TOWN OF LOXAHATCHEE GROVES

ORDINANCE NO. 2014-03

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, RELATING TO COMMERCIAL HAULING OF LIVESTOCK WASTE WITHIN THE TOWN; PROVIDING FOR DEFINITIONS; PROVIDING FOR PERMITS AND PERMIT FEES; PROVIDING FOR THE DISPOSAL OF LIVESTOCK WASTE WITHIN THE TOWN; PROVIDING FOR PERMITTED HOURS OF COMMERCIAL HAULING OF LIVESTOCK WASTE WITHIN THE TOWN; PROVIDING FOR REQUIRED RECORDS AND AUDITING OF SUCH RECORDS BY THE TOWN; PROVIDING FOR CHANGES TO LIVESTOCK WASTE REGULATIONS; PROVIDING FOR REVOCATION OF PERMITS AND ENFORCEMENT; EXEMPTING LIVESTOCK WASTE SELF-HAULERS AS DEFINED HEREIN FROM THIS ORDINANCE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on April 6, 2010, the Town Council of the Town of Loxahatchee Groves adopted Ordinance 2010-003, to provide requirements for permits by landowners and transporters of manure and horse bedding (livestock waste) in the Town; and,

WHEREAS, on April 3, 2012, the Town Council adopted Ordinance 2012-03, which amended and restated Ordinance 2010-03, to provide for properties eligible to receive manure and horse bedding materials (livestock waste), amend permit requirements and provide regulations on how such materials are used on eligible properties; and,

WHEREAS, the Town Council has heard concerns from Town Management and the public relating to the current permitting process and continued abuses by commercial haulers and property owners for dumping manure and horse droppings (livestock waste) on properties within the Town; and,

WHEREAS, the Town Council continues to be concerned with water quality within the drainage canals in the Town, and has heard from residents with scientific and academic backgrounds that raised phosphorous levels are possible from continued abuse of manure and horse bedding (livestock waste) by commercial haulers and property owners within the Town; and,

WHEREAS, improper commercial hauling and disposal of Livestock Waste is a public nuisance, attracting flies and emanating odors to nearby properties; and

WHEREAS, the Town Council believes that increased regulation of commercial livestock waste haulers is necessary to prevent illegal dumping and pollution, and avoid the creation of public nuisances within the Town; and,

WHEREAS, the provisions of this Ordinance shall replace and supersede the requirements for livestock waste haulers in Ordinance 2012-03.

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 are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. **Definitions.** The following definitions shall apply to this Ordinance.

(a) Approved disposal site: A parcel of real property for which a Town, county or state registration or permit has been issued for the disposal and/or processing of livestock waste, as amended from time to time, and/or a plot of land that is conducting bona fide agricultural activities in accordance with F.S. § 193.461.

(b) Bona fide agricultural purposes: means farming, pasture, grove, or forestry operations, including horticulture, floriculture, viticulture, dairy, livestock, poultry, bee and

aquaculture, consistent with Section 823.14, Florida Statutes (Right to Farm) and Section 570.02, Florida Statutes (Agriculture).

(c) *Commercial livestock waste hauler*: Person(s), firm(s), corporation(s), or other legal entity/entities providing livestock waste removal or delivery services for a fee, or in exchange for payment, within the Town.

(d) *Composting:* The process by which biological decomposition of organic solid waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material which can easily and safely be stored, handled, and used in an environmentally acceptable manner for a period of 30 to 90 days.

(e) *Livestock*: Grazing animals, such as cattle, horses, sheep, goats, other ruminants, swine, ostriches, emus and rheas, which are used for private use or commercial purposes, or as defined by F.S. § 585.01, as may be amended from time to time.

(f) *Livestock facility*: Property under single ownership or control where livestock is raised and or boarded.

(g) *Livestock waste*: Wastes composed of excreta of animals and residual materials that have been used for bedding, sanitary, or feeding purposes for such animals. For purposes of this ordinance, livestock waste that has been properly composted shall not be considered livestock waste.

