

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 16
Series of 2021

TITLE: A RESOLUTION APPROVING A PERMIT FOR A NOISE SOURCE PURSUANT TO SECTION 16-103.C(3) OF THE WHEAT RIDGE CODE OF LAWS FOR ROCKY MOUNTAIN BOTTLE COMPANY AND MAKING FINDINGS IN CONNECTION THEREWITH

WHEREAS, the City of Wheat Ridge is a home rule municipality operating under a charter approved by its electors and governed by its City Council; and

WHEREAS, on August 24, 2020, the City Council adopted Ordinance No. 1697, Series 2020, which ordinance amended section 16–103 of the Wheat Ridge Code of Laws concerning unreasonable noise and disturbing the peace; and

WHEREAS, revised section 16–103 provides standards for regulation of unlawful noise and subsection 16–103(C) establishes noise standards for industrial properties as follows:

TABLE A: ALLOWABLE NOISE LEVELS (IN DBA) WITH TIME OF DAY ALLOWANCE			
Receptor Premises 7 a.m. – 10 p.m. / 10 p.m. – 7 a.m.			
Source Premises			
	Residential	Commercial	Industrial
INDUSTRIAL	55/50	65/60	80/75

WHEREAS, subsection 16–103(C)(3) permits a business owner in the industrial zone district which operates a noise source, to apply to the City Manager for a permit for a different decibel level than that set forth in Table A. The subsection goes on to require that the application for a different decibel level be made to the City Manager and be accompanied by a written request and noise study; and

WHEREAS, subsection 16–103(C)(3) requires the City Manager to review the application materials, meet with the applicant and recommend to the City Council that the request be approved, approved with conditions or denied. The decision of the City Council is the final decision of the City; and

WHEREAS, any issued permit may include as conditions permitted decibel levels, time and day of week limitations, term of permit, and whether renewal periods are permitted, in addition to neighborhood outreach and education, the contact for complaints, and authority for the City Manager to revoke a permit for failure to comply with limitations and conditions.

NOW, THEREFORE, BE IT RESOLVED by the Wheat Ridge City Council:

FINDINGS

1. On January 13, 2021, Applicant, the Rocky Mountain Bottle Company (RMBC), through their consultant, Behren's & Associates Environmental Noise Control, submitted an application to the City Manager pursuant to Code section 16–103(C)(3) requesting an adjusted allowable sound level associated with the New B Furnace Oxygen Plant (Oxygen Plant B) portion of the Rocky Mountain Bottle Company (RMBC) facility.

2. The Application was accompanied by measured ambient sound levels collected from an onsite sound level survey conducted between August 14, 2020 and August 21, 2020. The survey was conducted while Oxygen Plant B was not in operation to provide a baseline sound level for the study representative of the ambient levels in the area prior to the addition of Oxygen Plant B. The measurements were taken at two locations: the southern boundary of the nearest neighbor, 5300 Nelson Street, Wheat Ridge, Colorado (Location 1) and at the northern property boundary of the RMBC operation directly north of Oxygen Plan B (Location 2). The measured ambient sound levels, as a result of the study, were as follows:

TABLE 2: Measured RMBC Ambient Sound Levels		
	Location 1 Receiving Property	Location 2 Receiving Property
Cumulative daytime ambient (7a.m.–7p.m.) From 8.15.2020 to 8.19.2020	57 dBA	61 dBA
Cumulative nighttime ambient (7p.m.–7 a.m.) From 8.15.2020 to 8.19.2020	56 dBA	60 dBA
Total measured ambient Leq Measured from 8.15.2020 to 8.19.2020	57 dBA	60 dBA

3. The measured ambient sound levels were in excess of sound levels currently permitted by Table A of Code Section 16-103(C) and therefore present an enforcement and compliance challenge. The Applicant requests the allowable noise limit be increased by adding 5 dBs to the measured ambient sound level at each of the two locations. In support of its Application, Applicant relies upon the measured ambient noise level at the two locations and the Federal Highway Administration analysis of relative loudness of environmental noise, which concludes that a noise increase is not readily perceptible until the sound level change equals approximately 5 dB (A).

4. In addition, Applicant relies upon the use by the Colorado Oil & Gas Conservation Commission of its agency code adopted August 2020 to the effect that if the measured ambient sound levels exceed the allowable noise level limits of a given zone then ambient +5 dBA constitutes the amended allowable noise level.

5. Based upon the foregoing, the Applicant has requested that the allowable noise limits for the RMBC facility should be adjusted and permitted pursuant to Code Section 16–103(C)(3), to be as follows:

TABLE 3: Adjusted RMBC Noise Limits		
	Location 1 Receiving Property	Location 2 Receiving Property
Measured cumulative ambient	57 dBA	60 dBA
Allowance based upon measured perception and logarithmic addition	5 dBA	5 dBA
Adjusted allowable noise limits	62 dBA	65 dBA

6. Pursuant to the authority granted to him by the Code, the City Manager has met with the Applicant, reviewed the Applicant's noise study and noise measurements and recommends approval of the Applicant's request, with conditions, all as set forth in the "Decision" section below.

DECISION

A. Pursuant to section 16–103(C)(3) of the Code of Laws, the City Council hereby approves the request by Rocky Mountain Bottle Company, hereafter ("Permittee") for a permit for a different decibel level than established by Code 16-103, for its new B Furnace Oxygen Plant at the Rocky Mountain Bottle Company facility, as follows:

TABLE 3: Adjusted RMBC Noise Limits		
	Location 1 Receiving Property	Location 2 Receiving Property
Measured cumulative ambient	57 dBA	60 dBA
Allowance based upon measured perception and logarithmic addition	5 dBA	5 dBA
Adjusted allowable noise limits	62 dBA	65 dBA

B. This permit, and the adjusted RMBC noise limits permitted hereby, is subject to the following conditions:

- i. In order to assess compliance with the proposed adjusted allowable noise limits, measurements should be conducted at the property lines of Location 1 or other residential receiving property, for a minimum of 15 minutes. The measurement is to be taken with a meter capable of integrating over the 15-minute period and providing an average (Leq) noise level. The meter should be calibrated prior to measurement and should adhere to other ANSI standards per Code Section 16-103.
- ii. Measurements should be taken with calm winds, making sure no extraneous noise like train or lawnmowers are present. Measurements should also avoid periods of high traffic such as 6 a.m. to 9 a.m. and 3 p.m. to 6 p.m. The measured sound levels at the receiving property shall be compared against the receiving property dBA limits (62 dBA) listed in Table 3. If the measured levels are 62 dBA or less at the receiving property, then the measured sound levels are compliant per this permit.
- iii. If the measured sound levels at the receiving property exceed 62 dBA, then a follow up measurement at the source (RMBC) property is

required. This measurement shall be taken at the source property line in the direction of the receiving property (Location 2). If the measurement is equal to or less than the allowable limit for the source property (65 dBA) listed in Table 3, then the measurements are in compliance with this permit and suggest that the offending source of noise is not the Oxygen Plant B. A noncompliance will be established only if both the receiving and source locations exceed the allowable adjusted noise limits listed in Table 3.

- iv. In the event the receiving locations exceed the allowable adjusted noise limits listed in the table, the City will notify the Permittee of such excess noise. Permittee will have ten (10) days to confirm the tests by performing testing. If the Permittee disagrees with the determination, the City and the Permittee will perform a third test to determine if the locations exceed the allowable adjusted noise limits listed in the table. If the receiving locations exceed the allowable adjusted noise limits listed in the table, then the Permittee will determine the source of the excess and shall design a plan to address the excess noise within sixty (60) days of the date of notification by the City. The Permittee will then apply for any necessary permits required by the City to make such design adjustments. The Permittee will then commence to make or employ such additional noise mitigation measures as necessary to bring the noise source within the limits allowed by this permit and shall provide the City with new measurements showing such compliance within 120 days. In the event compliance is not achieved within 120 days, the Permittee shall have an additional 30 days within which to achieve compliance, after which if Permittee is not diligently pursuing such compliance and does not reasonably obtain such compliance within thirty (30) days such event of noncompliance shall be subject to enforcement by the City in the Municipal Court. The City agrees the receiving locations for any tests for compliance will solely be at the locations set forth in the table.
- v. The City Manager is authorized to suspend the RMBC permit in the event noise measurements exceed the allowable limits after the period for remediation has expired.
- vi. The permittee shall conduct noise measurements at Locations 1 and 2, in the manner required by Paragraphs B(i) and (ii) above on a quarterly basis commencing June 1, 2021 until June 1, 2022, and thereafter on an annual basis or upon request by the City, with the results of such measurements being provided to the City Manager.

C. **Effective Date.** This Resolution shall be effective upon approval by the City Council and electronic signature by the Mayor.

DONE AND RESOLVED this 12th day of April 2021.



Bud Starker, Mayor

ATTEST:



Steve Kirkpatrick, City Clerk

