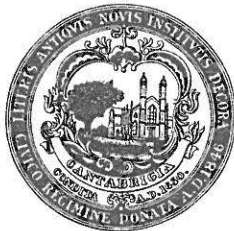


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CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
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December 21, 2020

Louis A. DePasquale
City Manager
City of Cambridge
City Hall, 795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Re: Response to Order No. O-8 of July 27, 2020 Seeking Review of Proposed Amendments to Chapter 2.119 of the Municipal code (the "Domestic Partnership Ordinance")

Dear Mr. DePasquale:

I write in response to Order No. O-8 of July 27, 2020 which requests that "the City Manager be and hereby is requested to confer with the City of Cambridge Law Department to review the above changes to the language of the Domestic Partnerships Ordinance and confer with the City's LGBTQ+ Commission (the "Commission") for their input and suggestions to the proposed ordinance and report back to the Council."

I. The City Council's Proposed Amendments to the Ordinance.

The proposed amendments to Chapter 2.119 of the Municipal Code (the "Domestic Partnership Ordinance" or the "Ordinance") are as follows (the proposed amendments are shown in bold and in strikethrough where a deletion is proposed):

2.119.020(D). "Domestic partnership" means the entity formed by two **or more** persons who meet the following criteria and jointly file a registration statement proclaiming that:

1. They are in a relationship of mutual support, caring and commitment and intend to remain in such a relationship; and
2. ~~They reside together;~~ and
3. They are not married **to anyone outside the partnership;** and

4. They are not related by blood closer than would bar marriage in the Commonwealth of Massachusetts; and
5. ~~They are each other's sole domestic partner;~~ **They are not in a domestic partnership with others outside this partnership;** and
6. They are competent to contract; and
7. They consider themselves to be a family.

2.119.020(E). Subsequent to the filing of a registration form, the existence of a "family" relationship may be shown by evidence relevant to the following factors:

1. The manner in which the people live their daily lives;
2. How they hold their relationship out to the world;
3. Their emotional and financial commitment;
4. Their reliance on each other for daily family services;
5. ~~The longevity and exclusivity of their relationship;~~ and
6. Any other factors which may be relevant.

We are aware of no legal authority that dictates the above revisions cannot be made, and it is a policy decision for the City Council to determine whether to approve the above proposed amendments. We have attached a revised draft of the Ordinance which incorporates the above proposed changes to Sections 2.119.020(D)(3) and (5) and 2.119.020(E) of the Ordinance.

II. The Commission's Recommended Revisions to the Ordinance.

We have also conferred with the Commission on its recommended revisions to the Ordinance. The Commission sought a legal opinion from the City Solicitor as to whether the following proposed amendments to the Ordinance are advisable: 1) revise Sections 2.119.020(D)(3) and 2.119.020(D)(5) of the Ordinance to “. . . allow a person to enter into multiple domestic partnerships and enter into both marriage and domestic partnership . . .”; 2) delete 2.119.020(D)(2) in order to “remove the requirement for domestic partners to reside together”; 3) delete Section 2.119.020(E)(2) in order to “remove the requirement for partners to provide evidence of ‘how they hold their relationship out into the world’”; and 4) “change the wording of termination in [Sections] 2.119.030 C. D. and E. so that a Domestic Partnership doesn't terminate if a partner leaves or dies and there are still 2 or more remaining partners.”

A. Proposed Revision to Allow Married Persons to Enter Into Domestic Partnerships and to Allow For Multiple Domestic Partnerships.

With respect to the Commission's questions as to revising Sections 2.119.020(D)(3) and 2.119.020(D)(5) of the Ordinance to “. . . allow a person to enter into multiple domestic partnerships and enter into both marriage and domestic partnership . . .”, we have not found any legal authority that indicates the City Council does not have the authority to amend the Ordinance in order to permit an individual to enter into multiple domestic partnerships, or to allow for married individuals to also register for a domestic partnership. Please note, however, that the City Council has proposed amending Section 2.119.020(D)(3) to read “They are not married to anyone outside the partnership” and proposed amending Section 2.119.920(D)(5) of

the Ordinance by deleting the existing language and replacing same with “They are not in a domestic partnership with others outside this partnership”; ultimately, these proposed changes are a question of policy for the City Council.

B. Removal of Requirement that Individuals in a Domestic Partnership Reside Together.

We have found no legal authority indicating that individuals in a domestic partnership must reside together in the same home. Therefore, it is a question of policy as to whether the City Council wishes to include such a requirement in the Ordinance, as there does not appear to be a legal impediment to the Commission’s recommendation that 2.119.020(D)(2) be revised in order to “remove the requirement for domestic partners to reside together”. We have made this proposed change to Section 2.119.020(D)(2) of the Ordinance in the attached document.

