

**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**

RIDGEWOOD VOLUNTEER AMBULANCE  
CORPS., INC.,

To Include the Communities of Woodhaven,  
Richmond Hill, and Kew Gardens within the  
boundaries of the 102<sup>nd</sup> Precinct in Queens and  
Community Board #9.

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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 2, 2021 via Zoom Videoconference regarding the application of Ridgewood 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 the boundaries of the 102<sup>nd</sup> Precinct in Queens and Community Board #9, as stated on Form 3777 and in the applicant’s Narrative. As stated on the applicant’s operating certificate, the applicant currently holds operating authority in Kings County (83<sup>rd</sup> Precinct/Brooklyn Community Board #4) and in Queens County (104<sup>th</sup> and 108<sup>th</sup> Precincts/Community Board 2 and Community Board 5) [Exhibit 1: Appendix A].

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

### **SUMMARY OF HEARING**

The applicant was represented by its Vice Chairman, Kevin Mahoney. 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 6:06 P.M [4].<sup>1</sup> Several members of the NYCREMSCO 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 Transportation Committee. Thereafter, the hearing was open for public comment. Approximately 60 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 NYCREMSCO to the chief executive officers of all general

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

hospitals, ambulance services, and municipalities operating within the same county where the applicant seeks to operate, was marked as **Exhibit 2**.

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 3, below).

The timeline entitled Account of Events prepared by Council 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**.

The memorandum and exhibits A-J transmitted by Attorney Jeffrey Reisner on behalf of Forest Hills Volunteer Ambulance Corps before the public hearing was marked as **Exhibit 6**.

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

In addition to Mr. Mahoney, other speakers at the public hearing offered remarks in support of the application, including:

- Hon. Joseph Addabbo, Jr., State Senator, District 15
- Hon. Jenifer Rajkumar, Assembly Member, District 38
- Hon. Robert F. Holden, Councilmember, District 30
- Kenichi Wilson, Chair, Queens Community Board #9
- Andrew Combs, Director, Woodhaven Richmond Hill Volunteer Ambulance Corps, Inc.
- Ryan Gunning, Former Chief, Glendale Volunteer Ambulance Corps, Inc.
- Lou Greco, Vice-Chair, District #4, NYSVARA

- Edward Wendell, Woodhaven Historical Society
- Martin Colberg, Woodhaven Business Improvement District
- Steven Forte, Woodhaven Residents' Block Association
- Vance Barbour, Community Member
- Christopher Deluca, Chief, Lindenwood Volunteer Ambulance Corps, Inc.

Notably, each of person identified above spoke in support of the application and of the existence of “public need” as defined by Policy Statement 06-06 within the affected area. Several of the speakers in support also submitted written statements in support of the application prior to the time of the public hearing. 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 included the following:

- Hon. Corey Johnson, Speaker, Council of the City of New York
- Hon. Eric Ulrich, Council Member, District 12
- Hon. Karen Koslowitz, Council Member, District 29
- Gary Giordano, District Manager, Community Board No. 5
- Ramon Rodriguez, CEO, Wyckoff Heights Medical Center
- Travis Kessel, District 4, NYSVARA
- Dave Meketansky, District 18, NYSVARA
- Daryl Mazlish, President, Jamaica Estates Holliswood South Bayside Volunteer Ambulance Corps, Inc.
- Rich Bogart, Assistant Chief, Broad Channel Fire Department
- Nicholas Spinelli, Chief, West Hamilton Beach Volunteer, Inc.
- Lisa Komninos, Executive Director, Woodhaven Development Corporation
- Stephen Forte, Woodhaven Residents’ Block Association
- Henry Ehrhardt, Life Member of the Applicant
- Dr. Lewis Bass, Medical Director of the Applicant

Jeffrey Reisner, Esq., attorney for Forest Hills 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. 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.

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. To wit, Mr. Mahoney stated that the applicant’s “intention is only to regain the territory that was previously served by the Woodhaven Richmond Hill VAC” [17-18]. Mr. Mahoney made specific reference to the actions of the NYCREMSCO relative to the proposed area of expansion, commenting:

“in 2017, the New York City Regional EMS Council petitioned the New York State Department of Health to restore Woodhaven VAC certificate to operate. The Regional Council’s request was to no avail, but it did show that this region already believes a community-based volunteer ambulance service is needed in the Woodhaven, Richmond Hill and Kew Gardens areas” [20].

It is unclear on this record why NYSDOH revoked the Woodhaven VAC Certificate and/or eliminated the possibility of a transfer of operating authority, particularly given the resulting “void” in ambulance service that such action caused [20-21, 26-28, 46 (Wilson); 98 (DeLuca); Exhibit 1: 30, 37, 47]. It is the finding of the hearing officer that NYSDOH’s removal of Woodhaven VAC from the system 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). Further, the statements offered by elected officials and community leaders 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 – and, potentially, the REMSCO, depending upon

when initial operating authority was obtained – previously determined that public need exists within the area formerly served by Woodhaven VAC.<sup>2</sup>

With respect to the demonstration of public need through the hearing process, Senator Addabbo stated that “the bottom line is these areas . . . are in dire need of service” [36]. 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” [32]. Councilmember Holden referenced specific local factors – an aging population, ambulance service response times – in support of his statement.

Community Board Chair 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” [47]. He further remarked “I’m a resident that misses the services and sees the holes there and the need as a community leader” [47-48]. Mr. Wilson described the “holes” as relating to delayed response times and unavailability of ambulances to his constituents [48]. Mr. Gunning explained that public need exists [56-57]. Mr. Colberg stated that “there’s a huge need in the community for an ambulance corps” [60], and that he has personally observed and been informed by constituents of an increase in ambulance response times since Woodhaven VAC’s cessation of service [63]. In view of their positions as elected officials and/or impartial community leaders

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<sup>2</sup> Present-day Public Health Law Article 30 was added in 1974, and heavily revised in 1993 (L 1974, ch 1053; L 1992, ch 804, § 1). Then-existing ambulance services were essentially “grandfathered” in to the new statutory scheme by NYSDOH for purposes of their Certificate of Need.

of the area that is the subject of this application, I find that the comments offered by said elected officials and local leaders are credible and persuasive as to the question at issue regarding whether public need exists within the affected area.

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). One significant local factor here is that the lone objector to this application, Forest Hills 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]. Indeed, the public hearing on the Forest Hills VAC application occurred two days after the public hearing on this application. 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 the 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 Forest Hills VAC application, representatives of that entity commented that public need exists sufficient to warrant and/or support more than one new ambulance service



in the affected area [Forest Hills VAC transcript, 31]. Similarly, it is also noted that Attorney Reisner commented that the statements made at the Forest Hills VAC public hearing “has proven a need” in the affected area [Forest Hills VAC transcript, 81].

At the public hearing on the Forest Hills VAC application, 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”

[Forest Hills VAC transcript, 61-64].

Like the elected officials and community leaders referred to above, 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 also find that his comments as to patient experiences and his personal observations of the EMS system in the affected area constitute “other local factors” under Policy Statement 06-06 that 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 [28-29]. In view of the statements made by Mr. Mahoney on behalf of the applicant relative to seeking only that area formerly held by Woodhaven VAC [17-18], it is submitted that the easiest solution to this issue may be using 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 Forest Hills VAC which, ostensibly, would be in competition with the applicant relative to the affected area. 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 Forest Hills VAC advanced opposition sounding in competitive injury [89-90], it is submitted that those claims are not properly before the NYCREMSCO, 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.

**3. The challenge of Forest Hills VAC to the fitness and competency of the applicant is unfounded as of this writing.**

It is noted that Attorney Reisner offered comments and a written submission on behalf of Forest Hills VAC in opposition to the application relative to the fitness and competency of the applicant [83-90; Exhibit 6]. Generally speaking, the opposition sounded in alleged violations of the not-for-profit corporation law and corporate compliance [84-87; Exhibit 6]. Although Attorney Reisner also characterized such opposition as sounding in the applicant's "quality of existing service" and "other local factors", I reject that contention and find that such issues more properly sound in fitness and competency. Indeed, later in his presentation, Attorney Reisner acknowledged that such matters "go to fitness and competency" [89, 92].

While Attorney Reisner alleged that he personally filed a complaint with NYSDOH against the applicant on February 1, 2021 [92-94], he indicated that no statement of deficiency or other corrective action was pending as to the applicant. Similarly, there is no evidence in the record of any actual pending investigation – let alone a negative finding – against the applicant with respect to its ambulance service or alleged not-for-profit compliance matters. Absent any proof, I find the allegations of impropriety wholly speculative, unavailing, and without merit on this record. It is also noted that the Office of the New York State Attorney General possesses concurrent jurisdiction over not-for-profit ambulance services such as the applicant, and that the

processes of that Office are separate and distinct from the inquiry of whether public need exists under Public Health Law Article 30 and Policy Statement 06-06.

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.

With respect to "quality" of service as that term is used in Policy Statement 06-06, it is submitted that the term must be read in context, as "quality, reliability, and response patterns of existing services" (Policy Statement 06-06, at 4), and that said term applies to the actual delivery of ambulance service and not the corporate structure or governance of the owner of the ambulance service as asserted by Forest Hills VAC in opposition. While the phrase "other local factors" is broader, it is submitted that the context of this phrase as used in Policy Statement 06-06 was intended to allow for considerations regarding the proposed area of operation itself, and not internal governance matters of the applicant. With respect to the ambulance service itself, the

resources available to serve the affected in the event that the application is granted, and remarked that such staffing is already in place [25-26].

**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 12, 2021

Respectfully submitted,



Timothy C. Hannigan, Esq.  
Hearing Officer