



***Coalition of Baltimore City Employee Unions***

June 28, 2022

VIA EMAIL AND HAND-DELIVERY

Nick J. Mosby, President  
and Members of the Baltimore City Council  
c/o Nikki Thompson, Director of Legislative Affairs  
City Hall, Ste. 400  
100 N. Holliday Street  
Baltimore, MD 21202

**Re: City Council Bill No. 22-0211  
City Employees and Retirees Health Care Reform**

Dear President Mosby and Members of the City Council:

Our Reasons for this Letter:

By letter dated August 2, 2021, on behalf of the Unions involved in the City's Health Insurance Committee ("HIC"), we wrote to the members of the Board of Estimates, who include City Council President Mosby, about patent deficiencies in the review and administration of the City's health care program for active employees and retirees. We wrote in August 2021 as we were asked in 2021 to present in writing the reasons why reform of the City's health care program is necessary. Health care reform had been in discussion between representatives of the Mayor and the City Administration and the Union Coalition since 2020, but to no avail.

The present bill, CC Bill No. 22-0211 was introduced on March 21, 2022. On June 8, 2020, the Director of the Department of Human Resources ("DHR"), Quinton M. Herbert, wrote to you to oppose CC Bill No. 22-0211 in all respects. This is the Unions' response.

Mr. Herbert's June 8 letter represents to you that the City has adequately addressed health care needs through the Baltimore Benefits Commission, which is described and is to operate under City Code Article 1, Subtitle 50; that CC Bill No. 22-0211 "could adversely impact" the cost and quality of the City's health care offerings; and that CC and Bill No. 22-0211 "would diminish" the City's authority to administer the program.

Mr. Herbert's assertions are plainly incorrect in four notable respects:

First, created in 2004 under Ord. 04-890, the Baltimore Benefits Commission is moribund. It has not operated for many years, if ever, and it has no active role in "studying, monitoring and reporting" about compensation and benefits as Mr. Herbert represents. Candidly, City Code Art. 1, Sec. 50 should be repealed.

Second, the City and its Unions have for many years collectively bargained over health benefits both for active employees and retirees, and for their spouses and dependents. The earliest available labor contracts ("MOUs") that refer to health benefits both for active City employees and retirees date back fifty years, to the 1970s.

Third, the City and the Unions organized the HIC in 2012 to collaboratively address health care review and administration. The HIC has occupied an important role in the City's health care program since its inception. Bill No. 22-0211 is necessary to formally address the HIC and its activities.

Fourth, an important health care constituency is the City's retired employees. The City has ignored the will of the Council as expressed in City Council Resolution No. 19-0147R. Adopted on April 15, 2019, the Resolution directed the City to admit a retiree representative to the HIC. Notwithstanding the Council's resolution of 2019, City DHR has flatly refused to admit any retiree representative to the HIC.

Mr. Herbert's comments reflect the view that robust employee/retiree participation in the evaluation, design, and administration of the City health program would be a profound inconvenience to the City. The Union Coalition is of the opposite view. What the Bill provides is necessary. As recognized by the *Baltimore Sun* on June 14, 2022, "Good government is hard" to achieve. <https://www.baltimoresun.com/opinion/editorial/bs-ed-0616-baltimore-comptroller-bills-20220614-yg22b24tfbgclaeivkwiuzyoha-story.html> Bill No. 22-0211 is necessary to formally recognize the place of the HIC, the City's Unions and City retirees in review and administration of the City's health care program.

The Union Coalition's reasons in favor of Bill No. 22-0211:

**1. The City is Obligated to Share Information:**

Legislation is necessary to assure that the City will be fair and transparent in its management of the City's health care program. The Union Coalition and its benefits consultant are entitled to "real time" access to program data to enable the Unions to: (i) track and evaluate outcomes of the City's health insurance program; (ii) to measure premium receipts and disbursements; (iii) to assess IBNR and net costs; and (iv) to annually weigh proposed margin computations and premium increases. Year-in and year-out, despite repeated demands, the City (acting through DHR) often has refused or delayed to furnish to the Union Coalition the information necessary to evaluate claims, costs incurred and proposed premium rates.

