

IN THE MATTER OF THE
APPLICATION BY CITY OF OLD
RIVER-WINFREE FOR A
TEXAS HEALTH & SAFETY CODE
§ 366.031 ORDER

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BEFORE THE
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

EXECUTIVE DIRECTOR'S MOTION TO OVERTURN

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Motion to Overturn (MTO) her prior decision to approve the application of the City of Old River-Winfree (City) for an Order pursuant to Tex. Health & Safety Code § 366.031 and 30 Tex. Admin. Code § 285.10 and the Order signed by the Executive Director on February 18, 2026. Upon the Executive Director's staff's review of the documents enclosed in the Notice to Proceed that was mailed to the City by the Office of the Chief Clerk on February 26, 2026, her staff informed the Executive Director that certain documents were inadvertently omitted and were not considered by the Executive Director during her consideration of the City's application and signing of the Order. Due to this clerical mistake, the Executive Director respectfully requests that the Commission grant her Motion to Overturn the Order she signed on February 18, 2026, and requests the Commission remand the City's application to the Executive Director so she may evaluate and sign an Amended Order that supersedes the previous Order.¹ The Office of the Chief Clerk issued and mailed the Notice of the Executive Director's Decision on February 26, 2026, which states that a MTO may be filed within 23 days;² therefore, the Executive Director's MTO is timely.

Attached for the Commission's consideration are copies of the Chief Clerk's Notice, the Executive Director's Order, and the City's Application and Ordinance.

I. FACTUAL BACKGROUND

The relevant facts and procedural history regarding the City's application are memorialized within the Executive Director's Order.³ On November 10, 2025, the City adopted a proposed Ordinance to repeal and replace its current regulations of on-site sewage facilities.⁴ The City's new Ordinance, which complies with the Commission's

¹ See 30 TEX. ADMIN. CODE §§ 50.137, 50.139(b).

² 30 TEX. ADMIN. CODE § 50.139(b).

³ See Attachment A, Executive Director's Order (Feb. 18, 2026), Findings of Fact.

⁴ See *Id.*, Executive Director's Order, Ex. A - City of Old River-Winfree, Ordinance No. 2024-004, Sec. 3-5 (Nov. 10, 2025).

standards regarding OSSFs under 30 Tex. Admin. Code, Ch. 285,⁵ also seeks to adopt more stringent requirements.⁶ The City then submitted an application to TCEQ for review and approval of the City's Ordinance so that the City may proceed with implementation of its proposed OSSF regulations.⁷ Upon receipt, the Executive Director's staff reviewed the City's application and new Ordinance, which was determined to comply with the applicable laws and requirements, including TCEQ's rules in 30 Tex. Admin. Code, Ch. 285, relating to OSSF requirements.

Upon her staff's transmittal of documents and draft Order to the Executive Director for her consideration and signature, a page from the certified copy of the City's Ordinance was inadvertently omitted. The omitted page reflects the City's intent to adopt more stringent requirements, which are allowed under 30 Tex. Admin. Code § 285.10(b)(4)-(5). Subsequently, the Executive Director's review of the City's application, and the Order she signed on February 18, 2026,⁸ do not reflect the City's proposal to adopt these more stringent standards. Upon the Executive Director's Staff review of the Notice to Proceed, which was issued by the Office of the Chief Clerk on February 26, 2026, her staff discovered the inadvertent omission and promptly informed the Executive Director of the necessity to file this MTO so she may sign an Amended Order to supersede the Order she signed on February 18, 2026.

II. APPLICABLE LAWS AND REGULATIONS

1. Under TCEQ's rules, an MTO must be filed no later than 23 days after the Chief Clerk mails notice of the Executive Director's decision.⁹
2. Under TCEQ's rules, an MTO must identify with particularity the subject of the complaint and must state the erroneous decision, any erroneous evidentiary or legal rulings, and the legal and factual basis for the claimed error.¹⁰
3. Under TCEQ's rules, the Commission may amend or modify a permit, or take any other appropriate action, including the consideration of an MTO filed by the

⁵ See Executive Director's Order, Finding of Fact No. 7, Conclusion of Law No. 6.

