



## **Protest Ordinance Questions**

On Tuesday, November 13, 2018, the Portland Police Bureau (PPB) and the City Attorney's Office provided the following responses to written questions presented by Commissioner Eudaly on Thursday, November 8, 2018. These responses were supplemented on November 28, 2018, to include information on legal settlements in protest-related cases. PPB and the City Attorney's Office would like to thank Commissioner Eudaly's office for working with us to help us focus on the questions that were not addressed at the hearing on November 8th.

### **Past Incidents/ Crowd Management and Use of Force Policies**

- 1. Since 2017, PPB has acknowledged the use of at least six different types of "riot control agents and less lethal impact munitions," including pepper spray, rubber ball distraction devices, flash grenades, etc. How much does the Bureau spend on these types of devices?**

PPB makes purchases based on deployment and training needs. We have trained several new officers in the last few years. The Bureau spends roughly \$10,000 a year on these tools. The vast majority of them are used in training and certification (approximately 70%).

#### **Has spending on these devices increased in recent years?**

The spending on these tools has been relatively consistent from year to year, except in 2016, when expiration, training and usage resulted in a larger purchase.

- 2. In 1970, the Police Bureau committed to not using violence on non-violent protestors. How many settlements have there been with protestors since then related to excessive use of force by police during demonstrations?**

#### **What is the estimated cost of these suits?**

*Response on November 13, 2018:* The City Attorney's Office is working with Risk Management to get information regarding the number and amounts of settlements in protest-related cases. Neither the City Attorney's Office nor Risk Management maintain data on settlements back to 1970, and both offices have only begun specifically coding matters as protest-related in the last 5-10 years. Typically, settlement agreements do

not admit fault by one party or another so a settlement does not necessarily mean that the force was excessive or that it was not.

*Supplemental Response on November 28, 2018:* The City Attorney's Office and Risk Management have reviewed the available data for claims to estimate the number of closed protest-related cases, settlements, and costs dating back to 1984. These numbers are estimates and only include claims that have been resolved, not claims that are currently unresolved. There have been approximately 96 closed claims arising from protest-related events since 1984. Since 1984, the City has paid settlements on approximately 20 of these closed claims, totaling approximately \$982,400 in settlements, including attorneys' fees to plaintiffs. These cases are defended by the City Attorney's Office under its existing budget, and Risk Management makes an internal estimate of the amount of City Attorney resources that are devoted to these cases. Since 1984, Risk Management estimates that approximately \$629,854 worth of existing internal City Attorney resources have been devoted to these approximately 96 claims since 1984. Finally, Risk Management estimates that the City has incurred approximately \$118,728 in other expenses like court filing fees, deposition expenses, and other litigation costs, related to these approximately 96 claims since 1984.

**3. How many pending lawsuits are there against the City from protestors or advocacy organizations for demonstrations between November 2016 and now?**

**What is the estimated cost to the City to defend PPB in these lawsuits?**

We believe that we answered this at the hearing. If you want more information, please let us know.

**4. In response to this proposed ordinance, Daryl Turner's recently decried the "over-emphasis on de-escalation and disengagement." Is this view on de-escalation consistent with that of PPB leadership?**

This does not represent the view of Portland Police Bureau leadership. The Police Bureau believes de-escalation is an appropriate tool in crowd management and crowd control, and it is addressed in Directive 635.10 and 1010.00. As Directive 635.10 states if there is an escalation to a civil disturbance we will change our tactics. The time between crowd management and crowd control may not rise to a civil disturbance however, the Bureau may need to use tactics which are not de-escalation in order to achieve certain objectives.

De-escalation and alternatives to force are emphasized in training and policy. Directive 635.10 Crowd Management / Crowd Control summarizes this philosophy clearly with, "The Bureau should employ only objectively reasonable crowd management and/or crowd control tactics with the intent to de-escalate the situation."

- 5. How should we reconcile PPB's stated commitment to de-escalation with the numerous injuries we've witnessed on our streets, of which the most serious appear to be at the hands of the police?**

**Please note these injuries include third degree chemical burns, open wounds, and a traumatic brain injury.**

The bureau remains committed to re-assessing the tools used during demonstrations. We believe that we otherwise answered this question at the hearing. If you want more information, please let us know.

- 6. Why do the police believe that after they give dispersal orders, people who remain are fair game to be subjected to violence, even though they are not committing any violent act by remaining?**

An order to disperse is not given lightly or when there are lawful protests occurring. These orders weigh the rights of those gathering against the rights and safety of those gathered and others. These orders are based on articulable facts given to the Incident Commander in consultation with the City Attorney's Office. Please see our response to Question No. 8 regarding specific dispersal orders and the notice provided to the public.

- 7. What are the conditions that have to be in place for PPB to demand a dispersal order?**

The conditions for crowd dispersal are addressed in Directive 635.10(9):

Pursuant to ORS 131.675 (Dispersal of unlawful or riotous assemblages), the Incident Commander may order the crowd dispersed when a demonstration or special event becomes a civil disturbance. Before giving the order to disperse, the Incident Commander must consider whether dispersal unduly endangers the public, police or participants in the crowd. Prior to taking police action to disperse the crowd, and when tactically feasible and time reasonably permits, members shall issue a minimum of two warnings at reasonable intervals to allow the crowd to comply.

- 8. I've heard feedback that dispersal orders are often contradictory, difficult to understand, or given without enough time for people to respond. What has PPB done to remedy this?**

The Police Bureau has acquired specific equipment to make sure the instructions are clear and audible. Dispersal orders are reviewed and authorized by the Incident Commander, and the Incident Commander monitors the number of times and how long the orders are given in accordance with Directive 635.10. Furthermore, when appropriate, the announcements are recorded and the recording is used to repeat

announcements. The Incident Commander, whenever feasible, ensures PPB members near the crowd can clearly hear the announcements.

Dispersal orders are specific. For example, PPB used two sound trucks on August 4, 2018, and made announcements including but not limited to the following:

"This is the Portland Police Bureau. To those near SW 2nd Ave and SW Market this is now a civil disturbance. All people must disperse by traveling to the west. You are ordered to disperse immediately. If you fail to adhere to this police order you are subject to arrest or citation and may be subject to riot control agents and impact weapons." This announcement was made multiple times by PPB facing east toward the crowd.

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"The Police Bureau reminds demonstrators and counter-demonstrators that no assaultive behavior is allowed and that all police orders must be followed. All demonstrators and counter demonstrators must obey all state and local laws."

This announcement was given by PPB from SW Naito and SW Salmon St. facing south toward the crowd from approximately 25 yards two times. This announcement was also given by PPB several times from SW Naito and SW Main St. facing north toward the crowd from approximately 25 yards.

**9. From the videos I've seen, it appears that counter-demonstrators are always the ones who are asked to disperse. Is this true?**

No. Groups who are committing crimes or other acts of violence have been ordered to disperse based on their behavior. This has included dispersal orders being issued to both demonstrators and counter-demonstrators. For example, publicly available videos from June 30, 2018, show PPB issuing orders for all participants to disperse or move to a specific location.

**10. Where is the evidence that the counterdemonstrators threw projectiles at police before the police began using violence in any of the recent demonstrations?**

There are ongoing investigations into these allegations. Members of the Rapid Response Team have sustained injuries from objects thrown to include bruising, cuts, and a serious concussion. The injuries sustained by officers during these events have

resulted in some officers being taken off active duty, some for significant periods of time. Our officers have also had foreign objects thrown at them causing damage to their uniforms and police equipment.

**11. How is it legal to subject everyone in a crowd to chemicals, flash-bang grenades and other dangerous weapons when there is no individualized reasonable suspicion that they are committing crimes, much less violent crimes?**

This is a legal question that is dependent on the facts of the situation. As Directive 635.10(9) sets forth:

When the crowd has been ordered to disperse and does not heed repeated warnings, and no reasonable alternative is apparent, riot control agents (RCAs) and/or special impact munitions may be deployed to prevent violence, injury or property damage and to avoid a greater application of force. These weapons shall only be used at the direction of the Crowd Management Incident Commander (CMIC) and when avenues of escape (i.e. clear path or route) are available to the crowd. Pursuant to 635.10 and Directive 1010.00, Use of Force, members must issue warnings prior to deployment. Force shall only be used in accordance with Directive 1010.00, Use of Force. Additionally, members shall not deploy specialty munitions or aerosol restraints indiscriminately into a crowd. Please see our response to Question No. 8 regarding specific dispersal orders and the notice provided to the public.

**12. I've heard PPB leadership describe the tactical challenge of sending in officers to pluck out individuals from rowdy crowds. How do other police departments deal with this issue?**

This is a challenge for many law enforcement agencies throughout the U.S. There is not a "one size fits all" answer and depends on the situation. It depends on the crowd demeanor, size and the ability to identify and locate individuals in a dynamic situation. PPB has, when feasible, arrested individuals in this manner. The challenge is that it is not always feasible and increases the likelihood that force will be used.

We have seen groups "un-arrest" people we are trying to take into custody. This challenge and hazard is only exacerbated if officers are in the middle of a semi-cooperative or uncooperative crowd.

**13. Have you looked to other police departments for "best practices" for crowd management? Are there any examples of good policing?**

The Bureau is consistently looking at best practices both here in the United States and overseas. There are no agreed upon "best practices" nationally as there is no national standard for training in crowd management and crowd control. PPB is working with national organizations to help develop national standards. PPB is actively engaged with

several law enforcement agencies around the country in examining this national challenge.

- 14. My understanding is the Crowd Control Directive excludes officers' right to use violence against people who are not engaged in active resistance. Is this a correct interpretation? If so, how does PPB reconcile this with the many injuries of protestors we've witnessed.**

Directive 1010.00, Use of Force, addresses passive resistance in Section 4.1: Members shall not use force against people who engage in passive resistance that does not impede a lawful objective. Physically moving a subject engaged in passive resistance is permitted when it is necessary and objectively reasonable. Please also see our response to Question No. 8, as it relates to specific dispersal orders and notice to the public.

- 15. How does having armed and armored police lined up facing a crowd help create a safe space for people to express their First Amendment protected speech? What alternatives have been considered?**

The City as the employer has an obligation to provide a safe working environment and protective equipment. The personal protective equipment used by the Rapid Response Team meets this requirement.

There are many events where people have come to express their First Amendment rights where police were not involved or not in full protective equipment. Council testimony on 11/08/18 by members of the public spoke to this. PPB has allowed groups to self-police without a visible presence of police and has used police liaisons to try and communicate with organizers to seek ways to ensure lawful activity. Police responses have been scaled accordingly.

#### Perceived PPB Bias

- 1. Portlanders have sustained countless injuries at the hands of the Portland Police Bureau. I can't recall of any instances of protestors from Proud Boys or Patriot Prayer being seriously injured by police. Is this accurate? If so, how do you explain this?**

We have arrested individuals associated with Proud Boys or Patriot Prayer, and they have not attempted to run, fight or resist those efforts. Force has been used against these groups by the Portland Police at events when necessary.

- 2. How do you explain the perception, if not reality, that PPB see Patriot Prayer and Proud Boys as "more mainstream" than Portlanders who come to stand up to them?**

PPB does not see any group as "more mainstream." This is a quote that was taken out of context. The phrase was not comparing demonstrators to counter-demonstrators. The

quote related to an individual who showed up for the Patriot Prayer rally on June 4, 2017. The PPB officers thought that an elderly man dressed in clothes that gave no indication of his affiliation was a counter-protester gathering at City Hall, when he was, in fact, looking to get into the Patriot Prayer rally. This was an example where the officers explained that the Patriot Prayer protest on that day consisted of both more extreme individuals looking for a fight, and also individuals who were “more mainstream.”

PPB respectfully seeks to clarify information presented at Council on Thursday regarding the April 29, 2017, Patriot Prayer protest in the Montavilla neighborhood. It was suggested that Jeremy Christian remained at the event on April 29, 2017, and was then “escorted” down 82<sup>nd</sup> Avenue by police. In fact, PPB officers from East Precinct noted he was agitated, spewing racist language and armed with a baseball bat. PPB officers seized Mr. Christian’s bat almost immediately. Mr. Christian initially tried to enter the area where Patriot Prayer was holding their rally and was refused entry by Patriot Prayer. He was taken to a nearby parking lot for questioning. PPB implored Patriot Prayer to keep their event in the Montavilla Park and in a designated area, however, PPB had no legal authority at the time to compel those actions. When the event became a march, it was not the PPB’s intent to escort the group but rather keep highly emotional protesters and counter-protesters from any form of physical confrontation. PPB initially followed the event in vehicles and only began walking near the groups to offer a presence to mitigate the chances of physical violence. The groups intermingled, while under the careful observation of police, for the duration of the march route. Unfortunately, there was a physical confrontation along the route that led to an arrest. Lastly, at the end of the march, PPB deliberately offered Trimet rides to members of both groups. PPB made sure this was a clearly delivered message and tweeted it out to the public. PPB’s goal was to bring this tense encounter to an end for the safety of everyone in the community. No favoritism was given to either group.

**3. The Mercury recently reported that more PPB officers live in Washington (177) than in Portland proper (158). How can we confidently say this has no bearing on actual or perceived officer biases?**

Portland Police officers take an oath to serve this City and do so consistently on a day to day basis. The location where an officer lives should have no bearing on how they carry out their duty. We have directives speaking to the concern regarding bias.

**4. Last summer, Portland activists were “kettled” and forced to provide ID. I still do not understand why this happened. Can you help us understand why that happened? Has PPB ever recorded identification information from the Patriot Prayer or Proud Boys groups in this manner?**

This event is currently the subject of federal litigation, and mediation is scheduled in the case. The group was detained based on reasonable suspicion of criminal activity, and

their identification was photographed as part of the investigation of that criminal activity. PPB has recorded identification information from members of Patriot Prayer or Proud Boys who have been detained or arrested for engaging in criminal activity.

- 5. Why is it that PPB seems to always be facing counterdemonstrators instead of the far-right paramilitary gangs that come to take over our streets? Has there ever been consideration of how this tactical decision actually empowers the alt-right groups, which makes Portland less safe for all?**

Based on the factors in the crowd additional resources may be needed in certain areas. We understand the perception of bias and we are currently assessing our tactical responses to alleviate concerns of bias in the future without compromising safety.

- 6. What efforts has PPB made to reach out to Portland activists and advocates to discuss policing of protests?**

Efforts have been ongoing for years. The Bureau has spoken with protesters, advocates, and others regarding protests in many different venues. These include one on one, coffee talks, group settings, and electronic communications. In advance of demonstrations, PPB also tries to communicate with the groups through the use of police liaisons. We will continue these efforts in the future.

- 7. Can the Portland Police Bureau explicitly and unequivocally state that Patriot Prayer, Proud Boys, and similar alt-right, white supremacist gangs are the real threat to our public safety?**

We believe that we answered this at the hearing. If you want more information, please let us know.

- 8. During the August 4 protest, my understanding was there were weapons check-points because of the threat of gun violence. Yet, media reports indicate that the Proud Boys and Patriot Prayer were able to breeze by these check-points. Can you explain what happened? Why was no one arrested?**

We believe that we answered this at the hearing. If you want more information, please let us know.

- 9. Much has been made of the “cache of weapons” that were discovered on the parking garage. Can you explain why no arrests were made in that situation?**

We believe that we answered this at the hearing. If you want more information, please let us know.

- 10. In many of the protests, I've witnessed Patriot Prayer and Proud Boys crossing the street and into the side of the road sectioned off for counter-demonstrators while PPB looked on. Why was this allowed to occur?**

Individuals from groups are at times going back and forth from all sides. We attempt to maintain separation once time, place and manner restrictions have been established by police at the event. If no time, place, manner restrictions are in place individuals are welcome to cross the street.

- 11. The Anti-Defamation League's Center on Extremism has reported that 71 percent of the extremist-related fatalities in the United States between 2008 and 2017 were committed by members of the far right or white-supremacist movements. Why is this, and more local data that we have at our disposal, not enough information to justify "selective enforcement" to address the actual threats to our public safety?**

The Bureau again focuses on individual's behaviors and actions. We cannot engage in selective enforcement based on people's exercise of free speech.

#### Follow-Up from Past Violence

- 1. At this point, we've seen countless videos of Patriot Prayer and Proud Boys violently assaulting Portlanders and can identify them by face if not also by name. Can you detail the steps that PPB has taken to follow-up and arrest these folks?**

We have arrested individuals associated with Patriot Prayer and Proud Boys based on probable cause several times. For example, PPB has arrested or cited Tusitala "Tiny" Toese on three separate occasions for unlawful conduct at demonstrations in Portland, including charges of assault, harassment, and disorderly conduct. PPB does not single out groups based on the content or viewpoint of their speech. PPB focuses its criminal investigations on the unlawful behaviors and conduct of individuals and makes arrests as warranted by that conduct.

- 2. Why are these white supremacist gang members not being prosecuted more harshly?**

This is a question best addressed by the Multnomah County District Attorney's Office, which has the responsibility of prosecuting crimes that occur in the City of Portland.

- 3. It appears to me that the "tool" PPB need is more effective collaboration with the DA's office. Has the Mayor's office or PPB talked to the DA about this? What was the outcome of these discussions?**

The Bureau works collaboratively with the Multnomah County District Attorney's Office and other community partners to address crowd control and crowd management.

### Ordinance Questions

**1. Have other cities with similar Time, Place, Manner (TPM) restrictions been sued for these policies? How much did it cost them to defend these policies in court?**

Many cities use time, place, and manner regulations to manage demonstrations. The most common time, place, and manner regulations are in the form of permitting requirements, but time, place, and manner regulations have also been used in more unique or emergency situations in response to events. Litigation in this area is common, and some cases have been successful, while others have not. We do not know how much it has cost other cities to defend their regulations. Below are some of the cases that we have looked to that have upheld time, place, and manner restrictions most similar to those proposed in the ordinance:

- *Menotti v. City of Seattle* (regulations at 1999 WTO conference in Seattle)
- *Coalition to March on the RNC v. City of St. Paul Minn.* (regulations at 2008 Republican National Convention in St. Paul)
- *Citizens for Peace in Space v. City of Colorado Springs* (regulations at 2003 NATO convention in Colorado Springs)
- *ACLU v. City and County of Denver* (regulations at 2008 Democratic National Convention in Denver)
- *Gibbs v. City of Tacoma* (regulations at 2007 Port of Tacoma demonstration)
- *Marcavage v. City of New York* (regulations at 2004 Republican National Convention)

**2. This ordinance is certain to face a legal challenge, what do you anticipate will be the legal costs associated with defending this policy in court?**

Legal costs to defend this policy would be absorbed by the existing budget of the City Attorney's Office. In the past the City Attorney's Office has been able to absorb the work of defending the Council's policy decisions in court, although certainly resources are limited and work has to be distributed and prioritized internally when the Office's caseload increases. The time and resources necessary to defend any Council action depends on the claims asserted, parties involved, the length of litigation, and any appeals. Of course, as with many cases and depending on the type of challenge, there is a risk that the City may have to pay the plaintiff's attorneys fees if the City is unsuccessful.

- 3. If we need to take a legally ambiguous policy to court, why are we saying that this is the legal fight worth having with our limited city resources? Wouldn't it be more responsible to spend our city attorneys' time and public funds pursuing legal strategies to stop the recruitment and mobilization of white supremacist, paramilitary gangs on our streets? Isn't that a more meaningful contribution to our public safety?**

The City Council has the responsibility to decide the best policy to advance public safety given the City's limited resources. As amended, the ordinance requires the Office of the City Attorney to report to Council additional legal strategies for addressing these issues. These additional strategies may include civil claims based on paramilitary activity, public nuisance claims based on street fighting, and enforcing permit regulations as in other cities. However, it is important to remember that legal strategies that are aimed at particular groups because of the content of their speech are constitutionally problematic. Consistent with this constitutional concern, Portland Police Bureau Directive 344.05, at Policy Statement 3, prohibits the Police Bureau from making policy decisions based on political ideology or affiliation.

