



LEAGUE OF
**CALIFORNIA
CITIES**

Strengthening California Cities
through Advocacy and Education

Essential Hour: Your First 'Disastrous' Hour

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Housekeeping Notes

- This session is being recorded. The recording will stop at the time of Q&A.
- Attendees are muted.
- Question and Answer is available throughout the webinar.
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Attorney Development & Succession Committee

- **Develop and enhance**

- the legal, technical, practical, & interpersonal skills necessary to succeed as a city attorney or senior member of a City Attorney's Office

- **Provide opportunities**

- for members to build & expand their knowledge of both substantive & essential skills integral to municipal law practice

- **Engage and connect**

- experienced municipal practitioners with newer attorneys to encourage mentoring, effective knowledge transfer, & succession planning

- **Encourage**

- municipal law practice in our law schools through panel discussions, internships, and mentorship

Attorney Development & Succession Committee

- **Subcommittees**
 - Substantive Law
 - Essential Skills
 - Law School Outreach
- **Upcoming Events**
 - 2024 Essential Hours: TBD



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BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

Essential Hour: Your First 'Disastrous' Hour

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Presenters



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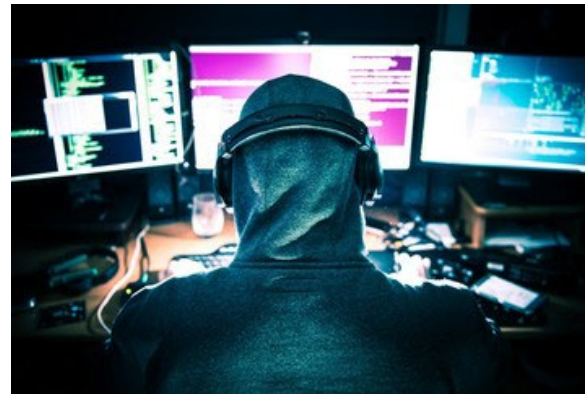
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Disaster Strikes





What is an “Emergency”



- “Local emergency” means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by conditions such as air pollution, fire, flood, storm, epidemic, riot, drought, cyberterrorism, sudden and severe energy shortage, deenergization event, electromagnetic pulse attack, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage or deenergization event that requires extraordinary measures beyond the authority vested in the Public Utilities Commission. Gov. Code § 8558(c)(1):

What is an “Emergency” under the Brown Act? Either:



- An "emergency," which in this context is "a work stoppage, crippling activity, or other activity that severely impairs public health or safety, such as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses immediate and significant peril, as determined by a majority of the members of the legislative body" (Govt. C §54956.5(a)(1)); and
- A "dire emergency," which is defined as "a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body." Govt. C §54956.5(a)(2).

What do you do first?

- Don't panic
- Get information
- Get somewhere safe
- Get in contact with the City Manager, key decision makers, and emergency responders



Emergency Proclamation



Have a draft proclamation ready—both in hard copy and electronic

- Gov. Code Section 8630 - Proclaiming local emergency
 - a) A local emergency may be proclaimed only by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body.
 - b) Whenever a local emergency is proclaimed by an official designated by ordinance, the local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the governing body.
 - c) The governing body shall review the need for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency.
 - d) The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant.

What can we do differently from non-emergency situations, what rights apply?



- Cities must take measures to preserve and protect the public health, including adoption of ordinances, regulations, and orders. Cal Const art XI, §7; Health & S C §101450.
- If an emergency is declared, the city health officer is authorized to take broad "preventative measures." Health & S C §101475.
- If there is an immediate threat, summary abatement of nuisances is authorized under Govt. C §38773; alternatively may want to use immediate vacation order available under the Uniform Code for the Abatement of Dangerous Buildings (includes summary hearing procedures)
- Create rules, obtain supplies for protection of life and property

Brown Act Emergency Provisions

- Meeting Outside Jurisdiction
- Notice requirements
- Minutes
- Closed session
- Remote participation



Statutory Powers in Disaster Situations

- Constitutional Disaster Authorizations
- California Emergency Services Act
- Should be codified in your municipal code



Key Emergency Services Act Provisions

- Declarations of Emergency
- Local Disaster Councils
- Emergency Powers and Press Access
- Emergency Government
- Mutual Aid



What Protections Apply?



