

CITY OF PHILADELPHIA

DOMESTIC PARTNERSHIP PROPOSALS

BILL NO. 970140 AND BILL NO. 970181

INFORMATIONAL BRIEFING
FOR
CITY COUNCIL MEMBERS AND STAFF

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SPECTRUM INSTITUTE

A Non-Profit Corporation Promoting Respect For Human Diversity

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City Council Members
Philadelphia, Pennsylvania

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Dear Council Members and Staff:

Councilman Angel Ortiz has asked me to conduct an informational briefing on domestic partnership issues so that you may be fully informed before debating and voting on his two bills.

For more than 20 years, my law practice has focused on family diversity, public policy, and the law. I have worked with the executive, legislative, and judicial branches of government at the federal, state, and local levels of government on issues concerning personal privacy, the definition of family, domestic partnership rights, and discrimination based on marital status and sexual orientation. For several years I taught a class at the University of Southern California Law Center on "Rights of Domestic Partners." I am currently engaged in a series of lectures and seminars for private employers and insurance companies regarding domestic partnership benefits.

Since you are probably not aware of the scope and extent of my work in this field, at the end of this booklet I have enclosed a short professional biography, the mission statement of Spectrum Institute, and some letters of reference from various organizations and government agencies.

In preparation for this briefing, I have analyzed both of the domestic partnership bills in considerable depth. I also have had ongoing discussions with the technical staff of the city council, checked marital status and household demographics for the city, considered existing local and state civil rights laws, reviewed the city's five-year financial plan, and read the pleadings in the pending lawsuit challenging the mayor's executive order on domestic partnership benefits. I also have examined the actions of other employers and governments on domestic partnership benefits.

The purpose of this briefing is to identify and discuss a variety of options available to the city council, from taking no action, to enacting partial reforms, to passing the most comprehensive domestic partnership ordinance in the nation. Each of these alternatives is addressed from legal, economic and political perspectives.

If Philadelphia enacts an ordinance for domestic partners regardless of their gender, it would join the ranks of many other cities that now prohibit discrimination against single people, including many seniors, who live together as a family unit.

Very truly yours,



Thomas F. Coleman

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| (Text of bill number 970181 is not included in this booklet because, except for the exclusion of opposite-sex couples, it is identical to bill number 970140.) | |

CURRENT DOMESTIC PARTNERSHIP PROPOSALS PENDING IN PHILADELPHIA CITY COUNCIL

The bills:

Bill No. 970140 was introduced on February 27, 1997 by council members Ortiz, DiCicco and Cohen. Registration under this bill is open to two adult partners regardless of gender.

Bill No. 970181, introduced on March 20, 1997 by council members Ortiz, DiCicco, Cohen, Kenney, Fernandez, and Longstreth, is open only to two adult partners of the same sex.

Both bills are the same in their scope, except that the latter is not open to opposite-sex partners.

What the bills would do:

1. Create a public registration system for domestic partners to register their relationship with the Department of Records.
2. Prohibit the city from discriminating in any way against domestic partners, i.e., the city would have to treat domestic partners in the same way it treats spouses (e.g., employee benefits, such as leave, health, dental, vision, life insurance, retirement, service connected death benefits; and other city policies such as real estate transfer taxes).
3. Require city contractors (organizations that receive funds from the city under contractual arrangements, such as vendors or grant recipients) to treat their employees who have domestic partners in the same manner that they treat their employees who have spouses, (e.g., full equality in employee benefits).
4. Require private employers who are not city contractors to treat their employees with domestic partners the same as they treat their employees with spouses, except to the extent that their employee benefits plans are governed by federal law (e.g., ERISA, IRS)
5. Prohibit labor organizations from discriminating against domestic partners (e.g., however they treat employees or members with spouses they would have to treat employees or members with domestic partners).
6. Prohibit discrimination against domestic partners in housing transactions (e.g., sale, lease, rental, financing); clarifies existing law by giving a more specific definition to "marital status"
7. Prohibit businesses (public accommodations) from discriminating against domestic partners in consumer transactions (e.g., discounts given to spouses or family members would have to be given to domestic partners; rates charged for spouses or families would have to apply to domestic partners).
8. Give reciprocity to domestic partners registered in other jurisdictions with similar laws, so that domestic partners registered in other places would receive all privileges and benefits granted under Philadelphia's domestic partnership law.

HOW PHILADELPHIA'S BILLS COMPARE WITH DOMESTIC PARTNER ORDINANCES IN OTHER MUNICIPALITIES

No municipality has enacted a domestic partnership law as comprehensive as the proposals pending in Philadelphia. Cities and counties have taken an incremental approach to ending discrimination against domestic partners, generally starting with some basic protections and then later adding others. As a method of comparison, the list of components in Philadelphia's proposals appear below, along with some comments regarding what other municipalities have done.

A. WHO MAY PARTICIPATE

1. Same-sex and opposite-sex couples

Philadelphia has two proposals. One is open to partners regardless of the gender of the parties. The other is open only to partners of the same sex.

Very few municipalities restrict domestic partnership registration or benefits to same-sex couples. The exclusion of opposite-sex unmarried couples was debated when domestic partnership was first conceived in San Francisco in 1981. The board of supervisors decided to allow opposite-sex couples to participate in this new secular institution, recognizing that such couples (including many seniors) do not marry for a variety of valid reasons. The final version that was approved by the board and signed by the mayor was open to two adults, regardless of the gender of the partners.

Berkeley became the first city to give domestic partner benefits to city employees in 1984. Again, the issue of limiting the plan to same-sex couples was debated and rejected. Today, of the dozens of municipalities that have domestic partner registries or employee benefits programs, the overwhelming majority are inclusive and do not discriminate on the basis of gender. It has only been during the past year or so that a handful of cities have limited participation to same-sex couples.

Only two state governments offer domestic partner health benefits to state employees. Both New York and Vermont grant benefits to partners regardless of their gender.

2. Blood relatives

Both of the proposals in Philadelphia prohibit close blood relatives from registering as domestic partners.

Virtually all municipalities have adopted such a restriction in their registration and benefits programs. The exclusion of close blood relatives was contained in the earliest proposals introduced in the 1980s. The apparent rationale was that domestic partnership would be a secular institution parallel to marriage. Since close blood relatives are prohibited from marrying each other, the same restriction was included in domestic partnership laws.

The District of Columbia was the first jurisdiction to challenge this “no blood relatives” model when the city council adopted a registry for residents of the district and voted to extend health benefits to local government employees.

Some private employers, such as Xerox and Bank of America have taken an inclusive approach to the reform of their benefits programs. They extend family benefits to spouses, domestic partners of the same-sex or opposite-sex, or to close blood relatives who reside with an employee.

The Catholic Archdiocese of San Francisco adopted a generic method of complying with San Francisco’s new law requiring city contractors to offer benefits to employees with domestic partners. Employees of Catholic Charities may now designate one adult member of their household to receive family benefits, whether the beneficiary is a spouse, a domestic partner, or a blood relative.

B. WHAT BENEFITS OR PROTECTIONS ARE INCLUDED

1. Public Registry

Both of Philadelphia’s proposals create a public registration system allowing partners to register their relationship with the city, much the same as births, deaths, marriages, divorces, name changes, or business partnerships are registered with the government.

Nearly 30 municipalities have established a system in which two adults may publicly declare their status as domestic partners by registering with the city clerk or other municipal agency. Some require that the partners either work or reside in the municipality. Others allow anyone to use their registry regardless of where the partners live or work.

The overwhelming majority of registries are available to domestic partners regardless of the gender of the parties. Two jurisdictions limit registration to same-sex couples only.

Creation of a public registry is an issue separate and distinct from a decision as to what benefits or protections should be granted to registered partners.

2. Full Equality in All City Programs and Services

Both of the proposals in Philadelphia contain a section requiring the city to treat domestic partners the same as it treats spouses in all city programs and services.

A “catch-all” clause of this type was contained in the first domestic partnership proposal in the nation when it was introduced in San Francisco in 1981. The proposal was adopted by the board of supervisors but was vetoed by then-mayor Diane Feinstein. Although the mayor agreed that the city should not discriminate against non-marital family units, she rejected the measure because it did not specify each of the programs and services that would be affected. She wanted the potential costs in the areas affected to be identified.

None of the nearly 50 municipalities with domestic partnership laws have included an omnibus nondiscrimination clause of this type. Instead, they all started with a few basic benefits or protections, with some municipalities later adding other benefits or protections.

Municipalities with public registries usually grant some form of limited benefits, such as the right to visit a partner in a local hospital or city jail. In those jurisdictions with domestic partner benefits programs for city workers, all include funeral leave when a partner dies, most include sick leave to care for an ill partner, many include health and dental benefits, some include vision care and prescription benefits, and a few include retirement benefits for surviving domestic partners.

San Francisco and West Hollywood are the only cities that come close to requiring full equality, and this was done program by program over a period of several years.

3. Nondiscrimination by City Contractors

Both of the proposals in Philadelphia require businesses contracting with the city to provide medical, dental, pension, and other benefits to their employees with domestic partners on the same terms that such benefits are provided to employees with spouses.

San Francisco is the only municipality that currently prohibits city contractors from discriminating against employees with domestic partners in this manner. The contractor nondiscrimination measure was adopted in 1996 and goes into effect on July 1, 1997.

Other cities, such as Seattle, West Hollywood, and New York are considering adding contractor nondiscrimination clauses to their domestic partnership ordinances.

4. Private employers

Both of the proposals in Philadelphia require private employers located within the city to provide benefits to their employees on the same terms that benefits are provided to employees with spouses. Both proposals contain an exception specifying that an employer is excused from compliance with the city's nondiscrimination provision to the extent that such discrimination is permitted by federal laws such as Employment Retirement Income Security Act (ERISA) or the Internal Revenue Code.

No other municipality has extended its domestic partnership laws to regulate the conduct of private employers that are not city contractors.

5. Labor organizations

Both of the proposals in Philadelphia require labor organizations operating within the city to treat employees or members with domestic partners on the same terms that they treat employees or members with spouses.

No other municipality regulates the operations of labor organizations in this manner.

6. Housing transactions

Both of the proposals in Philadelphia prohibit discrimination on the basis of marital status or domestic partnership status in real estate transactions.

Several states, and some municipalities, have general civil rights laws that prohibit marital status discrimination in housing. Many of these laws have been interpreted by courts to prohibit discrimination against unmarried couples. These statutes and ordinances are separate and distinct from domestic partnership laws and therefore protect an unmarried couple from housing discrimination regardless of whether the couple has registered as a domestic partnership.

Some local domestic partnership ordinances contain specific provisions prohibiting housing discrimination against domestic partners. Tacoma Park, West Hollywood, and Santa Monica are a few of the cities which prohibit housing discrimination against domestic partners.

7. Public Accommodations

Both of the proposals in Philadelphia prohibit businesses from discriminating against domestic partners in consumer transactions. This would require businesses that give discounts or provide special services to spouses or family members to treat domestic partners in the same manner.

No other municipality protects domestic partners from discrimination in consumer transactions. However, a proposal of this nature was recently introduced in San Francisco.

8. Reciprocity

Both of the proposals in Philadelphia give reciprocity to domestic partners registered in other jurisdictions with similar laws. This would appear to extend the protections of Philadelphia's laws to domestic partners who are registered elsewhere if they move to Philadelphia or visit the city.

A few of the jurisdictions with domestic partnership ordinances have a similar reciprocity clause.

OPTIONS AVAILABLE TO THE CITY COUNCIL

The city council may respond in any number of ways to the domestic partnership proposals introduced by Councilman Ortiz and other cosponsors. Some of those options are discussed below.

1. DO NOTHING

Obviously, one alternative is to do nothing. However, it is unlikely that the issue will disappear from the political arena merely because the city council fails to take any action on the current proposals. Throughout the nation, pressure has been mounting for several years to recognize domestic partnerships as one of many diverse family forms. Each year, several more municipalities adopt domestic partnership ordinances. Many major cities have already done so, and proposals are pending in others.

While doing nothing this year may temporarily defer action on this issue, it will likely return again and again until the underlying grievances which impel the domestic partnership movement are addressed and resolved.

2. HOLD HEARINGS

The city council could schedule public hearings on both domestic partnership proposals. City agencies affected by the measures could present an analysis of how these bills would affect their activities. Labor unions, private employers, insurance companies, HMOs, and other organizations affected by these bills could submit testimony. Individuals from the constituencies that will benefit from the bills -- seniors, single parents, divorcees, gays and lesbians, and people with disabilities -- could also have their views considered.

Since the issue of domestic partnership has been on the table now in Philadelphia for about four years, and will likely remain visible in the future, this may be a good time for the city council to hold public hearings to receive input from constituents.

3. ENACT PARTIAL REFORMS

After the public hearing phase is over, the city council could either reject both proposals, adopt one or the other as currently written, or pass an amended version containing partial reforms. The most common type of partial reform occurring in other cities has either involved granting benefits to city employees with domestic partners, or the creation of a public registry with limited benefits and protections to domestic partners who reside in the city. Some cities have done both.

A. BENEFITS FOR CITY WORKERS

In addition to their regular paycheck, city employees also receive a significant amount of compensation in the form of benefits. Some employment analysts estimate that benefits

account for as much as 30% of an employee's overall compensation. As a result, it is important that benefits be distributed to employees in a fair and equitable manner.

Some benefits are personal, such as sick days, disability pay, or vacation days. The amount of these personal benefits are not dependent on the marital status or family structure of the employee.

However, other benefits are designed to assist the employee to meet his or her family obligations. As a result, not only do employees receive a subsidy from the employer toward the cost of the employee's personal health and dental insurance, but employers also contribute something toward the cost of benefits coverage for "eligible family dependents."

The fair distribution of family-based employment benefits was relatively simple when the dominant family form was a nuclear family comprised of a breadwinner-husband and homemaker-wife with dependent children at home. However, that type of family unit constitutes only a small fraction of today's households. Most marital families now involve dual wage earners. Many married couples do not have children. With divorce and remarriage being so common, stepfamilies must now be considered when benefits programs are designed. Some employees are raising foster children. Single parents form a significant portion of the workplace. Many workers live with unmarried partners of the opposite sex and many of these families have children at home. Employees with partners of the same sex are also part of the wide array of contemporary families.

While employee benefits programs have expanded and diversified to meet the needs of workers living in more politically acceptable family units, such as foster families, step families, and single parent families, workers with domestic partners have often been ignored. However, a growing number of public and private employers are also beginning to include domestic partners in their benefits programs.

About 34 municipalities now offer health coverage to domestic partners, with all but five of them allowing both opposite-sex and same-sex partners to participate. An even larger number of local governments offer sick leave and bereavement leave benefits so that an employee may care for an ill partner or attend the partner's funeral. Almost none of these leave benefits exclude opposite-sex partners.

Cost considerations

The cost of providing health coverage for domestic partners has been negligible. The average rate of enrollment in workplaces where both opposite-sex and same-sex partners are allowed to participate is less than one percent (actually 0.9%) of the workforce. Employers uniformly report that the cost of domestic partner health coverage is the same as or less than the cost for spouses.

The City of Philadelphia employs about 24,000 workers. If health benefits plans were expanded to include opposite-sex and same-sex partners, it would be reasonable to assume that about 240 domestic partners (1% of the workforce) would be added. Some domestic

partner families include minor children. The census bureau says that 38% of opposite-sex partners have children as do about 10% of same-sex partners. Therefore one could expect 71 children to enroll. If these estimates hold true, the city could expect to contribute an additional \$517,000 a year to cover domestic partners and children in the existing health and dental plans. This estimate is based on the average increase in premiums from the single rate, to the single plus one rate for domestic partners, to the family rate for domestic partners with children. However, this projection may be too high because fewer children may be enrolled. In Seattle, for example, only 18% of domestic partners signed up children in the health plan. In Los Angeles County only 15% of domestic partners enrolled children.

Some municipalities have had higher enrollment rates for domestic partners than the national average. In the City of Los Angeles, which employs 34,000 workers, about 1.3% of employees signed up a domestic partner in the health plan. In the County of Los Angeles, which employs 75,000 workers, domestic partner enrollment was about 1.8%. On the other hand, in New York City, only about 0.6% of municipal workers added a domestic partner to the health plan.

It would be fiscally prudent for Philadelphia to assume, for purposes of financial projections for the first year of a domestic partnership health program, that its enrollment rate will be double the national average. Such an approach would project a 1.8% enrollment of domestic partners. Using this figure, and the 38% and 10% projection for children, would create an increase of about \$671,000 in the city's annual contributions to the health care plans to cover domestic partners and their children. That is less than one half of one percent of the city's total health benefits budget of \$154 million.

Since the city pays a composite rate for dental coverage, there should be little or no increase in premiums for adding domestic partners and their children. The cost of adding domestic partners to the bereavement leave benefit also would be negligible.

"Equal pay for equal work" is the rallying cry of proponents of domestic partnership benefits for city workers. If compensation should be based on merit and productivity, rather than lifestyle or household composition, then it makes sense for the city to adopt an inclusive benefits program that gives equal benefits compensation for workers with domestic partners, regardless of gender.

Legal considerations

Failure to provide domestic partner benefits to city workers may trigger lawsuits by city employees. Several years ago, New York City settled such a lawsuit and agreed to provide domestic partner benefits to city employees. A lawsuit is currently pending against the City of Pittsburgh. In New Jersey, university employees sued Rutgers and that case is pending on appeal. Two months ago, the Alaska Supreme Court ruled that the state university violated state civil rights laws by giving benefits to spouses but not giving them to domestic partners.

Granting benefits to unmarried partners of the same sex, but excluding unmarried

partners of the opposite-sex, may also result in litigation. As a matter of fact, it already has. The city council president filed a lawsuit challenging the mayor's executive order granting benefits to exempt unmarried employees with same-sex partners, while excluding unmarried workers with opposite-sex partners. That case is currently pending on appeal and may take years to resolve. The council president argued that the executive order constituted sexual orientation discrimination in violation of the city's human rights law.

Additional lawsuits might be filed if the city council were to extend benefits to the rest of the workforce in such a discriminatory manner. It could be argued that requiring an unmarried employee to get married to an opposite-sex partner (thereby incurring a lifetime obligation of support and requiring court proceedings to dissolve the relationship) in order to qualify for benefits, but allowing unmarried employees with same-sex partners to merely file a domestic partnership affidavit (which carries limited obligations during the relationship, no obligations after it ends, and requires no court proceeding to terminate it), is blatant sex discrimination.

If same-sex partners were truly put on the same par with opposite-sex partners in the employment setting, then the domestic partnership relationship would carry the identical obligations of marriage and would require court proceedings for a dissolution. It could be argued that an employer commits illegal sex discrimination by allowing same-sex partners to get full benefits without incurring equal obligations to married couples and that it is unfair to exclude opposite-sex couples from domestic partnership if they are willing to assume all of the obligations contained in the domestic partnership program.

It also could be argued that union health plans or private insurance plans that participate in such a discriminatory program would violate the state Unfair Insurance Practices Act. In fact, the Department of Insurance refused to allow Independence Blue Cross to initiate a health insurance plan for same-sex domestic partners only. The Insurance Department stated that a same-sex limitation constituted illegal discrimination on the basis of marital status and sex. When Blue Cross agreed to open the plan to all domestic partners regardless of sex, the plan was approved by the state.

The city's five-year financial plan speaks of the need to promote productivity and to foster positive employee morale. These objectives would not be well served by excluding opposite-sex unmarried couples, many with children, from a domestic partnership program. The five-year plan also says that a competitive benefits package is necessary to attract and retain well-qualified people. A "gays only" domestic partner program would be out of step with the national trend in both the public and private sectors. Almost all municipalities offering domestic partner benefits allow opposite-sex couples to participate. Most private employers do as well.

The argument that opposite-sex couples can get employment benefits by getting married does not answer the underlying legal questions. Marriage is a fundamental constitutional right. As such, it is the freedom of choice to marry, or not to marry, that is constitutionally protected. Making employment compensation hinge on how that choice is exercised might well be unconstitutional. But putting the constitution aside, it is more likely

that a “same-sex only” partnership benefits plan would be held to constitute sex discrimination in violation of the Pennsylvania Human Relations Act. That is because the obligations imposed in the proposed domestic partnership ordinances are less burdensome than the obligations imposed by marriage.

The best way to avoid lawsuits is to follow the principle of “equal pay for equal work” and not to base compensation on the marital status of employees or the gender of their partners.

B. PUBLIC REGISTRATION WITH LIMITED BENEFITS AND PROTECTIONS

Many municipalities have created domestic partner registries that entitle registrants to limited benefits and protections, even if they have not yet granted domestic partner benefits to public employees.

Some cities started with a public registration system, with such benefits and protections, and then subsequently added benefits for public employees. San Francisco and West Hollywood fall into this category. On the other hand, some cities, such as Berkeley, began with benefits for public employees, and then later created public registries with limited benefits for registrants.

Making a registry law separate from an employee benefits law

Even if a city does both, that is, creates a public registry and initiates benefits for public employees, it may be wise not to put both measures in the same ordinance. For example, the City of Atlanta passed one ordinance creating a registry and a separate ordinance for public employee benefits. Both, however, were enacted at the same time.

Separating the two issues proved beneficial after a lawsuit was filed by some taxpayers challenging the city’s authority to adopt such ordinances. The Georgia Supreme Court upheld the registry by a vote of 4 to 3, but invalidated the employee benefits law, also by a vote of 4 to 3. The city then reenacted a new benefits ordinance with a view to satisfying the Supreme Court’s objections. The new benefits ordinance was also challenged in court and that case is currently pending before the Supreme Court. In the meantime, the public registry continues to operate.

Creating an inclusive registry open to couples regardless of gender

At present, about 29 municipalities have domestic partnership registries that offer limited benefits and protections for registrants. All but two of the registries are open to same-sex and opposite-sex couples.

Creating a registry that excludes unmarried couples of the opposite sex may violate the constitutional requirement of equal protection of the law. It may be hard for the city to argue in court that it has a compelling interest in preventing unmarried opposite-sex partners from gaining visitation rights or other limited benefits associated with the registry. A judge

may wonder why such a couple should have to get married, thereby incurring a lifetime obligation of support and requiring court proceedings to dissolve the relationship, when a same-sex couple is allowed to gain these benefits by assuming only minimal obligations during the relationship, no obligations after it ends, and not have to go to court to get a dissolution.

Support by senior citizens

According to an article in the Christian Science Monitor, the Census Bureau has reported that unmarried couples older than 45 are the fastest growing type of household in the nation. This may account for the growing support among seniors groups for domestic partnership laws.

When a bill was introduced in California in 1994 to create a statewide domestic partner registry offering basic humanitarian protections to the partners in times of illness and death, seniors groups were vigorous in their support for the bill. Letters of support from the state Commission on Aging, California Senior Legislature, Congress of California Seniors, Gray Panthers, and the Older Women's League are included in the appendix of this report.

Discrimination against unmarried seniors who live together has caught the attention of the American Association of Retired Persons. Two years ago, AARP conducted a study on seniors living in nontraditional households. A report issued by AARP on that subject recommends ways in which state and local governments can help to eliminate discrimination against older adults who live together as unmarried couples. The Christian Science Monitor has reported that "with unmarried elderly couples growing in numbers daily and with baby boomers fast approaching their golden years, the AARP has taken up their cause." Such support is particularly evident in California where just this year the AARP submitted a letter in support of a bill to create a statewide public registry for domestic partners. The group sent representatives to the state capitol testify in support of the measure.

Some researchers have observed that the cohabitation of seniors is not only helpful to the individuals involved but may actually help society as a whole. For example, the director of the Florida Public Policy Center on Aging told the Christian Science Monitor that domestic partnerships by seniors is "a major cultural phenomenon" that could "drastically transform elderly care in the future. As more older people live together and care for one another, it may even reduce the need for nursing homes."

Benefits associated with registration

The City of Philadelphia could adopt an ordinance setting up a public registration system for domestic partners. The registration ordinance could do what most local governments have done, that is, specify that registrants must be given visitation rights by local hospitals and nursing homes even when visitation is restricted to immediately family members. It could also include a standard provision that entitles registrants to visitation at local correctional facilities on the same terms that other family members are allowed visitation privileges.

A registry in Philadelphia could also help the local business community. As more employers voluntarily adopt domestic partnership benefits programs for their employees, they could require employees to register with the city's registry rather than the employer having to establish its own internal registry within the corporation. It makes sense to have one central registry rather than having dozens of companies operating separate registries of their own. This could save businesses administrative costs.

There is an added feature to a public registry in Philadelphia which may have been overlooked. San Francisco now requires city contractors to offer domestic partnership benefits to their employees regardless of where the employees work. As a result, multi-state and multi-national corporations, such as Xerox or United Airlines -- only two of many thousand companies which contract with San Francisco -- must give domestic partner benefits to employees who work for these companies even if the employees work in cities other than San Francisco. However, there is a requirement that the employee and the domestic partner must be registered as domestic partners with a local municipality that has a public registry.

If Philadelphia were to create a domestic partnership registry, then local employees who work for major corporations that contract with San Francisco and have offices in Philadelphia, would be entitled to receive health and other benefits for their domestic partners. This would not be a mandate from the Philadelphia city council. It would merely be a byproduct of creating a public registry in Philadelphia. By entering into business contracts with San Francisco, the companies themselves would have voluntarily agreed to provide such benefits to their employees working in Philadelphia, provided that such employees have registered with the city registry. Thus, the creation of a local registry would help some local employees gain health and dental benefits for members of their domestic partnership families, without any cost to the City of Philadelphia and without the city council having mandated local employers to provide such benefits.

If a local registry is not created, these employees may not be able to meet one of the requirements of the San Francisco city contractor ordinance, i.e., that the employee and partner have registered with a local domestic partnership registry.

Furthermore, a domestic partnership registry, with limited benefits such as visitation rights (and the so-called San Francisco contractor byproduct as a bonus), would also help many single parents who may share living quarters on a long-term basis with other single parents for economic reasons. Two straight women, for example, each of whom has her own children, may share a home and live together as a single family unit. Although the women are not romantically involved with each other, they could register as domestic partners and gain basic benefits and protections for themselves and their children.

Of course, gay and lesbian couples, who do not have the option of marriage, would be major beneficiaries of a domestic partnership registry. Many of these couples live together in long-term committed relationships involving economic and social interdependence. Some of these family units have children. Registering as domestic partners

could not only gain them the usual benefits associated with registration, but might also help them in times of illness and death. For example, if a blood relative were to challenge a durable power of attorney or a will under a theory of “undue influence,” one partner could show a court that the couple had registered with the city as domestic partners. This would be prima facie evidence that one partner did not force or pressure the other into signing the will or power of attorney. A judge could conclude that it was only logical and reasonable for the will or power of attorney to designate one partner as the agent or beneficiary of the other inasmuch as the partners had publicly held themselves out to the community as members of each others immediate family. This type of evidence could help preserve assets and avoid protracted litigation.

Laguna Beach has one feature in its registration ordinance that Philadelphia might consider replicating. When partners go to city hall to obtain the registration papers, the city clerk in Laguna Beach automatically gives the couple two blank forms for a durable power of attorney for health care. This is a subtle way of encouraging people to take control of their own destinies by designating, while they are in good health, someone to act as an agent for health care decisions if they become mentally incapacitated. Promoting such advance health care planning is good public policy. While the couple may not necessarily execute the documents - and there is no requirement to do so in order to register as domestic partners in Laguna Beach -- putting blank forms in their hands increases the chance that they will do so. Philadelphia could replicate this provision and set an example for other cities.

One additional benefit that some cities such as Oakland and San Francisco have given to registrants is an exemption from the normal tax associated with the transfer of real estate. Many cities impose a transfer tax whenever the title to real estate is transferred from one individual to another. However, a transfer between spouses is usually exempt from such a tax. The current domestic partnership bills pending in Philadelphia contain such an exemption provision that would apply such an exemption to transfers between domestic partners.

C. EXPANDED BENEFITS AND PROTECTIONS

Both of the proposals pending in Philadelphia contain provisions that go beyond what most municipalities have done. They could be adopted as a part of one or more comprehensive domestic partnership ordinances, or they could be adopted after a more limited ordinance has been tried.

These expanded provisions include: requiring city contractors to provide domestic partner benefits to their employees; requiring all local private employers to provide such benefits to the extent that such a requirement is not preempted by federal laws such as ERISA; prohibiting discrimination in public accommodations; and requiring the city itself not to discriminate in any of its programs or services against domestic partners and to treat them for all purposes the same as it treats spouses.

The passage of such measures may require more analysis than would an ordinance creating a standard registry with limited benefits or granting benefits to public employees.

1. City contractors

Both of the pending proposals in Philadelphia contain a requirement that businesses contracting with the city must treat their own employees who have domestic partners the same as they treat employees with spouses.

Only one municipality in the nation has applied this type of a city contractor nondiscrimination clause to the extension of domestic partner benefits. San Francisco passed such an ordinance in November 1996. It goes into effect on July 1, 1997.

The San Francisco contractor provision prompted a variety of responses. First, the Catholic Archbishop protested that it would infringe on the right of Catholic Charities to discriminate on the basis of religious beliefs. Catholic Charities, a nonprofit agency that provides services to the needy, receives more than \$4 million annually from the City of San Francisco. The mayor refused to give in to the Archbishop's demand. Eventually, a compromise was reached whereby Catholic Charities will not have to officially recognize domestic partners as such, but nonetheless will comply with the city contractor nondiscrimination law. The nonprofit agency will allow its employees to designate any one adult member of their household as an employee benefits beneficiary, which could be a spouse, domestic partner, blood relative, or other bone fide member of the household.

The next hurdle was a battle with United Airlines when a significant contract came up for renewal. The city insisted that United comply with the new law. United pointed out that it was a multi-national organization that had to deal with dozens of unions in a variety of nations. Again, a compromise was reached. The contract was signed by the city on condition that United implement a domestic partner benefits program within two years.

Other major corporations that contract with the city have begun to comply with San Francisco's ordinance. For example, Bank of America and Chevron announced that they will offer benefits to domestic partners. Bank of America calls it "extended family benefits" and will allow a worker to designate a spouse, domestic partner, or close blood relative under 65 who is a dependent in the IRS sense of that term, as a beneficiary for employee benefits. Chevron will adopt a traditional domestic partner benefits program open to both opposite-sex and same-sex couples.

The next obstacle was a proposal by a major business lobby to exclude opposite-sex partners from the contractor law. The business lobby wanted to limit benefits to same-sex couples. While two members of the board of supervisors considered the idea for a few weeks, openly gay supervisor Tom Ammiano strongly opposed the proposal. He said that domestic partnership was never intended to be a second-class institution for gays only but was intended to benefit all single adults who live together as a family unit. The "gays only" proposal was ultimately withdrawn and the contractor ordinance will be implemented for all domestic partners regardless of the gender of the parties.

While some cities are reviewing a contractor proposal like the one adopted in San Francisco, none of them has passed such a law.

2. Private employers

Both of Philadelphia's proposals would prohibit private employers in the city from discriminating against domestic partners. If enacted into law, this provision would effectively require private employers to institute domestic partner benefits programs. The proposals, however, would allow companies to discriminate against domestic partners if their benefits programs are governed by federal laws such as ERISA or the Internal Revenue Code, to the extent that such federal laws might permit or require such discrimination.

No city has gone this far. Since health and retirement benefits at most large corporations are governed by federal law, this proposal would appear to affect only such non-federally regulated benefits such as sick leave, bereavement leave, tuition reimbursement, relocation reimbursement, and employee assistance programs at large companies and all benefits at non-ERISA firms.

3. All city programs and services

Both of Philadelphia's proposals would prohibit the city from discriminating in any manner against domestic partners. In other words, the city would be required to treat domestic partners the same as it treats spouses in all of its ordinances and regulations.

No city has adopted such a broad policy of nondiscrimination. In order to determine the actual effect of this clause, the city would have to do a word search of terms such as "spouse," "marriage," "husband," "wife" "family" and "dependent" in its current ordinances and administrative regulations. This may be an appropriate task for the technical staff of the city council or the staff of the city's Human Relations Commission.

4. Public accommodations

Both of Philadelphia's proposals would prohibit discrimination against domestic partners in public accommodations. This would essentially require businesses to treat consumers with domestic partners the same as they treat consumers with spouses or other family members.

Many businesses offer discounts or other perks to family members. For example, health clubs and automobile clubs may offer a family rate or give a discounted membership fee when a member's spouse joins the club. Insurance companies may give a multiple car discount to spouses, or allow spouses to purchase joint policies for homeowners or renters insurance. Credit unions usually restrict membership to an employee of a particular group and his or her immediate family members. Car rental companies may allow a spouse to drive without any additional cost whereas other additional drivers are charged a fee. Credit card companies may offer special travel programs for card holders and their spouses. Under the public accommodations proposal in Philadelphia's domestic partnership bills, these types of programs would have to treat registered domestic partners the same as spouses.

No other city in the nation prohibits discrimination against domestic partners in public accommodations. However, a proposal was introduced in April 1997 to add marital status and domestic partnership status to San Francisco's public accommodations civil rights ordinance. The proposal is pending.

5. Housing transactions

Philadelphia's existing Human Relations Law prohibits marital status discrimination in all real estate transactions. Both of the domestic partnership proposals contain a provision to clarify that the term "marital status" applies to unmarried couples as well as unmarried individuals. The proposals would also add "domestic partnership status" to the housing nondiscrimination law.

The existing marital status provision in Philadelphia's housing law has not been interpreted by the courts as applying to, or not applying to, unmarried couples. However, in most other jurisdictions where this issue has arisen, courts have held that "marital status" does protect unmarried couples from housing discrimination. Courts in Alaska, California, Illinois, New Jersey, and Massachusetts have interpreted marital status nondiscrimination laws in such a manner. However, in some jurisdictions where criminal laws penalize fornication or unmarried cohabitation, courts have ruled to the contrary. Since Pennsylvania does not have a criminal law of this type, its courts may interpret the current housing ordinance to protect unmarried couples.

