



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.3.

5/21/2024

Subject:

Emergency Management Ordinance

Fiscal Impact:

None

Dept/Office:

Public Safety Group: Emergency Management

Requested Action:

It is requested that the Board of County Commissioners hold a Public Hearing and consider adopting the establishment of an Emergency Management ordinance.

Summary Explanation and Background:

At the April 23, 2024, Board of County Commissioners meeting, the Board approved legislative intent and permission to advertise the establishment of an Emergency Management ordinance.

The proposed ordinance enables the Board of County Commissioners to respond swiftly and efficiently to emergencies and codifies the following:

- Establishes a delegation of authority to declare a local state of emergency from the Board of County Commission to the Chair, and when the Chair is not available to the Vice-Chair, and if both the Chair and Vice Chair are not available, to the remaining commissioners in ascending order of districts.
- Establishes a delegation of authority to enact emergency protection measures to the Chair, and when the Chair is not available, to the Vice Chair, and when the Chair and Vice Chair are not available, to the next remaining available commissioner in ascending order by district, and if no commissioners are available, to the County Manager.
- Defines the role of emergency management and outlines emergency powers and decision-making process.
- Transfers the debris removal language from the Solid Waste ordinance to the Emergency Management ordinance, streamlining the federal assistance and reimbursement process.
- Allows for the waiving of specific zoning restrictions during disasters for residents eligible for federal or state disaster housing assistance.
- Retains the Board's authority to terminate a local state of emergency by a majority vote, if at any time the Board feels no hazard or emergency remains.

This ordinance was developed with and approved by the County Attorney's Office. It has met all legal advertising/noticing requirements.

Clerk to the Board Instructions:

Upon approval by the Board, execution by the Chair, and attestation by the Clerk, file the ordinance with the Department of State as required by law within the 10-day deadline. Please return a copy of the executed ordinance with the Department of State's official acknowledgment to the County Attorney's Office.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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May 22, 2024

MEMORANDUM

TO: Morris Richardson, County Attorney

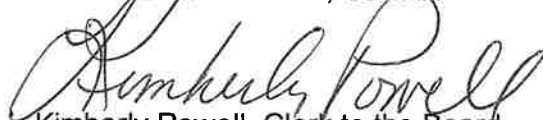
RE: Item H.3., Emergency Management Ordinance

The Board of County Commissioners, in regular session on May 21, 2024, conducted a public hearing and adopted Ordinance No. 24-10, establishing an Emergency Management Ordinance. Enclosed is the fully-executed Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/ns

Encl. (1)

cc: Emergency Management



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

May 23, 2024

Honorable Rachel M. Sadoff
Board of County Commissioners
Brevard County
Post Office Box 999
Titusville, FL 32781-0999

Dear Honorable Rachel Sadoff,

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 2024-10, which was filed in this office on May 23, 2024.

Sincerely,

Matthew Hargreaves
Administrative Code and Register Director

MJH/wlh

ORDINANCE NO. 2024-10

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, PERTAINING TO EMERGENCY MANAGEMENT; DELETING IN ITS ENTIRETY CHAPTER 94 – SOLID WASTE, ARTICLE VII. – DEBRIS REMOVAL FROM PRIVATE ROAD RIGHT-OF-WAY AND OTHER PRIVATE PROPERTY; AMENDING CHAPTER 42 – EMERGENCY SERVICES, BREVARD COUNTY CODE OF ORDINANCES, AND CREATING ARTICLE V. – DECLARATION OF EMERGENCY; CREATING SECTION 42-131. – DEFINITIONS; CREATING SECTION 42-132. – DECLARATION OF LEGISLATIVE INTENT; CREATING SECTION 42-133. – DECLARATION OF STATE OF LOCAL EMERGENCY; CREATING SECTION 42-134. – DELEGATION OF EMERGENCY POWERS TO BE EXERCISED BY CHAIR, VICE CHAIR, OTHER COUNTY COMMISSIONER, OR COUNTY MANAGER; CREATING SECTION 42-135. – ADDITIONAL EMERGENCY MANAGEMENT POWERS AND DELEGATION OF SUCH POWERS; CREATING SECTION 42-136. – DISASTER DEBRIS REMOVAL; CREATING SECTION 42-137. – TEMPORARY HOUSING UNITS PERMITTED WHEN INDIVIDUALS ARE DISPLACED FROM THEIR HOMES DUE TO DAMAGE FROM A DISASTER; CREATING SECTION 42-138. – FEDERAL REIMBURSEMENT; CREATING SECTION 42-139. – PENALTIES FOR VIOLATION; PROVIDING FOR RESOLUTION OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN AREA ENCOMPASSED; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES.

WHEREAS, being prepared for disasters and emergencies means being ready to respond promptly as danger threatens in order to preserve life, protect property, and provide relief from suffering and privation; and

WHEREAS, local services may be overwhelmed, and local government will have to operate in a different manner than in normal times to provide timely relief and minimize hardships in the event of a natural, technological, or man-made disaster in Brevard County; and

WHEREAS, many populated areas of our communities may require evacuation, food, and shelter until the disaster ends, services are restored, and needed supplies and materials are available; and

WHEREAS, the Board of County Commissioners of Brevard County has developed a Comprehensive Emergency Management Plan (CEMP) by resolution and now desires to codify, by ordinance, certain provisions of the CEMP; and

WHEREAS, the CEMP indicates that the Board of County Commissioners of Brevard County has delegated to certain persons the authority to declare a state of local emergency when a quorum of the Board of County Commissioners is unable to meet and also allows the Board of County Commissioners to alter this delegation by majority vote; and

WHEREAS, the Board of County Commissioners of Brevard County desires to adopt by ordinance provisions for declaring a state of local emergency in Brevard County, which will allow for certain designated individuals to declare a state of emergency when emergency circumstances requires such delegation of authority; and

WHEREAS, the Board of County Commissioners of Brevard County desires to bring together previously adopted provisions of the Brevard County Code of Ordinances (the "Code") relative to disasters or emergencies, in particular, provisions regarding the removal of disaster debris, in order to have all provisions relating to emergencies and disasters in the same portion of the Code; and

WHEREAS, specific authority for this ordinance includes, but is not limited, to Article VIII, Section I, Florida Constitution of 1968, Chapter 125, Florida Statutes, and the County's home rule authority to exercise all powers of local self-government to perform any acts in the common interest of the people of the County and exercise all powers and privileges not specifically prohibited by law, which power may be exercised by the enactment of legislation in the form of County ordinances; and

WHEREAS, Chapter 67-1146, Laws of Florida, as amended by Chapter 70-594, Laws of Florida, specifically authorizes the Board of County Commissioners of Brevard County, Florida, to construct, operate and maintain a solid waste disposal system for the use and benefit of the inhabitants and municipalities of Brevard County; and

WHEREAS, Section 252.38, Florida Statutes, provides authority for the Board of County Commissioners of Brevard County, as a political subdivision, to declare a state of local emergency and to exercise certain powers and authority to safeguard the lives and property of its citizens; and

WHEREAS, Section 252.38, Florida Statutes, also waives certain procedures and formalities otherwise required of a political subdivision during a declared state of local emergency; and

WHEREAS, the Board of County Commissioners of Brevard County finds that the removal of disaster-generated debris from private property under the circumstances specified in this ordinance is necessary to protect the public health, welfare, safety, and economic order of the County; and

WHEREAS, Chapter 94, Solid Waste, Code of Ordinances of Brevard County, Florida, currently prescribes the manner in which solid waste shall be collected in the unincorporated areas of Brevard County, the means by which the County's solid waste management program is implemented to efficiently dispose of solid waste generated within the incorporated and unincorporated areas of the County, and the manner in which disaster debris may be removed from private road right-of-ways and other private property, which removal is necessary to protect the public health, welfare, safety and economic order of the County; and

WHEREAS, the Board of County Commissioners of Brevard County desires to consolidate into a newly created Article V, Chapter 42, Emergency Services, all provisions regarding the declaration of a state of local emergency, the delegation of authority during a state of local emergency, the emergency powers and authority that can be exercised during a state of local emergency and by whom, provisions concerning the waiver of certain formalities during a state of local emergency, and provisions now codified as Chapter 94, Article VII, Debris Removal from Private Road Right-of-Way and Other Private Property regarding the removal of disaster debris from private road right-of-ways and other private property during or after a state of emergency.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Brevard County, Florida, that:

SECTION 1. Recitals. The foregoing recitals are incorporated by reference into this Ordinance.

SECTION 2. The Code of Ordinances of Brevard County, Florida, is hereby amended by deleting in its entirety Chapter 94 – Solid Waste, Article VII. – Debris Removal from Private Road Right-of-Way and Other Private Property. Additions to the Code are underlined and deletions are stricken through.

SECTION 3. The Code of Ordinances of Brevard County, Florida, is hereby amended by creating Chapter 42 – Emergency Services, Article V. – Declaration of Emergency, to read as follows:

ARTICLE V. – DECLARATION OF EMERGENCY

Sec. 42-131. – Definitions.

As used in this article, the following terms, phrases, and words shall have the following meanings, unless the context clearly otherwise requires:

Brevard County emergency management department or emergency management department means the department responsible for the mitigation of, preparation for, response to, and recovery from emergencies and disasters. Specific emergency management responsibilities include, but are not limited to:

- (1) Reduction of vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural, technological, or manmade emergencies or hostile military or paramilitary action.
- (2) Preparation for prompt and efficient response and recovery to protect lives and property affected by emergencies.
- (3) Response to emergencies using all systems, plans, and resources necessary to preserve adequately the health, safety, and welfare of persons or property affected by the emergency.
- (4) Recovery from emergencies by providing for the rapid and orderly start of restoration and rehabilitation of persons and property affected by emergencies.
- (5) Provision of an emergency management system embodying all aspects of pre-emergency preparedness and post-emergency response, recovery, and mitigation.
- (6) Assistance in anticipation, recognition, appraisal, prevention, and mitigation of emergencies which may be caused or aggravated by inadequate planning for, and regulation of, public and private facilities and land use.

- (7) Implementation and maintenance of the Comprehensive Emergency Management Plan (CEMP).

Brevard county emergency management operations center (EOC) operations means the emergency response and recovery organization within Brevard County which is made up of county, municipal, state, and federal offices, representatives of key community groups, and private sector entities with direct and/or indirect responsibilities for emergency services. The EOC operations is organized into nineteen emergency support functions or "ESFs" which are coordinated by the emergency management department within the EOC. The board of county commissioners is the lead agency for EOC operations.

CEMP means the latest Brevard County Comprehensive Emergency Management Plan, and any subsequent amendments, supplements, or revisions.

