

Emergency Management Legal Q&A

Prepared by TML Staff

Questions? Contact Evelyn Njuguna, Assistant General Counsel, at evelyn@tml.org

Updated March 13, 2020

Disaster Management

Q. What is a disaster?

- A. State law defines a disaster as an “occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, other public calamity requiring emergency action, or energy emergency [a temporary statewide, regional, or local shortage of petroleum, natural gas, or liquid fuel energy supplies that makes emergency measures necessary to reduce demand or allocate supply].” Tex. Gov’t Code §§418.004(1), (3). Effective September 1, 2019, a disaster shall also include a “cybersecurity event.” *Id.* §418.004(1).

Q. What steps is a city required to take to prepare for a disaster?

- A. Each city is required to maintain its own emergency management agency or participate in a local interjurisdictional emergency management agency. *See* 37 TAC §7.1. The mayor is required to notify the Texas Division of Emergency Management (TDEM) of the manner in which the city is providing an emergency management program and the person designated to head that program. *Id.* §7.3.

A city must also prepare, keep current, and distribute to appropriate officials a local emergency management plan or an interjurisdictional emergency management plan that is developed in conjunction with another city or county. *Id.* §7.12. The purpose of an emergency management plan is to provide for disaster mitigation, preparedness, response, and recovery. *See* Tex. Gov’t Code §418.106(a). Each emergency management plan must be signed by the mayor, and must include, at a minimum: (1) wage, price, and rent controls and other economic stabilization methods; (2) curfews and other movement restrictions; (3) limitations on utility use in areas affected by a disaster; and (4) rules governing entrance to and exit from the affected area, and other security measures. *Id.* §418.106(b); 37 TAC §7.12.

The mayor, as the emergency management director of the city, may designate a person to serve as the emergency management coordinator. *See* Tex. Gov’t Code §418.1015. In many cities, the emergency management coordinator is responsible for developing the emergency management plan and coordinating emergency management training. TDEM provides plan documentation templates and guidelines for each plan and annex at: <https://www.dps.texas.gov/dem/Preparedness/plansUnit.htm>. The plan, and any changes, must also be sent to TDEM. 37 TAC §7.12. Each plan must be reviewed annually and

updated at least once every five years. *Id.* For more information on emergency management, city officials may review TDEM's [Texas Emergency Management Executive Guide](#).

As a condition to receiving federal funds, grants, training, and reimbursement of disaster recovery costs, a city must also adopt and implement the National Incident Management System (NIMS) as its incident management system. *See id.* §7.13. NIMS is an incident management system that enables organizations across the country to work together during incidents of all kinds and sizes.

Additionally, upon the issuance of an annual proclamation by the governor before hurricane season, each city shall conduct, to the extent practicable, community outreach and education activities on hurricane preparedness between May 25 and May 31 of each year. Tex. Gov't Code §418.127. (Effective September 1, 2019.)

Q. Who is required to complete disaster management training?

- A. An elected law enforcement officer, or an appointed public officer of a city, who has management or supervisory responsibility is required to complete emergency management training if the officer: (1) has a position description, job duties, or assignment that include emergency management responsibilities; or (2) plays a role in emergency preparedness, response, or recovery. *See Tex. Gov't Code §§418.005(a), (b).* The League has interpreted this provision to mean that police chiefs and marshals, as well as a fire chief whose office is created by a home rule charter, should complete the training. Other fire chiefs may also wish to take the training out of an abundance of caution or after consultation with the city attorney. Any other city officer should take the training if his or her position is created by a home rule charter and the officer's job description has specific emergency management duties.

The training must be not less than three hours and must be completed before the 180th day after the public officer takes the oath of office, if required, or when the person assumes his or her responsibilities as a public officer. *See id.* §418.005(b). The mayor or the person serving as the emergency management coordinator is also required to complete disaster management training. *Id.* §§418.101(b), 418.1015(c).

Additionally, city personnel with a direct role in emergency preparedness or incident management or response are required to complete certain NIMS training depending on their incident command system role. *See 37 TAC §7.12.*

Q. Where can a city official get training in emergency management?

- A. The Texas Division of Emergency Management (TDEM) provides emergency management training. Regional liaison officers are also available to assist city officials with their training and other emergency management needs. Currently, TDEM provides these classes at no charge and will pay for a city official's travel expenses to attend one of its classes. A certificate of course completion shall be provided to each public officer who completes the training. Tex. Gov't Code §418.005(e). Such certificate shall be maintained and made available for public inspection. *Id.*

Training on NIMS is also offered by TDEM and may be taken in-person or online. A list of NIMS classes can be found at: <https://tdem.texas.gov/training/>

Local Authority

Q. Who can declare a local state of disaster?

- A. The mayor is authorized to declare a local state of disaster if a disaster has occurred or is imminent. Tex. Gov't Code §418.108(a). An order or proclamation declaring, continuing or terminating a local disaster must be given prompt general publicity and must be promptly filed with the city secretary. *Id.* §418.108(c). The declaration of a local disaster activates applicable provisions of local or interjurisdictional emergency management plans and authorizes the furnishing of aid and assistance under the declaration. *Id.* §418.108(d). The chief administrative officer of a joint board has exclusive authority to declare that a state of disaster exists within the boundaries of an airport operated or controlled by a joint board, regardless of whether the airport is located in or outside the boundaries of a city. *Id.* §418.108(e). A disaster declaration lasts for no more than seven days unless continued or renewed by city council or a joint board, as applicable. *Id.* §418.108(b).

