

# Borough Code Revision Project

## RFP22-003

Summer 2022

*A review of state and borough powers during a disaster emergency with recommendations for improvement.*

**HOLMES WEDDLE & BARCOTT**  
A PROFESSIONAL CORPORATION

# Briefing Objectives

- Project Overview
- Review of Statutory Authorities
- The Disaster Declaration Process
- Issues Identified with KPB Ordinances
- Review Recommendations
- Discussion



# Project Overview

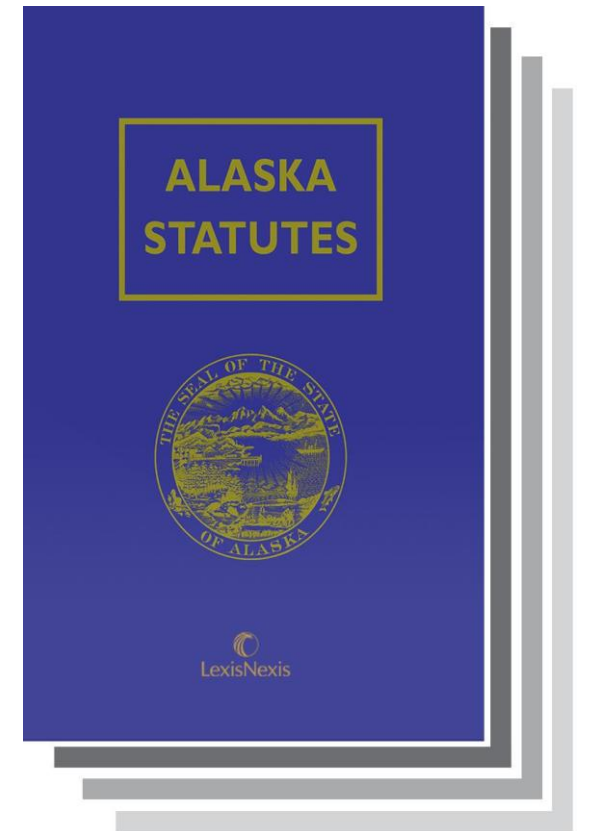
- KPB has successfully managed disaster response for years
- Response plans and authorities vary by jurisdiction
  - Federal (Stafford Act, NIMS)
  - State of Alaska (AK Disaster Act)
  - Kenai Peninsula Borough (Various ordinances)
- KPB OEM sought
  - analysis of state and local authorities and disaster responsibilities
  - review of authorities for typical (flood) and non-typical disasters (COVID-19)
- Provide recommendations to update KPB ordinances





# Authority and Important Concepts

- State of Alaska  
The Governor may declare a condition of disaster emergency upon a finding “that a disaster has occurred or that a disaster is imminent or threatened.” AS 26.23.020(c)
- Kenai Peninsula Borough  
The Mayor may declare a disaster pursuant to AS 26.23.140.
- Important Legal Concepts
  - State declaration activates local emergency operations plans
  - State has access to “all available resources” of local governments
  - A second-class borough does not gain additional powers under disaster declaration, only flexibility in using its existing powers.



