

Municipal Emergency Powers in Maryland

By Kevin J. Best, Esq.

Along with the Governor, every local government in Maryland has the potential to exercise local emergency powers. According to § 14-301 of the Public Safety Article of Md. Ann. Code, a “public emergency” means: (1) a situation in which three or more individuals are at the same time and in the same place engaged in tumultuous conduct that leads to the commission of unlawful acts that disturb the public peace or cause the unlawful destruction or damage of public or private property; (2) a crisis, disaster, riot, or catastrophe; or (3) an energy emergency meaning a situation in which the health, safety, or welfare of the public is threatened by an actual or impending acute shortage in energy resources.

Maryland has 23 counties, Baltimore City, 156 municipalities, and 167 special taxing districts. The counties are the principal unit of local government and the default public service provider in Maryland and are responsible for most basic services. Compared to the vast majority states in the union, Maryland ranks near the bottom or 45th among the states in the number of local governments. Many communities in Maryland do not have a municipality set up and are governed in an emergency and otherwise solely by the federal, state and the county governments.

A municipality is a public corporation exercising both corporate and governmental authority. The Maryland General Assembly has defined a “municipal corporation” as a city, town or village established either under general or formally under special law for “general governmental purposes” and subject to Article XI-E of the Constitution, “which possess legislative, administrative and police powers for the general exercise of municipal functions, and which carry on such functions through a set of elected and other officials.”

Municipal corporations in Maryland including Baltimore City may exercise a broad grant of authority when passing police power ordinances. Despite Dillon’s Rule under the Common Law of Maryland, which states that municipalities, as creatures of the State, can exercise only those powers expressly delegated and those implied powers that are necessary to carry out the express powers or those other powers that are indispensably necessary to carry out the express powers, this police power authority is so extensive that Article XI-E (Municipal Corporations) of the Constitution of Maryland probably amounts to a grant or devolution to municipalities of almost all of the state’s police powers to be exercised within the municipal geographic limits.

Municipalities are chartered to provide municipal services including law enforcement for the convenience and accountability of the city’s or town’s residents and typically provide a limited array of public services that in many instances complement county government services. Some of the larger municipalities are full-service providers that rival or surpass the county governments. Municipalities in rural counties on the Eastern Shore and in Western Maryland provide services that may not be offered at all by the respective county government.

The municipal charter serves as the equivalent of a constitution for the municipal government and the municipal code of ordinances serves as the equivalent of a code of statutes. The primary

purpose of a municipal charter is to delineate the powers and structure of the municipal government and the duties of its officers.

The federal government, although supreme in its sphere, is a government of limited powers. The State governments, although beholden to their own constitutions and the federal government under the Supremacy Clause of the U.S. Constitution, as the original sovereigns possess almost unlimited powers to pass laws for the health, safety and welfare of their citizens including certain emergency police powers delegated by statute to the Governors.

An incorporated community has the independent power to determine for itself which potholes are filled, where to deploy police forces, how to regulate land use or invest taxes, how to handle emergencies, which recreation programs to implement, whether to ban certain offensive behavior or other detrimental conditions impacting urban living. A municipality can focus its finite resources on solving as many or as few problems as it desires. Unless a suspect classification (i.e., race, national origin, or ancestry) or fundamental right (i.e., the right to vote, travel, access to criminal appeal, or procreation) is involved in a particular case or statute, a municipality, using its police power, may criminalize certain behavior which happens to be legally acceptable in a neighboring town without violating either state or federal equal protection guaranties.

The structure of municipal government in Maryland is similar to the various structures found in the rest of the nation's municipal corporations. A municipality consists of a governing body known as a council, commission or board. Each city or town government has a senior elected official usually designated to serve as the chief executive officer or mayor. The power of the mayor varies greatly amongst the municipalities.

In some cities or towns, the mayor possesses powers similar to those of our governor or president. However, in many cities or towns the mayor may simply presides over council meetings and votes only in case of tie, which may be more or less akin to the role of the chairman of the board of a business corporation.

In approximately fifteen of the 157 municipalities, the chief executive officer is an appointed city manager or administrator, who performs most of the duties of a traditional mayor. The manager or administrator is a professional, normally possessing a specialized degree and training. In the council-manager form of government, the mayor presides over meetings and acts as the ceremonial representative of the city, but the city manager executes the day-to-day operations of the municipal government.

