

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UPTOWN TENT CITY ORGANIZERS,)
and ANDY THAYER,)

Plaintiffs,)

v.)

CITY OF CHICAGO DEPARTMENT)
OF ADMINISTRATIVE HEARINGS,)
CITY OF CHICAGO DEPARTMENT)
OF TRANSPORTATION, and)
CITY OF CHICAGO,)

Defendants.)

No. 17 CV 4518

Hon. Judge Sidney I. Schenkier,
Presiding Magistrate

SECOND AMENDED COMPLAINT

Plaintiffs, UPTOWN TENT CITY ORGANIZERS and ANDY THAYER, by their undersigned attorneys, complain against the Defendants, CITY OF CHICAGO DEPARTMENT OF ADMINISTRATIVE HEARINGS, DEPARTMENT OF TRANSPORTATION, and CITY OF CHICAGO, a municipal corporation, as follows:

Nature of the Case

1. This lawsuit began as an administrative appeal from a denial of Plaintiffs' Notification of Public Assembly pursuant to §10-8-334 of the Municipal Code of Chicago (MCC). However, Defendants removed the case to federal court as raising an issue of federal law. Therefore, the case is now more properly a federal civil rights claim.

2. Plaintiffs allege that the City's refusal to approve Plaintiffs' permit application, in conjunction with the City's removal of the homeless "tent city" located

under the viaducts under Lake Shore Drive at Wilson Avenue and Lawrence Avenue and subsequent acts of the City denying plaintiffs any venue to establish their protest encampment, arresting and threatening to arrest those that do so, and threatening to seize plaintiffs' personal property, violates the First, Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution; and Illinois Bill of Rights for the Homeless Act, 775 ILCS 45/1 *et. seq.* (hereinafter Homeless Bill of Rights). Plaintiffs seek declaratory and injunctive relief, as well as reasonable attorneys fees.

Jurisdiction and Venue

3. Jurisdiction is proper in this court pursuant to 28 U.S.C. §1331 because this case alleges violations of Plaintiffs' rights under federal law and under 42 U.S.C. §1983. The Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 13 U.S.C. §1367. The Court has the authority to grant declaratory relief pursuant to 28 U.S.C. §§2201 and 2202.

4. Venue is proper in this district pursuant to 28 U.S.C. §1391(b), as all the events giving rise to the claims asserted herein occurred in Cook County.

5. The Court has authority to award attorneys' fees pursuant to 42 U.S.C. §1988.

Factual Allegations Common to All Counts

The Parties

6. Plaintiff Uptown Tent City Organizers ("UTC0") is an unincorporated association, the members of which include individuals currently residing on the streets and other non-permanent locations, primarily using personally-owned tents

for shelter, and supportive housed community members, primarily based in the Uptown neighborhood. The objective of this organized collective is to raise awareness about the plight of homelessness across the city of Chicago, to provide services for homeless individuals, and to advocate for those who have been excluded from mainstream society. As an organization, UTCO believes that ending homelessness is a political, societal, and moral responsibility that can only be confronted when homeless individuals come out of the shadows and into open public space.

7. Plaintiff Andy Thayer is a 30-year resident of Uptown, a community activist, and a member of Uptown Tent City Organizers.

8. Defendant City of Chicago (City) is a municipal corporation, duly incorporated under the laws of the State of Illinois and located in Cook County, Illinois.

9. Defendant Department of Administrative Hearings is a division of the City of Chicago responsible for appeals from denials of permit applications, MCC §10-8-334.

10. Defendant Chicago Department of Transportation (CDOT) is a department of the City of Chicago responsible for issuing permits for public assembly pursuant to MCC §10-8-334 and public use pursuant to MCC §10-28-010.

History of Homeless Tent Encampments in Uptown and Defendants' Harassment of Homeless Individuals

11. The city of Chicago, in general, and Uptown in particular, does not have enough shelter beds to house the homeless. Further, upon information and belief, certain populations of homeless people, such as married couples without children, are

not allowed to remain overnight together in any existing shelter.

12. Prior to August 17, 2015, homeless people had set up tent encampments and were sleeping in open public areas and on parts of public sidewalks located under the Lake Shore Drive viaducts at Wilson and Lawrence Avenues in Uptown. The encampment did not block the public's access to the public throughway.

13. Prior to August 17, 2015, Defendant City of Chicago, acting through various police officers, had on numerous occasions threatened to arrest these homeless people for sleeping on public sidewalks, or to confiscate or destroy their tents and other property.

14. On the night of August 17, 2015, a group of homeless and housed Uptown residents planned an overnight protest on the edge of the public park near the Wilson Avenue Lake Shore Drive bridge viaduct.

15. Members of the Chicago Police Department threatened to arrest everyone—homeless residents and protesters—when the park closed at 11 pm.

16. As the viaducts under Lake Shore Drive began to fill, several homeless people began to sleep in the public mall space in front of the now-shuttered Stewart Elementary School, 4525 N. Kenmore Avenue (Stewart Mall). Stewart Mall is public land containing a publically accessible area located across the street from Alderman James Cappleman's office, and is highly visible by the thousands of people who use Uptown's major commercial street, Broadway, daily.

17. From July through September 2016, 20 to 30 homeless residents erected tents and lived on the Stewart Mall, creating a tent city.

18. In addition to needing safe shelter, the Plaintiffs sought to erect tents at the Stewart Mall because it is highly visible to people frequenting the businesses in the Uptown community and a presence there would draw attention to the lack of affordable housing options and the lack of services available for people experiencing homelessness. Occupation is the Plaintiffs' chosen form of expression; reclaiming public space in a stationary location over an extended period of time provides for greater dissemination of its message and offers the only rebuff against pervasive attempts to silence it and relegate homeless individuals to the margins of society.

