

EMERGENCY PROCEDURES HANDBOOK FOR CITY ATTORNEY'S OFFICE

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EMERGENCY PROCEDURES HANDBOOK FOR CITY ATTORNEY'S OFFICE

INTRODUCTION

The purpose of this manual is to provide guidance to City Attorney personnel in carrying out the duties of the Legal Advisor as specified in the City of _____ Emergency Plan (Attachment A) and for purposes of implementing the City of _____ Emergency Services Regulations, Section _____ of the _____ Municipal Code (Attachment B). This document is intended for use immediately after a serious emergency and for several days thereafter. It is assumed that City Attorney personnel may not have access to their offices, office equipment, files, and research materials. The Table of Contents to this manual along with the Attachments may be used as a step-by-step guide in the case of an actual emergency. The following pages may be consulted for more complete explanations of the different types of emergencies, how and when to declare an emergency, and other relevant legal issues contemplated in the case of an emergency. The Attachments contain sample resolutions, ordinances, waivers of liability and other forms which may be needed. The City Attorney should maintain a copy of this manual at home and possibly in the trunk of his/her automobile in order to be better prepared in the case of an actual emergency. Copies will also be maintained in the City Attorney's Office and the Emergency Services Command Center.

A. DECLARATION OF EMERGENCY

1. Definition of Emergency

The California Emergency Services Act (Cal. Gov't Code § 8550 *et seq.* (Attachment C) provides guidelines for the declaration of an emergency by the Governor or a designated local official depending on the extent of the disaster. The Governor and other state agencies (California Emergency Council and Office of Emergency Services) are empowered to coordinate efforts and declare state emergencies, and local governments are able to do the same on a local level. The declaration of a local emergency is one of the first procedures to be accomplished by local government after a disaster. The declaration of emergency is necessary to provide for the carrying out of plans for the protection of persons and property within a county or city boundaries during a condition of a disaster or extreme peril to life. In addition, the declaration of emergency gives a county or city the necessary powers needed to protect citizens and property, preserve municipal government and assure mutual disaster aid from appropriate local, state and federal agencies.

Pursuant to the Emergency Act, a state of emergency occurs when the existence of conditions of disaster or a possible disaster threatens the safety of person and property within its territorial limits caused by such conditions as set out in Government Code section 8558(c):

air pollution,

fire,

flood,

storm,

epidemic,

riot,

drought,

sudden and severe energy shortage,

plant or animal infestation or disease,

the Governor's warning of an earthquake or volcanic prediction earthquake,

an earthquake,

other conditions (excluding 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 requiring extraordinary measures beyond the authority vested in the California Public Utilities Commission.

The Emergency Act also sets forth degrees of emergencies which are defined in Government Code section 8558 as:

"state of war emergency" (or threat of attack by enemy),

"state of emergency" (threat of or conditions of disaster within state), and

"local emergency" (threat of or conditions of disaster within territorial boundaries of county or city).

The only difference between the "state of emergency" and "local emergency" is the magnitude of the emergency. A "state of emergency" is one which would "require the combined forces of mutual aid region or regions to combat" the disaster, whereas a "local emergency" is one which would "require the combined forces of other political subdivisions to combat." See 62

Op. Att'y Gen. 701 n.3 (1979). Thus, a local emergency may be declared when it is determined that the emergency situation calls for forces beyond those within the City.

2. Purpose of Declaration of Emergency

The Emergency Act recognizes the fundamental role of state and local government to provide services in the event of emergencies resulting from conditions of disaster or of extreme peril to life and property. The purpose is to protect and preserve health, safety, life, and property within the state. The provision ensures that adequate preparations are made to deal with emergencies and that all governmental efforts to deal with emergencies are coordinated to make the most effective use of all available resources. See Adkins v. State of California (1996) 50 Cal.App.4th 1802.

The Emergency Act confers special powers on state and local governments during an emergency. Specifically, a local governing body or a designated official may promulgate orders and regulations necessary for the protection of life and property, including orders or regulations imposing a curfew within designated boundaries where necessary to preserve the public order and safety. Cal. Gov't Code § 8634. Several examples of such regulations are discussed later in this manual and sample regulations are contained in the Attachment.

