

Summary of Ordinance No. 3229

On April 8, 2013, the City of Abilene, Kansas, adopted Ordinance No. 3229, an Ordinance Establishing Chapter 1, Article 11 of the City Code of the City of Abilene, Kansas, concerning Emergency Operations. A complete copy of this ordinance is available online at www.abilenecityhall.com or during normal business hours at City Hall, located at 419 N. Broadway Street in Abilene, Kansas. The ordinance is not subject to a protest petition. Questions pertaining to this ordinance may be directed to City Attorney Mark Guilfoyle at (785) 263-3070 or City Manager David Dillner at (785) 263-2550. This summary has been reviewed and certified by Mark Guilfoyle, P.A., City Attorney.



Mark Guilfoyle, City Attorney

ORDINANCE NO. 3229

AN ORDINANCE ESTABLISHING CHAPTER 1, ARTICLE 11 OF THE CITY CODE OF THE CITY OF ABILENE, KANSAS, CONCERNING EMERGENCY OPERATIONS

WHEREAS, the City of Abilene acknowledges its role and responsibility with respect to emergency situations that may affect the community;

WHEREAS, the City hereby establishes an article of the City Code granting certain authorities to allow the City to appropriately and prudently address such emergency situations so as to preserve law and order and to protect life and property.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:

SECTION 1. That Chapter 1, Article 11 of the City Code of the City of Abilene, Kansas, be established as follows:

1-1101 EMERGENCY OPERATIONS PLAN ESTABLISHED. There is hereby established in the City of Abilene, Kansas, an Emergency Operations Plan for the purpose of coordinating the mitigation of, preparedness for, response to and recovery from disasters. When applicable, the plan should comply with the United States Department of Homeland Security National Incident Management System (NIMS).

1-1102 EMERGENCY MANAGEMENT OFFICER. The City Manager shall be authorized to implement the Emergency Operations Plan and is hereby delegated sufficient authority to effect coordination and accomplish all actions required incidental to the functions and duties as set out by state law and by any Emergency Operations Plan promulgated by the City Manager.

1-1103 STATE OF LOCAL DISASTER. A state of local disaster emergency may be declared by the Mayor upon a finding by the City Manager that a disaster or the threat thereof is imminent within the City. No state of local disaster emergency shall be continued for a period in excess of seven days, or renewed, except with the consent of the Governing Body. Any order or proclamation declaring, continuing or terminating a local disaster emergency shall be filed promptly with the City Clerk. In the event of the absence or incapacity of the Mayor, the order of succession is as follows: the Vice Mayor, any three members of the Governing Body, or the City Manager shall have the authority to declare a state of local disaster emergency and act with the authority of the Mayor under this Ordinance. In the event of the absence of the City Manager, the order of succession shall be set out in the Emergency Operations Plan.

1-1104 ASSISTANCE REQUEST. The Mayor and/or the City Manager shall have the authority to contact and request Dickinson County and/or the Dickinson County Emergency Management Director to provide assistance to the City during the course of the disaster.

1-1105 PUBLIC RESPONSIBILITY. Each person within the City shall conduct himself or herself and keep and manage his or her affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the City and the public successfully to meet disasters. This obligation includes appropriate personal service and use or restriction on the use of property during a declared state of local disaster emergency. Compensation for services or for the taking or use of property shall be only to the extent that obligations recognized in this section are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered his or her services or property without compensation.

1-1106 USE OF PROPERTY. Compensation for property shall be only if the property was commandeered or otherwise used in coping with a disaster and its use or destruction was ordered by an official of the City acting on behalf of the City. Any person claiming compensation for the use, damage, loss or destruction of property under this Ordinance shall file a claim with the City Clerk. Nothing in this section applies to or authorizes compensation for the destruction or damage of property caused by the local disaster, or removal of any buildings or structures rendered unsafe or dangerous by the disaster, or any actions by City employees necessary to protect the public safety, health and welfare.

1-1107 POWERS AND IMMUNITIES OF EMERGENCY PERSONNEL. Pursuant to K.S.A. 48-934, and any amendment thereof, law enforcement officers, military personnel, or other persons authorized by the City Manager or Police Chief to assist them, while engaged in maintaining or restoring the public peace or safety or in the protection of life or property during a state of local disaster emergency shall have all powers, duties, and immunities of peace officers of the state of Kansas in addition to all powers, duties, immunities now otherwise provided by law and shall be immune from civil and criminal liability for acts reasonably done by them in the performance of their duties so long as they act without malice and without the use of excessive or unreasonable force. All such personnel shall have the authority to enforce any and all ordinances of the City, and for such purpose, all such personnel shall be considered to be authorized officers of such City.

1-1108 CURFEW. During the state of local disaster emergency, the Mayor may order a general curfew applicable to such geographical areas of the City or to the City as a whole, as deemed advisable and applicable during such hours of the day or night as deemed necessary in the interest of the public safety and welfare.

1-1109 POWERS OF MAYOR AND CITY MANAGER. During any state of disaster emergency declared under this Act, the City Manager shall be commander of all forces available for emergency duty and shall delegate or assign command authority pursuant to the Emergency Operations Plan.

(a) The Mayor may in the interest of public safety and welfare make any or all of the following orders or actions:

(1) Order the discontinuance of the sale of beer or liquor by any establishment in the City.

- (2) Order the discontinuance of selling, distributing, transporting, or giving away gasoline or other liquid flammable or combustible products in any container other than a gasoline tank properly affixed to a motor vehicle.
 - (3) Order that no person shall possess, transport, or consume any alcoholic beverages in a public street or place which is publicly owned or in any motor vehicle driven or parked thereon which is within a duly designated restricted area.
 - (4) Order that no person shall carry or possess any rock, bottle, club, brick, explosive, combustibles, or weapon, who uses or intends to use the same unlawfully against the person or property of another.
 - (5) Order that no person shall make, carry, possess, or use any type of "Molotov Cocktail," gasoline or petroleum-base fire bomb or other incendiary missile.
 - (6) Order law enforcement officers or City employees to confiscate any items, including alcoholic beverages, firearms, explosives, weapons, and combustibles, which other orders prohibits possession thereof.
 - (7) Order suspension of the quorum requirement under K.S.A. 12-3002 and needed to hold a City meeting due to the unavailability or death of any member(s) of the City after a good faith effort to find such member(s).
 - (8) Issue such other orders as are imminently necessary for the protection of life and property.
- (b) The City Manager may in the interest of public safety and welfare make any or all of the following orders or actions:
- (1) Direct and compel the evacuation of all or part of the population from any area of the City stricken or threatened by a disaster, if the City Manager deems this action necessary for the preservation of life or other disaster mitigation, response or recovery.
 - (2) Prescribe routes, modes of transportation and destinations in connection with such evacuation.
 - (3) Control ingress and egress to and from a disaster area, the movement of persons within the area and the occupancy of premise therein.
 - (4) Order that no person shall enter any area designated by the City Manager as a restricted area unless in the performance of official duties or with written permission from any City employee or such person shall prove residence therein.
 - (5) Order the suspension of the confinement time period for animals picked up by City employees in order for the animals to be destroyed immediately if the capacity of the City animal shelter is full and said animals shall be destroyed in a humane fashion and to order animals, if found to be roaming in pack of four or more in the City, to be destroyed immediately and in any manner based upon the law enforcement officer's discretion.
 - (6) Order suspension of any or all provisions of any rule, resolution, or ordinance necessary for the immediate and effective response of City and/or City employees to the local disaster emergency, including the right to acquire needed supplies and equipment by any means necessary provided that compensation shall be paid under Section Eight hereof.

- (7) Transfer the supervision, personnel or functions of the City departments and agencies or units thereof for the purpose of performing or facilitating emergency management activities.
- (8) Commandeer or utilize any private property if the City Manager finds such action necessary to cope with the disaster, subject to any applicable requirements for compensation.
- (9) Issue such other orders as are imminently necessary for the protection of life and property.

The City Commission, through the majority of the remaining members, may rescind or amend any order issued by the Mayor and/or City Manager at any time under this section.

1-1110 DANGEROUS STRUCTURES. Where necessary to protect against escaping dangerous gases, explosion, unsafe buildings or structures, or other unsafe or dangerous physical conditions, designated City employees, including but not limited to law enforcement officers, firefighters and code enforcement officers may order the evacuation of any part of the City or of any structures in the City. Any area or structure to be evacuated shall be a restricted area, which no person, other than authorized City employees, shall be permitted to enter. The Community Development Director, or designee, shall have the authority to order any unsafe or dangerous structure or building to be taken down or repaired without delay and such action may be taken without prior notice to or hearing of the owners, agents, lien holders, and occupants pursuant to Chapter 4, Article 4 of the City Code.

1-1111 MINOR DISASTERS. In the event that a minor disaster of a local nature, including accidents or major disturbance, has occurred and a state of local disaster emergency is not declared, the City Manager, Police Chief, or any municipal employee authorized by the City Manager or Police Chief, shall have the authority to take reasonable steps whatsoever, including evacuation and/or restriction to the designated area, necessary to protect the public safety, health and welfare or to protect any individual located within the area of the disaster.

1-1112 EMERGENCY OPERATIONS PLAN. The City Manager is hereby authorized to adopt and promulgate the Emergency Operations Plan for the City of Abilene, establishing policies, guidelines, and procedures to provide municipal employees with information and equipment to function quickly and effectively in disaster situations. Said plan shall include operation of an Emergency Operations Center and any other function necessary to meet any potential disaster. Said plan shall be approved pursuant to K.S.A. 48-929 and be on file at the City Manager's Office for public review. A copy shall also be provided to the Dickinson County Emergency Management Department.

1-1113 AGREEMENTS WITH COUNTY. The Mayor and/or the City Manager is hereby authorized to enter into any agreement with the County and/or other municipalities in the County to provide or receive assistance of municipal and/or county employees or equipment needed to meet any disaster in the City or in the County. Any other municipality or county providing

assistance of its employees and/or equipment to the City during the state of local disaster emergency shall be entitled to the same authority and immunity as its own employees under this Ordinance or state law.

1-1114 AGREEMENTS WITH STATE. Pursuant to K.S.A. 48-914, the Mayor and/or the City Manager may enter into a contract on behalf of the City for the lease or loan with the State as he or she may deem necessary to promote the public welfare and protect the interests of the City of any real or personal property of the City or State or under the jurisdiction or control of the City or State, or the temporary transfer or employment of personnel of the state government. The Mayor and/or the City Manager is authorized to enter into such contract or lease with the State or accept any such loan or employ such personnel, and the City may equip, maintain, utilize and operate any such property and employ necessary personnel therefore in accordance with the purposes of which such contract is executed and do all things and perform any and all acts which he or she may deem necessary to effectuate the purpose for which such contract was entered into under the provisions of this Ordinance.

1-1115 EXTRATERRITORIAL ASSISTANCE. In the event of a disaster when there is a request for assistance in territory outside the corporate limits of Abilene, including outside the State of Kansas, the City Manager, or his or her designee, may authorize the City to provide assistance as may be allowed under the authority granted the City by K.S.A. 12-16, 117, with all the privileges and immunities provided therein. Assistance may include any form of municipal service including, but not limited to, police, fire, emergency medical services, public works, administrative and clerical services. The City will only provide assistance if it can do so without unduly jeopardizing the protection of its own community. Nothing in this section is intended to conflict or circumvent any existing interlocal agreement, any automatic aid, intergovernmental or mutual aid agreement, or any authority to enter into those agreements in the future.

1-1116 ACCEPTANCE OF SUPPORT. Whenever the federal or state government or any agency or officer thereof or any person, firm or corporation offers to the City, services, equipment, supplies, materials or funds by way of gift, grant or loan, for the purposes of emergency management, the City acting through the Mayor and/or City Manager, may accept such offer and upon acceptance, the Mayor and/or City Manager may authorize any employee of the City to receive such services, equipment, supplies, materials, or funds on behalf of the City and subject to the terms of the offer and rules and regulations, if any of the agency making the offer (K.S.A. 48-916).

