

**Proposed Ordinance for Codification
Emergency Management Code**

July 15, 2020

**Legal Aspects
of Emergency
Management**

Legal Aspects of Emergency Management

Two Emergency Management Structures

Ch. 252

Emergencies arising from natural, technological or manmade causes

Ch. 870

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.

Legal Aspects of Emergency Management

Current City Provisions Relating to Emergency City Charter

Sec. 5.02: - Emergency ordinances

Sec. 5.06: - Emergency appropriations

Sec. 6.05: - Powers and duties (City Manager)

City Code

Sec. 19-3. - Conduct on beaches

More Generally

- **Sec. 3.04: - Mayor and vice-mayor.**
- **Sec. 3.06: - General powers and duties (Commission).**

Legal Aspects of Emergency Management



Step One:
**Declaration of
Emergency**



Step Two:
**Administration of
Municipal Functions
(Municipal Response)**



Step Three:
**Emergency Regulations
(Emergency Orders)**



Step Four:
**Enforcement of
Emergency Orders**

Step One:



DECLARATION OF EMERGENCY

- **Relevant State Statutes**
 - 252.32. Policy and purpose.
 - 252.38. Emergency management powers of political subdivisions
 - 870.042. Designation of local authority
 - 870.043. Declaration of emergency
- Charter provisions and statutory requirements should be reconciled.
- Two Code provisions recommended, one to address each emergency structure specifically.

Step Two:



ADMINISTRATION OF MUNICIPAL FUNCTIONS (MUNICIPAL RESPONSE)

- 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.”
- Regardless of the designated authority to declare the state of emergency, (Step One) 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.
- This step should be differentiated from Step Three, which relates to regulating the behavior of the public.

Step Two:



ADMINISTRATION OF MUNICIPAL FUNCTIONS (MUNICIPAL RESPONSE)

Examples of Emergency Powers for Municipal Functions

- 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;
- To appoint, employ, remove, or provide, coordinators, rescue teams, fire and police personnel, and other emergency management workers.
- To reassign city resources for emergency operation purposes
- Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community.
- Entering into contracts without complying with procedures and formalities.
- Employment of permanent and temporary workers.
- Utilization of volunteer workers.
- Rental of equipment.
- Acquisition and distribution, with or without compensation, of supplies, materials, and facilities.
- Appropriation and expenditure of public funds with procedures and formalities.

Step Three:



**EMERGENCY
REGULATIONS
(EMERGENCY
ORDERS)**

- Charter language leaves potential ambiguity regarding emergency regulation of the public.
- **Relevant State Statutes**
 - 252.46. Orders and rules
 - 870.044. Automatic emergency measures
 - 870.045. Discretionary emergency measures

Step Four:



ENFORCEMENT OF EMERGENCY ORDERS

- Notice and Due Process will be significant considerations in the City's ultimate ability to enforce emergency orders.
- Section 252.47 requires municipal law enforcement to enforce all emergency orders issued pursuant to Ch. 252
- Misdemeanor penalties are provided for in statute.
- It is recommended that codification of the enforceability of emergency orders would strengthen the City's legal position should enforcement be challenged.