Imposing curfews and restrictions within specific boundaries are particularly effective during a disaster; however, as discussed further below, these types of orders and regulations must be written and given widespread publicity and notice. Penalties for violation of any emergency rules, orders, or regulations are enforced by the _____ Disaster Council (§ _____ Municipal Code, Government Code section 8665 or Penal Code section 409.5).

In addition, the Emergency Act recognizes that conditions constituting an emergency usually affect more than one local area or political subdivision. Therefore, mutual aid regions (or operational areas) have been designated. Cal. Gov't Code § 8600 . Each county is designated as an operational area and the governing bodies of each county or the political subdivision in the county may organize and structure their operational area. An operational area may be used by the county and the political subdivisions comprising the operational area for the coordination of emergency activities and to serve as a link in the communications system during a state of emergency or a local emergency. Cal. Gov't Code § 8605 . However, the power to declare an emergency is conferred on both a county and a city. While both political subdivisions can declare an emergency, the Emergency Act has been construed to give the county (larger territorial area) the ultimate power to govern the disaster area. See 62 Op. Att'y Gen. 701, 708 (1979).

In order to obtain monies from both state and federal agencies, the local government must declare a local emergency. Cal. Gov't Code § 8685. In the case of a natural disaster, such a declaration should be made quickly. Government Code sections 8680 *et seq.* provide that when a natural disaster occurs, an allocation may be made to a local agency for a project when, within 10 days after the actual occurrence of a natural disaster, the local agency has declared an emergency and that declaration is acceptable to the director or upon the order of the Governor when a state

of proclamation has been issued, and if the Legislature has appropriated money for allocation for purposes of this chapter.

Declaring the existence of a local emergency also ensures that local officials and employees are protected from liability when taking steps to deal with the disaster. County and city governments are not held liable for any claim based on the exercise or performance, or failure to exercise or perform, a discretionary function or duty on the part of a local agency or any local agency in carrying out the provisions of the Emergency Act. Cal. Gov't Code § 8655.

The Emergency Services Act contains specific provisions dealing with oil spills, highway toxic disasters, floods (including dam breaks) and nuclear powerplant emergencies.

3. Declaration of Local Emergency

_____ 's Emergency Services Ordinance provides the City with guidelines and powers to combat the onslaught of post-disaster events. The ordinance designates the individual (director of emergency services, i.e., City Manager) who has the authority to declare an emergency.

While the decision to declare an emergency is discretionary (Cal. Gov't Code § 8558(c)), it is usually based on the City needing mutual aid in controlling the disaster. The individual making the decision to declare an emergency may decide that, while mutual aid is necessary, the primary factors in the decision are based on the need to react to the disaster quickly and efficiently with the assistance of orders and regulations needed to preserve public order and safety. Cal. Gov't Code § 8634. Therefore, the requisite conditions for declaring the emergency can be based on the following: 1) conditions set out in local or state legislation; 2) conditions where the county or city makes the determination that mutual aid is needed; or, 3) conditions that the disaster can be better controlled if the local government has specific powers granted through the declaration of a local emergency.

The declaration of emergency can be made prior to, during, or after the disaster, depending upon the circumstances. Such action may be taken by the City Council in an emergency meeting pursuant to Government Code section 54956.5 (see Attachment D) or the director of emergency services may declare an emergency if the City Council cannot quickly be called into session (see Attachment E). In the latter case, the proclamation must then be confirmed by the governing body within seven days (see Attachment F). Once the local emergency is declared, it will remain in effect for a period of no more than seven days unless extended by the City Council. Cal. Gov't Code § 8630. However, a local governing body is required to meet "as soon as possible" after the local emergency is proclaimed. Cal. Gov't Code § 8642. The Council may meet outside the jurisdiction and the meeting may be called by the chief executive of the political subdivision or by a majority of the members of the governing body. Should there be only one member of the governing body, he may call and hold said meeting and perform acts necessary to reconstitute the governing body. Cal. Gov't Code § 8642. Also, strict compliance with the notice requirements of the Brown Act (See Attachment G) are

not required, although proper compliance should be attempted if at all practical. Cal. Gov't Code §§ 8642, 54956.5. Provisions for succession of officers are established by _____ Municipal Code section _____ and Government Code section 8637.

