

I. SUBJECT, ATTACHMENTS, AND BACKGROUND

Consider and approve a resolution pertaining to public safety, lewd acts in public, protests, and constitutional rights of the public in public spaces.

Attachments:

Resolution

II. STAFF COMMENTS AND ANALYSIS

At the request of the City Council, I have prepared the attached resolution for consideration by the Council. This resolution embodies the direction I have received from individual councilmembers and provides instructions to City Administration relating to the protection of the public and the preservation of the rights of all individuals within our jurisdiction during the planned Pride Celebration scheduled for September 14 at Unity Square.

The City has received official notification that there will be a drag show held during this celebration, and given the public concern and protest that occurred during and after the last public drag show in September of 2022, the Council has requested a resolution to ensure that the City is best prepared to address the concerns of citizens, protestors, performers, and attendees alike.

Following the public discussions that occurred after the drag show mentioned above, the Council entered into a one-year agreement with OKEQ – Bartlesville which required drag shows during the term of the agreement to be held indoors. Ultimately, OKEQ – Bartlesville decided not to hold a drag show at all during the period of this agreement. A great deal of legal precedent has been created across the country, since this agreement. However, it has played out exactly as our City Attorney advised prior to the passage of the agreement with OKEQ – Bartlesville.

The attached resolution neatly summarizes the legal environment and current jurisprudence related to the regulation of both drag and public protests. As fully outlined in the resolution, the great weight of this jurisprudence grants constitutional protections to both drag and public protests. As such, the City Council desires to uphold these sacred rights for everyone involved while maintaining public safety and adherence with applicable laws.

However, while both drag and public protests are regarded as Constitutionally protected freedoms of expression, both are still subject to certain laws and restrictions. These laws prohibit disturbances of the peace, indecent exposure, lewd acts, and reasonable time, place, and manner restrictions. The Council also desires to ensure that the Bartlesville police department continues to receive the highest level of training on these laws and the rights of all parties prior to the event and anticipated public protest of the event.

As such, the resolution contains specific direction to the City Manager to provide sufficient police presence to address all of these issues in three assignments. These assignments and duties are based on the location of the anticipated protest, the grounds of the event, and the performances. All assigned officers are to receive training specific to their assignment prior to the event. While our officers have received training specific to these areas in the past through a partnership with the District Attorney's office, the Council wishes to ensure that all new officers are fully trained and existing officers are up to date. These officers are also to be provided with body worn cameras which shall be utilized at all times when the officer is on duty. The Council also encourages open communication with all parties involved to ensure the safe and efficient execution of these duties.

I believe that the attached resolution captures the intent of the Council as it has been communicated to me by the entire body of the Council in individual discussions. This resolution has also been reviewed by the City Attorney who believes all statements and actions contained in the resolution to be factual and to be permissible within the authority granted to the City. I also believe that all requested actions are within the authority and capability of the City.

Please schedule this item for consideration and possible action at our regularly scheduled September meeting.

III. RECOMMENDED ACTION

Review the attached resolution, and if it embodies the direction of the Council as intended, approve the resolution.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY BARTLESVILLE
PERTAINING TO PUBLIC SAFETY, LEWD ACTS IN PUBLIC, PROTESTS,
AND CONSTITUTIONAL RIGHTS OF THE PUBLIC IN PUBLIC SPACES.**

WHEREAS, many citizens of Bartlesville have expressed concern about the content of a drag show held at Unity Square on September 10, 2022; and

WHEREAS, the highest duty of the City Council is to ensure the safety of the public and to protect and preserve the rights guaranteed by the Constitution of the United States to all persons within the jurisdiction of the City of Bartlesville; and

WHEREAS, the right to peaceably assemble, both for celebration and protest, has long been recognized as a cornerstone of our constitutionally guaranteed freedoms; and

WHEREAS, the Oklahoma legislature considered, but failed to pass, SB 503 and HB 2186 which would have regulated or prohibited public drag shows state-wide; and

WHEREAS, the great weight of jurisprudence relating to municipal and state regulation of public drag shows has found drag to be expression which is protected by the First Amendment as follows¹:

***The Woodlands Pride, Inc. et al. v. Paxton et al.*; S.D. Tex. Case No. 4:23-cv-02847:** After full trial on the merits, Texas SB 12 was ruled (1) an unconstitutional content-based restriction, (2) an unconstitutional restriction based on viewpoint, (3) unconstitutionally overbroad, (4) unconstitutionally vague, and (5) an unconstitutional prior restraint on speech;²

***HM Florida-Orl, LLC v. DeSantis et al.*; M.D. Fla. Case No. CV-23-950:** The District Court granted a preliminary injunction prohibiting enforcement of the Florida Protection of Children Act (“FPOCA”). The Court found the FPOCA to be a facially content-based regulation which is not narrowly

¹In each of these cases, a Court could grant a prevailing Plaintiff an award of its reasonable attorney fees and costs incurred in proceedings in vindication of civil rights. See 42 U.S.C. § 1988.

