

ORDINANCE NO. 23-18 N.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND, CA,
AMENDING CHAPTER 2.28 OF THE RICHMOND MUNICIPAL CODE, TO INCLUDE
GENDER IDENTITY IN NONDISCRIMINATION CLAUSES FOR CITY CONTRACTS**

The City Council of the City of Richmond do ordain as follows:

SECTION 1. Amendment of Chapter 2.28 Nondiscrimination Clauses in City Contracts

Chapter 2.28 entitled "Nondiscrimination Clauses in City Contracts" of the Municipal Code of the City of Richmond is hereby amended to read as follows:

Sections:

2.28.010 - Definitions.

As used in this chapter, "Human Relations Officer" means the person appointed to that position by the City Council or, in the event that the position is vacant, the person designated by the City Manager.

2.28.020 - Contracts to contain nondiscrimination clause.

Every contract or subcontract of the City for public works or for goods or services shall contain a clause obligating the contractor or subcontractor to observe the requirements of Section 2.28.030. The clause shall be in substantially the following form:

"Contractor agrees to observe the provisions of Section 2.28.030 of the Municipal Code of the City of Richmond, obligating every contractor or subcontractor under a contract or subcontract with the City of Richmond for public works or for goods or for services to refrain from discriminatory employment or subcontracting practices on the basis of the race, color, sex, sexual orientation, gender identity, religious creed, national origin or ancestry of any employee, any applicant for employment or any potential subcontractor. Said Section 2.28.030 is, by this reference, a part of this contract."

2.28.030 - Contents of contract.

Every contract or subcontract of the City for public works or for goods or services is deemed to contain the following provisions:

In the performance of this contract, contractor agrees as follows:

- (a) That contractor will not because of the race, religious creed, sex, sexual orientation, gender identity, national origin or ancestry of any person refuse to hire or employ such person, bar or discharge such person from employment, or discriminate against such person in compensation, terms, conditions or other privileges of employment; and that contractor will take affirmative action to insure that every applicant for employment and every employee will receive equal opportunity for employment and will be granted equal treatment with respect to compensation, terms, conditions and other privileges of employment, without regard to race, religious creed, color, sex, sexual orientation, gender identity, national origin or ancestry.
- (b) That contractor will post in conspicuous places where they may be seen by every employee or applicant for employment notices in such form as shall be prescribed by the Human Relations Officer, setting forth the provisions of Section 2.28.030, deemed to be part of this contract.
- (c) That contractor will in all applications or advertisements for employment include in such solicitation or advertisement language which reasonably conveys that every qualified applicant will receive consideration for employment without regard to the applicant's race, religious creed, color, sex, sexual orientation, gender identity, national origin or ancestry.
- (d) That contractor will give written notice, in such form as shall be prescribed by the Human Relations Officer, of the contractor's commitments under this contract to any labor union or employees' association with which he may have a collective bargaining or other agreement.

- (e) That contractor will permit access to their records of employment, employment advertisements, application forms, and other data and records pertaining to their employment practices by the Human Relations Officer and the Fair Employment Practices Commission of the State for the purposes of investigation to ascertain compliance with the nondiscrimination provisions of this contract.
- (f) That contractor will file a compliance report with the Human Relations Officer in such form and at such time as the Human Relations Officer prescribes, from which it may be determined whether they have complied with the nondiscrimination provisions of this contract. In lieu of such compliance report, contractor may file a copy of any similar report, at least in the detail of the United States Government Equal Employment Opportunity Information Report EEO-1, which they have been required to file with any department or agency of the State or the government of the United States of America; provided, that the period to which report applies has not expired, and, provided further, that such report currently meets the requirements of such department or agency. If any willful false statement is made in any such report, contractor is deemed to have willfully violated the nondiscrimination provisions of this contract.
- (g) That a willful violation of any nondiscrimination provision of this contract shall be deemed to be a material breach of this contract and the basis for determination by the City that contractor is an irresponsible bidder as to any future contract for which contractor may submit bids. Until contractor has satisfied the Human Relations Commission that they have established and are implementing an employment program which conforms to the nondiscrimination provisions of this contract, they shall not be allowed by the City to be a contractor or subcontractor under any City contract for public works, goods or services. Willful violation of any nondiscrimination provision of this contract shall constitute grounds upon which the City may cancel, terminate or suspend this contract, in whole or in part.
- (h) That contractor shall be deemed to have willfully violated the nondiscrimination provisions of this contract upon:
 - (1) A finding by the Human Relations Officer that contractor has willfully violated such nondiscrimination clauses; or
 - (2) A finding by the Fair Employment Practices Commission of the State that contractor has violated any provision of Section 1420 of the Labor Code; provided that the Fair Employment Practices Commission has issued a final order pursuant to Section 1426 of the Labor Code, or has obtained a final injunction pursuant to Section 1429 of the Labor Code; provided further, that for the purposes of this provision, an order or injunction shall not be considered final during the period within which (1) appeal may be taken, or (2) the same has been stayed by order of court, or (3) further proceedings for vacation, reversal or modification are in progress before a competent administrative or judicial tribunal.

Upon such finding by the human relations officer or the Fair Employment Practices Commission, the City shall notify contractor that unless he demonstrates to the satisfaction of the Human Relations Officer within such reasonable period as the Human Relations Officer shall determine that the violation has been corrected, action will be taken as set forth in paragraph (g) hereof.

