

The Oregonian

Jury rules company must pay \$291k for overgrown tree

By Aimee Green

August 8, 2017

A Multnomah County jury this week ruled that a Southeast Portland industrial shop is on the hook for nearly \$300,000 for failing to trim tree branches that blocked a stop sign and contributed to a fatal car accident.

In June 2013, driver Jason Rodriguez ran the stop sign and ended up crashing into cross-traffic at Southeast 10th Avenue and Madison Street, killing one of his passengers, 33-year-old Michael Dominguez.

Dominguez's family sued not only Rodriguez for bad driving, but the industrial shop, Portland Engine Rebuilders, for failing to keep the leaves on a tree bordering its property from obscuring the stop sign.

The verdict serves as a stark reminder to property owners that the city under one of its ordinances deflects liability for pruning its street trees and bushes to the residents and businesses whose properties border the vegetation.

Attorneys for the dead man's family originally tried to sue the city, as well as the other defendants, but a judge dismissed the city, in part because of the ordinance.

After a weeklong trial in Multnomah County Circuit Court, the 12-person jury ruled Monday that Dominguez's family was due a total of \$969,000 and that the driver was 70 percent responsible for the crash, while Portland Engine Rebuilders was 30 percent at fault.

That means Rodriguez is responsible for paying \$678,000 of the verdict, while Portland Engine Rebuilders must pay \$291,000.

But the industrial company could end up paying much more under Oregon law if the Dominguez family's attorneys successfully argue to Judge Kelly Skye that Rodriguez isn't able to pay more than the \$100,000 in insurance coverage he carried.

Portland Engine Rebuilders is insured up to \$2 million, the family's attorneys say.

The company twice received notice from the city that it needed to keep on top of trimming the tree -- in 2006 and 2008, said Portland attorney Jeff Bowersox, who represented Dominguez's estate along with attorney Patrick Angel.

Both of those years, the city had received complaints that the branches were enveloping the stop sign. The city sent workers to trim the branches, then sent Portland Engine Rebuilders reminder letters of its responsibility.

Dominguez and Rodriguez were childhood friends. They had attended Lake Oswego High School together, but had lost touch for years after that and then had reconnected, Bowersox said. Immediately before the crash, the friends had dined together at the 2nd Story restaurant, about half-mile away from the accident scene.

The crash happened on June 28, 2013, about 8 p.m. still during daylight hours. Portland police determined that Rodriguez wasn't under the influence of alcohol or drugs, but was driving about 35 mph in a 20 mph zone.

Rodriguez said he stopped at a stop sign at Southeast 10th and Hawthorne Boulevard before driving one block north through the next intersection at Southeast 10th and Madison. He said he hadn't realized there was a stop sign there because the tree branches were blocking it.

A 2012 Smart car hit slammed into the passenger side of his 2008 Honda Civic and pushed it into a utility pole. The impact knocked all three people inside the Honda unconscious, but Dominguez was the only one to die.

Rodriguez admitted he was at fault and the jury was left to decide the extent of liability.

The tree has since been cut down.

Portland mayor drops plan to wait for court ruling on compelling cops to talk after deadly force use

*By Maxine Bernstein
August 8, 2017*

Mayor Ted Wheeler and City Commissioner Nick Fish have heeded community concerns and decided not to allow the Multnomah County district attorney to dictate when police internal affairs can compel an officer to give a statement after using deadly force.

They've crafted an alternative ordinance that will direct police internal affairs to interview the officers within 48 hours -- unless the police chief or police commissioner direct otherwise.

Under the new proposal, the city may choose to seek a court ruling on the legal validity of the practice but doesn't have to.

The substitute ordinance is expected to go before the City Council at 1 p.m. Wednesday.

It marks an about-face from the mayor's original ordinance that drew widespread criticism during a hearing last week.

The first ordinance would have sought a court ruling to validate the practice of forcing officers to speak to internal affairs about their use of deadly force in less than 48 hours before the city would have put it into effect.

Waiting for a court to weigh in probably would have meant a long delay before the ordinance would have been adopted, if at all.

That would mean that the Police Bureau's recently-revised, controversial use-of-force directive would stand. It requires that internal affairs wait until completion of a criminal investigation before compelling an officer to give an interview and then only with the district attorney's go-ahead. The policy was recently rewritten based on legal advice from District Attorney Rod Underhill and approved by U.S. Justice Department lawyers and Oregon's U.S. attorney.

Under the substitute ordinance, that revised directive would be torn up.

Wheeler and Fish were swayed by testimony submitted from the National Lawyers Guild and the American Civil Liberties Union of Oregon, and a renewed opinion from the city attorney's office, Fish said.

"Ted and I believe the law is on the city's side," Fish said Tuesday. "We respectfully disagree with the district attorney's reading of the law."

In a March memo to police, Underhill said he was concerned that forcing an officer to give an internal affairs statement in a policy review of the shooting while a criminal investigation continues could result in the officer being granted immunity from prosecution. He cited a 1984 Oregon Supreme Court ruling to back up his concerns.

The National Lawyers Guild countered that Underhill's analysis was an inaccurate assessment of Oregon law, and the state Supreme Court case Underhill cited didn't directly deal with the issue of parallel police criminal and internal affairs investigations.

The Guild pointed to a subsequent Oregon Court of Appeals ruling in 1994 in the case of a state trooper indicted on sex abuse and official misconduct charges and forced to give a statement to internal affairs investigators during the course of the criminal inquiry. The state Justice Department argued that the remedy for the officer was excluding his compelled statements and any evidence that sprang from them, but not full immunity from prosecution. The Appeals Court agreed.

"It would be a disservice to the public and a threat to justice if the City waits for a court opinion on this issue before implementing a policy to hold officers administratively accountable," according to the written testimony provided by The National Lawyers Guild.

The mayor and Fish agreed that the better approach would be to preserve the Police Bureau's right to compel internal affairs interviews soon after a shooting or death-in-custody case.

As long as a sufficient wall exists between criminal and internal affairs investigations, an officer's constitutional rights wouldn't be violated, the substitute ordinance says.

The ordinance, though, gives the police commissioner and the chief the authority to delay the internal affairs interview in deadly force cases if warranted. That could arise in a case when a criminal indictment against an officer is expected.

"We feel that Oregon law and federal law is on our side and that the risk is very small here" of impeding a potential prosecution of an officer, Fish said.

If the final wording of the substitute ordinance isn't ready by Wednesday afternoon, the City Council still plans to scrap the revised use-of-force directive and go back to interviews within 48 hours, Fish said.

Underhill could not be reached for comment Tuesday.

Jeffrey Howes, Underhill's first assistant, reiterated Underhill's position Tuesday: "We will continue to vigorously investigate and present to grand jury any officer-involved use of deadly force case. That has not changed and will not change."

Williams said any changes to the use-of-force directive that the City Council approves would be reviewed by the Justice Department's civil rights division.

The mayor also is expected on Wednesday to pull from consideration his proposal to create a new Portland Commission on Community-Engaged Policing to allow more time to modify it. He'll ask for a two-week extension to continue work on refining the idea.

Community members blasted his plan to allow the commission to meet twice a month behind closed doors without a direct oversight role in monitoring the status of police reforms required after federal investigators found Portland police used excessive force against people with mental illness.

"We received some excellent feedback," Wheeler said in a written statement. "I think there's more we can do around police review, public meetings and assessment of the DOJ settlement agreement."

--*Draft of substitute ordinance*

--*Written testimony from National Lawyers Guild*

--*Written testimony from ACLU of Oregon*

Portland Mayor Ted Wheeler slow to deliver on promise of affordable housing

By Jessica Floum

August 8, 2017

Portland Mayor Ted Wheeler promised during his 2016 campaign that he would tackle the city's affordable housing crisis if elected.

His second day in office, he took over the housing bureau, putting himself in charge of its big decisions on top of his already ambitious workload.

But eight months into his term, the mayor has little to show for it.

No groundbreaking. A single deal to bring an affordable apartment complex to Northeast Portland. A key policy position on his staff vacant five months after his housing expert quit.

He has yet to tell developers what the city will fund if they work to put roofs over needy Portlanders' heads.

Wheeler's insistence on painstaking public involvement and the lack of housing expertise on his staff have hampered progress on what he said was an urgent priority.

The mayor has also made no decisions about how the city should spend the largest pool of money ever available to address Portland's affordable housing shortage.

Wheeler defends his pace so far, insisting it is better to make the right choices than to make them fast.

"Quick always sounds great until you screw it up," Wheeler said. "Then people will say 'why weren't we a little more thoughtful?'"

Many housing advocates agree.

But critics say the city has missed opportunities and prolonged renters' stress with its abundance of contemplation and lack of action.

Voters approved a \$258 million bond shortly before the dawn of Wheeler's term. But the mayor halted bond spending within days of taking office after bond advocates criticized the rushed purchase of a Northeast housing complex in December.

Seven months later, Wheeler still has provided no direction. Instead, at his request, more than 20 housing advocates have debated for months how to spend the money.

The mayor asked the group to develop big picture spending guidelines by August. But differing opinions among the developers, homeless advocates, minority leaders and coalition representatives continue to delay those decisions.

The group has wrestled with how to meet the bond's stated promise of adding 1,300 affordable apartments.

Many on the panel want the apartments to be in prime close-in neighborhoods near services and jobs, built to high environmental standards with plenty of space to accommodate families. But that makes it harder to fund 1,300 of them.

Committee members said in June they needed more time, so the mayor extended the deadline until the end of September. The city council is slated to vote on their recommendations October 11.

Former Housing Commissioner Dan Saltzman questioned the need for such a group at all. The council already appointed a five-member committee to oversee bond spending in March, and more community input has invited more competing interests, he said.

"Some of them are really clambering (because) they want the dollars directed towards them," Saltzman said. "Not everyone in that group is concerned about producing as many units as we can as quickly as we can."

The delay has caused a growing chorus to question Wheeler's commitment to the cause.

"If we all agree there is a crisis, then the crisis begets a sense of urgency," said Stephen Green, Wheeler's pick for the bond oversight committee.

The Oregonian/OregonLive spoke with 15 city officials, housing advocates and developers. They emphasized the need to demonstrate to voters that funding affordable housing is effective and worthwhile. To do that, they said, the mayor needs to choose spending priorities and get everyone behind them.

Multnomah County Chair Deborah Kafoury acknowledged that the mayor has had a busy seven months dealing with protests, a fatal snowstorm and a police chief search.

"That being said, I do kind of hope they push the gas a little harder, a little faster," Kafoury said.

Israel Bayer advocates for affordable housing and directs the homeless newspaper Street Roots. He said Portlanders are growing impatient with the mayor and his staff the longer they take to "get their feet under them."

"People in the community continue to have anxiety about how the mayor's office is going to do this," Bayer said. "The housing crisis is real."

In 2015, as rents skyrocketed, 15,000 fewer low-income individuals and families found housing in Portland than five years earlier, census data showed. Meanwhile thousands of families earning \$50,000 or more started paying more than 30 percent of their incomes in rent, the Census Bureau's American Community Survey found. Experts consider that threshold unaffordable.

Since then, landlords have continued to raise rents to the point that families and single mothers like Aleina Langford have no choice but to move. Her landlord raised her rent by 45 percent in November, forcing her to pull her 4-year-old son out of his Head Start preschool program, move in with a friend in Vancouver and send her 17-year-old daughter on hour-plus bus rides to school. Langford had to find a cheap car to get to her job in downtown Portland.

"Had I not been able to get a very cheap vehicle and have some financial support from my roommate and my close circle of family and friends . . . I don't know what I would have done," Langford said.

Many advocates see Wheeler's slow approach as necessary to "get it right." Delay is a typical side effect of Portland's inclusive and notoriously slow public engagement process, they said. It's also a symptom of Portland policymakers' paralyzing perfectionism, Green said. Perfectionism doesn't work during crisis, he said.

"You're going to kick yourself down the road for not taking advantage of opportunities that didn't seem perfect at the time," Green said.

BOND GOALS

The mayor says his goals for Portland's first affordable housing bond are precisely the metrics laid out in the ballot measure and related documents.

The measure promised 1,300 new housing units affordable to those who make 60 percent of the median family income in Portland. The City Council agreed to make 600 of those units affordable to people who make zero to 30 percent of the median family income. They stipulated that 50 percent of the units must be "family-sized," with two to three bedrooms. Together, those apartments are to house at least 2,900 people.

