



ROGER BALDWIN FOUNDATION  
OF ACLU, INC.

Illinois

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ACLU, INC.

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Via Email

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Dear Tyeesha and Allan,

We appreciate the Department's willingness to continue amending its dispersal guidelines. As described before Judge Dow on November 12, we have some overarching concerns with the Department's current dispersal guidelines, primarily related to the lack of standards that must be met before a First Amendment assembly can be dispersed. This lack of standards is at odds with the requirements of the Constitution.

The City has not yet responded to the Coalition's inquiry as to the source of its authority to issue dispersal orders. Based on past case law, we assume that the Department relies on Chicago Municipal Code 8-4-010(d). If so, the Department should update its dispersal guidelines to restrict officers from issuing dispersal orders unless there is an imminent risk of substantial physical harm or damage to property nearby. Section 8-4-010(d) provides that failure to obey a lawful order to disperse may result in arrest only when "three or more persons are committing acts of disorderly conduct in the immediate vicinity, **which acts are likely to cause substantial harm . . .**" Chicago Mun. Code 8-4-010(d). As the Illinois Supreme Court has assured that a dispersal cannot be triggered by protected expression, "then the logical corollary is that the substantial harm contemplated by Subsection D is physical harm or damage to the people and property nearby." *Bell v. Keating*, 697 F.3d 445, 458 (7th Cir. 2012). As it currently stands, the Department's guidelines for issuing dispersal orders do not meet this standard—in fact, the Department currently has no mandatory restrictions on when officers may issue dispersal orders. Given the Department's limitations on First Amendment assemblies this spring and summer—including multiple unlawful dispersals as documented by the Coalition—we view it as absolutely critical that the Department state plainly the Constitutional and statutory standards to which officers are bound. As such, the Department's new policy should adopt the following language:

*Officers are prohibited from issuing general dispersal orders unless three or more people are committing acts of disorderly conduct in the immediate vicinity and those acts are likely to cause substantial physical harm or substantial damage to property.*

Further, as we have described throughout our negotiations on this subject, officers must be required to attempt alternative crowd control techniques before issuing dispersal orders.<sup>1</sup> General dispersal orders should not be permitted on First Amendment assemblies without first engaging crowd management measures less intrusive to the protected activity. General dispersal orders should be allowable only if efforts to de-escalate activity the Department deems threatening to public safety and attempts to address individuals (rather than the crowd) have not reduced the likelihood of substantial harm to persons or property, or there is no reasonable likelihood that those efforts would reduce that likelihood.

We also have continued concerns regarding the amount of discretion field commanders and officers have under the current guidelines, particularly with respect to when and how to issue dispersal orders. We are concerned that undue discretion only serves to confuse officers and members of the crowd, and has the potential to result in disparate enforcement. As an example, the current guidance only requires officers to issue an order via amplified sound and confirm audibility “when safe and feasible to do so.” The guidance does not define circumstances that are “safe and feasible.” Given the size of many First Amendment assemblies in Chicago, it is almost always the case that an order must be made via amplified sound to ensure that all members of the crowd hear it. As the Supreme Court held in *Cox v. Louisiana*, “allowing unfettered discretion in local officials in the regulation of the use of the streets for peaceful parades and meetings is an unwarranted abridgment of . . . freedom of speech and assembly secured . . . by the First Amendment.” 379 U.S. 536, 558 (1965). General dispersal orders are such strong medicine that they must be accompanied by standardized, uniform requirements to be used every time.

We look forward to the Department’s response highlighting its source of authority for issuing dispersal orders, and we look forward to a response detailing how the new policy will come into compliance with constitutional standards. We appreciate the Department’s willingness to receive the Coalition’s comments at this stage of policy development, and we are hopeful that this process will lead to a much less protracted policy revision process. We view this process as critical to the health and safety of the community, and as critical to the legitimacy of the Consent Decree writ large. Please let us know if you have any questions about this letter, or if you would like to discuss language as you draft it.

Best,  
/s/ Elizabeth Jordan  
ACLU of Illinois

/s/ Sheila Bedi  
Mandel Legal Aid Clinic  
University of Chicago Law School

/s/ Craig Futterman  
Roderick and Solange MacArthur Justice Center  
Northwestern Pritzker School of Law

*For the Coalition*

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<sup>1</sup> See Code of the District of Columbia § 5-331.07(c), accessible at <https://code.dccouncil.us/dc/council/code/sections/5-331.07.html>.