

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: August 15, 2006

Consent

Regular

Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For: COUNTY ATTORNEY/SWA

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, TO BE KNOWN AS "THE POST-DISASTER DEBRIS RECOVERY ORDINANCE"; RELATING TO DISASTER DEBRIS COLLECTION AND REMOVAL; PROVIDING FOR DECLARATION OF FINDINGS AND INTENT; PROVIDING FOR IMPLEMENTATION OF THE COMPREHENSIVE EMERGENCY MANAGEMENT PLAN OF PALM BEACH COUNTY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

Summary: This Ordinance authorizes and directs the Solid Waste Authority of Palm Beach County, upon a declaration of a disaster and pursuant to the provisions of the County's Emergency Management Plan, to enter in and upon the public and private roads, including gated communities, of the unincorporated areas of the County to collect and remove debris. Countywide (MC)

Background and Policy Issues: On July 18, 2005, this Ordinance was approved by the Board of County Commissioners on preliminary reading and has been advertised in accordance with Florida Statutes. In preparation for the 2006 hurricane season, the Federal Emergency Management Agency (FEMA) has released guidelines identifying the circumstances under which debris from private roads and gated communities may be eligible for reimbursement. In addition to the fact that such collection must be necessary to serve a vital public interest for the health, safety and welfare of the residents of the County, the agency collecting the debris must have the right to enter upon the property – in this case private as well as public roads including gated communities – to collect and remove the debris in a manner akin to police and firefighters.

This Ordinance establishes that the collection and removal of debris occasioned by a disaster declared locally or by the state or federal government is necessary for the health, safety and welfare of the residents of the unincorporated areas of the County and further that the Solid Waste Authority is authorized and directed to enter the private and public roads, including gated communities, to collect and remove disaster debris.

Attachments:

1. Ordinance

Recommended by: _____

County Attorney

Date

[Handwritten Signature]

7/31/06

Approved by: _____

N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2006	2007	2008	2009	2010
Capital Expenditures	—	—	—	—	—
Operating Costs	—	—	—	—	—
External Revenues	—	—	—	—	—
Program Income (County)	—	—	—	—	—
In-Kind Match (County)	—	—	—	—	—
NET FISCAL IMPACT	—	—	—	—	—
# ADDITIONAL FTE POSITIONS (Cumulative)	—	—	—	—	—

Is Item Included in Current Budget? Yes ___ No ___

Budget Account No.: Fund ___ Department ___ Unit ___ Object ___

Reporting Category ___

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Jim Rink 8-1-06
OFMB

John Roberts 8/2/06
Contract Dev. and Control

B. Legal Sufficiency:

Maureen Cullen
Assistant County Attorney

This item complies with current County policies.

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

ORDINANCE NO. 2006 - _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, TO BE KNOWN AS "THE POST-DISASTER DEBRIS RECOVERY ORDINANCE"; RELATING TO DISASTER DEBRIS COLLECTION AND REMOVAL; PROVIDING FOR DECLARATION OF FINDINGS AND INTENT; PROVIDING FOR IMPLEMENTATION OF THE COMPREHENSIVE EMERGENCY MANAGEMENT PLAN OF PALM BEACH COUNTY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature, through the Palm Beach County Solid Waste Act, created the Solid Waste Authority of Palm Beach County, Florida (the "Authority") and granted to it the responsibility for solid waste management in Palm Beach County, Florida (the "County"), and authorized the Authority to enter into Interlocal Agreements to provide solid waste related government functions; and

WHEREAS, the Board of County Commissioners of Palm Beach County, Florida (the "Board"), through an Interlocal Agreement with the Authority dated September 21, 1988, transferred to the Authority the duty and responsibility to provide a mandatory solid waste collection program throughout the entire unincorporated areas of the County; and

WHEREAS, the Authority on behalf of the Board has established a mandatory solid waste collection program for the entire unincorporated areas of the County; and

WHEREAS, in order to implement provisions of the Comprehensive Emergency Management Plan of Palm Beach County (the "Emergency Plan"), the Authority is directed to act on behalf of the Board to collect and remove disaster debris throughout the unincorporated areas of the County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1: TITLE.

