

ORDINANCE 2016-75

An Ordinance of the Osceola County Board of County Commissioners Creating Article V “Domestic Partnership Registry” of Chapter 27 of the Osceola County Code; Providing for Conflict; Providing for Inclusion into the Code; Providing for an Effective Date.

WHEREAS, Osceola County Board of County Commissioners find that a significant number of Osceola County 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 dependents may be denied certain rights for lack of a system that establishes recognitions 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 Osceola County Board of County Commissioners find that the provision of domestic partner benefits promotes employee recruitment, employee retention, and employee loyalty. The existence of a Domestic Partnership Registry is attractive to companies that value diversity and can assist Osceola County in its economic development by attracting companies to locate and make capital investments in the County, and will promote the County’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 county laws or regulations, nor shall this ordinance be interpreted in a manner as to bring it into conflict with federal, state, or other county 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 BOARD OF COUNTY COMMISSIONERS OF OSCEOLA COUNTY, FLORIDA:

SECTION 1. Chapter 27 of the Osceola County Code, is hereby amended by the addition of a new Article V “Domestic Partnership Registry,” as follows:

**CHAPTER 27
HUMAN RIGHTS**

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ARTICLE V. - DOMESTIC PARTNERSHIP REGISTRY

Sec. 27-25. Definitions.

For purposes of this Article:

- (a) *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 27-26.
- (b) *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 27-26.
- (c) *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.
- (d) *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 Osceola County.
- (e) *Correctional facility* means holding cells, jails, and juvenile correction centers of any kind, located within or under the jurisdiction of Osceola County.
- (f) *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.
- (g) *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.
- (h) *County Clerk* means the Osceola County Clerk of the Circuit Court or such other person or office approved by the Board of County Commissioners to administer the Domestic Partnership registry.

Sec. 27-26. Registration of Domestic Partnerships.

- (a) A valid domestic partnership relationship may be registered by any two (2) persons by filing an affidavit of domestic partnership with Osceola County, which affidavit shall comply with all requirements set forth in this ordinance for establishing such domestic partnership. Upon payment of any required fees, the County Clerk shall file the affidavit of domestic partnership and issue a certificate and laminated card reflecting the registration of the domestic partnership relationships in Osceola County. The Clerk shall maintain or arrange for maintenance of an online searchable database of the domestic partnerships which have been registered with the County.
- (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 eighteen (18) years old and competent to contract;
 - (2) Neither person is currently married under the laws of any jurisdiction 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 in a mutual residence;
 - (6) Each person agrees to immediately notify the County Clerk, in writing, if the terms of the Registered Domestic Partnership are no longer applicable or one (1) 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 County 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. 27-27. 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 County Clerk. Upon the payment of the required fee, the County Clerk shall file the affidavit and within ten (10) days will issue a certificate of termination of domestic partnership relationship to each partner of the former relationship. The termination shall become effective upon issuance of the certificate.
- (b) Automatic termination. A registered domestic partnership shall automatically terminate upon notice to the County Clerk of the following events:

1. One (or both) of the domestic partners marries in Florida; or
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 relationship within ten (10) days of one of the occurrences listed in subsections (b)1—3 above.

Sec. 27-28. Maintenance of Records; Filing Fees.

- (a) The County Clerk shall prepare the form of all affidavits, amendments, and certificates required to be filed under this Act. The County Clerk shall maintain a record of all affidavits, amendments, and certificates filed pursuant to this ordinance.
- (b) The County Clerk is authorized to establish fees for the filing of any affidavits, amendments, and the issuance of any certificates required by this act.. Any fees established under this section shall be commensurate with the actual costs of administering the provisions of this ordinance.
- (c) The County 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 the City of Kissimmee or the City of St. Cloud establishes a domestic partnership registry law that is substantially similar to Osceola County's Domestic Partnership registry code provisions, the County Clerk shall collaborate with the City of Kissimmee and/or the City of St. Cloud to determine whether a joint registration system will most efficiently serve our citizens. The County Clerk will bring any recommendations for joint administration to the Board of County Commissioners for its consideration. If such a joint registry is established, the references in to the County Clerk shall mean the filing officer for the joint registry approved by Osceola County Board of County Commissioners and the City of Kissimmee and/or the City of St. Cloud.

Sec. 27-29. 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 Osceola County 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 such forms properly executed after the date of registration which contain 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) *Correctional Facility Visitation Rights.* Any person who is a party to a registered domestic partnership relationship, pursuant to Section 27-26, 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 Osceola County, 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 27-26 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.
- (g) *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 County. 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. 27-30. 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. 27-31. Enforcement.

