



## THE COMMON COUNCIL

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*I, Kerri A. Mellott, Deputy Clerk of the Common Council, hereby certify on this 29 day of November 2023 that the following Ordinance is a true and exact copy of one and the same adopted by the Common Council of the City of Winchester, assembled in regular session on the 28 day of November 2023.*

### **ORDINANCE TO AMEND THE WINCHESTER CITY CODE TO CREATE AND ENACT CHAPTER 32, EMERGENCY MANAGEMENT, ARTICLES I-III, AND SECTIONS 32-1 THROUGH 32-22**

**WHEREAS**, the Commonwealth of Virginia Emergency Services and Disaster Law of 2000 as amended (Title 44, Chapter 3.2 of the Virginia Code) authorizes the Commonwealth and its political subdivisions to provide emergency aid and assistance in the event of a major disaster; and,

**WHEREAS**, the City of Winchester Emergency Management Department and personnel manage emergency services for the City; and,

**WHEREAS**, the Winchester City Code should be amended to define the purpose and need of the Emergency Management Department, the roles and responsibilities of the Director and Coordinator of Emergency Management and their respective authorities during a local emergency declaration, and the civil liability of all individuals engaged in providing disaster response and relief services.

**NOW, THEREFORE, BE IT ORDAINED**, that the Common Council of the City of Winchester, Virginia hereby amends the Winchester City Code to create and enact Chapter 32, Emergency Management, Articles I-III, and Sections 32-1 through 32-22, as provided with this Ordinance.

**Ordinance No. O-2023-28**

**ADOPTED** by the Common Council of the City of Winchester on this 28 day of November 2023.

*Witness my hand and the seal of the City of Winchester, Virginia.*



**Kerri A. Mellott**  
**Deputy Clerk of the Common Council**

## Chapter 32 - EMERGENCY MANAGEMENT

### ARTICLE I. - IN GENERAL

#### Sec. 32-1. - Short title; Emergency Management Code.

This article shall be known and may be cited as the Emergency Management Code of the City of Winchester, Virginia.

#### Sec. 32-2. - Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section unless the context requires a different meaning:

**Emergency-** any occurrence or threat thereof, whether natural or manmade, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property or natural resources and may involve governmental action beyond that authorized or contemplated by existing law because governmental inaction for the period required to amend the law to meet the exigency would work immediate and irrevocable harm upon the citizens or the environment of the Commonwealth or some clearly defined portion or portions thereof.

**Emergency services-** the preparation for, and the carrying out of functions, other than functions for which military forces are primarily responsible, to prevent, minimize, and repair injury and damage resulting from natural or manmade disasters, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions. These functions include, without limitation, firefighting services; police services; medical and health services; rescue, engineering, and warning services; communications, radiological, chemical, and other special weapons defense; evacuation of persons from stricken areas; emergency welfare services; emergency transportation; emergency resource management; existing or properly assigned functions of plant protection; temporary restoration of public utility services; and other functions related to civilian protection. These functions also include the administration of approved state and federal disaster recovery and assistance programs.

**Local emergency-** the condition declared by the City when, in its judgment, the threat or actual occurrence of an emergency or disaster is or threatens to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby; provided, however, that a local emergency arising wholly or substantially out of a resource shortage may be declared only by the Governor, upon petition of the City, when he/she deems the threat or actual occurrence of such an emergency or disaster to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship, or suffering threatened or caused thereby, provided, however, that this should not be construed as prohibiting a local government body from the prudent management of its water supply to prevent or manage a water shortage.

**Major disaster-** any natural catastrophe, including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm or drought, or regardless of cause, any fire, flood, or explosion, in any part of the United States, which, in the determination of the President of the United States is, or thereafter determined to be, of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act (P.L. 43-288, as amended) to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby and is so declared by him.

**Manmade disaster-** any condition following an attack by any enemy or foreign nation upon the United States resulting in substantial damage of property or injury to persons in the United States and may be by use of bombs, missiles, shell fire, nuclear, radiological, chemical or biological means or other weapons or by overt paramilitary actions; terrorism, foreign and domestic; also any industrial, nuclear or transportation accident, explosion, conflagration, power failure, resources shortage or other condition such as sabotage, oil spills and other injurious environmental contaminations that threaten or cause damage to property, human suffering, hardship or loss of life.

