

## **The Oregonian**

# **Portland police report released in Michael Fesser case this week never made it to Fesser's lawyer in response to multiple subpoenas**

*By Maxine Bernstein  
February 13, 2020*

The lawyer for an African American man arrested in a disturbing case of retaliation and racism was incensed this week when Portland police released a related report that he'd never seen before.

Attorney Paul Buchanan said the report should have been turned over long ago when he subpoenaed all the Portland Police Bureau's records after filing two civil suits stemming from the spurious arrest and indictment of his client, Michael Fesser.

The November 2017 report contained misleading information about Fesser, Buchanan said.

That police didn't divulge it until now is one more insult to injury in a series of police misconduct, he said.

The Police Bureau posted the report on its website Wednesday in what Police Chief Jami Resch called an "effort to be transparent."

The report bolsters Fesser's case that Mike Stradley, a West Linn police lieutenant at the time who had retired from Portland Police Bureau, made up claims against Fesser to justify police actions, Buchanan said.

The report revealed that Stradley contacted a Portland police gang enforcement officer in November 2017 after a grand jury had indicted Fesser on first-degree theft charges.

Stradley told the gang enforcement officer that there was a warrant for Fesser's arrest and to be on alert because Fesser had made threats to assault his former boss at A&B Towing, Eric Benson, as well as Benson's employees and made threats to "damage his business," according to the police report.

Stradley's information, coupled with a notation that Fesser had a prior arrest for first-degree assault and a juvenile arrest (which was redacted in public release this week), led Portland police to flag Fesser in the computer dispatch system as a potential danger and provide extra protection to A&B Towing in Southeast Portland.

The police report directly contradicted the sworn statements that Stradley and Benson gave to Fesser's lawyer in the course of Fesser's federal civil suit. Both said they had no knowledge of any threats Fesser had made.

The police report also didn't note the year of Fesser's assault arrest, which was 1997, and the fact that prosecutors had dismissed the charge.

"It is so scary that the police can so readily make up claims that are not true," Buchanan said. "But in this case, they can't get away with it because we have sworn testimony in two civil cases and subpoenas that very clearly reveal the claims reflected in this November 2017 report from Stradley were lies."

Police Bureau report released on West Linn Lt. Mike Stradley's call to Portland Police

Stradley in 2017 told Portland police that Michael Fesser had made threats to his boss at A&B Towing and other co-workers, directly contradicting what he said in a sworn deposition to Fesser's civil attorney later.

West Linn this week paid \$600,000 to Fesser, 48, to settle a racial discrimination and unlawful arrest suit he filed against West Linn police in 2017. A&B Towing earlier paid Fesser \$415,000 to settle a separate racial discrimination and retaliation suit.

Fesser said they targeted him for arrest in Portland in February 2017 as a favor to a fishing buddy of former West Linn Chief Terry Timeus. The fishing buddy was A&B Towing's Benson.

Fesser said his arrest was in retaliation for his complaints about a racially hostile workplace at the Portland tow company.

Stradley enlisted Portland's gang enforcement officers to assist West Linn in arresting Fesser on Feb. 25, 2017, on allegations that he stole from A&B Towing. Stradley had been on the gang team and told West Linn officers that Fesser was a gang associate.

In a deposition, Stradley later admitted that he hadn't had contact with Fesser for more than 20 years and had no direct knowledge that Fesser was tied to a gang, beyond knowing he had been seen with gang members two decades earlier and had attended trials of known gang members.

After Fesser's arrest, prosecutors immediately dropped the aggravated theft charge. But he was indicted that November after he filed the lawsuit against A&B Towing.

It was then that Stradley directly contacted Portland gang enforcement Officer Charles Asheim and relayed that Fesser had made threats against A&B Towing, according to the Portland police report.

But in a sworn deposition, Benson said Fesser never threatened him.

In his sworn deposition, Stradley admitted that he was aware of no particular instance where Fesser had threatened someone. He also said he wasn't involved in labeling Fesser as an "officer safety concern."

Fesser's attorney said the newly public police report shows Stradley lied.

"This November 2017 report evidences a continuation of the West Linn Police's misconduct, aided and abetted by the Portland police," Buchanan said. "This conduct is despicable and should result in termination of Mr. Stradley from his current position training new police officers at the Oregon Department of Public Safety Standards and Training and criminal liability. Mr. Stradley cannot even keep his lies straight, as his deposition and the testimony of Mr. Benson make clear."

Portland police Lt. Tina Jones, who signed off on the officer safety report as a sergeant for the gang enforcement team at the time, initially referred questions to the City Attorney's Office about why this report wasn't turned over in response to multiple subpoenas by Buchanan.

"The City Attorney's Office staff had communications with Mr. Fesser's attorneys. They would be best suited to handle this inquiry," Jones said in an email.

City Attorney Tracy Reeve called it an "inadvertent oversight" that the November 2017 report wasn't among the records shared with Fesser's lawyer.

The report apparently was written after the city had provided a batch of police documents to Fesser's lawyer in response to an initial civil suit subpoena. When the city received an additional

subpoena later for all police reports, the city asked the Police Bureau for all records and bureau officials said they had already provided them.

"After a careful review, we have determined that due to an inadvertent error we failed to locate and release the November 10, 2017 record when we released the other responsive documents," Reeve said in an email. "We regret the oversight."

## **Officers placed on leave, investigations ordered in growing scandal over rogue arrest of black Portland man**

*By Maxine Bernstein*

*February 13, 2020*

Oregon's governor, a member of Congress and two district attorneys pushed Wednesday for investigations of wrongdoing by police in the rogue theft case against a black Portland man that has developed into a full-blown scandal with allegations of racially motivated cronyism.

In a day of fast-moving developments, authorities also announced that the two officers central to the case have been placed on leave.

The 2017 arrest of Michael Fesser has led to settlements of more than \$1 million, admissions in court documents of officers lying and ignoring basic civil rights and accusations of "good-old-boy racism" against West Linn police.

An account of the case this week in The Oregonian/OregonLive prompted calls by residents for further investigation.

Clackamas County District Attorney John Foote and Multnomah County Attorney Rod Underhill both answered the calls, saying the report raised serious concerns about law enforcement in their jurisdictions.

As a result, the lead West Linn investigator in the case, Sgt. Tony Reeves, was placed on paid administrative leave pending the outcome of the scrutiny, West Linn Chief Terry Kruger announced.

Gov. Kate Brown also weighed in, directing the Oregon Department of Public Safety Standards and Training "to conduct a full and thorough review of this matter as swiftly as possible."

Brown's demand came a day after the department's director said the agency "will be doing fact finding to gather more information" about the case.

Former West Linn Lt. Mike Stradley, who helped get the Portland police gang enforcement team involved in Fesser's arrest, also has been placed on paid administrative leave by the state's police training academy, where he now works as a supervisor of survival tactics training for police recruits.

"If what Oregonians are hearing about this case is true, everything about it is egregious, horrific and completely unacceptable. Law enforcement officers take a pledge to uphold the law and keep everyone safe - which is the opposite of active abuse of power, cronyism, hate crimes, and obstruction of justice," Brown said in a statement.

The U.S. Attorney's Office wouldn't comment whether it, too, planned to open an investigation.

U.S. Rep. Earl Blumenauer, D-Portland, said he plans to make sure Oregon's U.S. attorney is aware of Fesser's arrest and "considers whether it merits a criminal or civil rights investigation."

A Portland commissioner also directed the city's Bureau of Transportation to sever ties with one of its biggest towing contractors, A&B Towing, which is at the heart of the controversy.

In Clackamas County, Foote said his office will work to determine if any of the West Linn officers involved committed crimes in his county.

"We want to look at everything," Foote said.

Chief Deputy District Attorney Chris Owen will supervise the investigation and will review the civil case record and Multnomah County arrest and prosecution files, Foote said.

His office also will determine if credibility concerns raised in the case about the involved officers should trigger a so-called Brady notice, an obligation under the 1963 U.S. Supreme Court ruling in *Brady v. Maryland* that requires prosecutors to disclose to defense lawyers any material that could impeach the credibility of a government witness.

Fesser, 48, sued West Linn police in 2017, alleging racial discrimination and unlawful arrest. He said they targeted him for arrest in Portland that February as a favor to a fishing buddy of former West Linn Chief Terry Timeus. The fishing buddy was Eric Benson, Fesser's employer at the time.

Fesser said his arrest was in retaliation for his complaints about a racially hostile workplace at Benson's A&B Towing in Southeast Portland.

Depositions from the federal civil suit and court records revealed West Linn police, with civilian help, made a surreptitious audio recording of Fesser at work in Portland without a warrant or court order, then arrested him without probable cause with the help of Portland gang enforcement officers. They also seized Fesser's cash, cellphone and personal documents without a search warrant, according to the records.

The city of West Linn this week agreed to settle Fesser's federal suit for \$600,000. West Linn's mayor, city manager, police chief and two police captains have agreed to meet with Fesser and his lawyer, a provision that Fesser sought in the settlement. Fesser and his lawyer earlier negotiated a \$415,000 settlement with Benson and his company stemming from a separate civil racial discrimination and retaliation suit Fesser filed in state court.

In Multnomah County, Underhill announced that his office would initiate its own review of what led to Fesser's arrest and indictment in Portland. Theft charges were twice dismissed against Fesser in the case.

"Maintaining the integrity of the criminal justice system is at the forefront of the work we do each day," Underhill said in a statement. "As such, we have initiated a full review of this case. This examination will be exhaustive. We will be looking at what information law enforcement provided us when they submitted the case for criminal consideration, what information was learned at grand jury, and what information we've learned since."

In other fallout from the case, Portland Police Chief Jami Resch announced that she has asked her agency's Professional Standards Division to look into the role that Portland's gang enforcement team played in helping arrest Fesser. The review is standard bureau practice when there are civil lawsuits, Resch said.

Fesser's lawsuit uncovered unprofessional, racist and crude banter between West Linn's Reeves, who was a detective then, and the A&B Towing owner as they secretly recorded Fesser at work on Feb. 25, 2017. Later that night, West Linn officers, drawing on the help of the Portland officers, moved in to arrest Fesser during his drive home.

Stradley, a retired Portland police veteran working as a lieutenant for West Linn police at the time, had told Reeves that Fesser was a gang associate. Stradley helped connect Reeves to Portland's gang enforcement team for the arrest. Stradley admitted in a deposition, however, that he hadn't had any contact with Fesser in more than two decades and didn't have specific information about Fesser.

Resch said in a statement that Portland participated in Fesser's arrest "at the request" of West Linn police "based upon probable cause for his investigation."

The Portland Police Bureau released a report from that time that said: "(West Linn) Det. Poitras had been in contact with (Portland) Sgt. (Ken) Duilio and stated that he had probable cause to arrest Michael Fesser." Poitras is the former name of West Linn's Tony Reeves.

(In a deposition, the West Linn officer said he changed his name to his stepfather's last name, Reeves, because that's the man who raised him. He said his biological father, Daniel Poitras, was sentenced in Multnomah County in 2015 for running an illegal tow business in Portland. There's no indication from the case reports that the senior Poitras was in any way associated with A&B Towing. )

Fesser's lawyer, Paul Buchanan, has said Portland police didn't ask West Linn police about the details of their investigation into Fesser before agreeing to pull him over, based on his depositions of the West Linn officers in the case.

Multnomah County prosecutors chose not to pursue an aggravated theft charge against Fesser when he appeared for arraignment in February 2017. A Multnomah County grand jury in November 2017 indicted Fesser on five counts of first-degree theft after Benson, the A&B Towing owner, pressed West Linn to revive the case, and West Linn police, in turn, urged the prosecutors to again pursue the theft allegations, according to court depositions.

A grand jury indictment was based on the testimony of Reeves, Benson and two other men who West Linn police repeatedly described as "dirty" and "shady" individuals, according to depositions taken in the federal civil case.

The indictment was dismissed as a civil compromise when Fesser settled with A&B Towing.

Portland Commissioner Chloe Eudaly, who oversees the city's Bureau of Transportation, Wednesday directed the bureau "to sever our business relationship with A&B Towing. We're exploring how to do that expeditiously," said John Brady, a transportation spokesman.

The city's contract with A&B Towing was signed in October 2013 and was to run through September of this year. It's valued at \$750,000, meaning that's the maximum amount the towing company could receive during the term of the contract, not a guaranteed figure, Brady said.

"I was sickened by the story of Portland resident, Michael Fesser, who was the victim of racially motivated harassment, surveillance, and arrest by former West Linn Police Chief, in collusion with Mr. Fesser's employer—A&B Towing in SE Portland—after Mr. Fesser raised concerns about racial harassment in his workplace," Eudaly said in a statement. "It came to my attention today that PBOT has a contract with A&B Towing. I have directed the bureau to sever the contract immediately."

A&B Towing's owner Benson did not return messages seeking his comment.

## **The Portland Tribune**

### **Poll: Support for Metro measures drop if both on same ballot**

*By Jim Redden*

*February 12, 2020*

#### **The Metro Council is considering a homeless services measure for the May primary election and a transportation funding measure for the November general election**

A new poll helps explain why Metro is rushing to refer a measure to fund homeless services to the May 19 primary election ballot.

The DHM Research poll found that 62% of likely voters in the Metro region support a measure to reduce homelessness that focuses on expanding social services, like mental health and substance abuse treatment.

But the poll also found that support drops to 54% if the measure appears on the same ballot as the regional transportation funding measure Metro is planning to refer to the Nov. 3 general election ballot.

The transportation measures fares even worse, however. The poll found 59% of voters support a measure to reduce traffic, create additional transportation choices, fight climate change, and increase earthquake safety. But that support drops to 49% if it appears on the same ballot as the homeless services measure.

Complicating the picture is a measure to fund free pre-school for all children being considered by the Multnomah County Commission for the November ballot. The poll found that 66% of county voters support it. But that support dropped to 46% if it appears on the same ballot as the other two measures.

In other words, the chances of Metro passing both of its measures drop if they appear on the same ballot, with the transportation measure more likely to fail.

The Metro Council will hold a public hearing on the proposed homeless services measure from 5:30 to 9 p.m. Thursday, Feb. 13, at its headquarters, 600 N.E. Grand Ave. The text of the measure has not yet been released.

The poll was commissioned by the Portland Business Alliance and posted on its website on Wednesday, Feb. 12. It was conducted in early January, before Metro decided to place the homeless services measure proposed by the HereTogether advocacy group on the May ballot.

The poll was designed to help PBA members better understand the attitudes of voters throughout the region about key concerns related to jobs and the economy. Key findings include:

- Despite the thriving economy and record low unemployment in the region, 1 in 4 voters are experiencing difficulties or feeling worse off than they were two years ago. The poll also found 27% of voters say that are just getting by or having difficulty getting by.
- 30% of voters consider homelessness to be their primary concern, followed by traffic congestion at 15%, affordable housing at 11%, roads and infrastructure at 9%, and politics and politicians at 4%.

A majority of voters, 64%, support replacing the I-5 Bridge over the Columbia River between Oregon and Washington.

[You can find the DHM Research poll here.](#)

## **City Council splits on allowing up to six units on single-family lots**

*By Jim Redden*

*February 13, 2020*

### **The Deeper Affordability Bonus Amendment and other proposed changes to the Residential Infill Project will be considered again on March 12**

The City Council split on allowing up to six housing units in existing single-family neighborhoods on Wednesday.

The council was divided 2-to-2 on the proposed amendment to the Residential Infill Plan, which would currently allow up to four units on most lots. The proposed Deeper Affordability Bonus Amendment would allow up to six units if half of them were affordable to households earning 60% or less of the area median family income.

The amendment has been proposed by affordable housing developer, including Habitat for Humanity. It was strongly supported by Mayor Ted Wheeler and Commissioner Chloe Eudlay during the Feb. 12 work session.

But the amendment was opposed by commissioners Amanda Fritz and Jo Ann Hardesty. Fritz was concerned the accompanying size bonus would allow the construction of oversized apartment buildings in single-family neighborhoods. Hardesty said RIP — as the plan is commonly called — was never intended to create subsidized affordable housing and would unrealistically raise expectation about what it will accomplish.

Planners with the Bureau of Planning and Sustainability, which is staffing the project, said they would return with more information on how the amendment would be used at the next meeting.

The council also reviewed concepts for 12 other amendments proposed by the public during the work session. They ranged from limiting the number of units that can be built on streets that are not fully improved to requiring that anti-displacement policies be approved before the council takes a final vote on RIP.

The council rejected the amendment calling for the anti-displacement policies to be adopted first, saying that RIP will reduce displacement compared to current what will occur under current practices, except in three neighborhoods, which will not see much of an increase.

The council scheduled a public hearing on all amendments moving forward for 2 p.m. on March 12. The amendment concepts are posted the document section of the bureau's web page on RIP. Letters, emails and the public comments will be accepted through March 12.

The council has a vacancy because Commissioner Nick Fish died from cancer on Jan. 2. A special election to choose a replacement is scheduled at the May 19 primary election.

[You can find more information about RIP, including the proposed amendments, here.](#)

## Willamette Week

# Portland City Council Approves Plan to Get Buses Out of Traffic

*By Camille Soleil*  
*February 13, 2020*

**Commissioner Chloe Eudaly hailed the project as a bold step to get more people riding public transit—and reduce the carbon emissions of cars.**

The Portland City Council on Thursday unanimously approved an ambitious, citywide plan to take lanes of traffic away from cars and dedicate them to buses.

The Rose Lane Project, a plan championed by City Commissioner Chloe Eudaly, will allocate as much as \$10 million toward marking lanes of car-free road and making traffic signal improvements, among other enhancements, in a campaign to make public transit more punctual.

Tonight, Eudaly hailed the project as a bold step to get more people riding public transit—and reduce the carbon emissions of cars.

"The facts are undeniable—climate change is here, we're already experiencing its consequences and it hits our most vulnerable community members the hardest," Eudaly said in tonight's council hearing. "We know that transportation is a massive contributing factor to the climate crisis."

The Portland Bureau of Transportation, which Eudaly oversees, estimates that commuters lose 4,700 hours of delay every day because buses and streetcars are running late. The Rose Lane Project aims to end those delays by yanking the buses and streetcars out of traffic—and into their own dedicated lanes.

The money will be spent in part on creating traffic signals and lanes that prioritize public transit at locations that are notorious choke points. While cars are stuck in traffic, buses will be able to cruise ahead on time. Eudaly and other city officials hope that will encourage more people to ride the bus in a city where transit ridership is flat.

Jon Gove testified at the council hearing today. He's been a TriMet bus driver for four years and lives in Southeast Portland. He thinks the project will "bring people back to the bus."

"I have a front row seat to the daily impacts of congestion caused by too many people operating in too little or poorly designed roadway space," Gove said. "Passengers feel a loss of control; it's no wonder so many choose to drive."

The Rose Lane Project, while inexpensive by city standards, was initially seen as a radical move in Portland neighborhood politics—because it removes road lanes for driving and parking.

But it passed unanimously, with most of the debate centered on who would get to enjoy the new policy first.

One of the biggest goals of the proposal is to improve ridership quality for low income residents and communities of color since they're most likely to be impeded by unreliable and slow-moving transit. Commissioner Jo Ann Hardesty raised concerns that the planned segments of improvement don't directly benefit that population, citing East Portland as an area particularly in need.

"I'm very concerned that we say the focus is racial equity but nothing in what I've seen and talked about so far leads me to believe that we're prioritizing those who are transit dependent and



those who have no other choice," Hardesty said. "I'm all about the people, and what people are gonna be penalized because we're helping people get to the suburbs faster?"

Eudaly replied that even though the plan appears to be concentrated downtown, every inch of the city is impacted when traffic bottlenecks at one central point, creating a ripple effect. She added East Portland could highly benefit from adding more lines and expanded service, but that's a responsibility of TriMet and it's something they've been talking about closely.

"Even though the geographic location of these improvements is in the central city, do they benefit people in other parts of the city? I think that the answer to that is absolutely yes," said TriMet Executive Director Bernie Bottomly in today's testimony. "Those changes downtown not only speed up the system but they make the system much more reliable."

The proposal received a mostly positive response from community members — ranging from young climate activists to retirees. While many acknowledged this will largely benefit the city, some cited concerns about walking and bike safety, and worried TriMet would try to reduce the number of bus stops on high-speed routes.

Ken Marks, the director of transportation equity at a nonprofit called the Rosewood Initiative, told Bottomly, "We look forward to holding your feet to the fire on no consolidation of bus stops. That's a hill we're willing to die on."

## **Portland City Council “Appalled” By West Linn Police Abuse, Join Calls for Investigation**

*By Nigel Jaquiss  
February 13, 2020*

**A story earlier this week by The Oregonian's Maxine Bernstein continues to provoke outrage from elected leaders.**

The Portland City Council this afternoon joined the chorus of voices calling for further investigation of a 2017 incident in which then West Linn Police Chief Terry Timeus got the Portland Police Bureau to assist in the trumped-up arrest of Michael Fesser.

As determined in a federal lawsuit filed against West Linn, the arrest came was a favor to Fesser's employer, A & B Towing owner Eric Benson, who was a friend of Timeus. (Fesser settled lawsuits against his former employer and West Linn for more than \$1 million.)

After Oregonian reporter Maxine Bernstein reported earlier this week how the two police agencies teamed up to deprive Fesser of his civil rights, a series of public officials including Gov. Kate Brown, Clackamas County District Attorney John Foote and Oregon's two U.S. senators have demanded further investigation of the trumped-up arrest and how police resources were used in a private dispute.

This afternoon, Portland's four city commissioners—Mayor Ted Wheeler and Commissioners Chloe Eudaly, Amanda Fritz and Jo Ann Hardesty—joined that call.

Here is the statement the jointly issued this afternoon:

"We are appalled by the alleged abuses of power by West Linn's former Police Chief Terry Timeus and Detective Tony Reeves. We are particularly distressed by the fact that West Linn involved the Portland Police Bureau in this incident through what appeared to be a routine

request for assistance in effecting an arrest. This type of misconduct cannot be tolerated anywhere. It will not be tolerated in Portland. As a Council, we stand unified," they said.

"Portland Police Chief Jami Resch has our support as she has called for an Internal Affairs investigation to determine whether any Portland Police Bureau policy was violated. Further, we welcome Clackamas County District Attorney John Foote's investigation to determine to what extent Portland resources, including PPB and Portland Bureau of Emergency Management, were used under false pretexts. We also support the Governor's order of an investigation into DPSST employees – the entire state suffers if those individuals training our officers engage in this type of conduct. Commissioner Eudaly, as Transportation Commissioner, has already directed PBOT to terminate its contract with A&B Towing effective immediately. And, we join our members of Congress in looking to US Attorney Bill Williams to investigate whether there were any federal civil rights violations."

The Portland Police Bureau today also issued a statement providing additional context to a brief release of information from Feb. 12.

In the first instance, PPB merely released copies of police reports showing that they'd arrested Fesser in 2017 at the request of West Linn. Those reports provided little in the way of an explanation as to why they'd made the arrest or whether or not it met the bureau's guidelines for assisting other law enforcement agencies, i.e., that there was probable cause to detain Fesser.

Late this afternoon, PPB provided further explanation—and also made an embarrassing admission.

\* Officers in the State of Oregon swear an oath, which includes being truthful and upholding the laws. Officers rely upon what other officers tell them to be truthful and ethical, such as when probable cause is relayed. There are processes in place internally and externally to discipline, terminate and/or decertify sworn members who are untruthful,

\* On November 10, 2017, a West Linn Lieutenant contacted a Portland Police Officer regarding an on-going West Linn investigation and represented that there were safety concerns about Mr. Fesser, who had an outstanding felony warrant from Multnomah County related to their investigation.

Portland officers then arrested Fesser but, as it turns out, PPB did not turn over all reports to Fesser's attorney, Andrew Campbell, when Campbell subpoenaed the bureau in civil cases.

"It was brought to our attention that one of those documents had not been released to the attorney of the subject involved in this case before pursuant to a subpoena. PPB strives to accurately fulfill and respond to all subpoena and public records requests and we regret this inadvertent error. We have reached out to the involved party to acknowledge the error," the bureau said.

An internal affairs investigation into the circumstances of Fesser's arrest is pending, PPB says, but no officers have been placed on leave.

# The Portland Mercury

## Hall Monitor: Camping Goes to Court

*By Alex Zielinski  
February 13, 2020*

In Portland, people who live outside exist in what feels like an endless cycle of displacement. When someone erects a tent or lays out a sleeping bag on public property, they'll often find a paper sign posted near their campsite within a few days, informing them that they have anywhere between two to 10 days to move their property—or the city will move it for them.

If they're not able to relocate in time, people will find their few possessions have been picked up and placed in a city-run storage facility, where that person must call and make an appointment to retrieve it within 30 days. Some homeless Portlanders have accused the city of losing or throwing away their property in the process. If campers are able to move their camp in time, it won't be long until another posting appears above their new resting place.

“It's emotionally exhausting,” said Alexa Simpson—a Portlander who's been homeless for two years—in an interview with the Mercury last December. “It's like they're beating us down again and again until we leave town, or we die.”

According to two major appeals courts, however, this cyclical policy is constitutionally sound. For now.

In December, the US Supreme Court declined to hear a challenge to a ruling made by the 9th Circuit Court of Appeals, undoing a Boise law that made it a crime to sleep and camp on public property. The three-judge appeals panel argued that the policy violated the Eighth Amendment's protections against cruel and unusual punishment. “As long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter,” wrote Judge Marsha Berzon in the opinion.

Then, in January, the Oregon Court of Appeals dismissed a challenge to Portland's own public camping ban. In this case, Portlander Alexandra Barrett had appealed criminal charges that had been filed against her in 2015 for camping in public. As with the Boise case, Barrett argued that Portland's ban was unconstitutional because the city offered no other place for her to rest. The appeals court, however, said the case lacked enough evidence to prove that there were no shelter beds available to Barrett at the time.

Attorneys for the City of Portland say these rulings only underscore how Portland is, in fact, treating houseless citizens constitutionally. That's because Portland, unlike Boise, boasts a range of open shelter beds, many that don't have burdensome restrictions around pets, families, or sobriety.

Yet, many houseless individuals and families still feel unsafe and unstable in shelters. And while Portland's used its city housing bond funds to create low-income housing, the wait lists for tenants are long—if not completely closed. Same goes for any federally subsidized housing in Portland. These realities make the claim that homeless Portlanders are given viable alternatives to sleeping outside ring hollow.

And it's true that Portland police officers no longer charge people like Barrett with criminal offenses for camping in public. But the city continues to punish campers by taking their property away if they camp in a public space. (That is, if neighborhood vigilantes don't destroy that

camper's property first.) While the city employees tasked with carrying out this system are arguably the most empathetic to the population they're tasked with disrupting, the program seems to just barely skirt constitutional regulations.

The courts are paying attention. Although the Oregon Appeals Court chose not to examine the legality of the city's current homeless camping policy, it did express interest in a future investigation.

In the words of Judge Darleen Ortega: "As I see it, it is not hypothetical that the homeless in Portland are subject to criminal punishment for a circumstance that is, in many cases, beyond their control."

## **PPB Will "Look Into" Portland Cops' Involvement in Racist, Retaliatory Arrest**

*By Alex Zielinski  
February 12, 2020*

The Portland Police Bureau (PPB) department tasked with reviewing police misconduct is investigating Portland police officers' role in a 2017 arrest proven to be baseless—and purely retaliatory—in a recent federal court ruling.

On Wednesday, PPB Chief Resch released the bureau's police reports from February 2017 arrest in "an effort to be transparent" about PPB's role in the inflammatory case detailed in a Monday Oregonian article.

The case centers on the West Linn Police Department, which, under the guidance of its former Chief Terry Timeus, illegally surveilled, arrested, and detained a Portland man named Michael Fesser as a favor for Fesser's employer Eric Benson—who happened to be Timeus' close friend. According to court records, Benson was irritated that Fesser, a Black man, had raised concerns about racist harassment from coworkers at A&B Towing, the Southeast Portland towing company Benson ran. Benson convinced the police chief to investigate Fesser for an unsupported claim that Fesser was stealing money from the towing company.

Despite finding no evidence to support this allegation, West Linn detective Tony Reeves (who had sent Benson racist jokes about Fesser via text message during the investigation) asked PPB officers with the Gang Enforcement Team (now called the Gun Violence Reduction Team) to stop and arrest Fesser on his drive home from work on February 25, 2017.

According to the Oregonian's coverage, it didn't take much convincing for PPB officers to agree. That's because then-West Linn Lt. Mike Stradley had previously worked on Portland's gang enforcement team. (Stradley is also known for encouraging sexist, immature PPB hazing rituals steeped in sexual harassment.)

In a court deposition, Stradley said he remembered seeing Fesser hanging out with gang members in the 1990s, which is why he told West Linn detectives that Fesser was a "gang associate." So, when he told his former PPB colleagues on the gang enforcement team to arrest Fesser, they didn't hesitate.

Per court filings, one of the PPB arresting officers knew Fesser from Fesser's past ministry work in local prisons and said, at the time: "Mike, this is not my call. I don't want to be here. We're just assisting West Linn."

