

## The Oregonian

# Portland police oversight report: June 4 'kettling' of counter protesters not legally justified

*By Maxine Bernstein  
May 31, 2018*

Portland police should not detain a group of people or make mass arrests unless there's a compelling government interest and a written policy guiding such actions, a police oversight office says in a new report released Thursday.

On June 4, when officers encircled and stopped nearly 400 counter protesters during a Patriot Prayer Rally in downtown Portland, police had neither legal justification or any policies to support such enforcement, according to the Independent Police Review.

The report followed a review of the June 4 police response, prompted by 27 separate citizen complaints, many of which criticized the sweeping police tactics that swept up innocent bystanders. It also comes as a federal lawsuit filed by the American Civil Liberties Union of Oregon and others is pending against the city, the mayor and Portland police, accusing them of violating free speech rights by unlawfully corralling hundreds of protesters without probable cause.

During the June 4 protests, police detained and photographed 389 people and demanded to see and photograph their identification without any intelligence-gathering purpose or plan on how the photos would be used, shared or retained, the report found.

Though then-Chief Mike Marshman said their photos would be purged if they're not part of a criminal investigation, the bureau still had the photos of the people detained and pictures of their IDs, IPR investigators found.

The Independent Police Review recommended the bureau also prohibit detention of legal observers and the media, who were caught up in the crowd police ordered held nearly a year ago. Police also should retain audio recordings of officers' discussions on encrypted radio channels during their response to a large demonstration or protest, the independent oversight staff noted. Those recordings now aren't preserved.

"As a result, Police Bureau managers and other reviewers are deprived of a critical contemporaneous record," the report said. Other police agencies require all radio transmissions of crowd control events be kept, investigators said.

In a written response, the Police Bureau agreed that mass detentions should be pursued only in a "extraordinary circumstances" and at the direction of an incident commander.

The bureau is drafting written guidelines for mass detentions and expects to have a draft for public review by July. Mass arrests can only be carried out if police have probable cause to arrest each individual, and also should only be done at an incident commander's direction, the bureau said.

The bureau further said it would consult with the city attorney's office to develop guidelines on what to do with photos taken of people detained but not arrested.

As for the encrypted radio channels that officers talk on during the course of a demonstration that aren't kept for review, the bureau doesn't believe they should be. Bureau supervisors believe that keeping a recording of the police officers' "sensitive discussions" on their encrypted radio

channels, which include their observations of criminal behavior and tactics, "would be detrimental to the safety of both officers and the public."

The ACLU and five named plaintiffs are seeking a judge's order to classify their case in federal court in Portland as a class-action suit, noting that Portland police held about 353 people, including peaceful protesters, bystanders and media, on Southwest Fourth Avenue, between Morrison and Alder streets, using a tactic called "kettling," for almost an hour. People in the group were only allowed to leave after police photographed them and their ID, an unlawful detention without reasonable suspicion, wrote attorney Steven Wilker, one of the attorneys for the ACLU of Oregon. U.S. Magistrate Judge Paul Papak has taken the request under advisement and will issue a formal ruling.

City attorneys said they don't object to the classification of the suit as a class action. In court documents, Portland police admit that they corralled a throng of marchers last year, took their photos and demanded their IDs, but say they moved in only after people ignored repeated announcements by officers to leave or because they needed to investigate disorderly conduct.

## **You may soon bike or walk through Portland drive-thrus – sometimes**

*By Andrew Theen  
May 30, 2018*

Portland is expected to adopt rules this summer requiring businesses with drive-thru windows to serve customers who arrive on foot or by bicycle, under specific circumstances.

Portland's Planning and Sustainability Commission decided to add language to city rules governing drive-thru facilities. The new rules appear in a May 24 document and state the business "must serve customers using modes other than a vehicle such as pedestrians and bicyclists" if the business is open and "other pedestrian-oriented customer entrances" are unavailable or locked.

Businesses are welcome to go beyond these rules and serve customers on foot or bike whenever. But it's not a requirement.

"We don't regulate whether they allow a cyclist or pedestrian to use their facilities [at all hours]," Troy Doss, a city planner said in an email. "We just regulated if they can have the facility and apply certain development standards to them."

According to city documents, the rules are part of a package intended to reduce drive-thru businesses in Portland's core. "Of special concern are noise from idling cars and voice amplification equipment, lighting and queued traffic interfering with on-site and off-site traffic and pedestrian flow," according to city documents.

Beyond the zoning code change, Portland is also expected to ban new drive-thru businesses throughout the central city, including the Central Eastside and Lloyd District outright. "This prohibition is intended to encourage a high density, pedestrian and transit oriented urban form and discourage lower-density land uses that are dependent upon queuing lanes," city rules say.

The new rules would be effective July 9.

Doss said the prohibition isn't a byproduct of the total number of drive-thrus citywide, rather it's an effort to keep more hazards from the city core.

"Consider a single fast food drive-through on a single block in the Central City," he said. Lines "can go out into the street, blocking the adjacent sidewalk, bike lane, travel lane, and rail transit. Also consider how many curb cuts (an impact on pedestrian safety) might be associated with this single use."

Portland enforces its zoning code based on resident complaints, so no law enforcement officials will be driving or biking around slapping drive-thru offenders with a whopper of a fine.

"If the city did get a complaint," Eric Engstrom, a principal planner at the city said in an email, "usually there would be an attempt to educate and allow the operator to correct the problem."

He added that fines would be "a last resort" and be issued by the Bureau of Development Services.

In 2009, Burgerville changed its rules after a Portland mom went unserved and milkshakeless after riding her bike through the drive-thru window when she was unable to find parking.

Burgerville ultimately changed its policy to allow for cyclists.

BikePortland, which first reported on the zoning proposal this week, said the code language was first introduced into the city's comprehensive plan in 2016 by Planning & Sustainability Commissioner Chris Smith.

Smith told the website the commission didn't expand its provisions for pedestrians and cyclists to all hours of the day in part to make the rules politically palatable. But not all drive-thrus are safe for people who aren't in vehicles either.

"The driving public policy motivation for me was access to the service/business, which can be achieved either by providing access to the drive-thru or by leaving the front door open," Smith told the website.

Jilli Detweiler, executive director of the nonprofit advocacy group The Street Trust, said in a statement her group welcomes the policy shift. "There is no reason customers of retail establishments should be forced to own or use a car and this new policy is a move in the right direction," she said.

## **Willamette Week**

### **It Is Now a Violation of Portland City Code For Drive-Thru Windows to Refuse to Serve People Who Pedal or Walk to the Window**

*By Elise Herron  
May 30, 2018*

**Now you just have to figure out how to eat a burger and drink a milkshake while pedaling.**

As of last week, it is a violation of city code for drive-thru windows to deny service to bikers and people on foot. That's thanks to updated zoning codes in Portland's 2035 Comprehensive Plan that just went into effect.

The BikePortland website first reported on the new code, which states that, "When a drive-through facility is open and other pedestrian-oriented customer entrances to the business are

unavailable or locked, the drive-through facility must serve customers using modes other than a vehicle such as pedestrians and bicyclists."

The new policy outlines that if the lobby or indoor service of the establishment is open, stores are not required to serve people on bikes and on foot via a drive-thru window.

But if the service window is the only thing available, people using all forms of transportation—including their sneakers—must be served.

The updated code applies to any businesses with a drive-thru window, including restaurants, banks, gas stations and pharmacies. It was added to the city plan in 2016 by Planning and Sustainability Commissioner Chris Smith, who told BikePortland at the time that it was unfair for drive thru services to only cater to cars.

"Ideally you can't refuse service based on mode," Smith told BikePortland. "In a city that aims to be less than 30 percent single-occupancy vehicle mode share, that's just not cool."

Smith penned the update to the 2035 plan seven years after local writer and "family biking evangelist" Sarah Gilbert was refused service at the Southeast Portland Burgerville drive-thru while on bike. Gilbert expressed her outrage in a blog post that went viral and got the chain to change its policy.

"Rejection can sink the most confident of us into slow moments of self-doubt," Gilbert wrote about being denied cheeseburgers at the window, "and here I was: already kicking myself for spending most of my cash on fast food, only to be told I wasn't fit for the drive thru."

Non-automobile commuters—bikers, walkers, scooter-ers, roller bladers, hover boarders—are now advised by Smith to file a zoning code complaint if they are denied service at a drive-thru window while the store is otherwise closed.

The upshot? Prepare any day now for Portland drive-thrus to be filled with rental scooters.

## **City Review Reveals Portland Police Did Not Delete Photos of Protesters' IDs, Despite Promises to Do**

*By Katie Shepherd  
May 31, 2018*

**In its response to the review, Portland police made some concessions.**

Despite reassurances that it would do so, the Portland Police Bureau failed to delete nearly 400 photos taken of protesters' IDs during a mass detention at a protest against right-wing groups held on June 4, 2017.

