

NO: R109

COUNCIL DATE: June 10, 2019

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **June 6, 2019**
FROM: **Acting General Manager, Engineering** FILE: **5405-30**
SUBJECT: **Amendments to Surrey Train Whistle Cessation By-law, 2012, No. 17535**

RECOMMENDATION

The Engineering Department recommends that Council:

1. Approve amendments to the *Surrey Train Whistle Cessation By-law, 2012, No. 17535*, as documented in Appendix “I” to this report; and
2. Authorize the City Clerk to bring forward the necessary amendment Bylaw, a copy of which is attached as Appendix “II” to this report, for the required readings.

INTENT

The purpose of this report is to obtain Council approval to amend the *Surrey Train Whistle Cessation By-law, 2012, No. 17535*, to add the Elevator Road at-grade road/rail crossing to the list of Rail Level Crossings in Schedule “A” for relieving Railway Companies and their train crews of the responsibility for sounding train engine whistles.

BACKGROUND

When approaching public grade crossings, Federal regulations require that train engine whistles must be sounded within a quarter mile before the grade crossing at a cadence of two long sounds, followed by one short sound, ending with one long sound that is prolonged or repeated until the crossing is fully occupied by the train.

As a means of reducing the impact of train nuisance noise on communities along railway corridors in Surrey, the City has had a longstanding practice of engaging with various railway companies who operate in Surrey to achieve whistle cessation, as permitted within the applicable regulations for each grade crossing.

There are five railway companies that operate on railways in Surrey, resulting in 44 grade crossings. 14 of the grade crossings are Federally regulated and 30 grade crossings are Provincially regulated.

Railway companies that operate on Federally regulated railway tracks within Surrey are:

- Burlington Northern Santa Fe Railway (“BNSF”);
- Canadian National Railway Company (“CN”); and
- Canadian Pacific Railway (“CPR”).

Railway companies that operate on Provincially regulated railway tracks within Surrey are:

- British Columbia Railway Company (“BC Rail”); and
- Southern Railway of British Columbia (“SRY”).

On December 17, 2014 the Minister of Transport (Canada) established new Grade Crossing Regulations under the Railway Safety Act (Canada) to improve the safety of interactions between trains and road users at Federally regulated grade crossings. The Grade Crossing Regulations were accompanied by Grade Crossing Standards that provide additional design and engineering details to ensure and control consistency in the application of rail safety across Canada.

The Grade Crossing Regulations stipulate that the requirements must be met seven years after the day that the Regulations came into force. City staff have been working together with the railway companies that operate in Surrey since December 2014 to comply with the Grade Crossing Regulations and Grade Crossing Standards within the established timeline.

City staff apply to Transport Canada’s Railway Safety Improvement Program annually for cost-sharing dollars to offset the burden of grade crossing safety upgrades on City finances. Affected railway companies also cost-share in these upgrades in accordance with negotiated cost-sharing agreements and Federal orders, as applicable.

The whistle cessation requirements are identified in Section 104 of the Grade Crossings Regulations and Appendix D of the Grade Crossings Standards (attached as Appendix “III”). Upgrading the grade crossing to meet the requirements of the Grade Crossing Regulations and Grade Crossing Standards substantially meets the requirements for train whistle cessation.

Technical Safety BC is an independent, self-funded organization that oversees the safe installation and operation of technical systems and equipment across the Province of British Columbia. The Railway Safety Program at Technical Safety BC regulates railways that operate solely within British Columbia and have a certificate issued by the BC Ministry of Transportation and Infrastructure (“MoTI”).

At present, the Province of British Columbia has not adopted the same or comparable regulations and standards established by the Federal government (Canada). Furthermore, there is no defined procedure established to achieve whistle cessation at Provincially regulated grade crossings.

For these reasons, City staff have prioritized achieving whistle cessation concurrent with the completion of grade crossing safety upgrades at Federally regulated grade crossings.

One of the steps required by the Railway Safety Act (Canada) to implement whistle cessation is for the affected municipality to adopt a resolution declaring that train engine whistles not be used in a specified area within the municipality.

