



REQUEST FOR MAYOR & COUNCIL ACTION

Session of: May 21, 2013

Regular Special

DATE ACTION SUBMITTED: May 15, 2013

REGULAR CONSENT

TYPE OF ACTION:

RESOLUTION ORDINANCE FORMAL ACTION OTHER

SUBJECT: DISCUSSION AND POSSIBLE APPROVAL OF THE NOTICE OF INTENT TO ADOPT ORDINANCE O-13-08, ADDING CHAPTER 17, CIVIL UNIONS, TO THE CITY CODE AND PROVIDING FOR REPEAL AND SEVERABILITY

FROM: John A. MacKinnon, City Attorney

RECOMMENDATION: Recommend approval

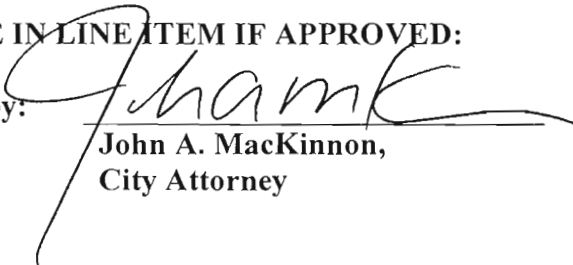
PROPOSED MOTION: I move that we approve the Notice of Intent to Adopt Ordinance O-13-08, adding Chapter 17, Civil Unions, to the City Code and providing for repeal and severability.

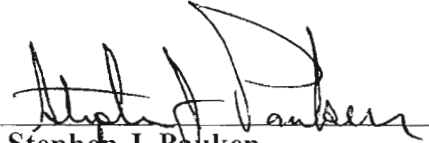
DISCUSSION: This Ordinance would provide a means to recognize the relationship of any two adults, regardless of their gender or sexual orientation, to manage their personal affairs through the formation of contractual agreements and the designation of agents. It is a statement of support for the right of all people to form lasting and personal relationships that are entitled to respect and recognition under the law. A Civil Union will authorize the parties to a limited set of City benefits. It may also provide a means of assisting certain members of our community in obtaining other rights and benefits which are available to them under the laws of this State. It is not intended to alter State law in any manner, but it is intended to make available to all persons those rights which do exist under these laws, without discriminating on the basis of gender or sexual orientation.

FISCAL IMPACT: Unknown

DEPARTMENT LINE ITEM ACCOUNT: NA

BALANCE IN LINE ITEM IF APPROVED: NA

Prepared by: 
John A. MacKinnon,
City Attorney

Reviewed by: 
Stephen J. Pauken,
City Manager

**NOTICE OF INTENT TO ADOPT
ORDINANCE O-13-08**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE,
COUNTY OF COCHISE, STATE OF ARIZONA, AMENDING THE CITY CODE
BY ADDING ARTICLE 17, CIVIL UNIONS, AND PROVIDING FOR REPEAL
AND SEVERABILITY**

WHEREAS, the Mayor and Council of the City of Bisbee support the right of every person to enter into a lasting and meaningful relationship with the partner of his or her choice, regardless of the gender or sexual orientation of the parties to that relationship; and

WHEREAS, the City of Bisbee seeks to lessen the impact of discriminatory practices upon all persons within the City of Bisbee, specifically including lesbian, gay, bisexual and transgender (“LGBT”) persons; and

WHEREAS, the City of Bisbee, pursuant to the authority granted to it under its City Charter, has all of the express or implied powers granted to it under the laws of the State of Arizona and that authority which is not prohibited by the Constitution of this State; and

WHEREAS, to the full extent of its authority to do so, and to no further extent, the City of Bisbee hereby exercises its authority to express its support for ending discrimination against all persons on the basis of their gender or sexual orientation and hereby exercises those powers which it may exercise to lessen the impact of discriminatory practices upon all citizens within the City of Bisbee, specifically including LGBT persons;; and

WHEREAS, to the full extent of its authority to do so, and to no further extent, the City of Bisbee exercises its authority to express its support for the right of all individuals to manage their personal affairs through the formation of contractual agreements and the designation of agents; and

WHEREAS, it is in the best interest of the City of Bisbee to refuse to continue to remain silent on this issue, in the face of discriminatory practices that are inconsistent with the principles upon which our country was founded, and to take such actions as are within its authority to ameliorate this situation,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA, THAT:

Section 1. The amendments of the City Code of the City of Bisbee, as stated in the attached Exhibit A, incorporated herein by reference, are hereby adopted as an amendment to the City Code of the City of Bisbee.

