More Protests: More Problems

Portland's Changing Landscape of Demonstration Management

International Municipal Lawyers Association 2018 Annual Conference

Houston, Texas

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No Prior Restraint

- "[E]njoining or preventing First Amendment activities before demonstrators have acted illegally or before the demonstration poses a clear and present danger [to public peace and order] is presumptively a First Amendment violation. The generally accepted way of dealing with unlawful conduct that may be intertwined with First Amendment activity is to punish it after it occurs, rather than to prevent the First Amendment activity from occurring in order to obviate the possible unlawful conduct."

  - Collins v. Jordan, 110 F.3d 1363, 1373 (9th Cir. 1996).

PPB's Crowd Management Directive

Definitions:

Civil Disobedience: A non-violent form of protest or resistance to obeying certain laws, demands or commands of a government.

Civil Disturbance: An unlawful assembly that constitutes a clear and present danger of riot, disorder, interference with traffic upon the public streets or when another immediate threat to public safety, peace or order appears.

Crowd Control: Law enforcement response to a pre-planned or spontaneous event, activity, or occurrence that has become a civil disturbance and may require dispersal of the crowd and/or arrests.

Crowd Management: Encompasses law enforcement management, intervention, and control strategies when responding to all forms of public assemblies and gatherings. Also refers specifically to strategies and tactics employed before, during, and after a gathering for the purpose of maintaining the event's lawful activities. These could include event planning, pre-event contact with group leaders, information gathering, and other means.

Crowd Management Incident Commander (CMIC): For the purposes of this Directive, a command member who has received special training in crowd management/crowd control. The Chief of Police will designate a command staff member to serve as the CMIC for every major demonstration and/or special event. This position possesses the overall responsibility for managing the demonstration by establishing objectives, planning strategies, and implementing tactics in accordance with this Directive and Directive 700.00, National Incident Management System (NIMS) and Incident Command System (ICS). This position reports to the Assistant Chief of Operations during demonstrations.

Demonstration (or Protest): A lawful assembly of persons who have organized primarily to exercise their First Amendment right to express political or social doctrine views and attract public attention. Planned or spontaneous demonstrations include, but are not limited to, the distribution of literature, displaying of banners, vigils, rallies, marches, strikes or other similar activity (e.g., event, concert, festival, street theater, etc.). Lawful demonstrations can become civil disturbances.

PPB's Crowd Management Directive (cont'd)

Freedom of Speech: The right to speak, associate, assemble, and petition the government; speech that is protected by the First Amendment to the United States Constitution and Article I, sections 8 and 26 of the Oregon Constitution. For the purposes of this Directive, the rights issuing from both the federal and state Constitutions are collectively referred to as First Amendment rights.

Incident Action Plan (IAP): A proposal that provides a concise and consistent means of capturing and communicating overall incident priorities, objectives and strategies for both operational and support activities.

Incident Commander (IC): The individual responsible for all incident activities, including the development of strategies and tactics and the ordering and release of resources. The IC has the overall authority and responsibility for conducting incident operations and is responsible for the management of all incident operations at the incident site.

Mobile Field Force (MFF): Sworn members, who are trained in basic crowd control tactics and techniques, organized into a squad and deployed to assist in the management of a crowd.

Operations Section Chief: A member, designated by the CMIC, who develops and implements strategy and tactics to carry out incident objectives. The designated member organizes, assigns, and supervises the tactical response resources.

Passive Resistance: A person's non-cooperation with a member that does not involve violence or other active conduct by the individual.

Persons-In-Charge: The person(s) designated by a demonstration organizer or permit holder to act on behalf of, and with the authority of, the demonstration organizer or permit holder.

Portland Police Bureau Demonstration Liaison: A Bureau member who has been designated by the IC as the primary contact for communication with the demonstration's Person-In-Charge to police.

PPB's Crowd Management Directive (cont'd)

Rapid Response Team (RRT): The Bureau's all-hazard team of members who are specially trained to assist in the response to manmade/natural disasters and other emergency management situations which include, but are not limited to, the management and control of crowds through various tactics and techniques.

Riot: Six or more persons engaging in tumultuous and violent conduct and thereby intentionally or recklessly creating a grave risk of causing public alarm, excluding persons who are engaged in passive resistance.

