

Memorandum



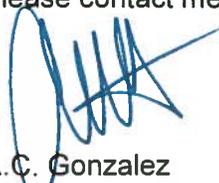
DATE November 27, 2013

TO Members of the Budget, Finance & Audit Committee: Jerry R. Allen (Chair),
Jennifer Staubach Gates (Vice Chair), Tennell Atkins, Sheffie Kadane,
Philip T. Kingston

SUBJECT Status on Defense of Marriage Act (DOMA) Impact

The Monday, December 2, 2013, Budget, Finance and Audit Committee agenda will include a briefing on the Status on Defense of Marriage Act (DOMA) Impact. The briefing will be presented by Theresa O'Donnell, Interim Assistant City Manager.

Please contact me if you need additional information.



A.C. Gonzalez
Interim City Manager

Attachment

c: Honorable Mayor and Members of the City Council	Jill A. Jordan, P.E., Assistant City Manager
Rosa A. Rios, City Secretary	Forest E. Turner, Assistant City Manager
Warren M.S. Ernst, City Attorney	Joey Zapata, Assistant City Manager
Daniel F. Solis, Administrative Judge	Charles M. Cato, Interim Assistant City Manager
Craig D. Kinton, City Auditor	Theresa O'Donnell, Interim Assistant City Manager
Ryan S. Evans, Interim First Assistant City Manager	Jeanne Chipperfield, Chief Financial Officer
	Frank Libro, Public Information Officer
	Elsa Cantu, Assistant to the City Manager

The Status of the Defense of Marriage Act (DOMA) and Its Impact

Budget, Finance and Audit Committee
December 2, 2013



Background

- ▶ June 12, 2013 - City Council meeting
 - LGBT leaders were in attendance and several speakers addressed the City Council
 - At issue was a proposed “Resolution for Marriage Equality and Employment Non-discrimination” resolution for LGBT persons
- ▶ Determination that the resolution was not appropriately placed on the agenda for Council consideration and action at that time
- ▶ Chair of the Budget, Finance and Audit Committee agreed to bring the issue to committee

Time of Rapid Change

- ▶ Since June, a number of significant changes have occurred that impact the issue of marriage equality throughout the country
- ▶ Foremost among these was the June 26, 2013 Supreme Court ruling that struck down DOMA as unconstitutional
- ▶ Interpretations and rule changes by Federal agencies have been significant since that time

Significant Changes

- ▶ Sixteen (16) states and Washington DC have passed legislation supporting marriage equality
- ▶ In August, the Department of the Treasury and the IRS ruled that same-sex, legally married couples will be treated as married for federal tax purposes regardless of where they live
- ▶ Attorney General Eric Holder announced that the Obama administration will extend Veteran Benefits to same-sex married couples
- ▶ In November, the U.S. Senate passed Employment Non-Discrimination Act of 2013 (ENDA)

Questions Raised

A number of questions have been raised since leaders of the LGBT community came before City Council last June -

- ▶ What should be the City's response to these changes and is now an appropriate time?
- ▶ Are the current ordinances and policies sufficient in light of the changing landscape?
- ▶ How can the City acknowledge and recognize LGBT individuals, couples and families?

Thoughtful and Informed Approach

- ▶ Importance of providing education and information on this topic
- ▶ Dialogue about concerns and issues impacting the LGBT community
- ▶ Understand and discuss requests for recognition and acknowledgement by the LGBT community leaders
- ▶ Consideration of programs, protections or enforcement provisions that may be appropriate

First Step - Status of the Law

- ▶ The current legal framework underscores the complexity of this issue, particularly in Texas
- ▶ Review of Federal, State and municipal laws and their impact on LGBT individuals, couples and families presented by John Rogers, City Attorney's Office

Dallas City Law

- ▶ Dallas City Code §2-17.3: “The city of Dallas will not discriminate because of a person’s race, color, age, religion, sex, marital status, sexual orientation, national origin, disability, political opinions, or affiliations in the provision of services to the general public.”

Dallas City Law

▶ Dallas City Code §34-35:

- “(a) City management may not discharge an individual, fail or refuse to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of the individual's race, color, age, religion, sex, marital status, sexual orientation, national origin, disability, political opinions, or affiliations. . . .
- (b) City management may not limit, segregate, or classify employees or applicants for employment in a way that would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect an employee's status because of the individual's race, color, age, religion, sex, marital status, sexual orientation, national origin, disability, political opinions, or affiliations.”

