

ORDINANCE NO. 2023-11

AN ORDINANCE ADOPTING THE LAKE POINT EMERGENCY ORDINANCE, PLAN, AND PROCEDURES AND RELATED MATTERS

WHEREAS Lake Point is required to prepare and adopt an emergency management plan, as required by the Utah Emergency Management Act, Title 53, Chapter 2a, of the Utah Code ("Act") and other applicable law;

NOW, THEREFORE, BE IT ORDAINED by the Lake Point City Council as follows:

Section 1. The emergency plan and procedures set forth in Exhibit A – Lake Point Emergency Ordinance, are hereby adopted by ordinance.

Section 2. This Ordinance shall be effective immediately upon its adoption and publication according to law.

PASSED, APPROVED, AND ADOPTED on the 10th day of May, 2023

Lake Point

By

Chair

ATTEST:

City Recorder

SEAL

Voting:

Daniel Crawford
Doyle Garrard
Jonathan Garrard
Kathleen VonHatten
Ryan Zumwalt

Yea ___ Nay / Absent ___
Yea / Nay ___ Absent ___
Yea ___ Nay / Absent ___
Yea / Nay ___ Absent ___
Yea / Nay ___ Absent ___

EXHIBIT A

Lake Point Emergency Plan Ordinance

Chapter 1: General Provisions

1-1. Findings and purpose.

- (1) The Lake Point Council finds that existing and increasing threats of the occurrence of destructive disasters resulting from attack, internal disturbance, natural phenomenon or technological hazard could greatly affect the health, safety, and welfare of Lake Point residents. It is therefore necessary to grant emergency disaster authority to the Emergency Manager.
- (2) The purpose of this Ordinance is to assist the Emergency Manager to effectively provide disaster response and recovery assistance necessary to protect the lives and property of Lake Point residents.

1-2. Definitions.

As used in this Ordinance:

- (1) "Act" means the Utah Emergency Management Act, Title 53, Chapter 2a, Utah Code.
- (2) "Attack" means a nuclear, conventional, biological, or chemical warfare action against the United States of America, the State of Utah, or Lake Point.
- (3) "Comprehensive emergency management plan" means a formal NIMS-compliant plan that is updated and reviewed on a regular basis and that provides emergency operations procedures to be used during a disaster.
- (4) "Council" means the Lake Point Council, which is the legislative body of Lake Point.
- (5) "Council member" means a member of the Lake Point Council.
- (6) "County" means Tooele County, Utah.
- (7) "Declaration of emergency" means a formal proclamation or order issued by the Emergency Manager declaring an emergency within the City in accordance with state law.
- (8) "Disaster" means a situation causing, or threatening to cause, widespread damage, social disruption, or injury or loss of life or property, resulting from attack, internal disturbance, natural phenomenon or technological hazard.
- (9) "Emergency" means a condition in the City which requires that emergency assistance be provided to save lives and protect property within the City in response to a disaster, or to avoid or reduce the threat of a disaster.
- (10) "Emergency manager" means the Lake Point Emergency Manager appointed by the Council, or the designated successor interim emergency manager, with respect to

organizing resources and cooperators to prepare for, respond to, recover from, and mitigate the effects of emergencies and disasters.

(11) "Emergency operations center" or "EOC" means a central command and control facility responsible for carrying out the principles of emergency preparedness and emergency management, or disaster management functions at a strategic level in an emergency, and for ensuring the continuity of City operations.

(12) "Incident command system" means the combination of facilities, equipment, personnel, procedures and communications operating within a common organizational structure, with responsibility for the management of assigned resources to effectively accomplish stated objectives pertaining to an incident.

(13) "Internal disturbance" means a riot, jailbreak, terrorism, or strike.

(14) "Local emergency" means those emergencies specified in state law, including but not limited to the Act.

(15) "Mutual aid agreement" means an interlocal cooperation agreement between governmental entities entered pursuant to state law for the purpose of providing aid or assistance during a disaster or emergency.

(16) "Natural phenomenon" means any earthquake, tornado, storm, flood, landslide, avalanche, forest or wildfire, drought, epidemic, pestilence, or other natural disaster.

(17) "Technological hazard" means any hazardous materials accident, mine accident, train derailment, truck wreck, air crash, radiation incident, pollution, structural fire or explosion.

Chapter 2: Emergency Management

2-1. Adoption of National Incident Management System.

The City hereby adopts the National Incident Management System (NIMS) as promulgated by the homeland security presidential directive (HSPD)-5, management of domestic incidents (October 2017), as amended. All City departments shall utilize NIMS in response to all disasters within the City.

2-2. Declaration of emergency.

