

OWNER OBLIGATION TO REMOVE SNOW AND ICE FROM TOWN ROADS

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Town officers know too well the problems that can occur when owners or occupants of land push, throw, or otherwise deposit snow or ice within a town road right-of-way. To help address this problem and the costs associated with cleaning owner deposited snow or ice from roads, in 1997 the legislature adopted Minn. Stat. § 366.016.

The section, which was modeled off of the obligation in Minn. Stat. § 366.015 for owners to remove rocks, weeds, and small brush from road ditches, creates an opportunity for a town board to submit a question to the town electors at a town election asking if owners or occupants should be responsible for removing snow or ice they deposited in a town road right-of-way adjacent to their property. Specifically, the ballot question asks:

"Shall persons who own or occupy real estate that adjoins a town road and is not a part of an incorporated municipality be required to remove snow or ice, or both, that has been caused to be deposited by the property owner or occupant upon the town road right-of-way adjacent to their land?

Yes
No"

If a majority of the town electors voting on this question vote yes, owners and occupants that deposit snow or ice on town road rights-of-way can be made to remove them. If they fail to do so, the statute provides a process for the town to be reimbursed for the expenses it incurs to remove the snow or ice by certifying the costs to the county auditor for inclusion on the property's taxes. One of the steps in the procedure is providing 10 days' mailed notice before the town removes the snow or ice.

A practical issue that arises regarding the notice requirement is that in most cases a town cannot, or should not, wait 10 days after it has discovered snow was placed within the right-of-way to remove it. Once a town is made aware of a potential safety hazard such as snow piled in the road, it needs to immediately take steps to correct the situation. Presuming the legislature was aware of this obvious need to promptly correct hazardous situation created by the placing of snow in a road right-of-way, one can assume the legislative authority does not necessarily require the 10 days prior notice each and every time an owner places snow in the right-of-way. In order to give common sense meaning to the legislation and to avoid an otherwise absurd result, a town must be able to act to protect the public and still be able to recover its costs. A town's ability to charge for its immediate removal of snow or ice should, at a minimum, be triggered once the owner or occupant has been put on notice of their obligation to remove snow and ice.

The following incorporates this common sense approach for correcting hazardous situations and for imposing a charge on those owners and occupants that fail in their duty to remove snow or ice they deposit in the right-of-way. In general, the procedure is as follows: 1) Upon the initial discovery of snow or ice placed in a town road right-of-way that poses a hazard, the board takes immediate steps to

remove the hazard; 2) The town then sends notice to the owner/occupant indicating that they have failed to comply with their obligation to remove snow and ice and that if it occurs again the town will remove the snow and charge the expenses against the taxes of the property; 3) If the owner/occupant again places snow or ice in the right-of-way in a way that creates a hazard, the board takes immediate steps to remove the hazard; 4) Detailed records are kept on the costs associated with removing the snow or ice adjacent to the particular property, and notes or pictures should be created to support the town's assertion that the snow or ice came from a particular property; 5) The town sends notice to the owner and occupant that the town removed the snow and that the costs will be placed on the property taxes; and 6) The town certifies the costs to the county auditor for collection as part of the taxes on the property.

The materials and procedures that follow reflect this approach to the statute. It should be noted that this particular interpretation of the statute is only to be employed if the snow or ice poses a direct safety hazard to the traveling public. There may be instances where an owner improperly places snow or ice in the right-of-way, but the piling does not pose a direct hazard to the public. The town may want to take steps to remove the snow, but in those cases it may have sufficient time to give 10 days notice to the owner to have them remove it before the town takes action to remove it if the owner/occupant fails to do so.

It is important for towns to note that this process was put in place to assist towns to defray the costs of cleaning their roads of snow and ice deposited by owners/occupants. It did not change the fact that it is against the law to put snow or ice in a public right-of-way. Under Minn. Stat. § 160.27, subd. 5, it is a misdemeanor to deposit snow or ice in a road right-of-way. The law also considers it littering to place snow or ice in a right-of-way, which is punishable as a misdemeanor. Minn. Stat. § 169.42, subd. 1 & 5. If an owner or occupant continually violates these prohibitions, in addition to the cost recovery procedures the legislature made available in Minn. Stat. § 366.016, the board can also consider contacting the sheriff's department for possible action under the criminal statutes.

In both cases, proof that a particular person placed the snow or ice in the right-of-way is critical. The board may want to make provisions for its snowplow operator or contractor to take pictures showing the deposit of snow or ice, paying particular attention to capturing any signs that the snow or ice came from a particular property (tracks, snow trails, etc.). This may seem a bit much, but such proof will become very important if the town wishes to pursue criminal charges or if the owner challenges the town placing the costs on their taxes.

PROCEDURE FOR ADOPTING AND ENFORCING THE SNOW AND ICE REMOVAL OBLIGATION

1. The town board makes a motion to ask the snow and ice removal obligation question at the next town election. Possible motion: *“I make a motion that the town submit the question of making owners and occupants responsible for snow and ice removal as provided for in Minnesota Statute 366.016 to the electors at the next town election.”*
 - a. This decision must be made at least 53 days before the town election to allow the town clerk to notify the county auditor of all ballot questions that will be submitted at the election. Minn. Stat. § 205.16, subd 4.
2. The town clerk develops the proper blue question ballot using the question language from the statute. Refer to Minn. Stat. § 205.17, subd. 4 & Minn. R. 8250.0390.
 - a. The Secretary of State’s Office sends a sample ballot question form to towns before each town election.
 - b. Ballot questions must have a title that is to be approved by the town’s attorney before it is used. Minn. R. 8250.0390, subp. 2. A possible title for this question is: ESTABLISHING OBLIGATION TO REMOVE SNOW FROM RIGHTS-OF-WAY.
3. Submit the ballot question to the voters at the town election.
4. If a majority of those voting on the question vote “yes,” then the obligation has been created.
5. Contact the county auditor to learn his/her preferences about certifying expenses to their office if someone does fail to comply with their obligation to remove snow or ice. Ask about the timing of the certification and whether each instance should be certified separately or if they can be certified in a group (though still listed separately) at the end of the month or at the end of the season.
6. At a board meeting, the town board should adopt a resolution to more specifically define the nature of the obligation. See Appendix A.
7. Consider placing a notice in the paper each fall reminding owners of the need to avoid placing snow or ice in the rights-of-way. See Appendix B.
8. If the board notices that snow or ice has been placed in the town road right-of-way, determine if the snow or ice will interfere with maintenance or will be a safety hazard. If so, follow the “Hazard” procedures below. Otherwise, follow the “No Hazard” procedures to address the situation.

HAZARD	NO HAZARD
Have the snow or ice immediately removed at town expense.	Send notice to owner & occupant indicate their obligation to remove the snow or ice with an affidavit of service. <u>See Appendix D & F</u>
Send notice to the owner & occupant. <u>See Appendix C</u>	If the owner/occupant does not remove the snow or ice at least 13 days from the date of the notice, have it removed and keep detailed records of the costs.
If owner/occupant again creates a hazard by placing snow or ice in the right-of-way, immediately remove it. Keep detailed records of the costs and proof of where it came from.	Certify the costs to the county auditor. <u>See Appendix G</u>
Send notice to the owner with an affidavit of service. <u>See Appendix D & F</u>	
Certify the costs to the county auditor. <u>See Appendix G</u>	

RESOLUTION
_____
OWNER OBLIGATION TO REMOVE
SNOW OR ICE FROM RIGHTS-OF-WAY

WHEREAS, Minn. Stat. § 366.016 creates an opportunity for town electors to vote to require owners or occupants of real estate that adjoins a town road and is not part of an incorporated municipality to remove snow or ice, or both, that has been caused to be deposited by the property owner or occupant upon the town road right-of-way adjacent to their land;