"I don't know how I could possibly be more specific than that," Wheeler told The Oregonian/OregonLive.

Despite the mayor's intent, advisory group members argued for months whether it's appropriate to focus on numbers, rather than home in on which people most need housing and where it makes the most sense to build.

The group has since affirmed the numeric goals, but it continues to grapple with tensions and tradeoffs that must get settled before money gets spent. Among them:

- How to serve populations who have been or who are at risk of being displaced.
- Whether to buy and build where it's cheap or to support affordable housing in areas with greater access to transit, jobs and services.
- Whether to help displaced populations return to their since-gentrified communities or preserve housing where those people now live.
- How to avoid concentrating poverty while also preserving housing in existing low-income communities to prevent displacement.

Portland's Jade District along Southeast 82nd Street in Southeast Portland, for example, has become the hub for many Chinese-American families. Jade District leaders emphasize the need to preserve affordability in the face of gentrification for those families. But others want to undo the displacement of the Chinese-American community from North Portland's Old Town Chinatown.

Saltzman said making those calls requires leadership from the housing bureau and City Hall.

"We have to at some point cut off the debate and just move ahead," Saltzman said.

Wheeler told The Oregonian/OregonLive in a July interview that he's "willing to fall on the sword and say my timeline is however long it takes to do it right and be fiscally responsible."

STAFFING UP

At least three housing advocates and developers questioned why Wheeler has no housing expertise in his office if housing is in fact his priority.

The housing policy position on his staff remains vacant six months after the former policy director, Alma Flores, abruptly quit and returned to her community development job in Milwaukie. Flores did not respond to requests for comment.

Wheeler tasked bureau liaison Kyle Chisek with housing on top of having a hand in the city's other 27 bureaus. Wheeler also tapped policy advisor Andrea Valderrama, who previously worked on transportation in former Commissioner Steve Novick's office.

"Why don't we have a bigger housing bureaucracy in the mayor's office when we already have an entire housing bureau? That's just not how I roll," Wheeler told The Oregonian/OregonLive on July 27. "We don't need two bureaucracies."

Four days later, he told the bond stakeholder group that his office is "in the final phases of hiring a housing lead."

The housing bureau recently hired Shannon Callahan as assistant director to help lead bond implementation. Callahan worked for more than a decade in Saltzman's office, where she spearheaded the housing bond campaign, collaborated with housing advocates and built years of connections in City Hall.

"Between the housing lead and Shannon and the existing leadership in the housing bureau and my own personal commitment, you'll see we have a very robust structure," Wheeler told the committee.

A BRAND NEW TOOL

The bond is one tool in the mayor's toolbox for fixing the affordable housing crisis, he said. He has made progress on other fronts while planning for its deployment, he said.

He touted the tenant protection policy introduced by Commissioner Chloe Eudaly in January and adopted unanimously by the City Council in February. It requires landlords to pay relocation assistance to tenants they evict without cause or who must leave after a rent increase of 10 percent or more.

He cited the city's continued funding of the Home for Everyone Coalition, a community-wide initiative supported by the city and county.

He lauded the Housing Bureau's "Fast Start" program established under former housing Commissioner Dan Saltzman in July 2016. It allows the city to choose developers from a list of prequalified firms to speed up affordable housing construction. Mayoral spokesman Michael Cox said the mayor intends to take advantage of the list later this summer.

Within his first 100 days in office, Wheeler announced that he planned to use Interstate Corridor urban renewal funds to give Habitat for Humanity money for down payment assistance.

In March, the city council gave land and money to a nonprofit to build 80 affordable apartments in Northeast Portland to help families displaced by gentrification return. On Wednesday, the council will consider buying a large Southeast Portland property, where they hope to develop 300 affordable rentals.

"For the first six to eight months that I've been here, I think we've actually been very aggressive," Wheeler said.

Housing Bureau Director Kurt Creager noted that the mayor's first proposed budget allocated \$210 million to the housing bureau—a 37 percent increase from the \$153 million budget the council adopted last year.

"That really is a strategic direction from the mayor," Creager said.

THE MAYOR'S ROLE

When it comes to affordable housing, the mayor sees his role as a visionary, facilitator, agitator and coordinator. While he has yet to provide one overarching strategy for housing, he said he thinks constantly about the topic.

"It is a thread that runs through every single issue the city deals with," Wheeler said.

When the mayor talks to businesses about increasing their local jobs, he says, he mentions the need for workforce housing.

When he talks about getting Portland's homeless off the streets, he advocates for permanent supportive housing.

He tells developers about his plans to make city permitting more efficient and less burdensome.

"I'm in a unique position as mayor because I'm the one going into the different rooms," Wheeler said. "It's my job as mayor to hold those interests together throughout this process."

'AN IMPOSSIBLE SITUATION'

Solving Portland's housing crisis doesn't fall just to the mayor, said Bayer, the Street Roots director. The real estate market and private development play a large role in creating and curbing the problem, he said.

Still, Bayer said he fully expects Wheeler to deliver the "big things" he promised to deliver with regard to housing and homelessness.

"A mayor in an American city is walking into an impossible situation," Bayer said. "There have been many mayors that have risen and fallen on the campaign promise of solving homelessness."

Wheeler has defended his housing efforts in council meetings, interviews and the most recent stakeholder advisory meeting. He complained in a recent council meeting about being "excoriated broadly" for being too slow to respond.

His sensitivity over the slow pace of housing stands out for a can-do mayor who has been open to accepting criticism and listening to detractors.

When a record snowstorm wreaked havoc on Portland's streets and caused the death of several homeless people during his first month, Wheeler attached crampons to his shoes, walked to work and asked the public to help direct people struggling in the streets to impromptu shelters.

In February and March, he nodded and took notes when protesters repeatedly disrupted council meetings and yelled criticisms during open forums.

Protesters questioned his decisions as the police commissioner so he called press conferences and in May embarked on a nation-wide search for a new police chief.

His reactions to housing criticisms suggest he understands how crucial curbing the crisis is to his success.

"We're just getting going," Wheeler said.

The Portland Tribune

New ONI director aims to bring back stability

By Lyndsey Hewitt

August 9, 2017

Commissioner Chloe Eudaly taps Suk Rhee to lead troubled city agency. Rhee hopes to expand the way Portland neighbors engage.

Commissioner Chloe Eudaly is looking to shake the dust from the city's troubled Office of Neighborhood Involvement, commonly called by its acronym, ONI.

She named Suk Rhee as the new director of the bureau last week, replacing interim director Dave Austin, Eudaly's chief of staff.

Former Director Amalia Alarcon de Morris resigned from the position in March after 11 years.

Rhee starts her new post Aug. 21; her contract and salary are still being finalized.

The Office of Neighborhood Involvement oversees the city's 95 neighborhood associations, and also works in neighborhood crime prevention, graffiti, noise control, marijuana and liquor matters. ONI also recently started a new program called Portland United Against Hate, which will collect data on hate crimes and hate speech and help fashion responses.

Following a particularly scathing city audit last November that said the bureau suffered from poor oversight and a host of other issues, Eudaly worked to make necessary changes when Mayor Ted Wheeler assigned her oversight of the bureau following her election win in November.

The Office of Neighborhood Involvement has a \$10.9 million budget and a staff of about 55.

Rhee "has a proven track record when it comes to engaging the community in developing ways to better the lives of all Portlanders," Eudaly wrote in an email to the staff. "She is also a big-picture thinker who will help lead our efforts to improve the ways we connect with and support people across our entire community, especially when it comes to diverse populations and underserved communities."

Rhee served the past 12 years as vice president of strategy and community partnership at Northwest Health Foundation, a Portland nonprofit that serves Oregon and Southwest Washington.

Rhee's resume describes her leading a transformation process at the foundation, resulting in a complete restructuring — including of initiatives, programs, funding, community partnerships, governance structure and staff roles.

"I would love to actually see the Office of Neighborhood Involvement reimagine all of the different forms that residents of the city can participate," Rhee says. "It's through the traditional and available structures that we have, but also could be through new ways of engagement. The city is changing ... the response to the changes we are experiencing, that's within our control."

"Given her experience and (Eudaly's) hard look at the bureau and what it needed, she thought it was important to bring up some stability immediately to the bureau," Austin says. He says there were roughly half a dozen interested or considered for the position, though he was not interested in the permanent job.

Rhee previously attended Richmond Neighborhood Association meetings when she lived in Southeast Portland. She now lives in the Rose City Park neighborhood in central Northeast Portland, but hasn't been involved with the association there.

The search process was conducted a bit differently from other recent bureau head hires — there was no formal job posting and there wasn't a national search or competitive recruitment process (Eudaly is conducting a national search for her other bureau, the Bureau of Development Services).

Instead, Eudaly hosted a community forum and an online survey to see what community members wanted in an ONI director.

Former director Alarcon de Morris was found via a competitive recruitment process when she was selected as director 11 years ago, and Eudaly wanted to go a different route.

Bureau directors are "at-will" employees of the city commissioners who oversee the bureaus.

"ONI is a very different kind of bureau," Austin says. "It's much smaller, it's around community involvement. The commissioner was a small business owner and was a community member, volunteer and organizer for a lot of things, so this bureau has a different need."

"She was going to appoint (vs. completing a national search process) given all the issues that the bureau was facing, including the audit and the mayor-elect's concerns about the bureau," Austin says.

Some neighborhood associations in Portland have endured serious divisions, such as Eastmoreland, where the neighborhood association sank into turmoil over the still-unresolved establishment of a historic district. Montavilla and Laurelhurst neighborhood associations have had heated discussions around how to deal with homelessness.

Adam Lyons, Northeast Coalition of Neighborhoods executive director, is ready for a new director.

"ONI, especially right now, could benefit from just some stability, and somebody who's coming from kind of an empathetic, progressive foundation," he says. "I think that she definitely seems like she has the right fortitude to right this bureau. It's a big challenge, but it's doable."

Rhee seems interested in expanding the way neighbors engage in the city, going beyond things like neighborhood association meetings "where we only get to talk to people in a certain region."

"There might be other issues that neighbors address and residents identify that will need different structure," she says.

Rhee isn't ready yet to describe what those forms may look like.

"They do have to be in service of a vision. And those visions have to be knitted," she says.

Closed Montavilla meeting on homelessness reset under pressure

*By Lyndsey Hewitt
August 8, 2017*

Neighborhood association board scolded for planning 'private' town hall. Office of Neighborhood Involvement urges transparency.

The Montavilla Neighborhood Association has postponed a town hall meeting about homelessness they were billing as a private event, with limited tickets and excluding the media.

Tickets ran out quickly, to the dismay of several residents, including Jeff Church, who opposed the board's resolution that called for banning homeless sweeps within that neighborhood's boundaries. Neighborhood division over the resolution is what prompted the town hall discussion. Church started an online petition and called for a boycott of the town hall.

Technically unbound by Oregon's open public meeting laws for neighborhood association-hosted events like town halls, where no decision-making is occurring, the city's Office of Neighborhood Involvement (ONI) stepped in to tell the association board members that "major community events" like the town hall are actually bound by the law. Additionally, ONI took issue with the event being ticketed.

Some board members, including chair Jonnie Shaver, have recently resigned from their posts.

"It's critically important that neighborhood associations, who are doing work to engage all corners of the public, do so with a high level of openness and transparency," says David Austin, interim director of ONI. "Meetings whenever possible should include open discussion and as many people as possible who are interested in a particular issue or issues. ONI will continue to push for more inclusiveness."

The issue of a "private" town hall hadn't come up before for the bureau.

"We need to continue to review, refresh and look at policies and procedures and guidance we give to the neighborhood associations, because our community is continually changing," Austin says.

The neighborhood association issued a statement July 27 apologizing for the inconvenience caused by postponing the event, "but also (we) very much want to maintain that the input and influence from neighbors within Montavilla is given the priority when considering actions about anything related to the board."

The statement added that the board "wouldn't want to encourage outside voices drowning out our neighbors' voices when it comes to any endorsed statements by the board."

The town hall was originally scheduled for July 29. A replacement town hall hasn't been set yet, but likely will be at a larger venue, the association said.

The town hall was scheduled following the neighborhood association board's passage of a controversial resolution in June calling for a ban on "sweeps" of homeless people within its boundaries in Southeast and Northeast Portland. The resolution criticized the city's approach of clearing out homeless camps, calling them inhumane and a waste of taxpayer dollars.

It turned out that the resolution wasn't legitimate, though, because the neighborhood association neglected to include the resolution as an agenda item for a special board meeting held in June — a requirement of ONI standards.

The association plans to take action on the resolution again at a future meeting.

Willamette Week

A Homeless Portland Student is Suing Security at Safeway for Allegedly Interrupting His Panhandling With a Beating

He says what happened to him will serve as an important civil rights example.

By Katie Shepherd

August 9, 2017

In April, Westley Foster went to the downtown Safeway seeking spare change. Instead, he received a beating so severe that an ambulance took him to the hospital.

Four months later, Foster is suing the security company hired by the grocery chain for damages—saying Safeway's guards interfered with his right to free speech by interrupting his begging with a nightstick.

"The whole thing was just ridiculous," says Foster. "They didn't have any right to come out on the sidewalk and do that to me."

Few forms of communication generate more emotion in this city than panhandling—the closest encounter many Portlanders have with homelessness and poverty. For years, it's been the bane of local businesses; several mayors have tried and failed to restrict it. Foster and his attorney say what happened to him will serve as an important civil rights example.

They will soon take their argument into Multnomah County Circuit Court—in a case that cites rulings that panhandling on the sidewalk is protected by the U.S. Constitution. Foster, 29, a Portland Community College student who has been living on the city's streets for nine years, wants to use what happened outside Safeway's Southwest 10th Avenue and Jefferson Street location as an affirmation of his and others' rights.

"He was attacked because he was homeless and because he was asking for money," says Lake Perriguy, Foster's attorney, who says he will file a civil suit early next week. "He was exercising his First Amendment rights. And they attacked him because they didn't like his message."

Chris Turrey, who runs Signal 88, the Portland branch of the Nebraska-based security company contracted to guard Safeway stores, says the issue isn't speech but safety.

"It's a frenzy out there," Turrey says. "My guys, they're just trying to protect themselves."

The story of Foster's violent encounter with Signal 88 guards is told in police reports, court filings and his own words.

On April 5, he was sitting at the northeast entrance of the Safeway on 1010 SW Jefferson St., asking passers-by for a dollar. He was there for 15 minutes, when two security guards dressed in blue uniforms came out to confront him.

Chris Templeton approached Foster and told him he couldn't stay in front of the store. Foster says he responded that he had a right to be on the public sidewalk and shouldn't have to move.

During this conversation, a second security guard, 19-year-old Ibrahim Seraphin, walked up to Foster. He says he thought Foster was being too aggressive with Templeton, so he shoved him, pushing him off the curb and into the busy downtown street.

Foster says he threw up a hand in defense, as a reflex to being shoved. Templeton told police that Foster punched Seraphin in the face.

Foster says he turned to pick up a backpack he uses to carry his school books. That's when Seraphin allegedly started beating him with a baton. The police report from April 5 says Seraphin hit Foster with the baton just twice, but Foster says it was more like five times. Seraphin says he hit Foster "two or three" times.

Seraphin and Templeton handcuffed Foster. In a video taken just after they put the handcuffs on Foster's wrists, Seraphin can be seen dragging Foster across the sidewalk and slamming him against the wall. Foster sinks to the ground and waits for the police to show up.

Seraphin, wearing blue latex gloves, grabbed Foster's backpack and dropped it next to him. When Foster asked him to grab some papers that were left in the street, Seraphin kicked them over to where Foster sat handcuffed.

A Portland police officer who arrived on the scene called an ambulance. Foster had bruises on his ribs and back from being shoved and beaten. He said it took almost three weeks to fully heal. He said he still sees a therapist more than four months later for panic attacks that started after the alleged assault.

"I'll just be sitting somewhere and doing something normal and I'll have a panic attack," Foster says. "I feel like it's really messing with my life. I could be doing anything and I just have to leave so I'm not crying like a baby."

Foster was born and raised in Salem but has lived in Portland for most of his adult life. A self-described "free-love hippie," he says he spends most of his time in the library studying or in the street skateboarding.

Nine years ago, Foster landed on the streets of Portland. He's been homeless ever since, going through bouts of heroin addiction, though he's enrolled in classes at PCC now and says he's kicked the habit. Over the years, he's had run-ins with law enforcement for misdemeanor drug possession, for fighting and for a robbery charge that was later dismissed.

But Foster says his most common interaction with Portland police is an officer asking him to move his panhandling.

"I've had the cops called on me several times in different places," he says. "When the cops respond, they basically take the side of whoever calls them there. They've made me leave a public sidewalk several times just because they're like, 'We don't want to keep getting called out here.' They don't really care about my rights."

Foster's lawsuit will seek damages from Security 88 and will assert he was exercising his First Amendment rights when the guards tried to stop him from asking for money on the public sidewalk.

Safeway says that it isn't responsible for the confrontation because it uses a security contractor.

"The security guard in this video works for a company who provides uniformed coverage for Safeway," says Safeway spokeswoman Jill McGinnis in a statement. "Our primary concern is customer and employee safety, and this falls outside the guidelines of how we request our third-party security vendors to handle such situations."

Seraphin no longer works at the Safeway and hasn't since April, McGinnis adds. Templeton still works for the security company, but declined to answer questions about the confrontation with Foster.

Seraphin says he was fired from Signal 88 after Safeway asked the company not to send him to provide security services a few days after the April 5 incident. He says he thought Foster was acting aggressively as soon as his partner approached him. He says he was afraid.

"He's a transient, I didn't know what was in his pocket," Seraphin says. "It could be a knife. In my experience, 85 percent of the transients in this area carry knives. I do my job exactly as I'm supposed to do in order to keep myself safe."

Jo Ann Hardesty Says Portland's Campaign to Return Black Families to Northeast Portland is "the Most Ludicrous, Arrogant, Obnoxious Policy Imaginable"

The candidate for City Council minces no words about housing, gentrification and the mayor.

*By Rachel Monahan
August 9, 2017*

Jo Ann Hardesty doesn't mind being called angry—so long as she wins your vote.

Hardesty, 59, announced Aug. 4 that she's challenging Commissioner Dan Saltzman for his council seat in May 2018. Hardesty, a former state representative, pulled the NAACP of Portland out of mothballs when she became its president in 2015. She lives in the East Portland neighborhood of Gateway—and has no intention of returning west.

What's a vote Saltzman has taken where you would have voted differently?

