ENHANCING AND ENCOURAGING ACTIVE MODES OF TRANSPORTATION

The proposed 2016 amendments and additions to O.Reg 239/02 under the *Municipal Act, 2001*.

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Overview

As municipalities across Ontario seek to enhance and expand transportation options for their citizens, including walking and cycling facilities, year-round maintenance of these portions of the public highway system will continue to increase in importance with growing numbers of users each year, demanding fair access for such use.

Increasing instances of obesity are linked to sedentary lifestyles and decreasing levels of physical activity (StatsCan, 2011; PHAC, 2011; Government of Canada, 2011). Obesity and physical inactivity are considered risk factors for heart disease, stroke, and other chronic diseases, such as cardiovascular disease, type 2 diabetes and various cancers. Each additional kilometre walked per day reduces the likelihood of becoming obese by nearly 5%, while each hour per day spent in a car increases the likelihood of becoming obese by 6% (Ontario College of Family Physicians, 2005).

Increased urbanization, concerns about air quality, CO^2 emissions, global warming and the importance of encouraging healthy and active lifestyles, as well as providing environmentally friendly alternatives for local transportation, as opposed to the traditional "single car/driver" model, are issues faced by the municipal governments in all parts of the Province. As always, limited resources and budgets are being carefully balanced against the desire to provide increased value, safety and maximum overall benefit to all taxpayers.

Winter Maintenance of Certain Bicycle Facilities and Sidewalks

The 2016 review of O.Reg 239/02 has focused largely upon the active transportation issue, and the Task Force has developed new proposed standards of Winter maintenance for sidewalks and certain types of bicycle facilities located within the public highways of municipalities in the Province, that remain open throughout the year for use. The intent is to encourage Ontario municipalities to continue to expand the number of active transportation facilities that they own and maintain, for *year-round* use, without fear of undue legal/liability risks being the excuse not to do so, by providing clear and achievable winter maintenance standards.

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Those municipalities who (pursuant to their existing powers to do so as granted under the *Municipal Act, 2001*) must close portions of their public highways during Winter months, due to lack of sufficient funding for proper inspection and maintenance, will continue to be able to do so and will also have clearer guidance and enhanced protections under the updated regulation. This will better permit municipalities, especially in rural or smaller centres with limited tax bases, to focus their resources and provide better service on those highways that remain open for winter use. Increased certainty for municipalities and clarifying expectations for all road and sidewalk users will result from these proposed amendments to the regulation.

Significant Weather Events

Weather monitoring has been the central hub of the winter road maintenance provisions of the Regulation since it was last updated immediately following the 2012 Court of Appeal for Ontario decision in *Giuliani v. Region of Halton et. al*., in which failure to monitor the weather was a key finding on liability against the municipal defendants.

The proposed additions to the Regulation under this regularly scheduled 5 year review, build and expand upon these key weather monitoring provisions, by including enhanced public safety notifications by local municipalities during "significant weather events" via efficient modes of mass communication. During these times, municipalities will be provided additional time to come to grips with the unique maintenance challenges such weather events present in respect to maintenance of the public highways under their care and jurisdiction. As significant weather events that threaten public safety continue to increase in frequency and severity with warming global temperatures and changing weather patterns, (such as the late 2013 GTA ice storm followed by extreme record-setting cold throughout the Province) municipalities will be able to more effectively address these situations while simultaneously increasing the information provided to all users of their public highways.

Other Trip Hazards and Encroachments

The new proposed additions to the maintenance standards include new definitions and an expanded scope for "sidewalk surface discontinuities" a.k.a. trip ledges, in excess of 2 cm in height, that are as a result of the presence of utility appurtenances. A classic example of this is a water box or shut-off valve for an adjacent hydrant that is installed on or within a sidewalk slab. Municipalities across Ontario already must address these potential hazards for pedestrians and other users of the sidewalk engaging in active modes of transportation, and the proposed additions will provide clear guidance to them and to the Courts as to what must be done to identify and where called for, address such issues.

Other Additions/Amendments

The Task Force has identified several issues requiring clarification or refinement within the existing Regulation, in order to fulfill the intent of the Regulation and hopefully avoid possible future misinterpretation by the Courts.

A new section will make clear the original intent and purpose of the Regulation, to provide additional interpretative guidance to all.

The Task Force is also proposing that the word "minimum" be deleted throughout the regulation, to ensure recognition that the other two statutory defences under s.44(3) of the Municipal Act, 2001, apply in a situation where a defence under the regulation is, for some reason, inapplicable or not established

These new proposed standards, like all of their predecessors, continue to be entirely optional (as they are merely one of three non-exclusive statutory defences pursuant to s.44(3) of the *Municipal Act, 2001*, and are "outcome based", specifying a desired end result rather than dictating specific methods to achieve them.

They reflect the hard work of a Task Force that featured municipal engineers and road maintenance specialists from across Ontario, both urban and rural. The proposed new standards continue the practice of acknowledging the expertise which municipal road authorities possess in respect of maintenance of their local highways, and the deference which should be given to their good judgment in seeking to achieve safety for their residents and the users of the roads within their care.