The *Surrey Train Whistle Cessation By-law, 2012, No. 17535*, was first established as the *Surrey Anti-Whistling By-law* in 1999 to regulate the sounding of train engine whistles at specified railway/roadway at-grade crossings in the City. The specified railway/roadway at-grade crossings are listed in Schedule “A” of By-law No. 17535.

The seven grade crossings where railway companies and their train crews are relieved from the responsibility for sounding train engine horns currently listed in Schedule “A” of By-law No. 17535 comprise of all the BCR grade crossings in Surrey.

DISCUSSION

Train whistling at the BNSF railway grade crossing at Elevator Road (New Westminster Subdivision, Mile 138.98) affects residents on the west side of the Royal Heights neighbourhood. Residents of the Royal Heights neighbourhood have long desired relief from train whistling. The community has regularly communicated with City staff the importance of this initiative to the quality of life for Royal Heights residents. Staff have kept the community apprised of the whistle cessation status, and they are eagerly awaiting the completion of these final administrative steps.

This active crossing is equipped with railway crossing signs, side-mounted flashing lights, cantilever lights, bells and gates and fully meets all the safety requirements of the Grade Crossing Regulations and Grade Crossing Standards.

Subsequent to the opening of Highway 17 and the completion of a full movement interchange at Tannery Road, public vehicle access across the railway has been physically restricted with concrete barrier and a lockable gate at the Elevator Road crossing. These restrictions are reinforced with signage. The crossing remains open to emergency services vehicles.

City staff hired an engineering consultant with expertise in railway grade crossing safety, WSP Canada Group Ltd., for the purpose of preparing a safety assessment to identify any outstanding requirements to facilitate whistle cessation. The safety assessment was submitted to the City on August 9, 2017.

City staff consulted with BNSF to confirm that all their safety and operational interests had been addressed in the safety assessment. Moreover, the safety assessment identified evidence of pedestrian activity adjacent to the railway tracks and recommended that fencing be installed to mitigate potential pedestrian trespass across the tracks.

BNSF undertook an internal review through 2018 to ascertain their crews’ experience of pedestrian trespass and the expected value of the recommended fencing towards the goal of whistle cessation. BNSF ultimately consented to waive their requirement for pedestrian fencing that was identified in the safety assessment. The City and BNSF agreed that all the safety requirements for whistle cessation have been fully met at the Elevator Road (New Westminster Subdivision, Mile 138.98) railway crossing in January 2019.

Pursuant to the City’s obligations stipulated by the Minister of Transport (Canada) Order Respecting Relevant Associations or Organizations (attached as Appendix “IV”), all of the relevant associations or organizations were then notified of the City’s intent to pass a resolution to stop train whistling at the BNSF railway grade crossing at Elevator Road (New Westminster Subdivision, Mile 138.98).

City staff now recommend an amendment to Schedule “A” of the *Surrey Train Whistle Cessation By-law, 2012, No. 17535*, to include the Elevator Road grade crossing to relieve BNSF and their train crews from sounding the train engine whistles at this crossing.

Next Steps

Following the adoption of the amendment to Schedule “A” of the *Surrey Train Whistle Cessation By-law, 2012, No. 17535*, City staff will notify BNSF that they are relieved from the requirement to sound train whistles that is established in Section 14 of the CROR. Within 30 days upon receipt of this notification from the City, BNSF is required to issue special instructions to stop train whistling at the crossing and to notify Transport Canada’s Rail Safety Directorate of the effective date of whistling cessation with a copy of its special instructions. BNSF is also required to notify the City in writing of the whistling cessation not later than 30 days after the day the whistling stops.

Work to achieve whistle cessation elsewhere in Surrey is ongoing. City staff anticipate that complete whistle cessation at every grade crossing in the City will take many years to accomplish. Whistle cessation is reliant on negotiation and cooperation with the railway companies to come to an agreement on the changed rail operation. Negotiation with railway companies is often challenging and lengthy, as their interests and priorities differ from those of the City.

