



# 2008 OMBUDSMAN REPORT

AUDITOR'S OFFICE, CITY OF PORTLAND, OREGON

Issued: June 2009



Photo: Steve Bonini

**H**ow important is accountability in government? Many believe that having accountability in their government is essential, while others might say it is a goal we can only aspire to. While we often hear how critical it is for government to be fair

and equitable, we are constantly reminded of examples to the contrary.

Accountability and the public service the City provides are closely aligned. If we fail in either, the public will remember and may abandon their support. One can often hear people share their personal stories of public service they judge as poor or unfair. In fact, when someone believes they have been wronged by the City, they will often embark on a quest to tell as many people as possible in order to achieve some sense of justice. The public's memory may lapse when the City performs service as expected but failures are long remembered.

City government must demonstrate that it is accountable. Accountability is possible though it may be difficult to achieve. The Auditor provides the face of accountability for the City of Portland. The Office of

the Ombudsman is one component in the Auditor's cadre of accountability systems. The Ombudsman receives and investigates public complaints and recommends improvements in code, policies and the provision of City services. The Audit Services Division provides additional management oversight through their performance audits of City bureaus. In addition, the Auditor's Office provides accountability through its administration of: Elections and Lobbying Regulation, the City Recorder Division (which includes the Council Clerk, Council Contracts and Archives and Records), the Hearings Office, Assessments and Liens and the Independent Police Review.

Gary Blackmer left the position of elected City Auditor in May of 2009 after some 10 years in the office. One of his first efforts upon becoming Auditor was to research best practices among ombudsman offices. He spoke with ombudsmen from around the country and examined the best government models available in order to bring forward a legislative model that would institutionalize an independent ombudsman service for the people of Portland. Blackmer is to be credited for evolving the ombudsman function and securing its permanence by introducing the City Ombudsman Code adopted by City Council.

Blackmer deserves praise for fully utilizing the tools of his office to improve accountability in the provision of City services. He leaves a legacy of good governance.

*Michael Mills, Ombudsman*

## Purpose of Report

The Office of the Ombudsman investigates complaints about City government, develops recommendations to improve public service and provides another voice for the public interest. As a result, City procedures become more transparent, the City is more accountable for its actions and responsive to potential improvements. We have an obligation to be accessible and to let the public know the types of issues we have addressed on their behalf. One way 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.

## A Word from the Auditor

Gary Blackmer, Portland City Auditor



**A**s I leave the Auditor's Office I believe the Ombudsman has been a significant improvement in Portland government. It has been most successful in this office because the ombudsman and the modern performance auditor share methods and objectives to achieve government accountability.

Both auditors and ombudsmen seek to improve government services. Auditors usually look at the management systems to identify patterns of problems that adversely affect public services. The ombudsman starts from the other perspective, fielding a complaint from an individual that may be a unique case, or may be the result of a systemic management problem.

For both, impartiality – "objectivity" in auditor parlance – is critical. The right answers and solutions are built on a real understanding of the situation, untainted by personal bias or flawed research. A complainant seeking redress, or a bureau under an auditor's scrutiny, are alert to any suggestion of bias against their case, so auditors and ombudsman must avoid any

situation that could undermine their credibility. Having auditors and ombudsman working for an independently elected official provides that critical independence.

An ombudsman also needs strong reasoning and persuasion skills to bring the complainant and bureau to see the facts as they are, and the necessary actions to resolve them. Similarly, auditors assemble the facts in a persuasive report that points to the recommendations. Neither have the power to direct agencies to implement their recommendations, but both depend upon the force of reason.

As auditors have their standards, which are an assurance to the public that they conduct proper audits, so too the ombudsman have standards. Accountability is important even for organizations that hold the other elements of government accountable.

Those common characteristics are important, but on a practical level the auditing and ombudsman functions complement each other. The information-sharing between ombudsman and audit personnel can better identify City problems and strategies for dealing with them. Problems that are too singular for an audit, are exactly what an ombudsman can resolve. And problems that are complex and systemic are perfect for auditors.

The Office of the Ombudsman has taught me that government accountability and improvement requires a variety of approaches. To ensure quality services, we need an Office of the Ombudsman to hear the complaints from the public and businesses who were not satisfied, and to work with each of them and the City's bureaus to resolve the matter.

As a result, I have become an advocate for government ombudsman offices because we improve by seeking out complaints and learning from them.

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# OMBUDSMAN HANDLES A VARIETY OF CASES IN 2008

## Frustration over Fire Hydrant Installation

A frustrated property owner called over the manner in which the Water Bureau replaced a fire hydrant on SE Harrison St. Eight weeks after the installation began in September, the complainant reported that the project had been left unfinished. A hole remained in the sidewalk around the hydrant and a number of barriers were scattered around. The complainant felt the condition posed a hazard to wheelchair users and other pedestrians frequenting this sidewalk.



Uncompleted work frustrates neighborhood

The complainant reported that for about three weeks after the initial work was done, the old hydrant was left in his driveway. After his call to the Water Bureau in October, the old hydrant was promptly retrieved but the hole in the sidewalk remained in need of repair. By the first week of December some repairs were made to the sidewalk. However, the complainant reported that on December 24 a hole approximately 18 inches by 36 inches and 6 inches deep remained. Once the Ombudsman contacted the Water Bureau, they pledged to repair the entire area as soon as the weather permitted (after the December snow melted).