The great example would be the housing bond that voters passed in November. Saltzman can pat himself on the back for the most expensive affordable housing measure on the planet. He believes we can do the same thing we've always done and get a different result. And so I voted no, and for anybody who asked me I told them I was voting no.

What's your grade for Ted Wheeler so far?

Right now, he's at a C-minus. He's got a lot of really smart lawyers on his staff—however, none of them have deep roots in Portland. And so, you have all these highly educated, certified smart people who have no understanding of the history and the lived experience of people in this city. And that's why he continues to bring forward really bad public policy.

Do you like Commissioner Amanda Fritz's proposal to shift citizen oversight of the police settlement with the Department of Justice?

I was kind of appalled at the prospect of putting the Office of Equity and Human Rights in charge somehow. I was on the committee that created them. But here we are five years later and I have asked for an audit, because I don't know what [director Dante James] does. He talks a good game, but fundamentally, has anything changed in the city of Portland? You look at contracting, and the answer is no. Not no, but hell no.

What do you think of the city's plan to help black families return to North and Northeast Portland?

It's the most ludicrous, arrogant, obnoxious policy imaginable. You're going to build a low-income housing unit in the middle of the most expensive area in Portland, and then you're going to invite people who can no longer afford to eat at the restaurants that are around them or shop at the grocery stores that are around them? But somehow just being in Northeast Portland, which looks absolutely nothing like it did 10 years ago, is somehow going to make people of color feel better? We don't live there anymore, and we won't live there anymore until white people decide that they don't want to live in inner Northeast anymore. Then all of the sudden, we'll be walking back.

You've talked about being angry. Are you ever afraid of being typecast as the angry black woman?

When you've been advocating as long as I have in the city of Portland, and you watch leadership come and go, and you watch outcomes stay exactly the same, you can't help but be angry. In the Pacific Northwest, we bend over backwards to make people comfortable, because heaven forbid anybody's uncomfortable. But change only comes in the uncomfortable places. So yes, I'm angry, but I'm angry enough to actually have solutions to some of these systemic problems.

With a New Chief Chosen, Portland Keeps Grappling Over the Same Police Reforms

The first black woman chief in city history will encounter a fraught history of activist-vs.-union battles.

*By Katie Shepherd
August 9, 2017*

Note: After WW's press deadlines, Portland Mayor Ted Wheeler delayed a City Council vote on a new police oversight body. The vote on the 48-hour rule will go on as scheduled.

Portland is getting a new police chief: Danielle Outlaw, the first black woman ever named to the job. She's coming from Oakland—and entering a city still fighting the same old battles about overseeing cops.

On Aug. 10, the Portland City Council will vote on proposed changes to the city's policing policies. Mayor Ted Wheeler's proposals have outraged police watchdogs and activists, who jammed council chambers last week to object.

Here's what Wheeler put on the menu—and why it's not appetizing to some.

Public oversight

Wheeler wants to create a new public oversight body to replace the Community Oversight Advisory Board, which dissolved last August amid infighting and ineffectuality. The city is required to have such a group to comply with a 2012 settlement with the U.S. Department of Justice, which found a "pattern and practice" of excessive force against people suffering from mental illness.

Wheeler's spokesman Michael Cox says the mayor's proposed new group, the Portland Commission on Community-Engaged Policing, would solve the biggest problem that doomed the

old one—"they couldn't get feedback on their recommendations." But Wheeler's proposed group has drawn criticism for lacking independence from the mayor, closing its meetings to the public, and having too few members.

The 48-hour rule

Last year, then-Mayor Charlie Hales negotiated a new contract with the police union that erased a longtime policy that said officers who fatally shot someone had 48 hours to get their stories straight before speaking to disciplinary investigators. But this summer, the Multnomah County District Attorney's Office said it couldn't prosecute criminal charges against a police officer who had been compelled to talk.

Now Wheeler is trying a work-around: compelling the testimony but keeping it secret from investigators. Most criminal justice reform groups in the city have cheered moves to strike the 48-hour rule. But Wheeler's original proposal would have put the changes on hold until a court determined the city would not be in violation of state law. Activists raised hell over the delay—and Wheeler's office decided to amend the proposal to take effect immediately.

Changes to the city police watchdog

The city's Independent Police Review, which investigates shootings by cops, is also submitting code changes that would allow it to offer recommendations for city action at the end of its reports. But commanding officers in the Portland Police Bureau won't have to abide by IPR's suggestions. Constantin Severe, director of IPR, says it's a small but useful step forward—and it's comparatively uncontroversial.

The Dialogue: Here's What Readers Said About the Major Development Projects That Could Radically Alter Portland

“Come on, admit it. Old Portland sucked.”

*By WW Staff
August 9, 2017*

Here's what readers said about seven major development projects that could radically alter Portland in coming years ("Newer Portland," WW, Aug. 2, 2017).

Debinpdx, via wweek.com: "When places like cities don't grow, they die. It's better to have a responsible plan than to do things halfway or not responsibly. Portland's growth is inevitable. It's just a fact."

Chris Elliott, via wweek.com: "'A mini Silicon Valley.' There is nothing appealing about that goal. Have you been to Silicon Valley? A concrete, unaffordable, overcrowded mess. And the proposed changes to the Ankeny Blocks are heartbreaking, destroying some of the heart of old Portland."

Pdan, in response: "Yes, nothing good has ever come out of Silicon Valley. Definitely not the device and software you used to type this comment."

Deb O'Naire, via wweek.com: "I miss the days when Portland consisted of people who didn't 'need' a big, new skyscraper phallus to feel good about themselves. Portland had better human beings back then. 2010."

Damon, in response: "Come on, admit it. Old Portland sucked. It was seedy, dirty, economically lousy, and perpetually depressed. Some are still stuck in that mindset. What was will never be again. Get over the change that comes with time."

OregonJelly, via wweek.com: "All of these discussions are built upon the unspoken assumption that growth is inherently good. While I am not anti-development, I do have a problem with the idea that another building, another bridge, another road is, in itself, providing any tangible benefit to the residents of a city."

Michael Andersen, in response: "What's the alternative? If we don't accommodate growth, then we (a) get more car traffic from the suburbs instead of more riders for our transit system and (b) displace our poorest residents because rich people show up anyway and are able to bid poorer folks out of the homes that used to be theirs."

