

ORDINANCE NO. 8329-12

AN ORDINANCE OF THE CITY OF CLEARWATER, FLORIDA, ADOPTING CITY OF CLEARWATER CODE OF ORDINANCES, CHAPTER 13, "DOMESTIC PARTNERSHIP REGISTRY"; CREATING SECTIONS 13.1 THROUGH 13.7; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Clearwater City Council finds that a number of Clearwater 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 nearly 6% of American households identified themselves as living in unmarried partner households, an increase over the 2000 census numbers. The 2010 Census data indicates that in Clearwater more than 7% of households are unmarried partner households.

WHEREAS, the Clearwater City Council finds that the existence of a Domestic Partnership Registry is attractive to companies that value diversity and can assist the City of Clearwater 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 COUNCIL OF THE CITY OF CLEARWATER, FLORIDA:

Section 1. That "Chapter 13" is created as follows:

"CHAPTER 13. DOMESTIC PARTNERSHIP REGISTRY"

Section 2. That "Sec. 13.1. Definitions." is created as follows:

"Section 13.1. Definitions.

For purposes of this Article:

- (a) Affidavit of Domestic Partnership means a sworn form under penalty of perjury, which certifies that two (2) Domestic Partners meet the registration requirements as described in Section 13.2.
- (b) City Clerk means the City Clerk of the City of Clearwater or such other person or office approved by the City Council to administer the Domestic Partnership registry.
- (c) 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.
- (d) Domestic Partners means only two adults who are parties to a domestic partnership and who meet the requisites for a domestic partnership as established pursuant to Section 13.2.
- (e) Health care facility includes, but is not limited to, hospitals, nursing homes, hospice care facilities, convalescent facilities, walk-in clinics, doctor's offices, mental health care facilities and any other short-term or long-term health care facilities located within the City of Clearwater.
- (f) Jointly responsible means each Domestic Partner mutually agrees to provide for the other partner's basic needs while the domestic partnership is in effect, except that partners need not contribute equally or jointly to said basic needs such as food and shelter.
- (g) 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 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 3. That "Section 13.2. Registration of Domestic Partnerships." is created as follows:

"Section 13.2. 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 Clerk must maintain or arrange for maintenance of an online searchable database of the domestic partnerships which have been registered with the City.
- (b) An affidavit of domestic partnership shall contain the name and address of each domestic partner, the signature of each partner, the signatures of two witnesses for each partner 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 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 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 4. That "Section 13.3. Termination of Registered Domestic Partnership" is created as follows:

"Section 13.3. Termination of Registered Domestic Partnership.

(a) Either partner to a registered domestic partnership may terminate such registration by filing a notarized affidavit of termination of domestic partnership registration 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 the domestic partnership to each partner of the former partnership. The termination shall become effective ten (10) days from the date the certificate of termination is issued.

(b) A registered domestic partnership will 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 (provided however, 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 within ten (10) days of one of the occurrences listed in (b)(1)-(3) above."

Section 5. That "Section 13.4. Maintenance of Records; Filing Fees." is created as follows:

"Section 13.4. 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 ordinance. The City Clerk shall maintain a record of all affidavits, amendments, and certificates filed pursuant to this ordinance.

(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 ordinance, subject to the approval by Resolution of the Clearwater City Council. Any fees established under this section shall be reasonable and commensurate with the actual costs of administering the provisions of this ordinance.

(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 ordinance is enacted.

(d) If Pinellas County, Florida establishes a domestic partnership registry law that is substantially similar to the City of Clearwater's Domestic Partnership registry code provisions, the City Clerk shall collaborate with Pinellas 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 City Council for its consideration. If such a joint registry is established, the references herein to the City Clerk shall then mean the filing officer for the joint registry approved by City Council and Pinellas County."

Section 6. That "Section 13.5. Rights and Legal Effect of Registered Domestic Partnership." is created as follows:

"Section 13.5. 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 partnership 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 which contains conflicting designations shall control over the designations by virtue of the registration.
- (c) Funeral/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) 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, "notification of family" shall include registered Domestic Partners.

- (e) Pre-need guardian designation. A person who is a party to a registered Domestic Partnership, pursuant to Section 13.2 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 plenary 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.
- (f) 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 their registered Domestic Partnership as a biological parent 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 7. That "Section 13.6. Limited Effect." is created as follows:

"Section 13.6. Limited Effect.

- (a) Nothing in this article shall be interpreted to alter, affect, or contravene city, county, state or federal law or to 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 8. That "Section 13.7. Enforcement." is created as follows:

"Section 13.7. Enforcement.

A registered Domestic Partner may enforce the rights under Section 13.5 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 9. That should a court of competent jurisdiction declare any part of this Ordinance invalid the remaining parts hereof shall not, in any way, be affected by such determination as to the invalid part.

Section 10. That all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of any conflict.

Section 11. That this ordinance shall take effect immediately upon becoming law.

PASSED ON FIRST READING

May 17, 2012

PASSED ON SECOND AND FINAL
READING AND ADOPTED

June 7, 2012

-george n cretekos

George N. Cretekos
Mayor

Approved as to form:

Attest:

Pamela K. Akin

Pamela K. Akin
City Attorney

Rosemarie Call

Rosemarie Call
City Clerk

