

# 2023

# SHORT ANSWERS TO COMMON QUESTIONS

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# TEXAS ASSOCIATION *of* COUNTIES

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# WEATHERING THE STORM: DISASTER PREPAREDNESS AND RESPONSE

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The  symbol indicates sections that have been updated since the previous publication.

## INTRODUCTION

Texas counties face many unique challenges in responding to emergencies due to the diverse climate, geography and availability of local resources throughout the State. In the aftermath of various disasters, including Hurricane Harvey, TAC received numerous questions regarding the operation of local government during and after emergencies that are applicable to a variety of disaster scenarios. Below are answers to a few of those questions.

## OPERATION OF COMMISSIONERS COURT

### **1. Where may the commissioners court meet if the posted location is unavailable due to an emergency?**

If the posted location of the commissioners court meeting is unavailable due to emergency conditions, the county may select an alternative meeting place within the county. The alternative meeting place may be an auxiliary courthouse, annex, or other county building that houses other courts or county administration offices within the city serving the county seat.<sup>1</sup>

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<sup>1</sup> Tex. Local Gov't Code §81.005

**2. May the commissioners court meet by phone if members of the court are unable to attend a commissioners court meeting due to an emergency?**

The commissioners court may hold an open or closed meeting by telephone if an emergency or public necessity exists and the convening of a quorum of the court at one location is difficult or impossible. The emergency telephone meeting is subject to the meeting notice requirements applicable to all open meetings held pursuant to the Open Meetings Act.<sup>2</sup>

**3. If a quorum of the commissioners court can physically meet, but one or both of the other members cannot attend due to an emergency, can the members of the court that cannot physically attend participate over the telephone?**

No. Teleconference participation is authorized only when a quorum is not located in one place.<sup>3</sup>

**4. If a phone meeting is not possible and some of the commissioners are available to meet in person, is a quorum of the commissioners court required to conduct county business?**

No. A quorum is not required for the commissioners court to take action if the county's jurisdiction is wholly or partly located in the area of a disaster declared by the president of the United States or the governor and a majority of the members of the court are unable to be present as a result of the disaster.<sup>4</sup>

**5. If the commissioners court is prevented from convening for a properly posted meeting due to a catastrophe, may the court convene the meeting without having to wait an additional 72 hours?**

Yes. A commissioners court that is prevented from convening an open meeting that was otherwise properly posted because of a catastrophe may convene the meeting in a convenient location within 72 hours of the originally scheduled date by posting an emergency meeting notice at least one hour prior to the emergency meeting. The posting must clearly identify the emergency. If the commissioners court is unable to

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<sup>2</sup> Tex. Gov't Code §551.125

<sup>3</sup> See Tex. Gov't Code §551.125; Tex. Att'y Gen. Op. No. JC-0352 (2001)

<sup>4</sup> Tex. Gov't Code §418.1102

convene the open meeting within 72 hours, the commissioners court must repost and wait 72 hours under the general posting rule.<sup>5</sup>

**6. In an emergency, does the commissioners court have to wait 72 hours from the date of posting to conduct a meeting?**

No. In an emergency or when there is an urgent public necessity, the notice of a meeting to deliberate or take action on the emergency or urgent public necessity, or the supplemental notice to add the deliberation or taking of action on the emergency or urgent public necessity as an item to the agenda for a meeting for which notice has been posted, is sufficient if it is posted at least one hour before the meeting is convened. A commissioners court may only deliberate or take action on a matter directly related to the emergency or urgent public necessity identified in the notice, or on an agenda item listed on a notice before the supplemental notice was posted. The notice must clearly identify the emergency or urgent public necessity.

