MEMORANDUM

TO: Honorable Board of Supervisors
   Jeffrey V. Smith, County Executive

FROM: James R. Williams, County Counsel
       Greta S. Hansen, Chief Assistant County Counsel
       Mary E. Hanna-Weir, Deputy County Counsel
       Jeremy A. Avila, Deputy County Counsel

RE: County-Level Domestic Partnership Registry
    Off-Agenda Response to Board Referral from December 17, 2019, Item No. 17

DATE: March 2, 2020

EXECUTIVE SUMMARY

This memorandum responds to the December 17, 2019 referral from the Board of Supervisors to Administration brought forward by Supervisor Cortese to research and analyze the possible creation of a voluntary County registry for domestic partnerships similar to those offered by other city and county governments, as well as options relating to how the County could honor domestic partnerships certifications with respect to employee benefits.

Prior to the expansion of California’s current domestic partnership laws, several cities and counties in California created local domestic partner registries to provide residents with the ability to obtain a locally recognized domestic partnership where the State would not recognize their partnership. Since that time, state law has been amended to significantly expand the scope of partnerships that can be recognized at the state level, and to our knowledge, there is no longer any significant number of persons who are unable to have their partnership legally recognized by the state. Because the current breadth and scope of California’s domestic partnership laws would likely render a County-level registry duplicative of State-level domestic partnership, and could potentially confuse residents seeking domestic partnerships, we do not recommend that the County create its own domestic partner registry.
If the Board wishes to expand access to State domestic partnerships to residents of the County, the Board could consider a referral requesting Administration report to the Board on whether the Office of the Clerk-Recorder can offer services to assist with processing paperwork for individuals to file for a California State-recognized domestic partnership.

BACKGROUND AND ANALYSIS

A. Domestic Partnerships in California

Two individuals can obtain a domestic partnership at either the state or local level, as further discussed below.

1. Domestic Partnerships Under State Law

California domestic partnerships were first created in 1999 as a legal relationship analogous to marriage.¹ Because same-sex marriages were not legally recognized in California until the events that led to the legal challenges in In re Marriage Cases, 43 Cal.4th 757 (2008) and Hollingsworth v. Perry, 570 U.S. 693 (2013), domestic partnerships were an effective way under state law to extend the rights and benefits of opposite-sex marriage to same-sex couples or those who were otherwise eligible.

From their first enactment to December 2019, domestic partnerships were available only to same-sex couples of any age over 18 and to opposite-sex couples where one or both parties were over age 62.² On July 30, 2019, however, Governor Newsom signed SB 30 into law, which expanded access to domestic partnerships to any two consenting adults regardless of their age or sex who are legally eligible to be married in California.³ As a result, marriage and domestic partnership are virtually identical now under California law and offer virtually the same legal benefits.⁴ Some differences remain in how federal law addresses marriages compared to domestic partnerships, such as differences in how the Internal Revenue Service assesses the impact on taxable income of health insurance benefits offered through an employer that are extended to a spouse versus comparable benefits extended to a domestic partner.⁵

---

Obtaining a state-level domestic partnership is relatively easy—both parties need only file a completed, signed, and notarized Declaration of Domestic Partnership, along with the processing fee, with the California Secretary of State. Once processing is complete, the Declaration of Domestic Partnership is returned to the parties along with a Certificate of Registration of Domestic Partnership.

2. Local Jurisdiction Domestic Partnerships

Because registered domestic partnerships were not available at the State level until roughly 20 years ago, and because the State definition of domestic partnership was relatively narrow before enactment of SB 30, some local jurisdictions within California acted to create and offer their own domestic partnerships.

For example, in 1984, the Berkeley City Council adopted a policy that extended employee benefits for its employees to domestic partners as a means of addressing the unequal treatment of same-sex and opposite-sex couples. Under this policy, a City employee who was in a same-sex, cohabitating relationship could include his or her partner under the City’s employee benefits in the same way that a City employee in an opposite-sex marriage could. In 1991, the Berkeley City Council expanded its policy to include the general public regardless of age or sexual orientation. This change effectively made Berkeley’s domestic partner program broader and more inclusive than what the State offered until SB 30.

Despite the breadth and scope of Berkeley’s program, and the relatively parallel eligibility requirements, it is not the same as a domestic partnership under California law. As a result, someone who registered for a domestic partnership with Berkeley, but not with California, would not be eligible for the same rights and benefits guaranteed by a State-recognized domestic partnership. The same is true of any other local jurisdiction that offers its own local domestic partnership program, such as the City and County of San Francisco, which similarly warns residents that its program is not the same as a domestic partnership under California State law.

---

6 Cal. Fam. Code § 297(b); see also California Secretary of State, Domestic Partners Registry, Frequently Asked Questions, https://www.sos.ca.gov/registries/domestic-partners-registry/frequently-asked-questions/.


10 Ibid.

3. Effects of Overlapping Laws

The differences between State and local laws carries potentially significant consequences. Because a local jurisdiction’s registry or program is independent of the State, someone who files for domestic partnership with a local jurisdiction only is not entitled to the same legal rights or protections as someone who did so with the State. The warnings offered by Berkeley and San Francisco illustrate this potential, and the impact of this confusion can be significant. For example, if a couple registers their domestic partnership with their local jurisdiction but not with the State, and one partner later dies, the surviving individual is not entitled to survivor benefits under State law and so would only have access to those benefits that an employer chose to extend further than the State requires. The same surviving partner would also not be eligible for or entitled to whatever other rights normally are afforded in a State-recognized domestic partnership because the State would not have any record of such a relationship. Our Office is aware of instances of County employees whose registered domestic partners were unable to access County death benefits because the domestic partnership was local in nature rather than registered with the California Secretary of State.

B. Where the County Can Act

While we recommend against a County-level registry like those in Berkeley or San Francisco, there is still room for leadership and action at the County level. In addition to its locally focused duties, the County Office of the Clerk-Recorder offers services typically provided by other government agencies. For example, County residents may schedule appointments with the Office of the Clerk-Recorder to apply for a passport, a service typically provided at a federal government building, or for marriage licenses.

In order to supplement the services currently offered, the Office of the Clerk-Recorder could assist County residents with the preparation and mailing of State-level domestic partnerships. This service would be substantially similar to the work staff already performs with respect to marriage licenses or passports but would widen the range of available options or services. County staff would assist residents by preparing the State-required Declaration of Domestic Partnership, notarizing the form, and mailing it to the Secretary of State. This would provide County residents with an added service and create parity with how the County processes marriage licenses.

12 See e.g. City of Berkeley, City Clerk, Domestic Partnership FAQs, https://www.cityofberkeley.info/Clerk/Home/Domestic_Partnership_FAQs.aspx; California Secretary of State, Domestic Partners Registry, Frequently Asked Questions, https://www.sos.ca.gov/registries/domestic-partners-registry/frequently-asked-questions/

County Counsel has conferred with the Office of Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Affairs in preparing this response. The Office of LGBTQ Affairs similarly concluded that a local domestic partnership registry would not confer significant benefits and may lead to confusion as highlighted above.

**CONCLUSION**

The breadth and inclusivity of California’s current domestic partnership law effectively renders local registries moot. Such local registries also potentially contribute to confusion by residents because registration solely at the local level does not provide all of the benefits available through registration at the State level. For these reasons, we do not recommend creation of a local domestic partnership registry. The County can, however, assist in the preparation and mailing of State-level domestic partnership paperwork in similar fashion to the marriage license and passport services currently available through the Office of the Clerk-Recorder. Doing so would close a gap in the services currently offered and would allow the County to further assist its residents.

c: Miguel Márquez, Chief Operating Officer  
Maribel Martinez, Director of the Office of LGBTQ Affairs  
Gina Alcomendras, County Clerk-Recorder