

INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION
76th ANNUAL CONFERENCE
CHICAGO, ILLINOIS
SEPTEMBER 11 – 14, 2011

" DEALING WITH DISASTERS "

Presented by:

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CITY ATTORNEY
JOPLIN, MISSOURI

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Dealing With Disasters

Or – How to get a career worth of experience in 30 days

International Municipal Lawyers Association
Annual Conference
Chicago, Illinois
September 11-14, 2011

By: Brian W. Head, City Attorney, Joplin, Missouri

Who is Joplin?

- Town of 50,175 in the southwest corner of the State of Missouri.
- Regional center for shopping, jobs and medical care.
- Daytime population of approximately 250,000 going as high as 500,000 during holiday season

What Just Happened?

- On May 22, 2011, 5:41 p.m., a Tornado touched down at the southwestern edge of the City.
- Quickly grew to an EF-4 tornado and then an EF-5 with winds in excess of 200 miles an hour.
- 7,500 homes impacted.
- 4,000 were either extensively or catastrophically damaged.
- 500 businesses damaged or destroyed – affecting 5,000 employees. (3,500 now back on payroll through governmental programs and private employers.)
- 2 fire stations and related engines destroyed.
- Cunningham Park (Joplin's very first park) was destroyed.
- Power, phone, cell phones, and water all down or reduced.
- 6 school buildings including the high school.

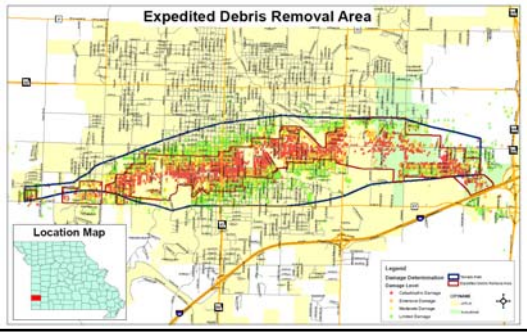
What Just Happened? (Cont.)

- St. John's Hospital built to a Type-1 Construction standard. Only one of two buildings in the entire City built to this standard was rocked off its foundation 4 inches and unusable.
- Wal-Mart, Academy, Home Depot, Dillon's Grocery, two Walgreens locations, numerous restaurants, car dealerships. Significant loss of sales tax revenue.
- Estimated 3,000,000 cubic yards of storm debris.





The Impact Zone



Where Is the City Attorney?





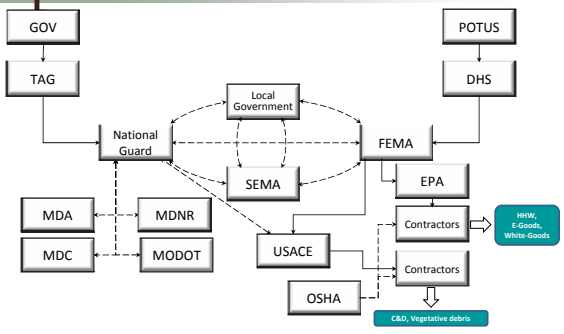
How Do We Clean this Mess Up?

- Self-Cleanup by residents.
- Volunteers – as of 7/31 - 69,088 registered volunteers; 337,627 hours of service.
- Get a coordinator like Americorps to help.
- City and MoDOT cleanup of streets – signals and stop signs.
- Request FEMA assistance through State Emergency Management Agency.
- US Army Corps of Engineers tasked to clean up the storm debris.

Coalition of the acronyms

- USACE; FEMA; MoANG; EPA; DNR; MDA, MDC, SEMA, CDC, AFOSI, BIA, ATF, DEA, DOD, ICE, KsARNG, NYPD, MSHP,SFPD, OSHA, JPD, JFD, METS, NCAD, JCSD, NCSD, PIO . . . Etc. And all of the dozens of police departments, etc., that responded from around the country.

Debris Management Task Force



FEMA?? Do I really have to?

- Yes. . . Really you do.
- City requests a “Clean Sweep” program like Tuscaloosa.
- Received a Presidential Declaration called “Expedited Debris Removal” EDR for short.
- 90/10 cost share and the ability to go onto private property to clean up loose storm debris. This was a “pilot project”.
- But. . . How do I get on private property?
- Right of Entry or Nuisance Declaration.
- FEMA Disaster Assistance Policy DAP9523.13 – debris removal.

But. . .how do I get on private property?

- Right of Entry form.
- Indemnity of the U.S. Government and Contractors; State and City.
- Insurance information.
- Duplication of Benefits. FEMA DAP 9525.3.
- Lessons learned – explicitly include trees and titled property like cars and boats.
- Nuisance Declaration by the Director of Public Health
- Ability to abate nuisances comes from the police power of the City.
- Missouri Statute - Section 67.398 provides specific authority for Debris removal.
- New City Ordinance.

42 USC 5155 - Sec. 5155. Duplication of benefits

(a) General prohibition The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.

(b) Special rules (1) Limitation This section shall not prohibit the provision of Federal assistance to a person who is or may be entitled to receive benefits for the same purposes from another source if such person has not received such other benefits by the time of application for Federal assistance and if such person agrees to repay all duplicative assistance to the agency providing the Federal assistance. (2) Procedures The President shall establish such procedures as the President considers necessary to ensure uniformity in preventing duplication of benefits. (3) Effect of partial benefits Receipt of partial benefits for a major disaster or emergency shall not preclude provision of additional Federal assistance for any part of a loss or need for which benefits have not been provided.

(c) **Recovery of duplicative benefits A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source.**

The agency which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with chapter 37 of title 31, relating to debt collection, when the head of such agency considers it to be in the best interest of the Federal Government. (d) Assistance not income Federal major disaster and emergency assistance provided to individuals and families under this chapter, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, shall not be considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs.

Figuring out a cost

- Cost is not the actual cost of removal paid by the Corps. "Corps is the most expensive contractor in the world." Unnamed Corps employee.
- Historic data from previous demo / removal contracts.
- Actual contractor bids.
- Reduce the historic cost to reflect the fact that it is removal and hauling, not demo.
- City Council Approved an Ordinance (2011-078) establishing these costs.

3-tier cost structure:

Lot Size	Debris Removal Value
Up to 10,000 square feet	$1,500.00
10,001 square feet to ½-acre	$2,500.00
½-acre and greater	$4,000.00

Insurance Proceeds

- In Missouri, most policies combine demolition and debris.
- Vegetation is generally not covered unless it impacts an insured structure like a house, outbuilding or fence.
- Policy structured to require the resident to pay the LESSER of their insurance proceeds or the amount established under the 3-tier structure.
- City will act as collection agency and will review policies, and bill property owners/insured for the correct amount.

Nuisance Process

- Missouri Statute 67.398 provides specifically for debris related nuisances.
- City Public Health Director declared debris a nuisance.
- A new Ordinance was passed by the City bypassing the Municipal Court and going directly to a hearing in front of the Council.
- Pictures of every property were taken and placed onto a spread sheet.
- Every property had a short hearing with pictures – 457 hearings. (Only one resident appeared.)
- Seven day notice of hearing, followed by the hearing, and a seven day notice of the Findings of Fact and Order.
- All notices by publication.

EDR ended August 7, 2011

- Final results:
- 1,462,044 cubic yards of debris removed by Corps contractors
- 10,578 cubic yards of RACM (Regulated Asbestos Containing Material) removed.
- 1505 properties (either ROE or Nuisance) were abated by the Corps.
- City to let an additional contract for roughly 100,000 cubic yards of remaining material

NOTE: Citizens, through volunteers and private contractors also removed roughly 1,500,000 cubic yards of debris in the same time.

Final Bits of Advice for Lawyers

- Don't be a lawyer for the first 48 hours.
- Assemble a team consisting of operations, finance and legal to ride herd on the big mission – in our case, debris.
- Don't be afraid to ask for more than you think you'll get.
- Don't be afraid to say "No".
- Don't be afraid to fight for your citizens even if it is the Federal Govt.
- Reach out to IMLA, your local state league, attorneys who have been through it before.
- Review your ordinances and statutes on emergency powers and who does what.
- As a lawyer, ask your self questions about what you're requiring. Is it really necessary or just your sense of "perfection".
- Help your PIO – whether he/she is your own or not. They are your conduit to the citizens.
- Don't be afraid to ask for help personally – consider your EAP.

Questions?

FEMA

FEMA-1980-DR-MO
Expedited Debris Removal

Overview

The Federal Emergency Management Agency (FEMA) is implementing an Expedited Debris Removal initiative to accelerate the removal of debris in the areas hardest hit by the devastating tornado that struck Missouri on May 22, 2011. The tornado left behind large swaths of destruction where virtually all structures within the swaths were destroyed leaving large amounts of debris. Expedited Debris Removal applies significant resources to removing debris from these areas in a rapid and comprehensive manner. Expedited Debris Removal allows public and private property debris removal (PPDR) in the high impact areas, as identified using geospatial imagery. The Expedited Debris Removal approach in these targeted areas will facilitate a speedier recovery of the community.

