

SPECTRUM INSTITUTE

A Non-Profit Corporation Promoting Respect For Human Diversity

January 15, 1998

*Thomas F. Coleman
Executive Director
Family Diversity Project*

Mayor Harriet Miller
City Hall
735 Anacapa Street
Santa Barbara, CA 93101

cc: Eleanor Langer
Gregg Hart
Marty Blum
Gil Garcia
Tom Roberts
Dr. Dan Secord

Re: Exclusion of opposite-sex couples from
domestic partner benefits is illegal

Dear Mayor Miller:

The News Press reported that the city council will consider a proposal to extend medical, dental, and vision benefits to domestic partners of unmarried city employees, but only if they are a same-sex couple. Under the proposal, opposite-sex domestic partners would be excluded.

I am writing to inform you and the city council members that such a plan would be illegal under California law to the extent that it excludes opposite-sex domestic partners. Along with this letter, I am faxing you a copy of a recent ruling by the state Labor Commissioner. That ruling was upheld on appeal by the director of the state Department of Industrial Relations.

At the outset, I would like to make it clear that this organization supports the extension of benefits to domestic partners. However, we are opposed to programs that define eligible domestic partners in a sexist manner.

In 1984, Berkeley was first municipality in California to extend benefits to domestic partners. The idea of making domestic partnership a "gay ghetto" institution by limiting it to same-sex couples only was debated and soundly rejected. Recent attempts to get San Francisco to limit its domestic partnership laws to same-sex couples have also been turned down by lawmakers there.

Currently, there are 13 municipalities in California (and about a dozen local school districts) that offer benefits to domestic partners. None of these employers, except Oakland, limits benefits to same-sex partners only. There is a legal reason for this. Refusing to extend benefits to an employee's domestic partner, merely because the couple are not of the same sex, constitutes discrimination on the basis of sex, sexual orientation, and marital status.

A municipality that limits a domestic partner benefits plan to same-sex couples violates Labor Code section 1102.1 which prohibits discrimination on the basis of sexual orientation. (See labor Commissioner ruling.)

Such a plan would also constitute "sex" discrimination in violation of state and federal civil rights laws to the extent that the sex of the partners is the factor which determines whether or not the benefit will be conferred. An opposite-sex couple willing to sign the same affidavit of interdependency that confers benefits to a same-sex couple would have grounds to file a complaint with the state Fair Employment and Housing Department and with the Equal Employment Opportunity Commission for illegal sex discrimination.

In addition, any HMO that would administer a plan for same-sex couples only, and that excludes opposite-sex domestic partners, would be in violation of Health and Safety Code section 1365.5 which prohibits health service organizations from discriminating against enrollees or potential enrollees on the basis of sex, marital status, and sexual orientation.

Implementation of a "same-sex only" domestic partnership benefits plan in Santa Barbara would subject the city and any participating HMO's to administrative complaints with the Labor Commissioner, Corporations Commissioner, Fair Employment and Housing Department, and EEOC, as well as lawsuits under relevant state and federal statutes.

The exclusion of opposite-sex domestic partners from Santa Barbara's benefits plan is not necessary for fiscal reasons. Reliable studies show that, on a national average, when employers offer such benefits to same and opposite sex partners, only about 1% of the workforce signs up. The percentage of enrollees in such plans in California cities is somewhat higher on average (about 2%). Therefore, if Santa Barbara adopted an inclusive program, its contributions to the benefits plan would probably increase by only 1% to 2%.

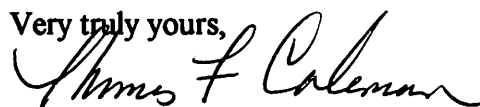
A copy of this letter, and relevant materials, are being sent to each member of the city council so that officials can make an informed decision when the matter is submitted for approval. Amending the proposal to delete the "same-sex" requirement would certainly be a prudent course of action.

We applaud the negotiating team for acknowledging that the current benefits system is unfair to many workers. In an era where diversity is the hallmark of family life, it is appropriate for employers to give equal benefits to all workers, regardless of the structure of their family.