19. Many of the tents in the encampment were the same orange-colored tents, given out by UTCO. Press conferences were held under the viaducts and several marches on issues of homelessness and affordable housing were also staged from that location. The tent city community put up signs educating people about police harassment and announcing upcoming protests and marches. At various times, UTCO homeless members who lived under the viaducts and at the Stewart Mall handed out informational leaflets.

20. On September 26, 2016, Morningside Construction Managers, LLC (MCM)—with heavy police presence in tow and under the guise of a public way permit—fenced off the Stewart Mall, evicting the homeless and the rest of the protesters from the Stewart Mall. No construction occurred at the adjacent school, nor was any equipment staged in the Stewart Mall, during the entire period of the MCM permit. The MCM permit expired on March 18, 2017, and was not renewed.

21. Many of the individuals living at the Stewart Mall encampment

relocated to encampments under the Lake Shore Drive viaducts over Wilson and Lawrence Avenues.

Defendants' Denial of Plaintiffs' Public Use Permit Application

22. Sometime during the winter of 2016–17, Plaintiffs learned of a plan by Illinois Department of Transportation to reconstruct or otherwise perform substantial repairs to the Lake Shore Drive viaducts over Wilson and Lawrence Avenues.

23. The City of Chicago stated that this reconstruction would require the homeless people living under those viaducts to move. The City of Chicago had stated that it is not required to find alternative housing for those people displaced by Illinois Department of Transportation's project, nor did it intend to do so.

24. As a response to this information, on March 7, 2017, Plaintiff Andy Thayer (Thayer) on behalf of Uptown Tent Community Organizers (UTCOC) filed a Notification of Public Assembly pursuant to MCC §10-8-334 for the Stewart Mall set to begin the day after the Morning Side Construction's MCM permit expired. The purpose of requesting this permit was two-fold: to provide an alternative location to live for the homeless people living in tents under the Wilson and Lawrence viaducts; and to erect a tent city in a highly visible location in order to protest the lack of affordable housing in the City of Chicago.

25. On March 15, 2017, the Chicago Department of Transportation denied Thayer's permit application, citing unspecified "safety" concerns to justify its tardy response to the application. Under MCC §10-8-334(b)(2), "[s]uch public assemblies

shall be allowed unless the commissioner notifies, in writing by mail, fax, or e-mail the person or organization giving the notice, within two business days after receipt of notice of the public assembly.” As permitted under MCC § 10-8-334, Thayer appealed the City’s rejection.

26. On March 22, 2017, two days before the appeals hearing was to take place, Thayer received a call from Kelley A. Gandurski, Senior Assistant Corporation Counsel at the Chicago Law Department. She stated that MCM’s permit was “illegal” and that the City had forced MCM to remove the fencing and “no trespassing” signs blocking the Stewart Mall. On this basis, she requested that that Thayer withdraw his appeal. Upon confirming that the Stewart Mall was indeed reopened, the next day Thayer withdrew the appeal, noting in an email to Ms. Gandurski that any attempt to close off the Stewart Mall again to the public would be taken as a sign of bad faith and possible legal action.

27. Within two hours after Thayer withdrew the appeal, MCM again erected the fences blocking the Stewart Mall. The next day, Thayer sent another email to the Department of Administrative Hearings requesting a new appeals hearing, which was granted and set for March 30, 2017. Prior to the March 30 hearing, the fences around the mall were again taken down. On March 28, 2017, the City filed a Hearing Memorandum outlining the City's posture on the permit request.

28. At the March 30, 2017, hearing, the City successfully moved to dismiss the hearing on the grounds of mootness, arguing that because the Stewart Mall was already open and accessible to the public, Thayer’s public assembly permit was

unnecessary.

29. With the appeal of the original permit application mooted, that afternoon Plaintiffs filed a more narrowly tailored Notification of Public Assembly. This permit notification was for a period of six months and included the use of tents by those assembled. On April 3, 2017, the City again denied Plaintiffs' Notification of Public Assembly.

30. Plaintiffs appealed and a full administrative hearing was held on April 12, 2017. On April 11, 2017, less than 24 hours prior to the hearing, the City filed a written motion to dismiss arguing that Plaintiffs' intention to allow for the erection of tents was an illegal, unpermitted act which should vacate the public assembly permit application without right of appeal. Plaintiffs' counsel asked for a continuance to file a written response, but both the request for a continuance and to file a written response to the motion to dismiss were denied.

31. At the hearing, Plaintiffs argued that the City's requirement to obtain a public way use permits pursuant to MCC §10-28-010 for people to erect tents, which can only be granted by passage of special ordinances by the City Council of Chicago, violated the First and Eighth Amendments to the U.S. Constitution, the broader public assembly protections of Illinois Article 1, the Illinois Homeless Bill of Rights (775 ILCS 45/1), and Chicago's Public Assembly Ordinance (MCC §10-8-334).

32. The City argued that a tent is a "structure" under subsection MCC §10-28-010(b)(10), and therefore, Plaintiffs were required to apply for a public way use permit rather than a public assembly permit. The City further argued that the denial

letter provided Thayer with an adequate time and place alternative as required under the ordinance.

33. On April 14, 2017, Senior Administrative Law Judge Frank Lombardo issued the “Findings Decision and Order” (sic) affirming the City's denial of the public assembly permit application.

34. MCC §10-8-334(b)(2) provides that “[s]uch public assemblies shall be allowed unless the commissioner notifies, in writing . . . that there is a significant public safety issue, limited to those set forth for parades in Section 10-8-330(g)(1)–(4).” CDOT’s and the City’s notice of denial only stated there were “significant public safety issues” but did not state what subsection of MCC §10-8-330(g)(1)–(4) was applicable nor did it specify what constituted the specific public safety issue. CDOT’s and the City’s failure to provide a legal notice of denial and the misapplication of MCC §10-8-334 to Plaintiffs resulted in a violation of Plaintiffs’ First Amendment and Illinois Article 1 rights. Notably, in denying the second public assembly permit, the City did not cite any safety issues.

