



Interoffice Memorandum

AGENDA ITEM

November 1, 2021

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Jon V. Weiss, P.E., Director
Planning, Environmental, and Development
Services Department 

CONTACT PERSON: **David D. Jones, P.E., CEP, Manager**
Environmental Protection Division
407-836-1406

SUBJECT: November 30, 2021 – Work Session
Fertilizer Management Ordinance

Orange County's Fertilizer Management Ordinance (Chapter 15, Article XVII) was last updated in June 2017. During the public hearing to adopt revisions to the ordinance, the Board directed the Environmental Protection Division (EPD) to gather additional research and data on excessive nutrients for evaluation and consideration for future ordinance revisions.

At this work session, staff will present a summary of the results of studies related to the contribution of fertilizer to nitrate concentrations within groundwater in the Wekiva Springshed, educational efforts to promote understanding of the current ordinance requirements countywide, proposed revisions to the ordinance, a comparison of key ordinance provisions with local counties and other counties in Florida, and input received from stakeholders and advisory boards. This work session will allow EPD to obtain Board direction in order to refine the draft ordinance prior to coming back to the Board for a public hearing.

This item is for informational purposes only; no action is required.

DDJ/JVW:jk
Attachment

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ORDINANCE NO. 2021-___

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 nutrients, the board hereby creates an ordinance that regulates the use and application of fertilizer, training requirements, and a prohibited fertilizer application period in the county. As a result of impairment to Orange County's surface waters caused by excessive nutrients, or, as a result of increasing levels of nitrogen in the surface or ground water within the aquifers or springs within the boundaries of the county, the board has determined that the use of fertilizers on lands within the county creates a risk of contributing to adverse effects on surface or ground water and finds that additional management measures are required by this ordinance.

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

40 ~~Orange County's Environmental Protection Division will provide~~
to the board of county commissioners a summary of data collected
42 ~~and current research related to excessive nutrients for evaluation and~~
consideration of ordinance revisions on or before December 31,
44 ~~2019.~~

Sec. 15-801. Definitions.

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

48 *Applicator* means any person who applies fertilizer.

50 *Article* means chapter 15, article XVII, of the Orange County
Code of Ordinances, as amended, unless otherwise specified.

52 *Best management practices (BMPs)* means the practice or
combination of practices based on research, field testing and expert
54 review, determined to be the most effective and practicable on-
location means, including economic and technological
56 considerations, for improving water quality, conserving water
supplies and protecting natural resources.

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

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

64 *Fertilizer* means any substance or mixture of substances,
excluding pesticides, organic composts, and fertilizer derived from
66 biosolids, that contains one (1) or more recognized plant nutrients
and promotes plant growth, or controls soil acidity or alkalinity, or
68 provides other soil enrichment, or provides other corrective
measures to the soil.

70 *Guaranteed analysis* means the percentage of plant nutrients or
72 measures of neutralizing capability claimed to be present in a
fertilizer.

74 *Golf course* means any public or private area of land designed and
76 used exclusively for playing or practicing golf, including tees,
78 fairways, greens, rough areas, hazards and driving ranges (stand-
alone ranges or those associated with a golf course). A golf course
80 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.

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

86 *Institutional applicator* means any person other than a private,
non-commercial or a commercial applicator (unless such definitions
88 also apply under the circumstances), that applies fertilizer for the
purpose of maintaining turf or landscape plants. Institutional
90 applicator shall include, but not be limited to, owners, managers or
employees of public lands, schools, parks, religious institutions,
92 utilities, industrial or business sites, and any residential properties
maintained in condominium or common ownership.

94 *Landscape plants* means any shrub, tree, or groundcover,
excluding turf and vegetable gardens.

96 *Low maintenance zone* means an area a minimum of ten (10) feet
wide adjacent to water courses that is planted and managed in order
to minimize the need for fertilization, watering, or mowing.

98 *Person* means any ~~person~~, natural or artificial person, individual,
100 firm, association, organization, partnership, business trust,
corporation, company, agent, employee, or any other legal entity,
102 the United States of America, and the State of Florida and all
political subdivisions, regions, districts, municipalities, and public
agencies.

104 ~~*Restricted season* means the period from June 1 through
September 30.~~

106 *Prohibited application period* means the time period during which
a Flood Watch or Warning, or a Tropical Storm Watch or Warning,
108 or a Hurricane Watch or Warning is in effect for any portion of

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

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

114 *Saturated soil* means soil in which the voids are filled with water.
115 Saturation does not require flow. For the purposes of this article,
116 soils shall be considered saturated if standing water is present or the
117 pressure of a person standing on the soil causes the release of free
118 water.

