



Date: May 15, 2014

To: Thomas J. Bonfield, City Manager

Through: Patrick Baker, City Attorney

From: Richard Weintraub, Senior Assistant City Attorney

Subject: Updating procedures regarding emergencies

Executive Summary

The General Assembly has revised and reorganized the General Statutes regarding the powers of cities with respect to declaring an emergency and imposing restrictions during an emergency. The changed laws allow cities to continue generally as they have regarding those matters, but Durham's ordinance should be revised to coordinate with the changes.

The proposed ordinance adjusts to the new laws. It also more accurately reflects the long-standing (and unchanged) relationships between the City and Durham County.

The proposed resolution gives the City Manager the authority to accept gifts, grants, and loans for emergency management purposes and to develop and enter into mutual aid agreements for reciprocal emergency management aid with other political subdivisions, both in and out of North Carolina.

Recommendation

The administration recommends adoption of the proposed ordinance and resolution.

Background

The proposed ordinance entirely rewrites chapter 22 of the City Code in order to coordinate with changes in the General Statutes. It also more accurately reflects the long-standing (and unchanged) relationships between the City and Durham County. The proposed resolution gives the City Manager the authority to accept gifts, grants, and loans for emergency management purposes and to develop and enter into mutual aid agreements for reciprocal emergency management aid with other political subdivisions, both in and out of North Carolina.

Issues and Analysis

Proposed Ordinance

The proposed ordinance entirely rewrites chapter 22 of the City Code in order to coordinate with changes in the General Statutes.

The proposed ordinance grants the Mayor the authority to impose the maximum range of restrictions allowed by state statute. When looking at a particular future situation, the Mayor

would be able to choose the restrictions that fit the emergency at hand and impose only those that fit the situation. By the same token, the proposed ordinance allows the Mayor to impose restrictions in only the parts of the City specified by the Mayor at the time or throughout the City.

Some provisions in the current ordinance purport to authorize the chair of the board of commissioners to take action with respect to an emergency outside the City limits, but the City has no authority to give such authority to the county. That authority is controlled by State law and is therefore not addressed in the proposed ordinance.

The revised State law now allows a city to delegate to its county or counties the authority to declare emergencies and impose restrictions inside the city limits, but it is not thought that the City Council desires to make such a delegation, so it is not provided for in the ordinance. Still, the revised State law allows the Mayor or the City Council in a particular future emergency to delegate such powers to a county at that time. If that is the choice of the Mayor or City Council at that time, the delegation can be made without the need of a City Code provision.

The details of the possible restrictions in the proposed ordinance (Sec. 22-4) closely follow the text of the General Statutes. They replace Sections 22-48 through 22-51. In any given emergency, the Mayor or city council will specify which of those restrictions are to apply.

Criminal penalties for violating restrictions in a declaration of emergency are set by State law and no longer can be controlled by a City ordinance.

The existing ordinance (Sections 22-19 through 22-20) establishes a city-county emergency management agency and prescribes how it is organized and its duties. However, those provisions are superseded by the interlocal agreement with the County of Durham, adopted in 1998.

Section 22-19 of the existing ordinance presumes that all of the City is located in Durham County, without recognizing that small portions of the City are located in Orange and Wake counties. By removing references to the emergency management agency from the City Code, the proposed ordinance avoids the need to address the multi-county nature of the City.

The existing ordinance (Section 22-21) directs that the city and county adopt an emergency operations plan. That section also purports to give the plan the force of law. However, the City lacks the power to direct Durham County to adopt a plan, and it is not necessary for the City Code to direct the City Council to do so. The emergency operations plan is essentially an internal operations document, rather than something that applies to the public. When an emergency occurs, legal restrictions can be placed on the public, but that is done by the issuance of a declaration of a state of emergency (usually issued by the Mayor). Restrictions are not placed on the public by an emergency operations plan. All of the emergency restrictions that the City can apply to the public are in proposed Sec. 22-4.

The existing ordinance (Sections 22-46, 22-47, 22-48, and 22-53) allows the chairperson of the board of commissioners to proclaim and to terminate a state of emergency in the portion of

the county that is outside the City and to impose restrictions in that portion of the county. However, State law gives the county those powers, and the City has no power to add to or subtract from them.

The existing ordinance (Section 22-47(b)) requires the Mayor's proclamation to be in writing. While a written proclamation is certainly the best practice, it is possible that the Mayor may be accessible only by voice when an emergency declaration is needed, so the proposed ordinance (Sec. 22-5) allows that method. In such a situation, the Mayor would (i) say that he or she finds and declares that an emergency exists, (ii) specify whether the restrictions apply City-wide or in particular areas, (iii) specify which of the restrictions in Sec. 22-4 of the ordinance apply, and (iv) specify whether the standard set of exemptions apply (for example, public safety officers, emergency medical personnel, and the press). State law continues to provide that a city's emergency restrictions can take effect when the substance of the Mayor's declaration is disseminated and that the full text of any declaration be made as soon as practicable.

The proposed ordinance (Sec. 22-6) provides that when the Mayor is unable to act, the Mayor pro Tem may declare or terminate an emergency. When both the Mayor and the Mayor pro Tem are unable to act, the proposed ordinance authorizes the City Manager to declare or terminate an emergency, and likewise that the acting City Manager may do so when the City Manager is unable. The City Manager would not be able to otherwise delegate the authority to declare or terminate an emergency. Whoever declares an emergency will specify which of the restrictions provided in the proposed ordinance (Sec. 22-4) will apply during the emergency.

Proposed Resolution

The proposed resolution gives the City Manager the authority to accept gifts, grants, and loans for emergency management purposes and to develop and enter into mutual aid agreements for reciprocal emergency management aid with other political subdivisions, both in and out of North Carolina. In some instances such grants, agreements, etc. will come to the City in the normal course of things and not during an emergency, but this resolution makes it possible for the City Manager to act without the necessity of City Council action.

Alternatives

Failure to adopt substantially the proposed ordinance would leave the City in a potentially confusing situation where the City's ordinance does not mesh with the General Statutes.

The ordinance could grant any or all of the counties of Durham, Orange, and Wake counties the authority to declare emergencies within the corporate limits of the City. Under the proposed ordinance, the Mayor and the City Council could delegate such authority to one or more counties at the time of an emergency.

The ordinance could specify that all declarations must be in writing. It is possible, however, that State law impliedly gives the Mayor the power to make an oral declaration regardless of an ordinance to the contrary. However, it is prudent to explicitly state that the Mayor may issue declarations orally for the rare situation in which immediate action is needed,

so that when police officers enforce orally-imposed restrictions they will have the backup of Council endorsement of the oral declaration.

The City Council could refrain from giving the City Manager the authority to declare an emergency when the Mayor and Mayor pro Tem cannot act.

If the resolution is not adopted, the loans and agreements referred to in the resolution would come to the City Council for approval. Because of other already-adopted resolutions, the City Manager has very limited authority to accept gifts without Council action, but he or she does have authority to sign grant agreements in which the amount of any City match is within budgeted appropriations.

Financial Impact

This item has no financial effect.

SDBE Summary

The Equal Business Opportunity Program article in the City Code does not apply to this item.

Attachments

ORDINANCE TO REVISE PROVISIONS OF THE CITY CODE RELATING TO A STATE OF EMERGENCY

RESOLUTION AUTHORIZING THE CITY MANAGER TO TAKE ACTIONS DURING A STATE OF EMERGENCY TOWARD MAKING AGREEMENTS THAT ARE AUTHORIZED BY THE EMERGENCY MANAGEMENT ACT