



**PAB**

**POLICE  
ACCOUNTABILITY  
BOARD**

# **2022 Protests and Mass Gatherings Analysis**

Rochester Police Accountability Board  
CITY OF ROCHESTER, NY 245 E. Main St.

# 2022 Protests and Mass Gatherings Policy Audit and Recommendations

This report reviews the Rochester Police Department's policies on protests and mass gatherings by explaining the current policies, evaluating announced changes to policy, and making recommendations to implement the changes and engage those affected by the policies in evaluating those changes.

On April 26, 2022, the Rochester Police Department (RPD), in concert with Mayor Malik Evans, announced changes to protest policies and the way it would police mass gatherings.<sup>1</sup> These new policies respond to calls for updates following sometimes violent and chaotic encounters between police and protesters in the summer and fall of 2020. The press release outlined seven major updates to the following areas:

- 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;
- Limitation on the use of pepper balls;
- Canine officers (dogs) are not permitted at mass gatherings;
- The city of Rochester's Corporation Counsel will participate in all protest planning discussions and be present with RPD command staff during those events;
- New language in RPD eviction protocols clarifies the right of citizens to protest and gather video at a mass gathering or scene of police activity.

The City and RPD announced these new policies but provided few details. In separate interviews in April 2022, Corporation Counsel Linda Kingsley and Communications Chief Barbara Pierce said the policies would be enacted immediately but were not yet codified and ready for public release. Public statements following the press release cast doubt on whether the details of the new policies deliver the promised changes. The Police Accountability Board (PAB) has requested but not received final or draft versions of the policies. Our recommendations are limited as a result. RPD has also not provided evidence that it has implemented the policies through training, nor has it stated what training would be provided to officers.<sup>2</sup>

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<sup>1</sup> City of Rochester, "News Release – Mayor, Police Chief announce changes to police policies during protests and mass gatherings," Apr. 26, 2022. <https://www.cityofrochester.gov/article.aspx?id=21474849825>

<sup>2</sup> On *Connections* on April 29 Chief Smith seemingly referenced written documents that already implement these policies including "rules of engagement" and a "guidebook." Those documents have not been released to the PAB. On January 27, 2021 then Chief Cynthia Herriott-Sullivan issued a press release entitled "Rules of Engagement for Gatherings and Protests." That document contains no restrictions on police use of force or weapon utilization. Instead, the document implores Rochesterians to refrain from crime and violence and to follow orders to disperse.

To enhance public trust and allow for community input into the amended policies, PAB recommends that RPD:

- Immediately send draft policies on protests and mass gatherings and proposed training materials to PAB for review;
- Immediately clarify, in writing, its criteria for declaring an “unlawful gathering” or “civil disorder.” Some policies permit the use of now “banned” weapons for “civil disorder.” PAB recommends RPD immediately clarify whether these weapons are banned under all circumstances or if they are permitted where there is “civil disorder;”<sup>3</sup>
- Issue notice of draft policies on protests and mass gatherings and solicit comment from the community in formats accessible to those most affected. PAB recommends utilizing community forums, drop boxes, text message, voicemail and email to maximize accessibility;
- Post a policy tracker on its website that lists proposed changes, outlines the process for comment, publishes comments, publishes responses to comment, and announces deadlines for adopting rules;<sup>4</sup>
- Implement its new policies with sufficient training audited by PAB staff, write rules with clear penalties for violations, impose discipline on officers and officials who violate the new policies, and provide positive incentives for officers who follow the new policies.

What follows is a policy-by-policy audit and analysis, as well as recommendations for implementation and further policy development.

## **1. PLANNING, COMMUNICATION, AND PROPORTIONALITY**

Law enforcement’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 protecting protesters and public safety.

To implement this promise and decrease the chances of conflict, PAB recommends a focus on planning, communication, and proportionality. RPD’s announced policy changes attempt to address planning and proportionality by focusing on use of specific weapons and techniques and increasing corporation counsel’s involvement.

