

CITY COUNCIL CONFERENCE
VIRTUAL MEETING HOSTED AT
MUNICIPAL BUILDING COUNCIL CHAMBERS
201 WEST GRAY, NORMAN, OK

<https://zoom.us/j/92277996158?pwd=RWM4UHNoUDFVNW5ldG9aemt0WkZiQT09>

MAY 11, 2021

5:30 P.M.

This is a virtual meeting - Councilmembers Bierman, Foreman, Hall, Holman, Nash, Peacock, Petrone, Councilmember – Elect Studley, Councilmember – Elect Schueler, and Mayor Clark will be appearing via video conference.

1. DISCUSSION REGARDING A PROPOSED CONVERSION THERAPY ORDINANCE FROM THE HUMAN RIGHTS COMMISSION.

It is the policy of the City of Norman that no person or groups of persons shall on the grounds of race, color, religion, ancestry, national origin, age, place of birth, sex, sexual orientation, gender identity or expression, familial status, marital status, including marriage to a person of the same sex, disability, retaliation, or genetic information, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in employment activities or in all programs, services, or activities administered by the City, its recipients, sub-recipients, and contractors. In the event of any comments, complaints, modifications, accommodations, alternative formats, and auxiliary aids and services regarding accessibility or inclusion, please contact the ADA Technician at 405-366-5424, Relay Service: 711. To better serve you, five (5) business days' advance notice is preferred.



office memorandum

DATE: May 6, 2021
TO: Honorable City Councilmembers
FROM: Anthony Purinton, Assistant City Attorney
Cinthy Allen, Chief Diversity and Equity Officer
THROUGH: Kathryn Walker, City Attorney
SUBJECT: Ordinance Prohibiting Use of City Fund for Conversion Therapy

BACKGROUND:

Staff was asked to draft an ordinance prohibiting the expenditure of City funds for conversion therapy. The Norman Human Rights Commission’s continued interest in taking action against the practice resulted in the City adopting a formal resolution in 2019, urging the State of Oklahoma to adopt a statewide ban on conversion therapy to persons under eighteen (18) years of age. (R-1819-85). The subsequent failure of State action on this issue, as well as the City’s annual Municipal Equality Index rating, prompted consideration of this ordinance. During a special meeting on 5/3/21, the Human Rights Commission voted unanimously to recommend that City Council adopt the ordinance, which is attached for your consideration.

DISCUSSION:

The American Psychiatric Association has consistently opposed the practice of conversion therapy since 1998 and issued a public statement in 2013 warning that conversion therapy represents “a significant risk of harm by subjecting individuals to forms of treatment which have not been scientifically validated and by undermining self-esteem when sexual orientation fails to change.” The American Psychological Association, American Academy of Child and Adolescent Psychiatry, and American School Counselor Association also oppose the practice of conversion therapy, concluding that sexual orientation and gender identity change efforts can pose critical health risks to LGBTQ people, including depression, suicide, substance abuse, self-hatred, and a feeling of being dehumanized.

To date, 21 states have enacted some version of a ban on the practice of conversion therapy. In States where there is no ban, municipalities have enacted local ordinances prohibiting the practice. States have adopted two types of approaches to banning conversion therapy: (1) amending the state’s licensing laws to prohibit the practice, or (2) restricting use of government funds for such practices. Local ordinances are more varied in their approach, with some choosing to ban the practice subject to a civil fine and others choosing to ban the practice subject to referral or escalation to the state’s relevant regulatory authority.

Oklahoma has yet to enact legislation banning or allowing conversion therapy, but several attempts have been made on both sides. In 2019, the Human Rights Commission

recommended to City Council that a resolution be adopted urging the Oklahoma State Legislature to pass the Youth Mental Health Protection Act (House Bill 2456), which would have prohibited health care providers from providing conversion therapy to those under the age of eighteen. That bill passed successfully out of committee but was ultimately unsuccessful.