The Water Bureau apologized for the excessive delay in making the repairs and explained it was the result of a misunderstanding between the manager and the crew leader. The manager anticipated that the hydrant would be picked up when the plates were picked up and recognized that the work she assigned to others should have been checked on. She assured us they will remain diligent in their efforts to prevent this from happening again.

## Ombudsman Tracks Down Information Bureau Failed to Provide for Claim

The Office of the Ombudsman was contacted by a person whose claim against the City had been denied. He claimed his car was parked behind a small white passenger bus with a “City that Works” logo on the bus door near the Convention Center. When he returned to his car just over an hour later, the bus was gone but his car was dented 26 inches off the ground. He said it was likely that the vehicle that damaged his car was the City of Portland vehicle. Risk Management denied the claim because they were unable to locate a City vehicle that was at the listed location on the date in question.

After receiving the denial letter, the claimant asked how many buses of this size the City of Portland owned and which bureaus own/use them. In particular he wanted to know which bureaus had checked out any motor pool buses on the date of the incident. He had not received a response to that request.

The Ombudsman felt the request was reasonable and followed-up to gather the information. At first, there was some confusion whether the claimant was referring to a large passenger van or small shuttle bus. Once the claimant confirmed it was a small shuttle bus, Ombudsman staff contacted various bureaus including Portland Parks and Recreation. Approximately six weeks after telling Risk Management they did not have a van in the area, Parks confirmed to the Ombudsman that they did have a small shuttle bus at this location on the date in question.

While we fully understand that the mere presence of a vehicle at the same location does not indicate liability, it was hard for us to understand why this information was not relayed accurately when it was initially requested. It appeared that the bureaus involved did not clarify with the complainant they were looking for a bus and not a van. By not providing the information, the intent could be misconstrued. Our primary interest was seeing accurate information provided and a thorough investigation conducted.

We provided this information to both Risk Management and the claimant so that they could complete their negotiation.

## Change in City Job Recruitment Deadlines Causes Concern

The Office of the Ombudsman initiated an inquiry into the announcement by the Bureau of Human Resources Employment and Development Division (The Bureau) that they had made changes to City Recruitment Practices and Announcement Language. The Ombudsman identified potential problems which would result from the new practice.

The new practice established that applications for City jobs could be “accepted until a sufficient number of qualified applicants have been received.” While the new language set an additional absolute ending deadline, it provided no minimum recruitment period, thus allowing arbitrary closing deadlines. The impact would be that applicants would have no idea how short of a duration job openings would be open. Individuals preparing their applications over a period of several days, or submitting their applications close to the deadline, “might find that due to volume, the recruitment closed early.”

The Ombudsman received a number of concerns related to instituting a practice that would allow an arbitrary date for recruitment closings, the primary concern being the ambiguity in the number of days or hours available to prepare and submit an application for a City job. Candidates would not know when to submit their applications in order to be considered. As a result, the Ombudsman recommended that regardless of how many days recruitments are open, there should always be an established minimum closing date.

The Bureau responded positively to our

recommendation. They first explained that the new language was actually a work in progress in response to managers losing qualified applicants due to the lengthy recruitment process. They also cited the current economic atmosphere of high unemployment having increased the volume of applications thereby increasing the amount of time needed for review and evaluation. They said extensive processing time means that often the most highly qualified applicants have been lost to other employers and the City’s ability to attract highly skilled candidates is compromised. The Bureau also emphasized that the City had to move quickly to process applications, interview candidates and extend job offers to remain competitive. They explained the language initially announced was offered as an optional tool for management to use when recruiting for positions that might attract a large volume of applications in a short period of time.

A workable solution was reached that requires a minimum number of days for recruitments to be held open. The language provides that, “applications will be accepted until a sufficient number of qualified applications have been received. This recruitment will remain open for a minimum of three days from the posting date but no later than 4:30 PM on (specific date)”.

## Unclaimed Barricades Unnecessarily Limit Parking Near Senior Apartments

When the complainant contacted the Office of the Ombudsman, she said parking barricades in Southwest Portland had been up about two weeks but no visible work was taking place. At issue for this particular person was a lack of parking for non-residents and care-givers at an apartment complex for seniors 55 and over. On-street parking in the area is limited.



Forgotten barricades restrict parking

The Ombudsman contacted the Portland Bureau of Transportation’s Maintenance Operations (PBOT) dispatch line to find out if they had any information on the barricades. They said they were unable to find any information and suggested trying the Water Bureau (WB) and the Bureau of Environmental Services (BES). The WB sent crews out to look at the barricades and confirmed that they were not the WB’s. BES said the barriers were not theirs. BES confirmed they had upcoming construction in the area, but the construction schedule had not been finalized and work had not yet begun. The

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Ombudsman also contacted Northwest Natural (NWN). NWN confirmed they also had work to do related to the BES project but had not yet put up any barricades. NWN explained they clearly mark their barricades and none of those that were up belonged to NWN.

Several days were spent contacting various bureaus and agencies. Because the Ombudsman could not find anyone who claimed the barricades, we recommended that the barricades be removed. Just as we sent our recommendation, we received information that the barricades had been set out by PBOT for some street patching/paving work which had been completed. PBOT went out and removed the barricades.

We have found that most people are very understanding when work is taking place. However when parking is limited without work happening, the public understandably becomes frustrated. Because the PBOT Dispatch Line did not have information that the barricades belonged to PBOT when we first called, City crews spent unnecessary time trying to track down who was responsible. The Ombudsman hopes incidents like these can be avoided in the future.