35. MCC §10-8-334(b)(2) further provides that when an assembly permit is denied, the City shall provide “an alternate date, time, location or route. This alternate, to the extent practicable, shall authorize a public assembly that will have comparable public visibility, and a similar route, location and date to that of the proposed public assembly.” The City’s alternative assembly offered the same dates and location, but not the same manner or public visibility of Plaintiffs’ planned public assembly. As applied to Plaintiffs, the City violated the public assembly ordinance in

violation of Plaintiffs' rights under the First Amendment and Illinois Article 1.

36. Nothing in the language of MCC §10-8-334 prohibits the erection of non-permanent structures as part of a public assembly. On information and belief, significant numbers of public assemblies include the erection of non-permanent structures as part of the assembly that are dismantled at the end of the assembly. Such structures include scaffolding for speakers and elevated stages, all erected on the public way. On information and belief, none of the public assemblies containing such structures obtained public use permits. As applied to Plaintiffs, the City and CDOT's requirement that Plaintiffs obtain a public use permit violated Plaintiffs' rights under the First Amendment.

37. MCC §10-28-015 provides that applications for public use permits are submitted to the commissioner of business affairs and consumer protection. MCC §10-28-015(c) provides "[i]f the commissioner finds that the applicant meets the applicable requirements, the commissioner shall provide the application to the alderman of the affected ward. Upon passage of an ordinance approving the application, the commissioner shall issue the public way use permit to the applicant. If approval by ordinance is withheld, the commissioner shall deny the application and shall notify the unsuccessful applicant in writing of the denial within ten business days after the denial.

38. On information and belief, Alderman James Cappleman, Alderman of the 46th Ward, where the Stewart Mall is located, would not submit an ordinance for public use for an assembly of homeless people and their supporters to include tents

to the Chicago City Council.

39. The requirement that a public assembly with certain types of structures obtain a public use permit pursuant to MCC §10-8-334 and 10-28-010 *et. seq.* constitutes an express municipal policy of the City. Such policy subjects the homeless to citations for ordinance violations and possible arrest.

40. As a result of Defendants' denial of Plaintiffs' application for a public use permit, the present litigation was filed.

41. On August 27, 2017, Plaintiffs filed a Motion for a Preliminary Injunction, enjoining the Defendants from forcibly removing the homeless tent encampment from the viaducts of Wilson and Lawrence Avenues without a viable alternative location for the encampment to relocate. (Dkt. 25).

42. The Plaintiffs sought and received a September 14, 2017 hearing (Dkt. 34) on their motion for a preliminary injunction to preserve the tent communities beneath Wilson and Lawrence Avenues.

43. At this hearing, City representatives stated that the City did not have any intention to arrest homeless individuals or unlawfully dispose of their property.

44. The motion was denied on September 15, 2017, with eviction to commence on Monday, September 18, 2017.

Post-Injunction Hearing Evictions

45. By September 17, 2017, homeless residents who were previously living under the Lawrence viaduct moved to the Wilson viaduct to live with the residents still residing there. On this date, 20-25 homeless residents were still living in tents

under the Wilson viaduct.

46. On the afternoon of September 17, 2017, the 20-25 homeless residents and many housed UTCO members spent approximately 4-5 hours moving everyone's tents and other belongings to relocate the protest encampment to a grassy strip west of the Wilson Avenue viaduct, between the southbound exit ramp of Lake Shore Drive at Wilson and the intersection of Wilson Avenue and North Marine Drive. No person's belongings were obstructing the sidewalk and, on information and belief, the specific area was west of the construction zone covered by the viaduct reconstruction permit.

47. On September 18, 2017, the day of the eviction from the viaducts, Chicago Police Department officers alleged that the new area of the encampment was covered by the construction permit for the Lake Shore Drive viaducts and that encampment members would have to move again or risk arrest and confiscation of their possessions.

48. Chicago Police Department officers ordered the dispersal of the tent community at the new Wilson Avenue location, threatening arrest and confiscation of the homeless' possessions if they failed to disperse.

49. Around 7:00 AM on the morning of September 18, 2017, more than 15 Chicago police officers assembled near the area where the tents had moved. A few hours later, approximately 40 police officers were present. The officers threatened to move everybody and stated that they could not be there; once they were finished securing the viaduct, they told them they would move every person out of the area. Many officers were standing in the viaduct where the tents had moved from, and

fences were put up around the area under the viaduct. Police officers then lined up in a row on Wilson Avenue between the viaduct and Marine Drive behind some of the tents. When asked questions by homeless residents or community members present, the officers would not respond. When the officers were asked to cite an ordinance, they did not respond or give a reason.

50. During this time, a truck from Chicago Streets and Sanitation Department was parked on the grass on the south side of Wilson Avenue.

51. A Chicago Police Department SUV was parked at the intersection of Wilson Avenue and Marine Drive to block cars from entering Lakeshore Drive at Wilson Avenue.

52. Chicago Police Officer with star #66 walked toward a row of tents on the south sidewalk. Officer #66 sought to frustrate a number of local residents and UTCO members who were asking questions and filming what was happening. The officer stated that this was a permitted area due to the construction under the viaduct. When asked if people could move one block west out of the permitted area and be left alone, officer #66 said they would have to check the permit. He also said that the area was a public way. When asked where people should go, the officer responded by saying, “DFSS,” —the Chicago Department of Family Support and Services.

53. Officer #66 walked up to the first tent in the line and unzipped the tent to look inside. The Chicago Streets and Sanitation Department workers then lifted the tent, collapsed it, and moved it across the sidewalk to drop it in the park. The workers announced that they would move the tents and possessions to 850 W. Wilson.

The workers then moved another tent and asked people to move off the sidewalk.

