

07/31/14
08/25/14

ORDINANCE 35 - 14

AN ORDINANCE ESTABLISHING CHAPTER 28 OF THE CITY OF CAPE CORAL CODE OF ORDINANCES ENTITLED "HUMAN RELATIONS," ARTICLE I, "DOMESTIC PARTNERSHIP REGISTRY", PROVIDING FOR THE CREATION OF A DOMESTIC PARTNERSHIP REGISTRY IN THE CITY OF CAPE CORAL; PROVIDING REGISTRATION, AMENDMENT, TERMINATION AND ADMINISTRATION PROCEDURES; PROVIDING FOR RIGHTS AND LEGAL EFFECT OF REGISTERED DOMESTIC PARTNERSHIP; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City Council finds that a significant number of City of Cape Coral 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, the City Council believes the existence of a Domestic Partnership Registry will be attractive to companies that value diversity and can assist the City of Cape Coral 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; and

WHEREAS, the City desires to establish a Domestic Partnership Registry.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

SECTION 1. Chapter 28, Human Relations, Article I, Domestic Partnership Registry, of the City of Cape Coral Code of Ordinances is hereby established as follows:

Chapter 28

HUMAN RELATIONS

Article I. DOMESTIC PARTNERSHIP REGISTRY

Section 28-1. Definitions.

For purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Committed relationship means a family relationship, intended to be of indefinite duration, between two individuals characterized by a 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 §28-2.

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 a 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 §28-2.

Section 28-2. 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 or a member of another registered domestic partnership or civil union with anyone other than the co-applicant;
 - (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;
 - (f) Agrees to immediately notify the city clerk's office, in writing, of any change in the status of the registered domestic partnership; and
 - (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 paragraph 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 partnership, 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 28-3. 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 within the City of Cape Coral:

- a. 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 Cape Coral. All health care facilities operating within the City of Cape Coral 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.
- b. 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 Cape Coral. A registered domestic partner shall have the same visitation rights at all correctional facilities operating within the City of Cape Coral 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.

- c. 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, this 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 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.
- d. 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 Cape Coral. This includes the right of a registered domestic partner to participate in the home schooling of a dependent in accordance with Florida law.
- e. 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.
- f. 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.
- g. 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 as 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 28-4. 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.
- 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 granted under § 28-3 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 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR
SESSION THIS 3rd DAY OF November, 2014.


MARNI L. SAWICKI, MAYOR

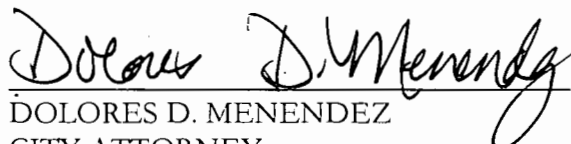
VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI	<u>aye</u>
BURCH	<u>nay</u>
CARIOSCIA	<u>aye</u>
NESTA	<u>nay</u>
LEON	<u>aye</u>
ERBRICK	<u>nay</u>
WILLIAMS	<u>aye</u>
DONNELL	<u>aye</u>

ATTESTED TO AND FILED IN MY OFFICE THIS 6th DAY OF November,
2014.


REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:


DOLORES D. MENENDEZ
CITY ATTORNEY
ord\Domestic Partnership Registry