

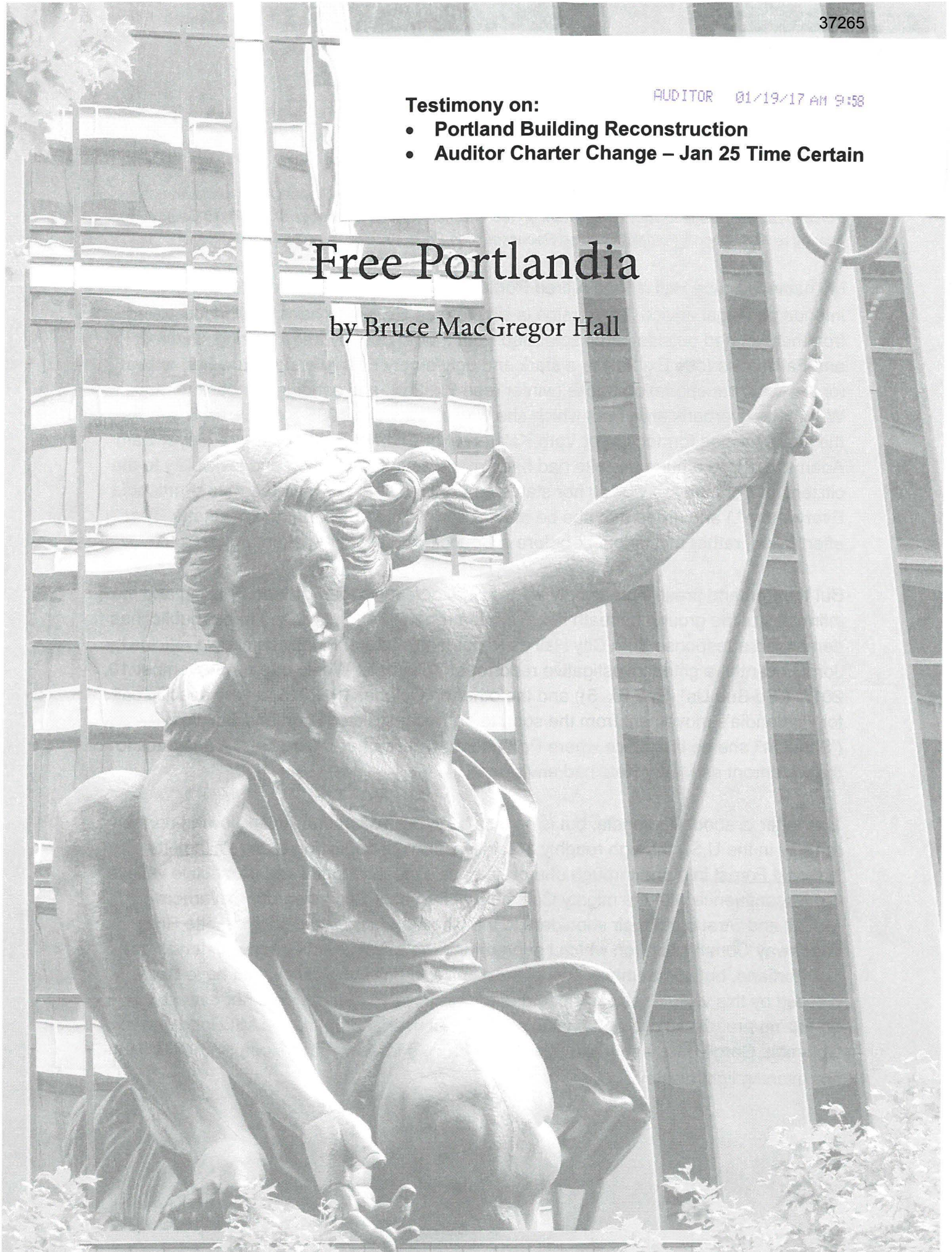
Testimony on:

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- Portland Building Reconstruction
- Auditor Charter Change – Jan 25 Time Certain

# Free Portlandia

by Bruce MacGregor Hall





### **To members of Portland City Council and Councilmen-**

For the hearing on January 25, 2017 *"Increasing Auditor's Authority"*

For the hearing on January 20, 2017 *"Portland Building Reconstruction"*

*Supplementation of the submission by Bruce M. Hall re movement of the Statue of Portlandia from the Portland Building ledge to Tom McCall Park on the Willamette River(or nearby) Cf. 10/21/15 Council hearing re Resolution ("Portland Building Reconstruction Project") D18518 and D78516*

My name is Bruce Hall, a long retired Portland lawyer. Nothing in the following is intended as legal advice. My mission is simple {see Ex. 1} - to have Portlandia moved from her isolated outside perch screened from Portlanders by trees (Spring, Summer and Fall leaves {see Ex. 2a}) or a stark and ugly/empty Fifth Avenue below her, except for the MAX transportation tracks (winter {see Ex. 2b}) -and sending her back to the Willamette riverbank area from which she was unloaded in 1985 {see Ex. 3a & 3b}. As the years passed former Mayor Vera Katz and her Chief of Staff and future Mayor Sam Adams, realized a huge mistake had been made as to her location and invisibility to the citizens of Portland -as well as her status as Portland's "Icon" ({see Ex. 4} is "Portlandia Everywhere".) and urged that she be moved back to the banks of the Willamette. That effort failed, rather mysteriously, before a Council vote could be taken.

But the Portland press increasingly, as the grim defects in the Portland Building and the infirmities of the ground beneath it, have been reported and disclosed to our public, has demanded a response from City Hall as to our icon's future. Finally came two articles by John Locanthi, a gifted investigative reporter at Willamette Week, one on September 10, 2014 ("So Sue Us" {See Ex. 5}) and the other on October 10, 2015, a very specific call for Portlandia's movement from the soon to be "reconstructed" Portland Building ('Shouldn't she be in a place where Portlanders can see her?' {see Ex. 6}) and back to the waterfront as Mayor Katz had envisioned.

This letter is about Portlandia, but is no less as to our Willamette River- flowing northerly (a rarity in the U.S.) through roughly 100 miles, from its beginning in the Willamette National Forest into and through one of America's most beautiful and productive valleys - to its confluence with the mighty Columbia at Portland. Back then our Governors McCall and Straub put their shoulders to the wheel and created the Willamette River Greenway Commission (on which I served) and the subsequent Greenway. It was not just Portland, but communities and farms all up and down the valley, that have been blessed by this vision {see Ex. 7}. And soon, we trust, Portlandia from her pedestal will be gazing proudly across and past this wonderful river and on toward Mt. Hood and the Columbia Gorge. Many east siders will then be able to view with (hopefully) her Tillikum-like evening light displays.

The Willamette at Portland is indeed surging back from years of neglect. Now we even hear of an enthusiastic new club dedicated to gaining Portlanders actual participation in her waters (Google: The River Huggers swim team {see Ex. 8}).

And just to make a point, Ted Wheeler (our new Mayor) swam across the downtown waters at least twice before his inauguration {see Ex. 9}.

But at this moment there remains continued silence from those currently in charge of Portlandia's fate. Bids to "restore" (the buzzword replacing "replace" or simply "wreck") have been let out for "restoration", and Howard Wright Co. of Seattle has already secured the Portland Building work- although what that will be we are not yet privileged to know.

I have briefly noted Mr. Locanthi's report of the role of Portlandia's sculptor, Raymond Kaskey of Washington DC- and his original 30 year copyright (plus now the next 70 years) as to a statue we Portlanders have already paid for and maintain and equitably own. Kaskey appears already to have had 30 years of revenues, and now, with the support of our past Mayor Hales, looks to another 70 years of tribute from a statue that we taxpayers and private donors have already paid for. Why?

But John Locanthi's Willamette Week articles tell you, in Mr. Kaskey's own words, what (having already been paid in full) he has expected and obtained from his dealings with his present defenders, the City attorney, and hidden supporters. Nor do we know whether Portland is charging Kaskey any rental for being on the obnoxious Portland Building, or not- and for maintaining Portlandia against the elements- or for its efforts to make Portlandia more visible. {See previous articles -Ex. % & 6} John Locanthi's articles have given you an insight into Mr. Kaskey's philosophy of "free enterprise" in all of this. (It is interesting that copyrights grant monopolies).

But why am I not describing exactly what is in these copyright documents? Because their contents have constantly been kept from our citizen taxpayers (and me). So what has Mr. Kaskey put into them? You will not get your answer as to how these contracts were negotiated from the Portland city attorney without Mr. Kaskey's permission {see Ex. 10}. What further payments will he receive? -What reimbursement for maintenance and usage should he be making to the city? And what rights, save the headline message in Mr. Locanthi's article "So Sue Us" do citizens and taxpayers have? (Ron Schmid of the Oregonian has also written strongly as to the Portland Building and Portlandia mess).



What was I able to discover from the City's side of the actual arrangements? Not much. The Assessor's office, which I have already mentioned has been both courteous and helpful, has previously indicated to me that it does not have any copies of the Portlandia copyright documents, which it should have been furnished from the inception of the Kaskey contract. The city's Ombudsman reports to the Assessor. If there have been irregularities as to procedure as now indicated, how is she to have investigated without key documents? The city Archives should have these articles. They don't, although that is their statutory function. I believe the Ombudsman office can be beefed up to build on its new limited but excellent work, and to better represent citizen concerns (in contrast to the City Attorney representing only the corporate city).

The report by the powerful Management and Finance Committee, under authority then of Mayor Hales, made no mention whatsoever in its first presentation to the City Council of even the word "Portlandia" or the Kaskey copyright (even though I had earlier (November, 2015) filed my position of record and expressed my view at the hearing that Portlandia should be moved at once to the Willamette).

Dissatisfied with the unwillingness by those controlling the agenda to even mention "Portlandia" at the November, 2015 City Hall hearing, I went to the Auditor's office to ask where I might find the Office of Management and Finance. I was told - the 14th floor of the Portland Building. When I arrived at the 14th Floor of that building, I was informed by the receptionist that this office operated behind secured doors -but that someone would be out to speak with me. When I indicated to "someone" that I wanted to learn what, if anything, Management had decided to do about Portlandia, I was advised by this spokeswoman that the file on Portlandia had already been passed on to the current Art Commission. So on I went.

The next day I phoned that Commission several times. I was told of employees who had previously worked on earlier issues regarding Portlandia, but was also told "I don't know" when it came to what was to become of Portlandia now, and about the copyrights that impact her so much. (I was also advised that very recently Mr. Kaskey, the sculptor and copyrights holder, had come from his Washington, DC residence to confer within the Commission). Next, I looked through published mission statements of our new Art Commission to see what might be there in relation to Portlandia, which is, after all, the most expensive artwork under its control. There appeared to be nothing. (I did note that there was much commendable language as to a new emphasis on Portland students and the arts – how about Portlandia in McCall Park?).

My next step was the City of Portland's Archive Center. Here there were some interoffice memos indicating the existence of these Kaskey copyrights- but no



copyrights. And that is where my investigation of copyrights stands today {see previous Ex. 10}. Presumably the City Attorney guards these copyrights and perhaps under “attorney - client” privilege will not disclose the copyright information I seek. {See Ex. 11}.

One added item- the managements of the newspapers that had put investigative reporters onto the Portland Building’s crisis and Portlandia, have not so far been willing to support them editorially. I then phoned KGW with my problem. The person to whom I spoke quickly stated “There are two copyrights as to Portlandia” -and hung up. By this I have assumed that possession of these alarming instruments, plus their owner, Mr. Kaskey, precludes any discussion, in the minds of some, whether Portlandia’s future should include us Portland citizens. However the copyright laws may not be so fearsome as the KGW spokesperson indicated, with proper legal representation by the media community {see Ex.12- Clayton Act}. The thesis that a copyright can determine an artworks’s location should now be tested, as well as what reimbursements for usages should be required of the provider of the location (us Portlanders).

I hope that you will decide that I have on many fronts been stonewalled -and that probably without sworn testimony questions as to Portlandia’s relationship to these contracts may never be known. Just the same, and with few gripes on their part from the media as to the stonewalling of their own various requests to the City of Portland {see Ex. 13a through 13h}, I have sent by certified letter to the City on June 23, 2016 my own request for documents {see previous Ex. 10}. If I ever receive anything, I will promptly advise them. I have since sent a letter to the City requesting that they acknowledge my previous request and that they provide the information available {see Ex.14}.

The rest is up to you, the City Council. I certainly believe that you should not only get the answers as to the Kaskey -City of Portland arrangements, but should act upon them now on behalf of all of us concerned Portland citizens and taxpayers.

As non-parties to the city’s contract with Howard Wright Co., we citizens can’t do anything at this time but to request {see previous Ex. 10 and 13} the city and Howard Wright Co. to extract Portlandia from their recently concluded arrangements -whatever these may be. That in turn will involve Mr. Kaskey and his copyrights -although I personally do not see how such restrictions could apply to the change of location of a statue, the original payment for which has long ago occurred, from its perch on a commercial office sized ledge to a hopefully wonderful location near Tom McCall Park. {See Ex. 15} Which is an illustration of Portlandia’s big sister “strutting her icon” (New York style). While New York’s Miss Liberty and Seattle’s Space Needle are on much



grander scales than Portlandia's, she in turn can have a unique visibility and vitality before our citizens from atop her appropriate pedestal within Tom McCall Park far superior to theirs.

Since Mr. Kaskey's approach seems to be constantly on making many years worth of money out of Portlandia, a well placed Portlandia on the waterfront may (ironically) increase his copyright revenue. And when the day comes to negotiate (hopefully for us) with Mr. Kaskey as to future (and past) copyright revenues, the issues of what shares of the revenues from Portlandia's return to the waterfront should be earmarked for Kaskey's use would then be decided.

Attached are some waterfront photos to illustrate some possible sites for Portlandia, the first showing a large space (near fountain area) to which Portlandia (and her future pedestal) can be safely placed during her own reconstruction process -behind the protective cyclone wiring already in place {see Ex. 16}. (Obviously much more professionally presented photos can be obtained by you.)

A final thought... Once the tearing apart ("reconstruction") of the Portland Building commences as now presently planned, what is to spare Portlandia's very thin skin ("about the thickness of a dime" -Regional Arts & Cultural Fact Sheet {see Ex. 17}) from any falling debris or objects from as high as the building's 15th Floor? Get her out of there -now!