## Two Distinct Systems Impede Vehicle Recovery

Seven weeks after he had reported a vehicle stolen from his Northeast Portland driveway, the owner's daughter located the vehicle about a mile from his home. The owner complained to our Office because someone in the neighborhood, where the vehicle was recovered, had called the Portland Bureau of Transportation's (PBOT's) Abandoned Autos Hotline twice to report the vehicle as abandoned some five or six weeks prior. However, PBOT did not know the vehicle was on the Portland Police Bureau's (PPB's) stolen vehicle list. The City's two systems are unable to share information.

As a result of the delay in locating the stolen car, the owner settled with his insurance company at a loss and bought a new vehicle before his car was located. He explained that the replacement vehicle came at considerable extra expense. Had the vehicle been identified as stolen when it was reported to Abandoned Autos, he would have had the opportunity to recover the car rather than replace it.

This Office investigated what would be necessary to check if a reported abandoned vehicle was also reported stolen. While there is hand held technology available, PBOT staff said it was cost prohibitive to make this technology available to the Abandoned Autos staff.

PBOT staff has to call the PPB to see if a vehicle is reported stolen. Parking Enforcement and Abandoned Autos staff only call if there is something unusual or suspicious about a vehicle. If the vehicle is legally parked and there is no violation, no action is taken. The high volume of cases combined with limited personnel make it impractical to check on every vehicle reported to determine if it was stolen. PBOT estimates the number of vehicles they encounter that are stolen is less than one percent annually.

One question asked was whether Abandoned Autos has the equipment with the capacity to load this information into a database at the time of ticketing and/or tagging a suspected abandoned auto.

At this time, the Abandoned Autos unit does not have access to the list of stolen vehicles and cannot load this information in real-time. However, if the inspectors tag a vehicle for tow, and the contractor tows a vehicle, the tow desk must inform Police Records. Police Records run every vehicle through their database and it is at this stage when it is determined whether a vehicle has been reported stolen.

## Neglected House Becomes a Danger for Neighborhood

A neighbor contacted the Office of the Ombudsman on a Friday afternoon to complain about an unsecured and abandoned house in the hopes of discouraging further neglect by an absent property owner. Neighbors believed the house was a nuisance and dangerous.

The neighbor reported the house had boarded up windows on the outside and the front door was open. On the inside there were holes in the walls and floors, no working toilet and waste in the bathroom. They indicated that there was a smell of solvents and hazardous materials just inside the open front door. The electricity was still on and many outlets were uncovered. They said the owner had placed a "for rent" sign in front.

The neighbors decided to file a complaint given the safety risk to their children. The house was habitable before the current owner took possession. The neighbors did not want to see the property remain uninhabitable indefinitely. Their research determined the owner had an interest in another house in the area that was also abandoned and uninhabitable.

A second complaint from another neighbor requested that the house be red tagged and boarded shut immediately given the open door and cans of flammables inside. They did not want the house to be left unsecured over the weekend.



Inspector's photo of broken window and missing siding

The property was under City nuisance abatement for grass and weeds. Given the high level of concerns over neighborhood safety, a Bureau of Development Services (BDS) inspector appeared at the site within a matter of hours on the same afternoon. The inspector encountered a worker inside who was cleaning and rehabbing, who let him do an interior inspection of the structure. The inspector did not find any evidence of unsanitary or hazardous materials. There were additional violations of Title 29 (Property Maintenance Regulations) and he posted the property for those. He also posted an orange tag on the front door prohibiting occupancy until violations were corrected or approved by the inspector. An additional Housing violation letter was mailed to the property owner. Monthly code enforcement fees were accruing and about to double. The nuisance case was at the work order stage and was ex-

pected to be inspected within a week.

By the following Wednesday, BDS had processed a warrant from the Court to abate a nuisance. Upon return of the warrant the following week BDS secured the property by boarding it up. The plywood covering the entrance on the back porch was removed and the house was found to be occupied by transients. The plywood was re-secured. The property was red tagged preventing the property from being occupied, especially by transients. BDS acted in swift manner to ensure safety and address neighborhood concerns.

## Sewer Line Crisis is Resolved Successfully

A property owner was very distressed about a joint party sewer line emergency that resulted in raw sewage in her basement. (A party sewer is when two or more properties share one sewer lateral before it reaches a public sewer line.) The City had deemed the situation an emergency. The owner said she contacted our Office for assistance after requests to other City officials failed.

The Bureau of Development Services (BDS) and Bureau of Environmental Services (BES) promptly responded and began working toward a solution, giving the property owner a sense of confidence that a solution would be reached.

Once the expert staff became involved exceptional efforts were made to assist the property owner and a resolution was reached. BES allowed a temporary private sewer branch down the planting strip to access the property because there were no other workable or affordable options. BES drafted a written agreement (Waiver of Remonstrance) for this branch line making the property owner fully responsible for construction and future maintenance. When, and if, BES provides a new public sewer main in the neighboring street, the property owner (or future property owner) will be required to disconnect the temporary branch line and connect to the public system.

While the initial response to the call for help fell short, once the issue was directed to City experts the individual's sewer line crisis was successfully resolved.

## Persistence Produces Tax Reform Results

Business License Fee were words that made the hackles rise for many business owners in Portland prior to 2008. One owner complained to the Office of the Ombudsman in 2005 that the City Business License fee was operating more like a business net income tax. The license fee was based on net revenue, but it was collected before that revenue was ever earned. This resulted in a double payment the first year of business operation and was inconsistent with Multnomah County, State and federal tax practices.

After investigating the complaint, the Ombudsman reached a conclusion that was consistent with the opinion of the business owner who raised the complaint. The Ombudsman made recommendations to the Revenue Bureau and eventually brought this business fee/tax issue to the attention of City Commissioners. Initially, our office was advised that a City

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Charter amendment would be required to enable such a change. Three years later, with periodic raising of the issue, a political decision was reached to address the inequity. The Bureau then worked diligently to revise the business license fee to be more equitable and to more closely reflect other common income tax structures.

This Office was ultimately able to inform the complainant that an August of 2008 decision by the City Council, and subsequent implementation by the Bureau, did in fact restructure the business license fee to function as an “after the fact” tax. This action became effective for the 2008 tax year.

*Brilliant. I'm amazed that you've been keeping this alive – proof that at least some tax dollars are worth their weight in gold!*

~ Comment from business owner who filed original complaint in 2005

### Hedge becomes issue between Feuding Neighbors

A Southeast Portland property owner had received several nuisance violation notices from 2006 through 2008, and called the Office of the Ombudsman because she believed that the City’s complaint driven enforcement system was being used by an angry neighbor as a means of harassment. The property was self-proclaimed by the owner to be one of the best maintained yards in the City.

In this instance, the nuisance violation

notice was for a hedge along the side of the property which reduced visibility at an intersection. The Portland Bureau of Transportation (PBOT) requires 200 feet of sight visibility at an intersection so drivers are able to see each other. There is also an eighteen inch height limitation for the hedge. However that was later found not to be an issue. The situation was further complicated since both PBOT and the Bureau of Development Services (BDS) were involved in making compliance decisions, one concerned with the property maintenance conditions and the other concerned about maintaining transportation safety.

At one point the property was posted with a violation when it need not have been, although according to PBOT it was close to being in violation. BDS apologized for the inconvenience and the two bureaus improved their coordination for any future complaints. PBOT was identified as the responding bureau for complaints about the hedge.

Frequent trimming of the vegetation on this property is indeed necessary to maintain a safe sight distance. However, this case was at the heart of a neighborhood conflict between two neighbors lasting for several years. A case that continues to reemerge after it has been previously resolved warrants additional scrutiny. In this case the property was subjected to enforcement actions as a result of chronic complaints.

Too often, City compliance agencies are caught in the unfortunate position of being used to attack a neighbor in a disingenuous manner. Mediation is often an effective means to restore neighborhood relations and free the City from this predicament. The Ombudsman suggested that the property owner request mediation with the neighbor through the City sponsored neighborhood mediation program at Resolutions Northwest. The parties were unable to agree to mediate.

## OMBUDSMAN RECOMMENDS ANTI-RETALIATION LANGUAGE

The Office of the Ombudsman has on a number of occasions received concerns from employees about the fear of retaliation if they were to file a complaint with our Office or cooperate with one of our investigations. We have had complainants who were reluctant to provide information or raise concerns without having some assurance that the City would protect them from retaliation. This Office recommended, and then advocated for, language to be added to the Bureau of Human Resources (BHR) Administrative Rules specifically addressing retaliation.

After many months, language was adopted on April 17, 2009, within BHR 11.03, Duty to Report, which specifically prohibits retaliation. Further, disciplinary action can be taken against an employee who participates in retaliation. In part, BHR 11.03 now reads:

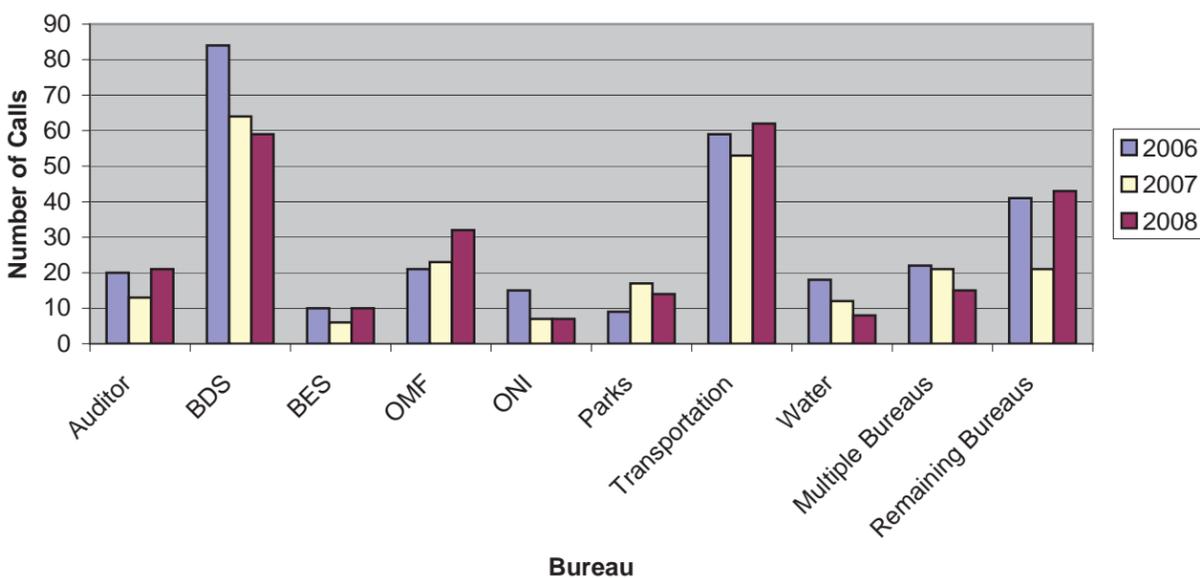
*The City will not tolerate any retaliation against an employee for filing a complaint or report under this rule or for cooperating in an internal or external government investigation. Retaliation is prohibited even if the underlying complaint or report is not substantiated.*