During the 2021 legislative session, the Parental and Family Rights in Counseling Protection Act (House Bill 1004) was introduced. The Act would prevent either a state or political subdivision from restricting counseling that, among other things, is intended to aid with reducing unwanted same-sex attraction or unwanted gender dysphoria. It also prevents the state or political subdivisions from “restrict[ing] the rights of parents” to obtain counseling for their children who experience unwanted same-sex attractions or unwanted gender dysphoria. The bill effectively preempts any City legislation prohibiting or restricting providers from participating in conversion therapy. This bill is likely not viable, as the deadline for the bill to make it past its committee has passed.

The proposed ordinance amendment follows the use-of-funds approach. This approach was used because (1) any fine imposed by the City would necessarily be criminal, rather than civil, in nature; and (2) the City does not have a relevant licensing scheme. The relevant changes amend Chapter 7 of the City’s code, which deals with Civil Rights. The definition of “Conversion therapy” was the only necessary addition and is consistent with almost every definition adopted by other states and municipalities.

There are potential validity concerns with the proposed ordinance. First Amendment precedent is currently unclear as to whether laws prohibiting the practice of conversion therapy violate free speech protections. *See, e.g., Otto v. City of Boca Raton*, 981 F.3d 854 (11th Cir. 2020). Prior to 2018, several appellate courts upheld similar ordinances. However, the Supreme Court’s holding in *National Institute of Family and Life Advocates v. Becerra* invalidated some of the presumptions previously used by those courts, leaving states’ bans on conversion therapy vulnerable to First Amendment invalidation. 138 S. Ct. 2361 (2018). In *Otto*, the first and only post-*Becerra* appellate decision, the Eleventh Circuit invalidated an ordinance banning conversion therapy, using the analysis identified in *Becerra*. Based on this shift in First Amendment precedent, bans in other jurisdictions (such as the Tenth Circuit) remain vulnerable to invalidation.

RECOMMENDATION:

Based on the vote taken during the 5/3/21 special meeting, the Norman Human Rights Commission recommends that City Council adopt these proposed changes. A draft of the proposed ordinance amendments is attached for your review and consideration. Staff will be available at the Council Conference on May 11, 2021, to answer questions and receive feedback and direction.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AMENDING SECTION 7-103 CHAPTER 7 OF THE CODE OF CITY OF NORMAN ADDING THE DEFINITION OF CONVERSION THERAPY; ADDING SECTION 7-111 PROHIBITING CITY FUNDS TO BE USED TO SUPPORT THE PRACTICE OR OFFERING OF CONVERSION THERAPY; AND PROVIDING FOR THE SEVERABILITY THEREOF.

- §1. WHEREAS, being lesbian, gay, or bisexual is not a disease, disorder, illness, deficiency, or shortcoming. The major professional associations of mental health practitioners and researchers in the United States have recognized this fact for nearly 40 years; and
- §2. WHEREAS, the American Psychological Association convened a Task Force on Appropriate Therapeutic Responses to Sexual Orientation. The task force conducted a systematic review of peer-reviewed journal literature on sexual orientation change efforts, and issued a report in 2009. The task force concluded that sexual orientation change efforts can pose critical health risks to lesbian, gay, and bisexual people, including confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and potential romantic partners, problems in sexual and emotional intimacy, sexual dysfunction, high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and resources; and
- §3. WHEREAS, the American Psychological Association issued a resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts in 2009, which states: “[T]he [American Psychological Association] advises parents, guardians, young people, and their families to avoid sexual orientation change efforts that portray homosexuality as a mental illness or developmental disorder and to seek psychotherapy, social support, and educational services that provide accurate information on sexual orientation and sexuality, increase family and school support, and reduce rejection of sexual minority youth;” and
- §4. WHEREAS, the American Psychiatric Association published a position statement in March of 2000 in which it stated:

“Psychotherapeutic modalities to convert or ‘repair’ homosexuality are based on developmental theories whose scientific validity is questionable. Furthermore, anecdotal reports of ‘cures’ are counterbalanced by anecdotal claims of psychological harm. In the last four decades, ‘reparative’ therapists have not produced any rigorous scientific research to substantiate their claims of cure. Until there is such research available, [the American Psychiatric Association] recommends that ethical practitioners refrain from attempts to change individuals’ sexual orientation, keeping in mind the medical dictum to first, do no harm.

