

City of Portland, Maine

Public Safety/Health & Human Services Committee Meeting

September 9, 2014

5:30 PM

Room 209/City Hall

1. Fire Department Update (No Public Comment)

Documents: [FIRE DEPARTMENT UPDATE.PDF](#)

2. Buffer Zone Alternatives: Possible Committee Action (Public Comment To Be Taken Only If Committee Votes On Recommendation To Council)

Documents: [MASS REVISED LAW.PDF](#), [MEMO TO COMMITTEE SEPT 2014.PDF](#)

3. Mayor's Substance Abuse Sub-Committee Update (No Public Comment)
4. State Public Health Nursing And Infectious Disease Update (No Public Comment)
5. Update On General Assistance Lawsuit And Costs (No Public Comment)

Portland Fire Department
Performance and Management Study Update
September 9, 2014



Presented to City of Portland
Public Safety, Health & Human Services Committee

Introduction:

The Performance and Management Study of the Portland Fire Department (Study) was presented to the City Council and public by Public Safety Solutions Incorporated on April 1, 2013. A 90 day review period was recommended by the consultant, and supported by the City Council, for examination of the findings and recommendations. This update will highlight accomplishments, ongoing initiatives, and future project planning related to implementation of the report recommendations.

Phase 1 was completed between September 1, 2013 and January 1, 2014.

These activities addressed recommendations that could be implemented without budgetary implications and without outside collaboration. It also included action items that were related to the safety and wellbeing of department employees, citizens of the city and our visitors. Accomplishments included:

- **Addressed immediate concerns for life safety at fire department facilities**

A budget request was submitted to complete a comprehensive assessment of all department facilities to detail needed safety, structural, and environmental actions. Unfortunately this request was not fully funded to complete in FY15.

- **Implemented a Peer Support Group**
- **Fully implemented Emergency Medical Dispatch Protocols**
- **Activated an Intermediate Level Transport Unit**
- **Began an EMS Internship Program**
- **Safely reduced unit responses**

Phase 2 – Current Initiatives and ongoing projects- implementation beginning January 1, 2014 and completed in 24-48 months.

The focus of phase 2 includes recommendations that require budget preparation and request and can be planned for through the budget process. Many of these requests require time to address and span more than one budget cycle. Many of the recommendations require collaboration such as collective bargaining, compliance with state and/or federal regulatory agencies, agreements with regional partners or other City agencies.

- **Marine Training**

Since the last update on March 18th, members of the Portland Fire Department Marine Division completed Coast Guard Approved Training. This class was a joint venture between the Portland and South Portland Fire Departments and 21 people completed the course. This 56 hour course certified the members as Operator of an Uninspected Passenger Vessel (OUPVC – or commonly referred to as 6-pak license).

This course was hosted by the Portland Fire Department, conducted by Captain Greg Metcalf of Atlantic Captain's Academy, and completed during normal work hours to eliminate overtime cost. It is the first time such training at this level has been complete at the Portland Fire Department Marine Division. Completion of this training brings certification levels of the Fire Department Pilots to that of commercial pilots.

The department plans to continue this initiative by conducting another 24 hour course to obtain the 50 Ton Captains Certification, with a towing endorsement. This will be done in a similar fashion, on-duty without overtime expenditures.

- **Community Paramedicine Grant & Training**

The Portland Fire Department, in collaboration with Departments from Cape Elizabeth, Cumberland, Falmouth, Gorham, Scarborough, South Portland, and Westbrook has been awarded a \$225,000 federal grant to train up to 24 members in the new field of community paramedicine.

Community paramedicine is a relatively new field of practice where currently licensed paramedics attain additional skills in assessing and treating patients in new and different procedures currently outside of their scope of emergency practice. The Portland Fire Department will be sending 6 members for this advanced training.

Currently when someone calls 911 our ambulances have no alternative but to transport patients to a local emergency room regardless of the severity of the illness or injury. That means we are using one of the most expensive modes of transportation to take patients to the single most expensive place to receive medical care. One of the methods envisioned to reduce healthcare costs is to train our first responders to treat certain patients at home or refer patients with non-urgent injuries or illnesses to less expensive service providers than transport to the emergency room when that is appropriate.

