

McKinney's Executive Law § 24

McKinney's Consolidated Laws of New York Annotated Currentness  
Executive Law (Refs & Annos)

Chapter Eighteen Of the Consolidated Laws

Article 2-B. State and Local Natural and Man-made Disaster Preparedness (Refs & Annos)

§ 24. Local state of emergency; local emergency orders by chief executive

1. Notwithstanding any inconsistent provision of law, general or special, in the event of a disaster, rioting, catastrophe, or similar public emergency within the territorial limits of any county, city, town or village, or in the event of reasonable apprehension of immediate danger thereof, and upon a finding by the chief executive thereof that the public safety is imperiled thereby, such chief executive may proclaim a local state of emergency within any part or all of the territorial limits of such local government; provided, however, that in the event of a radiological accident as defined in section twenty-nine-c of this article, such chief executive may request of the governor a declaration of disaster emergency. Following such proclamation and during the continuance of such local state of emergency, the chief executive may promulgate local emergency orders to protect life and property or to bring the emergency situation under control. As illustration, such orders may, within any part or all of the territorial limits of such local government, provide for:

- a. the establishment of a curfew and the prohibition and control of pedestrian and vehicular traffic, except essential emergency vehicles and personnel;
- b. the designation of specific zones within which the occupancy and use of buildings and the ingress and egress of vehicles and persons may be prohibited or regulated;
- c. the regulation and closing of places of amusement and assembly;
- d. the suspension or limitation of the sale, dispensing, use or transportation of alcoholic beverages, firearms, explosives, and flammable materials and liquids;
- e. the prohibition and control of the presence of persons on public streets and places;
- f. the establishment or designation of emergency shelters and/or emergency medical shelters;
- g. the suspension within any part or all of its territorial limits of any of its local laws, ordinances or regulations, or parts thereof subject to federal and state constitutional, statutory and regulatory limitations, which may prevent, hinder, or delay necessary action in coping with a disaster or recovery therefrom whenever (1) a request has been made pursuant to subdivision seven of this section, or (2) whenever the governor has declared a state disaster emergency pursuant to section twenty-eight of this article. Suspension of any local law, ordinance or regulation pursuant to this paragraph shall be subject to the following standards and limits:
  - (i) no suspension shall be made for a period in excess of five days, provided, however, that upon reconsideration of all the relevant facts and circumstances, a suspension may be extended for additional periods not to exceed five days each during the pendency of the state of emergency;
  - (ii) no suspension shall be made which does not safeguard the health and welfare of the public and

which is not reasonably necessary to the disaster effort;

(iii) any such suspension order shall specify the local law, ordinance or regulation, or part thereof suspended and the terms and conditions of the suspension;

(iv) the order may provide for such suspension only under particular circumstances, and may provide for the alteration or modification of the requirements of such local law, ordinance or regulation suspended, and may include other terms and conditions;

(v) any such suspension order shall provide for the minimum deviation from the requirements of the local law, ordinance or regulation suspended consistent with the disaster action deemed necessary; and

(vi) when practicable, specialists shall be assigned to assist with the related emergency actions to avoid adverse effects resulting from such suspension.

2. A local emergency order shall be effective from the time and in the manner prescribed in the order and shall be published as soon as practicable in a newspaper of general circulation in the area affected by such order and transmitted to the radio and television media for publication and broadcast. Such orders may be amended, modified and rescinded by the chief executive during the pendency or existence of the state of emergency. Such orders shall cease to be in effect five days after promulgation or upon declaration by the chief executive that the state of emergency no longer exists, whichever occurs sooner. The chief executive nevertheless, may extend such orders for additional periods not to exceed five days each during the pendency of the local state of emergency.

3. The local emergency orders of a chief executive of a county shall be executed in triplicate and shall be filed within seventy-two hours or as soon thereafter as practicable in the office of the clerk of the governing board of the county, the office of the county clerk and the office of the secretary of state. The local emergency orders of a chief executive of a city, town or village shall be executed in triplicate and shall be filed within seventy-two hours or as soon thereafter as practicable in the office of the clerk of such municipal corporation, the office of the county clerk and the office of the secretary of state.

4. Nothing in this section shall be deemed to limit the power of any local government to confer upon its chief executive any additional duties or responsibilities deemed appropriate.

5. Any person who knowingly violates any local emergency order of a chief executive promulgated pursuant to this section is guilty of a class B misdemeanor.

6. Whenever a local state of emergency is declared by the chief executive of a local government pursuant to this section, the chief executive of the county in which such local state of emergency is declared, or where a county is wholly contained within a city, the mayor of such city, may request the governor to remove all or any number of sentenced inmates from institutions maintained by such county in accordance with section ninety-three of the correction law.