City staff are currently negotiating with BNSF to install pedestrian fencing at the two grade crossings in Crescent Beach at Beecher Road and McBride Avenue with the aim of realizing whistle cessation for that neighbourhood. Work by City staff to attain a lease agreement with BNSF for pedestrian fencing that they have specified as a pre-requisite for whistle cessation have been ongoing since 2016 with little progress to date. Resolution of this matter may require the involvement of the Canadian Transportation Agency, an independent, quasi-judicial tribunal and regulator which has all the powers of a superior court to make decisions in matters related to railways and grade crossings. When that initiative is achieved, it will complete whistle cessation on all BNSF grade crossings in Surrey.

Discussion are already underway with CPR to determine any outstanding safety requirements for whistle cessation on their two grade crossings at 184 Street and 56 Avenue in Cloverdale.

Following the completion of the MoTI’s Golden Ears Connector road project in Fraser Heights, scheduled for later in 2019, City staff will engage CN to negotiate whistle cessation agreements for the three grade crossings adjacent to the construction area.

The remaining priority for Federally regulated grade crossings will be to complete negotiations with CN for achieving whistle cessation at five remaining crossings in the Bridgeview neighbourhood. This will complete whistle cessation for all Federally regulated grade crossings within Surrey.

City staff intend to engage SRY in 2019 to determine the work required to achieve whistle cessation on their grade crossings to complete whistle cessation in the City. Any required works would occur following the completion of the Federally regulated grade crossing upgrades and the community of Newton would be prioritized.

SUSTAINABILITY CONSIDERATIONS

The implementation of train whistle cessation at the BNSF at-grade road/rail crossing supports the City's Sustainability Charter 2.0. In particular, the implementation of whistle cessation relates to the Sustainability Charter 2.0 themes of Built Environment and Neighbourhoods, and Public Safety. Specifically, the train whistle cessation supports the following Desired Outcome ("DO") and Strategic Direction ("SD"):

- Neighbourhoods and Urban Design DO8: The built environment enhances quality of life, happiness and well-being; and
- Transportation Safety SD8: Ensure all public infrastructure is built and maintained to ensure community safety and well-being for all ages and abilities.

CONCLUSION

Based on the above discussion, it is recommended that Council:

- Approve amendments to the *Surrey Train Whistle Cessation By-law, 2012, No. 17535*, as documented in Appendix "I" to this report; and
- Authorize the City Clerk to bring forward the necessary amendment Bylaw, a copy of which is attached as Appendix "II" to this report, for the required readings.

Jaime Boan, P.Eng.
Acting General Manager, Engineering

GDC/RM/MC/cc

Appendix "I" – Proposed Amendments to *Surrey Train Whistle Cessation By-law, 2012, No. 17535*

Appendix "II" – Bylaw No. 19859 amending *Surrey Train Whistle Cessation By-law, 2012, No. 17535*

Appendix "III" – Appendix D of the Grade Crossings Standards

Appendix "IV" – Order Respecting Relevant Associations or Organizations

CITY OF SURREY

BY-LAW NO. 17535

A by-law to regulate the sounding of train engine whistles at specified railway/roadway at-grade crossings in the City of Surrey pursuant to the *Railway Safety Act* [SBC 2004] Chapter 8 and the *Railway Safety Adopted Provisions Regulation* (B.C. Reg 210/2004).

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As amended by By-law No. 18618, 02/01/16; 18722, 05/16/16

THIS IS A CONSOLIDATED BY-LAW PREPARED BY THE CITY OF SURREY FOR CONVENIENCE ONLY. THE CITY DOES NOT WARRANT THAT THE INFORMATION CONTAINED IN THIS CONSOLIDATION IS CURRENT. IT IS THE RESPONSIBILITY OF THE PERSON USING THIS CONSOLIDATION TO ENSURE THAT IT ACCURATELY REFLECTS CURRENT BY-LAW PROVISIONS.

