FIRE
Foundation for Individual Rights and Expression

March 6, 2025

Board of Commissioners
Downers Grove Park District
2455 Warrenville Road
Downers Grove, Illinois 60515

Sent via U.S. Mail and Electronic Mail (bkotula@dgparks.org; smcdonnell@dgparks.org; jdahlstrom@dgparks.org; bbender@dgparks.org; clundt@dgparks.org)

Dear Board Members:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech, is concerned by the Downers Grove Park District's designation of free speech zones in the public parks it manages. This issue was brought to FIRE's attention by Downers Grove residents Mary Mack, Jeffrey Mack, and Laura Hois, who have been adversely affected by these regulations. The restrictions infringe upon residents' First Amendment right to engage in expressive activity in traditional public fora. FIRE thus urges the District to eliminate its free speech zones and reform its policies to adhere to its constitutional obligations.

The District's Free Speech Zones

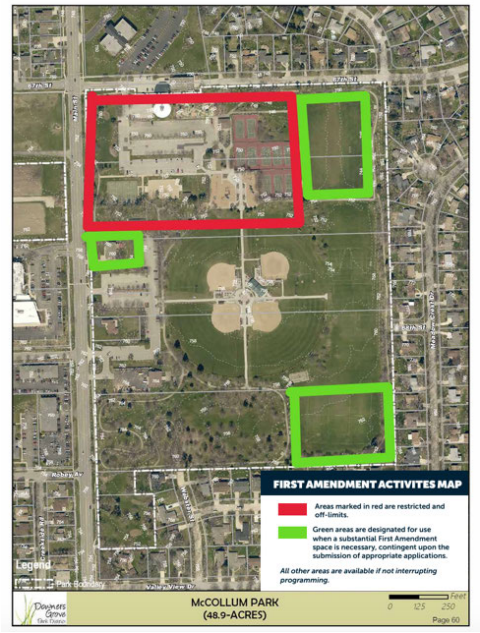
Downers Grove Park District Ordinance 1324 designates zones where it permits "First Amendment activities" in the public parks it manages.[1] The ordinance defines "First Amendment Activities" as:

1. One or more persons engaging in charitable, religious or political speech or expressive conduct, or gathering or associating for those purposes;
2. Engaging in the commercial sale and distribution of merchandise for charitable, religious, or political purposes;
3. Conducting parades or public assemblies;
4. Distributing non-commercial printed or written material; or

[1] DOWNERS GROVE PARK DIST., Ordinance 1324 § 4.4.12.1 (updated May 16, 2024), *available at* https://www.dgparks.org/upload/ParkOrdinance-Updated5-16-24.pdf.

5. Erecting unattended, seasonal displays representing a charitable, religious or political message, which may occupy an area no larger than 30 square feet.[2]

Limited areas within eight public parks and other public spaces are "designated as Public Forums for the purpose of First Amendment Activities" under the policy.[3] For example, in McCollum Park, the ordinance confines "First Amendment Activities" to the "[g]rass area northeast of Park along 67th Street; area southwest of park outside of ball diamonds/walking path; and pavilion west of the ball diamonds on Main Street."[4] However, a map of the park conflicts with this description, indicating three areas outlined in green "designated for use when a substantial First Amendment space is necessary, contingent upon the submission of appropriate applications," and noting "[a]ll other areas are available if not interrupting programming."[5]



Ordinance 1324 also limits First Amendment activities in Fishel Park to a "reserved & marked space on the Southwest side of the park, along Grove Street – during concerts, programming & events."[6] An accompanying map shows the designated space as 15 feet by 15 feet (despite appearing larger on the map).[7] A demarcated "free speech zone" in Fishel Park during the District's 2024 Summer Concert Series appeared even smaller, as shown in photos:

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[2] *Id.* § 4.4.12.2.1.

[3] *Id.* § 4.4.12.2.2(1).

[4] *Id.*

[5] DOWNERS GROVE PARK DIST., *First Amendment Activities Policy — McCollum Park*, https://www.dgparks.org/upload/2024-FirstAmmendmentActivityPolicy-McCollumPark.pdf.

[6] Ordinance 1324 § 4.4.12.2.2(1).

[7] DOWNERS GROVE PARK DIST., *First Amendment Activities Policy — Fishel Park*, https://www.dgparks.org/upload/2024-FirstAmmendmentActivityPolicy-FishelPark.pdf.

