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September 8, 2021

VIA ELECTRONIC MAIL
(email: Craig@rhfd.org)

Bryan Craig, President
Contra Costa County Fire Chiefs Association
Fire Chief, Rodeo-Hercules Fire Department
2495 Treat Blvd.
Concord, CA 94528

Re: Response to September 3, 2021 Letter Re Ambulance Ordinance Revision

Dear Chief Craig:

Thank you for your letter dated September 3, 2021, responding to the Agency's request for public comment on the proposed revisions to Emergency Medical Services and Ambulance Ordinance ("proposed ordinance"). I appreciate your feedback and will do my best to respond to the issues raised in your letter. Because you did not provide any specific references or citations to legal authority or to the proposed ordinance that support your comments (aside from a reference to AB 438), or direct references to any provision of the proposed ordinance, I will make my best attempt to provide a relevant and accurate response based upon what I am able to interpret from your letter.

In general, most – if not all – of your concerns appear unfounded or have already been mitigated by the latest revisions that CCCEMS posted for public comment on CCCEMS website on Friday, August 20, 2021. I have taken excerpts from your letter and responded below.

- 1. "Fire agencies and private providers are not comparable in need for licensing and permitting regulation by CCEMS and the County. Fire agencies are already subject to regulation by their governing bodies, which are comprised of elected officials. Our governing bodies make policy decisions regarding the agencies' funding, organization, operations, services, and resource levels according to the needs of the communities we serve and those communities' ability to pay for services. These governing bodies are politically accountable to voters and taxpayers for their public policy decisions and the fire agencies' performance of their responsibilities."***



Response:

The proposed ordinance does not expand any regulatory authority upon fire agencies that does not already exist in the current ordinance that was enacted in 1979. CCCEMS agrees that the proposed ordinance does not regulate any fire agencies and does not attempt to expand CCCEMS' existing regulation of any public EMS transport agencies beyond the scope of the current ordinance and regulations already in effect. The proposed ordinance does not alter or affect any public agencies existing obligation to sustainably perform reliable EMS response and transport for calls for service according to local EMS policy and as part of the Contra Costa County EMS System.

2. ***“The existing ordinance and the proposed revisions are therefore contrary to state law. The EMS Act does not grant the County the authority to issue licenses and permits to fire agencies, and the Legislature recently clarified in Stats. 2019, ch. 389 (SB 438) that CCEMS cannot unilaterally prevent fire agency responses or alter fire agency deployments.”***

Response:

I agree that the EMS Act does not grant the County the authority to issue licenses and permits to fire agencies. Hence, the County has had in effect for 34 years an ambulance ordinance to fill the void for regulation that was left open by the state choosing not regulate ambulance service. I am unable to locate any provision in the proposed ordinance that conflicts with state law. I am also unclear what “license” or “permit” you are referencing in your letter. All ALS ambulance contracts require that ambulances be subject to “no notice” inspections. Is there any reason any of your agencies would object to an EMS regulatory agency inspecting an EMS response vehicle and providing a “permit” that memorializes a passed inspection? I have also studied your comments and reviewed again SB 438 to understand your position that the proposed ordinance conflicts with state law, and specifically SB 438. I have also reviewed the Legislative Counsel’s Digest for SB 438. As you are aware, SB 438, which amended Government Code sections 53100.5, 53110, and Health and Safety Code sections 1797.223 and 1798.8, clarified that the authority of a local EMS agency medical director may not be construed to limit the authority of a public safety agency to directly receive and process “911” emergency requests or authorize a local EMS agency to unilaterally reduce a public safety agency’s response mode below that of an EMS transport provider. After a thorough review of your letter, the Legislative Counsel’s Digest, the amended Government and Health and Safety Codes, and the proposed ambulance ordinance, I have been unable to locate any provision in the proposed ordinance that directly or indirectly affects the processing of “911” calls or reduces a fire agency’s response mode below that of an EMS transport provider. Accordingly, I have concluded that this ordinance does not conflict with SB 438. I invite you to provide specific references to any provisions in the proposed ordinance that you believe conflicts with SB 438.



