

EMERGENCY ORD. NO. 24-_____

AN EMERGENCY ORDINANCE OF MARION COUNTY, FLORIDA, PROVIDING FOR A DECLARATION OF EMERGENCY; PROVIDING REGULATIONS FOR THE REMOVAL OF STORM DEBRIS FROM PUBLIC AND PRIVATE PROPERTY AND ROADWAYS IN THE AFTERMATH OF HURRICANE MILTON IN OCTOBER, 2024; PROVIDING FOR PRECEDENCE OVER CONFLICTING ORDINANCES; PROVIDING FOR IMPLEMENTING RESOLUTIONS AND COUNTY ADMINISTRATOR DIRECTIVES; PROVIDING FOR DURATION AND AUTOMATIC REPEAL, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, this Ordinance is adopted pursuant to the authority of Sec. 125.66(3), Florida Statutes related to the adoption of emergency ordinances; and

WHEREAS, although it is recognized that debris removal from private roads and/or other private property following a major disaster is the responsibility of the private property owner, large-scale disasters resulting in enormous quantities of debris on private streets and/or other private property may present a significant and immediate threat to life, public health and public safety of individual citizens and/or the County at-large, or other vital concerns of public interest; and

WHEREAS, the Board of County Commissioners of Marion County, Florida has determined that after a major disaster, under certain circumstances, concern to eliminate imminent threats to the health, safety and welfare of County residents justifies the County in taking the initiative for removal of disaster-generated debris from designated private roads and/or other private property; and

WHEREAS, Hurricane Milton in October 2024 has left thousands of cubic yards of storm debris throughout Marion County, which storm debris presents an imminent public health, safety and welfare threat to the residents of Marion County; and

WHEREAS, the Board of County Commissioners has previously authorized a State of Local Emergency related to Hurricane Milton by Resolution No. 24-R-459; and

WHEREAS, the Board finds that there exists an emergency need for the adoption of this ordinance in order to expedite the removal of storm debris that presents an immediate health and safety hazard to the residents of Marion County; and

WHEREAS, this emergency ordinance has been approved, and the normal notice requirements have been waived, by a minimum four-fifths vote of the membership of the Board of County Commissioners.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MARION COUNTY, FLORIDA:

SECTION 1. EMERGENCY REMOVAL OF DEBRIS

A. Based upon the previous declaration of a State of Local Emergency in Marion County, the County and its authorized contractors have the authority to enter onto, and may remove debris from private roads or property when the County Administrator or his designee determines the debris poses an immediate threat to life, public health, safety, or welfare of the community. The Board finds that the provisions of this ordinance satisfy a paramount public purpose. The County Administrator's or his designee's determination must be based on one or more of the following findings:

1. The debris significantly:
 - a. Hinders rescue vehicles from rendering emergency services;
 - b. Presents a danger of being transported by wind or water into the surrounding areas, increasing the cost of recovery and removal;
 - c. Prevents garbage collection service; or
 - d. Adversely impacts disaster recovery efforts.
2. The removal of debris by the County is necessary to:
 - a. Effectuate the orderly and expeditious restoration of county-wide utility services, including, but not limited to, power, water, sewer, and telephone services;
 - b. Effectuate an orderly and efficient manner of removal because of its volume;
 - c. Prevent the infestation of rodents and disease-carrying animals;
 - d. Prevent interference with drainage or water runoff in the event of rainfall;
 - e. Prevent disease, illness, or sickness to those residing or working in the area;
 - f. Prevent contaminants from leeching into the soil or groundwater;
 - g. Prevent substantial negative or adverse effects on emergency repairs to property;
 - h. Prevent fire hazards;
 - i. Eliminate obstructions that block access to private residential and commercial properties;
 - j. Ensure the economic recovery of the affected community; or
 - k. Eliminate immediate threats of significant damage to improved property.

B. Based on the Declaration of Local Emergency, the County Administrator may:

1. Accept funds from the federal government or the state of Florida for the purpose of removing debris from publicly or privately-owned land or water.
 2. Authorize the federal government to remove such debris and, in the case of removal of debris from private property, agree to indemnify the federal government against any claim arising from such removal.
- C. Whenever the County Administrator provides for removal of debris pursuant to this ordinance, employees of the County or individuals contracted by the County Administrator are authorized to enter upon private land or waters as provided in Paragraph H below and perform tasks necessary to the removal, to the extent required to eliminate the immediate hazard to public health and safety.
- D. Except in cases of willful misconduct or gross negligence, any employee or contracted individual authorized by the County Administrator to perform duties necessary for the removal of debris pursuant to this ordinance shall not be liable for death or injury to the persons or damage to property.
- E. The County 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, in carrying out the provisions of this ordinance.
- F. As part of any request for federal funding for debris removal from private property in accordance with this ordinance, the County shall indemnify and hold harmless, to the extent lawfully allowed, 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 ordinance shall be construed as a waiver of the County's sovereign immunity beyond allowed by general state law and the Florida Constitution.
- G. This Ordinance does not provide any legal responsibility, and shall not be construed to require any actions by the County, to remove or otherwise address Disaster-Generated Debris from Private Roads and/or other Private Property where there has not been a determination by the County Commission or County Administrator that such debris removal is necessary within or for a designated area of the County because of a determination as provided in Section 1(a). In the absence of such a determination, the legal responsibility for debris removal shall remain with the Private Property owner.
- H. Notwithstanding any other provision of this Ordinance, the County shall not have responsibility for the removal of Disaster-Generated Debris on any Private Road and/or other Private Property unless and until the County has obtained the legal right to enter upon such Private Roads and/or other Private Property to remove Disaster-Generated Debris. Such authority and right to enter upon Private Property may be by a right of entry from holding harmless and indemnifying employees and subcontractors executed by the Private Property owner or other authorized party, or a determination by the County that sufficient authority exists under federal, state, county or municipal laws to enter upon Private Property for the purposes set forth in this Ordinance.