Special Event: Generally, a non-routine activity within a community that brings together a large number of people.

Squad: A group of members tasked with accomplishing certain goals and missions. A minimum of one sergeant shall be assigned to each squad. The maximum span of control is twelve members per sergeant. (ICS refers to this group as a "strike team")

Policy:

1. The purpose of this Directive is to provide guidance for demonstrations, special events, the managing of crowds during demonstrations, and controlling crowds during civil disturbances.

2. Freedom of speech, association, assembly, and the right to petition the government are subject to reasonable restrictions on the time, place, and manner of expression; the content of the speech does not provide the basis for imposing limitations on First Amendment rights.

3. The Portland Police Bureau recognizes that the City of Portland has a tradition of free speech and assembly. It is the responsibility and priority of the Portland Police Bureau not to unduly impede the exercise of First Amendment rights and to provide for the safe and lawful expression of speech, while also maintaining the public safety, peace and order. A police response that impedes otherwise protected speech must be narrowly tailored to serve a significant government interest.

4. While the First Amendment provides broad protections for the expression of speech, it does not provide protection for criminal acts including, but not limited to, riot, disorder, interference with traffic upon the public streets, or other immediate threats to public safety, peace or order.

PPB's Crowd Management Directive (cont'd)

5. The Bureau recognizes that demonstrations and events are dynamic in nature. Accordingly, members will monitor the crowd throughout the event to assess the level of risk posed to both demonstrators and the public at large, with the goal of minimizing potential violence, injury or damage to property. Member response should be commensurate to overall crowd behavior, and members should differentiate between groups or individuals who are engaging in criminal behavior or otherwise posing a threat to the safety of others and those in the crowd who are lawfully demonstrating. Members will strive to maintain a diplomatic presence to dissuade participants from engaging in civil disturbance and to encourage crowd self-monitoring.

6. If a demonstration becomes a civil disturbance, the Bureau has a responsibility to reasonably protect public safety and restore peace and order. The preferred police response is one of crowd management rather than crowd control. The Bureau should employ only objectively reasonable crowd management and/or crowd control tactics with the intent to de-escalate the situation. If there is an escalation to a civil disturbance that is no longer isolated to individuals or small groups, members shall adjust their tactical response to adequately resolve the incident in an attempt to restore safety, peace and order.

7. All members are expected to conduct themselves in a professional manner when interacting with persons involved with demonstrations and special events. Members shall identify themselves by wearing a visible name badge or identification number at all times. A member's communication with members of the crowd will remain content neutral.

Procedure:

1. Directive 1010.00, Use of Force, governs all uses of force, including in crowd management and crowd control situations.

2. The Bureau shall use the national, standardized and exhaustive system established in the Incident Command System (ICS) to plan and manage significant incidents and events. Members shall refer to Directive 700.00, National Incident Management System (NIMS) and Incident Command System (ICS), for specific guidance regarding incident management.

PPB's Crowd Management Directive (cont'd)

2.1. When time and circumstances permit and a police response is reasonably anticipated, the IC shall develop an Incident Action Plan (IAP) prior to the start of an incident or event.

3. Communication.

3.1. The Bureau's goals are to facilitate participants' lawful objectives and protect their right to assemble. Furthermore, where event participants comply with City laws and ordinances, the Bureau shall encourage and support participants' efforts to monitor themselves in an attempt to limit member involvement.

3.1.1. When a police response is requested or deemed necessary by the Bureau:

3.1.1.1. The Bureau shall make reasonable efforts to contact and engage in dialogue with known event or demonstration organizers to assist the Bureau in its planning and to develop a shared understanding of the organizers' needs and objectives. Similarly, the Bureau should communicate its expectations and inform participants on permissible and restricted actions during the event or demonstration.

3.1.1.2. The Bureau, through the PPB Demonstration Liaison or another designee, shall attempt to maintain communication with known event or demonstration organizers or the Person(s)-In-Charge before and during the event. The Liaison shall maintain communications with the IC to keep them apprised of the situation.

3.1.1.3. The Bureau, through the Public Information Officer (PIO) or another designee, shall communicate through the use of social media and other conventional outlets to keep the public, including the crowd, informed throughout the event.

