

# Resolution

Version 2.5 released on 6/29/23  
Use for all types of Resolutions



## CITY COUNCIL USE ONLY

Date Received: \_\_\_\_\_  
Committee Date: \_\_\_\_\_  
1<sup>st</sup> Agenda Date: \_\_\_\_\_

Tracking #: \_\_\_\_\_  
Committee: \_\_\_\_\_  
Hearing Date: \_\_\_\_\_  
2<sup>nd</sup> Agenda Date: \_\_\_\_\_

## CITY CLERK USE ONLY

☐ Scanned      Date: 02.07.2024  
☐ Posted      Item #: 2402.00299

**All department items requiring Council approval must be submitted through the Mayor's Office.**

## Primary Details

### Board Approval

### Other Board Name

### City Council Approval

☒ Yes    ☐ No

Department: Legal  
Contact Name: Caroline Guerra Wolf

Email: cguerrawolf@cityoftulsa.org

Phone: 918-596-7714

Resolution Type: Expression of Support/Opposition/Intention

### Owner-Grantor

Amount: \_\_\_\_\_ Case Number: \_\_\_\_\_

TMAPC Number: \_\_\_\_\_ Council District: 7

Description (Subject): Resolution in support of an action to abate the nuisance at Rodeo Nightclub, 9379 E 46th Street

### Bid/Project Number

Section: \_\_\_\_\_ Township: \_\_\_\_\_

Range: \_\_\_\_\_ Addition: \_\_\_\_\_

Lot: \_\_\_\_\_ Block: \_\_\_\_\_

Address: 9379 E 46th Street

## Budget

### Funding Source(s)

### TOTAL:

Enter the funding source(s) using the appropriate Munis funding format: Org (Allocation Code)-Object-Amount (1001211-531401-\$10.00) or Project String-Amount (144104.AbstTitle5413102.6001-4043122-541102-\$30,000.01)

## Approvals

Department: \_\_\_\_\_  
Legal: Caroline Guerra Wolf  
Board: \_\_\_\_\_  
Mayor: [Signature]  
Other: \_\_\_\_\_

Date: 1.31.24  
Date: 1/31/24  
Date: \_\_\_\_\_  
Date: FEB 07 2024  
Date: \_\_\_\_\_

Policy Statement

Background Information

Mayor Bynum has previously authorized the City Attorney to file suit against EJC Real Estate LLC and other responsible parties to abate the public nuisance caused by the Rodeo Nightclub at 9379 E. 46th Street. In order to satisfy the relevant state statute authorizing such suits, Okla. Stat. title 50, section 17, the City Attorney now requests that the City Council pass a resolution in support of the bringing of this suit for the purpose of abating the nuisance.

A Notice of Violation-Nuisance, dated August 30, 2022, was issued to the property owner as a result of the disturbing noise and vibrations emanating from the Rodeo Nightclub. That Notice was subsequently appealed to and affirmed by the City Council. The property owner then appealed to the Tulsa County District Court, which also affirmed the Notice of Violation. Despite this Notice and numerous criminal citations, the Rodeo Nightclub continues to disturb the peace and comfort of the surrounding neighbors.

Provide background information on the requested action.

Summation of the Requested Action

The City Attorney requests that the City Council pass a resolution declaring the noise and vibrations from the Rodeo Nightclub to be a nuisance, declaring it impractical for the City to summarily abate the nuisance, and expressing the Council's support for a lawsuit against the responsible parties for the purpose of abating the nuisance.

Summarize the pertinent details of the requested action.

Emergency Clause?

- ☒ Yes
- ☐ No

Reason for Emergency Clause

This public nuisance is having a serious and detrimental impact on the surrounding residents nearly every night.

Explain why you are requesting that the City Council approve the action with an emergency clause.

Processing Information for City Clerk's Office

Post Execution Processing

- ☐ Mail vendor copy (addt'l signature copies attached)
- ☐ Must be filed with other governmental entity
- ☐ Addt'l governmental entity approval(s) required

Additional Routing and Processing Details

(Published in the *Tulsa World*,

\_\_\_\_\_, 2024)

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE TULSA CITY COUNCIL DECLARING THE NOISE AND VIBRATIONS CURRENTLY PRODUCED BY THE RODEO NIGHTCLUB ON THE PROPERTY OF EJC REAL ESTATE LLC TO BE A NUISANCE; DEEMING IT IMPRACTICAL TO SUMMARILY ABATE THE NUISANCE; AND SUPPORTING THE BRINGING OF AN ACTION IN THE TULSA COUNTY DISTRICT COURT FOR THE PURPOSE OF ABATING SUCH NUISANCE.**

