

**The Power
of Cities in
Emergency
Response**

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**Elected Officials'
Conference**

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Introduction

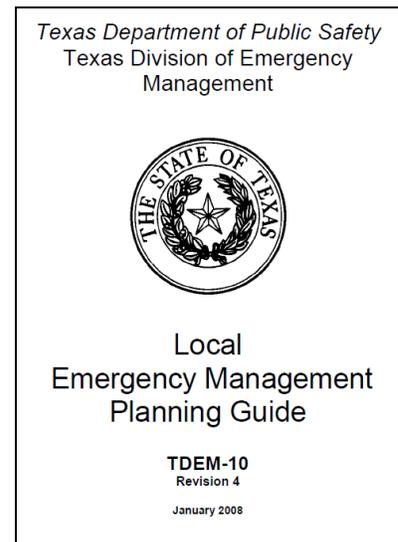
Cities have many duties and responsibilities when dealing with emergencies and disasters. These include emergency management plans, training, and the authority to take care of situations that arise. Also, while most decisions by a city council must be made according to very specific rules that may take extended amounts of time, city officials often have authority during emergency situations to make decisions quickly when absolutely necessary for the health and safety of their citizens. This paper is a brief overview of some of the duties, responsibilities, and authority city officials have when emergencies occur within the city.

Emergency Management

There are many statutes, rules, and regulations related to emergency management by different governmental entities. Most relevant to cities is Chapter 418 of the Texas Government Code, which governs emergency management, and allows a mayor to: (1) declare a local state of disaster; (2) order evacuation of the city or an area; and (3) control the ingress and egress of individuals in a disaster area. TEX. GOV'T CODE § 418.108. This declaration of disaster can last up to seven days. After the seven days it can be extended, but only with the consent of the governing body. The declaration of a local state of disaster activates any emergency management plan adopted by a city under the provisions of Chapter 418.

Under Chapter 433 of the Government Code, a mayor or governing body of a city may ask the governor to declare a state of emergency, and the governor would then be able to issue directives to help with the emergency.

For more information on emergency management, city officials can review the Texas Department of Public Safety's website on emergency management at <http://www.txdps.state.tx.us/dem/index.htm>. The Local Emergency Management Guide can be found here: <http://www.txdps.state.tx.us/InternetForms/Forms/TDEM-10.pdf>.



Duties of a City in an Emergency

A city: (1) must have some officials who are trained in emergency management, usually the emergency management coordinator or fire chief; (2) must develop a local emergency management plan or join with another city or county to develop a joint emergency management plan; (3) must appoint a director of emergency management--either the mayor or other appointed official; and (4) must adopt the National Incident Management System (NIMS) to be eligible for many of the available emergency management grants and other resources.

Emergency Management Training

Basic emergency management is required of a city's appointed official: "(1) whose position description, job duties, or assignment includes emergency management responsibilities; or (2) who plays a role in emergency preparedness, response, or recovery." TEX. GOV'T CODE § 418.005. The Texas Mutual Aid System and grant money controlled by state and federal agencies also depend on a city's adoption and compliance with National Incident Management System (NIMS). See TEX. GOV'T CODE § 418.1152; 37 TEX. ADMIN. CODE § 7.13.

Local Emergency Management Plan

A city must have a local emergency management plan, whether by itself or developed with other political subdivisions. TEX. GOV'T CODE § 418.106. While some cities have developed their own plan, other cities have coordinated with other cities and counties to develop a plan that they can use together. Each city or interjurisdictional local plan under Section 418.106, must provide for: (1) wage, price, and rent controls; (2) curfews and other movement restrictions; and (3) limitations on utility use. The plan also must be sent to the State's Division of Emergency Management. 37 TEX. ADMIN. CODE § 7.12. If a city does decide to combine its emergency planning with another political subdivision to form an interjurisdictional agency, that agency must meet annually to discuss its emergency management plan. TEX. GOV'T CODE § 418.106. The state, through the Division of Emergency Management, is required to provide resources to help cities develop their emergency management plans. A model plan that complies with state and federal law can be found on the Division of Emergency Management Web site at <http://www.txdps.state.tx.us/dem/downloadableforms.htm> under Local Emergency Plans and Annexes.

Local Emergency Management Plan And Annexes
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(NIMS) denotes that documents have been updated to be NIMS compliant.

