

# ATTACHMENT

For Item

#19

Tuesday,  
May 23, 2023

PUBLIC COMMUNICATION RECEIVED BY THE  
CLERK OF THE BOARD

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**From:** [Andrew Schouten](#)  
**To:** [FGG, Public Comment](#)  
**Cc:** [Chris Tubbs](#); [jeff.meston@calchiefs.org](mailto:jeff.meston@calchiefs.org); [FGG, CAO Mail](#); [Mecham, Tony@CALFIRE](mailto:Mecham.Tony@CALFIRE); [Collins, Jeff](#)  
**Subject:** [External] Public Comment by California Fire Chiefs Association, Inc. re SD County BOS 5/23/23 Meeting Agenda Item 19 & SDCFPD Board 5/23/23 Meeting Agenda Item 1  
**Date:** Monday, May 22, 2023 10:00:38 AM  
**Attachments:** [San Diego County BOS.001 \(Support for SD County Fire Ambulance Contract\).pdf](#)

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To Whom it May Concern,

Attached, please find correspondence from the California Fire Chiefs Association, Inc., by and through my law firm, expressing its strong support for the recommended actions in the above-referenced Agenda Items.

Please let me know if you have any questions.

Sincerely,  
Andrew Schouten

Andrew Schouten  
Lawyer

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**VIA ELECTRONIC MAIL**

The Honorable Board of Supervisors  
County of San Diego  
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The Honorable Board of Directors  
San Diego County Fire Protection District  
County Administration Center, Room 310  
1600 Pacific Highway  
San Diego, CA 92101  
[PublicComment@sdcounty.ca.gov](mailto:PublicComment@sdcounty.ca.gov)

**RE: Reimagining Ambulance Transportation Services in the County's Rural Communities, San Diego County Board of Supervisors May 23, 2023, Regular Meeting Agenda Item 19 (File 23-292).**

**Implementing a New Ambulance Transportation Model in the County's Rural Communities, San Diego County Fire Protection District Board of Directors May 23, 2023, Regular Meeting Agenda Item 1 (File 23-290).**

Dear Members of the Board of Supervisors and Board of Directors (collectively, "Board"):

We write on behalf of the California Fire Chiefs Association ("CalChiefs"), a professional association of more than 850 fire service agencies in California, including many fire service agencies in San Diego County. CalChiefs' mission is to strengthen and advocate for California fire service agencies by, among other things, collecting and disseminating ideas, information, knowledge, and experience concerning fire and emergency medical services ("EMS") in California. CalChiefs regularly engages in legislation and public policy advocacy on fire and EMS issues.

CalChiefs strongly supports the Board authorizing the County of San Diego ("County") and the San Diego County Fire Protection District ("SDCFPD") to enter a contract for the exclusive provision and/or management of emergency ambulance services within the Unified Service Area ("USA") pursuant to 2021 ch. 460 ("AB 389"), as described in the above-referenced Agenda Items, as well as approving the proposed AB 389 resolution for SDCFPD.

CalChiefs agrees with the recommendations of County staff, SDCFPD, and SDCFPD's consultant. SDCFPD's assumption of responsibility as the provider/manager of ambulance services will result in more equitable and sustainable EMS within the USA by allowing County to leverage the best combination of service options and revenues currently available, improve patient care, ensure the EMS needs of County's rural, vulnerable communities are met, bolster all-hazard emergency response in County's rural areas by increasing firefighter/paramedic staffing in those areas, increase opportunities for Community Paramedicine programs, and facilitate the local EMS agency's ongoing medical and quality control oversight functions. Finally, because the Board is the governing body of both County and SDCFPD, the USA's reimagined services and system will benefit from greater accountability, transparency, and institutional support.

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County's reimagining of ambulance services through the proposed County-SDCFPD contract also represents the next chapter in California local governments' continuing leadership and innovation regarding EMS for the communities they serve.

Modern EMS was innovated by California local governments. In 1969, the County of Los Angeles and City of Los Angeles began training and deploying firefighters as "paramedics," providing on-scene EMS and rescue service. The subsequent portrayal of those firefighter-paramedics in the television show, "Emergency!" revolutionized EMS in the United States. When the show first aired in 1971, there were only twelve paramedic programs in the country. By the end of the decade, about one-half of all Americans lived within ten minutes of a paramedic unit.

California local governments' leadership on EMS issues continued with the enactment of the Prehospital Emergency Medical Care Personnel Act of 1980 ("EMS Act"), Health and Safety Code section 1797 et seq.<sup>1</sup> Under that groundbreaking law, the state Emergency Medical Services Authority ("EMSA") is charged with setting overall standards for EMS systems, while regional, county, and local governments are tasked with taking the lead in designing and managing their EMS systems and programs.

With the Legislature's support, California local governments continue to lead on EMS. In 2011 and 2019, the Legislature approved new programs, developed by CalChiefs, California fire agencies, and state and federal regulators, to provide for supplemental reimbursements to public ambulance service providers to offset the unreimbursed costs of providing services to Medi-Cal beneficiaries. As the Board Letter correctly notes, the amount of such reimbursements has increased, effective January 1, 2023.

In 2020, the Legislature enacted the Community Paramedicine or Triage to Alternate Destination Act, 2020 ch. 138 ("SB 1544"). Cosponsored by California Professional Firefighters and the California Chapter of the American College Of Emergency Physicians emergency physicians, and supported by local government associations such as CalChiefs and the League of California Cities, SB 1544 authorizes counties and their local EMS agencies to innovate community-based programs using specially trained paramedics and health care providers to improve access to lower-acuity health care, behavioral health, and social services, while reducing preventable ambulance transports, emergency department visits, and hospital readmissions.

Beginning in 2015-2016, California counties and fire agencies pioneered a new service delivery model: the so-called "Alliance Model" public-private partnership. The Alliance Model is designed to improve the quality and delivery of EMS and to optimize EMS systems by leveraging the strengths of public and private ambulance services providers working together under fire agency leadership. Two years ago, the Legislature codified this latest innovation in AB 389, which CalChiefs co-sponsored. AB 389 added Sections 1797.230 and 1797.231 to the EMS Act, and expressly authorize Alliance style subcontracting arrangements, and establish requirements for county contracts and contracting processes for emergency ambulance services.

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<sup>1</sup> All statutory references are to the Health & Safety Code unless otherwise indicated.

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As described in the Board Letters, the proposed County-SDCFPD contract and equitable and sustainable service model for the USA rely and build upon the foregoing innovations and codified California laws and public policies. Furthermore, incorporating supplemental Medi-Cal reimbursements, community paramedicine, and Alliance subcontracting into the reimagination of services within the USA and the County-SDCFPD contract, will enable County and SDCFPD to provide high-quality and cost-effective emergency response and patient care within USA, while affording SDCFPD the fiscal sustainability and operational flexibility and resiliency to necessary avoid the structural difficulties that many ambulance services have encountered during and after the Covid 19 pandemic.

Finally, CalChiefs supports County's and SDCFPD's entry into an exclusive contract pursuant to AB 389. The provision of emergency ambulance services on an exclusive basis is desirable, if not necessary, to maintain the economic viability of such services and county EMS systems. *See, e.g., Mem'l Hosps. Ass'n v. Randol*, 38 Cal.App.4th 1300, 1308 (1995); *Schaefer's Ambulance Serv. v. Cnty. of San Bernardino*, 68 Cal.App.4th 581, 590 (1998); *Sievert v. City of National City*, 60 Cal.App.3d 234, 236-37 (1976); *Gold Cross Ambulance & Transfer v. Kansas City*, 705 F.2d 1005, 1008-09 (8th Cir. 1983).

An exclusive County-SDCFPD contract would also likely be immune from liability under federal antitrust laws. Under current U.S. Supreme Court doctrine, local governments are immune from federal antitrust laws when: (1) they act pursuant to state policy to displace competition with regulation or monopoly public service; and (2) the alleged anticompetitive effects of their actions are the inherent, logical, or ordinary result of their exercise of authority delegated by the state legislature. *FTC v. Phoebe Putney Health Sys.*, 568 U.S. 216, 226, 229 (2013).

The *Phoebe Putney* requirements are satisfied here. While they do not expressly authorize exclusive contracting, Sections 1797.230 and 1797.231 are part of the EMS Act. Well-established precedent holds that the EMS Act authorizes County to displace competition by contracting for, and regulating, EMS and an exclusive contract between County and SDCFPD is an inherent, logical, or ordinary result of such authorization:

[The EMS Act] on its face is a broad, discretionary grant of authority to the counties to regulate and contract for [EMS], including ambulance and paramedic services]. Virtually any anti-competitive effect, *including exclusive contracts* with primary providers and elimination of backup ambulance services altogether, would appear to be well within the statute's contemplation.

*Mercy-Peninsula Ambulance, Inc. v. Cnty. of San Mateo*, 791 F.2d 755, 758 (9th Cir. 1986) (emphasis added); *see Cnty. of San Bernardino v. City of San Bernardino*, 15 Cal. 4th 909, 932 (1997) (EMS Act “evidences an intent to ‘displace unregulated competition’ in a field where quality and cost control are vitally important state interests.”).

Indeed, the Legislature expressly codified its intent to “afford state action immunity under federal antitrust laws for activities undertaken by local governmental entities in carrying out their

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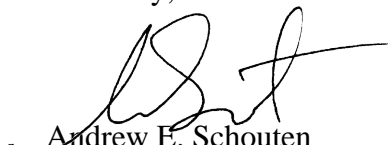
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prescribed functions [under the EMS Act].” *AmeriCare MedServices, Inc. v. City of Anaheim*, 735 F. App'x 473, 475 n.3 (9th Cir. 2018) (quoting Section 1797.6(b)); *Mercy-Peninsula Ambulance*, 791 F.2d at 758 & n.2 (because Legislature realized that EMS Act “reduces competition among providers of [EMS] and might generate antitrust litigation,” Section 1797.6(b) “expressly states the [L]egislature's intent . . . to provide ‘state action immunity under federal antitrust laws’ to local agencies in carrying out the functions authorized by the [EMS] Act.”).

Even so, AB 389 provides for competition among private ambulance services to serve as SDCFPD’s subcontractor. Such subcontracts must be awarded through a competitive procurement process under Section 1797.231(b), as provided for in the proposed SDCFPD resolution.

In sum, CalChiefs strongly supports the Board authorizing the County and SDCFPD to enter a contract for exclusive ambulance services in the USA and approval of the AB 389 resolution for SDCFPD. CalChiefs appreciates the opportunity to provide public comment on these important matters.

Sincerely,



Andrew E. Schouten  
Counsel for CalChiefs

cc: Christopher Tubbs, President, CalChiefs  
Jeff Meston, Executive Director, CalChiefs  
Helen N. Robbins-Meyer, Interim Chief Administrative Officer, County of San Diego  
Tony Mecham, Fire Chief, San Diego County Fire  
Jeff Collins, Director, San Diego County Fire