**Natural disaster-** any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, or other natural catastrophe resulting in damage, hardship, suffering, or possible loss of life.

**Resource shortage-** the absence, unavailability, or reduced supply of any raw or processed natural resource or any commodities, goods, or services of any kind that bear a substantial relationship to the health, safety, welfare, and economic well-being of the citizens of the Commonwealth.

**State of emergency-** the condition declared by the Governor when, in his/her judgment, the threat or actual occurrence of an emergency or a disaster in any part of the Commonwealth is of sufficient severity and magnitude to warrant disaster assistance by the Commonwealth to supplement the efforts and available resources of the several localities, and relief organizations in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby and is so declared by him/her.

State Law reference— Similar provisions, Code of Virginia, § 44-146.16

### **Sec. 32-3. - Establishment of office.**

There is hereby established the Emergency Management Department for the City to perform local emergency service functions.

State Law reference— Similar provisions, Code of Virginia, § 44-146.19

### **Sec. 32-4. - Director of Emergency Management; Emergency Management Coordinator.**

- (a) The City Manager shall be the Director of Emergency Management. The Deputy City Manager of Public Health & Safety shall be the Deputy Director of Emergency Management. The duties and responsibilities of the Director are as follows:
  - (1) The Director shall organize emergency management and direct emergency operations through the regularly constituted government structure and shall use equipment, supplies, and facilities of existing departments, offices, and agencies of the City to the maximum extent practical. The officers and personnel of all City departments, offices, and agencies are directed to cooperate with and extend any services and facilities to the Director upon request.
  - (2) The Director shall prepare or cause to be prepared and keep current a City Emergency Operation Plan (EOP).
  - (3) The Director may, in collaboration with (i) other public and private agencies within the Commonwealth or (ii) other states or localities within other states, develop or cause to be developed mutual aid agreements or reciprocal assistance in the case of an emergency or disaster too great to be dealt with unassisted.
  - (4) The Director shall have the authority to appoint an Emergency Management Coordinator.
  - (5) The Director may designate a Deputy Emergency Management Coordinator, who shall be responsible to, and carry out such tasks as assigned by, the Director, Deputy Director, and/or Coordinator.
  - (6) The Deputy Director of Emergency Management shall assume the duties of the Director of Emergency Management in his/her absence, and as otherwise delegated by the Director.
- (b) The Emergency Management Coordinator shall be responsible to the Director and shall carry out such tasks as designated by the Director. The Coordinator shall:
  - (1) Comply with all requirements issued by the Federal Emergency Management Agency (FEMA) and the Commonwealth of Virginia Department of Emergency Management (VDEM) in order to procure the maximum amount of federal and state assistance and grant monies to which the City is entitled or eligible as a result of local, state, and/or federal emergency declarations.
  - (2) Ensure the City's Emergency Operations Plan (EOP) is kept current and formally adopted every four years. The plan shall include, but not limited to, the responsibilities of all local agencies and shall establish a chain of command.
  - (3) Act as liaison with all local emergency response agencies and ensure their cooperation in drafting their

portions of the EOP. All agencies over which the City has authority shall cooperate with the planning, development, and execution of the EOP.

- (4) Develop a schedule of training to ensure that all persons with specific responsibilities under the EOP understand their respective duties and are capable of performing them. All persons with specific responsibilities under the EOP shall comply with the training schedule.
- (5) Prepare, coordinate, and participate in exercises of the EOP as mandated by VDEM and FEMA.
- (6) Conduct debriefings at the conclusion of plan exercises and revise the plan to reflect lessons learned.
- (7) Assist the Director in negotiating and entering into mutual aid agreements.
- (8) Coordinate resources for the Director and perform all other duties assigned by the Director in response to an emergency or disaster.
- (9) Cooperate and coordinate with state and federal authorities in the aftermath of an emergency or disaster to ensure the maximum available support for recovery and assistance for persons and businesses.
- (10) Develop a mitigation plan for the City in cooperation with all City agencies. All agencies over which the City has authority shall cooperate in mitigation planning, as directed by the Director.
- (11) Work with the City Council to ensure that requirements for infrastructure replacement are consistent with current best practices to ensure the maximum assistance from the federal government in the event that public facilities must be reconstructed or replaced in the aftermath of a disaster or emergency.
- (12) Provide an annually updated emergency management assessment to the state Coordinator of Emergency Management on or before July 1 of each year.
- (13) The Deputy Emergency Management Coordinator shall assume the duties of the Emergency Management Coordinator in his/her absence, and as otherwise directed by the Director, Deputy Director, and/or Coordinator.

