



MICHAEL P. BELL
MAYOR

June 6, 2012

TO: Jerry Dendinger, Clerk of Council

FROM: Michael P. Bell, Mayor

RE: Veto of Ordinance 226-12, as amended ("Authorizing the Mayor to amend plan documents of Toledo's hospitalization/health, prescription drug, dental, vision, and life insurance benefit plan descriptions to include 'domestic partners'; reopening Health and Welfare Trust Fund bargaining agreement with the City of Toledo and Firefighters Local 92, exclusively to provide discussions as it relates to the financial impact of expanding eligibility for ERISA health care trust; and declaring an emergency")

In furtherance of my responsibilities as Mayor and pursuant to my authority as set forth in §43A of the Charter of the City of Toledo, I hereby respectfully veto the above referenced legislation as amended and passed and notify you of this action. My objections to the legislation are as follows:

- 1) It is my belief, supported by the opinion of the Law Director, that the ordinance as amended and adopted illegally violates the Charter of the City of Toledo and the basic principles of separation of powers that lie at the heart of the Charter. Under the Charter, Council is a deliberative body with a very limited role in the administration of City government. See Charter §26. Conversely, the Mayor is the "Chief Executive and Administrative Officer of the City in whom the executive and administrative powers and duties of the City shall be vested." See Charter § 61. Chapter IV and V of the Charter clearly set forth a separation of powers plan that controls the roles of both the Council and the Mayor.

Council's unprecedented attempt to meddle in the basic operations of the administration represents a dangerous threat to the City's existing form of government. Specifically, Council's attempt to interfere with the conduct of the Administration violates both §30 and 61 of the Charter¹. Council has no authority under the Charter to

¹ Though not my primary concern, the Ordinance as amended also violates §38 of the Charter because, even if the amended Ordinance did not otherwise violate the Charter, it purports to address more than one subject. "When there is an absence of common purpose or relationship between specific topics in an act and when there are no discernible practical, rational or legitimate reasons for combining the provisions in one act, **there is a strong suggestion that the provisions were combined for tactical reasons**, i.e., logrolling[.] * * * the very evil the one

direct any Mayor to “reopen” an agreement with a bargaining unit. Decisions as to when, where or if to negotiate are administrative functions that are only within the purview of the Mayor. Council’s attempt to approve Ordinance 226-12 as amended exceeds the role granted to Council by the Charter.

Moreover, the Revised Code, to the limited extent the Revised Code can supersede the City’s Charter, provides no support for Council’s action. Councilman Collins cannot and does not cite any provision of R.C. Chapter 4117 that supports Council’s overreaching. In other words, nothing in Ohio law supports the proposition that a legislative body may exceed its Charter authority on matters involving labor and employment.

It could be suggested that I should limit my veto to a line item as is permitted by the Charter at §43A. It could also be suggested that I should ignore Council’s action to the extent that it attempts to change the intent of the ordinance as introduced. Some may even suggest, pragmatically, that I should just accept Council’s advice on labor relations. For the reasons provided herein, it is my belief that I would avoid my responsibility to this City and the citizens that we all serve if I proceeded in any course other than through veto of the legislation as a whole.

Consistent with the oath I took – and members of Council took – I have respected the Charter and have not interfered with Council in the conduct of its legislative role in City government. This is because I recognize the importance of adhering to the roles that define the City’s separation of powers. These principles must be zealously preserved if the City is to function as the voters intended with the adoption of the Charter. This position has nothing to do with me, individually, but it has everything to do with preserving the role of the office in which it is my honor to serve. In other words, yesterday’s Charter violation, if unchecked, will serve as tomorrow’s justification for more improper intrusions into executive prerogative.

I cannot simply ignore Council’s attempt to violate the Charter. Despite being advised by the City’s Law Director that Council lacked the authority to act on the amended legislation, Council did so anyway. Certain members of Council have tried to court labor endorsement at the expense of the City as a whole. The legislative action was apparently, in the minds of some Council persons, harmless despite its overt illegality because the Mayor, they believed, would bail them out by issuing a line item veto². This

subject rule was designed to prevent[.]” [cite omitted]. Logrolling is “the practice of combining and thereby obtaining passage for several distinct legislative proposals that would probably have failed to gain majority support if presented and voted on separately.” [cites omitted].” *Akron Metro. Hous. Auth. Bd. of Trs. v. State*, 2008 Ohio 2836 at ¶ 17. [emphasis added].

² Upon learning that I intended to veto the legislation in the entirety, one member of Council who had previously suggested a line item veto likened my stance to a “burnt earth policy.” Another member suggested that I would be “throwing the baby out with the bathwater”. I neither started the fire that burnt the earth nor drew the bathwater. Today’s predicament is the direct result of Council’s knowing sacrifice of the principles of the Charter at the alter of politics.

motivation ignores the precedent that would be created if I, as Mayor, in any way acquiesced or suggested that Council acted within its legal ability when it ignored the law and passed legislation that is abhorrent to the core form of government set forth in the Charter.

Finally, I am not willing to treat Council's self-serving and illegal attempt to undermine the Charter as "advisory." On the last occasion that Council advised this administration on collective bargaining- when it refused to implement favorable terms and conditions upon AFSCME Local 7- it cost the taxpayers hundreds of thousands of dollars.

- 2) While the underlying basis for this veto is rooted in the Charter rather than in the substance of the amended ordinance, I would be remiss not to address the fundamental error in the premise underlying the attempted amendment of a just and long overdue ordinance.

Councilman Collins wrongly assumes that it was within his power to dictate parameters of "negotiations" with Local 92³. Mr. Collins has no such powers. Reopening with Local 92 where the City has no obligation to do so has already created a domino effect as other units are lining up to seek to gain something in return for accepting a benefit.

The City is not and was not in any way required to negotiate with Local 92 as to the issue of domestic partnership benefits. Through his irresponsible efforts, Councilman Collins has created an issue where there is none. Mr. Collins has habitually asserted self-perceived powers he does not possess and portrays himself as an authorized spokesperson on the administration of municipal government. He is not. The role of a legislator is to legislate. The role of the executive is to administer. This veto is necessary, in part, to protect the City and the taxpayer against the consequences of his overstepping these bounds.

Finally, Mr. Collins made several allegations suggesting that the City was unfair or acted in bad faith in recent negotiations. Mr. Collins did not have his facts right and his accusations were irresponsible. Moreover, Mr. Collins, after introducing his amendment more than a month after the initial legislation was introduced and only hours before Council met, suggested that the accusations he made should not be publicly debated. Regrettably, a majority of council followed his lead despite legal advice to the contrary.

- 3) I believed and still believe in the legislation that the administration presented to Council and it is my intention to reintroduce the legislation immediately. Council and the public have been fully apprised of the long overdue need to provide benefits to committed

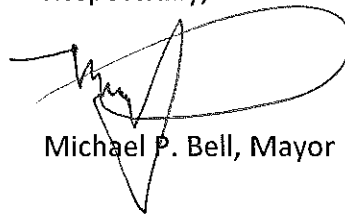
³ Councilman Collins ignores, and is probably unaware of the provisions of Local 92's healthcare plan. Nor does Councilman Collins acknowledge, perhaps due to ignorance of the facts, that Local 92 has never shared any details of its plan with the City. The City has no ability to monitor the plan or control its policies.

partners regardless of sexual orientation and/or marital status. By committing to legislate the true issue at hand without the taint of politics we can accomplish this. The administration provided Council with an ordinance that was both legal and justified and Council in turn amended it to make it illegal despite the advice of legal counsel. This is tantamount to torpedoing the well intended and long overdue purposes of the policy change.

I recognize that Council may succeed in overriding this veto despite or, perhaps, because of the reasons provided herein. In that event I will not enforce or comply with the offensive provisions contained in the Ordinance as amended because those amendments are illegal.⁴ It is my hope that Council will recognize the impropriety of the amendment and work with me to pass the un-amended legislation so that we can move forward together.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael P. Bell", is written over a large, loopy, oval-shaped flourish.

Michael P. Bell, Mayor

⁴ It should be noted that key and primary members of the City's negotiation team are members of the Ohio Bar. I will not require the staff of this administration to place themselves in professional jeopardy by implementing legislation known to violate the basic foundation of our municipal government.

