

SULTAN CITY COUNCIL

AGENDA ITEM COVER SHEET

ITEM NO: A-1
DATE: January 25, 2007
SUBJECT: Domestic Partner Coverage for Health Care Insurance

CONTACT PERSON: Deborah Knight, City Administrator



SUMMARY:

The issue before the Council is a review of the City's "opposite sex only" domestic partner health care coverage policy, and consideration of either eliminating the policy or extending the policy to include both opposite and same sex domestic partners.

The reason for the review is the addition of sexual orientation as a protected class under RCW 49.60 (Attachment A). Sexual orientation nondiscrimination became effective and part of the Washington State Law Against Discrimination on June 8, 2006.

RCW 49.60.180(3) states that "it is unfair practice for any employer...[t]o discriminate against any person in compensation or in other terms or conditions of employment" because of, among other things, "sexual orientation."

The City's health care plan sponsor, the Association of Washington Cities Employee Benefit Trust notified the City of Sultan in August 2006 (Attachment B) that the Washington State Human Rights Commission (WSHRC) has interpreted that offering domestic partner coverage for same sex only, or opposite sex only partners is discriminatory. Essentially, the WSHRC's ruling is that if an employer offers opposite sex domestic partner coverage, that employer would also need to offer same sex domestic partner coverage.

However, the new law does not appear to place additional obligations on employers who have chosen not to offer any domestic partner coverage, since the employer in this instance would not be discriminating against one class of persons. Same-sex and opposite-sex domestic partners would be treated similarly for purposes of the law.

The City of Sultan is the only known city in Washington State that has limited domestic partner coverage to opposite sex partners (Attachment C). Bellingham, by way of contrast, is the only city offering domestic partner coverage to same sex partners only.

The Association of Washington Cities was seeking to have the City amend its policy by January 1, 2007.

FISCAL IMPACT:

The City adopted a Domestic Partner Coverage Policy in May 2003 (Attachment D). There are currently 2 employees who have domestic partners and their dependents enrolled in the City's health insurance program. Coverage for domestic partners and their dependents cost the City approximately \$12,000 annually for 2007.

Adding same sex partner coverage is not expected to have any immediate fiscal impact on the City. Staff research found that less than 2% of eligible same sex domestic partners enroll in an available plan.

Eliminating domestic partner coverage could result in an annual savings of approximately \$12,000 to the City. Since opposite sex domestic partner coverage is currently part of the City's benefit package, a decision to eliminate domestic partner coverage would need to be negotiated with the bargaining unit.

ANALYSIS:

A policy question about offering health insurance benefits to unmarried same sex or opposite sex domestic partners can get wrapped around moral, social and/or religious views. This is a difficult discussion to keep focused on purely analytical cost/benefit issues. Continuing to provide domestic partner health coverage may be good policy regardless of one's moral, social or religious views.

In 2005, Mellon Financial Corporation's "Nontraditional Family Benefit Coverage Survey" found that 31% percent of respondents offer domestic partner benefit coverage up from 19% in 2001. More employees than ever have the option to obtain health care benefits for their domestic partners. The number of domestic partnerships is increasing. In a competitive hiring market, providing domestic partner health benefits may help attract and retain quality employees.

From an overall policy perspective, encouraging health coverage for as many individuals as possible reduces the number of persons who are without health coverage. The health care coverage provided by the City may be the only health coverage available to an employee's domestic partner and their dependents.

ALTERNATIVES:

1. Discuss the the City's domestic partner health benefits and direct staff to return to Council with an amending salary and benefits ordinance to discontinue the City's domestic partner coverage for opposite sex partners.

This decision would affect 2 employees, 2 domestic partners and 1 dependent child. A decision to discontinue an existing benefit would need to be negotiated with the Teamsters' Union as the City's bargaining unit representative.

2. Discuss the City's domestic partner health benefits and direct staff to return to Council with an amending salary and benefits ordinance extending the City's domestic partner coverage to same sex partners under the current terms and conditions.

