

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: April 16, 2008

Division: Engineering

Bulk Item: Yes No

Department: Engineering

Staff Contact /Phone #: Dave Koppel X4427

AGENDA ITEM WORDING: Approval to advertise a public hearing for an ordinance authorizing county workers and/or contractors to go onto private property in the event of a declared emergency if it becomes necessary to remove obstructions, debris, etc. for the safety and welfare of the general public.

ITEM BACKGROUND: There is no language in statute or ordinance that specifies the County has the right to go onto private property in the event of a disaster to remove debris in order to protect the safety, health & welfare of the public; however, there is state legislation as interpreted by the Florida Attorney General which would allow it. Further, the County has an ordinance in place which gives general power to do whatever is necessary in the event of a state of emergency to protect the public. Adopting this ordinance would clarify the debris removal aspect of that authority, allowing staff to plan more efficiently and take immediate action in the event of a declared emergency requiring debris removal.

PREVIOUS RELEVANT BOCC ACTION: Ordinance No. 28-1987, §§ 1--3; Ordinance No. 30A-2001, § 1; Ordinance No. 1-1982, § 13

CONTRACT/AGREEMENT CHANGES: NA

STAFF RECOMMENDATIONS: Approval as stated above

TOTAL COST: 0 **BUDGETED:** Yes No

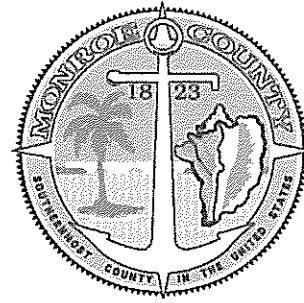
COST TO COUNTY: 0 **SOURCE OF FUNDS:** NA

REVENUE PRODUCING: Yes No **AMOUNT PER MONTH** _____ **Year** _____

APPROVED BY: County Atty _____ OMB/Purchasing _____ Risk Management _____

DOCUMENTATION: Included _____ Not Required

DISPOSITION: _____ **AGENDA ITEM #** _____



**Engineering Division
MEMORANDUM**

To: The Monroe County Board of County Commissioners

From: David S. Koppel, P.E.
Division Director, Engineering

Date: April 2, 2008

Re: Approval to Advertise Amendment to Section 2-15.1 of Monroe County Code

The Engineering Division is requesting approval to advertise the amendment to section 2-15.1 of Monroe County Code, providing authority for County staff and/or contractors to enter onto private land in the event of a declared emergency for removal of disaster-generated debris, in order to protect the safety, health, and welfare of the public.

Approval of this amendment clarifies debris removal authority, allowing County personnel to plan more efficiently and take action more quickly regarding disaster-generated debris on private roads (i.e. gated communities, trailer parks, etc.).

Staff supports the advertising and subsequent approval of this amendment.

ORDINANCE NO. -2008

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, AMENDING SECTION 2-15.1 OF MONROE COUNTY CODE, PROVIDING AUTHORITY FOR COUNTY STAFF AND/OR CONTRACTORS TO ENTER ONTO PRIVATE LAND IN THE EVENT OF A DECLARED EMERGENCY FOR REMOVAL OF DISASTER-GENERATED DEBRIS, IN ORDER TO PROTECT THE SAFETY, HEALTH, AND WELFARE OF THE PUBLIC; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES INCONSISTENT HEREWITH; PROVIDING FOR INCORPORATION INTO THE MONROE COUNTY CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statute 252.38 – Emergency management powers of political subdivisions states that “Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state;” and

WHEREAS, Florida Statute 252.38 (3a)(5a) states that “In carrying out the provisions of ss.252.31-252.90, each political subdivision shall have the power and authority...to waive the procedures and formalities otherwise required of the political subdivision by law pertaining to: a) Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;” and

WHEREAS, Florida Statute 252.52 specifies that “Sections 252.31-252.90 shall be construed liberally in order to effectuate their purposes;” and

WHEREAS, the Monroe County Code, Section 2-15.1, provides for the authority of the mayor, mayor pro tem, or sheriff to “declare a state of local emergency in Monroe County, Florida, after consultation with the emergency management director;” and

WHEREAS, the Monroe County Code, Section 6.5-13, further provides for the administrator to have temporary emergency powers “if a situation exists which poses a serious or imminent threat to the health, safety, or welfare and the public need and convenience”; and

WHEREAS, the aforementioned statute and County Code are comprehensive for the purpose of protecting the public health and safety; and

WHEREAS, Florida Attorney General’s opinions regarding use of public funds on private property for the 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, from time to time after a natural disaster it is necessary to remove debris and obstructions to get to the properties beyond the point of obstruction or to take other action to secure the public safety; now therefore,

BE IT ORDAINED BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS THAT:

Section 1. Section 2-15.1 of the Monroe County Code is hereby amended as follows:

2-15.1 (d) – In the event of a declared emergency, Monroe County is authorized by law to enter onto private land for removal of disaster-generated debris, in order to protect the safety, health, and welfare of the public; eliminate immediate threat of significant damage to improved public or private property; and/or to ensure economic recovery of the affected community to the benefit of the community-at-large.

Section 2. SEVERABILITY. Should any provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this Ordinance as whole, or any part thereof, other than the part declared to be invalid. 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 3. REPEAL OF CONFLICTING PROVISIONS. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of said conflict.

Section 4. INCLUSION IN THE CODE OF ORDINANCES. The provisions of this Ordinance shall be included and incorporated in the Code of Ordinances of the County of Monroe, Florida, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the code.

Section 5. EFFECTIVE DATE. This Ordinance shall take effect on _____, provided that this Ordinance shall be filed with the Department of State as provided in section 125.66(2), Florida Statutes.

PASSED AND ADOPTED at a regular meeting of the Board of County Commissioners of Monroe County, Florida, held on the ___th day of _____, 2008.

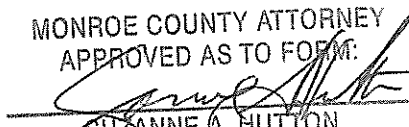
Mayor Charles "Sonny" McCoy _____
Mayor Pro Tem Mario DiGennaro _____
Commissioner George Neugent _____
Commissioner Dixie Spehar _____
Commissioner Sylvia Murphy _____

**BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA**

BY: _____
Mayor Charles "Sonny" McCoy

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

By: _____
DEPUTY CLERK

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

SUZANNE A. HUTTON
COUNTY ATTORNEY
Date 4/1/08