



# **Legal Guidelines for Controlling Movement of People and Property During an Emergency**

**Approved by the Standardized Emergency  
Management System (SEMS) Advisory Board on July  
28, 1999**

The contents of this document have not been changed from the original document; however, the guidelines have been reformatted to meet the Americans with Disabilities Act (ADA) 508 standards.

The Governor's Office of Emergency Services would like to acknowledge the assistance of the following staff and agencies in the development of this guideline:

**Governor's Office of Emergency Services**

Dallas Jones, Director

**Reviewed and edited by:**

Jane Hindmarsh, Planning & Technological Branch, Office of Emergency Services

David Zocchetti, Planning Section, Office of Emergency Services

Rebecca Wagoner, Planning Assistance Unit, Office of Emergency Services

Bob McKechnie, Staff Counsel, Office of Emergency Services

Ward Campbell, Deputy Attorney General, California Department of Justice

**Guideline researched and authored by:**

Andrew Grundman, Planning Assistance Unit, Office of Emergency Services

**Revision & Approval History:**

*Approved by the Standardized Emergency Management System Technical Group on May 15, 1999 Approved by the Standardized Emergency Management System Advisory Board on August 28, 1999.*

*Document Revision: Final Version 082599-0900*

**NOTICE:** This guideline is intended to provide information for State and local agencies for general planning purposes. This guideline is primarily concerned with legal authorities for the actual imposition of evacuation, curfew, or quarantines.

Many agencies or political subdivisions may provide input during an emergency situation under the authority of the Standardized Emergency Management System regulations (Cal. Code Regs. tit. 19, § 2400 et seq.). This guideline concentrates on those agencies or political subdivisions that have statutory or well-recognized authority to actually issue evacuation, curfew, or quarantine orders.

# LEGAL GUIDELINES FOR CONTROLLING MOVEMENT OF PEOPLE AND PROPERTY

## BACKGROUND/ INTRODUCTION

*Purpose:* The guidelines are intended to clarify and explain the legal authority that state and local political subdivisions and public safety agencies may use to initiate, maintain, and enforce restrictions on the movement of persons and property.

The guidelines focus on issues local government officials may face when evaluating the potential evacuation of their populations in the event of an emergency or disaster. As they face this decision, questions will arise as to a local government's authority to issue an evacuation order and the liabilities associated with such an order. The guidelines provide background to these questions.

*Contents:* This guideline relates to evacuations, quarantines, and similar restrictions for all types of emergencies. Specific guidelines for flood- related evacuations may be found in *Legal Guidelines for Flood Evacuation*. This guideline expands upon *Legal Guidelines for Flood Evacuation* by including other types of emergency situations.

*Guidelines:* This document is intended for use strictly as a guide, and should not be construed as providing legal advice. The guidelines are not inclusive of all legal issues that may arise during an emergency, and discuss only issues likely to arise during the course of an evacuation, quarantine, or similar action during an emergency. Before ordering an evacuation, quarantine, or other action, government officials or agencies should consult with appropriate legal counsel.

*Update and Revision:* This document will be updated and reviewed periodically by the Governor's Office of Emergency Services in cooperation with the California Department of Justice.

## Table of Contents

<b>LEGAL GUIDELINES FOR CONTROLLING MOVEMENT OF PEOPLE AND PROPERTY .....</b>	<b>4</b>
<b>BACKGROUND/ INTRODUCTION.....</b>	<b>4</b>
<b>DUTIES, RESPONSIBILITIES, AND POWERS .....</b>	<b>7</b>
Q. WHAT ARE THE LEGAL AUTHORITIES TO ORDER AN EVACUATION?.....	7
Q. WHAT IS THE POLICE POWER? .....	7
Q. WHAT CONSTITUTES AN EMERGENCY?.....	8
Q. WHO HAS THE AUTHORITY TO USE POLICE POWERS TO RESTRICT THE MOVEMENT OF PEOPLE AND PROPERTY?.....	9
Q: WHAT POWERS DO LAW ENFORCEMENT HAVE REGARDING EVACUATIONS?.....	12
<b>EMERGENCY SERVICES ACT /STANDARDIZED EMERGENCY MANAGEMENT SYSTEM.....</b>	<b>18</b>
Q. IS THE EMERGENCY SERVICES ACT A FACTOR IN CONTROLLING MOVEMENT OF PEOPLE AND PROPERTY? .....	18
Q. HOW DOES MUTUAL AID RELATE TO CONTROLLING THE MOVEMENT OF PEOPLE AND PROPERTY? .....	19
Q. WHAT ARE THE ADVANTAGES TO A LOCAL GOVERNMENT OF PROCLAIMING A LOCAL EMERGENCY PRIOR TO ENACTING ORDERS CONTROLLING THE MOVEMENT OF PEOPLE AND PROPERTY? .....	20
Q. WHAT ARE THE CONSEQUENCES OF NOT PROCLAIMING A LOCAL EMERGENCY? .....	21
Q. WHAT IS THE BEST WAY TO RECEIVE EXPANDED IMMUNITY PURSUANT TO THE EMERGENCY SERVICES ACT? .....	22
Q. WHAT AGENCIES ARE REQUIRED TO IMPLEMENT SEMS?.....	23
Q. HOW IS SEMS APPLIED IN AN EMERGENCY? .....	23
<b>ROUTE AND AREA CLOSURES.....</b>	<b>24</b>
Q. IS RESTRICTING TRAVEL ROUTES PERMITTED? .....	24
Q. WHAT IS THE AUTHORITY FOR CLOSING PUBLIC BEACHES?.....	27
Q. ARE THERE ALTERNATIVES TO EVACUATING UNDER § 409.5?.....	28
Q. WHAT ARE THE MEANS FOR IMPOSING A MANDATORY EVACUATION? .....	29
<b>CURFEWS .....</b>	<b>31</b>
Q. ARE THERE CONSTITUTIONAL CONCERNS WITH CURFEWS?.....	32
Q. WHO HAS THE AUTHORITY TO ORDER A CURFEW? .....	32
Q. HOW IS A CURFEW ORDERED?.....	34
Q. HOW SHOULD THE CURFEW ORDER BE DRAFTED? .....	36
<b>QUARANTINES.....</b>	<b>38</b>
Q. IS A QUARANTINE CONSTITUTIONAL? .....	38
Q. WHAT ARE THE LEGAL AUTHORITIES FOR A QUARANTINE? .....	38
Q. WHY ESTABLISH A QUARANTINE?.....	38
Q. WHO IS RESPONSIBLE FOR ORDERING A QUARANTINE? .....	39
Q. WHO HAS THE AUTHORITY TO ORDER A QUARANTINE?.....	39
Q. WHAT ACTIONS ARE STATUTORILY AUTHORIZED?.....	42
Q. WHAT ARE THE OBLIGATIONS OF CITIZENS UNDER QUARANTINE?.....	42
Q: WHAT POWER DOES LAW ENFORCEMENT HAVE WITH RESPECT TO QUARANTINES? ..	42

<b>RIOTS / UNLAWFUL ASSEMBLY.....</b>	<b>43</b>
Q: WHAT IS THE DEFINITION OF A RIOT? .....	43
Q. WHAT IS THE DEFINITION OF A ROUT?.....	44
Q. WHAT IS THE DEFINITION OF AN UNLAWFUL ASSEMBLY? .....	44
Q. WHAT ARE THE DUTIES THAT ARISE DURING A RIOT, ROUT, OR UNLAWFUL ASSEMBLY? .....	44
Q. WHAT ARE THE CONSEQUENCES OF FAILING TO ORDER A DISPERSAL? .....	45
Q. WHAT ARE THE DUTIES OF THE CITIZENS?.....	45
Q. IS THE USE OF DEADLY FORCE PERMITTED TO RESTRICT RIOTERS?.....	46
<b>HAZARDOUS MATERIALS .....</b>	<b>46</b>
Q. WHAT CONSTITUTES A HAZARDOUS MATERIAL INCIDENT?.....	47
Q. WHO IS RESPONSIBLE FOR A HAZARDOUS MATERIAL INCIDENT? .....	47
<b>TSUNAMIS / OFF SHORE INCIDENTS .....</b>	<b>48</b>
Q. WHAT IS THE TERRITORIAL JURISDICTION OF THE STATE?.....	48
Q. WHAT IS THE COAST GUARD'S RESPONSIBILITY? .....	49
<b>DOMESTIC TERRORISM.....</b>	<b>49</b>
<b>POTENTIAL LIABILITIES AND IMMUNITIES .....</b>	<b>50</b>
Q. WHAT PROTECTION IS OFFERED UNDER THE EMERGENCY SERVICES ACT? .....	50
Q. WHAT PROTECTIONS DOES THE TORT CLAIMS ACT OFFER TO PUBLIC ENTITIES WHEN AN EVACUATION IS NOT ORDERED UNDER THE EMERGENCY SERVICES ACT? .....	51
<b>APPENDIX OF SELECTED STATUTES .....</b>	<b>54</b>
<b>Government Code .....</b>	<b>54</b>
Cal. Govt. Code § 8558 Conditions or degrees of emergency. ....	54
§ 8630. Proclamation by local governing body; review; termination.....	55
§ 23002. Counties as legal subdivisions.....	55
§ 26602. Prevention and suppression of disturbances .....	55
<b>California Penal Code .....</b>	<b>55</b>
Cal. Pen. Code § 148.2 Illegal conduct at burning of building; misdemeanor. ....	55
§ 148.3. False report of emergency; punishment .....	56
§ 245.1. Fireman, firefighter and emergency rescue personnel defined .....	56
§ 409. Riot, rout, or unlawful assembly; remaining present after warning to disperse .....	57
§ 409.5. Authority of peace officers, lifeguard or marine safety officer to close disaster area; exclusion from police command post area; unauthorized entry; exception .....	57
§ 409.6. Avalanche danger; areas closed; unlawful entry .....	58
<b>California Health and Safety Code .....</b>	<b>59</b>
Health & Safety Code § 115885. ....	59
<b>BIBLIOGRAPHY AND REFERENCES.....</b>	<b>61</b>

# DUTIES, RESPONSIBILITIES, AND POWERS

**Summary:** To understand the duties and responsibilities that arise during an emergency, review of the various legal concepts that apply both prior to and during the emergency is necessary. Note that for the purposes of this guideline, the term “governing body” refers to that of a city, county, or city and county.

## Q. WHAT ARE THE LEGAL AUTHORITIES TO ORDER AN EVACUATION?

**A.** The primary authorities cited in this document are derived from the California Constitution, Government Code, Penal Code, Emergency Services Act, and case law.

A governing body may impose voluntary or mandatory evacuation orders pursuant to the general police power with which government is imbued. The preferred practice is to order an evacuation pursuant to statutory authority, e.g. the Emergency Services Act.

## Q. WHAT IS THE POLICE POWER?

**A.** The authority to control the movement of persons and property arises from the police power of the state. The police power enables governments to take action for the good of the public -- governing bodies may enact laws, ordinances, or regulations to protect the health, safety, morals, or general welfare of the population.<sup>1</sup> Of course, the police power is used everyday for building restrictions, licensing, and other similar activities. Similarly, the police power also provides governing bodies with flexibility to meet emergency situations.

*California Supreme Court:* The Supreme Court of California has described the police power as the inherent power of the government to enact laws that protect the order, safety, and health of society.<sup>2</sup>

## BASIS FOR AUTHORITY:

**California Constitution:** Local governing bodies derive their basic powers from the state Constitution, just as the state entities do.<sup>3</sup> California’s Constitution expressly authorizes counties and cities to make and enforce all local, police, sanitary and other laws.<sup>4</sup> California Constitution Article XI, § 7 “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”

---

<sup>1</sup> *Fitts v. Superior Court*, (1936) 6 Cal. 2d 230, 234.

<sup>2</sup> *In re Ramirez* (1924) 193 Cal. 633

<sup>3</sup> *Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 36.

<sup>4</sup> Cal. Const. art. XI, § 7.

**Statutory Authority:** The state constitution expressly empowers local governments to create rules and to enforce any non-conflicting regulation. The legislature has codified this constitutional intent for the counties to have the powers of the state, including the power to regulate movement of people and property.

**Government Code § 23002** “The several existing counties of the State and such other counties as are hereafter organized are legal subdivisions of the State.”

**Police Powers During an Emergency:** Pursuant to the police power, the Legislature has enacted specific statutes pertaining to the movement of persons and property. Even so, the police power does not require statutory enactment for authorities related to exigent circumstances.

The Courts of the United States and California have provided rulings defining the limits of the police power. Essentially, the extent of the police power is proportional to the extent of the emergency. Police powers flow from the law of necessity, and “in an emergency, the scope of permissible regulation may increase.”<sup>5</sup>

## **Q. WHAT CONSTITUTES AN EMERGENCY?**

**A.** An “emergency” is well established in California as meaning “an unforeseen situation calling for immediate action.”<sup>6</sup> An emergency is also defined as a situation of ‘grave character and serious moment,’ which is evidenced by an ‘imminent and substantial threat to public health or safety.’<sup>7</sup>

**Emergency Services Act Definition:** The California Emergency Services Act” and the Standardized Emergency Management System have a specific definition of an “emergency:<sup>8</sup> “...conditions of disaster or of extreme peril to the safety of persons and property...”<sup>9</sup>

The conditions that cause an emergency may be natural or human caused. For example, the California Emergency Services Act specifically enumerates the following conditions:<sup>10</sup>

- air pollution,
- fire,
- flood,
- storm,
- epidemic,
- riot,

---

<sup>5</sup> Adkins v. State of California, (1996) 50 Cal.App.4th 1802, 1810.

<sup>6</sup> Los Osos Valley Associates v. City of San Luis Obispo, (1994) 30 Cal. App. 4th 1670, 1681

<sup>7</sup> Los Osos at 1673; County Sanitation Dist. No. 2 v. Los Angeles County Employee’s Assn. (1985) 38 Cal. 3d 564, 586, 592 cert. denied 474 U.S. 995 (1985).

<sup>8</sup> Cal. Govt. Code § 8558, Cal. Code Regs., tit. 19, § 2402(e).

<sup>9</sup> Cal. Govt. Code § 8558(b), (c) (Describing “state of emergency” and “local emergency.”).

<sup>10</sup> Cal. Govt. Code § 8558.



