

BCC Mtg. Date: February 8, 2022

ORDINANCE NO. 2022-03

**AN ORDINANCE AMENDING THE ORANGE COUNTY
CODE, CHAPTER 15, ARTICLE XVII, PERTAINING TO
FERTILIZER MANAGEMENT; AND PROVIDING AN
EFFECTIVE DATE.**

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

Section 1. Amendments; In General. Article XVII, Chapter 15 of the Orange County Code is hereby amended as set forth in Section 2, with additions being shown as underlined and deletions being shown as ~~strike-throughs~~.

Section 2. Amendments to Article XVII, Fertilizer Management Ordinance. Article XVII, Fertilizer Management Ordinance is amended to read as follows:

CHAPTER 15

ARTICLE XVII

FERTILIZER MANAGEMENT ORDINANCE

Sec. 15-800. Findings and purpose.

In order to protect Orange County's surface waters, groundwater, and springs from excessive or improper use of fertilizers, the board hereby creates an ordinance that regulates the use and application of fertilizer containing nitrogen or phosphorus, establishes training requirements, and sets a prohibited application period for fertilizer containing nitrogen or phosphorus within the county. As a result of impairment to Orange County's surface waters and contamination of ground waters caused by excessive nutrients, or as a result of increasing levels of nitrogen detected in the surface or ground water within the aquifers or springs within the boundaries of the county, the board has determined that additional fertilizer management measures are required to prevent overuse of fertilizers that contain nitrogen or phosphorus on lands within the county and avoid further water quality degradation.

STATE OF FLORIDA, COUNTY OF ORANGE
I HEREBY CERTIFY this is a copy of a document
approved by the BCC on FEB 08 2022
PHIL DIAMOND, COUNTY COMPTROLLER
By: *[Signature]* FEB 11 2022
Deputy Clerk Date



~~As a result of impairment to the county's surface waters, groundwater, and springs caused by excessive nutrients, the county has determined that the improper use of fertilizers on land creates a risk of contributing to adverse effects on surface and groundwater. This ordinance regulates the proper use and application of fertilizer, training requirements, and restricted application periods in the county.~~

~~Orange County's Environmental Protection Division will provide to the board of county commissioners a summary of data collected and current research related to excessive nutrients for evaluation and consideration of ordinance revisions on or before December 31, 2019.~~

Sec. 15-801. Definitions.

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

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 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 means any designated employee or agent of Orange County, Florida authorized to enforce codes and ordinances enacted by Orange County.

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.

Fertilizer means any substance or mixture of substances, excluding pesticides, ~~organic composts, and fertilizer derived from biosolids,~~ that contains one (1) 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.~~

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 or landscape plants. Institutional applicator shall include, but 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 or common ownership.

Landscape plants means any shrub, tree, or groundcover, excluding turf, and vegetable gardens, and landscape features that serve as a food source for humans.

Low maintenance zone means an area a minimum of ten (10) feet wide adjacent to water courses that is planted, preferably with native or Florida-Friendly Landscaping™, and managed in order to minimize the need for fertilization, watering, or mowing.

Person means any ~~person~~, natural or artificial person, 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 1 through September 30.~~

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 Orange County, issued by the National Weather Service, or if more than two inches of rain are forecasted within a 24-hour period.

Reclaimed water means highly treated wastewater or other water sources meeting the requirements of chapter 62-610, F.A.C., and that is suitable for direct, non-potable, beneficial reuse.

Saturated soil means 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 means nitrogen in a form ~~that~~ ~~which~~ delays its availability for plant uptake and use for an extended period after application, or ~~that~~ ~~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 piece of grass-covered soil held together by the stems and roots of the grass, ~~mat layer of monocotyledonous plants, including but not limited to, Bahia, Bermuda, Centipede, Paspalum, St. Augustine, or Zoysia.~~

Sec. 15-802. Applicability and notice of requirements.

(a) Consistent with section 704 of the Orange County Charter, this ordinance shall be applicable throughout all of Orange County, except in municipalities that have minimum standards for the regulation of fertilizer application that are no less strict than those in this article.