If the City Council finds it necessary to continue the existence of local emergency, it must review the conditions of the local emergency at least every fourteen days and ratify the continuing existence of the local emergency. This may be desirable if rules and regulations promulgated thereunder are necessary for an ongoing disaster. Some cities have placed the item on the City Council agenda for each consecutive meeting until the emergency conditions subside.

Once the City Council determines that post disaster conditions have ceased, a declaration terminating the existence of the local emergency should be made at the earliest possible date that conditions warrant. Cal. Gov't Code § 8630. (See Attachment H).

B. STANDARDIZED EMERGENCY MANAGEMENT SYSTEM (SEMS)

The Standardized Emergency Management System (SEMS) is a coordinated system for responding to emergencies. All local agencies are required to participate in SEMS in order to receive disaster assistance funds for response-related costs. See Cal. Gov't Code § 8607. The SEMS framework, as mandated by the Emergency Services Act, allows state and local agencies to respond to and manage emergencies and disasters which involve multiple jurisdictions and/or agencies.

The Governor's Office of Emergency Services publishes a three volume Emergency Planning Guide which emergency managers can use to develop local emergency plans. This guide is available on the Internet at <http://www.oes.ca.gov>. The guide contains a detailed checklist, called the "crosswalk", which guides the preparation of local plans by outlining their contents. To comply with state regulations, local emergency plans should address management, operations, logistics, planning/intelligence and finance/administration. Although OES does not require local agencies to use the Emergency Planning Guide for crafting their local emergency plans, this guide informs emergency managers how to create local emergency plans that will comply with federal and state law.

C. PUBLIC NUISANCES, UNSAFE STRUCTURES, AND DAMAGED BUILDINGS

1. Demolition of Unsafe Structures

Cities have constitutional police power and statutory authority to demolish property which is a menace to public health and safety. Cal. Gov't Code § 38660(d). This right has been "traced to the highest laws of man, independent of society or civil government." Surocco v. Geary (1853) 3 Cal. 69, 73. The constitutional guarantee of the payment of just compensation for an exercise of the police power of eminent domain does not extend to an exercise of the police power, and the resulting damage is *damnum absue injuria*. Farmers Insurance Exchange

v. State of California (1985) 175 Cal. App. 3d 494, 501. To avoid liability for damaging or destroying property in an emergency, "the necessity must be clearly shown." Surocco v. Geary, Id. at 74. The demolition must, in all cases, be limited to that reasonably necessary to correct the existing danger. Property cannot be destroyed if the conditions which make it a menace can be abated in some other reasonably way. Smith v. Los Angeles County Waterworks District No. 29 (1989) 214 Cal. App. 3d 266, 287.

Unless the circumstances fall squarely within one of the types of emergencies which have been accepted by the courts as justifying the summary destruction of property, i.e., "the demolition of all or parts of buildings to prevent the spread of conflagration (destructive fire), or the destruction of diseased animals, of rotten fruit, or rotten trees where life or health is jeopardized," whether an emergency exists necessitating the destruction of property is a question of fact. The City bears the burden of proof to show, by a preponderance of the evidence, that an emergency actually existed. Farmers Insurance Exchange, Id. at 501; Leppo v. City of Petaluma (1971) 20 Cal. App. 3d 711, 718. It should be noted that an earthquake alone does not fall within these narrow parameters.

If a true emergency does not exist, due process requires that the property owner be given notice and a hearing prior to the taking of abatement action. "No ex parte declaration, however formal, by municipal authorities that it is a nuisance is final as against (a property owner)." Leppo v. City of Petaluma, Id. at 719. Testimony at the hearing should be under oath and competent. The property owner must be given an opportunity to cross-examine the City's witnesses and present evidence that the building is not a hazard or a public or private nuisance. If the evidence establishes that the building is not an immediate hazard and danger, then demolition cannot be ordered, forthwith, without incurring the risk of inverse condemnation liability. (Ibid.)

