

FILED

SEP 18 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

MATT SWART, JEREMY CHONG,)
GABRIEL EMERSON, and)
CAEDEN HOOD)

Plaintiffs,)

CITY OF CHICAGO, an Illinois)
municipal corporation,)
Defendant.)

CASE NO.

1:19-cv-06213
Judge John Robert Blakey
Magistrate Judge Sidney I. Schenkier

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Matt Swart, Jeremy Chong, Gabriel Emerson, and Caeden Hood

("Students"), by and through their attorneys Mauck & Baker LLC, complain against the
Defendant, City of Chicago, a municipal corporation, ("City") as follows:

NATURE OF THE CASE

1. The preamble to our Constitution reminds us that it was established "to secure
the Blessings of Liberty to ourselves and our Posterity."¹

2. This case is about keeping secure the liberty of public citizens, in general, and the
four student plaintiffs, specifically, to freely engage in speech activities at Millennium
Park — a public park and a traditional public forum.

¹ U.S. Const. Preamble.

3. The right of citizens to discuss matters of public importance, to engage with other citizens, and to hear encouraging or challenging opinions is a bedrock of the First Amendment which has found its fullest expression in the context of public forums.

4. Yet, the City of Chicago ("City") has now decided it can restrict speech activities and distribution of free literature in one of the nation's most recognizable public forums by prohibiting those activities in 10 out of 11 "rooms."

PARTIES

5. Plaintiff Matt Swart is a sophomore student at Wheaton College. Swart is a member of the Chicago Evangelism Team which is sponsored by the Office of Christian Outreach at Wheaton College.

6. Plaintiff Jeremy Chong is a sophomore student at Wheaton College. Chong is a member of the Chicago Evangelism Team which is sponsored by the Office of Christian Outreach at Wheaton College.

7. Plaintiff Gabriel Emerson is a sophomore student at Wheaton College. Emerson is a member of the Chicago Evangelism Team which is sponsored by the Office of Christian Outreach at Wheaton College.

8. Plaintiff Caeden Hood is a junior student at Wheaton College. Hood is a member of the Chicago Evangelism Team which is sponsored by the Office of Christian Outreach at Wheaton College.

9. Defendant, City of Chicago, is a municipal corporation located in Cook County, Illinois.

10. Defendant, through its employees, agents, and representatives, is responsible for the enactment and enforcement of the regulations and actions challenged herein.

JURISDICTION AND VENUE

11. This action arises under, *inter alia*, the First Amendment to the Constitution of the United States and Article I of the Illinois Constitution.

12. This Court has jurisdiction over the subject matter of this action by virtue of U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 1367 (supplemental jurisdiction); 28 U.S.C. § 2201 (authorizing declaratory relief); and 28 U.S.C. § 2202 (authorizing injunctive relief).

13. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(e) and 1402(a) and 5 U.S.C. § 703.

BACKGROUND

14. The Students are all members of the Chicago Evangelism Team which is an outreach ministry sponsored by the Office of Christian Outreach at Wheaton College.

15. The purpose of the Chicago Evangelism Team is to “Proclaim the gospel in the city of Chicago to whomever we find there, pray with and listen to all those we meet and be a light and a witness for Christ.”²

16. On December 7, 2018, Swart and Hood, along with four other members of the Chicago Evangelism Team, gathered at Millennium Park (“Park”) for the purpose of engaging in open air evangelism and distribution of free religious literature.

17. After the students commenced distribution of free religious literature, security staff at the Park approached the students and told them that they were not allowed to hand out any literature. The students heeded this directive and ceased further distribution.

18. After the students ceased distributions of their materials, Hood began open air preaching. After a few minutes, security staff at the Park once again approached the Students and informed them that they were not allowed to continue preaching.

19. Swart informed the security staff that they were on a public sidewalk (adjacent to Michigan Avenue) and that they had a right to continue speaking. Attached as **Exhibit A** is the location where the students gathered.

20. The security guard did not contend with Swart’s statement but insisted that he was “just doing his job.” The security guard further informed the students that they could speak to his supervisor.

² <https://www.wheaton.edu/life-at-wheaton/serve-off-campus/school-year/christian-service-council/outreach-ministries/>

21. The students ceased all evangelism activities as they contemplated what to do next.

22. About ten minutes later, Chong arrived at the Park and was informed by the other students about what had transpired.

23. Upon learning what happened, Chong decided to also engage in open air preaching.

24. Security staff approached Chong as well and directed him to stop speaking. Chong then requested that he speak with a supervisor.

25. Soon after, two Park supervisors arrived and informed the students that they were "soliciting" the public to subscribe to their beliefs and therefore in violation of a Chicago ordinance which prohibited "solicitation" on the Park sidewalk between Randolph Street and Roosevelt Street.

26. The students were not told what this ordinance was nor were they given a copy of it.

27. Members of the Chicago Evangelism Team, including Plaintiff Chong, returned to the Park the following week to engage in evangelism and but were again prohibited by Park security guards from doing so.

28. During the subsequent weeks, members of the Chicago Evangelism Team, including the Students at various times, continued to gather at the Park to engage in evangelism and distribute free religious literature.

29. On each occasion, the Students and other evangelists continued to face hostility and opposition from Park employees frustrating their ability to preach or distribute free religious literature.

30. Park employees, for example, prohibited the Students' activities near "the Bean" directing them to other parts of the Park, only later to prohibit them from those parts of the Park as well.

31. On at least one occasion, a Park employee informed the Students that they could not discuss religion in the Park and ordered the Students to leave the Park if they wanted to talk about religion.

32. This pattern continued until April 5, 2019 when Chong assembled at the Park and, as at other times, attempted to engage in evangelism. At that time, time Chong was approached by Christopher B. Deans, a Public Recreational Operations Manager, who provided Chong with newly enacted rules governing the Park and informed Chong that his activities were restricted to the confines of the new rules.

33. After receiving the new rules governing the Park in April 2019, the Students and members of the Evangelism Team felt restricted in their ability to evangelize and stopped gathering at the Park altogether.

34. Among the new rules promulgated by the City on April 2, 2019 included a requirement that individual speakers receive approval from two City departments before they can speak in the Park. **Exhibit B, April 2nd Rules.**

35. The City, in response to a letter from counsel highlighting various unconstitutional provisions within the rules (**Exhibit C, Letter**), amended the rules on August 26, 2019.

36. The newly revised rules still contain unconstitutional provisions which unduly restrict speech within a traditional public forum. These rules are described further below.

THE CITY'S NEW PARK RULES

37. The Park is now governed by a set of rules within a document known as the "Millennium Park Rules." ("Rules"). **Exhibit D, August 26th Rules.**

38. Section P of the Rules entitled "Disruptive Conduct" contains the following provisions:

(1) Conduct that objectively interferes with visitors' ability to enjoy the Park's artistic displays, including, but not limited to, substantially impairing pedestrian traffic, disrupting views of the art, or conduct that endangers public health or safety, may damage Park property, or is prohibited by applicable federal, state, and local laws, is prohibited in the Park.

(3) Millennium Park is divided into several outdoor "rooms," each with its own purpose or art. These rooms are: the Jay Pritzker Pavilion and the Great Lawn; the Lurie Garden; Cloud Gate Plaza; Chase Promenade North; Chase Promenade Central; Chase Promenade South; Boeing Gallery North; Boeing Gallery South; Wrigley Square and Millennium Monument; McCormick Tribune Plaza and Ice Rink; and Crown Fountain. Sidewalks surround Millennium Park and connect to sidewalks within the Park, which connect the *rooms* but are not part of the *rooms*. The making of speeches and passing out of written communications shall be restricted to Wrigley Square and Millennium Monument and the sidewalks in and

around the Park, though closed sidewalks, whether for an event or another reason, shall not be available for this purpose. (italics added).

39. Although an outdoor park is the quintessential public forum³, the City's Rules purportedly transform the outdoor public park into a novel spatial concept with various "rooms" that prohibit freedom of speech.

40. The Rules list 11 "rooms" and prohibit speech activities in 10 of them. The only "room" in which freedom of speech is permitted is the "Wrigley Square and Millennium Monument" room which is located in the corner of the Park away from the central activities and popular attractions. Attached as **Exhibit E** is a map of the "rooms."

41. Lawful conduct of Park visitors may also be prohibited if the conduct "objectively interferes with visitors' ability to enjoy the Park's artistic displays. . . ."

42. The Rules do not explain what "objectively interferes" means or how that determination is made.

43. Without any standards for making such a determination, lawful conduct, including speech activities, could be censored.

44. Without any standards, any person who disagrees with a speaker may, by force of the Rules, silence the speaker simply because the speaker, by expressing views disagreeable to a particular listener, "interferes" with a person's enjoyment of the art.

³ *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983).

45. All of the acts and Rules of the City, its officers, agents, and employees were executed, and continue to be executed, under the color and pretense of the policies of the City of Chicago.

**COUNT I
FREEDOM OF SPEECH**

46. The allegations contained in all preceding paragraphs are incorporated here by reference.

47. The Students' speech activities are protected under the Free Speech Clause of the First Amendment to the United States Constitution and Article I of the Constitution of the State of Illinois.

48. The Park is a traditional public forum.

49. The Rules, on their face, improperly restrict speech and distribution of free literature within a traditional public forum.

50. The Rules vest overly broad discretion upon unknown officials to restrict constitutionally protected speech.

51. The Rules improperly provide visitors to the Park the ability to shut down protected speech — a Heckler's Veto.

52. The Rules are overbroad in that they burden far more speech than is necessary to serve a significant governmental interest.

53. The Rules are vague in that they vest public officials with unbridled discretion that may be exercised in an inconsistent or discriminatory matter.

54. The Rules are not narrowly tailored and serve no governmental purpose.

WHEREFORE, the Students respectfully pray that the Court grant the relief set forth in the prayer for relief.

COUNT II FREE EXERCISE OF RELIGION

55. The allegations contained in all preceding paragraphs are incorporated here by reference.

56. The City's actions in interfering with the Students' ability to freely engage in evangelism, by open air preaching and distribution of free religious literature, constitute and infringement on the Students' rights to the Free Exercise of Religion under both the First Amendment to the United States Constitution and Article I of the Constitution of the State of Illinois.

57. The City has no compelling interest with which to justify its continual interference with the Students' religious activities within a traditional public forum.

58. Likewise, the newly adopted Rules also constitute an infringement on the Students' free exercise of religion.

59. The City has no compelling interest to limit the Students' religious speech activities to one corner of a public park.

60. The City cannot demonstrate that its actions, or its new Rules, are narrowly tailored to achieve any governmental interest.

WHEREFORE, the Students respectfully pray that the Court grant the relief set forth in the prayer for relief.

**COUNT III
ILLINOIS RELIGIOUS FREEDOM RESTORATION ACT**

61. The allegations contained in all preceding paragraphs are incorporated here by reference.

62. Section 15 of the Illinois Religious Freedom Restoration Act of 1998 ("IRFRA"), 775 ILCS 35/15, states:

Free exercise of religion protected. Government may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest.

63. According to 775 ILCS 35/20 of IRFRA, a claim may be raised under IRFRA in this case:

Judicial relief. If a person's exercise of religion has been burdened in violation of this Act, that person may assert that violation as a claim or defense in a judicial proceeding and may obtain appropriate relief against a government. A party who prevails in an action to enforce this Act against a government is entitled to recover attorney's fees and costs incurred in maintaining the claim or defense.

64. The City's actions and Rules substantially burden the Students' free exercise of religion without any compelling governmental interest.

WHEREFORE, the Students respectfully pray that the Court grant the relief set forth in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, the Students, respectfully request relief as follows:

A. Declare that the City's Rules and actions, particularly Section P(1) and (3) of the Rules, on their face and as applied, have violated and continue to violate the Students' (i) freedom of speech rights; (ii) free exercise of religion rights; (iii) and rights protected by the Illinois Freedom Restoration Act;

B. Enjoin the City and its employees, agents, or representatives from enforcing the Rules to prohibit or unduly restrict the Students' speech and religious activities within a traditional public forum;

C. Award damages for violation of the Students' constitutional and statutory rights and for the injuries and unlawful burdens it has incurred;

D. Award the Students their costs and expenses of this action, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988, and other applicable law;

E. Grant such other relief as this Court deems appropriate.

Respectfully submitted this 18th day of September, 2019.

