

The Portland Tribune

Wheeler defends record in three-way debate

By Jim Redden

February 26, 2020

Gonzalez and Iannarone challenge the mayor before the Columbia Corridor Association.

Ted Wheeler on Wednesday was forced to do something that no Portland mayor has done since Vera Katz — publicly defend his record against challengers while running for reelection.

The event was a Wednesday, Feb. 26, debate between Wheeler and two opponents before the Columbia Corridor Association, which represents mostly industrial businesses along the Columbia River in Portland. Wheeler is the first mayor to seek a second term since Katz. Former mayors Tom Potter, Sam Adams and Charlie Hales all declined to run for reelection.

In exchanges with architect Ozzie Gonzalez and community activist Sarah Iannarone, Wheeler repeatedly said he was proud of the progress his administration has made on the two biggest problems facing the city, homelessness and the affordable housing crisis. Wheeler pointed to partnerships forged by the city, Multnomah County and social service providers that have increased funding for homeless services, and he said the Portland Housing Bureau is on track to exceed the number of units to be funded by the \$258 million affordable housing bond approved by voters at the November 2016 general election.

Wheeler also praised Metro for passing a \$653 million affordable housing bond two years later. He said the \$250 million homeless services measure Metro recent referred to the May 19 primary election ballot will fund programs that will keep the chronically homeless housed in many of the units funded by both bonds when they are built.

"We have the right strategies, we just need to scale them up," Wheeler said.

Gonzalez and Iannarone were not impressed. Both of them accused Wheeler of being slow to grasp the magnitude of the problems. Gonzalez said the problems will not be solved until everyone who works in Portland can afford to live here, while Iannarone criticized the Portland Police Bureau, which Wheeler oversees, for sweeping homeless camps when the people who live in them have nowhere else to go. She suggested allowing people to live in their cars, where they can lock the doors to protect themselves.

"I want people experiencing homelessness to be safe," Iannarone said.

The situation was the same when the subject turned to economic development. Wheeler said he was proud of what Prosper Portland — formerly known as the Portland Development Commission — had done under his administration to support the creation of well-paying jobs.

Gonzalez and Iannarone said not enough is being done to create more environmentally responsible, green jobs and to train people for them. Gonzalez said the city needs to be prepared to support the new businesses that will be created by the Portland Clean Energy Fund that voters approved at the November 2018 general election.

"The opportunity will require leadership," Gonzalez said.

All three candidates agreed that the city's form of government is outdated and needs to be changed. Portland is the last major city in the county without a city manager who oversees all bureaus, allowing the mayor and council members to spend their time on legislative matters

instead of managing bureaus. Wheeler also said the commissioners should be elected by districts to give historically underserved community more power.

Wheeler said that he supports allowing the citizen charter review commission, which must be appointed by the end of the year, to lead the public discussion on how to reform the charter. The commission, which must be appointed at least every 10 years to recommend charter reforms, can refer measures directly to the ballot without council approval.

Wheeler told the Portland Tribune that he hopes all of the organizations currently discussing charter reforms will participate in the commission process, including the City Club of Portland, the League of Women Voters and Communities of Color.

All three candidates criticized TriMet, including Gonzalez, who serves on the regional transit agency's board of directors. They said TriMet is not providing enough service to meet the needs of the growing region. Wheeler questioned whether TriMet should remain an independent agency, calling for an "all hands on deck" discussion of whether it should be merged with an agency with land use and planning responsibilities, presumably Metro.

A fourth candidate, civil rights activist Teresa Raiford, had been invited to participate in the debate but did not show up. According to KOIN 6 News, her campaign said that due to an alleged attack on Commissioner Jo Ann Hardesty over the weekend and the "threat of anti-black violence," they made the decision to not attend. Willamette Week reported that Hardesty was harassed by right-wing protesters near City Hall on Saturday. Only environmental protesters were outside the Holiday Inn near Portland International Airport where the debate was held.

Columbia Corridor Association Executive Director Corky Collier said the four were chosen because they had easily raised more campaign funds than any of the other candidates who have filed for the office.

Wheeler to 'follow up' on Hayes' letter

By Jim Redden

February 28, 2020

Four City Council candidates object to negligence defense in police shooting case

Mayor Ted Wheeler's office responded Friday morning to criticisms of the City Attorney Office's legal defense in the federal wrongful death lawsuit filed by the family of Quanice Hayes, a 17-year-old African-American killed by police in February 2017.

Among other things, the city attorney is arguing that Hayes and his mother were negligent in his death. Four candidates for City Council wrote Wheeler and the other commissioners on Thursday urging them to prevent the city attorney from continuing to make that argument.

"The ugly history of state-sponsored racism, discrimination, and violence against communities of color in this city can't be erased, but we can start doing better today," read the letter signed by mayoral candidate Sarah Iannarone and city commissioner candidates Carmen Rubio, Loretta Smith and Sam Adams.

Wheeler spokesman Tim Becker did not respond directly to the criticism, but told the Portland Tribune, "We cannot comment on pending litigation. Our office will follow up with the city attorney to learn more about the circumstances mentioned in the letter."

Police stopped Hayes because they were looking for an armed robbery suspect who matched his description. He was shot and killed by an officer who believed he was reaching for a gun. A toy gun that looked like the one used in an earlier robbery attempt was found near his body.

The family sued the city and officer who killed Hayes in February 2018. In its defense filings, the city argued Hayes and his mother engaged in negligent acts that should have been foreseen to leading to his death. Haynes was not living at home and was taking drugs at the time of his death, the city noted.

"The City Attorney was not elected by the voters of Portland — you were. You all are empowered to stop this attack on a mother who is still, and always will be, mourning the tragic loss of her son," the letter from the candidates said.

Lawyers representing Hayes' family asked the federal judge overseeing the lawsuit to strike negligence arguments from its defense.

You can read the letter [here](#).

Local officials assess coronavirus spreading among homeless

*By KOIN 6 News
March 01, 2020*

There is a growing concern that the crowded conditions in which many homeless live make them more susceptible to the virus

Multnomah County officials have raised concerns over the possibility of the coronavirus rapidly spreading among the region's homeless population.

Because the first locally-transmitted cases of novel coronavirus have emerged in part of the country with a disproportionately large percentage of people sleeping outdoors or in shelters, there is a growing concern the number of infected people could significantly increase, according to a report by Willamette Week.

Multnomah County spokeswoman Julie Sullivan-Springhetti said the crowded conditions in which the homeless live make them more susceptible to contracting the virus. Furthermore, untreated medical conditions and substance abuse among members of the homeless population can make diagnoses and treatment even more challenging.

Officials are still in the early phase of compiling ideas on to handle the virus' impact on the area's most vulnerable, like the homeless. Representatives from the Joint Office of Homeless Services, the Portland Bureau of Emergency Management and Multnomah County Public Health were briefed on the situation Saturday by tri-county health officer Jennifer Vines. The group also spoke with shelter and other service providers to discuss procedures for handling those who become infected as well as efficient ways of providing information, according to the paper.

Washington state's King County said it is also exploring options for protecting the spread of the virus among the homeless, according to The Seattle Times. The move followed the first reported death in the U.S. from COVID-19, which took place at a hospital in Kirkland, a suburb of Seattle.

Multnomah county officials said they plan to meet Tuesday and develop more detailed strategy.

Willamette Week

Cynthia Castro is the Latest to Enter the Portland City Council Race to Replace Nick Fish

*By Camille Soleil
February 28, 2020*

The City Hall staffer hopes to restore financial security for Portland Parks and Recreation.

Cynthia Castro, a policy advisor to city Commissioner Amanda Fritz, has joined the increasingly crowded field seeking to replace the late Commissioner Nick Fish.

Castro joins 13 other candidates in the race, including three who have held elected office: Metro Councillor Sam Chase; former Multnomah County Commissioner Loretta Smith; and Dan Ryan a former member of the Portland School Board.

"I am running for City Council because I want Portlanders, especially youth, to be hopeful, I want them to know that their voices matter and that their City leaders are putting the health, safety, and well-being of our community above all else," Castro said in a statement. "I want to connect more Portlanders to their local government and build greater trust by following through with commitments made and being transparent throughout processes and programs."

Castro started her career as a coach at Oregon State University, where she assisted with women's cross country and distance track programs. She also has a Master's in Public Health.

Since coming to City Hall, she has worked with Fritz on a variety of initiatives.

"Commissioner Fritz has been such a great mentor to me," Castro said in a statement. "My experience working at the city for the past six years will help me be ready on day one if elected to Council."

Before joining Fritz's office a year ago, Castro worked for Portland Parks & Recreation employee for five years. She most recently served as the director of the Charles Jordan Community Center in North Portland and oversaw a budget of more than \$1 million.

Following a significant Portland Parks & Recreation 2019 budget shortfall, Castro says if elected she will focus her efforts largely on getting the department back on track.

She also hopes to "work to ensure all Portlanders, especially historically marginalized communities, have access to their City government and have their basic needs met like clean drinking water, clean air, housing and living wage jobs."

City Council Candidates Protest City's Defense of Policeman Who Killed Quanice Hayes

By Tess Riski
February 27, 2020

The candidates called the argument "disgusting, oppressive, and polarizing."

In a letter addressed to Portland Mayor Ted Wheeler and the other members of City Council, four candidates for city council urged the city to withdraw its defense of a police officer who shot and killed 17-year-old Quanice Hayes in 2017.

"The ugly history of state-sponsored racism, discrimination, and violence against communities of color in this city can't be erased, but we can start doing better today," the letter said. "You should direct the City Attorney to voluntarily withdraw this ludicrous argument today."

The letter was signed by mayoral candidate Sarah Iannarone and city council candidates Sam Adams, Loretta Smith and Carmen Rubio.

The letter cited yesterday's reporting from the Portland Mercury, which said that city attorneys blamed Hayes, a teenager, and his mother, Venus, for Hayes' death.

In 2017, Portland Police Officer Andrew Heart shot Hayes three times when the teenager was crawling out of an alcove between a garage and a house.

Officers thought Hayes had a weapon based on earlier reports that he robbed a man at gunpoint. The gun turned out to be a toy.

City attorneys argued that Hayes' decision to carry the toy gun contributed to his death, the Mercury reported, and that Hayes had been acting out prior to the shooting, and his mother, Venus, should have foreseen the incident taking place.

"That argument is disgusting, oppressive, and polarizing – only serving the interest of creating deeper rifts between vulnerable communities and the city that is meant to serve them," the candidates said in their letter.

City Auditor's Fraud Hotline Reveals Questionable Purchases By the Portland Water Bureau

By Nigel Jaquiss
February 27, 2020

Investigation finds a cozy relationship with a vendor and 16 transactions that appear designed to skirt city purchasing rules.

A report released today by City Auditor Mary Hull Caballero's office shows a series of questionable purchases overseen by a manager in the Portland Water Bureau.

In response to a call last year to the auditor's fraud hotline, a member of Hull Caballero's team, Deborah Scroggin, examined a series of purchases of water meter equipment in 2018 and 2019 totaling \$182,382.

Scroggin found that the purchases were made without a contract and appeared to be "fragmented" or intentionally broken into increments of less than \$10,000 in order to avoid city purchasing rules. There were 16 such transactions between January 2018 and June 2019.

