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## MUNICIPAL LAW

BY JEFFREY D. FRIEDLANDER

### *Law Department's Emergency Response to Hurricane Sandy*

When the city is confronted with an emergency, be it 9/11, the catastrophic event of our lifetime, a transit stoppage, power outage, or a weather event from a snowstorm to the cataclysmic Hurricane Sandy, it responds to protect the health and welfare of our population and visitors. The mayor, as chief executive, is responsible for mobilizing the city's resources—including our Police and Fire Department first responders, the Office of Emergency Management, the Sanitation, Buildings, Environmental Protection and Health departments. In the face of natural or man-made disaster, the challenge facing the New York City Law Department is twofold: first, to provide the necessary legal advice and assistance, and second, in order to be able to perform its duties, to assure that the Law Department itself remains operational.



In the wake of Sandy, I believe it is a good time to review briefly the city's emergency powers and discuss the Law Department's involvement in the city's storm-response and recovery efforts, as well as the impact of the storm on the agency and its preparedness to maintain its effectiveness.

#### **Emergency Powers**

In emergency situations, the city has authority under both common law and statute to exercise emergency powers in order to safeguard the public welfare. The Court of Appeals has recognized the doctrine of *salus populi est suprema lex* in upholding the city's ability to make emergency use of private property in order to respond to an imminent danger. In the Matter of the Petition of Charles A. Cheesebrough, 78 NY 232, 237 (1879). More recently, the U.S. District Court for the Southern District of New York has recognized the appropriateness of emergency government action in the city's rescue and recovery efforts following the terrorist attacks on 9/11. In re World Trade Ctr. Disaster Site Litig., 456 F.Supp.2d 520, 550 (S.D.N.Y. 2006) ("[W]hen an emergent disaster threatens society as a whole, the doctrine...requires the government to act, enlisting persons, firms and corporations in the private sector to eliminate the threat to society and restore society's ability to function").

The New York State Executive Law permits a variety of executive actions in response to a local state of emergency. Pursuant to section 24 of the Executive Law, the mayor may

proclaim a state of emergency within all or parts of the city when he finds that the "public safety is imperiled." Following such a proclamation, the mayor has authority to promulgate local emergency orders "to protect life and property or to bring the emergency situation under control." Such orders include, but are not limited to, orders establishing a curfew and providing for the prohibition or control of pedestrian and vehicular traffic; 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; and the establishment or designation of emergency shelters and emergency medical centers. The mayor may also, subject to federal and state constitutional, statutory and regulatory limits, suspend local laws, ordinances or regulations in order to safeguard the health and welfare of the public. A prerequisite to any such suspension is declaration by the governor of a state disaster emergency or a request by the mayor for state assistance after determining that the disaster is beyond the capacity of local government to meet.

State and local laws facilitate the acquisition of resources necessary to respond to exigencies. Under section 25 of the Executive Law, the mayor may "use any and all facilities, equipment, supplies, personnel and other resources of [the city] in such manner as may be necessary or appropriate to cope with the disaster or any emergency." Section 315 of the New York City Charter permits city agencies to make emergency procurements with the approval of the comptroller and the corporation counsel.

The charter, in section 1043(i), also permits city agencies to adopt emergency rules. With the approval of the mayor, agencies may promulgate rules without adhering to the notice and comment procedures otherwise required under the City Administrative Procedure Act, provided that the "immediate effectiveness of such rule is necessary to address an imminent threat to health, safety, property or a necessary service" and that the rule is re-promulgated, within 120 days, by the normal rulemaking process. Similarly, the charter and local laws empower commissioners of agencies to issue emergency orders.

For example, Charter §1403 confers on the Commissioner of Environmental Protection "the power to respond to emergencies caused by releases or threatened releases of hazardous substances into the environment," and

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Administrative Code §227 authorizes the Fire Commissioner to declare any building, structure, place or premises that is or may be perilous to life or property a public nuisance and order it removed, sealed, abated, repaired, altered or otherwise improved.

### **Operations During the Storm**

The Law Department, like many law offices throughout the city, was adversely affected by Sandy. The storm, and subsequent loss of electricity in Lower Manhattan, shuttered a number of the department's offices, including the main office on 100 Church Street, and forced many staff members to relocate. Despite these challenges, the Law Department was able to perform its duties and return to full operation once power was restored.

As the storm approached the city, the department initiated its emergency response plan, which directed core personnel to assemble at the department's Brooklyn office. From Brooklyn, where department facilities remained unaffected by the storm, the executive staff and division chiefs managed the department's affairs and established lines of communication with clients and the larger Law Department community while staff re-established core office functions lost with the closure of the main office—such as accepting service of legal papers. Although communication with employees was complicated by the loss of email services during the power outage, the Law Department was able to share updates and information through an emergency website which provided information as to when systems rendered inoperative by the power outage would be back up and offices would be reopened.

Even with its staff displaced and office functions limited, the Law Department carried out routine duties as well as aided city efforts to respond to and recover from the storm. For example, the Family Court Division proceeded with cases involving detained youth at the arraignment part of the Manhattan Criminal Court, the Contracts and Real Estate Division worked on approving emergency contracts, and the Legal Counsel Division assisted City Hall with the drafting of Mayor Michael Bloomberg's emergency orders. The efforts of Law Department personnel to respond to the storm also went beyond the practice of law as many staff members unable to make it to open offices assisted at city evacuation shelters and distribution centers.

Once power was restored to Lower Manhattan, the offices that had been closed during the outage were reopened and the department began to resume normal operations. Staff returning to the main office had to tolerate a lack of heat and working phones, however the efforts of the information technology staff ensured that they were greeted with computer systems

that were online and ready to assist them in managing the city's legal affairs.

