

A Review of Options for Ambulance Services in the Town of North Hempstead

Prepared for:
Town of North Hempstead

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INTRODUCTION

In 2007, the Town of North Hempstead and Village of Great Neck Plaza were awarded a grant through New York State's Shared Municipal Services Incentive (SMSI) program, with the goal of studying potential efficiency and effectiveness improvements in the delivery of ambulance and medical services across the Town's fire districts. Following a Request-for-Proposal (RFP) process in early 2008, a steering committee of stakeholders selected CGR Inc. (Center for Governmental Research), in partnership with Hofstra University, to complete the study.

This report follows the prior release of an in-depth study of ambulance services in the community (see *Baseline Review of Ambulance Services and EMS in the Town of North Hempstead, NY*, January 2010). That first report documented the study team's analysis of current operations, including the agencies and organizations that presently provide ambulance and emergency medical services; the personnel and capital resources available; the deployment of resources across the Town; the level of demand for ambulance and emergency services in the community; the processes and protocols governing the receipt of emergency calls-for-service and the dispatching of appropriate personnel and equipment; and key considerations impacting the delivery of ambulance services in North Hempstead and any efforts to enhance its overall quality and cost effectiveness. The *Baseline Review* can be accessed via the website of the Town of North Hempstead's Office of Inter-Municipal Coordination (www.northhempsteadny.gov).

Based on considerations noted in the *Baseline Review*, this report presents information on a variety of options for future delivery of ambulance services in the community. The presentation of these options is *not* intended to imply that the ambulance system in North Hempstead is "broken," but rather to focus future discussion on potential alternatives that may yield certain advantages from an operational perspective, financial perspective or both.

As stakeholders universally pointed out to the project team, any consideration to enhance the current system's effectiveness and/or efficiency should acknowledge a basic point: the current system works. The current ambulance and emergency medical system in North Hempstead provides essential services to the community, supported by an army of volunteers and paid personnel who are committed to ensuring the community's safety. And based upon response time data supplied by the State Department of Health (see the *Baseline Review*), ambulance response in the community is generally quicker than the statewide average.

That is not to say, however, that there are not potential improvements and opportunities to strengthen the overall system in ways that tighten the delivery of services, streamline response, more optimally distribute/deploy people and capital resources, and create potentially beneficial financial impacts for the overall community (perhaps even allowing it to further reinvest in its ambulance system and the people that support it).

This report reviews options for potentially enhancing the current state of ambulance services in the following areas:

- **The Dispatch System:** According to State Department of Health data, ambulance response time among the providers serving the Town of North Hempstead is generally in line with the countywide average, and noticeably better than the statewide average. Still, the *Baseline Report* noted the potential for dispatching inefficiencies that can result from the system's multi-layered structure, including multi-agency response to a single call and/or response by an agency that is not necessarily the closest available unit. What options are available to strengthen an already well-performing system?
- **The Non-Emergency Call Burden:** Many ambulance service providers in the community, particularly volunteer fire-based departments, are being strained by an increasing number of non-emergency calls. As the *Baseline Report* noted, non-emergency calls can result in a sub-optimal use of emergency resources and, in at least two cases, have resulted in a removal of valuable staff and equipment resources from the County 911 system. What options are available for mitigating the growing non-emergency demand and/or redirecting it in ways that preserve the ambulance system's ability (esp. volunteer fire departments) to adequately respond to true emergencies?
- **Streamlining Procurement and Standardizing Equipment:** As the *Baseline Report* noted, from an administrative perspective the ambulance and EMS agencies serving the community operate as separate, individual units. This may result in a loss of economy of scale benefits when it comes to procuring common supplies and equipment. What options are available to streamline procurement among ambulance and EMS providers in a way that yields economies of scale and relieves individual departments of the administrative responsibilities inherent in disaggregated purchasing?
- **Revenue Potential and Structural Options:** As the *Baseline Report* noted, state General Municipal Law precludes volunteer

fire departments from charging fees for ambulance services. As such, the costs of providing fire-based ambulance services are underwritten through municipal tax dollars and/or general fundraising. By contrast, volunteer ambulance corps, paid departments and private vendors can bill to recover some (or all) of their ambulance costs. Given the current ambulance call volume in the community, how much revenue is currently being foregone with the current structure and statutory prohibition on billing for service? What options are available to restructure the system in a way that enables cost recovery, including changes to state law, “spinning off” fire-based ambulances into standalone entities that can bill for service, outsourcing and/or consolidating into one or more town ambulance districts?

- **Meeting the Volunteer Challenge:** As the *Baseline Report* noted, many fire-based ambulance providers in the community indicated that volunteer recruitment and retention is an increasing challenge, and has the potential to impact delivery of ambulance/EMS services going forward. What options are available to address the volunteer challenge, including increased use of strategic incentives to attract volunteers?

THE DISPATCH SYSTEM

Calls for ambulance and EMS service in North Hempstead (and all of Nassau County, for that matter) can be placed in three primary ways:

1. Through the County 911 system¹;
2. Through the County Fire Commission’s FireCom line at 742-3300;
or
3. In certain jurisdictions, through the local fire department’s own dispatch center.

Based on average response time, the existing system appears to work well. According to State Department of Health response time data presented and analyzed in the *Baseline Report*, the average length of response time for the ambulance agencies serving portions of the Town of North Hempstead

¹ Calls to 911 are answered in different ways depending on the caller’s location. In some areas, calls are routed to the Central Communications Bureau; in others, they are answered by local police departments (*i.e.*, local public safety answering points).

is 6.79 minutes.² Among volunteer-based ambulance agencies, the mean response time was 8.33 minutes. Overall, the system's average response time suggests North Hempstead is generally in-line with the rest of Nassau County, and better than the statewide average. The weighted average response time of all calls in Nassau County was 8.03 minutes; the statewide average was 13.20 minutes.

While response times suggest an adequate dispatch process, there do appear to be opportunities to streamline the system in ways that mitigate the potential for sub-optimal response and help to more effectively deploy emergency equipment and personnel – in other words, opportunities to make a functional system better.

It is important to recognize that in its current form, dispatch is in large part a regional function. With the exception of a handful of local fire-based dispatch systems, it is administered from the County level through 911 and FireCom. As such, options to enhance the dispatch system will not necessarily be “Town of North Hempstead options” so much as they are “Nassau County options.” The following discussion should be read with this fact in mind. Still, any improvements made to enhance the system’s responsiveness and level of coordination would inure to the Town and its residents.

The opportunities emanate from the system's multi-layered framework. The current structure creates both financial and operational implications. On the financial side, four fire departments that serve portions of the Town fund their own local dispatch functions. This is in addition to County 911 and FireCom, which are funded through County taxes. On the operations side, each of these “intake mechanisms” has its own dispatch protocol. As the *Baseline Report* noted, the emergency number dialed often dictates which agency responds, meaning the ambulance that gets dispatched is subject to which number a person dials, not necessarily which is the closest available unit. Further, in the event multiple calls are placed to different emergency numbers regarding the same incident, it can also result in multiple agencies responding to the same call unnecessarily, yielding inefficient deployment of resources and straining the rest of the system.

² For ambulance providers whose territory includes areas outside the Town of North Hempstead (including the Nassau County EAB), their entire service area is included in the response time analysis.

How Layered Dispatch Can Yield Sub-Optimal Response

The current dispatch framework creates the *potential* for inefficient response in ways that a more coordinated, consolidated system would not. For example, there exists the potential for an ambulance to get dispatched to an emergency call when it is *not necessarily* the closest available unit, based on the telephone number someone dials seeking emergency response. The following case study demonstrates this scenario.

Fictional Case Study 1:

It is noon on a Monday, and a 911 call seeking ambulance response originates at the Great Neck Community School, located at 225 Schenck Avenue in Great Neck. The location is 1/10 mile from Manhasset-Lakeville Fire Department's ambulance units, which are based at the department's Company #3 station house at 25 Prospect Street. However, because the caller dialed 911, the department's resources cannot be accessed, as Manhasset-Lakeville is not dispatched via 911. Rather, the Nassau County Police Department ambulance will be the first to respond.

The first-due NCPD bus is unit 2356, which covers approximately 7.8 square miles of territory across University Gardens, Russell Gardens, Thomaston, Manhasset, North Hills, Plandome, Plandome Heights and Plandome Manor. At any point in time, the unit could be in that territory and be a maximum of 2.9 miles from the call in Great Neck. Similarly, the second-due NCPD bus is unit 2366, which covers approximately 10.5 square miles of territory across Roslyn, Roslyn Estates, Roslyn Harbor, Greenvale, East Hills and crossing over the Town of North Hempstead's eastern border. At any point in time, the unit could be in that territory and be a maximum of 7.4 miles from the call in Great Neck.

Even if Manhasset-Lakeville Fire Department had ready personnel at the station house and capable of responding the roughly one-block distance, the fact that the caller dialed 911 results in the use of a dispatch protocol that does not provide access to MLFD's ambulance resources.

The current dispatch framework also creates the potential for inefficiency through multiple-agency response.³ When this occurs, the result can be a sub-optimal distribution of emergency resources in the community, yielding strain on the rest of the emergency ambulance system. The following case study illustrates this scenario.

Fictional Case Study 2:

It is noon on a Monday, and an automobile accident occurs immediately in front of the Great Neck Community School, located at 225 Schenck Avenue in Great Neck. There are two witnesses to the incident – a staff member at GNCS and the operator of a different vehicle. Both witnesses place a call seeking immediate ambulance response. The GNCS staff member dials 911; the other vehicle operator, a resident of the neighborhood and someone familiar with Manhasset-Lakeville Fire Department’s proximity, dials MLFD dispatch at 466-4411.

The two calls seeking assistance simultaneously initiate two separate unique protocols. Via 911, a Nassau County Police Department ambulance is dispatched, with unit 2356 designated as first-due. Via 466-4411, an MLFD ambulance is dispatched from its location 1/10 mile away. Thus, two separate ambulances are dispatched by the two separate systems for the same call. While one may call off the other en route (or as it arrives on-scene), the parallel dispatch protocols result in two separate agencies responding – or at least beginning to respond – to the same call.

Because of its multi-layer framework, the current dispatch system also creates an occasional requirement for the individual layers to “handoff” emergency calls to one another. For example, a call to 911 seeking ambulance service in a territory that is served on a first-due basis by a fire department results in 911 handing off the call to FireCom, which then

³ This is different from multiple agency response that results from the “dual response” system. Some fire ambulance providers rely on a process known as “dual response,” whereby providers have a standing arrangement for NCPD ambulances to respond to all calls in shared fashion, subject to day and time. The system is used by only one department serving North Hempstead (Garden City Park). Both the fire ambulance and NCPD ambulance respond to the same call, with the fire department ambulance calling off NCPD if it arrives first and requires no further assistance. The model has important operational implications, as overviewed in the *Baseline Report*. At best, it can create the inefficiency of multiple ambulances being dispatched and responding to the same incident scene. At worst, in the event one does not call off the other, multiple ambulances from multiple jurisdictions may arrive at the same scene. This has the effect of removing multiple resources from the system for the same emergency call, leading to a potentially sub-optimal distribution of ambulance resources system-wide.

dispatches the appropriate fire department ambulance. Similarly, a call to FireCom for a territory not covered by a fire-based ambulance provider may result in the call being transferred to 911, which then dispatches the appropriate County Police Department ambulance. Moreover, in the event the first-due agency is occupied or otherwise unable to respond, the call may well get transferred *back* to 911 to initiate a response by a County Police Department bus. At best, these tradeoffs can compromise response time by seconds; at worst, more.

There is also the issue of County 911 and FireCom themselves being less-than-fully integrated. Fire-based stakeholders almost universally noted this as a complicating factor in dispatch, creating the need for “handoffs” between two separate emergency intake mechanisms that are based within the same government, but split between two departments (Police Department and Fire Commission).

Consolidated Dispatch

The optimal emergency dispatch system for any community is one that, at a minimum, produces the following:

1. Lowest possible response time;
2. Deployment of the closest available unit (or units), based on the nature of the call and required on-scene capabilities;
3. Maximum detail in pre-arrival instructions, through the use of enhanced 911 and emergency medical dispatch protocols; and
4. Sufficient redundancy/backup in the communications system to hedge against “outages” in one part of the system.

As noted, based on the response time measure alone, the existing dispatch system in Nassau County appears to work well. State DOH data indicate that the average response time for all ambulance providers serving the Town of North Hempstead is 6.79 minutes; for volunteer-based agencies, the average response is 8.33 minutes. That compares reasonably well with the countywide average of 8.03, and is significantly better than the statewide average of 13.20.

The dispatch system’s performance notwithstanding, there may still be opportunities to tighten up responsiveness in ways that yield overall improvement. Conceptually, a single consolidated intake mechanism would eliminate two types of *potential* inefficiency that exist as a result of the current multi-layer framework (see *Fictional Case Studies* presented earlier in this section):

- The potential for response by an agency other than the closest available unit, simply because the caller dialed one telephone number instead of another, or
- The potential for multiple agencies to respond (or at least *begin* to respond) to the same call, simply because different callers dialed multiple telephone numbers seeking an emergency response.

The most straightforward mechanism for ensuring response by the closest available unit *and* for avoiding unnecessarily deploying multiple units to the same incident would be a single consolidated dispatch framework. This could be achieved by consolidating emergency dispatch operations at the county level, built on a single emergency intake phone number and a correspondingly uniform agency dispatch protocol. The same advantages might accrue to a less-than-fully-consolidated system *if* the multiple dispatch layers fed into a common system that relied on a single uniform protocol for dispatching ambulances based on location, day and time.

Even at the County level alone, taking steps to better integrate FireCom and 911 (which rely on different dispatch protocols) would serve to enhance response by the closest available unit and mitigate the chances for multiple-agency response.

What about Fire-Based Dispatch?

A number of fire departments serving portions of the Town operate their own dispatch systems. Those systems are run out of the respective fire departments' station houses, staffed by a mix of department personnel and volunteers, and handle dispatching responsibilities for fire and (where applicable) ambulance and EMS functions. These systems represent important "sunk costs" in the community's emergency communications system, and serve key roles not only as primary intake mechanisms, but as valuable redundancy in the event one system requires backup.

At present, four fire companies (including three ambulance-providing departments) provide for their own local dispatching functions – Great Neck Vigilant, Great Neck Alert, Westbury and Manhasset-Lakeville (although M-L receives its local dispatch pursuant to a fee-for-service contract with Great Neck Vigilant).

Great Neck Vigilant: GNV's dispatch operation handles all of its own fire calls. It also dispatches calls for Manhasset-Lakeville, Kensington Police Department and the Merchant Marine Academy EMS. The department advertises its local dispatch number (482-5000) as the priority number to call for emergency response.

One paid dispatcher is on-service 24/7. In total, the operation includes seven full-time equivalent housemen/dispatchers (including three paramedics) to supplement volunteer dispatchers. The operation also includes one clerk, plus a part-time dispatcher who helps to fill occasional gaps in the schedule. Like other departments with their own dispatching systems, officials note that dispatching staff perform multiple functions during the day and between calls, including facility and equipment maintenance.

The department, which is otherwise entirely volunteer, has a total fire- and ambulance-related payroll of approximately \$700,000. The department budget includes another \$40,000 in “dispatch contingency” for fire and ambulance functions. Additional costs related to the maintenance of computers and technology requirements that may be necessitated by the dispatch operation are not discernible from the department’s detailed budget document, however total telephone communications costs are budgeted at \$33,000.

Manhasset-Lakeville: As noted, Manhasset-Lakeville provides for local dispatch through a contract with Great Neck Vigilant. According to Manhasset-Lakeville’s budget, the department pays \$60,000 for this local dispatching capability. The department advertises its local dispatch number (466-4411) as the primary ambulance and emergency number within the fire district.

Westbury: Westbury’s local dispatch operation is a paid service, with seven employees handling a mix of dispatch and firehouse maintenance responsibilities 24 hours a day, 7 days a week. Westbury’s budget includes annual salary-related costs of \$450,000 for these housemen positions. Additional costs related to the maintenance of computers and technology requirements necessitated by the dispatch operation are not discernible from the department’s detailed budget document. Westbury advertises its local dispatch number (334-7924) as the primary number for ambulance and emergency response.

Great Neck Alert: Although GNA does not provide ambulance service, it is important to note in the context of the dispatch issue that the department does have its own local dispatch operation. Alert’s budget contains approximately \$520,000 in salary-related costs for paid dispatchers. Additional costs related to the maintenance/upgrading of computers and technology requirements necessitated by the dispatch operation are not discernible from the department’s detailed budget document. GNA advertises its local dispatch number (487-7000) as the primary line for fires and other emergencies.

In total, the four fire departments that operate their own local dispatch functions employ more than twenty full-time equivalents and spend approximately \$1.8 to \$2.0 million on the dispatch function.

All of the revenue to offset these local dispatching costs originates in the North Hempstead community (with the partial exception of Westbury, whose fire district also covers portions of Hempstead and Oyster Bay). Two of the departments providing local dispatch – Great Neck Vigilant and Great Neck Alert – receive funding directly from the Town of North Hempstead through service contracts for fire protection districts. In the current year the Town is paying Vigilant nearly \$348,000, and Alert more than \$205,000.

As noted previously, these local fire-based dispatching functions exist parallel to two other dispatching entities already funded by Nassau County taxes:

- The County’s Fire Communications Center (FireCom), which provides complete dispatching service for forty-two fire departments in the County, three volunteer ambulance corps, and back-up dispatching coverage for all seventy-one Nassau County fire departments and six ambulance corps. FireCom is administered out of the County Fire Commission’s Bureau of Fire and Rescue Services, and funded through the Commission’s budget of approximately \$21 million.
- The County’s Police Department Communications Bureau, which handles 911 emergency dispatching services countywide. The Bureau is funded out of NCPD’s budget of approximately \$360 million.

Potential Drawbacks vs. Benefits

In the event a consolidated countywide dispatch system was implemented, what would happen to the fire-based dispatch operations that currently exist? It is an important factor to weigh, considering the embedded costs and investments already made in these systems, as well as the backup role they currently play in the event the County systems (911 or FireCom) temporarily lose functionality.

Fully integrating the fire-based dispatch operations within a consolidated emergency dispatch system could compromise some of the value those local systems currently provide. Supporters of the current local fire-based dispatch operations strongly contend that the services fill an essential role in the community’s dispatch system, not only as primary dispatchers but as a valuable “safety net” within the overall dispatch structure.

