

Local Restrictions that Impede Disaster Recovery

HB 5

State of Texas

June 2020

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Executive Summary

In the wake of Hurricane Harvey, Governor Greg Abbott created the Governor's Commission to Rebuild Texas on September 7, 2017, as a part of his effort to respond promptly and efficiently to the storm. The Commission was established to "oversee the response and relief effort between the state and local governments to ensure victims of the storm get everything they need as quickly as possible" and to be "involved in the rebuilding process, focusing on restoring roads, bridges, schools and government buildings in impacted communities" (Eye of the Storm, 2018).

The "Eye of the Storm" report from the commission describes how the state responded and how the citizens of Texas began recovering from this devastating event. As a result of the commission's report, the 86th Texas Legislature amended Section 1, Subchapter C of Chapter 418 of the Texas Government Code by adding Section 418.057 which created a work group composed of representatives of the Texas Division of Emergency Management, other state agencies selected by the division, and local governmental entities.

The role of the work group was to conduct a study on local and deed restrictions that impede disaster recovery efforts, including efforts to remove debris, and erect short-term housing. This report of the work group contains results from detailed discussions held over the course of several months and offers recommendations for minimizing local barriers to disaster recovery efforts in this state.

Although we can't stop the next storm from happening, we can help our communities be better prepared for any natural disaster. By taking proactive measures such as developing and implementing comprehensive debris management plans and entering into pre-event contracts, communities can control and minimize costs, facilitate recovery activities and increase their resilience.

Overview

Goal

The goal of this project is to identify local restrictions and requirements imposed by deed restrictions or property owners' associations that impede state and federal disaster recovery efforts in the state of Texas and to make recommendations to minimize the effect.

Objectives

- Identify local restrictions that impede state and federal disaster recovery efforts
- Identify requirements imposed by deed restrictions or property owners' associations
- Make recommendations to minimize the effects of the official actions and requirements on state and federal disaster recovery efforts

Audience

- TDEM- Chief Kidd
- Texas Legislature

Authority

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Texas Legislature Online

<https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=HB5>

Stakeholders

Members are identified in the table below.

| Agency | Responsibility |
|--|---|
| Texas Division of Emergency Management (TDEM) | The Texas Division of Emergency Management is charged with carrying out a comprehensive all-hazard emergency management program for the state and for assisting cities, counties, and state agencies in planning and implementing their emergency management programs. |
| Texas Association of Builders (TAB) | The Texas Association of Builders provides a professional group of architects, structural engineers and municipal building officials that perform post-disaster damage assessments to determine the safety for possible reentry into structures following an event. Over and above the public safety aspect of this function this group provides data on percent of damage as well as the ability of the structure to act as temporary or permanent housing. |
| Texas Association of Counties (TAC) | The Texas Association of Counties is the representative voice for all Texas counties and county officials. TAC unites counties to achieve better solutions. |
| Texas Commission on Environmental Quality (TCEQ) | The Texas Commission on Environmental Quality strives to protect our state's public health and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste. |
| Texas General Land Office (GLO) | Community Development and Revitalization (CDR) within the Texas General Land Office (TX GLO), is the state agency lead for administering the disaster recovery and mitigation funds provided by the U.S. Department of Housing and Urban Development (HUD), as well as, the FEMA funded temporary housing program. The HUD funded recovery programs may include housing, infrastructure, planning, and economic revitalization programs with a focus on low- moderate income communities. |
| Texas Municipal League (TML) | The Texas Municipal League exists to serve the needs and advocate the interests of cities and city officials. |

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|---|---|
| Texas Public Utilities Commission (PUC) | The Public Utility Commission of Texas regulates the state's electric, telecommunication, and water and sewer utilities, implements respective legislation, and offers customer assistance in resolving consumer complaints. |
| Community Associations Institute | Community Associations Institute supports public policy that recognizes the rights of homeowners and promotes the self-governance of community associations affording associations the ability to operate efficiently and protect the investment owners make in their homes and communities. |
| CDR Maguire | CDR Maguire Inc. is a full-service, nationally recognized emergency management and engineering firm specializing in grant management, debris monitoring and planning missions nationwide at the local, state and federal level. |
| CrowderGulf | CrowderGulf is a leading family-owned disaster recovery and debris removal business providing disaster recovery, debris removal, coastal restoration and other disaster support services to cities, municipalities, disaster management agencies and other entities throughout the United States. |
| DRC Emergency Services, Inc. | DRC Emergency Services, Inc. is among the leading disaster management and civil construction groups in the United States, specializing in providing emergency preparation, disaster response, and recovery from major catastrophes. |
| The Lemoine Company | The Lemoine Company is a family-owned and operated company that is available and equipped to handle disaster response, recovery, and restoration of buildings and properties. |
| Tetra Tech | Tetra Tech is a leading provider of consulting and engineering services worldwide, focusing on water, environment, infrastructure, resource management, energy, and international development services. |

