

# REGULATIONS FOR DEMONSTRATIONS

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME.

Number	Name (please print)	Address & Zip Code (optional)	Email (optional)
1	✓ Portland National Lawyers Guild - Beth Watten presenting		
2	✓ Robert West		
3	✓ DAN HANDELMAN	PORTLAND COPWATER	
4	✓ PEGGY ZEBROWSKI		
5	✓ <del>JOE WATSON</del>		
6	left Nancy Newell		
7	✓ Philip J. Wolfe		
8	✓ Mimi German		
9	✓ Brian King	Portland	
10	<del>ABBY WILHELM</del>	<del>PORTLAND, OR</del>	

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Number	Name (please print)	Address & Zip Code (optional)	Email (optional)
11	✓ Lightning Super Creativity	<u>XXX PDXVII</u>	
12	✓ Kalei Luyben	7455 SW Kelly Ave. PDX - 97219	Kalei Luyben
13	✓ Charles Bridgecraft		
14	✓ JACKIE YERBY	URBAN LEAGUE	JYERBY12 URPX.ORG
15	✓ John <sup>Portland's</sup> Resistance		
16	✓ John Nordberg		
17	✓ Edith Gellis		
18	✓ Guy Champion	3715 J.E. Hassel	cap-champ@joe
19	✓ Beth Woodward		
20	<sup>NO</sup> Nina Ingram		

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Number	Name (please print)	Address & Zip Code (optional)	Email (optional)
21	<i>NO</i> Sam Resnick	97217	
22	<i>NO</i> DAVID CANTOR	97206	
23	<i>✓</i> DAVID DAVIS		
24	<i>NO</i> Aimee Sitarz	97206	
25	<i>NO</i> David O'Brien	97202	
26	<i>NO</i> Tony Hadden	97217	
27	<i>NO</i> Sam Mondaca	97212	
28	<i>NO</i> Dru Maloney	_____	_____
29	<i>NO</i> S. papillon	97203	
30	<i>NO</i> Erin Garcia	97233	

@FarleyFilms

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Number	Name (please print)	Address & Zip Code (optional)	Email (optional)
31	✓ ANNIE ROSE SIXAPERO	97211	
32	NO O'Shea Spencer	86004	
33	✓ Courtney Shannon		
34	✓ Mark Nerys	97210	
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Number	Name (please print)	Address & Zip Code (optional)	Email (optional)
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49			
50	<input checked="" type="checkbox"/> Brandon Farley @farleyfilms	97209	bfarley88@gmail.com

**From:** [Kat Brockschmidt](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** COMMENTS on Mayor's protest ordinance-Agenda item 1160  
**Date:** Thursday, November 8, 2018 10:50:39 AM

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This proposed ordinance is concerning for our community. Constantly, we see an escalated police response to unarmed community protests and gatherings, but violent, racist, nationalists are met with police escort and assistance. This ordinance comes at a time of increasing violence in minority communities across the country, but I don't see how criminalizing community further for standing up to nationalist violence will help us. The nationalist violence will not stop with or without this passing, all this will do is hurt our communities and make people more scared.

**From:** [Policy Resistance](#)  
**To:** [Council Clerk – Testimony](#)  
**Cc:** [Commissioner Fish](#); [Commissioner Eudaly](#); [Commissioner Fritz](#)  
**Subject:** COMMENTS on Mayor's protest ordinance (Agenda item 1160)  
**Date:** Thursday, November 8, 2018 10:43:19 AM

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To City Council Members,

Portland's Resistance is writing City Council to express our opposition to the proposed ordinance restricting the time, place and manner of demonstrations. This ordinance leaves far too many unanswered questions and is bound to be abused and violate the rights of many with the goal of curtailing the actions of the few. As an organization, we stand up against the hate and injustices in this country that you also claim to stand against. We have done so while intentionally and vocally promoting non-violent direct action and still have been a target of law enforcement and blamed for what the Portland Police Bureau deemed "riots" after Trump's Election.

This ordinance will further make us, our allies, and other groups, targets of state punishment for simply standing up to hate. You claim this ordinance is necessary to prevent violence in the streets of Portland, but far-right, white nationalist groups have attacked Portland citizens many times over, and will continue unless our community stands up against their hateful actions.

This ordinance has not named the groups that will be restricted, how you will decide who is or is not in these groups, how you will deal with violent far-right groups coming to other groups' demonstrations, how the ordinance will actually be enforced, or why this is needed now without a fuller public participation process. This ordinance does not acknowledge that violence perpetrated by the far right will happen with or without this ordinance. It does not acknowledge that previous determinations of which demonstrations were deemed potentially dangerous have been highly correlated to race. It fails to acknowledge that demonstrations organized by communities of color or demonstrations critical of the police bureau have been far more likely to see police deployed fully armed in their warrior costume riot gear. This is not justice. This is not safety. We have serious concerns that similar metrics will be used under this ordinance and functionally perpetuate the imbalances that already exist in our criminal justice system and our society.

In many ways our country is built on a tradition of civic disobedience. From the Boston Tea Party to the Suffragettes, to the good trouble of the civil rights era, we are a nation that believes that at times we the people must take matters into our own hands and act directly. And for many years the First Amendment has made it clear to law enforcement and the officials who direct their actions that we are within our rights as Americans. But this ordinance continues the disturbing and authoritarian trend, typically pushed by right-wing leaders to discourage and dispel dissidents, of reducing those rights. This ordinance would

empower PPB leadership and the Mayor to curtail first amendment activity based on nebulously defined and highly subjective criteria. It will also give free reign to the Portland Police that have shown time and time again that they are incompetent when it comes to keeping people safe from far-right violence while inflicting their own violence on peaceful protesters.

In 2017 we met with members of the Mayor's staff regarding many aspects of our criminal justice reform platform. Although during the series of meetings they expressed interest particularly in our recommendations regarding improving the safety of protests, they chose to not follow up or to take any of our input or expertise into account. We are disappointed to see that this George W. Bush-style proposal is the best they could come up with. At a time when we need to be innovating and encouraging people to become more engaged in their community and active on the issues they care about, it's discouraging to see this proposal for exactly the opposite.

Thank you for your thoughtful consideration of this crucial issue for our democracy.

**From:** [Tony Jordan](#)  
**To:** [Council Clerk – Testimony](#)  
**Cc:** [Commissioner Fish](#)  
**Subject:** Comment on Agenda item 1160  
**Date:** Thursday, November 8, 2018 10:24:06 AM

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City Council and Commissioner Fish,

I don't think this is the right policy for our city. This is not a time to paint "both sides" of protest violence with the same brush.

Interloping agitators are coming to our city on a regular basis to spread a message of hate. I will admit that I have been discouraged from protesting against these hate mongers because I am afraid of violence. The violence I am afraid of is on behalf of the Portland Police.

The proposed ordinance does nothing to solve this problem. Hate needs to be addressed head on, not on the other side of the river. What I want is for my right to protest this hateful message to be protected, that requires a new understanding from the police that only a small small fraction of counter-protesters are seeking trouble. If our city truly supported a healthy dialog, so people didn't have to worry about being shot with flash grenades, the bad actors would be even further diluted.

Thank you for listening to my concerns,  
Tony Jordan



**From:** [Holly Kvalheim](#)  
**To:** [Council Clerk – Testimony](#)  
**Cc:** [Commissioner Fish](#)  
**Subject:** COMMENTS on Mayor's protest ordinance (Agenda item 1160)  
**Date:** Thursday, November 8, 2018 8:45:07 AM

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Hello,

I'm writing to voice my opposition to the Mayor's proposed ordinance allowing restrictions on protests.

It is inappropriate for the Police Bureau and Mayor to decide the allowable scope of a protest based on subjective criteria. Those entities shouldn't have the power to limit Portlanders' first amendment rights, particularly because they may be the direct or indirect target of protests (i.e. should the police be able to limit protests about police brutality?).

This ordinance is unnecessary, overreaching, and a distraction from the important work Portland's leaders are facing as progressive leaders in frightening times.

Thank you,  
Holly Kvalheim

**From:** [Michelle DuBarry](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** COMMENTS on Mayor's protest ordinance (Agenda item 1160)  
**Date:** Thursday, November 8, 2018 5:40:03 AM

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Dear Council Members:

I am writing to express my opposition to Mayor Ted Wheeler's protest ordinance.

As a white person, nonviolent protest is one of the most meaningful things I can do to stand up for community members who are threatened by the rising tide of white nationalism and fascism in the US. This ordinance would prevent Portlanders like me from exercising our constitutional right to speech and assembly in defense of our vulnerable friends and neighbors.

Please do not approve this dangerous and unnecessary ordinance.

Sincerely,

Michelle DuBarry

**From:** [Ghassan Ammar, LPC](#)  
**To:** [Council Clerk – Testimony](#)  
**Cc:** [Commissioner Fish](#); [Schmanski, Sonia](#)  
**Subject:** Testimony on Agenda Item 1160  
**Date:** Wednesday, November 7, 2018 11:07:33 PM

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Greetings,

I'm writing to submit testimony against the Mayor's proposed protest ordinance. This ordinance is nothing but authoritarian, anti-democratic, and attempts to weaken our First Amendment Rights, while at the same time giving greater power to a Police Bureau that needs to be reformed rather than allowed to continue its tradition of upholding the systems of white supremacy. I would expect such an ordinance to come out of the South or from some conservative bastion, but not Portland.

I've lived in this city for the past 10 years, and I've seen this community come together to fight against tyranny and injustice. Since the 2016 election, we have seen a rise in hate crimes, white supremacy, and nationalism across the country and within our own city. The protests which have become violent are due to out of state white supremacists and nationalists coming to our city to grab headlines and provoke our progressive community. Our community has and will continue to respond to these provocations. The police, time and time again, have fired upon this citizens of our community while protecting the provocateurs. Yet the Mayor still decides to engage in Trumpian "both sides"-ism, and the police chief jokes on conservative radio about protestors getting their "butts kicked".

I lived in Boston during to 2004 Democratic National Convention. I was with groups protesting at the convention, because it had become clear that Wall Street had its control of both political parties in this country. This was after 9/11 and so all protest activity was deemed dangerous. As we approached the center holding the convention, police armed with high-powered rifles corralled us into "free speech zones", which were fenced in areas topped with barbed wires. It was a horrific display of the tyranny of state power, designed to demoralize those expressing free speech, and showed me how little government actually cares about the Bill of Rights.

The Mayor and Chief Outlaw wish to continue this tradition, while enhancing it in a way that would make Trump proud. This attempt to erode the power of our community to stand up against hate and white nationalism is unacceptable in our city, and is the kind of ordinance that will set a precedent across the country, crushing resistance to white nationalism and fascism, and enhancing police power at a time when police are yet to be held accountable for the murdering of unarmed citizens across the country.

I urge each and every city council member to vote against this ordinance, and stand up to protect our communities from hate, racism, and white nationalism, because the Mayor and police certainly will not.

Kind Regards,  
Ghassan Ammar, LPC

*"Wisdom says we are nothing. Love says we are everything. Between these two our life flows."*

*-Jack Kornfield*

Ghassan Ammar, MS, LPC #C4664

503-941-0359

[ghassanammar.com](http://ghassanammar.com)

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**From:** [Bobby Hunter](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** COMMENTS on Mayor's protest ordinance (Agenda item 1160)  
**Date:** Wednesday, November 7, 2018 8:56:56 PM

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I am writing to protest this proposed ordinance. This ordinance creates a false equivalency between people peacefully protesting *against* neo-nazis, white supremacists, white nationalists, etc. and aforementioned groups like the Patriot Prayer and Proud Boys who *purposefully* come to Portland to incite violence.

As the ACLU points out, we already have policies on the books to handle white nationalist groups gathering and inciting violence. Please demand that we exercise those robustly rather than supporting Mayor Wheeler's poorly thought out ordinance.

Thank you,

Robert Hunter  
5826 N Interstate Ave #204  
Portland, OR 97217



**From:** [Andrew Riley](#)  
**To:** [Council Clerk – Testimony](#); [Wheeler, Mayor](#); [Commissioner Fish](#); [Commissioner Fritz](#); [Commissioner Eudaly](#); [Commissioner Saltzman](#)  
**Subject:** Oppose the Mayor's proposed protest ordinance  
**Date:** Wednesday, November 7, 2018 1:27:01 PM

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Dear members of Portland City Council,

I write to ask that you oppose Mayor Ted Wheeler's proposed ordinance allowing the Police Commissioner and Portland Police Bureau to enact time/manner/place restrictions on protests in our city.

I write first as a committed antifascist who has participated in many demonstrations in Portland, especially in the last several years. Time and time again, I have witnessed peaceful groups of people demonstrating against racism, fascism, and violence against vulnerable communities, who have been attacked by the Portland Police Bureau and right-wing demonstrators. While the Portland Police have repeatedly accused antifascist demonstrators of employing violent tactics or projectile weapons, I can honestly say that I have only ever seen such actions in response to police aggression, and I fear that this proposed ordinance only makes those kinds of confrontations more likely. As you well know, Portland's Police Bureau has a shameful history of targeting and harassing activists, people of color, and folks with disabilities in this city, and we should not augment the Bureau's legal authority to detain, interrupt, or attack protesters.

And as I'm sure you'll hear from many folks more qualified than myself to say so, this ordinance runs afoul of an established 9th Circuit precedent concerning prior restraint of protests, *Collins v. Jordan*. There is no meaningful distinction between this proposed ordinance and the proposed restrictions on protest in *Collins*, meaning that the city will not only likely lose a lawsuit challenging the law, it will be also forced to expend General Fund dollars to do so. This is not a responsible use of public funds.

