

DEMONSTRATIONS, NATIONAL CELEBRATIONS, AND SPECIAL EVENTS

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THE AVENUE’S IMPORTANCE

Pennsylvania Avenue has served as our country’s “main street” throughout its history. Because it links two branches of our government, represented by the U.S. Capitol and the White House, it has historically been used for state occasions, such as inaugural parades, victory parades, and state funeral corteges, as well as for public marches to air grievances. In 1805 Thomas Jefferson began the tradition of parades to mark the inauguration of a president. Armed forces have marched along the avenue to celebrate the end of a war; most prominent in this celebratory role was the two-day parade of the Grand Army of the Republic at the end of the Civil War. Since the 1894 march by Coxey’s Army to emphasize the plight of unemployed workers, the avenue has been frequently used as a public venue to air grievance and to seek redress from Congress. The avenue has also been a focal point as we mourn presidents, heroes, and people of note. These uses are firmly entrenched in law and public perceptions of what the avenue means to the American public.

First Amendment gatherings and marches, national celebrations, and special events all draw crowds that may stand or sit on bleachers placed on the sidewalks to watch the events on the street. Generally the avenue can sustain repeated use because it is paved, as are the adjacent sidewalks. While DC manages the 100-foot-wide roadway, where many parades and activities occur, NPS manages the adjacent sidewalks and park areas. Permitting and managing activities with large crowds requires a great deal of coordination among many agencies and organizations to address circulation, health and safety, security and security checkpoints, and gathering and dispersal locations. (It should be noted that Constitution Avenue is also used for many occasions — typically for the Fourth of July, Columbus Day, Memorial Day, and Veterans Day.) DC permits a number of annual street events on the avenue, primarily from late spring through early fall. The Metropolitan Police permit First Amendment activities.

NPS REGULATIONS

In the context of longstanding First Amendment jurisprudence, and consistent with NPS regulations and policies that allow demonstrations and sales activities under certain conditions, as discussed below, demonstrations are legally consistent with Pennsylvania Avenue NHS.

Regulating Public Use

CFR regulations apply to all federal agencies, and certain regulations apply only to the administration of the national park system. The *Code of Federal Regulations* addresses public use limits, which a park superintendent may establish based on a determination that limits are “necessary for the maintenance of public health and safety, protection of environmental and scenic values, protection of natural and cultural resources, . . . or implementation of management responsibilities, equitable allocation and use of facilities, or the avoidance of conflict among visitor use activities” (36 CFR 1.5).

Regulations at 36 CFR 7.96 contain provisions specific to the greater Washington, D.C., area, including Pennsylvania Avenue NHS. Demonstrations, special events, and national celebrations are defined as follows (36 CFR 7.96(g)(1)):

- **Demonstrations** — The term includes demonstrations, picketing, speechmaking, marching, holding vigils or religious services, and all other like forms of conduct that involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which is reasonably likely to draw a crowd or onlookers. This term does not include casual park use by visitors or tourists which is not likely to attract a crowd or onlookers.
- **Special events** — The term includes sports events, pageants, celebrations, historical reenactments, regattas, entertainments, exhibitions, parades, fairs, festivals, and similar events (including such events presented by NPS), which are not demonstrations as previously defined, and which are engaged in by one or more persons, the conduct of which has the effect, intent, or propensity to draw a crowd or onlookers. This term also does not include casual park use by visitors or tourists which does not have an intent or propensity to attract a crowd or onlookers.
- **National celebration events** — The term means the annually recurring special events regularly scheduled by the National Capital Region, including presidential inaugural ceremonies.

Public gatherings or demonstrations involving more than 25 people within the National Mall and Memorial Parks generally require a permit issued by NPS. In addition, portions of Pennsylvania Avenue NHS are reserved for the exclusive use of the Presidential Inaugural Committee (PIC) on inaugural day (36 CFR 7.96(g) (4)(iii)) and related setup and takedown.

Permit conditions for demonstrations and special events include how long events may last; hours of operation to avoid unreasonable interference with rush-hour traffic; and allowance of temporary structures erected for the purpose of symbolizing a message or meeting logistical needs (such structures may not unreasonably

harm park resources and shall be removed as soon as practicable). Permits for demonstrations may be extended if space is available (36 CFR 7.96(g)(5)). The regional director may impose reasonable restrictions on the use of temporary structures in the interest of protecting park areas, traffic, and public safety.

Sound amplification equipment is allowed in connection with permitted demonstrations or special events as long as it does not unreasonably disturb nonparticipating persons in, or in the vicinity of, the area (36 CFR 7.96(g)(5)(xii)).

General regulations for permitted activities along Pennsylvania Avenue have evolved with regard to reasonable time, place, and manner; some of the regulations have been tested, upheld, or modified through judicial proceedings. In 2008 the NPS regulations for the National Capital Region were revised through a rule-making process to clarify how long events could take place, including setup and takedown times for presidential inaugural parades. Permits for demonstrations and special events are generally limited to four months (36 CFR 7.96(g) (4)(ii)). Demonstrations may be extended unless another applicant's use precludes double occupancy.

The superintendent may take action necessary to maintain public health and safety, to protect environmental or scenic values, to protect natural or cultural resources, or to implement management responsibilities, equitable allocation and use of facilities, or the avoidance of conflict among visitor activities. Such actions may include limiting public use or closing areas to use; designating areas for specific uses; and terminating restrictions, limits, closures, or visitor hours (36 CFR 1.5; 36 CFR 7.96).

Proposed permitted activities must be consistent with legislation, administrative policies, and based on a determination that public health and safety, environmental or scenic values, natural or cultural resources, scientific research, implementation of management responsibilities, proper allocation and use of facilities, or the avoidance of conflict among visitor use activities will not be adversely affected (36 CFR 1.6; 36 CFR 7.96(g)). Regulations at 36 CFR (4)(vii)(A)-(D) stipulate that a permit may be denied if:

- (A) a fully executed application for the same time and place has been received, and a permit has been or will be granted authorizing activities which do not reasonably permit multiple occupancy
- (B) it reasonably appears that proposed demonstration or special event will present a clear and present danger to the public safety, good order, or health
- (C) the proposed demonstration or special event is of such a nature or duration that it cannot be reasonably be accommodated
- (D) the proposed demonstration or special event is contrary to NPS regulations or other applicable law or regulation

Additional factors for a proposed special event (36 CFR 7.96(g)(5)(v)(A)–(E)) include whether its objectives and purposes relate to and are within the NPS basic mission and responsibilities; whether it is reasonably suited in terms of accessibility, size, and nature; whether it can be permitted within a reasonable budgetary allocation considering its public appeal and anticipated participation; whether it is duplicative of events offered in the area; or whether it is in conformity with all applicable laws and regulations. A permit may be denied if these regulatory factors exist.

Recreational Activities

Regulations pertaining to recreational activities allow ice skating only in designated areas and prohibit swimming (36 CFR 7.96(b)(4), 36 CFR 7.96(e)).

Soliciting

Soliciting is allowed if under a permit (36 CFR 7.96(h) as amended on March 7, 2013).

Sales

A permit is required for the sale or distribution of books, newspapers, leaflets, pamphlets, buttons, and bumper stickers from a stand or structure during a special event (36 CFR 7.96(k)).

NPS-PERMITTED ACTIVITIES

First Amendment Activities

The First Amendment to the U.S. Constitution provides rights for freedom of speech and religion. First Amendment demonstrations are permitted along Pennsylvania Avenue in accordance with regulations at 36 CFR 7.96(g). Demonstrations expected to have more than 25 people are required to have a permit. NPS may coordinate permitting with the United States Park Police. Activities taking place within the avenue right-of-way also require a permit from the DC Metropolitan Police.

Special Events

In accordance with NPS *Management Policies 2006*, special events may be permitted “when (1) there is a meaningful association with the park area and the event, and (2) the event will contribute to understanding of the significance of the park area” (NPS 2006b, sec. 8.6.2.1). Special events will be denied when they would result in unacceptable impacts, such as (1) impeding the ability to achieve desired natural and cultural resource conditions; (2) diminishing opportunities for current or future generations to enjoy, learn about, or be inspired by park resources or values; or (3) unreasonably interfering with park programs or activities, an appropriate use, the atmosphere of peace and tranquility, or NPS concessioner or contractor operations (NPS 2006b, sec. 1.4.7.1). The park superintendent has discretionary authority to allow and manage authorized uses that will not cause impairment or unacceptable impacts, and the superintendent should consider presidential and congressional interest and enabling legislation or proclamations (NPS 2006b, sec. 1.4.3.1).

Special events taking place within the Pennsylvania Avenue right-of-way must follow the guidelines of the DC Mayor’s Special Events Task Group guidelines (2012), and organizers must acquire permits through the Homeland Security and Emergency Management Agency. Both John Marshall Park and Freedom Plaza are used as staging areas for parades, marches, walks, and runs that may take place within the avenue right-of-way. As a result, multiple permits are required to host many special events on Pennsylvania Avenue.

National Celebrations — Inaugural Parades

The most prominent national celebration occurring on Pennsylvania Avenue is the quadrennial Inaugural Parade. Federal regulations at 36 CFR 7.96 were revised in 2008 to create (1) certain regulatory priority designated areas for the PIC for stands, bleachers, media, and parade support structures for the Inaugural Parade, and (2) NPS regulatory priority designated areas for the PIC and Armed Forces Inaugural Committee for assorted stands, bleachers, media and parade support structures for the Inaugural Parade at seven specific park areas: Mellon Fountain, Indiana Plaza, U.S. Navy Memorial, National Archives Frontage, Benjamin Franklin Plaza, Freedom Plaza, and Pershing Park. The final rule for viewing of the Inaugural Parade by the PIC is found at 73 *Federal Register* 67739–50 (NPS 2008d), and a correction at 75 *Federal Register* 8806–7 (NPS 2010b).

The rule substantially reduces the area that in the past that has been designated for PIC bleachers. Under the rule, PIC bleacher areas along the parade route have now been reduced to 1,284 linear feet or 13% of Pennsylvania Avenue that abuts the street, amounting to 63,936 square feet or 9% of Pennsylvania Avenue and the NHS. These designated areas for the PIC could accommodate 24 bleachers and 8,790 ticket holders, based on the PIC’s 2005 setup. Because the final rule does not allocate to the PIC certain park areas that were allocated to the committee in past Inaugural Parades, the final rule substantially increases the park areas available to the public and to demonstrators. The final rule also designates an area in front of the John A. Wilson Building for the DC reviewing stand, and other areas for individuals with disabilities to view the parade.

At any Inaugural Parade people may be lawfully standing or sitting next to others who may have and express different viewpoints and messages. This expression of views and messages is protected by the First Amendment. “It is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers” (*Street v. New York*, 394 U.S. 576, 592 (1969)). And courts have properly identified the federal parkland in Washington,

D.C.’s, monumental core as a “location in the heart of our nation’s capital [which] makes it a prime location for demonstrations. It is here where Martin Luther King, Jr. delivered his famous ‘I Have a Dream’ speech, where both sides of the abortion debate have staged their passionate demonstrations, and where on any given day one may witness people gathering to voice their public concerns.” (*Friends of the Vietnam Memorial v. Kennedy*, 116 F.3d 495, 496 (DC Cir. 1997)). NPS encourages all Inaugural Parade viewers to understand and respect the exercise of First Amendment rights by others, and the U.S. Park Police will take enforcement action only when there is a violation of the law.

The final rule allows the PIC to place portable public bathrooms at designated areas along the parade route. In addition, the final rule designates the traditional areas necessary for television, radio, and other media to broadcast and report on the parade and related activities, as well as the traditional areas necessary for the Armed Forces Inaugural Committee for parade support structures for monitoring and managing the parade itself.

The setup and take-down times determined necessary under the rule are from November 1 through March 1 for the White House sidewalk and Lafayette Park, December 7 through February 10 for Pennsylvania Avenue, the NHS, and Sherman Park, and January 6 through January 30 for the National Mall between 1st and 14th Streets.

Commercial Filming and Photography

NPS issues permits for commercial filming and photography. Some permits may be for major motion pictures and others for group photography. Pennsylvania Avenue will remain a desirable filming location because of its prominent association with national events and its highly symbolic visual character.

VISITOR CAPACITIES

The capacity of various park areas was examined by applying several different square footage options per person. Physical capacities are most important when looking at specific venues for demonstrations, national celebrations, and

permitted events. Densities range from 5 square feet to 50 square feet per person.

For sidewalks the capacity ranges from typical pedestrian uses to how many people can be accommodated while watching a parade or march. For general sidewalk usage NPS assumes 100+ square feet per person, while for high-use activities, such as a demonstration, the figure may be closer to 5 square feet per person plus 15%–25% to allow for circulation. For an Inaugural Parade NPS assumes that 40% of the available space is used for preprogrammed or circulation space and 9% of the sidewalks is used for bleachers (around 8,800 seats).

The capacity for park areas ranges from how many people can be accommodated at a site and have a high-quality experience in terms of being able to easily access a memorial, enjoy or photograph it, and look at the views and vistas without being overly affected by others. The desired capacity could occasionally be exceeded, yet the experience might still be acceptable if a special event added to the visitor experience. At most park areas along Pennsylvania Avenue the optimal density for the desired experience would be 100–200 square feet per person. At this density visitors would have sufficient space for contemplation, reading quotations, or taking photos. At 50–100 square feet per person the social experience could be congested for many visitors. A density of 50 square feet per person could be ex-

pected when high levels or pulses occur, such as when multiple tour buses arrive at the same time and many people are taking photographs or trying to see a memorial at once. Capacity estimates, including general pedestrian use and high-capacity events, are shown in Table 1.

