

**REGIONAL EMERGENCY MEDICAL  
SERVICES COUNCIL OF NEW YORK CITY, INC.**

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In the Matter of the Application to Expand  
Primary Operating Territory by the

**REPORT &  
RECOMMENDATION**

FOREST HILLS VOLUNTEER AMBULANCE  
CORPS., INC.,

To Include the Communities of Woodhaven,  
Richmond Hill, and Kew Gardens within the  
geographical area formerly served by  
Woodhaven-Richmond Hill VAC.

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**PRELIMINARY STATEMENT**

In accordance with New York State Public Health Law Article 30 and New York State Department of Health (hereinafter “NYSDOH”) Policy Statement 06-06, a public hearing was held on March 4, 2021 via Zoom Videoconference regarding the application of Forest Hills Volunteer Ambulance Corps., Inc. (hereinafter “the applicant”) to expand its primary operating territory to include the communities of Woodhaven, Richmond Hill, and Kew Gardens within Queens County and Community Board # 9, in the geographical area formerly served by Woodhaven-Richmond Hill VAC, as stated in the applicant’s Narrative and on its DOH Form 3777. As stated on the applicant’s operating certificate, the applicant currently holds operating authority in Rego Park and Forest Hills in Queens County [Exhibit 1: p.33].

I, Timothy C. Hannigan Esq., served as Hearing Officer for the Regional Emergency Medical Services Council of New York City, Inc. (hereinafter “REMSCO”).

## **SUMMARY OF HEARING**

The applicant was represented by its Attorney, Jeffrey Reisner, Esq., Mr. Aviv Citron, and Mr. Alan Wolfe. The applicant was afforded the opportunity to amend the application prior to the commencement of the public hearing. No amendment was made. Thereafter, the hearing was called to order at 6:04 P.M. [3].<sup>1</sup> Several members of the REMSCO and its Ambulance Committee were present via Zoom Videoconference.

At the outset of the hearing, the applicant was instructed that it bore the burden of demonstrating public need as that term is defined in DOH Policy Statement 06-06. The applicant was afforded the opportunity to make a verbal presentation to the Ambulance Committee. Thereafter, the hearing was open for public comment. Approximately 40 people attended the hearing by videoconference.

### **A. Exhibits**

The redacted application for a permanent operating certificate was marked as **Exhibit 1**.

A copy of the Legal Notice of Public Hearing published prior to the hearing date, together with a supporting affidavit and notice of the application made by registered or certified mail by the REMSCO to the chief executive officers of all general hospitals, ambulance services, and municipalities operating within the same county where the applicant seeks to operate, was marked as **Exhibit 2**.

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<sup>1</sup> All references contained in brackets are to the transcript of the public hearing.

The record remains open for a letter from NYSDOH attesting to the fitness and competency of the applicant, which will be marked as **Exhibit 3**. As of this writing, NYSDOH's determination as to fitness and competency remains pending (See Point 4, below).

The timeline entitled Account of Events prepared by REMSCO Executive Director, Marie Diglio, was marked as **Exhibit 4**.

The PowerPoint presentation transmitted by the applicant to the REMSCO before the public hearing was marked as **Exhibit 5**.

An email transmitted by Attorney Jeffrey Reisner on behalf of the applicant before the public hearing, with attachment – that being a blank copy of the REMSCO's "Conflict of Interest Agreement" – was marked as **Exhibit 6**.<sup>2</sup>

#### **B. Public Comment Upon the Application**

In addition to Messrs. Reisner, Citron, and Wolfe, other speakers at the public hearing offered remarks in support of the application, including:

- Hon. Joseph Addabbo, Jr., State Senator, District 15
- Heidi Chain, President, 112<sup>th</sup> Precinct Community Council, Resident of Forest Hills
- Dr. Louis Rotkowitz, M.D., attending emergency department physician at Queens Hospital Center in Jamaica

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<sup>2</sup> Attorney Reisner alleged that the applicant perceives certain REMSCO members to have an impermissible conflict of interest such that they "should be precluded from discussing or voting on either application at both the committee and council levels" [Exhibit 6]. The REMSCO should abide by its existing Conflict of Interest Agreement or Disclosure Policy, Code of Ethics, and any other applicable practice or policy of the REMSCO relative to the identification and disclosure of conflicts of interest on matters before it. Said findings are within the province of the REMSCO, and I make no specific finding herein relative to any claimed conflict of interest.