SWART, CHONG, EMERSON, AND HOOD

By: /s/ John W. Mauck
One of its Attorneys

John W. Mauck, Esq.
Sorin A. Leahu, Esq.
Soo Y. Lee, Esq.
Mauck & Baker, LLC
One N. LaSalle St., Suite 600
Chicago, Illinois 60602
Telephone: 312-726-1243
Facsimile: 866-619-8661
jmauck@mauckbaker.com
sleahu@mauckbaker.com
slee@mauckbaker.com
Counsel for Plaintiffs

VERIFICATION

Under penalties as provided by law, the undersigned certifies that the statements set forth in the "Verified Complaint for Declaratory and Injunctive Relief" are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.


Jeremy Chong

EXHIBIT A

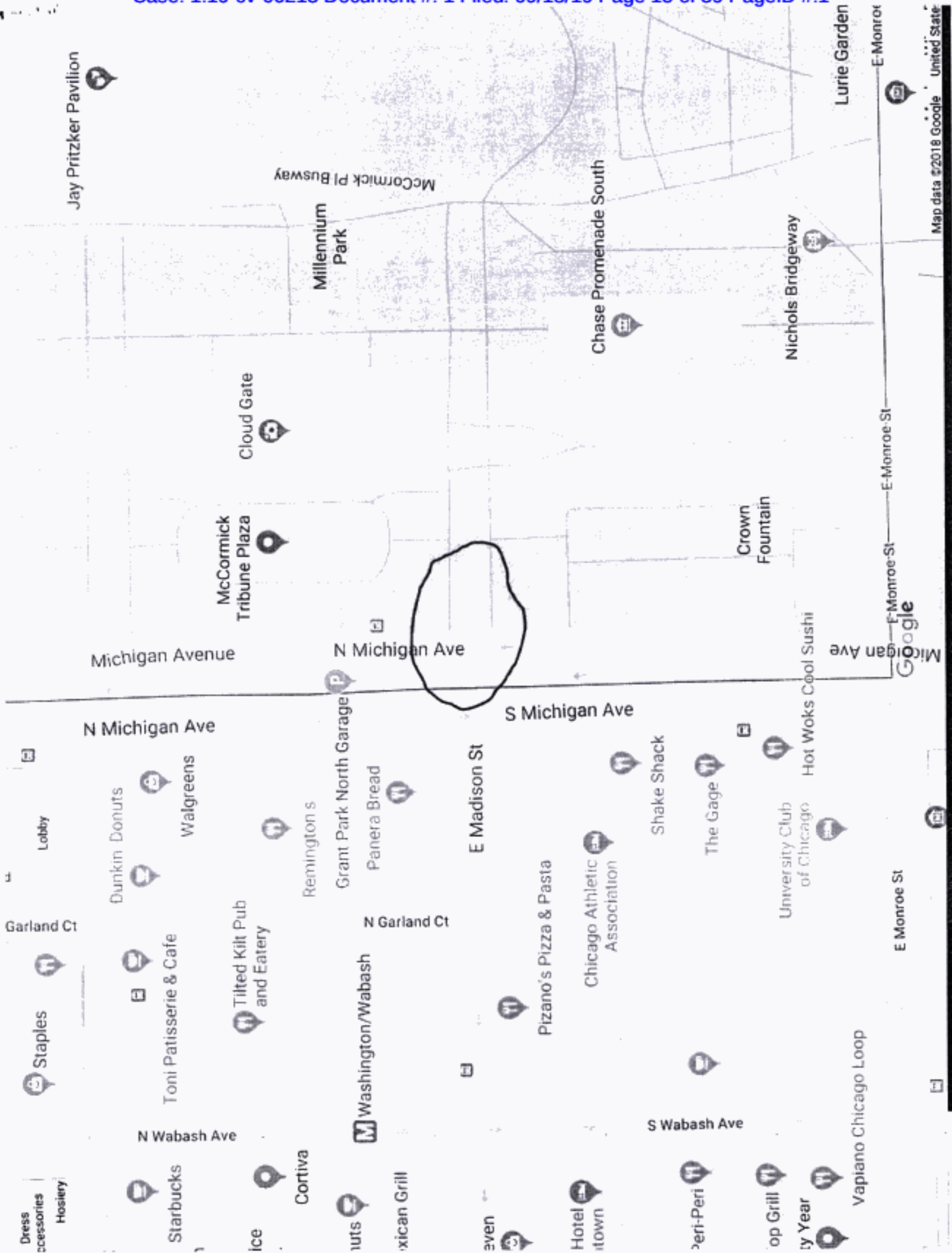


EXHIBIT B



MillenniumPark

C H I C A G O

MILLENNIUM PARK RULES

Welcome to Millennium Park! Millennium Park (the "Park") was created for the enjoyment of Chicago residents and visitors. While in the Park, please respect the rights of others by allowing open access to all areas of the Park at all times.

These Millennium Park Rules (the "Rules") have been promulgated by the Commissioner of the City of Chicago's Department of Cultural Affairs & Special Events ("DCASE") pursuant to the Municipal Code of Chicago Section 10-36-140(b), and may be enforced pursuant to Municipal Code of Chicago Section 10-36-140(g). The Rules apply to activity within Millennium Park, which is the 24.5-acre park bounded by Michigan Avenue, Randolph Street, Columbus Drive, and Monroe Street, as well as the BP Bridge that spans Columbus Drive and extending into Grant Park. (NOTE: The Nichols Bridgeway is owned and operated by the Art Institute of Chicago; any use of the Nichols Bridgeway is subject to the review and approval of the Art Institute of Chicago). Unless otherwise indicated, these Rules shall not apply to the streets or the sidewalks that bound the Park or the parking facilities located below the Park.

In addition to these Rules, all visitors of the Park are subject to all applicable federal, state, and local laws. The Code of the Chicago Park District does not apply to the Park.

A. Park Hours

The Park is open daily from 6 a.m. – 11 p.m. No person is permitted to be in the Park outside of these hours. The Great Lawn and Jay Pritzker Pavilion may be closed during hours when the Park is otherwise open.

B. Restricted Behavior

1. Park visitors are prohibited from using the restroom facilities and water features for bathing or personal grooming.
2. Park visitors are prohibited from sleeping in the Park.
3. Park visitors are prohibited from using any sound-emitting devices which are clearly audible to others at a distance of over ten feet.

4. Park visitors are prohibited from engaging in any obscene or indecent acts, including, but not limited to, exposing genitalia and engaging in sexual acts.

C. Smoking

Smoking, including e-cigs and vaping devices, is prohibited in the following locations in the Park:

1. The Jay Pritzker Pavilion seating area or on the Great Lawn;
2. East and West Arcades at the Jay Pritzker Pavilion;
3. Lurie Garden;
4. East and West Exelon Buildings;
5. McDonald's Cycle Center; and
6. Any tented areas in the Park.

D. Vehicles and Other Mobility Devices

1. *Motorized vehicles:*

- a. Unless otherwise provided, the use of motorized vehicles by Park visitors, including, but not limited to, cars, self-propelled scooters, carts, electric personal assistive mobility devices (Segways), hoverboards, and mopeds, is prohibited.
- b. This prohibition does not apply to people with disabilities who use:
 - i. power wheelchairs or electric scooters (for this subsection, an electric scooter is a three- or four-wheeled transportation device with a seat with back support designed to assist those with walking disabilities); or
 - ii. other power-driven mobility devices ("OPDMD"). If a Park visitor is using an OPDMD, the Park visitor may be asked to show proof of disability.
- c. The prohibition in subsection (1)(a) does not apply to motorized vehicles permitted by Park Management. Contractors or vendors may acquire permits for their motorized vehicles from the Park Management Office at 201 East Randolph Street. The permit must be displayed in the vehicle at all times while the vehicle is on Park property.
- d. Flight of small unmanned aircraft, as defined in Section 10-36-400 of the Municipal Code of Chicago, over Millennium Park is a violation of that section subject to the exceptions therein.

2. Non-motorized vehicles:

- a. Riding bicycles, skateboards, scooters, roller skates, rollerblades, or other wheeled transportation devices in the Park is prohibited. Bicycle parking is only permitted at the McDonald's Cycle Center and at designated bike racks.
- b. Manual wheelchairs and manually powered mobility aids, such as walkers, crutches, braces, and canes, are allowed.

E. Receipt of Deliveries

All deliveries to the Park must be scheduled in advance with Park Management and DCASE.

F. Fire and Barbecue Grills

Park visitors may not light or use fires in the Park. Additionally, Park visitors may not use barbecue grills or propane tanks.

G. Animals

Park visitors are prohibited from bringing any animals into the Park other than service animals as defined by 28 C.F.R. §§ 35.104 and 35.136, and 720 ILCS 5/48-8.

H. Alcoholic Beverages

No alcoholic beverages shall be sold, brought within, given away, delivered, or consumed within the Park, except in the following circumstances:

1. Alcoholic beverages may be purchased and consumed in designated areas at restaurants or within designated secured perimeters at properly licensed concession stands within the Park.
2. Alcoholic beverages may be consumed or sold in designated areas within designated secured perimeters during privately catered and City-sponsored events, as permitted by Park Management and DCASE, subject to all applicable ordinances and rules applicable to the consumption and sale of alcohol at these events.
3. Outside alcohol is prohibited at ticketed concerts and events presented by permitted private production companies.
4. Alcoholic beverages may be consumed within designated secured perimeters in the seating area and on the Great Lawn only during the performance of select free public concerts in the Jay Pritzker Pavilion, as permitted by Park Management. DCASE may prohibit outside alcohol at designated events.

I. Landscaping/Park Property

1. Park visitors may not in any way disturb or destroy plants, flowers, shrubs, leaves, or any other landscape elements. Park visitors may not place anything in the plant beds.
2. Visitors to the Lurie Garden must stay on the designated pathways that surround the flower beds. Visitors may not walk on the walls around the Lurie Garden or in the mulch pathways within the beds.
3. Climbing, sitting, and standing on Park parapet walls, balconies, balustrades, art, or other temporary or permanent Park structures is prohibited. Climbing, sitting, standing, and sliding down the BP Bridge is prohibited.
4. Affixing rope, signs, handbills, or other materials to any trees, shrubs, other landscaping, or other Park property is prohibited.
5. Park visitors may not cut, break, or in any way injure, deface, destroy, or alter any building, fence, monument, sculpture, bridge, sign, or other structure or property in Millennium Park.

J. Littering and Recycling

1. All trash must be deposited into the provided receptacles.
2. Recycling bins are located throughout the Park. Park visitors are encouraged to utilize them when disposing of recyclable materials.

K. Water Features

1. Park visitors are not allowed to bring glass into Crown Fountain, Wrigley Square, or the Lurie Garden Seam.
2. Park visitors may enter the Crown Fountain and put their feet in the Lurie Garden Seam.
3. Park visitors may not stand, walk, wade, or swim in the Lurie Garden Seam or the fountain at the Millennium Monument in Wrigley Square. Park visitors are prohibited from floating items in the Lurie Garden Seam, and from attempting to remove coins or other material from the water.
4. Irrigation pipes run throughout the Lurie Garden. Park visitors are prohibited from touching, moving, or picking them up. Park visitors are also prohibited from touching the green circular irrigation covers.

L. Closed or Prohibited Areas

Park visitors without invitation or authorization may not enter areas closed to the public, whether for private events or otherwise.

