

CHAPTER 31-1
ORGANIZATION, POLICIES AND PROCEDURES

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31-1.001 General

The Loxahatchee River Environmental Control District (hereinafter called "District") is a separate local agency of government created by the Florida Legislature in 1971 with enabling legislation under Chapter 2002-358, Special Acts of Florida, as amended. The purpose of the District is to preserve public health, safety, and welfare within our service area and protect, preserve, and restore the Loxahatchee River watershed through the management of water supply, wastewater, and stormwater drainage. Section 2 of Chapter 2002-358 states that "It is hereby declared to be the intent of the Legislature that the best interests of public health, safety and welfare of the area within the boundaries of the Loxahatchee River Environmental Control District, hereinafter created, necessitate the formation of a separate local agency of government with powers designed to meet the particular needs of said area. It is further the intent of the legislature that such needs be met in such a way as to cause minimum damage to the area's resources and environment and prevent additional environmental problems from being created, as well as providing solutions to existing problems. Maximum use of existing systems shall be made whenever feasible and consistent with the purposes of this act. It is also the intent of the legislature that current and long range planning shall be carried out so that required services are made available at the lowest possible cost as the characteristics of the area change."

(2) The District is located in southeast Martin County and northeast Palm Beach County and includes the Town of Jupiter, Jupiter Inlet Colony, the Village of Tequesta and a portion of Juno Beach.

(3) The affairs of the District are administered by a five (5) member Governing Board which is elected by the registered voters of the District.

(4) The existing internal organization consists of seven (7) divisions in addition to the Governing Board (see Organizational Chart, which is maintained online at www.loxahatcheeriver.org). Collectively, the Governing Board serves as the Agency Head and exercises regulatory and executive powers. The Executive Director administers the affairs of the Board and serves as the chief officer of all divisions. The Executive Division is responsible for management of the entire organization including personnel matters. The Finance & Administration Division is responsible for financial and fiscal operations and plans, maintenance of District records, and general support services to the District. The Operations Division is responsible for operation and maintenance of the District's wastewater treatment and disposal

facilities. The Information Services Division is responsible for the District's data collection and management systems including Information Technology, Customer Service, and the Wildpine Laboratory. The Engineering Division is responsible for the design, inspection, construction of the works of the District, upgrades and rehabilitation to existing infrastructure, and planning for the long range facilities needs of the District. The Director of Engineering is the responsible authority on drafting and interpreting the District's Construction Standards and Technical Specifications. The Engineering Division is also responsible for the District's collection and transmission system, which pumps and carries raw wastewater and reclaimed water. The Legal Division (external) is responsible for the legal aspects of District affairs including regulations, resolutions and legal opinions. The Auditing Division (external) is responsible for the annual auditing requirements of Chapter 2002-358 and to the establishment of account books and records of the District.

Specific Authority Chapter 2002-358, Special Acts of Florida, as amended. Law Implemented Chapter 2002-358, Preamble, Section 2, Section 3, Section 4, Section 6(1). History-New 11-12-75. Formerly 31-1.01, Amended 4-5-87, 5-15-92, 5-18-00, 9-19-2013, 5-21-2015, 7-21-2016.

History Note: The District's Rules were published in the Florida Administrative Code from 1975 until 1999 under Title 31. However, since that time, the Florida Legislature has amended the APA in Chapter 99-379, Laws of Florida, effective upon becoming law, which was approved by the Governor and filed in the Office of Secretary of State on June 18, 1999. The APA section 120.52(1) added the following section under the definition of "Agency": "This definition does not include..., or any multi-county special district with a majority of its governing board comprised of elected persons;..." Thereafter, the District publishes its Rules and maintains the same Rule numbering system. See also letter from Kenneth J. Plante, Coordinator of the Joint Administrative Procedures Committee dated February 23, 2012 to the Loxahatchee River Environmental Control District, which confirmed the Loxahatchee River Environmental Control District does not fall within the definition of "agency" under section 120.52(1), Florida Statutes.

ANNOTATIONS

Jurisdiction

Public Service Commission did not have jurisdiction to grant private utility authority to operate within Loxahatchee River Environmental Control District without district's consent; district was intended by legislature to be agency responsible for deciding which private utilities could operate within its boundaries. Loxahatchee River Environmental Control District v. Mann, 403 So. 2d 363 (1981).

31-1.002 The Agency Head

(1) The Agency Head is collectively the five (5) member Governing Board. Among themselves, the Governing Board selects a Chairman, Vice-Chairman, Secretary, Treasurer, and Assistant Secretary/Treasurer annually.