54. Other Chicago police officers were acting in a similar manner.

55. Many of the homeless residents had signs posted outside their tents stating “Homes Not Shelters,” “Stop Harassing the Homeless,” and other similar messages. Many residents and bystanders chanted together as tents were being removed: “Stop Harassing the Homeless.”

56. In response to the threats of arrest and dispossession of personal property, on the afternoon of Monday, September 18, 2017, the tent encampment moved a second time to the 4500 block of North Marine Drive, in the public way between the sidewalk and the curb and stayed the night there. At no point did the encampment block public access to the public way.

57. Around 12:15 AM on the morning of September 19, 2017, an unknown police officer told a man in a sleeping bag at the park that he would be ticketed if he did not move. The man stated that it was hard to move and Plaintiff Andy Thayer offered to help him. The officer stated that family services would be there in the morning to help him get somewhere. The man replied that he had already spoken with them. The man then moved his belongings with the help of bystanders.

58. On Tuesday, September 19, 2017, Chicago Police officers stated that people in the tent encampment on North Marine Drive would be subject to arrest and their possessions confiscated if they did not move.

59. Later in the early morning of September 19, 2017, DFSS workers came to tell people they could move to Pacific Garden Mission for shelter. Yet, this was not

a viable option for many of the homeless residents there because:

- a. Homeless individuals without funds are stranded in the neighborhood of the Pacific Garden Mission without the means to return to their neighborhoods where they have access to social services and medical care;
- b. Pacific Garden Mission's barracks environment is incompatible with those individuals with post-traumatic stress syndrome (PTSD) from military service. Approximately 10% of the homeless in Chicago are military veterans;
- c. Pacific Garden Mission is rife with bedbugs and other vermin, theft and sporadic violence; and
- d. "The Gospel of Jesus Christ is preached faithfully four times daily, before meals and before bed." (Pacific Garden Mission website) So even those who arrive after the evening meal are subjected to Christian preaching in violation of their First Amendment rights.

60. Later, in morning of September 19, 2017, when housed UTCO and other community organizers were no longer at the site, many police officers came and told all of the homeless residents that they had 15 minutes to move their belongings. Chicago Streets and Sanitation Department workers also arrived and brought multiple trucks.

61. Approximately six police officers began going tent-to-tent to tell people that they had to move. They asked if people needed medical attention and cited MCC

§10-28-010 saying people can't place any structure on the public way. One officer marked tents for removal with blue masking tape after warnings had been given.

62. When officers received no response at some of the tents visited, the officers removed tarps or blankets covering the corresponding tents. The officers then unzipped the tents to look inside. Simultaneously, another officer kicked a protest sign regarding homelessness out of the way.

63. An officer stated, "Everything will be tagged. If there is nobody here, it's garbage." Two trucks for the Chicago Department of Streets and Sanitation were waiting on Marine Drive behind the tents with many workers present. The Chicago Department of Streets and Sanitation confiscated one unattended tent that morning. The workers were heard laughing as they removed the tent to place in the truck. They also removed some other personal items.

64. One of the homeless residents responded, "How many times are we going to have to move? 18, 20, 20, 25 times?"

65. On the afternoon of September 19, 2017, for the third time, homeless residents packed their belongings. Residents moved across the sidewalk to a piece of land owned by the Metropolitan Water Reclamation District located on the south side of West Wilson Avenue between Marine Drive and Clarendon Avenue. Police officers stated that it was federal property, and thus it was up to another authority to determine whether people could stay on the land.

66. In the evening of September 19, 2017, retired police officer and current Metropolitan Water Reclamation District employee Ralph Chiczewski informed

people at the third tent encampment that if they did not leave by 11 PM that evening that they would be arrested and their possessions confiscated.

67. Around 8:30 PM the evening of September 19, 2017, most of the people on the Metropolitan Water Reclamation District property moved their belongings to a fourth location on the 4900 block of North Sheridan Avenue. Many housed UTCO members came to help people move their tents and belongings for the fourth time in three days. The new location was an abandoned lot with a broken fence and gate. Homeless persons and UTCO members repaired the fence and gate. People then set up their tents and most went to sleep.

68. Later, on the night of September 19, 2017, police officer John Doe approached Plaintiff Andy Thayer and other UTCO members and stated that the police would find out who the owner was, but that they couldn't evict the tent city that night.

69. On September 20, 2017, representatives of Chicago Police Department ordered plaintiffs to vacate the parcel claiming the owner had denied plaintiffs access to the parcel. The officers evicted everyone from the property, saying they had broken in. The police said there was a complaining witness but did not provide any name or more information. Such representatives refused to provide plaintiffs with the name and contact information of the owner.

70. One of the police officers placed a "No Trespassing" sign on the fence that had not been on the property the night before. More than ten (10) police officers were in the area at this time.

71. The officers then told everyone that they had to leave immediately, stating, “If you go back on that property, you do not have permission. You’ll be subject to arrest.” The officers would not let anyone on to the property to help homeless persons pack their belongings. A housed UTCO member brought a moving truck to help the homeless move their possessions again.

72. Simultaneously, one of the homeless women asked for water and began having a seizure from the stress of the events.

73. Tyler Dean Hamlin, a UTCO member, refused to leave the parcel and was arrested for trespass.

74. In the course of these interactions, Chicago Police Commander informed Plaintiffs that no protest tent encampment would be allowed anywhere in Uptown and those who attempted to set one up would be subject to arrest and their possessions confiscated. Further, the Chicago Police Commander asserted that anyone leaving their possessions on the public way would be subject to administrative citation pursuant to MCC §10-28-070 and such possessions would be confiscated.

Irreparable Injury to Plaintiffs

75. As a direct and proximate result of Defendants’ unconstitutional application of MCC §10-8-334 and 10-28-010 and violation of the Illinois Homeless Act, the rights of Plaintiffs have been interfered with, and they are in fear of being ticketed, arrested, and deterred from exercising their constitutionally protected First Amendment rights.