(b) Any business that sells fertilizer shall prominently display, at the point of distribution, ~~post~~ a notice to customers that the use of lawn and landscape fertilizers containing nitrogen or phosphorus within the county is restricted in accordance with this article. This notice shall be provided by the county ~~stating that the use of lawn and landscape fertilizers in the county is restricted in accordance with this chapter.~~

Sec. 15-803. Timing of fertilizer application. Weather and seasonal restricts.

~~(a) No fertilizer containing nitrogen or phosphorus shall be applied to turf or landscape plants during a period for which the National Weather Service has issued any of the following advisories for any portion [of] the county: a severe thunderstorm warning or watch, flood warning or watch, tropical storm warning or watch, or hurricane warning or watch.~~

(a) No applicator shall apply fertilizer containing nitrogen or phosphorus to turf or landscape plants during the prohibited application period or to saturated soils.

~~(b) No person, except applicators certified pursuant to section 15-809 herein, shall apply fertilizer containing nitrogen or phosphorus to turf or landscape plants during the restricted season from June 1 through September 30.~~

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

Sec. 15-804. Fertilizer content; application rate.

~~(a) No fertilizer shall be used unless labeled in accordance with state law.~~

(a) Fertilizers applied to turf or lawn within the county shall be labeled and applied in accordance with the requirements and directions provided in rule 5E-1.003, F.A.C., unless otherwise specified in this section.

~~(b) Notwithstanding section 15-803, No fertilizer containing phosphorus shall not be applied to any turf or landscape plants. Provided, however, except where a phosphorus deficiency has been demonstrated in the soil by a soil analysis test performed by a laboratory using University of Florida's Institute of Food and Agricultural Sciences ("UF/IFAS") approved methodology, phosphorus If a soil deficiency is demonstrated, phosphorus may then be applied at a rate no greater than one-quarter (0.25) of one (1) pound of phosphorus per one thousand (1,000) square feet per application, not to exceed one-half (0.5) pound of phosphorus per one thousand (1,000) square feet per year. Any person who obtains such a soil analysis test showing a phosphorus deficiency may apply~~

~~phosphorus and~~ shall provide the test results to the Orange County Environmental Protection Division, Attention: Manager within thirty (30) days of receipt of results.

(c) Notwithstanding section 15-803, No fertilizer containing nitrogen may only shall be applied if the nitrogen content is sixty-five (65) unless at least fifty (50) percent or greater of its nitrogen content is slow release as indicated on the Guaranteed Analysis label, with no more than one (1) pound total nitrogen per one thousand (1,000) square feet of area per application not to exceed three (3) pounds of nitrogen per one thousand (1,000) square feet per year. Commercial applicators may apply fertilizer at a rate that does not exceed one-half (0.5) of one (1) pound of readily available nitrogen per one thousand (1,000) square feet of area, provided however that any application that exceeds one-half (0.5) of one (1) pound of nitrogen conforms with this subsection. This requirement shall change to at least sixty five (65) percent slow release if the product is readily available on the local commercial market by July 1, 2020.

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

~~(e) Notwithstanding any other provision of this section 15-804, fertilizers applied to turf must follow the guidelines found in Rule 5E-1.003, F.A.C., as it may be amended.~~

(d) Where reclaimed water is available for irrigation, the fertilizer application rates herein shall be reduced in proportion to the nitrogen or phosphorus content of the water provided by the reclaimed water provider.

Sec. 15-805. Fertilizer-free zones.

(a) No fertilizer shall be applied within ~~fifteen (15)~~ twenty-five (25) feet of any surface waters or a wetland adjacent to ~~or~~ surface waters, including but not limited to a lake, spring, seep, pond, stream, water body, water course, or canal.

(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, inlet, ditch, conveyance, pond, or water body. 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. Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or landscape plants or any other legal site, or returned to the original or other appropriate container.

(c) A low-maintenance zone is strongly recommended, ~~though not required~~, for all areas within ten (10) feet of the normal high water elevation of any lake, pond, stream, water body, water course or canal, or any wetland, excluding permitted stormwater ponds. Low-maintenance zones should be planted and managed in such a way as to minimize the need for watering, mowing, and other active maintenance. 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 over-spray of aquatic weed control products in this zone.

