



Winter Closure of Sidewalks and Bicycle Lanes

Section 16.8 of Ontario Regulation 239/02 Minimum Maintenance Standards for Municipal Roads (MMS) allows a municipality, pursuant to its powers, to close a highway or part of a highway which could be the roadway, the sidewalk, the bicycle lane, all three asset types or any combination thereof.

Definitions in MMS and the *Highway Traffic Act (HTA)*

MMS definition - "Bicycle lane" means,

- (a) a portion of a roadway that has been designated by pavement markings or signage for the preferential or exclusive use of cyclists, or
- (b) a portion of a roadway that has been designated for the exclusive use of cyclists by signage and a physical or marked buffer.

HTA definition – "Highway" includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.

HTA definition – "Roadway" means the part of the highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder, and, where a highway includes two or more separate roadways, the term "roadway" refers to any one roadway separately and not to all of the roadways collectively.

MMS definition – "Sidewalk" means the part of the highway specifically set aside or commonly understood to be for pedestrian use, typically consisting of a paved surface but does not include crosswalks, medians, boulevards, shoulders or any part of the sidewalk where cleared snow has been deposited.

Requirements of Sections 16.8

16.8(1)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. O. Reg. 366/18, s. 15.

(2) For the purposes of subsection (1), a highway or part of a highway is closed on the earlier of,

- (a) when a municipality passes a by-law to close the highway or part of the highway; and
- (b) when a municipality has taken such steps as it determines necessary to temporarily close the highway or part of a highway. O. Reg. 366/18, s. 15.

Considerations

The municipality's Level of Service (LOS) policy should be revised to include but not limited to:

1. Many municipalities have not provided winter maintenance services on sidewalks in the past and do not have the resources today to provide the service in accordance with Section 16.4 of the MMS. If this is your municipality you should:

- a. Determine:

- i. Is the surface of the roadway wide enough for pedestrians and motor vehicles;
- ii. The type of roadway will pedestrians be walking upon i.e. arterial, collector, local residential;
- iii. The type of traffic is on the road e.g. percent heavy trucks, commuter traffic;
- iv. What the traffic volume and average operating speed of motor vehicles on the road;
- v. Are there schools and hospitals or other attractor for pedestrians;
- vi. If the closure of the sidewalk will force young children and persons with mobility issues to walk upon the roadway;

- b. After considering 1(a), if council wishes to continue with past practice, pass a bylaw which closes all sidewalks or select sidewalks under the municipality's jurisdiction. The municipality's Level of Service (LOS) Policy should be updated to show which sidewalks will be maintained in winter, if any, and which sidewalks will be closed. The LOS and bylaw should show the dates of the closure (e.g. from November 1st of each year to April 30th of the next year following).

- c. Determine if signage of the sidewalk closure is warranted. If it has been past practice that no winter maintenance on sidewalks has been provided (for example, sidewalks on local

residential streets) and those living on these streets are accustomed to this level of service it may not be warranted to post signs. On the other hand, if people use the sidewalk who may not be aware of the no winter maintenance on sidewalk policy or bylaw, (for example, a sidewalk in front of a location frequented by out of town visitors) then posting and possibly barricading the sidewalk may be appropriate.

- d. Regardless of whether or not signage is required, a municipality should post the notice of the sidewalk closure bylaw on their website.

2. Municipalities have been adding bike lanes to their roads in compliance with Ontario Traffic Manual Book 18 – Cycling Facilities. If the bike lane is set out for the exclusive use of bicycles and is not considered a shared facility and the municipality wishes to close the bike lane in winter the municipality should follow the steps in 1 (b) and (c) above and:

- a. Provide warning signage that denotes No Winter Maintenance of the Bicycle Lane and indicates the dates of the temporary closure.

3. If a municipality has provided winter maintenance services on sidewalks in the past, and with the passing of the revised MMS, determines that it cannot meet MMS for sidewalk winter maintenance, the municipality should remember that Section 44(9) of the *Municipal Act* provides the following defense; "Except in case of gross negligence, a municipality is not liable for a personal injury caused by snow or ice on a sidewalk. 2001, c. 25, s. 44 (9)". If a slip and fall were to occur and the municipality provides sidewalk winter maintenance service that does not meet the current MMS but does provide service that meets past practice. In a claim a judge should take into account, among other things, a person's familiarity with the sidewalk and the level of service previously provided.