

ORDINANCE NO. 12-12

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 38, ARTICLE V OF THE CODE OF ORDINANCES ENTITLED "DOMESTIC PARTNERSHIPS," BY REPEALING SECTIONS 38-291 THROUGH 38-294; ADDING A NEW SECTION 38-291 TO PROVIDE DEFINITIONS; ADDING A NEW SECTION 38-292 TO PROVIDE REGISTRATION, AMENDMENT, TERMINATION AND ADMINISTRATION PROCEDURES; ADDING A NEW SECTION 38-293, RIGHTS AND LEGAL EFFECT OF REGISTERED DOMESTIC PARTNERSHIP; ADDING A NEW SECTION 38-294, LIMITED EFFECT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Key West City Commission encourages equality in all aspects of life; and

WHEREAS, to protect the health, safety and welfare of the citizens of Key West, the City Commission desires to amend the Domestic Partnership ordinances, to ensure comprehensive rights and protections permitted by law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That existing sections 38-291 through and including section 38-294 of the Code of Ordinances, regarding Domestic Partnerships, are hereby repealed.

Section 1: That a new Section 38-291 is hereby added to the Code of Ordinances as follows*:

Sec. 38-291. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Committed relationship means a family relationship, intended to be of indefinite duration, between two individuals characterized by mutual caring and the sharing of a mutual residence.

Declaration of registered domestic partnership means the document that is filed with the city clerk's office according to the procedures established in section 38-292.

*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

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.

Mutual residence means that the registered domestic partners share the same place to live. 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 committed relationship between two persons who consider themselves to be a member of each other's immediate

family and have registered their partnership in accordance with section 38-292.

Section 2: That a new Section 38-292 is hereby added to the Code of Ordinances as follows:

Sec. 38-292. - Registration, amendment, termination and administration procedures.

(a) Registration.

(1) Declaration of registered domestic partnership. A declaration of registered domestic partnership shall be filed with the city clerk's office and shall contain the names and addresses of the applicants who shall swear or affirm under penalty of perjury that each partner:

a. Is at least 18 years old and competent to contract;

b. Is not married to or a member of another registered domestic partnership or civil union with anyone other than the coapplicant;

c. Agrees to share the common necessities of life and to be responsible for each other's welfare;

d. Shares his or her primary residence with the other;

e. Considers himself or herself to be a member of the immediate family of the other partner; and

f. Agrees to immediately notify the city clerk's office, in writing, of any change in the status of the registered domestic partnership.

g. Agrees to mutually support the other by contributing in some fashion, not necessarily equally, to maintain and support the registered domestic partnership.

(2) Each partner agrees to immediately notify the city clerk's office, 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.

(b) Amendment. A registered domestic partner may amend a registered domestic partnership previously filed with the city clerk to show a change in his or her household address or to add or delete dependents. Amendments shall be signed by both members of the

registered domestic partnership under penalty of perjury.

(c) Termination.

(1) Termination statement. A registered domestic partner may terminate the registered domestic partnership by filing a termination statement with the city clerk's office. The person filing the termination statement shall swear or affirm under penalty of perjury that:

- a. The registered domestic partnership is to be terminated; and
- b. If the termination statement is not signed by both registered domestic partners, a copy of the termination statement shall be served, by certified or registered mail, on the other registered domestic partner, and proof of service shall be filed with the city clerk's office.

(2) Effective date. The termination shall become effective on the date of filing of the termination statement signed by both registered domestic partners or if the termination statement is not signed by both parties, on the date proof

of service is filed with the city clerk's office pursuant to subsection 38-292.(c)(1)b., above.

(3) Automatic termination. A registered domestic partnership shall automatically terminate in the event that one of the domestic partners dies, marries, or enters into a civil union with someone other than his or her registered domestic partner.

(d) Administration.

(1) Forms. The city clerk's office shall provide forms for the establishment, amendment, and termination of registered domestic partnerships.

(2) Certificate of registered domestic partnership. The city clerk's office shall issue to the registered domestic partners a certificate of registered domestic partnership no later than ten business days after the declaration of registered domestic partnership is filed.