In the PPB report documenting the arrest, PPB officer Patrick Murphy writes that West Linn detective Reeves (who, at the time had the last name Poitras) had told PPB Sgt. Ken Duilio, a 20 year veteran of the gang enforcement team, that Reeves "had probable cause to arrest Michael Fesser." Duilio and fellow gang enforcement officer John Billard stopped Fesser near SE 102 and Foster, with two other PPB officers—Murphy and Kameron Fender—coming along for backup.

"Michael Fesser was taken into custody, and placed in the back of our patrol car," Murphy writes in the report.

In a Wednesday press release, PPB Chief Resch said that, "assisting other agencies with arrests within our jurisdiction is a routine part of police work."

Fesser's case was promptly dismissed. But when Fesser filed a federal lawsuit against West Linn, alleging retaliation and racial discrimination in September 2017, West Linn police convinced Multnomah County District Attorney's Office to revive the case—and put out a new warrant for his arrest.

According to PPB reports, that's when West Linn Lt. Stradley reached out to his former PPB colleagues again.

In a PPB report written in November 2017, PPB officer Charles Asheim explains that he had been contacted by Stradley "regarding an ongoing large theft investigation." Asheim said Stradley told him that Fesser "had made threats to assault [Benson], his employees, and to damage his business."

"Lt. Stradley was concerned that when Fesser was arrested he may follow through with these mentioned threats," the report reads.

If Asheim had investigated these claims, he would have found them to be false: In a court deposition, Benson told prosecutors he had never felt threatened by Fesser.

But Asheim instead "flagged" A&B Towing in the bureau's dispatch system, so officers would be informed about the "specific threats" if they were called to the business. (A note: Fesser's lawyer Paul Buchanan says PPB never shared this police report with the court even after Buchanan subpoenaed PPB for these records).

After a seemingly unbalanced grand jury trial, Fesser was indicted on five counts of first-degree theft. But after racist, plotting, and otherwise incriminating text messages from West Linn officers arose in March 2018, Multnomah County dropped Fesser's criminal charges. Last month, the City of West Linn agreed to pay Fesser \$600,000 to settle the federal lawsuit.

No involved officers, including Reeves, Timeus, Stradley, and all involved PPB cops, were charged for their retaliatory, racist investigation. After the incident, at the Oregonian points out, Reeves was promoted within the bureau, Stradley got a job supervising statewide police training, and Timeus retired with a \$123,000 payout. On Tuesday, West Linn police told the Oregonian it has no intention of re-investigating Reeves' racist and dishonest conduct in the case. On Wednesday, however, the Clackamas County District Attorney's office said it would conduct a full review of how West Linn police handled the investigation. The DA's interest prompted West Linn Police Department leadership to place Reeve on paid administrative leave.

All four PPB officers involved in Fesser's arrest are still on the force. PPB Chief Resch, however, says she's asked the PPB's Professional Standards Division—the department that investigates police misconduct—to "look into [PPB's] involvement" in the West Linn case.

On Wednesday afternoon, Multnomah County District Attorney's office also announced it would review its own role in the investigation and indictment. And by Wednesday evening, Oregon Governor Kate Brown had instructed the Oregon Department of Public Safety Standards and Training—Stradley's currently employer—"to conduct a full and thorough review of this matter as swiftly as possible." Stradley has been placed on administrative leave pending the outcome of the investigation.

Portland City Commissioner Chloe Eudaly, who oversees the city's bureau of transportation, said Wednesday that she's working to terminate the city's current contract with A&B Towing. In a public statement, Eudaly said she was "sickened" by Fessen's story.

## **Portland Business Journal**

### **Portland's Lents neighborhood more gentrified after city invested millions, audit says**

*By Jonathan Bach  
February 12, 2020*

East Portland's Lents neighborhood has become more gentrified within the past two decades as property values skyrocketed and the rate of homeownership among people of color fell, according to a City of Portland audit released Wednesday.

In Lents, property values rose by 63 percent, to \$260,330 from 2000 to 2018, auditors said. Lents also has fewer vacant lots, suggesting an uptick in development. The rate of homeownership among people of color dropped from 51 percent in 2000 to 41 percent as of 2013-17 data, auditors said.

Still, the number of jobs in Lents rose by 36 percent between 2003 and 2017, bolstered by health care, manufacturing and administrative and support sectors, auditors said. Lents also had several hundred units of affordable housing as of 2019.

This comes after the city has invested approximately \$200 million in the neighborhood since 2000. The report focused on work by the Portland Housing Bureau and Prosper Portland, the city's urban renewal agency.

The audit underscores the mixed effects of urban renewal efforts on Portland's east side. Urban renewal agencies typically want to see property values rise, but auditors warned those gains could also signal gentrification.

Auditors criticized Prosper Portland for underreporting how, exactly, its activity in the area matches up with goals. Prosper Portland said it would try to report on progress with more consistency in the future.

Mayor Ted Wheeler, Prosper Portland and the Portland Housing Bureau took issue with the audit's methodology, saying in a written response they believed it "provides an incomplete or potentially inaccurate analysis of the progress made."

For instance, the audit stated the city spent \$207 million on the area since 2000, while it has actually spent only \$189 million, according to the city leaders. The \$207 million figure is adjusted for inflation.

“The practice of converting historical expenditures is potentially misleading for readers of the audit,” Wheeler and the two others noted.

The city auditor responded that inflation adjustments make sure that dollars spent over an extended time period remain comparable.

“It is misleading to treat a \$10,000 project in 2000 as similar to a \$10,000 project in 2018, because the earlier dollars had more buying power,” the auditor’s response stated.

## **The Daily Journal of Commerce**

### **Changes sought to Block 216 tower design**

*By Chuck Slothower*

*February 12, 2020*

The architects designing the 35-story building for Block 216 have requested a number of changes to their proposal since it was approved by the Portland Design Commission.

The changes would add approximately 6,708 square feet to the building, bringing it to more than 850,000 square feet in total. That will exceed the base and bonus floor-area ratio allowed on the site, requiring the developer to transfer additional floor-area ratio rights, according to the Bureau of Development Services.

