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Emergency Management and Preparedness

Alabama is certainly not immune from natural and man-made emergencies, and municipalities and their first responders and officials are usually on the front-line in dealing with them. Therefore, it is imperative that municipal governments take proactive action and implement policies protecting the health, safety and welfare of their citizens.

Alabama laws on Emergency Management can be found in Chapter 9 of Title 31 of the Code of Alabama of 1975, as amended. For purposes of this article, we will refer to this law as the Alabama Emergency Management Act. The Act outlines the authority and procedures of the state for declaring and dealing with disasters as well as the specific powers granted to local governments during such times. In addition, one of the primary purposes of the Alabama Emergency Management Act is to assist and encourage emergency management and emergency preparedness activities on the part of any political subdivisions of the state by authorizing the state to make grants, as funds are appropriated, to those political subdivisions to assist in the costs associated with emergency preparedness and response. It is vital that municipalities understand and comply with this act if they wish to receive financial assistance from the state with regard to emergency preparedness and response.

In addition to the Alabama Emergency Management Act, Section 11-45-1, Code of Alabama 1975, states, "Municipal corporations may from time to time adopt ordinances and resolutions not inconsistent with the laws of the state to carry into effect or discharge the powers and duties conferred by the applicable provisions of this title and any other applicable provisions of law and to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the inhabitants of the municipality, and may enforce obedience to such ordinances."

These powers are commonly known as "police powers" and should be used advisedly as to not interfere with the civil liberties of citizens; however, in emergency situations, fundamental rights may be temporarily limited or suspended. See *Aptheker v. Secretary of State*, 378 U.S. 500, 84 S.Ct. 1659, 12 L.Ed.2d 992 (1964); see also *Korematsu v. United States,* 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194 (1944).

It is important to keep in mind that all laws of the state must continue to be followed during disaster preparation, response and recovery. For example, Section 94 of the Alabama Constitution of 1901, provides, "The legislature shall not have power to authorize any county, city, town, or other subdivision of this state to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever, or to become a stockholder in any such corporation, association, or company, by issuing bonds or otherwise." In 1994, the Alabama Supreme Court decided *Slawson v. Alabama Forestry Commission*, 631 So. 2d 953 (1994) which held that a public entity such as a city may give money or something of value to nonpublic entities and organizations if the public entity determines the appropriation will serve a public purpose. The court went on to define a "public purpose" as one promoting the health, safety, morals, security, prosperity, contentment and general welfare of the community. Further, the court determined that the decision as to whether an expenditure serves a public purpose or confers a public benefit is wholly within the discretion of the legislative body making the decision. To determine whether a public purpose is served, the governing body must look to the statutes setting forth the powers of the governmental entity. If within such powers there exists the authority to promote the action at issue, then the governing body need only decide whether the appropriation will help accomplish that purpose. AGO 2012-0002.

A municipality's ability to carry out an emergency operating procedure stems from its police power. It is important for a municipality to have an emergency operating procedure in writing and in place prior to a disaster. The policy should be adapted for each municipality's unique needs and give guidance and direction to municipal employees and officials on actions to be taken before, during and after a disaster. A written policy should be adopted either by motion or resolution. In light of the constant changes to state and federal laws and the unpredictable nature of disasters, emergency operating procedures should be reviewed frequently—at least annually—to be sure they are up to date.

In addition to an emergency operating procedure for employees and officials, a city should have an emergency operating ordinance outlining what to do in the event of an emergency. Unlike an emergency operating procedure, the adoption of

an ordinance allows a municipality to enforce penalties for any violations. Much like the emergency operating procedure, the emergency ordinance should be reviewed frequently and both the emergency operating procedure and ordinance should correspond.

This article outlines the various considerations that must be made when preparing and developing emergency operating procedures and ordinances.

Local Emergency Management Organization and Director

The Alabama Emergency Management Act authorizes and directs municipalities to establish a local organization for emergency management in accordance with the state emergency management plan. In creating such an organization, the council may appoint a director who shall have the direct responsibility for the organization, administration and operation of the organization subject to the direction and control of the council. The organization formed shall perform emergency management functions within the territorial limits of the municipality.

Declaration of Emergency

The proclamation of a state of emergency pursuant to the Alabama Emergency Management Act is the first step in activating the disaster and recovery aspects of state, local, and inter-jurisdictional disaster emergency plans. The Alabama Emergency Management Act provides that the Governor or the Legislature each have the authority to declare that a state of emergency exists. There is no authority under state law for mayors to declare an emergency in the face of a disaster. The only similar authority a mayor has is found in Section 11-43-82, Code of Alabama 1975, which gives mayors the authority, in time of riot, to close businesses in the vicinity of the municipality which sell arms and ammunition.

