

AGENDA	
Section	Public Hearing
Item No.	IV F

Meeting Date
September 7, 2017



AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Emergency ordinance for removal of disaster debris from private roads
DEPT/OFFICE:	County Attorney's Office

Requested Action:

It is requested that the Board declare that an emergency exists in light of Hurricane Irma, approve the proposed ordinance by super majority vote and direct the clerk to file it electronically today.

Summary Explanation & Background:

FEMA recently changed its reimbursement policy for the cost to collect disaster-related yard debris from private roads. Last November the Board enacted an ordinance to comply with FEMA requirements. One of FEMA's requirements is to either obtain written right of entry agreements from every private property owner or, in lieu of that, enact an ordinance FEMA would deem acceptable. There is no guidance from FEMA on what such an ordinance would look like. We are aware of at least one county, Clay County, which did use an ordinance to meet this requirement for Hurricane Matthew and FEMA approved their reimbursement request. The proposed ordinance incorporates similar language to satisfy this requirement.

Given the impending track of Hurricane Irma and its potential impact on Brevard County, it is recommended the Board adopt the proposed ordinance by super majority vote, pursuant to the emergency ordinance enactment authority in Section 125.66(3), Florida Statutes.

Clerk to the Board Instructions: File electronically on September 7, 2017.

Exhibits Attached: Proposed Ordinance

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager Frank Abbate	Interim Assistant County Manager Jim Liesenfelt	Department Director / Extension Scott L. Knox County Attorney
	Assistant County Manager John Denninghoff	



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

September 13, 2017

MEMORANDUM

TO: Scott Knox, County Attorney Attn: Christine Valliere

RE: Item IV.F., Ordinance Declaring Emergency for Amendment of Chapter 94 –
Solid Waste, Section 94-332 Removal of Disaster Debris from Hurricane Irma on
Private Roads

The Board of County Commissioners, in regular session on September 7, 2017, adopted Ordinance No. 17-20E, Declaring Emergency for Amendment of Chapter 94 – Solid Waste, Section 94-332 Removal of Disaster Debris from Hurricane Irma on private roads. Enclosed are two certified copies of the Ordinance for your action.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

for 
Tammy Rowe, Deputy Clerk

Encls. (2)

cc: Each Commissioner
County Manager
Solid Waste Management Director

ORDINANCE NO. 2017-20 E

AN ORDINANCE OF THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING CHAPTER 94 OF THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA ENTITLED "SOLID WASTE", SPECIFICALLY AMENDING SEC. 94-331 DEFINITONS; AMENDING SEC. 94-332 REMOVAL OF DEBRIS; ACKNOWLEDGING SUPERMAJORITY APPROVAL AND WAIVING NOTICE; PROVIDING FOR RESOLUTION OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN AREA EMBRACED; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR INCLUSION IN THE CODE.

WHEREAS, specific authority for this ordinance includes, but is not limited, to Article VIII, Section 1, Florida Constitution of 1968 and Chapters 125, Florida Statutes; and

WHEREAS, Chapter 67-1146, Laws of Florida, as amended by Chapter 70-594, Laws of Florida, 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, pursuant to the authority of Section 403.706, Florida Statutes, Brevard County has the responsibility and power to provide for the operation of solid waste management facilities to meet the needs of all unincorporated and incorporated areas of the county; and

WHEREAS, Section 252.38(3), Florida Statutes, provides authority for Brevard County 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, Chapter 94 Solid Waste, Code of Ordinances of Brevard County, Florida, prescribes the manner in which solid waste shall be collected in the unincorporated areas of Brevard County and 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

Officially filed with the Secretary of State September 7, 2017.

WHEREAS, pursuant to Chapter 94, Brevard County operates a mandatory solid waste collection and disposal program for all improved residential property, funded by special assessments and which includes disaster debris removal service; and

WHEREAS, the Brevard County Board of County Commissioners 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.

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

SECTION 1. Section 94-331. Definitions. Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

Sec. 94-331. Definitions.

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

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

Disaster-generated debris or Debris shall include, but is not limited to, ~~disaster-generated displaced~~, 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:

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

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.

Hazardous tree means a tree greater than six (6) inches in diameter (measured at diameter breast height) and which meets any of the following criteria:

- (a) More than fifty (50) per cent of the crown is damaged or destroyed;
- (b) The trunk is split or broken branches expose the heartwood; or
- (c) The tree is leaning at an angle greater than thirty (30) degrees and shows evidence of ground disturbance.

Hazardous limb means a broken tree limb greater than two (2) inches in diameter measured at the point of break.

Private road property means any all property that is road or street, including streets in gated communities, that is not owned or controlled by a governmental entity, including private communities as well as the private streets, roads, and roadways contained therein that has ve not been dedicated to public use or has ve not been accepted for maintenance by the county eity or other governmental entity, including streets in gated communities. 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 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.

