

## MEMORANDUM

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October 15, 2014

**TO:** Honorable Mayor and City Commission

**VIA:** Kenneth Fields, City Manager

**FROM:** Joe Jenkins, Fire Chief

**RE:** Ordinance 2014-13, Amendment to Emergency Management Procedures – 2<sup>nd</sup> Reading & Public Hearing

**SYNOPSIS:** The adoption of Ordinance 2014-13 provides an amendment to the Lake Wales Code of Ordinances, Chapter 9, Emergency Management. The amendment is necessary to allow for a broader approach to Emergency Management functions in the city.

### RECOMMENDATION

The recommendation of the City Commission is to adopt Ordinance 2014-13 after second reading and public hearing.

The City Commission approved Ordinance 2014-13 after first reading on October 7, 2014. Public hearing notice requirement has been met.

### BACKGROUND

The current ordinance is primarily for civil disturbances. The proposed ordinance includes other events that might prompt activation of the city's Emergency Management System.

### OTHER OPTIONS

None; this is a housekeeping ordinance which conforms the City Code to the requirements of Florida Statutes and actual practice.

### FISCAL IMPACT

The only fiscal impact is codification of Ordinance 2014-13.

### ATTACHMENTS

Ordinance 2014-13

## ORDINANCE 2014-13

**AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING THE LAKE WALES CODE OF ORDINANCES, CHAPTER 9, EMERGENCY MANAGEMENT, WHICH INCLUDES REPEALING ORDINANCE 2011-20, REGULATION OF FIREARMS, SECTIONS 9-2, 9-3, AND, 9-4; AND REPEALING ORDINANCE 2006-26, ESTABLISHING THE POSITION OF EMERGENCY MANAGEMENT DIRECTOR AND ESTABLISHING DUTIES AND RESPONSIBILITIES OF SAID DIRECTOR, SECTION 9-9; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**BE IT ENACTED** by the City Commission of the City of Lake Wales, Polk County, Florida.

**SECTION 1.** Chapter 9, EMERGENCY MANAGEMENT, Lake Wales Code of Ordinances, is amended as follows:

### **Sec. 9-1. Definitions.**

~~The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

Comprehensive Emergency Management Plan (CEMP) is the framework that describes the process for disaster preparedness, response, recovery and mitigation activities of the city.

Emergency means any occurrence, or threat thereof, whether accidental, natural, technological, or ~~caused by man~~ manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property

Emergency management means the preparation for, and the carrying out of, all emergency responsibilities and functions, other than those for which military forces or other federal agencies are primarily responsible, to prevent, mitigate, or repair injury and damage resulting from the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from emergencies. The responsibilities include but are not limited to:

- (1) Reduction of vulnerability of people and communities of this city to damage, injury, and loss of life and property resulting from natural or manmade catastrophes or hostile military or paramilitary action;
- (2) Preparation for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disasters;
- (3) Provision of a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by emergencies;
- (4) Provision of an emergency management system embodying all aspects of pre-emergency preparedness and post-emergency response;
- (5) Assistance in anticipation, recognition, appraisal, prevention, and mitigation of emergencies which may be caused or aggravated by inadequate planning for, and regulation of, public and private facilities and land use.

**Sec. 9-2. Powers, ~~to proclaim emergency and enact protective measures~~ duties and responsibilities.**

~~An emergency is proclaimed whenever, in the judgment of the chief of police in accordance with the provisions of F.S. § 870.043, a determination is made that a state of emergency exists causing or representing an immediate and present danger of injury to or danger to persons or property.~~

The city manager shall have the following powers, duties and responsibilities:

- (1) To declare a state of local emergency pursuant to section 9-3, should the mayor or vice mayor be unavailable, and to promptly file with the city commission a certificate showing such emergency and the necessity for such action.
- (2) To direct the creation and the exercise of the city's CEMP consistent with the state and county emergency plans for the mitigation of, preparation for, response to, and recovery from emergencies, and to exercise all powers permitted by F.S. ch. 252.
- (3) To recommend funding to the city commission for the creation and maintenance of an Emergency response capability as provided by this article.
- (4) To issue emergency regulations necessary for the protection of life and property, establishment of public order, and control of adverse conditions affecting public welfare resulting from an emergency.
- (5) To plan for and develop an emergency operations control center to include equipment, manning, and operational procedures necessary to the management and control of emergency conditions.
- (6) To develop and manage the city's emergency awareness public information program.
- (7) To apply for public assistance or other disaster relief funding
- (8) To award contracts and expend necessary city funds during a declaration of emergency for emergency relief and for disaster recovery as applicable.

### **Sec. 9-3. Emergency measures Declaration of a state of local emergency.**

~~Whenever the chief of police declares that a state of emergency exists, pursuant to F.S. § 870.043 and as further defined in F.S. § 252.34, the following acts enumerated in F.S. § 870.044 shall be prohibited during the period of the emergency throughout the city:~~

- ~~(1) The sale of, or offer to sell, with or without consideration, any ammunition or gun or other firearm of any size or description.~~
  - ~~(2) The intentional display, after the emergency is declared, by or in any store or shop of any ammunition or gun or other firearm of any size or description.~~
  - ~~(3) The intentional possession in a public place of a firearm by any person, except a duly authorized law enforcement official or person in military service acting in the official performance of his or her duty.~~
- (1) The mayor, deputy mayor or in his/her absence the city manager shall have the sole authority to declare a state of local emergency.
  - (2) Any declaration of a state of local emergency and all emergency orders shall be activated under the provisions of this article.
  - (3) A declaration of a state of local emergency shall activate the emergency plans applicable to the city. A declaration of a state of local emergency shall automatically invoke the emergency measures listed in F.S. § 252.38 regarding emergency management powers of political subdivisions and F.S. § 870.044 of the emergency relates to overt acts of violence or the imminent threat of such violence.
  - (4) Upon the declaration of a state of local emergency, the city manager shall file a copy with

the Polk County Emergency Management department and shall, promptly as practicable, file in the office of the city clerk a notice of a declared state of local emergency, or emergency measure declared or ordered and promulgated by virtue of Florida Statutes. The city manager shall notify the local media and residents as soon as possible and in the manner most practicable and expeditious.

- (5) The city manager may issue orders pursuant to this article and may elect to adopt orders issued by county, or state emergency management agencies.

**Sec. 9-4. Discretionary emergency measures Duration and termination of a state of emergency.**

~~(a) Whenever the chief of police declares that a state of emergency exists, pursuant to F.S. § 870.043 and as further defined in § 252.34, he or she may order and promulgate all or any of the following emergency measures, in whole or in part, with such limitations and conditions as he or she may deem appropriate:~~

- ~~(1) The establishment of curfews, including but not limited to, the prohibition of or restrictions on pedestrians and vehicular movement, standing, and parking, except for the provision of designated essential services such as fire, police, and hospital services, including the transportation of patients thereto, utility emergency repairs, and emergency calls by physicians;~~
- ~~(2) The Prohibition of the sale or distribution of any alcoholic beverage, with or without the payment or consideration therefor;~~
- ~~(3) The prohibition of the possession on any person in a public place of any portable container containing any alcoholic beverage;~~
- ~~(4) The closing of places of public assemblage with designated exceptions;~~
- ~~(5) The prohibition of the sale or other transfer of possession, with or without consideration, of gasoline or any other flammable or combustible liquid altogether or except by delivery into a tank properly affixed to an operable motor-driven vehicle, bike, scooter, boat, or airplane, and necessary for the propulsion thereof;~~
- ~~(6) The prohibition of the possession, in a public place of any portable container containing gasoline or any other flammable or combustible liquid;~~
- ~~(7) Order the closing of any or all other business establishments within all or a portion of the corporate limits of the city as the preservation of the public safety and health requires;~~
- ~~(8) Order and designate any public street, thoroughfare or vehicle parking areas, or portions thereof, to be closed to motor vehicles and pedestrian traffic;~~
- ~~(9) Call upon regular and auxiliary law enforcement agencies and organizations within or without the city to assist in preserving and keeping the peace within the city.~~

~~(b) Any such emergency measure so ordered and promulgated shall be in effect during the period of the emergency in the area or areas for which the emergency has been declared.~~

- (1) The duration of a state of local emergency shall be initially for seven days.
- (2) The mayor, deputy mayor or in his/her absence the city manager may extend the duration of the state of local emergency, as necessary, in seven-day increments by executive order.
- (3) Any state of local emergency may be altered or rescinded by the mayor, vice mayor or in his/her absence the city manager by the issuance of a subsequent executive order.
- (4) In the event a state of local emergency declared pursuant to this article has been in effect

continuously for more than 30 days and in the event a state or federal state of emergency is not also in effect, the city manager shall appear before the city commission at its next regularly scheduled meeting or special call meeting to present the reasons for further continuance of the state of local emergency. If, upon presentation of the city manager, the city commission determines emergency conditions exist, the city commission may extend the local state of emergency by resolution of the commission. If, upon presentation by the city manager, the city commission finds that emergency conditions no longer exist, the city commission may terminate the local state of emergency by resolution of the city commission.

