ORDINANCE NO. 2004-3451

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 62 OF THE MIAMI BEACH CITY CODE, ENTITLED "HUMAN RELATIONS", BY ADDING AN ARTICLE IV THERETO ENTITLED "REGISTERED DOMESTIC PARTNERSHIPS" WHICH PROVIDES FOR REGISTERED DOMESTIC PARTNERSHIPS AND SETS FORTH THE RIGHTS AND LEGAL EFFECTS OF SUCH PARTNERSHIPS; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, it is in the best interest of the City to be responsible to the changing needs of society and to treat all persons fairly and equitably; and

WHEREAS, the City recognizes that long-term committed relationships foster economic stability and emotional and psychological bonds; and

WHEREAS, the City has adopted a human rights ordinance and seeks to comply with the full spirit of it; and

WHEREAS, the City, independent of the rights and benefits provided by Article III of Chapter 62 for City employees, wishes to afford persons the ability to become a Registered Domestic Partner with certain legal rights.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Chapter 62 of the Miami Beach City Code is hereby amended by adding an Article IV thereto, as follows:

ARTICLE IV. REGISTERED DOMESTIC PARTNERSHIPS

Sec. 62-130. Definitions.

"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.

"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.

"Declaration of Registered Domestic Partnership" means the document that is filed with the City Clerk's office according to the procedures established in section 62-131.

A "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.

"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 62-131.

Sec. 62-131. 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 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; 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 (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.

Sec. 62-132. 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:

(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 Miami Beach. All health care facilities operating within the City of Miami Beach 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 Miami Beach. A Registered Domestic Partner shall have the same visitation rights at all correctional facilities operating within the City of Miami Beach 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, 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.

(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 Miami Beach. 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 Chapter shall have the same right as any other individual to be designated as a preneed guardian pursuant to section 744.3045, Florida Statutes, 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 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.

Sec. 62-133. 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 Chapter shall also be extended to all persons legally partnered in another jurisdiction.

~~***(d) Nothing in this Chapter shall be construed to create additional legal liabilities greater than those already existing under law or to create new private causes of action.***~~

(d) A Registered Domestic Partner may enforce the rights under Sec. 62-132 by filing a private action against a person or entity in any court of competent jurisdiction for declaratory relief, injunctive relief, or both.

Bolded/Italicized language reflects amendments made between first and second reading.

(e) This Article is independent of Article III of Chapter 62 and does not affect any rights or benefits of City employees.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the 7th day of August, 2004.

PASSED AND ADOPTED this 28th day of July, 2004.

ATTEST:

MAYOR

Maria E. Martinez
for CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 7/22/04 Date