Brevard County emergency operations center (EOC) or (county EOC) means the site of the direction and control functions for the county's response to a disaster or emergency.

Disaster-generated debris or debris shall include, but is not limited to, broken or discarded building and construction materials, garbage, vegetative matter, and spoiled or ruined household goods or materials deposited on county-owned property or right-of-way or on private roads as a direct result of a major disaster or a catastrophic disaster as described in the CEMP and DMP. The term does not include:

- (1) Debris from vacant lots, forests, heavily wooded areas, unimproved property, and unused areas;
- (2) Debris on agricultural lands used for crops or livestock;
- (3) Concrete slabs or foundations-on-grade; and
- (4) Construction and demolition debris consisting of materials used in the reconstruction of disaster-damaged improved property.

Disaster means any natural, technological, or civil (manmade) emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by the county, the governor, or the president of the United States. Disasters are defined as larger events than emergencies, and they will warrant a declaration of a state of emergency by at least the local government impacted and are more likely to involve activation of the Brevard county operations center (EOC) and emergency support functions (ESFs).

- (1) *Minor disaster* means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance.
- (2) *Major disaster* means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance. The Federal Emergency Management Agency (FEMA) will be notified and potential federal assistance will be predominately recovery-oriented.
- (3) *Catastrophic disaster* means a disaster that will require massive state and federal assistance, including immediate military involvement. Federal assistance will involve response as well as recovery needs.

DMP means the current Brevard County - Solid Waste Management Department Debris Management Plan, and any subsequent amendments, supplements, or revisions, including any action taken by the county in accordance with this article.

Emergency means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. Federal assistance will involve response as well as recovery needs.

Emergency coordination group means a group of executive and senior officials as defined by the CEMP (including but not limited to officials from Brevard County, the Department of Health in Brevard, Brevard Public Schools, the Brevard County Sheriff's Office, and the Space Coast Public Management Association). Their primary role is to facilitate the alignment

of countrywide emergency protective actions through the sharing of information. Each member maintains individual authority and does not direct the actions of nor supersede the authority of any other member.

Emergency management director means the individual appointed by the board of county commissioners who is responsible for the organization, administration, and operation of the Brevard County emergency management department and coordinates emergency management activities, services, and programs within the county.

ESF(s) or emergency support function(s) means the nineteen functionally oriented groups relied on by Brevard County as part of Brevard County's response to a significant disaster event. Each ESF is managed by a primary agency that is assisted by several designated support agencies. ESF operations are managed from the county EOC and coordinated by Brevard County emergency management at that facility during disasters.

Essential services means services necessary to a basic standard of living and the general welfare of society. Services may include, but are not limited to, the following: electrical services, gas services, and water and wastewater treatment services.

Hazardous limb means a broken tree limb greater than two inches in diameter measure at the point of break.

Hazardous tree means a tree greater than six inches in diameter (measured at diameter breast height) and which meets any of the following criteria:

- (1) More than 50 percent of the crown is damaged or destroyed;
- (2) The trunk is split or broken branches expose the heartwood; or
- (3) The tree is leaning at an angle greater than 30 degrees and shows evidence of ground disturbance.

Natural hazard or natural emergency means a hazard or an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake.

Pre-fabricated dwelling means a unit that is factory built or built on-site from modular parts and generally does not have wheels.

Private road means any road or street, including streets in gated communities, that is not owned or controlled by a governmental entity, that has not been dedicated to public use or has not been accepted for maintenance by the county or other governmental entity. The term also includes the land lying within the three-foot roadside shoulder area on both sides of the travel lanes of such road.

Right-of-way means the portions of the county-owned land over which facilities such as highways, roads, railroads, or power lines are built. The term includes the county-owned land on both sides of such facilities up to the boundary of the adjoining property.

Societal/man-made hazard or emergency means a hazard or an emergency caused by an action against persons or society, including, but not limited to, enemy attack, sabotage, terrorism, civil unrest, or other action impairing the orderly administration of government.

Technological hazard or emergency means a hazard or an emergency caused by a technological failure or accident, including, but not limited to, an explosion, transportation accident, radiological accident, or chemical or other hazardous material accident.

Temporary housing means temporary accommodations for individuals or families whose homes are made uninhabitable by an emergency or a major disaster that meets the physical accessibility needs of the household and includes essential utilities, access to areas for food preparation, and bath facilities in a context that allows a family to live together with a reasonable amount of privacy for a period of generally up to 36 months.

Temporary housing unit means manufactured housing, recreational vehicle, travel trailer, or pre-fabricated dwelling.

White goods means any inoperative and discarded refrigerators, ranges, washers, water heaters, and other similar domestic and commercial appliances.

Sec. 42-132. – Declaration of legislative intent.

The intent of this article is to provide for the authority to declare a state of local emergency in order to protect the health, safety and welfare of the people and property of the county under emergency conditions; to provide for the exercise of certain powers under such conditions; and to take a proactive approach to coordinating and managing debris removal operations as part of the county's overall emergency management plan.

The board finds that in the event of a disaster occurring in the county, a public health and safety threat may result from the generation of widespread debris throughout the county, that such debris constitutes a hazardous environment for transportation of the residents as well as emergency aid and relief services, endangerment to properties in the county, an environment conducive to breeding disease and vermin, and greatly increased risk of fire, and that it is in the public interest to collect and remove disaster debris from all properties, whether public lands, public or private roads or within gated communities, to eliminate an immediate threat to life, public health and safety, to reduce the threat of additional damage to improved property, and to promote economic recovery of the community at large.

The board recognizes that communities with a debris management plan are better prepared to restore public services and ensure the health and safety in the aftermath of a major disaster or catastrophic disaster, and to thereby be better positioned to receive the full level of assistance available to them from the Federal Emergency Management Agency and from other participating entities.

It is the intent of this article to promote the health, welfare, and safety of the residents of the county by providing for the collection and removal of disaster debris throughout the unincorporated public and private roads, gated communities, and public areas of the county, to eliminate an immediate threat to the life, public health and safety of the residents of the county. The county may extend disaster debris removal services to incorporated areas of the county through interlocal agreements with municipalities.

Sec. 42-133. – Declaration of state of local emergency.

The board, in order to facilitate a prompt preparation and response to an impending natural, societal/man-made, or technological hazard or emergency, hereby authorizes the chair of the board, or the vice chair, if the chair is unavailable, to declare a local state of emergency after obtaining input from the county manager and/or the emergency management director. If both the chair and vice chair are unavailable, the delegation of authority shall proceed according to the remaining commissioners in ascending order of districts.

The duration of a state of local emergency declared under this section is limited to seven (7) days, but the state of local emergency may be extended by the county manager, and/or his designee, in seven-day increments, as may be necessary. If at any time the board feels no hazard or emergency remains, it may, by majority vote, terminate the state of local emergency.

Sec. 42-134. – Delegation of emergency powers to be exercised by the chair, vice chair, other commissioner, or county manager.

Upon the declaration of a state of local emergency pursuant to section 42-133, the chair of the board, or vice chair, if the chair is not available, or the next available remaining commissioner in ascending order by district, if the chair and vice chair are not available, shall have the authority to order emergency protective actions, including implementing any restrictions necessary to protect life and property as a direct result of impacts from the emergency after obtaining input from the emergency management director, including but not limited to, issuing evacuation orders (area included, timing, effective date and termination) and shelter operations decisions (which shelters to open and timing).

If no commissioners are available, the county manager shall have the authority to exercise emergency powers.

Sec. 42-135. – Additional emergency management powers and delegation of such powers.

In addition to any other powers conferred by law, upon the declaration of a state of local emergency pursuant to section 42-133, in addition to issuing shelter orders or evacuation orders, the chair of the board, or vice chair, if the chair is unavailable, or the next remaining available commissioner in ascending order by district, if the chair and vice chair are

unavailable, or the county manager, if all commissioners are unavailable, is designated and empowered to order and promulgate emergency measures to be effective during the emergency to protect the health, safety, and welfare of the community, including but not limited to, the following:

- (1) Utilize all available resources of the county government as reasonably necessary to cope with the disaster emergency.
- (2) Exercise emergency management powers specifically authorized to political subdivisions:
 - a. To appropriate and expend funds; make contracts; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any emergency; and direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies.
 - b. To appoint, employ, remove, or provide, with or without compensation, coordinators, rescue teams, fire and police personnel, and other emergency management workers.
- (3) To establish, as necessary, a primary and one or more secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
- (4) To assign and make available for duty the offices and agencies of the county, including the employees, property, or equipment thereof relating to firefighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for emergency operation purposes, as the primary emergency management forces of the county for employment within or outside the political limits of the county.
- (5) To request state assistance or invoke emergency-related mutual-aid assistance.

- (6) To exercise the county's power and authority to waive the procedures and formalities otherwise required of the county by law pertaining to:
 - a. Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community.
 - b. Entering into contracts.
 - c. Incurring obligations.
 - d. Employment of permanent and temporary workers.
 - e. Utilization of volunteer workers.
 - f. Rental of equipment.
 - g. Acquisition and distribution, with or without compensation, of supplies, materials, and facilities.
 - h. Appropriation and expenditure of public funds.
- (7) Declare certain areas off limits to all but emergency personnel.
- (8) Make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
- (9) Make a determination that:
 - a. There is a threat to public health and safety that may result from the generation of widespread debris throughout the county.
 - b. Such debris constitutes a hazardous environment for all modes of movement and transportation of the residents as well as emergency aid and relief services.
 - c. There is an endangerment to all properties in the county.

- d. There is an environment conducive to breeding disease and vermin.
 - e. There is a greatly increased risk of fire.
 - f. It is in the public interest and safety to collect and remove disaster debris from all property, whether public lands, public or private roads, and gated communities, to eliminate an immediate threat to life, public health, and safety, to reduce the threat of additional damage to improved property, and to promote economic recovery of the community at large.
 - g. any of the criteria outlined in section 42-136(a)-(c) is satisfied which indicates an immediate threat to life, public health, safety, or community welfare sufficient to warrant removal of disaster debris on private property.
 - h. that clearing and pushing debris from all streets, both public and private, is necessary to ensure access necessary for the movement of emergency vehicles, including police, fire, rescue, and public utilities as stated in section 42-136(f).
- (10) Authorize the county or its contracted agent(s) the right of access to private roads or gated communities as needed for:
- a. Emergency vehicles such as, but not limited to, fire, police, and medical care.
 - b. Performance of damage assessment, emergency management, specialized search and rescue teams.
 - c. Human services and victim relief.
 - d. Temporary emergency traffic controls or detour efforts.
 - e. Debris removal vehicles and equipment, utility equipment, and sanitation efforts to alleviate immediate threats to public health and safety.
- (11) Authorize the removal of debris, wreckage or collapsed structures resulting from a major disaster.