(h) *Livestock waste self-hauler*: Property owner or authorized representative providing Livestock waste removal services from their own property within the Town, or delivering Livestock waste to their own property within the Town from a location within the Town, for personal use only by the owner or tenant of the receiving property, using a vehicle with a capacity no greater than ten (10) cubic yards.

(i) *Livestock waste storage area*: An area constructed of impermeable material such as concrete or asphalt; with an impermeable cover; or a mechanical storage container that can be sealed, lifted, and transported.

(j) *Load*: approximately twenty (20) to twenty-five (25) cubic yards of Livestock Waste.

(k) *Public Nuisance*: the unreasonable, unwarranted and/or unlawful activity and/or use of property, which causes inconvenience or damage to others, either to individuals and/or to the general public.

Section 3. All Commercial Livestock Waste Haulers must comply with the requirements of this ordinance.

Section 4. **Permitting Requirements.** All Commercial Livestock Waste Haulers transporting Livestock Waste within the Town must obtain a permit from the Town prior to engaging in any hauling of Livestock Waste.

(a) In obtaining the permit, the Commercial Livestock Waste Haulers will:

1. Identify every property within the Town from which it will haul Livestock Waste, and every Approved Disposal Site (whether located within the Town or not) to which it will deliver Livestock Waste;
2. Provide copies of all licenses and registrations for vehicles used for hauling Livestock Waste.
3. Acknowledge on a form provided by the Town that (1) loads to be deposited within the Town originate from a Livestock Facility within the Town, or shows by separate affidavit its load originated from outside the State of Florida; (2) upon receipt of a request from a property owner within the Town for Livestock Waste, it will confirm prior to engaging in hauling that the Livestock Waste will be

deposited within a Livestock waste storage area or used solely for bona fide agricultural purposes pursuant to Best Management Practices (BMP) for livestock waste application where applicable, and that the property owner has obtained the necessary permit from the Town; and (3) that it has read and reviewed this ordinance and agrees to its requirements and provisions, and will adhere to such in providing its hauling services.

4. Pay the required fees for the permit.

(b) An annual permit shall be valid from October 1 to September 30, and shall expire each September 30 regardless of the date it is issued. Commercial Livestock Waste Haulers are responsible for the timely renewal of the annual permits.

(c) The annual permit fee for a Commercial Livestock Waste Hauler shall be $500.00. An annual permit shall permit the Commercial Livestock Waste Hauler to transport up to twenty (20) loads. The permit fee shall be $2000.00 if a Commercial Livestock Waste Hauler transports Livestock Waste prior to obtaining a permit from the Town.

(d) A Commercial Livestock Waste Hauler may transport in excess of twenty (20) loads, for a maximum of thirty (30) additional loads, at an additional fee of $40.00 per load, paid in advance to the Town. Should the Commercial Livestock Waste Hauler fail to pay such fee in advance, the fee shall be $100.00 per load.

(e) The fees set forth in this ordinance may be amended by the Town Council by resolution.

(f) No permit shall be issued to a Commercial Livestock Waste Hauler who has not remedied previous violations of this Ordinance.

Section 5. **Origin of Livestock Waste.** All Livestock Waste deposited at Approved disposal sites in the Town must originate from within the Town, or be shown by affidavit to have originated from outside the State of Florida.

Section 6. **Approved disposal sites.** Commercial Livestock Waste Haulers may deposit Livestock Waste only at Approved Disposal Sites for the purpose of composting in an approved composting area, or for bona fide agricultural purposes.

Section 7. **Authorized Times for Hauling within the Town.** Hauling of Livestock Waste by Commercial Livestock Waste Haulers within the Town shall be permitted only between the hours of 9:00 a.m. through 4:00 p.m., Monday through Friday, except holidays as listed on the Town website. Hauling of Livestock Waste by Commercial Livestock Waste Haulers is prohibited at all other times.

Section 8. **Required Records.** Hauling records shall be provided by Commercial Livestock Waste Haulers to the Town Manager each month, no later than the fifth (5th) business day of the month following the month for which the report is filed. Hauling records shall identify the waste source, quantity in cubic yards, and the waste disposal site with quantity deposited in cubic yards within an approved site. Hauling records shall include signed load tickets or affidavits certifying the loads from both the source and disposal site owners. Failure to timely provide monthly hauling records shall result in the revocation of the permit. The Town reserves the right to audit the hauling record and load tickets from the generating properties and disposal sites which have been approved as a disposal site as defined herein. The failure to cooperate with such audit shall result in the revocation of a permit.

