

ORDINANCE 2013-5

AN ORDINANCE OF THE MONTGOMERY COUNTY BOARD OF COMMISSIONERS AMENDING PROVISIONS OF CHAPTER 37 REGARDING EMERGENCY DISASTER DECLARATIONS

WHEREAS, Chapter 37 of the County Code contains provisions regarding the declaration of emergency disasters and restrictions on travel during such periods;

AND WHEREAS, the State Legislature has enacted amendments to the Emergency Management Act which cause the provisions of Chapter 37 to be inconsistent with State law;

AND WHEREAS, it is in the best interests of the citizens of Montgomery County that Chapter 37 be amended in order to comply with these statutory changes.

IT IS, THEREFORE, ORDAINED that Chapter 37 of the County Code be amended to read as follows:

“§37.37 POWERS, REGULATIONS AND PROCEDURES

(A) This section shall apply whenever:

(1) A state of emergency affecting all or part of the county has been declared by the Governor, pursuant to I.C. 10-4-1-7;

(2) A state of emergency affecting all or part of the county has been declared by the Principal Executive Officer of the county, pursuant to I.C. 10-4-1-23(a);

(3) A presumptive state of emergency is deemed to exist affecting all or part of the county causing the Director to invoke and implement emergency plans and procedures in accordance herewith; or

(4) When the Board of Commissioners has implemented a test of the county's emergency plan and procedures in accordance with and to the extent necessary or dispensable to the test.

(B) The Department of Emergency Management shall have the following responsibilities prior to declaration of a disaster:

(1) The warning function as prescribed in the portion of the plan;

(2) Assuring proper functioning of emergency communications throughout the county, including all cities and towns, as prescribed in the communications portion of the plan; and

(3) Assuring the mitigation, training and exercising have been performed.

(C) (1) In the event of actual or threatened enemy attack or disaster the county, the Principal Executive Officer of the county may declare a local disaster emergency pursuant to I.C. 10-4-2-3(a) for any period not to exceed seven days.

(2) The declaration shall:

(a) Be in writing;

(b) Indicate the nature of the disaster;

(c) Indicate the conditions which have brought the disaster about;

(d) Indicate the area or areas threatened;

(e) Indicate the area or areas to which the state of emergency applies, which may include the entire county or only designated parts thereof; and

(f) Be announced or disseminated to the general public by the best means available.

(3) The declaration shall be filed in the offices of:

(a) The County Clerk;

(b) The County Auditor; and

(c) The Clerk of any incorporated municipality included in the declared disaster area.

(4) The declaration shall not be invalidated nor ineffective if any of the filing and dissemination requirements cannot be complied with due to the prevailing adverse circumstances.

(5) Upon a declaration, the county's comprehensive emergency management and disaster control plan which has been adopted pursuant hereto or the several component parts thereof as may be relevant to the emergency shall be activated and implemented.

- (6) A declaration shall not be necessary if the Governor, pursuant to I.C. 10-4-1-7, has already proclaimed a statewide or area-wide state of emergency including the county.
- (D) (1) As soon as possible after a disaster emergency affecting the county is declared either by the Governor or by the Principal Executive Officer of the county shall convene a meeting of the County Commissioners to perform their legislative and administrative functions as the situation may demand.
- (2) If the Principal Executive Officer fails or is unable to convene a meeting as mandated above, the meeting shall be convened in accordance with I.C. 36-2-2-3(a).
- (3) Any meeting of the Commissioners shall:
- (a) Be deemed an emergency meeting;
 - (b) Be subject only to such procedural provisions of law as govern emergency meetings of County Commissioners;
 - (c) Include relaxation of any applicable notice requirements, pursuant to I.C. 5-14-1.5-5(d);
 - (d) Be held in any convenient and available place;
 - (e) Continue, without adjournment, for the duration of the disaster emergency;
And
 - (f) Be recessed for reasonable periods of time as necessary and permitted by the circumstances.
- (E)(1) In the event that a quorum of the Board of Commissioners cannot be assembled for purposes of the meeting required hereunder, the Principal Executive Officer of the county shall:
- (a) Be considered a plenipotentiary representative of the Board;
 - (b) Have all powers of the full Board; and
 - (c) Take all actions of the full Board.
- (2) When a quorum is assembled, the plenipotentiary powers shall cease.
- (F)(1) At the meeting convened hereunder, the Commissioners may exercise any of their normal executive and legislative powers to the extent related to the emergency and necessary to deal herewith.

