



February 15, 2017

**VIA EMAIL**

The Honorable Ted Wheeler  
Portland City Hall  
1221 SW Fourth Ave  
Portland OR 97204

Chief Michael Marshman  
Portland Police Bureau  
1111 SW 2nd Ave, Suite 1526  
Portland, Oregon 97204

Attn: Edina Na-Songkhla  
Directives Project Management Analyst

**Re: Comments from American Civil Liberties Union of Oregon  
Portland Police Bureau Proposed Directive 635.10  
Crowd Management/Crowd Control**

Dear Mayor Wheeler and Chief Marshman:

On behalf of its 27,180 members in Oregon, including 14,220 members in the City of Portland (City), the American Civil Liberties Union of Oregon (ACLU) submits these comments on Portland Police Bureau (PPB) proposed directive 635.10 on crowd management and crowd control. The ACLU appreciates the opportunity to provide feedback on this important PPB policy.

**I. Introduction**

The City of Portland has long prided itself as a hub for First Amendment activity. In its recent report, the Crowd Control Workgroup of the Citizen Review Committee noted that

“Portland has a very engaged and activist-minded citizenry,” with numerous public marches and large crowds each year.<sup>1</sup> Public assemblies enrich the fabric of Portland by providing:

- a means of expression when people feel unheard through other methods
- a beacon of solidarity and connection for people impacted by the issues subject to protest
- a vehicle to spark conversations and debate about important issues
- an opportunity to form community and connections, leading to constructive engagement, organizing and action

The City cannot sustain these benefits without PPB policies that clearly support, and do not suppress, the exercise of First Amendment rights. Unfortunately, as the CRC Report notes, there is a history of confrontation between PPB and the public involved in protest activity. Some of this history is documented in a comprehensive report from the National Lawyers Guild and the Northwest Constitutional Rights Center.<sup>2</sup>

In the wake of a divisive presidential election in 2016, which produced far-reaching political and social change in our country, protest activity has increased markedly in Portland. This creates a new urgency for PPB to adopt directives on crowd management and crowd control that emphasize restraint, de-escalation, and use of force only as a last resort means to ensure public health, safety, and welfare. The ACLU and other groups who monitor the policing of protests have communicated concerns on this issue several times since November 2016.<sup>3</sup>

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<sup>1</sup> *Crowd Control and the Portland Police, A Policy Review Conducted by the Crowd Control Workgroup of the Citizen Review Committee* at 2 (September 2014) (CRC Report), available at <https://www.portlandoregon.gov/ipr/article/556654>.

<sup>2</sup> National Lawyers Guild and Northwest Constitutional Rights Center, *Whose Streets? Recommendations to the Portland Police Bureau for Responding to First Amendment Assemblies* (2007), available at [https://nlgpdx.files.wordpress.com/2017/01/report\\_crowd-control-final-1.pdf](https://nlgpdx.files.wordpress.com/2017/01/report_crowd-control-final-1.pdf).

<sup>3</sup> Letter from Oregon Lawyers for Good Government to Mayor Wheeler and Chief Marshman (Feb. 8, 2017) (attached); Letter from National Lawyers Guild to Mayor Wheeler Regarding Portland Police Bureau’s Crowd Control Activities on Jan. 20, 2017 (Jan. 27, 2017), available at <https://nlgpdx.files.wordpress.com/2017/01/nlg-letter-to-mayor-wheeler-re-j20.pdf>; ACLU, *Portland’s Protest Problem* (Jan. 25, 2017), available at <http://www.aclu-or.org/content/portland-protest-problem>; Letter from ACLU to Chief Marshman and Mayor Wheeler Regarding Surveillance and Law Enforcement Presence at Inauguration Day Protest (Jan. 25, 2017), available at [http://www.aclu-or.org/sites/default/files/ACLU\\_Public\\_Records\\_Request\\_J20\\_Portland.pdf](http://www.aclu-or.org/sites/default/files/ACLU_Public_Records_Request_J20_Portland.pdf); Letter from Lawyers for Good Government to Mayor Wheeler and Chief Marshman (Jan. 19, 2017) (attached); Letter from ACLU to Mayor Hales and Chief Marshman Regarding The Arrest of PDX Resistance Organizers During Peaceful Protest (Nov. 22, 2016), available at <http://www.aclu-or.org/content/letter-mayor-hales-and-chief-marshman-regarding-arrest-pdx-resistance-organizers->

Despite repeated calls for systemic review of how PPB handles protests, there is not a single substantive change in PPB proposed directive 635.10. Apart from formatting changes, the directive appears identical to current directive 635.10. The proposed directive makes no attempt to incorporate recommendations from the CRC Report, nor does it respond to recent complaints about arbitrary, military-style policing of post-election protests. It is unclear why PPB has simply re-published its existing directive on crowd management and control, instead of using this opportunity to respond to community input and refine and improve its policy.

There are serious flaws in the proposed directive 635.10 and additional clashes between protestors and PPB appear inevitable under this policy. The ACLU requests that PPB incorporate the ACLU's comments and meaningfully revise PPB proposed directive 635.10. This will provide an important roadmap for constructive engagement between PPB and the public engaged in constitutionally-protected protest activity.

## II. Specific Revisions to Proposed Directive 635.10

The ACLU offers the following revisions (in track changes) and explanatory comments to each section of the proposed directive.

### A. Definitions

- ~~Aggressive physical resistance: Physical actions of attack or imminent threat of attack coupled with the ability to carry out the attack which may cause physical injury.~~
- Bureau event liaison: A Bureau member who has been designated as the primary contact for communication with the event's primary liaison to police, as established by the event organizers.
- Crowd control: techniques used to address public assemblies where unlawful conduct has taken place or is imminently ~~threatened to take place~~, or there is a need to change or control the assembly's location or behavior to protect public health, safety or welfare. Techniques can include containment, dispersal, and arrests.
- Crowd Control Incident Commander (CCIC): Command level personnel selected and trained to manage crowd events. The CCICs have the authorization and responsibility for all police actions at such events. Two CCICs will be designated by the virtue of their assignment - the Central Precinct commander and one Central Precinct lieutenant. Two additional CCICs will be selected and trained. The Central Precinct commander will be the primary CCIC for all events citywide based on workload and

availability unless the Operations Branch chief delegates the responsibility to another CCIC.

- Crowd management: techniques used to facilitate, coordinate and manage lawful public assemblies before and during the event for the purpose of encouraging and maintaining their lawful and peaceful status.
- ~~Passive resistance: A situation where an individual merely goes limp and/or fails to comply with verbal commands with no other overt signs of resistance.~~
- Peacekeeper: Persons designated by event permit holder to assist with maintaining an orderly event.
- Persons-in-charge: A person designated by an event permit holder to act on behalf of, and with the authority of, the permit holder.
- Physical resistance: Actions that prevent or attempt to prevent members' attempts to control a subject, but do not involve attempts to harm the member.
- Planned/permitted event: An activity where a permit is obtained and/or the event is publicized.
- Unplanned/spontaneous events: Unforeseen or unplanned events ~~or incidents~~ that draw a crowd. Such events ~~may be~~ lawful as long as they do not unreasonably threaten public health, safety or welfare. ~~or they may create risk to public safety, peace and order or damage to property. Planned or unplanned events may include parades, marches, labor disputes, rallies, celebratory crowds, etc.~~

**Explanation:** The edits are designed to add precision to the definitions. In particular, the ACLU objects to the ambiguous and broad use of the term “peace and order” (and similar language) in the definitions and throughout the directive. The ACLU has substituted the language used in the crowd control definition (“public health, safety and welfare”). This ensures against the policy conflating threats to public safety with lawful, constitutionally-protected activity that some may perceive as disruptive or disorderly. *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Boston*, 515 US 557, 573, 115 SCt 2338, 132 LEd2d 487 (1995) (the general rule is that “the speaker has the right to tailor the speech.”); *Cohen v. California*, 403 US 15, 25, 91 SCt 1780, 29 LEd2d 284 (1971) (“[I]t is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.”) Neither “Aggressive Physical Resistance” nor “Passive Resistance” is used in the policy, so they have been removed from the definitions section.

## B. Policy

1. The Portland Police Bureau recognizes that the City of Portland has a tradition of free speech events. It is the policy of the Portland Police Bureau to uphold constitutional rights of

free speech and assembly. The Bureau will accomplish this by applying the ~~minimum appropriate~~ level of coordination, direction, guidance, and ~~when necessary,~~ control ~~necessary~~ to protect public health, safety and welfare~~life and property and to maintain public peace and order.~~

2. Actions and speech protected by the First Amendment include organization of and participation in rallies, marches, parades and leafleting. Actions or behavior that involve trespassing, destruction of property, sustained and intentional blocking~~disruption~~ of transportation, ~~unlawful use of amplification devices and~~ assaults ~~and disturbances of the peace~~ are not protected by the First Amendment.

3. The preferred police response to planned and unplanned events is crowd management rather than crowd control. Effective deployment during events generally consists of pairs of members on foot and/or on bicycles to monitor crowd activity, and to assist traffic diversions or crowd interaction with spectators.

**Explanation:** For greater accuracy, the ACLU's comments narrow the description of conduct excluded from First Amendment protection. *See Saia v. New York*, 334 US 558, 561, 68 SCt 1148, 92 LEd 1574 (1948) (sound amplification is protected by the First Amendment); *Seattle Affiliate of Oct. 22nd Coalition to Stop Police Brutality, Repression and Criminalization of a Generation v. City of Seattle*, 550 F3d 788 (9<sup>th</sup> Cir 2008) (First Amendment protections are at their strongest and regulation is most suspect when the government seeks to regulate access to the streets). The ACLU has also moved important policy directives from section 1 and added them to the policy section to make their general application more clear.

## C. Procedure

1.1. When there is advance knowledge of a planned event, attempts will be made, at the earliest opportunity, to establish and maintain communication with representatives of the event (even if a permit has not been applied for or issued). If communication is established, organizers of the event will be asked to identify their primary liaison to police. The Bureau event liaison will attempt to set up advance meetings in preparation for the event. The Bureau event liaison will establish and maintain continuous contact with both the Crowd Control Incident Commander (CCIC) and the event representatives during the event.

1.2. During meetings with event representatives, Bureau representatives will discuss the ~~purpose,~~ size, scope and organization of the event. ~~Bureau planners will attempt to determine the intent of the organizers. A threat assessment will be conducted focusing on key indicators.~~ Bureau representatives will discuss general tactics and resources. Reasonable and

active efforts at accommodation and cooperation will be made. Specific details of tactical planning will generally not be discussed. To the degree possible, agreements should be reached regarding timelines of the event, routes to be followed, planned stops, readily identifiable persons-in-charge and peacekeepers from the event organizers, etc.

1.3. The Bureau may develop a crowd control plan with the option of immediate application as needed, only after considering the following: (1) the policy of the Bureau that the preferred police response is one of crowd management rather than crowd control; (2) the potential threat that the event poses to the public health, safety, and welfare; and (3) the risk that crowd control measures could be counter-productive and escalate the threat to public health, safety, and welfare. In determining whether the event poses a threat to public health, safety, and welfare, the Bureau may not consider illegal profiling factors, including the organizers' age, race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, homelessness, or disability. Based on a threat assessment, crowd control plans should be in place with the option of immediate application if the need arises. However, if crowd leaders have sufficient internal communication and control mechanisms, it will be the Bureau's goal to work through the persons-in-charge and peacekeepers to avoid application of the crowd control plan, solve problems and achieve public safety results.

1.4. Event planning and coordination will be conducted with affected city bureaus and divisions within the Police Bureau. Additionally, potential targets of a protest should be advised of the event to minimize surprise and confusion. Site surveys of the route/location of the event should be conducted as part of the planning process. Also, site surveys should be conducted immediately prior to the commencement of the event. The survey should include physically surveying the entire route if the event is a march.

1.5. Effective deployment during these events generally consists of pairs of members on foot and/or on bicycles to provide a uniform presence, to monitor crowd activity, and to assist traffic diversions or crowd interaction with spectators.

**Explanation:** It is not the role of PPB to discuss the “purpose” or “intent” of a free speech activity with organizers, or to confer with potential targets of protests. This type of inquiry may be reasonably interpreted as an impermissible prior restraint on speech. *See Long Beach Area Peace Network v. City of Long Beach*, 574 F3d 1011 (9<sup>th</sup> Cir 2008) (prior restraints on speech are presumptively invalid). In addition, in determining whether to prepare a crowd control plan, PPB should weigh the potential threat to the public health, safety and welfare against factors that militate against development and deployment of such a plan. The CCR Report found, for example, that the lower the profile of “hard gear” equipped crowd officers,

the better the outcome. Similarly, the CCR Report noted that best practices from other jurisdictions indicate that arrests for “minor violations can have a significant negative impact on the behavior of a crowd and can needlessly escalate tensions.” Finally, the directive should be clear that PPB may not consider illegal profiling factors in assessing an event, its organizers, or its participants. The CCR Report reported testimony from community groups that PPB targeted some groups for more police attention than others. ORS 131.920 prohibits all law enforcement agencies, including PPB, from profiling.

## 2. Unplanned/Spontaneous Events

2.1. Many spontaneous events can be lawful and facilitated with minimal police assistance.

~~While a~~An unplanned or unforeseen event or incident may create a risk to public health, safety, and welfare, ~~peace and order or damage to property.~~ M members should remember that ~~the~~an unplanned/spontaneous nature of an event does not make it automatically mean that it is an unlawful assembly. The lack of a permit does not make an unplanned/spontaneous assembly unlawful. The responding Incident Commander (the most senior member by rank or seniority), shall make every effort to ensure there is a measured police response, similar to that applied to a planned event.

2.2. A notification for the CCIC to respond to the incident will be made as soon as practical.

2.3. The police response will be commensurate with the overall threat, if any, to public health, safety, and welfare, ~~life and property, and maintaining order.~~ These actions may include directing crowd and vehicular movement and, enforcing ordinances and statutes, ~~and employing any physical force necessary. Decisive and appropriate actions during the initial stages of a disturbance may make the difference in effectively managing the event.~~

**Explanation:** The policy correctly notes that the U.S. Constitution protects unplanned events. Unless an unplanned event poses a clear threat to public health, safety, and welfare, the police response should mirror that applied to a planned event. The lack of a permit does not render an unplanned/unpermitted assembly unlawful. This is especially true in the context of a permitting scheme, like the City of Portland’s, that does not satisfy the Constitution’s requirements for a valid time, place and manner restriction on speech. For example, the City requires filing of permit applications 30 days in advance of an event, without an exception for spontaneous events. *See* Section 3(D)-(E) of Administrative Rules for Portland City Code 7.22; *NAACP, Western Region v. Richmond*, 743 F3d 1346, 1354-57 (9<sup>th</sup> Cir 1984) (20-day advance notice requirement improperly prohibited spontaneous expression in response to immediate issues). In addition, the directive addresses the use of physical force in sections 3 and 4, so the reference here is unnecessary and potentially

inflammatory. Finally, the sentence referring to use of “decisive” action at the commencement of a “disturbance” appears contrary to the recommendation of the CRC Report that PPB employ de-escalation tactics in response to conflicts with protesters.

### 3. Incident Commander

#### 3.1. For All Crowd Events

3.1.1. The Incident Commander (IC) or supervisors should initiate and coordinate appropriate action to maintain the safety of the public, event participants and emergency personnel. An immediate and ongoing assessment of the event is imperative for effective police response. The IC should gather the following information:

3.1.1.1. Location and type of event.

3.1.1.2. Crowd size and behavior.

3.1.1.3. ~~Number of participants engaging in conduct that is, or is likely to, become unlawful and spread to other crowd participants.~~

3.1.1.4. ~~Prior behavior of identified participants and crowd leaders.~~

3.1.1.5. Threats to safety of public or members.

3.1.1.6. Damage to property.

3.1.1.7. Size of involved area.

3.1.1.8. Number of additional members needed and special assets such as RRT, MPU, Air One, PFB, EMS, etc.

3.1.1.9. Location of staging area.

3.1.1.10. Location of command post.

3.1.1.11. Ingress and egress routes.

3.1.1.12. Possible impact on vital infrastructure.

3.2. The IC should attempt to contact formal or informal leaders to ~~establish intent and to~~ negotiate/facilitate order of the event. (Police personnel should use caution when entering a hostile crowd solely for the purpose of communication). ~~When possible, e~~Clear instructions



~~should~~ must be communicated to the crowd. The IC and supervisors are responsible to ensure that all orders given to a crowd are consistent, lawful, and appropriate for the circumstances. The IC should take reasonable steps to ensure orders to the crowd have been heard and understood. Unless there is an immediate risk to public safety, ~~or significant property damage is occurring~~, sufficient time will be allowed for a crowd to comply with police commands before action is taken.

3.3. The IC will make the final decision as to what control action, if any, will be taken to address a crowd event. The police response will be commensurate with the degree of violence ~~and disorder~~, criminal conduct and ~~perceived~~ threat to the public health, safety and welfare, life and property. Crowd size and available police resources will also factor into the response. Uncoordinated actions or actions by individual members shall be avoided. The following factors should be considered:

3.3.1. Likelihood of police action reducing the threat to public health, safety and welfare, instead of increasing it ~~improving the outcome~~.

3.3.2. ~~Legal standing~~.

3.3.3. Weigh effectiveness of targeted arrests of specific violent or disruptive individuals before ~~vs.~~ applying broad crowd control tactics.

3.3.4. Sufficiency of personnel resources to achieve the action (number and level of training).

3.3.5. Establishment of clear escape/dispersal routes for the crowd and police.

3.3.6. Ability to clearly communicate with crowd (loud speakers, personal contact with leaders).

3.3.7. Modify plans/tactics as conditions evolve.

3.3.8. Availability and potential threat to public safety of less-lethal crowd control weapon/equipment/tools.

3.3.9. Disengagement timeline and strategies.

3.4. Members must maintain a professional demeanor, despite unlawful or anti-social behavior on the part of crowd members.

**Explanation:** The ACLU's proposed revisions on information gathering are designed to more clearly reflect the fact that is unconstitutional to retaliate against protesters for past protest activity. *See Ford v. City of Yakima*, 706 F3d 1188, 1196 (9<sup>th</sup> Cir 2013); *Skoog v. County of Clackamas*, 469 F3d 1221, 1232 (9<sup>th</sup> Cir 2006). In addition, ORS 181A.250 prohibits collecting and maintaining files based on political associations. The proposed edits also reflect the ACLU's position that PPB should take crowd control action only if clearly necessary to protect public safety; the edits also eliminate redundant factors.

#### 4. Crowd Control Tactics

4.1. Note that the order of these tactics is fluid (to provide for escalation and deescalation) and will change based on need.

4.1.1. Pre-emptive removal: Pre-emptive removal/confiscation of potential weapons under authority of city code.

4.1.2. Display of members/~~show of force~~: In some instances, Uniform presence can be used to deter criminal activity. Members should be brought into crowd view in an organized manner (i.e., Mobile Field Force). Deploying members in "hard gear" should not be used unless necessary.

4.1.3. Selective arrests: Individuals in the crowd who are ~~organizing or motivating unlawful conduct or resistance to lawful orders and have~~ engaged in unlawful conduct that threatens the public health, safety and welfare may be arrested. It can be an effective technique to arrest. This should be coordinated with the IC and be done at a supervisor's direction. Sufficient members should be present to safely take the subjects into custody and to remove them from the area.

4.1.4. ~~Multiple-Mass~~ arrests: Multiple-Mass arrests may will generally occur pursuant to a lawful dispersal order only after sufficient time has been given to follow the order. The IC should ensure sufficient resources are available for mass custody transport and processing. Mass arrests are highly disfavored and should be used only in situations where there is a clear and imminent risk to public health, safety, and welfare. The IC should carefully consider whether to initiate a mass arrests because they often violate constitutional principles and the rights of many of those arrested.

4.1.5. Containment of crowd: When ~~tactically feasible~~ necessary to ensure public health, safety, and welfare, perimeters can be established to contain or direct the crowd. Crowd containment should not be done for the convenience of members or in order to direct a particular march route unless there is an imminent threat to public health, safety, and

welfare. The police shall not conduct mass arrests of individuals who are “boxed in” a particular perimeter and lack the ability to reasonably follow a dispersal order.

4.1.6. Dispersal: Crowds should not be dispersed unless there is an imminent threat to the public health, safety and welfare and there are reasonable and articulable factors justifying the order in accordance with law. Before giving the order to disperse, the IC must consider whether dispersal unduly endangers the public, police or participants in the crowd. If the IC directs a crowd to be moved by the use of force, information regarding time to disperse, consequences of a failure to disperse, and a clear route for individuals, will, ~~when feasible,~~ be provided and announced in the same manner as the order to disperse. The crowd dispersal may be accomplished using any of the following techniques and tactics:

4.2. Mobile Field Force tactics: Skirmish line of members with batons at the ready. If physical resistance to the dispersal is encountered and there is imminent physical danger to members or public health, safety, and welfare, members may use batons to push crowd in direction of the dispersal. Batons may not be used to strike protesters for refusal to disperse.

4.3. Dispersal arrests: The IC may direct arrests of individuals who engage in physical resistance to the dispersal (this tactic is resource intensive and should generally be used at the direction of the IC).

