

CHAPTER 31-5

RULEMAKING PROCEEDING

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31-5.000 Definitions.

(1) The term “affected person” means any person having a substantial interest that is or reasonably will be affected by the subject District rule, a person regulated by the District, or an elector of the District.

(2) The term “Chair” means and refers to the Chair of the District’s Governing Board.

(3) The term “District” means and refers to the Loxahatchee River Environmental Control District.

(4) The term “Notice of Rule Development” shall mean notice of the District’s intention to adopt, amend, or repeal a rule.

(5) The term “rule” means each District statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of the District. The term also includes the amendment or repeal of a rule.

(6) The term “person” means any individual, child, firm, association, joint adventure, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, any unit of government in or outside the state, any agency, and all other groups or combinations.

(7) The term “petitioner” means the affected person requesting, via a written petition, the District to initiate rulemaking proceedings or for a public hearing, as applicable.

Specific Authority Chapter 2021-249, Laws of Florida. Law Implemented Chapter 2021-249, Laws of Florida, Section 6(19). History-New 9-15-2022.

31-5.001 Commencement of Rulemaking Proceedings. Proceedings held for the adoption, amendment, or repeal of a District rule shall be conducted according to these rules. Rulemaking

proceedings are initiated by the District, on its own initiative, or on the petition of an affected person. A rulemaking proceeding shall be deemed to have been initiated upon publication of a Notice of Rule Development by the District on its website.

Specific Authority Chapter 2021-249, Laws of Florida. Law Implemented Chapter 2021-249, Laws of Florida, Section (6)(19). History-New 12-31-74, Amended 6-10-75, 3-23-80, 10-20-2011, 9-15-2022.

31-5.002 Notice of Rule Development and Proposed Rules.

(1) Except as provided in 31-5.011, notice of the District's intention to adopt, amend, or repeal a rule (Notice of Rule Development) shall be published by the District on its website at least fourteen (14) calendar days prior to the rule adoption, amendment, or repeal.

(2) Upon the publication of the Notice of Rule Development, a draft of the proposed rule shall be made available to the public.

Specific Authority Chapter 2021-249, Laws of Florida. Law Implemented Chapter 2021-249, Laws of Florida, Section (6)(19). History-New 12-31-74, amended 6-10-75, 3-23-80, 10-20-2011, 9-15-2022.

31-5.003 Content of Notice of Rule Development. The Notice of Rule Development shall include the subject area to be addressed by the rule development, amendment, or repeal; provide a short, plain explanation of the purpose and effect of the proposed rule; cite the specific legal authority for the proposed rule; identify the District's contact person regarding the rule development, amendment, or repeal; include a statement of how a person may promptly obtain a copy of any preliminary draft, of the proposed rule, if available; and include a statement that an affected person may request a public hearing on the proposed rule (if the proposed rule does not relate exclusively to organization, practice or procedure) pursuant to the process and requirements of District Rule 31-5.009. The Notice of Rule Development may, but is not required to, include the text of the proposed rule.

Specific Authority Chapter 2021-249, Laws of Florida. Law Implemented Chapter 2021-249, Laws of Florida, Section (6)(19). History-New 12-31-74, Amended 6-10-75, 3-23-80, 10-20-2011, 9-15-2022.

31-5.004 Petitions to Initiate Rulemaking Proceedings.

(1) All petitions for the initiation of rulemaking proceedings to adopt, amend, or repeal a rule must be in writing and contain: (a) the name, phone number, and address of the petitioner; (b) an explanation of how, and the facts showing that, the petitioner is an affected person impacted by the rule that petitioner is requesting the District to adopt, amend, or repeal; (c) a statement of the specific action petitioner wishes the District to take; (d) the date the petition is submitted to the District; (e) the specific reason for the requested rule adoption, amendment, or repeal; and (f) shall specify the text of the proposed rule that petitioner is requesting the District to adopt, amend, or repeal.

(2) Any interested person may file a statement in support of or in opposition to any petition for the initiation of rulemaking proceedings. The interested person shall furnish the petitioner with a copy upon filing of the statement with the District.

Specific Authority Chapter 2021-249, Laws of Florida. Law Implemented Chapter 2021-249, Laws of Florida, Section (6)(19). History-New 12-31-74, Amended 6-10-75, 3-23-80, 10-20-2011, 9-15-2022.

31-5.005 District Action on Petitions to Initiate Rulemaking Proceedings.

(1) Upon receipt of any petition for the initiation of rulemaking to adopt, amend, or repeal a rule, the District shall assign the petition an identification number. The District shall publish notice of receipt and disposition of a petition for the initiation of rulemaking on its website.

(2) Not later than sixty (60) calendar days following the date of filing a petition to initiate rulemaking, the District shall initiate rulemaking proceedings or deny the petition. If the District determines that the petitioner is not an affected person or the subject matter of the requested rulemaking is not required to be addressed by the District as determined by the District's Governing Board, or otherwise determines that the petition does not contain adequate justification for the requested rulemaking, the District may forthwith deny the petition, and shall notify the petitioner in writing of the denial, including a brief statement of its reasons for the denial. If the District determines that the petition contains adequate justification for the requested rulemaking, the District shall issue a Notice of Rule Development and initiate rulemaking proceedings.

Specific Authority Chapter 2021-249, Laws of Florida. Law Implemented Chapter 2021-249, Laws of Florida, Section (6)(19). History-new 12-31-74, amended 6-10-75, 3-23-80, 10-20-2011, 9-15-2022.

31-5.007 Rulemaking Materials. After the publication of Notice of Rule Development on its website, the District shall make available for public inspection and shall provide upon request, copies of the text of the proposed rule to be adopted, amended, or repealed.

Specific Authority Chapter 2021-249, Laws of Florida. Law Implemented Chapter 2021-249, Laws of Florida, Section (6)(19). History-New 3-23-80, 10-20-2011, 9-15-2022.

31-5.008 Rulemaking Proceeding – No Hearing. When no public hearing is requested, or a public hearing is requested but the petitioner is not an affected person, and when the District chooses not to initiate a public hearing on its own, the District may direct that the proposed rule be considered on its consent agenda.

Specific Authority Chapter 2021-249, Laws of Florida. Law Implemented Chapter 2021-249, Laws of Florida, Section (6)(19). History-New 3-23-80, 10-20-2011, 9-15-2022.

31-5.009 Rulemaking Proceeding – Hearing.

(1) The District shall provide a public hearing if: (i) a petition requesting a public hearing is received by the District from an affected person(s) (hereinafter referred to as "petitioner") within fourteen (14) calendar days after the date of publication on the District's website of the Notice of Rule Development for the proposed rule; (ii) the petition contains the information specified in paragraph (2) below; and (iii) the proposed rule does not relate exclusively to District organization, practice, or procedure. The District shall publish notice of the public hearing on its website at least seven (7) calendar days before the scheduled public hearing. The public hearing shall allow for presentation by the District and petitioner(s) of evidence, argument, and oral statements, within

the reasonable conditions and limitations imposed by the District to avoid duplication, irrelevant comments, unnecessary delay, or disruption of the public hearing. Written statements may be submitted to the District prior to the public hearing by any person and may be considered and made a part of the record if authorized by the District.

(2) A petition requesting a public hearing must be in writing and, at a minimum, contain the following information: (a) the name and address of the petitioner; (b) the proposed rule(s) a public hearing is requested on; (c) an explanation of how, and the facts showing that, the petitioner is an affected person that will be impacted by the proposed rule(s); (d) the date the petition is being submitted to the District; (e) the specific action the petitioner is requesting the District to take on the proposed rule(s); and (f) an explanation of the facts and grounds the petitioner contends support its requested action on the proposed rule(s). Not later than sixty (60) calendar days following the date of filing a petition to initiate rulemaking, the District shall notice the public hearing or deny the petition. If the District determines that the petitioner is not an affected person, the District may forthwith deny the petition, and shall notify the petitioner in writing of the denial, including a brief statement of its reasons for the denial.

