

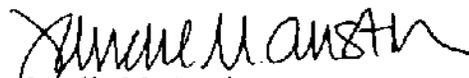
Memorandum to Municipal Clients  
Page 2

establish snow and ice removal practices based on the type of the road and the extent the road is traveled. Cannon v. Inhabitants of Brookline, 256 Mass. 468 (1926); Green v. Wilmington, 339 Mass. 142 (1959). Discretion is afforded to the Town's maintenance of a public road because of the financial pressures affecting local government. Sturdy v. Planning Board of Hingham, 32 Mass.App.Ct. 72 (1992). Therefore, to satisfy the requirements of Chapter 84, municipalities should continue to perform snow and ice removal activities, including plowing, salting and sanding, in order to keep roads reasonably safe and open for travel during and following inclement weather. Since snow and ice removal on public ways is already specifically addressed under Chapter 84, however, the Papadopoulos decision does not increase or otherwise alter municipal responsibilities or liability relative to snow removal on public ways.

As you assess snow removal in your municipality, please be aware that the Legislature recently adopted G.L. c.40U, a new local acceptance statute, which allows municipalities to adopt ordinances and bylaws relative the removal of snow and ice on sidewalks and impose fines for private property owners' failure to remove snow and ice from abutting sidewalks. The text of the statute is available online at <http://www.malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter26>. Chapter 40U provides for a local administrative hearing process for handling fines, similar to the G.L. c.148 procedure for building and/or fire code violations. Municipalities already have the authority, however, pursuant to G.L. c.40, §21, to adopt by-laws or ordinances regarding the removal of snow from roofs and sidewalks.

In summary, under both the Papadopoulos decision and Chapter 84, municipalities have an affirmative obligation to remove snow and ice on their property and on public ways to minimize potential injuries or damage. Accordingly, municipalities may wish to review their snow and ice removal practices prior to the upcoming winter season to ensure that effective removal procedures are in place during inclement weather.

Very truly yours,

  
Janelle M. Austin