- (12) Authorize the removal of abandoned vehicles pursuant to Florida law in conjunction with law enforcement of the city, county, or state.

Sec. 42-136. – Removal of disaster generated debris; authority; priorities and limitations.

(a) *Authority of county.* The county has the authority to enter onto, and may remove debris from, private property when such debris is determined to pose an immediate threat to life, public health and safety, and to the welfare of the community, so that it is in the public interest for the county to remove such debris. The board or, when a state of local emergency has been declared pursuant to section 42-133, the chair of the board, or the vice chair, if the chair is unavailable, or the next remaining available commissioner in ascending order of the districts, if the chair and the vice chair are unavailable, or the county manager, if all the commissioners are unavailable, shall determine whether there is an immediate threat to life, public health, safety, or community welfare sufficient to warrant removal of said debris on private property in accordance with one or more of the following criteria:

- (1) There is a substantial likelihood that rescue vehicles will be significantly hindered from rendering emergency services to residential and commercial property should the debris be allowed to remain in place absent county removal.
- (2) The type of debris may reasonably cause disease, illness, or sickness that could injure or adversely affect the health, safety, or general welfare of those residing and working in the area if it is allowed to remain.
- (3) The clearing is necessary to effectuate orderly and expeditious restoration of utility services including, but not limited to, power, water, sewer, and telephone.
- (4) The debris is determined to require removal to eliminate immediate threats of significant damage to improved public or private property.
- (5) The debris prevents garbage collection creating a public health hazard.

- (6) The debris contains contaminants that have a reasonable likelihood of leaching into the soil or groundwater.
- (7) The debris has a substantial negative impact in preventing or adversely affecting emergency repairs to buildings or property.
- (8) The debris presents a reasonable danger of being transported by wind or water into the surrounding areas of the county increasing the cost of recovery and removal.
- (9) If left over time, the debris poses a significant likelihood of producing mold that would be injurious to public health.
- (10) The presence of the debris significantly adversely impacts the county's recovery efforts.
- (11) The debris significantly interferes with drainage or water runoff, creating a significant hazard in the event of significant rainfall.
- (12) The sheer volume of the debris is such that it is impractical and unreasonable to remove it in an orderly and efficient manner without action by the county.
- (13) The type, extent, and nature of the debris are such that it would cause much greater damage if the debris was not removed immediately.
- (14) The clearing of the debris is necessary to ensure the economic recovery of the affected community to the benefit of the community at large.

(b) Priority of removal.

- (1) In removing disaster-generated debris in accordance with the DMP, the highest priority shall, initially be given to responding to immediate threats to life, public health, and safety, eliminating immediate threat of significant damage to county property or facilities, and pushing or removing disaster-generated debris from the county rights-of-way to permit safe passage.

- (2) The removal of disaster-generated debris in accordance with the priorities set forth in subsection (b)(1) shall begin as soon as functionally feasible after the occurrence of a major disaster or catastrophic disaster. The primary operation of the county work forces will be to cut and toss disaster-generated debris, depositing it along the county rights-of-way, thereby creating access to the major arterial roadways to allow for expedited search and rescue efforts as well as recovery efforts. Upon completion of the cut and toss operation, county work forces will begin the removal of other disaster-generated debris. The owners of private property or those individuals otherwise in possession of private property that adjoin county rights-of-way may place disaster-generated debris in the county right-of-way in accordance with the requirements set forth in subsection (b)(4). The community-at-large will be notified of the initial start date for removal of disaster-generated debris by county work forces and will subsequently be notified prior to the last removal pass by county work forces. After the last such removal pass, county residents will be responsible for the removal of any remaining disaster-generated debris which meets pre-disaster service collection requirements whether they be self-provided, provided through a private contractor, or provided through regular waste disposal services.
- (3) Upon the resumption of pre-disaster waste collection activities, county residents will be held accountable for the placement of any remaining disaster-generated debris along county rights-of-way and private roads, or on private property, which placement does not meet pre-disaster collection service standards and is found to be not in compliance with this article or with any other county regulation.
- (4) The removal of disaster-generated debris consisting of either hazardous trees or hazardous limbs on county-owned property and county rights-of-way is authorized only upon the satisfaction of each of the following conditions:
- a. The damage to the hazardous tree or hazardous limb was the result of the disaster; and

- b. The hazardous tree or hazardous limb is in danger of falling on a structure or other improvement, on a primary ingress or egress route, or on a county right-of-way.

(c) Removal from private roads.

- (1) The authority for county work forces to enter upon a private road for utilization in the DMP is provided by the state through the delegation of emergency management powers to political subdivisions in section 252.38, Florida Statutes, and the CEMP adopted pursuant to that authority, and shall in no way be deemed to be a trespass.
- (2) The removal by county work forces of disaster-generated debris from private roads shall be performed only upon the satisfaction of each of the following conditions:
 - a. The DMP has been implemented in accordance with this article;
 - b. A determination has been made pursuant to subsection (a) that such removal is reasonably necessary to eliminate immediate threats to life, public health, and safety or to ensure economic recovery of the affected community to the benefit of the community-at-large; provided, however, that the highest priority shall initially be given to responding to immediate threats to life, public health, and safety; and
 - c. Any disaster-generated debris removed from a private property has been placed in or adjacent to the private road in accordance with the requirements of this section, unless such requirements have been waived by the county manager or designee.
- (3) Removal of hazardous trees or hazardous limbs. The removal of disaster-generated debris consisting of either hazardous trees or hazardous limbs overhanging or otherwise endangering a private road shall be deemed to be the responsibility of the adjacent private property owners, and the county work forces shall not be authorized to remove or to otherwise act upon such disaster-generated debris unless it is necessary to eliminate an immediate threat to the safety of county work forces.