The City has done so to the point of necessitating a labor arbitration to define the obligations of the parties. That arbitration was decided in the Unions' favor. See *In the Matter of Healthcare Coalition of Baltimore City Unions*, AAA Case No. 01-16-0004-1291 (June 12, 2017) at p. 44 of 49 ("The delay in providing IBNR information to the Unions constitutes an unreasonable delay in the City's timing to a request for information;" "The City's failure to provide information on surpluses and fluctuations for all plans in a timely manner is a breach."). Notwithstanding the arbitration result in 2017, timely delivery of relevant data to the Union Coalition remains an annual challenge.

For example, under the health care agreement between the City and the Union Coalition, the City has a commitment to maintain a Premium Stabilization Fund ("PSF"). Plan year end surpluses are to be deposited into the PSF. When the balance of the PSF is equal to or greater than the equivalent of two months of health claims, a factor (of 1.5% or more) that is customarily added as margin to premiums is to be waived by the City, and not charged either to active employees or retirees.

To date, DHR and City Finance have chronically failed to timely provide to the Union Coalition data to account for the PSF as each plan year is closed out. This year, only on June 16, 2022 did the City produce added year-end plan information with respect to PY 2020 and PY 2021. The Union Coalition and their benefits consultant have not had the opportunity to evaluate the materials first delivered on June 16. The Coalition has every reason to believe that accurate data reports for PY 2020 and PY 2021 should reflect a fund surplus in the PSF to produce an additional financial cushion (further surplus within the health benefits program) for the City. The City has yet to acknowledge that fact.

## **2. Active Employees and Retirees Participate Equally:**

Health benefits, including retiree benefits and costs, have long been a focal point of collective bargaining between the City and member organizations that comprise the Union Coalition under the Municipal Employee Relations Ordinance (Code Art. 12).

Agreements about health benefits and premium cost-splits between the City, active City employees and City retirees have been bargained into successive labor contracts between the City and the Unions since 1973, and perhaps even earlier. At bottom, the City has made promises about health care delivery and cost-splits both to active employees and retirees which the Union Coalition has good reason to expect the City to satisfy. Bill No. 22-0211 is necessary to formally address the place of employee and retiree representatives in review and delivery of health benefits promised by the City, and new program offerings.

## **3. Retirees Comprise a Significant Constituency:**

As reported on page 152 in Volume II of the Board of Estimates' budget plan for Fiscal Year 2022, over 23,000 retirees are eligible to enroll in the City's retiree health plans. More than 14,000 insured lives are enrolled in the City's retiree plans, out of which 8,800 covered individuals or more are City direct retirees. The City's General Fund work force census, on the other hand, is reported to be slightly more than 10,500 individuals. In short, more retirees are enrolled in the City's health care program than active employees are on the City's payroll.

Retirees and retiree dependents have always been an important City constituency. They will grow in number to be an ever more important constituent group receiving benefits from the City. That is why the Board of Estimates adopted a "Graduated Retiree Health Benefits Contribution Schedule" which schedule took effect as of July 1, 2008 (as adopted by the Board of Estimates on November 7, 2007), to assure that even after retirement retirees will continue to receive health benefits at the level and proportionate cost split promised to them by the City on the date they retired. That also is why City Council Bill No. 19-0147R was adopted on April 15, 2019.

## **4. The Union Coalition's Goals are Modest:**

Contrary to Mr. Herbert's letter of June 8, the Union Coalition has no desire to mandate which benefit programs City must ultimately sponsor, which providers the City ultimately must select, or at what total cost. Under the Charter, those are undoubtedly management prerogatives. They are inherent prerogatives of the Mayor and the Board of Estimates under Art. VI of the City Charter.

One purpose of CC Bill No. 22-0211 is to assure that active employee and retiree representatives are reserved a place at the table (through the HIC) before and as health program decisions are made. To date, that kind of collaboration between the City and the Unions has saved the City money since CY 2012. As acknowledged by the City at pages 29 and 30 of the Executive Summary to the Board of Estimates' Ordinance of Estimates Recommendations for FY 2022, certain health care program changes applying to both active employees and City retirees achieved with Union participation in the HIC "have collectively reduced the City's costs by \$150 million compared to baseline estimates."

As proposed, CC Bill No. 22-0211 would work to protect Union access (and that of City retirees) to health care program data. Program data is needed to: (i) measure delivery of promises made by the City to its active employees and retirees; (ii) to determine what claims and service costs have been incurred; (iii) to gauge participant premiums and service charges; and (iv) to account for premiums, claims and costs. These items of data ought to be released to the Coalition at the end of each plan year – for all City programs – active employees, pre-65 retirees and Medicare eligible retirees, and for their respective spouses and dependents, as CC Bill 22-0211 provides.

#### **5. The Union Coalition's Ask is for Certainty, But in Limited Respects:**

Justice Ruth Bader Ginsburg recognized while writing in *National Federation of Independent Business v. Sebelius*, on the ACA's individual mandate, "Unlike the market for almost any other product or service, the market for health care is one in which all individuals inevitably participate." 567 U.S. 519, 590 (2012). In collective bargaining, health and prescription drug coverage is an essential benefit of past and current employment. It is offered both to active employees and retirees in exchange for services rendered. See, *Atkinson v. Anne Arundel County*, 236 Md.App. 139, 175 (2018) ("[W]e conclude that 'terms and conditions of employment' is a term of art that includes health insurance benefits.").

For that reason, health benefit options and health care cost splits both for active employees and retirees – including open and closed provider panels, first dollar payments for service, co-pays, and deductibles – have been subjects of annual bargaining between the City and its Union employee representatives under the Municipal Employee Relations Ordinance.

In 2012, by mutual consent, each of the City's Unions agreed to bargain jointly with all other City Union over healthcare to make healthcare offerings consistent throughout City Government, thus the HIC was created. The joint negotiations produced a third healthcare and prescription drug agreement (which expired on December 31, 2019) that was to cover in a fair-minded way all employee bargaining units, and non-represented employees and retirees as well. The third agreement has not been replaced. Legislative

action is warranted to assure continuing employee and retiree participation in benefit program design and oversight.

Through Bill No. 22-2011 as proposed, the Unions ask the Mayor & City Council to adopt as codified City law:

1. A definition of the City Benefits Program, including the HIC;
2. HIC operating procedures covering active employees, retirees, and their spouses;
3. Fixed premium cost-splits;
4. Recognized accounting principles for the Program;
5. Maintenance of the City's Premium Stabilization Fund;
6. Retained duties and powers of the City; and,
7. Administrative and communications procedures.

#### **6. Like Collaborative Health Structures Exist in Other Maryland Counties:**

Contrary to the assessment of Mr. Herbert in the letter of June 8, which attempts to minimize the importance of similar provisions in nearby Maryland counties, the contents of Bill No. 22-0211 are modeled after similar legislative measures adopted in other major Maryland Counties:

##### Anne Arundel County

Collective bargaining, data compilation (“enrollment, claims, administrative costs, usage trends and any data necessary to calculate any surplus or deficit”) and information rights about healthcare pertaining to “all exclusive representatives” have been set out in detail since 2019 as matters of collective bargaining in Sections 6-1-308(b), (p) and (q) of the Anne Arundel County Code. Components of the Anne Arundel County health insurance plan that are subject to collective bargaining under Code Section 6-1-308(b) are to be made available to all County employees whether or not they are represented by a labor organization.

Likewise as proposed in Bill No. 22-0211, AA Code Section 6-1-308(b)(iii) expressly provides “no changes may be made to an employer subsidy applicable to a retiree after the retiree retires.” By virtue of authority granted to it under Charter Sections 718 and 815, the County has established the Anne Arundel County Retiree Health Benefits Trust in Article 6, Title 5 of the County Code “solely for the purposes of paying health care benefits of retired County employees, and their spouses, dependents and survivors.” Baltimore City has no such measures to protect retirees or the PSF in law at present.

