

The Oregonian

Mayor Ted Wheeler says Portland Needs 'Consistency,' Two-Term Mayor

*By Jessica Floum
November 16, 2017*

Portland Mayor Ted Wheeler said this week that the city needs a two-term mayor.

After three straight one-term mayors, "we need some consistency," Wheeler said Tuesday. He made the remarks at a Hillsboro Chamber of Commerce event featuring him and Hillsboro mayor Steve Callaway.

Wheeler arrived via Lyft after the city car he was in ran out of electricity. He informed the audience that if he seemed out of breath or loopy, it was because he was on pain medication after he broke multiple ribs in a biking accident Sunday.

"If I declare I want to run for reelection today, it's totally the drugs," Wheeler joked.

Mayoral spokesman Michael Cox said Wednesday the mayor has not yet considered whether he will run for a second term. But he said Wheeler has learned "the value of stability" during his first year in office.

"Our first year has focused on setting a culture and solidifying an approach to these really challenging issues," Cox said. "To make the kind of progress the city needs to make ... stability can play a positive role in that."

At the Hillsboro event, the mayors discussed what keeps them up at night, what it's like to govern under the Trump administration and what the two leaders can learn from one another's cities.

Callaway said that gun violence and the children's safety and housing security keep him up at night. So do the phone calls from elderly people asking how to pay their property taxes and other calls from residents who hope the mayor can help them.

"I'm humbled by the phone calls I get," Callaway said. "They call because they believe that we can help. ... It's truly an opportunity, but you don't want to let people down."

Wheeler said "basic livability issues" like break-ins, "aggressive panhandling" and harassment on the street keep him up at night. His comments came after Columbia Sportswear President and CEO Tim Boyle said he was considering closing the company's downtown Portland store due to his employees feeling unsafe.

"It's paramount for me to be able to address those issues or I won't be here in another three years, and I know it," Wheeler said.

Portland's last three mayors -- Tom Potter, Sam Adams and Charlies Hales -- all opted not to run for a second term. The city's most recent multi-term mayor, Vera Katz, was elected to three terms ending in 2004.

Speaking to the Hillsboro audience this week, Wheeler called himself "an aggressive advocate" of community policing, which has officers step out of their cars and get to know the community members they serve.

He also noted that the city has increased its spending on homeless shelters and efforts to house the city's homeless more permanently.

Both Wheeler and Callaway said mayors should work together to address regional issues such as housing affordability and transportation.

Wheeler warned that if local government doesn't play an active role in developing and preserving affordable housing, Portland could lose its character.

He said Portland needs to learn from San Francisco where the housing market has driven up prices and forced police officers, service industry workers and teachers far out of the city. As a result, he said, it's almost impossible to open a restaurant in a city known internationally for its food.

"If we cannot create a beachhead, an anchor of affordability in our communities, in our urban areas, we will lose the people who actually make the community what it is," Wheeler said. "You'll end up with a very expensive Disneyland. That's not the future I want for my city."

ACLU Sues Portland Police, Mayor Ted Wheeler over June 4 Protest Tactics

*By Allen Brettman
November 15, 2017*

Jenny Nickolaus, horrified by the stabbing of three people aboard a MAX train during a racist rant a week earlier, showed up at Portland City Hall on June 4 wanting to make her voice heard.

Nickolaus was part of the Portland Stands United Against Hate protest, one of three demonstrations organized to counter a pro-President Trump rally also held downtown that day.

Before that Sunday was over, Portland police would pepper spray Nickolaus, her husband, friends and relatives and then, as an apparent crowd-control technique, herd them and many others into a parking garage stairwell, Nickolaus said Wednesday.

"It was frightening," she said.

Nickolaus appeared at a news conference where the ACLU of Oregon announced it had filed a federal court lawsuit against the city of Portland, Mayor Ted Wheeler, the Portland Police Bureau and others, accusing them of violating free speech rights with what the ACLU contends are overly aggressive tactics.

The ACLU filed the class-action lawsuit on behalf of what it said were 200 to 250 protesters who police illegally corralled and detained – a practice called a "kettle" -- at the protest. The lawsuit names Nickolaus, her husband Chris Whaley and three others as people detained in the kettle.

Wheeler spokesman Michael Cox declined to comment.

Sgt. Chris Burley, spokesman for the Portland Police Bureau, said it does not comment on pending or current litigation.

The pro-Trump "free speech" rally organized by Patriot Prayer founder Joey Gibson of Vancouver and the three counter-protests co-existed peacefully for about four hours, said Mat dos Santos, ACLU-Oregon legal director. Police kept the right-wing demonstrators and the three other groups – Portland Stands United, labor unions and Rose City Antifa -- separated.

"But things took a dangerous turn as police deployed flashbang grenades, chemical irritants and so-called less-lethal bullets at the antifascist gathering," dos Santos said at the news conference held in the ACLU's downtown office.

"While we understand that policing is no easy task, the pattern in Portland is clear. After a rock, stick or liquid is thrown, Portland protests regularly devolve into chaotic scenes involving the indiscriminate use of force and crowd control weapons."

The lawsuit accuses Wheeler, who serves as police commissioner, of ordering the corralling and detaining of protesters as he oversaw operations from the Police Bureau's command center.

Those orders followed officers' orders for people to disperse from Southwest Fourth Avenue and Morrison Street, yet surrounding them to prevent them from leaving the area, the lawsuit says.

When some people tried to leave through a parking garage on Fourth Avenue, police officers shot them with pepper-spray balls, the lawsuit says.

"By that point, if not before, it was clear to (counter-protesters) that they were not free to leave the kettle," the lawsuit says.

The lawsuit also accuses Wheeler of personally ordering police to not allow people to leave the cordoned area until officers photographed them.

Before ordering people to line up and present identification, officers announced to the people that they'd been "detained for purposes of investigation of disorderly conduct," the lawsuit says.

(Two days after the protest, Wheeler sent a letter to then-Police Chief Mike Marshman asking for an explanation of police tactics used during the protests, including questions about people protesting peacefully yet being subject to "crowd control devices.")

The lawsuit seeks a jury trial, unspecified monetary damages and attorneys' fees.

The Portland Tribune

Sources Say: Eudaly Posts Slam Local Media

*By Jim Redden
November 16, 2017*

Plus, Multnomah County's family shelter is turning away families and cousins aren't always a conflict of interest

On Saturday, local freelance reporter Mike Bivins reposted a slew of screen shots on Twitter that Portland city Commissioner Chloe Eudaly had posted on her personal Facebook page. In them, she trashed some local reporters and newspapers by name, and local media in general.

In blunt terms, Eudaly questioned the accuracy of an Oregonian article that ran Friday about plans for an expanded communications office at the Bureau of Development Services, and called the former daily newspaper "irrelevant, so who cares, I guess."

Eudaly's posts also attacked the Pulitzer-Prize-winning Willamette Week, claiming the paper is engaged in a "relentless pursuit of clicks and controversy." Other subjects of her criticism included the BBC, a piece by OPB, various local activists and a neighborhood association leader.

Bivins' tweets went viral, with wags likening Eudaly to President Donald Trump, Lars Larson, and Che Guevara. Eudaly then attacked those who shared her "personal" posts, saying it lacked

class and was unprofessional. She obtained a measure of redress when The Oregonian corrected several misstatements in the BDS article.

Family shelter overcrowded

The day after the Multnomah County Commission voted to sell the never-opened 525-bed Wapato Jail instead of using it as a homeless shelter, news broke that the county-supported family shelter has been seriously overcrowded for two weeks.

The commission voted last Thursday to sell the North Portland facility to Kehoe Northwest Properties for a medical-related distribution facility, over the objections of county Commissioner Loretta Smith, who unsuccessfully argued it should be used as a homeless shelter and service center.

The next day, Willamette Week reported the Human Solutions Family Shelter, which the county helped fund, stopped allowing additional families to stay there roughly two weeks before. The day of the commission vote, 39 families were on a waiting list for admission.

Also last Friday, the Joint Office of Homeless Services announced that Multnomah County Chair Deborah Kafoury and Portland Mayor Ted Wheeler would be calling landlords to ask them to find housing for homeless families in shelters. Kafoury has opposed using Wapato for the homeless.

Nothing to see here

Some of those who opposed Multnomah County's decision to sell the Wapato Jail were surprised to find that a cousin of Chair Deborah Kafoury is an executive at the commercial real estate firm brokering the transaction.

Trevor Kafoury is executive vice president of CBRE's Portland office, which was retained by the county in May to sell the jail and other surplus county properties. Although the office will receive a large commission if the proposed \$10.8 million sale goes through, that is not a conflict of interest that needed to be declared.

According to county communications director Julie Sullivan-Springhetti, Kafoury was not involved in the selection of CBRE, and county policy and Oregon ethics law do not include cousins within the definition of "relative" for declaring potential conflicts unless an elected official or their spouse is providing or receiving support from the cousin.

Deborah Kafoury is a member of a politically active family with many relatives in the area.

Home builder Says He's Had Enough of Portland

By Jim Redden

November 16, 2017

Frustrated by city permit process, Jeff Smith says other cities move much faster and are easier to work with.

Prominent area residential developer Jeff Smith says he has stopped trying to build new homes in Portland.

Smith, founder of J.T. Smith Companies, says the city's construction permitting process takes too long and is too uncertain to guarantee when his projects can even start — and at what cost.

"Portland's process is slower and more complicated than any other city we work in. It's a magnitude of difference," says Smith, whose company does everything from single-family home construction to subdivision development.

"We cannot work in Portland. We cannot predict our costs," Smith says.

Ironically, Smith is the incoming president of the Home Builders Association of Metropolitan Portland. Smith says his decision is strictly a business decision for his company and not connected to his new position with the builders trade group.

Smith says the permit delays are especially frustrating because the Portland City Council has repeatedly declared a housing emergency. The need for more housing was a major topic of discussion when Smith appeared with Oregon House Speaker Tina Kotek at the trade association's annual Housing Forecast on Nov. 3. During the standing-room-only event at the Oregon Convention Center, Kotek and other speakers lamented the shortage of new homes for sale that is driving up all housing costs, including rents for low-income households.

David Austin, public information manager for the Bureau of Development Services, says reforms are underway to speed up the permitting process. Austin says that Commissioner Chloe Eudaly, who is in charge of BDS, has appointed a new director who is committed to improving customer service. Eudaly appointed longtime BDS manager Rebecca Esau to replace former director Paul Scarlett in late October.

"Commissioner Eudaly came in and saw that changes needed to be made. Director Esau is committed to eliminating inefficiencies in the system. We want people to have successful projects," Austin says.

Bureau system blamed

Smith's company has been developing construction sites and building new homes in the region since 1991. He says that doing business in Portland has always been more difficult than in other jurisdictions, especially for land divisions and other projects that require the construction of new streets and the installation of new water and sewer lines. He blames much of that on Portland's fractured permitting process, which requires developers to submit a series of incremental plans to the Bureau of Development Services that must be reviewed separately by other bureaus, including the Bureau of Environmental Services, the Portland Bureau of Transportation, and Portland Fire & Rescue.

"We have to prepare a separate plan for each bureau because they only look at the portion that relates to them, and they all must be approved before we can submit the next set of plans," says Jesse Nemecek, a senior development manager at Smith's company. "Everywhere else, we just have to submit one complete plan that is reviewed. If any changes need to be made, they're made to that plan."

