

*General Letter*



Regional Clerk's Office  
Corporate Services Department

June 25, 2008

Ms. Sheila Birrell  
Town Clerk  
Town of Markham  
101 Town Centre Boulevard  
Markham, Ontario  
L3R 9W3

Dear Ms. Birrell:

**Re: Anti-Whistling Policy For Trains  
At Road/Rail Crossings**

The Council of The Regional Municipality of York, at its meeting held on Thursday, June 19, 2008, adopted, as amended, the attached Clause No. 14, Report No. 6 of the Transportation and Works Committee.

By the adoption of the foregoing clause, Regional Council has adopted a new Anti-Whistling Warrant Criteria policy. It has also indicated that it will entertain anti-whistling by-laws from the local municipalities with different hours of restrictions than those in the Region's policy as they come forward.

There are also specific recommendations Council has adopted regarding the installation of pedestrian gates and risk and liability for train crossings on Regional roads.

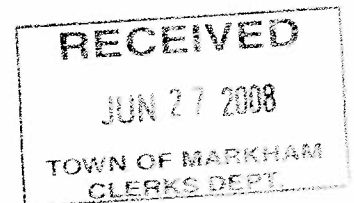
A copy of Clause No. 14, Report No. 6 of the Transportation and Works Committee, is attached for your information.

Please contact Paul Jankowski, General Manager, Roads, Transportation Services Department at 905-830-4444, ext. 5901, if you have any further questions with respect to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Denis Kelly".

Denis Kelly  
Regional Clerk  
B. Bridle  
Attachment



Copy to: K. Llewellyn-Thomas, Commissioner of Transportation Services  
Paul Jankowski, General Manager, Roads



Clause No. 14 in Report No. 6 of the Transportation and Works Committee was adopted as amended by the Council of The Regional Municipality of York at its meeting on June 19, 2008.

**14**

**ANTI-WHISTLING POLICY FOR TRAINS  
AT ROAD/RAIL CROSSINGS**

*(Regional Council at its meeting on June 19, 2008 adopted this Clause subject to the following amendments:*

- 1. The Region will entertain anti-whistling by-laws from the local municipalities with different hours of restrictions than those in the Region's policy as they come forward; and*
- 2. The Region will be responsible for risk and liability at train crossings on Regional Roads.*

*In considering this clause, Council had before it a letter dated June 11, 2008 from Kim Kitteringham, Deputy Clerk, Town of Markham.)*

**The Transportation and Works Committee recommends the following:**

- 1. the following deputations be received:**
  - a) Mr. Paul Mantella, President, Nashville Area Ratepayers Association;**
  - b) Mr. Brian Roman, resident, Unionville, Ontario;**
- 2. the following communications be received:**
  - a) Mrs. Michele Kennedy, Town Clerk, Town of Whitchurch-Stouffville, dated April 9, 2008;**
  - b) Ms. Donna McLarty, Town Clerk, Town of Richmond Hill, dated May 28, 2008;**
- 3. the Anti-Whistling Warrant Criteria policy be amended to reflect that the Region be responsible for the cost of installing pedestrian gates;**
- 4. the recommendations contained in the following report, May 28, 2008, from the Commissioner of Transportation Services, be adopted subject to the above amendment.**

## **1. RECOMMENDATIONS**

It is recommended that:

1. Regional Council adopt the attached policy to deal with requests from local municipalities wishing to enact by-laws prohibiting train whistling at railway crossings of Regional roads.
2. The Regional Clerk circulate this report to the Clerk of the local municipalities.

## **2. PURPOSE**

This report recommends adopting a policy on anti-whistling at railway crossings of Regional roads (*see Attachment 1*). The report also provides information on the staff discussions with the local municipalities.

## **3. BACKGROUND**

On February 6, 2008 (*see Attachment 2*), a report proposing an anti-whistling policy was endorsed by the Transportation and Works Committee. On February 21, 2008, Regional Council referred this report back to staff for further discussion with the local municipalities and requested the submission of a subsequent report to the Transportation and Works Committee.

Typically, requests pertaining to anti-whistling come from a resident to the local municipality or to the Region. As these requests are usually a noise issue related to the operation of train whistles, staff refer the request to the local municipality for their review and assessment through their noise by-laws. If required, the local municipality will request assistance from the Region.

Staff are continuing to receive requests for anti-whistling. This report recommends the adoption of a policy on anti-whistling and provides additional information as requested by the Transportation and Works Committee.

## **4. ANALYSIS AND OPTIONS**

### **DISCUSSIONS WITH LOCAL MUNICIPALITIES**

Staff was requested to discuss the implementation of anti-whistling with the local municipalities and report to the Transportation and Works Committee. Staff met with representatives from the local municipalities on April 10, 2008 where a presentation was provided and the implementation of anti-whistling was discussed. The local municipalities are concerned with the requirement that funding and associated costs for the implementation of anti-whistling are solely their responsibility. Other concerns

addressed during this meeting were the ability to adjust the hours prohibiting train whistling and the increased risk and liability resulting from implementing anti-whistling.

Several local municipalities have submitted or are in the process of submitting reports to their respective Councils and were requested to provide copies of those reports. Any municipalities not submitting Council reports were requested to submit a letter outlining their position regarding anti-whistling.

#### **4.1 COSTING OF CROSSING SAFETY DEVICES**

##### **Costs to install the necessary safety devices to implement anti-whistling at railway crossings vary based on geometrics**

Should a crossing location that is being considered for an anti-whistling by-law not have all appropriate safety warning devices in place, the installation of the necessary devices is required. The Federal government provides up to 80% of the funding for the installation of railway safety devices.

Generally, the cost to implement flashing signals and gates, not including pedestrian gates, at a railway crossing, regardless of an urban or rural road environment, are estimated at approximately \$200,000. According to Transport Canada, depending on location, geometrics of the road and railway and specific setup, the cost to install a pedestrian gate at a sidewalk crossing and a mast arm at a vehicle crossing range from \$60,000 to \$100,000 per location. The cost of installing an individual pedestrian gate range from \$60,000 to \$80,000 and are usually only required in urban locations with sidewalks. The cost of a safety audit varies based on location, but is approximately \$3,000.

The total cost to implement anti-whistling at a two-lane rural road railway crossing, where no railway safety devices are in place, is estimated to be approximately \$208,000 and does not include pedestrian gates. The cost to implement flashing signals and gates at a two-lane urban road railway crossing is estimated at approximately \$288,000. These costs are summarized in the following table which reflects the higher end of the scale. As noted in the table, the major difference in cost is based upon the inclusion of pedestrian gates and the difference between a four-lane and two-lane urban road cross section.

##### **Regional Policy proposes to share costs where no safety devices exist or where upgrades to existing devices are required**

During meetings, staff of the local municipalities outlined their concerns with the requirement that funding for the implementation of anti-whistling would be solely their responsibility. The discussions were beneficial in clarifying the division in responsibility as proposed by Regional staff. For clarification, in situations where there are no safety devices at a Regional road rail crossing, or where the current safety devices need to be upgraded, the Region would share in these costs. For example, if a crossing has flashing lights and bells only, the Region would pay for its share of installing the crossing gates and other related expenses. It would be the responsibility of the local municipality to pay for any additional devices required to implement the anti-whistling by-law. In a situation

where gates, bells and lights are already in place at a crossing, the Region would not be responsible for any costs related to installing devices to implement the anti-whistling by-law. Table 1 shows a range of costs for different crossing options.

**Table 1**  
**Anti-Whistling Implementation Costs on Regional Roads**

		Cost Per Location				
		Regional	Local Municipality for Anti-Whistling		Total	
# Lanes	Environment	Flasher and Gates	Pedestrian Gates	Safety Audit	Education Program	
2 – lane	Rural	\$200,000	No sidewalk	\$3,000	\$5,000	\$208,000
4 – lane	Rural	\$250,000	No Sidewalk	\$3,000	\$5,000	\$258,000
2 – lane	Urban	\$200,000	\$80,000	\$3,000	\$5,000	\$288,000
4 – lane	Urban	\$250,000	\$80,000	\$3,000	\$5,000	\$338,000

In comparison to the cost of railway devices, other costs, such as the completion of a safety audit and the creation of an education program are minimal.

