

ORDINANCE NO. 09- \_\_\_\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING CHAPTER 10 OF THE CODE OF LAWS OF LEON COUNTY, FLORIDA, BY ADDING A NEW ARTICLE XIV, TO REGULATE THE USE OF FERTILIZER WITHIN THE UNINCORPORATED AREAS OF THE COUNTY; PROVIDING DEFINITIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, as a result of impairment to Leon County’s surface waters caused by excessive nutrients under the Florida Impaired Waters Rule, 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 unincorporated areas of the county, the Leon County Board of County Commissioners has determined that the improper use of fertilizers on lands within the unincorporated areas of the county contributes to adverse effects on surface and/or groundwater. Accordingly, the Leon County Board of County Commissioners find that additional measures than are otherwise required by the most recent edition of the “Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002” may be required by this ordinance.

Furthermore, a violation of this ordinance is determined to be irreparable and irreversible.

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

SECTION 1: Adding a new Article XIV to the Code of Laws of Leon County, Florida, as follows:

1 **ARTICLE XIV. FERTILIZER USE**

2 **Sec. 10-14.101. Purpose and Intent.**

3 This Article regulates the proper use of fertilizers by any fertilizer applicator; requires  
4 proper training of commercial and institutional fertilizer applicators; establishes training and  
5 licensing requirements; establishes a prohibited and restricted application period; specifies  
6 allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones,  
7 and exemptions. The Article requires the use of Best Management Practices that provide  
8 specific management guidelines to minimize negative secondary and cumulative environmental  
9 effects associated with the misuse of fertilizers. These secondary and cumulative effects have  
10 been observed in and on the County's natural and constructed stormwater and drainage  
11 conveyances, creeks, canals, springs, lakes, ponds, and other water bodies. Collectively, these  
12 water bodies are an asset critical to the environmental, recreational, cultural and economic well  
13 being of the County's residents and the health of the public. Overgrowth of algae and vegetation  
14 hinder the effectiveness of flood attenuation provided by natural and constructed stormwater and  
15 drainage conveyances. Regulation of nutrients contained in fertilizer will help improve and  
16 maintain water and habitat quality.

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18 **Sec. 10-14.102. Definitions.** The following words, terms and phrases, when used in this Article,  
19 shall have the meanings ascribed to them in this Article, except where the context clearly  
20 indicates a different meaning.

21 Administrator means the County Administrator, or designee.

22 Application or apply means the actual physical deposit of fertilizer to turf or landscape  
23 plants.

1        Applicator means any person who applies fertilizer on turf and/or landscape plants in the  
2 unincorporated areas of the county.

3        Best management practices under this Article means turf and landscape practices or  
4 combination of practices based on research, field-testing, and expert review, determined to be the  
5 most effective and practicable on-location means, including economic and technological  
6 considerations, for improving water quality, conserving water supplies and protecting natural  
7 resources.

8        County means the unincorporated areas of the county.

9        County approved best management practices training program means a training program  
10 approved by the Administrator that includes at a minimum, a) the most current version of the  
11 “Florida Green Industries Best Management Practices for Protection of Water Resources in  
12 Florida, June 2002,” as revised and, b) all of the provisions and requirements of this Article; or  
13 c) an alternative training program under Section 10-14.111 of this Article.

14        Code enforcement officer, official, or inspector means any authorized agent or employee  
15 of the County whose duty it is to ensure code compliance.

16        Commercial fertilizer applicator means any person who applies fertilizer on turf and/or  
17 landscape plants in the County in exchange for money, goods, services or other valuable  
18 consideration.

19        Fertilize, fertilizing, or fertilization means the act of applying fertilizer to turf, specialized  
20 turf, or landscape plants.

21        Fertilizer means any substance or mixture of substances that contains one or more  
22 recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or  
23 provides other soil enrichment, or provides other corrective measures to the soil.

1       Institutional fertilizer applicator means any person, other than a non-commercial, or  
2 commercial applicator (unless such definitions also apply under the circumstances), that applies  
3 fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional fertilizer  
4 applicators shall include, but shall not be limited to, owners and managers of public lands,  
5 schools, parks, athletic fields, religious institutions, utilities, industrial or business sites and any  
6 residential properties maintained in condominium and/or common ownership.

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

8       Lawn has the same definition as turf.

9       Low maintenance zone means an area a minimum of six (6) feet wide adjacent to  
10 watercourses, which is planted and managed in order to eliminate the need for fertilization and  
11 minimize the need for watering, mowing, etc.

12       Non-commercial fertilizer applicator means any person other than a commercial fertilizer  
13 applicator or institutional fertilizer applicator who applies fertilizer on turf and/or landscape  
14 plants, such as an individual owner of a single-family residential unit.

