

FLOOD, SWEAT & TEARS

The Role of the Municipal Lawyer
in a Local Disaster

FLOOD, SWEAT & TEARS

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FLOOD, SWEAT & TEARS

- ✦ **Tim Lessons from Lyons**
- ✦ **Bob All Hazards Emergency Management**
- ✦ **Kendra A Personal Perspective**

LYONS – BEFORE THE FLOOD



LYONS – BEFORE THE FLOOD



LYONS – AFTER THE FLOOD



LYONS – AFTER THE FLOOD



LYONS – AFTER THE FLOOD



LYONS – SEPTEMBER 12, 2013



Lyons – Response Phase

Declaration of Local Disaster Emergency:
C.R.S. 24-33.5-709

- Authorizes "principal executive officer" to declare disaster to activate any local disaster plan and to authorize aid
- Declaration only valid for 7 days except by consent of governing body

Lyons – Response Phase

Declaration of Local Disaster Emergency:
C.R.S. 24-33.5-709

- Lyons administrator/mayor declared disaster in early hours after flood
- Held special meeting to extend emergency declaration for 60 days

Lyons – Response Phase

Declaration of Local Disaster Emergency:
C.R.S. 24-33.5-709

- Additional provisions
 - Town staff directed to dedicate all resources to flood recovery
 - Authorized Town business to be conducted elsewhere
 - "Eased" Open Meetings Law requirements, restrictions

Lyons – Response Phase

TABOR Reserves:
Colorado Constitution, Art. X, Sec. 20(5)

- To use for declared emergencies only, each district shall reserve for 1993 1% or more, for 1994 2% or more, and for all later years 3% or more of its fiscal year spending excluding bonded debt service. Unused reserves apply to the next year's reserve.

Lyons – Response Phase

TABOR Reserves:
Colorado Constitution, Art. X, Sec. 20(5)

Ordinance authorizing expenditure of emergency reserves during declared local disaster

Lyons – Response Phase

Official Posting Place



Lyons – Response Phase

Curfew, Park Closure

Businesses and homes abandoned, police patrols at night

Meadow Park – unstable banks, dangerous rocks



Lyons – Response Phase

Purchasing Policies

Code limits Town Administrator's authority to approve contracts based on purpose and amount

Adopted ordinance suspending purchasing policies

Lyons – Response Phase

Mutual Aid

Intergovernmental agreements normally require Board of Trustees approval

Resolution authorized Administrator to enter into agreements for mutual aid

Lyons – Response Phase

Utility/Water Theft

Some parts of town were ready to reconnect before others

Electric or gas available before water – safety concerns

Temporary water supply

Lyons – Response Phase

Utility/Water Theft

Ordinance made it unlawful to connect without consent

Also unlawful to use water from cisterns

Lyons – Recovery Phase

Debris Removal

Large volume of trees, rocks, mud

Public and private property



Lyons – Recovery Phase

Emergency Creek Repairs

Bank stabilization needed to avoid further damage

Lyons – Recovery Phase

Lease of private property

Needed place for new public works building



Lyons – Recovery Phase

Waiver of administrative fees

Town wanted to encourage early redevelopment and rehabilitation of damaged property

Lyons – Recovery Phase

Temporary uses and structures

Property owners sought to make use of land in short-term

Town wanted to facilitate quick re-use while still preserving zoning designations

Lyons – Recovery Phase

Substantial Damage Determination

FEMA urged Town to implement appeal process for those aggrieved by determination

Town wanted process to be easy for those waiting to know the fate of their homes

A PERSONAL PERSPECTIVE

Kendra Carberry



A PERSONAL PERSPECTIVE



Before

A PERSONAL PERSPECTIVE



After

A PERSONAL PERSPECTIVE



AFTER THE FLOOD . . .

ITEMS NEEDED BY PROPERTY OWNERS QUICKLY (but after the water has receded):

- **Limited/No Entry Placard**
 - This is provided by the building department after an initial inspection that should occur quickly after the flood
 - Other jurisdictions will "loan" building inspectors for this purpose (ours were from Wheat Ridge and Parker)

AFTER THE FLOOD . . .

"Determination of Substantial Damage" Letter

- This is typically a letter from the land use department to the property owner
- If the damage is greater than 50%, this letter allows a property owner to apply for Increased Cost of Compliance ("ICC") funds from the NFIP (up to \$30,000)
- This letter also assists the property owner with the initial NFIP estimate, so the sooner the property owner receives it, the better

AFTER THE FLOOD . . .

