

City Council Meeting Minutes

CITY OF WHEAT RIDGE, COLORADO

7500 WEST 29TH AVENUE, MUNICIPAL BUILDING

April 12, 2021

Note: This meeting was held virtually, using Zoom video-teleconferencing technology. As duly announced and publicly noticed, Council previously approved this format in order to continue with normal business and respond to the CoVid-19 Pandemic and the related public emergency orders promulgated by the President of the United States, the Governor of Colorado, and the Wheat Ridge City Council. Before calling the meeting to order, Mayor Starker stated the rules and procedures necessitated by this meeting format.

Mayor Starker called the Regular City Council Meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

ROLL CALL OF MEMBERS

Janece Hoppe Judy Hutchinson Zachary Urban Rachel Hultin
Amanda Weaver Korey Stites Leah Dozeman Valerie Nosler Beck

Also present: City Clerk, Steve Kirkpatrick; City Attorney, Gerald Dahl; City Manager, Patrick Goff; City Treasurer, Chris Miller; Administrative Services Director, Allison Scheck; Community Development Director Ken Johnstone; Police Chief Chris Murtha; Division Chief, Jim Lorentz; Assistant to City Manager, Marianne Schilling; Economic Development Manager, Steve Art, Candice Cooledge, Porchlight Family Justice Center; Jennifer Kemps, Ralston House; Cin Chapman, Victim Outreach, Inc.; other staff, guests and interested citizens.

PROCLAMATIONS AND CEREMONIES

Mayor Starker read a proclamation April as Child Abuse Prevention Month where every child deserves to grow up in a safe, nurturing environment, free from harm and fear. All children do not receive appropriate care; in fact, too many children become victims at the hands of abusive perpetrators, and it is up to us as a community to tirelessly work to end it through awareness and action.

Jennifer Kemp of Ralston House graciously acknowledged the proclamation.

Mayor Starker read a proclamation April as Sexual Assault Awareness Month every day, women, men, and children across Colorado suffer the pain and trauma of sexual assault; and this crime occurs far too frequently, goes unreported far too often, and leaves long lasting physical and emotional scars.

Ms. Cooledge described the extent of the sexual assault problem and thanked the City for this proclamation. She described how Porchlight can and does help sexual assault and abuse survivors.

Mayor Starker proclaimed the week of April 18-24 as National Crime Victims' Rights Week. Stating the victims' rights movement has resulted in the passage of laws at the local, state, and federal levels that established essential rights for victims; and he rights of crime victims are best protected when all participants in the criminal justice process-not only victims-are appropriately educated about victims' rights. He reaffirmed this City's commitment to creating a victim service and criminal justice response that assists all victims of crime, and to express our sincere gratitude and appreciation for those community members, victim service providers, and criminal justice professionals who are committed to improving our response to all victims of crime so that they may find relevant assistance, support, justice and peace.

Ms. Chapman acknowledged the proclamation and thanked the Mayor and City for highlighting victim advocacy and support.

APPROVAL OF MINUTES

Without objection or correction, the City Council Minutes of March 22, 2021 and Study Session Notes of March 15, 2021 were approved as published.

APPROVAL OF AGENDA

Without objection or correction, the agenda stood as announced.

CITIZENS' RIGHT TO SPEAK

This item began at 7:13 PM.

Deann Thurman, 4690 Independence St., called to express her concerns about the I-70 and Kipling area. There are too many property crimes, too much violence, too much trash which presents a terrible image of Wheat Ridge. "We who live near that area feel forgotten and overlooked and we are fed up!"

Guy Nahmiach, 3650 Ward Road, called to thank the City staff and officials who came to an event at Right Coast Pizza that raised \$500 for the WR High School post-graduation job search skills training. The next event will be on May 5th.

Jerry DiTullio, 32nd. and Newland, called to highlight the cumulative weather damage to trees in the City over the past decades. He applauded efforts to raise the issue of tree health and propagation in the City, also known as Tree City USA. He supports an effort to create a grant program for residents and businesses to help remove dead, dangerous trees and plant new ones. He reviewed the details of the proposed program and encouraged Council to take up this issue and fund the proposed program.