An emergency or urgent public necessity is defined as a reasonably unforeseeable situation, including: fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm; power failure, transportation failure, or interruption of communication facilities; epidemic; or riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence; or an imminent threat to public health and safety, including a threat described by one of the previously mentioned situations, if imminent.<sup>6</sup>

**7. If travel to a meeting location is dangerous or difficult as a result of a disaster or emergency, is one hour posting still required?**

It depends. If the governor has issued an executive order or proclamation declaring a state of disaster or state of emergency for a county and transportation to the meeting location is difficult or dangerous as a result of the disaster or emergency, a commissioners court may hold an open or closed meeting, including a telephone conference call, solely to deliberate about disaster or emergency conditions and related public safety matters that require an immediate response; no posting of the meeting is required. However, the commissioners court shall endeavor, to the extent practicable, to provide reasonable public notice of a meeting and if the meeting is an open meeting allow members of the public and press to observe the meeting. The commissioners court may not vote or take final action on a matter during a meeting

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<sup>5</sup> Tex. Gov't Code §§551.0411(b), 551.045

<sup>6</sup> Tex. Gov't Code §551.045

under this section, and a recording or minutes of the meeting shall be prepared and made available to the public as soon as practicable. This provision expires Sept. 1, 2027.<sup>7</sup>

## PUBLIC INFORMATION

### **1. Is there any authority for temporarily suspending the requirements of the Public Information Act during a disaster?**

Yes. The commissioners court of a county currently impacted by a catastrophe may elect to suspend the applicability of the requirements of the Public Information Act to the commissioners court for an initial seven-day suspension period which may be extended one time. A commissioners court that initiates a suspension period may not initiate another suspension period related to the same catastrophe, except for a single seven-day extension. The combined suspension period may not exceed a total of 14 consecutive calendar days with respect to any single catastrophe.<sup>8</sup>

A catastrophe is defined to mean a condition or occurrence that directly interferes with the ability of a governmental body to comply with the requirements of the Public Information Act, including: fire, flood, earthquake, hurricane, tornado, wind, rain, or snow storm; power failure, transportation failure, or interruption of communication facilities; epidemic; or riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence. A catastrophe does not mean a period when staff is required to work remotely and can access information responsive to an application for information electronically, but the physical office of the governmental body is closed.<sup>9</sup>

A commissioners court that elects to suspend the requirements must submit notice to the office of the attorney general, on the form prescribed by the attorney general, that the court is currently impacted by a catastrophe and has elected to suspend the applicability of the requirements during the initial suspension period or an extension of that suspension period.<sup>10</sup>

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<sup>7</sup> Tex. Gov't Code §551.091

<sup>8</sup> Tex. Gov't Code §552.233

<sup>9</sup> Tex. Gov't Code §552.233

<sup>10</sup> Tex. Gov't Code §552.233

**2. When do the suspension periods begin and end?**

The initial suspension period may not exceed seven consecutive days and must occur during the period that begins not earlier than the second day before the date the commissioners court submits the required notice to the office of the attorney general about the suspension and ends not later than the seventh day after the date the court submits that notice. The initial suspension period may be extended one time for not more than seven consecutive days that begin on the day following the day the initial suspension period ends.<sup>11</sup>

**3. Must a commissioners court that suspends the requirements of the Public Information Act during a disaster notify the public?**

Yes. A commissioners court that suspends the applicability of the requirements of the Public Information Act must provide notice to the public of the suspension in a place readily accessible to the public and in each other location the court is required to post a notice under Subchapter C of the Open Meetings Act.<sup>12</sup>

**BUDGET AND AD VALOREM TAXES**

**1. What if a disaster prevents the commissioners court from timely meeting to set the ad valorem tax rate and adopt the budget?**

The statutory deadlines for adopting the ad valorem tax and budget may be suspended if the county is wholly or partly located in the area of a disaster declared by the president of the United States or the governor, and the county judge proclaims that the county is unable to comply with the statutory requirements.<sup>13</sup>

**2. Is there any authority for homeowner property tax relief after a disaster?**

Yes. Certain persons are entitled to a temporary property tax exemption of a portion of the appraised value of certain qualified property located in an area declared a disaster by the governor if the property is at least 15 percent damaged as determined by the chief appraiser. "Damage" means physical damage to the property, and not purely economic loss in value.<sup>14</sup> The amount of the exemption on qualified property

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<sup>11</sup> Tex. Gov't Code §552.233

<sup>12</sup> Tex. Gov't Code §552.233

<sup>13</sup> Tex. Gov't Code §418.1075

<sup>14</sup> Tex. Tax Code §11.35(a)

is tied to a damage assessment rating assigned by the chief appraiser. An authorized exemption expires as to an item of qualified property on January 1 of the first tax year in which the property is reappraised under §25.18 of the Tax Code.<sup>15</sup>

Also, certain homeowners and business entities with property located in a disaster area or emergency area that has been damaged as a direct result of the disaster or emergency may pay county property taxes in installments. Payments may be made in four equal installments without penalty or interest if the first installment is paid before the delinquency date and is accompanied by notice to the county that the person will pay the remaining taxes in three equal installments. If the delinquency date is February 1, the second installment must be paid before April 1, the third installment must be paid before June 1, and the fourth installment must be paid before August 1. If the delinquency date is a date other than February 1, the second installment is due before the first day of the second month after the delinquency date, the third installment is due before the first day of the fourth month after the delinquency date, and the fourth installment must be paid before the first day of the sixth month after the delinquency date. This applies to property taxes imposed before the first anniversary of the disaster or emergency.<sup>16</sup>

Additionally, a commissioners court may authorize the payment of county property taxes in four equal installments with respect to property owned or leased by certain business entities when the property is located in a disaster or emergency area and has not been damaged as a direct result of the disaster or emergency.<sup>17</sup>

**3. Is there any authority for the county to exceed the 3.5% tax cap after a declared disaster or emergency?**

Yes. If any part of the county is located in an area declared a disaster area during the current tax year by the governor or president of the United States and at least one person is granted disaster tax relief under §11.35 of the Tax Code (see question 2 above), the county is authorized to calculate the voter-approval tax rate as a special taxing unit, i.e., up to 8%. If the county calculates the tax rate under the disaster exemption as a special taxing unit, it must continue to calculate the rate until the earlier of: (1) the first tax year in which the total taxable value of the property taxable by the county as shown on the appraisal roll submitted by the assessor exceeds the total taxable value of property taxable by the county on January 1<sup>st</sup> of the year in which

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<sup>15</sup> Tex. Tax Code §11.35. *See also* Tex. Const., Art. VIII, §2(e)

<sup>16</sup> Tex. Tax Code §31.032

<sup>17</sup> Tex. Tax Code §31.033

the disaster occurred; or (2) the third year after the tax year in which the disaster occurred.<sup>18</sup>

Additionally, the first year following the last year of calculating the tax rate using the disaster exemption, the county must reduce its rate by the “emergency revenue rate” under a statutorily defined equation.<sup>19</sup>

When increased expenditure of money by a county is necessary to respond to a tornado, hurricane, flood, wildfire or other calamity, but not including a drought, epidemic or pandemic, that impacted the county and the governor has declared any part of the county as a disaster area, a voter approval election is not required to approve the tax rate adopted by the commissioners court under Tax Code §26.042(a) for the year following the year in which the disaster occurs.<sup>20</sup>

## OPERATION OF LOCAL COURTS

### **1. If county, district and justice of the peace courts are inaccessible due to a disaster, is the county authorized to provide alternative locations to resume the operation of local courts?**

Yes. The commissioners court may purchase, construct, or provide by other means, including a lease or lease purchase, a building or building space for the housing of county or district offices, county or district courts and justice of the peace courts. If the building or rooms are for housing a county or district court, they may be located anywhere in the county at the discretion of the commissioners court.<sup>21</sup> *See also* Government Code §§24.033, 25.0019, 25.0032, 26.009, and 27.0515 (authorizing district courts, statutory county courts, statutory probate courts, constitutional county courts and justice courts, respectively, to operate outside the county seat or precinct if a disaster precludes functioning at the county seat or precinct).

### **2. If there are no available alternative facilities in the county for housing the local courts, may the courts be housed in adjoining counties?**

Certain presiding judges may authorize the relocation of local courts to other counties in the aftermath of disasters with the approval of the judge of the affected court.<sup>22</sup>

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<sup>18</sup> Tex. Tax Code §26.042(a)

<sup>19</sup> Tex. Tax Code §26.042(b) and (c)

<sup>20</sup> Tex. Tax Code §26.042(d)

<sup>21</sup> Tex. Local Gov’t Code §292.001

<sup>22</sup> Tex. Gov’t Code §§24.033, 25.0019, 25.0032, 26.009, and 27.0515

**3. How do the local courts address filing and other procedural deadlines during and after a disaster?**

The Texas Supreme Court and Texas Court of Criminal Appeals have the authority to suspend all procedural deadlines during and after a disaster.<sup>23</sup>

## **LOCAL EMERGENCY MANAGEMENT**

**1. Who is the emergency management director for the county?**

The county judge, as presiding officer of the commissioners court, is the emergency management director for the county.<sup>24</sup>

**2. Who has authority to designate a person to serve as an emergency management coordinator?**

The county judge, as the emergency management director for the county, has the authority to designate a person to serve as the emergency management coordinator. The emergency management coordinator serves as an assistant to the county judge for emergency management purposes.<sup>25</sup>

**3. Is the county required to maintain an emergency management program?**

Each county is required to maintain an emergency management program or participate in a local or interjurisdictional emergency management program. The emergency management program must provide for catastrophic debris management.<sup>26</sup>

**4. Is the county required to have an emergency management plan?**

Yes. Each county must prepare and keep current an emergency management plan providing for disaster mitigation, preparedness, response, and recovery.<sup>27</sup>

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<sup>23</sup> Tex. Gov't Code §22.0035

<sup>24</sup> Tex. Gov't Code §418.1015

<sup>25</sup> Tex. Gov't Code §418.1015

<sup>26</sup> Tex. Gov't Code §418.102

<sup>27</sup> Tex. Gov't Code §418.106

**5. Is the county required to hold public hearings to discuss the county emergency management plan?**

Yes, with one exception. A county must conduct at least one public meeting each calendar year to exchange information about the emergency management plan unless the emergency management plan contains sensitive information relating to critical infrastructure or facilities and the safety or security of the infrastructure or facilities could be jeopardized by the disclosure of the emergency management plan.<sup>28</sup>

**6. What are the requirements of an emergency management plan?**

An emergency management plan must provide for wage, price, and rent controls and other economic stabilization methods in the event of a disaster; and curfews, blockades, and limitations on utility use in an area affected by a disaster, rules governing entrance to and exit from the affected area, and other security measures.<sup>29</sup>

Additionally, each county shall adopt procedures for conducting telephonic, text and in-person wellness checks for “medically fragile individuals” included in an emergency assistance registry in compliance with minimum standards promulgated by the Texas Division of Emergency Management (TDEM) as soon as practicable *but not later than 24 hours* after the event requiring a wellness check occurs.<sup>30</sup>

At the time of publication, TDEM has not yet issued minimum standards. TAC staff will monitor the Texas Register for notice of proposed rulemaking and adoption of final rules.

A “medically fragile individual” means any individual who, during a time of disaster or emergency, would be particularly vulnerable because of a medical condition, including individuals: (A) with Alzheimer’s disease and other related conditions; (B) receiving dialysis services; (C) who are diagnosed with a debilitating chronic disease; (D) who are dependent on oxygen treatment; and (E) who have medical conditions that require 24-hour supervision from a skilled nurse.

TDEM shall adopt rules regarding which events require a wellness check, including: (1) an extended power, water or gas outage; (2) a state of disaster declared under

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<sup>28</sup> Tex. Gov’t Code §418.106

<sup>29</sup> Tex. Gov’t Code §418.106

<sup>30</sup> Subchapter I, Chapter 418, Tex. Gov’t Code, as amended by HB 4595, 88<sup>th</sup> (R.S.) Leg., effective September 1, 2023

Chapter 418 of the Government Code; and (3) any other event considered necessary by the Texas Health & Human Services Commission, the Texas Department of State Health Services, or TDEM. If more than one disaster is declared for the same event, or the same event qualifies as an event requiring a wellness check for multiple reasons, only one wellness check is required.

Access to the emergency assistance registry established and maintained by TDEM shall be provided to first responders, local governments and local health departments.<sup>31</sup> “First responder” means any federal, state or local personnel who may respond to a disaster, including: public health and public safety personnel; commissioned law enforcement personnel; fire protection personnel, including volunteer firefighters; emergency medical services personnel, including hospital emergency facility staff; a member of the National Guard; or a member of the Texas State Guard.