The President has authorized 90 percent Federal funding for the total eligible costs through August 7, 2011, for all eligible debris removed in the Expedited Debris Removal designated areas. FEMA is using geospatial imagery from the National Geospatial-Intelligence Agency (NGA) to identify the areas that are within or immediately adjacent to areas of "extensive" and "catastrophic" damage to designate areas as eligible for Expedited Debris Removal. FEMA, based on its authority to provide direct Federal assistance (DFA), can mission assign the U.S. Army Corps of Engineers (USACE) to remove the debris, or the State and/or local governments can remove the debris from the Expedited Debris Removal designated areas.

Funding for the removal of debris not included in the Expedited Debris Removal areas may be provided at 75 percent Federal funding. FEMA provides this and other assistance to the State and local governments under the Public Assistance Program in all of the areas designated by the major disaster declaration.

Frequently Asked Questions

What options does a local government have for debris removal related to Expedited Debris Removal?

Under this initiative, the eligible areas include both the public rights-of-way and private property. The work can be completed by the local government's force account labor and/or contractors, or by FEMA through a mission assignment to the U.S. Army Corps of Engineers (USACE). Local governments located in designated areas may choose, but are not required, to participate in Expedited Debris Removal.

Does the Federal cost share adjustment apply to other FEMA funding?

The 90 percent Federal cost share adjustment applies only to Expedited Debris Removal designated areas for removal of debris from public rights-of-ways and private property through August 7, 2011. After August 7, 2011, the Federal cost share will be at 75 percent. Areas not designated under Expedited Debris Removal and other Public Assistance Program activities are eligible for a 75 percent Federal cost share. Federal funds for Other Needs Assistance, under Federal Assistance to Individuals and Households (Section 408) and the Hazard Mitigation Grant Program (Section 404) will remain at the 75 percent Federal cost share, as required by law.

How are the eligible areas determined for Expedited Debris Removal?

FEMA utilizes the information supplied by the National Geospatial-Intelligence Agency (NGA) to identify those areas potentially eligible for Expedited Debris Removal through use of U.S. National Grid (USNG) coordinates. These coordinates identify the areas on a grid map.

FEMA will provide the State and local governments with the grid maps that delineate the boundaries of the high-impact swath of the tornado. All areas within the grid coordinates may be eligible for inclusion in Expedited Debris Removal as determined by the Federal Coordinating Officer (FCO). Additionally, the FCO may determine that areas immediately adjacent to these high-swath areas are also eligible for Expedited Debris Removal in order to facilitate the recovery of the community. FEMA will work with the State and local governments to obtain street addresses for properties that are eligible pursuant to the USNG coordinates.

What authorization and documentation is required?

The State or the appropriate local government must issue a finding of an immediate public health or safety threat as a result of the widespread and extensive debris which requires State or local government action. In accordance with 44 CFR 206.223(a)(3), in order to be eligible for Public Assistance Program funding, the local government must have the legal responsibility to remove debris from private property. The State or local government must confirm this legal responsibility in writing and cite relevant authority to enter upon private property and remove debris.

Local governments need to request private property debris removal through the State. The local government's request must include an indemnification for debris removal activity and must provide authorization for entry onto the property requested for debris removal. 42 USC 5173(b). This authorization may be provided through written rights-of-entry (ROE), State or local police powers, or condemnation ordinances.

Local jurisdictions should provide the Federal Coordinating Officer (FCO) copies of all ROEs or local government orders authorizing entry onto private property at least 72 hours prior to the commencement of debris removal in areas on the designated grid. If authorization is not provided, the affected property will not be cleared.

How will Expedited Debris Removal be implemented?

The process is as follows:

1. FEMA will designate Expedited Debris Removal areas using geospatial data provided by NGA;
2. FEMA and the State will meet with the local governments to discuss Expedited Debris Removal requirements as well as the Public Assistance Program's debris removal policies;
3. FEMA will provide the State and affected local governments a map of the designated Expedited Debris Removal areas;
4. FEMA will work with the State and local governments to identify individual properties and notify residents; and
5. In accordance with FEMA's Disaster Assistance Policy (DAP) 9523.13, *Debris Removal from Private Property*, local governments should submit a written request letter, through the State, to FEMA for private property debris removal approval. The request should include documentation required by DAP 9523.13. The FCO will consider the request and make a determination on approval.

How will property outside of the high impact swath be treated?

Local governments may conduct debris removal using their own force account labor or contractors. Eligible debris removal costs will be reimbursed by FEMA through the Public Assistance Program grant process with a 75 percent Federal and 25 percent non-Federal cost share.

Local governments, through the State, may also request direct Federal assistance (DFA) from FEMA, via mission assignment to the USACE, for debris removal outside of the Expedited Debris Removal areas. However, this will be implemented with a 75 percent Federal and 25 percent non-Federal cost share.

Will property owners be notified when the debris removal operation will begin so they have a chance to gather their personal effects?

A reasonable period of time (at least 72 hours) should be provided after obtaining ROEs or local government orders authorizing entry onto private property before the commencement of debris removal. The State or local government will confirm compliance with local notice

requirements. The State or local government will confirm that at a minimum, the following has been accomplished within a reasonable time prior to commencement of debris removal operations:

- Personal Notification
- Posting on the property if personal notification was attempted but was unsuccessful
- A media campaign undertaken by the State or local government with the assistance of FEMA External Affairs

Does the property owner have the right to refuse signing the ROE?

Yes. The property owner does not have to sign the ROE.

What responsibility does the property owner have in this process?

The property owner shall indemnify and hold harmless the local government, the State, the Federal government, and any of their officers, agencies, agents, contractors, subcontractors, employees and volunteers in the ROE.

What if the property owner has insurance coverage for debris removal?

The local government will be responsible for obtaining insurance information (coverage, proceeds, and settlements) from private property owners and will provide the information to the State and FEMA. All rights of entry will include a statement requiring the property owner to report any insurance coverage or insurance settlements made for debris removal. The property owner will submit any insurance proceeds as directed by the local government. For areas where direct Federal Assistance (DFA) is authorized, FEMA will pursue appropriate private insurance settlements for debris removal to reimburse Federal costs to the fullest extent of the law.

In order to maximize recovery of private property debris removal insurance proceeds, FEMA will engage the State Insurance Commissioner on development of a collection plan.

Is debris removal from commercial property eligible?

It may be eligible if FEMA and State officials determine that debris removal from those properties serves a legitimate public service and is in the public interest. The proximity of commercial property to residential property and the level of destruction are factors that FEMA will consider when determining the eligibility of debris on commercial property. If approved, local jurisdictions will be responsible for obtaining insurance information from the commercial property owners and will be responsible for pursuing the commercial property owner for any

insurance reimbursement for debris removal. The insurance settlement for debris removal will reimburse Federal costs to the fullest extent of the law.

How will environmental and historic preservation requirements be addressed?

FEMA and the State will establish a protocol for the consideration of environmental and historic preservation issues associated with this operation. The protocol should leverage emergency provisions in the various Federal environmental and historic preservation laws, executive orders, and regulations applicable to this action. The protocol should address how expedited reviews would occur for:

- Presence of and impacts to historic properties (including archeological resources),
- Location of temporary staging areas for debris,
- Suitability of final disposition site, and
- Appropriate disposal of hazardous debris such as asbestos containing materials, materials with lead-paint, and household hazardous wastes.

Will the USACE recycle debris? If so, what is the process?

Yes. USACE will segregate the debris and recycle it to the extent possible. Debris that cannot be recycled will be disposed of in accordance with all applicable environmental statutes and regulations.

What about debris in Expedited Debris Removal areas that is eligible for removal under other Federal agencies' authority?

FEMA may not duplicate assistance or provide assistance that is under the authority of another Federal agency. FEMA will work with other Federal agencies, as well as the State and affected local governments, to determine where removal of certain debris is not eligible for Expedited Debris Removal or Public Assistance Program funding.

If temporary reduction sites or temporary staging areas for debris are established, who is responsible for the restoration of the temporary sites?

When the site operations are complete, the property must be restored to its original condition before returning the site to the property owner. Restoration of a site involves removing all traces of the operations and possible remediation of any contamination that may have occurred during the operations. The site must be brought back to its environmental state, prior to it being returned to the owner. If the site is owned or leased by a FEMA mission assigned agency (USACE), the mission assigned agency is responsible for ensuring that the operation complies with all federal and state environmental statutes and regulations.

Is demolition included in Expedited Debris Removal?

No. Demolition of damaged structures is not authorized under the Expedited Debris Removal initiative. Demolition can be considered an emergency protective measure under Public Assistance Program Category B, for which the cost share adjustment for Expedited Debris Removal does not apply. FEMA defines the removal of slabs as a demolition activity, and therefore is not eligible as part of the Expedited Debris Removal operation.

RESOLUTION NO. 2011-006

A RESOLUTION making appropriate findings, representations, and authorizations for certain debris removal related to the May 22, 2011 tornado.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. That the City of Joplin, Missouri is a Constitutional Home Rule City organized pursuant to Article VI, Sections 19 and 20 of the Constitution of the State of Missouri and as such, has all powers of self-government and all powers possible for any city to have under the constitution and laws of the state of Missouri and all powers which the legislature of the state of Missouri or the people of the City of Joplin would be competent to grant as described in Section 1.04 of the Charter of the City of Joplin, except as may otherwise be prohibited.

Section 2. That the City of Joplin Director of Public Health and Welfare, pursuant to the Charter of the City of Joplin and Section 54-41 of the Municipal Code of the City of Joplin, has declared that residential tornado-caused debris located on private property resulting from the storm on May 22, 2011 is a danger in its continuance to the public health and is a public nuisance as defined by Section 67.398 RSMo. The Director further declared that it is in the public interest to eliminate such immediate threats to life, public health and safety. A copy of such order being attached hereto and incorporated herein by reference as Exhibit "A".

Section 3. That the City of Joplin certifies that under the authority provided by local and state law, it has the authority to enter onto private property for the purpose of abating nuisances and removing debris declared as such. More specifically, public nuisance abatement is provided for by Section 67.398 RSMo. 2010 and the Code of Ordinances of the City of Joplin, Missouri Sections 54-31 through 54-41 as well as the general police powers of the City. The Council finds that such nuisance abatement will protect the public health, safety and welfare and that a public purpose will be served thereby.

Section 4. That based upon Sections 2. and 3. above, and all other applicable facts and circumstances, the City has determined that in order to protect the public health, safety and welfare, it is necessary to exercise this authority to enter onto private property in order to abate the declared public health nuisance and safety emergency by removal of the tornado-generated debris and shall do so.

Section 5. The City certifies that before the City initiates removal, it shall have satisfied all the legal processes and received all legal permissions to carry out these actions of debris removal on private property through the use of Rights of Entry with indemnity clauses signed by the property owner or use of the City's Municipal Code process for condemnation or nuisance abatement.

Section 6. That the City shall utilize the process described in the City Code Sections 54-42 and Article X of Chapter 26 for nuisance abatement and demolitions as the case may be. The City certifies that it has a process to determine which properties will require this process to

protect the public safety. In all but emergency circumstances, a reasonable waiting period of at least seventy-two (72) hours will be required for public notification before private property debris removal will commence.

Section 7. The City will recognize and be mindful of all laws and regulations that concern historic preservation and environmental protection.

Section 8. The City agrees that if it determines that aggregating titled personal property such as cars, trucks, recreational vehicles and boats in order to clear streets and make properties accessible for short and long term housing is necessary, the City will certify that it has taken all appropriate action to declare so called "junk cars" a nuisance, whether they are on public or private property, and will provide a safe and secure location for storage.

Section 9. As required by, and only to the extent required by, §407(b) of the Stafford Act (42 U.S.C. §5173(b)), the City of Joplin hereby agrees, to the extent allowed by state and federal law, that it shall indemnify and hold harmless the federal government and its respective employees, agents, contractors, and subcontractors from any claims arising from debris removal, to the extent such debris removal was authorized by the City. The City of Joplin hereby acknowledges that in accordance with §305 of the Stafford Act (42 U.S.C. §5148), the Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Act.

Section 10. That during this disaster, the Mayor and Manager have executed certain cooperative agreements, requests for assistance, rights of entry for City property and other documents related to the emergency as provided by Sections 38-41 and 38-43 of the Joplin City Code. Such agreements, requests for assistance, rights of entry and other related documents are hereby ratified and approved by the Council of the City of Joplin, Missouri.

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this 23rd day of June, 2011.

Michael R. Woolston

Michael R. Woolston, Mayor

ATTEST:

Barbara Gollhofer

Barbara Gollhofer, Assistant City Clerk

APPROVED AS TO FORM:

Brian W. Head

Brian W. Head, City Attorney

RIGHT-OF-ENTRY PERMIT AND AGREEMENT **PERMIT NO. _____**

Property Address/Description (include County): _____

Mailing Address	Insurance Information
Name (Owner/Tenant): _____	**Please supply the following insurance information:**
Mailing Address: _____	This property (__is __is not) insured. (check one)
City/State: _____	Insurance Company: _____
Date: _____	Agent Name: _____
Phone/Cell: _____	Agent Phone #: _____
E-mail: _____	Policy #: _____
Drivers License No. _____	

1. **Grant of Right of Entry:** I certify that I am the owner, or the owner's authorized agent, of the property described above (the "Premises) I grant freely and without coercion, the right of access and entry to said property to the City of Joplin for removal of tornado debris for a period of ninety (90) days from the date written below. I hereby grant the City of Joplin, Missouri (the "City"), the State of Missouri, and the United States Government, their respective officers, employees, agents, contractors and subcontractors, a right-of-entry to enter upon Premises for the purpose of providing removal and clearing of any and all storm debris from the above described private property (curbside and/or streets), subject to all licenses, easements, encumbrances, and claims of title affecting the Premises upon the terms and conditions set forth in this Agreement. (*See the reverse of this page) It is fully understood that this Agreement does not create any obligation on the City, the State of Missouri, or the United States Government to perform debris clearance. Owner acknowledges that debris removal is subject to the approval of the City.

2. **Duplication of Benefits**: Most homeowner's policies have coverage to pay for removal of storm-generated debris. I understand that Federal law (42 U.S.C. Sect. 5155) requires me to reimburse City the cost of removing storm-generated debris to the extent covered by any other source including FEMA, Small Business Administration (SBA), private insurance, Other Needs Assistance or any other public assistance program.

PLEASE READ CAREFULLY THE TERMS ON THE REVERSE OF THIS PAGE

I HAVE READ AND AGREE WITH THE TERMS OF THIS RIGHT OF ENTRY AND UNDERSTAND THAT BY SIGNING THIS AGREEMENT I AM RELINQUISHING AND WAIVING CERTAIN LEGAL RIGHTS I OTHERWISE WOULD HAVE. I ENTER INTO THIS AGREEMENT VOLUNTARILY AND KNOWINGLY ON THIS ____ DAY OF _____, 2011.

OWNER(S): _____ WITNESS: _____

_____ _____
Print Name

_____
Print Name(s)

NOT FOR PUBLIC RELEASE

Special Considerations: _____
(i.e. gates, locks, major cross streets, and special directions contractors will need for site access):

3. **Private Insurance Coverage:** Owner understands that federal law may require the Owner to reimburse the City for the cost of removing tornado-generated debris to the extent covered in Owner's insurance policy. Owner shall provide a copy of all homeowners insurance policies to the City within thirty (30) days of signing this agreement. If Owner has received payment, or when Owner receives payment, for debris removal from Owner's insurance company, or any other source, Owner shall notify and send payment and proof/statement of loss to City within thirty (30) days. Owner understands that all disaster related funding, including that for debris removal from private property, is subject to audit. If Owner indicates that Owner does not have such insurance, Owner certifies under penalty of perjury that there was no insurance in effect at the time of the tornado, which provided coverage for debris removal. Owner will report, for the Premises, any insurance settlements to Owner or Owner's family for debris removal that has been performed at government expense.

4. **Hold Harmless**: The Owner agrees that the City, State of Missouri, and the United States Government shall not be liable for damages sustained by the Owner as a result of debris removal activity authorized in this Agreement. The Owner shall indemnify and hold harmless City, the United States Government, the Federal Emergency Management Agency (FEMA), the State of Missouri, and any of their officers, agencies, agents, contractors, subcontractors, employees and volunteers, against any and all claims, damages of any type whatsoever either to the Premises or persons situated thereon, deductibles, self-insured, retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, personal injury, charges or costs of any kind of character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to actions arising out of any activities or this Agreement and hereby release, discharge and waive any Claims and action, in law or equity, arising therefrom.

5. **No City, State of Missouri, or United States Government Assumption of Liability**: In consideration of the assistance City, **State of Missouri, and the United States Government** is providing to Owner under this Agreement, at no cost to Owner, City **State of Missouri, and the United States Government** assume no liability or responsibility, and Owner shall not seek to recover from City, the United States Government, the Federal Emergency Management Agency (FEMA), the State of Missouri, and any of their officers, agencies, agents, contractors, subcontractors, employees and volunteers, the cost of any remediation of damages to the Premises incurred due to actions taken pursuant to this Agreement.

6. **Purpose**: The parties acknowledge that this Agreement is for the sole purpose of the removal of tornado debris on private property subject to the approval of the City for a specifically designated tornado event.

Please return signed Agreement to:

Department of Public Works
City of Joplin
602 S. Main St.
Joplin, MO 64801

NOT FOR PUBLIC RELEASE

COUNCIL BILL NO. 2011-018 **ORDINANCE NO.** 2011-078

AN ORDINANCE authorizing the City of Joplin to collect insurance proceeds from homeowner(s) when government-funded contractors remove tornado-related debris from residential private property to ensure no duplication of benefits between government cleanup efforts and insurance coverage as required by Federal Law; and containing an emergency clause.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

WHEREAS, a devastating EF5 Tornado struck the City of Joplin and surrounding areas on May 22, 2011; and

WHEREAS, the President of the United States has authorized the Expedited Debris Removal (EDR) initiative utilizing government-funded contractors to remove tornado-related debris from residential private properties with extensive or catastrophic damage; and,

WHEREAS, Federal Law (42 U.S.C. 5155) requires that the City provide an assurance that there is no duplication of benefits received pursuant to the EDR Program by private properties receiving Federally funded debris clean-up and insurance proceeds; and,

WHEREAS, the City of Joplin wishes to establish a process whereby residential private property owners participating in the EDR Program will not receive a duplication of benefits; and,

WHEREAS, the City of Joplin obtained locals bids for loose debris removal in non-disaster related areas, as well as insurance estimates and local historical information, the City has established a 3-tier cost structure for the EDR Program.

NOW THEREFORE, IT IS ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. Residential private property owners without specific insurance coverage for debris removal will not receive a duplication of benefits and therefore, will not be required to remit any insurance proceeds to the City for participation in this program.

Section 2. For property with a lot size of 0 to 10,000 square feet, the private property owner or insurer thereof shall remit the lesser of the amount allowed under the insurance policy for debris removal or One Thousand Five Hundred Dollars ($1,500.00) upon receipt of an invoice from the City of Joplin.

Section 3. For property with a lot size of 10,001 square feet to ½-acre, the private property owner or insurer thereof shall remit the lesser of the amount allowed under the insurance policy for debris removal or Two Thousand, Five Hundred Dollars ($2,500.00) upon receipt of an invoice from the City of Joplin.

Section 4. For property with a lot size of ½-acre or greater, the private property owner or insurer thereof shall remit the lesser of the amount allowed under the insurance policy for debris removal or Four Thousand Dollars ($4,000.00) upon receipt of an invoice from the City of Joplin.

Section 5. An invoice shall not be sent by the City of Joplin until such time as residential private property owners have sufficient time to demolish house, if needed, to allow for the separation of debris removal and demolition insurance proceeds as may be set forth in individual insurance policies.

Section 6. Any person, insurer of any person or agent thereof in disagreement with the amount of the billing may appeal such determination to the City of Joplin, Director of Finance for review and adjustment within thirty (30) days of receiving such billing.

Section 7. In the event, a residential property owner has already expended a portion, or, all of the amount allowed under the insurance policy, the residential property owner shall provide proof of this payment for said debris removal to the City of Joplin. Such amount already paid shall be credited against the amounts described above. The insurer for the property or residential property owner shall remit the difference, if any, between the amount allowed under the insurance policy for debris removal and the amount set for such lot size as described above.

Section 8. That the City of Joplin declares that this ordinance relates to the preservation of public peace, property, health, safety or morals and is an emergency within the meaning of Section 2.12(1) of the HOME RULE CHARTER of the City of Joplin, Missouri, and the Council hereby declares that this ordinance shall be in full force and effect from and after its passage.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this 20th day of June, 2011, by a vote of 9-0.

Michael R. Woolston, Mayor

ATTEST:

Barbara L Hogelin, City Clerk

APPROVED AS TO FORM:

Brian W. Head, City Attorney

RIGHT-OF-ENTRY
TORNADO DISASTER ASSISTANCE
DR-1980-MO – UNITED STATES GOVERNMENT

WHEREAS, on May 22, 2011, the City of Joplin was struck by an EF-5 tornado resulting in catastrophic damage; and,

WHEREAS, as a result of the tornado, large amounts of debris were generated; and,

WHEREAS, such debris has been declared a public health nuisance by the Director of the Department of Health for the City of Joplin Missouri (See Exhibit "A" of Exhibit "1" attached hereto); and,

WHEREAS, on July 7, 2011, the Council of the City of Joplin Missouri conducted a number of hearings related to such debris continuing to be upon various properties in the City; and,

WHEREAS, at the conclusion of that Hearing, the Council of the City of Joplin found such debris to be a nuisance and ordered it abated (See Exhibit "2").

The City of Joplin, a municipal corporation in the counties of Jasper and Newton, State of Missouri, (hereinafter referred to as the "City") acting by and through Mr. R. Mark Rohr, City Manager, and Mr. Mike Woolston, Mayor for the City of Joplin, Missouri, in participation with the United States Government in the removal of debris in connection with the Joplin May 22, 2011 Tornado Event under the Federal Response Plan, Public Law 93-288 (Stafford Act), as amended, does hereby certify that the City is vested with sufficient right to enter onto the properties described in Exhibit "2" attached hereto for the purpose of abating nuisances related to the May 22, 2011 tornado. The City does hereby grant to the United States, its officers, employees, agents, successors and assigns and the federal government contractors, their officers, employees, agents, successors and assigns, an irrevocable right to enter in, onto, and upon the properties described in the attached Exhibit "2" for a period of one (1) year from the date of signing.

The City agrees to expressly and fully release and forever discharge the United States Government, including but not limited to FEMA, USACE, EPA, and OSHA, and any other Federal agencies along with its agents, employees and assigns, to hold harmless and free from all liability for any and all damage done or caused to be done pursuant to accomplishing the debris clearance, removal and disposal effort. The City hereby further agrees to waive any and all actions and to hold and save said Government, along with its agents, employees and assigns, free and harmless from any and all claims and demands whatsoever for any damage to the properties described as provided in Exhibit "2" attached hereto, or to any improvements or to personal property thereon, as well as any damages to public property, resulting from said operations. The agreement to hold harmless extends to the Federal government; it does not extend to claims against the Federal government contractors or subcontractors conducting the debris clearance, removal and disposal work to the extent damages are due to negligence of such contractors or subcontractors or their employees. The City of Joplin retains its sovereign immunity against third

parties and nothing herein shall be construed by any non-government third-party to in any way abrogate or waive such sovereign immunity.

The City agrees and certifies that it has complied with all state and local laws, ordinances and civil procedures in obtaining the right to enter upon private property for the purpose of abating the nuisances described in Exhibit "2", a true and accurate copy is attached hereto and incorporated herein by reference.

The City also certifies that it has the legal authority pursuant to its laws and ordinances to allow the Federal government to enter upon private property for debris removal as restated in City of Joplin Resolution 2011-006, attached hereto and incorporated herein by reference. See Exhibit "1".

IN WITNESS WHEREOF, the City located in Jasper and Newton Counties, State of Missouri caused its corporate name to be hereunto signed by the City Manager of the City, the Mayor of the City, attested to by the City Clerk, approved as to form by the City Attorney, and the corporate seal of said City, State of Missouri to be affixed hereto to execute this agreement this 14th day of July, 2011.

R. Mark Rohr,
City Manager

Michael R. Woolston,
Mayor

ATTEST:

Barbara J. Golhofer,
Deputy City Clerk

Brian W. Head,
City Attorney

CITY OF JOPLIN MISSOURI

Office of the Director of Health
321 East 4th Street
Joplin, MO 64801
(417) 624-0820 Ext. 282
(417) 624-6453 (Fax)

June 22, 2011

SEMA
Attn: Paul Parmenter
P O Box 116
Jefferson City, MO 65102

Re: Declaration of Public Health Nuisance
May 22, 2011 EF-5 Tornado

Dear Sir:

I am writing to notify you that as a consequence of the EF-5 tornado on May 22, 2011, in the City of Joplin, Missouri, a public health emergency exists and has existed since May 22, 2011, and is continuing in areas impacted by the tornado. Further, debris caused by the tornado is an immediate threat to the public's health and safety.

Jasper and Newton counties, including the City of Joplin, were added to the May 9, 2011 Major Disaster Declaration for Missouri (DR-1980- MO) by the Federal Emergency Management Agency Administrator on May 23, 2011. This designation included Public Assistance – for debris removal, emergency protective measures – and Direct Federal Assistance.

In this Declaration of Public Health Nuisance, I specifically refer to debris containing dead or infected animals or animals acting as vectors of disease; debris creating harborage and breeding area for vectors of disease including rodents and mosquitoes and harborage for stray domestic and wild animals; debris causing buildings, yards, premises or places to be or become menaces to the public health; debris including weed cuttings, cut or fallen trees and shrubs, rubbish and trash, lumber, rocks or bricks, tin, steel, broken furniture, debris containing unsanitary clothing, bedding, furniture, vehicles, containers, receptacles, buildings with one (1) wall or less still standing, appliances and equipment; and debris containing unwholesome or decayed or infected meat, fish, fruits or other food or food stuffs, medicines, drugs, beverages or drinking water which are, or are likely to become, a menace to the public health.

Wherever such debris exists, it constitutes a nuisance menacing public health and should be abated. I have made this determination pursuant to the authority vested in me under Joplin City Code, Ordinance §54-41, and other laws of the State of Missouri.

Very truly yours,

Daniel A. Pekarek,
Director of Health
City of Joplin

PCE/DAP:ab

June 22, 2011

SEMA
Attn: Paul Parmenter
P O Box 116
Jefferson City, MO 65102

Re: Declaration of Public Health Nuisance
May 22, 2011 EF-5 Tornado

Libby Turner
Federal Coordinating Officer
FEMA JFO (DR-1980 MO)
1512 Heriford Rd.
Columbia, MO 65202

Col. William Ward
National Guard

COUNCIL BILL NO. 2011-016 **ORDINANCE NO.**2011-080

AN ORDINANCE amending Chapter 54, Environment, Article II, Nuisances, to enact a new section, Sec. 54-42, Administrative Abatement Process", to provide for an expedited nuisance abatement procedure due to the large amount of debris generated by the May 22, 2011 tornado that constitutes a public health emergency; and, containing an emergency clause pursuant to Section 2.12 (1) of the Home Rule Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

WHEREAS, the damage from the May 22, 2011 tornado has been declared part of a federal disaster by the President of the United States.