Hassles in eastside project

Smith says the development that finally pushed him over the edge is Hawthorne Meadow, a 71-lot subdivision he has been planning in East Portland. It is planned on 20.8 acres of mostly vacant land bordered by Southeast 152nd and 157th avenues, and between Henderson Way and Barbara Welch Road. Properties west and north of it are already completed subdivisions.

Originally, Smith purchased just 4.4 acres at 152nd and Henderson for a 16-lot subdivision. The company received its land use approval on Jan. 15, 2016, and submitted its 60 percent plan a little more than three months later. It still has not received the last permit needed to begin construction.

During the land use process, Smith learned that another developer had given up trying to subdivide an adjacent 16.4 acres into 55 lots. Smith entered into a contact to purchase that property in January 2016, re-engineered the previous project to current city standards, and submitted a revised 30 percent plan on May 12, 2016. His company has still not received approval to prepare its 60 percent plan.

Nine months ago, Smith expressed his frustrations with the slow process in a Feb. 7, 2017, letter to Mayor Ted Wheeler.

"Developing residential real estate in the city of Portland versus the remainder of the metropolitan cities and counties has proven to be a model of inefficiency as a result of excessive bureaucracy, unrealistic expectations and lack of understanding of how development actually works," Smith wrote before relating experiences up until then with the Hawthorne Meadows projects.

He never received a reply.

Austin at BDS says the permitting process needs to be speeded up, but the Hawthorne Meadows project is moving slowly because it is complicated, requiring multiple easements, a right-of-way extension, and the need to guarantee emergency vehicle access from Southeast 152nd Avenue.

Nemec counters that the project is no more complicated than many of those Smith's company has done in other jurisdictions that haven't taken nearly as long.

"The fact they think it's a complicated project is the problem," Nemec says.

Lost construction window

Smith and Nemec say that even if the city approved all its permits tomorrow, it is now too late for work to begin on the Hawthorne Meadows project this year. The wet weather we are now experiencing usually increases construction costs 10 to 15 percent, all but wiping out the company's profit margin.

"We can't begin work now until next spring," Nemec says.

In Kotek's address to the home builders association, she stressed the need to build housing affordable to households earning 60 percent or less of the area median income. But two other major speakers said that building all kinds of new housing is needed to accommodate the many different people moving to the region, including newcomers with higher incomes who are driving up the cost of the existing supply.

Robert Dietz, chief economist for the National Association of Home Builders, said the shortage of new homes is a national problem. He blamed it on several factors, including a shortage of the kind of buildable lots that Smith has not yet been able to create at Hawthorne Meadows.

Tim Duy, senior director of the Oregon Economic Forum, agreed, noting that construction of new single-family homes in the Portland area is still well below pre-Great Recession levels. According to figures presented by Duy, multifamily housing development has exceeded single-family construction in the region since at least 2000. Single-family home construction is still around half its 2005 peak, while multi-family construction is higher than any time since 2002.

"We need more ownership opportunities," Duy said.

ACLU Oregon Takes on Portland Police Bureau in Class-Action Lawsuit

*By Lyndsey Hewitt
November 15, 2017*

Police bureau photographing IDs and 'kettling' tactic following June 4 rally, protest and march at the heart of lawsuit that names Mayor Ted Wheeler and a number of police officers.

The Portland Police Bureau could have to pay up for its response to a June 4 protest and march downtown Portland where it used a tactic called "kettling" to detain hundreds of people, including a number of local, national and freelance journalists, and two legal observers with the American Civil Liberties Union Oregon.

ACLU Oregon has decided to go to bat against the city in a class-action lawsuit that names the city of Portland, Mayor Ted Wheeler and police officers Dan DiMatteo, Chris Lindsey, Jason Christensen, Michael Pool, Justin Raphael and Kerri Ottoman. The lawsuit also lists up to 50 "John Doe" police officers, meaning their names could be added to the lawsuit in the future.

The five plaintiffs, Josef Haber, Patrick Garrison, Jennifer Nickolaus, Chris Whaley and Jade Sturms, were caught up as police "kettled" marchers during the protest. "For almost an hour, people were seized by defendant PPB officers, with no access to food or bathrooms," according to the 14-page complaint filed Wednesday, Nov. 15, in U.S. District Court.

"The members of the plaintiff class, including the individual named plaintiffs, were allowed to leave only after defendant PPB officers photographed each individual and recorded their identifying information."

ACLU attorneys claimed in the lawsuit that the city and police officers violated the plaintiffs' Constitutional rights against unreasonable search and seizure and equal protection. They also claimed that the "kettling" practice also violated their state constitutional rights by holding them "without individualized reasonable suspicion."

In addition to asking the court to declare the kettling practice unconstitutional, ACLU lawyers are seeking unspecified compensation for the plaintiffs and others in the protest, and legal and court fees.

City officials haven't responded to media requests for comment because of the pending litigation. No court date has been set for the case.

'A minor offense'

The most controversial part of the day's events, which started in a dueling protest between antifa groups at Chapman Square and an alt-right "free speech" rally at Terry Scrunk Plaza, was when officers decided to photograph IDs of everyone in the cordoned off area of about 200 to 250 people, including this reporter and Pamplin Media Group photographer Josh Kulla. Police at the time said that people were being detained pending investigation into disorderly conduct.

They wouldn't let anyone out of the kettle until their IDs were photographed, regardless if journalists had press credentials.

The bureau said they were using the photographs to identify anyone in footage who may have engaged in illegal activity during the protests prior so they could hold them accountable. Police were filming the day's events.

The police bureau later told media that they would destroy the photographs of IDs.

ACLU Oregon issued a statement shortly after protests, saying the strategy was unconstitutional and likely violated state law: "Disorderly conduct is a minor offense and hardly something the police should prioritize at the expense of the constitutional rights of those who were detained."

