

**ORDINANCE NO. 2024-\_\_\_**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AMENDING ITS CODE OF ORDINANCES BY AMENDING CHAPTER 46 “SPECIAL DISTRICTS” TO REORGANIZE AND UPDATE ITS PROVISIONS, TO PROVIDE ADDITIONAL DUE PROCESS PROTECTIONS FOR PROPERTY OWNERS CITED FOR DRAINAGE WORKS VIOLATIONS, TO PROVIDE LEGAL PROCEDURES FOR THE ASSESSMENT OF ABATEMENT COSTS, TO PROVIDE A VOLUNTARY CULVERT SPECIAL ASSESSMENT ASSISTANCE PROGRAM FOR THE REPAIR, REPLACEMENT, CONSTRUCTION AND/OR MAINTENANCE OF PRIVATELY OWNED CULVERTS, CULVERT CROSSINGS, AND/OR CULVERT BRIDGES, TO REMOVE HAULING PERMITTING PROVISIONS, AND FOR OTHER PURPOSES; PROVIDING FOR CONFLICT, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Loxahatchee Groves, Florida (“Town”), is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, the Loxahatchee Groves Water Control District (“District”) was an independent special district of the State of Florida until it was dissolved in 2018 and transferred to the Town as a dependent special district; and

**WHEREAS**, the District provides surface water management, road maintenance, and related services for the Town; and

**WHEREAS**, the special acts that provided for the duties and other provisions governing the District became ordinances of the Town when the District became dependent and are set forth in the Town’s Code of Ordinances as Chapter 46; and

**WHEREAS**, such ordinances require reorganization to allow for easier access to the District’s procedures and responsibilities and a more efficient and practical structure for the same; and

**WHEREAS**, drainage works include culverts, culvert crossings, culvert bridges, bridges, swales, drainage ditches, canals, or other drainage systems that connect with or cross over any of the works of the district, or lie within the rights-of-way of the town; and

**WHEREAS**, the Town continues to be concerned with privately owned and maintained drainage works that are deteriorating, improperly constructed, or otherwise adversely impacting the District, its operations, or any of its works; and

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**WHEREAS**, drainage works play a crucial role in managing the flow of water around and beneath private property and public roadways and other rights-of-way and draining runoff and stormwater out of the town’s residential properties; and

**WHEREAS**, failing drainage works create poor drainage, flooding issues and water quality problems for the Town’s agricultural, residential and commercial properties; and

**WHEREAS**, often times, the cost for repairs and/or replacements of drainage works is too expensive for individual landowners to undertake and, as a result, such drainage works remain in disrepair and continue to cause problems to the District’s operations; and

**WHEREAS**, when a drainage works is adversely impacting the District, its operations, or any of its works, the District requires an efficient and effective process to quickly address and correct the deficiencies causing the impact; and

**WHEREAS**, the District has the power to levy assessments pursuant to Chapter 298, Florida Statutes and as otherwise authorized by other laws including but not limited to its existing ordinances; and

**WHEREAS**, the Town wishes to amend Chapter 46 “Special Districts” to include a process whereby private landowners may engage the District to manage payments to the contractor procured by the landowner(s) to repair and/or replace privately owned culverts that are adversely impacting the District and to charge the affected landowner(s) a special assessment(s) to pay for such work, including an administrative fee (the “Culvert Special Assessment Assistance Program”); and

**WHEREAS**, the Town wishes to amend Chapter 46 to also provide additional due process protections for property owners cited for drainage works violations and to include additional legal and procedural support for special assessments for the abatement of violations; and

**WHEREAS**, in accordance with Florida law, special assessments will only be assessed if the services performed by the District confer a special benefit on the property assessed and the assessment is fairly and reasonably apportioned among the properties that receive the special benefit; and

**WHEREAS**, the District’s Board of Supervisors reviewed and considered this ordinance on the \_\_\_\_ day of \_\_\_\_\_, 2024 and recommended the Town Council’s approval of the ordinance as herein written; and

**WHEREAS**, the Town Council has determined that the enactment of this ordinance is for a proper municipal purpose and in the best interests of the residents of the Town.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, THAT:**

**Section 1.** The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and incorporated herein by this reference.

**Section 2.** The Town of Loxahatchee Groves hereby amends Chapter 46 “Special Districts” by reorganizing and amending the Chapter to read as follows:

**Chapter 46 – SPECIAL DISTRICTS**

**ARTICLE I. – LOXAHATCHEE GROVES WATER CONTROL DISTRICT**

**DIVISION 1. – GENERAL PROVISIONS.**

**Sec. 46-1. – In general Loxahatchee Groves Water Control District.**

- (a) *Name and duration of district.* The district is a dependent district of the town. The name of the district shall be Loxahatchee Groves Water Control District, hereinafter referred to as the “district.” The corporate life of the district is extended perpetually.
- (b) *Board of supervisors.* The town council shall serve as the board of supervisors for the district.
- (c) *Levy of assessments of land less than one acre.* In the levying and assessing of all assessments by the district, created under F.S. ch. 298, each tract or parcel of land less than one acre in area shall be assessed as a full acre.

(d) Coordination with town. In accordance with F.S. ch. 298 and to make the most efficient use of its powers, the district will cooperate and coordinate its activities with the town. Based on this premise and for mutual advantage, the district may coordinate with the town to administer the district’s programs and responsibilities set forth in this chapter. Such coordination shall be in the form of a written agreement signed by both parties. When a valid agreement exists, and the town is charged with enforcing or administering any provision of this chapter, the term “district” shall also include “town” where applicable to perform such agreement. The district shall retain ultimate control and supervision over matters of the district.

**Commented [J1]:** **New:** For legal and other purposes, this subsection (d) is needed to clarify the relationship between the Town and the District in the implementation and enforcement of the ordinance.

(e) Definitions. As used in this division, the following terms shall have the meanings ascribed thereto by this section unless the context clearly requires otherwise:

**Commented [J2]:** **New:** These new definitions provide residents with clear guidance regarding how these words or phrases are to be understood and used in the ordinance.

“Adversely impacts” means having a negative effect on, including but not limited to, restricting the normal conveyance of water, increasing flooding, erosion and/or sedimentation, increasing the cost of public services, or other negative effect, as determined in the reasonable discretion of the district.

**Commented [J3]:** **New:** The term “adversely impacts” is used in the current ordinance but it is not defined. A definition was added so residents have a better understanding of when a culvert or other drainage work is in violation.

“Culvert” means a capital improvement comprised of a pipe, channel, tunnel, or other drainage feature or structure and related facilities including baffles, drainage structures, endwalls, etc. intended to direct the flow of stormwater under, around, or through driveways, roads, trails, or other obstructions.

“Drainage Works” means culverts, culvert crossings, culvert bridges, bridges, swales, drainage ditches, canals, or other drainage systems that connect with or cross over any of the works of the district, or lie within the rights-of-way of the town.

“Property Owner” means, collectively, all of the record owners of the subject property.

**Sec. 46-2. – General powers of the district.**

**Commented [J4]:** The general powers of the district which are in the current ordinance have been reorganized and titled for easy reference.

(a) ~~(4)~~ Exercise of powers. To the extent permitted by law, the powers granted in this divisionsection may be exercised without the necessity of modifying or amending the water control plan for the district. ~~(5)~~ Unless otherwise required by law or this chapter, the powers set forth in this divisionsection shall be exercised by resolution adopted by a majority of the membership of the board of supervisors.

(b) ~~(d)~~ Powers of the district-Roads.

(1) Road maintenance, etc.