⁶ See *Id.*

⁷ See 30 TEX. ADMIN. CODE § 285.10(a)(1).

⁸ See Executive Director's Order, Finding of Fact No. 7, Conclusion of Law No. 6; see also 30 TEX. ADMIN. CODE § 285.10(b)(4)-(5).

⁹ 30 TEX. ADMIN. CODE § 50.139(b).

¹⁰ See 30 TEX. ADMIN. CODE §§ 50.117(a), 50.119(d), 50.137, 50.139(a), (b)-(c), (f); see also 30 TEX. ADMIN. CODE §§ 55.113(d), 50.119(a), 50.139(a) ("... Wherever other commission rules refer to a 'motion for reconsideration,' that term should be considered interchangeable with the term 'motion to overturn executive director's decision.'").

Executive Director and remand an application for further action by the Executive Director when the Commission holds jurisdiction over the application.¹¹

III. CONCLUSION

The Executive Director has determined that her previous decision to approve the City's application and signature of her Order on February 18, 2026, did not consider and does not reflect the City's intent to adopt more stringent OSSF standards pursuant to 30 Tex. Admin. Code, Ch. 285, as a result of an inadvertent omission during her staff's transmittal of documents to the Executive Director for her consideration. The Executive Director files this MTO to rectify this error so she may issue an Amended Order that supersedes her prior Order and is consistent with the City's intent to adopt more stringent OSSFs standards as reflected in its new Ordinance.

For these reasons, the Executive Director respectfully requests that the Commission grant her MTO and remand the City's Application for further action by the Executive Director.

¹¹ See 30 TEX. ADMIN. CODE §§ 50.113(c), 50.117(a), 50.119(d), 50.137, 50.139(a), (d), (f).

Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Kelly Keel, Executive Director

Phillip Ledbetter, Director
Office of Legal Services

Amy L. Browning, Acting Deputy Director
Environmental Law Division



Ryan Rakowitz, Staff Attorney
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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on March 23, 2026, a true and correct copy of the Executive Director's Motion to Overturn in the above referenced matter was filed with the Texas Commission on Environmental Quality's Office of the Chief.



Ryan Rakowitz, Staff Attorney
Environmental Law Division
State Bar No. 24143317

SERVICE LIST

For the Applicant:

The Honorable Kathy Franssen, Mayor
City of Old River-Winfree City Hall
4804 North Farm-to-Market Road 565
Old River-Winfree, Texas 77523

For the Executive Director:

Via electronic mail

Joseph L. Hopkins, P.G., Technical
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Office of Compliance & Enforcement
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Technical Programs Team (OSSF)
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Public Education Program, MC-108
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For the Public Interest Counsel:

Via electronic mail

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Counsel

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For the Chief Clerk:

Via eFilings

Docket Clerk
Texas Commission on Environmental
Quality

Office of Chief Clerk, MC-105

P.O. Box 13087

Austin, Texas 78711

<https://www.tceq.texas.gov/goto/efilings>

Brooke T. Paup, *Chairwoman*
Catarina R. Gonzales, *Commissioner*
Tonya R. Miller, *Commissioner*
Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 26, 2026

The Honorable Kathy Franssen, Mayor
City of Old River-Winfree City Hall
4804 North Farm-to-Market Road 565
Old River-Winfree, Texas 77523

RE: City of Old River Winfree
On-Site Sewage Facility No. 620316

This letter is your notice that the Texas Commission on Environmental Quality (TCEQ) executive director (ED) has acted on the above-named application. According to 30 Texas Administrative Code (TAC) Section 50.135 the ED's action became effective on the date the ED signed the permit or other action. A copy of the final action is enclosed and cites the effective date.

For certain matters, a **motion to overturn**, which is a request that the commission review the ED's action on an application, may be filed with the chief clerk. Whether a motion to overturn is procedurally available for a specific matter is determined by Title 30 of the Texas Administrative Code Chapter 50. According to 30 TAC Section 50.139, an action by the ED is not affected by a motion to overturn filed under this section unless expressly ordered by the commission.

If a motion to overturn is filed, the motion must be received by the chief clerk within 23 days after the date of this letter. An original motion must be filed with the chief clerk in person or by mail. The Chief Clerk's mailing address is Office of the Chief Clerk (MC 105), TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. On the same day the motion is transmitted to the chief clerk, please provide copies to the Environmental Law Deputy Director (MC 173), and the Public Interest Counsel (MC 103), both at the same TCEQ address listed above. If a motion is not acted on by the commission within 45 days after the date of this letter, then the motion shall be deemed overruled.

You may also request **judicial review** of the ED's action. The procedure and timelines for seeking judicial review of a commission or ED action are governed by Texas Water Code Section 5.351.

Individual members of the public may seek further information by calling the TCEQ Public Education Program, toll free, at 1-800-687-4040.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Gharis".

Laurie Gharis
Chief Clerk

LG/erg

cc: Garrett T. Arthur, TCEQ Public Interest Counsel (MC 103)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF THE	§	BEFORE THE EXECUTIVE
APPLICATION OF	§	DIRECTOR OF THE TEXAS
CITY OF OLD RIVER-WINFREE	§	COMMISSION ON
FOR A TEXAS HEALTH AND SAFETY	§	ENVIRONMENTAL
CODE §366.031 ORDER	§	QUALITY

On February 18, 2026, the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of City of Old River-Winfree for an Order pursuant to §366.031, Texas Health and Safety Code (THSC), and 30 Texas Administrative Code (TAC) §285.10 of the rules of the Commission.

No person has requested a public hearing on the application, therefore the Executive Director, on behalf of the Commission, is satisfied that City of Old River-Winfree has satisfied the requirements of §366.031, THSC. The Commission finds that the City of Old River-Winfree Order should be approved.

FINDINGS OF FACT

1. City of Old River-Winfree drafted a proposed Ordinance amendment which regulates on-site sewage facilities.
2. On October 31, 2025, City of Old River-Winfree caused notice to be published, in a newspaper regularly published and of general circulation in the City of Old River-Winfree, of a public meeting to be held on November 10, 2025.
3. City of Old River-Winfree held a public meeting to discuss its proposed Ordinance on November 10, 2025.
4. The City of Old River-Winfree Ordinance regulating on-site sewage facilities was adopted on November 10, 2025.
5. A certified copy of the minutes was submitted to the Commission.
6. A certified copy of the City of Old River-Winfree Ordinance was submitted to the Commission.
7. The Ordinance is at least equivalent to the standards of the Commission.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to issue Orders designating local governmental entities as authorized agents. TEXAS WATER CODE ch. 5 and TEXAS HEALTH & SAFETY CODE ch. 366.
2. The Commission may delegate uncontested matters to the Executive Director provided the required notice was given, the applicant agrees to the action and the application is uncontested. TEXAS WATER CODE § 5.122.
3. Notice of City of Old River-Winfree's intent to adopt a new Ordinance was properly provided. TEXAS HEALTH & SAFETY CODE § 366.031 and TEXAS ADMINISTRATIVE CODE § 285.10.
4. City of Old River-Winfree agreed to the proposed Order in writing.
5. The proposed Order is uncontested.
6. The City of Old River-Winfree proposed Ordinance incorporates the Commission's rules on abatement or prevention of pollution and prevention of injury to the public health; meets the Commission's minimum requirements for on-site sewage disposal systems. TEXAS HEALTH & SAFETY CODE § 366.032.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. City of Old River-Winfree is hereby authorized to implement its new Ordinance regulating on-site sewage facilities.
2. Any amendments to the City of Old River-Winfree Ordinance must be approved by the Commission.
3. The Office of Chief Clerk of the Commission is directed to forward a copy of this Order and the City of Old River-Winfree adopted Ordinance, marked as Exhibit "A," to City of Old River-Winfree and all other parties and to issue the Order and cause it to be recorded in the files of the Commission.