This Ordinance shall be known as the Palm Beach County Post-Disaster Debris Recovery Ordinance.

Section 2: DECLARATION OF FINDING AND INTENT.

This Board finds that in the event of a disaster occurring in the County a public health and safety threat may result from the generation of widespread debris

throughout the County, that such debris constitutes a hazardous environment for all modes of movement and transportation of the residents as well as emergency aid and relief services, endangerment to all properties in the County, an environment conducive to breeding disease and vermin, and greatly increased risk of fire, and that it is in the public interest to collect and remove disaster debris from all properties whether public lands, public or private roads, and gated communities to eliminate an immediate threat to life, public health and safety, to reduce the threat of additional damage to improved property, and to promote economic recovery of the community at large.

It is the intent of this Ordinance to promote the health, welfare and safety of the residents of the County by implementing the Emergency Plan by providing for the collection and removal of disaster debris throughout the unincorporated public and private roads, gated communities, and public areas of the County, to eliminate an immediate threat to the life, public health and safety of the residence of the county.

Section 3: IMPLEMENTATION OF COMPREHENSIVE EMERGENCY MANAGEMENT PLAN OF PALM BEACH COUNTY.

The Authority, pursuant to the Interlocal Agreement and the powers and authority invested in it by the Palm Beach County Solid Waste Act, is hereby directed to implement the provisions of the Emergency Plan when a Local State of Emergency has been declared pursuant to the Emergency Plan, or if declared by the State of Florida or the Federal government, by acting on behalf of the County to collect and remove disaster debris throughout the unincorporated areas of the County, and to enter in and upon the public and private roads, gated communities, and public areas of the County as necessary, to eliminate any immediate threat to life, public health and safety of the residents of the County, to reduce the threat of additional damage to improved property, and to promote economic recovery of the community at large.

Section 4: INCLUSION IN THE CODE OF LAWS AND ORDINANCES.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Palm Beach County, Florida. The sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "Ordinance" may be changed to "section," "article," or any other appropriate word.

Section 5: REPEAL OF LAWS IN CONFLICT.

Any laws or ordinances in conflict with the Ordinance that Palm Beach County is authorized to repeal are hereby repealed.

Section 6: SEVERABILITY.

If any section, paragraph, sentence, clause, phrase or word of this Ordinance is, for any reason, held or declared by a court to be unconstitutional, inoperative or void, such holding shall not affect the remainder of the Ordinance.

Section 7: CAPTIONS.

The captions, section headings and section designations used in this Ordinance are for convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

Section 8: EFFECTIVE DATE.

This Ordinance shall become effective upon filing with the Department of State.

APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach County, Florida on the _____ day of _____, 2006.

SHARON R. BOCK, CLERK &
COMPTROLLER

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Tony Masilotti, Chairman

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: Maureen Cullen
County Attorney

Filed with the Department of State on the _____ day of _____,
2006.



YOUR PARTNER FOR
SOLID WASTE SOLUTIONS

AGENDA

PUBLIC MEETING SOLID WASTE AUTHORITY

**Tuesday, July 18, 2006
9:30 AM**

LOCATION:

**PBC GOVERNMENTAL CENTER
301 N. OLIVE AVENUE, 6TH FLOOR
WEST PALM BEACH, FLORIDA 33401**

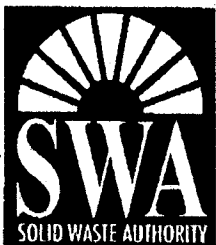
I. Call to Order / Roll Call

**Commissioner Addie Greene, Chair
Commissioner Jeff Koons, Vice Chair
Commissioner Burt Aaronson, Secretary
Commissioner Masilotti
Commissioner Karen Marcus
Commissioner Warren Newell
Commissioner Mary McCarty**

II. Proof of Publication of Meeting

III. Amendment of Mandatory Collection Resolution to address Disaster Debris collection, private roads, and gated communities. Adopt Resolution 2006-03.

IV. Adjournment



YOUR PARTNER FOR
SOLID WASTE SOLUTIONS

July 18, 2006

MEMORANDUM

TO: Commissioner Addie Greene, Chair
and Solid Waste Authority Board Members

SUBJECT: Amendment of Mandatory Collection Resolution to address
Disaster Debris collection, Private Roads and Gated
Communities.

RECOMMENDATION: Adopt Resolution 2006-03

BACKGROUND:

The position of the Federal Emergency Management Agency (FEMA) is that disaster debris collected from private roads and within gated communities is not eligible for reimbursement under the Public Assistance program that reimburses local governments for a portion of the cost of debris management.

However, in some circumstances, FEMA has determined that debris from private roads and gated communities may be eligible for reimbursement. They did not determine it was eligible in 2004 (Hurricanes Frances and Jeanne) but did declare it eligible in 2005 (Hurricane Wilma).

In preparation for the 2006 hurricane season, FEMA has released Disaster Specific Guidance (DSG) which identifies the circumstances under which debris from private roads and gated communities may be determined as eligible for reimbursement by FEMA. A copy of the Guidance issued by FEMA on May 20, 2006 is attached. Also attached is a copy of an email from the FEMA long-term recovery office in Orlando, which also frames the issues from a FEMA perspective and appears to predate the issuance of the FEMA Guidance.

The guidance identifies three principal criteria that must be met to have the debris from private roads and gated communities declared eligible for reimbursement:

1. Removal of the debris was the legal responsibility of the eligible applicant, such as the State or local government;
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 damage resulting from the work.

Staff of the Authority has reviewed the FEMA guidance and determined that amendment of the Mandatory Collection Resolution is the most effective means to attempt to meet the criteria specified by FEMA. Two versions of the amended Resolution are attached. One is a final, "clean" copy incorporating all the changes. The other is a version in strikethrough and underline format showing the changes made from the previous version of the Resolution.

This amended Resolution is only one of the elements that will be assembled in the event of a disaster to submit to FEMA as a request that they declare the debris from private roads and gated communities eligible for reimbursement. SWA staff has been in communication with County staff, and we believe that a County Ordinance which specifies that the SWA is acting on behalf of the County in carrying out debris collections pursuant to the Comprehensive Emergency Management Plan will provide additional support to our position concerning our legal responsibility to collect debris on private roads and in gated communities. SWA staff has prepared a draft Ordinance that County staff can review and modify, and initiate the County process for Ordinance adoption.

FEMA alone has the authority to declare debris eligible for reimbursement, and their policy and the language of the Disaster Specific Guidance provide them with many opportunities to deny eligibility regardless of the strength of the submittal requesting the debris be declared eligible. All we can do as Authority and County staff is make the underlying basis in Resolution and Ordinance as strong as possible, and make the case for the individual disaster as compelling as possible, in the hopes that FEMA will consider the debris eligible. If we do not make this effort, FEMA will not consider declaring the debris from private roads and gated communities eligible for reimbursement.

BUDGET IMPACT: The cost for amending the Resolution is limited to publication costs and staff time. The potential budget impacts concerning the FEMA decision to approve or deny reimbursement for gated communities and private roads in the event of a disaster is significant but unknown at this time.

ATTACHMENTS:

- Resolution 2006-03,
- Resolution changes in strikethrough/underline format,
- FEMA Disaster Specific Guidance on Gated Communities and Private Roads and

- Email from FEMA on Gated Communities and Private Roads.

REVIEWS:

Director: Mane Brunner, Date: 7/14/06

Finance:
(as required) _____, Date: _____

Legal Counsel:
(as required) _____, Date: _____

Managing Director: [Signature], Date: 7/14/06

Executive Director: [Signature], Date: 7/17/06

**FLORIDA COUNTY ORDINANCE DATA RETRIEVAL SYSTEM
(CODRS) CODING FORM**

Instructions: Florida's Department of State, Bureau of Administrative Code has developed the County Ordinance Data Retrieval System (CODRS) to facilitate the tracking of County ordinances in Florida's 67 Counties. CODRS' data base is composed of over 25,000 county ordinances enacted since 1974.