- a. In addition to the powers provided for in F.S. ch. 298, the district shall have the power to maintain roadways and roads necessary and convenient for the exercise of the powers or duties of the district or the supervisors thereof in coordination with the town; and in furtherance of the purpose and intent of this ~~divisionsection~~ and F.S. ch. 298, in coordination with the town, to maintain roadways and roads necessary and convenient to provide access to and efficient development of areas made suitable and available for cultivation, settlement, and other beneficial use and development as a result of the reclamation operations of the district, including all the roads shown on the replat of the town, as recorded in Plat Book 12, Page 29, Palm Beach County Public Records; and to provide funds for this purpose in its annual levy of district assessments.
- b. ~~(3)~~ In addition to the powers of the district, elsewhere provided by general or special law, or ordinance or resolution, the district shall have the power, in coordination with the town, to construct, maintain, improve, and repair roadways and roads necessary and convenient for the exercise of any of the powers or duties of the district or the board of supervisors thereof, including, but not limited to, all the roads shown on the replat of the town, as recorded in Plat Book 12, Page 29, Palm Beach County Public Records, or to provide access to and development of areas within the district, or both; to provide funds for such construction, maintenance, improvement, or repair through the levying of assessments pursuant to F.S. ch. 298, or this ~~divisionsection~~, or both; and to acquire land, including any interest therein, by purchase, gift, exchange, or eminent domain, for such construction, maintenance, improvement, or repair. Notwithstanding anything contained herein, the district's ability, under F.S. ch. 298, to create and assess units of development shall be unaffected.

(2) Road improvement program.—The board of supervisors of the district is hereby authorized, empowered, and permitted, in coordination with the town, to expend funds of the district to pay for surveying, engineering studies, and plans and other related services in preparation of construction documents for the purpose of developing a road improvement program for the construction, maintenance, improvement, and repair of dedicated roads and road rights-of-way, including the swales thereof, within the district.

~~(c)(8)~~Drainage works. The district shall have the power to require maintenance and/or repairs, including replacement, of any Drainage Works ~~swale, drainage ditch, culvert, or canal connecting to any of the works of the district where lack of such maintenance such Drainage Works~~ adversely impacts the district, its operations, or any of its works. The board of supervisors shall cause notice to be given to any person owning land on which any such a Drainage Works ~~swale, drainage ditch, culvert, or canal is located in the event such maintenance is required, and, if the requested maintenance is not performed within 30 days of said notice, unless extended by the board of supervisors, the district may go upon such property and perform said maintenance and assess the owner of the property for the district's cost thereof.~~

~~(d)(7)~~Uniform standards. The district shall have the power to adopt, by resolution, a uniform standard for Drainage Works ~~culvert crossings, bridges, culverts, or other drainage systems that connect with or cross over any of the works of, or lie within the rights of way of, the district. The uniform standards adopted by the district shall be consistent with the Town's adopted standards for access.~~ If the district so establishes a uniform standard, the district shall by resolution adopt procedures:

~~(1)a.~~ Which shall require notice of such uniform standards to be given to persons owning lands upon which, adjacent to, or, to the best of the district's knowledge, using any Drainage Work ~~culvert crossings, bridges, culverts, or other drainage systems that connect with or cross over any of the works of, or lie within the rights of way of, the district and to such other persons as the board of supervisors shall deem to be necessary or desirable, or both. The uniform standards and any subsequent changes to the uniform standards shall be available for inspection and copying at Town Hall and provided upon request.~~

~~(2)b.~~ Which shall authorize granting permits for Drainage Work ~~culvert crossings, bridges, culverts, or other drainage systems, or pursuant to such uniform standards, and the~~ The district may allow for permits to be applied for by a single landowner, ~~or by multiple landowners, or provided that, in the case of multiple landowners, such landowners may establish a single entity to represent all such landowners to apply for and obtain the permit and construct and maintain the Drainage Works, culvert crossings, bridges, culverts, or other drainage systems.~~ Any such single entity applying for a permit shall be subject to review by the district to ensure that said entity has and shall have the legal authority to assess such landowners for the cost of construction and maintenance of such Drainage Works. All permittees shall enter into a maintenance agreement with the district for the permitted Drainage Works. Such maintenance agreement shall, at a minimum, provide for the landowner's maintenance of the Drainage Works in accordance with this chapter and all other applicable laws, rules and regulations, culverts, drainage systems, culvert crossings, or bridges, that such ~~The single entity's power to assess the landowners shall run with the land of the landowners creating the entity, and that the district can enforce such assessment power if necessary. Each required maintenance agreement shall be signed by all affected landowners or a person with the legal authority to bind the single entity and shall be recorded in the official records of Palm Beach County, Florida. Such agreement shall run with the land. The form of the maintenance agreement shall be pre-approved by the district's attorney.~~

**Commented [J5]:** The current ordinance allows for a single entity to represent all landowners who use a culvert, but it doesn't address all owners' responsibilities in maintaining the culvert. **New:** The new language requiring the maintenance agreement puts all affected owners on notice of their responsibilities so the maintenance of the culvert does not fall on one or more unsuspecting owners or the Town.

~~e. Which shall, except as hereinafter provided, require as to culverts or other drainage systems not less than 60 days' written notice to be given to persons owning lands upon which any culverts or other drainage systems exist in violation of any such uniform standards prior to the taking of any enforcement action by the district. Less than 30 days' notice, in writing or otherwise, of violations of the uniform standards may be provided in emergency situations. If, after such notice pursuant to this subsection, any landowner shall fail to conform to such uniform standards, the district may enter upon such lands and take such action as necessary to cause such violation to be corrected and may assess the owner of such land for the district's costs in connection therewith. Upon the failure of any property owner to pay any assessment levied by the board of supervisors pursuant to subsection (d)(7)d of this section within 30 days of receipt by such owner of notice of said assessment, the district shall have a lien on all lands and premises affected thereby. To the extent permitted by law, such lien shall be superior and paramount to the interest in such land and premises of any owner, lessee, tenant, mortgagee, or other person except the lien of state, county, or district taxes and shall be on a parity with the lien of any such state, county, or district taxes. Such lien shall bear interest at an annual rate equal to the interest rate due on judgments, pursuant to F.S. § 55.03, per year, and shall, until paid, remain in effect in perpetuity.~~

**Commented [J6]:** This language (with strikethroughs) was removed and replaced with proper procedures and protections for property owners (e.g., notices, reasonable times to comply, right to appeal, etc.). See section 46-3 for these changes.

~~d. Which shall provide that in the event any culvert crossing or bridge, whether or not permitted by the district, is determined by the district to be restricting the normal conveyance of water in a district canal, the district shall notify the permit holder of said structure, or if there is no permit on file with the district for said structure, the district shall notify the landowners using such structure that the following options are available regarding the structure:~~

Notwithstanding any provisions contained in this subsection (d7), the ability of the district's board of supervisors under F.S. ch. 298 to create and assess units of development shall be unaffected.

(e) District works permits. The district shall have the authority to require and issue permits for all works within the district and any connections to any district works.

**Commented [J7]:** **New** language clarifies the District's authority to require and issue permits for connections to any district works. This authority comes from section 298.28, Florida Statutes.

**Sec. 46-3. – Enforcement of drainage works violations.**

(a) Violations. Any Drainage Works that (1) is not constructed or maintained in accordance with an adopted uniform standard; (2) is not properly permitted; or (3) restricts the normal conveyance of water or otherwise adversely impacts the district, its operations, or any of its works, is declared a nuisance and a violation of this division.

**Commented [J8]:** The ordinance currently authorizes the District to (1) notify a property owner of a violating culvert; (2) give the owner a set number of days to fix the issue; (3) enter the property, if not timely fixed by the owner, and perform the work; and (4) assess a lien against the property for the costs of the work. **New:** This section includes new language that addresses due process protections for property owners, including but not limited to, proper notice of the violation, the right to appeal the violation before the special magistrate, proper procedures/protections for such appeal, a requirement that owners be given a reasonable amount of time to comply the violation, etc.

(b) Options for compliance. The Property Owner may comply the violation, as applicable, as follows:

**Commented [J9]:** The ordinance currently authorizes the District to enforce existing drainage works (e.g., culverts) that are restricting drainage, are in violation of the uniform standards or were constructed without a permit (as required by uniform standards) (see the current code Sec. 46-1(d)(7)c. and d.).

~~(1) The Drainage Worksstructure may be repaired, by the permit holder or the landowners using the structure, in conformance with current district standards (as determined by a licensed engineer), including obtaining a permit from the district pursuant to its uniform standards and procedures.~~

~~(2) The Drainage Worksstructure may be abandoned and removed by the permit holder at its expense after prior written notice is provided to the district, or, if the structure has not been permitted, the district may shall remove the Drainage Worksstructure only if~~

the district secures an affidavit acknowledging abandonment and executed by all interested parties, and the district shall not be liable to any person or entity that uses such structure for its removal.

~~(3)3-~~ The landowners using such the Drainage Works structure may apply for a permit to construct a conforming replacement structure. This process shall require obtaining a permit issued by the district pursuant to its uniform standards and procedures, said permit to be contingent upon the removal of the nonconforming Drainage Works structure and the construction of a replacement structure at the sole expense of said landowners.

~~(4)4-~~ With respect to subsections ~~(b)(7)4-~~ (1) and (3) of this section, in the event that there are multiple landowners involved, the landowners may establish a single entity as set forth in subsection ~~46-2(d)(2)(7)5-~~ of this section to represent all such landowners. Prior to a permit being issued, the single entity or all affected landowners shall enter into a maintenance agreement for the Drainage Works. Such maintenance agreement shall, at a minimum, provide for the landowner's maintenance of the Drainage Works in accordance with this chapter and all other applicable laws, rules and regulations. Such agreement shall be signed by all affected landowners or a person with the legal authority to bind the single entity and shall be recorded in the official records of Palm Beach County, Florida. Maintenance agreements shall run with the land. The form of the maintenance agreement must be pre-approved by the district's attorney.

~~(5)5-~~ Alternatively, the affected landowners may pursue the voluntary culvert assessment program set forth in this chapter. ~~request the district, via referendum of the landowners utilizing the structure, upon a majority vote of such landowners, on a per-acre basis, to establish a special taxing unit of all such landowners to pay a special assessment to cover the initial costs, including, but not limited to, engineering fees, removal costs, repair or replacement construction costs, dedication of adjoining road, and permit fees and the structure shall thereafter be a district-owned structure maintained by the district.~~

~~(6)6-~~ The special magistrate for the town may order any other reasonable requirements to comply the violation(s). ~~The permit holder of a structure restricting the normal conveyance of water in a district canal, or if said structure is unpermitted, the landowners as reasonably determined by the district to be using such structure, shall have 60 days after notice is sent to respond to the district regarding which option set forth in this subsection (7) has been chosen and an additional 120 days to repair or remove said structure.~~

(c) Establishment of nuisance abatement special assessment district. The district, in its entirety, as its boundaries exist on the date of enactment of this section and as they may be expanded or contracted from time to time, is hereby declared a drainage works abatement special assessment district for the purposes of repairing or replacing existing Drainage Works. Individual properties, within the district's boundaries, will be assessed for the costs incurred by the district in repairing or replacing any Drainage Works that serve such individual properties. The repair or replacement of Drainage Works that adversely impact the district, its operations or any of its works constitutes a municipal service which specifically benefits the property(ies) upon which the Drainage Works attaches, benefits, or otherwise affects, and the assessment of the costs incurred by the district in repairing or replacing such Drainage Works against any such property(ies) is deemed fair and reasonable. The costs incurred by the district in repairing or

**Commented [J10]:** **New:** See the note at section 46-2(d)(2) above regarding the need for a maintenance agreement when multiple landowners are involved.

**Commented [J11]:** The current ordinance authorizes the District to assess properties when the Town abates a culvert violation. **New:** This new language provides a more detailed legal basis for such assessments.

replacing Drainage Works shall be levied as a special assessment. The enforcement of this division is supplemental to and outside of Chapter 162, Part I, Florida Statutes.

(d) Enforcement procedure.

(1) Violation found. If a violation is found, the district will notify the Property Owner, as stated upon the last records of the county tax collector or property appraiser, that a nuisance exists which is a violation of this division. The notice shall be provided to the Property Owner by regular and certified mail, return receipt requested, or by hand delivery which shall be effective and complete when delivered. In the event that the mailed notice is returned by the postal authorities or the return receipt is not received by the district within ten (10) days after mailing, the notice shall be given by physical posting of the notice on the subject property. Notice by posting shall be considered delivered on the date posted. When there is more than one owner, service as herein provided on any one owner shall be sufficient notice.

(2) Notice of violation contents. The notice will notify the Property Owner of the following:

- a. A public nuisance exists on the land and a brief description of the location and the nuisance;
- b. A reasonable time to comply the violation;
- c. The owner has ten (10) days from the date the notice is delivered to file with the district a written request for a hearing before a special magistrate;
- d. If the owner fails to timely comply the violation and a hearing is not timely requested, the district may have the violation abated at the expense of the owner, including all costs of inspection and administration.
- e. If the district has the violation abated, the costs of the work, together with all costs of inspection, administration, and all other related costs shall be a special assessment lien against the property and shall be equal in dignity to taxes.

(3) Right to appeal; abatement. The Property Owner shall have ten (10) days from the date the notice is delivered to file with the district a written request for an appeal of the finding of a violation by the district. Failure to timely file a request for an appeal with the district or to appear before the special magistrate shall be deemed a waiver of the Property Owner's rights to appeal the finding of a violation and the district's right to perform the maintenance, repairs, and/or replacement and charge the owner for the same. If an appeal is not timely requested, the district, may, upon the expiration of the time given to comply the violation, reinspect the property to determine whether the nuisance has been abated. If the Property Owner fails to timely abate the nuisance, the district may cause its abatement and charge the Property Owner the costs of such abatement. The costs of the abatement, including the costs of inspection, administration, and all other related costs, will be assessed against the property as set forth in this section for nuisance assessments.

**Commented [J12]:** **New:** As mentioned above, this language ensures property owners are provided proper notice of a violation involving a drainage work such as a culvert.

**Commented [J13]:** **New:** As mentioned above, this language gives property owners the right to appeal a notice of violation involving a drainage work such as a culvert.



(4) Appeal. If an appeal is timely requested, enforcement action shall proceed as follows:

- a. Generally. The district will coordinate with the town to use the town's special magistrate to hear these matters on a regularly scheduled agenda. The district shall send a written notice of the hearing date, time, and location to the Property Owner by regular U.S. mail at the mailing address provided by the owner in its request for a hearing.
- b. Procedures. Upon request of the district, a special magistrate hearing shall be scheduled. Minutes shall be kept of all special magistrate hearings. The case shall be presented to the special magistrate, and if the district prevails in prosecuting a case before the special magistrate, it shall be entitled to recover all costs in prosecuting the case before the magistrate and such costs will be included in the lien authorized hereunder. The magistrate shall take testimony from the appropriate staff and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. At the conclusion of the hearing or a reasonable time thereafter, the special magistrate shall issue an order that includes findings of fact, based on evidence of record, conclusions of law, and proper relief. The order may also include a time to comply as described in this subsection and a fine may be imposed along with the costs of repairs if the order is not complied with. The decision of the special magistrate will be final.
- c. Time to comply. If after hearing testimony and reviewing evidence, the special magistrate determines that the Drainage Works requires maintenance, repairs, and/or replacement and is in violation of this division, administrative costs will be assessed against the owner, and the owner shall have a reasonable time, as determined by the special magistrate, to perform the maintenance, repairs, and/or replacement. After the time to perform the maintenance, repairs, and/or replacement has expired, the district will be authorized to perform the maintenance, repairs, and/or replacement at the expense of the Property Owner. The costs of the abatement including the costs of inspection, administration, and all other related costs will be assessed against the property as set forth in this section for nuisance assessments. After the time to perform the maintenance, repairs, and/or replacement has expired, in the alternative to performing the abatement, the district will have the right to impose a daily fine (up to \$250.00 per day) for each day the violation continues after the time set for compliance. A certified copy of an order imposing a daily fine may be recorded in the public records and thereafter shall be a lien against the property.

(5) Emergencies. If the district finds that a violation poses an immediate hazard to life, property or public safety, the violation may be deemed an emergency. In emergency

**Commented [J14]:** The current ordinance provides for emergencies, but does not include the detailed procedures or enhanced protections for property owners (e.g., notice, appeal, etc.).  
**New:** This new language provides these procedures/protections for property owners.

situations, the time periods for notice and response may be shortened by the district as is reasonable under the circumstances. Emergencies shall be handled as follows:

- a. Notice and hearing. The district will make a reasonable effort to notify the Property Owner and may immediately request a hearing before the special magistrate. The notice shall include a brief description of the violation, time to comply the violation, if appropriate under the circumstances, and the date, time, and location of the hearing. The special magistrate will determine if a violation has occurred, provide a reasonable time to comply (if appropriate), allow the district to abate the violation if the owner fails to timely comply the violation, and charge the Property Owner the costs for such abatement. If the Property Owner fails to attend the hearing or the special magistrate otherwise finds that the situation does not or should not allow for an opportunity for the Property Owner to comply the property, the special magistrate may provide for the district's authority to immediately abate the violation. If the district does not intend to abate the violation, the special magistrate may provide the Property Owner a time to comply the violation and impose a daily fine for each day the property remains in violation past the date set for compliance. The hearing shall be conducted in accordance with the hearing procedures set forth in section 46-3(c)(4) of this Code, and the decision of the special magistrate will be final.
  - b. District responsibilities. The district shall not be required to abate any violation, but may voluntarily undertake abatement if authorized to do so by the special magistrate or as authorized elsewhere in this chapter. If the district abates a violation, there is no continuing obligation on the part of the district to make further repairs or to maintain the property or the Drainage Works, and the abatement does not create any liability against the district for any damages to the property.
  - c. Costs of abatement. The costs of abatement, including the costs of inspection, administration, and all other related costs, will be assessed against the property as set forth in this section for nuisance assessments.
  - d. Notices. Notices under this subsection shall be provided to the Property Owner at the mailing address provided for on the tax collector's or property appraiser's website. Notices shall be delivered either by hand-delivery or by posting and mailing by regular U.S. mail and certified mail, return receipt requested. The notice shall be deemed to have been received on the date of hand-delivery or the earlier of the date the return receipt was signed or ten (10) days after the notice was first posted.
- (6) Abatement costs. Abatement costs may include but are not limited to any costs, fees or other expenses reasonably related to the abatement of the conditions which violate this chapter and shall include but not be limited to enforcement, investigation, inspection, reinspection, removal, repair and/or correction of Drainage Works, permitting, surveying, securing easements, legal advice, engineering consultations, other professional consulting fees, and administrative costs. Administrative costs may include the cost of town staff time reasonably related to enforcement (e.g., site inspections, travel time, investigations,

**Commented [J15]:** The current ordinance authorizes the District to assess the property owner for all costs involved in the abatement of violations but it does not define what costs may be included.  
**New:** This new language gives residents notice of what abatement costs may include.

telephone contacts, preparation of reports, notices, correspondence, hearing packets, etc.), mailing costs, copies, and any other reasonable costs incurred in connection with the abatement of the nuisance.

(e) **Special Assessments.**

(1) **Nuisance assessments.** Upon the failure of any ~~p~~Property ~~o~~Owner to pay any ~~such~~ abatement assessment within 30 days of receipt by such owner of notice of the assessment, the district shall have a special assessment lien on all lands and premises affected thereby. The costs of the work, together with all costs of inspection, administration and all other related costs shall be a special assessment lien against the affected property(ies). The board of supervisors may, by the adoption of a resolution levying such charges, document such lien(s) in the amount of the charges outstanding, or such greater or lesser amount as the board of supervisors shall decide is just and fair. Assessment of liens levied in this manner may be recorded in the public records of the county. Such lien shall be superior and paramount to the interest in such land and premises of any owner, lessee, tenant, mortgagee, or other person except the lien of state, county, town, or district taxes and shall be on a parity with the lien of any such state, county, town, or district taxes. Such lien shall bear interest at an annual rate equal to the interest rate due on judgments, pursuant to F.S. § 55.03, per year and shall, until paid, remain in effect in perpetuity.

(2) **Collection.** Assessments may be certified to the tax collector for collection pursuant to the uniform method provided in F.S. § 197.3632, as more specifically set forth in ch. 42 of the Code and section 46-4(b) of this division. In the alternative, the board of supervisors may elect to collect assessments by any other method which is authorized by law.

(3) **Daily fines.** In the event the special magistrate imposes a daily fine instead of authorizing abatement, any daily fines imposed under this section, together with all costs of inspection, administration, and all other related costs shall be recorded as a lien against the real property. Such lien shall be in lieu of and not be part of the special assessment.

(f) **Appeal to circuit court.** Any person adversely affected by a final order of the special magistrate pursuant to this section may file an appeal to the Circuit Court of Palm Beach County. Such appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the special magistrate. The appeal shall be filed within thirty (30) days of the execution of the order to be appealed. The filing of an appeal shall not automatically constitute a stay of the proceedings without further action by the court.

**Sec. 46-4. – Financial and additional assessment powers of district.**

**Commented [J16]:** As mentioned, the ordinance currently authorizes the District to make assessments for violations abated by the District/Town. **New:** This new language provides more details in how these assessments are made, what they include, and how they are collected so residents are fully aware of the process.

**Commented [J17]:** Standard code enforcement procedures allow for daily fines on violations that are not timely complied. **New:** This new language puts residents on notice of the possibility of daily fines.

**Commented [J18]:** **New:** This new provision gives property owners notice of the right to appeal the special magistrate's decision (i.e., order) to the circuit court and the timeline for such appeal.

**Commented [J19]:** The financial and other assessment powers of the District which are in the current ordinance have been reorganized and titled for easy reference.

(a) ~~(6)~~ Generally. The board of supervisors, in the exercise of powers pursuant to this division section, may establish different special assessment areas within the district according to the benefits received, and may revise such areas according to the benefits received from time to time, so as to most equitably provide for the levying of special assessments according to benefits as are deemed desirable by the board of supervisors.

(b) Uniform Method; collection alternatives. ~~(4)~~ All special assessments levied pursuant to this division section may, in the discretion of the board, be collected pursuant to the Uniform Method set forth in section 197.3632, Florida Statutes, as amended from time to time. The board may follow the procedures for the Uniform Method set forth in chapter 42 of this Code. Using the Uniform Method will allow the special assessments to be collected by the tax collector of the county at the same time as the general county taxes are collected by the tax collector of the county, and the board shall in such event certify to the county tax collector a list of all such special assessments and a description of the lands and names of the owners of the properties against which such special assessments have been levied and the amounts to become due therefrom in the next succeeding year, including any interest thereon for any deficiencies for prior years. The board may in lieu of providing for the collection of said special assessments by the tax collector of the county, provide for the collection of the special assessments by the district under such terms and conditions as the board shall determine. In such event, the bills or statements for the amounts due at any time and from time to time shall be mailed to the owners of all properties affected by such special assessments at such time as the board shall determine. Special assessments may also be collected pursuant to any other available remedy at law or in equity. All charges of the county tax collector or of the district, and the fees, costs, and expenses of any paying agents, trustees, or other fiduciaries for assessment bonds issued under this division section, shall be deemed to be costs of the operation and maintenance of any improvements in connection with which such special assessments were levied and the board shall be authorized and directed to provide for the payment each year of such costs of collection, fees, and other expenses from additional special assessments or from the maintenance tax as provided by general law. Unless otherwise prohibited by law, ordinance, rule or policy, Property Owners who are subject to any special assessment set forth in this division may, at their option, prepay the assessment plus interest, if applicable, in full at any time.

**Commented [J20]:** The current ordinance allows for the District's collection of special assessment through the tax collector.  
**New:** This new language simply provides the statutory reference and procedures for the District to collect these assessments.

(c) ~~(9)~~ Formal special assessment district procedures. The board of supervisors of the district, in order to carry out any of ~~the its~~ powers set forth in ~~subsections (d)(3) through (6) of this division section~~, may levy and impose special assessments against any or all of the real property within the district upon a determination that the construction, maintenance, improvement, repair, or operation of said improvements or services provided to existing improvements provide a benefit to such real property. The assessments shall be imposed upon the property specially benefited by such construction, maintenance, improvement, repair, or operation in proportion to the benefits to be derived therefrom, and the special benefits shall be determined and prorated by a method prescribed by the board of supervisors. The district may use the following procedure to levy special assessments that will apply to more than one (1) parcel:

~~(1)~~ a. The board of supervisors, if it elects to assess a special benefit, shall declare by a resolution the nature of the proposed improvement or the services provided to existing improvements, shall designate the location of the improvement or the service provided

to existing improvements, and shall state the part or portion of the expense thereof to be paid by special assessments, the manner in which said assessments shall be made, when said assessments are to be paid, and what part, if any, shall be apportioned to and paid from the funds of the district. The resolution shall also identify the lands upon which the special assessments shall be levied. The resolution shall state the total estimated cost of the improvement or service to be provided to existing improvements.

~~(2)b.~~ Within 30 days after the adoption of the resolution, the board of supervisors shall cause said resolution to be published one time in a newspaper of general circulation in the county.

~~(3)e.~~ Upon the adoption of the resolution, the board of supervisors shall cause to be made an assessment roll in accordance with the method of assessment provided for in said resolution, which assessment roll shall be promptly completed and filed with the records of the board of supervisors. The lands assessed, the amount of the assessment against such lands, and, if said assessment is to be paid in installments, the number of annual installments in which the assessment is divided shall be entered and shown on said assessment roll.

~~(4)d.~~ On the completion of said assessment roll, the board of supervisors shall by resolution fix a time and place at which the owners of the property to be assessed, or any other persons interested therein, may appear before said board of supervisors and be heard as to the propriety and advisability of making such improvements or providing said services, as to the cost thereof, and as to the amount thereof to be assessed against each property so improved. Notice in writing of such time and place shall be given to the ~~p~~Property ~~o~~Owners.

~~(5)e.~~ At a time and place named in the notice provided for in this subsection ~~(c)~~ ~~(d)~~ ~~(9)~~ ~~d~~ ~~of this section~~, the board of supervisors of the district shall meet as an adjustment board to hear and consider any and all complaints as to the special assessments and shall adjust the assessments on an equitable basis. After the special assessments are so adjusted and approved by resolution, such assessments shall stand confirmed and, until paid, shall remain legal, valid, and binding liens upon the property against which such assessments are made of equal dignity with the lien for county taxes. However, upon completion of the improvement, or provision of service to existing improvements, the board of supervisors shall credit to each of the assessments the difference in the assessment as originally made, approved, and confirmed and the proportionate part of the actual cost of the improvement or service to be paid by special assessments as finally determined on the completion of the improvement or service, but in no event shall the final assessments exceed the amount of benefits originally assessed. Promptly after confirmation, the assessments shall be recorded in the public records of the county and the record of the lien shall constitute prima facie evidence of its validity.

~~(6)f.~~ The special assessments shall be payable at the time and in the manner stipulated in the resolution authorizing the improvement or service. Such assessments shall remain liens, coequal in priority with the lien of county taxes, until paid. Assessments not paid

when due shall bear interest at such rates, not in excess of the maximum legal rate, prescribed by the board of supervisors in the resolution.

~~(7)g.~~ Each annual installment of special assessments provided for shall be paid upon the date specified in said resolution, until the entire amount of said assessment has been paid, and, on the failure of any ~~p~~Property ~~o~~Owner to pay any annual installment due or any part thereof, or any interest on any delinquent payment, the district shall have a lien on all lands and premises affected thereby. Such lien shall be superior and paramount to the interest in such land and premises of any owner, lessee, tenant, mortgagee, or other person except the lien of state, county, or district taxes and shall be on a parity with the lien of any state, county, or district taxes. Such lien shall, until paid, remain in effect in perpetuity.

~~(8)h.~~ If any special assessment made under the provisions of this subsection (c) to defray the whole or any part of the expense of any improvement or provision of any service is either in whole or in part annulled, vacated, or set aside by the judgment of any court, or if the board of supervisors of the district is satisfied that any assessment is so irregular or defective that the same cannot be enforced or collected, or if the board of supervisors omitted to make such assessment when it might have done so, the board shall take all necessary steps to cause a new assessment to be made for the whole or any part of any improvement or service provided or against any property benefited by any improvement or service provided, following as nearly as possible the provisions of this subsection (c), and, in case such second assessment shall be annulled, the board of supervisors may obtain and make other assessments until a valid assessment is made.

~~(9)i.~~ An informality or any irregularity in the proceedings in connection with the levy of any special assessment under this subsection (c) shall not affect the validity of the same where the assessment roll has been confirmed by the board of supervisors, and the assessment roll as finally approved and confirmed shall be competent and sufficient evidence that the assessment was duly levied, the assessment was duly made and adopted, and that all other proceedings adequate to the adoption of the assessment roll were duly had, taken, and performed as required by this section; no variance from the directions hereunder shall be held material unless it is clearly shown that the party objecting was materially injured thereby.

~~(10)j.~~ The district may levy assessments using the Uniform Method for the Levy, Collection, and Enforcement of Non-Ad Valorem Assessments set forth in state statutes. Compliance by the district with the requirements of the statutory Uniform Method shall be deemed to satisfy the procedural requirements in this subsection ~~(c9)~~.

(d) Voluntary Culvert Special Assessment Assistance Program.

(1) Purpose. This subsection (d) sets forth a procedure wherein residents may seek financial assistance from the district for the repair or replacement of culverts located on private property.

**Commented [J21]:** **New:** This new Voluntary Culvert Special Assessment Assistance Program provides a process whereby a property owner may secure financing through the Town to help make a culvert replacement possible for the owner.

