



**PAB**

**POLICE  
ACCOUNTABILITY  
BOARD**

# **Policing Protests:**

A Proposal for Change

## NOTICE OF PUBLIC COMMENT PERIOD

The PAB announces the release of draft “Policing protests: a proposal for change.” We seek comment on the draft, which analyzes the Rochester Police Department’s actions during protests and mass gatherings, while also providing a summary of the department’s policies and practices. Finally, it offers observations based on research and comparative analysis.

The public comment period will run from Jan. 26 to Feb. 26, 2024.

- **You can submit comments online at: <https://forms.office.com/r/MsXXyyKtsr>**
- **You can submit comments by phone at 585-428-7866**
- **You can submit comments by email at [PABFeedback@CityofRochester.gov](mailto:PABFeedback@CityofRochester.gov)**
- **You can submit written comments by mail or at our drop box located at 245 E. Main Street Rochester, NY 14604**

Following the public comment period, PAB staff will analyze and incorporate feedback into a revised set of draft legislative recommendations. PAB staff will present the revised report to the Board to approve, reject, or request a revision.

If the Board votes to approve the policy recommendations, the final approved version will be published at rocpab.org and transmitted to City Council, the Mayor, and the Chief of Police.

The Chief of Police is required to respond to the recommendations within 30 days.

The Chief’s response will be published at rocpab.org.

## Contents

What is a proposal for change? .....	4
PAB Policy Recommendations .....	4
Executive Summary.....	5
Background .....	6
Planning, Communication, And Proportionality .....	9
Weapons and Tactics .....	10
a. Tear Gas and Flash Bangs.....	10
b. Long Range Acoustical Device (LRAD).....	11
c. Kettling.....	12
d. Pepper Balls.....	12
e. Use of Canine Officers.....	13
RPD Accountability Mechanisms .....	14
a. Body-Worn Cameras .....	14
b. Identifiable Officers.....	15
c. Medics, Legal Observers, and Journalists .....	15
Conclusion.....	16

## What is a proposal for change?

### **PAB Policy Recommendations**

Pursuant to City Charter Article 18-5(K)(1), the Police Accountability Board (PAB) shall review and assess Rochester Police Department (RPD) policies, procedures, patterns, and practices and recommend changes with input from the community. In April 2023, PAB voted to execute this duty with a process called proposals for change. A proposal for change is a community and data-driven process where PAB makes formal recommendations to change policies and practices that impact RPD and the Rochester community.

Pursuant to City Charter Article 18-5(K)(2), PAB shall send policy recommendations to the Chief of Police, the Mayor, and City Council. PAB shall also publish the policy recommendations on our website, [rocpab.org](http://rocpab.org).

Pursuant to City Charter Article 18-5(K)(4), the Chief of Police shall respond to PAB, the Mayor, and City Council within 30 days. This written response should include an explanation of why the Chief agrees or disagrees with the recommendations.

Pursuant to City Charter Article 18-5(K)(5), if the Chief of Police agrees with a recommendation, they shall provide a timeline of implementation.

Pursuant to City Charter Article 18-5(K)(6), PAB shall track the implementation of the policy recommendations on our website, [rocpab.org](http://rocpab.org).

## Executive Summary

Following the encounters, the police department vowed to examine its response and draft a new general order (GO) related to protests and mass gatherings. A general order, according to information published by RPD, is “used to institute guidelines for work-related policies and procedures.”<sup>1</sup> That can take the form of the “institution of permanent policies or procedures” and the “implementation of permanent programs.”

PAB published its initial set of recommendations in May 2022. RPD followed with its new GO (general order 680) in July 2022. Through research and comparative analysis, PAB offers up a series of recommendations to improve future interactions between police and protesters. In this proposal for change, PAB highlights three areas for further growth: 1. RPD’s planning, communication, and proportionality during mass gatherings; 2. The weapons and tactics used during RPD’s response to mass gatherings; 3. Police accountability mechanisms and measures. PAB recommends the following:

- Employing a tiered response approach, both in planning and execution
- Ensure police response matches the actions and moods of a gathering by employing officers and tool, tactics, and techniques proportional to incidents.
- Effectively engaging the public in community engagement prior to gatherings, but then also during and after.
- Since GO 680 serves as an overarching regulation, RPD must remove instances of ambiguity in written orders, most of which relate to officer discretion or contradictions within previously existing general orders.
- As we recommended in our proposal for change on data transparency, PAB recommends RPD implements a version control system to track changes to rules, regulations, and orders.
- RPD must add language to GO 680 to define and outline what will happen if/when “civil disorder” is declared.
- PAB recommends RPD publish its own criteria for determining when a dispersal order is needed.
- Currently, RPD does not have any written co-response or mutual aid agreements with its partner law enforcement agencies. These agreements must be drafted immediately and must utilize input from the public.
- General order 680 must be updated to address the use of body-worn cameras during mass gatherings.
- All officers, regardless of rank, must wear body-worn cameras during mass gatherings.
- Updating all existing general orders, training bulletins, and written directives to make sure they comply and align with 680.

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<sup>1</sup> [GO 115 Written directive system | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](https://arcgis.com)

## Background

In 2018, the Police Executive Research Forum (PERF) published a report titled “[The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned](#).” PERF recommended practices that many departments sought to implement in wake of the George Floyd summer of protest. Among PERF’s recommendations were: Tailoring the response to the mood of the crowd; Narrowing the use of force; Implementing an incident command system to streamline communications; establishing mutual aid agreements and cross-training with partner law enforcement agencies; and lastly, involving the community in planning, training and reviewing the police response to mass demonstrations.<sup>2</sup> The International Association of Police Chiefs (IAPC) made [similar recommendations](#) in 2019.<sup>3</sup>

New York City recently settled a federal class-action lawsuit over police actions during the 2020 George Floyd protests. The city agreed to pay out \$13.7 million to over 1,000 protesters.<sup>4</sup> The suit claimed police tactics violated the rights of protesters in late May and early June of 2020. It’s the largest settlement ever paid to protesters. Earlier this year, the city settled a smaller lawsuit focused on one specific day (June 4, 2020) where roughly 300 people were arrested in the Bronx. That payout will cost the city as much as \$6 million.<sup>5</sup> In December 2020, NYC’s Corporation Council published a review of NYPD’s handling of the George Floyd protest and made [similar recommendations](#) to that of PERF and IAPC.<sup>6</sup>

Though on a much smaller scale, the experience of protesters in New York mirrors those seen in Rochester, where there is a pending class-action lawsuit. One filed in federal court with 10 named plaintiffs has been in mediation since December 2022. Rochester community members participated in a series of social justice protests in the summer and fall of 2020 after the police-involved murder of George Floyd in Minneapolis and the death of Daniel Prude in Rochester. Prude died a week after an encounter with police where he was restrained and fitted with a spit sock during a mental health crisis. A medical examiner ruled Prude’s death was a homicide (and it is important to realize this is not a legal conclusion). A grand jury later determined no charges would be filed against any of the officers involved. Rochester police officers employed a number of techniques and tools that both injured protesters, according to ongoing lawsuits, and garnered international attention. Rochester Mayor Malik Evans stated the new policy needed to strike a balance between the right of the community to peaceably assemble and for police to maintain order and safety. Before the new policies were released, PAB published an audit and analysis of the proposed changes [in late May 2022](#).<sup>7</sup>

The ongoing suit is seeking an independent federal monitor to reform RPD’s “policies and practices with regard to the use of force, racially-biased policing, and policing (of)

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<sup>2</sup> [The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned \(policeforum.org\)](#)

<sup>3</sup> [Crowd Management FULL - 08062020.pdf \(theiacp.org\)](#)

<sup>4</sup> Colin Moynihan, “New York to Pay \$13 Million Over Police Actions at George Floyd Protests,” *New York Times*, July 20, 2023. <https://www.nytimes.com/2023/07/20/nyregion/nypd-george-floyd-protesters-settlement.html>

<sup>5</sup> Maria Cramer, “New York Will Pay Millions to Protesters Violently Corralled by Police,” *New York Times*, March 1, 2023.

<https://www.nytimes.com/2023/03/01/nyregion/nypd-kettling-blm-protests-settlement.html>

<sup>6</sup> [ProtestReport-np.pdf \(nyc.gov\)](#)

<sup>7</sup> <https://www.rocpab.org/2022-protests-and-mass-gatherings-policy-audit-and-recommendations/>

demonstrations,” according to the complaint.<sup>8</sup> The complainants said officers operate with a sense of impunity with no fear of recourse or discipline for unlawful actions.

Upon her appointment as city corporation counsel (or chief lawyer) in 2021, Linda Kingsley, who has since retired, said her office and RPD began “working on that overhaul (of the protest policing policies). And by July of 2022, we had a protest policy that I think is one of the most progressive in the country.”

She said the policy succeeds because it strikes a balance between protecting free speech and ensuring public safety. “(You) can’t ban police conduct and action in all situations, police have to be able to keep order,” Kingsley offered during a December 2023 appearance on WXXI Radio’s *Connections* program.<sup>9</sup> She also added that her office has taken a much more active role in police planning and response.

“But from the policy perspective, I think we have made massive changes in the department,” she said. “I think the officers respect those changes we have made and it has made for a much more peaceful co-existence.”

There have been similar calls for reckoning in other American cities such as Denver, Seattle, Chicago, Buffalo, and Los Angeles. The goal for PAB and other civilian-led oversight organizations has been to establish best practices and offer recommendations to ensure safety and space for officers and protesters alike.

GO 680 attempted to create a collaborative approach to planning, information gathering, and implementation of RPD’s response to mass gatherings. It “serve[s] as the overarching regulation relative to protests and mass demonstrations. Any GO, training bulletin or other writing which conflicts [was] deemed superseded by this order.”<sup>10</sup>

[GO 680](#) included the following major updates to RPD’s approach:

- Tear gas, flash bangs, long range acoustical device (LRAD) tones, and kettling are banned;
- Body-worn cameras must be worn by officers at gatherings;
- Officers are not permitted to tape over their names on their badges;
- Limitations on the use of pepper balls;
- Canine officers (dogs) are not permitted at mass gatherings;
- The city of Rochester’s Corporation Counsel (chief legal counsel) will participate in all protest planning discussions and be present with RPD command staff during those events.

For the purpose of this proposal for change, PAB believes there are three areas of the GO that leave room for improvement or strengthening: 1. RPD’s planning, communication and

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<sup>8</sup> Hall v. Warren, 6:21-cv-06296-FPG, 1 (W.D.N.Y. 2021).

<https://storage.courtlistener.com/recap/gov.uscourts.nywd.135753/gov.uscourts.nywd.135753.1.0.pdf>

<sup>9</sup> “Linda Kingsley interview.” *Connections*, hosted by Gino Fanelli, WXXI-AM, (15 January 2023).

<https://www.wxxinews.org/show/connections/2023-12-15/linda-kingsley-retiring-corporation-counsel-for-the-city-of-rochester-ny>.

<sup>10</sup> [GO 680 Protest and Mass Demonstration Response | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](#)

proportionality during mass gatherings; 2. The weapons and tactics used during RPD's mass gathering response; and 3. RPD accountability mechanisms.



## Planning, Communication, And Proportionality

General order 680 promises that police will “engage in proactive community engagement with involved groups, organizers, and community leaders when there is knowledge of a protest...” RPD maintains this proactive planning process will “build trust and ensure that the group is able to exercise their constitutional rights...”<sup>11</sup> RPD said it would partner with the Monroe County Crime Analysis Center for an information-sharing partnership. Details of this relationship have not been made public. RPD promises to gather as much information as possible before gatherings, maintaining the department’s “principal role in mass gatherings and protests is to give space for individuals to exercise their First Amendment rights to assembly and to express themselves while officers protect protesters and ensure public safety.” Accordingly, RPD maintains it will “whenever possible, will allow outdoor demonstrations to run their course without interference to focus on the goal of protecting human life and strategic property (when possible inside those properties).” It also promises officers “will display a neutral position, remain patient, and practice de-escalation where appropriate, and will not engage in demonstration relation conversation with participants.”<sup>12</sup>

For planning purposes, RPD states it will devise an operational plan to be approved by the police chief or the deputy chief of operations. Corporation Counsel must review the plan before it is approved. The plan will provide all “available information about the event, [...] the planned response, and the roles and responsibilities of the assigned members. The plan will establish chain of command and identify the supervisor who can authorize use of force.”

Many of these recommendations directly echo those earlier offered by the PAB. In May 2022, PAB recommended that RPD:

- Tailor its response to the actions and mood of a gathering and avoid using more force, gear, or equipment than necessary;
- Employ a “tiered approach” in which officers employing heavier gear and equipment are held in reserve to be deployed only if necessary;
- Promote a spirit of cooperation by encouraging officers to be fair, respectful, and restrained in their interactions and responses to crowd activity. Individual officers who exhibit or who have a history of displaying hostility should be removed from interacting with protesters;
- Meet in advance with community leaders to share plans and expectations.