Additionally, the chief executive officer of a city or the governing body of a city may request, during an emergency, that the governor proclaim a state of disaster and designate the area involved. *Id.* §433.001. For purposes of a request to the governor, an emergency exists in the following situations: (a) a riot or unlawful assembly by three or more persons acting together by force or by violence; (b) if a clear and present danger of the use of violence exists; or (c) a natural or man-made disaster. *Id.* Once a State of Disaster is declared, the applicable provisions of the State Emergency Plan are activated. *Id.* §418.015(b).

Q. What authority does a mayor or city council have during a declared state of disaster?

- A. The mayor may order the evacuation of all or part of the population from a stricken or threatened area within the city limits if the mayor believes it is necessary for the preservation of life or other disaster mitigation, response or recovery. Tex. Gov't Code §418.108(f). The mayor may compel persons who remain in the evacuated area to leave and authorize the use of reasonable force to remove persons from the area. *Id.* §418.185(b). A person who knowingly disobeys a mandatory evacuation order, and who engages in or fails to take action that a reasonable person would have taken and that results in the undertaking of a governmental rescue effort is civilly liable for the cost of the rescue to a governmental entity that conducts the rescue. *Id.* §418.185(d). The mayor is also authorized to control access to and from a disaster area that is under the mayor's jurisdiction and to control movement of persons and occupancy of premises in such area. *Id.* §418.108(g).

The chief executive officer or governing body of a city may request the governor to provide state military forces to aid in controlling conditions in the city that the officer or

governing body believes cannot be controlled by the local law enforcement agencies alone. *Id.* §433.005(a).

A city may temporarily or permanently acquire, by lease, purchase, or other means, sites required for installation of temporary housing units or emergency shelters for disaster victims. *Id.* §418.020(c). A city may also enter into arrangements necessary to prepare or equip the sites to use the housing units or shelters, including arrangements for the purchase of temporary housing units or shelters and the payment of transportation charges. *Id.*

The mayor also serves as the governor's designated agent in the administration and supervision of disaster management duties set out in state law and may exercise the same powers granted to the governor under the Texas Disaster Act (Chapter 418 of the Government Code) on an appropriate local level. Tex. Gov't Code §418.1015(b). Accordingly, the mayor may commandeer or use any private property if the mayor finds it necessary to cope with a disaster, subject to compensation requirements. *Id.* §418.017(c). The mayor may also suspend or limit the sale, dispensing or transportation of alcoholic beverages, firearms, explosives, and combustibles. *Id.* §418.019.

During a declared state of disaster and the 90-day period following the expiration or termination of the disaster declaration, the mayor of a city subject to the declaration may request the attorney general provide legal counsel to the city on issues related to disaster mitigation, preparedness, response, and recovery applicable to the area subject to the disaster declaration. *Id.* §418.193.

Q. What powers does a municipality have to protect the public health?

- A. The governing body of a municipality may enforce any law that is reasonably necessary to protect the public health. Tex. Health & Safety Code §121.003.

With respect to disease management, a Type A general law city can take any action that is necessary or expedient to promote health or suppress disease, including: (1) preventing the introduction of a communicable disease into the city, including stopping, detaining, and examining a person coming from a place that is infected or believed to be infected with a communicable disease; (2) establish, maintain, and regulate hospitals in the city or in any area within five miles of the city limits; or abate any nuisance that is or may become injurious to the public health. *Id.* §122.005(a). Additionally, a Type A general law city may adopt rules: (1) necessary or expedient to promote health or suppress disease; or (2) to prevent the introduction of a communicable disease into the city, including quarantine rules, and may such rules in the city and in any area within 10 miles of the city. *Id.* §122.005(b). A Type A general law city also has the authority to fine a person who fails or refuses to observe the orders and rules of the health authority. *Id.* §122.005(c). A home rule city may adopt rules to protect the health of persons in the city, including quarantine rules to protect the residents against communicable disease, and also provide for the establishment of quarantine stations, emergency hospitals, and other hospitals. *Id.* §122.006.

Additionally, a city may activate its emergency management powers by declaring a state of local disaster under Chapter 418 of the Government Code. Each city is required to have a local emergency management plan that contains information on addressing a health risk to the city, including the outbreak of a communicable disease.

Q. What is the role of a local health authority?

- A. A local health authority (LHA) is a competent and reputable physician licensed to practice medicine in Texas who is appointed by a municipality or county to administer state and local laws relating to public health within the appointing authority's applicable jurisdiction. Tex. Health & Safety Code §§121.002; .022. Cities that have established local health departments, public health district, or that receive grants from DSHS for essential public services are required to appoint an LHA. *Id.* §§121.028(b); .033; .041. In a city that has a local health department, the local health department director serves as the city's LHA, provided that the director is a physician. *Id.* §121.033(d). If the local health department director is not a physician, he or she is required to appoint a physician as the LHA, subject to approval by the DSHS and city council. *Id.* A city that does not have a local health department may appoint an LHA. *Id.* §121.028(a).

An LHA has supervisory authority and control over the administration of communicable disease control measures within his or her jurisdiction unless specifically preempted by the state. *Id.* §81.082. The LHA is also authorized to perform each duty that is necessary to implement and enforce a law to protect the public health or prescribed by DSHS, including the right of entry to real property and a right of access to an individual that is in isolation or quarantine. *Id.* §§121.024; 81.065. The LHA's responsibilities also include, among others: (1) establishing, maintaining, and enforcing quarantine in the LHA's jurisdiction; (2) aiding DSHS with local quarantine, inspection, disease prevention and suppression, birth and death statistics, and general sanitation within the LHA's jurisdiction; (3) reporting the presence of contagious, infectious, and dangerous epidemic diseases in the city; (4) reporting to the DSHS on any subject on which it is proper for a report to DSHS to be made; and (5) aiding DSHS in enforcing proper rules, requirements, ordinances, sanitation laws, quarantine rules, and vital statistics collection. *Id.* §121.024.

Q. What happens if a municipal court cannot conduct its proceedings due to a disaster?

- A. If a disaster precludes a municipal court (or a municipal court of record) from conducting its proceedings at the location assigned for the proceedings, the presiding judge of the administrative judicial region, with the approval of the judge of the affected municipal court, may designate an alternate location for the proceedings: (1) in the corporate limits of the city; or (2) the outside the corporate limits of the city at the location the presiding judge of the administrative judicial region determines is closest in proximity to the city that allows the court to safely and practicably conduct its proceedings. Tex. Gov't Code §§29.015(a); 30.000123(a). Additionally, if a disaster precludes a municipal court (or a municipal court of record) from holding its terms, the presiding judge of the administrative judicial region, with the approval of the judge of the affected municipal court, may designate the terms and sessions of court. *Id.* §§29.015(b); 30.000123(b).

Q. Can the enforcement of city ordinances be suspended during or after a disaster?

- A. The mayor may suspend the provisions of any regulatory ordinances if strict compliance with the provisions, orders or rules, would in any way prevent, hinder or delay necessary action in coping with a disaster. Tex. Gov't Code §§418.016; 418.1015(b).

The governor may also temporarily suspend or modify, for a period of not more than 60 days, any public health, safety, zoning or intrastate transportation, or other law or regulation if by proclamation the governor considers the suspension or modification essential to provide temporary housing or emergency shelter for disaster victims. *Id.* §418.020(c). Additionally, upon declaration of a state of disaster, enforcement of the regulation of on-premise outdoor signs by a city located in a county within or adjacent to a county within a disaster area specified by the declaration is suspended to allow certain insurance carriers or licensed agents to erect temporary claims service signage. *Id.* §418.016(b). The signage may be erected for not more than 30 days or until the end of the disaster declaration, whichever is earlier, and must be removed at the end of this time period. *Id.* A temporary claims service sign shall: (1) be less than forty square feet in size; (2) be less than five feet in height; and (3) not be placed in the right of way. *Id.* §418.016(c).

Q. Can a city suspend deadlines imposed on the city by its ordinances?

- A. Yes. The mayor or the city's governing body, in the absence of the mayor, may issue a proclamation suspending the deadlines imposed by a local law on the city if: (a) the city is unable to comply with a deadline imposed by the ordinance on the city due to a disaster, including a deadline related to a budget or property tax; and (b) the territory of the city is wholly or partly located in the area of a disaster declared by the president of the United States or the governor. Tex. Gov't Code §418.1075(a). The deadline may not be suspended for more than 30 days after the date the mayor or the governing body, as applicable, issues the proclamation. *Id.* §418.1075(b).

Q. May a city prohibit a person from carrying a handgun during a disaster?

- A. Effective September 1, 2019, a person, regardless of whether the person holds a license to carry a handgun, may carry a handgun if: (a) the person carries the handgun while evacuating from an area following the declaration of a state or local disaster with respect to that area or reentering that area following the person's evacuation; (b) not more than 168 hours have elapsed since the state of disaster was declared, or more than 168 hours have elapsed since the time the declaration was made and the governor has extended the period during which a person may carry a handgun; and (c) the person is not prohibited by state or federal law from possessing a firearm. Tex. Penal Code §46.15(k).

Additionally, a person may carry a handgun, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, on an otherwise prohibited premise that is operating as an emergency shelter during a declared state or local disaster if: (a) the owner, controller, or operator of the premises, or a person acting with apparent authority, authorizes the carrying of the handgun; (b) the person carrying the handgun complies with any rules and regulations of the owner, controller, or operator of the premises; and

(c) the person is not prohibited by state or federal law from possessing a firearm. *Id.* §46.15(l).

However, a peace officer who is acting in the lawful execution of the officer's official duties during a state of emergency may disarm an individual if the officer reasonably believes it is immediately necessary for the protection of the officer or another individual. Tex. Gov't Code §433.0045(b). The peace officer is required to return a firearm and any ammunition to an individual disarmed before ceasing to detain the individual unless the officer: (a) arrests the individual for engaging in criminal activity; or (b) seizes the firearm as evidence in a criminal investigation. *Id.* §433.0045(c).

