FIRE
Foundation for Individual Rights and Expression

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Sent via U.S. Mail and Electronic Mail (dprice@ancelglink.com)

Dear Mr. Price:

Thank you for your March 10 response to FIRE's letter of March 4, 2025. Unfortunately, it does not resolve our concerns over the unconstitutional defects in Downers Grove Park District Ordinance 1324.

To begin with, the ordinance designates select "public forums" where "First Amendment Activities" are allowed, but in doing so, it appears to improperly exclude open outdoor areas of parks that qualify as traditional public forums.

To reiterate, whether government property qualifies as a traditional public forum depends on its objective characteristics, not the label the government chooses to apply to it.[1] Parks, streets, and sidewalks have long been considered quintessential public forums.[2] While we acknowledge that some Park District properties—like burial grounds, artificial turf fields, or museum interiors—are not traditional public forums by their nature,[3] the ordinance also sweeps in open outdoor areas that *do* have the characteristics of traditional public forums.

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[1] *Arkansas Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 677 (1998) ("Traditional public fora are defined by the objective characteristics of the property, such as whether, by long tradition or by government fiat, the property has been devoted to assembly and debate.") (cleaned up); *Boardley v. Dep't of Interior*, 615 F.3d 508, 514 (D.C. Cir. 2010) (The "protections of the First Amendment do not rise or fall depending on the characterization ascribed to a forum by the government.").

[2] *Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009) ("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.") (cleaned up).

[3] Even these areas are not, however, outside the First Amendment's reach. *See Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46 (1983) (Even on "[p]ublic property which is not, by tradition or designation, a

For example, the ordinance excludes a walking path in McCollum Park from its designated "public forums." But a walking path in a public park is a textbook example of a traditional public forum that cannot be legislatively redefined.[4] Such exclusions are particularly concerning given that the ordinance not only restricts but completely bans all "First Amendment Activities" outside of areas explicitly designated as "public forums." As a result of the extremely broad definition of "First Amendment Activities," it is putatively unlawful even to have a casual political or religious conversation in this part of McCollum Park or any other excluded outdoor area.

Even where the ordinance allows expressive activity, its restrictions fail constitutional scrutiny. As our prior latter acknowledged, the Park District may impose reasonable time, place, and manner restrictions in traditional public forums. But those restrictions must (1) be content-neutral, (2) be narrowly tailored to serve a significant government interest, and (3) leave open ample alternative channels for communication.[5] Ordinance 1324 fails all three prongs.

First, the ordinance is not content-neutral, as it selectively applies to "charitable, religious or political speech or expressive conduct."[6] In other words, it "applies to particular speech because of the topic discussed or the idea or message expressed."[7] Speech that is not on those topics—artistic expression with no political or religious message, for example—is left unregulated unless it falls within another defined category such as "non-commercial printed or written material."

Content-based speech restrictions are subject to strict scrutiny and presumptively unconstitutional.[8] They "may be justified only if the government proves that they are narrowly tailored to serve compelling state interests."[9] Even assuming the ordinance is intended to serve a compelling interest like public safety, there is no credible argument that singling out charitable, religious, or political speech advances that interest, let alone in a narrowly tailored manner.

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forum for public communication," regulations on speech must be "reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view.").

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

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

[6] DOWNERS GROVE PARK DIST., Ordinance 1324 § 4.4.12.2.1(1) (updated May 16, 2024), *available at* https://www.dgparks.org/upload/ParkOrdinance-Updated5-16-24.pdf. If "expressive conduct" is meant to be a separate category to which the modifiers "charitable, religious or political" do not apply, that would not resolve the ordinance's constitutional issues, as it effectively mean *all* speech is banned outside of the listed "public forums."

[7] *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

[8] *Id.*

[9] *Id.*

Second, even assuming content neutrality, the ordinance is insufficiently tailored to any significant government interest. While the First Amendment does not require that the "Park District permit a parade or even a single protestor to march through a youth soccer or little league game," to use the example in your letter, the policy is not narrowly tailored to preventing such disruptions.

For instance, it limits all "First Amendment Activities" during "programming" or "events" in Fischel Park to a small 15-by-15-foot "free speech zone," regardless of the nature of the event or the "First Amendment Activities." Last fall, a Park District employee told Laura Hois—a recent candidate for the DuPage County Board—that she could not step outside the "free speech zone" to introduce herself and talk about her campaign with people gathering in the park before a concert, even though this was core political speech in a traditional public forum.[10] Whatever interest the Park District may reasonably have in restricting large demonstrations in these circumstances, it does not justify isolating solitary speakers to a tiny patch of grass during *any* undefined "events" or "programming," regardless of how unobtrusive the speech is. Nor does the policy—by relegating speakers to a small area that may be distant from their intended audience—leave open ample alternative channels of communication.[11]

We understand the Park District has legitimate reasons for imposing certain time, place, and manner restrictions on expressive activity in the parks. But the First Amendment requires more precision than Ordinance 1324 provides.

FIRE is willing to work with the Park District to revise the ordinance to ensure residents can fully exercise their constitutional rights in public parks, subject only to reasonable, narrowly tailored, content-neutral rules. We again urge the Park District to reconsider its approach and bring its policies in line with the First Amendment.

Sincerely,

Aaron Terr
Director of Public Advocacy

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[10] David Struett, *Do 'free speech zones' promote safety in Downers Grove parks? Or are they 'completely un-American'?*, CHI. SUN-TIMES (Mar. 14, 2025), https://chicago.suntimes.com/suburban-chicago/2025/03/14/free-speech-zones-downers-grove-parks-civil-rights-groups. *See also Virginia v. Black*, 538 U.S. 343, 365 (2003) ("Political speech [is] at the core of what the First Amendment is designed to protect.").

[11] *Weinberg v. City of Chi.*, 310 F.3d 1029, 1041 (7th Cir. 2002) (An "alternative is not adequate if it forecloses a speaker's ability to reach one audience even if it allows the speaker to reach other groups.") (cleaned up).