Suffolk County

Multi-Jurisdictional Debris Management Plan

APPENDIX B

NYS Article 2-B Information and FAQs

INFORMATION FOR LOCAL CHIEF EXECUTIVES REGARDING DECLARING A STATE OF EMERGENCY AND ISSUING EMERGENCY ORDERS

The following information can be used by local Chief Executives and Emergency Managers on matters pertaining to declaring a "local state of emergency", pursuant to Article 2-B of the State Executive Law. This document addresses the most commonly asked questions regarding a local state of emergency. Additional information or clarification may be obtained by contacting your local, County or State Office of Emergency Management. If you have a specific legal question regarding the use of the provisions found in 2-B it is always best to consult with your attorney.

A. INSTRUCTIONS FOR DECLARING A LOCAL STATE OF EMERGENCY:

1. Only the local chief executive (County Executive, Town Supervisor, Village or City Mayor) can declare a local state of emergency covering all or any part of his/her jurisdiction.

2. A local state of emergency is declared pursuant to section 24 of the NYS Executive Law.

3. It can be declared in response to, or anticipation of, a threat to public safety.

4. A declaration of a local state of emergency should be written.

5. The declaration should include the time and date, the reason for the declaration, the area involved, and the expected duration.

6. The written declaration should be kept on file in the Municipal or County Clerk's Office. Copies of the written state of emergency must be sent to the Department of State and the State Office of Emergency Management.

7. A local state of emergency must be declared BEFORE emergency orders are issued.

8. A local state of emergency should be formally rescinded when the declaration is no longer needed.

9. Only the local chief executive, or person authorized to act for the local chief executive, may rescind a local state of emergency.

10. The rescission should be written.

11. The rescission should include the time and date of the original declaration, the reason for the local state of emergency, and the time and date the state of emergency is rescinded.

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12. The written rescission should be kept on file in the Municipal or County Clerk's Office. Copies of the rescission should be sent to the Department of State and the State Office of Emergency Management.

B. QUESTIONS AND ANSWERS ON DECLARING A STATE OF EMERGENCY

1. ***Who is considered a local chief executive for the purpose of declaring a local state of emergency?***

   The Mayor of a City or Village, a Town Supervisor, the County Executive or County Manager are considered local Chief Executives. When a County does not have a County Executive or Manager, the Chairman or other presiding officer of the County Legislature serves as Chief Executive. In cases where the City, Village or Town has a Manager, then the Manager serves as the Chief Executive.

2. ***Why should I declare a local state of emergency?***

   It provides the local chief executive with additional powers in order to respond adequately to a disaster. These powers, exercised through the issuance of emergency orders, include, but are not limited to:

   - Establishing curfews;
   - Implementing public protective measures (e.g., controlling traffic, prohibiting ingress and egress into the affected area, prohibiting the sale of alcohol and firearms);
   - Establishing shelters, medical shelters, or alternate care sites;
   - Suspending local laws; and
   - Requesting supplemental assistance.

3. ***Can a declaration give legal protection?***

   Yes. A declaration of a local state of emergency provides legal protection and immunities for the local chief executive and local emergency officials when they make decisions and take actions to respond to disasters or emergencies.

4. ***Can a state of emergency be declared at any time?***

   No. A local state of emergency can be issued only when a situation exists that has or will place the public at risk and that will require extraordinary measures for proper protection.

5. ***When should I declare a local state of emergency?***

   You should consider declaring a local state of emergency when a dangerous situation is present or imminent and emergency officials are considering protective actions such as:

   - Evacuation of people for a large or heavily populated area street, road, housing development, multi-resident buildings),
   - Sheltering people in designated areas or buildings,
   - Large-scale closing of roads due to conditions considered to be dangerous to lives and property, or Impending emergency or disaster caused by natural forces (floods, blizzards, ice storms, tornadoes).

6. ***Can I issue Local emergency orders without a state of emergency?***

   No. A state of emergency must be declared before you may issue local emergency orders.

