

Emergency Management Legal Q&A

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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, cybersecurity event, 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).

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* Tex. Dep’t of Emergency Mgmt., *External Operating Rule*, No. 1.1.1 (Sept. 1, 2019). 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.* No. 1.4. Notification must be made using form [TDEM-147](#) or by logging into [TDEM’s WebEOC](#). *Id.*

A city must also prepare, keep current, and distribute to appropriate officials a local emergency management plan or an interjurisdictional emergency management plan that includes the minimum content specified by TDEM in its local emergency planning standards. *Id.* No. 2.2.1. 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).

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(c). In many cities, the emergency management coordinator is responsible for developing the emergency management plan and coordinating emergency management training. In 2020, TDEM launched the Texas All Hazards Planning System (TAHPS) in 2020 to assist cities and other local jurisdictions in creating emergency management plans. TAHPS allows users to interact with stakeholders and provides a step-by-step guide for filling out the proper paperwork. The tool can be found on TDEM’s website at: <https://www.tdem.texas.gov/preparedness/local-planning>. TDEM also provides plan

documentation templates and guidelines for each plan and annex at: <https://www.tdem.texas.gov/preparedness/local-planning>. The plan, and any changes, must be sent to TDEM within one month of adoption by the city. Tex. Dep't of Emergency Mgmt., *External Operating Rule*, No. 2.2.1 (May 18, 2023).

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. Tex. Gov't Code §418.106(b). 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 Executive Guide at: <https://www.tdem.texas.gov/executive-guide>.

As a condition to receiving federal funds, grants, training, and reimbursement of disaster recovery costs, all cities, including those cities that are part of an interjurisdictional plan, must also adopt and implement the National Incident Management System (NIMS) as its incident management system by ordinance. See National Incident Management System, FED. EMERGENCY MGMT. AGENCY, <https://www.fema.gov/emergency-managers/nims>; Homeland Security Presidential Directive 5, U.S. DEPT. OF HOMELAND SEC., <https://www.dhs.gov/sites/default/files/publications/Homeland%20Security%20Presidential%20Directive%205.pdf>. NIMS is an incident management system that enables organizations across the country to work together during incidents of all kinds and sizes. *Id.*

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(3)(A).

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)(1)(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)(3), 418.1015(c).

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

A. 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. A certificate of course completion shall be provided to each public officer who completes the training. Tex. Gov't Code §418.005(e). This certificate must 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://www.tdem.texas.gov/preparedness/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 and 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 the 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.*

Q. Who can order a mandatory evacuation during a declared local state of disaster?

A. The mayor or county judge may order the evacuation of all or part of the population from a stricken or threatened area within the authority or jurisdiction of the county judge or mayor if the county judge or 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 county judge

or mayor is also authorized to control access to and from a disaster area that is under the authority of the county judge or mayor and to control movement of persons and occupancy of premises in such area. *Id.* §418.108(g). For purposes of the above, the jurisdiction and authority of the county judge includes the incorporated and unincorporated areas of the county, and in the event of a conflict between the decisions of the county judge and the mayor, the decision of the county judge prevails. *Id.* §418.108(h).

Additionally, the county judge or 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). Similarly, the governor and a county judge or mayor who orders the evacuation of a disaster area by a concurrent order may compel persons who remain in the evacuated area to leave. *Id.* §418.185(c). 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).

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

- A. 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(d). 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. *Id.* §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.* §418.195.

Q. What authority does a mayor or city council have during a public health disaster?

- A. With respect to disease management, the city council of a Type A general city can take any action that is necessary or expedient to promote health and suppress disease, including: (1) preventing the introduction of a communicable disease into the city and stopping, detaining, and examining a person coming from a place that is infected or believed to be infected with a communicable disease; (2) examining and regulating hospitals in the city or within five miles of the city limits; and (3) abating any nuisance that is or may cause harm to the public health. Tex. Health & Safety Code §122.005(a). A Type A general law city may also adopt rules: (1) necessary to promote health or suppress disease; and (2) preventing introduction of a communicable disease into the city, including quarantine rules. *Id.* §122.005(b). The city may fine those who do not comply with the city’s rules. *Id.* §122.005(c). Similarly, home-rule cities may adopt rules to protect the public health, including quarantine rules, establishment of quarantine stations, and emergency hospitals. *Id.* §122.006.

