

COUNCIL MEMORANDUM

Council Meeting Date:

LEGISLATIVE ACTION ITEM

SPONSOR: Larry B. Johnson, Council Member

SUBJECT: Domestic Partnership Registry Ordinance

RECOMMENDATION:

That City Council adopt an ordinance creating Chapter 5-3, Domestic Partnership Registry, of the Code of the City of Pensacola

AGENDA: X Regular Consent

Hearing Required: Public Quasi-Judicial No Hearing Required

SUMMARY:

A Domestic Partnership Registry (DPR) is a local procedure used to register two unmarried cohabitating people. DPRs are necessary because of an abundance of evidence that various types of legal documents that attempt to contractually approximate these rights are costly, ineffectual and often disregarded. This proposed ordinance has been modeled after that of the City of Orlando, the most successful and effective ordinance in the state. Currently, 14 cities and counties across the state of Florida have a Domestic Partnership Registry ordinance, covering 47% of Florida citizens.

The proposed Domestic Partnership Registry Ordinance will provide the following rights and benefits to Pensacola's domestic partners:

- Notification in case of an emergency
- Medical decisions should you become incapacitated
- Healthcare facility visitation
- Funeral/burial decisions
- Pre-need guardian designation
- Participation in a dependent's education
- Correctional facility visitation

The City Clerk will implement the Domestic Partnership Registry and establish fees for the service commensurate with the actual costs of administering the registry.

PRIOR ACTION: None

FUNDING: Not budgeted. Fees are expected to cover costs.

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Date: November 14, 2013

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FINANCIAL IMPACT: Neutral

STAFF CONTACT: Lila S. Cox, Council Executive

ATTACHMENTS: 1. Proposed ordinance
2. Domestic Partnership Information – City of Pensacola
3. Setting the Record Straight on Domestic Partnership Registries

PRESENTATION: None

1 PROPOSED
2 ORDINANCE NO. xx-13

3
4 AN ORDINANCE
5 TO BE ENTITLED:
6

7
8 **AN ORDINANCE AMENDING THE CODE OF THE CITY OF PENSACOLA, FLORIDA;**
9 **CREATING CHAPTER 5-3, "DOMESTIC PARTNERSHIP REGISTRY"; PROVIDING**
10 **FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.**
11

12 WHEREAS, the Pensacola City Council finds that a significant number of Pensacola
13 residents establish and maintain important personal, emotional, and economic relationships with
14 persons to whom they are not married under Florida law. Individuals forming such domestic
15 partnerships often live in a committed family relationship. Domestic partners and their
16 dependants may be denied certain rights for lack of a system that establishes recognition of
17 such partnerships; and

18 WHEREAS, the 2010 census indicates that over 12% of Americans (approximately
19 6,759,453 households) identified themselves as living in a domestic partnership, which is a 25%
20 increase over the 2000 census numbers. As a result, employers and municipalities in Florida
21 and throughout the United States have begun to provide domestic partner benefits to their
22 employees and citizens; and

23 WHEREAS, the Pensacola City Council finds that the existence of a domestic
24 partnership registry is attractive to companies that value diversity and can assist the City of
25 Pensacola in its economic development by attracting companies to locate and make capital
26 investments in the City, and will promote the City's reputation as a growing, vibrant, and diverse
27 community; and

28 WHEREAS, the rules developed to implement the provisions of this ordinance shall be
29 construed to accomplish the policies and purposes of the ordinance. However, this ordinance

30 shall not be construed to supersede any federal, state, or other City laws or regulations, nor
31 shall this ordinance be interpreted in a manner as to bring it into conflict with federal, state, or
32 other City laws. Nothing in this ordinance shall be construed as recognizing or treating a
33 domestic partnership as a marriage.

