

ORDINANCE NO. 2008-__

AN ORDINANCE IN ORANGE COUNTY, FLORIDA, ENACTING A NEW “FERTILIZER MANAGEMENT ORDINANCE” REGULATING APPLICATION OF FERTILIZER TO LAWNS AND TURF IN ORANGE COUNTY; PROVIDING FOR DEFINITIONS; PROVIDING FOR SEASONAL RESTRICTIONS ON FERTILIZER APPLICATION; PROVIDING RESTRICTIONS FOR FERTILIZER CONSTITUENTS PHOSPHORUS AND NITROGEN; PROVIDING FOR RESTRICTIONS IN RATES OF FERTILIZER APPLICATION; PROVIDING FOR TRAINING REQUIREMENTS FOR COMMERCIAL APPLICATORS OF FERTILIZER; PROVIDING FOR EXEMPTIONS; PROVIDING FOR VARIANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR LIBERAL CONSTRUCTION; PROVIDING FOR INCLUSION INTO CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, surface water runoff and baseflow runoff leaves residential neighborhoods, commercial centers, industrial areas, and other lands of Orange County and enters into natural and artificial stormwater and drainage conveyances and natural water bodies in Orange County; and

WHEREAS, phosphorus and nitrogen – the primary nutrients associated with the degradation of groundwater and surface water – are commonly the primary components of fertilizer for turf application; and

WHEREAS, leaching and runoff of nutrients from improper or excess fertilization practices contributes to nitrogen and phosphorus loading in Orange County’s stormwater conveyances and natural water bodies and thus to the overgrowth of algae and vegetation in these waterways; and

WHEREAS, Orange County’s natural and artificial stormwater and drainage conveyances regulate the flow of stormwater to prevent flooding and undesired accumulations of water; and

WHEREAS, the overgrowth of algae and vegetation in stormwater and drainage conveyances hinders the goal of flood prevention and proper water conduction; 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 Orange County; and

WHEREAS, recent algae blooms and accelerated growth of aquatic weeds in Orange County’s water bodies have heightened community concerns about water quality and eutrophication of surrounding waters; 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 specific water bodies in Orange 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, the amount of fertilizer applied should be the minimum necessary for turf to meet initial establishment and basic growth needs; and

WHEREAS, it is generally recognized that Florida soils naturally have a suitable phosphorus content for most vegetative needs and that phosphorus is therefore rarely needed to create or maintain a vibrant landscape; and

WHEREAS, it has been recognized that the use of slow release nitrogen sources is more efficiently used by plants and less likely to leach out or wash away in stormwater runoff; and

WHEREAS, this ordinance is part of a multi-pronged effort by Orange County to reduce nutrient leaching and runoff through improved stormwater management, water conservation efforts, conversion of septic systems to central sewage treatment, public education, and updated development standards as set forth in the Orange County Code.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY:

Section 1. Enactment of New Fertilizer Management Ordinance. A new Fertilizer Management Ordinance, to be codified at Chapter 15, Article XVII of the Orange County Code, Section 15-801 through 15-812, is enacted to read as follows:

ARTICLE XVII. FERTILIZER MANAGEMENT ORDINANCE

Section 15-801. Definitions.

Apply or application means the physical deposit, placement, or release of fertilizer upon soil or turf.

Applicator means any person who applies fertilizer.

Article means Chapter 15, Article XVII of the Orange County Code of Ordinances, as amended, unless otherwise specified.

Best management practices (BMPs) means the practice or combination of practices based on research, field testing and/or expert review, determined to be the most effective and practicable on-location means, including economic and technological consideration, that minimize the negative environmental impacts associated with the installation and maintenance of lawns, turf and landscapes.

Commercial applicator means any person who applies fertilizer in exchange for money, goods, services or other valuable consideration and who is required by law, ordinance, or regulation to obtain an Orange County local business tax certificate.

County-approved best management practices training program means a program approved as such in writing by the Manager of the Orange County Environmental Protection Division. The program shall include the most current version of the “*Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002*,” as revised, as well as the provisions of this article. The Orange County Environmental Protection Division will maintain a publicly available list of approved training programs.

Fertilizer means any substance or mixture of substances, excluding pesticides, organic composts, and fertilizer derived from biosolids, 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.

Golf course means any public or private area of land designed and used exclusively for playing or practicing golf, including tees, fairways, greens, rough areas, hazards and driving ranges (stand-alone ranges or those associated with a golf course). A golf course shall also include the following uses if they are accessory to the above uses: clubhouses, and all facilities adjacent to and associated with the daily operations of the above-referenced areas. Golf-related structures or features on residentially zoned private land shall not constitute a golf course.

Groundcover means plants used in mass as alternative to turf or lawn and/or to create variety in landscape; usually not having a mature height over two (2) feet tall.

