



Report
of the
Work Group
on
Containers in the
Right-of-Way

September 27, 2007

Coordinated by the
City of Portland
Office of Sustainable Development
Office of Transportation

Preface

In September 2005, the Portland City Council passed Resolution 36339 establishing a collaborative public and private Work Group to develop solutions to the problem of garbage dumpsters and refuse containers permanently stored in the public right-of-way, including on public sidewalks.¹ This is an issue that Portland, like most other large cities, has struggled with for decades. The City of Portland has an ordinance² requiring that no private property be stored in the right-of-way, but for a variety of reasons that ordinance has not been generally enforced. The result has been an increasing number of containers stored on the sidewalk

Contributing factors have been:

- Very little enforcement of existing Code 16.20.170 which prohibits storage in public right-of-way, and no mechanism for recovering the cost of enforcement.
- Historic buildings being renovated to uses that require more garbage service.
- No requirement that new buildings or remodels provide any space on their property for garbage and recycling, although most new buildings do provide space.
- Shared jurisdiction among City bureaus.
- Most neighborhoods lack alleys for storage out of the public eye.
- Additional space requirements for recycling.
- Garbage collection is less costly when done with larger containers collected less frequently.

Council chose to address the problem in 2005 after the City Ombudsman's office brought to their attention that these containers present both livability and nuisance problems. A visual survey conducted in the summer of 2006 of the Pearl District, Old Town/ Chinatown, NW 23rd and 21st Avenues and the Central Eastside Industrial District found roughly 124 businesses storing containers on the right-of-way. Extending that number to the rest of the city would mean that an approximate total of 300 businesses are keeping containers on the right-of-way.

This use of the right-of-way poses a variety of concerns for the City:

- Blocking the sidewalk limits access for people in wheelchairs and potentially violates the Americans with Disabilities Act.
- Blocking pedestrians detracts from the livability of the neighborhood.
- The containers attract graffiti, causing visual blight.
- Spills and liquids draining from containers to the street and storm drains violate the Clean Water Act.
- Container odors detract from the livability of the neighborhood.
- Containers are a source of fires and litter from scavenging.
- Private storage is an inappropriate use of a public right-of-way.
- Un-enforced laws create the impression that Portland ordinances do not need to be obeyed.

¹ See Appendix A for Council resolution

² 16.20.170 Storing Property on Street Prohibited **A.** No person may store, or permit to be stored, a vehicle or other personal property on public right-of-way or other public property in excess of 24 hours without permission of the City Engineer, the City Traffic Engineer, or the Bureau of Development Services.

As the Ombudsman reported in May 2005:

"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."

The vast majority of businesses throughout the City comply with current regulations prohibiting the storage of garbage in public rights-of-way. For businesses that do use the public right-of-way, reasons include unawareness of the regulation, inadequate indoor facilities to meet requirements, or significant costs of compliance. The City has approximately 25,000 businesses operating throughout the City. Of these, approximately 300, or less than 1 percent, store garbage in dumpsters in the public right-of-way. While this does not represent an overwhelming problem, there remains a strong desire to reduce and eventually eliminate such storage.

The Work Group, created by Council in September 2005, consisted of the City bureaus with jurisdiction over the issue, representatives of business associations and representatives of the public.³ The Work Group was charged to provide Council with a report recommending potential solutions within one year of passage of the resolution. The Work Group began meeting in December of 2005 and has met on a regular basis since that time. It also solicited and received feedback from neighborhood associations⁴ in areas affected most strongly by containers of garbage and recycling being stored on the sidewalk.

Proposed solutions

A comprehensive solution to this problem must:

1. Ensure that no new containers are stored in the right-of-way, and
2. Address the existing containers.⁵

To accomplish these goals, the Work Group recommends a three tier approach addressing (1) new construction and major alterations, (2) public education and (3) existing containers.

New construction and major alterations

The Work Group recommends that all newly proposed commercial buildings be required to provide sufficient space for on-site collection and storage of garbage and recycling and that businesses and waste haulers be prohibited from newly placing containers in the right-of-way for permanent storage. Currently neither the Oregon building code nor the City zoning code mandates that builders

³ See appendix B for list of Work Group members

⁴ Northwest District Association, Old Town/Chinatown Neighborhood Association, Hosford-Abernethy Neighborhood Association, Downtown Neighborhood Association, Pearl District Neighborhood Association

⁵ See Appendix C for solutions that were considered but not recommended

and developers provide onsite space for storage of garbage and recycling.⁶ While most new construction currently includes some space for collection and storage of garbage and recycling, specific regulations are needed to ensure that adequate space is always provided. The regulations can also help builders and designers to determine space requirements and design so that ceilings, openings and slopes allow containers to be collected and emptied without damage to the building or injury to workers. Several other cities have similar regulations that could be used as a template when drafting the Portland requirements. Seattle's regulations make the size of the storage required proportionate to the overall square footage of the proposed building. Clackamas County regulations ensure that there is adequate turning radius, head room and a proper slope so that containers can be collected safely.

Similar requirements need to be created for major alterations, as these have been a growing source of recent problems. The Work Group struggled with the issue of which sort of alterations should be covered. Adding garbage and recycling space to existing buildings can be expensive and trigger other requirements. For example, the Building Owners and Managers Association representative estimated that adding a standard size space for garbage and recycling with one-hour fire rated walls and 4 sprinkler heads would cost approximately \$18,700⁷. The Work Group recommends that initially the new requirements be limited to alterations with significant capital expenditures and recommends that the need for seismic upgrade be used for the trigger. Some allowance may need to be made for unreinforced masonry structures because alterations unrelated to waste generation, like re-roofing, may trigger a seismic upgrade for those building.

The new regulations will be developed by the Office of Sustainable Development (OSD) and the Bureau of Development Services (BDS) in consultation with members of the Work Group who have expertise with design of buildings and waste hauling. The proposed requirements will be placed in the Solid Waste and Recycling section of the City Code and administered by OSD and BDS.

Finally, as of January 2007, the Office of Sustainable Development added a section in its Solid Waste and Recycling administrative rules prohibiting both businesses, garbage haulers and recyclers from newly placing any container in the right-of-way as its usual storage location. The prohibition carries a penalty of at least \$200 per month.

Education for builders and architects

OSD's Green Building Program conducts annual trainings and periodic seminars for building professionals. The new container regulations will be made part of this educational outreach.

Containers Currently Stored in the Right-of-Way

To address the containers that are currently stored in the right-of-way, the Work Group recommends publicizing the existing law, providing outreach and assistance to businesses and

⁶ If space is shown on plans it must meet City building, fire, zoning and stormwater standards. See Appendix D for a brief summary of existing regulations

⁷ Costs are \$150 per sprinkler head, required to have approx. one sprinkler head every 100 square feet. Cost for a 15-18 foot high one-hour rated wall is \$80 per square foot of floor area. So, assuming these figures, for a 15 x 15 x 15 foot square room (an average size trash room), it would cost approx. \$18,700 to build out. \$18,000 for one hour rated walls, \$300 for 2 sprinkler heads due to small size of room. \$400 for standard paint on walls.

property owners to aid in compliance, and initiating a phased-in enforcement period with financial assistance for smaller businesses that may need to remodel existing space to comply.

The most challenging task was devising solutions for addressing these businesses that currently are storing their garbage and recycling on the sidewalks or streets. A number of the Work Group members believe that many businesses that are currently storing containers on the sidewalk may not have adequate space inside their existing building and would have to begin costly unplanned alterations if they were required to comply immediately. Similarly, locating the dumpster outdoors on private property triggers requirements for many additional features such as enclosures, screening and preventing stormwater drainage. Other members of the group believe that the containers have a negative effect on the livability of the city, are an unauthorized use of public space and should come into compliance at whatever cost.

The Work Group's consensus approach is to begin by notifying the business community that long-term storage of garbage and recycling on sidewalks or streets is illegal and announcing a date when the City will begin the enforcement process for haulers and businesses. That date would be six months after the effective date of new code and rule language. The City will continue its existing practice of citing containers that pose a health nuisance, block traffic, are leaking into the storm sewers, or violate the Americans with Disabilities Act by blocking passage on sidewalks.

Upon adoption of this report by Council, OSD will prepare that additional code and rule language prohibiting permanent storage of garbage and recycling in the right-of-way, with a narrow accommodation available for those businesses or property owners that would face extreme economic hardship.

OSD will contract with the Bureau of Development Services, Neighborhood Inspection Team to investigate and enforce the ordinance when complaints are received. The proposed regulatory scheme would be:

- 1) Publication and outreach to business owners informing them of the current ban on storing containers in the right-of-way.
- 2) Six months after the initial publicity the City will begin responding to complaints by visiting the business and issuing the owner and/or hauler a warning letter if a problem is found. The City will also provide individual education and assistance in correcting the problem.
- 3) Responsible parties that have made no effort to comply after 30 days will receive a notice of violation and a fine. The City will work with responsible parties that need to make capital improvements that may take extra time.
- 4) Responsible parties may appeal the notice of violation and fine to a Code Hearings Officer in accordance with procedures set out in Chapter 22 of City Code.

Provide a source of funding to enable small businesses to comply with ordinance

The Work Group recommends that the Portland Development Commission make available remodeling grants and loans for those small businesses that can demonstrate that they do not have sufficient space meeting the requirements of the ordinance and the applicable City codes. While some funds may be available for business in urban renewal areas through the Storefront Improvement Program, nothing is currently available to assist small businesses outside of these

areas. Some other source of funds needs to be identified by Council to provide assistance through grants or loans in these areas. Further, the Work Group recommends that the City explore waiving some of the permit fees or additional requirements (such as those restricting remodeling of non-conforming businesses) for property owners that must modify an existing building to accommodate garbage and recycling facilities.

Data gathering on compliance during first year

Some members of the Work Group remain convinced that a number of businesses will not be able to store their garbage and recycling in their current space or externally on the existing site. There is not enough data to determine the extent of these instances. OSD proposes to gather data on the issue during the first year of the new policy and make a report back to the Work Group and Council with recommendations if additional changes or permits appear to be required.

Costs of recommended solutions

A. Changes to code requiring new and altered buildings to provide space for garbage and recycling storage.

Cost to the City – OSD estimates that the annual equivalent of a .5 FTE (\$33,840) Code Specialist II will be necessary to answer questions, consult with builders and participate in appeals. The cost of this can be covered by funds from the commercial garbage tip fee paid by the commercial haulers. PDOT and Nuisance Enforcement indicate that this is a reasonable estimate of the time needed based on their experience.

Cost to businesses – There will be some additional cost for design and for complying with the fire code. For most businesses engaged in new construction this is already standard procedure. For alterations, the cost is estimated at roughly \$18,000 (see previous footnote) depending on the size and configuration of the room needed. This cost is relatively modest when compared to the cost of most alterations, particularly required seismic upgrades. It can also be argued that there is a cost of forgone revenue on the space that might have been more productively employed. Since most businesses in the city already absorb this cost, these cost estimates do not include it.

B. Educating businesses about the existing law and enforcing the prohibition

Our survey of containers stored in the right-of-way in the Pearl District, Old Town-Chinatown, Downtown, NW 21st and 23rd Avenues and the Central Eastside Industrial Districts indicated that there were approximately 125 businesses in these areas with containers stored on the sidewalks and in the right-of-way. A generous extrapolation of the number of businesses citywide that would be affected would be 300 out of the 25,000 businesses in Portland. Once businesses are made aware that the practice is against the law it is estimated that at least 20 percent will voluntarily comply. Many of the businesses observed, such as the warehouses and auto repair shops, appeared to have large enough doors and usable space inside their building that would allow for inside storage without changes. Businesses that do not have indoor space for larger containers have other options such as changing their garbage and recycling collection to smaller containers that are collected more frequently.

Cost to the City

Assuming that there are a maximum of 240 businesses⁸ and that the ordinance will be enforced on a complaint driven basis, OSD estimates that education and enforcement would cost the equivalent of one FTE (or \$67,680) for the first year. Time spent would decrease in following years as more businesses complied with the law. The enforcement would be administered by OSD in conjunction with BDS Neighborhood Inspection Team using funds from the commercial garbage tip fee paid by the commercial garbage haulers.

Cost to businesses

This cost is more difficult to estimate as businesses have a choice of strategies to address the problem. We examine the cost of three common scenarios below:

1. Some businesses will be able to bring the containers inside or on their property without major alterations. An example would be a shop that would have to reorganize space but not make alterations to fit the container.

Some businesses could share a central garbage space with other neighbors or tenants. This is the strategy currently employed by Higgins Restaurant. It does not entail extra cost.

2. Many businesses could store their material inside their existing space using smaller collection containers and more frequent garbage collection. More frequent collection is more costly. The Work Group's solid waste collector member estimates that increasing collection from a two yard container collected weekly to three 55 gallon roll carts collected three times a week would cost twice as much. This is the strategy currently used by Cassidy's restaurant and many other small businesses.
3. Businesses that have a large volume of waste and recycling that they are currently storing in the right-of-way would face the largest increase in cost. To store roll cart containers of over 40 gallons inside a building requires an "approved" room that is protected by an automatic sprinkler system. The cost of this would vary but is estimated to be roughly \$18,000. This is the strategy already used by the Marriott Hotel and most other large businesses in Portland. Likewise, if the container is transferred from the public right-of-way to an exterior portion of the existing site, then the cost for screening, cover and drainage must be absorbed. This can be very costly dependant upon factors such as location relative to a city sewer line or the need for creating footings to support structural enclosures.

Indirect costs and impacts

To the extent that these businesses switch to smaller containers that are collected more frequently there could be a slight increase in traffic congestion, road wear, diesel emissions and neighborhood noise.

⁸ Eighty percent of the 300 estimated businesses, after subtracting the 20 percent that would comply voluntarily.

Benefits

The benefits of removing garbage and recycling containers from the right-of-way fall into three categories: livability, reduction of legal liability to the City, and equity for businesses.

1. Livability would be improved by the removal of blockages for pedestrians, the reduction of the visual blight, litter and fires and the odor associated with containers being permanently stored on the sidewalks. All businesses would be held to the same standard and some would no longer be able to use the public area for storage of their private property.
2. The City would directly benefit by the reduction of possible liability for violations of the Americans with Disabilities Act and the Clean Water Act.
3. Finally, the City would benefit by encouraging a culture where laws are obeyed.

Proposed timeline

October 2007	December 2007	May 2008	June 2008
<ul style="list-style-type: none"> • Council considers and accepts report of Work Group. • OSD and BDS begin work on code modifications to require space for garbage and recycling in new buildings and those undergoing significant alterations. 	<p>OSD publicizes prohibition on storing containers in the right-of-way.</p>	<p>Enforcement of the existing code prohibition begins on a complaint basis.</p>	<p>Code and rule language adopted for new building and alteration requirements.</p>

APPENDIX A
RESOLUTION No. 36339



Establish a collaborative public and private work group to develop solutions to the problem of garbage dumpsters and refuse containers permanently stored on public sidewalks and in the public right-of-way (Resolution)

WHEREAS, a growing number of garbage dumpsters, refuse containers, and recyclables are being permanently stored on public sidewalks and in the public right-of-way; and

WHEREAS, they cause a number of negative impacts on the aesthetics and livability of neighborhoods, on local businesses, and on the health and safety of pedestrians and tourists using the sidewalks; and

WHEREAS, permanently storing garbage dumpsters, refuse containers and recyclables on public sidewalks and in the public right-of-way is inconsistent with or in violation of a number of City requirements for protecting the public health, safety and livability of our urban environment; and

WHEREAS, Council acknowledges that there is no one easily identifiable solution for many businesses to readily address this issue and that a collaborative approach offers a greater opportunity to meet the needs of all those affected,

NOW, THEREFORE BE IT RESOLVED, that the City of Portland finds it necessary to require representatives from the Bureau of Development Services, Portland Fire Bureau, Portland Office of Transportation, Office of Neighborhood Involvement, and the Office of Sustainable Development to form a collaborative public and private work group with representatives from interested stakeholder groups to develop proposals to eliminate the permanent placement of waste and recyclable dumpsters and containers from public sidewalks and the public right-of-way within two years of passage of this resolution. Co-leaders from OSD and PDOT will be appointed by their respective Commissioners. At least one public representative will also be selected by each of these two Commissioners.

THEREFORE BE IT FURTHER RESOLVED, that representatives from the following groups should be invited to participate in this collaborative work group: the Alliance of Portland Neighborhood Business Associations, Oregon Restaurant Association, Portland Business Alliance, the Portland Solid Waste Advisory Committee, the Portland Building Owners and Managers Association, Small Business Advisory Council, the solid waste hauling industry, and citizen representatives.

THEREFORE BE IT FURTHER RESOLVED, that this collaborative work group shall provide Council with a report that recommends potential solutions within one year of passage of this resolution.

Adopted by Council: September 28, 2005

GARY BLACKMER

Auditor of the City of Portland
 By /S/Susan Parsons

COMMISSIONERS VOTED AS FOLLOWS:		
	YEAS	NAYS
ADAMS	X	
LEONARD	X	
SALTZMAN	X	
STEN	===	===
POTTER	===	===

Appendix B

Work Group on Containers in the Right-of-way

Public

Dan Anderson - Citizen Representative

Judy Craine - Small Business Advisory Council

Jeff Hampton - Oregon Restaurant Association

Marion Haynes - Portland Business Alliance

Dean Kampfer - Solid Waste Hauling Industry

Kevin Kraus - Citizen representative

Jim Totten - Portland Building Owners and Managers Association

Ken Turner -Alliance of Portland Neighborhood Business Associations

Dave White -Portland Solid Waste Advisory Committee

City Bureaus

Alex Bejarano, Portland Office of Transportation - Co-chair

Judy Crockett, Office of Sustainable Development - Co-chair

Deputy Chief Scott Edwards, Fire Bureau

Lori Graham, Bureau of Development Services

Donald Hunter, Portland Office of Transportation, Parking Enforcement

Rodney Jennings, Bureau of Planning

Kathy Saunders, Bureau of Development Services, Neighborhood Inspection Team

Appendix C

Approaches considered and rejected by Work Group

A. Permits for sidewalk storage

The Work Group discussed at length whether a system of permits would provide a satisfactory solution to the problem. The City currently issues permits for sidewalk café seating and for street food vendors. Council permits sidewalk cafes and food vendors because they are a desired public amenity that adds to the livability of the City. Public exposure to the sight and smell of garbage containers on the sidewalk could not be considered an amenity. Permitting some businesses to continue to store waste and recycling on the sidewalk would not solve the problem and would set up a double standard. Permits would create a double standard because, while the building and zoning codes do not require private storage space be provided for garbage and recycling, if such space *is* provided it must meet rigorous standards. Outdoor garbage and recycling areas are required to be fenced or screened, have a canopy or roof, and be plumbed so that they drain to the sanitary sewer, not the storm sewer. The City would be unwilling to permit fencing, roofing and replumbing in the sidewalk and thus a double standard would exist – businesses that had gone to the expense to comply with the code would be at a disadvantage relative to businesses using the public sidewalk.

B. Changing rules for new buildings and alterations without enforcing a prohibition on storage in the right-of-way

While this would have been a less controversial approach, the Work Group was not supportive since it would take decades to be effective in reducing the number of containers now in the right-of-way. Further, there have already been instances of buildings that provided internal space, or had available external space onsite, choosing instead to store their materials in the right-of-way.

Appendix D

State Law

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."

Because the requirement is not included in the Oregon Structural Specialty Code and since there has not been a state rulemaking action to define and quantify the term 'adequate space', Portland Bureau of Development Services staff does not currently have the authority to review plans for compliance with the provisions of ORS 455.422.

Stormwater Manual Requirements for **outside** storage of garbage and recycling on private property include:

- Permanent canopy or roof
- Set on paved area
- Drains to sanitary sewer rather than storm drain

Zoning requirement for outside storage of garbage and recycling

- Area must be screened or fenced
- In any Design Zone Design Review is required for those alterations that affect the exterior of a building, including outdoor garbage enclosures.
- Minimum setbacks required in some situations for outdoor garbage enclosures

Fire Code requirements for **inside** storage of garbage and recycling include:

- Roll carts over 40 gallons need to be in an approved room that is protected by an automatic sprinkler system.
- Rubbish containers that are not designed to be easily movable shall have a closed lid and be made of metal or approved material.