3. ***“More importantly, CCEMS’s unilateral imposition of inconsistent regulatory requirements on our agencies through permits and licenses threatens to impair our agencies’ ability to function as “all-risk” agencies and to contradict the policies set by our governing bodies. Therefore, consistent with the EMS Act, our agencies coordinate their EMS and ambulance operations with CCEMS through voluntary agreements. This process ensures that fire agencies voluntarily agree to EMS requirements and standards they can meet without impairing their other emergency services obligations and policies.”***

Response:

There is nothing in this draft ordinance that applies to any public vehicle other than an ambulance. What conflict are you identifying that would impair your agencies’ ability to operate? I am also unclear on your reference to inconsistent regulatory requirements. Any requirements imposed on an ambulance provider through the existing ordinance, or the proposed ordinance, would not be unilateral nor inconsistent. Contrariwise, the purpose of revising the ambulance ordinance is to create consistency and transparency.

4. ***“Second, CCEMS’s proposed revisions would allow it to investigate and enforce the ordinance and the EMS Act against fire agency personnel without complying with the EMS Act’s mandatory processes or affording our personnel legal and due process protections under the Administrative Procedure and Firefighter Bill of Rights Acts.”***

Response:

This is not a correct statement. The ordinance does not reference, conflict, or supersede the Administrative Procedure and Firefighter Bill of Rights Acts. In fact, nothing in the proposed ordinance addresses or references investigations or processes relating to certifications or licenses of prehospital personnel. I invite you to provide a specific reference to any section of the proposed ordinance that would allow CCEMS to investigate or enforce the ordinance and the EMS Act against licensed or certified prehospital personnel, or that would run afoul of the Administrative Procedure or Firefighter Bill of Rights Acts.

5. ***“Third, CCEMS’s proposed revisions would eliminate the requirement that CCEMS consult with the EMCC and the public before adopting and enforcing rules, regulations, and policies. CCEMS’s rulemaking processes must be open, transparent, and subject to public scrutiny.”***

Response:

The EMCC was created by a resolution of the Board of Supervisors under the authority of state law as an advisory committee to the local EMS agency and the EMS Authority. I have attached a copy of the EMCC bylaws for your information and review.

The EMCC is mandated by state law, and its own bylaws to at least annually, review the operations of each of the following: (a) Ambulance services operating within the county; (b) Emergency medical care offered within the county, including programs for training large



numbers of people in cardiopulmonary resuscitation and lifesaving first aid techniques; and, (c) First aid practices in the county. (See Health and Safety Code § 1797.274). The EMCC is also authorized to advise the local EMS agency on the development of a community paramedicine program or alternate triage destination program and other matters relating to emergency medical services. (See Health and Safety Code § 1797.273, *et seq.*) Nothing in the proposed ordinance repeals or preempts any resolution of the Board of Supervisors or limits the authority of the EMCC granted to it under state law to review or advise those matters delegated to it under Health and Safety Code sections 1797.273 or 1797.274. Additionally, you should know that CCCEMS does not adopt “rules” or “regulations.” CCCEMS does not enforce “rules.”

Because CCCEMS does not adopt rules, it does not have “rulemaking processes.” However, all CCCEMS policies and treatment guidelines are finalized and published after an open, transparent, and collaborative process, as illustrated by several years precedents requesting public comment. This draft ordinance is no exception.

Underscoring CCCEMS’ collaborative and transparent practice, CCCEMS met with each public fire-based transport agency and discussed the history, evolution, meaning and intent of the proposed ordinance. CCCEMS thereafter solicited comments from each transporting fire agency and revised the proposed ordinance based on fire agency feedback before releasing the proposed ordinance for public comment. CCCEMS also met with the County Police Chief’s at their March 2021 meeting and with Moraga-Orinda Police Chief and EMCC chair Jon King. Please see below timeline for fire transport agency and public outreach.

| | |
|---|------------|
| Moraga-Orinda Police Department/EMCC Chair Jon King: | 12/14/2020 |
| San Ramon Valley Fire Protection District: | 03/09/2021 |
| Moraga-Orinda Fire Protection District: | 03/09/2021 |
| Contra Costa County Police Chief’s Association: | 03/24/2021 |
| Contra Costa County Fire Protection District: | 03/26/2021 |
| Received written feedback from CCCFPD: | 04/21/2021 |
| CCCEMS Director email to fire chiefs inviting to meet: | 06/09/2021 |
| Publicly published and posted to CCCEMS website the revised draft, response to all comments submitted by CCCFPD, request for public comment with link to fillable online forms: | 08/20/2021 |

Please also see the attached PDF of an email I sent to all the fire chiefs on June 9, 2021, offering to meet and discuss the draft ordinance and address any concerns they or the County fire chiefs’ association may have.

You should also know that during CCCEMS meeting with each of the fire-based transport agencies, the concerns in your letter were not raised. Moreover, none of the fire agencies participated in the online public comment or used the comment form that was provided for them



and the ambulance transport providers.

6. ***“The Association is willing to accept the County ambulance licensing ordinance revisions if language is added, exempting Fire agencies, Fire agency personnel, publicly owned and operated ambulances, fire apparatus, and emergency response vehicles.”***

Response:

I understand your request that the proposed ordinance broadly exempt fire agencies. However, this ordinance does not impact any fire agencies who do not provide ambulance transport and a blanket exemption is not proper. Publicly owned and operated ambulances who have non-competitive exclusivity pursuant to Health and Safety Code section 1797.224 have many exemptions in the proposed ordinance. However, if a public agency is in the position to bid for a competitive contract, the requirements would be the same for any other bidder in order to mitigate anti-trust issues, *i.e.*, in a competitive bid for exclusivity there must be parity and equity in order for anti-trust immunity to apply.

Pursuant to the EMS Act, any Fire agency personnel who are credentialed as an EMT-B or EMT-P are subject to CCCEMS regulation and oversight because they provide EMS response and are regulated by CCCEMS policies and medical direction. However, there is nothing in this ordinance that exceeds any existing requirements for licensed or certified prehospital personnel.

Fire apparatus have been excluded from the proposed ordinance and any definition that could be construed to include fire apparatus has been removed. I invite you to cite a specific provision in the proposed ordinance if you believe I am mistaken.

In line with the removal of fire apparatus, CCCEMS revised the definition of “Emergency Response Vehicle.” The definition of an emergency response vehicle only applies to “privately owned” vehicles per ordinance definition.

As always, I remain available to meet with you to discuss your concerns.

Sincerely,

CONTRA COSTA COUNTY EMS AGENCY



MARSHALL BENNETT
Director of Emergency Medical Services

cc: Randy Sawyer, Deputy Director of Health Services
Contra Costa County Emergency Medical Care Committee (EMCC)
Louis Broschard, Fire Chief, Contra Costa County Fire Protection District
Paige Meyer, Fire Chief, San Ramon Valley Fire Protection District



Bryan Craig, President
Contra Costa County Fire Chiefs Association
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Dave Winnacker, Fire Chief, Moraga-Orinda Fire Protection District

Attch.: June 9, 2021 email to fire chiefs re: proposed ordinance
EMCC Bylaws



Draft Emergency Medical Services and Ambulance Ordinance of Contra Costa County

Marshall Bennett <Marshall.Bennett@cchealth.org>

Wed 6/9/2021 3:52 PM

To: Broschard, Lewis <Lewis.Broschard@cccfd.org>; Paige Meyer (pmeyer@srvfire.ca.gov) <pmeyer@srvfire.ca.gov>; dwinnacker@mofd.org <dwinnacker@mofd.org>; mpigoni@ci.el-cerrito.ca.us <mpigoni@ci.el-cerrito.ca.us>; Chris Wynkoop <cwynkoop@ci.pinole.ca.us>; Bryan Craig <Craig@rhfd.org>; teachfire@aol.com <teachfire@aol.com>; bhelmick@eccfd.org <bhelmick@eccfd.org>; michael_smith@ci.richmond.ca.us <michael_smith@ci.richmond.ca.us>

Good afternoon Chiefs,

I understand that there may be some issues with the current draft of "Emergency Medical Services and Ambulance Ordinance of Contra Costa County" that need to be clarified and likely discussed.