The city's Independent Police Review identifies numerous policy shortcomings in a review of police actions at the protest, which set the city on edge last spring. Officers surrounded and detained 389 people at the demonstration, including reporters for the local and national press.

IPR recommends the bureau adopt new policies governing mass detentions, evidence documentation, partnerships with other law enforcement agencies and photographing demonstrators engaged in protected free speech activities.

Last year, a Vancouver-based protest group called Patriot Prayer organized a "Freedom March" just days after a man who had previously shown up at the group's protests allegedly hurled

Islamophobic insults and killed two men and severely wounded another on a MAX train in Portland.

At least 1,000 counterprotesters surrounded the Patriot Prayer group, including a group of masked antifascists who clashed with lines of riot police.

The June 4 protest drew harsh criticism after observers accused police of treating counterprotesters more harshly than the alt-right patriot group.

IPR's review confirms that Portland police officers admit to treating far-right protesters aligned with Patriot Prayer differently than the antifascists and counterprotesters who showed up to oppose them.

The report published by IPR Thursday morning says an unnamed PPB lieutenant acknowledged the Patriot Prayer members, who were in Chapman Square, received different police treatment. He blamed the discrepancy on Rose City Antifa's lack of "hierarchical structure" saying the lack of a clear leader "made it difficult for [the Police Bureau] to find a single point of contact to convey information."

The review also revealed that then-Police Chief Mike Marshman made misleading statements about the bureau's intent to delete the photos taken of 389 people detained at the event. At the time, Marshman said "any photographs not used in a criminal investigation will be purged pursuant to PPB policy." (Marshman initially denied that police had photographed IDs at all, but quickly backtracked and said the bureau would destroy the photos. That claim was echoed by a police spokesman.)

But the IPR review shows that PPB had no policy on the books governing the retention of digital images and the bureau retained the photos for months even though it was not using them in a criminal investigation.

Community members raised concerns with IPR that the photos may be shared with federal agencies or used as "intelligence gathering" related to the photographed individual's political affiliations.

The photos are now subject to a court protective order and cannot be destroyed.

PPB has been sued for its actions on June 4 by the American Civil Liberties Union of Oregon, which is representing the people temporarily detained when police used a tactic called "kettling".

In its response to the review and IPR's recommendations, Portland police made some concessions and pointed to attempts to draft new policies to address some of the concerns raised.

However, the bureau says the procedure to change its directives is "slow moving."

IPR suggested the bureau record demonstrations with GoPro cameras. PPB says it is already working on a policy to bring body cameras to the force, but that is an effort that has been in the works with few signs of progress since 2014.

The review also recommended that PPB record radio communications that could document the rationale behind detentions and use of force during protests. The bureau disagreed with IPR's assessment and said it would not start recording communications on encrypted radio channels that police use to pass messages during protests because it would be "detrimental to the safety of both officers and the public."

PPB provided no further explanation of why recording the radio channels for records would be a safety risk.

The police bureau says it will update its directives related to mass detentions and the capture and retention of photos of detained people who have not been charged with a crime.

## **The Portland Mercury**

### **Brick By Brick**

*By Kelly Kenoyer*

*May 30, 2018*

#### **Many of Portland’s Historic Brick Buildings—And Their Residents—Won’t Survive an Earthquake. What Can Be Done?**

You’re standing on the corner of West Burnside and Broadway when it happens: The Cascadia Subduction fault line snaps. The fault has been straining underneath the Pacific Ocean for hundreds of years—and now centuries of geologic force are rumbling towards Portland. The ground starts rolling. Cars swerve into nearby buildings as you stumble across the splintering sidewalk. Dust from lurching buildings rises into the air. You grab a telephone pole and watch as bricks rain down from the Stewart Apartments building. The façade of Bailey’s Taproom falls onto the street, crushing several pedestrians below. You hear a tremendous crash as the Burnside Bridge collapses into the Willamette. After five agonizing minutes of the ground shaking, some of the buildings around you have completely collapsed.

Those brick buildings, also known as unreinforced masonry buildings or URMs, make up nine percent of the buildings in Portland—1,650 buildings in total. They’re the most dangerous places to be in or near during an earthquake, as their building materials snap like a piece of chalk during seismic activity—activity that could happen within the next 50 years, according to geologists.

But those buildings have an architectural style that represents a part of Portland history, and many don’t want them erased for the sake of a “someday” disaster. The structures also provide low-cost options to small businesses and renters, something in short supply in a rapidly gentrifying city.