(2) Section 4(1) of Chapter 2002-358 states: "The Board shall divide the area of the District into five (5) separate areas. Each area shall have approximately equal population according to the latest official decennial census. One board member shall be elected from each numbered area by the electors in the total District. Each Board member shall be a resident of the area in

which he is elected."

(3) The terms of Office for Board Members are as follows:

(a) Members from areas one and two shall be elected and hold office for a term of 4 years elected during the General Election beginning November 2000.

(b) Members from areas three, four, and five shall be elected and hold office for a term of 4 years elected during the General Election beginning November 2002.

(4) Members of the Governing Board serve with a compensation of \$100.00 per month; and, they are entitled to per diem and travel expenses as provided by Section 112.061, Florida Statutes.

(5) A quorum of not less than three (3) members physically present is required to hold a meeting and conduct business. An affirmative vote by at least three (3) members is required for action of the Governing Board to be official.

(a) Physical Attendance – Attendance in person is the norm.

(b) Electronic Attendance – Board members may attend and participate in meetings through the use of suitable technology as long as their participation is perceived as a public engagement. Any Board member attending a public meeting electronically shall be entitled to vote on any matter before the Board, provided that the member's speech is generally audible to Board members and the public who are physically present at the meeting, and the remote Board member can hear input from Board members and public present at the meeting.

(c) Approval of Electronic Attendance – The Board has decided, in good judgment, that electronic attendance serves the public interest in all cases where a Board member is unavailable to attend in person.

(d) A Board member must notify the Executive Director in writing (e.g., email) of their desire to attend a meeting electronically. The notice shall identify the meeting the member cannot attend, and their desire to attend and participate electronically.

(6) The Governing Board is required to cause true and accurate minutes and records to be kept of all business transacted by them and must keep full, true and complete books of account. Said minutes, records and books of account are at all reasonable times open and subject to the inspection of the public and any person desiring so may make or procure copies of such minutes, records and books or of such portions thereof as he may desire. The minutes of each public meeting shall identify which of the Board members were physically present and, if applicable, which members of the Board attended electronically.

(7) At least once each year, the Governing Board must cause the books and accounts of the District to be thoroughly audited by a competent and reliable accountant or auditor.

(8) The Governing Board is required to meet at least quarterly, in public meeting, at the call of the Chairman or by written call of a quorum of three (3) Board members.

(9) In order to effectuate the purposes of Chapter 2002-358 as amended, the Governing Board has the power to make and enforce such rules and regulations as may be advisable as necessary.

(10) Meetings of the Governing Board shall be administered in accordance with Florida Statutes, these rules, and Robert's Rules of Order. When Robert's Rules of Order conflict with Florida Statutes or these rules, Florida Statutes and these rules supersede Robert's Rules of Order in all cases. The Governing Board may elect to deviate from Robert's Rules of Order. Members of the public are not considered as part of the deliberate body and may not raise questions concerning Rules of Order.

(11) Public comments – Florida Statutes 286.0114, states the Governing Board must provide members of the public with a reasonable opportunity to be heard on a proposition before the Board. The opportunity does not have to occur at the same meeting where the Board takes official action on an item, whether by formal vote or other final action. The opportunity must occur at a meeting that is during the decision making process, and the opportunity must be within a reasonable proximity in time before the meeting at which the Board takes official action. The Board shall maintain orderly conduct and proper decorum in a public meeting, and hereby establishes these rules on the public providing testimony:

(a) an individual has three (3) minutes to address the Board.

(b) a designated representative of a group or faction may address the Board, rather than all of the members of the group or faction, and has six (6) minutes to address the Board.

(c) a "Public Comment Card" shall be made available for members of the public desiring to give public comment, indicating the speakers legal name, residence address, position on a proposition, and to indicate if member of the public is making a designation of a representative speaker.

(d) the requirement to provide a reasonable opportunity to be heard does not apply under the following circumstances:

(i) when an official act must be taken to deal with an emergency situation affecting the public health, safety or welfare, if compliance with the public comments requirement would cause an unreasonable delay in the ability of the Board to act;

(ii) for an official act involving no more than a ministerial act, including but not limited to approval of minutes and ceremonial proclamations;

(iii) at a meeting during which the Board is acting in a quasi-judicial capacity with respect to the rights or interests of a person; and

(iv) at a meeting that is exempt from the Sunshine or Open Meetings Law (section

286.011, Florida Statutes).

