

See Substitute

1173-2018

IMPACT STATEMENT

Legislation title: *Authorize the Commissioner in Charge of the Police Bureau to Order Content-Neutral Time, Place, and Manner Regulations for Demonstrations Held in the City (Ordinance)

Contact name: Michelle Plambeck

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Presenter name: Robert Taylor

Purpose of proposed legislation and background information:

There has been an increase in the number of demonstrations resulting in injury to people, property damage, and legitimate safety concerns for the public. The intensity of the demonstrations has also been escalating.

Recent history, and especially the increasingly dangerous and violent events, demonstrates that additional tools are necessary to protect the rights of demonstrators while preserving the peace and preventing violence and property damage.

These frequent and violent demonstrations have also utilized many of the City's available police resources to prevent and address violence. It is imperative that police services be available to other parts of the City.

The purpose of this legislation is to protect and ensure freedom of speech and public safety by enacting reasonable regulations on events where demonstrators and counter-demonstrators have a history of violence that have resulted in injuries to participants, by-standers, or damage to property.

Financial and budgetary impacts:

There are no financial or budget impacts associated with implementing this Ordinance.

Community impacts and community involvement:

Written orders regarding protest safety by the Commissioner in Charge will be released to the public prior to the event(s). The City will take steps to ensure that the public has been provided sufficient notice of any written orders.

100% Renewable Goal:

Approval of the Ordinance does not impact the City's total or renewable energy use.

Budgetary Impact Worksheet

Does this action change appropriations?

- ☐ **YES:** Please complete the information below.
- ☒ **NO:** Skip this section

ORDINANCE No.

*Authorize the Commissioner in Charge of the Police Bureau to order content-neutral time, place and manner regulations for demonstrations held in the City (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. Freedom of speech and association are among the fundamental rights guaranteed and protected by the United States and Oregon Constitutions. The City Council enthusiastically supports the exercise of these fundamental rights.
2. The law also recognizes the need for reasonable, content-neutral time, place, and manner regulations to ensure that speech and assembly rights can be exercised safely and without significant disruption to the rights of other members of the public.
3. The United States Supreme Court has explained “that even in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions ‘are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.’” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)).
4. Applying the Supreme Court standard, the Ninth Circuit Court of Appeals has upheld time, place, and manner regulations for demonstrations. *Menotti v. City of Seattle*, 409 F.3d 1113 (2005). As the Ninth Circuit explained, “No one could seriously dispute that the government has a significant interest in maintaining public order; indeed this is a core duty that the government owes its citizens.” *Id.* at 1131. Further, “once multiple instances of violence erupt, with a breakdown in social order, a city must act vigorously, and more extensively, to restore order for all of its residents and visitors. Adding large numbers of police on the street might be the solution in some cases, but in other cases could lead to more intense violence.” *Id.* at 1137. As the Ninth Circuit reasoned, “we do not think that even the most vital First Amendment expressions ... can be said automatically to overcome the need of a city to maintain order and security for its residents and visitors, in the face of violence.” *Id.* at 1140.
5. Similarly, under the Oregon Constitution’s Article I, Section 8, the Oregon Supreme Court has held that “some burdens on expressive activities are permissible, such as time, place, and manner restrictions.” *State v. Babson*,

355 Or. 383, 326 P.3d 559 (2014) (citing *Outdoor Media Dimensions, Inc. v. Dept. of Transp.*, 340 Or. 275, 286, 289-90 (2006)).