76. As a direct and proximate result of Defendants’ unconstitutional

application of MCC §§10-8-334 and 10-28-010 and violation of the Illinois Homeless Act, the activities of the Plaintiffs have been criminalized and they are being subjected to cruel and unusual punishment in violation of the Eighth Amendment and subject to illegal seizures and takings of their personal property in violation of the Fourth and Fifth Amendments.

77. Plaintiffs have suffered irreparable injury by Defendants' actions and will continue to suffer irreparable injury in the absence of injunctive relief.

78. Plaintiffs lack any adequate remedy at law.

79. The balance of harms weighs in favor of Plaintiffs and against Defendants, as the issuance of the injunctive relief will not adversely affect the public interest.

COUNT ONE

The City's Denial of Plaintiff's Application Was Not Justified by the Law or the Facts

80. Plaintiffs reallege as if they were set forth in full herein all allegations set forth in paragraphs 1–77. Plaintiffs' set forth the following Specification of Errors committed during Plaintiffs' Administrative Hearing appealing the denial of Plaintiffs' notification of public assembly:

81. The failure of the Senior Administrative Law Judge (ALJ) Frank Lombardo to grant Plaintiffs' motion to issue subpoenas for Michael Simon as a witness in accordance with MCC §2-14-076(f) and 2-14-080. Transcript of the Appeals Hearing, April 12, 2017, Case No. 17 PA 000002, page 11, lines 10-17. (hereafter, T. P__, L__). Defendants submitted an affidavit of Mr. Simon that stated that Plaintiffs

had not applied for a public use permit pursuant to MCC §10-28-010.

82. Mr. Simon, the Assistant Commissioner in the Public Way Permits Division of Public Way Infrastructure of the Chicago Department of Transportation, is the city official in charge of granting public use permits pursuant to MCC § 10-28-010. Plaintiffs sought to examine Mr. Simon under oath as to what constituted the specific “public safety issue” which formed the basis of CDOT’s denial of the Plaintiffs’ public assembly notification. Further, Plaintiffs sought to examine Mr. Simon as to the process of obtaining public use permits that require an ordinance of the City Council of Chicago. Plaintiffs sought to incorporate into the record the near impossibility of obtaining a public use permit for anything other than a sidewalk café that results in the de facto criminalization of the homeless organized in tent encampments. This form of criminalization is at the core of Plaintiffs’ arguments of cruel and unusual punishment under the Eighth Amendment to the United States Constitution.

83. The denial of Plaintiffs’ motion was arbitrary resulting in prejudice to the Plaintiffs and an unfair hearing.

84. ALJ Lombardo’s denial of a motion for continuance by Plaintiffs in order for Plaintiffs to respond in writing to Defendants’ Motion to Dismiss. Defendants filed a Motion to Dismiss on April 11, 2017, less than 24 hours before the administrative hearing. This motion included a 10-page memorandum of law and 10 pages of exhibits. T. P 6, L 10-24. Plaintiffs requested a continuance to respond with a memorandum of law to rebut Defendants’ arguments. T. P 5, L 11-24, P 6, L 1-2, P 8,

L 12-18. Even though ALJ Lombardo denied the Motion to Dismiss (T. P 15, L 13), the denial of Plaintiffs' motion for a continuance denied Plaintiffs' the ability to submit a memorandum of law which would be included as part of the record. Once again, this prevented the record from including arguments, reasoning, and legal support for Plaintiffs' position that the denial of the assembly permit violates the First, Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution and parallel provisions under the Illinois Constitution.

85. The denial of Plaintiffs' motion was arbitrary resulting in prejudice to the Plaintiffs and an unfair hearing.

86. ALJ Lombardo overruled Plaintiffs' objection as to Luis Benitez's qualifications to make a legal interpretation of MCC §10-28-010(b)(10). Mr. Benitez is the assistant chief engineer and chief bridge engineer for the Chicago Department of Transportation (CDOT) and was qualified as an expert with respect to structural engineering. T. P 25, L 4-18. Mr. Benitez was qualified to testify whether tents are structures. Mr. Benitez was asked by Defendants for an interpretation of whether tents for the proposed homeless encampment are structures for purposes of MCC §10-28-010(b)(10). T. P 28, L 11-24; P 29, L 12-24. ALJ Lombardo overruled Plaintiffs' objection that this called for a legal conclusion by Mr. Benitez. T. P 30, L 1-11.

87. This arbitrary overruling of Plaintiffs' objection resulted in prejudice to the Plaintiffs and an unfair hearing.

88. ALJ Lombardo overruled an objection by Plaintiffs that Mr. Benitez was not qualified to make a legal conclusion that the term "structure" as defined in Code

Section 13-96-480(a) should apply to the term “structure” in MCC §10-28-010(b)(10).
T. 32, L 3-18.

89. This arbitrary overruling of Plaintiffs’ objection resulted in prejudice to the Plaintiffs and an unfair hearing.

90. ALJ Lombardo sustained an objection by Defendants to part of Plaintiffs’ opening statement that provided background information on the history of the public assembly ordinance. T. P 50, L 13-24, P 51, L 1-4. Denial of presenting background information on the public assembly ordinance deprived Plaintiffs of entering such information in the record for purposes of making arguments of violations of the U.S. Constitution in subsequent proceedings.

91. This arbitrary sustaining of Defendants’ objection resulted in prejudice to the Plaintiffs and an unfair hearing.

92. ALJ Lombardo sustained an objection on relevancy grounds regarding the introduction of evidence of prior public assembly notifications for the same location (i.e. the Stewart Mall) as the notification of public assembly under appeal in the hearing. ALJ Lombardo stated, “I’m not going to allow this evidence from a previous hearing. It has no bearing on what the determination will be today.” T. P 53 L 9-24, P 53 L 1-12. The history of prior notifications of public assembly for the Stewart Mall was relevant to establishing Plaintiffs constitutional speech and assembly claims.