"City and state procurement rules prohibit breaking purchases into smaller amounts to circumvent competitive procedures," says the report released today. "Purchases exceeding \$10,000 must be made through a more complex competitive procedure, according to state law and city code."

The investigation further found that Jon Koch, the salesman who sold the materials in question, is married to the Water Bureau's Customer Services Group Director Kathy Koch, who supervises Ron Drath, the Water Bureau employee who made the purchases.

Emails showed that Drath and Jon Koch had known each other for 30 years and that on at least two occasions, they had "shared information related to Water Bureau procurement decisions, which may have given [Jon Koch] unfair access to city purchasing power."

That cozy relationship could constitute a conflict of interest, the investigation found.

"Manager [Kathy Koch] appears to have some (and perhaps a significant) personal and financial interest in manager's spouse's [Jon Koch's] success as a salesperson, manager's spouse's continued employment with vendor, and vendor's success," the investigation found.

In response, the Water Bureau conducted its own investigation. The bureau found that Kathy Koch had disclosed in writing in 2013 that her husband worked for a Water Bureau vendor (although not since) and determined there had been "no ethical or procurement rule violations due to family relationships."

The bureau did restrict Kathy Koch from involvement in any future purchases from the company that employs her husband and required her to make full disclosure of her familial relationship to the vendor.

But Koch's supervisors did not agree that the purchases in question were structured to skirt procurement rules.

"The Water Bureau did not intentionally fragment purchases in the procurement of water meter boxes," wrote Water Bureau Deputy Director Gabriel Solmer in response to the report. "[But] our investigation concluded that there are significant gaps and absences of procurement information, procedures, and trainings at the Water Bureau and perhaps throughout the city."

Portland Police declined to investigate the matter, so it ends there, although Hull Caballero said she hopes her office's report will send a signal.

"Ethics and procurement rules exist for a reason, and it is unacceptable for seasoned managers responsible for equipment and other purchases to say they are not aware of them," Hull Caballero said in a statement. "I am pleased the Bureau agreed to implement our recommendations."

Water Bureau Director Mike Stuhr issued a statement after the auditor's report was made public.

"We appreciate the critical work that the Auditor's Office does each day to support transparency and accountability," Stuhr said. Our joint investigation with the Bureau of Human Resources did not reach the same conclusions as outlined in the auditor's report. However, we continue to work with the Auditor's Office to identify opportunities for improvement."

The Water Bureau has:

- Completed a joint investigation with Human Resources, as recommended;
- Secured a new contract through the City's established competitive procurement process for meter equipment;
- Formally signed conflict of interest disclosure forms;
- Restructured work group reporting and purchasing approval to avoid even an appearance of a conflict of interest;
- Participated in procurement training.

The Portland Mercury

Can State Legislation Fix Portland's Police Accountability Problem?

*By Alex Zielinski
January 27, 2020*

Portland police officers have been fired for sending threatening emails, lying about crashing a patrol car, and for having sex while on duty. But cops who are accused of committing far worse offenses—from fatally shooting an unarmed man in the back, to refusing to take a man who officers had beat nearly unconscious to a hospital—have kept their jobs, even after mayors and chiefs of the Portland Police Bureau (PPB) have wanted to remove them from the force.

“This has created an atmosphere within the bureau that you can do anything you want, and you will not be held accountable for any actions,” says Dr. T. Allen Bethel, a civil rights activist and president of the police accountability group the Albina Ministerial Alliance. “Especially if those actions kill.”

Facing diminishing public trust in the city's ability to discipline its police force, Portland's elected officials are pushing the Oregon legislature to pass a bill that would close a legal loophole that prevents the firing of officers who gravely injure or kill members of the public.

It's an issue that has divided those in law enforcement. While union leaders representing rank-and-file police argue that the legislation undermines officers' rights, police leadership—including the PPB's chief and Portland's mayor, who serves as police commissioner—say the bill will allow them to discipline their employees equitably and improve workplace morale. Meanwhile, some community leaders who have long demanded accountability for cops, say that lawmakers' plans are a too-little, too-late solution that doesn't address the actual problem.

The future of the legislation is uncertain. But the discussion of its merits—a conversation that coincides with contract negotiations between the city and the PPB's union—has brought renewed attention to a question Portland has struggled to answer for decades: How can the city fairly penalize officers who kill or injure members of the public?

Those in leadership positions at the PPB point to a single tool that, they say, has routinely undercut their attempts to discipline problematic officers: arbitration.

“The current system of arbitration... undermines the chief’s ability to hold officers accountable to the high standards of our profession,” said PPB Assistant Chief Chris Davis at a recent hearing before Oregon’s Senate Judiciary Committee.

When a PPB chief chooses to discipline an officer, the decision can be challenged by the police union—in most cases, that’s the Portland Police Association (PPA), the union representing all 950 of the bureau’s rank-and-file officers. When the PPA challenges a disciplinary decision made by the PPB, the case goes to an arbitrator—a private attorney recommended by the state’s employment relations board—to settle the disagreement out of court.

In Portland, every time a police chief or mayor has decided to discipline or fire an officer for inappropriate use of deadly force, the PPA has challenged the decision, thus sending the matter to arbitration. And every time, the arbitrator has overturned the police chief or mayor’s decision.

In 2003, PPB officer Scott McCollister shot and killed Kendra James, an unarmed Black woman, during a traffic stop. The city suspended McCollister without pay for nearly six months—only to have an arbitrator overturn the decision and order the city to reinstate McCollister, erase the suspension from his record, and pay all lost wages and benefits.

