

Service Reductions Due to COVID-19

Municipalities are concerned that they will not meet their obligations to provide services and comply with Ontario Regulation 239/02 Minimum Maintenance Standards for Municipal Highways (MMS) as a result of reduced staff levels due to COVID-19. To minimize the risk of the spread of the virus within your workplace, the current provincial colour coding and local medical officers of health guidelines should be reinforced with your own requirements on how social distancing will be maintained, when and where masks are required, and how maintenance operations can be provided that minimizes close contact with others, all to assist in reducing the risk of the spread of the virus within the workplace. Staff must be kept up to date as these guidelines evolve and be informed of what potential changes in routine they should expect if there is a staff reduction due to COVID-19.

The MMS provides clauses that will allow reduced service levels, but these provisions for a “Significant Weather Event” pertain to specific weather conditions that do not apply due solely to reduced staff levels. However, of the three defences in section 44 of the *Municipal Act*, a defence that may apply if staff availability is impacted by COVID-19 is found in subsection (3)(b), “it took reasonable steps to prevent the default from arising”. The standard of reasonableness is generally considered to be the standard of care that an ordinary and prudent person would exercise in a similar situation. Under normal circumstances it would not be reasonable to reduce service levels due to absent staff members. However, should staff reductions occur due to COVID-19, reasonableness may be that you act in good faith, decide a course of action based on a review of all potential alternatives and do the best you can in the situation you find yourself within.

Staff may wish to consider developing a policy that identifies the steps to be taken if staff do contract the virus or are self isolating and normal services levels cannot be maintained

nor MMS complied with due to COVID-19. Some tips for your consideration as to what you may want to include in the policy are:

1. First and foremost, continue to monitor the weather and patrol your roads;
2. Set priorities for delivering service based on the results of the patrol, the weather forecast and the staff available on that day;
3. Deliver service based on the priorities set for that day;
4. Work with suppliers of sand, salt, liquids, fuel, spare parts, etc. to keep stocks topped up in case there is a disruption in supply;
5. Keep good records, that demonstrate a common-sense approach to the decisions made. Ensure that these records include the changes made from normal operations, the number of staff absent that day due to the virus, the timeframes within which the altered service was provided; and
6. Notify the public that normal service is not being provided due to staff who have contracted the virus or may be isolating at home.

As a last resort, staff may want to consider use of Section 16.8(1) of the MMS which states “when a municipality closes a highway or part of a highway pursuant to its powers under the Act, the highway is deemed to be in a state of repair in respect of all conditions described in this Regulation from the time of the closure until the highway is re-opened by the municipality”.

Charles Painter of Paterson McDougall LLP advises “in the current situation, if road maintenance staff are ill, quarantined or otherwise unable to work due to the COVID-19 outbreak, and staffing levels are too low to meet MMS maintenance levels consistently or at all, then an emergency bylaw or declaration in accordance with the foregoing provision

temporarily closing all or part of certain roads and sidewalks to some or all traffic would – on the clear wording of the regulation – ‘deem’ them in repair for all MMS conditions, including snow and ice. As a member of the Task Force that drafted this relatively new provision in the MMS, I can state without hesitancy that we envisioned situations where municipalities were unable to maintain parts of their road and sidewalk networks due to forces outside of their control, including not only budgetary limits but ‘acts of god’ which the current COVID-19 crisis clearly is.”

For more information on your particular circumstance, please contact the Risk Management Department.

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