Person means any person, natural or artificial, individual, firm, association, organization, partnership, business trust, corporation, company, agent, employee,

or any other legal entity, the United States of America, and the state of Florida and all political subdivisions, regions, districts, municipalities, and public agencies.

Restricted season means the period from June 1st through September 30th.

Slow release means nitrogen in a form which delays its availability for plant uptake and use for an extended period after application, or which extends its availability to the plant longer than a readily available, rapid or quick-release product. This definition includes the terms “controlled release,” “timed release,” “slowly available,” and “water insoluble.”

Turf, sod, or lawn means a mat layer of monocotyledonous plants, including but not limited to, Bahia, Bermuda, Centipede, Paspalum, St. Augustine, and Zoysia, or other groundcover.

Section 15-802. Applicability.

Consistent with Section 704 of the Orange County Charter, this ordinance shall be applicable throughout all of Orange County.

Section 15-803. Weather and Seasonal Restrictions.

No fertilizer containing nitrogen or phosphorus shall be applied to turf during a period for which the National Weather Service has issued any of the following advisories for any portion Orange County: a severe thunderstorm warning or watch, flood warning or watch, tropical storm warning or watch, hurricane warning or watch, or a three-day cone of uncertainty.

No person, except applicators certified pursuant to Section 15-809 herein, shall apply fertilizer containing nitrogen or phosphorus to turf during the restricted season from June 1st through September 30th.

Section 15-804. Fertilizer Content; Application Rate.

(a) All fertilizer shall be labeled in accordance with Section 576.031, Florida Statutes (2007), as it may be amended or superseded.

(b) No fertilizer containing phosphorus shall be applied to turf unless a phosphorus deficiency in the soil underlying the turf is demonstrated by a soil analysis test performed by a State of Florida-certified laboratory within one year of the phosphorus application. Any person who obtains such a soil analysis test showing a phosphorus deficiency and who wishes to apply phosphorus to turf shall mail a copy of the test results to Orange County Environmental Protection

Division, Attention: Manager, 800 Mercy Drive, Orlando, Florida 32808 within 30 days of receipt of results. Notwithstanding any other provision of this ordinance, phosphorus shall not applied to turf at a rate greater than one-quarter of one pound (0.25 lb.) of phosphorus per 1,000 square feet per application, not to exceed one-half pound (0.5 lb.) of phosphorus per 1,000 square feet per year.

(c) No fertilizer containing nitrogen shall be applied to turf unless at least fifty (50) percent of its nitrogen content is slow release as indicated on the Guaranteed Analysis label, with no more than one pound (1 lb.) total nitrogen per 1,000 square feet of area per application.

(d) Notwithstanding subsection 15-804(c), commercial applicators may apply fertilizer to turf at a rate that does not exceed one-half of one pound (0.5 lb.) of readily available nitrogen per 1,000 square feet of area, provided, however, that any application that exceeds one-half of one pound (0.5 lb.) of nitrogen shall conform to subsection 15-804 (c).

(e) Notwithstanding any other provision of this section 15-804, no fertilizer shall be applied to turf at a rate that exceeds the limits per plant species set forth below:

Plant Species/ Nitrogen limit:

Bahia grass:	2-4 pounds of nitrogen per 1,000 square feet per year.
Bermuda grass:	4-6 pounds of nitrogen per 1,000 square feet per year.
Centipede grass:	2-3 pounds of nitrogen per 1,000 square feet per year.
St. Augustine grass:	2-5 pounds of nitrogen per 1,000 square feet per year.
Zoysia grass:	3-6 pounds of nitrogen per 1,000 square feet per year.

Section 15-805. Fertilizer-Free Zones.

(a) No fertilizer shall be applied within ten (10) feet of any lake, pond, stream, water body, water course or canal. Additionally, no fertilizer shall be applied within ten (10) feet of any wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code, as it may be amended or superseded).

(b) No fertilizer shall be deposited, washed, swept, or blown off – intentionally or inadvertently – onto any impervious surface, public right-of-way, public property, stormwater drain, ditch, conveyance, or water body.

(c) A low-maintenance zone is strongly recommended – though not required – for all areas within six (6) feet of the normal high water elevation of any lake, pond, stream, water body, water course or canal, or any wetland. Low-

maintenance zones should be planted and managed in such a way as to minimize the need for watering, mowing, and other active maintenance.

Section 15-806. Mode of Application.

Broadcast spreaders applying fertilizers must be equipped with deflector shields positioned to deflect fertilizer from all impervious surfaces, rights-of-way, stormwater drains, ditches, conveyances, and water bodies.

Section 15-807. Grass Clippings and Vegetative Material/Debris.

Grass clippings and/or vegetative material/debris shall not be deposited, washed, swept, or blown off – intentionally or inadvertently – onto any impervious surface, public right-of-way, stormwater drain, ditch, conveyance, or water body.

