

Emergency Powers of Municipalities

As is often the case in the event of inclement weather or natural disasters, public officials are pressed to react quickly during perceived emergencies. However, there is limited authorization for municipalities to act without regard to generally applicable statutes. In fact, no single state law directly authorizes the chief executive officer of a city or town to declare a “state of emergency”. However, several specific statutory provisions allow a city or town to exercise certain powers in an emergency situation, as detailed below. Local governmental officials must critically evaluate any crisis to consider the nature of their response. In a true emergency, the statutes described below can provide useful and powerful tools for protecting the public health and safety.

Civil Defense Act of 1950

The concept of a “state of emergency” is found in the Civil Defense Act, *Chapter 639 of the Acts of 1950*, which also created the state’s first Emergency Management Agency. Under the Act, the Governor can declare a State of Emergency to implement broad emergency measures to ensure public health and safety, including authority to: take and use property; order evacuations; implement curfews and driving bans; order closing of places and roads threatened by disaster; and the like. Municipalities have some limited authorities under the Civil Defense Act.

Related Statutory Authorities and Powers

National Guard/“Unorganized Militia”. Municipalities may petition the Governor for National Guard assistance, pursuant to *G.L. c.33, §41*, to preserve order in the event of a public catastrophe or natural disaster, or when “a tumult, riot, mob or body of persons acting together by force to violate or resist the laws of the commonwealth” occurs or is threatened. When the National Guard has been mobilized, the Governor may authorize municipalities to form “unorganized militia” by accepting volunteers, or through a draft, to serve at the direction of the Governor. *G.L. c. 33, §§2, 54-55.*

Curfews. In the case of “riot or other form of civil disorder,” curfews may be imposed as necessary to preserve civil order and public safety. Such a curfew expires after 72 hours, unless terminated sooner. The formal requirements for issuing a curfew are contained in *G.L. c. 40, §37A.*

Prohibition of Alcohol Sales. Alcohol sales or delivery may be prohibited in times of “riot or great public excitement,” for a period not to exceed three days at any one time. *G.L. c. 138, §68.*

Declaration of Water Emergency. In cases where there does or will soon exist a water supply shortage that endangers the public health, safety or welfare, a municipality may petition the state Department of Environmental Protection for a declaration of water emergency. If approved, the municipality may impose water use restrictions for public and private property and establish water distribution priorities. *G.L. c. 21G, §§15-17.*

Demolition of Unsafe Structures. If public safety so requires, *G.L. c. 143, §7* authorizes the securing or demolishing of unsafe structures. There are specific statutory requirements for exercising this authority, however, and caution should be used as a municipality may face liability for improperly entering upon private property or taking action on such property.

Expenditure of Money in Excess of Appropriation. In cases of major disaster, *G.L. c.44, §31* allows a municipality to spend in excess of an existing appropriation. The statute defines “major disaster” to include: “flood, drought, fire, hurricane, earthquake, storm or other catastrophe, whether natural or otherwise, which poses an immediate threat to the health or safety of persons or property.” Such spending may be authorized by two-thirds vote of a city council or majority vote of the full board of selectmen, although no such vote is needed if the Governor declares a state of emergency. Further, *G.L. c.44, §31D* permits a municipality to exceed its appropriation for snow and ice removal under certain circumstances.

Waivers from Public Bidding and Procurement Laws. There are emergency waivers available under both G.L. c. 30B (Uniform Procurement Act) and G.L. c. 149, §44A(4) (Public Construction projects). Such waivers are only available in the event of emergency circumstances where public health and safety is threatened.

Meetings of Public Bodies/Open Meeting Law. In an emergency, a public body may meet without complying with the requirements of the Open Meeting Law (“OML”), but only to the extent necessary to address the emergency circumstances. *G.L. c. 30A, §§18 and 20(b)*. The OML defines “emergency” as, “a sudden, generally unexpected occurrence or set of circumstances” such as natural disasters or other emergent situations outside the control of government where immediate action is necessary to protect public safety or public health. If emergency action is taken without compliance with the notice or other requirements of the OML, such action should be ratified, at a properly posted meeting at which the matter appears on the agenda, and the minutes of the first meeting incorporated into the minutes of the ratification meeting.

Continuation of Town Meeting. In accordance with the detailed process set forth in *G.L.c.39, §10A* a properly posted town meeting may be continued in the event of an emergency (such as inclement weather), without the need for town meeting to first convene and then vote to postpone the meeting to another time, date and place certain.

For assistance determining the extent and scope of local emergency powers, please contact us at 617.556.0007.

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