However, cities should be aware of recent court decisions and new legislation that affect local authority during public health disasters. In June 2023, the Supreme Court of Texas addressed the scope and constitutionality of the governor’s authority under the Texas Disaster Act to prohibit local governments from imposing mask mandates. *See Abbott v. Harris Cnty.*, 672 S.W.3d 1 (Tex. 2023); *Abbott v. Jenkins*, 671 S.W.3d 960 (Tex. 2023); *Abbott v. City of San Antonio*, 671 S.W.3d 959 (Tex. 2023); *Abbott v. La Joya Indep. Sch. Dist.*, 672 S.W.3d 31 (Tex. 2023); and *Abbott v. Fort Bend Cnty.*, 672 S.W.3d 32, 33 (Tex. 2023). In one case, Harris County alleged that the governor exceeded his authority under the Texas Disaster Act by issuing an executive order that prohibited local governmental entities and officials from requiring face coverings as part of their COVID-19 mitigation efforts. In the court’s decision, the court held that the “Disaster Act empowers the Governor to override decisions of the county judges and other local officials who serve as his ‘designated agents’...[and] gubernatorial executive orders lawfully supersede contrary orders by [a county judge].” *Id.* at 12.

In 2021, a bill (SB 968) was passed that states that a mayor may not issue an order during a declared state of disaster or local disaster to address a pandemic disaster that would limit or prohibit: (1) housing and commercial construction activities, including related activities involving the sale, transportation, and installation of manufactured homes; (2) the provision of governmental services for title searches, notary services, and recording services in support of mortgages and real estate services and transactions; (3) residential and commercial real estate services, including settlement services; or (4) essential maintenance, manufacturing, design, operation, inspection, security, and construction services for essential products, services, and supply chain relief efforts. *See* Tex. Gov’t Code §418.1085.

In addition, effective September 1, 2023, cities may not implement, order, or otherwise impose a mandate, with limited exceptions, requiring: (1) a person to wear a mask or other face covering to prevent the spread of COVID-19; (2) a person to be vaccinated against COVID-19; and (3) the closure of a private business, public school, open enrollment

charter school, or private school to prevent the spread of COVID-19. *See* Tex. Health & Safety Code §§81B.002-81B.004. Cities are also prohibited from issuing a vaccine passport, vaccine pass, or other standardized documentation to certify an individual's COVID-19 vaccination status to a third party for a purpose other than health care or otherwise publish or share any individual's COVID-19 immunization record or similar health information for a purpose other than health care. *Id.* §161.0085.

Q. What is a “public health authority” under Texas law?

A. In Texas, a public health authority is called a “local health authority.” 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; 121.022. Cities that have established local health departments, a public health district, or that receive grants from the Department of State Health Services for essential public services are required to appoint an LHA. *Id.* §§121.028(b); 121.033; 121.041. 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) 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 a city suspend its city ordinances 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).

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. Can the governor suspend laws or rules during a declared state of disaster?

A. The governor may 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-premises 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).

Additionally, on the request of a political subdivision, including a city, the governor may waive or suspend a deadline imposed by statute or a state agency's orders or rules on the city, including a deadline related to a budget or property tax, if the waiver or suspension is reasonably necessary to cope with a disaster. *Id.* §418.016(e).

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

A. 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).

Wellness Checks

Q. Are cities required to conduct wellness checks for medically fragile individuals during disasters?

A. Yes. In 2021, the legislature passed a bill (S.B. 968) that requires each city and county to adopt procedures for conducting wellness checks on medically fragile individuals during disasters in compliance with minimum standards established by the Texas Division of Emergency Management (TDEM). Tex. Gov't Code §418.256. A wellness check must include an automated telephone call and text to the individual as well as a personalized phone call to the individual. *Id.* §418.256(b). If the person is unresponsive to a telephone call, the city must perform an in-person wellness check. *Id.* Wellness checks must be conducted as soon as practicable but not later than 24 hours after the event requiring a wellness check occurs. *Id.* §418.256(c). As of this update, TDEM is in the process of finalizing these minimum standards.

Q. Who is a "medically fragile individual" under the statute?

A. A medically fragile individual is defined as any individual who, during the time of disaster or emergency, would be particularly vulnerable because of a medical condition, including individuals: (1) with Alzheimer's disease and other related disorders; (2) receiving dialysis services; (3) who are diagnosed with a debilitating chronic illness; (4) who are dependent

on oxygen treatment; and (4) who have medical conditions that require 24-hour supervision from a skilled nurse. *Id.* §418.251(5).