All of that being said, my primary objection to this ordinance is a moral one. Let me put it simply: marchers have taken to the streets of Portland because fascism is on the rise in the United States. Immigrant families across the US are being rounded up and detained in makeshift camps with no oversight or due process, with children torn from their parents' arms, sometimes quite literally. Right-wing terrorists have drawn inspiration from organizations like Patriot Prayer, and have maimed and murdered vulnerable members of communities, as we've seen in Charlottesville, Pittsburgh, and right here in Portland. Unhoused individuals are swept from the relative safety of self-managed camps out into the cold and the rain, even as cities fail to meet their communities' needs for adequate affordable, accessible housing and emergency shelters. The President has outright called himself a nationalist at the same moment he deploys troops to the Mexican border to threaten and harass a caravan of vulnerable Central American migrants, families from countries which have been destabilized by US foreign policy and military intervention over a period of decades. I could, unfortunately, go on.

We march and we are militant because this is what the historical moment demands. As the old saying goes, you cannot remain neutral while on a moving train. I am often cynical about politics, especially locally, but I am nothing short of inspired to see thousands of Portlanders taking to the streets to fight the routine assaults inflicted on our vulnerable neighbors. Now is not the time - if there ever is one - for milquetoast, both-sides-are-bad rhetoric, nor solutions which indulge that false equivalence, such as the one in front of you this week. At this

moment in history, you have a choice: do you stand with right-wing agitators who seek to eradicate their supposed enemies by violent means, often using the police as a proxy to do so? Or do you stand with the communities which are rising up to demand an end to fascism, to demand justice, to demand liberation?

Choose justice. Reject this ordinance. Stand with the vulnerable members of our community who are very literally fighting for their lives.

In solidarity,  
Andrew

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Andrew A. Riley  
[andrew.a.riley@gmail.com](mailto:andrew.a.riley@gmail.com)  
Cell: (503) 936-9430

Pronouns: he/him

**From:** [Kevin Moore](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** COMMENTS on Mayor's protest ordinance (Agenda item 1160)  
**Date:** Wednesday, November 7, 2018 12:34:21 PM

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Dear City Council,

I am urging you to oppose Mayor Ted Wheeler's proposed emergency ordinance that give Portland Police the power to corral anti-racist and anti-fascist protesters away from the white supremacists targeting our city for disruption and hate speech. This ordinance is an unconstitutional imposition on the rights of free speech and assembly guaranteed by the First Amendment of the US Constitution. We already have laws against rioting, street-fighting, and other forms of violence.

Moreover, this ordinance would empower the PPB to target and harass protesters opposing white supremacist groups, particularly people of color whom the bureau has a long, sad history of persecuting and discriminating against. I welcome the work of police officers to keep the peace and protect the rights of citizens to protest, but far too often in the recent past we have seen excessive use of force, including military-grade weaponry, against unarmed citizens. Portland should not foment a police riot as we saw in Ferguson, Missouri.

Respectfully yours,  
Kevin Moore

**From:** [Julia Farrell](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** City Ordinance  
**Date:** Wednesday, November 7, 2018 11:41:10 AM

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Dear City Council,

I am appalled by the proposed Protest Safety Ordinance and I urge a vote against it. As a newer citizen of Portland who moved from a city where the right to protest is protected & a city, I might add, that handled a Patriot Prayer Event with skill & with the the protection of the citizens of the city in top priority (I was there and witnessed it first hand). I place 100% of the blame of violence breaking out during Portland protests on the Mayor and the Portland Police. There are no two sides when it comes to White Supremacist beliefs. Hate speech & violence, (which have led to murders here) against Portland citizens because of the color of their skin, religious beliefs, sexual orientation, gender or disability SHOULD be protested by the citizens & any attempt to silence that protest is a threat to all of us.

I implore you to do your job & protect the the people of Portland by focusing your attention where it belongs... on the white supremacists. Use the laws already on the books that focus on their unlawful actions instead of focusing your attention on the people trying to protect Portland when you fail to.

Sincerely, a very concerned citizen,

Julia

Sent from my iPhone

**From:** [Mat dos Santos](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** ACLU of Oregon Testimony  
**Date:** Thursday, November 8, 2018 3:07:59 PM  
**Attachments:** [image003.png](#)  
[11-8-18 ACLU of Oregon Testimony re Item No. 1160.pdf](#)

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Attached

**Mat dos Santos**

Pronouns: he, him

Legal Director

American Civil Liberties Union of Oregon

PO Box 40585, Portland, OR 97240

(o) 503.552.2105 (m) 415.816.8066 | [mdossantos@aclu-or.org](mailto:mdossantos@aclu-or.org)

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**Testimony of Kimberly McCullough, Policy Director  
City Council Item No. 1160 – Protest Ordinance  
November 8, 2018**

Mayor Wheeler and Council Members,

The American Civil Liberties Union of Oregon<sup>1</sup> appreciates the opportunity to testify today regarding the proposed ordinance that would authorize new time, place and manner regulations for demonstrations held in the City of Portland.

Before addressing the ordinance, we want to acknowledge that we share the concerns of many Oregonians that Portland is becoming a regular gathering place for white nationalists. **We share concerns about the safety of our communities and the desire to make Portland an inclusive and equitable city.** We don't want to downplay the challenges we are currently facing, as a city, state and nation. And we don't want to suggest that we sit idly by when violence occurs in our streets.

At the same time, **we have deep concerns about the ordinance that is being presented as a solution to the challenges we face.** Because those concerns run so deep, and because they cannot be addressed through amendments to this ordinance, **we urge you to change course and not lead the city down a path of rights violations and costly litigation.**

**Specific Concerns About the Ordinance**

**Overall, this ordinance problematic both as a matter of public policy and because it raises constitutional concerns.** If the ordinance passes, it will most certainly lead to constitutional challenges in court. But we shouldn't just be asking ourselves if the ordinance and its application would be struck down by a court. We should also be asking ourselves if it will actually solve the problems it seeks to address or if it will miss the mark and create new problems.

**As a matter of policy, we are hard pressed to see how this ordinance will actually prevent violence from occurring or reduce the use of law enforcement resources and police enforcement.** We've heard the suggestions that that government can't wait until violence has occurred to act, and that we have to take preventative measures; that this ordinance will somehow reduce law enforcement use of force in response to violence by

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<sup>1</sup> The ACLU of Oregon is a nonpartisan, nonprofit organization dedicated to preservation and enhancement of civil liberties and civil rights, with more than 28,000 members and supporters in the City of Portland and over 45,000 members and supporters statewide.

giving law enforcement preemptive tools to prevent violence; and that this ordinance will somehow reduce the diversion of law enforcement resources when protests occur.

**Despite the suggestion that imposition of these rules will reduce violence, we fail to see how that will actually be accomplished. Instead, we are left with numerous questions:**

- If this is really aimed at people who intend to cause harm, will such a person follow these “free speech zone” rules?
- If a person is already willing to violate criminal laws against assault, are they going to follow rules about when, where for how long, and with how many people to protest?
- Even if a person set on causing harm does follow the rules about when and where to protest, is that going to stop them from engaging in problematic behavior in or near the “free speech zone”?
- Is it going to stop them from leaving the zone and engaging in violent behavior elsewhere?

**It’s also hard to understand how an ordinance that gives government additional authority to enforce new rules will somehow lead to reduced enforcement.** These rules just create another avenue for enforcement, but now aimed at enforcing exactly where people can be—and how big their group can be, and how long they can remain—when they protest.

**The fact that violence has occurred at permitted events with associated time, place and manner regulations begs the question of whether these new rules will actually stop violence from occurring.** At least some of the incidents that involved violence cited in the findings of the ordinance are related to permitted protests. Our understanding is that this ordinance is aimed at groups that don’t seek permits, with the idea that the city can impose time, place and manner regulations outside the permit process. But if for those permitted events, regulations didn’t stop violence, why should we believe that regulations on unpermitted protests are going to do something different?

We understand that the city attorney’s office believes the ordinance is constitutional, but we respectfully disagree. **No lawyer would disagree that reasonable, content-neutral time, place, and manner regulations are constitutional, but that doesn’t mean this ordinance and its potential application are not problematic.** The problem is we can’t just say that reasonable, content-neutral time, place, and manner regulations are constitutional and end our analysis there. And no matter how many times the ordinance states that rules set under its authority will be content-neutral and reasonable, that does not necessarily mean that a court will agree.

**With time, place and manner regulations, the devil is in the details—and here, those details are incredibly problematic.** In addition, the cases cited in the ordinance (and additional case law we've been provided with that purports to justify the ordinance) are legally distinguishable, involving very different facts. And none of the cases cited related to an ordinance with the same framework as what is being presented to city council now.

**The ACLU of Oregon isn't alone in pointing out the constitutional issues with this ordinance.** In an article published several weeks ago, Jim Oleske, a constitutional law professor at Lewis & Clark Law School raised serious doubts about the city's ability to prove decisions made under the ordinance are content-neutral.<sup>2</sup> In another article published today<sup>3</sup>, Greg Magarian, law professor and free expression scholar at Washington University School of Law stated that the ordinance gives the mayor "unilateral authority to criminalize constitutionally protected speech before the speech happens, based on wildly subjective criteria." Tim Zick, professor of law at William & Mary Law School similarly stated that the ordinance is "constitutionally vulnerable."

**It's also important to note that none of us have had sufficient time to analyze the ways this may violate Article 1, sections 8 and 26 of our state constitution,** which actually provides more protection for free speech and assembly than our federal constitution.

**The ordinance suffers from overbreadth and vagueness.** The wide variety of actions authorized by the statute is so broad that many actions taken under the four corners of the statute could easily be deemed as unconstitutional.

**The ordinance simply gives too much discretion and power to city officials.** This ordinance centralizes the power to dictate conditions on the exercise of our free speech rights into a single official. Not only does this raise serious constitutional issues, but we also need to be concerned as a matter of policy.

**When we allow for an official to singlehandedly wield power in that official's sole discretion, we should be thinking not only about our present circumstances but also into the future.** We should ask ourselves how we think this power could be used by a variety of individuals holding public office and whether we can trust that everyone will use their power and discretion appropriately. What if we had people in charge that we didn't trust with this sort of power, and who could that power be used against in the wrong hands?

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<sup>2</sup> *Are Mayor Wheeler's Proposed Protest Rules Legal?*, Alex Zielinski, Portland Mercury <https://www.portlandmercury.com/blogtown/2018/10/16/23739031/are-mayor-wheelers-proposed-protest-rules-legal>

<sup>3</sup> *Are Portland Mayor Ted Wheeler's proposed limits on protests legal?*, Gordon R. Friedman, The Oregonian/OregonLive, [https://www.oregonlive.com/politics/index.ssf/2018/11/are\\_portland\\_mayor\\_ted\\_wheeler.html](https://www.oregonlive.com/politics/index.ssf/2018/11/are_portland_mayor_ted_wheeler.html)



**Imposing legal consequences based on a city official's judgment that a person or group has a "history of violence" and is likely to commit violence is extremely problematic. As an initial matter, it is unconstitutional to retaliate against protesters for past protest activity,<sup>4</sup> or to silence speakers who advocate for illegality in the abstract.<sup>5</sup>**

In addition, although we understand that the ordinance is aimed at predicting and getting out ahead of violence, restricting speech preemptively raises constitutional concerns because **there is a "'heavy presumption' against the validity of a prior restraint" on speech.<sup>6</sup>**

**In our society, we are entitled to due process and a presumption of innocence, both of which are absent here.** Yet this ordinance gives government officials the ability to impose legal restrictions on groups of people based on findings about past behavior and predictions of future behavior that are made outside a judicial setting and without any legal process.

As explained below (alternatives to the ordinance), if people engage in violent acts, there are already legal mechanisms to hold those individuals accountable in a court of law. Those mechanisms involve due process and the ability to present evidence and be represented by counsel, and cannot be based on the sole judgement of a city official.

**Checks on official discretion are extremely important to prevent overreach and dubious findings of violence based on bias against particular groups.** That is exactly why enforcement of this ordinance risks legal challenge on the basis that these judgements and decisions by city officials are not "content-neutral."

**All of this raises numerous questions about how judgements about groups of protestors will be made:**

- If a city official is going to be designating particular groups as groups that have a history of violence with another group, and using that designation to restrict that group and its perceived members' first amendment rights – will this list of violent groups be made public?
- What is the criteria for making this determination?
- What is the mechanism for an organization to challenge that finding?
- What is the mechanism for individuals to challenge their inclusion in that group if they do not belong to a group and are erroneously included?

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<sup>4</sup> *Ford v. City of Yakima*, 706 F3d 1188, 1196 (9th Cir 2013); *Skoog v. County of Clackamas*, 469 F3d 1221, 1232 (9th Cir 2006).

<sup>5</sup> *United States v. Williams*, 553 U.S. 285, 298–99 (2008); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 928 (1982); *Communist Party of Ind. v. Whitcomb*, 414 U.S. 441, 450 (1974).

<sup>6</sup> *Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 130 (1992) (internal citation omitted).

**On a related note, this ordinance creates the dangerous and constitutionally problematic possibility that it will lead to a “heckler’s veto.”** A key problem with restrictions based on predictions of violence is that one group’s right to protest could be endangered by another group showing up at their protests and provoking violent encounters, with the aim of giving the group a “history of violence.”

