

PW 18-2019 Appendix 3

O. Reg. 366/18: MINIMUM MAINTENANCE STANDARDS FOR MUNICIPAL HIGHWAYS

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Amending O. Reg. 239/02

(MINIMUM MAINTENANCE STANDARDS FOR MUNICIPAL HIGHWAYS)

1. (1) The definition of “surface” in subsection 1 (1) of Ontario Regulation 239/02 is amended by striking out “roadway or shoulder” and substituting “sidewalk, roadway or shoulder”.

(2) Subsection 1 (1) of the Regulation is amended by adding the following definitions:

“bicycle facility” means the on-road and in-boulevard cycling facilities listed in Book 18 of the Ontario Traffic Manual;

“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;

“encroachment” means anything that is placed, installed, constructed or planted within the highway that was not placed, installed, constructed or planted by the municipality;

“pothole” means a hole in the surface of a roadway caused by any means, including wear or subsidence of the road surface or subsurface;

“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;

“significant weather event” means an approaching or occurring weather hazard with the potential to pose a significant danger to users of the highways within a municipality;_

“utility” includes any air, gas, water, electricity, cable, fiber-optic, telecommunication or traffic control system or subsystem, fire hydrants, sanitary sewers, storm sewers, property bars and survey monuments;

“utility appurtenance” includes maintenance holes and hole covers, water shut-off covers and boxes, valves, fittings, vaults, braces, pipes, pedestals, and any other structures or items that form part of or are an accessory part of any utility;

“weather hazard” means the weather hazards determined by Environment Canada as meeting the criteria for the issuance of an alert under its Public Weather Alerting Program.

(3) Subsections 1 (2) and (3) of the Regulation are amended by striking out “annual” wherever it appears.

(4) Subsection 1 (4) of the Regulation is revoked and the following substituted:

(4) For the purposes of this Regulation, unless otherwise indicated in a provision of this Regulation, a municipality is deemed to be aware of a fact if, in the absence of actual knowledge of the fact, circumstances are such that the municipality ought reasonably to be aware of the fact.

(5) The Table to section 1 of the Regulation is revoked and the following substituted:

TABLE
CLASSIFICATION OF HIGHWAYS

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Average Daily Traffic (number of motor vehicles)	91 - 100 km/h speed limit	81 - 90 km/h speed limit	71 - 80 km/h speed limit	61 - 70 km/h speed limit	51 - 60 km/h speed limit	41 - 50 km/h speed limit	1 - 40 km/h speed limit
53,000 or more	1	1	1	1	1	1	1
23,000 - 52,999	1	1	1	2	2	2	2
15,000 - 22,999	1	1	2	2	2	3	3
12,000 - 14,999	1	1	2	2	2	3	3
10,000 - 11,999	1	1	2	2	3	3	3
8,000 - 9,999	1	1	2	3	3	3	3
6,000 - 7,999	1	2	2	3	3	4	4
5,000 - 5,999	1	2	2	3	3	4	4
4,000 - 4,999	1	2	3	3	3	4	4
3,000 - 3,999	1	2	3	3	3	4	4
2,000 - 2,999	1	2	3	3	4	5	5
1,000 - 1,999	1	3	3	3	4	5	5
500 - 999	1	3	4	4	4	5	5
200 - 499	1	3	4	4	5	5	6
50 - 199	1	3	4	5	5	6	6
0 - 49	1	3	6	6	6	6	6

2. The Regulation is amended by adding the following section:

Purpose

2.1 The purpose of this Regulation is to clarify the scope of the statutory defence available to a municipality under clause 44 (3) (c) of the Act by establishing maintenance standards which are non-prescriptive as to the methods or materials to be used in complying with the standards but instead describe a desired outcome.

3. (1) The heading before section 3 of the Regulation is amended by striking out “MINIMUM” and substituting “MAINTENANCE”

(2) Subsections 3 (1) and (2) of the Regulation are amended by striking out “minimum” wherever it appears.