WHEREAS pursuant to Section 9 (1) of the *Railway Safety Act* [SBC 2004], the Province of British Columbia may adopt by regulation provisions of the *Railway Safety Act (Canada)*;

AND WHEREAS pursuant to Section 3 of the *Railway Safety Adopted Provisions Regulation* (B.C. Reg 210/2004) the Province has wholly adopted the provisions of Section 23.1 of the *Railway Safety Act (Canada)*;

AND WHEREAS, pursuant to Section 23.1 of the *Railway Safety Act (Canada)*, a municipality may by resolution declare that train engine whistles not be used in a specified area within a municipality;

AND WHEREAS Council deems it desirable that railways cease the sounding of train engine whistles at the railway/roadway at-grade crossings listed in Schedule “A” attached hereto;

THEREFORE, be it resolved that the Council of the City of Surrey, in open meeting assembled, ENACTS AS FOLLOWS:

1. Railways are relieved of the obligation under the Canadian Railway Operating Rules for the sounding of train engine whistles at the railway/roadway at-grade crossings in the City of Surrey and listed in Schedule “A” attached hereto and forming part of this by-law, in accordance with the provisions of Section 3 of the *Railway Safety Adopted Provisions Regulation* (B.C. Reg 210/2004) and, by adoption, Section 23.1 of the *Railway Safety Act (Canada)*.

2. This By-law shall apply to a particular railway/roadway at-grade crossing listed in Schedule "A" on the date upon which that crossing has met the whistling cessation requirements referred to in Section 23.1 of the *Railway Safety Act* (Canada).
3. deleted by Bylaw 18722
4. deleted by Bylaw 18722
5. The "Surrey Anti-Whistling By-law, 1999, No. 13706" is hereby repealed.
6. This By-law may be cited for all purposes as the "Surrey Train Whistle Cessation By-law, 2012, No. 17535."

PASSED FIRST READING on the 23rd day of January, 2012.

PASSED SECOND READING on the 23rd day of January, 2012.

PASSED THIRD READING on the 23rd day of January, 2012.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on 6th day of February, 2012.

_____MAYOR

_____CLERK

CITY OF SURREY

SCHEDULE "A":

BY-LAW NO. 17535

Rail Level Crossings where the Railway Companies and their train crews are relieved from the responsibility for sounding train engine whistles.

<u>Railway</u>	<u>Subdivision</u>	<u>Mileage</u>	<u>Highway</u>
B.C. Railway	Port	6.89	127A Street
B.C. railway	Port	6.36	131A Street
B.C. Railway	Port	4.60	Colebrook Road at 144 Street
B.C. Railway	Port	2.75	160 Street
B.C. Railway	Port	2.24	164 Street
B.C. Railway	Port	1.74	168 Street
BNSF Railway	New Westminster	130.8	127A Street
<u>BNSF Railway</u>	<u>New Westminster</u>	<u>138.98</u>	<u>Elevator Road</u>

CITY OF SURREY

BYLAW NO. 19859

A bylaw to amend the provisions of "Surrey Train Whistle Cessation By-law, 2012, No. 17535".

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The Council of the City of Surrey, , ENACTS AS FOLLOWS:

1. "Surrey Train Whistle Cessation By-law, 2012, No. 17535", as amended, is hereby further amended as follows:

a. Schedule "A" is amended by adding the following Rail Level Crossing to the list of crossings where the Railway Companies and their train crews are relieved from the responsibility for sounding train engine whistles:

<u>Railway</u>	<u>Subdivision</u>	<u>Mileage</u>	<u>Highway</u>
BNSF Railway	New Westminster	138.98	Elevator Road

2. This Bylaw shall be cited for all purposes as " Surrey Train Whistle Cessation Bylaw, 2012, No. 17535", Amendment Bylaw, 2019, No. _____".

PASSED FIRST READING on the ____ day of _____, 2019.

PASSED SECOND READING on the ____ day of _____, 2019.

PASSED THIRD READING on the ____ day of _____, 2019.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the ____ day of _____, 2019.

