



Interoffice Memorandum

AGENDA ITEM

May 3, 2017

TO: Mayor Teresa Jacobs
—AND—
Board of County Commissioners

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

CONTACT PERSON: Lori Cunniff, CEP, CHMM, Deputy Director
Community, Environmental and Development
Services Department

SUBJECT: June 6, 2017 – Work Session
Revisions to Article VXII Fertilizer Management Ordinance

In 2009, Orange County adopted Article XVII, Fertilizer Management Ordinance as part of an effort to reduce leaching and runoff of nitrogen and phosphorus, which have shown to be the leading pollutants in our County waters.

In 2016, the Florida Legislature passed the Springs and Aquifer Protection Act. This act requires Priority Springs stakeholders to adopt the minimum standards in the State of Florida Model Fertilizer Ordinance by July 1, 2017. Orange County is included in this requirement due to the proximity to Wekiwa Springs. Orange County's ordinance was found to be deficient by the Florida Department of Environmental Protection and requires updating to include the addition of landscape plants and cleanup of spilled fertilizer.

In addition, there is outdated language that was copied from the Florida Urban Turf Rule, Florida Administrative Code 5E-1.003. Staff have updated these parts of the ordinance and where applicable, referenced by rule.

The work session will provide a summary of all updates and changes discussed from stakeholder meetings that were held during March and April of 2017.

This work session is for informational purposes only, and no action is required by the Board.

LC/JVW: mg

Attachment

ORDINANCE NO. 2017-____

AN ORDINANCE AMENDING THE "FERTILIZER MANAGEMENT ORDINANCE" REGULATING THE APPLICATION OF FERTILIZER ON LAND IN ORANGE COUNTY; CREATING SECTION 15-800, FINDINGS AND PURPOSE; AMENDING SECTION 15-801, DEFINITIONS; AMENDING SECTION 15-803, WEATHER AND SEASONAL RESTRICTIONS; AMENDING SECTION 15-804, FERTILIZER CONTENT; APPLICATION RATE; AMENDING SECTION 15-805, FERTILIZER-FREE ZONES; AMENDING SECTION 15-808, EXEMPTIONS; EXCEPTIONS; AMENDING SECTION 15-809, COMMERCIAL TRAINING REQUIREMENTS; PROOF OF COMPLIANCE; AMENDING SECTION 15-810, COMMERCIAL APPLICATORS; BUSINESS TAX CERTIFICATE; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Amendments; In General. Chapter 15 of the Orange County Code is amended as set forth in Section 2 through Section 14 herein with new additions being shown as underlined and deletions being shown by strike-throughs.

Section 2. Creating Section 15-800. Section 15-800, presently "Reserved" under Article XVI (Pollutant Storage Tanks) of Chapter 15, is created to read as follows:

Sec. 15-800. Findings and Purpose.

As a result of impairment to Orange County's surface waters, groundwater, and springs caused by excessive nutrients, Orange 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 Orange County.

38 **Section 3. Amending Section 15-801.** Section 15-801 (“Definitions.”) is amended to
read as follows:

40 **Sec. 15-801. Definitions.**

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

44 *Applicator* means any person who applies fertilizer.

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

48 *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
50 on-location means, including economic and technological
considerations, for improving water quality, conserving water
52 supplies, and protecting natural resources.

54 *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
56 to obtain an Orange County local business tax certificate.

58 ~~*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.~~
60 ~~The program shall include the most current version of “Florida~~
~~Friendly Best Management Practices for Protection of Water~~
~~Resources by Green Industries, December 2008.” The Orange~~
62 ~~County Environmental Protection Division will maintain a publicly~~
64 ~~available list of approved training programs.~~

66 *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
68 and promotes plant growth, or controls soil acidity or alkalinity, or
provides other soil enrichment, or provides other corrective
70 measures to the soil.

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

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

84 *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.

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

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

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

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

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

Section 4. No amendment to Section 15-802. There is no amendment to Section 15-

106 802 ("Applicability."), which shall remain unchanged.

Sec. 15-802. Applicability.

