

Municipal Road and Sidewalk Liability
Avoiding or Lessening Liability Through Preventive Policies

[Note: The adoption of a policy such as this may demonstrate that the municipality is undertaking reasonable preventive practices. Even if a policy is not adopted, it is recommended that a municipality undertake actions as suggested in this sample policy. A policy is preferred as this may invoke “discretionary immunity” as discussed in the presentation.]

As part of the obligations of the Municipality of ___ to carry out its responsibilities and duties of maintaining class V (and IV) roads and public sidewalks in accordance with RSA 231:90 - 231:93, the (Council/Board of Selectmen/Manager/Board of Commissioners) adopts these policies:

1. **Purpose and Intent.** In 1991, the New Hampshire Legislature enacted laws to more clearly specify the conditions under which a municipality may be held liable for insufficiencies in highways and sidewalks which the municipality is required to maintain. The purpose of this policy is to adopt and implement procedures to comply with those statutory changes and to carry out the _____'s obligations in a reasonable and meaningful way within the limits of available resources.

2. **General standards.** The _____ will make reasonable attempts to keep all its class V (and IV) roads and public sidewalks free from insufficiencies as defined by RSA 231:90, II. Because of the nature of the municipality and the (insert exact number of) miles of maintained roads and sidewalks which it contains, the _____ cannot practically assure that all roads and sidewalks will be safe and free from defects of all kinds. Many roads are "rural" roads that are often unpaved and "rough." [Describe sidewalks, if appropriate]. While the _____ will make reasonable efforts to assure that roads are safely passable by normal passenger vehicles traveling at safe speeds under existing conditions, and that its sidewalks may safely be used by prudent pedestrians, the _____ expects that operators of motor vehicles and pedestrians will exercise due caution and common sense to prevent injury to persons (including themselves) and damage to property, including vehicles.

3. **Road Classification.** To assist operators in safely using roads, the Road Agent, in cooperation with the (Council/Selectmen/Manager/Commissioners), shall inspect and review the existing Municipality road system.

(A) Roads shall be classified according to the following standards:

thoroughfares
local service roads
rural or scenic roads
limited use roads
roads closed to passenger vehicles.

(B) The classification of a road under paragraph (A) shall not be deemed to guarantee that the road is sufficient at any given time for use as indicated nor that the road will be maintained to any given standard. Instead, the classification is merely an indication of the general quality of the road and the type of maintenance it usually receives. [NOTE: An additional internal policy may specify the type of maintenance/inspection that each class of road will receive.]

(C) The classification of existing roads shall be completed by _____, 200_. Upon completion of the classification, the Selectmen/Municipality Manager shall determine the feasibility and wisdom of posting all or a portion of the road system to indicate road classifications as so designated.

(D) When this review is undertaken by the municipality, as part thereof, the Road Agent shall post any roads or sidewalks or segments thereof which are observed to contain potential safety hazards that are not reasonably discoverable or avoidable by a prudent user. The (_____) shall determine if it is necessary to take further action beyond posting which determination shall be within the discretion of the municipality's governing board.

4. **Notices of Insufficiency.** This section identifies the municipality's standard procedures for handling notice of insufficiency in accordance with RSA 231:90 - :92. These procedures are in addition to the municipality's inclement weather policy adopted pursuant to RSA 231:92-a and are not intended to replace or impose a higher standard of care than that stated in said policy. Only a notice which conforms in all respects to RSA 231:90 and this policy shall be deemed to comply with said statute.

(A) In accordance with RSA 231:90, a written notice of insufficiency must be delivered to [one of the Selectmen or village district commissioners] or the municipal road agent (or other title, e.g., public works director) [or in a city, the mayor or street commissioners) with a written copy of the notice provided to the municipal clerk. In addition, the municipality hereby delegates the authority to receive notices on behalf of said officials to [insert, for example, staff in the municipal office.] The notice must be signed by the individual(s) providing the notice, and shall contain each signer's name printed legibly, along with the signer's address and telephone number of other means of contact. In addition: the notice shall:

- (1) Contain the date and time of the notice
- (2) Contain the date and time at which the insufficiency was observed;
- (3) Describe, at least in general terms, the location of the insufficiency with such detail as may permit it to be found without undue difficulty;
- (4) Describe in reasonable detail the nature of the insufficiency.

