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January 6, 2016

Ronald Hynes
Director, Office of Technical Oversight
Federal Railroad Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: City of Fort Collins, Colorado - Request for a Waiver of Compliance with
Regulations for Use of Locomotive Horns at Public Highway-Rail Grade
Crossings ("Waiver Petition") - Docket Number FRA-2015-0022

Dear Mr. Hynes;

We are in receipt of the Federal Railroad Administration (FRA) letter dated December 11, 2015 denying Fort Collins' Waiver Petition. The purpose of this letter is threefold: (i) to respond to points made in the FRA letter and clarify the City's perspective; (ii) to ask for clarification regarding the purpose, process for, and anticipated work product of FRA's proposed Working Group; and (iii) to clarify that the City intends to hold in abeyance any decision regarding a petition for reconsideration, pending receipt of the requested information.

Response to FRA Letter

FRA process

From a governmental transparency and efficiency standpoint, the FRA's waiver process has been frustrating and is neither collaborative nor solution-oriented. The time that the City spent to get to "no" feels like time wasted rather than a path to an eventual solution.

Fort Collins originally pursued the waiver at the urging of the FRA. Staff at FRA noted that the Mason Street rail corridor is "unique" and this view has been substantiated by railroad personnel who told us that they are not aware of a similar track configuration anywhere in the nation. Acknowledging that the track configuration in Downtown Fort Collins does not work within the Train Horn Rule, FRA directed the City to the waiver process as an option for silencing the trains along Mason Street.

FRA's waiver process requires that City officials develop and submit a waiver petition to the federal agency. Realizing that we do not have expertise in railroad operations, City staff traveled to Kansas City, Missouri on May 30, 2014 to meet with Steven Fender and Region 6 staff to discuss waiver options for Downtown Fort Collins. The content of the submitted Waiver Petition is a result of that dialogue.



The City submitted its Waiver Petition to FRA on March 9, 2015 in Washington, DC. We heard nothing from FRA until receiving the denial letter nine-months later. Further, FRA's denial letter indicates that the Rail Safety Board visited Fort Collins on April 19, 2015 and that FRA safety staff and an inspector spent time in the community. The City was neither notified of, nor included in, any site visits or technical assessments in the community. City staff was notified that a Rail Safety Board hearing was to be conducted on August 29 but that the City could neither provide additional information nor even attend the hearing.

Feasibility of Gates

The FRA letter states that the City did not make a strong enough case for the infeasibility of gates in its waiver petition. While the FRA implies additional requirements for quiet zone implementation, FRA does not dispute the City's claim that it is not feasible to install gates at the crossings along Mason Street. That is the critical issue in the context of the waiver request and it was not directly addressed by the FRA response.

The regulations do not require the City to demonstrate the use of flashing lights with traffic signals provides the same level of safety as that provided by flashing lights and gates provided the level of risk is below the Nationwide Significant Risk Threshold (NSRT). The City demonstrated that the risk along the corridor with the proposed control at the grade crossings/intersections was below the NSRT. The Rule states that the threshold for quiet zone approval is demonstrating that the proposed safety measures result in a Quiet Zone Risk Index that is either a) At or below the Risk Index With Horns or b) At or below the Nationwide Significant Risk Threshold

The reason that gates are infeasible along Mason Street is predominantly related to the presence of two-way traffic immediately alongside the train tracks. During the 2012 improvement project, Fort Collins worked with BNSF to further improve corridor safety. Because there is not enough space for either the gate bases or the arms themselves, and due to an additional concern of trapping vehicles alongside the tracks, other safety enhancement measures were implemented. This information was detailed in the waiver petition.

Risk Assessment

The FRA stated that the City's use of the estimated cost of an injury (\$46,500) was not appropriate – that the City's figure underestimates risk. The FRA references the Quiet Zone Risk Index (QZRI) formula required by 49 CFR Part 222 and the Abbreviated Injury Scale (AIS) in Appendix D to 49 CFR 222, indicating that the City varied from the required QZRI formula in calculating the cost of an injury, thereby greatly reducing the calculated Quiet Zone Risk Index and deviating from the regulatory requirements.

On that scale, an AIS level 2 is assigned a value of \$46,500 meaning that is the cost of an injury for train speeds less than 25 mph. FRA rates collisions that occur at train speeds in excess of 25 mph at an AIS level 5 (\$2,287,500). About half of grade crossing collisions nationwide occur at speeds greater than 25 mph. FRA estimates that the value of preventing the average injury resulting from a grade crossing collision is \$1,167,000 (the average of an AIS-5 injury and an AIS-2 injury).

Fort Collins has conducted analysis of the speeds in the Mason Street corridor – this data was provided in the Waiver Petition and determined trains do not exceed 25mph. Fort Collins used the lower risk



level, AIS level 2, because all trains on this section of the Mason Corridor are traveling under 25 mph, using \$1,167,000 exaggerates the risk (by 25 times).

Proposed Working Group

The City noted the formation of the Department of Transportation (DOT) Working Group as a positive outcome from the Waiver Petition. In order to enhance the efficacy of such a Working Group as a mechanism to find a mutually beneficial solution to the horn noise disruption in Downtown, the City asks that FRA:

1. Articulate with specificity the purpose, process for, and anticipated work product of proposed Working Group – in other words, how will the Group function, what is the Group's charge, what authority will the Group have to identify necessary change or take innovative approaches, and what will the Group produce as an outcome. In articulating this, we suggest that a successful outcome addressing train horn noise must safely balance risk with the impacts and costs associated with the proposed solution.
2. Include City staff in the Working Group dialogue and to hold meetings in Fort Collins. Fort Collins staff is most familiar with the corridor and has technical traffic operations expertise and knowledge of local and regional transportation infrastructure.

Petition for Reconsideration

The City is interested in letting the Working Group develop recommendations for resolution of horn noise disruption Downtown Fort Collins, and look forward to the FRA's clarification regarding the purpose, process for, and anticipated work product of FRA's proposed Working Group. The City anticipates holding off on filing a request for reconsideration of its Waiver Petition to consider such clarification and pursue progress toward a resolution of this issue through the Working Group. The City will, however, reserve the option to request reconsideration of the Waiver Petition as well.

Next Steps

While we appreciate FRA's consideration of the City's proposed Waiver Petition, our experience to date has significantly diminished our optimism that FRA will help us develop a solution that works for the City. We have directed staff to work with our Congressional delegation and others nationally on a reexamination of the Train Horn Noise Rule and the overall waiver process utilized by FRA. As you know, Fort Collins' Congressional delegation has been actively engaged on railroad-related issues. We appreciated the joint call for reexamination of the Train Horn Rule from Senators Bennet and Gardner and Representative Polis and expect their continued involvement as we solve the train horn issues in Downtown Fort Collins.

We welcome dialogue on these points in a public and open process that focuses on a data-driven safety solution for our community.

Sincerely,

Wade Troxell
Mayor

Darin Atteberry
City Manager