

The Portland Tribune

Wheeler's Comment About Lt. Jeff Niiya May Be 'Inadvertent Gift'

By Nick Budnick
February 25, 2019

Lawyers: Mayor may have hurt disciplinary review of cop's texts with Patriot Prayer's Joey Gibson.

With an internal investigation imminent of Portland Police Lt. Jeff Niiya over his texts with right-wing organizer Joey Gibson, Mayor Ted Wheeler already may have given the cop an unintended helping hand.

That hand? A seemingly routine press release.

Following the disclosure of friendly sounding texts showing information-sharing between Niiya — a police protest liaison — and Gibson of the group Patriot Prayer, Wheeler issued a statement calling the messages "disturbing," adding that "It is imperative for law enforcement to remain objective and professional, and in my opinion, these text messages appear to cross several boundaries."

Issued after the texts were revealed by Willamette Week and the Portland Mercury, Wheeler's press release also suggested Niiya had encouraged demonstrations by Gibson that "caused disruption and increased fear in our community."

Most people get to say such things without consequence — and indeed, many police critics in Portland reacted more strongly. They'd long been accusing the bureau of going easy on Gibson and his followers at protests he organized.

But Wheeler is the city's police commissioner, and for him to make such bold proclamations before an investigation is done likely has legal implications in the restrictive world of government personnel investigations, according to several lawyers.

"It's almost impossible to do a fair, just and equitable investigation when you've already got your decision-maker saying it's misconduct," said labor lawyer Mark Makler, a former prosecutor who represents police unions, though not at the Portland Police Bureau.

In addition to an outside review of potential bureau bias during protests, Niiya likely faces an internal administrative disciplinary investigation, bureau insiders say.

But because Wheeler directly oversees the Portland Police Bureau, lawyers say his Feb. 14 statement would present Niiya with a powerful argument in his defense if the investigation leads to discipline being proposed.

Will Aitchison is an expert on police labor law who used to work for the Portland Police Association and whose partner still does. The PPA, though it does not represent Niiya, already has blasted Wheeler for his comments and handling of the texts.

"A 'crossing of boundaries' can only mean one thing," Aitchison said. "This is really solid law in this area. There's not much wiggle room on this. You can't have the decision-maker making a pronouncement as to culpability before the investigation is complete."

Akin Blitz, a Portland labor lawyer who has represented management during numerous police disciplinary cases, is not so sure. The outcome of any discipline of Niiya will rest on evidence,

not Wheeler's statements, Blitz argued. And if the union doesn't make this argument, it will simply make another.

"The mayor must be able to speak on matters of public concern," he said.

Wheeler walks back rhetoric

Since his Feb. 14 statement, Wheeler has shifted to a more measured tone, stressing that Niiya deserves due process.

"It was important to acknowledge that at face-value, the content of these texts was deeply concerning," he said in a statement. "Now it's just as important to suspend further judgment until the internal and external independent investigations yield their results."

But lawyers said the damage to the case already has been done.

One lawyer who's not affiliated with any police agencies spoke on condition of anonymity, saying that because of Wheeler's comments, "If you do try to discipline this employee, the odds of you being successful have diminished significantly."

The internal probe of Niiya is likely to examine December 2017 texts exchanged before an imminent protest regarding an ally of Gibson's who's repeatedly been accused of assaulting left-leaning protesters, Tusitala "Tiny" Toese.

Niiya told Gibson to make sure Toese had taken care of his "court stuff," and said, "Just make sure he doesn't do anything which may draw our attention. ... If he still has the warrant in the system (I don't run you guys so I don't personally know) the officers could arrest him. I don't see a need to arrest on the warrant unless there is a reason."

Some cops say it's standard to tell someone to get their warrants taken care of — and to avoid making arresting during a highly charged protest. But the exchange has been interpreted by others as favoritism and a violation of bureau policy.

Lt. Craig Morgan, a former lawyer who heads Niiya's union, the Portland Police Command Officers Association, said he is confident the protest liaison did nothing to merit discipline. But in the context of an investigation, Morgan said that comments like the one Wheeler made generally amount to an "inadvertent gift" to the cop under scrutiny, ensuring that no inappropriate discipline takes place.