The June 4 rally and counter protests were held only days after the MAX stabbing when Jeremy Christian, a white supremacist, killed two people and seriously injured another.

Willamette Week

Four Portland Protesters Are Suing the Police Bureau for Trapping Them in the Street After an Anti-Racist Protest

*By Katie Shepherd
November 15, 2017*

Protesters detained on Portland's streets explain why they're suing police.

One of the most fraught days in a year of downtown street protests is about to result in a lawsuit against the Portland Police Bureau.

The American Civil Liberties Union of Oregon will take the unusual step Nov. 15 of suing the bureau in U.S. District Court for police tactics that detained protesters and journalists at street events June 4, days after the racially motivated double slaying on a MAX train in Northeast Portland.

The civil rights group alleges that the city, and police in particular, violated the U.S. Constitution by detaining hundreds of protesters in downtown streets, holding them for more than an hour, photographing them and recording their personal information.

The lawsuit names five plaintiffs and a class of 200 to 250 other, unnamed plaintiffs.

Here's who is suing the city, and why.

Who Was There

Patrick Garrison, 23

Lives in the Portsmouth neighborhood

Why he went: Garrison attended the protest as a legal observer for the ACLU.

Why he's suing: "My main concern is the Portland Police Bureau's inability or unwillingness to de-escalate situations at protests. I have been to a lot of protests as a volunteer legal observer with the ACLU and have seen how the police response to protesters gets out of control and make protests confusing, chaotic and downright dangerous."

Jennifer Nickolaus, 38

Lives in the Foster-Powell neighborhood

Why she went: Nickolaus attended the protest to honor the victims of the MAX train murders, and to show support for the two teenage girls who were the target of racially motivated harassment on the train.

Why she's suing: "The Portland police have repeatedly escorted and protected the alt-right groups while, at the same time, violently quashing the protesters on the left, and infringing on or outright denying us the right to peacefully assemble."

Chris Whaley, 41

Lives in the Foster-Powell neighborhood

Why he went: Whaley attended the protest with his wife, Jennifer Nickolaus, to reject the fascism and racism that he says has been growing in the wake of the 2016 election.

Why he's suing: "It is clear that Portland is ill-equipped to deal with dissenting voices in a fair way. When protests are regularly met by militarized police with stun grenades, pepper spray and rubber bullets, it is a serious threat to our rights under the First Amendment to gather in solidarity or protest and to share ideas."

Jade Sturms, 27

Lives in the Montavilla neighborhood

Why she went: Sturms showed up June 4 to oppose what she viewed as hateful far-right demonstrations in Portland.

Why she's suing: "I want to use my experience to hold our police and our city accountable. Their use of indiscriminate violence and suppression towards thousands of peaceful protesters like myself is illegal, unjust and horrifying to witness firsthand."

The fifth named plaintiff, Josef Haber, was out of the country and unavailable at press time.

What Happened

On June 4, far-right activist group Patriot Prayer held a so-called "Freedom Rally," defying pleas by Mayor Ted Wheeler to allow a raw city to grieve the May 26 killings of Taliesin Myrddin Namkai-Meche and Ricky Best on a MAX train.

Thousands of counterprotesters flooded downtown Portland to condemn the rally, vastly outnumbering the right-wing extremists.

Police officers formed a cordon between the warring sides of the protest. Demonstrators shouted insults and taunts across the police line. Some protesters threw items at the officers, including tampons that had been dyed red.

A few blocks north, in the streets outside Pioneer Place, police surrounded a group of at least 345 people and detained them en masse, a technique called "kettling." The police forced each person caught in the kettle to submit to a photograph and show personal identification, which officers recorded before releasing the protesters one by one.

Portland police arrested 14 people at the protest. In the days that followed, the bureau said it would destroy the records of each protester's identifying information after the investigations related to the demonstration were complete.

Why the ACLU Is Suing

The ACLU says Portland police acted unconstitutionally by detaining protesters without cause, violating their right to be "free from unreasonable seizure and assault under the Fourth and Fourteenth Amendments of the United States Constitution." The lawsuit also alleges a violation of the state constitution's protection against unreasonable seizure.

Portland police spokesman Sgt. Christopher Burley says the bureau does not comment on pending litigation.

The Portland Mercury

Hall Monitor: The Earthquake Exemption

By Dirk VanderHart

November 15, 2017

Should Building Owners Be Able to Duck Renter Relocation Payments While Performing Seismic Upgrades?

Portland's been grappling with two housing crises.

The first is the one you're thinking of. Insufficient housing has produced skyrocketing rents, which have far outstripped Portlanders' earnings. People are being priced out—of the city and of homes altogether.

The second is easier to forget about. When the region experiences the magnitude 9.0 earthquake scientists have warned of, swaths of the city's housing stock could become weaponized rubble. So a string of volunteer committees has been wrestling with how to safeguard Portland's 1,640 "unreinforced masonry" (URM) buildings—brick structures that are especially unsafe in earthquakes.

Now these two crises are butting heads.

Last week, a city-appointed policy commission took a major step in the process of strengthening URM buildings. After years of study and discussion, the committee voted on a set of requirements it believes Portland City Council must force URM buildings to comply with.

Those requirements include making sure chimneys and parapets don't fall onto the street in an earthquake—measures that are already supposed to be required, but haven't been. They also include a second step: bolting a building's floors to its exterior walls to help stave off total collapse.

As we've reported, building owners have chafed at that stronger safeguard, warning untenable costs could force them to sell or demolish their historic buildings. But they've also made a plea that's stirring up renters' rights activists: If they must complete these steps, and in doing so need to displace renters, some want a guarantee they won't need to follow Portland's new mandatory relocation payment law.

The law, passed in February, requires landlords to pay between \$2,900 and \$4,500 if they evict tenants without cause. That could encompass tenants forced to leave because of new earthquake standards.

