

## **The Oregonian**

# **Are Portland Mayor Ted Wheeler's Proposed Limits on Protests Legal?**

*By Gordon Friedman  
November 8, 2018*

A proposed ordinance that would give Mayor Ted Wheeler broad powers to restrict where, when and how protesters gather in Portland may not pass constitutional muster if challenged in court, said two constitutional law scholars who reviewed the ordinance at The Oregonian/OregonLive's request.

The proposal, to be debated Thursday afternoon by the City Council, would allow Wheeler to issue orders telling demonstrators where they can protest, for how long and how many people may join in, among other restrictions. Violators would be subject to fines and arrest.

Wheeler has said further regulating protests is a matter of public safety. The idea came about as a direct response to frequent demonstrations in the city that have turned violent – and in particular the Aug. 4 clash between police and protesters, Wheeler and Police Chief Danielle Outlaw told The Oregonian/OregonLive in interviews Wednesday.

"It allows us to put something in place, hopefully before the violence occurs," Outlaw said.

Government officials like the mayor and police chief are limited by law in how they may regulate protests and other forms of free expression. But the U.S. Supreme Court has said governments may adopt reasonable restrictions on the time, place and manner of protests if the limits are narrow, free from bias and there are no alternatives.

However, two legal experts say Wheeler's ordinance gives broad power to him alone to decide how protests may be limited, and it does not offer a method of appeal.

That makes the ordinance "blatantly, dangerously unconstitutional," said Greg Magarian, law professor and free expression scholar at Washington University School of Law. The proposal, Magarian said, gives the mayor "unilateral authority to criminalize constitutionally protected speech before the speech happens, based on wildly subjective criteria."

Tim Zick, professor of law at William & Mary Law School, said giving one official vast power over regulating public gatherings "is historically problematic" and makes Wheeler's ordinance "constitutionally vulnerable." Zick, who studies free expression law, referenced Supreme Court cases from the 1930s and '40s striking down laws that allowed a single official to dictate the conditions of public gatherings.

"The court routinely struck those things down because bias is inherent in them," Zick said, given that the laws are based ultimately "on a single individual's notion of what is permissible."

Wheeler is not deterred. He said the city police force – which he is in charge of as police commissioner – will continue to arrest protesters that break the law. And Wheeler said he is "very comfortable" with his attorneys' assessment that the protest restrictions are lawful, though he acknowledged his "100 percent certainty" they will be tested in court if adopted.

Even so, Wheeler may never get that far.

Commissioners Amanda Fritz and Chloe Eudaly are opposed to the restrictions, while Commissioner Dan Saltzman supports the idea. That leaves Commissioner Nick Fish, an

attorney, as the swing vote. Fish, who declined to comment Wednesday, has said he will watch Thursday's hearing before making up his mind.

Magarian said Wheeler's ordinance is written with many First Amendment-friendly words and phrases, like "reasonable" and "content-neutral." But that has no legal weight, he said, and doesn't make its enforcement neutral.

"You can call a pig a peacock all day long," Magarian said, "but at the end of the day it's still a pig." He said the system Wheeler wants to install isn't neutral because it puts it "completely in his discretion" whether to restrict protests.

Another legal hiccup for the ordinance, Magarian said, is that it allows Wheeler to consider protesters' histories of violence or the perceived likelihood of violence to decide if restrictions are necessary.

"Predictions about violence becomes problematic," Zick said, "because those predictions can be based on your view of particular groups."

Basing decision about restricting protests on "the government's opinion about what's going to happen tomorrow" or past conduct presents an immediate legal problem, Magarian said.

Portland was previously in legal trouble under similar circumstances, when activist Joe Walsh sued the city and then-Mayor Charlie Hales in 2015. Walsh claimed his weeks-long expulsions from City Council hearings for interrupting the proceedings violated his First Amendment rights, and he prevailed in federal court.

Magarian and Zick said courts sometimes tell governments to enforce existing laws intended to keep the peace rather than create new regulations on public gatherings.

"It's so tempting and easy for government to say, 'We can solve this problem before it ever happens.' But what government is supposed to do is actually find the bad actors and prosecute them under the laws that prohibit bad acts," Magarian said.

## **Permit Filed for Demolition Work at Wapato Jail in Portland**

*By Everton Bailey Jr  
November 8, 2018*

The owner of the Wapato Detention Facility in North Portland applied last week for a permit with the city to demolish the structure, but it's unclear when or if it will happen.

The building permit application with the city's Bureau of Development Services was signed by a representative of real estate firm Harsch Investment Properties last Thursday. The company's president is developer Jordan Schnitzer, who bought the jail for \$5 million in April.

Developers and local officials have discussed repurposing as a homeless shelter, mental health facility or substance abuse recovery center. Schnitzer has previously told The Oregonian/OregonLive that if no one can figure out a way to operate a social services program at the jail, then he would demolish the building and build a warehouse.

