

# **POLICY REVIEW:**

Portland Police Bureau can improve its approach  
to crowd control during street protests

May 2018



PORTLAND  
CITY AUDITOR

**Independent  
Police Review**



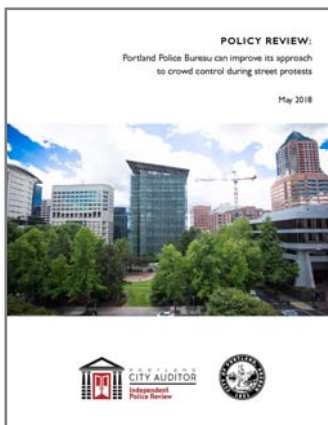
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## SUMMARY

Following the 2016 Presidential election, Portland saw an increase in political protests leading to more confrontations between crowds and police. A “free speech” rally organized by the alt-right group Patriot Prayer in downtown Portland on June 4, 2017, attracted attention from counter-protestors and law enforcement.

In the weeks leading up to the rally, Portland Police Bureau officials became concerned that the protest could escalate into physical violence and decided to deploy the Rapid Response Team, a unit specially trained in crowd control tactics.

On June 4, groups of Patriot Prayer members and various counter-protestors convened in adjacent parks in downtown Portland. Tensions among the opposing groups in Chapman Square and Terry Schunk Plaza escalated throughout the afternoon until police eventually closed and cleared Chapman Square and followed counter-protestors as they marched north. A group of nearly 400 counter-protestors was detained by police to investigate possible disorderly conduct. Among the detained were journalists from local and national media organizations who were not allowed to leave until they and their identification were individually photographed by police.



Community members objected to what they described as the Police Bureau’s unequal treatment of the various groups of protesters and the lack of legal justification for detaining people. The Independent Police Review (IPR) found insufficient documentation by the Police Bureau of the legal justification had by the officers for the mass detention.

The Police Bureau also photographed individuals during the mass detention without a clear policy on how those photos would be used, shared or retained. IPR found no evidence that the Police Bureau took photos for intelligence gathering purposes, but without clear guidelines, it cannot sufficiently address fear among some in the community that the tactic will be used to chill free speech and dissenting voices.

IPR recommends changes to Police Bureau policy and procedures to provide clarity for community members and officers on what tactics are permitted in crowd control situations. These changes, if combined with adequate training for members, represent the Police Bureau’s best mechanism to ensure consistent application of crowd control tactics. Policy development provides the opportunity for dialogue between community members and the Police Bureau about appropriate police tactics and behavior at protests that could lead to arrests.

## **EVENTS LEADING UP TO AND INCLUDING JUNE 4 PROTEST**

Over the past 30 years, Portland has become increasingly known as a center of protest, activism, and encounters between crowds and police. In the past decade, the Portland Police Bureau's response to Occupy Portland and protests related to the Black Lives Matter movement have led to increased community scrutiny of police tactics.

The results of the 2016 Presidential election led to five consecutive nights of protests, with several thousand demonstrators in attendance. During the early months of 2017, large demonstrations on Inauguration Day, President's Day and May Day were marked by multiple confrontations between police and protesters. Early 2017 also saw the rise in confrontations between an amalgam of alt-right and nationalist groups and anti-fascist counter-protesters.

In late April, the conservative group Patriot Prayer held a "March for Free Speech" rally in the Montavilla neighborhood in East Portland. Counter-protestors confronted the Patriot Prayer group, including members of Rose City Antifa, an anti-fascist group, as it marched down Southeast 82nd Avenue. Police arrested three counter-protestors during the march. The Police Bureau ultimately provided TriMet buses for the conservative protesters to leave the event, an act perceived by some as favoritism.

On May 26, two men were fatally stabbed and another seriously injured on a MAX train. The men intervened when a man started yelling anti-Muslim rhetoric at two teenage girls, one of whom was wearing a veil. The suspect in the case, Jeremy Christian, attended the April 2017 Patriot Prayer event and was videotaped giving Nazi salutes and referring to counter-protestors with racial slurs, prior to being escorted away by Portland Police officers.

After the stabbings, many called on Patriot Prayer to cancel its "Free Speech Rally" scheduled for June 4 at Terry Schunk Plaza in downtown Portland. Community members saw the event as Islamophobic, citing Christian's association with Patriot Prayer and his prior anti-Islamic statements. In response, Portland Mayor Ted Wheeler called for rally organizers to cancel the event. As Terry Schunk Plaza is a federal property, Mayor Wheeler also requested that the federal government revoke the approved permit for the rally, which the federal government declined to do, citing free speech considerations. Patriot Prayer said it would not cancel the event. Union groups, interfaith groups, and Rose City Antifa scheduled counter-protests for June 4 in the same vicinity as the Patriot Prayer rally.