"Determination of Substantial Damage" Letter (continued)

- In most jurisdictions, this letter also controls whether a legal nonconforming structure may be repaired (usually if the damage is < 50% of value), or needs to be reconstructed in full compliance with applicable codes (usually if the damage is ≥ 50% of value)

AFTER THE FLOOD . . .

"Determination of Substantial Damage" Letter (continued)

- FEMA/NFIP allows any determination of value to be used (assessed value, recent appraisal, homeowners' insurance value)
- Boulder County now provides an appeal process if a property owner disagrees with the initial determination, but the adoption of the appeal process resulted in a 5-month delay in the mailing of the letters. Consider adopting this appeal process now

AFTER THE FLOOD . . .

FEMA Right-of-Entry Form

- Typically, these forms allow local government/FEMA representatives to enter private property to assess and remediate flood damage
- The initial form sent by Boulder County was extremely broad – I would suggest a more limited form, with a timeframe, purpose, etc.

AFTER THE FLOOD . . .

FEMA Right-of-Entry Form (continued)

- If the property owner had flood insurance, the form must include a statement that the property owner will not accept flood insurance proceeds for any work that a local government or FEMA actually performs
- The form must include an indemnification clause (property owner indemnifies local government/FEMA representatives)

AFTER THE FLOOD . . .

Volunteer Coordination

AFTER THE FLOOD . . .

Base Flood Elevation Certificate

- Consider having a list of local surveyors/engineers qualified to issue this certificate

AFTER THE FLOOD . . .

Dumpsters

- These are usually provided by a local company (in our case, Western Disposal) on FEMA's dime
- Locations are often on public roads and in public parks, so coordination is essential
- May want to consider volunteer "dumpster guards" to prevent the dumping of hazardous or non-disaster-related waste

AFTER THE FLOOD . . .

ITEMS NEEDED BY PROPERTY OWNERS LATER (but not too late):

- For agricultural properties, proof of agricultural zoning and agricultural property tax status
- The assessment documentation comes from the county
- The zoning proof comes from the municipality or county, as applicable

AFTER THE FLOOD . . .

A central location (website) with links to the following:

- U.S. Department of Agriculture (to register for grants)
- U.S. Farm Service Agency (to register for grants)
- Colorado Farm Aid grant application
- Colorado Farm Bureau grant application

AFTER THE FLOOD . . .

A central location (website) with links to the following:
(continued)

- CDBG grant application
- Local community foundation website (if any)
- United Way website
- United Policyholders website – this is a consumer protection group for flood insurance policyholders

AFTER THE FLOOD . . .

A list of local real estate appraisers qualified to provide pre- and post-flood appraisals:

- This is necessary for both income tax purposes and for appealing a flood insurance claim payment

AFTER THE FLOOD . . .

Information concerning any applicable waiver/abatement/reduction in property taxes

AFTER THE FLOOD . . .

A system for advance notification of repairs to waterway near property

AFTER THE FLOOD . . .
Information on floodplain/floodway map revisions

QUESTIONS?

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Special Districts:
Metropolitan
Fire
Water & Sanitation
Park & Recreation
Sewerworks
Ambulance &
Health Services

Municipalities:
General Council
Special Council
Competition
Development
Urban Renewal

Service Authorities:
Water & Sewer
911
Emergency
Communications

Water & Environmental
Local Government
Elections
Employment
Finance


Bob Cole - All Hazards Emergency Management



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1. Framework for All Hazards Emergency Management


- 5 Phases of Emergency Management
 - Prevention
 - Mitigation
 - Preparedness
 - Response
 - Recovery




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1. Framework for All Hazards Emergency Management


- National Incident Management System (NIMS)
 - Preparedness
 - Communications and Information Management
 - Resource Management
 - Command and Management
 - Ongoing Management and Maintenance




**1. Framework for All Hazards
Emergency Management**


- Incident Command System (ICS).
 - Command
 - Operations
 - Planning
 - Logistics
 - Finance/Administration




**1. Framework for All Hazards
Emergency Management**

- Multi-Agency Coordination System (MACS)
- Emergency Operation Center (EOC) v. Incident Command Post
- Emergency Manager v. Incident Commander (IC)