(3) The District may also decide on its own initiative to hold a public hearing on a proposed rule and shall publish notice of this fact on its website at least seven (7) calendar days before the scheduled public hearing.

(4) The District shall prepare an agenda for the public hearing that provides the petitioner and affected persons (if any) with sufficient time to present evidence, argument, or oral statements, and other information.

(5) The District may take official recognition of any material that is of common and general knowledge, authoritatively well settled, and free from uncertainty. If the material is officially recognized by the District, it is deemed to be admissible without the necessity of the offering party presenting evidence. This material shall be part of the record and all affected persons shall be given a reasonable opportunity to examine and offer evidence and argument in opposition.

(6) Upon request of any petitioner, and affected person (if any), the District shall cause to be made a transcript of the public hearing. The cost of preparing the transcript and having the proceeding recorded shall be paid by the requesting person. A copy of the transcript shall be available to the public at cost.

(7) The Chair of the Governing Board, or any member thereof, may preside at a public hearing. Following the public hearing, the Executive Director shall present any recommendations for changes in the proposed rule to the Governing Board for final consideration. The Governing Board shall issue a final decision in writing, and stating the reasons therefor, within seventy (70) calendar days after the public hearing.

Specific Authority Chapter 2021-249, Laws of Florida. Law Implemented Chapter 2021-249, Laws of Florida, Section (6)(19). History-New 12-31-74, Amended 6-10-75, 3-23-80, 10-20-2011, 9-15-2022.

31-5.010 Incorporation by Reference. Any rule, standard, specification, or similar material that is generally available to affected persons, which includes material available on the District's website, may be incorporated in a rule by reference.

Specific Authority Chapter 2021-249, Laws of Florida. Law Implemented Chapter 2021-249, Laws of Florida, Section (6)(19). History-New 12-31-74, amended 6-10-75, 3-23-80, 10-20-2011, 9-15-2022.

31-5.011 Emergency Rule Adoption.

(1) The District may adopt an emergency rule if the District finds that immediate danger to the public health, safety and welfare exists, or which could exist, which requires immediate District action.

(2) Unless it defeats the purpose of any emergency rule, the District should notify the Palm Beach Post and place a notice of emergency rulemaking on the District's website before adopting an emergency rule. The District shall permit, upon receipt of a request by an affected person within forty-eight (48) hours of the emergency rule being on the District's website, any affected person to present testimony, evidence, and submit written statements on the proposed emergency rule. The emergency rule shall remain effective until such time as Governing Board codifies the emergency rule, amends it, or repeals it.