Issued this date: February 18, 2026



Executive Director
Texas Commission on Environmental Quality

EXHIBIT A

CITY OF OLD RIVER-WINFREE

§

STATE OF TEXAS

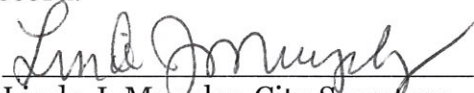
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AFFIDAVIT

Before me, the undersigned authority, personally appeared who, being by me duly sworn, deposed as follows:

My name is Linda J. Murphy, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

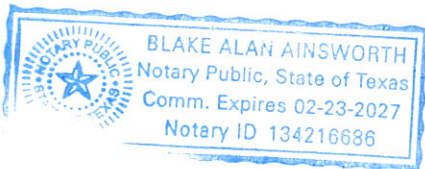
I am the custodian of the records of the City of Old River-Winfree for the city of Old River-Winfree, Texas. Attached hereto are Four (4) pages of records known as (Ordinance No. 2025-004) ON SITE SEWAGE FACILITEIS. The records are kept by me as City Clerk, County of Chambers and Liberty, in the regular course of business with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The record attached hereto is the original or exact duplicate of the official record.


Linda J. Murphy, City Secretary

BEFORE ME, the undersigned authority, a Notary Public in and for said County, Texas, on this day personally appeared Linda J. Murphy, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 30 day of January, 2024.

(SEAL)




Notary/Public, State of Texas
My commission expires:

ORDINANCE ADOPTING RULES OF THE CITY OF OLD RIVER-WINFREE, TEXAS
FOR ON-SITE SEWAGE FACILITIES
ORDINANCE NO. 2025-004

WHEREAS, the Texas Commission on Environmental Quality (TCEQ) has established Rules for on-site sewage facilities (OSSFs) to provide the citizens of this State with adequate public health protection and a minimum of environmental pollution; and

WHEREAS, the Texas Legislature enacted legislation, codified as Texas Health and Safety Code (THSC), Chapter 366, which authorizes a local government to regulate the use of OSSFs in its jurisdiction to eliminate and prevent health hazards from the use of OSSFs; and

WHEREAS, the City of Old River-Winfree, Texas understands that there are technical criteria, legal requirements, and administrative procedures and duties associated with regulating OSSFs, and may have responsibilities under the following provisions:

Texas Health and Safety Code Chapters 366 (On-Site Sewage Disposal Systems) and 367 (On-Site Wastewater Treatment Research);

Texas Water Code Chapters 7 (Enforcement), 26 (Water Quality), and 37 (Occupational Licensing and Registration);

30 Texas Administrative Code Chapters 30 (Occupational Licensing and Registrations), 70 (Enforcement), and 285 (On-Site Sewage Facilities); and

Section 9 of this Ordinance (More Stringent Requirements) (If more stringent requirements are included).

WHEREAS, due notice was given of a public meeting to determine whether the City Council of the City of Old River-Winfree, Texas should enact an Ordinance regulating the installation and use of OSSFs in the City of Old River-Winfree, Texas; and

WHEREAS, the City Council of the City of Old River-Winfree, Texas finds that the use of OSSFs in the City of Old River-Winfree Texas is causing or may cause pollution, and is injuring or may injure the public health; and

WHEREAS, the City Council of the City of Old River-Winfree, Texas has considered the matter and deems it appropriate to enact an Ordinance adopting Rules regulating OSSFs to abate or prevent pollution, or injury to public health in the City of Old River-Winfree, Texas.

NOW, THEREFORE, BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF Old River-Winfree, TEXAS:

SECTION 1. THAT the matters and facts recited in the preamble are true and correct;

SECTION 2. THAT the use of OSSFs in the City of Old River-Winfree, Texas is causing or may cause pollution or is injuring or may injure the public health.

SECTION 3. This Ordinance repeals and replaces any other On-Site Sewage Facility Ordinance for the City of Old River-Winfree, Texas.

SECTION 4. THAT an Ordinance for the City of Old River-Winfree, Texas be adopted entitled "On-Site Sewage Facilities," which shall read as follows:

SECTION 5. THAT the City of Old River-Winfree, Texas wishing to adopt more stringent requirements for its OSSF ORDINANCE understands that the more stringent requirements in this ORDINANCE take precedence over the corresponding TCEQ rule.

SECTION 6. AREA OF JURISDICTION.

This Ordinance shall apply to all the areas lying within the City of Old River-Winfree, Texas, except for areas regulated under an existing Order, Ordinance, or Resolution.

