

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Ord 2005-002

Meeting Date: January 10, 2006 [] Consent [] Regular [] Ordinance [X] Public Hearing

Department: Submitted By: County Attorney's Office Submitted For: Administration

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, PROVIDING FOR FINDINGS AND CONSTRUCTION; PROVIDING FOR DEFINITIONS; PROVIDING FOR A DOMESTIC PARTNERSHIP REGISTRY; PROVIDING FOR REGISTRATION OF DOMESTIC PARTNERSHIP RELATIONSHIP; PROVIDING FOR TERMINATION OF DOMESTIC PARTNERSHIP; PROVIDING FOR ADMINISTRATION OF THE REGISTRY; PROVIDING FOR RIGHTS OF REGISTERED DOMESTIC PARTNERS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR RECIPROCITY; PROVIDING FOR APPLICABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

Summary: On December 20, 2005, the Board of County Commissioners held preliminary reading of this ordinance and authorized advertising for public hearing. This ordinance would allow domestic partners to register with the Clerk and Comptroller's Office and would grant domestic partners rights in health care visitation, health care decisions, funeral/burial decisions, pre-need guardians and correctional facility visitations. Countywide (TKF)

Background and Policy Issues: On September 13, 2005, the Board of County Commissioners gave staff direction to bring forth a draft of a domestic partnership registry ordinance. The ordinance provides a process for domestic partners to register with the Clerk and Comptroller's Office, and grants certain rights based on the registration.

On October 18, 2005, the Board of County Commissioners implemented Domestic Partner benefits for County employees. As part of the agenda item presented to the Board of County Commissioners on October 18th, staff indicated that in order to be eligible for domestic partner benefits in the future, employees would need to register as domestic partners if a domestic partnership registry was adopted. The proposed ordinance contains the protections against fraud such as requiring certain documentation requested by the Board of County Commissioners.

The Board of County Commissioners directed staff to seek input from the League of Cities, Economic Council, Business Development Board, Clerk & Comptroller and Sheriff's Office. Staff has incorporated the changes suggested by the Clerk & Comptroller's Office, and no other comments were received. Staff also presented this item to the Fair Housing/Equal Employment Board, and that board unanimously requested an acknowledgment of the tireless efforts of Norman Aaron, former President of the Palm Beach County Human Rights Council and former Vice-Chairman of the Fair Housing/Equal Employment Board be incorporated into the ordinance.

Attachments:

- 1. Proposed Ordinance

Approved By: [Signature] Date: 12/20/05
County Attorney Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included In Current Budget?	Yes _____		No _____		
Budget Account No.:	Fund _____	Dept _____	Unit _____	Object _____	Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

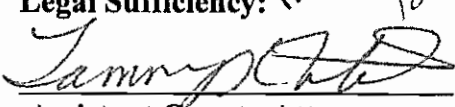
III. REVIEW COMMENTS

A. OFMB Budget and/or Contract Dev. and Control Comments:




 OFMB/Budget _____ Contract Development and Control _____

B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

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2
3 **ORDINANCE NO. 2006-002**

4 **AN ORDINANCE OF THE BOARD OF COUNTY**
5 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA,**
6 **PROVIDING FOR FINDINGS AND CONSTRUCTION;**
7 **PROVIDING FOR DEFINITIONS; PROVIDING FOR A**
8 **DOMESTIC PARTNERSHIP REGISTRY; PROVIDING FOR**
9 **REGISTRATION OF DOMESTIC PARTNERSHIP**
10 **RELATIONSHIP; PROVIDING FOR TERMINATION OF**
11 **DOMESTIC PARTNERSHIP; PROVIDING FOR**
12 **ADMINISTRATION OF THE REGISTRY; PROVIDING FOR**
13 **RIGHTS OF REGISTERED DOMESTIC PARTNERS;**
14 **PROVIDING FOR ENFORCEMENT; PROVIDING FOR**
15 **RECIPROCITY; PROVIDING FOR APPLICABILITY;**
16 **PROVIDING FOR REPEAL OF LAWS IN CONFLICT;**
17 **PROVIDING FOR SEVERABILITY; PROVIDING FOR**
18 **INCLUSION IN THE CODE OF LAWS AND ORDINANCE;**
19 **AND PROVIDING FOR AN EFFECTIVE DATE.**

