

**THE PROCESS FOR DETERMINATION OF PUBLIC NEED FOR A
NEW AMBULANCE SERVICE AND/OR
EXPANSION OF AN EXISTING AMBULANCE SERVICE**

This policy has been adopted by the Regional EMS Council of NYC (Council) as the official process for an applicant to follow when applying for a new or expanded ambulance service certificate in accordance with New York State Public Health Law Article 30.

In order to determine if need exists for a proposed additional ambulance service or the expansion of an existing ambulance service, the Council adopted this procedure that consists of the following components:

- I. The Application
- II. Applicant Required Solicitations
- III. Application Submission
- IV. Public Notice
- V. The Public Hearing
- VI. Regional Council Determination
- VII. Issuing Operating Authority or Appeal

DEFINITIONS:

Public Need

New York State Department of Health, Bureau of Emergency Medical Services, Policy 93-10: EMS Service Operating Authority Approvals, page 3, defines Public Need as, “The demonstrated absence, reduced availability or an inadequate level of care in ambulance or emergency medical service available to a geographical area which is not readily correctable through reallocation or improvement of existing resources.”

Variables in considering "Public Need":

- Geography
- Population - size, density, projections
- Level of Care - existing, availability, need for
- Quality, reliability and response of existing services
- Type of Service - emergency, non-emergency
- Special need - air, industrial, facility, special population, and community identified need
- Existing service effectiveness, cost and operational
- Other locally defined factors

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Competency

Pursuant to Article 30 of the New York State Public Health Law, Section 3005(8), "***Competent***" means any proposed operator of any ambulance service or advanced life support first response service who is already or has been within the last ten (10) years an incorporator, director, sponsor, principal stockholder, or operator of any services/agencies, which is rendering or did render a substantially consistent high level of care, and has been issued an operating certificate by any or all of the following:

- The New York State Department of Health or equivalent in any other state,
- The New York State Department of Social Services or equivalent in any other state,
- The New York State Department of Mental Hygiene or equivalent in any other state,
- The New York State Department of Transportation or equivalent in any other state.

A consistently high level of care will not be considered to have been rendered where there have been violations of the State EMS code, or other applicable rules and regulations, that:

- (i) threatened to directly affect the health, safety, or welfare of any patient, and
- (ii) were recurrent or were not promptly corrected.

Fitness

Pursuant to PHL 3005(8) "***Fit***" means that the operator or proposed operator:

1. has not been convicted of a crime or pleaded nolo contendere to a felony charge involving murder, manslaughter, assault, sexual abuse, theft, robbery, fraud, embezzlement, drug abuse, or sale of drugs; and
2. is not or was not subject to a state or federal administrative order relating to fraud or embezzlement, unless the commissioner finds that such conviction or such order does not demonstrate a present risk or danger to patients or the public.

I. THE APPLICATION

1. The applicant bears the burden of proof for the demonstration of public need and is responsible to respond to and/or provide data for all requirements and criteria stated in this policy.

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2. The appropriate time to obtain and submit data and material required in an application is prior to the date the application is submitted. If, at any time prior to the date the application is deemed complete, an applicant finds that it will require additional time to obtain data necessary to respond to the requirements, the applicant will be permitted to withdraw the application without prejudice.
3. It is the applicant's responsibility to verify, that prior to submission, the application is properly completed and that all necessary forms and attachments are submitted in accordance with all regulations and this policy.
4. All applications shall be complete, submitted on the prescribed State Forms (DOH 3777 & DOH 3778), be notarized and affirmed, be accompanied by all required attachments, endorsements, evidence and other supporting and explanatory material the applicant wishes the Council to consider.
5. The applicant shall attest to the competency and fitness of the owners, directors and officers of the corporation by providing a description of the organizational background and a biography or CV for each, highlighting their experience relevant to running an ambulance service. The Affirmation of Fitness and Competency (DOH 3778)¹ shall be provided for each owner, director and/or officer of the corporation.
6. An application fee of \$ 3000.00 must accompany all applications. All checks or money orders are to be made payable to The Regional EMS Council of New York City, Inc. The application fee is to be used to cover any expenses that may be incurred by the Council in the determination process. If the review process costs less than \$3000.00, the difference will be returned to the applicant. If the process exceeds the cost of \$3000.00, the applicant agrees to be billed for and will be responsible for the balance.
7. The complete application is the basis for the determination of need. At the public hearing the applicant shall be restricted to corroborating and/or explaining the data therein.
8. The application and narrative must:
 - a) describe the exact proposed area of service using recognized geo-political boundaries (in New York City use only city, county or community boards).
 - b) include a map of the exact proposed area to be covered

¹ The Regional EMS Council of NYC does not conduct the Fitness & Competency review for new applicants. This is a NYS DOH responsibility and the application only serves to gather the required information and affirmations.