**It is because of this potential for a heckler’s veto that the U.S. Supreme Court has ruled that it is not “content-neutral” to limit a protest based on the possibility that listeners will react angrily to the protesters’ speech<sup>7</sup> nor can they punish peaceful speakers if those reactions turns violent.<sup>8</sup>** If a group’s right to protest is limited because of a prediction that others may react to that protest with violence—which is exactly what the ordinance allows for—then a costly constitutional challenge is sure to follow.

**The way this ordinance is aimed at specific “groups” of people is problematic as both a constitutional and practical matter.** Essentially, the ordinance authorizes prior restraint on entire groups of people (and anyone who is somehow found to be associated with those groups) based on anticipated actions and/or prior actions of a few individuals that government has associated with the group.

**Unless an entire group of people is working in concert, with clearly articulated common goals, government shouldn’t be in the business of punishing the group for the past or present actions of a few.**

**We have deep concerns about how police will know who is and isn’t part of these “groups.”** Unless people clearly identify with a particular group, government shouldn’t be making judgements about who is or isn’t part of that group and then imposing restrictions on those individuals based on assumptions about group membership. We certainly hope Portland Police aren’t going to get in the business of tracking who is and isn’t associated with various political movements. If so, we would like to remind everyone that we have state laws that prohibit that type of information gathering.

**All of this raises even more questions about how this ordinance will regulate “groups” as a practical matter:**

- If the regulations are aimed at two particular groups, does everyone in the city have to follow those rules?
- If not, how is government going to figure out who is part of a group and is therefore subject to the rules?

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<sup>7</sup> *Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 134, (1992); *Bible Believers v. Wayne Cty., Mich.*, 805 F.3d 228, 252 (6th Cir. 2015).

<sup>8</sup> *Brown v. Louisiana*, 383 U.S. 131, 133 n. 1 (1966); *Bible Believers v. Wayne Cty., Mich.*, 805 F.3d 228, 246 (6th Cir. 2015).



- What if a person or group totally separate from the groups targeted by the rules are protesting outside the “free speech zones” on their own or as part of a totally different group—will they face police enforcement?
- Does it matter if they are protesting something related to the two groups, and what if they happen to be protesting something totally different at the same time the rules are in effect?
- What if someone is wanting to counter-protest one of the groups, but they aren’t associated with either of the groups targeted by the rules? Can they do that outside the “free speech zones”?
- How is the city going to resolve issues of group membership if a person engages in violence, the city believes they are part of a group, but the group says they are not a member, or if they disavow and disassociate with them?

**The ordinance allows for limits on the number of people who may attend a protest, which is both impractical and raises serious constitutional concerns.** How this would even function is anyone’s guess. People don’t all sign up ahead of time to participate in a protest, and government can’t require that they do so. Beyond that, people should be able to make a decision to protest whenever they want, whether it be far in advance or in the spur of the moment. Certainly, when a specific public space has capacity limits and those limits have been reached, police can direct people to a space nearby for safety concerns, but that’s something they can already do under our current laws.

**We have deep concerns about the potential for criminal sanctions related to the enforcement of this ordinance. Our concerns were heightened when the ordinance expressly included the potential for a sentence of six months in jail for violation of the ordinance.** That provision raised serious questions about whether the ordinance was consistent with our city charter’s restrictions on separation of powers and the fact that an executive officer cannot, in her power as executive, unilaterally create criminal laws. It also provided for severe and disproportionate penalties for non-violent conduct that amounts to no more than the failure to stay inside a “free speech zone.”

**We see that provision has now been altered, yet the new language just raises more questions and concerns.** For example, what is now the statutory basis for imposing criminal penalties for violating the written order? Is the ordinance intended to refer to some specific criminal statute, and if so which one(s)?

Regardless of the answer to those questions, **the potential for criminal charges for violating this ordinance will have a chilling effect on the exercise of First Amendment rights** in our city. More specifically, we worry that that civilians wanting to express their political opinions will be deterred from engaging in peaceful protest by this ordinance and associated orders by the mayor.

**If this ordinance is passed, we worry that other jurisdictions will follow our lead. We need to think about how this could play out in other locations. It could create a mechanism for suppressing protest by groups like Black Lives Matter based on false accusations that groups have a propensity for violence. This is not an unfounded fear, as even the FBI has falsely associated Black Lives Matter with past acts of violence and the threat of future violence. We would also be remiss if we didn't note that at this very moment, Donald Trump is trying to restrict protest rights in Washington D.C. based on similar justifications.**

**This long list of concerns should be a strong indication that this ordinance will lead to costly litigation.** There are so many things that our community needs our time and resources for. Instead of diverting those resources into legal battles over problematic laws, we should be working together to create tangible changes that will truly help and protect our communities.

### **What the City Can Do Instead of Passing this Ordinance**

At the outset, it is important to point out that in the context of protests, **law enforcement's job is to facilitate First Amendment activity by enabling peaceful protest, preventing violence, and managing large crowds.** In a balance between free speech and the state's power to maintain the peace, "the scale is heavily weighted in favor of the First Amendment,"<sup>9</sup> and speech cannot be banned or interrupted because of the potential for disturbance or disorder.<sup>10</sup> Punishing, removing, or otherwise silencing a speaker will seldom, if ever, constitute the least restrictive means available to manage a crowd.<sup>11</sup>

**Police can intervene if there is credible evidence that a person or persons intend to commit acts of violence.** Law enforcement's hands are not tied if there are credible threats of violence. If there are credible threats, they should be swiftly addressed.

**Police can keep groups of people physically separated when there is conflict at a protest.** We've seen Portland Police do this successfully in the past, and we encourage them to use this tactic in the future. One caveat here is that there have been times when our police have given the impression that they are protecting only one group of protestors, so we suggest they explore how to be more balanced when engaging in group separation.

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<sup>9</sup> *Bible Believers v. Wayne Cty., Mich.*, 805 F.3d 228, 252 (6th Cir. 2015) (citing *Terminiello*, 337 U.S. at 4);

<sup>10</sup> *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 516 (1939) ("uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right").

<sup>11</sup> *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940); *Terminiello v. City of Chi.*, 337 U.S. 1, 69 S.Ct. 894, 93 L.Ed. 1131 (1949); *Edwards v. South Carolina*, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963); *Cox v. Louisiana*, 379 U.S. 536 (1965); *Gregory v. City of Chi.*, 394 U.S. 111, 89 S.Ct. 946, 22 L.Ed.2d 134 (1969).



**Law enforcement can address violence if and when it occurs.** We have only cautioned law enforcement that they must respond to isolated incidents of property damage, violence, or other lawlessness by arresting the individuals responsible, not by breaking up a protest.<sup>12</sup> That caution should not, however, prevent officers from taking appropriate actions in response to incidents of violence.

**People who have committed acts of violence can be subjected to consequences and restrictions that limit the potential for future harm.** Individuals who commit violent acts can be prosecuted or subjected to a variety of civil actions. Associated legal mechanisms can be used to limit their actions. For example, restraining orders can limit a person's ability to be physically near another person or persons. If a person is convicted of committing a violent act, the court and probation officers can limit their conduct during the period of their probation.

**If we are concerned about public safety at protests, we should also be concerned about the ways that police actions can endanger people's rights and safety.** For example, police use of crowd control weapons is a danger to public safety. We have provided the City and Portland Police Bureau with feedback on this issue in the past, much of which has not been satisfactorily addressed.

**Police response needs to be proportional to what has occurred or is occurring.** Officers should also be mindful of the risk that crowd control measures can be counter-productive and escalate, rather than lower, risks to public health, safety, and welfare.

**Police should actively use techniques designed to de-escalate the potential for violence.** Indeed, scientific studies have shown that the most successful policing of protest focuses on de-escalation and crowd management, rather than crowd control.<sup>13</sup> We would also like to see the city research and implement better training and violence-prevention tactics for police during protests.

Finally, we believe that a huge part of the solution here is engaging in conversations with our community about how we can creatively and collaboratively address what is occurring in our city. We look forward to engaging in those conversations with you. Thank you for the opportunity to testify today.

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<sup>12</sup> *Cox v. Louisiana*, 379 U.S. 536, 551 (1965); *Kunz*, 340 U.S. at 294–95; *Gregory*, 394 U.S. at 120 (Black, J., concurring); *Collins v. Jordan*, 110 F.3d 1363, 1371 (9th Cir. 1996).

<sup>13</sup> See, e.g., Jaffe, *If Cops Understood Crowd Psychology, They'd Tone Down the Riot Gear* (Aug. 27, 2014), available at <https://www.fastcodesign.com/3034902/evidence/if-cops-understood-crowdpsychology-theyd-tone-down-the-riot-gear>; The International

Network of Civil Liberties Organizations (INCLIO) and Physicians for Human Rights,

*Lethal in Disguise: The Health Consequences of Crowd-Control Weapons*, available at <https://www.aclu.org/report/lethal-disguise-health-consequences-crowd-controlweapons>.

**From:** [Becky Hawkins](#)  
**To:** [Council Clerk – Testimony](#)  
**Cc:** [Commissioner Fish](#)  
**Subject:** COMMENTS on Mayor's protest ordinance (Agenda item 1160)  
**Date:** Thursday, November 8, 2018 2:11:53 PM

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Dear City Council,

I am writing to urge you to oppose Mayor Ted Wheeler's emergency ordinance that gives police the right to dictate when and where a protest takes place.

The proposed ordinance states that "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..." But it doesn't seem to be a secret that Patriot Prayer and the Proud Boys come to Portland with the intent "to goad Antifa into violence" and threaten Portlanders [before their protests even take place](#). They are literally there to infringe on "the rights of others to be safe in the community."

One of my colleagues moved away from Portland last year after a hostile stranger banged on her door to tell her that "black lives don't matter." She no longer felt safe in this city. At this moment in our country, right-wing white men are targeting women, people of color, Muslims, Jews, and countless others through domestic terrorism. Most of the people who show up to oppose Patriot Prayer are not looking for a fight; they just want to be there and let Portland know that their friends and neighbors have their backs.

The news tends to describe Patriot Prayer and Antifa in language that suggests an equal mirror image, like "rival political groups." This is a false equivalence between racism and anti-racism. It also ignores the possibility of the police escalating the violence. Most importantly, it ignores the thousands of left-wing protesters who belong to neither group, and just want to voice their concerns and hold their government accountable.

So this brings up a few questions:

1. How will you categorize who belongs to "a group that has a history of violence"?
2. What methods will you use to keep those protesters away?
3. How will you determine who the PPB will "protect" from counter-protesters, and who the PPB will face in full riot gear, ready for a confrontation?
4. How will this differ from the last several protests that ended with PPB kettling and using force against unarmed protesters?

The answers are too subjective, and too prone to abuse and unequal treatment under the law, to be good city policy.

I understand that emotions are high; people are on edge; no-one likes to think of their city as a site for street-brawls, or to worry about having their commute interrupted. But this vague, half-baked ordinance isn't a solution.

We already have laws against rioting and inciting violence. Please enforce those instead.

Respectfully,  
Becky Hawkins

--

Becky Hawkins

<http://frenchtoastcomix.com>

**From:** [Steve Cheseborough](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** COMMENTS on mayor's protest ordinance - agenda item 1160  
**Date:** Thursday, November 8, 2018 1:34:38 PM

---

Dear Mayor and Commissioners:

Please do not pass this ordinance. Restricting free speech is not the way to correct violent conflict or any other problems in a free society.

I certainly oppose Patriot Prayer and its associates who attack and intimidate minorities, homeless people, LGBTQ people, and anyone who stands up for these groups.

As an alternative way to decrease violence without restricting freedom, I invite Mayor Wheeler and the commissioners to join us in antifascist demonstrations, as the mayor of Liverpool, England, recently did in his city. That would send a clear message that Portland stands against fascism and bigotry. It also would help our police remember that antifascist protesters are regular citizens to be protected, not an army to be attacked and cleared away.

Thank you. Sincerely,

**Steve Cheseborough**  
[2735 NE 37th Ave, Portland 97212](#)  
[\(843\) 817-6065](#)



**From:** [Juan Chavez](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Portland NLG Testimony Regarding Protest Ordinance  
**Date:** Thursday, November 8, 2018 12:11:55 PM  
**Attachments:** [Portland NLG Testimony 11.8.18.pdf](#)

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Hello,

Attached, please find the Portland National Lawyers Guild's written testimony for today's reading of the protest ordinance, which is set to begin at 2:15 pm. Guild member Beth Wooten will be presenting our testimony.

-Juan

--

Juan C. Chavez  
Attorney at Law

PO Box 5248  
Portland OR 97208  
Tel: 503-944-2270 ext. 212  
Fax: 971-275-1839

Pronouns: he/him/his

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**NATIONAL LAWYERS GUILD  
PORTLAND, OREGON CHAPTER**



3519 NE 15TH AVENUE, #155  
PORTLAND, OR 97212  
PORTLAND, OREGON 97240-0723

November 8, 2018

Mayor Ted Wheeler  
Attn: Clerk of Council  
Portland City Hall  
1221 SW 4th Ave, Room 340,  
Portland, OR 97204

RE: Our Testimony Regarding the Proposed Protest Ordinance

Dear Mayor Wheeler and Commissioners,

This written testimony is made on behalf of the Portland Chapter of the National Lawyers Guild. The Guild counts as its members radical legal workers, lawyers, law students, and jailhouse lawyers engaged in furthering and supporting the struggle for collective liberation. One of our many projects includes protester support for anti-oppression movements. That work includes legal observing—the famous green hats—and jail support. As this city and country has seen, many of the most radical leaps forward came from protest movements by organizations that were not seen as mainstream by city or federal governments, the media, and certainly not law enforcement. While we understand the desire to stop the right-wing violence brought to our city by Patriot Prayer and the Proud Boys, we cannot view this ordinance as anything but exactly what Patriot Prayer wants: another opportunity to enlarge the police state that has repeatedly attacked counter-demonstrators at their rallies.

