

ORDINANCE NO. 2011-26

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, RELATING TO THE DOMESTIC PARTNERSHIP ACT, SECTIONS 16½-150 THROUGH 16½-162 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE"); AMENDING SECTION 16½-152 OF THE CODE; DELETING AND REPLACING SECTION 16½-157 OF THE CODE TO REQUIRE CONTRACTORS TO PROVIDE BENEFITS TO DOMESTIC PARTNERS ON THE SAME BASIS AS BENEFITS FOR EMPLOYEES' SPOUSES; PROVIDING THAT THE COUNTY NOT ENTER INTO A CONTRACT UNLESS THE CONTRACTOR PROVIDES BENEFITS TO DOMESTIC PARTNERS ON SUCH A BASIS; PROVIDING FOR APPLICABLE LANGUAGE IN CONTRACTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, the Board of County Commissioners (the "Board") finds that domestic partners of non-County employees are commonly denied benefits available to spouses of employees; and

WHEREAS, to protect the public health, safety, and welfare, the Board desires to require persons and entities that enter into contracts with Broward County to provide benefits to domestic partners of employees on the same basis that benefits are provided to employees' spouses,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA:

Section 1. Section 16½-152 of the Broward County Code of Ordinances is hereby amended to read as follows:

1 **Sec. 16½-152. Definitions.**

2 For purposes of this Act:

3 (a) *Business* means any corporation, partnership, sole proprietorship, firm,
4 joint stock company, joint venture, or other private legal entity, except governmental
5 entities, not-for-profit corporations, or charitable organizations.

6 (b) *Competitive solicitation* means any bid, request for proposal, request for
7 letters of interest, or any other method of procurement utilized by Broward County.

8 (c) *Contract* means all types of binding agreements between Broward County
9 and a Contractor for goods or services valued at over \$100,000.

10 ~~(b)(d)~~ *Contractor* means any business which has, or that has five (5) or more
11 employees and is awarded one or more contracts by Broward County.

12 ~~(e)(e)~~ *County employee* means active or retired employees of Broward County,
13 Florida, who are eligible for benefits pursuant to federal, state, or county laws, county
14 administrative rules, or collective bargaining agreements.

15 ~~(d)(f)~~ *Declaration of Domestic Partnership* means is a sworn form under penalty
16 of perjury, which certifies that said individuals meet the requirements of a domestic
17 partnership relationship as described in section 16½-153.

18 ~~(e)(g)~~ *Domestic Partners* means only two adults who are parties to a valid
19 domestic partnership relationship and who meet the requisites for a valid domestic
20 partnership relationship as established pursuant to section 16½-153.

21 ~~(f)(h)~~ *Dependent*, as used with regard to domestic partnership benefits,
22 pursuant to Ssection 16½-156, means the domestic partner of a County employee.

23 Any determination relating to whether a person identified above qualifies as a
24 dependent of the County employee shall be based solely on whether such person is

1 supported, in whole or in part, by the County employee's earnings and relies on such
2 support. Dependency ~~does not depend on~~ is not determined by whether the dependent
3 could support himself or herself without the County employee's earnings or whether the
4 dependent could so reduce his or her expenses such that he or she could live
5 independently of the County employee's earnings. Dependency ~~does not depend on~~ is
6 not determined by whether the dependent is employed or earns a substantial part of his
7 or her own support.

8 ~~(g)~~(i) *Dependent of domestic partner or dependent of employee*, as used with
9 regard to domestic partnership benefits, pursuant to ~~S~~section 16½-156, means a person
10 who is eligible for coverage under the County's insurance plans.

11 ~~(h)~~(j) *Jointly Responsible* means each domestic partner mutually agrees to
12 provide for the other partner's basic food and shelter living expenses while the domestic
13 partnership relationship is in effect, except that partners need not contribute equally or
14 jointly to said basic food and shelter.

15
16 Section 2. Section 16½-157 of the Broward County Code of Ordinances is
17 deleted in its entirety and replaced as follows:

18 **Sec. 16½-157. County contractors providing equal benefits for domestic**
19 **partners.**

20 (a) Contractor Offering Benefits. Except where federal or state law mandates
21 to the contrary, a Contractor awarded a Contract pursuant to a competitive solicitation
22 shall provide benefits to Domestic Partners of its employees on the same basis as it
23 provides benefits to employees' spouses. Benefits include the types of benefits
24 described in section 16½-156 of this Act.

