("The Consultants Competitive Negotiation Act").
- contracts for the procurement of life, health, accident, hospitalization, legal expense, annuity insurance, or any and all other kinds of insurance for the officers and employees of the City and their dependents, from a group insurance plan.

The Ordinance provides, upon written recommendation of the City Manager, that the City Commission may, by 5/7ths vote, waive application of the Ordinance for the following:

- emergency contracts.
- contracts where only one bid response is received.
- contracts where more than one bid response is received, but none of the bidders can comply with the requirements of the Ordinance.

The City's ability to apply the Ordinance may also be preempted in instances where the Ordinance impacts health, retirement, or pension program which fall within the jurisdiction of the Employee Retirement Income Security Act (ERISA), and may under certain circumstances be held invalid under Federal preemption.

6) How is the Ordinance enforced by the City?

- City contracts that are covered by the Ordinance shall notify potential bidders/proposers of the Ordinance and its requirements in the issued bid

documents.

- at the time of entering into the contract with the City, the proposed City contractor shall certify to the City that it intends to provide Equal Benefits, along with the description of its employee benefits plan, which needs to be delivered to the Procurement Director prior to entering into the contract.
- the City has the ongoing right to investigate/audit contracts for compliance with the provisions of the Ordinance.
- the contractor is required to post notice to its employees at its place of business that it provides Equal Benefits.

7) Is there another way for a Contractor who does not provide Equal Benefits to comply with the Ordinance?

If a contractor covered by the Ordinance has made a reasonable yet unsuccessful effort to provide Equal Benefits, it can still comply with the Ordinance by providing an employee with the “Cash Equivalent” of the similar benefit(s) offered to the contractor’s employees and their spouses.

8) What are the penalties for non compliance?

Failure of a contractor to comply with the requirements of the Ordinance may result in the following:

- breach/default under the contract.
- termination of the contract.
- monies due under the contract may be retained by the City until compliance is achieved.
- debarment of contractors from City work, as prescribed by the City Code.

ADMINISTRATIVE SURVEY AMONG CURRENT CITY VENDORS AND INITIAL FISCAL IMPACT ANALYSIS

In addition to research and preparation of the proposed Ordinance, the City’s Procurement Division prepared a written survey/questionnaire which was sent to vendors currently doing business with the City of Miami Beach. The purpose of the survey/questionnaire was to determine both the viability of the proposed Ordinance, particularly in terms of gauging potential fiscal impact, as well as impact upon the City’s competitive bidding process and current available bidder “pools.”

More than 2,800 surveys were issued to City vendors to determine among them the number of contractors who currently offer equal benefits to all their employees including employees in a domestic partnership; and the number of contractors who currently do not offer equal benefits to all their employees but would comply if required as a condition of doing business with the City. Of the 2,800 surveys issued, 604 responses were received (representing 22% of the surveys issued). The specific questions asked and the responses thereto are listed below:

- a. Does your company provide or offer equal benefits to all employees including

individuals in a domestic partnership?

Yes – 64.7% No – 33.3% N/A or No Answer – 2%

b. If the City was to require your company (as a condition of contract award), to provide/offer equal benefits to all your employees, including employees in a domestic partnership, would you continue to do business with the City?

Yes–76.3% No–19.2% N/A or No Answer – 4.5%

RECOMMENDATION

The Administration recommends that the Mayor and City Commission approve and adopt the attached Ordinance on second reading, public hearing; and approve the Contract Compliance Specialist position subject to the City's classification review process, in order to enforce the requirements set forth in the proposed Ordinance and the City's Living Wage Ordinance and any other ordinance the City Commission may adopt that requires the Administration to enforce.

Contracts Compliance Specialist

NATURE OF WORK

Employees in this class are responsible for inspecting and monitoring vendors, firms, individuals, contractors and sub-contractors for compliance with requirements pertaining to the Living Wage Ordinance, Equal Benefits Requirements for Contractors Ordinance, and any other ordinance adopted by the Mayor and City Commission that requires enforcement by the Procurement Division. Considerable field work is required to ensure contract compliance, through interviews and examination of documentation. Supervision is received from the Procurement Director who reviews work for compliance with established policies and procedures.

ILLUSTRATIVE EXAMPLES OF ESSENTIAL DUTIES

Performs field work to verify that vendors, contractors and sub-contractors are compliant with established living wage rates and equal benefits requirements.

Provides City departments with general support and technical assistance, as required.

Plans and schedules reviews of contractor payrolls and other applicable records required to determine compliance with appropriate ordinances.

