

ORDINANCE NO. \_\_\_\_\_ - 2021

AN ORDINANCE CREATING SECTIONS 14-107 TO 14-112 OF THE CODE OF ORDINANCES PROHIBITING MENTAL HEALTH PROFESSIONALS FROM ENGAGING IN SEXUAL ORIENTATION AND GENDER IDENTITY CHANGE EFFORTS, ALSO KNOWN AS CONVERSION THERAPY, TO MINORS AND PROHIBITING PUBLIC FUNDS FROM BEING DISTRIBUTED TO ANY ENTITY, ORGANIZATION OR INDIVIDUAL THAT PROVIDES CONVERSION THERAPY TO A MINOR; AND AMENDING SECTION 2-30 OF THE CODE OF ORDINANCES TO INCLUDE ENFORCEMENT OF THE PROHIBITION ON THE USE OF CONVERSION THERAPY TO A MINOR IN THE DUTIES OF THE LEXINGTON-FAYETTE URBAN COUNTY HUMAN RIGHTS COMMISSION.

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WHEREAS, the intent of this Ordinance is to protect the physical and psychological well-being of minors, including but not limited to lesbian, gay, bisexual, transgender and/or questioning youth, from exposure to the serious harms and risks caused by “conversion therapy” or “reparative therapy” by licensed providers, including but not limited to licensed therapists; and

WHEREAS, research demonstrates that sexual orientation and gender identity change efforts can pose critical health risks to lesbian, gay, bisexual or transgender persons; and

WHEREAS, contemporary science recognizes that being lesbian, gay, bisexual, or transgender is part of the natural spectrum of human identity and is not a disease, disorder, illness, deficiency, or shortcoming; and the major professional associations of mental health practitioners and researchers in the United States have recognized this fact for nearly 40 years; and

WHEREAS, in 2009, the American Psychological Association’s Task Force on Appropriate Therapeutic Responses to Sexual Orientation concluded that efforts to change sexual orientation and gender identity are unlikely to produce anticipated outcomes and can pose unintended harmful side effects to participants, such as a sense of having wasted time and resources, confusion, shame, guilt, helplessness, hopelessness, loss of faith, decreased self-esteem and authenticity towards others, increased self-hatred and negative perceptions, social withdrawal, a feeling of being dehumanized and untrue to self, depression, increased substance abuse and high-risk sexual behaviors and suicidality; and

WHEREAS, in 2009, the American Psychological Association issued a resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts

that, among other things, advises parents, guardians, young people, and their families to avoid sexual orientation change efforts that portray homosexuality as a mental illness or developmental disorder, while encouraging 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

WHEREAS, the National Association of Social Workers, the American Counseling Association Governing Council, the American School Counselor Association, the American Psychoanalytic Association, the American Academy of Child and Adolescent Psychiatry, the American Academy of Pediatrics, the American Medical Association Council on Scientific Affairs, the Pan American Health Organization, the American Association of Sexuality Educators, Counselors, and Therapists, and the American College of Physicians, among others, oppose the use of conversion therapy and find the method of treatment ineffective and harmful; and

WHEREAS, in a 2015 report, the Substance Abuse and Mental Health Services Administration concluded that:

- (1) "Conversion therapy perpetuates outdated views of gender roles and identities as well as the negative stereotype that being a sexual or gender minority or identifying as LGBTQ is an abnormal aspect of human development. Most importantly, it may put young people at risk of serious harm."
- (2) "Conversion therapy- efforts to change an individual's sexual orientation, gender identity, or gender expression- is a practice that is not supported by credible evidence and has been disavowed by behavioral health experts and associations."
- (3) "Same-gender sexual identity, behavior, and attraction are not mental disorders. Same-gender sexual attractions are part of the normal spectrum of sexual orientation. Sexual orientation change in children and adolescents should not be a goal of mental health and behavioral interventions;" and

WHEREAS, a 2018 study by the Family Acceptance Project found the following:

- (1) "Rates of attempted suicide by LGBT young people whose parents tried to change their sexual orientation were more than double (48%) the rate of LGBT young adults who reported no conversion experiences (22%). Suicide attempts nearly tripled for LGBT young people who reported both home-based and out-of-home efforts to change their sexual orientation (63%);"
- (2) "High levels of depression more than doubled (33%) for LGBT young people whose parents tried to change their sexual orientation compared with those who reported no conversion experiences (16%) and more than tripled (52%) for LGBT young people who reported both home-based and out-of-home efforts to change their sexual orientation;"

