



## Legislation Text

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File #: O-2021-45, Version: 1

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CONSIDERATION OF ADOPTION, APPROVAL, AMENDMENT, AND/OR POSTPONEMENT OF ORDINANCE O-2021-45 UPON SECOND AND FINAL READING: 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 THE PRACTICE OF CONVERSION THERAPY WITH A MINOR; AND PROVIDING FOR THE SEVERABILITY THEREOF.

**BACKGROUND:** At the request of the Human Rights Commission ("HRC"), Staff drafted an ordinance that would prohibit the use of City funds for conversion therapy. During a special meeting on 5/3/21, the HRC voted unanimously to recommend that City Council adopt the ordinance as drafted. The ordinance was discussed by Council during the Council Conference on May 11, 2021. Some Councilmembers expressed support for an approach that would outright prohibit the practice of conversion therapy for minor children and Staff revised the drafted ordinance. During the regularly scheduled meeting on 5/27/21, the HRC voted unanimously to recommend adoption of the revised draft ordinance. The latest version of the ordinance is attached for your consideration and the relevant changes contained therein are discussed below.

### **DISCUSSION:**

#### *Adding article headings*

First, the proposed amendments include housekeeping changes to Chapter 7 for organizational purposes. Chapter 7 is now split into three different Articles. This change only adds a layer of organization of the numerous sections of Chapter 7 and is not intended to be substantive:

#### **ARTICLE I - IN GENERAL**

The already existing sections to be included under this article are general provisions, such as the statement of purpose and duties of the HRC.

#### **ARTICLE II - ANTI-DISCRIMINATION**

The already existing sections to be included under the article relate to anti-discrimination and the HRC complaint process.

#### **ARTICLE III - CONVERSION THERAPY**

This article is where the two new sections of code will be placed.

#### *Changes to 7-109*

Section 7-109 deals with penalties for violation of the City's anti-discrimination prohibition. The

proposed changes narrow the application of the penalty to apply only to violations of section 7-104 (the City's anti-discrimination section). This change is necessary to have a separate penalty section for the violations of section 7-111, which prohibits providers from engaging in conversion therapy with minors. This proposed amendment would not substantively affect the intended scope of this section.

### *Conversion therapy prohibition*

Section 7-111 has been added, which prohibits providers (as defined by state law) to engage in conversion therapy with a minor. This would prohibit any medical provider licensed by the State of Oklahoma from practicing conversion therapy with anyone under the age of 18 in Norman. This would not include pastoral counseling by non-licensed medical providers.

Section 7-112 has been added, which provides the means of enforcement for violations of section 7-111. Under this section, the City has the option of enforcing violations in Norman Municipal Court. If charged and found guilty, violators would be subject to a fine amount between fifty (\$50.00) and seven hundred fifty dollars (\$750.00). Additionally, language has been added stating that "[this] section shall not limit the City of Norman from pursuing other remedies or from instituting any appropriate action or proceeding, including an injunction in a court of competent jurisdiction." This language reflects that the City has the option to enforce compliance with section 7-111 by pursuing appropriate action other than a prosecution in Municipal Court, if necessary.

As before, there are potential validity concerns with the proposed ordinance based on First Amendment grounds. However, no binding precedent exists in the Tenth Circuit that would directly conflict with this ordinance. In relation to the previous version of this ordinance, this version is more vulnerable to state preemption, as the prior version arguably dealt with matters of local concern (i.e., City funding). The City, as a home-rule municipality, is somewhat shielded from preemption when dealing with matters of local concern, but this version directly regulates a profession concurrently regulated by the State and would not be considered a matter of local concern.

**RECOMMENDATION:** Ordinance O-2021-45 is attached for your review and consideration.