


MIAMI BEACH

OFFICE OF THE CITY ATTORNEY

LTC No. 368-2018

LETTER TO COMMISSION

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Raul J. Aguila, City Attorney 

DATE: June 28, 2018

SUBJECT: Conversion Therapy Litigation Discussion

On June 8, 2016, the City of Miami Beach passed Ordinance 2016-4018, sponsored by Commissioner Aleman, that prohibited the performance on minors of so-called "conversion therapy" designed to alter a person's sexual orientation or gender identity. Conversion therapy, also known as "reparative therapy" or "sexual orientation change efforts" (SOCE), encompasses a range of discredited and non-effective counseling practices by which health care providers or counselors seek to change a person's sexual orientation, gender identity, or gender expression through aversion treatment.

Across the nation, California, Connecticut, Illinois, Nevada, New Jersey, New Mexico, Oregon, Vermont, the District of Columbia, have all banned conversion therapy on minors.

Miami Beach was the first local government in Florida to ban the practice and only the second local government in the United States to do so. The Aleman Conversion Therapy Ordinance has been used as a model by local governments around the State of Florida.

Since the passage of the Miami Beach Ordinance, multiple Florida governments including City of West Palm Beach, City of Lake Worth, City of Boynton Beach, City of Delray Beach, City of Riviera Beach, City of Miami, City of Wilton Manors, Bay Harbor Islands, Village of El Portal, City of Key West, City of Tampa, City of Wellington, and City of Boca Raton have all passed ordinances using the Aleman Conversion Therapy Ordinance as a model.

The City's Ordinance is now under attack in the courts.

In late 2017, Liberty Counsel (a right-wing legal organization designated as a hate group by Southern Poverty Law Center) filed suit in federal court against the City of Tampa in the Middle District of Florida seeking to enjoin enforcement of their ordinance and for damages. That case remains pending.

On June 13, 2018, Liberty Counsel filed a similar lawsuit against Palm Beach County and City of Boca Raton in the Southern District of Florida seeking to enjoin enforcement of those localities ordinances and for damages.

All three of the challenged ordinances follow the City of Miami Beach model sponsored by Commissioner Aleman. Therefore, our City's Conversion Therapy Ordinance would potentially be invalidated by a negative decision in either case, especially the case being heard here in the Southern District of Florida.

Therefore, I recommend that the City Commission authorize the City Attorney's Office to seek permission to intervene in the Southern District of Florida lawsuit to defend the City's Ordinance (or if permission is denied by the court or it is otherwise deemed inadvisable to do so, to file an amicus brief) at the trial level and on appeal.

There is no financial exposure to the City from intervening and all legal work will be performed in-house by City Attorney's Office legal staff.

Ordinance 2016-4018 is attached.

RJA:RR/mmm

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AMENDING CHAPTER 70 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "MISCELLANEOUS OFFENSES," BY CREATING ARTICLE VII, TO BE ENTITLED "SEXUAL ORIENTATION OR GENDER IDENTITY CHANGE EFFORTS," TO PROHIBIT LICENSED PROFESSIONALS FROM ENGAGING IN COUNSELING EFFORTS, PRACTICES, OR TREATMENTS WITH THE GOAL TO CHANGE A MINOR'S SEXUAL ORIENTATION OR GENDER IDENTITY; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the American Psychiatric Association published a position statement in December 1998 opposing any psychiatric treatment, including reparative or conversion therapy, which therapy regime is based upon the assumption that homosexuality *per se* is a mental disorder or that a patient should change his or her homosexual orientation; and

WHEREAS, the American Psychological Association's Task Force on Appropriate Therapeutic Responses to Sexual Orientation ("APA Task Force") concluded that sexual orientation change efforts can pose critical health risks to lesbian, gay, and bisexual people, including, among other things, confusion, depression, social withdrawal, suicidality, substance abuse, self-hatred, high-risk sexual behavior, and a feeling of being dehumanized; and

WHEREAS, following the report issued by the APA Task Force, the American Psychological Association issued a resolution in 2009 on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts, advising parents, guardians, young people, and their families to avoid sexual orientation change efforts that portray homosexuality as a mental illness or developmental disorder and encouraging psychotherapy, social support, and educational services that provide accurate information on sexual orientation and sexuality, increased family and school support, and reduced rejection of sexual minority youth; and

WHEREAS, the American Academy of Child and Adolescent Psychiatry published a statement in 2012 in its journal that, "[g]iven 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

WHEREAS, the American Academy of Pediatrics, the American Medical Association Council of Scientific Affairs, the National Association of Social Workers, the American Counseling Association Governing Council, the American School Counselor Association, and the American Psychoanalytic Association have each asserted in

reports or position statements that sexual orientation change efforts, including reparative therapy or conversion therapy, are not recommended and may be harmful; and

WHEREAS, the Pan American Health Organization issued a statement in 2012 that "[t]hese 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"; and

WHEREAS, the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services issued a report in 2015 examining the scientific literature on conversion therapy and concluded that "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 that "may put young people at risk of serious harm"; and

WHEREAS, the City of Miami Beach ("City") has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, transgender and questioning youth, and in protecting its minors against exposure to serious harms caused by sexual orientation and gender identity change efforts; and

WHEREAS, the City Commission hereby finds that being lesbian, gay, bisexual, or transgender is not a disease, disorder, illness, deficiency, or shortcoming, and that research has demonstrated sexual orientation and gender identity change efforts can pose critical health risks to lesbian, gay, bisexual, or transgender persons; and

WHEREAS, it is the desire of the Miami Beach City Commission to prohibit, within the geographic boundaries of the City, the use of sexual orientation or gender identity change efforts with minors, including reparative and conversion therapy, which have been demonstrated to be harmful to the physical and psychological well-being of lesbian, gay, bisexual, and transgender persons.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

Section 1. That Chapter 70 of the Miami Beach Code is hereby amended to create Article VII as follows:

CHAPTER 70
MISCELLANEOUS OFFENSES

* * *

ARTICLE VII. Sexual Orientation or Gender Identity Change Efforts

Sec. 70-405. Definitions.