**7. Are there limitations on what businesses or facilities may be closed or suspended pursuant to a disaster declaration?**

Yes. No governmental entity, including the state, a commissioners court, a municipality, or the legislature may prohibit a religious organization from engaging in religious or other related activities or continuing to operate in the discharge of the organization’s foundational faith-based mission and purpose or order a religious organization to close or otherwise alter the religious organization’s purposes or activities.<sup>32</sup> A “religious organization” is defined under §110.011(b) of the Civil Practice and Remedies Code and encompasses religious organizations, religious schools and religious charities that do not engage in activities that would disqualify it from federal charitable tax exemption. There is a private right of action to assert a violation of Government Code §2401.002 as a claim or defense in a judicial or administrative proceeding to obtain injunctive and declaratory relief in addition to court costs and reasonable attorney’s fees.<sup>33</sup> Additionally, the attorney general may independently seek injunctive or declaratory relief to enforce Government Code §2401.002 or intervene in a private suit or action, but the attorney general may not recover expenses incurred in bringing, instituting, or intervening in an action under Chapter 2401.<sup>34</sup>

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<sup>31</sup> Tex. Gov’t Code §418.303

<sup>32</sup> Tex. Gov’t Code §2401.002

<sup>33</sup> Tex. Gov’t Code §2401.003

<sup>34</sup> Tex. Gov’t Code §2401.004

No person is authorized to prohibit or restrict the business or operations of a firearms or ammunition manufacturer, distributor, wholesaler, supplier, or retailer or a sport shooting range in connection with a disaster.<sup>35</sup> The governor may not suspend or limit the sale, dispensing or transportation of firearms or explosives and combustibles that are components of firearm ammunition during a declared state of disaster under Chapter 418, Government Code, nor issue a directive during a declared state of emergency to control the storage, use and transportation of explosives or flammable materials that are components of firearm ammunition under Chapter 433, Government Code.<sup>36</sup>

Additionally, the presiding officer of the governing body of a political subdivision (i.e., county judges and mayors) may not issue an order during a declared state of disaster or local disaster to address a pandemic disaster that would limit or prohibit: (1) housing and commercial construction activities, including related activities involving the sale, transportation and installation of manufactured houses; (2) the provision of governmental services for title searches, notary services and recording services in support of mortgages and real estate services and transactions; (3) residential and commercial real estate services, including settlement services; or (4) essential maintenance, manufacturing, design, operation, inspection, security and construction services for essential products, services and supply chain relief efforts.<sup>37</sup>

Also, a county may not issue a vaccine passport, vaccine pass or other standardized documentation to certify an individual's COVID-19 vaccination status to a third party for a purpose other than health care or otherwise publish or share any individual's immunization record or similar health information for a purpose other than health care.<sup>38</sup>

## DECLARATION OF DISASTER

### 1. How does the county declare a local disaster?

The county judge may declare a local state of disaster. A declaration of local disaster may not be continued or renewed for a period of more than seven days without the consent of the commissioners court. A declaration of local disaster activates the appropriate recovery and rehabilitation aspects of all applicable local and

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<sup>35</sup> Tex. Gov't Code §418.003(7)

<sup>36</sup> See Tex. Gov't Code §§418.019, 433.002(b)(7)

<sup>37</sup> Tex. Gov't Code §418.1085

<sup>38</sup> Tex. Health and Safety Code §161.0085

interjurisdictional emergency management plans and authorizes the furnishing of aid and assistance under the declaration.<sup>39</sup>

**2. Who is authorized to order an evacuation of the county prior to or after a disaster?**

The county judge may order the evacuation of all or part of the population from a stricken or threatened area under the jurisdiction and authority of the county judge if the county judge considers the evacuation necessary for the preservation of life or other disaster mitigation, response, or recovery.<sup>40</sup>