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9. Include a comprehensive budget for the first year of operation (including anticipated revenues, expenses and capital expenditures) and budget narrative (including a description of the initial source of funds, the adequacy of future revenues, etc.), which shall be attached to the application. The budget must reflect the specific anticipated needs of the ambulance service.

10. Contain an impact statement that describes the *positive and negative* impact the proposed new or expanded service shall have on the area and the existing providers of first response and ambulance service. The impact statement must include, but is not limited to the following:
 - a) For all existing first response and ambulance services (municipal, volunteer, commercial and hospital) licensed to provide service within the proposed service area) in terms of, but not limited to:
 - i. a list of all existing services
 - ii. service areas
 - iii. staffing
 - iv. levels and types of service provided
 - v. call volume for the previous 12 months
 - vi. actual response times
 - vii. mutual aid
 - viii. ability and quality of existing services,
 - ix. financial impact on existing services,
 - x. adverse effects on existing services

 - b) The EMS system in New York City in terms of:
 - i. description of the system,
 - ii. all existing EMS agencies,
 - iii. hospitals and other institutions that generate calls,
 - iv. participation agreements,
 - v. communication system interface,
 - vi. medical direction and control,
 - vii. protocols
 - viii. quality assurance
 - ix. medical control
 - x. receiving hospitals
 - xi. any possible economies and improvements in service to be anticipated from the applicant.

11. The positive effects and benefits the new service will provide to the NYC EMS system.

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12. The applicant will address in detail the following criteria items, developing a narrative addressing the need for the new service. Include a specific statement identifying the public need and how the new service will meet the need. This narrative and the supporting data will be the basis of evaluating the public need:

- a) New Service Description:
 - i. Describe all relevant operational aspects for the proposed new service including but not limited to:
 - (1) number of ambulances,
 - (2) service location(s),
 - (3) number of EMTs and/or AEMTs, for volunteer services, a listing of individuals who have expressed in writing their interest in staffing the new volunteer service,
 - (4) staffing patterns,
 - (5) hours of operation,
 - (6) levels of service.
- b) Population Demographics:
 - i. Describe the area to be served and the population of the jurisdiction requesting the ambulance service, including but not limited to tourism and traffic flow through the area?
 - ii. Does the area have a large enough population base to support a new or expanded ambulance service?
 - iii. Include map of the exact proposed territory using recognized political boundaries (in NYC only city, county or community boards).
- c) Description of Calls:
 - i. How many calls for service and how many emergency calls are made in the proposed area?
 - ii. What is the average daily rate of calls for this area?
 - iii. Would the area have a large enough demand to maintain full-time service?
 - iv. What is projected call volumes for one year ?
 - v. What is the source of calls ?
 - vi. What will be the projected response times ?
 - vii. Provide a list of the destination hospitals that will receive the service's patients.
- d) Response Times:
 - i. What is the average response time for all calls and emergency calls during the previous 12 months?
 - ii. Do the facilities in the area experience any difficulty in obtaining a response to a request for ambulance service?
 - iii. Is the average response time reasonably prompt for the type of call or under response-time specifications?

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- e) Quality of Service:
 - i. What is the quality of existing services and how do present conditions affect public convenience?
 - ii. Do the nearby ambulance services adequately cover the emergency medical needs of the area?
 - iii. Would a newly licensed or expanded ambulance service be an improvement to public convenience?

- f) Mutual Aid:
 - i. Do mutual-aid agreements exist among the area under consideration and the nearby ambulance, police, and fire units?
 - ii. Are these agreements necessary for adequate coverage of this particular area?

- g) Employee/Member Qualifications:
 - i. Will the prehospital care provider staff of the proposed ambulance service have a sufficient level of clinical experience for maintaining emergency care?

- h) Skill Retention:
 - i. Would opportunities exist for personnel to maintain their level of skill?
 - ii. If a new or expanded ambulance service was added, would the dilution of service calls between the ambulance services cause decay in skills due to inactivity?