Section 15-808. Exemptions.

(a) Sections 15-805 through 15-810 of this article shall not apply to golf courses; provided, however, fertilizer shall not be applied to golf courses in excess of the provisions of the Florida Department of Environmental Protection (“FDEP”) document, *BMPs for the Enhancement of Environmental Quality on Florida Golf Courses, January 2007*, as FDEP updates or supersedes it from time to time.

(b) This article shall not apply to any bona fide farm operation that Orange County is without authority to regulate with regard to fertilizer application pursuant to the Florida Right to Farm Act, Sec. 823.14, *et seq.*, Florida Statutes (2007), as it may be amended.

(c) This article shall not apply to sports turf areas at parks and athletic fields.

(d) This article shall not apply to newly established turf for sixty (60) days after installation.

Section 15-809. Training Requirements; Proof of Compliance

(a) No commercial applicator shall cause fertilizer to be applied, except at his or her own residence, without proof of successful completion of a County-approved best management practices training program, unless he or she is under the direct physical supervision of a person who has proof of successful completion of such a training program.

(b) Each commercial applicator shall ensure that each applicator he or she employs has successfully completed a County-approved best management practices training program within 90 days of initial employment and shall ensure that prior to the successful completion of said program, each employee applicator shall work under the direct physical supervision of a person who has successfully completed said program.

Section 15-810. Commercial Applicators.

Prior to obtaining an Orange County local business tax certificate for a business that provides landscape services, each commercial applicator shall obtain a certificate of completion from a County-approved best management practices training program. Commercial applicators who hold an Orange County local business tax certificate as of the effective date of this article shall provide such certificate of completion to the Orange County Tax Collector's office within [INSERT A DATE THAT IS 180 DAYS AFTER THE PROJECTED EFFECTIVE DATE OF THIS ORDINANCE].

Section 15-811. Variances.

(a) All requests for a variance(s) from the requirements of this article shall be made in writing to the Manager of the Orange County Environmental Protection Division. The Manager may require the applicant for a variance to provide such information as necessary to carry out the purpose of this article. The Manager may approve, approve with conditions or deny requests for variances. A variance may be granted if strict application of the Orange County Fertilizer Management Ordinance would lead to unreasonable or unfair results in particular instances, provided that the applicant demonstrates with particularity that compliance will result in a substantial economic, health or other hardship on the applicant requesting the variance or those served by the applicant.

(b) Variances may be issued by the Manager only upon satisfaction of the following:

(1) A showing of good and sufficient cause by the applicant and that the cause is not self-imposed, and

(2) A determination by the Manager that the variance is the minimum necessary to afford relief, and

(3) A determination by the Manager that failure to grant the variance would result in a practical difficulty or a physical hardship affecting the applicant's economic use of the property, and

(4) A determination by the Manager that the granting of the variance will not result in threats to the health, safety and welfare of the residents of the County or conflict with existing local laws or ordinances.

(c) Any person aggrieved by the decision of the Manager may appeal pursuant to the provisions of section 15-38.

Section 15-812. Enforcement and Penalty.

(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. Every code enforcement officer is authorized to enforce the provisions of this article. Any person who violates 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:

- (i) First violation: written notice.
- (ii) Second violation: written notice.
- (iii) Third violation: Fine of fifty dollars (\$50.00).
- (iv) Fourth and subsequent violations: Fine of one hundred dollars (\$100.00).

(b) In addition to the enforcement provisions provided, the county may avail itself of any other legal or equitable remedy available to it 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. Any person violating this article shall be held liable for all costs incurred by the county in connection with enforcing this article, or any resolution enacted pursuant to the authority of this article including, but not limited to, attorney's fees.

Section 2. Severability. If any section, subsection, sentence, clause, phrase or word of this article is for any reason, held or declared to be unconstitutional, inoperative, or void, such holding of invalidity shall not affect the remaining portions of this article; and it shall be construed to have been the intent to adopt this article without such unconstitutional, invalid, or inoperative part therein; and the remainder of this article, after the exclusion of such part or parts, shall be deemed to be held valid as if such part or parts had not been included herein.

Section 3. Liberal Construction. The provisions of this ordinance shall be liberally construed to effectuate its purposes.

Section 4. Inclusion in the Orange County Code. 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 Orange County Code; 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.

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Section 5. Effective Date. This ordinance shall take effect pursuant to general law; provided, however, no citations, notices to appear, notices of violation or other enforcement procedures shall be instituted until September 1, 2009[INSERT A DATE THAT IS 180 DAYS AFTER THE PROJECTED EFFECTIVE DATE OF THIS ORDINANCE].

ADOPTED THIS _____ DAY OF _____, 2009.

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: _____

Richard T. Crotty,
Orange County Mayor

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk