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7/7/2010	0	COMMON COUNCIL	ASSIGNED TO		
7/9/2010	0	PUBLIC SAFETY COMMITTEE	HEARING NOTICES SENT		
7/9/2010	0	PUBLIC SAFETY COMMITTEE	HEARING NOTICES SENT		
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8/12/2010	0	CITY CLERK	PUBLISHED		

100324
ORIGINAL

THE CHAIR

A charter ordinance relating to emergency management and homeland security provisions.

6-01-1 am
6-01-3 am
6-03 rc
6-05-1 am
6-05-2-a am
6-07-1 am
6-07-2 am
6-07-4 am
6-09-1 am
6-09-2 am
6-09-3-b am
6-09-3-d am
6-09-4-a am
6-09-4-b am
6-11-0 am
6-11-1 am
6-11-3 am

6-11-4 am
6-11-7 am
6-13 ra
6-13-2 cr
6-15-1-b am
6-15-1-c am
6-15-1-g am
6-19-1 am
6-21-2 am
6-23-1 am
6-23-2 am
6-27 am
6-29 am
6-33-1 am
6-37 am
6-41 am
6-43 am

This charter ordinance updates the city's charter ordinance provisions relating to emergency management and homeland security, consistent with recent changes in state law, as provided in ch. 323, Wis. Stats. It specifically:

1. Creates a definition of the term disaster consistent with that provided in state law - "a severe or prolonged natural or human-caused, occurrence that threatens or negatively impacts life, health, property, infrastructure, the environment, the security, or critical systems including computers, telecommunications or agricultural systems."
2. Modifies certain definitions and terms.
3. Specifies that during a state of emergency, while the public business is being conducted at a temporary location, the mayor, common council and other city officers shall possess and exercise all executive, legislative, administrative and other judicial powers conferred upon them under state law.
4. Deletes obsolete provisions.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 6-01-1 and 3 of the charter is amended to read:

6-01. Purpose. 1. PURPOSE. By reason of the existing and increasing possibility of ~~[[the occurrence of disasters of unprecedented size and destructiveness resulting from enemy action, sabotage or other hostile action, or from fire, flood, earthquake or other natural causes]]~~ >> an emergency existing within the city whenever conditions arise by reason of a riot or civil commotion, a disaster, or an imminent threat of a disaster that impairs transportation, food or fuel supplies, medical care, fire, health or police protection, or other critical systems of the city << , and ~~[[in order]]~~ to insure that preparations of this city will be adequate to deal with such disasters; to provide for the common defense; and to protect the lives and property and to preserve the peace, health, safety[,] and general welfare, it is declared to be necessary:

a. To create the office of ~~[[city]]~~ emergency management ~~[[services]]~~ and homeland security.

- b. To confer upon the mayor, the common council and upon other officers of the city certain extraordinary powers in a period of ~~[[extreme]]~~ emergency.
 - c. To provide for cooperation or mutual aid with other political subdivisions, private agencies and individuals relative to emergency management activities, in a manner that is consistent with the ~~[[national]]~~ incident ~~[[management]]~~ >>command<< system and the city's emergency response plan.
- 3. EXECUTIVE POWERS.** It is further declared to be the purpose of this chapter and the policy of the city to permit the temporary suspension by ordinance, resolution or executive proclamation of the requirements of any city ordinance or resolution during a period of ~~[[extreme]]~~ emergency which the common council or mayor deems necessary to allow immediate response to meet the exigencies and needs of the extraordinary conditions existing, and to grant to the mayor during such period broad executive powers to discharge the responsibility and duties placed on him by statute and this chapter.

Part 2. Section 6-03 of the charter is repealed and recreated to read:

6-03. Definitions. In this chapter:

- 1. BIOLOGICAL AGENT** means any of the following:
 - a. A select agent that is a virus, bacterium, rickettsia, fungus, or toxin that is specified under 42 CFR 72, Appendix A.
 - b. A genetically modified microorganism or genetic element from an organism under par. a that is shown to produce or encode for a factor associated with a disease.
 - c. A genetically modified microorganism or genetic element that contains nucleic acid sequences coding for a toxin under par. a or its toxic subunit.
 - d. An agent specified by the state department of health services by rule.
- 2. BIOTERRORISM** means the intentional use of any biological, chemical or radiological agent to cause death, disease or biological malfunction in a human, animal, plant or other living organism in order to influence the policy of a governmental unit or to intimidate or coerce the civilian population.
- 3. CHEMICAL AGENT** means a substance that has chemical properties that produce lethal or serious effects in humans, plants, animals, or other living organisms.
- 4. DIRECTOR** means the head of the office of emergency management and homeland security as provided in ch. 323, Wis. Stats.
- 5. DISASTER** means a severe or prolonged natural or human-caused occurrence that threatens or negatively impacts life, health, property, infrastructure, the environment, the security of the city, or critical systems, including computer, telecommunications, or agricultural systems.
- 6. EMERGENCY MANAGEMENT AND HOMELAND SECURITY** means all measures undertaken by or on behalf of the city to do the following:
 - a. To prepare for and minimize the effect of a disaster or the imminent threat of a disaster.
 - b. To make repairs to or to restore infrastructure or critical systems that are destroyed or damaged by a disaster.
- 7. EMERGENCY RESPONSE PLAN** means the plan that identifies the various city department functions to be performed during a disaster.
- 8. EMERGENCY OPERATIONS CENTER** means the facility from which command and control takes place of a large disaster, catastrophic event or incident requiring extraordinary city resources.
- 9. GOVERNOR** means the governor of the state of Wisconsin or anyone legally administering the office of governor.
- 10. INCIDENT COMMAND SYSTEM** means a functional management system established to control, direct and manage the roles, responsibilities and operations of all the agencies in a multi-jurisdictional or multi-agency emergency response.
- 11. PUBLIC HEALTH EMERGENCY** means the occurrence or imminent threat of an illness or health condition that meets the following criteria:

- a. Is believed to be caused by bioterrorism or a novel or previously controlled or eradicated biological agent.
 - b. Poses a high probability of either of the following:
 - b-1. A large number of deaths or serious or long-term disabilities among humans.
 - b-2. A high probability of widespread exposure to a biological, chemical or radiological agent that creates a significant risk of substantial future harm to a large number of people.
- 12. RADIOLOGICAL AGENT** means radiation or radioactive material at a level that is dangerous to humans, animals or other living organisms.

Part 3. Section 6-05-1 and 2-a of the charter is amended to read:

6-05. Organization. 1. CREATED. To carry out the policies and purposes of this chapter, there is created the office of [[city]] emergency management [[services]] and homeland security under the executive direction and control of the mayor.

2. DIRECTOR.

- a. Have administrative control of the >>office of<< emergency management and homeland security [[services]].

Part 4. Section 6-07-1, 2 and 4 of the charter is amended to read:

6-07. Emergency Powers. 1. Pursuant to s. [[166.23]], >>323.14(4)<< Wis. Stats., [[notwithstanding any other provision to the contrary,]] the common council is empowered to [[declare]] >>order<<, by ordinance or resolution, an [[~~extreme~~]] emergency existing within the city. The period of emergency shall be limited by ordinance or resolution to [[~~the time during which the emergency conditions exist or are likely to exist~~]] >>an emergency or the imminent threat of an emergency<<.

2. The emergency power of the common council conferred under sub. 1 includes the general authority to order, by ordinance or resolution, whatever is necessary and expedient for the health, safety, >>protection and<< welfare [[~~and good order~~]] of >>persons and property within<< the city in the emergency and includes [[~~without limitation because of enumeration~~]] the power to bar, restrict or remove unnecessary traffic, both vehicular and pedestrian, from the public way, notwithstanding any provision of chs. 341 to 349, Wis. Stats., as amended, or any other provisions of law.

4. The office of emergency management and homeland security[[~~services~~]] shall not be empowered to interfere with the orderly process of a labor dispute.

Part 5. Section 6-09-1, 2, 3-b and d, and 4-a and b of the charter is amended to read:

6-09. Powers of the Mayor. 1. EXECUTIVE DIRECTION. The mayor shall have executive direction and control of the >>office of<< emergency management and homeland security [[services]] and shall be responsible for the carrying out of provisions of this chapter and ch. [[166]] >>323<<; Wis. Stats., as amended. During a period of [[~~extreme~~]] emergency >>1<< the mayor shall assume command and direct control over all emergency management and homeland security operations and functions within the city.

