

CODE ENFORCEMENT

After a Hurricane: Helping the Community Stabilize and Recover

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Enforcing local codes of all types, from noise ordinances to property maintenance requirements, starts with what the law requires. But, in many ways, the ongoing work can be less about following specific provisions or sections of the law than solving problems, especially on a neighborhood or community scale. That's in part because municipal and county code enforcement staff aren't just there to collect fines or issue citations. For example, failure to maintain a building can raise community concerns based on poor appearance as well as safety, and issuing a fine, by itself, doesn't solve the problem. In addition, most code enforcement cases are complaint driven, meaning the person complaining wants to see the violation corrected.

So, how do local communities handle code enforcement after a hurricane or natural disaster? Given the set of hurricanes which have recently hit the southeastern United States in rapid succession, this isn't a theoretical question. And with the help of the internet after a summer of such repeated hurricanes, from Harvey to Irma to Maria and elements of Jose, we have current evidence of practical steps dozens of communities have taken and are taking. The reality is that many localities in Texas, Florida and other parts of the southeast were devastated. Powerful winds not only damaged but wreaked havoc on some homes and buildings. Flooding, after forcing people out, will now force repairs and rebuilding. And as they recover, local governments have used the internet to try to get the word out to their communities as to the next steps, despite a lack of electricity in many areas, not to mention lack of computer access.

As anyone living through a disaster knows, priorities change for communities struggling to survive, where thousands of residents and homeowners have been struck all at once. Immediate needs have to be addressed, and lives are often at stake. And for code enforcement, the problems to be solved have multiplied exponentially. No more can code enforcement staff focus on individual homeowners who may have failed to paint or who may have an unsafe handrail or steps. Many buildings, including local government structures, are partly if not entirely destroyed, and in many cases, almost everyone in the community faces such damage – including local government staff and officials.

Thus, in such a widespread disaster, relief efforts focus on the emergency, such as providing immediate shelter for persons who have to evacuate. While relief agencies may take the lead role, local government shelters are also widely provided. But when the hurricane passes and people go back home, it's often local government which then provides the backbone of support. In reviewing reports after the most recent hurricanes as well as those from past decades, it's apparent that the immediate goal for code enforcement staff is to identify properties with damage and to try to make homes safe.

That doesn't start with citing anyone for code violations, however. News reports indicate, for example, that after Hurricane Irma moved through, code enforcement officers in Hillsboro County, Florida, were stopping to check on residents and to assist them in assessing the damage they faced. The County reported code enforcement staff – as well as building services, public facilities, parks and recreation and many others – were all canvassing the areas to identify homes with serious safety concerns and to try to bring assistance, through social services and other relief agencies, to persons needing shelter, food and clothing even as they returned home. Another reality is that in most cases, electric and other utilities aren't operating after a hurricane. It's apparent that part of the local effort in having staff canvass areas and notify people how they can start to recover is also to focus on the use of portable generators to ensure safe use. As the City of Weston, Florida, emphasized, generators can't be operated in enclosed spaces due to carbon monoxide fumes, can't be plugged into wall outlets, as electrocutions can result, fuel can't be stored inside the home, and generators should be installed by professional electricians.

Broward County, Florida, established a formal Home Damage Assessment Program to assist in identifying key safety concerns within the community, and established a set of protocols, including comparison photos and a Home Damage Assessment application, allowing residents to identify the extent of damage (from "minor, habitable," to "major damage, uninhabitable" or even "destroyed.")

While damage assessment is one of the first steps in rebuilding, the reality is that hurricanes involve both flooding and high winds. Thus, even as residents begin to recover and assess damage, other practicalities have to be addressed. Many local governments, such as St. John's County, Florida, note the need for proper disposal of sandbags, many of which were provided by the local governments in the first place to allow residents to try to control flooding. The code enforcement aspect becomes apparent when the sandbags are no longer needed. St. John's encouraged residents to keep them for the next time, as a pre-

caution, but to store them properly, and to dispose of sandbags which were used or came in contact with floodwaters. The City of Oviedo, Florida provided a drop off container in a public area for sandbag disposal, and Clearwater, Florida noted that sand can be taken out of used bags and put in the garden or, if they did not come in contact with floodwater, can be saved and reused later.

