

The Oregonian

In Portland's Old Town Chinatown, a \$57 Million Rebirth Promise Broken

*By Gordon Friedman
October 17, 2018*

It was supposed to be a new beginning for one of the grittiest neighborhoods in Portland.

The City Council, led by then-Mayor Charlie Hales, adopted an ambitious plan in 2014 to reinvent Old Town Chinatown. The “action plan” called for repairing the neighborhood’s tumbledown buildings and crumbling façades. It promised hundreds of new jobs and affordable apartments.

The plan, backed with a \$57 million budget, said crime would be tamped down in the neighborhood, known mostly for its soup kitchens and raucous nightclubs.

Hales promised to deliver. “We will, I believe, look back on this and say, ‘That paid off,’” he said at the time.

But four years later, almost none of that has happened.

Anyone who strolls Old Town Chinatown can witness the results. Many buildings have sunk further into disrepair or are boarded up. The streets remain crime-ridden. Housing is hard to come by, even as a construction upsurge has erupted in nearby neighborhoods.

City officials knew their 21-page action plan was a gamble, given previous failed attempts to revitalize the historic neighborhood with its distinctive red Chinese entry gate. They rolled the dice anyway.

To determine the impact of the action plan, The Oregonian/OregonLive reviewed council documents, budgets and reports from Prosper Portland, the city economic development agency. A reporter interviewed the mayor and city officials, real estate developers and neighborhood leaders and spent time in the Old Town Chinatown neighborhood.

The newsroom’s findings show every major goal under the action plan has gone unfulfilled as the five-year project enters its final year. Subsidies that city commissioners agonized over, fearing they were too generous, went ignored by developers. A promised \$5.5 million initiative for seismic retrofits was never started. Prosper Portland has delivered on neither its promise of 500 jobs nor that of 500 affordable apartments. More than \$50 million budgeted for the revitalization project remains unspent.

Inaction was exactly what Hales wanted to avoid. “I don’t want to walk around this district two years from now in the real estate boom that we’re in and see the conditions that I see there now,” he said in 2014.

Hales went on: “I don’t want Howard Weiner and the other leaders of this neighborhood to come back in front of us and say, ‘Why didn’t you implement our plan?’”

Weiner, who has owned a skate shop in Old Town Chinatown for 30 years and received accolades for community service, said in an interview he was hopeful the action plan would mark a watershed for the neighborhood. But not anymore. “What we have is unrealized dreams and aspirations,” he said.

When contacted and told this story would not paint a flattering picture of action plan results, Hales said in an email, “I think you might have just cemented my conviction that talking to The Oregonian is still a waste of time! Are you even partially aware of what was accomplished in my 10 years as commissioner and four years as mayor?”

As Hales predicted might happen, neighborhood leaders did return to City Hall, asking why the action plan was not carried out. Only this time, it was the new mayor’s problem.

Helen Ying, the neighborhood association president, said she has met twice about the action plan with the current mayor, Ted Wheeler, asking him to extend it another five years. Wheeler seemed open to the idea, Ying said.

Wheeler in a recent interview lamented that he “inherited” the action plan and others like it “where people made big promises and delivered next to nothing.” The mayor said he intends to identify “where we can go in new and interesting ways” instead of trying to “resuscitate agreements that have effectively not worked out.”

At the time the plan passed, Patrick Quinton directed Prosper Portland and Scott Andrews chaired its board. Quinton, who left the job in mid-2016 and eventually started a housing company, did not return voicemails seeking comment.

Andrews said he still has hope for Old Town Chinatown. Spending right is more important than spending fast, he said. “I just don’t think the right opportunities have come,” he said. “I think they will.”

Underspending is normally not a problem for Portland’s government, which sometimes faces criticism for perceptions of wasteful spending and largesse. Yet instead of spending the \$57 million budgeted for the Old Town Chinatown plan, it spent just \$3.6 million, city accounting records show. The largest single beneficiary: the Lan Su Chinese Garden, which received \$710,000 in grants, mostly to repair its leaky manmade lake.

Prosper Portland officials said the low spending is not a sign of failure.

The agency is more concerned with its “measures of success” than spending, said Lisa Abauf, the agency development manager since 2009. “There’s no measure of success in the action plan that says if you spend \$57 million you’re successful,” she said.

Yet the agency’s own measures of success do list specific outcomes. “500 new middle-income housing units constructed or under construction,” reads one. “500 new living wage jobs in district,” reads another.

Abauf said her agency has delivered “tremendous success” on parts of the five-year plan, such as its requirement to support the neighborhood association and local museums. She questioned if building apartments and creating jobs is a more pressing objective for Old Town Chinatown leaders than unofficial benchmarks like “working together” and “the neighborhood coming together.”

It’s unclear Prosper Portland even deserves credit for bringing about the biggest single expenditure made under the plan. Its \$710,000 grant to the Chinese Garden paid for a new liner for Lake Zither, the garden’s 9,000-square-foot pond, which had been leaking 10 million gallons of water a year.

Portland’s parks department originally requested money to fund the repairs. But then-Mayor Hales changed it to a Prosper Portland expense, records show. That change happened in 2015, the year after the Old Town Chinatown initiative passed, allowing city officials to attribute at least one big project to their action plan.

Dozens of businesses did accept and use small grants and special loans from the menu of subsidies offered by Prosper Portland under the action plan. Grants of \$45,000 helped open the popular Pine Street Market. Grants of \$239,000 allowed the Portland Chinatown Museum to renovate its exhibit space.

And a loan of \$690,000, the largest made under the action plan, helped the owners of the Society Hotel renovate their once-rundown and vacant building on Northwest Third Avenue into a boutique hostel-style hotel with a chic ground-floor coffee shop. But the rest of the block where the hotel sits is pure blight. And the city's bigger, bolder dream of a revitalized neighborhood rivaling the Pearl District remains far out of reach.

Sarah Harpole, a Prosper Portland project manager, said the 500 jobs benchmark will be met when the Multnomah County Health Department opens its new headquarters in the neighborhood, bringing along 350 employees.

But those are not new jobs; they have merely been relocated from downtown. And the Health Department move has been in the works since at least 2008, well before the action plan was conceived.

To subsidize apartment construction, Prosper Portland made a special offer to developers: Building fees would be waived if they agreed to construct housing and rent some units at prices affordable for the average family. The city was prepared to lose \$7 million by forgoing the fees.

But only one builder applied for the incentive. Just 18 affordable units have opened because of it. Twenty-seven more are under construction.

Interviews suggest developers did not clamor for the fee waiver because it was not a big enough incentive and because building in Old Town Chinatown is more complicated than in other neighborhoods. Another vexing factor, developers said, is the homelessness, open drug use and crime in the neighborhood and the perception of danger and dirtiness that accompanies it.

The fee waiver is significant, but not on its own enough to make a project feasible in a neighborhood with an image problem and low rents, said Jill Sherman, partner at developer Gerding Edlen. Her firm was the only one to snap up waivers under the neighborhood plan, records show.

Though the waiver program was not a smashing success, at least some units were built where there previously were none, Sherman said. "It's something," she said.

The two historic districts overlaying Old Town Chinatown make area building permits complex, said Peter Englander, a neighborhood association board member and former Prosper Portland manager. The neighborhood also sits atop an earthquake hazard zone that increases the cost of construction, he said.

Tom Brenneke, a prominent developer, said "transient activity" is perhaps the foremost deterrent for developers eyeing Old Town Chinatown. Andrews, the former development board chairman, said a homeless camp that for years abutted the Chinatown gate discouraged builders from doing business in the neighborhood.

For Brenneke, who owns key development-ready land in Chinatown, another stumbling block for the action plan may be Prosper Portland's inadequate outreach to developers. Brenneke said he had not heard of the plan until being contacted for this story, adding, "That says something to me."

"I'm a little caught off guard that we've had a formal action plan," Brenneke said. "As a developer, you can bet I'm all-in on incentives."

A major tenet of the program was \$5.5 million designated to pay for earthquake retrofits to Old Town Chinatown buildings. Abauf, the Prosper Portland manager, said the agency did not create the program because an existing incentive helps fund seismic upgrades in development projects.

Abauf said the \$5.5 million was a “reservation of funds” rather than a program. Yet the action plan said Prosper Portland was to “invest \$5.5M in the development and implementation of a seismic program” in the neighborhood.

Prosper Portland has put most of the remaining project budget, more than \$50 million, in a fund it labeled “Investment & Parking.” Abauf said she cannot say exactly what the money may pay for, since it is to be allocated as Prosper Portland becomes aware of development opportunities. She said some of the money could pay for construction of parking spaces if neighborhood leaders identify that as a priority.

Brenneke, the developer, said Prosper Portland has attempted to negotiate a deal with him that would give it ownership of the parking spaces at a future development on a full block he owns in Chinatown. The property now serves as a surface parking lot, but it recently was approved for redevelopment into a mixed-use tower.

Brenneke said he is open to the idea of the city owning parking on the site. But he said he and city negotiators are “a mile away on price.”

Although it is unclear what precisely the Investment & Parking fund will pay for, Prosper Portland has indicated it will continue spending the fund long after the action plan expires next year. A resolution passed in July by the development commission sets aside \$23 million for the Old Town Chinatown project in 2027.

Ying, the neighborhood association president, is trying to stay positive. Griping about city failings won’t help future efforts, she said. But she also recalled her testimony to the council four years ago, when she noted it would take “leadership, vision and funding” plus “political will” from City Hall to get the action plan accomplished.

“Everything I said then is true now,” Ying said. She leaned in, arms outstretched, as if to suggest annoyance. “Am I frustrated? Yeah. I’m frustrated.”

Cache of Guns? Police Clarify 3 Rifles in Cases Found atop Downtown Garage Before Protest

*By Maxine Bernstein
October 16, 2018*

A day after Mayor Ted Wheeler called out right-wing group Patriot Prayer for bringing a cache of guns to a downtown rooftop before a summer protest, the mayor and police clarified significant details about the discovery and response.

Police said they found four people on top of a parking garage at Southwest First Avenue and Jefferson Street on Aug. 4 with three rifles, all in cases.

The men let a sergeant inspect the rifles. None of the rifles was loaded. One was disassembled. All the men had concealed weapons permits, according to police.

The men told police they planned to stay at the garage and “act as a quick extraction team” in case someone from their group was injured during the demonstration.

A sergeant instructed the men to store the rifles in a locked container in the back of one of their pickups and place any ammunition in a different part of the truck, and they complied. Police made no arrests.

No laws were broken and there was no imminent danger to the public, police said Tuesday.