- 4. Are there any other cities using TPM restrictions as a tool to combat alt-right violence?**

Many cities either enforce existing permitting requirements, enact emergency rules or erect fencing around areas to ensure that opposing groups remain separated. For example:

- In Washington, D.C., for the Unite the Right rally and counter-demonstrations this last summer, the parks department issued permits beforehand to make sure both sides had space to protest and remained separated. The police erected fencing around different areas of Lafayette Square.<sup>1</sup>
- Seattle has repeatedly attempted to keep Patriot Prayer separate from counter-demonstrators by using metal barricades and police officers to varying degrees of success.<sup>2</sup>
- Berkeley, California, officials issued an emergency order this past summer in response to a rally. The order prohibited sticks, pipes, poles, baseball bats, bricks, rocks, mace, knives, and "anything else that can be used to riot," and prohibited people from wearing masks. The police also closed off streets<sup>3</sup> and attempted to direct protesters into separate areas.<sup>4</sup>

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<sup>1</sup> <https://www.nbcwashington.com/news/local/Officials-Across-Region-Prepare-of-Unite-the-Right-Rally-490472501.html>; <https://www.thedailybeast.com/white-nationalists-prepare-to-gather-at-white-house-for-rally>; <https://www.theatlantic.com/politics/archive/2018/08/unite-the-right-fizzles-amid-a-boisterous-counter-protos/567374/>

<sup>2</sup> <https://www.seattletimes.com/seattle-news/politics/largely-peaceful-dueling-rallies-at-seattle-city-hall-marked-by-lots-of-yelling-3-arrests/>; <https://www.seattletimes.com/seattle-news/politics/5-arrested-as-trump-supporters-counterprotesters-rally-at-uw-in-seattle/>

<sup>3</sup> <https://www.mercurynews.com/2018/08/05/berkeley-bracing-for-alt-right-rally-today-antifa-counter-protest/>

<sup>4</sup> <https://www.sfgate.com/bayarea/article/Berkeley-braces-for-demonstrations-13133346.php>

**5. How exactly does this ordinance lead to less enforcement or less use of police resources? The limits are surely to be tested, so isn't it possible that this policy will actually lead to more confrontations?**

This ordinance would allow the Police Commissioner to issue written orders in advance designating certain areas for demonstrators and counter-demonstrators to peacefully exercise their First Amendment rights. The Police Commissioner could only use this authority under limited circumstances when: (1) two or more groups with a history of violence between them announce plans to demonstrate on the same day; and (2) there is a threat to the safety of participants and by-standers if time, place, and manner regulations are not imposed; and (3) there is a substantial likelihood of violence based on the statements or conduct of members of the groups indicating an intent to engage in violence, or based on other credible information obtained by law enforcement. All three of these criteria must be met for the Police Commissioner to use the authority under the ordinance.

By issuing written orders in advance, peaceful demonstrators will know and be able to follow the rules to safely exercise their First Amendment rights. This policy assumes most demonstrators and counter-demonstrators are law-abiding and will follow clear rules announced in advance of a demonstration. By designating separate areas for demonstrators and counter-demonstrators, the expectation is that most people will follow the rules, and the police can focus their resources on responding to those who do not follow the rules. By separating the groups, the opportunities for violence between them will be reduced, and the police will be able to better plan for the event and manage the different crowds.

In the past, when the demonstrators and counter-demonstrators rally in close proximity, the crowds can be difficult to manage. In this situation, a high volume of police resources are required to physically separate the groups. The chart below shows the police overtime costs for demonstrations over the last three years:

<b>Police Bureau Protest Overtime - does not include straight time, payroll tax or materials expense</b>	<b>Comp Value</b>	<b>OT Paid</b>	<b>Total Amount</b>
<b>083 - DEMONSTRATIONS/STR</b>	<b>\$ 739,574.13</b>	<b>\$ 2,945,327.15</b>	<b>\$ 3,684,901.28</b>
<b>Calendar 2016</b>	<b>\$ 148,767.58</b>	<b>\$ 947,923.74</b>	<b>\$ 1,096,691.32</b>
<b>Calendar 2017</b>	<b>\$ 480,715.10</b>	<b>\$ 1,555,738.30</b>	<b>\$ 2,036,453.40</b>
<b>Calendar 2018</b>	<b>\$ 110,091.45</b>	<b>\$ 441,665.11</b>	<b>\$ 551,756.56</b>
<b>Grand Total</b>	<b>\$ 739,574.13</b>	<b>\$ 2,945,327.15</b>	<b>\$ 3,684,901.28</b>

Additionally, when the groups are in close proximity and engage in violence, it is more likely that the police will need to disperse a crowd and make arrests, which is not the desired outcome. By designating different areas to keep the groups apart, the goal is to reduce the number of events where crowds are dispersed and individuals are arrested.