The amendments to the housing ordinance in the domestic partner bills would make litigation over this issue unnecessary since they clearly indicate a legislative intent to prohibit discrimination against unmarried couples.

These amendments would also close a loophole in the current prohibition against sexual orientation discrimination in housing transactions. Although current law includes "sexual orientation" in the housing protections, a landlord might argue that his refusal to rent to a same-sex couple is not because of their sexual orientation but is only based on the landlord's preference to rent to married couples. These amendments would foreclose such an argument.

CITY OF PHILADELPHIA

1990 CENSUS: HOUSEHOLD DEMOGRAPHICS

| | | |
|---|---------|----------|
| Total Households | 603,075 | (100.0%) |
| One-Person Households | 190,529 | (31.6%) |
| Married-Couple Households | 227,187 | (37.7%) |
| With minor children at home | 102,233 | (17.0%) |
| Without minor children at home. | 124,954 | (20.7%) |
| Single-Parent Households | 88,796 | (14.7%) |
| Male Parent | 12,939 | (2.1%) |
| Female Parent | 75,857 | (12.6%) |
| Extended Family Household* | 62,062 | (10.3%) |
| Unrelated Adult Households** | 34,501 | (5.7%) |

Source: Census of Population and Housing, 1990: Summary Tape File 1

* Extended family includes blood relatives living together but without a married couple present in the household.

** Unrelated adults includes both domestic partners as well as roommates.

APPENDICES

2/27/97 Bill 970140

Introduced by: Committee of the Whole
Ortiz, DiCicco +
Cohen

AN ORDINANCE

Amending The Philadelphia Code by adding a new Section 21-1200, entitled "Domestic Partnerships" and amending the General Provisions of the Philadelphia Code to prohibit the making of misleading or false statements in the application or termination of Domestic Partnerships; amending the Fair Practices Code to prohibit discrimination on the basis of Domestic Partnership or marital status; amending the Realty Transfer Tax to exclude from taxation transfers between Domestic Partners, and further amending the Municipal Retirement System Benefit Plans to permit Domestic Partners to be designated as beneficiaries.

The Council of the City of Philadelphia hereby ordains:

SECTION 1. Title 21 of The Philadelphia Code, relating to Miscellaneous, is hereby amended to add the following Chapter:

CHAPTER 21-1200. DOMESTIC PARTNERSHIPS

§21-1201. Legislative Findings.

(1) *The Council finds that:*

(a) *Significant changes in our society have resulted in the creation of diverse living arrangements and family relationships. It is estimated by the 1990 Census data that only thirty-seven and seven-tenths percent (37.7%) of Philadelphia's households are comprised of married couples;*

(b) *While all stable families contribute to the economic and psychological well-being of the community, non-traditional families, or Domestic Partnerships as many have come to be known, lack the recognition, support and benefits provided to traditional families. Not recognizing the existence, legitimacy and importance to community stability of non-traditional family relationships is not sound public policy;*

(c) *The City of Philadelphia has consistently recognized the importance of equality of treatment for all its citizens. In particular, the Fair Practices Ordinance prohibits discrimination in housing, public accommodations and employment on the basis of race, color, sex, religion, national origin, ancestry, handicap or sexual orientation;*

(d) *Therefore, it is necessary and appropriate that legislation be enacted to legally recognize the existence of Domestic Partnerships and provide equality of treatment for members for those partnerships.*

§21-1202. Definitions.

- (1) *Committed relationship.* A family relationship, intended to be of indefinite duration, between two individuals characterized by mutual caring and the sharing of a mutual residence.
- (2) *Declaration of Domestic Partnership.* The document that is filed with the Department of Records according to the procedures established in Section 21-1203 of this Chapter.
- (3) *Domestic Partner.* An individual who is a member of a Domestic Partnership as set forth in Section 21-1203.
- (4) *Domestic Partnership.* Committed relationship of mutual caring between two (2) persons, who consider themselves to be members of each other's immediate family and who have registered their partnership in accordance with subsection 21-1203(1) of this Chapter.
- (5) *Family Member.*

(a) A Domestic Partner; or

(b) A dependent child of a Domestic Partner, which shall include, for the purposes of this section an unmarried person under 22 years of age, an unmarried person under 25 years of age who is a full-time student, or an unmarried person regardless of age who is incapable of self-support, because of a mental or physical disability that existed before age 22. A dependent child of a Domestic Partner shall include a natural child, adopted child, stepchild, foster child or child in the legal custody of a domestic partner.

§21-1203. Registration and Termination Procedures.

(1) *Registration.* Declaration of Domestic Partnership shall be filed with the Department of Records and contain the names and address of the Domestic Partners who shall swear or affirm under penalty of False Swearing (18 P.S. Sec. 4903) and Unsworn Falsification to Authorities (18 P.S. Sec. 4904), that each partner:

(a) is at least eighteen (18) years old and competent to contract:

(b) is not related by blood closer than would prohibit marriage in the Commonwealth of Pennsylvania;

(c) is the sole Domestic Partner of the other person;

(d) is not married;

(e) has not been a member of a Domestic Partnership for the past six (6) months (unless the prior partnership ended as a result of the death or marriage of one of the partners);

(f) agrees to share the common necessities of life and to be responsible for each other's welfare;

(g) shares at least one residence;

(h) considers himself or herself to be a member of the immediate family of the other partner, and

(i) agrees to notify the City of any change in the status of the Domestic Partnership.

(2) Termination.

(a) A Domestic Partner may terminate the Domestic Partnership by filing a Termination Statement with the Department of Records. The person filing the Termination Statement shall swear or affirm under penalty of False Swearing (18 P.S. Sec. 4903) and Unsworn Falsification to Authorities (18 P.S. Sec. 4904) that:

(.1) the Domestic Partnership is to be terminated; and

(.2) if the Termination Statement is not signed by both Domestic Partners, a copy of the Termination Statement shall be served, either personally or by certified or registered mail, on the other Domestic Partner, and proof of service shall be filed with the Department of Records.

(b) The termination shall become effective sixty (60) days from the date of filing of the Termination Statement signed by both Domestic Partners or if the Termination Statement is not signed by both parties, sixty (60) days from the date proof of service is filed with the Department of Records pursuant to Subsection 1203(2)(a)(.2).

(c) Automatic Termination. A Domestic Partnership shall automatically terminate in the event that one of the Domestic Partners dies or marries.

(3) Administration.

(a) Forms. The Department of Records shall provide forms for the establishment and termination of Domestic Partnerships.

(b) *Certificate of Domestic Partnership.* The Department of Records shall issue to the Domestic Partners a Certificate of Domestic Partnership no later than five (5) business days after the Declaration is filed.