Carmen Choice 10795 55th Ave in Arvada, called to urge the City to address the problems highlighted by the earlier speaker on the area near I-70 and Kipling. She

discussed her recent interactions with Councilmember Dozeman and the WR PD and was very grateful for both. She asked that the Mayor and Council address the problem soon and urgently.

Note about Wheat Ridge Speaks:

Citizens may visit the Wheat Ridge Speaks website and enter written comments of up to 1,000 words on any Council agenda item. The deadline for citizens to submit comments is 12:00 Noon Mountain Time on the day of a Council session so that Council members, other elected officials and City Staff have time to review the comments before the meeting on Monday evening.

The City Clerk's Office transcribes those Wheat Ridge Speaks comments into these minutes, placing each comment along with the record for that agenda item, including items that include a public hearing (verbatim, if the comments do not contain lascivious language or unlawful hate speech).

The following comments appeared in Wheat Ridge Speaks for this Council session.

End of comments entered into Wheat Ridge Speaks.

CONSENT AGENDA

There were no items for the consent agenda.

PUBLIC HEARINGS AND ORDINANCES ON SECOND READING

Discussion began at approximately 7:25 PM

1. **Council Bill No. 04-2021** - an ordinance of the City Council of the City of Wheat Ridge, Colorado, amending Chapter 11, Licenses, Permits and Miscellaneous Business Regulations, with the addition of new Article XV regulating tobacco product retail licenses and conforming changes in connection therewith.

Councilmember Hultin introduced Council Bill 04-2021.

Tobacco and youth vaping continue to be on the rise in Wheat Ridge and Jefferson County. The City of Wheat Ridge does not currently regulate its tobacco retailers. The purpose of this ordinance is to create licensing regulations for tobacco retailers.

Mayor Starker opened the public hearing.

City Clerk Steve Kirkpatrick assigned Ordinance No. 1710.

Staff report by Marianne Schilling, Assistant to the City Manager, presented an overview of previous actions and described the direction from council. Here explaining the

process involving a multi-department collaboration between City staff, the City Attorney, along with research and coordination from JCPH

Ms. Schilling also stated that Council may want to discuss the ordinance effective date. The effective date of July 1, 2021 was chosen by Council in November 2020 to align with the State's planned implementation date. However, at this time the State Department of Revenue has announced a pause in rulemaking and license fee collection due to the pandemic. Council may consider moving forward with the July 1, 2021 implementation date or waiting to learn more about the State's plans to move forward.

If approved, staff will refine the internal processes for review and approval of tobacco retail licenses. The proposed ordinance effective date of July 1, 2021 allows staff time to prepare for the initial notice and registration period to include a comprehensive outreach program to local Wheat Ridge businesses.

Public Comment

The Mayor reviewed the procedures for public comment.

Jesse Jennett, 125 S. Hoyt St. Lakewood. Called to advocate for regulation of tobacco access to minors. She has worked on this issue for many years, as a high school and college student. She decried the accessibility of tobacco products, including vaping, by our youth and urged passage of this proposed ordinance. She provided anecdotal stories from tobacco users who began the habit during their adolescence, often starting with vaping devices, and now regret it.

Lynnette Namba, 2977 Reed St, called in support of this Council bill and aligning our local laws with state and Federal laws. She supports in particular the provision that tobacco retailers shall not be licensed if their establishment is within 1000 feet of a school or youth-oriented facility. Data from other states and cities shows that this kind of measure will have a clear and important impact on youth tobacco access and the health consequence of its use.

Chaelin Sieving, 9661 W. Chatfield In Littleton and a nurse at Wheat Ridge High School. She supports this ordinance. She described the case of a 16-year-old student who had already began using tobacco and found it easy to obtain tobacco products at local retailers. We need to keep these products out of the hands of our youth, whose brains are not yet fully developed and capable of foreseeing the consequences of tobacco use.

Jennifer Yates, 3700 Miller St, thanked mayor and Council for devotion to the health of our youth. While the new state law restricting sales of tobacco to those under 21, she applauds this ordinance and the impact it will have on young people's health, now and in the long-term future of their lives. We sincerely thank you for protecting our youth and their futures.

Ellen Stern, Jefferson County Tobacco Prevention Initiative, recalled a letter her Executive Director sent to the Mayor and Council. Her agency strongly supports this ordinance because of the impact it will have, especially on underserved and economically disadvantaged youth. She emphasized that the vaping provisions and the limitations on locating tobacco retailers at least 1000 feet from schools and youth-oriented facilities in the proposed ordinance will have a major impact on preventing youth tobacco use.

City Attorney Dahl opined that we would need a small amendment to the Ordinance language distributed in tonight's Council packet, to address the proposal that the initial licenses do not expire for 18 months.

Sec 11-238 A will also have a new phrase, "provided that any license issued hereunder during 2021 shall not expire until December 31, 2022."

Council Questions and comments

Councilmembers expressed their support for the proposed resolution.

Is there an update on the implementation of the state statute on the sale of tobacco? Ms. Stern reported that the Department of Revenue has no update at this time.

In the future, would our ability to open new parks, schools or youth facilities be restricted because a tobacco retailer is within 1000 feet. Mr. Dahl provided a detailed response.

Mayor Starker closed the public hearing.

Motion by Councilmember Hultin to approved **Council Bill No. 04-2021** - an ordinance of the City Council of the City of Wheat Ridge, Colorado, amending Chapter 11, Licenses, Permits and Miscellaneous Business Regulations, with the addition of new Article XV regulating tobacco product retail licenses and conforming changes in connection therewith, including the amendment to Sec 11-238 A as read tonight by the City Attorney.

Seconded by Councilmember Urban. Motion carried 8-0.

City Clerk's Note: To avoid any misunderstanding or confusion, the final version of the Ordinance as approved in its entirety appears as an appendix to these minutes.

2. **Resolution No. 15-2021** – A Resolution approving a first amendment to an Enhanced Sales Tax Incentive Program Agreement with Grammy's Goodies extending the Commencement date from November 1, 2020 to November 1, 2021

Councilmember Urban introduced Resolution No. 15-2021

The City of Wheat Ridge approved an Enhanced Sales Tax Incentive Program (ESTIP) Agreement with Grammy's Goodies (Grammy's) on May 11, 2020. Section 2 of that Agreement set the term to commence on November 1, 2020 or upon issuance of a

certificate of occupancy for improvements to their restaurant, whichever should come first. Due to impacts of the COVID-19 pandemic, the patio door and HVAC system improvements have been delayed and Grammy's has been unable to complete their improvements which were projected to increase sales and sales tax revenues. Grammy's has requested an amendment to the Agreement to delay the commencement date to November 1, 2021 to allow them time to complete the improvements.

Mayor Starker opened the public hearing at 7:55 p.m.

Mr. Art, reprised the discussions, background and goals of an ESTIP, as they are to encourage the establishment and/or substantial expansion of retail sales tax generating businesses within the city, thereby stimulating the economy of and within the city, thereby providing employment for residents of the city and others, thereby further expanding the goods available for purchase and consumption by residents of the city, and further increasing the sales taxes collected by the city.

He also recounted the financial impact of the ESTIP agreement which stipulated sharing 50% of enhanced sales tax with Grammy's for a period of five years in a maximum amount not-to-exceed \$70,000. This Amendment will delay the sharing of revenues by up to one-year.

Public Comment

No one came forward to speak.

Council Questions and comments

Based on previous discussions of this resolution, Council had no further questions or comments.