## EPILOGUE

My efforts on behalf of Portlandia began some years ago- after having incorporated "Free Portlandia". But I only reached my current level of activity after I read in Willamette Week John Locanthi's articles in 2014 (noted above) about sculptor Raymond Kaskey and his first 30 year copyright involving Portlandia, now being followed by another copyright for the coming 70 years. As you have seen, I have learned basically nothing about these contracts nor what the decision to "reconstruct" the commercial Portland Building, only recently announced, followed by a contract with Howard Wright Co. of Seattle means for Portlandia and her citizens. Our citizenry, which paid for both (considering the time and investment involved in these failed investments) -have been knowingly uninformed beyond "mere announcements". All of this is apparently none of our business -until a 'fait accompli' is in place.

I was 92 in December. Commencing in 2013 I have had three operations, the second a triple bypass surgery, which weakened me, and the third amputation of all ten toes - which has certainly physically slowed this effort to unmask Kaskey's copyright, to end City Hall's obfuscations, and to get Portlandia to the waterfront -now, and certainly before construction starts. I am classified "disabled".

The unrepresented in this drama are not the City and Mr. Kaskey, but the very large group that constitutes a particular class of citizens and taxpayers of our City. When we can't get basic information, it is our City Government and City Attorney disadvantaging us. The direction of major funding provided by the citizens without their knowledge and consent is wrongful. Where are these copyrights I have requested from the City?

In all this, and if the new Council would take over this struggle, I would hope to assist in any way I can under my physical circumstances, along with my files, records and pictures (showing a different view than the Oregonian surely does). My contact is at [FreePortlandia@mail.com](mailto:FreePortlandia@mail.com).

The choice is between a drab cement-splattered figure adjacent to a wall of a boring commercial building now being "reconstructed" and Portlandia commanding -as our icon -the banks of our river! **Free Portlandia!**

-Bruce Hall

- 1) My appreciation to Miss S. Hyndshaw, who has helped me put together these documents and exhibits.
- 2) As to my own background, please look at my LinkedIn Profile: [https://www.linkedin.com/in/bruce-macgregor-hall-8aa146133?trk=nav\\_responsive\\_tab\\_profile\\_pic](https://www.linkedin.com/in/bruce-macgregor-hall-8aa146133?trk=nav_responsive_tab_profile_pic)



# Free Portlandia! And put the Portland Building out of its misery: Letters to the Editor



By **Letters to the editor**

on May 10, 2015 at 12:08 PM, updated May 12, 2015 at 11:21 AM

**Free Portlandia!:** Years ago, I undertook a state nonprofit filing under the name "Free Portlandia" to advocate moving Portland's iconic statue from the disastrous **Portland Building** down to the waterfront — onto which she was disembarked and then perched in cement upon a second-story ledge, commencing an unhappy marriage to that building. As I write this letter, Portlandia is commencing her annual disappearing act behind a thick canopy of London plane trees.

Renovating the building may cost \$175 million, and this should be Portlandia's moment of emancipation. I would hope The Oregonian/OregonLive would provide much-needed leadership in returning her to the waterfront, trident and all, away from a location that has been described in this newspaper as an "eyesore." Quite apart from the defects of **the Portland Building itself**, Portlandia must endure an artistic backwash as she overlooks Southwest Fifth Avenue, which is split by MAX tracks, with narrow car and bus lanes on each side. As for the Portland Building itself, the editorial board has written, "The building's troubled construction, engineering, seismic fitness and repair history, as well as any plans for its overhaul or replacement, *should be fully in the public's hands. Ditto for the destiny of Portlandia*" (emphasis mine). As for the seismic allusion, the first object to go in a seismic event will be Portlandia — right onto Fifth Avenue! To say that Portlandia is the city's icon is to state the obvious. One can hardly go a day (and with those "Portlandia" television skits, some evenings) without Portlandia showing herself — first in the hearts of her citizens and then to the greater world beyond Portland.

One emphatic example: I was at the 2014 Portland Timbers opener when **a three-story tifo of the statue was raised to the delight of the fans.**

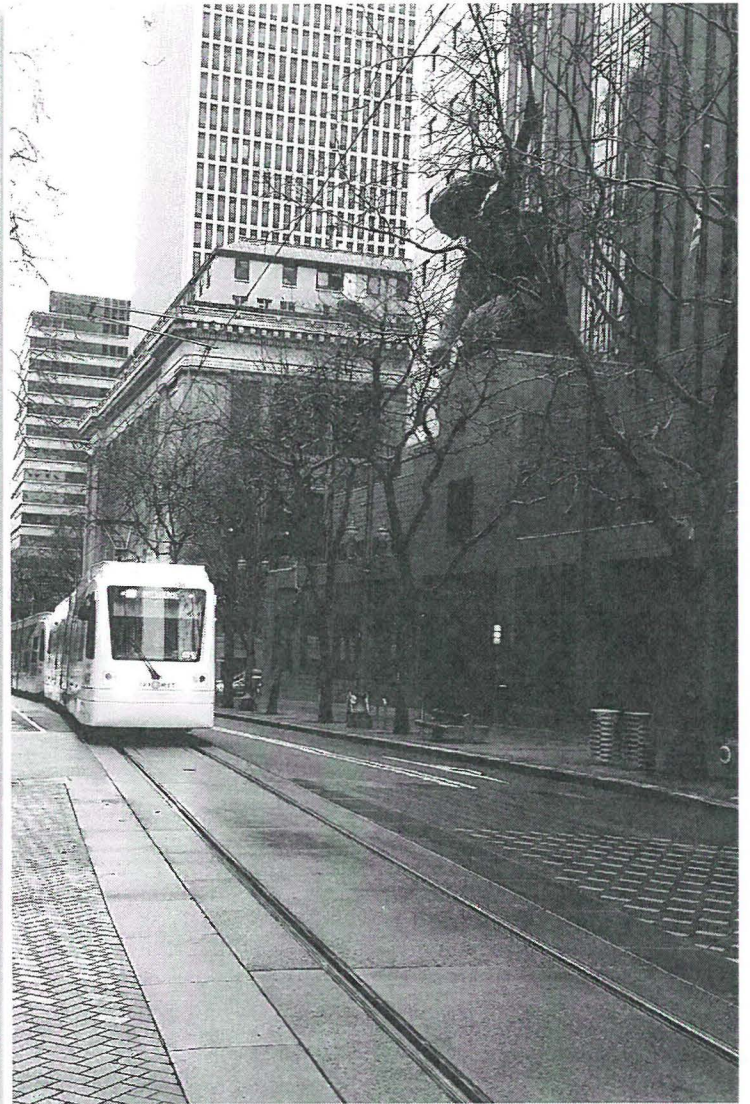
**Bruce Hall**

Southwest Portland

2A - Summer



2B - Winter









<https://pdxccentric.wordpress.com/app6-how-portlandia/>



On the overcast Sunday morning of Oct 6<sup>th</sup> the nervous wait and planning were over and a joyful surprise greeted the Kaskeys, Hall and all the other key players – an armada of private boats gathered around the dock at Gunderson’s all eager to escort their new first lady upriver. Spirits ran high as the public tooted and applauded their first view of the full-size *Portlandia*. The Portland people loved *Portlandia*! More than 200 boats cruised beside the gleaming goddess who rode solo on her barge. News helicopters flew overhead, the fire boat jetted arcing sprays of water. Under the Fremont she went, under the crowd of well-wishers who stopped their cars on the side-lanes of the upper deck to get out and have their first view. Onwards into the city every bridge was packed with a festive audience. Mayor Bud joined with the flotilla in his stand-up canoe, surely “Whoop-whooping” along with most every other Portlander. Pulling alongside the Taylor St. seawall Kaskey disembarked from the raucous Sternwheeler to an ovation from the massive crowd that gathered in the waterfront park around the waiting flatbed truck. Did Portland care for *Portlandia*? Hell yes! Kaskey later commented, “This was the best day of my career!”



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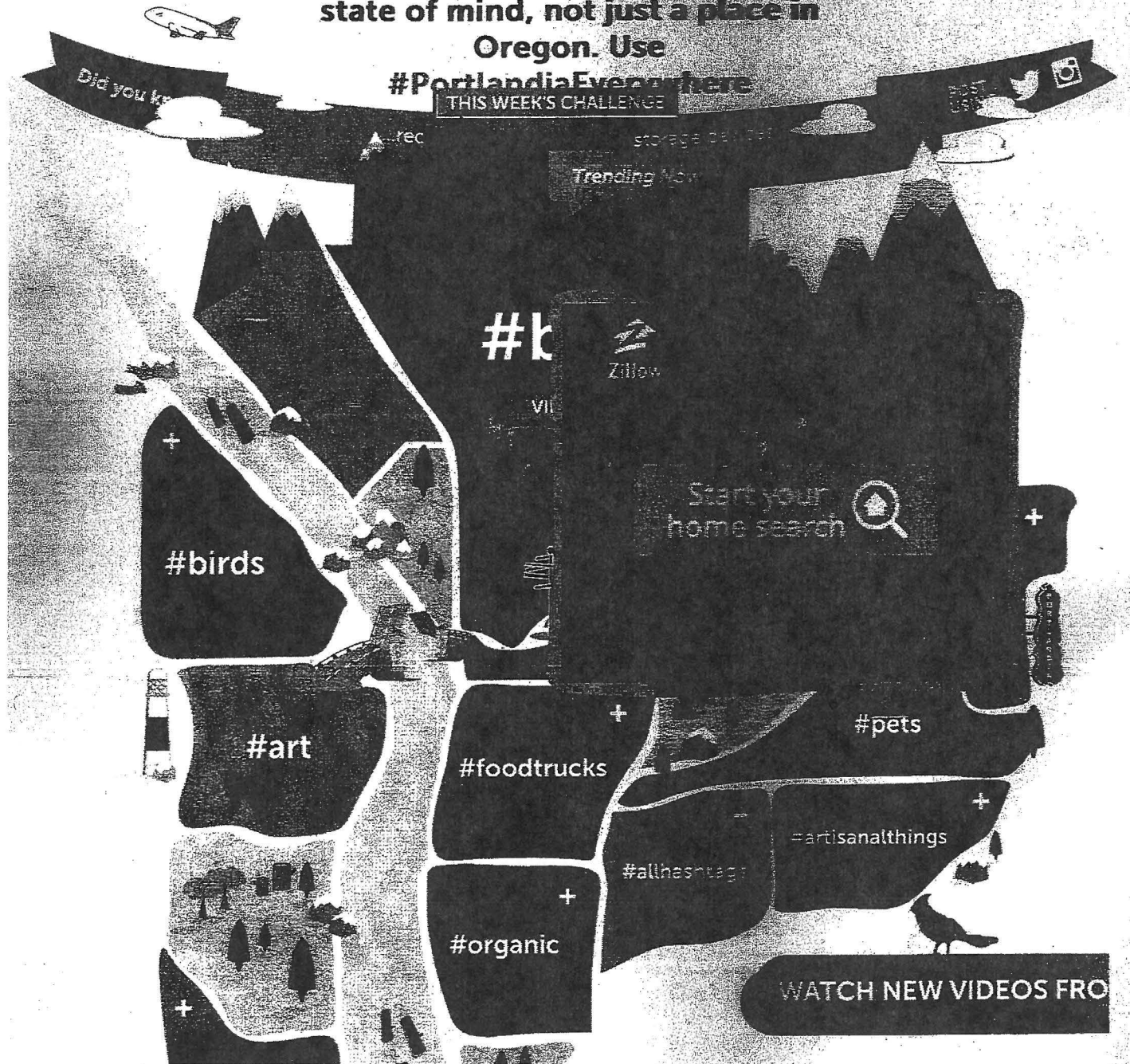
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THIS WEEK'S CHALLENGE



<http://www.portlandiaeverywhere.com/#1/portlandiaeverywhere>

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# So Sue Us

Why the *Portlandia* statue failed to become an icon.

By JOHN LOCANTHI

Updated September 9, 2014

Published September 9, 2014

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This story isn't about her.

Rather, it's about the nation's second-largest hammered-copper statue, *Portlandia*, which turns 30 next year. And about why the 6.5-ton, trident-wielding lady based on our city seal keeps such a low profile.

You would think the image of *Portlandia* would adorn postcards, photos and T-shirts. She doesn't. That's because her maker, Washington, D.C.-based sculptor Raymond Kaskey, has, over the past three decades, often threatened to sue those who dare use photos or illustrations of *Portlandia* for commercial purposes.

That's possible thanks to a policy adopted 30 years ago this week by the Metropolitan Arts Commission, now known as the Regional Arts & Culture Council, when it voted to allow artists to retain the copyrights to their publicly purchased artwork.

"It was a forward-thinking decision," says Kaskey, who was paid \$228,000 in public funds and reportedly another \$100,000 in private donations to create *Portlandia*. "Not many cities respected artists' rights in those days."

The RACC agrees. "Many artists have had their works taken advantage of in the past," says Peggy Kendellen of the RACC. "It's important to protect the rights of the artist."

Some people—including artists—don't agree.

"This is absolutely ridiculous," says John Goff, a local art publisher. "[Kaskey] made that statue with public money. He should receive what he was paid to make it and not a penny more."

"Public art should be in the public domain," says Chris Haberman, an RACC-contracted muralist and co-owner of the Peoples Art of Portland gallery.



10/25/2016

So Sue Us - Willamette Week

"It is unfair to have a situation where artists are afraid to make a painting of a statue or include public art in the background, or members of the public are afraid to take photos with the statue and post them on Instagram," says Kohel Haver, a local copyright lawyer who represents artists. "The [city] didn't realize it was giving away the rights to an icon."



*Portlandia* was unveiled atop the famous, postmodern Portland Building on Oct. 6, 1985. Tom Wolfe, covering the story for *Newsweek*, came to town for the grand ceremony as the city celebrated a crowning artistic achievement. Nearly 30 years later, architect Michael Graves' 15-story building—once considered a groundbreaking piece of art itself—now pops up on lists of the world's ugliest buildings, while *Portlandia*—Wolfe called her the "Copper Goddess"—crouches in relative anonymity.



### *Portlandia*

### *Body of Evidence*

### *Portlandia*

In 2012, Laurelwood Brewing put the statue's likeness on the label of a new beer, Portlandia Pils. The brewery assumed the public had a right to use *Portlandia*'s image because it was an "icon." Laurelwood later reached a cash settlement with Kaskey, paying for the rights to use a drawing of the statue.



