



## CITY OF ST. ALBERT ADMINISTRATIVE BACKGROUNDER

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### **TITLE: LAND USE BYLAW AMENDMENT RE: CONVERSION THERAPY**

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#### **PURPOSE OF REPORT**

On May 27, 2019 Councillor Joly provided notice in accordance with Section 23 of Procedure Bylaw 3/2018 that she intended to bring forward the proposed motion below.

*In order for Council to debate the motion, the motion must be formally moved.*

#### **PROPOSED MOTION(S):**

That Administration be directed to share the following potential motion for consideration to the CSAC, Youth & Seniors' committees, Outloud/PFflag, St. Albert Strategy and Mobilization Committee partners, and any other interested community partners and present their feedback to the December 2019 Governance, Priorities and Finance Committee.

That Administration be directed to prepare a Bylaw for Council's consideration, to:

- a. Amend the Land Use Bylaw to provide that activities commonly known as "conversion therapy" (i.e., practices or techniques aimed at changing or attempting to change a person's sexual orientation or gender identity or expression) are neither a permitted nor a discretionary use in any land use classification;
- b. Amend the Business Licensing Bylaw to provide that conversion therapy is not a lawful business activity in St. Albert and no business license shall be issued for any person or organization that has conversion therapy as part of its business activities.
- c. Set a fine of \$10,000 for those advertising or offering conversion therapy service for minors within St. Albert.

#### **ALIGNMENT TO PRIORITIES IN COUNCIL'S STRATEGIC PLAN**

N/A

#### **ALIGNMENT TO LEVELS OF SERVICE DELIVERY**

N/A

## **ALIGNMENT TO COUNCIL DIRECTION OR MANDATORY STATUTORY PROVISION**

N/A

### **BACKGROUND:**

#### **1. What is Conversion Therapy?**

Conversion therapy, also called reparative therapy, is any practice, treatment, or service designed to change an individual's sexual orientation or gender identity or to eliminate or reduce sexual attraction or sexual behavior between persons of the same sex, but does not include surgical sex changes or related services.

Conversion therapy is opposed by the Canadian Psychological Association (CPA 2015 Policy Statement on Conversion Therapy is attached), the World Health Organization, Amnesty International, and others.

#### **2. What Has Been Done?**

##### **A. Federal Government**

A petition was started by Alberta activist Devon Hargreaves in late 2018, asking the federal government to ban conversion therapy. The petition, which garnered over 18,000 signatures, was presented in the House of Commons on February 1, 2019. On March 19, 2019, the federal government responded by saying that "conversion therapies are immoral, painful and do not reflect the values of our government or those of Canadians" and by saying that the federal government continues "to work with provincial and territorial governments to address these practices through the regulation of the health profession."

New legislation, Bill S-260, attached, was introduced in the Senate on April 9, 2019, which proposes to change the Criminal Code of Canada to make it illegal to advertise conversion therapy to children and to criminalize receiving a financial or material benefit from the practice.

With no federal law in place to ban conversion therapy across Canada, some provinces and one municipality have taken steps to outlaw the practice within their jurisdictions.

##### **Manitoba**

It is the position of the Manitoba government that conversion therapy can have no place in the province's public healthcare system. Manitoba became the first province

to ban conversion therapy in 2015. The province expects its regional health authorities and health profession regulatory colleges to ensure that conversion therapy is not practiced in Manitoba's healthcare system.

## B. Ontario

Following Manitoba's lead, Ontario introduced its own bill later in 2015 to end the funding of conversion therapy for LGBTQ youth under the province's health insurance plan. The bill, attached, amended Ontario's *Health Insurance Act* and *Regulated Health Professions Act, 1991* with respect to services that seek to change the sexual orientation or the gender identity of patients. Strictly speaking, such services are not considered insured services any longer and the provision of treatment that, in the course of providing health care services, seeks to change the sexual orientation or gender identity of patients under 18 years of age is prohibited.

While not a strict ban, this is a restriction on the type of therapy that may be offered since it is no longer covered under Ontario's health insurance plan.

