



# Know Your Rights Guide: Speech in Public Places

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## **If I want to give a speech or pass out literature such as flyers or leaflets in a public place like on the sidewalk or in a park — do I need to get a permit?**

Generally, you do not need a permit to pass out literature or give a speech in public places like sidewalks or city parks. Those places are considered “traditional public forums” where free speech rights are protected the most. Legal cases consider public places that have historically been open to public expression and assembly to be “traditional public forums.” While even in traditional public forums, cities are allowed to regulate the time, place, and manner of speech in some ways (such as limiting noise), any such regulations must be reasonable and cannot be based on the content of the speech.<sup>1</sup>

## **Can the government ban certain types of speech from being distributed in public because of the content?**

There are only a few kinds of speech that the government can ban based on the content.<sup>2</sup> The First Amendment does not protect “true threats” of harm to others or defamation. For more information, see the ACLU-WA’s Know Your Rights Guide: Protests.<sup>3</sup> And the courts have ruled that the distribution in public of “obscene” material is not protected by the First Amendment;<sup>4</sup> courts look to community standards when determining whether sexually explicit material is so offensive that it would be considered obscene.<sup>5</sup>

## **Are there places at which I absolutely cannot distribute literature?**

The rules for distributing literature are different for places which do not fit the definition of a “traditional public forum.” For example, airports are not considered a traditional public forum for First Amendment purposes, so you do not have the same freedom of speech in that location as you do on a public sidewalk.<sup>6</sup>

## **Can I hand out literature and speak freely on public university campuses? How about public elementary, middle, or high schools?**

Public schools are not considered traditional public forums for First Amendment purposes, so there is less protection of speech in those places than there is for streets, sidewalks, and parks.<sup>7</sup> However, if a particular location at a school or university is considered open to the general public, restrictions on speech may have to meet the same requirements as if on a public sidewalk.<sup>8</sup> For example, speaking or passing out literature in the middle of an open university square is usually allowed while doing the same at an elementary school playground may not be. For more information about student and teacher free speech rights, see the ACLU-WA’s Free Speech Rights of Public School Teachers in Washington State and student rights guides.<sup>9</sup>

## **Does the Constitution protect my right to speak and distribute literature at my local farmers market?**

Free speech at farmers markets which are held in a place considered a “traditional public forum” (streets, sidewalks, and parks) have the same protection as at other traditional public forums. If a farmers market is on private property, the free speech rules are different.

### **What if I want to speak or distribute literature at a state park or national park?**

The courts have said that national parks, unlike city parks, are not a “traditional public forum.” There are hundreds of national parks and each one is a different type of setting, so there is no one rule regarding free speech rights in such parks.<sup>10</sup> The courts view state parks the same way. But in some state or national parks, in locations like a visitor center or open public gathering place, there may be the same protection for free speech rights as there would be in a city park.

### **Where can I legally put up posters, and are there limitations on what I can put up?**

There are limitations on where posters are allowed. In Washington state, courts upheld a law that prohibited posters being attached to utility poles.<sup>11</sup> And, whether or not a flyer can be posted in a particular location depends on whether the place is historically considered a traditional public forum or not.<sup>12</sup> The U.S. Supreme Court has allowed city governments to limit where posters are allowed.<sup>13</sup> That doesn’t mean cities have to limit the locations where posters are allowed, but legally they can do so.

### **Can I sell items or ask for donations for political or religious literature, buttons, and bumper stickers in public spaces?**

The First Amendment protects soliciting money for religious or charitable causes in traditional public forums,<sup>14</sup> and it protects political speech.<sup>15</sup> Therefore, permits are not required to sell political or religious items in traditional public forums, and permits cannot be required for activity seeking donations related to political or religious activities.

### **Are the rules different for speech involving selling purely commercial materials that are not expressing viewpoints on politics, religion, or other topics?**

The rules for commercial speech – when a business is selling products to make money – are different, and regulations regarding commercial speech are held to lower standards than laws regulating more traditional free speech.<sup>16</sup> But commercial speech, such as advertising, does have some constitutional protection.<sup>17</sup> However, if a person is engaging in expressive activity such as playing music or doing a performance in a traditional public forum like a park and is asking for donations, the stricter constitutional rules protecting free speech may apply.<sup>18</sup>

### **What if I have questions about my free speech rights regarding protests?**

See the ACLU-WA’s Know Your Rights Guide: Protests.<sup>19</sup>

### **What if I have questions about my free speech rights regarding signature gathering for ballot initiatives?**

See the ACLU-WA’s Know Your Rights Guide: Initiative Petitions.<sup>20</sup>

<sup>1</sup> *Reed v. Town of Gilbert*, Ariz., 576 U.S. \_\_\_, 135 S. Ct. 2218, 2230, 192 L. Ed. 2d 236 (2015); *McCullen v. Coakley*, 134 S. Ct. 2518, 2529, 189 L. Ed. 2d 502 (2014); *Sanders v. City of Seattle*, 160 Wn.2d 198, 209, 156 P.3d 874 (2013).

<sup>2</sup> *Reed*, 135 S. Ct. at 2222.

<sup>3</sup> <https://www.aclu-wa.org/docs/know-your-rights-guide-protests>

<sup>4</sup> *Miller v. California*, 413 U.S. 15, 93 S. Ct. 2607, L. Ed. 2d 419 (1973).

<sup>5</sup> *Id.* at 2610.

<sup>6</sup> *Int'l Society for Krishna Consciousness, Inc. v. Lee*, 506 U.S. 672, 112 S. Ct. 2711, 120 L. Ed. 2d 541 (1992).

<sup>7</sup> See *Morse v. Frederick*, 551 U.S. 393, 393, 127 S. Ct. 2618, 168 L. Ed. 2d 290 (2007); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 106 S. Ct. 3159, 92 L. Ed. 2d 549 (1986); *Widmar v. Vincent*, 454 U.S. 263, 102 S. Ct. 269, 70 L. Ed. 2d 440 (1981); *Tinker v. Des Moines Indep. Community Sch. Dist.*, 89 S. Ct. 733 (1969).

<sup>8</sup> *Sanders*, 160 Wn.2d 198.

<sup>9</sup> <https://www.aclu-wa.org/docs/free-speech-rights-public-school-teachers-washington-state>

<sup>10</sup> *Boardley v. U.S. Dep't of the Interior*, 615 F.3d 508, 515 (D.C. Cir. 2010).

<sup>11</sup> *City of Seattle v. Mighty Movers, Inc.*, 152 Wn.2d 343, 96 P.3d 979 (2004).

<sup>12</sup> *Id.*

<sup>13</sup> *Members of City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 104 S. Ct. 2118, 80 L. Ed. 2d 772 (1984) (where the Supreme Court held that a city law prohibiting signs posted on “any sidewalk, crosswalk, curb, curbstone, street lamppost, hydrant, tree, shrub, or certain other public property” was not a subject to First Amendment protection).

<sup>14</sup> *Cantwell v. State of Connecticut*, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213 (1940); *City of Lakewood v. Willis*, 186 Wn.2d 210, 375 P.3d 1056 (2016).

<sup>15</sup> *Collier v. City of Tacoma*, 121 Wn.2d 737, 854 P.2d 1046 (1993).

<sup>16</sup> *City of Seattle v. Bittner*, 81 Wn.2d 747, 758, 505 P.2d 126 (1973) (where the court said “[e]ven in absence of First Amendment considerations, an ordinance regulating right to engage in a lawful occupation or business must bear a rational relationship to a valid government purpose” rather than the compelling interest and narrowly tailored standard used in cases regarding speech protected by the First Amendment).

<sup>17</sup> *Catsiff v. McCarty*, 167 Wn. App. 698, 274 P.3d 1063 (2012).

<sup>18</sup> *Berger v. City of Seattle*, 569 F.3d 1029 (9th Cir. 2009).

<sup>19</sup> <https://www.aclu-wa.org/docs/know-your-rights-guide-protests>

<sup>20</sup> <https://www.aclu-wa.org/docs/know-your-rights-guide-initiative-petitions>