Emergency Meetings

Q. What is the legal standard for holding an emergency meeting?

A. In an emergency or when there is an urgent public necessity, a governmental body may conduct a meeting without providing the 72-hour notice requirement that is generally required to conduct a meeting under the Open Meetings Act.

An emergency or urgent public necessity exists only if immediate action is required of a governmental body because of: (1) an imminent threat to public health and safety; or (2) a reasonably unforeseeable situation. *See* Tex. Gov't Code §551.045(b). S.B. 494, effective September 1, 2019, expands the definition of a "reasonable unforeseeable situation" to include: (a) a fire, flood, earthquake, hurricane, tornado, or wind, rain or snow storm; (b) a power failure, a transportation failure, or interruptions of communication facilities; (c) an epidemic; or (d) a riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence. *Id.* §551.045(b)(2). Additionally, an "imminent threat to public health and safety," shall include a threat described above, if imminent. *Id.* §551.045(b)(1). The sudden relocation of a large number of residents from the area of a declared disaster to a governmental body's jurisdiction is also considered to be a reasonably unforeseeable situation for a reasonable period immediately following the relocation. *Id.* §551.045(e).

Q. What action or deliberation may take place at a properly posted emergency meeting?

A. At an emergency meeting, city council may only deliberate or take action on: (1) a matter that directly relates to responding to the emergency or public necessity identified in the notice of the meeting or supplemental notice; or (2) an agenda item listed on a meeting notice before the supplemental notice was posted. *Id.* §551.045(a-1).

Q. Is a quorum needed to conduct an emergency meeting?

A. A quorum is generally required at an emergency meeting before city council can conduct any city business. However, a quorum is not required if: (1) the city is wholly or partly located in the area of a disaster declared by the president of the United States or the

governor; and (2) a majority of the members of city council are unable to be present at a meeting of city council as a result of the disaster. *See* Tex. Gov't Code §418.1101.

Q. What notice must the city provide for an emergency meeting?

- A. A city must post notice of an emergency meeting, or the supplemental notice to add an emergency item to an already existing agenda of a properly posted meeting, at least one hour before the meeting is convened. Tex. Gov't Code §551.045(a). The notice must clearly identify the emergency or urgent public necessity justifying calling the emergency meeting or adding the item to the agenda of a previously scheduled meeting. *Id.* §551.045(c). The notice of the emergency meeting must specify the location of the meeting as the same place where the meetings of the city council are usually held. *Id.* §552.125(d).

The presiding officer or member of a governing body who calls an emergency meeting or adds an emergency item to an existing agenda of a properly posted meeting shall provide notice of the emergency meeting or emergency item to members of the news media who have previously filed with the city a request to receive the notice and agreed to reimburse the city for the cost of providing the notice *Id.* §§551.047(a), (b). Such notice must be provided by telephone, fax, or e-mail, at least one hour before the meeting is convened. *Id.* §551.047(c).

Q. Where must notice of an emergency meeting be posted?

- A. Notice for an emergency meeting must be posted on a physical or electronic bulletin board at a place convenient to the public in city hall. Tex. Gov't Code §551.050(b). A city that maintains an internet website must also concurrently post notice of an emergency meeting notice on the city's website. *Id.* §§551.043(b), 551.056(b). A city with a population of 48,000 or more is also required to concurrently post the agenda of the emergency meeting on the city's internet website. *Id.* §551.056(c).

Q. Can an emergency meeting be conducted via telephone conference?

- A. A city council may hold a meeting via telephone conference if: (1) an emergency or public necessity exists; and (2) it is impossible or difficult for a quorum of the city council to meet at one location. *See* Tex. Gov't Code §551.125(b). The meeting must be set up to provide two-way communication during the entire meeting and the identity of each speaker must be clearly stated prior to the speaker speaking. *Id.* §551.125(f). Additionally, all portions of the meeting, other than closed executive sessions, must be audible to the public at the location of the meeting, must be recorded, and the recording must be made available to the public. *Id.* §551.125(e). Also, the notice of the emergency meeting need not specify that the meeting will be held by telephone conference. *See* Tex. Att'y Gen. Op. No. JC-352 (2001).

Q. Can an emergency meeting be conducted via videoconference call?

- A. Yes. A member of a governmental body or a city employee may participate remotely in an open or closed meeting of the governmental body, including an emergency meeting, by means of a videoconference call. Tex. Gov't Code §551.127(a-1); *see also id.* §551.127(a) (providing for a city council meeting via videoconference call). However, a quorum of the city council must be present at one physical location. *Id.* §551.127(b). The procedures and requirements that a city must follow in order to use a videoconference call may be found [here](#).

Additionally, a governmental body may allow a member of the public to testify at a meeting from a remote location by videoconference call regardless of whether a member of the governmental body is participating in a meeting from a remote location by videoconference call. *Id.* §551.127(k). The Open Meetings Act does not expressly require any special notice of this type of remote participating by a member of the public.