3.2. When appropriate, members should engage and interact with the crowd in a positive and non-confrontational manner.

PPB's Crowd Management Directive (cont'd)

4. Demonstrations and Special Events.

4.1. Planned Demonstrations and Special Events.

4.1.1. Where the Bureau learns of an event at least twenty-four hours prior to its commencement, the Assistant Chief of Operations and the precinct commander nearest to the event location shall determine if the event should be staffed using the precinct's resources or city-wide Bureau resources.

4.1.1.1. Events that are small in crowd size, or for which credible information indicates that there is little concern of civil disturbance, shall generally be managed at the precinct level and staffed by the shift supervisor, who shall serve as the IC.

4.1.1.1.1. If crowd behavior escalates to a level that poses a threat to public safety, peace or order during an event that is being managed by a shift supervisor acting as the IC, the shift supervisor must consult with a CMIC who will then determine if they (the CMIC) should assume command and request additional resources.

4.1.1.2. Events that are anticipated to have a greater critical impact, require a significant police response, and/or have the potential to become a civil disturbance shall have a CMIC designated by the Assistant Chief of Operations as the IC.

4.1.2. The IC shall determine the level of police response, if any is warranted.

PPB's Crowd Management Directive (cont'd)

4.1.3. In accordance with the ICS, if the IC deems a police response necessary, the IC, or a designee, should develop an IAP for the demonstration or special event.

4.1.3.1. If it is determined that basic Mobile Field Force (MFF) and bicycle units are not sufficient to manage the crowd, a CMIC shall be assigned to the event.

4.1.3.2. Only a CMIC may activate RRT or Mass Arrest teams.

4.1.3.2.1. If a shift supervisor is staffing an event as the IC, they shall consult with a CMIC prior to activating RRT.

4.1.3.2.2. Activation of Mass Arrest requires the CMIC to notify the Detective Division to ensure mass-arrest resources are available.

4.2. Spontaneous Demonstrations.

4.2.1. Events that the Bureau learns of with less than twenty-four hours before the start of the event are deemed spontaneous.

4.2.2. Many spontaneous events can be lawful and facilitated with appropriate police assistance. A spontaneous or non-permitted event is not necessarily unlawful, nor does it automatically require a significant police response.

4.2.3. A supervisor at the precinct of occurrence shall respond to the event and determine if a police response is warranted.

PPB's Crowd Management Directive (cont'd)

4.2.3.1. If a police response is warranted, the on-scene supervisor shall serve as the IC for the incident and attempt to engage the event or demonstration organizer in an effort to facilitate participants' lawful objectives and protect their right to assemble.

4.2.3.1.1. A Sergeant who is the first supervisor on scene of a spontaneous demonstration shall notify their Lieutenant, who may then respond to the scene and assume command.

4.2.3.2. The on-scene supervisor (IC) may contact an RRT supervisor, the RRT commander or a CMIC to help determine an appropriate level of response.

4.2.3.2.1. After consultation, if a higher level of police response is deemed necessary, a CMIC shall be called in and assume command.

4.2.3.3. If crowd behavior during the event escalates to a level that poses a threat to public safety, peace or order during an event that is being managed by a shift supervisor, the shift supervisor must consult with a CMIC, who will then determine if they (the CMIC) should assume command.

4.3. Demonstrations may be broadcast to Bureau facilities by live video feed to provide situational awareness to the IC. In accordance with ORS § 181A.250, the broadcast will not be recorded unless and until a member has reasonable suspicion that a crime is being committed, at which time the member will communicate this information up the chain of command to the IC, who will make the decision whether to authorize recording to commence. If a possible crime is captured on the recording, that recording will be forwarded to Bureau's Detective Division for investigation and the District Attorney's Office, if requested. A copy will also be furnished to the City Attorney's office for the purpose of evaluating civil liability based on crimes charged or arrests made. Pursuant to Oregon Administrative Rules regarding records retention, recordings that do not have evidentiary value or aid in internal investigations shall only be retained by the City Attorney's office for thirty days. The Bureau will not keep a copy of any videos recorded under this Directive, and the IC will not authorize recording for the purposes of monitoring individuals or groups based solely on political associations or religious or social views.

