

Sponsored by: Burnett
Introduction Date: June 24, 2008
Public Hearing Dates: June 24 and July 8, 2008
Enactment date: July 8, 2008

**CITY OF MARATHON, FLORIDA
ORDINANCE 2008-14**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 26, CITY OF MARATHON CODE, BY CREATING ARTICLE IV "DEBRIS REMOVAL FROM PRIVATE STREETS, ROADS AND PRIVATE PROPERTY"; PROVIDING A TITLE; PROVIDING THE INTENT AND PURPOSE; PROVIDING AUTHORITY; PROVIDING DEFINITIONS; PROVIDING FOR PRIVATE ROADWAYS; PROVIDING FOR WAIVERS; PROVIDING FOR INDEMNIFICATION AND HOLD HARMLESS; PROVIDING FOR EMERGENCY ROADWAY CLEARANCE; PROVIDING FOR PRIVATE PROPERTY; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the "City") is a municipal corporation located within the State of Florida and often subject to major or catastrophic storm events and natural disasters potentially including those of human origin; and

WHEREAS, such events and disasters may on occasion cause the City or specific geographical areas within the City to experience widespread damage and destruction; and

WHEREAS, if the damage is significant and widespread, there will be a substantial benefit to the City's recovery plan to remove debris in order to restore emergency services, utilities and protect life and property; and

WHEREAS, it may be difficult if not impossible for private property owners of the City to clear property quickly and effectively; and

WHEREAS, it is the City's duty, under certain terms and conditions, to clear and remove debris which will cause significant and immediate harm to the health, safety and welfare of the inhabitants of the City; and

WHEREAS, the provisions of this Ordinance are consistent with the provisions of the City of Marathon Comprehensive Plan; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are hereby confirmed and adopted.

Section 2. Article IV of the City of Marathon Code is hereby created to read as follows:

Article IV DEBRIS REMOVAL FROM PRIVATE STREETS, ROADS, ROADWAYS AND PRIVATE PROPERTY.

Sec. 26-91. Intent and Purpose.

After declaration of a State of Emergency by either the President of the United States, the governor of Florida or Monroe County, the primary mission of the City will be to protect lives and property, restore governmental services and clear public streets. Depending on the magnitude of the disaster and after accomplishment of the primary mission, resources may be available to the City that may not be available to a private property owner. The intent and purpose of this Article is to establish a process by which the City may evaluate and, if necessary, remove debris from along privately owned streets, roads, roadways, and other private property in the event of an immediate threat to life, public health and safety after a significant disaster. While the City recognizes that, as a general proposition, the removal of debris from private property is the responsibility of the property owner, there are occasions when, because of the magnitude of the disaster and the threat posed to life, health, and safety, there may be a compelling need to remove debris from private streets, roads, and roadways and other private property as described in this Part.

Sec. 26-92. Definitions.

As used in this Article, the following terms shall have the following meanings, unless the context clearly otherwise requires:

(a) "Access Properties" means access to the properties depicted on the map entitled "Maintained Roads Map", as it may be amended from time to time, maintained by and in the custody of the City Public Works Department, and incorporated herein as if fully set forth verbatim. Access shall be provided if: (1) the City is undertaking to clear and push debris and (2) it is reasonably possible with respect to the equipment used to provide access under the circumstances. The Maintained Roads Map represents the best efforts of the City to set forth a complete listing; however, due to the nature of the roadway system and the historical problems relating to documentation and memorialization of roadways and rights-of-way, the listing may not be all inclusive.

(b) "Debris" shall include, but is not limited to, displaced, -- broken, or discarded building and construction materials, garbage, vegetative matter and spoiled or ruined household goods or materials

(c) "Private Property" means all property that is not owned or controlled by a governmental entity.

(d) "Private Streets, Roads and Roadway" shall include the rights-of-way as well as the improved surface that provides access to residential and commercial areas as identified as "Private Roadways" in the Maintained Roads Map.

