

## DISASTER DECLARATIONS AND EMERGENCY ORDERS

The Texas Association of Counties is always available to discuss issues that arise in your county. During this ongoing COVID-19 outbreak, we understand that these matters are particularly complex and time-sensitive. Our goal is to provide you with resources that address frequent topics that arise in states of emergency. We encourage you to discuss these and any other legal questions with your county attorney. You can always call the TAC Helpline at (888) 275-8224 and one of our legal staff will be happy to assist you.

### INTRODUCTION

On March 13, 2020 Texas Governor Gregg Abbott issued a disaster proclamation certifying that the COVID-19 virus posed an imminent threat of disaster for all counties in the State of Texas. On March 19, 2020 the Governor issued a follow up executive order "Relating to COVID-19 preparedness and mitigation". Additionally, the Texas Department of State Health Services determined that, as of March 19, 2020, COVID-19 represents a [public health disaster](#) within the meaning of [Chapter 81 of the Texas Health and Safety Code](#). Below are answers to some of the questions about Executive Order GA-08 and the authority for state and local officials to issue and enforce disaster and emergency orders in light of these developments.

### EXECUTIVE ORDER NO. GA-08

#### **What action has Governor Abbott taken in response to the declaration of public health disaster?**

The Governor has issued [Executive Order No. GA-08](#) which provides that:

- every person in Texas shall avoid social gatherings in groups of more than 10 people;
- people shall avoid eating or drinking in bars, restaurants, and food courts, or visiting gyms or massage parlors; however, the use of drive-thru, pickup, or delivery options are allowed and highly encouraged;
- people shall not visit nursing homes or retirement or long-term care facilities unless to provide critical assistance; and
- schools shall temporarily close.

#### **What is the duration of the Governor's executive order?**

The executive order is for a limited duration. For now, the order is effective 11:59 p.m. on March 20 and continues until 11:59 p.m. on April 3, 2020. The restrictions could be extended in the future.

#### **Does this mean all businesses in a county must shut down?**

No. This executive order does not prohibit people from visiting a variety of places including grocery stores, gas stations, parks and banks, so long as the necessary precautions are maintained to reduce the transmission of COVID-19. This order does not mandate sheltering in place

#### **Does the governor's order require that we close all county offices and field operations?**

No. All critical infrastructure will remain operational, domestic travel will remain unrestricted, and government entities and businesses will continue to provide essential services.

For offices and workplaces that remain open, employees should practice good hygiene and, where feasible, work from home in order to achieve optimum isolation from COVID-19. Trusted sources for information about such practices are available at [DSHS](#) and the [CDC](#).

### **May the county judge close the courthouse under Executive Order GA 08?**

The Texas Supreme Court and Court of Criminal Appeals have adopted emergency orders for all courts to meet the constitutional requirements of the Open Courts Provision. While the county has authority to limit access to the courthouse, the Supreme Court and Court of Criminal Appeals orders for limited court proceedings are controlling in the absence of additional guidance from the Supreme Court, Court of Criminal Appeals and Governor.

## **GOVERNOR'S EMERGENCY MANAGEMENT AUTHORITY**

### **What is the statutory authority for the governor's proclamation and executive order?**

The Texas Government Code provides authority for emergency management under the "Texas Disaster Act of 1975". Tex. Gov't. Code Ann. Ch. 418. The purpose of the act is to provide broad authority to reduce vulnerability of Texans to damage or injury and loss of life from a natural or manmade catastrophes. Tex. Gov't Code §418.002.

### **What is a disaster under the "Texas Disaster Act"?**

A disaster is identified as the threat or occurrence of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause including an epidemic among other things. Tex. Gov't. Code §418.004.

### **May the Governor Suspend Statutory Deadlines?**

Yes. Under §418.1075 Tex. Gov't Code, the Governor may suspend all statutory deadlines and TAC continues to work with our affiliated organizations to compile a list for the Governor's consideration.

## **LOCAL DISASTER DECLARATIONS**

### **Who makes a declaration of a local disaster?**

The county judge may declare a local state of disaster. Tex. Gov't Code §418.108(a). Such order may not extend beyond seven days except with the consent of the commissioners court. §418.108(b).

### **What power does the declaration of a local disaster provide?**

In part, the declaration activates all applicable local or inter jurisdictional emergency management plans and authorizes the furnishing of aid and assistance under the plan. Tex. Gov't Code §418.108(d). Under a local disaster order, the county judge may order the evacuation of all or part of the population from a stricken or threatened area under their county should they believe the action necessary for the preservation of life or other disaster mitigation. Tex. Gov't Code §418.108(f). The order allows the county judge to control the right of ingress and egress from a disaster area and control the movement of

persons and the occupancy of premises in that area. §418.108(g). In the unlikely event that there may be a conflict between the county judge and the mayor, the decision of the county judge controls. §418.108(h).

**May a municipal officer enforce directives or orders issued by a county judge?**

Yes. Section 418. 108 (h), Tex. Gov't Code, provides that after declaration of local disaster by the county judge, the jurisdiction and authority of the county judge includes the incorporated and unincorporated areas of the county.

**Who is the Emergency Management Director of a county?**

The county judge is designated as the emergency management director for the county. Tex. Gov't Code §418.1015(a). The county judge serves as the governor's designated agent in the administration and supervision of duties under chapter 418 and may exercise the powers granted to the governor under the chapter "on an appropriate local scale". §418.1015 (b).

**Is there a penalty for violation of an emergency management plan or evacuation order?**

Violation of an emergency management plan, failure to comply with the plan, or order under the plan is an offense and the plan may prescribe punishment for said offense not to exceed \$1,000 or confinement in jail for a term that exceeds 180 days. Tex. Gov't Code §418.173. The county judge may authorize the use of reasonable force to remove persons from an area that has been ordered to be evacuated. Tex. Gov't Code §418.185(b).

**LOCAL STATE OF EMERGENCY**

**How and why may a county proclaim a state of emergency?**

The county judge or commissioners court during an emergency may apply to the governor to proclaim a state of emergency and designate the area involved. Under Chapter 433, an emergency may be caused by one or more of several situations including "a natural or man-made disaster". Tex. Gov't Code §433.001.

**After a state of emergency is proclaimed, what directives may the governor issue?**

With reasonable notice, the governor may issue reasonable directives calculated to effectively control and terminate the emergency, protect human life and property. Tex. Gov't Code Section §433.002(a). Those directives may provide for control of public and private transportation in the affected area; designation of specific zones within the affected area in which occupancy of buildings and use of vehicles may be controlled; movement of persons may be controlled and establishment of curfews among other things. Tex. Gov't Code Section 433.002(b).

**What are the duties of law enforcement during a state of emergency?**

Each law enforcement agency in the state shall cooperate in the manner the governor or the governor's designated representative requires. Tex. Gov't Code §433.004(a). A county law enforcement agency shall notify the director of the Department of Public Safety if the agency receives notice of a threatened or actual disturbance, or the possibility of serious domestic violence. Tex. Gov't Code § 433.004(b).

**What are the penalties for violating Chapter 433, or a directive made under the chapter?**

A person who violates this chapter, or a directive issued under this chapter commits an offense. An offense under this section is a misdemeanor punishable by a fine of not more than \$200, confinement for not more than 60 days, or both. Tex. Gov't Code §433.006(a).

**COMMUNICABLE DISEASES**

**What public health control measures may the state implement during a pandemic?**

The power to implement public health control measures, including quarantine and isolation, is a well-established exercise of state police power. *Jacobsen v. Massachusetts*, 197 U.S. 11 (1905). In Texas, public health control measures are described in the Communicable Disease Prevention and Control Act. Tex. Health & Safety Code Chapter 81.

A peace officer may use reasonable force to secure the members of a group subject to a control measure order and prevent the members from leaving the group or other individuals from joining the group. Tex. Health & Safety Code §81.0839(m). Furthermore, a peace officer, including a sheriff or constable, may use reasonable force to secure a property subject to a court order and prevent an individual from entering or leaving the property subject to the order. Tex. Health & Safety Code §81.084(l). Finally, a peace officer may use reasonable force in order to secure a quarantine area and prevent an individual from entering or leaving the quarantine area. Tex. Health & Safety Code §81.085(j).

**What public health control measures may local health authority implement?**

In its jurisdiction, the local health authority has the same authority as the state to impose control measures on an individual or group and with regard to control of property. Tex. Health & Safety Code §§81.082 and 81.084.

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