7. ***Will a declaration help in getting assistance from the state?***

Yes. If you declare a local state of emergency and you determine the disaster is beyond the capacity of your jurisdiction's resources, and the resources of the county, the **County Chief Executive** may request the Governor to declare a state disaster emergency which will allow the Governor to provide assistance from state resources.

8. ***Must I rescind a declaration of state of emergency?***
   No. Executive Law § 24 does not require you to rescind the declaration of a state of emergency, however, a written rescinding statement should be made when the emergency no longer exists. The local chief executive can rescind the declaration of emergency at any time.

9. ***If I don't rescind a state of emergency, does it end automatically?***
   Yes. If no time limit was specified in the declaration, the state of emergency will terminate automatically 30 days after the effective date of the state of emergency. In the alternative, if a time limit was indicated in the declaration of state of emergency it will terminate at that the time and date indicated therein.

10. ***When should I rescind a state of emergency?***
    Even though the state of emergency will automatically terminate after 30 days, you should rescind it when the conditions that warranted the declaration no longer exist.

11. ***Must the rescission be issued in writing?***
    No. However, it is recommended, in the same manner as a declaration of state of emergency is recommended, to be issued in written form.

12. ***Must the rescission be filed?***
    No. However, it is recommended that it be filed in the Office of the Municipal or County Clerk.

C. INSTRUCTIONS FOR ISSUING LOCAL EMERGENCY ORDERS

Local Emergency Orders can be issued only if there is a State of Emergency in effect pursuant to section 24 of the State Executive Law

1. Local emergency orders can only be issued by the local chief executive for his/her own jurisdiction following the declaration of a local state of emergency by that same executive.

2. Local emergency orders must be written.

3. Local emergency orders should include the time and date they take effect, the reason for the declaration, the area involved, and the duration.

4. A local emergency order expires automatically after five (5) days. It can be rescinded before that by its own terms, or by a rescission by the local chief executive. It is also automatically rescinded when the state of emergency is rescinded

5. The local chief executive may extend local emergency orders for periods not to exceed five (5) days each during the state of emergency.

6. Local emergency orders must be published as soon as practicable in a newspaper of general circulation and provided to radio and television media for broadcast.

7. Local emergency orders may be terminated at any time by the local legislative body via concurrent resolution.

8. Local emergency orders must be executed in triplicate and filed within 72 hours or as soon as practicable in the Office of the County Clerk, and the Office of the Secretary of State.

9. Local emergency orders must be re-filed if they are extended.

D. QUESTIONS AND ANSWERS ON ISSUING LOCAL EMERGENCY ORDERS

1. ***Can anyone issue a local emergency order?***
   No. Only the chief Executive of a county, city, town or village may issue a local emergency order.

2. ***What can a local emergency order include?***
   An emergency order can require whatever is necessary to protect life and property or to bring the emergency situation under control as long as what it is within the constitutional powers of the local government. An emergency order should be used to execute the additional powers given to the chief executive by virtue of declaring a local state of emergency. *See section B.4 above.*

3. ***Can a local emergency order be issued at any time after I've declared an emergency?***
   Yes. Once the local chief executive has declared a local state of emergency s/he can issue local emergency orders.

4. ***Is it in effect indefinitely*?**
   No. A local emergency order automatically terminates 5 days after issuance, or by rescission by the local chief executive, or a declaration by the local chief executive that the state of emergency no longer exists, whichever occurs sooner. It can also be terminated at any time by concurrent resolution by the local legislative body.

5. ***Can an order be modified once it's issued?***
   Yes. A local emergency order may be amended, modified, or rescinded at any time by the local chief executive during the state of emergency.

6. ***Can a local emergency order be extended beyond five days?***
   Yes. The local chief executive may extend an order for additional periods up to 5 days each during the local state of emergency. Each extension must be re-filed.

7. ***Can a citizen who disobeys an emergency order be arrested?***
   Yes. Any person who knowingly violates any local emergency order of a local chief executive issued pursuant to Section 24 of the Executive Law can be found guilty of a class B misdemeanor.