**1. Framework for All Hazards
Emergency Management**

- Plans, Plans and More Plans!
 - Federal, state and local plans
 - Training/Exercise Plan
 - Public Education Plan
 - Emergency Management Strategic Plan

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**1. Framework for All Hazards
Emergency Management
Plans, Plans and More Plans!**


- Warning Notification Plans
 - Sirens
 - Emergency Notification Systems (ENS)
 - National Oceanic and Atmospheric Administration (NOAA) weather alerts
 - National Weather Service (NWS) internet and cell alerts

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**1. Framework for All Hazards
Emergency Management
Plans, Plans and More Plans!**


- Evacuation Plans
 - People and animals
 - Mandatory, voluntary and self-evacuation
 - Shelter-in-Place
 - Security
- Access and Functional Needs (AFN) Planning




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**1. Framework for All Hazards
Emergency Management
Plans, Plans and More Plans!**


- Continuation of Operations/Governance Plans (including legal services)
 - Succession Plan
 - Power and Connectivity
 - Back-ups and Redundancies




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**1. Framework for All Hazards
Emergency Management
Plans, Plans and More Plans!**


- Emergency Operations Plan (EOP)
 - Mobilization Plans
 - Resource Management Plans
 - Access and Transportation Plans
 - Communications and IT Plans
 - Logistics Plans
 - Facilities Plans




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**1. Framework for All Hazards
Emergency Management
Plans, Plans and More Plans!**

- Incident Management Plan
- Volunteer Coordination and Donations Management Plan
- Recovery Plan




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2. Legal Authorities




- Federal Disaster and Emergency Assistance Act (Stafford Act)
- Colorado Disaster Emergency Act Part 7, Article 33.5, Title 24, C.R.S.

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2. Legal Authorities

Colorado Disaster Emergency Act


- **Purpose:**
 - Reduce vulnerabilities from natural catastrophes, catastrophes of human origin, civil disturbance, or hostile military or paramilitary action
 - Prepare for disasters and emergencies
 - Restoration and rehab
 - Clarify and strengthen roles of the governor, state agencies, and local government
 - Coordination
 - Emergency management system
 - Prevention of disasters caused or aggravated by inadequate planning for regulation of public and private facilities and land use


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2. Legal Authorities

Colorado Disaster Emergency Act

- **Key Definitions:**
 - “Disaster” broadly defined to include “occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from” natural and human causes of a wide variety.
 - “Political Subdivisions” broadly defined to include county, city and county, city, town and other agencies designated by law as a political subdivision of the state.



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2. Legal Authorities

Colorado Disaster Emergency Act Governor's Powers

- **Responsible for meeting dangers presented by disasters**
- **Executive orders, proclamations, and regulations**
- **Governor's disaster emergency council**
- **Disaster declaration if “a disaster has occurred” or “occurrence or the threat thereof is imminent.”**
 - 30 days unless renewed by the Governor. Joint resolution of the general assembly can terminate.
 - activates disaster response and recovery aspects of state, local, and interjurisdictional disaster emergency plans.
 - “Governor is commander-in-chief of organized and unorganized militia and all other forces available for emergency duty.”



2. Legal Authorities
Colorado Disaster Emergency Act
Governor's Powers

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2. Legal Authorities
Colorado Disaster Emergency Act
Governor's Powers


- Other Governor powers during declared disaster emergency:
 - suspend regulatory statutes and agency regulations if strict compliance would hinder coping actions
 - utilize resources of state and political subdivisions
 - commandeer private property
 - compel evacuation
 - control ingress and egress from disaster area
 - suspend sale, dispensing, or transportation of alcoholic beverages, firearms, explosives or combustibles.
 - Emergency Epidemic Response Committee.



2. Legal Authorities
Colorado Disaster Emergency Act
Office of Emergency Management


- Prepares and implements State Disaster Plan
- Assists with development of local plans
- All-hazards response resources database and mobilization plan.




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2. Legal Authorities
Colorado Disaster Emergency Act
Office of Emergency Management


- Mobilization upon request of Governor, sheriff, emergency manager or person authorized in state resource mobilization plan, and large-scale emergency, disaster, or other local incident exceeds or will exceed local capabilities and mutual aid.