Q. In which events is the city required to conduct wellness checks?

- A. TDEM in collaboration with the Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS) are in the process of adopting rules regarding which events require wellness checks but must include: (1) an extended power, water, or gas outage; (2) a state of disaster declared under the Texas Disaster Act; or any other event considered necessary by TDEM, HHSC, and DSHS. *Id.* §418.255(a). If more than one disaster is declared for the same event or the same event qualifies as an event requiring a wellness check for multiple reasons, only one wellness check is required to be conducted. *Id.* §418.255(b).

Q. How can cities determine which residents may be medically fragile?

- A. Under the new law, TDEM must maintain an emergency assistance registry that provides local emergency planners and emergency responders with information on the needs of certain individuals in their communities. *Id.* §418.251(3). Individuals in the community that need assistance during emergency events may voluntarily sign up to be included in the State of Texas Emergency Assistance Registry (STEAR) program by visiting <https://stear.tdem.texas.gov/Login.aspx>. TDEM must also develop a process for designating which individuals included in the emergency assistance registry may be medically fragile. *Id.* §418.252. Cities, first responders, and local health departments can be granted access and learn more about the emergency assistance registry by visiting: <https://www.tdem.texas.gov/response/state-of-texas-emergency-assistance-registry>.

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 including: (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. *See* Tex. Gov't Code §551.045(b). Additionally, an "imminent threat to public health and safety," includes 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 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 the emergency 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: (1) filed a request with the city to receive the notice; and (2) 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. What action or deliberation may take place at a properly posted emergency meeting?

- A. City council may only deliberate or take action on a matter at an emergency meeting that: (1) directly relates to responding to the emergency or public necessity identified in the notice of the meeting; or (2) an agenda item listed on a notice of the meeting before the supplemental notice was posted. Tex. Gov't Code §551.045(a-1).

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

A quorum is generally required at an emergency meeting before the 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 §418.1102.

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

- A. A city council may hold a meeting via telephone conference if an emergency or public necessity exists and 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. 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, snowstorm, 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 posted 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 id.* §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. 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 §552.2325(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.* §552.2325(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 552.2325(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.* §552.2325(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 §552.2325(h). 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.* §552.2325(h).

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 §552.2325(j). 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.* §552.2325(i).

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; (2) relates to a tactical plan of the provider; or (3) 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.
- (c) 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.

- (d) 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.
- (e) 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.
- (f) Information that identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism is confidential. *Id.* §418.181.
- (g) Information, including access codes and passwords, that relates 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).
- (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.* §418.0545(d).
- (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. *See* 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. *See* Tex. Gov't Code §2253.021.

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

- A. To be eligible for reimbursement by the federal government, 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, this 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. Are there emergency financing options for cities during a disaster?

- A. In certain instances, a city that is located within 70 miles of the Gulf of Mexico or of a bay or inlet of the gulf may authorize the issuance of an anticipation note or other obligation in the event of an emergency to fund public work projects resulting from natural disasters. Tex. Gov't Code §1431.015(b). An emergency is defined as the occurrence of widespread or severe damage, injury, or loss of life or property affecting an area in the city and that is the result of a hurricane or tropical storm, including wind damage, fire damage, damage from wave action, or flood damage resulting from the hurricane or tropical storm. *Id.* §1431.015(a). Before issuing the note or other obligation: (1) the governor must have issued an executive order or proclamation declaring a state of disaster and designating the area affected by the emergency; (2) the city council acting through the mayor must have declared a local state of disaster designating the area affected by the emergency; or (3) the governor must have proclaimed a state of emergency designating the area affected by the emergency. *Id.* §1431.015(c).

A city that issues an anticipation note or other obligation under these conditions must deliver to the attorney general a transcript of proceedings related to the issuance of an anticipation note or other obligation and provide preliminary approval and fulfill other

requirements relating to the issuance of the anticipation note or other obligation. *Id.* §1431.017. The attorney general must expedite review and approve delivery of the anticipation note or other obligation subject to the city’s compliance with preliminary approval requirements. *Id.* Effective June 2023, cities are no longer required to meet credit rating requirements when issuing anticipation notes under these circumstances. *Id.* §1431.015(b).

