



2002 OMBUDSMAN REPORT

AUDITOR'S OFFICE, CITY OF PORTLAND, OREGON

Issued: April, 2003



A Message from Michael Mills, Ombudsman

The year 2002 marked the completion of the first full year of the Office of the Ombudsman under the elected City Auditor, Gary Blackmer. The office established effective working relations with City bureaus and is continuing to expand the public's awareness of the assistance that the Office can provide.

When citizens are unable to navigate through City government on their own, or believe they have been treated unfairly, they can seek assistance from our Office. The Office of the Ombudsman can conduct an independent, impartial investigation of the administrative actions of city agencies and recommend appropriate changes to promote higher standards of competency, efficiency and justice in the provision of City services. We try to resolve conflicts between the City and the public fairly, on a timely basis and in a non-adversarial manner. The services of the Ombudsman are free and provide an opportunity for confidentiality.

In 2002, we received 234 new complaints and 153 requests for information relating to City agencies within our jurisdiction. We closed 212 complaints received from either 2001 or 2002. We also assisted with 100 non-jurisdictional requests, often relating to other governmental agencies. The five City bureaus with the largest number of new complaints were: Bureau of Development Services (92), Office of Transportation (45), Water Bureau (35), Bureau of Environmental Services (11), and Parks (8). (Police Bureau conduct complaints are reviewed by the Independent Police Review Office, also within the Auditor's Office.) It comes as little surprise that the regulatory and enforcement agencies with high levels of public contact attract the highest number of complaints. How an agency responds to complaints is a better measure of performance than the number of complaints received.

We have also seen an increase in the variety of issues that were brought to our Office this past year, a testimony to the growing awareness of the Office of the Ombudsman among the public. We continue to build awareness and trust among citizens so they can feel comfortable that their concerns will receive a fair review. Just as important were our efforts to build trust among City bureaus so that issues could be addressed in an open and constructive environment. In large part we met those objectives. Sometimes it is as simple as providing a complete and fair review of a problem that will move someone to a position of trusting their government.

The Office of the Ombudsman continued to operate under the principle of independence in providing referrals, investigating complaints and making recommendations. The Office has tried to interpret the public's interest while investigating cases and has met with success in presenting many of our recommendations. We have explored non-traditional and collaborative approaches as a means to resolve conflicts with City agencies.

As we move ahead, one of our highest priorities continues to be our need to be accessible to a broader portion of our community. People need to know we are available to help them with their problems with the City. Outreach efforts are particularly important to under-represented communities and those who have no connection to City Hall. We will continue on this path by participating in business and neighborhood meetings and making contact with more leaders in our community.

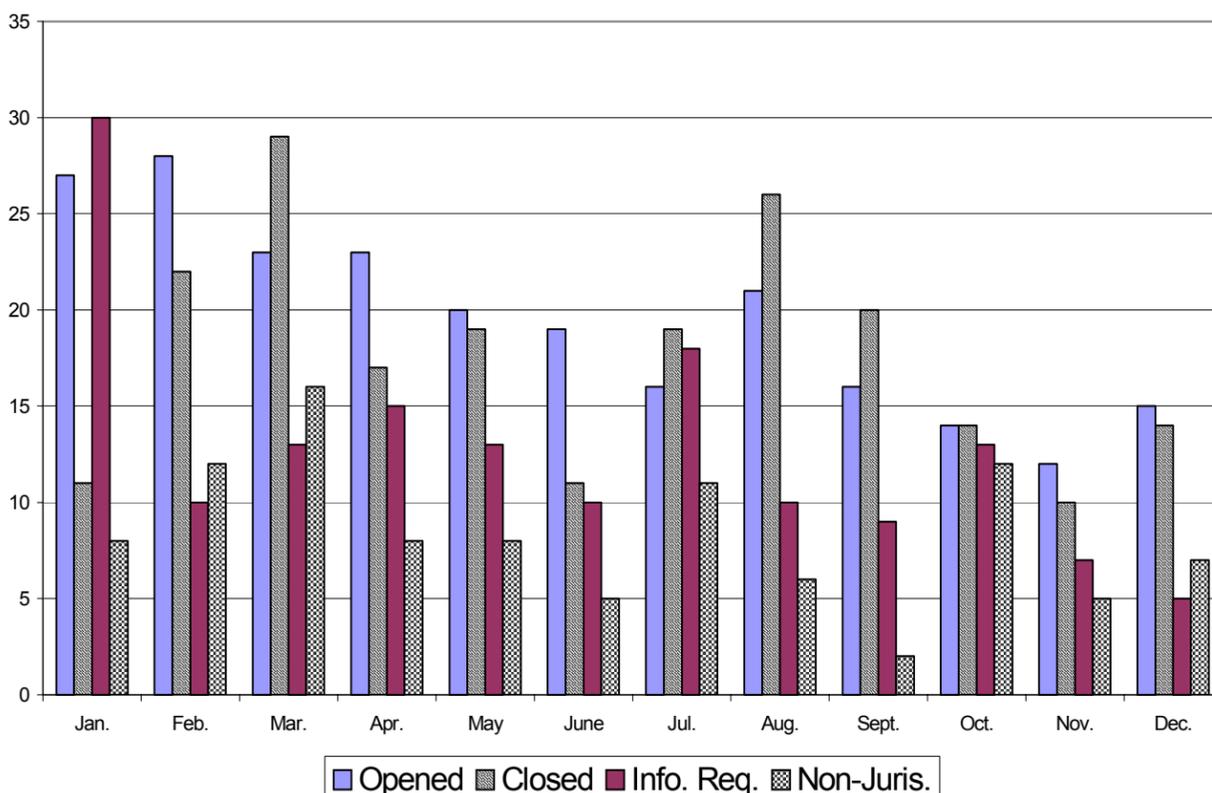
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The Ombudsman helped the City agency involved in my case to better understand my position and work with me to resolve the matter.