34 **NOW THEREFORE**, be it ordained by the City of Pensacola, Florida:

35
36 **SECTION 1.** Chapter 5-3 of the Code of the City of Pensacola, Florida, is hereby created to
37 read as follows:

38
39 **CHAPTER 5-3. DOMESTIC PARTNERSHIP REGISTRY**

40
41 **Section 5-3-1. - Definitions.**

42 For purposes of this Chapter:

43 (a) *affidavit of domestic partnership* means a sworn form under penalty of perjury,
44 which certifies that two (2) domestic partners meet the requirements of a domestic partnership
45 relationship as described in Section 5-3-2.

46 (b) *City Clerk* means the City Clerk of the City of Pensacola or such other person or
47 office approved by the City Council to administer the domestic partnership registry.

48 (c) *correctional facility* means holding cells, jails, and juvenile correction centers of
49 any kind, located within or under the jurisdiction of the City of Pensacola.

50 (d) *dependent* is a person who resides within the household of a registered domestic
51 partnership and is:

52 (1) a biological, adopted, or foster child of a registered domestic partner; or

53 (2) a dependent as defined under IRS regulations; or

54 (3) a ward of a registered domestic partner as determined in a guardianship

55 or other legal proceeding.

56 (e) *domestic partners* means only two adults who are parties to a valid domestic
57 partnership relationship and who meet the requisites for a valid domestic partnership
58 relationship as established pursuant to Section 5-3-2.

59 (f) *health care facility* includes, but is not limited to, hospitals, nursing homes,
60 hospice care facilities, convalescent facilities, walk-in clinics, doctors' offices, mental health care
61 facilities, and any other short-term or long-term health care facilities located within the City of
62 Pensacola.

63 (g) *jointly responsible* means each domestic partner mutually agrees to provide for
64 the other partner's basic needs while the domestic partnership relationship is in effect, except
65 that partners need not contribute equally or jointly to said basic needs, such as food and shelter.

66 (h) *mutual residence* means a residence shared by the registered domestic partners;
67 it is not necessary that the legal right to possess the place of residence be in both of their
68 names. Two people may share a mutual residence even if one or both have additional places to
69 live. Registered domestic partners do not cease to share a mutual residence if one leaves the
70 shared place but intends to return.

71

72 **Section 5-3-2. - Registration of Domestic Partnerships.**

73 (a) A domestic partnership may be registered by any two (2) persons by filing an
74 affidavit of domestic partnership with the City, which affidavit shall comply with all requirements
75 set forth in this chapter for establishing such domestic partnership. Upon payment of any
76 required fees, the City Clerk shall file the affidavit of domestic partnership and issue a certificate
77 and a laminated card reflecting the registration of the domestic partnership in the City. The Clerk
78 must maintain or arrange for maintenance of an online searchable database of the domestic
79 partnerships which have been registered with the City.

80 (b) An affidavit of domestic partnership shall contain the name and address of each
81 domestic partner, the signature of each partner, and the signatures of two witnesses for each
82 partner's signature, and each partner shall swear or affirm under penalty of perjury that:

83 (1) each person is at least eighteen (18) years old and competent to contract;

84 (2) neither person is currently married under Florida law or is a partner in a
85 domestic partnership relationship or a member of civil union with anyone other than the co-
86 applicant;

87 (3) they are not related by blood as defined in Florida law;

88 (4) each person considers himself or herself to be a member of the
89 immediate family of the other partner and to be jointly responsible for maintaining and
90 supporting the registered domestic partnership;

91 (5) the partners reside together in a mutual residence;

92 (6) each person agrees to immediately notify the City Clerk, in writing, if the
93 terms of the registered domestic partnership are no longer applicable or if one of the domestic
94 partners wishes to terminate the domestic partnership; and

95 (7) each person expressly declares their desire and intent to designate their
96 domestic partner as their healthcare surrogate and as their agent to direct the disposition of
97 their body for funeral and burial.

98 (c) Any partner to a domestic partnership may file an amendment to the domestic
99 partnership certificate issued by the City Clerk to reflect a change in his or her legal name or
100 address. Amendments shall be signed by both members of the registered domestic partnership
101 under oath.