We request your cooperation in completing this coding form. It is to be completed whenever your county enacts a new ordinance. Simply complete this form and include it with other pertinent ordinance information that is submitted to the Bureau of Administrative Code.

To code this form properly, please refer to the "keyfields" description sheet that has been given to your County Attorney's Office. If you do not have this sheet please contact the Bureau. We will be happy to fax one to you for referencing purposes. Please fill out this form as completely as is possible.

Thank you for your assistance. Should you need further assistance please contact the Bureau of Administrative Code, Department of State at (850)245-6270 or Suncom 205-6270.

COUNTY: (Palm Beach) COUNTY ORDINANCE # (2006 - _____)
(e.g., 00-001)

PRIMARY KEYFIELD
 DESCRIPTOR: (Hurricane Preparedness)

SECONDARY KEYFIELD
 DESCRIPTOR: (Solid Waste Management)

OTHER KEYFIELD
 DESCRIPTOR: (Road Maintenance)

ORDINANCE DESCRIPTION: (Right of entry for collection of disaster debris)
(25 characters maximum including spaces)

ORDINANCES AMENDED: (List below the ordinances that are amended by this legislation. If more than two, list the most recent two.)

AMENDMENT # 1: (_____) AMENDMENT # 2: (_____)

ORDINANCES REPEALED: (List below the ordinances that are repealed by this legislation.)

REPEAL # 1: (_____) REPEAL # 3: (_____)

REPEAL # 2: (_____) REPEAL # 4: (_____)

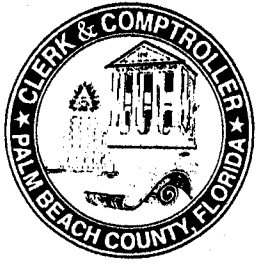
(Others repealed: List all that apply): _____

(FOR OFFICE USE ONLY): COUNTY CODE NUMBER: (_____)

KEYFIELD 1 CODE: (_____) KEYFIELD 2 CODE: (_____)

KEYFIELD 3 CODE: (_____)

Rev. 4/10/04



SHARON R. BOCK

Clerk & Comptroller
Palm Beach County

RECEIVED

JUL 31 2006

P.B. COUNTY ATTORNEY

July 21, 2006

The Palm Beach Post
2751 South Dixie Highway
West Palm Beach, FL 33406
Attention: Legal Ad Department

VIA FAX: (561) 820-4340

RE: NOTICE OF PUBLIC HEARING for the following item:
ORD: pertaining to posting of the restaurant inspection reports;
Providing for definitions; providing for general requirements;

ORD: to be known as "The Post-Disaster Debris Recovery Ordinance"

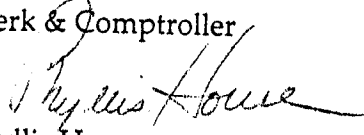
PUBLISH: FRIDAY, August 4, 2006

Please publish the enclosed Notice of Public Hearing wherein the Board of County Commissioners intends to consider the above referenced matter. Please furnish this office with four (4) proofs of publication along with your bill in quadruplicate, prior to the date of the **PUBLIC HEARING on August 15, 2006** and forward to the address provided below:

Sharon R. Bock
Clerk & Comptroller
P. O. Box 4036
West Palm Beach, Florida 33402-4036
Attention: Diane Brown

Should you have any questions, please contact Diane Brown at (561) 355-2956.

Very Truly Yours,
SHARON R. BOCK
Clerk & Comptroller


Phyllis House
Supervisor, Minutes Department

PH: db
Attachments

cc: Gentry Benjamin, Assistant County Attorney
Maureen Cullen, Chief Assistant County Attorney
Mary Kay McVeigh, County Administration

301 North Olive Avenue
West Palm Beach, Florida 33401

P.O. Box 229
West Palm Beach, Florida 33402

Telephone 561-355-2996
Facsimile 561-355-6727

www.pbcountyclerk.com