E. ADDITIONAL QUESTIONS AND ANSWERS REGARDING DECLARATION OF A STATE OF EMERGENCY

1. ***Do I have to declare a local state of emergency to receive state and federal disaster assistance?***

   No. A local state of emergency is not required for the municipality to receive state and federal aid. By proclaiming a local state of emergency, the local chief executive of a community is stating that a serious situation exists, or is imminent, that will affect public health and safety and may require extraordinary measures for effective response or recovery. The Governor may, on his own initiative, declare a state disaster emergency for the affected local area, which will allow the use of state assets. In addition, the threshold for seeking assistance from higher levels of government is the inability to respond adequately with available local resources. The declaration of a local state of emergency can be an acknowledgement that the disaster is beyond the capabilities of the local government.

2. ***What are the advantages of declaring a local state of emergency?***

   The declaration of a local state of emergency increases the powers of the local chief executive. These powers are implemented through the use of emergency orders. Additionally, an emergency declaration gives greater legal protection and immunities for local chief executives and local emergency officials when making decisions and taking actions during disasters and emergencies.

3. ***Are there circumstances when it would be inappropriate to declare a local state of emergency?***

   A local state of emergency can be declared and emergency orders can be issued in the event of a disaster, rioting, catastrophe or similar public emergency---or when there is reasonable apprehension of an immediate danger from such events. Declarations under Executive Law generally have been in response to disasters, emergencies and related catastrophes or threats that pose an immediate peril or have an acute impact on the community and public safety.

   In many cases, the need to proclaim a local state of emergency is obvious. When a situation exists which has or will place the public at risk and will require extraordinary measures for proper protection, a declaration should be made. For example, a Category III hurricane travelling up the coast, a blizzard that dumps 4' of snow in a short period of time, an explosion and subsequent release at a local chemical plant.

   In most situations assessing the need for the special powers, authorities and protections are primary concerns when deciding whether to declare a local state of emergency. When the incident can be effectively managed within the capabilities of the community and extraordinary measures are not required for response or recovery, a local state of emergency is not necessary. Examples would be a minor hazardous materials incident or normal and low-lying flooding from rains or spring snowmelt.

4. ***Can a local state of emergency be declared in anticipation of a disaster or in advance of an expected emergency?***

   Yes. If the impending disaster or emergency creates an imminent danger and may imperil public safety, a local state of emergency can be proclaimed. Doing so permits the community to obtain resources or take actions needed to provide more timely public protection or services in anticipation of an emergency (for example, ordering an evacuation).

5. ***When a municipality declares a local state of emergency, must the county also declare?***

   No. It is not necessary for the County to declare a local state of emergency because a municipality does.

4/13/2012
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6. ***Can a county declare an emergency in an area if the affected town, village, or city has not done so?***

   Yes. The county chief executive can declare an emergency if it determines the situation may have impacts or requirements that affect the county and its resources. The county chief executive may declare a local state of emergency for any portion of the county, including part or all of any Town, Village or City --- even when the local jurisdiction does not declare.

7. ***Should the local state of emergency include the entire jurisdiction or can a declaration be made for a specific are within the jurisdiction?***

   A local state of emergency can include the entire jurisdiction, or it can be designated for a specific geographical section or area of the community. In either case, the declaration area should be clearly defined. Counties may consider issuing a declaration for specific communities and contiguous areas, in case the situation has impacts or requirements extending beyond a local site. For example, when the Governor declares a state disaster emergency for an event that has occurred within one county, that county will be specifically named along with the generic statement "and contiguous counties."

8. ***Does declaring a local state of emergency require the local jurisdiction to pay for assistance it receives from other local governmental units?***

   Under the provisions of the Intrastate Mutual Aid Program (IMAP) (Exec. Law § 29-h), the assisting local government is authorized to seek reimbursement from the requesting local government. The assisting local government may choose to lend or loan resources to the requesting local government without any expectation of reimbursement. However, this expectation should be made clear prior to sending or accepting resources. If the assisting local government offers to provide resources and makes it clear that it is expecting to be reimbursed, the requesting jurisdiction may choose to refuse to accept assistance or accept the resources and reimburse the assisting local government. The IMAP committee is responsible for creating guidelines to be used and procedures to be followed when requesting reimbursement for the deployment of resources from the assisting local government.