During the course of a mass demonstration or protest, an effort must be made to distinguish between protected First Amendment-related activities and disturbances that pose a threat to life and/or property. Much like in RPD GO 680, the law enforcement policy in Eugene, Oregon, calls for a specified command officer present during mass gatherings. The Eugene policy spells out the specific factors the commander must use to determine whether crowd dispersal is warranted, a key detail missing in GO. 680. In making the civil disturbance assessment, the officer will consider “...information known about the event, the behavior and intent of those present (including the number of people and their mobility), the nature of the unlawful conduct involved, whether there is actual or imminent danger to persons or property, the event’s impact on non-participants [...] The fact that a gathering does not have a required permit will not, by

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<sup>11</sup> [GO 680 Protest and Mass Demonstration Response | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](https://arcgis.com)

itself, cause the event to be categorized as a civil disturbance.”<sup>12</sup> PAB recommends that RPD develop and publish its own criteria for determining when a dispersal order is necessary.

RPD’s new policy makes progress in addressing some PAB and public concerns, but we would like to continue the conversation we began in our Proposal for Change on [Data Transparency](#).<sup>13</sup> GO 680 “serve[s] as the overarching regulation relative to protests and mass demonstrations. Any GO, training bulletin or other writing which conflicts [was] deemed superseded by this order.”<sup>14</sup> Existing policies must be updated to become consistent with GO 680 and to minimize opportunities for misinterpretation. In our data transparency proposal, we recommended “RPD implement a version control system that tracks specific changes to rules, regulations, and orders. Further, PAB recommends that RPD maintain historical versions of rules, regulations, and orders to allow analysis of changes over time.”<sup>15</sup> For reference, we recommend RPD adopt a system similar to the Austin (Texas) Police Department’s version control system, which not only tracks changes to existing policies, but also provides an explanation for the change.<sup>16</sup>

Not only is effective in-person communication key, it is also important to effectively share information with the entire community. PAB recommends RPD enhance and expand its use of social media during protests. This expansion of public communication would better inform protesters and the community at large. It would also dispel or dissuade the spread of disinformation. The police department in Portland, Oregon, incorporates the use of social media to communicate “announcements and warnings.”<sup>17</sup>

## Weapons and Tactics

### a. Tear Gas and Flash Bangs

“Tear gas will not be utilized in any outdoor protests/mass demonstrations under any circumstances,” according to GO 680. Flash bangs will not be employed for any protests, the policy promises.

The updated general order, which states, “Chemical agents will not be used to disperse a crowd”<sup>18</sup> in the protest planning section, potentially contradicts the language just three lines later.<sup>19</sup> The ambiguity also exists in that it allows officers to change the rationale for usage presented in written reports. It states, “All use of chemical agents by MFF (mobile field force) and/or Grenadiers must be approved by the Chief of Police or DCO.” This statement leaves open the potential for officers to use these weapons in some circumstances. These chemicals are banned in warfare, but are not banned by federal or local law.<sup>20</sup>

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<sup>12</sup> [Microsoft Word - 316 - Public Assemblies and Demonstrations 10-15-21.docx \(eugene-or.gov\)](#)

<sup>13</sup> [Data Transparency Proposal for Change – Police Accountability Board City of Rochester \(rocpab.org\)](#)

<sup>14</sup> [GO 680 Protest and Mass Demonstration Response | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](#)

<sup>15</sup> [Data Transparency Proposal for Change – Police Accountability Board City of Rochester \(rocpab.org\)](#)

<sup>16</sup> [APD General Orders | AustinTexas.gov](#)

<sup>17</sup> [0635.10 Portland Police Bureau Response to Public Order Events | Portland.gov](#)

<sup>18</sup> [GO 680 Protest and Mass Demonstration Response | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](#)

<sup>19</sup> Id.

<sup>20</sup> [Fact check: It's true tear gas is a chemical weapon banned in war \(usatoday.com\)](#)

Existing general orders dictating the usage of tear gas and flash bangs contradict or contain discrepancies when compared to GO 680, which RPD describes as an “overarching regulation.” General orders 606 and 630, for example, outline instances where officers are permitted to use chemical agents without warning. This option for officer discretion must be eliminated or clarified.<sup>21</sup>

Initially, PAB recommended the following:

- Immediately issue written policies clearly prohibiting the use of tear gas and flash bangs at all mass gatherings and prohibit their use for crowd dispersal;
- Eliminate its cache of tear gas or in the alternative, at least annually, submit to a public audit of tear gas that has been used;
- At least annually, submit to a public audit of flash bang use to assure the public that the weapons have not been used at mass gatherings, protests, or for crowd dispersal.

