ORDINANCE No. 114534

COUNCIL BILL No. 107337

AN ORDINANCE suspending application of martial status antidiscrimination provisions of S.M.C. Chs. 14.04 and 14.08 to employee health insurance issues until March 1, 1990.

COMPTROLLER FILE No. _____

Introduced: MAY 16 1989	By: GALLE
Referred: MAY 16 1989	To: FINANCE & PERSONNEL
Referred:	To:
Referred:	To:
Reported: MAY 22 1989	Second Reading: MAY 26 1989
Third Reading: MAY 26 1989	Signed: MAY 29 1989
Presented to Mayor: MAY 30 1989	Approved: MAY 31 1989
Returned to City Clerk: MAY 31 1989	Published:
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

The City

Honorable President:

Your Committee on Fi

to which was referred the within Co
report that we have considered the

Public He
Committee
" Refe
Vote 9-0 Wi

The City of Seattle--Legislative Department

Date Reported and Adopted

REPORT OF COMMITTEE

e President:

mmittee on Finance and Personnel

was referred the within Council Bill No. 107337

at we have considered the same and respectfully recommend that the same:

Public Hearing Held 5/18/99

Committee action:

"Refer To Full Council

9-0 Without Recommendation"

Virginia Gree

Committee Chair

VG:ssj
5/19/89

CB 107337

ORDINANCE 114534

An Ordinance suspending application of marital status anti-discrimination provisions of S.M.C. Chs. 14.04 and 14.08 to employee health insurance issues until March 1, 1990.

WHEREAS, some employee benefit specialists and a spokesman for the Internal Revenue Service have suggested that if health insurance benefits are provided to cohabitants of City employees, the health insurance benefits received by all City employees and their beneficiaries may no longer be exempt from federal income tax because of limitations stated in Section 89 of the Internal Revenue Code, 26 U.S.C. § 89; and

WHEREAS, the City Attorney has requested an opinion from the Commissioner of the Internal Revenue Service regarding the income tax effects of extending health insurance benefits to the cohabitants of City employees; and

WHEREAS, the City of Seattle remains committed to full implementation at the earliest possible date of adopted principles of non-discrimination in employment, housing, and public accommodations as currently established in City law; and

WHEREAS, the City Council intends for the City Attorney to interact with all relevant parties to achieve implementation of the City's non-discrimination laws; Now, Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Any application of S.M.C. 14.04.030, 14.04.040, 14.08.020, 14.08.030 and 14.08.040 to an employer's or insurer's failure to provide health insurance benefits to cohabitants of employees is suspended until March 1, 1990, to permit the City Attorney to obtain the opinion of the Commissioner of the Internal Revenue Service regarding the income tax effects of extending employer-provided health insurance plans to provide benefits to employees' cohabitants.

Section 2. The City Attorney shall make his request of the Commissioner of the Internal Revenue Service by June 1, 1989, and shall submit a copy of said request to the Mayor and to the Chair of the City Council's Finance and Personnel Committee. Further, the City Attorney shall provide regular monthly progress reports to the Mayor and to the Chair of the City Council's Finance and Personnel Committee on the first working day of each month, beginning July 3, 1989.

Section 3. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

Section 4. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the City Charter.

Passed by the City Council the 22nd day of May, 1989 and signed by me in open session in authentication of its passage this 22nd day of May, 1989.

President of the City Council.

Approved by me this 24th day of May, 1989.

Mayor.

Filed by me this 24th day of May, 1989.

ATTEST: Norward J. Brooks
City Comptroller and City Clerk.

BY: Theresa Dunbar
Deputy Clerk.

(SEAL)

Published_____

#22
C.B. 107337

RG:et
5/15/89
7:ORD5

ORDINANCE _____

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WHEREAS, the City Attorney has requested an opinion from the Commissioner of the Internal Revenue Service regarding the income tax effects of extending health insurance benefits to the cohabitants of City employees; Now, Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Any application of S.M.C. 14.04.030, 14.04.040, 14.08.020, 14.08.030 and 14.08.040 to the provision of health insurance benefits to cohabitants is suspended until March 1, 1990 to permit the City Attorney to obtain the opinion of the Commissioner of the Internal Revenue Service regarding the income tax effects of extending employer-provided health insurance plans to provide benefits to cohabitants.

Section 2. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

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Office Of The Mayor
City of Seattle

Charles Royer, Mayor

RECEIVED
MAY 18 1989
VIRGINIA GALLE
SEATTLE CITY COUNCIL MEMBER

May 17, 1989

The Honorable Sam Smith
President, City Council
City of Seattle

Dear Council President Smith:

At my request, the Law Department prepared and the City Council introduced on Monday, May 15, 1989, Council Bill 107337. The proposed ordinance would suspend application of the provisions of the City's Fair Employment Practices (FEPO) and Fair Housing and Public Accommodations (FHPA) Ordinances as they might affect extension of employee health benefits to cohabitants until March 1990. During this time, the City will obtain and review a formal opinion from the U.S. Commissioner of the Internal Revenue Service as to the income tax effects of extending health insurance benefits to cohabitants.

The purposes of this letter are to explain:

1) The background leading to this request;

2) The rationale for the proposed ordinance and its effects should it be passed; and

3) The steps I would recommend the City pursue between now and March 1990.

Background

- FEPO Amendments

  In August 1986, amendments to the City's FEPO became effective. These amendments established the definition of marital status as: "The presence or absence of a marital relationship and including the status of married, separated, divorced, engaged, widowed, single, or cohabitating." (SMC 14.04.030[K])

- Foshay Case

  In December of 1987, the Law Department issued a decision declining to prosecute a charge involving a Pacific Northwest Bell employee, Robert Foshay, who had been denied funeral leave benefits and for which the Seattle Human Rights Department (HRD) had found cause. The Law Department decision was based on the fact that the claim in this case had occurred prior to the effective date of the City's amendments to the FEPO defining marital status to include cohabitating.

  The Law Department's opinion clearly layed the groundwork, however, for subsequent findings of cause in the denial of employee benefits based on marital status to cohabitating "heterosexuals in quasi-marital relationships and homosexuals similarly situated."

- Executive Planning for Extension of Employee Benefits to Domestic Partners

  Prior to issuance of the Law Department's decision, the City was engaged in two efforts addressed to extension of employee benefits to domestic partners of City employees. In January 1988, the Seattle Public Library labor contract with the American Federation of State, County, and Municipal Employees (AFSCME) Locals 2083 and 2083C was ratified. This contract established employee use of sick leave, emergency leave, and funeral leave for domestic partners, defined domestic partners, and provided an affidavit process declaring a domestic partnership.

  The Mayor's Gay and Lesbian Task Force, staffed by the Office for Women's Rights, undertook a review of domestic partner benefit programs operating in other City's and private companies and initiated planning for a program here. Their report and recommendations were completed March 1988 and revised November 1988.

  During 1988 and 1989, the City Personnel Department consulted with departments, union leadership, and the Mayor's Task Force in preparation of amendments to the City's leave ordinances that would, among other things, establish a definition of domestic partners and the basis for qualifying as a domestic partner and extend employee use of sick leave and funeral leave for domestic partners. After considerable review within the Executive branch and with the Law Department, this proposed ordinance was transmitted to the Council May 10, 1989, and is expected to be introduced May 22, 1989.

The City Personnel Department also approached the City's health insurance carriers in mid-1988 to obtain quotes and program requirements for potential extension of the City's health plan coverage to domestic partners of City employees. Responses were obtained from two of the City's three carriers with projections of premium costs increases from 1.8 to 8.0 percent depending on program design and coverage. The third carrier declined to respond to the City's request.

