

ST. PETERSBURG CITY COUNCIL

Meeting of August 20, 2009

TO: The Honorable Jeff Danner, Chair, and Members of City Council

SUBJECT: An ordinance providing for the declaration of states of emergency and for the exercise of emergency powers following any such declarations including the clearance and removal of disaster-generated debris; increasing the maximum limit on the necessary emergency expenditures without authorization of a higher limit by the City Council; amending Article VIII of Chapter 2 of the St. Petersburg City Code; and providing for an effective date.

EXPLANATION: The ordinance establishing the emergency powers that may be exercised by the Mayor in the event of an emergency was last revised in 1995. The disastrous consequences of hurricanes and other catastrophic events in Florida and elsewhere since 1995 have demonstrated the necessity to review and revise the ordinance. The experiences of other communities have demonstrated the extent to which disaster-generated debris creates immediate threats to life, public health, and safety; and causes significant damage to improved public or private property. This significantly impedes economic recovery of the City following the disaster. The City must respond to such threats by clearing or removing disaster-generated debris. Debris clearance and removal of debris from private property following a disaster is ordinarily the responsibility of the property owner, but large-scale disasters may deposit enormous quantities of debris on private property over a large area resulting in widespread immediate threats to the public-at-large, and in such cases the public interest is best served by utilizing City work forces to clear or remove such debris.

The ordinance adds new standards for determining when an immediate threat to life, public health, and safety is deemed to exist, and establishes priorities for the clearance and removal of disaster-generated debris from public property, private property, and private roads. The ordinance raises the level of emergency expenditures that may be made without City Council approval to a cumulative total of \$500,000.00, up from the \$100,000.00 limit set in 1995.

RECOMMENDATION: The Administration recommends that City Council conduct the first reading for the attached ordinance and set the second reading and public hearing for September 3, 2009.

COST/FUNDING/ASSESSMENT/INFORMATION: N/A

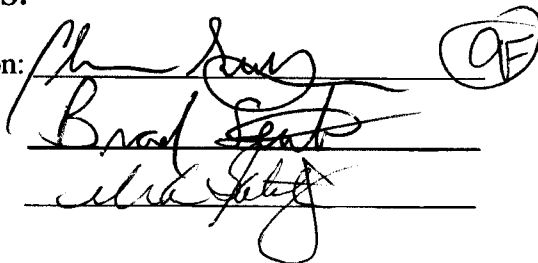
ATTACHMENTS: Ordinance

APPROVALS:

Administration: _____

Budget: _____

Legal: _____

Handwritten signatures and initials for Administration, Budget, and Legal. The Administration signature is followed by a circled '9F'. The Budget signature is 'Brad Seab' and the Legal signature is 'Mike Jett'.

ORDINANCE NO. ____

AN ORDINANCE PROVIDING FOR THE DECLARATION OF STATES OF EMERGENCY AND FOR THE EXERCISE OF EMERGENCY POWERS FOLLOWING ANY SUCH DECLARATION, INCLUDING THE REMOVAL OF DISASTER-GENERATED DEBRIS; INCREASING THE MAXIMUM LIMIT ON NECESSARY EMERGENCY EXPENDITURES WITHOUT AUTHORIZATION OF A HIGHER LIMIT BY THE CITY COUNCIL; AMENDING ARTICLE VIII OF CHAPTER 2 OF THE ST. PETERSBURG CITY CODE, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the ordinance establishing the emergency powers that may be exercised by the Mayor in the event of an emergency was last revised in 1995; and

WHEREAS, the disastrous consequences of hurricanes and other catastrophic events in Florida and elsewhere since 1995 have demonstrated the necessity to review and revise the ordinance as set forth herein; and

WHEREAS, the experiences of other communities have demonstrated the extent to which disaster-generated debris creates immediate threats to life, public health, and safety; immediate threats of significant damage to improved public or private property; and significantly impedes economic recovery of the City following the disaster; and that responding to such threats by removing disaster-generated debris is in the public interest; and

WHEREAS, debris removal from private property following a disaster is ordinarily the responsibility of the property owner, but large-scale disasters may deposit enormous quantities of debris on private property over a large area resulting in widespread immediate threats to the public-at-large, and in such cases the public interest is best served by utilizing City work forces to remove such debris; now therefore

THE CITY OF ST. PETERSBURG DOES HEREBY ORDAIN:

Section 1. Sections 2-236 through 2-328 of the St. Petersburg City Code are amended to read:

Chapter 2. Administration

Article VIII. Emergency Powers

Sec. 2-326. General provisions.

(a) Definitions. As used in this article, the following terms shall mean;

(1) “City work forces” means officers, employees and agents of the City including but not limited to contractors engaged by the City to push, remove, store or dispose of disaster-

generated debris or otherwise to respond to threats to life, public health, and safety or immediate threats of significant damage to property, during and following a state of emergency or disaster within the City.

(2) “Disaster-generated debris” or “debris” means any material, including trees, branches, personal property and building material found on public or private property that was directly deposited by any occurrence that results in a declaration of a state of emergency. The term includes but is not limited to debris created by the removal of disaster-damaged interior and exterior materials from improved property, and household hazardous wastes such as, but not limited to, household cleaning supplies, insecticides and herbicides. The term does not include concrete slabs or foundations on grade, or reconstruction debris consisting of materials used in the reconstruction of disaster-damaged improved property.

(3) “Emergency” means any occurrence, or threat thereof, whether accidental, natural, or caused by man, in war or peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

(4) “Mayor” means the Mayor of the City or, in the absence or disability of the Mayor, the First Deputy Mayor/City Administrator, or his or her designee. The Mayor may designate, by filing with the City Clerk, a line of succession to establish the order of succession of City officers to assume the authority of the Mayor for the purposes of this article in the absence or disability of the Mayor. In this article, the term “Mayor” means and includes the Mayor or any City officer who has been delegated the authority to act under this article.

(5) “Private property” means land that is owned by non-governmental entities and structures affixed to the land, including but not limited to tangible personal property contained within the structures. The term does not include private roads.

(6) “Private road” means any non-public road which the City is not legally responsible to maintain. The term includes but is not limited to roads owned and maintained by homeowners associations, including gated communities, and roads for which no entity has claimed or exercised maintenance responsibility.

(b) ~~(a)~~ Declaration of a state of emergency. In the event that a natural, technological, or manmade emergency should occur, or its occurrence is imminent, and this emergency will adversely ~~affect~~ ~~effect~~ the City and its ~~residents and visitors~~ ~~citizens~~, the City Council, or in the event that a quorum of the City Council is not available to attend a special meeting upon not less than 24 hours notice of a call for a special meeting by the Mayor ~~unavailable~~, the Mayor ~~or the Administrator~~ ~~successor, in the Mayor's absence~~, may declare that a state of emergency exists within the City of St. Petersburg. The City Council shall take this action by resolution. The Mayor ~~or administrator~~ ~~successor~~ shall take this action by a signed written proclamation. The Mayor may take this action without a special meeting of the City Council after the President of the United States or the Governor of Florida has declared a state of emergency or disaster in all or any part of the City.

(c) ~~(b)~~ Powers activated. Once a state of emergency has been declared, the powers contained in this article may be exercised by the Mayor ~~or the Administrator~~ ~~successor, in the Mayor's absence~~ as provided in Subsection 2-326(e).

~~(d)~~ ~~(e)~~ Initiation by written order. The powers contained in ~~outlined in Sections 2-327 and 2-328 of this article~~ shall be initiated by written order executed by the Mayor and shall be effective immediately upon transmittal of a copy of the order ~~a copy of the written order being issued and transmitted~~ to the Chief of Police, or the person acting in such capacity if the chief is unavailable. The original of such written order shall be filed with the City Clerk at the earliest practicable time after its issuance.

~~(e)~~ ~~(d)~~ Duration of the declared state of emergency. A state of emergency that has been declared by the City Council or the Mayor ~~or the Administrator successor, in the Mayor's absence,~~ shall continue until the City Council or Mayor determines that the threat or danger no longer exists. But in no instance shall the state of emergency continue for more than seven days unless the state of emergency is extended by the City Council. Such extensions of the state of emergency shall continue for no longer than seven days per extension. Provided, however, that:

(1) If a state of emergency or disaster has been declared by the President or the Governor in all or any part of the City, the state of emergency shall continue until terminated by the City Council.