PAB further recommends that RPD:

- Tailor its response to the actions and mood of a gathering and avoid using more force, gear, or equipment than necessary;
- Consider employing a “tiered approach” in which officers employing heavier gear and equipment are held in reserve to be deployed only if necessary;

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<sup>3</sup> Rochester Police Department, “G.O. 601, All Hazard Plan,” (2015), Rochester Police Department, “G.O. 605, Mobile Field Force,” (2015), Rochester Police Department, “G.O. 606, Grenadiers,” (2015).

<sup>4</sup> New York Police Department, “Mass Demonstration Recommendation Status.” [https://www1.nyc.gov/assets/nypd/downloads/pdf/public\\_information/mass-demonstration-recommendations-status-12222021.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/mass-demonstration-recommendations-status-12222021.pdf)

- 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 protestors;
- Meet in advance with community leaders to share plans and expectations.

## 2. WEAPONS AND TACTICS

### a. Tear Gas and Flash Bangs

Tear gas refers to chemical agents released into the air and intended to cause irritation.<sup>5</sup> These chemicals are banned in warfare but not banned by U.S. or local law in use against civilian populations. Flash bangs are explosives that are intended to stun and disorient by temporarily blinding or deafening people.<sup>6</sup> Local protesters filed a federal class-action complaint alleging widespread police misconduct during the September 2020 protests. This lawsuit, *Hall v. Warren*, alleges that between September 2 and 5, 2020, police used tear gas 77 times and flash bangs 10 times.<sup>7</sup> Protesters also claimed the department used expired chemical agents, which may increase the likelihood of injury.

Even with the announced policy changes, RPD will continue to permit flash bang use by trained members of the SWAT team.<sup>8</sup> SWAT members receive training at least annually on flash-bang use. It is unclear from available policy whether any other RPD officers are authorized to use flash bangs, trained in their use or effect, or when they could still be employed.

RPD has not announced and existing policy does not make clear whether RPD permits the use of tear gas outside of mass gatherings or protests.<sup>9</sup> The announced policy does not make clear whether RPD would permit the use of tear gas during civil disorder.<sup>10</sup> The process and standards for declaring an unlawful assembly or civil disorder are not well outlined in available policy. Such ambiguity may leave room for exceptions to the new policy, rendering the proposed bans ineffective.

Because current policy continues to authorize flash bang use by the SWAT team, RPD will likely retain this weapon. A more enduring and durable policy change would be for RPD to relinquish this weapon, making it more difficult to amend the use policy and reinstitute use at mass gatherings and protests. RPD has changed policy before without

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<sup>5</sup> Rochester Police Department, “G.O. 337, Use of Force,” (2021).

<sup>6</sup> Carrie Feibel, “From ‘Flash Bangs’ to ‘Rubber’ Bullets: The Very Real Risks of ‘Riot Control Agents,’” June 6, 2020. <https://www.npr.org/sections/health-shots/2020/06/06/871423767/from-flash-bangs-to-rubber-bullets-the-very-real-risks-of-riot-control-agents>

<sup>7</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>8</sup> Rochester Police Department, “Special Weapons and Tactics Standard Operating Procedures Manual.”

<sup>9</sup> Rochester Police Department, “G.O. 337, Use of Force,” (2021).

<sup>10</sup> Rochester Police Department, “G.O. 601, All Hazard Plan,” (2015), Rochester Police Department, “G.O. 605, Mobile Field Force,” (2015), Rochester Police Department, “G.O. 606, Grenadiers,” (2015).

notice and without formalizing a policy in writing. For example, former RPD leadership permitted officers to conceal their names and did not require unique identifiers during the September 2020 protests.

### **Tear Gas and Flash Bang Recommendation**

To achieve durable policy change PAB recommends that RPD:

- 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 not been used at mass gatherings, protests, or for crowd dispersal;
- 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.