Seethinksay, via Reddit: "WW misses the big in promoting the small. The Forest Park portal is too far out. They missed the development of Sandy, Esco, future 82nd, the gentrification of Old Town, outer Northeast gentrification, soon to come to outer Southeast, Barbur and the MAX...on and on."

Guard Lance Boyles, via Facebook: "Just leave the old houses alone and nobody gets hurt."

Naomi Ellis, via Facebook: "Eff you, Willamette Week. How many people on your staff grew up here? It's not just about not liking change. It's about not wanting to be displaced from your home, family and support system."

Nicole Johnson-Jones, via Facebook: "East Portland left in the dust. We're lucky if we get fixed roads. Anything east of 92nd should turn into Gresham, at least then maybe some things would change."

Letters to the editor must include the author's street address and phone number for verification. **Letters must be 250 or fewer words.** Submit to: 2220 NW Quimby St., Portland, OR 97210. Email: mzusman@wweek.com.

The Portland Mercury

A Prominent Oakland Civil Rights Attorney Dishes on Portland's New Police Chief

*By Doug Brown
August 8, 2017*

After nearly two decades with her hometown police department, Oakland Deputy Police Chief **Danielle Outlaw, 41, is headed north to lead the Portland Police Bureau (PPB)**. She'll take over for Chief Mike Marshman—who's using his vacation hours before officially retiring—this fall.

We don't know much about Outlaw yet, so we asked someone who does: prominent **Oakland civil rights attorney John Burris**.

"I've sued the Oakland Police Department (OPD) more times than I can count," Burris tells the *Mercury*. Burris, however, holds Outlaw in high regard, calling her a "progressive thinker about modern policing" who's open to listening to community members.

Burris was one of the attorneys who filed a federal class action suit 17 years ago against the OPD on behalf of 119 people over the "Riders"—a group of officers who planted drugs, falsely made false arrests, and assaulted people, among other corrupt activity.

Oakland settled with litigants for \$11.9 million and entered into a "**negotiated settlement agreement**" with the feds to implement court-ordered changes to the department, similar to Portland's own more recent settlement agreement. Outlaw has been among the police officials tasked with implementing the changes, Burris says, and he's been watching closely.

In more recent news, Burris is the attorney representing a young woman who **accused a number of Oakland and Bay Area cops** of statutory rape. **The accusations and subsequent departmental coverups, of course, have been explosive** and the department has been in turmoil. Outlaw, the attorney says, is clean.

Here's a portion of our chat with Burris about Outlaw.

MERCURY: How do you know Danielle Outlaw?

BURRIS: I'm a civil rights lawyer who's sued the Oakland Police Department more times than I can count. I'm actively involved in a case, **a negotiated settlement agreement involving the 'Oakland Riders,'** which has been going on for a number of years. I've been involved in trying to reform the department, much like they're trying to do up (in Portland).

I have known [Outlaw] in two capacities, one of which she is part of the command staff—chiefs, deputy chiefs, the mayor, sometimes city manager, other political leaders, who meet on a regular basis to determine whether the city is in compliance with the various tasks that are set forth in the negotiated settlement agreement, which is based on this case I'm involved with for a number of years. She's been an active member of that group of command staff in discussing those issues. She for the most part has been responsive in talking about the issues of recruiting and hiring. She's been at the forefront of discussing those issues, working towards putting forth a plan around those issues.

How do you think she'll do as police chief in Portland?

She's a progressive thinker about modern day policing, she's familiar with 21st-century policing issues. I think that she understands the challenges that a police chief has when they have different constituencies to deal with—the community, the political people such as the mayor and city manager, the police department and police officers themselves—all of whom have competing interests.

You have a union that is all "more, more, more" for officers that's not necessarily in line with the chief's overall goals. You have to figure out how to marshal all of those groups together to work on an agenda. I think she's fully capable knowing she understands those issues and I think she's fully capable of bringing them together.

Any new chief will have some resistance—the old guard—and she'll have to deal with that and figure out whether they're going to come along or have to be excised out of the department. It'll be up to her to figure out a reliable command staff—that's part of the job. I think she's capable of that. I've seen her in meetings, and she has what I refer to as "good eyes"—she watches, she listens, and she assesses. Those are skills you need as a chief to make a decision. I don't think she's afraid of making a decision.

Is she a civil rights advocate?

I know she understands civil rights issues clearly. I've had a lot of dialogue with her about these issues, I've been on programs with her where we discuss these issues. I've been on seminars with her where she's been very skillful of bringing new ideas to police officers, command staff, lieutenants, and captains, getting them to appreciate that you have to be more forward thinking. I think she is a proponent of 21st-century policing that was put forth under the Obama administration's Department of Justice, and there are a lot of good ideas in there.

If she implements those ideas, she'll move the department in a very progressive way. Civil rights are very important and she knows them—I've been involved in a lot of those issues here and she knows those issues very clearly. And she appreciates that officers are often put in difficult situations but that there's a standard they have to follow. Transparency and accountability are issues she firmly appreciates and understands. I think she'll be a chief who's progressive in thinking and understanding of these kinds of issues.

And, again, she didn't get caught up in the recent sex abuse and coverup scandal?

She did *not* get caught up in it at all, granted she didn't have that assignment. The department is pretty closed with these issues, and it's still being developed because there's certainly a view that a number of officers actively involved, command people, didn't act professionally in the best interest of the department. But she wasn't part of that at all.

Like you mention, police unions and civil rights/reform advocates almost always have conflicting goals. What do you think her relationship will be with the rank-and-file union here (Portland Police Association)?

That's going to be a challenge, particularly for a chief who comes from the outside. The union people, you can kind of wait them out, put roadblocks up, don't enforce the demands. It is a paramilitary organization, so officers are trained to follow orders.

It's a question about whether or not they don't follow orders—is she in a position to make them pay? You have to set a tone that you are in charge and certain conduct will not be tolerated. There will be people supportive of the new position she has, the problem is you will have some who will not be, and they can make life difficult for her. She's got to figure out how to work through those issues. It won't be the easiest thing because when you're from the outside and/or there was a strong association with the previous chief, you have to overcome that and gain the trust of of the officer—that you're for them. The police chief can't tear them down, but there's the issue of accountability—there's a bad relationship between with the community when there's an unwillingness to hold officers accountable. Those are issues she's got to be strong on: accountability and transparency.

What else should Portlanders know about our new police chief?