Q. Can city council make announcements regarding emergencies at a meeting without posting notice of such announcements?

- A. Yes. During a meeting, a quorum of city council may receive announcements of an imminent threat to the public health and safety of people in the city that has arisen after the posting of the agenda, without giving prior notice of the subject of the announcements and provided that no action is taken. *Id.* §551.0415(a).

Q. Can a city council meet in a closed session to discuss matters related to emergencies and disasters?

- A. Chapter 418 of the Government Code allows a governmental body to meet in a closed session to deliberate information that is made confidential under specific sections of Chapter 418. *See* Tex. Gov't Code §418.183(f). Accordingly, the following matters may be discussed in closed session: (1) information that relates to physically or mentally disabled individuals or other individuals with special needs and that is maintained for purposes of emergency management or disaster planning (*Id.* §418.175); (2) information collected, assembled or maintained by or for a governmental entity for purposes of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and that relates to information maintained by emergency response providers, including staffing requirements, tactical plans, or contact information of the provider (*Id.* §418.176); (3) certain information relating to an assessment of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity (*Id.* §418.177); (4) certain information relating to construction or assembly of weapons (*Id.* §418.178); (5) certain information related to encryption codes and security keys for a public communication system (*Id.* §418.179); (6) certain information prepared for the federal government related to an act of terrorism or related criminal activity that is required to be kept confidential by law or to obtain federal funding (*Id.* §418.180); (7) information in the possession of a governmental body if it identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism (*Id.* §418.181); and (8) certain information relating to specifications,

operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity (*Id.* §418.182).

A city council that meets in closed session to deliberate the above-listed information must keep a tape recording of the proceedings of the closed meeting. *Id.* §418.183(f).

Q. What if a disaster prevents a city council from holding a meeting that was otherwise properly posted?

A. If a catastrophe prevents a city council from holding an otherwise properly posted meeting, the council may convene at a convenient location within 72 hours of the properly posted meeting if the action is taken in good faith and not done to circumvent the Open Meetings Act. *See* Tex. Gov't Code §551.0411(b). A catastrophe is defined as a condition or occurrence that interferes physically with the ability of a governmental body to conduct a meeting, including a fire, flood, earthquake, hurricane, tornado, wind, rain, snow storm, power failure, transportation failure, interruption of communication facilities, epidemic, riot, civil disturbance, enemy attack or other actual or threatened act of lawlessness or violence. *Id.* §551.0411(c). If the city council is unable to convene the meeting within 72 hours, it may only subsequently convene the meeting if it provides 72-hour notice of the meeting. *Id.* §551.0411(b).

Q. What happens if the city must cancel its noticed meeting for adopting the budget and tax rate due to a disaster?

A. Texas law contains no specific disaster-related exceptions from the general process of adopting city budgets and tax rates. However, a city may request the governor waive or suspend any budget and tax rate deadlines imposed by state law. *See* Tex. Gov't Code §418.016(e). The governor is authorized to waive or suspend such deadlines if the waiver or suspension is reasonably necessary to cope with a disaster. *Id.* If a local law, such as a charter requirement, ordinance or resolution, imposes a budget or tax rate adoption deadline on the city, the mayor may suspend such deadline if: (1) the city is wholly or partially located in an area declared as a disaster by the United States president or the governor; and (2) the mayor (or the governing body in the absence of a mayor) proclaims the city is unable to comply with the requirement because of the disaster. *Id.* §418.1075(a). The deadline may not be suspended for more than 30 days after the date the mayor or the governing body, as applicable, makes the proclamation. *Id.* §418.1075(b).

Public Information

Q. May a city temporarily suspend the requirements of the Texas Public Information Act during a disaster?

A. Beginning on September 1, 2019, a governmental body that is currently impacted by a catastrophe that interferes with the ability of the governmental body to comply with the

requirements of the Texas Public Information Act (Act) may suspend the applicability of the requirements of the Act. For purposes of the suspension of the Act, a catastrophe is defined as a condition or occurrence that interferes with the ability of a governmental body to comply with the requirements of the Act, including: (1) a fire, flood, earthquake, hurricane, tornado, or wind, rain or snow storm; (2) power failure, transportation failure, or interruption of communication facilities; (3) epidemic; or (4) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence. Tex. Gov't Code §552.233(a).

A governmental body that elects to suspend the requirements of the Texas Public Information Act must provide notice to the office of the attorney general that the governmental body is currently impacted by a catastrophe and has elected to suspend the applicability of the Act during the suspension period and the extension period. *Id.* §552.233(c). Notice must be provided in a form promulgated by the attorney general. *Id.*

Q. For how long can the requirements of the Act be suspended?

- A. The governmental body may suspend the applicability of the requirements of the Act for an initial suspension period that does not exceed seven consecutive days. Tex. Gov't Code 552.233(d). The initial suspension period must occur during the period that: (a) begins not earlier than the second day before the date the governmental body submits the notice to the office of the attorney general; and (b) ends not later than the seventh day after the governmental body submits the notice. *Id.*