Sec. 15-806. Mode of application.

Broadcast spreaders applying fertilizers must be equipped with deflector shields positioned to deflect fertilizer from all fertilizer-free zones, impervious surfaces, rights-of-way, stormwater drains, ditches, conveyances, and water bodies, including but not limited to any lake, spring, seep, pond, stream, water course or canal.

Sec. 15-807. Grass clippings and vegetative material/ or debris.

Grass clippings ~~and/or~~ vegetative material/ or debris shall not be deposited, washed, swept, or blown off, intentionally or inadvertently, onto any impervious surface, public right-of-way, stormwater drain, inlet, ditch, conveyance, pond, or water body. Any material or debris that is deposited into or that may block stormwater infrastructure shall be immediately removed and properly disposed or reincorporated into the landscape to the maximum extent practicable and consistent with this article.

Sec. 15-808. Exemptions; exceptions.

~~(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 set forth in Rule 5E-1.003(3), F.A.C., as it may be amended.~~

(a) Sections 15-803 through 15-805 of this article shall not apply to golf courses when fertilizers are applied by or under the direction of a professional with a valid certification from the *Florida*

Golf Course Best Management Practices Certification Training, or its successor program, by UF/IFAS, and the fertilizer must be applied following the most current version of the FDEP Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses. Golf courses shall provide proof of valid certification to Orange County Environmental Protection Division prior to June 1 each year.

~~(b) This article shall not apply to a any bona fide farm operation that the county is without authority to regulate with regard to fertilizer application pursuant to consistent with the Florida Right to Farm Act, F.S. (2016) § section 823.14, F.S et seq., or other applicable state law.~~

(c) This article shall not apply to properties that have pastures used for grazing livestock that are not subject to or covered under the Florida Right to Farm Act.

(d) This article shall not apply to 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.

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

(f) Sections 15-804(b) and (c) of this article shall not apply to vegetable or community gardens, defined as a plot of ground where herbs, fruits (fruit trees and shrubs), flowers, or vegetables are cultivated for human ingestion and not for commercial sale; and yard or food compost, mulches, or other similar materials that are primarily organic in nature and applied to improve the physical condition of the soil.

Sec. 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 a valid limited certification for urban landscape commercial fertilizer application from the Florida Department of Agriculture and Consumer Services, as specified in section 15-809(c).~~

~~(b) Each commercial applicator shall ensure that each applicator he or she employs has a valid limited certification for urban landscape commercial fertilizer application from the Florida Department of Agriculture and Consumer Services prior to the application of fertilizer.~~

~~(e) Possession of a valid limited certification for urban landscape commercial fertilizer application from the Florida Department of Agriculture and Consumer Services or the Florida Department of Environmental Protection's *Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries* training by UF/IFAS shall suffice as evidence of completion of a county approved best management practices training program.~~

(a) Any commercial applicator that applies fertilizer within the county shall have and carry in their possession at all times during application, evidence of certification by the Florida Department of Agriculture and Consumer Services as a commercial fertilizer applicator pursuant to rule 5E-14.117(11), F.A.C., and section 482.1562, F.S. All such commercial applicators must submit proof of certification to Orange County Environmental Protection Division to receive an applicator decal and shall affix the decal provided to all vehicles used during fertilizer application.

(b) Any institutional applicator that applies fertilizer within the county shall abide by and successfully complete the six-hour 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 UF/IFAS "Florida-Friendly LandscapingTM" program. All such institutional applicators must submit proof of training to Orange County Environmental Protection Division to receive an applicator decal and shall affix the decal provided to all vehicles used during fertilizer application.

~~(d)(c) Non-commercial and non-institutional applicators shall follow the recommendations of the Orange County office of the UF/IFAS *Florida Yards and Neighborhoods* program (or its successor) when applying fertilizers. In the event of a conflict between any provision contained within this article and the *Florida Yards and Neighborhoods* program, the requirements of this article shall apply. provide proof on an annual basis of successful completion of the online training "Orange County Fertilizer Application Education Course for Citizens" on the Orange County fertilizer web page.~~

~~(e) Certified applicators must show proof of training on all vehicles used during applications.~~

Sec. 15-810. Commercial applicators; business tax certificate.

