

# The Municipal Governing Body's Disaster Responsibilities

The events of Sept. 11, 2001, and the damage caused by Hurricanes Ivan and Katrina pushed more municipalities in the state to embrace emergency operating procedures addressing both manmade and natural disasters. Mayor and council actions in the preparation and post-disaster stage are integral to these procedures. It is imperative that municipal governments take 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. This law outlines the authority and procedures of the state for declaring and dealing with disasters as well as the specific powers granted to counties and municipalities 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. As such 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 Emergency Management Act, [Section 11-45-1<sup>2</sup>](#), 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". Police powers 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 \(1964\)<sup>3</sup>](#); see also [Korematsu v. United States, 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194 \(1944\)<sup>4</sup>](#).

It is important to keep in mind that all laws of the state must continue to be followed during disaster preparation, response and recovery. Specifically, [Section 94 of the Alabama Constitution of 1901<sup>5</sup>](#), 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 Supreme Court passed [Slawson v. Alabama Forestry Commission, 631 So. 2d 953 \(1994\)<sup>6</sup>](#). In [Slawson](#), the court changed

the application of Section 94 to appropriations and expenditures of municipal governments by holding 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. *Id.* at 956. 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. *Id.* Further, the court held 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 (or the municipal governing body in the case of municipalities). *Id.*

A municipality's authority to carry out an [emergency operating procedure](#) 7 stems from the Alabama Emergency Management Act and a municipality's 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 annually to be sure they are up to date. Even in the face of disaster, the Slawson analysis should be used to determine whether or not a municipality can take action that would otherwise be in violation of Section 94.

In addition to an emergency operating procedure for employees and officials, a city should have an emergency operating ordinance which outlines what to do in the event of an emergency. Much like the emergency operating procedure, the emergency ordinance should be reviewed annually and both the emergency operating procedure and ordinance should correspond.

### **Local Emergency Management Organization and Director**

The Alabama Emergency Management Act authorized 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 [declaration of an emergency](#)<sup>8</sup> is the first step in addressing a particular threat. 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 by joint resolution, 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](#)<sup>9</sup>, 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 as provided in the Alabama Emergency Management Act 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 municipal governing body cannot take place. The declaration by the mayor or the emergency management director, should be subject to ratification, alteration, modification or repeal by the municipal governing body as soon as the body 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.

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.

### **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**

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; for example, many coastal communities have assigned [evacuation zones](#)<sup>10</sup> to residents in order to provide for a timely and efficient evacuation.

The plan should provide for what is expected of residents during the evacuation. 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 a plan should evacuation be necessary, a municipality may not order an evacuation without the approval of the Governor or the AEMA as provided in Section 31-9-10(c).

### **Emergency Powers**

The Alabama Emergency Management Act provides for specific powers of municipalities during times of disaster. Specifically, the city council, if it determines that any of the conditions described in Section 31-9-2(a) of the Code of Alabama has occurred or is imminently likely to occur, they have the power to do the following:

1. To waive procedure and formalities otherwise required by law pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the utilization of volunteer workers, the rental of equipment, the purchase and distribution (with or without compensation) of supplies, materials and facilities and the appropriation and expenditure of public funds.
2. To impose a public safety curfew for its inhabitants. If a public safety curfew is imposed, it shall be enforced by the police department. However, any curfew imposed cannot be applied to employees of utilities and cable communication companies and their contractors engaged in activities necessary to maintain or restore services; nor shall it apply to emergency management personnel engaged in emergency management activities.
3. To close any and all public buildings owned or leased by the municipality where emergency conditions warrant whether or not a local state of emergency has been declared. In the event that any documents required to be filed by a time certain deadline cannot be filed in a timely manner due to the closing of an office, 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.

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](#)<sup>11</sup>; 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. In accordance with the 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](#)<sup>12</sup> 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](#)<sup>13</sup>, 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 under Section 11-80-9, an agreement, in writing, shall be drafted and approved by the assisting governing body and the recipient governing body.

Unless set up as a loan, Section 11-80-9, Code of Alabama 1975, does not guarantee reimbursement by any governmental agency.

### **Emergency Procurements**

The competitive bid law is found at [Sections 41-16-50 through 41-16-63, Code of Alabama 1975](#)<sup>14</sup>. In any event, if a contract can be competitively bid, it should be. However, under the competitive bid law, a municipal council has the authority to let contracts without advertisement in emergency situations when public health, safety or convenience is involved in the delay of acquiring needed equipment. See Section 41-16-53, Code of Alabama 1975.

A municipal governing body can only declare an emergency in response to an actual emergency. Under the provisions of the competitive bid law, an emergency must be declared by the municipal governing body prior to the performance of any work by contractors. A municipal council may not declare an emergency after work has been performed by a contractor. However, after a contract has been performed, the council may provide funds to pay the contractor if the purchasing officer properly authorized the contract to be made on a negotiated basis because of an emergency. See [Attorney General’s opinion to Hon. Carl H. Kilgore, May 12, 1975](#)<sup>15</sup>.

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.

Municipalities located in disaster-prone areas should consider seeking competitive bids and awarding contracts for debris removal and other services in preparation for disasters. Such contracts can be let for those services for all such disasters, but cannot exceed three years. See Section 41-16-57(e), Code of Alabama 1975.

### **Emergency Spending Plan**

It is important the emergency operating procedure and ordinance implement 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 municipal governing body 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 Power of 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 health, safety and welfare of the citizenry as well as 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 persons and property while rendering first aid.

### **Work Hour Limits**

The municipal governing body, mayor and emergency management coordinators should keep in mind overtime pay of non-exempt employees will be compensable under certain circumstances. [See 29 U.S.C. § 201 et seq](#)<sup>16</sup>. It is important the governing body, mayor and emergency management coordinators work together to ensure employees are assigned shifts and managed in a way minimizing 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. Municipal governing bodies should take into consideration the amount of work that may be required of exempt employees during times of disaster. The governing body 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 municipal governing body chooses to grant overtime compensation for exempt FLSA employees, the emergency operating procedure and ordinance should state the municipal governing body'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 including all technological equipment.

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 the [FLSA](#)<sup>17</sup>.

The municipal governing body 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 and be operational within hours rather than days, weeks or months, as was the case following Sept. 11, 2001.

### **Single-Media Contact**

The governing body 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 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**

The emergency plan should include a plan for debris removal and storage. 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 municipality 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](#)<sup>18</sup>, which states, “No fine shall exceed \$500.00, and no sentence of imprisonment or

hard labor shall exceed six months except, when in the enforcement of the penalties prescribed in [Section 32-5A-191, Code of Alabama 1975](#)<sup>19</sup>, such fine shall not exceed \$5,000.00 and such sentence of imprisonment or hard labor shall not exceed one year.”

### **Termination of Emergency Powers**

Declarations, rules and orders enacted by the municipal governing body pursuant to the emergency operating procedure and ordinance shall remain in effect until the municipal governing body 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 emergency response, there are times when a disaster overwhelms the capacity of local government for effective response. The operations functions of the AEMA include 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. This assistance generally comes from [Public Law 93-288, Disaster Relief Act of 1974, as amended by the Stafford Act, Public Law 100-707](#)<sup>20</sup>.

Day-to-day support is provided by a variety of sources but the primary grant offering for local jurisdictions is the State and Local Assistance Program, formerly the Emergency Management Assistance Program. It is aimed, primarily, at increasing the operational capability of emergency management at the local and state levels of government, including development and maintenance of trained, experienced staff and emergency management personnel. In addition to this matching grant, the state legislature 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 municipal governing body 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 municipal governing body 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.