*All information received in connection with this rule is treated as highly sensitive. To the extent possible, confidentiality will be maintained, however, absolute confidentiality can not be guaranteed.*

With this addition, employees have greater assurance that they may report observed or suspected unlawful or improper actions without being subjected to retaliation.

## OMBUDSMAN COMPLAINTS BY BUREAU

All Complaints 2006-2008



The combined cases in the adjacent graph represent a wide variety of cases that we receive regarding City services. Sometimes we refer the complainants to the bureau letting the bureau staff attempt to directly resolve the issue with the complainant. Sometimes we decide to investigate the matter to the fullest extent allowed by our code, including requesting and reviewing bureau documents, interviewing parties involved and researching legal or technical questions that arise. Often, our intervention is somewhere between those two ends of the spectrum. In 2008, we had 271 complaints about City services.

The cases in the adjacent chart do not include calls to our office we deem non-jurisdictional, meaning they do not involve an administrative act of a City agency. In those cases, we try to refer callers to the best appropriate resource to address their concerns. In 2008 we had 143 calls regarding non-City services or calls outside our jurisdiction. That is an increase in the number of non-jurisdictional complaints compared to the previous year. We have also seen an increase in the variety of these types of calls our office receives. This might reflect the public’s frustration with trying to access public services during this economic crisis.

If you are interested in more information on case statistics, please contact the Office at 503-823-0144.

**Acronyms:** Bureau of Development Services (BDS), Bureau of Environmental Services (BES), Office of Management and Finance (OMF), Office of Neighborhood Involvement (ONI). OMF includes Business Operations, Financial Services, Human Resources, Purchases, Revenue and Technology Services.

### Explanation of Complaints

Portland City Code authorizes the Ombudsman to investigate the administrative acts of City agencies. An administrative act is defined as “an action, failure to act, omission, decision, recommendation, practice, policy or procedure.” An agent or agency is defined as “any bureau, office, institution, corporation, authority, board, commission, committee of the city and any officer, employee, or member of the forgoing entities acting or purporting to act in the exercise of their official duties, EXCEPTING: elected officials and their personal staff.” PCC 3.77.020.

## NEW CITY AUDITOR ELECTED MAY 2009



**L**aVonne Griffin-Valade was sworn in as interim City Auditor on May 18, 2009, and was elected City Auditor May 19, 2009\* to fill an unexpired term that runs through the year 2010.

LaVonne served as the elected Multnomah County Auditor beginning in 2007. She previously served in the Multnomah County Auditor's Office as the Deputy County Auditor, and prior to that as a Senior Management Auditor. She started with the Multnomah County Auditor's Office in 1998. Prior to joining the Multnomah County Auditor's Office she worked for the Northwest Regional Education Laboratory as a researcher and teacher trainer.

LaVonne has a Masters in Public Administration degree from Portland State University, and a B.A. degree from Western Oregon State. She has also done post graduate degree work in the Public Administration and Policy doctoral program at Portland State. She is a Certified Internal Auditor (CIA) and a Certified Government Auditing Professional (CGAP).

She is a member of the Institute of Internal Auditors and also of the Association of Local Government Auditors, where she serves on the Peer Review Committee.

The Ombudsman Office looks forward to working with LaVonne to continue to provide the public with accountability and transparency regarding City government.

\* Election results are expected to be certified by June 9, 2009.

## SPECIAL THANKS TO MEG BOWMAN



**I**n February 2008 the Office of the Ombudsman welcomed Meg Bowman to the role of Deputy Ombudsman. Meg served in a temporary capacity while deputy ombudsman Kristen Erbes was on leave.

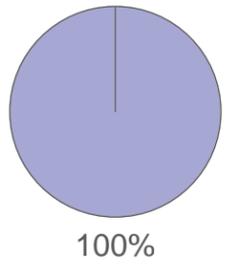
Meg was previously a family and peer mediation specialist at Resolutions Northwest where she managed the Family Mediation Program, recruited and trained youth mediators and mediated parent-adolescent and adult family conflict issues for over nine years. Her conflict resolution skills and experience allowed her to successfully assist those seeking help with City issues.

Meg was able to respond effectively to complaints, manage her assigned case load and contribute her good nature to the office. A big thank you to Meg as she was able to provide a seamless transition and step into the role of deputy ombudsman!

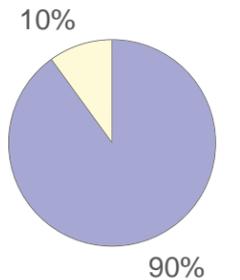
## 2008 SURVEY RESULTS

■ Satisfied □ Neither ■ Dissatisfied

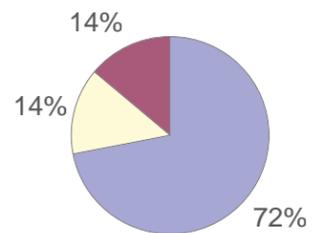
Did staff listen carefully to your complaint?



