

# **First Amendment Rights; Guaranteed by the U.S. & California Constitutions & Upheld by State & Federal Courts**

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**"For purposes of California's Liberty of Speech Clause, 'public forum doctrine' is not limited to traditional public forums such as streets, sidewalks and parks...." Under California law, even a privately owned facility that is open to the public is subject to requirements of the public-forum doctrine." *Carreras v. City Of Anaheim* (1985) 768 F.2d 1039**

**"At locations [where] the public is free to come and go: [where] the public travels over the parking lot and walkways to attend events or exhibitions .... Under California law...such locations must be open to expressive activity ...." *Carreras v. City Of Anaheim* (1985) 768 F.2d 1039**

**"Peaceful Picketing or handbilling carried on in a location open generally to public is, absent other factors involving purpose or manner of the picketing, protected by the First Amendment." *In Re Lane* (1969) 79 Cal. Rptr. 729; 71 Cal.2d 872.**

**"...if business were free to isolate themselves by the device of surrounding their store by parking lot...[they] could largely immunize themselves from ..criticism by creating a cordon sanitaire of parking lots around their stores. Neither precedent nor policy compels a result so at variance with the goal of free expression and communication that is the heart of the First Amendment." *In Re Lane* (1969) 79 Cal. Rptr. 729; 71 Cal.2d 872.**

**"When a business establishment invites the public generally to patronize its store and in doing so to traverse a sidewalk opened for access by the public, the fact of private ownership of the sidewalk does not operate to strip the members of the public of their rights to exercise First Amendment privileges on the sidewalk at or near the place of entry to the establishment." *In Re Lane* (1969) 79 Cal. Rptr. 729; 71 Cal.2d 872.**

**"Test for determining whether conduct has risen to the level of protected expression under the First Amendment asks (1) whether the actor intended to convey a particularized message; and (2) whether the conduct was likely to be understood as communication by the observers, given the surrounding circumstances. U.S.C.A. Cons. Amend. 1." *James v. City of Long Beach* (1998) 18 F.Supp.2d 1078**

**"The public interests in peaceful speech outweighs the desire of property owners for control over their property." *Robins v. Pruneyard Shopping Center* (1979) 23 Cal.3d 899; 153 Cal. Rptr. 854**

**"Restriction of the liberties guaranteed by the First Amendment can be justified only by clear and present danger to the public welfare." *Thomas v. Collins, Sheriff* (1945) 323 U.S. 516.**

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## **NOTE:**

***Under Penal Code 602's, businesses section trespasses, PC 602.1 (c)(2) provides;***

**This section shall not apply to any of the following persons:**

**Any person on the premises who is engaging in activities protected by the California Constitution or the United States Constitution.**

## **California Civil Code Provides;**

**CC § 52.3.(a) No governmental authority, or agent of a governmental authority, or person acting on behalf of a governmental authority, shall engage in a pattern or practice of conduct by law enforcement officers that deprives any person of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States or by the Constitution or laws of California.**

END.

# **FIRST AMENDMENT RIGHTS PROTECTED UNDER COLOR OF STATE LAW & THE UNITED STATES CONSTITUTION**

## ***To whom it may concern:***

"Any attempt to restrict (freedom of expression) must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger....Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation." *Thomas v. Collins* (1945) 323 U.S. 516; 65 S.Ct. 315, 322-23; 89 L. Ed. 430.

An act "which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantee" of the First Amendment.

*Schneider v. State* (1939) 308 U.S. 147, 164; 60 S.Ct. 146; 84 L. Ed. 155, 156.

Pamphleteering is a form of constitutionally protected expression. *Prisoners Union v. Department of Corrections* (1982) 135 Cal. App. 3rd 930, 934; 185 Cal. Rptr. 634.

The right to free expression includes both leafleting and talking to patrons on privately-owned property open to the public. *Westside San/Freeze v. Ernest W. Hahn, Inc.* (1990) 224 Cal. App.3d 546; 274 Cal. Rptr. 51.

Free expression is protected on private property which is open to the public. *Robins v. Pruneyard Shopping Center* (1979) 23 Cal. 3d 899; 153 Cal. Rptr. 854; 592 P.2d 341.

***Any attempt to restrict these laws is a violation of 42 USC 1983  
(deprivation of constitutionally protected rights under color of state law).***

## **NOTE:**

**§ 602 PENAL CODES TRESPASSES CONSTITUTING MISDEMEANORS  
DO NOT APPLY TO ANY PERSONS ON PRIVATELY OR PUBLICLY  
OWNED PROPERTY WHICH IS OPEN TO THE PUBLIC AND WHO ARE  
ENGAGING IN FREE SPEECH ACTIVITIES PROTECTED UNDER COLOR  
OF STATE LAW AND THE UNITED STATES CONSTITUTION.**

is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any such lands, whether covered by water or not, without the license of the owner or legal occupant; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any such lands.

(h) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(i) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(j) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(k) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(l) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(m) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to or lawfully occupied by another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession.

(n) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(o) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(p) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances are such as to indicate to a reasonable