

**DATE:** September 16, 2008  
**TO:** Mayor and City Council  
**FROM:** City Manager  
**SUBJECT:** Consideration of State Proposition 8: Limit on Marriage Amendment

### **RECOMMENDATION**

That Council receives and reviews this report and the attached Resolution, and takes action, if desired.

### **BACKGROUND**

Council asked that this item be brought forward for their consideration.

### **DISCUSSION**

This is a state proposition scheduled for the November 2008 ballot, which, if passed, would add a new section to the California State Constitution (Section 7.5 to Article 1) as follows: "*Only marriage between a man and a woman is valid or recognized in California.*" This new language would be located between the State Equal Protection Clause and nondiscrimination in business and the professions. The text of this amendment is the same as the previously defeated Proposition 22.

Until 1977, California did not explicitly define marriage as only being between a man and a woman. In 1977, the Legislature amended Civil Code 4100 to read that marriage is "...*a personal relation arising out of a civil contract between a man and a woman.*" In 2000, 61.4% of voters passed ballot initiative Proposition 22, which formally defined marriage in California as being between a man and a woman. Simultaneously, other laws have been passed by the State Legislature since 1999, which recognize domestic partnerships (both homosexual and heterosexual), and afford them some of the same rights as marriage.

On May 15, 2008, the California Supreme Court, by a vote of 4-3, ruled in the case of *In re Marriage Cases*<sup>1</sup> to strike down Proposition 22 and all other prohibitions on same-sex marriages as

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<sup>1</sup> *In re Marriage Cases*: In 2004, the California State Supreme Court ordered the City and County of San Francisco to stop issuing marriage licenses to same-sex couples and said that legal action could proceed about whether California's restriction of marriage to different-sex couples violates the State's constitution. Lambda Legal, the National Center of Lesbian Rights and the ACLU promptly filed a lawsuit against the state to win the right to marry for same-sex couples throughout California.

violating the State Constitution, and ordered the State to begin processing same-sex marriages as of June 16, 2008. Opposing groups asked the court to delay the decision's effect until after the November election, arguing voters may approve an initiative to amend the Constitution and reverse the decision. The Court (by the same margin) subsequently refused to issue a stay of its order.

If approved by the voters of California, Proposition 8 would once more restrict marriage by defining it as being only between a man and a woman; and would do so by amending the State Constitution. Same-sex marriages would no longer be legally recognized in the State of California.

### **FISCAL IMPACT**

There is no fiscal impact on the residents and businesses of the City of Hayward; nor is there any revenue benefit to the City of Hayward.

### **PUBLIC CONTACT**

N/A

Prepared by:



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Fran David, Assistant City Manager

Approved by:



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Gregory T. Jones, City Manager

Attachments: Exhibit A, Comparison of Marriage vs. Domestic Partnership in California Resolution

**Comparison of Marriage vs. Domestic Partnership in California<sup>1</sup>**

Domestic partnerships offer many protections for couples and families, and while they are a big step forward, they don't provide the same security as marriage. California still shuts out some people from marriage, creating a two-tiered system at odds with the principle that separate is not equal. Two people doing the work of marriage deserve the respect and support that only come with marriage.

<b>Affected Right</b>	<b>Marriage</b>	<b>Domestic Partnership</b>
<b>Legal Status, Recognition, Portability of Rights</b>	Universally recognized in all 50 states. Includes more than 1000 federal rights and benefits. Legal structure in place to dissolve marriages and divide property equitably.	Not valid outside of the state that grants it. No federal protections. Legal structure to dissolve partnership not guaranteed outside of state. May be dissolved without court ruling under some circumstances.
<b>Social Recognition</b>	Universal societal understanding, honor and respect for the nature of a couple's relationship and commitment.	Not universally understood because benefits vary widely by jurisdiction. Without common understanding of their meaning, domestic partnerships don't provide the same kind of honor and respect that marriages do.
<b>Medical Decisions, Emergencies</b>	Spouses and family members allowed to make decisions for incompetent or disabled person absent written instructions.	Partner's right to visitation and medical decision making may not be recognized out of state.
<b>Family Security</b>	The myriad of laws in place provide security about basic family protections that are socially recognized and won't disappear.	Partners may feel unsure of legal protection, and at the mercy of political whims of elected officials.