The grant will provide a number of our paramedics the training required so we will be in a position to take advantage of anticipated upcoming changes to state laws and emergency medical protocols driven by reforms that are coming in the nation's healthcare system to reduce costs. The grant provides 90 percent funding for tuition, text books, coordination, overtime reimbursement, supplies, equipment, and simulator aids for skilled lab work. The individual departments will be responsible for the 10 percent local match.

The paramedics will spend close to 400 hours of study, lab, and clinical time in the field to earn their certification over three college semesters, all while working full time as paramedic/firefighters in their local departments.

The Portland area Fire Departments have worked collaboratively for generations through our mutual aid systems. The Metro Fire Chief's Coalition and this successful grant once again shows how we are constantly striving to cost-effectively work towards regional solutions that save our individual communities money while better serving the public we are sworn to protect and serve.

- **Portland High School program**

As reported at the last update, the Portland Fire Department and Portland High School continue to work collaboratively to offer a Fundamentals of Firefighting and Emergency Medical Services program to students in the 11th and 12th grade. This program is a part of Portland High Schools Pathways to Success and is supported by a multi-year grant from the Nellie Mae Education Foundation. Although this program just began in September of 2013 it has already been recognized in a nationally distributed fire service journal.

Last year students completed an "Introduction to Firefighting" curriculum. This year students will complete a course on Emergency Medical Services. This non-certificate course will be based on the Maine Emergency Medical Responder curriculum. Students will be presented with an overview of the Emergency Medical Service, and also receive specific training in how to respond to selected medical emergencies. Topics will include the administration of oxygen to patients, the use of basic airway devices cardiopulmonary resuscitation (CPR), and the proper use of an Automated Electrical Defibrillator (AED). In addition, students will learn about assisting in uncomplicated childbirth, vital sign assessment, controlling bleeding, and some simple, emergency patient moving techniques. The class will involve a high degree of hands-on participation. This is an ideal course for students interested in pursuing a career in a health or rescue-related field.

The Portland Fire Department is working to offer the Firefighting and EMR classes on an alternating bi-annual schedule to provide students with a comprehensive education and background in this rewarding career. We are currently working with the Human Resources Department and Civil Service Commission

on establishing a “conditional offer of employment” to successful participants.

- **Administrative Reorganization**

The most significant initiative in process is the implementation of the reorganization plan requested in the FY15 budget process. This reorganization addresses a significant number of recommendations in the PSSi Study which identified weaknesses in the organizational structure and the division of responsibilities.

This reorganization of the Administration and Command Staff of the Fire Department reduces the span of control, provides needed oversight of critical functions, establishes clearer lines of authority, and will increase organizational accountability. The Fire Department is now divided into three primary functional areas referred to as Branches. Each of these Branches are commanded by an Assistant Chief assigned to a daywork staff position. Assistant Chiefs manage these Branches through subordinate officers and staff consisting of Deputy Chiefs, Captains, Lieutenants, and civilian administrative personnel. Additional staff personnel including the Principal Financial Officer, Emergency Management Administrator, and the Executive Assistant support and report directly to the chief of Department. This organizational structure has been developed using Incident Command principals and in conjunction with the National Incident Management System (NIMS).

The Branches and associated areas of responsibility are listed below:

Emergency Operations Branch

- Emergency Service Delivery
 - Fire Suppression
 - Emergency Medical Services
- Staffing
 - Personnel movement & bid administration
 - Overtime administration
 - Leave coordination
- Quality Assurance/Quality Improvement
 - Fire & EMS
- Special Operations
 - Air Rescue
 - Marine & Island Services Division
 - Hazardous Materials
 - Technical Rescue Services
 - Confined Space
 - Water Rescue
- Fire & EMS Training Programs
- Special Events Planning & Response

Administrative & Support Services Branch

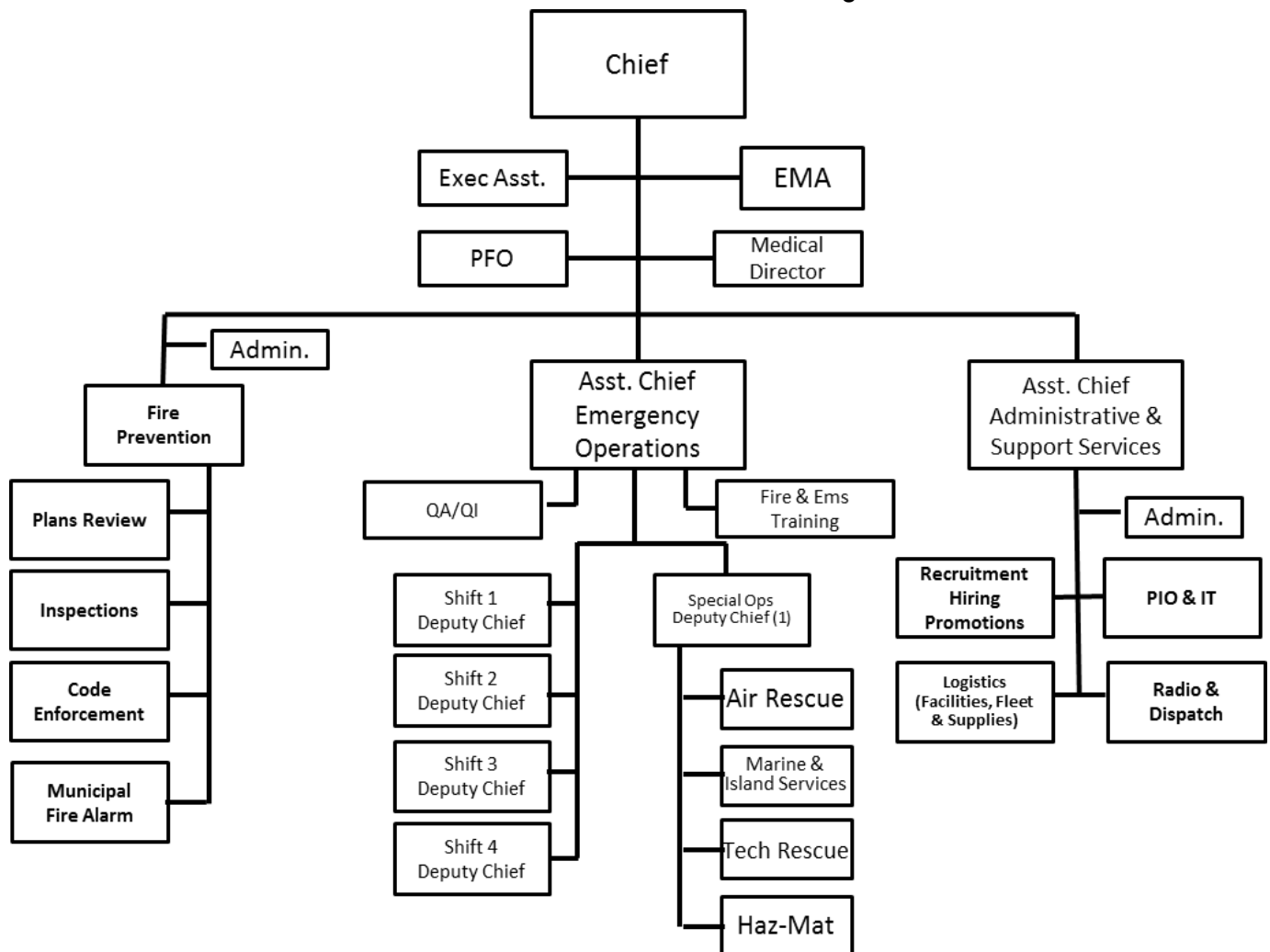
- Apparatus
 - Acquisition
 - Maintenance
 - Repairs
- Buildings
 - Maintenance
 - Repairs
 - Replacement
- Equipment
 - Acquisition
 - Inventory
- Communications Systems & Equipment
 - Radios
 - MDT
- Human Resources
 - Payroll
 - Workers Compensation claims
 - Hiring
 - Testing
 - CPAT
 - Job Suitability
- Promotional Process
 - Testing
 - Job suitability
- FMLA administration
- Peer Support Group

Fire Prevention & Community Outreach Branch (to be fully staffed and implemented January 1, 2015)

- Fire Prevention
 - Permit & Plans Review
 - Inspections
 - Code enforcement
 - Ordinance changes
- Public Education Programs
 - Fire Prevention
 - Citizen CPR
- Municipal Fire Alarm
- Fire Investigations
 - Juvenile fire setter program
 - Liaison with State Fire Marshall
- Community Outreach Programs
 - Community Para-medicine
- Department PIO
 - Website & Social Media
- Special Events Planning

Portland Fire Department

August - 2014



Organizational Chart

With this reorganization in place, we have established critical areas of focus as priorities for the next 6-12 months. Those include:

- Establishing consistency in our practices and policies across shifts, stations, and divisions within the department.
- Establish support mechanisms which efficiently provide critical support for operations (supplies, equipment, and technology).
- Reinforce, amend, or implement needed safety policies and programs.
- Establish and communicate clear expectations for all levels.

Phase 3 – For implementation beginning January 1, 2015 and spanning 3-5 years.

The final phase will be focused on those items and recommendations requiring advanced planning and capital budget preparation. These recommendations include major purchases or facility improvements that cannot be addressed utilizing operating budgets.

A priority item for Phase 3 is the implementation and funding for a health and wellness program to include annual physicals for fire department members. This has been recommended in the study, is a requirement of national standards, and critical to the safety of all members. The most telling need for this is the experience of the last 18 months in the Portland Fire Department.

- One member, who was mandated to undergo a cardiac stress test due to age, received lifesaving intervention for a cardiac condition. This condition was determined during the stress test and the member was immediately taken for cardiac surgery. He has fully recovered and has returned to active duty.
- Another member suffered a cardiac arrest while on duty. He was successfully resuscitated by his co-workers and transported to the hospital. That member survived the event but has not returned to active duty after more than 1 year.
- Tragically, an off-duty member suffered a cardiac related event and perished.

These three incidents indicate the critical importance of providing a health and wellness program which includes the proper medical screening.

Other initiatives and projects for Phase 3 include:

- Implement an effective department safety program
 - Including a dedicated Incident Safety Officer
- Establish a professional development process
 - Officers
 - Firefighters
 - EMS Providers
- Continue our efforts in peer support
- Plan and obtain support for facilities replacement and enhancements
- Plan and obtain support for apparatus/equipment replacement
- Plan and support training functions
- Improve our public fire and life safety education programs

Summary

The Portland Fire Department is intensely engaged in a number of processes and projects that reflect recommendations presented in the Study. Many other projects not directly related to recommendations, but identified internally as needing improvement or adjustment are also ongoing. This work is being done at every level of the organization, and in a manner that includes a great deal of collaboration.

These changes being implemented are steps toward an end goal and should not be viewed as fixed or finite. The end goal is to create and sustain a department that; provides for the protection of our community, supports the needs and wellbeing of its members, and operates in an efficient, responsible, and honorable manner. Changes made along the way, whether it is in the arrangement of staff, the shifting in responsibilities, or the manner in which we operate, are merely steps towards that end goal.

I would like to assure members of Council, as well as all citizens of the City, that this work is being done without compromising service levels which remain our highest priority. I understand my critical responsibility of managing the workload and the pace of change so that progress can be made in positive steps forward.

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act to promote public safety and protect access to reproductive health care facilities.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 11H of chapter 12 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by adding the following paragraph:-

If the attorney general prevails in an action under this section, the attorney general shall be entitled to: (i) an award of compensatory damages for any aggrieved person or entity; and (ii) litigation costs and reasonable attorneys' fees in an amount to be determined by the court. In a matter involving the interference or attempted interference with any right protected by the constitution of the United States or of the commonwealth, the court may also award civil penalties against each defendant in an amount not exceeding \$5,000 for each violation.

SECTION 2. Chapter 266 of the General Laws is hereby amended by striking out section 120E½, as so appearing, and inserting in place thereof the following section:-

Section 120E½. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

“Driveway”, an entry from a public street to a public or private parking area used by a reproductive health care facility.

“Entrance”, a door to a reproductive health care facility that directly abuts the public sidewalk; provided, however, that if the door does not directly abut the public sidewalk, the “entrance” shall be the point at which the public sidewalk intersects with a pathway leading to the door.

“Gathering”, 2 or more individuals.

“Impede”, to obstruct, block, detain or render passage impossible, unsafe or unreasonably difficult.

“Law enforcement official”, a duly authorized member of a law enforcement agency, including a member of a municipal, metropolitan or state police department, sheriffs or deputy sheriffs.

“Reproductive health care facility”, a place, other than within or upon the grounds of a hospital, where abortions are offered or performed including, but not limited to, the building, grounds and driveway of the facility and a parking lot in which the facility has an ownership or leasehold interest.

(b) A law enforcement official may order the immediate dispersal of a gathering that substantially impedes access to or departure from an entrance or a driveway to a reproductive health care facility. A dispersal order issued pursuant to this section shall include the following statements: (i) the gathering has substantially impeded access to or departure from the reproductive health care facility; (ii) each member of the gathering shall, under the penalty of arrest and prosecution, immediately disperse and cease to stand or be located within at least 25 feet of an entrance or a driveway to the reproductive health care facility; and (iii) the order shall remain in place for 8 hours or until the close of business of the reproductive health facility, whichever is earlier. This subsection shall apply during the business hours of a reproductive health care facility. This subsection shall also apply only if the 25-foot boundary is clearly marked and subsections (a) through (c), inclusive, of this section are posted outside of the reproductive health care facility.

(c) A person who fails to comply with a dispersal order pursuant to subsection (b) shall be punished, for the first offense, by a fine of not more than \$500 or not more than 3 months in a jail or house of correction or by both such fine and imprisonment and, for each subsequent offense, by a fine of not less than \$500 nor more than \$5,000 or not more than 2½ years in a jail or house of correction or by both such fine and imprisonment.

(d) A person who, by force, physical act or threat of force, intentionally injures or intimidates or attempts to injure or intimidate a person who attempts to access or depart from a reproductive health care facility shall be punished, for the first offense, by a fine of not more than \$2,000 or not more than 1 year in a jail or house of correction or by both such fine and imprisonment and, for each subsequent offense, by a fine of not less than \$10,000 nor more than \$50,000 or not more than 2½ years in a jail or house of correction or not more than 5 years in a state prison or by both such fine and imprisonment. For the purpose of this subsection, “intimidate” shall mean to place a person in reasonable apprehension of bodily harm to that person or another.

(e) A person who impedes a person’s access to or departure from a reproductive health care facility with the intent to interfere with that person’s ability to provide, support the provision of or obtain services at the reproductive health care facility shall be punished, for the first offense, by a fine of not more than \$1,000 or not more than 6 months in a jail or house of correction or by both such fine and imprisonment and, for each subsequent offense, by a fine of not less than \$5,000 nor more than \$25,000 or not more than 2½ years in a jail or house of correction or not more than 5 years in the state prison or by both such fine and imprisonment.

(f) A person who knowingly impedes or attempts to impede a person or a vehicle attempting to access or depart from a reproductive health care facility shall be punished, for the first offense, by a fine of not more than \$500 or not more than 3 months in a jail or house of correction or by both such fine and imprisonment and, for each subsequent offense, by a fine of not less than \$1,000 nor more than \$5,000 or not more than 2½ years in a jail or house of correction or by both such fine and imprisonment.

(g) A person who recklessly interferes with the operation of a vehicle that attempts to enter, exit or park at a reproductive health care facility shall be punished, for the first offense, by a fine of not more than \$500 or not more than 3 months in a jail or house of correction or by both such fine and imprisonment and, for each subsequent offense, by a fine of not less than \$1,000 nor more than \$5,000 or not more than 2½ years in a jail or house of correction or by both such fine and imprisonment.

(h) A person who fails to comply with a dispersal order pursuant to said subsection (b) or who violates subsections (c), (d), (e), (f) or (g) may be arrested without a warrant by a law enforcement official.

(i) If a person or entity fails to comply with a dispersal order pursuant to subsection (b) or violates subsections (c), (d), (e), (f) or (g), an aggrieved person or entity or the attorney general or both may commence a civil action. The civil action shall be commenced either in the superior court for the county in which the conduct complained of occurred or in the superior court for the county in which the person or entity complained of resides or has a principal place of business.

(j) In an action pursuant to subsection (i), a court may award as remedies: (1) temporary, preliminary and permanent injunctive relief; (2) compensatory and punitive damages; and (3) costs, attorneys' fees and expert witness fees. In an action brought by the attorney general pursuant to subsection (i), the court may also award civil penalties against each defendant in an amount not exceeding: (A) \$10,000 for a nonviolent violation and \$15,000 for other first violations; and (B) \$15,000 for a subsequent nonviolent violation and \$25,000 for any other subsequent violation.

(k) A violation of an injunction entered by a court in an action brought pursuant to subsection (i) shall be a criminal offense under section 11J

MEMORANDUM

To: Public Safety, Health and Human Services Committee
From: Trish McAllister, Associate Corporation Counsel
Re: Reproductive Health Facility Protests – Buffer Zone Alternatives
Date: September 2, 2014

In light of the Supreme Court's recent decision in *McCullen v. Coakley*, striking down a Massachusetts buffer zone law very similar to Portland's ordinance, the City Council chose to repeal the Portland ordinance on July 8, 2014. At that same meeting, the Council asked City staff to consider constitutionally sound alternatives to the 39-foot fixed buffer zone, and submit those to this committee for consideration. This memo outlines such alternatives.

PROTEST SITUATION SINCE ORDINANCE REPEAL

Shortly after the repeal, Planned Parenthood once again hired a police officer to stand outside its main entrance every Friday from 8 am to noon. The following are the protester counts and some notes compiled by officers so far:

Friday 7/18/14:

(According to the officer "there were no issues at all").

0800 -
0900 -
1000 12
1100 12
1200 -

Saturday 7/19/14 (no overtime detail but officers still took note of the following numbers):

0900 5 people w/ signs
1000 5 people w/ signs
1100 5 people w/ signs
1200 0 protesters

("Each time they were quiet and not blocking the sidewalk or street").

Friday 8/1/14

("No issues of note").

0800- 0
0900- 3 planned parenthood greeters
1000- 18 protesters, 3 greeters
1100- 6 protesters, none near building, 3 greeters
1115- 1 remaining protester on corner of Monument Square, greeters have left.

Friday 8/8/14:

"Today's detail was different. In addition to the normal protestors they has guest pastors and preachers from Texas, Arkansas, New York, and elsewhere. They said a conference was being held in the city at Deering Congregational church (not sure if that's accurate). They were preaching loudly and upon complaint of planned parenthood I notified [a] Sgt. who spoke to the group. They were cooperative and lowered tone and pitch of their message and remained in compliance till leaving at 1110 hrs.

They told me they showed up early 0800 because "the killing starts at 8 not 10". This was told to me by Donna (who said she was the point of contact) and at the time the group was at 6 (most of the family who always shows up)

At 0900 the guest preachers arrived and the total protestors at that time was 17. One person was asked to stop stepping in front of pedestrians, obstructing their normal course. A pro choice group of 3 also arrived with signs in monument square.

At 0945 the group was at 30. Pro choice group at 10.

True to their word they left at 1110.

At 1150 one man with signs arrived and set up across the street."

Friday 8/15/14:
("No incidents").

0800 - 0
0900 - 5
1000 - 13
1100 - 15
1125 - 0

Friday 8/22/14:

0800 - 0
0830 - 6 protestors (across the street).
0900 - 9 protestors and 2 greeters
0945 - Angry woman in wheelchair yelling at greeters as she went past.
1000 - 7 protestors 1 counter protester and 3 greeters
1100 - 1 protester 1 counter protester at the corner of One Monument.
1120 - No protestors, greeters have left.

Friday 8/29/14:

"Nothing of note occurred. They were all silent and did not block any of the sidewalks or impede traffic."

0800 - 0
0930 - 9 protestors arrived, half stood across the street and the other half stood around the corner on Elm street.
1030 - Another small group of about 4 arrived, but left after a short time.
All the other protestors left the area at 1100.

OPTIONS

A. Enforcement of Existing Laws.

In its decision, the Supreme Court specifically targeted law enforcement efforts as a more viable option to a 35-foot fixed buffer zone.

The following are the most applicable existing state laws available for enforcement here:

1. Disorderly Conduct (17-A M.R.S. §501-A(B))(Class E crime):

In a public or private place, the person knowingly accosts, insults, taunts or challenges any person with, derisive or annoying words, or by gestures or other physical conduct, that would in fact have a direct tendency to cause a violent response by an ordinary person in the situation of the person so accosted, insulted, taunted or challenged.

2. Failure to Disperse (17-A M.R.S. § 502) (Class E crime):

When 6 or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, annoyance, or alarm, a law enforcement officer may order the participants and others in the immediate vicinity to disperse.

3. Obstructing Public Ways (17-A M.R.S. § 505) (Class E crime):

A person is guilty of obstructing public ways if he unreasonably obstructs the free passage of foot or vehicular traffic on any public way, and refuses to cease or remove the obstruction upon a lawful order to do so given him by a law enforcement officer.

4. Harassment (17-A M.R.S. § 506-A)(Class E crime):

A person is guilty of harassment if, without reasonable cause:

A. The person engages in any course of conduct with the intent to harass, torment or threaten another person:

(1) After having been notified, in writing or otherwise, not to engage in such conduct by:

(a) Any sheriff, deputy sheriff, constable, police officer or justice of the peace.

5. Maine Civil Rights Act (5 M.R.S. § 4684-B)

It is a violation of this section for any person, whether or not acting under color of law, to intentionally interfere or attempt to intentionally interfere with the exercise or enjoyment by any other person of rights secured by the United States Constitution or the laws of the United States or of rights secured by the Constitution of Maine or laws of the State by any of the following conduct:

...

D. After having been ordered by a law enforcement officer to cease such noise, intentionally making noise that can be heard within a building and with the further intent either:

- 1) To jeopardize the health of persons receiving health services within the building; or
- 2) To interfere with the safe and effective delivery of those services within the building.

Each violation of this section is a civil violation carrying a penalty of not more than \$5,000.

In addition, the Attorney General's office may seek a temporary restraining order or injunction. A person who knowingly violates a temporary restraining order or preliminary or permanent injunction issued under this section commits a Class D crime, which is punishable by up to one year in prison and/or a fine of up to \$2,000.

Note the various elements of the listed offenses which make enforcement difficult (such as proving intent). Also note that all of these are not only reactive measures (the conduct has to occur before law enforcement gets involved) but also that some laws require warnings first, so there have to be two instances of the illegal behavior before enforcement can take place (via arrest or summons).

B. Possible Revision of City's Abusive Solicitation Ordinance

Sec. 17-2. Prohibition against abusive solicitation.

(a) Purpose. It is the intent of this chapter to impose reasonable manner of limitations on solicitation, as defined herein, in order to protect the safety of the general public against abusive solicitation while respecting the constitutional right of free speech.

(b) Definitions. The following words or phrases as used in this chapter shall have the following meanings:

(1) "Solicitation" means any request made in person seeking an immediate donation of money or other item of value, or seeking to solicit the attention of passersby to a particular cause or issue. A person shall not be deemed to be in the act of solicitation when he or she passively displays a sign or gives any other indication that he or she is

seeking donations or expressing a viewpoint without addressing his or her solicitation to any specific person, other than in response to an inquiry by that person.

(2) "Donation" means a gift of money or other item of value and shall also include the purchase of an item for an amount far exceeding its value under circumstances where a reasonable person would understand that the purchase is in substance a gift.

(3) "Abusive solicitation" means to do one or more of the following while engaging in solicitation or immediately thereafter:

- a. Blocking or impeding the passage of the person solicited;
- b. Following the person solicited by proceeding behind, ahead or alongside of him or her after the person solicited declines to make a donation or engage in discussion;
- c. Threatening the person solicited with physical harm by word or gesture;
- d. Abusing the person solicited with words which are offensive and inherently likely to provoke an immediate violent reaction;
- e. Touching the solicited person without the solicited person's consent.

(c) Penalties. Any person who engages in abusive solicitation as defined herein shall be guilty of a violation of this article and, upon conviction, shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred fifty dollars (\$150.00) for each offense. The city may also seek and the court may order injunctive relief designed to prevent any further violations of this article.

Such an ordinance revision may inspire a legal challenge because it may be seen as a First Amendment violation. Additionally, it is not clear that this would actually address the situation at 443 Congress Street, given the non-aggressive behaviors often noted (regardless of their effect on some patients).

C. Promotion of State law changes

In July, the Massachusetts Legislature passed new legislation to promote public safety and to protect access to reproductive health care facilities. The text of the adopted legislation is attached. Portland could sponsor such legislative changes to Maine's Civil Rights Law via the state legislature. There is some uncertainty as to whether such changes would pass, or survive a veto by the current administration.

D. Establishment of a "floating" buffer zone

In *Hill v. Colorado*, the Supreme Court held that a state law requiring a floating eight foot "bubble zone" around persons within one hundred feet of a health care facility was constitutional 530 U.S. 703, 729 (2000). This ruling was not overturned by *McCullen*. Additionally, two Supreme Court decisions upholding fixed buffer zones created by court injunctions are also, presumably, undisturbed by the *McCullen* decision. *Madsen v. Women's Health Ctr.*, 512 U.S. 753 (1994)(affirming an injunction creating a thirty-six foot buffer zone around clinic entrances and driveways and limiting excessive noise); *Schenk v. Pro-Choice Network*, 519 U.S. 357 (1997) (upholding an injunction creating a fifteen foot buffer zone

around clinic entrances).

Please note that establishment of a floating buffer zone would likely not be adequate to address the issues created on Portland's narrow sidewalks. As the Massachusetts law enforcement authorities pointed out, enforcement of such a zone is incredibly difficult, and can create as many problems as it addresses.

E. Establishment of a more limited fixed buffer zone

As we know, a fixed buffer zone which prohibits "peaceful conversations" has been struck down by the Supreme Court. The 35-foot zone in Massachusetts was too large, the Court said, to allow anti-abortion activists to converse with patients in a conversational tone and volume.

There has been a proposal for a much more limited buffer zone, very narrowly tailored to allow for such conversations to take place but to also limit the creation of a two-sided "gauntlet," which so many patients have identified as being intimidating and frightening.

Such a zone (protecting 6- or 8-feet from the side of the building) would allow a patient to walk to the main entrance while passing protesters on only one side. Those protesters would still be able to engage in "conversations" with willing patients and passersby.

Legally, this option has several risks. Fixed buffer zones mandated by government action (versus created by court injunction in a suit between private parties) are highly questionable given the *McCullen* decision. Portland would almost definitely face yet another lawsuit, and have to defend a regulation of "first impression" in federal court, perhaps at several levels. Also there is a legitimate question as to whether such an option will adequately address the public safety issue identified (safe unimpeded access to health care), which is a prong of the constitutional analysis of such a regulation.

This option might be much more effectively addressed via a private lawsuit requesting the court establish such a zone by injunction. This method was specifically noted by the Supreme Court in *McCullen* as preferable to government-imposed regulations curtailing speech.

STAFF RECOMMENDATION

The options outlined in this memorandum have been reviewed by the Chief of Police, Corporation Counsel, and the Interim City Manager. All agree that given the *McCullen* holding, as well as the current status of protests at this single facility, the City should not pursue passage of any new regulations at this time. This is particularly true given the potential of another lengthy legal battle, and considering our current legal expenses and pending budget challenges.

Instead, law enforcement personnel should continue their diligent efforts on site in terms of enforcement of existing laws, as well as data-gathering. In addition, discussions with the legislative committee to determine whether state law changes might help should be pursued.

If the situation escalates, perhaps re-evaluation of these options is merited.

Encl: Massachusetts' revised law