(3) Maintain records. The city clerk's office shall maintain copies of the declaration of registered domestic partnerships, any and all amendments thereto, certificates of registered

domestic partnership, and termination statements
filed by registered domestic partners.

(4) Fees. The fee for registering the
declaration of registered domestic partnership
shall be \$50.00, which shall cover all costs of
registration. The fee for amending or terminating
the declaration of registered domestic
partnership shall be \$25.00 which shall cover all
costs of amendment or termination of the
registered domestic partnership.

Section 3: That a new Section 38-293 is hereby
added to the Code of Ordinances as follows:

**Sec. 38-293. - Rights and legal effect
of registered domestic partnership.**

To the extent not superseded by federal, state,
or county law or ordinance, registered domestic
partners shall have the following rights:

(1) Health care facility visitation. The term
"health care facility" includes, but is not
limited to, hospitals, convalescent facilities,
walk-in clinics, doctor's offices, mental health
care facilities, and other short and long term

facilities located within, or under the jurisdiction of, the City of Key West. All health care facilities operating within the City of Key West shall allow a registered domestic partner the same visitation rights as a spouse (or parent, if the patient is a dependent of the registered domestic partnership) of the patient. A dependent of a registered domestic partner shall have the same visitation rights as a patient's child.

(2) Correctional facility visitation rights. The term "correctional facility" includes, but is not limited to, holding cells, jails, and juvenile correction centers of any kind, located within or under the jurisdiction of the City of Key West. A registered domestic partner shall have the same visitation rights at all correctional facilities operating within the City of Key West as a spouse (or parent, if the person in custody is a dependent of the registered domestic partnership) of a person in custody. A dependent shall have the same visitation rights afforded to the child of a person in custody.

(3) Health care decisions. This section pertains to decisions concerning both physical and mental health. If a patient lacks the capacity to make a health care decision, the patient's registered domestic partner shall have the same authority as a spouse to make a health care decision for the incapacitated party. If the patient is a dependent of the registered domestic partnership, the registered domestic partners shall have the same authority to make health care decisions as a parent; however, if a biological parent of a minor dependent, whose parental rights have not been terminated, is available, willing, and competent to make the health care decision, the biological parents' authority to make health care decisions on behalf of the minor shall supersede that of a registered domestic partner who is not the biological parent of the minor dependent.

(4) Participation in education. A registered domestic partner shall have the same rights to participate in the education of a dependent of the registered domestic partnership as a parent to participate in the education of their child, in all educational facilities located within or

under the jurisdiction of the City of Key West.
This includes the right of a registered domestic partner to participate in the home schooling of a dependent in accordance with Florida law.

(5) Funeral/burial decisions. Following the death of a registered domestic partner, the surviving partner shall have the same rights to make decisions with regard to funeral/burial decisions and disposition of the decedent's body as a surviving spouse.

(6) 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 inmates to contact family members, "notification of family" shall include registered domestic partners.

(7) Preneed guardian designation. Any person who is registered as a registered domestic partner pursuant to this article shall have the same right as any other individual to be designated as a preneed guardian pursuant to F.S. § 744.3045, and to serve in such capacity in the event of his

or her declarant registered domestic partner's incapacity. A registered domestic partner shall not be denied or otherwise be defeated in serving the plenary guardian of his or her registered domestic partner or the partner's property, under the provisions of F.S. ch. 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.

Section 4: That a new Section 38-294 is hereby added to the Code of Ordinances as follows:

Sec. 62-164. - Limited effect.

(a) Nothing in this article shall be interpreted to alter, affect, or contravene county, state or federal law.

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

(c) All rights, privileges, and benefits extended to registered domestic partnerships registered pursuant

to this article shall also be extended to all persons legally partnered in another jurisdiction.

(d) A registered domestic partner may enforce the rights under Section 38-163 by filing a private action against a person or entity in any court of competent jurisdiction for declaratory relief, injunctive relief, or both.

Section 5: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 6: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 7: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 15th day of May, 2012.

Read and passed on final reading at a regular meeting held this 5th day of June, 2012.

Authenticated by the presiding officer and Clerk of the Commission on 5th day of June, 2012.

Filed with the Clerk June 6, 2012.


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK