



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL AND
REDEVELOPMENT AGENCY
BOARD

FROM: Richard Doyle
City Attorney/General
Counsel

SUBJECT: Clarification of Domestic
Partner Benefits – City and
Agency Employees

DATE: February 25, 2005

RECOMMENDATION

1) Adoption of a Resolution by the City Council restating the intent of the Council action of March 9, 2004 and setting the following policies in view of the California Domestic Partner Rights and Responsibilities Act which became effective January 1, 2005:

- (a) That the intent of the City Council action of March 9, 2004, was to allow City employees who enter into marriages which are valid in the jurisdiction where the marriage was performed, to participate in the receipt of City of San José employee benefits on an equal basis without determining the legality of same sex marriages in California.
- (b) That on May 18, 2004, the City Council approved the extension of health and dental insurance benefits to the children of domestic partners of City and Agency employees.
- (c) That City of San José employees and their domestic partners who are members of a domestic partnership registered with the Secretary of State will be provided equal treatment with regard to City benefits as is provided to married employees and their spouses.
- (d) That City of San José employees and their domestic partners who are not members of a domestic partnership registered with the Secretary of State but who are registered with the City of San José will be provided equal treatment with regard to City benefits as is provided to married employees and their spouses.

2) Adoption of a Resolution by the Redevelopment Agency Board adopting the City Council's policy referred to above to apply to Agency employee benefits.

BACKGROUND

The City of San Jose employee benefit plans provide benefits for domestic partners of employees who are registered with the City. Employees may enroll a domestic partner and the dependents of the domestic partner within 30 days of the employee's date of hire, within 30 days of benefits eligibility, or during the benefits annual open enrollment period.

On March 9, 2004, the City Council adopted, by motion, a policy of recognizing all marriages of City employees certified by other jurisdictions and directed staff to make any necessary changes to benefit policies to ensure that all employees whose marriages are valid in the jurisdiction where the marriage was performed are treated equally and fairly

Because there have been changes in state law, it is necessary to clarify the City's policies.

ANALYSIS

AB 205 (Calif. Domestic Partner Rights and Responsibilities Act of 2003)

AB 205, effective on January 1, 2005, extends the same rights, protections, obligations and benefits to domestic partners that are granted to spouses. This bill amended the state Family and Government Codes to require that domestic partners submit to superior court jurisdiction as a condition of registration as domestic partners. As a result, they will gain access to the courts to resolve issues such as child custody, partnership property, termination of the partnership and other issues that arise in dissolutions of marriages. The qualifications for AB 205 registration under the Family Code for opposite gender couples is based on the Social Security age requirements of 62 years of age.

Examples of rights and obligations are:

- Right to benefits, such as family care and medical leave under the Calif. Family Rights Act (similar to the federal Family and Medical Leave Act)
- Right to medical, dental, life and disability insurance, and retirement benefits for surviving partners to the same extent these benefits are available to spouses
- Protection from discrimination in housing and employment, and entitlement to benefits accorded spouses of employees or applicants
- Right to receive government provided benefits such as workers compensation, public assistance and transfer of licenses upon the death of a domestic partner
- Joint ownership of property
- Custody, support, and visitation of children of either or both partners born after the registration of the partnership or adopted after registration

- Mutual responsibility for debts to third parties.

City of San Jose Compliance with AB 205

The intent of the City Council's action on March 9, 2004, was to allow City employees who enter into marriages, including same sex marriages which are valid in the jurisdiction where the marriage was performed, to participate in the receipt of City employee benefits on an equal and fair basis. The Council's action was done without passing or taking a position on the legality of same sex marriages.

The City has complied with rights of domestic partners of City employees with regard to medical, dental and insurance benefits and rights under AB 205. Further, City employees and their domestic partners who are not members of a domestic partnership registered with the state but who are registered as domestic partners with the City will be provided equal treatment with regard to City benefits as is provided to married employees and their spouses.

In January and February 2005, the City Retirement Boards discussed survivorship benefits for domestic partners upon the death of retirees of active members of the retirement plans.

Redevelopment Agency

The Agency Board did not take formal action on March 9, 2004 with regard to the City's policy on employee benefits. However, the Agency participates in the City Council's policy on domestic partners because the Agency's health, dental, and vision benefits are purchased through the City's plans.

While the Agency has been complying with AB205 since January 1, 2005, we recommend that the Board adopt a resolution applying the City's policy referred to above to Agency employees to formalize the policy.

PUBLIC OUTREACH

Not applicable.

RICHARD DOYLE
City Attorney/General Counsel

By _____
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cc: Del Borgsdorf