A registered Domestic Partner may enforce the rights under Section 27-26 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 of this chapter shall be subject to fines as provided in Section 1.6 of this Code.

SECTION 2. CONFLICT. Any ordinance or part thereof in conflict with this Ordinance or any part hereof is hereby repealed to the extent of the conflict.

SECTION 3. INCLUSION INTO THE CODE. The provisions of this Ordinance shall be included and incorporated within the Code of Ordinances of Osceola County Florida, and may be renumbered or relettered to accommodate such inclusion.

SECTION 4. FILING WITH DEPARTMENT OF STATE. The Clerk be and hereby is directed forthwith to send a certified copy of this Ordinance to the Bureau of Administrative Code and the Department of State pursuant to law.

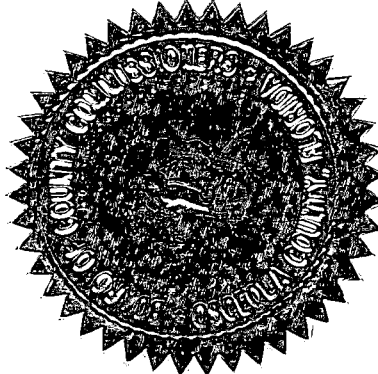
SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect upon filing with the Department of State.

BOARD OF COUNTY COMMISSIONERS
OF OSCEOLA COUNTY, FLORIDA

By: *Twiana Janer*
Chairwoman/Vice Chairwoman

ATTEST:
OSCEOLA COUNTY CLERK OF THE BOARD

By: *Jimmy Ross*
Clerk/ Deputy Clerk of the Board



As authorized for execution at the Board of County Commissioners meeting of:

08/08/16
Ordinance 2016-75

Ordinance Related to the
Statement of Legislative Intent

Background:

The Osceola County Board of County Commissioners find that a significant number of Osceola County residents establish and maintain important personal, emotional, and economic relationships with person to whom they are not married under Florida law. Individuals forming domestic partnerships often live in a committed family relationship but are denied certain rights due to the lack of an established system that recognizes such partnerships. The Board finds that the provision of domestic partner benefits promotes employee recruitment, employee retention, and employee loyalty. Additionally, the existence of a Domestic Partnership Registry is attractive to companies that value diversity and can assist Osceola County in its economic development by attracting companies to locate here. Finally, it will further promote the County's reputation as a growing, vibrant and diverse community.

Intent:

The proposed ordinance will provide a means for two adults to verify that they are parties to a valid domestic partnership relationship residing in the same household. The parties will be able to complete a sworn form which certifies that they meet the requirements of a domestic partnership relationship as outlined in the county's ordinance. The registration will provide for legal proof of the domestic partnership thereby allowing each partner to receive certain rights as outlined in the ordinance.

Elements of ordinance:

Provides for a definition of domestic partners as only two adults, over the age of 18, who are parties to a valid domestic partnership relationship and are residing in the same household.

Requires the two adults provide a sworn form which certifies that they meet the requirements of a domestic partnership relationship as outlined in the county's ordinance.

The registration of domestic partnership would be provided to the Clerk of the Court.

The registry includes a dependent which is a person who resides within the household and is either a biological, adopted or foster child, dependent as defined under IRS regulations, or a ward.

Provides for an automatic termination clause.

The rights included within the ordinance are as follows:

- All health care facilities operating within the County shall honor the issued Registered Domestic Partnership documentation and shall allow a Registered Domestic Partner visitation as provided under federal law.

- 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.
- 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.
- Any person who is a party to a registered domestic partnership relationship shall be entitled to visit his or her domestic partner, or other family members of the domestic partner, who is an inmate at a correctional facility located within the County of Osceola.
- 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.
- A person who is a party to a registered Domestic Partnership relationship shall have the same right as any other individual to be designated as a preneed guardian.
- 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 partner to participate in the education of their child, in all educational facilities located within or under the jurisdiction of the County.

Enforcement:

A registered Domestic Partner may enforce the rights under Section 27.26 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 of this Chapter shall be subject to fines as provided in Section 1.6 of this code.

Effective:

Upon adoption by the Board of County Commissioners.



FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

August 11, 2016

Ms. Paula J. Carpenter
Clerk of the Board
Osceola County
1 Courthouse Square, Suite 4400
Kissimmee, Florida 34741

Attn: Ms. Tammy Ross, Deputy Clerk

Dear Ms. Carpenter:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Osceola County Ordinance No. 2016-75, which was filed in this office on August 11, 2016.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb