



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## New Business - Add-On

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J.4.

10/25/2022

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### Subject:

RESOLUTION: A resolution declaring that it is in the public interest to have hurricane debris removed from public and private road right of ways in Brevard County, authorizing the Solid Waste Management Director to request that FEMA approve the removal of debris from these areas.

### Fiscal Impact:

\$569,604.00 (preliminary estimate of costs, anticipated to be reimbursed)

### Dept/Office:

Solid Waste Management Department

### Requested Action:

It is requested that the Board of County Commissioners execute the attached Resolution declaring it in the public interest to remove debris from certain public and private right of ways in Brevard County, and authorize the Solid Waste Management Director to request the Federal Emergency Management Agency (FEMA) approve said removal, therefore, making it eligible for federal reimbursement for cleanup costs.

In addition, in order to be eligible for reimbursement for costs the County is required to indemnify and holding harmless the Federal Government from claims arising from debris removal, and certify that the County shall satisfy all legal process and receive all legal permissions to carry out these actions.

### Summary Explanation and Background:

FEMA provides reimbursement to local governments who conduct eligible debris removal operations following a major disaster or emergency declared by the President. For most declared incidents, a local applicant would be responsible for 12.5% of debris removal costs.

As a general rule, FEMA will not provide reimbursement for the removal of debris from private property, including commercial property as well as private roads located within gated communities. However, if debris on private property is so widespread that it threatens public health and safety or the economic recovery of the community, then FEMA may provide reimbursement for this type of debris removal if certain conditions are met.

Specifically, in order to receive reimbursement for debris removal on private property, a local government must submit a written request to FEMA and must receive approval from FEMA. Any removal conducted prior to receiving approval from FEMA may be ineligible for reimbursement. The County must submit the request through the State Coordinating Officer to the Federal Coordinating Officer (FEMA) and in order for the State to recommend approval of the request the request must meet a number of specific requirements and include the required documentation including (1) a local public interest determination as presented in the subject

resolution; (2) documentation supporting the County's legal authority to remove debris from private road right of ways through an ordinance, (3) indemnification of federal government and its employees against any claims arising from the removal of debris, (4) assurance that there will be not duplication of benefits, and (5) identification of the specific properties or areas of properties for which the County is requesting approval. The attached Resolution addresses issue of the declaration of public interest and indemnification, the Emergency Ordinance and the required letter requesting FEMA reimbursement will address all the other eligibility conditions.

Name of Contact: Thomas Mulligan, Department Director  
Phone: 321-633-2042, x59182

**Clerk to the Board Instructions:**

Please sign and attest three (3) copies of the attached Resolution and return two (2) originals to the Solid Waste Management Department.



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

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Kimberly.Powell@brevardclerk.us

October 26, 2022

**M E M O R A N D U M**

**TO:** Tom Mulligan, Solid Waste Management Director

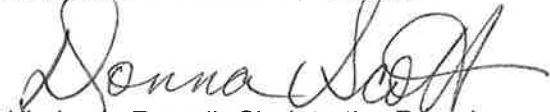
**RE:** Item J.4., Resolution Declaring that it is in the Public Interest to have Hurricane Debris Removed from Public and Private Road Right-of-Ways in Brevard County, Authorizing the Solid Waste Management Director to Request that the Federal Emergency Management Agency (FEMA) Approve the Removal of Debris from these Areas

The Board of County Commissioners, in regular session on October 25, 2022, adopted Resolution 22-147, declaring it in the public interest to remove debris from certain public and private right-of-ways in Brevard County; and authorized you to request FEMA approve said removal, therefore, making it eligible for Federal reimbursement for cleanup costs. Enclosed are two fully-executed Resolutions.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

  
Kimberly Powell, Clerk to the Board

/sm

Encls.(2)

cc: County Attorney  
County Manager  
Finance  
Budget

## **RESOLUTION 22- 147**

WHEREAS, the Board of County Commissioners has enacted Chapter 94, Article VII of the Brevard County Code of Ordinances declaring the collection and removal of disaster debris from all properties, whether public lands, public or private roads, or within gated communities in the interest of elimination of threat to life, public health, and safety of the residents of Brevard County and authorizing right of entry into private communities as well as private streets, roads, and roadways for storm-generated debris removal, also allowing extension of debris removal services to incorporated areas of Brevard County through interlocal agreements; and

WHEREAS, the Governor of the State of Florida issued Executive Order Number 22-218 on September 23, 2022, amended by Executive Order 2022-219, declaring a State of Emergency in numerous counties in the State of Florida, including Brevard; and

WHEREAS, on September 28, 2022, the Brevard County Board of County Commissioners declared a State of Local Emergency for all territory within the legal boundaries of Brevard County, including all unincorporated and incorporated areas through Emergency Proclamation Hurricane Ian 2022 #1 as authorized by Florida Law; and

WHEREAS, on September 28th and 29th, 2022, Brevard County encountered tropical storm conditions from Hurricane Ian and a threat continues to exist to the lives and property of the people of Brevard County due to damage caused by Hurricane Ian including excessive debris on public right of ways and private roads; and

WHEREAS, Hurricane Ian caused extensive damage to the unincorporated area and within all cities and municipalities contained within the geographic area of Brevard County; and

WHEREAS, on October 5, 2022, October 12, 2022 and October 19, 2022, the County Manager, as authorized by the Board of County Commissioners, executed extensions of the State of Local Emergency in order for the County to continue to provide such emergency measures including, but not limited to, providing for the health and safety of persons and property; and

WHEREAS, the Board of County Commissioners declares the large amounts of disaster-related debris located on public right-of-ways and certain private road right of ways poses an immediate threat to life, public health and safety, welfare of the community and that it is in the public interest for the County to remove such debris, including within gated communities in unincorporated and incorporated Brevard County without delay; and

NOW, THEREFORE, IT IS RESOLVED THIS 25<sup>th</sup> day of October, 2022, that the Board of County Commissioners of Brevard County, pursuant to its authority under State and Local law including Chapter 94, Article VII of the Brevard County Code of Ordinances, determines and finds disaster generated debris in unincorporated and incorporated Brevard County meet the criteria of Section 94.332 (a)(3), (a)(4), (a)(8), (a)(9), (a)(12), (a)(13), and (a)(15) and pose an immediate

threat to the life, public health and safety, welfare, and economic recovery of the community and that it is in the public interest to have such debris removed from certain private road right of ways in order to eliminate immediate threats to life, public health and safety, welfare, significant damage to improved property, and ensure the economic recovery of the affected community to benefit the community-at-large and that the highest priority shall be initially given to immediate threats to life, public health, and safety.

The Board of County Commissioners further finds that the disaster generated debris is so widespread that the removal is in the public interest and not merely benefiting an individual or a limited group of individuals within the community.


BE IT FURTHER RESOLVED that the Board of County Commissioners of Brevard County does hereby:

1. Request the Federal Emergency Management Agency (FEMA) to approve the removal of debris from certain private road right of ways within unincorporated and incorporated Brevard County, pursuant to the terms and conditions of the Stafford Act, 42 U.S.C. 5121 et seq., FEMA Regulations as published at 44 CFR 206.222 - 206.224, and the Public Assistance Program and Policy Guide FP 104-009-2.
2. Recognize and respect all laws and regulations regarding historic preservation and environmental protection.
3. Acknowledge that no reconstruction debris, vehicles, vessels, or other non-related storm debris will be removed under this request.
4. Agree that it shall indemnify and hold harmless the Federal Government and its respective employees, agents, contractors, and subcontractors from any claims arising from debris removal.
5. Acknowledge that, in accordance with section 305 of the Stafford Act (42 U.S.C. § 5148), the Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Act.

RESOLVED AND ADOPTED this 25<sup>th</sup> day of October, 2022.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF BREVARD  
COUNTY, FLORIDA



Rachell M. Sadoff, Clerk



Kristine Zonka  
Chair, Brevard County Commission