ORD. 226-12

Authorizing the Mayor to amend plan documents of Toledo's hospitalization/health, prescription drug, dental, vision, and life insurance benefit plan descriptions to include "domestic partners"; reopening Health & Welfare Trust Fund Section 2125.75 of the collective bargaining agreement with the City of Toledo and Firefighters Local 92, exclusively to provide discussions as it relates to the financial impact of expanding eligibility for their ERISA health care trust; and declaring an emergency.

SUMMARY & BACKGROUND:

By Ordinance No. 705-07, enacted on November 13, 2007, this Council established a Domestic Partnership Registry maintained by the City for committed unmarried couples, becoming the first major city in Ohio to do so. In addition, this Council was among the first in the entire state of Ohio to extend protection from discrimination to lesbian, gay, bisexual, and transgender (LGBT) individuals in matters of employment and public accommodations, by Ordinance 1183-98, enacted on December 8, 1998.

Currently, 21 states and over 200 local governments, at least 98 Fortune 100 companies, 442 Fortune 500 companies, and approximately 9,000 other private companies, non-profit organizations and unions provide health insurance and other benefits to their employees' domestic partners. In Toledo, these employers include the University of Toledo, Lucas County, Owens Corning, and the Toledo Area Chamber of Commerce. Furthermore, the cities of Cleveland, Columbus, and Franklin County offer their employees domestic partner benefits and at least 14 Ohio public and private universities and colleges offer these benefits.

In order to further Toledo's long-standing commitment to recruit and to retain the best employees for the City, and to ensure that the terms and conditions of City employment are extended on an equal basis to all employees, this Council has determined to provide employment benefits to employees' domestic partners in registered domestic partnerships.

The Firefighters represented under Local 92 have an ERISA health care trust, and their current enrollment does not provide for domestic partner benefits. The City of Toledo had knowledge that they would be forwarding to Council a domestic partner consideration for all city employees in 2012; therefore fundamental fairness dictates that this singular issue should be revisited under the color and scope of Section 4117 of the Ohio Public Sector Employees Bargaining Act. NOW, THEREFORE,

Be it ordained by the Council of the City of Toledo:

SECTION 1. That the Mayor of Toledo is authorized to amend and to execute as appropriate and as soon as practicable the plan documents of the City of Toledo's hospitalization/health, prescription drug, dental, vision, and life insurance benefit plan descriptions to include "domestic partners" of City of Toledo employees, as "domestic partner"

is defined in accordance with Toledo Municipal Code Section 114, as necessary to effectuate the terms set forth in this Ordinance and to the extent allowable by state and federal law.

SECTION 2. That upon completion of any necessary amendments as authorized herein, a City of Toledo employee's registered and qualified domestic partner, and the dependent children of the employee's registered domestic partner, shall be treated in the same manner as a City of Toledo employee's spouse or dependent children for the purpose of the following benefits: hospitalization/health insurance, prescription drug program, dental care insurance, sick leave, funeral leave, and any other applicable benefit afforded to an employee, their spouse, or their dependent children, to the extent allowable by state and federal law, including but not limited to the Consolidated Omnibus Budget Reconciliation Act (COBRA) and the Family Medical Leave Act.

SECTION 3. To qualify for any benefit as described under Sections 1 and 2 of this Ordinance, a City of Toledo employee must register Declaration of Domestic Partnership, in accordance with Toledo Municipal Code Section 114.04, with the Clerk of Toledo City Council.

SECTION 4. Upon a City of Toledo employee's filing of a Notice of Termination of Domestic Partnership by an employee, the benefits as provided under this section to a registered domestic partner or the dependent children of the registered domestic partner shall terminate.

SECTION 5. That the City of Toledo and Toledo Firefighters Local 92 revisit the singular issue of domestic partner benefits under the color and scope of Section 4117 of the Ohio Public Sector Employees Bargaining Act.

SECTION 6. That this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage. The reason for the emergency lies in the fact that the same is necessary for the immediate preservation of the public peace, health, safety and property, and for the further reason that this Ordinance must be immediately effective to preserve the City's standing as a competitive employment environment and to provide for equal access to benefits for all City of Toledo employees.

Vote on emergency clause: yeas 12, nays 0.

Passed: JUN - 5 2012, as an emergency measure: yeas 9, nays 3.

Attest:

[Signature]
Clerk of Council

[Signature]
President of Council

Approved: _____

[Signature]
Mayor

See Attached Veto
Message Dated June 6 2012