## 4.2 TIMES FOR ANTI-WHISTLING PROHIBITIONS

Staff also discussed the proposed time limitations for the anti-whistling prohibition at Regional road crossings. Following the staff consultations, Regional staff have amended the policy proposal to reflect a degree of flexibility regarding the time-of-day limitations. The main intent is to limit train whistling during night time hours when people are sleeping. The time proposal in the policy was based on the GO Train times on the Newmarket line. If other crossings in other local municipalities have different times for GO Train service, the restricted hours can be changed accordingly. The proposed policy has been amended to reflect a more flexible start and stop time for the anti-whistling by-law while maintaining the intent of eliminating the train whistle during night time hours.

## 4.3 RISK AND LIABILITY

In general, any road authority would potentially become more liable for collisions and increased risk with the implementation of an anti-whistling by-law. Regional staff suggest that the added risk and liability is most appropriately attributed to the municipality implementing the by-law. The rail authorities, such as GO Transit and CN, would both require indemnification agreements from the Region and the proposed policy suggests that the Region would require the same from the local municipality during the process of approving any anti-whistling by-law.

Even if a local municipality enacts an anti-whistling by-law at a location, the train operator still has discretionary use of the train whistle in emergency situations or in response to a safety concern. Any local by-laws are superseded by the rail authority's policies.

## **5. FINANCIAL IMPLICATIONS**

In accordance with this report, any costs related to the implementation of anti-whistling would be the responsibility of the local municipality. Any costs related to installing gates, bells and flashing lights to bring the crossing up to standard will be paid for by the Region. All safety devices at road-rail crossings are eligible for up to 80% funding from the Federal government.

## **6. LOCAL MUNICIPAL IMPACT**

Any costs to implement anti-whistling are the responsibility of the local municipality. Should a crossing location that is being considered for an anti-whistling by-law not have all appropriate safety warning devices in place, the Region would pay for the standard safety devices including gates, bells and flashing lights. The local municipality would have to pay for the installation cost of the necessary devices specifically required for the implementation of an anti-whistling by-law. Federal grants provide up to 80% of the funding for the installation of railway safety devices. The local municipality would also be required to assume the added risk and liability of enacting the anti-whistling by-law.

## **7. CONCLUSION**

This report recommends adopting a policy on anti-whistling at railway crossings of Regional roads and provides information regarding the approximate cost to implement anti-whistling. The policy also reflects a more flexible start and stop time for the anti-whistling by-law with the intent of eliminating train whistling during night time hours.

For more information on this report, contact Paul Jankowski, General Manager, Roads, Roads Branch at extension 5901 in the Transportation Services Department.

The Senior Management Group has reviewed this report.

*(The attachments referred to in this clause are attached to this report.)*







## STATUS

Council Approved

Y

N

CAO Approved:

Y

N

<b>TITLE:</b> Anti-Whistling Warrant Criteria	<b>NO.:</b>
	<b>Effective Date:</b>
	<b>Latest Revision Date:</b>

**POLICY STATEMENT:**

This policy provides a set of criteria when local municipalities request York Region support for a local municipal anti-whistling by-law at railway crossings of Regional roads.

**APPLICATION:**

The criteria provide a consistent approach to deal with requests from area municipalities for the implementation of anti-whistling within York Region.

**PURPOSE:**

The purpose of this policy is to provide a set of criteria for area municipalities to follow when requesting support of an anti-whistling by-law at locations on Regional roads.

**DESCRIPTION:**

This policy contains criteria for implementing anti-whistling on Regional roads that intersect railway lines.

**Criteria**

1. Local municipalities must make a formal request to the Region for support of an anti-whistling by-law for each individual location where a railway crosses a Regional road at-grade.