The follow-up details contrast with a "cache of guns" positioned on a garage rooftop that the mayor, who serves as police commissioner, referenced in a Monday news conference.

Patriot Prayer leader Joey Gibson of Vancouver, who had publicly encouraged supporters to bring firearms to the rally, called Wheeler a liar by suggesting his group had posted snipers looking down over the demonstration site.

"I'm slightly crazy but I'm not that crazy," he said in a Facebook Live video Monday night.

In an interview Tuesday, Gibson added he believed the mayor was attempting to further his political agenda by maligning Patriot Prayer supporters.

Wheeler's reference to the gun cache came as he announced his push for a new city ordinance to restrict the length, location and manner of protests by groups who have a history of violent disturbances in the city. It followed another bloody clash between Patriot Prayer supporters and self-described anti-fascists in downtown Saturday night.

While the mayor dubbed his proposed ordinance an emergency that he hoped would be adopted soon, fellow commissioners expressed concern that they learned of Wheeler's idea only a couple of hours before his news conference and had a host of legal and policy questions.

"This needs to be discussed with a broader group of stakeholders," Commissioner Nick Fish said.

The proposal also prompted rebukes from the American Civil Liberties Union of Oregon and a march called "Shame on Ted Wheeler" planned for this coming Saturday night to the mayor's home. It's being organized by a new group called "Cascadians Against Tyranny," which accuses the mayor's proposed ordinance of targeting left-wing demonstrators who have come to blows with Patriot Prayer followers in the streets.

The group also says the ordinance is too vague, curtails demonstrators' First Amendment free speech and protest rights and gives the city too much leeway "to shut down any protest anytime they want."

The ordinance would allow Wheeler to restrict protests if public safety "is being threatened or will be threatened" or if there is "a substantial likelihood of violence at the planned demonstrations."

A draft released to the media cites seven examples of protests that have turned violent or caused property damage in the city, between April 2017 and last Saturday.

Before the start of the Aug. 4 demonstrations, according to the ordinance, "police discovered individuals who had positioned themselves on a rooftop parking structure in downtown Portland with a cache of firearms."

Police clarified that they spotted about 20 to 30 people on the west side of the parking garage. Some were putting on padded clothing and helmets and had make-shift weapons, including sticks and signs with sticks. Police reminded them that they couldn't bring any weapons to the park where they planned to gather. Some in the group returned the gear to their cars, while others kept them and said they wouldn't enter the park.

The four found with three rifles were on the northeast side of the top floor of the garage. Because the four kept the rifles in a pickup and broke no laws, officers didn't write a report, according to police.

Police Chief Danielle Outlaw said Tuesday of the mayor's news conference remarks, "We didn't come up with his talking points."

The police bureau felt it was important to clarify exactly what police found on Aug. 4 atop the parking garage downtown, she said. The three unloaded rifles were locked away as a sergeant requested, and nothing unlawful occurred, and that's why the specific encounter wasn't shared with the mayor's office that day, she said.

But Outlaw said whatever misunderstanding resulted, she hopes it doesn't detract from the point of Wheeler's news conference and support for his proposed ordinance. She said it will give the police an extra tool to use "on the front end" to help keep city demonstrations safe.

"We support what he's trying to do," Outlaw said.

Officer Daryl Turner, president of the Portland Police Association, said the union is in favor of the ordinance, "as long as it's supported by accurate information." Turner said he's concerned that if the wording of the ordinance isn't accurate, then other commissioners might not support it.

Michael Cox, the mayor's chief of staff, said the mayor was made aware both before and after the demonstrations that guns were present and of officers' efforts to manage them. But the mayor didn't know the specifics of the Aug. 4 encounter until this week, Cox said.

"This galvanized his support for this ordinance," Cox said. "When we know two or more groups are coming to Portland with the intent to engage in violence we should have tools to prepare in advance in order to keep the peace."

The proposed ordinance likely would face legal challenges, considering a 1999 ruling by the 9th U.S. Circuit Court of Appeals that found "First Amendment activity may not be banned simply because similar activity led to or involved instances of violence."

During a news conference Tuesday in Vancouver, Gibson called for an end to protesters and counter-protesters fighting in the streets of Portland and instead urged people to unite to gather 35,000 signatures to begin a process of recalling Wheeler.

He described the proposed ordinance as an unconstitutional "attack on free speech" and pledged to help get people involved in collecting signatures though he said he wouldn't lead the effort himself because it "would scare people."

According to the city of Portland, a recall petition would require at least 35,925 valid signatures from Portland registered voters in 90 days to move forward. That number could change based on the November election results because the tally is based on 15 percent of Portland residents who vote in the governor's race.

Gibson said he's taking a "wait and see" approach to how to organize future protests if the ordinance passes.

Wheeler's office declined to comment on anything Gibson said Tuesday.

The Portland Tribune

Fritz Concerns Prompt Council to Delay Hearings on New MAX Line

*By Jim Redden
October 17, 2018*

Commissioner says more route details must be ironed out before the final alignment is approved and construction begins.

Commissioner Amanda Fritz has raised concerns about portions of the recommended route of the Southwest Corridor MAX line through Portland, prompting the City Council to delay its scheduled hearing on it from last Wednesday to Nov. 1.

Project planners say such questions are part of the normal process. But the TriMet Board of Directors and the Washington Council Commission approved the recommended route without any delays.