Niiya's union also has filed a workplace harassment complaint, as well as a grievance claiming the police contract was violated by the comments by Wheeler as well as others by Commissioners Jo Ann Hardesty and Chloe Eudaly.

Wheeler statements show evolving tone

Wheeler statement on Feb. 14:

"The released text messages, which I learned about in Willamette Week, are disturbing.

"Community members have long expressed concerns about police bias during demonstrations. Incidents like this contribute to the distrust that so many people have about the Portland Police Bureau. This creates a mandate for specific training to identify and combat white supremacy. It is imperative for law enforcement to remain objective and professional, and in my opinion, these text messages appear to cross several boundaries. They also raise questions about whether warrants are being enforced consistently and what information is being shared with individuals who may be subject to arrest.

"Moreover, the texts appear to unnecessarily encourage Joey Gibson, the leader of a group that perpetrates hate speech and violence. Demonstrations that he has led have caused significant disruption and increased fear in our community. I have directed Chief Outlaw to do a thorough investigation of this matter and report back to me expeditiously."

Wheeler statement on Feb. 24:

"Outreach and relationship building plays a fundamental role in de-escalating potential conflicts, especially when it comes to handling demonstrations with the potential to turn violent. The Portland Police Bureau does not often get enough credit for their years of successfully balancing this tricky, complicated, and nuanced dynamic of their job. However, there are some boundaries that should not be crossed when developing such relationships.

"That's why this is an examination of the content of such communication, not of the communication itself. The content of these texts spurred a necessary review of how a PPB liaison should communicate with demonstration organizers. The texts also catalyzed a necessary examination of potential bias within the Bureau.

"We are living at a time of significant division, where we are seeing deep wounds in the community, especially when it comes to policing.

"But we are also living at a time where there are misconceptions regarding the Portland Police Bureau, created by damaging generalizations. I believe most Portlanders can understand that this is not a simple case.

"So, bridging the perception of bias and the reality of bias begins when we examine the root of the problem.

"It was important to acknowledge that at face-value, the content of these texts was deeply concerning. Now it's just as important to suspend further judgment until the internal and external independent investigations yield their results."

Your City Hall: Council Wants More Funds for Homeless, Affordable Housing

By Jim Redden

February 26, 2019

Plus, Council scheduled to vote to delay and change controversial earthquake building warning requirements on Wednesday after emotional hearing last week.

Despite spending nearly \$400 million more on homeless services and affordable housing since 2015, new revenue sources are needed to end the related crises, the City Council agreed last Thursday.

The council discussed the need for more money when it voted to extend the existing Housing State of Emergency for two years.

Mayor Ted Wheeler said city and Multnomah County officials are having numerous conversations about increasing funding for homeless services and additional affordable housing. He said the searches for new revenue should be coordinated during the upcoming sessions for writing the next budgets for the city and county.

The funding discussion was spurred by a request by Commissioner Chloe Eudaly that the council direct city budget and housing officials to identify an additional \$50 million per year in ongoing funding for more services. She suggested a tax of vacant housing units, saying there currently are 16,000 empty apartments in Portland.

The council first declared a housing emergency for one year in October 2015 to waive zoning regulations to speed up the siting of new homeless shelters and affordable housing projects, among other things. The emergency is now extended until April 2021 — five and one-half years after it was first declared.

Despite thousands of new apartments of all kinds being built since 2015, rents are still too high for many households, the council agreed.

Vote on safe-building warning set for Wednesday

The City Council is scheduled to vote on delaying controversial earthquake-warning requirements for owners of unreinforced masonry buildings on Wednesday.

The scheduled vote follows a contentious hearing last Wednesday on an ordinance introduced by Commissioner Jo Ann Hardesty. It would postpone the requirement that warning signs be posted on commercial unreinforced masonry buildings from March 1 to Nov. 1, 2020. It also would eliminate the requirement that building owners file a letter with the city agreeing to post the signs with their deeds.

Most of the owners who testified last week said the requirements should be repealed. They testified that the signs alone will reduce the value of their buildings and make it difficult to refinance them, prompting many to be demolished and redeveloped. Hardesty said repealing the requirements would take the pressure off the city to solve the problem.