15       Pasture means land used for livestock grazing that is managed to provide feed value.

16       Person means any natural person, business, corporation, limited liability company,  
17 partnership, limited partnership, association, club, organization, and/or any group of people  
18 acting as an organized entity.

19       Prohibited application period means the time period during which a flood watch or  
20 warning, or a tropical storm watch or warning, or a hurricane watch or warning, or a 3-day cone  
21 of uncertainty is in effect for any portion of Leon County, issued by the National Weather  
22 Service, or if heavy rain is expected.

1        Readily available nitrogen means the water-soluble fraction of formulated fertilizer  
2 determined by the sum of the percentage of Nitrate and Ammoniacal Nitrogen plus Other Water  
3 Soluble Nitrogen and/or Urea Nitrogen in the guaranteed analysis section of the label.

4        Turf, sod, or lawn means a piece of grass-covered soil held together by the roots of the  
5 grass.

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7        **Sec. 10-14.103. Applicability.**

8        This Article shall be applicable to and shall regulate any and all applicators of fertilizer  
9 and areas of application of fertilizer within the unincorporated areas of the county, unless such  
10 applicator is specifically exempted by the terms of this Article. This Article shall be applicable  
11 to and shall regulate any and all application of fertilizer within the unincorporated areas of the  
12 county unless otherwise provided in Article IV of Chapter 10 of the Leon County Land  
13 Development Code (LDC). In case of a conflict between the requirements in Article IV of  
14 Chapter 10, LDC, and this Article, the provisions in Article IV of Chapter 10, LDC, shall prevail.  
15 This Article shall be prospective only, and shall not impair any existing contracts.

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17        **Sec. 10-14.104. Timing of fertilizer application.**

18        No applicator shall apply fertilizers to turf and/or landscape plants during the prohibited  
19 application period.

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**Sec. 10-14.105. Fertilizer content and application rates; irrigation with reclaimed wastewater.**

(a) Fertilizers applied to turf and/or landscape plants within the unincorporated areas of the 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. Fertilizer content in reclaimed wastewater used for irrigation shall be applied in accordance with Section 10-14.105(d).

(b) Except as provided in Section 10-14.105(a), fertilizers shall be applied to turf and/or landscape plants at the lowest rate necessary. Nitrogen shall not be applied at an application rate greater than 0.7 lbs of readily available nitrogen per 1000 ft<sup>2</sup> at any one time based on the soluble fraction of formulated fertilizer, with no more than 1 lb total N per 1000 ft<sup>2</sup> to be applied at any one time and not to exceed the annual nitrogen recommendations in the Fertilization Guidelines for Established Turfgrass Lawns set forth below for convenience:

**Fertilization Guidelines for Established Turfgrass Lawns within the unincorporated areas of the county:**

<u>Species</u>	<u>Nitrogen recommendations (lbs N / 1000 ft<sup>2</sup> / year)</u>
<u>Bahia grass</u>	<u>2-3</u>
<u>Bermuda grass</u>	<u>3-5</u>
<u>Centipede grass</u>	<u>1-2</u>
<u>St. Augustine grass</u>	<u>2-4</u>
<u>Zoysia grass</u>	<u>3-5</u>

1           (c) Nitrogen fertilizer may not be applied to turf or landscape plants except as provided  
2 above unless a tissue deficiency has been verified by an approved test.

3           (d) The use of water from a reclaimed wastewater system must be in accordance with an  
4 approved reclaimed wastewater reuse nutrient management plan. The plan shall contain, at a  
5 minimum, the frequency and volume of application, restricted periods of application (if any),  
6 application rates and required best management practices. If fertilizer other than that contained  
7 in the reclaimed water is to be applied, the nutrient management plan shall show that the  
8 cumulative nutrient loading does not exceed those established in this Article.

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10 **Sec. 10-14.106. Impervious surfaces.**

11           Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces.  
12 Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any  
13 impervious surface shall be immediately and completely removed to the greatest extent  
14 practicable. Fertilizer released on an impervious surface must be immediately contained and  
15 either legally applied to turf or any other legal site, or returned to the original or other  
16 appropriate container. In no case shall fertilizer be washed, swept, or blown off impervious  
17 surfaces into stormwater drains, ditches, conveyances, or water bodies.

18

19 **Sec. 10-14.107. Fertilizer free zones.**

20           Fertilizer shall not be applied within ten (10) feet of any pond, stream, watercourse, lake,  
21 drainage ditch, or wetland as defined by the Florida Department of Environmental Protection  
22 (Chapter 62-340, Florida Administrative Code) or from the top of a retaining wall associated  
23 with any of these features. If more stringent County Code regulations apply, this provision does  
24 not relieve the requirement to adhere to the more stringent regulations.