(3) Subsection 3 (4) of the Regulation is amended by striking out “section 16.1” and substituting “section 16.1, 16.2, 16.3 or 16.4”.

4. Subsections 3.1 (1) and (2) of the Regulation are amended by striking out “minimum” wherever it appears.

5. (1) Subsection 4 (1) of the Regulation is amended by striking out the portion before clause (a) and substituting the following:

Snow accumulation, roadways

(1) Subject to section 4.1, the standard for addressing snow accumulation on roadways is,

.....

(2) Subsection 4 (3) of the Regulation is amended by adding “and, if applicable, lane width under clause (1) (b),” after “roadway” in the portion before paragraph 1.

(3) Subsection 4 (4) of the Regulation is amended by adding “and lane width” after “roadway” in the portion before clause (a).

(4) Subsections 4 (5) and (6) of the Regulation are revoked and the following substituted:

(5) For the purposes of this section, addressing snow accumulation on a roadway includes,

(a) plowing the roadway;

(b) salting the roadway;

(c) applying abrasive materials to the roadway;

(d) applying other chemical or organic agents to the roadway;

(e) any combination of the methods described in clauses (a) to (d);

(6) This section does not apply to that portion of the roadway,

- (a) designated for parking;
- (b) consisting of a bicycle lane or other bicycle facility; or
- (d) used by a municipality for snow storage;

(5) The heading of the Table to section 4 of the Regulation is revoked and the following substituted:

SNOW ACCUMULATION - ROADWAYS

7. The Regulation is amended by adding the following sections:

Snow accumulation on roadways, significant weather event

4.1 (1) If a municipality declares a significant weather event relating to snow accumulation, the standard for addressing snow accumulation on roadways until the declaration of the end of the significant weather event is,

- (a) to monitor the weather in accordance with section 3.1; and
 - (b) if deemed practicable by the municipality, to deploy resources to address snow accumulation on roadways, starting from the time that the municipality deems appropriate to do so.
- (2) If the municipality complies with subsection (1), all roadways within the municipality are deemed to be in a state of repair with respect to snow accumulation until the applicable time in the Table to section 4 expires following the declaration of the end of the significant weather event by the municipality.
- (3) Following the end of the weather hazard in respect of which a significant weather event was declared by a municipality under subsection (1), the municipality shall,
- (a) declare the end of the significant weather event when the municipality determines it is appropriate to do so; and
 - (b) address snow accumulation on roadways in accordance with section 4.

Snow accumulation, bicycle lanes

4.2 (1) Subject to section 4.3, the standard for addressing snow accumulation on bicycle lanes is,

- (a) after becoming aware of the fact that the snow accumulation on a bicycle lane is greater than the depth set out in the Table to this section, to deploy resources as soon as practicable to address the snow accumulation; and
 - (b) after the snow accumulation has ended, to address the snow accumulation so as to reduce the snow to a depth less than or equal to the depth set out in the Table to this section to provide a minimum bicycle lane width of the lesser of 1 metre or the actual bicycle lane width.
- (2) If the depth of snow accumulation on a bicycle lane is less than or equal to the depth set out in the Table to this section, the bicycle lane is deemed to be in a state of repair in respect of snow accumulation.

(3) For the purposes of this section, the depth of snow accumulation on a bicycle lane and, if applicable, lane width under clause (1) (b), may be determined in the same manner as set out in subsection 4 (4) and by the persons mentioned in subsection 4 (3), with necessary modifications.

(4) For the purposes of this section, addressing snow accumulation on a bicycle lane includes,

- (a) plowing the bicycle lane;
- (b) salting the bicycle lane;
- (c) applying abrasive materials to the bicycle lane;
- (d) applying other chemical or organic agents to the bicycle lane;
- (e) sweeping the bicycle lane; or
- (f) any combination of the methods described in clauses (a) to (e).