- drought,
- sudden and severe energy shortage,
- the Governor's warning of an earthquake or volcanic prediction,
- probable or imminent enemy attack

***Penal Code Definition***

The Penal Code provides a further definition of emergency as “any condition which results in, or which could result in the response of a public official in an authorized emergency vehicle, or any condition which jeopardizes or could jeopardize public safety and results in or could result in, the evacuation of any area, building, structure, vehicle or of any other place which individuals may enter.”<sup>11</sup>

**Q. WHO HAS THE AUTHORITY TO USE POLICE POWERS TO RESTRICT THE MOVEMENT OF PEOPLE AND PROPERTY?**

**A.** The Governor, delegates of the Governor, local governing bodies and their designated representatives, statutorily designated law enforcement agents, and statutorily authorized government employees have the authority to restrict the movement of people and property in an emergency situation.

Local government may enact legislation under the authority of the state’s police power. Local law enforcement agencies may be used to enforce or assist in the implementation of the legislation.

Some of the legal subdivisions of the state that have the authority to restrict movement of people and property are:

- local governing body of counties, or whomever is authorized to act on their behalf;
- local governing body of cities, or whomever is authorized to act on their behalf;
- statutorily designated law enforcement officers;
- statutorily designated health and public safety employees; and
- Governor.

Generally, the local governing body, or whomever the local governing body has authorized to restrict the movement of people and property during an emergency is primarily responsible for ordering an evacuation, quarantine, curfew, or other restriction on travel. This authorization may be in the form of an ordinance, resolution, or order that the local governing body has enacted.

---

<sup>11</sup> Cal. Penal Code § 148.3(c) (defining false report of an emergency).

## COUNTIES

Authorities:

- All the counties of this state are deemed to be legal subdivisions of the state.<sup>12</sup>
- Case law establishes that a county exercises only those powers that are granted by the state.<sup>13</sup>
- Counties are not municipal corporations since counties are not, like municipal corporations, incorporations of the inhabitants of specified regions for purposes of local government.<sup>14</sup>
- Any county may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with the general laws.<sup>15</sup>
- All counties have the power to promote the public health and general welfare of its citizens.<sup>16</sup>

In addition, any county may disseminate information to the public concerning the rights, duties, properties and activities of the county.<sup>17</sup>

**Charter County:** In those cases where the county has been granted a charter from the state and that charter has been approved by the state legislature, then those charter counties shall have all the powers that are provided by the state constitution or by statute for the counties.<sup>18</sup> In contrast, a general law county is created and granted only those powers set forth by statute and the common law.

Throughout the State, if there is a conflict between state law and a county charter provision, the local law generally prevails except where the intent of a general state law is to establish a state policy. In those instances, state law prevails.<sup>19</sup>

**County Sheriff:** The Sheriff shall prevent and suppress any affrays, breaches of the peace, riots and insurrections which come to his knowledge, and investigate public offenses which have been committed.<sup>20</sup>

The Sheriff also has the responsibility for closing areas to the public<sup>21</sup> and consequently to order an evacuation. (see later discussion of Penal Code § 409.5).

---

<sup>12</sup> Cal. Const., Art. II, § 1; Cal. Govt. Code § 23002.

<sup>13</sup> *Marin County v. Superior Court of Marin County* (1960) 563 Cal. 2d 633

<sup>14</sup> *In re Miller's Estate* (1936) 5 Cal. 2d 588; *Dillwood v. Riecks* (1919) 42 Cal. App. 602.

<sup>15</sup> Cal. Const. Art II, § 7.

<sup>16</sup> *Goodall v. Brite*, (1936) 11 Cal. App. 2d 540.

<sup>17</sup> Cal. Govt. Code §§ 25, 207.5.

<sup>18</sup> Cal. Const. Art. XI, §§ 4(g), (h).

<sup>19</sup> *Pearson v. Los Angeles County* (1957) 49 Cal.2d 624; *Shean v. Edmonds* (1948) 89 Cal. App.

<sup>20</sup> Cal. Govt. Code § 26602.

<sup>21</sup> Cal. Penal Code §§ 409, 409.5, 409.6.

**As county director of emergency services:** If the board of supervisors adopts a resolution by unanimous vote, electing that the sheriff hold the office of county director of emergency services, ex officio, the sheriff shall perform the duties prescribed by state law and executive order, the California Disaster and Civil Defense Master Mutual Aid Agreement, mutual aid operational plans adopted pursuant thereto and by county ordinances and resolutions.<sup>22</sup>

*Note:* Not all counties have elected to have the sheriff perform the duties of the county director of emergency services. Verify who has been given that responsibility for a county.<sup>23</sup>

## **CITIES**

Authorities:

- The state legislature is the entity that prescribes the procedures for city formation and provides for city powers.<sup>24</sup>
- A city charter may provide for that city having the power to make and enforce all ordinances and regulations in respect to municipal affairs, subject only to those restrictions and limitations provided in their charter and in respect to other matters, the city shall be subject to the general laws.<sup>25</sup>
- A city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with the general laws.<sup>26</sup>
- A city may adopt regulations designed to promote the health and welfare of the people.<sup>27</sup>

A state statute addressing an area of statewide concern is deemed applicable to charter and general law cities.<sup>28</sup>

**Chief of Police:** “For the suppression of riot, public tumult, disturbance of the peace, or resistance against the laws or public authorities in the lawful exercise of their functions, the chief of police has the powers conferred upon sheriffs by general law and in all respects is entitled to the same protection.”<sup>29</sup>

The Chief of Police shall perform such other services as general law and the city ordinances require.<sup>30</sup>

---

<sup>22</sup> Cal. Govt. Code §§ 22620-22623.

<sup>23</sup> Cal. Const. Art. XI, § 4.

<sup>24</sup> Cal. Const. Art. XI, § 2(a).

<sup>25</sup> Cal. Const. Art. XI, § 4(a).

<sup>26</sup> Cal. Const. Art. XI, § 7.

<sup>27</sup> *DeAryan v. Butler* (1953) 119 Cal. App. 2d 674; cert. denied 74 S.Ct. 863.

<sup>28</sup> *DeVita v. County of Napa* (1995) 9 Cal. 4th 763.

<sup>29</sup> Cal. Govt. Code § 41601.

<sup>30</sup> Cal. Govt. Code § 41611

Just like the Sheriff, the Chief of Police has the power to close areas to the public and consequently to order an evacuation. (See later discussion of § 409.5)

## **Q: WHAT POWERS DO LAW ENFORCEMENT HAVE REGARDING EVACUATIONS?**

**A.** There are six specific statutes, in addition to the California Emergency Services Act, that provide methods for enforcing the restriction on movement of people and property.

*Penal Code § 148.2:* Provides for punishment of persons interfering with firefighters or rescue personnel during the discharge of their duties. Also makes it an offense to disobey orders given by firefighters or other public officers.

*Penal Code § 402:* Pertains to interfering with personnel at the scene of an emergency. Similar to Penal Code § 148.2, specifically broadens the conditions and types of personnel protected by the statute.

*Penal Code § 409:* Prohibits persons from remaining in the area of a riot or an unlawful assembly, after being warned to disperse.

*Penal Code § 409.3:* Provides that law enforcement has authority to control or manage an accident scene except for patient care.

*Penal Code § 409.5:* Allows specified law enforcement officers to close or restrict access to an area.

*Penal Code § 409.6:* Allows specified law enforcement officers to close or restrict access to an avalanche area, and provides for forcible removal from the area.

*PENAL CODE § 148.2:* This section is primarily used when people interfere with emergency measures implemented by a public safety agency. There are four chargeable conditions under this section.

First, every person that intentionally resists or interferes with fire department personnel or emergency rescue personnel discharging their duties may be charged for this crime.<sup>31</sup>

Second, a person may be guilty under this section if he or she disobeys the order of any firefighter or public officer.<sup>32</sup>

Third, in case of a fire, a person who causes a fire's extinguishment to be postponed because of any act of disorderly conduct is also chargeable under this section.<sup>33</sup>

---

<sup>31</sup> Cal. Penal Code § 148.2.1.

<sup>32</sup> Cal. Penal Code § 148.2.2.

<sup>33</sup> Cal. Penal Code § 148.2.3.

Fourth, a party who exerts influence on another person to delay or hamper the extinguishment of a fire may be charged under this section.<sup>34</sup>

Exception to § 148.2: Any volunteers or employees of a public firefighting agency are considered “emergency rescue personnel” when actively engaged in rescue of persons and property during an emergency.<sup>35</sup>

A private paramedic is not considered “emergency rescue personnel” for the purposes of § 148.2.<sup>36</sup>

*PENAL CODE § 402.*: Penal Code section 402 provides that interfering with personnel at the scene of an emergency is a criminal act.

*“Every person who intentionally travels to, or stops at, an emergency scene for the purpose of viewing the scene or the actions of the public safety personnel and impedes the personnel from discharging their duties is guilty of a misdemeanor.”*

Additionally, this section prohibits persons from interfering with rescues by impeding emergency vehicles or personnel while rescuers are traveling to or from an emergency scene for the purpose of protecting lives or property.

Traveling to, or stopping at, an emergency scene is permissible if a person’s employment requires viewing of the scene. This exception is probably limited to members of the media.

To avoid liability, each potential violator should be analyzed to determine whether viewing of the scene could be considered “part of the duties of their employment.”

### *Causes of Emergencies*

The term “emergency,” as explained in section 402 (c), means any incident that involves injured persons, property damage, or a threat to the safety of persons or property.

---

<sup>34</sup> Cal. Penal Code § 148.2.4.

<sup>35</sup> Cal. Penal Code § 245.1

<sup>36</sup> People v. Olsen (1986) 186 Cal. App. 3d 257.

Penal Code § 402 lists various causes of emergencies, including:

- fire,
- explosion,
- airplane crash,
- flooding,
- windstorm damage,
- railroad accident,
- traffic accident,
- power plant accident,
- toxic chemical spill, and,
- biological spill.

This list is merely illustrative. The code expressly includes any other natural or human-caused event.

*PENAL CODE § 409.*: Penal Code section 409 provides that failure to disperse from the area of a riot or an unlawful assembly is a criminal act.

*“Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.”*

The legislature intended that this section and related sections provide the means for officers to control any willful and malicious obstruction of the public’s free use of a public way.<sup>37</sup>

**Offender’s Guilt is Inferred:** Whether a person is guilty of the offense of assembling for the purpose of disturbing the peace or for failure to disperse does not depend on whether the assembly’s purpose was consummated.<sup>38</sup> The offense of “remaining at place of riot” does not require that an individual actively participated in a riot or an unlawful assembly.<sup>39</sup>

**PENAL CODE 409.5:** Penal Code section 409.5 provides that specified law enforcement officers may close or restrict access to an area in the event of a disaster.

---

<sup>37</sup> In re Bacon (1966) 49 Cal. Rptr. 322.

<sup>38</sup> People v. Anderson (1931) 117 Cal. App. 763.

<sup>39</sup> People v. Sklar (1930) 111 Cal. App. Supp. 776.

The agencies and persons that have the authority to restrict the movement of people and property under Penal Code § 409.5 are:

- California Highway Patrol,
- Sheriff's Office,
- Police Department,
- Marshal's Office,
- Any officer or employee of the Department of Forestry and Fire Protection designated a peace officer by subdivision (g) of Cal. Penal Code § 830.2,
- Any officer or employee of the Department of Parks and Recreation designated a peace officer by subdivision (f) of Cal. Penal Code § 830.2,
- Any officer or employee of the Department of Fish and Game designated a peace officer under subdivision (e) of Cal. Penal Code § 830.2,

Any publicly employed full-time lifeguard or publicly employed full-time marine safety officer while acting in a supervisory position in the performance of his or her official duties.

**Note:** *Local health officer:* If the calamity creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions set forth in this section.

*Other Subdivisions:* Subdivisions (c) and (d) of section 409.5 pertain to unauthorized persons entering or refusing to leave a closed area. These sections also pertain to restricted entry into a closed area by members of the media, the general public, and affected residents.

409.5(c) Unauthorized person entering a closed area or refusing to leave a closed area. "Any unauthorized person who willfully and knowingly enters an area closed pursuant to subdivision (a) or (b) and who willfully remains in the area after receiving notice to evacuate or leave shall be guilty of a misdemeanor.

409.5(d) Restricted entry into a closed area for media and residents. "Nothing in this section shall prevent a duly authorized representative of any news service, newspaper, or radio or television station or network from entering the areas closed pursuant to this section."

The media's statutory right of access to disaster areas was clarified in the case of Leiserson v. City of San Diego in 1986. One of the issues in the case was whether a member of the media could have their access restricted because the area was "unsafe" to enter.

The court reasoned that “press representatives must be given unrestricted access to disaster scenes unless police personnel at the scene reasonably determine that such unrestricted access will interfere with emergency operations.”<sup>40</sup>

“...**duly authorized representative**...”: The term “duly authorized representative” refers to individuals recognized by their employer and major city police or sheriff department as a working member of the press.<sup>41</sup> In 1984 the State Attorney General opined that the term “duly authorized” refers to a person authorized access by a news station, newspaper, radio or television network having duly authorized the individual to be its representative at the disaster location.<sup>42</sup>

**Order to evacuate:** Whether Penal Code § 409.5 permits law enforcement officers to forcibly evacuate an area is not clear.

*Issues:* Because of a variety of issues concerning the implementation of this approach, many jurisdictions decided to warn the person and either have that person sign a waiver form if the person refused to leave, or fully document the giving of the notice to leave and that person’s refusal to leave.

*Alternative:* Another alternative would be to have the officer order the evacuation, and should that person refuse to leave the area, the officer would arrest that person under Penal Code § 148.

*Evacuation order:* Rather than relying on Penal Code § 409.5, the local governing body should consider issuing an evacuation order that specifies the following:

- whether the order is for voluntary or mandatory evacuation;
- who is going to enforce the order (police, sheriff, director of emergency services, fire department, etc.);
- what they are authorized to do (evacuate, use reasonable force to remove someone from an area);
- the relevant time period; and that the evacuation is issued under provisions of the Emergency Services Act, thereby invoking the penalty provisions of the Act and affording the immunities accorded.

**PENAL CODE § 409.6:** Penal Code section 409.6 differs slightly from section 409.5, most noticeably in that it expressly authorizes the use of reasonable force to remove an unauthorized person from the closed area.

---

<sup>40</sup> Leiserson v. City of San Diego, (1986) 184 Cal. App. 3d 41, 51.

<sup>41</sup> L.A. Free Press v. City of Los Angeles (1970) 9 Cal. App. 3d 448, 451.

<sup>42</sup> 67 Ops. Cal. Atty. Gen. 535 (1984).



Whenever a menace to the public health or safety is created by an avalanche, officers of the Department of the California Highway Patrol, police departments, or sheriff's offices, any officer or employee of the Department of Forestry and Fire Protection designated a peace officer by subdivision (g) of Section 830.2, and any officer or employee of the Department of Parks and Recreation designated a peace officer by subdivision (f) of Section 830.2, may close the area where the menace exists for the duration thereof by means of ropes, markers or guards to any and all persons not authorized by that officer to enter or remain within the closed area.