(2) Definitions.-Powers of the district. As used in this subsection (d), the following terms shall have the meanings ascribed thereto unless the context clearly requires otherwise:

“Assessed Parcel” means a parcel of real property subject to an assessment under this subsection.

“Assessment Coordinator” means the chief administrative officer of the district, or such person’s designee responsible for coordinating calculation and collection of assessments as provided for in this subsection.

“Assessment Roll” means the list of Assessed Parcels subject to the assessments imposed under this subsection. References to the term “Assessment Roll” shall include, as the context requires, any electronic spreadsheet or database maintained by the district containing a list of Assessed Parcels and the current principal balance imposed against such parcels, as well as the “non-ad valorem assessment roll” contemplated by the Uniform Assessment Collection Act which is certified to the Tax Collector for collection of annual installments of the assessments levied under this subsection.

“Culvert Assessment” means a non-ad valorem special assessment imposed by the board pursuant to this subsection to fund Culvert Improvements. The term “assessment” and the reference to non-ad valorem assessments herein means those assessments which are not based upon millage and which can become a lien against a homestead as permitted by Article X, Section 4 of the State Constitution.

“Culvert Improvements” means the capital facilities surveyed, designed, permitted and constructed, demolished or installed to improve and/or repair Culverts.

“Financing Agreement” means an agreement between the board and the Property Owner providing for the financing of Culvert Improvements and the imposition of a Culvert Assessment against an Assessed Parcel.

“Uniform Assessment Collection Act” means sections 197.3632 and 197.3635, Florida Statutes, or any successor statutes authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes, and any applicable regulations promulgated thereunder.

(3) Initiation of services. A Property Owner who has been notified by the district that his or her culvert is in violation of this division or otherwise has a culvert in disrepair, may apply to the district using a form approved by the district.

(4) Application. The application shall include, at a minimum:

- a. A copy of the deed or other instrument showing the applicant's current ownership of the property.
  - b. An estimate for the costs of the Culvert Improvements proposed for the property, prepared by one of the district's competitively procured contractors, which estimate must be valid for a period of not less than ninety (90) days from the date the application is submitted.
  - c. The most recent statements for any mortgages encumbering the property.
  - d. The district may allow for an application by multiple landowners if such landowners either establish a single entity to represent all such landowners and have a person with the legal authority to bind the single entity or if all the landowners execute the application and all other required documents.
- (5) Approval criteria for applications. The Assessment Coordinator shall utilize the following criteria in determining whether an application for financing of Culvert Improvements shall be approved by the district:
- a. The funding program established herein shall only be available for the improvement and/or repair of existing Culvert facilities. Culvert Improvements shall not be financed hereunder for property or facilities under new construction or construction for which a certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued.
  - b. All property taxes and any other assessments levied on the same bill as property taxes for the Assessed Parcel are paid and have not been delinquent for the preceding three (3) years or the Property's Owner's period of ownership, whichever is less.
  - c. The Assessed Parcel(s) must be located in the Town of Loxahatchee Groves, Florida, and the culvert must be for a connection to a roadway maintained by the town or district.
  - d. The Property Owner(s) must have fee simple title to the Assessed Parcel(s).
- (6) Application approval or denial. The Assessment Coordinator shall review the application and provide written notice of approval or denial within forty-five (45) days of receipt. If the application is denied, the written notice shall specify the reason(s) for denial. A written notice of approval shall include direction to the Property Owner



regarding the deadline for returning an executed Financing Agreement and maintenance agreement to the Assessment Coordinator. Such maintenance agreement shall, at a minimum, provide for the Property Owner's maintenance of the Culvert Improvements in accordance with this chapter and all other applicable laws, rules and regulations. If required, the Property Owner shall obtain a residential driveway permit from the town for the proposed Culvert Improvements prior to commencement of work.

- (7) Selection of contractor. The district will competitively solicit one or more qualified contractors to perform Culvert Improvements. Property Owners will be required to select a contractor from the district's list of qualified contractors and enter into a direct contract with the selected contractor to perform the work.
- (8) Financing agreement. A Property Owner approved for funding hereunder must enter into a Financing Agreement with the district. The Financing Agreement shall be in a form approved by the district attorney, shall be signed by each owner of record for the Assessed Parcel, and shall include, at a minimum, an acknowledgement by the Property Owner that a non-ad valorem special assessment will be imposed against the Assessed Parcel to fund the Culvert Improvements, and that the annual installments of the Culvert Assessment will be collected pursuant to the Uniform Assessment Collection Act. When the fully executed Financing Agreement is returned to the Assessment Coordinator, the agreement shall be signed by the board of supervisors or designee, on behalf of the district, and recorded in the public records.
- (9) Maintenance agreement. A Property Owner approved for funding hereunder must also enter into a maintenance agreement with the district for the permitted Culvert Improvements. The maintenance agreement shall be signed by the Property Owner or, in the case of multiple landowners, by all affected landowners or a person with the legal authority to bind the single entity established to represent the multiple landowners. Such agreement shall run with the land. The form of the maintenance agreement shall be pre-approved by the district's attorney.
- (10) Disbursement. Upon recording of the Financing Agreement and the maintenance agreement, funding for the Culvert Improvements shall be disbursed as follows:
- a. The district shall retain an amount not to exceed ten percent (10%) of the Culvert Assessment to cover overhead expenses including but not limited to recording fees, credit reports and title searches. The principal amount of the Culvert Assessment shall include the amount retained.
  - b. The balance will be disbursed by the district directly to the vendor engaged by the Property Owner to construct or install the Culvert Improvements; provided, however,

that, the amount disbursed to the vendor shall not exceed the estimate provided by the vendor and submitted along with the Property Owner's application for funding.

- c. Construction or installation of Culvert Improvements shall be completed prior to disbursement of payment to the vendor. Prior to such payment, the Culvert Improvements and associated driveway shall have passed the pre-pour and final inspection for construction.

(11) *Procedure for collection of assessments pursuant to Uniform Method.* Assessments may be certified to the tax collector for collection pursuant to the uniform method provided in F.S. § 197.3632, as more specifically set forth in ch. 42 of the Code and section 46-4(b) of this division. In the alternative, the district may elect to collect assessments by any other method which is authorized by law.

(12) *Funding availability.* The board shall determine on an annual basis whether to dedicate funds for the Culvert improvement program in the forthcoming fiscal year. Funds dedicated for such purpose shall be made available to Property Owners on a first-come, first-served basis.

(13) *Policies.* The board may adopt policies and procedures for the implementation of the voluntary culvert assistance assessment program.