TABLE

Snow Accumulation – Bicycle Lanes

Column 1	Column 2	Column 3
Class of Highway or Adjacent Highway	Depth	Time
1	2.5 cm	8 hours
2	5 cm	12 hours
3	8 cm	24 hours
4	8 cm	24 hours
5	10 cm	24 hours

Snow accumulation on bicycle lanes, significant weather event

4.3 (1) If a municipality declares a significant weather event relating to snow accumulation, the standard for addressing snow accumulation on bicycle lanes until the declaration of the end of the significant weather event is,

- (a) to monitor the weather in accordance with section 3.1; and
- (b) if deemed practicable by the municipality, to deploy resources to address snow accumulation on bicycle lanes, starting from the time that the municipality deems appropriate to do so.

(2) If the municipality complies with subsection (1), all bicycle lanes within the municipality are deemed to be in a state of repair with respect to snow accumulation until the applicable time in the Table to section 4.2 expires following the declaration of the end of the significant weather event by the municipality.

(3) Following the end of the weather hazard in respect of which a significant weather event was declared by a municipality under subsection (1), the municipality shall,

(a) declare the end of the significant weather event when the municipality determines it is appropriate to do so; and

(b) address snow accumulation on bicycle lanes in accordance with section 4.2.

8. Section 5 of the Regulation is revoked and the following substituted:

Ice formation on roadways and icy roadways

5. (1) The standard for the prevention of ice formation on roadways is doing the following in the 24-hour period preceding an alleged formation of ice on a roadway:

1. Monitor the weather in accordance with section 3.1.

2. Patrol in accordance with section 3.

3. If the municipality determines, as a result of its activities under paragraph 1 or 2, that there is a substantial probability of ice forming on a roadway, treat the roadway, if practicable, to prevent ice formation within the time set out in Table 1 to this section, starting from the time that the municipality determines is the appropriate time to deploy resources for that purpose.

(2) If the municipality meets the standard set out in subsection (1) and, despite such compliance, ice forms on a roadway, the roadway is deemed to be in a state of repair until the applicable time set out in Table 2 to this section expires after the municipality becomes aware of the fact that the roadway is icy.

(3) Subject to section 5.1, the standard for treating icy roadways is to treat the icy roadway within the time set out in Table 2 to this section, and an icy roadway is deemed to be in a state of repair until the applicable time set out in Table 2 to this section expires after the municipality becomes aware of the fact that a roadway is icy.

(4) For the purposes of this section, treating a roadway means applying material to the roadway, including but not limited to, salt, sand or any combination of salt and sand.

(5) For greater certainty, this section applies in respect of ice formation on bicycle lanes on a roadway, but does not apply to other types of bicycle facilities.

TABLE 1
ice formation prevention

Class of Highway	Time
1	6 hours
2	8 hours
3	16 hours
4	24 hours
5	24 hours

TABLE 2
Treatment of ICY ROADWAYS

Class of Highway	Time
1	3 hours
2	4 hours
3	8 hours
4	12 hours
5	16 hours

Icy roadways, significant weather event

5.1 (1) If a municipality declares a significant weather event relating to ice, the standard for treating icy roadways until the declaration of the end of the significant weather event is,

(a) to monitor the weather in accordance with section 3.1; and

(b) if deemed practicable by the municipality, to deploy resources to treat icy roadways, starting from the time that the municipality deems appropriate to do so.

(2) If the municipality complies with subsection (1), all roadways within the municipality are deemed to be in a state of repair with respect to any ice which forms or may be present until the applicable time in Table 2 to section 5 expires after the declaration of the end of the significant weather event by the municipality.

(3) Following the end of the weather hazard in respect of which a significant weather event was declared by a municipality under subsection (1), the municipality shall,

(a) declare the end of the significant weather event when the municipality determines it is appropriate to do so; and

(b) treat icy roadways in accordance with section 5.

8. (1) Subsection 6 (1) of the Regulation is amended by striking out “minimum”.

(2) Section 6 of the Regulation is amended by adding the following subsections:

(1.1) For the purposes of this section, the surface area and depth of a pothole may be determined in accordance with subsections (1.2) and (1.3), as applicable, by a municipal employee, agent or contractor whose duties or responsibilities include one or more of the following:

1. Patrolling highways.

2. Performing highway maintenance activities.

3. Supervising staff who perform activities described in paragraph 1 or 2.

(1.2) The depth and surface area of a pothole may be determined by,

(a) performing an actual measurement; or

(b) performing a visual estimate.

(1.3) For the purposes of this section, the surface area of a pothole does not include any area that is merely depressed and not yet broken fully through the surface of the roadway.

9. (1) Subsections 7 (1) and (2) of the Regulation are revoked and the following substituted:

Shoulder drop-offs

(1) If a shoulder drop-off is deeper than 8 cm, for a continuous distance of 20 metres or more, the standard is to repair the shoulder drop-off within the time set out in the Table to this section after becoming aware of the fact.

(2) A shoulder drop-off is deemed to be in a state of repair if its depth is less than 8 cm.

(2) The Table to section 7 of the Regulation is revoked and the following substituted:

TABLE
SHOULDER DROP-OFFS

Class of Highway	Time
1	4 days
2	4 days
3	7 days
4	14 days
5	30 days

10. (1) Subsections 8 (1) and (2) of the Regulation are revoked and the following substituted:

Cracks

(1) If a crack on the paved surface of a roadway is greater than 5 cm wide and 5 cm deep for a continuous distance of three metres or more, the standard is to repair the crack within the time set out in the Table to this section after becoming aware of the fact.

(2) A crack is deemed to be in a state of repair if its width or depth is less than or equal to 5 cm.

(2) The Table to section 8 of the Regulation is revoked and the following substituted:

TABLE
CRACKS

Column 1	Column 2
Class of Highway	Time
1	30 days
2	30 days
3	60 days

4	180 days
5	180 days

11. Subsection 9 (1) of the Regulation is amended by striking out “minimum”.

12. Subsections 10 (0.1), (1), (2), (3), (4), (5) and (6) of the Regulation are revoked and the following substituted:

Luminaires

(1) The standard for the frequency of inspecting all luminaires to check to see that they are functioning is once per calendar year, with each inspection taking place not more than 16 months from the previous inspection.

(2) For conventional illumination, if three or more consecutive luminaires on the same side of a highway are not functioning, the standard is to repair the luminaires within the time set out in the Table to this section after becoming aware of the fact.

(3) For conventional illumination and high mast illumination, if 30 per cent or more of the luminaires on any kilometre of highway are not functioning, the standard is to repair the luminaires within the time set out in the Table to this section after becoming aware of the fact.

(4) Despite subsection (2), for high mast illumination, if all of the luminaires on consecutive poles on the same side of a highway are not functioning, the standard is to deploy resources as soon as practicable after becoming aware of the fact to repair the luminaires.

(5) Despite subsections (1), (2) and (3), for conventional illumination and high mast illumination, if more than 50 per cent of the luminaires on any kilometre of a Class 1 highway with a speed limit of 90 kilometres per hour or more are not functioning, the standard is to deploy resources as soon as practicable after becoming aware of the fact to repair the luminaires.

(6) Luminaires are deemed to be in a state of repair,

(a) for the purpose of subsection (2), if the number of non-functioning consecutive luminaires on the same side of a highway does not exceed two;

(b) for the purpose of subsection (3), if more than 70 per cent of luminaires on any kilometre of highway are functioning;

(c) for the purpose of subsection (4), if one or more of the luminaires on consecutive poles on the same side of a highway are functioning;

(d) for the purpose of subsection (5), if more than 50 per cent of luminaires on any kilometre of highway are functioning.

