

The Corporation of the Municipality of Leamington

By-law 17-23

By-law to amend By-law No. 288-13 a By-law to permit the construction of sidewalk patios in the uptown area.

Whereas Council of The Corporation of the Municipality of Leamington, at its meeting held April 22, 2013, enacted By-law No. 288-13 being a by-law to permit the construction of sidewalk patios in the uptown area;

And whereas Council of The Corporation of the Municipality of Leamington at its meeting held March 28, 2023 considered Report ENG-11-23 and now deems it necessary to amend By-law No. 288-13;

Now therefore the Council of The Municipality of Leamington enacts as follows:

1. That Schedule C of By-law No. 288-13 be deleted and replaced with the attached Schedule C Sidewalk Patio Guidelines.

SCHEDULE C

Sidewalk Patio Guidelines

Approval Requirements: The Municipality of Leamington will determine whether the sidewalk patio design and location is acceptable. The Municipality may refuse to grant approval or impose such terms and conditions as are consistent with the guidelines contained herein.

Other Approvals: Approval for a sidewalk patio must comply with other approvals such as the Health Unit, the Liquor Control Board of Ontario (LCBO) and any other regulatory bodies governing the sale of food and /or beverages or the public health. Approval by the property owner is also required by written consent.

Security Deposit: Prior to the application being approved, the Owner shall pay to the Municipality a security fee in the amount of \$ 1, 000.00 cash to ensure the Owner completes the Owner's obligations imposed by By-law 288 -13 and conditions attached to the application approval. If the Owner fails to comply with said obligations, the Municipality may use all or part of the security deposit toward correcting the non-compliance. If the Owner completes all the Owner's obligations in a manner satisfactory to the Manager of Engineering, then the Municipality shall refund all or part of the security deposit, as applicable, to the Owner.

Information Requirements: The applicant shall submit a site plan, drawn to a minimum scale of 1: 250, which shows the delineated area of the proposed sidewalk patio and proposed locations and placement of planters, awnings, tables, chairs, fences and all other accessories in relation to the public sidewalk and to the indoor restaurant associated with it. The site plan shall show (within 6 metres of the development) the location of utility

poles, utility pedestals, utility valves, parking spaces, parking markings, hydrants, parking meters, shelters, manholes, traffic signs, catch basins, awnings, planters, curbs, wheelchair ramps, easements and any other physical or drainage feature of the street or beyond 6 metres of any public utility that may be affected by the development. Number of washrooms provided by the establishment is required.

The following information should be considered in the application process for installing a patio within the road authority's right-of-way.

1) Diagram / design drawings of the proposed patio (Patio Plan) that provide the details as listed below. Stamped drawings from a Professional Engineer licensed to practice in the Province of Ontario are required for patios where the roadside barrier, crash cushion, and attenuator must be compliant with the Manual for Assessing Safety Hardware (MASH). This includes Option 1A and Option 1B layouts, as illustrated in Appendix A.:

- a) Roadside protection as outlined in these guidelines
- b) Temporary signing and delineation as outlined in these guidelines
- c) Location and dimensions of the patio entrances, exits, and access to washrooms, in accordance with the Integrated Accessibility Standards for the Design of Public Spaces
- d) Location and use of the adjacent buildings and their entrances and exits
- e) The location and dimensions of the patio and its entrances and exits
- f) Area of the patio in square metres (and square feet)
- g) Width of sidewalk occupied in metres
- h) Length of sidewalk occupied in metres
- i) Number of parking spaces occupied
- j) Width of sidewalk that will remain unobstructed (to be at least 1.8 metres)
- k) The location / dimension of any enclosures, umbrellas, tents, awnings, etc.
- l) The location, height, and construction material to be used for the boundary fence, gate location, and width of gate
- m) Location of fire extinguishers
- n) Location of trees
- o) Location of tables, chairs, other furniture or installations, etc. and the distance between them to demonstrate how the patio will be accessible to patrons with limited mobility
- p) Location of all municipal services and/or assets within or adjacent to the patio (e.g., location of curbs, municipal parking spaces, sidewalks, hydrants, storm sewer grates, manholes, trees, hydro poles, streetlights, benches,

garbage cans, sign poles, etc.)

- q) Identify whether any of these elements would need to be removed or relocated to accommodate the design. (Additional fees may apply for removal or relocation, if such modification is permitted)
 - r) Access to municipal improvements such as trees
 - s) The location of transit stops close to the patio
 - t) The address of the business
 - u) The number of seats on the patio
 - v) The maximum occupant load of the business and patio according to the Ontario Building Code
- 2) Certificate of Insurance
 - 3) Proof of a proper liquor license (if alcohol will be served at the patio)

Design: The design of the sidewalk patio should be consistent with the age and character of the building for which it serves as an accessory use, and where the municipality has established urban design guidelines (Section 10.7 of the CIP) for a specific area, these shall be considered in review of applications. Patios should be designed to contribute and integrate into the streetscape. Material and landscaping should be high quality and reflect the character of the building and business.

Conditions of Approval:

a) **Insurance:** The operator of a sidewalk patio must carry a minimum of \$ 5,000,000 Commercial General Liability insurance, extended to include the proposed patio area (include portions of the parking lane or curb lane included in the patio), including bodily injury including death, property damage, personal injury, liquor liability (if applicable), contingent employer's liability and cross liability, products and completed operations, contractual liability and non-owned automobile. This policy shall be endorsed to include The Corporation of the Municipality of Leamington, its Council and Employees and any persons, firms or corporations designated by the Municipality as an Additional insured, for the operation of the sidewalk patio. The Operator must indemnify the Corporation of the Municipality of Leamington safe and harmless from any and all claims of injury to persons or damage to property attributable, in whole or in part, to the existence, location and operation of a sidewalk patio in the public right-of-way and extend to collisions that occur away from the business premises and patio area but are alleged to have emanated from the use and operation of the business. Proof of insurance shall be provided before the permit is issued. Such insurance shall require notification to the municipality ten (10) days before cancellation.

b) **Accessory Use:** Sidewalk patios shall be located adjacent to an existing food and beverage establishment and shall be considered an accessory use. Sidewalk patios shall not extend beyond the frontage of the property containing the primary food or beverage establishment that the sidewalk patio is accessory to unless written permission is

obtained from the abutting property owners whose frontage is to be affected by the development.

c) **Hours of Operation:** A sidewalk patio shall be operated for no longer than the operating hours of the principle use to which it is accessory. The patio is to be secured during the time it is closed, chairs and tables stacked, and umbrellas stored.

Sidewalk Reservation: The minimum sidewalk reservation to be incorporated in a sidewalk patio design shall be 2.1m wide. The Manager may consider reduction of that reservation where in the opinion of Engineering Services, the design of the patio leaves sufficient clear space for the safe movement of pedestrians, but in no case shall the sidewalk width be less than 1.8m wide. Small sidewalk patios required 1.4m for a single row of tables and chairs.

e) **Temporary Sidewalks:** Where the sidewalk patio extends the width of the existing sidewalk, the operator shall provide temporary sidewalk adjacent to the sidewalk patio (see Appendix A), subject to the approval of Engineering Services who shall consider street design infrastructure, issues traffic movement and pedestrian safety issues. Unless otherwise approved by Engineering Services, the transition from sidewalk to temporary boardwalk shall be designed to provide a 2.1m wide unobstructed and level pathway for the movement of pedestrians and other sidewalk traffic from the sidewalk to the temporary boardwalk at an angle of no greater than 45°. If a straight pedestrian clearway cannot be maintained, the pedestrian path deviation must be less than 20°.

f) **Fencing:** Sidewalk patios may be fenced around the perimeter, but fences shall have a minimum height of 0.9m and a maximum height of 1.2m. Open fencing is required for the operation of a sidewalk patio. Fencing should incorporate a solid base perimeter to facilitate identification of the barrier by visually impaired individuals. Guards are required and subject to the OBC. Tall fencing should be avoided. Fencing around the perimeter of the interface of vehicular traffic will be required. Fencing may be wood, wrought iron or other suitable forms to ensure pedestrian safety and be of quality material and design (no chain link) and must not obstruct vehicular or pedestrian sightlines or fire routes. Temporary fencing, planter boxes and other vertical barrier materials must have retroreflective tape, or reflective flexi-posts at each end of the patio area, and preferably along the full length of the closure area. All other materials must minimize glare for nighttime road users.

g) **Structures and Awnings:** The installation of structures and awnings requires a development and building permit and shall conform to the requirements of the Ontario Building Code (OBC). Minimum clearance from the awning to the ground surface shall be 2.4m in all locations. Awnings cannot project over the sidewalk and must be secured to withstand against wind.

h) **Umbrellas:** Any umbrellas shall be located entirely within the approved sidewalk patio area and must be secured to withstand against wind. They must be a minimum of 2.1m above street level and shall not obstruct vehicular or pedestrian sightlines, visibility, or movement.

- i) **Waste and Storage:** The sidewalk patio operator shall maintain the sidewalk, temporary sidewalk, sidewalk patio area, and the immediately adjacent area, in a clean and safe condition at all times free of hazards at all times. Waste receptacles and workstations are permitted within the patio provided they are located with host stands and cannot be seen as a prominent feature within the space. The operator shall also ensure any refuse originating in the patio area is removed from the street right-of-way.
- j) **Access:** The operator shall maintain a minimum width of 1.8 metres of unobstructed walkway to the entrance of the building. Barrier-free access shall be maintained.
- k) **Landscaping:** Landscaping of the sidewalk patio is encouraged but should be of a temporary nature unless otherwise approved. Plant material must be high quality and contained within the approved sidewalk patio area. Planters may not exceed 0.5m in width and 1.0m in height. Landscaping shall be limited to a height of 1.2m from the surface of the sidewalk.
- l) **Lighting:** Any lighting of the sidewalk patio shall be of a temporary nature and shall not project onto or provide glare on adjacent properties or conflict with traffic control indicators or passing vehicular traffic. Additional lighting may be required as part of the patio installation. Lights may not exceed 3.0m in height and must be restricted to low voltage (12V system), 120VAC is not permitted.
- m) **Location:** The sidewalk patio shall not extend beyond the frontage of the property containing the use that the sidewalk patio is accessory to unless written permission is obtained from the abutting property owners whose frontage is to be affected by the development.
- n) **Signs and Advertising:** Any signs or advertising within the sidewalk patio area requires a sign permit, look professional and shall conform to the Sign By-law.
- o) **Sidewalk Patio Furnishings:** All tables, chairs and decorative accessories in the sidewalk patio should be constructed using weather-resistant materials and shall not obstruct vehicular or pedestrian sightlines, visibility, or movement.
- p) **Removal of Improvements:** Sidewalk patio furnishings, fences, awnings, screens, signs, lighting, and other sidewalk patio improvements must be removable and not permanently fixed in place. All objects must be contained within the approved sidewalk patio area and removed during the offseason or after the sidewalk patio ceases operation. The street, sidewalk and municipal property must be restored to its original condition to the satisfaction of Engineering Services.
- q) **Noise:** Music or other entertainment provided for patrons of a sidewalk patio shall not create a nuisance to abutting property owners. The Manager reserves the right to revoke agreements and permits, without reimbursement of fees, where this nuisance occurs. Nuisance may include, but shall not be limited to, police reports of loud, boisterous, or unreasonable noise, offensive language, or other disruptive behaviour. The Municipal noise by-law shall apply. Amplified sound is not permitted.