**APPROVAL INFORMATION****Council Minutes:**

Clause No.:

of Report No.:

Of the:

Date:

OR

CAO Approval Date:

2. An anti-whistling by-law could be considered if the following conditions are satisfied and all costs are incurred by the local municipality:
  - a. A safety audit is completed by a specialized safety consultant.
  - b. The safety audit is approved by Transport Canada.
  - c. If there are pedestrians in the area of the crossing, pedestrian gates must be installed.
  - d. An education program is developed for the affected area.
  - e. The whistling prohibition be implemented during night-time hours typically between the hours of 10:00 p.m. and 6:00 a.m.
  - f. The local municipality requesting the anti-whistling by-law agrees to assume any added risk and liability to the Region as a consequence of executing the anti-whistling by-law and to indemnify the Region for such added risk and liability

**CONTACT:**

Director, Operations, Roads Branch, Transportation Services Department

Report No. 2 of the Transportation and Works Committee  
Regional Council Meeting of February 21, 2008

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**6**

**ANTI-WHISTLING POLICY FOR TRAINS  
AT ROAD/RAIL CROSSINGS**

*(Regional Council at its meeting on February 21, 2008 referred the following Clause back to staff for further discussion with the local municipalities and the submission of a report to the April 9, 2008 Committee meeting.)*

The Transportation and Works Committee recommends the following:

1. The presentation by Brian Harrison, Director, Operations, Roads Branch, be received;
2. The recommendations contained in the following report, January 25, 2008, from the Commissioner of Transportation Services, be adopted.

**1. RECOMMENDATIONS**

It is recommended that:

1. Regional Council adopt the attached policy to deal with requests from local municipalities wishing to enact by-laws prohibiting train whistling at railway crossings of Regional roads.
2. The Regional Clerk forward this report to the Clerk of each local municipality.

**2. PURPOSE**

This report recommends adopting a policy on anti-whistling at railway crossings of Regional roads (*see Attachment 1*).

**3. BACKGROUND**

Requests to implement anti-whistling at level railway crossings throughout the Region are received on a regular basis.

On May 2, 2007, a report to the Region's Transportation and Works Committee proposed that anti-whistling not be considered at that time. The report recommended that the Regional Chair be authorized to send a letter to the Minister of Transport Canada of the federal government requesting that York Region rail crossings be included in ongoing

pilot tests for the use of automated horn systems that are intended as an option to replace the train whistle.

Staff are continuing to receive requests for anti-whistling. This report recommends the adoption of a policy on anti-whistling with criteria to consider future requests for the implementation of anti-whistling.

#### **4. ANALYSIS AND OPTIONS**

##### **Recent requests for anti-whistling and automated horn systems**

Most recently, staff received a request from a resident group in Aurora to implement anti-whistling at Regional road railway crossings in the Town of Aurora. Staff responded to the resident group indicating that Regional Council is not in support of anti-whistling.

Concerns have also been raised pertaining to the train whistling on the same line used by GO Transit and CN Rail within the neighbouring Town of Newmarket. As a result of many requests from the residents in Aurora and Aurora Council, staff attended a public meeting in October 2007 arranged by the Town of Aurora to discuss this issue. On October 19, 2007, staff also met with representatives from GO Transit, CN and Transport Canada.

##### **Automated horn systems are not recommended as an alternative to the train whistles at this time**

An automated horn system is a rail signalling device that is permanently mounted at the at-grade railway crossing and delivers a longer more consistent audible warning to motorists and pedestrians in the vicinity of the crossing than a train whistle. This automated system eliminates the noise pollution created by the sounding of the whistle on the train approaching the crossing as it travels past the neighbourhoods. A detailed description of the operation of the automated horn system is appended to this report as *Attachment 4*.

As a result of the meetings and discussions regarding train whistling, it was determined that the automated horn system may not be a viable solution for at-grade railway crossings at this time. Currently, the use of automated horn systems has not been approved for use. There are no standards for these systems and no criteria for their use. It would be very difficult to implement this horn system without established standards and criteria to enable design and construction of an automated horn system.

### **Existing locations within York Region with anti-whistling provisions**

There is currently one location in Pefferlaw in the Town of Georgina that involves two low volume Regional roads where anti-whistling is in effect. This anti-whistling was implemented in 2001 and at that time the Region's position on this issue was neutral.