The General Assembly recognizes the Governor's broad authority in the exercise of the police power of the State to provide adequate control over persons and conditions during impending or actual public emergencies. The Governor's emergency powers are primarily found in Subtitle 3 of Title 14 of the Md. Ann. Code. Many of the powers delegated to the Governor of Maryland to declare state emergencies are similarly delegated to the local chief executives.

The mayor or chief executive/administrator are usually authorized by charter or ordinance to declare an emergency. Who exactly is responsible to exercise local emergency powers depends on the structure of municipal government described in the local charter, and the municipal code of

ordinances; however, state law requires it to be “the principal executive officer of a political subdivision.” Declaration of a local state of emergency activates the response and recovery aspects of any applicable local state of emergency plan; and authorizes the provision of aid and assistance under the applicable plan.

A mayor, town manager or president of the commission should not assume that simply because he or she is the chief elected or appointed official of the city or town that he or she automatically has emergency powers or the ability to declare an emergency and marshal the municipalities employees and equipment to face the crisis. Typically, there will be in place a civil emergencies ordinance that spells out how to declare an emergency and what emergency powers are available.

Local civil emergency ordinances often include an enumerated list of emergency powers that a local mayor or manager can select to supplement existing law and to provide certain authority and establish guidelines for a municipality to react to and operate under during periods of civil emergencies, and to prevent or mitigate conditions that threaten to destroy property and harm the public health, safety or welfare of residents of, or visitors to, the city or town.

The authority to enact such provisions or regulations is provided in Title 14 (Emergency Management) of Public Safety Article of Md. Ann. Code, the local charter and other Maryland Statutes. A municipal civil emergencies ordinance may include sections entitled as follows: purpose and authority, applicability, proclamations (executive orders) of civil emergency, authority of the principal officer to issue such orders, the required contents of an emergency order, use of certain services and equipment, disaster readiness and response plans, emergency operations committees or team, emergency purchases of supplies, emergency notifications, and penalties for violating an emergency order.

Subject to § 14-1002 of the Public Safety Article of Md. Ann. Code, a local government has a duty to prevent civil disturbances, and if a structure or personal property is stolen, damaged, or destroyed in a riot, the injured party may recover actual damages sustained in a civil action against the county or municipal corporation of the State in which the riot occurred. Furthermore, pursuant to § 14-305 of the Public Safety Article of Md. Ann. Code, a law enforcement agency of a county or municipal corporation shall notify the Secretary of State Police if the local law enforcement agency receives notice of a threatened or actual disturbance that indicates the possibility of serious domestic violence.

Pursuant to most municipal charters and § 5-209 of the LG Art. of the Md. Ann. Code, the municipal governing body has the power to pass ordinances to protect and preserve the health of the municipality and its inhabitants. The governing body also may appoint a public health officer, and to define and regulate his or her powers or duties; to inspect, regulate, and abate any buildings, structures or places which cause or may cause unsanitary conditions or conditions detrimental to health provided that none of these powers and duties impair the Md. Secretary of Health and Mental Hygiene, the county board of health, or any public, general or local law relating to the subject of health.

According to § 14-111 of the Public Safety Article of Md. Ann. Code as found in the Maryland Emergency Management Agency Act, only the principal executive officer of a political

subdivision, which means a county or municipal corporation of the State, may declare a local state of emergency, and except with the consent of the governing body of the political subdivision, a local state of emergency may not continue or be renewed for longer than 30 days. Typically, the chief executive officer is deemed to be the senior official who oversees the day-to-day administration. A *de facto* or acting mayor ordinarily will be permitted to exercise the mayor's emergency powers.

Typically, an executive order of a civil emergency by the mayor or other executive officer shall, within some period of time from issuance of the proclamation or at the earliest practicable time be filed with the appropriate clerk for presentation to the governing body for possible ratification and confirmation, modification, or rejection. The governing body typically may, by resolution, modify or reject the proclamation, and if rejected, it shall be void.

If the governing body modifies or rejects the proclamation, said modification or rejection will typically be prospective only, and shall not affect any actions taken prior to the modification or rejection of the proclamation. Under state law, except with the consent of the governing body of the political subdivision, a local state of emergency may not continue or be renewed for longer than 30 days pursuant.