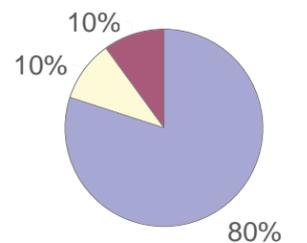
Did staff evaluate your complaint fairly?



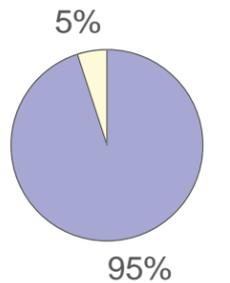
Did staff provide helpful assistance?



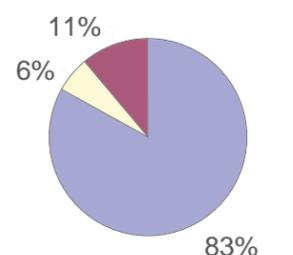
Did staff display suitable knowledge of issues?



Did staff respond in a timely manner?



How would you rate the service you received?



■ Satisfied □ Neither ■ Dissatisfied

**T**he Office of the Ombudsman sends a short survey to jurisdictional complainants to determine the level of satisfaction of our users and to identify where we can improve. Surveying the public is a key element of the City Council's directive to improve customer service.

The postcard mailer includes a postage-paid tear-off portion that responders can send in anonymously. This year, our overall response rate fell slightly to 35%. To address this trend, the office has created an on-line survey. We felt that due to the significant electronic contact with complainants this would be a convenient and cost-effective method of gathering input for many of those cases. Complainants are e-mailed a link to a survey that they can fill out anonymously. The survey takes less than five minutes to complete. In cases where we do not have an e-mail address or where the complainant prefers to receive a hard copy, we will still mail the postcard survey. We hope to see an increase in response rates next year.

Regarding the feedback we did receive, one measure "Did staff provide helpful assistance?" fell to 72% satisfied or very satisfied. (And 14% reported dissatisfied or very dissatisfied.) While this indicator identifies a need to provide more value added assistance, it may also reflect more complainants not receiving the results they desired rather than the level of service. However, another measure "Did staff listen carefully to your complaint?" received 100% satisfied or very satisfied. That is the first time we have ever achieved a 100% satisfaction result!

We were also pleased with our overall satisfaction rate. 83% rated their overall service as satisfied or very satisfied. While we know we cannot always deliver the results requested, we can use responses to help us provide the most complete and useful information possible. We also may not agree with every caller. We believe everybody should be afforded the opportunity for a fair and impartial review of their complaint, even when we may disagree.

We appreciate those complainants who take the time to respond to our survey. If you have feedback or constructive criticism on how we can improve, even if you do not receive a survey, please contact us at any time!

### Mission Statement

To receive complaints, conduct independent, impartial investigations of the administrative acts of City agencies and recommend appropriate changes to safeguard the rights of persons and promote higher standards of competency, efficiency and justice in the provision of City services.

## STATE ETHICS LAW UPDATE LINLY REES, DEPUTY CITY ATTORNEY

In 2007, the Oregon Legislature enacted significant changes to the state ethics laws. The biggest changes were to: (1) require more frequent reporting and reporting of additional information for certain public officials; (2) limit public officials and their relatives and household members to gifts of \$50 per year from sources with legislative or administrative interests in the government agency for which the official works; and (3) ban gifts of entertainment to public officials and their relatives and household members from such sources. The laws and penalties for violation of the laws apply to both the public official and the source of the gift. (A public official is someone who serves government as an elected or appointed official, an employee, or as an unpaid volunteer. The source of the gift is the ultimate payor of the expense and can be an individual or a business, government agency or other entity.)

The general rule is that public officials are not permitted to use their official position to obtain a personal financial gain or avoid a personal financial loss, if the gain or loss would not be available but for their holding the official position. Under state law, there are some exceptions, among them: (1) official compensation; (2) gifts from sources that do not have a legislative or administrative interest in the agency for which the official works; (3) gifts that do not exceed \$50 in a calendar year from a source with a legislative or administrative interest; and (4) items or expenses that are excluded from the definition of gift. For City employees, Bureau of Human Resources (BHR) Administrative Rule 4.07 places additional restrictions on the ability to receive gifts; employees may not receive any gifts offered due to their position and work for the City regardless of whether the gift giver has a legislative or administrative interest.

The 2007 state ethics laws resulted in resignations of numerous public officials across the state, primarily because of a requirement that certain public officials report names of relatives and household members. Concerns about these resignations and the difficulty that private and public entities were having with interpreting and implementing the new laws led to quick action by the 2009 legislature to make compliance more straightforward. The changes do not go into effect until January 1, 2010, so public officials and those providing gifts to public officials must continue to follow the 2007 laws for now.

Here is a preview of some of the state law changes that apply beginning **January 1, 2010**:

1. Currently, gifts to public officials and their relatives and household members are limited if the source of the gift has an economic interest in the government agency for which the public official works. The changes narrow the definition of legislative or administrative interest to mean that gifts are limited if the source has an economic interest in a matter subject to the public official's decision or vote.