WHEREAS, the tornado generated debris consisting of dead or infected animals or animals acting as vectors of disease; debris causing buildings, yards, premises or places to be, or become, menaces to the public health; debris containing insanitary clothing, bedding, furniture, vehicles, containers, receptacles, buildings with one (1) wall or less still standing, appliances and equipment; and debris containing unwholesome or decayed or infected meat, fish, fruits or other food or food stuffs, medicines, drugs, beverages or drinking water which are, or are likely to become, a menace to the public health.

WHERAS, the City of Joplin Health Director has declared that a public health emergency exists because of the large amount of tornado generated debris in a letter dated June 15, 2011.

WHEREAS, the large amount of tornado generated debris constitutes an immediate threat to the health, safety and welfare of the general public.

WHEREAS, because this debris is an immediate danger to public health, safety and welfare, and is a public nuisance by law and definition, an expedited nuisance abatement process is necessary.

WHEREAS, due to the estimated 7,000 homes that were damaged or destroyed as a result of the May 22, 2011 tornado, personal service and service by certified mail is impractical given the health emergency that exists.

WHEREAS, given the summary abatement powers of the City Health Director in Section 54-41 of the Code, and the requirement of a seven (7) day notice under RSMo Section 67.398, notice by publication that gives property owners seven (7) days notice provides the necessary due process under federal and state law.

Section 1. That Chapter 54, Environment, Article II, Nuisances, be amended by enacting a new section, Sec. 54-42, Administrative Abatement Process., of the Joplin City Code, to read as follows:

"Sec. 54-42. Administrative Abatement Process.

a. Pursuant to the authority of the City Charter, Missouri Constitution, and Revised Missouri Statute Section 67.398, and in light of the declared emergency in the City of Joplin as a result of the May 22, 2011 tornado, the City hereby enacts an Administrative

Abatement Process due to the amount of debris and waste throughout the City of Joplin that constitutes a danger to the public health, safety and welfare of the citizens of Joplin. The procedures are herein enacted under the emergency powers of the Director of Public Health and Welfare in Sec. 54-41. The notice and hearing procedures in this section shall supersede the notice and hearing procedures as outlined above. All other ordinances relating to nuisance abatement shall apply, as set forth immediately above, to the extent they are not in conflict with the procedures outlined below.

b. Notice Procedure. Notice of the nuisance violation shall be effectuated by publication in the local newspaper giving no less than seven (7) days notice of a public hearing on the nuisance violation. Said notice will indentify the physical address of the property on which the nuisance violation exists.

c. Hearing. A hearing shall be held on the nuisance violation by the Joplin City Council. If a hearing determines that a nuisance exists, the Council shall order the owner to abate such nuisance within seven (7) days of receiving notice that the nuisance has been ordered removed or abated. If the owner fails to pursue the removal or abatement without unnecessary delay in the time specified in the order, the Mayor or his designee shall cause the condition which constitutes the nuisance to be removed or abated. Any person aggrieved by the decision of the Joplin City Council must file a Notice of Appeal with the City within seven (7) days of receiving notice of the order to abate the nuisance. Notice by publication as described in subsection b of this section 54-42 shall be deemed sufficient do to the impracticability of providing actual service due to the disaster.

d. Costs. The costs and expenses incurred by the City for abating a nuisance shall be a personal debt of the property owner and a first lien on the real estate until paid. A tax bill shall be assessed against the real estate."

Section 2. That this Ordinance, dealing with the preservation of public health and safety, is an emergency within the meaning of Section 2.12 (1) of the Home rule Charter of the City of Joplin, Missouri, and, as such, shall be in full force and effect immediately from and after its adoption and approval.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this 23rd day of June, 2011, by a vote of 8-0-1.

Michael R. Woolston, Mayor

ATTEST:

Barbara Gollhofer, Assistant City Clerk

APPROVED AS TO FORM:

Brian W. Head, City Attorney

EXHIBIT "2"

BEFORE THE CITY COUNCIL OF THE CITY OF JOPLIN

In Re The Matter Of:

1201 LITTLE
1207 ROLAND
1211 ROLAND
1212 ROLAND
1217 LITTLE CT
1218 MONTANA
1218 ROLAND PL
1220 MONTANA PL
1220 ROLAND
1224 ROLLAND AVE
1227 MONTANA
1230 MONTANA PL
1236 MONTANA
1325 E 24TH
1520 E 19TH ST
1521 MASSACHUSETTS
1601 S ST LOUIS
1623 DELAWARE
1624 -1630 CONNECTICUT
1631 W 26TH
1632 - 1638 CONNECTICUT AVE
1701 CONNECTICUT
1710 S ST LOUIS
1716 -1722 CONNECTICUT AVE
1716 -1722 CONNECTICUT AVE
1721 DELAWARE
1721 S CONNECTICUT
1728 -1730 CONNECTICUT
1732 S ST LOUIS
1805 S HIGHVIEW
1808 NEW HAMPSHIRE AVE
1809 NEW HAMPSHIRE AVE
1811 KANSAS
1812 DELAWARE
1814 CONNECTICUT AVE
1814 TEXAS
1815 S KANSAS
1817 S HIGHVIEW
1819 TEXAS
1820 NEW HAMPSHIRE AVE
1822 TEXAS AVE
1823 S HIGHVIEW
1824 CAROLYN PL
1824 KANSAS
1825 CAROLYN
1830 CAROLYN PL
1830 DELAWARE
1831 CAROLYN PL
1831 S KANSAS
1901 CAROLYN
1901 CHRIS LN
1901 INDIANA
1901 KANSAS AVE
1901 VERMONT AVE
1902 CAROLYN PL
1903 CHRIS LN
1906 NEW HAMPSHIRE
1911 CHRIS LN
1915 MICHIGAN
1915 S HIGHVIEW
1918 E 18TH
1927 E 18TH
1930 E 19TH
1931 TEXAS-2802 E 19TH
1931 S MICHIGAN
1941 E 18TH
2001 ARIZONA
2003 MISSISSIPPI
2005 S OZARK
2006 -2008-2112 DELAWARE
2010 HIGHVIEW
2014 DELAWARE AVE
2016 DELAWARE
2016 S HIGHVIEW
2017 DELAWARE
2017 S FLORIDA
2018 S FLORIDA AVE
2019 & 2021 MARYLAND

EXHIBIT "2"

2019 DELAWARE
2020 S HIGHVIEW
2021 S OZARK
2023 MARYLAND
2024 MARYLAND
2024 S FLORIDA AVE
2025 MARYLAND
2026 ARIZONA
2027 ALABAMA
2028 MISSISSIPPI
2028 TEXAS
2029 - 2031 S PATTERSON
2029 ARIZONA
2029 MISSISSIPPI
2029 S FLORIDA
2030 S HIGHVIEW AVE
2032 ARIZONA
2033 TEXAS
2035 S OZARK
2036 S OZARK
2044 MISSISSIPPI
2044 S HIGHVIEW
2101 ALABAMA
2102 ALABAMA
2102 TEXAS
2102 S BROWNELL
2103 PARK PL
2103 S FLORIDA AVE
2106 ALABAMA
2106 S OZARK
2106 S PATTERSON
2107 S OZARK
2107 S PATTERSON
2109 PARK PL
2110 PARK PL
2111 DELAWARE
2111 S BROWNELL
2115 DELAWARE
2116 DELAWARE
2117 S FLORIDA AVE
2118 S FLORIDA
2120 MISSISSIPPI AVE
2120 S BROWNELL
2123 S BROWNELL
2124 DELAWARE
2127 S PATTERSON AVE
2131 S FLORIDA
2131 S OZARK
2133 MISSISSIPPI
2134 MISSISSIPPI
2134 S BROWNELL
2207 S PATTERSON AVE
2214 ILLINOIS
2226 WISCONSIN
2232 ILLINOIS
2233 ILLINOIS
2244 WISCONSIN
2301 E 20TH
2302 ILLINOIS
2303 INDIANA
2309 INDIANA
2311 WISCONSIN
2314 WISCONSIN
2315 INDIANA
2318 E 20TH
2320 WISCONSIN
2321 ILLINOIS
2403 ILLINOIS AVE
2403 WISCONSIN
2408 ILLINOIS
2415 ILLINOIS
2421 INDIANA
2427 INDIANA
2503 INDIANA
2508 ILLINOIS
2515 ILLINOIS
2520 E 20TH
2601 E 20TH
2636 E 20TH
2712 E 20TH
2810 E 19TH
2818 E 18TH
2822 E 18TH
2826 E 16TH
2827 E 19TH
2829 E 17TH

EXHIBIT "2"