But URM owners could get a free pass. In its final report to city council, the policy committee will recommend an exemption to the renter relocation law for URM retrofits.

That creates a particularly interesting question for Commissioner Chloe Eudaly. She's the city council's greatest champion of the "relo" law, and is on the verge of convincing her colleagues to make the policy permanent next month. She's also in charge of the Bureau of Development Services, which is taking a hard line that mandating building safety is a priority.

So does Eudaly favor skipping payments to displaced renters if it means safer structures? Her chief of staff, Marshall Runkel, says the question is moot.

"It's interesting that they made that recommendation, but it's essentially meaningless," Runkel told me.

In his thinking, there are far too many questions about how to pay for earthquake upgrades for the city to take meaningful action in the near future. When the city council considers the issue early next year, Runkel expects officials will address chimneys and parapets—the things that are already supposed to be safeguarded—and delay more-meaningful requirements.

If he's right, victims of the city's foremost housing crisis can, perhaps, breathe a bit easier. For potential victims of Portland's looming second crisis, though, it's a different story.

The ACLU Just Filed the First of Several Lawsuits Over Recent Police Protest Tactics

*By Doug Brown
November 15, 2017*

It Hopes to Stop Cops from Using a Controversial “Kettle” Maneuver

The ACLU of Oregon has repeatedly claimed that the Portland Police Bureau's heavy-handed tactics at protests over the last year have been unconstitutional. Now, it's asking a federal jury to agree.

On Wednesday morning, the civil rights group planned to file the first of a handful of lawsuits against the city. All involve controversial strategies the bureau has used to quell the protests that have become commonplace in the Trump era.

The first suit deals with the “kettling” tactic police used on demonstrators at a massive June 4 protest. By surrounding and detaining a large group of protesters and others downtown, and demanding to photograph their IDs, the ACLU believes the PPB violated their constitutional rights.

“They were detained unlawfully, in violation of their Fourth and Fourteenth Amendment rights,” ACLU of Oregon Legal Director Mat dos Santos tells the Mercury. “Portland police indiscriminately detained and arrested between 200 and 250 people without meeting the basic constitutional requirements: reasonable suspicion and probable cause.”

The ACLU's class-action lawsuit has five named plaintiffs—Jenny Nickolaus, Chris Whaley, Josef Haber, Jade Sturms (a freelance illustrator for the Mercury), and ACLU legal observer Patrick Garrison—who are acting on behalf of all who were rounded up on June 4. The City of Portland, Mayor Ted Wheeler, six identified officers, and up to 50 unidentified cops are listed as defendants.

The lawsuit is likely the first legal challenge to the PPB's use of “kettling,” a crowd-control tactic that the bureau first employed in 2014, and has been the subject of repeated controversy ever since.

The incident in question occurred amid one of the more tense protests of Trump's presidency. On June 4, the right-wing group Patriot Prayer held a “free speech” rally in downtown's Terry Schunk Plaza, inspiring a massive police presence and large counter demonstrations.

Police had good reason to be alert. A week before, white supremacist Jeremy Christian had stabbed three men, killing two, after an altercation on a MAX train. Christian had also recently attended a Patriot Prayer rally in Montavilla, where he yelled racial slurs at left-wing protesters and gave the Nazi salute throughout the day.

Patriot Prayer ignored calls to cancel the June 4 rally, and instead hosted racist “alt-right” figures known online as “Based Stickman” and “Baked Alaska.” A couple thousand protesters, including many anti-fascist activists (antifa), showed up.

Jenny Nickolaus, who along with her husband Chris Whaley is one of the five named plaintiffs in the ACLU-led lawsuit, says she demonstrated that day because of the MAX killings.

“I thought it was important that we show up as residents of this city to show solidarity against hate and intolerance,” she told the Mercury.

After hours of tense stand-offs, Portland riot cops deployed flash-bang grenades and less-lethal rounds, sending antifa demonstrators from downtown’s Chapman Square into the streets. In the early afternoon, armored-up cops circled between 200 and 250 protesters, legal observers, and journalists walking along Southwest 4th.

“We were walking on the sidewalk towards the front of the crowd and we saw a large group of riot cops come around the corner running straight at us,” Nickolaus says. “It was pretty frightening and surreal.”

Officers kept much of the crowd for nearly an hour, and wouldn’t let people go until they photographed detainees’ IDs next to their faces. Nickolaus compares the experience to getting “the shakedown from the Gestapo.”

Wheeler’s office, City Attorney Tracy Reeve, and PPB spokesperson Sergeant Chris Burley declined to comment on pending litigation.

Local attorneys Steven Wilker, Sarah Einowski, Alexander Tinker, and Megan Reuther--all from Tonkon Torp--have volunteered to lead the suit for the ACLU, along with in-house attorneys Kelly Simon and dos Santos. The suit seeks an unspecified amount of money from the city for those detained, legal fees, and an official declaration that kettling violates the constitution. That could either curtail its use by the bureau or make it significantly easier to sue the city again, should cops repeat the maneuver.

In order for a kettle to be constitutional, dos Santos says, police would need to have “individualized reasonable suspicion for every person they detained.”

“If the police detain 50 people, but could articulate reasonable suspicion for every one of those 50 people, that might be constitutional,” he says. “[But] the police can rarely, if ever, articulate individualized reasonable suspicion.”

Mike Marshman, who was chief of the PPB on June 4, originally claimed the kettle and photo-taking didn’t happen: “That’s not our practice, we do not do that,” he told OPB’s Think Out Loud the Monday following the incident. But as first reported by the Mercury, Marshman hadn’t even been monitoring the protest from the police command center. He was at home.

More than two weeks later, Marshman responded to questions from Wheeler about the strategy, saying it was necessary to separate protesters from Patriot Prayer supporters and to investigate crimes. Photographing each detainee with their license next to their face, Marshman said, was to “speed up the process,” and help detectives “investigating criminal behavior.”