In 2007, then-mayor Tom Potter fired PPB lieutenant Jeffrey Kaer for killing Dennis Young, an unarmed man, after Kaer approached his parked car. A year later, an arbitrator reversed his firing; Kaer returned to work shortly afterward, with a check for backpay.

A similar scenario played out in 2012, when an arbitrator overturned the termination of Ron Frashour, the PPB officer who shot and killed Aaron Campbell, an unarmed Black man. Later that year, another arbitrator overturned the two-week suspensions of Chris Humphreys and Kyle Nice—two PPB officers who severely beat and tased James Chasse, a man suffering from schizophrenia, and then neglected to take him to a hospital, directly leading to Chasse’s death later that day.

In these cases, arbitrators sided with the police union after finding past situations where PPB did not discipline officers for similar conduct. Arbitrators are allowed to use these contradictions as precedent, thus undoing PPB’s more recent decisions.

“Case after case, excessive use of force in Portland has been dismissed—not because the officer did not use deadly force, but because we allowed that use of force in the past,” says Oregon Sen. Lew Frederick, who represents North Portland. “That can’t be our standard.”

In 2019, Frederick introduced a bill that would prohibit arbitrators from overturning a discipline decision made by a police chief or police commissioner. Rather than letting arbitrators determine punishment based on prior precedent within a police department, Frederick’s bill would prioritize a “discipline matrix”—an established document that dictates what kind of punishment will be imposed for different levels of misconduct. Portland adopted a discipline matrix in 2014 and remains the only jurisdiction in the state with one in place.

Frederick’s bill passed the Senate, but was stalled in a House committee chaired by a former PPA president. Frederick, who reintroduced the bill in the legislature’s 2020 session, says an outside arbitrator’s opinion shouldn’t override discipline rules that are laid out in a legally binding discipline guide.

He’s not alone.

“As management, we need a clear discipline guide,” says Scott Winkels, a lobbyist for the League of Oregon Cities, a nonprofit that advocates for cities’ needs at the legislature. “And for officers, it provides clarity. So if they commit an act that is serious, they’ll know exactly what

the consequence will be. And line officers will know what standards their colleagues are going to be held to.”

PPB’s Davis says that to gain the trust of his employees, the discipline system has to be “predictable and consistent.”

“The current system causes unpredictability and different outcomes for discipline cases,” Davis told the Senate committee. “This contributes to distrust of the discipline system among our officers, and it leads to public distrust in our ability to hold our own people accountable, which is fundamental in a democracy.”

Davis is a member of the City of Portland’s bargaining team, which began meeting with the PPA in early February to negotiate the union’s contract. The city is expected to push PPA to include stronger discipline guidelines in its new contract. Frederick’s bill could make those negotiations easier—slightly.

Since Frederick’s legislation is modifying an existing policy within the union contract, the politically powerful PPA still has to approve his bill’s language before it goes into effect. The City of Portland, the PPB, and the Multnomah County Sheriff’s Office have all submitted testimony in support of the bill.

The PPA, which opposes the bill, did not respond to the Mercury’s request for comment.

The bill is co-sponsored by Rep. Janelle Bynum, who represents parts of East Portland. Bynum says that in the absence of state-level standards for police discipline, the legislation is a step toward; more equitable treatment of Oregon police officers.

“This is about the good cops, the ones putting their lives on the line. It’s about giving them a fair shot at rising to the top,” Bynum says. “This is so critically important for upholding professional standards. I don’t think you can guarantee real justice for police officers and the public without a consistent level of justice.”

Police union supporters, however, are using a similar argument to oppose the legislation’s proposal. In his testimony against the bill, Michael Selvaggio, a lobbyist for the Oregon Coalition of Police and Sheriffs, said that independent arbitrators keep police leadership from making biased or politically charged discipline decisions.

“We’re in favor of making the process standardized and predictable,” Selvaggio told the Senate committee. “That’s why we’re urging a ‘no’ vote.”

Attorney Will Aitchison, who served as PPA general counsel until 2013, believes the legislation misses the mark.

In Portland, the vast majority of police discipline recommendations made by the police chief or mayor aren’t challenged by the PPA.

“Thing is, the bureau usually gets it right,” Aitchison says, “and the union looks at the case and doesn’t challenge it.”

The cases that do make it to arbitration, however, are generally the most egregious—and often the ones in which politicians and members of the public have demanded that an officer be punished or fired.

As Aitchison points out, however, not all headline-grabbing cases will be impacted by the proposed policy. Frederick’s legislation would only apply to instances when an arbitrator agrees with the city that misconduct occurred, but doesn’t agree that city’s punishment is appropriate for the offense.

In each of the cases mentioned earlier in this story involving officers' punishments being reversed, arbitrators concluded that no discipline was necessary. Meaning that, in each of these cases, Frederick's legislation wouldn't apply.

Aitchison said that in his 35 years representing the PPA in arbitration, he never encountered a situation in which arbitrators agreed that misconduct occurred, but disagreed on the appropriate punishment.

According to the Portland City Attorney's office, there's only one case that has occurred since the introduction of PPB's discipline matrix in 2014 that would have been impacted, had this new bill had been in place at the time. The city declined to share any more details about that case.

"That's the supreme irony about this legislation," says Aitchison. "It's trying to solve a problem that doesn't exist."

Frederick disagrees. He says it's unfair to compare past discipline decisions against the suggested legislation, and that it's more important to think of the policy as one of several incremental tools that, when combined, can strengthen officer accountability.

"Police chiefs are telling us that this is what they need to do their job," says Frederick. "This isn't going to solve everything, but it's an attempt to begin making changes."

Passing this bill, the bill's supporters argue, will also encourage other cities to use a discipline matrix, thus standardizing discipline across the state.