Comment from satisfaction survey

Complaints and Inquiries by Month - 2002



Purpose of Report

The Office of the Ombudsman investigates concerns about City government, develops recommendations to improve public service where appropriate and provides another voice for the public interest. As a result, the City becomes more transparent and more accountable for its actions and responsive to potential improvements. We have an obligation to be accessible and to let the public know of the types of issues we have addressed on their behalf. One means to accomplish these objectives is this Annual Report. The Annual Report is required (PCC 3.77.170) in order to advise the Auditor and City Council of the Office's activities and some of the concerns raised. It also serves as a management tool for improving public services and helps evaluate our performance.

Meeting Challenges At Bureau Of Development Services

Progress. That word captures the Ombudsman's perspective on the Bureau of Development Services' (BDS, formerly Office of Planning and Development Review, OPDR) efforts over the past year to address individual complaints and systemic problems that we have investigated and brought to their attention. Midway through 2002, two BDS staff, Alisa Cour and Jackie Phillips, teamed up to provide more prompt and detailed reviews and responses to complaints. Their exercise of judgment has produced better results in less time with reduced conflicts. This indicates better service to citizens and a leveling off of BDS complaints needing to be investigated by the Office of the Ombudsman.

BDS serves a vital role in our community to help insure that the buildings in which we live and work are safe and to preserve and shape our planned urban environment. Given the difficulty of that regulatory obligation, as we stated in our 2001 Annual Report, BDS was expected to attract the highest number of complaints among City bureaus. While issues included the permitting processes, complaints we received were largely concentrated in the area of code enforcement and the monthly code enforcement penalties. We are charged not only to investigate and attempt to resolve those complaints, but to also recommend improvements in how those services are provided to the public.

In addition, the Mayor's regulatory reform initiatives, spearheaded by Sam Adams, have proven to be a catalyst for BDS to consider alternative enforcement methods. The recently implemented "new owner grace period" offers new property owners a more reasonable amount of time to correct past violations before new penalties are applied. The Bureau accepted our recommendation not to limit the application of this grace period to only residential property. We continue to work with BDS on their updated processes for reviewing past accounts to evaluate whether or not lien adjustments are warranted based on specific criteria. The results are proving to be very positive. We also have recommended that a reasonableness or proportionality component be added to the evaluation criteria.

This Office believes decisions on liens will be improved if the criteria can be expanded to include: the proportional relationship between liens and the violations, City resources committed to gaining compliance, neighborhood impacts and a standard of reasonableness or fairness. BDS has demonstrated a willingness to explore incorporating these additional criteria. Also, while commercial and rental properties may justly be held to a higher level of responsibility, they are no longer excluded from lien reduction consideration. Having more of these lien cases resolved by the Bureau will lessen the number of cases remaining unresolved for years and the number that will eventually appear in the new foreclosure process. Resolution of cases is resulting in the collection of liens, revenue that has often proven elusive.

This progress comes at a time when we continue to address other policy issues that have surfaced through the course of our investigations. The most noteworthy concerns center on the tools used for code enforcement, in particular, the monthly code enforcement fees. These fees do not lend themselves well to all situations. One size does not fit all. These fees most often can result in penalties that are disproportionately high compared to the violations. In some cases, business owners view fees as a cost of doing business, paying the fines but refusing to correct the violation. In these cases, more severe penalties will be required to gain compliance.

We have concluded the monthly fees should be replaced with one-time citations or similar processes used in the past. An alternative to the elimination of monthly fees would be to apply strict controls to these fees to prevent the unbridled buildup of penalties without interaction between enforcement staff and property owners. The Bureau is currently reviewing alternatives. It is recognized that there are implications to the BDS budget in adopting alternatives to the monthly code enforcement penalties.

We look forward to continuing the positive efforts that are underway to improve the regulatory services provided by BDS.

Building Permit Issues: Case Examples

A recurring complaint to our Office has been about code enforcement fees charged by the Bureau of Development Services (BDS formerly OPDR) for work done without permits or final inspections. The following article summarizes some of the cases. The general recommendation our Office has made regarding these cases—that an alternative to the revolving code enforcement fees be found for these and other situations—has not been fully accepted or implemented at this time. We continue to be optimistic that a balance will be found between the City's obligation to enforce State Building codes and property owners' concerns when faced with correcting a past violation.

Electric Permit Owner Paid, Contractor Pocketed the Money

On January 11, 2002, our office issued its first investigation report, Case #01-63. The complaint related to code enforcement fees imposed upon the owner of a rental property for electrical work that was done in 1997 by a contractor who failed to purchase a permit or have the work inspected, although the contractor charged the owner for the permit. In this case, the original lien of \$71.50 ballooned to \$2,600.00 even as the owner diligently worked with BDS to resolve the issue. The full report can be found on our website at http://www.ci.portland.or.us/auditor/ombudsman/reports/01_63.htm.

In this report, the Ombudsman made three recommendations:

1. Cancel the fees and penalties;
2. Improve internal systems to address code violations at an early stage to avoid the accumulation of assessments and liens; and
3. Increase enforcement against contractors who do not obtain permits.

The amount BDS initially agreed to waive was substantially less than what our report recommended. An Ombudsman has no authority to enforce recommendations, but may draw public attention to recommendations. The publication of the report in this case resulted in some media attention and interest by the public. Ultimately, in April 2002 BDS refunded half of the liens that the owner had paid to the City, some \$1,300. Although this was a partial resolution to the complaint, the systemic issue of the fairness of the revolving fees, particularly as they accrue for work done without permits in the past, was not resolved.

Water Heaters—Three Permits Required Two Years Later

BDS began a Code Compliance enforcement case against the owner of a property who had a water heater installed by a contractor in July 1998 with a notice in January 2000 stating that while three permits were taken out for the project, only one was inspected and approved. The notice stated that the owner had 15 days to request an inspection for the two outstanding permits. The Bureau took no other action until July 2001, 18 months later, when another letter was sent stating that since no inspection request was made, monthly code enforcement fees would begin.

Within a week, the contractor who did the original work for the owner contacted the City. According to the contractor, the work had been properly permitted and inspected. Although the City stated the contractor should call for inspections, he felt it would be a waste of City resources to send inspectors out to reinspect something that had already been inspected. Also, it was inconvenient for the property owner to be home during the day to meet the inspector. One inspection was completed on the outside of the property, but one permit remained outstanding.