- r) **Utility Access:** The Municipality and all public utility agencies retain the right of access to the approved sidewalk patio area for the installation, maintenance, and repair of infrastructure such as but not limited to pipes, cables, wires, poles, hydrants, etc. as necessary. In case of emergency, no notice may be given. For scheduled work, a minimum notice of forty-eight (48) hours will be given. Sidewalk patio improvements shall be removed and reinstalled at the sidewalk patio operator's expense.
- s) **Emergency Vehicle Access:** The Municipality retains the right of access to the approved sidewalk patio for emergency vehicle access. If the curb lane patio is longer than 15m, a review may be conducted by the local fire department to determine whether any emergency access points must be installed as part of the fencing or lateral barrier. Should this be required, patio operator will be notified in writing from the road authority. An emergency access point is a space with an easily identifiable and removable piece of fencing, at least 1m wide.
- t) **Season:** Patios will be temporary and will have to be removed during the winter months. The months of operation shall be April 1 through October 1. All works to be removed from right-of-way by October 15. Written permission is required by the Manager to request extensions.
- u) **Materials:** Patios are to be constructed as a deck-type structure or located directly on the pavement. They may be fenced and may be enclosed by a roof.
- v) **Temporary Deviation:** The applicant will have to construct a temporary sidewalk deviation that allows for uninterrupted pedestrian access and adhere to the UDG of the CIP. Must meet the OBC. Temporary sidewalk must not impede pedestrian access, sidewalk cleaning or drainage and must be constructed at the same grade as the sidewalk.
- w) **Grants:** Applicant may apply for the CIP sidewalk patio grant program subject to available funds for properties located within the CIP boundary.
- x) **Installation:** Set up / take down on parking spaces or curb lanes can only be completed by a road authority or contractor who is trained and qualified in the OTM Book 7. Engineering Services will inspect the installation and removal of the temporary sidewalks.
- y) **Parking Space:** That the number of parking spaces be limited to only in front of the property restaurant (excepting transition sections) and cannot exceed 3 spaces including transition sections).
- z) **Contractors:** All contractors should comply with the Municipality Health and Safety guidelines.
- aa) **Accessibility:** All sidewalk patio and sidewalk should be barrier-free with clear routes and maneuvering spaces for people using mobility devices on the patio. Accessible access to the patio must be provided with a minimum width of 1.8m. A minimum of one table or 20% of tables (whichever is greater) must be easily accessible. Per Accessibility for Ontarians with Disabilities Act and Municipal requirements.
- bb) **Smoking:** Smoking, vaping, and the use of cannabis is not permitted within a 9m radius of the perimeter of the patio area.

cc) **Capacity:** The total capacity of any licensed temporary patio must not exceed the capacity limit required by the Alcohol & Gaming Commission of Ontario (AGCO). The combined indoor and outdoor dining capacity of all patios must not exceed the capacity for the establishment's washrooms as determined by the Ontario Building Code. A temporary patio must have two separate exits when it is barricaded with fencing or railings and has a capacity for more than 60 people.

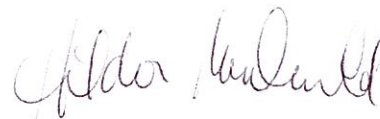
dd) **Roadside Barriers:** For all patios occupying either a parking lane or a curb lane on a roadway or where a pedestrian pathway has been diverted onto the roadway, a roadside barrier (along with a crash cushion or attenuator in some situations) must be installed to mitigate the risk of an errant vehicle striking either a pedestrian, restaurant patrons seated at tables or restaurant staff serving patrons. The roadside barrier, crash cushion and attenuator must be compliant with MASH (Manual for Assessing Safety Hardware) standards for some layouts. All barriers installed in parking or curb lanes shall be equipped with an appropriate amount of retro-reflective material to provide adequate daytime and nighttime visibility.

ee) **Temporary Signage & Traffic Control Devices:** For all patios occupying either a parking lane or a curb lane on a roadway or where a pedestrian pathway has been diverted onto the roadway, temporary signing and traffic control devices are to be installed to provide motorists and cyclists with advance warning of the presence of a patio and the potential need to change lanes (as applicable). For patios in a parking lane, a temporary sign in advance of the patio alerting motorists to the presence of a patio is to be installed at a location and distance determined by the road authority. Consideration should be given to mounting the sign on a utility pole so that it may be viewed over parked vehicles. TC-40L and TC-40R are to be used if pedestrians are being diverted onto the roadway.

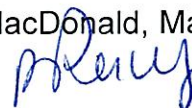
ff) **Cycle Lane Considerations:** Where patios are being installed within a bicycle lane, a temporary bicycle lane delineated using flexible posts should be installed to direct cyclists around the roadside barrier (space permitting). If it is not feasible to direct cyclists around the patio, the encroachment of the patio into the curb lane or parking lane should be reduced so that the bicycle lane can continue to be safely accommodated.

gg) **Sightlines:** Patio furniture, including umbrellas, shall not obstruct vehicular or pedestrian sightlines, visibility, or movement. At intersections and driveways, sightline triangles must be maintained per TAC (Transportation Association of Canada) Geometric Design Guide for Canadian Roads, Chapter 8 – Access. Fencing must not obstruct vehicular or pedestrian sightline or fire routes.

hh) **Miscellaneous:** For any other miscellaneous items that are not well-defined in the above "Conditions of Approval", refer to the most current OTC's "Restaurant Patio Guidelines within the Right-of-Way" for guidance.