1 See Article IV of Chapter 10 of the Leon County Land Development Code. Newly planted turf  
2 and/or landscape plants may be fertilized in this zone only for the first sixty (60)-day  
3 establishment period.

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5 **Sec. 10-14.108. Low maintenance zones.**

6 A voluntary six (6) foot low maintenance zone is strongly recommended, but not  
7 mandated, from any pond, stream, water course, lake, wetland or from the top of a retaining wall  
8 associated with any of these features. A properly permitted swale/berm system is recommended  
9 for installation at the landward edge of this low maintenance zone to capture and filter runoff.  
10 No mowed or cut vegetative material should be deposited or left remaining in this zone or  
11 deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products  
12 in this zone. If more stringent County regulations apply, this provision does not relieve the  
13 requirement to adhere to the more stringent regulations. See Article IV of Chapter 10 of the  
14 Leon County Land Development Code.

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16 **Sec. 10-14.109. Mode of application.**

17 Spreader deflector shields are required when fertilizing via rotary spreaders. Deflectors  
18 must be positioned such that fertilizer granules are deflected away from all impervious surfaces,  
19 fertilizer-free zones and water bodies, including wetlands.

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1 **Sec. 10-14.110. Exemptions.**

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

3 (a) Bona fide farm operations as defined in the Florida Right to Farm Act, Section  
4 823.14, F.S., provided that fertilizers are applied in accordance with the appropriate Best  
5 Management Practices Manual adopted by the Florida Department of Agriculture and Consumer  
6 Services, Office of Agricultural Water Policy for the crop in question.

7 (b) Other properties not subject to or covered under the Florida Right to Farm Act that  
8 have pastures used for grazing livestock provided that fertilizers are applied in accordance with  
9 the appropriate Best Management Practices Manual adopted by the Florida Department of  
10 Agriculture and Consumer Services, Office of Agricultural Water Policy for the crop in question.

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12 **Sec. 10-14.111. Training and certification; presence on site of trained applicator during**  
13 **application of fertilizer.**

14 (a) Within 180 days of the effective date of this Article and every three years thereafter,  
15 all applicators of fertilizer within the unincorporated areas of the county, other than private  
16 homeowners on their own property, shall abide by and successfully complete a County-approved  
17 best management practices training program as defined in this Article. Upon successful  
18 completion and compliance with the requirements in this Article, a certificate of completion and  
19 a certification card valid for a period of three years will be provided by the entity providing the  
20 training. Persons working as employees and under the direct and physical supervision of  
21 commercial applicators that hold a current certificate of completion and certification card shall  
22 be exempt from the requirement to complete a County-approved best management practices  
23 training program.

1           **(b) At least one person holding a current County-approved best management practices**  
2 **training Certificate shall be present at all times on any job site while applying fertilizer is in**  
3 **progress.**

4           **(c) Homeowners, and any other applicators not otherwise required to be certified are**  
5 **encouraged to follow the requirements of this Article as well as the recommendations of the**  
6 **University of Florida IFAS Florida Yards and Neighborhoods program when applying**  
7 **fertilizers.**

8           **(d) Persons holding a Certificate of Training issued in conjunction with the Florida Green**  
9 **Industries Best Management Practices Program for protection of water resources in Florida; or,**  
10 **other State approved certificate of training or, a certification issued by another local government,**  
11 **that includes at a minimum "Florida Green Industries Best Management Practices for**  
12 **Protection of Water Resources in Florida, June 2002," or newer as the basis for instruction, may**  
13 **obtain certification by the County after contacting the County's Environmental Compliance**  
14 **Division or designee and presenting proof of the currently active status of training as described**  
15 **in paragraph (a) above, and attesting that he/she has received and read a copy of this Article.**  
16 **The Environmental Compliance Division may adopt policies related to this exception, and shall**  
17 **maintain a list of approved alternative training programs.**

18  
19 **Sec. 10-14.112. Enforcement**

20 **It is the intent hereof that the administrative, civil, and criminal penalties imposed through**  
21 **execution of this Article be of such amount as to ensure immediate and continued compliance**  
22 **with this Article. This article shall be enforced by the Leon County Code Enforcement Board, as**  
23 **set out in Chapter 6 of the Leon County Code of Laws, if the penalties in this subsection are not**  
24 **collected within fourteen (14) days. A violation of this ordinance is determined to be irreparable**

1 and irreversible, such that no action to cure the violation is possible and a penalty in the form of  
2 a fine is warranted. Violation of any provision of this Article shall be subject to the following  
3 penalties:

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5 (a) First violation. Written notification and education.