**6. How will the Police Commissioner make determinations that a “group” has committed violent acts in the past?**

The Police Commissioner will evaluate whether individuals or groups intending to participate in a specific demonstration or counter-demonstration have engaged in violence at recent protests leading to injuries to participants, by-standers, or damage to property. This evaluation will be based on articulable facts, including observations and investigations by police, eyewitness accounts, or other information gathered by law enforcement before the event. As an important safeguard, the Police Commissioner’s determination must be supported by factual findings recorded in the written order issued before the event. These factual findings in the written order may be reviewed by a court if the order is challenged, and the ordinance also requires the Police Commissioner to report to Council after each event where a written order is issued. This report would also be made to the public under the amendment adopted by Council.

**7. How will the Police Commissioner determine who is part of the groups and who is not?**

Under the ordinance, the Police Commissioner can issue written orders designating areas for demonstrators and counter-demonstrators to safely protest. People will be free to choose which area to go to and the Police Commissioner and the police will not determine which group someone belongs to. Instead, each individual can decide where to go to safely exercise their rights. The expectation is that most people will go to the appropriate designated area. If there are any limited confrontations involving individuals who chose to assemble with those with opposing views, then the police can respond to those specific altercations.

**8. Will the rules apply to people who are not part of the groups targeted by the rules? What if they are unassociated with either group and have no history of violence, but they are counter-protesting one of the groups?**

The written order of the Police Commissioner will direct demonstrators to gather in a particular location, just as would happen if the group had sought and received a permit. The written order would further direct counter-demonstrators to gather in a separate area. Depending on the event, the written order by the Police Commissioner may designate a third area for those individuals who are unaffiliated with either group and do not otherwise wish to participate in either the demonstration or counter-demonstration. This ordinance is intended to provide everyone with the necessary space to demonstrate safely.

**9. If a person is already willing to violate criminal laws against assault, are they actually going to follow these rules about when, where and for how long to protest?**

Certainly there may be people who come to a demonstration or counter-demonstration with the intent to break the law. The risk to public safety is increased if people with that intent to commit crimes are mixed in a large crowd in close proximity to another large opposing group. Indeed, as was noted in the “After Action Report” discussed in the *Menotti v. City of Seattle* case, “[t]he protestors were establishing a fluid, dynamic method of operation that consisted of rapid deployment and the use of non-criminal protestors to buffer smaller pockets of protestors engaging in significant criminal acts.” *Menotti*, 409 F.3d 1113, 1124 (9<sup>th</sup> Cir. 2005). In a situation like that it can be challenging for police to identify and respond to individual criminal behavior. However, the goal of the ordinance is to make it easier for police to identify individuals violating the law since demonstrators wishing to follow the rules will assemble in the designated areas. Police can then use their resources to focus on those individuals who may be intent on breaking the law.

**10. How exactly can a city official predict a likelihood of violence occurring?**

Determining the likelihood of violence will depend on the factual information gathered in advance of the event. This will include past acts of violence at demonstrations and specific statements on social media or other sources indicating an intent to engage in violence. As an important safeguard, the facts demonstrating a substantial likelihood of violence are required to be included in the written order of the Police Commissioner, which could then be reviewed by a court if the order is challenged. Additionally, the ordinance as amended requires the Police Commissioner to report to the Council and the public after each event where written orders are issued, which provides an opportunity for the Council and the public to evaluate whether the Police Commissioner made the appropriate determination.

**11. If the plan is to set up free speech zones, will opposing groups be within line of sight of each other, or is the plan to place them far away from each other?**

The ordinance gives the Police Commissioner the ability to direct that demonstrations and counter-demonstrations be moved to locations that do not create a substantial risk to public safety, obstruct or impede traffic, or interfere with emergency services or other planned events. However, the ordinance also expressly limits the Police Commissioner’s authority since “[a]ny such redirection shall be to a location that is reasonably close to, sufficiently approximates, or reaches substantially the same audience as the original location.” The goal of the ordinance is to ensure that the groups could see and communicate with each other, but to be a sufficient distance apart so the police can safely and effectively manage the opposing large crowds.