State Law reference— Code of Virginia, § 44-146.19

**Secs. 32-5—32-10. - Reserved.**

## **ARTICLE II. - EMERGENCY DECLARATIONS**

### **Sec. 32-11. - Declaration of local emergency.**

- (a) The Director of Emergency Management is authorized to declare a local emergency. In his/her absence, the Deputy Director, or in the absence of both the Director and the Deputy Director, the Emergency Management Coordinator, may declare the existence of a local emergency, subject to confirmation by the City Council at its next regularly scheduled meeting or at a special meeting within forty-five days of the declaration, whichever occurs first. The City Council, when in its judgment all emergency actions have been taken, shall take appropriate action to end the declared emergency.
- (b) A declaration of local emergency shall activate the City's Emergency Operations Plan (EOP) and authorize the furnishing of aid and assistance thereunder.
- (c) Whenever a local emergency has been declared, the Director of Emergency Management or, in his/her absence, the Deputy Director, or in the absence of both the Director and the Deputy Director, the Emergency Management Coordinator, is authorized by the City Council to control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resource systems which do not impact systems affecting adjoining or other political subdivisions, enter into contracts and incur obligations on behalf of the City necessary to combat such threatened or actual disaster, protect the health and safety of persons and property, and provide emergency assistance to the victims of such disaster, and proceed without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and other expenditures of public funds, provided such funds in excess of appropriations in the current approved budget, unobligated, are available.
- (d) Whenever a local emergency has been declared, the Director, Deputy Director, Coordinator, or Deputy Coordinator shall notify the Virginia Department of Emergency Management when all local resources have been

committed and assistance is needed from the Commonwealth.

State Law reference— Code of Virginia, § 44-146.21

**Sec. 32-12. - State of emergency.**

Whenever the Governor has declared a state of emergency, the City, if so affected, may, under the supervision and control of the Governor or his/her designated representative, enter into contracts and incur obligations necessary to combat such threatened or actual disaster beyond the capabilities of the City, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster. In exercising the powers vested under this section, under the supervision and control of the Governor, the City may proceed without regard to time-consuming procedures and formalities prescribed by law pertaining to public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, levying of taxes, and appropriation and expenditure of public funds.

State Law reference— Code of Virginia, § 44-146.21

**Secs. 32-13—32-20. - Reserved.**

**ARTICLE III. - LIABILITY; SEVERABILITY**

**Sec. 33-21. - City liability.**

- (a) Neither the City, nor the agents or representatives of the City, nor any individual, receiver, firm, partnership, corporation, association, or trustee, nor any of the agents thereof, engaged in any emergency services activities in good faith carrying out, complying with or attempting to comply with this chapter or any other rule or regulation promulgated pursuant to the provisions of this chapter, shall be liable for the death of, or any injury to, persons or any damage sustained to persons or property as a result of such activities. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under the Commonwealth of Virginia Emergency Services and Disaster Law (Code of Virginia, § 44-146.13 et seq.), the Workers' Compensation Act (Code of Virginia, § 65.2-100 et seq.), or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress.
- (b) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants the City a license or privilege or otherwise permits the designation or use of the whole or any parts of such real estate or premises for the purpose of sheltering persons, of emergency access or of other uses relating to emergency services during an actual or impending disaster shall not be civilly liable for the death of, or injury to, any persons on or about such real estate or premises under such license, privilege or other permission, or for loss of or damage to the property of such person.
- (c) If any person holds a license, certificate, or other permit issued by any state or political subdivision thereof evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may gratuitously render aid involving that skill in the City during a disaster; and such person shall not be liable for negligently causing the death of or injury to, any person or for the loss of or damage to the property of any person resulting from such gratuitous service.

State Law reference— Similar provisions, Code of Virginia, § 44-146.23

**Sec. 32-22. - Severability.**

The provisions of this chapter are declared to be severable, and if any section, sentence, clause, or phrase of this chapter shall for any reason be held to be invalid or unconstitutional or if the application of this chapter to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the validity of the remaining sections, sentences, clauses and/or phrases of this chapter.