ORDINANCE NO. 10-____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING CHAPTER 2, ARTICLE VIII, DIVISION 1 OF THE CODE OF LAWS OF LEON COUNTY, FLORIDA, KNOWN AS THE EMERGENCY MANAGEMENT ORDINANCE OF LEON COUNTY, FLORIDA, BY AMENDING SECTION 2-304, INTENT OF ARTICLE, TO ADD THE ESTABLISHMENT OF A DEBRIS MANAGEMENT PROGRAM; BY AMENDING SECTION 2-305, DEFINITIONS, TO ADD DEFINITIONS APPLICABLE TO DISASTER-GENERATED DEBRIS REMOVAL FROM PUBLIC AND PRIVATE ROADS; BY AMENDING SECTION 2-309, ACTIVATION OF DISASTER EMERGENCY ACTIVITIES, TO ADD DISASTER-GENERATED DEBRIS REMOVAL FROM PUBLIC AND PRIVATE ROADS AS AN ADDITIONAL ACTIVITY; BY ENACTING AND ADDING NEW SECTIONS TO DIVISION 1 PROVIDING THE AUTHORITY AND IMPLEMENTATION FOR THE REMOVAL OF DISASTER-GENERATED DEBRIS FROM PUBLIC AND PRIVATE ROADS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the Leon County Board of County Commissioners (the "Board"), in enacting this ordinance, to take a proactive approach to coordinating and managing debris removal operations as part of its overall emergency management plan, recognizing that communities with a disaster-generated debris removal management plan are better prepared to restore public services and ensure the public health and safety in the aftermath of a disaster; and

WHEREAS, even though debris removal from private roads following a disaster is generally the responsibility of the individual adjoining private property owners, a major or catastrophic disaster event may result in enormous quantities of debris from private property being placed on private roads for removal, resulting in widespread immediate threats to the life, public health, and safety of the community-at-large; and

WHEREAS, in such widespread major or catastrophic disasters, a local government may need to enter private roads to remove debris in order to eliminate immediate threats to life, public health, and safety and to ensure economic recovery of the affected community to the benefit of the community-at-large; and

WHEREAS, with the accumulation of disaster-generated debris on public right-of-way and, as residents begin clearing disaster-generated debris from their properties and placing it on the public right-of-way or on private roads, a local government must be prepared with a proactive plan to remove such debris in order to eliminate an immediate threat to life, public health, and safety and as a means to recovery for the community; and

WHEREAS, the Board's purpose in enacting this ordinance is to promote and protect the public health, safety, and welfare of all individuals who live in and visit Leon County by establishing such a proactive plan; and

WHEREAS, the Board desires to enact an ordinance amending Chapter 2, Article VIII, Division 1 of the Leon County Code of Laws, known as the Emergency Management Ordinance of Leon County, Florida, to authorize and implement a disaster-generated debris removal management plan.

BE IT ORDAINED by the Board of County Commissioners of the County of Leon, Florida, as follows, that:

Section 1. The Code of Laws of Leon County, Florida, is hereby amended at Chapter 2, Article VIII, Division 1, by amending Section 2-304, Intent of article, to add a new subsection (4) to read as follows:

Sec. 2-304. Intent of article.

The intent of the Board of County Commissioners of Leon County, Florida, in adopting this article is to:

* * *

(4) Take a proactive approach to coordinating and managing debris removal operations as part of its overall emergency management plan, recognizing that communities with a debris management plan are better prepared to restore public services and ensure the public 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 (FEMA) and from other participating entities.

Section 2. The Code of Laws of Leon County, Florida, is hereby amended at Chapter 2, Article VIII, Division 1, by amending Section 2-305, Definitions, to insert in alphabetical order into the current definitions the following new definitions:

Sec. 2-305. Definitions.

As used in this article the following words and terms shall have the meanings respectively ascribed.

* * *

County work forces means officers, employees, and agents of the County including, but not limited to, contractors retained by the County to push, remove, store, or dispose of disaster-generated debris or to otherwise act in response to the implementation of the County's disaster-generated debris removal management plan.

Disaster-generated debris or *debris* means any material, including trees, branches, personal property, and building material deposited on County-owned property or rights-of-way or on private roads as a direct result of a major disaster or a catastrophic disaster.

a. The term includes, but is not limited to:

1. *Vegetative debris*. Debris consisting of whole trees, tree stumps, tree branches, tree trunks, and other leafy material.