20 **WHEREAS**, it is the best interest of Palm Beach County to be responsive to the
21 changing needs of society and to treat all persons fairly and equitably; and
22

23 **WHEREAS**, Palm Beach County recognizes that long-term committed relationships
24 foster economic stability and emotional and psychological bonds; and

25 **WHEREAS**, the Board of County Commissioners of Palm Beach County have
26 determined that the establishment of a Domestic Partnership Registry will serve the needs
27 of the many residents of Palm Beach County living in committed Domestic Partnerships.

28 **WHEREAS**, the Palm Beach County Fair Housing/Equal Employment Board and
29 the Board of County Commissioners wish to memorialize the efforts of Norman Aaron,
30 former Vice-Chairman of the Fair Housing/Equal Employment Board and former President
31 of the Palm Beach County Human Rights Council, by acknowledging him in this Ordinance.

32 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
33 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

34 **SECTION 1:**

35 (A) The Board of County Commissioners of Palm Beach County, Florida finds that
36 there are many individuals who establish and maintain a significant personal, emotional
37 and economic relationship with another individual. Individuals forming such Domestic
38 Partnerships often live in a committed relationship. Domestic Partners are often denied
39 certain benefits and rights because there is no established system for such relationships
40 to be registered or recognized.

41 (B) The provisions of this Ordinance shall be liberally construed to promote the
42 public safety, health and general welfare of the residents of Palm Beach County and to
43 further the general policies and purposes stated herein. However, this Ordinance shall not

1 be construed to supercede, alter, affect or contravene any federal, state or County laws
2 or regulations. Nothing in this Ordinance shall be construed as recognizing or treating a
3 Registered Domestic Partnership as a marriage.

4 **SECTION 2. DEFINITIONS:**

5 “*Domestic relationship*” means a familial relationship, intended to be of indefinite
6 duration, between two individuals characterized by mutual caring and the sharing of a
7 mutual residence.

8 “*Competent to contract*” means the two partners are mentally competent to contract.

9 “*Declaration of Domestic Partnership*” means a sworn declaration under penalty of
10 perjury, which certifies that said individuals meet the requirements of a Registered
11 Domestic Partnership as provided in Section 4 of this Ordinance..

12 “*Dependent*” means a person who resides within the household of a Registered
13 Domestic Partnership and is:

- 14 1. a biological, adopted or foster child of a Registered Domestic Partner; or
- 15 2. a dependent as defined under IRS regulations; or
- 16 3. a ward of a Registered Domestic Partnership as determined in a guardianship
17 or other legal proceeding.

18 “*Domestic Partners*” means two adults who are parties to a valid domestic
19 relationship and who meet the requisites for a valid Domestic Partnership relationship as
20 established pursuant to Section 4 of this Ordinance.

21 “*Health Care Facility*” includes, but is not limited to, hospitals, convalescent
22 facilities, nursing homes, walk-in clinics, doctor’s offices, mental health care facilities and
23 other short and long-term facilities located within, or under the jurisdiction of Palm Beach
24 County.

25 “*Jointly Responsible*” means each Domestic Partner, mutually agrees to provide for
26 the other partner’s basic food, shelter and common necessities of life while the Domestic
27 Partnership relationship is in effect, but does not require that partners contribute equally
28 to said basic food, shelter and common necessities of life.

29 “*Mutual residence*” means that the Domestic Partners share the same residence,
30 and contribute to the cost of maintaining such residence. It is not necessary that the legal

1 right to possess the place of residence be in both names. Domestic Partners are not
2 prohibited from owning or renting more than one residence. Temporary relocation of one
3 Domestic Partner for work, education or military service, does not negate the maintenance
4 of a mutual residence provided the Domestic Partner intends to return.