The contractor sought out the original paperwork but the Code Compliance staff did not have the documents. He researched the City archives and found a fax requesting a final inspection for the water heater installation. There appeared to be a miscommunication at the time, whereby the inspector did not realize there were a total of three permits rather than just one. The code enforcement inspector did not accept the fax as evidence the work had been inspected. Eventually the owner met with an inspector at the site who inspected the work and the case was closed.

In the meantime, a lien was placed on the property for \$200. The contractor paid the bill on behalf of his client, but complained to our Office in November 2001 about the situation after unsuccessfully seeking assistance through other channels. Upon review of the case, and after speaking with the original inspector who went to the property in 1998, BDS determined it was probable the work was inspected when originally installed. In January 2002 BDS agreed to refund the penalty fees. We closed the case, but reopened it when we

(continued pg. 6)

Garbage Dumpsters Litter Sidewalks

Assuming Responsibility as a Means to Avoid Government Intervention

Based on several complaints, this Office initiated a review of the practice by a small but growing number of businesses of permanently storing garbage dumpsters on public sidewalks.

Problems arise as a result of the impacts to pedestrians using sidewalks and to the general aesthetics of a neighborhood or business district. There are negative impacts from bad odors and food waste in and around garbage dumpsters. Residents and businesses see the City's complacency toward the issue of dumpsters on sidewalks as inconsistent with a number of other City requirements for improving our urban environment.

Complainants have more recently pointed out the inconsistency of the City taking steps to prevent people from sitting or lying on public sidewalks, while not attempting to utilize existing laws to remove garbage dumpsters stored on public sidewalks. In an unrelated case, a business owner was assessed penalties of over \$2,000 (later reduced to \$1,400) for not screening a garbage dumpster in his parking lot during building renovations. He had yet to open his business and use the dumpster. Had he moved it onto the sidewalk in plain view, he may have avoided the fines.

After consulting with the City bureaus associated with the use of sidewalks, it became clear there is no routine enforcement against dumpsters, in part, due to the

complexity of the problem of garbage collection in older buildings.

Under PCC 16.20.170 A, Storing Property on Street Prohibited, one could be required to obtain City approval to permanently store a dumpster on a public sidewalk.

A. No person may store, or permit to be stored, a vehicle or other personal property on public right-of-way or other public property in excess of 24 hours without permission of the City Engineer, the City Traffic Engineer, or the Bureau of Buildings.

While this code provision can be used for enforcement against dumpsters, the Portland Department of Transportation (PDOT) indicated it was really written to deal with construction materials adjacent to building sites and enforcement could be difficult. There are some situations where the Bureau of Development Services will, and has, taken enforcement action under other code provisions, but only if certain conditions exist. Likewise, PDOT has and will continue to take enforcement action when certain conditions exist, such as a violation of Americans with Disabilities Act access requirements. The Office of Sustainable Development, Solid Waste & Recycling Division also has limited authority in this area. However, routine enforcement for the regular storage of dumpsters on public sidewalks and rights-of-way has not been given a high priority.



The following may be necessary to successfully pursue more aggressive enforcement:

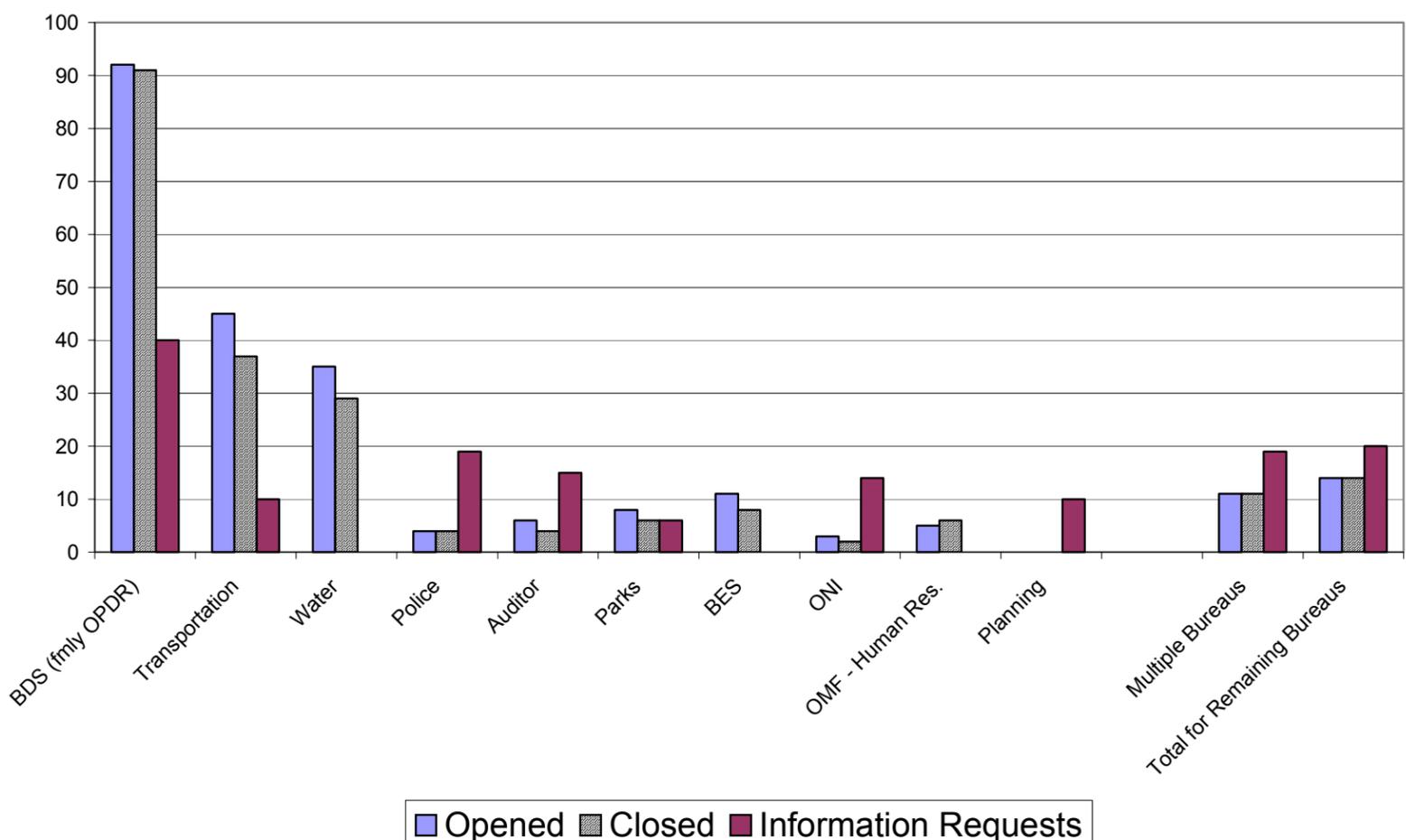
1. Adoption of a definitive regulation that prohibits garbage outside the property line except for pickup;
2. Developing an incentive for owners of older buildings to make accommodation for the garbage; and,
3. Council support for enforcement, both political and financial.

Rather than recommend at this time that the City initiate a more aggressive regulatory approach, the Office of the Ombudsman explored the potential for business associations to first attempt self-policing. (Other sidewalk objects, such as café tables, were not

considered since the consensus was these other objects were generally regarded as neighborhood and pedestrian amenities and were currently being managed in an acceptable manner.)

We discussed the self-policing proposal with the Nob Hill Business Association, where the issue is a concern. Their response was very positive and their Board has moved forward with the concept. They will contact garbage haulers to explore the potential to revert back to smaller containers that can be stored within structures and they will conduct site inspections to identify and involve some of the violators in the process. The effort is ongoing and has the potential for creative and promising results.

Complaints and Inquiries by Bureau - 2002



The graph above uses the following abbreviations:
 BDS = Bureau of Development Services, BES = Bureau of Environmental Services
 ONI = Office of Neighborhood Involvement, OMF = Office of Management and Finance

Environmental Improvement Costs Reimbursed

Perseverance Pays Off

The following case illustrates how an Ombudsman can resolve an issue which has languished for many years. In large City projects, an individual with unique circumstances can get lost. We understand busy departments have to set priorities. But we are also conscious of the toll it can take on an individual when his or her concerns are being lost in the shuffle. One of the things our Office can do is take the time to research issues on a case-by-case basis, including problems that have become more complex because so much time has passed.

In 1994, a man constructed a soakage trench on his property in coordination with a demonstration project at the Leach Botanical Gardens. He urged an adjacent neighbor to join in the project. It was a more expensive way of handling stormwater run-off, but was environmentally better for Johnson Creek. They constructed the soakage trench with the understanding they would have a permanent exemption from the City's stormwater fees.

The problem began in 1995 when the Bureau of Environmental Services (BES) discontinued the stormwater discount program that provided discounts to thousands of customers. When he read about the change in the paper and in a "Dear Customer" letter announcing the proposed phase-out of the discounts, he was alarmed. The letter stated there would be a reimbursement program to pay up to \$212.50 to property owners for the cost of stormwater mitigation improvements. This was far short of the approximately \$6,000 he and his neighbor had spent on the soakage trench. He says he contacted the City and was assured his situation was recognized as unique and that he and his neighbor would either continue to receive an exemption from the stormwater fees or appropriate compensation. He said he was asked to be patient while the larger issues of the downspout disconnect program and stormwater rate reform were resolved.

In 1999, the man and his neighbor were charged stormwater fees on their water bills. They were asked to submit documentation of the costs of the soakage trench and a note was put into the man's water account indicating the case was under review. Again, he was told to be patient, because his unique case would be looked at after more common issues related to the Mid-County sewer and downspout disconnect program were addressed.

After waiting over two years, the man contacted our Office with a complaint that the matter had not been resolved. We contacted BES. A month later they responded that the deadline for requesting a reimbursement expired in 1995 and a permanent stormwater exemption was not possible.

We investigated, wrote a report (http://www.ci.portland.or.us/auditor/ombudsman/reports/2002_J_57.htm) and recommended to BES that they either allow a late application for the reimbursement or exempt the two from stormwater fees. After reviewing our report, BES agreed to extend the application deadline in this case and provide reimbursement for the costs of the soakage trench.

A Word From The Auditor - 2002

The City of Portland takes pride in its livability and the Office of the Ombudsman is one more commitment to that goal. The Office reviews complaints in an objective manner to improve public satisfaction with City services, and make recommendations to prevent similar complaints in the future.

The Office of the Ombudsman is an important tool for holding Portland government accountable, which supplements the other responsibilities of my office. Historically, the independently elected auditor has been the watchdog over City money, but with the addition of the Office of the Ombudsman, we can now help ensure that the City treats people fairly.

I am very pleased to have Michael Mills, Becky Chiao, and Peg Genne building stronger links between the public and its City.

Gary Blackmer, Portland City Auditor

The Ombudsman serves as the conscience of the community with the potential to make government responsive to the citizenry.

Comment from satisfaction survey



Razor Wire Is Cutting Issue

Not All Ombudsman Recommendations Accepted

A realtor contacted our office on behalf of a property owner to complain that a neighboring business had installed razor wire on the fence separating the two properties. They believed the razor wire was a hazard to their children and a deterrent to selling their property. They requested the City take enforcement action to have it removed.

Razor wire is installed for high security and is designed to inflict severe injuries when one comes into contact with it. It is generally hung in a coiled pattern as opposed to a being pulled straight like barbed wire.

The complainant called both the Police Bureau and the Bureau of Development Services (BDS formerly OPDR) and was advised that neither City bureau found that a violation existed. The razor wire is about 5 feet off of the ground and hangs above a wooden fence. The family had already experienced one injury from inadvertently contacting the razor wire. The family had requested the business owner to remove the razor wire without success.

Our Office was advised that BDS treated razor wire under the same rules as barbed wire, allowing it when placed 6 inches above a 4-foot or higher fence (Portland City Code 24.60.020). This Office suggested that razor wire was a greater hazard and should be treated with greater restrictions, possibly under Portland City Code 29.20.020 B, Other Endangering Conditions. This section covers, "Any other substance, material or condition which is determined by the Director to endanger neighboring property, the health or safety of the public, or the occupants of the property." The recommendation was not accepted. Additional recommendations were made to amend the City Code to restrict razor wire from use in or adjacent to residential zones. While raising the minimum height was considered, the recommendations were not accepted. The Mayor's Office researched the possibility of greater restrictions, but given the limited extent of the problem and limited resources, revisions were not initiated. The razor wire remains at the property and is permitted in Portland if over 4 ½ feet above the ground.

City Declines To Pay For Damage To Water Line

Balancing Immunity and Fairness

A Southeast Portland home received severe damage to its water line on January 18, 2002 as a result of work on the water main by City crews. The damage occurred when the water main was recharged and the sudden water pressure caused the older service line to the home to rupture. The service line required replacement as a result. Five other homes in the area experienced similar damage. Some of the routine precautions to avoid this type of damage, such as shutting off valves at the meters and notifying residents so they may open their water outlets, were not implemented since it was deemed an “emergency shutdown.” The emergency was based on the number of services disrupted and providing notification to the 167 water customers affected would have taken an excessive amount of time.

The owner of the home filed a claim for nearly \$2,000 with the City’s Bureau of Risk Management. It was denied on March 22, 2002. The letter from Risk Management explained that the City Code (PCC 21.20.050) allows the Water Bureau to shut off service for any reason, and “the private property owner is always responsible for any private plumbing system damages that may arise from this action.”

21.20.050 Authority To Shut Off Service.

The Bureau reserves the right at any time, without notice, to shut off the water supply for repairs, extensions, nonpayment of bill and charges or any other reason. The Bureau shall not be responsible for any damage, such as the bursting of boilers, the breaking of any pipes or fixtures, stoppage, or interruption of water supply, or any other damage resulting from the shutting off of the water.

Risk Management further concluded there was no evidence of negligence on the part of the City in causing the damages and the Bureau made repairs based on established procedures for the circumstances.

This Office looked at the fairness of this denial. To minimize the inconvenience to a large number of customers, the Bureau did not follow normal recommended procedures to limit the risk of damage. This

calculated decision resulted in damage to a small number of customers. This Office concluded that in fairness, the Bureau and its customers should assume responsibility by paying for repairs of those who suffered damage. This recommendation was not accepted. Risk Management suggested the owner seek review in Small Claims Court if not satisfied. As a result, the owner filed a Small Claims action.

On October 23, 2002 the claim came before Small Claims Court. The owner selected mediation rather than a trial. In mediation she settled with the City for \$750. She was afraid that if she declined the settlement offer and went to trial, based on City code, the judge would find the City immune from damages. She was not satisfied with the resolution.

In a similar situation on SE 26th, the City paid claims to property owners for damage to their service lines as a result of work on a water main. Risk Management explained that in this case there were “different facts and a different event,” and admitted to having shut the water off too quickly. They said City workers heard chattering in the lines, which was said to be a clear signal they created a water hammer. While in the second situation it was determined the Bureau was negligent in their work, the Ombudsman’s Office believes it remains difficult to distinguish between the two situations.

As a result, this Office initiated discussions with the Bureau of General Services (BGS)/Risk Management on the type of claims that are appropriate for review before the Committee on Claims. This City committee can investigate and process “fair and moral” claims against the City. The Director of BGS has offered to seek clarification with the City Attorney on what types of claims can be reviewed by this Committee. When reasonable claims are denied by Risk Management due to statutory immunity, as appears to have been done in this case, this Office would like to allow them to be eligible for review as a “fair and moral” claim before the Committee on Claims. Risk Management may also wish to re-evaluate the criteria used to approve or deny claims where fairness is in question.

Hunting for Peace and Quiet

Neighbors Complain About Noise During Filming of “The Hunted”

When the movie “The Hunted” filmed a simulated war in North Portland, it included a series of middle-of-the night explosions, some occurring as late as 2 a.m. during weekends. Those outbursts and other film related activities led a number of citizens to call our Office with complaints. We investigated the complaints by contacting the Noise Control Officer, the Bureau of Licenses, the Oregon Film and Video Office and the Office of the Mayor.

Three residents complained about the nighttime noise levels, the impact of the exploding fireballs and the adequacy of notice to the neighbors about film scheduling. Another caller became alarmed when fighter jets flew overhead coincidentally around the same time as the filming.

The film company complied with numerous requirements to obtain permission to film in the City. The Bureau of Licenses coordinates film and video permits. One requirement is for a film company to contact the Office of Neighborhood Involvement to coordinate with residents in areas where filming will occur. If noise will exceed permitted limits, the film company must work with the Noise Control Officer to obtain variances.

We found that the company took several measures to offset the



Photo: Bruce “Sarge” Fleskes, courtesy Oregon Film and Video Office

effects of their filming. The company offered reasonable overnight accommodations for people who felt they would be disturbed. Residents were provided an opportunity to submit claims for repairs in the event the explosions caused damage to their homes and there was no evidence that the compensation offered for any damage was inadequate. Notices were given out to neighbors informing them of the times filming would occur. The company said more advance notice could not be given because of uncertain scheduling and its desire to prevent hordes of onlookers from flocking to the set. Their explanation seemed reasonable. The Noise Control

Officer felt the concerns of neighbors and the benefit to the City of hosting a large Hollywood film were appropriately balanced.

Before filming started, the University Park Neighborhood Association had been made aware of all of the plans and the group appeared to support the project. There was a meeting with representatives from the film company and the neighbors prior to approval of the permits.

In the end, our Office did not find any basis to make a finding of unfair or unreasonable actions by City staff involved in permitting the filming of “The Hunted”. In

addition to compensating some individual neighbors with money for hotel stays, the film company made donations to non-profit agencies in the community. However, certain residents remained dissatisfied. While we acknowledge there were complainants who suffered some inconvenience and sleep disturbance due to the filming, compensation was offered and the staff involved with responding to neighbor complaints were responsive and did attempt to balance the interests of the neighbors and the film company. It is likely that any similar filming projects in the future will face a high level of scrutiny.

City Standouts

Many City staff members have assisted our Office in the past year. Many other City employees have gone above and beyond in serving the public and thus avoided conflicts that may lead to a call for our assistance. We would like to publicly recognize a few of those who have provided exceptional service in helping the people of Portland in 2002. We know they will provide the highest quality of service when we call on these people for assistance or refer people to them.

Alisa Cour and Jackie Phillips, Bureau of Development Services (BDS), Office of the Director, Customer Assistance. Alisa's addition to Jackie's office has provided the extra capacity needed to the Director's Customer Assistance Team to manage the daunting workload that faces the Bureau. The result is an especially helpful team that provides timely responses to citizens with problems regarding code violations and lien reduction requests. The discretion now used by the team in resolving complaints

has been very productive and has been greeted by citizens with great appreciation.

Nolan Mackrill, Portland Department of Transportation (PDOT), Parking Program. Nolan has provided us with valuable information about parking enforcement. He spent time explaining policies to us and demonstrates an open mind regarding citizen suggestions for improvements. He has been accessible and friendly under various conditions.

Eli Rosborough, Water Bureau, Customer Service. Eli has patiently responded to questions about complex water billing issues and worked diligently and collaboratively with our Office to respond to questions and complaints about residential and commercial accounts. He will take a call on a Friday at 5 p.m., and has referred Water Bureau customers to our Office for an independent review of their problem.

Ombudsman Fairness Checklist

Communication

- Public information is available and understandable
- Forms are in plain language
- Clients are given all the information they need
- Clients are treated with courtesy

Facilities and Services

- Telephones are answered promptly
- Voicemail, answering machines or toll-free numbers are available
- Premises are easily accessible and suited for wheelchairs
- The environment is safe and healthy for workers
- The public's right to privacy is respected

Decision Procedures

- Those affected by a decision have a chance to give information and evidence to support their position
- Decisions are made within a reasonable time
- Reasons are given for decisions

Appeal, Review, and Complaint Procedures

- At the time of decisions, people are told of any existing appeal or review procedures
- Complaint procedures are clearly defined
- The public is asked for ideas on improvements in service

Organizational Issues

- Staff are given clear titles for the functions they perform
- Agencies consider whether reorganizing would provide better quality service
- Agencies cooperate with one another to provide better service to the public

Agency Review and Planning

- The public is invited to participate in planning programs
- How decisions will be made is clear from the beginning
- Statistical information needed to evaluate and improve performance is recorded and maintained

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Building Permit Issues: Case Examples

(continued from pg. 2)

found the refund check had not been issued. The \$200 was eventually refunded in August 2002.

Special Inspection Problem

A homeowner called our office in July 2001. He had been living in a new home since March 1997. In June and September 1997, the City sent the owner notices to his previous address that three required special inspection reports had not been received. The owner does not recall receiving these notices. He stated that at the time he referred all such matters to the building contractor who had told the owner the project was complete and the building was set to occupy.

It appears nothing further occurred regarding the matter until January 2001 at which time the contractor was no longer in business. The owner received a letter dated January 23, 2001 stating "Please forward the remaining special report..." On January 26, 2001 the owner had phone conversations with an inspector in the Code Compliance Section who stated he explained the special inspection permit requirements to the owner. Upon investigation of the situation, the owner found the company originally designated to perform the special inspection had not conducted a structural steel inspection. The owner spoke with BDS staff on April 24, 2001 and August 1, 2001 but stated he still did not know how to resolve the problem. The inspector repeated

that three special inspection reports were required. The owner did try to provide reports from other engineers but felt he was not given clear direction as to what reports, if any, could substitute for the original special inspection reports. Meanwhile, the Code Compliance Section was issuing monthly penalties and stated they would continue until the first inspector was satisfied with the inspection reports.

The owner contacted our Office in July 2001 and we referred him to the BDS director's office in July 2001. He was told the matter would be reviewed. As we tracked the case, BDS provided us some documents and communications in November 2001. We received a summary report from the bureau in January 2002. Eventually, in August 2002, the owner was informed in writing that the residential building permit would be closed as unapproved, the code compliance case would be cancelled and the fees reversed. In this case, more timely enforcement practices would have allowed the homeowner, who was not a contractor, to resolve the issue or to take action against the person who was responsible for the problem.

Unpermitted Shower and Occupancy Change

On December 10, 2002 we issued an investigation report on Case #01-43, another complaint having to do with enforcement fees charged for

work done without permits. The violation arose when the owner of a multi-use dwelling installed a shower without a permit, and began to use part of a building approved for commercial use as an extension of her residential apartment. She requested an inspector look at the shower first before she hired a contractor to redo the shower work. As a result, substantial fees accumulated as liens against the property. The full report can be found on our website at http://www.ci.portland.or.us/auditor/ombudsman/reports/01_43.htm.

The report recommended that BDS do the following:

1. evaluate the cost of its services relative to the fees already paid on this case, along with a reasonable penalty for the work done without a permit, and make a refund to the owner of the excess amount;
2. review inconsistencies between the various enforcement approaches toward work done without permits and implement alternatives to automatic monthly revolving fees for these types of violations; and
3. develop the practice of providing a consultation within 60 days of enforcement fees being imposed for code violations, clearly identifying one inspector to work with the

owner toward the goal of closing the violation case as quickly as possible.

The Bureau did not respond specifically to these recommendations. Again, after issuing the Ombudsman report, the fines were reduced and a refund made to the owner.

The current policy for resolving past work done without permits remains problematic. A recent statement by a BDS representative indicated that Title 29, the Housing Maintenance Code, does not provide a mechanism for enforcing violations of work done under a permit that was never finalized. Presumably, the Code Compliance Section would have authority over cases where a permit has been purchased but a final inspection was not recorded.

A clarification of the boundaries and procedural differences between the two enforcement Sections would be helpful. This issue remains a concern to our Office in light of the fact that thousands of outstanding permits have not been finalized. Careful consideration of each individual permit would be necessary to determine whether the owner abandoned the work, if the contractor was at fault or if there was a City paperwork error. The more time that has passed since the work was done, the more difficult this becomes.

How We're Doing

The Public Responds to our Satisfaction Survey

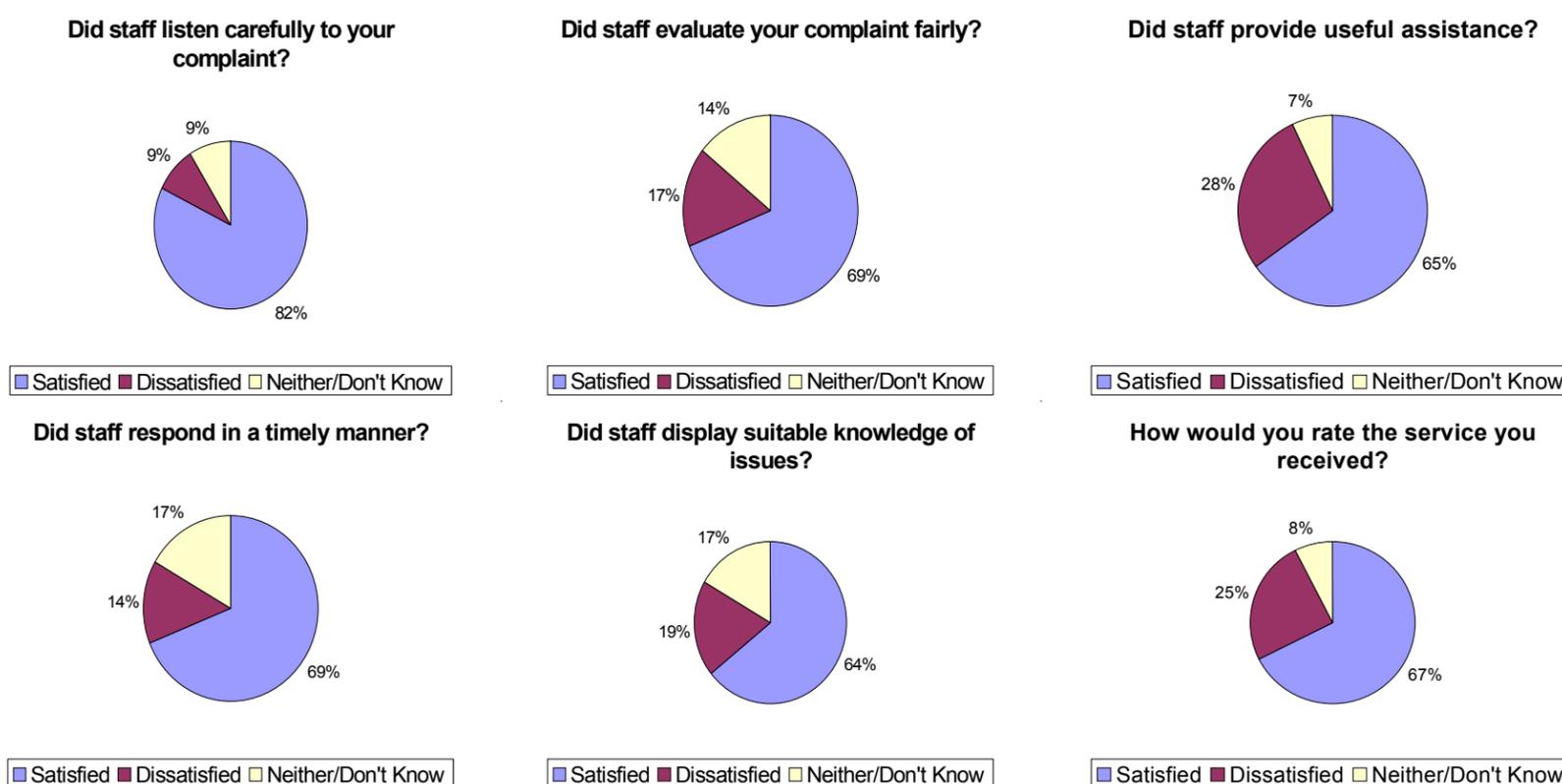
At the end of 2002, the Office of the Ombudsman mailed surveys to those who had complaints closed during the year. The survey asked six questions with rankings for evaluating our services. We also solicited comments about changes or improvements that might make our Office more helpful. We sent out 164 surveys, from which we received 46 responses with another 12 returned as undeliverable. The pie charts below summarize the responses received.

Survey participants had the option to remain anonymous so they would provide honest responses. Some respondents were anonymous and others chose to identify themselves. While some remarks dealt directly with the Office of the Ombudsman, others were expressing their level of satisfaction about the bureaus that were the subject of their complaints. Several respondents made suggestions about how to improve our service, or complemented us on things we were doing successfully.

Two themes emerged out of the suggestions we received. (1) Some people were dissatisfied that our Office simply referred them to another City bureau. (2) Others commented that our Office should have the power to enforce our recommendations. Reflecting on these comments, it may be necessary to further explain the role of our Office.

It is recognized that the expertise relating to bureau services usually resides within the bureau. The primary responsibility to address problems and complaints about a bureau's actions also rests with the bureau. While the role of the Ombudsman is to investigate complaints and make recommendations, it is also to promote and assist bureaus in resolving their own complaints. In most cases, it is appropriate and usually more efficient to first provide the bureau an opportunity to assume responsibility and resolve their own complainants. When a bureau is unable to resolve a complaint, it is appropriate for the complainant to seek a review from the Ombudsman.

One of the basic principles of the Ombudsman concept is that the Office is granted the power to investigate and make recommendations, but not to issue mandates or directives. Those powers are granted to elected officials and their designees and should not be given to an appointed Ombudsman. Many of those who voiced dissatisfaction with the Ombudsman services are actually dissatisfied that either we did not agree with them, or that we were unable to change a decision of the bureau involved. This points out the need to continually advise the public of the role of the Ombudsman.