## Police grew concerned about the potential for violence

In the weeks leading up to the June 4 rally, the Police Bureau monitored social media platforms and noted users associated with both Patriot Prayer and Antifa were making threats and inflammatory statements about each other. Police were concerned that the protest would escalate into physical violence as had happened in other cities. The Police Bureau decided it would deploy its Rapid Response Team and issued a press release noting the potential for violence:

*There will be a robust law enforcement presence due to online threats of violence between different groups. Due to these threats and the potential for violence, persons attending any of the events are discouraged from bringing any weapons (firearms, knives, etc.) or items that can be used as weapons (sticks, bats, poles, rocks, fireworks/incendiary devices, etc.) to any of the events. Prohibited items may be seized by police and, if in violation of city, state or federal law, the possessor may be arrested and charged criminally.*

## Rapid Response Team focuses on large events

The Police Bureau's Rapid Response Team, formed in 2001, is the unit most regularly sent to large events, including protests. Officers volunteer for the team, are screened, and receive additional training in crowd control tactics while maintaining a regular duty assignment.

Rapid Response Team members have a variety of specialized equipment available to them, including batons, shields and helmets.

In addition to its own resources, the Police Bureau maintains interagency agreements with several law enforcement agencies in Oregon and Washington, including Oregon State Police, Multnomah County Sheriff's Office and Washington County Sheriff's Office. Outside

agencies agree to help during a "major incident, natural disaster, or extreme civil disorder." Officers from these agencies regularly train with the Rapid Response Team and respond to protests and other mass events on an as-needed basis. This permits the Police Bureau to field a larger force of officers than might otherwise be available to an agency of its size.



Rapid Response Team closing Chapman Square.  
Lyndsey Hewitt – Courtesy of Portland Tribune

The Police Bureau also uses Mobile Field Force officers during protests and other incidents to supplement and reinforce the Rapid Response Team. Members of the Mobile Field Force, typically on-duty patrol officers, assist with arrests, property seizures, and other tasks.

More than 200 Police Bureau officers were present at the June 4 rally. Two squads of the Oregon State Police and a squad from the Multnomah County Sheriff's Office were part of the police presence.

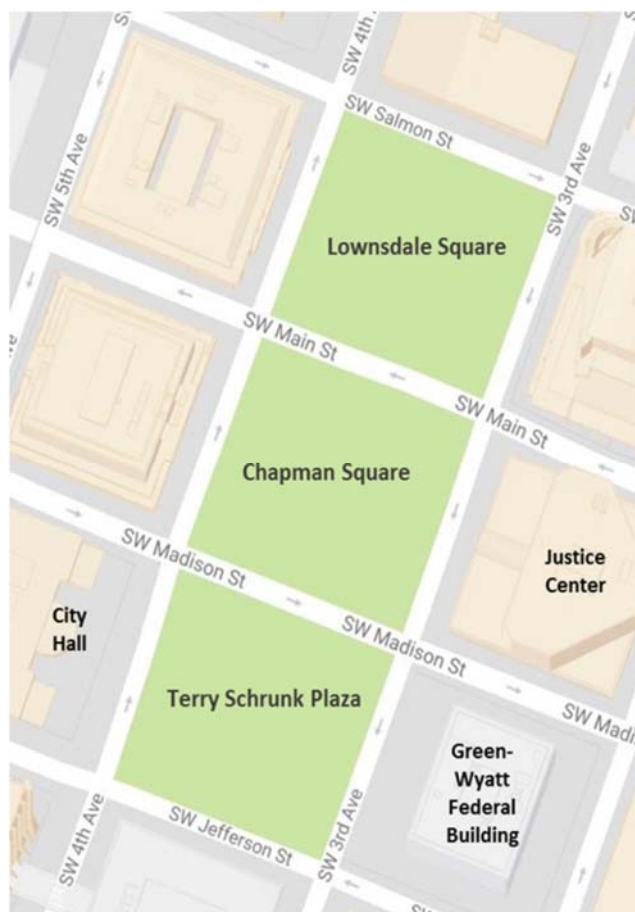
### Groups assembled downtown

Patriot Prayer members and various counter-protestors convened on June 4 in or near a series of parks in downtown Portland. Terry Schruck Plaza, Chapman Square, and Lowndale Square and the streets around them formed the location of most of the events of June 4.

Those associated with the Patriot Prayer Rally assembled in Terry Schruck Plaza, which is owned and administered by the federal government.

There were three locations for those protesting the Patriot Prayer Rally. The largest group of counter-protesters, including members of Rose City Antifa, gathered in Chapman Square. A counter-protest organized by labor unions met in front of the Green-Wyatt Federal Building on Southwest 3rd Avenue across the street from Schruck Plaza. A coalition called Portland Stands United Against Hate congregated in front of City Hall on Southwest 4th Avenue.

In planning documents, the Police Bureau identified four distinct groups and described the Antifa group planning to be in Chapman Square as “more confrontational” and more “volatile” in comparison to the other three groups. Police Bureau staff said the Antifa group wanted to “violently counter-protest” the Patriot Prayer group, while the organized labor and faith groups didn't agree with these “more confrontational violent tactics” and wanted to separate themselves from Antifa.