10/25/2016

So Sue Us - Willamette Week

"To make some money—that's the single-best reason," Kaskey, who also counts the National World War II Memorial in Washington, D.C., among his intellectual properties, told *WW* in a 2013 article about the negotiations. "It's called capitalism."

Kaskey says he has no intention of ever selling his rights to *Portlandia* to the city.

However, Kaskey did allow *Portlandia* to be used in a brief appearance in the opening credits of the TV show *Portlandia*. One of the show's producers said the negotiations were lengthy and that one of the conditions called for the statue not be used "in a disparaging way." The producer didn't know if Kaskey was paid. Kaskey declined to comment on the deal, or to say how much he's made in licensing through the years.

Kaskey has also allowed the creation of a line of *Portlandia* brooches, made by local crafter Liz Yerby.

"I actually just emailed [Kaskey] directly asking for permission, and he responded very quickly and very politely," Yerby says. "He gave me permission to use the image, granted I keep the copyright information intact with the piece, and pay him a licensing fee if I sold 10 pieces."

She has yet to sell any of the \$6 brooches, and has had to explain what the statue is to friends to whom she's gifted them.

"In a way, it's nice that the *Portlandia* image isn't overused and used on tacky souvenirs," Yerby says, "but it is kind of sad no one can recognize her."

How can a work of public art, located on public land and funded by taxpayer money, be the intellectual property of an individual artist? Actually, it's not that uncommon.

Portland was a leader in first allowing artists to retain copyright on all public art, but other cities, from Seattle to Miami, have followed suit.

In Portland, the decision evolved during a series of heated debates over the summer of 1984—sparked by a poster and a postcard.

The 1978 "Expose Yourself to Art" poster featured then-future Mayor Bud Clark holding his trench coat open and appearing to expose himself to a piece of public art, the downtown statue *Kvinneakt* ("nude woman" in Norwegian). The poster had sold some 250,000 copies by 1984. There was one problem: The poster did not contain an attribution to the sculpture's artist, Norman J. Taylor, who expressed concern that the city did not adequately ensure he was credited.

The second catalyst was a postcard of the then-unfinished *Portlandia* that Kaskey wanted to distribute. The city attorney advised Kaskey's lawyer that it was a violation of Kaskey's original contract with the city of Portland, which retained the rights to *Portlandia*.

In March 1985, the city amended Kaskey's contract for the unfinished statue to transfer the copyright back to Kaskey, with the city keeping only the right to use it for certain publicity purposes.

"In the early 1980s, copyright was not as big a deal as it is today, and it certainly wasn't in the forefront of public consciousness the way it is today," says Lydia Loren, a copyright law professor at Lewis & Clark College. "Even the amendment reflects that the only kind of reproductions [the parties involved] were contemplating were reproductions for 'publicity purposes.' But, in the end, the amendment is also clear that the artist is retaining his copyright."

"There is always going to be a debate about the rights to public works, but this is our standard operating procedure," says Eloise Damrosch, executive director of the RACC. "It's important to protect the integrity of the art and prevent it from being used in some schlocky merchandise."

Other artists aren't happy with Kaskey's brand of capitalism.

Amos Latteier, a Montreal artist and lecturer, had to get Kaskey's permission to use the likeness of the statue for his Be *Portlandia* project in 2003. That project, which Latteier had to assure Kaskey he would not profit from, involved the creation of an art installation reminiscent of *Portlandia*'s perch on the Portland Building and photographing people posing on it with a trident.

"In general, I have an unfavorable view of copyright law," Latteier tells *WW*. "It doesn't benefit most artists or the process of cultural creation."

"Likewise, I am generally opposed to rent-seeking behavior."



"Copyright has its origins in censorship and thought control," says Stephan Kinsella, a Houston intellectual property lawyer and author of *Against Intellectual Property*.

Kinsella cites odd outcomes such as the city of Paris' 2003 move to copyright the night view of its signature structure. "You could be sued by the city of Paris for using a photo of the Eiffel Tower taken at night—and only at night—without its consent," he says.

Similar things have happened to other public art. Last year, a federal court awarded sculptor Frank Gaylord of Vermont nearly \$700,000 in damages after determining the U.S. Postal Service did not have permission to use a photograph of Gaylord's 1995 work "The Column," a group of sculptures of U.S. soldiers and sailors that is part of the Korean War Veterans Memorial in Washington, D.C., on a commemorative stamp.

In 2009, artist Shepard Fairey was forced to pay a settlement after it was determined that the photo on which he had based the famous "HOPE" poster used by the Obama presidential campaign in 2008 was the intellectual property of an Associated Press photographer.

To be sure, *Portlandia*'s copyright restrictions have provided a nice income for Kaskey. But they also limit marketing possibilities for the city, which seems to understand it needs such icons. That's why it acquired the rights to the famous White Stag sign at the west end of the Burnside Bridge in 2010. With *Portlandia* in Kaskey's shackles, the Old Town sign remains one of the most instantly recognizable parts of the Portland skyline.

The city charges a small fee for commercial use of the sign—raising \$1,000 in the last fiscal year.

"Every time this sign appears in national magazines or [on televised] Blazers games, it is the city of Portland that gets the recognition, not the company," said then-Mayor Sam Adams.

Someday, the same will be true of *Portlandia*—but not until it enters the public domain, 70 years after the statue's maker and owner, Kaskey, dies.





# Where Should We Move Portlandia?

The Statue of Liberty's younger, shorter sister celebrates 30 years of being somewhat visible on the Portland Building.

By John Locanthi

Updated October 10, 2015

Published October 10, 2015

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Portlandia, the trident-wielding, Hellenic statue celebrating the rich history and tradition Portland does not have, turned 30 this week. Mayor Charlie Hales, former mayor Bud Clark and others will attend as Portland celebrates its copper goddess, the nation's second-tallest statue of her kind after the Statue of Liberty. But she may not make it another thirty more on her perch on the Portland Building, and that would be a good thing.

The future of the Portland Building is very much in doubt. The late Michael Graves' art deco design—consistently listed as one of the nation's ugliest buildings—is in dire need of many improvements despite being a young 32 years old. The cost of renovating this building was estimated at \$95 million last summer. Per the *Oregonian* earlier this summer, that estimate is now up to \$192 million as city planners realized that not only does it need better lighting, better windows and a better water system, but it also won't survive an earthquake. Some say repair it, others say tear it down and replace it with a building that is both aesthetically pleasing and functional. (The Portland Building being on the National Register of Historic Places makes the latter option more complicated.) All of this raises an interesting question: What's to be done with the statue of Portlandia?

Portlandia is unfortunately tied to this building through the percent for public art program. Most previous articles and news coverage have focused on the issue of her copyright and the litigious Washington, D.C., based sculptor who owns it—including a fantastic cover story in *Willamette Week's* fall arts guide last year—but that's only part of the problem. Her location, to put it mildly, stinks.

Crouched upon her perch along 5th Avenue-facing side of the Portland building, she gazes out to across the street and into a tall, dull banking building. You can walk right under her in the spring and summer without even seeing her through the dense foliage. The best vantage point is by going to the second floor of that building across the street.

Where the White Stag sign has become Portland's equivalent of Pike Place for establishing shots, Portlandia is relatively unknown. It's hard to get an aerial view of statue stuck near the bottom of tall buildings, and we know street view isn't of much help



either. (The networks would probably have a cease and desist letter coming their way even if they pulled it off.)

There was a strong effort in 1998 by then-mayor Vera Katz to move Portlandia moved to the waterfront. From Tom McCall Waterfront Park, she'd be far more visible to city-dwellers. The nearby water would provide better feng shui than being a rando with a trident in the middle of Portland's concrete jungle. The move would've made a lot of sense. This effort ultimately failed due to an inability to muster enough votes on the city council.

Portlandia was supposed to become an icon. The statue is based on the Lady of Commerce in the Portland city seal. Shouldn't she be in a place where Portlanders can see her?

### Where do you think we should move Portlandia?

- The Waterfront
- Keep her on the Portland Building, which is cool and totally not ugly
- Pioneer Square
- The Rose Quarter
- Outside Providence Park
- On top of Burnside 26
- On an island in the Willamette like Statue of Liberty
- Somewhere else! Somewhere else!

### COMMENTS

16 Comments Willamette Week

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Exhibit 7A



Exhibit 7B

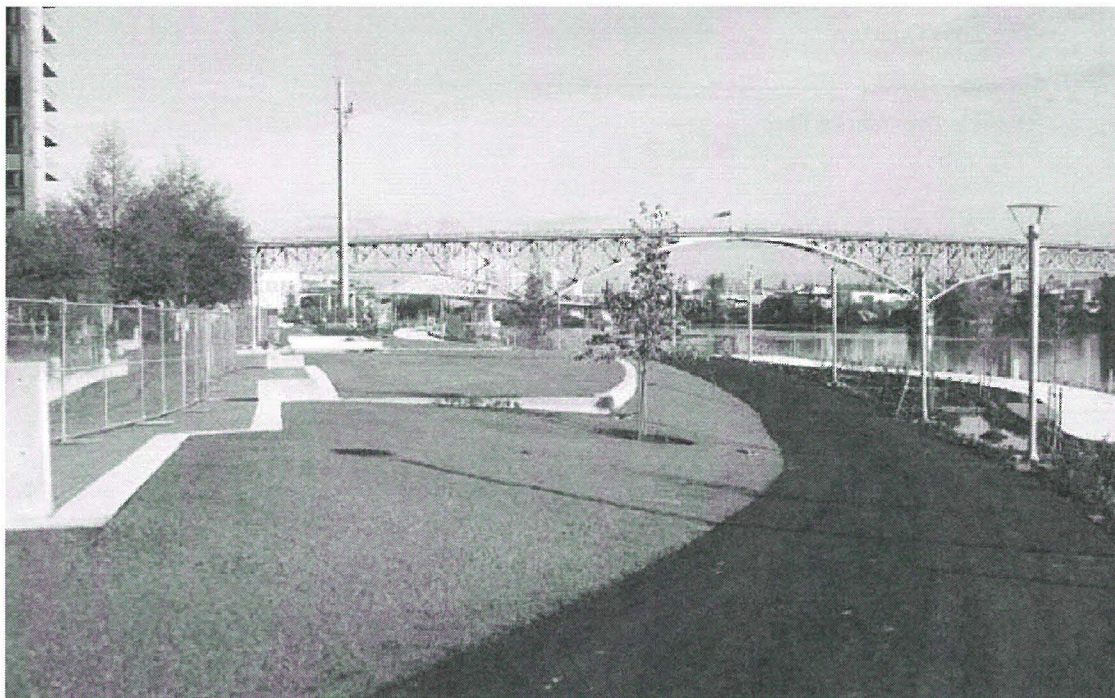




Exhibit 7C

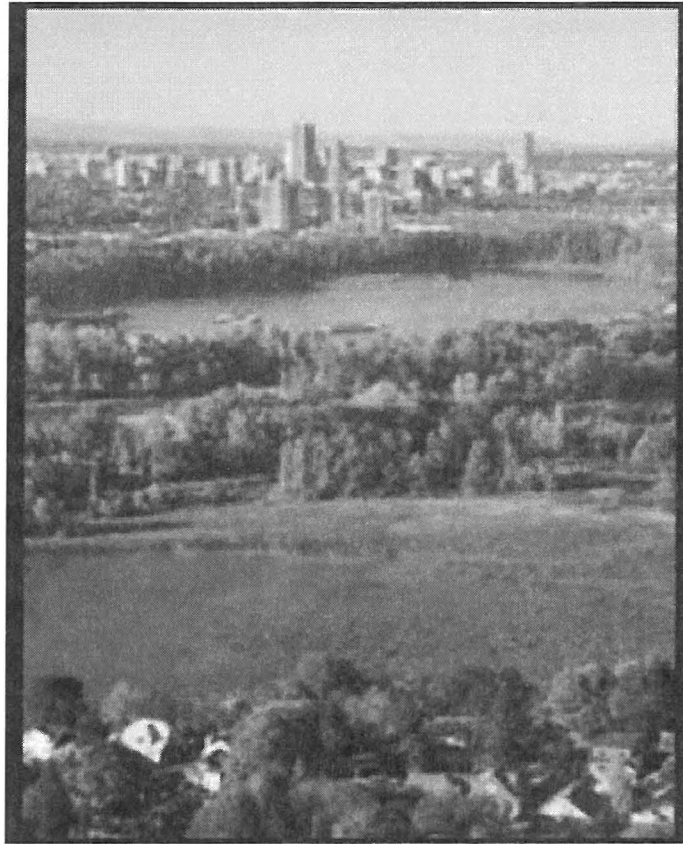


Exhibit 7D





HUMAN ACCESS PROJECT ABOUT EVENTS PROJECTS SWIMMING NEWS CONTACT DONATE

## HAP River Huggers Swim Team

Please fill out a [waiver form](#) in advance.

Swimming a lap takes on a whole new meaning with the newly formed Human Access Project River Huggers Swim Team. River Huggers is a group of early risers who together swim a lap across the Willamette River and back before work. This is not designed as an A Type swim group, this is a fun, intermediate level swim.

The group's goal is to swim together as a pod and create public awareness that it is safe to swim in the Willamette River. The River Huggers meet at 05 SE Madison at the [Fire Station on the Eastside Esplanade](#). It takes about 40 minutes to swim across to the west side and back, a 1/4 mile each direction.

The swim is for intermediate level swimmers and above. Safety paddlers will accompany the group to ensure safety. Each swim costs \$3 to participate or you can pay \$50 for the season. Swim caps cost \$15 and include your first swim!

Please know that this is **not** a competitive swim; however, it **does** require intermediate swim skills. Here are a few things to know about our river swims:

**How the swim works:** We all swim as a group to the west side (Tom McCall Beach) and wait for everyone to arrive, then swim back. You can also get out at the beach and walk back over the Hawthorne Bridge (bring your flip flops: it can be rocky on the beach and no fun to walk across the bridge barefoot). Advanced swimmers can make a second lap if they wish.



AVAILABLE FOR \$50 AT SWIM



AVAILABLE FOR \$15 AT SWIM





10/25/2016

## River Hugger Swim Team

**When we swim:** Monday, Wednesday, and Friday mornings at 7 a.m. New this summer is a Thursday after-work swim at 5:45 p.m.

**Safety first:** We can have someone swim along with you if you'd like. Safety kayakers will be near and ready to come to your aid, should you need a rest. Kayakers give a safety talk before the swim to let you know how to signal them.

**Swim gear:** Some people feel more comfortable in a wet suit, but many swimmers wear just a swimsuit. Goggles and a brightly colored swim cap are necessary. The Human Access Project has bright green River Hugger swim caps you can purchase for \$15 (includes your first swim). Fins can be helpful and are encouraged if you are afraid of being too slow for the group. You will also see swimmers with orange buoy bags (Human Access Project sells these for \$50): you can tote your own personal belongings in these, and they make you more visible.

**Where to find us (online):** Look for us on Facebook as the Human Access Project (HAP). You might see our latest swim picture posted! You can also sign up for the next swim (each swim is created as a Facebook event), and see any media or other relevant information. Want to see more swimmers out there? Tell your friends to join us! The more, the merrier.

Most of all, have fun! This is *our* swim in *our* beloved river.

We need volunteer safety paddlers! Every volunteer who comes out to provide eyes on the water for the River Huggers will receive a coupon for a free Chipotle Burrito! Thanks Chipotle! If you or a friend is interested in being a safety paddler please contact safety lead Archie at [archie.m.blakey@gmail.com](mailto:archie.m.blakey@gmail.com)

-River Huggers featured on Oregon Public Broadcasting -

<http://www.opb.org/news/article/portlands-willamette-once-heavily-polluted-now-home-to-a-swim-team/>

-Oregonian covers River Huggers -

[http://www.oregonlive.com/portland/index.ssf/2014/08/these\\_people\\_swim\\_across\\_portl.html](http://www.oregonlive.com/portland/index.ssf/2014/08/these_people_swim_across_portl.html)

-Willie Levenson on the River Huggers on Intertwine Blog -

<http://www.theintertwine.org/blog/swim-party-purpose>

-KGW-8 and Drew Carney Visit the River Huggers -

<http://www.kgw.com/videos/entertainment/events/drew-carney/2015/06/24/out-and-about-with-the-river-hugger-swim-team/29209351/>

-River Huggers on KATU - <http://www.katu.com/news/local/human-access-project-willamette-river-swim-beaches-307352121.html>

-For all the latest River Hugger News follow Human Access Project on [Facebook](#)!

-For information on Willamette River Water Quality [click here](#)

-For information on Willamette River Water Temperature [click here](#)

Spread the word! For more information contact [archie.m.blakey@gmail.com](mailto:archie.m.blakey@gmail.com)



Interested in being a corporate sponsor of the River Hugger Swim Team? Contact [willie@humanaccessproject.com](mailto:willie@humanaccessproject.com)

### Sign Up for Email Updates

Email \*

First name \*

Last name \*

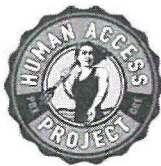
\* = required field





[HUMAN ACCESS PROJECT](#) [ABOUT](#) [EVENTS](#) [PROJECTS](#) [SWIMMING](#) [NEWS](#) [CONTACT](#) [DONATE](#)

## Embrace your river



The Willamette River is our home. We live on or near its banks and cross it every day. Yet, for generations we humans have mistreated, neglected, and scorned it. Well, the tide is turning. Together with others, the Human Access Project (HAP) is helping people "get into" this natural treasure - to enjoy it, preserve it, and cherish it for generations to come.

***Join the riverlution!***

## Mission, Vision and Path

**VISION** A city in love with its river.

**MISSION** Transform Portland's relationship with the Willamette River.

**PATH OF OBJECTIVES**

1. Build it: create more public spaces, beaches and access points to the Willamette River in downtown Portland.
2. Use it: inspire Portlanders and visitors to connect with the Willamette River.
3. Love it: support conservation, education and stewardship of the Willamette River and Watershed.

## Create a human habitat

Let's face it, even if you wanted to swim in the Willamette River in downtown Portland, how would you do it? There's no easy way to get into the water. Frankly, that's crazy. Here we have a natural treasure running through the heart of our city and no easy way to enjoy it.



**Sign Up for Email Updates**

Email *	<input type="text"/>
First name *	<input type="text"/>
Last name *	<input type="text"/>
* = required field	
<input type="button" value="Submit"/>	<input type="button" value="Clear"/>



It's like this: if you want birds to come into your yard, you put up a bird feeder and plant trees to create a bird-friendly habitat. The same is true for humans and the river. If we want to make it easy for people to swim and recreate in the Willamette we need to create better access and a more inviting environment.

That is the path we are on. Follow us!

## The decline of Portland's river is over

*The following is an excerpt from, "PORTLAND A Historical Sketch and Guide" by Terence O'Donnell and Thomas Vaughan.*

*"In the 1920s, the river through downtown was lost. From the beginning, the city's water playground had also been the city's sewer. Boat clubs declined the use of the river as did swimmers, lovers, fishermen and boys in skiffs. Also, now the river steamers stopped plying to wharf towns, their wakes no longer fanning the surface, their place taken by other forms of transportation.*

*Finally, in 1929 the downtown wharves were demolished and a seawall was built. The Willamette became a ditch and almost entirely disappeared from the city's consciousness. In the Old World, every river had its god and the people honored him and carved his image on bridges and banks. Perhaps we will someday repay in part the debt we owe the Willamette for the many years it has given Portland both pleasure and profit."*

The Human Access Project is part of the movement to reclaim the Willamette River - to improve access to it, restore its health, and preserve it as a natural resource for generations to come.

## Our River (Willamette River Song)



Human Access Project HAP

Our River (Willamette River Song)

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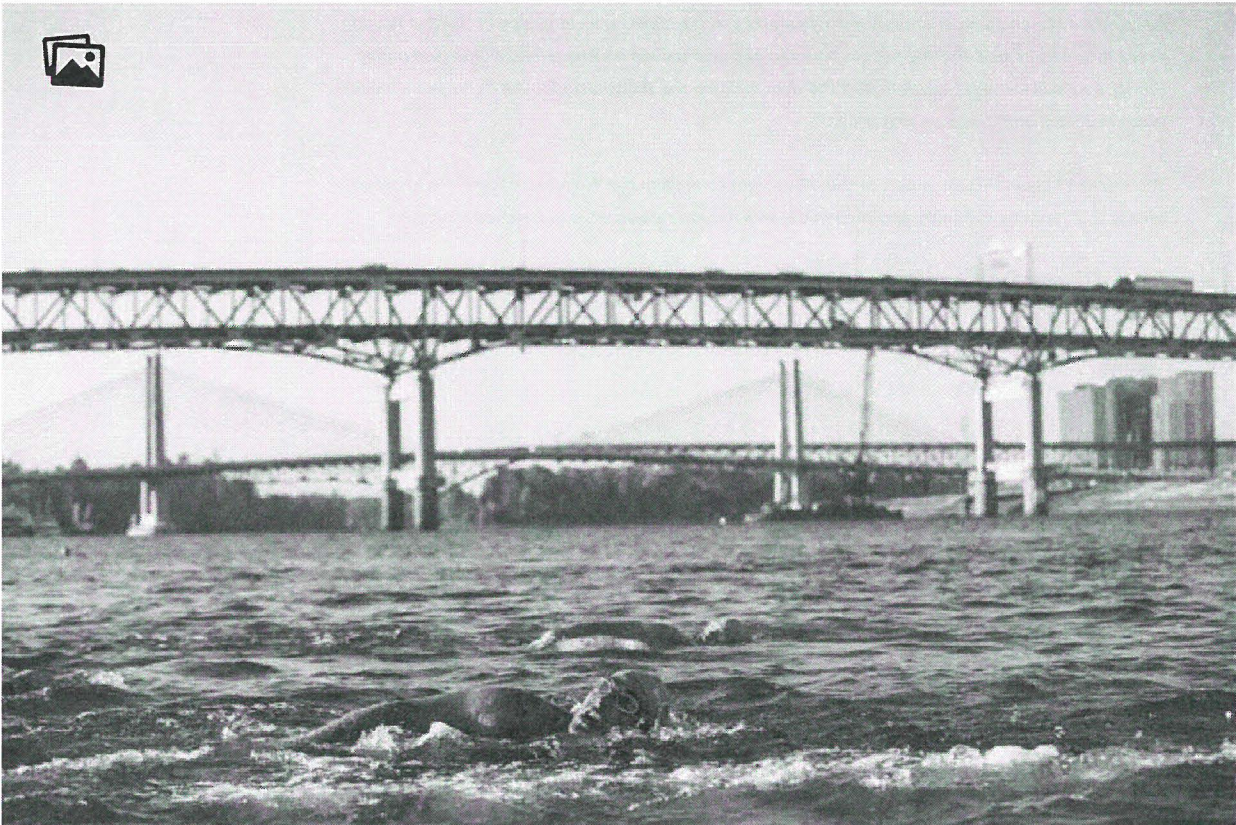
## News

[Local \(/News/Topic/Local/\)](#) | [Environment \(/News/Topic/Environment/\)](#) | [News \(/News/Topic/News/\)](#)

# Portland's Willamette, Once Heavily Polluted, Now Home To A Swim Team

by **Amelia Templeton** (</contributor/amelia-templeton/>) ([Follow](#)) and **John Rosman** ([/contributor/john-](/contributor/john-rosman/)

[rosman/](#)) ([Follow](#)) OPB | Aug. 28, 2014 5:30 p.m. | Updated: Feb. 18, 2015 8:01 a.m. | Portland



This summer the River Huggers Swim team has been crossing the Willamette River three times a week in the name of fun and awareness.

Crossing Portland's Hawthorne Bridge around sunrise this summer, you might spot something slicing through the water below: dozens of swimmers in matching green swim caps.



A group called the River Huggers

([http://www.humanaccessproject.com/events/river\\_hugger\\_swim\\_team](http://www.humanaccessproject.com/events/river_hugger_swim_team)) has been swimming the Willamette three times a week, and they say the water is cleaner than you think.

At 7 a.m. on a recent morning, about 20 men and women gather on the Portland Boathouse dock southeast of the bridge, pulling off their towels and sliding their goggles into place.

"I do it because it's a great way to start my day," said Kathy Sheppard, a regular member of the River Huggers swim team.

"The hardest part for me is jumping off the dock and making contact with the river, but once I'm in it's just fantastic. It tastes good, smells good, feels good," she said.

Joining the River Huggers is easy. The group meets Mondays, Wednesdays and Fridays to swim from the dock to Tom McCall Park and back, a half-mile in all. Anyone who's an intermediate swimmer or above is welcome, and a pair of safety kayakers follows the group in case anyone gets in trouble. Recently, a few swimmers donned flippers for a little extra help making it across.

Willie Levenson, the founder of the River Huggers, said the swim is more about advocacy for the river than competition or speed.

"There's no shame in fins," he said. "It's all about getting in the water, and if it's helpful for you to keep up with the pod, all the better."



Human Access Project founder Willie Levenson.

John Rosman/OPB

Levenson has dark hair and wears a shell necklace. He's the co-owner of Popina, a swim shop in town, but his mission in life is changing the reputation of the Willamette River.

Levenson is the founder of the Human Access Project (<http://www.humanaccessproject.com/>), the nonprofit behind the Big Float, an inner tube parade that gets thousands into the river every July. Where other people see a scuzzy, urban waterway, Levenson sees a buoyant playground.

"I'm not going to quit fighting and having fun until Portland loves the Willamette River like I do," he said.

The River Huggers swim team is his latest project.

Levenson figures getting people to swim in the river is a good way to turn them into environmental stewards. But first, he has to convince Portlanders the water is clean. He's surrounded by skeptics.



Back at the dock, a crew of four rowers glides up in a narrow boat. “Hands on, up and over heads and up,” Celia Heron cried as they lift the quad over their shoulders.

Heron has been rowing on the Willamette for years. But would she swim in it?

“Ick!” she said. “I know there’s a lot of heavy metals in the bottom. It’s just not a clean river.”

But while the river has a bad reputation, the Oregon Department of Environmental Quality and the Oregon Health Authority both say the Willamette is clean enough to swim (<http://www.oregon.gov/deq/wq/pages/swimwillametteriver.aspx>) in, though they suggest you might want to shower afterward.

Doug Drake has worked at DEQ on restoring the lower Willamette and monitoring water quality there for more than 20 years. He said swimming is safe.

“We do see pesticides. We do see heavy metals and some organic pollutants, but generally at really low levels,” he said.

Drake said one 10-mile stretch of the Willamette is a Superfund site: the reach between the Broadway Bridge and the confluence with the Columbia River. But even there, the Oregon Health Authority concluded it’s safe to swim. That’s because the toxic pollutants aren’t floating in the water, but lying in the sediment at the bottom of the river.

“The water column contaminants just aren’t a threat to people playing in the water,” Drake said.

He added that exposure to bacteria like E. coli is the greatest health concern to people swimming in the river. The main source of bacteria used to be sewage that overflowed into the river almost every time it rained. Now, Drake said a billion-dollar pipe project prevents most of those overflows.

“We can see noticeably in the last 10 years how much the big pipe has done to improve water quality. That really in particular helped with bacteria,” he said.

The city monitors bacteria at eight sites and posts the results online ([http://www.portlandoregon.gov/bes/waterquality/results.cfm?location\\_id=7131](http://www.portlandoregon.gov/bes/waterquality/results.cfm?location_id=7131)), according to Drake. The counts have been low all summer long, at a level that doesn't pose a risk to human health.

Within half an hour of when they set out, the River Huggers are arriving back on the dock. Willie Levenson's head popped up out of the water.

"So, there it is, another up and back completed," he said. "It's the new Portland rite of passage. How can you live in this town and not have swum across the river?"


Levenson thinks part of the Willamette's problem is that it just doesn't look appealing. He points out a sea wall he'd like to see a mural painted on.

"It takes a tremendous amount of creativity to remember that the Willamette River is a river in downtown Portland, because it's so heavily urbanized," he said.

All summer long, Levenson has been excavating a beach on the east bank of the river near the Hawthorne Bridge. He said volunteers and inmate work crews have removed 160 tons of broken concrete by hand. Underneath the concrete, there's sand.



## Our Opinion: Wheeler needs to step up, show vision

Created on Thursday, 19 May 2016 | Written by (none) | 

[1 Comment](#)

On an election night with plenty of suspense, Ted Wheeler did better than many observers expected, winning a clear majority in a crowded field. That means Oregon's 28th state treasurer will become Portland's 53rd mayor in January.

By avoiding a November runoff, Wheeler has the chance to act as mayor-in-waiting while he finishes out his term as treasurer. He should use this opportunity to begin to define in larger terms what he hopes to accomplish as leader of Oregon's largest city.