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ONTARIO REGULATION 239/02

~~MINIMUM~~ MAINTENANCE STANDARDS FOR MUNICIPAL HIGHWAYS

Consolidation Period: From January 25, 2013 to the e-Laws currency date.

Last amendment: O. Reg. 47/13.

This Regulation is made in English only.

Definitions

1. (1) In this Regulation,

"bicycle facility" includes but is not limited to the various on-road and in-boulevard cycling facilities listed in section 2.3 and its subsections, of Book 18 of the Ontario Traffic Manual;

"conventional bicycle lane" means a portion of a roadway which has been designated by pavement markings and signage for the preferential or exclusive use of cyclists;

"cm" means centimetres;

"day" means a 24-hour period;

"encroachment" means anything placed, installed, constructed or planted within the public road allowance that was not placed, installed, constructed or planted by the municipality;

"ice" means all kinds of ice, however formed;

"motor vehicle" has the same meaning as in subsection 1 (1) of the *Highway Traffic Act*, except that it does not include a motor assisted bicycle;

"non-paved surface" means a surface that is not a paved surface;

"Ontario Traffic Manual" means the Ontario Traffic Manual published by the Ministry of Transportation, as amended from time to time;

"paved surface" means a surface with a wearing layer or layers of asphalt, concrete or asphalt emulsion;

"pothole" means a hole in the surface of a roadway caused by any means whatsoever, including wear or subsidence of the road surface or subsurface beneath the pavement;

"roadway" has the same meaning as in subsection 1 (1) of the *Highway Traffic Act*;

"separated bicycle lane" means a portion of a roadway which has been designated for the exclusive use of cyclists by signage along with a physical or marked buffer;

"shoulder" means the portion of a highway that provides lateral support to the roadway and that may accommodate stopped motor vehicles and emergency use;

"sidewalk" means that part of the highway specifically set aside or commonly understood by a municipality to be for pedestrian use, typically consisting of a paved surface, and which is not used by a municipality for snow storage, and does not include crosswalks, medians or shoulders;

"significant weather event" means an approaching or occurring weather hazard which is deemed by a municipality, in its sole judgment, to pose a significant danger to users of the highways within the municipality, based on the current "threshold criteria" for weather hazards under Environment Canada's Public Alerting Program or threshold criteria defined by a municipality under its applicable policy.

"snow accumulation" means the natural accumulation of any of the following that, alone or together, covers more than half a lane width of a roadway:

1. Newly-fallen snow.
2. Wind-blown snow.
3. Slush;

"substantial probability" means a significant likelihood considerably in excess of 51 per cent;

"surface" means the top of a roadway or shoulder;

"utility" includes but is not limited to any air, gas, water, electricity, cable, fiber-optic, telecommunication, fire hydrant, sanitary sewer, storm sewer, property bar, survey monument, or traffic control system or subsystem;

"utility appurtenance" includes but is not limited to:

(i) maintenance holes and maintenance hole covers;

(ii) water shut-off covers and boxes;

(iii) valves;

(iv) fittings;

(v) vaults;

(vi) braces;

(vii) pipes;

(viii) pedestals; and,

(viiii) any other structure or item that forms part of or is an accessory part of any utility;

"weather" means air temperature, wind and precipitation.; O. Reg. 239/02, s. 1 (1); O. Reg. 23/10, s. 1 (1); O. Reg. 47/13, s. 1.

"weather hazard" includes the weather hazards enumerated by Environment Canada as ones for which it will issue alerts under its Public Alerting Program. O. Reg. 239/02, s. 1 (1); O. Reg. 23/10, s. 1 (1); O. Reg. 47/13, s. 1; O.Reg /16, s.1

(2) For the purposes of this Regulation, every highway or part of a highway under the jurisdiction of a municipality in Ontario is classified in the Table to this section as a Class 1, Class 2, Class 3, Class 4, Class 5 or Class 6 highway, based on the speed limit applicable to it and the average annual daily traffic on it. O. Reg. 239/02, s. 1 (2).

(3) For the purposes of subsection (2) and the Table to this section, the average annual daily traffic on a highway or part of a highway under municipal jurisdiction shall be determined,

(a) by counting and averaging the daily two-way traffic on the highway or part of the highway; or

(b) by estimating the average daily two-way traffic on the highway or part of the highway. O. Reg. 239/02, s. 1 (3); O. Reg. 23/10, s. 1 (2).

(4) For the purposes of this Regulation, unless otherwise indicated herein, 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. O. Reg. 23/10, s. 1 (3).

TABLE
CLASSIFICATION OF HIGHWAYS

Average Annual Daily Traffic (number of motor vehicles)	Posted or Statutory Speed Limit (kilometres per hour)						
	91 - 100	81 - 90	71 - 80	61 - 70	51 - 60	41 - 50	1 - 40
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

O. Reg. 613/06, s. 1.

Application

2. (1) This Regulation sets out the ~~minimum~~ standards of repair for highways under municipal jurisdiction for the purpose of clause 44 (3) (c) of the Act. O. Reg. 288/03, s. 1.