## Officers seized property and eventually cleared Chapman Square

Tension among groups in Chapman Square and Schrunk Plaza escalated throughout the afternoon. Police eventually closed and cleared Chapman Square and followed counter-protestors as they moved north.

Shortly before noon on June 4, Rapid Response Team squads formed “skirmish lines” around Schrunk Plaza to separate the opposing demonstrators. Two squads from the Rapid Response Team formed a line on Southwest Madison Street, facing north. A line of Federal Protective Service officers faced south toward Schrunk Plaza.

During the rally, individuals in Chapman Square and Schrunk Plaza yelled and cursed at each other. Occasionally, scuffles and arguments broke out as protest participants came and went from their respective areas. In some cases, officers intervened to stop these conflicts. Officers stopped several people carrying potential weapons and seized contraband items. Some people were arrested and charged with carrying concealed weapons, including sticks, knives, brass knuckles and smoke bombs.



*Police seized items from protesters.  
Lyndsey Hewitt – Courtesy of Portland Tribune*

In the early afternoon, the Police Bureau broadcast several warnings from its sound truck, directing people in the crowd to stop throwing dangerous objects and to move to the north out of Chapman Square. Actions escalated before officers eventually cleared the square around 3:30 pm. A group of protesters remained in Southwest Main Street and Lownsdale Square and was declared an unlawful assembly. Protesters then began to march to the north, but Rapid Response Team squads relocated and blocked the progress of the march at several intersections.



## Police detained nearly 400 people at Southwest 4th and Morrison

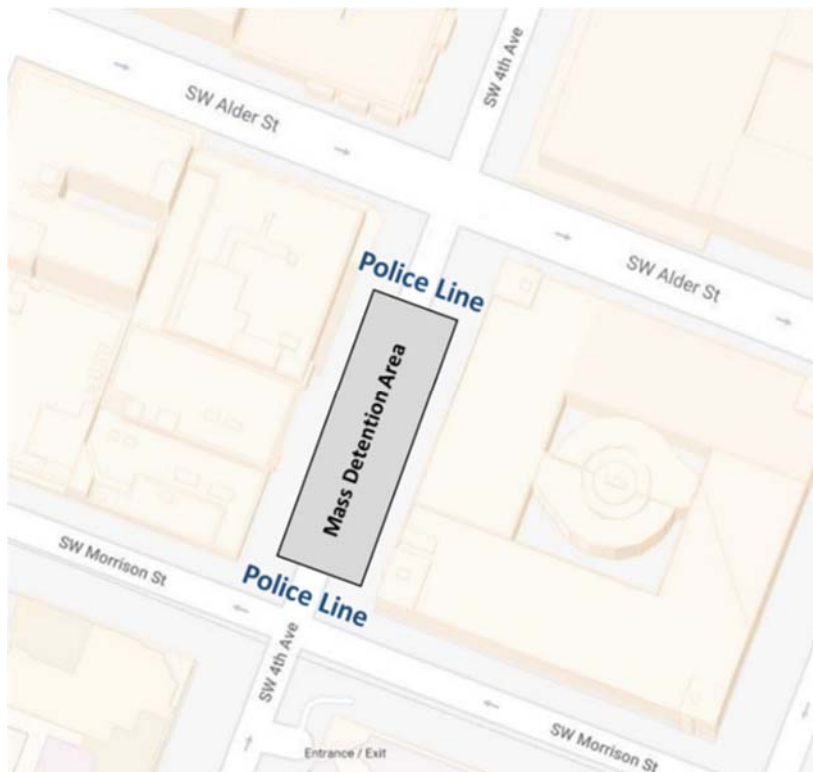
At 4:21 pm, Police Bureau officers and Oregon State Police detained counter-protesters who had moved north from Chapman Square to Southwest 4th Avenue between Morrison and Alder Streets.

A squad of state troopers moved in front of the marchers at Southwest Alder Street and prevented them from continuing north on 4th Avenue, while a Police Bureau Rapid Response Team squad blocked Southwest Morrison Street. The Incident Commander ordered that the group be detained to investigate the crime of disorderly conduct. Prior to initiating the detention,

the Incident Commander consulted with a deputy city attorney and a member of the Multnomah County District Attorney's Office, both of whom were present at the Emergency Operations Center. An officer on the scene estimated that 250-300 people were detained. IPR's review of police reports filed by Field Arrest Teams showed the Police Bureau photographed 389 people.

The Police Bureau used a sound truck to deliver warnings to the group, including two announcements that members would be detained for the investigation of disorderly conduct and that police would be making arrests based on probable cause. Subsequent messages from the sound truck specified that those detained should show their identification. Those without identification were required to provide contact information. Officers warned that once people were released, they should leave or face arrest. There is no record of a dispersal order or a warning being given at Southwest 4th and Morrison prior to the detention of the group. At the time of the detention, the sound truck was several blocks to the south.