RPD has partially implemented the first recommendation, but has not publicly addressed the other recommendations. The new general order bans tear gas and flash bangs “during any outdoor event.” These implements could still be employed during indoor events, an uncertainty that must be addressed. PAB recommends RPD collect public input, conduct and release inventory audits, and then work to implement updated policies.

## **b. Long Range Acoustical Device (LRAD)**

The Long-Range Acoustical Device (LRAD) can produce very loud sounds over long distances and be used for crowd-control purposes.<sup>22</sup> These devices have the potential to cause serious injury.<sup>23</sup> Under 680, RPD is not permitted to use its LRAD for “the purpose of emitting tones.”<sup>24</sup> However, the use of the LRADs, is still allowed in some instances: Officers can use it to make notifications, relay emergency orders, and give clear warnings. To ensure the safety of both police and protesters, we recommend that more detailed language be drafted to define the circumstances when the highest and most dangerous decibel levels of the LRAD can be used. According to GO 680, if the device is used for anything other than announcements, that must be documented through a subject resistance report (usage outlined in general order 335).

Existing policy recommends against using the highest and most dangerous decibel levels for the public address systems, but again does not explicitly prohibit the use of, and imposes no consequences for the use of, the highest decibel level for public address. PAB recommends the language in the existing [Long Range Acoustical Device Standard Operating Procedure](#) be updated immediately to reflect the superseding and most recent policy.<sup>25</sup>

Previously, PAB recommended RPD decommission its devices by making them inoperable or disposing of them. The PAB maintains RPD investigate employing systems that operate at

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<sup>21</sup> Rochester Police Department, “G.O. 606, Grenadiers,” (2015).

<sup>22</sup> American Civil Liberties Union, “Acoustic Weapons Fact Sheet.” <https://www.aclu.org/fact-sheet/acoustic-weapons-fact-sheet>

<sup>23</sup> Physicians for Human Rights, “Health Impacts of Crowd-Control Weapons: Acoustic,” (Oct. 27, 2020). <https://phr.org/our-work/resources/health-impacts-of-crowd-control-weapons-acoustic-weapons/>

<sup>24</sup> [GO 680 Protest and Mass Demonstration Response | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](#)

<sup>25</sup> [Long Range Acoustical Device \(LRAD\) SOP | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](#)

lower decibel levels, including bullhorns and lower powered public-address systems. PAB still maintains this recommendation is the best path forward.

### c. Kettling

Under 680, Rochester police officers will not utilize the kettling technique. The procedure, one designed to corner protesters and provide no means to disperse, was reportedly utilized during the September 2020 Daniel Prude protests.<sup>26</sup> The tactic is controversial, if not harmful. It is also known as “trap and detain.” Some experts argue it can cause tensions to rise, while one researcher concluded that “perceptions of unjustified force used against peaceful protesters would lead to more protests – and with them, more use of force.”<sup>27</sup> The April 2022 press release stated kettling was prohibited, but no prior RPD policy condoned or prohibited it by name.<sup>28</sup> In fact, no previous policy even used the term “kettling.”

Two existing general orders, 575 (de-escalation) and 601 (all hazard plan), both contain descriptions of practices that could be interpreted as kettling. In 575, officers are told to use time, distance, and “positioning to isolate and contain a subject.”<sup>29</sup> While in 601, officers must “contain the situation to the smallest possible area consistent with citizen and officer safety, and control of travel routes to attempt to prevent the escape of any involved suspects.”<sup>30</sup> PAB recommends that RPD clarify this language and further define kettling.

### d. Pepper Balls

Under GO 680, only officers who have completed the approved training will use pepper balls at protests or mass gatherings. When pepper balls are employed, “their use shall be as limited as possible...” It also promises that they will not be used for crowd dispersal. GO 680 echoes the [Pepperball Launching System \(PLS\) Standard Operating Procedure \(SOP\)](#).<sup>31</sup> The policy states that pepper balls will only be used “to address a specific articulable threat.”<sup>32</sup> The SOP allows for officers to employ a “degree of force that is reasonably necessary to provide protection for officer(s), subject(s), a third party, and/or to effect a legal arrest.” GO 680 contains similar language.

When it comes to deployment, officers are instructed to aim pepper balls at “an impact area, to ensure safety to those located nearby.”<sup>33</sup> If RPD officers shoot pepper balls at a person, they

<sup>26</sup> Human Rights Watch, “Kettling’ Protesters in the Bronx,” Sep. 30, 2020.