2. COOPERATION WITH OTHER AGENCIES. The mayor is authorized to cooperate with other political subdivisions, other states, the federal government, and with [[~~private agencies~~]] >>federally recognized American Indian tribes and bands<< in all emergency management and homeland security matters pertaining to the city, state and nation. The mayor shall comply, so far as is practicable and consistent with the emergency management and homeland security requirements of the city, with program guides of the emergency management and homeland security agencies of the federal government and the state of Wisconsin. He or she shall prepare or cause to be prepared

reports of emergency management and homeland security preparations, programs or progress which are required for eligibility or participation in financial or other assistance made available by or through the federal government or the state of Wisconsin.

3. DELEGATION OF AUTHORITY.

b. Enter into shelter licenses or other similar arrangements with other political subdivisions, or governmental or private agencies, or individuals. However, no expenditures of public funds or any obligation of such funds shall be made without prior approval of the common council, except during periods of ~~[[extreme]]~~ emergency.

d. Declare by proclamation a state of ~~[[extreme]]~~ emergency and the termination thereof unless the common council by resolution shall sooner declare the termination of the state of emergency. When ~~[[such]]~~ >>the<< proclamation is issued >>, << the governor shall be immediately notified of its contents.

4. SAFETY PROTECTION. a. The mayor shall have the power during a period of ~~[[extreme]]~~ emergency to take such action as he or she deems necessary to preserve or protect the lives, health and safety of persons and property and to provide emergency assistance to any victims during such period. The mayor shall not be required to comply with the procedures and formalities prescribed by any other ordinance or resolution of the city pertaining to the performance of public work, the issuance of temporary permits, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, or the requisition or purchase of supplies and materials. Such power or authority shall, however, not exceed the amount appropriated by the common council, and set aside and remaining in an emergency management and homeland security fund. In no event shall the liability of the city exceed the fair and reasonable value of the services, supplies, equipment or materials furnished by virtue of the exercise of such power or authority.

b. The mayor shall have the power after a proclamation of ~~[[extreme]]~~ emergency, and until the state of such emergency is terminated, to commandeer materials, services and property in the public interest and safety.

Part 6. Section 6-11-0, 1, 3, 4 and 7 of the charter is amended to read:

6-11. Director of Emergency Management and Homeland Security ~~[[Services]]~~. The director shall serve as the manager of the emergency operations center and shall facilitate the coordination among city departments and other levels of government when the center is activated.

1. The director shall ~~[[coordinate]]~~ >>direct<< the planning and training of all city departments relating to emergency management and homeland security. The director shall maintain liaison with and cooperate with emergency management and homeland security agencies and organizations of other political subdivisions within the state of Wisconsin, other states and the federal government, and shall have such additional administrative authority, duties and responsibilities as are delegated to him or her by the mayor or as may be granted by ordinance or resolution of the common council. The director shall not exercise command authority over any officer or employee in charge of any other city department.

3. The director shall prepare or cause to be prepared and maintain a comprehensive and current emergency response plan for emergency management, homeland security, and continuity of governmental operations plans for the city and its inhabitants. The plan shall be coordinated with the national incident ~~[[management]]~~ >>command<< system and national response plan, and the plans of the state of Wisconsin and the county of Milwaukee.

4. The director shall, in accordance with the city's emergency response plan, procure, or cause to be procured, supplies and equipment and take and cause to be taken all other preparations for any future partial or full mobilization of emergency management and homeland security organizations in advance of ~~[[actual war, attack or]]~~ >>a<<disaster, >>or for the imminent threat of a disaster<< to

assure the availability of adequately trained and equipped forces of necessary emergency management and homeland security personnel in a period of ~~[[extreme]]~~ emergency.

7. The director shall be the central point for the news media, city employees, public officials and the public regarding the operations of city government during a period of ~~[[extreme]]~~ emergency. The director shall also establish and maintain a public information program, consistent with the ~~[[national]]~~ incident ~~[[management]]~~ >>command<< system, to inform the public of protective measures planned or to be taken by the government during a period of ~~[[extreme]]~~ emergency. The director shall inform the public to the maximum extent possible of the necessity of self-help and protection and keep the public informed of the availability of self-help and protection materials and publications.

