

**MODEL SNOW AND ICE POLICY ADVISORY COMMITTEE**

**GUIDANCE DOCUMENT**

accompanying the

**Minnesota Model Snow and Ice Management Policy**

**August 26, 2016**

This Guidance Document presents background on and explains the structure of the Model Policy approved in August 2016 by the Model Snow and Ice Management Policy Advisory Committee. The Model Policy is the product of coordination among diverse snow and ice management professionals from different areas of Minnesota. It is intended to serve as the foundation for city and county snow and ice management policies and follows the following structure:

- Section A: Introduction
- Section B: Snow and Ice Management Priorities
- Section C: Training
- Section D: Delegations of Authority
- Section E: Operational Framework
- Section F: Assuming Responsibility for Private Roadways or Parking Areas
- Section G: Coordination with Other Jurisdictions

The Model Policy is a framework that: (a) identifies the competing public considerations that are weighed in setting specific policy and (b) allocates roles in setting and carrying out these policies as between the policymaking body (city council or county board of commissioners) and the administrative and field employees of the local government unit. The administrative and technical details of snow and ice management as developed by the city or county are intended to integrate into this framework.

The purpose of this framework is both to offer a tool for cities and counties to prepare clear and complete snow and ice management policies and to help them limit the potential liability risk from these activities. Snow and ice management requires balancing public interests including, as paramount, public safety but also equipment

and material cost, environmental impact, and other concerns. Judgments must be made based on weather and ground circumstances as they develop. The law governing public agency operations such as this largely protects cities and counties from liability, in recognition of the fact that in order to perform this important public function, these local units must exercise judgment based on expertise, experience, and the circumstances of the occasion. The law says, however, that to merit this protection, a city or county must be able to show that competing public concerns are in play, that these concerns have been weighed, and that judgment was used in making both policy and operational decisions. The Model Policy is a tool for cities and counties to establish this foundation for their snow and ice management policies and practices.

Cities, counties, and other users of this Model Policy are encouraged to adapt and modify the Policy as appropriate to local circumstances with guidance from their respective attorneys.

The Policy was developed specifically to allow for cities and counties to incorporate environmental considerations into their policies and operations and thereby better manage liability risk. Private contractors and operators serving private clients do not benefit from the above-referenced legal doctrines that afford liability immunity to local units of government. However, where a private client would like to reduce the environmental impact of ice and snow management on its property, private contract language can manage the operator's liability risk from instituting more environmentally friendly practices. The accompanying private operator Model Exhibit for Private Snow and Ice Service Contract language is offered for this purpose.

The MPCA's Green Leases template includes a sample provision, "Storm water," that the Committee considered as one resource available for private operators. (see <https://www.pca.state.mn.us/living-green/green-leases>). The Green Lease provision references Smart Salting level II training, which is most appropriate for organizational level maintenance organizations.

### **Planning Background**

In February 2016, Freshwater Society and Fortin Consulting joined with Smith Partners in a presentation at the 15<sup>th</sup> Annual Road Salt Symposium titled "Is Salt Your Only Defense?" The presentation responded to requests from cities, counties, and private operators, increasingly interested in reducing application of salt, sand, and other deicers as part of their winter maintenance operations, for legal guidance on how to manage risk and liability for their snow and ice management practices. Fortin Consulting and Freshwater Society pursued the strong interest of symposium

attendees to understand and limit legal liability risk for snow and ice management by organizing an Advisory Committee comprising snow and ice management professionals from around Minnesota. This Advisory Committee was to meet and develop a Model Snow and Ice Management Policy. Smith Partners provided legal background, framework, and guidance on snow and ice management risks and liability to the Advisory Committee, and helped to draft the Model Policy.

The Advisory Committee, comprising city, county, and watershed district management professionals, representation from the Minnesota Pollution Control Agency (MPCA), and private operator representatives (Minnesota Nursery and Landscape Association), met three times during Summer 2016 to draft the Model Policy and Model Exhibit for Private Snow and Ice Service Contract.

### **Authority**

The comments on the drafts of the Model Policy focused on the substantive policies proposed. State law authorizes cities and counties to manage snow and ice within their jurisdictions. Private snow and ice management operators are required under Minnesota law to manage their risks and adhere to a duty of care.