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

- A. Cities may purchase information technology commodity items through the Department of Information Resources (DIR). *See* Tex. Gov’t Code §2157.068(j). (Effective September 1, 2023.) Additionally, the city may contract with DIR for use of state consolidated telecommunications systems. *Id.* §2170.004. (Effective September 1, 2023.)

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).

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(a). 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. *Id.* §418.116(b)

Q. What financial resources or loans 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. Tex. Dep't of Emergency Mgmt., *External Operating Rule*, No. 3.1.1. 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 102.10 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's office. *Id.* §102.009(d).

If local and mutual aid resources prove to be inadequate for coping with a disaster and emergency management, the mayor, or another official specifically authorized by the mayor, may request assistance from the state by contacting the local Disaster District Committee Chairperson, who is the commanding officer of the Texas Highway Patrol district or sub-district in which the city is located. *Id.* No. 3.2.1. However, the mayor must request assistance from its county before requesting assistance from the state. *Id.* No. 3.1.1. To request state or federal recovery assistance and/or a state disaster declaration by the governor, the mayor must do so in writing to the Governor of Texas through the Texas Division of Emergency Management. *Id.* No. 4.2.1. The mayor must have declared a local state of disaster before requesting disaster recovery assistance from the state. *Id.* No. 4.1.1. An estimate of the extent of damages sustained to public and private property, including homes and businesses, and data on the number of people who are deceased, injured, or displaced must be completed on the Disaster Summary Outline (form [TDEM-93](#) or the [DSO Web App](#)) and attached to the request for assistance along with a copy of the declaration of a local disaster. *Id.* No. 4.3.1.

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(b).

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).

Cities may also be eligible for a disaster recovery short-term loan from TDEM. *Id.* §418.062. To qualify, the city must: (1) be located wholly or partly in an area declared to be a disaster area by the governor or president of the United States; (2) submit to TDEM, within 15 days of the date of its adoption by city council, the city's operating budget for the most recent fiscal year; and (3) submit an application for a loan from the Federal Emergency Management Agency's community disaster loan program. *Id.* In addition, an assessment of damages due to the disaster for which the declaration was made must have been conducted, and TDEM in consultation with FEMA must determine that the estimated cost to rebuild the city's infrastructure damaged in the disaster is greater than 50 percent of the city's total revenue for the current year as shown in the city's most recent operating budget that was submitted to TDEM. *Id.* Effective September 1, 2023, cities will have 30 days to submit their operating budget to TDEM for consideration of the disaster recovery loan.

A loan under the TDEM Disaster Recovery Loan Program must be at or below market interest rates for a term not to exceed 10 years, and loan proceeds must only be used for disaster recovery projects. *Id.* §418.064. If the term of a loan exceeds two years, the state auditor shall, on the second anniversary of the date on which the city received the loan, conduct a limited audit of the city to determine whether it has the ability to repay the loan under the terms of the loan. *Id.* §418.064(c). TDEM may forgive a loan if the state auditor determines that the city is unable to repay the loan. *Id.*

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 a 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.

Q. Are city employees entitled to hazard pay?

- A. Hazard pay for city employees is not mandated by state or federal law. State law requires state agencies to pay its eligible state employees hazard duty pay. Tex. Gov't Code §659.302. But no similar law requires a city to provide hazard pay to its employees. A city can choose to do so by enacting a policy allowing for such pay. Additionally, city personnel

should review their emergency management plan to determine if and under what conditions hazard pay is authorized.

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, the city should document the premature destruction detailing which record types were destroyed. TSLAC has created a template that cities can use that can be found here: [Documentation for Premature Loss or Destruction of Records](#). A premature destruction document should include: (1) basic information about the custodian of records (i.e., city name, department, address, etc.); (2) Record Number, using TSLAC's local schedules or the city's own unique series, for easy identification; (3) Record Series Title and, if necessary, a description; (4) inclusive dates; and (5) the quantity of affected records. In addition, cities should document the time spent trying to recover the records. Keep in mind that this internal documentation is a record that must be retained permanently under the local government records retention schedule.

This does not absolve the city of legal responsibility from following the retention period set by its retention 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.

For questions or more information, cities can contact TSLAC at 512-463-7610 or slrminfo@tsl.texas.gov.

*Via, TSLAC's [Texas Record](#) (June 8, 2020).