

**ORDINANCE NO. 10-XXX**

**AN ORDINANCE RELATING TO LAWN AND LANDSCAPE MAINTENANCE AND THE APPLICATION AND CONTENT OF FERTILIZERS APPLIED TO LAWNS AND LANDSCAPED AREAS WITHIN COLLIER COUNTY; CREATING A NEW ARTICLE XX OF CHAPTER XX OF THE COLLIER COUNTY CODE OF ORDINANCES PROVIDING FOR: FINDINGS; INTENT AND PURPOSE; DEFINITIONS; APPLICABILITY; TIMING OF APPLICATION, CONTENT AND APPLICATION RATE; TOTAL YEARLY APPLICATIONS; IMPERVIOUS SURFACES, FERTILIZER FREE BUFFER ZONE AND MODE OF APPLICATION; LOW MAINTENANCE ZONE; MANAGEMENT OF VEGETATIVE MATERIALS; EXEMPTIONS; TRAINING AND CERTIFICATION OF LAWN AND LANDSCAPING PROFESSIONALS; POSTING OF NOTICES AND EDUCATION; ENFORCEMENT; INCLUSION IN THE COUNTY CODE OF LAWS AND ORDINANCES; CONFLICTS OF LAW; SEVERABILITY; AND AN EFFECTIVE DATE.**

**WHEREAS**, nitrogen, phosphorus, and heavy metals associated with fertilizer use within the County are a source of pollution, occurring primarily from storm water runoff with the effect of impairing water quality and threatening the health of our aquatic systems; and

**WHEREAS**, the Florida Department of Environmental Protection has identified Rookery Bay and Lake Trafford as “impaired” for nutrients and has identified Corkscrew Marsh, Cocohatchee Slough, Gordon River, Naples Bay, Golden Gate, Okaloacoochee Slough, Silver Strand, Immokalee Basin and Fakahatchee Strand as “impaired” as a result of excess nutrients under the Florida Impaired Waters Rule (§ 62-303 F.A.C.); and

**WHEREAS**, 32% of the area of Collier County is considered “impaired” for nutrients and/or “impaired” for dissolved oxygen with a causative pollutant of excess nutrients; and

**WHEREAS**, remedial actions are necessary in order to maintain and improve the quality of these waterbodies and their downstream estuarine ecosystems, which can be accomplished through a reduction in the amounts and kinds of pollution flowing into these waterbodies through the County stormwater system as a result of fertilizer applications; and

**WHEREAS**, nutrients are essential elements for plant growth and are commonly used in various forms as a fertilizer for lawn, turf, and landscape application; and

**WHEREAS**, the amount of fertilizer applied shall be the minimum amount for the lawn and landscape to meet plant needs as amounts in excess may result in negative effects both to lawn and landscapes as well as water resources; and

**WHEREAS**, phosphorus is not a necessary fertilizer ingredient for all sites and all locations within the County; and

**WHEREAS**, nitrogen from slow release sources minimizes harmful leaching and is less likely to run off the land and pollute natural water bodies;

## Collier County Fertilizer Ordinance

**WHEREAS**, a significant portion of fertilizer pollution can be ameliorated by using the correct fertilizer and the correct application method;

**WHEREAS**, said practices would properly act to protect the health, safety, property, and welfare of the citizens and visitors to the County; and

**WHEREAS**, harmful algal blooms and accumulation of red drift algae on local beaches have heightened community concern about water quality and eutrophication of surrounding waters; and

**WHEREAS**, there is a need to develop and strengthen public awareness of the interconnectivity between activities in residential and commercial yards, streets, the County's stormwater system, and our surrounding natural water bodies;

**WHEREAS**, in accordance with Florida Statutes Section 403.9336 and 403.9337, the County must adopt, at a minimum, the Model Ordinance for Florida-Friendly Fertilizer Use due to the presence of impaired waterbodies.

**WHEREAS**, this ordinance is part of a comprehensive multi-pronged effort by Collier County to address nonpoint sources of pollution, reduce nutrient leaching and runoff including, but not limited to, stormwater management, water conservation, and education; and

**WHEREAS**, the Board of County Commissioners has considered all relevant scientific information, including but limited to, information related to local conditions, quality of waterbodies, soils and geology, urban or rural densities and other characteristics, on the need to include more stringent provisions to address fertilizer use as a contributor to water quality degradation, and has included all relevant documentation within the public record before adoption of the more stringent criteria;

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, as follows:**

### **SECTION 1: FINDINGS**

The above "whereas" clauses are hereby deemed by Collier County to constitute findings of Collier County for purposes of this Ordinance and are incorporated herein as if fully set forth in the section.

### **SECTION 2: INTENT AND PURPOSE**

(1) The intent and purpose of this Ordinance is to provide for the regulation of landscape management practices and fertilizers containing nitrogen and/or phosphorus and to provide specific guidelines for landscaping and fertilization in order to minimize the negative environmental effects said fertilizers have in and on the waterbodies of Collier County. Stormwater runoff is a major source of pollution for our natural waters, and in order to improve the water quality of the waterbodies within and

## Collier County Fertilizer Ordinance

surrounding the County and restore their estuarine ecosystems, the amount and kinds of pollution flowing into these waterbodies must be reduced. Collectively these water bodies are a natural asset, which are critical to the environmental, recreational, cultural and economic well-being of the County and the surrounding areas and contribute to the general health and welfare of the public. Therefore, regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, entering the above-referenced waterbodies is crucial. Reducing the negative effects of nutrient pollution combined with lawn and landscape maintenance professional certification will be an essential step towards improving and maintaining water and habitat quality. The use of no phosphorous and slow release nitrogen fertilizers is strongly encouraged as Florida soils typically contain sufficient phosphorous for a healthy native or man-made landscape and nitrogen can quickly and easily run off landscapes. Certification will result in increasing the knowledge of lawn and landscape maintenance professionals, and their residential and business customers, of:

- a. The effects of fertilizers and overwatering on the environment;
  - b. Ways to reduce the amount of fertilizers utilized; and
  - c. Methods to limit water use on lawns and landscapes thus potentially lowering the impacts of nonpoint source pollution on local waterbodies.
- (2) Nitrogen and phosphorous are essential ingredients for plant growth; however, overuse and improper application of these nutrients create water quality issues and pollute our treasured natural waters. They promote algae blooms and other excessive plant growth. No phosphorus fertilizer and slow release nitrogen fertilizer, along with proper utilization, result in absorption by plants and lower levels of nutrients reaching the waterbodies within and surrounding Collier County and their associated watersheds.

### **SECTION 3: DEFINITIONS**

The following words, terms, and phrases when used in this Ordinance shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Administrator* means the County Manager or designee, who will administer and enforce the provisions of this Article.

*Application* means the physical deposit of fertilizer to turf or landscape plants.

*Applicator* means any person who applies, in any manner, fertilizer to turf or landscape plants within the County.

*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.

## Collier County Fertilizer Ordinance

*Commercial Fertilizer Applicator* means any person who applies fertilizer in exchange for payment or other valuable 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 a lawn/turf or landscape plant.

*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.

*Impervious surface* means a constructed surface, such as a sidewalk, road, parking lot, or driveway, covered by impenetrable materials such as asphalt, concrete, brick, pavers, stone, or highly compacted soils.

*Institutional Applicator* means any person, other than a private, non-commercial or commercial applicator that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional applicators shall include, but shall not be limited to, owners and managers of public lands, schools, parks, religious institutions, utilities, industrial or business sites, and any residential properties maintained in condominium or common ownership.

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

*Lawn and Landscape Professional* means commercial or institutional applicator.

*Low Maintenance Zone* means an area a minimum of six (6) feet wide adjacent to watercourses which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.

*Leaching* means the process by which soluble constituents are dissolved and filtered through the soil by a percolating fluid.

*Non-Commercial Applicator* means any person other than a commercial fertilizer applicator or institutional applicator who applies fertilizer on turf or landscape plants in the County, such as an individual owner of a single-family residential unit.