That reasoning is, in so many words, bullshit, dos Santos says.

“If Portland police could detain, at any moment, hundreds of people on any given block in downtown Portland for an investigation of disorderly conduct, we would all be subject to detention all the time,” he said. “That’s what’s known as a police state, and that’s not the state we live in.”

The litigation comes, coincidentally, during the same month that Captain Larry Graham—the PPB’s incident commander on June 4 and at other major recent protests—boasted to an oversight board that the bureau’s crowd management is nationally respected.

“I know Portland’s got a reputation: ‘Oh, Portland police this and that,’” Graham, the top protest cop, told the Citizen Review Committee on November 1. “[But] nationally, they’ve looked at us and they’ve asked us to do national training for national law enforcement. They’re pretty impressed about how we’re able to adapt and change.”

Others are less impressed.

“The ACLU of Oregon has called on Portland police to change their tactics when policing protests, time and time again,” dos Santos says. “This is the first piece of litigation about the way Portland has policed protests. There will be more to come.”

Uber’s Bitterest City Council Foes Finally Have the Votes for a Crackdown

*By Dirk VanderHart
November 15, 2017*

And They’re Completely Comfortable with Kicking the Company Out of Portland

Roughly two years ago, Amanda Fritz was irate.

As Portland City Council cast the 3-2 vote that would allow companies like Uber into Portland, the city commissioner compared her colleagues to “the Republican-dominated Congress in Washington, DC” and stopped herself from using what she called “an emphatic swear word.” Fritz didn’t think the new regulations council was passing—hammered out after months of tense debate—were strong enough to rein in a business model she believes treats human life callously.

“This is one of the saddest votes I have cast in almost seven years in office,” Fritz said at the time. Now, it looks like she might be primed for a happier vote.

As Uber’s permit with the City of Portland nears expiration, city council is signaling a willingness to more severely regulate it and other so-called transportation network companies (TNCs). And with two avowed enemies on the council in Fritz and Commissioner Nick Fish—and two new councilmembers open to dropping the hammer—Uber’s future in Portland might not be guaranteed.

As Fritz tells the Mercury: “I think it’s in the public interest to make Uber go away.”

The council most recently aired its gripes about Uber in an executive session last week. Those sessions aren’t public and, though members of the media are allowed to attend, can’t be reported on. Following the meeting, though, Fritz, Fish, and Mayor Ted Wheeler’s office all described a conversation about whether TNCs—and particularly Uber—should be more strictly regulated. Officials say the company has been a persistent bad actor.

“If we renew their permit, I think we should put them on probation,” Fish said. He described “broad support” among his colleagues for taking a “harder line” with the ride-share company.

Fritz—who refuses to use TNCs and believes they are dangerous and contribute to traffic congestion—is on board. Both Wheeler and Commissioner Chloe Eudaly have been publicly critical of the company.

Interestingly, though, one voice was left out of the recent discussion. Commissioner Dan Saltzman, who oversees the Portland Bureau of Transportation, didn't attend the executive session. He's the lone remaining member of council to have voted to approve the current regulations, and he's been described as skeptical that wide-ranging new regulations are necessary.

Uber's relationship with the city has always been rocky. In December 2014, the company began operating in Portland without getting the permission of regulators. After about two weeks, it pulled back in the face of a lawsuit, creating space for a heated debate about what regulations TNCs would need to follow. Central to those discussions were questions about parity between taxi companies and TNCs—particularly with regard to insurance policies each would be required to carry.

The fight ended with the December 2015 vote that inspired Fritz's fiery speech—and also established one of the more robust sets of regulations TNCs face anywhere in the country.

It might have ended there if not for a revelation earlier this year. In March, the New York Times reported that Uber had used a software tool called Greyball to foil Portland regulators during its weeks-long incursion in 2014.

The extent of the program's use appears to have been minor. An audit released in April 2017 suggested Uber turned down 29 requests from 17 accounts flagged as possibly belonging to city regulators. There's no evidence the company has used the tool to skirt regulation since reaching an accord with the city.

Still, the Greyball news put a fresh target on Uber, causing officials to subpoena records and launch an investigation. It didn't help that Uber also unsuccessfully pushed a law in Salem this year that would have dismantled the city's regulations.

“The Greyball playbook... and the conduct that they've acknowledged is way, way, way over the top,” Fish tells the Mercury. “It reflected a corporate culture that had utter disregard for the communities they were involved in.”

Both Fish and Fritz point out that London recently revoked Uber's permits, finding that the company was not “fit and proper.”

Exactly what all this amounts to remains to be seen. There's at least some notion of tying regulations to a renewal Uber is expected to seek when its current permit expires on January 31, though it's unclear legislation could be passed in time. And without Saltzman's support, some other councilmember will need to take the lead.

There are also lots of ideas for bolstering regulation.

Fish, still irked that the company wasn't penalized for its Greyball scheme, speaks of a “one strike and you're out” policy that could lead to revocation of Uber's permit. He also wants explicit safeguards against the company using the tool again.

Fritz and Fish also bring up a suggestion that could be more meaningful: They want to require Uber to get the same insurance policies as cabbies.

Currently, TNC drivers have less insurance coverage when they are cruising around but haven't accepted a request for a ride. Once they're en route to a fare or transporting a passenger, their coverage kicks up to the same \$1 million liability coverage taxi drivers have.

“They said if we required them to have proper insurance they would leave,” Fritz says of Uber. Uber’s competitor, Lyft, which city officials are inclined to look on more favorably (and which even Fish will use on occasion), would also be affected.

Other issues that could be brought up: security cameras in TNC vehicles, steeper fines, and a push to treat drivers as employees rather than independent contractors. The city’s cab companies, fierce opponents of the TNC industry, would certainly be supportive.