- (2) In addition to the powers enumerated herein, the Board may also exercise any of the following special and extraordinary powers;
- (a) The Commissioners may extend the period of a state of emergency declared by the chief executive officer pursuant hereto, to last more than seven days if necessary.
 - (b) The Commissioners may terminate the state of emergency, except for a state of emergency declared by the Governor.
 - (c) The Commissioners may assemble and utilize emergency management forces including:
 - 1. Personnel of the Department of Emergency Management;
 - 2. Participating emergency services; and
 - 3. Any other forces at the disposal of the Commissioners hereunder for emergency management purposes.
 - (d) The Commissioners may order volunteer forces which have been activated pursuant to the plan to the aid of the county, state or political subdivisions thereof as soon as practicable. These volunteer forces shall be under the direction of the Department of Emergency Management.
 - (e) In order to control the local disaster emergency and provide for public health, safety and welfare, the Commissioners may, to the extent permitted by I.C. 10-4-1-25 and subject to its provisions, command services and/or requisition the use of:
 - 1. Equipment;
 - 2. Facilities;
 - 3. Supplies; or
 - 4. Other property.
 - (f) The Commissioners may order the evacuation of all or part of the population from stricken areas of the county and prescribe:
 - 1. Routes;
 - 2. Modes of transportation; and
 - 3. Evacuation destinations.

- (g) The Commissioners may make provision for availability and use of temporary emergency housing, which housing need not necessarily comply with any minimum housing standards, building or zoning regulations and the like, which would govern the use and location of premises for housing purposes during normal times.
- (h) The Commissioners may suspend, for the duration of the state of emergency or for a lesser period as they determine, any provisions of or procedures prescribed by ordinances of the county if they:
 - 1. Would be impractical during the emergency;
 - 2. Would interfere with the implementation and carrying out of emergency plans; or
 - 3. Would be inimical to actions necessary to protect the public safety and welfare.
- (i) Except in accordance herewith, hereinafter the Commissioners shall not suspend any provisions of ordinances or procedures which are mandated by statute.
- (j) In the event of enemy attack, or when the state of emergency has been proclaimed by the Governor, the Commissioners, in accordance with I.C. 10-14-3-17(j)(5), may waive any procedures or requirements of statute or of county ordinances reflecting statutory requirements and mandates and pertaining to:
 - 1. The appropriation and expenditure of public funds;
 - 2. The incurring of obligations;
 - 3. The performance of public works;
 - 4. The entering into contracts;
 - 5. The employment of workers whose employment may be either:
 - a. Permanent; or
 - b. Temporary.
 - 6. The utilization of volunteer workers;
 - 7. The rental of equipment;
 - 8. The purchase and distribution of:
 - a. Offices;
 - b. Materials; and

c. Facilities.

(k) The Commissioners may assign any special emergency duties and functions to county:

1. Offices;
2. Departments; and
3. Agencies.

(l) Any unexpended and unencumbered monies budgeted and appropriated or otherwise dedicated by law to different purposes may, within the scope of each major budget and appropriation category (major object classification), be utilized and expended for the purpose of carrying out special emergency duties and functions.

(m) The Commissioners may make and promulgate emergency regulations as may be deemed necessary to implement and carry out the provisions of the county's or state's plans.

1. The regulations shall not be effective until promulgated, through either:

- a. Written filing in the Offices of the County Clerk and County Auditor, as required by I.C. 10-4-1-15(b); or
- b. If filing is impossible, through conspicuous posting at two public locations within the county.

(n) The Commissioners may, in accordance with the plan, request the state or the country of their agencies and political subdivisions to send aid (including financial assistance) if the situation is beyond the control of the regular and emergency county forces and resources.

(3) All actions and regulations under the section shall be:

- (a) Adopted by ordinance or resolution;
- (b) Consistent with, and subordinate to, any actions, orders or regulations made by the Governor or a state agency implementing the state emergency operations plan.

(G) (1) The Director shall make recommendations and advise the Board of Commissioners or the Principal Executive Officer on any actions which it would be necessary or desirable to take hereunder in the event of any emergency.

(2) In the event that any emergency clearly exists or is imminent within the County, and a state of emergency has not been declared by the Governor nor is any person

having the powers of the Principal Executive Officer of the county present to declare an emergency pursuant hereto, the Director may temporarily presume the existence of a state of emergency.

(3) When Director temporarily presumes the existence of a state of emergency, the Director shall:

(a) Put into effect those portions of the plan as necessary:

1. To cope with the emergency; and
2. Protect the public safety and welfare.

(b) Be construed to have all powers necessary and dispensable to doing so to the extent not specifically limited by statute or specifically limited herein, until the time as the Chief Executive Officer becomes available;

(c) Have his or her functions performed by the Deputy Director to the extent that the Deputy Director is required to assume the duties of the Director, as provided hereby in the latter's absence or incapacitation during the emergency.

(4) Assistance from the Department of Emergency Management may be rendered without a declaration of an emergency I order to assist local emergency services in time of need.

