

INTRODUCED BY:

MAYOR BROWN



ORDINANCE NO. 2021-13

A BILL TO BE ENTITLED

**AN ORDINANCE CREATING A NEW ARTICLE VIII
(EMERGENCY MANAGEMENT), WITHIN CHAPTER 2
(ADMINISTRATION); PROVIDING FOR SEVERABILITY;
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, pursuant to Section 1.03 of the City Charter, the City is vested with all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes except as expressly prohibited by law or the City Charter; and

WHEREAS, Fla. Stat. § 252.38 grants political subdivisions, including municipalities, certain power and authority in the event of emergencies or disasters for local and general emergencies; and

WHEREAS, in the event of a disaster or emergency in the City of Neptune Beach, it may be necessary for the City to take certain actions and declare certain rules in effect in order to protect citizens, residents, visitors, and their properties; and

WHEREAS, it is in the best interest of the City and its citizens to establish lines of authority, procedures, rules and regulations, and actions which the City may take in the event of a disaster or emergency to protect its citizens and their properties; and

WHEREAS, the City Council for the City of Neptune Beach, Florida finds and declares that this ordinance is in the best interest of the public health, safety and welfare of the citizens and residents of the City, that it advances a significant and important governmental interest, and that it furthers the City's performance of municipal functions and rendering of municipal services.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF NEPTUNE BEACH, FLORIDA, THAT:

Section 1. Creating a new Chapter 2. Administration, Article VIII, Emergency Powers, Sections 2-500 through 2-519. New Sections 2-500 through 2-519, Chapter 2 (Administration), Article VIII (Emergency Management), City of Neptune Beach Code of Ordinances are hereby created to read as follows:

CHAPTER 2. ADMINISTRATION
ARTICLE VIII. EMERGENCY MANAGEMENT

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Sec. 2-500. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meaning ascribed to them in this section, except where the content clearly indicates a different meaning.

Abandoned vehicle shall mean any vehicle meeting the definitions of "Junked, abandoned property" as defined below or in Sec. 22-35:

- (i) In a wrecked, inoperative, junked, or partially dismantled condition upon any public property of this city;
- (ii) On any roadway of this city without the consent of the authority having jurisdiction thereof; or
- (iii) Left, stored, or abandoned upon the property of another without the consent of the owner of the property.

City shall mean the City of Neptune Beach.

County shall mean Duval County.

Derelict vessel shall mean any vessel that is left, stored, or abandoned:

- (i) In a wrecked, junked, or substantially dismantled condition upon any public waters of this city;
- (ii) On or at any beach, public property, or roadway without the consent of the agency having jurisdiction; or
- (iii) Docked or grounded at or beached upon the property of another without the consent of the owner of the property.

Disaster means the actual occurrence of widespread or severe damage, injury or loss of life or property resulting from a natural or human-made causes including but not limited to, fire, flood, hurricane, tornado, ice/snow storm, wind, oil spill, earthquake, explosion, water contamination, utility failure, hazardous materials or radiological incidents, pandemic, epidemic, air contamination, blight, drought, infestation, or hostile military action, terrorist activities, riots, or civil disorders.

Emergency or local emergency means any occurrence, event, disaster or threat thereof, whether accidental, natural, or caused by man, in war or peace, which results or may result in substantial injury or harm to the population of the city or substantial damage to or loss of property within the city or a condition which threatens or adversely affects the public health, safety or security and which is or threatens to be beyond the control of those public and private agencies normally responsible for the management of such a condition, resulting from an act of imminent threatened act of war, riot, terrorism, mob or other acts of violence;

from conflagration, explosion, hazardous materials incident or release; from a weather event such as a flood, hurricane or tornado; from a disruption in the city's utility system; from the threat or spread of disease, virus, or infection; or from any other cause. A state of emergency exists when either, the President of the United States, the Governor of the State of Florida, or the government of Duval County declares a state of emergency that applies to the city, or when an emergent situation exists or is imminent in the city that impacts the health, safety, and welfare of the residents of the city, including situations where it affects the city uniquely.