The potential risks of reparative therapy are great, including depression, anxiety and self-destructive behavior, since therapist alignment with societal prejudices against

homosexuality may reinforce self-hatred already experienced by the patient. Many patients who have undergone reparative therapy relate that they were inaccurately told that homosexuals are lonely, unhappy individuals who never achieve acceptance or satisfaction. The possibility that the person might achieve happiness and satisfying interpersonal relationships as a gay man or lesbian is not presented, nor are alternative approaches to dealing with the effects of societal stigmatization discussed.

Therefore, the American Psychiatric Association opposes any psychiatric treatment such as reparative or conversion therapy which is based upon the assumption that homosexuality per se is a mental disorder or based upon the a priori assumption that a patient should change his/her sexual homosexual orientation;" and

- §5. WHEREAS, the American Academy of Pediatrics in 1993 published an article in its journal, *Pediatrics*, stating: "Therapy directed at specifically changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation;" and
- §6. WHEREAS, the National Association of Social Workers prepared a 1997 policy statement in which it stated: "Social stigmatization of lesbian, gay and bisexual people is widespread and is a primary motivating factor in leading some people to seek sexual orientation changes. Sexual orientation conversion therapies assume that homosexual orientation is both pathological and freely chosen. No data demonstrates that reparative or conversion therapies are effective, and, in fact, they may be harmful;" and
- §7. WHEREAS, the American Psychoanalytic Association issued a position statement in June 2012 on attempts to change sexual orientation, gender, identity, or gender expression, and in it the association states: "As with any societal prejudice, bias against individuals based on actual or perceived sexual orientation, gender identity or gender expression negatively affects mental health, contributing to an enduring sense of stigma and pervasive self-criticism through the internalization of such prejudice.

Psychoanalytic technique does not encompass purposeful attempts to 'convert,' 'repair,' change or shift an individual's sexual orientation, gender identity or gender expression. Such directed efforts are against fundamental principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging internalized attitudes;" and

- §8. WHEREAS, the American Academy of Child and Adolescent Psychiatry in 2012 published an article in its journal, *Journal of the American Academy of Child and Adolescent Psychiatry*, stating: "Clinicians should be aware that there is no evidence that sexual orientation can be altered through therapy, and that attempts to do so may be harmful. There is no empirical evidence adult homosexuality can be prevented if gender nonconforming children are influenced to be more gender conforming. Indeed, there is no medically valid basis for attempting to prevent homosexuality, which is not an illness. On the contrary, such efforts may encourage family rejection and undermine self-esteem, connectedness and caring, important protective factors against suicidal ideation and attempts. Given that there is no evidence that efforts to alter sexual orientation are effective,

beneficial or necessary, and the possibility that they carry the risk of significant harm, such interventions are contraindicated;” and

- §9. WHEREAS, the Pan American Health Organization, a regional office of the World Health Organization, issued a statement in May of 2012 and in it the organization states: “These supposed conversion therapies constitute a violation of the ethical principles of health care and violate human rights that are protected by international and regional agreements.” The organization also noted that reparative therapies “lack medical justification and represent a serious threat to the health and well-being of affected people;” and
- §10. WHEREAS, minors who experience family rejection based on their sexual orientation face especially serious health risks. In one study, lesbian, gay, and bisexual young adults who reported higher levels of family rejection during adolescence were 8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse compared with peers from families that reported no or low levels of family rejection. This is documented by Caitlin Ryan et al. in their article entitled Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults (2009) 123 Pediatrics 346; and
- §11. WHEREAS, the City of Norman has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, and in protecting its minors against exposure to serious harms caused by sexual orientation change efforts.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA:

* * *

- § 12. THAT Section 7-103 of Chapter 7 of the Code of Ordinances of the City of Norman shall be amended to read as follows:

