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WHEN DISASTER STRIKES

"NASHVILLE RISES"

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"NASHVILLE RISES": A 1,000 YEAR FLOOD

Nashville's disaster response capabilities were put to the ultimate test this past May when a historic flood hit our city causing widespread destruction. It rained for 48 straight hours resulting in 13.53 inches of rain - shattering the previous two-day record of 6.60 inches from 1979. The Cumberland River, stretching along the edge of downtown Nashville, crested at 51.8 feet (flood level is 40 feet). This was the highest since the late 1920s.

This 1,000 year flood event has been ranked by the National Weather Service as the 4th largest non-hurricane disaster in U.S. history. Within days, President Obama declared Nashville a Federal Disaster Area. Governor Bredeson declared a state of emergency for Tennessee and I declared a state of emergency for Davidson County.

Damages to our city are estimated at over 2.5 billion dollars. Over 10,000 private properties (residential, commercial and industrial) were affected. This number does not include damage to public buildings and infrastructure. 10 people in Davidson County died as a result of the flood.

LEGAL ISSUE:

The first legal response in a crisis of this magnitude is to draw up the "State of Emergency" for the Mayor to sign. This State of Emergency automatically activates certain statutes and sections of the Metro Code. One example is our price gouging code.

M.C.L. Chapter 6.82 Section 6.82.010: Business Transactions After a Natural Disaster -

Prices of goods and services to remain the same after state of emergency. The sale or offering for sale of any goods, services or materials at prices in excess of those prices for the same or similar goods, services or materials that were in existence prior to the date of a natural disaster that results in declaration of a state of emergency by the Governor of the State of Tennessee or by the mayor shall be and the same is hereby prohibited for ninety days following the date of such natural disaster.

(Examples – price of water, cleaning supplies, water pumps, de-humidifiers)

5 STAGES OF DISASTER RESPONSE & LEGAL ISSUES THAT AROSE:

STAGE 1: CRISIS RESPONSE
STAGE 2: MANAGEMENT
STAGE 3: RECOVERY
STAGE 4: REBUILD/RESTORE
STAGE 5: MITIGATION

STAGE 1: CRISIS RESPONSE

At the onset of any crisis, the primary response is to mitigate damages. Clearly the most important damage to mitigate is the loss of lives. The second type of damage where mitigation is attempted is to property – both public and private.

For either of these two types of responses to occur, city leadership needs to be at the same location receiving the same information. In addition, there needs to be enough personnel to carry out the response efforts.

In Nashville, our Office of Emergency Management's (OEM) "War Room" was activated early on as the National Weather Service began to issue flash flood warnings. City leaders/decision makers worked together in the "war room" making equally informed decisions regarding emergency response efforts. Being privy to the same information at the same time made our emergency response efforts more effective because critical decisions and changes to those decisions were able to be made quickly.

All police and fire were called to duty and search and rescue efforts began. Over the course of the flood and the immediate aftermath, police, fire & EMS responded to 54,972 calls for service. In addition, 1,400 water rescues were made.

A true number of how many lives were saved from preventative metro efforts will never be known. We cannot know how many people saw police blockades and changed their mind about driving through the water. We cannot know how many people listened to our televised updates and decided to stay at home. We can never know how many lives were saved by evacuation efforts.

LEGAL ISSUE: FORCED EVACUATIONS:
Question: Can the government forcibly evacuate people from a flooding location.

Situation: A group of individuals were refusing to leave an apartment complex that was surrounded by water. Police were on the scene in boats when the Police Chief called OEM to speak with my legal staff to ask about forcible evacuation.

This type of situation is a lawyer's worst nightmare. A critical decision needs to be made, lives are at risk, and there is no time to research. As we all know, the thing to do in a situation like that is to think on your feet using basic legal risk analysis. We concluded that police could force evacuation for the following reasons: 1) The only way these individuals could leave the complex (that was essentially an island) was by police rescue boat. 2) By delaying rescue until in immediate harm would put officers at even greater risk. 3) The likelihood of successfully rescuing an entire group of people at the last potentially fatally moment was unlikely. 4) What legal action could be taken against metro – what damages could be claimed from the good intentions of a forced rescue?

The Result: When the police informed the residents of this apartment building that they would be forcibly evacuated – they cooperated.

STAGE 2: MANAGEMENT

Effective crisis management is a challenge. Just as city leaders and decision makers need to be at one location and privy to the same information for stage 1 crisis response efforts, the same is true for crisis management efforts. By crisis management I am speaking of two types of efforts: 1) Meeting victim basic needs (food, water and shelter); and 2) quick dissemination of accurate emergency information.

One of the first critical decisions made at OEM at this stage was to prevent the re-location of displaced individuals to a single location. Having benefited from the lessons learned in Katrina we were aware that large "staging areas" have the following problems:

1) Large groups of distressed individuals are very hard to manage;
2) Rumors/false information become difficult to control;
3) It is impossible to relate to a large group and be in tune to individual needs;
4) A "them vs. us" mentality can quickly take over; and

5) If needed, it is hard to re-locate large groups.

Although Nashville had an available large enclosed centrally located vacant building (fairgrounds) – we choose to re-locate displaced individuals in groups of 100-200 people at numerous locations scattered across the city. This approach proved to be very effective and enabled us to identify problems and disturbances early on. (Example below)

LEGAL ISSUE:
Question: Can we make a verbally disruptive individual leave an evacuation center?

Situation: At one of our evacuation centers there was a woman spreading false information and alarming other people at the center. Police called Metro Legal wanting to know if she could be forced to leave the center when police had evacuated her there and she was not a physical threat to anyone. The answer was "yes". Her behavior was treated as a "public disturbance" that was disrupting a government activity that we have a lawful right to conduct.

Result: The woman was told that she would be arrested if she did not stop her behavior. She voluntarily left the facility.

LEGAL ISSUE:
Question: Can we open an "exclusive" evacuation center?

Situation: A hotel along the river, the Opryland hotel, needed to be evacuated for fear that the leaking levy might break. The hotel wanted the government to open an evacuation center at a nearby school exclusive to their guests. Metro Legal was called to see if this should or should not be done. The answer to this question is clear to us all both legally and ethically. Providing an exclusive evacuation center would fly in the face of the intentions of the Equal Protection Clause. Government money and authority used to open an evacuation must not turn anyone away.

Result: An "exclusive" evacuation center was not opened.

LEGAL ISSUE:
Question: Is the closing of certain business during an emergency constitute a "taking"?

Situation: Nashville has 2 water treatment plants. One of these plants was badly flooded and was inoperable for 2 months. As a result, the city needed immediate water rationing. The first step was to ask and receive an order from the Tennessee Department of Environment and Conservation mandating that in Davidson County water is only to be used for drinking and health purposes (i.e. food preparation & bathing).

Clearly water could not be used for irrigation, car washes and filling swimming pools for Labor Day celebrations. Car washes across the city were shut down for approximately 2 months. The car washes pushed back.

The question became … was this a "taking". Did the government take action that denied the car wash's ability to use their property? The answer was "no". Car washes always had the option to bring in their own non-potable water (a course of action taken by other affected businesses). The fact that this was a state order also provided increased protection.

Another crisis response made during the immediate aftermath of the flood was establishing Disaster Information Centers (DICs) in the hardest hit areas. These centers were designed to serve as the government's eyes, ears, and mouth. Each of our 5 DICs was staffed by a member of my office. Each center was loosely defined and adaptable to the quickly changing the needs of each community.

Here is how the DICs worked: Flood victims would enter a DIC and be greeted by a volunteer. That volunteer would lead the flood victim to a volunteer intake worker who would assess what that person's immediate needs were. If the person needed shelter, they would be walked to the Red Cross table. If that person needed a meal, they would be walked to the Salvation Army table. If that person needed to cry, they would be introduced to one of our department of social services caseworkers, if that person needed legal advice or an explanation of FEMA, they would be led to the volunteer lawyer table. If that person needed to sign up for FEMA they would be taken to one of the center's 10 computers. If that person needed to use the phone, they would be allowed to use one of our 10 phones. If a person needed clothes or food they were taken to our donation room. If that

person had a special need (i.e. their spouse's wheelchair got washed away in the flood, their heart medicine needs to be replaced, food stamps or social security checks are gone) they would be directed to a volunteer who would "own" that problem with them until resolution was found. Each night these intake forms were reviewed and follow-up phone calls were made to ensure basic needs were met.

While providing these useful services, the DICs served as our eyes, ears, and mouth. When people began to talk about re-entering their homes, we provided flood water safety hand outs. When we observed how disconnected many people were and we began to hear false rumors, we set up wall to wall white boards with accurate and up to date information. When we saw people arriving with cuts and scrapes from clean-up efforts, we began to provide tetanus shots and cleaning supplies.

LEGAL ISSUE

Usefulness of Legal agreements between metro government & nonprofit organizations:

Throughout this presentation I will be speaking a great deal about volunteers. Volunteers helped with sand bagging efforts, volunteers staffed DIC centers, volunteers assisted with clean-up efforts, and volunteers are assisting in rebuild and restoration efforts. Volunteers were heavily utilized in stage 2 & 3 of our crisis response. To date, over 19,000 people have volunteered their time to flood relief in Nashville through Hands On Nashville. Countless others have volunteered on their own or through their church.

One of the reasons Nashville was able to effectively collect and direct volunteer efforts was our VOAD (Volunteer Organizations Active in Disaster) that works in partnership with my Office of Emergency Management. Unique to our VOAD is the active participation of our city's leading volunteer management agency (HON).

After a "lessons learned" analysis of our tornado crisis response and management years earlier, we had noted that volunteer efforts in many instances were misguided and uncoordinated resulting in service gaps and duplication. As a result, OEM signed a Memorandum of Understanding with HON agreeing that HON would have a seat in the OEM war room and be responsible for recruiting and managing

volunteers in emergencies (see attached). Since this MOU was signed, Nashville now has a VOAD with over 20 members.

STAGE 3: RECOVERY

In the case of a natural disaster, "recovery" usually means "cleaning up". After the water receded the temperatures were in the 80s-90s and homes were getting ripe and mold risks were increasing by the minute. As a result, hundreds and hundreds of homes and entire neighborhoods needed to be quickly "de-mucked" and brought down to the studs.

Just think about it – if a person experienced four feet of flood water in their home, all of the downstairs furniture is wet, appliances, heat and air units, at least 6 feet of dry wall, the insulation, the flooring, the floor boards … the list goes on and on. All of this needs to be removed from the home, hauled to the street in categorized debris piles, and the home needs to be de-mucked and de-humidified. That is a lot of hard, dirty and sweaty work.

Again utilizing the formalized relationship with our local volunteer management agency, we were able to deploy massive numbers of volunteers for this task. The unexpected benefit was that churches and community groups duplicated these efforts. We had so many volunteers that we even had volunteers helping volunteers … delivering water, meals, band-aids, sanitizers, cleaning supplies etc. With Nashville's many wonderful restaurants pitching in … these flooded neighborhoods might have been offering the best meals in the city!

With the hard work of volunteers, nearly every flooded home in the city was broken down to the studs within 2 weeks of the flood.

LEGAL ISSUE:
Question: What can be legally done when an owner of an apartment complex will not allow tenants to remove flooded carpeting, drywall and insulation?

Situation: In the aftermath of the flood, police came upon an encampment of sorts in front of an apartment building. After getting Arabic translators it became clear that the owner of the apartment building would not remove and would not allow the tenants to remove flooded carpeting, drywall and insulation. Apparently, he intended to

just let it all dry out on its own. Police were unable to convince him otherwise. Metro Legal was called to see if the landlord could be forced to remove flood debris from the apartments.

