

ANNEX U

LEGAL

CITY OF CONROE

APPROVAL & IMPLEMENTATION

Annex U

Legal



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Ken Kreger, Fire Chief
Emergency Management Coordinator

8/31/11
Date

8/31/11
Date

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), and Chapter 229 (Miscellaneous Regulatory Authority of Municipalities).
- C. City of Conroe Home Rule Charter, and Code of Ordinances, City of Conroe, Texas, Chapter 22, Article I. Emergency Management.

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

IV. SITUATION & ASSUMPTIONS

A. Situation

The City 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 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 Governor's Division of Emergency Management (GDEM) and the City Secretary.
- b. Chapter 418.108 of the Texas Government Code 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 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. Texas statutes (Chapter 229 of the Local Government Code and Chapter 433 of the Texas Government Code) limit the seizure and/or confiscation of any firearm or ammunition from individuals, except under specific circumstances.
- d. 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 chose to simply let the declaration expire by taking no action to extend it. A sample ordinance terminating a disaster declaration is provided in Appendix 4.

3. Authority for Evacuations

State law provides a County Judge or Mayor with the authority to order the evacuation of all or part of the population from a stricken or threatened area within their respective jurisdictions.

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. Prepare, have approved and signed, and disseminate legal documents declaring a disaster, terminating a disaster declaration, or invoking emergency powers, if required.
- c. 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, it shall be given prompt and general publicity.
- 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 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 for 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. Prepare and keep current this annex.
 - 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 Secretary
- a. Publish required agenda of meetings.
 - b. Prepare a record of public meetings
 - c. Receive a copy of disaster declarations and documents extending or terminating a state of disaster.
 - d. Ensure proper protection of all records.

VII. DIRECTION & CONTROL

- A. General.** The City Attorney is 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. City Attorney
 - 2. 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 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 on the operating procedures for that facility.

X. ANNEX DEVELOPMENT & MAINTENANCE

- A. Development.** The City Attorney 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. Governor's Division of Emergency Management *Local Emergency Management Planning Guide (DEM-10)*.

B. FEMA *Guide for All-Hazard Emergency Operations Planning (SLG-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

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 Conroe, 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 of Conroe to control. Pursuant to §433.001 of the Texas Government Code, I am requesting that you declare a state of emergency for Conroe, 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 Conroe 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 Conroe 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 CONROE, TEXAS:

1. That a local state of disaster is hereby declared for Conroe, Texas 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 Conroe.
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 Secretary.
4. Pursuant to §418.018(d) of the Government Code, this declaration of a local state of disaster activates the city emergency management plan.
5. That this proclamation shall take effect immediately from and after its issuance.

ORDERED this the ____ day of _____, 20__ .

signature
Mayor

SAMPLE EXTENSION OF DISASTER DECLARATION

CITY ORDINANCE

WHEREAS, on [___ date ___], the Mayor issued a proclamation declaring a state of disaster for Conroe, Texas 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 CONROE, TEXAS:

1. That the state of disaster proclaimed for the City of Conroe 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 the home rule charter of the City of Conroe and Article I, Chapter 22, Code of Ordinances, City of Conroe, Texas.
3. City employees working during the state of disaster shall receive disaster pay as authorized by Section 22-3, Code of Ordinances, City of Conroe, Texas.
4. This ordinance shall be effective immediately upon adoption.

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

APPROVED, this ___ day of _____, 20__.

Mayor

Attest:

City Secretary

SAMPLE TERMINATION OF DISASTER

CITY ORDINANCE

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 Conroe, Texas 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 OF THE CITY OF CONROE, TEXAS:

1. The City Council, as the governing body of Conroe, Texas, 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

Attest:

City Secretary

SAMPLE EMERGENCY POWERS

CITY ORDINANCE

WHEREAS, by proclamation issued [date of disaster declaration], the Mayor declared a state of disaster for the City of Conroe 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 Secretary.
- (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

Attest:

City Secretary

State Planning Standards Checklist for Annex U, Legal

Jurisdiction(s): City of Conroe

Annex Date: 8/31/11 **Date of most recent change, if any:** _____

(The date which appears on the signature page)

Note: The annex will be considered Deficient if the *italicized* standards are not met.

This Annex shall:	Section/paragraph
I. Authority	
U-1. Identify local, state, and federal legal authorities pertinent to the subject of the annex, in addition to those cited in the basic plan.	I.
II. Purpose	
U-2. Include a purpose statement that describes the reason for development of the annex.	II.
III. Explanation of Terms	
U-3 Explain and/or define terms and acronyms used in the annex.	III.
IV. Situation & Assumptions	
<i>U-4. Include a situation statement related to the subject of the annex or refer to the general situation information contained in the basic plan.</i>	IV.A
<i>U-5. Include a list of assumptions used in planning for legal services during emergency situations.</i>	IV.B
V. Concept of Operations	
<i>U-6. Outline the process for requesting an emergency declaration by the Governor for a local emergency situation.</i>	V.A.1
<i>U-7. Outline the process for issuing, extending, and terminating a local disaster declaration.</i>	V.A.2.a, d
<i>U-8. Outline the process for invoking the emergency powers of the chief elected official of the jurisdiction during a disaster.</i>	V.A.2.b
<i>U-9. Include a list of actions by phases of emergency management to be taken to ensure adequate legal services during emergency situations.</i>	V.B
VI. Organization & Assignment of Responsibilities	
<i>U-10. Describe or depict the legal services organization that will support the jurisdiction during emergency situations.</i>	VI.A
<i>U-11. Include a listing by organization and/or position of the legal service tasks to be performed.</i>	VI.B
VII. Direction & Control	
<i>U-12. Identify by position the individual who will oversee the provision of legal services during emergency situations.</i>	VII.A
VIII. Readiness Levels	
<i>U-13. Describe actions to be taken at various readiness levels.</i>	VIII
IX. Administration & Support	
U-14. Include policies on maintaining/preserving records and training.	IX
X. Annex Development & Maintenance	
U-15. Specify the individual(s) by position responsible for developing and maintaining the annex.	X.A

XI. References	
U-16. Identifies references pertinent to the content of the annex.	XI
Other	
U-17. <i>Includes sample documents for requesting an emergency declaration, issuing, extending or terminating a disaster declaration, and invoking emergency powers.</i>	Appendices 1-5
U-18. <i>Includes sample documents for prohibiting or restricting outdoor burning during periods of high wildfire threat (county and interjurisdictional plans only).</i>	Appendices 6-7

FOR LOCAL GOVERNMENT USE		Signature	Date
This Checklist Completed By		<i>Ken Keegan</i>	<i>8/31/11</i>

FOR GDEM USE	Initials	Date
GDEM Regional Liaison Officer Review		
GDEM Preparedness Section Processing		