13. The Regulation is amended by striking out “minimum” wherever it appears in the following provisions:

1. Sections 11 to 16.

2. Subsection 16.1 (1).**14. Subsections 16.1 (2), (2.1), (3) and (4) of the Regulation are revoked and the following substituted:**

(2) If a surface discontinuity on or within a sidewalk exceeds two centimetres, the standard is to treat the surface discontinuity within 14 days after acquiring actual knowledge of the fact.

(3) A surface discontinuity on or within a sidewalk is deemed to be in a state of repair if it is less than or equal to two centimetres.

(4) For the purpose of subsection (2), treating a surface discontinuity on or within a sidewalk means taking reasonable measures to protect users of the sidewalk from the discontinuity, including making permanent or temporary repairs, alerting users' attention to the discontinuity or preventing access to the area of discontinuity.

(5) In this section,

“surface discontinuity” means a vertical discontinuity creating a step formation at any joint or crack in the surface of the sidewalk or any vertical height difference between a utility appurtenance found on or within the sidewalk and the surface of the sidewalk.

15. The Regulation is amended by adding the following sections.

Encroachments, area adjacent to sidewalk

16.2 (1) The standard for the frequency of inspecting an area adjacent to a sidewalk to check for encroachments is once per calendar year, with each inspection taking place not more than 16 months from the previous inspection.

(2) The area adjacent to a sidewalk that has been inspected in accordance with subsection (1) is deemed to be in a state of repair in respect of any encroachment present.

(3) For greater certainty, the area adjacent to a sidewalk begins at the outer edges of a sidewalk and ends at the lesser of the limit of the highway, the back edge of a curb if there is a curb and a maximum of 45 cm.

(4) The area adjacent to a sidewalk is deemed to be in a state of repair in respect of any encroachment present unless the encroachment is determined by a municipality to be highly unusual given its character and location or to constitute a significant hazard to pedestrians.

(5) If a municipality determines that an encroachment is highly unusual given its character and location or constitutes a significant hazard to pedestrians, the standard is to treat the encroachment within 28 days after making such a determination, and the encroachment is deemed in a state of repair for 28 days from the time of the determination by the municipality.

(6) For the purpose of subsection (4), treating an encroachment means taking reasonable measures to protect users, including making permanent or temporary repairs, alerting users' attention to the encroachment or preventing access to the area of the encroachment.

Snow accumulation on sidewalks

16.3 (1) Subject to section 16.4, the standard for addressing snow accumulation on a sidewalk after the snow accumulation has ended is,

a) to reduce the snow to a depth less than or equal to 8 centimetres within 48 hours; and

b) to provide a minimum sidewalk width of 1 metre.

(2) If the depth of snow accumulation on a sidewalk is less than or equal to 8 centimetres, the sidewalk is deemed to be in a state of repair in respect of snow accumulation.

(3) If the depth of snow accumulation on a sidewalk exceeds 8 centimetres while the snow continues to accumulate, the sidewalk is deemed to be in a state of repair with respect to snow accumulation, until 48 hours after the snow accumulation ends.

(4) For the purposes of this section, the depth of snow accumulation on a sidewalk may be determined in the same manner as set out in subsection 4 (4) and by the persons mentioned in subsection 4 (3) with necessary modifications.

(5) For the purposes of this section, addressing snow accumulation on a sidewalk includes,

(a) plowing the sidewalk;

(b) salting the sidewalk;

(c) applying abrasive materials to the sidewalk;

(d) applying other chemical or organic agents to the sidewalk; or

(e) any combination of the methods described in clauses (a) to (d).

Snow accumulation on sidewalks, significant weather event

16.4 (1) If a municipality declares a significant weather event relating to snow accumulation, the standard for addressing snow accumulation on sidewalks until the declaration of the end of the significant weather event is,

(a) to monitor the weather in accordance with section 3.1; and

(b) if deemed practicable by the municipality, to deploy resources to address snow accumulation on sidewalks starting from the time that the municipality deems appropriate to do so.

