

# TOWN OF LOXAHATCHEE GROVES

155 F Road Loxahatchee Groves, FL 33470



## AGENDA MEMO

**TO:** Town Council of Town of Loxahatchee Groves

**FROM:** Glen J. Torcivia, Town Attorney

**DATE:** December 3, 2024

**SUBJECT:** Ordinance 2024-16 First Reading (Ch. 46 “Special Districts”)

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**Background:** Attached is the proposed ordinance in legislative format and a copy of the ordinance showing in yellow highlight the language changes made since the last presentation of this item to the Council. Adjustments have been made to the Ordinance based upon the Council’s comments at the last meeting. Those adjustments include a revision to what constitutes a violation to ensure existing works that were properly permitted will not be subject to a violation because they do not meet current or newly adopted standards. All works would be subject to a violation if they were adversely restricting the normal conveyance of water or otherwise adversely impacting the district, its operations or any of its works.

**Based on Council’s previous discussion of this matter at the November 12<sup>th</sup> meeting, it is proposed the definition of normal conveyance and failure of a drainage works be included in the uniform standards which are referenced by the ordinance and will be brought forward for adoption rather than including such definitions in the ordinance itself. Other changes include specifically identifying removal of works, by the district as a potential remedy along with repairing or replacing the works. In response to concerns about the response time to a violation notice being too short, the time frame was increased from 10 days to 30 days. The “grandfathering” in of permitted non-conforming well-functioning existing works and the additional time given for an initial response to a complaint may alleviate concerns about potential abuse of the powers granted under the ordinance.**

As the Council is aware, the special acts that provided for the duties and other provisions governing the Loxahatchee Groves Water Control District (“District”) became an ordinance of the Town when the District became a dependent district and are set forth in the Town’s Code of Ordinances as Chapter 46 “Special Districts”. To ensure proper drainage in the Town, the safety of its residents, and the protection of both public and private property, the Town must have the ability to address substandard and failing private culverts, to repair, replace, or remove the same if the responsible property owner(s) fails to correct such deficiencies, and to charge the costs of

this abatement to the owner. Chapter 46 includes these powers, but is lacking procedures to accomplish the same. Revisions to Chapter 46 include the following: (1) reorganize Chapter 46 to be user friendly; (2) ensure that its procedures and protections for property owners are legally sufficient; (3) include a voluntary culvert special assessment assistance program for residents; (4) removal of “including but not limited to” language; and (5) add other updates (collectively “Culvert Ordinance”). The revised Ordinance attempts to strike a fair balance between (1) providing the Town with adequate tools to address the multitude of situations that may arise that affect drainage and public safety within the Town and (2) protecting private property rights through reasonable regulations and due process protections.

Some of the substantial revisions are highlighted below:

1. Section 46-1 “In general”:
  - a. Subsection (d) - For legal and other purposes, **new** language clarifies the relationship between the Town and the District as it relates to the implementation and enforcement of the Ordinance.
  - b. Subsection (e) - The current ordinance uses certain key words, but does not define those words. **New** language has been added to provide residents clear guidance regarding how these key words are defined.
2. Section 46-2 “General powers of the district”:
  - a. Chapter 46 currently allows for a single entity to represent all property owners who use the same culvert, but it does not address all owners’ responsibilities to maintain the culvert. **New** language requires a maintenance agreement which puts all affected property owners on notice of their responsibilities so the maintenance of the private culvert does not fall on the Town or an unsuspecting property owner.
  - b. **New** language clarifies the district’s authority to require and issue permits for any connections to district works. This authority is pursuant to section 298.28, Florida Statutes.
3. Section 46-3 “Enforcement of drainage work violations”:
  - a. Chapter 46 currently authorizes the District to (1) notify a property owner of a violating culvert (i.e., restricting drainage, not in accordance with uniform standards, not permitted as required by uniform standards); (2) give the owner a set number of days to fix the issue (e.g. 30 days, 60 days); (3) enter the property, if not timely fixed by the owner, and perform the work; and (4) assess the a lien against the property for the costs of the work. **New** language addresses due process protections for property owners such as: 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. Chapter 46 currently authorizes the District to assess properties when the Town abates a private culvert violation. **New** language provides a more detailed legal basis for such assessments. See subsection (c).
  - c. Chapter 46 currently authorizes the District to address emergency situations but does not include detailed procedures. **New** language provides needed procedures and protections for property owners.

4. Section 46-4 “Financial and additional assessment powers of district”: Subsection (d) of this section provides the Town with a **New** voluntary culvert special assessment assistance program. This program provides a process whereby a property owner may secure financing through the Town via special assessments to help make a culvert replacement financially possible for the owner.

**Recommendation:** Motion to approve *Ordinance No. 2024 –16* on First Reading.