

Chapter 26 - CIVIL EMERGENCIES^[1]

Footnotes:

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Editor's note— Ord. No. 2006-29, § 1, adopted July 3, 2006, amended Ch. 26 in its entirety, in effect deleting §§ 26.001—26.039 and enacting a new Ch. 26, §§ 26.001—26.031, to read as set out herein. Former Ch. 26 pertained to similar subject matter and derived from Code 1970 §§ 7-1—7-11, 7-13.

ARTICLE 1. - IN GENERAL

Sec. 26.001. - Definitions.

In this chapter:

Act means the Texas Disaster Act of 1975, V.T.C.A. Government Code, Chapter 418, as amended.

Director means the person designated and serving as the city emergency management director under the provisions of section 26.002.

(Ord. No. 2006-29, § 1, 7-3-06)

Sec. 26.002. - Designation and duties of the emergency management director, deputy emergency management director, and emergency management coordinator.

- (a) The City of San Marcos shall establish and implement the National Incident Management System (NIMS) as the standard for incident management activities during emergencies and disasters within the City.
- (b) As presiding officer of the governing body of the city, directly charged with certain duties or granted certain powers by the Act, and as ordered by the Governor of Texas under authority of the Act, the mayor is designated as the emergency management director for the city.
- (c) In the absence of the mayor the line of succession to the mayor, as presiding officer, for the purpose of declaring a local state of disaster shall be as follows:
 - 1) In the absence of the mayor, the mayor pro tem shall act as the presiding officer.
 - 2) In the absence of the mayor and mayor pro tem, a city council member elected by the city council shall act as the presiding officer.
 - 3) In the absence of the mayor and mayor pro tem, and the failure or inability of the city council to elect a member to act as presiding officer, the city manager shall act as the presiding officer.
 - 4) In the absence of the mayor, mayor pro tem, city council and city manager, the emergency management coordinator or an employee previously designated by the city manager may act as the presiding officer.
- (d) The city manager is designated as the deputy emergency management director, and the mayor delegates to the city manager the authority needed to carry out the city's comprehensive emergency management program and the provisions of this chapter.
- (e) The director is responsible for conducting a program of comprehensive emergency management within the city and for carrying out the duties and responsibilities set forth in this chapter. The director may delegate authority for execution of these duties to the emergency management coordinator, but ultimate responsibility for the execution remains with the director.

- (f) The office of emergency management coordinator is created. The emergency management coordinator shall be appointed by and serve at the pleasure of the director. The emergency management coordinator appointed by the mayor shall, under the direction of the city manager, carry out the city's comprehensive emergency management program and the provisions of this chapter.
- (g) The emergency management coordinator is responsible for a program of comprehensive emergency management within the city.
- (h) The emergency management coordinator is encouraged to seek advice from other local governments, business, labor, industry, agriculture, civic organizations, volunteer organizations, and community leaders in the development and review of the emergency management program, under the Act. The director may appoint a local emergency planning committee (LEPC) as an advisory group to the emergency management coordinator.
- (i) The mayor and city manager shall certify the city's emergency management plan and any mutual aid plans and agreements, as required by applicable federal and state laws.
- (j) The emergency management coordinator supervises the office of emergency management, either directly or by delegation.
- (k) The city manager shall ensure that any official or employee with emergency management responsibilities obtains any training and certifications required by federal or state authorities required to perform the specific responsibilities assigned.

(Ord. No. 2006-29, § 1, 7-3-06)

Sec. 26.003. - Powers and duties of the office of emergency management.

The office of emergency management:

- (1) Develops and maintains an emergency management plan for the city, consistent with the Act. The plan should establish the disaster services organization, describe functions of the various organizational components, describe procedures to be followed, and assign responsibility to various divisions, officials, and employees in order to carry out the provisions of this chapter and any requirements in federal or state laws.
- (2) Maintains necessary liaison and coordinate cooperative activities with other municipal, county, district, regional, state, federal and other civil defense, emergency management, homeland security, and disaster relief organizations.
- (3) Drafts and recommends for adoption by the city council mutual aid plans and agreements deemed essential or desirable for the implementation of the city's emergency management plan and coordination regional disaster services efforts, including the participation in a countywide emergency management plan and the appointment of a disaster coordinator for such joint effort.
- (4) Surveys the availability of existing and potential personnel, equipment, supplies, services, and facilities for use during an emergency, and procures and disposes of all necessary equipment, supplies, and facilities, including acceptance of private contributions and assistance.
- (5) Continuously studies emergency management and disaster relief problems, recommends any needed amendments and improvement of the emergency management plan, homeland security and keeps current with all federal and state regulatory and informational requirements.
- (6) Implements the current emergency management plan and mutual aid plans and agreements.
- (7) Controls and directs all actual operations and training activities in emergency management and disaster relief.
- (8) Determines questions of authority and responsibility in connection with emergency management and disaster relief.

- (9) Negotiates and authorizes agreements, subject to the approval of the city council, when required, for the use of public and private property for public refuge, shelter, or other necessary purposes during the course of an emergency.
- (10) Acts as a clearinghouse on emergency management information for all governmental and private agencies cooperating in the emergency management plan.
- (11) Maintains contact with the division of emergency management of the office of the governor, providing prompt and efficient response to all requests and suggestions of the division and other agencies and departments of federal, state, and county governments in connection with emergency management and disaster relief.
- (12) Marshals, upon the declaration of a disaster, all necessary personnel, equipment, and supplies from any department of the city and from private contributors to aid in implementation of the emergency management plan.

(Ord. No. 2006-29, § 1, 7-3-06)

Sec. 26.004. - Emergency management council.

The mayor is authorized to join with the county judge of Hays County and the mayors of the other cities in Hays County in the formation of an emergency management council for the county, and the mayor shall have the authority to cooperate in the preparation of a joint emergency management plan and in the appointment of a joint emergency management coordinator, as well as all powers necessary to participate in a countywide program of emergency management insofar as the program may affect the city.

(Ord. No. 2006-29, § 1, 7-3-06)

Sec. 26.005. - Supersession of existing ordinances.

At all times when the orders, rules, regulations made and promulgated pursuant to this chapter shall be in effect, they shall supersede and override all existing ordinances, orders, rules and regulations insofar as the latter may be inconsistent therewith.

(Ord. No. 2006-29, § 1, 7-3-06)

Sec. 26.006. - Oath.

Each employee or any individual who is assigned a function or responsibility under this article shall solemnly swear or affirm to support and defend the Constitution of the United States, laws of the state and the Charter and ordinances of the city.

(Ord. No. 2006-29, § 1, 7-3-06)

Sec. 26.007. - Declaration of disaster.

- (a) When the city manager believes a state of disaster exists, the city manager, or in his absence the emergency management coordinator, shall inform the mayor and request the mayor to declare a local state of disaster under the provisions of the Act.
- (b) A disaster is an occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural, all hazards or manmade cause, including fire, flood, earthquake, wind, storm, wave action, oil spill, other water contamination, hazardous material

release, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, terrorist activity, civil disturbance, hostile military or paramilitary action, other public calamity requiring emergency action, or energy emergency.

- (c) In no event may a local state of disaster, declared by the mayor, be continued or renewed for a period in excess of seven days without the consent of the city council.
- (d) The city council may terminate a local state of disaster at anytime.
- (e) An action declaring, continuing, or terminating a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the city secretary.
- (f) A declaration of local state of disaster activates the recovery and rehabilitation aspects of the city's emergency management plan and authorizes furnishing of aid and assistance under the declaration. The preparedness and response aspects of the plan are activated as provided in the plan.

(Ord. No. 2006-29, § 1, 7-3-06)

Sec. 26.008. - Authority to issue orders in the interest of public safety and welfare.