**WHEREAS**, the City of Tulsa has the right and power, under its Amended Charter, to “adopt and enforce all ordinances necessary or proper to protect the public peace, health, order, morals, and safety, and to promote the general welfare of the City of Tulsa and its inhabitants” (1989 Amended Charter art. 1, § 3(A)); and

**WHEREAS**, a nuisance is defined by Oklahoma statutory law and City of Tulsa ordinance to include unlawfully doing an act, or omitting to perform a duty, which act or omission annoys, injures, or endangers the comfort, repose, health, or safety of others (Okla. Stat. tit. 50, § 1; Tulsa Revised Ordinances Title 24, § 100); and,

**WHEREAS**, the City of Tulsa has the right and power to determine what constitutes a nuisance within its corporate limits (Okla. Stat. tit. 50, § 16); and

**WHEREAS**, the Tulsa nuisance code declares to be a public nuisance “all noises, sounds or vibrations of such a character or duration so as to be unreasonably loud or disturbing to the peace and quiet of persons of ordinary sensibilities, including but not limited to those persons inside a building or structure used in whole or in part as a domicile, residence or dwelling” (Tulsa Revised Ordinances Title 24, § 103(F)); and,

**WHEREAS**, the City of Tulsa, through a nuisance abatement administrative proceeding, has previously determined that the noise and vibrations generated by the Rodeo Nightclub, operating at 9379 E. 46th Street, within City of Tulsa corporate limits, on property currently owned by EJC Real Estate LLC, currently constitute a nuisance; and

**WHEREAS**, the City previously issued to EJC Real Estate LLC a Notice of Violation-Nuisance, dated August 30, 2022, which was subsequently upheld by an Administrative Hearing Officer, the Tulsa City Council, and the Tulsa County District Court; and

**WHEREAS**, the Rodeo Nightclub has continued to disturb the peace and comfort of the surrounding neighbors since the violation cited on August 30, 2022, and

**WHEREAS**, the residents of Regency Park neighborhood have suffered tremendously from persistent loud music, noise, and vibrations that last at least until 2 a.m. multiple nights each week; and

**WHEREAS**, Oklahoma statutory law permits a municipality to bring a suit in district court for the purpose of abating a nuisance deemed impractical to summarily abate (Okla. Stat. tit. 50, § 17).

**NOW, THEREFORE, IT IS RESOLVED BY THE TULSA CITY COUNCIL** that the unreasonable noise and vibrations emanating from the premises of Rodeo Nightclub and affecting the nearby property owners are hereby declared a nuisance; and,

**IT IS FURTHER RESOLVED** that it is impractical for the City of Tulsa to summarily abate the nuisance; and, therefore,

**IT IS FURTHER RESOLVED** that the City Council hereby supports the bringing of a lawsuit in the Tulsa County District Court against the property owner and/or the owner or operator of the Rodeo Nightclub for the purpose of abating the nuisance and pursuing any and all other appropriate remedies and relief available by law to the City of Tulsa.

**IT IS FURTHER RESOLVED** that an emergency exists for the preservation of the public peace, health, and safety, by reason whereof this resolution shall take effect immediately from and after its passage, approval, and publication.

Adopted by the Council \_\_\_\_\_  
Date

\_\_\_\_\_  
Chair of the Council

ADOPTED as an emergency measure: \_\_\_\_\_, 2024.

\_\_\_\_\_  
Chair of the Council

OFFICE OF THE MAYOR

Received by the Mayor: \_\_\_\_\_, at \_\_\_\_\_.  
Date Time

G. T. Bynum, Mayor

By \_\_\_\_\_  
Secretary

APPROVED by the Mayor of the City of Tulsa, Oklahoma: \_\_\_\_\_,  
at \_\_\_\_\_.  
Time Date

\_\_\_\_\_  
Mayor

(Seal)

ATTEST:

\_\_\_\_\_  
City Clerk

Approved:

\_\_\_\_\_  
City Attorney



**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY, OKLAHOMA**

<p>EJC REAL ESTATE LLC, AKA EL SUPER CORRAL DBA MIDNIGHT RODEO Plaintiff, v. CITY OF TULSA, EX REL WORKING IN NEIGHBORHOODS DEPARTMENT Defendant.</p>	<p>No. CV-2023-252 (Civil Misc.: <b>PETITION FOR APPEAL FROM CITY COUNCIL AND REQUEST FOR TEMPORARY RESTRAINING ORDER)</b>  Filed: 02/09/2023  Judge: Civil Docket B</p>	<p>DISTRICT COURT <b>FILED</b> OCT 02 2023 DON NEWBERN, Court Clerk STATE OF OKLA. TULSA COUNTY</p>
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**JE/ORDER AFFIRMING TULSA CITY COUNCIL DECISION PURSUANT TO 12 O.S. §951**