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

Acoustic weapons, also known as long range acoustical devices (LRADs), deliver very loud sounds over long distances. This technology is used for crowd control purposes by emitting loud and painful levels of noise to disperse crowds.<sup>11</sup> LRADs can emit pattern tones for crowd dispersal and broadcast audible messages. Whether an LRAD emits a pattern tone or plays a message, it can operate at decibel levels as high as 154.<sup>12</sup> LRADs can “lead to significant harms to the ears, potentially causing hearing loss.”<sup>13</sup>

Before April 26, 2022, RPD permitted use of LRADs for two main functions: announcements and “deterrent tones intended to gain and maintain compliance and order of crowds.” According to Interim Chief David Smith, the department has only used the LRAD as an announcement system under his command.<sup>14</sup> Comments by RPD have suggested that it may continue to use LRADs as a “public address system,” but will ban the use of crowd dispersal tones.

The RPD’s LRAD Standard Operating Procedure permits the use of LRADs as a weapon for crowd dispersal and as a public address system. RPD policy recommends but does not require warning crowds before the LRAD is used as a crowd dispersal weapon. RPD policy limits who can authorize the highest and most dangerous decibel levels, but not the circumstances when the highest and most dangerous decibel levels can be used. Policy recommends against using the highest and most dangerous decibel levels for the public address systems, but does not prohibit the use, and imposes no consequences for

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<sup>11</sup> American Civil Liberties Union, “Acoustic Weapons Fact Sheet.” <https://www.aclu.org/fact-sheet/acoustic-weapons-fact-sheet>

<sup>12</sup> According to the RPD Standard Operating Procedure, the RPD owns a 500X and 100X. The product guide indicates that the maximum decibel level of the 500x is 154 and the 100X is 140 db. Genasys, *LRAD Overview and Product Guide*. <https://genasys.com/wp-content/uploads/LRAD-Product-Guide-Final-PRINT.pdf>

<sup>13</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>14</sup> Rochester Police Department, “Long Range Acoustical Device Standard Operating Procedure,” (2019).

using the highest decibel level for public address.<sup>15</sup> RPD policy does not require a use of force report if the LRAD is used as a “loud-speaker.” RPD policy permits the use of LRADs in other jurisdictions and at the direction of other law enforcement agencies operating within Rochester.

LRADs can cause significant harms. For example, plaintiffs in a lawsuit against NYPD said they suffered migraines, sinus pain, dizziness, facial pressure, ringing in ears, sensitivity to noise, tinnitus, and hearing loss as a result of an LRAD. New York City settled the lawsuit for more than \$700,000 and agreed to ban the use of crowd dispersal tones.<sup>16</sup> Plaintiffs in *Hall v. Warren* similarly allege that that RPD uses LRADs inappropriately.

### **LRAD Recommendation**

To effectively ban the use of LRADs, PAB recommends that RPD:

- Decommission its devices by making them inoperable or disposing of them. PAB recommends against simply limiting the use of LRADs to only a public address system. This limitation is less likely to prevent improper use of an LRAD, either through misuse or human error. A partial ban will not ensure that RPD will not harm protesters or members of mass gatherings;
- Consider alternative announcement systems that operate at lower decibel levels. Alternatives include bull horns and lower powered public-address.

### **c. Kettling**

Kettling is a procedure used in crowd control where protesters are “trapped, with no way to disperse.”<sup>17</sup> Published RPD policy does not condone or explicitly prohibit kettling. The April 26 press release says the practice is banned but does not describe how this ban is implemented either in written policy or training.

Kettling causes harm to protestors. A still pending lawsuit filed in 2019 against 343 St. Louis police officers noted that officers surrounded a group of protesters, corralled them, blocked access to exits, and made more than 100 arrests.<sup>18</sup> A 2020 report from Human Rights Watch explored a similar incident in Mott Haven, a predominantly low-income area in the South Bronx, where New York police officers used the technique to allegedly control protesters and enforce a citywide 8 p.m. curfew.

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<sup>15</sup> LRAD SOP (II)(C)(2)(d) (noting only that the “Red volume zone is not appropriate for the effective delivery of verbal messages and should not be utilized for this purpose.”) *compare* to (II)(A)(4) noting that operators “shall” use hearing protection.

<sup>16</sup> Nick Pinto, “City Settles Lawsuit From Protesters Who Accused NYPD Of Firing Sound Cannon At Them,” *Gothamist*, Apr. 19, 2021. <https://gothamist.com/news/city-settles-lawsuit-protesters-who-accused-nypd-firing-sound-cannon-them>

<sup>17</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>18</sup> *Street v. O’Toole*, 4:19-cv-02590, 1 (E.D. Missouri 2019). <https://storage.courtlistener.com/recap/gov.uscourts.moed.174977/gov.uscourts.moed.174977.1.0.pdf>

Rochester protesters said the technique was utilized on numerous instances during the Prude protests, including encounters in September 2020 on the Court Street bridge and outside RPD's Special Operations Division headquarters on Child Street. The *Boehner v. City of Rochester* lawsuit, filed last year in state Supreme Court, echoes those sentiments: Officers and deputies used the “kettle” crowd containment technique in a “scene tragically reminiscent of the 1965 ‘Bloody Sunday’ attack on civil rights demonstrators on the Edmund Pettus Bridge in Selma, Alabama.”<sup>19</sup>

### **Kettling Recommendation**

PAB recommends that RPD:

- Immediately issue a written policy affirming that there must always be a way for protesters to safely leave a gathering;
- Explicitly ban kettling in written policy and training,
- Clarify its policy for initiating crowd dispersal by affirming that assemblies will only be dispersed in exceptional cases;
- Submit to a public audit of its prior use of kettling.

### **d. Pepper Balls**

Pepper ball guns are, in essence, paintball guns that fire rounds containing oleoresin capsicum (“OC”) powder, also known as pepper spray. Pepper balls combine the kinetic impact of a projectile with the sensory discomfort of pepper spray.<sup>20</sup> Rochester police officers utilized pepper balls to control and disperse crowds during numerous encounters at protests following the police-involved killings of George Floyd in Minneapolis and Daniel Prude in Rochester.

During the first three days of Prude protests in September 2020, RPD deployed 6,100 pepper balls, according to a report in the *Democrat and Chronicle*.<sup>21</sup> This contrasts with the NYPD, which did not fire a single pepper ball during the George Floyd protests, according to *Hall v. Warren*. The current policy already limits use of pepper balls by requiring that projectiles be fired away from subjects and at a location to “saturate the area with the pepper ball agent.” Yet protesters,<sup>22</sup> public officials,<sup>23</sup> and journalists<sup>24</sup> reported being struck directly by pepper balls during the 2020 protests. Injuries in Rochester included bruises, welts, broken orbital bones, and various other injuries, according to a 2021 lawsuit filed by protesters against RPD, the Monroe County

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<sup>19</sup> *Boehner v. The City of Rochester*, 6:21-cv-06574, 1 (W.D.N.Y. 2021).

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

<sup>20</sup> *Nelson v. City of Davis*, 685 F.3d 867, 873 (9th Cir. 2012). <https://law.justia.com/cases/federal/appellate-courts/ca9/10-16256/10-16256-2012-07-11.html>

<sup>21</sup> Will Cleveland, “How many pepper balls did Rochester police fire during the protests?” *Democrat and Chronicle*, Sept. 24, 2020. <https://www.democratandchronicle.com/story/news/2020/09/24/rochester-police-fired-thousands-pepper-balls-daniel-prude-protesters/3503589001/>

<sup>22</sup> Nicole Hushla-Re, Twitter post, Sept. 6, 2020. <https://twitter.com/NHushlaRe/status/1302534195886120971>

<sup>23</sup> Rachel Barnhart, Twitter post, Sept. 6, 2020. <https://twitter.com/rachbarnhart/status/1302632663652675584>

<sup>24</sup> Tina MacIntyre-Yee, Twitter post, Sept. 3, 2020. <https://twitter.com/tyee23/status/1301723839190179840>

Sheriff's Office and other officials.<sup>25</sup> "Attorneys allege RPD 'quietly' updated its policies on pepper balls to 'ensure more officers could (and would) be able to use the PLS (PepperBall Launching System) in anticipation of protests' after Prude's death became public," according to a 2021 *Democrat and Chronicle* article.<sup>26</sup> "By removing any 'disciplinary history check,' the Department knew or had reason to know that RPD officers would use excessive force when engaging with protesters — which they did," it concluded.