WHEREAS, at the annual town election held on the ____ day of March, 20____ the question described in Minn. Stat. § 366.016, subd. 1 was submitted to the electors and was passed by a majority of the town electors voting on the question;

WHEREAS, the removal of snow or ice, or both, from town road rights-of-way is important to the proper maintenance of the rights-of-way, public safety, and the safety of those providing snow removal services to the town;

NOW, THEREFORE, BE IT RESOLVED, that persons who own or occupy real estate that adjoins a town road and is not part of an incorporated municipality are required to remove snow or ice, or both, that has been caused to be deposited by the property owner or occupant upon the town road right-of-way adjacent to their land;

NOW, THEREFORE, BE IT FINALLY RESOLVED, that the town board of _____ Township, _____ County, Minnesota shall follow the following procedures regarding the administration and enforcement of the obligations imposed on owners and occupants under Minn. Stat. § 366.016:

1. (OPTIONAL) *The town board shall publish, in a local newspaper, an annual notice indicating the prohibition of placing snow or ice in town road rights-of-way and the obligation of owners and occupants to remove snow or ice if they do place either or both within a town road right-of-way. Failure of the board to publish the annual notice does not relieve an owner or occupant from the necessity to fully comply with the removal obligation or in any way prevent the town board from enforcing the obligation or exercising any other right available to it under law.*
2. A person that places snow or ice in a town road right-of-way and does not immediately remove it is in violation of state law and the obligation enacted under Minn. Stat. § 366.016 and is subject to both criminal prosecution and a lien being placed against the property they own or occupy for the expenses the town incurs to remove the snow or ice.
3. If the town determines the snow or ice placed in the town road right-of-way does not interfere with the safety or maintenance of the road, the owner and/or occupant of the property will receive mailed notice, along with an affidavit of service, of the violation and the obligation to remove the snow or ice, or both. If the snow or ice is not removed within 10 days of the date of the notice or the date indicated in the notice as the deadline for removal, whichever is later, the town will cause the snow or ice, or both to be removed. The expenses the town incurs to remove the snow or ice will be certified to the county auditor as a lien on the real estate. The amount is a tax upon the land and will be collected in the same manner as other real estate taxes.
4. If the town determines the snow or ice placed in the town road right-of-way does interfere with the safety or maintenance of the road, the town will provide for the removal of the snow or ice. The town board may then send notice, accompanied by an affidavit of service, to the occupant or owner of the parcel as stated in the records of the county auditor, stating the failure to remove snow or ice from the

town road right-of-way adjacent to the their land. If the owner or occupant thereafter fails to immediately remove snow or ice, or both they place in a town road right-of-way, the expenses the town incurs to remove the snow or ice will be certified to the county auditor as a lien on the real estate. The amount will be a tax upon the land and will be collected in the same manner as other real estate taxes.

Adopted this ____ day of _____, 20____.

Town Board Chair

Attest: _____
Town Clerk

_____ TOWNSHIP
SNOW AND ICE NOTICE

Owners and Occupants of land in _____ Township are prohibited by law from placing snow or ice on town road rights-of-way. Those who violate this prohibition are guilty of a misdemeanor. If snow or ice is deposited on a town road right-of-way, the owner or occupant is obligated to immediately have it removed. Failure to do so can result in the town having the snow or ice removed and the costs of removal placed on the taxes of the property.

STATE OF MINNESOTA)
COUNTY OF _____) ss.
TOWNSHIP OF _____)

Date: _____

NOTICE

PLEASE TAKE NOTICE that the town board of _____ Township,
_____ County, Minnesota has determined that the owner or occupant of the property
located at:

[describe the property]

has failed to comply with the obligation to remove snow or ice as required under Minn. Stat. § 366.016,
and addressed in a town resolution adopted on the _____ day of _____, 20__, on
the town road known as _____, that is adjacent to said property.
Also, placing snow or ice in a public road right-of-way is against the law and is punishable as a
misdemeanor.