*Person* means any natural person and shall also mean any business, corporation, association, club, organization, and/or 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 Collier County, issued by the National Weather Service, or if heavy rain (World Meteorological Organization definition of heavy rain is rainfall greater

## Collier County Fertilizer Ordinance

than or equal to 50 mm (2 inches) in a 24 hour period) is likely.

*Rainy season* means June 1 through September 30 of each calendar year.

*Rapid Release or Water Soluble Nitrogen* means any product containing:

- (1) Ammonium Nitrate.
- (2) Ammonium Sulfate.
- (3) Calcium Nitrate.
- (4) Diammonium Phosphate.
- (5) Monoammonium Phosphate.
- (6) Potassium Nitrate.
- (7) Sodium Nitrate.
- (8) Urea (not in the form of slow release nitrogen).
- (9) Others as may be designated in writing by the County Manager or designee.

*Runoff* means the water that results from and occurs following a rain event, or following an irrigation event, because the water is not absorbed by the soil or landscape and flows from the area.

*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 release nitrogen" product. Forms of slow release, controlled release, slowly available, or water insoluble nitrogen include:

- (1) Isobutylidene diurea (IBUD).
- (2) Resin, Polymer, or Sulphur coated urea.
  - (3) Biosolids or residuals from domestic wastewater treatment.
- (4) Ureaformaldehyde.
- (5) Composted animal manure.
  - (6) Others as may be designated in writing by the County Manager or designee.

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

*Vegetable Gardens* means a small area, privately cultivated and used to grow edible produce.

*Waterbody* means any visible, standing or open body of water. This shall include, but not be limited to: municipal or private storm sewer systems (including inlets, conveyances and structures), ditches, swales, canals, creeks, rivers, streams, tidal waters, lakes, ponds, ponded water, standing water, wetlands, or any other body of permanent or temporary standing or visible water whether or not the water body is natural or manmade or contained by impervious surfaces on the bottom or sides. Water

body shall not include structures such as pools and water fountains.

*Wetlands* means those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soils.

*Yard Waste* means shredded yard clippings, leaves, grass clippings, coconuts, limbs and any plant debris created in the act of mowing, trimming and removal of vegetation.

#### **SECTION 4: APPLICABILITY**

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

#### **SECTION 5 : TIMING OF APPLICATION; FERTILIZER CONTENT AND APPLICATION RATE; TOTAL YEARLY APPLICATIONS; IMPERVIOUS SURFACES; FERTILIZER FREE BUFFER ZONES; MODE OF APPLICATION; LOW MAINTENANCE ZONES; MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATERIAL**

- (1) *Timing of application.* No person shall apply fertilizers containing nitrogen and/or phosphorus to lawn, turf and/or landscape plants during the Rainy Season and the Prohibited Application Period, or to saturated soils.
- (2) *Fertilizer content and application rate.*
  - a. *Phosphorous Content.* Fertilizers applied to lawn, turf, and/or landscape plants within the County shall contain no phosphorus per guaranteed analysis label.
  - b. *Slow Release Fertilizer.* Fertilizers applied to lawn, turf and/or landscape plants within the County shall contain no less than fifty (50) percent slow release nitrogen per guaranteed analysis label.
  - c. *Application Rate.* Fertilizers should be applied to lawn, turf and/or landscape plants at the lowest rate necessary without exceeding the maximum rate per application. Fertilizer shall not be applied at a rate greater than one (1) pound of nitrogen per 1000 square feet per application. No more than four (4) pounds of nitrogen per 1,000 square feet shall be applied to any lawn, turf or landscape area in any calendar year.
  - d. *Total Yearly Applications.* Fertilizers shall not be applied more than four (4) times during any one calendar year to a single area.
- (3) *Impervious Surfaces.* Fertilizer shall not be applied, spilled or otherwise deposited on any impervious surfaces. Any fertilizer applied, spilled or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and

## Collier County Fertilizer Ordinance

completely removed. Fertilizer released on an impervious surface must be immediately contained and either legally applied or returned to the original or other appropriate container.

