



City Manager's Report
Item Number: 06-385
Submitted by G. Timothy Oksman, City Attorney
August 22, 2006

Issue: Proposed adoption of an Ordinance to amend Article XXI of Chapter 2 of the Code of the City of Portsmouth (1988), pertaining to the Emergency Services Agency.

Background:

- Experience with several recent natural disasters and the possibility of previously unprecedented terrorist activities have demonstrated the need for a comprehensive review and update of the City's laws for responding to local emergencies. This proposed revision of the City's Emergency Services Agency corrects certain outdated material and provides a clearer and more comprehensive set of operating procedures by which the City can protect its citizens during an emergency.

Discussion:

- The Emergency Services Agency is renamed the "Emergency Management Agency" for consistency with State Statute terminology.
- Procedures for declaring a local emergency are clarified.
- Emergency powers are clearly stated.
- A chain of command and an order of succession are established.
- There are enhanced standards for maintaining written records.
- Enhanced cooperation and coordination with independent agencies.
- **Financial Impact:** There is no immediate cost. The enhanced standards for maintaining written records should aid in securing future reimbursement from federal and state emergency agencies.

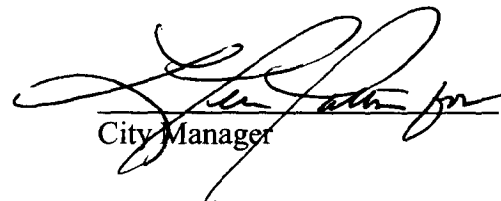
Staff Recommends:

Adoption of proposed Ordinance. *Vision Principle: Bold New Directions.*

Next Steps Following Council Action:

- Transmit to Municipal Code Commission for inclusion in City Code.
- Transmit to leadership of city's emergency management team.

Attachment: Ordinance


City Manager

AN ORDINANCE TO AMEND ARTICLE XXI OF CHAPTER 2 OF THE CODE OF THE CITY OF PORTSMOUTH (1988), PERTAINING TO THE EMERGENCY SERVICES AGENCY.

BE IT ORDAINED by the Council of the City of Portsmouth, Virginia:

1. That Sections 2-656, 2-657, and 2-658 of Article XXI of Chapter 2 of the Code of the City of Portsmouth, Virginia (1988), are hereby amended and reordained to read as follows:

CHAPTER 2. ADMINISTRATION

ARTICLE XXI. EMERGENCY SERVICES MANAGEMENT AGENCY.

Sec. 2-656. Created; director, coordinator.

In accordance with the Commonwealth Emergency Services and Disaster Law of ~~1973~~ 2000, Chapter 3.2 of Title 44 (§44-146.13 *et seq.*) of the Code of Virginia, and also Section 2.15 of the Portsmouth City Charter, the ~~Agency of Emergency Services~~ Management Agency is created ~~for and within the city~~. The City Manager ~~is hereby appointed as shall be~~ Director of Emergency Services Management (within this Article, the "Director"). A coordinator of emergency management shall be appointed by the City Manager, with the consent of City Council. The coordinator of emergency management (within this Article, the "coordinator"), shall report to the Director and shall have such powers as are set forth in this Article unless restricted by the Director, or as may otherwise be assigned or delegated by the Director.

Sec. 2-657. General powers and duties of Director.

(a) In collaboration with other public and private agencies within the ~~state~~ Commonwealth, the Director shall develop or cause to be developed mutual aid arrangements for reciprocal assistance in case of a disaster too great to be dealt with unassisted.

(b) The Director ~~of emergency services~~ shall prepare or cause to be prepared and kept current ~~a one or more~~ local or interjurisdictional emergency plans for the area, for dealing with disasters of different types and scopes. ~~This~~ The plan or plans shall include, but not be limited to, responsibilities of all local agencies, and they shall establish a chain of command according to the National Incident Management System. Plans shall be reviewed and updated annually, with documentation.

(c) The Director shall have such other powers and duties as provided for in the Commonwealth Emergency Services and Disaster Law of ~~1973~~ 2000 (Code of Virginia §44-146.13 *et seq.*), and any and all other applicable laws, plus all powers reasonably and necessarily implied from any express grant of authority.

Sec. 2-658. Declaration of emergencies.

~~A local emergency may be declared by the director of emergency services, with the consent of the city council. In the event the city council cannot convene due to the disaster or other exigent circumstances, the director or any member of the city council, in the absence of the director, may declare the existence of a local disaster subject to confirmation by the city council at its next regularly scheduled meeting or at a special meeting within fourteen (14) days of the declaration whichever occurs first. The city council, when in its judgment all emergency actions have been taken, shall take appropriate action to end the declared emergency.~~

(a) The Director may declare a local emergency.

(b) The Director or the Coordinator shall designate a Command and Control Center.