5 *“Registered Domestic Partnership”* means a committed relationship between two
6 persons who consider themselves to be a member of each other’s immediate family and
7 have registered their partnership in accordance with Section 4 of this Ordinance.

8 **SECTION 3. ESTABLISHMENT OF DOMESTIC PARTNERSHIP REGISTRY:**

9 There is hereby created in Palm Beach County, Florida a Domestic Partnership
10 Registry, which shall be maintained by the Clerk and Comptroller’s Office.

11 **SECTION 4. REGISTRATION OF A DOMESTIC PARTNERSHIP RELATIONSHIP:**

12 (A) Registration: A valid Domestic Partnership may be registered by two persons,
13 who maintain a residence in Palm Beach County, by recording a Declaration of Domestic
14 Partnership with the Clerk and Comptroller’s Office, which declaration shall comply with all
15 requirements for establishing such Domestic Partnership as described herein. Upon
16 payment of any required fees, the Clerk and Comptroller’s office shall file the Declaration
17 of Domestic Partnership and issue a certificate reflecting the registration of the Domestic
18 Partnership relationship in Palm Beach County.

19 (B) Declaration: A Declaration of Domestic Partnership shall contain the name and
20 address of each Domestic Partner, the signature of each partner, and each partner shall
21 swear or affirm under penalty of perjury that each partner:

- 22 (1) Is at least eighteen (18) years old and competent to contract;
- 23 (2) Is not married;
- 24 (3) Is the sole Domestic Partner of the other person;
- 25 (4) Is not related by blood;
- 26 (5) Consents to the Domestic Partnership relationship without force, duress
27 or fraud;
- 28 (6) Agrees to be jointly responsible for each others basic food, shelter,
29 common necessities of life and welfare;
- 30 (7) Has not been a member of another Domestic Partnership for the past

1 year;

2 (8) Shares his or her primary residence with the other;

3 (9) Considers himself or herself to be a member of the immediate family of
4 the other partner.

5 (C) Documentation: As further evidence of a Domestic Partnership, the following
6 documents must be presented for review along with the Declaration of Domestic
7 Partnership:

8 (1) To establish mutual residence: At least one (1) of the following: current
9 copy of mortgage, lease or deed showing both names or copies of current driver's licenses,
10 passports, tax returns, or other government issued photograph identification showing the
11 same address for both partners; and

12 (2) To establish joint financial responsibility: At least two (2) of the following:
13 current copy of mortgage document, lease or deed showing both names, copy of statement
14 from joint bank account, credit cards with the same account number for both partners,
15 vehicle title showing common ownership, a beneficiary designation form for a retirement
16 plan or life insurance policy signed and completed to the effect that one Domestic Partner
17 is the beneficiary of the other, wills which designate the other as primary beneficiary.

18 (D) Amendment: Any partner to a Domestic Partnership may file an amendment
19 to the Domestic Partnership certificate issued by the Clerk and Comptroller to reflect a
20 change in his or her legal name.

21 **SECTION 5. TERMINATION OF DOMESTIC PARTNERSHIP:**

22 (A) Obligation to notify clerk and comptroller: By recording a Declaration of
23 Domestic Partnership, each partner agrees to immediately notify the Clerk and
24 Comptroller's Office, by filing a Declaration of Termination of Domestic Partnership, if the
25 terms of the Registered Domestic Partnership are no longer applicable or one of the
26 Domestic Partners wishes to terminate the Domestic Partnership.