Section 2. Ordinance O-13-05, Bisbee Civil Unions, is hereby repealed in its entirety. All other prior resolutions, ordinances, and policies are hereby repealed to the extent of any conflict with this Ordinance.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Bisbee on this ____ day of _____, 2013.

APPROVED:

Adriana Z. Badal, Mayor

ATTEST:

Gloria P. Gonzalez, City Clerk

APPROVED AS TO FORM:

John A. MacKinnon, City Attorney

EXHIBIT A

CHAPTER 17 CIVIL UNIONS

Article 17.1 Purpose

The City of Bisbee supports the right of every person to enter into a lasting and meaningful personal relationship with the partner of his or her choice, regardless of the gender or sexual orientation of the parties to that relationship. The City of Bisbee exercises its inherent powers of self government, as established under its City Charter, to attempt to lessen the impact of discriminatory practices upon all persons within the City of Bisbee, specifically including lesbian, gay, bisexual and transgender (“LGBT”) persons. For that purpose, the City of Bisbee seeks to respect, support, and facilitate the rights of all persons to enter into contractual relationships and to designate agents, to the full extent permitted by the law, to manage their property, to make important life decisions, and otherwise to provide and care for loved ones within a meaningful and lasting personal relationship.

Article 17.2 Definitions

In this Chapter, unless the context otherwise requires:

- A. “City of Bisbee Certificate of Civil Union” means a document that certifies that the persons named on the certificate have registered a contractual relationship in the City of Bisbee, Arizona pursuant to this Chapter.
- B. “Civil Union” is a contractual relationship established by two eligible persons and which has been registered pursuant to this Chapter.
- C. “Party to a Civil Union” means a person who has registered a Civil Union with the City of Bisbee.

Article 17.3 Requirements for a Valid Civil Union; Filing Fee

- A. Two persons who meet all of the following requirements may enter into a Civil Union:
 - 1. Are at least eighteen years of age.
 - 2. Are not related by blood in a way that would disqualify them from marriage pursuant to A.R.S. §25-101.A.
 - 3. Are not presently married pursuant to Arizona law.
 - 4. Are competent to enter into a contract.

5. Are not party to any existing civil union, domestic partnership, marriage, or other legally-recognized domestic relationship with any third party.

B. A Civil Union is established by the following process:

1. Two eligible individuals seeking to register a Civil Union must complete and file a notarized affidavit, in a form to be prescribed by the City Clerk, declaring their intention to register a Civil Union. This form shall include the name, age, and address of each applicant; a statement that both parties are eligible to register this Civil Union; and a statement that it is the intent of each party to register this Civil Union.
2. With this affidavit declaring their intentions, the parties may also submit a statement of some or all of the contractual rights, obligations, and expectations they have agreed will govern their relationship. Such a statement shall not be required to register a Civil Union.
3. The City Clerk shall file the affidavit and any accompanying statement of contractual terms in the records of the City and shall issue a Civil Union Certificate, upon the payment of the required fee.
4. The fee for the registration of a Civil Union and the issuance of a Certificate is Seventy-five Dollars (\$75.00).

ARTICLE 17.4 Responsibilities and Benefits of Parties to a Civil Union.

A. Each party to a Civil Union shall have such rights, responsibilities, and obligations as provided in their contractual agreement or agreements, whether or not such terms are set forth in the affidavit filed pursuant to Article 17.3.

1. The City Clerk may provide the applicants with a form which will allow the applicants the option of designating and documenting certain rights and obligations that have been agreed to by the parties. Such form may also provide each applicant the option to make certain legal designations permitted by applicable law, which may include, but are not limited to the following:
 - a. The designation of a party to serve as the health care representative of the other party.