2. Gifts of entertainment to public officials and their relatives and household members from sources with an economic interest in matters subject to the public official's decision or vote will be subject to the same \$50 annual limit as other gifts.
3. Under state law, public officials will be able to accept food and beverages at most community or charitable events if they are representing government. Currently, public officials may accept food and beverages at events only if the official is speaking or is attending for certain purposes. It is not clear how BHR Administrative Rule 4.07 will apply to these situations.
4. Customary gifts received as part of a public official's private business, employment or volunteer work are exempted from the definition of gift, so long as the gift bears no relation to the public official's official position.
5. Public officials who file Statements of Economic Interest with the state no longer have to list all relatives and members of the household on the forms. For forms filed in 2009, the state will not penalize public officials who decide not to provide this information.

The following examples show how giving and acceptance of gifts to public officials is expected to change **on January 1, 2010**:

**Example 1:** A developer in Portland offers to buy lunch for a Portland City official who issues development permits for the City. It seems clear that the developer has a legislative or administrative interest in the City agency for which the public official works because the developer has an economic interest in the permitting department of the City. Thus, the value of lunches could not exceed \$50 annually under state law and would be prohibited under BHR Administrative Rule 4.07. As of January 1, 2010, the gift would still be subject to the state law \$50 limit and prohibited under BHR Administrative Rule 4.07 because the public official for whom the developer offers to buy lunch could use his or her official position to make a decision that could benefit the developer.

**Example 2:** A developer offers to take a computer programmer from the City's development department out to lunch (because they were college roommates). While the developer certainly has an economic interest in the programmer's bureau, assume for this example that the public official does not have the ability to make a decision or vote on a matter that could benefit the developer. Nevertheless, under current law, any gifts from the developer to her roommate would be subject to the \$50 annual limit, but would be permitted under BHR Administrative Rule 4.07. As of January 1, 2010, unlimited gifts from the developer to the roommate would be permitted so long as the developer does not have an economic interest in matter subject to the decision or vote of the roommate.

**Example 3:** City officials are expected to attend community, charitable, and business events and represent the City by their attendance, even when the officials are not speaking or appearing for a ceremonial purpose. Currently, if the source of the expense for attendance has an economic interest in the agency for which the public official works, gifts of food and beverage at such events are subject to the \$50 annual limit. As of January 1, 2010, under state law, officials may accept admission and payment for food and beverages at a reception, meal or meeting as long as the official is representing government. This exception does not permit acceptance of expenses for a small private meal. In addition, employees should confer with Human Resources or the City Attorney to ensure compliance with BHR Administrative Rule 4.07.

**Example 4:** Public officials, particularly those who serve a public body in a volunteer capacity, often have private businesses unrelated to their public office. Moreover, many public officials volunteer with charitable organizations, but are prohibited in some cases from receiving food, travel and entertainment even when the volunteer service is not related to their public office. Under current law, acceptance of gifts related to outside business or volunteer activities is complicated and case specific. As of January 1, 2010, state law will exempt customary gifts received as part of the person's private business, employment or volunteer work from the definition of gift, so long as the gift bears no relation to the public official's official position.

The City Attorney's Office will be sending out more information to City employees about the January 1, 2010 changes closer to the implementation date.

### For more information on State statutes and City rules see:

#### Oregon Government Ethics Commission's website (links to statutes and rules)

<http://www.oregon.gov/OGEC/index.shtml>

#### City of Portland Code of Ethics

<http://www.portlandonline.com/auditor/index.cfm?a=1243&&c=26811>

#### City of Portland Bureau of Human Resources Administrative Rules

<http://www.portlandonline.com/omf/index.cfm?c=49507>

## NEW SOUTH WALES OMBUDSMAN PUBLISHES APOLOGIES GUIDE

Over the last decade, the US has seen the propagation of apology legislation. Most has been limited to barring apologies from evidence in medical-related civil litigation. In 2003, Oregon adopted legislation that prevents an apology from being used for liability purposes in limited cases.

**Oregon Revised Statute 677.082 Expression of regret or apology by licensee.** (1) For the purposes of any civil action against a person licensed by the Oregon Medical Board, any expression of regret or apology made by or on behalf of the person, including an expression of regret or apology that is made in writing, orally or by conduct, does not constitute an admission of liability for any purpose.

(2) A person who is licensed by the Oregon Medical Board, or any other person who makes an expression of regret or apology on behalf of a person who is licensed by the Oregon Medical Board, may not be examined by deposition or otherwise in any civil or administrative proceeding, including any arbitration or mediation proceeding, with respect to an expression of regret or apology made by or on behalf of the person, including expressions of regret or apology that are made in writing, orally or by conduct. [2003 c.384 §1]<sup>1</sup>

Initial research has shown that apologies can reduce litigation and medical malpractice claims.<sup>2</sup>

There have also been apologies made by elected officials for acts committed by the government. The Civil Liberties Act of 1988 was enacted by the US Congress to recognize the “fundamental violations of the basic civil liberties and constitutional rights” of both US Citizens and permanent residents of Japanese ancestry by the “evacuation, relocation, and internment of civilians during World War II.”<sup>3</sup>

In 1997 President Bill Clinton apologized for the syphilis study at Tuskegee saying in part,

To the survivors, to the wives and family members, the children and the grandchildren, I say what you know: No power on Earth can give you back the lives lost, the pain suffered, the years of internal torment and anguish. What was done cannot be undone. But we can end the silence. We can stop turning our heads away. We can look at you in the eye and finally say on behalf of the American people, what the United States government did was shameful, and I am sorry.<sup>4</sup>

In addition to these examples, there are other instances where the government has apologized. However, there has not been legislation created

in the United States that systematically exempts apologies from civil litigation similar to the medical-related legislation.

