

# 2010 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 2010 annual report from the City's Office of the Ombudsman. The term "ombudsman" comes from Swedish tradition and is generally defined as a **government official who investigates complaints from members of the public against other government officials or agencies.** An effective Ombudsman requires

independent authority, neutrality, and objectivity, thus why this function fits naturally within the programs that are the responsibility of Portland's elected City Auditor.

The Ombudsman investigates a variety of complaints, responds to reports to the Auditor's anonymous tip line, and provides community members and City employees with a safe place to report concerns about how tax dollars are spent, problems with service delivery, and potential misconduct. In 2010, the Ombudsman received about 400 contacts, including some alleged violations of the City's Code of Ethics.

The Code of Ethics provides guidance for elected officials, employees, and City volunteers.

The guidelines are advisory in nature and built around these four key components:

- 1) **Trust.** The purpose of City government is to serve the public. City officials treat their office as a public trust.
- 2) **Objectivity.** City officials' decisions are based on the merits of the issues. Judgment is independent and objective.
- 3) **Accountability.** Open government allows the public to make informed judgments and to hold officials accountable.
- 4) **Leadership.** City officials obey all laws and regulations, and their leadership facilitates, rather than blocks, open discussion.

The City's Code of Ethics is not intended to legislate behavior, but rather to convey general expectations of appropriate conduct. Ethics are positive principles of conduct, and although some ethical standards are enforced by statute, most rely on an individual's desire to do the right thing.

LaVonne Griffin-Valade, City Auditor

### How to Contact Us

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## Ethics: A Lens for City Employees

“City Officials” include employees, elected and appointed officials, as well as volunteers working for the City. As City officials we face ethical decisions continuously and are held to a different and higher standard than that of employees in private business or in our private lives. The standards of ethics that City officials must adhere to are more conservative and protective to insure that the decisions we make are in the public’s best interest rather than our own. This is because City officials are the stewards of the public’s resources. City officials are required to maintain awareness of the public’s interest in order to avoid any conflict of interest or violations of our own ethics code.

The City Code of Ethics, Chapter 1.03 of the Portland City Code, conveys the principals of the City organization and emphasizes positive expectations. This approach is a result, in part, of the original work done for the City by the Josephson Institute of Ethics. The Auditor’s Office has also published a printed booklet which provides employees explanations and examples to help guide their decisions. The booklet is also available online under “Code of Ethics” on the Auditor’s website.

The Office of the Ombudsman is available to provide guidance to officials on the common sense application of the Code of Ethics, whereas the City Attorney has the expertise to provide legal advice on compliance with the Code of Ethics and other laws. Our Office can help enhance an official’s perspective while considering an appearance of fairness issue, or an appearance of a conflict of interest, even in situations where there may not be a violation of law. The City Attorney’s Office can assist bureaus in understanding Oregon’s government ethics law, which establishes reporting and lobbying regulations and places limits on accepting gifts, including travel and entertainment.

The Office of the Ombudsman has addressed some of the following concerns:

- Use of City resources for non-City business
- Gifts, including travel
- Relationships with contractors
- City sponsored non-profit organizations
- Restrictions on using City resources for campaign purposes

We encourage City officials and the public to contact our office with questions. We can either provide information or refer the question to the appropriate person for response.

## When Private Waterlines Break During Routine Public Work

The Water Bureau, their contractors and permit holders, as well as the Fire Bureau, routinely open and close fire hydrants. This operation occurs thousands of times every year without incident. On a very few occasions, turning a hydrant on or off can result in enough of an increase in water pressure to break a water service line on private property. One of those unusual incidents occurred in August in a Northeast Portland neighborhood causing waterlines to break and damage four properties. The resulting damage ranged from several hundred dollars to over \$7,000, including some irreplaceable items. The waterlines that broke varied in quality from relatively new copper pipe to older pipe. The hydrant involved was old and in disrepair. It was replaced.

The property owners filed damage claims with the Bureau of Internal Business Services Risk Management Division, which evaluates and settles claims. The primary complainant was offered \$500, half of the insurance deductible, given that the remaining \$6,000 could be paid under the homeowner’s insurance. The City’s position was that it was not and should not be liable for the damage resulting from routine maintenance work as there was no negligence. The property owner disagreed, believing that the Bureau should at the very least pay the full amount of the deductible, explaining that this hydrant incident was anything but routine.

Our Office consulted with the City Attorney’s Office to determine if such a claim could be considered through the Committee on Claims for a review as a “fair and moral claim;” however, it was found that such claims do not meet the criteria. After meeting with Bureau officials to discuss in detail the reasons for pipe failures and potential mitigation measures, the Bureau agreed to pay the full amount of the insurance deductibles as a good faith offer. Our Office agreed and thought this resolution was in the best interest of all utility ratepayers.