102

103 **Section 5-3-3. - Termination of Registered Domestic Partnership Relationship.**

104 (a) Either partner to a registered domestic partnership relationship may terminate
105 such relationship by filing a notarized affidavit of termination of domestic partnership relationship

106 with the City Clerk. Upon the payment of the required fee, the City Clerk shall file the affidavit
107 and issue a certificate of termination of domestic partnership relationship to each partner of the
108 former relationship. The termination shall become effective ten (10) days from the date the
109 certificate of termination is issued.

110 (b) Automatic termination. A registered domestic partnership shall automatically
111 terminate upon notice to the City Clerk of the following events:

- 112 (1) One (or both) of the domestic partners marries in Florida;
- 113 (2) One of the domestic partners dies, except that upon the occurrence of
114 this event the provisions relating to funeral and burial decisions shall survive; or
- 115 (3) One of the domestic partners registers with another partner.

116 The marrying, surviving, or re-registering domestic partner(s) shall file an affidavit terminating
117 the domestic partnership relationship within ten (10) days of one of the occurrences listed in
118 (b)(1)-(3) above.

119

120 **Section 5-3-4. - Maintenance of Records; Filing Fees.**

121 (a) The City Clerk shall prepare the form of all affidavits, amendments, and
122 certificates required to be filed under this chapter. The City Clerk shall maintain a record of all
123 affidavits, amendments, and certificates filed pursuant to this chapter.

124 (b) The City Clerk is authorized to establish fees for the filing of any affidavits,
125 amendments, and the issuance of any certificates and laminated cards required by this act,
126 subject to the approval of the Pensacola City Council. Any fees established under this section
127 shall be commensurate with the actual costs of administering the provisions of this chapter.

128 (c) The City Clerk is authorized and directed to take all actions necessary to
129 implement the provisions of this section within ninety (90) days after this chapter is created.

130 (d) If Escambia County, Florida establishes a domestic partnership registry law that
131 is substantially similar to the City of Pensacola's domestic partnership registry provisions, the

132 City Clerk shall collaborate with Escambia County to determine whether a joint registration
133 system will most efficiently serve our citizens. The City Clerk will bring any recommendations
134 for joint administration to the City Council for its consideration. If such a joint registry is
135 established, the references to the City Clerk shall mean the filing officer for the joint registry
136 approved by City Council and Escambia County.

137

138 **Section 5-3-5. - Rights and Legal Effect of Registered Domestic Partnership.**

139 To the extent not superseded by federal, state, or other City law or ordinance, or
140 contrary to rights conferred by contract or separate legal instrument, registered domestic
141 partners shall have the following rights:

142 (a) Health Care Facility Visitation. All health care facilities operating within the City
143 shall honor the registered domestic partnership documentation issued pursuant
144 to this code as evidence of the relationship and shall allow a registered domestic
145 partner visitation as provided under federal law. A dependent of a registered
146 domestic partner shall have the same visitation rights as a patient's child.

147 (b) Health Care Decisions. This section pertains to decisions concerning both
148 physical and mental health. Registry as a domestic partner shall be considered
149 to be written direction by each partner designating the other to make health care
150 decisions for their incapacitated partner, and shall authorize each partner to act
151 as the other's healthcare surrogate as provided in Chapter 765, Florida Statutes,
152 and otherwise as provided by federal law. Further, no person designated as a
153 health care surrogate shall be denied or otherwise defeated in serving as a
154 health care surrogate based solely upon his or her status as the domestic partner
155 of the partner on whose behalf health care decisions are to be made. Any
156 statutory form, including but not limited to, a living will or health care surrogate
157 designation in the form prescribed by Chapter 765, Florida Statutes, that is

158 properly executed after the date of registration and that contains conflicting
159 designations shall control over the designations by virtue of the registration.