M. Event Rules

1. It is important to maintain safety and security in Millennium Park. In order to ensure that events in the Park are enjoyable for all attendees, a security perimeter with metal detecting wands and bag check will be in place for all Jay Pritzker Pavillion events and select other events held in Millennium Park. Park visitors attending any event will be subject to bag search at security perimeters. Bags and coolers brought to events must be smaller than 26L x 15W x 15H.
2. The following are prohibited from Millennium Park events unless otherwise provided for in these Rules:
Pets; hammocks; flags; banners; lawn stakes; tents; canopies; shade structures; staked or golf umbrellas; balloons; noise makers; laser pointers; all metal knives and cutlery (though corkscrews and plastic or compostable cutlery are allowed); motorized toys; walkie-talkies or portable radios; unauthorized/unlicensed vendors; unauthorized solicitation and materials including, but not limited to, handbills, flyers, stickers, samples, and giveaways; illegal and illicit substances of any kind including drugs or drug paraphernalia; firearms; weapons of any kind (including, but not limited to, pocket knives and pepper spray); fireworks and any other explosive; open flames; and any other items deemed dangerous by Millennium Park Security or the Chicago Police Department.
3. Capacity:
 - a. Millennium Park staff may close off portions of the Park that have reached maximum safe capacity.
 - b. Visitors shall relinquish held space or seats at the request of Millennium Park Staff.
4. Weather: Concerts and performances in the Jay Pritzker Pavillion may be cancelled for severe weather warnings and/or the occurrence or imminent threat of lightning in the area. Weather-related announcements may be transmitted on Twitter @Millennium_Park.
5. Small umbrellas may only be used in inclement weather and extreme heat.
6. Professional video, audio, and photography equipment and setup are not allowed except for previously approved media professionals.
7. Any taping of performances without prior, written permission of the performers is prohibited.

N. Rules Specific to the Jay Pritzker Pavillion and the Great Lawn

1. Visitors may not engage in conduct that disrupts a performance or event. Disruptive visitors will be asked to leave and will be escorted out of the Park.

2. In addition to the prohibitions stated for events in Section M(2) of these Rules, oversized blankets and any kind of staked item are prohibited on the Great Lawn. So as not to obstruct people's views, signs are not allowed during performances.
3. Due to public safety concerns, concert attendees may not stand or dance in the aisles, walkways, and ramps unless permitted at the discretion of Park Management. The concrete pad in the rear of the seating area is available for those who wish to dance if there is appropriate space for emergency access as determined by Park Management.
4. Park visitors may save no more than one (1) seat in the Pavilion, such privilege being subject to revocation by Millennium Park Staff as needed for the accommodation of people.
5. The Great Lawn will be closed except during events.

O. Permits

1. Permits and approval are required for the performance of professional services and activities in the Park and may be acquired from the Park Management Office at 201 East Randolph Street. Food vendors, caterers, photographers, videographers, and exhibitors all need permits to operate in the Park, as do the producers of television, film, music, and events. For more information go to:
https://www.chicago.gov/city/en/depts/dca/supp_info/rates_for_filming.html#mp
2. Prior approval of any professional use of the Park for any purpose must be provided by Park Management, DCASE, and any artist, architect, or that creative person's representatives for: the Lurie Garden, the Jay Pritzker Pavilion, the Crown Fountain, Cloud Gate, and any other temporary or permanent art or structure installed in the Park unless it is specifically acknowledged to be in the public domain.
3. The sale of any goods, printed or written material, or services is prohibited without a permit.

P. Disruptive Conduct

1. Any conduct, even if not specifically noted by these Rules, is prohibited in the Park if it interferes with or disrupts another visitor's peaceful enjoyment of a performance or amenity in the Park, endangers public health or safety, may damage Park property, or is prohibited by applicable federal, state, and local laws.
2. The solicitation and receipt of funds is prohibited.

3. Any displays, speeches, or demonstrations on Park property must be approved by DCASE and Park Management, which may impose reasonable time, place, and manner restrictions and may require a permit.
4. Millennium Park is divided into several outdoor "rooms," each with its own purpose or art. These rooms are: the Jay Pritzker Pavilion and the Great Lawn; the Lurie Garden; Cloud Gate Plaza; Chase Promenade North; Chase Promenade Central; Chase Promenade South; Boeing Gallery North; Boeing Gallery South; Wrigley Square and Millennium Monument; McCormick Tribune Plaza and Ice Rink; and Crown Fountain. Sidewalks surround Millennium Park and connect to sidewalks within the Park, which connect the rooms but are not part of the rooms. The making of speeches and the passing out of written communications shall be restricted to Wrigley Square and Millennium Monument and the sidewalks in and around the Park, though closed sidewalks, whether for an event or another reason, shall not be available for this purpose.

Effective this date: 2 of April, 2019



Mark Kelly, Commissioner
Chicago Department of Cultural Affairs & Special Events

EXHIBIT C

MAUCK & BAKER, LLC

RICHARD C. BAKER
WHITMAN H. BRISKY
JOHN W. MAUCK

ONE NORTH LASALLE STREET, SUITE 600
CHICAGO, ILLINOIS 60602

SOO YEON LEE
OF COUNSEL

SORIN A. LEAHU
TERRY S. LU

WWW.MAUCKBAKER.COM
TEL. 312.726.1243 FAX: 866.619.8661

Writer's Direct Line:
312-726-1243 x410
jmauck@mauckbaker.com

May 16, 2019

Mark Kelly
Commissioner
Department of Cultural Affairs and Special Events
121 N. LaSalle St.
Chicago, Illinois 60602

Re: **Millennium Park Rules**

Dear Commissioner Mark Kelly:

We represent four Wheaton College students who desire to evangelize at Millennium Park through non-amplified speech and distribution of free religious literature. Three provisions in the Millennium Park Rules, put into effect on April 2, 2019, thwart our clients' ability to deliver, and other Park visitors from hearing, their message. We request the Department of Cultural Affairs & Special Events change these rules to allow the customary vibrant, colorful, energetic and vigorous exchange of ideas that have always characterized America's best public spaces.

Section P(1) begins, "[a]ny conduct, even if not specifically noted by these rules, is prohibited in the Park if it interferes with or disrupts another visitor's peaceful enjoyment of a performance or amenity in the Park..." We request the elimination of the word "amenity." Unlike a performance which is an active object of one's attention, an amenity is a passive object. Concert attendees are actively engaged in an event from which they understandably do not want to get distracted, e.g., listening to lyrics or a guitar solo. An artist or actor who is performing certainly wants to be seen and hear without distraction. In contrast, passive amenities in Millennium Park, like the Bean, art work, and open grassy areas, are permanent aspects of which do not offer the same kind of active engagement as a concert. Visitors at the Bean who want to enjoy the reflection of Chicago's skyline will not miss it because they turn their heads for a few seconds. The skyline's reflection off the Bean will still be there, does not change, and visitors can visit the Park's amenities as often as they want.