There is also an anti-whistling by-law in the Town of Richmond Hill, which was passed in 1987, and involves both Regional and Town roads. The Town of Richmond Hill passed this by-law without consultation with the Region. Since the Town of Richmond Hill does not have jurisdiction over Regional roads, this by-law would not be valid since Regional Council was not consulted on the matter and did not endorse it.

The Town of Markham has an anti-whistling by-law which was passed in 1966 and prior to the formation of The Regional Municipality of York. Staff attended a meeting on November 23, 2007 with Town of Markham staff to discuss anti-whistling and the existence of their anti-whistling by-law; however, the Town of Markham staff were not aware of the existence of any anti-whistling by-laws specific to Regional roads within the Town's geographic jurisdiction.

### **Impact of rail authorities policy on the Newmarket and Aurora rail line**

GO Transit has indicated that where a train stops at a station, for example at Wellington Street in the Town of Aurora, the train operator is required to sound the whistle as part of GO Transit policy consequently, GO Transit has indicated that the implementation of an anti-whistling by-law would therefore not be obeyed by commuter trains operated by GO Transit at crossings in close proximity to passenger stations as their established policy requires sounding of the train whistle.

On the Newmarket and Aurora rail line between Wellington Street and Green Lane, there are currently at grade crossings at Wellington Street, St. John's Sideroad, Mulock Drive, Davis Drive and Green Lane (*see Attachments 2 and 3*). On this line, GO Transit is obligated to sound the whistle, even if an anti-whistling by-law was in place, at Wellington Street, Davis Drive and at Green Lane due to the presence of passenger stations.

The affected residents in Aurora are mostly concerned with train whistles through the night, mainly by freight trains. GO Transit does not operate their trains on the Newmarket and Aurora line during the night. The first GO train leaves Newmarket at 6:17 a.m. each weekday en route to Union Station in Toronto. Theoretically, freight trains using this rail line during the night could pass through the crossings without sounding the train whistle if there was an anti-whistling by-law in place. It is staffs' understanding that freight trains do not have the same requirements as GO trains, to whistle at crossings in close proximity to stations.

### **All day anti-whistling by-law may significantly increase the Region's liability**

Regional Legal Services and Regional Policy, Risk and Treasury staff have investigated liability and insurance issues related to the potential implementation of anti-whistling at rail crossings in Aurora. The conclusions are as follows:

#### **i) The Brockville Experience**

In March, 1999, the City of Brockville passed a by-law prohibiting train whistles within the City, at any time of the day. Tragically, in February, 2005, 2 pedestrian children were hit by a train at a level crossing. In response, train whistles were once again permitted in Brockville 24 hours per day. However, in May, 2006, whistling was again prohibited, but only between the hours of 10:00 p.m. and 6:00 a.m. and after the installation of pedestrian safety gates and other safety devices at level crossings. In doing so, the City struck a balance between addressing the noise concerns of residents and protecting pedestrian and vehicular traffic during peak traffic hours.

#### **ii) Impact on Liability Insurance Premiums**

In response to concerns that an anti-whistling by-law would result in higher liability insurance premiums, Policy, Risk and Treasury staff contacted the Region's insurer to investigate this issue. Staff determined that there would be no specific identifiable increase in premiums, although this was a possibility. By way of example, staff were able to determine that a similar by-law in Milton, Ontario had resulted in increased premiums of \$900.00 per level crossing within the Town. It is not known whether this would be representative of potential costs to the Region for increased premium costs, as several factors which are not known at this time must be taken into account, including proposed design of the crossing, sight-line issues, traffic volume, etc.

It is, however, virtually certain that the Region's insurance premium costs would increase significantly in the event of an accident at a level crossing during a period while anti-whistling was in effect. As well, more liability for the accident itself would be shifted to the Region from the rail authority, as GO Transit and CN would both require indemnification agreements from the Region during the process of approving any anti-whistling by-law.

In consideration of balancing the concerns of the residents of the Region with pedestrian and vehicular safety issues, Regional staff recommend it may be appropriate to adopt a policy to support local municipal anti-whistling by-laws for the night time (i.e. 10:00 p.m. – 6:00 a.m.) as is experienced in Brockville.

