

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
6 A BILL

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

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

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

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

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

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

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

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

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

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

30 **Sec. 10-430. – Purpose.**

31 The purpose of this article is to protect building occupants and citizens in close proximity to
32 freight railways; to protect, buildings and property; and to facilitate emergency access to a freight
33 railway incident. To achieve this purpose, development in close proximity to freight railways must

1 demonstrate that the impact of railway incidents has been mitigated prior to obtaining all permits
2 issued by or on behalf of the city.

3

4 **Sec. 10-431. – Definitions.**

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

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

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

11 (c) *Major commercial renovation* means an alteration of greater than fifty (50) percent of
12 existing gross floor area, or addition of 100,000 gross square feet floor area or greater than fifty
13 (50) percent of the existing gross floor area, whichever is the lesser, in a building zoned for
14 commercial use.

15 (d) *Major residential renovation* means an alteration of greater than fifty (50) percent of
16 existing gross floor area, or addition of 750 gross square feet floor area or greater than fifty (50)
17 percent of the existing gross floor area, whichever is the lesser, in a building zoned for residential
18 use.

19 (e) *Railroad facilities* shall have the same meaning as the term defined in article XIII of
20 the Denver Zoning Code.

21 (f) *Sensitive use* means an addiction treatment, assisted living, child care, custodial
22 care, permanent residential care, home-based child care, emergency shelter, hospital, jail, or
23 school.

24

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

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

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

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

(b) The manager may only issue a zone use permit for a residential, commercial, campus, or sensitive use within one-hundred (100) feet of a freight railway if the applicant produces:

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

(2) An evacuation plan or procedure, including a shelter-in-place plan, for the structure approved by the fire department; and

(3) Documents demonstrating:

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

b. That the finish floor elevation is located above the freight railroad right-of-way grade; or

c. That berms or walls will be erected between the structure and the freight railway; or

d. Other mitigations that provide equivalent safety to this subsection (3) so as to reduce the effect of a derailment, chemical release, or fire on the structure or facility to the satisfaction of the manager.

(c) The manager may only issue a zone use permit for a temporary shelter within one-hundred (100) feet of a freight railway if the applicant produces an evacuation plan or procedure, including a shelter-in-place plan, approved by the fire department.

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

1 **Sec. 10-434. – Administration—Rules.**

2 This article shall be administered by the manager of community planning and development. The
3 office of community planning and development, in consultation with the agencies listed in Sec. 10-
4 433(a), shall promulgate such reasonable rules and regulations as necessary for the purpose of
5 administering and enforcing the provisions of this article no later than January 1, 2024.

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

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

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13 **Sec.10-436—10-450. – Reserved.**

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1 COMMITTEE APPROVAL DATE: June 6, 2023
2 MAYOR-COUNCIL DATE: N/A
3 PASSED BY THE COUNCIL _____

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____

6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER

9
10 NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

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

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14 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the
15 City Attorney. We find no irregularity as to form and have no legal objection to the proposed
16 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
17 3.2.6 of the Charter.

18
19 Kerry Tipper, City Attorney

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21 BY: Anshul Bagga Assistant City Attorney DATE: Jun 22, 2023