93. This arbitrary sustaining of Defendants’ objection resulted in prejudice to the Plaintiffs and an unfair hearing.

94. ALJ Lombardo sustained an objection to Plaintiffs laying a foundation for the notification of public assembly at issue in the hearing. T. P 69, L 9-18.

95. This arbitrary sustaining of Defendants' objection resulted in prejudice to the Plaintiffs and an unfair hearing.

96. ALJ Lombardo denied the admission of exhibits presented by Plaintiffs based on Defendants' objection as to relevancy. T. P 77, L 18. Plaintiffs' proffered exhibits were photographs of the prior homeless tent encampment at the Stewart Mall. Plaintiffs sought to enter the photographs into evidence for purposes of establishing the public safety and accessibility of the Stewart Mall with a homeless tent encampment. T. P 74, L 5-18. Plaintiffs wanted the photographic evidence and testimony related thereto entered into the record for purposes of appealing the permit denial on constitutional grounds.

97. This arbitrary denial of the admission of Plaintiffs' exhibits resulted in prejudice to the Plaintiffs and an unfair hearing.

98. ALJ Lombardo denied Plaintiffs' objection on grounds of relevancy to questions on cross-examination of Plaintiff Thayer whether he had asked Chicago officials, prior to submitting the notification for public assembly, if the City of Chicago was willing to house 40 homeless people. Plaintiffs objected that notification for a public assembly does not require other inquiries of city officials. T. P 97, L 16-24; P 98, L 1-19.

99. This arbitrary overruling of Plaintiffs' objection resulted in prejudice to the Plaintiffs and an unfair hearing.

100. ALJ Lombardo overruled Plaintiffs' objection to the relevancy of Defendants' questions to Plaintiff Thayer in cross-examination as to the extent of his contact with the homeless. Plaintiffs argued that the notification for public assembly was by an organization of the homeless and Thayer's contacts with the homeless was irrelevant. ALJ Lombardo overruled the objection based on the Defendants' argument of developing the record as a defense for constitutional arguments of Plaintiffs on appeal, even though the Plaintiffs were denied the same requests for entering evidence and testimony into the record. See other errors delineated above. T. P 101, L 13-24, P 102, L 1-19.

101. This arbitrary overruling of Plaintiffs' objection resulted in prejudice to the Plaintiffs and an unfair hearing.

102. ALJ Lombardo overruled Plaintiffs' objection based on relevancy to questions regarding Plaintiff Thayer's attitude toward the project to convert the Stewart School into market rate housing. T. P117, L 3-24. ALJ Lombardo also allowed the follow up question to Plaintiff Thayer as to the location of the Stewart School in relation to the Stewart Mall, which left the prejudicial implication that the notification for public assembly was a pretext to stop the Stewart School project. T. P 119, L 2-18.

103. This arbitrary overruling of Plaintiffs' objection resulted in prejudice to the Plaintiffs and an unfair hearing.

104. ALJ Lombardo permitted extensive testimony by Alisa Rodriguez, Deputy Commissioner for the homeless programs of the City of Chicago Department

of Family and Support Services, with respect to services and programs provided by the City of Chicago for the homeless population as well as testimony on the number, characteristics and condition of the homeless population in Chicago. T. P 129-161. Prior to cross-examination of Ms. Rodriguez by Plaintiffs, Plaintiffs noted to ALJ Lombardo that Plaintiffs “were not allowed the same scope of questioning [as conducted by Defendants of Ms. Rodriguez] when we were conducting our direct examination of Mr. Thayer.” T. P 162, L 18-20.

105. ALJ Lombardo erred in not permitting the same scope of questioning Mr. Thayer by Plaintiffs on direct examination as he allowed on the direct examination of Ms. Rodriguez by Defendants. This arbitrary error resulted in prejudice to the Plaintiffs and an unfair hearing.

106. ALJ Lombardo’s interpretation of “structure” to include tents is arbitrary and capricious and has no basis in law or fact.

WHEREFORE, Plaintiffs request that this Court:

- A. Enter an order reversing the decision of ALJ Lombardo, and granting Plaintiffs’ application for an assembly permit for the Stewart Mall for the location and manner as applied therefore, to run for a period of six months from the date of issuance;
- B. Enter judgment for reasonable attorney’s fees and costs incurred in bringing this action; and
- C. Grant Plaintiffs any and all other relief as law and justice demand.

COUNT TWO
Violation of the First Amendment

107. Plaintiffs reallege as if they were set forth in full herein all allegations set forth in paragraphs 1–106.

126. MCC §10-8-334 and 10-28-010 as applied to Plaintiffs violate the First and Fourteenth Amendments and constitute an unconstitutional express municipal policy of the Defendants.

127. Additionally, the City’s disruption and eviction of tent cities beginning September 17, 2017 and continuing through the present day violate the First and Fourteenth Amendments to U.S. Constitution and constitute an unconstitutional municipal policy of the Defendants.

128. As applied, these provisions and the City’s conduct unconstitutionally abridge the Plaintiffs’ right to free speech and assembly.