First, supporters of the current local systems point to what they see as the “unreliability” of County 911 and FireCom, and specific recent instances where one or the other went down for a period of time. Those supporters argue that fire-based dispatch operations act as a valuable insurance policy, building important backup/redundancy into the overall system.

Supporters also contend that local fire-based dispatch operations have a more “intimate” understanding and familiarity with the neighborhoods, streets, properties and overall layout of their districts than do dispatchers based elsewhere in the County. Although the County’s electronic street grid is optimally detailed and highly accurate, supporters of local dispatch systems note that fire-based dispatchers’ “local knowledge” of the layout of their districts adds valuable contextual information to the dispatching process.

From the other perspective, there would appear to be both potential financial and operational benefits from shifting to a more consolidated county-level dispatch system. In financial terms, fully phasing out local dispatch operations in favor of a more consolidated system (*i.e.*, relying exclusively on County 911 and/or FireCom) would save \$1.8 to \$2.0 million annually. In operational terms, consolidating into a single county-level dispatch system would help eliminate any confusion over which number residents should dial in the event of an emergency; reduce the need to “trade off” calls from one dispatch system to another, when time is of the essence; and help to mitigate multiple agency responses that could result when separate numbers are dialed for the same emergency (*e.g.*, one person dials 911 and another dials the local fire station dispatch).

In addition, consolidating emergency dispatch at the county level would seem to enable more universal use of “enhanced 911” functionality (*i.e.*, as soon as the caller’s phone goes off-hook, the dispatcher immediately knows a host of information about the location). A larger consolidated dispatch function may also be better equipped to deal with emergency calls placed by individuals for whom English is not a primary (or even secondary) language.⁴ The absence of enhanced or multilingual capabilities may otherwise increase the amount of necessary interrogation time by the dispatcher, potentially wasting critical seconds or minutes.

⁴ Based on the Census Bureau’s American Community Survey for 2008, 26 percent of Nassau County residents speak a language other than English.

THE NON-EMERGENCY CALL BURDEN

As noted in the *Baseline Report*, there is strong consensus among fire-based ambulance providers that non-emergency calls are placing significant (and growing) strain on the current emergency response system. Increasingly, ambulances are arriving at certain calls only to find someone needing a ride to a routine hospital procedure or doctor's appointment. These "taxi rides," as some stakeholders referred to them, place a particular burden on volunteer fire-based agencies which depend on members to leave work or other obligations to respond to calls.⁵

The strain has grown to such an extent that two departments – Manhasset-Lakeville and Westbury – have removed their resources from the 911 system.⁶ In other words, because these departments were receiving a high number of non-emergency calls received via 911, they made the strategic decision to remove themselves from the 911 system's ambulance pool in order to preserve their resources for genuine emergency calls. Those ambulances can now only be accessed by calling FireCom or either department's local dispatch number (466-4411 in Manhasset-Lakeville and 334-7924 in Westbury).

Ideally, all non-urgent and non-emergency calls could be culled out of the system in a way that does not interfere with the community's overall emergency readiness. Under this scenario, non-emergency calls could be handled outside of the emergency response system. However, the split-second decisions required of dispatchers (and emergency responders, for that matter) makes this an extremely challenging reality to achieve. In most instances, calls placed for ambulance and/or emergency medical response – whether to 911, FireCom or local fire-based dispatch – must universally be treated as genuine emergencies. Unless dispatchers are informed otherwise, they must treat calls for service as urgent and requiring rapid response. Even in situations where there may be the potential for "triaging" calls based on their relative acuteness, dispatchers

⁵ In a 2004 letter published in the *Manhasset Press* newspaper, a Manhasset-Lakeville Deputy Chief noted that "the county 911 system and particularly the volunteer ambulance service are abused on a continuous basis by assisted living facilities, doctors' offices, and other related healthcare facilities that fail to call private ambulance services to handle non-emergency medical requests."

⁶ Westbury removed itself from the 911 system entirely. By contrast, Manhasset-Lakeville removed itself from 6 am to 6 pm, during typical working hours when volunteer response is most compromised.

and emergency responders have to err on the side of caution. That means treating nearly every response situation as an emergency response.

The result is a situation where resources and personnel may be rapidly assembled and deployed, only to find out on-scene that the call was not a true emergency. Fire-based stakeholders interviewed for the *Baseline Report* repeatedly noted the burden this places on their departments and volunteers.

Although there are no available data to empirically verify the most common sources of non-emergency calls, interviews with stakeholders in North Hempstead's ambulance network for the *Baseline Report* suggested anecdotally that a large proportion involve senior facilities (e.g., nursing homes) and seniors lacking other means of transportation.

How Non-Emergency Demand has Yielded Sub-Optimal Resource Deployment

Clearly, the most tangible way in which non-emergency call demand has resulted in a sub-optimal use of available resources involves the strategic decision by two major ambulance and EMS providers to remove their resources from the County 911 system.

The *Baseline Report* outlines how specific ambulance and emergency medical service providers are dispatched when calls are received via County 911. Which agency responds – whether the Nassau County Police Emergency Ambulance Bureau, a fire department or volunteer ambulance corps – depends on location, call type and (in some cases) time of day and day of week.

Currently, nearly all of the fire-based ambulance providers serving the Town of North Hempstead are integrated within the County 911 dispatch priority system at some level. Fire departments opt for a certain level of “priority,” whether first due, second due, third due or fourth due. Nassau County Police ambulances fill in the remaining priority slots in the framework, as illustrated in the following graphic. Darker-shaded cells indicate a response by the County Police Emergency Ambulance Bureau; lighter-shaded cells indicate a fire department ambulance (or VAC) response.

(Note: Dispatch priority is displayed on a per call basis. For example, Port Washington Fire Department is the first-due ambulance for each 911 call within its territory. Since it has multiple ambulances, it has the capacity to serve as first-due to multiple near-simultaneous calls.)

Area	Notes (if applicable)	1st	2nd	3rd	4th
Albertson		NCPD	WFPD	NCPD	NCPD
Carle Place		NCPD	NCPD	CPFD	NCPD
East Williston		NCPD	WFPD	NCPD	NCPD
Floral Park		FPFD	NCPD	NCPD	NCPD
Floral Park Centre		NCPD	NCPD	NCPD	NCPD
Garden City Park		NCPD	NCPD	NCPD	GCPFD
Glenwood		GFD	NCPD	NCPD	NCPD
Great Neck	North of LIRR	GNVFD	NCPD	NCPD	NCPD
Great Neck	South of LIRR	NCPD	NCPD	NCPD	NCPD
Manhasset-Lakeville	6 pm to 6 am	NCPD	MLFD	NCPD	NCPD
Manhasset-Lakeville	6 am to 6 pm	NCPD	NCPD	NCPD	NCPD
Mineola	6 am to 6 pm Monday-Friday	NCPD	MVAC	NCPD	NCPD
Mineola	Other Times	NCPD	NCPD	MVAC	NCPD
New Hyde Park		NCPD	NCPD	NCPD	NHPFD
Plandome		NCPD	NCPD	NCPD	NCPD
Port Washington		PWFD	NCPD	NCPD	NCPD
Roslyn		NCPD	RRFD	NCPD	NCPD
Westbury		NCPD	NCPD	NCPD	NCPD
Williston Park		NCPD	WFPD	NCPD	NCPD

In nearly all coverage areas with fire-based ambulance service capabilities, the fire department ambulances are fully integrated within the dispatch priority structure. While different departments may opt for higher-level priority (e.g., Floral Park, Glenwood, Great Neck Vigilant and Port Washington) and others for lower-level priority (e.g., Garden City Park and New Hyde Park) based on their respective capacities, the key is that each agency and its ambulance/volunteer resources are formally part of the County 911 dispatch system.

This is not the case in all parts of the Town of North Hempstead, however. In two areas that otherwise have fire departments with ambulance capabilities – Manhasset-Lakeville and Westbury – ambulance resources are not fully integrated within County 911. In other words, if a resident

places an emergency call to 911 seeking an ambulance, odds are the response will be provided by a Nassau County Police ambulance *even if* either fire department were otherwise able to respond more quickly.

In Manhasset-Lakeville, the fire department's ambulance resources are inaccessible through County 911 from 6 am to 6 pm. Although the department will still respond to ambulance calls placed via FireCom or Manhasset-Lakeville's local dispatch service, calls placed to County 911 during those times are the exclusive responsibility of the Nassau County Police Department. In Westbury, by contrast, the fire department is completely removed from the County 911 system. In other words, Nassau County Police Department ambulances handle *all* calls received via 911 regardless of time of day, while Westbury handles calls received via FireCom and the local dispatch service.

For an illustration, refer to *Fictional Case Study 1* presented earlier in this report. While that scenario was used to illustrate potential implications of multi-layered dispatch, it also is a useful depiction of how non-emergency call demand has resulted in a sub-optimal distribution of system resources.

Adding Ambulance Resources to 911 System

As noted, Manhasset-Lakeville and Westbury opted to remove themselves from the 911 system because of the growing number of non-emergency calls both were receiving via 911. Both departments' ambulances continue to respond to emergency calls received via FireCom and local dispatch. And even though they are not integrated with County 911, they remain major service providers in the community. In fact, during 2007 they responded more than 1,000 combined ambulance/EMS rescue calls.

Both departments bring significant volunteer and capital resources to the emergency response system which, if non-emergency call volume were adequately mitigated or addressed in a way that enabled "re-integration" of the agencies into the 911 system, would yield a more optimal use of the community's emergency resources.

Based on data analyzed for the *Baseline Report*, it is estimated that adding Manhasset-Lakeville and Westbury back to the County 911 system would enhance the system's overall capability by:

- Four ambulances;
- Two first response cars/fly vehicles; and
- A significant number of volunteer EMTs, including more than 70 EMT-Bs and EMT-Ds, 18 EMT-CCs and 7 EMT-Ps.

The key point is that those resources already exist to serve the community's essential public safety needs, but are only accessible through specific phone numbers (and not via the most common, County 911). Addressing the non-emergency call problem in a way that alleviates strain on individual fire-based ambulance providers could go a significant way toward enabling a more optimal deployment of these existing resources.

The remainder of this section considers options for mitigating the impact of non-emergency call demand on the current system, including the use of Town-based assistance programs; a public education and information effort; better coordination with other ambulance providers in the community that may be better-positioned to satisfy non-emergency call demand (and realize revenues from so doing); and ensuring the issue is adequately addressed as the Town reviews future site plans and applications for senior living facilities and nursing homes.

Integrate Existing Town-Based Programs

According to fire-based ambulance providers, the aging of the community's population and a growth in the number of senior living facilities (*e.g.*, nursing homes and assisted living complexes) has corresponded to a growing number of non-emergency calls entering the ambulance response system.

Thus, there appears a link between the non-emergency call issue and the more general issue of senior transportation options in the community. Fortunately, the Town already possesses several programmatic assets which, if used strategically and considered in the context of the non-emergency call demand, have the potential to alleviate the burden of these non-emergency, transport-only calls that are burdening the response system and driving an inefficient (and suboptimal) use of ambulance resources and manpower.

The first is *Project Independence* (PI), the Town's current aging-in-place initiative. The Town describes PI as an effort to "mobilize all existing services in the community – health and social services, government and community services, information and referral services, and others – for the benefit of Town Residents who want to age in place." The program is targeted at residents aged 60 years and over, as well as their family members and primary caregivers, and there are no eligibility requirements for most services.⁷

⁷ For additional information on Project Independence in the Town of North Hempstead, visit <http://www.northhempsteadny.gov/content/7352/7123/7223/7225/default.aspx>.

Of particular interest in the context of non-emergency ambulance calls, PI has obtained funding for two senior transportation pilot programs. The first, focused on assisting seniors with their regular shopping needs, was scheduled to launch in October 2009. The second is specifically geared toward helping meet seniors' medical transportation needs, and is scheduled to launch in 2010. PI officials note that the medical transport pilot will be shaped by the experience the Town gained working on a similar grant-funded program previously offered in New Hyde Park.

PI represents an opportunity to build on an existing network of connections through which targeted outreach can be made to the senior citizen community. Moreover, the Town's upcoming plan to conduct a needs assessment for senior transportation services can incorporate the non-emergency transport-only call issue in a way that furthers the primary goals of Project Independence while simultaneously relieving the ambulance response system of the burden of such calls.

The second available resource is *North Hempstead's 311 System*, within which Project Independence is integrated. Launched in 2005, the 311 system offers residents a single access point for municipal services. The system was modeled on similarly successful initiatives in Baltimore and New York City, and funded initially through a combination of federal and state grants, as well as Town resources. The system's established, robust call center is staffed by operators capable of providing streamlined access to Town services. It typically receives approximately 500 calls per day, although program administrators indicate the system has capacity to absorb three-to-four times more.

Leveraging Project Independence and 311

The key point is that, with Project Independence and the 311 system, the community already has critical infrastructure and processes in place to help mitigate the impact of non-emergency calls on the ambulance response system. Using these assets in concert, and leveraging a public education campaign to inform the community of their availability, could go a considerable distance toward alleviating the non-emergency call burden.

These pieces of the solution to the non-emergency call problem have already been put in place even without the link to the stated problem having been made explicit. As a prime example, Project Independence is already developing a pilot program that will utilize taxicabs to provide *individual medical transport services* to seniors. The pilot is expected to start in early 2010, and rides can be accessed through the 311 system. Interestingly, the program's planners, while certainly aware of the need for transport services, were unfamiliar with the strain this unmet need was placing on the fire-based ambulance providers. The Town may wish to

consider having the communitywide pilot focus more intensively on Manhasset-Lakeville and Westbury, for the reasons cited earlier.

Informing and Educating the Community

During the project team’s stakeholder interviews, it was suggested that a major education campaign was required to inform residents as to what constitutes a “true” emergency call. To the extent that residents better understood the difference between emergency ambulance calls and non-emergency calls, some interviewees noted, it could help to relieve some of the non-emergency call burden.

At the same time, however, such an education campaign alone would not resolve the basic contributing factor to non-emergency calls – namely, the lack of transportation alternatives for certain segments of the community. However, by incorporating the existing resources and infrastructure of the Town’s Project Independence and 311 assets, a more effective public education campaign could be developed to both *inform* and *offer alternatives*. Such a campaign could focus on two primary points:

1. Sensitizing residents to the difference between emergency and non-emergency calls, and
2. Informing residents *and* senior facilities (such as nursing homes and assisted living facilities) of existing transport options for non-emergency calls, and how to access those resources.

By informing residents that non-emergency calls should not enter the ambulance response system, and by also informing them that there are *readily available transportation alternatives* for non-emergency needs, the Town could help to alleviate the burden of such calls on the fire and ambulance response system in the community.

The clear link between Project Independence, 311 and the non-emergency call problem involves resident education and community awareness. The project team suggests that the following elements be contemplated as North Hempstead officials consider an outreach and education campaign:

1. Share the fire departments’ perspective and experience with the Commissioner of Project Independence, and consider incorporating their input into the needs assessment process.
2. Design an engaging educational and promotional campaign which includes multiple “transport scenarios,” some of which require 311, some of which require 911, to illustrate the distinction for residents.

3. Recast this issue as one of “civic duty” and accessing the *most appropriate level* of municipal service, using examples to illustrate the impact of over-burdening the emergency response system (*e.g.*, longer response time for emergencies, lack of coverage in certain areas, etc.).
4. Educate 311 dispatch staff and volunteer fire departments on the available senior transport options, and encourage them to share this information when they do respond to non-emergency calls.
5. Similarly, educate neighborhood groups (*e.g.*, neighborhood associations and block clubs), those who work with seniors, and family members in the larger community on the available options for senior transport, on the explicit need not to overwhelm County 911 with these requests, and on the use of 311.

The Town’s pre-existing and innovative Project Independence and 311 programs provide valuable infrastructure to help remedy the increasingly problematic burden of non-emergency transport ambulance calls. The Town is well-positioned to capitalize on these by executing a strategically targeted community-wide education campaign aimed simultaneously at more effectively serving seniors and preserving the well-being of all of its citizens through a more efficient use of emergency resources.

Integrating Providers that Can Bill for Service

A complementary option might involve better coordination between the Town, emergency providers and paid ambulance services such that paid providers with capacity can assume greater responsibility for handling non-emergency transport-only calls. The Town might take the lead in working with paid providers to gauge their willingness and resource capability to assume this responsibility. Not only would this approach enable the non-emergency burden to be lifted from volunteer providers and preserve their capacity to respond to genuine emergencies, but relying on paid providers would enable the capture of new insurance revenues that cannot otherwise be recovered by volunteer fire-based ambulances.

Ensure Adequate Coverage at New Senior Living Facilities

At the December 1, 2009 forum held with stakeholders in North Hempstead, it was again noted that many non-emergency calls originate at senior/assisted living facilities in the community. Further, providers expressed concern that some portion of those calls were for incidents as

minor as residents “falling out of bed.” One suggestion offered at the stakeholder meeting was for the Town to incorporate consideration of this issue as it processes future approvals of site plans for such living facilities. Specifically, the Town’s review could require facility applicants to demonstrate the capacity to handle such non-emergency calls on their own, without burdening the community’s fire departments and ambulance providers. Successful implementation of such a requirement would further mitigate the growth in non-emergency call volume, and permit a more optimal distribution/use of emergency ambulance resources communitywide.

STREAMLINE PROCUREMENT AND STANDARDIZE EQUIPMENT

Administratively, the ambulance providers serving the community operate as separate units. Greater coordination in terms of procurement has the potential to yield economy of scale benefits. For example, a formal framework for jointly bidding/purchasing capital equipment and apparatus; regular supplies; and administrative items such as liability insurance and legal/auditing services could give departments more clout to drive down prices on common items.

At the same time, could a more coordinated approach to procurement serve to standardize equipment in ways that help departments more effectively “share” a common pool of ambulance and EMS volunteers? Most fire departments cited volunteer recruitment and retention as major issues, as detailed in the *Baseline Report* and later in this options report. Limited pools of volunteers make it increasingly challenging to meet growing demand, and raise questions about how future demand growth will be adequately addressed. Standardizing equipment across ambulance providers could make it easier for volunteers to work effectively in more than one department.