Dallas City Law

- ▶ Dallas City Code Chapter 46
 - Prohibits discrimination because of sexual orientation in employment, public accommodations, and housing.
 - “It is the policy of the city of Dallas to bring about through fair, orderly, and lawful procedures the opportunity for every person to obtain employment, access to all places of public accommodation, and housing, without regard to sexual orientation. This policy is based upon recognition of the rights of every individual to work and earn wages through gainful employment, to obtain and enjoy goods, services, facilities, privileges, advantages, and accommodations in all places of public accommodation, and to obtain housing. The denial or deprivation of these rights because of sexual orientation is detrimental to the health, safety, and welfare of the citizens of Dallas and is within the power and responsibility of the city to prevent.”

City Law

- ▶ Texas cities that prohibit discrimination on the basis of sexual orientation:
 - Austin
 - Dallas
 - El Paso
 - Fort Worth
 - Houston
 - San Antonio

City Law

- ▶ Local governments that provide domestic partner benefits to same-sex employees:
 - Austin
 - Dallas
 - Dallas County
 - El Paso
 - El Paso County
 - Fort Worth
 - Pflugerville ISD
 - San Antonio
 - Travis County

City Law

- ▶ Local governments that have adopted marriage equality resolutions:
 - Austin
 - Durham, North Carolina
 - Atlanta
 - Santa Fe
 - Palm Springs, California
 - Cathedral City, California
 - Red Bank, New Jersey

- ▶ Entities that have adopted marriage equality resolutions:
 - Palm Springs, California (Human Rights Commission)
 - American Federation of State, County, and Municipal Employees (AFSCME)
 - New Jersey Commission on Civil Rights
 - NAACP
 - American Psychological Association (APA)

Texas State Law

- ▶ Texas Constitution Article I, Section 32:
 - "(a) Marriage in this state shall consist only of the union of one man and one woman.
 - (b) This state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage."

Texas State Law

- ▶ Texas Family Code 6.204(c):
 - (b) A marriage between persons of the same sex or a civil union is contrary to the public policy of this state and is void in this state.
 - (c) The state or an agency or political subdivision of the state may not give effect to a:
 - (1) public act, record, or judicial proceeding that creates, recognizes, or validates a marriage between persons of the same sex or a civil union in this state or in any other jurisdiction; or
 - (2) right or claim to any legal protection, benefit, or responsibility asserted as a result of a marriage between persons of the same sex or a civil union in this state or in any other jurisdiction.

Texas State Law

- ▶ Texas Attorney General Opinion GA-1003: “Article I, section 32 of the Texas Constitution prohibits political subdivisions from creating a legal status of domestic partnership and recognizing that status by offering public benefits based upon it.”

Texas State Law

- ▶ In Re Marriage of J.B. and H.B.
 - In October 2009, a Dallas district court granted a divorce to a same-sex couple married in Massachusetts.
 - The Dallas Court of Appeals reversed.
- ▶ State of Texas v. Naylor and Daly
 - In 2011, an Austin district court granted a divorce to a same-sex couple married in Massachusetts.
 - The Austin Court of Appeals rejected the Texas Attorney General's appeal of the decision.
- ▶ Both cases are pending before the Texas Supreme Court.

State Law

- ▶ States that allow same-sex marriage:
 - California
 - Connecticut
 - Delaware
 - District of Columbia
 - Hawaii
 - Iowa
 - Illinois
 - Maine
 - Maryland
 - Massachusetts
 - Minnesota
 - New Hampshire
 - New Jersey
 - New York
 - Rhode Island
 - Vermont
 - Washington
 - Five Native American tribes

State Law

- ▶ States that allow same-sex civil unions or domestic partnerships:
 - California
 - Colorado
 - Delaware
 - Hawaii
 - Illinois
 - Maine
 - New Jersey
 - Oregon
 - Rhode Island
 - Washington
 - District of Columbia
 - Nevada
 - Wisconsin

Federal Law

- ▶ Defense of Marriage Act (DOMA):
 - “(2) No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.
 - (3) Definition of marriage in determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife.” (Section 3 is unconstitutional)

Federal Law

- ▶ United States v. Windsor
 - A surviving same-sex spouse, legally married in New York, was subject to federal inheritance tax as if she was unmarried.
 - The U.S. Supreme Court declared Section 3 of DOMA unconstitutional, stating: “DOMA is unconstitutional as a deprivation of the equal liberty of persons that is protected by the Fifth Amendment.”