(d) Responsibility of private property owners.

- (1) The owners of private property, or those individuals otherwise in possession of private property, shall be responsible for assuring that the placement of any disaster-generated debris in county rights-of-way or on private roads for removal by county work forces satisfies each of the following conditions:
 - a. The disaster-generated debris shall be neatly stacked, piled, or placed with its leading edge lying within the three-foot roadside shoulder area on either side of the travel lanes of the road.
 - b. The disaster-generated debris shall be separated into stacks or piles of the following types of debris:
 1. Putrescent debris and mixed common household items.
 2. Vegetative debris.
 3. Construction and demolition debris.
 4. White goods.
 5. Hazardous household waste and electronic waste.
 - c. The disaster-generated debris shall be placed so that it does not block the roadway, traffic signs and signals, or stormwater structures.
 - d. The disaster-generated debris shall be placed so that it is not under any power lines, not on top of any water meters, or not within three feet of any power poles, fire hydrants, vehicles, mailboxes, or fences.
- (2) Any damage to personal property by county work forces resulting from the placement of disaster-generated debris in a manner inconsistent with this section shall be the responsibility of the private property owner, or individual otherwise in possession of private property, who misplaced such debris.
- (3) Any owners of private property, or any individuals otherwise in possession of private property, who stack, pile, or otherwise place anything for removal on county rights-of-way or on private roads which is deemed not to be disaster-generated debris, shall be responsible for removing such unauthorized debris no later than 24

hours after notification of such removal requirement by a member of the county work forces. Any such owner or other individual who fails to timely comply with such removal requirement shall thereafter be responsible for any costs associated with the removal of such unauthorized debris by county work forces.

(e) *Indemnification and hold harmless for removing debris from private property.*

(1) In consideration for and as a condition of removing debris from private property, the county may require the owner of such private property to indemnify and hold harmless the county, the State of Florida, and the United States, and their officers, agents, employees, and contractors, from any claims arising from removal of debris from private property.

(2) As a part of any request for federal funding for debris removal from private property, the county agrees to indemnify and hold harmless, to the extent allowed by section 768.28, Florida Statutes, the United States, its officers, agents, employees, and contractors from any claims arising from the county's negligence in the removal of debris from private property. Nothing in this article shall be construed as a waiver of the county's sovereign immunity beyond that allowed by state law and the Florida Constitution.

(f) *Emergency roadway clearance.* Nothing herein shall limit the county, within the first seventy (70) hours after the declaration of a disaster emergency, from clearing and pushing debris from all streets, both public and private, as necessary to ensure access necessary for the movement of emergency vehicles, including police, fire, rescue, and public utilities.

(g) *No requirement to remove debris from private property.* Nothing in this article shall be construed to require the county to remove debris from private property except where the severity of the situation is of such magnitude or the debris is so widespread that it is determined by the board or, pursuant to the CEMP, the chair of the board, or vice chair, if the chair is unavailable, or the next remaining available commissioner in ascending order of the districts, or the county manager, if all the commissioners are unavailable, to be a significant, immediate threat to life, health and safety, the welfare of the county, and in the overriding

public interest of the county to remove debris from such areas as set forth in this article.

(h) *Federal reimbursement.*

- (1) With regard to the eligibility for federal funding, the Federal Emergency Management Agency (FEMA) may waive the requirement for the county to establish the criteria listed in subsection (a) above as a condition precedent to the county action depending on the severity of the situation.
 - (2) The county acknowledges that commercial property debris removal is generally ineligible for reimbursement under the Public Assistance Program unless determined to be in the public interest and subject to other private property provisions as defined in FEMA's Disaster Assistance Policy for Debris Removal from Private Property guidance document, as amended from time to time, and that reimbursement for non-commercial private property debris removal is discretionary with FEMA.
 - (3) Upon approval of a request for debris removal from private property by FEMA's federal coordinating officer, the county shall comply with all mandates for Section 407 of the Stafford Act as a condition of reimbursement.
- (i) *Countywide application of disaster-generated debris removal provisions.* The provisions of this section relating to disaster-generated debris removal from private roads and other private property shall apply in both the unincorporated area of the county and in any municipality within the county; provided that any provision of this section in conflict with a municipal ordinance shall not be effective within that municipality to the extent of such conflict.

Sec. 42-137. – Temporary housing units permitted when individuals are displaced from their homes due to damage from a disaster.

- (a) Temporary housing units may be used as temporary housing by individuals displaced from their private, primary residence deemed uninhabitable due to damage from a disaster. As such, a temporary suspension of the County Zoning Regulations as set forth in Chapter 62, Article VI, Brevard County Code of Ordinances, may be issued, for the

limited purposes set forth herein, for residents actively participating in a non-congregate sheltering program as defined by the Florida Division of Emergency Management or the Federal Emergency Management Agency, which expedites the permitting and placement of a recreational vehicle or trailer to provide temporary disaster housing.