A governmental body may extend an initial suspension period, one time, if the governing body determines that the governing body is still impacted by the catastrophe on which the initial suspension period was based. *Id.* §552.233(e). The initial suspension period may be extended for not more than seven consecutive days that begin on the day following the day the initial suspension period ends. *Id.*

Q. Where and for how long must a suspension notice be posted?

- A. A city that suspends the applicability of the Act must provide notice to the public of the suspension in a place that is readily accessible to the public and in each other location the governmental body is required to post notice of a meeting under the Open Meetings Act. Tex. Gov't Code §552.223(f). This means that the notice must be posted on a physical or electronic bulletin board at a place convenient to the public in city hall (*Id.* §551.050(b)); on a city's website if the city maintains an internet website (*Id.* §§551.043(b), 551.056(b)); and, if the city has a population of 48,000 or more, the agenda of the emergency meeting must be concurrently posted on the city's internet website (*Id.* §551.056(c)). The notice of suspension must be maintained during the suspension period. *Id.* §552.223(f).

Q. What happens to requests for public information that are received before or during a suspension period(s)?

A. The requirements of the Act related to a request for public information that was received before the initial suspension period begins are tolled until the first business day after the date the suspension period ends. Tex. Gov't Code §552.223(h). A request that is received during a suspension period is considered to have been received by the city on the first business day after the date the suspension period ends. *Id.* §552.223(g).

Q. Can a member of the public view a city's emergency management plan or disaster-related information maintained by the city?

A. An emergency management plan is confidential if it contains sensitive information relating to critical infrastructure or facilities and the safety or security of such infrastructures or facilities could be jeopardized by disclosure of the emergency management plan. *See* Tex. Gov't Code §418.106(e). Additionally, the following information is deemed confidential:

- (a) Any information maintained by the city for purposes of emergency management or disaster planning that relates to physically or mentally disabled individuals or individuals with special needs is also confidential. *Id.* §418.175.
- (b) Information that is collected, assembled or maintained by or for a city for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and: (1) relates to the staffing requirement of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency; relates to a tactical plan of the provider; or (2) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider. *Id.* §418.176.
- (c) Information collected, assembled or maintained by or for a city for the purpose of prevention, detecting or investigating an act of terrorism or related criminal activity and relates to an assessment of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity. *Id.* §418.177.
- (d) Information related to the construction or assembly of an explosive weapon or a chemical, biological, radiological or nuclear weapon of mass destruction or indicates the specific location of a chemical, biological agent, toxin or radioactive material that is more than likely to be used in the construction or assembly of such weapon or unpublished information relating to a potential vaccine or a device that detects biological agents or toxins. *Id.* §418.178.
- (e) Encryption codes and security keys for a public communication system if the information is collected for the purpose of preventing, detecting or investigating an act of terrorism or related criminal activity. *Id.* §418.179.
- (f) Information, other than financial information, in possession of the city that is: (1) a part of a report to an agency of the United States; (2) relates to an act of terrorism or related criminal activity; and (3) is specifically required to be kept

confidential by federal law, an information sharing agreement or to obtain federal funding. *Id.* §418.180.

- (g) Information that identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism is confidential. *Id.* §418.181.
- (h) Information, including access codes and passwords, that related to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *Id.* §418.182.
- (i) The following information that is maintained by a governmental body: (1) the name, social security number, house number, street name, and telephone number of an individual or household that applies for state or federal disaster recovery funds; (2) the name, tax identification number, address, and telephone number of a business entity or an owner of a business entity that applies for state or federal disaster recovery funds; (3) any other information the disclosure of which would identify or tend to identify a person or household that applies for state or federal disaster recovery funds; and (4) the street name and census block group of and the amount of disaster recovery funds awarded to a person or household before the date on which disaster recovery funds are awarded to the person or household. *Id.* §§552.160(b), §552.160(c). (Effective September 1, 2019.)
- (j) Information collected or maintained in the state's disaster case management system that could identify a person affected by a disaster except that such information may be disclosed to a governmental body for the purpose of disaster relief or recovery. *Id.* §418.054 (d). (Effective September 1, 2019.)
- (k) Information contained in a notice that is provided to a city related to a report of a release of a radioactive substance in the environment, including the name, quantity, and state of matter of the radioactive substance released, if known. *See* Tex. Health & Safety Code §501.0245(c).

Purchasing Procedures

Q. What is the process for procuring goods or services during or after a disaster?

- A. Generally, a city must competitively procure goods or services that require an expenditure of more than \$50,000. Tex. Local Gov't Code §252.021(a). However, state law allows a city to procure goods or services without following a competitive procurement process if: (1) the procurement is made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the city's residents or to preserve the property of the city; (2) the procurement is necessary to preserve or protect the public health or safety or the city's residents; or (3) the procurement is necessary because of unforeseen damage to public machinery, equipment or other property. *Id.* §252.022(a)(1)-(3).

Although Section 252.022 of the Local Government Code relieves the city from complying with the regular competitive procurement process, it does not exempt the city from complying with the requirements related to performance and payment bonds. Performance bonds are required for construction projects that exceed \$100,000, and payment bonds are required for construction projects that exceed \$50,000. Tex. Gov't Code §2253.021.