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

126 *Turf, sod, or lawn* means a piece of grass-covered soil held
127 together by the roots of the grass. ~~mat layer of monocotyledonous~~
128 plants, including but not limited to, Bahia, Bermuda, Centipede,
Paspalum, St. Augustine, or Zoysia.

130 *Urban landscape* means pervious areas on residential,
131 commercial, industrial, institutional, highway rights-of-way, or
132 other nonagricultural lands that are planted with turf or horticultural
133 plants. For the purposes of this article, agriculture has the same
134 meaning as in section 570.02, F.S.

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

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

141 (b) Any business that sells fertilizer shall prominently display,
142 at the point of distribution, ~~post~~ a notice to customers that the use of
143 lawn and landscape fertilizers in the count is restricted in accordance
144 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.

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

148 (a) ~~No fertilizer containing nitrogen or phosphorus shall be~~
149 ~~applied to turf or landscape plants during a period for which the~~
150 ~~National Weather Service has issued any of the following advisories~~
151 ~~for any portion [of] the county: a severe thunderstorm warning or~~
152 ~~watch, flood warning or watch, tropical storm warning or watch, or~~
153 ~~hurricane warning or watch. No applicator shall apply fertilizer~~
154 ~~containing nitrogen or phosphorus to turf or landscape plants during~~
155 ~~the prohibited application period or to saturated soils.~~

156 (b) ~~No person, except applicators certified pursuant to section~~
157 ~~15-809 herein, shall apply fertilizer containing nitrogen or~~
158 ~~phosphorus to turf or landscape plants during the restricted season~~
159 ~~from June 1 through September 30.~~

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

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

167 (a) Fertilizers applied within Orange County shall be labeled
168 and applied in accordance with the requirements and directions
169 provided in rule 5E-1.003, F.A.C., unless otherwise specified in this
170 section. ~~No fertilizer shall be used unless labeled in accordance with~~
171 state law.

172 (b) No fertilizer containing phosphorus shall be applied to any
173 turf or landscape plants. ~~Provided, however, except~~ where a
174 phosphorus deficiency has been demonstrated in the soil by a soil
175 analysis test performed by a laboratory using University of Florida's
176 Institute of Food and Agricultural Sciences ("UF/IFAS") approved
177 methodology, ~~phosphorus~~ If a deficiency is demonstrated,
178 phosphorus may then be applied at a rate no greater than one-quarter
179 (0.25) of one (1) pound of phosphorus per one thousand (1,000)
180 square feet per application, not to exceed one-half (0.5) pound of
181 phosphorus per one thousand (1,000) square feet per year. Any
182 person who obtains such a soil analysis test showing a phosphorus
183 deficiency ~~may apply phosphorus and~~ shall provide the test results
184 to the Orange County Environmental Protection Division,
185 Attention: Manager within thirty (30) days of receipt of results.

186 (c) No fertilizer containing nitrogen shall be applied unless at
188 least ~~fifty (50)~~ sixty-five (65) percent of its nitrogen content is slow
190 release as indicated on the Guaranteed Analysis label, ~~with no more~~
192 ~~than one (1) pound total nitrogen per one thousand (1,000) square~~
~~feet of area per application not to exceed two (2) pounds of nitrogen~~
~~per one thousand (1,000) square feet per year. 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.~~

194 (d) ~~Notwithstanding section 15-804(e), commercial~~
196 ~~applicators may apply fertilizer at a rate that does not exceed one-~~
198 ~~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(e).~~

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

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

208 (e) Nitrogen or phosphorus fertilizer may be applied to
vegetable gardens or fruit trees as provided in UF/IFAS
recommendations for vegetable gardens and fruit trees.

210 **Sec. 15-805. Fertilizer-free zones.**

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

214 (b) No fertilizer shall be deposited, washed, swept, or blown off,
216 intentionally or inadvertently, onto any impervious surface, public
right-of-way, public property, stormwater drain, ditch, conveyance,
218 or water body. Any fertilizer applied, spilled, or deposited, either
intentionally or accidentally, on any impervious surface shall be
220 immediately and completely removed to the greatest extent
practicable. Fertilizer released on an impervious surface must be
222 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.

224 (c) A low-maintenance zone is strongly recommended, ~~though~~
~~not required,~~ for all areas within ten (10) feet of the normal high

226 water elevation of any lake, pond, stream, water body, water course
228 or canal, or any wetland, excluding permitted stormwater ponds.
230 Low-maintenance zones should be planted and managed in such a
232 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.

234 **Sec. 15-806. Mode of application.**

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

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

242 Grass clippings ~~and/or~~ vegetative material/ or debris shall not be
deposited, washed, swept, or blown off, intentionally or
244 inadvertently, onto any impervious surface, public right-of-way,
stormwater drain, ditch, conveyance, or water body. Any material
or debris that is deposited into or that may block stormwater
246 infrastructure shall be immediately removed to the maximum extent
practicable.

248 **Sec. 15-808. Exemptions; exceptions.**

250 (a) Sections 15-805 through 15-810 of this article shall not
apply to golf courses; provided, however, fertilizer shall not be
252 applied to golf courses in excess of the provisions set forth in rule
Rule 5E-1.003(3), F.A.C., as it may be amended, and golf courses
254 follow the most current version of the *FDEP Best Management
Practices for the Enhancement of Environmental Quality on Florida
Golf Courses.*

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

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

264 (d) This article shall not apply to any lands used for bona fide
266 scientific research, including, but not limited to, research on the
 effects of fertilizer use on urban stormwater, water quality,
 agronomics, or horticulture.

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

270 **Sec. 15-809. Training requirements; proof of compliance.**

272 ~~(a) No commercial applicator shall cause fertilizer to be applied,~~
 ~~except at his or her own residence, without a valid limited~~
274 ~~certification for urban landscape commercial fertilizer application~~
 ~~from the Florida Department of Agriculture and Consumer Services,~~
 ~~as specified in section 15-809(e).~~

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

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

290 (a) All commercial and institutional applicators within Orange
 County, shall abide by and successfully complete the six-hour
292 training and continuing education requirements in the *Florida-*
 friendly Best Management Practices for Protection of Water
294 *Resources by the Green Industries*, offered by the Florida
 Department of Environmental Protection through the UF/IFAS
 "Florida-Friendly Landscaping" program.

296 (b) All commercial applicators within Orange County shall have
 and carry in their possession at all times when applying fertilizer,
298 evidence of certification by the Florida Department of Agriculture
 and Consumer Services as a commercial fertilizer applicator
300 pursuant to rule 5E-14.117(11), F.A.C., and section 482.1562, F.S.

302 (c) All commercial applicators must submit proof of
 subparagraph (b) to Orange County EPD to receive an applicator

304 decal and shall affix the decal provided by Orange County EPD to
305 all vehicles used during applications.

306 (d) Non-commercial applicators shall follow the
307 recommendations of the Orange County office of the UF/IFAS
308 Florida Yards and Neighborhoods program (or its successor) when
309 applying fertilizers provide proof on an annual basis of successful
310 completion of the online training “Orange County Fertilizer
311 Application Education Course for Citizens” on the Orange County
312 fertilizer web page.

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

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

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

328 **Sec. 15-811. Variances.**

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

342 (b) ~~A variance~~ Variances may be issued by the manager ~~only~~
upon satisfaction of the following:

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

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

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

352 (4) A determination by the manager that the granting of the
variance will not ~~threaten~~ result in threats to the health, safety, and
354 and welfare of the residents of the county or conflict with existing
local laws or ordinances.

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

Sec. 15-812. Enforcement and penalty.

358 (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
360 regulation resolution enacted pursuant to the authority of this article.
Every code enforcement officer is authorized to enforce the
362 provisions of this article. Any applicator person who violates any
provision of this article, except section 15-802(b), or any provision
364 of any regulation resolution enacted pursuant to the authority of this
article, shall be subject to the following penalties: may be
366 prosecuted in accordance with chapter 11. Each day such a violation
continues shall be considered a separate offense.

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

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

372 (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).~~

374 (b) In addition to the enforcement provisions provided, the
county may avail itself of any other legal or equitable remedy
376 available to it including, without limitation, injunctive relief, in the
enforcement of any provision of this article or any provision of any
378 resolution enacted pursuant to the authority of this article. Any

380 person violating this article shall be held liable for all costs incurred
382 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.

384 **Section 3. Effective Date.** This ordinance shall become effective as provided by
general law.

386 **ADOPTED THIS ____ DAY OF _____, 2022.**

388 **ORANGE COUNTY, FLORIDA**
By: Board of County Commissioners

390 By: _____
392 Jerry L. Demings
Orange County Mayor

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

398 By: _____
400 Deputy Clerk

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