- (a) After the declaration of a local state of disaster, the presiding officer may in the interest of public health, safety, and welfare, subject to confirmation or revocation by the city council, issue proclamations, orders, or regulations, which shall have the force and effect of law, to:
 - (1) Evacuate all or part of the population of an area of the city that has been stricken or is threatened, if necessary for the preservation of life or other disaster mitigation, response, or recovery effort.
 - (2) Prescribe routes, modes of transportation, and destinations in connection with an evacuation.
 - (3) Control ingress and egress to and from a disaster area and any areas that may be adversely effected by riot, unlawful assembly, threat of violence, or an imminent natural or manmade disaster, and may control the movement of persons and the occupancy of premises in those areas.
 - (4) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, or combustibles, including fuel for vehicles.
 - (5) Establish general or limited curfews and blockades, regulating or prohibiting any person from being, remaining, loitering, or congregating on any street, alley, park, public property, or any other place that may be specified.
 - (6) Suspend or limit the use of utilities.
 - (7) Implement other security measures necessary to protect life and secure property.
 - (8) Protect life and property by such means as are imminently necessary and authorized under law.
 - (9) Suspend or modify the formal bidding requirements for purchase of goods and services, as authorized by state law.
 - (10) Suspend or modify the requirements for an itinerant vendor's permit, electrician license, and similar regulations so as to give due consideration to the license, certificate, or other permit issued to a person by any state or any political subdivision of any state evidencing qualifications for professional, mechanical, or other skills, so that the person may render aid involving the skill to meet the emergency or disaster.
 - (11) Establish temporary emergency housing, for persons needing shelter, notwithstanding any limitations in the zoning ordinance, or deed restrictions.
 - (12) Establish temporary wage, price, and rent controls and other economic stabilization methods.

- (13) Implement all or portions of the city's emergency management plan.
- (b) The mayor may delegate the authority to issue additional implementing orders, which are necessary to carry out the mayor's orders and to protect the public health and welfare, to the city manager, emergency management coordinator or another official designated by the city manager.
- (c) The city council may continue, renew, enact, or terminate any of the measures enumerated in subsection (b) of this section.

(Ord. No. 2006-29, § 1, 7-3-06)

Sec. 26.009. - Rules governing expenditures of funds.

No person shall have the right to expend any public funds of the city in carrying out any emergency management activity authorized by this chapter without prior approval of the city council, nor shall any person have any right to bind the city by contract, agreement or otherwise without prior and specific approval of the city council. During a declared disaster or state of emergency, the mayor may expend funds of the city, or enter into contracts for the duration of the declaration of emergency or disaster, when deemed prudent and necessary for the protection of public safety and welfare.

(Ord. No. 2006-29, § 1, 7-3-06)

Sec. 26.010. - Price gouging prohibited.

- (a) For the purposes of this section:
 - (1) *Necessity* means items needed by members of the public for preparation, survival, or recovery during an emergency, including, but not limited to, fuel, food, medicine, construction materials, including plywood, boards, shingles, and fasteners, tarps, tents, ice, water, batteries, generators, housing, and other property.
 - (2) *Disaster* means a disaster specified in a declaration of disaster issued by the governor, mayor, or city council.
 - (3) *Exorbitant or excessive price* means a price for any item charged during a period when a declaration of disaster is in effect that is in excess of the price for the same item that was in effect prior to the declaration of disaster, or in the case of a hurricane or flood the price in effect 72 hours before the landfall of the storm.
- (b) A person commits an offense, if, in order to take advantage of a disaster, the person intentionally, knowingly, or recklessly with criminal negligence:
 - (1) Sells or leases a necessity at an exorbitant or excessive price.
 - (2) Demands an exorbitant or excessive price in connection with the sale or lease of a necessity.
- (c) A person commits a separate offense for each item sold or leased in violation of subsection (b) of this section. Each item or group of items, which is listed or identified separately on a cash register tape or receipt, is considered to be a separate sale or lease. Multiple items that are sold in a sealed package are considered to be a single item.
- (d) It is a defense to prosecution that the higher price is related to increased costs from suppliers, increased transportation costs for items brought into the city after the declaration of disaster, or other verifiable conditions.
- (e) Before an arrest or issuance of a citation under this section, the peace officer shall provide the apparent violator an opportunity to explain a justification for the price increase other than taking advantage of the disaster.