(e) By the Board adopting these rules for public comment, the Board is deemed to be acting in compliance with Florida Statutes 286.0114. Any action taken by the Board that is found to be in violation of the opportunity to be heard is not void as a result of the violation.

Specific Authority Chapter 2002-358, Special Acts of Florida, as amended, Florida Attorney General Advisory Legal Opinion - AGO 2003-41. Law Implemented Chapter 2002-358, Section 4(1), (5), (6), (7), (8), (9), (10), Section 6(19), Section 11, Florida Statutes 286.0114 as to Public comments effective October 1, 2013. History-New 11-12-75, Formerly 31-1.02, Amended 4-5-87, 5-15-92, 5-18-00, 9-19-2013.

31-1.003 General Description of Agency Organization and Operations

(1) Existing Staff Units of the District are as follows:

- (a) Executive Division
- (b) Finance & Administration Division
- (c) Operations Division
- (d) Information Services Division
- (e) Engineering Division
- (f) Legal Division
- (g) Auditing Division

(2) The functions, duties and responsibilities of each division are as follows:

(a) Executive Division - The office of the Executive Director is located in this Division. This Division is responsible for the daily management of the entire organization including application of the District's Rules, policies and management of all personnel matters. This Division is responsible for administration of neighborhood sewerage projects, capital projects and grants, administration and coordination with legal and engineering consultants, and origination of Developer Agreements for Sewer Service and I.Q. Water Service.

(a) Finance & Administration Division – This Division is responsible for financial and fiscal operations, plans and reports, maintenance of District records, and general support services to the District.

(b) Operations Division - This Division is responsible for the effective and efficient operation and maintenance of the District's wastewater reclamation facilities, including treatment of wastewater, production of reclaimed water, and disposal of treated wastewater.

(c) Information Services Division – This Division is responsible for the District's data collection and management systems including Information Technology, Customer Service, and the Wildpine Laboratory. Customer Service is responsible for the collection of the District's quarterly rates, fees, and charges. The Wildpine Laboratory is responsible for assessing performance of the wastewater treatment system and the

environmental and ecological health of the Loxahatchee River watershed.

(d) Engineering Division - This Division is responsible for drafting, maintaining and interpreting the District's Construction Standards and Technical Specifications. The Engineering Division is also responsible for the District's collection and transmission system, which pumps and carries raw wastewater and reclaimed water. In addition, this Division is responsible for the design, construction, inspection and protection of the works of the District. It provides evaluation of facilities and proposes upgrades to and rehabilitation of existing District infrastructure. The Engineering Division also is responsible for the review and approval of construction plans of developer contributed wastewater collection systems, and provides long range facilities planning for the District.

(e) Legal Division - This Division is handled by contract and, as such, there are no in-house staff. This Division is responsible for the legal aspects of District affairs including regulations, resolutions and provides professional consultation to the Governing Board and Executive Division for all legal matters of the District.

(f) Auditing Division - This Division is handled by contract and, as such, there are no in-house staff. This Division is responsible for the annual auditing requirements of Chapter 2002-358 and 31-1.002(7) contained herein, and the establishment of account books and records of the District.

Specific Authority Chapter 2002-358, Special Acts of Florida, as amended. Law Implemented Chapter 2002-358, Section 5, Section 6, Section 11, Section 12. History - New 11-12-75, Formerly 31-1.03, Amended 4-5-87, 9-19-2013, 5-21-2015, 7-21-2016.

31-1.004 General Information Concerning Agency

(1) The District headquarters are located at 2500 Jupiter Park Drive, Jupiter, Florida 33458-8964 and is open for business between the hours of 8:30 a.m. and 5:00 p.m. on all weekdays, except State and Federal holidays.

(2) All interested persons can make requests and procure general information, rules and regulations, and other printed material at the District office.

(3) The Governing Board normally holds business meetings during the third week of each month at the District offices. Notice of these meetings is published in the Palm Beach Post or other qualified newspaper, the District web pages as well as by press releases. Copies of meeting agendas can be obtained from the District Headquarters or by writing to the District.

(4) The District maintains a web site www.loxahatcheeriver.org in order to provide the public with convenient and efficient access to information about District governance, divisions, programs, services, public notices, and other public information.

Specific Authority Chapter 2002-358, Special Acts of Florida, as amended. Law Implemented Chapter 2002-358, Special Acts of Florida, Section 4(7). History-New 11-12-75, Formerly 31-1.04, Amended 4-5-87, 5-15-92, 5-18-00, 9-19-2013.

