

Creating and Organizing a New Emergency Services District

The Law, The Practical Steps
and What Not to Forget

80th Annual West Texas County
Judges and Commissioners Conference
April 23, 2009

The Law

- Chapter 775 – Emergency Services Districts
- Chapter 776 – Emergency Services Districts in Counties with less than 125,000 population (pending legislation may repeal this chapter)

Basic Process

- Petition
- Acceptance by County Commissioners Court
- Order for Election
- Conducting the Election
- Canvassing the Election
- Order Creating the District
- And Then...

Petition

- 100 Qualified Voters, or a majority if less than 100 Qualified Voters in the Area
- Name of the District
- Boundaries of the District
- Voter Printed Name, Mailing Address, Voter ID Number, Signature, Date
- Agreement of 2 voters to pay not more than \$150 of costs

Petition

- Municipal Consent required if area within City Limits or ETJ
 - written request to City for consent
 - 60 days for City to Respond
 - if no consent, within 90 days of request, file petition requesting services
 - majority of voters
 - 50 percent landowners
 - if refusal or no action within 6 months of petition, deemed consent
- Consent valid for 6 months

Acceptance

- Proper petition received by County Judge and filed with County Clerk
- Hearing at next regular or special session after Petition is filed
 - Notice of Hearing
 - Posted at least 21 days in advance
 - Published 2 consecutive weeks (first at least 21 days in advance)

Hearing on Petition

- If Commissioners Court Finds
 - that creation of the district is feasible
 - will benefit the territory in the district
 - will secure the public safety, welfare, and convenience, and
 - will aid in conserving the real property or natural resources in the proposed district
- Then Commissioners Court shall grant the petition and fix the district's boundaries

Ordering Election

- Upon granting petition, Commissioners Court must order election
- Notice of Election same as notice of hearing on petition
- Election on next Uniform Election Date

Canvassing Election

- District Created if Majority of Votes In Favor
- Must be Majority of Voters within City Limits and ETJ in favor of creation to include those areas in District
- If election fails, must wait one year to try again

Order Creating District

- In form prescribed by statute
- Order should be filed in County Records together with all other records relating to creation of District
 - Petition
 - Municipal Consents
 - Order Calling Election and Making Findings regarding Creation
 - Order Canvassing Election and Creating District
- Overlapping Districts
 - Services limited to those not provided by existing district

Commissioner Appointment

- Names of initial board candidates submitted to Commissioners Court.
 - Must be at least 18 years of age; and
 - Must be a resident citizen of the state and:
 - a qualified voter within areas served by the district; or
 - the owner of land subject to taxation in the district.
- Board consists of five commissioners.
- Commissioners serve two-year terms.

Commissioner Appointment

- The commissioners court shall consider relevant factors in determining the individuals to appoint as emergency services commissioners, including whether the individuals have knowledge that relates to fire prevention or emergency medical services and that is relevant to the common policies and practices of the board.
 - Health & Safety Code 775.034(g) or 776.033(g)

Commissioner Traits to Consider

- Professional Business Management
- Strong Leadership and People Skills
- Medical/EMS knowledge and/or experience
- Fire Suppression knowledge and/or experience
- Real Estate/Building Construction
- Banking and Investments
- Information Technology
- Working Knowledge of the Open Meetings Act
- Must be bondable
- Intangibles

Commissioner Traits to Consider

- Conflicts – 776 Districts
 - Except as a resident or property owner in the district, an emergency commissioner may not have an interest in a contract or transaction to which the district is a party and under which the commissioner may receive money or other things of value as consideration.
 - Health & Safety Code 776.037(b)

Commissioner Traits to Consider

- Conflicts – 775 Districts
 - Commissioners are subject to Chapter 171, Local Government Code.
 - Health & Safety Code 775.038(d)
 - If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if...

Commissioner Traits to Consider

- SUBSTANTIAL INTEREST IN BUSINESS ENTITY.
 - owns 10 percent or more of stock or shares or owns either 10 percent or more or \$15,000 or more of the fair market value; or
 - funds received exceed 10 percent of the person's gross income for the previous year.
- SUBSTANTIAL INTEREST IN REAL PROPERTY.
 - equitable or legal ownership with a fair market value of \$2,500 or more.
- NEPOTISM
 - A local public official is considered to have a substantial interest under this section if a person related to the official in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest under this section.

Board of Commissioners Issues

- Oaths of office and statements for Commissioners.
- Open Meetings and Open Records Training to be completed by all Commissioners.
 - Must be completed within 90 days of taking office.
- Election of President, Vice President, Treasurer, Secretary and Assistant Treasurer.

Offices and Meetings

- District Board meeting location.
- Regular meeting date and time.
- District Administrative Office and publication of notice of location in newspapers within 60 days of Commissioner qualification.
- Rules of Order.

Budget and Tax Rate

- Must conduct meetings and public hearings on Budget and Tax Rate to comply with Truth-in-Taxation requirements.
- Adopt Budget by September 30th.
- Adopt Tax Rate by September 30th or within 60 days after tax roll certification.

Miscellaneous Financial Issues

- Resolution Establishing District Fiscal Year.
- Adoption of an Order Establishing Fees for Certain District Services.
- Establish District Depository.
- Open District bank account(s), and investment account(s).

Contracts for Services

- Contract for service with departments serving the area.
- Contract for bookkeeping services.
- Contract for general legal services.
- Contract for audit services.
- Contract for tax assessment and collection services.

Other Agreements

- Automatic and mutual aid agreements with surrounding departments and jurisdictions.
- Agreement for dispatch services.
- Purchasing agreements with Cooperatives. (i.e. HGAC, Buy Board, State)
- HIPPA Association Agreement for EMS and First Response agencies.

Insurance and Bonds

- District insurance
 - General liability insurance
 - Directors and Officers liability
- Bond posted for District Treasurer with County.

Reporting and Registrations

- Register/File Report with Office of Rural Community Affairs.
- Federal tax identification number for the District.
- Taxing unit identification number from the Texas Comptroller

Recordkeeping

- A Records Management Program, including:
 - Order Establishing Records Management Program, Appointing Records Management Office, and Appointing Public Information Coordinator; and
 - Declaration of Compliance with Records Scheduling Requirement of the Local Government Act.
 - File with State Library and Archives Commission.

Fire Code

- Adoption of a Fire Code.
- Consider Fire Marshal Services in counties without a County Fire Marshal.

SAFE-D

- Texas State Association of Fire and Emergency Districts
- Annual Conference
- Regional Conferences
- Website – www.safe-d.org

Questions?

Creating and Organizing a New Emergency Services District

John J. Carlton
Armbrust & Brown, L.L.P.
100 Congress Avenue
Suite 1300
Austin, Texas 78701
(512) 435-2308
jcarlton@abaustin.com