(e) ~~(10)~~ *Bonds.*—The district is authorized to provide from time to time for the issuance of special assessment bonds of the district to pay all or any part of the cost of improvements. Any bonds issued by the district are subject to the limitations and requirements of the town Charter. The principal of and interest on any bonds shall be payable from special assessments sufficient to pay the bonds in the manner provided in the bonds, in this subsection (e), and the resolution authorizing such bonds. The bonds shall be authorized by resolutions of the board of supervisors of the district, adopted by a majority of the supervisors present and voting at a meeting of the supervisors. The bonds shall bear interest at rates not in excess of the maximum rates permitted by general law, may be in one or more series, may bear such dates, and may mature at any time not exceeding 40 years from their respective dates, may be payable in such medium of payment, at such place or places within or without the state, may carry such registration privileges, may be subject to redemption prior to maturity, with or without premium, may be executed in such manner, may contain such terms, covenants, and conditions, and may be in such form otherwise as such resolution or subsequent resolutions shall provide. The bonds may be sold or exchanged for refunding bonds, or delivered to contractors in payment for any part of the work or improvements financed by such bonds, or delivered in exchange for any properties, either real, personal, or both, to be acquired for such works or improvements, in such manner as the district in its discretion shall determine. Pending the preparation of the definitive bonds, interim certificates or receipts or temporary bonds in such form and with such provisions as the district may determine may be issued to the purchasers of the bonds issued hereunder. The bonds and such interim certificates or receipts or temporary bonds shall be fully negotiable and shall be and

constitute negotiable instruments within the meaning of and for all purposes of the law merchant and the Uniform Commercial Code of the State of Florida. ~~To the extent permitted by law, the~~ proceeds of the sale of any such bonds shall be used solely for the payment of the allowable costs of the district incurred or to be incurred in carrying out the powers set forth in subsections 46-2(a), 46-2(b)(1)b., and 46-4(a) and any other powers in this division relating to improvements to Drainage Works located on district/town property. ~~(3), (4), (5) or (6) of this section, and Such~~ proceeds shall be disbursed in such manner and under such restrictions as the district may provide in the authorizing resolution. The district may also provide for the replacement of any bonds which become mutilated or are stolen, destroyed, or lost, upon proper indemnification. A resolution providing for the issuance of special assessment bonds may also contain such limitations upon the issuance of additional bonds secured on a parity with the bonds theretofore issued as the district may deem proper.

(f) *Borrowing authority to deal with disaster.* To allow the district to deal with the financial impact of the repair, replacement, or reconstruction of works of the district or other costs incurred by the district due to a “disaster,” as defined in F.S. § 252.34(1), the district is hereby authorized to borrow such funds as the district may reasonably determine are necessary to cope with the disaster. The district is also authorized to enter into a line of credit arrangement that will permit such borrowing, but funds can be drawn on the line of credit only after a state of emergency has been declared by the town, the county, the governor, or the President of the United States. The district may grant as security or collateral for borrowing under this subsection any local, state, or federal disaster relief payments (or similar type of payments) to be received by the district or maintenance assessments levied by the district pursuant to F.S. § 298.54, or both. This subsection is subject to the limitations and requirements of the Town Charter.

**Sec. 46-5 – 46-159. – Reserved.**

**DIVISION 2. MISCELLANEOUS**

(e) ~~*Permitting of hauling operations.*~~

~~(1) *Definitions.* The following words, terms and phrases, when used in this subsection (e), shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:~~

~~*Excavate or excavation* means any act by which material is cut into, dug, quarried, uncovered, removed, displaced, relocated, or otherwise deliberately distributed. *Excavation* excludes agricultural plowing and site grading and de-mucking in preparation for construction.~~

~~*Haul or hauling* means to cart, pull, carry, or transport in a motor vehicle.~~

~~(2) *Application for hauling permit.*~~

~~a. The town shall have the power to implement and enforce a permitting system necessary and convenient for the exercise of any of the powers or duties of the town thereof pertaining to all roads and roadways maintained by the town to provide access to or to restrict the use of roads or~~

**Commented [J22]:** The permitting of hauling operations was removed from the ordinance because it is no longer enforceable under current Florida law.

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~~roadways within the town for the hauling of excavated material where such hauling exceeds 250 cubic yards of excavated material within a one-year period to or from the property of any landowner.~~

~~b. In order to effect the regulation of hauling activities and the protection of the condition of district roads and roadways, the town:~~

~~1. May require the following information to be supplied in an application for a hauling permit made to the town:~~

- ~~(i) Name and address of proposed hauling operator.~~
- ~~(ii) Type and number of vehicles to be operated.~~
- ~~(iii) Origin and destinations of hauling load.~~
- ~~(iv) Description of routes upon which the hauling operation will be conducted.~~
- ~~(v) Dimensions and maximum total weight of hauling vehicles.~~
- ~~(vi) Requested hauling schedule, including times and dates of excavation and use of hauling route.~~
- ~~(vii) Verification of notice to all utility companies and municipalities along the proposed route and a copy of their reply.~~
- ~~(viii) Approval of the county's engineering department, if required.~~
- ~~(ix) Name and address of permit applicant, which shall be either the owner of the land within the town from which the material is excavated or transported to or the person or entity performing the excavation work in the town; if the latter, the landowner must also sign the permit application.~~

~~2. Shall require that the recipient of a hauling permit from the town coordinate with the town the hauling routes and the times during which hauling activities are permitted to take place.~~

~~3. Shall include, as a condition of the hauling permit, that the hauling operator, permit applicant and landowner (if not the permit applicant) not cause damage or loss from the undertaking of hauling activities to the property of the town or the district, including, but not limited to, town roads and roadways and adjacent private property. Notwithstanding the foregoing, the hauling operator, permit applicant, and landowner (if not the permit applicant) shall be liable for the repair of any such damage caused by hauling activities and shall reimburse the town and any adjacent private property owners for any loss or damage occasioned by hauling activities.~~

~~4. Shall require, as a condition of the approval of a hauling permit, evidence of insurance by the hauling operator to remain in force for the duration of the permit.~~

~~5. Shall require a permit applicant, the landowner (if not the permit applicant) and the hauling operator, jointly and severally, to indemnify and hold harmless the town and its agents, employees, officers, and supervisors from and against all claims, damages, losses, and expenses, including, but not limited to, reasonable attorneys' fees, arising out of or resulting from the exercise of hauling activities pursuant to the permit, provided that any such claim, damage, loss, or expense arises or results, in whole or in part, from the hauling operator's activities in connection with the hauling permit, and to execute an indemnity agreement so stating.~~

~~6. May assess and collect reasonable fees in connection with reviewing permit applications and approving the hauling permit.~~

~~7. May adopt rules to implement the purposes of this section.~~

~~(3) *Liability.*~~

~~a. Any person who, willfully or otherwise, hauls material on town roads or roadways shall obtain a hauling permit as required under this section and shall not violate the conditions of any hauling permit that has been granted by the town pursuant to this section.~~

~~b. Any person who willfully hauls excavated material on town roads or roadways without a hauling permit as required under this section or who violates the conditions of a hauling permit granted pursuant to this section is liable to any person injured thereby for the full amount of the injury occasioned to any land or crops or other property by reason of such hauling activities, and shall be liable to the town for double the cost of repairing any resulting damage to the district's roads or roadways.~~

~~c. Any person who willfully hauls excavated material upon the town roads or roadways without a hauling permit as required under this section, or in contravention of the conditions of a hauling permit granted pursuant to this section, shall be subject to a civil fine of up to \$500.00 per occurrence, with each day that a violation occurs constituting a separate occurrence. Any violation of this section may be treated in the same manner as a noncriminal traffic infraction under F.S. ch. 318, and citations for such violations may be issued by traffic enforcement agencies in the same manner as traffic citations are issued under F.S. ch. 316.~~

~~d. If a hauling operator, permit applicant, or landowner (if not the permit applicant) upon notice, in writing or otherwise, fails to repair any damage occasioned by the hauling of materials on the road or roadways of the town within 24 hours of receiving said notice, the town may repair such damage and assess the owner of the land in the town from which the material was excavated or to which the material was hauled for the town's costs in connection with such repairs. Upon failure of any landowner to pay any assessments levied by the town pursuant to this section within 30 days of receipt of any owner of notice of the assessment, the town shall have a lien on all lands of such owner within the town. To the extent permitted by law, such shall be superior~~