160 (c) Funeral and Burial Decisions. Registry as a domestic partner shall be considered
161 to be written direction by the decedent of his or her intention to have his or her
162 domestic partner direct the disposition of the decedent's body for funeral and
163 burial purposes as provided in Chapter 497, Florida Statutes, unless the
164 decedent provides conflicting, written inter vivos authorization and directions that
165 are dated after the date of the registration, in which case the later dated
166 authorization and directions shall control.

167 (d) Correctional Facility Visitation Rights. Any person who is a party to a registered
168 domestic partnership relationship pursuant to Section 5-3-2 shall be entitled to
169 visit his or her domestic partner, or other family member of the domestic partner,
170 who is an inmate at a correctional facility located within the City of Pensacola,
171 upon the same terms and conditions under which visitation is afforded to
172 spouses, dependents, or parents of inmates. Visitation rights provided by this
173 section shall extend to any children of the domestic partners, and the domestic
174 partners of an inmate's parents or children.

175 (e) Notification of Family Members. In any situation providing for mandatory or
176 permissible notification of family members including but not limited to notification
177 of family members in an emergency, or when permission is granted to
178 correctional facility inmates to contact family members, "notification of family"
179 shall include registered domestic partners.

180 (f) Preneed guardian designation. A person who is a party to a registered domestic
181 partnership relationship, pursuant to Section 5-3-2 above, shall have the same
182 right as any other individual to be designated as a preneed guardian pursuant to
183 Chapter 744, Florida Statutes, and to serve in such capacity in the event of his or

184 her domestic partner's incapacity. A domestic partner shall not be denied or
185 otherwise be defeated in serving as the preneed guardian of his or her domestic
186 partner or the partner's property under the provisions of Chapter 744, Florida
187 Statutes, to the extent that the incapacitated partner has not executed a valid
188 preneed guardian designation, based solely upon his or her status as the
189 domestic partner of the incapacitated partner.

190 (g) Participation in Education. To the extent allowed by federal and state law, and in
191 a manner consistent with any applicable court orders or valid agreements or
192 contracts, a registered domestic partner shall have the same rights to participate
193 in the education of a dependent of the registered domestic partnership as a
194 biological parent has to participate in the education of their child, in all
195 educational facilities located within or under the jurisdiction of the City.
196 However, if a biological parent of a minor dependent, whose parental rights have
197 not been terminated, objects to the participation of a non-biological registered
198 domestic partner in education conferences or other dissemination of educational
199 information, only the participation of the biological parents shall be allowed.

200

201 **Section 5-3-6. - Limited Effect.**

202 (a) Nothing in this article shall be interpreted to alter, affect, or contravene city,
203 county, state, or federal law or impair any court order or contractual agreement.

204 (b) Nothing in this article shall be construed as recognizing or treating a registered
205 domestic partnership as a marriage.

206

207 **Section 5-3-7. - Enforcement.**

208 A registered domestic partner may enforce the rights under Section 5-3-5 by filing a
209 private judicial action against a person or entity in any court of competent jurisdiction for
210 declaratory relief, injunctive relief, or both.

211

212 **Section 5-3-8. - Recognition of Domestic Partnerships Registered in Other**
213 **Jurisdictions.**

214 All rights, privileges, and benefits extended to domestic partnerships registered pursuant
215 to this chapter shall also be extended to domestic partnerships registered pursuant
216 to domestic partnership laws in other jurisdictions, so long as the registry documents issued by
217 other jurisdictions comply with all applicable state and federal requirements. If a conflict occurs
218 between jurisdictions, this chapter shall govern in the City.

219

220 **SECTION 2.** Should a court of competent jurisdiction declare any part of this ordinance invalid,
221 the remaining parts shall not in any way be affected by such determination as to the invalid part.

222

223 **SECTION 3.** All ordinances or parts of ordinances in conflict with this ordinance are hereby
224 repealed to the extent of such conflict.

225

226 **SECTION 4.** This ordinance shall become effective on the fifth business day after adoption
227 unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of
228 Pensacola.