The project is being overseen by Metro, the elected regional government. If approved and funded, it would run from downtown to Tualatin through Tigard. In Portland, the line would run from the southern end of Portland State University along Southwest Barbur Boulevard to Tigard.

Fritz tells the Portland Tribune she has three main areas of concern. They include the connection to the Oregon Health & Science University campus on Marquam Hill through Terwilliger Parkway, the route through the existing Barbur Transit Center and complex "Crossroads" intersection of Barbur and Southwest Capitol Highway over I-5, and the connection to Portland Community College's Sylvania campus at Southwest 53rd Avenue.

"Council has received many emails of concern on all three of these areas," Fritz says.

Before the hearing, city staff prepared a seven-page memo listing 14 specific issues that will need to be addressed after the route is approved and before construction begins. They range from reconfiguring the westside Ross Island Bridgehead to stormwater management along the entire route. TriMet will form a new steering committee next year to decide the remaining outstanding issues before construction begins.

As the hearing date approached, Fritz circulated proposed amendments to the list to the other council officers, prompting Commissioner Chloe Eudaly, who is in charge of the Portland Bureau of Transportation, to request the delay so they could be studied.

Fritz identifies problem areas

Among other things, Fritz is proposing that the council must approve the exact OHSU connection before the coming TriMet steering committee makes its decision. She does not believe one option, a tower and walkway, is viable, however.

"The tower and walkway to OHSU through Terwilliger Parkway would have too much impact to the parkway, and not be used due to the distance and terrain on the hill," she says.

Fritz also wants the council to approve how the line crosses I-5 at the Crossroads intersection before the coming TriMet steering committee makes its decision. She opposes the preferred alignment, which would cross west of the existing Barbur Transit Station.

"Crossing over to Taylors Ferry at the intersection with I-5 and Capitol Highway would impact Barbur World Foods, further break the intersection of Taylors Ferry and Capitol, which is

already at F in peak periods, impact Woods Park, and ignore desired land-use patterns at the Crossroads. Land use should guide transportation choices, not the other way around," Fritz says.

And Fritz wants to eliminate a park-and-ride station recommended at the Southwest 53rd Avenue station, saying it should only be reached by walking and biking.

"Southwest 53rd is an ideal location for affordable housing. Using it for a park-and-ride used mostly by people living outside Portland would be a missed opportunity and put even more cars on Pacific Highway which is already congested," she says.

The recommended route was approved by the TriMet board and the Washington County commission in late September. But the Tigard City Council also postponed its hearing on the recommendation after it was released. No new hearing date has yet been set.

Big project, big questions

There is no doubt the proposed MAX line is a complicated project with many unanswered questions. This stage is being overseen by Metro, the elected regional government in charge of transportation planning in the greater Portland area.

Metro has appointed a steering committee representing government and stakeholders in the corridor that released their recommended route on Aug. 31. Once approved and funded, the project will be built by TriMet, the regional transit agency that will own and operate it.

Once finalized, the route officially will be known as the Locally Preferred Alternative. That decision will help determine the final cost of the project, which most recently was estimated at \$2.64 billion to \$2.86 billion in 2024 dollars, the estimated midpoint of its construction.

Project partners include ODOT, Metro, Washington County and the cities of Portland, Tigard and Tualatin. They are expected to contribute 50 percent of the project cost, with the federal government anticipated to provide the other half.

The exact amounts each partner will contribute has not yet been decided. Metro has promised to place a transportation funding measure on the November general election to help raise the regional match.

The overall goal of the project is to reduce traffic congestion and encourage planned redevelopment in the corridor, which already is home to more than 10 percent of the region's population, with more than 70,000 new residents and 65,000 new jobs expected to be added by 2035.

Research conducted by Metro has found that despite growing traffic congestion, property values have been rising rapidly in the corridor, threatening the naturally occurring affordable housing in it.

Among other signs of gentrification, smaller, older homes in many neighborhoods are being replaced with larger, more expensive ones. And older apartment buildings are being purchased, apparently so they can be remodeled and generate higher rents.

Mayor Ted Wheeler warned of an affordable housing crisis in the corridor last October. The council approved a SW Corridor Equitable Housing Strategy intended to help mitigate it on Oct. 4. It calls for spending \$1.5 billion on affordable housing and rental services in the corridor over the next 10 years, although it does not say where all of the money will come from.

The council had been scheduled to consider the recommended MAX route the next week.

Other issues

The six-page memo deals with other areas of concern about the proposed project. Some are environmental, such as potential damage to Terwilliger Parkway and Woods Park, which is near the Crossings intersection. Others concern how development at the 10 MAX stations along the route in Portland would affect nearby existing neighborhoods.

Most of the issues cannot be resolved at the Nov. 1 council hearing. They are expected to be addressed by project staff before construction begins.

Public engagement efforts already are underway to solicit comments on some of the issues identified in the memo. For example, a community meeting on the Crossroads intersection is set from 6-7:30 p.m. on Oct. 29 at the Multnomah Arts Center, Room 30, 7688 S.W. Capitol Highway, Portland.

To read a previous Portland Tribune story on the project, go to: tinyurl.com/y96pw874.

Willamette Week

Portland Police Found Right-Wing Protesters With a Cache of Long Guns Atop a Parking Garage. Why Didn't the Mayor Know?

By Katie Shepherd

October 16, 2018

"Prior to the start of the scheduled demonstrations, police discovered individuals who had positioned themselves on a rooftop parking structure in downtown Portland with a cache of firearms."