(2) The authority to remove disaster-generated debris under this article shall continue for as long as the Mayor determines that such removal is necessary to eliminate immediate threats to life, public health, and safety; eliminate immediate threats of significant damage to improved public or private property; or ensure post-disaster economic recovery of the City.

~~(e)~~ ~~Definitions.~~ The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

~~(1) Emergency means any occurrence, or threat thereof, whether accidental, natural, or caused by man, in war or peace, which results or may result, in substantial injury or harm to the population or substantial damage to or loss of property.~~

~~(2) Administrator successor is the chief administrative officer of the City or in this person's absence the next in line and available as designated by the Mayor in the line of succession on file with the City Clerk.~~

~~(3) Line of succession means the list most recently filed with the City Clerk by the Mayor which establishes for the purposes of this article the order of succession of administrative officials to assume the administrative duties of the Mayor in the absence of the Mayor.~~

Sec. 2-327. Emergency powers of Mayor ~~or Administrator successor.~~

During the declared state of emergency, the Mayor ~~or the Administrator successor, in the Mayor's absence,~~ is authorized to take the following actions:

(1) Suspend or limit the sale, dispensing or transportation of alcoholic beverages, firearms, explosives, and combustibles.

(2) Establish curfews, including, but not limited to the prohibition of or restrictions on pedestrian and vehicular movement, standing and parking, except for the provision of designated, essential services, such as fire, police, emergency medical services and hospital services including the transportation of patients, utility emergency repairs and emergency calls by physicians.

(3) Utilize all available resources of the city government as reasonably necessary to cope with the emergency, including emergency expenditures not to exceed a cumulative total of ~~\$100,000.00~~ \$500,000.00 unless a higher limit is authorized by resolution of City Council or by unanimous written authorization of the City Councilmembers able to attend an emergency meeting upon not less than 24 hours notice if less than a quorum are able to attend. For the purposes of this subsection, the limit on emergency expenditures shall not be construed as imposing a limit on overtime compensation for City employees who are required to work overtime.

(4) Declare certain areas off limits.

(5) Make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.

(6) Establish emergency operations centers and shelters in addition to or in place of those provided for in the City's Emergency Plan.

(7) Declare that during an emergency it shall be unlawful and a municipal ordinance violation for any person, firm or corporation to use the fresh water supplied by the City for any purpose other than cooking, drinking or bathing.

(8) Declare that during an emergency it shall be unlawful and a municipal ordinance violation for any person, firm or corporation operating within the City to charge more than the normal average retail price for any merchandise, goods, or services sold during the emergency. The average retail price as used herein is defined to be that price at which similar merchandise, goods, or services were being sold during the 90 days immediately preceding the emergency or the wholesale cost plus the mark-up percentage that was being charged for similar merchandise, goods or services during the 90 days immediately preceding the emergency.

(9) Confiscate merchandise, equipment, vehicles or other property needed to alleviate the emergency. Such property shall be returned or compensation for the property ~~Reimbursements~~ shall be made within 60 days, any such compensation to based upon the and at customary value charged for the property items during the 90 days immediately preceding ~~previous to~~ the emergency.

(10) Request emergency assistance and resources from higher levels of government, other local governments and/or other agencies, in accordance with the State of Florida Comprehensive Emergency Management Plan and/or the Statewide Mutual Aid Agreement and/or in accordance with the needs of the City and the resources available.

(11) Order the removal of disaster-generated debris in accordance with section 2-330.

Sec. 2-328. Waiver of procedures and formalities during emergency.

During the declared state of emergency, the Mayor ~~or the Administrator successor, in the Mayor's absence,~~ is authorized to invoke any emergency provisions of State law regarding the procuring of goods or services.

During the declared state of emergency, the Mayor ~~or the Administrator successor, in the Mayor's absence,~~ is authorized to waive the procedures, formalities and ordinance provisions otherwise required by the City pertaining to:

- (1) Performing of public work and taking whatever action is necessary to ensure the health, safety and welfare of the community;
- (2) Entering into contracts;
- (3) Incurring obligations;
- (4) Employment of permanent and temporary workers;
- (5) Utilization of volunteer workers;
- (6) Rental of equipment;
- (7) Acquisition and distribution with or without compensation of supplies, materials and facilities;
- (8) Appropriation and expenditure of public funds.

Section 2. Section 2-329 of the St. Petersburg City Code is created to read:

Sec. 2-329. Removal of disaster-generated debris.

(a) After a state of emergency or disaster has been declared, the Mayor shall make all reasonable and prudent efforts to remove disaster-generated debris from publicly-owned and private property and public and private roads within the City, subject to the limitations of this section, when removal is necessary to:

- (1) Eliminate immediate threats to life, public health, and safety;
- (2) Eliminate immediate threats of significant damage to improved public or private property;
or
- (3) Ensure post-disaster economic recovery of the City.

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

- (1) There is a significant likelihood that rescue vehicles will be significantly hindered from rendering emergency services to residential or commercial property if debris is allowed to remain in place.

(2) The 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.

(3) The debris is determined by the Building Official to be dangerous or hazardous.

(4) The debris contains contaminants which have a reasonable likelihood of leeching into the soil.

(5) The debris presents a reasonable danger of being transported by wind or water to neighboring properties, thereby increasing the cost of recovery and removal.

(6) The debris has a substantial negative impact upon public health and safety by preventing or adversely affecting emergency repairs to buildings or property.

(7) The clearing of debris is necessary to effectuate orderly and expeditious restoration of utility services including, but not limited to, water, sewer, garbage collection, gas, electric power, and telephone; provided, that the City shall not be deemed to assume the duty to provide or restore service by any utility service provider not owned by the City and shall not be responsible or liable for any claim arising from any alleged failure to clear debris in a timely manner.

(8) The presence of the debris significantly adversely impacts the City's recovery efforts.

(9) The debris significantly interferes with drainage or water runoff, so as to be a significant hazard in the event of significant rainfall.

(10) The sheer volume of the debris is such that it is impractical and unreasonable to remove the debris in an orderly and efficient manner absent action by the City.

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

(c) In removing disaster-generated debris from publicly-owned property and public roads, the highest priority shall initially be given to responding to immediate threats to life, public health, and safety; eliminating immediate threats of significant damage to improved property; and pushing or removing debris from the public streets to permit safe passage. Removing debris from property other than public roads which is owned or maintained by a governmental agency other than the City may be initiated only after a request for the removal of debris has been delivered to the Mayor by the agency owning or having maintenance responsibility for the property.

(d) In removing disaster-generated debris from private property and private roads, the following limitations shall apply:

(1) The highest priority shall initially be given to responding to immediate threats to life, public health, and safety; and eliminating immediate threats of significant damage to improved private property.

(2) In the absence of an immediate threat to life, public health, or safety, or an immediate threat of significant damage to improved private property:

a. If a private road is not legally accessible by police, fire, and emergency medical personnel and their vehicles to provide emergency services to the residents of the community, removal or pushing of debris from the road by City work forces shall not be authorized.

b. If a private road is legally accessible by police, fire, and emergency medical personnel and their vehicles to provide emergency services to the residents of the community, City work forces may push disaster-generated debris to clear a route of safe passage for motor vehicles along such roads, but shall not be authorized to remove disaster-generated debris from the private road.

c. City work forces shall not enter upon private property or private roads without first having obtained authority, in writing, to enter the property and remove or reduce threats to life, public health and safety by debris removal, which authorization shall have been executed by a person having legal authority to grant such authority to the City on behalf of the owner of the property. Any such written authorization shall include but not be limited to a statement that the City, state and federal agencies and their officers, employees, agents and contractors shall be indemnified and held harmless from claims for damages for bodily injury or property damage, or both, that may arise from the debris removal and related activities of the personnel engaged in such work. The written authorization shall also disclose any insurance policies providing coverage or other sources of funding to pay for the debris removal work.