Conducts job-site interviews with contractor management staff and employees, as needed, concerning wage, benefit and job classification issues.

Investigates complaints related to enforcement of applicable ordinances and prepares for administrative hearings.

Determines any underpayments on the part of contractors or sub-contractors; reviews findings with Procurement Director.

Prepares program evaluation reports.

Exercises considerable independent judgment in ensuring vendor/contractor compliance with applicable ordinances

Performs related work as required.

KNOWLEDGE, SKILLS AND ABILITIES

Considerable knowledge and understanding of ordinances and procedures pertaining to wages and benefits.

Working knowledge of contracts, all applicable clauses, contract compliance and enforcement.

Considerable knowledge of techniques in monitoring contracts for compliance.

Knowledge of interviewing practices and techniques.

Knowledge of regulations and rules governing payroll reporting procedures.

Knowledge of public relations principles and techniques.

Knowledge of job classifications in the construction and services industries.

Ability to obtain, collect and organize pertinent information required to review contracts compliance issues.

Ability to analyze detailed payroll and bookkeeping records.

Ability to develop interview questionnaires and conduct interviews.

Ability to deal effectively with departmental staff members, private contractors and their employees.

Ability to communicate clearly and concisely, verbally and in writing.

Ability to plan and schedule work to meet scheduled reviews of contractor' payroll records.

MINIMUM REQUIREMENTS

Graduation from an accredited college or university with a Bachelor's degree in Public or Business Administration, or a related field. Three (3) years experience which demonstrates competencies in required knowledge, skills and abilities needed for this position. Experience may substitute for education on a year-for-year basis.

DESIRES:

Positive attitude and ability to maintain composure. Excellent written and oral communication skills. Knowledge of Windows, Office Suite (i.e., Word, Excel, Access, PowerPoint) and automated purchasing system.

PHYSICAL REQUIREMENTS

Must have the use of sensory skills in order to effectively communicate and interact with other employees and the public through the use of the telephone and personal contact. Physical capability to effectively use and operate various items of office related equipment, such as, but not limited to, word processor, calculator, copier, and fax machine. No significant standing, walking moving, climbing, carrying, bending, kneeling, crawling, reaching, and handling, sitting, standing, pushing, and pulling.

SUPERVISION RECEIVED

General and specific assignments are received and work is performed with moderate latitude for the use of independent judgment in the selection of work methods and procedures and is subject to review for compliance with departmental standards and objectives.

SUPERVISION EXERCISED

May supervise the work of Procurement clerical staff

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CITY OF MIAMI BEACH NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY given that public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, October 19, 2005**, to consider the following:

10:15 a.m.

An Ordinance Amending Miami Beach City Code Chapter 2, Article VI, Division 3, By Creating Section 2-373 Thereof, Entitled "Requirement For City Contractors To Provide Equal Benefits For Domestic Partners," By Mandating That City Contractors Provide Equal Benefits For Domestic Partners.

Inquiries may be directed to the Procurement Division at (305) 673-7490.

10:20 a.m.

A Resolution Setting A First Public Hearing To Consider Extending The Approval Of The Miami Beach Convention Center As A Venue For Conventions, Expositions Or Events Involving Adult Materials, Pursuant To The Provisions Of Section 847.0134, Florida Statutes; and Referring The Matter To The Land Use And Development Committee.

Inquiries may be directed to the Planning Department at (305) 673-7550.

10:30 a.m.

An Ordinance Amending The Land Development Regulations Of The Code Of The City Of Miami Beach, By Amending Chapter 118, "Administration And Review Procedures," Article X, "Historic Preservation," Division 1, "Generally," By Amending Section 118-503 To Modify The Requirements For An After-The-Fact Certificate Of Appropriateness; By Amending Chapter 118, "Administration And Review Procedures," Article X, "Historic Preservation," Division 3, "Issuance Of Certificate Of Appropriateness/Certificate To Dig/Certificate Of Appropriateness For Demolition," By Amending Section 118-562 To Add A Requirement For An Independent Structural Evaluation For Demolition Requests.

Inquiries may be directed to the Planning Department at (305) 673-7550.

10:35 a.m.

An Ordinance Amending The Land Development Regulations Of The Code Of The City Of Miami Beach, By Amending Chapter 138, "Signs," By Amending Article I, "In General," By Amending Section 138-11 To Clarify The Requirements And Procedures For The Removal Of Signs; Providing For Inclusion In The City Code.

Inquiries may be directed to the Planning Department at (305) 673-7550.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact (305) 604-2489 (voice), (305) 673-7218 (TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Ad #331