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2. Legal Authorities
Colorado Disaster Emergency Act
Office of Emergency Management

- Facilitate reimbursement to mobilized state agencies and jurisdiction from federal and state funds. For reimbursement must be mobilized pursuant to decision of the Executive Director of the Department of Public Safety, and participating in a mutual aid agreement under part 7.
- Resource Mobilization Fund and Disaster Emergency Fund

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2. Legal Authorities
Colorado Disaster Emergency Act
Local and Interjurisdictional Disaster Agencies and Services


- Political subdivisions are within the jurisdiction of OEM and local disaster agency.
- County disaster agency is the lead.
- Municipal disaster agency determined by Governor.
- Joint disaster agencies determined by Governor.




2. Legal Authorities
Colorado Disaster Emergency Act
Local and Interjurisdictional Disaster Agencies and Services

- Prepares local disaster emergency plan.
- Local emergency manager provides training, planning, mitigation alternatives, and recovery operations, and link between IC and local governments.






2. Legal Authorities
Colorado Disaster Emergency Act
Local and Interjurisdictional Disaster Agencies and Services




Local disaster emergency declaration

- Only by principal executive office of a political subdivision
- Continues for 7 days, only, unless consent of the governing board
- Prompt and general publicity, and file with county clerk and recorder, municipal clerk, Office of Emergency Management
- Activates response and recovery aspects of local disaster emergency plan and authorize furnishing of aid and assistance.




2. Legal Authorities
Colorado Disaster Emergency Act
Disaster Prevention

- Governor may suspend or impose local standards if:
 - area is susceptible to a catastrophic disaster without adequate warning, existing building standards and land-use controls are inadequate and could add substantially to the magnitude of the disaster, and changes in zoning, land-use or building regulations are essential; and
 - holds a hearing and local governments with jurisdiction do not act; and
 - requests the general assembly take legislative action to mitigate the impact of disaster.




2. Legal Authorities
Other Statutes

- Hazmat
 - Federal Emergency Planning and Community Right-to-Know Act, SARA Title III, requires LEPCs to address hazmat incidents.
 - Colorado Emergency Planning Commission, REPCs and LEPC. Part 15, Article 33.5, Title 1501, C.R.S.
 - General Hazmat and DERA §29-22-102, C.R.S.
- CGIA
- Compensation for taking property. §24-33.5-711, C.R.S.
- Mutual aid. §24-33.5-713, C.R.S.




2. Legal Authorities
Other Statutes

- Civil Defense Worker Compensation and Liability. Parts 8 and 9, Article 33.5, Title 24, C.R.S.
- School Buildings and Buses for Civil Defense. Part 10, Article 33.5, Title 24, C.R.S.
- Disaster Relief. Part 11, Article 33.5, Title 24, C.R.S.
 - Debris removal on public or private land by state and the state's instrumentalities if Governor or Presidential major disaster or emergency declaration.
 - Loans to state and local governments upon Presidential declaration.
- Division of Homeland Security and Emergency Management. Part 16, Article 33.5, Title 24, C.R.S.



2. Legal Authorities
Municipal Legal Authority


- Charter
- Municipal Code/Policies
 - Emergency/Disaster Declaration Authority
 - Emergency Curfew
 - Emergency Evacuation/Establishment of Police lines
 - Emergency meeting procedures
 - Emergency authority to exceed budget
 - Emergency Access to Tabor reserves
 - Price Controls During an Emergency
 - Property Seizure
 - Emergency Contracting Procedures

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2. Legal Authorities


Municipal Legal Authority

- Personnel Manual – exceptions in case of emergencies for:
 - Holidays
 - Limitations on hours/OT authorization
 - OT for salaried employees (pre-emergency authorization needed for FEMA reimbursement)



TOWN OF
PAGOSA
SPRINGS


Personnel Handbook

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3. Emergency Management Information Resources


- FEMA, <http://www.fema.gov>
- Colorado Division of Homeland Security & Emergency Management, <http://www.dhsem.state.co.us>
 - Colorado Emergency Management Program Guide
 - Resource Library.