While officers arrested some of those detained, most were released without charge. The mass detention lasted approximately one hour. Then-Police Chief Mike Marshman later wrote that the decision to photograph the identification of detained individuals was made to "speed up the process."



Several journalists were detained along with protestors, representing the Coos Bay World, Getty Images, The Oregonian, Willamette Week, Portland Tribune and Vice Media. The journalists were processed similar to the protestors, required to be photographed and show identification prior to release.

The only reported use of force during the mass detention occurred at the northeast corner of the intersection of Southwest 4th and Morrison. An Oregon State trooper fired pepper balls at a small group attempting to leave the containment by climbing up a parking garage stairway. Officers apprehended and subsequently released them, but none were charged with a crime.



*Police detained protesters on SW 4<sup>th</sup> Ave.  
Lyndsey Hewitt – Courtesy of Portland Tribune*

During the mass detention, Federal Protective Services officers closed Schrunk Plaza and required those still present to leave. As the Patriot Prayer Rally ended, Rapid Response Team squads relocated closer to Schrunk Plaza, where police broke up scuffles among various groups of protestors as people left the area.

## **COMMUNITY MEMBERS OBJECTED TO TREATMENT BY POLICE**

Twenty-seven community members filed complaints with IPR related to the June 4 protest. Their objections fell into three broad areas:

1. Perceptions that police favored one group over another;
2. Use of a detention tactic that swept up innocent bystanders; and,
3. Forcing people who were detained to be photographed holding their identification without evidence they had engaged in criminal activity.

Prior to June 4, the Special Events sergeant for Central Precinct contacted people associated with the Patriot Prayer Rally, including event organizer Joey Gibson and others, who indicated they would provide security for the event. During these contacts, the sergeant emphasized the Police Bureau's responsibility to provide a safe and secure environment for everyone, regardless of their political views or group affiliations. Patriot Prayer representatives assured the sergeant their participants would not bring firearms.

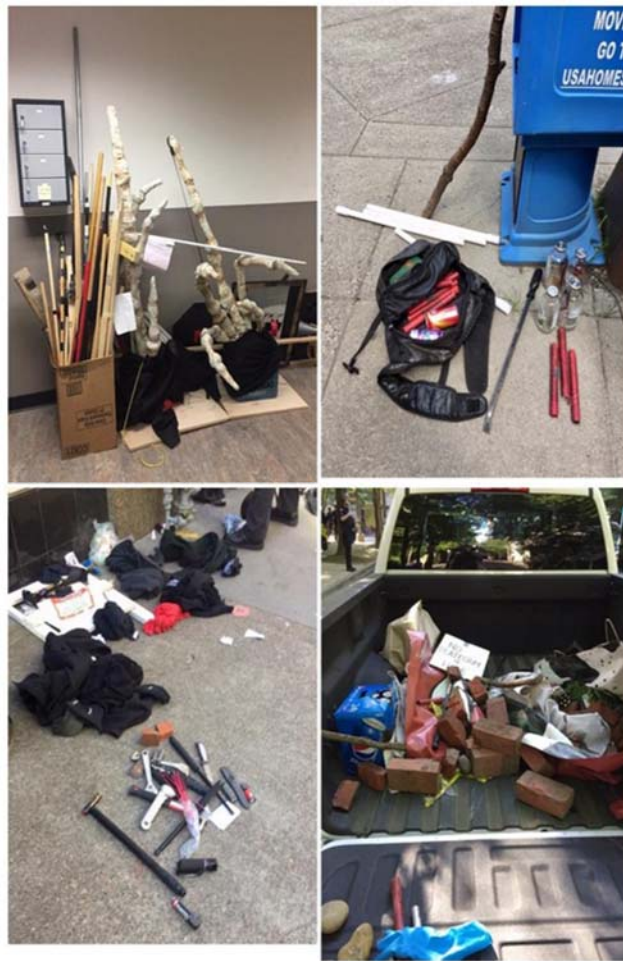
The sergeant also attempted to contact representatives of Rose City Antifa and other groups planning to hold counter-protests on June 4. The sergeant asked these groups to remain physically separated from the Patriot Prayer group and express their concerns verbally, not physically.

During the event, the sergeant tried to remain in regular contact with all groups present, largely by text message. Patriot Prayer members and some counter-protestors exchanged multiple text messages with the sergeant. Antifa members were less responsive and exchanged fewer text messages. When the sergeant texted counter-protest organizers in Chapman Square to call attention to people throwing bricks and water bottles at police, the organizers denied it.

Several community members perceived disparities in how the Police Bureau treated the different groups, ranging from the quantity and types of objects confiscated to individual and mass arrests. Some community members believed that protesters in Chapman Square were removed to allow for the safe passage and exit of the Patriot Prayer protesters once their rally ended. A lieutenant with the Rapid Response Team said protesters in Chapman Square were treated differently because Rose City Antifa lacked a hierarchical structure with a clear leader, which “made it difficult for [the Police Bureau] to find a single point of contact to convey information.”

