

AN ORDINANCE
OF THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK,
AMENDING CHAPTER 69, “PURCHASING PROCEDURES” BY ADDING SECTION
69-6, “EQUAL BENEFITS” AND SECTION 69-7 “NON-DISCRIMINATION BY CITY
CONTRACTORS” TO REQUIRE THAT CONTRACTORS SEEKING CITY
CONTRACTS PROVIDE EQUAL BENEFITS TO EMPLOYEES AND THEIR
DEPENDENTS AND THAT CITY CONTRACTORS NOT DISCRIMINATE IN
EMPLOYMENT

WHEREAS, pursuant to §5-201 *et seq.* of the Local Government Article, Annotated Code of Maryland, the City of College Park, Maryland (hereinafter, the “City”) has the power to pass such ordinances as it deems necessary to assure the good government of the municipality, and to protect and preserve the municipality’s property; and

WHEREAS, pursuant to §5-205 of the Local Government Article, Annotated Code of Maryland, the City of College Park also has the express power to expend municipal funds for any purpose deemed to be public and to affect the safety, health and general welfare of the municipality and its occupants; and

WHEREAS, pursuant to this authority, the City enacted Chapter 69 “Purchasing Procedures” to establish the ways in which the City can acquire certain items, services and materials; and

WHEREAS, the Mayor and Council have determined there is a need to prohibit discrimination on the basis of race, color, religion, ancestry, national origin, age, sex, marital status, disability, sexual orientation, and gender identity in the area of purchasing and City contracts; and

WHEREAS, the Mayor and Council have determined that certain contractors are required to provide equal benefits to their employees in order to obtain City contracts.

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: Indicate matter added to existing law.
 : Indicate matter deleted from law.
 : Indicate matter remaining unchanged in existing law but not set forth in Ordinance

Section 1. NOW, THEREFORE, BE IT ORDAINED AND ENACTED, by the Mayor and Council of the City of College Park, Maryland, that Chapter 69 “Purchasing Procedures”, §69-6, “Equal Benefits” of the Code of the City of College Park be, and is hereby, adopted to read as follows:

§ 69-6. EQUAL BENEFITS

(A) *DEFINITIONS.* FOR PURPOSES OF THIS SECTION ONLY, THE FOLLOWING DEFINITIONS SHALL APPLY:

BENEFITS MEANS ALL FORMS OF INSURANCE PROVIDED BY THE CONTRACTOR TO THE SPOUSES OF THE CONTRACTOR'S EMPLOYEES AND/OR DEPENDENTS OF EMPLOYEE'S SPOUSE, AS WELL AS EMPLOYEE'S SICK LEAVE, BEREAVEMENT LEAVE, AND FAMILY MEDICAL LEAVE WHICH MAY BE USED TO CARE FOR HIS/HER DOMESTIC PARTNER, EXCEPT TO THE EXTENT PREEMPTED BY FEDERAL OR STATE LAW.

BID SHALL MEAN A COMPETITIVE VENDOR SELECTION 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.

CONTRACT MEANS ALL TYPES OF BINDING AGREEMENTS BETWEEN THE CITY OF COLLEGE PARK AND A CONTRACTOR FOR GOODS AND SERVICES.

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 TWENTY-FIVE (25) OR MORE FULL-TIME EMPLOYEES ON THE PAYROLL DURING THE TERM OF ANY CONTRACT WITH THE CITY.

COVERED CONTRACT MEANS A CONTRACT BETWEEN THE CITY AND A CONTRACTOR AWARDED FOR BIDS WHICH ARE ADVERTISED/ISSUED AFTER THE DATE WHEN THIS SECTION BECOMES EFFECTIVE VALUED AT OVER THIRTY THOUSAND DOLLARS (\$30,000.00).

DOMESTIC PARTNER SHALL MEAN ANY TWO (2) ADULTS OF THE SAME OR DIFFERENT SEX, WHO HAVE REGISTERED AS DOMESTIC PARTNERS PURSUANT TO STATE OR LOCAL LAW AUTHORIZING SUCH REGISTRATION, OR WITH AN INTERNAL REGISTRY MAINTAINED BY THE EMPLOYER OF AT LEAST ONE (1) OF THE DOMESTIC PARTNERS, OR WHO ARE:

IN A RELATIONSHIP OF MUTUAL SUPPORT, CARING AND COMMITMENT AND INTEND TO REMAIN IN SUCH A RELATIONSHIP FOR THE IMMEDIATE FUTURE;

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NOT MARRIED TO, OR LEGALLY SEPARATED FROM, SOMEONE ELSE;

NOT ABLE TO MARRY IN THE STATE OF THEIR RESIDENCE;

NOT CURRENTLY REGISTERED IN A DOMESTIC PARTNERSHIP WITH A DIFFERENT DOMESTIC PARTNER;

EIGHTEEN YEARS OF AGE OR OLDER AND COMPETENT TO CONTRACT; AND

ARE OCCUPYING THE SAME DWELLING UNIT AS A SINGLE, NONPROFIT HOUSEKEEPING UNIT WHOSE RELATIONSHIP IS OF A PERMANENT AND DISTINCT DOMESTIC CHARACTER.

EQUAL BENEFITS MEANS THE EQUALITY OF BENEFITS BETWEEN EMPLOYEES WITH SPOUSES AND/OR DEPENDENTS OF SPOUSES AND EMPLOYEES WITH DOMESTIC PARTNERS AND/OR DEPENDENTS OF DOMESTIC PARTNERS, AND/OR BETWEEN SPOUSES OF EMPLOYEES AND/OR DEPENDENTS OF SPOUSES AND DOMESTIC PARTNERS OF EMPLOYEES AND/OR DEPENDENTS OF DOMESTIC PARTNERS.

(B) *EQUAL BENEFITS REQUIREMENTS.*

- (1) ALL BIDS FOR COVERED CONTRACTS WHICH ARE ADVERTISED/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) AS PART OF THE BID RESPONSE, THE CONTRACTOR SHALL CERTIFY THAT THE CONTRACTOR:
 - A. CURRENTLY COMPLIES WITH THE CONDITIONS OF THIS SECTION; OR
 - B. WILL COMPLY WITH THE CONDITIONS OF THIS SECTION AT TIME OF CONTRACT AWARD; OR
 - D. IS NOT REQUIRED TO COMPLY WITH THE CONDITIONS OF THIS SECTION BECAUSE OF ALLOWABLE EXEMPTION.

THE CERTIFICATION SHALL BE IN WRITING AND SIGNED BY AN AUTHORIZED OFFICER OF THE CONTRACTOR. FAILURE TO PROVIDE SUCH CERTIFICATION SHALL RESULT IN THE CONTRACTOR BEING DEEMED NON-RESPONSIVE.

- (3) THE CONTRACTOR MAY NOT SET UP OR USE IT'S CONTRACTING ENTITY FOR THE PURPOSE OF EVADING THE REQUIREMENTS IMPOSED BY THIS SECTION.
- (4) IF AFTER MAKING A REASONABLE EFFORT TO PROVIDE AN EQUAL BENEFIT FOR A DOMESTIC PARTNER OF AN EMPLOYEE THE CONTRACTOR IS UNABLE TO PROVIDE THE BENEFIT, THE CONTRACTOR

SHALL PROVIDE THE EMPLOYEE WITH THE CASH EQUIVALENT OF THE BENEFIT.

(C) *MANDATORY CONTRACT PROVISIONS PERTAINING TO EQUAL BENEFITS.* UNLESS OTHERWISE EXEMPT, EVERY COVERED CONTRACT SHALL CONTAIN LANGUAGE THAT STATES:

1. CONTRACTOR MUST COMPLY WITH THE APPLICABLE PROVISIONS OF THIS SECTION. 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,

2. UPON REQUEST, THE CONTRACTOR 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, AND

3. THE FAILURE OF THE CONTRACTOR TO COMPLY WITH THIS SECTION WILL BE DEEMED TO BE A MATERIAL BREACH OF THE COVERED CONTRACT.

(D) *EXCEPTIONS AND WAIVERS.*

THE PROVISIONS OF THIS SECTION SHALL NOT APPLY WHERE:

1. THE CONTRACTOR PROVIDES BENEFITS NEITHER TO EMPLOYEES' SPOUSES NOR SPOUSE'S DEPENDENTS.
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 CONTRACT IS FOR THE SALE OR LEASE OF PROPERTY.
5. THE COVERED CONTRACT IS NECESSARY TO RESPOND TO AN EMERGENCY.
6. THE PROVISION OF THIS SECTION WOULD VIOLATE GRANT OR OTHER REQUIREMENTS, THE LAWS, RULES OR REGULATIONS OF FEDERAL OR STATE LAW.
7. THE CONTRACTOR IS A SOLE SOURCE OR NONE OF THE BIDDERS CAN COMPLY WITH THE REQUIREMENTS OF THIS SECTION.
8. THE CITY IS PURCHASING UNDER THE PROVISIONS OF §69-2(B) OF THIS CHAPTER.

