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# EMERGENCY MEDICAL SERVICES

## EMS and The Legislative Process

### Monograph 2



International Association  
of Fire Fighters



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# Emergency Medical Services

## EMS and The Legislative Process

### Monograph 2



**Department of Emergency Medical Services  
International Association of Fire Fighters, AFL-CIO, CLC**

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# Foreword

Today more than 80 percent of fire departments perform some level of emergency medical services (EMS), making professional fire fighters the largest group of providers of prehospital emergency care in North America. No other organization – public or private – is capable of providing prehospital emergency response as efficiently and effectively as fire departments. Fire department operations are geared to rapid response, whether it is for EMS or fire suppression. Cross-trained/dual-role fire fighters are trained to aggressively attack their work whether it involves a fire, a rescue, or a medical emergency. It is no surprise that study after study has shown that fire department-based prehospital emergency medical care systems are superior to other provider types.

However, as we look into the future of prehospital emergency medical care, we are called upon to evaluate our role and the possible need for change in the context of a rapidly evolving medical care system. We must look at what we have learned during the past century and create a vision for the future of fire-based EMS. This vision must address necessary legislation for the protection of fire-based systems. It must address public education, prevention, and the possible expansion of the scope of practice for paramedics. This vision must consider the effects of managed care organizations on prehospital EMS, as well as revenue recovery for the services fire fighters perform. It must also protect fire-based systems from the threat of privatization, as well as protect the citizens we serve by preserving the nation's universal emergency access number, 9-1-1. The information in this series of monographs is designed to guide local fire department leaders through the process of developing a vision for the future of a fire-based EMS system. This monograph is the **second** in the series and includes information on local, state and federal legislation that affects fire-based EMS systems. IAFF members and fire service leaders should find this monograph to be of use in preparing to enhance and to protect their EMS systems.

The role of the professional fire fighter is constantly changing. We are called upon to act as multi-faceted first responders answering not only fire calls but rescue, hazardous materials, and emergency medical calls. By answering the challenge of change, we can continue to meet the needs of the communities we serve and do what we do best — protect property and save lives.

**Harold A. Schaitberger**  
**General President**

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Richard L. Mayberry, President, IAFF Local 522, Sacramento, CA  
Gary Rainey, Secretary, IAFF Local 1403, Metro-Dade Co., FL  
Ronald L. Saathoff, President, IAFF Local 145, San Diego, CA

## **IAFF DEPARTMENT OF EMERGENCY MEDICAL SERVICES**

**Lori Moore, MPH, EMT-P, Director**



International Association of Fire Fighters® AFL-CIO, CLC  
Department of Emergency Medical Services  
1750 New York Avenue, NW  
Washington, DC 20006  
(202) 737-8484  
(202) 737-8418 (FAX)

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# EMS and The Legislative Process

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# INTRODUCTION

EMS first received systematic attention from federal, state, and local governments and from the medical community in the mid-1960s. Attempts to improve patient outcomes following trauma (especially motor vehicle crashes) and acute cardiac events led to the development of today's EMS systems. The EMS roles of the various levels of government vary. The federal government defines the basic components of EMS systems and directs nationwide system development. The federal government also oversees the development of national training guidelines and promotes EMS data collection and research. State governments have broad authority over EMS activities, principally through regulation and oversight of services and providers. While local governments are directly responsible for actually providing EMS services.

EMS systems involve a myriad of agencies and organizations, both public and private. The groups are usually politically active and may take markedly different positions on related issues. Various groups may have self-interested expectations with regard to system design, provider type, or system finance issues. Additionally, individuals within groups may have vested political or financial interests in EMS systems.<sup>1</sup> In the political/legislative arena, fire department officials should be aware of the ambitions of those around them, and carefully evaluate their own desires and expectations.

This monograph discusses the levels of governmental involvement in emergency medical services systems and offers specific legislative language that can be used to protect public fire-based EMS systems. Nothing can substitute, however, for getting to know elected officials, influential committees, and your state and local legislative process. For fire service leaders to have a voice in government, they must have the attention and support of lawmakers as well as specific suggestion for new laws.

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## THE FEDERAL LEVEL

The 1973 federal Emergency Medical Services Systems Act defined an EMS system and provided guidelines for developing all EMS systems. This law allowed for varied system configurations but minimized their differences by defining fifteen basic components to be included in all systems. Today, the role of the federal government in EMS is divided between various agencies, including the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation, the Maternal and Child Health Bureau of the Department of Health and Human Services, and the U.S. Fire Administration (USFA), to name a few. The primary roles of the federal government, as a whole, are to establish minimum EMS training standards, develop national equipment lists and specifications, coordinate national research and prevention efforts, and offer technical assistance to the state EMS offices.

### FEDERAL LEGISLATION

An example of federal legislation recently passed that affects all EMS systems is the Food and Drug Administration's *Medical Device User Facility and Manufacturer Reporting, Certification, and Registration* (21 CFR Parts 803 & 807).

