BOARD OF ADJUSTMENT FOR THE CITY OF BROKEN ARROW

OWNER: **D&B PROCESSING, LLC**
CASE NUMBERS: **ZON-025337-2025**
ZON-025338-2025
ZON-025339-2025
ZON-025340-2025
ADDRESSES: **21900 E. 96TH ST S., BROKEN ARROW, OK 74014**
9600 S. 219TH EAST AVE., BROKEN ARROW, OK 74014
9740 S. 219TH EAST AVE., BROKEN ARROW, OK 74014
9750 S. 219TH EAST AVE., BROKEN ARROW, OK 74014

FIRST AMENDED NOTICE OF APPEAL

COMES NOW, D&B Processing, LLC ("D&B"), by and through its attorney, Tadd J.P. Bogan, and hereby provides the following written notice of appeal to the Board of Adjustment for the City of Broken Arrow (the "City"), and in support states as follows:

1. On December 5, 2025, the City issued four (4) Zoning Violations to D&B in the above-referenced case numbers for alleged violations of the Industrial Light zoning rules and regulations.

2. D&B was given until January 5, 2026, to comply with requirements set forth in the Zoning Violations.

3. The Zoning Violations alleges, "[t]he manufacturing being performed is not conducted entirely within an enclosed structure and is producing objectionable noise, and vibrations affecting neighboring properties therefore it is in violation of the IL zoning district."

4. D&B did not initially dispute the Zoning Violations. Rather, D&B complied with the requirements of the Zoning Violations on or before January 5, 2026, and took measures beyond those required by the Zoning Violations.

5. The remedial measures taken by D&B include, but are not limited to, the following:

a. Moving all materials from the east side of its building to the west side of the building to reduce forklift and other noises created by the movement of materials into D&B's building;

b. Moving scrap metal containers from the east side of its building to the west side to reduce noise caused by placing scrap metal into said containers;

c. Prohibiting the playing of music at all times;

d. Prohibiting the dumping of scrap materials at night;

e. Limiting the use of forklifts at night and modifying the safety indicators thereon;

f. Limiting the time(s) when overhead doors may be opened to only allow them to be open when materials are being moved in and out of the building;

g. Purchasing a water truck to reduce dust from graveled surfaces;

h. Turned equipment fan duct from facing east to south;

i. Continuous monitoring of noise levels using a decibel reader;

j. Leasing a yard outside of the industrial park to store loaded trailers to reduce semi-truck traffic and noise in the industrial park; and

k. Changing the way that it loads I-Beams to reduce noise caused by the way the beams were previously loaded.

6. D&B is in the process of taking the following additional remedial measures:

a. D&B has purchased a product that will be applied to the graveled surfaces to further eliminate dust from the same during high winds; and

b. On April 20, 2026, the City of Broken Arrow approved plans for D&B to construct 760' long, 10' tall, and 6" thick concrete sound barrier wall along the property line between 21900 E. 96th Street and the neighboring property zoned Agricultural

General District and the property beyond that, zoned Agricultural General District RS2.1.

7. Notwithstanding the foregoing, on March 9, 2026, the City issued D&B a citation/Summons, Case No. 444431, alleging D&B violated "Zoning Code 2-1-2 D Commercial and Industrial Districts" (the "Citation").

8. First, the undefined term "objectionable noise" is unconstitutionally vague and ambiguous. The term "objectionable noise" is subjective, and the Zoning Code provides no guidance or other measurable criteria to instruct D&B on what noises and/or noise levels are prohibited. Further, the Zoning Code, and Table 2-2-2-1 therein, provides no use-specific standards. *See Johnson v. U.S.*, 576 U.S. 591 (2015), ("[t]he Government violates the Due Process Clause when… a criminal law [is] so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.")

9. Notwithstanding the foregoing, D&B continuously measures the decibel levels of the noise from its operations. The levels below are the decibel measurements 192 yards from the nearest residence, and essentially at the exterior of D&B Plant 3. The decibel level at D&B's property when it is closed and no activity is occurring is approximately 55-60 decibels (or higher). For comparison, the decibel level of a quiet library is approximately 40 decibels, conversational speech or an air conditioner is approximately 60 decibels, a shower, dishwasher, or traffic is approximately 70 decibels, a toilet flushing or a vacuum cleaner is approximately 75 decibels, an alarm clock or garbage disposal is approximately 80 decibels, a passing diesel truck is 85 decibels, and a lawnmower is approximately 90 decibels. Below is a list of notable decibel readings which

have occurred from January 6, 2026, the duration of such levels, and common activities with relative decibel levels[1]:

Decibel Level	Duration	Associated Activities
72	< 10 Seconds	Dishwasher or shower to a toilet flushing
65	< 10 Seconds	Conversation or air conditioner to a shower
68	< 10 Seconds	Shower, dishwasher, or traffic

10. Second, the Zoning Violation erroneously alleges that not all manufacturing is being conducted entirely within an enclosed structure.

11. All manufacturing performed at D&B is conducted using large machinery/equipment, all of which is located inside of enclosed structures with large overhead doors for the movement of materials in and out of the enclosed structures.

12. Pursuant to the City Zoning Code, as amended 7/1/25, "Manufacturing, Light" is defined as, "[a]n establishment engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales, and distribution of such products, but excluding basic industrial processing. The manufacture, assembly… or processing of products and goods occurs entirely within an enclosed structure requiring no outdoor industrial wastewater treatment system, and producing no airborne emissions, objectionable noise, glare, odor, vibrations, smoke or dust associated with the industrial operation. Outdoor storage of raw materials and products is permitted with proper screening. Examples include, but are not limited to: airplane, automobile, or truck assembly, remodeling, or repair… boat building; computer chip

[1] *See Sound Proofing Guide*, https://soundproofingguide.com/decibels=level-comparison-chart/, 2006; and Level of Noise in Decibels (dB), American Academy of Audiology, 2023 poster, https://audiology.org/wp-content/uploads/2023/09/PR23-Poster-Noise-Chart-8.5x11.pdf.

manufacturing; machine or blacksmith shops; metalworking or welding shops… paint shops; and printing and publishing shops."

13. By definition, outdoor storage of raw materials and products is permitted with proper screening. D&B has proper screening, and as stated above, stores raw materials and products on the west side of its building.

14. Based upon the foregoing, D&B is not in violation of the City's Zoning Code.

15. D&B's Plant 3 operations are located on an 11-acre tract of land that includes a 20,981 square foot building constructed in 1984, with a 3,500 office building built in 1994, and there is a 7-acre tract of land sharing a boundary with Plant 3 that is zoned Agricultural. D&B has a plant that is west of Plant 3 across S. 219th Street East Pl., is on 2.8 acres of land, and includes a 16,850 square foot building constructed in 1984.

16. The 7-acre tract referenced above, and the complaining neighbor's residence, are both outside the City of Broken Arrow.

17. When D&B moved into Plants 1 & 2, both properties were already zoned as Industrial Light. Further, D&B moved into Plants 1, 2 & 3 prior to the City amending the Zoning Code.

18. Pursuant to Chapter 7 of the Zoning Code, any alleged nonconforming use of the property by D&B is not a violation of the Zoning Code.

WHEREFORE, premises considered, D&B Processing, LLC, hereby appeals the above referenced Zoning Violations and Citation, and requests that the same be reversed and overturned due to D&B's compliance with the applicable Zoning Code.

Respectfully submitted,

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