

Memorandum



DATE January 3, 2014

TO Budget, Finance and Audit Committee Members: Jerry Allen, Chair, Jennifer Staubach Gates, Vice-Chair, Tennell Atkins, Mayor Pro Tem, Sheffie Kadane, and Philip T. Kingston

SUBJECT Financial Benefits and Protections of Marriage

On Monday, January 6, 2014, you will be briefed on Financial Benefits and Protections of Marriage. A copy of the briefing is attached.

Please let me know if you have any questions.



Theresa O'Donnell
Interim Assistant City Manager

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



City of Dallas

Financial Benefits and Protections of Marriage

Budget, Finance and Audit Committee

January 6, 2014



Rights and Benefits Construed by Marriage

The U.S. General Accounting Office compiled a list of rights and benefits which were related to civil marriage:

- ▶ GAO has identified 1,138 federal rights, benefits and privileges connected to marital status.
- ▶ These rights are not given to people who cannot marry, to people who in civil unions, or to people in registered domestic partnerships.

Rights and Benefits Construed by Marriage

- ▶ These federal rights were unavailable to legally married, same-gender couples prior to the Supreme Court ruling in the DOMA case, *United States v. Windsor*.
- ▶ Many of these federal rights are still unavailable to the majority of same-gender couples in the 33 states that prohibit gay marriage.
 - *Some of these rights are available to legally married couples regardless of where they reside.*
 - *Some of these rights are available only if legally married couples reside in a state that recognizes gay marriage.*

Categories of Rights and Benefits

- ▶ The GAO list is organized into thirteen categories of rights and benefits*, including:
 - Social Security and related programs, housing, and food stamps
 - Veterans' benefits
 - Taxation
 - Federal civilian and military service benefits
 - Employment benefits and related laws
 - Immigration, naturalization, and aliens
 - Trade, commerce, and intellectual property
 - Financial disclosure and conflict of interest

*(*see Appendix A for brief description of each category)*

Overview of Most Common Benefits

- ▶ Tax
- ▶ Estate planning
- ▶ Government benefits
- ▶ Employment benefits
- ▶ Medical benefits
- ▶ Death benefits
- ▶ Family benefits
- ▶ Consumer benefits

Tax Benefits

- ▶ Filing joint income tax returns with the IRS and state taxing authorities
- ▶ IRS Revenue Ruling 2013-17 - treats same-gender couples as married if they are married in any of the 17 states that recognize same-sex marriage, even if they live in a state that prohibits same-sex marriage.
- ▶ Creating a "family partnership" under federal tax laws, which provides the ability to divide business income among family members

Tax Benefits

- ▶ While the distinction between married and unmarried status is pervasive in federal tax law, terms such as "husband," "wife," or "married" are not defined.
- ▶ Marital status figures in federal tax law in provisions as basic as those giving married taxpayers the option to file joint or separate income tax returns.
- ▶ It is also seen in the related provisions prescribing different tax consequences, depending on whether a taxpayer is married filing jointly, married filing separately, unmarried but the head of a household, or unmarried and not the head of a household.

Estate Planning Benefits

- ▶ Inheriting a share of your spouse's estate
- ▶ Receiving an exemption from both estate taxes and gift taxes for all property you give or leave to your spouse
- ▶ Creating life estate trusts that are restricted to married couples and marital deduction trusts
- ▶ Obtaining priority if a conservator needs to be appointed for your spouse -- that is, someone to make financial and/or medical decisions on your spouse's behalf

Government Benefits

- ▶ Receiving Social Security, Medicare, and disability benefits for spouses
- ▶ Receiving veterans' and military benefits for spouses, such as those for education, medical care, or special loans
- ▶ Receiving public assistance benefits

Employment Benefits

- ▶ Obtaining insurance benefits through a spouse's employer
- ▶ Taking family leave to care for your spouse during an illness
- ▶ Receiving wages, workers' compensation, and retirement plan benefits for a deceased spouse
- ▶ Taking bereavement leave if your spouse or one of your spouse's close relatives dies

Medical Benefits

- ▶ Visiting your spouse in a hospital intensive care unit or during restricted visiting hours in other parts of a medical facility
- ▶ Making medical decisions for your spouse if he or she becomes incapacitated and unable to express wishes for treatment

Death Benefits

- ▶ Consenting to after-death examinations and procedures
- ▶ Making burial or other final arrangements

Family Benefits

- ▶ Filing for step-parent or joint adoption
- ▶ Applying for joint foster care rights
- ▶ Receiving equitable division of property in a divorce
- ▶ Receiving spousal or child support, child custody, and visitation in a divorce

Consumer Benefits

- ▶ Receiving family rates for health, homeowner's, auto, and other types of insurance
- ▶ Receiving tuition discounts and permission to use school facilities
- ▶ Other consumer discounts and incentives offered only to married couples or families

