

UNDERSTANDING “PUBLIC,” “LIMITED,” AND “NON-PUBLIC” AREAS IN THE CONTEXT OF THE CSU TIME, PLACE AND MANNER POLICY

INTRODUCTION

The [California State University Systemwide Time, Place and Manner Policy](#) is meant to balance freedom of expression with other University priorities, such as campus safety and the orderly conduct of University operations. An important concept in this Policy is the designation of various “areas” as “Public,” “Limited,” and “Non-Public” to indicate—in general terms—the availability of various campus locations for expressive activities.

While the CSU is a “public institution,” this does not mean that every part of the University is always open to everyone. The courts have recognized that the government (the University) has the power to preserve the property under its control for the use to which it has been dedicated.

GENERAL CONCEPTS

In First Amendment law, there are concepts of “traditional public forum,” “designated public forum” (a subset of which is “limited public forum”), and “Non-public forum.” These concepts guide the level of scrutiny that courts apply when determining whether the government has wrongly interfered with a person’s free speech rights. A higher level of scrutiny applies in traditional and designated public forums than in Non-public forums. In such forums, content-based regulations must be narrowly tailored and necessary to serve a compelling state interest. However, in all forums, the government may impose reasonable, content-neutral restrictions on the time, place or manner of speech.

As used in the Policy, “Public Areas,” “Limited Areas,” and “Non-Public Areas” do not have the same meaning as similar-sounding terms that are used in forum analysis (although they may have some overlapping characteristics). Rather, these terms signify how the University makes use of various areas on its campuses. The terms are meant to indicate whether the areas (1) are generally open for anyone without the need for reservation for any type of protected speech and are appropriate for assemblies, marches, demonstrations and protests (Public Areas); (2) have limited availability for use by the public and campus community but are not appropriate for assemblies, marches, demonstrations and protests (Limited Areas); or (3) are generally not available for anything other than use by the University (Non-Public Areas).

While the University may allow a Limited or Non-Public Area to be used for purposes other than University business, this does not serve to convert the venue into a designated public forum under First Amendment law unless the University has intentionally opened it to be generally accessible to all speakers for the purpose of expressive activity. For instance, allowing a local club to rent a classroom does not make the classroom a designated public forum. When University facilities are reserved for a particular user, that location can become exclusive to that user and not open to the public. If the University has intentionally opened a venue for the purpose of expressive activity (such as opening a lecture hall for public dialogue about a community matter), it must be treated as a designated public forum (under First Amendment law) for so long as it is open, and reasonable time, place and manner restrictions may be imposed.

The designations of areas as “Public,” “Limited,” and “Non-Public” are not meant to be bright-line limitations on the use of campus areas. There may be instances when the area’s use is temporarily changed. For instance, there may be times when a Public Area is reserved by the University for its own purposes, such as a large-scale ceremony. During this time, the Public Area is not open for others to use for assemblies or other purposes. On rare occasions, use of a Non-Public Area might be provided to a local organization. A Limited Area might be a hybrid location that is

sometimes exclusively used for University business and other times is available for the campus community or public to use.

All three categorized areas are subject to reasonable time, place and manner regulations. The University should have good reasons for the regulations it imposes at any given location, and these regulations should accomplish their intended purposes.

PUBLIC AREAS

The defining feature of a “Public Area” is that it is generally (i.e., most of the time during operating hours) available for assemblies, marches, demonstrations and protests by the public and campus community. These are not “free speech zones,” as free speech can occur in many other areas of the University. Rather, these are areas that are safe and appropriate for energetic expressive activity and large gatherings. Reasonable time, place and manner restrictions can be imposed in Public Areas, but they must be narrowly tailored to serve a significant University purpose.

A Public Area is an area that is conducive to crowds and the typical noise that crowds generate. It can accommodate many people without creating a risk to safety or impeding ingress and egress. It is in a location that typically gets a substantial amount of foot traffic. Usually, a Public Area is an open, outdoor space that is not locked and is generally accessible to the public. A Public Area is a space that is suitable for members of the University community and the public to freely congregate, speak, distribute materials, and vigorously voice their positions without interfering with the normal operations of the University.

Large, open areas of the campus that have traditionally been used for assembly, debate, and other expressive activities should be designated as Public Areas to retain these characteristics, unless the University has a compelling reason to apply a different designation.

Not every large, open, unlocked, outdoor space is a Public Area. For instance, lands used for crops are for the purpose of agricultural endeavors and educating students. These areas are not appropriate for protests which would damage the crops and interfere with educational operations. Steep hills or areas with uneven terrain are not conducive to large gatherings for safety reasons. Athletic fields with surfaces that would be damaged by crowds do not have to be opened as Public Areas. Locations should be analyzed for their suitability as Public Areas.

Typical examples of Public Areas on CSU campuses include:

- Parks
- Plazas
- Lawns
- Quads

LIMITED AREAS

A “Limited Area” is a space that is **not available for assemblies, marches, demonstrations, or protests, but is available for use by the campus community and/or the public under prescribed circumstances**. Limited Areas encompass a broad range of University spaces and uses.

A Limited Area is an area that the University shares—under specified circumstances—with members of the campus community and/or the public. The area might be one that is usually reserved for the University’s own use but is occasionally open for others to use; or it might be used by the campus community or public more than it is used by the University. It might be available by reservation only, or it might be available on a priority or first-come basis. It can have limitations on the time or duration of availability for Non-University use. It may be designated for a

particular type of event or use. It may have few restrictions or many, depending on the circumstances. The primary feature is that it is, at least sometimes, available for use by persons or organizations other than the University and it is not available for public assemblies, marches, demonstrations or protests.

Some reasons why a University space might be designated as “Limited” rather than “Public” can include the following:

- The area is not big enough for large crowds.
- There are safety concerns that make the space not conducive to marches and protests.
- The area is near instructional activities that would be adversely impacted by crowds and noise generated from demonstrations.
- Large gatherings in the area would impede access to important University facilities, such as health centers or support offices.
- The location is an interior space that must be maintained and kept secure from damage.
- The location is a desirable space that needs to be scheduled or regulated to provide fair access to multiple users.
- The space is normally used for University operations and is available to others only occasionally.
- The area would be damaged if opened for unregulated use and would then be unsuitable for its primary purpose.
- The location is near sensitive campus operations or areas that could be negatively impacted by crowds, such as livestock barns, childcare facilities, research activities, protected habitat, etc.
- The area is near residential facilities where demonstrations would interfere with residents’ quiet enjoyment of their living spaces.
- The space is available at limited times due to the University’s own use of the area or due to impact on other University operations.
- Sound generated by unfettered use of the area would impact University operations such as classes, study areas, business activities, etc.
- Registration is necessary to ensure safety and crowd management.

NON-PUBLIC AREAS

A Non-Public Area is a space that is dedicated solely to operations of the University. It is not open for use by the public or the campus community, although the public and campus community members may be permitted in this space to engage in business with the University that is consistent with the intended purpose of the space.

A Non-Public Area is generally locked or otherwise inaccessible when not in use by the University. The area is typically used exclusively for University business, though it may infrequently be opened for other purposes (which might temporarily change its character). Although Non-Public Areas are dedicated to University business and control, Students, Employees, auxiliary employees, and Non-affiliates who are guests in these areas continue to have free speech rights as long as they do not interfere with University operations.

Typical examples of Non-Public Areas on CSU campuses include:

- Classrooms and lecture halls
- Libraries
- Administrative offices
- Residence halls

- Dining facilities
- Building lobbies and hallways
- Recreation centers
- Barns, pastures, crop fields, orchards and other agricultural facilities
- Solar farms
- Radio towers
- Flagpoles
- Research facilities
- Childcare centers
- Healthcare centers

DETERMINING AREA DESIGNATIONS AND LIMITATIONS

In deciding how to label an area in the Campus Addendum, the University should consider the primary ways the area is used. Areas that are almost always open (during operating hours) for assemblies, marches, demonstrations, and protests without the need for reservations should be designated as Public Areas. Areas that are never or rarely available for anything other than University business should be designated as Non-Public Areas. Locations that can be used by both the University and others, but are not appropriate for demonstrations, protests, etc. should be designated as Limited Areas.

The University should be liberal in determining which outdoor areas are Public Areas (provided that the areas are suitable for assemblies, demonstrations, etc.). An area that has all the qualities of a Public Area should be designated as such. The University should not designate it as Limited or Non-Public unless it has compelling reasons to do so and there are other available Public Areas. If there are occasional exceptions to the designated use of an area, these exceptions can be described in the “Permitted Manner of Use” section of the Campus Addendum.

Time, place and manner restrictions should be narrowly tailored. There is not a one-size-fits-all formula for restrictions. Rather, they should be customized to fit the specific location, time, use, surroundings and other circumstances. The fact that areas have designations of Public, Limited, or Non-Public does not mean they will have the same restrictions as other areas with the same designations. Even within a particular area, it may be appropriate to have different limitations that are tailored to changing circumstances. For instance, there may be sound amplification restrictions during certain hours when nearby classes are in session, and no such restrictions when classes are not in session.

Restrictions should be clearly articulated and easily accessible to the campus community and the public. Limitations can either be fully stated in the Campus Addendum or provided by way of hyperlinks. For areas that are subject to reservation, hyperlinks to the reservation process can be provided.

CONCLUSION

The University has the right to control its property to allow it to operate as intended. The University’s goal is to allow for the free exchange of ideas while maintaining the safety, order, educational activities and functioning of the campus. Understanding the distinction between Public, Limited and Non-Public Areas and properly designating campus locations are crucial for ensuring that free speech rights are respected, public discourse is encouraged, and University operations continue without disruption.