31-1.005 Statutory Chapters and Rules

The following statutory provisions affect the operation of Loxahatchee River Environmental Control District: Chapter 2002-358, Special Acts of Florida, as amended, Chapters 73, 74, 97, 98, 99, 100, 101, 102, 104, 106, 111, 112, 119, 153, 189, 218, 286, 287, 403, Florida Statutes; and any and all other applicable laws and regulations.

Specific Authority Chapter 2002-358, Special Acts of Florida, as amended. Law Implemented Chapter 2002-358, Section 15. History-New 11-12-75, Formerly 31-1.05, Amended 5-15-92, 9-19-2013.

31-1.006 Public Information and Inspection of Records

All public records of the District shall be available for public inspection pursuant to Florida Statutes Chapter 119, except those specifically exempted by Florida Statutes. Any person wishing to examine public records of the District may do so during normal business hours as provided in 31-1.004 at the offices listed in 31-1.004.

Specific Authority Chapter 2002-358, Special Acts of Florida, as amended. Law Implemented Chapter 119, Florida Statutes. History-New 11-12-75, Formerly 31-1.06, Amended 9-19-2013.

31-1.007 Public Access to Agency

All meetings and workshops shall be held under Florida Statutes 286.011, and all public hearings shall be open for public access.

Specific Authority Chapter 2002-358, Special Acts of Florida, as amended. Law Implemented Chapter 286, Florida Statutes. History-New 11-12-75, Formerly 31-1.07, Amended 9-19-2013.

31-1.008 Quasi- Judicial Hearing Procedures.

(1) Scope and Applicability. The procedures set forth herein shall apply to all quasi-judicial hearings¹ (hereinafter “Hearing”), held by the Governing Board (hereinafter the “Board”) of the Loxahatchee River District (hereinafter the “District”).

(2) Administration Order. Matters that do not involve a Notice of Violation (defined herein below), but rather involve requests for approval, shall be classified either as an “Administration Order” or as a “Board Order”. The Executive Director of the District shall determine if a matter has received a final “Administration Order”, and is ripe for consideration by the Board.

¹ See *Anoll v. Pomerance*, 363 So.2d 329, 331 (Fla. 1978)(“...a judgment becomes judicial or quasi-judicial, as distinguished from executive, when notice and hearing are required and the judgment of the board is contingent on the showing made at the hearing”).

(3) **Board Order.** A “Board Order” is defined as a matter decided by a vote of the Board at a Board Meeting not conducted as a quasi judicial Hearing. An “Applicant” who has legal standing to appeal the Board Order shall Petition the Board, in writing, within the appropriate statute of limitations period according to Florida Statutes, to conduct a Hearing as to the matters contained in the Board Order.

(4) **Notice of Violation.** For matters that involve the Violation of the District enabling legislation, District Rules, District Policies, District Procedures, Administration Order or Board Order, a written Notice of Violation shall state if the Violation is not corrected by a certain date (hereinafter “Compliance Date”), that a Notice of Hearing may be issued, or the Notice of Violation may contain the Notice of Hearing. A Hearing shall be conducted subsequent to written issuance of a Notice of Hearing and subsections (5)-(10) shall apply.

(5) **Notice of Hearing.** The Petition requesting a Hearing shall be placed on the agenda for a Board Meeting that is not less than (20) days after the Petition is received by the District. The Applicant shall be provided with a written Notice of Hearing at least fifteen (15) days² prior to the Hearing date, which shall include the date, time, and place of the Hearing. The Notice of Hearing shall also state that if the Applicant decides to appeal any decision made by the Board, with respect to any matter considered at such Hearing, the Applicant will need a record of the proceedings and that, for such purpose, the Applicant may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.³ The Board shall also provide reasonable notice to the public of the Hearing.

(6) **Proceedings.** Hearings shall be conducted informally, but with decorum. Formal rules of civil procedure shall not apply, except as set forth herein. However, procedural due process considerations shall be afforded at all times. There shall be at least two (2) attorneys present at the Hearing; one as the Advising attorney (hereinafter “Advising Attorney”) and a second as the Prosecuting attorney (hereinafter “Prosecuting Attorney”) to prosecute the matter on behalf of the District. Applicant shall be afforded a fair Hearing with an opportunity to be heard, whether or not Applicant decides to have legal counsel present at the Hearing.