First and foremost, First Responders were not included in initial stakeholder outreach because there is no (intended) material within the draft that applies to non-transport agencies outside of statutory, regulatory, and local policy requirements that all your agencies already achieve. However, with the feedback we have received from our meetings with SRVFPD, MOFD, and CCCFPD we have identified some sections that need to be qualified with improved language that will distinctly exempt public safety agencies from most current deliverables in the draft ordinance. Most notably the sections that need editing are the definition of "Emergency Response Vehicle", personnel uniforms, transport of cadavers, and some other minor changes that are needed to accurately capture CCCEMS intent and objectives.

The solicited feedback we have already received is an intentional first step and integral part of our process to author and implement an effective ordinance that does not create unintended consequences. I am satisfied with the process that we have conducted thus far, and I would be grateful for any feedback that you as a group or individually might provide after we make our first round of edits. I would also be very happy to meet with you as a group or individually and answer any questions you have on any topics including the current version of the draft ordinance. I would very much like to get to a place where any assumptions made of the LEMSA are founded in positive intent, and I'd like to build trust with you that CCCEMS's objective is to support patient safety and public welfare and not to blur or challenge medical versus operational boundaries.

Please let me know if you'd like to meet in person and discuss the draft ordinance in its current form, I am happy to make myself available to you all. Additionally, if any of you would like to speak to me at any time about any matter, please feel free to call my personal cell phone 209 332 0931.

Thank you all for your partnership and I look forward to future discussions with you all.

Respectfully,

Marshall Bennett
Director of Emergency Medical Services
Contra Costa County
marshall.bennett@cchealth.org
Phone: (925) 608-5454 Office Fax: (925) 228-2492

Emergency Medical Care Committee

BY-LAWS

MISSION STATEMENT

The goal of the Emergency Medical Care Committee (EMCC) is to assure the availability of an effective and efficient emergency medical services system that provides consistent, high quality emergency medical services to all people in Contra Costa County. The EMCC advocates Emergency Medical Services (EMS) system fiscal stability, provides a means for community involvement in defining levels of EMS, and promotes a system that can withstand future challenges and thrive. The EMCC provides the Board of Supervisors, under which it serves, and the Health Services Director with advice and recommendations on EMS system planning and oversight.

I. AUTHORITY.

The Contra Costa County Board of Supervisors, established the Contra Costa County EMCC (Resolutions 68/404, 77/637, 79/460 and by Board Order on February 24, 1998), in accordance with the California Health and Safety Code Division 2.5, Chapter 4, Article 3, to act in an advisory capacity to the Board and the County Health Services Director on matters relating to emergency medical services.

II. DUTIES.

- A. The duties of the EMCC as specified in the California Health and Safety Code Section 1797.274 and 1797.276 are to review the operations of each of the following at least annually:
 - 1. Ambulance services operating within the county.
 - 2. Emergency medical care offered within the county, including programs for training large numbers of people in cardiopulmonary resuscitation and lifesaving first aid techniques.
 - 3. First aid practices in the county.
- B. The EMCC shall, at least annually, report to the Authority, and the local EMS Agency its observations and recommendations relative to its review of the ambulance services' emergency medical care, and first aid practices, and programs for training people in cardiopulmonary resuscitation and lifesaving first aid techniques, and public participation in such programs in the county. The EMCC shall submit its observations and recommendations to the County Board of Supervisors which it serves and shall act in an advisory capacity to the County Board of Supervisors, and to the County EMS Agency, on all matters relating to emergency medical services as directed by the Board.