A California case involving the summary demolition of an earthquake damaged building called into question a city's right to demolish a potentially dangerous private building without first providing an administrative hearing and establishing the existence of an emergency. Failure to provide the requisite due process could result in an inverse condemnation claim. Rose v. City of Coalinga (1987) 190 Cal. App. 3d 1627. In another case, Mound Lodge No. 166 IOOF v. City of Hollister (1991) 230 Cal.App.3d 760 (depublished), the court held that there was a factual question as to whether the destruction of a building had been necessary the day after an earthquake. The Odd Fellows Hall had been damaged in the 1989 Loma Prieta earthquake and city officials ordered the building destroyed. The city argued that the demolition of the Odd Fellows Hall was a proper use of the city's police power for the public good, and thus not compensable. The lodge brought an inverse condemnation action alleging that since the building was structurally sound, the destruction of it was in improper use of the city's police power. The court concluded that the appellants' had successfully stated causes of action for inverse condemnation, but that if the city produced evidence that they used police power properly (affidavits from engineers, for example) the city would be immune under the Emergency Services Act. Although this opinion has been depublished, the outcome in Rose appears to have been quite similar.

In an emergency situation involving physical safety of its citizens, a city can dispense with a due process hearing and demolish a building summarily. If a demolition is then challenged, the city bears the burden to establish by a preponderance of the evidence the necessity for immediate destruction. If any doubt exists as to whether a building is repairable, an administrative hearing should be held at which the property owner is given the opportunity to present evidence and cross-examine the city's experts. If, after the administrative hearing, doubt remains as to the building's structural integrity, the city may be in a better legal position to leave the damaged structure standing and posted for non-entry in order to allow the property owner to seek a judicial determination through writ proceedings instead of immediately abating the possible hazard.

Another important consideration is if the determination is made that a due process hearing is required, it is essential that the city contact the owners and others having an interest in the property prior to demolition. If there is any appreciable gap between the time notice is given and the demolition, the city has a duty, beyond merely checking the last equalized assessment role, to determine the identity of the owners. If the owners cannot be ascertained, then the city should record a lis pendens, and post the property giving constructive notice of the pendency of proceedings. Friedman v. City of Los Angeles (1975) 52 Cal. App. 3d 317.

Property owners can also maintain actions under the Fourth Amendment if there are no exigent circumstances before the city acts. In Conner v. City of Santa Ana (9th Cir. 1990) 897 F.2d 1487, the court held that "entry to abate a known nuisance falls within the warrant requirement of the Fourth Amendment." Id. at 1490. In Conner, city officials entered the Conner's property to inspect and remove old and inoperable autos stored there that may have constituted a public nuisance. The vehicles were removed and destroyed. The Conners were awarded damages of \$71,000, injunctive relief, and attorney's fees. The Conners were successful because there was no emergency before the city acted.

2. CEQA Compliance

If a building has been designated by a city or the state as an historic structure, CEQA must be considered. Although CEQA contains an "emergency" exception (Cal. Pub. Res. Code § 21171; CEQA Guidelines - Cal. Admin. Code §§ 15269, 15359), if no true emergency exists, and if city officials are given "permit discretion" under the city's code, the demolition is a "project" and an environmental review must be conducted prior to demolition. Public Resources Code section 21060.5 defines an "emergency" as a "sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. An emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage." See also CEQA Guidelines, Cal. Admin. Code § 15359.

The term "emergency" will not be interpreted broadly by the courts as illustrated by the decision in Western Municipal Water District v. Superior Court (1986) 187 Cal. App. 3d 1104, where the court held that a water district's need to reduce groundwater levels was not an

emergency because there was only a two to five percent chance of an earthquake yearly and the water district had not taken speedy action earlier.

If there is confusion as to whether CEQA applies, then the Friends of "B" Street v. City of Hayward (1980) 106 Cal. App. 3d 988, standard should be applied. Under Friends of "B" Street, an EIR is required whenever there is substantial evidence from which a "fair argument" can be made that the project might cause significant impacts.

3. Alternatives to Demolition

It should be stressed that alternatives to summary demolition exist, e.g., cordoning off damaged areas, posting signs warning of danger, policing damaged areas, requiring waivers of liability from persons entering damaged buildings. In Rose, actual destruction of the building did not occur until 57 days after the earthquake, thus suggesting that alternatives to demolition were effective for at least that period of time

4. Demolition Following an Earthquake

Section _____ of the _____ Municipal Code provides for abatement of unsafe, substandard or dangerous buildings. (Attachment I). The ordinance contains a provision allowing the summary abatement buildings posing an immediate danger to the life, limb, property, health or safety of the public.

Following a disaster when buildings are seriously damaged, there will be various situations where people will need to enter unsafe structures. In order to reduce the City's liability in the case of building collapse, it is advisable that waivers of liability be obtained from persons authorized to enter dangerous buildings. Several sample waivers of liability forms are included in the Attachment (Attachment J) to address different re-entry scenarios.

D. EMERGENCY WORKERS, LIABILITY AND IMMUNITIES

Government Code section 8580 requires the California Emergency Council to establish various classes of disaster service workers and the scope of their duties. A person registered with local disaster councils in any of the classes specified in section 8580 shall be a disaster service worker; also, disaster service worker includes public employees and all other persons impressed into service during a state of war, state of emergency, or local emergency by an official having the authority to commandeer the aid of citizens. In an emergency, all public employees are disaster service workers "subject to such disaster service activities as may be assigned to them by their superior or by law". Cal. Gov't Code §§ 3100 *et seq.*

1. Workers' Compensation. Disaster service workers may be eligible for workers' compensation. Cal. Lab. Code §§ 3211.92, 4353. See Resolution regarding workers' compensation benefits for registered volunteer "Disaster Service Workers" (Attachment K). All public employees are deemed by law to be disaster workers and must comply with lawful commands assigned to them by their superiors or by law.

2. Privileges and Immunities from Governmental Liability. Provided a state or local agency is acting pursuant to the California Emergency Services Act, neither the State nor the local agency is liable for any claim based upon the exercise or failure to exercise a discretionary function or duty. Cal. Gov't Code § 8655. All privileges and immunities from liability and all benefits that apply to public officers, agents and employees continue to apply when those persons are performing any of their functions or duties extraterritorially pursuant to the Act. Cal. Gov't Code § 8657.

Volunteers who are trained and registered with the Office of Emergency Services or any disaster council, and unregistered persons who are impressed into service during a state of war emergency, state of emergency or local emergency, have the same privileges and immunities as officers and employees. Cal. Gov't Code § 8657(a). No political subdivision is liable for personal injury or property damage sustained by registered volunteers or impressed unregistered persons. Cal. Gov't Code § 8657(b). Health care providers who render services during a state of war emergency, state of emergency or local emergency are also exempt from liability except for willful acts or omissions. Cal. Gov't Code § 8659.

E. REGULATIONS ADOPTED IN ORDER TO MAINTAIN THE PUBLIC PEACE

1. Curfew. Once a local emergency has been declared, the governing body or designated official may declare a curfew or impose other regulations necessary to provide for the protection of life and property. The regulations shall be in writing and given widespread notice and publicity. Cal. Gov't Code § 8634.

In an emergency situation, the most likely abridgment of First Amendment rights is the imposition of a curfew. Curfews may be appropriate in times of crisis due to riot, civil disorder, or other emergency. Moorhead v. Farrelly (D. Virgin Islands 1989) 723 F. Supp. 1109. The curfew bars persons from using public rights-of-way during prescribed periods of time. Freedom of movement is a fundamental right, and may be restricted only under extraordinary circumstances, and when necessary to further a compelling state interest. Davis v. Justice Court (1970) 10 Cal. App. 3d 1002.