27 (B) Declaration of Termination. Either Registered Domestic Partner may terminate
28 a Registered Domestic Partnership by recording a Declaration of Termination with the
29 Clerk and Comptroller. The person filing the Declaration of Termination shall swear and
30 affirm, under penalty of perjury, that:

1 (1) The Registered Domestic Partnership is to be terminated; and

2 (2) If the Declaration of Termination is not signed by both Registered
3 Domestic Partners, then proof of service (copy of declaration and certified or registered
4 mail receipt) shall be required at the time of recording the termination with the Clerk and
5 Comptroller's Office.

6 (C) Effective date of termination. The termination shall become effective on the
7 date of recording of the Declaration of Termination signed by both Registered Domestic
8 Partners, or, if the Declaration of Termination is not signed by both partners, on the date
9 proof of service is filed with the Clerk and Comptroller's Office.

10 (D) Automatic termination. A Registered Domestic Partnership shall automatically
11 terminate in the event that one of the Domestic Partners dies, marries, enters into a civil
12 union or registered Domestic Partnership with someone other than his or her Registered
13 Domestic Partner.

14 **SECTION 6. ADMINISTRATION OF REGISTRY:**

15 (A) The Clerk and Comptroller shall collect a fee for recording and administering the
16 Declarations of Domestic Partnership in the amount of \$50.00. The cost of recording an
17 amendment or a Declaration of Termination of Domestic Partnership shall be \$20.00. The
18 fees may be adjusted as necessary by resolution of the Board of County Commissioners.

19 (B) The Clerk and Comptroller shall collect a fee in the amount the Clerk and
20 Comptroller has established pursuant to State public records law for certified copies of the
21 Domestic Partnership documents, other than the original certificate of Domestic
22 Partnership initially issued by the Clerk and Comptroller to the Domestic Partnership.

23 (C) The Clerk and Comptroller shall keep a computer record of all Declarations of
24 Domestic Partnership, amendments and Declarations of Terminations of Domestic
25 Partnership.

26 (D) The Clerk and Comptroller shall identify on the Declaration of Domestic
27 Partnership what types of documents were presented for further documentation. It shall
28 not be necessary for a copy of such documents to be kept on file.

29 (E) Upon receipt of a Declaration of Domestic Partnership signed by both Domestic
30 Partners and the requisite recording fee, the Clerk and Comptroller shall issue a certificate
31 of Domestic Partnership.

1 (F) The Clerk and Comptroller shall provide pertinent Domestic Partnership forms
2 to persons requesting them.

3 **SECTION 7. RIGHTS OF REGISTERED DOMESTIC PARTNERSHIP:**

4 To the extent not superseded by federal, state or County laws or ordinances,
5 Registered Domestic Partners shall have the following rights:

6 (A) Health Care Visitation. All Health Care Facilities operating within Palm Beach
7 County shall allow a Registered Domestic Partner the same visitation rights as a spouse
8 of the patient. If the patient is a dependent of the Registered Domestic Partnership, all
9 Health Care Facilities operating within Palm Beach County shall allow a Registered
10 Domestic Partner the same visitation rights as a parent if the patient is a dependent of a
11 Registered Domestic Partner. A dependent of a Registered Domestic Partner shall have
12 the same visitation rights as a patient's child.

13 (B) Health Care Decisions. If a patient lacks the capacity to make a health care
14 decision, the patient's Registered Domestic Partner shall have the same authority as a
15 spouse to make a health care decision for the incapacitated party to the extent allowed by
16 Section 765.401, Florida Statutes. This section pertains to decisions concerning both
17 physical and mental health.

18 (C) Funeral/Burial Decisions. Following the death of a Registered Domestic Partner,
19 the surviving Domestic Partner shall have the same rights to make decisions and
20 disposition of the decedent's body as a surviving spouse, unless otherwise provided by
21 law. The surviving Domestic Partner shall retain these rights notwithstanding the automatic
22 termination provision of Section 5.

23 (D) Notification of Family Members. In any situation providing for mandatory or
24 permissible notification of family members, including, but not limited to, notification of family
25 members in an emergency, or when permission is granted to inmates to contact family
26 members such notification shall include Registered Domestic Partners.

