

WEATHERING THE STORM: DISASTER PREPAREDNESS AND RESPONSE

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The  symbol indicates sections that have been updated since the previous publication.

Introduction

Texas counties face many unique challenges in responding to emergencies due to the diversity of climate, geography and availability of local resources throughout the State. In the aftermath of various disasters, including Hurricane Harvey, TAC received numerous questions regarding the operation of local government during and after emergencies that are applicable to a variety of disaster scenarios. Below are answers to a few of those questions.

OPERATION OF COMMISSIONERS COURT

1. Where may the commissioners court meet if the posted location is unavailable due to an emergency?

If the posted location of the commissioners court meeting is unavailable due to emergency conditions, the county may select an alternative meeting place within the county. The alternative meeting place may be an auxiliary courthouse, annex, or other county building that houses other courts or county administration offices within the city serving the county seat. Loc. Gov't Code §81.005

2. May the commissioners court meet by phone if members of the court are unable to attend a commissioners court meeting due to an emergency?

The commissioners court may hold an open or closed meeting by telephone if an emergency or public necessity exists and the convening of a quorum of the court at one location is difficult or impossible. The emergency telephone meeting is subject to the meeting notice requirements applicable to all open meetings held pursuant to the Open Meetings Act. Gov't Code §551.125

- 3. If a quorum of the commissioners court can physically meet, but one or both of the other members cannot attend due to an emergency, can the members of the court that cannot physically attend participate over the telephone?**

No. Teleconference participation is authorized only when a quorum is not located in one place. *See* Gov't Code §551.125; Tex. Att'y Gen. Op. No. JC-0352 (2001)

- 4. If a phone meeting is not possible and some of the commissioners are available to meet in person, is a quorum of the commissioners court required to conduct county business?**

No. A quorum is not required for the commissioners court to take action if the county's jurisdiction is wholly or partly located in the area of a disaster declared by the president of the United States or the governor and a majority of the members of the court are unable to be present as a result of the disaster. Gov't Code §418.1102



- 5. If the commissioners court is prevented from convening for a properly posted meeting due to a catastrophe, may the court convene the meeting without having to wait an additional 72 hours?**

Yes. A commissioners court that is prevented from convening an open meeting that was otherwise properly posted because of a catastrophe may convene the meeting in a convenient location within 72 hours of the originally scheduled date by posting an emergency meeting notice at least one hour prior to the emergency meeting. The posting must clearly identify the emergency. If the commissioners court is unable to convene the open meeting within 72 hours, the commissioners court must repost and wait 72 hours under the general posting rule. Gov't Code §§551.0411(b); 551.045, amended by SB 494, 86th Leg. Effective Sept. 1, 2019.



- 6. In an emergency, does the commissioners court have to wait 72 hours from the date of posting to conduct a meeting?**

No. In an emergency or when there is an urgent public necessity, the notice of a meeting to deliberate or take action on the emergency or urgent public necessity, or

the supplemental notice to add the deliberation or taking of action on the emergency or urgent public necessity as an item to the agenda for a meeting for which notice has been posted, is sufficient if it is posted at least one hour before the meeting is convened. A commissioners court may only deliberate or take action on a matter directly related to the emergency or urgent public necessity identified in the notice, or on an agenda item listed on a notice before the supplemental notice was posted. The notice must clearly identify the emergency or urgent public necessity.

An emergency or urgent public necessity is defined as a reasonably unforeseeable situation, including: fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm; power failure, transportation failure, or interruption of communication facilities; epidemic; or riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence; or an imminent threat to public health and safety, including a threat described by one of the previously mentioned situations, if imminent. Gov't Code §551.045, amended by SB 494, 86th Leg. Effective Sept. 1, 2019.

PUBLIC INFORMATION



1. Is there any authority for temporarily suspending the requirements of the Public Information Act during a disaster?

Yes. The commissioners court of a county currently impacted by a catastrophe may elect to suspend the applicability of the requirements of the Public Information Act to the commissioners court for an initial seven-day suspension period which may be extended one time. A catastrophe is defined to mean a condition or occurrence that interferes with the ability of a governmental body to comply with the requirements of the Public Information Act, including: fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm; power failure, transportation failure, or interruption of communication facilities; epidemic; or riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

A commissioners court that elects to suspend the requirements must submit notice to the office of the attorney general, on the form prescribed by the attorney general, that the court is currently impacted by a catastrophe and has elected to suspend the applicability of the requirements during the initial suspension period or an extension of that suspension period. Gov't Code §552.233, added by SB 494, 86th Leg. Effective Sept. 1, 2019.



