

Requested by: City Council

Prepared by: City Clerk

ORDINANCE NO. 2013-04

AN ORDINANCE OF THE CITY OF VENICE, FLORIDA, ESTABLISHING A DOMESTIC PARTNERSHIP REGISTRY TO BE CODIFIED AS ARTICLE I, CHAPTER 40 OF THE CODE OF ORDINANCES, HUMAN RELATIONS; PROVIDING FOR DEFINITIONS; PROVIDING FOR A PROCESS FOR REGISTRATION; PROVIDING FOR TERMINATION PROCEDURES; PROVIDING FOR MAINTENANCE OF RECORDS; PROVIDING FOR FEES AND CHARGES; PROVIDING FOR ENUMERATION OF RIGHTS AND LEGAL EFFECTS; PROVIDING FOR RECIPROCITY; PROVIDING FOR LIMITED EFFECT; PROVIDING FOR ENFORCEMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, city council finds that a significant number of City of Venice residents establish and maintain important personal, emotional, and economic relationships with persons to whom they are not married under Florida law; and,

WHEREAS, individuals forming such domestic partnerships often live in a committed family relationship, yet domestic partners and their dependents 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 and 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, city council believes the existence of a Domestic Partnership Registry will be attractive to companies that value diversity and can assist the City of Venice 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; and,

WHEREAS, 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 VENICE, FLORIDA:

SECTION 1. Chapter 40, Human Relations, Article I, Domestic Partnership Registry, is hereby created to read as follows:

CHAPTER 40. HUMAN RELATIONS

Article I. Domestic Partnership Registry.

Sec. 40.1. Definitions.

Affidavit of domestic partnership means a sworn form under penalty of perjury, which certifies that two domestic partners meet the requirements of a domestic partnership as described in Sec. 40-2.

City clerk means the city clerk of the City of Venice or such other person or office approved by city council to administer the domestic partnership registry.

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.

Domestic partners means only two adults who are parties to a valid domestic partnership and who meet the requisites for a valid domestic partnership as established pursuant to Sec. 40-2.

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.

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.

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.

Registered domestic partnership means a domestic partnership which has been registered with the city by its domestic partners, whereby the city clerk has issued a certificate and laminated card evidencing the registration of such domestic partnership with the city.

Sec. 40-2. Process for registration.

- (a) A valid domestic partnership may be registered by any two persons by filing an affidavit of domestic partnership with the city, which affidavit shall comply with all requirements set forth in this ordinance 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 and laminated card reflecting the registration of the domestic partnership in the city. The city clerk shall not be responsible for maintaining a record of any of the forms except the domestic partnership registry. The city clerk shall 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, and each partner shall swear or affirm under penalty of perjury that:

- (1) Each person is at least 18 years old and competent to contract; and
- (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; and
- (3) They are not related by blood as defined in Florida law; and
- (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; and
- (5) The partners reside in a mutual residence; and
- (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 registered 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.

Sec. 40-3. Termination procedures.

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

(b) Automatic termination. A registered domestic partnership shall automatically terminate upon discovery by, or 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 days of one of the occurrences listed in 40-3(b)(1) through (3). Upon receipt of such affidavit, or upon discovery of one of the occurrences listed in 40-3(b)(1) through (3) by any other verifiable

means, the city clerk shall file the affidavit (when applicable) and issue a certificate of termination of domestic partnership to any surviving partner of the former partnership. The termination shall become effective immediately upon issuance of such certificate of termination by the city clerk.

Sec. 40-4. 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 article. The city clerk shall maintain a record of all affidavits, amendments, and certificates filed pursuant to this ordinance. The city clerk shall record in the official records of Sarasota County all certificates of domestic partnership and certificates of termination issued under this article.

(b) Persons filing, amending or terminating a domestic partnership shall pay the following fees and charges. Any fees established under this section shall be commensurate with the actual costs of administering the provisions of this ordinance.

(1) Affidavit of domestic partnership registration \$30.00

(2) Application for amendment to certificate of domestic partnership \$10.00

(3) Affidavit for termination of domestic partnership \$20.00

(c) If Sarasota County, Florida, establishes a domestic partnership registry law that is substantially similar to the city's domestic partnership registry code provisions, the city clerk shall collaborate with Sarasota County to determine whether a joint registration system will most efficiently serve the 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 in this ordinance to the city clerk shall then mean the filing officer for the joint registry as agreed upon and approved by the city and Sarasota County jointly.

Sec. 40-5. Enumeration of rights and legal effects.

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, domestic partners in a registered domestic partnership shall have the following rights within the city:

(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 ch. 765, F. S., 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.

- (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 ch. 497, F.S., unless the decedent leaves 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) Preneed guardian designation. Any person who is a domestic partner in a registered domestic partnership, pursuant to Sec. 40-3, shall have the same right as any other individual to be designated as a preneed guardian pursuant to ch. 744, F.S., 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 ch. 744, F. S., 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, 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 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.

Sec. 40-6. Reciprocity.

All rights, privileges and benefits extended to domestic partnerships registered pursuant to this article shall also be extended to domestic partnerships registered pursuant to domestic partnership laws in other jurisdictions in the state of Florida to the extent allowed by law. If a conflict occurs between jurisdictions, this article shall govern in the city.

Sec. 40-7. Limited Effect.

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

Sec. 40-8. Enforcement.

A registered domestic partner may enforce the rights granted under Sec. 40-5 by filing a private judicial action against a person or entity in any court of competent jurisdiction for declaratory relief, injunctive relief, or both.

Any person violating the provisions of this article may be subject to fines as provided in Sec. 1-14 of the city code.

SECTION 2. Should any section, sentence, clause, part or provision of this ordinance be held or declared invalid or unenforceable by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part held or declared to be invalid.

SECTION 3. Severability. If any part, section, subsection, or other portion of this ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this ordinance, and all applications thereof not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

SECTION 4. Sunset Provision. This ordinance shall automatically expire three years after its adoption unless extended by city council prior to its expiration.

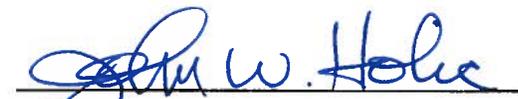
SECTION 5. Effective Date. This ordinance shall take effect immediately upon approval and adoption as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA THIS 26th DAY OF MARCH 2013.

First Reading: March 12, 2013

Final Reading: March 26, 2013

Adoption: March 26, 2013



John W. Holic, Mayor

ATTEST:



Lori Stelzer, MMC, City Clerk

Approved By City Council

Date: 3/26/13

Approved as to form:



City Attorney, Robert C. Anderson