

ORDINANCE NO. 11-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, ADOPTING AN ORDINANCE FOR FLORIDA-FRIENDLY USE OF FERTILIZER ON URBAN LANDSCAPES; AND BY PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature, via the passage of Senate Bill 494 in 2009 and the creation of Florida Statute Section 403.9337, mandate the establishment of a Model Ordinance in Collier County concerning the use of fertilizer on urban landscapes,

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

SECTION ONE: FINDINGS

As a result of impairment to COLLIER 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 governing body of Collier 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 Collier 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, 2008,*" may be required by this ordinance.

SECTION TWO: PURPOSE AND INTENT

This Ordinance 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 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 Collier County's natural and constructed stormwater conveyances, rivers, creeks, canals, springs, lakes, estuaries and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of Collier 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 THREE: 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 County Manager, or an administrative official of 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 Collier County.

“Board or Governing Board” means the Board of County Commissioners of Collier 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 Collier County whose duty it is to enforce codes and ordinances enacted by Collier County.

“Commercial Fertilizer Applicator”, except as provided in 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 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 Collier County, issued by the National Weather Service, or if heavy rain is likely.

“Collier County Approved Best Management Practices Training Program” means a training program approved per 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 County Manager or his designee.

"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.

¹ World Meteorological Organization definition of heavy rain: Rainfall greater than or equal to 50 mm (2 inches) in a 24 hour period. <http://severe.worldweather.org/rain/>, and forecast keyword “likely”, http://www.wrh.noaa.gov/sew/MediaGuide/TermsOutlooks_Watches_Warnings.pdf.

“Specialized Turf Managers” means landscape manager of non agricultural land planted exclusively for golf course, parks, or athletic fields.

“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 Florida Statute 570.02

SECTION FOUR: APPLICABILITY

This Ordinance shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the area of Collier 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 FIVE: TIMING OF FERTILIZER APPLICATION

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 SIX: 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. 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. Fertilizer shall not be applied to native vegetated buffers required by Collier County Land Development Code section 3.05.07F.3.f. Caution shall be used to prevent direct deposition of nutrients into the water.

SECTION SEVEN: 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. 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 in this zone.

SECTION EIGHT: FERTILIZER CONTENT AND APPLICATION RATES

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

(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.

(c) 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.

SECTION NINE: 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.

SECTION TEN: MANAGEMENT OF GRASS CLIPPINGS AND VEGETABLE 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.

SECTION ELEVEN: EXEMPTIONS

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) 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;

(d) all golf courses provided that landscaping is done within the provisions of the Florida Department of Environmental Protection document, "Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses, 2007" (Florida Golf Course BMPs), as updated. Florida Golf Course BMPs shall be followed when performing landscaping on golf course practice and play areas. If Florida Golf Course BMPs are not

adhered to, Collier County may take enforcement action in accordance with Section 14 of this Ordinance;

(e) all Specialized Turf Managers provided that fertilization is based on the provisions of RULE 5E-1.003(2)(d), F.A.C. and UF/IFAS Publication #SL 191 , while maintaining the health and function of their Specialized Turf areas.

SECTION TWELVE: TRAINING

(a) All commercial and institutional applicators of fertilizer within the (un)incorporated area of Collier 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 THIRTEEN: LICENSING OF COMMERCIAL APPLICATORS

(a) Prior to 1 January 2014, all commercial applicators of fertilizer within the (un)incorporated area of Collier County shall abide by and successfully complete 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-10 friendly Landscapes” program, or an approved equivalent program, prior to obtaining a Collier 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 County Tax Collector’s office within 180 days of the effective date of this ordinance.

(b) After 31 December, 2013, all commercial applicators of fertilizer within the (un)incorporated area of Collier 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 County Tax Collector’s Office.

SECTION FOURTEEN: ENFORCEMENT

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

SECTION FIFTEEN: ~~EFFECTIVE DATE~~ PENALTIES

(a) For any violation or alleged violation of this article, a Code Enforcement Officer, may issue to the applicator a written warning statement.

(b) For any violation of this article, a Code Enforcement Officer may issue to the applicator a notice of violation.

(c) A violation of this article is a civil infraction. For any violation of this article, Code Enforcement Officer may issue to the applicator a citation.

(1) A citation issued by a Code Enforcement Officer under the provisions of this section shall be in a form prescribed by the county. Such citation shall include the date and time of issuance of the citation; name and address of the person in violation; the date of the violation; description of the violation; the section or sections of this article, or subsequent amendments, violated; the facts constituting probable cause; name and authority of the citing enforcement officer; also the procedure for the person to follow in order to pay the civil penalty, to contest the citation, or to appear before the enforcement board or special magistrate when a mandatory appearance is required as specified in the citation or when scheduled by the code enforcement department, in which case there is no option but to appear before the enforcement board or special magistrate; the applicable civil penalty if the person elects not to contest the citation and the applicable civil penalty if the person elects to contest the citation; also a conspicuous statement of the effect of failure to promptly pay the fine or appear before the enforcement board or special magistrate or in court.

(2) Upon conviction of any civil infraction, the violator shall be punished by a fine not to exceed \$500.00 in the discretion of the enforcement board, court or special magistrate, as applicable. Each day of the violation or noncompliance shall be considered as a separate and distinct offense. In addition, any person convicted under any provisions of this article shall pay all costs and expenses involved in the case.

(3) Each person or entity that commits one or more civil infraction(s) under this article, but does not contest the citation, shall pay a fine for each such separate offense as follows:

a. Nonaggravated violations. Fines for an uncontested citation of violation of any

provision of this article, except any aggravated violation described in subsection b., below and as defined above, are as follows:

1. First citation: \$105.00 for each first offense.

2. Second citation: \$255.00 for each second offense.

3. Third (or more) citation: \$405.00 for each such offense if a mandatory appearance is not required by the code enforcement officer named on the citation. If a mandatory appearance is required by the code enforcement officer named on the citation, the recommended fine should be more than \$350.00, but not more than \$500.00. The amount of the fine(s) shall be as determined by the enforcement board, special magistrate or other trier of fact. A mandatory appearance shall be required for each third and each subsequent citation if the violator has not at the time of issuance of the citation paid all fines and all surcharges for all prior citations.

b. Aggravated violations. A violation of section Five, section, or section Ten shall be considered an aggravated violation. For each uncontested aggravated violation, the fines and appearance obligations are as follows:

1. First citation: \$250.00 for each first aggravated violation.

2. Second citation: \$350.00 for each second aggravated violation and a mandatory appearance before the enforcement board or special magistrate.

3. Third (or more) citation (s): A mandatory appearance and a recommended fine of more than \$400.00 but not more than \$500.00 for each such aggravated violation. The amount of such fines shall be determined by the enforcement board or special magistrate or other trier of fact.

(4) A person who is required to appear does not have the option of paying the fine instead of appearing before the enforcement board or special magistrate.

Steven T. Williams
Assistant County Attorney