2. When do the suspension periods begin and end?

The initial suspension period may not exceed seven consecutive days and must occur during the period that begins not earlier than the second day before the date the commissioners court submits the required notice to the office of the attorney general about the suspension, and ends not later than the seventh day after the date the court submits that notice. The initial suspension period may be extended one time for not more than seven consecutive days that begin on the day following the day the initial suspension period ends. Gov't Code §552.233, added by SB 494, 86th Leg. Effective Sept. 1, 2019.



3. Must a commissioners court that suspends the requirements of the Public Information Act during a disaster notify the public?

Yes. A commissioners court that suspends the applicability of the requirements of the Public Information Act must provide notice to the public of the suspension in a place readily accessible to the public and in each other location the court is required to post a notice under Subchapter C of the Open Meetings Act. Gov't Code §552.233, added by SB 494, 86th Leg. Effective Sept. 1, 2019.

BUDGET AND AD VALOREM TAXES

1. What if a disaster prevents the commissioners court from timely meeting to set the ad valorem tax rate and adopt the budget?

The statutory deadlines for adopting the ad valorem tax and budget may be suspended if the county is wholly or partly located in the area of a disaster declared by the president of the United States or the governor, and the county judge proclaims that the county is unable to comply with the statutory requirements. Gov't Code §418.1075



2. Is there any authority for property tax relief after a disaster?

Yes. Certain persons are entitled to a temporary property tax exemption of a portion of the appraised value of certain qualified property located in an area declared a disaster by the governor if the property is at least 15 percent damaged as determined by the chief appraiser. However, if the governor first declares territory in a county to be a disaster area on or after the date the county adopts a tax rate for the tax year in which the declaration is issued, a person is not entitled to the exemption for that tax

year unless the commissioners court adopts the exemption. An exemption adopted by commissioners court must specify the disaster to which the exemption pertains and be adopted not later than the 60th day after the date the governor first declares territory in the county to be a disaster area. The amount of the exemption on qualified property is tied to a damage assessment rating assigned by the chief appraiser. An authorized exemption expires as to an item of qualified property on January 1 of the first tax year in which the property is reappraised under Sec. 25.18 of the Tax Code. Tax Code §11.35, added by HB 492, 86th Leg. Effective Jan. 1, 2020. *See also* Tex. Const., art. VIII, §2(e).

OPERATION OF LOCAL COURTS



- 1. If county, district and justice of the peace courts are inaccessible due to a disaster, is the county authorized to provide alternative locations to resume the operation of local courts?**

Yes. The commissioners court may purchase, construct, or provide by other means, including a lease or lease purchase, a building or building space for the housing of county or district offices, county or district courts and justice of the peace courts. If the building or rooms are for housing a county or district court, they may be located anywhere in the county at the discretion of the commissioners court. Local Gov't Code §292.001, amended by SB 40, 86th Leg. Effective June 7, 2019. *See also* Gov't Code §§24.033, 25.0019, 25.0032, 26.009, and 27.0515, amended by SB 40, 86th Leg. Effective June 7, 2019 (authorizing district courts, statutory county courts, statutory probate courts, constitutional county courts and justice courts, respectively, to operate outside the county seat or precinct if a disaster precludes functioning at the county seat or precinct).



- 2. If there are no available alternative facilities in the county for housing the local courts, may the courts be housed in adjoining counties?**

Certain presiding judges may authorize the relocation of local courts to other counties in the aftermath of disasters with the approval of the judge of the affected court. Gov't Code §§24.033, 25.0019, 25.0032, 26.009, and 27.0515, amended by SB 40, 86th Leg. Effective June 7, 2019.

3. How do the local courts address filing and other procedural deadlines during and after a disaster?

The Texas Supreme Court and Texas Court of Criminal Appeals have the authority to suspend all procedural deadlines during and after a disaster. Gov't Code §22.035

LOCAL EMERGENCY MANAGEMENT

1. Who is the emergency management director for the county?

The county judge, as presiding officer of the commissioners court, is the emergency management director for the county. Gov't Code §418.1015

2. Who has authority to designate a person to serve as an emergency management coordinator?

The county judge, as the emergency management director for the county, has the authority to designate a person to serve as the emergency management coordinator. The emergency management coordinator serves as an assistant to the county judge for emergency management purposes. Gov't Code §418.1015



3. Is the county required to maintain an emergency management program?

Each county is required to maintain an emergency management program or participate in a local or interjurisdictional emergency management program. The emergency management program must provide for catastrophic debris management. Gov't Code §418.102, amended by HB 6, 86th Leg. Effective Sept. 1, 2019 (each county must provide for catastrophic debris management in the county's emergency management program or in a program in which the county participates not later than Jan. 1, 2020).