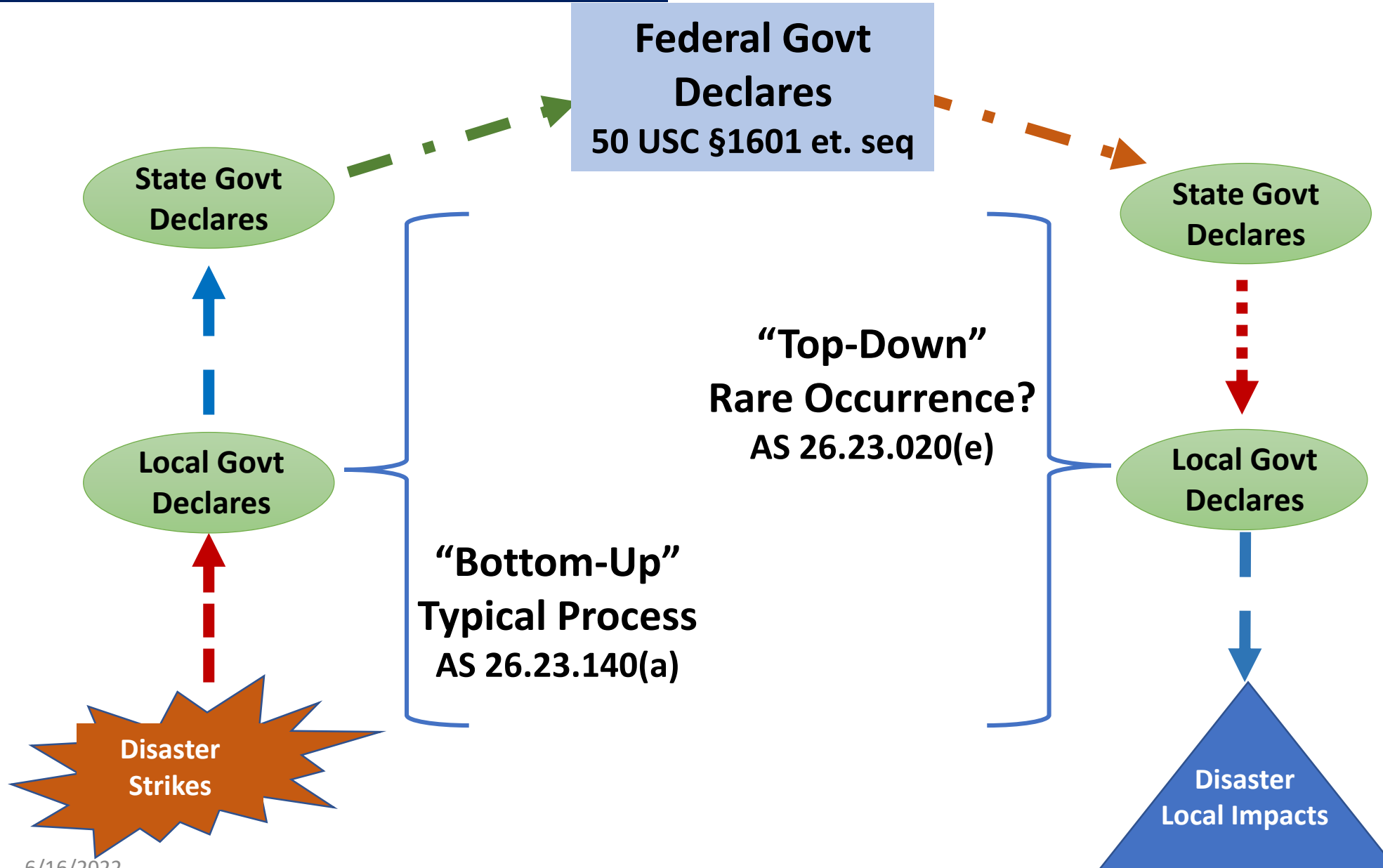
# Definition of Disaster



## **AS 23.26.900**

- (2) "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, loss of life or property, or shortage of food, water, or fuel resulting from
- (A) an incident such as storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, avalanche, snowstorm, prolonged extreme cold, drought, fire, flood, epidemic, explosion, or riot;
  - (B) the release of oil or a hazardous substance if the release requires prompt action to avert environmental danger or mitigate environmental damage;
  - (C) equipment failure if the failure is not a predictably frequent or recurring event or preventable by adequate equipment maintenance or operation;
  - (D) enemy or terrorist attack or a credible threat of imminent enemy or terrorist attack in or against the state that the adjutant general of the Department of Military and Veterans' Affairs or a designee of the adjutant general, in consultation with the commissioner of public safety or a designee of the commissioner of public safety, certifies to the governor has a high probability of occurring in the near future; the certification must meet the standards of AS [26.20.040](#) (c); in this subparagraph, "attack" has the meaning given under AS [26.20.200](#) ; or
  - (E) an outbreak of disease or a credible threat of an imminent outbreak of disease that the commissioner of health and social services or a designee of the commissioner of health and social services certifies to the governor has a high probability of occurring in the near future; the certification must be based on specific information received from a local, state, federal, or international agency, or another source that the commissioner or the designee determines is reliable;

# The Disaster Declaration Process



## Important Considerations

- ✓ Nobody has time to contemplate their legal rights during a disaster.
- ✓ Disaster statutes must accommodate the unexpected.
- ✓ Practical needs of emergency responders must be balanced with the legislative responsibilities of local government.
- ✓ Local government may need a backstop against overstep delegation by the State.
- ✓ Local government may need to limit the State's ability to reach down and co-opt local resources.
- ✓ OEM responsibilities have expanded over time.





## Recommendations

- ✓ Clarify KPB ordinances in the following areas
  - Codify important disaster declaration processes
  - Ensure availability of disaster powers
  - Clarify scope of existing authorities
  - Balance roles of Mayor and Assembly
  - Address special issues during “top-down” disasters
  - Organize KPB ordinances to assist policy makers understand authorities during any disaster



