

NO: R092

COUNCIL DATE: May 2, 2016

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## REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **April 26, 2016**

FROM: **General Manager, Engineering**

FILE: **1711-007**

SUBJECT: **Amendments to Surrey Train Whistle Cessation By-law, 2012, No. 17535**

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## 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 Bylaws 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 remove references to obsolete requirements and other non-applicable legislation.

## BACKGROUND

Increased Asia-Pacific trade led to the expansion of the Roberts Bank container port and coal terminal. This expansion was projected to double the volume of train traffic serving the port by the year 2020, and triple the volume of train traffic by the year 2030. As a means of reducing the impacts of this train volume increase on the communities along the rail corridor, the Roberts Bank Rail Corridor (RBRC) Program was developed to construct a number of road/rail grade separations along the corridor in Langley, Surrey and Delta. In Surrey, the Program Partners included the BCR Properties Ltd. (formerly known as BC Railway Company) and the Burlington Northern Santa Fe Railway. Working with these Partners, the City of Surrey initiated procedures to eliminate whistle cessation at the remaining at-grade crossings which were not separated as part of the program.

One of the steps required to effect whistle cessation, in accordance with Section 23.1 of the Railway Safety Act (Canada) and by its adoption Section 9(1) of the Railway Safety Act (SBC 2004), pursuant to Section 3 of the Railway Safety Adopted Provisions Regulation (B.C. Reg 210/2004), is for the affected municipality to adopt a resolution declaring that train engine whistles not be used in a specified area within the municipality. Consequently in 2012, the City of Surrey adopted By-law No. 17535 in anticipation of meeting the further steps in the whistle cessation process.

The overall process to effect whistle cessation took longer than originally anticipated when By-law No. 17535 was adopted, and in the intervening period, various requirements for the implementation of whistle cessation were superseded. This resulted in an amendment of the By-law in January 2016 to remove references to obsolete requirements and other non-applicable legislation.

## DISCUSSION

Pursuant to the January 2016 By-law Amendment, the City and BCR Properties Ltd. have been unable to negotiate an agreement related to the implementation of whistle cessation. Under the terms proposed by BCR Properties Ltd., the City would be responsible to pay all premiums and deductibles, regardless of the amounts, on an annual basis in perpetuity for General Liability Insurance against risks arising from the cessation of train engine whistling at the subject crossings. BCR Properties Ltd. is not prepared to put caps on these amounts. In light of this, given that all prescribed safety devices will be in place and given that an agreement is not necessary under the new legislative scheme, it is recommended that the By-law be amended to remove the requirement to obtain agreement with the railway company and pay all insurance costs.

Risk Management and Legal Services have been consulted and have no objection to proceeding in this manner.

## SUSTAINABILITY CONSIDERATIONS

The implementation of train whistle cessation at the at-grade road/rail crossings of the British Columbia Railway supports the Pillars of the City's Sustainability Charter under the following specific elements of the Charter:

- SC 11: Public Safety & Security; and
- EN 13: Enhancing the Public Realm.

## 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 Bylaws for the required readings.

Fraser Smith, P.Eng., MBA  
General Manager, Engineering

SBN/KDZ/JWD/clr

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

Proposed Amendments to  
Surrey Train Whistle Cessation By-law, 2012, No. 17535

That the By-law be amended as follows:

By deleting Section 2:

"This By-law shall apply to a particular railway/roadway at-grade crossing listed in Schedule "A" on the date upon which both of the following requirements has been met in respect of that crossing:

- (a) the crossing has met the whistling cessation requirements specified in Appendix D of the Transport Canada Grade Crossing Standards dated for reference July, 2014; and
- (b) the City of Surrey and the subject railway company have agreed in writing that the crossing has met the conditions required to be eligible for relief of the obligation for the sounding of train engine whistles."

And replacing it with:

"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)."

By deleting Section 3:

"The Company owning the railway track(s) at the railway/roadway at-grade crossings listed in Schedule "A" shall procure and maintain General Liability insurance against third party liability risks arising from the cessation of train engine whistling at the subject crossings for an amount not less than \$10 million per occurrence, with the City of surrey,. The company owning the railway track(s), its subsidiaries and each railway company operating trains over the subject crossings listed as insured parties."

By deleting Section 4:

"The Company owning the railway track(s) at the railway/roadway at-grade crossings listed in Schedule "A" shall invoice the City of surrey for the costs of insurance premiums attributed to the subject crossings, and the City shall promptly pay all such invoices."