- i) Communications:
 - i. Are the existing communication capabilities adequate for maintaining medical control and directing ambulance personnel?
 - ii. Would the proposed new or expanded ambulance service be a burden to the current system of communications, or a positive addition or improvement?

- j) Fiscal Stability:
 - i. Is the proposed comprehensive budget realistic in terms of expected revenues and expenses?
 - ii. Are all budget assumptions (capital, operations, cash flow, etc.) fully explained?
 - iii. Is the initial financing adequate?
 - iv. Are the financial resources available sufficient to maintain a full-time service?

- k) Organization and Administration:
 - i. How will the ambulance service be organized and administered?
 - ii. Does management seem willing to support an ambulance service and is management capable of performing its duties?

- l) Cost Benefit Ratio:
 - i. What is the total cost (risks, burdens) of the new or expanded ambulance service?
 - ii. Are the benefits that the proposed area would receive worth the expense?

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- m) Community Support:
 - i. Does public opinion in the proposed area favor the establishment of new or expanded ambulance service.
 - ii. Who in the community will benefit from the proposed service?
 - n) Government Support:
 - i. Do local government planning agencies favor establishment of the new or expanded ambulance service?
 - o) Reallocation of Existing Resources:
 - i. Are there any viable alternatives other than licensing a new or expanded ambulance service?
 - ii. To what extent have these alternatives been explored and how likely are they to be implemented?
13. Statement from the (new) service's Medical Director listing credentials and acknowledging his/her intent to serve as Medical Director for the proposed new or expanded service. Additionally identifying the roles and responsibilities as Medical Director relevant to the level of service to be provided.
14. If applicant is applying for Advanced Life Support (ALS) level of service, documentation that:
- a) All employees providing ALS have been or will be tested and certified by the Regional Emergency Medical Advisory Committee;
 - b) The service and personnel intend to operate under the ALS Standards and Protocols promulgated for the region by the Regional Emergency Medical Advisory Committee;
 - c) Has On-line Medical Control as approved by the Regional Emergency Medical Advisory Committee (On-Line Medical Control is not required for services providing care below the level of EMT-D);
 - d) The service agrees to file periodic statements signed by the Chief Executive Officer and the Medical Director documenting Medical Control and agreeing to abide by the Regional ALS Standards and Protocols;
 - e) The service agrees to participate in the Regional QA/I program

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II. APPLICANT REQUIRED SOLICITATIONS

1. It is the intent of the public hearing process to obtain input from all who use, provide, pay for or compete in the EMS arena. Therefore the applicant shall solicit letters of endorsement from, but not limited to, the following agencies or organizations providing service within the proposed service area and those with service areas bordering the proposed area.
 - a) All Ambulance Agencies certified to provide ambulance service in NYC;
 - b) The Emergency Department Medical and/or administrative Directors of all the receiving hospitals within the new service's proposed area of service and/or that the service intends to deliver patients to;
 - c) Municipalities and/or municipal organizations (specifically in NYC – Community Boards)
2. All letters of solicitation must include:
 - a) a general description of the proposed new or expanded service;
 - b) the type and level of service to be provided;
 - c) the definition of public need;
 - d) a request for response by a specific date.
3. All letters of solicitation must be sent via certified mail, return receipt requested.
4. The application shall include a copy of a sample letter of solicitation, a list of individuals/agencies to which it was sent, any responses received and the return receipts.
5. All letters in response to the applicant's solicitation should be signed by the Chief Executive Officer (CEO) of the agency or an authorized designee, can be no more than six (6) months old, and if in support shall be responsive to the definition of public need.

III. APPLICATION SUBMISSION

1. The application submission process is as follows:
 - a) One copy of the application with original signatures and check or money order in the amount of \$3000.00 is to be sent to the offices of the Council as follows:

Regional EMS Council of New York City, Inc.
475 Riverside Drive, Suite 1370
New York, New York 10115
Attention: Ambulance Committee