Laws imposing curfews must be narrowly drawn, directed towards the particular circumstances of the crisis situation, and must be within the power of the particular governmental entity which imposes it. (See, e.g. Hirabayashi v. United States (1943) 320 U.S. 81, in which the U.S. Supreme Court held that the circumstances of World War II warranted a curfew because of the danger of a national security threat, and in United States v. Chalk (4th. Cir. 1971) 441 F.2d 1277, where the imposition of a city wide curfew was upheld between 9 p.m. and 6 a.m. after a state of emergency was declared following a battle between black youths and the police. In Davis, for example, the court held that Contra Costa County had the right to proclaim a "state of emergency" in a Pittsburg Housing Project because of riotous conditions and to impose a curfew from 6 p.m. until 7 a.m. the next day.

The recent Nunez decision provides that the ordinance imposing the curfew must be neither overly broad nor vague and the ordinance must be rationally related to a legitimate state interest. Nunez v. City of San Diego (9th Cir. 1997) 114 F.3d 935. In order to avoid unconstitutional overbreadth and vagueness, "an ordinance must (1) define the offense with sufficient definiteness that ordinary people can understand what conduct is prohibited; and (2) establish standards to permit police to enforce the law in a non-arbitrary, non-discriminatory manner." Id. at 938. Further, if the classification is determined to disadvantage a particular class or impinge a "fundamental right," the ordinance is subject to a strict scrutiny analysis. Id. at 954.

Under all but the most severe circumstances, curfews will be invalidated as unconstitutional restrictions upon First Amendment rights of free association. A law imposing a curfew will be struck down if it is found to be overbroad (Zemel v. Rusk (1965) 381 U.S. 1), and the circumstances do not warrant such drastic measure. See Ruff v. Marshall (MD. Ga. 1977) 438 F. Supp. 303; see also Johnson v. City of Opelonsas (5th Cir. 1981) 658 F.2d 1065, in which the court ruled that juvenile curfew ordinances curtailed the minor's rights of speech, association, travel, and of the parent's rights to rear their children). The "reasonableness" of the curfew is the determinative standard. Alves v. Justice Court of Chico Judicial District (1957) 148 Cal. App. 2d 419, 423-424.

A sample declaration of curfew can be found at Attachment L. Care should be taken to formulate the curfew regulation based upon a clear showing of necessity, and the regulation should be narrowly drawn to avoid vagueness and overbreadth. For example, a curfew could be limited to nighttime hours in a specific geographical area where widespread looting has been reported and where damage from disaster is extensive.

It should be noted that the Attorney General has opined in 62 Op. Att'y Gen. 701 (1979) that county rules and regulations adopted pursuant to a declaration of local emergency may include incorporated territory as well as unincorporated territory, and that these rules and regulations may be applied for the protection of life and property within the territorial limits of a city; further, that under such local emergency, cities need not independently declare a local emergency and adopt emergency regulations.

2. Other Regulations for Protection of Life and Property. Upon declaration of a local emergency, a city has broadened powers to regulate for the protection of life and property. Attachment M contains a Declaration Imposing Certain Rules and Regulations determined as necessary to safeguard life and property. In the case of extensive road closures, many may attempt to transport fuel in containers which pose a serious danger. Attachment N is a declaration prohibiting the transport of gasoline in plastic containers. Also included in the Attachment are a declaration closing certain types of businesses and places of public assembly (Attachment O) and a declaration directing the removal of firearms, ammunition, explosives, and incendiary devices from areas of civil disturbance (Attachment P). Other such regulations may be drafted as conditions warrant. Attachment Q contains a message for requesting National Guard support. Also, see the City of _____ Emergency Services Regulations (Attachment B) for additional powers such as the ability to arrest persons who obstruct or hinder emergency operations. Penal Code section 409.5 prohibits persons from remaining in an area

designated closed by a peace officer because of an emergency (Attachment R).

F. ACCESS BY THE PRESS IN EMERGENCY SITUATIONS

Penal Code section 409.5 (Attachment R) authorizes peace officers to close certain areas to the public during emergencies. Subdivision (d) of that section provides: "nothing in this section shall prevent a duly authorized representative of any new service, newspaper, or radio or television station or network from entering the areas closed pursuant to this section." Thus, access to the scene of an emergency should not be denied to press. If members of the press interfere with, hinder or obstruct emergency operations, however, these offenders may be arrested pursuant to the local Emergency Service Regulations and state law provisions concerning interference with police and fire personnel. Endangerment of themselves, without interfering with emergency service operations, is not grounds for ordering members of the news media to evacuate the scene of an emergency. Restrictions on media access may be imposed for only so long and only to such extent as is necessary to prevent actual interference. Leiserson v. City of San Diego (1986) 184 Cal.App.3d 41, 51.