Portland Mayor Ted Wheeler intended to look decisive Monday afternoon by announcing an emergency ordinance that would give police broad authority to control warring protest groups.

But as he justified his action, the mayor opened a can of worms. He described an alarming discovery—a nest of guns on a downtown roof—that raised more questions than it answered.

In the early morning of Aug. 4, hours before a massive waterfront protest, Portland police officers discovered a group of Patriot Prayer supporters on the roof of a parking garage in downtown. According to a description provided in the mayor's proposed ordinance, the men had a "cache of firearms," which a mayoral staffer would later describe as "long guns."

"Prior to the start of the scheduled demonstrations, police discovered individuals who had positioned themselves on a rooftop parking structure in downtown Portland with a cache of firearms," the ordinance says.

Police say they seized the guns—but could not detain or cite the protesters because they had concealed handgun licenses that allow them to carry the weapons legally. Officials say they later returned the firearms.

A spokeswoman in the mayor's office says Wheeler only learned about the incident on Monday, as he and police compiled a list of events detailed in the proposed ordinance that the city says demonstrates a "pattern of escalation, injury and property damage."

That raises questions about why the mayor didn't know about the right-wing rooftop gun cache until this week—and who did know.

Wheeler says he didn't learn about the incident in the parking garage until Oct. 15. But his office adds that he was told more generally on Aug. 4 that there were guns at the protest.

"The Mayor was briefed both prior to the event and after the event about the presence of firearms, and the Police Bureau's efforts to manage the presence of firearms during the demonstration," says Sophia June, a spokeswoman for the mayor's office. "That information galvanized the need for this ordinance. When we know in advance that people are coming to Portland, armed with guns and with the intent to fight, we want to take reasonable precautions in advance to preserve the peace."

It is unclear when Police Chief Danielle Outlaw learned about the Patriot Prayer supporters waiting on the roof with long guns.

However, Outlaw said the police bureau would consider informing the public of similar events in the future.

"Hindsight is always perfect," she said at Monday's press conference.

Wheeler directed the City Attorney's Office to begin working on the ordinance after Aug. 4, a spokeswoman says. The attorneys worked with mayoral staffers and the police bureau to craft the new rules.

The policy proposal inspired a number of still-unanswered questions. But the one most people were asking was: How much danger did the public and the mayor not know about on Aug. 4?

That day, hundreds of protesters—right-wing Patriot Prayer supporters and Proud Boys and left-wing antifascist and anti-racist organizers—gathered along SW Naito Parkway. They marched along the waterfront of a city set on edge by past violence and online threats.

Patriot Prayer organizer Joey Gibson held his protest in Tom McCall Waterfront Park so that his supporters with concealed handgun licenses could bring guns and open carry, which they often do at protests in Washington. (At past rallies, Patriot Prayer staged in Terry Schunk Plaza, which is federal property and does not allow firearms. The change in venue inspired speculation from national media outlets that the Aug. 4 event might turn violent and some even predicted it would be "the next Charlottesville.")

As the day unfolded, police reportedly observed firearms "in both groups," but there were no shots fired and few skirmishes between the right-wing and leftist groups. Instead, the day ended with a chaotic, violent clash between police and left-wing counterprotesters.

A week later, Portland Police Chief Danielle Outlaw spoke on a conservative radio show and claimed it was those counterprotesters who had weapons.

"I made it very clear that I focus on behaviors," she said, when asked if Antifa is a terrorist organization. "And at that particular time, that group is the group that was lobbing projectiles and setting off smoke bombs and, you know, showing up in flak jackets and bringing guns and wearing helmets. And, so, yes, that's where my attention went. Now, whether or not they're a terrorist group, I don't think that's for me to say. But I will say that their intention that day was to cause physical harm and confrontation."

The Police Bureau did not immediately respond to WW's questions about the cache of guns.

Portland Police Say Rifles Atop Parking Garage Were Unloaded and Belonged to a Right-Wing “Extraction Team”

By Katie Shepherd

October 16, 2018

"The men told the sergeant they were going to stay at the garage and act as a quick extraction team in case any of their group was injured during the demonstration."

Portland police today released more information about an encounter with right-wing protesters atop a parking garage in the morning before a large Aug. 4 rally.

The announcement by Mayor Ted Wheeler yesterday afternoon that police found a "cache of firearms" atop the garage sent shock waves through the city. Now police are downplaying the incident, saying they found just three rifles, unloaded and still in cases.

The new details appear to be an attempted explanation for why Wheeler wasn't told about the guns for three months.

The police bureau's statement corrects previous statements by Assistant Chief Ryan Lee at a press conference Oct. 15, where he said officers seized weapons from the protesters and "redirected" them away from the garage

Officers noticed four individuals standing in the northeast corner of the top floor of the garage. They had three rifles, which they were permitted to carry because of concealed handgun licenses. The rifles were in cases and were not loaded, police now say.

"The men told the sergeant they were going to stay at the garage and act as a quick extraction team in case any of their group was injured during the demonstration," police spokesman Sgt. Chris Burley says in a statement.

Officers ordered the men to store the guns in a locked storage case in the back of their pickup truck and keep ammunition for the rifles in another part of the truck. The men were allowed to stay on the top floor of the parking structure.