PPB's Crowd Management Directive (cont'd)

5. Police Response to Demonstrations and Special Events.

5.1. Prior to a demonstration or event, the IC shall make a determination regarding the appropriate level of police response and the necessary allocation of resources to manage an event. Depending on the potential impact of the crowd (e.g., size, interference with commerce, street and pedestrian traffic, etc.), the Bureau may not need to be involved in the event.

5.2. The priority of the Bureau is to allow demonstration and event participants to self-police and manage their own events. To that end the IC shall monitor the event, weighing the totality of the circumstances to inform the decision to introduce police action to maintain public safety, peace and order.

5.2.1. When deciding whether to use certain police tactics within a crowd, the IC shall balance the benefits of such action(s) to maintain public safety, peace and order against the impact on the demonstration or event participants' First Amendment rights.

5.2.2. The IC, or a designee, shall authorize the appropriate level of protective equipment based on several factors to include, but not limited to:

5.2.2.1. Member safety,

5.2.2.2. Individual and/or group physical resistance,

5.2.2.3. The presence of weapons,

5.2.2.4. Actual or credible threats or indicators of violent behavior,

5.2.2.5. Actual or credible threats or indicators of criminal actions, and

PPB's Crowd Management Directive (cont'd)

5.2.2.6. The potential impact or perceived effect that appearing in protective gear may have on the crowd.

5.2.3. When practicable, the IC should attempt to position members in protective gear in locations that minimize visibility until deployment is necessary.

5.3. If crowd behavior presents a clear and present danger that threatens the public safety, peace or order, and the event can no longer be effectively managed through a minimal police presence, the IC may adjust crowd tactics to adequately respond.

5.3.1. When police action is necessary, members should endeavor to distinguish between individuals engaged in criminal behavior and demonstration or event participants who are peacefully and lawfully demonstrating.

5.3.1.1. The Bureau's assigned Demonstration Liaison, another IC-designated member and/or the member operating the sound truck shall, when feasible, attempt to convey the police action to the crowd via announcements and warnings.

5.3.2. The Bureau shall de-escalate its response when it is safe and tactically feasible to do so.

6. Member Responsibilities During Demonstrations.

6.1. The IC shall:

6.1.1. Oversee the development, dissemination, and implementation of the IAP for the demonstration in accordance with this Directive and ICS;

PPB's Crowd Management Directive (cont'd)

6.1.2. Determine the mission and objectives and consider what crowd tactics are objectively reasonable under the totality of the circumstances;

6.1.3. When feasible, attempt to maintain communication, through the PPB Demonstration Liaison, with the Person-In-Charge, or their designee, during demonstrations;

6.1.4. Authorize the use of protective gear;

6.1.5. Ensure announcements communicated to the crowd are clear, consistent, lawful, and appropriate for the circumstances. The content and timing of the announcement shall be documented and, if feasible, shall be audio recorded;

6.2. The CMIC shall (in addition to the IC responsibilities):

6.2.1. Activate RRT, when deemed necessary; and

6.2.2. Authorize the deployment of riot control agents and/or special impact munitions, when objectively reasonable, to address civil disturbance and crowd dispersal.

6.3. The Operations Section Chief shall:

6.3.1. Assist the IC in determining staffing levels, probable missions, and possible tactical strategies during the planning for the event; and

6.3.2. Assign units to specific missions during the event to meet the objectives established by the IC.

PPB's Crowd Management Directive (cont'd)

6.4. The Detective Division Commander or Supervisor shall:

6.4.1. Coordinate with the IC to determine the scale of the mass arrest team response;

6.4.2. Assign detectives to assist with mass arrests;

6.4.3. Manage the processing of all arrests pursuant to the Detective Division SOP; and

6.4.4. Ensure that all required documentation for arrests is collected.

6.5. Sergeants shall:

6.5.1. Verify that all members have the proper equipment;

6.5.2. Ensure that members are briefed prior to the start of the event; and

6.5.3. Communicate orders from the IC or the Operations Section Chief to their assigned squad to ensure that the mission and objectives are appropriately executed.