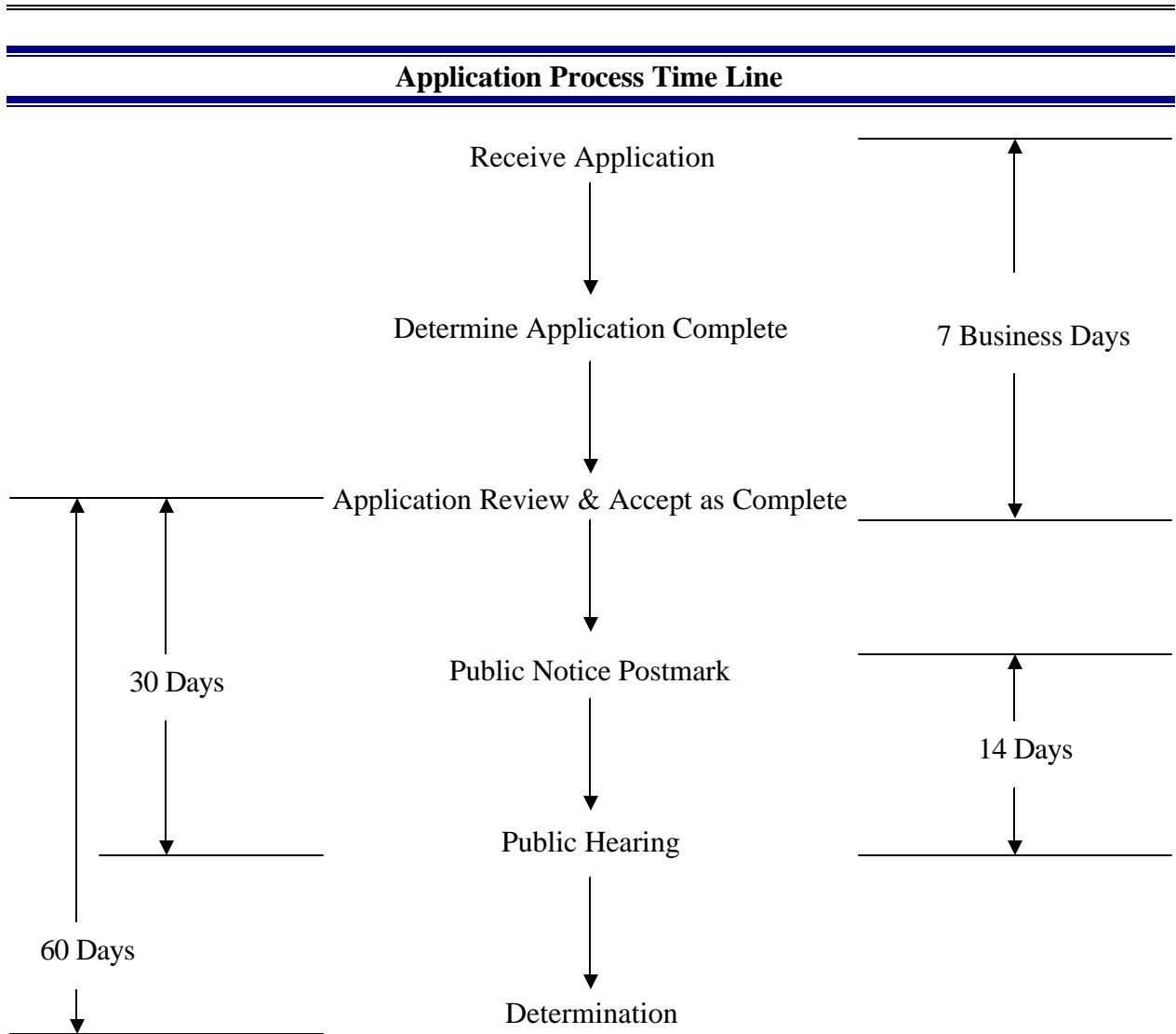
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2. If the Ambulance Committee or its designee deems the application to be incomplete, it shall be returned to the applicant within seven (7) business days from the date of receipt. A list of areas that are incomplete will be provided to the applicant.
3. The applicant will be given thirty (30) days to complete the application. If at the end of the thirty (30) day period the applicant has not sent in a completed application or a request for an extension of the time period, a final bill of expenses will be sent to the applicant and a refund for any of the \$3000.00 not expended in the review of the application.
4. In the case an application is deemed incomplete, the entire application will be returned to the applicant to have the additional required information integrated into a revised application prior to resubmission. Multiple addendums and attachments **are not acceptable**. *The final application must be one complete, comprehensive document.*
5. Upon determination by the Ambulance Committee or its designee that the application is complete, the applicant will be notified via certified mail within five (5) business days of the date the application is deemed complete. The Public Hearing shall be scheduled upon acceptance of a complete application.
6. Upon determination that an application is complete the applicant shall provide ten (10) complete copies of the application to the Offices of the Council.
7. The Regional EMS Council of New York City will forward a copy of the accepted, complete application to the New York State Department of Health New York City and Central offices.

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IV. PUBLIC NOTICE

1. The Council shall establish a date, time and location for a public hearing to review the application.
2. The public notice shall be postmarked at least (14) fourteen days prior to the hearing date. The notice will be sent in accordance with Article 30, Section 3008, certified return receipt to:
 - a) "...the Chief Executive Officers of all general hospitals, ambulance services, and municipalities operating within the same county or counties where the service seeks to operate..."
 - b) Additionally in NYC the Council shall include the Chair of each Community Board in the proposed service area.
3. The notice will include the following:
 - a) Date, Time, and Location of Hearing;
 - b) Guidelines for Determination of Public Need;
 - c) A solicitation of response to the application by a specific date;
 - d) Notification of the availability for review of the application at the Offices of the Regional EMS Council by appointment.
4. Copies of the notification, the list of recipients and postal receipts will be kept on file at the Offices of the Council as part of the permanent record of the application.
5. Public Notice shall be published in "*The New York Times*" only.

V. THE PUBLIC HEARING

- 1) The purpose of the public hearing is to provide a technical review, objective evaluation and public need fact finding of the applicant's statement of need and receive any public comment regarding the application..
- 2) The Ambulance Committee of the Council will hear each application and coordinate the Public Hearing.
- 3) The Ambulance Committee will conduct the public hearing and application review for all applications of determination of public need.
- 4) Public notice shall be postmarked at least fourteen (14) days prior to the hearing date.

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- 5) The hearing shall be established at a time and place deemed logical to the application.
- 6) The hearing officer designated by the Ambulance Committee and approved by the Council shall preside at the fact-finding hearing and shall determine all questions of procedure that may arise.
- 7) The Ambulance Committee members will assist the hearing officer by acting as advisors in their respective areas of expertise.
- 8) It shall be at the hearing officer's discretion as to whether or not witnesses shall be sworn; said decision to be made at the commencement of the hearing and if any witnesses are to be sworn, then all witnesses shall be sworn.
- 9) The applicant has the right to participate in the hearing and to be represented there at by counsel of the applicant's choosing and at the applicant's expense.
- 10) If the applicant elects to be represented by counsel at the hearing, in the event more than one (1) attorney appears on behalf of the applicant, then the applicant must designate which attorney shall participate in the proceeding on the applicant's behalf and only the designated attorney shall be recognized.
- 11) The applicant is not required to participate in the public fact finding hearing; however, if the applicant is requested to testify and refuses to do so, the hearing officer, members of the Ambulance Committee and members of the Council may draw inferences unfavorable to the applicant from the applicant's refusal to testify.
- 12) The Council will make provisions for the hearing to be recorded via stenographic recorder. A copy of the transcript will be made available to the applicant and any other party at the expense of the party or parties requesting it.
- 13) In the conduct of the hearing, the hearing officer shall not be bound by the formal rules of evidence of the State of New York as set forth, and amended, in the Civil Practice Law and Rules.
- 14) The application accepted as complete is the basis for the determination of need. In the public hearing the applicant shall be restricted to corroborating and or explaining the data therein.
- 15) It is the applicant's burden to document and demonstrate the absence, reduced availability or an inadequate level of care in ambulance or emergency medical service available to a geographical area which is not readily correctable through the reallocation or improvement of existing resources (New York State Department of Health, Bureau of Emergency Medical Services, Policy 93-10: EMS Service Operating Authority Approvals).