<https://www.hrw.org/report/2020/09/30/kettling-protesters-bronx/systemic-police-brutality-and-its-costs-united-states>

<sup>27</sup> Wyatt Grantham-Philips, et al, “What Is kettling? Here’s a look at the usage and history of the controversial police tactic,” *USA Today*, June 24, 2020.

<https://www.usatoday.com/story/news/nation/2020/06/24/kettling-controversial-police-tactic-black-lives-matter-protests/3248681001/>

<sup>28</sup> *Boehner v. The City of Rochester*, 6:21-cv-06574, 1 (W.D.N.Y. 2021).

[https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=ZINY1ryx\\_PLUS\\_JTX181dgycm7g==](https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=ZINY1ryx_PLUS_JTX181dgycm7g==)

<sup>29</sup> Rochester Police Department, “G.O. 575, De-Escalation,” (2021).

<sup>30</sup> Rochester Police Department, “G.O. 601, All Hazard Plan; Emergency Situations; Hostage/Barricaded Subject; Civil Disorder/Terrorist Attacks,” (2015).

<sup>31</sup> [GO 680 Protest and Mass Demonstration Response | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](#); [Pepperball Launching System SOP | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](#)

<sup>32</sup> [GO 680 Protest and Mass Demonstration Response | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](#)

<sup>33</sup> *Id.*

are taught to avoid “the throat, face, base of neck, and spine.”<sup>34</sup> In general order 337 (use of force), officers are authorized to use the PLS as a “less lethal” tool. The PLS SOP authorizes RPD to use the PLS to control crowds. GO 680 states all pepper ball usage must be approved by the police chief or deputy chief of operations. RPD’s PLS SOP requires authorization by a commanding officer. The overriding policy requires a “high-ranking officer” to authorize pepper ball use. It permits use of pepper balls to “disperse subjects involved in a civil disorder.” This directive contradicts the instructions provided in GO 680. All of this suggests that RPD will retain the discretion to use pepper balls if it determines a mass gathering or protest amounts to “civil disorder.”

In general order 605 (mobile field force), “civil disorder” is defined as, “An action by any group that poses a substantial threat to peace, life, or property; or any tumultuous or violent activity that creates a grave risk of causing public alarm and/or result in a mass arrest situation.”<sup>35</sup> GO 680 does not contain any references to “civil disorder.” There are no examples of what it might entail or when it could be declared. This is problematic, because it creates uncertainty and ambiguity for officers and protesters. It leaves open the potential for increased strife and tension between involved parties. PAB recommends RPD publish its own detailed criteria for civil disorder and determining when a dispersal order is necessary. RPD must develop a script to alert crowds when a dispersal order is necessary. A supervisor shall give the reasons for the dispersal order and then provide adequate time for people to leave before officers begin arrests. Finally, PAB recommends RPD enact a new policy to outline the differences between civil disobedience and civil disorder or disturbances.

Opportunities for officer discretion still exist within the framework of every RPD policy related to the PLS. PAB recommends a stricter reading of these policies, along with the closure of these potential loopholes, to ensure the safety of both community members and officers.

#### **e. Use of Canine Officers**

Since 2015, RPD has banned the use of canines at mass gatherings and in crowd-control situations. Existing RPD policy recognizes the harms of canine use.<sup>36</sup> General order 680 continues that policy, stating canines “will not be approved or be used as part of a response to riots or demonstrations, but may be used for protective sweeps before or after an incident.”

Outside agencies used dogs during these protests, which raised questions about the relationships maintained by RPD and other law enforcement agencies operating within the city of Rochester.<sup>37</sup> A search of RPD’s open data portal did not reveal information on mutual aid agreements with other law enforcement agencies. After not locating any agreements on RPD’s open data portal, PAB sent an open records request to the Monroe County Sheriff’s Office (MCSO). MCSO responded, “The Monroe County Sheriff’s Office does not have any written agreements with the Rochester Police Department responsive to your request, as the Sheriff’s

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<sup>34</sup> Rochester Police Department, “Pepperball Launching System SOP,” July 13, 2020.

<sup>35</sup> Rochester Police Department, G.O. 605, Mobile Field Force,” April 20, 2015.

<sup>36</sup> Rochester Police Department, “G.O. 555, Canine Use,” (2015).

<sup>37</sup> Steve Orr and Brian Sharp, “State Police dogs at Rochester protests draw criticism, comparisons to the '60s,” *Democrat and Chronicle*, Sept. 11, 2020. <https://www.democratandchronicle.com/story/news/2020/09/10/state-police-dogs-rochester-protests-draw-harsh-criticism/3458715001/>

Office has concurrent jurisdiction across the entirety of Monroe County.” PAB also sent a request to the New York State Police, but did not receive a response.

