

PROPOSED
ORDINANCE NO. 41-13

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AN ORDINANCE
TO BE ENTITLED:

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

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

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

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

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

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

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

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

CHAPTER 5-3. DOMESTIC PARTNERSHIP REGISTRY

Section 5-3-1. - Definitions.

For purposes of this Chapter:

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

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

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

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

- (1) a biological, adopted, or foster child of a registered domestic partner; or
- (2) a dependent as defined under IRS regulations; or
- (3) a ward of a registered domestic partner as determined in a guardianship or other legal proceeding.

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

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

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

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

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

(a) A domestic partnership may be registered by any two (2) persons by filing an affidavit of domestic partnership with the City, which affidavit shall comply with all requirements set forth in this chapter for establishing such domestic partnership. Upon payment of any required fees, the City Clerk shall file the affidavit of domestic partnership and issue a certificate reflecting the registration of the domestic partnership in the City. The City Clerk shall record the affidavit with the Escambia County Clerk of Court.

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

- (1) each person is at least eighteen (18) years old and competent to contract;
- (2) neither person is currently married under Florida law or is a partner in a domestic partnership relationship or a member of civil union with anyone other than the co-applicant;
- (3) they are not related by blood as defined in Florida law;
- (4) each person considers himself or herself to be a member of the immediate family of the other partner and to be jointly responsible for maintaining and supporting the registered domestic partnership;
- (5) the partners reside together in a mutual residence;
- (6) each person agrees to immediately notify the City Clerk, in writing, if the terms of the registered domestic partnership are no longer applicable or if one of the domestic partners wishes to terminate the domestic partnership; and

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

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

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

(a) Either partner to a registered domestic partnership relationship may terminate such relationship by filing a notarized affidavit of termination of domestic partnership relationship with the City Clerk. Upon the payment of the required fee, the City Clerk shall file the affidavit and issue a certificate of termination of domestic partnership relationship to each partner of the former relationship. The termination shall become effective ten (10) days from the date the certificate of termination is issued.

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

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

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

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

(a) The City Clerk shall prepare the form of all affidavits, amendments, and certificates required to be filed under this chapter and shall record the same with the Escambia County Clerk of Court. The City Clerk shall maintain a record of all affidavits, amendments, and certificates filed pursuant to this chapter.

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

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

(d) If Escambia County, Florida establishes a domestic partnership registry law that is substantially similar to the City of Pensacola's domestic partnership registry provisions, the City Clerk shall collaborate with Escambia County to determine whether a joint registration system will most efficiently serve our citizens. The City Clerk will bring any recommendations for joint administration to the City Council for its consideration. If such a joint registry is established, the references to the City Clerk shall mean the filing officer for the joint registry approved by City Council and Escambia County.

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

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

- (a) Health Care Facility Visitation. All health care facilities operating within the City shall honor the registered domestic partnership documentation issued pursuant to this code as evidence of the relationship and shall allow a registered domestic partner visitation as provided under federal law. A dependent of a registered domestic partner shall have the same visitation rights as a patient's child.
- (b) Health Care Decisions. This section pertains to decisions concerning both physical and mental health. Registry as a domestic partner shall be considered to be written direction by each partner designating the other to make health care decisions for their incapacitated partner, and shall authorize each partner to act as the other's healthcare surrogate as provided in Chapter 765, Florida Statutes, and otherwise as provided by federal law. Further, no person designated as a health care surrogate shall be denied or otherwise defeated in serving as a health care surrogate based solely upon his or her status as the domestic partner of the partner on whose behalf health care decisions are to be made. Any statutory form,

including but not limited to, a living will or health care surrogate designation in the form prescribed by Chapter 765, Florida Statutes, that is properly executed after the date of registration and that contains conflicting designations shall control over the designations by virtue of the registration.

- (c) Funeral and Burial Decisions. Registry as a domestic partner shall be considered to be written direction by the decedent of his or her intention to have his or her domestic partner direct the disposition of the decedent's body for funeral and burial purposes as provided in Chapter 497, Florida Statutes, unless the decedent provides conflicting, written inter vivos authorization and directions that are dated after the date of the registration, in which case the later dated authorization and directions shall control.
- (d) Correctional Facility Visitation Rights. Any person who is a party to a registered domestic partnership relationship pursuant to Section 5-3-2 shall be entitled to visit his or her domestic partner, or other family member of the domestic partner, who is an inmate at a correctional facility located within the City of Pensacola, upon the same terms and conditions under which visitation is afforded to spouses, dependents, or parents of inmates. Visitation rights provided by this section shall extend to any children of the domestic partners, and the domestic partners of an inmate's parents or children.
- (e) Notification of Family Members. In any situation providing for mandatory or permissible notification of family members including but not limited to notification of family members in an emergency, or when permission is granted to correctional facility inmates to contact family members, "notification of family" shall include registered domestic partners.
- (f) Preneed guardian designation. A person who is a party to a registered domestic partnership relationship, pursuant to Section 5-3-2 above, shall have the same right as any other individual to be designated as a preneed guardian pursuant to Chapter 744, Florida Statutes, and to serve in such capacity in the event of his or her domestic partner's incapacity. A domestic partner shall not be denied or otherwise be defeated in serving as the preneed guardian of his or her domestic partner or the partner's property under the provisions of Chapter 744, Florida

Statutes, to the extent that the incapacitated partner has not executed a valid preneed guardian designation, based solely upon his or her status as the domestic partner of the incapacitated partner.

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

Section 5-3-6. - Limited Effect.

- (a) Nothing in this article shall be interpreted to alter, affect, or contravene city, county, state, or federal law or impair any court order or contractual agreement.
- (b) Nothing in this article shall be construed as recognizing or treating a registered domestic partnership as a marriage.

Section 5-3-7. - Enforcement.

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

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


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

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

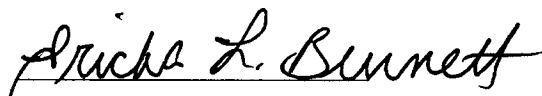
SECTION 3. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

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

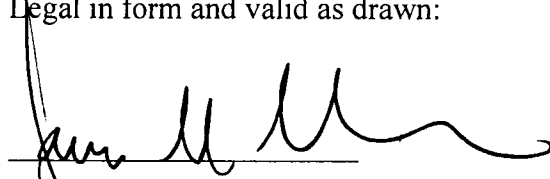
Passed: December 12, 2013

Approved: 
President of City Council

Attest:


City Clerk

Legal in form and valid as drawn:


City Attorney