

ORDINANCE NO. 2015-05

An Ordinance of the Board of County Commissioners of Osceola County, Florida, Amending Chapter 9, Creating Article III, Sections 9-81 through 9-94, "Fertilizer Management", of the Osceola County Code of Ordinances; Regulating Commercial Application of Fertilizer to Urban Landscapes in Osceola County; Providing for Conflict; Providing for Severability; Providing for Inclusion in the Code of Ordinances; and Providing for an Effective Date.

WHEREAS, surface water runoff and base flow runoff flows from residential neighborhoods, commercial centers, industrial areas, and other lands of Osceola County and enters into natural and artificial stormwater and drainage conveyances and natural water bodies in Osceola County; and

WHEREAS, phosphorus and nitrogen - the primary nutrients associated with the degradation of groundwater and surface water - are the primary components of landscape fertilizer; and

WHEREAS, leaching and runoff of nutrients from improper or excessive fertilization contributes to nitrogen and phosphorus loading in Osceola County's stormwater conveyances and natural water bodies; and

WHEREAS, the quality of streams, lakes, and wetlands is critical to environmental, economic, and recreational prosperity and to the health, safety, and welfare of the residents of Osceola County; and

WHEREAS, pursuant to Section 303(d) of the federal Clean Water Act and the resulting Florida Impaired Waters Rule (Chapter 62-303, Florida Administrative Code), the Florida Department of Environmental Protection ("FDEP") has classified certain water bodies in Osceola County as "impaired" as a result of the presence of excess nutrients; and

WHEREAS, the amount of fertilizer applied to a given landscape and the method of application have potential for creating nutrient pollution; and

WHEREAS, section 403.9337, Florida Statutes, provides that any county located within the watershed of a water body or water segment that is listed as impaired by nutrients shall, at a minimum, adopt the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes; and

WHEREAS, the Total Maximum Daily Load program, the Florida Watershed Restoration Act (403.067 F.S.), Water Conservation Florida-Friendly Landscaping (125.568 F.S.), the Lake Toho Nutrient Reduction Plan and the National Pollutant Discharge Elimination System (NPDES) municipal stormwater permitting program require local

governments to reduce pollutant loads discharged from their stormwater management systems and developed areas to better protect and restore surface and ground waters; and

WHEREAS, Osceola County has demonstrated, as part of a comprehensive program to address nonpoint sources of nutrient pollution, this ordinance is appropriate to address urban fertilizer contributions to nonpoint source nutrient loading to water bodies; and

WHEREAS, in the process of adoption of this ordinance, the Osceola County Board of County Commissioners has considered all relevant scientific information, including input from the Department of Environmental Protection, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF OSCEOLA COUNTY, FLORIDA:

SECTION 1. RECITALS.

The foregoing recitals are true and correct and incorporated herein by reference.

SECTION 2. CREATION.

This ordinance creates Chapter 9, Article III, Sections 9-81 through 9-94, of the Osceola County Code of Ordinances, entitled Fertilizer Management, to read as follows:

Article III. Fertilizer Management

Sec. 9-81. Findings.

As a result of impairment to Osceola County's surface waters caused by excessive nutrients, or, as a result of increasing levels of nitrogen in the surface and/or ground water within the aquifers or springs within the boundaries of the County, the Board of County Commissioners of Osceola County has determined that the use of fertilizers on lands within the County creates a risk to contributing to adverse effects on surface and/or ground water. Accordingly, the Board of County Commissioners of Osceola County finds that management measures contained in the most recent edition of the "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2010," may be required by this Article.

Sec. 9-82. Purpose and Intent.

This Article regulates the proper use of fertilizers by any applicator; requires proper training of Commercial and Institutional Fertilizer Applicators; establishes training and licensing requirements; establishes a Prohibited Application Period; specifies allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones, and exemptions. The Article requires the use of Best

Management Practices which provide specific management guidelines to minimize negative secondary and cumulative environmental effects associated with the misuse of fertilizers. These secondary and cumulative effects have been observed in and on the County's natural and constructed stormwater conveyances, rivers, creeks, canals, lakes and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of Osceola County residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, will help improve and maintain water and habitat quality.

Sec. 9-83. Definitions.

For this Article, the following terms shall have the meanings set forth in this section unless the context clearly indicates otherwise.

"Administrator" means the Osceola County Manager, or an administrative official of Osceola County government designated by the County Manager to administer and enforce the provisions of this Article.

"Application" or "Apply" means the actual physical deposit of fertilizer to turf or landscape plants.

"Applicator" means any Person who applies fertilizer on turf and/or landscape plants in Osceola County.

"Board or Governing Board" means the Board of County Commissioners of Osceola County, Florida.

"Best Management Practices" means turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

"Code Enforcement Officer, Official, or Inspector" means any designated employee or agent of Osceola County whose duty it is to enforce codes and ordinances enacted by Osceola County.

"Commercial Fertilizer Applicator", except as provided in section 482.1562(9), F.S., means any person who applies fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicator.

"Fertilize," "Fertilizing," or "Fertilization" means the act of applying fertilizer to

turf, specialized turf, or landscape plants.

"Fertilizer" means any substance or mixture of substances that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil. For the purposes of this Article, the term "fertilizer" does not include unmanipulated vegetable manures, peat, or compost which make no claims as described in the preceding sentence.

"Guaranteed Analysis" means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.

"Institutional Applicator" means any person, other than a private, non-commercial or a Commercial Applicator (unless such definitions also apply under the circumstances), that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional Applicators shall include, but shall not be limited to, owners, managers or employees of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.

"Landscape Plant" means any native or exotic tree, shrub, or groundcover (excluding turf).

"Low Maintenance Zone" means an area a minimum of ten (10) feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.

"Person" means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.

"Prohibited Application Period" means the time period during which a Flood Watch or Warning, or a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of Osceola County, issued by the National Weather Service, or if heavy rain is likely.

"Osceola County Approved Best Management Practices Training Program" means a training program approved per section 403.9338, F.S., or any more stringent requirements set forth in this Article that includes the most current version of the Florida Department of Environmental Protection's "Florida- Friendly Best Management Practices for Protection of Water Resources by the Green Industries" as revised, and approved by the Administrator.

"Saturated soil" means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this Article, soils shall be considered saturated if standing water is present or the pressure of a person standing on the

soil causes the release of free water.

"Slow Release," "Controlled Release," "Timed Release," "Slowly Available," or "Water Insoluble Nitrogen" means nitrogen in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant longer than a reference rapid or quick release product.

"Turf," "Sod," or "Lawn" means a piece of grass-covered soil held together by the roots of the grass.

"Urban landscape" means pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or horticultural plants. For the purposes of this section, agriculture has the same meaning as in section 570.02, F.S.

Sec. 9-84. Applicability.

This Article shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the area of Osceola County, unless such applicator is specifically exempted by the terms of this Article from the regulatory provisions of this Article. This Article shall be prospective only, and shall not impair any existing contracts.

Sec. 9-85. Timing of Fertilizer Application.

(a) No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the Prohibited Application Period, or to saturated soils.

(b) Fertilizer containing nitrogen or phosphorus shall not be applied before seeding or sodding a site, and shall not be applied for the first 30 days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation (wildfire, etc.), or in accordance with the Stormwater Pollution Prevention Plan for that site.

Sec. 9-86. Fertilizer Free Zones.

Fertilizer shall not be applied within ten (10) feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) or from the top of a seawall, unless a deflector shield, drop spreader, or liquid applicator with a visible and sharply defined edge, is used, in which case a minimum of 3 feet shall be maintained. If more stringent Osceola County Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. Newly planted turf and/or landscape plants may be fertilized in this Zone only for a sixty (60) day period beginning 30 days after planting if needed to

allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water.

Sec. 9-87. Low Maintenance Zones.

A voluntary ten (10) foot low maintenance zone is strongly recommended, but not mandated, from any pond, stream, water course, lake, wetland or from the top of a seawall. A swale/berm system is recommended for installation at the landward edge of this low maintenance zone to capture and filter runoff. If more stringent Osceola County Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. No mowed or cut vegetative material may be deposited or left remaining in this zone or deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products.

Sec. 9-88. Fertilizer Content and Application Rates.

(a) Fertilizers applied to turf within Osceola County shall be applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*.

(b) Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in (a) above for turf, or in UF/IFAS recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an approved test.

Sec. 9-89. Application Practices.

(a) Spreader deflector shields are required when fertilizing via rotary (broadcast) spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from all impervious surfaces, fertilizer-free zones and water bodies, including wetlands.

(b) Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces.

(c) Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable.

(d) Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or any other legal site, or returned to the original or other appropriate container.

(e) In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

Sec. 9-90. Management of Grass Clippings and Vegetative Matter.

In no case shall grass clippings, vegetative material, and/or vegetative debris be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable.

Sec. 9-91. Exemptions.

The provisions set forth above in this Article shall not apply to:

(a) bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14 Florida Statutes;

(b) other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock;

(c) any lands used for bona fide scientific research, including, but not limited to, research on the effects of fertilizer use on urban stormwater, water quality, agronomics, or horticulture.

Sec. 9-92. Training.

(a) All commercial and institutional applicators of fertilizer within the unincorporated area of Osceola County, shall abide by and successfully complete the six-hour training program in the "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries" (GIBMP) offered by the Florida Department of Environmental Protection through the University of Florida Extension "Florida-Friendly Landscapes" program, or an approved equivalent.

(b) Private, non-commercial applicators are encouraged to follow the recommendations of the University of Florida IFAS Florida Yards and Neighborhoods program when applying fertilizers.

Sec. 9-93. Licensing of Commercial Applicators.

(a) All commercial applicators of fertilizer within the unincorporated area of Osceola County, shall abide by and successfully complete training and continuing education requirements in the GIBMP, offered by the Florida Department of Environmental Protection through the University of Florida IFAS "Florida-friendly Landscapes" program, or an approved equivalent program, prior to obtaining an Osceola County Local Business Tax Certificate for any category of occupation which may apply any fertilizer to turf and/or landscape plants. Commercial Fertilizer Applicators shall provide proof of completion of the program to the Osceola County Tax Collector's office within 180 days of the effective date of this

Article.

(b) After the effective date of this Article, all commercial applicators of fertilizer within the unincorporated area of Osceola County, shall have and carry in their possession at all times when applying fertilizer, evidence of certification by the Florida Department of Agriculture and Consumer Services as a Commercial Fertilizer Applicator per 5E-14.117(18) F.A.C.

(c) All businesses applying fertilizer to turf and/or landscape plants (including but not limited to residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that at least one employee has a "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries" training certificate prior to the business owner obtaining a Local Business Tax Certificate. Owners for any category of occupation which may apply any fertilizer to Turf and/or Landscape Plants shall provide proof of completion of the program to the Osceola County Tax Collector's Office.

Sec. 9-94. Enforcement.

(a) It shall be unlawful for any person to violate any provision of this Article, or any provision of any resolution enacted pursuant to the authority of this Article. Employers are responsible for their employee's compliance with this Article.

(b) The Code Enforcement Board shall have jurisdiction to hear and decide violations of this Article. Any person who is found to violate any of these provisions shall upon code enforcement action be punished as provided in chapter 7, article I, of this code. The jurisdiction of the Code Enforcement Board shall not be exclusive. Any alleged violation of any of the provisions of this Article may be pursued by appropriate remedy, whether by injunctive, declaratory or other civil sanction, at the option of the County. Any employer of employees, who violate any provision of this Article, or any provision of any resolution enacted pursuant to the authority of this Article, shall be subject to the following penalties:

- (1) First violation: Written warning
- (2) Second violation: Written violation notice and requirement for all persons violating this Article, and their employers, if applicable, to attend the Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries (GIBMP) training, regardless of prior attendance of this training
- (3) Third and subsequent violations: Fine of one-hundred dollars (\$100.00)

(c) This Article may also be enforced pursuant to the supplemental procedures contained in the Osceola County Code of Ordinances, chapter 7, article II, as amended, and the maximum civil penalty for a violation of this Article shall be five hundred dollars (\$500.00) per violation.

(d) The provisions of this Article are supplemental to any other remedy or enforcement procedure provided for or recognized by ordinance, statutory law, common law, case law or the Constitution and shall not be construed as an exclusive remedy or procedure available for enforcement of the codes and ordinances of the county. Nothing contained in this Article shall prohibit the board of county commissioners from enforcing its codes by any other means, including, without limitation, injunctive relief, in the enforcement of any provision of this article or any provision of any resolution enacted pursuant to the authority of this article.

(e) Funds generated by penalties imposed under this section shall be used by Osceola County for the administration and enforcement of section 403.9337, Florida Statutes, and the corresponding sections of this Article, and to further water conservation and nonpoint pollution prevention activities.

Secs.9-95—9-105. Reserved.

SECTION 3. CONFLICT.

All Ordinances or parts or Ordinances in conflict herewith shall be and the same are hereby repealed to the extent of such conflict.

SECTION 4. SEVERABILITY.

If any portion of this Ordinance is for any reason held or declared to be unconstitutional, inoperative, or void, such holding shall not affect the remaining portions of this Ordinance. If this Ordinance or any provision thereof shall be held to be inapplicable to any person, property or circumstances, such holding shall not affect its applicability to any other person, property, or circumstance.

SECTION 5. INCLUSION IN THE OSCEOLA COUNTY CODE OF ORDINANCES.

It is the intention of the Board of County Commissioners hereby provided that the provisions of this ordinance shall be made a part of the Osceola County Code of Ordinances; that the sections of this ordinance may be renumbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section," "article," or other appropriate designation.

SECTION 6. EFFECTIVE DATE.

This ordinance shall take effect upon adoption by the Board of County Commissioners; provided, however, no citations, notices to appear, notices of violation or other enforcement

procedures shall be instituted until twelve (12) months after the effective date to allow for education and public awareness programs to be implemented throughout the County.

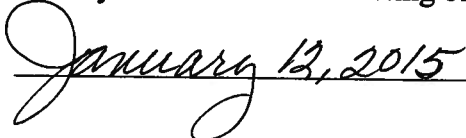
BOARD OF COUNTY COMMISSIONERS
OF OSCEOLA COUNTY, FLORIDA

By: 
Chairman/Vice Chairman

ATTEST:
OSCEOLA COUNTY CLERK OF THE BOARD

By: 
Clerk/ Deputy Clerk of the Board

As authorized for execution at the Board of
County Commissioners meeting of:


January 12, 2015