Other community members objected to the Police Bureau confiscating property from protesters in Chapman Square, but not from the other groups downtown. An ACLU staff attorney observed police take “poles from signs” from the protesters in Chapman Square, while the those at the rally in Schrunk Plaza had “giant flag poles.”

This variation could be attributed to differences in federal and local policies regarding the seizure of property. Police reports show that the Police Bureau confiscated weapons from individuals affiliated with groups in both Chapman Square and Schrunk Plaza. Federal Protective Police checked bags and individuals as they entered Schrunk Plaza. Portland Police worked outside Schrunk Plaza, so officers mostly seized property from counter-protestors in and around Chapman Square.



Items seized by Portland Police.  
via @PortlandPolice on Twitter.

Portland’s City Code authorizes the police to confiscate “any dangerous or deadly weapon that is possessed unlawfully, or used unlawfully, or used for an unlawful purpose.” City Code 14C.30.050 authorizes a police officer to “temporarily seize” dangerous or deadly weapons that “may be used to cause serious harm” for “safekeeping or the prevention of crime.” Police Bureau Directive 660.10 (Property and Evidence Procedure) also allows police to preemptively take custody of property that may be used in the commission of a crime.

After-action reviews from the June 4 event indicated that multiple objects used as projectiles or potential weapons were collected from Chapman Square and taken to the Property Evidence Division, where they were photographed and displayed on the Police Bureau’s Twitter feed.

Additionally, there were weapons left by some individuals detained at Southwest 4th and Morrison.

## COMMUNITY MEMBERS OBJECTED TO MASS DETENTION

In the days following the June 4 protest, community members reported that the Police Bureau had “kettled” protesters at Southwest 4th Avenue and Morrison Street. Kettle is a term often used to describe the crowd-control tactic when officers surround a group and control access in and out of the area. The Police Bureau generally refers to it as a “box-in” or “containment.” The kettle or box-in is used by many domestic and international police agencies and can vary greatly in size, containing upwards of hundreds of people or as few as a dozen.

| Kettling  |
|---|
| Kettle derives from the German word <i>Kessel</i> , which translates as either kettle or cauldron. A kettle also describes a military tactic, where a large force will surround an opposing force, separating it from external support and the surrounded force is eventually made ineffective. |

The kettle/box-in is disliked by some community members for several reasons. One concern is that bystanders not involved in disruptive or illegal activity may be unfairly detained. An additional worry is that having a large number of officers surrounding and detaining protestors may have a chilling effect on free speech.

Law enforcement officials point to the box-in as an effective tactic but noted the logistical challenges involved with its use. A former Police Bureau Incident Commander said a box-in is often difficult to execute because of its complexity and timing, adding that, “(i)f you can make the box-in, bring in a team to make the arrests, and get out – if you can do it in under 10 minutes, it can be feasible, but if it sometimes takes longer than that, it just becomes difficult.” Police Bureau command staff said that the use of the box -in deescalates potentially violent situations without police use of force. The Vancouver, British Columbia, Police Department said it does not use this type of containment because of the number of officers required and human rights considerations.

## **Reasonable suspicion of disorderly conduct not documented**

Courts allow police to temporarily detain or stop an individual if there is reasonable suspicion that the person was involved in a crime. IPR found little documentation by the Police Bureau describing the evidence supporting officers' reasonable suspicion of disorderly conduct prior to the mass detention. Police reports indicated that those detained were not questioned about disorderly conduct prior to their release. Some community members said they were not told why they were detained.

Police records show those detained were held for further investigation of disorderly conduct, which is a misdemeanor. Officers did not interview independent witnesses about the actions of the marchers prior to their detention. While video taken by police and community members during the early moments of the detention show a large group of marchers in the street and sidewalk on Southwest 4th Avenue, there were no videos or reports showing that marchers obstructed vehicles or pedestrians or any of the other elements required by the disorderly conduct statute.

Police reports documented the individuals detained and the forms of identification they provided, but no statements indicating they engaged in acts that could constitute disorderly conduct. In police reports, detectives and members of the Field Arrest Team said they were directed by supervisors only to identify and process individuals who were detained, not question them.

## **COMMUNITY MEMBERS FEARED POLICE WOULD MISUSE PERSONAL INFORMATION COLLECTED AT THE PROTEST**

On June 4, the Police Bureau individually photographed 389 people and their identification before allowing them to leave the mass detention area. Officers directed individuals wearing masks or disguises to protect their identity to remove them prior to being released.

In complaints filed with IPR, community members feared the Police Bureau had retained or shared the photographs and data with other law enforcement agencies. Some questioned whether photographing people and their identification constituted a form of intelligence gathering by the Police Bureau.

The ACLU contends photographing individuals with their identification during a protest was a violation of their Fourth Amendment rights and violated Oregon law, which prohibits the collection and creation of files based on a person's political affiliation.