If an avalanche creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions, which are set forth above in this section.

The media is allowed the same freedom of access to an area of avalanche danger that they have at any disaster scene: § 409.6(d) Nothing in this section shall prevent a duly authorized representative of any news service, newspaper, or radio or television station or network from entering the areas closed pursuant to this section.

*Definition of an avalanche:* An avalanche, for the purpose of this section, would include avalanches of snow and mudslides. Additionally, volcanic activity is also subject to the provisions of § 409.6.

Volcanoes are covered under this section because of the potential for avalanches resulting from a volcano's pyroclastic flow. Pyroclastic flows are streams of hot ash and rock fragments, mixed with hot air and other gases, that move rapidly along the ground surface. Pyroclastic flows can occur when a large mass of rock avalanches from the side of a volcanic dome.<sup>43</sup>

Penal Code 409.6 may be used to facilitate an emergency area closure whenever a menace to the public health or safety is created by an avalanche.

The law enforcement officers may close the area that threatens the public, and may also close the area surrounding any emergency field command post or any other command post regardless of whether that command post is located near the avalanche.<sup>44</sup>

*Differences between: 409.5 and 409.6* Penal Code 409.6 is similar to section 409.5 except that it applies specifically to avalanches, including snow, mud, and volcanic. This section would also apply to mudslides and landslides. Unlike 409.5, the use of reasonable force to remove persons who were given notice to leave the area is expressly provided for in section 409.6.

---

<sup>43</sup> Volcanic Hazards (1987) U.S. Govt. Print. Off. 194 - 389.

<sup>44</sup> Cal. Penal Code § 409.5(b).

*Alternative* As with Penal Code § 409.5, the option remains to have the officer order the evacuation, and should that person refuse to leave the area, the officer could arrest that person under Penal Code § 148.

*Evacuation order:* Rather than relying on Penal Code § 409.6, the local governing body may issue an evacuation order that specifies the following:

- whether the order is for voluntary or mandatory evacuation;
- who is going to enforce the order (police, sheriff, director of emergency services, fire department, etc.);
- what they are authorized to do (evacuate, use reasonable force to remove someone from an area);
- the relevant time period; and
- that the evacuation is issued under provisions of the Emergency Services Act, thereby invoking the penalty provisions of the Act and affording the immunities accorded.

## **EMERGENCY SERVICES ACT / STANDARDIZED EMERGENCY MANAGEMENT SYSTEM**

### **Q. IS THE EMERGENCY SERVICES ACT A FACTOR IN CONTROLLING MOVEMENT OF PEOPLE AND PROPERTY?**

**A.** The various statutory provisions and the police power of the state that allow for controlling the movement of people and property during an emergency may be utilized independently or in conjunction with the Emergency Services Act. Immunity from liability is generally greater if the provisions of the Emergency Services Act are employed. To illustrate the differences, the discussion below explains the Emergency Services Act beginning with Government Code § 8550.

*State responsibility:* Section 8550 codifies the legislative intent that the state is responsible to mitigate the effects of those emergencies “which result in conditions of disaster or in extreme peril to life, property, and the resources of the state, and generally to protect the health and safety and preserve the lives and property of the people of the state.” This section also confers emergency power on the Governor, the Director of the Office of Emergency Services, and the chief executives and governing bodies of political subdivisions of this state.

*“Political subdivision” defined:* Government Code Section 8557(c) defines “political subdivision” to include “any city, city and county, county, district, or other local governmental agency or public agency authorized by law.”

By enacting the Emergency Services Act, the legislature merged civil defense, disaster response, and mutual aid into one operational concept. As a result, each political subdivision has the authority and obligation to plan and participate in emergency situations.

## **Q. HOW DOES MUTUAL AID RELATE TO CONTROLLING THE MOVEMENT OF PEOPLE AND PROPERTY?**

**A.** Mutual Aid may be rendered under the authority and protection of the Emergency Services Act even though a local emergency has not been proclaimed. There must exist an emergency affecting life and property of such a magnitude that the local entity is unable to combat it with its available resources, and outside assistance is required. That outside assistance is termed “mutual aid”<sup>45</sup> for the purposes of the Emergency Services Act.

*Advantage:* If a local government renders mutual aid in the absence of a local emergency proclamation, it may do so and still be within the auspices of the Emergency Services Act. The advantage of proclaiming a local emergency is that it conclusively establishes the actions were within the Emergency Services Act. Compliance with the Act provides local government greater immunities such as immunity from liability for itself and its employees.<sup>46</sup>

***Master Mutual Aid Agreement:*** The Emergency Services Act does not specifically define “mutual aid.”<sup>47</sup> Instead, the Act merely references the Master Mutual Aid Agreement, approved emergency plans, and the authority for rendering such aid during a war emergency or state of emergency.<sup>48</sup> Mutual aid must be consistent with the Master Mutual Aid Agreement and the Standardized Emergency Management System.<sup>49</sup>

In periods other than a state of war emergency, state of emergency, or local emergency, the Emergency Services Act refers to the Master Mutual Aid Agreement and local ordinances, resolutions, agreements, or plans as authority for the exercise of mutual aid powers.<sup>50</sup>

The Master Mutual Aid Agreement suggests that mutual aid means the interchange of services and facilities on a local, county-wide, regional, state-wide and interstate basis to combat the effects of disasters which may result from such calamities as flood, fire, earthquake, pestilence, war, sabotage and riot.

---

<sup>45</sup> Cal. Govt. Code § 8559

<sup>46</sup> Soto v. California (1997) 56 Cal. App. 4th 196.

<sup>47</sup> Cal. Govt. Code §§ 8615-8618.

<sup>48</sup> Cal. Govt. Code §§ 8560, 8561, 8615, 8616.

<sup>49</sup> Cal. Govt. Code § 8617, Cal. Code Regs. tit. 19, § 2415(c).

<sup>50</sup> Cal. Govt. Code §§ 8560, 8561, 8617.

It is intended to be available in the event of a disaster of such magnitude that is, or is likely to be, beyond the control of a single political subdivision and requires the combined forces of several political subdivisions to combat.

**Q. WHAT ARE THE ADVANTAGES TO A LOCAL GOVERNMENT OF PROCLAIMING A LOCAL EMERGENCY PRIOR TO ENACTING ORDERS CONTROLLING THE MOVEMENT OF PEOPLE AND PROPERTY?**

**A.** The immunities of the “Emergency Services Act” provide more protection than those offered by the “State Tort Claims Act.” In the event of litigation, however, a local government will have to establish that it was acting in accordance with the Emergency Services Act” in order to use its protection.<sup>51</sup>

***Local Proclamation of Emergency*** The easiest way to prove a local governing body was acting underneath the protection of the Emergency Services Act is when a “state of local emergency” has been proclaimed by the local governing body.

*In-county resources:* By proclaiming a state of local emergency, there is a finding that an emergency exists and that mutual aid is needed to assist that entity. Even if only in-county resources are utilized, the Master Mutual Aid Agreement and any local agreements to provide mutual aid should be sufficient to establish that the Emergency Services Act applies.<sup>52</sup>

*Out-of- county resources:* If out-of-county assistance is needed, requests for mutual aid should follow the procedures set forth by the Office of Emergency Services, including obtaining mission numbers from OES for responding agencies.

This is particularly important for possible reimbursement of extraordinary expenses in the event of a proclaimed “State of Emergency” or in the event of a presidential declaration of disaster when state or federal disaster relief funds become available.

*Proclaim early:* If there are grounds for proclaiming a “local emergency,” for a number of reasons, proclaim it at the earliest possible time. By doing so, the proclamation provides for the following:

- alerting and activating the mutual aid system;
- invoking and disseminating emergency orders at the earliest possible time; and
- meeting the requisites for seeking the Governor’s proclamation of a “State of Emergency.”

---

<sup>51</sup> Adkins v. State of California (1996) 50 Cal. App. 4th 1802.

<sup>52</sup> Cal. Govt. Code §§ 8615-8617, 8631.

*Issue orders and regulations:* Another advantage to proclaiming a local emergency is authorization of the local governing body to issue “orders and regulations necessary to provide for the protection of life and property.”<sup>53</sup>

This provision is particularly important because enhanced control over the movement of people and property during an emergency is available.

For example:

- The local governing body may expand the category of persons who are authorized to announce and enforce the orders;
- the failure to obey the order is a misdemeanor subject to fine and/or imprisonment;<sup>54</sup>
- The use of an order avoids the legal ambiguities that exist in using Penal Code section 409.5 when used to restrict movement into or out of a disaster area.

## **Q. WHAT ARE THE CONSEQUENCES OF NOT PROCLAIMING A LOCAL EMERGENCY?**

**A. *No Local Proclamation:*** If a state of local emergency is not proclaimed, then the only remaining authorities that would allow restrictions on the movement of people and property would be statutorily authorized officials, and the governing body’s use of the police power. Additionally, in order for a local agency to receive the immunity afforded by the Emergency Services Act, the parties would have to establish that mutual aid was provided in accordance with the act. This would require proving that the emergency response was accomplished in accordance with the State Emergency Plan, the Master Mutual Aid Agreement, or local mutual aid agreements or plans.<sup>55</sup>

**Actions under the ESA:** If a local government entity were to be sued, it would have to establish that it was acting under the provisions of the Emergency Services Act in order to receive the protection offered by the Emergency Services Act. Although a proclamation of an emergency is not a prerequisite to establish that actions occurred pursuant to the ESA, such a proclamation facilitates establishing that the ESA applies.

---

<sup>53</sup> Cal. Govt. Code § 8634.

<sup>54</sup> Cal. Govt. Code § 8665.

<sup>55</sup> Cal. Govt. Code §§ 8560 et seq.

## **Q. WHAT IS THE BEST WAY TO RECEIVE EXPANDED IMMUNITY PURSUANT TO THE EMERGENCY SERVICES ACT?**

**A.** The best way to insure that a local government or agency is protected by the immunities of the Emergency Services Act is to:

- Establish a local plan,
- Have the plan approved by the local governing body,
- Have the plan reviewed by OES,
- Verify that the plan is consistent with the State Emergency Plan as adopted by the Governor.<sup>56</sup>

A second method for claiming the expanded immunities of the California Emergency Services Act is to establish that mutual aid was provided in accordance with the Emergency Services Act, the Master Mutual Aid Agreement, the Standardized Emergency Management System, and the procedures set forth by the Office of Emergency Services.

*“All mutual aid systems and agreements shall be consistent with SEMS and the Master Mutual Aid Agreement.”<sup>57</sup>*

*Mutual aid outside OES procedures:* On occasion, there may be assistance rendered according to local agreement, or merely a request for assistance, without utilizing the formalized OES mutual aid procedures. This often occurs within an operational area.

*Operational Area:* “An intermediate level of the state emergency services organization, consisting of a county and all political subdivisions within the county area.”<sup>58</sup>

*Make reference to the ESA:* If a formal agreement is drafted, or an ordinance or regulation enacted requiring mutual aid to combat an emergency, it is recommended that reference to the mutual aid provisions of the Emergency Services Act be incorporated into those documents.<sup>59</sup> These approaches will at least allow for an arguable position that there was substantial compliance with the Emergency Services Act.

---

<sup>56</sup> Cal. Govt. Code §§ 8560, 8568, 8569.

<sup>57</sup> Cal. Code Regs., tit. 19, § 2415(c).

<sup>58</sup> Cal. Govt. Code §8559(b).

<sup>59</sup> Cal. Health & Safety Code § 13863.

## **Q. WHAT AGENCIES ARE REQUIRED TO IMPLEMENT SEMS?**

**A.** All state agencies are required to use the Standardized Emergency Management System for coordination during either multiple jurisdiction or multiple agency emergency and disaster operations.<sup>60</sup> The use of SEMS is not mandatory for local agencies, however, the use of SEMS is required to be eligible for reimbursement of disaster related personnel response expenses.<sup>61</sup>

## **Q. HOW IS SEMS APPLIED IN AN EMERGENCY?**

**A.** The State of California has developed the Standardized Emergency Management System (SEMS) for responding to and managing multi- agency and/ or multi-jurisdictional emergencies and disasters within California's territorial area.

**DESCRIPTION OF SEMS:** The Standardized Emergency Management System incorporates a broad range of emergency management practices to effectively respond to disasters. Between disasters, SEMS builds connections to integrate management, communications, and resources at the local, regional, and statewide levels to maximize the responsiveness of emergency personnel.

**Emergency Response Organization:** The Standardized System is multi-level and designed to manage disasters anytime and anywhere in the State. It is intended to facilitate priority setting, interagency cooperation, and the efficient flow of resources and information, but does not alter statutory authorities or responsibilities of emergency responders.

SEMS provides the framework for coordinating state and local government emergency response in California using the existing incident command system and mutual aid agreements. It consists of five organizational levels, five main functions, mutual aid, the Incident Command System, multi/inter-agency coordination, and the operational area concept.

### **Five Organizational Levels:**

**Field level** - includes those entities which manage and coordinate response at the emergency scene.

**Local level** - manages and coordinates county, city, or special districts (which in turn manage and coordinate the field levels).

**Operational areas** - manage and coordinate at the local level (essentially all local governments within the geographic boundary of a county).

---

<sup>60</sup> Cal. Govt. Code § 8607(d).

<sup>61</sup> Cal. Govt. Code § 8607(e).

**Regional levels** - manage and coordinate information and resources among operational areas.

**State level** - provides statewide regional level resource coordination integrated with federal resource coordination.

### ***Five Main Functions of the SEMS Structure***

**Management** -provides the overall direction and sets priorities for an emergency, limited by the jurisdiction roles and responsibilities.

**Operations** - implements priorities established by the management function.

**Planning/Intelligence** - gathers and assesses information.

**Logistics** - obtains the resources to support the operations.

**Finance/Administration** - tracks all costs related to the operations.

Most local jurisdictions have "mutual aid" agreements. These agreements provide a means for a community, which has fully committed all of its available resources to a local emergency, to obtain additional resources from surrounding communities and counties. Mutual aid agreements are used daily and during disasters by fire, law enforcement, health care, and other disciplines. SEMS incorporates existing, and newly developed mutual aid systems.

The Incident Command System provides standardized procedures and terminology, a unified command structure, a manageable span of control, and an action planning process that identifies overall incident response strategies. Within SEMS, the general concepts of the ICS are translated to each level of the statewide response system--from a local field incident to statewide coordination. This allows seamless communication among all responding agencies and levels of government.

## **ROUTE AND AREA CLOSURES**

### **Q. IS RESTRICTING TRAVEL ROUTES PERMITTED?**

#### **A. ROADS & HIGHWAYS.**

*General Concept:* Under the police powers of the state and by statutory authority, emergency response and law enforcement agencies are empowered to close roads to general traffic under the authority of the police powers.



Because the state has preempted the entire field of traffic control, any right of a local authority to interfere with the free flow of traffic, such as closing a street, must be derived from an express delegation of authority from the Legislature.<sup>62</sup>

The same police power that allows for the closure of a road also imposes a duty to allow the movement of people and property as soon as possible, because that is the primary purpose of the roadway.<sup>63</sup>

Authorities:

- Police Power
- Vehicle Code
- Health and Safety Code
- Street and Highways Code

*General rule:* A local legislative body having authority to adopt local police regulations may close a street when the local authority that has jurisdiction determines it is necessary for the safety and protection of persons using the street during the closure.<sup>64</sup> Signs must be posted at all entrances of the affected section before the closure may take effect.<sup>65</sup>

**State Highways:** The California Department of Transportation is statutorily authorized to restrict traffic or close any state highway whenever necessary for the protection of the public or for protection of the highway during storms.<sup>66</sup>

**Note:** The Department of Transportation, sometimes referred to as “CalTrans,” often performs traffic restrictions and road closures in conjunction with the Highway Patrol. It is important to note that each agency has independent statutory authority to close a state highway.

**County Highways:** The Board of Supervisors of a county may restrict traffic or close any county highway whenever the board determines those actions are necessary to protect the public or to protect the highway from damage during a storm.<sup>67</sup> The Board of Supervisors may delegate their authority to the county road commissioner.<sup>68</sup>

**Highway Patrol:** The California Highway Patrol, police departments, and sheriff’s office may close any highway to traffic if there is a threat to public health or safety caused by dangerous substances.<sup>69</sup>

---

<sup>62</sup> Cal. Vehicle Code § 21; 75 Ops. Cal. Atty. Gen. 80 (1992).

<sup>63</sup> People v Uffindell (1949) 90 Cal. App. 2d Supp. 881, 883, 202 P.2d 874, 876.

<sup>64</sup> 78 Ops. Cal. Atty. Gen. 65, fn. 2 (1995).

<sup>65</sup> Cal. Health & Safety Code § 21103

<sup>66</sup> Cal. Streets and Highways Code § 124

<sup>67</sup> Cal. Streets and Highways Code § 942.5

<sup>68</sup> Cal. Streets and Highways Code § 942.6

<sup>69</sup> Cal. Vehicle Code § 2812

Additionally, the Highway Patrol may also restrict traffic or close down any highway if visibility poses a significant safety hazard.<sup>70</sup>

**WATERWAYS:** A state may exercise its police powers in regulating the use of navigable waters within its borders in the absence of federal preemption.<sup>71</sup> The California Department of Boating & Waterways is one state agency possessing authority to close waterways during an emergency.<sup>72</sup>

Regulations that restrict or prohibit traveling on federally designated navigable waterways normally are considered to be an infringement on the public's rights. However, in an emergency situation, reasonable regulations are permitted in the interests of the safety and welfare of the public.<sup>73</sup>

The Department of Water Resources is vested with the authority to supervise reservoirs as necessary to safeguard life and property. The Department also has the power to take remedial measures necessary to protect the health, safety, convenience and welfare of the general public during times of extraordinary stress and of disaster resulting from storms, floods, or where damage to watershed lands by forest fires has created an imminent threat of floods or damage.<sup>74</sup>

**FIRES:** It is a criminal offense to disobey the lawful order of any firefighter or public officer at a forest fire,<sup>75</sup> or a firefighter in the course of his/her duties he/she is protecting personnel or equipment.<sup>76</sup>

Roads or other areas may be closed to vehicle or conveyances to prevent damage to firefighting apparatus or to prevent firefighting efforts from being interfered with.<sup>77</sup>

**OFF SHORE:** The United States Coast Guard has exclusive jurisdiction over incidents occurring at sea. The Coast Guard may also act in supporting roles to assist other jurisdictions in inland or near shore responses.

**AIRPORTS:** Congress' whole purpose in creating the Federal Aviation Administration was to promote safe air travel, and to protect the lives and property of people on ground as well as air travelers.<sup>78</sup> Further, Congress has impliedly preempted state and territorial regulation of aviation safety because the nature of aviation safety permits only one uniform system of regulation.<sup>79</sup>

---

<sup>70</sup> Cal. Vehicle Code § 2812.5

<sup>71</sup> 80 Ops. Cal. Atty. Gen. 311 (1997).

<sup>72</sup> See Protocol for Closure of Delta Waterways, State of California, Office of Emergency Services, November 1997

<sup>73</sup> 45 Ops. Cal. Atty. Gen. 122, 128 (1965)

<sup>74</sup> Cal. Water Code §§ 128, 6100.

<sup>75</sup> Cal. Pub. Res. Code § 4165(a).

<sup>76</sup> Cal. Vehicle Code § 2801.

<sup>77</sup> Cal. Pub. Res. Code § 4165(b), (e).

<sup>78</sup> *NORML v. Mullen* (1985) 796 F.2d 276.

<sup>79</sup> United States Const., art. VI, cl. 2; 49 U.S.C § 40101 et seq.

Many airports have memorandums of understanding or similar instruments with local public safety agencies for the purpose of providing rapid and efficient response in the event of a disaster or an emergency.

**National Transportation Safety Board:** The National Transportation Safety Board is the federal entity responsible for investigating aviation crashes.<sup>80</sup>

**OFF-HIGHWAY AREAS:** In order to protect natural resources, among other reasons, the United States Bureau of Land Management may temporarily prevent public use of federal lands within the State of California.<sup>81</sup>

**EARTHQUAKE DAMAGED AREAS**<sup>82</sup> Local law enforcement officers may restrict entry to an area damaged by an earthquake while a threat exists to the public health and safety, as determined on a case by case basis. However, media representatives may not be denied access to the area.

**NUCLEAR INCIDENTS**<sup>83</sup> State law is the primary authority relating to precautionary evacuations due to a nuclear incident. Reimbursement for evacuation costs under the Price-Anderson act requires that the evacuation be authorized by State law, and be necessary to protect public health and safety.<sup>84</sup>

## **Q. WHAT IS THE AUTHORITY FOR CLOSING PUBLIC BEACHES?**

### **A. Authorities:**

- Police Power
- Health and Safety Code § 115885
- Penal Code § 409.5

The local health officer may restrict the use of, or close all or a portion of a public beach if they find violations of department standards exist. The health officer must inform the agency responsible for the beach within 24 hours of a closure or restriction.<sup>85</sup>

In the event of an untreated sewage release adjacent to a public beach, the local health officer shall close the beach and waters until the area is within safe standards.<sup>86</sup>

---

<sup>80</sup> 49 U.S.C § 1101 et seq.

<sup>81</sup> 63 Ops. Cal. Atty. Gen. 115 (1980).

<sup>82</sup> 67 Ops. Cal. Atty. Gen. 535 (1984).

<sup>83</sup> See generally, Price-Anderson Act, 42 U.S.C. § 2011 et seq.

<sup>84</sup> 42 U.S.C. §§ 2014(w), (gg), 2210(q).

<sup>85</sup> Cal. Health & Safety Code § 115880, 115885.

<sup>86</sup> Cal. Health & Safety Code § 115880, 115885.

**EVACUATIONS:** For the purpose of this guideline, an evacuation is considered a control on the movement of people and their property. An evacuation may be a voluntary evacuation, where the governing body recommends but does not require the evacuation of an area. Alternately, an evacuation may be mandatory, where the governing body determines that under its police power it can require the citizens of an area to leave that area in order to protect life, safety, or the general welfare of the population during an emergency. In either event, an evacuation is best ordered pursuant to either statutory authority or the Emergency Services Act.

**Penal Code § 409.5:** Section 409.5 provides that specified law enforcement officers may close or restrict access to an area in the event of a disaster. This is the most common method used to initially order an evacuation, and is usually used prior to a resolution by the local governing body.

**Penal Code § 409.6:** Penal Code Section 409.6 provides law enforcement officers with the same powers as allowed under § 409.5, however, § 409.6 expressly allows the use of reasonable force to remove an unauthorized person from a closed avalanche area.

*Issues* Instead of forcibly removing persons from an area ordered evacuated, many jurisdictions merely warn the person and either have them sign a release of liability or fully document the notice given and the citizen's refusal to leave. There are potential problems with this method, such as questions of whether "duress" could be construed when a citizen signs the release under emergency conditions, and whether a mere waiver is adequate to relieve the governing body of its obligation under the police powers of the state.

*Alternative:* An alternative to the use of a signed waiver would be to have an officer order an evacuation. This would permit the officer to arrest that person under Penal Code § 148 or § 148.2.

*Another Alternative:* Occasionally a person may refuse to evacuate an area, and may advise others to do the same. Under some circumstances, that person may be subject to arrest for violation of criminal statutes such as child endangerment, cruelty to animals, suicide, and others.<sup>87</sup>

## **Q. ARE THERE ALTERNATIVES TO EVACUATING UNDER § 409.5?**

**A.** The local governing body may impose voluntary or mandatory evacuation orders pursuant to their police powers. The preferred practice is to proclaim a local emergency under provisions of the Emergency Services Act and then issue any evacuation order pursuant to that authority.

---

<sup>87</sup> Cal. Penal Code §§ 273a, 273d, 401, 597.

## **Q. WHAT ARE THE MEANS FOR IMPOSING A MANDATORY EVACUATION?**

**A.** There are four different means for imposing a mandatory evacuation.

*Penal Code § 409.5:* Penal Code section 409.5 authorizes officers of the highway patrol, police departments, marshal's office or sheriff's office and certain other statutorily designated law enforcement officers to close an area whenever there is a menace to public health or safety.

Although section 409.5 is often utilized during emergencies, it is not clear whether it authorizes law enforcement to remove persons who were within the area prior to its closure. Further, only those officers specifically named in the statute may enforce it.

*Penal Code § 409.6:* Penal Code section 409.6 authorizes officers of the highway patrol, police departments, marshal's office or sheriff's office and certain other statutorily designated law enforcement officers to close an area whenever there is a menace to public health or safety caused by an avalanche or the potential for an avalanche.

Section 409.6 expressly provides for the use of reasonable force to remove persons from an area that has been ordered closed pursuant to section 409.6.

*State of local emergency:* Even though a local governing body has inherent policy powers to protect the health and safety of its people, Government Code § 8558(c) and § 8630 authorize the local governing body to proclaim a "state of local emergency" pursuant to the Emergency Services Act.

When a "state of local emergency" has been proclaimed, the local governing body may issue orders and regulations "necessary to provide for the protection of life and property."<sup>88</sup> An order for mandatory evacuation would be authorized under that section. Failure to comply with such an order is a misdemeanor providing imprisonment for up to six months and/ or a fine of up to \$1,000.<sup>89</sup> The advantage of this approach is that local control and coordination are maintained.

*Enacting local ordinances:* Although the police power are primarily legislative, a governing body of a political subdivision is not required to promulgate specific rules or ordinances to be enacted prior to a particular incident. The reason for this is twofold: First, it is neither practical or possible to envision every type of incident that would require a restriction on the movement of people or property. Second, the proclamation of an emergency by the local governing body allows for flexibility in enacting rules.

---

<sup>88</sup> Cal. Govt. Code § 8634.

<sup>89</sup> Cal. Govt. Code § 8665.

For example, an official designated by the governing body may proclaim a local emergency, after which it does not need to be ratified by the governing body for seven days.<sup>90</sup>

If the local governing body wishes to empower a particular official with the authority to proclaim an emergency, this should be done by ordinance prior to a potential emergency. This provides for a smoother transition than would otherwise normally exist under emergency circumstances.

In preparation for an emergency response, a governing body could adopt, by ordinance, emergency standby orders for evacuations, quarantines, curfews and other restrictions on the right to travel. These ordinances may be drafted to become effective upon the proclamation of a local emergency.

One advantage offered by this method is that the appropriate authorities will immediately be empowered to act upon the proclamation of a local emergency, reducing response time, and allowing for pre- planning of an emergency response.

*Example:* For example, the local governing body can, by emergency standby order, authorize the local director of emergency services to evacuate or close areas under certain conditions. In the emergency standby order the local governing body would specify who they have designated to act on their behalf, and what that person's authority is.

If the governing body operates under an ordinance when no local emergency has been proclaimed, the ordinance may be deemed by the courts as complementing Penal Code § 409.5 rather than the Emergency Services Act, and consequently limit the immunities afforded by the Emergency Services Act.<sup>91</sup>

### ***State of Emergency***

*Proclaim early:* The Governor may proclaim a "state of emergency."<sup>92</sup> During a "state of emergency" the Governor has complete authority over all state agencies and the right to exercise all police powers vested in the State, including the issuance of such orders and regulations as deemed necessary.<sup>93</sup>

The Governor may also amend or rescind existing orders and regulations.<sup>94</sup> The Governor may suspend any regulatory statute, any statute prescribing the procedure for conducting state business, or the orders, rules, or regulations of any state agency.

---

<sup>90</sup> Cal. Govt. Code § 8630.

<sup>91</sup> Cal. Govt. Code §§ 8655 et. seq.

<sup>92</sup> Cal. Govt. Code §§ 8558(b), 8625.

<sup>93</sup> Cal. Govt. Code §§8567, 8627, 8627.5, 8628.

<sup>94</sup> Cal. Govt. Code § 8567.

Local public officials and employees are required to render all possible assistance to the Governor during a “state of emergency.”<sup>95</sup> The ordinances, orders, and regulations of a political subdivision continue in effect during a state of emergency unless suspended or superseded by an order issued by the Governor.<sup>96</sup>

Thus, the Governor may choose to either assume responsibility for the issuance of mandatory evacuation orders or abide by the mandatory evacuation orders issued by the affected political subdivision.

If a governing body issues a local proclamation of emergency, it is preferable to issue the proclamation at the earliest possible time since this will authorize the local governing body to issue “orders and regulations necessary to provide for the protection of life and property.”<sup>97</sup>

*Note:* Review the city charter to determine what powers the local government possesses. The city may already have independent powers to take certain emergency response actions, providing that those actions do not conflict with any state statutes.

*Ordinances remain in effect:* Local ordinances remain in effect even if a “State of Emergency” is proclaimed by the Governor unless the Governor orders the local ordinance suspended or superseded.<sup>98</sup> The Governor may permit local governing bodies to continue to exercise their emergency powers and to issue orders and regulations even though a “State of Emergency” is proclaimed.