There is certainly a strong argument backed up by public policy that under its police powers, a city council has the discretion to declare an emergency in order to protect the health, safety and welfare of its citizens. If such a situation arises whereby a municipality cannot obtain a declaration by the Governor or the Legislature because immediate action is needed, the council should convene to declare an emergency.

If the situation is such that the council cannot convene, the emergency operating procedure and ordinance should provide for an alternative. The council, in the procedure or ordinance, should confer upon the mayor or the emergency management director the authority to declare a state of emergency in the event a meeting of the council cannot take place. The declaration by the mayor or the emergency management director should be subject to ratification, alteration, modification or repeal by the council as soon as they can convene. The ordinance should state that subsequent actions of the council will not affect the validity of prior actions of the mayor or other city officials. The declaration should be made as early as possible, especially if evacuations are necessary. All declarations should be made and attested to by the city clerk to the extent feasible.

When dealing with the declaration of a disaster, it is important to remember that unless and until your municipality is declared to be under a state of emergency by the Governor or the Legislature pursuant to the Alabama Emergency Management Act, funding may not be available for assistance.

With regard to funding available, it cannot be emphasized enough the need to document any expenditures made during the time of a disaster. For example, you will need to carefully keep up with every man-hour your employees work and every equipment hour utilized. Also keep up with every purchase order or invoice for materials, rentals of equipment, contracts entered into for assistance, landfill tickets etc… related to clean up. It is also very helpful to take pictures and to document where they are, what they are of and when they were taken.

Emergency Alert System

The municipality should have a plan in place to exercise the Emergency Alert System (EAS), which can be activated to warn and inform the public during emergency situations. The system can also be used as a public information tool during an evacuation.

Evacuation Plan

Section 31-9-10, Code of Alabama 1975 states that municipalities have no authority to provide for and compel the evacuation of an area except by the direction and under the supervision of the Governor or the Alabama Emergency Management Agency (AEMA), or both. The council should carefully design a plan of evacuation prior to the onset of a natural or manmade disaster, and this plan should be coordinated with and approved by the AEMA. The plan may be accomplished in a variety of ways. It should be tailored to the needs of the individual municipality and the circumstances surrounding the disaster.

The availability of public transportation should also be considered when designing an evacuation plan. The plan should include schools, special-care facilities, hospitals and those industries handling extremely dangerous materials. Part of the

evacuation plan may include a list or registry of the municipality's disabled citizens. The plan should include procedures for re-entry as well.

Remember that while it is important to have an evacuation plan, a municipality may not order an evacuation without the approval of the Governor or the AEMA as provided in Section 31-9-8, Code of Alabama 1975.

Emergency Powers

The Alabama Emergency Management Act provides for specific powers of municipalities during times of disaster. Specifically, the city council has the power, pursuant to Section 31-9-10, Code of Alabama 1975, to do the following:

1. Appropriate and expend funds, make contracts, obtain, and distribute equipment, materials, and supplies for emergency management purposes; to provide for the health and safety of persons and property, including emergency assistance to the victims of any disaster; and to 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. Appoint or employ the personnel necessary to accomplish the goals in the Alabama Emergency Management Act.
3. Establish a primary and one or more secondary control centers to serve as command posts during an emergency, and to coordinate with other political subdivisions to establish the same.
4. Assign and make available for duty the employees, property, or equipment of the subdivision relating to firefighting, engineering, rescue, health, medical and related service, police, transportation, construction, and similar items or services for emergency management purposes, within or outside of the physical limits of the subdivision.
5. In the event that the governing body of the political subdivision determines that any of the conditions described in Section 31-9-2(a) has occurred or is imminently likely to occur, the governing body may do any of the following:
    a. Notwithstanding the competitive bid law, let contracts to the extent necessary to address the conditions described in Section 39-9-2(a) provided that the governing body does the following:
    b. Documents at least two price quotes or estimates before letting the contract.
    c. Adopts a resolution or ordinance declaring the operation of the local organization for emergency management subject to the direction and control of the governing body.
    d. Impose a public safety curfew for its inhabitants. If a public safety curfew is imposed, it shall be enforced by the appropriate law enforcement agency within the political subdivision. A public safety curfew imposed under this subdivision shall not apply to employees of utilities, cable, or telecommunications companies and their contractors engaged in activities necessary to maintain or restore utility, cable, and telecommunications services or to official emergency management personnel engaged in emergency management activities.
6. Close, notwithstanding Section 11-1-8, Code of Alabama 1975, any and all public buildings owned or leased by and under the control of the political subdivision where emergency conditions warrant, whether or not a local state of emergency has been declared by the governing body of the political subdivision. In the event that any documents required to be filed by a time certain deadline cannot be filed due to the closing of an office under this subdivision, the deadline for filing shall be extended to the date that the office is reopened as provided in Section 1-1-4 of the Code of Alabama 1975.