9. ***If a local state of emergency is declared, does it allow officials to confiscate or demand the use of private resources, property, and equipment?***

   No. Declaring a local state of emergency does not permit government to demand or confiscate private property and resources. The local chief executive can undertake emergency actions on any property within his or her jurisdiction, including private property, with the possible exception of Federal and Indian property.

10. ***Is there a difference between a disaster declaration, an emergency declaration or proclamation and a local state of emergency?***

    The wording in Article 2-B of the Executive Law refers to a proclamation of a local state of emergency. When a declaration is issued, it actually means a local state of emergency is in effect, as proclaimed by the local chief executive. The terms "disaster declaration," "local state of emergency," and "disaster proclamation" are often used interchangeably to refer to the same thing. However, the correct term as cited in § 24 of the Executive Law is "local state of emergency."

11. ***Is the local chief executive the only local official that can declare a local state of emergency?***

    Yes. The local chief executive is the only official that can proclaim a local state of emergency under provisions of § 24 of the Executive Law. It is important to keep in mind that the declaration of a local state of emergency **does** not affect the statutory powers, duties, and authorities which may be given to other local officials pursuant to other provisions of New York State or local laws. For example, a Sheriff

can declare a "Special Emergency" relating to public safety under provisions of the General Municipal Law (§ 209-f(2)). These declarations are applied in specific circumstances and are not considered to be as comprehensive as a proclamation under Article 2-B.

12. ***What is the relationship between a local state of emergency and emergency orders? How are each applied and handled?***

    A local state of emergency is a declaration or proclamation by the local chief executive that a disaster has occurred and certain emergency conditions exist. The declaration is a statement to the public that some type of hazard or threat exists and has been determined to pose a risk to the community and to public safety. It also establishes a legal basis for the local chief executive and local emergency officials to implement authorities and actions to address the situation.

    Once a local chief executive proclaims a local state of emergency, it then permits him or her to issue emergency orders. Emergency orders are the specific actions taken by the local chief executive when a local state of emergency is in effect. An evacuation order or an order limiting access in certain areas would be examples of emergency orders.

13. ***Can a local state of emergency be used to suspend existing local laws?***

    Yes. A local chief executive can use a local state of emergency to suspend local laws, ordinances and regulations, provided certain conditions outlined in § 24(1)(g) of the Executive Law are met. Requirements associated with suspension of local laws can be complex and should be done in consultation with your local attorney. Before local laws can be suspended, either the Governor must have declared a state disaster emergency, or after a local chief executive has declared a state of emergency, the county chief executive has requested assistance from the Governor. Suspensions must be reasonably necessary as a result of the disaster and provide for minimum deviation from the intent of the law, ordinance or regulation.

    Local chief executives cannot suspend state or federal laws, rules, or regulations.

14. ***Will declaring a local state of emergency expose me to a greater risk of liability?***

    No. Section 25(5) of the Executive Law provides immunity for local officials when making discretionary decisions during a disaster or emergency. Although a declaration of a local state of emergency cannot prevent lawsuits against public officials and municipalities, having a proclamation in effect provides greater protection from liability. While a declaration provides immunity, it is still important that local officials act within the scope of their authority and experience. It is also recommended that a local disaster preparedness plan be followed to the extent possible during the response and recovery to such a disaster.

15. ***Do the individuals who provide assistance in response to or recovery from a disaster have any kind of liability protection?***

    Yes. Individuals, such as public officers, employees or affiliated volunteers that have duties or responsibilities specified in the local comprehensive emergency management plan are given protection from liability in § 29-b of the Executive Law. These individuals, referred to as Disaster Emergency Response Personnel (DERP), when operating under the command of the county emergency management director, receive the same privileges and immunities they would receive if they were participating in a local civil defense drill in the political subdivision in which they are enrolled. When participating in a civil defense drill, civil defense forces (DERPs in Article 2-B) are provided with immunity from liability (Defense Emergency Act – NYS Unconsolidated Laws § 9193)

4/13/2012
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16. ***Is it necessary to declare a local state of emergency to order an evacuation of the general public?***

    Yes. Section 24 of the Executive Law gives the local chief executive the authority to issue emergency orders, which could include the requirement for an evacuation in time of emergency to protect public health and safety. At times, on-scene responders may recognize a need for a limited and immediate evacuation. It may not always be possible or practical to declare a local state of emergency. In these situations, evacuations are commonly conducted as a recommended emergency protective measure, without a local state of emergency and order, and are completely voluntary.