(1) A declaration of emergency may be issued by the Emergency Manager if the Emergency Manager finds that a disaster has occurred, or the occurrence or threat of a disaster is imminent, in any area of the City in which City government response or recovery assistance is required to supplement the response and recovery of any political subdivision of the City. Any order or proclamation declaring, continuing, or terminating an emergency shall be filed promptly with the City Recorder.

(2) A declaration of emergency shall not be continued or renewed for more than 30 calendar days without the consent of the Council, unless such continuation or renewal is expressly authorized by the Act.

(3) All proclamations or orders issued under this chapter shall include the following:

- (a) the nature of the emergency;
- (b) the area or areas affected or threatened; and
- (c) the conditions which caused the emergency.

(4) When the Emergency Manager issues a declaration of emergency, the City's emergency response shall operate as outlined in the comprehensive emergency management plan. The incident command system shall be utilized.

(5) If necessary, the Emergency Manager shall activate the EOC.

(6) Notice of the declaration of emergency shall be sent to the State of Utah Division of Emergency Management.

2-3. Declaration of local emergency by other political subdivisions.

(1) A declaration of local emergency by any political subdivision of the State, including the county, which is located, in part or total, within or adjacent to the boundaries of the City is official recognition that a disaster situation exists within the City and provides a legal basis for the Emergency Manager to request and obtain state or federal government disaster assistance or to mobilize and provide City resources to aid the City, the County, or the other affected political subdivision.

(2) Notice of any local emergency declared by any political subdivision described in subsection (1) shall be promptly conveyed to the Emergency Manager. Said notice may be conveyed verbally so long as a written notification follows within 24 hours.

(3) The Emergency Manager may provide requested assistance and resources based on an evaluation of the resources utilized by the political subdivision, the sufficiency of the political subdivision's emergency response plan and reserves, and the City's available resources.

(4) If the Emergency Manager determines that the city is unable to provide assistance to the political subdivision, the Emergency Manager may issue a declaration of emergency on behalf of the City and forward the same to the State of Utah Division of Emergency Management.

2-4. Authority and duties of Emergency Manager.

(1) The Emergency manager, during a declared emergency, is authorized and empowered to:

- (a) enact rules and regulations or temporarily suspend ordinances, rules or regulations when necessary to save human life and protect property, for a period not to exceed seven calendar days unless extended by the Council;
- (b) utilize all available resources as reasonably necessary to cope with the emergency;
- (c) employ measures and give direction to City and local officials and agencies that are reasonable and necessary for the purpose of securing compliance with the provisions of this chapter and with orders, rules, and regulations made pursuant to this chapter;
- (d) order an evacuation of all or part of the population from any stricken or threatened area within the City, if necessary for the preservation of life;
- (e) in connection with any evacuation, suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles or other hazardous materials, except that the Emergency Manager may not restrict the lawful bearing of firearms;
- (f) establish curfews for the protection of life and property in the affected areas;
- (g) establish price freezes to prohibit the practice of price gouging for items in short supply or high demand in the affected areas;
- (h) establish the rationing of critical supplies necessary to sustain life;
- (i) approve routes, modes of transportation and destinations in connection with an evacuation;
- (j) control ingress and egress to and from a disaster area, control the movement of persons within the area, and approve the occupancy or evacuation of premises in a disaster area;
- (k) clear or remove from publicly or privately owned land or water, debris or wreckage which may threaten public health or public safety; however, where there is not an immediate threat to public health or safety, the Emergency manager shall not exercise this authority in relation to privately owned land or waters unless:
 - (i) the owner authorizes the employees of designated local agencies to enter upon the private land or waters to perform any tasks necessary for the removal or clearance of debris or wreckage, and
 - (ii) the owner provides an unconditional authorization for removal of the debris or wreckage and agrees to indemnify the local and state government entities against any claim arising from such removal;
- (l) establish temporary shelters for the housing of evacuated persons;

- (m) invoke the provisions of any mutual aid agreement or compact to which the City is a party;
- (n) transfer the direction, personnel, or functions of any City department, agency or unit thereof for the purpose of performing or facilitating emergency services;
- (o) consult with the Council leadership within 12 hours of the declaration of emergency to inform the Council of the nature of the emergency and actions being undertaken in response thereto; and
- (p) perform and exercise such other functions, powers and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population during a declared emergency.

(2) The Emergency manager shall keep the Council reasonably informed as to the scope and duration of the emergency and the plan of operations to cope with the emergency.

2-5. Authority of Sheriff to order evacuations.

- (1) The County Sheriff and the chief law enforcement officer of any law enforcement agency created by or contracted with the City is hereby empowered to order an evacuation of all or part of the population from any stricken or threatened area within the City if necessary for the preservation of life.
- (2) The evacuation may not exceed a period of 36 hours without the express written consent of the Emergency manager.

2-6. Role of emergency manager.

