

**DATE:** January 17, 2014

**TO:** Mayor and Members of Council

**RE:** **FINANCE, ADMINISTRATION AND AUDIT COMMITTEE – JANUARY 20, 2014  
ITEM 30, REPORT 35, COMMITTEE OF THE WHOLE SEPTEMBER 17, 2013  
TRAIN WHISTLE CESSATION**

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### **Recommendations**

The Commissioner of Engineering and Public Works and the Director of Engineering Services recommends:

1. That train whistle cessation at new locations not be considered at this time; and
2. That Project No. EN-1990-14, "Railway Crossing Safety Assessment – City Wide", submitted as part of the 2014 Capital Budget deliberation, be removed for consideration at this time

### **Contribution to Sustainability**

Not applicable.

### **Economic Impact**

Project No. EN-1990-14, "Railway Crossing Safety Assessment – City Wide", had been submitted in the amount of \$192,610, for consideration as part of the 2014 Capital Budget, to be funded through taxation. The project was identified to be undertaken in 2014 and 2015. This project request was for the procurement of a consultant to carry out safety assessments at railway crossings where train whistle cessation may be considered.

Should the recommendations of this report be adopted by Council and train whistle cessation requests not be considered at this time, this project should be retracted from the 2014 Capital Budget.

Project No. EN-1992-15, "Railway Crossing Improvements – CPR crossing at Huntington Road", had been submitted in the amount of \$402,215 as part of the preliminary 2015 - 2017 Capital Plan. The project request is to fund the installation of safety measures at this crossing to facilitate train whistle cessation.

Should the recommendation of this report be adopted by Council, staff would review the need and funding for this potential project as part of the 2015 Budget Deliberations.

### **Communications Plan**

Not Applicable.

### **Purpose**

The purpose of this report is to address Council's direction from its meeting held on September 17, 2013:

**“That staff prepare a report for a future Finance and Administration Committee, in order that the issue of train whistle cessation may be considered as part of the 2014 Budget Deliberations”**

### **Background**

**Three railway lines are currently operating in the City of Vaughan by Canadian Pacific Railway (CPR), Canadian National Railway (CNR), and GO Transit**

On September 17, 2013, Council adopted the receipt of a deputation by Dan Tersigni dated September 3, 2013 (Attachment No. 1). The deputation reflected the concerns the from residents in the Kleinburg area regarding the train whistling at the Nashville Road, Cold Creek Road and Huntington Road CPR crossings.

As identified in Attachment No. 2, the CPR line (known as the MacTier Subdivision) has seven (7) at-grade crossing locations of City roads, namely at: Islington Avenue, Kipling Avenue, Huntington Road (2 crossings), Kirby Road, Cold Creek Road and Albion Vaughan Road. Train whistling had earlier been eliminated at the Islington Avenue, Kipling Avenue, and Albion Vaughan Road crossings. Three (3) other at-grade road crossings of Regional roads also exist on this line within the City of Vaughan.

The Barrie GO Transit line has four (4) at-grade rail crossings of City roads, namely at: Rivermede Road, McNaughton Road East, Kirby Road, and King Vaughan Road. Three (3) other at-grade road crossings of Regional roads also exist on this line within the City of Vaughan.

The CNR lines (known as CN York Subdivision and CN Halton Subdivision) have grade separations at all of the rail crossings.

Although CPR has indicated that train whistling has been eliminated at the Islington Avenue, Kipling Avenue and Albion Vaughan Road crossings, there is no record of any agreement in place for train whistle cessation at any at these locations.

**Whistling requirements are federally regulated by Transport Canada and supersede any approved train whistle cessation agreements**

Train whistles are a safety feature that protect motorists, cyclists, pedestrians, and train crews from collisions at railway grade crossings, by alerting motorists, cyclists and pedestrians that an imminent danger is approaching.

Train whistling requirements are regulated by Transport Canada and controlled through the Canadian Rail Operating Rules (CROR) document. CROR indicates that train whistling is required for all public crossings “except as may be prescribed in special instructions”. The relevant railway company can initiate an exception by issuing a special instruction to its locomotive engineers. The procedures to request the elimination of train whistling at a particular at-grade crossing, are outlined within the September 22, 2008 Committee of the Whole Report (Item 15, Report No. 44), refer to Attachment No. 3.

In addition to Transport Canada regulations, provincially regulated GO Transit policy further indicates that whistling is required when a train approaches and passes station facilities, in an emergency situation, and/or when there is maintenance work being completed within the train right-of-way, irrespective if a whistling cessation agreement is in place or not.

**Staff has reviewed whistle cessation policies for other municipalities within Southern Ontario**

An environmental scan of whistle cessation policies was undertaken for a number of municipalities in southern Ontario, to gain an understanding of their experiences with this issue.

In general, many of the municipalities found that entering into whistle cessation agreements is a costly and lengthy process. All costs associated with eliminating train whistling are borne solely by the municipality. These costs include:

- A safety assessment of the at-grade rail crossing to determine the feasibility and requirement of additional safety feature(s) to eliminate train whistling
- The additional safety features(s) required to eliminate train whistling
- The operation and maintenance of this additional infrastructure
- Additional insurance premium costs

Some of the municipalities expressed concerns regarding pedestrian and vehicular safety in the vicinity of at-grade crossings if train whistling has been eliminated through a cessation agreement. Municipalities have also been concerned about:

- Additional risk and liability taken on by the municipality
- Continued train whistle activity in spite of the enactment of an agreement

The City of Brantford summarized a train whistle cessation review of several municipalities in Ontario within their Committee of the Whole – Operations and Administration Report (Report No. EN2012-008), refer to Attachment No. 4. The following is a summary of their experiences:

- Municipalities have had varying degrees of success with the elimination of train whistles at railway grade crossings because of the many safety considerations and unique characteristics of the railway grade crossings and surrounding environment
- Other municipalities have found railway companies uncooperative in response to inquiries regarding train whistle cessation at grade crossings
- The process to eliminate train whistling at railway grade crossings can be lengthy (over 2 years)
- A consulting firm will need to be hired to conduct a detailed safety audit at each railway grade crossing where the City is considering the cessation of train whistling. The safety audit reviews the need for safety warning devices including signs, lights, bells and gates, but can also include the need for anti-trespassing fencing and other mitigation measures to improve safety at the crossing. The cost to implement any required safety improvements will be the responsibility of the City
- The City may be required to pay an increased liability insurance premium for each railway grade crossings where train whistling is prohibited.

**An investigation has been initiated into the collision of a train and a bus, at an at-grade crossing, that occurred in the City of Ottawa on September 18, 2013, where train whistling had been eliminated through a cessation agreement**

On September 18, 2013, a rail accident occurred at an at-grade crossing within the City of Ottawa whereby a Via Rail train was struck by an OC Transpo bus. As a result, six people were fatally injured and more than 30 others were injured. The at-grade crossing at this location has lights, bells and gates that were functioning and the train was travelling below the speed limit. However, it did not sound its whistle due to a whistle prohibition that was previously implemented.

The Transportation Safety Board of Canada (TSB) is investigating the incident and it is anticipated that the investigation will take six months to one year.

On September 19, 2013, The Globe and Mail published an article titled, *"Collision between Ottawa City bus and train illustrates how collisions and fatalities at rail crossing are still common occurrences in Canada"*, refer to Attachment 5. The article summarizes the TSB statistics on collisions, including



fatalities, at level train crossings. The data shows that there has been a significant increase in collisions from 2012 to 2013 in Ontario (39 collisions in 2012 and 111 collisions in 2013). The same trend is demonstrated for fatal collisions (12 in 2012 and 25 in 2013)

**Staff recommend deferring consideration of any future train whistle cessation requests until the investigation into the Ottawa incident has been completed and the TSB findings are made public**

In view of the above and as the findings of the TSB may result in changes at railway crossings, including rules pertaining to train whistles, staff recommend deferring consideration of any train whistle cessation requests until the results of the investigation can be duly considered.

#### **Relationship to Vaughan Vision 2020/Strategic Plan**

Not Applicable.

#### **Regional Implications**

Not Applicable.

#### **Conclusion**

As public safety of all road users is paramount, and given the potential risk/liability involved in further pursuing whistle cessation, staff recommends reporting back to Council once the TSB findings from the Ottawa train incident have been released. This report will include a summary of the TSB findings along with along with cost and risk analysis for whistle cessation in Vaughan. As the findings are expected to be released within the next six to twelve months, it is recommended that train whistle cessation not be considered at this time.

#### **Attachments**

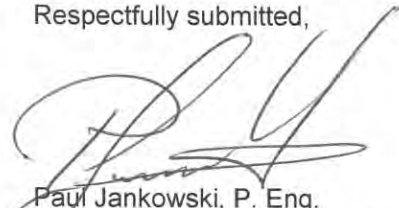
1. Extract from Council Meeting Minutes of September 17, 2013, Item 30, Report No. 35 of the Committee of the Whole.
2. Location Map
3. Extract from Council Meeting Minutes of September 22, 2008, Item 15, Report No. 44 of the Committee of the Whole.
4. City of Brantford Committee of the Whole Report dated February 13, 2012, Report No. EN2012-008
5. The Globe and Mail Article, Published September 19, 2013 – Collision between Ottawa city bus and train illustrates how collisions and fatalities at rail crossings are still common occurrences in Canada

#### **Report prepared by:**


Wai Lam Tang, P. Eng., Senior Traffic Technologist, ext. 8496

Vince Musacchio, P. Eng., Manager, Capital Planning and Infrastructure, ext. 8311 27

Respectfully submitted,



Paul Jankowski, P. Eng.  
Commissioner of Engineering and Public Works  
VM: mm



Jack Graziosi, P. Eng.  
Director of Engineering Services

# ATTACHMENT NO. 1

CITY OF VAUGHAN

## EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 17, 2013

Item 30, Report No. 35, of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on September 17, 2013.

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**DEPUTATION – MR. DAN TERSIGNI  
WITH RESPECT TO WHISTLE CESSATION AT VARIOUS LOCATIONS  
IN THE CITY OF VAUGHAN**

The Committee of the Whole recommends:

- 1) That the deputation of Mr. Dan Tersigni, Communication C1, dated August 7, 2013, Communication C2, petition, and Communication C10, be received;
- 2) That the following be approved in accordance with Communication C6 from the Commissioner of Engineering and Public Works, dated August 29, 2013:
  1. That the deputation by Dan Tersigni be received; and
  2. That staff prepare a report for a future Finance and Administration Committee, in order that the issue of train whistle cessation may be considered as part of the 2014 Budget Deliberations; and
- 3) That Communication C3, from Diane Berdini-Palmer, dated August 29, 2013, be received.



# ATTACHMENT No. 2



## LOCATION MAP CITY OF VAUGHAN RAILWAY LINES

### LEGEND

- CANADIAN NATIONAL RAILWAY
- GO TRANSIT
- CANADIAN PACIFIC RAILWAY

Note: Aerial Photography Taken in Spring, 2013





# ATTACHMENT NO. 3

## CITY OF VAUGHAN

### EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 22, 2008

Item 15, Report No. 44, of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on September 22, 2008.

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#### TRAIN WHISTLING CESSATION

The Committee of the Whole recommends:

- 1) That the recommendation contained in the following report of the Commissioner of Legal and Administrative Services and City Solicitor, dated September 15, 2008, be approved; and
- 2) That staff contact Mr. Paul Mantella of the Nashville Area Ratepayers' Association \*to advise of the requirements of the report and that the Region of York also be so advised.

#### Recommendation

The Commissioner of Legal and Administrative Services and City Solicitor recommends:

1. That this Report be received for information;
2. That should Council wish to request train whistling cessation at railway crossings, Staff recommend commencing the process for such a request as outlined in this Report;

#### Economic Impact

Should Council wish to request a cessation of train whistling at particular railway crossings, all costs associated with such an endeavor would be borne by the City. These would include railway safety consultant costs, costs of new safety measures such as flashing lights and gates, and insurance premium costs. York Region estimates that the costs for these safety measures can range from \$60,000 to \$100,000 for pedestrian gates, and potentially more for vehicular gates. York Region also estimates that the cost of a railway safety consultant is \$3,000, and that the costs to create an education program range from \$2,000 to \$5,000. Pursuant to Council direction of December 10, 2007, the Engineering Department is preparing a Report to be brought forward with the 2008 Capital Budget respecting costs.

#### Communications Plan

Should Council wish to request a train whistling cessation at a particular railway crossing, the City would be required to notify the general public of such a proposed prohibition. Furthermore, the City would be required to notify all railway trade unions, pursuant to Canadian Rail Operating Rules.

#### Purpose

The purpose of this Report is to provide Council with an outline of the process for requesting a train whistling cessation at grade railway crossings in the City.

#### Background - Analysis and Options

There have been complaints in relation to train whistling at various railway crossings throughout the City, including railway crossings along Nashville and Coldcreek Roads, as well as the railway crossing near Steeles Avenue and Conley Street. Attached are the lists of railway crossings in the City. Canadian Pacific Railway has advised where train whistling cessation is already in place. The City is awaiting this information from Canadian National Railways. The following

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\* Amended at the Council meeting of October 27, 2008, under Minute No. 218.



## CITY OF VAUGHAN

### EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 22, 2008

#### Item 15. CW Report No. 44 – Page 2

procedures apply to requests for train whistling cessation. It should be noted that train whistling cessations would only apply to railway crossings at grade, and not railway overpasses or underpasses. Furthermore, the train operator would still have residual discretion to use the train whistle in emergency situations and to warn workers who are performing maintenance on tracks.

- Canadian Railway Operating Rules

Train Whistling requirements are controlled through the Canadian Rail Operating Rules (hereinafter the "CROR"). Rule 14(L)(ii) requires train whistling for all public crossings "except as may be prescribed in special instructions". The relevant railway company can initiate an exception by issuing a special instruction to its locomotive engineers, which eliminates the application of Rule 14(L)(ii).

Transport Canada sets out the guidelines that must be followed in order for a special instruction to be issued. First, the municipality must contact the relevant railway company to discuss the matter. In the case where the municipality is not the responsible road authority, the responsible road authority must also be contacted. It is also incumbent upon the municipality to contact the various trade unions representing railway employees, as well as to notify the general public about the proposed whistling cessation. Once these parties have been contacted, the municipality, Railway Company, and road authority (if applicable) are to conduct a detailed safety assessment of the rail crossing.

The safety assessment will be conducted by a railway safety consultant, who will determine whether the safety measures in place satisfy Transport Canada requirements for whistle cessation. Depending on the character of the railway crossing, Transport Canada may require safety measures such as flashing lights, bells, gates, and signs. Factors such as the train speed limit and the number of tracks dictate the requisite safety measure. In addition, the railway safety consultant will look at traffic density, sight lines, adjacent public buildings, evidence of trespassing problems in determining whether the railway crossing qualifies for whistle cessation.

Once the safety assessment is concluded, the railway company may agree to have the whistling discontinued at the relevant railway crossing. The railway company may also request that a Transport Canada inspector inspect the railway crossing to confirm that it meets the requirements of the guideline.

- York Region Requirements

It is necessary to contact York Region in order to have whistling cessation at railway crossings on Regional Roads. On February 21, 2008, York Regional Council adopted a policy for the cessation train whistling at railway crossings of Regional Roads. York Region would consider supporting train whistle cessation if the following conditions are satisfied and all costs are incurred by the local municipality requesting the train whistle cessation:

1. A safety audit is completed by a specialized safety consultant (railway safety consultant)
2. The safety audit is approved by Transport Canada
3. If there are pedestrians in the area of the crossing, pedestrian gates must be installed
4. An education program is developed for the affected area
5. The whistling prohibition is implemented only between the hours of 10:00 p.m. and 6:00 a.m.

Some of these requirements mirror those in the CROR. However, the education program and the time frame requirements are unique to York Region.



## CITY OF VAUGHAN

### EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 22, 2008

#### Item 15, CW Report No. 44 – Page 3

It should be noted that the Town of Richmond Hill passed a Resolution requesting that all costs for implementing train whistling cessation affecting Regional Roads remain the responsibility of the York Region. It is not clear what effect, if any, this Resolution has.

- Canadian National Railway Requirements

Canadian National Railways (hereinafter "CN") requires that the safety assessment be sent to Transport Canada for review and comment, even though the CROC guidelines do not require Transport Canada consultation. If Transport Canada agrees that whistle cessation is appropriate, CN requires that the municipality pass a by-law prohibiting whistling at the location under review. When the by-law is passed and any additional safety measures have been put into place, Transport Canada will issue a letter to the railroad exempting it from compliance with the whistling regulations at the particular location. Once CN receives this letter, CN will instruct their train crews to cease whistling at that location. Any costs in relation to the safety assessment and the installation of additional safety measures are to be borne by the municipality.

- Canadian Pacific Railway Requirements

Canadian Pacific Railways (hereinafter "CP") also requires Transport Canada involvement after the safety assessment has been conducted. Once Transport Canada completes their review and approves the whistling cessation, CP requires that the municipality enter into an insurance agreement with CP, rather than passing a by-law prohibiting train whistling. Costs of the insurance premiums are shared with the municipality. CP will issue special instructions to their train crews to cease trains whistling at the particular location, once the insurance agreement is executed. Any costs in relation to the safety assessment and the installation of additional safety measures are to be borne by the municipality.

#### Relationship to Vaughan Vision 2020

This report is in keeping with the Vaughan Vision in that it speaks to enhancing and ensuring community safety, health and wellness. The necessary resources have not been allocated.

#### Regional Implications

The City would need to contact York Region for train whistling cessation in relation to any railway crossings that are situated on Regional Roads. The City would also need to comply with York Region's policy for train whistling cessation, as outlined above.

#### Conclusion

There have been complaints in relation to train whistling at various locations throughout the City. If these railway crossings are at grade, the City can engage in a process whereby train whistling can be ceased. This process can potentially alleviate neighbourhood concerns regarding noise, while addressing public safety. A Report on costs is being brought forward for the 2008 Capital Budget.

#### Attachments

1. List of CP railway crossings in the City
2. List of CN railway crossings in the City

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 22, 2008

Item 15, CW Report No. 44 – Page 4

**Report prepared by:**

Chris G. Bendick  
Solicitor

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)



Attachment #1

**CP Railway Crossings in the City**

CP Mactier Subdivision (North-South)

- 9.95 Islington Ave (whistle cessation in place)
- 10.10 CNR (grade separation - no whistle required)
- 10.30 Highway #407 (grade separation - no whistle required)
- 10.48 Humber River (grade separation - no whistle required)
- 11.15 Highway #7 (grade separation - no whistle required)
- 11.49 Woodbridge Ave (grade separation - no whistle required)
- 11.56 William St. (grade separation - no whistle required)
- 11.77 Kipling Ave (whistle cessation in place)
- 11.90 Private Road (whistle cessation in place)
- 12.5 Langstaff Road
- 13.70 Highway #27 (grade separation - no whistle required)
- 14.13 Rutherford Road (whistle cessation in place)
- 15.47 Major Mackenzie Drive (whistle cessation in place)
- 16.70 Nashville Road (whistle cessation in place)
- 17.28 Huntington Road
- 18.48 Kirby Road
- 19.15 Cold Creek Road
- 19.71 Albion Vaughan Townline Road (whistle cessation in place)

Attachment #2

**CN Railway Crossings in the City**

CN Newmarket Subdivision (North-South)

14.65 - Private crossing  
14.82 - Rivermade Road  
15.50 - Langstaff Road  
16.83 - Rutherford Road  
17.55 - Private crossing  
18.49 - McNaughton Road  
19.40 - Teston Side Road  
19.72 - Farm crossing  
20.03 - Farm crossing  
20.43 - Farm crossing  
20.66 - Kirby Road  
21.10 - Farm crossing  
21.49 - Farm crossing  
21.70 - Farm crossing  
21.99 - King-Vaughan Townline

CN York Subdivision (East-West)

23.46 - Foreman's crossing

**Note: These are all grade crossings**



## ATTACHMENT NO. 4



### ENGINEERING & OPERATIONAL SERVICES

**DATE:** February 13, 2012 **REPORT NO.** EN2012-008

**TO:** CHAIR AND MEMBERS  
COMMITTEE OF THE WHOLE – OPERATIONS AND ADMINISTRATION

**FROM:** G. RAE, MBA, P.ENG.  
GENERAL MANAGER, ENGINEERING & OPERATIONAL SERVICES

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1.0	TYPE OF REPORT	CONSENT ITEM	[ ]
		ITEM FOR CONSIDERATION	[ x ]

#### 2.0 TOPIC

Cessation of Train Whistling at Specific Railway Grade Crossings

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#### 3.0 RECOMMENDATION

1. THAT staff of Transportation Services BE DIRECTED to contact the Southern Ontario Railway to discuss the City of Brantford's intention of passing a by-law prohibiting train whistling between the hours of 22:00 to 07:00 at the Stanley Avenue, Garden Avenue and Johnson Road railway grade crossings; and
2. THAT staff NOTIFY the general public and all relevant organizations of the City of Brantford's intention to pass a resolution forbidding the use of train whistles between the hours of 22:00 to 07:00 in the area; and
3. THAT the County of Brant BE INCLUDED in discussions with the Southern Ontario Railway to discuss concerns regarding the need for improved safety and prohibiting train whistling at the railway grade crossings on Colborne Street East, Old Onondaga Road and Blossom Avenue; and
4. THAT staff of Transportation Services RECOGNIZE the need to update the railway crossing safety audit for the Southern Ontario Railway grade crossings of Stanley Street, Garden Avenue and Johnson Road, with the ultimate purpose being to develop and enact an anti-whistling by-law for these railway crossings, and
5. THAT staff BE DIRECTED to include an Unmet Need in 2013 to fund the Railway Crossing Safety Audit in an amount not to exceed \$50,000 because funding to hire a consultant to conduct the safety audit is currently unavailable.

#### 4.0 PURPOSE

To begin the process necessary for the City of Brantford to enact a cessation of train whistling by-law between the hours of 22:00 and 07:00 at railway grade crossings on Stanley Street, Garden Avenue and Johnson Road.

#### 5.0 BACKGROUND

New residents of the Mission Estates and Grand Valley Trails neighbourhoods have raised noise concerns relating to the use of train whistles by the Southern Ontario Railway (SOR) at railway grade crossings in the area. The railway line, known as the SOR Hagersville Subdivision and shown in Figure 1 in Appendix 'A', is utilized by four to six trains per day. Two of the trains consistently travel through the City in the early morning hours, creating a noise nuisance for those residents living in close proximity to the railway grade crossings.

City Council, at its meeting held October 3, 2011, passed the following resolution:

*WHEREAS train whistles are a regular ongoing occurrence at many railway crossing in the City, and*

*WHEREAS the frequency and volume of train whistles can be a noise nuisance for individuals living in the vicinity of these railway crossing, and*

*WHEREAS the Railway Safety Act, 2001 includes provisions for eliminating the use of train whistles at a crossing at the request of the municipality, provided equipment that meets specific safety standards, including adequate warning systems, are in place to compensate for the elimination of whistling; and*

*WHEREAS anti-whistling by-laws have been enacted by other municipalities in Ontario;*

*NOW THEREFORE BE IT RESOLVED that staff from the Transportation and Legal Departments BE DIRECTED to review the provisions of the Railway Safety Act, 2001 as well as existing anti-whistling by-laws enacted by other municipalities in Ontario in order to outline the process necessary to enact an anti-whistling by-law with the ultimate purpose being to develop and enact an anti-whistling by-law for specific railway crossing in the City, and*

*THAT Councillors Carpenter, Utley, Kings, McCreary and Ceschi-Smith WORK with staff in the development of this report.*

The City of Brantford previously conducted a safety audit for the cessation of whistling at railway grade crossings on the SOR Hagersville Subdivision. The previous safety audit was done in 2002 at a cost of \$20,000 and recommended \$200,000 in improvements to reduce trespassing by installation of fencing along



the railway corridor. At that time, Council resolved to not pursue the cessation of train whistling without the full co-operation of the County of Brant.

Co-operation with the County of Brant is necessary because of the close proximity of the railway grade crossings of Colborne Street East, Old Onondaga Road, and Blossom Avenue in the County. Passing a whistle cessation by-law in the City would be less effective at eliminating the noise nuisance if trains are still required to sound their whistle at the adjacent railway grade crossings in the County. Figure 2 in Appendix "A" illustrates the close proximity of the railway grade crossings on the Hagersville Subdivision in the City of Brantford and County of Brant.

Since the 2002 safety audit there has been increased residential development along this railway corridor, especially on Garden Avenue and Johnson Road, which has led to increased complaints of train whistling at night.

Staff from the Transportation Services and Legal Departments proceeded to research and collect information relating to cessation of train whistling at railway grade crossings.

On November 22, 2011, a meeting was held regarding Cessation of Train Whistling in the City of Brantford. In attendance were Councillor R. Carpenter, Councillor L. Kings, Councillor J. Utley. Staff in attendance was L. Tansley, R. Loukes and R. Smith. Absent with regrets were Councillor M. Ceschi-Smith and Councillor D. McCreary. The purpose of the meeting was to advise Councillors of the procedures and impacts of implementing a cessation of train whistling by-law at certain locations in Brantford. The items discussed at this meeting are included in the analysis section of this report.

## **6.0 CORPORATE POLICY CONTEXT**

The following long term desired outcome from the Strategic Plan is addressed with the recommendation:

- Brantford will be supported by well-developed and maintained transportation and servicing infrastructure.

## **7.0 INPUT FROM OTHER SOURCES**

### **7.1 County of Brant**

City of Brantford Councillors have contacted County of Brant Councillors to advise them that this report is being presented to Council dealing with safety improvements and consideration for the cessation of train whistling at the Colborne Street East, Old Onondaga Road, and Blossom Avenue railway grades crossings. The County Councillors indicated that they would prefer that any improvements be funded by the City of Brantford.



The following is a summary of recent experiences in other municipalities where cessation of train whistling by-laws have been enacted and/or in the process for consideration of a cessation of whistling by-law.

## **7.2 Town of Milton**

In 2002, the Town of Milton received a petition and several inquiries from new residents in the Bristol neighbourhood regarding the possibility of eliminating train whistling at Fourth Line, Fifth Line and Sixth Line railway grade crossings. In response to the concern, Town staff retained a consulting firm with expertise in level railway crossing safety. Safety assessment reports for each of the crossings were completed which indicated that the elimination of train whistling at the crossings would not compromise safety. However, each of the crossings required some road surface and visibility improvements. The Town was required to pay an increased liability insurance premium of approximately \$600 per crossing per year for a total of \$1,800 per year. In October 2004, over 2 years after receiving the petition for eliminating train whistling, a report was prepared to Town Council recommending that an agreement be authorized relating to the eliminating train whistling at the three grade crossings.

## **7.3 City of Cambridge**

In July, 2008, the City of Cambridge retained a consulting firm to complete safety assessments at the railway grade crossings on Rogers Drive, Dolph Street and Montrose Street prior to the consideration of a whistling prohibition. The City of Cambridge was required to install railway crossing protection systems, including flashing lights, bells, and gates, as required, at the three railway grade crossings. The City's insurance premium would also increase when the whistle prohibition was implemented, in the sum of approximately \$500 per crossing per year.

## **7.4 City of Hamilton**

In 2006, City of Hamilton staff received a request from a Councillor to investigate the use of train whistles at the Canadian Pacific Railway (CPR) railway grade crossing of Parkside Drive. Train whistling was considered a nuisance for area residents. Noise nuisance concerns at the railway grade crossing date back to 1998, when the former Town of Flamborough was unsuccessful in its request to stop train whistling at this crossing due to the close proximity of the tracks to a commercial driveway. CPR agreed that if the commercial access was relocated from its current location then they would agree to the cessation of train whistling. The commercial access was relocated, however Transport Canada revised the standards and policies in 2002 for train whistle cessation and therefore any agreement with CPR prior to that date was not valid.



In accordance with the *Procedure and Conditions for Eliminating Whistling at Public Crossings* published by Transport Canada, the Parkside Drive railway grade crossing met the warning system requirement for the cessation of train whistles by being equipped with flashing lights, bells, and gates. In early 2006 the City of Hamilton received correspondence from CPR and hired a consultant to perform a safety audit of the railway grade crossing. The safety audit recommended some minor revisions to existing conditions to improve safety at the crossing. City of Hamilton staff then notified relevant organizations and advertised in the paper the intent for cessation of train whistling at this crossing in accordance with the Railway Safety Act.

The Safety Audit performed by the City of Hamilton's consultant was forwarded to CPR for review and action. If CPR is satisfied with the safety audit, the City will enter into an agreement with CPR for the cessation of train whistles at this crossing. The City and CPR will cost share the required premiums for protection of third party liability. Upon CPR receiving the signed insurance agreement, CPR will issue "Special Instructions" eliminating the use of train whistles at this crossing. The safety audit performed provides the necessary confirmation that the safety of vehicular and pedestrian traffic is met. With the rail crossing having obtained this safety assurance, train whistle cessation can be accommodated.

## 7.5 City of Kingston

The City of Kingston has thoroughly reviewed the possibility of implementing a ban on train whistling. City of Kingston staff was requested to review the costs involved, impact to insurance premiums/risk management, consultation process, and review comparative Cities between Brockville and Toronto.

During the review process, City of Kingston staff met with CN and Transport Canada officials and was advised that they would not support a whistling ban through the City of Kingston due to the high volume of trespass locations.

City of Kingston staff received costing estimates from six consulting firms ranging from \$50,000-\$100,000. The estimates were based on time estimates from similar reviews the firms had conducted in the past.

The City of Kingston's review of comparative municipalities was limited due to short turnaround time of their report. The review found that Whitby, Oshawa, Belleville, and Brockville have anti-whistling by-laws in effect. Their whistle bans are in effect 24 hours unless in an emergency situation, except for Brockville, where the whistle ban is only in effect from 11:00 p.m. to 6:00 a.m.



The City of Kingston's insurance managers indicated that from a risk management perspective, they did not recommend the cessation of train whistles at railway grade crossings. In response to the inquiry regarding the potential impact of anti-whistling on insurance, City of Kingston staff were advised that the insurers do not underwrite to a degree where premium would come into play whether or not a train whistles were prohibited within City limits, however, if a claim were to occur, a loss would impact the City's loss ratio and have a negative impact on premium.

To date, City of Kingston Council has taken no action on the issue of elimination of train whistling at railway grade crossings

#### **7.6 City of Brampton**

Over the past several years, the City has received complaints regarding to train whistling at the Ward Road and Williams Parkway railway grade crossings. In July 2000, a by-law was passed prohibiting the sounding of train whistles at the grade crossings, however CN would not consider a whistle ban at the Williams Parkway crossing unless improvements to the crossing were implemented. In April 2004, Council passed a resolution authorizing the required improvements to the Williams Parkway railway grade crossing. In 2005, the required improvements to the Williams Parkway crossing were completed. Letters were sent out to the relevant organizations advising of the City of Brampton's intent to pass a ban on train whistling at the Williams Parkway crossing. As of July 2008, no response had been received from the relevant organizations and the by-law to ban whistling at the railway grade crossing had yet to be passed.

#### **7.7 City of London**

The City has tried on several occasions to initiate discussions with the railway companies to eliminate train whistling at railway grade crossings and they have been flat out told "No." It was suggested by the railway companies that the City contact Transport Canada if the municipality wanted to pursue the elimination of train whistling at specific locations, which they have not pursued. Ultimately the railway company has the final say regarding the elimination of train whistling at a railway grade crossing.

#### **7.8 Summary of Experience of Other Municipalities**

- Municipalities have had varying degrees of success with the elimination of train whistles at railway grade crossings because of the many safety considerations and unique characteristics of the railway grade crossings and surrounding environment
- Other municipalities have found railway companies uncooperative in response to inquiries regarding train whistle cessation at grade crossings



- The process to eliminate train whistling at railway grade crossings can be lengthy (over 2 years)
- A consulting firm will need to be hired to conduct a detailed safety audit at each railway grade crossing where the City is considering the cessation of train whistling. The safety audit reviews the need for safety warning devices including signs, lights, bells and gates, but can also include the need for anti-trespassing fencing and other mitigation measures to improve safety at the crossing. The cost to implement any required safety improvements will be the responsibility of the City
- The City may be required to pay an increased liability insurance premium for each railway grade crossings where train whistling is prohibited.

## 7.9 City of Brantford Risk Management

The Risk Management Department of the City of Brantford provided the following comments on the proposed cessation of train whistling:

Thought must be given to the indemnity and terms of insurance signed by the Rail Authority and the City. Risk Management should be provided an opportunity to review any agreement and indemnity that will be signed by the City. The Rail Authority will likely want to be indemnified for all claims or losses that may take place at the railway grade crossings including their damages or losses for the implementation of this anti-whistling by-law. The indemnity exposure may exceed the municipality's insurance coverage. In other words, if the indemnity provision allows for funds in excess of the City's insurance coverage, the municipality has a significant exposure.

There are a number of municipalities which have been quoted a higher cost for insurance for each railway crossing with their insurance carrier. The Risk Management Department has reviewed this issue with the City's insurer, The Frank Cowan Company, and they assured staff that there is no premium assessment of these types of agreements which would constitute an increase in insurance costs. However, insurance costs are driven by claims and when we have an agreement to indemnify the Rail Authority for all claims, the municipal exposure increases. When claims and claim costs increase, the cost of purchasing insurance also increases.

## 8.0 ANALYSIS

### 8.1 Procedure for Eliminating Whistling at Public Crossings

All trains are required to sound their whistle on the approach to railway grade crossings. The use of whistling is a requirement of the Canadian Rail Operating Rules, more specifically Rule 14(L)(i), which requires whistling for railway crossings at grade "except as may be prescribed in special instructions."



Transport Canada, which has responsibility for the safety of railway grade crossings across Canada, will consider applications for an exemption from the regulations at specific railway grade crossings providing certain requirements are met. Prior to considering the application, the local municipality and the railway must review the crossings to ensure that the safety of the railway grade crossing will not be compromised by the proposed elimination of whistling.

In accordance with the *Procedure and Conditions for Eliminating Whistling at Public Crossings* published by Transport Canada, municipalities seeking relief from train whistling at railway grade crossings must contact the appropriate railway company directly to discuss the concern. At the same time, the City must also notify the general public and all relevant organizations of its intention to pass a resolution forbidding the use of train whistles in the area. The City and the railway company must then conduct a detailed safety audit to be conducted by a consultant. The recommendations from the audit would need to be implemented, the responsible authorities be in agreement, and the crossing meet the requirements of the guideline, prior to the City passing a bylaw to stop train whistling. The City and/or railway company may also request a Transport Canada railway safety inspector to inspect the crossings to confirm the safety assessment that the crossing meets the conditions of the guideline. Following the assessment, the railway may issue special instructions eliminating the application of CROR Rule 14(L)(i) at the crossings.

## 8.2 Risk Management

In reviewing the train whistle cessation experience of other municipalities, many reports cited an incident that occurred in the City of Brockville on February 15, 2005. In this incident, a CN freight train proceeding eastward struck two grade 7 girls walking home from school. The two girls stepped into the path of the eastbound train after the passage of a westbound train. One girl was fatally injured, the second received serious injuries. In March 1999, the City of Brockville had enacted a by-law to prohibit the sounding of engine whistles of trains at highway crossings within the City of Brockville, and the train involved in the incident had not sounded its whistle prior to the railway grade crossing. A Transportation Safety Board of Canada railway investigation and Coroner's inquest ensued and shortly thereafter in response to recommendations from the inquest, in July 2005, following an internal safety audit, CN reinstated 24 hour a day whistling at railway grade crossings in the City of Brockville. Subsequently on May 8, 2006, whistling was halted nightly between 10:00 p.m. and 6:00 a.m. subject to a number of conditions, including the installation of pedestrian gates and posting school crossing guards at railway grade crossings before and after school.

Train whistles are a vital safety feature, which protect motorists, pedestrians, and train crews from collisions at railway grade crossings. The sole purpose of train whistling on the approach to railway grade crossings is to alert motorists and pedestrians that an imminent danger is approaching.



### 8.3 Action items Identified at meeting held November 22, 2011

The following is a list of action items identified at the meeting held November 22, 2011:

- Agreed that CN at the Hardy Road double track railway grade crossing would not be included in the Cessation of Whistling request.
- Agreed that due to the high trespass activity identified in earlier reports, that the cessation of train whistling would only be pursued for the period from 22:00 to 07:00, when there is less likelihood of pedestrian activities close to the railway.
- Agreed that the request for the cessation of train whistling would only be sent to Southern Ontario Railway for the section of their Hagersville Subdivision that includes the following railway grade crossings within the City of Brantford where their trains are currently required to whistle:
  - Stanley Street
  - Garden Avenue
  - Johnson Road
- Agreed to invite the County of Brant to participate by including the following crossings, due to concerns regarding need for improved safety at the railway grade crossing on Colborne Street East which is used by many Brantford residents, and the impact that train whistling at these locations has on the residents of the City of Brantford:
  - Colborne Street East
  - Old Onondaga Road
  - Blossom Avenue
- Request that Risk Management provide input regarding potential change in liability costs and agreements with railways and experience in other communities where cessation of whistling has been implemented. (Section 8.2 of this report).
- Transportation Services will prepare a report to Council in early 2012 which will advise Council of the background, the process, risk management and seek approval to contact railways and Brant County to continue the process. (this report).
- The Councillors in attendance at the meeting also asked that they be provided with a copy of the report, well in advance, in order that they could review it and provide input.

## 9.0 FINANCIAL IMPLICATIONS

The cost to hire a consultant to conduct a railway grade crossing safety audit at the railway grade crossings on Stanley Street, Garden Avenue and Johnson Road is approximately \$50,000.

## 10.0 CONCLUSION

All railway operations are regulated by Transport Canada. To request whistle cessation, municipalities must follow a lengthy process that can take years (based on the experience of other municipalities). Notwithstanding the outcome of the process, a locomotive engineer may still sound a train whistle at any crossing, if the engineer deems it necessary at their discretion.

The process for cessation of train whistling at railway grade crossings includes the completion of a safety audit for each railway crossing, implementation of any necessary railway grade crossing protection and safety improvements, passing of a City Council resolution to prohibit train whistling and advising the general public and relevant organization of the municipality's intention to prohibit whistling. The municipality then applies to the railway company, in this case Southern Ontario Railway, to request that they issue special instructions eliminating the application of CROR Rule 14(L)(i) at the crossings.

This process was unsuccessful when last studied in 2002 because the City was unable to get the co-operation of the County of Brant to pass a similar whistle cessation by-law for railway grade crossings immediately adjacent to the City limit.

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R. Loukes, P.Eng., PTOE  
Director of Transportation Services

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G. Rae, MBA, P.Eng.,  
General Manager,  
Engineering & Operational Services.

### Attachments:

- Figure 1 – Southern Ontario Railway Crossings – Hagersville Subdivision
- Figure 2 - Adjacent Railway Crossings in the City of Brantford and County of Brant

In adopting this report, is a by-law or agreement required? If so, it should be referenced in the recommendation section.

By-law required	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no
Agreement(s) or other documents to be signed by Mayor and/or City Clerk	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no
Is the necessary by-law or agreement being sent concurrently to Council?	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no



## ATTACHMENT NO. 5

Infographic: Accidents at level rail crossings by province - The Globe and Mail

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[Back to Article Rail's spread into suburbia ramps up debate over safety at busy crossings](#)

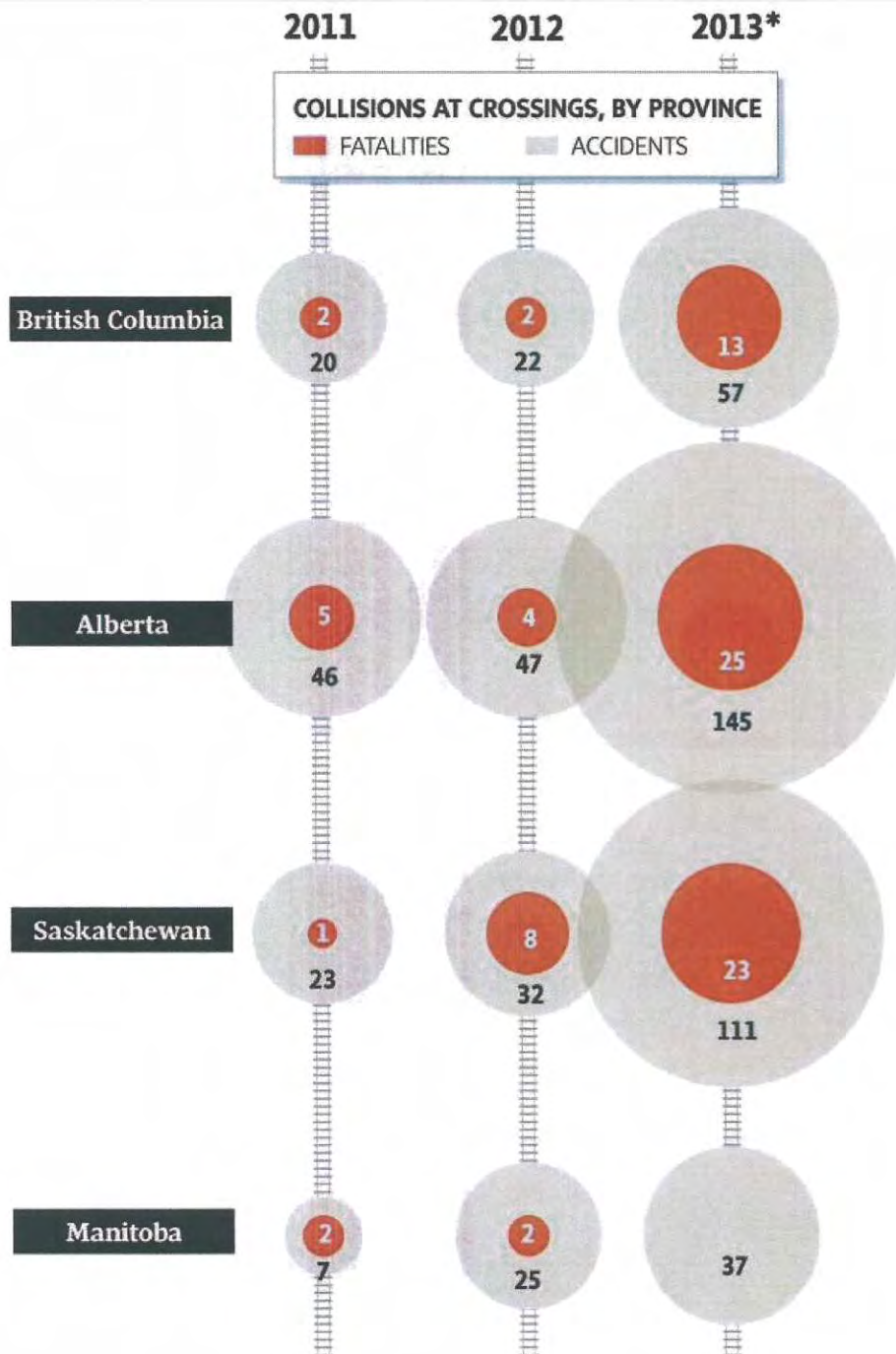
### Infographic: Accidents at level rail crossings by province

The Globe and Mail

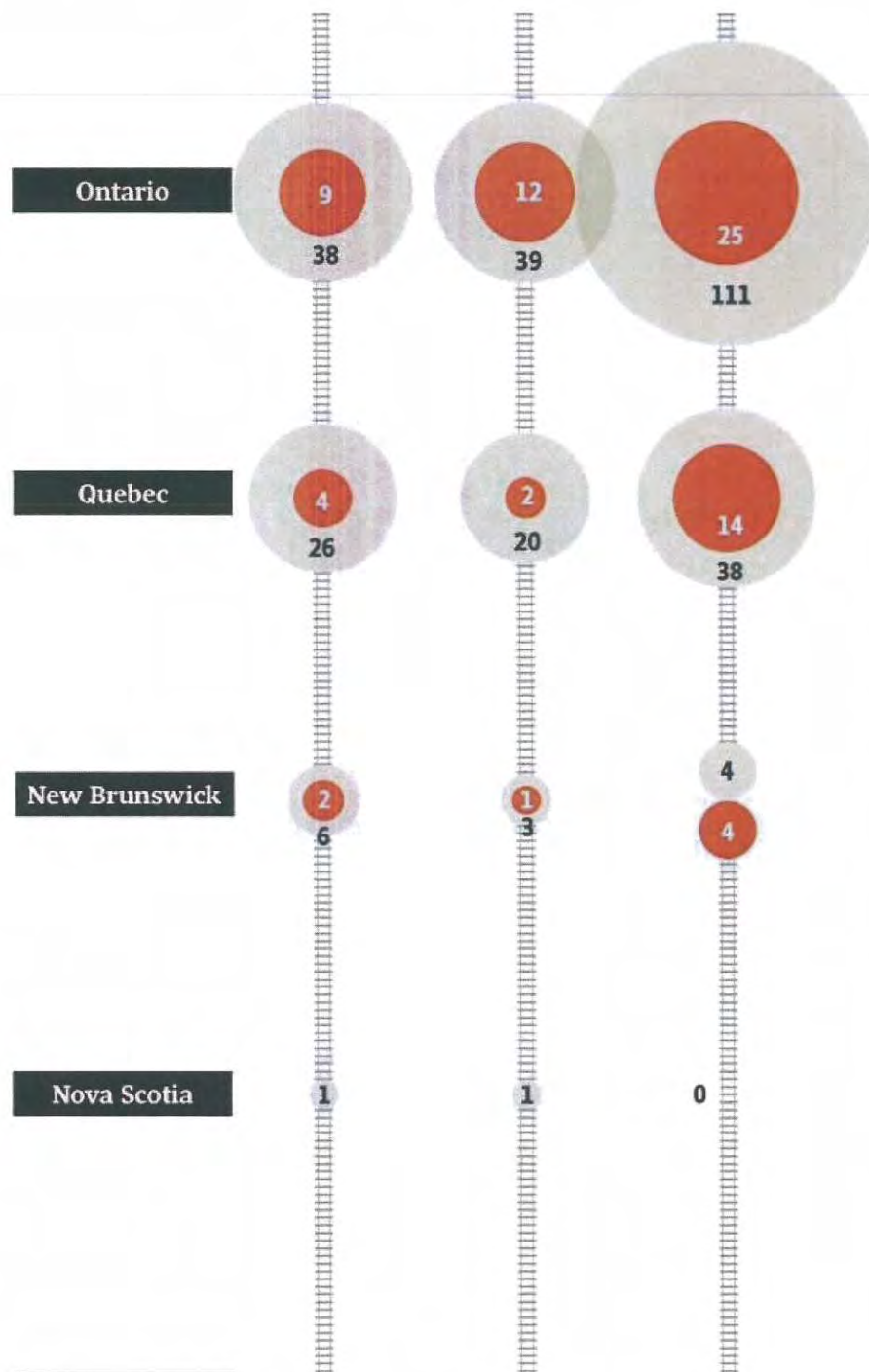
Published Thursday, Sep. 19 2013, 10:06 PM EDT

Last updated Thursday, Sep. 19 2013, 10:06 PM EDT

**Collision between Ottawa city bus and train illustrates how collisions and fatalities at rail crossings are still common occurrences in Canada**







**Newfoundland  
and Labrador**



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