4. Is the county required to have an emergency management plan?

Yes. Each county must prepare and keep current an emergency management plan providing for disaster mitigation, preparedness, response, and recovery. Gov't Code §418.106

5. Is the county required to hold public hearings to discuss the county emergency management plan?

Yes, with one exception. A county must conduct at least one public meeting each calendar year to exchange information about the emergency management plan unless the emergency management plan contains sensitive information relating to critical infrastructure or facilities and the safety or security of the infrastructure or facilities could be jeopardized by the disclosure of the emergency management plan. Gov't Code §418.106

6. What are the requirements of an emergency management plan?

An emergency management plan must provide for wage, price, and rent controls and other economic stabilization methods in the event of a disaster; and curfews, blockades, and limitations on utility use in an area affected by a disaster, rules governing entrance to and exit from the affected area, and other security measures. Gov't Code §418.106

DECLARATION OF LOCAL DISASTER

1. How does the county declare a local disaster?

The county judge may declare a local state of disaster. A declaration of local disaster may not be continued or renewed for a period of more than seven days without the consent of the commissioners court. A declaration of local disaster activates the appropriate recovery and rehabilitation aspects of all applicable local and interjurisdictional emergency management plans and authorizes the furnishing of aid and assistance under the declaration. Gov't Code §418.108

2. Who is authorized to order an evacuation of the county prior to or after a disaster?

The county judge may order the evacuation of all or part of the population from a stricken or threatened area under the jurisdiction and authority of the county judge if the county judge considers the evacuation necessary for the preservation of life or other disaster mitigation, response, or recovery. Gov't Code §418.108

MUTUAL AID ASSISTANCE

- 1. May a county provide assistance to another local government during a public calamity?**

Yes. A county may provide mutual aid assistance on request from another local government or organized volunteer group. Gov't Code §418.109

- 2. Who has the authority to authorize mutual aid assistance?**

Mutual aid assistance may be provided with the approval and consent of the county judge, while acting in accordance with the policies and procedures established by the commissioners court. Gov't Code §418.109

PURCHASING AUTHORITY

- 1. Does the commissioners court have to solicit bids for necessary equipment or services to respond to an emergency if the cost exceeds \$50,000?**

No. The commissioners court is authorized to exempt from competitive purchase items that must be promptly purchased in a public calamity in order to relieve the necessity of citizens or to preserve the property of the county. Local Gov't Code §262.024(a)(1)

- 2. If the county uses the emergency exemption to competitive bidding set forth in the County Purchasing Act to purchase goods and services during a public calamity, is the county eligible for FEMA reimbursement?**

Possibly. FEMA may provide reimbursement funding for equipment and services procured by a county during a public calamity. However, FEMA funding eligibility guidelines are often revised and may contain competitive bidding requirements that are more stringent than Texas Local Government Code emergency exemptions.

CLEARANCE OF DEBRIS

- 1. Does the county have authority to access private property to clear debris with county equipment during or after a local disaster?**

Yes. The county judge may use county equipment on private land if deemed necessary to meet or prevent a locally declared disaster emergency as long as the action is consistent with the local disaster plan so activated. Tex. Atty Gen. Op. MW-140

- 2. What authority does the State have to access private property to clear debris?**

In a disaster declared by the governor or president, the governor, acting through members of the Emergency Management Council, may clear or remove debris or wreckage from private land or water if it threatens public health or safety or threatens public or private property.

If the governor provides for clearance of debris or wreckage from private property, state employees or other individuals acting by authority of the governor may enter private land or water to perform the necessary removal or clearance operation. Gov't Code §418.023

- 3. In the aftermath of a disaster, does the county have authority to demolish certain buildings that are deemed to be hazardous?**

Possibly yes. Pursuant to its nuisance abatement authority, a county may seek to demolish a building that is being maintained in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard. Tex. Health & Safety Code, Chapter 343