Legal Actions

- ▶ Suing a third person for wrongful death of a spouse and loss of consortium (loss of intimacy)
- ▶ Suing a third person for offenses that interfere with the success of your marriage, such as alienation of affection and criminal conversation (these laws are available in only a few states)
- ▶ Claiming the marital communications privilege, a court cannot force a person to disclose the contents of confidential communications between married spouses
- ▶ Receiving crime victims' recovery benefits if your spouse is the victim of a crime
- ▶ Visiting rights in jails and other places where visitors are restricted to immediate family

Appendix A

US Government Accountability Office

- ▶ Description of 13 categories of rights and benefits

Defense of Marriage Act: Update to Prior Report

- GAO-04-353R January 23, 2004
- www.gao.gov

Social Security and related benefits

This category includes the major federal health and welfare programs, particularly those considered entitlements, such as Social Security retirement and disability benefits, food stamps, welfare, and Medicare and Medicaid.

Veterans' Benefits

Spouses of veterans have many rights and privileges by virtue of the marital relationship.

Veterans' benefits include:

- Pensions
- Indemnity compensation for service-connected deaths
- Medical care
- Nursing home care
- Right to burial in veterans' cemeteries
- Educational assistance
- Housing assistance

Federal Civilian and Military Service Benefits

- ▶ This category includes statutory provisions dealing with current and retired federal officers and employees, members of the Armed Forces, elected officials, and judges, in which marital status is a factor.
- ▶ Typically these provisions address the various health, leave, retirement, survivor, and insurance benefits provided by the United States to those in federal service and their families.

Employment Benefits and Related Provisions

- ▶ Marital status comes into play in many different ways in federal laws relating to employment in the private sector.
- ▶ Other provisions includes laws that address the rights of employees under employer-sponsored employee benefit plans; that provide for continuation of employer-sponsored health benefits after events like the death or divorce of the employee; and that give employees the right to unpaid leave in order to care for a seriously ill spouse.
- ▶ In addition, Congress has extended special benefits in connection with certain occupations, like mining and public safety.

Immigration, Naturalization and Aliens

- ▶ This category includes federal statutory provisions governing the conditions under which noncitizens may enter and remain in the United States, be deported, or become citizens.
- ▶ The law gives special consideration to spouses of immigrant and non-immigrant aliens in a wide variety of circumstances.
- ▶ Under immigration law, aliens may receive special status by virtue of their employment, and that treatment may extend to their spouses.
- ▶ Spouses of aliens granted asylum can be given the same status if they accompany or join their spouses.
- ▶ Obtaining immigration and residency benefits for noncitizen spouse

Indigenous Peoples

- ▶ The indigenous peoples of the United States have long had a special legal relationship with the federal government through treaties and laws.
- ▶ The law also outlines the descent and distribution rights for property.
- ▶ In addition, there are laws pertaining to health care eligibility for indigenous people and spouses and reimbursement of travel expenses of spouses and candidates seeking positions in the Indian Health Service.

Trade, Commerce, and Intellectual Property

- ▶ This category includes provisions concerning foreign or domestic business and commerce, including the National Housing Act (rights of mortgage borrowers); the Consumer Credit Protection Act (governs wage garnishment); and the Copyright Act (spousal copyright renewal and termination rights).
 - Bankruptcy
 - Banks and Banking
 - Commerce and Trade
 - Customs Duties

Financial Disclosure and Conflict of Interest

- ▶ Federal law imposes obligations on members of Congress, employees or officers of the federal government, and members of the boards of directors of some government-related or government chartered entities, to prevent actual or apparent conflicts of interest.
- ▶ These individuals are required to disclose publicly certain gifts, interests, and transactions.
- ▶ Many of these requirements, which are found in 16 different titles of the United States Code, apply also to the individual's spouse.

Crimes and Family Violence

- ▶ This category includes laws that implicate marriage in connection with criminal justice or family violence. The nature of these provisions varies greatly. Some deal with spouses as victims of crimes, others with spouses as perpetrators.

Loans, Guarantees and Payments in Agriculture

- ▶ Under many federal loan programs, a spouse's income, business interests, or assets are taken into account for purposes of determining a person's eligibility to participate in the program.
- ▶ In other instances, marital status is a factor in determining the amount of federal assistance to which a person is entitled or the repayment schedule.
- ▶ This category includes education loan programs, housing loan programs for veterans, and provisions governing agricultural price supports and loan programs that are affected by the spousal relationship

Federal Natural Resources

- ▶ Federal law gives special rights to spouses in connection with a variety of transactions involving federal lands and other federal property.
- ▶ These transactions include purchase and sale of land by the federal government and lease by the government of water and mineral rights

Miscellaneous Provisions

- ▶ This category comprises federal statutory provisions that do not fit readily in any of the other 12 categories.
- ▶ Federal provisions that prohibit discrimination on the basis of marital status are included in this category.
- ▶ This category also includes various patriotic societies chartered in federal law, such as the Veterans of Foreign Wars or the Gold Star Wives of America.

Next Steps

- ▶ Identify Committee direction on future actions and appropriate follow-up