Part 7. Section 6-13 of the charter is renumbered 6-13-1 and amended to read:

6-13. Designation of Emergency Temporary Locations. >>1. ALTERNATE SITES<< The mayor may designate, subject to common council approval, alternate sites as the emergency temporary locations of government where all, or any part, of the public business may be conducted whenever during a state of emergency it becomes imprudent, inexpedient or impossible to conduct the affairs of city government at the regular or usual places. The alternate sites may be within or without the territorial limits of the city and may be within or without those of the state of Wisconsin. With the approval of the mayor, department heads shall from time to time designate specific places for their subordinates and employees to report upon the commencement of an ~~[[extreme]]~~ emergency, if it is desirable for such persons to report to a place other than that designated by the mayor as the temporary site of government.

Part 8. Section 6-13-2 of the charter is created to read:

2. EXERCISE OF AUTHORITY. While the public business is being conducted at a temporary location, the mayor, common council and other city officers shall possess and exercise all executive, legislative, administrative and judicial powers and functions conferred upon the mayor, common council and city officers under state law. Those powers and functions, except judicial, may be exercised in light of the exigencies of the emergency situation without regard to the compliance with time-consuming procedures and formalities prescribed by law. All acts of the mayor, common council and officers shall be valid and binding as if performed within the territorial limits of the city.

Part 9. Section 6-15-1-b, c and g of the charter is amended to read:

6-15. Departmental Emergency Response and Continuity of Operations Plans.

1. b. Identification of key staff and the means of contacting key staff during a period of ~~[[extreme]]~~ emergency.
- c. The activities of the department during a period of ~~[[extreme]]~~ emergency.
- g. An outline of the process of restoring departmental services following a period of ~~[[extreme]]~~ emergency.

Part 10. Section 6-19-1 of the charter is amended to read:

6-19. Utilization of Existing Services and Facilities. 1. In carrying out the provisions of this chapter, the director shall utilize the services, equipment, supplies and facilities of existing departments, bureaus, offices, commissions, committees, authorities and agencies of the city to the maximum extent practicable. The officers, agents, employees and personnel of all such departments, bureaus, offices, commissions, committees, authorities and agencies of the city shall cooperate with

the >>office of<< emergency management and homeland security [[services]].

Part 11. Section 6-21-2 of the charter is amended to read:

6-21. Cooperation.

2. The mayor may, subject to the approval of the common council, in collaboration with other public or private agencies, enter into mutual aid agreements or arrangements for reciprocal emergency management and homeland security aid. The agreements or arrangements shall be consistent with the currently existing state of Wisconsin statutes and the state of Wisconsin emergency management and homeland security plan and the currently existing plan and program of the federal government. In a period of [[extreme]] emergency, the >>office of<< emergency management and homeland security [[services]] shall render assistance in accordance with provisions of any mutual aid agreement or arrangement.

Part 12. Section 6-23-1 and 2 of the charter is amended to read:

6-23. Funding. >>1. APPROPRIATION.<< The common council shall appropriate such money as it deems necessary for the carrying out of the purposes of this chapter, such money to be deposited in a special account to be known as the "emergency management and homeland security fund." [[Such]] >>The<< money, except as otherwise specifically provided, shall be disbursed in the manner prescribed for the disbursement of public funds, excepting in case of a period of [[extreme]] emergency, in which event the mayor may disburse such appropriated funds within his or her discretion for emergency management or homeland security services without the signature or countersignature of any other city officer or compliance with any other ordinance.

2. SUPPLIES. Whenever during a period of [[extreme]] emergency, the federal government or the state of Wisconsin or any agency or officer thereof, or any person, firm or corporation shall offer to the city or to the >>office of<< emergency management and homeland security [[services]], equipment, supplies, materials, aids, expenses, assistance or funds by way of gift, grant, contribution or loan or otherwise for the purposes of emergency management or homeland security, the mayor, on behalf of the city, may accept such offer, and upon such acceptance, may authorize any officer of the city or the director to receive the same, subject to the terms of the offer and the rules and regulations, if any, of the offerer or agency making the offer. [[Such]] >>The<< acceptance or receipt shall not create or cause any liability on the part of the city, the director, or any officer, agent or employee thereof or of the city for failure to comply with the terms of such offer and the rules and regulations, if any, of the offerer or agency making the offer. All funds or moneys so received shall be disbursed in the manner prescribed for the disbursement of public funds.