- (i) That nothing contained in this contract shall be construed in any manner so as to prevent the City from pursuing any other remedy that may be available at law.
- (j) That nothing contained in this contract shall be construed in any manner so as to require or permit the hiring of aliens on public works when prohibited by law.
- (k) That contractor will, at such time and in such form as shall be prescribed by the Human Relations Officer, certify to the Human Relations Officer that they have or will take the following affirmative action to implement the nondiscrimination provisions of this contract:
 - (1) Contractor will provide such evidence as shall be required by the Human Relations Officer that they have or will notify all supervisory personnel and personnel officers in their employment in writing of the nondiscrimination provisions of this contract and of their commitment thereunder;

- (2) Contractor will provide such evidence as shall be required by the Human Relations Officer, that they have or will notify all sources of employee referrals, including unions, employment agencies, advertising agencies and the department of Employment of the State in writing of their commitment under the nondiscrimination provisions of this contract;
 - (3) Contractor will personally, or through their authorized representative, attempt to negotiate and develop with any union or employees' association with which they have a collective bargaining agreement an agreement which will:
 - (A) Define the responsibilities of contractor and such union or employees' association for nondiscriminatory practices in hiring, referral, upgrading and training of employees; and
 - (B) Otherwise implement an affirmative anti-discrimination program with respect to such union's or employee association's responsibilities in the employment process or in apprenticeship programs to the end that every qualified worker will be given an equal opportunity for employment without regard to the worker's race, religious creed, color, sex, sexual orientation, gender identity, national origin or ancestry.
 - (4) Contractor shall notify the City of any opposition to the nondiscrimination provisions of this contract by any firm or organization with whom they must deal in the ordinary course of business.
- (1) That contractor will not, because of considerations of race, religious creed, color, sex, sexual orientation, gender identity, national origin or ancestry, refuse to subcontract with any potential subcontractor, or discriminate against any subcontractor with respect to compensation, terms, conditions or other privileges of a subcontractor; and, that contractor will take affirmative action to:
- (1) Insure that every potential subcontractor who informs the contractor that such subcontractor desires to subcontract with the contractor to perform a specified portion of the public works or services called for by the contract between the contractor and the City, and every subcontractor awarded a contract by the contractor will receive equal opportunity for a subcontract for the performance of the specified portion of such public works or services and will be granted equal treatment with respect to compensation, terms, conditions and other privileges of a subcontractor without regard to race, religious creed, color, sex, sexual orientation, gender identity, national origin or ancestry;
 - (2) Obtain bids prior to any subcontracting from minority subcontractors engaged in the trades covered by the public works or services called for by the contract between the contractor and the City, including circulation to minority associations of notice of the fact that the contractor intends to enter into a subcontract or subcontracts.

2.28.040 - Enforcement.

The Human Relations Officer shall, in the enforcement of this chapter, consider the recommendations of the Commission on Human Relations and their actions and decisions shall be subject to review by the Commission.

2.28.050 - Appeals.

- (a) Any person or persons affected by the action of the Human Relations Officer in the enforcement of this chapter shall be notified of their right to appeal to the Commission on Human Relations. Notice of appeal shall be made in writing and shall be filed with the chairman of the Commission within thirty days after the date of the protested action of the Human Relations Officer. Compliance with any decision, order or other action of the Human Relations Officer shall not be required during such time as an appeal is pending.
- (b) For purposes of its appellate jurisdiction under this section, a quorum shall consist of five members of the Commission. A majority of at least five members of the Commission shall be necessary for all decisions rendered in its appellate jurisdiction.
- (c) The presiding officer of the commission shall have the power to administer oaths to witnesses in appellate proceedings before the Commission under this section. In the event that any person fails to appear as a witness in any such proceeding that being requested to do so, and if it appears to the Commission that their testimony, or books, records, documents or

other things under their control are material and relevant as evidence in the matter under consideration by the Commission in the proceedings, the presiding officer of the Commission may request the City Council to subpoena such person, requiring their presence at the proceeding, and requiring them to bring such books, records, documents or other things under their control.

- (d) All appellate proceedings of the Commission on Human Relations shall be open to the public. Records and minutes shall be kept of such proceedings and shall be open to public inspection. The Commission shall adopt rules or procedure for appellate proceedings. Upon reaching a decision in any appellate proceedings, the Commission shall give written notice thereof to the Human Relations Officer and the appellant or appellants. The decision of the Commission shall be final unless the appellant, appellants or Human Relations Officer petitions the City Council to review the proceedings as provided in paragraph (f) hereof.
- (e) If any contractor or subcontractor under contract to the City for public works or for goods or services fails to appear at an appellate proceeding of the Commission after having been given written notice to appear, such failure to appear is grounds for cancellation of the contract or subcontract and such contractor or subcontractor is deemed to have forfeited all rights, benefits and privileges thereunder.
- (f) Upon petition of any person aggrieved by the determination of the Commission on Human Relations, the City Council may review the proceedings and the decision of the Commission. No petition for review shall be considered unless it is filed in writing with the City Clerk within ten days from the date of the decision of the Commission. After consideration of such petition, the City Council may affirm, reverse or modify the Commission's decision and the action of the City Council shall be final and conclusive.

SECTION 2. Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 3. Effective Date.

This ordinance amendment shall be effective 30 days after passage and adoption. First introduced at a regular meeting of the City Council of the City of Richmond held on July 17, 2018, and finally passed and adopted at a regular meeting held on July 24, 2018, by the following vote:

YES: Councilmembers Beckles, Choi, Martinez, Myrick, Recinos, Vice Mayor Willis, and Mayor Butt.
NOES: None.
ABSTENTIONS: None.
ABSENT: None.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:
TOM BUTT
Mayor

Approved as to form:
BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Ordinance No. 23-18 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on July 24, 2018.



Pamela Christian, City Clerk of the City of Richmond