

CITY OF CORAL GABLES

CITY ATTORNEY'S OFFICE

MEMORANDUM

TO: Mayor and City Commission

Cc: Craig Leen, City Attorney
Cathy Swanson-Rivenbark, City Manager

FROM: Miriam S. Ramos, Deputy City Attorney & City Prosecutor

RE: State of Emergency Ordinance

DATE: October 10, 2017

During the course of Hurricane Irma, the City noted certain powers that are useful in order to adequately protect its residents. As such, this memorandum sets out proposed provisions relating to emergency operations before, during and after a storm or other emergency and is intended to guide the conversation regarding the adoption of a State of Emergency Ordinance.

Definition. For purposes of this Ordinance, a state of emergency exists when either, the President of the United States, the Governor of the State of Florida or the Miami-Dade County Mayor declares a state of emergency that applies to the City of Coral Gables or when an emergent situation exists or is imminent in the City of Coral Gables that impacts the health, safety and welfare of the residents of the City including in situations where it affects the City uniquely.

Mayor's Powers.

- The Mayor may declare a state of emergency when the conditions in sec. 27-1 exist.
- Once a state of emergency is declared, it remains in existence until affirmatively terminated by the Mayor.
- When a state of emergency has been declared, the Mayor shall exercise all powers granted to him or her under state law and under Section 6 of the Charter of the City of Coral Gables and in doing so, may waive any requirement of any law or rule that impedes the emergency efforts being undertaken by the City. Specifically, the Mayor's powers include, but are not limited to, the following:
 - Approve any item that the City Commission would be required to approve outside of the state of emergency;
 - Delegate his or her authority to the City Manager, City Attorney and/or Building Official, as further indicated in this Ordinance;
 - Issue evacuation and curfew orders;
 - Approve contracts related to emergency efforts;
 - Call emergency meetings; and
 - Exercise all powers granted in Ch. 252.38, F.S.

City Commission's Powers.

- Given the exigency and danger that exists during a state of emergency, the City Commission may attend meetings of the City's emergency operations center and/or emergency briefings in person or by phone. These briefings are intended to inform members of the Commission on the status of emergency preparedness and/or rescue and clean-up efforts, and of any emergency issues that may have arisen. Emergency briefings will not involve any items that will later be presented to the City Commission to act on as a body and will only relate to emergency matters over which only the Mayor has authority to take action.
- As to non-emergency matters, the City Commission retains authority to act if a City Commission meeting is held during the state of emergency.

City Manager's Powers.

- The City Manager shall exercise all powers delegated to him or her by the Mayor, when the declaration of state of emergency is issued and shall take all prudent and lawful actions necessary to protect the health, safety and welfare of the community and its residents.
- The City Manager may, in his or her discretion, grant extensions of special event permits, suspend or reschedule special events and take any action necessary to secure City property and or the City's right-of-way.
- The City Manager shall coordinate with other governmental agencies to ensure the City's actions are consistent with the emergency management plans for the State of Florida and Miami-Dade County.
- The City Manager may, in his or her discretion, delegate all or part of this authority to Assistant City Managers.

City Attorney's Powers.

- The City Attorney, Deputy City Attorney or Assistant City Attorneys may issue authoritative interpretations of any emergency management provision upon which the Mayor and City Manager and their designees may rely.
- The City Attorney, Deputy City Attorney or Assistant City Attorneys may issue cease and desist letters, as necessary, in order to require compliance with the city code, zoning code or Florida state statutes. Cease and desist letters issued under this Ordinance shall carry a fine of up to \$15,000 (per day or per violation, as may be applicable) if violated, unless the letter indicates otherwise.

Powers of the Building Official and Code Enforcement Division.

- The Building Official has full jurisdiction over any construction site and can give any orders deemed appropriate which can be enforced by the City Attorney or Code Enforcement.
- Hurricane Inspections