Many of the owners also faulted the administration of the requirements since they were approved last October. They complained about poor record-keeping, inadequate communication and fingerprinting by Portland employees charged with enforcing them.

Some building owners have filed a federal lawsuit to repeal the requirements. A federal judge has issued a 60-day injunction preventing the city from enforcing them until May 1. A hearing in the suit is scheduled for April 25.

The city is seeking applicants for a new Unreinforced Masonry Building Work Group that will study the issue and make recommendations before the new deadline. Learn more at portlandoregon.gov/civic/article/712316.

The Portland Mercury

Portland's Trying to Prepare Brick Buildings for an Earthquake—But at What Cost?

*By Blair Stenvick
February 28, 2019*

When Virginia Hankins and her father bought a commercial building on Northeast Martin Luther King Jr. in 1990, business in the area was far from booming.

“Times were hard,” Hankins says. “We couldn’t find anybody to rent in that building.”

Nearly 30 years later, that's no longer the case. Hankins' building is occupied by what she calls three "mom and pop" local and independent businesses: a beauty salon, a record shop, and an art supply store. She calls the location, just north of where Northeast MLK intersects with Fremont, "an upcoming spot." Hankins has watched as shiny new condos, hip restaurants, and boutiques have taken over her neighborhood; now, the two closest grocery stores are New Seasons and Whole Foods.

Hankins and her husband have long been looking forward to living off the property's rental income when they retire. But now Hankins fears that plan is in jeopardy.

That's because of a city ordinance that's intended to increase Portland's earthquake preparedness, but that also has the potential to displace hundreds of property owners and tenants from the central city—many of whom, like Hankins, are African American.

While Portland City Council is currently attempting to rework the ordinance to address these concerns, the way things have progressed thus far hasn't inspired confidence in building owners like Hankins. If anything, it's exacerbated the deep mistrust in city government that's already felt by many Black Portlanders.

"To be honest," Hankins says, "I think all of this boils down to a land grab."

By now, most Portlanders know the city is overdue for a major, devastating earthquake. Sooner rather than later, the Cascadia subduction zone will rupture, buildings across Portland will collapse, and people will die.

Unreinforced masonry buildings (URMs)—old brick buildings that haven't been seismically reinforced with steel bars—would be particularly vulnerable in the event of an earthquake. Portland's 1,600 URMs can be found throughout the city, but are especially concentrated in downtown, the Pearl District, the Central Eastside, and the Rose Quarter.

Built between the late 1800s and the 1960s—before the disastrous scale of a Portland-area earthquake was fully understood, and before local builders and owners were required to comply with modern safety codes and standards—many Portland URMs now serve as Black-owned businesses and churches, host independent music venues, and provide affordable housing units.

For years, Portland has been aware of the risks that URMs pose in earthquakes: According to FEMA, URMs are among the most seismically vulnerable building types. In 2014, the council formed the URM Building Policy Committee.

In its final report in December 2017, the committee proposed new seismic upgrade requirements for URMs. They also urged the city to find funding sources to help private building owners afford the updates, which, depending on the size of the building, can cost hundreds of thousands or even millions of dollars.

In October 2018, Portland City Council passed an ordinance that took those recommendations into consideration, and also set a requirement that any URMs not in compliance with city standards would need to display a placard declaring them unsafe in the event of an earthquake.

City council approved the ordinance with three votes in favor and none opposing.

Commissioners Chloe Eudaly and Nick Fish were present at the meeting—but rather than participating, they chose to leave the room for the URM ordinance vote.

Despite declining to vote against it, Fish and Eudaly now say they don't support the ordinance.

"I believe we put the cart before the horse, and we got a lot of it wrong. We're only now seeing the unintended consequences of that decision," says Fish, who believes the placard requirement

unfairly places a “scarlet letter” on URM properties. “No one is cavalier about threats of earthquakes. But instead of doubling down on what we have, I think it’s better we back off and take the time to do it right.”

The ordinance’s focus on placarding came as a surprise to Peggy Moretti, who sat on Portland’s URM Building Policy Committee and is the director of the historic preservation society Restore Oregon. The committee’s final report, she says, didn’t recommend any signage, except for potentially labeling URMs after they’d been seismically upgraded.