**12. How exactly can PPB and the Police Commissioner limit the number of people in a group at a march?**

The ordinance gives the Police Commissioner the ability to regulate the number of people who “gather or congregate upon public property, public sidewalks, public rights-of-way, and places of public assembly to which the public has access.” This aspect of the ordinance is not intended

to cap the number of individuals who can engage in First Amendment activity. The intent is to ensure that the designated areas are large enough to accommodate the number of people who plan to assemble to demonstrate and counter-demonstrate. If more people attend than are able to safely gather in the designated areas, PPB will make every effort to identify and direct attendees to overflow areas where people can safely gather to exercise their First Amendment rights.

**13. What if a protest organically and quickly comes together in response to current events, will the ordinance apply to those types of events?**

The ordinance only applies in limited circumstances when: (1) two or more groups with a history of violence between them announce plans to demonstrate on the same day; and (2) there is a threat to the safety of participants and by-standers if time, place, and manner regulations are not imposed; and (3) there is a substantial likelihood of violence based on the statements or conduct of members of the groups indicating an intent to engage in violence, or based on other credible information obtained by law enforcement. All three criteria must be met. In the situation described by the question, it is unclear if those criteria would be satisfied. For example, if the event comes together quickly and organically then there may not be facts demonstrating a substantial likelihood of violence at the event. Further, if there is only one group that organically and quickly comes together to demonstrate about a current event, the ordinance would not apply. However, Portland Police Bureau Directive 635.10, Section 4.2, may be applied to a truly spontaneous demonstration, in which case the planning and operations would be entirely within the authority of the Police Bureau.

**14. If this is aimed at events that are being planned in advance of their occurrence, how far in advance of the protest will the rules be put out?**

The intent of the ordinance is for the Police Commissioner to issue a written order with as much advanced notice as possible. Often, demonstrations and counter-demonstrations are organized with only a few days' or a couple of weeks' notice, so the timing of the Police Commissioner's order would depend upon when police learn of the events. The proposed ordinance would give the City the ability to proactively manage in advance the "flash" demonstrations that are organized with only a few days' notice. The goal is to provide people who want to participate as much notice as possible about the rules issued by the Police Commissioner.

**15. If a group disputes the characterization of their members as having a history of violence, how can they challenge that? What if the characterization was false and there wasn't ample time to dispute it?**

A group could challenge the characterization through an action in court by seeking an injunction. One important safeguard in the ordinance is the requirement that the Police Commissioner include written findings in the order to provide a record of the factual circumstances that led to the Police Commissioner's conclusions. This written record will allow

a court to review the Police Commissioner's decision if it is challenged. Additionally, the requirement that the Police Commissioner report back to Council and the public is intended to ensure that people have the opportunity to discuss the outcomes and express concerns.

**16. Could one group's right to protest be endangered by another group showing up at their protests and provoking violent encounters, with the aim of giving the group a "history of violence" (aka a heckler's veto).**

The ordinance is focused only on violent conduct. Moreover, the ordinance does not prohibit any person or group from exercising their First Amendment freedom of speech. Instead, the ordinance authorizes the Police Commissioner to issue reasonable time, place, and manner regulations to manage these events in advance. As the Ninth Circuit Court of Appeals explained in *Menotti v. City of Seattle*, "[T]here is no authority suggesting that protesters have an absolute right to protest at any time and at any place, or in any manner of their choosing..." *Menotti*, 409 F.3d 1113, 1138-39 (2005). In a "Heckler's Veto" situation, the threat of violence by one group results in the other having their First Amendment rights restricted. *Santa Monica Nativity Scenes Comm. v. City of Santa Monica*, 784 F.3d 1286, 1293 (9th Cir. 2015) ("The prototypical heckler's veto case is one in which the government silences *particular* speech or a *particular* speaker 'due to an anticipated disorderly or violent reaction of the audience.'"). The ordinance before Council, however, does not bar any particular group from exercising their First Amendment rights. Instead, the ordinance allows the Police Commissioner to designate areas for everybody to exercise their First Amendment rights safely without the threat of violence.