



**CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Transportation Operations and Maintenance Division**

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	February 1, 2021
SUBJECT/REPORT NO:	Maintenance Standards for Municipal Highways Policy (PW18096(a)) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY:	Edward Soldo Director, Transportation Operations & Maintenance Public Works Department
SIGNATURE:	

RECOMMENDATIONS

- (a) That Appendix "A" to Report PW18096(a) respecting Maintenance Standards for Municipal Highways Policy be approved; and
- (b) That the Outstanding Business List Item, Minimum Maintenance Standards Changes, be identified as completed and removed from the list.

EXECUTIVE SUMMARY

The Minimum Maintenance Standards for Municipal Highways (MMS), established by the Province under the Municipal Act, provide for a consistent level of service and maintenance of roads, sidewalks, lighting and related infrastructure in the right-of-way across Ontario.

The standards assist in minimizing the risk of accidents and injury and providing a level of safety for the public and citizens, while allowing municipalities an ability to manage costs and liability. The standards were developed to provide municipalities with a defence against liability from actions arising with regard to levels of care on roads and

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bridges. Meeting or exceeding this level of service will reduce the overall cost of defence of claims arising from issues of road maintenance.

Through Report PW18096(a), it is recommended that Council affirm the City's approach to transportation infrastructure maintenance as it relates to the different classifications of municipal highways.

The principles and desired objectives for the level of maintenance are defined in the Maintenance Standards for Municipal Highway Policy, attached to Report PW18096(a) as Appendix "A". To ensure appropriate maintenance levels are achieved, staff will reference its Maintenance Guidelines for Levels of Service for Highways, which is attached to Report PW18096(a) as Appendix "B".

While the common law test of reasonableness continues to apply to the City's duty to provide a reasonably safe transportation system, the Road Authority uses the MMS as a framework and benchmark for providing service and the continual and ongoing development of the Transportation Quality Management System (TQMS) Operational Plan.

The TQMS is a framework that documents processes, procedures, and responsibilities to safely, effectively and efficiently maintain and operate the transportation system while meeting applicable legislative and regulatory requirements.

Alternatives for Consideration – N/A

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: Meeting the standard(s) prescribed by the MMS is intended to provide municipalities with a complete defence to a claim alleging failure to maintain the roadway or sidewalks. Therefore, where the City is able to meet or exceed the MMS within this policy, a complete defence based upon the MMS will be available to the City. Meeting or exceeding this level of service will reduce the overall cost of defence of claims arising from issues of road maintenance.

The purpose of this policy is to establish an approach which is reflective of an operational plan established pursuant to available staffing, equipment, and budget resources.

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HISTORICAL BACKGROUND

The second 5-year review of the MMS was completed in 2018 by the Province and the current version of the MMS came into force on May 3, 2018.

In December 2018, Council approved “Minimum Maintenance Standards Changes” (PW18096) and recommendations including:

- (a) That staff be directed to develop, and report back to Council, an updated policy setting out maintenance standards of repair for highways under the jurisdiction of the City of Hamilton, with consideration of the standards contained in the *Municipal Act, 2001*, Ontario Regulation (O.Reg.) 239/02 – Minimum Maintenance Standards for Municipal Highways, and the existing Winter Control Level of Service (attached as Appendix “D” to Report PW18096(a)).

Since that time, staff have reviewed the amended MMS and current programs from an operational and resourcing perspective to ensure that all regulated activities within the Road Authority generally align with the MMS while addressing the City’s needs and expectations of divisions to operate within approved budget.

Through the development of the Transportation Quality Management System (TQMS) Operational Plan, documentation and data management practices are continually being improved to ensure that evidence is readily accessible to support that service standard levels are being met.

Establishing a Policy for maintenance standards reflective of provincial regulation and best practices will enable the City to capture the benefits of improved public safety, and a greater ability to defend claims against the municipality.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The provincial Minimum Maintenance Standards (MMS) O. Reg. 239/02 amended by 366/18 clarify the scope of the statutory defence available to the City under clause 44(3)(c) of the *Municipal Act, 2001*, as it relates to its roadway and sidewalk maintenance obligations. The Policy recommended in Report PW18096(a) aligns with the minimum standards outlined in the MMS. In some areas, the City has established higher levels of service, such as in the City’s Winter Control Level of Service where certain priority roads exist during inclement weather conditions.

Council has approved Winter Control Level of Service at the Public Works Committee on March 18, 2013 Report PW13022 – attached to Report PW18096(a) as Appendix “B”. The level of service exceeds the MMS and will continue.

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Council approved Streetlighting Maintenance Program Service Levels at the Public Works Committee on February 5, 2007 and updated on October 15, 2020, Report PW07024 – attached to Report PW18096(a) as Appendix “B”. The level of service exceeds the MMS and will continue.

RELEVANT CONSULTATION

Corporate Services Department – Legal & Risk Management Services Division were consulted in the preparation of this report and have provided their feedback.

Public Works Department – Engineering Services Division provided feedback on the Policy and report.

Planning and Economic Development Department – Transportation Planning and Parking Division have provided their feedback on the Policy and report.