“My understanding of the placarding was that it was supposed to be more of a positive placarding,” Moretti says, “rather than what one might call a punitive one.”

Portland’s URM ordinance is currently in limbo. A federal judge recently ordered the city to suspend enforcement for 60 days while a lawsuit between building owners and the city plays out in court, and Commissioner Jo Ann Hardesty has introduced proposed amendments that would push back the March 2019 enforcement date to November 2020.

Hardesty’s changes are backed by both Fish and Eudaly and are expected to pass at a February 27 city council vote. But even the updated ordinance doesn’t completely address community concerns.

Most of the ordinance’s language centers around requiring placards on Portland’s potentially lethal URMs, so that those entering are aware of the dangers posed by the buildings in an earthquake. But the original policy does more than just mandate a warning sign—it also calls for URM owners to sign an agreement to comply with the placarding rules. That agreement, drafted by Portland’s Bureau of Development Services (BDS) and to be filed at the county recorder’s office, contains some legalese that appears to place a “title encumbrance” on the URM—a mark similar to a lien that could devalue the property and scare away potential lenders and buyers.

Mayor Ted Wheeler says city lawyers guarantee that the agreement does not place any encumbrance on the buildings in question and claims opponents to the ordinance misunderstand the phrasing.

But Alan Brickley, a real estate attorney and a faculty member at Portland State University’s Center for Real Estate, says there’s “no question [the agreement] would create an encumbrance on the title of the property.”

Brickley says it’s difficult to predict how such an encumbrance might affect a URM owner’s ability to refinance or sell their property for a fair value, and that adding it to the URM agreement was an unusual and risky move on the city’s part.

“There are always unintended consequences when you fool around with the title of the property,” Brickley says. “And in this case... that could make it more difficult to sell or to finance.”

Hankins, the owner of the URM on Northeast MLK, says that adding the appropriate upgrades to make her building safer in an earthquake would cost about \$400,000, a price that would require her to take out a loan. She fears the agreement she has to sign will hurt her chances of getting one.

“And on top of that, it’s going to lower the value of my building, plus I’m going to be at risk of my insurance probably going up,” Hankins says. “That is, if they continue to insure me.”

E. D. Mondainé, the president of the NAACP’s Portland chapter, finds the city’s insistence that the encumbrance does not exist “extremely alarming.” The NAACP is leading a coalition of groups opposed to the ordinance.

“[The city is] continuing to use the language that says, [the encumbrance] doesn’t really exist, move along, there’s nothing to see here,” he says. “It’s right there in black and white, and you can see it for yourself.”

Along with extending the placarding deadline, Hardesty’s proposed changes to the original ordinance would remove the requirement for a compliance agreement filed with the county’s recorder’s office, which could ease concerns about a title encumbrance.

“I don’t believe that we need to record the URM issue on the title,” Hardesty said at a February 20 council meeting. “We did not provide enough information early enough to ensure that people thought that this was a joint effort rather than something that was being shoved down their throat.”

Even as owners of URMs stand to lose money and property due to ramifications from the ordinance, developers could win big—especially if those owners are forced to sell their properties. When Donald Trump passed a new tax plan in 2017, it included the creation of “opportunity zones,” or neighborhoods where developers can benefit from significant tax breaks in exchange for building in areas that are supposedly in need of investment. Governor Kate Brown’s administration chose to designate much of downtown Portland and the Central Eastside as opportunity zones.

Those parts of Portland contain hundreds of URMs—a fact that’s particularly noteworthy because a developer can’t reap tax benefits in an opportunity zone unless their project is either a new building on a vacant lot or if their investment “substantially improves” the property—i.e., knocking down a building deemed unsafe by the city and replacing it with a new development.

Several prominent Portland developers stand to benefit considerably from investments in opportunity zones.

Paul Brenneke is a Portland investor who frequently partners with his brother Tom, the owner and president of local development firm Guardian Real Estate. Paul recently launched a \$100 million investment fund for opportunity zone developments.