Section 9. **Changes to Regulations.** The hauling of Livestock Waste by Commercial Livestock Waste Haulers within the Town is a privilege, not a right. The Town

Council reserves the right to amend this Ordinance at any time, and any such amendments will apply to both future permits, and active permits unless specifically exempted by the Town Council.

Section 10. **Revocation of Permits.** A Commercial Livestock Waste Hauler that violates any of the provisions of this ordinance shall have its permit revoked by the Town Manager. Should a person violate this ordinance on more than one (1) occasion during a calendar year, that person shall not be granted a permit from the Town for a period of one (1) calendar year from the date of the last violation.

Section 11. **Nuisance.** A violation of this ordinance is deemed by the Town Council to be a public nuisance.

Section 12. **Violation of State Laws.** The Town Council specifically finds that a violation of this ordinance presents a public nuisance for purposes of enforcement of Section 403.413, Florida Statutes, and law enforcement officers charged with the enforcement of state and local laws within the Town shall strictly enforce Section 403.413, Florida Statutes. Upon the issuance of a violation notice under Section 403.413, Florida Statutes, or this ordinance, any permits issued by the Town to the Commercial Livestock Waste Hauler shall be suspended and the Commercial Livestock Waste Hauler shall cease all Livestock Waste hauling until such time as a hearing is conducted or the fines paid.

Section 13. **Enforcement.** This ordinance shall be enforced as follows:

(a) Law enforcement officers are authorized to enforce this ordinance. In addition to penalties resulting from a violation of Section 403.413, Florida Statutes, the fines for violations of this ordinance shall be:

First Offense	Second Offense	Third Offense	All Additional Offenses
$100	$250	$400	$500

(b) The Town may also file charges for any offense in a court with jurisdiction, in which case the penalty shall be a fine of $500, imprisonment not to exceed sixty (60) days, or both, for each violation of this ordinance. The Town shall recover its costs of prosecution, including attorney's fees, filing fees, and personnel costs for law enforcement and Town employees.

(c) To the extent authorized by law, the Town Administration is authorized to use the Town's Code Enforcement process to enforce violations of this ordinance where a law enforcement officer has not otherwise issued violations of Section 403.413, Florida Statutes, or of this ordinance. In such instances, the fine shall be the maximum permitted by law. The Town shall recover its costs of prosecution, including attorney's fees, filing fees, and personnel costs for law enforcement and Town employees.

(d) Each day a violation remains, and each haul for which there is no permit, constitutes a separate violation of this ordinance.

Section 14. Exemption of Livestock waste self-hauler. Livestock waste self-haulers are exempt from this ordinance.

Section 15. Effect on Ordinance 2012-03. The provisions herein as to regulations for haulers (referred to in Ordinance 2012-03 as transporters) of Livestock Waste, referred to in Ordinance 2012-03 as "manure and horse bedding," supersedes and replaces regulations as to haulers in Ordinance 2012-03. Regulations relating to property owners and the use of Livestock

Waste on Property within the Town shall remain in effect except to the extent in conflict with this Ordinance.

Section 16. Repeal of Laws in Conflict. All Ordinances or part of Ordinances in conflict herewith are in the same are hereby repealed to the extent of such conflict.

Section 17. Severability. If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

Section 18. 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, and that the Sections of this ordinance may be re-numbered, 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 19. Effective Date. This Ordinance shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS 1ST DAY OF APRIL, 2014.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS 15th DAY OF April, 2014.

TOWN OF LOXAHATCHEE GROVES, FLORIDA

ATTEST:

Janet K. Whipple, Town Clerk

Mayor David Browning

Vice-Mayor Ron Jarriel

Council Member Tom Goltzené

APPROVED AS TO LEGAL FORM:

Office of the Town Attorney

Council Member Ryan Liang

Council Member Jim Rockett

Sent to MC for review 05/06/2014 jw