Coordinated Procurement, Common Planning

There may be benefits to coordinating certain common administrative functions among ambulance and emergency service providers in the community. In particular, purchasing represents a potential opportunity for driving down costs on common commodities and services through a pooled approach that yields both economies of scale and operational efficiencies.

The concept of consolidated purchasing has increasingly gained traction in the public sector. Numerous examples already exist in both Nassau County and the Town of North Hempstead. The County adopted a “just in time” purchasing program in January 2004. According to purchasing officials, the program has helped reduce personnel time throughout the procurement process, from bidding to processing orders, requisitioning and payment. Similarly, the Town’s purchasing department serves as the central coordinating mechanism for all of the Town’s departmental purchases. While individual departments identify their operational needs, the purchasing department handles bids and manages the actual procurement process. The purchasing department has responsibility for searching state-approved vendor lists and, if the items are not available under state contract, obtaining price quotes and/or initiating a formal public bid process.

There are two primary benefits of a consolidated (or at least more coordinated) procurement process for common items. First, “bulking” supplies and services may enable buyers to achieve economies of scale, driving down unit costs compared to what they would pay if purchasing as a sole entity. Second, centralizing the procurement process has the benefit of reducing the operational redundancy of each department or agency having to administer its own pricing, bidding and requisition processes.

Coordinated purchasing is likely to provide the greatest benefit where supplies and services are *common* (as opposed to *unique*). For example, Nassau County’s “just in time” program yields benefits on the standard office supplies required by nearly every County department. In much the same way, better coordination among ambulance and emergency service providers may yield benefits on common supplies (such as medical equipment and medications required to be on each bus) and services (such as audit functions and service award program administration).

In order to pinpoint areas of current spending that represent the most likely opportunities to benefit from coordinated purchasing, the project team reviewed each department’s detailed spending lines to identify the total “purchasing power” in common supplies and services. The following categories represent the greatest overlap in terms of aggregate spending across the seventeen fire departments (spanning ambulance and EMS-only providers) serving portions of North Hempstead:

- 1) Length of Service Award Program (\$2,400,897) – Although this total includes the full award program cost, the administrative-only component may provide an economy of scale benefit if procured in coordinated fashion.

- 2) General Insurance (\$1,756,475) – This includes the insurance purchased by fire departments to cover their facilities, apparatus and general liability.
- 3) Professional and Contractual Services (\$1,057,265) – This includes custodial, outside audit, legal and other services procured by fire departments to support their administrative operations.
- 4) Health and Life Insurance (\$990,698) – A portion of departments serving the community offer health and/or life insurance benefits to their paid personnel and/or as a volunteer incentive. Consolidating those benefits under a single carrier and/or purchasing them through an insurance cooperative (or “piggy-backing” onto the County or Town’s bid) could yield rate savings.
- 5) General Office Supplies (\$717,495) – This includes telephones, computers and related office equipment.
- 6) Uniforms (\$258,625) – This includes uniforms, hats, badges and general turnout gear.
- 7) Medical Supplies (\$132,327) – This includes on-ambulance medical equipment and medications.

Collectively, these areas of common expenditure exceed \$7.3 million. It should be noted that this is likely a conservative estimate of the departments’ common “spending power,” since not every department breaks out its budgetary expenditures at the same level of detail. It is highly likely that the above totals are a minimum – that is, departments’ collective purchasing power in each of these categories is almost certainly greater. Furthermore, the totals reflect only fire-based ambulance providers serving the Town. Expenditures made by the region’s largest ambulance provider – Nassau County Police EAB – would drive aggregate spending power higher in several categories.

The best-case scenario for a mechanism to coordinate purchasing would seem to be aligning with an existing purchasing operation – for example, Nassau County’s or the Town of North Hempstead. While the Town’s purchasing department might represent an opportunity to bulk bids on a local basis, working to establish a process with Nassau County (perhaps via the County Fire Commission) would create the potential for even greater economies of scale by opening the process to fire departments and volunteer ambulance/EMS providers countywide.

Related, a more coordinated approach to purchasing may also yield opportunities for ambulance and emergency service providers to collectively plan for their short-term and long-term capital needs going

forward. Especially for major apparatus (*e.g.* ambulances, fly cars) and facilities, a joint approach to planning and procuring may well prove more cost-effective.

Montgomery County, MD's Consolidated Procurement Model

One example of a streamlined, coordinated regional approach to procuring common emergency and EMS supplies exists in Montgomery County, Maryland. The Montgomery County Fire and Rescue Service (MCFRS) is a life safety agency protecting roughly 500 square miles and nearly 1 million people who live and work in Montgomery County. The MCFRS itself is a combination career/volunteer system, operating as a county department with an annual budget of \$200 million dollars.

Montgomery's administrative structure is akin to Nassau County's, with a county-level agency and a network of local fire and rescue companies playing essential roles in the delivery of emergency services. Each local fire and rescue company (in this case, 19 departments) is technically independent and operates under its own budget.

In an effort to enhance efficiency and provide economy of scale benefits to local departments, MCFRS established a program that offers local departments the opportunity to buy expendable EMS supplies under centralized county-level contracts. By consolidating the purchases of individual departments, the county is able to contract with suppliers on a larger scale, producing lower per-unit prices. Presently, the coordinated purchasing approach is limited to expendable EMS supplies; trucks, hoses and turnout gear, for example, continue to be procured by individual departments. However, MCFRS officials indicate that a similarly consolidated process could well be available for those purchases in the near future.⁸

Not only does the coordinated approach yield economy of scale benefits on the unit prices of common items, but the centralized county-level contracts relieve each participating department the administrative responsibility of pricing, bidding and procuring these items independently.

⁸ Information on MCFRS was provided by the agency's procurement director and a review of the department's website.

How Standardizing Equipment May Help Stretch Volunteer Ranks Further

As discussed later in this report, volunteer fire departments and emergency service providers across the country have been confronting critical challenges in the recruitment and retention of volunteers. Some of the departments serving North Hempstead acknowledge facing the same challenge. It is worth pointing out that, to the extent more coordinated purchasing and capital planning processes can be adopted among providers in the community, it may provide an opportunity to better maximize volunteers.

While volunteer firefighters cannot simultaneously be members of multiple departments under current state law, volunteer EMS personnel are permitted membership in as many volunteer departments as they choose. (See a more detailed discussion of this issue in the “Meeting the Volunteer Challenge” section later in this report). If departments – especially volunteer fire-based ambulance providers in the community – engaged in a more coordinated procurement approach, the result could be greater consistency and standardization among different agencies’ ambulance buses. Greater standardization of buses, equipment and organization/layout of supplies within ambulances would enable willing volunteers to be more “interchangeable” on emergency vehicles. Enhancing volunteers’ ability to work effectively in multiple departments could be one strategy for offsetting the recruitment and retention challenges facing providers in the community.

REVENUE POTENTIAL AND STRUCTURAL OPTIONS

State General Municipal Law precludes volunteer fire departments from charging fees for ambulance service. By contrast, the County Police ambulance bureau generates nearly \$20 million per year in fee revenue. Similarly, Mineola VAC receives over \$100,000. In this fiscal environment, and given the stressed nature of municipal finances, it makes sense to examine options to access this revenue stream that is otherwise inaccessible under the current system.

This section begins by estimating the potential revenue that would be generated *if* volunteer fire-based ambulance providers were able to charge fees for service in the same way private vendors, paid services (such as the Nassau County PD) and volunteer ambulance corps (such as Mineola VAC) can. Then, given that those revenues are not accessible under the current structural framework for ambulance/EMS in North Hempstead, it

considers what restructuring options would be available to the community in order to realize that revenue.

Revenue Generating Potential

What if current ambulance providers – especially fire-based providers – were able to “charge back” for ambulance service? To put in perspective the amount of ambulance service revenue that is currently forgone in the community, the project team estimated the system’s revenue generating capability based on actual call and billing experience. Estimations were developed using assumptions for call type, payer distribution, fee rates and recovery rates (see tables later in this section). Assumptions were based on actual experience data provided by a third-party billing administrator that handles collections for a volunteer ambulance corps serving a portion of Nassau County. The experience data were drawn from a portion of the administrator’s metro New York service area. For analytical purposes, they are assumed to be reasonably consistent in call type, service level, fee rates and recovery rates with Nassau County.

The revenue foregone under the current system is significant. Assuming a call level of 10,000 per year⁹, approximately \$2.8 to \$3.2 million in potential annual revenue is being forfeited in the Town of North Hempstead. The following table illustrates the breakdown of those projected revenues by primary payer category:

Primary Payer	Low Range	High Range
Medicare	\$1,775,221	\$1,972,468
Medicaid HMO	\$46,941	\$52,157
Medicare HMO	\$424,741	\$471,935
Facility	\$116,461	\$131,018
Insurance	\$313,430	\$352,608
Medicaid	\$109,208	\$121,342
NF/WC	\$19,865	\$22,349
Nursing Home	\$6,148	\$6,916
Patient	\$21,566	\$75,481
Total	\$2,833,581	\$3,206,274

⁹ Based on 2007 ambulance and EMS call volume statistics presented in the *Baseline Report*, the volunteer fire-based ambulance providers serving portions of the Town of North Hempstead reported slightly more than 9,700 calls for service.

Notes on Analytical Assumptions

Revenue projections are based on a series of assumed fees, call types, payer distribution and recovery rates. The following tables contain a breakdown of the assumptions underlying these revenue projections.

Fee Rates¹⁰

Call Type	ALS1 E A0427	ALS1 NE A0426	ALS2 E A0433	ALS2 NE A0433	BLS E A0429	BLS NE A0428	SCT E A0434	SCT NE A0434
Primary Payer	***** Rate paid to Ambulance Service Provider *****							
Medicare	487.09	307.63	704.99	704.99	410.17	256.36	833.17	833.17
Medicaid HMO	95.50	95.50	95.50	95.50	95.50	95.50	95.50	95.50
Medicare HMO	487.09	307.63	704.99	704.99	410.17	256.36	833.17	833.17
Facility	487.09	307.63	704.99	704.99	410.17	256.36	833.17	833.17
Insurance	1,217.71	769.08	1,762.46	1,762.46	1,025.43	640.89	2,082.91	2,082.91
Medicaid	95.50	95.50	95.50	95.50	95.50	95.50	95.50	95.50
NF/WC	487.09	307.63	704.99	704.99	410.17	256.36	833.17	833.17
Nursing Home	487.09	307.63	704.99	704.99	410.17	256.36	833.17	833.17
Patient	487.09	307.63	704.99	704.99	410.17	256.36	833.17	833.17

Distribution of Calls by Service Level

Call Type	ALS1 E A0427	ALS1 NE A0426	ALS2 E A0433	ALS2 NE A0433	BLS E A0429	BLS NE A0428	SCT E A0434	SCT NE A0434
Primary Payer	***** Percentage as Share of Total Calls *****							
Medicare	4.56%	0.81%	0.04%	0.08%	21.37%	28.21%	0.52%	0.89%
Medicaid HMO	0.59%	0.25%	0.00%	0.02%	2.91%	1.56%	0.03%	0.09%
Medicare HMO	1.29%	0.30%	0.00%	0.03%	5.48%	5.14%	0.19%	0.30%
Facility	0.16%	0.20%	0.00%	0.01%	0.92%	3.32%	0.02%	0.07%
Insurance	0.39%	0.30%	0.00%	0.02%	1.41%	2.14%	0.04%	0.13%
Medicaid	0.98%	0.19%	0.02%	0.08%	5.20%	5.79%	0.21%	0.24%
NF/WC	0.01%	0.01%	0.00%	0.00%	0.10%	0.08%	0.00%	0.21%
Nursing Home	0.00%	0.00%	0.00%	0.00%	0.05%	0.21%	0.00%	0.00%
Patient	0.26%	0.21%	0.00%	0.00%	1.13%	1.29%	0.03%	0.08%

Recovery Rates

Primary Payer	Low	High
Medicare	90%	100%
Medicaid HMO	90%	100%
Medicare HMO	90%	100%
Facility	80%	90%
Insurance	80%	90%
Medicaid	90%	100%
NF/WC	80%	90%
Nursing Home	80%	90%
Patient	20%	70%

¹⁰ Fee rates for various payers were based on the Medicare rate calculated as the average of the GHI and Empire rates from the Centers for Medicare and Medicaid Services (CMS) fee schedule. Pay rates for facilities, No Fault Workers Compensation, nursing homes and patient pay were assumed equal to the Medicare rates. Private insurance was estimated at 2.5x the Medicare rate. The Medicare rates, as drawn from eMedNY, were assumed to be the same for specialty care.

Options for Realizing Ambulance Revenues

As discussed in the *Baseline Report*, New York State General Municipal Law, Section 209-b precludes volunteer fire departments from charging fees for ambulance service. As such, the costs of providing fire-based ambulance services are underwritten through contracts with municipalities (generally for standard fire protection services) and/or general fundraising specifically for ambulance services. By contrast, volunteer ambulance corps and paid services, including the County ambulance bureau, *can* legally bill for services. As noted in the *Baseline Report*, two providers serving portions of North Hempstead – the Mineola Volunteer Ambulance Corps and Nassau County Police Emergency Ambulance Bureau – generate substantial annual revenues through the cost recovery process.

Options for realizing ambulance revenues range from changing the current prohibition in state law, to restructuring the system through outsourcing and/or consolidation. Those options are contemplated below.

Change in State Law

All else being equal, the current ambulance and EMS framework in the community could continue *and* revenues could be realized *only* through a change to General Municipal Law, Section 209-b. Notably, there have been recent efforts to do just that. In 2010, the Fireman’s Association of the State of New York (FASNY) added to its legislative agenda a call “to amend the General Municipal Law to authorize fire departments and companies that provide emergency medical services to establish fees and charge for the services.” Such an amendment would enable volunteer fire-based ambulance providers to begin the cost recovery process, and allow the system to realize at least a portion of the \$2.8 to \$3.2 million in potential revenues cited above. For further information on FASNY’s full 2010 legislative priority agenda, see <http://capwiz.com/fasny/home/>.

County as Sole Provider

The largest provider of ambulance services in Nassau County – in operational support and equipment terms, as well as financially and in total call volume – is the County Police Department’s Emergency Ambulance Bureau. As noted, under state law the EAB is empowered to (and currently does) engage in cost recovery for its services. The *Baseline Report* indicated that the County’s ambulance bureau realized \$17.2 million in 2007, \$16.9 million in 2008, and budgeted \$19.5 million in 2009. Extending the County EAB’s role in ambulance service provision – up to the extreme of making it the community’s exclusive provider of ambulance services – would enable realization of the \$2.8 to \$3.2 million in potential revenues cited above. At least one previous study – the 2006 “Report of the Nassau County Emergency Ambulance Service

Modernization Task Force” – suggested the addition of County EAB buses, not only to relieve the growing burden on the volunteer system but also to “(translate) into more billable recovery from...patients, as the NCPD EAB bills for patient transports.”

However, there are some pointed implementation challenges for this option. Beyond the need to add ambulance equipment (and personnel) at the County level, shifting to the County as sole provider would result in the loss of the major investments already embedded in the fire-based ambulance system. As the *Baseline Report* notes, the volunteer fire-based providers serving portions of the Town of North Hempstead run a combined twenty-two ambulances and eleven “fly cars” and EMS utility vehicles, and comprise hundreds of volunteer personnel. Simply shifting ambulance responsibility exclusively to the County would result in a sub-optimal use of these valuable resources.

“Spin Off” Fire-Based Ambulance System

One available option involves “spinning off” existing fire-based ambulance services into separate, standalone entities. This approach would enable the system to retain the embedded investments it has already made in its fire-based ambulance and emergency medical system, and reconstitute the organizations in ways that permits them to engage in cost recovery under state law. The most recent example of a New York town opting for this approach to ambulance services is Holland, a 35-square mile area in suburban Erie County.

The accompanying legal review produced specifically for this report by project team member Sahn Ward & Baker, PLLC delineates the legal process for spinning off volunteer fire departments’ ambulance functions into autonomous entities, with which the Town (and any villages within it) can then contract. The full legal analysis, including a discussion of operational, structural, legal, debt and implementation issues is presented on pages 6-29. The process for spinning off fire-based ambulance functions into separate corporations is specifically discussed on pages 28-29.

Contracting for Service & Ambulance District Options

Another option available to the Town (and any villages within it) involves *contracting* for emergency service, general ambulance service or a combination of such services. Among the contractual options granted in General Municipal Law, Section 122-b is the ability to engage outside organizations “to supply, staff and equip suitable emergency medical service or ambulance vehicles and operate such vehicles for the furnishing

of pre-hospital emergency treatment.” Permissible contracts entered into pursuant to this section include contracting with a private ambulance service, a volunteer ambulance corps and/or a private hospital.

This option has gotten substantial visibility in Nassau County over the past two years due in large part to a program launched by the Incorporated Village of Rockville Centre in the neighboring Town of Hempstead. In December 2008, the Village initiated a contract with North Shore-Long Island Jewish Health System’s Center for Emergency Medical Services (CEMS)¹¹. In response to volunteer pool limitations that compromised the fire department’s ability to respond adequately to calls at certain times of the day, the Village engaged CEMS to provide supplemental ambulance service for twelve hours per day. Under terms of the relationship, CEMS places an ambulance in the Village from 6:30 am to 6:30 pm, Monday through Friday. Prior to the contract, that time window presented the greatest challenge for assembling volunteer responders.

Begun as a six-month pilot program, the relationship was expanded into a full-year contract in June 2009. Costs are addressed on a sliding scale, and are subject to the number of calls CEMS receives. This is because, as a private ambulance service, North Shore LIJ is permitted to bill insurance and/or patients for services. In the event CEMS has a sufficient number of responses that payments cover its costs, the Village has no financial obligation. On the other hand, if CEMS’ response numbers are insufficient to produce full cost recovery, the Village is responsible to pay a fee up to a maximum of \$108,000.