- b. The nomination of a party to be given preference for appointment as guardian or conservator of the other party.
 - c. The designation of a party to make any decisions concerning anatomical gifts, to provide for the disposition of the remains of the other party, and to make decisions concerning any funeral arrangements, upon the death of the other party.
 - d. The designation of the other party as a domestic partner and support person for purposes of hospital visitation.
2. The parties may also include such other agreements in their specific agreement as they may determine to be appropriate for their particular circumstances. These may include, but are not limited to agreements addressing the following matters:
- a. Agreements between the parties regarding the management and ownership of their respective real and personal property.
 - b. Agreements between the parties regarding the obligations that either or both may have agreed to assume regarding the existing children or other family members of one or both of the parties.
 - c. Agreements between the parties regarding the obligations that either or both may have agreed to assume regarding prospective children of one or both of the parties
 - d. Agreements between the parties regarding the disposition of their property upon the death of either party.
 - e. A means for resolving any disputes that may arise should the relationship dissolve, through alternative dispute resolution procedures or otherwise.
 - f. Any other rights or obligations that may be legally exchanged by and between the parties.

Certain of these agreements may require additional documentation and other formalities in execution in order to effectuate this intent, pursuant to the laws of the State of Arizona. The City of Bisbee makes no warranty or guarantee regarding the legality or enforceability of any agreements or nominations of the parties.

- B. The following rights of two people who have entered into a Civil Union will be recognized by the City of Bisbee:
- 1. The right of any party to a Civil Union who is an employee of the City of Bisbee to designate his or her Civil Union partner as a beneficiary

of any of the benefits provided by the City of Bisbee to spouses of employees of the City, to the extent that the City is able to do so.

2. The right of parties to a Civil Union to be treated as family members for all purposes by the City of Bisbee, including for admission fees, cemetery operations, use of City facilities, all events sponsored by the City, and all other circumstances for which the City offers preferential terms or conditions to recognized family members.

ARTICLE 17.5 Modification of Terms; Termination of Designation

- A. The Parties to a Civil Union may amend the terms of their particular agreements, designations, and nominations, in whole or in part, in the same manner as such agreements, designations, and nominations may be modified under applicable law.
- B. The City Clerk of the City of Bisbee shall include in the registration records for Civil Unions any amendments or modifications that are provided to the City Clerk as set forth above.
- C. One or both parties may request that the City Clerk terminate the registration of the Civil Union for those parties by submitting a signed and notarized statement to the City Clerk. Upon the receipt of such a signed and notarized request, the City Clerk will terminate the registration of such Civil Union. Any such termination of registration shall not alter any remaining contractual obligations or legal designations that have been made by the respective parties or the ability of either party to enforce any contractual rights that may continue to be enforceable under applicable law.
- D. A registered Bisbee Civil Union shall not prevent the parties to that status from entering into any other type of legal status between those two parties in another jurisdiction, including a marriage where the laws of such other jurisdiction permits them to enter that status. For any two parties who are married or in a civil union or domestic partnership under the laws of another jurisdiction, a Bisbee Civil Union may provide a means of effectuating portions of that relationship under the laws applicable within the City of Bisbee to the extent set forth herein.

ARTICLE 17.6 Formalization; Right of Nonparticipation

- A. This Chapter of the City Code of the City of Bisbee does not require any religious organization or judicial officer to participate in formalizing a Civil Union.**
- B. The persons listed in A.R.S. § 25-124 are hereby authorized to solemnize a Civil Union.**
- C. A document affirming that a Civil Union has been solemnized may be submitted along with the Affidavit submitted to the City Clerk pursuant to Article 17.3(B)(1).**
- D. A formal solemnization ceremony may be performed at the sole option of the parties, and will have no effect on the validity of the registration of the Civil Union or on the contractual obligations, nominations, and designations made by the parties to the Civil Union.**

ARTICLE 17.7 Public Records

- A. The Certificate of Civil Union shall be treated as a public record pursuant to the laws of the State of Arizona and shall be subject to disclosure upon request.**
- B. The statement of contractual rights may contain private, privileged, or confidential information that is protected from disclosure under the laws of the State of Arizona. The parties to each Civil Union will have the opportunity to designate which, if any, of the components of this statement are to be subject to public disclosure. In the event that a third party may request information from this statement that has not been designated for disclosure, the parties to that Civil Union shall be advised of this request and offered the opportunity to assert their position regarding the disclosure of that information.**