C. Removal of the Requirement for Partners to Provide Evidence of How they Hold Their Relationship Out Into the World.

The deletion of Section 2.119.020(E)(2) which permits those seeking to file a domestic partnership registration form with the City to show by evidence “how they hold their relationship out into the world” would remove one potential avenue of an individual seeking to register for a domestic partnership to provide evidence of their relationship. Thus, as a practical matter, the removal of Section 2.119.020(E)(2) would remove the possibility of an applicant providing evidence of their relationship by submitting, for example, a witness statement from a friend, neighbor, or other person who is aware of their relationship, and thus could deprive an applicant of a method of providing evidence of their relationship. Section 2.119.020(E) provides that: “Subsequent to the filing of a registration form, the existence of a “family” relationship may be shown by evidence relevant to the following factors: 1) the manner in which the people live their daily lives; 2) how they hold their relationship out to the world; 3) their emotional and financial commitment; 4) their reliance on each other for daily family services; 5) the longevity and exclusivity of their relationship; and 6) any other factors which may be relevant.”

The Committee’s proffered reason for recommending deletion of “how they hold their relationship out to the world” is that “[p]olyamory is stigmatized (people may face employment issues, loss of child custody, for example) and the City should not require people to out themselves.” However, the filing of a registration form for a domestic partnership is a public act in order to facilitate, among other things, the City’s provision of municipal services to certain individuals. The filing of a registration form provides notice to the general public, and to those rendering municipal services, that those identified in the registration form are members of a domestic partnership. Removing this option of providing evidence of a family relationship would likely be found to derogate from the intent of the Ordinance, i.e., to facilitate the provision of municipal services by City departments or by entities subject to the City’s regulation. Because this part of the Ordinance is optional and not mandatory, we do not believe it would be viewed as a legal impediment to individuals applying for a domestic partnership. As a result, we have not made this proposed change in the attached document.

D. Removal of Termination Upon Death of an Individual in the Partnership.

The Commission also proposes the following: “change the wording of termination in [Sections] 2.119.030 C, D, and E so that a Domestic Partnership doesn’t terminate if a partner leaves or dies and there are still 2 or more remaining partners.” However, when one individual in a domestic partnership dies, the membership of that partnership becomes irreparably changed by the death of that individual in that each of the original members of the partnership no longer exist. While the remaining individuals in such a partnership may elect to continue existing in a domestic partnership, that new partnership no longer includes all of the original participants in the original partnership as one of those individuals is deceased, and thus, the membership in the partnership is forever changed. We therefore believe that this recommended change is inadvisable as it may constitute a legal deformity for that reason, and as a result, we have not made this proposed change in the attached document. (We also note that if the remaining members wanted to create a new domestic partnership with the surviving partner(s), they would be able to apply to create a new domestic partnership under the Ordinance.) Ultimately, this is a policy decision for the City Council.

E. Removal of the Six-Month Waiting Period to File a New Application for Domestic Partnership After Voluntary Termination.

The Chair of the Commission (the “Chair”) asked for a legal opinion as to whether the six-month waiting period outlined in 2.119.030(E) which requires that “. . . if a domestic partnership is terminated by one or both domestic partners, neither domestic partner may file another domestic partnership until six months have elapsed from termination” may be deleted or replaced with a ninety day requirement; the Chair also asked that appropriate changes be made to Section 2.119.030(E) to reflect that a terminated partnership may have contained more than two individuals. We have found no legal authority which dictates that the six-month waiting period after voluntary termination of partnerships may not be deleted. There is a six-month waiting period after filing a complaint for a divorce under G. L. c. 208, § 1B, however, Chapter 208 applies to marriages and divorce, not to domestic partnerships. Therefore, it is a policy decision for the City Council as to whether to amend the Ordinance to remove the six-month waiting period and/or amend the Ordinance to include a shorter waiting period to file a new application for a domestic partnership after voluntary termination of a partnership. We have made this proposed change to Section 2.119.030(E) of the Ordinance (as well as changes to reflect the fact that more than two individuals may have been in the terminated partnership) in the attached document. As noted above, it is a policy decision for the City Council to decide whether to amend the Ordinance to allow more than two individuals to file a domestic partnership.

As noted above, the City Council’s proposed amendments to the Ordinance are included in the attached document for your review and consideration; the Commission’s proposed revisions to Sections 2.119.020(D)(2) and 2.119.030(E) are also shown in the attached document.

If you have any further questions concerning the above matters, please do not hesitate to contact me.

Very truly yours,



Nancy E. Glowa
City Solicitor

Enclosure: Proposed Amendments to Chapter 2.119
of the Municipal Code