2832 E 19TH
2833 E 18TH
2838 E 18TH
2845 E 18TH
2901 E 18TH
2907 E 18TH
2915 E 17TH
2915 E 18TH
2916 E 16TH
2918 E 17TH
2920 E 16TH
2921 E 22ND
2926 E 17TH
2927 E 18TH
2929 E 16TH
1609 S ST LOUIS
1722 DELAWARE
1801 DELAWARE
1822 TEXAS AVE
2017 GRAND
2020 E 22ND
2021 GRAND
2101 GRAND
2101 PENNSYLVANIA
2101 VIRGINIA
2105 GRAND
2105 PENNSYLVANIA
2106 VIRGINIA AVE
2109 VIRGINIA
2110 VIRGINIA
2114 GRAND
2115 PENNSYLVANIA
2116 GRAND
2117 VIRGINIA
2120 VIRGINIA
2124 KENTUCKY
2126 GRAND
2127 KENTUCKY
2129 KENTUCKY & 409 E 22ND
2129 PENNSYLVANIA
2143 S BROWNELL
2202 IOWA
2202 Missouri AVE
2204 VIRGINIA
2205 GRAND
2205 KENTUCKY
2205 VIRGINIA
2206 VIRGINIA
2209 GRAND
2212 GRAND
2214 MISSOURI
2214 W 29TH
2215 MISSOURI
2215 PENNSYLVANIA
2216 PENNSYLVANIA
2217 VIRGINIA
2219 VIRGINIA
2222 GRAND
2222 IOWA
2222 MISSOURI AVE
2224 VIRGINIA
2227 GRAND
2301 & 2303 S KENTUCKY
2301 VIRGINIA
2302 KENTUCKY
2302 VIRGINIA
2302 S HARLEM
2303 S KENTUCKY
2305 S PEARL
2309 S MOFFET
2310 KENTUCKY
2314 S KENTUCKY
2315 KENTUCKY AVE
2316 IOWA
2317 PENNSYLVANIA
2317 KENTUCKY
2319 MURPHY
2324 PENNSYLVANIA
2325 VIRGINIA
2326 PENNSYLVANIA
2327 KENTUCKY
2339 MISSOURI
2401 MISSOURI
2402 MURPHY AVE
2404 IOWA
2405 OHIO

EXHIBIT "2"

2406 ANNIE BAXTER
2407 PENNSYLVANIA
2407 S PICHER
2411 MINNESOTA
2412 KENTUCKY
2415 KENTUCKY
2419 BIRD
2419 VIRGINIA
2420 PENNSYLVANIA
2421 MINNESOTA
2424 BIRD
2424 MISSOURI AVE
2425 OHIO
2427 MINNESOTA
2430 KENTUCKY
2430 PENNSYLVANIA
2430 VIRGINIA
2431 S MINNESOTA
2437 IOWA
2447 GRAND AVE
2448 MINNESOTA
2449 IOWA
2501 KENTUCKY
2502 INDIANA
2502 PENNSYLVANIA
2505 OHIO
2506 PENNSYLVANIA
2508 VIRGINIA
2510 IOWA
2514 KENTUCKY
2518 OHIO AVE
2520 GRAND
2527 MISSOURI
2534 N KINGSDALE
2549 MINNESOTA
2609 VIRGINIA
2610 GRAND
2610 PENNSYLVANIA
2610 VIRGINIA AVE
2614 -16-16 1/2 VIRGINIA
2614 PENNSYLVANIA
2620 GRAND
2621 & 2625 VIRGINIA
2624 KENTUCKY
2625 KENTUCKY
2626 GRAND AVE
2627 S MONROE
2628 GRAND
2628 KENTUCKY AVE
2629 KENTUCKY
2629 VIRGINIA
2631 PENNSYLVANIA
2634 MISSOURI
2720 S KENTUCKY
2801 VIRGINIA
2808 VIRGINIA
2819 VIRGINIA
2831 VIRGINIA
2905 JEFFERSON AVE
3014 EILER AVE
3025 W SUNSET
3102-3104 ADELE
830 E 24TH
902 E 24TH
2001 & 2007 & 2011 26TH
2017 W 26TH ST
2026 W 26TH ST
2223 W 26TH
2227 W 27TH
2315 W 29TH
2331 W 26TH
2401 W 29TH
2408 WILLARD
2507 S KINGSDALE RD
2509 W 29TH
2525 W 29TH
2526 W 29TH
2531 ROOSEVELT
2531 WILLARD
2532 WILLARD
2534 W 29TH
2601 W 29TH
2602 MONROE ST
2603 S ADELE
2607 W 29TH
2618 S MONROE

EXHIBIT "2"

2637 S WINFIELD
2706 ADELE
2709 ADELE
2711 S WINFIELD AVE
2712 JEFFERSON
2715 S OLIVER
2723 S MONROE
2725 S OLIVER AVE
2726 -2728 S ADELE
2804 S MONROE
2805 S MONROE
2809 S WINFIELD
2818 JEFFERSON
2824 JEFFERSON
2829 S MINA AVE
2829 S MONROE
2910 MCCLELLAND ST
2948 & 2952 APT C & D MCCLELLAND BLVD
3001 SUNSET DR
3007 JENNIFER AVE
3010 EILER AVE
3011 EILER AVE
3018 SUNSET W DR
3020 IRON GATES RD
3026 S MONROE
3030 W 27TH
3061 S DAY RD
3101 W SUNSET DR
3102 S TYLER
3107 S DAY RD
3113 S JEFFERSON
3118 S ABIGAIL LN
3418 SUNSET DR
1018 W 26TH
2205 S WALL
2206 S JOPLIN
2207 S WALL
2209 -2211 S JOPLIN
2217 MURPHY
2221 -2223 S JOPLIN
2303 S HARLEM
2305 CONNOR
2305 S BYERS
2306 S BYERS
2307 S PEARL
2310 S HARLEM
2310 S JOPLIN
2311 S WALL
2312 S MOFFET
2314 S PEARL
2315 S PEARL
2316 CONNOR
2317 BIRD
2319 S CONNOR
2320 S SERGEANT
2328 S PORTER
2329 S CONNOR
2329 S JOPLIN
2402 -04 ANNIE BAXTER
2402 BIRD
2402 S CONNOR
2406 CONNOR
2407 S WALL
2409 S PEARL
2410 BIRD
2410 S JOPLIN
2412 S CONNOR
2414 S CONNOR
2416 WALL
2420 ANNIE BAXTER
2423 S JOPLIN
2424 EMPIRE
2427 S JOPLIN
2428 ANNIE BAXTER
2428 S JOPLIN AVE
2428 S WALL
2429 MURPHY
2501 EMPIRE
2502 EMPIRE
2514 BIRD AVE
2514 S JOPLIN
2515 EMPIRE
2515 S BIRD
2520 MURPHY
2520 S CONNOR

EXHIBIT "2"

2521 S WALL
2531 EMPIRE
2604 S PEARL
2611 MOFFET
2614 S SERGEANT
2616 S CONNOR
2620 CONNOR
2621 S CONNOR
2626 S PEARL AVE
2628 MOFFET
2630 S WALL
2632 S MOFFETT AVE
2706 S WALL
2711 CONNOR
2714 SERGEANT
2728 S SERGEANT AVE
2731 BIRD
2802 WALL
2807 S SERGEANT
3218 OAKRIDGE (Newton County)
414 W 26TH
811 W 25TH
902 W 26TH
2620 S JOPLIN
2628 S JOPLIN
2702 S WALL
2706 JOPLIN AVE
2716 S JOPLIN AVE
2718 S JOPLIN
2722 S WALL
2731 S JOPLIN
2805 S JOPLIN
2811 S JOPLIN
2828 S WALL

HEARING DATE: JULY 6, 2011

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW ON THIS 6th day of July, 2011, this matter comes on for hearing in accordance with the procedures of Section 54-42, Administrative Abatement Process, of Chapter 54 of the Code of Ordinances of the City of Joplin. The City Council finds due notice of the pendency of these proceedings has been given by a Notice and Declaration of Nuisance to all interested parties, pursuant to §54-42, by Publication in the Joplin Globe which ran on June 28, 2011.

NOW, after holding such hearing, and having heard the testimony of the Code Enforcement Official(s) and other interested parties, and after having reviewed the evidence submitted and admitted into evidence, the Council makes the following findings of fact regarding the properties identified above:

FINDINGS OF FACT

Pictures of the above-described properties were authenticated by the Code Enforcement Official(s) and entered into evidence as Exhibit's 1(a) through (e), and Exhibits 6 and 7. The photos showed and illustrated the presence of some or all of the following on the properties: debris containing dead or infected animals or animals acting as vectors of disease; debris creating harborage and breeding area for vectors of disease including rodents and mosquitoes and harborage for stray domestic and wild animals; debris causing buildings, yards, premises or places to be or become menaces to the public health; debris including weed cuttings, cut or fallen trees and shrubs, rubbish and trash, lumber, rocks or bricks, tin, steel, broken furniture, debris containing unsanitary clothing,

bedding, furniture, vehicles, containers, receptacles, buildings with one (1) wall or less still standing, appliances and equipment; and debris containing unwholesome or decayed or infected meat, fish, fruits or other food or food stuffs, medicines, drugs, beverages or drinking water ("debris") which are a menace to the public health.