(2) REVOKED: O. Reg. 23/10, s. 2.

(3) This Regulation does not apply to Class 6 highways. O. Reg. 239/02, s. 2 (3).

Purpose and Intent

2.1 (1) The purpose of this Regulation is to set forth outcome-based maintenance standards which are non-prescriptive as to methods or materials to be used, and which instead describe a desired end-result.

2.1(2) The intent of this Regulation is to define the scope of the statutory defence available to a municipality pursuant to s.44(3)(c) of the *Municipal Act, 2001*, and provide the Courts with clear rules in respect of liability for those aspects of highway repair addressed by this Regulation, and thereby create greater certainty for both municipalities and users of municipal highways.

~~MINIMUM~~ MAINTENANCE STANDARDS

Patrolling

3. (1) The ~~minimum~~ standard for the frequency of patrolling of highways to check for conditions described in this Regulation is set out in the Table to this section. O. Reg. 23/10, s. 3 (1).

(2) 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 roadways, ice formation on roadways or icy roadways, the minimum standard for patrolling highways is, in addition to that set out in subsection (1), to patrol highways that the municipality selects as representative of its highways, at intervals deemed necessary by the municipality, to check for such conditions. O. Reg. 47/13, s. 2.

(3) Patrolling a highway consists of observing the highway, either by driving on or by electronically monitoring the highway, and may be performed by persons responsible for patrolling highways or by persons responsible for or performing highway maintenance activities. O. Reg. 23/10, s. 3 (1).

(4) This section does not apply in respect of the conditions described in section 10, subsections 11 (0.1) and 12 (1) and sections 16.1, 16.2, 16.3 or 16.4. O. Reg. 23/10, s. 3 (1).

TABLE
PATROLLING FREQUENCY

Class of Highway	Patrolling Frequency
1	3 times every 7 days
2	2 times every 7 days
3	once every 7 days
4	once every 14 days
5	once every 30 days

O. Reg. 239/02, s. 3, Table; O. Reg. 23/10, s. 3 (2).

Weather monitoring and Significant Weather Events

3.1 (1) From October 1 to April 30, the ~~minimum~~ standard is to monitor the weather, both current and forecast to occur in the next 24 hours, once every shift or three times per calendar day, whichever is more frequent, at intervals determined by the municipality. O. Reg. 47/13, s. 3.

(2) From May 1 to September 30, the ~~minimum~~ standard is to monitor the weather, both current and forecast to occur in the next 24 hours, once per calendar day. O. Reg. 47/13, s. 3.

(2.1) A municipality may declare a significant weather event in accordance with this Regulation at any time in its sole discretion it elects to do so.

(3) For the purposes of this Regulation, a significant weather event is declared or ended by a municipality when it has been communicated to the public by the municipality in one or more of the following ways:

(i) posting it on the municipal website;

(ii) announcing it via social media, including but not limited to Facebook or Twitter;

(iii) a press release or similar communication is sent to the media, including internet, newspaper, radio, or television;

(iv) notification to the police service; or

(v) notification pursuant to the municipal notification bylaw, if one exists and is applicable.

(4) For the purposes of this Regulation, a municipality is not required to declare a significant weather event at any time, including times when the threshold criteria are met under its applicable policy or times when Environment Canada's threshold criteria for a particular weather hazard are met under Environment Canada's Public Alerting Program, or when Environment Canada has issued an alert under that program. A municipality may declare a significant weather event even if such threshold criteria have not been met and conversely, choose not to do so even if such threshold criteria are met.

Snow accumulation- Roadways

4. (1) The ~~minimum~~ standard for addressing snow accumulation on roadways is,

(a) after becoming aware of the fact that the snow accumulation on a roadway 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 within the time set out in the Table,

(i) to provide a minimum lane width of the lesser of three metres for each lane or the actual lane width, or

(ii) on a Class 4 or Class 5 highway with two lanes, to provide a total width of at least five metres. O. Reg. 47/13, s. 4.

(2) If the depth of snow accumulation on a roadway is less than or equal to the depth set out in the Table to this section, the roadway is deemed to be in a state of repair with respect to snow accumulation. O. Reg. 47/13, s. 4.

(3) For the purposes of this section, the depth of snow accumulation on a roadway and, if applicable, lane width under subsection (1)(b), may be determined in accordance with subsection (4) 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. O. Reg. 47/13, s. 4.

(4) The depth of snow accumulation on a roadway and lane width may be determined by,

(a) performing an actual measurement;

(b) monitoring the weather; or

(c) performing a visual estimate. O. Reg. 47/13, s. 4.

(5) For the purposes of this section, addressing snow accumulation on a roadway includes, but is not limited to,

(a) plowing the roadway;

(b) salting the roadway;

(b.1) the application of other chemical or organic agents to the roadway;

(c) applying abrasive materials to the roadway; or

(d) any combination of the methods described in clauses (a), (b) and (c). O. Reg. 47/13, s. 4.

