07-007 Solicitation on Private Property

Los Angeles County Sheriff's Department

FIELD OPERATIONS DIRECTIVE

Field Operations Support Services

SOLICITATION ON PRIVATE PROPERTY

PURPOSE

The purpose of this Field Operations Directive is to establish procedures and guidelines for handling incidents of solicitation on private property. These incidents commonly occur when person(s) seek to solicit on the property of a store, shopping center, or other commercial establishment. Often, the manager/owner of the property has asked the solicitor to leave the premises but they refuse to do so based on their First Amendment rights of free speech and petition.

BACKGROUND

Solicitation for political, financial or religious reasons (signatures, protest, voting registration, donations or contributions) is covered by Article I, Sections 2 and 3 of the California Constitution*(Right to Free Speech and Petition)*.

California law permits free speech activity on certain commercial property. In *Pruneyard Shopping Center v Robins*, the U.S. Supreme Court held that the California Constitution protects "speech and petitioning, reasonably exercised, in shopping centers, even when the centers are privately owned." The central theme of the court's ruling was that Pruneyard shopping center, because of its open public gathering areas, had become the modern equivalent of the "Town Square." The court gave commercial property owners the right to establish regulations regarding reasonable "time, place and manner" restrictions on expressive activity, and allowed owners of "modest retail establishments" (smaller stand alone stores not having the "Town Square" characteristics of *Pruneyard*) to prohibit all expressive activity on their premises.

The California Court of Appeal has held that if a "modest retail establishment" sets up time, place and manner restrictions on the use of its premises, it does not make the location the equivalent of a traditional public forum, nor does that give solicitors a constitutional right to use the property in disregard of the establishment's restrictions.

The reasonableness of a time, place and manner restriction depends on the problem the owner seeks to correct, not on the extent to which it furthers the owner's interest in an individual case. Personnel should try to determine the reasonableness of the restriction prior to taking any enforcement action.

Determining what type or kind of establishment is very important when dealing with solicitation. In considering whether a particular business or business area is impressed with a public character for purposes of expressive activity, no single factor is determinative. The following descriptions are examples of

some of the types of locations that may be subject to solicitors:

- A large retail facility (large mall or shopping center) which has areas designated for the public to meet, talk and spend time together (plazas, walkways or courtyards for people to congregate) it may be considered to be the functional equivalent of a traditional public forum and be subject to expressive activity.
- A large strip mall that does not contain any areas for the public to congregate (courtyards, picnic areas, gardens, health clubs, gyms, etc.) or has restrictions on certain types of businesses (theaters, bowling alleys, pool halls, skating rinks, etc.) from being located in the center may not be subject to expressive activity.
- Stand-alone stores or modest retail establishments, while popular and open to the public, are not public forums which require that their owners permit expressive activity.

Any location, including malls, may prohibit expressive activity on certain days of the year within reason, (i.e., a narrowly tailored ban on those days when its legitimate interest were most vulnerable to disruption).They can also limit the number of days/times a group may solicit in a given period to time (e.g., no individual or organization could use store property for more than five days within any 30 day period). The courts have determined that an owner may impose reasonable restrictions provided the restrictions are justified without reference to the content, that they are narrowly tailored and that they leave open ample alternative channels for communication.

While there have not been any court decisions regarding the direct solicitation of funds for personal gain, on private property, common sense and prudence should be your guide for enforcing trespassing, solicitation and loitering violations.

POLICY AND PROCEDURES

The possible infringement of a person's First Amendment rights in the exercise of free speech and petition should not be taken lightly, especially when dealing with someone who is uncooperative. If the solicitation does not meet the legal criteria listed below or violates the time, place or manner restrictions, the manager/owner of the location would need to be advised of private person arrest procedures if an arrest was requested. If there is probable cause for the arrest, the manager/owner may place the disturbing party under arrest as described in FOD 02-06 (*Private Person Arrest Procedures*.

DEPUTY'S RESPONSIBILITIES

Upon arriving at the location where someone is soliciting, you should determine:

- If the location is subject to the right of free expression (malls vs smaller free standing stores).
- Is the kind of activity considered free speech or petition of government for redress of grievances (soliciting signatures, donations and distributing leaflets).
- What kind of reasonable time, place and manner regulations have been established.

The right of access is imposed usually on large malls and shopping centers. It is limited to relatively quiet activity and it can be regulated by reasonable, fact based regulations to prevent disruption and disorder.

After determining the type of location, contact the manager or property owner to determine if they have a written policy which governs the activities allowed and time, place and manner restrictions. If a policy exists,

ask which rule(s) or regulation(s) the disturbing party is violating. The policy of the location should then be reviewed to determine if the rules and restrictions are reasonable and how the disturbing party is in violation of one or more of the rules. If the disturbing party is within the guidelines set forth by the location, no enforcement action should be taken.

If the disturbing party is violating any of the restrictions set forth by the location, the manager/owner may request to make a private person arrest. Deputies shall conduct a through investigation to determine if probable cause exists for the arrest before accepting custody of an individual in a private person arrest situation.

If the location has a restriction on all solicitation and the location can be considered a functional equivalent of a town center, deputies shall advise the location's representative of this evaluation, refer them to seek the advise of their legal counsel, and shall decline to take enforcement action.

Deputies may recommend that the owner/manager seek a restraining order against a solicitor in cases where the existing case law cannot be clearly applied. This avenue allows for a judicial evaluation of the specific facts of the case prior to enforcement action being taken.

Affected Directives/Publications

Field Operations Directive 02-06 (*Private Person Arrest Procedures*) - Provides supplemental guidance

Cites/References

California Constitution, Article I, Sections 2 and 3 (*Right to free speech and assembly)*

Pruneyard Shopping Center V. Robins (447 U.S. 74) - Requires access to shopping center for exercise of expression and petition rights under the California Constitution, held not to violate center owner's rights under First, Fifth and Fourteenth Amendments.

Costco Companies, Inc. v. Don Gallant (96 Cal. App 4th 740) - Allows a location to prohibit expressive activity on certain days or the number of days/times in a given period.

Albertson's Inc. v. James Young (107 Cal. App. 4th 106) - When a "modest retail

establishment" sets up time, place and manner restrictions, it does not make the location the equivalent of a traditional public forum nor does this does not give solicitors a right to use the property.

Trader Joe's Co. v. Progressive Campaigns (73 Cal. App. 4th 425)- Modest retail establishments, are not public forums which require that their owners permit expressive activity.