Mayor shall mean

- (i) The mayor of Neptune Beach;
- (ii) In the absence of the mayor of Neptune Beach, the vice mayor of Neptune Beach;
- (iii) In the absence of the mayor and vice mayor of Neptune Beach, the mayor pro tempore as provided in Section 2.04(b) of the Charter of the City of Neptune Beach.

Municipal Comprehensive Emergency Management Plan shall mean the City of Neptune Beach's emergency management plan as permitted by Fla. Stat. §252.38.

State shall mean State of Florida.

Weapon means a cutting instrument of any type, size or configuration; tear gas gun or chemical weapon or device; electric weapon or device; or any other device or object not commonly considered a weapon but which, in its use, intended use, or threatened use, is capable of causing injury to a person; e.g., rock, bottle, stick, club, bat, etc.

Sec. 2-501. - Administration and maintenance of an active municipal comprehensive emergency management plan in accordance with federal, state, and county guidelines.

A Municipal Comprehensive Emergency Management Plan for the city shall be administered, maintained, and updated as appropriate, in their discretion, by the city manager for the purpose of the management of emergency and disaster preparedness, response, recovery, and mitigation in accordance with current federal, state, and county guidelines.

Sec. 2-502. - Authority to declare and extend a state of emergency; activation of disaster plans; duration of state of emergency.

(1) When it is determined that any emergency or disaster has occurred or that the occurrence or threat of one is imminent and requires immediate and expeditious action to protect the lives and property of the citizens and to provide for the continued operation of essential services, a majority of a quorum of the city council, or, in the absence of same, the mayor, is authorized to declare a state of emergency. A

declaration of a state of emergency shall activate the Municipal Comprehensive Emergency Management Plan and any other disaster emergency plans applicable to the city and shall be the authority and guidelines for emergency measures as well as to authorize the use or distribution of any supplies, equipment, materials, or facilities assembled or arranged to be made available pursuant to such plans. A state of emergency declared by the mayor shall automatically expire unless extended by the city council within thirty (30) days of declaration.

(2) To the extent permitted by the provisions of state law, the mayor and city manager shall, as necessary, convene meetings of the city council with members of the city council attending, as appropriate, by telephone or other electronic means. The mayor and city manager may rely upon actions of the city council for guidance and direction notwithstanding the absence of a legal quorum; provided, however, that the mayor and city manager's taking of necessary emergency actions shall not be conditioned upon the actual receipt of any such guidance or direction in dealing with emergency situations.

(3) In the absence of either the mayor or city council, the city manager may declare a state of emergency.

(4) Upon the declaration of a state of local emergency pursuant to this division, the state of local emergency shall be effective during the period of such local emergency for the duration of the period of time established in the applicable proclamation or as otherwise provided by state law, to protect the health, safety and welfare of the citizens of Neptune Beach and those other persons residing in, traveling in or conducting business in the city.

(5) The city council by a majority vote may declare or extend a state of emergency until such disaster or emergency no longer exists. Any extension declared by the city council shall be of a fixed and stated duration, subject to future extensions. Notwithstanding the preceding, at any time a state of local emergency is declared pursuant to this Chapter, such matter shall be placed as an agenda item under "old business" on the agenda of each regular meeting of the city council. In each such meeting, the city council shall be deemed to have approved the continuance of the state of local emergency unless motion is made and passed to terminate such state of local emergency. In the event, at any time, that three (3) regular meetings occur without motion made as to the state of local emergency, the city council shall vote on whether to continue the state of local emergency at the next regular meeting. Failure to affirmatively extend the state of local emergency during such mandatory vote shall result in termination of the state of local emergency thirty (30) days thereafter unless otherwise specified by motion approved by the city council.

(6) The provisions of this Article VIII shall be deemed supplementary to, and not in lieu of, the powers granted to the city by law and shall not be construed as to limit the powers granted by law.

Sec. 2-503. - Clarifying and designating powers of the, council, mayor and city manager during emergencies and disasters.

(1) General powers. A majority of a quorum of the city council or, in the absence of same, the mayor and city manager, acting jointly, have the power to invoke any or all of the following provisions during a declared state of emergency or disaster, as well as any other powers the city may have by law. Should it be necessary to invoke any of the following provisions, a notice, when possible, should be made to the local news media for immediate dissemination to the public.

a. *Alcoholic beverages.* No person shall consume any alcoholic beverages in a public street or place which is publicly owned or in any motor vehicle driven or parked thereon which is within a duly designated restricted area.

b. *Weapons.* No person, except certified law enforcement or U.S. military personnel, shall carry or possess any weapon in a public place or upon the property of another; such possession shall be prima facie evidence of an intent to violate the provisions of this section.

c. *Restricted areas.* No person shall enter any area designated by the City of Neptune Beach as a restricted area unless in the performance of official duties or with written permission from the city manager, or their designated representative.

d. *Curfews.* No person shall be allowed in the public or private streets or places throughout the city or in any designated sections of the same during the hours in which the city has declared a curfew, except for the provision of designated, essential services, such as fire, utilities, police, emergency medical services and hospital services, including the transportation of patients, utility emergency repairs, and emergency calls by physicians. The provisions of this subsection shall not apply to government employees in the performance of essential services or while in the service of protecting the life, health, property, welfare or public peace of the community.

e. *Budget.* The mayor and city manager may recommend a budget to the city council for the creation and maintenance of an emergency response capability as provided herein.

f. *Emergency Regulations.* Emergency regulations necessary for the protection of life and property, establishment of public order, and control of adverse conditions affecting public welfare resulting from an emergency may be issued by the city manager and mayor.

g. *Control Center.* An emergency operations control center to include equipment, manning, and operational procedures necessary to the management and control of emergency conditions may be established.

h. *Permits.* Development permits may be issued to allow the reconstruction and repair of non-conforming structures that have been damaged. Development permits and construction permits may be issued without assessing customary fees and charges for activities that pertain to the restoration and rehabilitation of any and all structures damaged.

i. *Water.* The city may suspend the watering or irrigation of properties in the event that the city's water supplies or water supply system or facilities is or are threatened with harm or an inability to function at a level that is consistent with the protection of the public health, safety and welfare. The city may prohibit

the use of fresh water supplied by the city for any purpose other than cooking, drinking or bathing.

j. *Emergency Housing.* Provisions may be made for the availability and use of temporary emergency housing and the emergency warehousing of materials and the city may establish emergency operating centers and shelters in addition to or in place of those provided in Jacksonville's or the city's emergency management plans.

k. *Requisition.* The city may confiscate merchandise, equipment, vehicles or property needed to alleviate the local emergency. Reimbursement to the owner shall occur within 60 days and at customary value charged for the items during 90 days previous to the state of local emergency.

l. *Support.* The city may call on the National Guard of the Army, public safety officials and law enforcement officials as necessary to assist in the mitigation of the local emergency or to help maintain law and order, rescue and traffic control.

m. *Price Gouging.* The city may prohibit the sale of merchandise, goods or services at more than the average retail price.

n. *Rules.* In addition to any other power, to the fullest extent permitted by law, the city may promulgate such other emergency rules as may be deemed necessary for the protection of the health, safety and general welfare of the city.

(2) During a state of emergency, the procedures and formalities otherwise required of the city by law may be waived by the mayor and city manager jointly and may authorize actions pertaining to the following as necessary:

a. Performing public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community;

b. Entering into contracts;

c. Suspending bid provisions for a period not to exceed six (6) months from the declaration of the emergency in accordance with the provisions of Sec. 2-377(b)(4) of the Code;

d. Employment of permanent and temporary workers;

e. Utilization of volunteer workers;

f. Rental of equipment;

g. Acquisition and distribution of supplies, materials, and facilities;

h. Additional appropriation and expenditure of funds as needed for the emergency;

i. Implementing emergency personnel policies;

j. Activating and/or executing the statewide mutual-aid system and/or interlocal agreements;

k. Determining a threat to public health and safety that may result from the generation of widespread debris throughout the city, that such debris constitutes a hazardous environment for all modes of movement and transportation of the residents as well as emergency aid and relief services, endangerment to all properties in the city, an environment conducive to breeding disease and vermin, and greatly increased risk of fire, and that it is in the public interest to collect and remove disaster debris from all property within the city, whether publicly-owned lands, privately-owned lands, both public and private roads and easements, including lands and roads located within any private, gated community, and

within any waterway, to eliminate an immediate threat of additional damage to improved property and to promote economic recovery of the community at large and the health and safety of the community at large;

l. Authorize the city or their contracted agent right of access to private roads and easements and/or gated communities as needed by emergency vehicles such as, but not limited to, police, fire, medical care, debris removal, utility repairs, and sanitation to alleviate immediate threats to public health and safety;

m. Authorize the removal of debris and wreckage resulting from a major disaster from all property whether public lands, public or private roads, or gated communities for a safe and sanitary living or functioning condition;

n. Authorize the removal of derelict vessels pursuant to current Statutes of the State of Florida and in conjunction with the Florida Fish and Wildlife Conservation Council; and

o. Authorize the removal of abandoned vehicles pursuant to current Statutes of the State of Florida and in conjunction with law enforcement of the city, county, and state.

Sec. 2-504. - Emergency response costs.

Any expenditure made in conjunction with emergency activities, including mutual aid agreements and interlocal agreements, shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of the city.

Sec. 2-505. - Responsibility for debris removal.

The city, its designee, or their contractor will be responsible for removing and disposing of any wide spread debris generated by a disaster on public land, public or private roadways, or roadways in gated communities that is determined to be a public threat to health or safety, as determined by the city manager.

The city is not responsible for removing debris generated from private residential or commercial property unless the debris is in the public right-of-way. However, the city may remove debris from private residential or commercial property if the removal of the debris is required to lessen an immediate threat to life, public health and safety, and reduce the threat of additional damage to improved property or to promote economic recovery of the community. This determination will be made by the city manager on a case-by-case basis.

Sec. 2-506. - Administrative rules.

The city manager is hereby authorized to adopt administrative rules that are deemed necessary and appropriate to implement the provisions of this division.

Sec. 2-507. - Termination of a state of emergency.

A state of emergency shall be terminated by a vote of the city council if practicable or upon the certification of the city manager or authorized person who originally requested the declaration of the state of emergency, that the conditions leading to or causing the emergency no longer exist and the city's agencies and departments are able to manage the situation without extraordinary assistance; provided that a state of emergency established under F.S. § 870.041 et. seq. shall terminate at the end of a period of 72 consecutive hours after the declaration of the emergency, unless, prior to the end of the

72-hour period, the state of emergency has been terminated by an appropriate authority. Any extension of the 72-hour time limit must be accomplished with the concurrence of the city council by adoption of a resolution. Notice of termination of the emergency declaration shall be made to the public by the city manager, or designee, by the same means as the notice of the declaration of the state of emergency.

Sec. 2-508. - Applicability of provisions.

All persons, officers, employees, contractors, vendors, boards, councils, authorities and all other agencies of the city are subject to the provisions of this division.

Sec. 2-509. - Police emergencies.

