

AMENDED BILL 40 – Includes Amendment to be proposed and voted on July 12.

ORDINANCE NO.

FILE OF CITY COUNCIL

BILL NO. 40 - 2017

Introduced by the Administration and Councilpersons Affa, Guridy, Hendricks, O'Connell, McGuire and Mota

JUNE 21, 2017

AN ORDINANCE

Amending Part III, Business Regulation and Taxation Code, Title One Businesses and Licensing Code, of the City of Allentown Code by Creating Article 320, Appropriate Mental Health Services, which would prohibit licensed professionals from engaging in counseling, practices, or treatments that seek to change a minor's sexual orientation or gender identity.

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 concluding 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 Allentown (“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 conversion therapy; and

WHEREAS, the City Council hereby finds that being lesbian, gay, bisexual, or transgender is not a disease, disorder, illness, deficiency, or shortcoming, and that research has demonstrated conversion therapy can pose critical health risks to lesbian, gay, bisexual, or transgender persons; and

WHEREAS, it is the desire of the Allentown City Council to prohibit, within the geographic boundaries of the City, the use of conversion therapy with minors, which has 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 ALLENTOWN CITY COUNCIL:

SECTION ONE: That Article 320, Appropriate Mental Health Services, be added to Part III, Business Regulation and Taxation Code:

ARTICLE 320
Appropriate Mental Health Services

320.01 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 practices or treatments that seek to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to reduce or eliminate sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy does not include counseling that:

- a) Provides assistance 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 does not seek to change an individual's sexual orientation or gender identity.

Mental health professional means an individual who is licensed, certified or otherwise authorized to administer or provide professional mental health care or counseling under the act of March 23, 1972 (P.L.136, No.52), known as the Professional Psychologists Practice Act, the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, the act of December 20, 1985

(P.L.457, No.112), known as the Medical Practice Act of 1985, or the act of July 9, 1987 (P.L.220, No.39), known as the Social Workers, Marriage and Family Therapists and Professional Counselors Act.

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

320.02 Conversion Therapy Prohibited.

A person who is licensed by the State of Pennsylvania to provide professional counseling, or who performs counseling as part of his or her professional training under Chapters 16, 25, 41, 47, 48, or 49 of Title 49 of the Pennsylvania Code, as such chapters may be amended, including, but not limited to, medical practitioners, osteopathic practitioners, psychologists, social workers, marriage and family therapists, and professionals counselors, may not engage in conversion therapy with a minor.

320.03 Penalty.

The penalty for a violation of [320B] Section 320.02 shall be revocation of the licensee's business license, after notice and hearing.

320.04 Enforcement: Investigation of Complaints of Violation, Notice and Hearing.

(a) There is hereby established a Complaint Administrator to investigate complaints for the violation of Section 320.02 of this Ordinance. A Licensed Mental Health Professional shall be nominated by the Mayor and confirmed by City Council to serve in this capacity.

(b) Neither the Complaint Administrator nor the Appropriate Mental Health Services Appeals Board, established under Section 320.05 of this Ordinance, shall have the ability to compel the production of records or any materials that are made confidential by federal or state law or that are protected from disclosure by a lawful privilege, unless a valid waiver of the privilege is made.

(c) The Complaint Administrator and the Appropriate Mental Health Services Appeals Board, established under Section 320.05 of this Ordinance, shall not divulge confidential or privileged information that is disclosed during the Enforcement process under this Section 320.04 to anyone outside the Enforcement process.

(d) Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing conducted by an appeals board. The notice shall be mailed, postage prepaid, to the licensee at the licensee's last known address at least five days prior to the date set for hearing.

320.05 Appropriate Mental Health Services Appeals Board

(a) There is hereby established a Appropriate Mental Health Services Appeals Board.
i. The Appropriate Mental Health Services Appeals Board shall consist of five (5) members - a member of City Council, the Health Director or designee, a Licensed Mental Health Professional, and two private citizens nominated by the Mayor and confirmed by the City Council.

ii. The initial terms of the members of the Board of Appeals are as follows:
Licensed Mental Health Professional 4 years
Health Director or designee - 3 years
Private citizen - 3 years
Member of City Council- 2 years

Private Citizen 2 years

iii. After the initial terms have expired, members of the Appeals Board shall be appointed for terms of four (4) years.

iv. After all members have been appointed, the Appropriate Mental Health Services Appeals Board shall hold an organizational meeting within thirty (30) days to appoint a Chair and Vice-Chair.

v. Thereafter, an organizational meeting shall be held annually.

(b) It shall be the responsibility of the Appropriate Mental Health Services Appeals Board to hold hearings to review all appeals of the revocation of a business license.

(c) Hearings shall occur at monthly public meetings. Monthly meetings may be cancelled if there are no pending appeals as of ten (10) days prior to the scheduled meeting.

i. All hearings for appeals of determinations of licenses shall occur within forty- five (45) days of the date of service of the appeal.

ii. Notice of the date, time and place of the hearing shall be served upon the Appellant and the Bureau of Health.

(d) The Appropriate Mental Health Services Appeals Board of Appeals shall issue its decision to either grant or deny the appeal within five (5) business days of the date of the hearing. Notice of the decision shall be served upon the Appellant and the Bureau of Health.

(e) Failure to hold an appeal hearing and/ or issue a decision within the allotted time shall result in the appeal being granted.

(f) All hearings shall be conducted pursuant to the requirements of the Local Agency Law (Subchapter B of Chapter 5 and Subchapter B of Chapter 7 of Title 2 of the Pennsylvania Consolidated Statutes).

i. At its first and annual organizational meetings, the Appropriate Mental Health Services Appeals Board shall decide whether to engage stenographic services to record hearings for the ensuing year.

ii. An appellant has the right to retain the services of a court reporter or stenographer for the hearing at the appellant's sole cost should such service not be provided by the Appropriate Mental Health Services Appeals Board.

(g) Any Appellant whose appeal is denied by the Appropriate Mental Health Services Appeals Board may continue to remain open during a pendency of appeal with the Lehigh County Court of Common Pleas.

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: Effective Date: That this ordinance take effect 10 days after final passage and signage by the Mayor.