

2009 OMBUDSMAN REPORT

AUDITOR'S OFFICE, CITY OF PORTLAND, OREGON

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A Word from the Auditor

LaVonne Griffin-Valade, Portland City Auditor



I am pleased to introduce the 2009 Annual report from the City's Office of the Ombudsman. The term "ombudsman" comes from Swedish traditions and is defined as "a government official who hears and investigates complaints by private citizens against other officials or government agencies."

This requires independent authority, neutrality, and objectivity, and that's why the Ombudsman is a natural fit within the programs and divisions assigned by Charter or City Code to the elected Auditor's Office.

The goals of the Ombudsman are to safeguard the rights of the public and promote higher standards of competency, efficiency, and justice in the provision of City services. The Ombudsman investigates complaints, develops recommendations to improve City services, and provides another voice for the public interest. The Ombudsman explains options to resolve issues, including whether there are opportunities for administrative review or appeal. The Ombudsman may also recommend solutions or improvements to how services are provided. As a result, City procedures become more transparent, and the City is more

accountable for its actions and responsive to potential improvements.

In 2009, the Ombudsman received 247 complaints about City services. Investigations carried out by the Ombudsman covered a variety of issues, including calls regarding overgrown trees and brush in the public right-of-way, excessive noise generated by wireless communication equipment on utility poles, and the possible misuse of City vehicles. These and other complaint events are described in detail throughout this report as a way of demonstrating the Ombudsman's core service, but there are other benefits offered by the Office of the Ombudsman.

The Ombudsman also provides community members and City employees with a safe place to report concerns about the inappropriate use of City resources, problems with service delivery, and potential misconduct. The Office can offer guidance about possible ethical impropriety and refer callers to other organizations or agencies.

In 2009, the Ombudsman also developed procedures and oversaw the implementation of the Auditor's Fraud Alert tip line. This new mechanism for anonymous reporting of fraud and other misbehavior was launched in February 2010.

How to Contact Us

Office of the Ombudsman

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OMBUDSMAN HANDLES A VARIETY OF CASES IN 2009

Storefront Improvement Grant Program Overlooked Guidelines

A co-owner of a commercial property complained the Portland Development Commission (PDC) authorized a Storefront Improvement Matching Grant to a business tenant for building alterations without first obtaining their permission. In addition, the complainant reported some work funded by the program was completed by individuals who were not licensed contractors. The

some grant dollars were used, and PDC found that some of the program funds provided for storefront improvements were instead used for unapproved interior modifications by the tenant. PDC took action to reconcile the expenditures, including requiring the tenant to pay back 60% of the grant that was used for purposes other than façade improvements.

PDC staff spent considerable effort in evaluating this case with the intent to ensure full compliance with program guidelines in the future.



Photo of storefront (identifying information removed)

property owner was concerned the improvements made might not comply with local and state building codes.

The complaint was substantiated. While making extraordinary efforts to assist the tenant, PDC did not follow all of their grant program guidelines. After contacting the PDC Director's Office, PDC staff provided us with a thorough and complete accounting of the project. The review by PDC revealed that the tenant misrepresented how

Budget Cuts Impact Tree Trimming in Right-of-Way

This year the Ombudsman had several calls about overgrown trees and brush in the right-of-way. One example is the growth of trees around streetlights impacting the amount of light and visibility to the right-of-way below. The growth also sometimes damages the lights themselves. The Portland General Electric Trojan Customer

refund provided some funding in Fiscal Year 2009 to allow Urban Forestry to trim trees around some street lights for Portland Bureau of Transportation's Signals and Street Lighting Division. The Trojan Customer refund monies will be



PBOT took corrective action immediately for this life safety issue.

used to trim trees until those funds run out. After the funds are gone, the status of tree trimming remains uncertain.

Another call was for overgrowth from a private residence into the right-of-way. The inspector found the overgrowth was impacting the complete use of the roadway and visibility and needed to be removed and cut back off of the adjacent street area. Because the overgrowth originated on private property, the property was posted for a nuisance. In the past, if a property owner did not respond to a posting, a work order would have been issued and the City would have paid a private contractor for the abatement work and then placed a lien on the property for the costs and additional charges.

In this case, the inspector did not

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feel the situation posed a significant life safety risk, so because of budget cuts, the complainant was told nothing would happen. The complainant appeared before City Council, and Council pledged to find a way to address the complainant's issue by conferring with Urban Forestry.

Because of budget cuts to the Nuisance Abatement Program, there will not be a systematic response to enforcement on these issues unless such situations pose a severe risk to life safety.