(6) This section does not apply to that portion of the roadway consisting of a conventional or separated bicycle lane, other bicycle facility, designated for parking, or while utilized by a municipality for snow storage. ~~.~~ O. Reg. 47/13, s. 4.

(7) When a municipality declares a significant weather event under this Regulation, all roadways within the municipality are deemed to be in a state of repair in respect of any snow accumulation present, until the applicable time under the Table to this section expires following the end of the declared weather emergency.

TABLE
SNOW ACCUMULATION- ROADWAYS

Class of Highway	Depth	Time
1	2.5 cm	4 hours
2	5 cm	6 hours
3	8 cm	12 hours
4	8 cm	16 hours

5	10 cm	24 hours

O. Reg. 47/13, s. 4.

Snow Accumulation – Separated and Conventional Bicycle Lanes

4.1(1) The standard for addressing snow accumulation on separated and conventional bicycle lanes is,

(a) after becoming aware of the fact that the snow accumulation on a separated or conventional 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 within the time set out in the Table 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 separated or conventional 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 with respect to snow accumulation.

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

(4) For the purposes of this section, addressing snow accumulation on a bicycle lane includes, but is not limited to,

(a) plowing the bicycle lane;

(b) salting the bicycle lane;

(c) the application of other chemical or organic agents to the bicycle lane;

(d) applying abrasive materials to the bicycle lane;

(e) sweeping the bicycle lane; or

(f) any combination of the methods described in clauses (a), (b), (c), (d) or (e).

(5) When a municipality declares a significant weather event under this Regulation, all bicycle facilities within the limits of any highway within the municipality , including but not limited to separated and conventional bicycle lanes, are deemed to be in a state of repair in respect of any snow accumulation present, until the applicable time under the Table to this section expires following the end of the declared weather emergency.

TABLE- Snow Accumulation – Separated and Conventional Bicycle Lanes

Class of Highway or Adjacent Highway	Separated Bicycle Lanes		Conventional Bicycle Lanes	
	Depth	Time	Depth	Time
1	2.5 cm	4 hours	2.5 cm	8 hours
2	2.5 cm	6 hours	5 cm	12 hours
3	2.5 cm	12 hours	8 cm	24 hours
4	4 cm	16 hours	8 cm	24 hours
5	6 cm	24 hours	10 cm	24 hours

Ice formation on roadways and icy roadways

5. (1) The ~~minimum~~ 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 the Table to this section, starting from the time that the municipality determines is the appropriate time to deploy resources for that purpose. O. Reg. 47/13, s. 5.

(2) If the municipality meets the ~~minimum~~ 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 earlier of,~~

(a) the time that the municipality becomes aware of the fact that the roadway is icy ~~; or~~ and,

(b) the applicable time set out in the Table to this section for treating the roadway to prevent ice formation expires. O. Reg. 47/13, s. 5.

(3) The ~~minimum~~ standard for treating icy roadways after the municipality becomes aware of the fact that a roadway is icy is to treat the icy roadway within the time set out in the applicable part of the Table to this section, and an icy roadway is deemed to be in a state of repair until the applicable time set out in the applicable part of the Table for treating the icy roadway expires. O. Reg. 47/13, s. 5.

(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. O. Reg. 47/13, s. 5.

(4.1) For greater certainty, this section includes conventional and separated bicycle lanes on a roadway, but does not include other types of bicycle facilities.

(5) If at any time a municipality declares a significant weather event under this Regulation, then all roadways within the municipality are deemed to be in a state of repair in respect of any ice present or which may form on the roadways, until the applicable time under the Table to this section expires following the end of the declared significant weather- event..

TABLE
ICE FORMATION PREVENTION AND ICY ROADWAYS

Class of Highway	Time – Roadways and Separated Bicycle Lanes	Time – Conventional Bicycle Lanes
1	3 hours	6 hours
2	4 hours	8 hours
3	8 hours	16 hours
4	12 hours	24 hours
5	16 hours	24 hours

O. Reg. 47/13, s. 5.

Potholes

6. (1) If a pothole exceeds both the surface area and depth set out in Table 1, 2 or 3 to this section, as the case may be, the ~~minimum~~ standard is to repair the pothole within the time set out in Table 1, 2 or 3, as appropriate, after becoming aware of the fact. O. Reg. 239/02, s. 6 (1).

(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,

(i) performing an actual measurement, or,

(ii) performing a visual estimate.

(1.3) The surface area of a pothole shall not include any area that is merely depressed and not yet broken fully through the surface of the roadway.

(2) A pothole is deemed to be in a state of repair if its surface area or depth is less than or equal to that set out in Table 1, 2 or 3, as appropriate. O. Reg. 239/02, s. 6 (2); O. Reg. 47/13, s. 6.