# new

## KPB 2.04.090

- (a) If the borough mayor finds that a disaster as defined by AS 26.23.900 has occurred or that a disaster is imminent or threatened within the borough, the borough mayor may declare a condition of local disaster emergency for the Kenai Peninsula Borough. The borough mayor may make a declaration of disaster emergency when a disaster has occurred within the borough, regardless of any declaration in another municipality or the state.*
- (b) If the mayor is temporarily absent or disabled, the mayor's designee pursuant to KPB 2.04.030 may declare a disaster emergency and take such actions as are authorized in this section without action of the assembly.*
- (c) The declaration shall include:*
  - i. A statement indicating the nature of the disaster or emergency, the area threatened or affected and the conditions that have brought it about or that make possible the termination of the disaster emergency;*
  - ii. An initial statement of available resources to address the disaster emergency,*
  - iii. An initial statement identifying any borough funds to be expended to respond to the disaster or emergency and any State or other third party funds which may be requested;*
  - iv. A statement confirming whether an emergency affecting life, health or safety exists for purposes of KPB 5.28.280*
- (d) The declaration of local disaster emergency activates the disaster response and recovery aspects of all relevant borough emergency operations plans applicable to the area in question and constitutes authority for the borough to spend emergency or other borough funds as authorized by the assembly, and to receive and administer state, federal or other funding within the bounds of the borough's legal authority.*
- (e) The mayor or designee's declaration of local disaster emergency shall remain in effect for seven (7) days unless extended by the assembly.*

# Updated

## KPB 2.04.040

Whenever the assembly president and two thirds of the members of the assembly file a written document with the borough clerk, *or in the case of a disaster as defined in AS 26.23.900, if the assembly president issues a good faith declaration*, showing good and sufficient cause that the borough mayor is temporarily absent or disabled, then the administrative officer designated by the mayor *under KPB 2.04.030* will exercise the powers and duties of borough mayor until such time as the borough mayor is able to resume *[his]* office. The administrative officer acting for the mayor shall have the qualifications for the position of mayor, but shall not have veto power. The actions of the administrative officer in exercising the powers and duties of the borough mayor shall be subject to the review of the assembly president. No administrative staff shall be dismissed or replaced during the mayor's absence except with the concurrence of a majority of the assembly. *If the determination of the mayor's absence or disability is made by the assembly president alone, then the authority of the designated administrative officer will expire after seven (7) days unless ratified by the assembly.*

**new**

## KPB 2.04.100

*During the pendency of a disaster emergency declared by the mayor, and if sufficient resources (including personnel, facilities, equipment or any other resource necessary for the adequate exercise of the delegated authority) are determined to be available, the borough may accept and exercise authority expressly delegated by the State to the borough, as its agent, pursuant to AS 26.20.020.*

**new**

## KPB 2.04.110

*Following the declaration of a disaster emergency by the governor pursuant to 26.23.020(c) or by the borough mayor pursuant to AS 26.23.140, the mayor may execute an emergency mutual aid agreement or other cooperative agreement with the state, the federal government, or with any other municipality in the state pursuant to AS 29.35.010(13) for the exchange of aid upon request, including the loan of personnel, equipment and materials and the administration of funds or other resources, all as permitted by law.*

*The borough shall be obligated under such mutual aid agreements to perform duties (i) which are within its legal power and (ii) subject to the availability of sufficient resources.*

*Any mutual aid agreement promulgated hereunder shall remain in effect until the earlier of (i) the rescission of the relevant local or state emergency disaster declaration or (ii) express rescission of the mutual aid agreement by the assembly.*

**new**

## KPB 1.12.080

- (a) *In the event of a disaster as defined by AS 26.23.900 or other emergency, the assembly may adopt emergency ordinances effective upon adoption. Each emergency ordinance shall contain a finding by the assembly that an emergency exists and a statement of the facts upon which the finding is based. An emergency ordinance may be adopted, amended and adopted, or rejected at the meeting at which it is introduced. The governing body shall print and make available copies of adopted emergency ordinances.*
- (b) *An emergency ordinance may not be used to levy taxes, to grant, renew, or extend a franchise, or to regulate the rate charged by a public utility for its services.*
- (c) *The affirmative vote of all members present, or the affirmative vote of three-fourths of the total membership, whichever is less, is required for adoption of an emergency ordinance, the confirmation or extension of a local disaster declaration or the ratification of emergency actions taken by the executive.*
- (d) *An emergency ordinance, or any other action taken under this section, is effective for 60 days.*

**new**

## KPB 1.09

*The mayor shall supervise the compilation and maintenance of a list enumerating the powers that may be exercised by the borough, whether bestowed by statute or acquired by other legal means. The list of powers shall be readily available for reference by the borough's departments and the general public.*

# Updated

## KPB 2.45.010

There is established an office of emergency management as a department in the Kenai Peninsula Borough. The Senior Manager of the Office of Emergency Management shall administer the department, *shall assume primary responsibility for managing and coordinating department responsibilities during a declared disaster emergency*, and shall report to the mayor or designee. The department shall be responsible for *response to, and recovery from, a declared disaster emergency*, for the development of borough and inter-jurisdictional disaster response and recovery plans, and for coordination of disaster management between the borough, the State of Alaska, and other municipalities and response and recovery organizations.





# Discussion and Q&A