**Proposed process and criteria for approval of an anti-whistling by-law at specific Regional road rail crossings**

In considering all of the information and issues, staff from Roads and Legal and Risk Management have developed a proposed process to address the anti-whistling issue and to create criteria to assist Regional Council and local Councils in considering requests for anti-whistling at specific locations. The following is the recommended anti-whistling criteria:

1. Local municipalities must make a formal request to the Region for support of an anti-whistling by-law for each individual location where a rail crosses a Regional Road at-grade.
2. An anti-whistling by-law could be considered if the following conditions are satisfied and all costs are incurred by the local municipality:
  - a. A safety audit is completed by a specialized safety consultant.
  - b. The safety audit is approved by Transport Canada.
  - c. If there are pedestrians in the area of the crossing, pedestrian gates must be installed.
  - d. An education program is developed for the affected area.
  - e. The whistling prohibition be implemented only between the hours of 10:00 p.m. and 6:00 a.m.

**Impact of proposed criteria on the Newmarket and Aurora rail line**

The Town of Aurora has already retained a specialized consultant to conduct a safety audit at the crossings within their jurisdiction. If an anti-whistling by-law is supported on this line, the Town of Aurora would need to have their safety audit approved by Transport Canada, install pedestrian gates at each location and develop an education program.

The Town of Newmarket is interested in anti-whistling; however, at this time Regional staff is not aware of any safety audits conducted at their crossings.

**5. FINANCIAL IMPLICATIONS**

In accordance with this policy, any costs related to the implementation of anti-whistling would be the responsibility of the local municipality. These costs include:

- The completion of a safety audit by a specialized safety consultant
- The installation of pedestrian gates if there are pedestrians in the area
- An education program for area residents and users

## **6. LOCAL MUNICIPAL IMPACT**

The creation of a policy regarding implementing anti-whistling at rail crossings of Regional roads will provide a guideline for Regional staff to consider future requests from residents and local municipalities. This policy will also allow staff of the local municipalities a reference which can be used to consider future requests within their own jurisdiction.

Any costs to implement anti-whistling are the responsibility of the local municipality. According to Transport Canada, depending on location, geometrics of the road and railway and specific setup, the cost to install a pedestrian gate and mast arm range from \$60,000 to \$100,000 per location. Federal grants provide up to 80% of the funding for the installation of railway safety devices.

In comparison, other costs, such as the completion of a safety audit and the creation of an education program are minimal. For example, the approximate cost to conduct safety audits of the at-grade rail crossings in the Town of Aurora were \$3,000 per location. The cost to create an education program, including items such as the mailing of information brochures to area residents, posting of notices in local newspapers and hosting public meetings range from \$2,500 to \$5,000. In accordance with the Regional policy "Public Notice Requirements", notice of a public meeting must be published in a newspaper at least two weeks prior to the date of the meeting.

Even if a local municipality enacts an anti-whistling by-law at a location, the train operator still has discretionary use of the train whistle. Any local by-laws are superseded by the rail authority's policies.

## **7. CONCLUSION**

Staff receive requests to implement anti-whistling at railway crossing of Regional roads. This report recommends adopting a policy to consider requests for the implementation of anti-whistling that can be used by Regional staff to review any future requests.

This policy requires local municipalities to make a formal request to the Region for support of an anti-whistling by-law for each individual location. The Region would consider supporting an anti-whistling if the following conditions are satisfied and all costs are incurred by the local municipality:

- A safety audit is completed by a specialized safety consultant.
- The safety audit is approved by Transport Canada.
- If there are pedestrians in the area of the crossing, pedestrian gates must be installed.
- An education program is developed for the affected area.



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Regional Council Meeting of February 21, 2008

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- The whistling prohibition is implemented only between the hours of 10:00 p.m. and 6:00 a.m.

For more information on this report, contact Brian Harrison, Director, Operations, Roads Branch at extension 5205 in the Transportation Services Department.

The Senior Management Group has reviewed this report.

*(The attachments referred to in this clause are attached to this report.)*