Q. Are purchases made in response to a disaster eligible for reimbursement?

- A. To be eligible for reimbursement, purchases made by a city must comply with federal procurement laws. Although a city may procure goods and services without competitive bidding as an emergency under state law, such exception does not necessarily result in compliance with federal procurement rules. Federal law may be more stringent than state law with respect to procurement and emergency exceptions. The Federal Emergency Management Agency's (FEMA) [Procurement Disaster Assistance Team](#) (PDAT) provides assistance with adhering to federal procurement standards and FEMA policies and guidance associated with FEMA's Public Assistance grants. If a city plans on filing a reimbursement claim with FEMA, the city should work with FEMA and its city attorney to competitively procure goods and services in accordance with federal regulations to reduce the likelihood of disallowance of such claim.

Q. What purchases may the city make through the State Department of Information Resources?

- A. A public safety entity, including a city, may purchase information technology commodity items through the Department of Information Resources (DIR) if the entity finds the purchase of those commodities will assist the entity in providing disaster education or preparing for a disaster. Tex. Gov't Code §418.193 (Effective September 1, 2019.) Additionally, the city may contract with DIR for use of state consolidated telecommunications systems if the entity finds that use of the system will assist the entity in providing disaster education or preparing for a disaster. *Id.* §418.194. (Effective September 1, 2019.)

Mutual Aid

Q. May a city request emergency assistance from or provide emergency assistance to another local government?

- A. Texas law allows local government entities to provide emergency assistance to one another under mutual aid agreements or the Texas Statewide Mutual Aid System (the "System"). *See* Tex. Gov't Code §§418.107(c); 791.027. A city may provide emergency assistance to another local government, whether or not the local governments have previously agreed to contract to provide that kind of assistance if: (1) in the opinion of the presiding officer of the requesting local government, a state or civil emergency exists in the local government that requires assistance and the presiding officer requests the

assistance; and (2) before the emergency assistance is provided, the governing body of the local government providing the assistance authorizes that local government to provide assistance by resolution or other official action. *Id.* §791.027(a). A “local government entity” is a county, incorporated city, independent school district, public junior college district, emergency services district, other special district, joint board, or other entity defined as a political subdivision under Texas law that maintains the capability to provide mutual aid.” Tex. Gov’t Code §418.004(10). “Mutual aid” refers to any activity related to the prevention or discovery of, response to, or recovery from a terrorist attack, a natural or manmade disaster, hostile military or paramilitary action, or extraordinary law enforcement emergency performed under the System or a written mutual aid agreement. *See id.* §§418.004(11); 421.001(3).

A request for mutual aid assistance may be submitted verbally or in writing, but if made verbally, it must be confirmed in writing. *Id.* §418.115(a). If a request for mutual assistance is made to a city, the city manager or the highest ranking officer of the city, with the approval and consent of the mayor or the mayor’s designee, may provide the requested assistance in accordance with the polices, ordinances, and procedures established by the city’s governing body. *Id.* §418.115(b). Further, a person assigned, designated or ordered to perform duties by the governing body of a city employing the person in response to a request under the System is entitled to receive the same wages, pension, and other compensation and benefits, including injury or death benefits, disability payments, and workers’ compensation benefits for the performance of the duties as though the services were rendered for the entity employing the person. *Id.* §418.116. The city employing the person is responsible for the payment of wages, salary, pension, and other compensation and benefits associated with the performance of duties.

Q. What financial resources are available to cities to aid in the recovery process?

- A. A city is expected to use its own resources and the resources available to it through mutual aid assistance before requesting assistance from the state. 37 TAC §7.23. A city may need to tap into reserve funds if appropriations for disaster preparation or recovery were not included in the city’s original budget. To add funds to the original budget, a city would need to amend its budget. State law allows a city to increase its budget only if there a “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. . .” Tex. Local Gov’t Code §102.009(b) (note that under section 102.101 of the Local Government Code, a city may amend its budget at any time for city purposes, provided total budget expenditures under the budget are not increased). If the city amends its original budget to authorize an emergency expenditure, the city must file a copy of the order or resolution amending the budget with the city secretary, and attach such order or resolution to the original budget. *Id.* §102.009(c). The amended budget must also be filed with the county clerk office. *Id.* §102.009(d).

If local resources are exhausted and assistance is needed outside a mutual aid agreement, the mayor is authorized to request such resources from other political subdivisions or the state. *See* 37 TAC §§7.23; 7.25. Before a city can request assistance from the state, a city

must request assistance from the county where the city is located. *See id.* §7.23. Additionally, the mayor must have declared a local state of disaster before she or he can request disaster recovery assistance from the state. *Id.* §7.41. An estimate of the extent of damages sustained to public and private property, including homes and business and data on the number of people who are deceased, injured or displaced must be attached to the request for assistance along with a copy of the declaration of a local disaster. *Id.* §7.43.

A city that participates in disaster preparation or disaster recovery is eligible for funding from the state disaster contingency fund to pay for costs incurred by the city in preparing for and recovering from a disaster. Tex. Gov't Code §418.073(c). A city that receives funding from the disaster contingency fund to pay for costs associated with disaster recovery and that subsequently receives reimbursement from the federal government, an insurer, or another source shall reimburse the disaster contingency fund. *Id.* §418.073(f). A city that is experiencing financial hardship as a result of a disaster may also use funds provided to the city from the disaster contingency fund for purposes of providing local matching funds for FEMA qualifying projects. *Id.* §418.073(h).

