



CITY OF
PORTLAND, OREGON

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OFFICE OF THE OMBUDSMAN

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To: Mayor Tom Potter
Commissioner Sam Adams
Commissioner Randy Leonard
Commissioner Dan Saltzman
Commissioner Erik Sten
Auditor Gary Blackmer

From: Ombudsman Michael Mills

RE: Report on Dumpsters in the Right-of-Way

Attached is a report and recommendation on on-site waste storage and dumpsters stored in the public right-of-way. As you will see from the report, Commissioners Saltzman and Francesconi asked our office to address the increasing complaints in December of 2004. We convened a meeting with representatives from several City Bureaus. While there are some existing rules that provide a means of enforcement, there is not one over-arching code, policy, or directive to address this situation. Therefore, complaints generally go unaddressed and the problem is on the rise. You will need to need to give policy direction if the increasing encroachment on the public right-of-way is to be addressed.

C: Brant Williams, PDOT
Jimmy Brown, ONI
Bruce Walker, OSD
Ty Kovatch, Commissioner Leonard's Office/ BDS
Tom Miller, Commissioner Adams' Office
Jeff Cogen, Commissioner Saltzman's Office
Bob Durston, Commissioner Sten's Office
Diane Betcher, Auditor's Office
Austin Raglione, Mayor Potter's Office
Elizabeth Kennedy-Wong, Mayor Potter's Office
Rochelle Lessner, Mayor Potter's Office
Ben Walters, City Attorney's, Office
Linly Rees, City Attorney's Office
Ed Marihart, ONI Neighborhood Inspections
Tiffani Penson, BDS
Judy Crockett, OSD
Calvin Lee, PDOT
Scott Edwards, PFB

On-Site Waste Storage and Dumpsters in the Right-of-Way

I. History of complaints

The issue of encroachments on Portland's public right of way is not new. The Oregonian recently ran this item in their "Portland of Years Past" column.

100 Years Ago: 1905. That the Chamber of Commerce board of civic improvement intends to see that the ordinances of this city relating to obstructions and debris on the streets and sidewalks are enforced was shown in the Municipal Court this morning when L. Penny, a butcher, was fined \$5 for having boxes arranged in front of his place of business. Mr. Penny runs a butcher shop on Yamhill Street. He has been in the habit of placing meat for display on boxes in front of his place of business. He was notified twice that such action was not in accordance with the ordinances, but he failed to take heed of the warning.¹

Similarly, Mayor Bud Clark's 12-point plan also tried to address obstructions and debris on downtown sidewalks fifteen years ago. The City Club of Portland reported that item number 6, Street Sanitation, stated:

Provide safe and appropriate public toilet facilities in the downtown area and eliminate dumpsters from sidewalks.²

Increasingly, over the last several years, our office and other offices with the City, have received complaints regarding the practice by a growing number of businesses of permanently storing garbage dumpsters on public sidewalks.

Problems arise as a result of the impacts to pedestrians using sidewalks and to the general aesthetics of a neighborhood or business district. There are negative impacts from bad odors and food waste in and around garbage dumpsters, not to mention vector control issues. Residents and businesses see the City's complacency toward the issue of dumpsters on sidewalks as inconsistent with a number of other City requirements for improving our urban environment. It is inconsistent for the City to attempt to prevent people from sitting or lying on public sidewalks, or to regulate groups of three or more people from sitting and standing in designated pedestrian zones in the Downtown area, while not attempting to utilize existing laws to remove garbage dumpsters that are permanently stored on public sidewalks. A business was fined over \$1,000 for not installing a screening fence around his dumpster on his private parking lot during remodeling while we allowed others to store their dumpsters on the public sidewalks.

Our office has tried to work with multiple bureaus to address this growing problem.

Under Portland City Code (PCC) 16.20.170 A, Storing Property on Street Prohibited, one could be required to obtain City approval to permanently store a dumpster on a public

¹ June Boone, the Oregonian, Thursday, March 10, 2005, E5.