(c) *Maintain Records.* The Department of Records shall maintain copies of Certificates of Domestic Partnership and Termination Statements filed by Domestic Partners.

(d) *Fees.* The fee for registering or terminating the Declaration of Domestic Partnership shall be twenty-five dollars (25) dollars, which shall cover all costs of registration or termination.

§21-1204. Legal Effect of Declaration of Domestic Partnership.

(1) *Obligations.* The Obligations of Domestic Partners to each other are those described in Section 21-1203(1).

(2) *Duration of Rights and Duties.* If a Domestic Partnership ends in accordance with Section 21-1203(2), the Domestic Partners will incur no additional obligations to each other under this Ordinance.

(3) *Duly registered Domestic Partners shall be considered members of each other's immediate family until such time as the partnership is terminated. If the Domestic Partnership is terminated by death, the survivor shall be considered a surviving immediate family member of the deceased partner.*

§21-1205. Non-Discrimination.

The City of Philadelphia shall not discriminate against Domestic Partnerships or on account of Domestic Partnership status in any way. This includes, but is not limited to, using marital status or a marital relationship as a factor in any decision, policy or practice, or as the basis for any right, benefit or protection, in which case Domestic Partnerships shall be accorded the same treatment.

§21-1206. Limited Effect.

Nothing in this Chapter shall be construed to alter, affect, or conflict with state or federal law. In particular, this Chapter is not intended to and does not make the Pennsylvania Partnership Law, Purdon's P.C.S.A., Title 59, or the Pennsylvania Domestic Relations Law, Purdon's P.C.S.A., Title 23, applicable to Domestic Partnerships or affect state or federal taxes due and payable by an individual or individuals.

§21-1207. Reciprocity.

All rights, privileges and benefits extended to registered Domestic Partners and/or Domestic Partnerships pursuant to this ordinance shall also be extended to Domestic Partnerships and/or Domestic Partners registered pursuant to similar laws in other jurisdictions.

§21-1208. Severability

If any sentence, clause, section or part of this Chapter is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Chapter. It is hereby declared as the intent of the City Council that this Chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 2. Section 1-111 of the Philadelphia Code relating to Fraud or Deceit in Obtaining Licenses or Permits is hereby amended as follows:

§1-111. Fraud or Deceit in Obtaining Licenses or Permits[,] or Certificates or Terminations of Domestic Partnership.

(1) Prohibited Conduct. No person shall make false, deceitful or misleading statements in applications for any license, [or] permit *or Certificate or Termination of Domestic Partnership* issued under the provisions of The Philadelphia Code or knowingly violate any of the terms and conditions upon which any license, [or] permit *or Certificate or Termination of Domestic Partnership* is issued.

(2) Penalties. The penalty for violation of the provisions of this section, in addition to any other penalty provided by the Philadelphia Code[,] *or other applicable law*, shall be a fine of three hundred (300) dollars plus cost of prosecution together with imprisonment not exceeding ninety (90) days if the -fine and costs are not paid within ten (10) days.

SECTION 3. Chapter 9-1100 of The Philadelphia Code, entitled Fair Practices is hereby amended as follows:

* * *

§9-1102. Definitions.

* * *

(e) Domestic Partnership Status. The status of a person or couple as a Domestic Partner as defined in The Philadelphia Code Section 21-1202(2) above.

[(e)](f) Employer.

* * *

[(f)](g) Employment.

* * *

[(g)](h) Employment Agency

* * *

[(h)](i) Handicap

| | | | |
|--------------------------------|---|---|---|
| | * | * | * |
| [(i)](j) Housing Accommodation | | | |
| | * | * | * |
| [(j)](k) Labor Organization | | | |
| | * | * | * |
| [(k)](l) Lending Institution | | | |
| | * | * | * |
| [(l)](m) Owner | | | |
| | * | * | * |

[(m)](n) Marital Status. The status of [being] *a person or couple as single, married, separated, divorced or widowed.*

| | | | |
|--|---|---|---|
| [(n)](o) Personal Residence. | | | |
| | * | * | * |
| [(o)](p) Presence of Children. | | | |
| | * | * | * |
| [(p)](q) Public Accommodation Resort or Amusement. | | | |
| | * | * | * |
| [(q)](r) Roomer. | | | |
| | * | * | * |
| [(r)](s) Living Unit. | | | |
| | * | * | * |
| [(s)](t) Source of Income. | | | |
| | * | * | * |
| [(t)](u) Sexual Orientation | | | |
| | * | * | * |

§9-1103. Unlawful Employment Practice.

(A) It shall be an unlawful employment practice:

(1) For any employer to refuse to hire, discharge, or discriminate against any person because of race, color, sex, sexual orientation, religion, national origin, ancestry, age, [or] handicap[.], *marital status or Domestic Partnership status* with respect to tenure, promotions, terms, conditions or privileges of employment or with respect to any matter directly or indirectly related to employment.

(2) For any employer, employment agency or labor organization to establish, announce or follow a policy of denying or limiting, through a quota system or otherwise, the employment of membership opportunities, of any individual or group because of race, color, sex, sexual orientation, religion, national origin, ancestry, age [or] handicap[.], *marital status or Domestic Partnership status.*

(3) For any employer, employment agency or labor organization prior to employment or admission to membership to:

(a) make any inquiry concerning, or make any record of the race, color, sex, sexual orientation, religion, national origin, ancestry, age, [or] past handicap, *marital status or Domestic Partnership status*.

(b) use any form or application for employment of personnel or membership blanks containing questions or entries regarding race, color, sex, sexual orientation, religion, national origin, ancestry, age, [or] handicap, *marital status or Domestic Partnership status*.

(c) cause to be printed, published, or circulated any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race, color, sex, sexual orientation, religion, national origin, ancestry, age, [or] handicap, *marital status or Domestic Partnership status*.

(4) For any employment agency because of a person's race, color, sex, *sexual orientation*, religion, national origin, ancestry, age, [or] handicap, *marital status or Domestic Partnership status* to:

* * *

(5) For any labor organization to discriminate against any individual or to limit, segregate or classify its membership in any way which would deprive such individual of employment opportunities or limit his employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment or would affect adversely his wages, hours or conditions or employment, because of race, religion, color, sex, sexual orientation, national origin, ancestry, age, [or] handicap, *marital status or Domestic Partnership status*.

(B)Exceptions. It shall not be an unlawful employment practice for:

* * *

(5) an employer, employment agency or labor organization, *in the case of an employment practice based on age*, to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Chapter, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual because of the age of such individual.

* * *

(7) *Nothing in this Section shall be construed to require benefit plans which are subject to the Employment Retirement Income Security Act of 1974 (ERISA), other than plans of entities contracting with the City of Philadelphia, to provide medical, dental, or pension benefits to Domestic Partners of employees or said Domestic Partner's dependents, insofar as the requirement that such benefits be provided is preempted by ERISA.*

§9-1104. Unlawful Housing Practice.