(7) **Witnesses and Supporting Materials.** At least eight (8) days prior to the Hearing:

² Fla. Stat. Ch. 286.011(1) provides that the Board must provide ‘reasonable notice of all such meetings’. Fla. Stat. Ch. 189.417(1) provides guidance for what constitutes ‘reasonable notice’ when discussing notice requirements for independent special district meetings: “The governing body of an independent special district shall advertise the day, time, place, and purpose of any meeting other than a regular meeting or any recessed and reconvened meeting of the governing body, *at least 7 days prior to such meeting*, in a newspaper of general paid circulation in the county or counties in which the special district is located, unless a bona fide emergency situation exists, in which case a meeting to deal with the emergency may be held as necessary, with reasonable notice, so long as it is subsequently ratified by the board.” [emphasis added]

³ See Fla. Stat. 286.0105.

(a) The Prosecuting Attorney shall submit to Applicant, and Applicant shall submit to the Prosecuting Attorney, an outline of the argument(s) in support of their respective positions, copies of all documents which will be presented at the Hearing, and the names and addresses of all the witnesses (if any) who will be called to testify in support of the respective parties' position. If either party intends to qualify any witnesses as an expert, that party may also provide the resume for any such expert witness.

(b) The eight (8) day deadline is necessary to ensure both parties are given sufficient notice and opportunity to review the submissions prior to the Hearing and shall be strictly observed. Should the eight (8) day deadline be missed by either party, the party that did not miss the deadline may elect upon written notice to the other party of not less than three (3) business days before the scheduled Hearing to either (i) reschedule the Hearing to the next available agenda, or (ii) proceed with the scheduled Hearing.

(8) Conduct of Hearing.

(a) The Advising Attorney shall call the proceeding to order, announce that the Hearing has begun, and take roll call of the Board Members presiding.

(b) The Advising Attorney shall explain the rules concerning procedure, testimony, and consideration of evidence.

(c) The Advising Attorney shall swear in all witnesses (if any) who are to testify at the Hearing.

(d) Applicant, or Applicant's representative or counsel, shall describe Applicant's position on the matter, introduce and review all relevant documents and evidence, present witnesses in support of Applicant's position (if any), which witnesses are subject to cross examination by the Prosecuting Attorney, and answer any questions from the Board members.

(e) The Prosecuting Attorney shall describe the District's position on the matter, introduce and review all relevant documents and evidence, present witnesses in support of the District's position (if any), which witnesses are subject to cross examination by the Applicant's attorney, or the Applicant or Applicant's representative if not represented by an attorney, and answer any questions from the Board members.

(f) After each witness testifies (if any), the Applicant, or Applicant's representative or counsel, or the Prosecuting Attorney, shall be permitted to cross-examine the witness, which such cross-examination shall be limited to matters about which the witness testified.

(g) All evidence shall be considered, whether or not such evidence would be admissible in a court of law in Florida.

(h) Applicant, or Applicant's representative or counsel, may make final comments and closing remarks, and may submit a proposed Final Order, if any.

(i) The Prosecuting Attorney may make final comments and closing remarks, and may submit a proposed Final Order, if any.

(j) The Board may conduct open deliberations, which coupled with the facts considered during the Hearing, be sufficient to inform the parties of all the facts upon which the Board acts.⁴ A vote of the Board shall be taken, which decision shall be reduced to writing in a Final Order to be signed by the Board and dated within five (5) business days of the Hearing.

(k) The Final Order shall be sent to Applicant by Certified Mail Return Receipt Requested, or by Courier with receipt for delivery.

(l) The Applicant may appeal the Final Order to the Circuit Court of the County in which the Property is located, that is subject of the Final Order, within (30) days after the date of the Final Order.

(9) Transcript of Hearing. Applicant may arrange for a court reporter to attend and transcribe the Hearing, at the expense of the Applicant. Similarly, the District may arrange for a court reporter to attend and transcribe the Hearing, at the expense of the District. Each party shall be responsible for the cost of obtaining a copy of the transcription.⁵

(10) Failure of Applicant to Appear. If the Applicant, or Applicant's representative or counsel, fails to appear at the time fixed for the Hearing, and such absence is not excused: (i) if the Hearing is based upon Applicant's Petition, the Board shall issue an Order dismissing the Applicant's Petition; or (ii) if the Hearing is based on a Notice of Violation, the Board shall issue a Final Order.

Specific Authority Chapter 2002-358, Special Acts of Florida, as amended. Law Implemented Chapter 2002-358, Special Acts of Florida, Section 6. History- New 9-19-2013.

⁴ See *Generally Jennings v. Dade County*, 589 So.2d 1337 (Fla. 3rd DCA 1991).

⁵ See Fla. Stat. 286.011(2).