² The State of Texas has appealed this decision. The appeal is pending as *The Woodlands Pride, Inc. et al. v. Paxton et al.*; 5th Cir. Case No. 23-20480.

tailored to achieve a compelling state purpose. The FPOCA was also found to suffer from vagueness and overbreadth in violation of the 5th Amendment;

Imperial Sovereign Court of the State of Montana, et al. v. Knudsen et al., D. Mont. Case No. CV-23-50: The District Court granted a preliminary injunction prohibiting the enforcement of Montana HB 359. The Court found that HB 359 presumptively unconstitutional as a facially content-based restriction on free expression. Applying a strict scrutiny analysis, the Court found that HB 359 was not narrowly tailored to serve a compelling state interest and is unconstitutional vague and overbroad in violation of the Fifth Amendment;³

Friends of George's, Inc. v. Steven Mulroy, W.D. Tenn case no. 23-CV-02163: After full trial on the merits the Tennessee Adult Entertainment Act (“TAEA”) was ruled a facially content-based restriction which was passed for the constitutionally impermissible purpose of chilling free speech. The TAEA was also determined to be unconstitutionally vague and substantially overbroad;⁴

Southern Utah Drag Stars v. City of St. George, D. Utah case No. CV-23-44; The District Court granted a temporary injunction prohibiting the City of St. George, Utah from denying permits for a drag show; and⁵

WHEREAS, even constitutionally protected expression is subject to reasonable regulation to protect public decency acts as follows:

21 O.S. §22 prohibits acts which grossly disturb the public peace or is injurious to public morals;

³The State of Montana has appealed the District Court’s preliminary injunction. The appeal is pending as *Imperial Sovereign Court of the State of Montana, et al. v. Knudsen et al.*; 9th Cir. Case No. 23-3581

⁴ The State of Tennessee appealed the District Court’s ruling. In *Friends of George's, Inc. v. Mulroy*; 6th Cir. Case. No. 23-5611 the 6th Circuit ordered the case dismissed due to Plaintiffs’ lack of standing to pursue a pre-enforcement review of the TAEA. The merits of Plaintiff’s claims under the First Amendment were not reached. Plaintiffs have sought *en banc* review of the dismissal before the 6th Circuit.

⁵ Since the injunction, the City has changed its ordinance and requested that the Plaintiff’s claims be dismissed as moot. The District Court denied dismissal of most of Plaintiff’s claims because “[t]he subsequent change in the City’s ordinance does not eradicate the City’s past actions or ensure the non-discriminatory application of the new ordinance.”

21 O.S. §1021(A) and Bartlesville Municipal Code §12-64 prohibit indecent exposure of genitals in a public place;

Bartlesville Municipal Code §12-91 through 12-94 prohibits disturbance of the peace;

21 O.S. §1123(A)(5) prohibits exposing children to lewd acts; and

WHEREAS, protestors and counter-protestors have a constitutionally protected right to assemble peaceably at all public events; and

WHEREAS, even protests protected by the constitution are subject to laws relating to disturbing the peace and reasonable time, place, and manner restrictions; and

WHEREAS, a public, outdoor drag event is planned during the annual “Pride Celebration” being provided by the Oklahomans for Equality successor group known as Bartlesville Equality on September 14, 2024 at Unity Square; and

WHEREAS, a protest of this event is anticipated; and

WHEREAS, the City Council is deeply concerned about the public safety implications to attendees, protestors, and the public at large related to this event; and

WHEREAS, the City Council is providing specific guidance to the City Manager and the Bartlesville Police Department to ensure that the rights of all parties are preserved, that the safety of the public is maintained, that the above referenced laws relating to lewd and lascivious conduct are strictly enforced, and that the protest remains peaceful and obeys all applicable laws for the preservation of public order.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BARTLESVILLE, THAT:

1. A sufficient number of police officers shall be assigned to Unity Square and surrounding areas set aside for protest to ensure the safety of the protestors and participants alike.
 - a. All officers assigned to such duty shall be provided with a high level of specific training related to the rights of protestors at public events, disturbing the peace, and all other topics related to this assignment.

- b. Officers assigned to such duty shall be responsible for enforcement of all public disturbance laws, preserving the rights of the protestors, and ensuring the safety of all involved.
 - c. Open communication with any known protestors or groups should be held in advance of the event and as needed during the event to lessen tensions, improve public safety, and ensure compliance with all laws and regulations.
- 2. A sufficient number of officers shall be assigned to patrol the Unity Square and all areas surrounding the public event to ensure the safety of the attendees.
 - a. All officers assigned to such duty shall be provided with a high level of training related to rights of attendees and protestors at public events, public safety practices at public events, and all other topics related to this assignment.
 - b. Officers assigned to such duty shall be responsible for enforcement of all public disturbance laws, preserving the rights of attendees, and ensuring the overall safety of the event.
 - c. Open communication with event organizers shall be held in advance of the event and as needed during the event to lessen tensions, improve public safety, and ensure compliance with all laws and regulations.
- 3. A sufficient number of officers shall be assigned to observe all performances to ensure that no lewd or lascivious acts are committed by performers or spectators.
 - a. All officers assigned to such duty shall be provided with a high level of training related to lewd and lascivious acts, rights of attendees and performers at public events, and all other topics related to this assignment.
 - b. Officers assigned to such duty shall be responsible for ensuring the proper enforcement of all public decency laws, preserving the rights of performers and event organizers, and ensuring the safety of performers and spectators.
 - c. Open communication with event organizers and participants should be held in advance of the event and as needed during the event to lessen

tensions, improve public safety, and ensure compliance with all laws and regulations.

4. All officers shall be provided with body worn cameras and the cameras shall at all times be turned on to record all events while the officers are on duty.
5. The City Manager shall make available to the Chief of Police all resources necessary to ensure the safety of the public, preserve the rights of all parties, and enforce all applicable rules and laws during this event.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Bartlesville, Oklahoma, held the 3rd day of September 2024.

City of Bartlesville

Mayor

ATTEST:

City Clerk