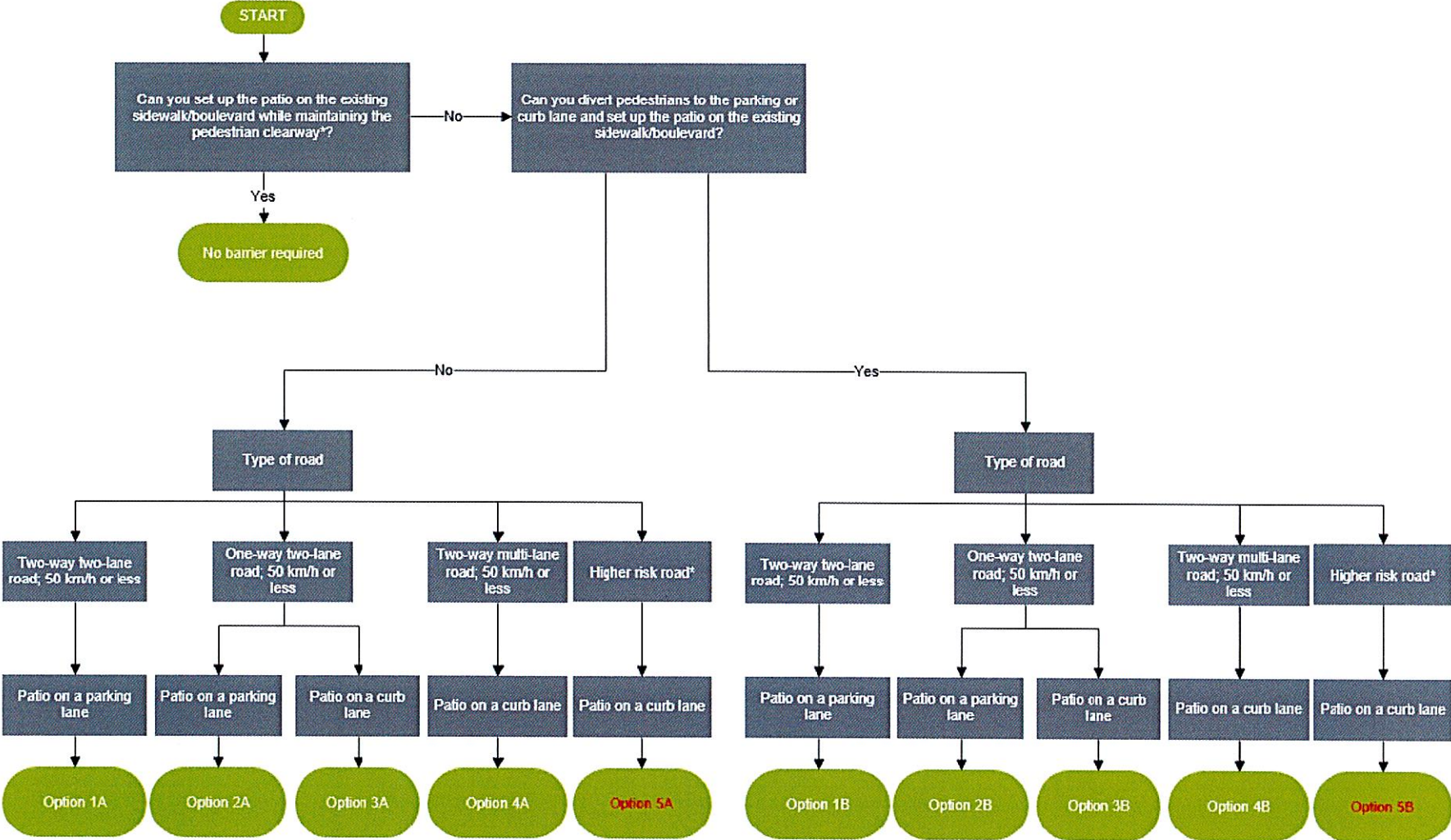


Hilda MacDonal, Mayor



Brenda Percy, Clerk

Appendix A – OTC Restaurant Patio Guidelines (April 2022) Relevant References











Note
 *Higher risk roads are one-way roads with multiple lanes (>2 lanes) or roads with a posted speed of 60 km/h

Option XX: Attenuator/cushion also required

Figure 1 – Flow Chart for Determining Roadside Protection, Temporary Signing and Delineation