TABLE 1
POTHOLES ON PAVED SURFACE OF ROADWAY

Class of Highway	Surface Area	Depth	Time
1	600 cm²	8 cm	4 days
2	800 cm²	8 cm	4 days
3	1000 cm²	8 cm	7 days
4	1000 cm²	8 cm	14 days
5	1000 cm²	8 cm	30 days

O. Reg. 239/02, s. 6, Table 1.

TABLE 2
POTHOLES ON NON-PAVED SURFACE OF ROADWAY

Class of Highway	Surface Area	Depth	Time
3	1500 cm²	8 cm	7 days
4	1500 cm²	10 cm	14 days
5	1500 cm²	12 cm	30 days

O. Reg. 239/02, s. 6, Table 2.

TABLE 3
POTHOLES ON PAVED OR NON-PAVED SURFACE OF SHOULDER

Class of Highway	Surface Area	Depth	Time
1	1500 cm²	8 cm	7 days
2	1500 cm²	8 cm	7 days
3	1500 cm²	8 cm	14 days
4	1500 cm²	10 cm	30 days
5	1500 cm²	12 cm	60 days

O. Reg. 239/02, s. 6, Table 3.

Shoulder drop-offs

7. (1) If a shoulder drop-off is deeper, for a continuous distance of 20 metres or more, than the depth set out in the Table to this section, the ~~minimum~~ standard is to repair the shoulder drop-off within the time set out in the Table after becoming aware of the fact. O. Reg. 239/02, s. 7 (1).

(2) A shoulder drop-off is deemed to be in a state of repair if its depth is less than or equal to that set out in the Table. O. Reg. 239/02, s. 7 (2); O. Reg. 47/13, s. 7.

(3) In this section,

"shoulder drop-off" means the vertical differential, where the paved surface of the roadway is higher than the surface of the shoulder, between the paved surface of the roadway and the paved or non-paved surface of the shoulder. O. Reg. 239/02, s. 7 (3).

TABLE
SHOULDER DROP-OFFS

Class of Highway	Depth	Time
1	8 cm	4 days
2	8 cm	4 days
3	8 cm	7 days
4	8 cm	14 days
5	8 cm	30 days

O. Reg. 239/02, s. 7, Table.

Cracks

8. (1) If a crack on the paved surface of a roadway is greater, for a continuous distance of three metres or more, than both the width and depth set out in the Table to this section, the ~~minimum~~ standard is to repair the crack within the time set out in the Table after becoming aware of the fact. O. Reg. 239/02, s. 8 (1).

(2) A crack is deemed to be in a state of repair if its width or depth is less than or equal to that set out in the Table. O. Reg. 239/02, s. 8 (2); O. Reg. 47/13, s. 8.

TABLE
CRACKS

Class of Highway	Width	Depth	Time
1	5 cm	5 cm	30 days
2	5 cm	5 cm	30 days
3	5 cm	5 cm	60 days
4	5 cm	5 cm	180 days

5	5 cm	5 cm	180 days

O. Reg. 239/02, s. 8, Table.

Debris

9. (1) If there is debris on a roadway, the ~~minimum~~ standard is to deploy resources, as soon as practicable after becoming aware of the fact, to remove the debris. O. Reg. 239/02, s. 9 (1).

(2) In this section,

"debris" means any material (except snow, slush or ice) or object on a roadway,

(a) that is not an integral part of the roadway or has not been intentionally placed on the roadway by a municipality, and

(b) that is reasonably likely to cause damage to a motor vehicle or to injure a person in a motor vehicle. O. Reg. 239/02, s. 9 (2); O. Reg. 47/13, s. 9.

Luminaires

10. (0.1) The ~~minimum~~ 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. O. Reg. 23/10, s. 6; O. Reg. 47/13, s. 10 (1).

(1) For conventional illumination, if three or more consecutive luminaires on the same side of a highway are not functioning, the ~~minimum~~ standard is to repair the luminaires within the time set out in the Table to this section after becoming aware of the fact. O. Reg. 239/02, s. 10 (1).

(2) 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 ~~minimum~~ standard is to repair the luminaires within the time set out in the Table to this section after becoming aware of the fact. O. Reg. 239/02, s. 10 (2).

(3) 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 ~~minimum~~ standard is to deploy resources as soon as practicable after becoming aware of the fact to repair the luminaires. O. Reg. 239/02, s. 10 (3).

(4) 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 ~~minimum~~ standard is to deploy resources as soon as practicable after becoming aware of the fact to repair the luminaires. O. Reg. 239/02, s. 10 (4).

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

(a) for the purpose of subsection (1), 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 (2), if more than 70 per cent of luminaires on any kilometre of highway are functioning;

(c) for the purpose of subsection (3), 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 (4), if more than 50 per cent of luminaires on any kilometre of highway are functioning. O. Reg. 239/02, s. 10 (5); O. Reg. 47/13, s. 10 (2).

~~(6) Subsections (1), (2) and (3) only apply to,~~

~~(a) Class 1 and Class 2 highways; and~~

~~(b) Class 3, Class 4 and Class 5 highways with a posted speed of 80 kilometres per hour or more. O. Reg. 239/02, s. 10 (6).~~

(~~7~~6) In this section,

"conventional illumination" means lighting, other than high mast illumination, where there are one or more luminaires per pole;

"high mast illumination" means lighting where there are three or more luminaires per pole and the height of the pole exceeds 20 metres;

"luminaire" means a complete lighting unit consisting of,

(a) a lamp, and

(b) parts designed to distribute the light, to position or protect the lamp and to connect the lamp to the power supply. O. Reg. 239/02, s. 10 (7).