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EMERGENCY MANAGEMENT PLAN

FOR

(Jurisdiction)

Emergency Management Authority

Emergency Meetings

The Open Meetings Act (Act) provides many guidelines for cities, including notice and attendance requirements, but also allows some leeway from its strict requirements when an emergency requiring immediate action occurs. Under the Act, notice of a regular meeting must be posted at least 72 hours in advance, but notice of an *emergency* meeting may be posted for as little as two hours. *See* TEX. GOV'T CODE §§ 551.045; 551.043. An emergency “exists only if immediate action is required of a governmental body because of an imminent threat to public health and safety” or “because of a reasonably unforeseeable situation.” The notice of an emergency item must “clearly identify the emergency” and no nonemergency items may be placed on the agenda. This emergency requirement is very strictly construed and few occasions are considered an emergency.

Under the Act, a city may not have a meeting by conference call unless there is an emergency as defined above. *Id.* § 551.125. A meeting of a governing body may be held by teleconference call only if: (1) an emergency or public necessity exists; and (2) it is difficult or impossible to convene a quorum at one location. City officials should also review their charters for any provisions relating to emergency meetings.

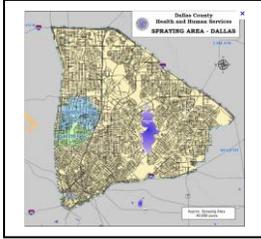
Emergency Finance Authority

Normally, a city budget may be increased only when there is an emergency. According to Section 102.009 of the Local Government Code, a city may make an emergency expenditure outside strict compliance with its budget only:

in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention.

This standard is strict and few amendments will meet it, but in cases of severe weather damage or another unforeseeable event, a city council could invoke this authority. (Note that a city may always make a budget amendments for city purposes so long as the total expenditures under the budget are not increased.) TEX. LOC. GOV'T CODE § 102.010.

Another tool is a city's emergency purchasing power. Usually, a city must go through certain procedures before purchasing an item or service that costs more than \$50,000. TEX. LOC. GOV'T CODE § 252.021. However, there is an exemption for purchases that are “made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality” or “a procurement necessary to preserve or protect the public health or safety of the municipality's residents.” *Id.* § 252.022.



Disease Management

A city can take any action necessary to promote health and suppress disease under Texas Health & Safety Code Sections 122.005 (general law) and 122.006 (home rule). These actions could include quarantine, examining and regulating hospitals, regulating ingress and egress from the city, and fining those who do not comply with the city's rules.

Emergency Management Authority for Mayors

The mayor, as the emergency management director for a city, has statutory powers and duties during an emergency. TEX. GOV'T CODE § 418.1015. The mayor has the same powers, on a local level, as the governor under Chapter 418 of the Government Code. *Id.* The mayor is the official responsible for declaring a state of disaster or requesting that the governor declare a state of emergency. *See id.* §§ 418.108; 433.001. Also, if local resources are exhausted and assistance is needed outside a mutual aid agreement, then the mayor is the official who must request it from other political subdivisions or the state. 37 TEX. ADMIN. CODE § 7.25. The mayor also has the authority to order and enforce evacuation and other restrictions on movement during an emergency. TEX. GOV'T CODE ch. 418. The mayor can designate an emergency management coordinator to be his assistant for emergency management purposes. *Id.* § 418.1015. The mayor must notify the Division of Emergency Management of who the emergency management coordinator is (if any) and the city's plan for emergency management using a form provided by the Division of Emergency Management. 37 TEX. ADMIN. CODE § 7.3.



Emergency Evacuation and Reentry

Section 418.185 of the Government Code, passed in 2009, allows a mayor to enforce mandatory evacuation orders against individuals who refuse to leave. It also would impose civil liability on individuals who choose not to leave an area that is under a mandatory evacuation order, and who cause damages or injuries to others who have to rescue or remove them from the area. The law also requires the state to make rules regarding uniform reentry procedures and credentialing after a mandatory evacuation. However, an affected city must be considered when the state makes the rules and the city can adjust the rules if needed. The law also requires a city to provide a post-disaster evaluation to the state division of emergency management not later than the 90th day after requested to do so by the division.

Conclusion

A city must follow the requirements of state statutes regarding open meetings, bidding, and ordinance authority, but there are exemptions from some of these requirements for emergencies that cause an imminent threat to health and safety and require immediate attention.

If a city has any questions regarding emergency authority or emergency management, please call the Texas Municipal League Legal Department at 512-231-7400 or email us at legal@tml.org.