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

The MMS identifies six basic categories of roads all of which are defined only by traffic volume and speed limit. In 2001, when levels of service standards were harmonized, the application of provincial standards in Hamilton’s large urban setting would have resulted in a fragmented operating plan that may not have met the broader socio-economic needs of the community for transit and emergency response groups such as police, fire and ambulance.

Therefore, the City of Hamilton decided to instead incorporate three priorities for the roadway network designed to meet the needs of the community from the perspective of driver safety and emergency service provisions. Over the years, Council has modified service levels and some remain higher than the standards in provincial regulations.

Recognizing that roads are a necessary part of municipal infrastructure relied upon by the public, the City has established service levels to inspect, maintain and repair that infrastructure to reduce the risk to users. In cases of serious collisions or personal injury, municipalities are often faced with liability claims. A significant number of claims are related to road and sidewalk maintenance (both summer and winter), road design, and signage. The MMS is designed to provide municipalities with a “due diligence” defense in the event of vehicular collisions, slips, trips and falls, or other incidents.

Operational Assessment

After completing a comprehensive review and gap analysis of the MMS, it has identified the City is consistent with the minimum level of service for all substantive maintenance activities except for the following areas:

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Parking Signs – These signs are a sub-segment of regulatory and warning signs. On street parking is managed through the Transportation Planning and Parking Division (TPP) in the Planning & Economic Development Department. The signs are implemented in the field by the Transportation Operations & Maintenance Division (TOM) in Public Works.

There is currently no comprehensive inventory of on-street parking signs and a comprehensive plan for state of repair inspections is required. All other regulatory and warning signs are inventoried, inspected, serviced and repaired as per the guidelines out by the TOM division. Through analysis, this gap has been identified and the two divisions are working to clarify roles and responsibilities in order to determine how the levels of service will be met.

Winter Sidewalk Snow Removal - In November of 2020, Report PW19022(b) Sidewalk Snow Removal provided an overview of the existing practice and enhancement options to the level of service for winter sidewalk maintenance to be considered as part of the 2021 Operating Budget deliberations.

The Minimum Maintenance Standards (Ontario Regulation 239/02) was changed in May 2018 to contain specific sections dealing with sidewalk winter maintenance. Refer to Minimum Maintenance Standards Changes (Report PW18096).

Section 16.3 of the MMS provides a standard for snow removal on sidewalks. It states that snow accumulation on sidewalks shall be reduced to less than or equal to eight centimetres within 48 hours of the end of a snow event. The section further provides a standard of a minimum maintained width of one metre. The section does not require clearing to bare pavement; rather, simply reducing the depth to less than or equal to eight centimetres.

Sidewalks are deemed to be in a state of repair with respect to snow accumulation (a) where snow depth is less than or equal to eight centimetres; and (b) during ongoing snow accumulation, even where it exceeds eight cm, until 48 hours after the snow accumulation ends.

The current level of service is defined in By-law No. 03-296 which requires that every occupant or owner shall, within 24 hours of the cessation of a winter storm event, or within 24 hours of the cessation of a series of consecutive winter storm events, remove and clear all snow and ice from sidewalks abutting the highways in front of, or alongside, or at the rear of any occupied or unoccupied lot or vacant lot.

By-law No. 03-296 provides a higher level of service than is required through Section 16.3 of the MMS when complied with by the property owners.

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The City does not deflect or transfer liability to property owners through the sidewalk clearing by-law. As the owner of the sidewalk the City carries a full liability exposure for sidewalk slip and falls. If it can be established that the City has not satisfied the MMS in relation to a particular slip and fall incident, the City will most likely be found liable in a court of law.

Policy

The standards outlined in the MMS are not mandatory; as such, the City does not have to explicitly follow them. If the City cannot meet the MMS as established, it may continue to rely upon the defences that were available before the MMS were introduced (i.e. the City met its duty of keeping highways in a reasonable state of repair, by establishing a reasonable program of inspection and maintenance of highways within its jurisdiction, based upon available municipal resources). In short, the City can set its own Maintenance Standards based on its needs and resources.

To meet its duty as described above, the City's program reflects the MMS and are supported by the guidelines outlined in Appendix "B" to Report PW18096(a). These levels of service are based upon highway and sidewalk classification, and priorities based upon expected levels of pedestrian and vehicular traffic.

Meeting the MMS is a complete defence, as prescribed by section 44 of the *Municipal Act*. However, in some cases, the City is not able to meet the MMS due to available municipal resources. For this reason, it is not recommended that the MMS be adopted in its entirety. Instead, it is recommended that the program outlined in Appendix "B" to Report PW18096(a) be accepted as "guidelines".

It is recommended that the Maintenance Standards for Municipal Highways Policy in Appendix "A" to Report PW18096(a) be approved. The purpose of the policy is to clarify that the City of Hamilton will reference the MMS as a guideline for delivering a level of service for maintenance operations. The policy will provide the Road Authority with clear direction from Council on the level of maintenance effort as it relates to the different classification of municipal highways.

Under circumstances where situations fall outside of the scope of guidelines, the Road Authority will respond as deemed appropriate with respect to budgetary constraint and reasonable best practice.

ALTERNATIVES FOR CONSIDERATION

N/A

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PW18096(a) - Maintenance Standards for Municipal Highways Policy

Appendix “B” to Report PW18096(a) - Maintenance Guidelines for Levels of Service for Highways