17. ***When can the Governor declare a state disaster emergency?***

    When the Governor, on his own initiative or upon request from one or more local chief executives, finds that a disaster has occurred or is imminent for which local governments are unable to respond adequately, he may declare a state disaster emergency. In many cases, when state agencies can provide emergency assistance pursuant to existing authorities and resources, a declaration by the Governor is not required.

18. ***Is a Governor's state disaster emergency declaration necessary to receive federal aid?***

    A declaration by the Governor is not necessary to request federal assistance. A decision by the Governor to declare a state disaster emergency is based upon the scope of the disaster and the authority needed to direct state resources.

    State requests for federal disaster assistance are based on an assessment of response and recovery demands and damages to the public and private sectors. The assessment is done in coordination with FEMA staff, and further determines if the implementation of various supplemental federal disaster relief programs is warranted in relation to the scope of the disaster and the capability of state and local governments to effectively address response and recovery needs.

19. ***Can the Governor request federal assistance immediately?***

    Yes. In catastrophic disasters, where the need for early federal support from the President is proven, the Governor may request federal involvement immediately. When requesting disaster assistance from the President, federal law requires the Governor to submit specific information and meet certain requirements, supported by impact statements and damage estimates. By federal law, the Governor has 30 days to request federal assistance from the President.

    In emergencies of less significant scope, a determination on the extent and kinds of federal assistance to be requested are generally not made until a comprehensive damage assessment is completed to ascertain the exact type of assistance needed. It may be that federal disaster relief programs can be implemented under the authority of a Federal Agency (such as the U.S. Small Business Administration, U.S. Department of Agricultural, the U.S. Corps of Engineers, etc.), and that Presidential assistance is not warranted. Such an assessment is conducted jointly by state and local governments, usually with technical assistance from FEMA.

STATE OF EMERGENCY DECLARATION

A State of Emergency is hereby declared in _____ effective at
(area within municipality, or entire municipality)

_____ on _____ .
(time) (date)

This State of Emergency has been declared due to _____

_____
(description of situation)
.
This situation threatens the public safety.

This State of Emergency will remain in effect until rescinded by a subsequent order.

As the Chief Executive of _____,
(name of municipality)
I, _____, exercise the authority given me under
(name of Chief Executive)

Section 24 of the New York State Executive Law, to preserve the public safety and hereby render all required and available assistance vital to the security, well-being, and health of the citizens of this Municipality.

I hereby direct all departments and agencies of _____ to
(name of municipality)

take whatever steps necessary to protect life and property, public infrastructure, and provide such emergency assistance deemed necessary.

_____	_____
(Name)	*(Signature)*
_____	_____
(Title)	*(Date)*

SAMPLE

EMERGENCY ORDER

Local Emergency Order for: _____:
(name(s) of area(s)/municipality(ies) affected by this order)

I, _____, the Chief Executive

of _____, in accordance with a declaration of a State of
(name of municipality)

Emergency issued on _____, 20__, and pursuant to Section 24 of the
(date SOE was issued)

New York State Executive Law, do hereby order _____
_____

_____

_____
(description of the action ordered and the area(s) affected and the reason for the order)

This order shall take effect _____
("IMMEDIATELY" or specify date and time)

and shall remain in effect until removed by order of the Chief Executive. This order may also be renewed in

(5) five-day increments.

Failure to obey this order is a criminal offense, punishable by law under New York State Executive Law § 24(5).

Signed this the _____ day of _____, 20__, at _____ o'clock, in ,
(date) (month) (year) (time)

_____, New York.
(municipality)

_____ _____
(Name) (Signature)

_____ _____
(Witness Name) (Witness Signature)

_____ _____
(Title) (Date)

SAMPLE