Nationally, police forces have faced significant liability for improper use of pepper balls at protests. For example, a federal jury in Denver recently awarded \$14 million to a dozen plaintiffs after it determined police officers violated their constitutional rights by utilizing excessive force during 2020 protests.<sup>27</sup> The jury found one Denver police officer violated a protester's Fourth Amendment rights and awarded her \$250,000. The protester asserted the officer shot her with a pepper ball.

RPD announced on April 26 that it would place "significant limitations" on the use of pepper balls by requiring approval by a high-ranking officer and prohibiting their use to "clear an area during a peaceful event." During an hour-long interview on WXXI's *Connections*, Chief Smith said, "You are going to see [pepper balls] less likely and rarely used going forward."<sup>28</sup>

While the release calls for "significant limitations" on pepper balls, similar limitations are already partially incorporated into current policy. RPD's PepperBall Launching System Standard Operating Procedure<sup>29</sup> requires authorization by a commanding officer. The announced policy requires a "high-ranking officer" to authorize pepper ball use. The current policy permits use of pepper balls to "disperse subjects involved in a civil disorder." The language of the announced policy, limiting use only at "a peaceful event," suggests that RPD will retain the discretion to use pepper balls if they determine a mass gathering or protest amounts to "civil disorder."<sup>30</sup>

## Pepper Ball Recommendation

PAB recommends that RPD:

- Publicly release the new written policy and permit PAB to audit training materials;

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<sup>25</sup> *Boehner v. The City of Rochester*, 6:21-cv-06574, 1 (W.D.N.Y. 2021).

<sup>26</sup> Will Cleveland, "Lawsuit claims RPD, sheriff's deputies used 'military arsenal' against BLM protesters," *Democrat and Chronicle*, June 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/>

<sup>27</sup> Julia Cardi, "Jury finds Denver police violated rights of protesters during 2020 George Floyd demonstrations; awards \$14M," *The Denver Post*, Mar. 25, 2022. [https://denvergazette.com/news/courts/jury-awards-14m-in-damages-to-group-of-denver-protesters-who-claimed-excessive-force-by/article\\_69c48632-ac65-11ec-ba06-b792decf0a15.html](https://denvergazette.com/news/courts/jury-awards-14m-in-damages-to-group-of-denver-protesters-who-claimed-excessive-force-by/article_69c48632-ac65-11ec-ba06-b792decf0a15.html)

<sup>28</sup> "Discussing changes to how RPD officers can respond to protests," *Connections*, WXXI, Apr. 29, 2022. <https://www.wxxi.com/show/connections/2022-04-29/discussing-changes-to-how-rpd-officers-can-respond-to-protests>

<sup>29</sup> Rochester Police Department, "Pepperball Launching System SOP," July 13, 2020.

<sup>30</sup> "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. General Order 605.



- Submit to a public audit of pepper ball use at least annually;
- Listen to community voices to determine if it is acceptable to use these irritants under any circumstances.

## e. Use of Canine Officers

The use of canine officers for the purpose of crowd control calls to mind images of police misconduct during Civil Rights era demonstrations. According to a 2005 article in *Criminal Justice Policy Review*, “Today most departments frown on the use of police service dogs in crowd control situations.”<sup>31</sup> Existing RPD policy recognizes that the harms of canine use outweigh the benefits because they themselves have banned it. According to a 2015 policy, “K-9s will not be used in crowd control situations or for a deterrent effect at any demonstrations.” This establishes RPD will not use canine officers at protests.<sup>32</sup> However, New York State Police engaged canine officers at a demonstration in Rochester on September 5, 2020, according to reporting from the *Democrat and Chronicle*.<sup>33</sup> RPD’s existing policy on canine use at protests was clear, so this new policy calls into question the relationship between RPD and other law enforcement agencies operating within their jurisdiction. A search of RPD’s open data portal did not reveal information on such cooperation agreements.