Longtime critics of the PPB and PPA, however, seem to agree with Aitchison.

Arbitrators who review police discipline cases don't only rely on the PPB's past disciplinary decisions when determining their rulings. More often than not, arbitrators also find that an officer's conduct, while egregious, was in line with PPB policy guidelines.

"In order for this [bill] to be effective, we have to believe that officers who have killed people are going to be found 'out of policy' to begin with, and that's an incredibly rare thing to occur," says Dan Handelman of police accountability group Portland Copwatch.

PPB policy is notably vague when granting officers the right to use deadly force, requiring only that such action is "objectively reasonable." The bureau requires that determination be made "based on the totality of circumstances known by an officer at the time of action or decision-making... without the clarity of 20/20 hindsight after the event has concluded."

In the 2012 ruling that overturned the city's decision to fire Frashour—finding that Frashour acted within PPB guidelines in killing Campbell—arbitrator Jane Wilkinson was careful to specify that her ruling avoided relying on "20/20 hindsight."

"This was a very tragic case, one where the Monday-morning quarterback has the clear advantage when divining what went wrong," wrote Wilkinson.

Handelman says that if the city is truly concerned about penalizing officers who seriously hurt or kill Portlanders, it needs to reconsider its deadly force policy.

It's not out of the question that city leaders could revise that policy to offer stronger protections for Portlanders. City leadership is allowed to review and adjust PPB policies if they have solid "administrative rationale," a term that includes anything from "complaints or discipline outcomes" to "a shift in organizational philosophy."

Portland City Council used this tool in 2017 when it voted to require that PPB officers give statements to investigators within 48 hours of a shooting.

J. Ashlee Albies, a Portland attorney who has represented police accountability groups in court, believes responsibility lies with the city, not the state legislature, to improve the PPB's discipline system.

“Over the years, we’ve seen so many people in crisis and people of color killed by the police, yet we’ve seen no attempt to hold officers accountable,” says Albies. “If the city actually held the officers accountable, then there wouldn’t be bills like this.”

Albies argues that if the city took a stronger position in advocating for the community’s interests—particularly in their closed-door arbitration meetings with the PPA—these cases might end with different outcomes.

“I think this bill is a convoluted way at getting at that problem,” she says. “In this case, legislators are trying to represent the community. It’s admirable.”

Frederick’s legislation has collected bipartisan support at the state capitol. At the time of publication, the bill had passed the Senate and was still being discussed in a House committee, but it’s unclear if it’ll pass before the end of Salem’s whirlwind 35-day session on March 8. Both Bynum and Frederick, however, have shown interest in continuing to push the bill forward, even if that means waiting until 2021’s longer session.

“The motivation here is very simple: trust,” Frederick said during the bill’s first Senate committee hearing. “I want to see a system where people feel they are treated well—both law enforcement and the general public. This is an attempt to make a step in that direction.”

City Council Candidates Criticize City Attorneys' Handling of Quance Hayes Case

*By Alex Zielinski
February 27, 2020*

Four Portland City Council candidates have signed a letter denouncing the arguments made by Portland city attorneys in Quance Hayes' wrongful death lawsuit.

In a letter sent to city commissioners, candidates Loretta Smith, Sarah Iannarone, Carmen Rubio, and Sam Adams urge officials to withdrawal the "ludicrous" argument used in court against the Hayes' family.

The candidates cite the Mercury's coverage of Wednesday's federal hearing in Hayes' case in their letter to city commissioners.

Hayes, a 17-year-old African American, was killed by Portland officer Andrew Hearst in February 2017 after being cornered by a group of officers in an alcove outside of a Northeast Portland house. At the time, Hayes was a suspect in an attempted carjacking and armed robbery—accusations that haven't been contested by his family. After officers tracked him down, Hayes followed their orders to crawl on the ground out of the alcove, towards Hearst. But when Hayes reached down to his waistband, Hearst fired his AR-15 rifle, hitting Hayes in the head and torso.

In court testimony, Hearst said he believed Hayes was reaching for a gun. Only after Hearst fatally shot Hayes did officers find a fake gun next to his body. A Multnomah County grand jury declined to indict Hearst for killing Hayes.

Hayes' family sued the City of Portland in 2018 for failing to properly train its police officers—a result that allegedly led to Hayes' death.

In pre-trial hearings before US District Court Judge John Acosta, attorneys representing the city have argued that Hayes and his mother, Venus Hayes, are the only people responsible for his death. During a Wednesday court hearing, city attorney William Manlove argued that, because Hayes slept poorly, carried a fake weapon, and committed crimes before his encounter with the police, the fatal shooting was justified. The city has also accused Venus of not supervising her son, thus allowing him to commit crimes that warranted his killing.

In their letter, candidates call the city's victim blaming "disgusting, oppressive, and polarizing ... only serving the interest of creating deeper rifts between vulnerable communities and the city that is meant to serve them."

"Quanice Hayes' story is not unique but is rather representative of many of the young people struggling to find their way in this city that we should be uplifting – not beating down," the letter continues. "Venus Hayes' story is not unique but is rather representative of many parents in this city burdened with the weight of providing for their families in an environment where they struggle to find an affordable place to live and a job that pays them a livable wage."

The group urges city officials to direct the city attorneys working on this case to withdraw their argument immediately and "work with Quanice Hayes' estate to quickly resolve the broader case so that true community healing can begin."

"The City Attorney was not elected by the voters of Portland – you were," the letter reads. "You all are empowered to stop this attack on a mother who is still, and always will be, mourning the tragic loss of her son. This must end today. We shouldn't have to wait on Judge Acosta to deliver a ruling on something as wrong-headed as this."

