



## Should Toronto allow developers to block bike lanes and sidewalks?

By Jennifer Pagliaro City Hall Bureau  
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The councillor for the fast-growing Yonge-Eglinton area wants to see developers denied the right to push their construction out onto public sidewalks and roadways except in exceptional circumstances.

Coun. Josh Matlow's (Ward 12 Toronto-St. Paul's) request for a report back in the second quarter of this year on a new policy for right-of-way occupancy permits that "defaults" to a denial of requests, except when no other options are available, was approved unanimously at infrastructure and environment committee on Thursday. It will go to council for final approval later this month.

"If you are in the development business, the burden of responsibility should be on you, when you are speculating and you are considering what properties that you want to buy and then make a lot of money, that you should be able to figure out whether you're going to be able to develop it or not without assuming that you have some divine right to occupy somebody else's property to stage the construction for often two to three years," Matlow said.

Anyone wishing to occupy the public roadway, sidewalk or other part of the city's right-of-way must apply for an occupancy permit and pay the applicable fees. A staff report to committee notes the city has "no legal obligation" to grant that use to developers and only does so "when the city's criteria are met."

Matlow said the city's "default" position is to permit closures to allow for development, which can last upwards of two years depending on the building. He said developers often need part of the public right-of-way because their project is designed to completely fill the footprint of the lot, instead of including setbacks that would leave room for construction equipment and hoarding on their own property.

Matlow said he's not suggesting the city be unreasonable, and acknowledges there are circumstances where permits should be allowed. But that should only be done, he said, in exchange for a percentage of the gross floor area that allowing use of the public right-of-way creates to be used for affordable housing, child care or seniors services.

"If the city does, in some instances, provide land to facilitate a larger building, it should be done in the public interest," Matlow wrote in a letter to the committee.

In their report, city staff recommend keeping the current system in place.

“Following consultation with the development industry, city planning, Toronto Building and transportation services staff do not find it practical or feasible to eliminate the occupation of the public right of way,” the report begins. “Eliminating the use of the right of way for construction purposes would cause development restrictions, impact construction costs, result in longer development horizons and cause potential health and safety concerns on certain sites.”

Staff also said that if the city didn’t permit the prolonged use of the public right of way, temporary closures would still occur because paid duty police officers assigned to construction sites have the “discretionary authority” to close live lanes of traffic when materials need to be hoisted into the site or for concrete pouring.

Staff did say they will now require developers to address preliminary construction considerations at an earlier stage in the process, as part of rezoning applications, including the impact on the city’s right-of-way.

Chief planner Gregg Lintern said there was an “inevitability” to developers using the public right-of-way during construction.

“You can only set the building back so far,” he said. “Positioning the building is not going to get you away from the problem of getting into the right-of-way during construction.”

Coun. Mike Layton (Ward 11 University-Rosedale), who moved Matlow’s request at committee, said this issue has been a struggle for the city.

“The use of the public right-of-way by developers is a constant annoyance of residents in the city of Toronto,” he said, and is therefore often the target of councillors and media. “It is sometimes a necessity ... But I think where Coun. Matlow wants to go with this is that it can’t always seem like we start at a position favourable to developers.”

Mayor John Tory told reporters he can get behind the intent of Matlow’s motion, but needs to examine the specific wording. “The notion of reducing it? I’m all in favour of,” Tory said. “How you do it is something you have to be careful about.”

**Andrew Pariser, vice-president of the Residential Construction Council of Ontario (RESCON)** and chair of its health and safety committee, said it would be impractical for developers to be unable to use the right-of-way, and with buildings designed to the lot line, not possible to protect the health and safety of workers and the public without needing to push out onto the sidewalk and/or roadway.

“This just doesn’t seem to be the right answer,” he said after the vote. “We have a duty as employees and constructors to ensure the health and safety of all workers” as well as the public.

On providing community benefits, he noted the existing process is currently being remade by the province, and said any concerns about appropriate benefits for the public in exchange for growth should happen as part of that review.

Asked why developers could not design buildings that don't require the full site and allow for construction on their own property, **RESCON president Richard Lyall** said it comes down to money. "It can completely change the economics of a project and you have to maximize the footprint."

Lyall said he doesn't know for what percentage of buildings the use of the public right-of-way would be "do or die" for getting a building off the ground versus just hurting developers' profits but said it would be "pretty high."