129. As applied, these provisions are not narrowly tailored to meet a significant governmental interest.

130. There are no ample alternatives channels for communication of the Plaintiffs message.

WHEREFORE, Plaintiffs request that this Court:

- A. Grant Defendants’ appeal to reverse the Department of Administrative Hearings’ affirmation of the Commissioner of the Chicago Department of Transportation’s denial of Defendants’ Notification of Public Assembly and grant said Notification of Public Assembly for the dates, location and manner as applied therefore;

- B. Enter a declaration that MCC §10-8-320 and MCC §10-28-010 as applied to the Plaintiffs violate the First Amendment to the U.S. Constitution;
- C. Enter a declaration that Defendants' disruptions and evictions of tent cities throughout the city of Chicago violate the First Amendment to the U.S. Constitution.
- D. Enter a permanent injunction barring Defendants and their agents, servants, employees and attorneys from applying MCC 10-8-320 and MCC § 10-28-010 in a manner prohibiting Defendants from erecting tents as applied for in the Notification of Public Assembly;
- E. Enter a permanent injunction barring Defendants and their agents, servants, employees and attorneys from unconstitutionally disrupting and evicting Plaintiffs' tent encampments.
- F. Enter judgment in favor of Plaintiffs and against Defendants.
- G. Enter judgment for reasonable attorney's fees and costs incurred in bringing this action; and
- H. Grant Plaintiffs any and all other relief as law and justice demand.

COUNT THREE
Violation of the Eighth Amendment

131. Plaintiffs reallege as if they were set forth in full herein all allegations set forth in paragraphs 1–130.

132. 42 U.S.C. §11302 defines those who are homeless to include: (a) an individual or family who lacks a fixed, regular, and adequate nighttime residence; (b) an individual or family with a primary nighttime residence that is a public or private

place not designed for or ordinarily used as a regular sleeping accommodation for human beings; (c) an individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements; (d) an individual who resided in a shelter or place not meant for human habitation and who is exiting an institution where he or she temporarily resided; (e) an individual or family who will imminently lose their housing, including housing they own, rent, or live in without paying rent, and are sharing with others; (f) an individual or family having a primary nighttime residence that is a room in a hotel or motel and where they lack the resources necessary to reside there for more than 14 days; (g) lacks the resources or support networks needed to obtain other permanent housing; and (h) unaccompanied youth and homeless families with children and youth who have experienced a long term period without living independently in permanent housing, have experienced persistent instability as measured by frequent moves over such period, and can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or multiple barriers to employment.

133. Regulations promulgated by the U.S. Department of Housing and Urban Development are in accordance with 42 U.S.C. §11302.

134. Pursuant to this definition, the Chicago Coalition for the Homeless estimates that in 2015, there were 82,212 homeless Chicagoans, of which 67,414 were “doubled up,” (*i.e.* sharing housing with others due to loss of housing, economic

hardship, or similar reason), leaving approximately 14,798 individuals in shelters or on the streets.

135. Of the homeless, approximately 35,480 individuals were part of 9,925 families with children with 8,734 families (31,222 individuals) “doubled up” leaving 1,191 families (4,258 individuals) living in shelters or on the streets.

136. Approximately 44% of homeless families served by the emergency shelter system had lived “doubled up” in the prior year.

137. In 2015, Chicago had 1,701 emergency shelter beds, down 17.6% from the 2,064 beds in 2014.

138. The lack of beds in shelters for the homeless population combined with the application of City ordinances in a manner which prohibits homeless people from legally sleeping on public land, results in the criminalization of homeless people based solely on their status as being homeless. The criminalizing of the status of homelessness, rather than any conduct by the homeless, violates the Eighth Amendment’s prohibition on cruel and unusual punishment.

139. On information and belief, the City of Chicago, acting through the Chicago Police Department has consistently and regularly threatened to arrest the individual homeless Plaintiffs in this action, who are attempting to sleep in tents or otherwise attempted to force them to move their tents and all other personal possessions, and in some instances have actually confiscated their personal possessions, from the public way - all without a lawful basis for doing so. Such actions of the Chicago Police Department constitute policies of the City.

140. The City's denial of the permit, coupled with the declared policy of the not allowing anyone to sleep with or without tents in the public way, without providing alternative housing for the Plaintiffs, violates the Eighth Amendment prohibition against cruel and unusual punishment, by criminalizing the status of homelessness.

WHEREFORE, Plaintiffs request that this Court:

- A. Grant plaintiffs' appeal to reverse the Department of Administrative Hearings' affirmation of the Commissioner of the Chicago Department of Transportation's denial of plaintiffs' Notification of Public Assembly and grant said Notification of Public Assembly for the location and manner as applied therefore, to run for a period of six months from the date of issuance;
- B. Enter a declaration that MCC §10-8-320 and MCC § 10-28-010 as applied to the Plaintiffs violates the Eighth Amendment to the U.S. Constitution;
- C. Enter a a permanent injunction barring Defendants and their agents, servants, employees and attorneys from applying MCC § 10-8-320 and MCC § 10-28-010 in a manner prohibiting Defendants from erecting tents as applied for in the Notification of Public Assembly;
- D. Enter judgment in favor of Plaintiffs and against Defendants.
- E. Enter judgment for reasonable attorney's fees and costs incurred in bringing this action; and
- F. Grant Plaintiffs any and all other relief as law and justice demand.

COUNT FOUR
Violation of the Fourth Amendment – Illegal Seizure

141. Plaintiffs reallege as if they were set forth in full herein all allegations set forth in paragraphs 1–140.

142. The Fourth Amendment to the United States Constitution protects individuals from unreasonable searches and seizures of “their persons, houses, papers, and effects.”

143. It is well recognized that the Fourth Amendment protects property as well as privacy. *Soldal v. Cook County*, 506 U.S. 56 (1992).

144. A seizure of property occurs when “there is some meaningful interference with an individual’s possessory interests in that property.” *U.S. v. Jacobson*, 466 U.S. 109 (1985).

145. The Fourth Amendment to the U.S. Constitution is applicable to the Defendants’ conduct through the Fourteenth Amendment to the United States Constitution.

146. Though this Court has not specifically held that an individual living in a tent has an expectation of privacy in the tent of its contents, several other Courts have found an individual does have an expectation of privacy in a tent which served as a residence. *U.S. v. Gooch*, 6F 3d 673 (6th Cir. 1993).