SECTION 7. COMPLIANCE WITH ORDINANCE.

All OSSFs installed in the jurisdictional area of (the city of Old River-Winfree, Chambers County) must comply with this Ordinance.

SECTION 8. INCORPORATION BY REFERENCE.

The following statutes and rules, including all future amendments to the statutes and rules, are incorporated by reference specifically, but not limited to:

Texas Health and Safety Code Chapters 366 (On-Site Sewage Disposal Systems) and 367 (On-Site Wastewater Treatment Research);

Texas Water Code Chapters 7 (Enforcement), 26 (Water Quality), and 37 (Occupational Licensing and Registration); and

30 Texas Administrative Code Chapters 30 (Occupational Licensing and Registrations), 70 (Enforcement), and 285 (On-Site Sewage Facilities).

SECTION 9. MORE STRINGENT REQUIREMENTS.

30 Texas Administrative Code (TAC) § 285.10 allows local governmental entities to propose more stringent standards than minimally required by 30 TAC Chapter 285. (City of Old River-Winfree, Chambers County has determined that more stringent requirements are necessary to protect human health and the environment. The

Justification for the more stringent requirements is in Exhibit B of this ORDINANCE. The following more stringent requirements are adopted by City of Old River-Winfree__, Texas in this ORDINANCE:

SECTION 9 or 10. COLLECTION OF FEES.

All fees collected for permits and/or inspections shall be made payable to the City of Old River-Winfree, Texas. A fee of \$10 will also be collected for each OSSF permit to be paid to the credit of the TCEQ Water Resources Management Account as required by the THSC Chapter 367.

SECTION 10 or 11. APPEALS.

Persons aggrieved by an action or decision of the designated representative may appeal such action or decision to the City Council of the City of Old River-Winfree, Texas.

SECTION 11 or 12. ENFORCEMENT PLAN.

The City of Old River-Winfree, Texas understands that, at a minimum, it must follow the requirements in 30 TAC § 285.71 (Authorized Agent Enforcement of OSSFs). This includes timely investigating complaints, notifying complainants of findings, and taking appropriate action related to any documented violations. Records related to these activities shall be retained for review by TCEQ.

The City shall take appropriate and timely action on all documented violations, which may include any available penalties and remedies, pursuant to all applicable provisions related to OSSFs, including those found in Chapters 341 and 366 of the THSC, Chapters 7 and 26 of the Texas Water Code, and 30 TAC Chapter 285.

SECTION 12 or 13. SEVERABILITY.

It is hereby declared to be the intention of the City Council of the City of , Texas, that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared void by a valid judgment or decree of any court of competent jurisdiction the judgment or decree shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Ordinance.

SECTION 13 or 14. RELINQUISHMENT OF ORDINANCE.

If the Authorized Agent of the City of Old River-Winfree, Texas decides to relinquish its authority to regulate OSSFs in its area of jurisdiction, the local governmental entity (previously the Authorized Agent) and TCEQ shall follow the procedures in 30 TAC § 285.10 (d) (1) through (4).

After relinquishing its OSSF authority, the local governmental entity understands that it may be subject to charge-back fees in accordance with 30 TAC § 285.10 (d) (5) and § 285.14.

SECTION 14 or 15. TITLE VI COMPLIANCE.

If necessary, based on the need for access to information in a language other than English by the community, the Authorized Agent shall provide information regarding this Ordinance, including notice, applications, and enforcement actions, in an alternative language. The Authorized Agent may base its determination on all relevant factors including: whether the elementary or middle school nearest to the site is required to provide a bilingual education program as required by Texas Education Code, Chapter 29, Subchapter B; whether there is newspaper regularly published in an alternative language; or if the Authorized Agent has historical knowledge.

SECTION 15 or 16. EFFECTIVE DATE.


This Ordinance shall be in full force and effect from and after its date of approval as required by law and upon the approval of TCEQ.

AND IT IS SO ORDERED:

PASSED AND APPROVED THIS 11th DAY OF November, 2025.

APPROVED:

(SEAL)



Mayor

ATTEST:



City Clerk