

# When Disaster Strikes, Are you ready?

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Whether natural or unnatural, when disasters hit, municipalities will face a host of issues. Efforts to prepare for flooding episodes, damage from snow storms, or fallout from radiologic events, for example, should be undertaken carefully, followed by the implementation of appropriate means and methods for efficient and timely cleanup and recovery. Recent weather and other events, including the damage caused by Hurricane Sandy, have caused many towns to review their state of disaster preparedness. When undertaking these evaluations, it is important to understand not only the scope of a community's authority, but also the sources of that power.

Before turning to the specific power granted to towns by the state Legislature to prepare for, to endure and to recover from disaster, a brief look at the scope of their general power is instructive. Even before formal zoning, municipalities relied upon their police powers to protect their communities.<sup>1</sup> This authority is so venerable that some courts have even stated that municipalities receive their police powers merely through their initial organization.<sup>2</sup>

Police powers are fluid by design, but can generally be thought of as the authority granted to a town to protect the health, safety and welfare of the public.<sup>3</sup> Some specific examples of municipalities properly exercising their police powers include preventing and abating large accumulations of snow on sidewalks,<sup>4</sup> efforts to regulate solid waste disposal<sup>5</sup> and laws designed to eliminate traffic and parking congestion and their associated pollution.<sup>6</sup>

So, local efforts aimed at protecting a community are nothing new. But in 1978, the Legislature determined that express legislation was needed to “mobilize the resources of individuals, business, labor, agriculture and government at every level — federal, state and local — for effective organization to prepare for and meet natural and man-made disasters of all kinds.”<sup>7</sup> New York Executive Law Article 2-B was thus created to fill this apparent void.

When it enacted Executive Law Article 2-B, the Legislature spoke to many of the same types of disasters making recent news, including fires, floods, earthquakes, tornadoes and hurricanes, and even some that have not made recent headlines, at least not in New York, such as blight, drought, volcanic activity and infestations.<sup>8</sup> In crafting this law, the Legislature duly recognized that natural and unnatural disasters “cause loss of life, property and income, disrupt the normal functions of government, communities and families, and cause great human suffering,” as part of its specific findings that it must help local communities “prevent, meet, defend against and recover from” disasters, as part of a “joint effort” that relies heavily on state leadership and direction.<sup>9</sup>

While there are other sections of the Executive Law that speak to disaster preparedness, sections 23 and 24 — which speak to local plans, and local states of emergency and local emergency orders, respectively — are of pivotal importance in a town's review of this issue. Section 23 addresses the ability of a town to prepare an emergency management

plan and its contents. Section 24 speaks to how local communities can declare a state of emergency, with specific examples as a guide. Thus, towns have the force of specific legislation to support local decision-making on this topic.

Municipalities and emergency service organizations are recognized as “the first line of defense in times of disaster.”<sup>10</sup> And New York encourages “local chief executives [to] take an active and personal role in the development and implementation of disaster preparedness programs,” “vest[ing] [them] with authority and responsibility in order to ensure the success of such programs.”<sup>11</sup> While not required by law, disaster preparedness plans are a good resource upon which your community can rely.

A town's local disaster preparedness plan should begin with prevention. It should identify potential disasters, recommend prevention projects, and suggest revisions to building, safety or zoning codes to lessen devastating impacts.<sup>12</sup> It should also develop mechanisms to respond to disasters by implementing plans and procedures to coordinate resources, developing warning systems, creating evacuation plans, establishing priorities for service restoration and ensuring the continuity of the local government.<sup>13</sup> And last, but not least, a plan should include provisions for recovery and redevelopment after disaster, consisting of recommendations for replacement of destroyed facilities, plans for cooperation with state and federal recovery efforts, and

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training in preparing applications for recovery assistance.<sup>14</sup> All local disaster plans (county, city, town and village) must be consistent with one another, and cooperation during a plan's development is crucial.<sup>15</sup> Any inconsistencies between plans will be resolved by the county.<sup>16</sup>

In the event of a disaster or reasonable apprehension of immediate danger to the public safety, the town supervisor has the authority to declare a local state of emergency and issue orders to protect life and property or to bring the emergency situation under control. The town supervisor may declare a local state of emergency by proclamation, which should be in writing, include the date, time and reason for the declaration, specify the area involved and note the expected duration. It must then be kept on file in the municipal or county clerk's office, and copies should be sent to the Department of State and the Office of Emergency Management as well. The local state of emergency remains in effect until the proclamation is rescinded by the town supervisor, or for 30 days, whichever occurs first. Additional proclamations may be issued extending the state of emergency for additional 30-day periods. While a town supervisor may declare a state of emergency without having an emergency management plan, it is much more efficient to handle the adversity caused by disaster with a detailed plan in place.