You Can't Always Get What You Want

One of the primary goals of our Office is to provide recommendations to fairly resolve conflicts involving City government. However, we were not able to satisfy all of the complainants who contacted our office in 2002. While we would prefer to have 100% caller satisfaction, not all complainants have valid complaints; and not all complainants evaluate our Office based on our services separate from their complaint with another agency. Some of the people who were not satisfied with our Office did not appreciate that we found their complaints to be without merit. Below are two examples.

First Example

A woman called in April with a complaint that her water had been shut off. She said that she was a new tenant who called the Water Bureau to start service on March 1st but then the water was turned off March 15th. The Water Bureau referred the case to us after staff and the Commissioner's office had looked at the issue. The caller explained that the Bureau had been confusing her with a prior tenant who had an unpaid water bill. She said that the Water Bureau was requiring proof that the old tenant no longer lived at the location and had requested that the landlord provide this confirmation.

The caller gave us two phone numbers for the landlord. Neither of the numbers matched the name of the landlord in a reverse look-up directory. We called the Water Bureau and were told it was their finding that the new tenant was in fact the girlfriend of the original tenant whose water had been shut off for non-payment. They had confirmed this information with the landlord and with the original tenant's ex-wife. Lacking any new information that contradicted the facts we had gathered, the complaint was found unjustified.

Second Example

A man called to complain that his car had been towed from a street posted for street cleaning while he was out of town. He was new to the area and unaware of the periodic street sweeps that required parked cars to be moved or towed. He stated he did not see the fliers mailed to all area residents prior to the sweep and that he was out of town before the 24-hour No Parking barricades were put out. Further, he felt when he got his area parking permit, he should have been informed of the dates of the street sweeps and the fact that cars parked for longer than 24-hours in one spot could be towed upon notice.

We informed the complainant that because an option existed to challenge the tow in a hearing, we would not make a determination of the fairness of his particular case. We did forward his suggestion that information regarding street sweeps be included in materials provided with area parking permits and it was accepted by the permit program supervisor.

Later the man got a ticket for parking in an adjacent neighborhood that also required a permit. His permit was not valid for the other neighborhood, but he felt he should not have been ticketed since his neighborhood had lost many of its parking places during a City sewer construction project. We told him that a way existed to challenge the ticket in court and suggested he talk to the neighborhood association and /or the construction project coordinator to determine whether any consideration had been made to the on-street parking disruption. Unfortunately, the caller felt these suggestions were inadequate. He was dissatisfied with our Office. However, the response we provided was consistent with our policies of not interceding where there is another adequate avenue for appeal, and to require citizens to first seek assistance from those directly involved with an issue before seeking review by our office.

Outreach Efforts

As stated in our last Annual Report, one of our goals was to continue outreach efforts to make community members aware of our services. Throughout the year, we met with a variety of groups to explain our program. Our outreach contacted neighborhood groups (SouthWest Neighbors Inc., SouthEast Uplift, Piedmont Neighborhood Assoc., Northwest Industrial Neighborhood Assoc.), ethnic communities (Chinese Consolidated Benevolent Assoc.) and business groups (Alliance of Portland Neighborhood Businesses Assoc., East Portland Chamber of Commerce, Parkrose Neighborhood Business Assoc., Nob Hill Business Assoc., Portland Metropolitan Small Business Alliance).

In addition there were several articles in the media concerning the Ombudsman's Office. These articles heightened people's awareness of who we are and what we do and frequently generated calls to our office.

We also participated in the 2002 Oregon Small Business Fair held on Sept. 14, 2002. This was a free information event for small business owners and those thinking about starting businesses. It was an excellent opportunity to explain the Ombudsman program and make people aware of how we can assist in their dealings with City bureaus.

During the coming year we will be continuing and expanding our outreach efforts. If you would like to schedule a speaker for your community or business group, please contact us at 503-823-0144.

When and How To File A Complaint

The Office of the Ombudsman receives complaints by mail, telephone, fax, e-mail and in person. Our staff is available from 8:00 a.m. to 5:00 p.m., Monday through Friday. If the complainant has not yet tried to deal directly with the relevant bureau, we recommend he or she first seek help from the bureau staff. Most often, the bureau will be able to help more quickly than the Office of the Ombudsman. If the person is not sure which bureau to call, he or she can call us or the Information and Referral Line, (503) 823-4000. If the complainant cannot resolve the issue with the bureau, he or she should then contact the Office of the Ombudsman.

When someone contacts the Office of the Ombudsman, that person will work with a designated staff person who will follow through with the case by gathering information and discussing the situation with them. The staff person may ask questions to clarify exactly what happened. It is helpful if the complainant can provide as many details as possible, such as the names of any staff he or she has contacted, dates of the events in question, options already tried and copies of any documents or correspondence.

The staff person will conduct additional research and speak with the City officials involved to get a more complete overview of the situation, as well as solutions that might be available. When the staff person has gathered all the relevant information, and has a complete understanding of the situation, they will contact the complainant as to their findings and possible resolutions. When warranted, the Office of the Ombudsman will make a recommendation to a bureau. Our recommendations are suggestions. It is up to the bureau itself to make a final decision.

How To Contact Us:

Staff: Michael Mills, Becky Chiao and Peg Genne
Phone: (503) 823-0144
Fax: (503) 823-3530
E-mail: ombudsman@ci.portland.or.us
Website: www.ci.portland.or.us/auditor/ombudsman
Address: 1221 SW 4th Avenue, Room 320
Portland, OR. 97204

Our office is located on the third floor of City Hall, which is downtown between SW 4th and SW 5th Avenues and SW Madison and SW Jefferson Streets.

Ombudsman Website

Important Information at Your Fingertips

The Office of the Ombudsman's website, <http://www.ci.portland.or.us/auditor/ombudsman/index.html> can provide a great deal of information for people to view at their convenience. It explains who we are and what we can do (as well as what we can't do). There is a link to the City Code provisions that created this Office and outlines our duties and responsibilities. There are links to both our Annual Reports and our Investigative Reports, which detail specific cases where visibility was important. The website also has links to other resources as well as a list of helpful telephone numbers.

To assist people who are having problems with the City, or even other entities, the website includes "Tips for Problem Solving" which outlines successful ways to ask questions to clarify the situation as well as document communications and contacts with staff.