Wheeler needs to advance a more comprehensive vision following a campaign that dealt with the mechanics of governing, but offered little in the way of inspiration. Despite the fact that there were several worthy candidates in the race, the primary election likely left many Portlanders feeling less than enthused. Wheeler and his main mayoral rivals were policy wonks who agreed on almost all the key issues facing the city. When they did part ways, it was usually on minor points.

The campaign drew attention to real problems: skyrocketing rents and home prices, a proliferation of homeless tent campers visible in many areas of the county, streets in desperate need of repair, disturbing data about air quality and a looming cleanup of the Willamette River Superfund site.

We agree that all those issues need to be addressed, and we thought Wheeler, the former chair of the Multnomah County Board of Commissioners, did an admirable job of explaining how he would deal with them.

But what was lacking in the campaign — and what's needed before the next mayor is sworn in Jan. 2 — is something grander than what voters have seen so far this election season. Portlanders want to know that their next mayor isn't just a fixer looking at a checklist, but also someone with substantial vision. The next mayor must aspire to make this city not just functional, but exceptional.

Portland is certainly far from perfect. Yet it still is the envy of many big-city mayors who battle far worse problems.

Yes, the number of people sleeping in tents is disturbing. But the upswing in visible homelessness is a national trend and the most recent estimate of homeless residents in Multnomah County (2015) was down nearly 20 percent from its peak 10 years earlier.

The apparent narrow passage of a city gas tax Tuesday provides the next mayor with a bit of breathing room through a short-term, partial fix for the backlog of needed road repairs.

Part of the mayor's job is to be the top problem-solver, and Wheeler is well-suited for that. But the mayor is also cheerleader-in-chief, and that's a role we'd like to see Wheeler focus on for the next several months.

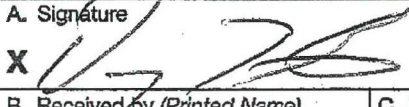
Last week, he joined a group swimming across the Willamette River to draw attention to the lack of public access points along the waterway. But rather than use the occasion to spell out his vision of what role a cleaner Willamette can play in the city and region, he defaulted to a get-out-the-vote reminder.

Likewise, we'd like to know how Wheeler thinks Portland can leverage its supply of stable (and comparatively cheap) power and water into a draw for new businesses. How can the city's new comprehensive plan become a blueprint for helping more Portlanders prosper and more neighborhoods thrive?

Portland has tremendous physical, cultural and environmental advantages over most other cities of similar size. However, it has lacked consistent, robust leadership from the mayor's office since the days of Vera Katz. She served three terms and accomplished a great deal. Her three successors each struggled to keep the council focused on a clearly defined set of larger objectives.

Wheeler can avoid that fate by challenging Portland residents to imagine what more their city could become. And those aspirations must go beyond filling potholes or moving homeless tents off the sidewalks.

Too often, this city's identity gets boiled down to the sentiment contained in the "Keep Portland Weird" bumper sticker that has been around for more than a decade now. It's time for the next mayor to give us a new slogan to remember.

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<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
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<p>2. Article Number (Transfer from service label)</p> <p>7015 3010 0000 1533 4991</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
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Portland OR 97205





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*Hervey?*

**CITY OF PORTLAND  
UNIFORM PUBLIC RECORDS REQUEST FORM**

Date of Request: 6/23/16

**REQUESTOR INFORMATION**

Name: Bruce MacGregor Hall  
 Mailing Address: Suite 505, The Legends, 1132 S.W. 16<sup>th</sup> Avenue  
 City, State, Zip: Portland, OR 97205 Daytime Phone: 503-317-6127  
 E-mail Address: bmacgregorhall@gmail.com Fax: —  
 Preferred method of contact: ☐ Mail ☐ Phone ☒ E-mail ☐ Fax

**REQUEST DETAILS**

1. Is this request related to a lawsuit involving the City of Portland? no

If "yes," enter the case name, court docket number, or other identifying information:  
 \_\_\_\_\_

2. Is this request related to a tort claims notice involving the City of Portland? no

If "yes," enter the claimant's name and, if known, the incident date:  
 \_\_\_\_\_

3. If you answered "yes" to question 1 or question 2, are you making this request on behalf of a party in the lawsuit or tort claim? no

NOTE: If "yes," enter "City Attorney's Office" for question 4 in addition to any other applicable bureaus.  
 This is required by state law (ORS 192.420(2)(a)).

4. Bureau or office, if known (a copy of this form must be submitted to each): Regional Arts & Cultural Council; Oregon Arts Commission (if still existent); Office of Management and Finance; Portland City Archives; Auditor's Office
5. A fee reduction or waiver may be possible if the custodian determines that this request is primarily in the public interest. Does this request primarily benefit the general public? Please explain.

*Yes - This relates to the future location of the publically-owned statue "Perthendia", which should be immediately moved off of its "porch" on the soon to be "reconstructed" Portland Building and placed alongside a prominent location next to the West side of the Willamette River. This statue is owned by the citizens of Portland.*



6. Does this request pertain to personnel records? not now

NOTE: If "yes," please attach a signed release from the employee.

7. How would you prefer to have this request fulfilled?

☐ I would like to inspect the records.

☐ I would like photocopies made and sent to me.

☐ I would like electronic copies made and sent to me.

☐ I would like photocopies made and held for me to pick up.

### DESCRIPTION OF RECORDS REQUESTED

Please include the following when describing the materials requested, to the extent known and with as much detail as possible:

- Type of document
- Date
- Author
- Title
- Address of any real property at issue
- Subject matter

NOTE: Additional sheets may be added if necessary.

#### Description:

These documents have been kept from Portland citizens for many years, and thus not describable in detail. However, it is known that there have been many contacts by Portland's sculptor and his agents with the City of Portland's authorities which have occurred over the years of Portland's operation by the citizens of Portland. This request includes all filings required by law regarding Portland, as well as all written materials relating to the copyright, ~~to~~ allowed to Raymond Keger by

- The City will respond to your request as soon as practicable and without unreasonable delay. ~~The City of P.~~
- If the estimated costs involved in fulfilling your request exceed \$25, the City will advise you of those costs and require your approval before beginning work.
- If the fee estimate exceeds \$25, a 50% deposit may be required to begin work.
- Full payment of the total amount of costs incurred is required before the public records may be inspected or copies released.
- NOTE: Police reports cannot be obtained through the use of this form. For these records, please contact the Police Bureau.

I HAVE READ AND AGREE TO COMPLY WITH THE ABOVE CONDITIONS, and further agree to pay the cost of fulfilling this Public Records Request according to the conditions set forth above. These costs may include the cost of searching for records, reviewing records to redact exempt material, supervising the inspection of records, copying records, certifying records, and mailing records. I agree to pay a maximum of \$25 without further approval.

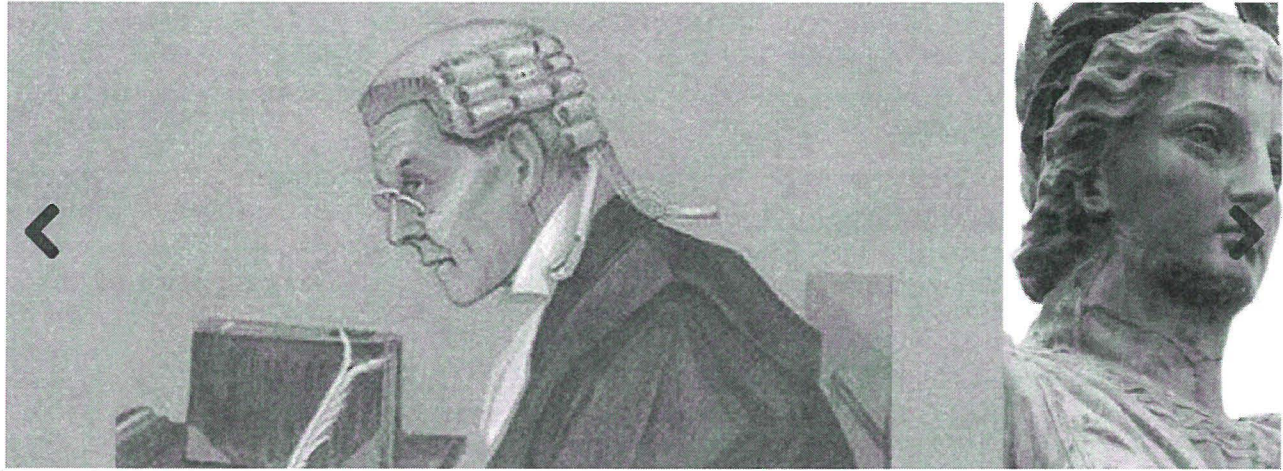
James M. Hall  
Signature of Requestor

6/23/16  
Date

City of Portland Uniform Public Records Request Form

## City Attorney

Office of the City Attorney



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about the office (<http://www.portlandoregon.gov/attorney/28923>)  
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opportunities in the office (<http://www.portlandoregon.gov/attorney/28924>)  
See staff/organization (<http://www.portlandoregon.gov/attorney/28923>)

## Our Mission Statement

To provide excellent, objective, timely and cost-effective legal advice and advocacy in support of the City's policy goals and to ensure that the official actions of the City, its elected officials and employees comply with the law.

### RESPONSIBILITIES

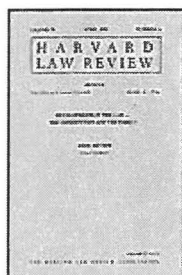
The Portland City Attorney's Office is responsible for all of the legal affairs of the City of Portland. The Office's client is the City itself and office attorneys are prohibited from providing legal advice to the public.

The Office represents the City and its elected officials, employees, bureaus, offices, boards and commissions in court and in administrative and quasi-judicial proceedings. Office attorneys draft and review local legislation, contracts, real estate leases, intergovernmental agreements and other documents and legal instruments. The Office advises on policy development and program implementation. Attorneys advocate and negotiate on behalf of the City. Office attorneys provide training to elected officials, City boards and commissions and City employees on a broad spectrum of law-related topics.

The City Attorney's Office also advises City officials in many different subject areas, such as environmental law; constitutional law; civil rights; employee benefits; public records requests and records management; personnel and labor law issues; tort claims; workers compensation; construction law; land use planning; equity, diversity and affirmative action; revenue and taxation; policing; fire, rescue and emergency services; code enforcement; housing; elections; telecommunications, franchises and utilities; and collection of revenues owed to the City.



## HARVARD LAW REVIEW



## The Effect of the Federal "Anti-Trust Laws" on Commerce in Patented and Copyrighted Articles

Amos J. Peaslee

*Harvard Law Review*

Vol. 28, No. 4 (Feb., 1915), pp. 394-406

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Page Count: 13

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Viewing page 394 of pages 394-406

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*HARVARD LAW REVIEW*

### THE EFFECT OF THE FEDERAL "ANTI-TRUST LAWS" ON COMMERCE IN PATENTED AND COPYRIGHTED ARTICLES

THE Clayton Anti-Trust Act which went into effect Oct. 15, 1914,<sup>1</sup> restricts the making of "tying contracts," affecting: "goods, wares, merchandise, machinery, supplies, or other commodities, *whether patented or unpatented.*"

The insertion of the words "whether patented or unpatented" injects further interest into a subject which has claimed much recent attention before the United States Supreme Court.

The purpose of the patent and copyright laws is to create monopolies. The purpose of the "Anti-Trust Laws" is to restrict them. Obviously there is a line where the operations of the two groups of statutes must come into contact, if not into conflict. These two questions are therefore presented:

First: Exclusive of the Clayton Act, does the fact that a monopoly, combination, or agreement alleged to be in unlawful restraint of trade, involves the use of patented or copyrighted commodities, cause it to be judged by a standard different from that governing other situations, and if so, to what extent?

Second: If such a different standard exists, how far has it been affected by the Clayton Act?

## I

### THE STATUS OF THE LAW BEFORE THE CLAYTON ACT

The Sherman Act <sup>2</sup> provides that:

"Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce . . . is hereby declared to be illegal. . . .

"Sec. 2. Every person who shall monopolize or attempt to monopolize or combine or conspire with any other person or persons to

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<sup>1</sup> PUBLIC ACTS NO. 212, 63d Congress, § 3.

<sup>2</sup> 26 STAT. AT L. 209.

*Harvard Law Review*

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## The high cost of government transparency in Oregon (Column)



Shasta Kearns Moore, left, presents Oregon Attorney General Ellen Rosenblum with the Oregon Territory SPJ Chapter's annual First Freedom Award. The First Freedom Award recognizes a non-journalist who has advocated for open government in Oregon. (Samantha Swindler/Staff) (Samantha Swindler/Staff)



By **Samantha Swindler** | [The Oregonian/OregonLive](#)

[Email the author](#) | [Follow on Twitter](#)

on June 29, 2016 at 5:18 AM, updated June 29, 2016 at 8:26 AM

Last year, The Oregonian/OregonLive requested an electronic database of property recorded into evidence by the Portland Police Bureau. The estimated cost of making those public records public?

\$1,042,450.20.

It was a bit out of our price range.

Instead, we paid for a narrower subset of information about rape kits. There were thousands of untested kits in Portland Police custody despite the bureau's assurances following the 2001 murder of a 14-year-old girl by a serial rapist that it would regularly test forensic evidence from sexual assaults. Data from our records request helped tell the story.

When news of the backlog was made public, lawmakers passed **Melissa's Law**, requiring police agencies to establish protocols for testing rape kit evidence.

This is what can happen when journalists shine a light on the workings of government, but it only happens when we have access to public records – the documents, emails and digital data created and maintained by public employees using your tax dollars.

### SAMANTHA SWINDLER

A six-month fight for a police report (Column)

Eat like an inmate: Bean & Veggie Chili recipe

At women's prison, food is medicine and a fresh start (Column)

Why protesters are mad about the police contract (Column)

Artist asks for activism with 'Camp Here Tonight' (Column)

And this story is not an anomaly. Outrageous quotes and unnecessary delays for public records happen all the time, at every level of government across Oregon.

"I got a \$62,000 estimate to search emails by keywords for four people," reporter Rob Davis of The Oregonian/OregonLive said during a recent hearing. "That is the agency telling us that they don't want to bother."

When Willamette Week reporter Nigel Jaquiss asked the Department of Human Services for basic records related to troubled foster care agency **Give Us This Day**, he said "it took 140 days for DHS to give me the first piece of paper on that request."

That happened only after he complained to the Oregon Attorney General's office.

"A few hundred dollars for one record, a few thousand for an email search. We all know this is not the true cost of this service," wrote Sara Roth with KGW. "The cost is not only confusing, but it forces us to choose which stories to cover. I know we haven't uncovered stories just because the records request was too expensive."

In my free time, I serve as president of the Oregon Territory Chapter of the Society of Professional Journalists, a national organization that supports ethical journalism and a free press. Last week, our chapter presented Attorney General Ellen Rosenblum with the **annual First Freedom Award**, which recognizes a non-journalist who has worked toward government transparency.

It was a hopeful gesture, given because of the steps she has taken and the promises she has made regarding public access to information.

In September, Rosenblum's office created the Public Records Law Reform Task Force, which will propose changes during next year's legislative session to the state's notoriously flimsy public records laws. The reporters' stories mentioned throughout this column were either shared during a public records hearing in May or emailed to the task force.

Oregon received an **"F" grade** from the Center of Public Integrity's 2015 State Integrity Investigation. We ranked 42nd in the nation. Our neighbors California and Washington ranked second and eighth, respectively.

One problem is that costs for Oregon public documents can vary wildly, since government agencies can charge for more than just the copying of records. They can charge for staff time to procure them and attorney fees to review them, with little oversight as to how fees are determined.

This allows costs to skyrocket. The \$1 million quote from Portland Police was based on the bureau's claim that it would need to review more than a half-million individual cases to see if they were ongoing investigations, allowed to be exempt from disclosure.

Apparently a sort button doesn't exist in their data system.

And there is little recourse for a journalist — or a citizen — to question those cost estimates.

The wait for documents is also a problem. Current law only requires records requests be filled in "a timely manner," which as Nigel's experience illustrates, is meaningless. The task force has tentatively proposed a law change requiring government agencies to fulfill most requests within 10 business days, which falls closer in line with laws in other states.

But Oregon stands out nationally for its staggering number of exemptions to disclosure law — more than 500. These include exemptions allowing government agencies to withhold information about underground storage tanks, complaints about judges, boating accidents and death certificates.

Even agencies that want to be transparent are confused by the current system, which can lead to delays and high costs. At worst, Oregon's convoluted law can be used to thwart disclosure and purposefully delay the release of information. There are no penalties when an agency violates the records law.

Of course, this issue isn't only about journalists. These are the public's records and the average citizen who has tried to get government documents has likely faced similar roadblocks.

10/25/2016

The high cost of government transparency in Oregon (Column) | OregonLive.com

But I mention the frustrations of my colleagues at other media outlets because this issue is bigger than our turf wars. In the battle for public information, journalists are outnumbered, fighting an ever-growing Goliath with an ever-shrinking slingshot. Nationally, there are now **five public relations professionals to every one journalist**. Many of these PR folks work for the same government agencies that can afford communications people but can't respond to information requests in a timely and cost-effective manner.

As Shasta Kearns Moore with the Portland Tribune noted, when these agencies start to report their own news and hinder efforts by investigative journalists, we are essentially left with state-run media.

That does not bode well for the future of the republic.

-- Samantha Swindler

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# Oregon DEQ's public-records run-around: Editorial



By **The Oregonian Editorial Board**  
[Email the author](#) | [Follow on Twitter](#)  
 on July 15, 2016 at 1:32 PM

We trust that most people who read our editorials can understand common acronyms without extra hand-holding. What Oregonian doesn't know, after all, that **FBI** stands for Federal Bureau of Investigation and **OLCC** for Oregon Liquor Control Commission?

No one needs to be reminded, meanwhile, that **DEQ** stands for Department of Exceptional Quickness. Oh, wait. *That* DEQ exists only in our fantasies, especially when it comes to producing public records. The real DEQ is something very different, as illustrated by the timeline below, which covers a simple records request.

**May 20:** Oregonian/OregonLive editorial board requests applications submitted by eight entities seeking to become "credit generators" under **Oregon's low-carbon fuel standard**. Credit generators will be subsidized for selling low-carbon fuels such as electricity. The information request is followed shortly by a phone call confirming its receipt.

**May 21-July 7:** Crickets. Seven weeks' worth.

**Friday, July 8:** Email to DEQ inquiring about fate of records request, followed by phone call from DEQ spokeswoman Jennifer Flynt expressing regret. As it is late Friday afternoon, a Monday conversation is agreed upon.

**Monday, July 11:** Phone call with Flynt, who says Cory-Ann Wind, who oversees the fuel program, will produce documents responsive to request before the end of the day Wednesday. To that end, Flynt suggests a call to Wind will be productive.

**Tuesday, July 12:** Call to Wind, which goes unreturned.

**Wednesday, July 13:** Email to DEQ and call to Flynt expressing concern about release of documents, as Wind has yet to return call or otherwise indicate intent to produce promised documents. Wind calls shortly thereafter, discusses scope of request and agrees to produce application from one entity – Tesla Motors – promptly in exchange for waiving remainder of request.

**Wednesday, July 13:** Wind emails application of Car Charging Group rather than Tesla. The editorial board had not requested or discussed this application, but, Wind explained, "I felt this registration provided a clearer picture of the information that we currently get from credit generators."

**Wednesday, July 13:** Email thanking Wind for extra information and requesting agreed-upon Tesla application. Email receives no response.

**Thursday, July 14:** Phone call to Flynt's cell phone expressing frustration. Flynt is on vacation. Shortly thereafter, **email from Wind offering a new explanation** for failing to produce agreed-upon Tesla application: A review of the material has not been completed, and it is, thus, unavailable for release.

## Oregonian editorials

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10/25/2016

Oregon DEQ's public-records run-around: Editorial | OregonLive.com

**Thursday, July 14:** Email to Flynt and Wind requesting prompt release of Tesla application and asking whether the stage of its analysis affects its status as a public record subject to release. Email receives no response.

**Friday, July 15:** Crickets. After eight weeks and numerous phone calls and email exchanges, no part of May 20 public records request has yet been satisfied.

One wonders whether such an agency has the competence to operate something as complex as the low-carbon fuel standard. Is it just us, or is this beginning to feel like BETC, the sequel?

BETC, for those in search of acronym advice, **does not stand for Brilliantly Executed Tax Credit.**

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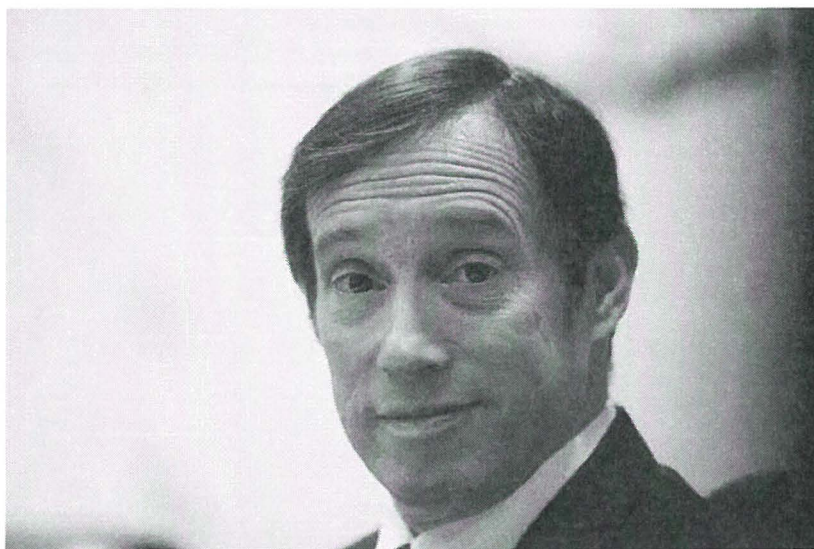
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## Portland's latest technology screw-up ends in finger-pointing



Portland Commissioner Dan Saltzman reinherited the city's paperless permitting system, which is years behind schedule.



By **Brad Schmidt** | [The Oregonian/OregonLive](#)

[Email the author](#) | [Follow on Twitter](#)

on June 28, 2016 at 7:25 AM, updated June 28, 2016 at 10:28 AM

Add this to Portland's growing list of bungled technology projects: permitting software that's cost \$3.9 million but is nowhere near complete.

Frustrated city officials this month cut ties with the lead contractor, Sierra-Cedar Inc., after the Georgia-based company failed to complete half its promised work by the end of a three-year-old contract.

That decision creates more uncertainty for a software project already years behind schedule and now even more likely to blow its \$11.8 million budget. Almost half of what was spent so far went to management fees and travel expenses — and not lasting work on the project, records show.

Officials concede they aren't sure how much the project might cost and say it won't be ready for at least 2½ more years. Officials had once hoped to complete it by May 2015.

The setbacks extend beyond the city's bottom line and are expected to hurt businesses who won't be able to cut costs by submitting records electronically. The delay also highlights challenges of making seismic shifts inside government bureaucracy, raising questions about how easily officials can cut red tape for affordable apartments amid a construction boom.



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"I can't deny that technology projects and government are sort of like oil and water," said Commissioner Dan Saltzman, who oversees the Bureau of Development Services, which has been leading the project. "But then again, there are a lot of screw-ups in the private sector that you just never hear about."

Hear about this, the Portland City Council has. But **repeated public warnings since September 2014** did little to steer the project on track.

The so-called **Information Technology Advancement Project** was supposed to bring the city's permitting bureau into the 21<sup>st</sup> century.

Officials expected the software would let developers and architects submit permits and paperwork electronically. City employees would approve documents online and access records from the field. Historic permit and property information would be digitized and available online.

But the project has been plagued with problems. It joins a notorious list of city technology projects, including the Water Bureau's software fiasco in 2000 that left the city with millions of dollars in uncollected bills and a citywide payroll system that tripled in cost to \$47.4 million in 2010.

In November 2010, the City Council moved forward with its now-troubled permitting project just days after Portland's auditor revealed problems with the payroll system – prompting Commissioner Nick Fish to call it the "elephant in the room." But officials supported a plan by then-Commissioner Randy Leonard to work exclusively with the state of Oregon's vendor for a proven software system.

When Saltzman took over the permitting bureau in 2011 he changed course and decided to seek competitive bids. The project was projected to cost \$8.2 million and finish by May 2015. Officials in December 2012 approved a contract with Sierra Systems, which later became Sierra-Cedar. An aide for Saltzman called the company "a highly qualified implementation vendor."

Work finally began under the contract in June 2013, this time with Commissioner Amanda Fritz overseeing the permitting bureau. Sierra began warning of price and schedule changes in January 2014, according to documents obtained under the state's public records law.

Problems became public in September 2014 when a city oversight committee – created by Saltzman because of the payroll debacle – weighed in. The committee accused Sierra of falling behind and applying "faulty assumptions" to the original plan and schedule. Fritz maintained it would be built **"on time, on budget, and it will work."**

Every three months, the oversight committee updated the City Council on mounting problems, with a color-coded matrix showing the lagging project engulfed in red. In July 2015, officials said the project wouldn't be ready until the end of 2018, and **even that was considered risky.**

Last fall, a Sierra-Cedar representative flew to Portland hoping to reassure the City Council. By then, Saltzman was back in charge of the permitting bureau and had ordered Sierra to show what it could deliver within 90 days.

But members of the city's oversight committee questioned if Sierra-Cedar had enough talent to complete the project after massive staffing turnover.

"You will likely hear how the vendor is going to turn things around," Ken Neubauer, one of the city's oversight members, warned the City Council in an October 2015 meeting. "It is my opinion that while the vendor possessed the capabilities at the time the project was awarded, they have since lost that capability – along with the entire team, 17 people."

That scorching assessment didn't discourage the city. Officials kept working with Sierra and considered extending the company's contract beyond June. But the city ultimately dropped that plan and decided to cut ties.

"It was just a recognition that, I think, they weren't going to be able to produce the progress and achievements we were expecting" at the price Portland wanted to pay, Saltzman said.

Behind the scenes, both sides blamed the other.

10/25/2016

Portland's latest technology screw-up ends in finger-pointing | OregonLive.com

In a May letter, Sierra blasted the city for providing "no leadership" and refusing to approve "efficiency-enabling measures." Sierra also said the city lacked enough staffing to oversee the project, which was a "key factor in the slow progress of the project to date."

Portland countered that Sierra "does not have the skills or knowledge to complete" some work and "continues to avoid acknowledging or owning its self-caused delays." What's more, the city said the company hadn't provided adequate information for more than two years, preventing the city from making informed decisions or "fully discovering how much work is completed" and "how much remains."

Sierra accused Portland of inaccuracies and myriad generalizations unsupported by facts. Portland accused Sierra of numerous allegations that "cast a false light" on the city.

In the end, Saltzman said, both sides decided to walk away. Under terms of a settlement agreement, neither will sue.

"It's an amicable parting of ways," Saltzman said.

An attorney for Sierra-Cedar did not respond to a phone call or an email seeking comment.

In the end, Portland spent nearly as much paying Sierra-Cedar's \$35,000 monthly management fee and travel expenses as it did on software deliverables. Records show Portland paid nearly \$1.1 million for management fees and more than \$653,000 on travel expenses.

The contract spelled out 56 specific tasks or projects that needed completion. Half weren't accomplished, records show. Of the \$2.2 million Portland spent on projects outlined in the contract, the city didn't pay full price on a single item. Portland spent an additional \$180,000 paying two subcontractors directly.

Money for the project comes from permitting fees charged by the bureau.

Of the big-ticket items envisioned for the software project, Saltzman could point to only one – a way to submit and review building plans electronically – that is near completion. But Paul Scarlett, director of the permitting bureau, said city officials won't use it widely at first and instead will test it with a tiny sample of projects.

"We don't want to take on everything to begin with," Scarlett said. "We'd rather see with a few projects that it's working."

If completed, the overall technology project is supposed to benefit government and businesses alike. Officials estimate that a functioning system would eliminate the need for nine positions at a cost of \$1.3 million annually, although those jobs don't currently exist. The technology is also estimated to cut costs for businesses by a total of up to \$1 million a year.

Saltzman and Scarlett maintain the project will be completed, with Saltzman suggesting project oversight should shift to the Bureau of Technology Services. They hope to hire a new company or companies and are targeting the end of 2018 to finish the project – the same delayed timeframe linked to Sierra.

"The optimism remains strong," Scarlett said. "This is a critical project that needs to be implemented"

Asked if the timeframe is realistic, Saltzman said: "At this point, I believe it is."

City documents from the spring belie that optimism.

"There are extreme costs and risks," officials wrote in March about a November 2018 completion, "that come with a date so far in the future."