### **Immediate Response**

The Law Department began assisting the city's storm-response efforts prior to Sandy's landfall. In anticipation of the storm's arrival, Law Department attorneys worked with various city agencies in determining the existence of emergency conditions and securing emergency procurements, and assisted the mayor's office in drafting an executive order proclaiming a state of emergency in the city and ordering the evacuation of homes and businesses in the evacuation zone (denominated as "Zone A" by the Office of Emergency Management).

Once the storm had moved on, Law Department staff focused their efforts on addressing the numerous challenges that arose in its aftermath. At the request of the mayor's office, the Legal Counsel and Administrative Law Divisions collaborated in reviewing drafts of Executive Order 165, dated Oct. 31, 2012, authorizing re-occupation of Zone A. The Legal Counsel Division also aided in efforts to handle the post-Sandy fuel shortage by advising the mayor on his power to impose fuel rationing and assisting in the drafting of an executive order that established an odd-even license plate system for gasoline and diesel purchases so as to reduce wait times and lines at gas stations.<sup>1</sup> The Environmental Law Division assisted in city efforts to respond to the fuel shortage as well by procuring federal and state waivers to allow the temporary use of higher sulfur content fuels and heating oil.

The Law Department was similarly instrumental in facilitating the clean-up and repair of property damaged in the storm. The Contracts and Real Estate Division assisted the Department of Environmental Protection by reviewing and negotiating contracts for the Rapid Repair program, a mayoral initiative which has helped homeowners in flood-damaged areas to restore their properties to habitable condition as quickly as possible. The Legal Counsel and Administrative Law Divisions collaborated in drafting executive orders directing city agencies to remove debris, and waiving license and registration requirements to facilitate the clean-up process.

Attorneys of the Legal Counsel, Administrative Law and Affirmative Litigation Division, along with attorneys from the mayor's office, participated in discussions with the Federal Emergency Management Agency (FEMA) and provided the necessary legal assurances to ensure that the city would qualify for the maximum federal assistance available for its recovery efforts. As the Law Department was working to procure funds from the federal government, it helped obtain

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relief for numerous residents by assisting in the preparation of local and state legislation that would, respectively, extend the due date and provide rebates for real property taxes assessed on property destroyed or rendered unsafe to occupy by the storm. One of these bills, extending the date for payment of real property taxes on certain storm-damaged properties from Jan. 1, 2013, to April 1, 2013, has been enacted by the City Council as Local Law 63 of 2013.

An unusual debris removal effort involved the John P. Caddell, a 185-foot oil tanker, which had broken from its moorings and run aground on Staten Island. Attorneys from the department and the mayor's office coordinated with city, state, and federal agencies to determine the environmental impact of this event and to enable the U.S. Coast Guard and Army Corps of Engineers remove the derelict vessel.

When the ship's owner, a Nigerian company, failed to claim it, lawyers from the Affirmative Litigation Division petitioned the Staten Island Supreme Court to have the tanker declared abandoned pursuant to the Navigation Law, allowing the City Sheriff to sell it by public auction. On Feb. 15, 2013, the New York State Supreme Court (Richmond Co.) granted the city's petition and ordered it auctioned, allowing the city to recover its storage costs. *City of New York v. M/V The John P. Caddell*, Index No. 080340/2012 (Sup. Ct., Richmond Co. 2013) (Minardo, J.).

Finally, as many New Yorkers needed legal assistance as a result of the storm, the Law Department worked with the mayor's office, several bar associations, and legal services providers to collect and disseminate information about available pro bono legal services. The Law Department also helped the mayor's office coordinate the provision of in-person, online, or hotline pro bono legal services to city residents and businesses affected by the hurricane.

### **Work Going Forward**

Although we are now several months removed from Hurricane Sandy, the Law Department's work on Sandy-related issues continues, both in assisting with the city's ongoing recovery efforts and in helping make changes to local laws that could mitigate the damage caused by any future storm.

The Contracts and Real Estate Division continues to advise the Office of Management and Budget as well as other agencies on eligibility to obtain reimbursement from FEMA for Hurricane Sandy-related expenses. As FEMA assistance is available to the city as a "local government" and to certain private not-for-profit organizations, the Law Department is

examining whether the city's application to FEMA for reimbursement may include certain not-for-profit entities (such as public libraries) that have a significant connection to the city or could be considered public entities.

Another issue that has arisen as a result of the storm involves the disposition of records of a number of city agencies that were damaged by floodwater or contaminants. Pursuant to §1133 of the charter, the corporation counsel, along with the commissioner of the Department of Records and Information Services, must approve any city agency's decision to dispose of government records. With regard to storm-damaged records, the Law Department's main concern has been to ensure that these decisions are made and the necessary approvals are given as quickly as possible. Where records may be necessary to pending litigation or have some other legal value, the Law Department has tried to ensure that they are salvaged rather than disposed of. Through this process, the Law Department, together with the Department of Records and Information Services, has assisted in the removal of damaged and potentially hazardous materials from city premises without unnecessarily losing access to records of legal importance.

With respect to prospective measures that could mitigate damage in the event of a future storm, the Legal Counsel and Administrative Law Divisions, in conjunction with the Department of Buildings and the City Planning Commission, are drafting revisions to the city's Building Code and the Zoning Resolution to require that new buildings be more storm-resistant. The Environmental Law Division has been advising the Mayor's Special Initiative for Rebuilding and Resiliency, which is helping to prepare the city for future climate risks.

The law provides useful tools for city officials to respond to public emergencies, and the Law Department stands ready to assist officials in using those tools when necessary. Hurricane Sandy was an event where the effective exercise of emergency powers was of paramount importance, and careful planning by the Law Department enabled it to provide city government with the legal assistance necessary to safeguard the welfare of New Yorkers while addressing its own storm-related operational challenges.

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