6 (b) Second violation. Fifty dollars (\$50) for residential applicators applying fertilizer to  
7 their own property and one hundred dollars (\$100) for commercial or institutional  
8 fertilizer applicators.

9 (c) Third violation(s). One hundred dollars (\$100) for residential applicators applying  
10 fertilizer to their own property and two hundred dollars (\$200) for commercial or  
11 institutional fertilizer applicators.

12 (d) Fourth and subsequent violation(s). A minimum of one hundred dollars (\$100) for  
13 residential applicators applying fertilizer to their own property and a minimum of two  
14 hundred dollars (\$200) for commercial or institutional fertilizer applicators, not to exceed  
15 one thousand dollars (\$1,000).

16 (e) Any applicator that violates the provisions of this Article may be responsible for the  
17 County's costs of prosecution of any violation, including any costs to remedy or clean up  
18 any environmental condition caused by an act, which constitutes a violation of this  
19 Article:

20  
21 **Sec. 10-14.113. Variances**

22 Any applicator of fertilizer regulated by the provisions of this Article may apply to the  
23 Board of Adjustment and Appeals for a variance from the requirements of this Article.

1           (1) Standards and procedures. The applicant must identify the specific provisions of the  
2 fertilizer regulations for which a variance is requested, and shall address the following:

3           (a) Whether, as a result of soil or tissue content at the point of the proposed application or  
4 for other geographical, environmental or geological reasons or other circumstances, such person  
5 should not be required to adhere to the strict provisions of this Article; and

6           (b) Whether such person is able and willing to use a less strict application method or  
7 alternative materials or methods; and

8           (c) A plan for fertilizer application, including where the fertilizer will be applied, the  
9 frequency of application, contents of fertilizer to be applied, and period of time for which the  
10 variance is requested.

11           (2) Following receipt of the variance application, the Board of Adjustment and Appeals  
12 shall, at a timely regularly scheduled meeting:

13           a. Approve the variance request or any portion thereof

14           b. Approve the variance request or any portion thereof subject to conditions

15           c. Disapprove the variance request, specifying the reasons therefore in writing; or

16           d. Continue consideration of the variance request to a time certain.

17           (3) Criteria for granting variance. The Board of Adjustment and Appeals may grant the  
18 variance request if it determines that:

19           a. The applicant satisfactorily demonstrates that all practical alternatives have been  
20 evaluated, and the soil or tissue content at the point of the proposed application is such that the  
21 provisions of the fertilizer regulations create a hardship for the applicant; or

1           b. The applicant satisfactorily demonstrates that all practical alternatives have been  
2 evaluated, and due to unique geographical, environmental or geological reasons or other unique  
3 circumstances, the applicant should not be required to adhere to the strict provisions of the  
4 fertilizer regulations; and

5           c. The applicant satisfactorily demonstrates that its plan for fertilizer application is  
6 consistent with the purpose and intent of the fertilizer regulations to the greatest extent feasible  
7 and that adverse impacts, if any, are appropriately mitigated.

8           (4) Time periods for variances. Any Board of Adjustment and Appeals order approving  
9 a variance request to the fertilizer regulations shall establish an expiration date for the variance.

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11 **SECTION 2. Conflicts.** All ordinances or parts of ordinances in conflict with the provisions of  
12 this Ordinance are hereby repealed to the extent of such conflict, as of the effective date of this  
13 Ordinance, except to the extent of any conflicts with the Tallahassee-Leon County  
14 Comprehensive Plan, as amended, which provisions shall prevail over any parts of this  
15 Ordinance which are inconsistent, either in whole or in part, with the Comprehensive Plan.

16  
17 **SECTION 3. Severability.** If any section, subsection, sentence, clause, phrase or portion of this  
18 article is for any reason held invalid or unconstitutional by any court of competent jurisdiction,  
19 such portion shall be deemed a separate, distinct, and independent provision and such holding  
20 shall not affect the validity of the remaining portions of this Ordinance.

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22 **SECTION 4. Effective date.** This ordinance shall be effective according to law.

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DULY PASSED AND ADOPTED BY the Board of County Commissioners of Leon County,  
Florida, this \_\_\_\_ day of \_\_\_\_\_, 2009.

LEON COUNTY, FLORIDA

BY: \_\_\_\_\_  
BRYAN DESLOGE, CHAIRMAN  
BOARD OF COUNTY COMMISSIONERS

ATTEST:  
BOB INZER, CLERK OF THE COURT  
LEON COUNTY, FLORIDA

BY: \_\_\_\_\_

APPROVED AS TO FORM:  
LEON COUNTY ATTORNEY'S OFFICE

BY: \_\_\_\_\_  
HERBERT W.A. THIELE, ESQ.  
COUNTY ATTORNEY