-- Brad Schmidt

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# Portland City Council fights disclosure of 25-year-old legal advice



By **Brad Schmidt** | [The Oregonian/OregonLive](#)

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on January 13, 2016 at 12:49 PM, updated January 13, 2016 at 4:02 PM

The Portland City Council took the highly unusual step Wednesday of fighting disclosure of legal advice given to city leaders in 1990 and earlier.

Elected officials **voted 4-1 to challenge a ruling** this month by Multnomah County District Attorney Rod Underhill ordering the city to disclose decades-old public records requested by a Portland resident.

Underhill determined that **public records containing legal advice must be released after 25 years**.

The records in question provide guidance on how the city should handle color-of-money issues for public property owned by taxpayers, and public property owned by ratepayer-funded utility bureaus – a politically charged issue, even today, which prompted a **still-pending lawsuit over questionable utility spending**.

Commissioner Nick Fish, who oversees Portland's utility bureaus, urged the City Council to fight release of the records on principle.

Disclosing past legal advice would "greatly disadvantage the council, the city and the taxpayers," Fish said, particularly on issues still being litigated, such as liability over cleaning contamination in the Willamette River.

But even if that's true, the law may require disclosure, city officials conceded.

Although state law allows for withholding public records because of attorney-client privilege, the district attorney determined that another law limits that exemption to 25 years.

Harry Auerbach, a chief deputy city attorney, said challenging the decision in Multnomah County Circuit Court won't be easy.

"It's not a slam dunk by any means," he told the City Council. "But we're trying to preserve our ability to give you the best legal advice we can."

Commissioner Steve Novick voted against the challenge, saying the law appeared to favor disclosure.

"I just don't see a way around this," he said. "I think the law should be changed."

Portland resident Mark Bartlett filed a public records request in September seeking three opinions from the City Attorney's Office from the 1980s, and a legal memo to Mayor Bud Clark in 1990, about differences between taxpayer-funded assets and ratepayer-funded assets.

The city refused to release the records, prompting Bartlett to file an **appeal with the district attorney**.

## PORTLAND CITY HALL

Portland pulls plug on Terminal 1 warehouse homeless shelter plan

Portland misspent water bureau cash on Powell Butte park, judge says

Why protesters are mad about the police contract (Column)

Hip-Hop Day moves venues, splits with City Hall

Nick Fish -- not Amanda Fritz -- will be target of Portland recall attempt



Bartlett learned about the legal memos after reading a 2002 email memo from a Water Bureau employee. **The email referred to the legal guidance** and then applied it to property issues at Mount Tabor, where both the ratepayer-funded Water Bureau and the property-tax supported Parks Bureau own property.

"What the above means in short is that Parks cannot use a Water Fund property for any purpose, and neither can Water Funds be used in support of a Parks purpose, without 'market value' compensation," **according to the 2002 email**, which summarizes the legal records now being requested by Bartlett.

Bartlett on Wednesday told The Oregonian/OregonLive he hopes release of the records will force the city to acknowledge it can't mingle assets, and perhaps to revisit past decisions. He said he's asked John DiLorenzo, the attorney who has **successfully sued the city over questionable utility spending**, to review the case.

"They can't just do whatever the hell they want," Bartlett said of the City Council.

Although city attorneys often fight initially to keep records private, they almost always comply when ordered to release documents by the district attorney. In the past five years, for instance, officials have never fought an order to release records.

At Wednesday's City Council meeting, Commissioner Amanda Fritz said elected officials need to maintain attorney-client privilege so they can receive the best legal advice possible. Officials would be reluctant to get it in writing if the records could be made public after a quarter century, she said.

Fish warned that, if the district attorney's decision stands, private companies that polluted the Willamette River may seek old public records hoping to pin more cleanup responsibility on the city and taxpayers.

But others thought city officials were simply trying to hide information from the public.

Joe Walsh, who **frequently testifies in front of the City Council**, reminded officials that the city received **poor marks from a group advocating transparency**. He called on the city to stop fighting.

"Why in God's name would this body, with your reputation for not giving out documents, do something like this?" he said.

-- Brad Schmidt

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# Kate Brown, supposed transparency advocate, defends months-long public records run-around: Editorial



By **The Oregonian Editorial Board**  
[Email the author](#) | [Follow on Twitter](#)

on December 29, 2015 at 12:30 PM, updated December 29, 2015 at 1:12 PM

There's something Oregonians should know about the governor who, **in her Feb. 18 inaugural speech**, emphasized the need to "restore the public's trust" in state government, to which end "We ... must strengthen laws to ensure timely release of public documents." What Oregonians should know is that these are just words, and hollow ones at that. A telling episode in 2015 reveals that Kate Brown's commitment to transparency is no deeper than your average puddle. In August.

The episode, which we discussed in **an editorial earlier this month**, involved the state Department of Human Services, which deliberately dragged out its response to a public records request for months while the Legislature worked to exempt the requested material from public disclosure. Then, one day after Brown signed the bill, a DHS official emailed the requester to explain that her request was now moot. Talk about rubbing it in.

While the request was handled by DHS, its existence was made known to the governor's office, for which the episode's timeline could not be more embarrassing – and telling. The request was made on Dec. 17, 2014, by Anne Marie Gurney, who is the Oregon coordinator for the Washington-based Freedom Foundation. The nonprofit is concerned about the power of public employee unions. Gurney requested a CD containing the names and addresses of all home health care providers in Oregon. Her purpose, she says, was to let these people know their rights under a 2014 U.S. Supreme Court decision, *Harris v. Quinn*, which determined that workers in their position are not public employees and, thus, not required to pay certain union fees.

The information Gurney requested was, at the time, subject to public disclosure. In fact, the state maintained a searchable database of home health workers, which Oregonians who needed their services could use to find a match. The information was neither sensitive nor, at the time, controversial.

But rather than release such ho-hum information in a timely fashion, DHS stalled, as department spokesman Gene Evans explained to The Oregonian/OregonLive editorial board in an email this month. Then-department Director Erinn Kelley-Siel told Evans to notify then-Gov. John Kitzhaber's labor and workforce policy adviser, Elana Pirtle-Guiney. DHS then hit the brakes, relying, Evans wrote, on legal advice from the Department of Justice "from the beginning and throughout this request."

Why? Because, said Evans, officials "did not want to disclose information that may soon be protected from disclosure." Franz Kafka could not have said it better.

The fate of Gurney's request, which was filed during Kitzhaber's tenure, is exactly the kind of abuse against which Brown appeared to rail in her inaugural speech. And a governor who claimed to support the strengthening of laws to ensure the timely release of public documents would never defend a strategy of delaying the release of public documents while public records laws were weakened. Or would she?

## Oregonian editorials

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We asked Brown's office to weigh in after reviewing emails, obtained through public records request, that show Pirtle-Guiney's involvement in the records runaround both before and after Brown's "ain't-transparency-great" inaugural speech. On Feb. 27 – fewer than 10 days after Brown's address – Evans forwarded to Pirtle-Guiney an email in which he promises Gurney, among other things, that "Your request is in process." That's one way to put it. Pirtle-Guiney responded on March 2 by asking Evans to "Let me know what you hear back from the DOJ." Three days later, Evans wrote, "Erinn (Kelley Siel) said you had asked about a timeline" and attached his phone number.

The governor's office, in other words, was fully engaged in the very sort of activity the governor herself claimed to abhor. But did the governor know what her workforce and labor policy adviser was up to, and did she approve? We asked these and several other questions to Brown's communications director, Kristen Grainger, via email. And Grainger carefully avoided answering them directly. But she did say, via email, the following: "Generally speaking, if immediate legislative action is pending related to a specific matter, it makes sense for an agency to seek legal advice as to how best to proceed. Keeping the Governor's Office apprised via the relevant policy adviser is also pretty standard."

Translation: Maybe the governor knew. Maybe she didn't. So what?

And then the governor's spokesperson defends DHS' records runaround. "The request you refer to involved publicly sharing individuals' *personal* information, such as names, home addresses, and personal/home telephone numbers. This had serious implications for the expectation of privacy for these individuals and their families." Gurney, again, requested only the names and addresses of home health workers, not their phone numbers, as Grainger claims. In any case the "serious implications" of Gurney's request were this: That home health care workers would be notified of their rights. The horror!

If Brown meant what she said Feb. 18, she would not have tolerated the public-records abuse in which her workforce and labor policy adviser was complicit. Nor would she now be defending it. She'd also be willing to say whether she knew about it. It couldn't be more clear, however, that Brown's avowed commitment to transparency was nothing more than inaugural window dressing.

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## Something not in the air at Oregon's environmental agency? Transparency



Gov. Kate Brown and Attorney General Ellen Rosenblum have both said the state's public records law needs improvement. Enormous hurdles persist. Kristyna Wentz-Graff/Staff (*The Oregonian/Oregonlive.com*)



By **Rob Davis | The Oregonian/OregonLive**

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on June 25, 2016 at 5:00 AM, updated June 25, 2016 at 12:28 PM

When two Pacific Green Party activists set out two years ago to let people know who was responsible for Portland's air pollution, they didn't realize how hard it would be.

In Seattle, Vancouver and Eugene, air districts post every company's air pollution permit online. Neighbors can look up the factory next door to see what it emits and what laws it must abide by. Portland's air overseer, the Oregon Department of Environmental Quality, does not.

So the activists, Greg Bourget and Seth Woolley, began doing the work themselves. They requested copies of the permits, which are public documents under Oregon's Public Records Law.

They faced a time-consuming and laborious process to make the public records available to the public, a common problem faced by Oregon journalists and ordinary citizens alike.

Gov. Kate Brown and Attorney General Ellen Rosenblum have both said they value transparency and that the state's system needs improvement. Rosenblum has convened a task force to propose reforms to state records law.

Enormous hurdles persist. Public agencies in Oregon frequently charge fees so exorbitant that they dissuade public scrutiny.

The problem has special resonance for the Department of Environmental Quality, whose director resigned earlier this year amid revelations of delays in disclosure about the discovery of toxic air pollutants in Portland neighborhoods.

When Bourget and Woolley, part of a group called Portland Clean Air, made their request, the agency initially responded with blank permits, Bourget said. Then an official said producing paper copies would cost \$800, a fee eventually waived after Bourget threatened to sue. Releasing electronic records, Bourget recalled being told, would cost even more because confidential information was commingled.

The two men and other volunteers spent more than 40 hours in a windowless room feeding documents into a scanner at an agency office. Then they **mapped the permit holders online**, allowing the public to easily see who pollutes the air nearby. The process took months.

"The whole point of our doing outreach was to enable people to participate in the DEQ process – and they make it very difficult to do that," Woolley said. "I just feel like they're hiding everything."

Woolley said he's asked for documents from numerous public agencies in Oregon. "DEQ was by far the worst," he said.

Pete Shepherd, the department's interim director, said he's committed to aggressively addressing concerns about the agency's transparency. Shepherd, who took office April 20, wants permits like the ones Woolley sought to be online and plans to hire a centralized records officer to manage requests more cohesively. He said he's evaluating how the agency levies fees and how it decides whether to waive charges.

"I'm really interested in trying to figure out whether there's a better way to do it," he said.

The agency has historically only offered a small \$200 annual fee waiver to news organizations and other community groups. Fees charged under state law can be waived if a record's disclosure is in the public interest.

Advocates are skeptical of Shepherd's promises. He's had an adversarial relationship with the state's Public Records Law in his earlier work as an attorney in public and private practice.

Notably, he represented the Oregon Public Employees Retirement System in a lawsuit against The Oregonian that sought to keep employee pension payments secret. The information was eventually made public. He worked at the Oregon Department of Justice during what reporters say was a low point for transparency statewide.

Mary Peveto, president of Neighbors for Clean Air, a Portland nonprofit, said Shepherd's earlier work on public records was the most concerning red flag she spotted when he was hired.

Since Shepherd took office April 20, at least two requests for documents have floundered or been met with high fees.

In one case, Peveto's group requested documentation to understand how the state agency recently chose safety goals for hexavalent chromium, a carcinogenic pollutant at the center of ongoing air quality concerns in Southeast Portland. The group abandoned its pursuit after receiving a \$530 estimate for records.

Peveto said the environmental agency's lack of transparency makes it more difficult for advocates statewide to be informed participants in environmental policy decisions that affect the health of every Oregonian.

"It's an out-of-the-gate barrier," she said. "It stops things before they happen by not empowering community groups to understand what they're doing."

In another instance, the agency told The Oregonian/OregonLive it would cost more than \$1,000 to produce emails, inspections and other reports related to two businesses that Hayden Island residents suspect are the source of odors so overwhelming they've awoken at night with headaches and bloody noses.

Shepherd agreed to waive \$700 of the charges after the news organization repeatedly protested, notified Gov. Kate Brown's office of the cost, and told the agency its fees would be described in a news story.

10/25/2016

Something not in the air at Oregon's environmental agency? Transparency | OregonLive.com

The agency still plans to charge \$300 to get records out of storage. When the agency moved offices last year, it put volumes of records in a storage facility run by a private contractor, Iron Mountain. Thousands of inspections, annual reports and other vital records about Portland's polluters are now behind a pay wall: \$60 for the first box, \$12 for each additional box.

The system is structured so that even the state has to pay to get its own records out of storage.

Nina DeConcini, a Department of Environmental Quality regional administrator, said off-site storage was cheaper than office space. And the floors in the agency's new office near Lloyd Center weren't strong enough to support the files' weight, she said.

But Oregon's state archivist maintains a warehouse called the State Records Center in Salem, where agencies can store records. It costs an agency to keep the records there but not to access them.

It is unclear why the Department of Environmental Quality did not use that system. Shepherd said he was unsure.

Still, the agency marks up the fees it charges the public, effectively turning its own records into a profit center. Getting a box of records from the State Records Center doesn't cost the agency anything. Yet it charges the public \$60 for retrieval. The same box from the department's private storage center costs the agency \$36.78. The public gets billed \$60.

Shepherd said he plans to examine those charges as part of his review of the agency's fees.

— Rob Davis

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503.294.7657

**@robwdavis**

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# The Oregonian/OregonLive files motion seeking to recoup legal fees from Cylvia Hayes (Editor's Notebook)



By **Mark Katches** | The Oregonian/OregonLive

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on March 18, 2016 at 10:35 AM, updated April 06, 2016 at 12:27 PM

This week The Oregonian/OregonLive took an extraordinary step in an Oregon court. We filed a motion seeking payment of our legal fees amassed during a protracted public records battle with former first lady Cylvia Hayes.