The mayor's or chief executive's emergency powers are extraordinary, but their constitutionality has generally been upheld. The mayor's exercise of these powers must be reasonable and may be invoked only for the purposes specified by the legislature [governing body], and only when an emergency exists. Any exercise of these powers during a non-emergency period will be invalid.

Notwithstanding the above, the determination of whether an emergency exists lies with the mayor or chief administrator. However, in order to ensure that the mayor does not assume unfettered control over governmental operations, that determination is subject to judicial review. Ordinary, if the mayor's declaration is challenged, the local trial court will scrutinize the facts underlying the mayor's determination that an emergency existed in the context of the situation that existed when the declaration was made. The party who seeks to attack the mayor's declaration has the burden of establishing its invalidity by proving that no emergency existed.

The court's task in reviewing the mayor's determination is not an easy one. The applicable provisions of law rarely define the circumstances constituting an emergency except in general terms. Rather, the mayor is vested with a great deal of discretion in formulating his decision to declare an emergency. It has been held that where a charter provision described an emergency as being a situation in which public property, or the lives, property or welfare of the city's residents was threatened, it did not have to be limited to situations including a public disaster such as an earthquake, fire, flood or bombing, but also included that where the municipal police and fire departments were on strike.

Once an emergency is deemed to exist and has been declared by the mayor or chief administrator, he is given a wide range of powers to cope with it. These may include assuming control over the city's police and fire departments, or summoning, organizing and directing the members of any other appropriate city agency, marshaling, deputizing or otherwise employing private citizens, issuing directives which may derogate express charter provisions, modifying employee salaries or

exercising other legislative powers, or doing whatever else he may deem necessary for the purpose of meeting the emergency.

Pursuant to § 14-306 of the Public Safety Article of Md. Ann. Code, the chief executive officer or governing body of a county or municipal corporation may request the Governor to provide the militia to help bring under control conditions existing within the county or municipal corporation that, in the requestor's judgment, the local law enforcement agencies cannot control without additional personnel. (Furthermore, the Governor by proclamation may require that each able-bodied individual in the State between 18 and 50 years old, inclusive, who is not regularly or continuously employed or engaged in a lawful and useful business, occupation, trade, or profession immediately register for work under Subtitle 9 of Title 14 of the PS Art.) Where the mayor or chief executive/administrator has made a valid emergency proclamation, subsequently adopted ordinances approved by the mayor will not impliedly repeal or otherwise modify his emergency powers where the emergency continued to exist at the time of their passage, and where the ordinances were not intended to have any influence on his exercise of those powers.

Pursuant to § 14-8A-02 of the Public Safety Article of Md. Ann. Code, the state, the governing body of a county or municipal corporation, or any other governmental agency within the National Capital Region, as defined under § 2674(f)(2) of Title 10 of the United States Code, may enter into a reciprocal agreement for the period that it considers advisable with a federal agency, the Commonwealth of Virginia, the District of Columbia, or a county or municipal corporation, within or outside the state, and establish, train, and implement plans to request or provide mutual aid through the use of its officers, employees, and agents, together with all necessary equipment, in accordance with § 7302 of the Intelligence Reform and Terrorism Prevention Act of 2004 (108 P.L. 458, 118 Stat. 3638). Of course, many municipalities in Maryland already have in place mutual aid agreements (“MAA’s”) such as police MAA’s to allow assistance during times of emergency or when there is no emergency and certain jurisdictions simply wish to work together to provide aid and assistance.

Occasionally, the Governor will directly delegate certain powers to local chief executives or administrators through his emergency orders. An interesting situation recently arose under the current COVID-19 health emergency that necessitated the postponement of several municipal elections, which occur around the State in every month of the year. Several cities and towns expressly amended their charters in accordance with the Constitution of Maryland to move the election dates but did so using the Governor’s emergency order suspending the timelines and procedural requirements for amending municipal charters found in State statutes.

As an exercise of the broadly delegated police power, Maryland’s incorporated cities and towns potentially possess a full array of emergency and enumerated powers. Although all municipalities in Maryland may potentially declare and exercise certain emergency powers to combat a calamity or health emergency, the mayor, manager, or administrator must typically do so in accordance with a duly enacted civil emergencies ordinance.

This article was written by Kevin J. Best, Esq. who is a municipal attorney in Maryland with offices in Annapolis. A substantial part of this article is credited to or derived from a treatise by Charles S. Rhyne, Mayor: Chief Municipal, Executive Law, §11.16 (1985).