Legend of Symbols used in the Typical Layouts

Legend	
Symbol	Description
	Traffic Control Devices - TC-54, TC51C or Flexible Delineator Posts
	Sign
	Barrier - MASH Test TL-1
	Barrier - MASH Test TL-2
	Barrier - Not Tested
	Attenuator/Crash Cushion
	Business Front
	Patio Area

Option 1A
Parking Lane Closed

<input checked="" type="checkbox"/> Parking-Lane <input type="checkbox"/> Thru-Lane <input type="checkbox"/> Sidewalk Diversion <input checked="" type="checkbox"/> No Sidewalk Diversion	<input type="checkbox"/> Single Lane - One Way <input checked="" type="checkbox"/> Single Lane - 2 Direction <input type="checkbox"/> Multi-Lane <input type="checkbox"/> High Risk
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* Refer to OTM Book 7, Table B

NOTES

- i) Barriers to be placed between 25-45 degrees upstream of patio to protect from lateral impact
- ii) Barriers installed to have minimum requirement of MASH test level TL-1 (or equivalent)

Option 1B
Parking Lane Closed

Parking-Lane

Thru-Lane

Sidewalk Diversion

No Sidewalk Diversion

Single Lane - One Way

Single Lane - 2 Direction

Multi-Lane

High Risk

*** Refer to OTM Book 7, Table B**

NOTES

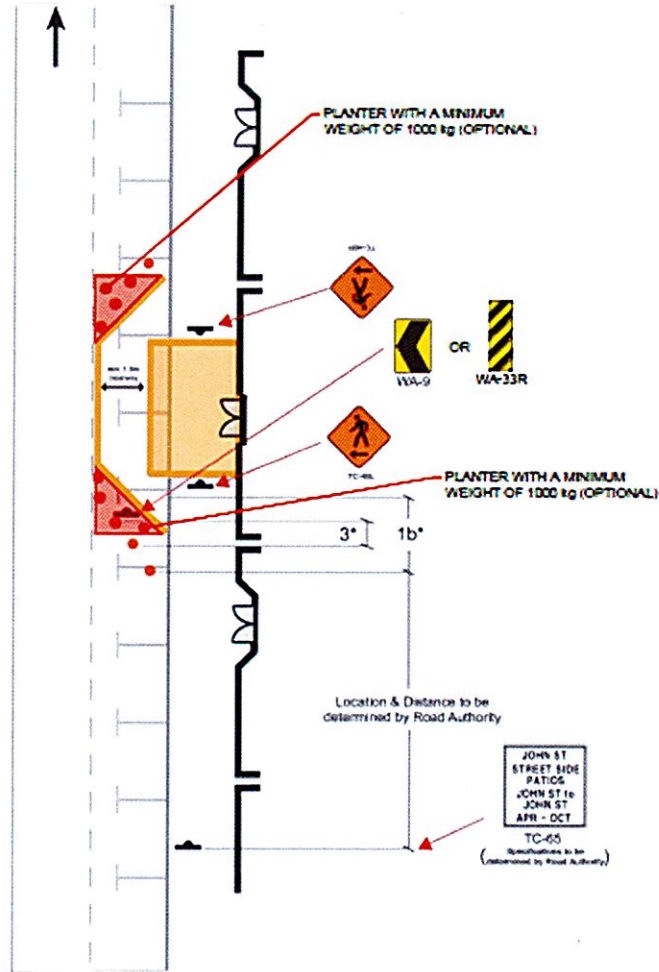
i) Barriers to be placed between 25-45 degrees upstream of patio to protect from lateral impact

ii) Barriers installed to have minimum requirement of MASH test level TL-1 (or equivalent)

ii) Temporary sidewalk to meet or exceed AODA requirements

Option 2B Parking Lane Closed

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> Parking-Lane | <input checked="" type="checkbox"/> Sidewalk Diversion | <input checked="" type="checkbox"/> Single Lane - One Way |
| <input type="checkbox"/> Thru-Lane | <input type="checkbox"/> No Sidewalk Diversion | <input type="checkbox"/> Single Lane - 2 Direction |
| | | <input type="checkbox"/> Multi-Lane |
| | | <input type="checkbox"/> High Risk |








Refer to OTM Book 7, Table B




NOTES

- i) Barriers to be placed between 25-45 degrees upstream of patio to provide positive guidance
- ii) No testing requirements for barriers or delineators utilized
- iii) Typical layout to apply when dividing median present for opposing directional traffic
- iv) Temporary sidewalk to meet or exceed AODA requirements