Ordinance 1324 also provides that, for *some* purposes, there might be additional areas where First Amendment activity can take place:

> an open and unimproved area no larger than 10' x 10' adjacent to and outside the parking lot at any District Property which has a parking area, provided that such First Amendment Activity, in consideration of all other contemporaneous Park District activities occurring there, does not obstruct any public sidewalk or ingress or egress to any place or building on District property by hindering or impeding or tending to hinder or impede the free and uninterrupted passage pedestrians thereon or therein.[8]

The ordinance further states: "All District Property or parts thereof not expressly described above shall be **not** be [*sic*] considered a public forum and therefore First Amendment Activities are not permitted."[9]

The District's Establishment of Free Speech Zones Violates the First Amendment

The fundamental mistake of law underpinning Ordinance 1324's "First Amendment Activities" policy is the idea that the government can convert a traditional public forum into a non-public forum by fiat. Under well-settled First Amendment doctrine, it cannot. As the Supreme Court has explained:

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[8] *Id.* § 4.4.12.2.2(2). Despite the reference to "First Amendment Activities described in items A(1) and (4)," neither this section nor the preceding one contain a subsection (A). In context, however, this language appears to refer to the enumerated list of "First Amendment Activities" in Section 4.4.12.2.1, specifically "one or more persons … gathering or associating" for "charitable, religious, or political speech or expressive conduct," or "distributing non-commercial printed or written material."

[9] *Id.* § 4.4.12.2.2(3) (emphasis added).

> This Court long ago recognized that members of the public retain strong free speech rights when they venture into public streets and parks, which have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. In order to preserve this freedom, government entities are strictly limited in their ability to regulate private speech in such traditional public fora.[10]

The Court has repeatedly emphasized that public "streets, sidewalks, parks, and other similar public places are so historically associated with the exercise of First Amendment rights that access to them for the purpose of exercising such rights cannot constitutionally be denied broadly and absolutely."[11] These principles do not square with the plain language or intent of Ordinance 1324, which completely bans First Amendment activities in District parks—including open areas within those parks—outside of designated zones that make up a fraction of the fora.

A public park, like any traditional public forum, can allow for reasonable and content-neutral time, place, and manner restrictions on expressive activity, such as limits on use of amplified sound, so long those restrictions are narrowly tailored to serving a significant governmental interest and leave open ample alternative channels of communication.[12] The District cannot simply declare that areas which by their nature are traditional public fora are *not* traditional public fora and shut down *all* First Amendment activity in broad swaths of those areas.[13]

The policy's constitutional flaws are especially serious given the District's extremely broad definition of "First Amendment Activities." Read literally, the policy prohibits even a lone individual from handing out leaflets or verbally expressing a political opinion in a park outside the designated free speech zones. These are not reasonable and narrowly drawn time, place, and manner restrictions but rather defy the high level of First Amendment protection afforded public parks as vital spaces for open discourse and civic participation.

The ordinance and park maps also conflict with each other, sowing confusion for those wishing to use to use the parks. For example, Ordinance 1324 flatly bans all First Amendment activities outside its designated zones and lists three such zones for McCollum Park, yet the District's map of that park designates three zones for when "substantial First Amendment space is necessary" and says "[a]ll other areas are available if not interrupting programming." Even if the map's more lenient policy controls, it affords officials undue discretion to subjectively decide when First Amendment activities are "substantial" or would "interrupt" programming.

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[10] *Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009) (internal quotation marks and citations omitted).

[11] *Carey v. Brown*, 447 U.S. 455, 460 (1980) (cleaned up).

[12] *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

[13] *U.S. Postal Serv. v. Council of Greenburgh Civic Ass'ns*, 453 U.S. 114, 133 (1981) (government "may not by its own *ipse dixit* destroy the 'public forum' status of streets and parks which have historically been public forums").

It is thus unconstitutionally vague because it fails to "provide explicit standards for those who apply them," risking "arbitrary and discriminatory enforcement."[14]

Ultimately, courts have held time and again that creating "free speech zones" in public fora and banning expressive activity outside those zones violates the First Amendment. Public colleges have tried this repeatedly, and FIRE, along with others, have repeatedly and successfully challenged these policies in court.[15] For example, a federal court held a Texas Tech policy must be interpreted to allow free speech for students on "park areas, sidewalks, streets, or other similar common areas . . . irrespective of whether the University has so designated them or not. These areas comprise the irreducible public forums on the campus."[16] The court further noted the university "may open up more of the residual campus as public forums for its students, but it can not designate less."[17]

Conclusion

Allowing free speech in certain limited areas a traditional public forum does not license the government to censor expression everywhere else in that forum. FIRE calls on the District to excise or revise the unconstitutional provisions in Ordinance 1324 and to ensure residents are fully able to exercise their First Amendment rights in the parks.

We request a response to this letter no later than March 20, 2025.

Sincerely,

Aaron Terr, Esq.
Director of Public Advocacy

[14] *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

[15] *See* Samantha Harris, '*Free Speech Zones,' Then and Now*, FIRE (Dec. 27, 2016), https://www.thefire.org/news/free-speech-zones-then-and-now.

[16] *Roberts v. Haragan*, 346 F. Supp. 2d 853, 861–62 (N.D. Tex. 2004).

[17] *Id.* at 862.