

ORDINANCE NO. 2012-09

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA, TO BE KNOWN AS THE HEALTH, EDUCATION AND LIFE PROTECTIONS (“HELP”) ORDINANCE; EXPANDING ON A COUNTYWIDE BASIS THE CITY OF ORLANDO’S DOMESTIC PARTNERSHIP REGISTRY; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE RIGHTS AND DUTIES OF SUPPORT PERSONS; PROVIDING FOR ALTERNATE MEANS OF DESIGNATING SUPPORT PERSONS; PROVIDING FOR TERMINATION OR REVOCATION OF DESIGNATION OF SUPPORT PERSON; PROVIDING FOR MAINTENANCE OF RECORDS AND FILING FEES; PROVIDING FOR LIMITED EFFECT; PROVIDING FOR ENFORCEMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Orange County Board of County Commissioners (“the Board”), acknowledges that the City of Orlando has adopted and enacted an ordinance entitled “Domestic Partnership Registry,” at Chapter 57, Article 6 (Sections 57.80-57.86); and

WHEREAS, it is the intent of the Board in enacting this Ordinance, to recognize, protect, safeguard and facilitate the right of all adult persons in Orange County to designate persons to make, if necessary, healthcare decisions, funeral/burial decisions, preneed guardian designations, and to designate persons to have access to educational records and be involved in the myriad of proceedings and decisions related to the education of a minor child and to designate persons to be notified in emergencies; and

WHEREAS, the Board also intends to recognize, protect, safeguard and facilitate the right of all adult persons in Orange County to designate persons who should be allowed visitation rights, where appropriate, in healthcare and correctional facilities; and

WHEREAS, the Board intends to recognize, protect, safeguard and facilitate the above-mentioned rights to all adult persons in Orange County regardless of whether they choose to register under the Domestic Partnership Registry; and

WHEREAS, the Board intends to afford judicial remedies for all adult persons in Orange County who are denied the rights set forth herein; and

WHEREAS, the Board does not intend to supersede any federal, state, or other county laws or regulations, or any existing contractual right, in enacting this Ordinance, and the Board does not intend that this Ordinance be construed as recognizing or treating domestic partnerships, as defined in the Domestic Partnership Registry, as a marriage.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:

Section 1. Short Title. This Ordinance shall be known as the “Health, Education, and Life Protections (“HELP”) Ordinance and Domestic Partnership Registry.”

Section 2. Definitions. For purposes of this Ordinance, the terms below shall have the following meaning:

- A. “Designating Person” means an adult person in Orange County who has chosen to designate another person to make healthcare decisions, funeral/burial decisions, and/or educational decisions, and/or to have visitation rights in healthcare and/or correctional facilities, and to be notified in case of emergency, or any combination thereof, concerning the Designating Person and/or the Designating Persons’ legal dependents.
- B. “Support Person” means the adult person designated by the Designating Person to make healthcare decisions, funeral/burial decisions, and/or educational decisions, and/or to have visitation rights in healthcare and/or correctional facilities, and to be notified in case of emergency, or any combination thereof, concerning the Designating Person and/or the Designating Person’s

dependents. Only one person can be designated as a Support Person.

- C. “Health Care Facility” includes, but is not limited to, hospitals, nursing homes, hospice care facilities, convalescent facilities, walk-in clinics, doctors’ offices, mental health care facilities and any other short-term or long-term health care facilities located within Orange County.
- D. “Correctional Facility” means holding cells, jails, and juvenile correction centers of any kind, located within or under the jurisdiction of Orange County.
- E. “City of Orlando Domestic Partnership Registry Ordinance” shall mean and refer to Chapter 57, Article VI, Sections 57.80 through 57.86 inclusive, as enacted in 2011 by the City Commission for the City of Orlando.
- F. “Domestic Partnership Registry” shall refer to the Domestic Partnership Registry established by the City of Orlando in facilitation of the City of Orlando Domestic Partnership Registry Ordinance.
- G. “Registered Domestic Partnership” shall refer to the relationship created by compliance with the City of Orlando Domestic Partnership Registry Ordinance, except that registration may be accomplished directly through the Orange County Comptroller’s Office.
- H. “Registered Domestic Partners” shall refer to each and both applicants who register effectively with the Domestic Partnership Registry.
- I. “Comptroller” shall mean the Comptroller of Orange County, Florida, and the Office of the Comptroller for Orange County, Florida.

Section 3. Recognition and Establishment of Registered Domestic Partnerships throughout Orange County. To the extent not superseded by federal, state or other county law or ordinance, and to the extent not contrary to rights conferred by contract or separate legal

instrument, Registered Domestic Partners shall be recognized throughout Orange County as being in a Registered Domestic Partnership and shall have any and all rights recognized and established between Registered Domestic Partners under the City of Orlando Domestic Partnership Ordinance as of December 12, 2011.

Section 4. *Rights and Duties of Support Persons.* To the extent not superseded by federal, state or other county law or ordinance, and to the extent not contrary to rights conferred by contract or separate legal instrument, a Designating Person who has designated a Support Person in accordance with Section 5, below, shall be deemed to have conferred upon the Support Person the following rights with respect to the Designating Person, unless the Designating Person indicates otherwise under Section 5.B., below:

A. *Health Care Facility Visitation.*

1. All Health Care Facilities operating within Orange County shall allow the Support Person visitation as provided under federal law.

2. All Health Care Facilities operating within Orange County shall also allow visitation as provided under federal law to dependents of those Support Persons who are also Registered Domestic Partners.

B. *Health Care Decisions.* A Designating Person's designation of a Support Person shall be sufficient to recognize the Support Person as the Designating Person's health care surrogate as provided in Chapter 765, Florida Statutes, and otherwise as provided by federal law.

C. *Funeral/Burial Decisions.* A Designating Person's designation of a Support Person under this Ordinance shall be considered to be the written inter vivos authorization and direction to have his or her Support Person direct the disposition of the

Designating Person's body for funeral and burial purposes as provided in Chapters 406, 497 and 732, Florida Statutes, unless the Designating Person had otherwise provided conflicting written inter vivos authorization and directions that are dated after the date of the designation by the Designating Person or the Support Person pursuant to this Ordinance, in which case the later dated authorization and direction shall control.

D. *Correctional Facility Visitation Rights.*

1. Any Support Person designated by a Designating Person under this Ordinance shall be entitled to visit the Designating Person, if the Designating Person is an inmate of a correctional facility located within Orange County, upon the same terms and conditions under which visitation is afforded to spouses, dependents, or parents of inmates.

2. Support Persons and Designating Persons who are also Registered Domestic Partners will also be entitled to visit or be visited by family members of the Support Person or Designating Person upon the same terms and conditions under which visitation is afforded to spouses, dependents, or parents of inmates.

E. *Emergency Notification.* In any situation providing for mandatory or permissible notification, including but not limited to notification in an emergency, or when permission is granted to correctional facility inmates to contact family members, notification shall include Support Persons, so long as adequate contact information for the Support Person is provided by the Designating Person.

F. *Preneed Guardian Designation.* The person who has been designated as a Support Person pursuant to this Ordinance shall have the same right as any other individual to be designated as a Preneed Guardian pursuant to Chapter 744, Florida Statutes, and to serve in such capacity in the event of the Designating Person's incapacity.

G. *Participation in Education.* To the extent allowed by federal and state law, a Support Person as defined by this Ordinance shall have the same rights as would a parent of the child to access educational records and to be involved in the myriad of proceedings and decisions related to the education of a minor child or children who are the dependents of a Designated Person in all educational facilities located within or under the jurisdiction of Orange County. However, if a parent of a minor dependant of the Designating Person, whose parental rights have not been terminated, objects to the participation of a Support Person who is not a parent of the Designating Person's dependent, only the participation of the parent shall be allowed.

Section 5. Alternative Methods of Designating Support Persons.

A. Any adult person in Orange County may choose to use the registration provisions of the City of Orlando Domestic Partnership Registry Ordinance. Any adult person in Orange County who is registered under the Domestic Partnership Registry will be a Registered Domestic Partner in a Registered Domestic Partnership as of the Effective Date hereof. As to each of any pair of persons who submit or have submitted an affidavit together and who register or have registered under the Domestic Partnership Registry, each person is a Registered Domestic Partner, and if necessary, a Support Person, under this Ordinance, in relation to the other affiant, who will also be deemed the Designating Person under this Ordinance.

B. Alternatively, any adult person in Orange County who chooses not to register under the City of Orlando Domestic Partnership Registry may nevertheless designate a Support Person by signing a written document, provided by the Comptroller, designating the Support Person, and the Designating Person shall indicate the express functions and rights which the Support Person will have with respect to the Designating Person, identifying healthcare

surrogate status, healthcare facility visitation rights, authority to make funeral/burial decisions, correctional facility visitation rights, right to notification in the event of an emergency, preneed guardian designation, and/or the right to have access to educational records and be involved in the myriad of proceedings and decisions related to the education of a minor child who is the Designating Person's dependent. The written designation shall be signed by the Designating Person in the presence of two subscribing adult witnesses, at least one of whom shall be neither the Designating Person's spouse nor blood relative. If the Designating Person is unable to sign the instrument, the Designating Person, in the presence of two adult witnesses, one of which shall be neither of the Designating Person's spouse nor blood relative, may direct that another person sign the Designating Person's name. The Designating Person shall provide an exact copy of the instrument to the Support Person.

Section 6. Termination or Revocation of Designating Person's Designation of Support Person Under This Ordinance. In addition to any other laws or regulations or contract rights providing for termination or revocation of rights concerning Registered Domestic Partners and the relationship between Registered Domestic Partners or between a Designating Person and a Support Person, and to the extent not inconsistent with any such other law, regulation or contract, a Registered Domestic Partner or a Designating Person may terminate or revoke the Registered Domestic Partnership or the designation of a Support Person by completing a Notice of Termination and Revocation of Designation as prepared by the Comptroller. However, to the extent a Registered Domestic Partnership or the relationship between the Designating Person and the Support Person has been terminated without the provision of a Notice of Termination and Revocation as provided for in this section, no person relying upon the information established

and recorded by this Ordinance shall be liable under this Ordinance by relying upon the information maintained by the Comptroller in the public records pursuant to this Ordinance.

Section 7. Maintenance of Records; Filing Fees.

A. The Comptroller shall prepare all forms necessary for the implementation of this Ordinance, including all forms to be completed by Support Persons and Designating Persons. The Comptroller shall maintain a record of all forms filed pursuant to this Ordinance.

B. The Comptroller shall collect appropriate fees as allowed by law for the filing of any forms required by this Ordinance. Any fees under this Section shall be commensurate with the actual costs of administering the provisions of this Ordinance.

C. The Comptroller is authorized and requested to take all actions necessary to implement the provisions of this Section within forty-five (45) days after this Ordinance is enacted.

D. The Comptroller may collaborate with the City Clerk of the City of Orlando to coordinate the maintenance of records between Orange County and the City of Orlando regarding this Ordinance and the City of Orlando's Domestic Partnership Registry Ordinance.

Section 8. Limited Effect.

A. Nothing in this Ordinance shall be interpreted to alter, affect, or contravene county, state, or federal law, or any existing contract or legal right.

B. Nothing in this Ordinance shall be construed as recognizing or treating the relationship between a Designating Person and a Support Person, or a Registered Domestic Partnership under the Domestic Partnership Registry Ordinance, as a marriage.

C. No other rights are created nor implied under this Ordinance, and no private right of action is created unless specified herein.

Section 9. Enforcement. Any Registered Domestic Partner or Designating Person or Support Person may enforce their rights by filing a private judicial action against any person or entity denying those rights in any court of competent jurisdiction for declaratory relief, injunctive relief, damages, interest and costs, or any other relief a court may deem appropriate.

Section 10. Severability. Pursuant to and consistent with Orange County Code Section 1-11, if any section, sub-section, sentence, clause, phrase, or portion of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holding of invalidity shall not affect the remaining portion of this Ordinance, and it shall be construed to have been the legislative intent to pass this Ordinance without such unconstitutional, invalid or inoperative part therein, and the remainder of this Ordinance after the exclusion of such part or parts shall be deemed and held to be valid as if such part or parts had not been included herein. If this Ordinance or any provision thereof shall be held inapplicable to any person, group of persons, property or kind of property, or circumstances or set of circumstances, such holding shall not affect the applicability hereof to any other person, property or circumstance.

Section 11. Effective Date. This Ordinance shall become effective on July 6, 2012.

ADOPTED THIS ___ DAY OF _____, 2012.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Teresa Jacobs, County Mayor

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

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