<http://www.dhsem.state.co.us/emergency-management/resources>




EMERGENCY MANAGEMENT PROGRAM GUIDE
FOR COLORADO
January 2013

Colorado Office of Emergency Management




Department of Public Safety
Division of Homeland Security
and Emergency Management
Office of Emergency Management
1800 S. Wacker Drive, Suite 200
Denver, CO 80202
(303) 863-8800
www.dhsem.state.co.us
www.colorado.gov

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3. Emergency Management Information Resources

- National Response and Mobilization Plan
- Colorado Resource Mobilization Plan
- NFPA Standard 1600, <http://www.nfpa.org>
- IAEM International Association of Emergency Managers <http://www.iaem.com/home.cfm?c=Global> Resources tab and Reference Materials
- Colorado Emergency Management Association <http://cemacolorado.com/>

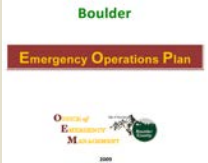
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4. Document Toolkit

- County Response Plan
- Local Response Plan
- County Wildfire Annual Operations Plan (AOP)

Boulder


Emergency Operations Plan




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4. Document Toolkit


- Emergency Contacts
 - Council Members
 - Municipal Manager
 - County Attorney and BOCC
 - Emergency Manager
 - State OEM Field Manager
 - Law Enforcement
 - Fire, Ambulance
 - PSAP
 - Department Heads
 - Public Works
 - Water, Sewer, Electricity, Natural Gas, Telephone Utilities
 - Hospital
 - Insurance Carrier/Claims Department,




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4. Document Toolkit



- Select State Emergency Operations Plans
 - Wildfire
 - Tornado
 - Winter Incident
 - Terrorism
 - Resource Mobilization Plan
- Mutual Aid Agreements
- Requesting Assistance




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4. Document Toolkit


- Charter
- Municipal Code
- Personnel Manual





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4. Document Toolkit


- Emergency/Disaster Declaration
- Supplemental Declarations to implement emergency powers, or emergency ordinances to establish emergency powers.
- Equipment and Services Contracts
 - Inspection forms
- Waivers of Liability
 - Volunteers
 - Property Owners
 - Contractors



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5. Training


- NIMS/ICS
 - Introduction to the Incident Command System (ICS-100)
 - Introduction to NIMS (IS-700)
 - NIMS Multiagency Coordination System (MACS) (IS-701)
 - Introduction to National Response Framework (IS-800)
- Multi Agency Exercises
- Intra-agency Exercises

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6. Emergency Incident Evolution



- Initial reliance on local resources
- The IC is in charge of on-scene operations!
- Mutual and Automatic Aid
- Local Emergency Manager provides support
- EOC support and coordination role





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6. Emergency Incident Evolution


- Local Emergency Declaration
 - Emergency Fire Fund (EFF)
 - Wildfire Emergency Response Funds (WERF)
 - Flood Response Fund
- Delegation of Authority to Incident Management Team (IMT)





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6. Emergency Incident Evolution


- State Emergency Declaration
 - Governor’s Disaster Declaration
 - State Emergency Reserve Fund
 - MACS activation
- Federal Emergency Declarations
 - Presidential Disaster Declaration
 - FEMA Fire Management Assistance – Current threat of major disaster, 75% federal cost share
 - Agricultural Emergency Disaster Designation




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6. Emergency Incident Evolution


- **Recovery Phase**
 - Coordination through EOC and Emergency Manager
 - Transition Emergency Support Functions (ESFs) to Recovery Support Functions (RSFs)
 - Appoint Recovery Task Force or Coordination Group
 - Disaster Assistance Center – local, state and federal representatives





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6. Emergency Incident Evolution

- **Recovery Phase Continued**
 - Damage Assessments
 - Rapid Needs Assessment
 - Preliminary Damage Assessment
 - Safety Assessments
 - Security Assessment
 - Behavioral Health Needs
 - Debris Management
 - Re-entry
 - Volunteer coordination and donations management
 - Economic, housing and finance priorities






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7. Role of the Municipal Attorney


- Understand the framework of emergency response and recovery
- Know legal authorities
- Know where to find emergency management resources
- Have a documents toolkit and ready access to legal forms and documents
- Participate in training

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7. Role of the Municipal Attorney During an emergency or disaster incident



- Help ensure continuance of government
- Legal support for operational personnel




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7. Role of the Municipal Attorney During an emergency or disaster incident

- Support the Policy Group
 - Coordination of local resources with EOC Manager
 - Policy Decisions – establish goals and priorities considering financial, economic, legal, political and social implications
 - Strategic Decisions requested by IC or Emergency Manager
 - Priorities for incident and recovery planning
 - Legal guidance to policy makers, IC and emergency manager
 - Delegations of Authority
 - Emergency and Disaster Declarations
 - Coordination with Policy Groups of other affected jurisdictions

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7. Role of the Municipal Attorney During an emergency or disaster incident

- Be alert, keep the calm, think clearly, act decisively