Nothing in Penal Code section 409.5 gives reporters permission to trespass onto private property, and law enforcement officials have no authority to grant such permission. See, e.g., Hanlon v. Berger (1999) 526 U.S. 808 (Fourth Amendment violated when officers permit media to accompany them during execution of search warrant).

G. CONTINUANCE OF COURT PROCEEDINGS

In the event of a disaster which drastically affects the operations of the City Attorney's Office itself, it may be necessary to continue all court proceedings in which the City Attorney is involved. A sample Order and Declaration of the City Attorney are included in Attachment S. Separate documents should be drawn up for each different court.

H. SUSPENSION OF DEADLINES FOR LAND USE MATTERS

In order to avoid automatic land use approvals in situations where matters must be heard by the legislative body or planning agency within a certain amount of time pursuant to the permit streamlining act, the subdivision map act or local ordinance, it may be necessary to suspend all automatic approvals. A draft resolution to accomplish this is included in Attachment T.

I. FEMA REQUIREMENT OF RECORDS FOR COST RECOVERY

Before the President declares the existence of a major disaster, the damages must be determined to be of sufficient severity and magnitude to warrant federal assistance to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused by the disaster.

In order to obtain emergency relief monies from FEMA, a local government must demonstrate the need for financial assistance in order to perform its governmental functions.

When deciding whether or not to grant federal assistance, the agency will consider facts such as:

- 1) amount and type of damages
- 2) impact of damages on affected individuals, state and local governments
- 3) available resources of state and local governments and other disaster relief organizations
- 4) extent and type of insurance in effect
- 5) assistance available from other federal programs and other sources
- 6) imminent threats to public health and safety
- 7) recent disaster history in the state
- 8) hazard mitigation measures taken by the state or local governments

Therefore, it is essential that careful records be kept of, at a minimum, the following:

- 1) Regular and overtime hours worked by all
- 2) Costs of supplies used, purchased, commandeered, etc.
- 3) Estimates of dollar amounts of damage
- 4) Times and dates of all actions taken, e.g., when disaster declared by City Manager, when disaster proclaimed by City Council, when mutual aid sought, etc.
- 5) Numbers of residents in affected areas

FEMA regulations and procedures are continually changing. For current forms and information, see FEMA's website at <http://www.fema.gov>

J. CONFLICT OF INTEREST

The Political Reform Act was enacted to ensure that public officials, whether elected or appointed, act impartially, without being affected by their own financial interests or the financial interests of people who have supported them. Cal. Gov't Code §§81000-91015 . Government Code section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. Section 82048 defines "public official" as every natural person who is a member, officer, employee, or consultant of a state or local government agency. An official is deemed to have a financial interest in a decision "if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on ... (c) any source of income ... within 12 months prior to the time when the decision is made." Cal. Gov't Code § 87103 . A disaster could affect the financial interests of several public officials thereby precluding their participation in emergency response efforts. During the Oakland Hills fire in 1991, the City of Oakland prevailed upon the FPPC to issue an informal advice letter (Attachment U) exempting affected public officials under the "public generally" exception of the FPPC regulations which would allow the official to participate in the decision-making process only if the decision did not affect the public official in a unique manner. Cal. Admin. Code § 18703 . Such an exception likely will only be granted when disaster damage is

widespread such that the exception can in good faith be applied by the FPPC.

K. OTHER REFERENCES

1. California Municipal Law Handbook

The Municipal Law Handbook contains an excellent summary entitled "Disaster Preparedness and Response". It is reproduced at Attachment V.

2. FEMA materials. (Attachment W).

3. Sample Resolution Declaring Abatement of Imending Peril in Earth Movement Situation, pursuant to Gov=t Code § 865 *et seq.* (Attachment X.)