The two candidates who championed the idea of turning the 500 minimum-security facility into a homeless shelter – gubernatorial Republican candidate Knute Buehler and city council candidate Loretta Smith -- both lost their races Tuesday.

Schnitzer said previously that the demolition and new warehouse would likely not be completed until next year. He said he pays \$50,000 a month while the jail remains empty.

The application calls for razing the 155,400-square-foot jail building and site. The cost of all the equipment, materials, labor, overhead and profit for the work is listed at \$1 million.

Plans included with the application show plans for the building, curbs, fencing, lighting and other aspects of the site slated to be removed.

The detention center was built for \$58 million by Multnomah County in 2004 and was used for occasional TV and movie shoots but never as an operational jail.

## **The Portland Tribune**

### **Building Heights Must Rise Along SW Corridor MAX**

*By Jim Redden*

*November 8, 2018*

#### **Zoning in project corridor to focus on housing, density to maximize benefits of proposed light rail line.**

For the Southwest Corridor MAX Project to fully succeed, building heights must be increased along the line being planned from Portland to Tualatin through Tigard. This is especially true around the proposed light rail stations, where affordable housing advocates already envision mid-rise apartments not allowed by the current zoning in many areas.

The Portland City Council unanimously approved the recommended route for the proposed MAX line last Thursday. Some details will require additional approval before work can begin in 2022 — if all funds are secured. The cost of the 12-mile line is currently estimated at \$2.3 billion to \$2.9 billion, with the federal government expected to pay for half of it.

Mayor Ted Wheeler declared the project a "necessary vision, a bold vision" and that the city "needs to make big infrastructure investments like this." He also noted how proud he was the discussion included more than transportation, that housing and livability were also in the mix.

But the Portland Bureau of Planning and Sustainability is already in the startup phase of a project to look at zoning in the corridor. The initial focus in 2019 and 2020 will be a local area plan for the West Portland Town Center, which includes the complex Crossroads intersections of Southwest Barbur Boulevard, Southwest Capitol Highway and Southwest Taylors Ferry Road, along with the existing Barbur Transit Center just north of it.

Some smaller-scale zoning refinements also will be examined around the Ross Island Bridgehead, where a related project has been proposed to realign some of the connecting streets, freeing up nearly three acres for development that could support as many as 400 new homes.

Senior planner Eric Engstrom says work on other station areas will come later, after the locations are finalized. The city of Tigard is expected to do the same for its stations. The line is expected to include 13 stations and seven park-and-ride lots.

It should be no surprise that city planners are already looking at increasing densities in the corridor. The project was conceived as much more than a new MAX line when planning first began in earnest in 2011. It is based in part on previously adopted plans — including Portland's

Barbur Plan and Tigard's Comprehensive Plan — that foresaw more intensive development in the corridor.

The corridor planning is currently being overseen by Metro, the elected regional government, whose 2040 Concept calls for multifamily housing at or near transit stops. The most successful example to date is Orenco Village, where apartments and townhomes are concentrated around the Orenco MAX station in Hillsboro.

Much of the process for reconsidering the zoning is outlined in a Memorandum of Understanding (MOU) between the project partners that was approved Oct. 10 and reviewed by the council last Thursday. It calls for TriMet — the regional transit agency that will build, own and operate the MAX line — to lead a Station Optimization Study that will identify potential redevelopment sites along the line, including those suitable for government-subsidized affordable housing projects.

Portland and Tigard will participate in the study, and will consider new funding sources to help support mixed-use developments at the stations. Both cities also will help build government-subsidized affordable housing projects in the corridor, as called for in the previously-approved Equitable Housing Strategy

The MOU calls for TriMet to sell excess properties acquired for the project to Portland, to accommodate between 600 and 700 affordable housing units. Depending on the locations of the properties, some if not all of them may need to be rezoned for apartment buildings. Nearly half of the property near the potential station areas is currently zoned for single-family homes, the traditional residential development pattern in the corridor.

As the project moves forward, TriMet will convene a Southwest Corridor Steering Committee to make final decisions on such things as the final alignments, station locations, and the size and location of park-and-ride lots. That group is expected to include representatives of the Oregon Department of Transportation, Metro, Washington County, Portland, Tigard, and Tualatin.

Commissioner Chloe Eudaly will represent Portland on the steering committee.

"There are many important project elements to be evaluated and refined in the weeks and months and probably years ahead, such as connections to Marquam Hill, the route through the Crossroads area," Eudaly said Thursday in the City Council session.

## **The Portland Mercury**

### **The Second Wave of Portland's Meth Epidemic Hits Homeless Hardest**

*By Alex Zielinski  
November 8, 2018*

Brian Wagner was 13 years old when he began using methamphetamines.

"It was a survival tactic," he says. "It would help me stay awake until my abusive stepdad went to sleep."

More than a decade later, Wagner's on-and-off addiction to meth led to him living in a tent in Portland. There, he'd use meth to stay awake and warm during winter nights. It also suppressed his appetite, meaning he wouldn't have to buy food.