TABLE
LUMINAIRES

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

O. Reg. 239/02, s. 10, Table.

Signs

11. (0.1) The ~~minimum~~ standard for the frequency of inspecting signs of a type listed in subsection (2) to check to see that they meet the retro-reflectivity requirements of the Ontario Traffic Manual is once per calendar year, with each inspection taking place not more than 16 months from the previous inspection. O. Reg. 23/10, s. 7 (1); O. Reg. 47/13, s. 11 (1).

(0.2) A sign that has been inspected in accordance with subsection (0.1) is deemed to be in a state of repair with respect to the retro-reflectivity requirements of the Ontario Traffic Manual until the next inspection in accordance with that subsection, provided that the municipality does not acquire actual knowledge that the sign has ceased to meet these requirements. O. Reg. 47/13, s. 11 (2).

(1) If any sign of a type listed in subsection (2) is illegible, improperly oriented, obscured or missing, the ~~minimum~~ standard is to deploy resources as soon as practicable after becoming aware of the fact to repair or replace the sign. O. Reg. 239/02, s. 11 (1); O. Reg. 23/10, s. 7 (2).

(2) This section applies to the following types of signs:

1. Checkerboard.
2. Curve sign with advisory speed tab.
3. Do not enter.

3.1 Load Restricted Bridge.

3.2 Low Bridge.

3.3 Low Bridge Ahead.

4. One Way.
5. School Zone Speed Limit.
6. Stop.
7. Stop Ahead.
8. Stop Ahead, New.
9. Traffic Signal Ahead, New.
10. Two-Way Traffic Ahead.
11. Wrong Way.
12. Yield.
13. Yield Ahead.
14. Yield Ahead, New. O. Reg. 239/02, s. 11 (2); O. Reg. 23/10, s. 7 (3).

Regulatory or warning signs

12. (1) The ~~minimum~~ standard for the frequency of inspecting regulatory signs or warning signs to check to see that they meet the retro-reflectivity requirements of the Ontario Traffic Manual is once per calendar year, with each inspection taking place not more than 16 months from the previous inspection. O. Reg. 23/10, s. 8; O. Reg. 47/13, s. 12 (1).

(1.1) A regulatory sign or warning sign that has been inspected in accordance with subsection (1) is deemed to be in a state of repair with respect to the retro-reflectivity requirements of the Ontario Traffic Manual until the next inspection in accordance with that subsection, provided that the municipality does not acquire actual knowledge that the sign has ceased to meet these requirements. O. Reg. 47/13, s. 12 (2).

(2) If a regulatory sign or warning sign is illegible, improperly oriented, obscured or missing, the ~~minimum~~ standard is to repair or replace the sign within the time set out in the Table to this section after becoming aware of the fact. O. Reg. 23/10, s. 8.

(3) In this section,

"regulatory sign" and "warning sign" have the same meanings as in the Ontario Traffic Manual, except that they do not include a sign listed in subsection 11 (2) of this Regulation. O. Reg. 23/10, s. 8.

TABLE
REGULATORY AND WARNING SIGNS

Class of Highway	Time
1	7 days
2	14 days
3	21 days
4	30 days
5	30 days

O. Reg. 239/02, s. 12, Table.

Traffic control signal systems

13. (1) If a traffic control signal system is defective in any way described in subsection (2), the ~~minimum~~ standard is to deploy resources as soon as practicable after becoming aware of the defect to repair the defect or replace the defective component of the traffic control signal system. O. Reg. 239/02, s. 13 (1).

(2) This section applies if a traffic control signal system is defective in any of the following ways:

1. One or more displays show conflicting signal indications.
2. The angle of a traffic control signal or pedestrian control indication has been changed in such a way that the traffic or pedestrian facing it does not have clear visibility of the information conveyed or that it conveys confusing information to traffic or pedestrians facing other directions.
3. A phase required to allow a pedestrian or vehicle to safely travel through an intersection fails to occur.
4. There are phase or cycle timing errors interfering with the ability of a pedestrian or vehicle to safely travel through an intersection.
5. There is a power failure in the traffic control signal system.
6. The traffic control signal system cabinet has been displaced from its proper position.
7. There is a failure of any of the traffic control signal support structures.
8. A signal lamp or a pedestrian control indication is not functioning.
9. Signals are flashing when flashing mode is not a part of the normal signal operation. O. Reg. 239/02, s. 13 (2).

(3) Despite subsection (1) and paragraph 8 of subsection (2), if the posted speed of all approaches to the intersection or location of the non-functioning signal lamp or pedestrian control indication is less than 80 kilometres per hour and the signal that is not functioning is a green or a pedestrian "walk" signal, the ~~minimum~~ standard is to repair or replace the defective component by the end of the next business day. O. Reg. 239/02, s. 13 (3).