The Affidavit of Publication from the Joplin Globe was received into evidence as Exhibit 3. It provides that the above-described properties have been identified and declared a "public nuisance", and notified of today's hearing.

The Joplin Health Director issued a declaration of nuisance in a letter dated June 22, 2011 wherein he declared that debris generated from the May 22, 2011, that includes debris containing dead or infected animals or animals acting as vectors of disease; debris creating harborage and breeding area for vectors of disease including rodents and mosquitoes and harborage for stray domestic and wild animals; debris causing buildings, yards, premises or places to be or become menaces to the public health; debris including weed cuttings, cut or fallen trees and shrubs, rubbish and trash, lumber, rocks or bricks, tin, steel, broken furniture, debris containing unsanitary clothing, bedding, furniture, vehicles, containers, receptacles, buildings with one (1) wall or less still standing, appliances and equipment; and debris containing unwholesome or decayed or infected meat, fish, fruits or other food or food stuffs, medicines, drugs, beverages or drinking water which are a menace to the public health. This debris is a public nuisance and a safety and health hazard for the City of Joplin. A copy of the letter was accepted into evidence as Exhibit 3 and made a part of the record. The Joplin Code of Ordinances was accepted into evidence as Exhibit 4 and made a part of the record.

Testimony was accepted from City of Joplin employees and code enforcement officers Rich Boucher, Gina Simmons, Nathan Turner, Jason Cummins and Scott Buffer regarding the pictures they took of the properties and the presence of debris on the properties described above. The code enforcement officers offered professional opinions regarding the properties; specifically, that the properties contained various debris that constitute a nuisance as defined by Joplin City Code Section 54-35, Enumeration.

CONCLUSIONS OF LAW

Based on the factual findings and evidence immediately stated above, the properties identified above violate Sections 54-31 through 54-42 of the Code in that a nuisance exists on the property due to the existence of tornado and storm debris on the property.

*A copy of Sections 54-31 through 54-42 is attached hereto and incorporated herein.

IT IS THEREFORE DECLARED AND DETERMINED that the properties identified above are in violation of the Joplin City Code Section 54-35 in that a nuisance exists on the property.

EXHIBIT "2"

IT IS THEREFORE, ORDERED that the owner of the properties described above shall abate and remove within seven (7) days the storm and tornado debris that includes: debris containing dead or infected animals or animals acting as vectors of disease; debris creating harborage and breeding area for vectors of disease including rodents and mosquitoes and harborage for stray domestic and wild animals; debris causing buildings, yards, premises or places to be or become menaces to the public health; debris including weed cuttings, cut or fallen trees and shrubs, rubbish and trash, lumber, rocks or bricks, tin, steel, broken furniture, debris containing unsanitary clothing, bedding, furniture, vehicles, containers, receptacles, buildings with one (1) wall or less still standing, appliances and equipment; and debris containing unwholesome or decayed or infected meat, fish, fruits or other food or food stuffs, medicines, drugs, beverages or drinking water which are a menace to the public health.

IT IS FURTHER ORDERED that in the event said nuisance on the property is not abated or removed within seven (7) days of this Order, the City shall proceed to abate and remove said nuisance violation in accordance with Sections 54-31 through 54-42 of the Joplin City Code, the cost of the same to be a Special Tax Bill against the subject property and a personal debt of the owner in accordance with the provisions of said section.

Dated: July 7, 2011.

JOPLIN CITY COUNCIL

By: Michael R. Woolston
Mike Woolston, Mayor

I. TITLE: **Debris Removal from Private Property**

II. DATE: JUL 18 2007

III. PURPOSE:

This policy describes the criteria that the Federal Emergency Management Agency (FEMA) will use to evaluate the eligibility of debris removal work from private property under the Public Assistance Program.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters and emergencies declared on or after the date of publication of this policy. It is intended for FEMA personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Sections 403(a)(3)(A), 407, and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170b, 42 U.S.C. 5173, 42 U.S.C. 5192, and 44 CFR 206.224.

VI. BACKGROUND:

A. Sections 403(a)(3)(A) and 407 of the Stafford Act, 42 U.S.C. 5170b and 5173, respectively, provide FEMA authority to fund debris removal from private property provided that the State or local government arranges an unconditional authorization for removal of the debris, and agrees to indemnify the Federal government against any claim arising from the removal.

B. The regulations implementing Sections 403 and 407 of the Stafford Act at 44 CFR 206.224 establish the requirement that debris removal be in the "public interest" in order to be eligible for reimbursement. "Public interest" is defined as being necessary to:

1. eliminate immediate threats to life, public health, and safety; or

2. eliminate immediate threats of significant damage to improved public or private property; or

3. ensure economic recovery of the affected community to the benefit of the community-at-large.

C. Generally, debris removal from private property following a disaster is the responsibility of the property owner. However, 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. In these cases, the State or local government may need to enter private property to remove debris to: eliminate immediate threats to life, public health, and safety; eliminate immediate threats of significant damage to improved property; or ensure economic recovery of the affected community to the benefit of the community-at-large. In these situations, debris removal from private property may be considered to be in the public interest and thus may be eligible for reimbursement under the Public Assistance Program (44 CFR 206.224).

VII. POLICY:

A. Definitions.

1. Disaster-generated debris: Any material, including trees, branches, personal property and building material on public or private property that is directly deposited by the disaster.

2. Improved property: Any structure, facility, or equipment that was built, constructed, or manufactured. Examples include houses, sheds, car ports, pools, and gazebos. Land used for agricultural purposes is not improved property (44 CFR 206.221(d)).

3. Legal responsibility: A statute, formally adopted State or local code, or ordinance that gives local government officials responsibility to enter private property to remove debris or to perform work to remove an immediate threat (44 CFR 206.223(a)(3), 44 CFR 206.221(c), and 44 CFR 206.225(a)(3)).

4. Private property: Land and structures, to include contents within the structures, built on land that is owned by non-governmental entities (44 CFR 206.224(b)).

5. Private road: Any non-public road for which a subdivision of the State is not legally responsible to maintain. Private roads include roads owned and maintained by homeowners associations, including gated communities, and roads for which no entity has claimed responsibility. Local police, fire, and emergency medical entities may use these roads to provide services to the community (44 CFR 206.224(b)).

B. Approval for FEMA Assistance. FEMA will work with states affected by a disaster to designate those areas where the debris is so widespread that removal of the debris from private property is in the "public interest" pursuant to 44 CFR 206.224, and thus is eligible for FEMA Public Assistance reimbursement on a case-by-case basis.

1. Any State or local government that intends to seek reimbursement to remove debris from private property within a designated area will, prior to commencement of work, submit a written request for reimbursement to, and receive approval from, the Federal Coordinating Officer (FCO). The written request will include the following information:

a. Public Interest Determination (44 CFR 206.224(a)):

i. Immediate Threat to Life, Public Health, and Safety Determination. The basis of a determination by the State, county or municipal government's public health authority or other public entity that has legal authority to make such a determination that disaster-generated debris on private property in the designated area constitutes an immediate threat to life, public health, and safety; or

ii. Immediate Threat to Improved Property Determination. The basis of the determination by the State, county, or municipal government that the removal of disaster-generated debris is cost effective. The cost to remove the debris should be less than the cost of potential damage to the improved property in order for the debris removal to be eligible; or

iii. Ensure Economic Recovery of the Affected Community to the Benefit of the Community at Large Determination. The basis of the determination by the State, county, or municipal government that the removal of debris from commercial properties will expedite economic recovery of the community-at-large. Generally, commercial enterprises are not eligible for debris removal.

b. Documentation of Legal Responsibility (44 CFR 206.223(a)(3)).

A detailed explanation documenting the requesting State or local government's authority and legal responsibility at the time of disaster to enter private property to remove debris, and confirmation that all legal processes and permission requirements (e.g., right-of-entry) for such action have been satisfied.

i. The eligible applicant requesting assistance must demonstrate the legal basis as established by law, ordinance, or code upon which it exercised or intends to exercise its responsibility following a major disaster to remove disaster-related debris from private property. Codes and ordinances must be germane to the condition representing an immediate

threat to life, public health, and safety, and not merely define the applicant's uniform level of services. Typically, solid waste disposal ordinances are considered part of an applicant's uniform level of services.

States and local governments ordinarily rely on condemnation and/or nuisance abatement authorities to obtain legal responsibility prior to the commencement of debris removal work. There may be circumstances, however, where the State or local government determines that ordinary condemnation and/or nuisance abatement procedures are too time-consuming to address an immediate public health and safety threat. In such circumstances, applicants do not have to precisely follow their nuisance abatement procedures or other ordinances that would prevent the State or local government from taking emergency protective measures to protect public health and safety (44 CFR 206.225(a)).

ii. The applicant's legal responsibility to take action where there is an immediate threat to life, public health, and safety must be independent of any expectation, or request, that FEMA will reimburse costs incurred for private property debris removal. In addition, legal responsibility is not established solely by an applicant obtaining signed rights-of-entry and hold harmless agreements from property owners.

c. Authorization for Debris Removal from Private Property (44 CFR 206.223(a)(3)). Confirmation that a legally-authorized official of the requesting applicant has ordered the exercise of public emergency powers or other appropriate authority to enter onto private property in the designated area in order to remove/reduce threats to life, public health, and safety threat via debris removal.

d. Indemnification (44 CFR 206.9). The requesting entity indemnifies the Federal government and its employees, agents, and contractors from any claims arising from the removal of debris from private property.