Smith, a former Multnomah County Commissioner, Rubio, the director of Latino Network, and Adams, a former Portland mayor, are all running for separate city council seats in the May election. Iannarone, an urban planning researcher, is running for mayor.

[Read the complete letter here.](#)

City Attorney Tracy Reeve told the Mercury the city does not comment on pending litigation.

Commissioner Jo Ann Hardesty responded to the letter in a brief email to the Mercury.

"This decision predates my time on city council," Hardesty wrote. "While I cannot comment on pending litigation, I have asked for a briefing from the city attorneys to explain their rationale."

Mayor Ted Wheeler's office gave a similar response. "We cannot comment on pending litigation," wrote Tim Becker, a spokesperson for Wheeler's office. "Our office will follow up with the city attorney to learn more about the circumstances mentioned in the letter."

City Attorneys Argue That Teen Slain By Portland Police Was Solely Responsible for His Death

*By Alex Zielinski
February 26, 2020*

Attorneys with the City of Portland believe it's plausible to argue that 17-year-old Quanice Hayes died on February 9, 2017 because he burglarized a house and lied to police officers about it—not because a Portland cop shot him three times with a AR-15 rifle.

On Wednesday, US District Court Judge John Acosta pushed city attorneys to explain why Hayes' death "was the sole and exclusive fault of Mr. Hayes," an argument that attorneys representing Hayes' family in a civil rights lawsuit want to throw out.

"Under their logic, officers have the right to use deadly force against anyone simply because they were engaged in felonies," said Jesse Merrithew, one of the attorneys representing the Hayes family. "That's ludicrous."

Hayes was killed by Portland officer Andrew Hearst after being cornered by a group of officers in an alcove outside of a Northeast Portland house. At the time, Hayes was a suspect in an attempted carjacking and armed robbery—accusations that haven't been contested by his family. After officers tracked him down, Hayes followed their orders to crawl on the ground out of the alcove, towards Hearst. But when Hayes reached down to his waistband, Hearst fired his rifle, hitting Hayes in the head and torso.

In court testimony, Hearst said he believed Hayes was reaching for a gun. Other officers testified that Hayes' pants had been falling down when they cornered him, suggesting he may have been just trying to pull them up. Only after Hearst fatally shot Hayes did officers find a fake gun next to his body. A Multnomah County grand jury declined to indict Hearst for killing Hayes.

The lawsuit, filed by Hayes' family in 2018, accuses Hearst of using excessive force against Hayes and blames the City of Portland for failing to train officers who are interacting with suspects they believe to be armed. In response, city attorneys have presented a laundry list of reasons why Hayes' actions leading up to his death—and the actions of his mother—are to blame for his death.

Attorneys representing the Hayes family have asked that Acosta make it impossible for the city to rely on these arguments when the case goes to trial.

In a November 2019 response to the litigation, city attorneys presented a list of 17 reasons explaining why Hayes caused his own death. The document points to Hayes' burglaries of a house and a vehicle—and his decision to lie to officers about it—as reasons for why he was killed. Attorneys also argue that Hayes' decision to carry a replica gun and to use it to frighten a man sitting inside the vehicle he robbed led to his death.

"If Mr. Hayes had never robbed [the man in the vehicle] with a handgun, it is quite likely the police response would be very different," said City Attorney William Manlove, at the Wednesday court hearing. "If he had never done the things listed [by the city], this particular outcome wouldn't have happened. It was his conduct that added to and was part of the risk he created."

Acosta zeroed in on the city's accusation that Hayes acted negligently by "failing to sleep properly," because lack of sleep can alter a person's judgment.

"Negligence would be failing to do something for his or her own safety," said Acosta. "The night before, when Mr. Hayes fell asleep, how did he know the next day he was going to be confronted by armed police officers and be shot? How is it negligent to not sleep enough? I didn't sleep well last night. Am I negligent because I didn't sleep well last night?"

Manlove paused, and responded: "It depends on what you were planning to do this morning. If you planned to drive a motorcycle from here to Pendleton, maybe that would be negligent."

J. Ashlee Albies, another attorney representing the Hayes family, argued that many of the city's accusations were irrelevant, since they include information Hearst was unaware of at the time he shot Hayes. She also opposed the idea that felonious conduct on its own was enough probable cause for an officer to kill someone.

Albies' arguments were in line with the findings of independent investigators who, in 2019, concluded that the Portland Police Bureau (PPB) failed to acknowledge officer errors in its internal review of Hayes' death.

"Instead," the report reads, "[PPB] reached the fatalistic conclusion that Mr. Hayes' actions drove the outcome."

Later in the hearing, Acosta questioned city attorneys' claim that Hayes' mother, Venus Hayes, was partially to blame for her son's death because she failed to "reasonably supervise and monitor Quanice Hayes' behavior."

Manlove pointed to evidence that Venus had admitted to the court that she had been struggling to control her teenage son's behavior prior to his death. Because she knew Hayes was acting out, the city argued, it's reasonable to assume Venus "could foresee he would go out and commit these crimes."

Albies quickly rejected that argument.

"The city argues that a parent's failure to supervise a child led to the child being shot by police," said Albies. "The framing of this defense is entirely objective and offensive."

Acosta did not rule Wednesday on the request to throw out the city's accusations against Hayes and his mother. He did not give a timeframe for when he plans on making that ruling.

Venus attended the Wednesday hearing with her children and other family members—including Hayes' grandmother Donna Hayes, who became active in police accountability activism after her grandson's death.

"I think the judge recognized that this argument is something [Manlove] is grasping for, and I think he knows it too," said Donna, speaking to the Mercury after the hearing.

