CITY OF OAKLAND

OFFICE OF THE CITY ATTORNEY

PUBLIC LEGAL OPINION

TO: Mayor Sheng Thao
Council President Nikki Fortunato Bas
Members of the City Council
City Administrator Jestin D. Johnson

FROM City Attorney Barbara J. Parker

DATE: September 19, 2023

RE: City's Authority Upon a Declaration of a Local Emergency

Dear Mayor Thao, Council President Bas, Councilmembers and City Administrator Johnson:

Several Councilmembers and other City officials have asked what authority a local declaration of a local emergency grants to the City. This public legal opinion provides the authority for a local emergency declaration, describes the procedure to declare a local emergency, and outlines the powers the declaration grants to the City Administrator. Like all public legal opinions, this opinion will be posted on the City Attorney's website at: https://www.oaklandcityattorney.org

I. CITY'S AUTHORITY TO DECLARE A LOCAL EMERGENCY

The City's authority to declare a local emergency is rooted in the California Government Code. Government Code § 8630(a) authorizes a city's governing body or an official designated by ordinance to proclaim a local emergency. The Council (the City's governing body) has designated the City Administrator by ordinance to proclaim a local emergency. (See Oakland Municipal Code (OMC) section 8.50.050.) Accordingly, the City Council or the City Administrator may declare a local emergency. Government Code section 8630 provides:

(a) A local emergency may be proclaimed only by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body.

(b) Whenever a local emergency is proclaimed by an official designated by ordinance, the local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the governing body.

(c) The governing body shall review the need for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency.

(d) The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant.

II. WHAT CONSTITUTES A LOCAL EMERGENCY?

OMC section 8.50.020(A) defines a "Local Emergency" as follows:

"the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of the City caused by such conditions as air pollution, fire, flood, landslide storm, epidemic/pandemic, riot, earthquake, drought, hazardous materials incidents, sudden and severe energy shortage, plant or animal infestation, terrorism, the Governor's warning of an earthquake, conditions resulting from war or imminent threat of war, or other conditions which are or are likely to be beyond the capability or control of the services, personnel, equipment, facilities, or finances of the City, requiring the combined forces of other political subdivisions to combat."

III. WHAT POWERS DOES A DECLARATION OF A LOCAL EMERGENCY GRANT TO THE CITY?

When the City declares a local emergency, OMC section 8.50.050(C) vests the City Administrator with three extraordinary powers, that are in addition to their normal administrative powers. During a local emergency the City Administrator is empowered to:

1. Promulgate local orders, rules, and regulations related to protecting life and property and preserving public peace and order, without prior approval from the City Council.

The power to promulgate orders includes the power to amend or suspend existing local laws and regulations. But this power only extends to local rules, regulations, and laws; the City Administrator cannot suspend or alter state or federal legal requirements and cannot excuse the City from complying with those laws. Additionally, any emergency action by the City Administrator that would normally require legislative action by the City Council must be ratified by the Council at the earliest practicable time.

2. Obtain vital supplies and equipment necessary to protect life and property, without Council approval.

Notably, the City's Purchasing Ordinance authorizes the City Administrator to procure goods and services on an emergency basis, without Council approval, and without declaring a local emergency (OMC section 2.04.020(F) and (G).)

3. Activate City employees and officers as emergency workers.

This authority allows the City Administrator to require City employees and officials to provide emergency services, even if those services are outside of their prescribed duties or their normal work hours.

IV. IMPACT OF LOCAL EMERGENCY DECLARATION ON CITY'S ELIGIBILITY TO SEEK REIMBURSEMENT FOR COSTS ADDRESSING AN EMERGENCY

In addition to vesting the City Administrator with the emergency powers described above, declaring a local emergency may impact the City's eligibility to seek federal and or state reimbursement for the costs of dealing with an emergency. Reimbursement typically is possible only when the federal government and/or State of California likewise have declared or recognized an emergency or disaster in Oakland in accordance with the federal Stafford Act and the California Disaster Assistance Act. These acts generally require that the City declare a local emergency and then carefully document incident costs as prerequisites to applying for federal or state emergency reimbursement.

Respectfully,

Barbara J. Parker

BARBARA J. PARKER
City Attorney