

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 017456, TO PROVIDE THAT CITY HEALTH BENEFITS SHALL BE AVAILABLE TO CITY EMPLOYEES AND THEIR LEGAL SPOUSE AND DEPENDENT CHILDREN AND ALL OTHER PERSONS WHO ARE WITHIN AN ELIGIBLE CLASS OR IN A CLASS THAT ACTUALLY RECEIVED BENEFITS UNDER A CITY HEALTH BENEFITS PLAN PRIOR TO NOVEMBER 10, 2010.

WHEREAS, State law in Section 172.002, Texas Local Government Code, allows cities to provide health benefits for the following reasons:

- (1) provide uniformity in benefits including accident, health, dental, and long-term disability coverage to employees of political subdivisions;
- (2) enable the political subdivisions to attract and retain competent and able employees by providing them with accident and health benefits coverages at least equal to those commonly provided in private industry;
- (3) foster, promote, and encourage employment by and service to political subdivisions as a career profession for persons of high standards of competence and ability;
- (4) recognize and protect the political subdivisions' investment in each permanent employee by promoting and preserving economic security and good health among those employees;
- (5) foster and develop high standards of employer-employee relationships between each political subdivision and its employees;
- (6) recognize the service to political subdivisions by elected officials and employees of affiliated service contractors by extending to them the same accident and health benefits coverages as are provided for political subdivision employees; and
- (7) recognize the long and faithful service and dedication of employees of political subdivisions and to encourage them to remain in service of their respective political subdivisions until eligible for retirement by providing health benefits to those employees.;

and

WHEREAS, on November 2, 2010, the qualified voters of the City of El Paso voted to approve an initiative ordinance, the language of which was: "That the City of El Paso endorses traditional family values by making health benefits available only to city employees and their legal spouse and dependent children"; and

WHEREAS, this ordinance, Ordinance No. 017456, became effective on November 10, 2010, the date upon which the Special Election was canvassed by the City Council; and

WHEREAS, on May 20, 2011, the United States District Court for the Western District of Texas, in Ronald G. Martin, et al. vs. The City of El Paso, Texas, Cause No. EP-10-CA-468-FM, entered an Order finding that Ordinance No. 017456 does not violate the Contract Clause or the Equal Protection Clause of the United States Constitution; and

WHEREAS, the Court found that the Ordinance limits health benefits coverage to city employees and their legal spouse and dependent children and excludes coverage for all other classes of persons who had received health benefits coverage prior to the effective date of the ordinance; and

WHEREAS, the Court's ruling means that more than one hundred persons who had health benefit coverage prior to the adoption of Ordinance No. 017456 will lose their health benefit coverage on August 1, 2011, the date upon which the Court's preliminary injunction will cease.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That Ordinance no. 017456, is amended in its entirety to read as follows:

That health benefits shall be available to city employees and their legal spouse and dependent children and all other persons who are within an eligible class under a City Health Benefits Plan to receive health benefits or who are in a class that actually received health benefits from the City prior to November 10, 2010, the effective date Ordinance No. 017456; provided however, that all persons who were previously approved for health benefits for the reason that they were in a "related agency" shall be reevaluated to determine their eligibility under the state law enumerated classification of an "affiliated service contractor" and shall be approved or re-approved for eligibility by the City Manager, as appropriate.

ADOPTED THIS 14th day of June 2011.

CITY OF EL PASO

ATTEST:

John F. Cook, Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Elaine S. Hengen
Senior Assistant City Attorney



Mayor's Health Benefits Restoration Ordinance

Court Decision on the Litigation Of Initiative Ordinance No. 017456

June 14, 2011



December 15, 2010

A group of city employees, domestic partners of City employees, retirees and elected officials (the plaintiffs) files a lawsuit against the City seeking a court declaration that Ordinance No. 017456 is unconstitutional on grounds it violates equal protection and impairs contract rights.