"I'm hoping for my daughter," she continued. "Nothing can pay for the loss of her son. But if we can give her a little bit of justice... that's something. The city has to do right. To sit here and blame her for pulling Hearst's trigger—that's not right."

Venus told the Mercury that she has sympathy for Manlove, since she knows he's simply doing the job the city's asked him to do. But that doesn't mean his accusations didn't hurt.

"To blame me for my son's death, that's hard to hear," she said. "That is hard."

The Daily Journal of Commerce

Report: Portland residential demolition ordinance a success

By Sam Tenny

February 26, 2020

A Portland ordinance intended to minimize the spread of hazardous materials during residential building demolitions has been largely effective, according to a new city report analyzing the first 18 months of implementation.

Portland City Council in 2018 adopted updates to the building demolition code as a means to protect neighbors of structures undergoing demolition. Prior to passage of the residential demolition ordinance, the city had no regulations in place for containment of materials such as asbestos and lead-based paint. The Oregon Department of Environmental Quality was responsible for enforcing asbestos abatement rules, but lacked the resources to do so.

Stakeholders including contractors, the city's Development Review Advisory Committee, neighborhood representatives, state agencies and city staff convened over the course of six months to craft the ordinance, which gained approval in February 2018 and took effect in July 2018.

The ordinance applies to residential buildings with up to four units, and includes garages and other accessory structures. Among its provisions are requirements that plastic sheeting be placed around demolition sites and in waste bins to prevent soil contamination and runoff, removal of exterior surfaces by hand rather than with mechanical equipment, use of water spray to contain dust and debris, and prohibition of mechanical demolition when wind speeds exceed 25 miles per hour.

In addition, the ordinance requires the Bureau of Development Services to expand the geographic reach of mailed and door-hung demolition notices, makes demolition permits susceptible to BDS staff review, requires contractors to submit demolition plans and materials surveys prior to starting work, and mandates three inspections over the course of a demolition – one each before, during and after the project. An interim administrative rule adopted earlier this month updated the policy to require two inspections during the demolition process.

From implementation in 2018 through the end of last year, the city accepted about 550 demolition permit applications that were subject to the new rules and took 47 enforcement actions for violations of the ordinance. After an initial correction notice, penalties for noncompliance start at \$5,000 for the first offense, \$10,000 for the second, and \$15,000 each for subsequent violations. Through Dec. 31, 2019, the city issued 42 correction notices, two stop work orders and three first offense citations.

According to a BDS report presented to Portland City Council this week, the ordinance – the strongest of its kind nationwide, as stated in the report – has resulted in a reduction in both off-site demolition impacts and complaints to the bureau about dust from mechanical demolition activities.

City staff and stakeholders have identified several areas for improvement in the code, and are drafting updates to the rules, including requiring those performing demolition work to have lead-based paint certifications (regardless of whether that person is a contractor), and removing a requirement that somebody with certified asbestos accreditation be on-site during mechanical

demolition. Revisions to the ordinance are being finalized by BDS staff and are slated for presentation to City Council next month.

OPB

Portland Council Candidates Object To City Legal Strategy Against Quanice Hayes' Family

February 27, 2020

Four candidates for Portland City Council sent a letter Thursday in which they object to the city attorney's strategy in a lawsuit against the family of Quanice Hayes, a black 17-year-old who was fatally shot by Portland Police in 2017.

The letter comes from four candidates vying for different seats on the city council: commission contenders Loretta Smith, Carmen Rubio and former mayor Sam Adams, as well as mayoral candidate Sarah Iannarone. The candidates' letter calls the strategy, first described in a story in the Portland Mercury, "disgusting, oppressive, and polarizing." The letter summarizes the city's legal approach as "arguing that Quanice Hayes and his mother, Venus Hayes, are ultimately responsible for his death because of their negligence."

During a phone call Loretta Smith, former Multnomah County Commissioner said for her, "It's personal."

"I'm a single mother. Who raised her son here in Portland. And I was outraged that the city would seek to attack Miss Venus Hayes, who is the mother, who is still mourning the loss of her son. And it hit me in a very personal way," Smith said.

According to records released in the months after the shooting, officers came into contact with Hayes as part of a robbery investigation. Police said Hayes ran from police, and when officers caught up to him and told Hayes to raise his hands, he reached for his waist area. Police shot Hayes three times. A replica handgun was found near Hayes' body after he was killed.

Hayes' death was part of a rash of officer-involved shootings of black males in recent years, including the 2016 death of Philando Castile in Minnesota, the 2015 shooting of Freddie Gray in Baltimore and the 2014 death of Michael Brown in Ferguson, Missouri.

The letter argues that the circumstances of Quanice Hayes and his mother are "not unique" but are "representative" of challenges facing parents and young people in communities of color in Portland. The candidates are pressing city leaders to change their legal course.

"The City Attorney was not elected by the voters of Portland — you were," the letter said. "You all are empowered to stop this attack on a mother who is still, and always will be, mourning the tragic loss of her son."

Smith said, "We have to show true leadership especially in times like this if we're going to come together as a city. And I thought, being poor and in need of wrap around services isn't a crime and it's certainly not a justification for use of lethal force."

Staff for Portland Mayor Ted Wheeler said there was a limit to what their office could say, given that the letter arrived while a lawsuit involving the city is working its way through the court system.

“We cannot comment on pending litigation,” public information officer Tim Becker said in an email to OPB. “Our office will follow up with the city attorney to learn more about the circumstances mentioned in the letter.”

Portland Renter Protections Start Next Week, Despite Attempt To Block Them

*By Rebecca Ellis
February 27, 2020*

Portland’s landmark package of rental screening rules will go into effect as planned March 1, despite a last-minute effort by a coalition of landlords to block the regulations three days before they were slated to start.