### **Development of the Model Policy**

#### *City, County, and Private Snow and Ice Management Professional Engagement and Draft Policy*

The development of the Model Policy relied on Fortin Consulting's strong relationships with snow and ice professionals throughout Minnesota and history of working with state and local agencies to develop snow and ice management handbooks, manuals, trainings, and other resources. To best ensure that the Model Policy integrates most effectively and productively with existing city, county, and private operator policies, the Model Snow and Ice Management Policy Advisory Committee framed the Model Policy drafting through three key meetings:

The Advisory Committee first met on June 29, 2016 at the Freshwater Society office. The Committee reviewed a summary of legal decisions in snow and ice management cases; sample snow and ice management policies; and examples of different city, county, and private operator snow and ice management policies and contracts. By the end of the June 29 meeting, the Advisory Committee determined the priority content for the Model Policy.

At its second meeting on July 20, 2016, the Advisory Committee reviewed the first draft Snow and Ice Management Model Policy. The first draft Model Policy was

developed using the comments, discussion, and feedback from the June 29 Advisory Committee meeting. Based on its review of the first draft, the Committee agreed on a policy framework that would express the discretionary elements of snow and ice management decisionmaking, while also anticipating opportunity for cities and counties to insert actual substantive and technical details.

Smith Partners incorporated the comments, discussion, and feedback from the July 20 Advisory Committee meeting into a second draft Model Snow and Ice Management Policy for Advisory Committee review. In addition, the Advisory Committee incorporated other reviewers in the process to offer feedback. The second draft was circulated among several Minnesota local government attorneys for legal peer review and feedback. The Committee invited review of the second draft Model Policy by the League of Minnesota Cities.

Smith Partners incorporated feedback on the second draft from city and county attorneys, the League of Minnesota Cities, the Advisory Committee, and other reviewers into a third draft Model Policy.

At its final meeting on August 10, the Advisory Committee approved the third draft Model Policy, contingent on the incorporation of changes decided upon at the meeting.

### **The Model Policy – Guidance and Explanations**

The remainder of this Guidance Document summarizes comments and discussion on the Model Policy, and explains how the Advisory Committee structured the Model Policy in response. This Guidance Document then provides background and insights into the operation of each section of the Model Policy.

#### *Overarching Discussion and the Advisory Committee's Responses*

##### MODEL POLICY INCORPORATION OF TECHNICAL GUIDANCE

Members of the Advisory Committee considered numerous times the question of whether, and how much, the Model Policy should include snow and ice management technical practices and guidance. Snow and ice management professionals from cities and counties expressed concern that the Model Policy would duplicate the technical guidance content already contained in other resources, including city and county technical manuals and snow and ice guidance manuals published by the MPCA. Among other discussion, city and county snow and ice management professionals expressed concern about attempting to recreate the level of detail in existing guidance documents developed based on years of snow and ice management experience.

After much discussion about inclusion of detailed operational and technical guidance sections, the Committee elected to eliminate specific technical guidance from the Model Policy. The framework of the Model Policy instead structures the discretion of authorized individuals to make administrative and operational decisions about snow and ice management. The Model Policy includes a reference to the best practices and other technical resources contained in the snow and ice manuals published by the MPCA (see section D-2) and assumes that individual cities and counties will develop and insert appropriate substantive and technical policies and practices as appropriate.

#### DETERMINING SNOW AND ICE MANAGEMENT PRIORITIES

Several Committee members observed that snow and ice management priorities established by the Committee in the Model Policy (see section B) would not be consistent in all particulars with other city and county management priorities. The cities and counties agreed that the Model Policy would provide a structure to help secure for cities and counties the strongest possible liability protection for judgments made in forming the specifics of their snow and ice policies. Cities and counties should insert their management priorities into this policy structure.

#### COORDINATION AND REASONABLE EXPECTATIONS

The Committee identified coordination among operators from different jurisdictions, and reasonable expectations about different roads and public responsibility to practice due care, as two main policy needs for the Model Policy to address.

### **Section-by-Section Review – Substantive Rules**

The balance of this Guidance Document explains the rationale supporting the framework of each Model Policy section. While this document attempts to be fully explanatory, it is important for all interested parties to analyze the actual text of the sections to gain a complete understanding of the Model Policy.

The Model Policy has been drafted and refined first and foremost to implement the snow and ice management responsibilities and support the discretion of cities and counties in allocating authority and making snow and ice management decisions.

## **SECTION A – INTRODUCTION**

The Introduction paragraphs (1-7) express the elements to be considered and weighed by cities and counties engaged in snow and ice management.

Importantly, this section provides a framework for judgments made by authorized individuals in making snow and ice management decisions. Some of the information in these paragraphs is articulated in other manuals and policies relied on by snow and ice management professionals in Minnesota. Specifically, the Committee agreed that a foundation for liability protection is of critical importance if cities and counties are to be comfortable in considering the environmental impact of snow and ice management practices, where incorporating such considerations may result, for example, in moderating the use of salt or sand in appropriate instances.