6.6. Officers shall:

6.6.1. Follow the directions of the sergeant; and

6.6.2. Not take independent police action, unless exigent circumstances require immediate action for protecting themselves or others from physical harm.

PPB's Crowd Management Directive (cont'd)

7. Coordination with Other Agencies.

7.1. The Bureau may request assistance from other law enforcement agencies to sufficiently staff and respond to a demonstration or special event.

7.1.1. The Bureau IC, or their designee, shall appropriately brief outside agency personnel prior to their deployment.

7.1.2. The Bureau IC shall maintain the authority to determine tactical objectives; direct the overall police response (all agencies); and determine, when objectively reasonable, how and when force may be used and when to deploy less lethal munitions to address civil disturbance and/or disperse the crowd.

7.1.3. The Bureau expects assisting agencies to act in accordance with the lawful orders of the Bureau IC; however, their members' conduct is subject to the outside agency's policies and procedures.

8. Announcements and Warnings.

8.1. When feasible, members shall make loud, intelligible and consistent announcements and warnings to the crowd.

8.2. Announcements are designed to:

8.2.1. Convey general information to the crowd in an effort to keep an event lawful;

8.2.2. Communicate targeted information to specific individuals to provide direction; and

8.2.3. Serve as a de-escalation tool by directing and informing the crowd in an attempt to prevent the need for police action or the use of force.

PPB's Crowd Management Directive (cont'd)

8.3. Civil Disturbance.

8.3.1. Warnings are designed to allow the crowd time to comply with orders given from police members. When tactically feasible and time permits, members shall issue a minimum of two warnings at reasonable intervals to notify the crowd of an impending order.

8.3.2. When issuing warnings, members should cite specific offenses and violations being committed and caution the crowd that these acts of civil disturbance will not be permitted and can result in arrest or necessitate the use of force. An IC-designated member and/or the member operating the sound truck shall give clear directions in an attempt to reduce or eliminate the necessity for force. Members shall issue a minimum of two warnings to alert the crowd of possible impending arrest or force, unless doing so would present a danger to the member(s) or others.

8.3.3. Members shall document the warnings in an appropriate police report, and if feasible, ensure the audio (e.g., date, time, announcing member, messages, etc.) confirmation received by identified staff on other end.

9. Crowd Dispersal.

9.1. Pursuant to ORS §131.675, the IC may order the crowd dispersed when a demonstration or special event becomes a civil disturbance.

9.1.1. Before giving the order to disperse, the IC must consider whether dispersal unduly endangers the public, police or participants in the crowd.

9.1.2. Prior to taking police action to disperse the crowd, and when tactically feasible and time reasonably permits, members shall issue a minimum of two warnings at reasonable intervals to allow the crowd to comply.

PPB's Crowd Management Directive (cont'd)

9.2. When the crowd has been ordered to disperse and does not heed repeated warnings, and no reasonable alternative is apparent, riot control agents (RCAs) and/or special impact munitions may be deployed to prevent violence, injury or property damage and to avoid a greater application of force.

9.2.1. These weapons shall only be used at the direction of the CMIC and when avenues of escape (i.e., clear path or route) are available to the crowd. Pursuant to this policy and Directive 1010.00, Use of Force, members must issue warnings prior to deployment.

9.3. Force shall only be used in accordance with Directive 1010.00, Use of Force.

10. Prohibited Crowd Control Tactics.

10.1. Members shall not take the following actions to disperse a crowd:

10.1.1. Use fire hoses;

10.1.2. Deploy Canine Units; and

10.1.3. Use a conducted electrical weapon (CEW).

10.2. Members shall not deploy specialty impact munitions or aerosol restraints indiscriminately into a crowd.

10.3. The Bureau shall not use mounted patrol units (MPUs) against passively resistant demonstrators who are sitting or lying down.

10.4. Motor vehicles shall not be intentionally brought into contact with protestors (i.e., to push or strike).

PPB's Crowd Management Directive (cont'd)

11. Detentions.

11.1. The failure to comply with the lawful order to disperse can transform otherwise legal conduct into criminal conduct if the protest has been determined to be a civil disturbance by the IC or if the crowd has left from a certain location. Members may be justified in detaining individuals engaged in civil disturbance after providing a lawful order to disperse followed by a reasonable opportunity to comply with that order.