(3) “Sexual orientation change experiences during adolescence by both parents/caregivers and externally by therapists and religious leaders were associated with lower young adult socioeconomic status, less education attainment and lower weekly income;” and

WHEREAS, a 2019 study by The Trevor Project, which surveyed 34,000 LGBTQ youth between the ages of 13-24, found that five (5) percent of respondents reported being subjected to conversion therapy. Forty-two (42) percent of these LGBTQ youth who underwent conversion therapy reported a suicide attempt in the past year, more than twice the rate of their LGBTQ peers who did not report undergoing conversion therapy. Fifty-seven (57) percent of transgender and nonbinary youth who had undergone conversion therapy reported a suicide attempt in the last year; and

WHEREAS, twenty (20) states, as well as the District of Columbia and Puerto Rico, have enacted laws banning conversion therapy efforts against minors when applied by licensed medical providers; and

WHEREAS, according to one estimate, nearly 144,000 individuals 13 years old or older identify as gay, lesbian, bisexual or transgender in Kentucky;

WHEREAS, Lexington-Fayette Urban County Government was the first in Kentucky to pass an inclusive, county-wide Fairness Ordinance providing discrimination protection for lesbian, gay, bisexual and transgender citizens of all ages, illustrating its continuing commitment to the LGBTQ+ community; and

WHEREAS, Lexington-Fayette County has a compelling and important interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual and transgender youths, and in protecting minors against exposure to serious harms associated with conversion therapy; and

WHEREAS, the Kentucky Supreme Court held that there is no broader field of police power than that of public health, and an urban county government, pursuant to its police power, has a wide latitude to adopt ordinances which promote the health, safety, morals or general welfare of the people; and

WHEREAS, the following provisions are exercises of police power of Lexington-Fayette Urban County Government for the safety, health and welfare of the public; its provisions shall be liberally construed to accomplish that purpose; and

WHEREAS, through this narrowly tailored ordinance, Lexington-Fayette Urban County Government desires to prohibit within the Urban County harmful conduct by

licensed professionals in the mental health field to change sexual orientation or gender identity with minors, finding that this conduct is correlated with serious risks to health, wellbeing and lives, and no other less intrusive means of protecting minors from the harms associated with conversion therapy would be effective in furthering the Urban County's interest.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE  
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Section 14-107 of the Lexington-Fayette Urban County Code of Ordinances be and hereby is created to read as follows:

Sec. 14-107. –Sexual Orientation or Gender Identity Change Efforts Prohibited – Purpose; Findings.

- (1) Purpose: Sections 14-107 to 14-112 is an exercise of the Urban County's police power for public safety, health and welfare; and its provisions shall be liberally construed to accomplish this purpose.
- (2) Findings and Intent. Medical and mental health experts have denounced efforts to change sexual orientation and gender identity as ineffective and unsafe for people, especially minors. These efforts are based on the discredited premise that being non-heterosexual is a mental disorder that can be corrected or cured. It is the intent of the Urban County Council that these unethical conversion practices that correlate with serious and dangerous harm to the health and well-being of minors be prohibited. Therefore, the Urban County Council finds and declares that a compelling and important interest exists in protecting the physical and psychological well-being of minors from efforts to change sexual orientation and gender identity within the municipality through the professional conduct of licensed providers, and no other less intrusive means of protecting minors from the harms associated with conversion therapy would be effective in furthering the Urban County's interest.

Section 2 – That Section 14-108 of the Lexington-Fayette Urban County Code of Ordinances be and hereby is created to read as follows:

Sec. 14-108. -Same – Definitions.

For purposes of Sections 14-107 to 14-112, the following definitions shall apply:

- (1) Sexual Orientation or Gender Identity Change Efforts or "Conversion Therapy." Any counseling, practice, or treatment that seek to change a person's sexual orientation or gender identity, including, but not limited to, efforts to change behaviors or gender expression, or reduce or eliminate sexual or romantic attraction or feelings toward a person of the same gender. The definition encompasses the terms "reparative therapy," "aversion therapy," and "reorientation therapy." Sexual orientation or gender identity change efforts do not include counseling that does not seek to change sexual orientation or gender identity and that:
  - (a) Assists a person undergoing gender transition;
  - (b) Provides acceptance, support, and understanding to the person; or

- (c) Facilitates a person's coping, social support, identity exploration, and development, including sexual orientation- and gender identity- neutral interventions to prevent or address unlawful conduct or unsafe sexual practices.
- (2) MINOR. Any person less than eighteen (18) years of age.
- (3) PROVIDER. Any person licensed, certified, or registered with the state to provide professional counseling including, but not limited to, behavior analysts; licensed professional counselors; marital and family therapists or associates; physicians or assistants; osteopaths or assistants; registered or practical nurses or assistive personnel, certified nurse aides; physical or occupational therapists or assistants; psychologists or psychological associates; social workers or associates; licensed professional conservators or guardians; naturopaths; or any other person who performs counseling as part of the person's professional training.
- (4) PUBLIC FUNDS. Any money, regardless of the original source of the money, of the Lexington-Fayette Urban County Government, and any department, agency or instrumentality thereof.

