

ORDINANCE 2012- 37

AN ORDINANCE OF THE BREVARD COUNTY, FLORIDA AMENDING CHAPTER 46, ENVIRONMENT, CREATING ARTICLE VIII, ENTITLED "FERTILIZER USE ON URBAN LANDSCAPE"; SPECIFICALLY PROVIDING FOR THE REGULATION OF POLLUTANT RUNOFF AND THE APPLICATION OF FERTILIZERS AS REQUIRED BY LAW; CREATING SECTION 46-335 PURPOSE AND INTENT; SECTION 46-336 DEFINITIONS; SECTION 46-337 APPLICABILITY; SECTION 46-338 TIMING OF FERTILIZER APPLICATION; SECTION 46-339 FERTILIZER FREE ZONE; SECTION 46-340 LOW MAINTENANCE ZONE; SECTION 46-341 FERTILIZER CONTENT AND APPLICATION RATES; SECTION 46-342 APPLICATION PRACTICES; SECTION 46-343 MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER; SECTION 46-344 EXEMPTIONS; SECTION 46-345 TRAINING; SECTION 46-346 LICENSING OF COMMERCIAL APPLICATORS; SECTION 46-347 ENFORCEMENT AND MONITORING; SECTION 46-348 PENALTY; ADDITIONAL REMEDIES; SECTION 46-349 APPEALS; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY;; PROVIDING FOR INCLUSION IN CODE AND AN EFFECTIVE DATE.

WHEREAS, the County is authorized by the Florida Constitution and the provisions of Chapters 125, 163 and 403, Florida Statutes to establish and administer programs for stormwater management including the control of pollutants entering the County's stormwater system; and

WHEREAS, the United States Environmental Protection Agency, pursuant to 40C.F.R. §122.26, and the Florida Department of Environmental Protection pursuant to 33 U.S.C. § 1342(b), have mandated, through the issuance of a National Pollution Discharge Elimination System Generic Permit for discharges from Phase II Municipal Separate Storm Sewer Systems, that the County must establish legal authority to control discharges to the County's municipal separate storm sewer system in order to control the quality of discharges from the County's municipal separate storm sewer system to surface waters of the State; and

WHEREAS, the Florida Department of Environmental Protection has documented impairments, pursuant to Section. 403.067, F.S., within the surface waters of the County and has established pollutant load limits in the form of Total Maximum Daily Loads (TMDLs) which

require the County to reduce pollutant loads discharged from the County's stormwater system and;

WHEREAS, Section 403.9337, F.S. requires a county government or municipal government located within the watershed of a water body or water segment that is listed by the Department of Environmental Protection as impaired to adopt at a minimum the model ordinance "Florida Friendly Fertilizer Use on Urban Landscapes"; and

WHEREAS, the Florida Department of Environmental Protection will provide pollutant load reduction credit to the County toward meeting mandated Total Maximum Daily Load Program Reductions for adoption and enforcement of code provisions directed at reducing such loadings from the use of fertilizer; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida, hereby determines that the adoption of such an ordinance to reduce pollutant runoff into Brevard County waterways serves the public, safety, health and welfare of its citizens.

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

SECTION 1. Section 46-335. Purpose and intent. is hereby created as follows:

This Ordinance regulates and promotes 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 Ordinance 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 Brevard County natural and constructed stormwater conveyances and surface waters. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of Brevard 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.

SECTION 2. Section 46-336. Definitions. is hereby created as follows:

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

Administrator means county manager or designee authorized to administer and enforce the provisions of this Article.

Application or *apply* means the actual physical deposit of fertilizer to turf, specialized turf, or landscape plants.

Applicator means any person who applies fertilizer on turf and/or landscape plants in Brevard County.

Board means the Board of Commissioners of Brevard County, Florida.

Best management practices mean 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.

Brevard County approved best management practices training program means a training program approved pursuant to 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, 2008," as revised, and approved by the administrator.

Code enforcement officer, official, or inspector means any designated employee or agent of Brevard County whose duty it is to enforce codes and ordinances enacted by Brevard 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.

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 surface waters 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 Brevard County, issued by the National Weather Service, or if heavy rain is likely.

Saturated soil means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this ordinance, 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.

Surface waters as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) means waters on the surface of the earth, contained in bounds created naturally or artificially, including, the Atlantic Ocean, bays, bayous, sounds, estuaries, lagoons, lakes, ponds, impoundments, rivers, streams, springs, creeks, branches, sloughs, tributaries, canals, and ditches.

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.

SECTION 3. Section 46-337. Applicability. is hereby created as follows:

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

SECTION 4. Section 46-338. Timing of fertilizer application. is hereby created as follows:

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.

SECTION 5. Section 46-339. Fertilizer free zone. is hereby created as follows:

Fertilizer shall not be applied within ten (10) feet of any surface waters, pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) or within 10 feet from the top of a seawall. If a deflector shield, drop spreader, or liquid applicator with a visible and sharply defined edge is used in these areas, a minimum of 3 feet shall be maintained. Newly planted turf and/or landscape plants may be fertilized in this Zone 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. The requirements of Section 46-338 above also apply to newly planted turf and landscape plants.

SECTION 6. Section 46-340. Low maintenance zone. is hereby created as follows:

A voluntary ten (10) foot low maintenance zone is strongly recommended, but not mandated, from any surface waters, pond, stream, watercourse, 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. No mowed or cut vegetative material should 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 in this zone.