4.4. Use of pepper spray: Targeted application of aerosol agents may be used only against specific individuals who are ~~reasonably perceived to be~~ attempting to cause physical harm to any person or threatening imminent physical injury to any person or who are, engaged in looting or the destruction of property, ~~or displaying intent to engage in physical resistance to a lawful police order.~~ Pepper spray may not be used solely in response to a specific individual’s refusal to comply with an order to disperse. Broadcast spraying of pepper should be avoided in all cases. ~~unless there is a crowd surge that threatens to overcome police lines.~~

4.5. ~~Impact munitions: When used as a dispersal technique, impact munitions will be deployed at the direction of the IC, unless there is exigency to prevent imminent injury to a person or destruction of property.~~

4.6. Impact munitions and riot control agents: Impact munitions and riot control agents may be used only in circumstances where the public health, safety and welfare is seriously and imminently threatened. This requires a determination by the IC that ~~the~~ crowds have ~~been resistant to~~ refused a dispersal order after a reasonable compliance period and have engaged in multiple instances of violent behavior such as throwing items at police that present a serious risk of harm to the police, attacking uninvolved citizens ~~or vehicles,~~ or

engaged in widespread property damage. Use of impact munitions and riot control agents will be at the direction of the IC. Only qualified personnel will deploy impact munitions and ~~the~~ riot control agents. It is the responsibility of the IC to notify Bureau personnel to don protective breathing equipment or to evacuate. The IC shall consider the physical environment, weather, number of persons involved, especially innocent bystanders, prior to deploying impact munitions or riot control agents.

**Explanation:** This section of the proposed directive raises the most significant concerns for the ACLU because it attempts to outline how and when PPB will arrest or use force against protesters. The ACLU's proposed revisions are consistent with our view that PPB should disperse protests and use force against protesters only when there is a clear and serious threat to public safety. The ACLU's proposed revisions reflect current social science showing that the use of militarized police or "hard gear" leads to escalation, not de-escalation, and that PPB's "show of force" creates violence instead of suppressing it. *See, e.g., Jaffe, If Cops Understood Crowd Psychology, They'd Tone Down the Riot Gear* (Aug. 27, 2014).<sup>4</sup> The ACLU's proposed revisions also reflect that crowd-control weapons pose significant and irreparable health consequences. These findings are available in a report by The International Network of Civil Liberties Organizations (INCLEO) and Physicians for Human Rights, entitled *Lethal in Disguise: The Health Consequences of Crowd-Control Weapons*.<sup>5</sup>

## 5. Prohibited Techniques

5.1. The following techniques are prohibited in crowd management/crowd control situations:

5.1.1. Use of fire hoses.

5.1.2. Canine Units.

### 5.1.3. Arrests of credentialed journalists and legal observers.

**Explanation:** The First Amendment protects freedom of the press, which includes the right to observe and record police interactions with the public. *Am. Civil Liberties Union of Illinois v. Alvarez*, 679 F3d 583, 595 (7th Cir 2012) ("The act of *making* an audio or audiovisual recording is necessarily included within the First Amendment's guarantee of speech and press

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<sup>4</sup> Available at: <https://www.fastcodesign.com/3034902/evidence/if-cops-understood-crowd-psychology-theyd-tone-down-the-riot-gear>.

<sup>5</sup> Available at: <https://www.aclu.org/report/lethal-disguise-health-consequences-crowd-control-weapons>.

rights as a corollary of the right to disseminate the resulting recording.”); *Glik v. Cunniffe*, 655 F3d 78, 82 (1st Cir 2011) (“The filming of government officials engaged in their duties in a public place, including police officers performing their responsibilities, fits comfortably within [firmly established First Amendment] principles.”) Journalists and legal observers who are monitoring a protest, not participating in it, should not be arrested if they continue to monitor and observe a protest after a dispersal order is issued. It is at that point that the monitoring and reporting function becomes paramount.

## 6. Reporting Requirements

6.1. If arrests are made, or force is used during a crowd event, the IC shall submit a special report which describes the context and conditions that led to the police action. Members who use force will document the incident as outlined in DIR 1010.20. Supervisors who direct crowd dispersal or arrests will also complete a special report that describes the context and conditions. These reports will be completed prior to the end of shift. A delay of up to 24 hours may be authorized by the IC. This reporting requirement is separate from the After Action requirement. The CCIC or designee will ensure coordination with the District Attorney’s office where arrests were made.

## III. Conclusion

The ACLU looks forward to working collaboratively with the City of Portland and PPB on revisions to proposed directive 635.10.

Sincerely,



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