

**SUBJECT:** PRELIMINARY REPORT  
City Initiated Review of Potential Regulations to Permit Outdoor Patios on the Public Right of Way along Main Street Markham and Associated Design Guidelines

**PREPARED BY:** Sally Campbell, Senior Planner – Urban Design, ext. 2645

**REVIEWED BY:** Rino Mostacci, Director of Planning & Urban Design, ext. 4713

---

**RECOMMENDATION:**

- 1) That the report dated May 21, 2013, entitled “PRELIMINARY REPORT. City Initiated Review of Potential Regulations to Permit Outdoor Patios on the Public Right of Way along Main Street Markham and Associated Design Guidelines”, be received;
- 2) That the presentation entitled “Outdoor Commercial Patios in the Public Right of Way”, be received;
- 3) That Council adopt the three patio types (A, B and C) as potential layouts, where appropriate, for outdoor patios in the public right of way;
- 4) That Council approve the chart attached as Appendix “F” to the report, as it relates to Main Street Markham that recommends which patio type is considered appropriate for each business that has requested a patio, subject to review and approval by staff in accordance with patio regulations and design guidelines;
- 5) That Staff revise the Road Occupancy By-law to incorporate provisions to permit outdoor patios in the public right of way, where appropriate, across the City of Markham;
- 6) That Staff implement the necessary application process and administrative procedures, including the provision of information on the City’s portal;
- 7) And that Staff be authorized and directed to do all things necessary to give effect to this resolution.

**PURPOSE:**

The purpose of this report is to:

- Review how some other municipalities regulate the use of the public right of way for outdoor café and restaurant patios;
- Inform Council of potential patio types, regulations and design guidelines that would permit outdoor patios to operate in the public right of way along Main Street Markham (in the context of the road and streetscape improvements currently underway);
- Consider a potential application process to administer the above noted regulations, which would be managed through Operations with design review by Urban Design and Heritage Planning, as required;

- 
- Review the application of the above noted regulations to Main Street Markham; and
  - Seek Council direction to finalize the regulations, procedures and design guidelines as they relate to Main Street Markham with a view to expanding the permissions City-wide

**BACKGROUND:**

Since the mid-2000's a few businesses located in Markham Village and Unionville have, during the summers months, placed tables and chairs partly on private property frontages and partly encroaching onto the municipal right of way on an ad hoc basis. While not legally permitted or authorized by the municipality, these casual arrangements were tolerated. However, due their increasing popularity and scale, this type of sidewalk or boulevard patio has resulted in concerns relating to public safety, particularly in Unionville due to conflicts between pedestrians / patio users and vehicles parking on the west side of the street, as permitted, and accessing driveways to parking lots at the rear of stores.

In June 2012 the Manager of By-law Enforcement & Licencing and the Director of Operations brought a memo forward to General Committee to address these concerns and an interim solution was agreed to by Council for the 2012 patio season. The Council resolution at that time also included direction to staff to prepare Markham-wide Urban Design Guidelines and By-laws to permit boulevard patios and that those documents have regard to with the Main Street Markham Reconstruction Project.

In January 2012 the Community Engagement process for the Main Street Markham Reconstruction Project was initiated and a Project Liaison Committee (PLC) was established to receive information relating to the streetscaping components being designed for Main Street and to provide input and feedback. The stakeholder groups represented on the PLC include Heritage Markham, Markham Village Conservancy, Old Markham Village Ratepayers Inc, Markham Village City Ratepayers Association, Markham Village BIA, Main Street Markham Committee and Vinegar Hill Ratepayers Association.

The PLC met seven times during 2012 and at the April 2012 meeting the matter of accommodating restaurant patios along Main Street was initially raised. As a result, Urban Design staff hosted a half day workshop on June 6, 2012 with stakeholders representing both Main Street Markham and Unionville to review how other municipalities deal with the matter of permitting businesses to locate patios within the public right of way and what form the patios take in terms of their location, layout and the design of fencing, furniture, flower boxes, umbrellas, awnings et cetera.

The streetscape design for Main Street Markham Reconstruction project is complete and tenders for the reconstruction work have been received. In the event that there are any further adjustments to the construction drawings which affect the curb alignment and bump outs to accommodate patio space then such direction must be acted upon immediately to ensure the contractor to be selected can make adjustments prior to construction work commencing on July 2, 2013. For this reason, the City's position on the type of patios appropriate for Main Street Markham must be determined at this stage.

By-law Enforcement & Licencing and Operations are currently preparing a Road Occupancy By-law which will include provisions and public safety standards to permit patios within the municipal right of way. The Road Occupancy By-law will be considered by General Committee at a future meeting and the section relating to patios will reflect, as necessary, the resolution of Committee in relation to this report.