- (1) The emergency manager shall have the following powers, duties and responsibilities:
 - (a) budgeting, accounting, and documenting all areas pertaining to emergency management, including grants, training, and EOC operations;
 - (b) applying for state and federal emergency management grants and programs;
 - (c) coordinating resources that may be utilized during an emergency through mutual aid agreements or other methods;
 - (d) advising the Council on emergency management issues;
 - (e) training City employees, including planning practical exercises and the promotion of continuing emergency management education;
 - (f) drafting the comprehensive emergency management plan and continuity of operations plan for approval by the Council;
 - (g) managing records pertaining to emergencies;
 - (h) issuing an after action report with regard to all emergencies where the EOC has been activated;

- (i) upon request, assisting political subdivisions within the City in their response to emergency or disaster related events; and
 - (j) maintain City critical communications infrastructure sites and assets.
- (2) During a declaration of emergency, the emergency manager shall:
- (a) exercise supervisory control over the EOC;
 - (b) coordinate resources from local, state and federal agencies;
 - (c) manage volunteers; and
 - (d) assist the incident commander.

2-7. Orders, rules and regulations having force of law.

All orders, rules and regulations promulgated by the Emergency manager shall have the full force and effect of law during the declared emergency, provided a copy thereof is filed with the City Recorder.

2-8. Acquisition of property for public use.

- (1) Upon a declaration of emergency, the Emergency manager may purchase or lease public or private property for public use including:
- (a) food;
 - (b) medical supplies;
 - (c) clothing;
 - (d) shelter;
 - (e) means of transportation;
 - (f) fuels and oils; and
 - (g) buildings and land.

- (2) Such acquisitions may be used for any purpose to meet the needs of an emergency, including use to relieve want, distress, and disease.

2-9. Emergency contracts for repair, removal or construction projects.

In the event of a declaration of emergency, the Emergency manager may, without obtaining bids or bonds, contract for repairs, construction, removal of debris, or maintenance of public improvements or public improvement projects that may be reasonable and necessary to alleviate the emergency or its consequences, subject to the following:

- (1) emergency contracts shall be made with as much competition as practicable under the circumstances; and

(2) a written determination of the basis for the emergency, the selection of the particular contractor, and the actions of the Emergency manager in entering into the contract shall be submitted to the Council and the City Recorder as soon as reasonably possible thereafter.

Chapter 3: Emergency Interim Succession Procedures

3-1. Purposes.

The purposes of this chapter are to implement the state Emergency Interim Succession Act and to provide for continuity of City government in times of emergency or disaster.

3-2. Definitions.

As used in this chapter:

- (1) "Absent" or "unavailable" means not being physically present at the place of governance during a disaster or emergency, or not being able to communicate with the place of governance during a disaster or emergency via telephone, radio or other communications device within thirty minutes of an official attempt to communicate.
- (2) "Available" means being physically present at the place of governance during a disaster or emergency, or being able to communicate with the place of governance during a disaster or emergency via telephone, radio or other telecommunications device.
- (3) "Emergency interim successor" means a person designated by this chapter to exercise the powers and discharge the duties of a City office when the person legally exercising the powers and duties of that office is absent or unavailable.
- (4) "Local government officer" means each City elected official who is required to designate three emergency interim successors.
- (5) "Official attempt to communicate" means any attempt by the County Sheriff's office, the office of any law enforcement agency created by or contracted with the City, the City emergency management department, or any City elected official to contact a local government officer during a disaster, emergency or local emergency.
- (6) "Place of governance" means the physical location where the powers of City officials are being exercised.

3-3. Declaration of emergency by emergency interim successor.

(1) If the Emergency manager is absent or unavailable for the purpose of considering or making a declaration of emergency, then the following City officials or employees shall be contacted in the order listed below, and the first person so contacted shall have the power and duty to issue a declaration of emergency when the circumstances warrant such a declaration:

- (a) City Council chair;

- (b) City Council vice chair;
- (c) Each City Council member not already designated as emergency manager, chair, or vice-chair, in descending alphabetical order by last name;
- (d) County Sheriff.

(2) If all of the foregoing officials and employees are absent or unavailable, then the emergency succession procedures specified in Section 16-3-4 shall apply for the purpose of designating emergency interim successors for the Emergency manager, Council chair, and Council vice chair.

3-4. Emergency interim succession for City Council.

(1) If a quorum of the Council is absent or unavailable, any available Council member may act as the Council until such time as three or more Council members are available. If one Council member is available and acting as the Council, the emergency interim successors for the other Council members shall not be called upon and shall not be empowered to exercise the powers or duties of office.

(2) If every Council member is absent or unavailable, an emergency interim successor for each Council member shall be contacted and shall exercise the powers and duties of office according to the order of succession specified by that Council member. An emergency interim successor appointed under this section shall exercise the powers and duties of office only until the vacancy is filled pursuant to law, the Council member becomes available, or an emergency interim successor earlier in order of succession becomes available.

