CITY OF SANIBEL
ORDINANCE NO. 08-011

AN ORDINANCE PROVIDING THAT THE CITY OF SANIBEL ACKNOWLEDGES AND ACCEPTS, UNDER CERTAIN DEFINED CIRCUMSTANCES AND WITHIN CERTAIN DEFINED AREAS, LEGAL RESPONSIBILITY FOR DISASTER-GENERATED DEBRIS REMOVAL FROM PRIVATE ROADS AND/OR PRIVATE PROPERTY; SETTING FORTH DEFINITIONS; SETTING FORTH THE CRITERIA AND DETERMINATIONS UNDER WHICH DISASTER-GENERATED DEBRIS WILL BE REMOVED FROM DESIGNATED PRIVATE ROADS AND/OR PRIVATE PROPERTY; PROVIDING THAT THERE ARE NO PRIVATE THIRD-PARTY BENEFICIARIES WITH RESPECT TO THE OPERATION OF THE ORDINANCE; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, although it is recognized that debris removal from private roads and/or other private property following a major disaster is the responsibility of the private property owner, large-scale disasters resulting in enormous quantities of debris on private streets and/or other private property may present a significant and immediate threat to life, public health and public safety of individual citizens and/or the City at-large, or other vital concerns of public interest; and

WHEREAS, the Sanibel City Council has determined that under certain circumstances, the City should accept the responsibility of disaster-generated debris removal from designated private roads and/or other private property after a major disaster;

NOW, THEREFORE, BE IT ORDAINED by the City of Sanibel, Florida, that:

SECTION 1. DEFINITIONS.

As used in this Ordinance, the following words shall have the following meaning:

A. "Disaster-Generated Debris" means any material, including trees, branches, personal property and building material on public or Private Property that is directly deposited by the disaster.

B. "Improved Property" means any structure, facility, or equipment that was built, constructed or manufactured. Examples include houses, sheds, carports, pools and gazebos. Land used for agricultural purposes is not Improved Property.

C. "Private Property" means land and structures, to include contents within the structures, built on land that is owned by non-governmental entities.

D. "Public Interest" is defined as being necessary to:

(i) Eliminate immediate threats to life, public health and safety; or

(ii) Eliminate immediate threats of significant damage to public Improved Property or Private Property; or

(iii) Ensure economic recovery of an affected community to the benefit of the City at-large.

E. "Private Road" means any non-public road for which the state, county or the City of Sanibel is not legally responsible with respect to operation or maintenance. Private Roads include roads owned and maintained by homeowners associations, including any gated roadways, and roads for which no entity has claimed responsibility. Local police, fire, and emergency medical entities may use these Private Roads to provide services to the community.

SECTION 2. ACKNOWLEDGEMENT AND ACCEPTANCE OF LEGAL RESPONSIBILITY FOR DEBRIS REMOVAL FROM DESIGNATED PRIVATE ROADS AND/OR OTHER PRIVATE PROPERTY AFTER A PUBLIC INTEREST DETERMINATION.

A. It is hereby determined and declared that this Ordinance shall constitute acceptance and acknowledgement of legal responsibility on the part of the City of Sanibel to enter upon a Private Road and/or other Private Property to remove Disaster-Generated Debris or to perform work to remove an immediate threat, but only after the City, through its City Council or City

Manager, has determined that there is, with respect to such Disaster-Generated Debris on Private Roads and/or other Private Property, an (i) immediate threat to life, public health and safety, (ii) an immediate threat to Improved Property, and/or (iii) that such Disaster-Generated Debris removal is necessary to ensure economic recovery of the affected community to the benefit of the City at-large.

B. The determination by the City Council or City Manager pursuant to Subsection A above may be made for a specific Private Road or Private Roads and/or Private Property or Private Properties based on the facts and circumstances determined applicable by the City Council or City Manager at the sole discretion of the City Council or City Manager. The determination that it is necessary to remove Disaster-Generated Debris from one parcel or area of Private Property or Private Roads shall place no obligation on the City Council or City Manager to remove Disaster-Generated Debris from other Private Property or Private Roads.

C. This Ordinance does not provide any legal responsibility, and shall not be construed to require any actions by the City of Sanibel, to remove or otherwise address Disaster-Generated Debris from Private Roads and/or other Private Property where there has not been a determination by the City Council or City Manager that such debris removal is necessary within or for a designated area of the City because of (i) an immediate threat to life, public health and safety; (ii) an immediate threat to Improved Property , and/or (iii) necessary to ensure economic recovery of the affected community to the benefit of the City at-large. In the absence of such a determination, the legal responsibility for debris removal shall remain with the Private Property owner.

D. Notwithstanding any other provision of this Ordinance, the City shall not have responsibility for the removal of Disaster-Generated Debris on any Private Road and/or other Private Property unless and until the City has obtained the legal right to enter upon such Private Roads and/or other Private Property to remove Disaster-Generated Debris. Such authority and right to enter upon Private Property may be by a right of entry form executed by the Private Property owner or other authorized party, or a determination by the City that sufficient authority exists under federal, state, county or municipal laws to enter upon Private Property for the purposes set forth in this Ordinance. Additionally, in those instances where the City Council determines that it is necessary to remove Disaster-Generated Debris from any Private Road or other Private Property, the City shall have the right to require that such Private Property owner fully hold harmless and indemnify the City, its officers, agents, employees and subcontractors, as well as those of any cooperating county, state or federal agency, as consideration for the removal of such debris.

SECTION 3. NO PRIVATE THIRD-PARTY BENEFICIARY.

This Ordinance is intended to serve the interests of the general public and no individual private owner or group of private owners of Private Roads or Private Property are intended to be, or shall be construed to be, third-party beneficiaries under the terms of this Ordinance.

SECTION 4. CODIFICATION

It is the intention of the City of Sanibel that the provisions of this Ordinance will become and be made a part of the City of Sanibel Code and that sections of this Ordinance may be renumbered or re-lettered and that the word "Ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intention.

SECTION 5. CONFLICT AND SEVERABILITY

In the event this Ordinance conflicts with any other ordinance or other applicable law, the more restrictive shall apply. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

SECTION 6. EFFECTIVE DATE

This Ordinance shall become effective immediately upon adoption.

DULY PASSED AND ENACTED by the City Council of the City of Sanibel, Florida this 15th day of July, 2008.

Mick Denham, Mayor

AUTHENTICATION:

Pamela Smith, City Clerk

APPROVED AS TO FORM:

Kenneth B. Cuyler, City Attorney

Date: 7/8/08

Publication and Hearing Dates:

Date of First Public Hearing:	August 05, 2008
Ordinance Publication Date:	August 21, 2008
Date of Second Public Hearing:	September 06, 2008

Vote of Council Members:

Denham	yea
Ruane	yea
Jennings	yea
Johnston	yea
Pappas	yea

Date filed with City Clerk: September 08, 2008