As explained elsewhere in this Guidance Document, individual city councils and county boards will make the decision to use this Model Policy. Sections B, D, E, and F of the Model Policy provide strong backing for the exercise of discretion by such bodies in snow and ice management policy making.

## **SECTION B – SNOW AND ICE MANAGEMENT PRIORITIES**

The purpose of this section is to clearly state that authority is delegated to the decision maker to balance numerous considerations (*see* Section A-1-8).

The Committee discussed how distinct local service priorities are based on local roads, temporary and permanent conditions, and public expectations. Committee members agreed that level of service policies as decided and maintained by individual cities and counties are a better foundation for best management practices than a uniform level of service policy for all cities and counties. The Committee agreed that, like other actual substantive and technical details, level of service details will be inserted into the Policy by cities and counties. The Committee discussed the substantial experience of cities and counties to effectively and efficiently manage snow and ice conditions.

### *Additional considerations*

The Committee considered the additional technical element of re-directing snow and ice management in response to snow and ice conditions. Committee members agreed that cities and counties may at their discretion develop or rely on existing policies for modifying normal level of service.

## **SECTION C – TRAINING**

Section C defers authority to cities and counties to determine training requirements and programs for snow and ice management professionals and other personnel. This training section provides a structure for cities and counties to use and delegate judgment to determine appropriate training.

The Committee references training best practices, included in the MPCA-published manuals and existing policies, in the Model Policy. The Committee did not create new responsibilities for cities and counties in this section. The Committee agreed that more cities and counties would adopt the model policy and consider appropriate training opportunities for operators, and education for the public, without a requirement in this section that training be conducted. However, liability protection of a city or county will be strengthened when administrative or operational personnel exercising delegated discretion under the policy have received training and the training is documented. The Committee agreed that documentation of training is already practiced among snow and ice management entities, and included this requirement in the policy.

The Committee agreed that requiring specific training in the Model Policy would make it difficult for private operators that would need to navigate different city-by-city training requirements, and opted to instead encourage non-mandatory training. The Committee agreed that training such as Smart Salting level 1 and level 2, should be considered by jurisdictions and private operators for inclusion in a training program.

Other useful snow and ice management tools that the Committee discussed as beneficial resources are the MPCA web-based report card reflecting compliance with snow and ice management best practices, and the MPCA's Twin Cities Metropolitan Area Chloride Management Plan (2016), which includes training and educational resources.

Finally, Committee discussions noted that other city or county departments, in particular those with emergency response authorities, have a role in ice and snow management. This section includes an important reminder that training may be important not only for public works personnel or other city or county personnel within the department specifically responsible for ice and snow management, but also, and in some respects, even more so, for personnel in other departments with a coordinative or supportive role.

## **SECTION D – DELEGATIONS OF AUTHORITY**

It is not practical for the city council or county board of commissioners to craft the details of ice and snow management policies. More so, these details and the judgments necessary to determine them require expertise that these policymaking bodies do not have. Policies must leave room for judgment to be exercised under the immediate circumstances of a weather event.

The law governing liability protection recognizes this and therefore extends protection for discretionary decisionmaking beyond the policymaking body to city and county employees who must exercise judgment in carrying out their responsibilities. It is important, however, for the delegation of such discretionary decisionmaking authority from the city council or county board to be clearly evident. This section creates a framework for the city or county policymaking body to delegate authority to establish and implement local snow and ice management policies.

The section includes space to insert an individualized city or county complaint documentation and response policy to accommodate individual city and county complaint handling practices, which reflect different abilities to manage timing and response to complaints. The Committee discussed how some jurisdictions have the resources to respond to complaints immediately, others have a different policy for complaints received during the day and those received at night, and others have a 24-hour response policy. Committee members agreed that allowing the flexibility for jurisdictions to incorporate these specific policies in the Model Policy is the most workable approach.

### *Authority to enter into contracts for services*

Paragraph 1 of this section concerns contracting for snow and ice management services. It does not state the policy of the city or county personnel as to whether it will enter into such contracts and, if so, whether the city council or county board must approve a particular contract; each city or county should incorporate its policy in this regard. What the section does do, however, is mandate a specific set of terms that any such contract must include to provide a basic framework of contract-based liability protection for the city or county.

### *Operational and technical policy authority*

Paragraph 2 of this section delegates to a specific administrative employee (which may be a city/county engineer, a director of public works, or similar) the authority to establish and modify operational and technical snow and ice management policies. As noted above, this delegation recognizes that while certain judgments such as overall

safety risk level and program funding lie at the level of the policymaking body, other judgments critical to setting management policies rely on expertise and experience held at the administrative level.