When asked by the Mercury about potential new regulations, Uber stuck to a perfunctory statement.

“We are unaware of any imminent private for-hire regulatory changes being considered by the city,” spokesperson Nathan Hambley said. “We would expect any new proposals to be thoroughly vetted by the PBOT private for-hire advisory committee.”

Of course, TNCs aren’t the only ones who might bristle at greater regulation. Uber and Lyft are popular in Portland, and credited with dramatically increasing the city’s “private-for-hire” transportation market, which also includes cabs.

Asked about the political fallout of limiting Portlanders’ choices, neither Fish nor Fritz blinked.

“If they choose not to operate in a safe manner,” Fritz says, “then it’s my responsibility to make them go away.”

The Portland Business Journal

Portland's Homeless Crisis: Why Big Ideas from Businesses Are Meeting a Dead End

*By Jon Bell
November 15, 2017*

It seemed like a good idea to Tom Brenneke.

Why not open up Multnomah County’s never-used Wapato Detention Facility and use it not as a jail, but as a 525-bed homeless shelter? The industrial zoning was an issue, funding needed to be lined up and there were legitimate concerns about the lack of public transportation nearby.

Still, Brenneke, head of the development and property management firm Guardian Real Estate Services, and others like real estate investors Barry and Jordan Menashe, believed those obstacles could be overcome and that the building — constructed in 2003 — could provide not only shelter to homeless individuals, but also services to help them transition to more stable lives off the streets.

“You look at that building, and if you took the razor wire away, it’s ideal. The grounds are beautiful, not a bar on the window. My first reaction is, it’s perfect. What are we waiting for?” Brenneke said. “It’s a hell of a lot better than a tent on the Springwater Corridor.”

It didn't happen. Instead, four of Multnomah County's five commissioners voted last week to sell Wapato, which cost \$58 million to build, for \$10.8 million to a developer who plans to use it for medical equipment distribution. Why not use Wapato as a homeless shelter? The commissioners cited zoning and land-use regulations, as well as cost and perception concerns among the issues that sunk the idea and paved the way for the sale.

It was the second time in the span of just over a year that a private-sector idea to help address the region's troubling homeless issue ran headlong into bureaucratic entanglements and pushback. Last year, developer Homer Williams' big idea to turn the city's Terminal 1 property into a temporary homeless shelter met its maker when the city rejected his plan for the site and instead opted to sell it, despite giving Williams the initial thumbs-up.

Those projects collapsed as elected officials, including Portland Mayor Ted Wheeler, have called upon the business community to step up its role in taking on the issue even more than it already has.

"I ask the business community to continue to step up," Wheeler said at a press conference in October held to address the city's progress on the homeless issue over the past year. "We are trying to provide as many on-ramps for people to be able to step in and participate in this as much as possible. The (Portland Business Alliance) has been a great partner, but I think there's a lot of business interests in the community that have yet to be inspired to step forward."

That may be true, but as the Wapato and Terminal 1 examples demonstrate, it's unclear whether local governments will be able to do their part when good ideas emerge.

Homeless population swells

The Portland metro region has seen its homeless population balloon in recent years. The Great Recession hit hard, the opioid epidemic has wrought havoc and Portland's robust economy has made it harder for folks to afford to live here.

According to the 2017 Point in Time count, an annual effort to document homeless individuals in Multnomah County, the number of people experiencing homelessness was up nearly 10 percent from 2015. The number was 4,177 on Feb. 22, the night when volunteers and outreach workers conducted a survey for the most recent count.

That reality became much more visible after former Mayor Charlie Hales implemented his "safe sleep" policy, which allowed people to pitch tents on public property around the city. The move quickly brought the issue into the spotlight and caught many off guard.

"We were very dismayed by that," said Jim Mark, CEO of Melvin Mark Companies and the current chair of the PBA. "That kicked the problem into high gear. You saw huge amounts of crime going on, lots of garbage. There was no effort to make it a safe program. In fact, it made it more dangerous for people on the streets and created issues for businesses."

Hales' policy also came as many downtown businesses were seeing a rise in crime, vandalism and illicit activities. In one incident last March, a lone trespasser broke into the old Police Headquarters Building at Southwest Second Avenue and Southwest Oak Street and caused an estimated \$300,000 in damage, including to the headquarters of digital marketing agency Sq1. Around the same time, fed-up business owners convened a meeting with Portland Commissioner Nick Fish in Old Town Chinatown to vent their concerns over an increase in crime and the city's lackluster response to the homeless crisis.

"We all have immediate pain right now that needs to be addressed," Sarah Shaoul, owner of the boutique Black Wagon on North Mississippi Street, said at the time. "But this is going to explode."

At his October press conference, Wheeler acknowledged that the homeless crisis was growing, but he also pushed back on an investigative report by Portland's KGW that dubbed Portland "Tent City U.S.A." He praised the business community for contributions so far and shared examples of how businesses in other communities are making a difference. In San Francisco, for

instance, he said the private sector has funded pilot programs that provide mobile restrooms and laundry service to the homeless.

“The private sector (in Portland) steps up in a big way,” Wheeler said, “but it is notable that in other communities, the business community supports these kinds of efforts. We don’t have a corporate headquarters here on the scale of Amazon . . . but Amazon is building one of the most modern and most innovative shelters on their campus in Seattle. That kind of corporate support is important if we really are serious about solving this regional issue, this national issue.”

Creative ideas, regulatory hurdles

The Wapato example, however, shows that creative solutions from Portland-area businesses can get squashed when confronted with the regulatory framework that local governments must operate within.

“It’s very discouraging,” Brenneke said. “I’ve been around this town a long time, and there are a lot of well-intentioned people, but I’m very discouraged.”