- (5) Notwithstanding the provisions of subsection (4), the city manager shall retain the authority to continue to extend any state of local emergency, in seven-day increments in excess of 30 days when:
- (a) Declared state or federal state of emergency continues to exist;
  - (b) The city commission has not yet acted pursuant to subsection (4);
  - (c) The city commission has acted to extend the local state of emergency to subsection (4).

**Sec. 9-5. Emergency management powers of the city manager ~~Prohibited acts during emergency.~~**

During the period of a declared state of emergency no person shall:

- ~~(1) — Consume any alcoholic beverages in a public street or place which is publicly owned or in any motor vehicle being driven or parked within the corporate limits of the city;~~
- ~~(2) — Carry or possess any rock, bottle, club, brick or weapon, who uses or intends to use the same unlawfully against the persons or property of another;~~
- ~~(3) — Enter any areas designated by the chief of police as a restricted area unless in the performance of official duties or unless with written permission from the mayor or city manager or their duly designated representatives, or such person shall prove residence therein;~~
- ~~(4) — Make, carry, possess or use any type of gasoline or petroleum-based fire bomb or other incendiary missile.~~

- (1) Upon declaration of a state of local emergency, the city manager, in addition to any other powers conferred by City Charter, shall have the following powers and authority:
- (a) To direct and compel the evacuation of all or part of the population from any stricken or threatened area within the city if he/she deems this action necessary for the preservation of life or other emergency mitigation, response, or recovery.
  - (b) To waive the procedures and formalities otherwise required of the city by law or ordinance pertaining to:
    - (1) Performance of public work and taking whatever prudent action is necessary to ensure health, safety, and welfare of the community;
    - (2) Entering into contracts;
    - (3) Incurring obligations;
    - (4) Employment of permanent and temporary workers;
    - (5) Utilization of volunteer workers;
    - (6) Rental of equipment;
    - (7) Acquisition and distribution, with or without compensation, of supplies,

- materials, and facilities; and
- (8) Appropriation and expenditure of public funds.

- (c) Request emergency assistance and resources from higher levels of government, other local governments and/or other agencies, in accordance with State of Florida Comprehensive Emergency Management Plan and/or the Statewide Mutual Aid Agreement and/or in accordance with the needs of the city and the resources available.

#### **Sec. 9-6. Declaration of emergency Activation of emergency management plan.**

~~Whenever the chief of police determines that there has been an act of violence or a flagrant and substantial defiance of, or resistance to, a lawful exercise of public authority and that, on account thereof, there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law or an emergency as defined in section 9-1 and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order and to the general welfare of the city or a part or parts thereof, he may declare that a state of emergency exists within the city or any part or parts thereof.~~

A declaration of emergency by the governor or a declaration of state of local emergency by the city shall automatically activate the city CEMP and shall be authority for the deployment of personnel and use of any forces to which the CEMP applies and for use or distributions of any supplies, equipment, materials, and facilities assembled, stockpiled or arranged to be made available pursuant to the state and county CEMP.

#### **Sec. 9-7. Filing and publication Specific restrictions authorized; exemptions.**

~~Any state of emergency or emergency measure declared or ordered and promulgated by virtue of the terms of this chapter shall, as promptly as practicable, be filed in the office of the city clerk and delivered to appropriate news media for publication and radio and television broadcast thereof. If practicable, such state of emergency declaration or emergency measure shall be published by other means such as by posting and loudspeakers.~~

