

LEGISTAR

160200

## DRAFT

## ORDINANCE NO.: 160200

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3       **An ordinance of the City of Gainesville, Florida amending**  
4       **Chapter 17 of the Code of Ordinances, relating to offenses, by**  
5       **creating Article IV, to be entitled "Conversion Therapy," to**  
6       **prohibit licensed professionals from engaging in counseling**  
7       **efforts, practices, or treatments with the goal to change a**  
8       **minor's sexual orientation or gender identity; amending**  
9       **Section 2-339 to provide a civil citation penalty; providing**  
10       **directions to the codifier; providing a severability clause;**  
11       **providing a repealing clause; and providing an immediate**  
12       **effective date.**

13  
14       **WHEREAS**, as recognized by major professional associations of mental health  
15  
16 practitioners and researchers in the United States and elsewhere for nearly 40 years, being  
17 lesbian, gay, bisexual, transgender or gender nonconforming, or questioning (LGBT or LGBTQ)  
18 is not a mental disease, disorder or illness, deficiency or shortcoming; and

19       **WHEREAS**, the American Academy of Pediatrics in 1993 published an article in its  
20 Journal, stating: "Therapy directed at specifically changing sexual orientation is contraindicated,  
21 since it can provoke guilt and anxiety while having little or no potential for achieving changes in  
22 orientation;"<sup>1</sup> and

23       **WHEREAS**, the American Psychiatric Association in December 1998 published its  
24 opposition to any psychiatric treatment, including reparative or conversion therapy, which  
25 therapy regime is based upon the assumption that homosexuality is a mental disorder *per se* or  
26 that a patient should change his or her homosexual orientation;<sup>2</sup> and

27       **WHEREAS**, the American Psychological Association's Task Force on Appropriate  
28 Therapeutic Responses to Sexual Orientation ("APA Task Force") conducted a systematic

<sup>1</sup> <http://pediatrics.aappublications.org/content/pediatrics/92/4/631.full.pdf>

<sup>2</sup> [https://www.camft.org/ias/images/PDFs/SOCE/APA\\_Position\\_Statement.pdf](https://www.camft.org/ias/images/PDFs/SOCE/APA_Position_Statement.pdf)

# DRAFT

1 review of peer-reviewed journal literature on Sexual Orientation Change Efforts ("SOCE"), and  
 2 issued its report in 2009, citing research that sexual orientation change efforts can pose critical  
 3 health risks to lesbian, gay, and bisexual people, including confusion, depression, guilt,  
 4 helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress,  
 5 disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-  
 6 hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and  
 7 potential romantic partners, problems in sexual and emotional intimacy, sexual dysfunction,  
 8 high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and  
 9 a sense of having wasted time and resources;<sup>3</sup> and

10 **WHEREAS**, following the report issued by the APA Task Force, the American  
 11 Psychological Association in 2009 issued a resolution on Appropriate Affirmative Responses to  
 12 Sexual Orientation Distress and Change Efforts, advising parents, guardians, young people, and  
 13 their families to avoid sexual orientation change efforts that portray homosexuality as a mental  
 14 illness or developmental disorder and to seek psychotherapy, social support, and educational  
 15 services that provide accurate information on sexual orientation and sexuality, increase family  
 16 and school support, and reduce rejection of sexual minority youth;<sup>4</sup> and

17 **WHEREAS**, the American Psychoanalytic Association in June 2012 issued a position  
 18 statement on conversion therapy efforts, articulating that "As with any societal prejudice, bias  
 19 against individuals based on actual or perceived sexual orientation, gender identity or gender  
 20 expression negatively affects mental health, contributing to an enduring sense of stigma and  
 21 pervasive self-criticism through the internalization of such prejudice" and that psychoanalytic

<sup>3</sup> <https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf>

<sup>4</sup> <http://www.apa.org/about/policy/sexual-orientation.pdf>

## DRAFT

1 technique "does not encompass purposeful attempts to 'convert,' 'repair,' change or shift an  
 2 individual's sexual orientation, gender identity or gender expression," such efforts being  
 3 inapposite to "fundamental principles of psychoanalytic treatment and often result in substantial  
 4 psychological pain by reinforcing damaging internalized attitudes;"<sup>5</sup> and

5       **WHEREAS**, the American Academy of Child & Adolescent Psychiatry in 2012  
 6 published an article in its Journal stating that clinicians should be aware that there is "no  
 7 evidence that sexual orientation can be altered through therapy and that attempts to do so may be  
 8 harmful;" that there is "no medically valid basis for attempting to prevent homosexuality, which  
 9 is not an illness;" and that such efforts may encourage family rejection and undermine self-  
 10 esteem, connectedness and caring, important protective factors against suicidal ideation and  
 11 attempts; and that, for similar reasons cumulatively stated above, carrying the risk of significant  
 12 harm, SOCE is contraindicated;<sup>6</sup> and

13       **WHEREAS**, the Pan American Health Organization, a regional office of the World  
 14 Health Organization, issued a statement in 2012 stating: "These supposed conversion therapies  
 15 constitute a violation of the ethical principles of health care and violate human rights that are  
 16 protected by international and regional agreements." The organization also noted that  
 17 conversion therapies "lack medical justification and represent a serious threat to the health and  
 18 well-being of affected people;"<sup>7</sup> and

<sup>5</sup> <http://www.apsa.org/content/2012-position-statement-attempts-change-sexual-orientation-gender-identity-or-gender>

<sup>6</sup> [http://www.jaacap.com/article/S0890-8567\(12\)00500-X/pdf](http://www.jaacap.com/article/S0890-8567(12)00500-X/pdf)

<sup>7</sup> [http://www.paho.org/hq/index.php?option=com\\_content&view=article&id=6803%3A2012-therapies-changesexual-orientation-lack-medical-justification-threaten\\_health&catid=740%3Apress-releases&Itemid=1926&lang=en](http://www.paho.org/hq/index.php?option=com_content&view=article&id=6803%3A2012-therapies-changesexual-orientation-lack-medical-justification-threaten_health&catid=740%3Apress-releases&Itemid=1926&lang=en)

# DRAFT

1           **WHEREAS**, in 2014 the American School Counselor Association issued a position  
2 statement that states: "It is not the role of the professional school counselor to attempt to change  
3 a student's sexual orientation or gender identity. Professional school counselors do not support  
4 efforts by licensed mental health professionals to change a student's sexual orientation or gender  
5 as these practices have been proven ineffective and harmful;"<sup>8</sup> and

6           **WHEREAS**, a 2015 report of the Substance Abuse and Mental Health Services  
7 Administration, a division of the U.S. Department of Health and Human Services, "Ending  
8 Conversion Therapy: Supporting and Affirming LGBTQ Youth" further reiterates based on  
9 scientific literature that conversion therapy efforts to change an individual's sexual orientation,  
10 gender identity, or gender expression is a practice not supported by credible evidence and has  
11 been disavowed by behavioral health experts and associations, perpetuates outdated views of  
12 gender roles and identities, negative stereotypes, stating, importantly, that such therapy may put  
13 young people at risk of serious harm, and recognizing that, same-gender sexual orientation  
14 (including identity, behavior, and attraction) is part of the normal spectrum of human diversity  
15 and does not constitute a mental disorder;<sup>9</sup> and

16           **WHEREAS**, the American College of Physicians wrote a position paper in 2015  
17 opposing the use of "conversion," "reorientation," or "reparative" therapy for the treatment of  
18 LGBT persons, stating that "[a]vailable research does not support the use of reparative therapy as  
19 an effective method in the treatment of LGBT persons. Evidence shows that the practice may

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<sup>8</sup> [https://www.schoolcounselor.org/asca/media/asca/PositionStatements/PS\\_LGBTQ.pdf](https://www.schoolcounselor.org/asca/media/asca/PositionStatements/PS_LGBTQ.pdf)

<sup>9</sup> <http://store.samhsa.gov/shin/content/SMA15-4928/SMA15-4928.pdf>

# DRAFT

1 actually cause emotional or physical harm to LGBT individuals, particularly adolescents or  
2 young persons;"<sup>10</sup> and

3 **WHEREAS**, In 2016, the American Medical Association issued policy statement H-  
4 160.991, which expressly opposed the use of "reparative" or "conversion" therapy for sexual  
5 orientation or gender identity;<sup>11</sup> and

6 **WHEREAS**, The World Psychiatric Association issued a policy statement in March,  
7 2016 on Gender Identity and Same-Sex Orientation, which stated, "There is no sound scientific  
8 evidence that innate sexual orientation can be changed. Furthermore, so-called treatments of  
9 homosexuality can create a setting in which prejudice and discrimination flourish, and they can  
10 be potentially harmful. The provision of any intervention purporting to 'treat' something that is  
11 not a disorder is wholly unethical;"<sup>12</sup> and