- (b) The permit for a temporary housing unit may only be granted during a state of local emergency to a resident who is actively participating in a non-congregate sheltering program administered by the Florida Division of Emergency Management or the Federal Emergency Management Agency. If the resident is no longer within the non-congregate sheltering program at any point, whether from non-compliance or the program's expiration, such suspensions will no longer be in effect.
- (c) A maximum of one (1) temporary housing unit will be allowed on an existing home site provided:
 - (1) The home located on the site has been declared uninhabitable by code enforcement, fire department, or designee or the applicable municipal department.
 - (2) The water service and wastewater service must be properly connected to a functioning water service and sanitary sewer system or septic system in accordance with codes in effect at the time. However, if connection to a functioning service is not feasible, other water and wastewater services may be utilized subject to Brevard County Health Department approval.
 - (3) Setback requirements will be waived during the duration that the temporary housing unit is permitted. However, the temporary housing unit cannot extend into any adjacent public right-of-way or onto any adjacent property.
 - (4) Electrical service must be available on-site and have a proper connection for a temporary housing unit.
 - (5) Only a licensed contractor or an owner-builder will be allowed to apply for a permit and perform any work related to the connection of plumbing, electrical and mechanical service systems at the site.

- (d) The use of a temporary housing unit in a zoning district where such use is prohibited prior to the declaration of a state of local emergency shall cease no later than thirty-six (36) months after the date of the issuance of the temporary housing building permit unless an appropriate extension of the temporary permit has been granted. Nothing in this section will waive or exempt permanent construction or repair from compliance with state and federal permit regulations or other building requirements nor pertain to any situations that occur outside of a state of local emergency.

Sec. 42-138. – Penalties for violation.

Any person, firm, company, or corporation who fails to comply with or violates any section of this article, or the emergency measures that may be made effective pursuant to this article, is guilty of a misdemeanor of the second degree, punishable as provided in section 775.082, Florida Statutes or section 775.083, Florida Statutes. Nothing contained herein prevents the county from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any failure to comply with, or violation of, this article or the emergency measures which may be made effective according to this article. Such other lawful action includes, but is not limited to, an equitable action for injunctive relief or an action at law for damages.

SECTION 4. Conflicting Provisions. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal or state or county law, rule, code, or regulation, the more restrictive shall apply. If there is a direct conflict between the CEMP and this ordinance, the CEMP shall apply except where the CEMP allows for changes to be made in the CEMP.

SECTION 5. Severability. If any provision of this ordinance or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 6. Area Encompassed. This ordinance shall be applicable both within the incorporated and unincorporated areas of Brevard County.


SECTION 7. Effective Date. A certified copy of this ordinance shall be filed by email with the Department of State by the Clerk to the Board as soon after enactment as is practicable. The ordinance shall be deemed filed and shall take effect when a copy has

been accepted and confirmed by the Department of State by email, as provided by Section 125.66(3), Florida Statutes.

SECTION 8. Inclusion in Code. This ordinance shall be included and be made a part of the Code of Ordinances of Brevard County, Florida, and the editors of that Code of Ordinances shall have the authority to re-number or re-letter any section in this ordinance to conform to the format used in the Code of Ordinances. Any editorial changes to the section numbers or section titles in this ordinance shall be deemed and interpreted as a non-substantive editorial change that have no effect on any substantive provision in the ordinance.

DONE, ORDERED AND ADOPTED, in regular session, this 21st day of May, 2024.

ATTEST:


Rachel M. Sadoff, Clerk
(SEAL)

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA


Jason Steele, Chair

As approved by the Board on MAY 21 2024

Approved as to legal form and sufficiency:

Assistant County Attorney

Business Impact Estimate

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, PERTAINING TO EMERGENCY MANAGEMENT; DELETING IN ITS ENTIRETY CHAPTER 94 – SOLID WASTE, ARTICLE VII. – DEBRIS REMOVAL FROM PRIVATE ROAD RIGHT-OF-WAY AND OTHER PRIVATE PROPERTY; AMENDING CHAPTER 42 – EMERGENCY SERVICES, BREVARD COUNTY CODE OF ORDINANCES, AND CREATING ARTICLE V. – DECLARATION OF EMERGENCY; CREATING SECTION 42-131. – DEFINITIONS; CREATING SECTION 42-132. – DECLARATION OF LEGISLATIVE INTENT; CREATING SECTION 42-133. – DECLARATION OF STATE OF LOCAL EMERGENCY; CREATING SECTION 42-134. – DELEGATION OF EMERGENCY POWERS TO BE EXERCISED BY CHAIR, VICE CHAIR, OTHER COUNTY COMMISSIONER, OR COUNTY MANAGER; CREATING SECTION 42-135. – ADDITIONAL EMERGENCY MANAGEMENT POWERS AND DELEGATION OF SUCH POWERS; CREATING SECTION 42-136. – DISASTER DEBRIS REMOVAL; CREATING SECTION 42-137. – TEMPORARY HOUSING UNITS PERMITTED WHEN INDIVIDUALS ARE DISPLACED FROM THEIR HOMES DUE TO DAMAGE FROM A DISASTER; CREATING SECTION 42-138. – FEDERAL REIMBURSEMENT; CREATING SECTION 42-139. – PENALTIES FOR VIOLATION; PROVIDING FOR RESOLUTION OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN AREA ENCOMPASSED; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption may apply, Brevard County hereby publishes the following information:

1. Summary of the proposed ordinance: The proposed ordinance accomplishes the following:

a) Codifies a delegation of authority to declare a local state of emergency, from the Board of County Commission to the Chair, and when the Chair is not available to the Vice-Chair, and if both the Chair and Vice Chair are not available, to the remaining commissioners in ascending order of districts and to enact emergency protection measures to the Chair, and when the Chair is not available, to the Vice Chair, and when the Chair and Vice Chair are not available, to the next remaining available commissioner in ascending order by district, and if no commissioners are available to the County Manager. The Board retains the ability to terminate a local state of emergency by majority vote if at any time the Board feels no hazard or emergency remains.

b) Defines the role of emergency management and outlines emergency powers and decision-making processes.

c) Transfers debris removal language from the Solid Waste ordinance to the Emergency Management ordinance.

d) Allows for the waiving of specific zoning restrictions during disasters for residents eligible for federal or state disaster housing assistance.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the County, if any:

(a) An estimate of direct compliance costs that businesses may reasonably incur: None.

(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible: None.

(c) An estimate of the County's regulatory costs, including estimated revenues from any new charges or fees to cover such costs: None.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance: None.

4. Additional information the governing body deems useful (if any):

Emergency management ordinances are becoming increasingly recognized as a best practice for disaster preparedness and response. In Florida, 67% of counties have implemented such ordinances, which climbs to 75% among coastal counties. Notably, Brevard is the sole county with a population exceeding 400,000 that lacks such a crucial ordinance. Historically, the Comprehensive Emergency Management Plan (CEMP) sufficed to outline response and recovery efforts for emergencies. However, federal and state authorities increasingly prefer these core concepts outlined in an ordinance, especially for those areas where they directly interact with the County. Furthermore, emergencies are growing in complexity, emphasizing the need for swift decision-making and action. Establishing an Emergency Management Ordinance will provide the required clarity and timeliness and codify a framework for an efficient and effective response/recovery.

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Board of County Commissioners of Brevard County, Florida, on May 21, 2024 at 9:00 a.m., in the Commission Room at 2725 Judge Fran Jamieson Way, Building C, First Floor, Viera, FL 32940, will hold a public hearing on the following ordinance:

ORDINANCE NO. 2024-XX

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, PERTAINING TO EMERGENCY MANAGEMENT; DELETING IN ITS ENTIRETY CHAPTER 94 – SOLID WASTE, ARTICLE VII. – DEBRIS REMOVAL FROM PRIVATE ROAD RIGHT-OF-WAY AND OTHER PRIVATE PROPERTY; AMENDING CHAPTER 42 – EMERGENCY SERVICES, BREVARD COUNTY CODE OF ORDINANCES, AND CREATING ARTICLE V. – DECLARATION OF EMERGENCY; CREATING SECTION 42-131. – DEFINITIONS; CREATING SECTION 42-132. – DECLARATION OF LEGISLATIVE INTENT; CREATING SECTION 42-133. – DECLARATION OF STATE OF LOCAL EMERGENCY; CREATING SECTION 42-134. – DELEGATION OF EMERGENCY POWERS TO BE EXERCISED BY CHAIR, VICE CHAIR, OTHER COUNTY COMMISSIONER, OR COUNTY MANAGER; CREATING SECTION 42-135. – ADDITIONAL EMERGENCY MANAGEMENT POWERS AND DELEGATION OF SUCH POWERS; CREATING SECTION 42-136. – DISASTER DEBRIS REMOVAL; CREATING SECTION 42-137. – TEMPORARY HOUSING UNITS PERMITTED WHEN INDIVIDUALS ARE DISPLACED FROM THEIR HOMES DUE TO DAMAGE FROM A DISASTER; CREATING SECTION 42-138. – FEDERAL REIMBURSEMENT; CREATING SECTION 42-139. – PENALTIES FOR VIOLATION; PROVIDING FOR RESOLUTION OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN AREA ENCOMPASSED; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES.

Interested parties may appear at the May 21, 2024 meeting and be heard with respect to the proposed ordinance. A copy of the ordinance may be inspected at the following locations:

- Office of Clerk to the Board of County Commissioners, Titusville, Florida
- North Brevard Library, Titusville, Florida
- Central Brevard Library, Cocoa, Florida
- Melbourne Library, Melbourne, Florida

- South Mainland Library, Micco, Florida

A copy of the ordinance may also be viewed on line at www.brevardfl.gov/public-hearings-and-notices. Pursuant to Section 286.0105 Florida Statutes, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or herein, he or she will need a record of the proceeding, and that, for such purpose, he or she will need to ensure that a verbatim record of the proceedings is made, at his or her own expense, which record includes the testimony and evidence upon which any such appeal is to be based. Such person may provide a court reporter, stenographer, or a tape recorder for such verbatim record. In accordance with the Americans Disabilities Act, persons needing a special accommodation or an interpreter to participate in the proceedings, please notify the department sponsoring the meeting/hearing, or the County Manager's Office, (321) 633-2001, at least 48 hours in advance. TDD:1-800-955-8771. Assisted Listening System receivers are available for the hearing impaired, and can be obtained from the Sound Technician at the meeting. This meeting will be broadcast live on Space Coast Government Television (SCGTV) on Brighthouse Networks channel 499, Comcast Cable Communications channel 51 in North Brevard and channel 13 in South Brevard, and AT&T U-verse channel 99. SCGTV will also replay this meeting during the coming month. Check the SCGTV website for daily program updates at brevardfl.gov/Communications/SpaceCoastGovernmentTelevision.