Retrofitting URMs will cost millions. And the high price of retrofits could exacerbate Portland’s housing crisis as landlords pass costs along to renters, or opt to simply tear down the aging buildings. Doing nothing, however, could cost hundreds of lives.

How URMs will be fixed—and who’s going to pay for them—comes down to local elected officials. On June 13, a city council vote could decide the fate of these buildings, and change the character of the city.

#### **Death by Brick**

Portland URMs, or “brickies,” as advocates call them, were primarily built between 1870 and 1960. Amit Kumar, a structural engineer with the Portland Bureau of Development Services (BDS), says they were constructed to be fire resistant, but tend to collapse when the earth shakes. Bricks aren’t stable when exposed to side-to-side motion because the floors, walls, and roof are often not connected to the rest of the building.

Earthquakes in Portland are no idle threat: The looming Cascadia Subduction Zone quake has a 22 to 26 percent chance of popping within the next 50 years. Oregon State University geophysics professor Chris Goldfinger says there are several other faults much closer to Portland—around

Mount Hood, near Hagg Lake west of Portland, and close to the Columbia River dams—but we don't have time estimates for those.

“It's not really planning for a specific earthquake, it's planning for the next earthquake,” Goldfinger says.

Studies by FEMA of 4,457 URMs around the United States during large earthquakes indicate that one-fifth of the URMs in Portland will partially or completely collapse, while five out of six will shower bricks onto the surrounding sidewalks. With 1,650 URMs in Portland, that's a lot of potential devastation.

“Even if 10 percent of the URMs collapse, that's hundreds of people dead,” says Jonna Papaefthimiou, a community resilience manager at the Portland Bureau of Emergency Management (PBEM).

After nearly two years of work with the URM Policy Committee—a group of stakeholders tasked with creating a policy proposal for URMs—PBEM staff brought a policy proposal to Portland City Council to address the future of these dangerous buildings. It divided Portland's URMs—including apartments, churches, offices, community centers, and schools—into four classifications. Class 1 includes “essential facilities” like firehouses and hospitals that will be extremely important after an earthquake. The group's proposal recommends that city council implement the highest possible standard for these buildings so they can withstand any earthquake and be immediately usable afterward. Class 2 includes schools and large assembly places, which PBEM says should be raised to a “damage control standard,” making them safe to exit and easy to repair after a disaster. These standards require intense renovations, like adding an internal metal structure that makes the building's brick walls redundant.

The rest of the buildings fall into classes 3 and 4 and primarily represent the commercial and privately owned apartment buildings that make up 80 percent of URMs. These would be required to undergo extensive reconstruction. Unsurprisingly, most of the owners of these types of buildings are fighting the proposal, and dozens called it an “unfunded mandate” during a May 9 hearing on the URM policy.

Initially, a URM retrofit standards committee recommended that Portland adopt a “prevent collapse” standard for these buildings. “The building suffers severe damage—it's on the verge of collapse, but people can get out,” Kumar explains. This also means invasive modifications need to be performed: floors strengthened and attached to the walls, walls braced and strengthened, and even foundation strengthening in some cases. Those extensive retrofits—plus hazards like asbestos and lead paint that can be health risks during construction—may force tenants to vacate a building for up to a year, because the floors, roof, and walls may need to be ripped out and replaced.

After hearing extensive concerns from building owners about the invasive nature of those procedures, the URM policy committee lowered this standard even further to match San Francisco's “Bolts Plus” requirements: thickening and reinforcing walls and floors, bolting the roof and floors to the walls, and tying down parapets. But building owners fought this option, too—BDS estimates the cost of meeting this standard to be around \$450,000 for a 9,500-square-foot building, and between \$43 and \$65 per square foot.

Upon hearing continuous pushback from building owners concerned with this costly process, the URM Policy committee again lowered the expectations, requiring only that URMs' roofs have their parapets—the bit of a wall that sticks up above the roof—bolted down so they don't fall off, and that walls be bolted to the floors and roof. Such seismic modifications—called “reduce

risk”—could prevent the walls from falling completely out, but the building might still be unusable after an earthquake, and it doesn’t guarantee the safety of occupants. If council adopts it, the policy would be mandatory. Owners would have 10 years to fix the roof (something that has been technically required but unenforced since the 1990s whenever an owner reroofs their building), and 15 years to fix the walls.