(c) Prior to the declaration of a local emergency, the Director shall attempt to obtain the prior formal or informal consent of City Council. However, if such consent is not reasonably practical under the circumstances, then the declaration shall nevertheless be legally valid and of full legal force and authority.

(d) The declaration shall be in writing. It shall remain in effect for fourteen days, or until confirmed, modified, extended, or cancelled by official recorded vote of City Council, whichever occurs first. If City Council extends the declaration, it shall state the length of the extension and the conditions and procedures under which it shall be ended, if practicable. If City Council is unable to meet within fourteen days, then the declaration may be renewed or extended by the Director for an indefinite period of time unless and until later modified or cancelled by the Director or City Council.

(e) To the greatest extent practicable, the Director or the Coordinator shall maintain a written record of all official actions taken hereunder, for later review by applicable state, federal, and local agencies.

2. That new sections 2-659 and 2-670 to Article XXI of Chapter 2 of the Code of the City of Portsmouth, Virginia (1988) are hereby adopted to read as follows:

Sec. 2-659. Emergency Powers.

When a local emergency has been declared by the Director pursuant to Section 2-658, or by Order of the Governor, pursuant to Code of Virginia §44-146.17:

(a) All departments and agencies of City government shall cooperate in full with all directives from the Director or the Coordinator. All independent agencies and officials within the City of Portsmouth, including without limitation the Portsmouth Public School Division, the Sheriff's Office, the Portsmouth Health Department, and the South Hampton Roads Regional Jail

shall also cooperate as fully as reasonably possible and act under the overall direction of the Director or the Coordinator.

(b) The Director or the Coordinator may:

(1) Implement any applicable emergency plans and mutual aid agreements.

(2) Suspend all normal procurement requirements in whole or in part.

(3) Regulate the distribution of food, fuel, water, emergency supplies, and other resource systems and provide emergency assistance to individuals and groups as needed.

(4) Establish shelters as he determines necessary. If any private property is declared to be a shelter, the owner thereof shall have the right to just compensation upon conclusion of the emergency, but he may not lawfully resist or interfere with the use of said property as a shelter during the emergency.

(5) Commandeer and appropriate automobiles, boats, other vehicles, or other personal property if needed to protect the public. The owner of any such personal property shall have the right to just compensation upon conclusion of the emergency, but he may not lawfully resist or interfere with the taking of his property to protect the public.

(6) Direct any City employees to work at such hours and to perform such duties as are reasonably necessary to help protect and serve the public, and it shall be their duty to perform as directed.

(7) Request the assistance of the Superintendent of Schools, the Sheriff, the Director of Public Health, the Director of the Regional Jail, or any other public official to make employees, officials, facilities, and equipment available to assist as needed with emergency efforts.

(8) Order an emergency curfew pursuant to section 2-831 et seq.

(9) Order the evacuation of areas of the City. Such evacuation orders may be enforced by any sworn officer. Failure to evacuate shall comprise the misdemeanor offense of resisting a police officer in the enforcement of his duty, in violation of section 24-246, and disorderly conduct, in violation of Code of Virginia §18.2-415.

(10) Provide support or cooperation for the Portsmouth Director of Public Health for any actions taken by that official.

(c) The Building Official or any official of the Portsmouth Department of Fire, Rescue, and Emergency Services may order the evacuation of buildings pursuant to section 13-62. Any sworn officer may order evacuation because of an explosive device. Failure to evacuate

shall comprise obstruction or hindrance of a city employee in the discharge of his duty, in violation of section 24-246, and disorderly conduct, in violation of Code of Virginia §18.2-415 and shall be punishable as a Class 1 misdemeanor.

(d) The Director or the Coordinator shall provide all reasonable assistance to the State Health Commissioner in the enforcement of any order of quarantine or order of isolation issued pursuant to Code of Virginia, Title 32.1, Article 3.02 ("Quarantine and Isolation of Persons with Communicable Diseases of Public Health Threat").

Section 2-660. Emergency succession.

If a local emergency has been declared, and the Director is for any reason incapacitated, disabled, or for any other reason unable to perform his duties, his powers shall pass to a successor official, in the following order:

- i. The Coordinator, if one has been appointed.
- ii. The Chief of the Department of Fire, Rescue, and Emergency Services.
- iii. The Deputy Emergency Management Coordinator.
- iv. The Chief of Police.
- v. The Deputy City Manager for Public Safety.
- vi. The Deputy City Manager for Operations.
- vii. The City Engineer.

Section 2-661. Legal determinations.

Any question involving the interpretation of this Article shall be decided by the City Attorney or, in his absence, a deputy city attorney, whose decision shall be final and binding.

3. That this ordinance shall take effect on the date of its adoption.

ADOPTED by the Council of the City of Portsmouth, Virginia, at a meeting held on August 22, 2006.

Teste:

City Clerk