"After further review it has been determined that no firearms were seized or taken as safe keeping from the individuals in the parking garage, as police did not have lawful authority to do so," the statement say. "No arrests were made as no laws were broken. Portland Police Officers continued to monitor the individuals for some time during this event. "

In the same parking structure, officers also approached between 20 and 30 protesters parking their cars in a garage in downtown. The protesters donned padded clothes, helmets, and gathered weapons including make-shift sticks and sign posts. Officers reminded the protesters that weapons were not allowed in Tom McCall Waterfront Park, where Patriot Prayer was supposed to gather.

"Police watched them place items that could be used as weapons, such as make-shift sticks and signs with sticks, into their vehicles and some of them kept these items and said they would not enter the park," a statement from police spokesman Christopher Burley says.

These new details raise even more questions about a new proposal by Mayor Ted Wheeler to expand police powers to police protests. The incident on the rooftop was listed in the proposed ordinance as an example of "pattern of escalation, injury and property damage." But at the time, police thought the incident was so minor they did not even write reports about the encounter.

Portland police say they fear the protest groups are growing more violent, although they ultimately decided the men in the parking garage did not pose a public safety risk.

Portland City Commissioners, Surprised By Mayor's Proposed Crackdown On Protest Violence, Call for More Public Process

*By Katie Shepherd
October 16, 2018*

"As a strong advocate for freedom of speech, expression, and assembly I am very reluctant to support a policy that could infringe in any way on these essential constitutional rights," says Commissioner Chloe Eudaly.

Portland Mayor Ted Wheeler surprised the city with a sudden move to snuff out violence ignited repeatedly at right-wing protests for nearly two years.

He also surprised the rest of City Hall.

The four city commissioners who will vote on the mayor's proposal to expand police power to control rowdy protests say they were not consulted before the ordinance was announced Monday afternoon.

Three of them say they want to hear from community members before they pass final judgement on the proposal. But Commissioner Dan Saltzman says enough is enough.

"Let us dispense with long, protracted debates that will consume a lot of oxygen and lead us nowhere," he says.

The rule change would allow Portland officials to place restrictions on the time, location and duration of protests in the city that pose a risk to public safety, particularly when they involve two or more groups with a history of violent clashes.

Recent street brawls pushed Wheeler's office to begin working with the Portland Police Bureau and the City Attorney's Office on the proposal. They started after the Aug. 4 rally that ended when police shot riot control agents at a crowd of antifascist protesters who had gathered to oppose right-wing Patriot Prayer.

Here's how each of the city commissioners reacted to the mayor's proposal:

Commissioner Dan Saltzman

"The current situation is untenable and strong action must be taken. With the street brawls and violent scums we have seen occurring in downtown Portland over the past 2 years, action is needed as it is just a matter of time before lives are lost. I fully support Mayor Wheeler's effort to take this action and believe his proposed ordinance is an excellent proposal to best accommodate public expression and promote order. Let us dispense with long protracted debates that will consume a lot of oxygen and lead us nowhere. Let's take this reasonable action to protect all who live work and play in Portland."

Commissioner Amanda Fritz

"I appreciate that Mayor Wheeler has invited the Council to set policy on how to address escalating conflict between demonstrators. Any solution must be developed with community

input—this is a community issue, and Portlanders are vital stakeholders whose rights and opinions must be considered. The City is responsible for the safety of all Portlanders. We must end these confrontations without damaging free speech and assembly rights guaranteed in the State and Federal Constitutions.

"I will work collaboratively with the Mayor and the rest of Council to ensure that we pursue a policy solution that is constitutional, enforceable, accountable, and addresses the needs of our community. While I hope we can find a solution that all of Council can support as early as next Wednesday, I believe the process of reaching that outcome will be crucial to the policy's success."

Commissioner Nick Fish

"We all want to live in a community that is safe for peaceful demonstrations. And I agree that recent behavior on our streets has been unacceptable. It's possible that we need another tool in our toolkit to ensure safety in our public spaces. And time, place, manner regulations may be the right approach.

"However, I have a number of legal and policy questions about the proposal, which I intend to raise with the Mayor and the City Attorney. I look forward to a broader discussion with my colleagues and key stakeholders before we take any further action."

Commissioner Chloe Eudaly

"I share the Mayor's concern and the public's frustration with these violent and disruptive demonstrations. However, as a strong advocate for freedom of speech, expression, and assembly I am very reluctant to support a policy that could infringe in any way on these essential constitutional rights.

"I do agree that we need to create a strategy to prevent groups intent on spreading fear in and provoking violence from harming our residents and disrupting and doing damage to our city. There is a legitimate balance to be struck between public safety and free speech. In my view, this begins with an acknowledgment that in our city, although our policies must be content-neutral, it is far-right extremists and hate groups who are necessitating these measures."

The Portland Mercury

Are Mayor Wheeler's Proposed Protest Rules Legal?

*By Alex Zielinski
October 16, 2018*

In the 24 hours since Mayor Ted Wheeler first laid out an emergency ordinance to restrict potentially violent protests in Portland, city officials, civil rights groups, and legal experts have raised concerns about the proposal's legality.

The ordinance would broaden the city's ability to apply "content-neutral time, place, and manner" restrictions to any protest in Portland city limits. Specifically, it would allow the police commissioner (who, at the moment, is Wheeler) to limit the duration, location, and size of a protest if there are two or more groups involved that have a "history of violence" or if there is a "likelihood of violence" based on protesters' conduct. The commissioner can also order limitations on a protest if they believe that protest will endanger bystanders.