Wireless but Not Noiseless

The co-chair of a neighborhood association land use committee called the Ombudsman after she had made repeated attempts with City officials to address excessive noise being generated by wireless communications equipment attached to utility poles in the public right-of-way.

We were able to confirm complaints had been received and had been investigated. However, the company that owns the equipment had not taken effective corrective measures and the problem continued to disturb the residential neighborhood. These investigations often required the Noise Office to respond in the middle of the night when ambient sound levels are reduced and the noise is most annoying.

Paul van Orden, the City's Noise Control Officer with the Bureau of Development Services, found the cooling equipment, as designed, did not comply with the standards of Portland City Code Title 18. The recorded sound readings were



Wireless transmission boxes raise livability concerns for neighbors

within the permissible levels during the hours of 7 a.m. – 10 p.m., but exceeded nighttime sound levels.

While the Noise Control Officer worked with the wireless provider and their suppliers to do further

engineering to solve the problem, they were slow to reduce the noise levels to be within compliance. The hope was that the company would be able to reduce the noise levels before neighbors requested the City to take formal enforcement action with citations.

The City issued a commercial citation which carries a \$300 fine. While \$300 may be a relatively small fine for a large company, it may serve as an incentive for the company to act promptly and correct the violation.

Officer van Orden indicated that this was not the only location where there have been noise complaints about the company's equipment. In at least one other case, the complaint included an additional problem of an alarm ringing when the equipment needed maintenance. This was a further irritant to people residing in the area. The Noise Office has informed the company that future issues with the alarm system waking and impacting neighbors will be met with citations.

Sample Graffiti Materials and Sales Log Updated After Complaint

The Ombudsman was contacted by a Portlander who believed the Office of Neighborhood Involvement's (ONI's) graffiti materials sales log unintentionally sets up businesses to violate the Oregon Consumer Identity Theft Protection Act. The complainant explained he recently purchased materials covered by the code and when he went to fill out the log he saw the personal information of other previous purchasers on the log sheet. The City of Portland's Graffiti Materials and Sales Code (Portland City Code Chapter 14B.85) requires the seller to log the name of the purchaser with a description of the graffiti material sold.

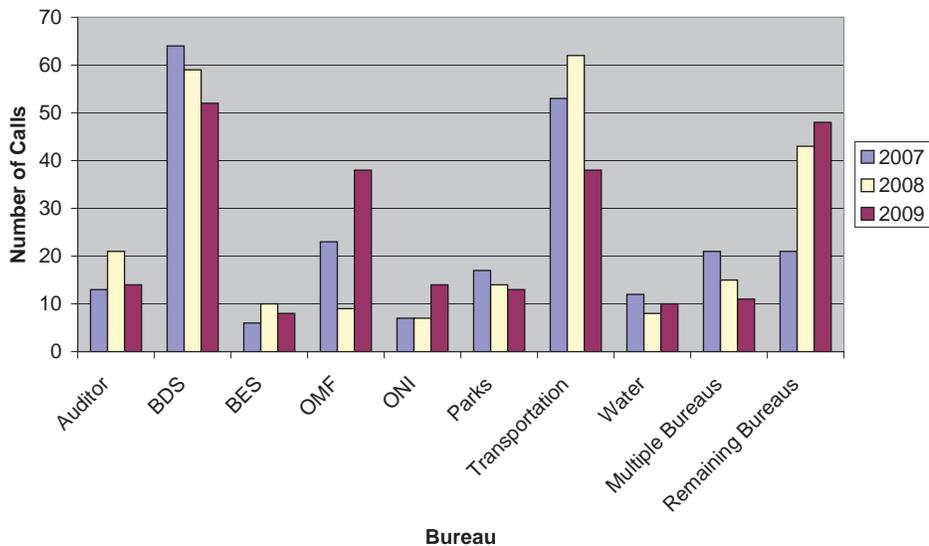
Ombudsman staff clarified with the Oregon Department of Consumer and Business Services (DCBS) that business keeping identity information with name and driver's license numbers together must follow all provisions of the statute and keep the information secured. DCBS indicated a log book was problematic if buyers could see other buyers' identity information. The Ombudsman shared this information with ONI.

ONI provided a written response to the complainant and explained that although the code does not specify the requirement for date of birth or driver's license number, the information is required under the guidelines, and the guidelines were consistent with the scope and purpose of the code. ONI further explained the Portland Police Bureau identified

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COMPLAINTS BY BUREAU

All Complaints 2007-2009



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.

The graph above represents a wide variety of cases we receive regarding City services. Sometimes we refer the complainants to the bureau so staff can 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 2009, we had 247 complaints about City services. This was 24 fewer cases than the previous year.

These numbers 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 most appropriate resource to address their concerns. In 2009 we had 119 calls regarding non-City services or calls outside our jurisdiction. That is a decrease of 24 non-jurisdictional complaints compared to the previous year.

If you are interested in more information on case statistics, please contact the Office at 503-823-0144 or via e-mail at ombudsman@portlandoregon.gov

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the date of birth or driver's license number as being critical pieces of information in order to assist in identity verification, investigation, and potential prosecution of graffiti vandal suspects.

Because of the complaint, ONI posted the guidelines online as a Portland Policy Document. ONI also updated the business resources online to highlight the recommendation to use single page logs or to block out customer information to ensure security. ONI determined the information logged was critical and worth collecting. However, they also took the complainant's concerns seriously and updated the sample log and information they provide to businesses as well as pledged to work with businesses to ensure compliance with state and federal laws regarding identity theft protection.



Photo of graffiti clean-up courtesy of Office of Neighborhood Involvement Graffiti Abatement Program

Complaints about the Use of City Vehicles

Several complaints were received during the year regarding the possible misuse of a City vehicle. City vehicles are clearly marked and if they are spotted at an unusual location that appears to be unrelated to City work, the public can and does report possible abuses. One complaint concerned a vehicle seen in a Vancouver, Washington neighborhood. Another complaint questioned why a City vehicle was visiting a residential property on an almost daily basis.

With the assistance of the City's Fleet Services and the City bureaus involved, the first vehicle was confirmed to be assigned as an emergency response vehicle to a City employee who lives in Vancouver. The employee was permitted to take the vehicle home so they could more quickly respond to an emergency directly related to providing public services.



The public is frequently concerned about the use of City vehicles

In the second case, a member of the public kept a detailed log of the date, time, and duration they witnessed the City vehicle at a specific property. Based on those reports and confirmation by the City bureau, it was determined the vehicle was not being used for official City business. As a result, disciplinary action was taken.

City Human Resources Administrative Rule 4.13, Vehicle Loss Control, prohibits employees from using a City vehicle for any purpose except official business. An exception is allowed on a bureau-by-bureau basis whereby a bureau may adopt its own written policies allowing use of City vehicles to accomplish brief personal business incidental to official use.

Dumpsters in the Right-of-Way

The effort to rid the public sidewalks of dumpsters and garbage containers continues. Despite the City Council's 2005 resolution to ban dumpsters from sidewalks, the Council's acceptance of the 2007 Containers in the Right-Of-Way Committee (CROW) report which affirmed the resolution, and direction from Council to develop a process for enforcement, a comprehensive solution has not been found. One critical piece remaining is the adoption of rules prescribing the process and requirements for obtaining an extreme economic hardship exemption. Without the exemption rules in place, anyone found in violation may request an exemption and be allowed to delay enforcement until such time as an application for exemption can be processed. The City also lacks rules to require on-site storage of waste. Code amendments are being proposed to correct this deficiency and require new commercial construction and "major alterations" to existing structures to provide adequate on-site storage space.

The Office of Sustainable Development/Bureau of Planning and Sustainability (BPS) contracted



The placement of dumpsters on sidewalks continues to occur

with the Bureau of Development Services (BDS) to begin actively enforcing CROW rules beginning in May of 2008 and has been successful in resolving some 90% of the more than 200 complaints received and investigated. This agreement will expire on July 1, 2010 and BPS will perform all CROW investigations and enforcement activities directly.

BPS continues to draft rules to be brought before City Council for adoption. The Ombudsman has at several junctures recommended no extreme economic hardship waiver be granted unless it is accompanied by an approved plan containing a definitive date for achieving compliance. Without a definitive date for compliance, the direction of City Council to bring about the eventual permanent removal of dumpsters from the public sidewalks will not be achieved.

The best way to report new cases is to call BDS at 503-823-CODE (2633) before July 1, 2010. After July 1, 2010 call BPS at 503-823-7202 or send an e-mail to wasteinfo@portlandoregon.gov

City Code Stretched in Order to Calculate the Base Height

A neighbor and representative of the interests of a neighborhood association land use committee complained the height of a new residence exceeded the code requirements by approximately 7 to 12 inches. The complainant also claimed the Bureau of Development Services (BDS) allowed alterations to the site in order to change the height measurements from the original site plan which had been previously submitted and approved. The complainant argued the altering

a 5 foot horizontal distance of the exterior wall of the building.” (PCC 33.930.050.A.1) In this instance, a raised planting bed about 5 feet in diameter was built up about a foot above the surrounding grade within a 5 foot horizontal distance from the corner of the house for the purpose of establishing a higher base height from which to measure the structure. The Ombudsman was told this case was not unusual.

Many involved in the review of this case agreed this type of modification of the ground level did not meet the intent of the code. However, there was uncertainty about whether or not the BDS

such changes due to the reallocation of staff to the Portland Plan.

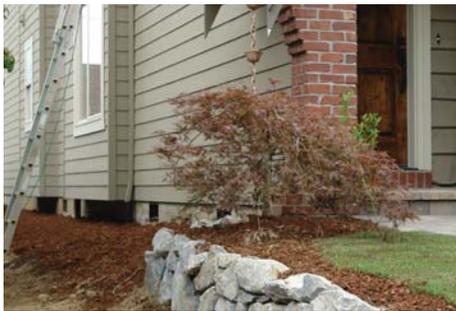
LUBA upheld the City’s decision. However, LUBA agreed the City Code language was ambiguous and stated the decision to affirm the City’s interpretation was an exceedingly close one. One Board member observed the applicable portion of the City Code, “badly needs to be revised to more clearly state how the City measures building height in circumstances that are likely to be encountered.” The LUBA decision mirrored the Ombudsman’s recommendation.

Recommendation Relating to the Use of Undisclosed Information

An individual reported that when he searched by name on the City of Portland’s PortlandMaps.com site, it listed the property owned by the individual. An agreement had been made between the City and Multnomah County that properties could only be searched by location searches and not by names of property owners. This was established to reduce the risk of an unnecessary invasion of an individual’s privacy and safety.

Upon further investigation, it was learned the individual was able to search by the name of the property owner because he was accessing the system through his City of Portland intranet employee account. The search by name is not available to the public on the Internet.

As a result, the Ombudsman resubmitted a recommendation concerning the need to restrict employees’ use of information obtained from the intranet to business use only.



Before raised planting bed was added house exceeded height requirements



After raised planting bed was added house met height requirements

of the grade and re-measuring of the height was not in conformance with the City Code (Title 33) or state regulations, and the builder should be required to apply for a height adjustment (a Type II land use review) allowing neighbors an opportunity to express their concerns over the structure’s height.

The issue concerns how the City Code is interpreted in order to accommodate changes to the base elevation from which a structure is measured. For relatively flat lots, the code directs height to be measured from “Base Point 1,” which is “the elevation of the highest adjoining sidewalk or ground surface within

could successfully defend a legal challenge if they denied the re-grading.

The neighborhood association land use committee appealed the BDS decision to the State Land Use Board of Appeals (LUBA). It was their belief state law precluded establishing a base elevation in the manner approved. Our office suggested revising the City Code to prevent this type of adjustment in the future. We were advised that such a code amendment was on the Bureau of Planning and Sustainability’s list of pending proposed code amendments but staff resources were no longer available to process

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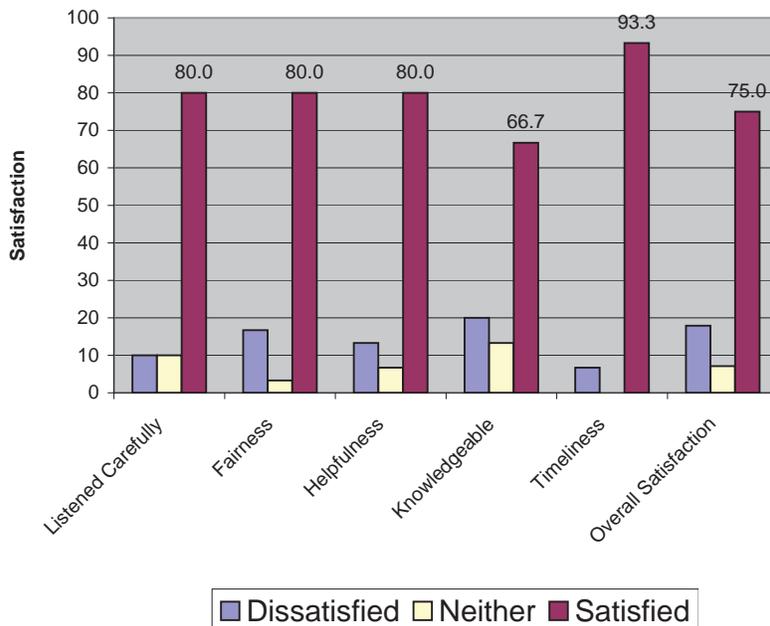
Both the Bureau of Human Resources and Bureau of Technology Services accepted the recommendation. The following language is now displayed for employee notification when they access PortlandMaps.com through the City’s intranet: “Access to this site from the City of Portland network is for official city business and any information obtained can not be used or disclosed for any non-business reason.”

Human Resources Administrative Rule (HRAR) 11.02 prohibits the use of this information for private gain or to avoid financial detriment. HRAR 4.08 prohibits the use of city technologies for political use. This new language addressed our final concern, the prohibition against using the information for personal use even if the personal use does not result in a financial gain or detriment or for a political purpose.

Ombudsman 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.

2009 SURVEY RESULTS



The Office of the Ombudsman sends a short survey to complainants to determine the level of satisfaction of our users and to identify where we can improve.

This year we sent out postage-paid postcard mailers to complainants for whom we have a mailing address as well as a link to an on-line survey for complainants with whom we have significant e-mail correspondence. We sent out 80 postcards and 51 e-mail surveys. Our overall response rate was approximately 23%, with almost half of the returned surveys from each group (postcard and e-mail).

While research shows low response rates are not unusual for complainant survey efforts, the Office continues to find value in the survey responses. We know we can not always deliver the results sought, but we must remember

to take time and provide the most complete information we can.

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, please contact us at any time. Phone 503-823-0144 or E-mail

ombudsman@portlandoregon.gov



Photo: Steve Bonini

Ombudsman Michael Mills & Deputy Ombudsman Kristen Erbes

Auditor Initiates Portland Fraud Alert Line

In September 2009, City Auditor LaVonne Griffin-Valade released an audit, "Fraud Reporting: Clarification of process and training needed" which identified improvements needed in the City's fraud reporting process. To address this concern, Auditor Griffin-Valade initiated the Fraud Alert line.

The Ombudsman solicited bids from hotline vendors in 2009, drafted policies, and worked on implementation plans. The Fraud Alert line was launched on February 1, 2010.

The Auditor's Fraud Alert line allows the public and City of Portland employees to report concerns about suspected fraud, waste or misuse of City resources,

and abuse of position to a 24/7, centralized tip line. The Fraud Alert line is one more mechanism for enhancing accountability to the public.

Fraud Alert reports can be made online or by telephone to a secure call center and server managed by an outside vendor, EthicsPoint. The EthicsPoint system also allows callers to report anonymously if they choose. The Ombudsman oversees the handling of Fraud Alert reports.

Report fraud online at:

www.portlandfraudalert.com

or call

1-866-342-4148

Recognizing Outstanding Service

The vast majority of City employees are dedicated to public service and often receive little recognition. We thank those workers, and we would like to provide a special "thank you" to a handful of City employees who have provided exceptional help in assisting us this year.

Eileen Dent of the Portland Bureau of Transportation's Traffic Investigations Section consistently goes the extra mile in assisting the public and this office with questions and concerns relating to traffic safety and livability issues. The Transportation SAFE Hotline receives a high volume of calls and requests. Eileen responds to concerns in a timely, professional, courteous, and thorough manner.

Paul Komanecky, Portland Fire and Rescue's Driving Instructor, will be conducting training to a group of PF&R employees (40 hour/week sworn members) to ensure safe and courteous driving in response to several complaints. We appreciate PF&R taking the issue seriously and responding proactively.

Bob Stillson of Portland Parks and Recreation assisted in a particularly delicate issue with an anxious bride who visited the Gold Medal Garden in Washington Park a few weeks before her wedding and found the garden under construction. Bob responded immediately and followed up several times to ensure the Gold Medal Garden looked great for the nuptials.

Resolving Your Own Complaints

Here are some basic, important guidelines to follow when you're trying to resolve complaints.

1. Be pleasant, persistent and patient. Treat everyone with respect, don't give up easily, and realize that most problems are not resolved overnight.

2. Exercise your appeal rights. Ask the agency if you have a right to appeal and whether there is a deadline.

3. Choose the right communication mode. If the problem is urgent you'll probably want to rule out a letter.

4. Strategize. Ask to speak to someone who can actually fix the problem and, if needed, politely ask to speak with a supervisor – perhaps even more than once!

5. Plan your questions. Be sure to specifically ask which law, rule, or policy authorized the agency's actions.

6. Be prepared. Be sure to have any relevant information available before contacting the agency.

7. Keep records. Take good notes including names, dates, and copies of all correspondence.

8. Read what is sent to you. Including the fine print!

If all that fails, contact us at 503-823-0144.

Reprinted with changes from the Iowa Citizens' Aide/Ombudsman