



City of Hallandale Beach City Commission Agenda Cover Memo

Meeting Date:	Item Type:		1 st Reading	2 nd Reading
8/5/2020	<input type="checkbox"/> Resolution	Ordinance Reading	7/15/2020	8/5/2020
File No.:	<input checked="" type="checkbox"/> Ordinance	Public Hearing	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
20-181	<input type="checkbox"/> Other	Advertising Required	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Quasi Judicial:	<input type="checkbox"/>	<input type="checkbox"/>
Fiscal Impact (\$):	Account Balance (\$):	Funding Source:	Project Number :	
0	n/a	n/a	n/a	
Contract/P.O. Required	RFP/RFQ/Bid Number:	Sponsor Name:	Department:	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Jennifer Merino, City Attorney	City Attorney's Office	
Strategic Plan Focus Areas:				
<input type="checkbox"/> Financial	<input checked="" type="checkbox"/> Organizational Capacity	<input type="checkbox"/> Infrastructure	<input type="checkbox"/> Development, Redevelopment and Economic Development	
Implementation Timeline: N/A				
Estimated Start Date: upon adoption Estimated End Date: n/a				

SHORT TITLE:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF HALLANDALE BEACH, FLORIDA, CREATING CHAPTER ONE , ARTICLE II, "EMERGENCY MANAGEMENT" TO CODIFY PROCEDURES FOR EMERGENCY MANAGEMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Background and Summary

Various Florida Statutes empower municipalities to exercise special powers during a state of emergency to protect the health, safety and welfare of residents. Two different statutory structures, Ch. 252 and Ch. 870, grant municipalities the ability to declare a state of emergency under specified circumstances and the option to exercise extraordinary powers during the declared state of emergency. However, because municipalities differ in their governmental structure, neither chapter specifies precisely how a state of emergency is declared nor which officials may exercise the emergency powers. For example, the emergency provisions in Chapter 252 state only that the municipality may declare a state of emergency, and that it may exercise various extraordinary powers. Chapter 870, on the other hand, permits a municipality to designate a specific official by ordinance that may declare the emergency and then exercise the discretionary emergency powers.

A review of the City Charter and Code revealed that there was no specific guidance in relation to the exercise of authority under these emergency statutory schemes. In the past, the Commission has approved emergency provisions applicable to the beaches and a Comprehensive Emergency Management Plan. However, during the COVID-19 pandemic, review of Ch. 252 and Ch. 870 and the historical practices of the City revealed that there was a legal void that might leave the City subject to a challenge for its emergency activities. To put it plainly, those that disagree with the City's actions could sue the City claiming that the actions were not authorized based on who signed or executed the specific activity in question. This type of legal vulnerability is easily remedied with an ordinance that specifically addresses, in accordance with the City's Charter, the process for exercising the emergency powers granted by state statute.

During the initial COVID-19 emergency stage, the City Commission approved a specific Emergency Ordinance delegating certain authorities while the State caught up to the City in its response to the Emergency. However, the City was fortunate that there was the time and availability to research, draft, publish, and organize a City Commission meeting for passage of an Emergency Ordinance. A more imminent or fast-paced emergency would not allow for such a response. Further, approval of two-thirds of the full commission is required for passage of an emergency ordinance. Thus, this would not be an option if two commissioners were physically unavailable due to the emergency.

It is for this reason that it is recommended that the Commission adopt an Emergency Management Code Ordinance that would codify

- (1) the authority to Declare a State of Emergency (separate provisions for Ch. 252 and Ch. 870);
- (2) emergency powers that may be exercised in the administration of municipal functions;
- (3) authority to issue Emergency Orders (regulations issued to the public during the emergency); and,
- (4) enforcement powers of the City as it pertains to emergency orders.

A review of municipal codes has revealed that the vast majority of the cities surveyed have adopted some form of the provisions recommended here, including: Aventura, Boca Raton, Coral Springs, Coconut Creek, Davie, Deerfield Beach, Ft. Lauderdale, Ft. Myers Beach, Hollywood, Key Biscayne, Pembroke Park, Plantation, Sunny Isles Beach, Weston, and many others. All of the codes vary and any code has to be customized to applicable requirements of our City Charter.

The proposed Emergency Management Code reflects the city's current practices during recent emergencies. It is not the only option and specifics can be adjusted, as discussed below, if desired by the City Commission. However, it is strongly recommended that some form of an Emergency Management codification be adopted.

Analysis

The purpose of the proposed ordinance is to codify an Emergency Management authorization that clarifies the City's process as it relates to the state statutory structures. In order to do this, the Commission must meld the statutory requirements with those of the City's Charter. Courts will generally give deference to the governing body's reasonable interpretation of its Charter. Therefore, it is important that the commission be aware of and take into account the various relevant provisions of the City Charter identified in Exhibit A.

In order to facilitate the Commission's consideration of the relevant issues, the aspects of the ordinance have been separated into four distinct categories: (1) the authority to Declare a State of Emergency (separate provisions for Ch. 252 and Ch. 870); (2) emergency powers that may be exercised in the administration of municipal functions; (3) authority to issue Emergency Orders (regulations issued to the public during the emergency); and, (4) enforcement powers of the City as it pertains to emergency orders. Each aspect is discussed in more detail below.

I. State Statutory Emergency Structures

Florida Statutes contain two emergency management structures that apply specifically to municipalities: (1) Sections 252.31-252.90 which apply to emergencies arising from natural, technological or manmade causes (hereinafter referenced as "Ch. 252"), and (2) Sections 870.041-870.048 which apply in the event of overt acts of violence, or the imminent threat thereof (hereinafter referenced as "Ch. 870"). The two differ significantly and are tailored to accomplish the necessary goals of protecting the public health and safety in differing circumstances. Generally speaking, Ch. 252 is broader in nature, reflective of its goal to provide authority to deal with circumstances that cannot necessarily be foreseen by legislators. It relies heavily on a top-down approach of emergency governance, granting the greatest powers to the Governor. However, it contemplates that actions will have to be taken by municipalities during emergencies and certain formalities will have to be suspended. On the other hand, Ch. 870 is automatically more restrictive of public activity but also very short-lived, lasting only 72-hours unless extended. This reflects its more specific purpose of controlling public safety from the threat of acts of violence, including riots.

To provide some context, Ch. 252 is regularly invoked in response to hurricanes. However, during the initial Covid-19 response, an unprecedented emergency in modern times, administration was faced with the possibility that the powers in Ch. 870 may be required if the public turned to panic, defiance of the law and rioting.

II. Aspects of an Emergency Management Code

1. Step One: Declaration of Emergency

No existing provisions of the City Charter or Code specifically address the authority to declare a state of emergency. Sec. 6.05(13) of the City Charter addresses the City Manager's authority during an emergency, but does not address the declaration of the emergency. In the City's Code, one provision appears to address the declaration of an emergency, but it is located in Section 19-3, "Conduct on Beaches," limited the closing of beaches. The provision

allows the mayor, city manager and chief of police to declare an emergency situation and has been in effect since 1980.

A. Pursuant to Ch. 252.

The ordinance as proposed incorporates the current practice of the City for declaration of emergency, a joint declaration of the Mayor and City Manager. However, various options may reasonably fall within the authority conferred by the City Charter for the purposes of declaring an emergency pursuant to Ch. 252. The commission may reserve the power to declare an emergency only for the full commission, or it may delegate it to solely to the City Manager or solely to the Mayor. Regardless of the designated authority to declare the state of emergency, once the state of emergency is declared, the City Manager would exercise the emergency powers in accordance with Sec. 6.05(13) of the City Charter.

The Commission should also keep in mind that emergencies may, by their very nature, prevent the commission from meeting in the Sunshine. Therefore, options that require a meeting of the commission may not be viable during certain emergencies and would not be conducive to a fast response by the City to an unforeseen emergency. It is for this reason that the Emergency Ordinance procedure in the Charter is inadequate to address the need for a designation of authority to declare an emergency. That procedure requires at least four members of the commission to meet and at least four members to approve of the emergency ordinance. Nothing in state statute requires the declaration to be made by ordinance.

B. Pursuant to Ch. 870.

Ch. 870 permits a municipality to designate an official to exercise the powers within that chapter. Specifically it requires the designation be made by ordinance and that the designated official "shall be either the mayor or chief of police or the person who performs the duties of a mayor or chief of police in such municipality." The reference to "mayor" in the statute may be read to refer to the individual that might traditionally control municipal administration, but an ordinance such as the one proposed is required to address any potential arguments of a legal conflict.

Because of the structure of Ch. 870 and the structure of the City Charter, it is the opinion of the City Attorney that the only option for delegation of authority to declare a state of emergency under Ch. 870 is to designate the City Manager as the designated local official. This is because, unlike Ch. 252, Ch. 870 states that the same official designated to declare the emergency is also the official who shall exercise the discretionary emergency powers conferred by Ch. 870. Section 6.05(13) of the City Charter states that in time of emergency the City Manager shall "assume full temporary direction of all municipal operations." Therefore, the City Charter contemplates that only the City Manager would exercise control during an emergency.

2. Step Two: Administration of Municipal Functions

This aspect is subject to much more explicit guidance in the form of Section 6.05(13) of the City Charter which states that in time of emergency the City Manager shall "assume full temporary direction of all municipal operations." Pursuant to this section, the City Manager is empowered to exercise the emergency powers in 252.38 which primarily relate to the administration of municipal operations (as opposed to regulating the behavior of the public).

3. Step Three: Emergency Regulations (Emergency Orders)

This aspect relates to regulation of the public during an emergency (as opposed to control of the city administration's activities). Section 252.46 allows the City to issue orders and rules as necessary for emergency management, so long as they are not inconsistent with emergency orders and rules issued by the state. Ch. 870 has two provisions that relate to regulation of the public. The first, 870.044, automatically prohibits certain activities relating to firearms when an emergency is declared pursuant to Ch. 870. The second, 870.045 is a limited list of discretionary measures that may be taken by the designated public official. These include curfews, prohibition of the sale of alcohol or the closing of places where the public assembles.

The language used in Section 6.05(13) of the City Charter, specifically the phrase "municipal operations," leaves some doubt as to whether it intends to include the ability to regulate the public within the emergency powers reserved for the City Manager. A holistic look at the Charter structure would imply that the above issue is resolved in favor of the City Manager. However, regulating private business and conduct is an area of high potential litigation risk and any areas of doubt should be resolved as explicitly as possible to minimize legal challenges. Ch. 252 states only that the political subdivision is authorized and empowered to enact regulations necessary for emergency management purposes.

It is therefore recommended that a process for issuance and notice of emergency regulations (emergency orders) be codified to eliminate any potential doubt. This will also further reinforce the City's legal position as it relates to enforcement, discussed further below.

4. Step Four: Enforcement of Emergency Orders

Enforcement is the area of greatest potential litigation risk because the City is itself initiating legal action against the public. Notice and Due Process will be significant considerations in the City's ultimate ability to enforce emergency orders. Section 252.46 provides for emergency orders to have the effect of law and Section 252.47 requires municipal law enforcement to enforce all emergency orders issued pursuant to Ch. 252. Ch. 870 also provides for penalties for violation of the emergency orders issued pursuant to that chapter. It is recommended that codification of the enforceability of emergency orders would strengthen the City's legal position should enforcement be challenged.

PROPOSED ACTION:

The City Commission consider the attached proposed ordinance codifying an Emergency Management Code.

ATTACHMENT(S):

Exhibit 1 – Proposed Ordinance
Exhibit A – Relevant Legal Provisions
Exhibit B – Presentation

400 South Federal Hwy
Hallandale Beach, FL 33009