As to the impact of high winds, almost every local government has focused on the need to clear and remove debris as one of the first steps to recovery. In many ways this underscores the extent of the damage, for in normal circumstances, the code enforcement aspects are also apparent – as most local ordinances include prohibitions against solid waste in yards or on the streets. Here, entire streets can be blocked by all sorts of debris. West Miami, Florida, for example, noted that contractors would begin storm debris removal "to the extent that these areas can be safely accessed," and asked residents to place storm debris in the right of way for pickup.

West Miami's request that debris be separated by category underscores their challenges. It's worth noting that those categories include vegetative debris, such as whole trees and leafy material; construction and demolition debris, including damaged components of buildings; household hazardous waste, such as paints, cleaners and pesticides; "white goods," such as appliances which no longer work, including freezers, refrigerators and the like; and electronic waste, such as computers and televisions. Similarly, Altamonte Springs, Florida, noting that contractors would be removing debris from roadways "seven days a week from 7 a.m. to 7 p.m" asked residents to place yard waste separate from construction and building debris in rights of way for pickup. The City of Kissimmee, Florida, asked for separation of tree debris from construction debris as well, as close to the road as possible without being in the roadway. The Town of Lauderdale-By-The-Sea, even while noting it sustained relatively minimal damage, hired a contractor the week after Irma to begin hurricane debris removal. Residents were asked to separate vegetation, including tree limbs, from hurricane debris such as fences and roof tiles, and to keep debris out of the roadway to allow passage. Even in noting minimal damage, the Town's website advised that it "will take several days" to complete clean-up for the entire Town.

As Pinellas County, Florida has noted, rebuilding begins after the area has been stabilized. Rebuilding is indeed the next step even as water recedes and debris is cleared, and that directly involves application of building codes and code enforcement processes. The hard reality is that local government staff will face exponentially more permit and plan reviews, and when disasters are so widespread, there's no chance to bring in additional staff from other jurisdictions – as they are facing their own community needs.

Yet even with more permits and plan reviews, in many cases local governments give staff less time to complete reviews. That's not to cut the code enforcement process short, but to assist residents and businesses in rebuilding by expediting permit approvals. Such changes in the days after Hurricane Irma, to "facilitate the recovery efforts," were specified, for example, by Altamonte Springs, Florida. The City of Melbourne simply noted that "all storm-damage permits will be expedited." After Hurricane Harvey, the City of Victoria, Texas specified that no permits were required before emergency repairs could begin, even as the City noted that permits would be "eventually required" in all cases, implying that no emergency repairs could be completed without final approval, even while asking for patience in that regard. Generally, communities specified that even while permits may be expedited, permits were still required, such as, for example, Orange County, Florida.

To encourage rebuilding, local governments waive or reduce permit fees, usually for a short time in the immediate aftermath of a hurricane. After Hurricane Matthew last year, the City of St. Augustine, Florida, specified that no building permit fees would be charged to homeowners for removal of storm damage material from their homes, or for "owner/builder" repairs to residences in response to hurricane damage. After Hurricane Irma, Port Orange, Florida instituted a temporary building permit fee waiver, from September 5 until November 8, 2017, exempting permits for tree removal, roof repairs, sheds, fences, sign repair or any other repairs caused by Hurricane Irma, but still requiring a separate affidavit and application to waive fees, along with the permit itself. The City of Oviedo waived fees for fence, roof and screen enclosures, but only for one month after Hurricane Irma passed – clearly encouraging those permits to be applied for during that first month, rather than later.

But waiving fees temporarily does not necessarily mean that permit requirements will be reduced. After Hurricane Hugo nearly 20 years ago, a University of Colorado study on permitting in South Carolina found instances in which local governments waived permits or were not stringent in approving permits for rebuilding. Miller, Elliott, "Building Code Enforcement Following Hurricane Hugo in South Carolina (1991)", FMHA Publications, at 5-6. It's always possible that permit applications or final building projects will be reviewed less stringently given the rush of permits after a disaster. But even the 1991 Report, while critical of local permitting officials in many ways, found that no city or county implemented a policy granting variances. *Id.* In reviewing local government responses to the recent hurricanes, many allowed temporary permit fee waivers, but no permit waivers were noted, even where emergency work was allowed to begin without a formal permit.