**3. What information is required to be disseminated during a local state of disaster?**

During a declared state of disaster or local state of disaster, the Department of State Health Services shall ensure that educational materials regarding immunizations are available to local health authorities for distribution to public and private schools, childcare facilities, community centers providing youth services and programs or services to vulnerable populations, local healthcare providers and veterans homes. The educational materials must include (1) the most recent immunization schedules by age as recommended by the Centers for Disease Control and Prevention (CDC); and (2) locations, if any, of local healthcare providers that offer immunizations.<sup>41</sup>

**4. Are there other mechanisms for declaration of a disaster?**

Yes. The governor by executive order or proclamation may declare a state of disaster if the governor finds a disaster has occurred or that the occurrence or threat of disaster is imminent for all or part of the state. An executive order or proclamation shall be promptly filed with the county clerk in each county to which the executive order or proclamation applies unless the circumstances attendant on the disaster prevent filing.<sup>42</sup>

The commissioner of state health services may declare a statewide or regional public health disaster or order a statewide or regional health emergency if the commissioner determines an occurrence or threat to public health is imminent, but only if the governor declares a disaster under Chapter 418 of the Government Code for the occurrence or threat. A regional declaration or order of the commissioner shall be filed

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<sup>39</sup> Tex. Gov't Code §418.108

<sup>40</sup> Tex. Gov't Code §418.108

<sup>41</sup> Tex. Gov't Code §418.1861

<sup>42</sup> Tex. Gov't Code §418.014

with the county clerk in each county which it applies unless the circumstances attendant on the disaster or emergency prevent or impede the filing.<sup>43</sup>

## MUTUAL AID ASSISTANCE

### **1. May a county provide assistance to another local government during a public calamity?**

Yes. A county may provide mutual aid assistance on request from another local government or organized volunteer group.<sup>44</sup>

### **2. Who has the authority to authorize mutual aid assistance?**

Mutual aid assistance may be provided with the approval and consent of the county judge, while acting in accordance with the policies and procedures established by the commissioners court.<sup>45</sup>

## PURCHASING AUTHORITY

### **1. Does the commissioners court have to solicit bids for necessary equipment or services to respond to an emergency if the cost exceeds \$50,000?**

No. The commissioners court is authorized to exempt from competitive purchase items that must be promptly purchased in a public calamity in order to relieve the necessity of citizens or to preserve the property of the county.<sup>46</sup>

### **2. If the county uses the emergency exemption to competitive bidding set forth in the County Purchasing Act to purchase goods and services during a public calamity, is the county eligible for FEMA reimbursement?**

Possibly. FEMA may provide reimbursement funding for equipment and services procured by a county during a public calamity. However, FEMA funding eligibility guidelines are often revised and may contain competitive bidding requirements that are more stringent than Local Government Code emergency exemptions.

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<sup>43</sup> Tex. Health & Safety Code §81.0813

<sup>44</sup> Tex. Gov't Code §418.109

<sup>45</sup> Tex. Gov't Code §418.109

<sup>46</sup> Tex. Local Gov't Code §262.024(a)(1)

## CLEARANCE OF DEBRIS

**1. Does the county have authority to access private property to clear debris with county equipment during or after a local disaster?**

Yes. The county judge may use county equipment on private land if deemed necessary to meet or prevent a locally declared disaster emergency as long as the action is consistent with the local disaster plan so activated.<sup>47</sup>

**2. What authority does the State have to access private property to clear debris?**

In a disaster declared by the governor or president, the governor, acting through members of the Emergency Management Council, may clear or remove debris or wreckage from private land or water if it threatens public health or safety or threatens public or private property.

If the governor provides for clearance of debris or wreckage from private property, state employees or other individuals acting by authority of the governor may enter private land or water to perform the necessary removal or clearance operation.<sup>48</sup>

**3. In the aftermath of a disaster, does the county have authority to demolish certain buildings that are deemed to be hazardous?**

Possibly yes. Pursuant to its nuisance abatement authority, a county may seek to demolish a building that is being maintained in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard.<sup>49</sup>

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<sup>47</sup> Tex. Att'y Gen. Op. No. MW-0140 (1980)

<sup>48</sup> Tex. Gov't Code §418.023

<sup>49</sup> Tex. Health & Safety Code, Chapter 343