~~and paramount to the interest in such land and premises of any owner, lessee, tenant, mortgagee, or other person except the lien of state, county, or town or district taxes and any conservation easements and shall be on a parity with the lien of any such state, county, or town or district taxes and any conservation easements. Such liens shall bear interest at the annual rate equal to the interest rate due on judgments, pursuant to F.S. § 55.03, per year and shall, until paid, remain in effect in perpetuity.~~

~~(f) *Borrowing authority to deal with disaster.* To allow the district to deal with the financial impact of the repair, replacement, or reconstruction of works of the district or other costs incurred by the district due to a "disaster," as defined in F.S. § 252.34(1), the district is hereby authorized to borrow such funds as the district may reasonably determine are necessary to cope with the disaster. The district is also authorized to enter into a line of credit arrangement that will permit such borrowing, but funds can be drawn on the line of credit only after a state of emergency has been declared by the town, the county, the governor, or the President of the United States. The district may grant as security or collateral for borrowing under this section any local, state, or federal disaster relief payments (or similar type of payments) to be received by the district or maintenance assessments levied by the district pursuant to F.S. § 298.54, or both. This section is subject to the limitations and requirements of the town Charter.~~

**Sec. 46-16. – Road dedication and maintenance.**

~~(g)~~ *Dedication of width of certain roads within the district.*

(1) Improvement of four public roads identified in subsections ~~(g)~~(1)a through d of this section was approved at referendum pursuant to paragraph c. of section 4 of chapter 2004-410, Laws of Florida, after January 1, 2009, and before December 31, 2010. The width of these roads, to the extent that they have been actually constructed and maintained or repaired continuously and uninterruptedly by the district or town for seven years, shall be dedicated through easement rights to the public pursuant to Laws of Fla. ch. 2011-257 and F.S. § 95.361. The four public roads subject to this section are as follows:

- a. "A" Road to include the following description: "A" Road from Okeechobee Boulevard to North Road and North Road approximately one-quarter mile east from "A" Road intersection.
- b. "C" Road (South) to include the following description: "C" Road from Collecting Canal Road to Okeechobee Boulevard and Collecting Canal Road approximately one-quarter mile each way, east and west from "C" Road intersection.
- c. "C" Road (North) to include the following description: "C" Road from Okeechobee Boulevard to North Road and North Road approximately one-quarter mile each way, east and west from "C" Road intersection.
- d. "D" Road to include the following description: "D" Road from Okeechobee Boulevard to North Road and North Road approximately one-quarter mile each way, east and west from "D" Road intersection.

**Commented [J23]:** This section provides a separate section number for road dedication and maintenance for easier reference and renumbers the provision of the existing ordinance.

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(2) The filing of a map in the office of the clerk of the circuit court of the county in which the road is located showing the lands and reciting on it that the road has been dedicated in accordance with subsection (ga)(1) of this section or by any other means of acquisition, duly certified by the chair and secretary of the district, shall be prima facie evidence of the public's easement rights.

(3) This section does not apply to any facility of an electric utility which is located on property otherwise subject to this section.

(4) The town shall have traffic control jurisdiction over all public roads located within the district.

(5) All rights and privileges to these roads have been transferred to the town. Nothing in this section shall affect the town's maintenance of these roads and their dedications pursuant to F.S. § 95.361.

~~(h)~~ *Roads presumed to be dedicated.*

(1) When a road within the district has been constructed by the district, and when such road has been maintained or repaired continuously and uninterruptedly for seven years by the district or the town, an easement for such road over, under, across, upon, through, and within the underlying real property for road right-of-way purposes shall be deemed to be dedicated to the public to the extent of the width that has been actually maintained or repaired for the prescribed period, whether or not the road has been formally established as a public road. The dedication shall vest such easement in and to the road in the public, whether or not there is a record of conveyance, dedication, or appropriation to the public use.

(2) The filing of a map in the office of the clerk of the circuit court of the county where the road is located showing the lands and reciting on it that the road has been dedicated in accordance with subsection (hb)(1) of this section, or by any other means of acquisition, duly certified by the chair and secretary of the district, shall be prima facie evidence of the public's easement rights.

(3) This section does not apply to any facility of an electric utility which is located on property otherwise subject to this section.

(4) The town shall continue to have traffic control jurisdiction over all public roads located within the district.

(5) All rights and privileges to these roads have been transferred to the town. Nothing in this section shall affect the town's maintenance of these roads and their dedications pursuant to F.S. § 95.361.

~~(i)~~ *Maintenance easements and use for public trail purposes.* To the extent permitted by state law:

(1) When land adjacent to canals has been used and maintained for district-related purposes by the district to access its canals continuously and uninterruptedly for seven years, a maintenance

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easement for such land over, under, across, upon, through, and within the underlying real property for maintenance purposes is deemed to be dedicated to the district to the extent of the width that has been actually used, maintained, or repaired for the prescribed period, regardless of whether the land has been formally established as an easement in favor of the district. The dedication shall vest such easement in and to the land to the district, regardless of whether there is a record of conveyance, dedication, or appropriation to the district.

(2) The filing of a map in the office of the clerk of the circuit court of the county where the maintenance easement is located showing the lands and reciting on it that the land has been dedicated in accordance with subsection (1) of this section, or by any other means of acquisition, duly certified by the chair and secretary of the district, shall be prima facie evidence of the district's easement rights.

(3) For any maintenance easement established pursuant to this section, the use by the public for recreational trail purposes, including, without limitation, equestrian trails, shall be authorized. The district is authorized to issue permits to the town to construct and maintain such recreational trails within the maintenance easements. Any permit issued by the district for perpetual use by the public for recreational trail purposes is deemed to satisfy any and all current or future state grant requirements for property control by the town.

(4) This section does not apply to any facility of an electric utility which is located on property otherwise subject to this section.

**Section 4. Conflict.** All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be, and the same are hereby repealed to the extent of such conflict.

**Section 5. Severability.** If any clause, section, or other part or application of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and so not affecting the validity of the remaining portions or applications remaining in full force and effect.

**Section 6. Codification.** It is the intention of the Town Council of the Town of Loxahatchee Groves that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Loxahatchee Groves, Florida, that the Sections of this ordinance may be renumbered, re-lettered, and the word "Ordinance" may be changed to "Section", "Article" or such other word or phrase in order to accomplish such intention.

**Section 7. Effective Date.** This Ordinance shall become effective immediately upon its passage and adoption.

Councilmember \_\_\_\_\_ offered the foregoing ordinance. Councilmember \_\_\_\_\_ seconded the motion, and upon being put to a vote, the vote was as follows:



Ordinance No. 2024- \_\_

	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
ANITA KANE, MAYOR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MARGARET HERZOG , VICE MAYOR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PHILLIS MANIGLIA, COUNCILMEMBER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LAURA DANOWSKI, COUNCILMEMBER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ROBERT SHORR, COUNCILMEMBER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS \_\_\_ DAY OF \_\_\_\_\_, 2024.**

Councilmember \_\_\_\_\_ offered the foregoing ordinance. Councilmember seconded the motion, and upon being put to a vote, the vote was as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
ANITA KANE, MAYOR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MARGARET HERZOG , VICE MAYOR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PHILLIS MANIGLIA, COUNCILMEMBER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LAURA DANOWSKI, COUNCILMEMBER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ROBERT SHORR, COUNCILMEMBER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.**

**TOWN OF LOXAHATCHEE GROVES, FLORIDA**

ATTEST:

\_\_\_\_\_  
Mayor Anita Kane

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Vice Mayor Margaret Herzog

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Councilmember Phillis Maniglia

Ordinance No. 2024- \_\_

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Office of the Town Attorney

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Councilmember Laura Danowski

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Councilmember Robert Shorr

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