However, extending benefits to some nonmarital households but not to others is wrong because it attempts to eliminate discrimination against some workers while perpetuating it with respect to others. All single workers with domestic partners deserve "equal pay for equal work," regardless of their sexual orientation or the gender of their partners.

This organization, like the National Organization for Women, "supports fair domestic partnership laws that do not discriminate based on sex." (See letter from NOW's president, Patricia Ireland.) We hope that Santa Barbara follows the lead of the 12 California municipalities that wisely adopted an inclusive program.

Very truly yours,



Thomas F. Coleman

SPECTRUM INSTITUTE

A Non-Profit Corporation Promoting Respect For Human Diversity

February 2, 1998

*Thomas F. Coleman
Executive Director
Family Diversity Project*

Mayor Harriet Miller
City Hall
735 Anacapa Street
Santa Barbara, CA 93101

cc: Eleanor Langer Gil Garcia Dan Wallace
Gregg Hart Tom Roberts
Marty Blum Dan Secord

Re: Will city include or exclude
opposite-sex domestic partners?

Fax Transmission (9 pages)
Please distribute to cc: list

Dear Mayor Miller:

I am taking the liberty of faxing you the letter to the editor that was published yesterday by the Santa Barbara News Press on domestic partner benefits for city employees.

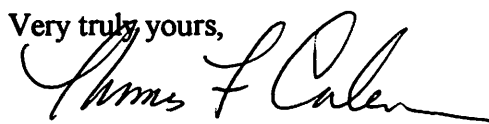
The newspaper reported that, at last month's council meeting, the city attorney advised the council that a "gays only" health benefits plan would be illegal. He cited a recent ruling by the state Labor Commissioner concluding that a similar plan adopted by the city of Oakland was illegal sexual orientation discrimination. The paper reported that the council instructed the staff to review the issue for possible corrective action.

We are wondering whether, and when, the council will delete the restriction that partners must be of the same sex. Spectrum Institute is in the process of completing a 90 page booklet entitled "Seniors Support Domestic Partnership Rights and Benefits: for all couples regardless of gender." The booklet is scheduled to be sent next month to state headquarters and local chapters of all major seniors groups in California. We are trying to decide how to categorize the city of Santa Barbara.

As you can see from the accompanying pages, there is a list of all public employers which have adopted *inclusive* benefits plans. Santa Barbara is currently not on that list. Also, in a short article that will appear at the front of the booklet, we mention only two public employers with plans that discriminate. We are not sure whether or not to change the text to include Santa Barbara.

We want this booklet to be accurate. We also need to get it to the printer very soon. We would appreciate hearing from you about whether or not the council will heed the advice of the city attorney. We would like to be fair in the way we portray Santa Barbara in this booklet. Your response will assist us.

Very truly yours,



Thomas F. Coleman



LETTERS TO THE EDITOR

Editorials for Sunday, February 1, 1998

Santa Barbara's same-sex domestic partner policy is illegal

There's a right way and a wrong way to correct an injustice. Unfortunately, the Santa Barbara City Council has engaged in an illegal act of discrimination as it tried to bring justice to gay and lesbian city employees.

The council voted to extend health benefits to the domestic partners of city workers. For this it should be applauded. However, as city attorney Dan Wallace warned council members, the exclusion of opposite-sex unmarried partners from the plan is illegal under state law.

The state Labor Commissioner recently ruled that a "gays only" domestic partner medical benefits plan adopted by the Oakland City Council violated a state statute prohibiting sexual orientation discrimination. That ruling applies equally to Santa Barbara.

Dozens of cities and counties in California now extend benefits to domestic partners of municipal workers, as do many school districts. All but Oakland - and now Santa Barbara - allow opposite-sex as well as same-sex partners to participate. These employers have found that the cost is minimal.

Councilman Gregg Hart is off-base when he says that straight couples should be forced to get married in order to get equal benefits at work. This type of coercion violates the fundamental right of privacy which protects the freedom of choice to marry or not to marry.

The purpose of employer-subsidized health benefits is not to pressure workers into marrying. These benefits are intended to help workers care for their immediate family members. One does not have to be married to an employee to be part of his or her immediate family.