While villages have authority to contract for ambulance services within their boundaries (using the Rockville Centre model), if the Town sought to establish a similar framework the most logical approach would be through the use of an ambulance district. ***The accompanying legal review produced specifically for this report by project team member Sahn Ward & Baker, PLLC delineates the legal process for creating a town ambulance district. The full legal analysis, including a discussion of***

¹¹ Although North Shore LIJ’s Center for Emergency Medical Services was not referenced in the *Baseline Report* because it is not a publically-funded (*i.e.*, through municipal budgets, contracts or property taxes) agency, it is a provider of emergency ambulance services. It is important to note that CEMS *does* respond to emergency calls in the Town of North Hempstead and surrounding communities on a regular basis. The only hospital-based ambulance service in the Town, its total service area spans Nassau and Suffolk County, as well as New York City (with which it is under contract). Last year it responded to over 70,000 calls and transported more than 58,000 patients. CEMS ambulances respond to emergency calls that are received via its own communications center, which is staffed by EMTs and paramedics and handles an average of more than 800 calls per day.

structural, legal, debt and implementation issues is presented on pages 10-27.

As noted in the legal review, the Town's ability to create a *town-wide* model along the lines of Rockville Centre is limited, given home rule protections in Town Law, Section 190: "No such district shall be established...in a city or in an incorporated village provided, however, that such district may be established...wholly or partly within an incorporated village on consent of the village expressed in local law, ordinance or resolution..." In other words, villages' prerogative to enter into (or not enter into) such contracts for ambulance services are protected in state law. The Town cannot force villages to adopt such a contractual arrangement for ambulance services.

However, the Town can create ambulance districts in other (unincorporated) parts of its territory. As noted in the accompanying legal review, "NY Town law provides two (2) separate procedures for the establishment of an ambulance district. These procedures can be found in Articles 12 and 12-A of the NY Town Law. The main distinction between these two procedures is that the establishment of an ambulance district under Article 12 requires that the process be commenced upon a petition of the real property owners situated within the proposed district owning at least one half of the assessed value of the taxable real property therein, while the establishment procedure under Article 12-A may be commenced by a vote of the Town Board, but is then subject to permissive referendum."

Again, the accompanying legal review produced specifically for this report by project team member Sahn Ward & Baker, PLLC delineates the full legal process for creating a town ambulance district. The analysis, including a discussion of structural, legal, debt and implementation issues is presented on pages 10-27.

The Financial Impacts of Districting and/or Consolidation

It is important to note that, insofar as consolidation of *only* ambulance coverage may be contemplated in the community, the options are likely limited to the district option(s) presented in this report. Beyond consolidating into ambulance districts, privatizing service and/or spinning off fire-based ambulance functions into separate entities that can bill for service, a *full* consolidation of ambulance/medical services cannot be entertained without simultaneously considering the consolidation of fire districts and fire protection districts throughout the Town. As this study focused on ambulance/emergency medical functions in North Hempstead,

it was beyond the scope of the analysis to assess the *full* delivery of fire protection services and the potential for consolidating them.

(Note: While an analysis of fire district consolidation was outside the scope of this study, the accompanying legal review produced specifically for this report by project team member Sahn Ward & Baker, PLLC delineates the full legal process for consolidating fire districts, as well as how it is impacted by the most recent consolidation law in New York State. The analysis is presented on pages 32-51.)

In the event the Town chose to create ambulance districts and/or consolidate ambulance coverage areas, it is unlikely that there would be a noticeable reduction to the current cost of emergency services in the community. Even if volunteer fire-based ambulances “spun off” into standalone entities, the fire protection function of independent companies and districts would remain intact. As such, administrative responsibilities and overhead would remain in place.

Clearly, the most significant financial impact of these reform options would involve new revenues. Restructuring the system (and/or reconstituting current providers) in a way that permits insurance and patient cost recovery under state law would make available up to \$3 million on a recurring basis to offset ambulance services. Given current trends, that revenue figure is likely to grow in future years.

MEETING THE VOLUNTEER CHALLENGE

The challenge of recruiting and retaining volunteer firefighters and emergency personnel is well-documented across the country. During interviews for the *Baseline Report*, some of the agencies serving the Town of North Hempstead expressed being under the same pressure. The region’s higher cost-of-living serves to complicate this challenge – departments are finding it hard to recruit and retain younger members, because more are working multiple jobs and many have simply left for lower-cost locales.

The volunteer challenge represents a growing obstacle to fire-based providers meeting the increasing demand for ambulance service. What options exist to help mitigate the volunteer challenge, and to enhance providers’ ability to recruit and retain capable and committed volunteers? Some departments in Nassau and Suffolk Counties have begun to

specifically recruit retirees, to help address the workload during the day when other volunteers are working, as well as to provide administrative support that frees up other fire and rescue personnel/volunteers.¹²

One option for stretching the current volunteer pool further – multiple-department membership – would require modification in state law. This section considers how that might be done, and then presents two other models for enhancing manpower levels: more strategic use of targeted financial incentives, and supplementing the volunteer system with more paid resources.

Multiple-Department Membership

Under current New York State law, volunteer firefighters are only permitted to be a member of one fire company or department at any point in time. Even in situations where individuals live and work in different communities, they are only allowed membership in one volunteer fire company or department. This has the effect of constraining the pool of potential volunteers, even where individuals otherwise wish to volunteer their time and service.

It should be noted that the same restriction does *not* apply to volunteer EMS personnel. They are permitted membership in as many volunteer EMS departments as they choose. However, as fire stakeholders repeatedly pointed out to the project team for this study, the fire service views its ambulance/EMS function as part of an emergency response “system,” rather than a stand-alone service. To the extent that volunteer fire personnel play a crucial role in supporting the community’s emergency ambulance response system, any additional flexibility to maximize the use of willing volunteers would be beneficial.

There has been consideration at the state level to remove this restriction. An Assembly bill (A09216) was introduced in October 2009 to amend the General Municipal Law, the Town Law, the Village Law, the General City Law, the Not-for-Profit Corporation Law and the Volunteer Firefighters’ Benefit Law to permit volunteer firefighters to be eligible to serve in more than one volunteer fire department at one time. The bill’s justification notes that:

Under current law, volunteer firefighters can only be a member of one volunteer fire company or department. While they are able to assist other volunteer fire companies on an as-needed basis in

¹² See “Answering a Call – To Volunteer,” by Liza N. Burby, printed in *Newsday* on February 7, 2009.

emergency situations, they cannot become permanent members. This legislation would allow a volunteer firefighter to become a member of more than one fire company at a time.

An effort to amend state law in a way that promotes a more optimal use of volunteer firefighters could help enhance the emergency response network in the community (and across the state).

The accompanying legal review produced specifically for this report by project team member Sahn Ward & Baker, PLLC delineates the parameters regarding volunteers being members of multiple fire departments simultaneously. The full legal analysis is presented on pages 29 through 32.

The Use of Incentives

Current Approach

To help volunteer fire, ambulance and emergency medical organizations overcome the challenge of recruiting and retaining staff, the state and its communities have established a menu of incentives. Most volunteer departments in the Town and throughout Nassau County, like their peer agencies statewide, participate in these incentive programs.

The two most commonly used incentive programs involve tax credits (income and/or property) and retirement benefits. Regarding tax credits, in accordance with New York State Tax Law, Section 606, any fire or ambulance volunteer is entitled to a \$200 annual credit towards the New York State income tax. Other state law also provides the opportunity for local governments to offer volunteers a partial exemption from their local property tax. Real Property Tax Law, Section 466-c states that members of volunteer fire departments or ambulance services may be exempt from taxation to the extent of 10 percent of the assessed value of their homes, provided that the value of such exemption does not exceed \$3,000 on an individual basis.

State law also provides the opportunity for municipalities to offer a retirement-like program for volunteers, generally referred to as a Length of Service Award Program, or LOSAP. Upon a majority vote by residents within a given district, a certain portion of tax levied by the district can be set aside to provide a partial retirement benefit for long-tenured members of voluntary fire departments or ambulance services. Volunteers earn “points” or credits based on length of service and active participation, which build toward a pension benefit that can be drawn upon starting at age 55. LOSAP benefits vary by community, but no award program in New York State can exceed \$1,200 per month. Some programs offer the

ability to transfer benefits to a designated beneficiary upon a recipient's death.

Since New York State law considers fire and ambulance volunteers "employees" of their respective department, there are other incentives that are similar in nature to benefits provided by employers. For example, some districts provide life insurance, access to Employee Assistance Programs (EAPs), access to departmental vehicles and, in some cases, reimbursement for mileage/fuel. Some districts even extend lifetime property tax exemptions to their longer-serving members.

To enhance the recruitment and retention of emergency service volunteers, Nassau County recently passed a law establishing a tuition incentive for fire and ambulance volunteers. Local Law No. 9-2009 authorized the County's Office of Emergency Management to implement a tuition assistance program for volunteer firefighters, volunteer ambulance workers and auxiliary police officers. The program extends assistance to active members of such organizations interested in attending Nassau Community College or any accredited college located in Nassau County.

Strategies for Enhancing the Effectiveness of Incentives

The available incentives notwithstanding, many volunteer fire departments across the state and country continue to face recruitment and retention challenges. Even in some departments with high volunteer membership numbers, participation remains a challenge. Within the current incentive structure, what options exist to encourage not only higher levels of recruitment, but more active participation by departments' full volunteer ranks?

Increase Benefit Levels

One possibility would be to increase benefit levels, both to attract a higher volume of volunteers and improve the retention rate among current members. Particularly in the current economic environment, increasing existing benefit levels may well be an attractive inducement to service. The primary challenge to this approach is funding – increasing benefit levels would create additional cost liabilities directly for the Town, or indirectly through the Town's contracts for service with volunteer fire and emergency medical agencies.

Raise Participation Standards

Another option involves raising participation standards. For most volunteer emergency organizations in New York State, the threshold for maintaining "good standing" as a member is relatively low – generally at or near 10 percent of total calls. Increasing the threshold would raise the

bar for accessing available benefits, and encourage greater participation among current volunteers.

Increasing benefit levels need not drive up the total cost of the current incentive structure, especially if the minimum threshold of activity were raised and benefits were redistributed upward to reward the most active volunteers. A stratified benefit system could award different benefits (and benefit levels) to recognize different amounts of service, similar in form to the LOSAP points system (but considering participation rate instead of length of service). For example, although the minimum participation rate to qualify for a property tax exemption may be 10 percent, volunteers who hit participation rates in excess of 20 percent could qualify for larger exemptions; those hitting 30 percent could qualify for more, still.

**REPORT ON LEGAL ISSUES FOR
BASELINE REVIEW OF AMBULANCE
SERVICES AND EMS IN THE TOWN OF
NORTH HEMPSTEAD**

May 6, 2010

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INTRODUCTION

Current Legal Framework—Pursuant to CGR Baseline Analysis and Review of Ambulance Services and EMS in the Town of North Hempstead

As explained in the CGR Report prepared for the Town of North Hempstead, the delivery of ambulance services and EMS (emergency medical services) within the Town of North Hempstead is built on different types of providers. Some of the providers are volunteer agencies, most of which are fire districts or fire departments whose territories are fully or partially located within the Town. A non-volunteer provider is the Nassau County Police Department (the “NCPD”). Further, as outlined in the CGR Report, some of the fire protection agencies provide both EMS and general ambulance services, while others provide EMS only. Moreover, the NCPD Emergency Ambulance Bureau has county-wide jurisdiction whereas the volunteer providers operate only within a defined service area. Another provider, the Mineola Volunteer Ambulance Corps, (“MVAC”), a non-profit corporation, has a contract for delivering services with the Village of Mineola and mutual aid agreements with other agencies.

The volunteer agencies that provide both general ambulance services and EMS have the capability of stabilizing patients at incident or accident scenes and transporting them to a local medical center for emergency treatment. The volunteer agencies that are EMS only providers are capable of stabilizing individuals at incident or accident scenes in advance of the arrival of a transporting ambulance.

In the Town of North Hempstead, there are three (3) categories of volunteer agencies that provide both general ambulance services and EMS. These categories are as follows:

(i) Fire Districts or Joint Fire and Water Districts:¹ By statute, a fire district formed under N.Y. Town Law section 170 is a separate unit of local government that is established for the purpose of providing fire protection and response to emergencies. The law allows a fire district to contract with a neighboring municipality or district and its services may span several towns or portions of towns.²

(ii) Fire Departments:³ A municipal corporation may sometimes afford fire protection by means of fire departments. A municipal fire department is administered by a board of fire commissioners or, where no board of fire commissioners has been appointed, by the village board of trustees and the council of the fire department.⁴ The terms “fire department” and “fire company” are sometimes used interchangeably. However, there is a distinction.⁵ “A municipal fire department is a corporation consisting of the members of all of the fire, hose, protective and hook and ladder companies of a municipality whereas a fire company is an association or a corporation, separate and distinct from the municipality, but is, in certain respects, under the control of the municipal authorities.”⁶

¹ In the Town of North Hempstead, The Garden City Park Fire Department, Manhasset-Lakeville Fire Department, and Westbury Fire Department fall under this category.

² See N.Y. Town Law § 189-a (“The town board of a town or the town boards of more than one town, and the board of trustees of an incorporated village or the boards of trustees of more than one incorporated village . . . located in said town or towns are hereby authorized to establish in such town or towns and village or villages a joint fire district . . . provided all of the territory in such joint fire district shall be contiguous.”); N.Y. Gen. Mun. Law § 119-o (“[M]unicipal corporations and districts shall have power to enter into, amend, cancel and terminate agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis or for the provision of a joint service or a joint water, sewage or drainage project.”).

³ In the Town of North Hempstead, The Floral Park Fire Department, New Hyde Park Fire Department, and Williston Park Fire Department fall under this category.

⁴ See N.Y. Village Law § 10-1000; see also N.Y. Village Law § 3-308 (stating that “[t]he board of trustees *may* establish or abolish a board or boards of fire . . . commissioners or a single municipal board having the powers, duties and responsibilities of two or more such separate boards”) (emphasis added).

⁵ See N.Y. Op. State Comp. No. 90-19 (1990), available at, <http://www.osc.state.ny.us/legal/1990/legalop/op90-19.htm>

⁶ *Id.*

(iii) Fire Companies:⁷ Fire protection services are also provided by volunteer fire companies. Independent volunteer fire companies are special not-for-profit corporations formed to provide fire protection to a fire district, joint fire and water district, fire protection district, or municipality under contract.⁸

1. The General Statutory Framework Governing Fire Protection Agencies Under New York State Law:

A. Fire Districts – Generally

Fire districts are established pursuant to N.Y. Town Law, chapter 62, article 11, section 170, et.seq. Once a fire district is established, a board of fire district commissioners is appointed by the town board.⁹ N.Y. Town Law section 176 describes and sets forth the powers and duties of fire district commissioners. Of particular note is Town Law section 176(22). This subsection authorizes contracts for fire protection, emergency service and general ambulance service within the fire district with any city, village, fire district or incorporated fire company under the statutory guidelines as stated subsection 22. In this regard, the statute states that the fire district commissioners:

may contract for the furnishing of fire protection within the fire district with any city, village, fire district, or incorporated fire company having its headquarters outside such fire district and maintaining adequate and suitable apparatus and appliances for the furnishing of fire protection in such district; provided there is not fire company maintaining its headquarters in said district or provided the fire department of said district is, in the judgment of such fire commissioners, unable to render adequate and prompt fire protection to such district or any area thereof. The contract may also provide for the furnishing of (1) emergency service in case of accidents, calamities or other emergencies in connection with which the services of firemen would be required and (2) general

⁷ In the Town of North Hempstead, Carle Place Fire Department, Glenwood Fire Department, Great Neck Vigilant Fire Company, Port Washington Fire Department, and Roslyn Rescue Fire Department fall under this category.

⁸ See N.Y. Not-for-Profit Corp. Law § 1402.

⁹ N.Y. Town Law §174.

ambulance service subject, however, to the provisions of section two hundred nine-b of the general municipal law.¹⁰

B. Fire Departments – Generally

A separate board of fire commissioners may be established by the board of trustees of a village.¹¹ The board of fire commissioners of a village may, subject to approval of the board of trustees, purchase suitable equipment for the prevention and extinguishment of fires or for the purposes of equipping an emergency and first aid squad within the fire department. It may also erect and maintain the necessary buildings for the fire department, and adopt rules and regulations governing fire companies and fire departments.¹²

Further, under Village Law section 10-1004, “[t]he board of fire commissioners, with the approval of the board of trustees, may organize and maintain fire, hose, protective and hook and ladder companies, whenever in its judgment the public interests require.”¹³ Any of these companies, subject to the approval of the board of trustees, may be incorporated.¹⁴ The statute also provides that “[t]he members of all the fire, hose, protective and hook and ladder companies of a village, organized and maintained in pursuance of law, constitute a corporation by the name of the ,fire department of...”¹⁵

C. Not-for-Profit Fire Companies or Corporations – Generally

Not-for-profit fire companies or corporations are formed pursuant to N.Y. Not-For-Profit Corporation Law, chapter 35, article 14, sections 402 and 1402. In addition to the general requirements set forth in N.Y. Not-for-Profit Corporation Law section 402, upon formation, a fire company must specify in its certificate of incorporation the precise boundaries of the

¹⁰ N.Y. Town Law § 176(22).

¹¹ N.Y. Village Law § 3-308.

¹² N.Y. Village Law § 10-1000.

¹³ *Id.* § 10-1004.

¹⁴ *Id.*

¹⁵ *Id.* § 10-1008.

geographic territory in which it intends to operate.¹⁶ The Not-For-Profit Corporation Law provides that such a corporation,

shall be under the control of the city, village, fire district, or town authorities having, by law, control over the prevention of extinguishment of fire. Such authorities may adopt rules and regulations for the government and control of such corporations Where a fire corporation formed outside of a city, village or fire district furnishes fire protection to territory outside of the boundaries specified in the certificate of the incorporation, the fire corporation and the members there of shall be under exclusive control of the town board of the town in which the fire corporation maintains its apparatus.¹⁷

Any debts incurred by a Not-For-Profit Fire Corporation are the responsibility of such corporation, and a municipality is not liable therefor in the event of default by the corporation.¹⁸

Further, such a corporation may engage in fund raising activities pursuant to N.Y. General Municipal Law section 204-a.¹⁹

With this background, and with reference to the CGR Baseline Analysis and Review, this Report addresses three specific questions with respect to the provision of general ambulance services in the Town.

¹⁶ N.Y. Not-for-Profit Corp. Law § 1402.

¹⁷ *Id.* § 1402(e)(1).

¹⁸ N.Y. Op. State Comp. No. 451 (1978).

¹⁹ N.Y. Not-For-Profit Corp. Law § 1402(e)(4).

