

[First-Middle Last]
[Address]
[City, State [Zip]]

[Name, City Attorney]
[Address]
[City, State, Zip]

[Name, City Mayor]
[Address]
[City, State, Zip]

[Name, Sheriff]
[Address]
[City, State, Zip]

[Name, Police Chief]
[Address]
[City, State, Zip]

[Name, Chief Judge]
[Address]
[City, State, Zip]

[Date]

Re BAD LEGAL ADVICE – HUGE PUBLIC LIABILITY

Greetings,

Please be advised that the police and sheriffs deputies are being given bad legal advice that may create enormous financial liabilities. First of all, adopting a policy where you refuse to respond to consumer calls for illegal conduct by business employees and then only responding to the managers and owners of these businesses is police bias.

Private businesses, even membership clubs such as Costco, cannot enforce any policy that violates state law. Businesses that are open to the public, such as grocery stores and shopping malls are places of public accommodation. Customers and patrons entering the premises have an irrevocable license to enter the premises, socialize and go shopping.

No laws have been suspended and no emergency of any magnitude permits anyone to violate the laws. Executive orders regarding mask-wearing are not laws and do not apply to private businesses or people. Misinforming police personnel is creating enormous liabilities against the public interest and against public policy. The cities and counties are jeopardizing their insurance coverage and even solvency.

Patronizing private businesses on private property creates an irrevocable license for the patrons who enter and walk upon the premises, provided that there is no violation. Unless there is a violation, such as someone disrupting the business or harassing other patrons, there is no violation and there is no trespass. If police or sheriff's deputies issue warnings or citations for trespass or arrest people for trespass where there is no violation, they may be individually liable for tort claims including false arrest and the city and county may also be liable for damages.

There is no trespass because a customer is confined to a wheel-chair, or because of his race, or that he may be blind, have certain religious convictions, or for refusing to accept the store's policies of undertaking any medical intervention as a condition of entry. Just like it would be illegal for the store owners to require patrons to take an aspirin or get a tattoo as a condition for entering a business that is open to the public, it violates the law to refuse service to people as we are now witnessing, in utter disregard of the law. Just because a business is private and on private property, does not permit the business personnel to enforce policies and engage in conduct that violates the laws or violates the rights of people.

Please be further advised that it may also be a crime for a business employee to wear a mask and at the same time, intimidate or harass patrons entering the premises. It is also a crime to engage in the unlicensed practice of medicine and falsely imprison a patron by blocking his path into the business.

It may be a misuse of public funds to improperly advise police about these matters and thereby create unnecessary litigation and in some cases, violent confrontations. In many

cases, store owners who call the police embellish the circumstances just to get police to respond. It would be a wise risk management exercise to properly advise the police and sheriff of the correct legal understanding in these matters and possibly choose not to respond to calls from businesses unless there truly is a *bona-fide* indication of an actual violation.

POLICY CHANGES IN CONFORMITY WITH STATE LAW

NON-DISCRIMINATION

When an individual is asked to leave premises which are held open to the public for business, and it appears that the allegation of trespassing is based on discrimination by the owner, manager, or employee of the establishment, officers will not enforce trespass provisions, but will only take enforcement action in response to behavior which occurs in their presence (e.g., a crime or an aggravated escalating disturbance).

PROCEDURE

In the event an owner/agent or occupant advises an officer that a person is not wanted on the property or premises, and requests that the person be removed, officers should conduct an investigation and do the following:

1. Notice must be given by the owner or legal occupant to the person found trespassing that the person is not legally on the property, is not wanted, and is requested to leave.
2. Verbal or written notice must be given by the owner or legal occupant. (In trespass to land, property or premises situations, a property owner can also provide notice by properly posting the property involved.)
3. An officer may relay a written notice from the owner/legal occupant to the person not legally on the premises. An officer may not relay a verbal notice; verbal notice must be conveyed personally from the owner/legal occupant to the person involved.
4. Unless it is clearly established that prior notice not to reenter was given, the person should be properly advised by the owner/legal occupant; be notified by the officer that failure to leave may result in arrest; and be given the opportunity to leave.
5. If prosecution for violation of an actual law is contemplated, does the owner or occupant want the person arrested? Will the owner/occupant testify?

UNLAWFUL TRESPASS TO PREMISES HELD OPEN TO THE PUBLIC

Taverns and restaurants, although not publicly owned, are licensed by the city or county or state and held open to the public, thus they are viewed as a form of public accommodation with greater expectations of access and reasonable use by the public. The public is correspondingly expected to behave reasonably and in a manner which does not inappropriately interfere with, disturb, intimidate, threaten, injure, or otherwise impede the legitimate interests of owners and/or other patrons.

The unruly patron law should be used when arrests are made on licensed premises. Officers should order unruly patrons out for three months following an arrest for violating an actual law, and six months following an arrest for a state crime. A record of enforcement will be completed and maintained in the dispatch center. When investigating incidents at liquor-licensed or other establishments held open to the public, officers must obtain information. If the circumstances meet the guidelines identified in the above procedure section, the officer(s) should establish control of the immediate situation, insure that the person receives proper notice not to enter or remain on the premises and take whatever action becomes necessary thereafter.