## C. Vancouver

The City of Vancouver is governed by a unique City Charter which, in part, permits the City to pass bylaws prohibiting businesses in the City as long as the prohibition is done by unanimous vote:

### **Powers of Council re businesses, trades, etc.**

**203.** Where and to the extent that the Council is authorized to regulate, license, or tax persons carrying on a business, trade, profession, or other occupation, it shall have the power to

- (a) divide and subdivide such businesses, trades, professions, or other occupations into as many groups or classes as it sees fit, having regard to the number of persons engaged therein, the extent of the accommodation offered to the public, or on such other basis as the Council may think expedient;
- (b) differentiate and discriminate between groups or classes both as to the amount of any licence fee or tax to be paid and the terms and conditions under which any group or class may or may not carry on the business, trade, profession, or other occupation;
- (c) define any business, trade, profession, or other occupation;
- (d) prohibit, but only by the unanimous vote of the members present.

1953-55-203.

In June 2018, Vancouver became the first Canadian City to ban businesses from offering conversion therapy services. This was done through an amendment to an existing bylaw called the *Business Prohibition Bylaw* (attached), which was originally enacted in 1978. This Bylaw has been amended 11 times over the decades, to increase the fine amounts, and most prominently to add more businesses to the list of prohibited businesses. Currently, this Bylaw fines offenders between \$500 -

\$10,000 for each offence. The Bylaw was most recently amended in 2018 to prohibit “charging a fee for any services that seek to change the sexual orientation or gender identity of any person.”

#### D. Nova Scotia

In September 2018, legislation entitled the *Sexual Orientation and Gender Identity Protection Act*, attached, was introduced in Nova Scotia which makes it illegal for health professionals to provide conversion therapy for those under the age of 19, and makes conversion therapy an uninsurable practice. There is a provision that allows “mature minors” between the ages of 16 and 18 the ability to provide consent for the practice.

### **3. What About Alberta?**

Conversion therapy is not a recognized health service in Alberta and cannot be provided by any regulated health professional in Alberta. The various associated colleges of health professions deal with their members directly to sanction them if an unrecognized health service is being provided of which they become aware.

#### A. Health Professions Act

Professions which are regulated under the *Health Professions Act* (“HPA”) are exempt from the requirement to obtain a business license from a municipality:

##### **Municipal, settlement licence exemption**

**101** No municipality or Metis settlement has the power to require

- (a) a regulated member to obtain a licence from the municipality or Metis settlement to practise a regulated profession, or
- (b) a professional corporation, a business corporation or a partnership owned by regulated members to obtain a licence from the municipality or Metis settlement to practise a regulated profession.

RSA 2000 cH-7 s101;2016 c9 s5

Currently, psychologists and psychiatric nurses are regulated members under the HPA. Therapists are expected to be regulated under the HPA in the fall/winter 2019/2020. As mentioned above, the practice of conversion therapy is opposed by the Canadian Psychological Association.

#### B. Conversion Therapy Working Group

A Conversion Therapy Working Group was established in early 2019 to provide recommendations on legislation and policy options to ban the practice of conversion therapy in Alberta. While the status of this Working Group is currently unclear given the change in government that has occurred since the Working Group was

established, the Working Group's co-chair has reported that the Group plans to continue meeting.

#### **4. What About St. Albert?**

##### **A. MGA**

The *Municipal Government Act* ("MGA") gives municipalities in Alberta the ability to pass bylaws for "municipal purposes" respecting the matters outlined in section 7 of the MGA. Specifically, section 7(e) of the MGA permits a council to pass bylaws "for municipal purposes respecting...businesses, business activities and persons engaged in business." Furthermore, section 8 of the MGA permits a council to pass a bylaw to "regulate or prohibit."

##### **B. LUB**

The Land Use Bylaw ("LUB") is "the instrument through which the use and development of all lands within the municipality are regulated" (Laux and Stewart-Palmer, *Planning Law and Practice in Alberta*, 4<sup>th</sup> ed., 2019). In addition, within a particular land use district, the LUB distinguishes between permitted and discretionary uses.

Based on the definition of conversion therapy provided above, a development permit application to undertake such an activity would have to be done under either a "home occupation" use, or a "health services" use, as defined in the LUB.

The underlying principle embodied in planning law is that where a 'use' adversely impacts the 'use and enjoyment of neighbouring properties', a development permit may be denied. Council may wish to consider whether the LUB is the appropriate document through which certain types of behaviours in the community are either encouraged or discouraged.