(A) It shall be an unlawful housing practice:

(1) For the owner of any commercial housing, or any other real property except as provided in Section 9-1102(a)(3) hereof, to refuse to sell, rent, lease or in any discriminate because of race, color, sex, sexual orientation, religion, national origin, ancestry, physical handicap, marital status, *Domestic Partnership status*, age, presence of children or sources of income in terms, conditions, or privileges of the sale, rental or lease of any commercial housing accommodation or other real property or in the furnishing of facilities or services in connection therewith.

(2) For any lending institution, to discriminate against any person because of race, color, sex, sexual orientation, religion, national origin, ancestry, physical handicap, marital status, *Domestic Partnership status*, age presence of children or source of income in lending, guaranteeing loans, accepting mortgages or otherwise making available funds for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation.

(3) For any person to make, print or circulate or cause to be made, printed or circulated any written or oral statement, advertisement, or publication, or to use any form of application for purchase, rental or lease of housing accommodations or to make real estate appraisals, financial or credit reports or any record or inquiry in connection with the prospective purchase, rental or lease of housing accommodation which express, directly or indirectly, any limitation, specification or discrimination as to race, color, sex, sexual orientation, religion, national origin, physical handicap, marital status, *Domestic Partnership status*, age, presence of children or sources of income or any intent to make any such limitation, specification or discrimination.

* * *

(6) For any person being the owner, lessee, manager, superintendent, agent or broker of any commercial housing, or any other whose duties, whether voluntary or for compensation, relate to the rental, sale or leasing of commercial housing, to establish, announce, follow a policy of denying or limiting, through quota system or otherwise, the housing opportunities of any individual or group because of race, color, sex, sexual orientation, religion, national origin, ancestry, physical handicap, marital status, *Domestic Partnership status*, age, presence of children or source of income.

* * *

(9) For any person to give false or misleading information written, or oral, with regard to the sale or rental of any commercial housing for the purpose of discriminating on the basis of race, color, sex, sexual orientation, religion, national origin, ancestry, physical handicap, marital status, *Domestic Partnership status*, age presence of children or source of income.

(10) For any person to make any distinctions in the location of a house, lot, apartment or other commercial housing or to make any distinctions relating to the time of delivery of a house or the date of availability of an apartment or other commercial housing on the basis of race, color, sex, sexual orientation, creed, national origin, ancestry, marital status, *Domestic Partnership status*, age, presence of children or source or income.

* * *

(12) For any person selling, renting or leasing housing accommodations, as broker or agent or as an employee or representative of a broker or agent, to refuse or limit service to any person on the basis of race, color, sex, sexual orientation, creed, national origin, ancestry, marital status, *Domestic Partnership status*, age, presence of children or source of income or to accept or retain a listing of any housing accommodations for sale, rent or lease with an understanding that discrimination may be practiced in connection with the sale, rental, or lease thereof.

* * *

§9-1105. Unlawful Public Accommodations Practice.

(A) It shall be an unlawful public accommodations practice:

(1) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement to:

(a) Refuse, withhold from, or deny to any person because of his race color, sex, sexual orientation, *marital or Domestic Partnership status*, religion, national origin, ancestry or physical handicap, either directly or indirectly, any of the accommodations, advantages, facilities or privileges of such place of public accommodation, resort or amusement.

(b) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the advantages, facilities, and privileges or any such place shall be refused, withheld or denied to any person on account of race, color, sex, sexual orientation, *marital status or*

Domestic Partnership status, religion, national origin, ancestry or physical handicap, or that the patronage of any person of any particular race, color, sex, sexual orientation, marital or Domestic Partnership status, religious creed, ancestry, national origin or physical handicap is unwelcome, objectionable or not acceptable, desired or solicited.

(2) For a Domestic Partner or the child of the Domestic Partner to be denied visitation at a health care facility or correction institution as specified below:

(a) Health Care Facilities. All health care facilities, including but not limited to hospitals, convalescent facilities, mental health care facilities, hospices or other long term care facilities, shall afford Domestic Partners the same visitation rights as are afforded to the patient's spouse or a member of his/her immediate family.

(b) Correctional Institutions. All jails, prisons and juvenile correctional centers shall afford Domestic Partners the same visitation rights as are afforded to the spouse or a member of the immediate family, of an inmate.

(c) The specific designation of health care facilities or correctional institutions in this section is not to be construed in any way to deny, alter or limit rights to any other public accommodation under the Section 9-1105.

SECTION 4. Chapter 19-1400 of The Philadelphia Code, entitled Realty Transfer Tax is hereby amended as follows:

§19-1405. Excluded Transactions.

The tax imposed by Section 19-1403 shall not be imposed upon:

* * *

(6) A transfer between husband and wife, between persons who were previously husband and wife who have since been divorced, provided the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, *between Domestic Partners (as defined in Chapter 21-1200, Section 1202(2) of The Philadelphia Code, between persons who have since terminated said Domestic Partnership, provided the property or interest therein subject to such transfer was acquired by the Domestic Partnership or other of the Domestic Partners prior to the termination of the Domestic Partnership, between parent and child or the spouse or Domestic Partner of such child, between brother or sister or spouse or Domestic Partner of a brother or sister and between a grandparent and grandchild or the spouse or Domestic Partner of such grandchild, except that a subsequent transfer by the grantee within one year shall be subject to tax as if the grantor were making such transfer.*

SECTION 5. Section 201 of the Municipal Retirement System Ordinance, approved December 3, 1956, as amended, is hereby amended as follows:

SECTION 201. Definitions.

201.1 Unless a different meaning is plainly required by the context, the following words and phrases used in this article shall have the following meanings:

* * *

(cc) Domestic Partner or Domestic Partnership. As defined in Chapter 21-1200 of the Philadelphia Code, or a Domestic Partner or Domestic Partnership recognized pursuant to similar law in other jurisdictions.

(dd) Spouse includes a Domestic Partner.

(ee) Marriage or remarriage includes the registration of a Domestic Partnership.

(ff) Widow includes a Domestic Partner at the time of a member's death.

SECTION 6. Section 101 of the Municipal Retirement System Ordinance, approved on January 8, 1987, as amended, is hereby amended as follows:

SECTION 101. Definitions.

* * *

101.2 The following definitions apply to the words and phrases used in this Ordinance:

* * *

(z) Domestic Partner or Domestic Partnership. As defined in Chapter 21-1200 of the Philadelphia Code, or a Domestic Partner or Domestic Partnership recognized pursuant to similar laws in order jurisdictions.

(aa) Spouse includes a Domestic Partner.

(bb) Marriage or remarriage includes the registration of a Domestic Partnership.

(cc) Widow includes a Domestic Partner at the time of a member's death.

SECTION 7. Severability.

If any sentence, clause, section or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, section or part of this ordinance. It is hereby declared as the intent of City Council that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 8. This Ordinance shall take effect ninety (90) days from the date it becomes law.