YOU ARE HEREBY NOTIFIED that if the owner or occupant of the property deposits snow or ice in
the right-of-way in the future the town will provide for its removal and the removal expenses will be
certified to the county auditor as a lien on the real estate. The amount will be entered as a tax on the
land and will be collected in the same manner as other real estate taxes. If the town board determines
the snow or ice interferes with safety or maintenance of the road, the town board may take steps to have
the snow or ice immediately removed without providing you any further notice.

Dated this _____ day of _____, 20__.

Town Clerk

APPENDIX D
Individual Notice of Work Done

STATE OF MINNESOTA)
COUNTY OF _____) ss.
TOWNSHIP OF _____)

Date: _____

NOTICE

PLEASE TAKE NOTICE that the town board of _____ Township,
_____ County, Minnesota has exercised its authority under Minn. Stat. § 366.016 to
remove snow and/or ice from the town road right-of-way adjacent to the property you own or occupy.
In accordance with the town's resolution adopted on the _____ day of _____, 20____, and as
you were informed in an earlier notice sent you by the Township, the expenses of the removal will be
certified to the county auditor as a lien on the real estate and will be entered and collected as a tax on the
property. As of the date of this notice, the amount thus far that will be certified to the county auditor is
\$_____.

To avoid future expenses being added to the taxes of the property, do not place snow or ice within the
town road right-of-way. To the extent you do place snow or ice in the right-of-way, you are obligated to
immediately remove those items or the town will once again remove them and charge the expenses
against the taxes of the property without providing you any further notice.

Dated this _____ day of _____, 20____.

Town Clerk

STATE OF MINNESOTA)
COUNTY OF _____) ss.
TOWNSHIP OF _____)

Date: _____

NOTICE

PLEASE TAKE NOTICE that the town board of _____ Township,
_____ County, Minnesota has determined that the owner or occupant of the property
located at:

[describe the property]

has failed to comply with the obligation established under Minn. Stat. § 366.016 to remove snow and/or
ice from the town road right-of-way known as _____, that is adjacent
to said property. *[Add additional descriptive information as needed to describe the particular problem
area that needs to be corrected.]*

Also, placing snow or ice in a public road right-of-way is against the law and is punishable as a
misdemeanor.

YOU ARE HEREBY NOTIFIED that you must provide for the removal of snow and or ice by
_____, 20____ *[allow at least 13 days from the date of the notice]* or the town board will
have the work performed. The expenses incurred by the town to perform the work are a lien on the
property and will be entered and collected as a tax on the property.

Dated this _____ day of _____, 20__.

Town Clerk

AFFIDAVIT OF MAILED NOTICE

[illegible]

_____, being duly sworn on oath, deposes and states that on the _____ day of _____, 20____, s/he served the attached **Notice** regarding failure to comply with the snow and ice removal obligation imposed under Minn. Stat. § 366.016 upon

[List the names and addresses of those receiving the notice]

by depositing a true and correct copy thereof in the United States mailbox / post office located at _____ with postage prepaid thereon.

Signed: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

APPENDIX G
Certification of Expenses

STATE OF MINNESOTA)
) ss
COUNTY OF _____)

CERTIFICATION OF EXPENSES

TO: _____ COUNTY AUDITOR

The Town Board of _____ Township, _____ County, Minnesota hereby certifies the following expenses in the amounts indicated below as liens upon the parcels of property listed below as authorized in Minn. Stat. § 366.016, subd. 2.

The county auditor is required to enter the amounts herein certified on the tax books as a tax upon the described parcels. The amount shall be collected in the same manner as other real estate taxes and paid over to the Township along with any applicable interest and penalties.

This certification is made pursuant to the authority provided in Minn. Stat. § 366.016 to collect expenses incurred by the Township for the failure of an owner and/or occupant to remove snow or ice they have deposited upon a town road right-of-way.

Property	Date	Work Description	Amount

Dated this _____ day of _____, 20____.

Town Clerk