This ordinance does three things: it enables the City to arbitrarily place individuals into ill-defined “groups,” it polices the language demonstrators use to craft what will undoubtedly be an overreaching protest restriction, and it enables post-hoc justifications for police violence against protesters.

Generally, it is true that time, place, and manner restrictions are valid exercises of state power per the first amendment. However, what we have seen at these demonstrations shows that when the Police are left to enforce these restrictions, counter-demonstrators get hurt. The police directing their attention and force toward one side can hardly be described as “content-neutral.” We and many, many others have observed this: Police line up, predominately facing the counter-demonstrators, and separate the groups. Often with no provocation, the police begin to violently disperse the counter-demonstrators. Most recently, on August 4, 2018, counter-demonstrators nearly got killed by police weapons and tactics, as the PPB turned downtown Portland into a war zone.

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The NATIONAL LAWYERS GUILD is an association dedicated to the need for basic change in the structure of our political and economic system. We seek to unite the lawyers, law students, legal workers and jailhouse lawyers of America in an organization that shall function as an effective political and social force in the service of the people, to the end that human rights shall be regarded as more sacred than property interests.

The ordinance describes at length some of the protests that have occurred in our city in the last year. We refute many of the factual conclusions made by the ordinance. Violence ascribed to protesters was actually caused by law enforcement. No one but the police deploy flash bang grenades, full strength pepper spray, pepper ball projectiles, and other impact weapons that amount to use of deadly force. How can police curtail threats to “safety of participants or bystanders,” when the police themselves have been the biggest threat?

It is of note that the ordinance cites the *Menotti* decision to justify its validity. That case came after the police actions at the WTO protests in Seattle, Washington, and a City ordinance that blocked protest activities near where world leaders were gathering. A decision was made by the Seattle PD to deploy tear gas at protesters trying to get the attention of these world leaders. The then-Chief of Police of Seattle, Norm Stamper, justified that decision at the time, but has since recanted, citing that the violence that followed was likely caused by the decision to clear protesters with police force.<sup>1</sup>

While the 9th Circuit upheld the ordinance following a facial-constitutional challenge, that was not the whole story of the case. The Court found that the individual, as-applied challenges to the ordinance’s enforcement could proceed to trial. That case was ultimately settled.

As here, this ordinance will just invite further violent police suppression of speech and lengthy, costly litigation.

The ordinance activates under three main circumstances: one of which is “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...” A reading of this section of the ordinance suggests that what the police will be doing is watching facebook events get created and shared. If that is the case, how will PPB determine who or what a group is? Does someone who likes, or comments, or clicks “interested” on an event then become part of the group? How can restrictions on demonstrations happening “separately but on the same day” possibly be narrowly tailored? Along with questioning how the City will determine who or what can be defined as a group, how will the City determine whether a history of “violence” (another vague term) exists between them? And where is there space to discuss the violence that has been initiated or escalated by the police?

These are important considerations since the ordinance allows the City to then limit the number of protesters at a demonstration. Given the vagueness of the statute, all it would take for a person to have their right to demonstrate curtailed is a facebook “like” on a comment from a Proud Boy saying they want to show up. That is overly broad, and will stifle far more speech than it will save, which is precisely what Joey Gibson wants. Patriot Prayer wants the City to scramble any and every time they make a peep on social media. You might think that it is incumbent on the counter-demonstrators to just not show up, but that is irresponsible and ignorant of the history of fascist movements, which thrive on public normalization of their activities.

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<sup>1</sup> Talk of the Nation, *Shifts In Police Tactics To Handle Crowds*, National Public Radio, November 29, 2011. <https://www.npr.org/2011/11/29/142903638/shifts-in-police-tactics-to-handle-crowds>



These counter-demonstrators are not organizing by traditional notions of “groups.” More often, people want to go to protests because they are passionate about an idea and want to show up for it! They don’t care who organized the event, they want to challenge the Kavanaugh hearing, or visibly oppose Patriot Prayer. This ordinance will stifle that.

This ordinance will also incite more police violence. The Portland Police Bureau has shown time after time that they do not focus on individual actors, but instead broadly cast demonstrators as lawbreakers as justification for use of force. This ordinance will exacerbate this by creating another layer of restrictions that many demonstrators will likely not be aware of. The ordinance provides: “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.” How can this be assured? All it would take is a single protester who does not have twitter, or facebook, or access to the internet to miss the written orders. Once the written orders are broken, then PPB will have the opportunity to kick the butts of counter-demonstrators, as Chief Outlaw put it in her Lars Larson interview.

This testimony is meant to provide a broad outline for City Council’s consideration ahead of your vote. The Guild will be writing and submitting to your offices a legal memorandum detailing our concerns. We urge this council to reject this ordinance, and to understand that the community has been shocked and injured by the actions of the Portland Police Bureau at these protests. Rather than provide legal cover to state-sanctioned violence, we need to consider proactive, non-police and prison alternatives to the threat of right-wing violence.

For a collectively liberated future,

Portland National Lawyers Guild

**From:** [Elliott Young](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Testimony for Protest Ordinance  
**Date:** Thursday, November 8, 2018 12:06:22 PM  
**Attachments:** [Elliott Young Comments on protest ordinance.docx](#)

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Dear City Auditor,  
I would like to submit this as my testimony for the City Council's discussion of the Mayor's Protest Ordinance.

Cheers,  
Elliott Young

--

Elliott Young  
Professor of History  
Lewis & Clark College

Tepoztlán Institute: <http://www.tepoztlaninstitute.org/>  
Twitter [@elliottyoungpdx](#)

Nov. 8, 2018

Comments on Mayor Ted Wheeler's Proposed Protest Ordinance by Elliott Young

Dear Mr. Mayor and City Commissioners:

We all recognize the need to balance safety and security with the desire for an open society. The proposed ordinance is overly vague and places too much discretion in the hands of one person, the Commissioner in Charge of the Portland Police Bureau. Although one can imagine scenarios where such time and place regulations would help to prevent conflicts and violence, one can also imagine myriad other scenarios where such regulations would needlessly impede the right to free expression. On balance the good does not outweigh the bad.

The question should not be how to avoid all risks of violence, but how to minimize violence and expand freedom. Declaring a nighttime curfew and imposing martial law would prevent violence, but we have decided as a society that such restrictions impose too much of a burden on our rights to free movement and assembly. Similarly, this ordinance imposes a heavy burden on individuals, including a possible six-month prison sentence for just being present in a part of the city that has been deemed off-limits.

The ordinance is also not practical in that it would be difficult to determine which individuals were part of which group that has been pre-ordained as potentially causing conflict. Neither Patriot Prayer nor Antifa people wear t-shirts identifying their allegiances (American flags and black clothing are not conclusive evidence), and there are many people who have attended these rallies that don't belong to either of these groups. Therefore, the idea of being able to determine in advance which groups are subject to the restrictions is impractical and will lead to countless court challenges.

Finally, we are living at a moment when the president of the United States is trying to limit protest activities outside of the White House, withdrawing press credentials from journalists who ask tough questions, and attacking the press as the "enemy of the people." This is precisely not the moment to be limiting our free expression. If anything, Portland should be a place that represents the most expansive interpretation of our constitutional right to free expression. Violent actors should be identified and prosecuted for crimes they may have committed. Let's not restrict all of our rights based on a belief that a few people may commit crimes. That's the definition of a totalitarian state, not a free society.

Elliott Young, Professor of History, Lewis & Clark College  
2431 SE Sherman St.  
Portland, OR 97214  
eyoung@lclark.edu



**From:** [TRaiford PDX Campaign](#)  
**To:** [Council Clerk – Testimony](#)  
**Cc:** [Friedman, Gordan](#); [Shaun King](#); [Teresa Raiford](#); [alyssapariah@gmail.com](#)  
**Subject:** Agenda Item 1160 via Ted Wheeler  
**Date:** Thursday, November 8, 2018 11:57:39 AM

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> Commissioners and Mayor Wheeler,

>

> Please honor this as my direct testimony on the time certain item you are proposing which authorizes the commissioner Ted Wheeler, who has charge of the Portland Police Bureau the authority to order content-neutral time, place and manner regulations for demonstrations held in the City. As a community organizer who facilitates uprisings of vulnerable communities in the manner of Non Violent Direct Action and has been met with police violence, political intimidation and the subsequent oppression of freedoms promised in our constitution that allow speech and expression I ask that you deny this order. I ask of you this today because it is my belief that this decision and action can be used to violate the civil liberties that support the voices of marginalized communities it may subject them to be vetted and suppressed.

> I believe it is an unlawful order and will trigger more violence against people who cannot afford the decency shown to those who lobby our same interests though do not engage with us. Bringing our voices directly to civic leaders under the promise of petition of due process is our inheritance as Americans in this country. You don't have the authority to dismiss that. If you do this, we will outreach and educate in a manner that brings this issue which is against Community to court.

> I promise you.

>

> Teresa Raiford

>

> Sent from my iPhone

**From:** [Shannon McKillion](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Written Testimony  
**Date:** Friday, November 9, 2018 7:59:52 AM

---

Hi,

I hope this email finds you well.

We need to clean-up our neighborhoods and make people feel safe again! This is such an important and necessary step to Portland's long-term success. It is sad to see my neighbors distraught, frustrated, and scared. Just this week I woke up to learn my neighbor experienced an attempted break-in, their screens removed and damaged. Then I quickly learned on the same night another neighbor had video of three men attempting to enter their home. Spoke to our local market owner and heard he had to kick out a gentleman who was filling his sleeping bag with beer. And this was followed by a post this morning on next door neighbor that just two blocks away another building was vandalized. One week. Four blocks. This must change. There is no question, people are feeling unsafe.

It's so disappointing to see needles and trash scattered on the ground where families walk their children. It's frustrating to hear stories of theft and the reality that Portland police don't have the bandwidth or authority to act. It's disturbing to sit outside on our private residential porch only to be asked for money by those passing by and experience backlash when the answer is "no". It's sad to hear of business owners who are looking to take their business elsewhere due to too many mornings of feces, trash, and harassment. And then this week I walk to my mailbox to find my property taxes increasing only to think, will these untouched problems diminish our home values. Our voice must be heard.

We need to make a change!

We need to fund our police force and give them power to uphold the law. We need to set boundaries and establish rules, so all populations of people feel the impact of work, responsibility, and law. We need to make our neighborhoods safe and we need your help. It is time to make a change. It's time to show the homeowners, business-owners, renters, old and new residents that Portland is a clean, safe, and amazing place to live.

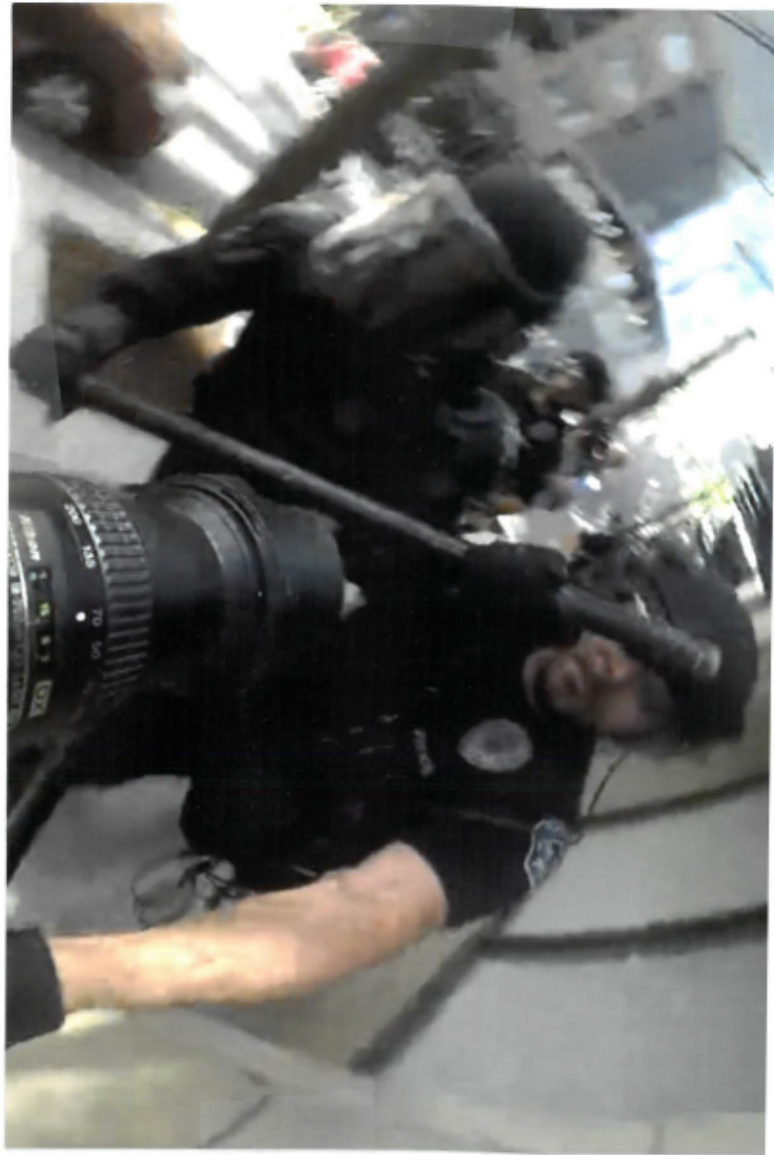
It's time, please listen and act. Our neighborhoods need you!