The rush of needed rebuilding and repairs will of course encourage contractors into the area, some of whom may not be licensed or even competent. As the 2006 Miami-Dade County Progress Assessment Report noted after Hurricane Wilma, the large need can lure unlicensed contractors who will prey on homeowners. "Post Hurricane Wilma Progress Assessment, Miami-Dade County Building Code Compliance Office, April 2006," at 17. This element of recovery involves code enforcement as well, both to ensure contractors have proper licensing as well as the quality of their work. The City of Victoria, Texas, noted that all contractors must hold a valid and current license with the City, would be fined $100 for not having such

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a license, and that unlicensed work "will not be tolerated." The City also noted that contractors soliciting work door to door needed a solicitor's permit from the City. The City clearly reflects the local government concern that their residents not become victims, which may also inhibit overall area recovery as well. In that light, Pinellas County, Florida noted that residents should not "let your eagerness to make repairs leave you a victim" of an unscrupulous contractor, advising everyone that they should insist on license numbers, references and a written estimate – and that the County's Department of Justice and Consumer Services could assist with more information.

One type of waiver was noted in a recent report from the City of St. Augustine, Florida after Hurricane Matthew: due to the state of emergency, homeowners could reside in a recreational vehicle on the property for up to six months while the hurricane damage was being repaired. Hurricane Matthew Recovery, City of St. Augustine Planning and Building Department (2015) at 1. But no zoning or building code waiver was granted, and the Report specified that permits and all requirements still applied. *Id.* at 2. This demonstrates that code enforcement efforts continue to be relevant throughout the recovery process, as waiving building code and construction requirements is not part of that recovery.

For the long term, code enforcement can become the critical element enforcing the need for a community to recover. For instance, when property owners don't make repairs in a timely manner, it falls to code enforcement staff to inspect, re-inspect, issue notices of violation, and pursue civil citations or even orders for construction or demolition, where necessary. A November 13, 2016 SUN-SENTINEL article noted that after Hurricane Matthew threatened Florida, many homes remained boarded up in South Florida, presenting a bad visual appearance while also potentially blocking a resident's ability to escape a fire. Huriash, Lisa, "A Month After Hurricane, Cities Crack Down on Residents Who Haven't Removed Shutters," SUN-SENTINEL, November 13, 2016. The article reported that the City of Parklane issued nine warnings, and the City of Tamarac, Florida, modified the local code to require shutter removal 15 days after a hurricane, with fines to be imposed if the shutters remain.

Taking another approach, the City of North Miami Beach, Florida, instituted an Administrative Code Waiver program which ended on December 31, 2016, allowing property owners to legalize zoning and building code violations without facing a penalty. The program specified that permits would be required but no fines or penalties, beyond the $25.00 fee to apply for the waiver, would be imposed.

Recovering from the flooding, collecting debris, rebuilding and recovering all takes weeks, months, even years. But only one week after Hurricane Irma and a few weeks after Hurricane Harvey, it was apparent that local counties, cities and towns affected were starting the path to recovery. Such survival and recovery is worth celebrating, as the City of Madeira Beach, Florida, recognized. That city was not in the direct path of Hurricane Irma as initially feared, but still suffered serious damage, power outages, and flooding. But in the midst of recovery, the City put word out that they wanted to take a moment to celebrate the volunteers, city staff, support teams and others, including the Pinellas County Sheriff Department and the Madeira Beach Fire Department "and our great community as a whole for coming together at this time," inviting everyone to the City Hall parking lot the Friday after the hurricane for a celebration toast.

Life thus goes on, even through disaster and recovery, and that does deserve celebration. As noted at the beginning, code enforcement is essentially about problem solving. This article demonstrates that code enforcement staff are also very much part of the solution after a natural disaster It requires both more, and in some ways less, from code enforcement. Any emergency that causes widespread damage to a community results in less stringent enforcement – because the details don't matter as much as life and safety. Thus, code enforcement offices and staff become part of the community's overall response, assisting with life safety and property emergencies. They will help assess building damage for recovery, while also helping enforce debris removal and even disposal of sandbags used to prevent flooding. Waiving fees to encourage rebuilding and expediting the permit review process also adds to the code enforcement work load, as it essentially requires the same staff to accomplish more, in less time. But permit and building code requirements are generally still honored and enforced by code enforcement staff, as they work with their towns, cities and counties to help their communities recover. ML

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