More recently, RPD worked in partnership with State Police, sheriff’s deputies, and officers from Irondequoit and Brighton, to control crowds in early August 2023.<sup>38</sup> These mass gatherings and the interactions between the community and police officers are outlined in GO 680. PAB recommends RPD and its partner agencies draft and publicize written mutual aid agreements to clarify the prohibition of canine officers for all agencies assigned to crowd-control situations in Rochester. These agreements would also dictate other important areas of policing practices.

The Police Executive Research Forum (PERF) and the Denver Office of the Independent Monitor (OIM) offered some strong, common sense-based recommendations regarding mutual aid agreements. Both stated these agreements with neighboring agencies must be developed. “These agreements should adhere to best practices, including but not limited to specifying the circumstances under which assistance may be requested and provided, acceptable request methods, forms of assistance to be provided, and an agreed upon command and control structure,” according to recommendations offered by the Denver OIM.<sup>39</sup> The Denver Police Department agreed with this recommendation and stated it would meet with neighboring law enforcement agencies to formalize these agreements. These agreements must adhere to best practices, including specifying when assistance would be requested and provided, acceptable request methods, forms of assistance to be provided, and a clear command and control structure. In addition to these written agreements, PAB recommends RPD and its partner agencies participate in periodic joint training sessions to ensure consistency.

## **RPD Accountability Mechanisms**

### **a. Body-Worn Cameras**

General order 680 does not address the use of body-worn cameras during mass gatherings and protests. The April 2022 press release called for the “mandatory wearing of body-worn camera by police officers while at assemblies.” For the policy to be fully enacted, that language needs to be added to RPD’s Body Worn Camera (BWC) manual and to GO 680.

According to the BWC manual, which was last updated on May 25, 2022, officers are instructed to turn on bodycams during “protests, demonstrations, and civil disorder situations.” That does not involve the mobile field force (MFF) and the grenadier team, a subunit of the MFF where officers receive specialized training to deploy chemical munitions and employ crowd dispersal techniques (outlined in GO 605), unless directed by a police commander, deputy chief, or chief. MFF and grenadier team leaders issue commands to activate and record with bodycams before officers engage with protesters, make arrests, or take any other actions. Both policies must

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<sup>38</sup> Gio Battaglia, “1 dead, 1 suffering life-threatening injuries after 5 people shot on N. Clinton Ave,” WROC-TV, August 5, 2023. <https://www.rochesterfirst.com/news/rpd/1-dead-1-suffering-life-threatening-injuries-after-5-people-shot-on-n-clinton-ave/>

<sup>39</sup> Denver Police Department, “DPD response to the Independent Monitor’s protest report,” Dec. 8, 2020. [https://denver.prelive.opencities.com/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Police-Department/News/2020/Response-to-OIM-Protest-Report ResponseMassDemonstrations.pdf](https://denver.prelive.opencities.com/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Police-Department/News/2020/Response-to-OIM-Protest-Report%20ResponseMassDemonstrations.pdf) ([policeforum.org](http://policeforum.org))

contain the same unified language. Often, it will be officers from the mobile field force policing protests. Therefore, the policy should not single them out as exempt from wearing BWCs. PAB recommends all officers, regardless of rank and position, wear BWCs during protests and mass gatherings.

Using BWCs not only provides a critical view of policing, but it also protects both protesters and officers by allowing an unfiltered window into interactions. Plus, the department is currently rolling out a new BWC model and plans to incorporate a new digital system for uploading, sharing, and storing videos. RPD leadership revealed it is in the process of updating its BWC policies as it rolls out new cameras for officers. In Denver, all officers, regardless of rank, are required to wear BWCs during mass gatherings and protests, according to recommendations from OIM. RPD must enact the same policy. Furthermore, the Denver OIM recommended having a supervisor assigned to regularly conduct spot check comparisons between the rosters and the BWC database to identify gaps in officer recording.<sup>40</sup> RPD must employ the same policy.

### **b. Identifiable Officers**

Officers concealed or taped over their badges during the 2020 Black Lives Matter protests, according to multiple photographs shared on social and in the media.<sup>41</sup> Prior to the summer of 2020, however, Rochester police officers were not permitted to obscure their nameplates. A department spokesperson said that the requirement was waived after a series of encounters between police and protesters. The department said alternative forms of identification were provided to protect the safety of officers and their families as fears arose of potential retribution. This policy reversal was not available in any publicly accessible documents or databases.