- (1) During the existence of a declared state of local emergency, the city manager may impose by executive order any or all of the following restrictions:
  - (a) Prohibit or regulate the purchase, sale, transfer or possession of alcoholic beverages.
  - (b) Prohibit or regulate any special event, demonstration, parade, march, vigil or participation therein from taking place on any of the public rights-of way or upon any public property;
  - (c) Prohibit or regulate the sale or use of gasoline, kerosene, naphtha or any other explosive or flammable fluids or substances altogether, except by delivery into a tank properly affixed to an operable motor vehicle, bike, scooter, boat, or airplane and necessary for the propulsion thereof;
  - (d) Prohibit or regulate the participation in or carrying on of any business activity, and prohibit or regulate the keeping open of places of business, places of entertainment and any other places of assembly;

- (e) Prohibit or regulate travel upon any public street, highway or upon any other public property. The city manager may exempt persons in search of medical assistance, food or other commodity or service necessary to sustain the well being of themselves or their families or some member thereof;
  - (f) A curfew upon all or any portion of the city thereby prohibiting persons from being on public streets, highways, parks or other public places during the hours which the curfew is in effect;
  - (g) Prohibit state and/or local business licensees, vendors, merchants and any person operating a retail business from charging more than the normal average price for any goods, materials or services sold during a declared state of local emergency, except that the normal average price for any merchandise may be increased, but only to the degree that the maximum increase in retail price shall be a percentage less than or equal to the amount representative of the average mark-up percent between wholesale and average retail price for any merchandise during the 30-day period immediately preceding the declared state of local emergency or the normal average price for services sold during the 30 days immediately preceding the declaration of a state of local emergency; or
  - (h) Upon request of the city utilities director, prohibit any person, firm, or corporation from using fresh water supplied by the city for any purpose other than cooking, drinking or bathing.
- (2) The executive order of the city manager may exempt, from all or part of such restrictions, physicians, nurses and ambulance operators performing medical services, on-duty employees of hospitals and other medical facilities, on-duty military personnel, bona fide members of the news media, personnel of public utilities maintaining essential public services, city authorized or requested firefighters, law enforcement officers and personnel and such other classes of persons as may be essential to the preservation of public order and immediately necessary to serve safety, health and welfare needs to the people within the city or other essential personnel having to stop or travel through the city.

#### **Sec 9-8. Offices of city manager to aid during emergency Police emergencies.**

~~The city manager is authorized and directed to utilize his offices and the subordinates thereof to fully accomplish the purposes of this chapter and any proclamation of emergency issued hereunder. The city manager will appoint an emergency management director to coordinate city emergency operations and coordinate operations with local, county, state and federal agencies and the citizens of Lake Wales as appropriate. It shall be the responsibility of the emergency management director be responsible for having the city and various departments thereof within the city to keep updated plans for and be prepared for emergencies as much as reasonably possible. It shall be the duty of the emergency management director to keep the city manager posted on the readiness of the city to be able to prevent or effectively respond to emergencies/disasters that may occur. The emergency management director shall take measures to provide an effective emergency operations center to coordinate city departments and all operations when an emergency seems eminent and throughout the duration of the emergency if it should occur.~~

- (1) An emergency may be declared because of civil unrest or imminent threat to public peace or order when the city's police chief certifies to the city manager that an emergency condition arising from hostile actions of others, armed and unarmed or other imminent threat to public peace or order, requires extraordinary measures for control,

including, but not limited to curfew; blockade; proscription of the sale of alcohol beverages; explosives and combustibles; evacuation; and other similar actions. The city manager may issue a declaration of a state of emergency in accordance with this article.

- (2) The declaration of a state of local emergency because of civil unrest or imminent threat to public peace or order shall authorize the issuance of emergency orders as may be required and may, if applicable, require automatic emergency measures pursuant to F.S. § 870.044. In addition, additional discretionary emergency measures pursuant to F.S. § 870.045 may be issued.

~~The emergency management director shall report to the city manager.~~

**Sec. 9-9. ~~Powers to be cumulative~~ Enforcement.**

~~The powers granted by this chapter shall be deemed to be cumulative to those granted by the Charter or ordinances of the city or by the general law of the state.~~

Any violation of this article shall be considered a violation of state law and enforced in accordance with the provisions of F.S. § 252.50.

**SECTION 2.** If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

**SECTION 3.** This ordinance shall become effective immediately upon its passage by the City Commission.

**CERTIFIED AS TO PASSAGE** this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

\_\_\_\_\_  
Mayor/Deputy Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk Clara VanBlargan, MMC