(Ord. No. 2006-29, § 1, 7-3-06)

Sec. 26.011. - Offenses and penalties.

- (a) It is unlawful for a person to:
- (1) Violate the terms of this or any other ordinance adopted to carry out the city's emergency management functions or order issued under the authority of this chapter.
 - (2) Violate any provision of the city's emergency management plan.
 - (3) Willfully obstruct, hinder, or delay any member of the city's emergency management organization in the enforcement of any order issued under the authority of this chapter.
 - (4) Operate a siren or other device so as to simulate a warning signal or terminate an official warning signal, unless authorized.
 - (5) Wear, carry, or display any emblem, insignia, or any other means of identification that identifies the individual as a member of the city's emergency management organization, unless the individual has been designated as a member of the organization by the office of emergency management.
 - (6) Wear, carry, or display any emblem, insignia, or any other means of identification that identifies the individual as a member of an organization participating in the official response to the local state of disaster, unless the individual has been designated as a member of that organization by an appropriate official of that organization.
- (b) Any person knowingly violating a provision of this chapter or any order issued under the authority of this chapter relating to fire safety, public health, or sanitation after being warned that a specific act or omission would be a violation is guilty of a misdemeanor and upon conviction may be fined up to \$2,000.00 per violation.
- (c) Any person knowingly violating a provision of the city's emergency management plan after being warned that a specific act or omission would be a violation of the plan is guilty of a misdemeanor and upon conviction may be fined of up to \$1,000.00.
- (d) Any person violating any other provision of this chapter or any order issued under the authority of this chapter is guilty of a misdemeanor and upon conviction may be fined up to \$500.00 per violation.
- (e) Any person violating section 26.010 is guilty of a misdemeanor and upon conviction may be fined not less than \$200.00 but not more than \$500.00 per violation.

(Ord. No. 2006-29, § 1, 7-3-06)

Sec. 26.012. - Conflict with state and federal laws and regulations.

This article shall not be construed so as to conflict with any state or federal laws or regulations.

(Ord. No. 2006-29, § 1, 7-3-06)

Sec. 26.013. - Inclusion within city's emergency management plan.

This chapter is incorporated into and is made part of the city's emergency management plan.

(Ord. No. 2006-29, § 1, 7-3-06)

Secs. 26.014—26.026. - Reserved.

ARTICLE 2. - EMERGENCY RESPONSE

Sec. 26.027. - Standard of care for emergency action.

- (a) Every officer, agent, or employee of the city and every officer, agent, or employee of an authorized provider of emergency services, including, but not limited to every unit of government or subdivision thereof, while responding to emergency calls or reacting to emergency situations, is authorized to act or not to act in such a manner to effectively deal with the emergency.
- (b) An action or inaction is "reasonable and effective" if it in any way contributes or could be reasonably be thought to contribute to preserving any lives or property.
- (c) This section shall prevail over every other ordinance of the city and, to the extent to which the city has the authority to so authorize, over any other law establishing a standard of care in conflict with this section.
- (d) Neither the city nor any of its employees, agents, or officers, nor other unit of government or government subdivision nor its employees, agents, or officers may be held liable for the failure to use ordinary care during an emergency.
- (e) It is the intent of the city council, by passing this article, to assure effective action in emergency situations by those entrusted with the responsibility of saving lives and property by protecting such governmental units from liability, and their employees, agents, and officers from non-intentional tort liability to the fullest extent permitted by statutory and constitutional law.
- (f) This section shall be liberally construed to carry out the intent of the city council.

(Ord. No. 2006-29, § 1, 7-3-06)

Sec. 26.028. - Liability.

This chapter is an exercise by the city of its governmental function for the protection of the public peace, health, and safety. Neither the City of San Marcos, its officers, employees, agents, and representatives, nor any person, who is in good faith carrying out, complying with, or attempting to comply with, any order, rule, or regulation promulgated pursuant to the provisions of this chapter shall be liable for any damage sustained to persons as the result of such activity.

(Ord. No. 2006-29, § 1, 7-3-06)

Sec. 26.029. - No liability for operation of shelters.

- (a) Notwithstanding the fact that most public and privately owned buildings within the city were not designed and constructed to withstand the forces of nature that may be present in severe weather conditions or other manmade disasters, and may not be any more suitable than residential homes; and, because of the public's desire that public shelters be made available to them, the city manager may provide shelter in buildings that are owned, leased, or otherwise made available to the city as refuges of last resort. These refuges of last resort may be made available for use by residents and visitors to the city in anticipation of any disaster (all hazards) and specifically during the occurrence of severe weather within the city. The operation of shelters is a governmental function for the protection of the public peace, health, and safety, and the city, any of its officers, employees, agents, representatives, or any person, in operating a shelter may not be held liable for any death, injury, or damage from any cause sustained to persons who elected to use a shelter operated by the city.
- (b) Any person, and their successor in interest, if any, owning or controlling real estate or other premises, who voluntarily and without compensation, grants to the city a license or privilege, or otherwise permits the city to inspect, designate, and use such real estate or premises, either in whole or in part, for the purpose of sheltering persons during an actual, impending, or practice

emergency, may not be held civilly liable for the death or injury to any person, or for loss of, or damage to, any property of others occurring on or about the real property or premises used by the city.

(Ord. No. 2006-29, § 1, 7-3-06)

Sec. 26.030. - No liability for operation of vehicles used to evacuate residents.

- (a) Due to the need for transporting individuals who may not be able to make independent arrangements for transportation in response to an order to evacuate the city prior to the time a disaster is predicted to strike the city, the city manager may arrange to use buses and other vehicles of any type made available to the city by any private transportation company, state, city, regional transportation authority or school district to evacuate residents of the city to prearranged shelters in the city or in communities outside the threatened area. The evacuation of residents, including the return of the residents from shelters outside or within the city, is considered to be an emergency governmental function for the protection of the public peace, health, and safety, and, the city, any of its officers, employees, agents, representatives or any other person operating a vehicle, may not be held liable for any death, injury, or damage from any cause sustained to persons who elected to be evacuated in a vehicle operated for these purposes.
- (b) Any public entity owning, operating, or controlling any vehicle used to evacuate residents from the city or within the city, who voluntarily and without compensation, grants to the city the use of its vehicle for this purpose may not be held civilly liable for the death or injury to any person, or for loss or damage to any property resulting from the operation of the vehicle while transporting individuals to and from the city as part of an evacuation program organized by the city manager. Any officer, employee, agent, and representative of a public entity who is involved in the evacuation effort on behalf of the entity and the city may not be held civilly liable for the death or injury to any person or damage to any property as the result of the operation of a vehicle during an evacuation program.

(Ord. No. 2006-29, § 1, 7-3-06)

Sec. 26.031. - Designation of certain authorized emergency vehicles.

The following vehicles are designated authorized emergency vehicles for the purposes set forth, regardless of whether a disaster exists:

- (1) Director of public health vehicle while responding to a medical emergency.
- (2) Gas division emergency unit vehicles while responding to a gas emergency, which may threaten life or property.
- (3) Electric utility emergency unit while responding to a electric utility emergency, which may threaten life or property.
- (4) Director of safety and risk management vehicle while responding to an emergency call or emergency situation.
- (5) Office of emergency management vehicle while responding to an emergency call or emergency situation.
- (6) Buses and other vehicles owned and operated by the city, regional transportation authority, school districts, and other public or private entities while being used in an emergency evacuation program directed by the city manager, including while returning residents to the city from shelters.

(Ord. No. 2006-29, § 1, 7-3-06)