- (4) *Fertilizer Free Buffer Zones.* No fertilizer shall be applied in or within ten (10) feet from the edge of any waterbody or seawall.
- (5) *Mode of application.* Spreader deflector shields are required when fertilizing by use of any broadcast or rotary spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from all impervious surfaces, fertilizer free buffer zones, and water bodies, including wetlands.
- (6) *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 Collier County Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations.
- (7) *Management of grass clippings and vegetative material.* In no case shall any person wash, sweep or blow off grass clippings and/or vegetative material into stormwater drains, ditches, conveyances, water bodies, roadways or other impervious surfaces.

### **SECTION 6: EXEMPTIONS**

- (1) The provisions set forth in Section 5 of 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, provided that fertilizers are applied in accordance with the appropriate best management practices manual adopted by the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy for the crop in question.
  - b. 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.
  - c. Golf courses, provided that the provisions of the Florida Department of Environmental Protection document, "*Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses, 2007*", as updated, as well as any training and certification requirements established in the "*Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes*", as updated, are followed when applying fertilizer.
  - d. Vegetable gardens.
  - e. Yard waste compost, mulches, or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil.
- (2) The provisions set forth in Section 5 regarding timing of application and fertilizer free buffer zones shall not apply to:

- a. Newly planted turf and/or landscape plants which may be fertilized only for a thirty (30) day establishment period beginning the thirtieth (30<sup>th</sup>) day after planting and extending to the sixth (60<sup>th</sup>) day after planting, provided documentation for newly established turf or landscape plants is maintained to support this exemption.
- (3) The provisions set forth in Section 5 regarding phosphorous content of fertilizer shall not apply to:
- a. Areas where soil tests confirm, and such tests are confirmed and approved by the County Manager or designee, that phosphorous levels are below 10 parts per million. This is equivalent to a “very low” designation for phosphorous set forth in the University of Florida Institute of Food and Agricultural Science Extension Soil Testing Laboratory Procedures Training Manual (Circular 1248, September 2002).

**SECTION 7: TRAINING AND CERTIFICATION OF LAWN AND LANDSCAPE PROFESSIONALS**

- (1) *Lawn and Landscape Maintenance-Mandatory Certification Requirements of Landscape Professionals.* The provisions contained in this section shall constitute the requirements for certification of lawn and landscape maintenance professionals by the County. Additional state training and certification may also be required.
- a. *General Requirements.* No commercial or institutional applicator shall apply fertilizer without first obtaining a County certification as a lawn and landscape maintenance professional.
  - b. *Certification.* To obtain County certification as a lawn and landscape maintenance professional, a person shall demonstrate competency through successful completion of a best management practices course, the curriculum of which will be approved by, provided by, or under the supervision of, the County and which will include at a minimum, the following general standards of competency:
    - i. Effects on the environment from sediment, nutrients, and pesticides moving off site through surface or ground water.
    - ii. Site design and plant selection that enhances the natural environment.
    - iii. Rates and methods of applying fertilizer and irrigation that minimize negative environmental consequences.
    - iv. Utilization of integrated pest management to both minimize pests and decrease chemical applications.



## Collier County Fertilizer Ordinance

- c. *Specific standards of Competency.* In addition to the general standards of competency, all commercial and institutional applicators of fertilizer within Collier County shall provide evidence of having successfully completed a course of study with at least six (6) hours of training in the areas identified under the general standard of competency.
- d. *Certification.* The County will provide a person who has paid the application fee and has satisfied the general and specific standards of competency set forth in this section with certificate indicating that the person is a certified lawn and landscape maintenance professional for the specified duration.
- e. After obtaining County certification as stated above, all certificate holders shall annually enroll in and successfully complete a refresher course.
- f. *Administration.* The program shall be administered by the County Manager or designee. The County Manager or designee is authorized to determine the qualifications of any applicant or any person performing lawn and landscape maintenance and to enforce this article as provided herein. The determination of qualifications of an applicant by the County Manager or designee may be appealed to the Board of County Commissioners by filing of an appeal within 14 days after receipt of determination. The Board of County Commissioners will conduct a hearing within 30 days, or will appoint a special magistrate within 60 days. The time periods may be waived by consent of the applicant and the County Manager or designee. The determination by Board of County Commissioners will constitute final agency action.
- g. *Procedure for Application for Certification.*
  - i. A person requesting certification by the County as a lawn and landscape maintenance professional shall obtain an application for certification from the County that requires proof of completion of a course of instruction in the areas identified under the standards of competency.
  - ii. The initial application fee and annual renewal fee amounts shall be set forth in the County's land development code, and will be used to defray the costs of the program, including without limitation, record keeping associated with the certification credentials, production of certificates and landscape certification cards, and all aspects of the written and verbal communications concerning the educational requirements.
- h. Lawn and landscape maintenance shall be performed only by those businesses that have at least one supervisor and a minimum of 10 percent of their field operations staff certified by the County as lawn and landscape professionals. At least one licensed lawn and landscape maintenance professional shall be present at any location where lawn or landscape maintenance is taking place.