III. MEMBERSHIP.

- A. Membership of the EMCC shall consist of the following:
 - 1. Consumer representatives - One representative and one alternate representative from each supervisorial district approved by the Board of Supervisors.
 - 2. One representative and one alternate representative from each of the following organizations or groups approved by the Board of Supervisors:
 - a. Alameda-Contra Costa Medical Association
 - b. American Heart Association
 - c. American Red Cross
 - d. California Highway Patrol
 - e. Communications Center Managers' Association
 - f. Contra Costa Fire Chiefs' Association
 - g. Contra Costa Police Chiefs' Association
 - h. Emergency Nurses Association
 - i. Hospital Council, Bay Area Division
 - j. Public Managers' Association

- k. Trauma Center (Contra Costa Contract)
 - l. Contra Costa Sheriff-Coroner
 - m. Contra Costa Health Services
 - n. Community Awareness and Emergency Response – CAER
- 3. One representative and one alternate representative of each of the following groups nominated by the Health Services Director and approved by the Board of Supervisors:
 - a. Ambulance Providers (Contra Costa Contract)
 - b. Air Medical Transportation Provider (Contra Costa Authorized)
 - c. Base Hospital
 - d. Emergency Department Physicians
 - e. EMS Training Institution
 - f. Private Provider Field Paramedic
 - g. Public Provider Field Paramedic
- 4. Existing membership-elected EMCC Officers for the remainder of their terms.
- B. The EMS Director shall serve as an ex officio member.

IV. APPOINTMENT PROCESS

- A. The EMS Agency will contact each of the agencies, organizations and groups listed in Section A, above, to solicit nominations for one representative and one alternate representative prior to the expiration of its representative's and its alternate representative's term.
- B. The nominations received from Sections 3.A.1-2 will be submitted to the Clerk of the Board for the Board of Supervisors' consideration and approval.
- C. The Health Services Director will consider suggested names received from Section 3.A.3. and will provide nominations for these groups for the Board of Supervisors' consideration and approval.

V. TERMS.

- A. EMCC members shall serve for terms not to exceed two years, and elected officers shall remain members of the EMCC for the balance of their terms in office. All terms will expire on November 30th on even-numbered years. There shall be no limit on the number of consecutive terms that an EMCC member may serve.
- B. Any Board-appointed member or alternate member choosing to resign from the EMCC must submit a written letter of resignation to the Clerk of the Board of Supervisors with copy to the EMCC Chair.
- C. The EMS Agency will follow the initial appointment procedure to fill a position for the remainder of a term when there is a resignation or lack of participation.

VI. OFFICERS.

- A. The officers of the EMCC shall be a Chair, First Vice-Chair, and Second Vice-Chair.
- B. Officers shall be elected by the EMCC membership to serve for two years or until their successors are elected. The term will begin on December 1st and terminate on November 30th of odd-numbered years.
- C. Officers may not be elected for more than two consecutive terms in the same office.
- D. In the event of an officer vacancy, the next Vice Chair moves up to the vacant position. In the event of a vacancy of the Second Vice Chair position, the Chair may appoint a member of the EMCC to serve as Second Vice Chair for the remainder of the officer term, subject to an affirmative vote of the EMCC.

VII. DUTIES OF OFFICERS.

- A. The Chair shall preside over all meetings of the EMCC in addition to serving as the Chair of the Executive Committee. The Chair will be a spokesperson for the EMCC and assure that the EMCC

is informed about County emergency medical services issues and needs.

- B. The First Vice-Chair shall assume the duties of Chair in the absence of the Chair and shall render assistance as requested by the Chair. The First Vice-Chair shall also serve as a member of the Executive Committee.
- C. The Second Vice-Chair shall assume the duties of Chair in the absence of the First Vice-Chair and shall render assistance as requested by the Chair or First Vice-Chair. The Second Vice-Chair shall serve as a member of the Executive Committee.
- D. In the absence of the Chair and Vice-Chairs, one of the two non-officer Executive Committee Members shall preside.