Proposed alterations include:

- replacement of two revolving doors into the building from the plaza at the corner of Southwest 10th Avenue and Washington Street with a window system that could fold up during warm weather,
- addition of canopy lighting and exterior lighting at roof terraces on floors three to eight,
- new in-ground lighting on the east elevation, on private property along Southwest Ninth Avenue,
- catenary luminaries and wire attachments over Ninth Avenue,
- reduction in the amount of bird-friendly glazing (the proposed bird-friendly glazing would no longer cover the entire podium, but would meet minimum requirements),
- changes to landscape design and decking on the terrace, and
- a new stair enclosure.

The Design Commission approved GBD Architects’ design in December 2018. The proposed post-review changes are being evaluated by Bureau of Development Services staff in a Type II review.

“Generally speaking, the only way we’d go back to the Design Commission is if the applicants file another design review application or file appeal of decision,” said Ben Nielsen, a senior city planner at BDS who is evaluating the Block 216 alterations.

Reconsideration by the Design Commission can also be triggered if an applicant appeals a condition of approval, Nielsen added.

Typically, architects and city staff reach agreement on post-approval design changes that never draw public attention. On occasion, however, such changes cause controversy – most notably in 2015-16 when Yard turned out to be much darker than anticipated. Some observers even likened the building to the Death Star from “Star Wars.”

Block 216's developer, BPM Management, declined to comment on the requested changes through a representative. Also, a request to interview GBD designers was denied.

The building will occupy a full block in Portland's West End, and include a Ritz-Carlton hotel, condominiums, office space and retail space. Construction is under way with Howard S. Wright serving as general contractor. BDS on Jan. 31 issued a building permit for the concrete foundation, core, superstructure and below-grade parking structure.

## **The Portland Observer**

### **Preserving Black History**

*February 11, 2020*

#### **Moving ahead on effort to save cultural landmarks**

Buildings and sites that are important to the history of African Americans in Portland may soon have more protection from demolition thanks to the efforts of Portland's Architectural Heritage Center/Bosco-Milligan Foundation and the city's Bureau of Planning and Sustainability.

The nonprofit Heritage Center conducted a comprehensive and cultural study of the African American community in Portland from 1865 to 1973 to identify buildings that were part of the community, including houses, churches, fraternal lodges and more. The plan is to protect these buildings from demolition. It completes the study started in 2017 by Cathy Galbraith, the founding director of the foundation, who died in late 2018.

When the Oregon Advisory Committee on Historic Preservation meets later this month, it will consider adopting the foundation's work and consider approving an application to place the historic Billy Webb Elks Lodge, an epicenter of African-American life, on the National Register of Historic Places.

The Bill Webb Elks Lodge on North Williams Avenue in the historic Albina Neighborhood has served as a gathering place for African-American social, political, educational and civil rights groups since 1926, according to the foundation.

The lodge was named for Billy Webb, a prominent musician who led an African American band that played in Portland and on steamships in the 1920s. By the end of the 20th century, the building was in disrepair, but was renovated in 2009 with the help of the National Association of Minority Contractors of Oregon.

Designed by the Portland architecture firm DeYoung and Roald, the structure was completed in 1926 for the Portland YWCA to serve the black community during those segregated times. Facilities included a gym, auditorium, stage, lounge and locker rooms for both boys and girls, according to the foundation, and activities for both sexes were programmed in coordination with black church congregations in the neighborhood.

During World War II, the USO (United Service Organizations) used to building to entertain troops, and after the 1948 Vanport Flood, the building became a Red Cross emergency shelter and clearinghouse for families separated by the flood.

After the passage of the Oregon Public Accommodations Law in 1953, which outlawed discrimination in public venues, the YWCA sold the Williams Avenue building to the Billy Webb Elks Lodge.



The State Advisory Committee will allow oral testimony on the draft proposal and the nomination of the Billy Elks Lodge at its meeting at 9:45 a.m. on Feb. 28 at Nordic Northwest's Nordia House, 8800 S.W. Oleson Road. Oral testimony is limited to two minutes. Written comments can be sent to Tracy Collis at 725 Summer St., NE, Suite C, Salem OR 97301 or emailed to [tracy.collis@oregon.gov](mailto:tracy.collis@oregon.gov).

## OPB

# Portland Renews Tax On Drivers Of Heavy Trucks

*By Rebecca Ellis*

*February 12, 2020*

Over objections from the state's trucking industry, Portland's city council chose to renew a tax on drivers of heavy trucks that travel on city roadways.

The original tax was passed in 2016, a four-year companion to a 10-cents-per-gallon gas tax referred to — and ultimately passed by — Portland voters. Last week, the Council voted to refer that tax to Portland voters once more, so the city can keep the money flowing to address a backlog of street repairs and improvement projects. And the city is, once again, asking truck drivers — who don't pay the gas tax — to pay their share.

The tax is slightly higher than the 2016 version. It lops on a 3% surcharge to the weight-mile tax drivers of heavy vehicles already pay to the state, rather than a 2.8% surcharge.

This means Portland collects taxes based, in part, on miles truck drivers are driving throughout Oregon. It's a setup some said was fundamentally unfair, in testimony to the City Council last week.

"We have branches and equipment throughout the state. In fact, the vast majority of our equipment is outside the city of Portland," said Tim Love, who oversees logistics at Carson Oil Co. and sits on the board of the Oregon Trucking Associations. "But this tax, as unfair as it is, we pay on all the miles we drive in Central Oregon, in Medford, across the state."

Those in the industry also voiced concern that the tax, when first hammered out by then-Commissioner Steve Novick, was presented to them as an emergency four-year measure.

"To approve a tax on a temporary basis and then come back at its sunset and change to a permanent tax is disingenuous and poor policy," said Diane DeAutremont, the president of moving and storage company Lile International. "We were told the tax was an emergency measure for immediate repairs because the state had failed to pass an adequate transportation package."

She noted the state had since passed that package.

