

1 BY AUTHORITY

2 ORDINANCE NO. \_\_\_\_\_  
3 SERIES OF 2023

COUNCIL BILL NO. 22-1102  
COMMITTEE OF REFERENCE:  
4 Land Use, Transportation and Infrastructure

5 A BILL

6 **For an ordinance creating a new Article XV, Chapter 10 of the Denver Revised**  
7 **Municipal Code to regulate development near freight railways.**

8  
9 **WHEREAS**, local government leaders have responsibilities to put measures in place to  
10 protect public health, safety, and welfare and, under Homeland Security authorities, to identify risks  
11 and vulnerabilities; and

12 **WHEREAS**, beneficial land use development near freight rail comes with risks posed by  
13 railway incidents, derailments, and hazardous materials releases; and

14 **WHEREAS**, the City and County of Denver has engaged transportation engineering  
15 consultants HNTB and is assessing freight rail risks and potential mitigations that are expected to  
16 be identified; and

17 **WHEREAS**, this ordinance creates formal requirements and procedures to ensure that city  
18 officials fulfill this responsibility.

19  
20 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**  
21 **DENVER:**

22 **Section 1.** Article XIV of chapter 10 of the Revised Municipal Code shall be amended by  
23 adding the language underlined, to read as follows:

24 **Sec. 10-408—10-429. – Reserved.**

25  
26 **Section 2.** A new article XV of chapter 10 of the Revised Municipal Code shall be added, to  
27 read as follows:

28 **ARTICLE XV – RESTRICTIONS ON STRUCTURES NEAR FREIGHT RAILWAYS.**

29 **Sec. 10-430. – Purpose.**

30 The purpose of this article is to protect building occupants and citizens in close proximity to  
31 freight railways; to protect, buildings and property; and to facilitate emergency access to a freight  
32 railway incident. To achieve this purpose, development in close proximity to freight railways must  
33 demonstrate that the impact of railway incidents has been mitigated prior to obtaining all permits

1 issued by or on behalf of the city.

2

3 **Sec. 10-431. – Definitions.**

4 Except as otherwise provided in this article, the following words and phrases shall have the  
5 following meanings:

6 (a) *Freight Railway* means a public or private right-of-way for the purpose of allowing  
7 freight rail travel, including, but not limited to, at least one of the following elements: rail tracks,  
8 guideways, overhead power lines, relay stations, substations, and railroad facilities.

9 (b) *Manager* means the manager of community planning and development.

10 (c) *Railroad facilities* shall have the same meaning as the term defined in article XIII of  
11 the Denver Zoning Code.

12 (d) *Sensitive use* means an addiction treatment, assisted living, child care, custodial  
13 care, residential care, home-based child care, emergency shelter, hospital, jail, school, or a  
14 temporary shelter facility.

15

16 **Sec. 10-432. – Pre-application meeting.**

17 Prior to submitting an application for a zone use permit that authorizes a residential,  
18 commercial, or campus use, as defined in the Denver Zoning Code, or sensitive use, within one-  
19 hundred (100) feet of a freight railway, the applicant shall schedule a pre-application meeting or  
20 concept plan review with the manager and other such agencies or departments the manager  
21 deems necessary, to review the requirements of this article. Other such agencies and departments  
22 may include, but are not limited to, the department of public health and environment, the  
23 department of transportation and infrastructure, the fire department, and the office of emergency  
24 management.

25

26 **Sec. 10-433. – City permits and licenses; application requirements.**

27 (a) A manager, chief, or executive director of city agency or department that receives an  
28 application for a permit or license within one-hundred (100) feet of a freight railway may only issue  
29 a permit after receiving approval from the department of public health and environment,  
30 department of transportation and infrastructure, the fire department, the office of emergency  
31 management and other such agencies or department the issuing manager, chief, or executive  
32 director deems necessary.

33 (b) The manager may only issue a zone use permit for a residential, commercial,

1 campus, or sensitive use within one-hundred (100) feet of a freight railway if the applicant  
2 produces:

3 (1) An analysis of emergency vehicle access to the portion of the freight railway adjacent  
4 to the permitted activity conducted by the fire department;

5 (2) An evacuation plan or procedure for any occupied facilities within one-hundred (100)  
6 feet of the freight railway approved by the fire department; and

7 (3) Documents demonstrating:

8 1. That the structure utilizes structural reinforcement such as ductile column  
9 design, enhanced column protection, or reinforced pillars;

10 2. That the finish floor elevation is located above the freight railroad right-of-way  
11 grade;

12 3. That berms or walls will be erected between the structure and the freight  
13 railway; or

14 4. Other mitigations that provide equivalent safety to this subsection (3) so as to  
15 reduce the effect of a derailment on the structure or facility to the satisfaction of the  
16 manager.

17 (c) This article shall not apply to any application for permit or license required by a rail  
18 carrier for the purpose of ensuring the proper operation of the freight railway or railroad facilities, or  
19 any permit or license required for a surface parking, garage parking, open space zone districts, or  
20 other non-occupied structures or facilities.

21

22 **Sec. 10-435. – Reporting requirements.**

23 Beginning January 1, 2024, and annually thereafter, the department of community planning and  
24 development shall provide a report to the city council detailing the number of permits issued and the  
25 mitigation measures approved pursuant to this article, and the number of permits denied and the  
26 grounds for denial pursuant to this article.

27

28 **Sec.10-435—10-450. – Reserved.**

29

30 COMMITTEE APPROVAL DATE: \_\_\_\_\_, 2023.

31 MAYOR-COUNCIL DATE: \_\_\_\_\_, 2023.

32 PASSED BY THE COUNCIL \_\_\_\_\_ 2023

33 \_\_\_\_\_ - PRESIDENT

1 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_ 2023

2 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
3 EX-OFFICIO CLERK OF THE  
4 CITY AND COUNTY OF DENVER

5  
6 NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_ 2023; \_\_\_\_\_ 2023

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8 PREPARED BY: Anshul Bagga, Assistant City Attorney; DATE: April 18, 2023

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10 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the  
11 City Attorney. We find no irregularity as to form and have no legal objection to the proposed  
12 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §  
13 3.2.6 of the Charter.

14  
15 Kerry Tipper  
16 City Attorney

17  
18 BY: \_\_\_\_\_, \_\_\_\_\_ City Attorney DATE: \_\_\_\_\_