The April 2022 press release stated the practice would be prohibited without authorization from command staff. Moreover, if the authorization was given, officers were to “replace them with their issued designated protest number which must remain visible at all times.” General order 680 prohibits the practice of taping over badges and nameplates without the approval of command staff. If granted, officers are to be equipped with personalized protest numbers. While this is clear progress, PAB further recommends that RPD develop and publish clear criteria that would warrant command staff granting officers the ability to replace their nameplates with designated protest numbers.

### **c. Medics, Legal Observers, and Journalists**

Medics, legal observers, and journalists often found themselves in the middle of ongoing protests in 2020. Some reported they were injured by RPD officers during protests.<sup>42</sup> In 2022,

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<sup>40</sup> Denver Police Department, “DPD response to the Independent Monitor’s protest report,” Dec. 8, 2020. <https://denver.prelive.opencities.com/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Police-Department/News/2020/Response-to-OIM-Protest-Report>.

<sup>41</sup> Sean Lahman, “Can police officers cover their name tags? Rochester department says yes, for officer safety,” *USA Today*, Sept. 4, 2020. <https://www.usatoday.com/story/news/nation/2020/09/04/daniel-prude-protests-can-rochester-officers-cover-up-name-tags/5715089002/>

<sup>42</sup> Will Cleveland, “Suit claims RPD, deputies used military arsenal against BLM protesters,” *Democrat and Chronicle*, July 17, 2021. <https://www.democratandchronicle.com/story/news/2021/06/17/lawsuit-rochester-police-officers-and-sheriffs-deputies-used-military-grade-arsenal-target-blm-prote/7625690002/>

PAB recommended RPD develop a policy directed toward the treatment of these parties. The city and RPD did not address this in its initial press release. General order 680, however, states it is “the policy of the RPD to take all reasonable steps to avoid harm to identifiable medics, members of the press and legal observers.” The policy does not include information on training, recognition, and implementation. PAB recommends the department collect input from members of these groups and that these observers be exempt from dispersal orders.

PAB recommends adopting a policy mirroring the one in Cleveland, Ohio, that dictates officer actions during gatherings. (It should be noted that Cleveland enacted many of these reforms as part of a court-enforced reform agreement with the U.S. Department of Justice.) The policy includes: 1. The acknowledgement that officers are likely to be photographed and recorded by multiple parties during gatherings; 2. Officers should not attempt to interfere with individuals who are legally recording; 3. Officers must not attempt to confiscate or destroy recordings or photographs; 4. Make efforts to identify media and legal observers, who often wear official credentials, as uninvolved parties; 5. Immediately notify superiors if a media member or legal observer is arrested; 6. Officers may designate a special area for media to assemble, observe, and receive updates. PAB recommends existing RPD policy be made as robust and far-reaching as the one outlined in Cleveland.

## **Conclusion**

RPD’s announced policy changes are designed to support the First Amendment rights of Rochesterians while protecting public safety. In the three years since Daniel Prude’s death, numerous protests, gatherings, rallies, and efforts have called for improved police accountability, practices, and transparency.

PAB will continue to evaluate and make recommendations as RPD implements these novel approaches. RPD maintains a duty to respond in a manner that is effective, proportionate, and consistent, regardless of the content of the protests. PAB realizes this is an evolving conversation and is subject to change with time. Therefore, PAB and RPD must remain flexible and forward-thinking to ensure the safety of both protesters and officers. The police department must sufficiently plan and prepare for protests and gatherings, while maintaining a readiness for potential unrest caused by community members or from improper responses from officers.

To adequately respond to protests, mass gatherings, and potential unrest, the City and RPD must:

1. Prioritize better and more robust data collection and analysis;
2. Improve intelligence gathering and maintain clear channels of communication;
3. Plan for and implement better inter- and intra-agency training and coordination;
4. Maintain and implement a clear command structure that outlines responsibilities, including documentation of decisions, operational actions, and results;
5. Update policies and general orders to make sure those existing documents comply and agree with GO 680;
6. Work to establish clear lines of communication with community members and organizations to better facilitate understanding of policies that dictate restrictions and enforcement actions, specifically dispersal orders;



7. Stronger support for officer safety and wellness efforts through equipment, supplies, support, mental-health services, and rest.

With compliant policies, training, reporting, community engagement, and inter-agency agreements, RPD would be better able to respond to large-scale protests and then potentially predict, prevent, and mitigate unrest. By doing this, RPD can build a stronger foundation of trust within communities and ensure safe interactions with protesters.