## **DISCUSSION:**

### **Urban Design Considerations and the Public Realm**

Streets, sidewalks, boulevards and other public spaces are municipally owned property and form part of what is termed the “public realm”. Within the public realm there is a distinction between the pedestrian and the vehicular environments. The vision for Markham’s public realm as set out in the new Official Plan is for safe, accessible and comfortable public spaces that add to the creation of vibrant, healthy and sustainable communities by emphasizing walkable streets and people places.

The pedestrian priority area within the public realm occurs between the curb and the private property line, which in an urban or heritage context is quite often the building face. The primary function of the sidewalk is to provide a safe, convenient and accessible path of travel whereas the boulevard typically buffers the sidewalk user and accommodates various streetscape elements, such as street trees, light poles, benches, waste and recycling receptacles, bike racks and other street furniture and utilities.

The number, scale and quality of these streetscape elements will vary across the City depending on the type of street, number of traffic lanes and space available in the right of way. A typical cross section on Main Street Markham comprises one 4 metre wide traffic lane in each direction, a 2 metre wide continuous sidewalk on both sides of the street and either a 2.5 metre wide parking lay-by / 0.5 metre wide continuity strip or a 3 metre wide extended boulevard (bump out) depending on the specific location along the street, as illustrated as Appendix A to the report.

### **Growing Popularity of Outdoor Patios**

The culture of dining and drinking on patios in the open air during fair weather has become increasingly popular with businesses and customers. When well designed, patios located in front of businesses either on the private property or within the public right of way can contribute to the animation and life of a street, allowing people to engage in street activities, providing a vibrant and attractive pedestrian environment, as well as contributing to the economic success of commercial areas.

In Markham there are several successful outdoor patios operating within the private front yard areas of business premises particularly along main streets of Unionville and Markham Village. Currently there are requests from several Main Street Markham establishments interested in having patio space that encroaches into the public right of way. Appendix B to the report provides a list of Main Street Markham businesses that currently have patios in their private front or side yard areas.

However desirable, outdoor patios should only be allowed where specific right of way widths and configurations can accommodate a patio in a manner that is safe for customers and maintains a comfortable, safe and accessible sidewalk / path of travel for all users, including people with disabilities.

## **OPTIONS:**

### **How Other Municipalities Regulate Outdoor Patios**

Many Ontario municipalities have regulations in place to permit private patios on the public right of way and there exists a variety of measures and controls which range in complexity. The chart attached as Appendix C to the report provides a summary of some of the other municipal regulations currently in place. Best practice shows that there are some fundamental tools to permit and regulate patios, including;

- A By-law under the Municipal Act
- An application process and annual renewal
- Encroachment Agreement required
- Compliance with standards and design guidelines
- Fees and liability insurance required
- Regular monitoring and inspections

### **Potential Patio Types and Layouts**

Based on the aforementioned research and following consultation with other City departments, advisory committees and stakeholders the following three patio types have been developed for consideration as potential patio types for Main Street Markham, where appropriate. Illustrations of each type are attached as Appendix D to the report. Below is a summary of the pros and cons of each of the three types.

#### **Type A – Boulevard Patio, located between the curb and the sidewalk.**

<b>Pros</b>	<b>Cons</b>
Maintains 2m wide linear sidewalk / path of travel	Servers required to cross sidewalk / path of travel with food and drinks
Enables continuous use of urban Braille paving treatment	Customer seating is closer to the curb edge / traffic lane
Does not result in loss of street trees	Potential conflict with street furniture location and light poles
Maintains minimum setback between curb and patio fence	

#### **Type B – Sidewalk patio, extends from the building face or property line across the sidewalk / path of travel.**

<b>Pros</b>	<b>Cons</b>
Opportunity to extend existing private front yard and maximize seating capacity	Linear sidewalk is not maintained which erodes effectiveness of urban Braille treatment
Provides enclosed, manageable area with operational advantages for servers	Pedestrians required to deviate around the patio closer to the curb edge / traffic lane

	creating potential pedestrian safety concerns
Reduces issues of servers and customers crossing sidewalk / path of travel – particularly a concern for licensed premises	Potential increased risk of people with visual impairment or people using mobility aids to safely navigate around the patio
Customers are seated away from curb edge / traffic lane	Surface treatment of the boulevard may not be appropriate for a sidewalk / path of travel (for Main Street Markham some redesign required)
	Conflict between deviated sidewalk route and street trees, street furniture and light poles resulting in fewer street trees and less convenient / frequently placed benches, bins etc.

#### **Type C – Single Row, tables and chairs up against the building face.**

<b>Pros</b>	<b>Cons</b>
Maintains 2m wide linear sidewalk / path of travel	Generally limited amount of space available so modest seating only
Does not result in loss of street trees	If unfenced then potential for tables and chairs to encroach onto the sidewalk
No conflict with street furniture location or light poles	
Customers seated away from curb edge / traffic lane	
No conflict with servers crossing the sidewalk / path of travel	
For unlicensed premises a fence might not be essential	

Focusing on Main Street Markham, the available width between curb and property line typically ranges between 5 metres (16ft) and 6.5 metres (21ft) where a bump out is located and where adjacent to on-street parking bays this width is approximately 3 metres (9ft 8"). As a result there are limited opportunities for patios on the right of way particularly given the other streetscape elements that a municipality has a duty to provide for use by the general public in addition to accessibility and public safety concerns, as well as operational constraints.

Therefore, staff generally does not support patio Type B, preferring instead Types A and C, which can be accommodated without requiring the alignment of the sidewalk to deviate closer to the curb / traffic lane, while maintaining a linear sidewalk and protecting the bump outs as furniture zones wherein to located street trees, light poles and street furniture.

#### **Potential Regulations to be Included in Road Occupancy By-law**

Notwithstanding the social and economic benefits and popularity of outdoor patios, public safety and operational maintenance are paramount. Businesses wishing to apply for permission to

---

locate a patio on the right of way will be required to adhere to certain regulations, including but not limited to:

Season - April 1<sup>st</sup> to October 31<sup>st</sup>

Hours - 7am to 11pm

Setback - 1.2m from fire hydrant  
0.9m from curb face  
0.3m from sidewalk

Fences - Mandatory

Minimum height 0.9m, maximum height 1.2m

Secured, but not fixed by bolts that penetrate sidewalk / boulevard

Easily and immediately removable for emergency or operational needs

Removed and stored off-site out of season

These provisions have been developed by Operations, By-law Enforcement and Urban Design staff.

### **Potential Design Guidelines**

A business wishing to apply to have a patio shall first obtain approval from the Director of Planning & Urban Design to ensure that the appearance of the proposed patio is in general conformity with an established set of design principles. Design Guidelines will be available through the City portal and at the Development Services counter giving clear direction as to the City's expectations and requirements. Useful illustrations and photographs will assist in demonstrating the general intent of the requirements and a list of items that will be included in the guidelines is attached as Appendix E. An application process will be developed in association with Planning & Urban Design, Operations and By-law Enforcement & Licencing.

### **Main Street Markham Reconstruction and Requests for Patios**

The reconstruction of Main Street Markham represents an opportunity to bring forward enhancements to the public realm, including creating a continuous 2 metre wide concrete sidewalk, using some of the principles of urban Braille to improve the path of travel for people with disabilities, eliminating some existing grading differences, improving the functionality and appearance of street furniture and greening the streetscape with trees installed in a soil cell system below grade that greatly increases the trees' ability to establish and mature. The streetscape and heritage context will be further enhanced by the use of a traditional brick pavers installed in the boulevard area.

With the reconstruction comes an opportunity to ensure that the design and layout of the right of way also supports the commercial function and economic viability of the street, which includes enlivening the street with commercial patios.

While some businesses already have large private front and side yard areas to utilize as patio space other properties are constrained by having little or no private yard area. One option for these constrained properties is to permit some modest patio space on the public right of way in front of the business premises.

With the assistance of the Markham Village BIA, several businesses are requesting the design of Main Street Markham be modified to allow for patios to extend across the sidewalk and that additional bump outs be provided in order that the sidewalk can deviate around the patio. These represent patio Type B, which would have the effect of creating a zigzag sidewalk alignment, loss of street trees and reduced space to locate street furniture.

Notwithstanding the regulations contained in the ROAD Occupancy By-law pertaining to a business wishing to locate a patio on the public right of way, there are a number of physical constraints and design considerations that impact where exactly a patio could be located with the right of way. Having regard for the pros and cons outlined for each patio type, the current status of the Main Street Markham Reconstruction project, the current streetscape design and the nature / layout of each business making a request, Staff have provided a recommendation for each request, which is attached as Appendix F to the report.

Staff recommends that Appendix F be approved and that any business located on Main Street Markham wishing to have a patio, as set out in Appendix F, apply for a permit under the Road Occupancy By-law and in accordance with the design guidelines and application process that staff will finalize by summer 2013.

### **Stakeholder Consultation to Date**

#### Markham Advisory Committee on Accessibility

Staff have met on several occasions with this Committee to review the Main Street Markham plans. On the subject of the potential for patios to encroach across the sidewalk pushing the path of travel towards the curb / traffic lane members of the committee expressed moderate concern and passed the following motion:

“That the Markham Advisory Committee on Accessibility supports commercial patios in the municipal right of way and expresses a preference for patios that do not encroach across the continuous linear path of travel.”