12. Arrests.

12.1. Absent exigent circumstances, arrests should only be made when authorized by the IC.

12.2. Careful consideration should be given to the timing, location, and method of the arrest and resources available.

12.3. To effect arrests, members must be able to articulate the individualized probable cause for the arrest of each person.

12.4. Media or legal observers will not be arrested solely for their role in observing, capturing, and/or reporting on demonstrations or events. Members will not interfere with media or legal observers performing their respective functions, so long as they are performed in a safe manner and in compliance with police orders. However, such persons must comply with all police orders and maybe subject to arrest for failure to do so.

13. Reporting and Coordination Requirements.

13.1. The IC (or their designee) shall:

PPB's Crowd Management Directive (cont'd)

13.1.1. Write an After Action in accordance with Directive(s) 905.00, Non-Force After Action Reporting, or 1010.00, Use of Force, if force was used;

13.1.2. Review any uses of force by other agencies' personnel as part of the overall incident after action report;

13.1.3. Write an overall police report that describes the major decisions made by the police during the incident in accordance with Directive 900.00, General Reporting Guidelines;

13.1.4. Ensure all other applicable pertinent reports are submitted as required by Directive 900.00, General Reporting Guidelines, and 1010.00, Use of Force; and

13.1.5. Hold a formal debrief of the event to discuss the overall plan, tactics, staffing and areas of improvement. The debrief should include key supervisory member participants in the event.

13.2. The Detective Division Commander or Supervisor shall:

13.2.1. Ensure coordination with the District Attorney's Office when arrests are made.

13.3. Supervisor Responsibilities.

13.3.1. The supervisor shall not independently direct management or crowd control tactics without the authorization of the IC, unless exigent circumstances require immediate action.

PPB's Crowd Management Directive (cont'd)

13.3.2. At the end of the event, the lead supervisor of each squad shall conduct a debriefing of the Incident with their personnel and complete an appropriate police report in accordance with Directive 900.00, General Reporting Guidelines, and 1010.00, Use of Force, documenting the actions of their squad during the incident.

13.3.3. The supervisor shall review all reports written by their squad's members pursuant to Directive 900.00, General Reporting Guidelines.