### Canine Officer Recommendation

PAB recommends that RPD:

- Engage partner agencies in planning and written agreements to clarify the prohibition of canine officers for all agencies assigned to crowd control situations in the city of Rochester;
- Support legislation required to implement legally enforceable bans on the use of canine officers during protests and mass gatherings.

## 3. TRUST AND MONITORING

### a. Body-Worn Cameras

Properly functioning body-worn cameras (BWCs) have the potential to serve as a means of accountability for police misconduct. BWCs can also serve as a mechanism for protecting officers as recording incidents can provide a clearer picture once allegations are brought against police. A 2021 study found that, on average, BWCs are associated

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<sup>31</sup> Jonathan K. Dorriety, “Police service dogs in the use-of-force continuum,” *Criminal Justice Policy Review* 16, no. 1 (2005): 88-98. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/police-service-dogs-use-force-continuum>

<sup>32</sup> Rochester Police Department, “G.O. 555, Canine Use,” (2015).

<sup>33</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/>

with declines in use of force and civilian complaints.<sup>34</sup> This evidence suggests that BWCs would serve as a tool for police accountability at protests when properly employed. However, officers and the public alike have reported instances of BWC malfunction and misuse at protests around the country. Rochester protesters alleged in *Hall v. Warren* that “Many RPD officers in their reports indicate that their body cameras ‘fell off’ or ‘would not record’” during the September 2020 demonstrations.

RPD adopted its current BWC Manual in 2018. The manual states officers assigned to protests or demonstrations that do not involve the mobile field force or grenadier team should record with assigned BWCs unless directed otherwise by a commander, deputy chief, or the police chief.<sup>35</sup> There are special instructions for the mobile field force and grenadier teams, which are deployed to control and disperse crowds at protests or demonstrations.<sup>36</sup> Mobile field force and grenadier team leaders are instructed to issue a command to activate and record with BWCs and ensure officers are recording with their issued BWC while actively engaged in crowd-control operations.

While BWCs can provide accountability for police misconduct, they also raise questions of protester privacy. The American Civil Liberties Union recommends, “If the police are observing peaceful marchers, they don’t need to record. If they decide they need to assert their authority or engage in a law enforcement action of any kind, their cameras should be turned on.”<sup>37</sup>

## **Body-Worn Camera Recommendation**

PAB recommends that RPD:

- Submit to a public audit of the BWC program and its footage retention policies to determine why video technology either does not record or is not retained;
- Clarify consistent instructions to all officers assigned to crowd control;
- Record whenever engaged in law enforcement or asserting authority;
- Test and evaluate its BWC equipment to determine its effectiveness, including any new equipment currently testing in a pilot program and if found to be defective, acquire new technology.<sup>38</sup>

## **b. Identifiable Officers**

Prior to the summer of 2020, Rochester police officers were not permitted to place black tape over their nameplates on their uniforms. A department spokesperson told the *Democrat and Chronicle* in September 2020 the requirement was waived after a series

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<sup>34</sup> Morgan C. Williams Jr. *et al*, “Body-Worn Cameras in Policing: Benefits and Costs,” (2021). [https://www.nber.org/system/files/working\\_papers/w28622/w28622.pdf](https://www.nber.org/system/files/working_papers/w28622/w28622.pdf)

<sup>35</sup> Rochester Police Department, “G.O. 605, Mobile Field Force,” (2015).

<sup>36</sup> Rochester Police Department, “G.O. 606, Grenadiers,” (2015).

<sup>37</sup> American Civil Liberties Union, “Body Cameras and the George Floyd Protests.”

<https://www.aclu.org/news/privacy-technology/body-cameras-and-the-george-floyd-protests>

<sup>38</sup> Mayor Malik Evans, as part of his most recent budget proposal, outlined a desire to acquire new BWCs for all RPD officers. <https://www.cityofrochester.gov/uploadedFiles/Departments/OMB/Documets/2022-23%20Proposed%20Budget.pdf>

of chaotic and violent interactions between police and protesters in May 2020.<sup>39</sup> The department said it was enacted to protect the safety of officers and their families as fears arose of potential doxing and retribution.

