

# RISK SIMPLIFIED

## RESOURCE

[California Manual on Uniform Traffic Control Devices \(CA MUTCD\)](#)

[NTSB Safety Recommendation H-04-027](#)

## QUESTIONS

[Risk Control](#)

916.850.7300

## Private Business Usage of Public Right-of-Way

Some organizations are allowing private business or event organizers use of the public right-of-way (whether that be sidewalks, roadways, parking lots, etc.) either for restaurant seating, farmers' markets, street fairs or other events. This raises some concerns over increasing liability by allowing this usage, however there are some best practices that can be utilized to increase safety and limit the exposure.

### What are some potential liability exposures?

The first thing that needs to be considered are some of the potential liability exposures from using the public right-of-way. While this list is not comprehensive, the liabilities could include:

- Traffic collisions from vehicles that stray into roadways that have been closed to enable seating or events
- Sidewalk defects and someone potentially tripping/falling whether a patron or employee (dangerous condition/premise liability exposure)
- Noise levels and any ordinances the business must consider and comply with and the organization's enforcement of the same



## Best Practices for reducing liability exposure

Utilizing these methods of controlling the risk and exposure could help the organization reduce the liability when these spaces are being used for purposes other than the one they were designed for.

### 1. Comprehensive permitting process

- A comprehensive permitting process that includes a detailed plan of how the space will be used and what precautions will be taken to ensure that the spaces are being used safely, and with consideration for public usage and access (including considerations for the Americans with Disabilities Act).

### 2. Insurance and Indemnity Language

- Indemnity language in the permit that requires the business owner to accept all liability on the property they are utilizing for the permit to be approved. In addition, some organizations may require the business take out a special policy for the use of the public right-of-way if it is not covered in their existing policy.
- This should include language requiring the business name the organization as an additional insured on the policy for the limits the organization deems appropriate.

### 3. Safety Considerations for Road Closures

- Utilize the organization's resources by contacting an internal civil engineer (or traffic safety engineer) to discuss options for the most effective way to close the road. This is a good way to start the process of developing a permitting policy, but there are two main aspects to consider.

## Signage and Road Closure Warnings

- The CalTrans "[California Manual on Uniform Traffic Control Devices \(CA MUTCD\)](#)" should be used as a guide for traffic control measures.
  - In which, they recommend at least Type 3 Barricades with ROAD CLOSED signs mounted on them as well as advanced warning signs.
  - However the recommendations made by the NTSB also include ensuring that the traffic control signals (i.e. the traffic lights) indicate that the road is closed to through traffic in that section.



## Preventing Vehicle Collisions

While these measures would alert drivers that are paying attention that there is a road closure, they would not stop an errant driver or a vehicle that is out of control. To provide adequate protection from that exposure, there would need to be something that would absorb or redirect the collision.

- The NTSB does not recommend vehicles being used as barricades unless they are equipped with crash attenuating devices and most vehicles do not have this feature and are not designed to redirect or absorb a collision. In addition, vehicles also contain flammable/combustible liquid

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as fuel and so their use as a barricade is not a recommended best practice.

- The best practice for this situation is to install removable metal bollards into the road where you anticipate having a regularly scheduled and continuous event.
  - If this is not possible or feasible, a civil engineer or traffic safety engineer should be consulted to determine the barricade that would provide the best possible defense against an errant or out of control vehicle.

With these precautions put into place, the organization can reduce the liability they may face from allowing businesses/event organizers to use the public right-of-way, while also ensuring the safety of the public that uses them.

For questions, please contact [PRISM Risk Control](#).