2. The FCO will approve or disapprove in writing each written request submitted by the State or local government for FEMA to designate areas eligible for private property debris removal. After receiving approval from the FCO, the State or local government may begin identifying properties and the specific scope of work for private property debris removal activities and apply for supplemental assistance through the Public Assistance Program.

C. Duplication of Benefits (44 CFR 206.191). FEMA is prohibited by Section 312 of the Stafford Act from approving funds for work that is covered by any other source of funding. Therefore, State and local governments must take reasonable steps to prevent such an occurrence, and verify that insurance coverage or any other source of funding does not exist for the debris removal work accomplished on each piece of private property.

1. When debris removal from private property is covered by an insurance policy, the insurance proceeds must be used as the first source of funding. Public Assistance grant funding may be used to pay for the remainder of the costs of debris removal from private property.

2. If FEMA discovers that a duplication of benefits from any other source of funding has occurred, FEMA will de-obligate funds from the Grantee in the amount that such assistance duplicates funding that the property owners received from other sources.

D. Eligibility of Debris Removal Work from Private Property (44 CFR 206.224(b)).

1. Eligible debris removal work from private property includes removal of:

a. Large piles of disaster-generated debris in the living, recreational, and working areas of properties in urban, suburban, and rural areas, including large lots.

b. Disaster-generated debris obstructing primary ingress and egress routes to improved property.

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

i. Hazardous tree removal is eligible only if the tree is greater than six inches in diameter (measured at diameter breast height) and meets any of the following criterion: more than 50% of the crown is damaged or destroyed; the trunk is split or broken branches expose the heartwood; or the tree is leaning at an angle greater than 30 degrees and shows evidence of ground disturbance.

ii. Hazardous limb removal is eligible only if the limb is greater than two inches in diameter measured at the point of break.

d. Debris created by the removal of disaster-damaged interior and exterior materials from improved property.

e. Household hazardous wastes (such as household cleaning supplies, insecticides, herbicides, etc.)

f. Disaster-generated debris on private roads, including debris originating from private property and placed at the curb of public or private rights-of-way, provided that the

removal of the debris is the legal responsibility of an eligible applicant, on the basis of removing an immediate threat to life, public health, and safety.

2. Ineligible debris removal work on private property includes the removal of:

a. Debris from vacant lots, forests, heavily wooded areas, unimproved property, and unused areas.

b. Debris on agricultural lands used for crops or livestock.

c. Concrete slabs or foundations-on-grade.

d. Reconstruction debris consisting of materials used in the reconstruction of disaster-damaged improved property.

E. Debris Removal from Commercial Property. The removal of debris from commercial property is generally ineligible for Public Assistance grant funding. It is assumed and expected that these commercial enterprises retain insurance that can and will cover the cost of debris removal. However, in some cases as determined by the FCO, the removal of debris from private commercial property by a State or local government may be eligible for FEMA reimbursement only when such removal is in the public interest (44 CFR 206.224(a) and (b)).

Industrial parks, golf courses, commercial cemeteries, apartments, condominiums, and mobile homes in commercial trailer parks are generally considered commercial property with respect to Public Assistance funding.

F. Environmental and Historic Review Requirements. Eligible debris removal activities on private property must satisfy environmental and historic preservation compliance review requirements as established by 44 CFR Parts 9 and 10, the National Historic Preservation Act, the Endangered Species Act, and all other applicable legal requirements.

VIII. ORIGINATING OFFICE: Disaster Assistance Directorate (Public Assistance Division)

IX. SUPERSESSION: This policy supersedes Recovery Policies 9523.13 and 9523.14, dated October 23, 2005, and all previous guidance on this subject.

X. REVIEW DATE: Three years from date of publication.

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

FEMA

Duplication of Benefits – Non-Government Funds

Disaster Assistance Policy 9525.3

I. **TITLE:**Duplication of Benefits – Non-Government Funds

II. **DATE:** July 24, 2007

III. **PURPOSE:**
This policy clarifies the duplication of benefit issues related to grants and cash donations from non-Federal third parties for emergency and permanent work under the Public Assistance Program and the Fire Management Assistance Grant Program. Disaster Assistance Policy DAP9525.2, Donated Resources, addresses donated labor, equipment, and materials.

IV. **SCOPE AND AUDIENCE:**
This policy is intended for Federal Emergency Management Agency (FEMA) personnel in making eligibility determinations for the Public Assistance Program and the Fire Management Assistance Grant Program. It is applicable to all eligible emergency and permanent work done under Public Assistance Program grants, and all eligible emergency work done under Fire Management Assistance Grant Program grants.

V. **AUTHORITY:**
Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, Section 312; 44 CFR 13.24, 206.226(a), and 204.62(a).

VI. **BACKGROUND:**

A. Communities and private non-profit institutions often look for assistance from the general public, private institutions, and Federal and State agencies to help rebuild their infrastructure following a disaster. This assistance may come in the form of donations, insurance proceeds, volunteer work, or grants. With multiple entities providing assistance, it is possible for different sources to allocate funds to repair the same project. This action may constitute a duplication of benefits.

B. Section 312 (a) of the Stafford Act, as amended states that no entity will receive assistance for any loss for which financial assistance has already been received from any other program, from insurance, or from any other source. The use of Federal and/or State funds granted for the same purpose clearly constitutes a duplication of benefits. Grant or cash donations provided by a third party also may constitute a duplication of benefits.

C. Part 13.24 of 44 CFR allows, *but does not require*, applicants to use the credit of third party donations, such as cash and grants, designated solely for eligible work, to reduce the non-Federal share of project costs. Designated third party funding that is not used towards reducing the non-Federal share will be considered a duplication of benefits and will be used to reduce total project cost.

VII. **POLICY:**

A. **Grants and cash donations designated for specific eligible work.**

1. Grants and cash donations from non-Federal sources designated for the same purpose as Federal disaster funds generally are considered a duplication of benefit. However, these funds may be used for the non-Federal cost-share. All costs to be applied to the non-Federal cost-share must be for eligible work under the program.
2. If the grants and cash donations from non-Federal sources designated for specific eligible work exceed the amount of the non-Federal obligation, they should be used to reduce the total project cost. FEMA headquarters will provide the methodology for calculating the adjusted project cost and adjusted Federal and non -Federal share.

B. **Grants and cash donations not designated for specific eligible work.** Unless otherwise prohibited, grants and cash donations received for unspecified purposes (e.g., "for disaster recovery/relief efforts"), or for work not eligible for FEMA assistance, do not constitute a duplication of benefits.

C. **Insurance.**Disaster assistance will not be provided for damages covered by insurance. Disaster assistance provided by FEMA is intended to supplement assistance from other sources; therefore, insurance proceeds should be an applicant's first alternative for disaster assistance. For further guidance, refer to Disaster Assistance Policy Fact Sheet DAP9580.3, Insurance Considerations for Applicants.

D. The retention of duplicated funds is illegal. Duplicated funding received from FEMA must be returned to FEMA (Section 312).

VIII. **RESPONSIBLE OFFICE:** Disaster Assistance Directorate (Public Assistance Division).

IX. **SUPERSESSION:** This policy supersedes Recovery Policy RP9525.3 Duplication of Benefits - Non-Government Funds, published October 30, 2000.

X. **REVIEW DATE:** Three years from date of publication.

//signed//
Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

Disaster Assistance Policy 9525.3 - Duplication of Benefits – Non-Government Funds(PDF 989 KB)

Duplication of Benefits

An applicant may not receive funding from two sources for the same item of work. This is called a **Duplication of Benefits**. If an applicant can obtain assistance for a project from another Federal agency, then FEMA cannot provide funds for that project (see **Other Federal Agencies**).

Grants and cash donations received from non-Federal sources designated for the same purpose as public assistance funds are generally considered a duplication of benefits. However, these funds may be applied towards the non-Federal cost share. Grants and cash donations that are received for unspecified purposes or ineligible work do not constitute a duplication of benefits.

A duplication of benefits most commonly occurs with insurance settlements. If a damaged facility is insured, FEMA is required to reduce the amount of the grant by any insurance proceeds that the applicant anticipates or receives for the insured facility, even if the applicant has not completed negotiations with the insurer. The applicant is required to provide information concerning insurance recoveries to FEMA, including copies of all applicable policies. FEMA will review the insurance information and determine whether the settlement appears proper in terms of the provisions of the policy (see **Insurance**). The retention of duplicated funds is illegal and duplicated funds must be returned to FEMA.

References: Section 312 of the Stafford Act
44 CFR §206.226(a)(1)
Duplication of Benefits – Non-Government Funds, FEMA Policy 9525.3, dated July 24, 2007
Public Assistance Guide, FEMA 322, pages 41-42

Educational Facilities
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References: Sections 102(9)
44 CFR §206.22
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