3-5. Emergency interim successors for City officials.

(1) By July 1 of each year, each City elected official shall:

- (a) designate three emergency interim successors;
- (b) specify their order of succession; and
- (c) provide a list of those designated successors to the emergency manager, the Sheriff, and the State of Utah Division of Emergency Management. The list shall remain in effect until revoked or revised in writing by the elected official or until the official no longer holds City office.

(2) If any City elected official is unavailable, a designated emergency interim successor shall exercise the powers and duties of the office according to the order of succession specified by the elected official.

(3) An emergency interim successor shall exercise the powers and duties of office only until the vacancy is filled pursuant to law, the elected official becomes available, or an emergency interim successor earlier in order of succession becomes available.

Chapter 4: Hazardous Materials Local Emergency Planning Committee

4-1. Definitions.

As used in this chapter:

- (1) "LEPC" means the Lake Point Local Emergency Planning Committee.
- (2) "EPCRA" means the Federal Emergency Planning and Community Right-to-Know Act of 1986.

4-2. Committee created.

Lake Point hereby authorizes and establishes a Lake Point Local Emergency Planning Committee. The LEPC, through the Lake Point Emergency Manager, is hereby authorized to enforce the provisions of this chapter.

4-3. Role of emergency manager.

The emergency manager or his/her designee shall, upon resolution of the LEPC, act as the LEPC's agent for the enforcement, management, and administration of the LEPC's duties set forth under EPCRA.

4-4. Emergency Planning and Community Right-to-Know Act.

- (1) The requirements of EPCRA shall be the law of Lake Point and shall apply equally to federal, state, City, or local governmental agencies, departments, installations, and facilities located in this City, as well as to other facilities that are subject to the provisions of EPCRA.
- (2) The provisions of EPCRA are hereby deemed rules and regulations of the Lake Point Emergency Management Department and the fire department governing the operation of any business that holds a license or permit issued pursuant to Lake Point ordinances.
- (3) An owner or operator of a covered facility under the provisions of EPCRA who violates such provisions shall be subject to a civil administrative fine not to exceed \$1,000 per violation. The LEPC shall establish the fine based on the severity of the violation, the duration of the violation, the alleged violator's history of non-compliance, the economic benefit of non-compliance, the LEPC's or the City's investigative costs, and the cooperation of the owner or operator in remedying the alleged violation.

4-5. Notice of violation.

- (1) Whenever the LEPC determines that any person or facility is in violation of any applicable emergency plan accepted by or created by the LEPC pursuant to EPCRA, the requirements of EPCRA, or any rules of the LEPC, the LEPC may cause a written notice of violation to be served on the alleged violator.
- (2) The notice of violation shall:
 - (a) specify the provisions of the emergency plan or law or rule alleged to have been violated;

- (b) recite the facts alleged to constitute the violation;
- (c) advise the alleged violator that an administrative hearing will be held to determine if a civil administrative fine should be imposed; and
- (d) include the time, date, and place of the hearing.

4-6. Procedure.

- (1) The LEPC shall appoint an examiner to conduct the hearing.
- (2) The examiner shall conduct the hearing and shall issue written findings of fact and recommendations to the LEPC, which shall be served on the alleged violator.
- (3) If the examiner's findings or recommendations are adverse to the alleged violator, the alleged violator may, within 15 days after the date of the findings and recommendations, submit written objections to the LEPC.
- (4) The LEPC shall review the examiner's findings and recommendations, as well as any timely objections submitted by the alleged violator, and may adopt, modify or reject the examiner's findings and recommendations. The LEPC shall issue a written order which shall be served on the alleged violator.
- (5) The alleged violator shall have 30 days from the date of the order in which to seek judicial review in the district court. The alleged violator shall serve a copy of the petition seeking judicial review on the LEPC. The LEPC shall promptly file a complete copy of the record.

4-7. Service.

The notice of violation, the examiner's findings and recommendations, and the LEPC's order shall be served on the alleged violator and/or record owner of the facility where the violation is alleged to have occurred. Service shall be accomplished by mailing a copy of such document by certified mail, postage prepaid, return receipt requested, to the address of the facility where the violation is alleged to have occurred.

4-8. Failure to pay.

If any person fails to pay a civil administrative fine after the time for judicial review has expired or after the court has entered final judgment in favor of the LEPC, the LEPC may request the City Attorney to institute a civil action to collect the civil administrative fine.

4-9. Enforcement.

- (1) Nothing contained in this chapter shall prohibit the City or LEPC or any other person from initiating suit pursuant to 42 USCS 11045 and 11046 of EPCRA at any time during the pendency of the administrative proceedings authorized by this chapter.
- (2) The LEPC shall have the authority to enter into an informal settlement agreement with an alleged violator in lieu of seeking a civil administrative fine.