PBEM manager Jonna Papaefthimiou says, “The only really new requirement proposed is the walls bolted to floors, which is also only for multi-story buildings; 53 percent of URM buildings are just one-story, so they basically have no new requirements. Just the deadline is new.”

### **Warnings from Christchurch**

Yu Xiao, a sociology professor at Portland State University, fears Portland could be economically decimated after a quake. She points to Christchurch, New Zealand, a city often compared to Portland for its URM-dominated downtown. An earthquake ranking 6.3 on the Richter scale hit Christchurch in 2011, killing 185 people, injuring thousands, and leaving only 14 percent of URMs standing—the Cascadia quake is predicted to be far bigger—over 8.0 on the scale by most estimates. Even seven years after the earthquake, downtown Christchurch is still economically depressed—full of empty lots and areas closed off for demolition.

“There used to be so many businesses [downtown], but no one can wait that long. A lot of them moved out of the area,” Xiao says. Rebuilding Christchurch after the quake cost an estimated \$15 billion.

Xiao fears the same could happen to Portland if the city doesn’t adequately prepare.

“Places can change after a disaster,” she says. “Recovery is not uniform.”

Fixing up buildings could prevent that kind of devastation in Portland, but the costs have to fall on someone. Determining who pays is a matter of deciding whose responsibility it is to maintain these buildings, protect residents, and keep the city safe.

“If the landowner pays for it, they’re going to transfer that cost to the renters, which could lead to gentrification,” says Xiao.

Portland itself, says Xiao, could help provide funds for seismic modifications.

“These older buildings have historic value,” she adds.

In the meantime, she advocates for the city to label URMs as dangerous buildings—a policy that city council will also vote on in June. Such warnings would help protect people and start a conversation, she says.

“The technology is there,” Xiao says. “You can add reinforcement to the URMs to make them safer—but what it comes down to is financing and social factors.”



## The High Cost of Safety

Mandatory retrofits might scare the owners and renters of URM buildings even more than the idea of a destructive earthquake. Kayla Anchell recently bought a condo near Lloyd Center after years of saving, which she picked for its affordability and charm.

“I love the old brick buildings in Portland. I felt like I finally have a piece of Portland now,” she says. But soon after moving in, she found out she lived in a URM.

“I’ve heard that when they’re bracing the floor to the walls, you can’t be in the building for nine to 12 months,” she says. “I can’t afford rent and a mortgage.”

Even if that weren’t a concern, Anchell is worried she can’t afford the seismic enhancements, which require significant upfront capital and which building advocates say can cost up to \$105.50 per square foot, though the city estimates it at \$43 to \$65 per square foot. Anchell says she needs “some kind of financial support so I can afford my mortgage,” and that without it, “I have to sell.”

Anchell worries that the city’s mandate could end up demolishing more buildings than an earthquake.

“It’s just going to further contribute to the gentrification we’re already seeing,” she adds.

At a May 9 hearing on URM policy, Mayor Ted Wheeler added an amendment to the proposal from PBEM staff and the URM policy committee. Where the original proposal requires bolting the floors of a building to its walls along with roof repairs and tying down parapets, Wheeler’s amendment would limit repairs to just the roof, and extended the timeline on the mandatory construction from 10 to 20 years.

Elisabeth Perez, one of Wheeler’s policy advisers, says the change is meant to give building owners and the city some time to get their finances in order. Business owners who attended the hearing demanded assistance from the city with upfront costs, and some suggested a ballot measure to help fund construction.

At the same hearing, Commissioner Nick Fish introduced an amendment to the proposal that would get rid of the mandate for repairs altogether until funding is in place. He suggested tightening the current city code to prevent building owners from avoiding required retrofits when they reroof their buildings—a requirement that’s been around, but unenforced, since 1995.

But is that enough to save lives? Goldfinger isn’t so sure.

“A partial retrofit of a URM building doesn’t sound like it will be effective,” he says. “It winds up being sort of an experiment. It might not do anything at all.”

None of the proposed seismic standards for the 80 percent of URM buildings that fall into class 3 and 4 require wall bracing, something that can prevent them from buckling in an earthquake. And the standards currently before council don’t fit into any known safety standard because they’re too low to guarantee anything—they don’t even match the “Bolts Plus” standards implemented by San Francisco in 1992.

Even with the reduced costs of these lower standards, Anchell suspects that mandatory retrofits could still force the sale and demolition of old Portland.

“I truly believe that 50 percent of these buildings are going to disappear, because who can afford this?” she asks.

The lower level of seismic modifications could still displace residents anywhere from a week to a few months, depending on the needs of the building, according to Kumar. There are currently no proposals for housing those displaced during construction.

### **Affordable Housing at Risk**

Beyond the issue of affordability for private owners, there's an equity issue as well. Of the 7,200 apartments inside Portland's URM, 1,800 are city-funded affordable housing and another 218 are naturally occurring affordable housing.

"The city really has an obligation to protect vulnerable folks by retrofitting," says Jonna Papaefthimiou, the resilience manager at PBEM.

Commissioner Fish agrees. He says reinforcing affordable housing should happen as soon as possible. Bringing those up to code could cost more than \$20 million, though Fish thinks he may have an idea for how to fund it: Build Portland.

Build Portland is a housing bond Wheeler created in 2017 that could create an estimated \$600 million in revenue over the next 20 years. That still doesn't cover the estimated \$1.4 billion it could cost to fix all the URM in Portland, but would easily cover the cost of retrofitting buildings that offer affordable public housing. But what about the hundreds of buildings that are privately owned?

Lisa Bates, an urban studies professor at PSU, says the cost of seismic modifications could hurt the overall affordability of Portland, since older buildings tend to have more affordable rents compared to newer construction. But if the building goes through seismic reconstruction, the added costs may fall to the tenants. And if tenants aren't willing to pay a premium on a vintage apartment, building owners will have to make a calculation.

"I can't charge the rent I need, people don't want to live here anymore, I'll sell it," Bates says of the math. When it comes to the choice between retrofitting or rebuilding, "it might not pencil out" to keep the old brick building.

### **Winners and Losers**

URM owner Angie Even owns one building: a small two-story commercial property on Southeast 44th and Woodstock that houses a bakery, a children's clothing store, and a church office.

"It is absolutely the centerpiece of our main street," Even says. "My husband and I have spent all our time and resources bringing this building up to its best."

She bought the building in the 1990s, but says she didn't know it was a URM until she received a postcard in the mail in 2016 telling her to go to a city meeting about the designation. From research, she knows that fixing the roof alone would cost her \$170,000 to \$200,000—money she doesn't have and that banking institutions won't loan her.

"Creating a system where building owners can find financing and succeed should be the goal. But what's happening now backs building [owners] into corners," Even says.

Even was able to rally building owners ahead of the City Council's May 9 hearing. Out of 53 speakers, about 50 spoke out against the proposed mandate.

"If a mandate goes through and there's no funding, [Woodstock] will be decimated," Even says. She also worries that mandating seismic modifications will force building owners to sell.

“They’re going to lose to the developer,” she says. “Building owners can be part of the solution, but we have to have a seat at the table.”

Not all business owners have been resistant to change. Walter McMonies is one of Portland’s few building owners who voluntarily retrofitted his building—and to a life safety standard, far beyond what the city may soon require. He says he did so because of his love of old buildings and his desire to protect them—and their tenants.

“My daughter lives in a URM, and I care about her and want to make sure she and other tenants aren’t killed in an earthquake,” McMonies says.

He also could afford it: With a portfolio of several major buildings in the central city, McMonies had financial flexibility that other building owners don’t.

“We had a little money we could redirect from one building to the other,” McMonies says, adding that retrofitting also keeps his insurance costs down.

The building he renovated, Trinity Place, is in a designated historic district, which comes with several benefits. According to PBEM, the majority of URM in Portland are old enough to potentially receive historic designation. For McMonies, that meant getting a tax credit from the federal government worth 20 percent of the cost of his reconstruction—which cost over \$1 million. While his taxes are also kept lower because of tax abatement on historic buildings, he still had to take out a second mortgage to finance the construction.

“You can’t raise rents any higher than tenants are willing to pay, and we’re in a pretty competitive market,” he adds. And the market doesn’t seem to pay attention to URM designation.

“Most residential tenants don’t differentiate a seismically retrofitted building from a non-seismically retrofitted building,” McMonies says.

### **FAR-Out Deals**

Even’s building isn’t currently designated as historic. If she did get it designated, she might be able to get the 20 percent federal tax credit, but it wouldn’t help her with up-front costs. And since her building isn’t in a historic district, it’s not eligible for certain programs.

Brandon Spencer-Hartle, Portland’s historic resources program manager, says historic designation provides financial incentives in exchange for building owners maintaining their important old buildings. One of the financial tools available is called floor area ratio transfer (FAR transfer). It operates on the fact that Portland zoning laws limit the amount of floor space developers are allowed to build depending on the size of the lot.

