

KNOW YOUR RIGHTS

Peaceful Protest in Boston, MA

Disclaimer: This resource is designed for informational purposes only. It is not legal advice and is not intended to create an attorney-client relationship. Please note that this resource is not exhaustive. Situations or inquiries may arise that are not answered below.

Do You Have a Constitutional Right to Peacefully Protest?

- You have a First Amendment right to free speech and peaceful assembly.
- Generally, sidewalks, parks, and other public places may be used for a peaceful protest, provided your group has obtained any required permit.
- The First Amendment does **not** protect speech that threatens; intends to cause others to violate laws; or provokes a person to violence.
- The First Amendment does **not** protect civil disobedience, which is considered peaceful but unlawful activity. Such activity may lead to arrest.

Where Can I Protest or Demonstrate?

- Depending on where you intend to conduct a peaceful protest (land owned by federal, state, or local government), various restrictions may apply, *e.g.*, Boston regulates activity conducted on public property, including city parks, plazas, sidewalks, roadways, the Boston Common, the Public Garden, Government Center, the State House, Copley Square, and other public grounds in Boston.
- In general, your exercise of First Amendment rights cannot disrupt or impede others' use of the same public space for its usual purpose, *i.e.*, demonstrators may not block pedestrian or vehicular traffic on sidewalks and streets, or prevent entry or exit from buildings.

Do I Have the Right to Record During a Protest?

- You have the right to take photographs and video during a protest of demonstration, including recordings of law enforcement activity, as long as you do not interfere with police activity or their operations. **Police officers cannot confiscate or order you to delete your recordings, phone, camera, or other equipment without a warrant.**

What Rules Apply When Conducting a Lawful, Peaceful Protest in Boston?

- In Boston, unless confined to a private property or a public sidewalk, organizers of protests must obtain a permit from the Commissioner of Parks and Recreation. The Commissioner is required to honor all requests for such permits but may specify the time, place and manner of the demonstration. Organizers must obtain a bond or deposit cash equal to the amount of the bond to cover costs of restoration, rehabilitation and cleanup of the public area. (City of Boston Code, Ordinances §16-19.3).

- Protests disrupting the flow of traffic or pedestrian travel require a permit. In general, Boston considers unauthorized activity that blocks access to building entrances, driveways, or otherwise obstructs sidewalks or streets to be a public nuisance, subject to a fine. (City of Boston Code, Ordinances §16-27.2).
- Profane, threatening, abusive, obscene, or indecent language or loud outcries are not allowed in the Boston Common, the Public Garden, or other public ground. (City of Boston Code, Ordinances § 16-19.4).
- Defacing, defiling, or removing any structure, sign or other thing connected to a public ground is prohibited. (Parks & Recreation Commn. of Boston, Sec. 2(e)).
- Demonstrators may not sit, stand or lie upon, or climb upon any statue, monument, fountain, wall, fence, or other structure on public grounds. (City of Boston Code, Ordinances § 16-19.1; Parks & Recreation Commn. of Boston, Sec. 2(a)).
- Unless specifically authorized by permit, megaphones and other noise devices are prohibited in public areas. The city may impose decibel level and time period restrictions. The city may also limit sound amplification equipment so that it does not unreasonably interfere with another demonstration. (City of Boston Code, Ordinances § 16-19.2).
- Hand-carried signs generally are allowed regardless of size. However, signs may not be affixed, leaned against, or set down on city property, including fences, lamp posts, and other structures. (City of Boston Code, Ordinances § 16-23.3).
- Demonstrators may not carry any firearm or destructive weapon, concealed or otherwise, in any public park concealed weapons, including guns. (Parks & Recreation Commn. of Boston, Sec. 2(m)).
- Igniting or maintaining an open fire on public property, except those locations especially set apart for the purpose by the Boston Parks and Recreation Commission, is prohibited unless a permit is obtained from the Fire Commissioner. (City of Boston Code, Ordinances § 16-6.1; Parks & Recreation Commn. of Boston, Sec. 3(j)).

Government Authority and Public Safety

- Law enforcement officials are sworn to preserve the peace and protect the general public. Law enforcement must employ crowd control measures to the extent appropriate and necessary to ensure safety for all -- protestors, counter-protestors, spectators, and passers-by.
- Law enforcement may not interfere with a lawful protest but may use blockades to restrain a crowd from engaging in illegal activity.
- You may only be detained if law enforcement reasonably suspects you are involved in criminal activity.
- If there is a reasonable suspicion that you have a weapon, a law enforcement officer may conduct a pat down but not a full search.
- A crowd may be lawfully ordered to disperse if there is a substantial risk of violence or disturbance of the peace, e.g. blocking a highway.

De-Escalating Protester-Police Encounters

- Keep calm. Make clear your intent to be non-violent.
- Open and maintain lines of communication and negotiation between protesters and law enforcement.
- Follow law enforcement orders to disperse if you seek to avoid arrest.
- Memorize and share the phone numbers you may need to call if you need help, or are arrested or detained.

- You have the right to leave the protest location if you are not under arrest. Ask if you are free to leave; if you are, walk away; if you are not, politely ask why.
- You have the right to remain silent and cannot be arrested for refusing to answer questions by law enforcement. Statements that you do make can be used against you. If you wish to remain silent, say so out loud.
- You do not have to give law enforcement your name or show identification unless you are under arrest.
- Do not give false information to law enforcement. Doing so is a crime and can be used against you in later proceedings.
- In Boston, failure or refusal to obey an officer's command to disperse or assist in suppressing a protest or in arresting people, is a misdemeanor, punishable by imprisonment of up to 12 months or a fine of between \$100 and \$500. (Mass. Gen. Laws ch. 269, § 2). While you retain your constitutional rights to speak, assemble, and remain silent, ignoring an officer's request to clear a pathway, resisting arrest, or helping another to escape arrest, violate this rule.
- Fall back to a safe place if the situation becomes dangerous or violent.

What Should I Do If An Arrest Occurs?

- Do not resist. Try to memorize the arresting officer's badge number, name, and other identifying information. In Massachusetts, every police officer is required to carry an identification card with a photograph and show the card upon request. Any police officer, acting in an official capacity, must provide his or her name, rank, and badge number, in a civil manner, when requested. (Mass. Gen. Laws ch. 41, § 98D).
- During an arrest, law enforcement may conduct a pat down of your body for the exclusive purpose of finding hidden weapons. If law enforcement wishes to search your person or possessions, phones, or bags, you must first provide your consent. If you do not consent to such a search, say so out loud.
- If you are arrested, you may be held at the scene or the local police precinct until you can be processed. Your identifying information, address, photograph, or fingerprints may be taken and any prior criminal history, warrants, or unpaid parking or traffic tickets identified. Not providing this information upon arrest, or providing false information, is a misdemeanor, punishable by not more than a \$1,000 fine and/or up to 12 months imprisonment. (Mass. Gen. Laws ch. 268, § 34A).
- If you are arrested, you have the right to use a telephone at the police station, at your expense, to communicate with your family or friends, to arrange for bail, or to hire an attorney. This right is limited to a period of one hour after you have been advised of your right. (Mass. Gen. Laws ch. 276, § 33A).
- A summons will be issued notifying you in writing to appear at a specified time and place for court. You may have to pay a nonrefundable fee, not to exceed \$50 (in addition to any bail amount) prior to your release. (Mass. Gen. Laws ch. 276, § 58).
- To be prepared for such a misdemeanor arrest, bring with you your ID and any prescription medications you regularly need.

What Should I Do If Subject to Racial Discrimination or Harassment?

- You have the right to be free from racial discrimination or other forms of harassment by police. This right is guaranteed by local, state, and federal law.
- If you believe that you have been targeted for discrimination on the basis of your identity while protesting or otherwise, you can call 844-9-No HATE or visit www.8449nohate.org to report the incident and get support