Background, Discussion and Recommendations

Background: The “Eye of the Storm” report from the Commission to Rebuild Texas recommended that the Texas Legislature establish a work group to study and recommend ways to resolve restrictions of homeowner associations or local jurisdictions impeding debris removal or trailer placement for short-term housing during disasters (Eye of the Storm, 2018).

The following are summaries of work group discussions held over the course of several months and include recommendations from the group:

Issue: Permitting Issues for Temporary Housing Hauling

Law and/or Policy Reference: Texas DMV Single Use Permit: <https://www.txdmv.gov/oversize-weight-permits/manufactured-housing-single-trip>. Texas DMV issues a single-trip permit for the movement of manufactured housing or industrialized buildings/housing exceeding Texas legal size limits when transported on any returnable undercarriage or temporary chassis system. Single-trip manufactured housing permits may only be used for one movement, during the times specified on the permit (not to exceed five days), from a specific point of origin to a specific destination.

Discussion: The Department of Public Safety (DPS) typically grants the hauling of temporary housing units beyond the permits needed for large loads and off hours. This is accomplished through the Governor’s Emergency Declaration for an event. However, local law enforcement agencies do not always recognize the waiver.

Recommendation: Advise local law enforcement agencies of the Governor’s Declaration for the hauling of temporary housing units for disasters (to include installation and deactivation). No policy or law changes are required however, the GLO will coordinate with other state partners to increase law enforcement awareness of the process to haul temporary housing.

Issue: Permitting Issues for Temporary Housing Placement.

Law and/or Policy Reference: Each jurisdiction has their own policy.

Discussion: When disaster strikes it is imperative to make progress toward providing temporary housing solutions to individual households that qualify for the program funded by the federal government. One impediment can be the issuance of permits for the placement of the unit, the utilities, and a temporary power pole (if warranted). Each jurisdiction varies in what permits they require, if a fee will be collected and the timeline for issuing these permits. These all pose challenges to providing swift service to disaster survivors.

Recommendation: (1) Work with the Texas Municipal League and the Texas Association of Regional Councils to communicate with local jurisdictions about the program and coordinate the permitting needs. (2) Seek ways to streamline and make this process consistent (if not possible across the whole state then at least for a region). (3) Pair the Building Officials Association of Texas (BOAT) team with local jurisdictions lacking the capacity to adequately address the increase in permitting requests in addition to daily duties. No policy or law changes are required however, the Texas General Land Office (GLO) will continue to coordinate with other state partners and educate local jurisdictions on available resources.

Issue: HOA/POA deed restrictions related to temporary housing units.

Law and/or Policy Reference: Texas Property Code. Title 11. Chapters 201-215 give HOAs/POAs authority.

Discussion: Most HOAs/POAs have rules that stipulate how long recreational vehicles (boats, trailers, etc.) may be parked on a homeowner's property; usually no more than 48 hours. Restrictions such as these could potentially delay repair and restoration efforts as well as a return to normalcy for affected homeowners.

Recommendation: Amend Chapter 202 to prevent HOAs/POAs from explicitly banning temporary structures following a disaster for a pre-determined amount of time, e.g. up to six months from the date of the disaster.

Issue: Ever-changing temporary housing allowances due to local administration changes.

Law and/or Policy Reference: Each jurisdiction has their own policy.

Discussion: Often following a major disaster, communities and families are forced to seek emergency sheltering and short-term housing as they recover from devastating losses. In some instances, local communities experience administration changes which could potentially cause a delay in ongoing recovery efforts.