1-1117 LIABILITY. Pursuant to K.S.A. 48-915, and any amendment thereof, neither the City, its employees, members of the City, employees from other cities or county, or volunteers, shall be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer worker, or any City employees engaged in emergency operations activities. The foregoing shall not affect the right of any person to receive benefits or compensation to which he or she might otherwise be entitled under the workmen's compensation law or any pension law or any act of Congress. Upon a declaration of a local disaster emergency, neither the City nor, except in cases of willful misconduct, gross negligence or bad faith, the employees, agents of the

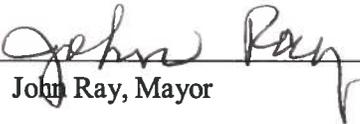
City nor any volunteer workers, or employees from other municipalities or counties, complying with or reasonably attempting to comply with this act, or any proclamation, order, rules, regulations or the Emergency Operations Plan adopted pursuant to the provisions of this Ordinance relating to blackout or other precautionary measures enacted by the City, shall be liable for the death of or injury to persons, or for damages to property, as a result of any such activity performed during the existence of such state of local disaster emergency.

- 1-1118 **VACANCIES.** Pursuant to K.S.A. 48-1201, et seq., should any vacancy arise due to the death of or the unexplained absence of any member of the City or in the event that the member is unavailable to exercise the powers and discharge the duties of his/her office during the course of any local disaster emergency declared pursuant to this Ordinance, said vacancy shall be filled through appointment by the Mayor with approval of a majority of the remaining members of the City from the following: ex-member of the City or any member of the Planning Commission or Board of Zoning Appeals. Said appointment shall last until the member reappears or until the next scheduled election of the City
- 1-1119 **JUDICIAL VACANCIES** Pursuant to K.S.A. 48-1201, et seq., in the event that the Judge of the Abilene Municipal Court is unavailable to exercise the powers and discharge the duties of the Court, the Mayor and/or City Manager may appoint an attorney with a preferred minimum of ten years of legal experience in municipal court, as Judge of the Municipal Court with the approval of the majority of the remaining Governing Body.
- 1-1120 **EMERGENCY LOCATION OF GOVERNMENT.** Whenever due to an emergency resulting from the effects of enemy attack or the local disaster emergency, the City may meet within or without the City of Abilene on the call of the Mayor and/or City Manager or any three members of the City Commission, and shall proceed to establish and designate by resolution, alternate places as the emergency temporary location of the local government where all or any part of the public business may be transacted and conducted during the emergency situation. Such place may be within or without the City of Abilene and within the state of Kansas. (K.S.A. 48-1401). During the period when the public business is being conducted at the emergency temporary location, the Governing Body shall have and possess and shall exercise all of the executive, legislative and judicial powers and functions conferred upon the Governing Body. Such powers and functions may be exercised in the light of the exigencies of the emergency situation without regard to or compliance with the time consuming procedures and formalities prescribed by law and pertaining thereto, and all acts of such Governing Body shall be as valid and binding as if performed within the City of Abilene (K.S.A. 48-1402).
- 1-1121 **VIOLATION AND PENALTIES.** The violation of any provision of this act or any rule, regulations, or plan adopted under this act or any lawful order or proclamation issued under authority of this Ordinance whether pursuant to a proclamation declaring a state of local disaster emergency, shall constitute an Unclassified Public Offense. The sentence shall be a definite term of confinement in jail which shall not exceed one hundred eighty days, or a fine to be at least Two Hundred Fifty Dollars and not to exceed One Thousand Dollars, or both

SECTION 2. This Ordinance shall become effective and in full force from and after its passage, adoption and publication in the official City newspaper.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this April 8, 2013.

CITY OF ABILENE, KANSAS

By: 
John Ray, Mayor

ATTEST:


Penny Soukup, CMC
City Clerk