2. *Hazardous limbs and hazardous trees*. Limbs or trees damaged in a major disaster or a catastrophic disaster and in danger of falling on primary ingress or egress routes or on County rights-of-way.

3. *Construction and Demolition Debris*. Debris created by the removal of disaster-damaged interior and exterior materials from improved property such as lumber and wood, gypsum wallboard, glass, metal, roofing material, tile, carpeting and floor coverings, pipe, concrete, fully cured asphalt, equipment, furnishings, and fixtures.

4. *HHW and e-waste*. Household hazardous waste (HHW) such as household cleaning supplies, insecticides, herbicides, and other products or materials containing volatile chemicals that catch fire, react, or explode under certain circumstances, or that are corrosive or toxic, and electronic waste (e-waste) such as computer monitors, televisions, and other such electronics that contain .hazardous materials.

5. *White goods*. Discarded household appliances such as refrigerators, freezers, air conditioners, heat pumps, ovens, ranges, washing machines, clothes dryers, and water heaters.

6. *Putrescent debris*. Debris that will decompose or rot such as animal carcasses and other fleshy organic matter.

b. 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.

4. Construction and demolition debris consisting of materials used in the reconstruction of disaster-damaged improved property.

Disaster-generated debris removal management plan means the action by the County taken in accordance with Section 2-314 herein.

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

a. more than 50% 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 30 degrees and shows evidence of ground disturbance.

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

Private road means any non-public road that is located within the unincorporated area of Leon County and has a designated name and private-road signage, the maintenance of which is not the legal responsibility of the County. The term includes, but is not limited to, roads owned and maintained by homeowners' associations, including gated communities, and roads for which no individual or entity has claimed or exercised maintenance responsibility. 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 3. The Code of Laws of Leon County, Florida, is hereby amended at Chapter 2, Article VIII, Division 1, by amending Section 2-309 to add a new subsection (12) to read as follows:

Sec. 2-309. Activation of disaster emergency activities.

A proclamation declaring a state of emergency shall be the authority for taking emergency measures including, but not limited to, the use or distribution of any supplies, equipment, materials, facilities assembled or arranged to be made available pursuant to the disaster emergency plans of Leon County. Such disaster emergency measures may include the following actions at the discretion of the board:

* * *

(12) Allow the County Administrator, subject to the limitations of Section 2-314 below, to determine after a major disaster or catastrophic disaster if the removal of disaster-generated debris accumulated within the County is necessary in order to remove or reduce threats to life, public health, and safety. Upon making such determination, the

County Administrator shall inform the Chairman and shall immediately implement the disaster-generated debris removal management plan set forth in Section 2-314 below.

Section 4. The Code of Laws of Leon County, Florida, is hereby amended at Chapter 2, Article VIII, Division 1, by adding a new Section 2-314, Removal of disaster-generated debris; authority, priorities, and limitations, to read as follows:

Sec. 2-314. Disaster-generated debris removal management plan; authority, priorities and limitations.

(a) The County Administrator, or designee, shall have the authority, subject to the limitations of this Section, to remove disaster-generated debris located within Leon County on County-owned property, County-owned roads, and private roads after the declaration of any state of emergency pursuant to this Article. The removal of such disaster-generated debris is authorized only after a major disaster or a catastrophic disaster and upon the determination by the County Administrator, or designee, that such removal is reasonably necessary to (i) eliminate immediate threats to life, public health, and safety; (ii) eliminate immediate threats of significant damage to County property or facilities; or (iii) ensure economic recovery of the affected community to the benefit of the community-at-large.

(1) An immediate threat to life, public health, and safety shall be deemed to exist if any one of the following conditions is satisfied:

a. There is a significant likelihood that rescue vehicles will be significantly hindered from rendering emergency services if the disaster-generated debris is allowed to remain in place;

b. The type of disaster-generated debris is such that it may reasonably cause disease, illness, or sickness which 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 removal of the disaster-generated debris is necessary to effectuate orderly and expeditious restoration of County-wide utility services including, but not limited to, power, water, sewer, and telephone;

d. The disaster-generated debris is determined by the Leon County Building Official or Public Health Official to be dangerous or hazardous;

e. The disaster-generated debris prevents garbage collection, thereby creating a public health and safety hazard;

f. The disaster-generated debris contains contaminants which have a reasonable likelihood of leeching into the soil and/or aquifer of the County;

g. The disaster-generated debris has a substantial negative impact upon public health and safety by preventing or adversely affecting emergency repairs to buildings and/or property;

h. The disaster-generated debris presents a reasonable danger of being transported by wind and/or water to neighboring properties, thereby increasing the cost of recovery and removal;

i. The disaster-generated debris is significantly likely to produce mold or may otherwise cause disease, illness, or sickness which could injure or adversely affect the health, safety, or general welfare of the public;

j. The presence of the disaster-generated debris significantly adversely impacts the County's recovery efforts;

k. The disaster-generated debris significantly interferes with drainage or water runoff, so as to be a significant hazard in the event of significant rainfall;

l. The sheer volume of the disaster-generated debris is such that it is impractical and unreasonable to remove in an orderly and efficient manner absent action by the County; or

m. The type, extent and nature of the disaster-generated debris is such that it would cause much greater damage if not removed immediately.

(2) An immediate threat of significant damage to County property or facilities shall be deemed to exist if the cost to remove the disaster-generated debris is less than the cost of potential damage to the County property or facility, thereby being a cost effective removal.

(b) *Removal from County-owned Property and County Rights-of-Way.*

(1) In removing disaster-generated debris from County-owned property and County rights-of-way, 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 the priority expressed 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, adjoining County rights-of-way may place disaster-generated debris in the County right-of-way in accordance with requirements set forth in Subsection (d) of this Article entitled, "Responsibility of private property owners." 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 in compliance with pre-disaster 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 is found to be not in compliance with this Article or with any other County regulation. Upon such finding, the alleged violation will be referred to and enforced by Leon County Department of Growth and Environmental Management. The Leon County Code of Laws, Section 14-31 Junk Prohibitions, requires that no owner or occupant shall cause or permit junk to remain in or upon any yard, garden, lawn, open outbuilding, or open area of any private property in the County for a period in excess of 15 days, other than in an enclosed litter receptacle.

(4) *Removal of hazardous trees or hazardous limbs.* 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.

b. The hazardous tree or hazardous limb is in danger of falling on (i) a structure or other improvement; (ii) a primary ingress or egress route; or (iii) 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 disaster-generated debris removal management plan shall be as provided in Section 252.36(d), Florida Statutes (2009), or as may be thereafter amended, 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 disaster-generated debris removal management plan has been implemented in accordance with this Section.

b. A determination has been made by a designated member of the County work forces 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.

c. Any disaster-generated debris removed from a private property has been placed in the private road in accordance with the requirements of this Section, unless such requirements have been waived by the County Administrator, 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, as such, 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) With regard to the implementation of its disaster-generated debris removal management plan, the County shall, subject to the restrictions and requirements of Section 768.28, *Florida Statutes*, indemnify and hold the Federal Government, its agencies and employees, harmless from any claims arising from or based upon the exercise or performance of, or the failure to exercise or perform, a discretionary function or duty on the part of any Federal agency or any employee of the Federal Government in carrying out the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).

(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 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 as defined in this Article:

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.

Section 5. Conflicts.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, except to the extent of any conflicts with the Tallahassee-Leon County 2010 Comprehensive Plan as amended, which provisions shall prevail over any parts of this ordinance which are inconsistent, either in whole or in part, with the said Comprehensive Plan.

Section 6. Severability.

If any provisions or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full force and effect.

Section 7. Effective Date.

This ordinance shall have effect upon becoming law.

DONE, ADOPTED AND PASSED by the Board of County Commissioners of Leon County, Florida this _____ day of _____, 2010.

LEON COUNTY, FLORIDA

By:_____
Bob Rackleff, Chairman
Board of County Commissioners

ATTESTED BY:
BOB INZER, CLERK OF THE COURT
LEON COUNTY, FLORIDA

By:_____

1 Bob Inzer, Clerk of Court
2 Leon County, Florida
3
4
5 APPROVED AS TO FORM:
6 COUNTY ATTORNEY'S OFFICE
7 LEON COUNTY, FLORIDA
8
9
10 By:_____
11 Herbert W. A. Thiele, Esq.
12 County Attorney
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