Section 3 – That Section 14-109 of the Lexington-Fayette Urban County Code of Ordinances be and hereby is created to read as follows:

Sec. 14-109. –Same – Prohibitions.

- (1) It is unlawful for any provider to provide, apply, or use sexual orientation or gender identity change efforts or conversion therapy with a minor through a provider's professional conduct; and
- (2) Public funds shall not be directly or indirectly used, granted, paid, or distributed to any Provider who provides conversion therapy to a minor.

Section 4 – That Section 14-110 of the Lexington-Fayette Urban County Code of Ordinances be and hereby is created to read as follows:

Sec. 14-110. -Same – Enforcement

The Lexington-Fayette Urban County Human Rights Commission shall enforce the provisions of Sections 14-107 to 14-112 pursuant to Article II of Chapter 2 of the Code.

Section 5 – That Section 14-111 of the Lexington-Fayette Urban County Code of Ordinances be and hereby is created to read as follows:

Sec. 14-111. -Same – Complaint Procedure

- (1) Any person or persons claiming to be aggrieved by a violation of Sections 14-107 to 14-111, or a member of the Lexington-Fayette Urban County Human Rights Commission, may file a verified complaint to the Lexington-Fayette Urban County Human Rights Commission pursuant to Section 2-32 of the Code.
- (2) The procedures contained in Section 2-32(2) of the Code shall apply to complaints filed under this section.

Section 6 – That Section 14-112 of the Lexington-Fayette Urban County Code of Ordinances be and hereby is created to read as follows:

Sec. 14-112. –Same – Appeals.

An appeal from any final order issued by the Commission may be made to the Fayette Circuit Court within thirty (30) days of the date the order is issued, with service made upon the Commission. Within thirty (30) days of the notice of filing an appeal in Fayette Circuit Court, the Commission shall cause to be certified and deliver to the Clerk of the Fayette Circuit Court, the entire records of the proceedings before the Commission, including the transcript or other reproduction of the hearing.

Section 7 – That Section 2-30 of the Lexington-Fayette Urban County Code of Ordinances be and hereby is amended to read as follows:

- (1) The commission shall endeavor to promote and secure mutual understanding and respect among all economic, social, religious and ethnic groups in the county and shall act as conciliator in controversies involving intergroup and interracial relations.
- (2) The commission shall cooperate with federal, state and other local agencies in efforts to develop harmonious intergroup and interracial relations and shall endeavor to enlist the support of civic, religious, laborer and commercial groups and leaders dedicated to the improvement of human relations and the elimination of discriminatory practices.
- (3) The commission shall receive complaints, conduct investigations, hold hearings and have such studies made as will enable the commission to carry out the purposes of this article and the Kentucky Civil Rights Act [K.R.S. 344.010 et seq.].
- (4) The commission shall receive complaints and conduct investigations concerning allegations that an employee has been paid less than the minimum wage established under Chapter 13A of the Code of Ordinances of the Lexington-Fayette Urban County Government. Where the Commission determines that a violation has occurred, the Commission may, with the written consent of the aggrieved employee, bring a civil action on behalf of such employee to recover unpaid wages.
- (5) The commission shall receive complaints, conduct investigations, conciliate, hold hearings, and issue orders concerning allegations of violations of Sections 14-107 to 14-112 relating to the use of sexual orientation or gender identity change efforts or conversion therapy with a minor, as those terms are defined by Section 14-108.

Section 8 – That each section and provision of this ordinance is hereby declared to be independent and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this ordinance, or the application thereof to any person or circumstance, is held to be invalid, the remaining sections or provisions and the application of such sections or provisions to any person or circumstances other than those to which it is held invalid shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid.

Section 9 - That this Ordinance shall become effective upon the date of its passage.

PASSED URBAN COUNTY COUNCIL:

ATTEST:

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MAYOR

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CLERK OF URBAN COUNTY COUNCIL  
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