(B) The municipality will provide forms upon which notices of insufficiency may be filed, but an individual need not use that form if the notice conforms to the requirements of law and this policy.

(C) The municipality encourages other municipal officials and employees who may receive notice of an insufficiency to advise individuals to report the insufficiency as required by law and to advise appropriate officials of conditions called to their attention. However, the municipality cannot assure that any notice which is provided in a manner other than that specified for a formal notice under this section will actually be received by the appropriate official/employee and therefore must require that notices be provided as required by law and this policy.

(D) Upon receipt of a notice of insufficiency, the individual receiving the notice shall first indicate on the notice or an appropriate form the exact time and date on which the notice is received and the identity of the person with whom it is filed. Upon receipt, the _____ shall determine if the notice conforms to the requirements of this policy and the law. It is the municipality's intent to implement action to investigate any claimed notice of insufficiency which is reasonably identified in a notice even if the notice does not formally conform to the requirements of law and this policy, but the municipality does not thereby waive any immunity or limit of liability which otherwise would apply.

- (1) As soon as practicable, a determination shall be made as to whether an insufficiency exists. If it is determined that no insufficiency exists, the ____ shall promptly advise the person filing the notice, and shall include a statement of the reasons why no insufficiency exists.

(2) If an insufficiency is found to exist, the municipality shall take one or more of the following actions as appropriate to the circumstances and shall, at an appropriate time, notify the person filing the notice of the actions taken or planned.

(a) If the insufficiency was temporary and no longer poses a hazard, the ____ shall determine the likelihood of another occurrence and what action, if any, is required to prevent or post danger signals warning of such conditions. In most such cases, the posting of danger signals is not required unless there is a reasonable likelihood of a recurrence of the insufficiency.

(b) If the insufficiency is not temporary, the _____ shall as soon as practicable post danger signals warning of the insufficiency. Within 72 hours after receipt of the notice of insufficiency, the _____ shall develop a plan to remedy the insufficiency. The plan shall be implemented in good faith within a reasonable time. If the insufficiency is not immediately remedied, appropriate danger signals shall be continued. The municipality may take reasonable interim action and shall determine if danger signals continue to be required. The reasonableness of any proposed remedy must consider the requirements that the expenditure of municipal funds may be made only in accordance with proper procedures.

5. Municipal Observations and Inspections.

(A) Scheduled and Regular Inspections. As part of its routine road and sidewalk maintenance, the municipality conducts periodic inspections of their condition.

(B) Actual Notice Observations.

(1) In accordance with RSA 231:92, I (b), any official or employee designated in subparagraph (5) (B) (2) of this policy who has actual notice or knowledge of an insufficiency by means other than a written notice filed in accordance with section 4 of this policy, shall promptly report such insufficiency to _____ who shall take the same action as would be taken if the insufficiency was reported by formal written notice.

(2) The employees/officials required to act under subparagraph (5) (B) (1) are the following: (selectman/commissioner/mayor/the municipal manager or municipal administrator/municipal clerk/ any on-duty fire or police personnel/road agent/public works director).

(C) Casual Observations. Only knowledge by or notice to those officials or employees designated in paragraph (5) (b) shall impose an obligation to act as provided by RSA 231:92. While the municipality is not designating or authorizing any other municipal officials and employees to receive notice or otherwise commit the municipality to act, in the interest of safety and efficiency, all municipal officials and employees are encouraged to be observant of highway and sidewalk conditions and to advise _____ if they observe any conditions which they believe might pose a problem. Any such advice provided to the municipality shall not constitute formal or actual notice or knowledge on the part of the municipality unless made in accordance with section 4 or an official designated in paragraph (5) (B) (2) has actual knowledge of an insufficiency through personal investigation or observation.

6. Inclement Weather Practices. In accordance with RSA 231:92-a, insufficiencies or hazards caused by snow, ice, or other inclement weather shall be handled pursuant to the municipality's inclement weather policies and procedures.