NUMBER AND SIZE OF EVENTS ALONG PENNSYLVANIA AVENUE

From 2009 to 2012 NPS issued permits for 27 to 46 special events (average of 33 per year) on sidewalks and areas along Pennsylvania Avenue, and from 43 to 57 First Amendment demonstrations (average of 54 per year). Estimated participation per special event ranged from 50 to 54,000 people, and for First Amendment demonstrations from 2 to 86,150 people (see Table 2). In addition to the NPS-permitted activities, the DC Homeland Security and Emergency Management Agency also issued permits, along with the Metropolitan Police (see Table 2).

There is an average of one street closure per weekend from mid-March to mid-October.

Any governmental regulation of demonstrations and related sales activities is subject to First Amendment jurisprudence. NPS regulation of demonstrations and sales activities on federal parkland has been the subject of extensive First Amendment litigation for many years.

TABLE 1: NPS CAPACITY ESTIMATES FOR PENNSYLVANIA AVENUE SIDEWALKS AND COMMEMORATIVE PARK AREAS

Area	General Pedestrian Capacity		High-Use Capacity		
	200 SF/ person	100 SF/ person	50 SF/ person	10 SF/ person	5 SF/ person*
Pennsylvania Avenue					
• North sidewalk	673	1,345	2,690	13,450	26,900
• South sidewalk	624	1,247	2,494	12,470	24,940
Meade Plaza and Pennsylvania Avenue Triangle	139	278	556	2,780	5,560
John Marshall Park	331	663	1,326	6,630	13,260
Mellon Fountain	65	130	260	1,300	2,600
FDR Memorial Stone / Front of National Archives	140	280	560	2,800	NA
Indiana Plaza	237	474	948	4,790	NA
Navy Memorial	351	702	1,404	7,020	NA
Franklin Square	146	293	586	2,930	5,630
Freedom Plaza	350	695	130	6,950	13,900
Pershing Park	215	431	862	4,310	NA
Total	3,271	6,538	11,816	65,380	NA

* NA — not applicable) for some commemorative areas. Experience has shown that densities of 5 SF/person generally do not consistently apply on Pennsylvania Avenue.

TABLE 2: SPECIAL EVENTS AND DEMONSTRATIONS ALONG PENNSYLVANIA AVENUE — 2009–2012

Area	NPS Permitted Events							
	2009		2010		2011		2012	
	No. of Special Events / Participants	No. of First Amendment Demonstrations / Participants	No. of Special Events / Participants	No. of First Amendment Demonstrations / Participants	No. of Special Events / Participants	No. of First Amendment Demonstrations / Participants	No. of Special Events / Participants	No. of First Amendment Demonstrations / Participants
Pennsylvania Avenue Sidewalks	0 / 0	7 / 3,410	0 / 0	4 / 350	6 / 750	0 / 0	1 / 500	0 / 0
Meade Statue / Pennsylvania Avenue Triangle	0 / 0	1 / 2	0 / 0	1 / 12	1 / 25	0 / 0	2 / 45	0 / 0
John Marshall Park	1 / 200	9 / 14,765	7 / 17,000	4 / 5,700	0 / 0	7 / 1,458	9 / 3,770	8 / 24,760
Navy Memorial	5 / 7,100	1 / 500	11 / 1,600	1 / 10	0 / 0	10 / 8,950	0 / 0	23 / 3,600
Freedom Plaza	27 / 53,865	36 / 23,865	27 / 39,297	33 / 22,865	18 / 7,681	34 / 64,465	14 / 9,230	24 / 86,150
Pershing Park	0 / 0	3 / 1,650	1 / 50	0 / 0	2 / 475	6 / 1,245	1 / 2,000	6 / 720
Subtotals	33 / 61,165	57 / 44,192	46 / 57,947	43 / 28,937	27 / 8,931	57 / 76,118	27 / 15,545	61 / 115,230
Total Permitted Activities / Estimated Participants	90 / 105,357*		89 / 86,884		84 / 85,049		88 / 130,775	

* Does not include the 2009 Inaugural Parade.

DC Homeland Security and Emergency Management Agency Events — 2012			
DC Permits	Type of Events*	Time of Year	First Amendment / Metropolitan Police
25**	About a third of events are races or runs; remainder are street festivals, parades, ceremonies, or street art	April, September, and October had four or more events; no events in August	No data.

** No participant estimates provided.