The Committee agreed to leave to cities and counties the discretion to determine protocols for snow and ice management, but to require balancing of considerations listed in Section A, as well as specific environmental considerations (see Section D-2-c). The criteria in this section reference the two MPCA-published manuals (Parking Lot Sidewalk and Maintenance Manual (MPCA, 2015), and Minnesota Snow and Ice Control Field Handbook for Snowplow Operators (Minnesota Local Road Research Board, 2012)) on which cities, counties, and private operators rely. It is advised that city and county personnel maintain awareness of best practices and conform to them as appropriate. That a particular policy or practice conforms to best practices tends to be evidence that the policy or practice reflects a sound balancing of relevant public concerns and tends to show that personnel are operating with due care.

#### *Exercise of judgment by field personnel*

Paragraph 3 of this section authorizes snow and ice management personnel to adjust snow and ice management operations consistent with city or county policy. The Committee agreed that trained and experienced operators are constantly balancing numerous considerations when managing snow and ice operations. A common, agreed upon thread in the Committee's discussion is that each snow and ice event is different, and that operator discretion and professional judgment is frequently involved in managing snow and ice operations. Because operational activity that does not involve judgment and discretion does not fall within the liability protections afforded by law, it is important to document that during snow and ice operations, even field personnel are engaged in discretionary activity that rests on their experience and training. Subject to certain exceptions, state traffic laws do not apply to persons, motor vehicles, and other equipment while actually engaged in work on highways. See Minnesota Statutes §169.035, subd. 1 (b)(2).

### **SECTION E – OPERATIONAL FRAMEWORK**

This section establishes a framework for operational considerations in snow and ice management, and delegates authority to cities and counties to insert the substantive and technical details of these provisions.

Snow and ice management entities have extensive experience in managing operations. The Advisory Committee agreed that, rather than prescribing new policies duplicating existing, locally created and functional operational frameworks, this Model Policy

section should have as its purpose to not duplicate what exists and works. This section provides spaces for snow and ice management entities to insert current policies, and also offers model language for jurisdictions without these policies, or that are interested in revising their policies. This section reflects the Committee’s agreement that snow and ice managers and operators with extensive discretion under this Model Policy to manage snow and ice must document a deviation from the Model Policy. Some paragraphs, such as E-4, Damage to Personal Property, may be cross-referenced with the existing jurisdictional claims policy for each city and county.

#### **SECTION F – ASSUMING RESPONSIBILITY FOR PRIVATE ROADWAYS OR PARKING AREAS**

Section F generally applies to snow and ice management by a city or county with respect to roadways or other surfaces that are not owned by or otherwise under the operational responsibility of that public entity. The Committee noted that different jurisdictions may have policies in place regarding snow and ice management on private property, and agreed that a space should be included for existing city or county policies. The purpose of this statement in the Policy, however, is to establish explicitly that the public body does not have a responsibility unless there is an affirmative, documented agreement to the contrary.

#### **RULE G – COORDINATION WITH OTHER JURISDICTIONS**

Section G aims to minimize conflict and ensure mutual understanding with other jurisdictions by clarifying snow and ice management responsibilities on boundary roads, parking lots, sidewalks, and other areas. The section includes a space for cities and counties to list those streets and other areas managed by the state. In response to discussion among Committee members, the Advisory Committee agreed that the section should require cities and counties to coordinate with nearby jurisdictions to better be able to balance the considerations in Section A, and facilitate the operation of the Model Policy alongside the policies of other jurisdictions.

Section G includes a space to insert individual city and county call-out/ coordination lists under the “Distribution” paragraph. Inclusion of the city/county call-out/coordination list is optional. Cities and counties have the option of cross-referencing these lists if they already exist elsewhere in the city/county.

**Table 1 – Technical Advisory Committee participants**

<b>Name</b>	<b>Affiliation</b>
Jeff Davies	City of Grand Rapids
Mark Maloney	City of Shoreview
Dan Plizga	City of Rochester
Steven Lawrence	City of St. Cloud
John Wickenhauser	Carver County
Matt Morreim	City of Saint Paul
Craig Eldred	City of Waconia
Becky Christopher	Minnehaha Creek Watershed District
Erica Sniegowski	Nine Mile Creek Watershed District
Claire Bleser	Riley Purgatory Bluff Creek Watershed District
Doug Snyder	Mississippi River Watershed Management Organization
Cassie Larson	Minnesota Nursery and Landscape Association
Brooke Asleson	Minnesota Pollution Control Agency
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