

ORDINANCE NO. 2018- _____

AN ORDINANCE OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA AMENDING CHAPTER 9, “EMERGENCY MANAGEMENT” RELATING TO DEBRIS REMOVAL FROM PRIVATE PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne (the “Village”) has experienced hurricanes and other storm related events that have resulted in widespread debris on private property, including on private roads and right of way; and

WHEREAS, such disaster-generated debris on private property may result in significant safety issues, including, but not limited to, impeding the access of essential public safety services and presenting a risk of debris becoming airborne causing additional damage to property during subsequent storms; and

WHEREAS, if debris on private property is not timely removed such debris may result in significant health issues by providing a breeding ground for the spread of diseases and acting as a wet receptor for mosquitos and other arthropods carrying viruses, including, but not limited to, the Zika virus; and

WHEREAS, in order to safeguard the life and property of the citizens of the Village, the Village Council finds that it is in the public interest to establish a disaster-generated debris removal process for private property; and

WHEREAS, the Village Council finds that adoption of this Ordinance is necessary for the preservation of the public health, safety and welfare of the Village and its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA, AS FOLLOWS: ¹

Section 1. **Recitals Adopted.** That the above-stated recitals are hereby adopted and confirmed.

Section 2. **Amending Chapter 9 of the Village Code.** That Chapter 9 “Emergency Management” of the Code of Key Biscayne, Florida is hereby amended as follows:

Chapter 9 – EMERGENCY MANAGEMENT.

¹ Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with **highlight**.

Sec. 9-1. - Definitions.

As used in this chapter:

Debris shall mean to include, but is not limited to, vegetative debris, construction and demolition debris, sand, mud, silt, gravel, rocks, boulders, and vehicle and vessel wreckage.

Duplication of Benefits shall mean funding received from two sources for the same item of work.

Private property shall mean all property that is not owned or controlled by a governmental entity.

Sec. 9-13. – Private Debris removal from Private Property.

The Village Manager may authorize removal of Debris from Private Property only during a declared Village state of emergency. Prior to the removal of Debris from Private Property, the Village Manager shall determine that: (1) the severity of the situation is of such magnitude or the Debris is so widespread that removal is in in the public interest; and (2) the Debris constitutes an immediate threat to life, public health, or safety, or to the economic recovery of the Village at large.

Sec. 9-14. – Gated Private Property.

In the event of a declared Village state of emergency, gated Private Property must provide reasonable access for emergency vehicles and any Debris removal vehicles and personnel. If the gates are unable to be opened for emergency access, then the entrance gates are required to be secured in the open position to allow for access during the emergency event.

Sec. 9-15. – Right of entry, indemnification and hold harmless, no duplication of benefits agreement.

Prior to removal of Debris by the Village from Private Property, the property owner(s), community association(s), homeowner association(s) and/or governance board(s) shall execute a right of entry, indemnification and hold harmless, and no Duplication of Benefits agreement on a form approved by the Village Attorney.

Sec. 9-16. – Emergency roadway clearance.

Nothing in this chapter shall preclude a first response by the Village to clear and push Debris from private roadways and rights-of-way as necessary for the movement of emergency vehicles, including police, fire, ambulance and other emergency responders.

Sec. 9-13 9-17. - Penalty.

Section 3. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Codification. That it is the intention of the Village Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Village's Code of Ordinances, and that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word.

Section 5. Conflicts. That all ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 6. Effective Date. That this Ordinance shall become effective immediately upon adoption on second reading.

PASSED on first reading this 24th day of April, 2018.

PASSED AND ADOPTED on second reading this ____ day of _____, 2018.

MAYOR MAYRA PEÑA LINDSAY

ATTEST:

JENNIFER MEDINA, CMC
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

VILLAGE ATTORNEY