(H) During a declared emergency, all officers and employees of incorporated and unincorporated areas of the county shall:

(1) Cooperate with and give active support to:

- (a) The County Commissioners; and
- (b) The County Emergency Management Director.

(2) Comply with all orders issued pursuant to this chapter by:

- (a) The Commissioners; and
- (b) The County Emergency Management Director.

(I) At all times when the orders, rules and regulations made and promulgated pursuant to this chapter shall be in effect, they shall supersede all existing inconsistent:

- (1) Ordinances;
- (2) Orders;
- (3) Rules; and

(4) Regulations.

(J) (1) Whenever this chapter applies, it shall be unlawful and a penal ordinance violation for any person to:

- (a) Willfully obstruct, hinder or delay the Commissioners, the Director or Emergency Management, participating emergency services, authorized emergency management volunteers or other authorities from implementing, carrying out and enforcing emergency plans and procedures;
- (b) Failure to observe, abide by and comply with any emergency management duties, orders, regulations and procedures as made applicable to the person by the appropriate authorities; or
- (c) Falsely wear or carry identification as a member of the Department of Emergency Management or to otherwise falsely identify or purport to be a county emergency management authority.

(2) Any person who commits an offense as described above shall be liable to a fine of \$2,500; the fine to be subject, however, to the discretion of the court of jurisdiction.

(3) Any regular or reserve police officer of the state or any of its political subdivisions is hereby empowered to issue and serve a civil citation against any person found to be committing an offense described above.

(K) During an emergency management test or declared emergency, the following shall be immune from liability, to the extent provided by I.C. 10-14-3-17 and any other applicable law:

- (1) The county;
- (2) Its assigned personnel;
- (3) Participating emergency services; and
- (4) Rostered volunteers.

(L) Owners of property commandeered for the use in any county official shall be reimbursed for its use by the county as the County Council shall approve with regard to:

- (1) Manner of compensation; and
- (2) Amount of compensation.

(M) The effect of a declaration of a local disaster emergency is to:

- (1) activate the response and recovery aspects of all applicable local or interjurisdictional disaster emergency plans; and
- (2) authorize the furnishing of aid and assistance under the plans.

(Ord. 1996-4, passed 10-22-96. Amended Ord. 2013-5, passed 6-24-13).

LOCAL DISASTER EMERGENCY

§37.45 ORDER OR PROCLAMATION OF LOCAL DISASTER EMERGENCY AFFECTING COUNTY ROADS WHEN COUNTY ROADS ARE NOT CLOSED

Any order or proclamation of a local disaster emergency, which does not order the closing of county roads, shall provide that:

(A) The risk of travel on county roads is upon the person traveling upon such road or roads;

(B) The driver or person in charge of a vehicle, whether or not stalled, that impedes or interferes with highway snow removal crews or emergency vehicles responding to an emergency may be directed to remove the vehicle from the county road by any law enforcement officer or county highway employee;

(C) If an unoccupied vehicle impedes or interferes with highway snow removal crews or emergency vehicles and the driver or person in charge of such vehicle cannot be found, the Sheriff, County Emergency Management Director or county highway employee may order the vehicle to be towed to place of safety at the owner's expense;

(D) A person who stops, parks or leaves a vehicle shall leave a sufficient unobstructed width of the roadway opposite the vehicle for the free passage of other vehicles and a clear view of the stopped vehicle from a distance of 300 feet in each direction upon the highway;

(E) The driver of each vehicle shall drive at a reduced speed appropriate to the weather and highway conditions; (I.C. 9-21-5-4).

(F) It is unlawful for a person to knowingly fail to comply with an order or direction of a law enforcement officer, county highway employee or Emergency Management Director directing, controlling or regulating traffic under this chapter.
(Ord. 2000-3, passed 1-18-00).

§37.46 ORDER OR PROCLAMATION OF LOCAL DISASTER EMERGENCY CLOSING COUNTY ROADS

(A) **Local Travel Advisory Defined.** As used in this section, the term "Local Travel Advisory" shall mean the level of emergency declared under Indiana Code §10-14-3-29 by the principal executive officer or Emergency Management Agency Director or the

Director's designee to alert the traveling public of emergency conditions that may require the imposition of travel restrictions.

(B) All Local travel Advisories shall be one (1) of the following:

(1) Advisory: This is the lowest level of local travel advisory and means that routine travel or activities may be restricted in areas because of a hazardous situation. Individuals traveling during an advisory should use caution or avoid these areas.

(2) Watch: This is the mid-level local travel advisory and means that conditions are threatening to the safety of the public. During a watch, only essential travel, such as travel to and from work or in emergency situations is recommended. During a watch, emergency action plans should be implemented by businesses, schools, government agencies and other organizations.