“It can numb the experience you’re going through,” Wagner says. “It helps when you don’t want to live with reality.”

After three years living outdoors, Wagner entered a residential drug treatment program, and left meth—and homelessness—behind. Not all are so lucky.

Since 2011, Multnomah County has released an annual report on the number of people who died while homeless in the past year. The county includes data on where each person died, how old they were, their race, gender, and, perhaps most importantly, what caused their death. [While the latest report](#), released in late October, shows little change in the number of homeless fatalities between 2016 and 2017 (79 died in 2017; 80 in 2016), one piece of data stands out: For the first time in the seven years the county’s collected this information, methamphetamine has surpassed opioids as the top cause of death among homeless people who died from a substance-related cause.

In 2014, 22 percent of all homeless people whose death was caused by a substance died from meth use. Sixty-one percent died from opioid use—either heroin, prescription painkillers, or other illicit concoctions like fentanyl. In 2017, homeless deaths linked to meth rose to 46 percent, with opioid deaths dropping to 41 percent.

There’s potentially some good news tucked into this sobering data: Medical experts and lawmakers say the drop in opioid deaths are probably caused by improved access to naloxone, the drug that reverses an opioid overdose. But that still doesn’t explain an uneasy rise in deaths linked to meth.

While meth has plagued Oregon communities for decades, its resurgence has alarmed the local detox clinics, advocacy groups, and police teams that have struggled to keep the insidious drug at bay. Oregon’s homeless population is particularly vulnerable to the drug, and like meth’s tangled history in Oregon, the solution to the crisis is complicated.

Oregon grabbed national headlines in 2004 with Multnomah County Sheriff’s Department’s “Faces of Meth” project, which used county mug shots to illustrate how methamphetamine use changed a person’s appearance. Two years later, Oregon became the first state in the country to pass a law requiring a prescription to purchase medicine containing pseudoephedrine, a drug commonly used to produce meth. The 2006 law was instantly effective at shuttering Oregon’s homegrown meth labs—but it didn’t kill the demand. Mexican cartels stepped in, filling the void with extremely potent meth shuttled over the border. Not only was this meth extra-powerful, the flood of shipments into Oregon kept its street price remarkably low, especially compared to other stimulants like cocaine. And it’s only become more accessible since.

“It can numb the experience you’re going through. It helps when you don’t want to live with reality.”

According to Portland Police Bureau (PPB) Officer Carlos Pagan, an investigator in the police bureau’s Drugs and Vice Division, the bureau has already seized 300 percent more meth this year than it did in 2017.

“Meth has never left the Northwest,” says Pagan. “The model has just changed.”

The PPB estimates that in 2000, a pound of meth produced in Oregon would be 50 percent pure and cost around \$15,000. Today, PPB says a pound of meth imported from Mexico is at least 90 percent pure—and costs just \$3,000.

Andrew Mendenhall, the medical director for Substance Use Disorder Services at Central City Concern, says he can see this shift in his detox centers.

“Patients are reporting worse psychosis and longer periods of psychosis,” Mendenhall says. “Which makes sense if the drug is more potent.”

Mendenhall also oversees Hooper Detox Stabilization Center, the largest free-standing withdrawal management center in the country, which sees nearly 1,900 clients a year.

“Recovery outcomes are always better when people have access to housing. There’s no question.”

Mendenhall says that 15 percent of the clients served at Hooper enter for meth use. Treating meth abuse, he says, is particularly challenging for clinicians: Unlike other addictive drugs like opiates or alcohol, there is no medicinal treatment for meth withdrawal. All that staff can do is provide a “safe place for people to sleep” and ride out the detox process, Mendenhall says.

The most effective treatment he’s seen is permanent supportive housing—a model that pairs affordable housing with on-site substance abuse, health care, or other programs that will help keep residents stable. It’s a system that requires some coordination—and a lot of funding. But in 2017 Multnomah County and the City of Portland announced a plan to create 2,000 units of supportive housing each year for the next decade. Mendenhall says those kinds of commitments keep him optimistic.

“Recovery outcomes are always better when people have access to housing,” Mendenhall says. “The more the region can create those resources, the more we’re able to offer solutions. There’s no question.”

Before he entered a residential detox facility, Brian Wagner said he tried an outpatient recovery program. But despite treatment, the fact that he had to return to the same environment and community where he used meth every night made recovery nearly impossible.

“It’s simple,” Wagner says. “If you do outpatient and you don’t have a place to live, it’s not going to work.”

Despite the long-term promises of housing, Multnomah County is still facing a deep deficit in affordable—let alone supportive—housing. In the meantime, many without a home will follow Wagner’s path: using meth to help survive and ease the sometimes insurmountable challenges of homelessness.

Mendenhall recalls a past homeless client who explained to him that she mostly relied on meth to protect herself.

“She said staying awake would lower the chances of her being victimized while she was asleep,” Mendenhall says. “I had never considered that. It’s humbling to realize that’s sometimes the best option.”