And we're not talking about chump change. The amount is in the low six figures.

Not many of our public records fights go this far, but the law is on our side. Oregon's public records statute entitles media companies – and members of the public – to recoup legal fees in justifiable and successful public records cases. It's a good law that sides with the First Amendment and favors transparency. It protects the public against stonewalling, recalcitrant public agencies and individuals. It underscores that public servants and public agencies work for you and are accountable to you.

Hayes had ample opportunity to turn over her records. Her lawyers knew the risks when they put up one frivolous roadblock after another. If she had complied with the public records law in a timely manner, we would have avoided this latest court motion. But here we are.

The details of the case date back more than a year when reporters from The Oregonian/OregonLive requested emails sent or received by Hayes related to state business. We never had any interest in her personal matters. But her consulting contracts, government work and her role as first lady merited deeper scrutiny in an era when government officials have been known to use personal email accounts to fly under the radar.

Hayes did not respond to our records request.

That prompted us to file a petition with the state attorney general seeking the release of the records. The attorney general's office granted our petition in February 2015. Hayes responded with a countersuit filed against The Oregonian/OregonLive to prevent any release of her emails, a move that further elongated the process.

Hayes had her own webpage as first lady – part of the governor's website. She also had her own government office and staff. She had an official role inside the administration of her fiancée John Kitzhaber. And yet Hayes contended that she didn't meet the test of a public official and was therefore exempt from any public record disclosure requirements. It was a losing battle – and a dangerous one if you believe in sunlight and transparency and access to government records that hold the powerful accountable. But she dug in.

Months later, Marion County Judge Tracy A. Prall **ruled that Hayes did in fact function as a senior policy adviser** with authority to direct state employees in their work, and that she was therefore **covered by the state's public records law**.

## CYLVIA HAYES EMAILS

John Kitzhaber won't sue over leak, Cylvia Hayes gives emails to judge

Cylvia Hayes, Hillary Clinton to turn over personal emails

Cylvia Hayes keeps emails as judge considers arguments

Cylvia Hayes' emails: Online index helps you search for yourself

Cylvia Hayes asked staff to 'lean on media' to call her First Lady

## All Stories

10/25/2016

The Oregonian/OregonLive files motion seeking to recoup legal fees from Sylvia Hayes (Editor's Notebook) | OregonLive.com

By this time, we had received tens of thousands of emails from official state accounts, but Hayes had not turned over any emails from her personal accounts that were related to her role as first lady or that were connected to the consulting contracts that prompted a **federal investigation**. Questions about Hayes' role were central as Kitzhaber's administration unraveled.

During the drawn-out legal process, Hayes' lawyers continued to stall, repeatedly raising objections to the release of individual emails. Ultimately we won, but it was at a high financial cost to us in excess of \$125,000 in attorney fees.

Maybe Hayes had hoped her legal tactics would wear us down. But we weren't going away. If we had given up this fight what message would it have sent? Government agencies and public individuals would have felt emboldened to stonewall the media and the public, hoping we'd eventually go away. We won't. It's a matter of principle. We will relentlessly pursue documents that belong to you.

Around the nation, newsrooms are commemorating "Sunshine Week" calling attention to public records initiatives and hard-fought victories. I've been in the business for more than 30 years. I've worked in some accomplished and respected newsrooms. But this newsroom is more committed to the principle of open records than any place I've ever been. The Oregonian/OregonLive and our parent company Advance Publications are totally dedicated to the pursuit of public records access. And, when necessary, we'll fight for it.

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This next bit of news should elicit a cheer from sports fans of the newspaper. With the start of a new Major League Baseball season right around the corner, we are reconfiguring our sports pages to include daily MLB box scores.

Two seasons ago, we eliminated all but the Mariners box score. And fans booed. Last year, we included a limited number of West Coast teams. More boos.

No one likes the sound of relentless booing. So the baseball box scores are back. Full box scores, including updated batting averages, extra-base hits and full pitching lines. Our deadlines are tight. And that means we won't always be able to get all the late scores in print the next day. But it will be a vast improvement, and we'll catch up on games we might have missed in print the following day.

– Mark Katches

@markkatches

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## In Oregon, the battle against transparency is bipartisan (Opinion)



A nonprofit pushing for government records reform says Oregon's public records should be free to all citizens and organizations. (Randy L. Rasmussen/2015)



By **Guest Columnist**

**Follow on Twitter**

on October 30, 2016 at 10:45 AM, updated October 30, 2016 at 10:51 AM

**Adam Andrzejewski**

The supporters of Sen. Bernie Sanders and Donald J. Trump have one thing in common: Both are upset by what they perceive as government by, for, and of the special interests.

Imagine how upset they would be if they knew everything that goes on.

Imagine how upset all of us might be.

Knowledge is power, and access to facts gives citizens the means to "fight City Hall." The good news is that big data and technology are giving us new ways to expand oversight of government. The bad news, at least here in Oregon, is that the effort to fight transparency is bipartisan.

Some powerful Oregon politicians in both parties circumvent, and thus violate, Oregon's open record laws. This makes it difficult for citizens and the media to monitor government and expose abuse of taxpayer dollars.



11/7/2016

In Oregon, the battle against transparency is bipartisan (Opinion) | OregonLive.com

Consider the Republican-controlled board in Lane County. This summer, our organization, **American Transparency**, filed an open records request with all 1,509 municipal units of Oregon government. We asked for the salaries of public employees. To date, nearly 1,000 units have produced their records. Then, there's Republican Lane County, which sent us an invoice for \$24,000 instead.

Some powerful Oregon politicians in both parties circumvent, and thus violate, Oregon's open record laws. This makes it difficult for citizens and the media to monitor government and expose abuse of taxpayer dollars.

Oregon Democrats aren't any better than the Lane County Republicans. It seems that both parties support government opacity.

Governor Kate Brown's office and House Speaker Tina Kotek's office weren't much better at transparency.

Four months ago, Oregon Capitol Watch paid \$2,700 to the governor and speaker for time sheets, calendars, credit card statements and reimbursements. At the start of this week, no records had been produced by either office.

Zero.

Oregon's open records laws need to be updated. First, transparency should be completely free to all citizens and organizations. Charging for "open records" makes a mockery of the term "freedom of information." Next, stonewalling in the form of delays, redactions, and non-responsiveness should lead to fines and

firings of the employees responsible.

#### Share your opinion

Submit your essay of 700 words or less to [commentary@oregonlive.com](mailto:commentary@oregonlive.com). Please include your email and phone number for verification.

In 1913, an early progressive, U.S. Supreme Court Justice Louis D. Brandeis, recognized the power of transparency: "Sunlight is said to be the best of disinfectants." Disinfecting government at every level should become the rallying cry of an abused electorate.

Oregon citizens need to flex some muscle and start enforcing transparency law at the ballot box. If your representative doesn't support dramatically expanded transparency, find another that will.

*Adam Andrzejewski is chief executive of OpenTheBooks.com, an Illinois-based nonprofit that tracks government spending with 3 billion government expenditures posted online.*

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City of Portland  
1900 SW 4th Avenue  
Portland, OR 97204

October 7, 2016

Re: Records request of June 23, 2016 which was mailed June 28, 2016

Dear City of Portland,

Over Two months ago, I sent to you by certified letter my Request for Documents (see attached copies) related to the two copyrights you have granted sculptor Raymond Kaskey in connection with the statue "Portlandia" he produced under contract with the City of Portland -and for which he was fully paid.

A few days later I received from a City Attorney a phone call expressing uncertainty as to what I was seeking. I again stated what I was seeking, and my request was correctly received. I have not received any documents or further communication regarding my request.

So, once again, with this letter, I restate this request for copies of the two copyrights in favor of Raymond Kaskey and any related documents (negotiations, those involved etc.).

Very truly yours,

Bruce M. Hall  
1132 SW 19th Avenue  
Unit 505  
Portland, OR 97205



*Hervey*

**CITY OF PORTLAND  
UNIFORM PUBLIC RECORDS REQUEST FORM**

Date of Request: 6/23/16

**REQUESTOR INFORMATION**

Name: Bruce MacGregor Hall

Mailing Address: Suite 505, The Legends, 1132 S.W. 16<sup>th</sup> Avenue

City, State, Zip: Portland, OR 97205 Daytime Phone: 503-317-6127

E-mail Address: bmacgregorhall@gmail.com Fax: ---

Preferred method of contact: ☐ Mail ☐ Phone ☒ E-mail ☐ Fax

**REQUEST DETAILS**

1. Is this request related to a lawsuit involving the City of Portland? no

If "yes," enter the case name, court docket number, or other identifying information:  
\_\_\_\_\_

2. Is this request related to a tort claims notice involving the City of Portland? no

If "yes," enter the claimant's name and, if known, the incident date:  
\_\_\_\_\_

3. If you answered "yes" to question 1 or question 2, are you making this request on behalf of a party in the lawsuit or tort claim? no

NOTE: If "yes," enter "City Attorney's Office" for question 4 in addition to any other applicable bureaus. This is required by state law (ORS 192.420(2)(a)).

4. Bureau or office, if known (a copy of this form must be submitted to each): Regional Arts & Cultural Council; Oregon Arts Commission (if still existent); Office of Management and Finance; Portland City Archives; Auditor's Office
5. A fee reduction or waiver may be possible if the custodian determines that this request is primarily in the public interest. Does this request primarily benefit the general public? Please explain.

Yes - This relates to the future location of the publicly-owned statue "Perthandis", which should be immediately moved off of its "porch" on the soon to be "reconstructed" Portland Building and placed alongside a prominent location next to the West side of the Multnomah River. This statue is owned by the citizens of Portland.



6. Does this request pertain to personnel records? not now

NOTE: If "yes," please attach a signed release from the employee.

7. How would you prefer to have this request fulfilled?

- ☐ I would like to inspect the records.
 ☐ I would like photocopies made and sent to me.
- ☐ I would like electronic copies made and sent to me.
 ☐ I would like photocopies made and held for me to pick up.

### DESCRIPTION OF RECORDS REQUESTED

Please include the following when describing the materials requested, to the extent known and with as much detail as possible:

- Type of document
- Title
- Date
- Address of any real property at issue
- Author
- Subject matter

NOTE: Additional sheets may be added if necessary.

#### Description:

These documents have been kept from Portland citizens for many years, and thus not describable in detail. However, it is known that there have been many contacts by Portland's sculptor and his agents with the City of Portland's authorities which have occurred over the years of Portland's perversion by the citizens of Portland. This request includes all filings required by law regarding Portlandia as well as all written materials relating to the copyright, ~~the~~ allowed to Raymond Keegan by ~~The City of P.~~

- The City will respond to your request as soon as practicable and without unreasonable delay. ~~The City of P.~~
- If the estimated costs involved in fulfilling your request exceed \$25, the City will advise you of those costs and require your approval before beginning work.
- If the fee estimate exceeds \$25, a 50% deposit may be required to begin work.
- Full payment of the total amount of costs incurred is required before the public records may be inspected or copies released.
- NOTE: Police reports cannot be obtained through the use of this form. For these records, please contact the Police Bureau.

I HAVE READ AND AGREE TO COMPLY WITH THE ABOVE CONDITIONS, and further agree to pay the cost of fulfilling this Public Records Request according to the conditions set forth above. These costs may include the cost of searching for records, reviewing records to redact exempt material, supervising the inspection of records, copying records, certifying records, and mailing records. I agree to pay a maximum of \$25 without further approval.

Signature of Requestor

Date

City of Portland Uniform Public Records Request Form

Last revised December 2015

Page 2 of 2





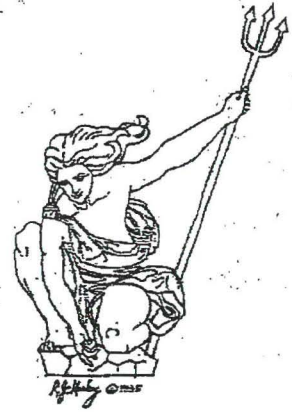








Regional Arts &  
Culture Council



## PORTLANDIA Fact Sheet

<b>Artist:</b>	Raymond J. Kaskey		
<b>Location:</b>	1120 SW 5 <sup>th</sup> Avenue, above the entrance to the Portland Building.		
<b>Medium:</b>	Hammered copper	<b>Height:</b>	36 feet, 10 inches
<b>Weight:</b>	6.5 tons	<b>Dedicated:</b>	October 8, 1985
<b>Theme:</b>	Lady Commerce, based on the City of Portland seal		

The idea for *Portlandia*, a classical allegorical figure representing the spirit of Portland, came from the official Portland City Seal. The seal depicts a wilderness scene including mountains, forest and the sea. In the foreground, Lady Commerce, stands on the shore with a trident in her right hand as a ship enters the port behind her. A sheaf of grain, a cogwheel and a sledgehammer lie to her left in the foreground. Together, these figures symbolize the origins of the city, its culture, agrarian base, and industry.

Michael Graves suggested a statue of her as part of his design for the Portland Building. Raymond J. Kaskey, a Washington, D.C. sculptor, won the commission through the city's Percent for Art program. The sculpture is made of hammered copper sheeting about the thickness of a dime formed around a steel armature, and the artist spent three years creating this massive work. She is 1/3 the size of the *Statue of Liberty*, the only larger statue of this kind in the nation.

*Portlandia* was shipped across country by rail in eight pieces. After being assembled in a local shipyard, she rode by river barge and truck to her final destination, welcomed by thousands of Portland residents along the riverbank, streets and bridges. Her dedication to the citizens of Portland on October 8, 1985, confirmed her acceptance as a new symbol of the city. *Temple Art Supply*

All copyrights to the *Portlandia* image and state are the sole property of Raymond J. Kaskey. All commercial reproduction is prohibited without his consent and agreement. Questions concerning the use of the *Portlandia* image should be directed to the Regional Arts & Culture Council at 503.823.5111.

**Regional Arts & Culture Council Public Art Program:** RACC administers all public art projects for the City of Portland and Multnomah County. 2% of construction or renovation budgets for public buildings are allocated for works of art.

**Portland Building Percent for Art Selection Committee:** Members of the Selection Committee included Architect Michael Graves, arts professionals and citizens at large.

**National Competition:** Held in 1981; Raymond Kaskey selected in 1982.

**Project Budget:** \$225,000 of which Kaskey (as finalist) received \$198,000 from the *Portlandia* project, August 1981.

www.racc.org