



The Corporation of the Town of Tecumseh

Corporate Services & Clerk

To: Mayor and Members of Council

From: Laura Moy, Director Corporate Services & Clerk

Date to Council: February 25, 2020

Report Number: CS-2020-06

Subject: Minimum Maintenance Standards for Roads

Recommendations

It is recommended:

That CS-2020-06 entitled “Minimum Maintenance Standards for Roads” **be received;**

And that By-law No. 2020-17 being a by-law to adopt Minimum Maintenance Standards for Municipal Highways, **be adopted**, as appended to the Agenda for the February 25, 2020 meeting of Council.

Background

The *Municipal Act*, 2001, S.O. 2001 c. 25 (Act) in subsection 44 (1) states that:

“a municipality that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge.”

A municipality that defaults in complying with subsection (1) is, subject to the *Negligence Act*, liable for all damages any person sustains because of the default.

Under subsection 44 (3) of the Act, a municipality is not liable for failing to keep a highway or bridge in a reasonable state of repair if,

- a) it did not know and could not reasonably have been expected to have known about the state of repair of the highway or bridge;
- b) it took reasonable steps to prevent the default from arising; or
- c) at the time the cause of action arose, minimum standards established under subsection (4) applied to the highway or bridge and to the alleged default and those standards have been met.

Clause c) was added to the Act in 1996 and was the Province's response to municipalities' requests for relief from onerous court decisions. Subsection 44(4) was also added to the Act to recognize that:

“The Minister of Transportation may make regulations establishing minimum standards of repair for highways and bridges or any class of them.”

To enable this defence to be used, the Minister of Transportation filed Ontario Regulation 239/02: Minimum Maintenance Standards for Municipal Highways (MMS). The MMS came into effect on November 1, 2002.

At the September 23, 2003 meeting of Council, By-law No. 2003-65, being a by-law to adopt Minimum Maintenance Standards for Municipal Highways from Ontario Regulation 288/03 under the *Municipal Act*, was adopted.

Comments

By-law No. 2003-65 was adopted over 16 years ago based on the recommendation of the Director of Public Works to the Public Works Committee at their meeting held March 5, 2003. The body of the by-law included the MMS provisions, as amended by O. Reg. 288/03, and did not take into consideration any future amendments to the MMS.

Since the adoption of By-law No. 2003-65, there have been a number of further amendments, besides O. Reg. 288/03, to the MMS under O. Reg. 613/06, O. Reg. 23/10, O. Reg. 47/13, and most recently O. Reg. 366/18.

The Town's minimum standards for maintaining its highways and bridges pursuant to subsection 44 (1) of the Act should be at least consistent with the MMS in order to be able to rely on the defence in subsection 44 (3) (c) of the Act, as well as for risk management and liability purposes.

By-law No. 2020-17 has been prepared for Council's consideration in order to adopt the MMS, as amended to date. This draft by-law appends a Schedule A, the current O. Reg. 239/02, as amended by the above referenced O. Regs., rather than incorporate the provisions of the MMS in the body of the by-law for ease of future amendments.

By-law No. 2020-17, as drafted, also indicates that, to the extent the Province of Ontario lawfully enacts mandatory minimum standards of repair for highways under municipal jurisdiction other than those currently provided in O. Reg. 239/02, as amended, they shall be deemed to be incorporated into this By-law.

It is recommended that By-law No. 2020-17 be adopted by Council and that it be reviewed at least annually for any future amendments to the MMS.

Consultations

Public Works & Environmental Services
Town Solicitor

Financial Implications

There are no financial implications with respect to the adoption of By-law No. 2020-17. The potential legal fees and liability costs for not acting in accordance with the MMS are undeterminable.

Link to Strategic Priorities

Applicable	2019-22 Strategic Priorities
<input checked="" type="checkbox"/>	Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers.
<input type="checkbox"/>	Ensure that Tecumseh's current and future growth is built upon the principles of sustainability and strategic decision-making.
<input checked="" type="checkbox"/>	Integrate the principles of health and wellness into all of Tecumseh's plans and priorities.
<input checked="" type="checkbox"/>	Steward the Town's "continuous improvement" approach to municipal service delivery to residents and businesses.
<input type="checkbox"/>	Demonstrate the Town's leadership role in the community by promoting good governance and community engagement, by bringing together organizations serving the Town and the region to pursue common goals.

Communications

Not applicable ☒

Website ☐

Social Media ☐

News Release ☐

Local Newspaper ☐

This report has been reviewed by Senior Administration as indicated below and recommended for submission by the Chief Administrative Officer.

Prepared by:

Laura Moy, Dipl. M.M., CMMIII HR Professional
Director Corporate Services & Clerk

Reviewed by:

Phil Bartnik, P.Eng.
Director Public Works & Environmental Services

Recommended by:

Margaret Misek-Evans, MCIP, RPP
Chief Administrative Officer

Attachment Number	Attachment Name
None	None