## **CURFEWS**

For the purpose of this guideline, a curfew is a restriction on movement of persons or property based on time of day factors. Usually restrictions on the freedom to travel in public areas are considered intrusions by the state that are protected against by the Due Process Clause of the Fourteenth Amendment.<sup>99</sup> However, the government may limit an individual’s freedom under exigent circumstances if necessary to promote the general public’s safety. For example, an insurrection or riot is an instance where the government’s interest in safety outweighs a person’s right to assemble, speak or travel in public areas as long as the imminent peril of violence exists.<sup>100</sup>

---

<sup>95</sup> Cal. Govt. Code § 8614

<sup>96</sup> Cal. Govt. Code § 8614.

<sup>97</sup> Cal. Govt. Code § 8634.

<sup>98</sup> Cal. Govt. Code § 8614(c).

<sup>99</sup> *Papachristou v. Jacksonville*, (1972), 405 U.S. 156.

<sup>100</sup> *In re Juan C.* (1994) 28 Cal. App. 4th 1093, 1101, 33 Cal. Rptr. 2d 919, 923.

Curfews may also be justified after natural or manmade disasters for other public safety reasons:

- Imminent threat of violence,
- Protecting the health of citizens,
- Protecting private property,
- Protecting government services,
- other interests relating to public welfare during or following a disaster.

## **Q. ARE THERE CONSTITUTIONAL CONCERNS WITH CURFEWS?**

**A.** There are several immediate Constitutional concerns. For example, because a curfew imposes restrictions on the time, place, and manner in which speech may be exercised, discretionary determinations by a public official of who may be heard or not heard encourages censorship and discrimination, and is constitutionally suspect.<sup>101</sup>

Further, there is judicial concern that "...unless there is a genuine emergency, a curfew aimed at all citizens could not survive constitutional scrutiny."<sup>102</sup>

Citywide or countywide curfew laws enacted or promulgated at a time of riot or civil disorder have been held valid, as against various constitutional objections.<sup>103</sup>

## **Q. WHO HAS THE AUTHORITY TO ORDER A CURFEW?**

**A.** There are several statutory authorities that expressly allow for the implementation of a curfew. These authorities are in addition to the inherent police powers delegated to the local political subdivisions by the state legislature.<sup>104</sup>

**EMERGENCY SERVICES ACT:** The Emergency Services Act provides that during a local emergency, the local government, or a designated agent, may impose a curfew. Additionally, the Governor has the authority to exercise "all police powers vested in the State..." which would include the power to order a curfew.<sup>105</sup>

*Govt. Code § 8634* "During a local emergency the governing body of a political subdivision, or officials designated thereby, may promulgate orders or regulations necessary to provide for the protection of life and property, including orders or regulations imposing a curfew within designated boundaries where necessary to preserve the public order and safety."

---

<sup>101</sup> In re Juan C. (1994) 28 Cal. App. 4th 1093, 1099.

<sup>102</sup> Bykofsky v. Borough of Middletown (1976) 429 U.S. 964, 965 cert. denied (dissent Justices Marshall and Brennan)

<sup>103</sup> United States v Chalk (4th Cir. 1971) 441 F. 2d 1277. cert. denied 404 U.S. 943.

<sup>104</sup> Cal. Govt. Code § 8634.

<sup>105</sup> Cal. Govt. Code §§ 8567(a), 8627.



Under § 8634 of the Emergency Services Act, there are three sources of a curfew proclamation. These sources include: the local governing body, an official designated by the local governing body, or the Governor.

**Local Governing Body:** A local governing body is the legislative body, trustees, or directors of any city, city and county, county, district, or other local government agency or public agency authorized by law.<sup>106</sup>

The local governing body may order a curfew, after a local emergency has been proclaimed, if the curfew is necessary to preserve public order and safety.

**Designated Official:** The designated official should be determined by an ordinance adopted by the local governing body<sup>107</sup> The designated official of the local governing body usually means the mayor, city manager, or other person whose chief function is the administration of an area. Depending upon the particular circumstances of the situation, power may be vested in an officer of a law enforcement agency, fire suppression agency, or health department.

The designated official of the local governing body may order a curfew after a local emergency has been proclaimed, if the curfew is necessary to preserve public order and safety.

**Governor:** The Governor has the authority to make, amend, and rescind regulations. The Governor has the power to impose a curfew if necessary to carry out the provisions of the Emergency Services Act.

During a state of emergency, the Governor has complete authority over all of the state government and the right to exercise all police powers of the state.<sup>108</sup> The Governor has the authority to make, amend, or rescind a curfew initiated by a local government under a local emergency, because a local government's authority flows from the state. California Govt. Code § 8627 vests all of the state's police power in the Governor during a state of emergency.

All local governments must "follow the lawful orders of the Governor" during a "state of emergency," as well as during a "state of war emergency."

"The Governor is [ ] empowered to proclaim a state of emergency in an area affected or likely to be affected thereby when...he finds that local authority is inadequate to cope with the emergency."<sup>109</sup>

---

<sup>106</sup> Cal. Govt. Code § 8557(c), (d).

<sup>107</sup> Cal. Govt. Code § 8630.

<sup>108</sup> Cal. Govt. Code § 8627.

<sup>109</sup> Cal. Govt. Code § 8625(a).

This indicates that the Governor can determine when an emergency is or is likely to be “beyond the control of the services, personnel, equipment, and facilities of any county, city and county, or city and requires the combined forces of a mutual aid region or regions to combat...”<sup>110</sup>

Additionally, the Governor also has the authority to make, amend and rescind orders and regulations to carry out the provisions of the California Emergency Services Act.<sup>111</sup> Under this section, there are no restrictions limiting the Governor’s authority over local jurisdictions to “state of war emergency.”

## **HEALTH AND SAFETY CODE.**

**Department of Health Service:** Health & Safety § 120140: The department of Health Services may take measures as necessary to determine the nature of any contagious, infectious, or communicable disease and prevent the disease from spreading. Additionally, the department may take possession or control of any living person.

Because of the various methods of spreading disease, it is possible that a curfew might become necessary. It may become necessary to enforce a curfew to prevent the unnecessary spread of a disease to surrounding regions.

### **Q. HOW IS A CURFEW ORDERED?**

**A.** A curfew is allowed as a function of the state’s police power. Because of the tenuous relationship between a curfew and restrictions on a person’s constitutional rights, the ordering of a curfew on a local level should be done by legislation.

For local governments, an emergency curfew may be imposed following the proclamation of a local emergency, since this offers increased protection from liability, in addition to express statutory authorization under Govt. Code § 8634. A curfew may be ordered under circumstances other than those in the Emergency Services Act.<sup>112</sup>

A curfew on a state level should be imposed by the Governor following proclamation of a state of emergency, or a state of war emergency. Exceptions to this would be when the exigency of the potential problem to be avoided or alleviated would make it necessary for an interim curfew to be imposed prior to the Governor’s proclamation of a curfew.

### **EMERGENCY SERVICES ACT REQUIREMENTS**

*Must be written:* A curfew must be in writing. This includes all orders and regulations regarding the curfew, and amendments to the original curfew.

---

<sup>110</sup> Cal. Govt. Code § 8558(b).

<sup>111</sup> Cal. Govt. Code § 8567(a)

<sup>112</sup> Cal. Govt. Code § 8634.

Additionally, when the curfew restriction is lifted, the rescission of the curfew must also be in writing.<sup>113</sup>

*Must provide widespread publicity:* An additional requirement of a curfew order is that the orders and regulations concerning the curfew must be given “widespread publicity and notice.”<sup>114</sup>

*Note:* Methods of notice should include local media. Care should be used to ascertain if alternative methods are necessary due to power outages, or other exigent circumstances.

### **GENERAL REQUIREMENTS (CASE-LAW)**

*Careful Drafting:* Because restricting a person’s freedom to travel is such an important concept in our society, a curfew must be carefully drafted to avoid later constitutional and due process claims.

During a local emergency, the county, city or city and county may impose a curfew within a designated boundary to preserve public order and safety.

*Must not be vague:* For an emergency curfew regulation to withstand a facial vagueness challenge under the due process clause, there are two basic requirements:

#### **1. NOTICE TO THE PUBLIC.**

The statute or regulation must be sufficiently definite to provide adequate notice of conduct proscribed.<sup>115</sup>

#### **2. CLEAR INSTRUCTIONS FOR ENFORCEMENT.**

The regulation must provide sufficiently definite guidelines for the police in order to prevent arbitrary and discriminatory enforcement.<sup>116</sup> In other words, concern that law enforcement might exercise their discretion in an unlawful manner, such as based on a person’s race or economic status, would render an otherwise well defined statute unconstitutionally vague.<sup>117</sup> Concern would be caused on a showing of evidence that the curfew law was discriminatorily or arbitrarily enforced.<sup>118</sup>

*Explanation:* A regulation is not unconstitutionally vague merely because an officer can, when presented with probable cause, exercise his discretion and decide whether or not to arrest someone.<sup>119</sup>

---

<sup>113</sup> Cal. Govt. Code § 8634.

<sup>114</sup> Cal. Govt. Code § 8634.

<sup>115</sup> People v Richardson (1994) 33 Cal. App. 4th Supp. 11.

<sup>116</sup> Id.

<sup>117</sup> People v. Superior Court (1998) 46 Cal. 3d 381, 397-398.

<sup>118</sup> People v Richardson (1994) 33 Cal. App. 4th Supp. 11, 17.

<sup>119</sup> People v Monroe (1993) 12 Cal. App. 4th 1174, 1193.

**Legislation should not be inclusive:** Because some persons and activities are required and necessary during a curfew, such as police activity, firefighting, media reporting, these categories should be specified. However, if an inclusive list is created, the curfew might be found to be unconstitutional because of people that have good cause to be on the streets are not included in the list of examples, such as homeless people.

## **Q. HOW SHOULD THE CURFEW ORDER BE DRAFTED?**

**A.** While the Emergency Services Act does not provide any requirements in excess of those listed in Govt. Code § 8634, general rules derived from non ESA curfews should be used for guidance.

First, the curfew order must be carefully drafted to prevent being invalidated or later found to be unconstitutional.

**Narrow Emphasis:** Because a curfew significantly interferes with a person’s protection under the 14th amendment, the State or the local political subdivision that is responsible for promulgating the curfew regulations must be able to demonstrate that the curfew order is “narrowly drawn” to further a “compelling state interest.” This would presumably be the health, safety, or general welfare of the affected citizens.<sup>120</sup>

A curfew may be deemed unconstitutional on the face of the document if it seeks to prohibit “an overly broad range” of constitutionally protected conduct.<sup>121</sup>

*Suggested Practice:* Specify the emergency or possible problem that the curfew is being imposed to prevent or decrease. Do not attempt to solve subsidiary or ancillary problems that are not the specific target of the proposed curfew. An emergency curfew should only be ordered when there is a heightened need to protect the public health, safety, or to protect the constitutional rights of citizens.<sup>122</sup>

**Clear Language:** Second, the order should clearly describe what conduct is to be prohibited, and must sufficiently define the offense so that ordinary people can understand the order.<sup>123</sup>

---

<sup>120</sup> Roe v. Wade (1973) 410 U.S. 113, 155-156.

<sup>121</sup> In re Juan C. (1994) 28 Cal. App. 4th 1093, 1100.

<sup>122</sup> See generally, In re Juan C. (1994) 28 Cal. App. 4th 1093.

<sup>123</sup> Nunez v. City of San Diego (9th Cir. 1997) 114 F.3d 935.

The language of the curfew order should clearly define:

- The action sought to be prohibited:
- The people affected by the order,
- The geographic area where the curfew is in effect,
- The excepted classes of people, (public safety),
- The dates and time of the curfew, including beginning and ending dates,
- The instructions for enforcement that will be given to law enforcement agencies,
- The conditions under which a person will be prosecuted for a violation of the curfew
- that the curfew is mandatory

*Suggested Practice:* Avoid use of gratuitous “legalese” when drafting curfew orders. Use concise and specific language when describing the restricted area. Use language that is readily understood by the majority of the population, consider the educational level of the population sought to be restrained. The curfew order should “speak for itself” and it is advisable to avoid public comment that could be considered contradictory of the curfew order.

For example, when describing a boundary, use “the area bounded by the Caldera river on the south, H street on the north, 22<sup>nd</sup> street on the east, and 47<sup>th</sup> street on the west”, rather than “The Hollyhock neighborhood.”

When describing the restrictions of time, do not use military time such as “1800 hours through 0600”, rather use the measurements used by the general population: “From Six O’clock, Friday night, to Six O’clock, Saturday Morning.

**Enforcement Standards:** Third, the curfew order should provide definite standards concerning enforcement of the curfew. These standards must permit law enforcement to enforce the law in a non-arbitrary, nondiscriminatory manner.<sup>124</sup>

To prevent claims of discrimination or censorship, a “blanket” curfew should be imposed. A curfew that covers all segments of the population except for those necessary to preserve order or extinguish fires “falls into [the] category of systematic, consistent, and just order of treatment” especially with reference to presence on streets or highways.<sup>125</sup>

**Designated Boundary:** The boundary must be clearly defined in order to allow for adequate notice of expected conduct.

---

<sup>124</sup> Nunez v. City of San Diego (9th Cir. 1997) 114 F.3d 935.

<sup>125</sup> In re Juan C. (1994) 28 Cal. App. 4th 1093, 1100.

## QUARANTINES

**Duties and Responsibilities:** In order to understand the duties and responsibilities that arise prior to and during a quarantine, one must first review the relationships between the restriction of personal freedom compared with the health, safety, and welfare of the public in general.

For the purposes of these guidelines, “quarantine” is the prevention or restriction of movement of persons or property for the purposes of protecting public health.<sup>126</sup>

### Q. IS A QUARANTINE CONSTITUTIONAL?

**A.** The quarantine of persons or property is a power allowed the states under the Constitution.<sup>127</sup> A quarantine remains constitutional even if it affects foreign and domestic commerce.<sup>128</sup>

Even though the right to travel within the United States is constitutionally protected, that right may be limited when a community’s safety and welfare is threatened because of disease.<sup>129</sup>

### Q. WHAT ARE THE LEGAL AUTHORITIES FOR A QUARANTINE?

**A.** The primary authorities cited in this document include the following: The United States Constitution, Health and Safety Code, Food and Agriculture Code, Harbors and Navigation Code, and case law. The legal bases for establishing, maintaining and enforcing a quarantine vary depending on the specific threat, and are discussed accordingly.

For the purposes of these guidelines, discussion is limited to state law authorities.