This decision does not appear to affect any Sultan employees at this time. Staff does not anticipate any immediate impact to the City's budget by extending the benefit at this time. A decision to extend an existing benefit would not require negotiations with the Teamsters.

3. Discuss the City's domestic partner health benefits and direct staff to return to Council with an amended salary and benefits ordinance extending the City's domestic partner coverage to opposite partners and same sex partners under revised terms and conditions.

The Council could elect to offer domestic partner coverage but require that the employee pay the full cost of medical insurance, as allowed by the underwriting rules. An employee would pay approximately \$408/month to cover a domestic partner and \$863/month to cover a domestic partner and child.

This decision would affect employees who have enrolled (or plan to enroll) their domestic partners and dependents in the City's health care plan. A decision to amend the existing benefit would require negotiations with the Teamsters.

4. Discuss the City's domestic partner health benefits and direct staff not to take any action at this time.

The City's domestic health care benefits policy appears to violate the revised Washington Law Against Discrimination as interpreted by the Washington State Human Rights Commission. A decision to maintain the City's opposite sex only coverage carries the risk of violating the WSHRC's ruling. It is the AWC Employee Benefit Trust's intent to be in compliance with the WSHRC guidance on domestic partner policies plan-wide; however, at this juncture, the guidance from the WSHRC is for employers not health care plan sponsors such as AWC.

RECOMMENDED ACTION:

Discuss the City's domestic partner health benefits and direct staff to either discontinue the City's domestic partner health care partner coverage or add same sex partners to the policy.

ATTACHMENTS:

Attachment A – RCW 49.60.180(3) Discrimination: Unfair Practices of Employers

Attachment B – Association of Washington Cities letter dated August 2006

Attachment C – Association of Washington Cities Domestic Partner Policies

Attachment D – City of Sultan Memo Domestic Partner Coverage May 30, 2003

COUNCIL ACTION:

RCW 49.60.180

Unfair practices of employers.

It is an unfair practice for any employer:

(1) To refuse to hire any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person, unless based upon a bona fide occupational qualification: PROVIDED, That the prohibition against discrimination because of such disability shall not apply if the particular disability prevents the proper performance of the particular worker involved: PROVIDED, That this section shall not be construed to require an employer to establish employment goals or quotas based on sexual orientation.

(2) To discharge or bar any person from employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person.

(3) To discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person: PROVIDED, That it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex, or to base other terms and conditions of employment on the sex of employees where the commission by regulation or ruling in a particular instance has found the employment practice to be appropriate for the practical realization of equality of opportunity between the sexes.

(4) To print, or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination as to age, sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: PROVIDED, Nothing contained herein shall prohibit advertising in a foreign language.



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August 23, 2006

City of Sultan
ATTN: Laura Koenig, Clerk-Treasurer
P.O. Box 1199
Sultan, WA 98294

Dear Laura,

As you may be aware, the August issue of Personnel News included a brief segment addressing Domestic Partner Health Benefits.

As background information, ESHB 2661 was signed by Governor Chris Gregoire on January 31, 2006. ESHB 2661 adds sexual orientation as a protected class in Washington State. Sexual orientation nondiscrimination became effective and part of the Washington State Law Against Discrimination (RCW 49.60) on June 8, 2006.

With regard to Domestic Partner Benefits, the Washington State Human Rights Commission (WSHRC) has interpreted this law as allowing coverage for same sex only, or opposite sex only partners as discriminatory. Essentially, the WSHRC's ruling is that if an employer offers same sex domestic partner coverage, they would also need to offer opposite sex domestic partner coverage, and vice versa, so as to be non-discriminatory in nature.

As you have adopted an "opposite sex only" domestic partner coverage policy, it is our intent to inform you of the position of the WSHRC and encourage you to amend your policy to include both same *and* opposite sex domestic partners as quickly as possible. While the statute has no phase-in period, the WSHRC will exercise a "reasonability" standard. The AWC is asking for these policy amendments, including a new copy of your domestic partner policy by January 1, 2007.

This letter is not intended to provide legal advice on how you proceed with future domestic partner policy, and we strongly encourage the City to consult your own legal counsel. If the City determines with its own legal substantiation that you are maintaining existing policy, please notify the AWC Trust in writing by the end of the year. It is the AWC Employee Benefit Trust's intent to be in compliance with the WSHRC guidance on domestic partner policies plan-wide; however, at this juncture, the guidance is for employers not health care plan sponsors.

August 23, 2006
Page 2

For additional information, please reference the WSHRC website at:
<http://www.hum.wa.gov/Sexual%20Orientation/empFAQ.html>. Please contact either myself or
Carol Wilmes at 1-800-562-8981 with any other questions you may have.

Sincerely,



Beverly T. Lakey
Employee Benefits Specialist

/btl

cc: City of Sultan File

**ASSOCIATION OF WASHINGTON CITIES
EMPLOYEE BENEFIT TRUST
Domestic Partner Policies**
(Updated November 2006)

The following jurisdictions have adopted domestic partner policies, with gender policy and effective date indicated. Also related below is the number of employees enrolling a domestic partner out of the total employee population.

<u>City/Entity</u>	<u>Effective Date</u>	<u>Gender</u>	<u>Dependents</u>	<u># of Enrolled</u>
TRUST CITIES WITH DOMESTIC PARTNER COVERAGE				
Anacortes	1-1-05	Same & opposite	Yes	
AWC	8-1-03	Same & opposite	Yes	
Bainbridge Island	6-1-03	Same & opposite	Yes	
Bellingham	4-1-06 & 5-1-06	Same Only ¹	Yes	
Bothell	1-1-05	Same Only ¹	Yes	
Burien	3-1-03	Same & opposite	Yes	
Covington	3-1-04	Same & opposite	Yes	
Hopelink	1-1-05	Same & opposite	Yes	
Issaquah	1-1-07	Same & opposite	Yes	
Kirkland	4-1-03	Same & opposite	Yes	
Lake Forest Park	5-1-03	Same & opposite	Yes	
LOTT Wastewater	1-1-05	Same & opposite	Yes	
Olympia	7-1-04	Same & opposite	Yes	
Port of Seattle	9-1-04	Same & opposite	Yes	
Pullman	1-1-03	Same & opposite	Yes	
RiverCom 911	7-1-04	Same & opposite	Yes	
Sammamish	3-1-05	Same & opposite	Yes	
Shoreline	1-1-07	Same & opposite	Yes	
Sound Transit	5-1-03	Same & opposite	Yes	
Sultan	7-1-03	Opposite only ¹	Yes	
Tumwater	4-1-03	Same & opposite	Yes	
NON TRUST CITIES WITH DOMESTIC PARTNER COVERAGE				
Seattle				
Spokane	Mid 2005	Same & opposite	Yes	
Vancouver	5-1-98	Same & opposite	Yes	

OTHER EMPLOYERS

WWU	2001	Same	Yes	
PEBB (State Health Plans)	2001	Same	Yes	

¹ These four jurisdictions are currently reviewing the legal interpretation issued by the Washington State Human Rights Commission regarding anti-discrimination regulations for sexual orientation and gender identity. They will notify the AWC effective 1-1-07 as to their policy intentions.

CITY OF SULTAN MEMO

TO: All Employees
FROM: Laura Koenig, Clerk/Treasurer
DATE: May 30, 2003
RE: Domestic Partner Coverage

The Council adopted a Domestic Partner Coverage Policy for insurance at the May 7, 2003 meeting. The effective date of coverage will be July 1, 2003.

In accordance with AWC Benefit Trust, there is a thirty (30) day open enrollment period for employees to add domestic partners.

A copy of the Policy and the forms are attached for you to insert in your copy of the Personnel Manual.

If you want to add coverage for a domestic partner, please contact me for the necessary forms.

All employees shall be required to provide a physicians release to return to work after filing a State Industrial Claim. The release should include any work related restrictions and the number of days the restrictions shall apply or a statement releasing the employee to full duties.

6.03 HEALTH INSURANCE BENEFITS

Regular full time and part time employees and their dependents are eligible to participate in the City's health insurance program on the first day of the month following employment. The program and criteria for eligibility will be explained upon hire. The City contributes toward the cost of premiums in the amounts authorized by the current union contract. The remainder of the premiums, if any, shall be paid by the employee through payroll deductions.