(3) When responding to a threat of significant damage to improved private property:

a. The Mayor shall initially determine whether the removal of disaster-generated debris is cost effective. For this purpose, "cost effective" means that the cost to remove the debris will be less than the cost of potential damage to the improved property. If removal of the debris is determined not to be cost-effective, the Mayor shall not authorize removal of the debris.

b. The highest priority shall be given to the removal of debris from single-family and two-family residential property, but debris may be removed from commercial property when such removal is found to be in the public interest. For the limited purpose of this paragraph, "commercial property" includes but is not limited to apartments, condominiums, mobile homes in commercial trailer parks, golf courses, and industrial parks.

(4) Disaster-damaged trees and limbs may be removed from improved private property and private roads if they meet any of the following criteria:

a. Disaster-damaged limbs and leaning trees are in danger of falling on improved property, primary ingress or egress routes, or public rights-of-way;

b. A tree is greater than six inches in diameter (measured at diameter breast height) and meets any of the following criteria: More than 50% of the crown is damaged or destroyed; the trunk is split, exposing the heartwood; broken branches expose the heartwood; or the tree is leaning at an angle greater than 30 degrees and shows evidence of ground disturbance;

c. A limb is greater than two inches in diameter measured at the point of break.

Section 3. Sections 2-329, 2-330 and 2-331 of the St. Petersburg City Code are renumbered as Sections 2-330, 2-331 and 2-332, respectively, and amended to read:

Sec. 2-330. ~~Sec. 2-329.~~ Authority of the City Council.

Nothing in this article shall be construed to limit the authority of the City Council to declare or terminate a state of emergency and take any action authorized by law when sitting in regular or special session.

Sec. 2-331. ~~Sec. 2-330.~~ Penalties.

(a) Violations. Any person, firm or corporation who ~~refuses to comply with or~~ violates any section of this article, or any of the emergency measures which may be made effective pursuant to this article, shall be subject to punishment as provided in section 1-7 of this City Code ~~be punished according to law and upon conviction for such offenses, shall be punished by a fine not to exceed \$500.00 or by imprisonment not to exceed 60 days in the County jail, or both.~~ Each individual violation, or day of continued non-compliance, shall constitute a separate offense ~~subject to the maximum penalty.~~ In addition to the foregoing, any licensee of the City found guilty of violating any provision of this article, or any emergency measure which may be made effective pursuant to this article, may have his license suspended or revoked by the City.

(b) Other lawful action. The violation of any section of this article, or any of the emergency measures which may be made effective pursuant to this article, is declared to be a public nuisance for which the City may seek all available relief, including but not limited to abatement by injunctive or other equitable relief. The imposition of a penalty does not prevent equitable relief or any action at law for damages. Nothing herein contained shall prevent the City 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 the 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 any action at law for damages.

Sec. 2-332. ~~Sec. 2-331.~~ Conflict; separability.

In the event this article conflicts with any other ordinance of the City, any ordinance of the County or any other applicable law, the more restrictive shall apply. If any phrase or portion of this article is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

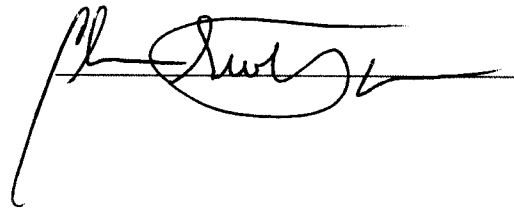
Section 4. In the event this ordinance is not vetoed by the Mayor in accordance with the City Charter, it shall become effective upon the fifth business day after adoption unless the Mayor notifies the City Council through written notice filed with the City Clerk that the Mayor will not veto the ordinance, in which case the ordinance shall take effect immediately upon filing such written notice with the City Clerk. In the event this ordinance is vetoed by the Mayor in accordance with the City Charter, it shall not become effective unless and until the City Council overrides the veto in accordance with the City Charter, in which case it shall become effective immediately upon a successful vote to override the veto.

REVIEWED AND APPROVED AS TO
FORM AND CORRECTNESS:



City Attorney/Designee

DEPARTMENT:



July 23, 2009