7. Whenever a local state of emergency has been declared pursuant to this section, the chief executive of the county in which the local state of emergency has been declared, or where a county is wholly contained within a city, the chief executive of the city, may request the governor to provide

assistance under this chapter, provided that such chief executive determines that the disaster is beyond the capacity of local government to meet adequately and state assistance is necessary to supplement local efforts to save lives and to protect property, public health and safety, or to avert or lessen the threat of a disaster.

8. The legislature may terminate by concurrent resolution, such emergency orders at any time.

#### CREDIT(S)

(Added L.1978, c. 640, § 3, amended L.1981, c. 708, § 1; amended L.1994, c. 158, §§ 2, 3.)

<<EXECUTIVE LAW>>

<Laws 1951, Chapter 800>

#### HISTORICAL AND STATUTORY NOTES

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L.1994, c. 158 legislation

Subd. 1, opening par. L.1994, c. 158, § 2, eff. June 7, 1994, substituted "As illustration, such orders" for "Such orders".

Subd. 1, par. f. L.1994, c. 158, § 3, eff. June 7, 1994, added par. f and redesignated former par. f as g.

Subd. 1, par. g. L.1994, c. 158, § 3, eff. June 7, 1994, former par. f redesignated as par. g.

L.1978, c. 640 legislation

Section effective April 1, 1979, pursuant to L.1978, c. 640, § 7.

#### CROSS REFERENCES

Class B misdemeanor, maximum sentence, see Penal Law §§ 70.15 and 80.05.

Clerk of board of supervisors, see County Law § 475.

County clerk as including register, see General Construction Law § 42.

County clerk, see County Law § 525 et seq.

Municipal clerks, see Second Class Cities Law § 32; Town Law §§ 20, 30; Village Law §§ 2-240, 3-301, 4-402, 18-1812.

Municipal corporation, defined, see General Construction Law § 66.

Secretary of state, see Executive Law § 90.

Temporary custody of sentenced inmates in emergencies, see Correction Law § 93.

#### LIBRARY REFERENCES

2001 Main Volume

Municipal Corporations ¶168.

C.J.S. Municipal Corporations § 370.

In a caselaw database, run TO(268) or 268k[add key number] to retrieve cases related to Municipal Corporations.

## RESEARCH REFERENCES

## 2005 Electronic Update

## Encyclopedias

NY Jur. 2d, Criminal Law § 4988, Local Legislation.

NY Jur. 2d, Government Tort Liability § 63, Natural Disaster Assistance or Warnings.

NY Jur. 2d, State of New York § 14, State Disaster Emergency Powers.

## Treatises and Practice Aids

Carmody-Wait, 2d § 144:6, Generally.

## NOTES OF DECISIONS

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1. Scope of authority

The chief executive of a county may unilaterally **declare** a local **state of emergency** in a city, town or village within the territorial limits of the county without the prior concurrence of the chief executive of such city, town or village. 1979, Op.Atty.Gen. 21.

2. Basis for emergency

Decision of town supervisor and town board to stabilize slope behind condominium in immediate aftermath of hurricane, after declaring state of emergency, was a proper exercise of discretion which enjoyed immunity from liability, although homeowners had been evacuated and hurricane had passed. Sluys v. Holbrook (2 Dept. 2002) 292 A.D.2d 371, 739 N.Y.S.2d 173. Towns 45

The presence in private well-water supplies of known or suspected carcinogens which pose a risk to public health and safety establishes a basis for declaration of a local state of emergency. Op.Atty.Gen. 82-F1.

3. Curfews

A town has no authority to enact a juvenile curfew that holds parents responsible for their children's violation of the curfew, but it does have authority to enact a juvenile curfew under its police power if the curfew is necessary for the protection or preservation of the public health, safety and welfare, and in such instance the curfew must be reasonable in relation to the ends sought to be achieved and should be narrowly drawn to avoid infringing on the fundamental rights of juveniles. 1980, Op.Atty.Gen. (Inf.) Dec. 15.

4. Special relationship

Under New York law, no special relationship between city and owners and occupants of properties in vicinity of Twin Towers was created by city's assumption and exercise of control over area following September 11, 2001 terrorist attacks in order to facilitate rescue, recovery, and clean-up activities, and thus city could not be held liable for its alleged negligent failure to take appropriate measures to protect properties, absent allegation that city made any promises or representations to owners and

occupants. Tanus Corp. v. City of New York, 2003, 2003 WL 22023955, Municipal Corporations ↵  
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Current through L.2005, chapter 513 (except for chapters 1 to 3, 149, 214,  
243, 262, 333, 342, 356, 395, 420, 426, 431, 434, 438, 442, 446, 447, 449,  
452, 453, 457, 491, 499, 503, 504 and 512).

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