12 **WHEREAS**, The National Association of Social Workers ("NASW") issued a policy  
13 statement stating that "No data demonstrates that reparative or conversion therapies are effective,  
14 and in fact they may be harmful." The NASW went further and stated that "conversion and  
15 reparative therapies are an infringement to the guiding principles inherent to social worker ethics  
16 and values;"<sup>13</sup> and

17 **WHEREAS**, The Agency for Healthcare Research and Quality issued a clinician's  
18 guideline for practitioners who work with children and adolescents based on research provided  
19 by the American Academy of Child and Adolescent Psychiatry. It stated that "There is no

<sup>10</sup> <http://annals.org/article.aspx?articleid=2292051>

<sup>11</sup> <https://www.ama-assn.org/delivering-care/policies-lesbian-gay-bisexual-transgender-queer-lgbtq-issues>

<sup>12</sup> [http://www.wpanet.org/WPA\\_in\\_News.php](http://www.wpanet.org/WPA_in_News.php)

<sup>13</sup> <http://www.naswdc.org/diversity/lgb/reparative.asp>

# DRAFT

1 empirical evidence that adult homosexuality can be prevented if gender nonconforming children  
 2 are influenced to be more gender conforming. Indeed, there is no medically valid basis for  
 3 attempting to prevent homosexuality, which is not an illness. On the contrary, such efforts may  
 4 encourage family rejection and undermine self-esteem, connectedness, and caring, which are  
 5 important protective factors against suicidal ideation and attempts;"<sup>14</sup> and

6 **WHEREAS**, At least two federal circuit courts of appeal have upheld bans on conversion  
 7 therapy.<sup>15</sup> Both courts found that bans on conversion therapy did not violate free speech rights;  
 8 nor did such bans run afoul of the Free Exercise Clause; nor were such bans vague or  
 9 impermissibly overbroad. Further the courts found that counseling is professional speech,  
 10 subject to a lower level of judicial scrutiny because the government has a substantial interest in  
 11 protecting citizens from ineffective or harmful professional practices; and

12 **WHEREAS**, the City of Gainesville ("City") does not intend to prevent mental health  
 13 providers from speaking to the public about SOCE; expressing their views to patients;  
 14 recommending SOCE to patients; administering SOCE to any person who is 18 years of age or  
 15 older; or referring minors to unlicensed counselors, such as religious leaders. This ordinance  
 16 does not prevent unlicensed providers, such as religious leaders, from administering SOCE to  
 17 children or adults; nor does it prevent minors from seeking SOCE from mental health providers  
 18 in other political subdivisions or states outside of the City of Gainesville, Florida; and

19 **WHEREAS**, the City has a compelling interest in protecting the physical and  
 20 psychological well-being of minors, including but not limited to lesbian, gay, bisexual,

<sup>14</sup> <https://www.guideline.gov/summaries/summary/38417>

<sup>15</sup> King v. Governor of the State of New Jersey, 767 F.3d 216 (3rd Cir. 2014), and Pickup v. Brown, 740 F.3d 1208 (9th Cir. 2013)

# DRAFT

1 transgender and questioning youth, and in protecting its minors against exposure to serious  
2 harms caused by sexual orientation and gender identity change efforts; and

3 **WHEREAS**, the City Commission hereby finds the overwhelming research demonstrates  
4 that sexual orientation and gender identity change efforts can pose critical health risks to lesbian,  
5 gay, bisexual, transgender or questioning persons, and that being lesbian, gay, bisexual,  
6 transgender or questioning is not a mental disease, mental disorder, mental illness, deficiency, or  
7 shortcoming; and

8 **WHEREAS**, the City Commission finds minors receiving treatment from licensed  
9 therapists in the City of Gainesville, Florida who may be subject to conversion or reparative  
10 therapy are not effectively protected by other means, including, but not limited to, other state  
11 statutes, local ordinances, or federal legislation; and

12 **WHEREAS**, the City Commission desires to prohibit, within the geographic boundaries  
13 of the City, the practice of sexual orientation or gender identity change efforts on minors by  
14 licensed therapists only, including reparative and/or conversion therapy, which have been  
15 demonstrated to be harmful to the physical and psychological well-being of lesbian, gay,  
16 bisexual, transgender and questioning persons.

17  
18 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE**  
19 **CITY OF GAINESVILLE, FLORIDA:**

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# DRAFT

1           **Section 1.** Chapter 17 of the Gainesville Code of Ordinances is hereby amended to  
 2 create Article IV as set forth below. Except as amended herein, the remainder of Chapter 17  
 3 remains in full force and effect.