Prior to that declaration, the RPD policy on uniform appearance, requirements and name tag placement stated, "Worn on the right pocket flap, centered one-quarter inch below the top pocket seam on shirts, dress blouse, and leather jacket. To be worn on the right breast of the authorized sweater, on the mounting tab affixed for this purpose."<sup>40</sup> RPD's 2020 policy reversal was not outlined in any publicly available announcements, policies, or procedures. The practice of covering nameplates during protests was also observed in cities like Seattle, Chicago,<sup>41</sup> Buffalo,<sup>42</sup> and Portland.<sup>43</sup>

On *Connections*, Corporation Counsel Linda Kingsley said Chief Smith made the decision to reverse the blacking out of name tags and badges independently of her. She said she supported the move, adding, "We cannot have the impression of our officers trying to hide their identity, their accountability. Protests numbers, for lack of a better term, were created for each officer. If a determination is made that identity, nameplate, can be concealed, nothing is going to be taped over. The nameplate would be removed and replaced with a number. Anyone who is looking at BWC footage, media footage, would automatically be able to say to the Chief of Police, 'Officer #35, for example, did such and such.' We can identify who Officer #35 is. It allows accountability and transparency, while still addressing the officer safety concerns that have come up in many cities."

## Identification Recommendation

PAB recommends that RPD:

- Reinstate the nameplate policy outlined in general order 350;
- Acquire easily readable alternate unique identifiers for officers during mass gatherings and protestors. Large format numbers affixed to officer uniforms during protests and mass gatherings allows for officer identification and addresses the safety concerns of officers. It reduces the temptation to modify or not enforce policy.

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<sup>39</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>40</sup> Rochester Police Department, "G.O. 350, Uniform, Equipment and Personal Appearance," (2022).

<sup>41</sup> Jonathan Ballew, "Chicago police launch investigation into officer for covering up name tag, badge number at George Floyd protests." *The Chicago Reporter*. June 4, 2020. <https://www.chicagoreporter.com/chicago-police-launch-investigation-into-officer-for-covering-up-name-tag-star-number-at-george-floyd-protests/>

<sup>42</sup> Dave McKinley and Bill Boyer. "Buffalo Police brass to officers: Stop covering your name tags," *WGRZ*, Sept. 2, 2020. <https://www.wgrz.com/article/news/local/buffalo-police-brass-to-officers-stop-covering-your-name-tags/71-eb38668d-dd86-4bc5-a3cf-8a758029279f>

<sup>43</sup> Maxine Bernstein, "Portland police allowed to cover name tags with personnel number during protests, at former chief's direction," *The Oregonian*, June 17, 2020. <https://www.oregonlive.com/portland/2020/06/portland-police-allowed-to-cover-name-tags-with-personnel-number-during-protests-at-former-chiefs-direction.html>

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

During the Prude protests, medics, legal observers and journalists often found themselves in the middle of everything. These unbiased observers report that RPD injured them on multiple occasions.<sup>44</sup> A search of the open data portal reveals no clear RPD policy related to the treatment of these observers at demonstrations or protests. According to the *Boehner v. City of Rochester* complaint, Brendan Boehner, a legal observer with the National Lawyers Guild Rochester, was injured on May 30, 2020, after he was targeted despite wearing a bright green “NLG” hat. The lawsuit alleges Boehner was struck by pepper balls that afternoon and then targeted once again on the night of September 5, 2020. “He was subjected to a large amount of tear gas and flash bangs,” the complaint stated. On each occasion, he suffered irritation to his skin, eyes, mouth, nose, and lungs, pain and bruising from the projectiles, and then flu-like symptoms afterward.