* * *

- (3) "Conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including, but not limited to, any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:
- (a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change sexual orientation or gender identity, or
- (b) mental health services that facilitate a person's coping, social support, or sexual orientation or gender identity exploration and development, including, but not limited to, an intervention to prevent or address unlawful

conduct or unsafe sexual practices, without seeking to change sexual orientation or gender identity;

- (3)(4) *Disability*: A physical or mental impairment that substantially limits one (1) or more of the major life activities of an individual, a record of such impairment, or being regarded as having such an impairment.
- (4)(5) *Discriminate or discrimination*: Any act which, because of race, color, religion, ancestry, national origin, age, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex, results in the unequal treatment, separation, or termination of any person; or denies, prevents, limits, or adversely affects the benefit or enjoyment of any person as to employment, ownership, or occupancy of real property or access to public accommodations and public services.
- (5)(6) *Employer*: Any person or entity who pays one (1) or more individuals a salary or wages for work performance, including the City of Norman, its departments, boards, commissions, and authorities, and any other governmental agency within its jurisdiction, but excluding any religious, fraternal, or sectarian organization which is not supported in whole or part by any governmental appropriations. Excludes independent contractors and employment of the parents, spouse, or children of such person.
- (6)(7) *Employment agency*: Any person regularly undertaking with or without compensation, to procure opportunities for employment or to procure, recruit, refer or place employees.
- (7)(8) *Gender identity or expression*: The actual or perceived gender-related identity, appearance, expression, mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.
- (8)(9) *Labor organization*: Any organization which exists for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in relation to employment.
- (9)(10) *Owner*: The owner, co-owner, lessee, sublessee, mortgagee, assignee, manager, agent, employee or any other person having the right of ownership or possession or the authority to sale, rent, or lease any housing accommodation, or any person having an equitable or security interest in any housing accommodation, including the City, and its departments, boards, commissions, and authorities.
- (10)(11) *Person*: An individual, association, corporation, joint apprenticeship, committee, joint stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee, unincorporated organization, or other legal or commercial entity, including the City of Norman.
- (11)(12) *Public accommodation*: Any place, business or activity which is open to, accepts or solicits the patronage of the general public or offers goods, services or recreation to the general public.

~~(12)~~(13) *Sexual harassment*: Unwelcome sexual advances, requests of sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- (a) Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
- (b) Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- (d) For purposes of this chapter, an employer, labor organization or employment agency has engaged in sexual harassment if:
 - (1) The agents and supervisory employees of an employer, labor organization or employment agency engaged in sexual harassment, regardless of whether the specific acts of sexual harassment were authorized or even forbidden, and regardless of whether the employer knew or should have known of their occurrence; or
 - (2) The nonsupervisory employees of an employer, labor organization or employment agency engaged in sexual harassment and the employer, labor organization or employment agency knew or reasonably should have known of the sexual harassment.

~~(13)~~(14) *Sexual orientation*: An individual's actual or perceived heterosexuality, homosexuality, asexuality, or bisexuality.

§ 13. THAT Section 7-111 of Chapter 7 of the Code of Ordinances of the City of Norman shall be added to read as follows:

Sec 7-111. - Conversion Therapy – Use of City Funds Prohibited

No public funds shall be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any individual, organization, or entity who practices in or offers conversion therapy to any person under eighteen (18) years of age, or to a consumer that is the subject of a conservatorship, regardless of age.

§14. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, except that the effective date provision shall not be severable from the operative provisions of the ordinance.

ADOPTED this _____ day
of _____, 2021.

NOT ADOPTED this _____ day
of _____, 2021.

Brea Clark, Mayor

Brea Clark, Mayor

ATTEST:

Brenda Hall, City Clerk

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AMENDING SECTION 7-103 CHAPTER 7 OF THE CODE OF CITY OF NORMAN ADDING THE DEFINITION OF CONVERSION THERAPY; ADDING SECTION 7-111 PROHIBITING CITY FUNDS TO BE USED TO SUPPORT THE PRACTICE OR OFFERING OF CONVERSION THERAPY; AND PROVIDING FOR THE SEVERABILITY THEREOF.

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beneficial or necessary, and the possibility that they carry the risk of significant harm, such interventions are contraindicated;” and

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§11. WHEREAS, the City of Norman has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, and in protecting its minors against exposure to serious harms caused by sexual orientation change efforts.

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- (a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change sexual orientation or gender identity, or
- (b) mental health services that facilitate a person's coping, social support, or sexual orientation or gender identity exploration and development, including, but not limited to, an intervention to prevent or address unlawful

conduct or unsafe sexual practices, without seeking to change sexual orientation or gender identity;

- (4) *Disability*: A physical or mental impairment that substantially limits one (1) or more of the major life activities of an individual, a record of such impairment, or being regarded as having such an impairment.
- (5) *Discriminate or discrimination*: Any act which, because of race, color, religion, ancestry, national origin, age, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex, results in the unequal treatment, separation, or termination of any person; or denies, prevents, limits, or adversely affects the benefit or enjoyment of any person as to employment, ownership, or occupancy of real property or access to public accommodations and public services.
- (6) *Employer*: Any person or entity who pays one (1) or more individuals a salary or wages for work performance, including the City of Norman, its departments, boards, commissions, and authorities, and any other governmental agency within its jurisdiction, but excluding any religious, fraternal, or sectarian organization which is not supported in whole or part by any governmental appropriations. Excludes independent contractors and employment of the parents, spouse, or children of such person.
- (7) *Employment agency*: Any person regularly undertaking with or without compensation, to procure opportunities for employment or to procure, recruit, refer or place employees.
- (8) *Gender identity or expression*: The actual or perceived gender-related identity, appearance, expression, mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.
- (9) *Labor organization*: Any organization which exists for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in relation to employment.
- (10) *Owner*: The owner, co-owner, lessee, sublessee, mortgagee, assignee, manager, agent, employee or any other person having the right of ownership or possession or the authority to sale, rent, or lease any housing accommodation, or any person having an equitable or security interest in any housing accommodation, including the City, and its departments, boards, commissions, and authorities.
- (11) *Person*: An individual, association, corporation, joint apprenticeship, committee, joint stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee, unincorporated organization, or other legal or commercial entity, including the City of Norman.
- (12) *Public accommodation*: Any place, business or activity which is open to, accepts or solicits the patronage of the general public or offers goods, services or recreation to the general public.

- (13) *Sexual harassment*: Unwelcome sexual advances, requests of sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
- (a) Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
 - (b) Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - (c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
 - (d) For purposes of this chapter, an employer, labor organization or employment agency has engaged in sexual harassment if:
 - (1) The agents and supervisory employees of an employer, labor organization or employment agency engaged in sexual harassment, regardless of whether the specific acts of sexual harassment were authorized or even forbidden, and regardless of whether the employer knew or should have known of their occurrence; or
 - (2) The nonsupervisory employees of an employer, labor organization or employment agency engaged in sexual harassment and the employer, labor organization or employment agency knew or reasonably should have known of the sexual harassment.
- (14) *Sexual orientation*: An individual's actual or perceived heterosexuality, homosexuality, asexuality, or bisexuality.

§ 13. THAT Section 7-111 of Chapter 7 of the Code of Ordinances of the City of Norman shall be added to read as follows:

Sec 7-111. - Conversion Therapy – Use of City Funds Prohibited

No public funds shall be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any individual, organization, or entity who practices in or offers conversion therapy to any person under eighteen (18) years of age, or to a consumer that is the subject of a conservatorship, regardless of age.

§14. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, except that the effective date provision shall not be severable from the operative provisions of the ordinance.

ADOPTED this _____ day
of _____, 2021.

NOT ADOPTED this _____ day
of _____, 2021.

Brea Clark, Mayor

Brea Clark, Mayor

ATTEST:

Brenda Hall, City Clerk