### Q. WHY ESTABLISH A QUARANTINE?

**A.** The state of California has a duty to take all necessary steps for the promotion and protection of the health of its citizens, and may take actions to achieve that goal.<sup>130</sup>

---

<sup>126</sup> Cal. Code Regs. Tit. 17, § 2500 (similar definition).

<sup>127</sup> Morgan’s L. & T.R. & S.S. Co. v. Bd. of Health (1886) 118 U.S. 455; Compagnie Francaise de Navigation a Vapeur v. State Bd. of Health (1902) 186 U.S. 380.

<sup>128</sup> Compagnie Francaise de Navigation a Vapeur v. State Bd. of Health (1902) 186 U.S. 380.

<sup>129</sup> In Re Juan C. (1994) 28 Cal. App. 4th 1093; United States Const., amds. I, V, XIV.

<sup>130</sup> Patrick v. Riley (1930) 209 Cal. 350

A quarantine could also be established to enforce regulations regarding:

- Contagious, infectious, or communicable diseases;<sup>131</sup>
- Sexually transmitted diseases;<sup>132</sup>
- A disease detrimental to the animal industry;<sup>133</sup>
- Hazardous waste;<sup>134</sup>

## **Q. WHO IS RESPONSIBLE FOR ORDERING A QUARANTINE?**

**A.** Generally, health officers are responsible for a threat to the human population, while agricultural officials are responsible for threats to agriculture or commerce.

## **Q. WHO HAS THE AUTHORITY TO ORDER A QUARANTINE?**

**A.** Which official has authority to order a quarantine depends upon whether the danger is a threat to agriculture or commerce, or a threat to the human population.

Generally, health officials have the power to “quarantine, isolate, inspect, and disinfect persons, animals, houses, rooms, other property, places, cities or localities.”<sup>135</sup> Agricultural officials have similar powers and may also establish quarantines that affect people movement as well as commerce. Because of the overlap in authority, they will be discussed together.

Specific examples of statutorily authorized persons who may order a quarantine are discussed below. They include:

- The state Department of Health Services;
- The county health officer, under the direction of the Department of Health Services;
- The director of the department of Food and Agriculture;
- The county veterinarian;<sup>136</sup>
- The board of health or the health officer of a county that has commercial access to the ocean;<sup>137</sup>
- Governor.<sup>138</sup>

Other agencies or personnel may also be authorized under the “police powers” of the state to enforce regulations to protect the public health and the public safety.<sup>139</sup>

---

<sup>131</sup> Cal. Health & Safety Code § 120175

<sup>132</sup> Cal. Health & Safety Code § 120585.

<sup>133</sup> Cal. Food & Agric. Code §§ 9568-9569(a).

<sup>134</sup> Cal. Health & Safety Code § 25187.6.

<sup>135</sup> Cal. Health & Safety Code § 120145.

<sup>136</sup> Cal. Food & Agric. Code § 2343

<sup>137</sup> Cal. Harb. & Nav. Code § 4160.

<sup>138</sup> Cal. Food & Agric. Code § 9572.

<sup>139</sup> Henning Jacobsen v. Commw. of Massachusetts (1905) 197 U.S. 11.

**Duration of a quarantine:** Once a quarantine is ordered, it remains until all affected property is treated or destroyed, and until all isolated persons are considered noninfectious.<sup>140</sup>

## **COUNTIES & CITIES.**

### ***Health Officers and Health Boards***

Authorities:

- “Health Officer” refers to county, city, and district health officers, and city and district health boards, except for advisory boards.<sup>141</sup>
- The health officer shall take measures to control the spread or further occurrence of any contagious, infectious, or communicable disease that he is aware of.<sup>142</sup>
- The health officer may inspect any place or person when necessary to enforce health regulations.<sup>143</sup>
- After being informed of the need for quarantine to isolate diseases, the health officer shall ensure the adequacy of isolation and determine procedures for the premises and contacts.<sup>144</sup>

*Limitations on Authority:* In some instances where the health officer has determined that a quarantine is necessary, the officer may be required to receive approval from the Department of Health Services prior to establishing a quarantine zone.<sup>145</sup>

### ***County Veterinarian***

The county veterinarian has the authority to establish such quarantine regulations as he deems necessary.<sup>146</sup>

*Limitations of County Officials:* “A quarantine shall not be established by one county or city against another county or city on account of the existence of any disease of domestic animals without the written consent of the director [of Department of Health Services].”<sup>147</sup>

---

<sup>140</sup> Cal. Health & Safety Code § 120235.

<sup>141</sup> Cal. Health & Safety Code § 120100.

<sup>142</sup> Cal. Health & Safety Code § 120175

<sup>143</sup> Cal. Health & Safety Code § 120585.

<sup>144</sup> Cal. Health & Safety Code §120215, (a), (b).

<sup>145</sup> Cal. Health & Safety Code § 120200, 120210(a), 120210(b), 120215, 120135, 120415.

<sup>146</sup> Cal. Food & Agric. Code § 5763.

<sup>147</sup> Cal. Food & Agric. Code § 9573.



## STATE

### ***Department of Health Services***

#### Authorities:

- The functions and duties of the Department of Health are to quarantine, isolate, inspect, and disinfect persons, animals, houses, rooms, or other property, places, cities, or localities, whenever it deems it necessary to protect or preserve the public health.<sup>148</sup>
- Department of Health Services promulgates general and specific rules regarding quarantine and disinfection of persons and property, and may require the local health officer to enforce the regulations;<sup>149</sup>

### ***Department of Food and Agriculture***

#### Authorities:

- The Director of the Department of Food and Agriculture may summarily disinfect, remove, destroy, or take any other action thought necessary to eradicate a public nuisance.<sup>150</sup>
- The director may establish and enforce quarantine regulations to protect the agricultural industry from pests.<sup>151</sup>
- The director shall set a quarantine district upon discovery of an infectious disease deemed detrimental to the animal industry.<sup>152</sup>
- The Director may restrict movement of persons, vehicles and commodities from entering or leaving the quarantine district.<sup>153</sup>

### ***Governor***

#### Authorities:

- The Governor may proclaim quarantine regulations, which apply to any state or country and the animals or diseases from that region.<sup>154</sup>
- The Emergency Services Act

---

<sup>148</sup> Cal. Health & Safety Code § 120145.

<sup>149</sup> Cal. Health & Safety Code § 120210(a).

<sup>150</sup> Cal. Food & Agric. Code § 5763.

<sup>151</sup> Cal. Food & Agric. Code § 5301.

<sup>152</sup> Cal. Food & Agric. Code § 9568

<sup>153</sup> Cal. Food & Agric. Code § 9569(a).

<sup>154</sup> Cal. Food & Agric. Code § 9572.

## **Q. WHAT ACTIONS ARE STATUTORILY AUTHORIZED?**

**A.** The local health officer may be authorized by the Department of Health Services to protect or preserve the public health. A city health officer is authorized to enforce local, state, and federal regulations concerning the public health.<sup>155</sup>

The director of the Department of Food and Agriculture may also impose quarantine measures. These measures include:

- Preventing or restricting persons from entering or leaving a quarantined area;
- Preventing or restricting movement of vehicles, commodities, household goods, and animals from entering or leaving a quarantined area;
- Preventing or restricting direct communication between persons under the quarantine and those not affected;
- Disinfecting of persons, animals, houses or rooms;
- Destruction of beddings, carpets, household goods, furnishings, materials, clothing, or animals when disinfecting would be unsafe;
- Any other action considered necessary to eradicate a public nuisance;
- Any other action considered necessary to prevent spread or additional occurrences of a disease;
- Any other action necessary to preserve the public health.

## **Q. WHAT ARE THE OBLIGATIONS OF CITIZENS UNDER QUARANTINE?**

**A.** A person lawfully placed in quarantine by health authorities is obligated to stay within the prescribed bounds, whether guarded or not.<sup>156</sup> Persons who fail to follow rules, regulations or orders authorized by the Department of Health are guilty of a misdemeanor.<sup>157</sup>

It is unlawful for any person to violate any quarantine order which regulates, restricts, or restrains the movement of persons, vehicles, farm equipment, farm and dairy products, into from, or from place to place within a quarantined district, area, or premises.<sup>158</sup>

## **Q: WHAT POWER DOES LAW ENFORCEMENT HAVE WITH RESPECT TO QUARANTINES?**

**A.** *Govt. Code § 202:* “The state may imprison or confine for the protection of the public peace or health or of individual life or safety.”

---

<sup>155</sup> Cal. Health & Safety Code § 101470.

<sup>156</sup> *In Re Vaughan* (1922) 189 Cal. 491; Cal. Health & Safety Code § 120225.

<sup>157</sup> Cal. Health & Safety Code § 120275.

<sup>158</sup> Cal. Food & Agric. Code § 9698.

*Health & Safety Code § 120140:* To determine the nature of a disease, and to prevent its spread, the Department of Health Services may take possession or control of the body of any living person.

*Penal Code § 409.5:* Allows closing of an area because of an emergency. Describes power that is granted to certain law enforcement groups.

## **RIOTS / UNLAWFUL ASSEMBLY**

Even though the first amendment of the Constitution expressly provides the right to peaceably assemble and the freedom of speech, police powers and public policy define limitations to the exercise of the rights.

*1<sup>st</sup> Amendment, United States, Constitution:*

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

There are three activities, which fall under the general description of riots or unlawful assembly:

- Riots
- Routs
- Unlawful Assembly

### **Q: WHAT IS THE DEFINITION OF A RIOT?**

**A. PENAL CODE § 404(a):** This section defines what actions are statutorily required in order for the actions of individuals to constitute a riot. The purpose of this definition allows for officers to control any willful and malicious obstruction of the citizens’ free use of a public way.<sup>159</sup>

In order to establish the existence of a riot, the following conditions must be met:

- Two or more persons acting together,
- disturbing the public peace,
- without authority of law,
- use of any force or violence, or threat and immediate capability of force or violence

---

<sup>159</sup> Rees v. City of Palm Springs (1961) 10 Cal. Rptr. 386.

**Note:** Disturbance of public peace extends even to any place of confinement, such as prisons, jails, work camps, and juvenile ranches.<sup>160</sup>

## **Q. WHAT IS THE DEFINITION OF A ROUT?**

**A. PENAL CODE § 406:** This section defines a “rout” as the joint actions of two or more persons in any attempt to advance toward the commission of an act that would constitute a riot.

For example, member of demonstration warned to disperse that threw rocks at officers was found guilty of rout.<sup>161</sup> Because actions of one member of an assembly may cause or compel another person to act in concert to create a public nuisance, this attempt is defined as a “rout.”

## **Q. WHAT IS THE DEFINITION OF AN UNLAWFUL ASSEMBLY?**

**A. PENAL CODE § 407:** An unlawful assembly occurs whenever two or more persons assemble together to do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly.

A person is considered to take part in an unlawful assembly by “knowingly joining or remaining with the group after it has become unlawful.”<sup>162</sup>

## **Q. WHAT ARE THE DUTIES THAT ARISE DURING A RIOT, ROUT, OR UNLAWFUL ASSEMBLY?**

**A.** The governing body of the affected town or city, the town justices, or the county sheriff must command the assembled persons to disperse.

**Penal Code § 726:** “Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his or her deputies, the officials governing the town or city, or the judges of the justice courts, or any of them, must go among the persons assemble, or as near to them as possible, and command them, in the name of the people of the state, immediately to disperse.”

**Note:** Penal Code § 726 includes police officers among those that are required to order unlawfully or riotously assembled persons to disperse.<sup>163</sup> This means that law enforcement officers may arrest persons without giving the § 726 dispersal command, however, those persons may not be charged with a violation of § 409 because no dispersal command had been given.

---

<sup>160</sup> Cal. Penal Code § 404(b).

<sup>161</sup> In re Wagner (1981) 119 Cal. App. 3d 90.

<sup>162</sup> In re Wagner (1981) 119 Cal. App. 3d 90, 104.

<sup>163</sup> People v. Sklar (1930) 111 Cal. App. Supp. 776.

*Dispersal command must be heard:* The courts have interpreted that the requirement to “go among the persons unlawfully or riotously assembled and command them to disperse” is satisfied when delivered from an amplification device on a police helicopter flying over the area in such a manner as to reasonably assure that the persons involved heard the command.<sup>164</sup>This section does not apply to Penal Codes § 415 or § 416 regarding disturbances of the peace.<sup>165</sup>

**Penal Code § 727:** *TO ARREST RIOTERS IF THEY DO NOT DISPERSE.* If the assembled persons do not immediately disperse, they must be arrested. Any person present at the riot or within that county may be commanded to assist in the arrests.

## **Q. WHAT ARE THE CONSEQUENCES OF FAILING TO ORDER A DISPERSAL?**

**A.** Magistrates or officers having knowledge of an unlawful or riotous assembly that neglect to command the people to disperse or to exercise their vested authority in suppressing or arresting the offenders are guilty of a misdemeanor.<sup>166</sup>

## **Q. WHAT ARE THE DUTIES OF THE CITIZENS?**

**A.** It is the duty of citizens to obey the commands that a peace officer gives in the line of duty. A purported rioter may not use alleged unlawful attacks as a defense for not obeying the otherwise lawful order of a peace officer. This is because a citizen’s recourse is in the courts, as opposed to open resistance.<sup>167</sup>

*Persons to aid in the dispersal:* Additionally, if requested, all persons present or within the county must aid the magistrates or officers in arresting rioters who do not immediately disperse.<sup>168</sup>

## **Q.WHAT ARE THE CONSEQUENCES OF NOT FOLLOWING A DISPERSAL ORDER?**

**A. Penal Code § 409:** Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

---

<sup>164</sup> People v. Cipriani (1971) 95 Cal. Rptr. 722.

<sup>165</sup> People v. Anderson (1931) 117 Cal. App. Supp. 763.

<sup>166</sup> Cal. Penal Code § 410.

<sup>167</sup> People v. Yuen (1939) 32 Cal. App. 2d 151, cert. denied 60 S.Ct. 115; Cal. Penal Code § 416.

<sup>168</sup> Cal. Penal Code § 727.

## **Q. IS THE USE OF DEADLY FORCE PERMITTED TO RESTRICT RIOTERS?**

**A. By Public Safety Officers:** Public officers and those acting under their command for aid and assistance are allowed to use deadly force in the discharge of a legal duty.<sup>169</sup>

**By the General Public:** Homicide is justifiable when committed against a person who manifestly intends and endeavors, in a riotous manner, to enter the habitation of another for the purpose of committing violence on a person inside that habitation.<sup>170</sup>

## **HAZARDOUS MATERIALS**

Hazardous material incidents may occur without warning at any location in California and may often appear at unexpected places. For example, residue from illegal pharmaceutical enterprises are often discarded in public areas such as parks or rivers, further increasing the chance of exposure to the general population or environmental damage.