SECTION 2. NO THIRD-PARTY BENEFICIARIES. This Ordinance is intended to serve the interests of the general public and no individual private owner or group of private owners of Private Roads or Private Property are intended to be, or shall be construed to be, third-party beneficiaries under the terms of this Ordinance.

SECTION 3. AUTHORIZATION FOR IMPLEMENTING RESOLUTIONS AND COUNTY ADMINISTRATOR DIRECTIVES. Based on the emergency need for quick action in the execution of the intent of this ordinance, the Board authorizes that the intent of this ordinance may be further implemented by Board Resolution and County Administrator Directives consistent with this Ordinance, which directives shall be placed on the Board record at the next following Board meeting.

SECTION 4. CONFLICT AND SEVERABILITY. The provisions of this ordinance are deemed to be severable, and a determination that any provision of this ordinance is invalid, by a court of competent jurisdiction, shall not invalidate any other provisions of this ordinance.

SECTION 5. DURATION AND AUTOMATIC REPEAL. This emergency ordinance shall be in effect for 180 days from the date of adoption, and shall stand repealed on April 15, 2025.

SECTION 6. EFFECTIVE DATE. This ordinance shall be transmitted by the Clerk to the Secretary of State by email, and shall become effect upon receipt of confirmation by email that it has been filed with the Office of the Secretary of State of the State of Florida.

DULY ADOPTED this 15th day of October, 2024.

BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, FLORIDA

MICHELLE STONE, CHAIR

ATTEST:

GREGORY C. HARRELL, CLERK



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

DEBRIS REMOVAL FROM PRIVATE PROPERTY

Pursuant to the Federal Emergency Management Agency's (FEMA) Consolidated Public Assistance Debris Removal Guidance Memorandum, there are policy changes to the Private Property Debris Removal (PPDR) eligibility determination process.

Debris removal from private property (PPDR) is the responsibility of the property owner and is usually ineligible under the PA Program.

In limited circumstances, based on the severity of the impact of an incident and whether debris on private property is so widespread that it threatens public health and safety or the economic recovery of the community, FEMA may determine that debris removal from private property is eligible under the PA Program.

In such cases, FEMA works with the State, Local, Tribal, and Territorial (SLTT) governments to designate specific areas where debris removal from private property, including private waterways, is eligible. The debris removal must be in the public interest, not merely benefiting an individual or a limited group of individuals.

PPDR ELIGIBILITY DETERMINATION PROCESS: Applicants are **not required** to obtain pre-approval from FEMA before beginning Private Property Debris Removal (PPDR) on privately-owned roads, privately-owned non-commercial, or commercial property. However, **applicants are encouraged** to request preliminary approval where circumstances allow. Regardless, the applicant must notify FEMA that PPDR is being conducted and identify the type of property on which the PPDR is being conducted so FEMA can ensure notifications are made to the necessary components.

DEBRIS REMOVAL FROM PRIVATE RESIDENTIAL PROPERTY

Debris removal from residential property is usually not in the public interest because the debris does not typically present an immediate health and safety threat to the general public.

If the incident generates debris quantities and/or types of debris on residential property that is so widespread or of such magnitude that it creates an immediate threat to public health and safety, debris removal may be in the public interest. To determine if removal of debris from private residential property is in the public interest, FEMA will consider:

- Whether the debris is located in open areas accessible to the public (e.g., in a yard with no fence barrier next to a public sidewalk), located in maintained areas, or creating a health and safety hazard (such as a rodent infestation):



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- Volume of debris;
- Height of debris;
- Number of houses and blocks with large volumes of debris; and
- Amount of the public population affected.

Although the approval from FEMA is not required, Applicants should consider obtaining approval from FEMA prior to starting work.

PRIVATE PROPERTY DEBRIS REMOVAL APPROVAL PROCESS

The Applicant must submit a notice of intent to FEMA identifying the specific properties or areas of properties where private property debris removal activities will occur. The Applicant does not need to wait for FEMA approval to start work. However, for the Applicant to receive PA funding, FEMA must determine that the PPDR work at each property is eligible.

FEMA only provides PA funding for PPDR if the Applicant demonstrates all of the following with sufficient documentation.

FEMA accepts a written statement from an authorized Applicant official that:

- Certifies the Applicant has legal authority and responsibility to remove debris from private property;
- Cites all applicable sources of authority (law, ordinance, code, contract, etc.); and
- Indemnifies the United States for any claim arising from the debris removal.

The Applicant must demonstrate that the PPDR was in the public interest. This includes:

- The basis for the determination that removing the debris from the private property locations requested was in the public interest. The determination must be made by the State, Territorial, Tribal, county, or municipal government's public health authority or other public entity that has legal authority to make a determination that disaster-generated debris on private property constitutes an immediate threat to life, public health, or safety, or to the economic recovery of the community at large.
- The established, specific legal requirements for declaring the existence of a threat to public health and safety.



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FEMA evaluates the submission to determine if it concurs that PPDR is in the public interest and provides a written response specifying any properties or area of properties for which it approves funding for debris removal.

More information on Private Property Debris Removal (PPDR) can be found in the FEMA Consolidated Public Assistance Debris Removal Guidance Memo (October 10, 2024), Memo attachment, and Public Assistance Program and Policy Guide v4 (Page 108) Chapter 7, I.G.1.

If you have any questions or concerns, please contact Recoverydebris@em.myflorida.com