While condemnation might be a future possibility – it was not a useful immediate tool. As a result, the decided course of action was to flex some legal and governmental muscle. The Health Department was brought to the scene to explain to the landlord that if clean-up is not done that he would be cited and that the building could be closed due to health concerns (mold). Metro Codes was brought to the scene to explain that they could also cite the landlord and close the building deeming it not fit for human habitation. The Landlord was reminded and Tenants informed that under Tennessee Code Annotated T.C.A. §66-28-53, tenants could terminate the lease if the "use of the premises have been substantially impaired" (see attachment). The police were brought to keep the peace, and the fire department paramedics were brought to check on the health of the tenants.

Result: With the risk of closure and numerous citations – the landlord became much more cooperative and responded to the situation appropriately and to his tenants respectfully.

STAGE 4: REBUILD AND RESTORE

Although volunteers certainly helped reduce costs for clean-up, re-building and restoring a flood damaged home is expensive. The first financial relief for those without flood insurance arrived with FEMA, SBA & TEMA.

<u>FEMA, SBA & TEMA</u>
What is required -
What is offered -
Effectiveness in Nashville -

Although these programs are very helpful, it still leaves a significant financial gap for most flood victims. As a result we launched a "We are Home" program. Homeowners that apply are offered additional financial assistance through a three-tiered approach that takes into account an individual's financial situation and home repair needs.

1) For those who did not take advantage of the SBA home loan program, a 4 percent interest loan is offered based on the individual's ability to repay with terms ranging from 5-20 years.
2) If flood repair funds are needed beyond an owner's ability to repay a loan, they are eligible for a grant up to $10,000.
3) If a gap remains after the grant, an owner will be eligible for a 0% interest Due-On-Sale loan up to $20,000. The Due-On-Sale loan does not require a monthly payment. Instead, the loan is repaid when the property is sold.
4) Reconstruction projects that require additional resources beyond these three funding sources are being referred to volunteer rebuilding agencies for assistance.

STAGE 5: MITIGATION (FOR THE FUTURE)

Buy Out Process:

HMGP (Hazard Mitigation Grant Program) provides federal money for the purchase of certain properties in the floodplain. Nashville chose to focus first on purchasing homes in the floodway, which is the most dangerous part of the floodplain – the area during a flood where the water is moving.

We have identified 305 homes in the floodway that were damaged greater than 50% of the structure's pre-flood appraised value, and have offered to include those homes in the first phase of our buyout program. Those are the homes that are most in danger from a future flood and will have the most difficult time rebuilding from this flood. Legally noteworthy, is that this is an optional program and may be rejected by the homeowner. The homes will be purchased through a combination of federal, state and local dollars – with the federal government covering most of the cost. Once purchased, these homes will be owned by the city and torn down to create permanent green space.

The benefits of the "buy out" program are obvious; these high risk homes will no longer exist and therefore will not flood again in the future. In addition, the water will not rise as high in the floodplain during the next flood with the non-water absorbing structure removed and green space added.

While the “buy out” program is optional it is very appealing to homeowners and is often the only logical choice. Storm water safety regulations mandate that if flood repairs on a home exceed 50% of the value of the structure then the home must be elevated 4 feet above the 100-year flood elevation line. For those homes that were already (i.e. 2 feet) below that line – the home would need to be further elevated (i.e. 6 feet). This type of situation can make re-building a financial or engineering impossibility.

Normally, Federal Funding for “buy outs” contributes 75% and local funding pays for the remaining 25% (12.5% State and 12.5% County). However, in this instance a Bill was passed for the Tennessee flood where the Federal Funding paid for 90% and local funding pays for 10% (5% State & 5% County).

CONCLUSION:

In any emergency, a city will do some things very right and a city will do some things that it would like to improve upon in the future. In Nashville, we continue to evaluate our efforts and actions from stage 1, crisis response, to stage 5, re-building and restoring. We look forward to sharing our lessons learned and best practices with other cities over the months and years to come

Nashville is truly a city on the rise – I have never been more optimistic about Nashville’s future than I have been in the wake of this historical flood.