As indicated below, Senator Addabbo and Dr. Rotkowitz spoke in support of the application and of the existence of “public need” as defined by Policy Statement 06-06 within the affected area. Ms. Chain stated that she does not live in the affected area and was unable to comment about whether public need exists in the area sought by the applicant for expansion [45-46]. Multiple letters in support from persons not in attendance at the public hearing were also received and incorporated into Exhibit 1. These written letters of support are contained within Exhibit 1 and included the following:

- Hon. Robert Holden, District 30, Council of the City of New York
- Hon. Daniel Weprin, New York State Assembly, 24<sup>th</sup> District
- Leslie Brown, Executive Director, Forest Hills Chamber of Commerce
- Hon. Karen Koslowitz, Council Member, District 29
- Hon. Toby Ann Stavisky, State Senator, District 16
- Hon. Edwin Wong, District 29, Council of the City of New York
- Martin Grillo, Chief, Emergency Medical RESCUE of New York City
- Daryl Mazlish, President, Jamaica Estates Holliswood South Bayside Volunteer Ambulance Corps, Inc.
- Jonathan Fricker, Coordinator of Queens Borough Safety Patrol, Inc.
- FDNY

Kevin Mahoney, Vice Chairman for Ridgewood Volunteer Ambulance Corps., Inc., spoke in opposition to the application. No other opposition to the application exists.

## **FINDINGS OF FACT**

- 1. The evidence presented demonstrates the existence of public need as defined by Policy Statement 06-06.**

To support the pending application, the applicant had the burden of proof for the demonstration of public need. Public need is defined by Policy Statement 06-06 as “the demonstrated absence, reduced availability or an inadequate level of care in ambulance or emergency medical service available to a geographical area which is not readily correctable through the reallocation or improvement of existing resources.” Accordingly, this Report and Recommendation focuses solely on the evidence presented relative to the issue of public need in the affected area. To the extent statements of want, desire, feeling, or other general statements of support were presented, such statements are not probative of whether public need exists, and have not been considered here, including statements of want contained within the applicant’s narrative and elsewhere in the application [Exhibit 1].

To carry its burden, the applicant essentially relied upon the recent elimination of an ambulance service resource from the system – Woodhaven-Richmond Hill Volunteer Ambulance Corps. – to form the basis of its application [Exhibit 1: 3; Exhibit 1: Form 3777].

It is the finding of the hearing officer that NYSDOH’s apparent revocation of the Operating Certificate held by Woodhaven VAC can be considered evidence of a “demonstrated absence, reduced availability or an inadequate level of care in ambulance or emergency medical service available to a geographical area” (Policy

Statement 06-06) [Exhibit 1: p.3]. Further, the statements offered by Senator Addabbo and Dr. Rotkowitz support a determination that the resulting void in service was not ameliorated, and thus not readily correctible, by existing resources.

It is also noted that Woodhaven VAC once held a Certificate of Need issued for by NYSDOH for the same area now sought for expansion via the present application. This fact establishes that NYSDOH previously determined that public need exists within the area formerly served by Woodhaven VAC. The record demonstrates that Woodhaven VAC served the affected area for 50 years [Exhibit 1: 42-43].

Mr. Wolfe stated that public need exists to support the addition of more than one new ambulance service resource to the affected area [31], a fact supported by the statements of the various elected officials and Dr. Rotkowitz. With respect to the demonstration of public need through the hearing process, Senator Addabbo stated that the areas at the subject of the application “are in desperate need of service” [73]. Dr. Louis Rotkowitz, M.D., attending emergency department physician at Queens Hospital Center in Jamaica, offered impartial and compelling statements as to public need, as follows:

“my patients are telling me this is necessary. . . without question there is a public need. I swear to you there’s a public need. I see it night after night, day after day. Any available help is appreciated. This is a no-brainer.

They are telling me, the patients are telling me they are oftentimes waiting 20 to 30 minutes for an ambulance at times. This was even before COVID” [61-64].

Like Senator Addabbo, I find that Dr. Rotkowitz's comments were credible and persuasive as to the question of whether public need exists in the affected area. I find that the comments of Dr. Rotkowitz as to patient experiences and his personal observations of the EMS system in the affected area are compelling as to the question of public need before the REMSCO.

The REMSCO may consider "other local factors" in its evaluation of whether public need exists relative to the subject application (Policy Statement 06-06, p.4). A significant local factor here is that the lone objector to this application, Ridgewood Volunteer Ambulance Corps., Inc., has affirmatively claimed that public need exists in the exact same area by way of its application for expansion of operating territory to include the same area at the subject of this application [Exhibit 1]. It is noted that the public hearing on the Ridgewood VAC application occurred two days before the public hearing on this application, and the Ridgewood VAC application and public hearing was referenced during the applicant's public hearing [32, 80, 84].

While each application should be evaluated on its own merits under Article 30 of the Public Health Law and Policy Statement 06-06, it is submitted that 06-06 does not require the REMSCO to conduct that evaluation in a vacuum without regard to "other local factors" relevant to the question of public need for ambulance service. Rather, Policy Statement 06-06 expressly directs REMSCOs to consider "other local factors", and it is submitted that the existence of another pending application for the same area, as well as the comments made at that public hearing relative to the question of public need in the same area, are local factors that should be considered by the REMSCO.

With respect to “other local factors”, it is significant that, at the public hearing on the pending Ridgewood VAC application, community leaders in the affected area commented that public need exists. City Councilmember Holden explained that “there is a public need for restoring a community-based ambulance service to this area . . . in fact, there is a desperate need, especially in these days of the pandemic” [Ridgewood VAC Transcript: 32]. Councilmember Holden referenced specific local factors – an aging population, ambulance service response times – in support of his statement. Community Board #9 Chair Kenichi Wilson stated that public need as defined in Policy Statement 06-06 “absolutely” exists in the affected area, and characterized the loss of Woodhaven VAC as “a big hole” [Ridgewood VAC Transcript: 47]. He further remarked “I’m a resident that misses the services and sees the holes there and the need as a community leader” [Ridgewood VAC Transcript: 47-48]. Mr. Wilson described the “holes” in service as relating to delayed response times and unavailability of ambulances to his constituents [Ridgewood VAC Transcript: 48]. I find that these comments constitute “other local factors” under Policy Statement 06-06, and that these comments should be considered by the REMSCO in determining whether the public need exists in the affected area such that the application should be granted.

- 2. The REMSCO should clearly identify the operating territory to be added to the applicant’s Certificate of Operating Authority should the application be granted.**

Alternate Council member Downey posed a question at the public hearing regarding the map submitted by the applicant, and whether this map accurately



depicted the proposed new area of operation [19-22]. This subject was also raised by Mr. Mahoney in opposition to the application [50-51]. In view of the statements made by the applicant and the subsequent clarifying information submitted by the applicant as stated at the public hearing [22], it is submitted that the easiest solution to this issue is utilizing the same language stated on the former Woodhaven VAC certificate.

**3. Competitive injury is not within the zone of interests protected by Article 30 of the Public Health Law.**

As explained above, the record demonstrates that the public need for additional transportation services has not been – and will not be – ameliorated by the reallocation of existing resources. Even assuming that the business interests of competing ambulance providers were a proper consideration, which is not the case (see Matter of Lasalle Ambulance v New York State Dept. of Health, 245 AD2d 724, 724 [3d Dept 1997], lv denied 91 NY2d 810 [1998]), there is no allegation or evidence to suggest that granting the application will result in a decrease in services due to the creation of additional financial strain on existing providers.

The only opposition to the present application was from Ridgewood VAC which, ostensibly, would be in competition with the applicant relative to the affected area [47-55]. In that regard, “competitive injury is not within the zone of interest protected by Public Health Law Article 30 (see Matter of Lasalle Ambulance v New York State Dept. of Health, 245 AD2d at 725). With respect to Public Health Law Article 30, the Third Department explained:

In enacting this article, the Legislature declared that the furnishing of medical assistance in an emergency is a matter of vital concern affecting the public health,

safety and welfare, and that the purpose of the legislation is to promote the public health, safety and welfare by, inter alia, providing for certification of all advanced life support first response services and ambulance services (Public Health Law § 3000). From this it is clear that the legislative intent was to protect the public and not to shield ambulance services from competition. Accordingly, we find that petitioner's claimed competitive injury is not within the 'zone of interest' protected by Public Health Law article 30" (Id.).

For the reasons set forth in Matter of LaSalle Ambulance, and as explained in the more recent case of Matter of N. Shore Ambulance & Oxygen Servs. Inc. v NY State Emergency Med. Servs. Council (2020 NY Slip Op 051471, at \*5 [Sup Ct Albany Co. 2020]), to the extent Ridgewood VAC advanced opposition sounding in competitive injury [47-55], it is submitted that those claims are not properly before the REMSCO, and have been disregarded by the hearing officer to the extent that they are rooted in an interest that is not protected by Public Health Law Article 30.

Mr. Mahoney advanced one procedural objection to the application regarding the alleged omission of a duly executed DOH Form 3777 [48]. An objection of this nature bears on the completeness of the application. It is noted that this form was contained within the complete, unredacted application submitted by the applicant, and may have been errantly omitted from the redacted public version of the application. Inasmuch as the appropriate form was submitted and the REMSCO previously deemed the application complete [Exhibit 4], this objection is moot and/or without merit.

**4. The REMSCO should abide by the determination of NYSDOH relative to the Applicant's Fitness and Competency.**

Finally, Review of an applicant's fitness and competency is, of course, a component of the certificate of need application process (see Public Health Law § 3005; Policy Statement 06-06, p. 7 of 30). Policy Statement 06-06 authorizes the REMSCO to request that the Department of Health conduct the review (Policy Statement 06-06, p. 9 of 30). This was the case here [Exhibit 3]. The Public Health Law makes clear that the Commissioner of Health is charged with determining whether a proposed operator is fit and competent to operate an ambulance service (see Public Health Law § 3005 [5]).

In this case, the Commissioner, through the New York State Department of Health Bureau of Emergency Medical Services and Trauma Systems, is reviewing the fitness and competency of the applicant [Exhibit 3]. It is submitted that the REMSCO should abide by the determination of NYSDOH in this regard. To the extent that NYSDOH determines that the applicant is fit and competent, then it is submitted that, consistent with the findings herein, the application should be approved. Conversely, in the event that NYSDOH determines that the applicant is *not* fit and competent, then it is submitted that the REMSCO should deny the application.

**RECOMMENDATION**

Pursuant to DOH Policy Statement 06-06, the question to be voted on is whether to approve the application. Based on the entire record, the applicant has shown that a need exists for additional services in the affected area, and that those needs are not readily correctable through the reallocation or improvement of existing resources. It is

the recommendation of the hearing officer that, subject to a determination by NYSDOH that the applicant is fit and competent to operate the proposed service, the application should be granted in its entirety.

Dated: March 15, 2021

Respectfully submitted,



Timothy C. Hannigan, Esq.  
Hearing Officer