(2) If the municipality complies with subsection (1), all sidewalks within the municipality are deemed to be in a state of repair with respect to any snow present until 48 hours following the declaration of the end of the significant weather event by the municipality.

(3) Following the end of the weather hazard in respect of which a significant weather event was declared by a municipality under subsection (1), the municipality shall,

(a) declare the end of the significant weather event when the municipality determines it is appropriate to do so; and

(b) address snow accumulation on sidewalks in accordance with section 16.3.

Ice formation on sidewalks and icy sidewalks

16.5 (1) Subject to section 16.6, the standard for the prevention of ice formation on sidewalks is to,

(a) monitor the weather in accordance with section 3.1 in the 24-hour period preceding an alleged formation of ice on a sidewalk; and

(b) treat the sidewalk if practicable to prevent ice formation or improve traction within 48 hours if the municipality determines that there is a substantial probability of ice forming on a sidewalk, starting from the time that the municipality determines is the appropriate time to deploy resources for that purpose.

(2) If ice forms on a sidewalk even though the municipality meets the standard set out in subsection (1), the sidewalk is deemed to be in a state of repair in respect of ice until 48 hours after the municipality first becomes aware of the fact that the sidewalk is icy.

(3) The standard for treating icy sidewalks after the municipality becomes aware of the fact that a sidewalk is icy is to treat the icy sidewalk within 48 hours, and an icy sidewalk is deemed to be in a state of repair for 48 hours after it has been treated.

(4) For the purposes of this section, treating a sidewalk means applying materials including salt, sand or any combination of salt and sand to the sidewalk.

Icy sidewalks, significant weather event

16.6 (1) If a municipality declares a significant weather event relating to ice, the standard for addressing ice formation or ice on sidewalks until the declaration of the end of the significant weather event is,

(a) to monitor the weather in accordance with section 3.1; and

(b) if deemed practicable by the municipality, to deploy resources to treat the sidewalks to prevent ice formation or improve traction, or treat the icy sidewalks, starting from the time that the municipality deems appropriate to do so.

(2) If the municipality complies with subsection (1), all sidewalks within the municipality are deemed to be in a state of repair with respect to any ice which forms or is present until 48 hours after the declaration of the end of the significant weather event by the municipality.

(3) Following the end of the weather hazard in respect of which a significant weather event was declared by a municipality under subsection (1), the municipality shall,

(a) declare the end of the significant weather event when the municipality determines it is appropriate to do so; and

(b) address the prevention of ice formation on sidewalks or treat icy sidewalks in accordance with section 16.5.

Winter sidewalk patrol

16.7 (1) If it is determined by the municipality that the weather monitoring referred to in section 3.1 indicates that there is a substantial probability of snow accumulation on sidewalks in excess of 8 cm, ice

formation on sidewalks or icy sidewalks, the standard for patrolling sidewalks is to patrol sidewalks that the municipality selects as representative of its sidewalks at intervals deemed necessary by the municipality.

(2) Patrolling a sidewalk consists of visually observing the sidewalk, either by driving by the sidewalk on the adjacent roadway or by driving or walking on the sidewalk or by electronically monitoring the sidewalk, and may be performed by persons responsible for patrolling roadways or sidewalks or by persons responsible for or performing roadway or sidewalk maintenance activities.

Closure of a highway

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.

(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.

Declaration of significant weather event

16.9. A municipality declaring the beginning of a significant weather event or declaring the end of a significant weather event under this Regulation shall do so in one or more of the following ways:

1. By posting a notice on the municipality's website.
2. By making an announcement on a social media platform, such as Facebook or Twitter.
3. By sending a press release or similar communication to internet, newspaper, radio or television media.
4. By notification through the municipality's police service.
5. By any other notification method required in a by-law of the municipality.

Commencement

16. This Regulation comes into force on the day it is filed.

Made by:

Kathryn McGarry

Minister of Transportation

Date made: May 2, 2018

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