At Wednesday's council meeting, Commissioner Chloe Eudaly, who oversees Portland's Bureau of Transportation, said she'd since checked with Novick, against whom she ran and defeated in 2016. Eudaly said she'd been assured that the heavy-vehicle-use tax was created to run parallel with the gas tax. Therefore, if the gas tax was being posed to voters again, it was logical that the heavy vehicle use tax be renewed as well.

"The fair share principle certainly does not expire," Eudaly said.

She also noted that most companies using Portland's roads are bearing a relatively small tax burden. The majority of companies, she said, do not pay more than \$65 a month under the tax. The tax is estimated to bring in \$11 million before it sunsets after four years. It begins in 2021 and will go toward and go toward the city's long list of improvement projects, which include new street paving, sidewalks and signals.

## **DAs Investigating Officers Involved In Racially-Motivated Surveillance, Arrest Of Black Portland Man**

*By Rebecca Ellis and Conrad Wilson*

*February 13, 2020*

The Clackamas and Multnomah County district attorneys offices said Wednesday they're reviewing the actions taken by certain officers from the West Linn and Portland police departments. The decisions follow reporting by the Oregonian/OregonLive that detailed the rogue and racially-motivated surveillance and arrest by officers of a black Portland man.

West Linn officials announced Wednesday they were placing an officer involved in the arrest, Sgt. Tony Reeves, on paid administrative leave, pending the outcome of the investigation.

Portland Police Chief Jami Resch also said that the Professional Standards Division will be investigating the role their officers played in the unfounded arrest.

The announcements come after the Oregonian/OregonLive detailed the 2017 surveillance and arrest of 48-year-old Portland man Michael Fesser.

The surveillance began after Fesser reported racial harassment to his boss, Eric Benson, the owner of Southeast Portland's A&B Towing. Rather than address the concerns, Benson asked his friend, former West Linn Police Chief Terry Timeus, to investigate allegations that Fesser was stealing from the company.

The West Linn police surveilled Fesser and ultimately arrested him on Feb. 25, 2017, with the assistance of five Portland police officers, without probable cause, according to the Oregonian/OregonLive. Fesser sued West Linn and received a \$600,000 settlement.

In a two-sentence letter to West Linn Police Chief Terry Kruger, Clackamas County District Attorney John Foote said they're reviewing the case for any possible criminal activity or Brady violations.

In a statement, Multnomah County District Attorney spokesman Brent Weisberg expressed concerns raised in Fesser's case.

"We have initiated a full review of this case," Weisberg said. "This examination will be exhaustive. We will be looking at what information law enforcement provided us when they submitted the case for criminal consideration, what information was learned at grand jury, and what information we've learned since."

Weisberg declined to comment on the specific facts or the scope of the investigation.

The Portland Police Bureau released the police report Wednesday detailing Fesser's arrest "in an effort to be transparent." According to the report, the Portland police were told by West Linn police that they had probable cause to arrest Fesser. They initiated a traffic stop and placed him into custody.

City Commissioner Chloe Eudaly, who oversees Portland's Bureau of Transportation, said Wednesday that she's ending the city's contract with A&B Towing.

"I was sicked by the story of Portland resident, Michael Fesser, who was the victim of racially motivated harassment, surveillance and arrest by former West Linn Police Chief in collusion with Mr. Fesser's employer," Eudaly wrote in a statement. "I have directed the bureau to sever the contract immediately."

Current West Linn Police Chief Terry Kruger noted in a release that the arrest took place three years ago and that only one of the officers involved remains on the force.

"The former Chief, Captain and Lieutenant involved, no longer work here. Three Sergeants, one Detective and thirteen Officers have also left service from the City of West Linn in that same timeframe," Kruger wrote in a release Wednesday. "All in a department of 30 sworn personnel."

Kruger said they plan to fully cooperate with the investigation.

## **County Chairs Come Out In Support Of Metro's Homeless Services Ballot Measure**

*By Rebecca Ellis  
February 13, 2020*

In a notable display of solidarity, the county chairs for Clackamas, Multnomah, and Washington counties lined up in support of a measure for homeless services that Metro, the regional government, is expected to place on the May 2020 ballot.

The measure, as it's currently envisioned, would place a 1-to-2% tax on high-income earners — individuals earning above \$125,000 or couples making more than \$250,000. That money would be funneled primarily toward services that keep people out of homelessness, such as mental health support, addiction services and rental assistance.

HereTogether Oregon, a coalition pushing for a regional response to the homelessness crisis, crafted the measure and presented it to Metro this month. The Metro Council quickly organized a vote — expected to take place later this month — and, before that, a public hearing, which took place Thursday evening.

The three-county chairs were the first to testify — all in support, a rare occurrence for a regional funding measure.

Kathryn Harrington, Washington County's chair, framed the measure as a necessary follow-up to the regional housing bond that Metro passed in 2018.

Clackamas County Chair Jim Bernard followed, saying he believed the speed with which they were moving toward putting the measure on the ballot was fitting, considering how pressing of an issue homelessness had become in the region.

"This is pretty fast-moving but this is an emergency ... We need some assistance. We can't wait for the federal government," said Bernard. "We need to take this on ourselves."

In her plea to the council to move forward, Multnomah County Chair Deborah Kafoury noted how rare it was to have all three county commissioners walking in lockstep on a single solution.

“We all know focusing on one issue has the habit of dividing people,” said Kafoury. “But not this one. We have an entire region standing in full support of a coordinated response of ending homelessness.”

Katrina Holland, a board member of HereTogether, said she believed the county chairs were matching the sentiment of county residents.

“The public is sort of exhibiting the same thing,” she said. “We did some polling that looked at what are the top priorities for folks in the region, in each of the counties, and homelessness was by far the top concern for folks that took that survey in a way that some pollsters had never seen before, so I think what we’re seeing here is a long-overdue community-wide commitment to solving an issue at scale,” she said.

The council is expected to vote later this month on whether to send the measure to the May ballot.

### **Further Reading (linked below)**

**[RACC Executive Director Madison Cario Comments on Last Week’s Restructure](#)**

**[California Considers Tax on Companies With Large CEO-Worker Pay Gaps](#)**