## Baltimore County

In 2013, Baltimore County adopted County Bill No. 6-13 to ensure that health benefits offered to all categories of County employees are “uniform.” The new subtitle adopted (Art. 4, Title 3, Subtitle 5) established a joint Health Care Review Committee intended to function (like the City HIC) as a “health care bargaining agent for county employees.” The collective bargaining characteristics of the ordinance included directions that proceedings of the Health Care Review Committee are subject to common collective bargaining tools, including mediation, fact-finding and labor arbitration. Baltimore County Code Section 4-3-504.

By action of Baltimore County’s Review Committee, terms which cover and promise retiree health insurance benefits are included in the Memorandum of Understanding for each bargaining unit and corresponding County retirees.

<https://resources.baltimorecountymd.gov/Documents/Executive/mous>.

## Prince George’s County

Collective bargaining rights authorized under Section 908 of the Prince George’s County Charter are conferred under Subtitle 13A - the Labor Code of the County.

Labor Agreements concluded between Prince George’s County and AFSCME for a broad number of County bargaining units recognize a Health Care Benefits Committee that is intended “to review existing health care benefits and provisions for employees and retirees; make recommendations to the Chief Administrative Officer regarding health care benefit levels; cost containment measures and contribution ratios; and meet on a monthly basis or as necessary.” <https://www.princegeorgescountymd.gov/DocumentCenter/View/2683/Council-67-AFSCME-AFL-CIO-Affiliated-Locals-No-2462-No-2735-No-3389-and-No-1170-PDF>

For the County’s IAFF Unit, the Labor Agreement expressly extends to retirees the same health plan enrollment opportunities as active employees, with respective contribution rates for retirees also determined by collective bargaining and placed in the Labor Agreement. <https://www.princegeorgescountymd.gov/DocumentCenter/View/2686/Local-No-1619-Fire-Fighters-Paramedics-And-Emergency-Response-Technicians-PDF>

## The Union Coalition’s Requests and Conclusion.

In CY 2021 as the City’s Human Capital Officer, Mr. Herbert, sought to fast-track unjustified health insurance rate increases for active employees and retirees in the face of strong and valid objections from the Unions, producing, we believe, unnecessary surplus in

Honorable President and Members of the Baltimore City Council

June 28, 2022

Page 8

the City's health care program, which is yet to be accounted for. Also, continuing is the refusal of DHR and the Director of Finance to give adequate and timely access to data about all retiree programs (including those for Medicare-eligible retirees), and to acknowledge that retirees are due at least one seat at the table in the HIC, access to information, and discussion about what most concerns them.

Bill No. 22-0211 promises openness and transparency. In no way does Bill No. 22-0211 threaten to inflate the City's health care costs nor to reduce health benefit quality.

We urge you to support, to report favorably on and to pass Bill No. 22-0211. The Coalition's principal contact is Frank Boston. You may reach Mr. Boston and/or his partner Ari Plaut at (410) 323-7090. Thank you.

Respectfully,

Michael Spiller,  
Interim President Baltimore Metropolitan Council of AFL-CIO Unions

Glenard S. Middleton, Sr.  
Executive Director AFSCME Council 67 and President, AFSCME Local 44

Antoinette Ryan-Johnson  
President, Local 800, City Union of Baltimore

Joshua L. Fannon  
President, IAFF Local 964 Baltimore Fire Officers

Richard Langford  
President, IAFF Local 734 Baltimore Fire Fighters

Michael Mancuso  
President, Fraternal Order of Police Lodge 3

Wendy Smith  
President, AFSCME Local 558 Community Health Workers & Nurse Practitioners

Domonique Graham  
President, AFSCME Local 2202 Human Service Workers



Honorable President and Members of the Baltimore City Counsel

June 28, 2022

Page 9

cc: Christopher Shorter, CAO, Office of the Mayor  
Chichi Nyagah-Nash, Deputy City Administrator  
Deborah F. Moore-Carter, Labor Commissioner