For example, a 1:1 FAR would allow a developer to build a one-story building on the entirety of a lot—or a two-story building that takes up half the lot. Certain zones in the city have significantly higher FAR, especially close to downtown.

“In most of our zones that include URM buildings, you can sell your unused FAR building rights,” says Spencer-Hartle.

Most URM don’t take up all the FAR they are permitted, and with that large building potential, the land they’re on becomes very valuable to developers. Building owners can sell those rights to developers of nearby properties and use the money to fix up their buildings.

In these cases, developers get taller buildings, and URM owners get cash to fund their construction: a win-win for the overall housing stock in the city. FAR transfers can help buildings like McMonies’ Trinity Place, which gets an added bonus to its FAR transfer because

of its location in the central city. But the tool isn't available to someone like Even, whose building has used most of its FAR and isn't in an eligible district.

These transfers are limited to designated historic buildings to prevent owners from selling FAR rights and then scrapping the building.

"We're trying to make clear that we're preserving that building for generations to come," Spencer-Hartle says.

And allowing every URM with or without historic designation to sell FAR could flood the market and drive down prices, he says.

Another possible tool in Oregon is Senate Bill 311, which exempts older building owners from property taxes for up to 15 years if they install retrofits. It's a great program for owners with very valuable buildings, but is less useful for those with lower taxes in less desirable areas. And it still doesn't provide up-front capital to pay contractors.

Some historic buildings don't benefit from those kinds of tax incentives because of their nonprofit status—churches, for example. Those that take on historic designation may be allowed to have unconventional uses like cafes, brewpubs, or event spaces; such is the case with Revolution Hall.

"We may be able to give those buildings a leg up with the private market," Spencer-Hartle says.

### **Following Missouri's Lead**

Oregon has a very limited toolbox compared to other states. Thirty-five states have a rehabilitation tax credit that matches the federal credit—sometimes allowing building owners to recoup 50 percent or more of their costs. Such a state tax credit could make a huge difference for owners of URMs.

Missouri is one of the states providing a tax credit for historic buildings that stacks with the federal tax credit—up to 25 percent of project costs can be covered by the state, which can be added to the 20 percent covered by the feds.

According to St. Louis Cultural Resources Director Dan Krasnoff, the city of St. Louis also offers incentives. "We do have tax abatement and tax increment financing that's done on the local level," he says. Tax abatement means eligible buildings may not have to pay additional taxes after rehabilitation, while tax increment financing subsidizes investments in those buildings by diverting future tax revenue into those projects.

The biggest problem facing small-time URM owners is a lack of upfront capital. But there is one tool available that could provide some of that cash: PropertyFit. It's a collaborative project between Multnomah County, Prosper Portland, and Energy Trust of Oregon that gives loans to property owners who are doing work on their buildings for a public benefit, like reducing carbon emissions or increasing seismic resiliency.

There are a few other ideas floating around, too. Wheeler advisor Perez says the city's resolution also directs staff to create a pool of funds for a loan program benefitting building owners in need of cash. It's similar to a \$350 million bond that San Francisco voters passed in 1994 to provide low-cost loans to URM owners retrofitting their buildings.

Still, there isn't anything in place for those who would be displaced by construction, like condo owner Kayla Anchell.

"I haven't heard a solution so far that works for middle to low income people," she says. "It's just solutions for people who don't need much financial assistance."

## Notes from San Francisco, Letters from Fukushima

When San Francisco passed its 1992 ordinance that required all URMs to meet “Bolts Plus” standard, the buildings were put into four risk levels based on size, location, and soil quality. Risk level 1 buildings, those taller than three stories on poor soil, were required to complete retrofits by mid-1996—giving those owners just four years to fix up their buildings. Other risk levels had rolling deadlines—1998, 2004, and 2006 respectively.

Of 1,987 URMs in San Francisco, 1,829 were completed by 2008—a 92 percent compliance rate. Eight percent (or 158 buildings) were demolished and not retrofitted, while a further 158 small, unoccupied buildings remained in need of repairs in 2008.

William Strawn, a manager in San Francisco’s Department of Building Inspection, says the program “is almost 100 percent complete by now.” Most of those buildings were able to get private loans at a lower rate than the 2.5 percent charged by the city from its bond measure—only \$70 million out of the \$350 million has been used to date.

The standards San Francisco implemented are much higher than those being considered by Portland City Council: The lowest standard in San Francisco’s 1992 ordinance was “Bolts Plus”, which Wheeler considered too high and costly for building owners.

Geologist Chris Goldfinger hopes Portland City Council “follows the lead of San Francisco.” While it may cause some economic pain now, “I come down on the side of public safety,” he says. “If any of those buildings are still around in the next earthquake, people are going to get hurt in them for sure.”

We’re relying on elected officials to make a hard choice. But the cost of waffling and waiting too long could be catastrophic.

That’s something Japan learned the hard way in 2011, Goldfinger says. Geologists came to the Japanese government in 2010 with new data showing Japan’s impending earthquake could be much larger than anticipated, so preparing the Fukushima nuclear plant was of the utmost importance. Officials decided against doing so due to retrofit costs. The Fukushima disaster happened just a year later.

Portland doesn’t have a nuclear plant, but it does have the opportunity to learn from the events in both Fukushima and Christchurch. In the meantime, Goldfinger worries that it’s too easy to “talk yourself into not doing anything at all, because that’s the cheapest option.

“When economic developers and politicians get involved, they try to negotiate the standard down to something much smaller than it needs to be,” Goldfinger says. “You really can’t negotiate with nature.”

## OPB

### Portland Wants Washington Court to Block Defense Attorney's Public Record Request

*By Amelia Templeton*

*May 30, 2018*

Attorneys with the city of Portland are preparing to go to court in Washington state to try to stop a defense attorney from obtaining a 26-year-old police report in a child sex abuse case.

It's an unusual case because the record Portland leaders want to withhold belongs to another jurisdiction: the Clark County Sheriff's Department.

The record in question is a Portland Police investigation of child sex abuse that took place in 1992. The victim was under 12. The perpetrator, James Clark, pleaded no contest to attempted sex abuse in the third degree.

The Clark County sheriff's office received a copy of the Portland Police investigation of the incident when Clark registered there as a sex offender.

Clark is homeless and recently began camping in Portland. In 2017, he was arrested and charged with failing to register as a sex offender in Oregon, a felony.

In April, his public defender requested a copy of his sex offender registration file from the sheriff in Washington. Clark County notified the Portland Police Bureau that it was preparing to release the file, which included the bureau's 1992 investigation.

Washington's public records law strongly favors disclosure of all public records. In cases involving child sex abuse, the victim's name, photo and any other identifying details, including family relationships, are redacted. Clark County is planning to release the file June 13.

"The narrative in a police report is not protected, just because it's an investigation of a crime involving a sex act," said Bill Richardson, a deputy prosecutor for Clark County. "In the state of Washington, the people have the right to oversee how they are governed. In this context, that means they have a right to oversee the process of the investigation of the crime, to see if it was done correctly."

According to Richardson, Washington's law applies to records generated by other jurisdictions. "Nothing in the law addresses record generated by another state," he said.

But on Wednesday, the Portland City Council directed their attorney to seek a court injunction to stop Clark County from releasing the Portland investigation file on the basis of Oregon's public records law.

In Oregon, child abuse investigation records are exempt from public disclosure in most circumstances. City attorney Tracy Reeve said the city will argue that the Washington court should follow Oregon's standard in this case.

"We believe that with the events having occurred in Oregon, the record being a PPB record and the victim being located here, that Oregon has the predominant interest," she said.

Reeve said a victim's advocate with the Portland Police Bureau contacted the victim in the case, and the victim does not want the police report released.

Members of the City Council argued that fighting the release of the records is necessary to protect the victim, now in their 30s.

"We don't do nearly enough to support sexual assault victims to begin with. This could be very devastating to this individual," said Commissioner Chloe Eudaly.

During her presentation to the council, the city attorney misstated a significant fact in the case. Asked by Commissioner Dan Saltzman who had requested the record from Clark County, Reeve said she believed it was the perpetrator.

That detail appeared to disturb council members.

"That's even worse," said Commissioner Amanda Fritz.

In fact, Christian Eickelberg, an attorney with Metropolitan Public Defender law office, had requested the file. Eickelberg is defending Clark against charges that he failed to register as a sex offender in Oregon.

Eickelberg declined to comment on why he asked for the record, but said he had no intention of publishing the information in it.

“It’s part of an attorney-client work product that I wouldn’t disclose,” he said.

Eickelberg said Portland city attorneys had not notified him they intend to seek an injunction to block his record request in another state.

“This is surprising and baffling to me,” he said Wednesday.