This ordinance is a direct response to the weekend's violent clash between Patriot Prayer, a right-wing group, and members of anti-fascist (or antifa) groups in downtown Portland.

"We don't tolerate violence in our streets," said Wheeler at yesterday's press conference announcing the ordinance. "Violence is not, and has never been, a legitimate means to a political end."

He said the proposed ordinance aims to protect both "the freedom of expression for demonstrators and the safety of the entire community."

But will it hold up in court?

Jim Oleske, a constitutional law professor at Lewis & Clark Law School, has doubts.

There are two issues Oleske sees becoming a problem for the city. First is that the city may have trouble proving that any decisions made with this new rule are truly "content-neutral."

In legalese, "content-neutral" essentially means the city isn't making a biased decision. If it's obvious the city moved a protest across town just because Wheeler doesn't support Patriot Prayer's beliefs, he wouldn't be making a content-neutral decision—and he'd be violating the First Amendment.

Thanks to prior litigation, the definition of "content-neutral" has become a little more complicated. The US Supreme Court has ruled that it is not "content-neutral" to limit a protest based on the possibility that listeners will react angrily to the protesters' speech. If it's clear that Mayor Wheeler had decided to restrict a Patriot Prayer protest because it is that possible others may react to that protest with violence—as they have in the past—then the ordinance could face a constitutional challenge, says Oleske.

An example: In 1992, the DC Court of Appeals considered DC's decision to limit to four blocks a planned 11-block march by the Ku Klux Klan, citing public safety concerns. The court ruled that the DC government had, in part, made the decision because it expected the march's message would instigate violence. That decision, the DC court ruled, was based on the demonstration's content, meaning it was not a "content-neutral" decision. The court allowed the KKK to march all 11 blocks.

The second potential issue Oleske flagged is that the city may be seen as giving too much discretion to one city official—in this case, the police commissioner—to decide which protests require special regulating. The ordinance grants broad authority for the police commissioner to put these rules into effect without any oversight.

"I can see people being concerned about how much judgment we're allowing one commissioner," Oleske says.

Mat dos Santos, legal director at the ACLU of Oregon, has already raised these concerns.

"The mayor's proposal grants broad authority to the mayor's office to regulate constitutionally-protected speech and assembly with no meaningful oversight for abuse," said dos Santos in a statement released last night. "Inevitably, this ordinance will get challenged in court."

The Portland City Attorney's Office, however, strongly believes the ordinance will stand up in court.

In the past, when asked why the city doesn't simply ban Patriot Prayer from holding demonstrations in Portland, the city has repeatedly pointed to a single court ruling: *Collins v. Jordan*. The case, brought to the Ninth Circuit Court of Appeals in 1996, addressed a sweeping protest ban issued by San Francisco city government in May 1992, the day after a violent protest

in response to the Rodney King ruling rattled that city's downtown. The city government ordered all police officers to break up any protests, violent or non-violent, that took place that day. The Ninth Circuit said this kind of blanket ban lacked constitutional backing.

"The law is clear that First Amendment activity may not be banned simply because prior similar activity led to or involved instances of violence," the court wrote in its final decision.

In an interview with the Mercury in June, Portland Bureau of Transportation spokesperson Dylan Rivera said *Collins v. Jordan* is why the city can't deny a protest permit to groups like Patriot Prayer.

"We're not allowed to make a decision on a permit based on past experience with the group in situations like this," said Rivera.

But, since Wheeler's proposed ordinance doesn't outright ban potentially unruly protests, it wouldn't be in violation of this piece of case law. That, at least, is how the city attorney's office is seeing things.

"The draft ordinance is a tool to help preserve peace and order in the community while respecting demonstrators' First Amendment rights," said Robert Taylor, Portland's chief deputy city attorney, during a call with Mercury this morning.

The city attorney's office modeled the new ordinance after a Seattle ordinance that was upheld in a 2005 case before the Ninth Circuit. In that case, *Menotti v. City of Seattle*, the court ruled that the city's "time, place, and manner" restrictions to planned protests were constitutional since they weren't based on the content of the protest.

If the Portland City Council approves Wheeler's ordinance, Oleske predicts it will face immediate legal challenges. That's probably why members of city council and outside organizations have urged the city to not rush this ordinance.

"We encourage city leaders to fully explore the middle ground between silence in the face of far-right threats to democracy and emergency measures that could undermine the spirit of the US Constitution," said Eric Ward, director of Western States Center, in a press statement. "We are facing a political crisis, and it is ineffective and unfair to place the entire burden on law enforcement to find a solution."

Portland Police Give New Version of August 4 Events. (It's Still Concerning.)

*By Alex Zielinski
October 14, 2018*

Yesterday, the Portland Police Bureau's top brass told reporters that officers had encountered several individuals with loaded firearms prior to an August 4 protest organized by Patriot Prayer, a right-wing activist group. The officers did not charge or arrest the individuals because they all had permits allowing them to carry a concealed weapon, but they did confiscate the weapons. Deputy Chief Ryan Lee told reporters the individuals were associated with Patriot Prayer.

Now, less than 24 hours later, PPB's telling a different story.

According to PPB spokesperson Christopher Burley, a sergeant encountered four men hanging out on the top floor of a parking garage located about three blocks from Salmon Springs

Fountain—where the Patriot Prayer protest was expected to take place later that day. The men had three rifles—all in cases and all unloaded—with them and had ammo on hand.