Hazardous material incidents often occur along transportation routes such as railroads, highways, and waterways. The vast quantities and types of chemicals transported pose a major threat of exposure to the general public traveling and living near transportation routes.

When a hazardous situation endangers the public, two primary options are available to emergency responders:<sup>171</sup>

1. Evacuation, or
2. Sheltering-in-place.

Use of the Hazardous Materials Incident Contingency Plan along with this guideline is recommended. Legal authorities providing for evacuation of persons in a potentially dangerous area may be accomplished through use of the evacuation authorities provided in Section II of this guideline, "Duties, Responsibilities & Powers," specifically the powers that law enforcement has relative to evacuations. Similarly, the "Quarantine" section may provide guidance for certain types of evacuations, as well as providing some authority for "sheltering-in-place."

---

<sup>169</sup> Cal. Penal Code § 196.

<sup>170</sup> Cal. Penal Code § 197.

<sup>171</sup> Hazardous Materials Incident Contingency Plan, Attachment 7, Draft Version (April, 1999).

## **Q. WHAT CONSTITUTES A HAZARDOUS MATERIAL INCIDENT?**

**A.** Generally a release, or threatened release, of hazardous materials that could threaten public health and safety is considered a hazardous material incident. This includes the discharge or threatened discharge of substances and materials designated as hazardous by the United States Department of Transportation for the purposes of Parts 172, 173, and 177 of Title 49 of the Code of Federal Regulations. For the purposes of this document, the guidelines presented are not intended to address problems associated with non-hazardous or long-term non-emergency site mitigation.

Also included in the category of an acute release of hazardous material are oil spills and radiological incidents because of their adverse impacts on public health and the environment. Because of the unique technical requirements, policy considerations, and national security issues that surround these materials, planning issues are usually covered under a separate plan.

## **Q. WHO IS RESPONSIBLE FOR A HAZARDOUS MATERIAL INCIDENT?**

**A.** The person with custodial responsibilities for the material is usually the responsible party, and is ultimately responsible for abating the release or threatened release of the material, damage to the public health, and environmental concerns.<sup>172</sup>

First Responders, such as Sheriff, Police, or Fire Departments have the authority to begin initial emergency procedures as necessary, such as evacuating the area, quarantining the area, or closing down the transportation route.<sup>173</sup>

Following the initial emergency response, many governmental agencies may also have concurrent responsibility and authority to control and mitigate damage. Additionally, most of these agencies provide information necessary for the Incident Commander to decide whether restrictions on movement of people or property should be implemented.<sup>174</sup>

The Incident Commander or Unified Command will generally make the decision whether to evacuate based on technical advice provided from public health officers, technicians, or other qualified personnel.

---

<sup>172</sup> Hazmat Contingency Plan at 1-6.

<sup>173</sup> Cal. Penal Code §§ 148.2, 409.3, 409.5; Cal. Health & Safety §§ 1798.6(c), 25187.6, Cal Govt. Code §§22620-22623.

<sup>174</sup> See e.g. Cal. Govt. Code § 8670.7 (authority over oil spills).

*Use of SEMS required:* “All state agencies shall use SEMS to coordinate multiple jurisdiction or multiple agency emergency and disaster operations.”<sup>175</sup> In order for local governments to be eligible for partial reimbursement of response costs, SEMS must be utilized when responding to an incident.<sup>176</sup>

Hazardous Material Incidents often involve jurisdiction or technical expertise of various state and local agencies. Always refer to a current copy of the State Hazardous Materials Incident Contingency Plan for information about the various authorities.

## **TSUNAMIS / OFF SHORE INCIDENTS**

A tsunami is a series of sea waves most commonly caused by an earthquake beneath the sea floor. The waves can kill and injure people and cause great property damage when they come ashore. Tsunamis can occur at any time of day or night, under any and all weather conditions, and in all seasons. Areas especially vulnerable to tsunamis are beaches open to the ocean, bay mouths or tidal flats, and river delta areas.<sup>177</sup>

Further, the potential exists for the occurrence of either an airplane crash or a ship disaster in the ocean or navigable waterways of the state that would give cause for an immediate quarantine, evacuation, or decontamination of that area.

### **Q. WHAT IS THE TERRITORIAL JURISDICTION OF THE STATE?**

**A.** California's territorial claims in the coastal channels and straits are limited to three-mile belts off the mainland shore and surrounding the coastal islands. This boundary is established for all purposes domestic, political and proprietary, as between the federal and state government.<sup>178</sup> For practical purposes, whenever the jurisdiction is relevant to the operation of federal law, the congressional delineation of the boundary will prevail over a conflicting state assertion.

Even so, the State may enforce laws that are not in conflict with federal law in adjacent waters of the State.<sup>179</sup>

---

<sup>175</sup> Cal. Code Regs., tit. 19 § 2443. See also Cal. Code. Regs., tit. 19 § 2407

<sup>176</sup> Cal. Code Regs., tit. 19 §§ 2407, 2443. See also Cal. Code. Regs., tit. 19, § 2402(i) (defining “incident”).

<sup>177</sup> Tsunami! How To Survive the Hazard On California’s Coast, (1996) Cal. Off. Emerg. Serv.

<sup>178</sup> People v. Weeren, (1980) 26 Cal. 3d 654; 43 U.S.C. § 1301 (Submerged Lands Act).

<sup>179</sup> People v. Weeren, (1980) 26 Cal. 3d 654.



## **Q. WHAT IS THE COAST GUARD'S RESPONSIBILITY?**

**A.** The Coast Guard is permitted to render aid to persons, vessels, or aircraft on or under waters within federal jurisdiction.<sup>180</sup> The Coast Guard may also assist in the protection of persons and property wherever and whenever it is feasible.

### **14 U.S.C. § 88 Saving Life and Property**

(1) In order to render aid to distressed persons, vessels, and aircraft on or under the high seas, and on and under the waters over which the United States has jurisdiction and in order to render aid to persons and property imperiled by flood, the Coast Guard may perform any and all acts necessary to rescue and aid persons and protect and save property;

(b)(1) Subject to paragraph (2), the Coast Guard may render aid to persons and protect and save property at any time and at any place at which Coast Guard facilities and personnel are available and can be effectively utilized.

(2) The Commandant shall make full use of all available and qualified resources, including the Coast Guard Auxiliary and individuals licensed by the Secretary pursuant to § 8904(b) of title 46 USC, in rendering aid under this subsection in non-emergency cases.

*Authority over navigable waters:* As far as may be necessary for the regulation of interstate and foreign commerce, the United States has the paramount right to control the navigable waters within the several states.<sup>181</sup>

This means that the Federal government may regulate navigable waters for the purpose of commerce, but that they have no specific authority over non-navigable rivers, streams, and lakes.

## **DOMESTIC TERRORISM**

Terrorism generally involves a violent act, or an act dangerous to human life, in violation of the criminal laws of the United States or of any State, to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.

The State of California and local governments exercise preeminent authority to make decisions regarding the consequences of terrorism, including authority to make decisions regarding protective actions of the community.

---

<sup>180</sup> 14 U.S.C. § 88.

<sup>181</sup> *Forestier v. Johnson* (1912) 164 Cal. 24.

This authority will ordinarily rest with the incident commander and local emergency services organization. State and federal governments provide assistance as required.

## POTENTIAL LIABILITIES AND IMMUNITIES

The potential for liability-related lawsuits exists for the responding emergency agency, for public employees, and for impressed disaster workers. The two primary sources of protection are the Emergency Services Act and the State Tort Claims Act.

### Q. WHAT PROTECTION IS OFFERED UNDER THE EMERGENCY SERVICES ACT?

A. The majority of the actions discussed in this guideline may be executed under the provisions of the Emergency Services Act.<sup>182</sup> The primary reason that restrictions on the movement of people or property during an emergency should be performed under the Emergency Services Act is because this will provide greater immunity from liability than the State Tort Claims Act.<sup>183</sup> The Emergency Services Act expressly grants immunity from liability based on an agency's actions during a proclaimed emergency:

*Government liability* "The state or its political subdivisions shall not be liable for any claims based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty on the part of a state or local agency or any employee of the state or its political subdivisions in carrying out the provisions of this chapter."<sup>184</sup>

*Volunteer liability:* Government Code Section 8657 extends the immunities of the Emergency Services Act to include disaster service workers (DSW) and persons impressed into service during a state of war emergency, a state of emergency, or a local emergency.

*Comparison between ESA and Tort Claim Act:* The Emergency Services Act grants immunity for both discretionary and ministerial duties, while the "Tort Claims Act" generally provides immunity only for discretionary acts.<sup>185</sup>

**Tort Claims Act:** In 1961, the California Supreme Court abrogated the doctrine of governmental tort immunity.<sup>186</sup> In response to that ruling, in 1963 the California legislature enacted the "Tort Claims Act."<sup>187</sup>

---

<sup>182</sup> Cal. Govt. Code §§ 8550 et seq.

<sup>183</sup> Cal. Govt. Code § 810 et seq.

<sup>184</sup> Cal. Govt. Code § 8655.

<sup>185</sup> *Macias v. State of California* (1995) 10 Cal. 4th 844.

<sup>186</sup> *Muskopf v. Corning Hospital District* (1961) 55 Cal. 2d 211.

<sup>187</sup> Cal. Govt. Code §§ 810 et seq.

*Defines liability and immunities:* The “Tort Claims Act” is the primary source for defining the liabilities and immunities of public entities and public employees. This guideline will briefly discuss the general principles of the “Tort Claims Act.”

*“Public Agency” defined:* For the purposes of the Tort Claims Act, a “public agency” is defined as the State, the Regents of the University of California, a county, a city, a district, public authority, public agency and any other political subdivision or public corporation in the state.<sup>188</sup>

*“Employee defined”:* The term “employee” includes an officer, a judicial officer, an employee, or a servant, whether compensated or not, but does not include an independent contractor.”<sup>189</sup>

*Tort liability* Even though Government Code § 815 appears to establish immunity of public entities as the rule and liability as the exception, the courts generally have taken the opposite approach.<sup>190</sup> For example, statutes which impose tort liability in general terms have been found to be applicable to public entities even though public entities were not named.<sup>191</sup> Nor is liability based upon contractual arrangements affected.<sup>192</sup>

However, Government Code § 815(b) indicates that liabilities established under the “Tort Claims Act” are subject to any statutory immunities, including immunities created by statutes other than the “Tort Claims Act,” such as those in the Emergency Services Act. For example, Government Code § 855.4 provides that neither a public entity nor its employees are liable for injury resulting from a decision to perform or not perform any act to prevent disease or to control the spread of the disease.<sup>193</sup> However, this section probably does not remove the responsibility that a governing body or an agency may have in the event an area is proclaimed a diseased area, such as a rabies area.<sup>194</sup>

## **Q. WHAT PROTECTIONS DOES THE TORT CLAIMS ACT OFFER TO PUBLIC ENTITIES WHEN AN EVACUATION IS NOT ORDERED UNDER THE EMERGENCY SERVICES ACT?**

**A.** Even though the “Tort Claims Act” is statutory in nature, the courts have referred to common law and general principles of negligence. This approach usually arises when determining an employee’s liability and the possible vicarious immunity accorded the public entity employer.<sup>195</sup>

---

<sup>188</sup> Cal. Govt. Code § 811.2.

<sup>189</sup> Cal. Govt. Code § 810.2

<sup>190</sup> Ramos v. County of Madera (1971) 4 Cal. 3d 685, 692.

<sup>191</sup> Levine v. City of Los Angeles (1977) 68 Cal. App. 3d 481, 487.

<sup>192</sup> Aubry v. Tri-City Hospital District (1992) 2 Cal. 4th 962.

<sup>193</sup> Cal. Govt. Code § 855.4.

<sup>194</sup> 63 Ops. Cal. Atty. Gen. 8 (1980).

<sup>195</sup> California v. Superior Court (1984) 150 Cal. App. 3d 848.

*Circumstances for liability:* Even though the “Tort Claims Act” states that except as otherwise provided by statute, a public entity is not liable for an injury, whether the injury arises out of an act or omission of the public entity, a public employee, or any other person, the exceptions to immunity are numerous. Essentially, a public entity may be liable under the following circumstances:

*Act or omission:* Where there is a duty of care owed the injured party, a reasonable reliance upon the performance of that duty and the public employee’s act or omission would be the proximate cause of injury so that such act or omission would make the employee personally liable. When viewed under general negligence principles, then the public entity may be found vicariously liable for the act of its employee.<sup>196</sup>

This has often arisen in the context of the employee promising to do an act such as warn a particular person of some danger, the person reasonably relies upon that promise, the employee fails to carry out the promise and the failure to give the warning resulted in damage to the promisee. In essence, the employee created a duty to a person with a special relationship, and then performed negligently, causing the injury.<sup>197</sup>

*Example* The situation could arise under the provisions of Penal Code Section 409.5. where a peace officer promised to notify a person in a disaster area of a future need to evacuate. If the officer fails to warn the promisee, then liability may attach if a “special relationship” could be found between the officer’s promise and the promisee’s detrimental reliance on that promise.

*Avoid “created duties”:* A public entity and its employees should pay particular attention to the phrasing of orders that control the movement of people and property in order to avoid “created” duties. Generally policy decisions are accorded immunity, while ministerial acts are not.<sup>198</sup>

*Failure to discharge duty:* Liability may be incurred for an injury proximately caused by a public entity’s failure to discharge a mandatory duty imposed by statute or regulation.<sup>199</sup> Where a public entity fails to perform a mandatory duty, it has the burden of establishing that it exercised reasonable diligence to assure that the duty was performed.

*Liabilities not included:* Liability is imposed by statute or constitutional provisions other than those set forth by the “Tort Claims Act.” For instance, the constitutional provision governing a taking of property for public use (condemnation),<sup>200</sup> negligent or wrongful

---

<sup>196</sup> California v. Superior Court (1984) 150 Cal. App. 3d 848.

<sup>197</sup> Connelly v. State of California (1970) 3 Cal. App. 3d 744.

<sup>198</sup> Johnson v. State of California (1996) 50 Cal. App. 4th 1802.

<sup>199</sup> California v. Superior Court (1984) 150 Cal. App. 3d 848.

<sup>200</sup> Cal. Const., art. I, § 19.

act or omission in the operation of any motor vehicle<sup>201</sup> or maintaining a nuisance<sup>202</sup> are examples of liabilities that may not be protected by either the State Tort Claims Act or the Emergency Services Act.