She's fair, she's a fair-minded person. That I know. She appreciates community concerns about quality policing, and I think she will effectively communicate with the community, politicians, and hopefully the officers themselves.

The Daily Journal of Commerce

OP-ED: Portland tangles with dormant Commerce Clause in U.S. Constitution

By Edward Sullivan and Carrie Richter
August 8, 2017

Last month, **Oregon's Land Use Board of Appeals** overturned amendments to Portland zoning regulations to prohibit the siting of new fossil fuel terminals as well as the expansion of existing terminals. At least 90 percent of fossil fuels serving the state of Oregon are stored in or transported through the northwest industrial area of Portland, in a moderate to high-risk earthquake liquefaction zone. The ordinance furthers a city policy of “actively oppos(ing) expansion of infrastructure whose primary purpose is transporting or storing fossil fuels in or through Portland or adjacent waterways.”

The effort was intended to serve two objectives: 1, reducing the potential for catastrophic damage resulting from an earthquake; and 2, reducing the city's contribution to greenhouse gas emissions and encouraging transition to cleaner, renewable energy. Although other cities such as Seattle, Oakland and Berkeley have enacted similar limitations, this ordinance prohibits the siting of any new terminals that accommodate storage of more than 2 million gallons of fossil fuel and declares that all existing terminals are conditional uses.

In the case before LUBA, *Columbia Pacific Building Trades Council v. City of Portland*, opponents of the ordinance, largely fossil fuel interests, raised numerous challenges. The single LUBA referee who participated in the decision agreed with a number of the arguments. These included that the decision lacked sufficient findings addressing local plan policies intended to protect and expand industrial use as well as other objections concerning how the prohibition will affect the flow of freight throughout the state under Goal 12 and the Oregon Transportation Plan policies. Ultimately, a clause in the federal constitution led to the ordinance's undoing.

The United States Constitution's Commerce Clause provides that all power to regulate commerce rests with Congress. The dormant clause refers to the implicit reverse proposition that states may not pass legislation that discriminates against or excessively burdens interstate commerce. In other words, the clause prohibits protectionist state policies that favor state citizens or businesses at the expense of noncitizens conducting business within that state.

For example, the United States Supreme Court struck down a state tax on milk products, in conjunction with a subsidy program for in-state dairy farmers, because it discriminated against out-of-state interests. The test is whether the state or local law either on its face or in effect has the “practical effect” of discriminating against interstate commerce. Where it is the latter, the burden shifts to the local government to show that the law is supported by a legitimate local purpose that cannot be served by nondiscriminatory alternatives. Where a law does not discriminate in its purpose or practical effect, the courts take a balancing approach, weighing the state interest against the burden on interstate commerce. LUBA found that the city's amendments failed under both tests.

LUBA found that notwithstanding the facial neutrality of the amendments regarding the origin or destination of fossil fuels, the record showed that the intent was to preclude the construction of fuel terminals that serve interstate or international markets. LUBA pointed out that although

most of Commerce Clause cases involve laws intended to favor local economic interests by restricting competition from out-of-state interests, the Portland ordinance “attempts to shield local interests from the burden of obstacles it places in the path of interstate commerce.”

Although the amendment did not speak to the sources of the fuel, a stated objective was to limit fossil fuel storage to meet local and regional demands. Because existing terminals could adequately serve the current demand, limiting expansion effectively restricted interstate or international commerce in fossil fuels. Ultimately, the problem was that the ordinance did not burden the state and local interests to the same degree that it burdened out-of-state interests.

Finding that the regulation did have a practical effect on interstate commerce, LUBA moved on to consider the legitimacy of the stated interest and whether it could be served by nondiscriminatory alternatives. Here, the city fared better, but not quite good enough. LUBA found that reducing seismic vulnerability and reducing a contribution to climate change were both legitimate local interests, but the amendments did not further those objectives. LUBA did not see how a prohibition on new terminals, that presumably would meet seismic standards and could be located outside of the liquefaction zone, increased the seismic risk, particularly when it allowed existing, unreinforced terminals to remain.

LUBA also pointed out exceptions that allowed small terminals or those that handle non-fossil fuels, such as bio-diesel and ethanol, to remain in the same high-risk seismic areas. With regard to climate change, the amendments lacked any provisions reducing the local consumption of fossil fuels. The city made no findings addressing alternatives.

In conclusion, LUBA “questioned whether the city’s desire to preclude establishment of fossil fuel export terminals reflects a legitimate local interest.” The city is free to tackle “its own greenhouse gas emissions from local consumption of fossil fuels,” even if the efforts impose effects on interstate commerce, but it cannot slow the flow of fuels from other states to consumers in other states or countries to reduce carbon emissions worldwide.

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OPB

Portland Mayor, Commissioner Push For Immediate Interviews In Officer Shootings

*By Amelia Templeton
August 9, 2017*

In a split with the Multnomah County district attorney, two Portland city council members say the city can compel police officers involved in shootings to talk with investigators immediately afterward.

Mayor Ted Wheeler and Commissioner Nick Fish plan to introduce a new ordinance Wednesday that asserts the city’s right to interview officers promptly after deadly shootings. They want to direct the Portland Police Bureau to make it policy.

The compelled statements would not be part of a criminal investigation. They would be used in the administrative process to review whether an officer violated his job training and should be fired or disciplined.

Multnomah County District Attorney Rod Underhill has said that an Oregon court case suggests that officers who are compelled to testify in an internal affairs investigation can demand immunity from criminal prosecution. He wants the police bureau to delay their investigations until he's finished his review. That's counter to a compromise reached between the police officer union and city negotiators last year during contract talks to eliminate a rule that allowed officers to wait at least 48 hours after a deadly force incident before being interviewed by internal affairs.

Portland's City Council heard public testimony on the issue last week. Fish says testimony from the ACLU and the Lawyer's Guild convinced him and the mayor to take a different approach.

The Portland Mercury has published a draft copy of the new ordinance.

It states that the city will keep its internal investigations of officers wholly separate from any criminal investigation.

But the new ordinance also acknowledges that the law on compelled testimony in Oregon isn't clear. And it gives the police bureau the leeway to delay their internal investigations until after any criminal investigation is done, on a case by case basis.

Also in response to last week's public testimony, the mayor has decided to delay a vote on a plan to create a new civilian oversight board for the bureau.