



May 10, 2017

VIA EMAIL

The Honorable Ted Wheeler
Portland City Hall
1221 SW 4th Avenue, Room 340
Portland, OR 97204
MayorWheeler@portlandoregon.gov

RE: Portland Police Bureau's Crowd Control Activities on May 1, 2017

Mayor Wheeler,

In March, you met with a number of lawyers representing the National Lawyers Guild, Lawyers for Good Government and the ACLU to discuss our concerns about the Portland Police Bureau's (PPB) indiscriminate use of force and chemical weapons in crowd control. At the meeting, we talked at length about de-escalation as the primary role for police in a crowd control situation. In the comments we made to directive 635.10 (attached), our organizations also emphasize that de-escalation is the most important function of the police.

We appreciated your constructive engagement at the meeting. You called the police in riot gear "storm troopers" and when we asked you for specific solutions to stem the indiscriminate use of force, you said you would advocate for focused use of force toward those committing crimes, and adopt a demilitarized look for the police, including getting rid of "those trucks with sideboards" that police in riot gear ride on. These commitments were in line with the priorities for police reform you put forth as a mayoral candidate, which included: "Actively demilitarize the police force and encourage a culture of community engagement and problem solving."

We are deeply concerned about PPB's response to the permitted march on May Day. Based on the eyewitness accounts from legal observers, organizers of the march, and members of the public that have reached out to our organizations, the response was confusing, swift, and, by all accounts, escalated a predominantly peaceful march. Instead of preventing violence, PPB's response precipitated it, turning a peaceful march into a dangerous and chaotic situation.

PPB appeared to approach the May Day march and rally in an adversarial manner.

- At the rally, PPB took signs away from ordinary participants, claiming the sticks were too long and could be used as weapons. One of these participants, a therapist who works a successful practice in NE Portland focused on the LGBTQ community, described the situation as unnecessary and confusing given that the rally was peaceful and family oriented. His sign was dismantled so PPB could seize his sign stick, which was

apparently “too big.” Others were allowed to carry signs with sticks. What is clear is that PPB did not previously communicate with participants before they moved through a peaceful crowd to select individuals for enforcement of a never-before-articulated rule disallowing signs with sticks of a certain size. This selective enforcement may be a violation of the First Amendment. Regardless, people reported that this created unnecessary tension in a completely peaceful setting.

- The march organizers had arranged a “resting trailer” at the rear of the march to accommodate people with disabilities. PPB swarmed the truck pulling the trailer after the march began and forced it to exit the march after only one block. This may have prevented members of the disabled community or people with mobility issues from participating in this march. Failing to accommodate people with disabilities, and thereby preventing them from participating in the march, may be a violation of both the Americans with Disabilities Act and the First Amendment. Regardless of the legal violations, it is wrong for PPB to take action preventing disabled members of our community from participating in civic events.
- For much of the march, PPB lined both sides of the sidewalk, hemming the marchers in and intimidating them. Heavily armed PPB officers actually walked in the street in the midst of marchers, creating a tense and volatile environment.
- Marchers peacefully went by bridge entrances, which were lined with PPB officers in riot gear.
- Several battalions of officers in riot gear drove up to the rear of the march, which was still peaceful. Without warning, PPB first announced that the permit for the march had been revoked and that individuals engaging in violence would be arrested. The revocation of the permit may be a violation of the First Amendment.
- A few minutes later, PPB then announced that the street was open to traffic, even though hundreds of marchers remained in the street, and that anyone in the street would be arrested.
- After just a few more minutes, PPB announced that the area was closed and everyone needed to disperse, but did not give instructions as to a safe exit route.
- The announcements were made from a sound truck at the rear of the march. Even if PPB instructions had been clear and even if people had been given time to comply, the march leaders and participants in the front of the march could not have complied because they had not heard PPB’s announcements or witnessed their battalions arriving.

In discussing the march with legal observers and march leaders, it is clear that very little property destruction or violence occurred *before PPB cancelled the march permit*. To our knowledge,

before PPB revoked the permit, there were a couple Pepsi cans and what appeared to be a commercial smoke bomb typically used in photography thrown by a small group at the back of the march, and one window was broken. These incidents were isolated and limited. Without proof, we can only assume that PPB's claims that "Molotov cocktails" were thrown was inadvertent hyperbole. The alternative conclusion was that PPB was intentionally disseminating false information to suppress a peaceful assembly. In any event, PPB has not explained why it did not simply respond to these isolated incidents by arresting the individuals responsible. It is hard to understand how individual perpetrators could have gotten away, given the heavy PPB presence at the march.

In response to the chaos that followed the revocation of the march permit, PPB used flashbangs indiscriminately, rushed the streets with dozens of officers in riot gear, and several people have reported experiencing chemical irritants. These tactics and weapons were deployed in the middle of downtown Portland, which adversely affected bystanders and peaceful protesters and exacerbated the amount of property destruction. The PPB response turned downtown into a battleground, jeopardizing the safety and civil rights of Portland residents.

In summary, PPB created tension at the rally, long before the march began, then police in riot gear stormed the city instead of dealing with isolated incidents of property destruction. The police declared the entire assembly unlawful within an hour after the march began, purportedly because of a few objects thrown at the back of the march. This was a disproportionate and dangerous response. The vast majority of protesters were left confused as to whether they could continue peacefully exercising their First Amendment rights, or whether they had to leave and where to go. Only a few minutes later, while people with impaired mobility and children were still making their way out, the police rushed the crowd, creating chaos and panic. Both legal observer and media accounts confirm that the property destruction and fires occurred *after* the police declared the gathering illegal and began attacking the demonstrators.

To be clear, we are neither advocating for nor justifying acts of property destruction. If people engage in criminal behavior, the police may arrest them. However, the criminal behavior of a few does not give police the right to attack and restrict the First Amendment rights of everyone else.

On May Day, PPB created a *more* violent, *more* dangerous situation for everyone in downtown Portland because of their aggressive, militaristic response. Many people, including families who had participated in the May Day march and innocent passersby, were scared and some were injured in the chaos created by the broad use of concussion grenades, while others reported use of munition rounds that were both concussive and contained additional chemical irritants. These indiscriminate, violent tactics are exactly what our organizations hope to curb with the new crowd control directive. Protests are not going away anytime in the near future. As a policy matter, we are concerned that aggressive tactics curtail civil rights and discourage peaceful protesters from attending demonstrations, while intensifying the distrust and anger towards the police by others.

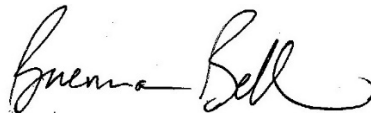
Again, we ask your office to advocate that PPB create a directive that is focused on demilitarization and de-escalation in crowd control situations. And subsequently, that such a policy be implemented so that Portland can remain a hub for the safe exercise of First Amendment activities in these troubling times.

When running for office you campaigned on the promise of police reform and have publicly called for the de-militarization of PPB. Your public support of the aggressive, militaristic tactics used by PPB in response to the May Day protests is a troubling break from your campaign promises. The Portland Police are sworn to uphold the constitution and protect and serve the **people** of Portland. As the head of the police bureau, it is your duty to see that they do.

Sincerely,



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