#### Main Street Markham Committee

At its meeting on April 17<sup>th</sup> 2013 it was clear that this Committee, representing various interests, is divided with regards to permitting business patios that encroach over the sidewalk and force the path of travel towards the curb. While some members appreciate the variety and interest created by the zigzag sidewalk and attractive patios; others have long lobbied for more street trees and improved public realm for all.

The Committee discussed in detail the merits and issues surrounding the deviated sidewalk concept. The Committee identified a number of concerns including:

- Deviating the sidewalk to the curb area raises the issue of public safety by putting the pedestrian next to an active travel lane with little to no buffer.
- Concern was expressed that the deviated concept would eliminate the tree and any street furniture from the area.
- A small degree of deviation would be desirable to serve to animate the streetscape, however if a large number of trees would be lost as a result the Committee is not in

---

favour. Incorporating trees into the landscape has been a primary goal of the Committee since the beginning of this process.

- It was noted that approximately 15 businesses expressed a desire for a deviated sidewalk and most did not wish to have a tree.
- There was much discussion on how to limit the number of deviated sidewalks (i.e. if a restaurant already had a front yard patio, then the sidewalk would not be deviated, or if liquor was being served, deviation could be supported).
- Desire expressed to include the Deviated Sidewalk concept as one of the preferred concepts under certain circumstances.
- It was noted that if a deviated sidewalk is installed and the restaurant later leaves, the streetscape will have concrete where the deviated sidewalk once was as opposed to pavers and street trees.

Main Street Markham Committee carried the following motion:

“The Committee support patio type B, as presented by staff, as one of the preferred options for commercial patios on Main St., where appropriate.”

#### Project Liaison Committee (PLC)

A PLC meeting is planned for Thursday May 16<sup>th</sup>, 2013 and staff will provide a verbal update when this report is considered.

#### Old Markham Village Ratepayers Inc.

While represented on the PLC, detailed comments have been received from the President of the OMVR.

“The Old Markham Village Ratepayers Inc. does not, in principle, object to wrapping the sidewalk around a patio. Our concern is the happiness of our residents. We want them to look forward to going to the street, not to be apprehensive about it. If wrapping the sidewalk around a patio can be done while keeping residents free from fear of traffic, then it is acceptable.

For us, the question comes down to, how much space do young families and seniors need to feel comfortable? I cannot read the minds of all of our residents; however, our feeling is something like a two-metre buffer from the sidewalk to the traffic will make the vast majority of pedestrians feel safe enough to find our street a place worth strolling.

If such a buffer can be taken into consideration when any patio policy is being considered, you will have satisfied the OMVR.”

#### Markham Village BIA

The BIA supports commercial patios along Main Street Markham and in December 2012 it provided a list of requests made by businesses for patios to encroach across the sidewalk.

Appendix F provides staff’s recommendation in response to these requests.



---

**FINANCIAL CONSIDERATIONS AND TEMPLATE:**

The Main Street Markham Reconstruction Project is being funded by the municipality predominantly through gas tax funding. The streetscape patio design elements approved by Council will need to be reflected in the detailed design drawings and revisions made to the current tender as required.

**HUMAN RESOURCES CONSIDERATIONS**

No applicable

**ALIGNMENT WITH STRATEGIC PRIORITIES:**

This work aligns with the following areas of strategic focus; growth management, infrastructure management, environmental responsibility, municipal services and operations.

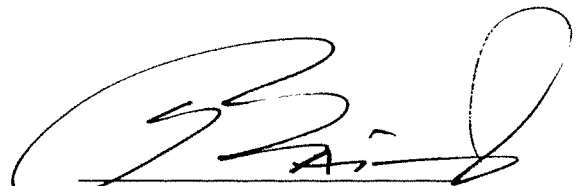
**BUSINESS UNITS CONSULTED AND AFFECTED:**

Business Units consulted include By-law Enforcement & Licencing, Engineering and Heritage Planning all of which agree with the report.

The Director of Operations commented that the relocation / diversion of the permanent concrete sidewalk to align with seasonal patio requirements was not supported. Operations provided direct input into the Potential Regulations, attached as Appendix E.

**RECOMMENDED BY:**

  
Rino Mostacci, M.C.I.P., R.P.P.  
Director, Planning and Urban Design

  
Jim Baird, M.C.I.P., R.P.P.  
Commissioner, Development Services

**ATTACHMENTS:**

Appendix A – Typical Main Street Markham Cross Section  
Appendix B – Existing properties on Main Street Markham with private patios  
Appendix C – Summary of other municipality's patio regulations  
Appendix D – Patio Types A, B and C  
Appendix E – Draft contents of Patio Design Guidelines  
Appendix F – Main Street Markham patio requests and recommendations