

ANNEX U

LEGAL

CITY OF



April 2021

APPROVAL & IMPLEMENTATION

Annex U

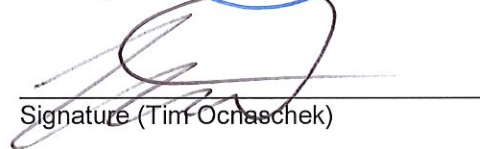
Legal



Signature (Tyrone Cooper)

City Attorney

4.14.2021
Date



Signature (Tim Ochnaschek)

EMC

4/14/2021
Date

NOTE: The signature(s) will be based upon local administrative practices. Typically, the annex is signed by the individual having primary responsibility for this emergency function in the first signature block and the second signature block is used by the Emergency Management Coordinator, Mayor, or County Judge. Alternatively, each department head assigned tasks within the annex may sign the annex.

RECORD OF CHANGES

Annex U

Legal

Reviewed Virtually by Planning Committee Members: 4/9/2021

Shaqueena Nobles, Emergency Management
Charlie Cox, Emergency Management
Amalia Villarreal, City Engineer

Further Review by:
Tyrone Cooper, Legal Advisor
Sharae Reed, Legal Advisor
Tina Broussard, City Clerk

Change #	Date of Change	Entered By	Date Entered

ANNEX U

LEGAL

I. AUTHORITY

- A. See Section I of the Basic Plan for general authorities.
- B. Texas Local Government Code, Chapter 203 (Management and Preservation of Records).

II. PURPOSE

The purpose of this annex is to make provision for legal services during emergency situations or when such situations appear imminent and to provide guidance for invoking the emergency powers of government when necessary.

III. EXPLANATION OF TERMS

EOC	Emergency Operating Center
FEMA	Federal Emergency Management Agency
IC	Incident Commander
TAC	Texas Administrative Code
TGC	Texas Government Code
UC	Unified Command

IV. SITUATION & ASSUMPTIONS

A. Situation

The City of Beaumont faces a number of hazards that could threaten public health and safety, and personal and government property; see Section IV.A of the basic plan for a summary of these hazards. Legal issues requiring timely resolution may arise during pre-disaster hazard mitigation designed to lessen the effects of known hazards, during pre-disaster preparedness activities designed to enhance the local capability to respond to a disaster, during the actual response to a disaster, or during the post-disaster recovery process.

B. Assumptions

1. Local emergency preparedness plans and programs should have a sound legal basis.
2. In responding to major emergencies and disasters, local officials may be required to take extraordinary measures to protect public health and safety and preserve property. They will also probably require timely advice regarding the legality of proposed measures.

3. Implementation of measures to protect public health and safety and preserve property during emergency recovery and mitigation activities generally require issuance of appropriate legal documents. These should be prepared by competent legal service professionals.

V. CONCEPT OF OPERATIONS

A. General

1. Emergency Declaration.

- a. Pursuant to Chapter 433, Texas Government Code (TGC), the chief elected official or the governing body of a city or county may request the Governor declare a state of emergency for a jurisdiction or a portion thereof. For purposes of this statute, an emergency exists in the following situations: riot or unlawful assembly by three or more persons acting together by use of force or violence, the existence of a clear and present danger of violence, or a natural or man-made disaster. The Governor may proclaim a state of emergency and issue directives to control and terminate the emergency and protect life and property. Directives issued by the Governor for a state of emergency expire 72 hours after issuance; however, successive states of emergency may be declared by the Governor. A sample request for an emergency declaration is provided in Appendix 1.
- b. The emergency declaration process is generally not used for natural or man-made disasters because: (1) it requires action by the Governor to resolve local problems rather than facilitating action by local officials, (2) the Governor's directives require advance notice before they become effective, and (3) directives are of very limited duration – 72 hours. Hence, a disaster declaration may be more appropriate for responding to natural or technological emergencies. An emergency declaration may be appropriate for security-related incidents where local law enforcement resources are inadequate to handle the situation.
- c. If the actions taken by the Governor after an initial emergency declaration do not resolve the emergency situation, the chief elected official or governing body may request that the emergency declaration be continued. If the local emergency situation that was the basis for an emergency declaration is resolved before the Governor's directives expire, it is desirable to advise the Governor that the emergency declaration is no longer required.

2. Disaster Declaration

- a. The Texas Disaster Act, Chapter 418, TGC, provides that the presiding officer of the governing body of a political subdivision (the county judge of a county or the mayor of a municipality) may declare a local state of disaster. A disaster declaration may be issued when a disaster has occurred or appears imminent. Chief elected officials, in order to respond to or recover from a significant natural or man-made disaster, typically use the disaster declaration process. A sample disaster declaration is

provided in Appendix 2. Copies of a disaster declaration should be filed with the Texas Division of Emergency Management (TDEM) and the City Clerk for the City.

- b. The Executive Order of the Governor Relating to Emergency Management provides that county judges and mayors may, when a state of disaster has been declared, exercise similar powers on an appropriate local scale as have been granted to the Governor in the Disaster Act. Among those powers is the authority to suspend procedural laws and rules, use public and private resources to respond to the disaster, control the movement of people, restrict the sale and transportation of certain items, and take a number of other actions. Once a state of disaster is declared, a city or county may enact an emergency ordinance or order describing the specific emergency regulations that are to be put into effect during the disaster. A sample emergency powers ordinance is provided in Appendix 5.
- c. A disaster declaration may not be continued in force for more than seven days unless renewed by the City Council. A sample ordinance extending a disaster declaration is provided in Appendix 3. The City Council may terminate a state of disaster at any time; this approach is typically used when the threat that gave rise to the disaster declaration has subsided. Alternatively, the City Council may choose to simply let the declaration expire by taking no action to extend it. A sample ordinance/court order terminating a disaster declaration is provided in Appendix 4.

B. Activities by Phases of Emergency Management

1. Prevention

- a. Brief the elected officials and department heads on possible liabilities arising from disaster operations, procedures for invoking the emergency powers of government, and legal documents relating to emergency powers.
- b. Maintain current copies of existing disaster-related laws, regulations, and orders.
- c. Develop local procedures for invoking emergency powers.
- d. Prepare sample legal documents (included in this annex) for approval by elected officials.

2. Preparedness

- a. Ensure City emergency call-out rosters include the City Attorney, who should maintain current telephone numbers and addresses for the legal staff.
- b. Review plans and procedures.
- c. Review mutual aid agreements submitted to the jurisdiction for approval and prepare mutual aid agreements to be submitted to other jurisdictions for approval.

3. Response

- a. Advise the Mayor and emergency services staff on legal implications of response activities.

- b. If required, prepare, have approved and signed, and disseminate legal documents declaring a disaster, terminating a disaster declaration, or invoking emergency powers.
 - c. If required, advise the Incident Commander (IC) on legal matters, such as emergency proclamations, legality of evacuation orders, and legal rights and restrictions pertaining to media access.
4. Recovery
- a. Advise City officials on legal aspects of recovery operations.
 - b. Assist City officials in preparing emergency ordinances, permits, applications for state or federal assistance, grant applications, and, if necessary, litigation.

VI. ORGANIZATION & ASSIGNMENT OF RESPONSIBILITIES
--

A. General.

Overall responsibility for providing legal services to the Mayor, the City Council, department heads, and other local officials during an emergency rests with the City Attorney. The City Attorney will be assisted by his or her subordinates.

B. Task Assignments

1. Mayor

- a. Will take such actions that are legal and necessary to manage the disaster at hand.
- b. If the situation warrants, may declare a local state of disaster. Issuance of a local disaster declaration is advisable if an emergency situation has resulted in substantial damage to privately-owned or government property and state or federal assistance will be needed to recover from the incident. If a local disaster declaration is issued, coordinate with Emergency Management for prompt and general publicity of declaration.
- c. If the situation warrants, may request the Governor to declare a state of emergency.
- d. If requesting state assistance to cope with a local disaster, should attach copies of any local disaster declaration that has been issued to the request for state assistance. See Annex J, Damage Assessment, for further information.

2. City Attorney

- a. Advise City's elected officials and department heads regarding the emergency powers of local government and necessary procedures for invoking measures to:
 - 1) suspend procedural laws and rules

- 2) establish curfews
 - 3) restrict or deny access to a disaster area
 - 4) control the movement of persons and occupancy of premises in a disaster area
 - 5) implement wage, price, and rent control;
 - 6) establish rationing of critical supplies
 - 7) limit or restrict use of water or other utilities
 - 8) use any publicly owned resource to respond to the disaster
 - 9) commandeer private property, subject to compensation requirements, to respond to the disaster
 - 10) remove debris from publicly or privately owned property
 - 11) restrict outdoor burning and use of fireworks
- b. Review and advise City officials on possible liabilities arising from disaster operations, including the exercising of any or all of the above powers.
 - c. Prepare and recommend legislation to implement the emergency powers that may be required during an emergency.
 - d. Advise City officials and department heads on record keeping requirements and other documentation necessary for the exercising of emergency powers.
 - e. Coordinate with the Emergency Management Office to keep this annex current.
 - f. During an emergency, report instances of overcharging for emergency supplies, equipment, and repair materials to the Consumer Affairs section of the Office of the Attorney General.
3. City Clerk
 - a. Publish required agenda of meetings.
 - b. Prepare a record of public meetings
 - c. Receive the disaster or emergency declarations and documents extending or terminating a state of disaster.
 - d. Ensure proper protection of all records.
 4. Documentation Unit Leader
 - a. Receive a copy of disaster or emergency declarations to maintain in the incident file.
 - b. Receive a copy of documents extending or terminating disaster or emergency declarations to maintain in the incident file.
 - c. Receive copies of documents regarding invocation or termination of emergency powers during an emergency for inclusion in incident file.

VII. DIRECTION & CONTROL

- A. **General.** The City Attorneys are responsible for providing legal services to the Mayor, City Council and department heads and for preparing all legal documents necessary for the conduct of emergency operations and the exercise of emergency powers. Supervisors will exercise their usual supervisory responsibilities over legal personnel.
- B. **Coordination.** The City Attorney will designate a person to coordinate with the Mayor and the EOC, if activated. The City Attorney will identify staff members to be called for emergency duty and will designate those responsible for contacting such staff members.
- C. **Line of Succession.** The line of succession for legal services personnel will be:
1. First Assistant City Attorney
 2. Senior Assistant City Attorney
 3. Police Legal Advisor
 4. Assistant City Attorney

VIII. READINESS LEVELS

A. Readiness Level IV – Normal Conditions

See the prevention and preparedness activities in paragraphs V.B.1) and V.B.2) above.

B. Readiness Level III - Increased Readiness

1. The City Attorney will review the potential emergency situation, determine staff availability, and review emergency tasks assigned in the emergency management plan and this annex.
2. The City Attorney will designate the personnel on call for emergency duty.

C. Readiness Level II – High Readiness

1. Senior City officials and department heads will be briefed on the legal ramifications, if any, of the potential emergency situation.
2. The City Attorney will brief the legal staff on the potential emergency situation and plans to deal with it should it occur and ensure that on-call staff members are available by telephone and ready to report for duty if called.

D. Readiness Level I – Maximum Readiness

The designated on call legal services representative will proceed to the EOC if requested.

IX. ADMINISTRATION & SUPPORT

- A. Maintenance of Records.** All records generated during an emergency will be collected and filed in an orderly manner so a record of events is preserved for use in determining response costs, settling claims, and updating emergency plans and procedures.
- B. Preservation of Records.** Vital legal records should be protected from the effects of disaster to the maximum extent feasible. Should records be damaged during an emergency situation, professional assistance in preserving and restoring those records should be obtained from a firm specializing in these tasks as soon as possible.
- C. Training.** Legal services personnel who will be participating in EOC operations shall receive training in line with their responsibilities while assigned to the EOC. Training will be coordinated with the Emergency Management Office.

X. ANNEX DEVELOPMENT & MAINTENANCE

- A. Development.** The City Attorney, in coordination with the EMC, is responsible for developing and maintaining this annex.
- B. Maintenance.** This annex will be reviewed annually and updated in accordance with the schedule outlined in Section X of the Basic Plan.

XI. REFERENCES

- A.** Texas Division of Emergency Management *Local Emergency Management Planning Guide (DEM-10)*.
- B.** FEMA *Guide for All-Hazard Emergency Operations Planning (CPG-101)*

APPENDICES:

- Appendix 1 Sample Request for Emergency Declaration
- Appendix 2 Sample Disaster Declaration
- Appendix 3..... Sample Extension of Disaster Declaration
- Appendix 4..... Sample Termination of Disaster
- Appendix 5..... Sample Emergency Powers Ordinance/Order

SAMPLE REQUEST FOR EMERGENCY DECLARATION

The Honorable _____
Governor of Texas
c/o State Coordinator
Governor's Division of Emergency Management
P. O. Box 4087
Austin, Texas 78773-0001

Date:

Dear Governor _____:

The City of Beaumont, Texas, is facing significant threats to life, health and property due to:

[Provide a description of the threat and the area or areas affected. Threats may include:

- riot or unlawful assembly of three or more persons acting together by use of force or violence
- the existence of a clear and present danger of the use of violence
- a natural or man-made disaster

(For these threats, a disaster declaration may be more appropriate.)

The potential impact of this threat is:

(Provide an estimate of the impact on public health, safety, and property if the threat is not dealt with.)

I have determined that this incident is of such severity and magnitude that an effective response is beyond the capability of the city to control. Pursuant to §433.001 of the Texas Government Code, I am requesting that you declare a state of emergency for the City of Beaumont, Texas, and issue appropriate directives to deal with the emergency; including:

(Indicate what measures that you want the Governor to take.)

Furthermore, I am asking that successive proclamations be issued and remain in effect until the threat of loss of life, injury, or damage property is contained.

A timely response to this request would be appreciated.

Signature: _____
Mayor_*

* NOTE: The statute provides that either the chief elected or the governing body of a city or county may request the Governor issue an emergency declaration. If a governing body makes a request, this letter should be appropriately modified.

SAMPLE DISASTER DECLARATION

DECLARATION OF DISASTER

WHEREAS, the City of Beaumont on the ____ day of _____, 20__ , has suffered widespread or severe damage, injury, or loss of life or property (or there is imminent threat of same) resulting from

(Briefly describe the disaster situation), and

WHEREAS, the Mayor of the City of Beaumont has determined that extraordinary measures must be taken to alleviate the suffering of people and to protect or rehabilitate property,

NOW, THEREFORE, BE IT PROCLAIMED BY THE MAYOR OF the City of Beaumont, that a local state of disaster is hereby declared for the City of Beaumont pursuant to §418.108(a) of the Texas Government Code.

2. Pursuant to §418.018(b) of the Government Code, the state of disaster shall continue for a period of not more than seven days from the date of this declaration unless continued or renewed by the City Council of the City of Beaumont.

3. Pursuant to §418.018(c) of the Government Code, this declaration of a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the City Clerk.

4. Pursuant to §418.018(d) of the Government Code, this declaration of a local state of disaster activates the City's emergency management plan.

5. That this proclamation shall take effect immediately from and after its issuance.

ORDERED this the ____ day of _____, 20__ .

Mayor

SAMPLE EXTENSION OF DISASTER DECLARATION

CITY ORDINANCE or COMMISSIONERS COURT ORDER

WHEREAS, on [___ date ___], the Mayor issued a proclamation declaring a state of disaster for the City of Beaumont resulting from

[Provide a brief description of the disaster];

WHEREAS, the conditions necessitating declaration of a state of disaster continue to exist; and

WHEREAS, §418.108(b) of the Texas Government Code provides that a local state of disaster may not be continued for a period of excess of seven days without the consent of the governing body of the political subdivision;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL of the City of Beaumont:

1. That the state of disaster proclaimed for the City of Beaumont by the Mayor on _____ shall continue until terminated by order of the CITY COUNCIL.

2. This ordinance is passed as an emergency measure and pursuant to local authority for emergency measures and shall become effective on the _____ day of _ 20__ .

PASSED AND ADOPTED, this _____ day of _____ , 20__.

APPROVED, this _____ day of _____ , 20__.

Mayor

SAMPLE TERMINATION OF DISASTER DECLARATION

CITY ORDINANCE ORDER

WHEREAS, on _____, the Mayor, pursuant to the Texas Government Code, Chapter 418, (the "Texas Disaster Act"), issued a proclamation declaring a local state of disaster for the City of Beaumont resulting from:

[Describe the situation that occasioned the disaster declaration];

WHEREAS, the conditions necessitating the proclamation of a local state of disaster have ceased to exist; and

WHEREAS, the Texas Disaster Act provides that a local state of disaster may be terminated by the governing body of the political subdivision or by executive order of the Mayor,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL:

1. The City Council, as the governing body of the City of Beaumont, hereby terminates the proclamation of a local state of disaster described in the preamble above.

2. A public emergency exists requiring that this ordinance be passed formally on the date of its introduction; therefore, this ordinance shall take effect immediately upon its passage and approval by the Mayor.

PASSED AND ADOPTED, this ____ day of _____, 20__.

APPROVED, this ____ day of _____, 20__.

Mayor

SAMPLE EMERGENCY POWERS

CITY ORDINANCE or COMMISSIONERS COURT ORDER

WHEREAS, by proclamation issued [date of disaster declaration], the Mayor declared a state of disaster for the City of Beaumont resulting from

[Briefly describe the situation] ; and

WHEREAS, said state of disaster requires that certain emergency measures be taken pursuant to the Executive Order of the Governor Relating to Emergency Management; now, therefore, the following regulations shall take effect immediately upon issuance, and shall remain in effect until the state of disaster is terminated:

[Eliminate sections below describing measures that will not be used.]

1. CURFEW

- (a) A person shall not remain or travel upon any public or private property in the following area(s) between the hours of _____ and _____:

[Insert description of applicable areas]

- (b) Subsection (a) shall not apply to:

- (1) a person authorized by the Emergency Management Director to assist in the production of the health, safety, or welfare of the public; or
- (2) a person who remains or travels upon private property which is owned by him or upon which the person has been invited.

2. MOVEMENT OF PEOPLE AND OCCUPANCY OF PREMISES

- (a) A person shall not remain or travel upon any public or private property in the following area(s):

[Insert description of applicable areas]

- (b) Subsection (a) shall not apply to a person authorized by local government officials to assist in the protection of the health, safety, or welfare of the public.

3. UTILITIES

All utility services shall be discontinued in the following area(s):

[Insert description of applicable areas]

4. FLAMMABLE PRODUCTS

- (a) A person shall not sell or give away gasoline or other flammable or combustible products in the following area(s):

[Insert description of applicable areas]

- (b) All gasoline stations shall be closed in the following area(s):

[Insert description of applicable areas]

5. EXPLOSIVES

- (a) A person shall not sell, barter, loan, or give away arms, ammunition, dynamite, or other explosives in the following area(s):

[Insert description of applicable areas]

- (b) All establishments where arms, ammunition, dynamite, or other explosives are sold shall be closed in the following area(s):

[Insert description of applicable areas]

6. ALCOHOLIC BEVERAGES

- (a) A person shall not sell or distribute beer, wine, liquor, or alcoholic beverages of any kind in the following area(s):

[Insert description of applicable areas]

- (b) Subsection (a) shall not apply to the sale of medicine which contains alcohol.

7. PRICE CONTROLS

A person shall not sell any of the following goods or services for more than the price the person charged for the goods or services on (date of disaster declaration):

- (a) groceries, beverages, toilet articles, ice
- (b) construction and building materials and supplies, and earthmoving equipment and machinery
- (c) electrical and gas generating and transmission equipment, parts and accessories
- (d) charcoal briquettes, matches, candles, lamp illumination and heat unit carbides, dry batteries, light bulbs, flashlights, and hand lanterns
- (e) hand tools (manual and power), hardware and household supplies, and equipment rental
- (f) automotive parts, supplies, and accessories
- (g) plumbing and electrical tools and supplies
- (h) apartment, duplex, multi-family dwelling, rooming house, hotel and motel rental
- (i) gasoline, diesel oil, motor oil, kerosene, grease, and automotive lubricants
- (j) restaurant, cafeteria, and boarding-house meals

- (k) services of roofing and building contractors, plumbers, electricians, mechanics, tree surgeons, and automobile wrecker companies
- (l) medicine, pharmaceutical, and medical equipment and supplies
- (m) blankets, quilts, bedspreads, bed linens, mattresses, bedsprings, bedsteads, towels, and toilet paper
- (n) furniture and clothing

8. SUSPENSION AND MODIFICATION OF ORDINANCES

- (a) The following ordinances and regulations are hereby suspended or modified as indicated:

[List the relevant ordinances and regulations]

- (b) The suspension or modifications of the ordinances and regulations listed in Subsection (a) shall remain in effect until (date 60 days from the date these regulations are issued), or until the state of disaster is terminated, whichever is sooner.

9. PENALTIES

- (a) These regulations shall have the effect of ordinances when duly filed with the City Clerk.
- (b) A person who violates any provision of these regulations, upon conviction, is punishable by a fine of not more than five hundred dollars (\$500.00).

10. EMERGENCY

This ordinance shall take effect immediately from and after its passage and publication, and it is accordingly so ordained.

PASSED AND ADOPTED, this ____ day of _____, 20__.

APPROVED, this ____ day of _____, 20__.

Mayor

