

ORDINANCE NO. 22- _____

**AN ORDINANCE
APPROVING A VARIANCE TO SECTION 15.72 D.3 OF THE DUPAGE
COUNTYWIDE STORMWATER AND FLOODPLAIN ORDINANCE FOR THE
NORTH AURORA ROAD UNDERPASS PROJECT AT THE CANADIAN
NATIONAL RAILWAY**

RECITALS

1. **WHEREAS**, The City of Naperville (“City”), is a partner with the City of Aurora and Naperville Township on the North Aurora Road underpass improvement project at the Canadian National Railway; and
2. **WHEREAS**, the three partners have been working on the project since 2006 and have assembled \$24.4 million of outside funding to assist in constructing the improvements; and
3. **WHEREAS**, the City has adopted, adheres and enforces the provisions of the DuPage Countywide Stormwater and Floodplain Ordinance (DPCSFO) as a partial waiver community since the ordinance was originally adopted in 1992; and
4. **WHEREAS**, the City’s engineering consultant had completed the design of the storm sewer system, including the sewers, underground storage vault, and pumping station for the underpass project prior to a change to Section 15.72 D.3 of the DPCSFO three years ago; and
5. **WHEREAS**, a redesign of the stormwater system for the project would add additional cost, require additional time and result in the need for additional land to accommodate a larger underground storage vault; all of which could jeopardize the \$24.4 million of outside funding previously secured; and
6. **WHEREAS**, the City decided to seek a formal variance to Section 15.72 D.3 of the DPCSFO to be able to use Bulletin 70 rainfall data instead of Bulletin 75 rainfall data; and
7. **WHEREAS**, the City filed a variance petition with the County and indicated that it would follow the necessary procedures for the variance; and
8. **WHEREAS**, as required by the DPCSFO the City notified all other municipalities of the variance request and December 6 public hearing in writing, copies of which letters are attached hereto as **Exhibit A** and made a part hereof; and

9. **WHEREAS**, as required by the DPCSFO the City had notice of the December 6 public hearing published in the Chicago Tribune on November 9, 2022, the certification of publication is attached hereto as **Exhibit B** and made a part hereof; and
10. **WHEREAS**, on November 1, 2022 the DuPage County Stormwater Committee considered the variance request and passed a motion to not object to a variance petition requesting relief from Section 15.72 D.3 of the DPCSFO for using the Bulletin 70 rainfall data in place of the Bulletin 75 data, as documented in the letter from DuPage County attached hereto as **Exhibit C** and made a part hereof; and
11. **WHEREAS**, the public hearing for the stormwater variance was conducted on December 6, 2022 and no objections were raised or received from the public.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL

OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in

exercise of its home rule authority that:

SECTION 1: Recitals incorporated. The foregoing Recitals are hereby incorporated in this Section 1 as though fully set forth herein.

SECTION 2: That the Corporate Authorities find:

- (i) That utilizing the Bulletin 75 rainfall data instead of the Bulletin 70 data will create an undue hardship, adding significantly to the design and construction cost and jeopardizing the \$24.4 million of outside funding already secured for the project; and
- (ii) That granting the variance will not alter the character of any of the upstream or downstream properties; and
- (iii) That this variance is the minimum necessary for the underpass project to move forward; and that it is unique and does not impact or alter any floodplain or wetlands.

SECTION 3: That the Corporate Authorities approve a variance from Section 15.72 D.3 of the DPCSFO to allow the use of Bulletin 70 rainfall data instead of Bulletin 75 data.

SECTION 4: If any provision of this Ordinance, or the application of any provision of this Ordinance, is held unconstitutional or otherwise invalid, such occurrence shall not affect other provisions of this Ordinance or their application if they can be given effect without the unconstitutional or invalid provision or its application. Each unconstitutional or invalid provision is severable, unless otherwise provided by this Ordinance.

SECTION 5: This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

PASSED by the Mayor and City Council of the City of Naperville, DuPage and Will Counties, Illinois, this 6th day of December 2022.

AYES:

NAYS:

ABSENT:

Pam Gallahue, Ph.D.
City Clerk

APPROVED this 6th day of December 2022.

Steve Chirico
Mayor