Mark and Greg Goodman are the brothers behind Downtown Development Group, which owns iconic downtown Portland buildings like the Power & Light Building and the Kress Building, which houses Nike’s downtown store. The Goodmans were featured in a January Bloomberg Businessweek article about developers who planned to take advantage of Portland’s opportunity zones.

For the NAACP’s Mondainé, the ongoing URM saga feels like history repeating itself. He sees parallels to Portland’s long history of “redlining”—the use of discriminatory real estate practices to drive African Americans out of the city. In the middle of the 20th century, the Albina neighborhood had a majority African American population, but the city used eminent domain and redlining to push most Black residents out of the neighborhood. Mondainé sees the placarding ordinance as a continuation of Portland’s racist real estate policies.

“Now you’re telling us that the remainder of all of that is pertinent to African American culture is going to be annihilated through this placarding,” Mondainé says. “Now you’ve created genocide of a whole community. You’ve wiped them out.”

In addition to the African American community and advocates for affordable housing, the URM policy is facing opposition from owners of the city’s independent music venues, many of whom belong to the advocacy group Music Portland. Meara McLaughlin, the organization’s director, told the Mercury the ordinance is “fundamentally flawed” and notes that about 30 percent of

Portland concerts are held in URMs. It remains to be seen how much Commissioner Hardesty's proposed amendments will ease their concerns. Wheeler has indicated he's open to removing the part of the ordinance that creates an encumbrance, and all of Portland's city commissioners support a bill currently in the Oregon Legislature that would provide public funding to private building owners in order to seismically upgrade their URMs.

Still, the effect that even a single sign on a URM could have on things like financing and insurance is unclear at best—and even if they receive financial assistance to upgrade their buildings, many URM owners may still decide to sell.

The proposed changes to the ordinance also might not be enough to satisfy the NAACP-led coalition. At a rally held outside Portland City Council's February 20 meeting, Mondainé called for the original URM ordinance to be completely repealed. He and his fellow coalition members are reluctant to trust the city on URM policy, due in part to what they see as lackluster communication and outreach efforts.

One issue the coalition points to is the city's URM database, which they say was hastily put together and includes many buildings that, due to upgrades, should no longer be classified as URMs. For building owners to confirm that they've adequately improved the safety of their URMs, it can cost an estimated \$14,000 to have an engineer assess the property—another price tag working against building owners.

Meanwhile, poor communication on the city's part has left many URM owners confused about what the ordinance means for them and what they need to do in order to comply. Several URM owners told the Mercury they have yet to receive any formal notice from the city about the new ordinance. Hankins notes that she received a letter from the city about her URM, but it s addressed to her father—who has been dead since 2005—suggesting that her property hadn't been updated in the city's URM database since it was first created in 1995.

When asked what will happen if the city continues to pursue a placarding-based approach to URMs, Mondainé's answer is clear.

“We're not going to rest until it's repealed, and the contract language is changed,” he says. “We're going to scream at the top of our lungs, and we're not going to stop. This is important.”

The Skanner

Portland City Council Approves Ordinances to Write Portland Clean Energy Fund into City Code

*By The Portland Clean Energy Fund Coalition
February 25, 2019*

Portland City Council voted last week to approve an ordinance to write the Portland Clean Energy Fund into city code and authorize four new program staff positions to oversee and support the Portland Clean Energy Community Benefits Fund.

They also approved a small handful of amendments proposed by the City Revenue Division. The pair of ordinances writes Measure 26-201, which was approved by 65 percent of Portland voters Nov. 6, into City Code with a small handful of housekeeping amendments proposed by the City Revenue division that were supported by the coalition that led the Portland Clean Energy Fund campaign. The city invited testimony from community leaders and took comments from

members of the public who expressed their support of a robust implementation faithful to the will of the over 200,000 voters who approved the measure.

Leaders in the Portland Clean Energy Fund coalition identified next steps for the implementation of the Portland Clean Energy Community Benefits Fund, including but not limited to recruiting a diverse and representative grant committee to be appointed by City Commissioners, hiring program staff to be housed at the Bureau of Planning and Sustainability, and building capacity among community organizations to prepare them to submit competitive proposals to the fund.

More information may be found at the Bureau of Planning and Sustainability website and at the website from the Portland Clean Energy Initiative campaign.