In 1990, Congress enacted the Safe Medical Devices Act (SMDA) to increase the information that the Food and Drug Administration (FDA) and manufacturers receive about serious problems with medical devices. A medical device is any item that is used for the diagnosis, treatment, or prevention of a disease, injury, or other condition and is not a drug or biologic (such as blood). The reporting requirements for SMDA became effective on November 28, 1991. All "device user facilities," which include providers of ambulance service, must report deaths and serious injuries that may have been caused by a device, even if the device only contributed to the injury. Serious injuries are those that require medical or surgical

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intervention. Failure to comply with reporting requirements may subject device user facilities to civil and criminal penalties. On June 16, 1992, the President signed into law the Medical Device Amendments of 1992, amending reporting requirements to establish a single reporting standard for user facilities, manufacturers, and importers. Reporting requirements, record keeping, definitions, and penalties for failure to comply with the medical device reporting requirements are addressed in documents available from the FDA at (301) 594-3880.<sup>2</sup>

An example of pending federal legislation related to EMS is the “Access to Emergency Medical Services Act of 1997” (HR 815; 105th Congress). This bill was introduced to amend the Internal Revenue Code of 1986, the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and titles XVIII and XIX of the Social Security Act to assure access to emergency medical services under group health plans, health insurance coverage, and the Medicare and Medicaid programs. This bill would require health care service payers to cover emergency services as defined by the “prudent layperson” test described in the bill. This means that health insurers must pay for emergency services if the patient seeks care for a condition that a prudent layperson (not a physician) would judge to require emergency care. The bill would also require health coverage agencies to educate subscribers on the appropriate use of the 9-1-1 telephone system to access prehospital emergency care.

Other examples of federal legislative efforts expected to arise in the future include the Cardiac Arrest Survival Act, supported by the American Heart Association, and attempts by the Health Care Finance Administration to change the regulations governing payment for prehospital care services.

There will be continual federal legislative efforts supported by various national organizations that will affect fire-based EMS systems. Fire department officials should monitor these efforts and take appropriate stands to support or oppose them, communicating concerns to elected officials, and as necessary, educating their communities.

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## THE STATE LEVEL

All states have legislation that provides a statutory basis for EMS activities and programs. State laws, however, vary greatly in the way they describe EMS system components. EMS state authorities are responsible for implementing regulations, licensing personnel and vehicles, certifying training programs, and defining required record keeping. Most states have placed the lead responsibility for EMS in the state health agency. State health departments serve as the lead EMS agency in all states except Kansas, Maine, Ohio, Indiana (each has a separate state EMS agency within the executive branch of state government), and Maryland where the lead organization is the University of Maryland.<sup>3</sup>

A second part of the system's structure is the EMS advisory council. With the exception of Minnesota, Nebraska, Nevada, and New Jersey, all states have some type of advisory council.<sup>4</sup> These councils bring together EMS professionals, consumers, and various special interest groups involved in EMS to provide direction to the lead agency on policy development. Councils may also provide a forum for developing cooperative action between the EMS stake holders. Though the composition of the councils vary from state to state, members typical include EMS physicians, EMS providers, nurses, fire fighters, police officers, EMS educators, and members of the public. Most council members are appointed by the governor or the executive director of the state agency.

A third component of state EMS structure is the office of the EMS Director. Although specific titles may vary, all states have a single individual who serves as the State EMS Director. The Director is responsible for the administrative direction of EMS programs within the state. Most states also identify a physician as the State Medical Director. The few states that do not have medical directors at the state level receive medical direction at the regional or local level. In areas where state governments are not

## STATE LEGISLATION

active, EMS systems are regulated primarily by local governments. In general, state governmental control is stronger east of the Mississippi River and gradually diminishes toward the west.<sup>5</sup>

As previously stated, all states have laws that serve as the legal foundation for the state EMS programs. These laws specify activities and programs that state government regulates. Such legislation also identifies the lead agency, outlines the basic responsibilities of the agency, and provides the necessary authority for administration of state EMS programs. The laws often give agencies the authority to establish minimum standards and set penalties for noncompliance. Fire department officials and local leaders must be familiar with all state laws relevant to providing EMS programs.

As the EMS industry continues to change, it may become necessary to amend state EMS legislation. Fire department leaders must be involved in these efforts. Issues of particular interest involve the definitions section within the legislation. These definitions can either permit or exclude fire fighter involvement in EMS; if permitted, definitions specify the levels of involvement that are allowed. Examples of key definitions have been taken from the state of Massachusetts' "EMS 2000" legislation.<sup>6</sup>

- **Ambulance** means any aircraft, boat, motor vehicle, or any other means of transportation, however named, whether privately or publicly owned, which is intended to be used for, and is maintained and operated for, the transportation of sick or injured individuals.
- **Ambulance service** means the business or regular activity, whether for profit or not, of pre-hospital emergency medical care and transportation of sick or injured individuals by ambulance.
- **Emergency** means a condition or situation in which an individual perceives a need for immediate medical attention, including conditions

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or situations requiring medical care, extrication, rescue, or risk suppression in connection with the provision of emergency medical services, or where the potential for such need is perceived by the individual, a bystander, or an emergency medical services provider.

- **Emergency medical services** means the pre-hospital assessment, treatment, and other services utilized in responding to an emergency or provided on scene or during the transport of patients to or between health care facilities.
- **Emergency medical services first responder** means a person who has, at a minimum, successfully completed a course in emergency medical care approved by the (state EMS) department and who provides emergency medical care through employment by or in association with an emergency medical services first responder service, including fire departments.
- **Emergency medical services first response service** means the business or regular activity, whether for profit or not, by a qualified emergency medical services provider, designated as a service zone provider for the purpose of providing rapid response and emergency medical services including, without limitation: patient assessment; patient treatment; patient preparation for transport; and extrication, rescue, and risk suppression in connection with the provision of emergency medical services.
- **Emergency medical services first response vehicle** means any aircraft, boat, motor vehicle, or any other means of transportation, whether privately or publicly owned, which is intended and is maintained and operated for the rapid response of emergency medical personnel, equipment, and supplies to emergencies by an emergency medical services first response service or by an ambulance service and is not utilized for patient transport.

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- **Emergency medical services personnel** means emergency medical services first responders and emergency medical technicians.
  - **Emergency medical services plan** means a plan that includes an inventory and assessment of emergency medical services resources and a plan for the optimal maintenance, coordination, and utilization of those resources: (i) to improve the emergency medical services system and its component elements; and (ii) to coordinate with all state and municipal public safety agencies' mass casualty and other public emergency plans.
  - **Emergency medical services provider** means an emergency medical services first response service, an ambulance service; a hospital (including, without limitation, trauma centers); or, any individual associated with an emergency medical services first response service, an ambulance service, or a hospital engaged in providing emergency medical services, including without limitation: emergency medical services first responders; medical communications system operators; emergency medical technicians; and, medical control physicians; to the extent such physicians provide emergency medical services.
  - **Emergency medical technician** means a person who has successfully completed a course in emergency medical care, approved by the (state) department or offered by an (accredited) course sponsor, and who is certified by the department. The term "emergency medical technician" includes EMT-Basic, EMT-Intermediate, and EMT-Paramedic.
  - **Emergency response** means the dispatch and response of the closest appropriate emergency medical services personnel and/or vehicle(s) to an emergency in the shortest practicable amount of time.
  - **Medical control** means the clinical oversight by qualified physicians of all components of the emergency medical services system, including treatment protocols, medical direction, training, and authorization of

**LEGISLATION TO  
PROTECT AGAINST  
PRIVATIZATION**

emergency medical services personnel to practice quality assurance and continuous quality improvement.

- **Medical direction** means the authorization for treatment established in local, regional, or state emergency medical services treatment protocols provided by a qualified medical control physician to emergency medical services personnel whether on-line, via direct communication or telecommunication, or off-line via standing orders.

In addition to ensuring that definitions of emergency responders includes fire fighters, it may be necessary to seek legislation protecting the fire service and fire-based EMS from privatization. There have been efforts in several states to amend relevant state practice acts using language given below. The goal of these efforts is to ensure that privatization is not imposed on communities without endorsement from a majority of citizens.

**Missouri**

The following is an excerpt from Missouri Senate Bill 735 (Missouri General Assembly 1996).

Section 2. 1. Fire districts in the State of Missouri may contract to a private company to provide fire service only if a majority of voters of the political subdivision authorize such a proposal at a public election.

2. The ballot shall be in the following form:

Shall the \_\_\_\_\_ (name of fire district) have the authority to contract the fire service of the district to a private company?

9 YES

9 NO

If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the Fire District Board may have the authority to contract fire services to a private company. If a majority of the votes cast by the qualified voters voting are opposed to the proposal, then the Fire District Board shall have no authority to contract fire services to a private company.

This bill was approved by Missouri Governor on March 29, 1996.

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## **Nebraska**

Fire fighters in Nebraska have proposed language to protect fire department-based EMS systems against privatization. The following is an excerpt of Nebraska Legislative Bill 447 (January 16, 1997).

FOR AN ACT relating to fire and ambulance service; to amend sections 13-303 and 35-514.02, Revised Statutes Supplement, 1996; to change provisions relating to contracts; to provide an operative date; to repeal the original sections; and to declare an emergency.

LB 447 Section 1. Section 13-303, Revised Statutes Supplement, 1996, is amended to read as follows.

(3) The county board or municipal governing body shall not contract with a private person, firm, or corporation to provide fire service or ambulance service, or both, within or without the county, city, or village unless the authority to so contract is approved by a majority of the registered voters of the county, city, or village....

Finally, fire service officials must be aware of attempts of private EMS providers to promote legislation giving them more control over EMS services. Some of this legislation may not be recognizable as EMS related legislation. For example, fire fighters in the state of Washington were recently confronted with a bill proposing to regulate commercial activity by governmental agencies. Actually, the legislation strongly favors private sector service providers attempting to take over fire-based EMS services. Relevant sections follow.

State of Washington, 55th Legislature, 1997 Regular Session, Substitute House Bill 1721.

NEW SECTION. Sec. 1. The legislature finds that private enterprise is essential to the health, welfare, and prosperity of Washington state citizens. When government engages in commercial activities and provides goods and services to private citizens, private businesses are unable to compete with the prices offered by government because the true costs of the goods and services are not reflected in the price. This sometimes results in businesses failing or reducing the number of their employees.

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In addition, the legislature finds that there is no entity that is designated as a source to which private enterprise may file complaints against unfair competition by a government agency or institution of higher education.

NEW SECTION. Sec. 4. (1) A task force on commercial activities by government is established. The task force shall consist of the following twelve members: (a) Two members of the house of representatives, one member from each major political caucus, appointed by the speaker of the house of representatives; (b) two members of the senate, one member from each major political caucus, appointed by the president of the senate; (c) four government representatives, one member representing institutions of higher education appointed by the governor, one member representing state agencies appointed by the governor, one member representing local government appointed by the governor, and the director of the office of financial management or the director's designee; and (d) four members from private enterprise who are owners or officers of small business, appointed by the governor. The governor shall appoint one of the small business members to serve as the chair of the task force. The task force may contract for consultant or other services subject to available funds.

(2) The task force shall study and develop recommendations pertaining to commercial activities by government, including but not limited to: (a) The development of an effective mechanism for private businesses to file and resolve complaints of unfair competition by government; and (b) minimizing the impact of commercial activities on small businesses by establishing criteria as to when commercial activities can be engaged in by government. The task force shall include as part of its study the operation of central stores by the department of general administration, including the sale of surplus items, and the provision of emergency medical services by local governments. (emphasis added)

(3) The task force shall report its findings and recommendations to the appropriate legislative committees by December 1, 1998.

(4) This section expires January 1, 1999.

The Washington State Council of Fire Fighters lobbied to kill this bill. They were successful in amending the bill to exclude the reference to emergency medical services (Section 4[2]). After continuous efforts by state fire fighters, the bill was killed. House Bill 1721 died in committee in April 1997.

The state EMS authority may also recommend legislation separate from the EMS program laws that are considered necessary for the protection of the public. For example, legislation promoting the use of automatic external defibrillators may be appropriate. The American Heart Association has developed sample language that may be help to implement these programs. Excerpts of the language pertinent to fire fighters are presented below. State laws governing emergency medical services, licensure, certification, and training vary greatly across the country. Check your state statutes first and modify this sample accordingly to meet your state's needs.

AUTOMATIC EXTERNAL DEFIBRILLATOR SAMPLE STATE LEGISLATION<sup>7</sup>

A bill to be entitled

\_\_\_\_\_

An act to amend \_\_\_\_\_ to create standards for the training and use of automatic external defibrillators (AEDs), as well as new limitations on liability for the provision or use of AEDs in medical emergencies.

Sponsors \_\_\_\_\_

I. INTENT

The [Governing Body] finds that timely attention in medical emergencies saves a significant number of lives, and that trained use of automatic external defibrillators (AEDs) in medical emergency response can significantly increase the number of lives saved. It is the intent of the [Governing Body] to encourage training in lifesaving first aid, to set minimum standards for the use of AEDs and to encourage their use by all First Responders.

II. DEFINITIONS

For the purposes of this Act –

(a) "Automatic external defibrillator" means a medical device heart monitor and defibrillator that:

- (1) Has received approval of its premarket notification, filed pursuant to 21 U.S.C. Section 360(k), from the United States Food and Drug Administration;
- (2) Is capable of recognizing the presence or absence of ventricular fibrillation and rapid ventricular tachycardia, and is capable of determining, without intervention by an operator, whether defibrillation should be performed;
- (3) Upon determining that defibrillation should be performed, either automatically charges and delivers an electrical impulse to an individual's heart, or charges and delivers an electrical impulse at the command of the operator; and
- (4) In the case of a defibrillator that may be operated in either an automatic or a manual mode, is set to operate in the automatic mode.

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(b) "Defibrillation" means administering an electrical impulse to an individual's heart in order to stop ventricular fibrillation or rapid ventricular tachycardia.

(c) "Person" means any individual, partnership, association, corporation or any organized group of persons whether incorporated or not.

(d) "First responder" means any person who is presently certified under the regulations promulgated under Section III(a) of this Title to use an AED, or who is licensed to practice medicine in the [State/Commonwealth of \_\_\_\_\_].

(e) "Department" means [appropriate state agency authorized to promulgate regulations governing emergency medical services (EMS) and cardiopulmonary resuscitation (CPR) training, licensure and certification].

(f) "Lifesaving first aid" includes performance of cardiopulmonary resuscitation, the application of an automated or manual external defibrillator, or the provision of relief for the obstruction of a breathing passage by a foreign object.

### III. CERTIFICATION OF FIRST RESPONDERS

The Department is directed to promulgate rules regarding the establishment of training programs to certify individuals as First Responders, and to recommend which individuals should be required to be trained in lifesaving first aid including use of AEDs. In identifying first responders, the Department shall consider the following:

(a) Whether individuals in any field other than health care should be required to obtain certification for the use of AEDs as a condition of employment in the field and, if so, whether such fields should include employment as any of the following: Law enforcement officers, firefighting personnel; teachers in preschool programs, elementary or secondary schools or institutions of higher education; coaches and other instructors or supervisors in sports or other extracurricular activities; providers of daycare services; school bus drivers; and, lifeguards.

### IV. LIMITATIONS OF LIABILITY

Except as otherwise provided by statute:

(a) A First Responder shall not be liable for an injury, whether such injury arises out of an act or omission of the First Responder, where the injury occurs during the course of the First Responder administering lifesaving first aid with an AED in conformance with the training procedures promulgated pursuant to Section III(a) of this Title; and

(b) No Person shall be liable for an injury arising out of an act or omission of a First Responder, where the Person's liability would otherwise be based solely upon the Person providing a properly operating and labeled AED to the First Responder.

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# THE LOCAL LEVEL

## TYPES OF MUNICIPAL INCORPORATION

The primary opportunity to protect fire-based EMS systems by exerting political influence is at the local level. It is at the local level that EMS providers can best generate the greatest support (from the communities they serve), track legislative initiatives, and make their voices heard. The responsibility for providing EMS typically rests with local governments, such as counties, cities, fire districts, or other geo-political jurisdictions. Fire department leaders should be familiar with EMS system issues that are addressed in their local charters and ordinances, and, more importantly, issues that are **not** addressed. Examples of local legislation relevant to EMS are included in this section, following a description of how municipalities are incorporated, and the different types of local legislation.

The term **incorporation** describes the result of legal proceedings that bring a municipal corporation into existence.<sup>8</sup> Municipalities may be incorporated through: (1) special legislation, where not forbidden by the state constitution; (2) organization under general laws, including optional charter laws; or (3) adoption of a home rule charter under constitutional provisions.<sup>9</sup> Local fire department leaders should understand clearly the method of incorporation used in their municipalities.

- **Incorporation Through Special Legislation** — This method of incorporating municipalities has been discontinued in almost every state due to the adoption of state constitutional provisions prohibiting creation by special act or requiring the legislature to incorporate and organize municipalities by general law.<sup>10</sup>
- **General Incorporation Laws** — Disparities in treatment of municipalities under special legislation led to constitutional reforms prohibiting special acts and organization of municipalities under

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general laws. General laws allow the classification of municipalities so that similar municipalities can operate under statewide regulations, rather than specific legislation.<sup>11</sup>

- **Optional Charter Laws** — A number of states have adopted optional charter laws, under which the voters of each municipality may adopt one of several types of municipal charters. For example, voters may choose to be governed by a mayor-council, commission, or city manager plan.<sup>12</sup>
- **Home Rule** — The constitutions of at least half of the states authorize, in varying degrees, local self-government by municipalities and, in some states, by counties. These powers are conferred either directly, by self-executing provisions of the state constitutions, or indirectly through enabling or supplementary legislation. The purpose of home rule is to provide the inhabitants of municipal corporations with powers of local self government, free from state legislative interference in matters of local concern. In some states, home rule charters become effective upon adoption by the citizens of the municipality. In other states, the charter must be submitted to the state legislature or the governor for approval or rejection after adoption.<sup>13</sup> A home rule charter must be consistent with the state constitution. However, a home rule charter generally supersedes all conflicting state laws insofar as such laws relate purely to municipal or local affairs.

## **TYPES OF LOCAL LEGISLATION**

There are essentially two types of legislation that are relevant to EMS activities at the local level: charter amendments and local ordinances and resolutions.

### **Municipal Charters**

A charter (city or county) is an official document (constitution) granting certain rights and privileges to its citizens and outlining the principles,

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functions, and organization of the corporate body. When not constitutionally forbidden, amendments may be made to municipal charters according to a defined process based on the method of municipal incorporation. In some states, municipalities may amend their own charters either under statute authorizing amendments by local officials, or more usually, under constitutional and statutory provisions permitting direct amendment of home rule charters by the voters of the municipality.<sup>14</sup> No particular form of wording is required for municipal charters, unless specified in state statutes.

### **Municipal Ordinances and Resolutions**

A municipal ordinance is a by-law, local law, regulation, or legislative act of the municipal governing body.<sup>15</sup> A resolution is not the equivalent of an ordinance but is a more temporary act.<sup>16</sup> A resolution is usually sufficient for council action, administrative, or executive matters but does not have the dignity of an ordinance.<sup>17</sup> The courts, however, have generally held that there is no difference between a resolution, order, or motion adopted by a governing body. The name used by the council or commission of a city does not change the nature of the steps taken. The method of passing resolutions, motions, or ordinances generally is defined in the municipal charter and must be followed.

A municipal ordinance carries the authority of the state and has the same force and effect within the corporate limits as a state statute. No particular formality in wording is required or essential to the validity of a municipal ordinance in the absence of specific requirements in the charter or state laws.<sup>18</sup>

Generally, if a municipal council has the power to enact an ordinance, it has the power to repeal it. However, the repeal must comply with all the formalities required for enacting a new ordinance.<sup>19</sup> Therefore, an ordinance may be repealed by the body that made the ordinance, the

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state legislature, the courts, or a subsequent amendment to nullify the ordinance.

Many local fire department officials have found it necessary to present language to promote the enactment of charter amendments or local ordinances to protect their fire-based EMS system. The experiences of fire departments in the following cities may be useful for fire service leaders in cities without ordinances or charter provisions to ensure that only the fire departments operates emergency medical services.

#### Mansfield, OH

Mansfield's city charter, which did not include any protections for the fire-based EMS, was up for review in 1996. IAFF Local 266 members were able to secure two seats on the Charter Review Commission with the City. These fire fighters also prepared language for an amendment that would prevent the privatization of fire department EMS response services in the City of Mansfield without a majority vote of the citizens.

In November 1995, the charter amendment was submitted to the Review Commission for consideration. In June 1996, the members of the Commission voted to support the amendment. The amendment was then brought before the Mansfield City Council which favored the amendment but requested that the City Law Director review and refine the amendment's language. Following this review, the amendment was forwarded to the Secretary of State for review. In September 1996, the official language for the amendment was returned from the Secretary of State to the County Board of Elections. In Mansfield, charter amendments must receive a majority vote for passage. On the ballot, the proposed charter amendment read as follows.

Shall Section 11.02 of Article XI of the Charter of the City of Mansfield be added to provide for the City of Mansfield to provide Emergency Medical Service to the citizens of the City of Mansfield in accordance with current policy?

In October 1996, an officer of IAFF Local 266 attended a meeting of the Rules Committee. Members of the Rules Committee of the County Board

of Elections for Mansfield were concerned that the language would prevent fire department policies from being changed without a city-wide vote. Fire fighters explained that the intent of the language was to keep the fire department's EMS first responder policy intact, preventing Mansfield from lowering standards for EMS provision. The Committee then concurred with the amendment's language. Later in October 1996, the Amendment was again brought before the City Council. After two sessions and much debate, the Council members endorsed the fire department's amendment.

IAFF Local 266 then began a public relations effort to promote the amendment. Fire fighters printed brochures for citizens and distributed them throughout the City, targeting public events, such as the city's Halloween parade, with approximately 3,000 in attendance. Fire fighters attended area political candidates' nights, as well as meetings of the NAACP and the AARP, seeking endorsements. Fire fighters also spoke in area churches, on local television, and in newspaper coverage.

Finally, during November 1996, Mansfield's citizens approved the charter amendment. Involvement in the political process and wide scale public information enabled these fire fighters to protect the EMS system in their community.

### Idaho Falls, ID

The city of Idaho Falls has long recognized the value of a fire department-based EMS system. In 1991, city officials passed an ordinance that prohibits private ambulance services from operating within the city limits.

This ordinance language may serve a model for other cities.

#### *SECTION:*

- 4-16-1: Purpose*
- 4-16-2: Ambulance Defined*
- 4-16-3: Ambulance Service Defined*
- 4-16-4: Patient Defined*
- 4-16-5: Ambulance Services Prohibited*
- 4-16-6: Exceptions*

4-16-1: PURPOSE: The City recognizes that it is not economically feasible to operate more than one ambulance service within the city, and that the high cost of acquiring capital and equipment and facilities and maintaining

a qualified labor force for operation of an ambulance service renders it impractical to allow ambulance services to operate on a competitive basis. The City further recognizes that it is in the public interest to provide public ambulance services at cost to the public and that the prohibition of private ambulance services with the City will facilitate the delivery of public ambulance services at the lowest possible cost to the public.

4-16-2: AMBULANCE DEFINED: For purposes of this Chapter, an “ambulance” is any motor vehicle designed, constructed, equipped and operated for the purpose of transporting patients.

4-16-3: AMBULANCE SERVICE DEFINED: For purposes of this Chapter, an “ambulance service” is the business of transporting patients for hire, pecuniary profit or gain.

4-16-4: PATIENT DEFINED: For purposes of this Chapter, a “patient” is any person who is injured, ill or otherwise incapacitated.

4-16-5: AMBULANCE SERVICES PROHIBITED: Unless specifically excepted from the provisions of this Chapter, it shall be unlawful for any person to conduct or engage in any ambulance service within the City.

4-16-6: EXCEPTIONS: The prohibitions set forth in this Chapter shall not be construed to prohibit or regulate the following activities:

- (A) Operation of ambulance services by the State, County, City or other government agencies;
- (B) Transportation of patients by helicopter or other aircraft.
- (C) Transportation of patients from within the City to a place outside the City by an ambulance service whose principal place of business is outside the City.
- (D) Transportation of patients from outside the City to a place within the City by an ambulance service whose principal place of business is outside the City.
- (E) Transportation of patients from outside the City to another place outside the City by an ambulance service whose principal place of business is outside the City.

## Dover, NH

The City Charter of Dover was amended to require that all public safety employees be employees of the city. This amendment became effective in November 1983, coinciding with the removal of The Wackenhut Company, a private provider, from Dover Fire and Rescue Services.

The charter amendment states employee requirements as follows.

### C7-7 Public Safety employees

All public safety employees shall be appointed and promoted consistent

with the provisions of C7-1 and shall at all times be employees of the City. "Public safety employees" shall be construed to mean those employees that provide police and fire protection.

A City ordinance further defines the duties of the fire department as stated below.

#### DOVER CODE

##### 3-10. Fire Department.

A. The Department of Fire, under the supervision of a Fire Chief, appointed as specified by the City Charter, who shall have all the powers conferred upon fire wardens by the laws of the State of New Hampshire, shall consist of such forces of permanent officers and call officers as may be recommended by the Fire Chief and approved by the Manager. [Amended 2-21-90 by Ord.No. 1-90]

B. The Fire Department shall perform the following functions [Amended 10-25-78 by Ord. No. 23-78]:

- (1) Extinguish fires and protect life and property against fires.
- (2) Enforce all laws regarding the inspection for and removal of fire hazards and the prevention of fires.
- (3) Care for and maintain all property and equipment assigned to the Fire Department.
- (4) Care for and maintain the signal alarm system.
- (5) Prepare and maintain all Fire Department records as required.
- (6) Issue fire permits as required.
- (7) Plan and carry out a training program of instruction for all regular and call firemen.
- (8) Cooperate with surrounding communities through mutual aid programs so that additional fire fighting facilities may be made available when needed.
- (9) Perform all other related functions as required.

#### Albuquerque, NM

The fire fighters in Albuquerque have proposed an ordinance to be adopted by the city council that would place the authority over the local emergency medical services system in the hands of the Fire Chief. Excerpts from the proposed language follow.

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## ORDINANCE

Eliminating the emergency medical services authority and establishing the Fire Chief as the authority over emergency medical services in the City; charging the Fire Chief with delivery of emergency medical services and transport services; establishing a Medical Advisory Board; providing for oversight by the Public Safety Advisory Board; establishing a Providers Advisory Committee; establishing a contractual process for inclusion on a rotation list for the provision of ambulance transport services needed for 911 system responses; repealing Chapter 9, Article 4, Part 4, ROA 1994; be it ordained by the Council, the governing body of the City of Albuquerque:

### Section 1. SHORT TITLE.

This Ordinance may be cited as the "EMS Ordinance."

### Section 5. SYSTEM AUTHORITY.

(A) The Fire Chief or his designated representative, acting under the authority of the Mayor, shall be charged with the delivery of EMS and transport services generated through the 911 Emergency System in the City. Agencies whose primary function is the transportation of patients to health care facilities shall engage in appropriate contractual agreements with the City in order to operate and respond as a component within the 911 Emergency System.

(B) Oversight and Enhancements. The Public Safety Advisory Board shall provide general oversight with regard to the operations of the EMS Emergency Service provided by the City and shall be responsible for the investigation and improvement, if appropriate, of existing EMS programs. Ambulances, acting under regulation of the State Corporation Commission, shall respond within the 911 Emergency System as required by the Fire Department as stipulated in specific contractual agreements. Additionally, ambulances shall provide to the Chief performance reports and statistics for submittal to the Public Safety Advisory Board. In matters related to patient care and the delivery of medical services, the Chief shall solicit direction from the Medical Advisory Board established by Section 7 of this Ordinance.

(C) EMS Report. The Chief shall prepare and submit an annual report concerning activities, finances, and the performance of the EMS Emergency System and ambulance transport system to the Council and the Mayor.

(D) System Restructuring. The Public Safety Advisory Board, with input from Medical Advisory Board, shall monitor the present operation of the EMS Emergency System and ambulance transport system, establish desired performance standards, and, if necessary, recommend system changes to the Mayor.

At this time, the ordinance is being considered by the city council.

Orange City, CA

In November 1996, the Orange City fire fighters were instrumental in proposing an urgency ordinance regarding the operations of EMS. The ordinance was proposed to amend a section of a previous ordinance that could have limited the City Council's ability to make decisions regarding ambulance transportation. The ordinance was amended and further declared ambulance transportation as a municipal function. The ordinance language follows.

ORDINANCE NO. 30-96  
AN URGENCY MEASURE OF THE CITY COUNCIL OF THE CITY OF  
ORANGE  
DECLARING ITS INTENTION REGARDING THE PROVISION OF  
AMBULANCE SERVICES.

WHEREAS, the City Council of the City of Orange has adopted a comprehensive Ordinance pertaining to the provision of ambulance services as set forth in Orange Municipal Code Chapter 5.35; and

WHEREAS, that Chapter established a procedure to select an ambulance service provider that calls for a fair and impartial means for selecting responsible private operators to provide such services; and

WHEREAS, the City Council never intended, and the Ordinance does not state or imply, that the City would be required to competitively bid against an existing ambulance service provider; and

WHEREAS, the City Council never intended, and the Ordinance does not state or imply, that the City would be required to competitively bid against an existing ambulance service provider; and

WHEREAS, the City Council does hereby wish to declare its intention that the City Council retained the authority to provide ambulance services by using City forces, or another government entity's services, without competitively bidding against any private operator; and

WHEREAS, litigation is now pending which threatens to disrupt the manner in which the City Council has determined to provide ambulance services for the public health and safety; and

WHEREAS, the City Council does therefore determine, by a four-fifths vote, that this Ordinance is necessary for the immediate preservation of the public health and safety since the City will be left without an ambulance service ready to respond should an injunction issue declaring that Medix Ambulance Service, Inc., is to be the City's ambulance service provider.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORANGE  
HEREBY ORDAINS AS FOLLOWS:

SECTION I:

That Section 5.35.010 of the Orange Municipal Code is amended to read:

5.35.010 Intent and Purpose. It is the intent of this Chapter to establish general operating procedures and standards for medical transportation services

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operating within the City in both emergency and other situations, to provide a fair and impartial means of allowing responsible private operators to provide such services in the public interest and to provide a means for the designation of emergency response areas. Nothing stated herein is meant to abrogate or limit the right of the City to provide ambulance services utilizing its own forces or the services of another public entity and nothing herein stated is meant to require that this City or another public entity is required to competitively bid against any private provider, either existing or proposed. Nothing stated herein is meant to confer any vested or contract rights to any service provider to provide such services to those persons within the City of Orange on an exclusive or non-exclusive basis. Neither the City nor any other public entity shall be required to comply with the requirements of this chapter. Whether the City Council shall provide such services itself or by another public entity shall be a matter within the City Council's sole and absolute discretion regarding how the public health, safety and welfare will best be served.

SECTION II:

That section 5.35.020 of the Orange Municipal Code is amended to add the following definition:

PRIVATE OPERATOR means an ambulance service operator other than the City of Orange, its employees, any special district, joint powers authority or other public entity providing ambulance transportation services.

SECTION III:

The City Council further finds and declares that this section is declarative of existing law, and that no action of the City Council taken prior to November 26, 1996, violated this section as it read, then or now.

SECTION IV:

This Ordinance is intended to supersede existing provisions of the Orange Municipal Code to the extent those existing provisions are inconsistent.

SECTION V:

Severability. If any section, subdivision, paragraph, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed this Chapter, and each section, subdivision, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

SECTION VI:

This urgency ordinance shall take effect immediately in order to protect

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the public health, safety and welfare.

SECTION VII:

A summary of this urgency ordinance shall be published once within fifteen (15) days after this urgency ordinance is passed, in a newspaper of general circulation, published and circulated in the City of Orange. The City Clerk shall post in the Office of the City Clerk, a certified copy of the full text of such adopted urgency ordinance along with the names of those City Council members voting for and against the urgency ordinance in accordance with Government Code 36933.

Adopted this 26th day of November, 1996.

Fire department officials must be well versed in the local municipal charter language and ordinances that may affect their delivery of emergency medical services. Should the existing provisions be determined insufficient, steps should be taken to amend them.

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## CONCLUSION

The EMS systems now in place throughout the United States are the direct result of the work of individuals at the federal, state, and local levels of government. With the assistance of federal initiatives, including EMS program standards, EMS training and practice levels, emergency communication systems, and research and prevention efforts, the EMS systems envisioned three decades ago are functioning well in most areas.

State governments will continue to play a major role in the organization and delivery of EMS. From the administration and oversight of training programs to the direct inspection and monitoring of response vehicles and equipment, state EMS organizations are responsible for ensuring adequate EMS coverage from all citizens.

The responsibility for actually providing EMS, however, rests with the local governments. As a part of local governments, fire department officials must promote the attributes of fire-based EMS response systems that make them superior to other system designs. Acting at the local level, fire department leaders can ensure the adequacy of their EMS systems by seeking to place or maintain the system within the fire department. This may require that fire fighters become involved in the local political process and in efforts to amend city charters or local ordinances.

It is critical for fire department officials to be politically knowledgeable and prepared to promote EMS issues at all levels of government. The value of fire-based EMS systems must be recognized by federal, state, and local governments, the medical community, and the public. It must be a genuine and continuing priority. Decision makers must make protection of fire-based EMS services a genuine priority and must ensure that adequate funding resources are available.

## ENDNOTES

- 1 SPRUILL, W.N., "EMS: WORKING WITH AND WITHIN THE 'SYSTEM'," IN PRINCIPLES OF EMS SYSTEMS, 2ND ED. AMERICAN COLLEGE OF EMERGENCY PHYSICIANS, 1994.
- 2 FOOD AND DRUG ADMINISTRATION, CENTER FOR DEVICES AND RADIOLOGICAL HEALTH, DIVISION OF SURVEILLANCE SYSTEMS (HFZ-530), MEDICAL DEVICE REPORTING INQUIRIES, ROCKVILLE, MD.
- 3 NATIONAL ASSOCIATION OF STATE EMS DIRECTORS, EMERGENCY MEDICAL SERVICES TRANSPORTATION SYSTEMS AND AVAILABLE FACILITIES, NATIONAL EMS CLEARINGHOUSE, LEXINGTON, KY, 1988.
- 4 METCALF, W., "STATE AND REGIONAL EMS SYSTEMS," IN PRINCIPLES OF EMS SYSTEMS, 2ND EDITION, AMERICAN COLLEGE OF EMERGENCY PHYSICIANS, 1994.
- 5 *IBID.*, P. 128.
- 6 THE COMMONWEALTH OF MASSACHUSETTS, CHAPTER III C, THE EMERGENCY MEDICAL SERVICES SYSTEM (PROPOSED AMENDMENTS).
- 7 EXPANDED ACCESS TO DEFIBRILLATION: LEGISLATIVE ADVOCACY GUIDE; AMERICAN HEART ASSOCIATION, 1996.
- 8 RHYNE, C., "CREATION, ALTERATION, DISSOLUTION," IN MUNICIPAL LAW, NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS, 1957.
- 9 *IBID.*
- 10 *IBID.*
- 11 *IBID.*
- 12 *IBID.*
- 13 *IBID.*
- 14 *IBID.*
- 15 RHYNE, C., "MUNICIPAL ORDINANCES AND RESOLUTIONS," IN MUNICIPAL LAW. NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICER, 1957.
- 16 *IBID.*
- 17 *IBID.*
- 18 *IBID.*
- 19 *IBID.*