Thank you,

Shannon



Submitted by  
Philip J. Wolfe  
11/8/2018







**Moore-Love, Karla**

---

**From:** OR Howard <orclh2@yahoo.com>  
**Sent:** Wednesday, November 14, 2018 8:11 AM  
**To:** Council Clerk – Testimony  
**Subject:** Protest laws

I am 100% supportive of the Mayor's proposal to regulate protests so the streets are not blocked, property damaged, or people harmed. Protests do not mean people can break laws.

Constance Harvey  
SW Portland

Sent from my iPad

## Moore-Love, Karla

---

**From:** Taylor, Robert  
**Sent:** Tuesday, November 13, 2018 6:05 PM  
**To:** Moore-Love, Karla; Parsons, Susan  
**Subject:** McCord ICAP Statement on Protest Safety Ordinance  
**Attachments:** McCord ICAP Statement on Portland Ordinance 11-12-18.pdf

Karla:

Attached is another document to please include in the record for Item 1173 (Protest Safety Ordinance) and circulate to members of Council.

Thank you,  
Robert

ROBERT L. TAYLOR | Chief Deputy City Attorney (He/Him)  
PORTLAND OFFICE OF THE CITY ATTORNEY  
1221 SW Fourth Avenue, Room 430  
Portland, OR 97204  
Voice: 503-823-0808 | Fax: 503-823-3089  
[robert.taylor@portlandoregon.gov](mailto:robert.taylor@portlandoregon.gov)

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INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION  
GEORGETOWN UNIVERSITY LAW CENTER

**Statement of Mary B. McCord**

I am a senior litigator at the Institute for Constitutional Advocacy and Protection (ICAP) and a visiting professor of law at Georgetown University Law Center. I previously was the Acting Assistant Attorney General for National Security at the U.S. Department of Justice from 2016–2017, the Principal Deputy Assistant Attorney General for National Security from 2014–2017, and an Assistant U.S. Attorney in the U.S. Attorney’s Office for the District of Columbia for nearly two decades. ICAP is a small constitutional impact litigation organization within Georgetown Law, focused on issues of public interest. I recently led successful litigation on behalf of the City of Charlottesville, Virginia, and local small businesses and neighborhood associations to prevent a recurrence of militaristic violence in the public square, as had occurred at the August 2017 Unite the Right rally during which one person was killed and dozens injured.

I make this statement today on behalf of ICAP and with regard to Portland’s proposed ordinance to “Authorize the Commissioner in Charge of the Police Bureau to Order Content-Neutral Time, Place, and Manner Regulations for Demonstrations Held in the City” (“the ordinance”). I appreciate that some observers have expressed concern about the constitutionality of the proposed ordinance. In our view, a facial constitutional challenge to the ordinance under the First Amendment to the U.S. Constitution would stand little chance of succeeding. The ordinance instead serves the laudable goal of ensuring public safety during large demonstrations, thereby creating the conditions for freer and more peaceful expression.

I express no view on the constitutionality of the ordinance under the Oregon Constitution or other Oregon law, nor do I express any view on the constitutionality of any particular applications of the ordinance, which would depend on the particular facts. Further, this statement does not address the constitutionality of any potential penalty for violation of the ordinance.

**The Proposed Ordinance Comports with First Amendment Principles**

Governmental restrictions of speech on the basis of content or viewpoint pose unique concerns in a free society. The U.S. Supreme Court has therefore long subjected such restrictions to a rigid standard known as strict scrutiny. But this does not mean that people may express themselves “at all times and places or in any manner that may be desired.” *Heffron v. Int’l Soc’y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981); *see also Menotti v. City of Seattle*, 409 F.3d 1113, 1138–39 (9th Cir. 2005) (rejecting the view that “protestors have an absolute right to protest at any time and at any place, or in any manner of their choosing”).

Accordingly, under well-settled First Amendment principles, regulations of the time, place, or manner of public expression are subject to a less demanding form of review. Such regulations are constitutional as long as they (1) “are justified without reference to the content of the regulated speech,” (2) “are narrowly tailored to serve a significant governmental interest,” and

(3) “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)).

The ordinance’s stated purpose is to authorize the issuance of “Content-Neutral Time, Place, and Manner Regulations for Demonstrations Held in the City.” Consistent with this professed constraint, the ordinance does *not* empower the Commissioner in Charge (“the Commissioner”) to control what people may say. It merely enables the Commissioner—when certain conditions are met—to issue written orders concerning when and where people may demonstrate, and what weapons, if any, they are prohibited from carrying when they do so. Such generalized restrictions “have nothing to do with content.” *Boos v. Barry*, 485 U.S. 312, 320 (1988). Nor do the ordinance’s well-documented justifications for imposing them.

Because the ordinance allows the Commissioner to limit only the time, place, and manner of certain demonstrations, the sole remaining question is whether the ordinance satisfies the more lenient three-part test described above. I will first discuss the *Ward* test’s second and third prongs, and then conclude by analyzing whether the ordinance would actually enable content-based speech restrictions, contrary to its stated purpose.

**First**, the governmental interests served by the ordinance are undoubtedly significant. Among the ordinance’s core objectives are to protect the safety of demonstrators, prevent property damage, minimize congestion on public property, and reduce the mass diversion of police resources. Courts have repeatedly recognized the importance of such interests. *See, e.g., Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 768 (1994) (“The State . . . has a strong interest in ensuring the public safety and order, in promoting the free flow of traffic on public streets and sidewalks, and in protecting the property rights of all its citizens.”); *Heffron*, 452 U.S. at 651 (characterizing as “substantial” the government’s “interest in the orderly movement of a large crowd and in avoiding congestion”); *Menotti*, 409 F.3d at 1131 (“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.”).

**Second**, there is no plausible argument that the ordinance violates the *Ward* test’s tailoring prong. Although a time, place, or manner regulation must be “narrowly tailored” to serve a significant governmental interest, it “need not be the least restrictive or least intrusive means of doing so.” *Ward*, 491 U.S. at 798. *Ward*’s tailoring requirement is satisfied as long as the relevant governmental interest “would be achieved less effectively absent the [challenged] regulation.” *Id.* at 799 (quoting *United States v. Albertini*, 472 U.S. 675, 689 (1985)). A regulation will be invalidated for this reason only if its restrictions are “substantially broader than necessary to achieve the government’s interest.” *Id.* at 800.

The ordinance contains structural safeguards designed to ensure the satisfaction of this standard. For example, the ordinance requires the Commissioner to issue written “findings demonstrating the necessity” for any time, place, or manner restrictions imposed. And it specifies that the Commissioner’s written orders must “establish that other alternative regulations were considered and that no other less restrictive means were practicable under the circumstances.” In this way, the ordinance *overprotects* demonstrators’ constitutional rights by erecting more barriers to regulation than the First Amendment requires. If any protestors’ rights are violated by the

application of this ordinance in the future, it will be despite—and not because of—this carefully crafted feature.

**Third**, the ordinance also hews closely to *Ward*'s requirement that any restriction preserve ample alternative channels for expression. This command rarely will be violated unless the government “foreclose[s] an entire medium of public expression across the landscape of a particular community or setting.” *Menotti*, 409 F.3d at 1138. After all, the First Amendment requires that “individuals retain the ‘ability to communicate effectively,’” *id.* at 1138 n.48 (quoting *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 812 (1984)), not “the most effective means of communication,” *id.* (emphasis added).

Under the conditions specified in the ordinance, if the Commissioner orders the relocation of a public demonstration, “[a]ny such redirection shall be to a location that is reasonably close to, sufficiently approximates, or reaches substantially the same audience as the original location.” This provision faithfully tracks the applicable law. And the ordinance grants no authority to impair demonstrators’ ability to convey their messages effectively in a public setting. Put another way, “the limited nature of the prohibition makes it virtually self-evident that ample alternatives remain.” *Frisby v. Schultz*, 487 U.S. 474, 483 (1988). Any violations that might occur in the course of implementing concrete time, place, or manner regulations would be attributable not to the ordinance—which facially comports with First Amendment doctrine—but to separate acts that purport to exercise authority *beyond* what the ordinance provides.

**Fourth**, the ordinance does not authorize content-based restrictions of speech. A content-based regulation is one that “target[s] speech based on its communicative content”—in other words, “because of the topic discussed or the idea or message expressed.” *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226–27 (2015). Laws that draw such distinctions “on [their] face” qualify as content-based. *Id.* at 2227 (quoting *Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 563 (2011)). So do facially content-neutral laws that “cannot be ‘justified without reference to the content of the regulated speech,’” or that were adopted “‘because of disagreement with the message [the speech] conveys.’” *Id.* (quoting *Ward*, 491 U.S. at 791) (alteration in original).

None of the five types of regulations contemplated in subsection (d) of the ordinance references the communicative content of speech. Each is a paradigmatic time, place, or manner regulation, one that would “apply equally to all demonstrators.” *Hill v. Colorado*, 530 U.S. 703, 719 (2000). And subsection (c), which sets out the conditions under which the Commissioner “is authorized to take action by written order,” steers a decidedly content-neutral course. It aims at preventing the outbreak of violence between groups that have clashed before, regardless of those groups’ respective beliefs. The ordinance’s detailed recitation of past “injury and property damage” ascribes no views to these antagonistic groups, identifying them only as “demonstrators” and “counter-demonstrators.” In short, the ordinance draws no content-based distinctions on its face; it is fully justified by content-neutral considerations; and there is no indication that its true purpose is to suppress speech on certain topics or to stifle particular viewpoints. See *Menotti*, 409 F.3d at 1129 (restricted zone established by mayor’s order “applied equally to persons of all viewpoints”).

To be sure, there is a superficial resemblance between the ordinance—specifically, its focus on obviating anticipated violence—and the permitting scheme deemed to be content-based in



*Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992). In *Forsyth County*, an administrator was empowered to increase the fee paid by permit applicants to compensate for the expected cost of maintaining order at permitted events. To assess such a fee, the Supreme Court reasoned, the administrator would have to examine the content of an applicant's message and predict the likely response of onlookers. The resulting fee would depend on "the amount of hostility likely to be created by the speech based on its content." *Id.* at 134. The rule of *Forsyth County*—that "[l]isteners' reaction to speech is not a content-neutral basis for regulation," *id.*—is often referred to as the "heckler's veto" principle.

The D.C. Circuit reached the same result for the same reason in *Christian Knights of the KKK v. District of Columbia*, 972 F.2d 365 (D.C. Cir. 1992). In that case, the government sought to limit a planned Klan march to four blocks rather than the requested eleven—a "place" restriction—for the sake of better "control[ing] the outbreak of violence it anticipated." *Id.* at 373. Such a restriction, the court held, would necessarily be predicated on "what point [the Klan] would be trying to make, and how much antagonism, discord and strife this would generate." *Id.* The government's proposed location restriction was therefore content-based.

By contrast, the ordinance does not oblige the Commissioner to anticipate listeners' reactions. Although subsection (c)(3) of the proposed ordinance requires a showing of "a substantial likelihood of violence at the planned demonstrations" for the Commissioner's authority to be activated, because subsection (c)'s three factors are listed in the conjunctive, the Commissioner need not forecast how onlookers are likely to react to the utterance of any particular message. Instead, a "substantial likelihood" showing would presumably be anchored by a documented history of violence between multiple groups planning to demonstrate at the same time. The presence of such a history—that two groups have skirmished in the past and will likely do so again—would provide a standard for the Commissioner to administer irrespective of the content of any group's or speaker's message. *Cf. Christian Knights of the KKK*, 972 F.2d at 372 (noting that "the Klan were not expected to engage in violence," and that any disorder would result from onlookers' hostile reactions to the Klan's message).

The Seventh Circuit's decision in *Potts v. City of Lafayette*, 121 F.3d 1106 (7th Cir. 1996)—decided after *Forsyth County*—illustrates this exact principle at work. In *Potts*, a police order forbade all persons from bringing weapons to an upcoming rally. The order justified this "manner" restriction in light of the expected attendance of "groups . . . who have been violent toward the [demonstrators] in the past, and who have been violent toward one another." *Id.* at 1111. In the court's view, the police order targeted "the possibility that attendees who had been violent at previous rallies would injure themselves, others, or property," and "not . . . the content of the views aired at the rally." *Id.* The record contained "[n]othing . . . suggest[ing] that the [government] disagreed with the content of the message of the [demonstrators] or other groups expected to attend the rally." *Id.* The same is true here. As Section 1 of the ordinance painstakingly demonstrates, the City of Portland is endeavoring to counteract "a pattern of escalation, injury and property damage"—regardless of what each set of antagonists says or believes.