_____MAYOR

_____CLERK

APPENDIX D – WHISTLING CESSATION

Table D-1 – Requirements for Warning Systems at Public Grade Crossings within an Area without Whistling

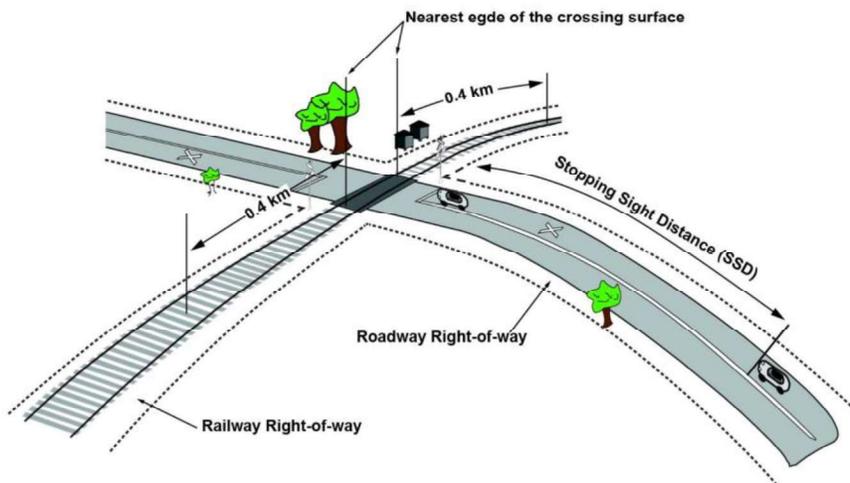
	Column A		Column B	
Railway Design Speed	Grade Crossings for Vehicle Use		Grade Crossings For Sidewalks, Paths, or Trails with the centreline no closer than 3.6 m (12 ft) to a warning signal for vehicles	
	No. of Tracks		No. of Tracks	
	1	2 or more	1	2 or more
Column 1	Column 2	Column 3	Column 4	Column 5
1 – 25 km/h (15 mph)	FLB	FLB	No warning system requirement	No warning system requirements
25 – 81 km/h (16 – 50 mph)	FLB	FLB & G	FLB	FLB & G
Over 81 km/h (50 mph)	FLB & G	FLB & G	FLB & G	FLB & G

Legend :

FLB is a warning system consisting of flashing lights and a bell.

FLB & G is a warning system consisting of flashing lights, a bell and gates

Figure D-1 – prescribed area for whistling cessation as per article 23.1 of the RSA



Order Respecting Relevant Associations or Organizations

Minister of Transport

Order Respecting Relevant Associations or Organizations

Under Subsection 4(1)

Railway Safety Act, R.S.C. 1985 C-32 (4th Supp.)

Pursuant to the provisions of Subsection 4(1) of the *Railway Safety Act*, the Minister of Transport has the authority to declare, by order, what association or organization constitutes a “relevant association or organization” in relation to a railway company.

I have determined that the associations or organizations set forth in Schedules “A” and “B” attached hereto are relevant associations or organizations in relation to the railway companies coming under federal jurisdiction.

I hereby revoke the previous order, MO 10-04, dated February 8, 2010.

I further declare that the associations or organizations described in the attached Schedules “A” and “B” to this order are relevant associations or organizations in relation to all federally regulated railway companies.

Luc Bourdon

Director General, Rail Safety

November 18, 2013

Schedule “A”

(Associations or Organizations Formed to Represent the Interests of Persons Employed by a Railway Company)

- Travailleurs Unis Transport (1843)
- Teamsters Canada Rail Conference
- Teamsters Canada Rail Conference – Maintenance of Way Employees Division (TCRC-MWED)
- Teamsters Canada Rail Conference/Rail Canada Traffic Controllers
- Signal and Communications Council of the International Brotherhood of Electrical Workers
- International Association of Machinists and Aerospace Workers
- UNIFOR
- United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union
- Amalgamated Transit Union Local 279
- Transportation Communications International Union System Board
- Brotherhood of Locomotive Engineers and Trainmen (BLET)
- United Transportation Union (UTU)

Schedule "B"

(Associations or Organizations Formed to Represent the Interests of Owners or Lessees of Railway Equipment)

- GATX Rail Canada
- Canadian Chemical Producers Associations
- Canadian Fertilizer Institute
- General Electric Railcar Services Corporation
- PLM Railcar Management Services (Canada) Ltd.
- Procor Limited
- Propane Gas Association of Canada Inc.