Section 31-9-10, Code of Alabama 1975 further authorizes that in the event that the Governor or the Legislature proclaims a state of emergency affecting a political subdivision, the chair or president of the governing body for the political subdivision may execute a resolution on behalf of the governing body declaring that any of the conditions described in Section 31-92(a), Code of Alabama 1975 (enemy attack, sabotage, or other hostile action, or from fire, flood, earthquake, or other natural causes) has occurred or is imminently likely to occur.

The emergency powers and duties of the mayor and/or emergency management director should be specifically described in the ordinance and procedure; however, due to unforeseeable circumstances, they should not be limited only to the ordinance and procedure. In addition to the specific powers provided for under the Alabama Emergency Management Act, a municipality may want to consider powers that would fall under their police power. For example, a list of powers may include: closing businesses; suspending alcoholic beverage sales; closing roadways; ordering continuation, disconnection or suspension of public utilities; controlling or allocating the distribution of relief supplies; applying for local, state or federal assistance; and others as needed. A chain of command should be established within the procedure and ordinance. In addition, employees should understand exactly what may be required of them during a disaster, both natural and manmade.

Preprinted Orders, Forms and Resolutions

In the interest of quick administration of the declaration and other procedures during a state of emergency, the council should consider drafting preprinted orders, forms and resolutions. Some sample forms include: declaration of emergency; evacuation and reentry control orders; curfew declarations; orders limiting or controlling re-entry to affected areas; state of emergency extension forms; and refusal to evacuate forms. Refusal to evacuate forms may protect the city from liability in the event a citizen refuses to follow a mandatory evacuation order.

Interlocal Agreements

Interlocal agreements with other governmental entities coordinating emergency management procedures should be in place well before the disaster. Except as otherwise provided or prohibited by law, any county or incorporated municipality of the State of Alabama may enter into a written contract with any one or more counties or incorporated municipalities for the joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually. Section 11-102-1 et. seq., Code of Alabama 1975. In accordance with the federal Disaster Mitigation Act of 2000, all counties are required to have approved and adopted a multi-hazard mitigation plan in order to receive future mitigation grant assistance. If a municipality participated in the development of their county's local hazard mitigation plan and is not sanctioned by the National Flood Insurance Program, that municipality must have passed a National Incident Management System (NIMS) resolution adopting the county's hazard mitigation plan.

The resolution should be transmitted to FEMA through the local EMA office. Failure to pass a resolution prior to receiving a presidential disaster declaration places the municipality at risk of becoming ineligible for future FEMA hazard mitigation grants. All municipal officials and disaster coordinators should coordinate with local emergency management agency personnel during a disaster response and recovery period.

Regular meetings between the city-county emergency management coordinator/director, the mayor, the municipal emergency management coordinator and the municipal department heads should be conducted on a regular basis.

Mutual Aid

Under Section 11-80-9, Code of Alabama 1975, municipalities in Alabama have the authority to provide "assistance, by means of gift or loan, to the governing body of any other municipality or county located within the state when such county or municipality has been declared a disaster area by the Governor of the State of Alabama or by the President of the United States." In order to provide mutual aid, an agreement, in writing, shall be drafted and approved by the assisting governing body and the recipient governing body.

Section 11-80-9, Code of Alabama 1975, does not guarantee reimbursement by any governmental agency unless provided for by contract.

Under Section 31-9-9, Code of Alabama 1975, the governing body of municipalities with local organizations for emergency management may develop, or cause to be developed, mutual aid agreements (i) with other public or private agencies within the state, (ii) with federally recognized Indian tribes located within the state, or (iii) between the Governor and adjoining states or political subdivisions thereof for reciprocal aid and assistance. Municipal employees rendering outside aid pursuant to a mutual aid agreement are considered to be acting in the same capacity as their normal employment within the municipality. Section 31-9-11, Code of Alabama 1975.

Emergency Procurements

During times of disaster, Section 31-9-10, Code of Alabama 1975, specifically addresses emergency procurements during occurrences of disaster or emergency. In the event the governing body determines that any of the conditions described in Section 31-9-2(a) (i.e. disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action, or from fire, flood, earthquake, or other natural causes) has occurred or is imminently likely to occur, Alabama's competitive bid laws are precluded by Section 31-9-10. In lieu of the competitive bid law, the governing body may let contract to the extent necessary to address the Section 31-9-2(a) conditions provided that it (1) documents at least two price quotes or estimates before letting the contract and (2) adopts a resolution or ordinance declaring the conditions, the action taken, and the reasons for taking the action. Section 31-9-10(b)(5)(a).

