

Resolution No. \_\_\_\_\_

RESOLUTION INVOKING AUTHORITY OF SECTION 33-15-49, MCA,  
REGARDING DEBRIS REMOVAL FROM PRIVATE PROPERTY  
NECESSITATED BY STATE OF EMERGENCY

WHEREAS, due to the widespread damage wrought by Hurricane Katrina on August 29, 2005, the City Council of the City of Biloxi has declared a state of emergency, as authorized by Section 33-15-17(d), MCA; and,

WHEREAS, due to the same catastrophic natural disaster the Governor of the State of Mississippi declared a state of emergency for much of the State of Mississippi, including the City of Biloxi; and,

WHEREAS, although removal of debris from the streets of the City of Biloxi has begun in earnest, vast amounts of debris (including but not limited to limbs, trees, cars, boats, demolished homes and structures, and partially demolished and unsafe homes and structures) remain, sometimes completely covering vast areas of private property in size and density too great for private citizens to remove unassisted; and,

WHEREAS, the continued presence of these vast masses of debris on private property is adversely affecting the health, safety, and welfare of the general public and the City of Biloxi by significantly increasing the potential for uncontrolled fires, which would be rendered more difficult to access and contain by the debris itself; and,

WHEREAS, the continued presence of these vast masses of debris on private property is adversely affecting the health, safety and welfare of the general public and the City of Biloxi by concealing deteriorating vegetative debris and animal remains, and potentially concealing as yet undiscovered remains of citizens of the City of Biloxi; and,

WHEREAS, on September 9, 2005, the Mississippi Department of Health notified FEMA

that it had issued a [Declaration of Public Health Emergency](#) declaring that a public health emergency exists in the State of Mississippi as a consequence of Hurricane Katrina; and,

WHEREAS, it would be in the public interest (as contemplated by 44 CFR Section 206.224) to remove the debris on private property in order to eliminate the immediate threat to life, public health, and safety (as evidenced by the Mississippi Department of Health [Declaration of Public Health Emergency](#)), and to eliminate the immediate threat of significant fire damage to other improved property in the City of Biloxi; and,

WHEREAS, although vast areas of the City of Biloxi are in need of this additional debris removal from private property, the only way the City can effectively accomplish this herculean task without being overwhelmed by its enormity is by serially designating portions of the City and attacking the problem in those manageable increments; and,

WHEREAS, under Major Disaster Declaration DR-1604-MS and FEMA Recovery Division Policy Number 9523.13, and as explained in the September 10, 2005 letter from FEMA (signed by Nancy Ward, Director, Recovery Area Command) FEMA has made a determination that it is in the public interest to remove debris from private property because an immediate threat to public health and safety exists to the City of Biloxi, thus qualifying the City for reimbursement for such debris removal provided FEMA procedures and prerequisites are followed and satisfied; and,

WHEREAS, pursuant to Section 33-15-11(b)(1), MCA, on August 31, 2005, the Governor of the State of Mississippi signed an agreement with the Federal Emergency Management Agency entitled [FEMA-State Agreement](#); and,

WHEREAS, it is the intent of the City of Biloxi to qualify for funding of debris removal under Sections 403 and 407 of the Stafford Act by arranging an unconditional authorization for

removal of debris and agreeing to indemnify the Federal government against any claim arising from the removal, as required by Recovery Division Policy Number 9523.13; and,

WHEREAS, although (to the extent feasible and as circumstances permit), an attempt to obtain a right of entry from private property owners prior to the commencement of debris removal work shall be undertaken, as contemplated by Section 7(B) of Recovery Division Policy Number 9523.13, it is hereby found, determined, and adjudicated that ordinary condemnation and nuisance abatement procedures and the obtaining of a right of entry are too time consuming to address the immediate public health and safety threat identified herein; and,

WHEREAS, as evidenced by Opinion Letter dated September 9, 2005, and addressed to William L. Carwile, III, the Attorney General of the State of Mississippi has determined that the laws of the State of Mississippi cited therein and the actions of the Governor of the State of Mississippi in this time of emergency establish a legal basis for local officials to authorize emergency debris removal from private property without the need to first obtain a condemnation order from a court or the property owner=s permission, thus satisfying the requirement of Section 7(E) of Recovery Division Policy Number 9523.13; and,

WHEREAS, it is the intent of the City of Biloxi, Mississippi, to comply with the requirements of Section 7(D) of Recovery Division Policy Number 9523.13 by taking reasonable steps to prevent duplication of benefits by subsequently researching whether insurance coverage exists for the debris removal accomplished on each piece of private property in the program, and, where such duplicate payment is found, by making reasonable efforts to recover such proceeds paid to the property owners and remitting recovered funds in a timely fashion to FEMA;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILOXI, MISSISSIPPI, AS FOLLOWS:

SECTION ONE: The statements, findings, determination, and conclusions stated in the preamble of this Resolution are hereby approved, adopted and ratified. A state of local emergency having been previously declared by municipal, state, and federal authorities, the City of Biloxi takes the following actions based upon Section 33-15-49, MCA, as well as other state and federal statutory and declaratory authority and mandates.

SECTION TWO: The first of the serially designated areas of the City of Biloxi, Mississippi, which is hereby declared to contain sufficient amounts of debris on private property to constitute an immediate threat to the health, welfare, and safety of the general public and the City of Biloxi, and therefore to require public assistance in the removal of such debris is designated as that area bounded on the North by the CSX Railroad right of way, on the East by the mouth of the Bay of Biloxi, on the South by the Mississippi Sound, and on the west by Oak Street.

SECTION THREE: On the basis of the determinations by state and federal officials as to the extent of the immediate threat to public health, welfare, and safety (as well as on the basis of the first hand experience of City officials and personnel), it is hereby found, determined, and adjudicated that emergency debris removal from private property within the area designated by Section Two above is hereby authorized without the need to first obtain a condemnation order from a court or the property owner=s permission. As contemplated by document BB 1604 9/13/2005 (ASuggested Template@) attached to the Private Property Debris Removal Advisory Package provided by the Mississippi Emergency Management Agency and the Federal Emergency Management Agency, the Director of the Department of Community Development shall compile the list of which tax parcels within the designated area require this exceptional process of public removal of debris from private property without obtaining a Right of Entry

with Indemnity Clause signed by the property owner or use of the statutory condemnation or nuisance abatement procedures.

SECTION FOUR: If it is possible to obtain the approval of a property owner prior to such debris removal, then that should be accomplished; however, the extent and scope of the damage and the severity of the public health and safety danger that has been created by this debris necessitates that removal of said debris shall not be delayed by any failure to locate an owner or the failure to obtain consent to remove debris from private property.

SECTION FIVE: Within the area designated above in Section Two, on property where there is no structure, or the structure is not in need of condemnation, the following procedure shall be followed:

- i) A notice describing the area and/or parcel of land where debris removal will take place shall be published in the Bay Press or Sun Herald newspaper (based upon the most expedient publication deadline), at least seven (7) calendar days prior to the beginning of the debris removal. During this seven (7) day period, property owners shall have the right and opportunity to go upon their property and remove such items as they deem appropriate, under rules promulgated by the Administration;
- ii) A notice shall be clearly posted in the area where debris removal will take place. The media will be advised of this action so as to give the broadest public notice;
- iii) The notice shall contain the following information: a) a general description of the area where debris removal shall take place; b) the date and time when debris removal will begin; c) the name and telephone number of the office where the property owner can secure information with regard to the debris removal; d) a statement of the reason for the debris removal.

SECTION SIX: If the debris consists of a partially destroyed or damaged structure and the appropriate City official determines that it is unsafe, unfit for human habitation, or presents a danger to the public in its existing state, and if the property owner consents and executes a written consent to the demolition and removal of debris, then the official shall condemn the structure and the demolition shall be completed and the debris shall be removed.

SECTION SEVEN: If the debris consists of a partially destroyed or damaged structure and a part of that structure still remains but the consent contemplated above is not obtained for any reason, then an abbreviated and expedited procedure shall take place that shall consist of:

- i) in addition to the notice required above to be published, an attempt to identify and contact the owner of the structure (which shall only be required to consist of those measures reasonable and possible based upon the state of available records and communication channels, which have been severely diminished as a consequence of the disaster);
- ii) a determination by a designated officer of the Community Development Department that the structure is unsafe, unfit for human habitation, or presents a danger to the public in its existing state;
- iii) the posting of a notice of condemnation on the structure containing a phone number and physical address where the owner can contact the City, designating the date of posting of the condemnation notice, and stating the time period available prior to demolition for contacting the City, and a publication one time in the Bay Press or Sun-Herald (based upon the most expedient publication deadline), of a notice of the condemnation;
- iv) a waiting period of seven days from the posting of the notice for a property owner to contact the City and present compelling evidence to the Director of the Department of Community Development of why the condemned structure should not be removed; and,
- v) at the next City Council meeting following said seven day period a public hearing shall be held, and upon confirmation of adjudication of condemnation of a structure the structure shall be demolished.

If an owner does contact the City as provided in the notice and the Director of the Department of Community Development does not conclude that the evidence presented by the owner alleviates the danger to the public, an owner aggrieved of this process may appeal to the City Council by written notice to the Clerk of Council prior to the demolition of the structure; however, while City officials should make every effort to schedule demolitions in a sector to allow time for such an appeal, no appeal shall be allowed to jeopardize the health and safety of the rest of the citizens by causing a postponement of demolition beyond the next City Council meeting following the filing of such an appeal (unless postponement is ordered by the City

Council).

SECTION EIGHT: As contemplated by Section 7(C) of Recovery Division Policy Number 9523.13, the Mayor is hereby authorized and directed to submit a written request to the Federal Coordinating Officer (FCO) seeking approval for reimbursement of funds expended to remove debris from private property pursuant to this Resolution. Said request shall include those provisions required in Section 7(C) and shall be in substantially the format of the ASuggested Template@ provided by MEMA/FEMA. The Mayor is hereby authorized to execute said document on behalf of the City of Biloxi, as its act and deed, making all certifications and commitments required by said federal procedure on behalf of the City of Biloxi. A copy of the ASuggested Template@ is attached hereto as Exhibit AA@ to this Resolution.