*Qualifying principles:* Although most of the discussion has centered on areas of potential liability, two qualifying principles may be applicable in emergency evacuation situations.

*Doctrine of imminent peril:* The first qualifying principle is known as the “imminent peril doctrine”, the “sudden peril rule”, or the “emergency doctrine.” This doctrine allows the jury in a civil trial to be instructed that “a person who, without negligence on his or her part, is suddenly and unexpectedly confronted with apparent or actual imminent danger, that person is not required to use the same judgment and prudence as would be required under ordinary circumstances.”<sup>203</sup>

This instruction will be given only if the evidence supports that:<sup>204</sup>

- the party invoking the doctrine was in fact confronted by a sudden and unexpected peril,
- That the perilous situation was not brought about by the party’s own negligence,
- That at least two courses of action were available after the perilous situation was perceived,
- That the course of action taken after confrontation by the peril was a course of action which would have been taken by a reasonably prudent person under similar circumstances.

If these conditions are met, the person is not necessarily negligent if that person makes a choice that ultimately proves to have been the wrong one, provided that that person chose a course of action that a person of ordinary prudence would have chosen under the circumstances. If such is the case, that person will not be liable even if an alternative course of action would have avoided the action.<sup>205</sup>

*State’s police power:* The other governing principle is that the State may take property by virtue of its police powers when there is an urgency sufficiently important to override the policy of compensation.<sup>206</sup>

---

<sup>201</sup> Cal. Vehicle Code §§17001, 17004. But see *Soto v. California* (1997) 56 Cal. App. 4th 196. (negligent operation of a motor vehicle found protected under Emergency Services Act).

<sup>202</sup> *Nestle v. City of Santa Monica* (1972) 6 Cal. 3d 920.

<sup>203</sup> *Leo v. Dunham* (1953) 41 Cal. 2d 712, 714-715. See also *Damele v. Mack Trucks, Inc.* (1990) 219 Cal. App. 3d 29.

<sup>204</sup> Cal. Civil BAJI 4.40, 8th ed. 1995.

<sup>205</sup> *Leo v. Dunham* (1953) 41 Cal. 2d 712, 714-715.

<sup>206</sup> *Teresi v. State of California* (1986) 180 Cal. App. 3d 239; see *Adkins v. State of California*, *supra*; *Holtz v. Superior Ct.* (1970) 3 Cal. 3d 296, 305; *Farmer’s Ins. Exchange v. State of California* (1985) 175 Cal. App. 3d 494, 501-502; *Freeman v. Contra Costa County Water District* (1971) 18 Cal. App. 3d 404,

# APPENDIX OF SELECTED STATUTES

## Government Code

### **Cal. Govt. Code § 8558 Conditions or degrees of emergency.**

Three conditions or degrees of emergency are established by this chapter:

(a) “State of war emergency” means the condition which exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an attack is probable or imminent.

(b) “State of emergency means the duly proclaimed existence of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy or conditions causing a “state of war emergency,” which conditions, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

(c) “Local Emergency” means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and requires the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

## **§ 8630. Proclamation by local governing body; review; termination**

(a) A local emergency may be proclaimed only by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body.

(b) Whenever a local emergency is proclaimed by an official designated by ordinance, the local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the governing body.

(c)(1) The governing body shall review, at its regularly scheduled meetings until the local emergency is terminated, the need for continuing the local emergency. However, in no event shall a review take place more than 21 days after the previous review.

(2) Notwithstanding paragraph (1), if the governing body meets weekly, it shall review the need for continuing the local emergency at least every 14 days, until the local emergency is terminated.

(d) The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant.

## **§ 23002. Counties as legal subdivisions**

The several existing counties of the State and such other counties as are hereafter organized are legal subdivisions of the State.

## **§ 26602. Prevention and suppression of disturbances**

The sheriff shall prevent and suppress any affrays, breaches of the peace, riots, and insurrections which come to his knowledge, and investigate public offenses which have been committed.

## **California Penal Code**

### **Cal. Pen. Code § 148.2 Illegal conduct at burning of building; misdemeanor.**

Every person who willfully commits any of the following acts at the burning of a building or at any other time and place where any fireman or firemen or emergency rescue personnel are discharging or attempting to discharge an official duty, is guilty of a misdemeanor:

- (1) Resists or interferes with the lawful efforts of any fireman or firemen or emergency rescue personnel in the discharge or attempt to discharge an official duty.

- (2) Disobeys the lawful orders of any fireman or public officer.
- (3) Engages in any disorderly conduct which delays or prevents a fire from being timely extinguished.
- (4) Forbids or prevents others from assisting in extinguishing a fire or exhorts another person, as to whom he has no legal right to protect or control, from assisting in extinguishing a fire.

### **§ 148.3. False report of emergency; punishment**

- (a) Any individual who reports, or causes any report to be made, to any city, county, city and county, or state department, district, agency, division, commission, or board, that an "emergency" exists, knowing that such report is false, is guilty of a misdemeanor and, upon conviction thereof, shall be punishable by imprisonment in the county jail, not exceeding one year, or by a fine, not exceeding one thousand dollars (\$1,000), or by both such fine and imprisonment.
- (b) Any individual who reports, or causes any report to be made, to any city, county, city and county, or state department, district, agency, division, commission, or board, that an "emergency" exists, knowing that such report is false, and great bodily injury or death is sustained by any person as a result of such false report, is guilty of a felony and upon conviction thereof shall be punishable by imprisonment in the state prison, or by a fine of not more than ten thousand dollars (\$10,000), or by both such fine and imprisonment.
- (c) "Emergency" as used in this section means any condition which results in, or which could result in, the response of a public official in an authorized emergency vehicle, or any condition which jeopardizes or could jeopardize public safety and results in, or could result in, the evacuation of any area, building, structure, vehicle or of any other place which any individual may enter.

### **§ 245.1. Fireman, firefighter and emergency rescue personnel defined**

As used in Sections 148.2, 241, 243, 244.5, and 245, "fireman" or "firefighter" includes any person who is an officer, employee or member of a fire department or fire protection or firefighting agency of the federal government, the State of California, a city, county, city and county, district, or other public or municipal corporation or political subdivision of this state, whether this person is a volunteer or partly paid or fully paid. As used in Section 148.2, "emergency rescue personnel" means any person who is an officer, employee or member of a fire department or fire protection or firefighting agency of the federal government, the State of California, a city, county, city and county, district, or other public or municipal corporation or political subdivision of this state, whether this person is a volunteer or partly paid or fully paid, while he or she is actually engaged in the on-the-site rescue of persons or property during an emergency as defined by subdivision (c) of Section 148.3.



**Cal. Pen. Code § 402 Interference with personnel at scene of emergency.**

- (a) Every person who goes to the scene of an emergency, or stops at the scene of an emergency, for the purpose of viewing the scene or the activities of police officers, firefighters, emergency medical, or other emergency personnel, or military coping with the emergency in the course of their duties during the time it is necessary for emergency vehicles or those personnel to be at the scene of the emergency or to be moving to or from the scene of the emergency for the purpose of protecting lives or property, unless it is part of the duties of that person's employment to view that scene or activities, and thereby impedes police officers, firefighters, emergency medical, or other emergency personnel or military personnel, in the performance of their duties in coping with the emergency, is guilty of a misdemeanor.
- (b) Every person who knowingly resists or interferes with the lawful efforts of a lifeguard in the discharge or attempted discharge of an official duty in an emergency situation, when the person knows or reasonably should know that the lifeguard is engaged in the performance of his or her official duty, is guilty of a misdemeanor.
- (c) For the purposes of this section, an emergency includes a condition or situation involving injury to persons, damage to property, or peril to the safety of persons or property, which results from a fire, an explosion, an airplane crash, flooding, windstorm damage, a railroad accident, a power plant accident, a toxic chemical or biological spill, or any other natural or human-caused event.

**§ 409. Riot, rout, or unlawful assembly; remaining present after warning to disperse**

Remaining present at place of riot, etc., after warning to disperse. Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

**§ 409.5. Authority of peace officers, lifeguard or marine safety officer to close disaster area; exclusion from police command post area; unauthorized entry; exception**

- (a) Whenever a menace to the public health or safety is created by a calamity including a flood, storm, fire, earthquake, explosion, accident, or other disaster, officers of the Department of the California Highway Patrol, police departments, marshal's office or sheriff's office, any officer or employee of the Department of Forestry and Fire Protection designated a peace officer by subdivision (g) of Section 830.2, any officer or employee of the Department of Parks and

Recreation designated a peace officer by subdivision (f) of Section 830.2, any officer or employee of the Department of Fish and Game designated a peace officer under subdivision (e) of Section 830.2, and any publicly employed full-time lifeguard or publicly employed full-time marine safety officer while acting in a supervisory position in the performance of his or her official duties, may close the area where the menace exists for the duration thereof by means of ropes, markers, or guards to any and all persons not authorized by the lifeguard or officer to enter or remain within the enclosed area. If the calamity creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions set forth in this section.

- (b) Officers of the Department of the California Highway Patrol, police departments, marshal's office or sheriff's office, officers of the Department of Fish and Game designated as peace officers by subdivision (e) of Section 830.2, or officers of the Department of Forestry and Fire Protection designated as peace officers by subdivision (g) of Section 830.2 may close the immediate area surrounding any emergency field command post or any other command post activated for the purpose of abating any calamity enumerated in this section or any riot or other civil disturbance to any and all unauthorized persons pursuant to the conditions set forth in this section whether or not the field command post or other command post is located near to the actual calamity or riot or other civil disturbance.
- (c) Any unauthorized person who willfully and knowingly enters an area closed pursuant to subdivision (a) or (b) and who willfully remains within the area after receiving notice to evacuate or leave shall be guilty of a misdemeanor.
- (d) Nothing in this section shall prevent a duly authorized representative of any news service, newspaper, or radio or television station or network from entering the areas closed pursuant to this section.

#### **§ 409.6. Avalanche danger; areas closed; unlawful entry**

- (a) Whenever a menace to the public health or safety is created by an avalanche, officers of the Department of the California Highway Patrol, police departments, or sheriff's offices, any officer or employee of the Department of Forestry and Fire Protection designated a peace officer by subdivision (g) of Section 830.2, and any officer or employee of the Department of Parks and Recreation designated a peace officer by subdivision (f) of Section 830.2, may close the area where the menace exists for the duration thereof by means of ropes, markers, or guards to any and all persons not authorized by that officer to enter or remain within the closed area. If an avalanche creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions which are set forth above in this section.

- (b) Officers of the Department of the California Highway Patrol, police departments, or sheriff's offices, or officers of the Department of Forestry and Fire Protection designated as peace officers by subdivision (g) of Section 830.2, may close the immediate area surrounding any emergency field command post or any other command post activated for the purpose of abating hazardous conditions created by an avalanche to any and all unauthorized persons pursuant to the conditions which are set forth in this section whether or not that field command post or other command post is located near the avalanche.
- (c) Any unauthorized person who willfully and knowingly enters an area closed pursuant to subdivision (a) or (b) and who willfully remains within that area, or any unauthorized person who willfully remains within an area closed pursuant to subdivision (a) or (b), after receiving notice to evacuate or leave from a peace officer named in subdivision (a) or (b), shall be guilty of a misdemeanor. If necessary, a peace officer named in subdivision (a) or (b) may use reasonable force to remove from the closed area any unauthorized person who willfully remains within that area after receiving notice to evacuate or leave.
- (d) Nothing in this section shall prevent a duly authorized representative of any news service, newspaper, or radio or television station or network from entering the areas closed pursuant to this section.

## **California Health and Safety Code**

### **Health & Safety Code § 115885.**

The health officer having jurisdiction over the area in which a public beach is created shall:

- (a) Inspect the public beach to determine whether the standards established pursuant to Section 115880 are being complied with. If the health officer finds any violation of the standards, he or she may restrict the use of, or close, the public beach or portion thereof in which the violation occurs until the standard is complied with.
- (b) Investigate any complaint of a person of a violation of any standard established by the department pursuant to Section 115880. If the health officer finds any violation of the standards prescribed by the department, he or she may restrict the use of, or close, the public beach or portion thereof until the standard is complied with. If the person who made the complaint is not satisfied with the action taken by the health officer, he or she may report the violation to the department. The department shall investigate the reported violation, and, if it finds that the violation exists, it may restrict the use of or close the public beach or portion thereof until the standard violated is complied with.

- (c) (1) Whenever a beach is posted, closed, or otherwise restricted in accordance with Section 115915, the health officer shall inform the agency responsible for the operation and maintenance of the public beach within 24 hours of the posting, closure, or restriction.
- (c) (2) The health officer shall establish a telephone hotline to inform the public of all beaches currently closed, posted, or otherwise restricted. The hotline shall be updated as needed in order to convey changes in public health risks.
- (d) Report any violation of the standards established pursuant to Section 115880 to the district attorney, or if the violation occurred in a city and, pursuant to Section 41803.5 of the Government Code, the city attorney is authorized to prosecute misdemeanors, to the city attorney.
- (e) In the event of a known untreated sewage release, the local health officer shall immediately test the waters adjacent to the public beach and to take action pursuant to regulations established under Section 115880.
- (f) Notwithstanding any other provision of law, in the event of an untreated sewage release that is known to have reached recreational waters adjacent to a public beach, the local health officer shall immediately close those waters until it has been determined by the local health officer that the waters are in compliance with the standards established pursuant to Section 115880.
- (g) Any duty imposed upon a local public officer or agency pursuant to this section shall be mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the State Director of Health Services, in the annual Budget Act or otherwise for local agencies to cover the costs to those agencies associated with the performance of these duties. The State Director of Health Services shall annually, within 15 days after enactment of the Budget Act, file a written statement with the Secretary of the Senate and with the Chief Clerk of the Assembly memorializing whether sufficient funds have been appropriated.

## **BIBLIOGRAPHY AND REFERENCES**

*Westlaw*, West Group, Inc. (Computer Assisted Legal Research)

*The Police Power - Public Policy and Constitutional Rights*, Prof. Ernst Freund, Callaghan & Co., 1904

*Hazardous Material Incident Contingency Plan, California*, State of California, Office of Emergency Services, (January 1991), Paul J. Penn, et al. (serving as the State Toxic Disaster Plan as required by Cal. Govt. Code § 8574.17)

*State of California, Annex G, Media and Public Information Functions for Hazardous Materials in California*, prepared by Local Emergency Planning Committees and Public Safety Agencies within California, March 1995

*Legal Guidelines for Flood Evacuation*, State of California, Office of Emergency Services, October 1997.

*Public Sector Tort Liability for Disaster Management*, David Zocchetti, May 1997