Part 13. Section 6-27 of the charter is amended to read:

6-27. Enforcement. The director, department heads, officers, agents, employees and all other city and emergency management and homeland security [[services]] personnel shall execute, enforce and obey such lawful orders, rules and regulations as may be issued by the mayor during a period of [[extreme]] emergency.

Part 14. Section 6-29 of the charter is amended to read:

6-29. Penalty. Any person, who willfully refuses to comply with any lawful order of the mayor during a period of [[extreme]] emergency shall upon conviction by a court of record forfeit a sum not exceeding \$1,000, and in default of payment be imprisoned not exceeding 40 days.

Part 15. Section 6-33-1 of the charter is amended to read:

6-33. Vacancies. 1. TEMPORARY VACANCIES. If during the period of emergency >>resulting from a disaster or the imminent threat of a disaster<<, any officer except the mayor or a common council member, or employe fails [tø] or [[bø]] >>is<< unable to report to his or her assigned duties and location, his or her position shall thereupon be deemed temporarily vacant. When there is no succession provided by law, or an emergency interim successor designated under s. 6-39, the mayor or his or her successor may designate another city officer or employe to act in his stead with all the powers, responsibilities and duties of the office or position but without change in classification or salary. The mayor or his or her successor shall authorize department heads to make such temporary appointments to positions within their departments. In those cases where a deputy is provided by law, he or she shall immediately succeed to any temporary vacancy upon the same terms. When neither the officer nor the deputy is present, the mayor shall make a temporary appointment of another city officer or employe to the vacancy. Immediately upon the return of the permanent officer or employe, he or she shall resume duties and the temporary appointee shall return to his or her regular position.

Part 16. Section 6-37 of the charter is amended to read:

6-37. Vacancies in the Office of Common Council. Temporary vacancies in the office of common council shall remain vacant. Permanent vacancies, ~~[[subject to filling as provided in]]~~ >>as determined under<< s. 6-33-2, may be filled [[until the next municipal election]] >>for the continuance of an emergency resulting from enemy action in the form of an attack<< by appointment by the common council by a vote of not less than 3/4 of the remaining elected council members. >>After cessation of the emergency, the vacancy shall be filled by special election as provided under s. 17.23(1)(b), Wis. Stats.<<

Part 17. Section 6-37 of the charter is further amended, effective the day after the Wisconsin secretary of state notifies the legislature that an amendment to the Wisconsin Constitution has been approved that requires the legislature to provide for temporary succession to the powers and duties of public offices for the period of an emergency resulting from a cause other than an enemy action, to read:

6-37. Vacancies in the Office of Common Council. Temporary vacancies in the office of common council shall remain vacant. Permanent vacancies, as determined under s. 6-33-2, may be filled for the continuance of an emergency resulting from ~~[[enemy action in the form of an attack]]~~ >>a disaster or the imminent threat of a disaster<< by appointment by the common council by a vote of not less than 3/4 of the remaining elected council members. After cessation of the emergency, the vacancy shall be filled by special election as provided under s. 17.23(1)(b), Wis. Stats.

Part 18. Section 6-41 of the charter is amended to read:

6-41. Residence Requirements Suspended. Notwithstanding any provisions of law to the contrary, during the period of ~~[[extreme]]~~ emergency any city officer or employe may establish his or her domicile wherever practical without prejudice to his or her status. Upon termination of the ~~[[extreme]]~~ emergency all city officers and employes shall forthwith re-establish their domiciles within the city unless the time therefore shall be extended for a reasonable time by the city service commission or the fire and police commission upon a finding of hardship.

Part 19. Section 6-43 of the charter is amended to read:

6-43. Preservation of Essential Public Records. The city information management committee shall establish a system for the preservation of essential city records necessary for the continuity of governmental functions in the event of ~~[[enemy action]]~~ >>emergencies << or natural or man-made disasters. The committee shall notify the director of the system established for the preservation of essential city records.

Part 20. This is a charter ordinance and shall take effect 60 days after its passage and publication, unless within such 60 days a referendum petition is filed as provided in s. 66.0101(5), Wis. Stats., in which event this ordinance shall not take effect until submitted to a referendum and approved by a majority of the electors voting thereon.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

LRB10171-2

TWM:lp

6/29/2010

Clerical correction 10/8/10 -- lp