Recommendation: Communicate to the newly elected officials regarding the previous administration's approval of temporary housing. Schedule an in-person meeting with the local jurisdiction to provide more detailed information relating to the short-term housing process, specifically the mission, goals and expectations, as well as answer any questions they may have. No policy or law changes are required however, the GLO in concert with other state partners will be proactive in communicating with local communities and educating them on the short-term housing process.

Issue: Local tax offices inadvertently taxing homeowners on temporary housing units.

Law and/or Policy Reference: Property taxes are locally assessed and locally administered. Chapter 6, Subchapter A of the Texas Property Tax Code authorizes local administration of property taxes.

Discussion: When the Governor or President declare a location a disaster area, taxpayers in the affected area(s) are eligible for certain tax exemptions and filing extensions for their taxes. When local appraisal districts are not aware of a State or Federal Disaster Declaration, they may inadvertently tax homeowners on temporary housing units.

Recommendation: (1) Work with FEMA to develop a system for the State to share personal information with appraisal districts. (2) Send communication to the Texas Association of Appraisal Districts (TAAD) for notification of the affected districts. The TAAD will push the information out to the districts so they are aware of temporary housing within the district. No policy or law changes are required however, the GLO will work with FEMA on personal data sharing and engage the TAAD for district notification of temporary housing.

Issue: Non-compliance procurement for contract services.

Law and/or Policy Reference: (1) 2 CFR §200.317-326 outlines Procurement Standards for Federal Awards (2) Each jurisdiction typically has its own procurement policy.

Discussion: In the immediate aftermath of a disaster, communities look to quickly obtain resources to aid in a safe and speedy recovery. Federal regulations allow for non-competitive procurements under certain circumstances however, when the emergency or exigency no longer exists, the competitive procurement process must be implemented.

Recommendation: (1) Local jurisdictions should develop a comprehensive debris management plan. (2) Encourage local communities to engage in pre-event contracts that have been reviewed for federal contracting and procurement compliance by FEMA's Procurement Disaster Assistance Team (PDAT). (3) Encourage local jurisdictions to engage in inter-governmental agreements or memorandums of understanding. (4) the State should engage in Regional pre-event all-hazards contracts that address hazards that occur or could potentially occur in specific geographical areas (i.e. region-specific hazards) that communities within the region can utilize. No policy or law changes are required however, TDEM will continue to educate local communities on the importance of proactive preparedness efforts such as debris management planning, pre-event contracts, and inter-governmental agreements. TDEM will also review potential funding streams and steps to implement all-hazards pre-event contracts.

Issue: Debris removal reconciliation and reimbursement.

Law and/or Policy Reference: The FEMA Public Assistance Program and Policy Guide (PAPPG) Version 3.1 dated April 26, 2018 (p.44) provides guidance on debris removal activities to include clearance, removal and disposal. Reasonable costs for debris removal activities such as removal, labor, disposal fees, monitoring, equipment, contract and materials costs may be reimbursed so long as the contracts comply with Federal (2 CFR Part 200.317-326), State, and local procurement standards.

Discussion: When a subrecipient requests reimbursement for debris removal activities documentation must be reviewed prior to reimbursement. Often due to the impact of the disaster, subrecipients are delayed in their efforts to maintain adequate records which may result in denial of otherwise eligible costs.

Recommendation: (1) Include a template or checklist in the Local Catastrophic Debris Management Guide for providing documentation for debris removal activities. (2) Provide State-funded incentives to complete debris removal activities in a specified period of time. (3) Eliminate the use of load tickets by implementing the Automated Debris Management System (ADMS). No policy or law changes are required however, TDEM will review cost-effectiveness, potential funding streams, and implementation steps to provide state-funded incentives for debris removal activities. TDEM will also consider the process for eliminating load tickets and implementing the ADMS.

Issue: Breach of contract for debris removal operations.

Law and/or Policy Reference: 2 CFR §200.325 outlines Bonding Requirements for Federal Awards.

Discussion: When communities in multiple regions or states are impacted by a disaster, a shortage of debris removal contractors and/or subcontractors may occur. In many instances, these communities are willing to re-negotiate contracts which entices contractors and subcontractors to move to areas with higher rates.

Recommendation: Local communities should impose penalties by pulling payment bonds. No policy or law changes are required however, TDEM will encourage local communities to take the necessary steps to protect the interests of their citizens and community.

Issue: Debris removal permits.