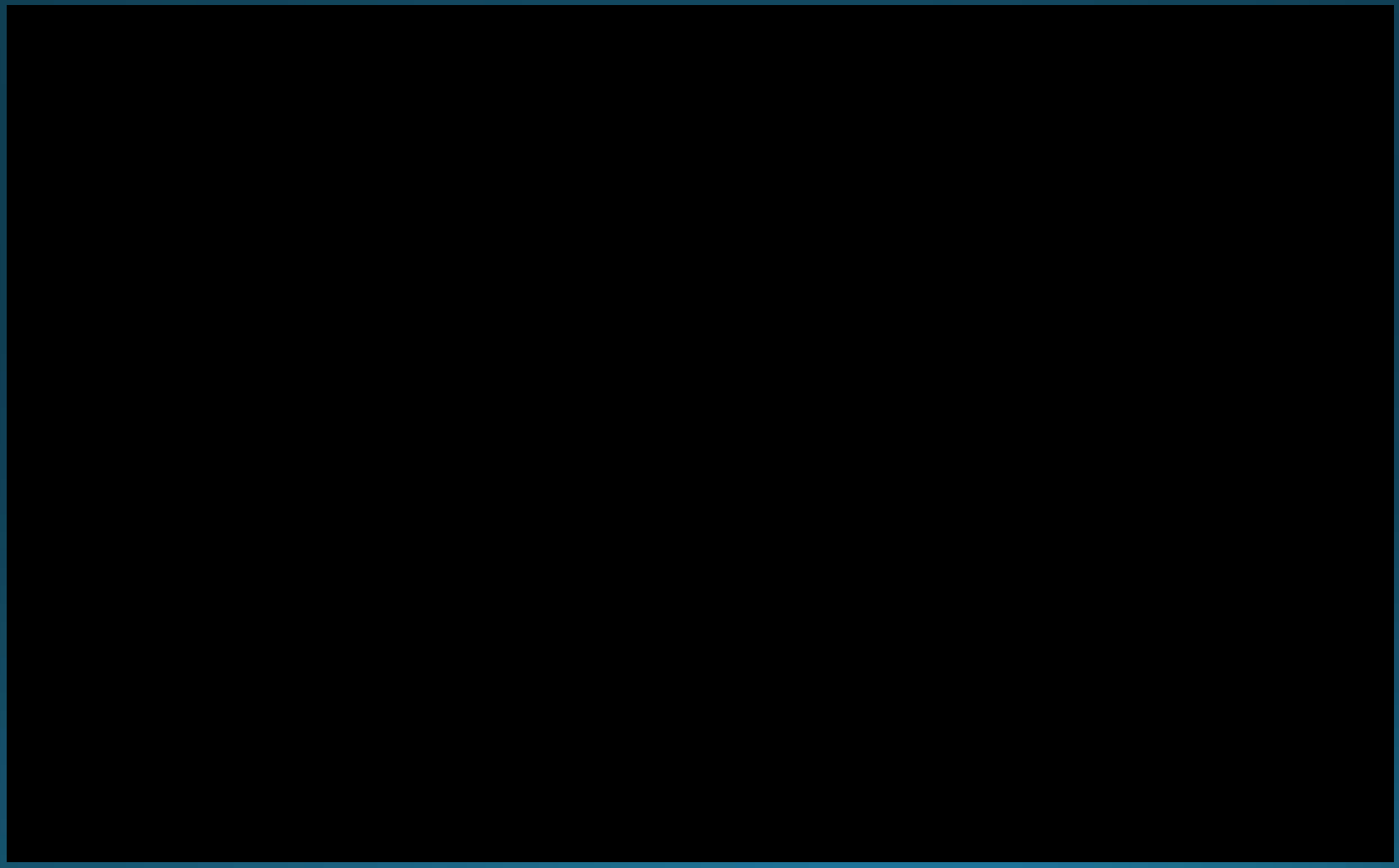
13.3.4. The assistant supervisor, or a designated alternate supervisor, of each squad shall write an after action of any force used by the squad in accordance with Directive 1010.00, Use of Force, during the incident. This after action shall be routed to the IC.

13.4. Members Responsibilities.

13.4.1. Members who use force, or witness force by another member during the incident, shall document such actions in an appropriate police report, in accordance with Directive 1010.00, Use of Force.

July 2018 Demonstration

* All videos shown were taken from public sources on the internet and are not filmed by or authenticated by PPB or the City of Portland.



Two Warnings-July 2018



August 2018 Demonstration (Including Multiple Warnings)