VIII. EXECUTIVE COMMITTEE

- A. The Executive Committee is established to conduct the business of the EMCC between regular meetings and shall be composed of the:
 - 1. EMCC Chair
 - 2. EMCC First Vice-Chair
 - 3. EMCC Second Vice-Chair
 - 4. Two non-officer EMCC members
- B. EMCC members elected to the Executive Committee will serve for two years or until their successors are elected. The term will begin December 1st, and terminate on November 30th of odd-numbered years. Executive Committee members may be elected to consecutive terms.
- C. At least one member of the Executive Committee shall be a Citizen/Consumer.
- D. The Executive Committee shall be subject to the orders of the EMCC and none of its acts shall conflict with action or directions of the EMCC.
- E. The Executive Committee shall meet at the call of the Chair, or at the request of a majority of the members of the Executive Committee.
- F. Whenever issues arise requiring the attention of the EMCC before its next regularly scheduled meeting, the Executive Committee shall be empowered to meet and take whatever action is considered appropriate. It will be the responsibility of the Chair to assure that all Executive Board members are notified of such meetings.
- G. Whenever issues must be voted on at Executive Committee meetings in which other EMCC members are in attendance, the voting shall be limited to Executive Committee members.

IX. OFFICER AND EXECUTIVE COMMITTEE SELECTION

- A. The EMCC Chair shall appoint a three-member nominating committee from the membership prior to the June EMCC meeting of odd-numbered years. This committee shall solicit one or more names for each office. The ballot shall be presented at the June meeting, at which time nominations from the floor may be added to the slate. If there are no additions to the slate from the floor and there is a single nomination for each of the Officers, the Chair may call for a vote at the June meeting.
- B. The election of Officers and the two non-officer members of the Executive Committee will be carried out by mail ballot of members if there is more than one nomination for any of the positions. Results of any mail ballot elections will be announced at the September EMCC meeting.
- C. Nominations and election of the two non-officer Executive Committee members will be handled in the same manner as the nomination of EMCC officers.
- D. Whenever a vacancy occurs on the Executive Committee, the Chair shall appoint an EMCC member to fill the vacant position to complete the remainder of the existing term subject to an affirmative vote of the EMCC.

X. MEETINGS.

- A. Regular meetings of the EMCC shall be held at least four times per year or more often as deemed necessary. Meetings will convene at 4:00 pm on the second Wednesday of March, June, September, and December unless otherwise directed by the EMCC or its Executive Committee.
- B. The EMCC Chair may call special meetings as deemed necessary upon ten days prior written notification.
- C. A quorum for the EMCC shall consist of all members (or their alternates) who are present.
- D. Staff support for the EMCC will be provided by the County Emergency Medical Services Agency.

XI. ATTENDANCE.

- A. EMCC members or their alternate members shall attend EMCC meetings.
- B. Whenever a member, or his or her alternate, does not attend three consecutive, regularly scheduled meetings, the Chair of the EMCC may notify the appointing agency/organization of the absences.

XII. VOTING.

- A. All motions placed before the EMCC shall be approved or disproved by the majority of members present and voting.
- B. An alternate for a member shall have full voting rights in the absence of the appointed member.
- C. The EMCC member, or in his or her absence, the alternate member, for each of the groups and agencies identified in Section III, above shall have the right to vote on any motion.

XIII. AD HOC COMMITTEES.

- A. The EMCC membership may appoint ad hoc committees to address EMS related matters.
- B. The EMCC Chair shall appoint chairs and members of any ad hoc committees.
- C. Ad hoc committee members must be members or alternate members of the EMCC.
- D. The EMCC Chair shall be ex officio, a member of all ad hoc committees.
- E. Ad hoc committees shall meet at the call of the ad hoc committee Chair.
- F. Members present shall constitute a quorum.
- G. EMS Agency shall provide a staff member to attend each ad hoc committee meeting.

IVX. BROWN ACT AND BETTER GOVERNMENT ORDINANCE.

County advisory bodies are subject to both the Ralph M. Brown Act (Government Code, sections 54950 et. seq.) and the County's expanded open meeting law, the Better Government Ordinance (Contra Costa County Code, Chapter 25-2.)

VX. PARLIAMENTARY AUTHORITY.

All proceedings of the EMCC and its ad hoc committees shall be conducted in a free and open manner. Upon the request of any three members of the EMCC or at the discretion of the Chair, parliamentary procedure as specified in Robert's Rules of Order will be followed provided they do not otherwise conflict with these by-laws.

VXI. AMENDMENT.

These by-laws may be amended by a two-thirds vote at any regularly scheduled meeting of the EMCC provided that the amendment has been submitted in writing to all members ten (10) working days prior to the meeting.