SECTION 7. Section 46-341. Fertilizer content and application rates. is hereby created as follows:

- a. Only "No Phosphate Fertilizer" or "Low Phosphate Fertilizer" as defined in Rule 5E-1.003(2) may be applied to turf or landscape plants in Brevard County without a soil or plant tissue deficiency as verified by a University of Florida, Institute of Food and Agriculture Sciences, approved testing methodology. In the case that a deficiency has been verified, the application of a fertilizer containing phosphorous shall be in accordance with the rates and directions provided by Rule 5E-1.003(2), Florida Administrative Code. Deficiency verification shall be no more than two (2) years old. However, recent application of compost, manure, or top soil shall warrant more recent testing to verify current deficiencies.

- b. The nitrogen content of fertilizer applied to turf or landscape plants within Brevard County shall contain slow release, controlled release, timed release, slowly available, or water insoluble nitrogen per guaranteed analysis label. Newly planted turf and/or landscape plants may be fertilized with less than other rate of release products 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 in the water.
- c. Fertilizers applied to turf within Brevard County shall be applied at rates that are in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*.
- d. 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.
- e. Where golf courses, parks and athletic fields are subject to and implementing Best Management Practices as prescribed in Rule 5E-1003(2)(d) F.A.C., they shall be exempt from this Section,

SECTION 8. Section 46-342. Application practices. is hereby created as follows:

- 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, surface waters 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 and either legally applied to turf or any other legal site, or returned to the original or other appropriate container.
- d. In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

SECTION 9. Section 46-343. Management of grass clippings and vegetative matter. is hereby created as follows:

In no case shall grass clippings, vegetative material, and/or vegetative debris be washed, swept, or blown off into surface waters, stormwater drains, ditches, conveyances, watercourses, water

bodies, wetlands, sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable.

SECTION 10. Section 46-344. **Exemptions.** is hereby created as follows:

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

- a. Bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14, Florida Statutes;
- b. Any lands used for scientific research supported by an accredited institution of higher learning or a government entity, including, but not limited to, research on the effects of fertilizer use on urban stormwater, water quality, agronomics, or horticulture.

SECTION 11. Section 46-345. **Training.** is hereby created as follows:

- a. Prior to January 1, 2014, all commercial and institutional applicators of fertilizer within the incorporated and unincorporated area of Brevard 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*" 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.

SECTION 12. Section 46-346. **Commercial and institutional applicators.** is hereby created as follows:

- a. After December 31, 2013, all commercial applicators of fertilizer within the incorporated and unincorporated area of Brevard County, shall abide by and have successfully completed training and continuing education requirements in the "*Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries*", 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 a business tax receipt 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 Brevard County's Tax Collector's office upon application or renewal of business tax receipt.
- b. After December 31, 2013, all commercial applicators of fertilizer within the unincorporated area of Brevard 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 pursuant to Rule 5E-14.117(18), Florida Administrative Code.

- c. Institutional Applicators who apply 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 business tax receipt. 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 Brevard County's Tax Collector's Office.

SECTION 13. **Section 46-347. Enforcement and monitoring.** is hereby created as follows:

Fines collected shall be deposited in a trust dedicated to fulfill the purposes of this section. Funds generated by penalties imposed under this section shall be used by the County for the administration and enforcement of Section 403.9337, F.S., and the corresponding sections of this ordinance, and to further water conservation and nonpoint pollution prevention activities.

SECTION 14. **Section 46-348. Penalty; additional remedies.** is hereby created as follows:

Penalties for violations of this division shall be as specified in Section 125.69, F.S., Chapter 162, F.S., section 1-7, Code of Ordinances of Brevard County, Florida, or any other appropriate remedy provided by law. The County may seek enforcement action against both the owner of record and any person or entity responsible for carrying out any prohibited action. The provisions of this section are an additional and supplemental means of enforcing County codes and ordinances. Nothing in this section shall prohibit the County from enforcing this Code by injunctive relief, or by any other means provided by law.

SECTION 15. **Section 46-349. Appeals.** is hereby created as follows:

Appeals relating to any administrative decision or determination concerning implementation or application of the provisions of this Division shall be filed in writing within 30 calendar days after the decision is rendered by the Administrator. Requests for appeals will be considered by the county manager.

SECTION 16. **Conflicting Provisions.** In the case of a direct conflict between any provision of this Ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

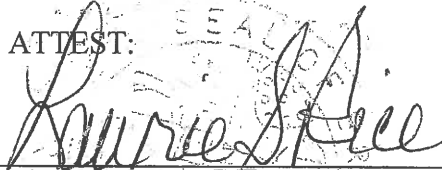
SECTION 17. **Severability.** If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 18. Inclusion in code. It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida; and that the sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 19. Effective date. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This ordinance shall take effect upon adoption and filing as required by law. For Commercial and Institutional applicators the dates required for compliance are stipulated in Sections 11 and 12. Enforcement of all other requirements will begin six months after the effective date to facilitate implementation of and education about this Ordinance.

DONE, ORDERED AND ADOPTED in regular session this 11 day of December, 2012.

ATTEST:



A handwritten signature in dark ink, appearing to read "Laurie S. Rice", is written over a circular official seal. The seal contains the text "SEAL OF BREVARD COUNTY FLORIDA" and "1845".

Laurie S. Rice
Chief Deputy Clerk

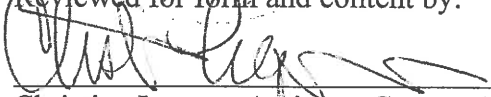
BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 

Andy Anderson, Chairman

As approved by the Board on December 11, 2012

Reviewed for form and content by:



A handwritten signature in dark ink, appearing to read "Christine Lepore", is written over a circular official seal. The seal contains the text "SEAL OF BREVARD COUNTY FLORIDA" and "1845".

Christine Lepore, Assistant County Attorney

RECEIVED
JAN 09 2013
BREVARD COUNTY
NATURAL RESOURCES MGT.