Domestic Partnership Information - City of Pensacola

A domestic partnership registry (DPR) is a means for an unmarried couple to secure rights in limited but very important circumstances. DPRs are necessary because of an abundance of evidence that various types of legal documents that attempt to contractually approximate these rights are often ineffectual and disregarded, and some of these rights simply cannot be approximated contractually.

DPRs provide a small bundle of rights and benefits to Pensacola's DP families, they are:

- Notification in case of an emergency
- Medical decisions should you become incapacitated
- Healthcare facility visitation
- Funeral/burial decisions
- Pre-need guardian designation
- Participation in a dependent's education
- Correctional facility visitation

Fortunately, registering as a domestic partner is easy and inexpensive. To become domestic partners, two people that meet the qualifications simply must go to the City Clerk with a government form of identification such as a driver's license. Applicants must be:

- Over 18 years of age and unmarried/not in a domestic partnership
- Not related by blood as defined by Florida law
- Residing together in a mutual residence

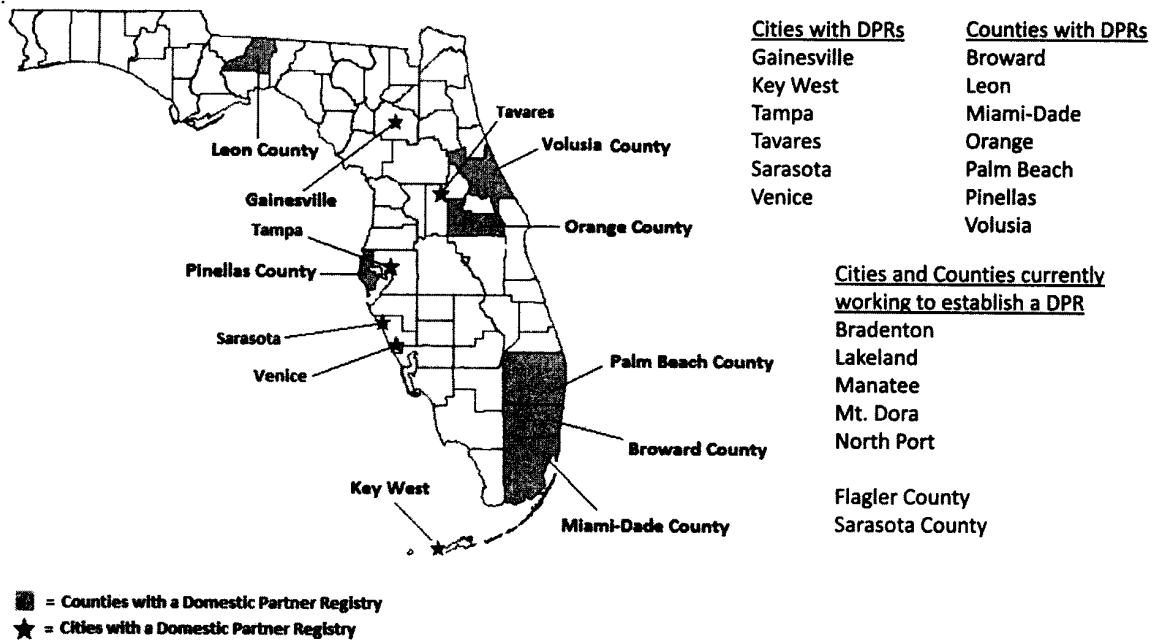
Cost to the city to implement and operate: A DPR is cost neutral. Most cities charge a small fee to register as domestic partners (\$35--\$60). If anything, a small amount of revenue is generated by DPRs.

In addition to providing rights for you and your domestic partner, there are many benefits to the city as well:

- Provides inherent legal rights to DP families not dependent upon the execution & presentation & recognition of a piece of paper (much as inherent rights attach to "married" families)
- Recognizes and benefits the whole family: two legal adults (gay or straight) and any respective children
- Provides evidence of DP relationship to access domestic partner health insurance coverage and other benefits through an employer plan (AT&T, Siemens)
- Provides evidence of DP relationship for accessing various domestic partner benefits from businesses (e.g. AAA, YMCA, Avis)
- Provides evidence of DP relationship for Obama Executive Order expanding visitation and other hospital rights to domestic partners
- Delivers regional economic benefits by attracting companies that require affirmative LGBT policies, i.e. domestic partner registries
- Attracts LGBT tourism
- Approved by hospitals and other affected entities because provides clarity and consistency

DPRs are established and accepted vehicles for providing these rights to DP families, and have uniformly been recognized in Florida and nationwide as constitutionally valid.

Current Domestic Partnership Registries in Florida
 The areas included represent **47.7%** of Florida's Population



According to the 2012 Census Bureau, **47.74%** of Florida's Population reside in an area with a Domestic Partnership Registry

As the map states, nearly half of all Floridians enjoy living in an area where people can register as domestic partners. What the map doesn't tell you is that there are currently ~1350 people in Pensacola currently living with an un-married partner that would receive these additional rights if they were registered as domestic partners. This would impact over 2,700 of Pensacola's citizens.

"Cities are always vying with each other for tourism, tax dollars and especially jobs. But no matter how much political capital and other capital their leaders expend to convince lucrative, cutting-edge businesses to locate or relocate within their limits, all of their efforts will be in vain unless they can show them that they are places that attract and retain top talent."

Richard Florida, Author, The Rise of the Creative Class

Setting the Record Straight on Domestic Partnership Registries

Won't a DPR involve "more government," with added cost?

No. Administering a DPR does not require any additional personnel, and the very minimal costs are more than offset by the revenue generated.

Isn't this about personal responsibility?

Entering into a DPR *is* an act of personal responsibility that enables individuals to protect and care for their families.

But isn't this still just about convenience? Can't folks simply obtain all of these rights individually?

No. A DPR would *require* that The City of Pensacola provide emergency notification, that a hospital or prison in The City of Pensacola provide partner visitation, that a school in The City of Pensacola allow a partner to pick up a child from school, and that a funeral home in The City of Pensacola allow a partner to make funeral arrangements. Otherwise, these entities are not required to do so, and there is no legal documentation that can create these rights.

Didn't President Obama issue an Executive Order about the visitation issue?

As a result of the Executive Order, federal regulations were enacted that require hospitals to inform patients of their right to receive visitors that they designate, including domestic partners. If a partner is incapacitated, however, they of course cannot designate any visitors. Also, hospitals are allowed to require proof of the DP relationship.

So what *can* you obtain with a legal form without a DPR?

Potentially, the right to act as a surrogate for healthcare decisions, and the right to be pre-designated as a guardian for your partner if they become incapacitated. But there are often problems for gay couples in enforcing these forms.

What role does a power of attorney play in all of this?

A power of attorney - in the correct legal form and properly executed - can permit a partner to make some healthcare decisions in an emergency, but it expires upon death and will therefore not suffice for funeral and burial arrangements, and it provides none of the other rights granted by a DPR.

Okay, so you can't get all of these rights individually. But why not get the ones you can?

Even if you obtain these documents and dutifully take them with you everywhere you go (which a straight married couple does not need to do), experience has shown that due to prejudice against gay couples these documents are often disregarded, and bringing a lawsuit can be prohibitively expensive and is unlikely to provide the needed relief in a timely manner. Also, securing these documents requires the services of a lawyer, and those services can cost a lot of money.

But can't you just find these forms for free on the Internet?

The Internet has a lot of information and material, but there is no guarantee that any form you find will serve the intended purpose or have legal effect in Florida.

Won't people be confused into thinking that a DPR will have effect beyond The City of Pensacola?

Perhaps some will, but many people also incorrectly believe that their power of attorney will always be recognized in another state – that is not a justification for prohibiting people from creating a power of attorney. The DPR will grant important rights in The City of Pensacola that people have never had before, and, more and more jurisdictions *are* recognizing domestic partnerships. The legal status of the domestic partnership will eventually become even more portable than the power of attorney.