Wapato certainly wasn't the ideal choice for a homeless shelter. Built in 2003 to house an expected wave of inmates, Wapato instead sat empty and unused as operational funding sources dried up and the increased crime failed to materialize. Because it was built with tax-exempt bonds, the county was not able to sell the facility until it paid those off in October 2016.

Mark, of the PBA, said advocates have been making the case for Wapato as a homeless shelter for at least the past decade or longer. Opponents, however, have long said its industrial zoning, its location — 10 miles or so from the urban core, northeast of the Portland Expo Center — and the costs of running it, not to mention the stigma associated with warehousing people in a jail, rendered it unsuitable. The county estimated that it would cost at least \$1.7 million a year to open the site for other uses.

More recently, the county cited a 2016 opinion from the state Land Use Board of Appeals that prohibits siting homeless shelters on industrial lands as yet another reason Wapato could not be used for a shelter.

Still, folks like Brenneke and the Menashes thought there might be a way. Brenneke even visited the site several times with the likes of the nonprofit Central City Concern and developer Williams.

“In my world,” Brenneke said, “you don’t talk about all the reasons something won’t work. You talk about how it will work.”

Williams had his own plans for a homeless shelter denied in 2016. His grand vision for the city’s Terminal 1 property in Northwest Portland as a huge campus for a shelter and services met a fate similar to Wapato’s. After initially working with the developer and authorizing a lease for a shelter on the property, the city reversed course, saying the Harbor of Hope shelter wouldn’t be able to open in time to meet the city’s needs. Commissioner Nick Fish had also said that the city was obligated to sell the property to get taxpayers the biggest return and to put the dormant property to use creating new jobs.

At the time, Williams said he was “surprised and tremendously disappointed in the city’s decision.” A few months later, the city announced it would be selling the property to Lithia Motors Inc. for \$11.1 million.

Going it alone

Despite the bureaucratic barriers that have derailed projects like Wapato and Terminal 1, there are examples of Portland-area businesses pursuing solutions to address homelessness that don't rely on local governments. And because the issue is so tightly knitted to real estate, the city's developers and property owners are in many ways in the best position to offer solutions.

The Menashes, Brad Malsin and Tom Cody all opened vacant buildings they owned last year for use as temporary shelters. Some of those will be open again this year.

Portland developer Kevin Cavanaugh, of Guerrilla Development, is also working to make an impact. As a U.C. Berkley grad, an ex-member of the Peace Corps and a “tree-hugging guy,” he said he simply hates stepping over people on the sidewalk and hopes two new housing projects will provide some relief to those in need.

One, called the Atomic Orchard Experiment near Northeast 25th Avenue and Northeast Sandy Boulevard, will offer ground-floor retail and 84 loft units, 18 of which will rent for around \$600 a month — far below market rate. What's more: Those affordable units will be reserved for social workers who are working to address the homeless issue.

“It's not about you proving that you're poor, it's about you proving what kind of a citizen you are,” said Cavanaugh, adding that it's legal to discriminate by profession in the landlord business. “Every day you wake up as a social worker, and if every day you wake up and push that boulder farther up that hill, I want to help you and give you a key to a loft that's discounted by almost \$1,000 per month.”

The second project, called Jolene's First Cousin and expected to break ground in January in the Creston Kenilworth Neighborhood, will have a total of six units: three retail spaces, two market rate lofts and one known as a single resident occupancy. The latter will include 11 bedrooms that will share a furnished kitchen, bathrooms, showers and a living area. Rent will be \$425 for the SRO rooms, with half available to the public and half reserved for employees of Street Roots, the nonprofit street newspaper.

Cavanaugh, who envisions SRO projects in every Portland neighborhood, said he will be able to bring both projects to life “without a penny of public subsidy,” which is usually what it takes to offer affordable housing rents. Instead, private investors in the two Guerrilla projects have agreed to a 4 percent return rather than the typical 8 percent that the developer has worked out on other projects. In the case of the Atomic Orchard Experiment, that difference will result in about \$200,000 that will be used to buy down rents on the affordable lofts.

“There are investors who didn't even pause at the idea, who said, ‘Of course, I'm in,’” said Cavanaugh, investors, who he declined to name the investors. “And there are others who said no, but not because they thought it was a bad idea.”

Mat Ellis, founder and CEO of the tech firm Cloudability, was motivated himself to try and help address the homeless situation almost from the first day he came to Portland back in 2010.

"It was dark and raining, and seeing people on the street waving at the traffic lights was hard," he said.

Ellis' company makes software that helps clients manage their spending across cloud infrastructure. Now up to 100 employees, it's been growing fast since its 2011 founding, and has benefitted from the relatively booming business scene. In that sense, according to Ellis, Cloudability has contributed to Portland's lack of affordability, a factor in the growing homeless crisis. It has drawn employees from across the country and it pays them handsomely, which in the bigger picture helps drive up costs.

"We have benefitted, but we've also caused part of the problem," he said. "We have to own our part of that equation."

In addition to testifying in Salem for higher taxes on businesses to help pay for additional homeless services and becoming involved with the new civic-minded chamber Business for a Better Portland, Cloudability has scrapped its annual holiday party over the past several years and instead has used the money to assemble supply kits for the homeless packed with hats, gloves, sleeping bags, coffee shop gift cards and more. This year, more than 30 companies will join Cloudability in doing the same.

Ellis acknowledges that handing out supply kits isn't going to make a huge difference.

"It is, at this moment, a gesture. It doesn't solve any problems," he said. "But it's a start and an awareness."

As that awareness continues to spread, more and more businesses will likely step up to be part of the larger solution that the city, county, nonprofits and other entities are working toward.

"The business community has always been a part of the solution and always will be," said PBA chair Mark. "And as the population continues to grow and the city grows, we all need to come up with answers other than life on the street, because that's not a good way for anyone to live."