Motion by Councilmember Urban to approve **Resolution No. 15-2021** – A Resolution approving a first amendment to an Enhanced Sales Tax Incentive Program Agreement with Grammy's Goodies extending the Commencement date from November 1, 2020 to November 1, 2021. Seconded by Councilmember Hultin; motion carried 8-0.

ORDINANCES ON FIRST READING

None for tonight

DECISIONS, RESOLUTIONS AND MOTIONS

Discussion began at approximately 7 PM

1. **Resolution No. 16-2021** - 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.

Councilmember Dozeman introduced Resolution No. 16-2021

City of Wheat Ridge Code of Laws permit a business 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 set forth in the Code. Rocky Mountain Bottle Company (RMBC) submitted an application to the City Manager requesting an adjusted allowable sound level associated with a new furnace oxygen plant portion of the RMBC facility.

City Manager Patrick Goff reported on the prior actions with respect to RMBC noise levels. In 2018, Rocky Mountain Bottle Company (RMBC) began an extensive upgrade to their glass plant to install a new, environmentally friendly furnace. Unfortunately, the new furnace increased the level of noise emanating from the plant into the adjacent neighborhoods. RMBC worked in partnership with the City and the surrounding neighborhoods and completed significant investments to address the increased noise coming from the plant

However, the City has continued to receive complaints from the surrounding neighborhoods concerning the noise. RMBC has continued to respond to the situation by designing and approving construction of a sound wall barrier, which is expected to be complete in June 2021.

The Code permits an existing 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 set in the ordinance and RMBC submitted an application on January 13, 2021 requesting adjusted noise levels.

Mr. Goff recommends approval of this request with the adjusted noise limits set in Table 3:

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

along with 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

Public Comment

No one came forward to speak.

Mr. Goff gave a staff presentation explaining the reasoning behind the staff recommendations in the proposed resolution. Mr. Bob Hunt of the RMBC and Mr. Andrew Truitt, an acoustical engineer with Barons and Associates, discussed their work and progress on noise dampening.

Council Questions

- We have worked closely with the neighbors near RMBC to reach this point. However, we need to outreach to the community so that neighbors understand what this resolution means. RMBC provided a detailed answer to this question. Mr. Goff also explained that during the first year there will be quarterly monitoring of the noise levels with transparency to the public.
- Where are we in the process of constructing the wall to deflect the RMBC noise away from the neighboring residents? Mr. Truitt and Mr. Hunt explained where we are with the sound wall construction timeline and what the next steps will be, beginning with a public meeting this Thursday.
- What was the average ambient dB reading without the unit that generates most of the noise? RMBC gave a detailed response with a data chart.
- Council thanked the RMBC for their cooperative and helpful approach throughout this process, especially their explanations and communications.

Motion by Councilmember Dozeman to approve Resolution 16-2021- 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, seconded by Councilmember Urban; motion carried 8-0,

CITY MANAGER'S MATTERS

This discussion began about 8:28 PM.

Mr. Goff provided several updates.

Our Wadsworth project has received final approval from the Federal Highway Administration, and bids will go out later this week.

The City diverted some bond funds from the Ward Road Station budget to the Clear Creek Crossing project. The City approached the Urban Renewal Authority asking that they issue bonds to get cash immediately to complete these two projects. He explained the reasons and methods behind the request. The Urban Renewal Authority can issue bonds in amounts up to \$31 million to fund these projects. These bonds will also help complete other projects as well, such as the 38th Avenue and Kipling intersection improvements.

Councilmember Hoppe endorsed the City Manager's report, based on her participation with the Urban Renewal Authority Board.

There are other additional funding opportunities. The Congress has brought back earmarks, and we have submitted a request for \$10 million funding for the Wadsworth project through Congressman Perlmutter's office.

We are looking at submitting applications for other funds available to municipalities. For instance, the American Rescue Act includes help for municipalities, but we are awaiting details from the US Treasury on how the application process will work.