The landlords had filed a federal lawsuit against the city last week, alleging the rules were poorly constructed, cumbersome and poised to make owning property in Portland nearly impossible. It was not an entirely unexpected legal action, as Multifamily NW, a trade group representing the region’s landlords and the main plaintiff in the suit, had been an outspoken critic of the rules, known as the FAIR ordinance, leading up to their passage last June.

But the timing of the suit — and the fact that the landlords were asking for a temporary restraining order, which would block the rules just days before they were set to begin — turned some heads, including the judge’s.

“Everyone has known about these ordinances since June,” said U.S. District Judge Michael Simon Thursday at the initial court hearing on the lawsuit. “And yet just the week before they go into effect, I get a temporary restraining order motion?”

Simon appeared displeased that the rush had led to him receiving court filings at five minutes to midnight the night before. He noted such an ask was not a way to endear yourself to the court.

“I get when there are real emergencies ... but on cases with this degree of complexity, it’ll take up to 90 days to write an opinion,” he said. “This just doesn’t look to me that it represents the kind of urgency that requires a temporary restraining order.”

His ultimate decision to deny the landlords’ request to block the rules was cheered by members of Portland Tenants United, who had filled the benches in the federal courtroom.

Margot Black, the founder of the group, said there’d been extensive training and outreach since the rules were passed to try to make sure all the tenants understood their new rights before the ordinance took effect.

“It’s a game to them,” Black said. “For them a week before to try to kill [the rules] and then have us have to go out and now tell everybody just kidding ... That’s chaos.”

The new rules eliminate many of the criteria landlords could potentially use to discriminate against tenants, such as criminal records, income and credit scores. The rules were crafted by Commissioner Chloe Eudaly, who said at the time of their passage that they were meant to address “the criteria that continue to be used in as a proxy for race.”

Jill Gibson, who’s representing the plaintiff for law firm Lynch Conger, argued these new rules are confusing to landlords with important phrases left undefined. As a result, she said, landlords could easily misstep and be left vulnerable to a lawsuit.

“We believe landlords will start being sued,” Gibson told the judge. “These lawsuits will start popping up and you’ll have juries and judges trying to interpret this very vague and complex ordinance.”

As for why they brought the lawsuit so near to its effective date, a spokesperson for Multifamily NW said they had been holding out hope until very recently that the ordinance would become less vague during the city’s rule making process. They said it only became clear recently that no clarification was coming, leading them to rush a suit.

Simon also questioned why the matter had ended up in federal court as, at its crux, it’s dealing with issues of state law.

“What are you doing in this court?” he questioned. “I don’t want to be the decider on very important — and I dare say some of them are difficult — issues of interpreting state law and the state constitution.”

Simon recommended both parties take some time to discuss whether they want the lawsuit to continue winding its way through the federal court system or whether the group of landlords would prefer to bring the suit in state court. City Attorney Tracy Reeve noted this decision would ultimately be up to the plaintiffs.

In a statement, Deborah Imse, the head of Multifamily NW, said while she was disappointed that the court declined to temporarily block the rules from going into effect, they were “looking forward to continuing the next steps of this case and getting relief from this unworkable ordinance.”

Portland Auditor Finds Evidence Of Illegal Procurement Practices Within Water Bureau

*By Rebecca Ellis
February 28, 2020*

The Portland city auditor’s office says staff at the Water Bureau have not been abiding by city rules — and may have even violated state law.

In a report out Thursday, the auditor’s office says investigators followed up on a tip to their fraud hotline and found evidence that a Portland Water Bureau staff member tried to circumvent the city-mandated competitive procurement process.

Whenever city staff plans on spending more than \$10,000 on services or goods, officials are supposed to begin a procurement process where vendors are invited to come in and compete for city dollars.

But the auditor says staff at the Water Bureau skipped that process by routinely making purchases just under that \$10,000 threshold.

Between January 2018 and June 2019, Ron Drath, a meters supervisor for the Bureau, made 18 purchases of just under \$10,000 for water meter equipment, according to a memo sent to the Water Bureau from the auditor’s office. (Drath had previously been the subject of a \$20,000 sexual discrimination lawsuit.)

Despite there never being a competitive process, more than \$182,000 went toward an equipment company called Consolidated Supply Co.

The practice has a name. It's called "fragmenting" — and it's illegal, according to Deborah Scroggin, the lead investigator for the city auditor's office. She said they've forwarded their investigation to the Water Bureau and the matter's now in their hands.

The office of City Commissioner Amanda Fritz, who oversees the bureau, said the Water Bureau did their own investigation with the Bureau of Human Resources and found "no evidence of fraud or illegal personal gain." As a result, no disciplinary action will be taken against the Water Bureau staff members named in the investigation.

The auditors' investigation turned up one possible reason why the supervisor might want to avoid the competitive procurement process.

According to the report, Kathy Koch, who oversaw the equipment purchases for the Water Bureau, is married to a salesperson at the equipment company. The auditors' report points out her husband receives commissions based on how much he sells.

This is the kind of conflict-of-interest that the manager would need to disclose to the city. But, according to the report, this never happened.

The auditor's office pins part of the blame on a messy procurement process within the Water Bureau.

"Folks were not clear on what part of the process they were at when they were purchasing equipment," said Scroggin. "And so we just recommended that they really put into place more clear procedures and go through some procurement training, especially people at all levels of the bureau who are engaged in purchasing decisions."

In a statement, Mike Stuhr, the director of the Water Bureau, said the bureau has since signed all the conflict of interest forms, received "procurement training," and signed a new contract through the procurement process for meter equipment - though the auditors' report points out this happened after their investigation began.