<sup>1</sup> This analysis is taken from the website of Let California Ring, a public education coalition of organizations opposing Proposition 8. Members include the American Civil Liberties Union (ACLU), California NAACP, California National Organization for Women (CA NOW), several Gay and Lesbian advocacy groups, and many others: [www.letcaliforniaring.org](http://www.letcaliforniaring.org)

Affected Right	Marriage	Domestic Partnership
<b>Tax Benefits</b>	Guaranteed unlimited transfers and gifts and automatic right to inherit without tax penalties. Able to file federal income taxes jointly.	Large gift transfers and inheritance transactions subject to federal taxes. Federal tax returns filed separately.
<b>Retirement, Leave, and other Family Benefits</b>	Eligible for Social Security, veteran's benefits and pension plan survivor benefits upon death of spouse. Entitled family leave to care for ill spouse.	Do not receive Social Security, veteran's benefits, and pension plan survivor benefits upon death of partner. Not guaranteed equal benefits from employers. Excluded from long-term care benefits. Not guaranteed family leave to care for ill partner.
<b>Spousal and Child Support</b>	Criminal penalties imposed if a spouse abandons a child or spouse.	Outside of state, partners have no legal obligation to support their partner.
<b>Immigration</b>	U.S. citizens can sponsor spouse, family members for immigration.	No benefits for couples in bi-national relationships.
<b>Common Residence</b>	Not required.	Must share common residence.
<b>Name Changes</b>	Allowed upon marriage.	Not allowed without court order.
<b>Privacy</b>	Recorded only at county level with no address on the form.	Maintained by the state with a central, public, and easily-searchable database.

### **By the Numbers: Key Facts about Gay and Lesbian Couples in the U.S.<sup>2</sup>**

- Gay and lesbian couples live in 99.3 percent of all counties nationwide.
- There are an estimated 3.1 million people living together in gay or lesbian relationships in the United States.
- Fifteen percent of these couples live in rural settings.
- Between 1 million and 9 million children are being raised by gay, lesbian and bisexual parents in the United States today.
- The highest percentages of these couples raising children live in the South.
- Nearly one in four gay and lesbian couples includes a partner 55 years old or older, and nearly one in five is composed of two people 55 or older.
- More than one in 10 same-sex couples include a partner 65 years old or older, and nearly one in 10 of these couples is composed of two people 65 or older. The states with the highest numbers of senior gay or lesbian couples are also the most popular for straight senior couples: California, New York and Florida.

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*2 These facts are based on analyses of the 2000 Census conducted by the Urban Institute and the Human Rights Campaign. (See GAY AND LESBIAN FAMILIES IN THE UNITED STATES: SAME-SEX UNMARRIED PARTNER HOUSEHOLDS: A Preliminary Analysis of 2000 United States Census Data. August 22, 2001 by David M. Smith, Communications Director & Senior Strategist, Human Rights Campaign and Gary J. Gates, Ph.D., Population Studies Center, The Urban Institute; Report at [www.hrc.org](http://www.hrc.org))*

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

*Mme*  
*9/11/08*

RESOLUTION URGING ALL VOTERS TO VOTE NO ON  
PROPOSITION 8 ON THE NOVEMBER 4, 2008 BALLOT

WHEREAS, there exists on the November 4, 2008, statewide ballot Proposition 8, which presents a Constitutional Amendment defining marriage in the State of California as being solely and only between a man and woman, and change the State Constitution to read, "Only marriage between a man and a woman is valid or recognized in California"; and

WHEREAS, this ballot initiative is also known as the "Protect Marriage Act", the "Same Sex Marriage Ban", and the "Limit on Marriage Amendment"; and

WHEREAS, such an amendment would deny the same rights and privileges to same-sex partners as provided to opposite-sex couples for example legal rights and protections, tax options, and other formal benefits of legal marriage; and

WHEREAS, since 1999, gay and lesbian couples and opposite-sex couples aged 62 or older have been able to register as domestic partners, affording them many, but not all, of the same responsibilities and benefits of marriage; and

WHEREAS, domestic partnerships are not valid outside the state that grants the partnership, afford no federal protections or rights to the partners, and may be dissolved without court ruling; and

WHEREAS, only recognized marriage affords couples the security of legal rights regarding medical decisions and medical emergencies, including the right to make decisions for incompetent or disabled spouses/partners absent written instructions and to unrestricted "family" visitation while hospitalized; and

WHEREAS, gay and lesbian couples deserve the same fundamental rights and freedoms that all Californians enjoy and the freedom to enter into societal responsibilities such as parenting and legal accountability for the support of their children.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward supports equal rights for all Californians and opposes any attempt to ban same-sex marriage.