## Dumpsters on Sidewalks: End of the Road

The Bureau of Planning and Sustainability (BPS) now heads the effort to remove waste and recycling containers from the public right of ways. BPS has been operating an active enforcement program and brought before City Council provisions to adopt administrative rules for extreme economic hardship exemptions. Once these rules are approved by the City

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Council in 2011, uniform enforcement can be achieved on a complaint driven basis.

The best way to report a container violation is to: call BPS at 503-823-7202 or send an email to: [wasteinfo@portlandoregon.gov](mailto:wasteinfo@portlandoregon.gov) with the specific address of the property in question.

To file a complaint for garbage and recycling containers being stored on public streets and/or sidewalks, please call the Solid Waste & Recycling Section at 503-823-5545 or email: [wasteinfo@portlandoregon.gov](mailto:wasteinfo@portlandoregon.gov).



## Walking Through the Tall Grass

What would you do if your neighbor's grass was so high that cars were missing the stop sign on the corner?

Effective July 19, 2010, in an effort to provide service with limited resources, the Bureau of Development Services (BDS) created a pilot project for the summer that allowed citizens to submit complaints online accompanied with a digital photograph of tall grass and weed violations.

Title 29 of Portland City Code requires property owners to remove and/or cut weeds and tall grass, keeping the height of grass to ten inches or less.

BDS was forced to prioritize complaints in order to effectively triage its most critical cases due to reduction in resources. BDS Director, Paul Scarlett, stated "Even though tall grass and weed conditions have been deemed a lower priority, I do understand the importance of the outdoor maintenance regulations as they relate to increased vandalism, graffiti, and other conditions that can lead to neighborhood deterioration. While BDS enforcement resources remain limited at this time, we are very excited to create this opportunity to allow citizens to partner with

us to address tall grass and weed violations to improve the livability and safety of our community."

If you wish to report a property with grass and weeds in excess of 10 inches high, you may submit a complaint, online only, that is accompanied by a digital photograph to <http://www.portlandonline.com/bds/gwcomplaints>.

## The City That Drives Miles and Miles

The City government tallied 15 million vehicle miles last year in the course of performing public services. Thousands of City employees are behind the wheels of vehicles. Occasionally, we receive reports of improper vehicle use. Whether the complaint is about unsafe driving or vehicles being misused, it is important to investigate and correct behavior where necessary.

Of the several complaints received in 2010, two alleged unsafe driving on a freeway and another reported two vehicles being used by employees for excessive work breaks. Supervisors instructed the drivers involved of the need and requirement to drive safely and responsibly. In one bureau, the supervisor took the initiative to remind all the drivers within the division to remember their responsibilities on the road.



The City Fleet Manager and his staff assisted the Office of the Ombudsman in identifying the bureaus to which vehicles in question were assigned.

Report fraud online at:  
[www.portlandfraudalert.com](http://www.portlandfraudalert.com)  
or call  
**1-866-342-4148**



## Where There is Smoke, There May be Ribs

Several people complained about the frequent impacts of smoke produced from a large woodburning steel smoker Bar-B-Q grill. The commercial operation was stationed in a parking lot off of SW Macadam Blvd. The site was inspected by the City's Fire Bureau and Bureau of Development Services (BDS), as well as the State Department of Environmental Quality (DEQ). The police were called to the site on one occasion. The agencies recognized there were negative impacts on surrounding commercial and residential properties. While the City had limited jurisdiction through the odor code, air quality issues were the responsibility of the DEQ.

The Office of the Ombudsman recommended mediation or some form of collaboration between those in the affected area, the business owner and the property owner. Two City Commissioners became involved and supported a collaborative effort to mitigate the impacts of the smoke. The Office of Neighborhood Involvement (ONI) provided facilitation services allowing neighbors and the business to explore improvements. ONI and BDS convened a community meeting to review the findings and mitigation measures. The neighborhood coalition office and neighborhood association participated.

When BDS initially investigated the odor complaint, the smoker was located next to the fence separating the commercial and residential properties. At this location, the odor created from the smoker was in

violation of City Code because the smoke odor was continuously crossing the property line. BDS and Fire worked with the tenant to reduce the odor. The tenant and the property owner began implementing changes, including:

1. Relocating the smoker away from the property line, approximately 80 feet east.
2. Increasing the height of the smoker stacks.
3. Modifying the vents in the smoker to create a stronger updraft.
4. Sealing the smoker doors to stop smoke from escaping before the stacks.
5. Fabricating new tops/lids to allow more smoke to discharge through the stacks when the doors were open.

BDS monitored the odor after the modifications. Based on site visits, the inspector concluded that the odor had been greatly reduced and closed the investigation. While the modifications resulting from the City's intervention yielded positive results, some residents of the area were not satisfied with the remaining amount of smoke being created.

## Public Records Requests

For several years, the Office of the Ombudsman has advocated for uniformity in the way in which City agencies responded to requests for public records. The Office has also called for a uniform copying fee for records. After the State of Oregon mandated changes to the public's access to public records, the City had the incentive to make many of the changes it had been contemplating.

Most importantly, in 2009 the City established a Uniform Records Request form for use by all City agencies except the Police Bureau. In concert with the uniformity in accessing records was the adoption of a standard fee schedule for copying records. (The Police Bureau, the Fire Bureau, the Bureau of Development Services, and the Archives & Records Management Division maintain their own fee schedules.)

Important direction has been given that if a record is immediately available, the City official need not require the completion of the form. The form was intended to streamline access to records and make clear any associated costs, but not to be hindrance to obtaining records. Those requesting records are encouraged to contact the assigned bureau to assist in processing the request in an efficient and cost-effective manner.

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The information related to public records requests may be found at:

<http://www.portlandonline.com/auditor/index.cfm?c=35190&a=185815>

With City agencies adjusting to the new Public Records Request Rules ADM-8.03, it has been important that the rules be applied fairly as intended. Some agencies have charged research costs or staff supervision fees to requests. We have recommended judicious review when such fees are applied to ensure that they are justified and meet the intent of the rules and are not a result of frustration with an individual who makes frequent or arduous requests. Agencies have responded positively to our discussions and are more direct in offering assistance that will minimize or negate the cost of obtaining or viewing records.

## Under a Bad Sign

A resident contacted a Commissioner and then the Office of the Ombudsman in what the resident initially described as a “classic bureaucratic approach to a very simple issue.” A street name sign was incorrectly spelled resulting in a number of problems including the delivery of mail. The sign was on a private street and the resident argued that it had been installed by the City and should therefore be replaced by the City. The resident went on to describe the Portland Bureau of Transportation’s response as “pathetic.” This harsh criticism was found to be unjustified.

After numerous conversations with City agencies, the Office of the Ombudsman concluded the best possible explanation to be that the street name sign was originally installed by the contractor for the development and not by the City. The type of pole used was not one used by the City, there was no record of the City installing the sign and there was no City date sticker on the back of the sign, which is customary. There was evidence that the original sign went missing and that someone other than the City replaced it. This was most likely the source of the spelling error.

While the Bureau of Development Services would have been responsible for insuring the installation was completed by the contractor, the Bureau is not responsible for the installation of street name signs and there was no evidence that any City agency did the actual installation. It appears that the contractor, or some subsequent party other than the City, made the error and installed a sign that was misspelled. In the absence

of the contractor, it is the responsibility of the private property owners to correct the sign since it is a private sign on a private street and was not installed by the City.

The Portland Bureau of Transportation, Maintenance Division, advised that private street signs have green letters on a white background. This provides a clear indication of a private street to the public and to City workers. Public street name signs are white letters on a green background.



## Cause of Sink Hole Proves Elusive

Several property owners living on an undeveloped street in Southwest Portland reported a large sink hole in their street. They had received a host of conflicting information from a variety of City agencies over two months after reporting the sink hole. The street is adjacent to a Water Bureau above-ground water tank and has other underground utilities in the area. Neighbors reported a number of conversations with City agencies; however, the City could reach no consensus on whether the cause of the continuing sinking of the roadway was a result of a sewer line, a water line, or an overflow line from the adjacent water tank.

The City filled the hole and moved the barricades, only to have the hole reemerge and have an automobile run into it. The hole became larger after every heavy rain. Much of the information received by the property owners was conflicting as a result of not being able to determine the cause. At one time, neighbors were told that the City was preparing a Local Improvement District to reconstruct the road and they would be responsible to pay half the cost, about \$125,000. A surveying crew at the site said they were going to begin construction of a new waterline in a week. No notice of any work had been provided to the property owners.

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The Office of the Ombudsman convened a meeting of the three City bureaus involved: Portland Bureau of Transportation (PBOT) Maintenance Division, Bureau of Environmental Services (BES), and the Water Bureau to explore how to approach the problem. While all suspected that water was causing the sink hole, the source could not be identified. Since it was an unimproved street, unless the cause was a result of a City utility, the adjacent property owners would be responsible for repairs. Following the meeting, the Water Bureau in coordination with PBOT and BES spent considerable effort at the site to determine the cause. Numerous dye tests proved inconclusive. Ultimately, excavation by the Water Bureau found that there as a linear cavity running perpendicular to the sewer line, approximately five feet below the surface. BES excavated the cavity and followed it to where it eventually surfaced. BES also hired a contractor who then filled the cavity with compacted material.

While the residents experienced several months of frustration over the uncertainty of their liability, the bureaus involved are to be complimented for their extensive efforts to identify and ultimately correct the problem. BES was responsible for the major repair, the filling of the cavity.

### *What the respondents have to say...*

*“There are neighborhood issues that only this office can help with. They are cost effective, responsive to the public. It’s been great. I have called three times in maybe a dozen years.”*

*“The response was very human, respectful and helpful when I was feeling cranky about the City.”*

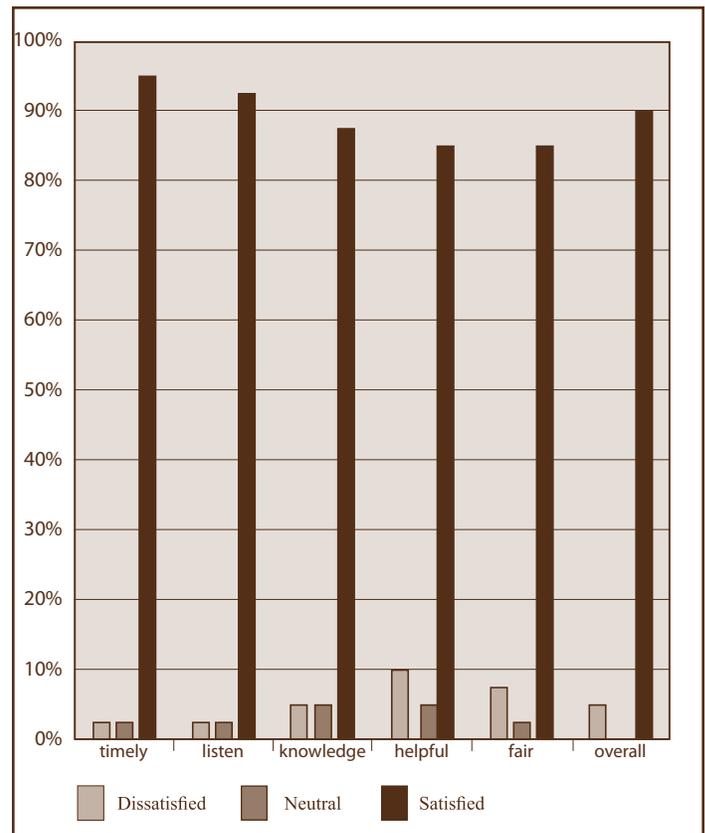
*“I consider myself as knowledgeable but they provided information I didn’t have... gave me resources and empathy.”*

*“Three bureaus were not talking to each other. It took the Ombudsman to get them to sit down and move forward.”*

*“... sincere, helpful, and kind.”*

*“Staff are neutral, they know who to call and what to say.”*

## 2010 SURVEY RESULTS



### Level of Satisfaction

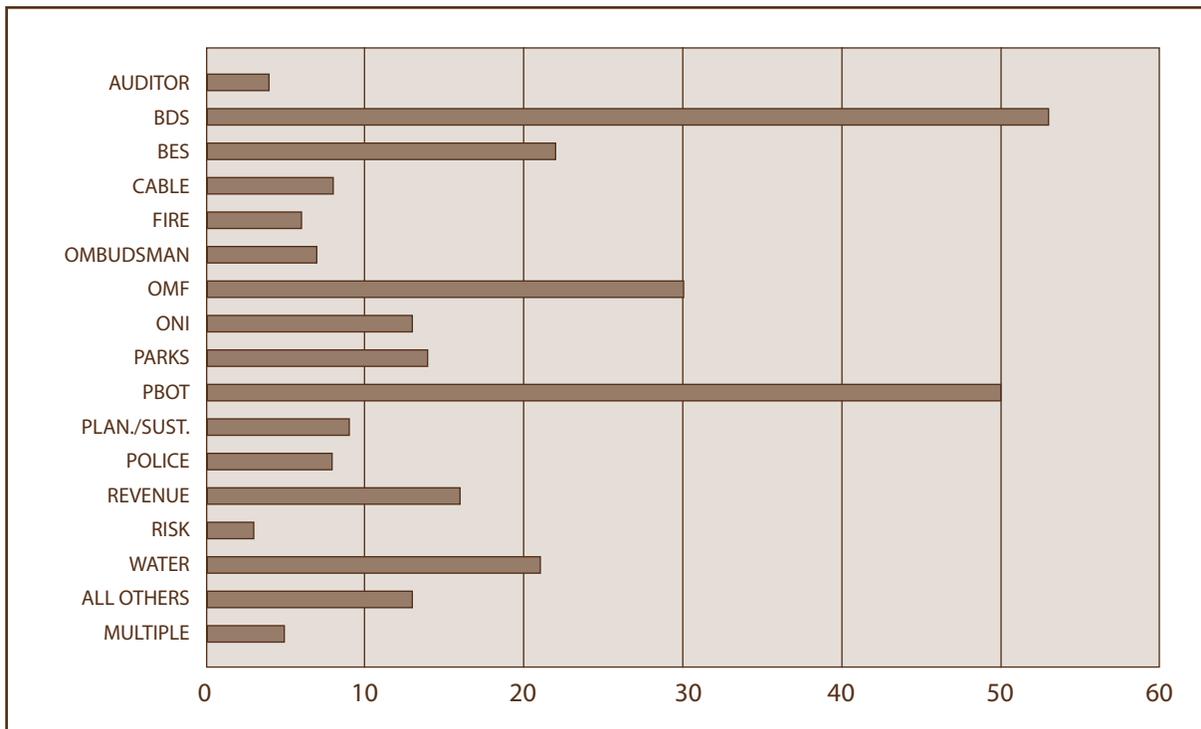
The Office of the Ombudsman sends a short survey to complainants each year to help us understand the level of satisfaction with our service and where we can improve. Surveying the public is one of City Council’s adopted policies for improving customer service.

This year we sent out postage-paid mailers to citizens that supplied us with their mailing addresses as well as a link to an online survey for complainants with email correspondence.

While research shows how low response rates are typical for this form of survey, the Office of the Ombudsman continues to find value in the survey. Our goal is to provide value-added assistance even if we are not able to obtain the results initially sought after by the person contacting our Office. We are pleased to report an overall satisfaction rate of 90% of the 40 respondents.

We appreciate those who take the time to respond to our survey. If you have ideas of how we can improve, please contact us at 503-823-0144 or email [ombudsman@portlandoregon.gov](mailto:ombudsman@portlandoregon.gov)

# COMPLAINTS BY BUREAU



The combined cases in the above graph represent 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 2010, we had 399 complaints about City services.

The cases in the above 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 most appropriate resource to address their concerns. In 2010 we had 91 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.

## Reaching Out to the Community 2010

We are working to introduce the services provided by the Office of the Ombudsman to Portlanders. Some examples of outreach efforts during 2010 include the following:

- IRCO: Shaping Our Future: Community Needs Assessment Conference
- Building Peace Ending Discrimination Workshops
- NW Public Employee 2010 Diversity Conference
- U.S. Citizenship and Immigration Services
- SAY HEY
- Colored Pencils
- Kwanzaa

## Office of the Ombudsman Staff

The small Office of the Ombudsman, staffed by two persons, is always impacted by staff changes. When one person leaves, we have a 50% turnover. Kristen Erbes provided exceptional service to the public through her work as Deputy Ombudsman at the Office for 5 years. We wish her the best in her career move to the Regence Group.

The Office is fortunate to have hired Beverly Bolensky Dean as our new Deputy Ombudsman. Beverly brings with her 10 years of experience with the City's Diversity Development Office and has a thorough understanding of City organizations.

## Ombudsman Conference

There are few opportunities to learn the skills necessary for traditional ombudsman services to the public. The U.S. Ombudsman Association conferences offer the best avenue for this type of professional training. Beverly Bolensky Dean attended the 31st anniversary conference in Dayton, Ohio where she enrolled in the pre-conference for "New Ombudsman" training program to learn the professional standards of practice and how to apply them in every day situations. She also attended a one-day session on analytical and persuasive writing offered by Bryan Garner. The conference also featured sessions on gathering information through interviews.

Beverly reported, "I found creative case strategizing, principles of public service and working with vulnerable populations very helpful in performing my new position."

## 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.*

“After a year of beating my head against the bureaucratic brick wall, and on the verge of initiating litigation...you were able to motivate the (bureau)...without your perseverance, the (bureau) wouldn't have looked at it until a lawsuit forced them to. Portland is fortunate to have (an Ombudsman Office) in public service. ”