108 Consistent with section 704 of the Orange County Charter,
this ordinance shall be applicable throughout all of Orange County,
110 except in municipalities that have minimum standards for the

regulation of fertilizer application that are no less strict than those in this article.

Section 5. Amending Section 15-803. Section 15-803 ("Weather and seasonal restrictions."), is amended to read as follows:

Sec. 15-803. Weather and seasonal restrictions.

(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 Orange County: a severe thunderstorm warning or watch, flood warning or watch, tropical storm warning or watch, or hurricane warning or watch, ~~or a three-day cone of uncertainty.~~

(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.

Section 6. Amending Section 15-804. Section 15-804 ("Fertilizer content; application rate.") is amended to read as follows:

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

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

(b) No fertilizer containing phosphorus shall be applied to turf or landscape plants. Provided, however, where phosphorus deficiency has been demonstrated in the soil ~~underlying the turf~~ by a soil analysis test performed by a ~~State of Florida certified~~ laboratory using University of Florida's Institute of Food and Agricultural Sciences ("UF/IFAS") approved methodology, phosphorus may then be applied ~~to turf~~ at a rate no greater than one-quarter of one pound (0.25 lb.) of phosphorus per one thousand (1,000) square feet per application, not to exceed one-half pound (0.5 lb.) of phosphorus per one thousand (1,000) square feet per year. Any person who obtains such a soil analysis test showing a phosphorus deficiency ~~and who wishes to may~~ apply phosphorus ~~to turf and shall mail a copy of~~ provide the test results to the Orange County Environmental Protection Division, Attention: Manager, ~~800 Mercey Drive, Orlando, Florida 32808~~

148 within thirty (30) days of receipt of results. ~~In addition, phosphorus~~
150 ~~may be applied at the foregoing rate to newly installed, regardless~~
~~of whether a soil deficiency test has been performed, for a period~~
~~of sixty (60) days following installation.~~

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

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

164 (e) Notwithstanding any other provision of this section
165 15-804, fertilizers applied to turf must follow the guidelines found
166 in Rule 5E-1.003, F.A.C., as it may be amended. ~~no fertilizer shall~~
~~be applied at a rate that exceeds the limits per plant species set~~
~~forth below:~~

168 **Plant Species/Nitrogen limit:**

169 ~~Bahia grass: 2—4 pounds of nitrogen per 1,000~~
170 ~~square feet per year.~~

171 ~~Bermuda grass: 4—6 pounds of nitrogen per 1,000~~
172 ~~square feet per year.~~

173 ~~Centipede grass: 2—3 pounds of nitrogen per 1,000~~
174 ~~square feet per year.~~

175 ~~St. Augustine grass: 2—5 pounds of nitrogen per~~
176 ~~1,000 square feet per year.~~

177 ~~Zoysia grass: 3—6 pounds of nitrogen per 1,000~~
178 ~~square feet per year.~~

Section 7. Amending Section 15-805. Section 15-805 ("Fertilizer-free zones.") is

180 amended to read as follows:

Sec. 15-805. Fertilizer-free zones.

(a) No fertilizer shall be applied within ~~ten (10)~~ fifteen (15) feet of any wetland or surface waters, including but not limited to a 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. 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 ~~six (6)~~ 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.

Section 8. No amendment to Section 15-806. There is no amendment to Section 15-

806 ("Mode of application."), which shall remain unchanged.

Sec. 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 9. No amendment to Section 15-807. There is no amendment to Section 15-

218 807 ("Grass clippings and vegetative material/debris."), which shall remain unchanged.

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

220 Grass clippings and/or vegetative material/debris shall not be
222 deposited, washed, swept, or blown off, intentionally or
stormwater drain, ditch, conveyance, or water body.

224 **Section 10. Amending Section 15-808.** Section 15-808 ("Exemptions; exceptions.")
is amended to read as follows:

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

228 (a) Sections 15-805 through 15-810 of this article shall
not apply to golf courses; provided, however, fertilizer shall not be
230 applied to golf courses in excess of the provisions of the Florida
Department of Environmental Protection ("FDEP") document,
232 BMPs for the Enhancement of Environmental Quality on Florida
Golf Courses, January 2007 set forth in Rule 5E-1.003(3), F.A.C.,
as it may be amended.