1 **(b) Certification of Contractor.** As part of the competitive solicitation and
2 procurement process a Contractor seeking a Contract covered by paragraph (a) above
3 shall certify that upon award of a Contract it will provide benefits to Domestic Partners of
4 its employees on the same basis as it provides benefits to employees' spouses. The
5 certification shall be in writing and signed by an authorized officer of the Contractor.
6 Failure to provide such certification shall result in a Contractor being deemed non-
7 responsive.

8 **(c) Exceptions to Contractor Offering Benefits.** The provisions of this section
9 shall not apply where:

10 **(1) The Contractor does not provide benefits to employees' spouses;**

11 **(2) The Contractor provides an employee the cash equivalent of benefits**
12 **because the Contractor is unable to provide benefits to employees'**
13 **Domestic Partners despite making reasonable efforts to provide them. To**
14 **meet this exception, the Contractor shall provide a notarized affidavit that**
15 **it has made reasonable efforts to provide such benefits. The affidavit shall**
16 **state the efforts taken to provide such benefits and the amount of the cash**
17 **equivalent. Cash equivalent means the amount of money paid to an**
18 **employee with a Domestic Partner rather than providing benefits to the**
19 **employee's Domestic Partner. The cash equivalent is equal to the**
20 **employer's direct expense of providing benefits to an employee's spouse;**

21 **(3) The Contractor is a religious organization, association, society, or any**
22 **non-profit charitable or educational institution or organization operated**
23 **supervised or controlled by or in conjunction with a religious organization,**
24 **association, or society;**

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscored type are additions.

- 1 (4) The Contractor is a governmental agency;
- 2 (5) More than one response to a competitive solicitation is received, but the
- 3 responses indicates that none of the prospective vendors can comply with
- 4 the requirements of this section;
- 5 (6) The provisions of this section would violate the laws, rules, or regulations
- 6 of federal or state law (for example, section 287.055, Florida Statutes,
- 7 Consultants' Competitive Negotiation Act);
- 8 (7) The provisions of this section would violate or be inconsistent with the
- 9 terms or conditions of a grant or contract with the United States or the
- 10 State of Florida; or
- 11 (8) The Board waives the requirements of this section in the best interests of
- 12 the County.
- 13 (d) Contracts. Every Contract, unless otherwise exempt from this section,
- 14 shall contain language that obligates the Contractor to comply with the applicable
- 15 provisions of this section. The Contract shall include provisions for the following:
- 16 (i) The Contractor certifies and represents that it will comply with this
- 17 section during the entire term of the Contract.
- 18 (ii) The failure of the Contractor to comply with this section shall be
- 19 deemed to be a material breach of the contract, entitling the County
- 20 to pursue any remedy stated below or any remedy provided under
- 21 applicable law.
- 22 (iii) The County may terminate the Contract if the Contractor fails to
- 23 comply with this section.
- 24

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1 (iv) The County may retain all monies due or to become due until the
2 Contractor complies with this section.

3 (v) The Contractor may be subject to debarment or suspension
4 proceedings. Such proceedings will be consistent with the
5 procedures in Chapter 21 of the Broward County Administrative
6 Code.

7 (e) *Applicable Dates.* This section shall be applicable to Contracts awarded
8 pursuant to competitive solicitations issued after the effective date of this ordinance.

10 Section 3. SEVERABILITY.

11 If any portion of this Ordinance is determined by any Court to be invalid, the
12 invalid portion shall be stricken, and such striking shall not affect the validity of the
13 remainder of this Ordinance. If any Court determines that this Ordinance, or any portion
14 hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies),
15 or circumstance(s), such determination shall not affect the applicability hereof to any
16 other individual, group, entity, property or circumstance.

18 Section 4. INCLUSION IN CODE.

19 It is the intention of the Board of County Commissioners that the provisions of
20 this Ordinance shall become and be made a part of the Broward County Code; and that
21 the sections of this Ordinance may be renumbered or relettered and the word
22 "ordinance" may be changed to "section," "article," or such other appropriate word or
23 phrase in order to accomplish such intentions.

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Section 5. EFFECTIVE DATE.

This ordinance shall become effective as provided by law.

ENACTED November 8, 2011

FILED WITH THE DEPARTMENT OF STATE November 15, 2011

EFFECTIVE November 15, 2011

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10/19/11
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