6. In some recent demonstrations, nearly all of the City's available police resources have been needed to prevent and/or address violence and property damage arising from demonstrations. This leaves other parts of the City without adequate police services. Reasonable, content-neutral time, place, and manner regulations protect both the freedom of expression of demonstrators and the rights of others to be safe in the community and access police services.
7. Reasonable, content-neutral time, place, and manner regulations may be particularly necessary in instances where demonstrators and counter-demonstrators seek to use the same, limited public spaces, and have a history of violence against each other.
8. Reasonable, content-neutral time, place, and manner regulations are now necessary because, even with a significant law enforcement presence, the City continues to experience demonstrations resulting in injury to persons, damage to property, and legitimate safety concerns for the public. Further, the potential for violence at these events continues to escalate. The following demonstrates the pattern of escalation, injury and property damage:
 - a. On April 29, 2017, demonstrators held a rally where they gathered in Portland at Montavilla Park and marched to Eastport Plaza via 82nd Avenue. More than 100 demonstrators and counter demonstrators participated in the event. Some demonstrators wore helmets and brought thick wooden sticks. Other weapons observed included a baseball bat and collapsible baton. Several people were arrested.
 - b. On June 4, 2017, a demonstration and counter-demonstrations occurred in downtown Portland. The events occurred at Terry Schrunk Plaza, City Hall and Chapman and Lownsdale Squares. A total of more than 2,000 people participated in the demonstrations. Projectiles were thrown at police by demonstrators, including eggs, fireworks and mortars, soda cans, rocks, an unknown chemical agent, and a metal bar. Weapons confiscated by police included sticks, batons, shields (metal and plastic), knives, brass knuckles, crowbar, wrist rocket, switchblade, reinforced weaponized shields, and other homemade implements. Multiple fights occurred including a report of a large fight involving 50-60 people. Vandalism occurred. One person was injured. An officer was struck in the head with a rock, denting his helmet. Another officer was struck by a brick on his arm. Chapman and Lownsdale Squares were closed. Portland Police Bureau (PPB) declared an unlawful assembly. Multiple people were arrested.

- c. On August 6, 2017, a demonstration and counter-demonstration were held in downtown Portland. The events occurred at Tom McCall Waterfront Park. More than 300 people participated in the demonstrations. Some of the demonstrators engaged in physical altercations including use of pepper spray on each other. Several demonstrators were impacted by the pepper spray. A few people were arrested.
- d. On June 3, 2018, multiple demonstrations occurred in downtown Portland. The events occurred at Terry Schrunk Plaza, Chapman and Lownsdale Squares and the surrounding blocks. More than 300 people participated in the demonstrations. Throughout the events, members of competing groups were observed deploying pepper spray and throwing projectiles, including fireworks, bottles, rocks and ball bearings. Multiple fights and skirmishes broke out, including a physical altercation in which a participant was struck repeatedly with a helmet. Several people went to the hospital and several people were arrested.
- e. On June 30, 2018, multiple demonstrations were held in downtown Portland. Close to 300 people participated in the demonstrations, which included a permitted march. Large scale fights broke out between the competing groups resulting in multiple injuries. Weapons were used by demonstrators and projectiles were thrown at police, including eggs, water bottles, and a wooden dowel. Other projectiles included fireworks, rocks, and construction equipment. Emergency responders provided on-scene medical evaluations to several people and four people were transported to area hospitals by ambulance. One PPB officer was also injured and transported to the hospital as a result of being struck by a projectile. PPB revoked the march permit. Chapman and Lownsdale Squares were closed. PPB declared a riot. Multiple people were arrested.
- f. On August 4, 2018, demonstrators gathered in downtown Portland for a demonstration, counter-demonstration and unpermitted march. The demonstrations and march were held in Tom McCall Waterfront Park and on roadways in the downtown area for approximately eight hours. More than 1,000 people participated in the demonstrations. Due to the size of the crowd and the forecasted major violence gathered in intelligence, PPB expended significant resources to prevent catastrophic injuries. PPB had to redirect most of its resources to the event, which resulted in PPB needing neighboring law enforcement agencies to assist in covering PPB calls for service. PPB had to employ more than 200 officers to the event, not including the other law enforcement agencies who also provided personnel. Prior to the start of the scheduled demonstrations, police contacted four individuals on the top floor of a parking garage. The sergeant involved contacted them and they confirmed they had three rifles and had concealed weapon permits. The