Law and/or Policy Reference: Texas Commission on Environmental Quality (TCEQ) Form: <https://www.tceq.texas.gov/assets/public/response/TCEQ-20660.pdf>. TCEQ provides oversight and guidance for debris management and disposal and issues authorizations for temporary debris management sites for debris resulting from a declared State or Federal disaster. The Texas Historical Commission (THC) administers duties of the State Historic Preservation Office (SHPO) and ensures compliance with the National Historic Preservation Act and the Antiquities Code of Texas. The THC certifies that the temporary and/or disposal site for disaster debris will not adversely affect a historic property and that it is not located on an archaeological site which would require an alternate disposal area to be considered.

Discussion: In the wake of a disaster, communities are heavily engaged in response activities aimed at ensuring the health and safety of its citizens and protection of property from further damages. While attention is focused on these efforts, communities may inadvertently overlook the need to obtain an authorization for a temporary debris management site from TCEQ and/or approval from THC prior to initiating debris removal activities. Not only does this oversight occur in this situation, it may also occur when a State or Federal disaster is not declared immediately or within days of the event. As a result, communities may face challenges in obtaining reimbursement from a federally declared event.

Recommendation: To expedite the TCEQ and THC review processes, communities are encouraged to identify locations for potential temporary debris management sites prior to a disaster. Once a State or Federal disaster has been declared, communities must submit an application to the appropriate TCEQ regional office for review to determine if the location meets the criteria for a temporary debris management site. No policy or law changes are required however, TDEM in coordination with TCEQ will continue to educate communities on debris removal permitting.

Issue: Illegal dumping of disaster debris.

Law and/or Policy Reference: Each jurisdiction typically has its own policy.

Discussion: Illegal dumping poses health and safety risks to the community and usually occurs to avoid disposal fees or the time and effort to properly dispose of materials.

Recommendation: (1) Communities without dumping ordinances are encouraged to develop, implement and enforce ordinances. (2) Communities are encouraged to coordinate with police, health, environment, public works, and sanitation departments to allow sharing of resources and help avoid duplication of efforts. (3) Communities are encouraged to educate residents on disaster debris removal

processes and pick-up dates. No policy or law changes are required however, TDEM will educate communities on the importance of developing illegal dumping ordinances and encourage information sharing amongst the departments within the community.

Issue: Private Property Debris Removal from HOAs/POAs.

Law and/or Policy Reference: (1) Stafford Act § 407, 42 U.S.C. § 5173 (2) 44 CFR § 206.224(b) (3) FEMA Public Assistance Program and Policy Guide (PAPPG) Version 3.1 dated April 26, 2018 pgs. 54-55 provides guidance on debris removal from private property.

Discussion: In limited circumstances the FEMA Public Assistance Program provides funding for private property debris removal. However, FEMA must determine the debris removal is eligible for the applicant to receive Public Assistance funding. Depending on the location of disaster debris within an HOA/POA community, approval must be obtained from the HOA/POA, homeowner, or renter. The THC must also be present to certify that the temporary and/or disposal site for disaster debris will not adversely affect a historic property and that it is not located on an archaeological site which would require an alternate disposal area to be considered.

Recommendation: Coordination and communication is key to overcoming impediments to disaster recovery. Communities should be encouraged to include HOAs/POAs in debris management plans as their inclusion may reduce the time it takes to obtain HOA/POA approval following a disaster. Not only are there instances where HOA/POA approval is required to initiate debris removal activities, but homeowner and renter approval may be required as well. HOAs/POAs and local jurisdictions are encouraged to work together to ensure residents are aware of the private property debris removal process. No policy or law changes are required however, TDEM will encourage communities to invite property and homeowners' associations to participate in debris management planning activities.

Several issues were identified and discussed, and appropriate actions were taken to ensure that recommendations effectively address and minimize local restrictions that impede federal disaster recovery efforts in Texas.

Steps to Development and Implementation

This section provides a summary of next steps including organizational approval, legislative approval and follow on steps if approved. It should also include resource requirements as identified.

Detailed next steps

| Due Date | Objectives | Team Assignments | Status | Resource |
|----------|---------------------|-------------------|--------|----------|
| 1 Jun 20 | Review and Approval | Chief Kidd | | |
| 1 Nov 20 | Review | Texas Legislature | | |
| 1 Jun 21 | Approval | Texas Legislature | | |
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For More Information

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