² City Club of Portland Bulletin; Vol. 70, #42, March 16, 1990.

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sidewalk. While this code provision can be used for enforcement against dumpsters, the Portland Office of Transportation (PDOT) indicates it was written primarily to deal with vehicular parking and storage of construction materials adjacent to building sites. Enforcement of this section for dumpsters could be difficult. There are some situations where the Bureau of Development Services (BDS) will, and has, taken enforcement action under other code provisions, but only if certain conditions exist. Office of Neighborhood Involvement (ONI) Neighborhood Inspections also takes action in some situations, such as overflowing garbage and obstructing the sidewalk if there is interference with the normal flow of pedestrian traffic and there is not a clear passage of at least four feet.

Likewise, PDOT has and will continue to take enforcement action when certain conditions exist, such as a violation of Americans with Disabilities Act access requirements. However, routine enforcement for the regular storage of dumpsters on public sidewalks and rights-of-way has been given a low priority. The Portland Fire Bureau (PFB) also remains concerned that dumpsters remain in the right-of-way because they are a leading source of preventable fires every year. PCC 9.12.180 regulates garbage receptacles for public eating places. But because health related responsibilities were transferred to Multnomah County, no City bureau enforces the provisions of Title 9 which requires restaurants to store refuse on-site or at the rear of the premises. (Multnomah County representatives have also said they do not enforce the provisions of PCC Title 9.)

Because this is a complex issue involving many bureaus, we convened a meeting of City Bureaus in December 2004. (We also convened a similar meeting in 2002 without resolution.) Representatives from Office of Sustainable Development (OSD), PFB, PDOT, BDS, and ONI attended. Each of the representatives discussed their bureau's approach to addressing the issue. These agencies were provided an opportunity to review this report and comments received were considered or incorporated into this final draft.

II. Current jurisdictional responsibilities & approaches

While each of these bureaus has some piece of the regulatory puzzle, there is not one over-arching code, policy, or sentiment to address this issue.

Building codes

Oregon Revised Statutes (ORS) 455.422 provides that, "(1) Each multifamily residential dwelling with more than 10 individual residential units that is constructed after October 4, 1997, should include adequate space and access for collection of containers for solid waste and recyclable materials.

(2) Each commercial building and each industrial and institutional building that is constructed after October 4, 1997, should include adequate space and access for collection of containers for solid waste and recyclable materials.

(3) As used in this section, "commercial," "recyclable material" and "solid waste" have the meanings given in ORS 459.005. [Formerly 215.620]"

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However, because the requirement is not included in the Oregon Structural Specialty Code and since there has not been a rulemaking action to define the term ‘adequate space’, BDS staff does not review plans for compliance with the provisions of ORS 455.422.

Ben Walters and Linly Rees, from the City Attorney’s Office, have reviewed this issue and have said BDS needs to be requiring the set-aside space. BDS can get clarification from the State by asking the State for a formal interpretation, asking the Legislature for more definition, or developing a City Ordinance (this approach will eventually require State clarification). BDS has said staff will be working on this last option, a City Ordinance.

BDS does have requirements that address screening of garbage areas if they are outside the building and on private property. BDS representatives have pointed out that there are other issues to consider when requiring businesses to move garbage inside (loss of existing space for other uses, health and odor issues, the added cost of permit fees and construction for set aside space for new construction and remodels).

Property Maintenance

ONI becomes involved if there is a Title 29 nuisance issue (overflowing trash onto a sidewalk or an obstruction of the sidewalk that interferes with the normal flow of pedestrian traffic). ONI inspectors require a clear passage of 48 inches for people to pass. (This meets or exceeds federal regulations and recommendations for accessibility in the public right of way.³) Therefore, if there is at least four feet of clearance, ONI does not consider the dumpster in the right-of-way a violation. ONI will cite the property owner if a dumpster is over-flowing with litter and garbage on the adjacent sidewalk or property. If there is no sidewalk area, or unimproved sidewalk area, the ONI inspectors check to make sure the dumpster is not obstructing the normal flow of street traffic.

The property owner has an opportunity to correct the problem if the situation is cited as a nuisance. While this is a benefit for property owners, there are repeat offenders that temporarily remove the blockage to the sidewalk so that they are not fined, but then as soon as the inspector closes the case, replace the barrier to the sidewalk.

Since August 2003, there is a business in an inner Southeast neighborhood that has been the source of complaints regarding the permanent storage of dumpsters and equipment on the sidewalk. Despite repeated attempts by the ONI inspector to address the problem, nothing has yet been resolved. ONI has recently warned the property owner that if the property is posted again, they will begin the summary abatement process. Abatement in this case will constitute ONI removing the dumpsters and anything else that is reducing clear passageway to less than 48 inches. Summary abatement is authorized under Title 29.

³ While ONI enforces a clearance of 48 inches (4 feet), PDOT enforces a clearance path of 6 feet for sidewalk cafes in Portland’s Commercial Districts.

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There has been exploration in the past of allowing inspectors to ticket and issue a citation imposing immediate fines to offending properties, but that approach, as part of a package of Code changes, was never adopted by City Council.

Office of Sustainable Development – Solid Waste & Recycling Division

OSD requires businesses, multifamily complexes, and most construction projects to recycle at least 50% of their waste material. The OSD administrative rule, Maintaining Passage on Public Streets, says, “To the greatest extent practicable, the permittee shall avoid ... placing of drop boxes, in a manner that blocks the passage of other vehicles or pedestrians on public streets or sidewalks.” Drop boxes usually contain 10 yards of material. Regulations also require the prominent labeling of all solid waste containers with the name and telephone number of the hauler.

There are several reasons businesses have moved to dumpsters that are stored outside: to have less frequent pick-ups so that their costs may be reduced, the space they have inside may not meet fire code regulations, or they may have converted the space they originally used inside to other uses (storage, seating, etc.).

Another possible difficulty is that Portland’s non-franchised commercial solid waste system complicates enforcement because haulers are reluctant to refuse customer requests (because they know the customer can easily find alternative service). Haulers also have commented that they may have longer stops, and therefore traffic slowdown, when picking up roll cart service.

Fire Code

PFB has commented that dumpster fires are a leading source of preventable fires every year. International Fire Code Section 304.2 states that storage of combustible rubbish shall not produce conditions that will create a nuisance or a hazard to the public health, safety, or welfare. PFB is working to adopt the IFC through the PCC Title 31 this year.

Containers that are 1.5 cubic yards or larger are required to be protected by an approved automatic fire sprinkler system and a tight fitting non-combustible lid if they are inside. There might be other health issues to address if they are brought inside. Recyclables have additional storage requirements (one-hour room, etc.). If the container is outside, it must be five feet away from combustible walls, openings, or combustible roof eave lines.

The preference of the PFB is to place these dumpster containers inside an approved non-combustible structure used exclusively for dumpster or container storage, located not less than ten feet from other buildings to help prevent fires.

Right-of-Way

PDOT is responsible for Portland City Code (PCC) 16.20.170 (which prohibits private property to be stored in the right-of-way). This code is not currently used as an enforcement tool for garbage dumpsters or recycling containers because PDOT states it was written primarily to deal with vehicular parking and storage of construction materials adjacent to construction sites. In addition, a PDOT representative has noted that from the

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bureau's perspective, the storage of garbage and waste containers is a public health (sanitary or vector control) and/or public safety (fire hazard) issue and it might be better for another bureau with better expertise in sanitary and/or fire hazard enforcement to have regulatory and enforcement capacity over garbage dumpsters and waste containers since PDOT does not have that expertise. Unless there is direction and resources provided, PDOT feels they do not have the capacity to enforce violations of refuse and recyclable containers in the right-of-way.

For other right-of-way issues, such as sidewalk cafes or vending carts, PDOT generally looks at a clearance of 6 feet (path of travel adjacent to businesses). PDOT also has the ability to use a summary abatement process for violations of property stored in the right-of-way.

Ombudsman

When the Office of the Ombudsman receives a complaint about dumpsters or encroachments to the right-of-way, we generally inform ONI. If an inspector does not see the dumpster as a nuisance and it allows for four-feet of passable area, we notify PDOT if there is a possible infraction impacting right-of-way parking or traffic. Complainants continue to be frustrated with the City's inaction. Many have expressed an interest to be involved if this issue is addressed by City Council. Some of the complainants are residents and some of the complainants are neighboring businesses that feel the dumpsters impact their own business activities.

III. Other Jurisdictions

Many other jurisdictions require that dumpsters be placed on private property and not within the public right-of-way. Due to the promulgation of international codes and standards, we found the same or similar requirements to our own for setbacks, landscaping, and screening areas for waste and recyclables on private property. Additionally, many jurisdictions have regulations regarding when garbage can be placed in the right-of-way for pick up. Generally cities and counties permit this type of temporary, not permanent, placement. Finally, many jurisdictions have already defined the amount of waste and recyclable storage space required for new and remodeled commercial and multifamily developments. These requirements include standards for location, design, and access.

Staff looked at two jurisdictions, Seattle, Washington, and Philadelphia, Pennsylvania, in more depth. Both cities have tried to address the issue of dumpsters being stored in the public right-of-way through multiple approaches. It must be noted that these approaches and examples may or may not be directly translatable to Portland. There are differences in environmental policy and regulation, geographic and architectural constraints, and business climate (including whether the haulers are franchised). These examples are meant as a starting point to discuss whether it is in Portland's interest to prohibit or limit the permanent placement of solid waste dumpsters and containers in the public right-of-way.

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Seattle, Washington

Seattle has multiple efforts in place to address the issue of dumpsters being stored in the right-of-way. The first is a specific ordinance that prohibits containers for solid waste and recyclables from remaining in the right-of-way for more than 24 hours without City approval. Another approach is an effort to consolidate dumpsters. Seattle's commercial collection is franchised and those haulers are assisting with the consolidation effort. Seattle City staff told us, "For example, in one alley, there were 25 containers and now there are 4 containers, two for garbage and two for recycling. They are collected 5 days a week. The customers' bills stay the same." Third, set aside storage space is required for containers in all new commercial and remodeled development projects. Fourth, there are some haulers who are shifting to a "European" model or bag system. Customers purchase color-coded bags. The purchase price of the bag includes all hauling fees, tonnage, and bag costs. Collection is twice daily, 365 days per year. A pilot project in Seattle has shown that costs are approximately equal to using dumpsters.

Philadelphia, Pennsylvania

The City of Philadelphia has addressed the issue for its Center City. As the use of dumpsters increased, citizens and businesses expressed concern to the city about the public hazard and litter created by dumpsters. In response to this situation, Philadelphia City Council passed an ordinance in June 1989 requiring the licensing of dumpsters and regulating their use.

Newly constructed buildings and buildings with modified usage are required to provide trash storage inside the building. Other older and historic buildings that cannot accommodate dumpsters inside are required to find alternative disposal methods or obtain a dumpster license. The license is required for anything in excess of one cubic yard (anything smaller than that is considered a trash can). The user is required to provide proof of need when requesting the license.

Center City's Weekly Press reports, "Each dumpster must identify the hauler, its telephone number, an ID number and the name of the user. If not, the dumpster is considered noncompliant or doesn't have a license. Dumpsters must be emptied once weekly or every three days if they contain "non-grindable" food waste. The City can require additional provisions for dumpsters that have received complaints or past violations. All food-handling establishments are required to install garbage disposals for disposal of grindable garbage and therefore dumpsters may not be used for the disposal of grindable garbage."⁴

The City considers the width of the sidewalk, pedestrian and auto traffic volume and availability of alternative trash handling methods. If a dumpster impedes pedestrians or offends nearby residents, users may be required to handle trash in an alternative manner that does not require a dumpster. Dumpsters will not be approved on the public right-of-way in predominately residential blocks or retail/commercial strips. Dumpster users who

⁴ Portland water, sewer, and solid waste policies actively discourage the use of garbage disposals in these instances.

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do not comply with the Dumpster Code Provisions may be fined⁵ and may have their Business Privilege License revoked. Dumpsters placed on the public right-of-way without a license will be presumed to be abandoned, and subject to removal.”⁶

Trash cans cannot be set out more than two hours prior to collection. For collection scheduled after business hours, trash cannot be put out more than 30 minutes prior to the close of business. Dumpsters not licensed for public right-of-way placement must be kept inside of the business premises until the proper set-out time.

A one-time fee of \$50.00 is charged for dumpsters placed on private property. Dumpsters on private property are required to be screened from public view by shrubbery, fencing, or an enclosure. An annual license and fee of \$300 is required for dumpsters placed in the public right-of-way.

Licenses are issued through the City’s License and Inspections Review Board and applications that are rejected may be appealed. In addition, residents that are upset about dumpsters placed near their home may also appeal the decision. A list of licensed dumpsters is available on the City’s website and there are a number of places that residents can report dumpster violations.

III. Issues to be decided

While Portland’s approach may not be the same as the approaches of Seattle and Philadelphia, it is clear that the City Council needs to decide whether it is in the public’s best interest to develop policy to curtail the growing practice of permanently storing dumpsters and other waste containers in the public right-of-way.

The Office of the Ombudsman recommends that the City Council establish by resolution the goal of eliminating the permanent placement of waste and recyclable dumpsters and containers from public streets and sidewalks within two years; and, direct associated City bureaus to initiate a process to accomplish this goal.

There are a number of ways to achieve this goal. Some results may be immediate, while others may be over a number of years. We recommend that a work group of representatives from City and County bureaus as well as business, citizen, and neighborhood association representatives be convened. Business representatives should include business that store refuse in the right-of-way as well as businesses and business associations that have complained about this problem. Additionally, commercial hauler representatives should be included.

⁵ The penalty for violation of dumpster laws is a minimum fine of \$100-\$300 for each violation and for each day the violation continues. Violations not corrected within 30 days will also cause the dumpster license to be revoked for a period of 5 days, the dumpster owner may be ordered to remove the dumpster, or it may be removed by the City at further cost to the violator. Violators may also have their Business Privilege License revoked.

⁶ Bill Faust, “Is that Sidewalk Dumpster Legal?” Center City’s Weekly Press, June 30, 2004.

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Priorities need to be developed. For example one approach may be to prioritize according to building types: new construction, remodels, and existing buildings without indoor space for refuse. Most likely, multiple approaches need to be discussed and implemented so that commercial and multifamily complexes have options to address their needs. There are a number of creative ideas a diverse collaborative group could develop. A number of ideas have already been discussed locally: consolidating dumpsters in dense and mixed-use neighborhoods, developing model plans for inside waste storage areas that would assist businesses in design and remodel efforts, developing and implementing pilot projects in neighborhoods, and requiring smaller containers and more frequent pick-ups.⁷ A work group convened and supported by Council will indicate the importance of addressing this issue.

The development of clear, enforceable standards, as well as alternatives that balance the needs of businesses, citizens, the environment, and the public right-of-way are needed to ensure access to the public right-of-way and enhance livability throughout Portland.

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Michael Mills, Ombudsman
Kristen Erbes, Deputy Ombudsman

⁷ Some have expressed concerns over increased traffic associated with more frequent pick-ups. However if franchising is adopted (and the number of haulers are reduced in a given area), traffic may not necessarily increase even if there are more frequent pick-ups.