In essence, section P(1) creates a Heckler's Veto. Under current language, a politically conservative Park visitor can bar another visitor's free speech right solely for speaking positively about Bernie Sanders. To the conservative, hearing advocacy of Democratic-Socialism

could be enough to disrupt their enjoyment of the Park's amenities. A visitor who would explain, "My family was taking a picture at the Bean and were enjoying ourselves until this guy started handing out offensive political materials" would have a valid complaint under the Rules but not under the Constitution. Irritation or annoyance of some opinionated minority is unavoidable in public spaces and is never enough to prohibit someone from exercising their First Amendment rights both to express and to hear ideas wonderful and ridiculous. The City should not create the kind of restrictions whereby people are only capable of exercising free speech with which no one disagrees. And given the size of Millennium Park, a few people speaking and handing out free literature with a 30 foot radius or moving radius disrupts very little. People can ignore the speaker, refuse the literature or walk away. 24.5 acres is space enough for everyone.

Next, we ask the Department to eliminate section P(4). This provision labels sections of the Park as "rooms" apparently to justify application of Limited Public Forum restrictions by prohibiting speeches and the distribution of free written communications in all sections but Wrigley Square or sidewalks. Public parks are expressly recognized as the *quintessential* Traditional Public Forums in multiple court decisions because they are inherently a space where people assemble and communicate. At public parks, people walk and talk to each other morning, noon, and evening. They walk alone, in pairs, in families and in large groups. They are free to enter, free to leave. They can stay for 20 minutes or an hour. They can play Frisbee on the grass or gaze at stars. Many if not most parks in America (certainly the larger ones) have art work and statues which people are free to enjoy. If park visitors want something more restrictive, they can always go to multiple museums, a restaurant, offices, shops, or hotels. Does not Millennium Park fit within the preceding description of a public park? If so, how does a novel designation of most of the Park as "rooms" change this underlying reality? Is not the use of "rooms" really just a backdoor approach to allow Park District officials the authority to limit First Amendment rights?

The well-established and cherished right to speak and offer free literature is often summarized as, "where the public is free to walk, it is free to talk." The Rules' abstract use of the word "rooms" not only encroaches on the First Amendment for those who want to speak, but also for visitors who desire to hear different points of view. We believe the City cannot reclassify a Traditional Public Forum as a Limited Public Forum simply through semantics. Our First Amendment rights are too important, especially in the most visited attraction in the country's third largest city. The more people, the more important it is to protect the free speech rights of all Americans. Please eliminate section P(4).

Third, we ask the Department to eliminate section P(3). This section requires the Wheaton College students and all other visitors to obtain permission to share their message. Whether P(3) applies to all of Millennium Park or all of Millennium Park except Wrigley Square and the sidewalks is unclear. However, these questions, unanswered in the Rules, highlight the burden which the Rules impose on free speech.

1. How do visitors know about the permit requirement? Will Millennium Park post signs?
2. Where does one go to get a permit?
3. How long will it take to get a permit?
4. What if the office is closed or the permit grantor has gone to lunch?

5. On what basis can a permit be denied or granted?
6. What if the permit is denied?
7. People sometimes do things casually or spontaneously. Does that mean they cannot hand out Gospel or Bernie Sanders literature as they stroll through the Park?

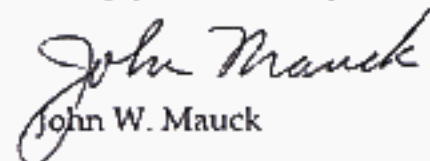
Beyond unforeseen issues that could arise with the Rules' permit requirement, why would Chicago need to grant permission to speak once its rules are clear and constitutional?

In summary, we request the Chicago Department of Cultural Affairs & Special Events amend the Millennium Park Rules in three ways. First, we ask the Department to eliminate "amenity" from section P(1) for its vagueness and the Heckler's Veto it necessarily affords. Next, we ask the Department to eliminate section P(4) entirely for its illegal classification of a public area where people have always been free to speak and listen into one where they must get prior permission by applying Limited Public Form restrictions based on semantics. Finally, we ask the Department to eliminate section P(3) because of the burden required to receive permission and the subjectivity of regulation for speech and communication in a Traditional Public Forum.

Commissioner Kelly, we would appreciate a response by June 3, 2019. Thank you for your consideration.

Very Truly Yours,

MAUCK & BAKER, LLC


John W. Mauck

CC: JEREMY CHONG (JEREMY.CHONG@MY.WHEATON.EDU); GABRIEL EMERSON (GABRIEL.EMERSON@MY.WHEATON.EDU);
CAEDEN HOOD (CAEDEN.HOOD@MY.WHEATON.EDU); MATT SWART (MATT.SWART@MY.WHEATON.EDU)

F:\Users\Urosentha\20190509_1r to ch millennium2.docx

MAUCK & BAKER, LLC

EXHIBIT D

CITY OF CHICAGO

RULES



These Millennium Park Rules are being promulgated by the Commissioner of the City of Chicago's Department of Cultural Affairs and Special Events (DCASE) pursuant to the Municipal Code of Chicago Section 10-36-140(b), and may be enforced pursuant to Municipal Code of Chicago Section 10-36-140(g). The Rules apply to activity within Millennium Park, which is the 24.5-acre park bounded by Michigan Avenue, Randolph Street, Columbus Drive, and Monroe Street, as well as the BP Bridge that spans Columbus Drive and extending into Grant Park. Unless otherwise indicated, these Rules shall not apply to the streets or the sidewalks that bound the Park or the parking facilities located below the Park.

