
SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
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Agenda Number:

Prepared on: 4/15/99
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If Yes, date from: 3/16/99
Document File Name: DOMPARO.BLT

TO: Board of Supervisors

FROM: Shane Stark, County Counsel
Kenneth A. Pettit, County Clerk-Recorder

SUBJECT: Domestic Partnerships Registration Ordinance

Recommendations: That the Board of Supervisors:

- a. Introduce (FIRST READING) a Domestic Partnerships Registration Ordinance.
- b. Set hearing for adoption of ordinance (SECOND READING) for May 4, 1999 and direct docketing of hearing on resolution establishing administration fees.

Alignment with Board Strategic Plan:

The recommendations are primarily aligned with the Board of Supervisors' commitment to ensuring that all residents have an opportunity to equally partake in the benefits of living and working in Santa Barbara County without being subjected to discrimination, prejudice and intolerance (HRC Bylaws Article 1).

Executive Summary and Discussion:

On March 16, 1999, the Board of Supervisors held a public hearing and took public comment for and against. Following the recommendation of the Human Relations Commission, the Board directed County Counsel to prepare a Domestic Partnerships Ordinance for introduction. The Commission had recommended that the ordinance be modeled on the ordinance adopted by the City of Santa Barbara. ordinance (Ordinance No. 5012, adopted June 3, 1997, Santa Barbara Municipal Code Chapter 9.135). We have done so in cooperation with the County Clerk-Recorder. The attached ordinance is submitted for Board consideration as Exhibit A.¹

¹ We have used the City ordinance as a model, as did the Commission., with technical modifications suggested by the County Clerk. We deleted the provision on reciprocity because different jurisdictions may have different requirements and the formal granting of reciprocity seemed unnecessary and complicated. If the Board desires, we could develop a reciprocity provision. The Clerk will maintain the registry, issue certificates, and adopt administrative procedures and the Board will set fees by resolution..

The proposed Domestic Partnerships Ordinance enacts Chapter 41 of the County Code. It provides that two persons may declare that a “Domestic Partnership” exists between them and each of them shall be the “domestic partner” of the other if they sign and register a statement with the County Clerk-Recorder.

Domestic partnership status does not by itself operate to confer any benefits or rights (e.g., community property, child custody, “palimony”). State law neither expressly authorizes nor prohibits domestic partnership recognition. Courts have decided disputes between domestic partners on contract principles. Partners may agree among themselves as to mutual rights and obligations. Employers, insurers, and others may agree to confer benefits or rights on registered “domestic partners”.

The adoption of domestic partnership ordinance is a wholly discretionary policy decision. There are numerous policy issues and options as to who might be eligible to register. This sub-issue is also entirely within the discretion of the Board. Under the ordinance as proposed by the Commission and adopted by the City, there are five main criteria for two parties to be “domestic partners”:

1. The two parties reside together and share the common necessities of life.
2. The two parties are not married to anyone. (Marriage is defined in Family Code § 300 as a personal relationship between a man and a woman, to which the consent of the parties making that contract is necessary, and which requires a license.)²
3. The two parties are at least eighteen (18) years of age or older.
4. The two parties are not related by blood so close as to bar marriage in the State of California and are mentally competent to consent to contract.³
5. The two parties are each other’s sole domestic partner and intend to remain so indefinitely, and are responsible for their common welfare.

An alternative to adopting an ordinance substantively identical to the City’s is to adopt an ordinance similar to the County of Los Angeles (attachment B-1). The LA County ordinance creates a public registry for any person resident or employed in the county who wishes to make his or her domestic partnership a matter of public record.⁴ It does not contain any criteria defining partnership. Rather, a Statement of Domestic Partnership (attachment B-2) contains acknowledgement boxes that may be checked by the individuals. Thus,

² The Commission’s draft allows both same-sex partners and man-woman partners to register. The Board has discretion to limit registration to same-sex partners on the basis that man-woman partners may marry and do not need to register to manifest commitment and formal status.

³ Family Code § 2200 states “marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces or aunts and nephews, are incestuous and void from the beginning.....” (emphasis added). The HRC draft definition could be interpreted to allow same-sex siblings (two sisters or two brothers) to be domestic partners, but not man-woman sibling pairs (brother and sister). This is not how the City Attorney interprets the Santa Barbara ordinance. The question whether any relatives, same-sex-relatives, or no relatives may register as domestic partners is within the Board’s legislative discretion, subject to equal protection considerations. San Francisco allows a person to register one blood relative as a domestic partner. We suggest clarifying the ambiguity by specifying which siblings or other relatives may register. We have included an inclusive definition of “related by blood” in the draft ordinance.

⁴ The LA County Domestic Partnership Registry Ordinance differs from the City’s in several ways. It has a specific statement of purpose (.010). Any two persons age 18, one of whom is a resident or employed in the County, may register (.020). There are specific provisions on the County Clerk’s issuance of certificates (.020), records (.040), and costs (.050). There is no reciprocity provision or hold harmless requirement, or six-months waiting period between termination and registration of a new partnership.

an employer that gives benefits to partners meeting specific criteria could determine worker eligibility by reviewing his or her statement and seeing which boxes were checked.

The American Center for Law and Justice filed a taxpayer suit against the City for adopting its ordinance and giving benefits to domestic partners of employees. (Jacks v. City of Santa Barbara, SBSC No. 224122.) The basic claim is that the ordinance is preempted by state law and void against public policy in that it affects the rights of married people and the rights of the state to regulate marriage. Plaintiff also claims that giving health benefits to employees is likewise preempted and void. (The complaint has 122 paragraphs, 7 causes of action, and 11 separate preemption claims.) The City won in Superior Court; Judge Thomas Anderle sustained the City's demurrer to the complaint. Plaintiff filed a notice of appeal on March 23.⁵

Mandates and Service Levels:

A domestic partnerships ordinance is not mandated.

The County Clerk-Recorder's office would be responsible for administering the ordinance, including maintaining a registry. It is expected that service level impact will be minimal.

Fiscal and Facilities Impacts:

The cost of administering a domestic partnerships ordinance could be financed by fees for registry and termination of domestic partnerships. The draft ordinance provides for fees to be set by resolution. The County Clerk-Recorder advises that the recommended fee schedule, equivalent to that charged by the City of Santa Barbara, is as follows:

1. Statement of Domestic Partnership Filing and Certificate of Domestic Partnership \$35.
2. Issuance of Certificate Confirming Filing of Statement of Domestic Partnership \$25.
3. Filing of Statement of Termination of Domestic Partnership \$10.
4. Filing of Statement of Death of Domestic Partner \$10. (Attached certified copy of Death Certificate must be obtained from the county where the death occurred and is a separate fee.)
5. Certified Copy of Statement of Domestic Partnership or Statement of Termination \$3 for first page, \$0.50 for each page afterwards.

If the Board adopts the ordinance, we will return with a separate fee resolution after proper notice.

If the County is sued, defense of the ordinance will require County Counsel time.



⁵ In part, the City based its authority to pass the ordinance on its charter city powers to regulate municipal affairs. The County does not have "municipal affairs" police power, which supersedes conflicting general State law. We would base authority to allow registration of domestic partners on counties' general police power under California Constitution Art. XI § 7, which must be consistent with general law. This is a complex legal issue. The Los Angeles County ordinance, which simply provides a registry for partnership declarations without limiting eligibility except for residence, is not subject to this legal claim.

cc: HRC Chair Grace Florez
HRC Commissioner Robert Hamilton