Mr. Goff also discussed our response to the issues raised by people experiencing homelessness. He noted that this issue is of increasing interest to our residents. He gave a detailed explanation of the complex nature of these issues. For instance, being homeless is not a crime, so law enforcement cannot simply remove these folks from our streets and parks. And, there are more and more people in this group as a result of the pandemic. He discussed the efforts underway in cooperation with the county, other cities and social service agencies. The list of efforts underway through the City, the county and other regional agencies is quite extensive.

He also described and discussed staff's ongoing efforts to alleviate the problems related to homelessness. He reported on additional staff and law enforcement that will be devoted to these issues. He indicated that staff will have a more detailed report for Council in May 2021.

Mr. Goff emphasized that we are addressing the issue of those experiencing homelessness on many fronts with the cooperation of many agencies and the efforts of many City staff, both currently employed by the City and positions we will fill for the spring and summer.

The Mayor has asked that staff convene a community discussion on homelessness this summer.

CITY ATTORNEY'S MATTERS

Nothing tonight.

ELECTED OFFICIALS' MATTERS

Councilmember Nosler Beck reminded everyone that she and Mayor Pro Tem Hoppe are hosting a pandemic lessons-learned public discussion, tomorrow, Tuesday, April 13th, at 6 pm, virtually. As noted herein above, several public health and elected officials will be attending.

She also thanked the residents who have reached out to Council about issues of concern to them and their neighborhoods. We are here to help, and we will solve these problems through collaborative and cooperative efforts.

Councilmember Dozeman echoed Councilmember Nosler Beck's comments about our residents reaching out to us about health and safety issues. She thanked Chief Murtha and the other staff who have engaged with the Council and residents to resolve these issues.

Councilmember Stites echoed his peers' comments and thanked the staff for their hard work on these issues.

Councilmember Weaver asked whether the tree program has been scheduled for a future study session; it will be added to a future Study Session agenda.

Councilmember Hultin will hold a District II coffee chat this Saturday, 9:30 to 10:30, virtually.

She also thanked City Clerk Kirkpatrick for his timely and diligent efforts to complete our meeting minutes and post them online for public access.

Councilmember Urban thanked the WRPD for their involvement in the homelessness issues. While this has been a more urgent issue of late, the PD has worked hard on this matter for many years.

Councilmember Hutchinson thanked the PD for its work on homelessness. People experiencing homelessness have arrived for the first time in District I neighborhoods, and residents are between concerned and outright frightened. It's not only on the major corridors any longer, but also in the neighborhoods.

Councilmember Hoppe shared an anecdotal story about a homeless resident with whom she had had numerous contacts. He beamed when he said he now has a navigator to help him. He was recently injured and now hobbles about, trying to survive and wait for eligibility for services. He nonetheless considers himself a resident of that neighborhood. Going forward, we will need to "open our wallets," to also address mental health issues for this population.

The Mayor asked Chief Murtha for his thoughts. He described complaints about fear and safety as a result of homelessness issues. He assured us that the WRPD will continue to treat everyone with dignity and respect, enforce the law and reach out to others working on this issue to help individuals cope. We will not become an occupying


force at I-70 and Kipling but will help those who need it and enforce the law for those who break it. Feel free to call the Chief if the WRPD can help.

The Mayor thanked everyone who came tonight and spoke on these issues. We need to address the issues faced by people experiencing homelessness and the health and safety of all community members. This will take all of us working together in order to succeed.

He thanked those who attended his Coffee with the Mayor and apologized to anyone who felt like they did not have an ample opportunity to speak during that session.

ADJOURNMENT

The meeting adjourned at 8:48 pm.



Steve Kirkpatrick, City Clerk

APPROVED BY CITY COUNCIL ON April 26, 2021



Janeece Hoppe, Mayor Pro Tem

The preceding Minutes were prepared according to §47 of Robert's Rules of Order, i.e. they contain a record of what was *done* at the meeting, not what was *said* by the members. Recordings and DVD's of the meetings are available for listening or viewing by contacting the City Clerk's Office, as well as copies of Ordinances and Resolutions.