Purchases should be streamlined through the mayor and/or emergency coordinator. A list of emergency purchases should be maintained by the mayor and/or emergency coordinator, and as soon as is possible, should be formally communicated to the municipal governing body.

Section 31-9-120, Code of Alabama 1975 authorizes AEMA to provide obsolete equipment or items to local emergency management agencies for emergency purposes.

The Facilitating Business Rapid Response to Declared Disasters Act of 2014 (Sections 40-31-1 through 40-31-4, Code of Alabama 1975) provides that an out-of-state employee or business performing disaster or emergency related work on public infrastructure is not considered to have established residency or a presence in this state that would require the person or his or her employer to file income taxes or be subject to tax withholdings during a disaster period, as defined by the act. The act also specifies that an out-of-state employee or business is not exempt from paying transaction-based taxes and fees, such as fuel taxes, lodging taxes, or automobile leasing taxes, during the disaster period or from securing and paying applicable license and related fees to professional licensing boards of the state.

Emergency Spending Plan

The emergency operating procedure and ordinance should include an emergency spending plan during disaster operations. This plan should include activation authority and payment methods not requiring high technologies (such as computers), which may be offline in a disaster.

Emergency Control Centers and Temporary Emergency Meeting Locations

Emergency control centers and temporary emergency meeting locations should be established in the event it becomes impossible to conduct governmental affairs at the regular and usual locations. These locations may be set by the council before or after the emergency. If possible, these locations should be within the municipal corporate limits. If temporary emergency locations are established prior to the disaster, they should be incorporated into the emergency operating procedure and ordinance.

Police and Fire Departments

The emergency operating procedure and ordinance should have a provision granting both the police and fire departments power to enter any property or premises as may be necessary to protect the public health, safety and welfare as well as to maintain order. The police department should be granted the authority to bar, restrict or remove all unnecessary traffic, both vehicular and pedestrian, from all local roadways. The fire department should be granted the authority to do whatever is reasonably necessary to protect people and property while rendering first aid. It is important to note, however, that there is no authority to grant firefighters any police powers.

The police chief, fire chief, or chief administrator of a rescue squad may designate any publicly owned "off-road vehicle," as defined by Section 32-8-2, Code of Alabama 1975, as an authorized emergency vehicle, provided the vehicle meets certain criteria. Act 2025-340. Such emergency off-road vehicles may be used for official purposes only, including emergency call responses and training operations, and may only be operated by authorized personnel of the department or squad.

Work Hour Limits

Overtime pay of non-exempt employees will be compensable under certain circumstances pursuant to federal law. The mayor and emergency management coordinators must work together to ensure employees are assigned shifts and managed in a way that minimizes the amount of overtime worked by each employee. This will keep the overall costs of the disaster down as well as reduce employee exhaustion and injury, leading to a more efficient disaster recovery effort.

Compensation During Disaster

Non-exempt municipal employees under the Fair Labor Standards Act are entitled to overtime pay during a disaster; however, exempt employees are not. The mayor and council should take into consideration the amount of work that may be required of exempt employees during times of disaster. The council should also consider circumstances under which additional compensation may be granted to exempt employees for tireless efforts and work on preparation, response and recovery. If the council chooses to grant overtime compensation for exempt employees, the emergency operating procedure and ordinance should state the council's intentions.

Personal Property Protection Plan

The emergency operating procedure should include a plan to protect municipal personal property. The plan should address technological failures including protection and recovery procedures. The plan should address all types of breakdowns, including power, computer and telephone failures. It should also cover complete loss of municipal personal property.

If time clocks are used to maintain personnel working hours, it is important to prepare and implement a plan of paper record keeping to ensure the municipality adequately complies with federal law.

The council should consider a disaster recovery plan for technological data. Many public entities store data in secure, off-site locations. In the event a disaster strikes one of these locations, the municipality can download the data from another location.

Single-Media Contact

The council should designate an employee or municipal official as the single-media point of contact for the disaster plan. This can be the emergency management coordinator, the mayor, or another municipal employee. By establishing a single-media point of contact, the municipality will cut down on confusion during the preparation, response and recovery stages of the disaster. A single-media point of contact and timely dissemination of information to the public will both serve the needs of the citizens and help the municipality operate in the most efficient manner before, during and after the disaster.