Additionally, a city that is the locus of temporary housing or emergency shelters for persons moved or evacuated by recommendation or order of the governor may be assisted by any resource available to the state, including the disaster contingency fund, to ensure the political subdivision receives an advance or reimbursement: (a) of all expenses, including lost revenue, incurred by the city associated with the use of public facilities for temporary housing or emergency shelters; and (b) of the amounts paid for salaries and benefits of permanently employed, straight-time, and regular-time personnel of the city who perform duties associated with the movement or evacuation of persons into, out of, or through the city. *Id.* §418.020.

In addition, on the governor's determination that a city has suffered or will suffer a substantial loss of tax or other revenue from a major disaster and has demonstrated a need for financial assistance to perform its governmental functions, the governor may apply to the federal government on behalf of the city for a loan and may receive and disburse the proceeds of an approved loan to the city. *Id.* §418.021(a). Based on the governor's review, the governor may recommend to the federal government the cancellation of all or part of repayment of the loan if in the first three full fiscal years following the major disaster the revenues of the city are insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character. *Id.* §418.021(c).

Personnel

Q. Is the city required to pay employees while the city is closed due to a disaster?

A. The answer depends on whether the employee is an exempt employee or nonexempt employee under the Fair Labor Standards Act (FLSA). Generally, the FLSA does not require employers to pay nonexempt employees for hours they did not work. As a result, whether the city is closed for part of a day, part of a week, or a full week or more, the FLSA does not require the city to pay nonexempt employees for time they did not work even if such employees would normally be scheduled to work if the city were open.

However, in instances where a nonexempt employee receives a fixed salary for fluctuating workhours (i.e. an employee who has agreed to work an unspecified number of hours for a specified salary), the city must pay the employee his or her full weekly salary for any week in which any work was performed. *See* 29 C.F.R. §778.306.

The city is required to pay an exempt employee his or her full salary if the employee works any part of a workweek in which the city is closed or cannot be reopened due to inclement weather or disaster for less than a workweek. *See* 29 C.F.R. §541.602. For example, if the city is closed for only part of a week, and the exempt employee worked during that any part of that week, the city is required to pay an exempt employee the employee's full salary if the employee's worksite is closed or cannot be reopened due to inclement weather or disaster for less than a full workweek. *Id.* If the city is closed for a full workweek and an exempt employee performs no work during that workweek, the city is not required to pay the exempt employee. *Id.*

Q. Can city penalize an employee who leaves his place of employment to participate in an emergency evacuation order?

A. Texas law prohibits an employer from discharging or discriminating against an employee who leaves the employee's place of employment to participate in a general public evacuation ordered under an emergency evacuation order or a local disaster declaration. *See* Tex. Lab. Code §22.002. An employer who violates this provision is liable for any loss of wages and employer-provided benefits incurred by the employee as a result of the violation. *Id.* §22.003. However, this provision does not apply to emergency services personnel, including fire fighters, police officers, emergency medical technicians, and other individuals who are required to provide services for the benefit of the general public in emergency situations, provided that adequate emergency shelter is provided for such individuals. *Id.* §22.004.

Records Management

Q. What happens if city records are destroyed during a disaster?

A.* If records are maintained electronically, hopefully backups can be brought online and computer equipment can be salvaged or replaced quickly. In the case of physical records, it is essential to examine the condition of offices, warehouses, and other locations where records are stored as soon as possible. Unfortunately, some physical records just aren't going to be salvageable or will be too costly to send to a conservation lab for restoration. For some ideas on how to begin triaging records, the Texas State Library and Archives Commission (TSLAC) has a [webinar](#) with some suggestions. In cases where the records cannot be recovered, city officials need to document the types of records affected, the volume of records lost, and when the records were due for destruction. For non-permanent records, this internal documentation is sufficient. But for any permanent records, TSLAC will need to be notified. City officials should submit an [SLR 501: Request for Authority to Destroy Unscheduled Records](#) to TSLAC. It is helpful to

TSLAC if the city can include photos, a letter describing the circumstances that lead to the damage, or any other evidence that supports the information you will provide on the form.

Now, the INTENDED use for these forms is either to obtain permission and legal authority to destroy unique records that do not appear on a local government's approved retention schedule, which otherwise would be permanent OR to request permission from TSLAC to destroy the paper original of a record a local government wants to microfilm.

That being said, if permanent records are damaged/rendered unsalvageable from conditions beyond your control, submit this form to TSLAC in order to officially document and note the event, any pertinent details, and number/ type of records that were destroyed.

This does not absolve you of legal responsibility for following the retention period set by your schedules; it just provides evidence about the nature of the records' destruction. By doing this in the normal course of business, it shows that information was not intentionally withheld or destroyed.

If you have any questions about our forms or the process, please contact TSLAC at 512-463-7610 or slrminfo@tsl.texas.gov.

***Via, the Texas Record (Sep. 6, 2017)**