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16) The format of the hearing shall be as follows:

- a) A statement by the hearing officer setting forth the rules and procedures to be followed;
- b) At the discretion of the hearing officer, opening statements by the applicant, or applicant's counsel, and by protestants, or by protestant's counsel;
- c) The applicant shall be given the opportunity to put forth its proof first and may call witnesses to offer testimony relevant to the facts at issue. Each witness must be identified and their anticipated testimony summarized in a list which must be received by the Offices of the Council not less than five (5) days prior to the scheduled date of the hearing;
- d) The protestants, if any, or their counsel, shall have the right to question each of the applicant's witnesses with respect to any testimony such witnesses gave;
- e) Each protestant, if any, may offer testimony that is relevant to the facts in issue. Each protestant shall have the right to be represented by counsel subject to the same conditions as apply to the applicant's right to counsel;
- f) The Chair-person of the Ambulance Committee and or his/her designee, shall have the right to question each of the applicant's witnesses with respect to any testimony such witnesses gave;
- g) The hearing officer shall have the right to question any witness with respect to any testimony given upon completion of the witness direct testimony;
- h) The applicant, or applicant's counsel, shall have the right to question every protestant with respect to the testimony offered by the protestants or any witnesses testifying on behalf of the protestants;
- i) A period of time shall be available for testimony from the general public. The time allotted to each speaker shall be determined by the Hearing Officer. The Hearing Officer may request that groups select a single speaker to act as their representative. Groups or individuals wishing to present testimony regarding the application must contact the Offices of the Council to make their intentions known.
- j) At the hearing officer's discretion, the applicant or applicant's counsel, and each protestant or their counsel, shall have the right to make a closing statement;
- k) The hearing officer shall deem the hearing closed;
- l) The hearing officer may permit the applicant and the protestant(s) to file briefs in support of their respective positions.

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17. The hearing officer shall issue a written report and recommendation based upon all the evidence produced at the hearing, to the Ambulance Committee ten (10) days after the completion of the hearing. The hearing officer's report will contain findings of fact and conclusions of law to support the recommendation.
18. The Ambulance Committee will prepare a written summary of the hearing and shall include findings of fact and a recommendation along with any other pertinent findings for presentation to the Council at its next regularly scheduled meeting. The Ambulance Committee may accept, reject or modify the Hearing Officer's report as long as it is accompanied by specific findings to support the change.

VII THE REGIONAL EMS COUNCIL DETERMINATION OF PUBLIC NEED

1. The Chairperson of the Ambulance Committee shall present the Ambulance Committee report, including the summary and specific recommendations to the Regional Council at its next regularly scheduled meeting.
2. The recommendation of the Ambulance Committee will be formatted in a positively stated motion (to accept or reject) and comes to the floor of the Council as a seconded motion for discussion.
3. The Council may place binding contingencies on the approval of an application as long as the conditions are in the interest of the EMS System and are not in conflict with any State law, regulation or policy. As an alternative, the applicant may amend the application at any time during the process with the approval of the Council
4. Any member of the Council who has a direct conflict of interest according to the NYS Ethics Rules and or Council policy shall abstain from voting and will announce their intent to abstain from voting on this issue.
5. A written ballot of the Council members present will be taken to accept or reject the application. The Regional Council shall make such determination by an affirmative vote of a majority of all of those members consisting of voting members.²

² New York State Public health Law, General Construction Law and past New York State department of Health case history determines that this is a majority of the total available membership of the Council (30 members). Vacancies do not reduce the number.

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VII ISSUING OPERATING AUTHORITY OR DECISION APPEAL

1. The Council shall provide written notice of its determination in the format recommended including the determination, findings of fact and conclusions of law to support the Council's determination to the applicant and the NYS Department of Health within five (5) business days, along with a copy of the complete and accepted application.
2. The applicant or any other party directly involved has the right to appeal by filing written notice with the NYS-DOH within thirty (30) days of the date of the Regional Council's determination. Appeals may be directed as follows:

Executive Secretary
The New York State Emergency Medical Services Council
c/o NYS DOH Bureau of Emergency Medical Services
433 River Street, 6th Floor
Troy, NY 12180

3. If the Council's determination was to grant operating authority, and no notice of appeal is filed within thirty (30) days, the New York State Department of Health will issue the Ambulance Service Certificate.
4. If the Council's determination was to grant operating authority, and a notice of appeal is filed within the thirty (30) days, New York State Department of Health will not issue the ambulance service certificate until the conclusion of all administrative processes as defined by law.

The following forms are required and can be downloaded from the NYS Department of Health website:

- **NYS DOH Affirmation of Fitness and Competency (Form 3778)** –
<http://www.health.state.ny.us/nysdoh/ems/pdf/doh3778.pdf>
- **NYS DOH Application for New EMS Service, Expansion of Primary Operating Territory, or Transfer of Ownership (Form 3777)** –
<http://www.health.state.ny.us/nysdoh/ems/pdf/doh3777.pdf>