

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2022

COUNCIL BILL NO. 22-1102
COMMITTEE OF REFERENCE:

4
5 A BILL

6
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 by the end of 2022; 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.** New reserved sections shall be added and read as follows:

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

25
26 **Section 2.** A new article XV of the Denver Revised Municipal Code shall be added and read
27 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 railway
32 incident. To achieve this purpose, development in close proximity to railways must demonstrate
33 that the impact of railway incidents has been mitigated prior to obtaining all permits issued by or on

1 behalf of the city.

2

3 **Sec. 10-431. – Definitions.**

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

7 (b) *Railroad facilities* shall have the same meaning as the term defined in article XIII of
8 the Denver Zoning Code.

9 (c) *Railway incident* means a train derailment, a train accident, or a release of materials,
10 any of which are hazardous to human health or safety from a railway.

11

12 **Sec. 10-432. – Development Near Rail; Application Requirements.**

13 All applications for permits issued by Community Planning and Development and the
14 Denver Fire Department within 100 feet of a freight railway shall be denied unless the application
15 contains the following information:

16 (a) An attestation that the applicant has reviewed the “Report to Mayor Michael B.
17 Hancock by the Mayor’s Railroad Safety Working Group, July 2016”;

18 (b) A list of all efforts made to mitigate the risks associated with the adjacency to the
19 railway and its operations; and

20 (c) An analysis of emergency vehicle access to the railway in case of emergency; and

21 (d) An evacuation plan or procedure for any occupied facilities within the above-specified
22 distance.

23

24 **Sec. 10-433. – Development Near Rail; Agency Approval Requirements.**

25 The manager of community planning and development (the “manager”) or the director of
26 any other city agency (“director”) that receives an application for a permit within 100 feet of a
27 freight railway shall only issue a permit after receiving approval from the department of public
28 health and environment, department of transportation and infrastructure, the fire department, the
29 office of emergency management and other such agencies the manager or director deems
30 necessary.

31

32 **Sec. 10-434. – Development Near Rail; Council Requirements.**

33 City Council shall enact standards regarding building near railways upon the publication of

1 the 2022 HNTB Consultant’s Railroad Safety Analysis. The standards shall:

2 (a) Mitigate the risk to health, safety, and welfare of residents and citizens in proximity to
3 a railway in event of a railway incident;

4 (b) Mitigate impact to structures in proximity to a railway from a railway incident;

5 (c) Facilitate emergency response access to a railway in case of a railway incident; and

6 (d) Be based on findings on both the “Report to Mayor Michael B. Hancock by the
7 Mayor’s Railroad Safety Working Group, July 2016” and the 2022 HNTB Consultant’s Railroad
8 Safety Analysis and qualitative and quantitative analysis of the mitigation required to address the
9 risks. The analysis shall include, but not be limited to, consideration of allowed uses on the parcel,
10 emergency access to the parcel or railway, utilities, right-of-way improvement and infrastructure,
11 review of best practices, and other information that may be available.

12

13 **Sec. 10-435. – Sunset.**

14 This article shall be repealed on July 1, 2023.

15

16 **Sec.10-436—10-450. – Reserved.**

17

18 **[REMAINDER OF PAGE INTENTIONALLY BLANK]**

19

1
2 COMMITTEE APPROVAL DATE: June 6, 2023

3 MAYOR-COUNCIL DATE: N/A

4 PASSED BY THE COUNCIL _____

5 _____ - PRESIDENT

6 APPROVED: _____ - MAYOR _____

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

10

11 NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

12

13 PREPARED BY: Jonathan Griffin, Assistant City Attorney; DATE: June 22, 2023

14

15 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the
16 City Attorney. We find no irregularity as to form and have no legal objection to the proposed
17 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §
18 3.2.6 of the Charter.

19

20 Kerry Tipp, Denver City Attorney

21

22 BY: _____, Assistant City Attorney DATE: _____