A public police emergency may be declared because of civil unrest or imminent threat to public peace or order when the chief of police, or if unavailable, the next highest ranking officer in the police department chain of command, certifies to the city manager, or designee, that an emergency condition arising from hostile actions of others, terrorism, or other imminent threat to public peace or order, requires extraordinary measures for control, including, but not limited to curfew; blockade; proscription of the sale of firearms and other weapons to the extent permitted by law, alcohol beverages; explosives and combustibles; evacuation; and other like actions. Such events may be either armed or unarmed in nature. The city manager, or designee, shall report said certification to the city council regarding the need to declare a state of emergency and a declaration of emergency may then issue.

Sec. 2-510. - Utility emergencies.

(a) A public emergency may be declared because of utility conditions, when the appropriate official of the relevant utility, or designee, certifies to the city manager, or designee, that:

- (1) A condition exists or is imminent that endangers the safety, potability, quantity, availability, collection, conveyance, transmission, distribution, treatment, or storage of water or waste water through or within the city's water or wastewater utility system; or
- (2) A condition exists or is imminent that endangers the safety, quality, quantity, availability, transmission, distribution, or storage of gas through or within the city; or
- (3) A condition exists or is imminent that endangers the safety, quality, quantity, availability, transmission, or distribution of electric power through or within the city; or
- (4) A condition exists or is imminent that endangers the safety of citizens due to failures in communications system within the city; or
- (5) Other extraordinary actions to control and correct a situation relating to utility services of whatever nature are required including, but not limited to emergency purchase; call-in of off-duty personnel; assistance by other communities and agencies; and other like actions.

Sec. 2-511. - Weather emergencies.

A public emergency may be declared because of weather conditions when the national weather service or the state or county or other emergency management agency informs the city that emergency conditions resulting from meteorological conditions are present

or imminent. Meteorological conditions include, but are not limited to hurricane, floods, tornados, or other severe weather conditions and the results therefrom. The city manager, or designee, may request a declaration of a state of emergency from appropriate officials.

Sec. 2-512. – Health emergencies.

A public emergency may be declared because of health conditions when the Center for Disease Control or the state or county or other emergency management agency declares that a health concern is present or imminent in the state or county. Health concerns include, but are not limited to pandemics, epidemics, or other spread of disease, virus, bacteria, or other health-impacting matters, organic or inorganic, and the results therefrom. The city manager, or designee, may request a declaration of a state of emergency from appropriate officials.

Sec. 2-513. - Suspension of local building regulations.

The city manager, or designee, may authorize a suspension of local building regulations during and following a declared state of emergency when the city's building official certifies to the city manager, or designee, that such action is necessary for the expeditious restoration of property damaged by the emergency event. Such suspension of building regulations may be applied on a case-by-case basis as required to remedy specific conditions and to facilitate the provision of emergency housing to disaster victims. The building official shall specify the provisions of the building code to be suspended and the reasons therefore, when certifying the necessity of such suspension to the city manager, or designee. The city manager, or designee, shall communicate to the city council the need to suspend local building regulations. The city council may confirm the suspension in its discretion.

Sec. 2-514. - Certification of emergency conditions.

A certification of emergency conditions to the city manager, or designee, may be verbal, but each verbal certification shall be confirmed in writing within 24 hours following an emergency declaration.

Sec. 2-515. - Immunity.

Elected and appointed officials, their designees, and all city employees shall have immunity for any actions taken in accordance with this division and the city retains its sovereign immunity for all actions taken relating to emergency preparedness, response and/or clean-up. The city retains extensive sovereign immunity for actions taken during a state of emergency and does not waive any of its sovereign immunity in this division.

Sec. 2-516. - Violation; penalties.

Any person or persons convicted of violating any of the provisions of this division including, but not limited to, any proclamation or rule adopted under the provisions of this division, shall be punished by a fine of not more than five hundred dollars (\$500.00), plus costs of prosecution, or by imprisonment for not more than sixty (60) days, or by both such fine, costs and imprisonment in the discretion of the court.

The provisions of this division may be enforced by any and all lawful means by the city pursuant of all codes and ordinances duly adopted by the city council or as may

otherwise be available to the city pursuant to state law and nothing contained in this division shall prohibit the city from enforcing this division by other means set forth in the city's codes and ordinances, provided in the statutory law of the State of Florida, or otherwise available to the city.

Sec. 2-517. - City council; powers.

(a) Given the exigency and danger that exists during a state of emergency, the city council may attend emergency briefings in person or by phone. These briefings are intended to inform members of the city council on the status of emergency preparedness and rescue and clean-up efforts, and of any emergency issues that may have arisen. Emergency briefings will not involve any items that will later be presented to the city council to act on as a body and will only relate to emergency matters.

(b) The city council retains authority to act if a city council meeting is held during the state of emergency. The city council may prospectively modify any emergency policies or approvals issued by the mayor under any provisions of state law, although any prior actions taken in reliance on such emergency policies or approvals shall remain effective and enforceable.

Sec. 2-518. - City attorney; powers.

(a) The city attorney may issue authoritative interpretations of any emergency management provision upon which the mayor, city councilors, and city manager, or designee, and their designees may rely.

(b) The city attorney may issue cease and desist letters, as necessary, in order to require compliance with the city Code and other controlling law.

(c) The city attorney may execute emergency documents on behalf of the mayor and other city officials with their permission.

Sec. 2-519. - Building official and code enforcement division; powers.

(a) During a state of emergency, the building official has full jurisdiction over any construction site and can give any orders deemed appropriate which can be enforced by the city attorney or code enforcement personnel.

(b) During a state of emergency or once the five-day forecast cone from the National Hurricane Center predicts that the city will be impacted by a tropical storm or hurricane, whichever comes first, best efforts shall be used by owners and/or any occupants of real property to secure all furniture, display racks, materials and similar loose objects in exposed outdoor locations, including loose materials or equipment at construction sites that must be secured or otherwise appropriately braced to rigid construction or stored in buildings to the extent practicable, given the conditions. The city shall give oral or written orders to any person on the premises most logically responsible for maintenance and such orders shall be carried out before winds of tropical storm velocity begin. In the event of construction, the city shall also attempt to give notice to the contractor, if practicable.

* * *

Section 2. Severability. If any section, sentence, clause, phrase, or word of this Ordinance is, for any reason, held or declared to be unconstitutional, inoperative or void, such holding or invalidity shall not affect the remaining portions of

this Ordinance, and it shall be construed to be the legislative intent to pass this Ordinance without such unconstitutional, invalid or inoperative part therein.

Section 3. Effective Date. This Ordinance shall become immediately upon passage by the City Council.

VOTE RESULTS OF FIRST READING:

Mayor Elaine Brown	YES
Vice Mayor Fred Jones	ABSENT
Councilor Kerry Chin	YES
Councilor Lauren Key	YES
Councilor Josh Messinger	YES

Passed on First Reading this 6th day of December, 2021.

VOTE RESULTS OF SECOND AND FINAL READING:

Mayor Elaine Brown	YES
Councilor Kerry Chin	YES
Councilor Lauren Key	ABSENT
Councilor Josh Messinger	YES

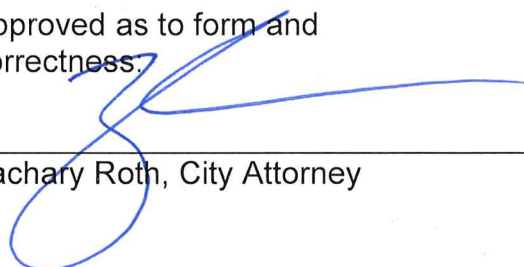
Passed on Second and Final Reading this 3rd day of January, 2022.


Elaine Brown, Mayor

ATTEST:


Catherine Ponson, CMC, City Clerk

Approved as to form and
correctness.


Zachary Roth, City Attorney