Domestic Partner Health Insurance Benefits

Unmarried opposite sex domestic partners and their dependents of full time and part time employees are eligible to participate in the City's health insurance program on the first day of the month following employment. Upon termination of a domestic partner relationship and termination of benefit coverage, a new domestic partner can be enrolled no earlier than one (1) year following termination of the prior relationship. Further program information and criteria will be provided upon hire. Contribution rates and premiums are as described above.

Leave of Absence Upon mutual agreement between the employee and the City, and in accordance with the terms and conditions of the insurance policy, the City will continue health insurance coverage at the employee's expense during and approved unpaid leave of absence. COBRA continuation rights may apply in the event coverage is not extended through the City.

Worker's Compensation Leave While an employee is on worker's compensation leave and for a maximum period of two (2) months from the date the employee became absent due to injury or illness, the City will continue to pay for the employer's portion of health insurance premiums, provided that the employee continues to pay their share of the premiums, if any. After two (2) months, the employee's benefits shall cease and the employee may continue health care benefits by self-paying insurance premiums for the remainder of the time they receive Worker's Compensation benefits.

COBRA Rights Upon an employee's termination from City employment or upon an unpaid leave of absence, at the employee's option and expense, the employee may be eligible to continue City health insurance benefits to the extent provided under the federal COBRA regulations. The City will pay the premium for the month the employee is leaving, provided the employee is on paid status for the first ten (10) days of the month.

6.05 UNEMPLOYMENT COMPENSATION

City employees may qualify for State unemployment Compensation after termination from City employment depending on the reason for termination and if certain qualifications are met. The State of Washington Employment Security Department will make all eligibility determinations.

AFFIDAVIT OF DOMESTIC PARTNERSHIP

SECTION I

I, _____ certify that:
Name of Employee (Print)

I, and _____ are domestic partners, and we:
Name of Domestic Partner (Print)

1. share the same regular and permanent residence; and
2. have a close, personal and exclusive relationship; and
3. are jointly responsible for "basic living expenses," as defined below; and
4. are not married to anyone, are of the opposite sex; and
5. are each eighteen (18) years of age or older; and
6. are not related by blood closer than would bar marriage in the State of Washington; and
7. were mentally competent to consent to contract when our domestic partnership began; and
8. are each other's sole domestic partner and are responsible for each other's common welfare.

"Basic living expenses" means the cost of basic food, shelter and any other expenses of Domestic Partner which are paid at least in part by a program or benefit for which the partner qualified because of the Domestic Partnership. The individuals need not contribute equally or jointly to the cost of these expenses as long as they agree that both are responsible for the cost.

SECTION II

- A. I understand that this affidavit shall be terminated upon the death of my domestic partner or by a change of circumstance attested to in this affidavit.

I agree to notify the Finance Department if there is any change of circumstances attested to in this affidavit within thirty (30) days of change by filing Statement of Termination of Domestic Partnership.

- B. After such termination, I understand that another Affidavit of Domestic Partnership cannot be filed one (1) year after a Statement of Termination of Domestic Partnership has been filed with the Finance Department, unless such termination is due to death of my domestic partner.

STATEMENT OF TERMINATION OF DOMESTIC PARTNERSHIP

I, _____ affirm, under penalty of perjury, that the

Affidavit of Domestic Partnership attested to and signed by me on _____
Date of Affidavit

Shall be terminated as of this date.

Termination of Affidavit of Domestic Partnership is due to:

- Termination of Domestic Partnership
- Death of Domestic Partner

I understand that another Affidavit of Domestic Partnership cannot be filed until one (1) year after this Statement of Termination of Domestic Partnership has been filed with the Finance Department.

I understand that my former domestic partner (and domestic partner's dis-enrolled children, if applicable) may have COBRA Continuation Coverage rights. I shall mail a copy of this signed statement to my surviving domestic partner.

Name (Please print)

Date

Signature

Social Security Number