147. Furthermore, the U.S. Supreme Court has held that the illegal removal of a trailer home constituted a seizure within the Fourth Amendment framework. *Soldal v. Cook County*, 506 U.S. 56 (1992).

148. At no to time relevant hereto did Defendants obtain a valid warrant or

judicial authority to remove or seize Plaintiff's personal property.

WHEREFORE, Plaintiffs request that this Court:

- A. Grant plaintiffs' appeal to reverse the Department of Administrative Hearings' affirmation of the Commissioner of the Chicago Department of Transportation's denial of plaintiffs' Notification of Public Assembly and grant said Notification of Public Assembly for the location and manner as applied therefore, to run for a period of six months from the date of issuance;
- B. Enter a declaration that MCC §10-8-320 and MCC §10-28-010 as applied to the Plaintiffs violates the Fourth Amendment to the U.S. Constitution;
- C. Enter a permanent injunction barring Defendants and their agents, servants, employees and attorneys from applying MCC § 10-8-320 and MCC § 10-28-010 in a manner prohibiting Defendants from erecting tents as applied for in the Notification of Public Assembly;
- D. Enter judgment in favor of Plaintiffs and against Defendants;
- E. Enter judgment for reasonable attorney's fees and costs incurred in bringing this action; and
- F. Grant Plaintiffs any and all other relief as law and justice demand.

COUNT FIVE

Violation of the Fifth Amendment – Takings Clause

149. Plaintiffs reallege as if they were set forth in full herein all allegations set forth in paragraphs 1–148.

150. The Fifth Amendment to the U.S. Constitution prohibits the taking of private property without just compensation.

151. The Fifth Amendment to the U.S. Constitution is applicable to the Defendants' conduct through the Fourteenth Amendment to the United States Constitution.

152. At all times relevant hereto, the Plaintiffs have had a vested property right in the tents, blankets, and other personal property in their possession while they were living in public areas of the City of Chicago.

153. At no time were any of the Plaintiffs provided with just compensation when their personal property had been destroyed or confiscated by the Defendants.

WHEREFORE, Plaintiffs request this Court:

- A. Grant Plaintiffs' appeal to reverse the Department of Administrative Hearings' affirmation of the Commissioner of the Chicago Department of Transportation's denial of Plaintiffs' Notification of Public Assembly and grant said Notification of Public Assembly for the dates, location and manner as applied therefore;
- B. Enter a declaration that MCC § 10-8-320 and MCC § 10-28-010 as applied to the Plaintiffs violates the Fifth Amendment to the United States Constitution;
- C. Enter a permanent injunction barring Defendants and their agents, servants, employees and attorneys from applying MCC § 10-8-320 and MCC § 10-28-010 in a manner prohibiting Defendants from erecting tents as applied for in the Notification of Public Assembly;
- D. Enter judgment in favor of Plaintiffs and against Defendants;

- E. Enter judgment for reasonable attorney's fees and costs incurred in bringing this action; and
- F. Grant Plaintiffs any and all other relief as law and justice demand.

COUNT SIX

State Claim: Violation of the Illinois Homeless Act

154. Plaintiffs reallege as if they were set forth in full herein all allegations set forth in paragraphs 1–153.

155. The Illinois Homeless Act states in “Sec. 5. Legislative intent. It is the long-standing policy of this State that no person should suffer unnecessarily from cold or hunger, be deprived of shelter or the basic rights incident to shelter, or be subject to unfair discrimination based on his or her homeless status. At the present time, many persons have been rendered homeless as a result of economic hardship, a severe shortage of safe and affordable housing, and a shrinking social safety net. It is the intent of this Act to lessen the adverse effects and conditions caused by the lack of residence or a home.”

156. The Illinois Homeless Act states that homelessness “means the status of having or not having a fixed or regular residence, including the status of living on the streets, in a shelter, or in a temporary residence.” Illinois Homeless Act Sec. 10(b).

157. The rights of the homeless pursuant to the Illinois Homeless Act include:
- a. Sec. 10(a)(1): the right to use and move freely in public spaces, including but not limited to public sidewalks, public parks, public transportation, and public buildings, in the same manner as any other person and without discrimination on the basis of his or her

housing status; and

- b. Sec. 10(a)(7): the right to a reasonable expectation of privacy in his or her personal property to the same extent as personal property in a permanent residence

158. The Defendants' policies impede the ability of homeless Plaintiffs to move freely in public spaces in violation of the Illinois Homeless Act.

159. The Defendants' policies prohibit use of public spaces and violate the reasonable expectation of privacy of the homeless Plaintiffs in violation of the Illinois Homeless Act.

WHEREFORE, Plaintiffs request that this Court:

- A. Grant Plaintiffs' appeal to reverse the Department of Administrative Hearings' affirmation of the Commissioner of the Chicago Department of Transportation's denial of Plaintiffs' Notification of Public Assembly and grant said Notification of Public Assembly for the dates, location and manner as applied therefore;
- B. Enter a declaration that MCC §10-8-320 and MCC §10-28-010 as applied to the Plaintiffs violates the Illinois Homeless Act;
- C. Enter a a permanent injunction barring Defendants and their agents, servants, employees and attorneys from applying MCC §10-8-320 and MCC §10-28-010 in a manner prohibiting Defendants from erecting tents as applied for in the Notification of Public Assembly;
- D. Enter judgment in favor of Plaintiffs against Defendants.

- E. Enter judgment for reasonable attorney's fees and costs incurred in bringing this action; and
- F. Grant Plaintiffs any and all other relief as law and justice demand.

Respectfully submitted,

/s/ Alan Mills
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CERTIFICATION OF SERVICE

The undersigned certifies that he/she filed the forgoing **Second Amended Complaint** on November 7, 2017, via the electronic filing system, which will serve copies upon all parties who have filed an appearance.

Respectfully submitted,

/s/ Alan Mills
One of the Counsel for Plaintiffs