In 2002, the state government of New South Wales (NSW) Australia became the first government to give legal protection for a full apology made by anyone. Since that time, the Australian Capital Territory and the Canadian provinces of British Columbia, Saskatchewan, Manitoba, Alberta and Nova Scotia have also enacted full statutory protection for apologies.<sup>5</sup>

The NSW Civil Liability Act 2002 defines an apology as “an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter, whether or not the apology admits or implies an admission of fault in connection with the matter.”<sup>6</sup> There is a growing understanding of the importance of apologies across professions and sectors, including the public sector, and these

governments have recognized that importance and are working to remove legal liability issues from preventing someone from apologizing.

The NSW Ombudsman Bruce Barbour released a revised apologies guide in March 2009. The key messages of the guide follow. It is a comprehensive and valuable document to understanding the important role apologies can play.

### (Endnotes)

- 1 Oregon Revised Statutes Chapter 677 — Regulation of Medicine, Podiatry and Acupuncture
- 2 Discussion Paper on Apology Legislation, British Columbia Ministry of Attorney General, January 30, 2006.
- 3 Civil Liberties Act of 1988.
- 4 Remarks by President Clinton In Apology For Study Done In Tuskegee, May 16, 1997.
- 5 Apologies: A Practical Guide, pg. 25.
- 6 Ibid.

## KEY MESSAGES IN APOLOGIES-A PRACTICAL GUIDE

1. Apologies are not magic potions that work in every case, but they can be remarkably effective in addressing the key needs of people who have experienced harm. There will be some circumstances where an apology will serve no good purpose, but these will be the exceptions, not the rule.
2. If a mistake or error led to harm, an appropriate apology is often seen by complainants as an essential prerequisite for, or part of, the proper resolution of their complaint—an appropriate apology is often the main thing they really want.
3. The greater the harm, the greater the likely value of an appropriate apology to the person harmed.
4. Crafting and delivering an appropriate and effective apology can be affected by a range of variables—the more complex the situation or the more reprehensible the action or inaction that led to the harm, the more care that is likely to be required.
5. The more an apology addresses the needs of the person harmed, the greater the likelihood it will be effective in reducing anger, restoring a damaged relationship, and helping the person to ‘move on’.
6. An effective apology must usually include an express acceptance of responsibility or fault for the actions or inaction that caused the harm—that is, a ‘full’ apology. Even if a full apology may not be justified or warranted, a sincere expression of sympathy, sorrow or regret for the suffering of others may still be the right thing to do.
7. Where a problem has caused harm, a ‘full’ apology will consist of a ‘package’ of actions including admissions of responsibility, explanations of cause, actions to put things right (where possible) and expressions of sorrow and remorse.
8. Where a problem has caused harm, a ‘full’ apology may also be the culmination of a ‘process’ of communication, investigation and negotiation.
9. If an apology fails—for example because of a failure to accept responsibility (a partial apology) or because it is not seen as sincere—it is unlikely that any further attempt at apologizing will be effective, so try hard to get it right the first time!
10. A partial or otherwise inappropriate apology can do more harm than good.

The full guide can be found at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

## RECOGNIZING OUTSTANDING SERVICE

We have found that the vast majority of City employees are dedicated to public service and often receive little recognition. We thank those workers, and would like to provide a special “thank you” to a handful of City employees who have provided exceptional help in assisting the Office of the Ombudsman (Ombudsman) in resolving complaints. This year we would like to acknowledge and thank the following people.

**Joe Blanco of the Bureau of Environmental Services** has provided exceptional customer service to the public time and time again. In one tough joint party sewer line emergency, a property owner contacted our Office to say that Joe was very patient and responsive. She felt that Joe always took time to explain what was needed and consulted with her so she had a clear understanding of what needed to be done. She characterized his service as “remarkable.”

**Ramon Corona of the Bureau of Transportation** consistently goes the extra mile in assisting the public and this Office with questions and concerns relating to parking operations. Additionally, Ramon has assisted by tracking down information that goes beyond parking operations. Instead of referring the problem to someone else, he often takes initiative and follows up so that the public is provided with answers to their questions.

**Colleen Daley of the Bureau of Development Services** is frequently the point person between our Office and the Customer Service Team at BDS. Colleen is solution oriented in responding to complaints about development services. She is able to work collaboratively with our Office to ensure that complaints are addressed in a timely manner and complainants are provided with the accurate and necessary information.

**Jeff Milkes of Portland Parks and Recreation** assisted in a particularly contentious issue in which neighbors were upset with impacts from an adjacent park. Jeff coordinated the response which included addressing alcohol use in the park, adding a standard of conduct to the agreement for use of the park and installing signs requesting park users utilize the parking lot instead of neighborhood streets. Most importantly, he was willing to listen and respond to neighborhood concerns.

**City Fleet Services**, a program within the Business Operations Division of the Office of Management and Finance, has on numerous occasions assisted our Office with tracking down necessary information on City vehicles in order to complete our investigations. Staff we work with are always professional, courteous and responsive.

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*Photo: Steve Bonini*

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