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5           **CHAPTER 17 - OFFENSES**

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7           **ARTICLE IV – CONVERSION THERAPY**

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9           **Sec. 17-36. Intent.**

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11           The intent of this article is to protect the physical and psychological well-being of minors,  
 12 including but not limited to lesbian, gay, bisexual, transgender and/or questioning youth, from  
 13 exposure to the serious harms and risks caused by conversion therapy or reparative therapy by  
 14 licensed providers. These provisions are exercises of police power of the city for the public  
 15 safety, health, and welfare; and its provisions shall be liberally construed to accomplish that  
 16 purpose.

17           **Sec. 17-37. Definitions.**

18           The following words, terms and phrases, when used in this article, shall have the  
 19 meanings ascribed to them in this section, except where the context clearly indicates a different  
 20 meaning:

21           Conversion therapy or reparative therapy means, interchangeably, any counseling,  
 22 practice or treatment performed with the goal of changing an individual's sexual orientation or  
 23 gender identity, including, but not limited to, efforts to change behaviors, gender identity, or  
 24 gender expression, or to eliminate or reduce sexual or romantic attractions or feelings toward  
 25 individuals of the same gender or sex. Conversion therapy does not include counseling that

# DRAFT

1 provides support and assistance to a person undergoing gender transition or counseling that  
 2 provides acceptance, support, and understanding of a person or facilitates a person's coping,  
 3 social support, and development, including sexual orientation-neutral interventions to prevent  
 4 or address unlawful conduct or unsafe sexual practices, as long as such counseling does not  
 5 seek to change sexual orientation or gender identity.

6 Minor means any person less than 18 years of age.

7 Provider means any person who is licensed by the State of Florida to provide professional  
 8 counseling, or who performs counseling as part of his or her professional training under Chapters  
 9 456, 458, 459, 490 or 491, Florida Statutes, as such chapters may be amended, including but not  
 10 limited to, medical practitioners, osteopathic practitioners, psychologists, psychotherapists,  
 11 social workers, marriage and family therapists, and licensed counselors. A provider does not  
 12 include members of the clergy who are acting in their roles as clergy or pastoral counselors and  
 13 providing religious counseling to congregants, as long as they do not hold themselves out as  
 14 operating pursuant to a license issued under any of the aforementioned Florida Statutes.

15 **Sec. 17-38. Conversion therapy prohibited.**

16  
 17 It shall be unlawful for any provider to practice conversion therapy on a minor.

18 **Sec. 17-39. Enforcement; penalties; injunctive relief.**

19 The city may enforce this article by civil citation in accordance with Chapter 2,  
 20 Division 6. In addition, persons who are not in conformity with these requirements shall be  
 21 subject to appropriate civil action in the court of appropriate jurisdiction for injunctive relief.

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# DRAFT

1           **Section 2.** Section 2-339 of the Gainesville Code of Ordinances is hereby amended as  
2 follows:

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4           **Sec. 2-339. - Applicable codes and ordinances.**

5           The following ordinances are enforceable by the procedures described in this division:

17-38	<u>Practicing conversion therapy on a minor</u>	II \$250.00

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7

8           **Section 3.** It is the intention of the City Commission that the provisions of Sections 1  
9 and 2 of this Ordinance shall become and be made a part of the Code of Ordinances of the City  
10 of Gainesville, Florida, and that the sections and paragraphs of this Ordinance may be  
11 renumbered or relettered in order to accomplish such intentions.

12

13           **Section 4.** If any word, phrase, clause, paragraph, section or provision of this ordinance  
14 or the application hereof to any person or circumstance is held invalid or unconstitutional, such  
15 finding shall not affect the other provisions or application of the ordinance which can be given  
16 effect without the invalid or unconstitutional provisions or application, and to this end the  
17 provisions of this ordinance are declared severable.

18

19           **Section 5.** All ordinances or parts of ordinances, in conflict herewith are to the extent of  
20 such conflict hereby repealed.

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# DRAFT

1       **Section 6.** This ordinance shall become effective immediately upon final adoption.

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3       **PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.**

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\_\_\_\_\_  
LAUREN POE  
MAYOR

10

11

ATTEST:

Approved as to form and legality

12

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\_\_\_\_\_  
OMICHELE D. GAINEY  
CLERK OF THE COMMISSION

\_\_\_\_\_  
NICOLLE M. SHALLEY  
CITY ATTORNEY

17

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This ordinance passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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This ordinance passed on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

23