

**ORDINANCE NO. 2019-01**

**AN EMERGENCY ORDINANCE OF THE CALHOUN COUNTY BOARD OF COUNTY COMMISSIONERS PROVIDING INTENT, DEFINITIONS, PROVISIONS FOR ACTIVATION, DISASTER DEBRIS MANAGEMENT PLAN, PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, this Ordinance is enacted under the emergency provisions of section 125.66(3), Florida Statutes and the Board of County Commissioners of Calhoun County, Florida hereby waive the notice requirements of subsection (2) of 125.66, Florida Statutes, by a four-fifths vote and declares an emergency exist and that the immediate enactment of this Ordinance is necessary; and

**WHEREAS**, the Calhoun County Board of County Commissioners intend to make this ordinance effective retroactively to October 8, 2018, the date Governor Scott declared a State of Emergency due to Hurricane Michael; and

**WHEREAS**, in accordance with *Metropolitan Dade County v. Chase Federal Housing Corporation, et al.*, 737 So.2d 494 (Fla 1999) that provides that a retroactive provision of a legislative act is valid, so long as vested rights are not adversely affected or destroyed or a new obligation or duty is created or imposed, or an additional disability is established in connection with transactions or considerations previously had or expiated, the Calhoun County Board of County Commissioner finds that this ordinance may be retroactive; and

**WHEREAS**, the County has authority to adopt this ordinance pursuant to Sec. 252.38, Florida Statutes, as may be amended; and

**WHEREAS**, under Section 252.38(3)(a), Florida Statutes, in the event of a declaration of state of local emergency, the political subdivision has the power and authority to waive procedures and formalities otherwise required of the political subdivision, pertaining to various things, including performance of public works and taking whatever prudent action is necessary to ensure the health, safety and welfare of the community, incurring obligations, and appropriation and expenditure of public funds; and

**WHEREAS**, it is the intent of the Calhoun County Board of County Commissioners, 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 counties 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 disaster; and

**WHEREAS**, even though debris removal from private roads and gated communities 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 and in waterways for removal, resulting in

widespread immediate threats to the life, public health, and safety of the County's citizens, and F.S. 252.38(3) gives the County broad powers to take actions to protect health and safety while under a declaration of local emergency; and

**WHEREAS**, the County has determined that private property debris removal is necessary to protect the public health and safety in a declared emergency when such debris poses a significant and immediate threat; and

**WHEREAS**, Florida Attorney General's opinions regarding use of public funds on private property for health and welfare of the community, as documented in AGO 98-22 and AGO 2002-48, indicate that the ability to remove debris from private property is firmly established by Florida law if the general public's welfare is at stake; and

**WHEREAS**, the removal of such debris is critical for emergency access by police and fire vehicles and to prevent additional hazards; and

**WHEREAS**, the Federal Emergency Management Agency's (FEMA) Public Assistance Program provides for reimbursement for removal of disaster-related debris from public rights-of-way and will determine eligibility for removal of debris from private roads and gated communities on a case by case basis; and

**WHEREAS**, in determining eligibility under the Public Assistance Program for private roadway and gated community debris removal, FEMA and the State must be able to reach the following conclusions in relation to the work in question:

1. Removal was the legal responsibility of an eligible applicant (County);
2. It was necessary in the public interest to eliminate an immediate threat to life, public health and safety; and
3. The Federal government was held harmless and indemnified for all claims or loss or damages resulting from the work; and

**WHEREAS**, the County needs to be able to act quickly to mitigate threats during and immediately after emergency situations; and

**WHEREAS**, the efficient and safe removal of disaster related debris will promote the economic recovery of the community and benefit the community-at-large;

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

**SECTION 1:**

The intent of the board of county commissioners in adopting this article is to:

Take a proactive approach to coordinating and managing debris removal operations as a 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 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: Definitions**

. The following definitions shall apply in the interpretation and enforcement of this article:

*County work forces* means officers, employees, and agents of the County including, but not limited to, contractor retained by the County or the State of Florida 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*, which means debris consisting of whole trees, tree stumps, tree branches, tree trunks, and other leafy material.
  - (2) *Hazardous limbs and hazardous trees*, which means 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*, which means 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*, which means household hazardous waste 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.
  - (5) *E-waste*, which means electronic waste such as computer monitors, televisions, and other such electronics that contain hazardous materials.

- (6) *White goods*, which means discarded household appliances such as refrigerators, freezers, air conditioners, heat pumps, ovens, ranges, washing machines, clothes dryers, and water heaters.
- (7) *Putrescent debris*, which means 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 and 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.

*Hazardous limb* means a broken tree limb greater than two inches in diameter measured 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 criterion:

- a. More than 50 percent 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.

*Private road* means any non-public road that is located within the unincorporated area of Calhoun 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: – 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 the county. Such disaster emergency measures may include the following actions at the discretion of the board:

Allow the Chairperson of the Board of County Commissioners or County Road Superintendent or Emergency Management Director, subject to the limitations 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, County Road Superintendent or Emergency Management Director shall inform the chairman and shall immediately implement the disaster-generated debris removal management plan set forth below.

**SECTION 4:** Disaster-generated debris removal management plan; authority, priorities and limitations.

(a) The Chairperson of the Board of County Commissioners, or County Road Superintendent or Emergency Management Director, or designee, shall have the authority, subject to the limitations of this section, to remove disaster-generated debris located within Calhoun 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 Road Superintendent or Emergency Management Director, or designee, that such removal is reasonable 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 Calhoun 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.

(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 F.S. (2009) § 252.36(5)(d), 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 F.S. § 768.28, 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: - Penalties.**

(a) Any person, firm or corporation who refuses to comply with or violates any section of this article, or the emergency measures which may be effective pursuant to this article, shall be punished according to law and upon conviction for such offense, shall be punished

by a fine not to exceed \$500.00 or imprisonment not to exceed 60 days in the county jail, or both. Each day of continued noncompliance or violation shall constitute a separate offense.

(b) Nothing contained herein shall prevent the county from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or other emergency measures which may be effective pursuant to this article. Such other lawful action shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

**SECTION 6: SEVERABILITY.** If any portion of this ordinance is for any reason held invalid or declared to be unconstitutional, inoperative or void, such holding shall not affect the remaining portions of this ordinance. If this ordinance or any provision thereof shall be held to be inapplicable to any person, property or circumstances, such holding shall not affect its applicability to any other person, property or circumstances.

**SECTION 7: CONFLICT WITH OTHER ORDINANCES.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

**SECTION 8: TRANSMITTAL AND EFFECTIVE DATE.** The Ordinance shall have retroactive application to October 7, 2018. This Ordinance is enacted under the emergency provisions of section 125.66(3), Florida Statutes. The Board of County Commissioners of Calhoun County, Florida hereby waives the notice requirements of subsection (2) by a four-fifths vote and declares an emergency exist and that the immediate enactment of this Ordinance is necessary. In accordance with F.S. 125.66(3), certified copies of the Ordinance shall be filed with the Department of State as soon after enactment as is practicable and shall be deemed to be filed when a copy has been accepted by postal authorities of the Government of the United States for special delivery by certified mail to the Department of State.

**PASSED AND ADOPTED** by the Board of County Commissioners of Calhoun County, Florida, at a special meeting of the Board held on the 25th day of February, 2019.

BOARD OF COUNTY COMMISSIONERS  
OF CALHOUN COUNTY, FLORIDA

BY Gene Bailey  
Hon. GENE BAILEY, Chairman

(SEAL)

ATTEST: CARLA HAND, CLERK

By Carla A Hand  
Deputy Clerk