- During such time as a state of emergency is in effect for the City or once the five-day forecast cone from the National Hurricane Center predicts that the City will be impacted by a tropical storm or hurricane, whichever comes first, best efforts shall be used by owners and/or any occupants of real property to secure all furniture, display racks, materials and similar loose objects in exposed outdoor locations, including loose materials or equipment at construction sites that must be secured or otherwise appropriately braced to rigid construction or stored in buildings to the extent practicable, given the conditions. The City shall give oral or written orders to any person on the premises most logically responsible for maintenance and such orders shall be carried out before winds of tropical storm velocity begin. In the event of construction, the City shall also attempt to give notice to the contractor, if practicable.
- Failure to comply with the requirements in (1) will subject the property owner and/or contractor to the following fines:
 - A property owner who fails to remove or secure furniture, display racks, materials and similar loose objects in exposed outdoor locations, \$1,000 per day, through the duration of the storm;
 - A property owner who fails to remove or secure loose materials or equipment at a construction site, including items in dumpsters, \$5,000 per day, through the duration of the storm;
 - A contractor who fails to remove or secure loose materials or equipment at a construction site, including items in dumpsters, \$5,000 per day, through the duration of the storm.
- If damage is caused to property due to the owner or contractor's failure to remove or secure loose materials or equipment at a construction site, a fine of up to \$15,000 may be issued.
- City employees may enter onto private property to secure items, if necessary, to protect life, safety and welfare, and will not be held liable for any damage caused while doing so. This authority to enter private property does not impose a duty on the City or its employees to do so or to otherwise inspect private property or secure items.
- Cranes
 - All cranes that are located on City property, over or on the public right-of-way, or that involve a staging plan affecting the public right-of-way, shall comply with the wind load requirements of the Florida Building Code. This provision applies at any time the circumstances in this subsection are met even when there is not a state of emergency, due to the City's proprietary interests and the potential liability related to public property.
 - Any crane on private property that does not comply with the Florida Building Code shall be removed once the five-day forecast from the National Hurricane Center predicts that the City will be impacted by at least a Category 2 hurricane on the Saffir-Simpson Hurricane Wind Scale. Failure to remove any cranes as detailed above will result in a fine against each contractor and crane operator of up to \$15,000 per

day, through the duration of the storm, and the contractor and crane operator shall be jointly and severally liable for all damages that result from their failure to remove the cranes.

- Any crane located in the City, whether it complies with the Florida Building Code or not, shall be removed once the five-day forecast cone from the National Hurricane Center predicts that the City will be impacted by at least a Category 3 hurricane on the Saffir-Simpson Hurricane Wind Scale. Failure to remove any cranes as detailed above will result in a fine against each contractor and crane operator of up to \$15,000 per day, through the duration of the storm, and the contractor and crane operator shall be jointly and severally liable for all damages that result from their failure to remove the cranes.
- The City retains its sovereign immunity as to any claim related to cranes. Nevertheless, to the extent that the City is sued, the contractor and/or crane operator shall indemnify, defend and hold harmless the City from all liability that may result.

Disaster-generated Debris Removal.

- When the removal and disposal of disaster-generated debris is necessary, the City Manager and his or her designee is authorized to designate a site for placement of a chipper and any other equipment needed for an efficient and effective operation. This applies both when the City is conducting the debris-removal and processing operations as well as when the operations are being conducted by a private party.
- The City Manager or his or her designee shall set all conditions for the operation of the equipment at the designated sites.

Disaster-generated Debris Removal on Private Roads and Property.

This section is drafted with the intention of securing FEMA reimbursement for debris-removal on private property.

- Disaster-generated debris located on private roads and private property is the responsibility of the property owner. Property owners and communities must rely heavily on private contractors to collect, remove, and otherwise manage debris located on private property.
- The City may remove debris from private roads and private property when the following conditions are met:
 - Disaster-generated debris located on private property and/or private roads is determined to be an immediate threat to the public. The determination shall be made by:
 - i. The City Commission, City Mayor, City Manager, his or her designee, or any other public entity with legal authority stating that disaster-generated debris on private property and/or private roads within the City constitute an immediate threat to life, public health, and/or safety, and/or;

- ii. The Building Official, by providing documentation stating that the debris on private property poses an immediate threat to improved property and that its removal is cost effective.
 - The property is located within the City’s jurisdictional boundaries.
 - When reasonably possible, documentation is received from the property owner which includes a right-of-entry, hold harmless and indemnification agreement, along with the applicable scope of work to be performed by the City.
- Disaster-generated debris removal on private property shall be limited to clearance of the living, recreational and working areas of the property except for areas used for crops and livestock or unused areas.

Trees.

During a state of emergency, all City code provisions relating to trees remain in effect and any person or entity that unlawfully removes a tree or commits tree abuse, in the days immediately following the state of emergency, will be issued a citation with a fine of up to \$15,000.

The Ordinance will also include an immunity provision protecting all elected and appointed officials, their designees and all City employees who undertake actions pursuant to the Ordinance.