(4) In this section and section 14,

"cycle" means a complete sequence of traffic control indications at a location;

"display" means the illuminated and non-illuminated signals facing the traffic;

"indication" has the same meaning as in the *Highway Traffic Act*;

"phase" means a part of a cycle from the time where one or more traffic directions receive a green indication to the time where one or more different traffic directions receive a green indication;

"power failure" means a reduction in power or a loss in power preventing the traffic control signal system from operating as intended;

"traffic control signal" has the same meaning as in the *Highway Traffic Act*;

"traffic control signal system" has the same meaning as in the *Highway Traffic Act*. O. Reg. 239/02, s. 13 (4).

Traffic control signal system sub-systems

14. (1) The ~~minimum~~ standard is to inspect, test and maintain the following traffic control signal system sub-systems once per calendar year, with each inspection taking place not more than 16 months from the previous inspection:

1. The display sub-system, consisting of traffic signal and pedestrian crossing heads, physical support structures and support cables.
2. The traffic control sub-system, including the traffic control signal cabinet and internal devices such as timer, detection devices and associated hardware, but excluding conflict monitors.
3. The external detection sub-system, consisting of detection sensors for all vehicles, including emergency and railway vehicles and pedestrian push- buttons. O. Reg. 239/02, s. 14 (1); O. Reg. 47/13, s. 13 (1).

(1.1) A traffic control signal system sub-system that has been inspected, tested and maintained in accordance with subsection (1) is deemed to be in a state of repair until the next inspection in accordance with that subsection, provided that the municipality does not acquire actual knowledge that the traffic control signal system sub-system has ceased to be in a state of repair. O. Reg. 47/13, s. 13 (2).

(2) The ~~minimum~~ standard is to inspect, test and maintain conflict monitors every five to seven months and at least twice per calendar year. O. Reg. 239/02, s. 14 (2); O. Reg. 47/13, s. 13 (3).

(2.1) A conflict monitor that has been inspected, tested and maintained in accordance with subsection (2) is deemed to be in a state of repair until the next inspection in accordance with that subsection, provided that the municipality does not acquire actual knowledge that the conflict monitor has ceased to be in a state of repair. O. Reg. 47/13, s. 13 (4).

(3) In this section,

"conflict monitor" means a device that continually checks for conflicting signal indications and responds to a conflict by emitting a signal. O. Reg. 239/02, s. 14 (3).

Bridge deck spalls

15. (1) If a bridge deck spall exceeds both the surface area and depth set out in the Table to this section, the ~~minimum~~ standard is to repair the bridge deck spall within the time set out in the Table after becoming aware of the fact. O. Reg. 239/02, s. 15 (1).

(2) A bridge deck spall is deemed to be in a state of repair if its surface area or depth is less than or equal to that set out in the Table. O. Reg. 239/02, s. 15 (2); O. Reg. 47/13, s. 14.

(3) In this section,

"bridge deck spall" means a cavity left by one or more fragments detaching from the paved surface of the roadway or shoulder of a bridge. O. Reg. 239/02, s. 15 (3).

TABLE
BRIDGE DECK SPALLS

Class of Highway	Surface Area	Depth	Time
1	600 cm²	8 cm	4 days
2	800 cm²	8 cm	4 days
3	1,000 cm²	8 cm	7 days
4	1,000 cm²	8 cm	7 days
5	1,000 cm²	8 cm	7 days

O. Reg. 239/02, s. 15, Table.

Roadway surface discontinuities

16. (1) If a surface discontinuity on a roadway, other than a surface discontinuity on a bridge deck, exceeds the height set out in the Table to this section, the ~~minimum~~ standard is to repair the surface discontinuity within the time set out in the Table after becoming aware of the fact. O. Reg. 23/10, s. 9.

(1.1) A surface discontinuity on a roadway, other than a surface discontinuity on a bridge deck, is deemed to be in a state of repair if its height is less than or equal to the height set out in the Table to this section. O. Reg. 47/13, s. 15.

(2) If a surface discontinuity on a bridge deck exceeds five centimetres, the ~~minimum~~ standard is to deploy resources as soon as practicable after becoming aware of the fact to repair the surface discontinuity on the bridge deck. O. Reg. 23/10, s. 9.

(2.1) A surface discontinuity on a bridge deck is deemed to be in a state of repair if its height is less than or equal to five centimetres. O. Reg. 47/13, s. 15.

(3) In this section,

"surface discontinuity" means a vertical discontinuity creating a step formation at joints or cracks in the paved surface of the roadway, including bridge deck joints, expansion joints and approach slabs to a bridge. O. Reg. 23/10, s. 9.

TABLE
SURFACE DISCONTINUITIES

Class of Highway	Height	Time
1	5 cm	2 days
2	5 cm	2 days
3	5 cm	7 days
4	5 cm	21 days
5	5 cm	21 days

O. Reg. 239/02, s. 16, Table.

Sidewalk surface discontinuities and adjacent area

16.1 (1) The ~~minimum~~ standard for the frequency of inspecting sidewalks to check for surface discontinuity is once per calendar year, with each inspection taking place not more than 16 months from the previous inspection. O. Reg. 23/10, s. 10; O. Reg. 47/13, s. 16 (1).