The following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this Article, except when the context clearly indicates a different meaning:

Conversion therapy means any counseling, practice, or treatment performed with the goal of changing a person's sexual orientation or gender identity including, but not limited to, efforts to change behaviors, gender expression, or to reduce or eliminate sexual or romantic attraction or feelings toward a person of the same gender. Conversion therapy does not include counseling that:

- a) Provides support to a person undergoing gender transition; or
- b) Provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, if such counseling is not conducted with the goal of changing the person's sexual orientation or gender identity.

Minor means a person less than eighteen (18) years of age.

Reparative therapy has the same meaning as conversion therapy defined in this section.

Sec. 70-406. Conversion therapy prohibited.

A person who is licensed by the State of Florida to provide professional counseling, or who performs counseling as part of his or her professional training under Chapters 458, 459, 490, or 491 of the Florida Statutes, as such chapters may be amended, including, but not limited to, medical practitioners, osteopathic practitioners, psychologists, psychotherapists, social workers, marriage and family therapists, and licensed counselors, may not engage in conversion or reparative therapy with a minor.

Sec. 70-407. Enforcement; penalties.

A violation of Section 70-406 shall be enforced pursuant to the procedures set forth in Chapter 30 of this Code. The penalty for a violation shall be \$200.00. Each day that a violation occurs constitutes a separate offense.

SECTION 1. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 2. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 3. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 4. EFFECTIVE DATE.

This Ordinance shall take effect the 18 day of June, 2016.

PASSED and ADOPTED this 8 day of June, 2016.

ATTEST:

[Signature]

JUNE 13, 2016

Rafael E. Granado
City Clerk

[Signature]
Philip Levine
Mayor

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Signature]
City Attorney

5/25/16
Date

Underline denotes addition

~~Strikethrough~~ denotes deletions


(Sponsored by Commissioner John Elizabeth Aleman)

(Co-sponsored by Mayor Philip Levine, Vice-Mayor Micky Steinberg, Commissioner Ricky Arriola, Commissioner Michael Grieco, Commissioner Joy Malakoff, and Commissioner Kristen Rosen Gonzalez)

MIAMI BEACH

OFFICE OF THE CITY ATTORNEY
RAUL J. AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

TO: Members of the City Commission
City Manager Jimmy Morales
FROM: Raul J. Aguilá, City Attorney 
Hernan Cardeno, Code Compliance Director

DATE: June 8, 2016

SECOND READING – PUBLIC HEARING

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AMENDING CHAPTER 70 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "MISCELLANEOUS OFFENSES," BY CREATING ARTICLE VII, TO BE ENTITLED "SEXUAL ORIENTATION OR GENDER IDENTITY CHANGE EFFORTS," TO PROHIBIT LICENSED PROFESSIONALS FROM ENGAGING IN COUNSELING EFFORTS, PRACTICES, OR TREATMENTS WITH THE GOAL TO CHANGE A MINOR'S SEXUAL ORIENTATION OR GENDER IDENTITY; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

Pursuant to the request of Commissioner John Elizabeth Aleman, the above-referenced Ordinance was drafted to create a prohibition on conversion therapy counseling, practices, and treatments by state licensed professionals in the City of Miami Beach. The prohibitions set forth in the Ordinance would apply to medical practitioners, osteopathic practitioners, psychologists, psychotherapists, social workers, marriage and family therapists, and licensed counselors.

Conversion therapy, also known as reparative therapy, is a counseling practice or treatment which seeks to change a person's sexual orientation or gender identity, including, but not limited to, efforts to change behaviors, gender expression, or to reduce or eliminate romantic or sexual attraction toward a person of the same gender. This therapy has been denounced by national psychology and psychiatry associations and academies as ineffective, unsupported by credible evidence, and a potentially harmful practice. Indeed, cities and states across the nation have begun to adopt laws prohibiting conversion therapy including California, Illinois, New Jersey, Oregon, the District of Columbia, and the City of Cincinnati.

Pursuant to Section 456.003 of the Florida Statutes, which regulates health professions and occupations, when the "public is not effectively protected by other means, including but not limited to, other state statutes, local ordinances, or federal legislation," the state may regulate such professions for the preservation of the health, safety, and welfare of the public. As no state or local legislation currently exists in Florida to protect the public from the harmful and professionally discredited practice of conversion therapy, the City of Miami Beach will take the lead in the state on this issue upon the passage of this Ordinance.

Existing Code Compliance resources will be utilized for the enforcement of this Ordinance, therefore no fiscal impact is anticipated.



MIAMI BEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jimmy Morales, City Manager
FROM: John Elizabeth Alemán, Commissioner
DATE: April 25, 2016
SUBJECT: Agenda item for May 11, 2016 City Commission Meeting

Please place the following item on the May 11, 2016 City Commission Meeting Agenda:

The first reading of an ordinance regarding conversion therapy practices.

If you have any questions please do not hesitate to call our office at ext.6437.

Thank you!

MIAMI BEACH

Commissioner John Elizabeth Alemán

OFFICE OF MAYOR AND COMMISSION

1700 Convention Center Drive, Miami Beach, FL 33139

Tel: 305-673-7102 / Fax: 305-673-7096 / www.miamibeachfl.gov