CHICAGO DEPARTMENT OF
DCASE
CULTURAL AFFAIRS & SPECIAL EVENTS

Mayor Lori E. Lightfoot

Commissioner Mark Kelly

BY AUTHORITY VESTED IN THE COMMISSIONER OF THE DEPARTMENT OF CULTURAL AFFAIRS AND SPECIAL EVENTS PURSUANT TO SECTION 10-36-140(b) AND 10-36-140(g), OF THE MUNICIPAL CODE OF CHICAGO, THE FOLLOWING RULES REGARDING MILLENNIUM PARK ARE HEREBY ADOPTED.

By Order of the Commissioner:

Signed: Mark Kelly
Commissioner [commissioner name here]

Date: 8/26/2019

Published: _____

Effective: _____



MillenniumPark

C H I C A G O

MILLENNIUM PARK RULES

Welcome to Millennium Park! Millennium Park ("Park") was created for the enjoyment of Chicago residents and visitors. While in the Park, please respect the rights of others by allowing open access to all areas of the Park at all times.

These Rules have been promulgated by the Commissioner of the City of Chicago's Department of Cultural Affairs and Special Events (DCASE) pursuant to the Municipal Code of Chicago Section 10-36-140(b), and may be enforced pursuant to Municipal Code of Chicago Section 10-36-140(g). The Rules apply to activity within Millennium Park, which is the 24.5-acre park bounded by Michigan Avenue, Randolph Street, Columbus Drive, and Monroe Street, as well as the BP Bridge that spans Columbus Drive and extending into Grant Park. (**NOTE:** The Nichols Bridgeway is owned and operated by the Art Institute of Chicago; any use of the Bridgeway is subject to the review and approval of the Art Institute of Chicago). Unless otherwise indicated, these Rules shall not apply to the streets or the sidewalks that bound the Park or the parking facilities located below the Park.

In addition to these Rules, all visitors of the Park are subject to all applicable federal, state, and local laws. The Code of the Chicago Park District does not apply to the Park.

A. Park Hours

The Park is open daily from 6 a.m. – 11 p.m. No person is permitted to be in the Park outside of these hours. The Great Lawn and Jay Pritzker Pavilion may be closed during hours when the Park is otherwise open.

B. Restricted Behavior

1. Park visitors are prohibited from using the restroom facilities and water features for bathing or personal grooming.
2. Park visitors are prohibited from sleeping in the Park.
3. Park visitors are prohibited from using any sound-emitting devices which are clearly audible to others at a distance of over ten feet.

4. Park visitors are prohibited from engaging in any obscene or indecent acts, including, but not limited to, exposing genitalia and engaging in sexual acts.

C. Smoking

Smoking, including e-cigs and vaping devices, is prohibited in the following locations in the Park:

1. The Jay Pritzker Pavilion seating area or on the Great Lawn;
2. East and West Arcades at the Jay Pritzker Pavilion;
3. Lurie Garden;
4. East and West Exelon Buildings;
5. McDonald's Cycle Center; and
6. Any tented areas in the Park.

D. Vehicles and Other Mobility Devices

1. *Motorized vehicles:*
 - a. Unless otherwise provided, the use of motorized vehicles by Park visitors, including, but not limited to, cars, self-propelled scooters, carts, electric personal assistive mobility devices (Segways), hoverboards, and mopeds, is prohibited.
 - b. This prohibition does not apply to people with disabilities who use:
 - i. power wheelchairs or electric scooters (for this subsection, an electric scooter is a three- or four-wheeled transportation device with a seat with back support designed to assist those with walking disabilities); or
 - ii. other power-driven mobility devices (OPDMD). A Park visitor using an OPDMD may be asked to show proof of disability.
 - c. The prohibition in subsection (1)(a) does not apply to motorized vehicles permitted by Park Management. Contractors or vendors may acquire permits for their motorized vehicles from the Park Management Office at 201 E. Randolph Street. The permit must be displayed in the vehicle at all times while the vehicle is on Park property.
 - d. Flight of small unmanned aircraft, as defined in Section 10-36-400 of the Municipal Code of Chicago, over Millennium Park is a violation of that section subject to the exceptions therein.
2. *Non-motorized vehicles:*
 - a. Riding bicycles, skateboards, scooters, roller skates, rollerblades, or other wheeled transportation devices in the Park is prohibited. Bicycle parking is only permitted at the McDonald's Cycle Center and at designated bike racks.
 - b. Manual wheelchairs and manually-powered mobility aids, such as walkers, crutches, braces, and canes, are allowed.

E. Receipt of Deliveries

All deliveries to the Park must be scheduled in advance with Park Management and DCASE.

F. Fire and Barbecue Grills

Park visitors shall not use barbecue grills or propane tanks, or otherwiss light or use fires, in the Park.

G. Animals

Park visitors shall not bring any animals into the Park other than service animals as defined by 28 C.F.R. §§ 35.104 and 35.136, and 720 ILCS 5/48-8.

H. Alcoholic Beverages

No alcoholic beverages shall be sold, brought within, given away, delivered, or consumed within the Park, except in the following circumstances:

1. Alcohol may be purchased and consumed in designated areas at restaurants or within designated secured perimeters at properly licensed concession stands within the Park.
2. Alcohol may be consumed or sold in designated areas within designated secured perimeters during privately catered and City-sponsored events, as permitted by Park Management and DCASE, subject to all applicable ordinances and rules applicable to the consumption and sale of alcohol at these events.
3. Outside alcohol is prohibited at ticketed concerts and events presented by permitted private production companies.
4. Alcohol may be consumed within designated secured perimeters in the seating area and on the Great Lawn only during the performance of select free public concerts in the Jay Pritzker Pavilion, as permitted by Park Management. DCASE may prohibit outside alcohol at designated events.

I. Landscaping/Park Property

1. Park visitors shall not in any way disturb or destroy plants, flowers, shrubs, leaves, or any other landscape elements. Park visitors may not place anything in the plant beds.
2. Visitors to the Lurie Garden must stay on the designated pathways that surround the flower beds. Visitors shall not walk on the walls around the Lurie Garden or in the mulch pathways within the beds.