Importantly, the ordinance is not directed to a permitting process or the establishment of permitting conditions, and instead applies when multiple groups have announced an intention to demonstrate simultaneously. It does not purport to name such "groups" in advance or even limit

its applicability to “groups” that are formal or informal named organizations. Any time, place, and manner regulations resulting from application of the terms of the ordinance would apply equally to *all* persons attending those events, not just to a single person or group. As the Supreme Court has explained, regulatory evenhandedness “is evidence against there being a discriminatory governmental motive.” *Hill*, 530 U.S. at 731; *see also Heffron*, 452 U.S. at 649 (concluding that a “place” restriction was not content-based because it “applie[d] evenhandedly to all”). The Court has also suggested that generally applicable time, place, and manner regulations categorically fall outside the “heckler’s veto” doctrine. *See Hill*, 530 U.S. at 734 (concluding that such a restriction “does not provide for a ‘heckler’s veto’ but rather allows every speaker to engage freely in any expressive activity communicating all messages and viewpoints subject to the narrow place requirement).

The Ninth Circuit has explicitly endorsed this view. It is the law of the circuit that speech restrictions are subject to the “heckler’s veto” doctrine only when a speaker or message is singled out for disfavor, as often occurs when conditions are attached to permits. “The prototypical heckler’s veto case is one in which the government silences *particular* speech or a *particular* speaker ‘due to an anticipated disorderly or violent reaction of the audience.’” *Santa Monica Nativity Scenes Comm. v. City of Santa Monica*, 784 F.3d 1286, 1293 (9th Cir. 2015) (quoting *Rosenbaum v. City & Cty. of San Francisco*, 484 F.3d 1142, 1158 (9th Cir. 2007)). To date, “every appellate decision” applying that doctrine has “involved the restriction of *particular* speech due to listeners’ actual or anticipated hostility to *that* speech.” *Id.* (emphases added). But when a “generally applicable regulation” does “not single out [any] speech,” it is “not the stuff of a traditional heckler’s veto,” and must therefore be deemed content-neutral. *Id.* at 1294; *see also id.* (“We would expand the heckler’s veto doctrine significantly . . . if we held here that the doctrine applies to neutral regulations that do not target particular speech . . .”).

As a matter of historical reality, the ordinance was drafted against the backdrop of violence committed by groups of demonstrators and counter-demonstrators with discernible ideological commitments. These recent patterns of conflict in downtown Portland show few signs of abating. As a result, the restrictions contemplated by the ordinance will likely fall most heavily on these groups—at least in the near term. But that fact is irrelevant for First Amendment purposes.

To understand why, consider *McCullen v. Coakley*, 134 S. Ct. 2518 (2014). *McCullen* involved a speech restriction that applied only outside clinics where abortions were performed. Naturally, the act “ha[d] the inevitable effect of restricting abortion-related speech more than speech on other subjects.” *Id.* at 2531. As the Court explained, however, “a facially neutral law does not become content based simply because it may disproportionately affect speech on certain topics.” *Id.*; *see also Menotti*, 409 F.3d at 1129 (“That Order No. 3 predominantly affected protestors with anti-WTO views did not render it content based.”). The relevant inquiry is simply “whether the law is ‘justified without reference to the content of the regulated speech.’” *McCullen*, 134 S. Ct. at 2531 (quoting *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 48 (1986)). Here, the ordinance rests on a content-neutral foundation, even though it may have “an incidental effect on some speakers or messages but not others.” *Ward*, 491 U.S. at 791.

Put simply, the ordinance “ha[s] everything to do with the need to restore and maintain civic order, and nothing to do with the content of [anyone’s] message.” *Menotti*, 409 F.3d at 1129.



And it creates a framework under which vital governmental interests will be pursued with precision. For these reasons, the ordinance stands on solid constitutional footing. In the event that in any future application the Commissioner exceeds the authorities conferred by the ordinance, the proper remedy would be “to seek re[lie]f through as-applied challenges.” *Id.* at 1145.

### **It Is Proper to Consider Past Incidents of Violence**

It is our understanding that some critics have argued that it is improper to consider past patterns of lawbreaking in promulgating time, place, and manner restrictions. Bedrock First Amendment principles belie that claim. A robust factual record is precisely what establishes that an asserted governmental interest is worth advancing. Otherwise, expressive activity could be foreclosed based on “mere speculation about danger.” *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1228 (9th Cir. 1990).

Unsurprisingly, then, courts routinely examine relevant prior conduct in assessing the validity of time, place, and manner restrictions. In *Menotti*, for example, the Ninth Circuit acknowledged that “violent protestors had established a pattern.” 409 F.3d at 1132 n.33. When confronted with such a history, the court concluded, a city need not “wait for further violence to occur” before instituting time, place, and manner restrictions. *Id.* at 1136 n.43; *see also McCullen v. Coakley*, 134 S. Ct. 2518, 2532 (2014) (noting a record of “recurring problems,” including “crowding, obstruction, and even violence”); *Schenk v. Pro-Choice Network of Western N.Y.*, 519 U.S. 357, 377 (1997) (stating that “a record of abusive conduct” can “make[] a prohibition on classic speech in limited parts of a public sidewalk permissible”); *Potts*, 121 F.3d at 1111 (considering the history of “groups . . . who ha[d] been violent toward one another” in assessing the validity of a “manner” regulation); *cf. City of Charlottesville v. Pa. Light Foot Militia*, No. CL 17-560, 2018 WL 4698657, at \*10 (Va. Cir. July 7, 2018) (refusing to require a city to “react[] after the fact” to anticipated violence—“after someone else is beaten, stabbed, shot, or killed.”).

It is of course true that “a *complete* ban on First Amendment activity cannot be justified simply because past similar activity led to violence.” *United States v. Baugh*, 187 F.3d 1037, 1043–44 (9th Cir. 1999) (citing *Collins v. Jordan*, 110 F.3d 1363, 1371–72 (9th Cir. 1996)). But the ordinance does not authorize anything resembling a complete ban on protected activity. It represents an appropriately limited effort to comply with the Ninth Circuit’s admonition: “[O]nce multiple instances of violence erupt, with a breakdown in social order, a city must act vigorously . . . to restore order for all of its residents and visitors.” *Menotti*, 409 F.3d at 1137.

### **The Ordinance Does Not Vest a Single Decisionmaker with Unbridled Authority**

Finally, we understand that the proposed ordinance has been criticized on the ground that it would authorize a single official to restrict protected speech in his sole (and unappealable) discretion. This criticism does not appear to be well founded based on the language of the ordinance, and is irrelevant to the ordinance’s constitutionality in any event.

**First**, as long as a time, place, or manner restriction pursues a sufficiently important interest with adequate precision, First Amendment doctrine does not constrain *which* governmental actor may enact the restriction. We are aware of no case, state or federal, in which an otherwise-valid time,

place, or manner restriction has been struck down on the ground that a multimember body did not promulgate it. In fact, multiple decisions with which we are familiar have upheld speech restrictions issued by a single governmental official. *See Menotti*, 409 F.3d at 1124 (mayor's order); *Potts*, 121 F.3d at 1109 (police captain's order); *Hobbs v. Cty. of Westchester*, 397 F.3d 133, 143 (2d Cir. 2005) (county executive's order).

**Second**, the ordinance would not grant the Commissioner unfettered authority. Under the First Amendment, government officials may not be endowed with “unbridled discretion” in issuing time, place, or manner restrictions. *Forsyth Cty.*, 505 U.S. at 133. An authorizing regulation must “contain adequate standards to guide the official’s decision and render it subject to effective judicial review.” *Thomas v. Chicago Park Dist.*, 534 U.S. 316, 323 (2002). The ordinance easily satisfies that test. Written orders issued by the Commissioner must include “findings demonstrating the necessity” for each regulation imposed. Those orders must also establish that all other less-restrictive means were deemed impracticable under the circumstances. And within 30 days after a demonstration governed by a written order, the Commissioner must issue a written report assessing the regulations’ efficacy and identifying any “lessons that might be learned for future written orders.” This multi-layered process does not leave the choice of restrictions “to the whim of the administrator.” *Forsyth Cty.*, 505 U.S. at 133.

**Third**, there is no constitutional right to an administrative appeal of generally applicable speech regulations. Any orders issued under the terms of the ordinance would apply equally to all persons who attend an affected demonstration. The proper way to “appeal” such an order would be to file a suit for injunctive relief in advance of the scheduled event.

\* \* \*

In summary, we at ICAP see no facial constitutional infirmity in the ordinance proposed. Applied consistently with its terms, the ordinance authorizes reasonable time, place, and manner regulations designed to *facilitate*, rather than thwart, opportunities for persons to engage in First Amendment-protected activity, regardless of their views, by mitigating the potential for violence during public demonstrations and protests.

Dated: November 12, 2018

**Moore-Love, Karla**

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**From:** Constance McClellan <cdmcclellan@comcast.net>  
**Sent:** Tuesday, November 13, 2018 2:14 PM  
**To:** Council Clerk – Testimony  
**Subject:** Testimony on Item 1173, Regulations for Demonstrations

I wish to submit the following testimony to the City Council meeting on November 14. If there are time and space constraints, just use the last two paragraphs:

In Portland we currently have two groups of people who are bringing weapons to demonstrations with the intent to behave in angry and hostile ways, and with the hope of opportunities for violence. In the meantime other members of the public feel that it's their duty to participate in these demonstrations in spite of the risks. These situations are dangerous. They have the potential of becoming more severe here in Portland and more widespread elsewhere.

The City has to weigh the risk of someone, perhaps a child, being killed or permanently injured in a violent clash against the possibility of freedom of speech being constrained in a specific time and place. The priority at this point is to manage the physical risks first, and let constitutional issues be worked out as the City, the ACLU, and everyone else gain experience in this unprecedented political environment.

For these reasons, the City Council SHOULD adopt this ordinance as soon as possible.

Constance McClellan  
NW Pettygrove St.

## Moore-Love, Karla

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**From:** Kathleen Juergens <redemma13@yahoo.com>  
**Sent:** Tuesday, November 13, 2018 12:22 PM  
**To:** Commissioner Fritz; Commissioner Eudaly; Commissioner Saltzman; Commissioner Fish; Wheeler, Mayor  
**Cc:** Council Clerk – Testimony  
**Subject:** Vote NO on Mayor Wheeler's anti-protest ordinance!

Dear Mayor Wheeler and Commissioners Fritz, Eudaly, Saltzman and Fritz:

I am a constituent and concerned Portlander, writing to urge in the strongest possible terms a NO vote on the Mayor's proposed protest ordinance, Agenda Item #1173 as amended.

This ordinance is unnecessary; it gives the mayor and police no necessary tools for protecting public safety that they do not already have under existing state law. Police already have all the authority they need to apprehend individuals who engage in violence; the problem is that they ignore such individuals while issuing politically-motivated orders against entire groups. The "findings" of this ordinance are extremely misleading, as they do not mention that most of the injuries at protests over the past year and a half were caused by the police themselves attacking people engaged in legal First Amendment activity, and that such attacks have been completely one-sided and NOT "content-neutral."

This ordinance exacerbates the very problems it purports to solve; it creates NEW restrictions on people's ability to peaceably assemble, which will assuredly take MORE police resources to address, not less. Even the Mayor acknowledges his "100% certainty" that this ordinance will be challenged in court, taking yet more scarce resources away from the needs of the public.

This ordinance is undemocratic and unconstitutional. Under its vague and sweeping terms, no union picket line, no candlelight vigil, no speakout, is safe from being shut down, moved miles away, and/or having some or all of its attendees dispersed. All that is required is some kind of indication on social media that right-wing groups like Patriot Prayer or the Proud Boys intend to counter-demonstrate and that "groups" previously targeted by right-wingers may also be present (which could conceivably mean as little as a few people active with Black Lives Matter Portland RSVP'ing to your candlelight vigil). Neo-nazis would in effect be handed a veto over any oppressed people's ability to gather publicly to defend their rights - and a lazy veto at that, since they don't even have to actually show up, just say they're going to show up.

The introduction of this ordinance is a disgusting show of hypocrisy by those who claim to be progressive leaders. It will exacerbate the problems it disingenuously claims to be addressing and leave the residents of Portland MORE at risk from racist, sexist, homophobic and anti-Semitic attacks. No official who votes for this travesty of justice will have my vote in any future election.

Sincerely,

Kathleen Juergens



**Moore-Love, Karla**

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**From:** Debbie Aiona <debbieaiona@fastmail.com>  
**Sent:** Tuesday, November 13, 2018 10:44 AM  
**To:** Wheeler, Mayor; Commissioner Eudaly; Commissioner Fish; Commissioner Fritz; Commissioner Saltzman  
**Cc:** Council Clerk – Testimony; Doreen Binder  
**Subject:** League of Women Voters comments: Protest Ordinance  
**Attachments:** LWV protest ordinance 11-18.pdf

Dear Mayor and Commissioners,

Please find attached the League's comments on the protest ordinance. Thank you for considering our recommendations.

Sincerely,

Debbie Aiona  
LWV Portland



## The League of Women Voters of Portland

618 NW Glisan Street, Suite 303, Portland, OR 97209

503-228-1675 • [info@lwvpdx.org](mailto:info@lwvpdx.org) • [www.lwvpdx.org](http://www.lwvpdx.org)

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**DATE:** November 13, 2018

**TO:** Mayor Wheeler, Commissioners Eudaly, Fish, Fritz, and Saltzman

**FROM:** Doreen Binder, president  
Debbie Aiona, Action Committee chair

**RE:** Time, place, and manner regulations for demonstrations (Council Agenda #1173)

The League of Women Voters of Portland is very concerned about the number and gravity of issues related to the proposed ordinance to impose time, place, and manner restrictions on protesters. Our organization strongly supports the public's right to engage in constitutionally protected speech and assembly.