After, and only after, a local state of emergency is declared, may the town supervisor promulgate local emergency orders.<sup>17</sup> Examples of such orders may include (1) establishing a curfew; (2) designating zones within which the occupancy and use of buildings or ingress and egress of vehicles and people may be prohibited or regulated; (3) closing places of public assembly; (4) prohibiting and

controlling the presence of people on public streets and in public places; (5) establishing emergency shelters; and (6) suspending local laws, ordinances or regulations — subject to limitations — that may prevent, hinder or delay disaster response.<sup>18</sup> Local emergency orders terminate five days after issuance, by rescission of the chief executive, or by declaration that the state of emergency no longer exists.<sup>19</sup> Any person who knowingly violates any local emergency order is guilty of a class B misdemeanor.<sup>20</sup>

These powers are important tools, as they give local governments direct authority to protect life and property during times of great peril. During major disaster events, local government is often the first line of defense, with additional state or federal help arriving later. If the recent weather and other events have taught us anything, it is that preparation and a quick and focused response makes all the difference to maximizing recovery in the least amount of time.

### (Endnotes)

1 See, e.g., *People v. Carlin*, 182 A.D. 626, 169 N.Y.S. 295 (2d Dep't 1918) (upholding building code adopted to ensure safe construction).

2 *Carollo v. Town of Smithtown*, 20 Misc.2d 435, 436, 190 N.Y.S.2d 36 (N.Y. Sup. 1959) (“Were [police power] not expressly given it would be implied in the grant to govern.”).

3 See, e.g., *Matter of Pine Knolls Alliance Church v. Zoning Bd. of Appeals of the Town of Moreau*, 5 N.Y.3d 407, 804 N.Y.S.2d 708, 711 (2005); *Village of Carthage v. Frederick*, 77 Sickels 268, 276, 25 N.E. 480 (1890) (recognizing the breadth and comprehensive nature of police powers, “exercised to promote the health, comfort, safety and welfare of society . . .”) (citation omitted); *Carollo, supra*, 20 Misc.2d at 436 (“Police power is dynamic and ‘sufficiently comprehensive to embrace new subjects and new or revised measures as exigencies and changing conditions

require.”) (citing 6 McQuillin, Municipal Corporations, § 24.08, p. 455).

4 *Village of Carthage, supra*, 77 Sickels at 277.

5 *Jamaica Recycling Corp. v. City of New York*, 12 Misc.2d 276, 816 N.Y.S.2d 282 (N.Y. Sup. 2006) (“in the exercise of their police powers, municipalities may regulate the disposal of solid waste.”), *aff'd*, 38 A.D.3d 398, 832 N.Y.S.2d 40 (1<sup>st</sup> Dep't 2007), *lv. denied*, 9 N.Y.3d 801, 840 N.Y.S.2d 566 (2007); see *Town of Concord v. Duwe*, 4 N.Y.3d 870, 873, 799 N.Y.S.2d 167 (2005).

6 *People v. Weinberg*, 142 Misc.2d 608, 614-15, 537 N.Y.S.2d 1003 (N.Y. Just. Ct. 1988).

7 L. 1978 c. 640 § 1.

8 N.Y. EXEC. LAW § 20(2)(a) (McKinney 2012).

9 L. 1978 c. 640 § 1.

10 N.Y. EXEC. LAW § 20(1)(A) (McKinney 2012).

11 N.Y. EXEC. LAW § 20(1)(B) (McKinney 2012).

12 N.Y. EXEC. LAW § 23(7)(a) (McKinney 2012).

13 N.Y. EXEC. LAW § 23(7)(b) (McKinney 2012).

14 N.Y. EXEC. LAW § 23(7)(c) (McKinney 2012).

15 N.Y. EXEC. LAW § 23-c (McKinney 2012).

16 *Id.*

17 N.Y. EXEC. LAW § 24(1) (McKinney 2012).

18 N.Y. EXEC. LAW § 24(1) (a)-(g) (McKinney 2012).

19 N.Y. EXEC. LAW § 24(2) (McKinney 2012).

20 N.Y. EXEC. LAW § 24(5) (McKinney 2012). ❖