(1.1) A sidewalk that has been inspected in accordance with subsection (1) is deemed to be in a state of repair with respect to any surface discontinuity until the next inspection in accordance with that subsection, provided that the municipality does not acquire actual knowledge of the presence of a surface discontinuity in excess of two centimetres. O. Reg. 47/13, s. 16 (2).

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

(1.3) For greater certainty, the area adjacent to a sidewalk as described in subsection 1.2 begins at the outer edges of a sidewalk and ends at the lesser of (i) the limit of the highway, (ii) the back edge of a curb if one is present and (iii) a maximum of 45 cm.

(2) If a surface discontinuity on a sidewalk exceeds two centimetres, the ~~minimum~~ standard is to treat the surface discontinuity within 14 days after acquiring actual knowledge of the fact. O. Reg. 23/10, s. 10; O. Reg. 47/13, s. 16 (3).

(2.1) A surface discontinuity on a sidewalk is deemed to be in a state of repair if it is less than or equal to two centimetres. O. Reg. 47/13, s. 16 (4).

(2.2) An encroachment within the area adjacent to a sidewalk is deemed to be in a state of repair, unless it is determined by a municipality, in its sole discretion, to be highly unusual given the character and location in question or to constitute a significant hazard to pedestrians.

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

(3) For the purpose of subsections (2) and (2.3), treating a surface discontinuity on a sidewalk or an encroachment means taking reasonable measures to protect users of the sidewalk from the discontinuity, or encroachment including making permanent or temporary repairs, alerting users' attention to the discontinuity or encroachment or preventing access to the area of discontinuity or encroachment. O. Reg. 23/10, s. 10.

(4) In this section,

"surface discontinuity" means a vertical discontinuity creating a step formation at any joint~~s~~ or crack~~s~~ 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. O. Reg. 23/10, s. 10.

Snow accumulation on Sidewalks

16.2 (1) The standard for addressing snow accumulation on a sidewalk after the snow accumulation has ended, is to address the snow accumulation so as to reduce the snow accumulation to a depth less than or equal to 8 centimetres within 48 hours.

(2) If, at any time, 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 with respect to 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 and by the same persons as under s. 4(3) and s.4(4) of this regulation.

(5) For the purposes of this section, addressing snow accumulation on a sidewalk includes, but is not limited to,

(a) plowing the sidewalk;

(b) salting the sidewalk;

(c) the application of other chemical or organic agents to the sidewalk;

(d) applying abrasive materials to the sidewalk; or

(e) any combination of the methods described in clauses (a), (b), (c) or (d).

(6) If at any time a municipality declares a significant weather event under this Regulation then all sidewalks within the municipality are deemed to be in a state of repair in respect of any snow accumulation present, until 48 hours following the end of the declared significant weather event.

Ice formation on sidewalks and icy sidewalks

16.3. (1) The standard for the prevention of ice formation on sidewalks is to

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

(b) If the municipality determines, as a result of its weather monitoring under subparagraph a, that there is a substantial probability of ice forming on a sidewalk, treat the sidewalk if practicable to prevent ice formation and/or improve traction within 48 hours, 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 sidewalk, the sidewalk is deemed to be in a state of repair in respect of ice until,

(a) the time that the municipality becomes aware of the fact that the sidewalk is icy and,

(b) 48 hours elapses thereafter.

(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 until 48 hours expires after it has been treated.

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

(5) If at any time a municipality declares a significant weather event under this Regulation, then all sidewalks within the municipality are deemed to be in a state of repair in respect of any ice present, until 48 hours expires following the end of the declared significant weather event.

Winter Sidewalk Patrol

16.4 (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, to check for such conditions.

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

Closure of a Highway

16.5 (1) When a municipality closes a highway or part of a highway pursuant to its powers to do so under the *Municipal Act, 2001*, the highway is deemed to be in a state of repair in respect to all conditions encompassed within this Regulation, from the time of closure until such time as the highway is re-opened by the municipality, by passage of the requisite bylaw.

(2) For greater certainty, the time of closure of a highway commences at the earlier of:

(a) when a municipality passes a bylaw to close a highway or part of a highway; or
(b) when a municipality has taken such steps as in its sole discretion it deems necessary to temporarily close the highway or part of a highway.

REVIEW OF REGULATION

Review

17. (1) The Minister of Transportation shall conduct a review of this Regulation and Ontario Regulation 612/06 (Minimum Maintenance Standards for Highways in the City of Toronto) made under the *City of Toronto Act, 2006* every five years. O. Reg. 613/06, s. 2.

(2) Despite subsection (1), the first review after the completion of the review started before the end of 2007 shall be started five years after the day Ontario Regulation 23/10 is filed. O. Reg. 23/10, s. 11.

18. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 239/02, s. 18.

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