3. Climbing, sitting, and standing on Park parapet walls, balconies, balustrades, art, or other temporary or permanent Park structures is prohibited. Climbing, sitting, standing, and sliding down the BP Bridge is prohibited.
4. Affixing rope, signs, handbills, or other materials to any trees, shrubs, other landscaping, or other Park property is prohibited.
5. Park visitors shall not cut, break, or in any way injure, deface, destroy, or alter any building, fence, monument, sculpture, bridge, sign, or other structure or property in Millennium Park.

J. Littering and Recycling

1. All trash must be deposited into the provided receptacles.
2. Recycling bins are located throughout the Park. Park visitors are encouraged to utilize them when disposing of recyclable materials.

K. Water Features

1. Park visitors shall not bring glass into Crown Fountain, Wrigley Square, or the Lurie Garden Seam.
2. Park visitors may enter the Crown Fountain and put their feet in the Lurie Garden Seam.
3. Park visitors shall not stand, walk, wade, or swim in the Lurie Garden Seam or the fountain at the Millennium Monument in Wrigley Square. Park visitors shall not float items in the Lurie Garden Seam, or attempt to remove coins or other material from the water.
4. Irrigation pipes run throughout the Lurie Garden. Park visitors are prohibited from touching, moving, or picking them up. Park visitors are also prohibited from touching the green circular irrigation covers.

L. Closed or Prohibited Areas

Park visitors without invitation or authorization may not enter areas closed to the public, whether for private events or otherwise.

M. Event Rules

1. It is important to maintain safety and security in Millennium Park. In order to ensure that events in the Park are enjoyable for all attendees, a security perimeter with metal detecting wands and bag check will be in place for all Jay Pritzker Pavilion events and select other events held in Millennium Park. Park visitors attending any event will be subject to bag search at security perimeters. Bags and coolers brought to events must be smaller than 26" L x 15" W x 15" H.

2. The following items shall not be allowed at Millennium Park events unless otherwise provided for in these Rules:
pets; hammocks; flags; banners; lawn stakes; tents; canopies; shade structures; staked or golf umbrellas; balloons; noise makers; laser pointers; all metal knives and cutlery (though corkscrews and plastic or compostable cutlery are allowed); motorized toys; walkie-talkies or portable radios; unauthorized/unlicensed vendors; unauthorized solicitation and materials including, but not limited to, handbills, flyers, stickers, samples, and giveaways; illegal and illicit substances of any kind including drugs or drug paraphernalia; firearms; weapons of any kind (including, but not limited to, pocket knives and pepper spray); fireworks and any other explosive; open flames; and any other items deemed dangerous by Millennium Park Security or the Chicago Police Department.
- 3 Capacity:
 - a. Millennium Park staff may close off portions of the Park that have reached maximum safe capacity.
 - b. Visitors shall relinquish held space or seats at the request of Millennium Park Staff.
4. Weather: Concerts and performances in the Jay Pritzker Pavilion may be cancelled for severe weather warnings and/or the occurrence or imminent threat of lightning in the area. Weather-related announcements may be transmitted on [Twitter@Millennium Park](#).
5. Small umbrellas may only be used in inclement weather and extreme heat.
6. Professional video, audio, and photography equipment are not allowed except for previously approved media professionals.
7. Any taping of performances without prior, written permission of the performers is prohibited.

N. Rules Specific to the Jay Pritzker Pavilion and the Great Lawn

1. Visitors may not engage in conduct that disrupts a performance or event. Disruptive visitors will be asked to leave and will be escorted out of the Park.
2. In addition to the prohibitions stated for events in Section M(2) of these Rules, oversized blankets and any kind of staked item is prohibited on the Great Lawn. So as not to obstruct people's views, signs are not allowed during performances.
3. Due to public safety concerns, concert attendees may not stand or dance in the aisles, walkways, and ramps unless permitted at the discretion of Park Management. The concrete pad in the rear of the seating area is available for those who wish to dance if there is appropriate space for emergency access as determined by Park Management.

4. Park visitors may save no more than one (1) seat in the Pavilion, such privilege being subject to revocation by Millennium Park staff as needed for the accommodation of people.
5. The Great Lawn will be closed except during events.

O. Permits

1. Permits and approval are required for the performance of professional services and activities in the Park and may be acquired from the Park Management Office at 201 E. Randolph Street. Food vendors, caterers, photographers, videographers, and exhibitors all need permits to operate in the Park, as do the producers of television, film, music, and events. For more information go to:
https://www.chicago.gov/city/en/depts/dca/supp_info/rates_for_filming.html#mp
2. Prior approval of any professional use of the Park for any purpose must be provided by Park Management, DCASE, and any artist, architect, or that creative person's representatives for: the Lurie Garden, the Jay Pritzker Pavilion, the Crown Fountain, Cloud Gate, and any other temporary or permanent art or structure installed in the Park unless it is specifically acknowledged to be in the public domain.
3. The sale of any goods, printed or written material, or services is prohibited without a permit.

P. Disruptive Conduct

1. Conduct that objectively interferes with visitors' ability to enjoy the Park's artistic displays, including, but not limited to, substantially impairing pedestrian traffic, disrupting views of the art, or conduct that endangers public health or safety, may damage Park property, or is prohibited by applicable federal, state, and local laws, is prohibited in the Park.
2. The solicitation and receipt of funds is prohibited in the Park.
3. Millennium Park is divided into several outdoor "rooms," each with its own purpose or art. These rooms are: the Jay Pritzker Pavilion and the Great Lawn; the Lurie Garden; Cloud Gate Plaza; Chase Promenade North; Chase Promenade Central; Chase Promenade South; Boeing Gallery North; Boeing Gallery South; Wrigley Square and Millennium Park Monument; McCormick Tribune Plaza and Ice Rink; and Crown Fountain. Sidewalks surround Millennium Park and connect to sidewalks within the Park, which connect the rooms but are not part of the rooms. The making of speeches and the passing out of written communications shall be restricted to Wrigley Square and Millennium Park Monument and the sidewalks in and around the Park, though closed sidewalks, whether for an event or another reason, shall not be available for this purpose.

Effective this date: 26 of August, 2019

Mark Kelly

Mark Kelly, Commissioner
Chicago Department of Cultural Affairs & Special Events