234 (b) This article shall not apply to any bona fide farm
operation that Orange County is without authority to regulate with
236 regard to fertilizer application pursuant to the Florida Right to
Farm Act, F.S. (20072016) § 823.14 et seq., or other applicable
238 state law.

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

Section 11. Amending Section 15-809. Section 15-809 ("Commercial training
242 requirements; proof of compliance.") is amended to read as follows:

244 **Sec. 15-809. ~~Commercial~~ Training requirements; proof of
compliance.**

246 (a) No commercial applicator shall cause fertilizer to be
applied, except at his or her own residence, without proof of
248 successful completion of a county approved best management
practices training program within the previous three (3) years,
250 unless he or she is under the direct physical supervision of a person
who has proof of successful completion of such a training program

252 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).

254 (b) Each commercial applicator shall ensure that each
256 applicator he or she employs has ~~successfully completed a county-~~
~~approved best management practices training program within one~~
258 ~~hundred eighty (180) days of initial employment and shall ensure~~
~~that prior to the successful completion of said program, each~~
260 ~~employee applicator shall work under the direct physical~~
~~supervision of a person who has successfully completed said~~
262 ~~program~~ a valid limited certification for urban landscape
commercial fertilizer application from the Florida Department of
264 Agriculture and Consumer Services prior to the application of
fertilizer.

266 (c) Possession of a valid limited certification for urban
268 landscape commercial fertilizer application from the Florida
270 Department of Agriculture and Consumer Services or the Florida
Department of Environmental Protection's Florida Friendly Best
272 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.

274 (d) Non-commercial applicators shall provide proof on
an annual basis of successful completion of the online training
276 "Orange County Fertilizer Application Education Course for
Citizens" on the Orange County fertilizer web page.

Section 12. Amending Section 15-810. Section 15-810 ("Commercial applicators;

278 business tax certificate.") is amended to read as follows:

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

280 Prior to obtaining or renewing an Orange County local
282 business tax certificate for a business that provides landscape
284 services, each commercial applicator shall provide proof of
successful completion from ~~a county-approved best management~~
286 ~~practices training programs within the previous three (3) years.~~
~~Commercial applicators who hold an Orange County local business~~
~~tax certificate as of the effective date of this article shall provide~~
288 ~~such certificate of completion to the Orange County Tax~~
~~Collector's office no later than March 1, 2010.~~ Possession of a
290 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.

Section 13. No amendment to Section 15-811. There is no amendment to Section 15-
811 ("Variances."), which shall remain unchanged.

Sec. 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 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 manger 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.

328 **Section 14. No amendment to Section 15-812.** There is no amendment to Section 15-
812 ("Enforcement and penalty."), which shall remain unchanged.

330 **Sec. 15-812. Enforcement and penalty.**

332 (a) It shall be unlawful for any person to violate any
provision of this article, or any provision of any resolution enacted
334 pursuant to the authority of this article. Every code enforcement
officer is authorized to enforce the provisions of this article. Any
336 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:

338 (1) First violation: Written notice.

 (2) Second violation: Written notice.

340 (3) Third violation: Fine of fifty dollars (\$50.00).

342 (4) Fourth and subsequent violations: Fine of one
hundred dollars (\$100.00)

344 (b) In addition to the enforcement provisions provided,
the county may avail itself of any other legal or equitable remedy
346 available to it including, without limitation, injunctive relief, in the
enforcement of any provision of this article or any provision of any
348 resolution enacted pursuant to the authority of this article. Any
person violating this article shall be held liable for all costs
350 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.

352 **Section 15. Effective Date.** This ordinance shall take effect pursuant to general law.

354 ADOPTED THIS _____ DAY OF June, 2017.

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

358

360 By: _____
Teresa Jacobs
362 Orange County Mayor

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

368 By: _____
Deputy Clerk

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