Debris Removal

Natural and manmade disasters can generate substantial amounts of debris that can overwhelm existing solid waste disposal facilities. With this in mind, a municipality should design a long-term debris removal plan that prepares for worst case scenarios. When designing the plan, the council should consider federal and state aid, interlocal mutual aid agreements, equipment, recycling, collection and storage sites, hazardous waste, contracts, state bid laws and federal reimbursement options.

Emergency Exercises

Emergency exercises are an excellent way to ensure personnel adhere to an emergency operating procedure. Emergency exercises familiarize employees with the plan and assist the local governing body in developing a more comprehensive and workable plan tailored to the needs of the municipality. When conducted, emergency exercises should include schools, special care facilities, hospitals and industries handling extremely dangerous materials.

Penalties

The emergency operating ordinance should proscribe penalties for ordinance violations and violations of any powers or orders granted pursuant the ordinance. Municipalities are given the power to enforce their ordinances by Section 11-45-9, Code of Alabama 1975.

Termination of Emergency Powers

Declarations, policies, rules and orders enacted pursuant to the emergency operating procedure and ordinance shall remain in effect until the council or other issuing individual withdraws the declaration, rule or order. In any event, all actions taken pursuant to any declaration, rule or order should cease once the conditions which gave rise to the emergency end.

Federal and State Assistance for Emergency Management

While local government is primarily responsible for the emergency response, there are times when a disaster overwhelms the local government's capacity to effectively respond. The operations functions of the AEMA includes those activities essential to a coordinated response in support of the local jurisdiction, such as warning, alerting, emergency communications, damage assessment and recovery assistance. The state's emergency operations center is the command post during disasters. Warning and coordination of the emergency is conducted in coordination with federal and local governments based on the state emergency operations plan.

An invaluable resource during a disaster are the state agency personnel trained to assess damage to public and privately owned facilities; to aid local government in warning and notification and, if necessary, the evacuation of the threatened populace; to open and operate shelters; and to assist in other response and recovery operations.

AEMA administers a number of grants provided by FEMA and state sources, including the Hazard Mitigation Assistance grant programs. These programs and grants help local governments identify risks and vulnerabilities associated with natural disasters, and to develop long-term strategies for protecting people and property in future hazard events. The Alabama legislature also allocates funds for local emergency management organizations through AEMA. Several other grants for local emergency planning committees and local emergency management organizations are also available.

Numerous training, planning and exercise services are available from AEMA for city-county management organizations. Courses are delivered in the field and at the Emergency Management Institute for emergency preparedness and cover executive development/management, natural hazards, radiological preparedness, hazardous materials and national emergency preparedness.

Sticking to the Plan

The most important aspect of crafting both an emergency operating procedure and ordinance is making sure the procedure and ordinance are followed. Doing so ensures that employees, officials and residents understand how their municipality will prepare for, respond to and recover from a disaster.

Conclusion

Disaster preparation, response and recovery can be overwhelming. Having a detailed emergency operating procedure and ordinance in place prior to the occurrence of a natural or manmade disaster can be the difference between an efficient and effective recovery and a long and tedious one. The city council and mayor must have positive interaction with county, state and federal emergency management officials to ensure the municipality can provide for its citizens before, during and after an emergency. With a sound emergency operating procedure and ordinance in place, a municipality can weather any storm.

Additional Information

Additional information concerning emergency preparedness activities can be obtained from the Alabama Emergency Management Agency, P. O. Drawer 2160, Clanton, Alabama 35046-2160. Telephone number: 205-280-2200. Fax number: 205-280-2495. Website: *www.ema.alabama.gov*

Attorney General's Opinions

- The State Emergency Management Agency may loan necessary equipment to county agencies during an emergency. AGO 1985-0403 (to Hon. Dan Turner, June 26, 1985).
- Volunteers performing services without pay for the Alabama Emergency Management Agency are protected by the Volunteer Service Act, Section 6-5-336, Code of Alabama 1975. AGO 1993-0147.
- Under Section 31-9-16(b) of the Code of Alabama 1975, individuals and entities have immunity from tort liability for emergency management services rendered on behalf of the State and under the authority of the Alabama Emergency Management Agency, even in the absence of a declared emergency. AGO 2006-0010.
- Section 11-102-1 of the Code of Alabama supports the right of a municipality to make purchases through the purchasing cooperative contained in Section 41-16-51(a) of the Code, but does not affect the right of an Emergency Management Agency to make such purchases. There is no authority for entities covered by the Competitive Bid Law to make purchases through a purchasing cooperative other than the one sponsored by NACo as listed in Section 41-16-51(a)(16) of the Code of Alabama. AGO 2007-0011
- An emergency management agency has no inherent right to control an emergency management communications district. AGO 1997-0228.