SECTION 2. Sec. 94-332. Removal of debris. Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

Sec. 94-332. Removal of debris; authority, priorities and limitations.

(1) 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, pursuant to the CEMP, the chair of the policy group, 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:

(a) 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.

(b) 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.

(c) The clearing is necessary to effectuate orderly and expeditious restoration of utility services including, but not limited to, power, water, sewer, and telephone.

(d) The debris is determined to require removal to eliminate immediate threats of significant damage to improved public or private property.

(e) The debris prevents garbage collection creating a public health hazard.

(f) The debris contains contaminants that have a reasonable likelihood of leaching into the soil or groundwater.

(g) The debris has a substantial negative impact in preventing or adversely affecting emergency repairs to buildings or property.

(h) 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.

(i) If left over time, the debris poses a significant likelihood of producing mold that would be injurious to public health.

(j) The presence of the debris significantly adversely impacts the county's recovery efforts.

(k) The debris significantly interferes with drainage or water runoff, creating a significant hazard in the event of significant rainfall.

(l) 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.

(m) The type, extent and nature of the debris are such that it would cause much greater damage if the debris was not removed immediately.

(n) The clearing of the debris is necessary to ensure the economic recovery of the affected community to the benefit of the community at large.

(2) Priority of removal.

(a) 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.

(b) The removal of disaster-generated debris in accordance with the priorities set forth in subsection (2)(a) 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 (d). 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 predisaster service collection requirements whether they be self-provided, provided through a private contractor, or provided through regular waste disposal services.

(c) Upon the resumption of predisaster 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 predisaster collection service standards and is found to be not in compliance with this article or with any other county regulation.

(d) 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:

- i. The damage to the hazardous tree or hazardous limb was the result of the disaster; and
- ii. 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.

(3) Removal from private roads.

(a) 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.

(b) 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:

- i. The DMP has been implemented in accordance with article;
- ii. A determination has been made pursuant to subsection (1) 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
- iii. 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.

(c) 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.

(4) Responsibility of private property owners.

(a) 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:

- i. 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.
- ii. The disaster-generated debris shall be separated into stacks or piles of the following types of debris:
 - A. Putrescent debris and mixed common household items.
 - B. Vegetative debris.
 - C. Construction and demolition debris.
 - D. White goods.
 - E. Hazardous household waste and electronic waste.
- iii. The disaster-generated debris shall be placed so that it does not block the roadway, traffic signs and signals, or stormwater structures.
- iv. 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 (3) feet of any power poles, fire hydrants, vehicles, mailboxes, or fences.

(b) 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.

(c) 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 twenty-four (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.

SECTION 3. NOTICE WAIVED. At least four/fifths (4/5ths) of the membership of the Board of County Commissioners of Brevard County, Florida, hereby declares that an emergency exists and that the immediate enactment of this ordinance is necessary to meet such emergency, and in accordance with Section 125.66(3) Florida Statutes, waives all notice requirements.

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, state or county law, rule code or regulation, the more restrictive shall apply.

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 EMBRACED. This ordinance shall take effect in the unincorporated area of Brevard County, Florida and in any municipality which is described in Sec. 62-817 of the Code of Ordinances of Brevard County, Florida, unless such municipality has adopted or in the future adopts an ordinance with conflicting provisions, thereby opting out of the provisions of this ordinance.

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 THE CODE OF ORDINANCES. 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 changes that have no effect on any substantive provision in the ordinance.

DONE, ORDERED AND ADOPTED, in regular session, this 7th day of September, 2017.

**BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA**

By: 
Rita Pritchett, Vice Chairman
(As approved by the Board on Sept. 7, 2017)

ATTEST:


CLERK OF COURT, SCOTT ELLIS

Reviewed for legal for and content by:


Christine Valliere, Assistant County Attorney



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

September 13, 2017

Honorable Scott Ellis
Clerk
Board of County Commissioners
Brevard County
Post Office Box 999
Titusville, Florida 32781-0999

Attention: Ms. Christine Mulligan-Willey

Dear Mr. Ellis:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 2017-20E, which was filed in this office on September 7, 2017.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb

Donna Scott

From: Christine Mulligan-Willey
Sent: Wednesday, September 13, 2017 10:42 AM
To: Donna Scott
Subject: FW: Brevard20170907_Ordinance2017_20E_Ack.pdf
Attachments: Brevard20170907_Ordinance2017_20E_Ack.pdf

From: Bryant, Linda C. [Linda.Bryant@DOS.MyFlorida.com]
Sent: Wednesday, September 13, 2017 8:26 AM
To: Christine Mulligan-Willey
Cc: County Ordinances
Subject: Brevard20170907_Ordinance2017_20E_Ack.pdf

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