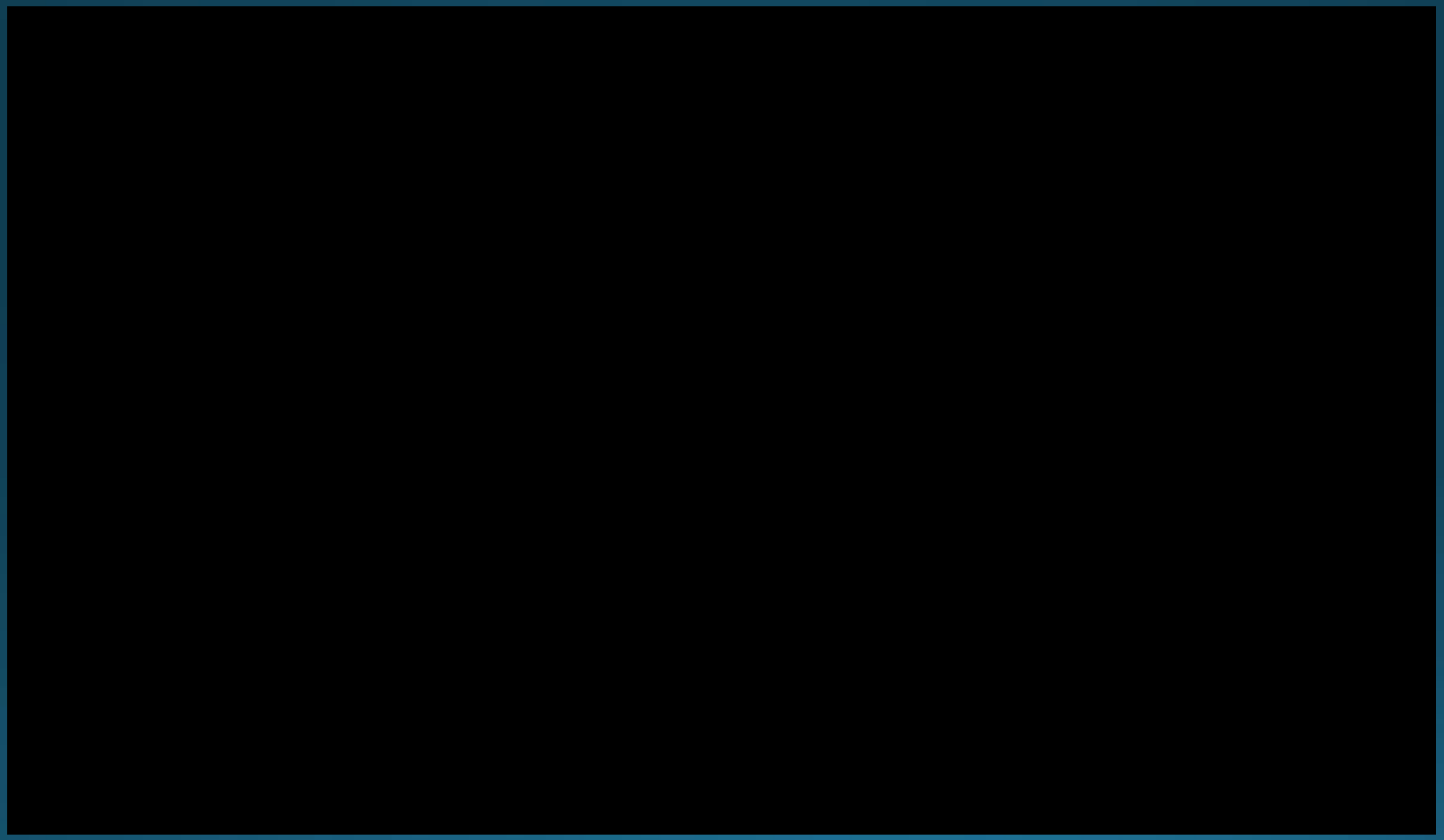


Resources Can Get Strained

Pulling Resources

- HR Input in advance
  - Overtime approvals
  - Staffing levels for precincts
- Buy-in from rank and file
  - Even if volun-told, try to incentivize
- Budget input in advance
  - Feeding everyone
  - Cost of emergency resources
- PPE Preparedness
  - Get equipment ready in advance
- Surrounding agencies
  - IGA's and MOU's in place in advance
  - Limited Liability Considerations

After the Demonstration is Over



Debriefing

- Immediately after
  - Hash out and record key events while fresh in mind
  - Show appreciation and point out what went right
- Full review
  - Examine the decision points of IC
  - Review propriety of any uses of force
- Stakeholder reporting
  - Let municipal leaders know Reasons for decisions
  - Have PIO issue press release

Your Client's Day Getting Ruined



Protecting Your City From (Successful) Litigation

- DO ensure that police employees' personnel files specify that they have received training in protest management protecting First Amendment civil rights.
- DON'T let a Complaint or Tort Claim Notice fall through the cracks.
- DO have police send a copy of all formal and informal debriefs or investigations to the City/County/Municipal Attorney's Office for safekeeping and analysis soon after the event.
- DON'T fail to be honest in investigations where there has been an improper use of force or violation of policy.
- DO document in writing any investigation and also document reasons why you did not further investigate.

Protecting Your City From (Successful) Litigation(cont'd)

- DON'T promulgate crowd management policies without having them first examined by legal counsel for constitutional compliance.
- DO maintain recordings of all sound truck warnings and communications, and print screen shots of all social media communication to the public.
- DON'T interfere with journalists or legal observers (unless breaking the law) while they observe the event.
- DO detail every medical claim brought to officers' or medics' attention during the protest event, and have officers actively look for signs of injury after deploying less lethals or RCAs.

Final Thought…
The Sentiments of Many