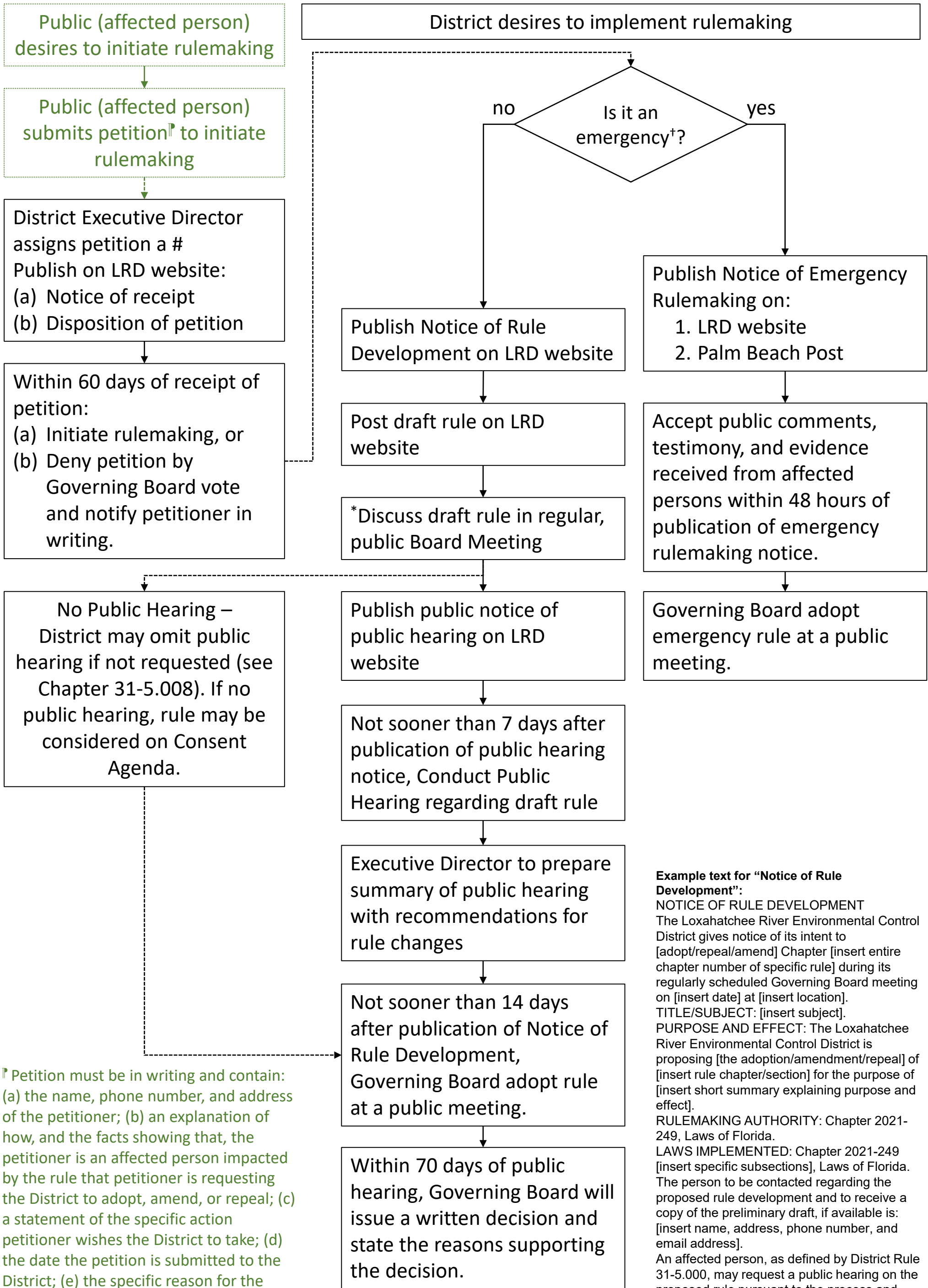
(3) Upon the timely request of any affected person, the District shall cause a transcript to be made of the emergency rule adoption proceeding and shall compile a record, consisting of the transcript, copies of the notice, and any other matter of information considered by the District in adopting the emergency rule. Cost of preparing the transcript and having the proceeding recorded shall be paid by the requesting affected person. A recording may be made of the proceeding.

(4) Notwithstanding subsection (2) and (3) above, the District may use any procedure that is fair under the circumstances in the adoption of any emergency rule as long as it protects the public interest.

Specific Authority Chapter 2021-249, Laws of Florida. Law Implemented Chapter 2021-249, Laws of Florida, Section (6)(19). History-New 12-31-74, amended 6-10-75, 3-23-80, 10-20-2011, 9-15-2022.

Chapter 31-5 Rulemaking Flowchart

(for interpretation assistance only – not part of the rule)



[¶] Petition must be in writing and contain:
 (a) the name, phone number, and address of the petitioner; (b) an explanation of how, and the facts showing that, the petitioner is an affected person impacted by the rule that petitioner is requesting the District to adopt, amend, or repeal; (c) a statement of the specific action petitioner wishes the District to take; (d) the date the petition is submitted to the District; (e) the specific reason for the requested rule adoption, amendment, or repeal; and (f) shall specify the text of the proposed rule that petitioner is requesting the District to adopt, amend, or repeal.

[†] An emergency is something that presents immediate danger to public health.

^{*} This step is not required by rule and may be skipped.