Any HMO which participates in this illegal "gays only" plan will be violating the state Health and Safety Code which prohibits health service plans from discriminating on the basis of sex, marital status, and sexual orientation.

Unless opposite-sex partners are included in the domestic partner plan, Santa Barbara may find it difficult to locate an HMO willing to participate in the currently illegal "gays only" health plan. In fact, a complaint is now pending with the state Corporations Commissioner against Prudential Health Care Plan of California for its administration of Oakland's illegal same-sex program.

Santa Barbara did the right thing when it passed a domestic partner registry a few years back. That program includes all domestic partners, regardless of gender. The new health plan should be corrected immediately so that it conforms to the inclusive registry.

Spectrum Institute, a non-profit corporation which promotes respect for family diversity, urges equal rights for all domestic partners, is assisting the Oakland employee who is fighting that city's sexist health plan. We hope it is not necessary for unmarried heterosexual or bisexual employees to seek our help in challenging the illegal plan in Santa Barbara.

It would be much better for the council to heed the advice of its city attorney and to immediately remove the "gays only" restriction from the plan.

Thomas F. Coleman

Executive Director

Family Diversity Project

Spectrum Institute

Thursday
January 22, 1998



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Domestic partners to get benefits

City will study extending decision to unmarried heterosexual couples.

1/21/98

By RHONDA PARKS

NEWS-PRESS STAFF WRITER

The Santa Barbara City Council on Tuesday night unanimously agreed to extend health benefits to the partners of gay and lesbian city employees, and they instructed staff to look into providing the benefits to unmarried heterosexual couples as well.

City Attorney Dan Wallace advised council members that the ordinance approved Tuesday is legally weak because it applies only to gay and lesbian couples and may be seen as preferential and subject to legal challenge. State law prohibits preferential treatment based on sexual orientation. "This is not a problem until a heterosexual couple applies for benefits. I think it's clear that if they came in tomorrow, we can't deny it. This needs to be fixed."

The same-sex benefits will be extended only to those who are registered with the city as domestic partners.

Using statistics compiled from other cities, Santa Barbara officials predict about eight people will take part in the same-sex benefit package, at an estimated cost to the city of about \$4,000. The exact cost will vary depending upon the union to which the employee belongs and the benefits involved.

It is not yet known how many unmarried heterosexual couples might be eligible for benefits if the ordinance is amended. But Councilman Gregg Hart said he would object to the inclusion of unmarried heterosexual couples, because they have the option of being married and securing their partner's benefits, while homosexual couples do not.

Partners of gay and lesbian employees of the city will become eligible for

the health benefits in 30 days under the city's agreement with employee unions, who negotiated the benefits for their members who are in committed same-sex relationships.

The council's action met with objections from some members of the audience, although the conservative groups that had attended previous meetings did not show up Tuesday night.

Isaac Garrett, a prominent member of the city's black community, said he felt the citizens of the city had been hoodwinked about the purpose and costs of the domestic partner registry, which he viewed as nothing more than a vehicle for providing benefits to homosexual couples at taxpayer expense.

City Administrator Sandra Tripp-Jones countered that the registry is supported by fees, and noted that the unions could have negotiated for the benefits without a registry in place.

Two other people, Jeremiah Garrett and Bonnie Raisin, objected to the ordinance on moral grounds.

A number of people in the gay and lesbian community and their supporters spoke in favor of the ordinance. Jason Bryan, an assistant supervisor in the city's Parks and Recreation Department, said the ordinance is "fair and equitable, and I don't believe it is unusual."

Jana Zimmer, a lawyer in private practice, said she came to support the ordinance "as a matter of decency and fairness."

Hart said the council had decided that, despite the costs and in the interest of fairness, it was the right thing to do.

Like other civil rights issues that have been controversial in the past, Hart predicted that this issue will seem unremarkable in the not too distant future.

Councilman Tom Roberts, the only openly gay member of the council, agreed. He remembered the fervent opposition to the city's anti-discrimination ordinance to protect AIDS patients several years ago, and said it would seem silly today. "This is not a groundbreaking issue," Roberts said, noting that dozens of cities and major corporations provide benefits to partners in same-sex relationships.