

## **WEATHERING THE STORM: DISASTER PREPAREDNESS AND RESPONSE**

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### **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 or 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 2 hours prior to the emergency meeting. The posting must clearly identify the emergency. If the governmental body is unable to convene the open meeting within 72 hours, the governmental body must repost and wait 72 hours under the general posting rule. Gov't Code §§551.0411(b), 551.045

- 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 or the supplemental notice of a subject added as an item to the agenda for a meeting for which notice has been posted is sufficient if it is posted at least 2 hours before the meeting is convened. The notice must clearly identify the emergency or urgent public necessity. An emergency is defined as an imminent threat to public safety or a reasonable unforeseeable situation. Gov't Code §551.045

## SUSPENSION OF BUDGET AND AD VALOREM TAX DEADLINES IMPOSED BY LOCAL LAW

- 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 and the governor, and the county judge proclaims that the county is unable to comply with the statutory requirements. Gov't Code §418.1075

- 2. May the commissioners court authorize property tax relief after a disaster?**

Yes. The governing body of a taxing unit that is located partly or entirely inside an area declared to be a disaster area by the governor may authorize reappraisal of all property damaged in the disaster at its market value immediately after the disaster. A taxing unit that authorizes a reappraisal must pay the appraisal district for the costs of the reappraisal. Property taxes are prorated for the year in which the disaster occurred. Tax Code §23.02

## 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. Local Gov't Code §292.001. *See also*, Gov't Code §§24.033, 25.0019 and 26.009 (authorizing district courts, constitutional county courts and statutory county courts, respectively, to operate outside the county seat if a disaster precludes functioning at the county seat).

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

The Texas Supreme Court and Texas Court of Criminal Appeals have the authority to authorize the relocation of local courts to other counties in the aftermath of disasters. Gov't Code §22.035(b)

- 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(b)

## 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. Gov't Code §418.1015

### 3. 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

### 4. 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 of the infrastructure or facilities could be jeopardized by the disclosure of the emergency management plan. Gov't Code §418.106

### 5. 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 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 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 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 governmental during a public calamity?**

Yes. A county may provide mutual 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?**

The county judge, with the consent and approval of the presiding officer of the governmental entity requesting assistance, may authorize mutual aid assistance while acting in accordance with policies and procedures established by the commissioners court. Gov't Code §418.109

### **PURCHASING AUTHORITY**

**1. Do the commissioners 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 or emergency as long as the action is consistent with the local disaster plan so activated. Attn'y Gen. Op. MW-140

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

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. A county may seek to demolish a building pursuant to its nuisance abatement authority 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. Texas Health and Safety Code Chapter 343