Police accountability agencies in Washington, D.C. and Berkeley, Calif., said their departments do not use this tactic despite frequent protests in those cities. The Seattle Police Department said it photographs protesters as part of the arrest process, but a local ordinance prevents officers from photographing people unless crimes have been committed.

The Police Bureau has no policy to guide if photographs should be taken at large events and how they may be later used, shared, or retained. IPR found no evidence that the Police Bureau took photos of those detained for intelligence gathering purposes, but without clear guidelines, the Police Bureau has no ability to address community concerns that the photographs and identification will not be misused to chill free speech and dissenting voices.

Police Bureau command staff defended the tactic, saying it was part of an investigation into the attempted assault on officers with bricks and other objects.

Chief Marshman said in a June 6, 2017, Oregon Public Broadcasting interview that he was unaware that photos were taken of people and their identification on June 4 and wondered if one of the Police Bureau's partner agencies was responsible, as it was not the Bureau's practice to do so. A Police Bureau spokesman later clarified that it had been Police Bureau personnel who had taken the photographs.

In a June 21 memo to Mayor Wheeler, Chief Marshman wrote that the photographs taken during the mass detention were uploaded to the Police Bureau's Digital Image Management System. Chief Marshman also wrote, "(a)ny photographs not used in a criminal investigation will be purged pursuant to PPB policy."

During this review, IPR learned the Police Bureau still had the photos of the individuals and their identification in its possession. The Police Bureau does not have a retention policy for digital image data, allowing for photos to be held permanently until staff are told to delete them. The Police Bureau said the photographs would be retained indefinitely unless they were explicitly ordered to be removed. Now they are subject to a legal hold in response to a lawsuit, which prohibits their destruction.

## **POLICY CONCLUSIONS**

### **Better communication during planning would help public understand expectations during events**

While the Police Bureau prudently attempted to contact participants prior to the rally, the Special Events sergeant was unable to fully communicate with Rose City Antifa prior to June 4, because it did not have the leadership and organizational structure of the other groups. While this presented a challenge, the Police Bureau should recognize that leaderless or less hierarchical groups are not inherently more dangerous and should not be treated differently because their members prefer not to interact with law enforcement.

Some community members said that they were unaware of the Police Bureau's authority or why it had taken certain actions. The Police Bureau maintains a robust social media presence and sends out regular press releases but should have a comprehensive, transparent communication plan for specific events to add clarity and coherence for the public. Such a plan could include a planning website prior to the event with relevant statutory and City Code authority, as well as descriptions of methods used to disseminate information during the event, such as warnings amplified from a sound truck or social media sites to monitor in real-time. These communication strategies should not require participants to interact with an officer to get information.

## Police Bureau needs polices to govern mass detentions and arrests

Any inquiry into the action of Police Bureau members normally begins with a review of the applicable policy. Currently, the Police Bureau has no written policy governing stops or other forms of temporary detention, including mass detentions. The Police Bureau also does not have a mass arrest policy.

The absence of a policy that addresses mass detentions and arrests presents risk for the City. A well-reasoned policy would allow the Police Bureau to wrestle with competing public policy goals prior to a highly-charged event and allow for adequate training based on the policy. It would provide the opportunity to craft a document that addresses legitimate public safety goals in consultation with the community. Constitutional protections and community concerns could be weighed against the governmental interests the Police Bureau seeks to advance when it uses mass detention or arrest during protests.



A mass detention and arrest policy should:

- provide adequate guidance to officers and articulate under what circumstances mass detentions and arrests are permissible;
- describe the types of warnings that need to be provided to demonstrators prior to detention;
- include a general prohibition on the detention of media and legal observers;
- consider the length of detention and if weather and other conditions are suitable for holding a large group outside; and
- articulate the point at which Police Bureau personnel would be obligated to provide those detained with access to food, water and restrooms.

### **Better recorded evidence would benefit post-event investigations and reviews**

The Police Bureau often documents mass events through videos to record officers' actions and aid in criminal prosecutions. It has improved and expanded its video-taping capacity during crowd control activities in recent years, but gaps remain because of the limited number of cameras and vantage points provided by Police Bureau videographers.

Video is often taken by Forensic Evidence Division criminalists from behind police lines. During larger, quickly moving events, videographers may not be well-positioned to record events of value to criminal or administrative investigators. Better video collection will promote the community and City's shared goal of greater accountability at crowd control events.

The Police Bureau uses an encrypted radio channel for its crowd control events, which it does not preserve nor archive. As result, Police Bureau managers and other reviewers of crowd control incidents are deprived of a critical contemporaneous record. Such a record would provide reviewers with a fuller, real-time explanation of events and chronicle the factors that influenced police decision making. The Police Bureau currently uses a scribe in the Emergency Operation Center to document incidents during a crowd control event, but it is not a substitute for retaining radio transmissions. Other agencies have policies that require all radio transmissions of crowd control events be preserved.

### **Intergovernmental agreements need to be updated**

Although intergovernmental agreements between the Police Bureau and other agencies may be reviewed annually, they date back to the late 1990s and early 2000s. The agreements do not include requirements that officers from other agencies read and comply with the host agencies' directives when participating in large events in that jurisdiction. This principle is expressed as an expectation in the Police Bureau's Crowd Control Directive but is not included in the agreements among agencies. Such language will become more important as the Police Bureau's directives, particularly those governing use-of-force, are updated to be more restrictive than those used by partner agencies.

The agreements also do not require other agencies to make their employees and/or documents available to Portland during administrative investigations of alleged misconduct by City employees.



## RECOMMENDATIONS

Police directives and standard operating procedures, when combined with adequate training for members, represent the Police Bureau's best mechanism to ensure consistent application of crowd control tactics. Through their considered development, and in the case of directives, their opportunity for public comment, these documents also represent the areas where the Police Bureau must be transparent about the tactics it will permit its officers to use. The lack of clarity also appeared to lead to confusion among Police Bureau leadership about what actions were undertaken by Police Bureau personnel and whether they were within existing policy.

1. To improve consistency in the way community members are treated, the Police Bureau should: create a new written policy or amend Directive 635.10 (Crowd Management/Crowd Control) to
  - provide guidance on how it interprets its broad discretion under City Code 14C.30.050 to seize items that an officer may consider a dangerous or deadly weapon;
  - have a transparent and comprehensive strategy to better communicate with the public prior to and during large crowd control events;
  - update intergovernmental agreements to require outside agencies to comply with the Portland Police Bureau's use-of-force policies during crowd control events and cooperate with the City's administrative investigation process.
2. To address issues with mass detentions and arrests the Police Bureau should:
  - create a written policy that governs all stops and other forms of temporary detention;
  - not use mass detentions or arrests absent a compelling governmental interest;
  - amend Directive 635.10 (Crowd Management/Crowd Control) to include under what circumstances officers can engage in mass detentions and arrests and a general prohibition on the detention of media and legal observers; and
  - determine in the after-action review whether a mass detention or arrest was appropriately ordered and implemented.
3. To better document crowd control events, Police Bureau personnel should:
  - make use of Go-Pro cameras on individual officers and position other cameras from a distance to capture group dynamics;
  - time and date stamp all video footage with videographer's name;
  - attempt to document, on video, the dynamic nature of a crowd control event as well as the actions of members of the public and officers;
  - preserve and archive audio transmissions between officers during crowd control events; and create policies for audio and video recordings of crowd control events with clear use and retention guidelines.

4. The Police Bureau should not photograph individuals who have been detained but not charged with a crime absent a written policy governing the use of the photos. Such a policy should include:
  - who within the Police Bureau will be authorized to access the photos;
  - whether they will be shared with other law enforcement agencies; and
  - a deadline after which the photographs must be purged if there are no criminal charges.

## **METHODOLOGY**

IPR is authorized under Portland City Code to conduct reviews of Police Bureau policy and procedure and to make recommendations. The aim of a policy review is to conduct an examination of the underlying facts and circumstances of an incident and determine whether there are any lessons that can be learned.

The objective of this review was to assess the Portland Police Bureau's response to the June 4, 2017, rally organized by Patriot Prayer and related counter-protests and associated Police Bureau policies and directives.

We reviewed Police Bureau Directives including 635.10 Crowd Management/Crowd Control and 1010.00 Use of Force. We also reviewed applicable state and federal case law, Oregon statutes, and Portland City Code.

We interviewed members of the public present at the rally and counter-protest. We also reviewed video created by members of the public.

We reviewed Police Bureau memos, planning documents, reports, after action reviews, and video from the event. We interviewed members of the Rapid Response Team command staff. We also reviewed statements made to the news media by Police Bureau and City officials.

Some members of the review team attended Rapid Response Team and Crowd Control Incident Commander trainings and observed the team at other protests.

As part of this review we also interviewed representatives from Washington, D.C.'s Office of Police Complaints, Berkeley's Police Review Commission and the ACLU of Oregon. We interviewed law professors from Willamette University and Lewis and Clark College. We also consulted with officials responsible for crowd control from the Seattle Police Department and the Vancouver, British Columbia, Police Department.

# **RESPONSES TO THE POLICY REVIEW**



## CITY OF PORTLAND, OREGON



### Bureau of Police

Ted Wheeler, Mayor

Danielle M. Outlaw, Chief of Police

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### Response to IPR Crowd Control Recommendations

At the outset, it is important to note that the Police Bureau's Crowd Management/Crowd Control Directive 635.10 has already been significantly revised since the incident discussed in this report. Subsequent to the June 4 protest, the Bureau, after significant consultation with political leaders, community members, and internal subject matter experts, released an amended version of Directive 635.10 in August 2017. In addition, the Bureau posted the Directive for additional public comment in March 2018. The Policy Development Team is currently working on additional revisions as we continue to improve and refine the policy.

#### Recommendation 1

- A. Seizures of property are covered by Bureau Directive 650.00. The Bureau agrees that additional guidance on the temporary seizure of items that could be used as weapons would be beneficial. The Bureau has begun the process of revising Directive 650.00 by placing it up for the first universal review period on 5/15/18. The Bureau will complete its review and revisions, and the updated Directive will take effect by 10/1/18.
- B. The Bureau believes that Procedure section 3 of the revised Directive 635.10 provides guidance to members and lays out an overall strategy of communication regarding crowd events. We will continue to evaluate ways to strengthen the policy during the current review process. The Bureau will also explore the possibility of developing an FAQ on its website related to crowd events.
- C. Outside agencies who are called upon to assist with crowd events train extensively with PPB RRT. In addition, outside agency personnel are briefed for each event, and are expected to follow the guidelines established by the PPB Incident Commander for the situation. Unless there are extraordinary circumstances requiring an immediate response, outside agency personnel report to a centralized staging location, provide a list of their personnel to the Incident Commander, and are given a copy of the written Incident Action Plan. Supervisor for outside agency teams attend the Police Bureau's supervisor briefing as well. As noted in Directive 635.10, section 7.1.3., members of outside agencies who respond to assist with crowd control events are subject to their own agencies' rules and regulations. The Police Bureau does not have the authority to compel compliance with PPB directives by outside agency personnel.

#### Recommendation 2

- A. The law surrounding stops and detentions is complex and frequently changing. As such, the Bureau provides extensive training to new officers on Fourth Amendment issues. In addition, ongoing training is provided to members via updates from the City Attorney's

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Office and other sources. Because the process to change Bureau directives is relatively slow moving, the Bureau believes the most effective way to ensure compliance with the law by members is via this training. Accountability for deviations from training and violations of rights can be achieved via enforcement of Directive 310.00 – Professional Conduct and Courtesy and Directive 315.00 – Laws, Rules, and Orders.

- B. Revised Directive 635.10 section 12.3. makes it clear that arrests can only be carried out if there is individualized probable cause for each person. The Bureau agrees that mass detentions should only be carried out under extraordinary circumstances and at the direction of the Incident Commander. The Bureau is currently drafting language to address mass detentions in Directive 635.10. As noted above, Directive 635.10 is currently undergoing executive reconciliation as we evaluate feedback from members and community partners. A draft incorporating proposed changes should be posted for a second universal review period by July 2018. After additional consideration of feedback provided at that time, the Bureau hopes to enact a revised version of Directive 635.10 by October 2018.
- C. As noted above, Directive 635.10 section 12.3. makes it clear that arrests can only be carried out if there is individualized probable cause. In addition, section 12.1. states that the Incident Commander is responsible for authorizing any arrests, including mass arrests. The Bureau will draft language to address the circumstances under which a mass detention may occur. Section 12.4. states that media or legal observers will not be arrested solely for their role in observing, capturing, and/or reporting on demonstrations or events. Likewise, media or legal observers will not be detained solely for their role in observing, capturing, and/or reporting on demonstrations or events. However, it is important to note that media or legal observers are required to obey all laws and follow all lawful orders.
- D. The Bureau agrees that in the event of mass detentions or arrests, the after action review following that incident should include an evaluation of whether the mass detentions or arrests were properly ordered and implemented.

### Recommendation 3

- A. The Bureau already attempts to stream video from various locations in order to provide a complete picture of a crowd event. The Bureau continues to work on developing a body worn camera policy, but the surrounding issues are complex. Go Pro cameras would present many of the same challenges as body worn cameras, including retention, storage, and public records.
- B. The Bureau keeps a record of which footage is recorded by which videographer. The Bureau will check with the Forensic Evidence Division to explore the feasibility of editing the date/time stamp to include the videographer's name on the footage. The Bureau agrees that video documentation of crowd events can be valuable in both criminal proceedings and administrative reviews of member actions. Forensic Evidence Division will have a response to the Chief's Office on the feasibility of implementation by July 1, 2018.
- C. The Bureau uses encrypted radio channels to conduct sensitive discussions regarding observed criminal behavior, the movement of personnel, and various other tactics. The Bureau believes the recording of these encrypted channels would be detrimental to the safety of both officers and the public. D. Directive 635.10 section 4.3. provides extensive and detailed guidance on the use and retention of video evidence from crowd events. Although recordings for purposes of criminal prosecutions are strictly proscribed, the

Bureau also has to balance the need to retain material for a window of time during which civil claims may be filed, as well as for use during internal administrative investigations.

#### Recommendation 4

The Bureau agrees that additional guidance should be provided regarding the photographing of individuals who are detained. The Policy Development Team will consult with the City Attorney's Office for development of guidelines regarding use and retention of such photographs. The Policy Development Team will develop written guidance to be included in Directive 635.10 as it undergoes its current revisions. As noted above, these revisions should be completed, and a new version of the Directive enacted, by October 2018.

**Independent Police Review**  
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