1. On February 1, 2023, the Tulsa City Council denied Plaintiff EJC Real Estate LLC (“EJC”)’s appeal of a violation of a public nuisance ordinance. The ordinance in question reads:

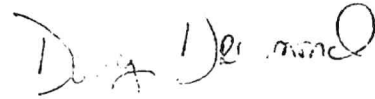
**All noises, sounds or vibrations of such a character or duration so as to be unreasonably loud or disturbing to the peace and quiet of persons of ordinary sensibilities, including but not limited to those persons inside a building or structure used in whole or in part as a domicile, residence of building. 24 TRO §103-F**

2. On February 9, 2023, EJC filed a *Petition For Appeal From A Ruling Of The City Council And Request For Temporary Restraining Order*.
3. This is an appeal under 12 O.S. §951. “The district court sits as an appeal tribunal and its jurisdiction is limited to the consideration of the transcript and the argument of the respective attorneys thereon.” *Tuttle v. Pilance*, 1994 OK 141 ¶8. The standard is whether the decision by the City Council is “contrary to the law or contrary to the clear weight of the evidence.” *Id*.
4. Both parties filed briefs. EJC’s lone argument is that TRO Section 103-F is “unconstitutionally vague.”<sup>1</sup> The ordinance,” EJC writes, “establishes “no objective standard by which the peace and quiet of ‘persons of ordinary sensibilities’ can be disturbed.” *Plaintiff’s July 13, 2023, Response*, pp. 4-6.
5. An ordinance is unconstitutionally vague if “it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits” or “if it authorizes or even encourages arbitrary and discriminatory enforcement.”

<sup>1</sup> On September 26, 2023, the Court allowed oral argument. EJC’s counsel briefly argued the ordinance was unconstitutional and informed the Court that was the sole issue EJC raised on appeal.

*Harmon v. City of Norman, Oklahoma*, 61 F.4th 779, 797–98 (10th Cir. 2023). An ordinance is not unconstitutionally vague if the potential violator is given fair warning of the nature of the proscribed conduct. *Howard v. City of Tulsa*, 1986 OK CR 5 ¶5. The ordinance is presumed valid and constitutional, with the burden of proof allocated to the party attacking the ordinance. *Id.*

6. In this case, the ordinance is not so vague that persons of ordinary intelligence are unable to understand the prohibited conduct. Language is not expected to be a mathematical certainty. *Grayned v. City of Rockford*, 408 U.S. 104, 110, 92 S. Ct. 2294, 2300, 33 L. Ed. 2d 222 (1972). This ordinance provides the potential violator of fair warning for the forbidden conduct. It prohibits all noises, sounds or violations that are “*unreasonably* loud or disturbing to the peace and quiet of people with *ordinary* sensibilities.”<sup>2</sup> The imposition of a reasonable person standard regarding a person of ordinary sensibility is a sufficient objective standard to overcome a vagueness challenge. In addition, the language used is a matter of common knowledge and an “average citizen can determine with reasonable certainty what conduct is proscribed.” *Id.*
7. The Court also finds that the denial of the appeal by the Tulsa City Council was neither contrary to law nor contrary to the clear weight of the evidence. The City Council decision is **AFFIRMED**.



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DISTRICT JUDGE  
DOUG DRUMMOND  
OCT 02 2023

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<sup>2</sup> The Tenth Circuit has found that the word “loud” has a sufficient meaning to put citizens of ordinary intelligence on notice. *Harmon, supra*. Also, see, generally, *State v. Holcombe*, 187 S.W.3d 496, 499 (Tex.Crim.App. 2006) (By grounding a noise ordinance in terms of reasonableness, the ordinance is not rendered unconstitutionally vague.) Also, see EJC cites to an Oklahoma City noise ordinance sets out the maximum loudness in terms of decibels. While that is more precise, an ordinance not using decibels as a guide is not, in itself, unconstitutionally void.

**CERTIFICATE OF MAILING**

I, Don Newberry, Court Clerk for Tulsa County, hereby certify that on the 2 day of October, 2023, a true and correct copy of the foregoing Notice was mailed to each of the attorneys/parties listed below, and a true and correct copy of the foregoing Notice was filed in the foregoing case.

R. Jack Freeman  
6506 S Lewis, Suite 116  
Tulsa, OK 74136

*Attorney for Plaintiff*  
*EJC Real Estate, LLC*

Jeff Stephens  
175 E 2<sup>nd</sup> Street, Suite 685  
Tulsa, OK 74103

*Attorney for Defendant*  
*City of Tulsa*

  
\_\_\_\_\_  
Deputy Court Clerk