Since the City's medical benefit plans are due to be rebid at the end of this year, the Executive has been considering inclusion of domestic partner coverage in the specifications for rebidding our insurance plans. It has been our intent to address this issue with the Council following Council action on the proposed leave ordinance, since passage of this ordinance would formally establish for the City a definition of domestic partnership.

- Current HRD Cases

Four recent charges of discrimination on the basis of marital status in the denial of employee health benefits for domestic partners have been under consideration by HRD. On March 31, 1989, the HRD Director, Bill Hilliard, dismissed one case involving a private employer on the grounds that HRD lacked jurisdiction under provisions of the federal Employee Retirement Income Security Act (ERISA).

On April 3, 1989, the HRD Director issued a Proposed Determination and Offer of Conciliation in three cases involving City employees who had been denied health care coverage for their cohabitating partners. The Proposed Determination found cause on the grounds that the denial was discriminatory on the basis of marital status under the FEPO. The Executive has requested a time extension to prepare a response to the Proposed Determinations in these cases.

- Internal Revenue Service Code (Section 89)

Congress enacted amendments to the Internal Revenue Code (Section 89) which become effective in 1989. The pertinent amendments pertain to requirements for employers to qualify their health plans and establish that they are nondiscriminatory as to highly paid versus lower paid employees. The IRS issued draft regulations implementing Section 89 in March 1989. Currently, there are numerous amendments to Section 89 pending before Congress; these range from repeal to imposition of a 34 percent penalty surcharge on the employer's total health care premiums for plans that do not qualify under the IRS code.

The matter of the potential income tax effects of Section 89, in the event of extension of health care plan coverage to domestic partners of the City's employees, arose last week when public discussion of the HRD Proposed Determination began. We sought the advice of the City Attorney and the City's insurance broker, Mercer Meidinger Hansen. On Friday, May 12, my office was apprised by the City Attorney of the results of their consultations with the Regional Commissioner of the IRS and four private tax attorneys. Although no definitive answers regarding this new and untested section of the IRS code are available, the preliminary opinion of the Regional IRS Commissioner and three of four private tax attorneys was reported as follows:

-- Extension of health plan coverage to persons other than the employee, the employee's legal spouse, and the employee's minor dependent children could result in disqualification of the City's health plans from tax exemption with the result that employer provided benefits would become taxable income to all participants receiving benefits under the plan.

The attached May 12 letter from the City's insurance broker (Attachment 1) also contains this interpretation, but also contains an alternate possible interpretation of Section 89 whereby only those employees with coverage for domestic partners would be taxed on benefits received. All those with whom we have consulted agree that only a ruling from the U.S. Commissioner of the IRS can provide definitive advice on the tax consequences of extending health plan benefits to domestic partners of employees.

Proposed Council Bill 107337

In light of the information we received on Friday, May 12, we requested the Law Department to prepare an ordinance that would have the effect of giving the City time to obtain an IRS ruling on the tax questions and time to devise a strategy that would allow the City to preserve the integrity and purposes of both our civil rights ordinances and our employee health insurance programs. We requested such an ordinance as an alternative to any actions that might be proposed by others that would compromise the principles and policies of our local nondiscrimination laws.

While the proposed ordinance temporarily suspends application of selected provisions of our FEPO and FHPA ordinances, it does not contemplate amending or eroding the protections of the City's civil rights laws, and this is important. The City's long history of steadfast and unequivocal support for the antidiscrimination protections of our fair employment and public accommodations ordinances remains. The credibility of our principles and our public policy commitments to anti-discrimination, as embodied in the City's ordinances, are at risk any time we consider exceptions to those principles and commitments. Fairness and equal treatment of all people on a nondiscriminatory basis remains the fundamental value we seek to promote.

To achieve this objective and provide time to fully consider tax code interpretations and potential amendments to the tax code, the Law Department advised that we submit the ordinance currently before the Council. The ordinance suspends application of provisions of both the FEPO and the FHPA ordinances as they might affect extension of employee health benefits to cohabitants until March 1990.

We have been advised by the Law Department that suspension of provisions in both ordinances is required to ensure that during this interim period our health plans are not disqualified by the IRS, either as a result of the City directly extending health plan coverage to employees' domestic partners or as the result of insurance carriers being required under the FHPA to extend coverage to employees' domestic partners.

In order that we not compromise or erode our nondiscrimination policies, the ordinance has been drawn as narrowly as possible and no other applications of the FEPO or FHPA other than those pertaining to extension of health insurance benefits to cohabitants have been suspended, amended, or otherwise affected.

If the Council approves the proposed ordinance, it is my intent to request that the HRD Director hold in abeyance issuance of his Final Determination in the three cases brought by City employees until March 1990 or any earlier date by which the suspension of the FEPO provisions is lifted. This action will have the effect of preserving the rights of the charging parties during the period of the suspension. The Council's expeditious consideration of the proposed ordinance, in combination with my request of the HRD Director, will ensure that the City's health plans are not disqualified by the IRS in the interim period as a result of a Final Determination by the HRD Director and will maintain the integrity of the civil rights protections under the current FEPO for the charging parties in the present case.

Recommended Actions - Now to March 1990

I have asked Deputy Mayor Shelly Yapp to work with the Council and direct the efforts of the Executive during the remainder of the year to pursue the following objectives:

1) To enact and implement the proposed amendments to the City's leave ordinance

   Among other provisions of this ordinance, we propose to establish a definition of domestic partners and extend sick and funeral leave benefits for employees with domestic partners.

2) To develop a legislative and lobbying strategy that will preserve and ensure the effectiveness of local government anti-discrimination laws.

   We will work through OIR with other cities, private employers, and unions to address both the federal tax code issues and preemption questions that have arisen in the present debate.

3) To prepare bid specifications for the City's 1990 health insurance plans that would enable the City to elect extension of health care coverage to domestic partners of City employees.

Through the Personnel Department, we will solicit bid alternates that will position the City to elect extension of health benefits to domestic partners of our employees.

4) To fully investigate and report on the programs and experience of other governmental and private sector policies and plans that involve extension of employee benefits to domestic partners.

The Personnel Department and the Office for Women's Rights will be assigned responsibility for developing and updating information on the experience and programs of other employers and will report on their findings before the end of the year.

These efforts, along with those that will result from passage of proposed Council Bill 107337, are designed to enable us, as elected officials, to make informed decisions; to ensure that we and the public are fully aware of the policies underpinning our decisions; and to preserve the principles of non-discrimination for all our citizens.

If you have questions or desire additional information, please contact me or Shelly Yapp (8103).

Sincerely,

Charles Royer

Attachment

cc: All City Councilmembers
Doug Jewett, City Attorney
All Department Heads
Shelly Yapp, Deputy Mayor

ATTACHMENT 1

WILLIAM M.
MERCER MEIDINGER HANSEN
INCORPORATED

May 12, 1989

Ms. Sally Fox
Benefits Supervisor
City of Seattle
Personnel Department
Dexter Horton Building, 4th Floor
710 2nd Avenue
Seattle, WA 98104

RECEIVED
MAY 16 1989

Re: Domestic Partners and Section 89(k)

Dear Sally:

This is in response to your recent inquiry concerning 1) whether health benefits provided to domestic partners who are not married would be taxable, and 2) the tax impact on the plan as a whole of providing benefits to non married domestic partners. This letter is intended to provide you with a general overview of the issues and identify relevant tax laws. This is a complex issue which should be addressed by your legal counsel. You may wish to forward this letter to your attorneys to facilitate their review.

Exclusive Benefit Requirement

Effective January 1, 1990, the City's health plan must be maintained for the "exclusive benefit of employees" pursuant to IRC Section 89(k)(1)(D). Proposed Treasury Regulation 1.89(k)-1, Q-6 indicates that whether the exclusive benefit requirement is satisfied is based on all of the facts and circumstances. The proposed regulation also provides that an individual will be deemed to be an "employee" for purposes of this rule if benefits for the individual are excluded from gross income pursuant to IRC sections 105 and 106. In general, IRC Section 105(b) excludes from gross income amounts reimbursed for medical expenses under an employer sponsored health plan. IRC Section 106 excludes from gross income the employer paid cost of health coverage.

In order for medical reimbursements to be excluded from gross income pursuant to IRC Section 105, the medical expenses must be incurred by the employee, or his or her spouse or dependents. Similarly, the cost of coverage is excluded from gross income only if coverage is limited to the employee and his or her spouse and dependents.

"Dependent" is defined in IRC Section 152 to include several categories of relatives by blood or marriage, and the individuals described below, provided that the individual must receive over half of his or her support from the employee -

> "... (9) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 7703, of the taxpayer) who, for the taxable year of the taxpayer, has as his principle place of abode the home of the taxpayer and is a member of the taxpayer's household."

However, an individual would not be considered a "Dependent" under this subparagraph (9) if the relationship between the employee and the individual is in violation of local law.

Thus, it appears that the cost of coverage and reimbursement of medical expenses of a domestic partner who is included in the above definition of dependent would not be taxable to the employee. Similarly, since amounts are excludable under IRC Sections 105 and 106, it appears that providing coverage to such domestic partners would not violate the requirement that the plan be maintained for the exclusive benefit of employees.

Domestic Partners Who Are Not Dependents

A domestic partner who does not receive over half of his or her support from the employee would not be considered a dependent. In the event coverage is extended to an individual who does not satisfy the definition of "Dependent", several tax consequences may result:

1. The cost of medical coverage provided to the individual would be taxable since the IRC Section 106 exclusion would not apply.

2. The plan would violate the exclusive benefit requirement of IRC Section 89(k). In general, this means that all or a portion of employer provided benefits (ie. the amount of reimbursed medical expenses) would be taxable to all participants who receive benefits under the plan. The portion of the benefit which is taxable is determined on a sliding scale based on the expenses and the employee's income.

   Proposed Treasury Regulation 1.89(k)-1 Q-8 provides that where the failure to meet the Section 89(k) requirements is directly and exclusively related to a specific portion or aspect of the plan, that portion may be treated as a separate plan for purposes of determining the penalties. This could be interpreted to mean that only those employees with coverage for domestic partners who are not dependents would be taxed on benefits received. We will discuss whether this interpretation is correct with the national office of the Internal Revenue Service and let you know if we obtain further information.

In addition to taxation of employees, the City may also be subject to an excise tax pursuant to IRC Section 6652(k) if it fails to correctly report taxable income on employee wage statements.

Sally, as you know the proposed regulations implementing section 89(k) are new and are still subject to varying interpretation. Early next week we expect to speak with two individuals in the national office of the Internal Revenue Service who have apparently discussed how the exclusive benefit rule applies to plans which cover unmarried domestic partners. We will continue to keep you informed if we learn additional information.

As you know, Mercer Meidinger Hansen is a consulting firm and does not provide legal advice. As I mentioned above, we recommend that you obtain a legal opinion on this issue.

Sincerely,

Mimi Gerdes Warner

Mimi Gerdes Warner, J.D.
Associate

MGW/DEF/js

cc: Mr. Dave Forsell

TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

Virginia Gale

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

_____

_____

_____
PRESIDENT'S SIGNATURE

C.S. 20.28

STATE OF WASHINGTON - KING COUNTY

15872
City of Seattle, City Clerk

—ss.

No.

City of Seattle

ORDINANCE 114534

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This ordinance shall take effect and be in force ...m and after its passage and approval, if approved by ...rwise it shall take effect at the time it shall become ... provisions of the City Charter.

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

ORD/114534

was published on

06/02/89

The amount of the fee charged for the foregoing publication is the sum of $, which amount has been paid in full.

Subscribed and sworn to before me on

6/2/89

Notary Public for the State of Washington, residing in Seattle