

**PROPOSED EMERGENCY MANAGEMENT CODE:
RELEVANT LEGAL PROVISIONS**

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I. CITY CHARTER PROVISIONS RELEVANT TO AUTHORITY AND EMERGENCIES

Sec. 3.04: - Mayor and vice-mayor.

The mayor shall preside at meetings of the commission, shall be recognized as head of city government for all ceremonial purposes, by the governor for purposes of military law, for service of process, execution of contracts, deeds and other documents, and shall act as the city official designated to represent the city in all agreements with other governmental entities or certifications to other governmental entities, but shall have no administrative duties except as required to carry out the responsibilities herein. The vice-mayor shall act as mayor during the absence or disability of the mayor.

Sec. 3.06: - General powers and duties.

All powers of the city shall be vested in the commission, except as otherwise provided for by law or this Charter, and the commission shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the city by law. The city commission may establish by ordinance city departments, offices and agencies, and may prescribe their functions and duties

Sec. 5.02: - Emergency ordinances.

To meet a public emergency affecting life, health, property or the public peace, the commission may adopt one (1) or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, set service or user charges for any municipal services or authorize the borrowing of money except as provided under the emergency appropriations provisions of article V, section 5.06 of this Charter.

(1) Form. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated in a preamble as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms.

(2) Procedure. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least two-thirds of all the commission shall be required for adoption. After its adoption, the ordinance shall be published once in a newspaper of general circulation.

(3) Effective date. Emergency ordinances shall become effective upon adoption or at such other date as may be specified in the ordinance.

(4) Repeal. Every emergency ordinance except emergency appropriations shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance under regular procedures, or if the emergency still exists, in the manner specified in this section. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of an emergency ordinance.

Sec. 5.06: - Emergency appropriations.

To meet a public emergency affecting life, health, property or the public peace, the commission may make emergency appropriations. Such appropriations may be made by emergency ordinance in accordance with the provisions of section 5.02. To the extent that there are no available unappropriated revenues to meet such appropriations, the commission may, by such emergency ordinance, authorize the issuance of emergency notes, which may be renewed from time to time; but the emergency notes and renewals of any fiscal year shall be paid not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.

Sec. 6.05: - Powers and duties.

The city manager shall be responsible to the city commission for the proper administration of all affairs of the city coming under his jurisdiction and he shall:

(13) In time of emergency or disaster, assume full temporary direction of all municipal operations.

II. EXISTING CITY CODE PROVISIONS

Sec. 19-3. - Conduct on beaches

(c) Closing in an emergency.

(1) The power is granted to declare an emergency situation closing public beaches in the interest of public safety due to emergencies such as severe storms, hurricanes, highwater, etc., or civil disasters. If an unlawful, riotous or tumultuous assembly exists, or such assembly as is likely to result in a breach of the peace, or in such instances where the chief of police or his command duty officer shall have reasonable cause to believe that such assembly will occur, the chief of police or any police operations officer shall have the authority to declare the public beach and immediately adjacent public rights-of-way closed and shall thereafter order all persons to immediately disperse and leave the area; and the area shall remain closed until the chief of police shall determine that the danger no longer exists.

(2) The power to declare an emergency situation is vested in the mayor, the city manager and the chief of police.

III. State Statutes Relevant to Emergencies within Municipalities

A. Step One: Declaration of Emergency

252.32. Policy and purpose

(1)(b) To confer upon the Governor, the Division of Emergency Management, and the governing body of each political subdivision of the state the emergency powers provided herein.

252.38 Emergency management powers of political subdivisions

(2) Municipalities.--Legally constituted municipalities are authorized and encouraged to create municipal emergency management programs. Municipal emergency management programs shall coordinate their activities with those of the county emergency management agency. Municipalities without emergency management programs shall be served by their respective county agencies. If a municipality elects to establish an emergency management program, it must comply with all laws, rules, and requirements applicable to county emergency management agencies. Each municipal emergency management plan must be consistent with and subject to the applicable county emergency management plan

(3) Emergency management powers; political subdivisions

(a) (5.) To request state assistance or invoke emergency-related mutual-aid assistance by declaring a state of local emergency in the event of an emergency affecting only one political subdivision. The duration of each state of emergency declared locally is limited to 7 days; it may be extended, as necessary, in 7-day increments....

870.042. Designation of local authority

(2) The governing body of any municipality within this state may designate by duly adopted ordinance a city official who shall be empowered to declare that a state of emergency exists within the boundaries of the municipality and to exercise the emergency powers conferred in ss. 870.041-870.047. The designated city 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. In the absence of a duly adopted ordinance so designating the official so to act, the chief of police of such municipality is designated as the city official to assume the duties and powers hereof.

870.043. Declaration of emergency

Whenever the sheriff or designated city official determines that there has been an act of violence or a flagrant and substantial defiance of, or resistance to, a lawful exercise of public authority and that, on account thereof, there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order and to the general welfare of the jurisdiction affected or a part or parts thereof, he or she may declare that a state of emergency exists within that jurisdiction or any part or parts thereof.

Step Two: Administration of Municipal Functions

252.38 Emergency management powers of political subdivisions

(3) Emergency management powers; political subdivisions.

(a) In carrying out the provisions of ss. 252.31-252.90, each political subdivision shall have the power and authority:

1. To appropriate and expend funds; make contracts; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any emergency; and direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies.
2. To appoint, employ, remove, or provide, with or without compensation, coordinators, rescue teams, fire and police personnel, and other emergency management workers.
3. To establish, as necessary, a primary and one or more secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
4. To assign and make available for duty the offices and agencies of the political subdivision, including the employees, property, or equipment thereof relating to firefighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for emergency operation purposes, as the primary emergency management forces of the political subdivision for employment within or outside the political limits of the subdivision.
5. To request state assistance or invoke emergency-related mutual-aid assistance by declaring a state of local emergency in the event of an emergency affecting only one political subdivision. The duration of each state of emergency declared locally is limited to 7 days; it may be extended, as necessary, in 7-day increments. Further, the political subdivision has the power and authority to waive the procedures and formalities otherwise required of the political subdivision by law pertaining to:
 - a. Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community.
 - b. Entering into contracts.
 - c. Incurring obligations.
 - d. Employment of permanent and temporary workers.
 - e. Utilization of volunteer workers.
 - f. Rental of equipment.
 - g. Acquisition and distribution, with or without compensation, of supplies, materials, and facilities.
 - h. Appropriation and expenditure of public funds.

Step Three: Emergency Regulations (Emergency Orders)

252.46. Orders and rules

(1) In accordance with the provisions of chapter 120, the political subdivisions of the state and other agencies designated or appointed by the Governor or in the state comprehensive emergency management plan are authorized and empowered to make, amend, and rescind such orders and rules as are necessary for emergency management purposes and to supplement the carrying out of the provisions of ss. 252.31-252.90, but which are not inconsistent with any orders or rules adopted by the division or by any state agency exercising a power delegated to it by the Governor or the division.

870.044. Automatic emergency measures

Whenever the public official declares that a state of emergency exists, pursuant to s. 870.043, the following acts shall be prohibited during the period of said emergency throughout the jurisdiction:

- (1) The sale of, or offer to sell, with or without consideration, any ammunition or gun or other firearm of any size or description.
- (2) The intentional display, after the emergency is declared, by or in any store or shop of any ammunition or gun or other firearm of any size or description.
- (3) The intentional possession in a public place of a firearm by any person, except a duly authorized law enforcement official or person in military service acting in the official performance of her or his duty.

870.045. Discretionary emergency measures

Whenever the public official declares that a state of emergency exists, pursuant to s. 870.043, he or she may order and promulgate all or any of the following emergency measures, in whole or in part, with such limitations and conditions as he or she may deem appropriate:

- (1) The establishment of curfews, including, but not limited to, the prohibition of or restrictions on pedestrian and vehicular movement, standing, and parking, except for the provision of designated essential services such as fire, police, and hospital services, including the transportation of patients thereto, utility emergency repairs, and emergency calls by physicians.
- (2) The prohibition of the sale or distribution of any alcoholic beverage, with or without the payment or a consideration therefor.
- (3) The prohibition of the possession on any person in a public place of any portable container containing any alcoholic beverage.
- (4) The closing of places of public assemblage with designated exceptions.
- (5) The prohibition of the sale or other transfer of possession, with or without consideration, of gasoline or any other flammable or combustible liquid altogether or except by delivery into a tank properly affixed to an operable motor-driven vehicle, bike, scooter, boat, or airplane and necessary for the propulsion thereof.

(6) The prohibition of the possession in a public place of any portable container containing gasoline or any other flammable or combustible liquid.

Any such emergency measure so ordered and promulgated shall be in effect during the period of said emergency in the area or areas for which the emergency has been declared.

Step Four: Enforcement of Emergency Orders

252.46. Orders and rules

(2) All orders and rules adopted by the division or any political subdivision or other agency authorized by ss. 252.31-252.90 to make orders and rules have full force and effect of law after adoption in accordance with the provisions of chapter 120 in the event of issuance by the division or any state agency or, if promulgated by a political subdivision of the state or agency thereof, when filed in the office of the clerk or recorder of the political subdivision or agency promulgating the same. All existing laws, ordinances, and rules inconsistent with the provisions of ss. 252.31-252.90, or any order or rule issued under the authority of ss. 252.31-252.90, shall be suspended during the period of time and to the extent that such conflict exists.

252.47. Enforcement

The law enforcement authorities of the state and the political subdivisions thereof shall enforce the orders and rules issued pursuant to ss. 252.31-252.90.

252.50. Penalties

Any person violating any provision of ss. 252.31-252.90 or any rule or order made pursuant to ss. 252.31-252.90 is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083

870.048. Violations

Any violation of a provision of ss. 870.041-870.047 or of any emergency measure established pursuant thereto shall be a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.