Federal Law

▶ Hollingsworth v. Perry

- Proposition 8 amended the California constitution to prohibit same-sex marriage after it was previously allowed.
- U.S. District Court of California: Proposition 8 violates due process and equal protection. “Proposition 8 finds support only in . . . disapproval [and] As such, Proposition 8 is beyond the constitutional reach of the voters and their representatives.”
- Ninth Circuit: “Proposition 8 serves no purpose, and no effect, other than to lessen [same-sex] status and human dignity . . . and to officially reclassify their relationships and families as inferior. . . [thereby] subject[ing] a minority group to deprivation of an existing right without a legitimate reason. . . . The Constitution simply does not allow for ‘laws of this sort’.”
- U.S. Supreme Court: Supporters of Proposition 8 lacked standing to appeal, so decision of the U.S. District Court is the final decision.

Federal Law

- ▶ IRS Revenue Ruling 2013-17:
 - “For Federal tax purposes, the terms ‘spouse,’ ‘husband and wife,’ ‘husband,’ and ‘wife’ include an individual married to a person of the same sex if the individuals are lawfully married under state law, and the term ‘marriage’ includes such a marriage between individuals of the same sex.
 - “For Federal tax purposes, the [IRS] adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.”

Federal Law

- ▶ U.S. Department of Labor Technical Release 2013-04: Guidance to Employee Benefit Plans
 - “[T]he term "spouse" will be read to refer to any individuals who are lawfully married under any state law, including individuals married to a person of the same sex who were legally married in a state that recognizes such marriages, but who are domiciled in a state that does not recognize such marriages.”
 - “[T]he term "marriage" will be read to include a same-sex marriage that is legally recognized as a marriage under any state law.”
 - “A rule that recognizes marriages that are valid in the state in which they were celebrated, regardless of the married couple's state of domicile, provides a uniform rule of recognition that can be applied with certainty by stakeholders, including employers, plan administrators, participants, and beneficiaries.”

Federal Law

- ▶ Benefits and protections of marriage
 - According to the U.S. General Accounting Office, there are 1,138 provision of federal law in which benefits, rights, or privileges are contingent on marital status.
 - Marital status can affect:
 - Agricultural price supports and loans
 - Bankruptcy
 - Child adoption
 - Consumer fees: Memberships, insurance rates, tuitions, discounts
 - Crime victim benefits
 - Disability benefits
 - Divorce – division of property, alimony, child support, or child custody
 - Domestic violence protection
 - Educational loans
 - Emergency medical decisions
 - Employee benefits
 - Family medical leave act

Federal Law

- Marital status can affect: (continued)
 - Foster children
 - Funeral arrangements
 - Health insurance
 - Hospital visitation
 - Housing assistance
 - Immigration and naturalization
 - Income taxes
 - Inheritance and estates
 - Medicare and medicaid benefits
 - Military or veteran's benefits
 - Pension benefits
 - Privilege for communications between spouses in court cases
 - Social security benefits
 - Workers compensation
 - Wrongful death or personal injury

International Law

- ▶ Countries that allow same-sex marriage:
 - Argentina
 - Belgium
 - Brazil
 - Canada
 - Denmark
 - France
 - Iceland
 - Netherlands
 - New Zealand
 - Norway
 - Portugal
 - Spain
 - South Africa
 - Sweden
 - Uruguay
 - Mexico
 - United Kingdom (England and Wales)

International Law

- ▶ Countries that allow civil unions or domestic partnerships:
 - Andorra
 - Australia
 - Colombia
 - Croatia
 - Czech Republic
 - Finland
 - Germany
 - Hungary
 - Ireland
 - Israel
 - Liechtenstein
 - Luxembourg
 - Slovenia
 - Switzerland
 - United Kingdom

Next Steps - Briefings

- ▶ Dallas' ENDA ordinance and its enforcement
- ▶ Discussion of the financial benefits and protections now available to LGBT couples and families