(3) Warning: This is the highest level of local travel advisory and means that travel may be restricted to emergency workers and public safety or health officials only. During a warning, individuals are directed to:

- (a) refrain from all travel;**
- (b) comply with all necessary emergency measures;**
- (c) cooperate with public officials and disaster service forces in Executing emergency operation plans; and**
- (d) obey and comply with the lawful directions of properly identified Officers.**

Further and more specific restrictions, including parking restrictions, may be included in a warning.

(C) Advisories Without Declaration. If the Emergency Management Director or Board of Commissioners determines that conditions in the County have created the need for travel advisory restrictions without a local disaster emergency declaration, the Director or Board may issue an advisory or watch travel advisory. If the Director issues an advisory or watch travel advisory, the Director shall promptly notify the Board.

(D) If a local travel advisory is issued under this section, the County may not prohibit individuals engaged in employment necessary to:

- (1) Maintain a safe rail system;**
- (2) Restore utility service;**
- (3) Provide any other emergency public service;**

From traveling on the highways in the County.

(E) The driver or person in charge of a vehicle, whether or not stalled, that impedes or interferes with highway snow removal crews or emergency personnel and vehicles responding to an emergency may be directed to remove the vehicle from the county road by any law enforcement officer or county highway employee;

(F) If an unoccupied vehicle impedes or interferes with highway snow removal crews or emergency vehicles and the driver or person in charge of such vehicle cannot be found, the Sheriff or Emergency Management Director or county highway employee may order the vehicle to be towed to a place of safety at the owner's expense;

(G) A person who stops, parks or leaves a vehicle shall leave a sufficient unobstructed width of the roadway opposite the vehicle for the free passage of other vehicles and clear view of the stopped vehicle from a distance of 300 feet in each direction upon the highway;

(H) It is unlawful for a person to knowingly fail to comply with a lawful order or direction of a law enforcement officer, county highway employee or Emergency Management Director directing, controlling or regulating traffic under this chapter.

(Ord. 200-3, passed 1-18-00; Am. Ord. passed 11-13-01. Amended Ord. 2013-5, passed 6-24-13).

§37.47 MEDIA NOTICE

Upon issuance of an order declaring a local disaster a local disaster emergency the president of the Board of Commissioners of the county shall cause the local media to be promptly notified.
(Ord. 200-3, passed 1-18-11)

§37.48 FILING OF ORDER

As soon as possible, the president of the Board of Commissioners shall cause the local disaster emergency order to be filed with County Auditor.
(Ord. 200-3, passed 1-18-00)

§37.49 ENFORCEMENT

(A) The driver or person in charge of a vehicle who violates §§37.45(B), 37.45(D), 37.46(C), or 37.46(E) may be directed to move the vehicle off the traveled portion of the road. (I.C. 9-21-1-3)

(B) A vehicle stopped, parked or left in violation of §§37.45(B), 37.45(C), 37.45(D), 37.46(B), 37.46(D), or 37.46(E) may be towed to the nearest place of safety at owner's expense. (I.C. 9-21-16-3).

(C) (1) Violation of the provisions of §§37.45(B), 37.45(C), 37.45(F), 37.46(C), or 37.46(F) is cause for an action to enforce state statute and may result in the entry of a judgment of up to \$500 for a Class C Infraction. (I.C. 9-21-5-13, I.C. 9-21-16-9, and I.C. 9-21-8-49)

(2) In the alternative, the violation may be charged as a Class C ordinance violation for which a judgment may include the amount necessary to reimburse the county for any towing or storage fee which it has incurred in addition to the prescribed fine and court costs.

(D) Violation of the provisions of §§37.01(D) or 37.03(E) is a Class C ordinance violation for which a judgment may also include the amount to reimburse the county for any towing or storage fee which it has incurred, in addition to the prescribed fine and court costs.
(Ord. 2000-3, passed 1-18-00)."

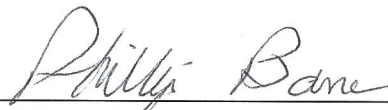
IT IS FURTHER ORDAINED that all other provisions of Chapter 37 which are not expressly amended by this ordinance shall remain in full force and effect.

IT IS FURTHER ORDAINED that this ordinance shall be effective upon adoption.


Adopted this 24th day of June, 2013.

A Majority of the Montgomery County

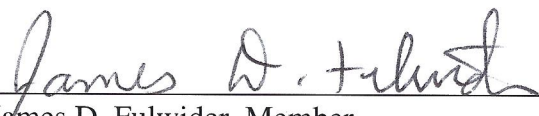
Board of Commissioners:



Phil Bane, President



Terry Hockersmith, Vice President



James D. Fulwider, Member

Attest:



Michelle Cash, Auditor