## Collier County Fertilizer Ordinance

### i. *Revocation.*

- i. Certifications issued under this Article may be revoked by the County Manager or designee after notice and hearing for any of the following offenses:
  1. Fraud, misrepresentation or a false statement in the application of certification.
  2. Fraud, misrepresentation or a false statement in the performance of lawn or landscaping maintenance services.
  3. Violation of any condition, provision or qualification provided in the application.
  4. Conviction, nolo contendere plea or forfeiture resulting from violation of any county, state or federal law involving theft, fraud, violence or moral turpitude.
  5. Conducting business in an unlawful manner or in such manner as to threaten breach of the peace or menace to public health, safety or welfare.
  6. Failure to comply with any provision of this Article.
- ii. Written notice of revocation of a certification issued under this Article and the grounds therefore shall be mailed or delivered to a certified Lawn and Landscaping Professional at the address specified in its application.

- (2) *County-issued credentials required for display and inspection.* The County-issued lawn and landscape maintenance professionals certificate must be displayed on the premises of any venue that makes use of at least one institutional applicator or commercial fertilizer applicator and those institutions or businesses that employ at least one lawn and landscape maintenance professional.

The County-issued lawn and landscape maintenance professionals decal shall be displayed on every state-licensed motor vehicle used by a commercial fertilizer applicator or institutional applicator when performing lawn and landscape maintenance services within the County. The decal shall be displayed prominently and in such a manner as not to be obstructed.

## **SECTION 8: POSTING OF NOTICES AND EDUCATION**

- (1) Retail businesses within the County selling fertilizer shall:
- a. post a notice in a conspicuous location near the fertilizer notifying customers of the fertilizer ordinance regulations, particularly the required content of fertilizers.

- b. provide a County-approved brochure to all customers purchasing fertilizer products. Such brochures shall be developed and produced at the County's cost, and issued by the County to such retail businesses.

#### **SECTION 9: ENFORCEMENT**

- (1) The violation of any provision of this article shall subject the violator to enforcement procedure and to the penalties. This article may be enforced against any person actually committing the infraction and any owner of person in control of the property upon which the violation occurs or condition exists. Each non-compliance or violation, and each day thereof, shall constitute a separate offense.
- (2) Nothing contained herein shall prevent the County from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article. Such other lawful action shall include but shall not be limited to, and equitable action for injunctive relief or an action at law for damages.
- (3) Funds generated by penalties imposed under this section shall be used by Collier County for the administration and enforcement of this fertilizer ordinance and to further water conservation and nonpoint pollution prevention activities.

#### **SECTION 10: INCLUSION IN THE COUNTY CODE OF LAWS AND ORDINANCES**

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Collier County, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish this goal, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

#### **SECTION 11: CONFLICTS OF LAW**

#### **SECTION 12: SEVERABILITY**

If any clause, section or provision of this Ordinance shall be declared to be unconstitutional or invalid for any cause or reason, the same shall be eliminated from this Ordinance and the remaining portion of this Ordinance shall be in full force and effect and be as valid as if such invalid portion thereof had not been incorporated therein.

#### **SECTION 13: EFFECTIVE DATE**

This article shall take effect on ~~XX~~, however, a one hundred and eighty (180) days implementation period from the effective date is hereby established. During this

## Collier County Fertilizer Ordinance

implementation period, no citations, notices to appear or other enforcement actions will be taken by the County.