The 2020 case of *Index Newspapers LLC v. City of Portland* found that officers intentionally targeted legal observers and journalists during the George Floyd protests.<sup>45</sup> Best practices and legal precedent established that police should be prohibited from “targeting with chemical irritants or projectiles any individual displaying clear indicia as a Journalist or Legal Observer... at such time(s) as the individual is acting lawfully and in a capacity such that the City knows or reasonably should know of their status.”<sup>46</sup>

#### **Medic, Legal Observer, and Journalist Recommendation**

The PAB recommends that RPD:

- Release a written policy that protects medics, legal observers, and journalists;
- Devise said policy with input from members of those groups. PAB recommends that this policy respect the role of these groups that enhance accountability and safety, exempt these groups from dispersal orders, and prohibit targeting these groups with chemical irritants or projectiles;
- Implement the recommended policy with sufficient training.

## **4. EVICTION PROTOCOL**

New York State Assemblymember Demond Meeks and 17 others were arrested following the protest of an eviction of a family in the Corn Hill neighborhood in December 2020. The charges were dismissed, but Meeks filed a complaint against the

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<sup>44</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/>

<sup>45</sup> *Index Newspapers LLC v. United States Marshals Service*, 3:20-cv-01035-SI, 157 (D. Oregon 2020). [https://storage.courtlistener.com/recap/gov.uscourts.ord.153126/gov.uscourts.ord.153126.157.0\\_4.pdf](https://storage.courtlistener.com/recap/gov.uscourts.ord.153126/gov.uscourts.ord.153126.157.0_4.pdf)

<sup>46</sup> *Black Lives Matter Seattle-King County v. City of Seattle*, 2:20-cv-00887, 110, (W. D. Washington 2020). [https://storage.courtlistener.com/recap/gov.uscourts.wawd.286633/gov.uscourts.wawd.286633.110.0\\_2.pdf](https://storage.courtlistener.com/recap/gov.uscourts.wawd.286633/gov.uscourts.wawd.286633.110.0_2.pdf)

City of Rochester and the arresting officers. *Meeks v. City of Rochester* alleges that Meeks was falsely arrested “in retaliation for filming RPD officers performing their duties in a public place.”<sup>47</sup>

A search of RPD’s open data portal did not reveal an eviction protocol. The current General Order on Observation and Recording of Police Activity was adopted January 31, 2022, replacing the 2016 version. This policy clearly states, “A person may record public police activity unless the person engages in conduct that jeopardizes the safety of police officers or other persons in the vicinity; violates the law or incites others to violate the law; or interferes with police activity.” The policy goes on to say, “Such conduct does not constitute a basis to arrest, stop, detain, question, or frisk a person.”<sup>48</sup> Thus, the alleged conduct is already prohibited by policy.

### **Eviction Protocol Recommendation**

The PAB recommends that RPD:

- Immediately release a copy of the eviction protocol;
- Fully implement General Order 365 through training of all staff, release training materials, and permit PAB to audit the training. RPD policy already prohibits arrests for filming;
- Issue appearance tickets for violations but ban the use of force in response to passive resistance at evictions.

### **Conclusion**

RPD’s announced policy changes trend in the right direction toward interactions that respect the First Amendment rights of Rochesterians while protecting public safety. The recommendations in this report further protect the First Amendment rights to protest and assembly while promoting safer and less harmful interactions between police and protestors. RPD has the opportunity, by implementing these recommendations, to enhance transparency and follow community will. These recommendations, if implemented, provide for more durable and effective policy changes by closing loopholes, memorializing the changes in writing, and where necessary, protecting those changes in law.

The Police Accountability Board looks forward to RPD releasing the announced policies and providing the PAB with full access to information so that it can audit RPD’s compliance with those policies and its adherence to best practices.

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<sup>47</sup> *Meeks v. City of Rochester*, 6:22-cv-06163, 1 (W.D.N.Y. 2021).

[https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=BzC7E7NiuL0bRILmIMNS\\_PLUS\\_Q==](https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=BzC7E7NiuL0bRILmIMNS_PLUS_Q==)

<sup>48</sup> Rochester Police Department, “G.O. 365, Observation and Recording of Police Activity; and Seizure of Recording Devices,” (2022).