~~Prior to obtaining or renewing an Orange County local business tax certificate for a business that provides landscape services that include fertilizer application, each commercial applicator shall provide proof of compliance with section 15-809(a) successful completion from county approved best management practices training programs within the previous three (3) years. Possession of a valid limited certification for urban landscape commercial fertilizer application from the Florida Department of Agriculture and Consumer Services or the Florida Department of Environmental Protection's *Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries* training by UF/IFAS shall suffice as evidence of completion of a county-approved best management practices training program.~~

Sec. 15-811. Variances.

~~(a) All requests for a variance 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.~~

~~(e) Any person aggrieved by the decision of the manager may appeal pursuant to the provisions of section 15-38.~~

(a) Generally. An applicant may apply for a variance from a requirement of this article to Orange County Environmental Protection Division and must pay a non-refundable variance processing fee. Review of the variance application will not begin until the fee is paid in full and payment does not guarantee approval of the variance request. At a minimum the applicant must provide information that:

- (1) Identifies the section(s) of this article from which a variance is requested and the extent of the requested variance;
- (2) Describes the impact of the requested variance on the environment, using valid scientific data, including any receiving waters (ground water and surface water) in the county;
- (3) Explains the effect of the requested variance on any existing nutrient impairments, or Total Maximum Daily Loads adopted for the receiving waters, using valid scientific data;
- (4) Describes how strict compliance with the identified section would impose a unique, substantial and unnecessary hardship on the applicant or how literal application of the section affects the applicant in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule;
- (5) Explains why the unique, substantial and unnecessary hardship is not self-imposed or self-created; and
- (6) Explains how the purpose of this article will be achieved by the requested variance.

(b) Procedure. The environmental protection officer shall render a written recommendation to approve, approve with conditions, or deny the variance application and schedule a hearing on the request before the Environmental Protection Commission (EPC). The EPC shall render a recommendation to the board to approve, approve with conditions, or deny the variance application. The recommendation of the EPC will be timely provided to the board and the board may accept the recommendation or schedule for a public hearing.

(c) Criteria. A variance application may receive an approval or an approval with conditions if it is determined that that strict

application of this article would lead to unreasonable or unfair results. The final decision granting or denying the variance request shall contain a statement of the relevant facts or data and reasons supporting the decision. In addition, it should be determined by the county that granting the variance:

- (1) Would not negatively impact the receiving water body or the environment;
- (2) Would not be contrary to the public interest;
- (3) Where, owing to special conditions or circumstances, strict compliance with the provisions herein would impose a unique, substantial and unnecessary hardship on the applicant that is not self-imposed or self-created; and
- (4) Would not be contrary to the intent and purpose of this ordinance.

Sec. 15-812. Enforcement ~~and penalty.~~

(a) It shall be unlawful for any person to violate any provision of this article, except section 15-802(b), or any provision of any ~~regulation resolution~~ enacted pursuant to the authority of this article. Every code enforcement officer is authorized to enforce the provisions of this article. Any ~~applicator person~~ who violates any provision of this article, except section 15-802(b), or any provision of any ~~regulation resolution~~ enacted pursuant to the authority of this article, ~~shall be subject to the following penalties:~~ may be prosecuted in accordance with chapter 11. Each day such a violation continues shall be considered a separate offense.

~~(1) First violation: Written notice.~~

~~(2) Second violation: Fine of fifty dollars (\$50.00), except for commercial applicators it shall be five hundred dollars (\$500.00).~~

~~(3) Third and subsequent violations: Fine of one hundred dollars (\$100.00), except for commercial applicators it shall be seven hundred fifty dollars (\$750.00).~~

(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.

Secs. 15-813 — 15-819. Reserved.

Section 3. Effective Date. This ordinance shall become effective June 1, 2022.

ADOPTED THIS 8th DAY OF February 2022.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk to the Board of County Commissioners

By: *Phil Diamond*
Deputy Clerk