##### **C. Business Licensing**

The City's *Business License Bylaw* pertains to the licensing and regulation of businesses in St. Albert. Whereas permits issued under the LUB regulate the general "use" of a property, licenses issued under the *Business License Bylaw* regulate the specific business activities of the occupants of that space; for example, a development permit could be issued for a "health services" use at a property, however the business license will cover the specific activities of the business occupying that space, such as distinguishing between psychological services and chiropractic services, which would both fall under the same "health services" use in the LUB. To date, the City of St. Albert has taken a "business-friendly" approach and has not banned any types of businesses from operating within the municipality. Rather, St. Albert requires all non-exempt businesses that operate within the City to have a business license to carry on business. Generally, all business licenses cost the same amount, with the exception of higher fees for tobacco retail stores, and the fairly recent addition of higher business licensing fees for cannabis retail stores.

It would be possible to prohibit businesses that offer conversion therapy services as well as those that advertise conversion therapy services within St. Albert, as well as impose a \$10,000 fine amount for offences with respect to these provisions, through an amendment to the *Business License Bylaw* or the passing of a new “Business Prohibition Bylaw”, similar to the approach taken in Vancouver. However, Administration has reservations about this approach for the following reasons:

- **Precedent.** In Vancouver’s experience, since the establishment of the *Business Prohibition Bylaw* in the 1970s, the only amendments that have been made to the bylaw have been to increase the fine amounts and to add further businesses that are prohibited. Administration has trepidations that this may start a slippery slope of banning businesses in St. Albert, which may be perceived as a “business-unfriendly.”
- **Challenge.** Such business licensing provisions may be subject to legal challenge. It is difficult to predict the outcome of such a potential challenge.

#### D. Diversity & Inclusion Declaration

On June 11, 2018, Council approved “St. Albert’s Declaration to be a Welcoming & Inclusive Community” in order to publicly identify the City of St. Albert’s intention to enhance its capacity for social, cultural, and economic excellence due to the diversity of the community and inclusivity of all residents. The provision of conversion therapy services is inconsistent with this Declaration.

#### E. The Edmonton Experience

On April 16, 2019, Edmonton City Council passed the following motion:

That Administration provide a report to Committee on:

1. The current state of licensing for the practice referred to as conversion therapy in Edmonton.
2. What other municipalities are doing to end conversion therapy practices?
3. What options are available to end the practice of conversion therapy in Edmonton?

Edmonton Administration’s report is due at the Community and Public Services Committee on August 21, 2019. As of the date of the writing of this Administrative Backgrounder, St. Albert’s and Edmonton’s Administrations are aligned in their approaches on the matter of regulating conversion therapy in municipalities.

As far as Administration is aware, no other municipality in Alberta is dealing with or has plans to deal with conversion therapy at the municipal level.

## **F. Stakeholder Feedback**

Should Council proceed with the motion on July 8, 2019, Administration could facilitate gathering feedback from the groups as outlined in the proposed motion.

## **G. Options**

In Administration's opinion, the best way to legislate conversion therapy bans is through federal and potentially provincial legislation. The federal government has the authority to ban/restrict/prohibit activities, and the provincial government regulates health services.

Some potential options for Council's consideration with respect to conversion therapy are:

1. Council direct Administration to develop an engagement strategy regarding the prohibition of conversion therapy services inclusive of regional, provincial and federal stakeholders, that would seek to encourage federal and/or provincial action on the matter.
2. Council pass a resolution declaring that St. Albert opposes conversion therapy services as they are not consistent with "St. Albert's Declaration to be a Welcoming and Inclusive Community."
3. Council to direct Administration to pass amendments to St. Albert's *Business License Bylaw*, as described above.

## **5. Recommendation**

Based on the information provided in this Administrative Backgrounder, Administration believes that the outcome of banning/restricting conversion therapy practices is best achieved by other orders of Government, and would therefore suggest an engagement strategy be developed, if deemed an advocacy priority for Council. Should Council wish to discuss engagement with other orders of Government on this topic at this time, Administration would suggest Council move in camera per Section 21 of the *Freedom of Information and Protection of Privacy Act*.

Report Date: July 8, 2019

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