January 12, 2011

The group El Pasoans for Traditional Values and various individuals (the defendant-intervenors) intervene in the lawsuit.

January 13, 2011

The Court grants a preliminary injunction. The City continues its defense of the constitutionality of the Ordinance, including preparing a brief in opposition to the lawsuit.

May 20, 2011

The Court enters a dispositive order in the City's favor, upholding the constitutionality of Ordinance No. 017456.

The preliminary injunction will end on August 1, 2011.



The Court's Interpretation of the Ordinance

The Court states:

"As there were "tens of thousands of 'legislators' " enacting the Ordinance, it would be incongruous to rely on Defendant-Intervenor's intent to define the scope of the ordinance. Rather, the scope of Ordinance is defined through the rules of statutory interpretation.... Pursuant to the Texas Local Government Code, the Ordinance's language does not provide benefits to retirees or elected officials." (Order, p. 17)

The Court states:

"Accordingly, the Ordinance limits health coverage to city employees and their spouse and dependent children. It distinguishes between these people and everyone else." (Order, pp. 17-18)



The Ordinance as interpreted by the Court does not violate Equal Protection

The Court states:

"Plaintiffs point out the Ordinance denies health insurance coverage to retirees, elected officials, affiliated service contractors, domestic partners of employees, and certain dependent children, all of whom were previously covered. However...The Ordinance does not affect a discrete group as it does not identify a class which it affects disparately." (Order, p. 18)

The Court also states:

"It is worth noting, though, that if the Ordinance only affected domestic partners, it would then be subject to the [rational basis] part of the equal protection analysis. An Ordinance that barred city employees' domestic partners from receiving health benefit coverage would have created a discrete group." (Order, p. 18)



Mayor's Health Benefits Restoration Ordinance:

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What does the Mayor's Ordinance Do?

- The provisions of the voter-initiated ordinance are superseded.
- Restores the availability of health benefits to the eligible classes as they existed under the City health plans prior to November 10, 2010.
- Addresses two issues discovered regarding the wording contained in the health plans to ensure that coverage is available to all elected officials as per actual practice, and for “affiliated service contractors”—the specific term used in state law, Chapter 172, Local Gov’t Code.



Mayor's Health Benefits Restoration Ordinance

Historical Data and Information

June 14, 2011



Dates and Events

March 25, 2003

City accepts a \$100,000 grant from Levi Strauss Foundation for master planning the unified medical campus; the grant is stipulated on City compliance with the foundation's non-discrimination policy, which included protection from discrimination based on sexual orientation.

April 8, 2003

The City expands its local anti-discrimination law (Title 10, Section 10.16.010) to prohibit discrimination in places of public accommodation based on gender identity or sexual orientation. City Council Representative Jan Sumrall, who initiated the measure. At its passage, Rep. Sumrall states that "coverage for domestic partners on the City's insurance will begin in January 2004" -- the provision of such coverage, however, was never implemented.



Summer 2009

During the budget process several City Council members ask questions regarding providing health care benefits for domestic partners.

August 25, 2009

City Council approves a motion to provide health care benefits to domestic partners with the January 1, 2010 plan year.

November 10, 2009

The Initiative Petition is filed with the City Clerk and it is verified. The petition states:

"The undersigned ask that the El Paso City Council pass the following ordinance: The City of El Paso endorses traditional family values by making health benefits available only to city employees and their legal spouse and dependent children."

Pursuant to the City Charter, the initiative ordinance is placed on the December 8, 2009 Council agenda --Council voted to delete its introduction.



April 30, 2010

The second Initiative Petition is filed with the City Clerk and it is verified.

August 17, 2010

The City Council calls a special election for November 2, 2010 to place the proposed initiative ordinance on the ballot.

November 2, 2010

The Initiative Ordinance is placed on the ballot at a special election and passes by majority vote.

November 10, 2010

The City Council canvasses the vote of the election and declares that voter-initiated ordinance (Ordinance No. 017456) passes and goes into effect.