Rather than voting on this ordinance on Wednesday, we urge you to appoint a workgroup of limited duration to research how other jurisdictions handle violent protests. It should consider the U.S. and Oregon constitutional and legal issues related to implementation that were raised at the November 8 hearing, explore existing laws and methods that could be used more effectively, and determine whether there is a need for new legislation at this time. It is entirely possible that a consensus will emerge, allowing City Council to enact a plan the public and Police Bureau can support. Workgroup meetings should be open to the public so that interested individuals will understand the rationale behind a new policy proposal and will be able to provide meaningful feedback.

The League thinks the current proposal is overly broad and puts too much authority in the hands of one individual. We find the objections raised by constitutional experts convincing and worrisome. Furthermore, it is not clear that imposing time, place, and manner restrictions on protesters when there is a fear of violence will reduce problematic behavior or conserve police resources. The possibility of endless litigation, regardless of whether the City Attorney's staff has the capacity to manage it, should also give you pause.

Finally, the serious questions raised by Commissioner Eudaly at the hearing, including the Police Bureau's crowd control practices, its use of devices such as flash grenades and pepper spray, and a perceived bias in its interactions with white nationalist groups deserve further discussion. These should be topics the new Portland Committee on Community Engaged Policing includes in its work.

A decision of this magnitude deserves very careful consideration. In our view, the best way forward is forming a workgroup to address the multitude of issues that were raised at the hearing and to explore other options.

## Moore-Love, Karla

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**From:** Peace and Justice Works <pjw@pjw.info>  
**Sent:** Tuesday, November 13, 2018 10:17 AM  
**To:** Commissioner Fritz; Commissioner Eudaly; Commissioner Saltzman; Commissioner Fish; Wheeler, Mayor  
**Cc:** Council Clerk – Testimony; Portland Copwatch  
**Subject:** FOLLOW-UP COMMENTS on Mayor's protest ordinance (Agenda item 1173)

To Mayor Wheeler and members of Council

Peace and Justice Works and Portland Copwatch already sent in testimony on the previous draft of the protest ordinance. The hearing on Thursday led us to have even more concerns, which we outline below. We hope that if any new amendments are offered this week, the Council will take public testimony focused on those amendments, which is Council protocol. Here are our thoughts about last week's hearing:

First, the testimony of the Mayor and the City Attorney seemed to acknowledge that there are constitutional problems with the ordinance.

Many of these problems were noted by the ACLU and National Lawyers Guild, who conduct legal analyses regularly. Although the Mayor said he has an interest in making sure the use of this ordinance is constitutional or else the City will face lawsuits, that money is taxpayer money and not the Mayor's. The City should not be gambling on a questionable policy with the attitude "if we got it wrong, sue us."

More time is needed to address the question of policy toward violence growing from some protests, as indicated by the fact that the Mayor brought revisions to the table at the opening of Thursday's hearing, then Council added more amendments on the fly, and Commissioner Eudaly asked a series of questions which were not answered.

As we noted in our previous comments, most of those questions have to do with how the police are currently using violence to suppress the counter-demonstrators while giving those who come to Portland with firearms and an intent to do harm get away with minor arrests and little police attention.

Another large concern is that the two organizations invited to testify in favor of the ordinance-- the Portland Business Alliance and Travel

Portland-- seem more concerned about tourist dollars and Portland's "brand" than human rights. The constitution guarantees rights to free speech and assembly, not the right to make money. While the business interests claimed support for free speech, supporting an ordinance that would allow the City to dictate the size and location of protests based on vaguely defined "intelligence" is not appropriate.

It did not escape our attention that these businesses are coming forward to urge Council action at the outset of the holiday shopping season, about one year after Columbia Sportswear made an effective threat to leave town if the Mayor did not crack down on homeless people. The response was to forbid sitting and lying in front of that business and a crackdown on houseless people.

Also at the hearing there was contradictory information about whether having a permit protects a group from being subjected to the whims of the proposed law. It was stated that it does not apply to

permitted events, but also that the permit would be "taken into consideration" if the criteria about groups with a "history of violence" are met.

It also was made clear that the concern we raised in our previous comments regarding the "counter-protestor veto" is even worse than we thought. It was stated that if a group which claims they want to do violence attaches itself to the same "side" of a peaceful permitted protest, that protest could be subject to the draconian restrictions of the law.

One of the most salient points was the NLG's statement that taking away our liberties plays into the hands of far-right activists who want to see the government use heavy tactics to put down protests. This is very similar to how the federal government responded after 9/11, claiming that the people who conducted the attacks that day "hate our freedoms" so they responded by instituting the PATRIOT act, investigating Muslim Americans, opening Guantanamo, and taking other steps to take away those very freedoms.

Commissioner-elect Hardesty asked the Council to wait for her to be seated before you take collective action, allowing more time to craft policies on how to deal with violence without erasing people's constitutional rights.

It was also very disturbing to hear a member of the state legislature suggest that the Council might want to request the State Constitution be amended to allow crackdowns on protests. Even if Oregon's Constitution were (inappropriately) changed, it would not take away federal First Amendment guarantees.

One final note: the introductory paragraphs to the ordinance outlining the history of protests in the last two years only describes the police violence on one day-- August 4, 2018, even though they used violence repeatedly. There is no mention of how protestors were "kettled" and had their IDs photographed. The paragraph about the discovery of alt-right protestors with rifles doesn't address the question of whether concealed handgun permits allow people to carry rifles. But perhaps most offensive is the repeated use of the term "had to" in describing that police decided to divert a large number of resources to these protests, call in officers from other agencies, and shut down traffic. These are all choices and the phrase "had to" should not be used to bolster arguments that are tactical decisions.

We once again urge you not to pass this ordinance.

dan handelman and other members of  
peace and justice works/portland copwatch  
PO Box 42456  
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## Moore-Love, Karla

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**From:** Claire Alexander <clairealex@gmail.com>  
**Sent:** Friday, November 9, 2018 11:53 PM  
**To:** Council Clerk – Testimony  
**Subject:** proposal to limit protest expressions

I have read the proposal to “authorize the Commissioner in Charge of the Police Bureau to order content-neutral time, place and manner regulations for demonstrations held in the City,” and I am greatly concerned.

One concern is that an ordinance that is a reaction to one specific combination of demonstrators would be applied to other protests. There is potential for abuse in more generalized application. There is potential to stifle constitutional protest as ordinary citizens, out of fear, give up their right to protest injustice.

Another concern is that unequal opponents are being treated throughout the discussion as indistinguishable. In contrast, many of us see one group, Patriot Prayer and its outside-the-city members (who publicize that they are coming to “cleanse” Portland and who invite their members to come and fight) as instigators. Instigators should be seen in a different category than those who resist them, Antifa and others. Treating the two groups as equal actually favors Patriot Prayer, the instigators.

As ACLU has said, we already have rules against street fighting and violence. It seems to me that if Portland Police had arrested the instigators of the fighting early on instead of the defenders, Patriot Prayer would have lost interest in attacking Portland--much as happened recently in New York City. Well, we can’t rewind and do it over, but it isn’t too late to start. Instead of facing away from Patriot Prayer, as has been done in the past, police could face them so as to see/hear members instigating. Portland doesn’t need more policing so much as more focused policing.

Besides my concern that were the proposal to be invoked, the Portland Police would apply it unequally to Antifa more than to Patriot Prayer based on their previous protest behavior, I have concerns about the proposed limitation of number of protesters. First, it seems beyond the control of protest organizers to limit the number of participants. Secondly, it is undesirable to do so. Given that one goal of some protests is to show the number of people holding a position, to limit that number would distort intended expression, thus affecting free speech artificially by changing the message.

Finally, because the proposal refers frequently to “demonstrations” and “counter demonstrations,” I don’t see how any restriction could be “content-neutral.”

Claire Alexander  
North Portland

*Invited Testimony of Portland Business Alliance President & CEO Andrew Hoan to Portland City Council regarding Protest Safety Ordinance*

*Thursday, Nov. 8, 2:15 p.m.*

Good afternoon Mayor Wheeler, city commissioners. My name is Andrew Hoan, and I am the President and CEO of the Portland Business Alliance, greater Portland's chamber of commerce. Our organization represents around 1,900 small, medium and large businesses throughout the Portland metro area. We work every single day to ensure that our region's residents have access to stable family-wage jobs, quality educational opportunities and a high standard of living. As the leading voice for business in the region, I am here this afternoon to state for the record that we support Mayor Wheeler's protest safety ordinance and efforts to keep our city's civic discourse safe and free from violence. We will support any measure that both simultaneously protects our constitutional right to free speech while preventing behaviors that put our residents at risk.

First and foremost, The Alliance unequivocally supports every American's first amendment rights to freedom of speech and peaceful assembly and would never condone any perceived infringement on those rights. We are fully confident that Mayor Wheeler is following legal precedent set by federal courts and other major cities around the nation.

Portland's business community is seriously concerned about the increasing amount of violence unfolding on our streets, in front of our stores and inside our public spaces. Not only does this unnecessary violence threaten the physical safety and emotional wellbeing of the employees and employers we represent, but it has real economic impacts that are felt by small and large businesses alike. When property is damaged, when physical violence occurs in front of our businesses, when racist or inflammatory graffiti is painted on our walls or in our parks, our community hurts.

More must be done, and with this ordinance, more can be done to prevent such acts before they occur.

The Alliance is committed to building bridges and collaborating with local government and fellow community organizations to make our city a better, safer place to live, work and raise a family.

While of course disagreements on policy are frequent here in Portland, we can all agree that hatred and violence have no place within our city and we absolutely condemn the inflammatory actions of those seeking to dismantle productive community dialogue. Indeed, in September, after police and protesters alike had been hospitalized after such incidents, the Alliance spoke out alongside environmentalists and labor unions to make a public statement calling for more civility in how we discuss and debate important issues and to demonstrate our collective disappointment with recent violent behavior. This consistent threat to our community transcends politics and demands strong action.

Approving this ordinance will allow the Mayor and Chief Outlaw necessary authority to be proactive and mitigate violent protests, and in so doing, help all of us avoid personal harm and significant damage to public and private property. We are further encouraged by a provision to review the ordinance after implementation which provides for a sun-setting should perceived constitutional concerns turn into reality.

This form of iterative policy making with thoughtful flexibility does not limit free speech rights – this advances the doctrine of “peaceable assembly.” Safety must be our collective priority. We understand this is a sensitive issue from your perspective and you have the obligation to balance the rights of all citizens, regardless of extremist views. But we believe violence should never be tolerated and common sense must win out. That is why we strongly urge you to continue working towards a viable law.

Thank you for your consideration.



*Peace and Justice Works*  
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(503) 236-3065

## **COMMENTS on Mayor's protest ordinance (Agenda item 1160)**

November 6, 2018

Mayor Wheeler and members of City Council:

Peace and Justice Works and its project group Portland Copwatch oppose the ordinance being considered to curb protesting in Portland. While the stated goal is to stop people from engaging in street brawls, the gist of the proposal is that the Mayor gets to decide who protests and where, and if you don't do what he says, you can be fined \$500 and/or spend 6 months in jail.

The most salient point in the ordinance is the citation of the Ninth Circuit opinion that says "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." Given the police response to most recent protests in Portland, this analysis needs more attention.

We are a group that promotes and practices nonviolence. We do not agree with the tactics of the "alt-right" Patriot Prayer and Proud Boys protestors, some of whom came to Portland armed with rifles in August.

But we also oppose the government's assertion that it has the monopoly on violence, by dispatching paramilitary police to attack crowds who fail to obey their orders. Those orders are frequently hard to understand, contradictory, or on their face apparently unlawful efforts to end First Amendment protected activity. Portland Copwatch continues to challenge Chief Outlaw's perception that anyone who stays around after police give a dispersal order is "there to fight."

We agree with the ACLU that this ordinance gives too much authority to one elected official, and that the way to deal with people who engage in violence is to enforce the existing laws against assaults. Not that PCW encourages the use of the criminal justice system as it is, but since it exists, it makes no sense to criminalize protesting when the violence is what is the problem.

The Mayor has asked why wait for people to engage in violence before stopping it—the reason is the same why the US should not engage in pre-emptive wars and why the United Nations only recognizes states' rights to act in self defense once attacked. Pre-emptive action is first strike action.

If people are engaged in First Amendment protected speech (or free expression, under Article 1 section 8 of the Oregon Constitution), they should not be subjected to arrest. In all cases, it is not right for the state to engage in violence to show people that they should not engage in violence.

Over the years Portland Copwatch has observed many protest actions, at which we have seen police use "less lethals," flash-bangs, pepper spray and other chemical weapons, not to mention batons—which were used to push one of our members up a sidewalk when she was clearly there as an observer. We have had to inhale indiscriminate chemical spray, avoid being stomped by police horses and jump out of the way of police motorcycles on sidewalks.

Peace and Justice Works organizes many protest actions about US domestic and foreign policy, sometimes seeking a permit and sometimes not. What this ordinance sets up is the ability of a pro-war group which disagrees with our point of view to [post] on social media that they plan to counter-demonstrate, thus triggering the imposition of these rules and making us subject to be arrested and put in jail for 6 months and/or asked to pay a \$500 fine.

This is a very disturbing proposal and it does not fix the problem you intend to solve.

At the root of the problem is the unparalleled spending this country makes on its military, leaving little for health care, jobs, the environment and other human needs. The City could solve the homelessness issue, the street brawls, and the alleged need for more police all at once by asking its citizens to send 60% of their federal tax money to local causes instead of diverting it to weapons of war.

The impulse to "do something" without a deep look at how it will affect democracy is the hallmark of a certain other elected leader who now sits in the White House. Portland can do better than this, and we must.

—dan handelman and other members of  
Peace and Justice Works/ Portland Copwatch



## Moore-Love, Karla

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**From:** Peace and Justice Works <pjw@pjw.info>  
**Sent:** Tuesday, November 6, 2018 3:07 PM  
**To:** Commissioner Fritz; Commissioner Eudaly; Commissioner Saltzman; Commissioner Fish; Wheeler, Mayor  
**Cc:** Portland Copwatch  
**Subject:** COMMENTS on Mayor's protest ordinance (Agenda item 1160)

Mayor Wheeler and members of City Council:

Peace and Justice Works and its project group Portland Copwatch oppose the ordinance being considered to curb protesting in Portland. While the stated goal is to stop people from engaging in street brawls, the gist of the proposal is that the Mayor gets to decide who protests and where, and if you don't do what he says, you can be fined \$500 and/or spend 6 months in jail.

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--dan handelman and other members of  
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<http://www.pjlw.info>

## Moore-Love, Karla

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**From:** Terry Parker <parkert2012@gmail.com>  
**Sent:** Tuesday, November 6, 2018 2:12 PM  
**To:** Council Clerk – Testimony  
**Subject:** Testimony for 1160 -Authorize the Commissioner in Charge of the Police Bureau to order content-neutral time, place and manner regulations for demonstrations held in the City

All too often in a left coast state like Oregon, hate is associated with the other side, especially since Donald Trump was elected President. Like so many New Yorkers, Trump has a different way of speaking and presenting himself that Westerners can't relate to and rustling their feathers.

I think it is important to note when discussing an ordinance that authorizes the Commissioner in Charge of the Police Bureau to order content-neutral time, place and manner regulations for demonstrations held in the City that hate which leads to violence can come from the extremes on both sides - the Right and the Left. Diverse opinions such as the following need to be entered into the conversation. This is not to say I agree or disagree with the following.

**Why the Left Is Consumed With Hate** by **Shelby Steele** September 23, 2018, who is a senior fellow at Stanford University's Hoover Institution, is author of "Shame: How America's Past Sins Have Polarized Our Country" (Basic Books, 2015).

Even before President Trump's election, hatred had begun to emerge on the American left—counterintuitively, as an assertion of guilelessness and moral superiority. At the Women's March in Washington the weekend after Mr. Trump's inauguration, the pop star Madonna said, "I have thought an awful lot of blowing up the White House." Here hatred was a vanity, a braggadocio meant to signal her innocence of the sort of evil that, in her mind, the White House represented. (She later said the comment was "taken wildly out of context.")

For many on the left a hateful anti-Americanism has become a self-congratulatory lifestyle. "America was never that great," New York Gov. Andrew Cuomo recently said. For radical groups like Black Lives Matter, hatred of America is a theme of identity, a display of racial pride.

For other leftists, hate is a license. Conservative speakers can be shouted down, even assaulted, on university campuses. Republican officials can be harassed in restaurants, in the street, in front of their homes. Certain leaders of the left—Rep. Maxine Waters comes to mind—are self-appointed practitioners of hate, urging their followers to think of hatred as power itself.

How did the American left—conceived to bring more compassion and justice to the world—become so given to hate? It began in the 1960s, when America finally accepted that slavery and segregation were profound moral failings. That acceptance changed America forever. It imposed a new moral imperative: America would have to show itself redeemed of these immoralities in order to stand as a legitimate democracy.

The genius of the left in the '60s was simply to perceive the new moral imperative, and then to identify itself with it. Thus the labor of redeeming the nation from its immoral past would fall on the left. This is how the left put itself in charge of America's moral legitimacy. The left, not the right—not conservatism—would set the terms of this legitimacy and deliver America from shame to decency.

This bestowed enormous political and cultural power on the American left, and led to the greatest array of government-sponsored social programs in history—at an expense, by some estimates, of more than \$22 trillion. But for the left to wield this power, there had to be a great menace to fight against—a tenacious menace that kept America uncertain of its legitimacy, afraid for its good name.

This amounted to a formula for power: The greater the menace to the nation's moral legitimacy, the more power redounded to the left. And the '60s handed the left a laundry list of menaces to be defeated. If racism was necessarily at the top of the list, it was quickly followed by a litany of bigotries ending in "ism" and "phobia."

The left had important achievements. It did rescue America from an unsustainable moral illegitimacy. It also established the great menace of racism as America's most intolerable disgrace. But the left's success has plunged it into its greatest crisis since the '60s. The Achilles' heel of the left has been its dependence on menace for power. Think of all the things it can ask for in the name of fighting menaces like "systemic racism" and "structural inequality." But what happens when the evils that menace us begin to fade, and then keep fading?

It is undeniable that America has achieved since the '60s one of the greatest moral evolutions ever. That is a profound problem for the left, whose existence is threatened by the diminishment of racial oppression. The left's unspoken terror is that racism is no longer menacing enough to support its own power. The great crisis for the left today—the source of its angst and hatefulness—is its own encroaching obsolescence. Today the left looks to be slowly dying from lack of racial menace.

A single white-on-black shooting in Ferguson, Mo., four years ago resulted in a prolonged media blitz and the involvement of the president of the United States. In that same four-year period, thousands of black-on-black shootings took place in Chicago, hometown of the then-president, yet they inspired very little media coverage and no serious presidential commentary.

White-on-black shootings evoke America's history of racism and so carry an iconic payload of menace. Black-on-black shootings carry no such payload, although they are truly menacing to the black community. They evoke only despair. And the left gets power from fighting white evil, not black despair.

Today's left lacks worthy menaces to fight. It is driven to find a replacement for racism, some sweeping historical wrongdoing that morally empowers those who oppose it. (Climate change?) Failing this, only hatred is left.

Hatred is a transformative power. It can make the innocuous into the menacing. So it has become a weapon of choice. The left has used hate to transform President Trump into a symbol of the new racism, not a flawed president but a systemic evil. And he must be opposed as one opposes racism, with a scorched-earth absolutism.

For Martin Luther King Jr., hatred was not necessary as a means to power. The actual details of oppression were enough. Power came to him because he rejected hate as a method of resisting menace. He called on blacks not to be defined by what menaced them. Today, because menace provides moral empowerment, blacks and their ostensible allies indulge in it. The menace of black victimization becomes the unarguable truth of the black identity. And here we are again, forever victims.

Yet the left is still stalked by obsolescence. There is simply not enough menace to service its demands for power. The voices that speak for the left have never been less convincing. It is hard for people to see the menace that drives millionaire football players to kneel before the flag. And then there is the failure of virtually every program the left has ever espoused—welfare, public housing, school busing, affirmative action, diversity programs, and so on.

For the American left today, the indulgence in hate is a death rattle.

Respectfully submitted for discussion purposes only,

Terry Parker



**From:** Howard Shapiro <howeird3@gmail.com>  
**Sent:** Monday, November 5, 2018 9:29 PM  
**To:** Council Clerk – Testimony  
**Subject:** Proposed demonstration ordinance

### My Thoughts on the City's Proposed Demonstration Ordinance

The city must keep in mind that the demonstrators are an integral part of the stated “public” that this proposed ordinance is attempting to protect. It seems to me that the mission of the city would be to protect their first amendment rights also. These rights are often infringed upon by some members of the Portland's poorly trained police bureau.

This poor training is obvious to me from the violent manner in which the police bluster into a situation in their riot gear launching flash bangs and tear gas canisters without first attempting to diffuse the situation with staff that is well trained in persuasion and

negotiations. I realize that the training is probably prescribed by countless police training manuals and I have never been on a police force. However many of these manuals are probably antiques and written by people from cities other than Portland.

The public bought and paid for the streets and it is the city's responsibility to

maintain order in the streets without infringing on the public's constitutional rights. This could be a very challenging responsibility and cannot be taken lightly with a show of weakness by resorting to brute force prematurely.

In short, the police are there to help maintain order not to create disorder with their militaristic actions. They are dealing with the public that they have sworn to protect and

serve. It seems that when they put on their riot gear and are weaponized they no longer think of themselves as members of the community but as some outside military force. In my opinion, an important part of their training would be to change this attitude and reinforce their feeling that they are a part of the community in which they work.

It is a natural reaction for free people to resist when an outside force invades their freedoms. This is the reaction that you are getting when this seemingly outside military

force dressed for war begins to interfere with a peaceful demonstration. If the demonstrators become confrontational the first step for law enforcement should be to send in trained negotiators similar to what you do with hostage situations.

If the city passes this poorly conceived and surprising (for Portland) demonstration ordinance the city should probably prepare for constitutional law suits and also increased law enforcement costs. It may even be necessary to establish additional incarceration facilities and personnel to contain the public that demonstrate against the ordinance.

Howard Shapiro

7426 SE 21<sup>st</sup> Ave.

Portland, OR 97202

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*Howard Shapiro*

## Moore-Love, Karla

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**From:** A Shapiro <alice.shapiro2@gmail.com>  
**Sent:** Monday, November 5, 2018 5:52 PM  
**To:** Council Clerk – Testimony  
**Subject:** emergency ordinance

I am concerned with the “emergency ordinance” that is being proposed to regulate public demonstrations. Laws in our city already exist to prevent and prosecute violence. I believe that the proposed ordinance allows too much power for the “commissioner in charge” and to the mayor. One of the arguments presented is that these demonstrations require so much police action that the services of the police are taken away from other areas. From my observations as a peaceful, first amendment rights participant in many of these actions, I feel that these demonstrations are over-policed. Is there really a need for the vast majority of the police to be equipped with riot gear and major weapons at the onset of demonstrations? Does the presence of such a force promote peace or escalate fear?

Also, there has not been an opportunity for this proposed ordinance to be discussed in a public forum. I believe that more time is needed to discuss and study. And, why the rush? Should not we wait until the new city council begins with new members and possible shift in feelings about the role and responsibilities of the police. Is that why this is being rushed through?

I believe in community policing—which means the presence of officers in neighborhoods with minimal weapons and the purpose of getting to know and trust and be trusted by local communities. I am 72 years of age. When I was a child my parents told me to always trust the police and go to an officer if I had a problem. I saw officers walking my neighborhood in a relaxed and helpful manner. Unfortunately, that is not the earned image of officers in our city today. The police have been over-weaponized and removed from local neighborhoods. No ordinance can remedy that. Communicating with neighborhood leaders and establishing trust is what is needed. Demonstrators *are* the public, not the enemy.

If this ordinance is rushed through, more trust will be lost. We are supposed to be preserving democracy, not promoting authoritarianism. Putting that much power into the hands of one commissioner or mayor is not the right path for achieving and maintaining a peaceful Portland.

Alice Shapiro  
Portland

## Moore-Love, Karla

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**From:** Betsy Toll <betsy.toll@gmail.com>  
**Sent:** Saturday, November 3, 2018 6:32 PM  
**To:** Commissioner Fritz; Commissioner Eudaly; Commissioner Saltzman; Commissioner Fish; Wheeler, Mayor; Council Clerk – Testimony  
**Subject:** Defend Portlanders' First Amendment rights

Dear Mayor and City Commissioners,

I firmly and respectfully urge Mayor Wheeler to withdraw his proposal to restrict the rights of assembly and protest in Portland. Such a plan that undermines our civil liberties could be expected of our current President, but it has no place in Oregon and no place in Portland. Our city leaders must take a deep breath, reflect carefully, and reject this idea.

The Mayor's proposed ordinance plays on the climate of fear being stirred by extreme rhetoric across the country. Tension and violence in Portland and across the country are indeed unsettling. The actions so easily sparked by the hateful rhetoric of desperate people cannot be taken lightly. But Portland must not fall prey to the vitriol infecting our country. To level an assault on fundamental rights at the height of intense pre-election partisan anxiety and stress cannot possibly contribute to comity and hope for our city.

Fear is thick in the air these days, and hasty, fear-based policy that allows scant time for thoughtful discourse, challenge, engagement or reflection, is dangerous. Our concerns for safety, for conflict resolution, and for community well-being must be approached but with thoughtful care and patience, to arrive at reasonable, Constitutionally grounded policies that support the rights of everyone in Portland.

History has made painfully clear that headstrong governments and rash policies to restrict the rights of speech and assembly — always touted as well-intended for the public good — inevitably weaken and undermine those freedoms. Portland needn't react in kneejerk fashion to the tensions so evident in these times. Especially in a climate of divisiveness and rancor, it is vital that we uphold the rights that can make this country the best it can be.

Thank you for reading, for serving, and for proceeding with care and caution in regard to this proposed ordinance.

Sincerely,

Betsy Toll

Betsy Toll | 503.358.5204 | [betsy.toll@gmail.com](mailto:betsy.toll@gmail.com)  
3841 SE 51st Ave., Portland, OR 97206



**From:** [Mat dos Santos](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** ACLU of Oregon Testimony  
**Date:** Thursday, November 8, 2018 3:07:59 PM  
**Attachments:** [image003.png](#)  
[11-8-18 ACLU of Oregon Testimony re Item No. 1160.pdf](#)

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Attached

**Mat dos Santos**

Pronouns: he, him

Legal Director

American Civil Liberties Union of Oregon

PO Box 40585, Portland, OR 97240

(o) 503.552.2105 (m) 415.816.8066 | [mdossantos@aclu-or.org](mailto:mdossantos@aclu-or.org)

[aclu-or.org](http://aclu-or.org)  



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