27 (E) Pre-need Guardian Designation. Any person who is registered as a Registered
28 Domestic Partner pursuant to this Ordinance shall have the same right as any other
29 individual to be designated as a pre-need guardian pursuant to Section 744.3045, Florida
30 Statutes, and to serve in such capacity, unless otherwise provided by law. In the event one
31 Registered Domestic Partner becomes incapacitated and has not executed a valid pre-

1 need guardian designation, the other Registered Domestic Partner shall not be denied
2 serving as the plenary guardian of his or her Domestic Partner or the partner's property,
3 under the provisions of Chapter 744, Florida Statutes, based solely upon his or her status
4 as the Domestic Partner of the incapacitated partner.

5 (F) Visitation Rights at County Correctional and Juvenile Detention Facilities. Any
6 person who is a party to a Registered Domestic Partnership, pursuant to this Ordinance,
7 shall be entitled to visit his or her Domestic Partner, or other family member of the
8 Domestic Partner, who is an inmate at a County correctional facility or juvenile detention
9 facility, upon the same terms and conditions under which visitation is afforded to spouses,
10 children or parents of inmates. Visitation rights provided by this Ordinance shall extend to
11 any children of the Domestic Partners, and the Domestic Partners of an inmate's parents
12 or children.

13 **SECTION 8. ENFORCEMENT:**

14 A Registered Domestic Partner may enforce the rights conferred herein by filing a
15 private action against a person or entity in any Court of competent jurisdiction for
16 declaratory relief, injunction relief or both.

17 **SECTION 9. RECIPROCITY:**

18 All rights, privileges and benefits extended to Registered Domestic Partnerships
19 registered pursuant to this Ordinance shall also be extended to all persons legally
20 partnered in another jurisdiction.

21 **SECTION 10. APPLICABILITY:**

22 It is hereby provided that this Ordinance shall constitute a uniform law applicable in
23 all the unincorporated and incorporated areas of Palm Beach County, Florida, to the extent
24 permitted by the Florida Constitution, Article VIII, Section I.

25 **SECTION 11. REPEAL OF LAWS IN CONFLICT:**

26 All local laws and ordinances in conflict with any provisions of this Ordinance are
27 hereby repealed to the extent of such conflict. This provision is not intended to repeal or
28 otherwise effect in any way an ordinance of any municipality in Palm Beach County
29 creating a Domestic Partnership Registry within the municipality.

1 **SECTION 12. SEVERABILITY:**

2 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for
3 any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall
4 not affect the remainder of this Ordinance.

5 **SECTION 13. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

6 The provisions of this Ordinance shall become and be made a part of the Code of
7 Laws and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may
8 be renumbered or relettered to accomplish such, and the word "ordinance" may be
9 changed to "section", "article", or other appropriate word.

10 **SECTION 14. EFFECTIVE DATE:**

11 The provisions of this Ordinance shall become effective upon filing with the
12 Department of State.

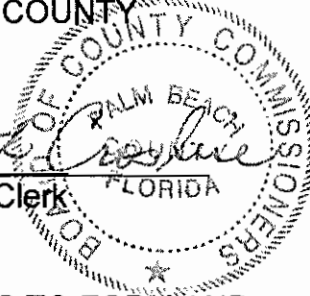
13 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach
14 County, Florida, on this the 10th day of January, 2006.

15 SHARON R. BOCK,
16 CLERK & COMPTROLLER
17 PALM BEACH COUNTY

 PALM BEACH COUNTY, FLORIDA, BY ITS
 BOARD OF COUNTY COMMISSIONERS

18 By: Judith Croshaw
19 Deputy Clerk

 By: Tony Masilotti
 Tony Masilotti, Chairman



20 APPROVED AS TO FORM AND
21 LEGAL SUFFICIENCY

22 By: Sammy Katz
23 County Attorney

24 EFFECTIVE DATE: Filed with the Department of State on the ____ day of _____,
25 2006.