



# LEGAL BULLETIN



September 2023

Tucson Police Department – Legal Advisors' Office

23-4

## SIDEWALKS AND THE FIRST AMENDMENT

**Amendment I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press or the right of the people to assemble, and to petition the government for a redress of grievances.**

The First Amendment guarantees the right of freedom of expression. The Tucson Police Department is entrusted to ensure that the right to free speech is conducted in a safe and lawful manner. As in all rights, freedom of expression is not absolute. The courts have allowed the government to regulate speech in various manners. For example, criminal acts are not protected under the first amendment.

The first consideration when confronting First Amendment protections is understanding the levels of protections afforded in public spaces versus private spaces. Expressions in public spaces are granted more protections than those in private spaces. In general, private property owners may exclude persons or expressive acts on their premises. If a person is protesting on private property, department members may ask the protestors to move to the nearest available public space upon the request of the property owner. Many times, the closest available public space is the public sidewalk in front of a business.

Parks are a good example of a public spaces that are provided protections under the First Amendment. Parks have been identified by the courts as a traditional public forum that have historically been associated with expressive activities. Government actors must be extremely careful when regulating speech in public spaces. Regulations in public forums must be narrowly tailored to serve significant government interests while leaving open alternative channels for communications. A regulation on speech should be a content neutral time, place, and manner restriction on expression. Reasonable regulations on park hours are acceptable time and place restraints on speech that is content neutral.

Sidewalks are another example of a traditional public forum granted protections under the First Amendment. The sidewalk regulations for the City of Tucson always leave open channels for communication required by the First Amendment. First Amendment Activities are permitted 24 hours a day on the City's sidewalks. There is always a space to practice First Amendment activities in a highly visible location in the City of Tucson.

Tucson City Code Section 16-35 prohibits the blocking of sidewalks. The code states that "No person shall obstruct any public sidewalk... by placing, maintaining, or allowing to remain thereon any item or object that prevents full, free and unobstructed public use in any manner." Any items on sidewalks must not violate Tucson City Code Section 25-51 (b). Tucson City Code Section 25-51(b) states that any item placed on a sidewalk shall be deemed an obstruction, if the item is on the sidewalk between 7:00 a.m. and 10:00 p.m. During the hours between 10:00 p.m. and 7:00 a.m. the objects will not be deemed an obstruction if:

- (1) the items are, in aggregate, four cubic feet or smaller,
- (2) the item is personally attended by its owner,
- (3) the item is not affixed in any manner,
- (4) the item is placed at least five feet back from the edge of the sidewalk adjacent to the street,

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- (5) where the sidewalk is wider than 8 feet, the item is placed in the three feet portion of the sidewalk furthest from the adjacent street, and
  - (6) the sidewalk is not part of an underpass.

The City of Tucson has identified three areas as designated business districts that have additional regulations. These areas include the Downtown Zone, the Fourth Avenue Business Zone, and the University Zone. Under Tucson City Code Section 11-36.2(a), in these zones “no person shall sit or lie down upon a public sidewalk or upon a blanket, chair, stool, or any other object placed upon a public sidewalk or median during the hours between 7:00 a.m. and 10:00 p.m.” Tucson City Code Section 11-36.2(b) contains a list of acts that are not prohibited; these acts include sitting for a medical emergency, the use of wheelchairs, walkers and other device to move on the sidewalk, the use of chairs by a business pursuant to a permit, sitting on a chair or bench provided by a public agency or an abutting private property owner, and sitting on a sidewalk within a bus stop zone while waiting for public transportation.

Tucson City Code Section 11-36.2(b)(4) expressly permits the exercising of First Amendment rights within the business districts. Sitting or lying down is permitted in these areas, if the person practicing their First Amendment rights remains ten (10) feet from any entrance, leaves open a five (5) foot path, and does not otherwise block or impede pedestrian traffic. This exception only applies to persons during the time frame expressed and does not create exceptions for items excluded under Tucson City Code 16-35 and 25-51 (as stated above). Tucson City Section 11-36.2(c) requires that law enforcement notify a person engaged in conduct prohibited by Tucson City Code Section 11-36 before a citation is issued.

### **Summary**

The top priority of the City of Tucson is to ensure the safety of the public while protecting First Amendment Rights. On sidewalks, members of the public may utilize their First Amendment rights at any time. In the business districts, a person practicing First Amendment rights must be ten feet from business entrances, they must leave a five-foot path on the sidewalk, and they must not block or impede pedestrian traffic. Throughout the city, persons must not place items on the sidewalks between the hours of 7:00 a.m. and 10:00 p.m. Between the hours of 10:00 p.m. and 7:00 a.m. items placed on the sidewalks must fall under the regulations stated in Tucson City Code Section 25-51 (b). Officers must notify the person of the controlling regulation and should allow the person an opportunity to comply prior to issuing any citations. Officers may also direct persons to locations where the specific First Amendment activities are permitted, such as directing a person to a nearby park during the appropriate hours. Additionally, many paved sidewalks do not take up the entirety of the public space adjacent to a road. There may be public space to place items near the sidewalk while practicing First Amendment activities.