"The men told the sergeant they were going to stay at the garage and act as a quick extraction team in case any of their group was injured during the demonstration," said Burley.

Going against Lee's retelling of the event, Burley said the sergeant did not confiscate any of the rifles.

"In consultation with the City Attorney's Office, the sergeant told the men to store the weapons in a locked storage container in the back of the pickup and place the ammo away from the weapons in a different part of the truck," said Burley.

So, essentially: A sergeant encountered a group of men who brought rifles and ammo to a predictably violent protest in downtown Portland, and told them to just put the ammo in a different part of their car.

What makes this more troubling is that, according to Burley, since "there was no imminent danger to the public," no police reports were written about this incident.

Perhaps that's why Burley and Lee's stories contradict each other: There is no actual recording of the encounter to go off of.

OPB

Portland Police Give New Details About Armed Parking Garage Protesters

*By Conrad Wilson and Amelia Templeton
October 16, 2018*

The Portland Police Bureau on Tuesday sought to clarify an Aug. 4 incident that involved officers discovering a group with a “cache” of firearms on top of a parking garage downtown during a protest.

The new details recast statements that Portland Mayor Ted Wheeler and Assistant Chief Ryan Lee made Monday about the incident.

The comments also raised questions about what Wheeler — who is also the city’s police commissioner — knew about the incident he used to argue publicly for the ability to dictate the time and place of protests if they pose a threat to public safety.

“Prior to the start of a scheduled demonstration, the Portland Police Bureau discovered individuals who had positioned themselves on a rooftop parking structure in downtown Portland with a cache of firearms,” Wheeler said at a press conference Monday.

Lee added Monday that police officers were concerned the men were in an elevated position over a large protest venue and seized their weapons for safekeeping.

“Those individuals were redirected,” Lee said, adding that the men were affiliated with the group Patriot Prayer.

Patriot Prayer’s leader, Joey Gibson, immediately questioned the account. He said an officer told him that a group had been stopped in a parking garage while on their way to the protest. He

denied they'd been taking a tactical position in the garage, and said officers had allowed the men to store their guns in their vehicle.

A new, more detailed account released Tuesday by the Portland Police Bureau corroborates part of Gibson's story.

But the bureau has yet to release any records related to the incident, and said there is no police report.

On Aug. 4, according to the bureau's clarifying statement, officers encountered four individuals on the top floor of the parking garage. Sgt. Steve Andrusko spoke with the group and confirmed they had three rifles.

"The men told the sergeant they were going to stay at the garage and act as a quick extraction team in case any of their group was injured during the demonstration," the police bureau statement said. "The men were compliant and allowed the sergeant to inspect the weapons."

PPB said in its statement Tuesday that the men had concealed weapons permits. None of the firearms were loaded, PPB said. Three firearms were in cases, and one of them was disassembled.

After Andrusko consulted with a city attorney in the PPB's incident command center, the officer told the men to put the weapons in a locked container in the back of a pickup and place the ammunition in a separate part of the truck, away from the firearms.

"After further review it has been determined that no firearms were seized or taken for safe keeping from the individuals in the parking garage, as police did not have lawful authority to do so," the police statement said. "No arrests were made as no laws were broken."

The bureau did not identify the four individual protesters involved.

According to the bureau's statement, officers determined the men on the roof posed "no imminent danger to the public."

The incident came to light publicly for the first time Monday, when Wheeler used it as an example of the escalating threat of violence from dueling factions fighting in the city's streets over the past year.

The mayor's comments mirror language in his proposed ordinance. While the incident did not yield a written police report, the city does appear to be concerned about the potential for armed factions to take elevated positions during protests.

Wheeler told OPB's "Think Out Loud" on Tuesday that language in the proposed ordinance gives him the ability to close parking structures and other buildings.

"It gives the police commissioner the opportunity to close certain public buildings and that could, for example, include city and parking structures immediately adjacent to a large gathering or a large protest," Wheeler said.

Wheeler added the city needed a new tool to address the protests involving groups like Vancouver-based Patriot Prayer and counter protesters.

"These brawls are becoming increasingly frequent and increasingly violent, and since we can't legally prevent groups or individuals from coming to Portland — even if we know they're coming to engage in acts of violence or vandalism — I'm proposing what I believe is a common sense solution to protect the safety and the property, the public," Wheeler said.

The new ordinance would allow the city's police commissioner to deem when and where groups with a history of violence can protest, according to a draft published Monday.

Wheeler told OPB that his statements Monday were based on the information he'd received from the police bureau, details that he said he learned for the first time that day.

The fallout is a self-inflicted wound for the city that's trying to curb street violence.

Portland Police Association president Daryl Turner said the miscommunication shouldn't have happened.

"The situation was not handled correctly," Turner said. "What the ordinance is trying to do is protect citizens, but with misinformation out there, everybody would have anxiety based on misinformation."

The mayor's chief of staff said Wheeler hopes to introduce the ordinance by the end of October. Three members of the city council have put out statements saying they need more time to evaluate the proposal.

Meanwhile, Commissioner Dan Saltzman said he supports the measure.

"I fully support Mayor Wheeler's effort to take this action and believe his proposed ordinance is an excellent proposal to best accommodate public expression and promote order," Saltzman said in a statement. "Let us dispense with long protracted debates that will consume a lot of oxygen and lead us nowhere. Let's take this reasonable action to protect all who live work and play in Portland."