Sec. 26-94. Private Roadways.

The City shall remove Debris from Private Roadways when such Debris is determined to pose an immediate threat to the health, safety and welfare of the community. The City Manager shall determine whether there is an immediate threat to the public health, safety, and welfare sufficient to warrant removal of said Debris in accordance with any one of the following standards:

(a) There is a significant likelihood that rescue vehicles will be significantly hindered from rendering emergency services to residential and commercial property should the Debris be allowed to remain in place absent City removal.

(b) The type of 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 clearing is necessary to effectuate orderly and expeditious restoration of City-wide utility services including, but not limited to, power, water, sewer, and telephone.

(d) The Debris is determined by the City Building Official to be dangerous or hazardous.

(e) The Debris prevents garbage collection thereby creating a public health hazard.

(f) The Debris contains contaminants which have a reasonable likelihood of leeching into the soil and/or aquifer of the City.

(g) The Debris has a substantial negative impact in preventing or adversely affecting emergency repairs to buildings and/or property.

(h) The Debris presents a reasonable danger of being transported by wind and/or water into the surrounding areas of the City and thereby increasing the cost of recovery and removal.

(i) The Debris poses a significant likelihood of, if left over time, producing mold which would be injurious to public health.

(j) The presence of the Debris significantly adversely impacts the City's recovery efforts.

(k) The 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 Debris is such that it is impractical and unreasonable to remove in an orderly and efficient manner absent action by the City

(m) The type, extent and nature of the Debris is such that it would cause much greater damage if the Debris was not removed immediately.

(n) Commercial or other specific areas will be cleared if, in the opinion of the City Manager, the clearance will aid the City's recovery operations or aid the health, safety, or welfare of the residents of the City

Sec. 26-94. Waiver.

With regard to eligibility for Federal funding, the Federal Emergency Management Agency (FEMA) may waive the requirement for the City to establish the criteria listed in Code Sec. 26-94 as a condition precedent to City action depending on the severity of the situation.

Sec. 26-95. Indemnification and Hold Harmless.

Prior to removal of Debris by the City as contemplated herein on Private Roadways and Private Property, or clearance by the City of Private Property as provided herein, the private property owner shall indemnify and hold harmless, to the maximum extent permitted by law, the Federal, State, and local government and all employees, officers and agents of the Federal, State, and local government connected with the rendering of such service.

Sec. 26-96. Emergency Roadway Clearance.

Nothing herein shall preclude a first response by the City to clear and push Debris from all roadways (both public and private) including Access Properties necessary for the movement of emergency vehicles including police, fire and ambulance within the first seventy (70) hours after a disaster declaration.

Sec. 26-97. Private Property.

Nothing herein shall require the City to remove Debris from Private Property other than the Private Roadways identified above except where the severity of the situation is of such magnitude or the Debris is so widespread that it is determined by the City Manager to be a significant immediate threat to the health, safety and welfare of the City and in the overriding public interest of the City to remove Debris from such areas.

Secs. 26-98 – 26-99 Reserved.

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

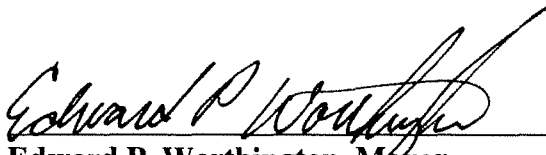
Section 4. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

Section 5. The provisions of this ordinance shall be included and incorporated in the Code of The City of Marathon, Florida, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

Section 6. This Ordinance shall be effective immediately upon enactment.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, this 8th day of July, 2008.

THE CITY OF MARATHON, FLORIDA



Edward P. Worthington, Mayor

AYES: Vasil, Tempest, Worthington
NOES: None
ABSENT: Bull, Cinque
ABSTAIN: None

ATTEST:



Diane Clavier
City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



Jimmy Morales, City Attorney