

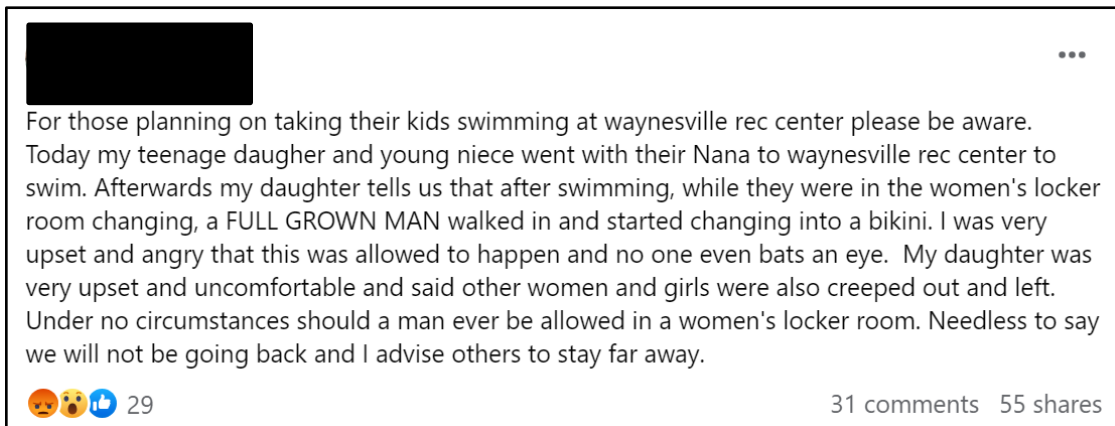


MEMORANDUM

TO: Mayor and Town Board of Aldermen
FROM: Martha S. Bradley, Town Attorney
DATE: July 23, 2023
SUBJECT: Locker Room Use at the Waynesville Recreation Center

FACTUAL BACKGROUND

On July 12, 2023 at 10:20PM, an individual alleged on their public Facebook page that an adult male entered the women's locker room and changed into a bathing suit in the presence of at least two (2) female juveniles and other female adults (below). As of the date of this memorandum, the post has received 36 comments and 69 shares. Several of these comments and/or shares either allude to or expressly endorse carrying out acts of physical violence against transgender persons attempting to use public facilities located within the Waynesville Recreation Center (WRC) in the future.



This post and one other complaint concerning a transgender person using the WRC came to the attention of members of Town civilian staff and the Waynesville Police Department (WPD), and as a result, an investigation was carried out to ascertain: (1) whether the statements made were true; (2) whether any WRC rules of conduct or policies were violated; (3) and whether any violation of North Carolina criminal statutes occurred.

According to a review of security footage from the public areas¹ of the WRC from July 12, 2023, a transgender person purchased a day pass and used the pool area while wearing a women's two-piece bathing suit. Their behavior was appropriate and consistent with WRC current rules and policies. Additionally, no children appear to be in or near the pool area at same time. During their visit, this person also entered the sauna and family locker room for brief periods. The Town has not received any complaints regarding this person's use of the sauna or family locker room². There is no indication from security footage that this person entered or exited the women's locker room. Lastly, no person has filed a complaint with the WPD concerning the allegations raised in the Facebook post.

On July 18, 2023, an adult female filed a complaint with WPD that a transgender person came into the sauna on July 17, 2023, wearing a women's two-piece bathing suit which allowed the complainant to observe the outline of the transgender person's genitalia. During their interview with the complainant, WPD confirmed that no interaction occurred between the two individuals and that both persons remained appropriately clothed in bathing suits during the entire period that they occupied the sauna together.

Based on the investigation of WPD and Town staff, the allegations in the July 12 Facebook post cannot be verified. Furthermore, there is no evidence suggesting that any violation of Town rules, policy, or ordinance or any criminal act occurred at any time.

ACCESS TO PUBLIC RESTROOMS OR LOCKER ROOMS

All forms of state and local government must, according to the Fourth Circuit Court of Appeals, provide transgender persons with access to public restrooms and locker rooms which conform to their gender identity. *See Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586 (2020). Numerous federal courts "have held that various forms of discrimination against transgender people constitute sex-based discrimination for purposes of the Equal Protection Clause [of the Fourteenth Amendment to the U.S. Constitution] because such policies punish transgender persons for gender non-conformity, thereby relying on sex stereotypes." *Id.* at 608.

Because North Carolina lies within the Fourth Circuit of the federal court system, the *Grimm* opinion is binding on the Town. As a result, either enacting or enforcing any ordinance, rule, or policy to the contrary could subject the Town to liability for damages resulting from civil rights violations.

Additionally, according to a statute which was enacted in 2017, municipalities "are preempted from regulation of access to multiple occupancy restrooms, showers, or

¹ There are no security cameras located within the WRC locker rooms, restrooms, or sauna.

² The family locker room is designed for extra privacy, with all three changing areas located within being separated by floor to ceiling concrete masonry walls and floor to ceiling wooden doors.

changing facilities, except in accordance with an act of the General Assembly.” N.C. Gen. Stat. § 143-761 (2022). Since the adoption of this statute, the General Assembly has failed to adopt any further legislation directing local governments concerning the management of restrooms or locker rooms, meaning that the Town has no lawful authority to impose any limitations or requirements on access to either by any person.

CONCLUSION

Based on the information gathered during the investigation and my review of the applicable statutes and case law, no unlawful conduct occurred at the WRC on either July 12 or 18, 2023. Absent a new complaint to WPD providing additional information concerning the identity of the minors or adult females involved, the claims made in the Facebook post have no factual basis. And, lastly, due to the risk of potential liability from civil rights violations and because adopting any ordinance, rule, or policy limiting any person’s access to the WRC would be a violation of the Recreation Department’s Mission³ and Vision⁴ Statement, I advise the Board to take no further action concerning this issue at this time.

³ “To promote quality recreation opportunities for all citizens of the greater Waynesville area by providing indoor and outdoor facilities and activities and to be a resource for those who seek to improve their quality of life through recreation.”
(<https://www.waynesvillenc.gov/departments/parks-recreation>)

⁴ “The vision for the Waynesville Parks and Recreation Department is to be the natural leader in promoting community health and well-being through fun, progressive and memorable parks and recreation experiences and activities for everyone by: Providing safe, well-designed and maintained facilities; Providing broad-based programs and services; Maximizing community resources.” *Id.*