men told the sergeant they were going to stay at the garage and act as a quick extraction team in case any of their group was injured during the demonstration. The men were compliant and allowed the sergeant to inspect the weapons. All three firearms were in cases (one was disassembled) and none were loaded. In consultation with the City Attorney's Office, the sergeant told the men to store the weapons in a locked storage container in the back of the pickup and place the ammo away from the weapons in a different part of the truck.. Officers located and seized multiple weapons throughout the demonstrations including rocks, smoke bombs, fireworks and mortars, unknown chemical agents, bottles, items from a slingshot and other projectiles. Multiple participants also came to the event armed with firearms. PPB had to close Naito Parkway for a portion of the event and redirect traffic. Several police vehicles were damaged by counter-demonstrators. Multiple fights and skirmishes broke out. Several people were injured including a reporter who was struck by a demonstrator's projectile (water bottle). PPB declared a civil disturbance. Due to the close proximity of demonstrators and counter-demonstrators and the increasing danger and threat of violence, police used riot control agents and less lethal munitions on the crowd. Several people were arrested.

- g. On October 13, 2018, a group of demonstrators marched to the site of a vigil in downtown Portland and they were met by counter-demonstrators. Earlier in the evening, members of the groups were seen with hard knuckle gloves, knives and firearms. At the vigil, the two groups exchanged taunts and threats. Later in the evening, members of the two groups engaged in a brawl downtown.
- 9. This recent history, and especially the increasingly dangerous and violent events, demonstrates that additional tools are necessary to protect the rights of demonstrators while preserving the peace and preventing violence and property damage. These tools include reasonable, content-neutral time, place, and manner regulations imposed as necessary by written order of the Commissioner in Charge of the Police Bureau (Commissioner in Charge).
- 10. Different demonstrations may require different time, place, and manner regulations. Due to the short notice of demonstrations and the need to quickly prepare for these events, City Council acknowledges that it is not feasible for Council to evaluate appropriately tailored regulations for each event. Therefore, delegation of authority to the Commissioner in Charge to impose reasonable, content-neutral time, place, and manner regulations is necessary and appropriate to timely address emergent situations related to demonstrations within the City.

NOW, THEREFORE, the Council directs:

- a. The Commissioner in Charge, through written orders, is authorized to impose upon planned demonstrations in the City reasonable, content-neutral time, place, and manner regulations prior to the demonstration event. Each written order by the Commissioner in Charge shall make findings demonstrating the necessity for each instance in which time, place, and manner regulations are imposed.
- b. The written orders of the Commissioner in Charge shall be imposed to protect the public's use and enjoyment of public spaces, to coordinate multiple uses of a limited public space, to assure preservation of public and private property, to protect the lives and safety of people in the City, and/or to prevent conduct that is dangerous or unlawful.
- c. Specifically, the Commissioner in Charge is authorized to take action by written order based on the following sufficient or articulable facts or information:
 - 1) When two or more groups have announced plans to demonstrate separately but on the same day, and there is a history of violence between the groups that has led to injuries to participants, bystanders, or damage to property, or
 - 2) The safety of participants or by-standers is being threatened or will be threatened unless the Commissioner in Charge imposes content-neutral time, place, and manner regulations prior to the scheduled demonstration; or
 - 3) There is a substantial likelihood of violence at the planned demonstrations based on statements or conduct by members of one or more demonstrating groups indicating an intent to engage in violence, or based on other credible information obtained by law enforcement in advance of the event.
- d. The Commissioner in Charge, in the interest of the public peace, health, safety or welfare, and in regard to the specific area or areas of the City imperiled by the public danger or emergency, may impose written orders to do any or all of the following:
 - 1) Restrict the time and length of the event or place regulations on the number of participants who may gather or congregate upon public property, public sidewalks, public rights-of-way, and places of public assembly to which the public has access.
 - 2) Restrict or prohibit movement within, around, above, or beneath the area or areas which, in the judgment of the Commissioner in Charge, are imperiled by the public danger or emergency.

- 3) Direct that demonstrations or counter-demonstrations be located or moved to one or more locations within the City so that the demonstrations do not create a substantial risk to public safety, obstruct or impede pedestrian or vehicular traffic, interfere with the movement of police, fire, or emergency services, crosswalk traffic, or otherwise interfere with special events, concerts or other previously scheduled activities. Any such redirection shall be to a location that is reasonably close to, sufficiently approximates, or reaches substantially the same audience as the original location.
 - 4) To address any vantage points the use of which by demonstrators could create a substantial risk to public safety, direct City-partner bureaus in charge of City buildings, properties or facilities, to close or limit access to those properties for the period of time necessary to eliminate any vantage points that could create a substantial risk to public safety.
 - 5) To the fullest extent permitted by law, prohibit weapons in certain locations within the City.
 - 6) The written orders of the Commissioner in Charge shall establish that other alternative regulations were considered and that no other less restrictive means were practicable under the circumstances.
- e. No time, place, or manner regulations regarding a demonstration shall be based on the content of the beliefs expressed or anticipated to be expressed during the event, nor may such regulations favor non-First Amendment activities over First Amendment activities.
 - f. Written orders imposed by the Commissioner in Charge will be released to the public prior to the event(s). The City will take steps to ensure that the public has been provided sufficient notice of any written orders.
 - g. Violation of any written orders imposed by the Commissioner in Charge pursuant to this Ordinance will constitute criminal activity punishable upon conviction by a fine of not more than \$500, or by imprisonment for a period of not more than 6 months, or by both. PPB will be authorized to arrest individuals who violate the terms of any written orders imposed by the Commissioner in Charge pursuant to this Ordinance.
 - h. Nothing in this Ordinance authorizes conduct prohibited by other provisions of the Portland City Code or other ordinances and laws of general applicability, including without limitation prohibitions relating to the obstruction of rights-of-way. The authority granted in this Ordinance is in addition to, and in no way restricts, any other authority granted to the City, its officials, and employees under applicable law.

- i. In the event that the Commissioner in Charge is not available to enact the order in advance of a demonstration, the Mayor or President of the Council, respectively, when not the Commissioner in Charge, has the authority to impose these written orders.
- j. This Ordinance is limited to content-neutral time, place and manner regulations by written order of the Commissioner in Charge in advance of a demonstration. This Ordinance does not affect the City's ability to place other content-neutral time, place and manner regulations as necessary to address issues that arise during the demonstration(s).
- k. Within 30 days after each demonstration for which the Commissioner in Charge has issued written orders pursuant to this ordinance, the Commissioner in Charge shall provide a written report to Council describing whether the regulations were effective and the lessons that might be learned for future written orders.
- l. This ordinance shall be in full force and effect through December 31, 2019, after which the ordinance shall expire unless renewed by the Council.

Section 2. The Council declares that an emergency exists because the Commissioner in Charge needs the tools provided in this Ordinance as soon as possible to address any emergent events that may arise; therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council:

Mayor Ted Wheeler
Prepared by: Robert Taylor
Date Prepared: October 24, 2018

Mary Hull Caballero
Auditor of the City of Portland
By

Deputy

*Authorize the Commissioner in Charge of the Police Bureau to Order Content-Neutral Time, Place and Manner Regulations for Demonstrations Held in the City (Ordinance)

INTRODUCED BY Commissioner/Auditor: Mayor Ted Wheeler	CLERK USE: DATE FILED <u>OCT 30 2018</u>
COMMISSIONER APPROVAL Mayor—Finance & Administration – Wheeler <i>MP</i> Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Eudaly	Mary Hull Caballero Auditor of the City of Portland By: <u><i>[Signature]</i></u> Deputy
BUREAU APPROVAL Bureau: Mayor Ted Wheeler Bureau Head: Mayor Ted Wheeler	ACTION TAKEN:
Prepared by: Michelle Plambeck Date Prepared: October 30, 2018	
Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City Auditor Office Approval: required for Code Ordinances	
City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan	
Council Meeting Date November 8, 2018	

AGENDA		FOUR-FIFTHS AGENDA			COMMISSIONERS VOTED AS FOLLOWS:		
TIME CERTAIN <input checked="" type="checkbox"/> Start time: 2:15PM Total amount of time needed: 2 hrs 45 min (for presentation, testimony and discussion)							
CONSENT <input type="checkbox"/>							
REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)		1. Fritz	1. Fritz				
		2. Fish	2. Fish				
		3. Saltzman	3. Saltzman				
		4. Eudaly	4. Eudaly				
		Wheeler	Wheeler				