**QUESTION 1:
WHAT IS THE LEGAL PROCESS FOR
“SPINNING OFF” VOLUNTEER FIRE DEPARTMENTS’
AMBULANCE FUNCTIONS INTO AUTONOMOUS ENTITIES?**

ANSWER 1: In order to “spin off” volunteer fire departments’ ambulance functions into autonomous entities, the ambulance services provided must be severed from the other services of the volunteer fire departments. This may be accomplished by either: 1) rescinding prior authorization to the fire department to provide such ambulance service; or 2) terminating an existing contract to provide ambulance service.

Thereafter, a municipality may provide general ambulance services to its constituents in one of two ways. First, the municipality may provide general ambulance services by contracting with one or more individuals, municipal corporations, associations, or other organizations for general ambulance services. Second, the municipality may establish one or more ambulance districts in the Town.

DISCUSSION

In general, section 209-b of the General Municipal Law governs the establishment and operation of emergency rescue and first aid squads in fire departments and fire companies, composed mainly of volunteers. More specifically, subsection (1) governs the furnishing of emergency ambulance services and subsection (2) governs the furnishing of general ambulance services.

As relating to emergency ambulance services, section 209-b(1) provides that a fire department or fire company is permitted to establish an emergency rescue or first aid squad to provide emergency ambulance services in the case of “accidents, calamities, or other emergencies in connection with which their services may be required, as well as in case of alarms of fire.”²⁰ In addition, where the governing board of a city, town or fire district has not

²⁰ N.Y. Gen. Mun. Law § 209-b(1)(a)

authorized its fire department to render emergency ambulance services, such governing board may contract with another city, town, village or fire district for emergency ambulance services.²¹

As relating to general ambulance services, section 209-b(2) provides the circumstances under which the governing body of a city, town, village, or fire district may authorize or contract for the provision of general ambulance services with the emergency rescue and first aid squads of a fire department or fire company composed mainly of volunteer firefighters, for the purpose of:

(1) transporting any sick, injured or disabled resident or person found within the area described in the certificate of incorporation of the fire corporation to a hospital, clinic, sanatorium or other place for treatment and care and returning any such person therefrom if still sick, injured or disabled, and

(2) transporting any sick, injured or disabled resident of such described area from a hospital, clinic, sanatorium or other place where such person has received treatment and care to any other place for treatment and care or to such person's home whether such hospital, clinic, sanatorium or other place where such person has received treatment and care is within or without the area described in the certificate of incorporation of such fire corporation or the territory listed on the ambulance service certificate or certificate of registration as the usual territory within which the ambulance service operates.²²

In order to confer authority to an emergency rescue or first aid squad to provide general ambulance services, section 209-b requires that a town board adopt a resolution authorizing any such squad to furnish general ambulance service. More specifically, pursuant to General Municipal Law section 209-b(2)(a) and (b),

a. The governing board of any city, town which has a fire department, village or fire district which has in its fire department an emergency rescue and first aid squad composed mainly of volunteer firefighters, by resolution, may authorize any such squad to furnish general ambulance service . . . [; or]

²¹ N.Y. Gen. Mun. Law § 209-b(2)(b).

²² *Id.* § 209-b(2)(a).

b. The town board of a town which does not have a fire department but in which there is a fire corporation located outside any village, fire district, fire alarm district or fire protection district, by resolution, may authorize the emergency rescue and first aid squad of such fire corporation to furnish general ambulance service

In addition, section 209-b(2)(c) provides a town board with the authority to contract on behalf of a fire protection or fire alarm district, for the furnishing of general ambulance services.

c. The governing board of a city, village or fire district which by law is authorized to contract to have fire protection furnished for any district or area thereof, or the town board on behalf of a fire protection district or fire alarm district, may include in any fire protection contract a provision for the furnishing of general ambulance service by the emergency rescue and first aid squad of the fire department or fire company which furnishes such protection.

A public hearing is required before a town board can authorize a volunteer agency to provide general ambulance service under the terms of General Municipal Law section 209-b(2)(a) and (b), and before a town board can enter into a fire protection contract which for the first time provides for the furnishing of general ambulance services under subsection (c). The procedures and requirements for holding such public hearing are set forth in subsection (e) of the statute. These procedures are extensive.

Moreover, the statute provides that any action taken to authorize general ambulance services under this subdivision may be rescinded by a “resolution” of the governing body which took the action. In this regard, General Municipal Law section 209-b(2)(i) defines the term “resolution” to mean “resolution, ordinance, act or local law.”

The statute does not specifically state that a “resolution” to rescind an authorization to provide general ambulance services requires the same public hearing process as the initial authorization for such services. Nonetheless, given the broad definition of the term “resolution,”

and given that General Municipal Law section 209-b(2)(e) requires a public hearing process to authorize or contract for ambulance services, it seems proper to interpret the statute as to require a public hearing to rescind a prior authorization. However, on this point, appropriate guidance would be useful from the Office of the State Comptroller or the Office of the Attorney General.

Assuming that prior authorizations by the Town of North Hempstead for the provisions of ambulance services by volunteer organizations followed the public hearing provisions of General Municipal Law section 209-b(2), the Town would, therefore, need to follow the same procedures to rescind those authorizations. These procedures would include consents by the fire departments, the fire company and the emergency rescue and first aid squad rendering the ambulance services per General Municipal Law section 209-b(2)(d).

On the other hand, if the general ambulance service is provided by contract, the Town could terminate the contract pursuant to its terms, or when the term of the contract otherwise expires, the Town could chose not to enter into a new contract. General ambulance service could then be provided by other means, and through other providers.

Accordingly, to “spin off” general ambulance services now provided by a volunteer fire district or department that provides both general ambulance services and EMS, the Town may (i) rescind a prior authorization to provide such services, (ii) terminate an existing contract for services, or (iii) allow an existing contract to expire by its own terms.

Once general ambulance services currently provided by volunteers are severed either by the termination or expiration of existing contracts or rescission of existing authorizations to provide ambulance services, a municipality may choose from two options in order to provide general ambulance services. These options include (1) contracting with one or more individuals, municipal corporations, associations or other organizations for general ambulance services or (2)

establishing one or more ambulance districts to provide these services. These options are discussed below. Alternatively, a fire department can form a new not-for-profit corporation (“NFPC”) either under its own control or as an independent entity, for the purpose of providing these services, which NFPC would then be able to contract with the Town or the fire department for the provision of general and emergency ambulance services. This option will also be more fully discussed below.

1. Contracting With One or More Individuals, Municipal Corporations, Associations or Other Organizations for Emergency and/or General Ambulance Services.

Pursuant to N.Y. General Municipal Law section 122-b, “[a]ny county city, town or village, acting individually or jointly may provide an emergency service, a general ambulance service or a combination of such services for the purpose of transporting sick or injured persons found within the municipality to a hospital or other place of treatment.”²³ In order to do so, such county, city, town or village, acting individually or jointly, may:

- (1) acquire, by gift or purchase, emergency vehicles and its equipment;
- (2) contract with certain individuals, municipal corporations, associations, or other organizations for operation, maintenance and repair of such vehicles and for the furnishing of pre-hospital emergency treatment;
- (3) contract with certain individuals, municipal corporations, associations, or other organizations to supply, staff and equip suitable emergency medical service or ambulance vehicles and operate such vehicles for the furnishing of pre-hospital emergency treatment; and
- (4) use any combination of the aforementioned methods.²⁴

Permissible contracts entered into pursuant to this section include, but are not limited to, contracts with: a paid police force,²⁵ a paid fire department,²⁶ a private ambulance service, such

²³ N.Y. Gen. Mun. Law § 122-b.

²⁴ *Id.* § 122-b(1)(a)-(e).

as First Response Ambulance or LifeStar Response;²⁷ a voluntary ambulance corps, such as Mineola Volunteer Ambulance Corps or Bellmore Merrick Emergency Medical Services;²⁸ and/or contracts with a private hospital that maintains its own ambulance services, such as North Shore-Long Island Jewish Center for Emergency Medical Services.²⁹

Impermissible contracts under General Municipal Law section 122-b are contracts entered into for the emergency or general ambulance service from any emergency rescue or first aid squad of a fire department or fire company comprised mainly of volunteers and organized under General Municipal Law section 209-b, which, as explained above, governs contracts entered into for emergency and general ambulance services from such squads.

Once a contract is entered into, the municipality must establish the rules and regulations, regarding the use of such apparatus and equipment.³⁰ Furthermore, the municipality “may fix a schedule of fees or charges to be paid by persons requesting the use of such facilities.”³¹ In other words, fees may be paid on a town-wide basis, a per-use-basis by those who request the use of the ambulance service, or a combination thereof.³² However, such fees shall not exceed the cost of providing such services.³³

In addition to the authority to contract for emergency and general ambulance services set forth in General Municipal Law sections 209-b and 122-b, Town Law section 184 provides additional authority for a town board to enter into contract for emergency and general ambulance services in a fire protection district. Town Law section 184(1) provides, in relevant part, that

²⁵ See N.Y. Op. State Comp. No. 8 (2005).

²⁶ *Id.*

²⁷ See N.Y. Op. Att’y Gen. (Inf.) (1972).

²⁸ See generally N.Y. Op. State Comp. No. 80-702 (1980).

²⁹ See generally N.Y. Op. State Comp. No. 78-759 (1978).

³⁰ N.Y. Gen. Mun. Law § 122-b(2).

³¹ *Id.*

³² See N.Y. Op. State Comp. No. 98-9 (1998), available at, <http://www.osc.state.ny.us/legal/1998/legalop/op98-9.htm>.

³³ See N.Y. Op. State Comp. No. 2005-8 (2005), 2005 WL 3752344.

In the event that the fire department or fire company furnishing fire protection within the district pursuant to contract does not maintain and operate an ambulance then a separate contract may be made for the furnishing within the district of emergency ambulance service or general ambulance service, or both, with any city, village or fire district the fire department of which, or with an incorporated fire company having its headquarters outside the district which, maintains and operates an ambulance subject, however, in the case of general ambulance service, to the provisions of section two hundred nine-b of the general municipal law, or with an ambulance service, certified or registered pursuant to article thirty of the public health law, which is not organized under the provisions of section two hundred nine-b of the general municipal law. [Emphasis added.]

This section would permit a town board to contract for general and emergency ambulance services within a fire protection district from an emergency rescue or first aid squad of a fire department or fire company located outside of that district, after ambulance services are discontinued by rescission, termination or expiration, as discussed above, with the fire department or fire company providing fire protection services for that district.³⁴

2. The Establishment of an Ambulance District

N.Y. Town Law provides two (2) separate procedures for the establishment of an ambulance district. The purpose of an ambulance district is to provide emergency medical services, general ambulance services, or a combination of services to persons found within the boundaries of such district.³⁵ These procedures can be found in articles 12 and 12-A of the N.Y. Town Law. The main distinction between these two procedures is that the establishment of an ambulance district under article 12 requires that the process be commenced upon a petition of the real property owners situated within the proposed district owning at least one half of the assessed value of the taxable real property therein, while the establishment procedure under article 12-A

³⁴ N.Y. Town Law § 184(1).

³⁵ See N.Y. Town Law § 198(10-f). These purposes and functions of an ambulance district are further discussed below under Powers of Town Boards with Respect to Ambulance Districts.

may be commenced by a vote of the Town Board, but is then subject to permissive referendum. Although the procedure under both articles of the Town Law is different, the result is the same. Both of these procedures are set forth in greater detail below.

A. N.Y. Town Law, Article 12 – District And Special Improvements

Generally, a town board may create an ambulance district within a given town or part of a town.³⁶

No such district shall be established . . . in a city or in an incorporated village provided, however, that such district may be established . . . wholly or partly within an incorporated village on consent of the village expressed in local law, ordinance or resolution, subject to a referendum on petition under section twenty-four of the municipal home rule law or a permissive referendum under article nine of the village law, as the case may be, and . . . on consent of a village expressed in a local law by resolution of the board of trustees and not subject to any referendum.³⁷

Petition

In order to establish an ambulance district, a petition must be presented to the town board and include the signatures of the property owners whose property is located in the proposed district or extension thereof, “owning in the aggregate at least one-half of the assessed valuation of all the taxable property of the proposed district or extension” based on the most recent assessment-roll of the town.³⁸ If only a portion of a property is located within the proposed district or extension, the town board shall determine the relative value of that portion, based on the assessment-roll.³⁹

The petition should include a description of the boundaries of the proposed district or extension, “in a manner sufficient to identify the lands included therein as in a deed of

³⁶ N.Y. Town Law § 190.

³⁷ *Id.*

³⁸ *Id.* § 191.

³⁹ *Id.*

conveyance.”⁴⁰ Such petition must “be signed by the petitioners, and acknowledged or proved in the same manner as a deed to be recorded, or authenticated in the manner provided by the [E]lection [L]aw.”⁴¹ The Election Law requires that a petition “must set forth . . . the name of the signer, his or her residence address, town or city . . . and the date when the signature is affixed.”⁴² The petition must substantially follow the form set forth in N.Y. Election Law section 6-132, which will also include a “Statement of Witness” attached to the petition, in which such person attests to witnessing all of the signatures on the page, not including his or her own.⁴³ In lieu of the “Statement of Witness,” a statement signed by a notary public or commissioner of deeds is acceptable as well.⁴⁴ Each sheet of the “petition shall be signed in ink.”⁴⁵ The petitions must also comply with the requirements of N.Y. Election Law section 6-134 and 9 N.Y.C.R.R. section 6215.

If the petition requests the construction or acquisition of an improvement or the performance of supplying of certain services, the maximum amount to be expended shall be included in such petition.⁴⁶

Notice of Hearing on Petition

When the town board is in receipt of a petition for the establishment of an ambulance district,

the board shall adopt an order and enter the same in the minutes of its proceedings, reciting in general terms the filing of such petition, the boundaries of the proposed district, the improvements proposed, the maximum amount proposed to be expended for the improvement . . . or supplying of services . . . [as] stated in the petition . . . and the cost of the district or extension to, the typical

⁴⁰ N.Y. Town Law § 191

⁴¹ *Id.*

⁴² N.Y. Elec. Law § 6-130.

⁴³ *See id.* § 6-132.

⁴⁴ *See id.*

⁴⁵ *Id.*

⁴⁶ N.Y. Town Law § 191.

property and, if different, the typical one or two family home, and specifying the time when and place where said board will meet to consider the petition and to hear all persons interested in the subject thereof, concerning the same.”⁴⁷

A copy of the order shall be certified by the town clerk and published.⁴⁸ The order shall be published, at a minimum, once in the official paper between ten and twenty days before the hearing.⁴⁹ A copy shall also be posted on the signboard of the town between ten and twenty days before the hearing.⁵⁰ If the town maintains a website, a copy of the order shall be posted on it as well.⁵¹ Before the order is published, the board shall make a file available with the town clerk for public inspection.⁵² Such file shall contain information regarding the proposed ambulance district, including the computed cost of the district to the typical property and typical one or two family home, if different.⁵³

„[T]ypical property“ shall mean a benefitted property having an assessed value that approximates the assessed value of the mode of the benefitted properties situated in the district or extension that will be required to finance the cost of the proposed improvements „[T]ypical one or two family home“ shall mean a benefitted property improved by a one or two family dwelling and having an assessed value that approximates the assessed value of the mode of the benefitted properties improved by one or two family dwellings situated in the district or extension that will be required to finance the cost of the proposed improvements.⁵⁴

Establishment of Districts

After the requisite hearing is held, the town board will determine by resolution whether

- 1) the petition met all of the requirements as provided by N.Y. Town Law section 191, 2) whether all affected property and property owners are benefitted by the proposal, 3) whether all

⁴⁷ N.Y. Town Law § 193(1)(a).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ N.Y. Town Law § 193(1)(a).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* § 193(2)(a) and (b).

benefitted property and property owners are included within the limits of the proposed district, and 4) whether it is in the public interest to grant the proposed district.⁵⁵

If the town determines that the manner in which the notice was published was insufficient or that establishing an ambulance district is not in the public interest, the town board will deny the petition.⁵⁶ If the town board determines that all of the aforementioned questions are answered in the affirmative, except that a portion of the property owners within the proposed district are not benefitted or that certain property owners have been excluded, the town board shall make the necessary changes to the boundaries of the proposed district and call a further hearing between fifteen and twenty five days after such determination.⁵⁷ Notice of such hearing shall follow the same guidelines as provided in N.Y. Town Law section 193, except it shall include the manner in which the boundaries are to be altered.⁵⁸

If and when the town board answers all of these questions in the affirmative, the board may adopt a resolution approving the establishment of an ambulance district, specifying the agreed upon boundaries.⁵⁹

Permission of the State Comptroller

Pursuant to N.Y. Town Law section 194(6), permission of the State Comptroller to establish an ambulance district is required if:

it is proposed or required that the town in which such district or extension is located shall finance the cost thereof by the issuance of the bonds, notes, certificates or other evidences of indebtedness of the town therefor or it is proposed that debt service on obligations issued to finance the costs of facilities acquired be assumed, pursuant to subdivision twelve of section one hundred ninety-eight . . . and, if the state comptroller shall have computed

⁵⁵ N.Y. Town Law § 194(1)(a)-(d).

⁵⁶ *Id.* § 194(2)(a).

⁵⁷ *Id.* § 194(2)(b).

⁵⁸ *Id.*

⁵⁹ *Id.*

average estimated costs for similar types of districts, the cost of the district or extension to the typical property or, if different, the costs of the district or extension to the typical one or two family home, as stated in the notice of hearing, is above the average estimated cost to typical properties or homes for the establishment or extension of similar types of districts as may be annually computed by the state comptroller. The state comptroller annually shall provide to towns notice of the average cost thresholds.⁶⁰

If it is determined that permission of the state comptroller is required, within ten days of the adoption of a resolution approving the establishment of an ambulance district, a certified copy of such resolution and an application for permission to create or extend an ambulance district, shall be filed by the town clerk, in duplicate, in the office of the state department of audit and control at Albany, New York.⁶¹

Such application shall be executed and verified by the supervisor, or such other officer of the town as the town board shall determine, and shall include the following (1) A certified copy of the petition (omitting, however, the signatures, and acknowledgments or proofs, or authentications) . . . (2) An itemized statement of the then outstanding indebtedness of the town for all purposes, as evidenced by bonds, bond anticipation notes, capital notes and budget notes; the amount of joint indebtedness contracted or incurred for a joint service or a joint water, sewage or drainage project and the amount of such indebtedness allocated and apportioned to the town, as defined in title one-a of the local finance law; the amount of the indebtedness proposed to be contracted for the improvement; the amount of budgetary appropriations for the payment of any such indebtedness, whether or not such appropriations have been realized as cash, and the amounts, purposes and probable dates of issuance of any bonds, bond anticipation notes, capital notes and budget notes which the town has authorized to be issued but which in fact have not been issued on the date of such application, (3) A statement of the aggregate assessed valuation of the real property situated in the proposed district or extension thereof, as such assessed valuations are shown on the last completed assessment roll of the town prior to the date of such application;(4) A statement of the average full valuation of the taxable real property of the town. Such average full valuation shall be determined in accordance with the

⁶⁰ N.Y. Town Law § 194(6).

⁶¹ *Id.* § 194(3)(a).

provisions of the first paragraph of subdivision seven-a of section 2.00 of the local finance law, [and] (5) A statement as to the manner in which it is proposed to finance the cost of the improvement.⁶²

Within five days after such application is filed, the State Comptroller shall give notice to the board of supervisors of the county in which the proposed ambulance district is located, by filing one copy of the application.⁶³ Within fifteen days of such filing, the board of supervisors may file an objection with the office of the department of audit and control.⁶⁴ After the fifteen-day period has expired, the State Comptroller will determine whether the proposed district will serve the public interest and whether it will pose an undue burden on the affected properties.⁶⁵ The State Comptroller shall make an order, in duplicate, either granting or denying the proposed district and file one copy with the office of the state department of audit and control in Albany, New York and the other copy with the office of the town clerk of the town of the proposed district.⁶⁶

B. N.Y. Town Law, Article 12-A – Establishment or Extension of Improvement Districts – Alternative Procedure

A town board may adopt a resolution, subject to permissive referendum as set out in article 7 of the N.Y. Town Law,

appropriating a specific amount to pay the cost of preparing a general map, plan, and report for providing facilities, improvements or services in any portion of the town not included within the boundaries of any incorporated village, city or existing improvement district in which such facilities or services are provided, except that all or part of an incorporated village may be included therein on consent of the village expressed in a local law, ordinance or resolution, subject to a referendum on petition under section twenty-four of the municipal home rule law or a permissive

⁶² N.Y. Town Law § 194(3)(a)(1)-(5).

⁶³ *Id.* § 194(3)(b).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* § 194(4).

referendum under article five-a of the village law Such maps, plans and reports shall be prepared by or under the supervision of town officers and employees to be designated by the town board or by persons to be employed for the purpose, or the town may contract for the preparation thereof within the limitations of the amount appropriated.⁶⁷

Any costs incurred from such preparation shall be paid for by a town charge, “assessed, levied and collected in the same manner as other town charges.”⁶⁸ The aforementioned maps, plans and reports shall be filed in the office of the town clerk.⁶⁹

Notice of Hearing

After the requisite maps, plans and reports are filed with the town clerk, the town board may adopt an order and enter it in the minutes of its proceedings, which shall include:

a description of the boundaries of the proposed district or extension in a manner sufficient to identify the lands included therein as in a deed of conveyance, the improvements proposed, the maximum amount proposed to be expended for the improvement, the estimated cost of hook-up fees, if any, to, and the cost of the district or extension to, the typical property and, if different, the typical one or two family home, the proposed method of financing to be employed, the fact that a map, plan and report describing the same are on file in the town clerk's office for public inspection and specifying the time when and the place where said board will meet and hold a public hearing to hear all persons interested in the subject thereof, concerning the same.⁷⁰

A copy of the notice shall be published, at a minimum, in the official paper between ten and twenty days before the hearing.⁷¹ A copy shall also be posted on the sign-board of the town between ten and twenty days before the hearing.⁷² If it is deemed necessary or desirable to have

⁶⁷ N.Y. Town Law § 209-b.

⁶⁸ *Id.*

⁶⁹ *Id.* § 209-c.

⁷⁰ *Id.* § 209-d(1).

⁷¹ *Id.*

⁷² *Id.* § 209-d(1).

an additional viewing location of the map, plan and report, the notice may include such location.⁷³

If it is determined that permission of the state comptroller is not required to establish such ambulance district (see below, Permission of the State Comptroller), “a certified copy of the order of the town board adopted . . . shall also be filed with the state comptroller on or about the date of the publication of a copy of such order.”⁷⁴

Establishment of Districts

After the requisite hearing is held, the town board will determine by resolution whether 1) the petition met all of the requirements as provided by N.Y. Town Law section 209-d, 2) whether all affected property and property owners are benefitted by the proposal, 3) whether all benefitted property and property owners are included within the limits of the proposed district, and 4) whether it is in the public interest to grant the proposed district.⁷⁵

If the town determines that the manner in which the notice was published was insufficient or that establishing an ambulance district is not in the public interest, the town board will enter the reasons for its determination in the minutes of its proceeding.⁷⁶ If the town board determines that all of the aforementioned questions are answered in the affirmative, except that a portion of the property owners within the proposed district are not benefitted or that certain property owners have been excluded, the town board shall make the necessary changes to the boundaries of the proposed district and call a further hearing between fifteen and twenty-five days after such determination.⁷⁷ Notice of such hearing shall follow the same guidelines as provided in N.Y. Town Law section 209-d, except it shall include the manner in which the boundaries are to be

⁷³ N.Y. Town Law § 209-d(1).

⁷⁴ *Id.* § 209-d(2)(a).

⁷⁵ *Id.* § 209-e(1)(a)-(d).

⁷⁶ *Id.* § 209-e(2)(a).

⁷⁷ *Id.* § 209-e(2)(b).

altered.⁷⁸ If and when the town board answers all of the aforementioned questions in the affirmative, the board may adopt a resolution approving the establishment of an ambulance district, specifying the agreed upon boundaries, but subject to a permissive referendum pursuant to article seven of N.Y. Town Law.⁷⁹

The proposition submitted must be approved by the affirmative vote of a majority of the owners of taxable real property situate in the proposed district or proposed extended district as shown upon the latest completed assessment-roll of the town, voting on such proposition. A petition requesting a referendum shall be sufficient if signed, and acknowledged or proved in the same manner as a deed to be recorded, or authenticated in the manner prescribed by the election law for the authentication of nominating petitions, by the owners of taxable real property situate in the proposed district or proposed extended district, as shown upon the latest completed assessment-roll of said town, in number equal to at least five per cent of the total number of such owners, or by one hundred of such owners, whichever is the lesser [A] corporate owner of such taxable real property shall be considered one owner for the purposes of a petition requesting a referendum and shall be entitled to one vote to be cast by an officer or agent of the corporation or other duly authorized person designated by appropriate resolution of such corporation.⁸⁰

The town clerk shall have the proper forms for the petition, which will be available upon request.

Id. If the time for filing expires and a petition requesting the matter be submitted to a referendum of the property owners is subsequently filed, the petition will not be filed with the town clerk, but a “certificate stating such fact [will be filed] in the office of the county clerk” and, if permission of the state comptroller is required, in the office of the department of audit and control at Albany, New York as well.⁸¹ If a referendum is held and petition requesting the matter be submitted to a referendum of the property owners is subsequently filed, the petition will not be filed with the town clerk, but “a certificate stating that a petition was filed and a referendum

⁷⁸ N.Y. Town Law § 209-e(2)(b).

⁷⁹ *Id.* § 209-e(3).

⁸⁰ *Id.* § 209-e(3).

⁸¹ *Id.* § 209-e(4)(a).

was held . . . and certifying the result of the vote on the proposition [will be filed] in the office of the county clerk” and, if permission of the State Comptroller is required, in the office of the department of audit and control at Albany, New York as well.⁸²

Permission of the State Comptroller

Pursuant to N.Y. Town Law section 209-f(1), permission of the state comptroller to establish an ambulance district is required if:

it is proposed or required that the town in which such district or extension is located shall finance the cost thereof by the issuance of the bonds, notes, certificates or other evidences of indebtedness of the town therefor, or shall assume the debt service on obligations issued to finance the cost of facilities, pursuant to subdivision twelve of section one hundred ninety-eight of this chapter, and, if the state comptroller shall have computed average estimated costs for similar types of districts, the cost of the district or extension to the typical property or, if different, the cost of the district or extension to the typical one or two family home as stated in the notice of hearing is above the average estimated cost to the typical properties or homes for the establishment or extension of similar types of districts as may be annually computed by the state comptroller.⁸³

If it is determined that permission of the State Comptroller is required, within ten days of the adoption of a resolution regarding the establishment of an ambulance district, a certified copy of such resolution and an application for permission to create or extend an ambulance district, shall be filed by the town clerk, in duplicate, in the office of the state department of audit and control at Albany, New York.⁸⁴

Such application shall be executed and verified by the supervisor, or such other officer of the town as the town board shall determine, and shall include the following: (1) A certified copy of the notice of public hearing, with proof of publishing and posting thereof as required by this article . . . ; (2) An itemized statement of the then outstanding indebtedness of the town for all purposes, as evidenced

⁸² N.Y. Town Law § 209-e(4)(b).

⁸³ *Id.* § 209-f(1).

⁸⁴ *Id.* § 209-f(3)(a).

by bonds, bond anticipation notes, capital notes, deferred payment notes and budget notes; the amount of budgetary appropriations for the payment of any such outstanding indebtedness, whether or not such appropriations have been realized as cash; the amount of indebtedness proposed to be contracted for the improvement, and the amounts, purposes and probable dates of issuance of any bonds, bond anticipation notes, capital notes, deferred payment notes and budget notes which the town has authorized to be issued but which in fact have not been issued on the date of such application; (3) A statement of the aggregate assessed valuation of the real property situated in the proposed district or extension thereof, as such assessed valuations are shown on the last completed assessment roll of the town prior to the date of such application; (4) A statement of the average full valuation of the taxable real property of the town. Such average full valuation shall be determined in accordance with the provisions of the first paragraph of subdivision seven-a of section 2.00 of the local finance law; [and] (5) A statement as to the manner in which it is proposed to finance the cost of the improvement.⁸⁵

Within five days after such application is filed, the state comptroller shall give notice to the board of supervisors of the county in which the proposed ambulance district is located, by filing one copy of the application.⁸⁶ Within fifteen days of such filing, the board of supervisors may file an objection with the office of the department of audit and control.⁸⁷ After the fifteen-day period has expired, the State Comptroller will determine whether the proposed district will serve the public interest and whether it will pose an undue burden on the affected properties.⁸⁸ In making his determination, the State Comptroller may require the submission of additional information.⁸⁹ The State Comptroller shall make an order, in duplicate, either granting or denying the proposed district and file one copy with the office of the state department of audit and control in Albany, New York and the other copy with the office of the town clerk of the

⁸⁵ N.Y. Town Law § 209-f(3)(a)(1)-(5).

⁸⁶ *Id.* § 209-f(3)(b).

⁸⁷ *Id.*

⁸⁸ *Id.* § 209-f(3)(c).

⁸⁹ *Id.*

town of the proposed district.⁹⁰ The order shall be presented to the town board at the next meeting.⁹¹ If the state comptroller denies permission for the establishment of an ambulance district, the town board shall adopt an order consistent with the denial.⁹² If the state comptroller grants permission, the town board shall adopt a final order establishing the district.⁹³

Recording and Review of Determination

Within ten days of the town board's adoption of the final order, such order shall be recorded in the office of the clerk of the county in which the town is located.⁹⁴ Once the final order is recorded, it will be "presumptive evidence of the regularity of the proceedings for the establishment or extension of such district, of the proceedings instituted for the construction of such improvement and of all other action taken by said town board in relation thereto."⁹⁵ During the same time period, the town clerk shall file a certified copy of the final order in the office of the state department of audit and control at Albany, New York.⁹⁶

Such an order is deemed final, unless an interested party aggrieved by such order commences a proceeding within thirty days from the date of the recording of the certified copy of the order in the county clerk's office.⁹⁷ Review shall take place only if it is approved by the supreme court, or a justice thereof.⁹⁸

⁹⁰ N.Y. Town Law § 209-f(4).

⁹¹ *Id.*

⁹² *Id.* § 209-f(5).

⁹³ *Id.*

⁹⁴ *Id.* § 209-g(1).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* § 209-g(2).

⁹⁸ *Id.*

C. Ambulance Districts - Generally

Powers of Town Boards with Respect to Ambulance Districts

“After an ambulance district has been established . . . the town board may provide an emergency medical service, a general ambulance service, or a combination of services for the purpose of providing pre-hospital emergency medical treatment or transporting sick or injured persons found within the boundaries of the district.”⁹⁹ In order to provide such services, the town board may obtain, by gift or purchase, suitable vehicles and equipment.¹⁰⁰ The town board may also “[c]ontract with one or more individuals, municipal corporations, associations, or other organizations”¹⁰¹ that (1) have adequately trained personnel for the “operation, maintenance and repair of such emergency medical service or ambulance vehicles and for the furnishing of pre-hospital emergency treatment” and/or (2) “supply, staff and equip emergency medical service or ambulance vehicles suitable for such purposes and operate such vehicles for the furnishing of pre-hospital emergency treatment.”¹⁰² However, the town board may not contract with an “emergency rescue and first aid squad of a fire department or fire company [comprised mainly of volunteers] which is subject to the provisions of section two hundred nine-b of the general municipal law.”¹⁰³ If the State Comptroller denies the establishment of an ambulance district,

⁹⁹ N.Y. Town Law § 198(10-f).

¹⁰⁰ *Id.* § 198(10-f)(a)(i).

¹⁰¹ This includes contracts with the Mineola Volunteer Ambulance Corps. A town is authorized to enter into an ambulance service contract on behalf of a town ambulance district under which the service provider will provide services, including the vehicles owned and operated by the service provider. N.Y. Op. State Comp. No. 2006-7 (2006), *available at*, <http://www.osc.state.ny.us/legal/2006/op2006.7.htm>. In fact, if the town owns an unneeded ambulance, it may convey such ambulance to a not-for-profit ambulance company that provides service, so long as the town board determines that it would secure the best price obtainable or most beneficial terms for an unneeded ambulance held on behalf of an ambulance district,” subject to public hearing requirements. *Id.*

¹⁰² N.Y. Town Law § 198(10-f)(a)(ii) and (iii).

¹⁰³ *Id.*

the town board must adopt an order consistent such decision.¹⁰⁴ If permission is granted by the state comptroller, the town may adopt an order consistent with such decision if it so chooses.¹⁰⁵

The town board has various other powers with respect to regulating, maintaining, and operating the service.¹⁰⁶ The town board may adopt rules and regulations regarding the emergency medical apparatus and equipment, purchase or provide insurance indemnifying against liability, provide for the administration of such service, and establish by local law a board of commissioners for the ambulance district, either by appointment or election.¹⁰⁷

Furthermore, a town board is authorized to enter into an ambulance service contract on behalf of a town ambulance district under which the service provider will provide services, including the vehicles owned and operated by the service provider.¹⁰⁸ In fact, a town board may also “convey an unneeded ambulance to a private entity providing services to the ambulance district as part of the consideration under the ambulance service contract, as long as the town board satisfies its fiduciary duty to ensure the best possible price and most beneficial terms for the ambulance.”¹⁰⁹

Expense of Establishing an Ambulance District

The expense of establishing an ambulance district “shall be assessed, levied, and collected from the several lots and parcels of land within the district for each purpose in the same manner and at the same time as other town charges, except as otherwise provided by law.”¹¹⁰

¹⁰⁴ N.Y. Town Law § 194(5).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* § 198(10-f)(b)-(e).

¹⁰⁷ *Id.* § 198(10-f)(b)-(e).

¹⁰⁸ N.Y. Op. State Comp. No. 2006-7 (2006), *available at*, <http://www.osc.state.ny.us/legal/2006/op2006.7.htm>.

¹⁰⁹ *Id.*

¹¹⁰ N.Y. Town Law § 202(3).

Once the district has been established, costs of its maintenance shall be determined pursuant to N.Y. Town Law section 202-a.¹¹¹

Fees

Pursuant to N.Y. Town Law § 202-a(1), the expense of maintaining and ambulance district *shall* be assessed, levied and collected from the properties within the district in the same as other town charges. However, the town board also has the authority to:

fix a schedule of fees or charges to be paid by persons requesting the use of [ambulance district] facilities, provide for the collection of such fees and charges, or formulate rules and regulations for the collection thereof by the individuals, municipal corporations, associations, or other organizations furnishing service under contract.¹¹²

Thus, “[a] town board, on behalf of an ambulance district, can impose fees upon users of the ambulance district services to offset district costs and raise the remainder of district costs by ad valorem assessment.”¹¹³ In N.Y. Op. State Comp. No. 93-26, the opinion expresses that the cost of the operation and maintenance of an ambulance district is akin to the cost of the operation and maintenance of a town water district. This is an important distinction from general and emergency ambulance service furnished by emergency rescue and first aid squads of fire departments and fire companies comprised mainly of volunteers under General Municipal Law section 209-b, which cannot charge a fee for their services.¹¹⁴

¹¹¹ Section 202-a of N.Y. Town Law sets forth the manner in which costs for maintaining an ambulance districts may be raised. This includes, but is not limited to, that “[t]he town board may apportion against and charge to the expense of maintaining any improvement an allowance for any services rendered by any town officer or employee when such services have been necessary to and occasioned by reason of the maintenance of an improvement, or the town board may separately compensate any town officer or employee for services necessary to or occasioned by reason of the maintenance of an improvement and include the amount so paid in the expense of such maintenance.” N.Y. Town Law § 202-a(7).

¹¹² *Id.* § 198(10-f)(b).

¹¹³ N.Y. Op. State Comp. No. 93-26 (1993), available at, <http://www.osc.state.ny.us/legal/1993/legalop/op93-26.htm>; see also N.Y. Town Law § 202, § 202-a.

¹¹⁴ N.Y. Gen. Mun. Law § 209-b(4).

3. Alternatively, Fire Districts Or Departments Can “Spin Off” Their Existing Ambulance Services Or EMS Into A Not-For-Profit Corporation Through Which Billing For Those Services Are Permitted

As an alternative method to provide general and emergency ambulance services, the fire department or district that currently provides such services can form a NFPC for the express purpose of providing those services. The benefit of this would be that the NFPC could then bill for the provision of those ambulance services. As stated above, pursuant to General Municipal Law § 209-b(4), volunteer fire departments are prohibited from billing for the ambulance or emergency medical services that they are statutorily authorized to provide in conjunction with their fire services.¹¹⁵ However, there is nothing that prohibits a fire district or department from forming an independent NFPC for the purpose of providing ambulance and/or emergency medical services, which NFPC would then be permitted to bill for its services. The members of the NFPC can be the same members of the existing ambulance or rescue squads of the fire district or department and can use the same equipment and space that it previously occupied when those services were provided by the fire department.

If the fire district or department wishes to retain control over the new not for profit company that will be providing ambulance services, there are a variety of methods by which it may do so, such as, requiring all members of the NFPC to be members of the fire department or to join the fire department; making the board of the fire department the board of the NFPC; or making the fire department the only voting member of the NFPC.

The fire department may also allow the NFPC to independently control itself. In addition, there can be hybrids of these two control mode. An example of this would be that the NFPC controls itself, but the fire department is the only one with the power to amend the bylaws and certificate of incorporation.

¹¹⁵ N.Y. Op. State Comp. No. 2004-1

Regardless of which method of control that the fire department decides upon, the fire department can benefit from an economic standpoint by the creation of the NFPC. This may be done by a variety of methods, but must be governed by a detailed contract between the NFPC and fire department. The NFPC can contract to pay the fire department for things such as equipment, supplies, space in the fire house to store their equipment. In addition, the fire department can contract with the NFPC to manage the NFPC, and then be paid a management fee for such services.

In order for the fire department to “spin off” its ambulance services, the NFPC must be created, the federal and state tax exemptions must be applied for, and NFPC must receive operating authority from the New York State Department of Health (“DOH”). With regard to obtaining the DOH operating authority, the simplest way to do this is for the fire department to transfer its authority to the NFPC. This application process takes approximately 2 months. In addition, the new NFPC must obtain insurance coverage. In some cases, this can be dealt with by adding the NFPC to the fire department’s existing policy as an additional insured. This is not allowed by all insurance companies, and the carrier must be consulted to determine if this is a possible alternative to obtaining a new policy for the NFPC. In total, the entire process should take approximately 3 months.

**QUESTION 2:
IS THERE A LEGAL PROHIBITION
AGAINST VOLUNTEERS BEING MEMBERS OF
MULTIPLE FIRE DEPARTMENTS SIMULTANEOUSLY?**

ANSWER 2: Yes. N.Y. Town Law section 176-b(10) prohibits a person from becoming a volunteer member of more than one fire company or department. However, under certain circumstances, a member of one fire company or department may assist another company or department in providing emergency or ambulance services as provided for in General Municipal Law section 209-i.

DISCUSSION

N.Y. Town Law section 176-b(10) expressly provides that, “[a] person shall not be eligible to volunteer membership in more than one fire company at one time [emphasis added].”¹¹⁶

Notwithstanding this prohibition, a volunteer member¹¹⁷ of one fire company or department may “assist” another fire company or department on an “on-going” basis under certain circumstances. This “on-going” assistance is authorized by section 209-i(1-a) of the General Municipal Law which provides, in relevant part, as follows:

A volunteer firefighter who, because of his residence or usual occupation, is regularly in the area served by a volunteer fire company or department of which he is not a member may nevertheless volunteer his services on an on-going basis to the officer in command thereof to assist such fire company or fire department for the purpose of assisting such company or department's general or emergency ambulance services, or for the purpose of assisting such fire company or fire department at a fire or other emergency scene or for the purpose of training with such fire company or fire department.¹¹⁸ (emphasis added).

After the volunteer firefighter’s services to assist are accepted by the commanding officer of a department in which the volunteer is not a member, the volunteer firefighter shall be entitled

¹¹⁶ N.Y. Town Law § 176-b(10) (emphasis added).

¹¹⁷ Duties of volunteer members are may be determined for each fire department or company by the fire district commissioners. *See id.* § 176(11).

¹¹⁸ N.Y. Gen. Mun. Law § 209-i(1-a); See also 1999 N.Y. Op. Att’y Gen. No. 41 (1999).

to all powers, rights, privileges and immunities “granted by law to volunteer firefighters during the time such services are rendered, in the same manner . . . as if he were a volunteer member of the fire company or department which . . . he is assisting, including benefits under the volunteer firefighters” benefits law.”¹¹⁹

Likewise, emergency service by a volunteer firefighter outside the firefighter’s regular service area is authorized by General Municipal Law section 209-i. This section provides that whenever a volunteer fireman is within the State, but outside the area regularly served by the fire company or department of which he is a member and he has knowledge of a fire or other emergency at or near the place where he is for the time being, such volunteer fireman may report to the officer in command of one of the paid or volunteer fire companies or departments engaged in handling such fire or other emergency and, on an individual basis, offer his services to assist such fire company or department. As with section 209-i(1-a) of the General Municipal Law, once the volunteer’s services are so accepted by the commanding officer, the volunteer is entitled to all powers, rights, privileges and immunities otherwise granted by law during the time the volunteer renders services.

The discretion of the commanding officer, authorized by General Municipal Law section 209-i, to accept services from a volunteer in such emergency circumstances may be limited or precluded if the legislative body of the city or village, the board of fire commissioners or other governing body of the fire district, or the town board of the town in relation to the fire companies serving territory outside villages or fire districts, or a town fire department, as the case may be, has forbidden acceptance of such services by a resolution previously adopted for that purpose.

¹¹⁹ N.Y. Gen. Mun. Law § 209-i(1-a). Benefits that such volunteer firefighters are entitled to include, but are not limited to, those under Volunteer Firefighters’ Benefit Law. *See id.* § 209-i(1).

Numerous opinions of the State Comptroller and the Attorney General have confirmed the statutory prohibition on a volunteer holding membership in two fire companies or departments at the same time.¹²⁰ This prohibition applies regardless of whether the companies are part of the same fire department or different fire departments.¹²¹ Indeed, upon joining a second company, a volunteer will be automatically removed from membership in the volunteer's original company.¹²²

Notably, however, the statutory prohibition of Town Law section 176-b(10) does not prohibit an individual from becoming a member of a fire company and a volunteer ambulance corps at the same time, but he or she must fulfill the minimum service requirements of both organizations.¹²³

Accordingly, under the relevant statutes, and except as explained above, volunteers cannot hold membership in multiple fire departments or companies simultaneously.

It is important to note that this rule is subject to change, as there is currently proposed legislation pending in the New York State Assembly that, if enacted, would make it permissible for volunteer firefighters to be members of multiple fire departments or fire companies simultaneously.¹²⁴

¹²⁰ See N.Y. Op. Att'y Gen. (Inf.) No. 99-2 (1999); N.Y. Op. Att'y Gen. (Inf.) 129 (1975); N.Y. Op. Att'y Gen. (Inf.) No. 105 (1972); N.Y. Op. State Comp. No. 00-13 (2000).

¹²¹ N.Y. Op. State Comp. No. 91-23 (1991).

¹²² N.Y. Op. State Comp. No. 85-31 (1985).

¹²³ N.Y. Op. State Comp. No. 97-23 (1997).

¹²⁴ New York State Assembly Bill No. A09216

QUESTION 3:
***WHAT IS THE PROCESS FOR CONSOLIDATING
FIRE DISTRICTS AND HOW IS IT IMPACTED BY THE
RECENT CONSOLIDATION LAW IN NEW YORK STATE?***

ANSWER 3: The fire district consolidation process is currently governed by N.Y. Town Law section 172. However, the New York State Legislature has enacted a new law, under which N.Y. Town Law section 172 will be repealed as of March 21, 2010 and all consolidation processes thereafter will be governed by N.Y. General Municipal Law article 17-A.

DISCUSSION

1. Process for the Consolidation of Fire Districts under N.Y. Town Law Section 172

The process for consolidating fire districts was previously governed by N.Y. Town Law section 172. This consolidation procedure still must be followed for all consolidation processes commenced prior to March 21, 2010, the effective date of the “New N.Y. Government Reorganization and Citizen Empowerment Act” (the “Act”). After March 21, 2010, the consolidation of all local government entities, including fire districts, will be governed by the newly enacted article 17-A of the N.Y. General Municipal Law. The consolidation procedure for fire districts under the Act will be discussed in detail in part two of this answer.

Under N.Y. Town Law section 172, where the boundaries of two or more fire districts adjoin, consolidation of those fire districts is possible. The town boards of every town in which the adjoining fire districts are located must, “acting jointly by a majority vote of the members of each such town boards” vote to adopt a resolution consolidating the fire districts.¹²⁵ If the adjoining fire districts are located within the same town, only a majority of the members of that town’s board is required.¹²⁶ Before such a vote can take place, the town board(s) must receive either: (1) “a written petition of resident taxpayers owning taxable real property aggregating at

¹²⁵ N.Y. Town Law § 172.

¹²⁶ *Id.*

least one-half of the assessed valuation of all the taxable real property of each of the districts, . . . [or (2) a] written petition of a majority of the members of the board of commissioners of each fire district proposed to be included within the consolidated district.”¹²⁷ The second method is by far the more commonly used of the two methods available for consolidation under Town Law section 172.

Such petition(s) must “be signed, and acknowledged or proved in the same manner as a deed to be recorded, or authenticated in the manner provided by the [E]lection [L]aw.”¹²⁸ The Election Law requires that a petition “must set forth . . . the name of the signer, his or her residence address, town or city . . . and the date when the signature is affixed.”¹²⁹ The petition must substantially follow the form set forth in N.Y. Election Law section 6-132, which will also include a “Statement of Witness” attached to the petition, in which such person attests to witnessing all of the signatures on the page, not including his or her own.¹³⁰ In lieu of the “Statement of Witness,” a statement signed by a notary public or commissioner of deeds is acceptable as well.¹³¹ Each sheet of the “petition shall be signed in ink.”¹³² The petitions must also comply with the requirements of N.Y. Election Law section 6-134 and 9 N.Y.C.R.R. section 6215.

Notice of a public hearing for the consolidation of fire districts shall be given in a similar manner as notice of public hearings for the establishment of fire districts.¹³³ In order to hold a public hearing for the consolidation of fire districts, a notice must be “published at least once in a newspaper having general circulation in the territory affected,” between ten and twenty days

¹²⁷ N.Y. Town Law § 172.

¹²⁸ *Id.*

¹²⁹ N.Y. Elec. Law § 6-130.

¹³⁰ *See* N.Y. Elec. Law § 6-132.

¹³¹ *See id.*

¹³² *Id.*

¹³³ N.Y. Town Law § 172.

before the hearing.¹³⁴ Furthermore, the town clerk(s) shall post copies of such notice on the town(s)'s sign-board and other conspicuous places within the territory affected.¹³⁵ If the town maintains a website, a copy of notice shall be posted on it as well.¹³⁶ The information in the notice shall include a description of the purpose of the hearing, districts proposed to be included and specify the time and place of the town board(s)'s meeting to consider the petition.¹³⁷

The fire district consolidation shall be effective on the date the town board(s) resolution providing for consolidation is adopted,” unless the resolution specifies another date.¹³⁸ The town clerk(s) shall have a certified copy of the resolution “duly recorded in the office of the clerk of the county or counties in which such fire districts . . . are located, and shall, within ten days” file a certified copy of the resolution in the State Comptroller’s Office in Albany, New York.¹³⁹

Within ten days after a consolidated fire district is established, the town boards of affected towns shall act jointly, by a majority vote of the members, to appoint five fire district commissioners and a treasurer.¹⁴⁰ Such officers shall hold their respective positions until December 31st following such election, unless the election is held subsequent to October 1, in which case, the officers shall retain their positions until December 31st of the next succeeding year.¹⁴¹

If, at the time of consolidation, any district has any indebtedness,

such district shall continue to exist in law for the purpose of paying such indebtedness, and there shall be annually assessed and levied upon and collected from the taxable real property within such original fire district, in the same manner and at the same time and by the same officers as town taxes are assessed, levied and

¹³⁴ N.Y. Town Law § 171(2)(a).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* § 172.

¹³⁹ *Id.* § 173.

¹⁴⁰ *Id.* § 174.

¹⁴¹ *Id.*

collected, a sum sufficient to pay such indebtedness and interest thereon as the same shall be due. All real property within the consolidated district shall be liable for the payment of indebtedness incurred for the purposes of the district after such consolidation.¹⁴²

2. Process for the Consolidation of Fire Districts under the —Nw N.Y. Government Reorganization and Citizen Empowerment Act” (the —Act”)

As stated above, the Act becomes effective on March 21, 2010. The Assembly Memorandum in Support of the Act states that the purpose of the Act is to empower “citizens, local officials and counties to reorganize outdated and inefficient local governments . . . [by] establish[ing] userfriendly procedures for local government entities to consolidate or dissolve . . . [and, thereby,] enhance the delivery of services, achieve savings and reduce local real property taxes and other taxes and fees.”¹⁴³

Thus, in order to simplify the consolidation and dissolution of local government entities into a “userfriendly” process, on the effective date of the Act and thereafter, article 17-A of the General Municipal Law will govern the consolidation and dissolution of all “local government entities.” The term “local government entity” is defined in General Municipal Law section 750(13) as

a town, village, district, special improvement district or other improvement district, including, but not limited to, special districts create pursuant to articles eleven, twelve, twelve-A, or thirteen of the town law, library districts, and other districts created by law; provided, however, that local government entity shall not include school districts, city districts or special purpose districts created by counties under county law.

Under this definition, a fire district is considered a “local government entity,” and all fire district consolidation processes will be governed by General Municipal law article 17-A, title 2, after the

¹⁴² N.Y. Town Law § 172.

¹⁴³ 2009 Sess. Law News of N.Y. Legis. Memo Ch. 74

effective date of the Act. Thus, the procedures for consolidation set forth by N.Y. Town Law section 172, and outlined in part 1 above, will no longer apply.

Pursuant to General Municipal Law, article 17-A, title 2, section 751, the process of consolidating a fire district must begin with the commencement of a consolidation proceeding.

A consolidation proceeding may be commenced when,

[t]wo or more local government entities, whether within the same county or different counties, may be consolidated into a single local government entity if each of the local government entities is contiguous to at least one of the other consolidating local government entities and if together the local government entities would form a consolidated local government entity of a kind or class that is authorized under the laws of the state of New York. The requirement that local government entities be contiguous to consolidate does not apply to entities other than towns and villages [emphasis added].¹⁴⁴

Thus, it is important to note that under the Act, boundaries of fire districts no longer have to be adjoining, as currently required under Town Law section 172, in order for fire districts to be consolidated.

General Municipal Law section 751 proscribes two (2) methods for commencing consolidation proceedings.

Consolidation proceedings may be commenced by either:

- (a) a joint resolution by the governing body or bodies of the local government entities to be consolidated endorsing a proposed joint consolidation agreement; or
- (b) elector initiative.¹⁴⁵

A. Consolidation of Fire Districts under General Municipal Law Section 751(a)

The first method of consolidation of local government entities under General Municipal Law article 17-A requires that the “governing bodies” of the fire districts to be consolidated pass

¹⁴⁴ N.Y. Gen. Mun. Law § 751(1).

¹⁴⁵ *Id.* §§ 751(2)(a) and (b).

“a joint resolution . . . endorsing a proposed joint consolidation agreement[.]”¹⁴⁶ The term “governing body” is defined in General Municipal Law section 750(10) as “the body in which the general legislative, governmental and/or public powers of a local government entity are vested and by authority of which the official business of such entity is conducted.” The “governing body” of a fire district is the board of commissioners of the fire district.¹⁴⁷ Thus, it is by joint resolution of the boards of commissioners of the fire districts to be consolidated that the consolidation process is commenced under the first method of consolidation. This significantly different from how fire districts are consolidated under Town Law section 172, which requires the consolidation process to be commenced by the town board in which the fire districts to be consolidated are located, upon written petition from either the owners of certain real property or the boards of commissioners within each district.

The proposed joint consolidation agreement that is to be endorsed by joint resolution of the boards of commissioners of the fire districts has specific requirements as to the information that it must contain. These requirements are set forth in General Municipal Law section 752 (2)(a). This section states that the proposed joint consolidation agreement shall specify the following:

- (a) the name of each local government entity to be consolidated;
- (b) the name of the proposed consolidated local government entity, which name shall be such as to distinguish it from the name of any other like unit of government in the state of New York (except the name of any one of the entities to be consolidated);
- (c) the rights, duties and obligations of the proposed consolidated local government entity;
- (d) the territorial boundaries of the proposed consolidated local government entity;

¹⁴⁶ N.Y. Gen. Mun. Law § 751(2)(a).

¹⁴⁷ Important to note is that in fire protection districts, the “governing body” would be the town board.

(e) the type and/or class of the proposed consolidated local government entity;

(f) the governmental organization of the proposed consolidated local government entity insofar as it concerns elected and appointed officials and public employees, along with a transitional plan and schedule for elections and appointments of officials;

(g) a fiscal estimate of the cost of and savings which may be realized from consolidation;

(h) each entity's assets, including, but not limited to, real and personal property, and the fair value thereof in current money of the United States;

(i) each entity's liabilities and indebtedness, bonded and otherwise, and the fair value thereof in current money of the United States;

(j) terms for the disposition of existing assets, liabilities and indebtedness of each local government entity, either jointly, separately or in certain defined proportions;

(k) terms for the common administration and uniform enforcement of local laws, ordinances, resolutions, orders and the like, within the proposed consolidated local government entity, consistent with section seven hundred sixty-nine of this title;

(l) the effective date of the proposed consolidation; and

(m) the time and place or places for the public hearing or hearings on such proposed joint consolidation agreement pursuant to section seven hundred fifty-four of this title.¹⁴⁸

After the respective boards of commissioners for the fire districts to be consolidated pass a joint resolution endorsing a proposed joint consolidation agreement, General Municipal Law section 753 requires the proposed joint consolidation agreement be published within five (5) business days. The publication requirement may be satisfied by,

(i) causing a copy of the agreement and a summary of the agreement to be displayed and readily accessible to the public in a public place or places within the entity;

¹⁴⁸ N.Y. Gen. Mun. Law § 754.

- (ii) causing the agreement, a summary of the agreement, and a description of the public place or places where a copy of the agreement and summary may be examined, to be displayed on the entity website, or county, town or village website in which the entity is located; and
- (iii) causing the agreement, a summary of the agreement, and a description of the public place or places where a copy of the agreement and summary may be examined, to be published in a newspaper of general circulation within each entity for four (4) successive weeks.¹⁴⁹

Within thirty five (35) days after the consolidation proceeding is commenced, but no more than ninety (90) days, the boards of commissioners of the fire districts to be consolidated must hold a public hearing or hearings on the proposed joint consolidation agreement.¹⁵⁰ The public hearing(s) may be held jointly or individually by the boards of the fire districts being consolidated.¹⁵¹ Notice for the public hearing must be given at least ten (10) days, but no more than twenty (20) days, in advance of the hearing, by publication in a newspaper of general circulation within each fire district to be consolidated and displayed on the fire district website, or the town, village and/or county website in which the fire district is located.¹⁵² The notice must provide the location, date and time of the hearing, a summary of the proposed consolidation agreement and the location where a copy of the agreement may be examined.¹⁵³

Once the final public hearing is held, the respective boards of commissioners of the fire districts to be consolidated shall decide whether to: (i) amend the proposed joint consolidation agreement, provided the amended agreement complies with the requirements of General Municipal Law section 752(2)(a) and is published in the same manner that the proposed joint

¹⁴⁹ N.Y. Gen. Mun. Law § 754.

¹⁵⁰ *Id.* § 754(1)

¹⁵¹ *Id.*

¹⁵² *Id.* § 754(2)

¹⁵³ *Id.*

consolidation agreement was originally published;¹⁵⁴ and/or (ii) approve a final version of the joint consolidation agreement; or (iii) decline to proceed with the consolidation proceedings.¹⁵⁵ This concludes the consolidation process for fire districts under the first method provided for in the Act. Up until the effective date set forth in the joint consolidation agreement, the consolidated fire districts will continue to be governed as they were prior to consolidation.

B. Consolidation of Fire Districts under General Municipal Law Section 751(b)

The second method for the consolidation of fire districts under article 17-A of the General Municipal Law is the commencement of the consolidation proceedings by elector initiative.¹⁵⁶ The proceeding herein is commenced by the filing an original petition with the town or village clerk where the fire districts are located, containing the signatures of ten (10%) percent of the electors,¹⁵⁷ or five thousand (5,000) electors, whichever is less, in fire district to be consolidated;¹⁵⁸ provided, however, that in fire districts containing five hundred (500) or fewer electors, twenty (20%) percent of the electors’ signatures are required. Notably, the requirement of Town Law section 172, that the signatories of the petition to commence the consolidation proceeding be “resident taxpayers owning taxable real property aggregating at least one-half of the assessed valuation of all the taxable real property of each of the districts . . .” has not been included in either method of consolidation created pursuant to the Act. The form of the petition is provided in N.Y. General Municipal Law section 757(3).

Within ten (10) days of the filing of the petition, the clerk with whom the petition was filed must make a determination as to whether the number of signatures is sufficient.¹⁵⁹ The

¹⁵⁴ N.Y. Gen. Mun. Law §§ 754 (3) and (4).

¹⁵⁵ *Id.* § 754.

¹⁵⁶ *Id.* §§ 751(2)(b) and 757.

¹⁵⁷ The term “electors” is defined as a “registered voter of this stat registered to vote in the local government entity subject to consolidation or dissolution proceedings pursuant to this article.” *Id.* §750(7).

¹⁵⁸ *Id.* §§ 757 (1) and (2).

¹⁵⁹ *Id.* § 757(6).

clerk must then provide “timely written notice of such determination” to the individual who submitted the petition. This determination is subject to judicial review pursuant to C.P.L.R. article 78.

If the clerk determines that the number of signatures is sufficient, then within thirty (30) days of such determination, the board of commissioners of the fire districts to be consolidated by the terms of the petition must enact a resolution pursuant to N.Y. General Municipal Law section 755(2), calling for a referendum on the proposed consolidation, and set a date for such referendum.¹⁶⁰ The resolution calling for the referendum shall:

(a) provide (i) the name of each of the towns and/or villages proposed to be consolidated, (ii) a statement fully describing the territory to be included within the proposed consolidated local government entity, (iii) the name of the proposed consolidated local government entity, and (iv) the date for the referendum, in accordance with subdivision one of section seven hundred fifty-eight of this title;

(b) state the substance of the question to be submitted to the electors; and

(c) set forth such other matters as may be necessary to call, provide for and give notice of the referendum and to provide for the conduct thereof and the canvass of the returns thereupon.¹⁶¹

Thereafter, the referendum must be placed before the electorate of each fire district to be consolidated at a special election that must be held not less than sixty (60) or more than ninety (90) days after the enactment of the resolution.¹⁶² However, if a town or village general election falls within the proscribed time period, the referendum may be considered at the general election.¹⁶³ Further, the referendum in each district to be consolidated may be held on either the same day or on different days, provided that they are held within twenty (20) days of one

¹⁶⁰ N.Y. Gen. Mun. Law § 757(7).

¹⁶¹ *Id.* § 755(2).

¹⁶² *Id.* § 758(1).

¹⁶³ *Id.*

another.¹⁶⁴ The governing boards of the fire districts to be consolidated must provide notice of the referendum by publication in a paper of general circulation within the boundaries of the fire districts to be consolidated, at least once a week for four consecutive weeks immediately prior to the date of the referendum.¹⁶⁵ The notice must include the following:

- (a) a summary of the contents of the resolution and joint consolidation agreement or petition for consolidation, as the case may be;
- (b) a statement as to where may be examined a copy of the resolution and . . . petition for consolidation . . . ;
- (c) the names of the local government entities to be consolidated and a description of their territory;
- (d) with respect to a resolution calling for a referendum under section seven hundred fifty-five of this title only, the name of the proposed consolidated local government entity;
- (e) the time and place or places at which the referendum will be held; and
- (f) such other matters as may be necessary to call, provide for and give notice of the referendum and to provide for the conduct thereof and the canvass of the returns thereupon.¹⁶⁶

The question to be posed to the electorate in the referendum must simply state “Shall (insert type and name of local government entity) be consolidated with (insert type and name of local government entity or entities)? Yes _____ No _____”.¹⁶⁷

The referendum and the tabulation of the results thereof shall be conducted in the same manner as in other municipal elections or referendums in the fire districts to be consolidated.¹⁶⁸

The consolidation shall take effect if a majority of the electors voting in each fire district to be

¹⁶⁴ N.Y. Gen. Mun. Law § 758(2).

¹⁶⁵ *Id.* § 758(3).

¹⁶⁶ *Id.* § 758(3).

¹⁶⁷ *Id.* § 758(4).

¹⁶⁸ *Id.* §§ 758(6) and 759.

consolidated vote in favor of consolidation.¹⁶⁹ If approved, the results shall be filed with the secretary of state and with the clerks of the government entity and county in which any part of the fire districts are situated.¹⁷⁰ If a majority fails to vote in favor of the consolidation in any of the fire districts to be consolidated, than the referendum shall fail and there will not be any consolidation of the fire districts.¹⁷¹ Further, if the referendum fails, the statute imposes a four (4) year moratorium from the date of the referendum on the further commencement of any consolidation process under General Municipal Law, article 17-A, title 2, “for the same purpose[.]”¹⁷²

Upon the majority of electors voting to approve the proposed consolidation of the fire districts, the boards of commissioners of the fire districts to be consolidated must meet within thirty (30) days of the certification of the vote and within one hundred eighty (180) days of such first meeting to prepare and approve by resolution a proposed elector initiated consolidation plan.¹⁷³ The consolidation process commenced by elector initiative from this point forward is a mirror image of the consolidation process commenced by resolution endorsing a proposed joint consolidation agreement, except as explained below.

Accordingly, the requirements for the proposed elector initiated consolidation plan are nearly identical to the requirements for the proposed joint consolidation agreement. Specifically, the requirements for the elector initiated consolidation plan are set forth in General Municipal Law section 760(2). Like the proposed joint consolidation agreement, the proposed elector initiated consolidation plan must be publicized within five days of the resolution approving it and

¹⁶⁹ N.Y. Gen. Mun. Law § 759(3).

¹⁷⁰ *Id.*

¹⁷¹ *Id.* § 759(4).

¹⁷² *Id.*

¹⁷³ *Id.* § 760(1).

in the same manner as the publication of the proposed joint consolidation agreement.¹⁷⁴ The public hearing or hearings on the proposed elector initiated consolidation plan must be held within the same thirty five (35) to ninety (90) day period of time as the public hearing or hearings for the proposed joint consolidation agreement and the board of commissioners must provide notice in the same manner.¹⁷⁵

Upon conclusion of the final public hearing on the proposed elector initiated consolidation plan, the boards of commissioners of the fire districts to be consolidated must either amend or approve the plan.¹⁷⁶ This, however, is a departure from the consolidation procedure under the first method, where the boards of commissioners also have the option of declining to proceed with the consolidation process.¹⁷⁷ If the boards decide to amend, the amended plan must comply with the requirements of General Municipal Law section 760(2) and be publicized in accordance with General Municipal Law section 766(4).¹⁷⁸ Regardless of whether the respective boards of commissioners decide to approve or amend, the final version of the plan must be approved within sixty (60) days of the conclusion of the final hearing.¹⁷⁹

Upon approval of the elector initiated consolidation plan, the fire districts shall continue to be governed as they previously were prior to consolidation, up until the effective date specified in the consolidation plan.¹⁸⁰ The effective date “shall be no less than forty-five days after final approval of such plan. . .”¹⁸¹

Unlike the consolidation process that is commenced by joint resolution of the board of commissioners, this may not ultimately conclude the consolidation proceeding commenced by

¹⁷⁴ N.Y. Gen. Mun. Law § 761.

¹⁷⁵ *Id.* §§ 762(1) and (2).

¹⁷⁶ *Id.* § 762(3).

¹⁷⁷ *Id.* § 754(3).

¹⁷⁸ *Id.* § 762(3).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* § 763(1).

¹⁸¹ *Id.*

elector initiative. Here, the statute provides for an opportunity for the electors in the fire districts to be consolidated to decline to proceed with the consolidation process. This option is similar to the option given to the boards of commissioners to decline to proceed with the consolidation process at the conclusion of the public hearings under the first method.¹⁸² Pursuant to General Municipal Law section 763(2),

the elector initiated consolidation plan shall not take effect if, no later than forty five days after final approval thereof . . . , electors of a local government entity to be consolidated pursuant to such plan shall:

(a) file an original petition, containing not less than the number of signatures provided for in subdivision three of this section, seeking a referendum on the question whether the elector initiated consolidation plan shall take effect, with the clerk of the town in which the entity or the greater portion of its territory is located, except that if the entity is a village the original petition of electors from the village shall be filed with the clerk of the village; and

(b) thereafter less than a majority of the electors in the entity vote in the affirmative on such question at a referendum.

General Municipal Law section 763(3) provides that the petition shall be circulated, signed and authenticated in the same manner as the original petition for consolidation.¹⁸³ However, the petition to stop the consolidation process must contain the signatures of at least twenty five (25%) percent or 15,000, whichever is less, of the electors of the fire district to be consolidated.¹⁸⁴

Thereafter, the referendum process called for in order to stop the consolidation is substantially the same as the referendum process that was followed to commence the consolidation process herein.¹⁸⁵ The question to be posed by referendum must state “The voters

¹⁸² N.Y. Gen. Mun. Law § 754(3).

¹⁸³ *Id.* § 763(3).

¹⁸⁴ *Id.*

¹⁸⁵ *See Id.* §§ 763(4) to (8).

of the (insert type and name of local government entity to which the consolidation plan applies) having previously voted to consolidate, shall the elector initiated consolidation plan take effect? Yes ____ [,] No ____[.]”¹⁸⁶ If the majority of the voting electors vote in favor of the consolidation, the consolidation plan shall take effect.

The statute also provides for a court-ordered consolidation, when the consolidation proceedings are commenced by elector initiative.¹⁸⁷ This section provides that if the boards of commissioners fail to

prepare and approve an elector initiated consolidation plan . . . or are otherwise unable or unwilling to accomplish and complete the consolidation . . . , then any five of the electors who signed the original petition seeking consolidation may commence a special proceeding against the . . . [boards of commissioners] pursuant to Article 78 of the civil practice law and rules, in the supreme court within the judicial district in which the consolidated . . . [fire districts] will be located to compel compliance with the provisions of this article.¹⁸⁸

Upon review of the actions or inaction of the boards of commissioners, the court will make a determination as to whether the boards acted in good faith to prepare and approve the consolidation plan.¹⁸⁹

If the court finds that the boards acted in good faith, then it may refer the matter to mediation, with costs to be borne to the fire districts to be consolidated, as the court determines appropriate.¹⁹⁰ If the boards of commissioners thereafter prepare and approve an elector initiated consolidation plan, then the statutory provisions shall apply as if the boards of commissioners had acted without the intervention of the court.¹⁹¹

¹⁸⁶ N.Y. Gen. Mun. Law § 763(7).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* § 764(1).

¹⁸⁹ *Id.* § 764(2).

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

If the court finds that the boards failed to act in good faith, “the court shall issue an injunction ordering the . . . [boards of commissioners] to comply with the applicable provisions of this article.”¹⁹² If the boards of commissioners thereafter violate the injunction, the court shall appoint a judicial hearing officer to “hear and determine” a consolidation plan in accordance with General Municipal Law section 760(2).¹⁹³ The final determination of the judicial hearing officer shall constitute final approval of the elector initiated consolidation plan and such plan shall take effect forty five (45) days after the filing of the determination with the clerk of the court, unless a referendum pursuant to General Municipal Law section 763 is filed prior to that date.¹⁹⁴

3. General Statutory Provisions Affecting the Consolidated Fire District

Whether fire districts have been consolidated under the first or second method under the Act, there are additional sections of the General Municipal Law that apply to the newly consolidated fire districts. After the effective date of consolidation, the consolidated fire districts shall be treated and considered to be one single district, and operate under the name and terms and conditions set forth in the joint consolidation agreement or the elector initiated consolidation plan, as the case may be.¹⁹⁵ Specifically, in relevant part, General Municipal Law section 765 provides that

2. All rights, privileges and franchises of each component local government entity and all assets, real and personal property, books, records, papers, seals and equipment, as well as other things in action, belonging to each component local government entity shall be deemed as transferred to and vested in the consolidated local government entity without further act or deed.

¹⁹² N.Y. Gen. Mun. Law § 764(3).

¹⁹³ *Id.*

¹⁹⁴ *Id.* § 764(4).

¹⁹⁵ *Id.* § 765(1).

3. All property, rights-of-way and other interests shall be as effectually the property of the consolidated local government entity as they were of the component local government entities prior to their consolidation. The title to real estate, either by deed or otherwise, under the laws of the state of New York vested in any of the component local government entities shall not be deemed to revert or be in any way impaired by reason of the consolidation.

4. The consolidated local government entity shall in all respects be subject to all the obligations and liabilities imposed and shall possess all the rights, powers, and privileges vested by law in other similar entities.

5. Upon the effective date of the consolidation, the joint consolidation agreement or the elector initiated consolidation plan, as the case may be, shall be subordinate in all respects to the contract rights of all holders of any securities or obligations of the local government entities outstanding at the effective date of the consolidation.

...¹⁹⁶

The election of new officials of the consolidated fire district, for which required to be election is required, shall take office on the first Monday of January following the election designated in the joint consolidation agreement or elector initiated consolidation plan, as the case may be.¹⁹⁷ The election of officials for the consolidated fire districts shall otherwise remain unchanged and must comply with applicable provisions of law, including, but not limited to, Town Law section 175.¹⁹⁸ All appointed officials, except as otherwise provided for in the joint consolidation agreement or elector initiated consolidation plan, shall be appointed as they had been appointed prior to consolidation and in accordance with article 11 of the Town Law.¹⁹⁹

With respect to the effect of consolidation on the existing employees of consolidated fire districts, General Municipal Law section 767 provides, in relevant part, that

¹⁹⁶ N.Y. Gen. Mun. Law § 765.

¹⁹⁷ *Id.* § 766.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

[e]xcept as otherwise provided by law and except for those officials and employees protected by tenure of office, civil service provisions or collective bargaining agreement, upon the effective date of consolidation, all appointive offices and positions then existing in all component local government entities involved in the consolidation shall be subject to the terms of the joint consolidation agreement or elector initiated consolidation plan, as the case may be.

All valid and lawful debts, liabilities, and obligations of the component fire districts prior to consolidation, shall upon the effective date of the consolidation become the debts, liabilities and obligations of the consolidated fire district.²⁰⁰ Likewise, with respect to actions or proceedings in which a component fire district is a party prior to consolidation, the consolidated fire district may be substituted as the party in that action or proceeding after the effective date of the consolidation.²⁰¹

With respect to existing laws, General Municipal Law section 769 states, in relevant part,

Subject to the provisions of the joint consolidation agreement or elector initiated consolidation plan, as the case may be, pertaining to the common administration and uniform enforcement of laws in the consolidated local government entity, all local laws, ordinances, rules or regulations of the component local government entities in effect on the effective date of consolidation shall remain in full force and effect within the respective areas of the component local government entities that existed prior to consolidation, insofar as the local laws, ordinances, rules or regulations are not repugnant to law, until repealed or amended. As soon as practicable but not later than two years after the effective date of consolidation, the governing body of the consolidated local government entity shall adopt new local laws, ordinances, rules and regulations as necessary to redress conflicts and otherwise redress ambiguities arising among the then-existing laws, ordinances, rules or regulations for the common administration and uniform governance of the consolidated local government entity.

²⁰⁰ N.Y. Gen. Mun. Law § 768.

²⁰¹ *Id.* § 770.

Finally, any right, title, interest or claim arising out of the consolidation of the fire districts, that is not determinable under the provisions of the Act or by the joint consolidation agreement or elector initiated consolidation plan, or otherwise under the laws of the State of New York, shall be determined by the board of commissioners of the consolidated fire district and in conformance with the laws of the State of New York.²⁰²

Also, it is important note that there is currently legislation under consideration by the State Senate and Assembly that proposes to amend General Municipal Law article 17-A.²⁰³ . These proposed amendments attempt, among other things, to clarify perceived ambiguities in Article 17-A through additional definitions and to increase certain time limitations contained therein. Currently, this proposed legislation has been referred to the Committee on Local Governments.

²⁰² N.Y. Gen. Mun. Law § 772.

²⁰³ A.10432 / S.7238