- Broader if state of emergency has been declared
 - extraterritorial immunity; volunteers and conscripts
 - disaster malpractice immunity
 - inspection of property/entry onto property
 - Govt. Claims Act
- Earth movement, operation/failure of dam/reservoir, nuisance abatement, transporting injured to hospital, provision of emergency medical care, rescue efforts, operation of emergency vehicles, communications during proper discharge of official duties

Local Emergency Plan

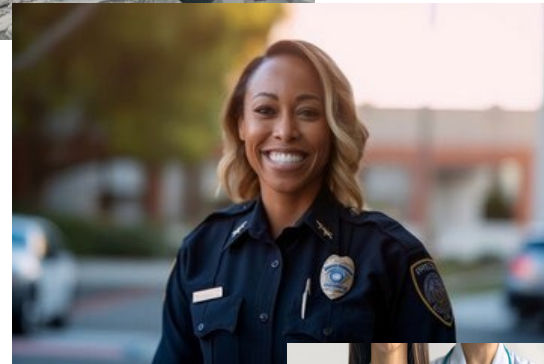


- Continuity of Government
- Communications, Evacuation, Sheltering
- Participation in Office of Emergency Services' Standardized Emergency Management System (SEMS) required for reimbursement:
<https://www.caloes.ca.gov/cal-oes-divisions/planning-preparedness/standardized-emergency-management-system>.



Other Important Laws Affecting Emergency Powers

- Disaster service workers
- Workers Compensation
- Chief Executive Powers
- Police Chief/Sheriff Powers
- Health Officer Powers



Limits Relaxed on Expenditures



- 4/5 vote authorizing
- Competitive bidding and other requirements suspended
- Emergency contracting procedures, review
- Utilities
- California Disaster Assistance Act
- Federal Reimbursement
- Keep Detailed Records

Shelter



- Declaration
- Use of public facilities for emergency shelter purposes
- Liability limited to grossly negligent/reckless/intentional injuries

Special Situations



- Hazardous material transportation/handling
- Small craft vessels and harbors
- Joint powers agreements
- Exemption from CEQA
- Coastal Act

Practice Tips

- Be familiar with procedures, rules, plans, personnel/contacts
- Have emergency proclamation ready, and have it signed ASAP
- Establish a safe location from which to operate
- Establish consistent source for latest information, and central person to distribute
- Keep council updated
- Expect to wear different hats



Resources



- Avoiding Total Disaster: The Law & Emergencies, Disaster Preparedness Training for Local Government Legal Advisors, County Counsels' Association and League of California Cities (Conference, June 24, 2019) (includes three playbooks with forms), available at <https://www.calcities.org/resource/avoiding-total-disaster-the-law-and-emergencies>;
- Lowell, Emergency Preparedness, League of California Cities (City Attorneys Continuing Education Seminar, Sept. 2004);
- Federal Emergency Management Agency, Comprehensive Preparedness Guide 101, Version 2.0: Developing and Maintaining Emergency Operations Plans (Nov. 2010); this downloadable document provides general guidelines on developing Emergency Operations Plans (see the Federal Emergency Management Agency website at <https://www.fema.gov>);
- The California Governor's Office of Emergency Services website at <https://www.caloes.ca.gov>; and
- Zafferano, Summary of Immunities Applicable to Emergency Response, available at https://www.calcities.org/docs/default-source/city-attorneys/summary-of-immunities-applicable-to-emergency-response.pdf?sfvrsn=be867749_3.
- Municipal Law Handbook



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Questions?

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