Delimiters No Mash Testing

	<p>The retractable bar is made of durable ABS plastic and wrapped in reflective sheeting for night-time visibility. Each end of the retractable bar has a rugged 3.25" loop that easily drops over any traffic cones or delineator posts. The bar comes in 2 telescoping lengths: 4' to 6' and 5' to 10'.</p>
	<p>The stem of the Grabber-Tubes are made of flexible yet durable fluorescent low density polyethylene material, with UV inhibitors to minimize fading. The recessed areas on the stem protect the reflective bands, minimizing rips and scratches. The extra large flange at the bottom of the stem allows the rubber base to hold it firmly in place.</p>
	<p>Commercial duty, sturdy rolling planter cage Barrier. Nicely finished to both sight and touch. Planters are lined for durability and many, many-years of plant growth. The product comes with original wood grain. It is ready for customizing color with spray paint or stain. Wood has been treated for outdoor use.</p>
	<p>TC 54 Premium Traffic Barrel with Handle Used in conjunction with standard Tire Base and 25 lb Rubber Octagon Base</p>
	<p>The Crowdcade Barricade is a 6' long multi-functional barricade system that is easy to set up and store. This device features heavy-duty rubber feet that rotate and lock for stacking purposes. The Crowdcade Barricade comes with holes on one side for mounting signs 24"W x 18"H and can be used wherever crowd control, pathways, and blockades are needed.</p>

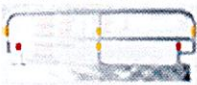

Water filled sled/ Sand attenuators (TL3 Mash Tested)

	<p>The Big Sandy Attenuator/Crash Cushion Sand Barrel is MASH Tested, Passed and Eligible, and meet the crash worthy requirements of NCHRP 350. Big Sandy Sand Barrels go above and beyond these requirement to provide the best in highway safety.</p>
	<p>The Delta Crash Cushion consists of a series of steel three beam fender panels supported by steel diaphragms. It attenuates energy evenly for all vehicle types with shear bolts tearing through cut-outs of various sizes and shapes. Quick and easy installation reduces exposure to traffic. Multi-directional object marker comes in Chevron, Left or Right angles, and can be quickly changed in the field.</p>
	<p>The Sentry Longitudinal Energy Dissipater (SLED) is a narrow, water filled non-redirection gaging crash cushion that is a MASH Tested, Passed, and Eligible TL1 / TL2 / TL3</p>

Mash Containment Level TL2 products

	<p>The SLED Mini is MASH Tested and Passed for Uni- and Bi-Directional applications as well as TL-2 End Treatment for the Traffic Water-Cable Barrier™ or Concrete Median Barrier</p>
	<p>The Lo-Ro Water-Cable Barrier is intended for applications where low deflection of barrier walls is desired. The durable design of the Lo-Ro Water-Cable Barrier's interlocking knuckles minimize rotation between modules to ensure maximum stability, while also having the lowest deflection of any MASH TL-2 Water-Filled Barrier at 11.9" (3.0m). Each Lo-Ro module has three galvanized steel cables that minimize vehicle penetration into the work zone, has a low profile height of only 36" to provide increased visibility for motorists in urban areas, and molded in stacking lugs for</p>
	<p>The Water-Wall Barrier is an economic and easy to install crash barrier system. The Water-Wall Barrier is a durable side protective temporary crash barrier system that can be used in many situations; from protecting the public surrounding a construction site, to work-zone safety on roads and highways.</p>

Mash Containment Level TL1 products

	<p>The Urban Barrier is a unique product that provides a straightforward, robust interlinking of barrier units with the help of its coupling arrangement – reducing the working width when compared to traditional construction barriers. This in turn provides more space for pedestrians and cyclists to pass the work site. The Urban Barrier is an ideal solution for work zones, bike lanes, restaurant patios, and more!</p>
	<p>The Water-Cable Barrier is designed with three (3) molded in galvanized steel cables that strengthen the water-cable barrier to resist vehicle penetration during an impact. The hinges are designed to allow a 30° pivot between sections and each hinge features a double wall knuckle design that greatly minimizes breakage. Each wall includes one (1) galvanized steel T-pin to securely link Water-Cable Barrier sections together.</p>