- 9. THE CONTRACT IS FOR THE PURCHASE OF GOODS OR SUPPLIES ONLY.
- 10. AGREEMENTS WITH BOND UNDERWRITERS AND AGREEMENTS WITH FINANCIAL INSTITUTIONS WHERE THE AGREEMENT RELATES TO THE CITY’S BORROWING.

(E) *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; AND
- 2. THE CITY MAY TERMINATE THE COVERED CONTRACT OR MONIES DUE OR TO BECOME DUE UNDER THE COVERED CONTRACT MAY BE RETAINED BY THE CITY UNTIL COMPLIANCE IS ACHIEVED; AND
- 3. THE CITY MAY ALSO PURSUE ANY AND ALL OTHER REMEDIES AT LAW OR IN EQUITY FOR ANY BREACH.

Section 2

BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that, that Chapter 69 “Purchasing Procedures”, §69-7, “Non-Discrimination by City Contractors” of the Code of the City of College Park be, and is hereby, adopted to read as follows:

§69-7 NON-DISCRIMINATION BY CITY CONTRACTORS

A. DISCRIMINATION IN EMPLOYMENT BY A CITY CONTRACTOR BASED ON AGE, RACE, COLOR, CREED, PREGNANCY, RELIGION, NATIONAL ORIGIN, ANCESTRY, DISABILITY, MARITAL STATUS, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, PHYSICAL CHARACTERISTIC OR ANY OTHER UNLAWFUL BASIS FOR DISCRIMINATION IS PROHIBITED.

B. ALL CITY CONTRACTS SHALL INCLUDE A CERTIFICATION BY CONTRACTORS THAT THEY DO NOT DISCRIMINATE ON THE BASIS OF AGE, RACE, COLOR, CREED, PREGNANCY, RELIGION, NATIONAL ORIGIN, ANCESTRY, DISABILITY, MARITAL STATUS, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, PHYSICAL CHARACTERISTIC OR OTHER UNLAWFUL BASIS OF DISCRIMINATION.

C. DISCRIMINATORY ACTS BY A CONTRACTOR IN EMPLOYMENT SHALL CONSTITUTE A MATERIAL BREACH OF A CITY CONTRACT.

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Section 3

BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that, upon formal introduction of this proposed Ordinance, which shall be by way of a motion duly seconded and without any further vote, the City Clerk shall distribute a copy to each Council member and shall maintain a reasonable number of copies in the office of the City Clerk and shall publish this proposed ordinance or a fair summary thereof in a newspaper having a general circulation in the City of College Park together with a notice setting out the time and place for a public hearing thereon and for its consideration by the Council. The public hearing, hereby set for **7:00 P.M.** on the **15th** day of **August**, 2014, shall follow the publication by at least seven (7) days, may be held separately or in connection with a regular or special Council meeting and may be adjourned from time to time. All persons interested shall have an opportunity to be heard. After the hearing, the Council may adopt the proposed ordinance with or without amendments or reject it. As soon as practicable after adoption, the City Clerk shall have a fair summary of the Ordinance and notice of its adoption published in a newspaper having a general circulation in the City of College Park and available at the City's offices. This Ordinance shall become effective on August 5, 2014 provided that a fair summary of this Ordinance is published at least once prior to the date of passage and once as soon as practical after the date of passage in a newspaper having general circulation in the City.

INTRODUCED by the Mayor and Council of the City of College Park, Maryland at a regular meeting on the **27th** day of **May**, 2014.

ADOPTED by the Mayor and Council of the City of College Park, Maryland at a regular meeting on the 15th day of July 2014.

EFFECTIVE the 5th day of August, 2014.

ATTEST:

CITY OF COLLEGE PARK,

Janeen S. Miller
Janeen S. Miller, CMC, City Clerk

Andrew M. Fellows
Andrew M. Fellows, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Suellen M. Ferguson
Suellen M. Ferguson, City Attorney