

Model Ordinance

**ORDINANCE NO. _____
CLEAN WATER COUNTY FERTILIZER USE AND APPLICATION CODE**

AN ORDINANCE REGULATING THE USE OF FERTILIZERS CONTAINING NITROGEN AND/OR PHOSPHORUS WITHIN CLEAN WATER COUNTY; PROVIDING FOR ENFORCEMENT AND PENALTY; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE, INCLUDING AN IMPLEMENTATION PERIOD.

WHEREAS, surface water runoff leaves residential neighborhoods, commercial centers, industrial areas, and other lands of Clean Water County with low permeability soils; and

WHEREAS, base flow runoff flows from residential neighborhoods, commercial centers, industrial areas, and other lands of Clean Water County with high permeability soils; and

WHEREAS, surface water and baseflow runoff enter into natural and artificial stormwater and drainage conveyances and natural water bodies in Clean Water County; and

WHEREAS, Clean Water County's natural and artificial stormwater and drainage conveyances regulate the flow of stormwater to prevent flooding; and

WHEREAS, this ordinance is part of a multi-pronged effort by Clean Water County to reduce nutrient leaching into runoff through such policies as, but not limited to, stormwater management, water conservation, conversion from septic systems to central sewage treatment, public education, and development standards as set forth in the Clean Water County Land Development Regulations; and

WHEREAS, the detrimental effects of nutrient-laden runoff are magnified in a coastal community such as Clean Water County, due to the proximity of stormwater and drainage conveyances to coastal and estuarine waters; and

WHEREAS, nutrients are commonly found in various forms as a Fertilizer for turf and landscape application and if applied improperly, may contribute to pollution in natural water bodies; and

WHEREAS, nutrient-laden runoff containing nitrogen and phosphorous fosters undesirable plant and algae growth in natural water bodies resulting in poor water quality; and

WHEREAS, the quality of our streams, lakes, rivers, Tampa Bay and the Gulf of Mexico is critical to environmental, economic, and recreational prosperity and to the health, safety, and welfare of the citizens of Clean Water County; and

WHEREAS, the amount of Fertilizer applied should be the minimum necessary for the turf and landscape to meet initial establishment and subsequent growth needs; and

WHEREAS, it is generally recognized that many Florida soils are naturally high in phosphorus; and

WHEREAS, state and federal limits on the amount of nutrients permitted in designated impaired waters, including significant portions of the Tampa Bay ecosystem, may require local governments to make significant investments in water quality improvement projects;

THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CLEAN WATER COUNTY, FLORIDA:

ARTICLE _____. FERTILIZER USE AND APPLICATION

SECTION 1. This Ordinance establishes and enacts Ordinance No. _____ as codified in Sections _____ through _____ of the Clean Water County Code

Findings of Fact

As a result of adverse impacts to Clean Water County waters caused by excessive nutrients resulting from the incorrect or unnecessary application of fertilizers containing phosphorus and/or nitrogen, the Clean Water County (Board of County Commissioners or City Council) has determined that the lands and waters of Clean Water County are at particularly high risk for adverse effects to surface and ground water from such fertilizer containing phosphorus/nitrogen not applied in accordance with best management practices established by the Florida Department of Environmental Protection and the University of Florida Institute of Agricultural Sciences.

SECTION 3. Section No. _____ of the Clean Water County Code is hereby restated as follows:

SECTION _____. Short Title.

This Article is referred to as the "Clean Water County Fertilizer Use and Application Code."

SECTION 4. Section No. _____ of the Clean Water County Code is hereby restated as follows:

SECTION _____. Purpose and Intent.

This Ordinance regulates the proper use of Fertilizers by any Applicator and requires proper training of Commercial and Institutional Fertilizer Applicators by establishing a Restricted

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Season for fertilizer application, fertilizer-free zones, low maintenance zones, exemptions, training and licensing requirements. The Ordinance requires the use of Best Management Practices which provide specific management guidelines to minimize negative secondary and cumulative environmental effects associated with the misuse of Fertilizers. These secondary and cumulative effects have been observed in and on Clean Water County's natural and artificial stormwater and drainage conveyances, rivers, lakes, canals, estuaries, interior freshwater wetlands, and Tampa Bay. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of Clean Water County residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and artificial stormwater and drainage conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in Fertilizer, will help improve and maintain water and habitat quality.

SECTION 5. Section No. _____ of the Clean Water County Code reads:

SECTION _____. Definitions.

For this Article, the following terms shall have the meanings set forth in this section unless the context clearly indicates otherwise.

"Administrator" means the Clean Water County Administrator, or an administrative official of Clean Water County government designated by the County Administrator to administer and enforce the provisions of this Article.

"Application" or "Apply" means the actual physical deposit of Fertilizer to Turf or Landscape Plants.

"Applicator" means any Person who applies Fertilizer on Turf and/or Landscape Plants in Clean Water County.

"Article" means Chapter ____, Article ____ of the Clean Water County Code of Ordinances, as amended, unless otherwise specified.

"Board" means the Board of County Commissioners of Clean Water County, Florida.

"Best Management Practices" means turf and landscape practices which minimize the negative environmental impacts of installation and maintenance of landscapes.

"Code Enforcement Officer, Official, or Inspector" means any designated employee or agent of Clean Water County whose duty it is to enforce codes and ordinances enacted by Clean Water County.

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"Commercial Fertilizer Applicator" means any Person who applies Fertilizer on Turf and/or Landscape Plants in Clean Water County in exchange for money; goods, services or other valuable consideration.

"Fertilize," "Fertilizing," or "Fertilization" means the act of applying Fertilizer to Turf, specialized Turf, or Landscape Plants.

"Fertilizer" means any substance or mixture of substances, including pesticide/fertilizer mixtures such as "weed and feed" products, that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.

"Institutional Applicator" means any Person, other than a non-commercial or commercial Applicator (unless such definitions also apply under the circumstances), that applies Fertilizer for the purpose of maintaining turf and/or landscape Plants. Institutional Applicators shall include, but shall not be limited to, owners and managers of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.

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

"Low Maintenance Zone" means an area a minimum of six (6) feet wide adjacent to water courses which is planted with non-turf grass vegetation and managed in order to minimize the need for fertilization, watering, mowing, etc.

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

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

"Restricted Season" means June 1st through September 30th.

"Clean Water County Approved Best Management Practices Training Program" means a training program approved by the Clean Water County Administrator that includes at a minimum, the most current version of the *"Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002,"* as revised and the more stringent requirements set forth in this Article.

"Specialized Turf Manager" means a Person responsible for Fertilizing or directing the Fertilization of a golf course or publicly owned athletic field.

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“Surface Water” means fresh, brackish, saline or tidal waters, including but not limited to bays, rivers, lakes, streams, wetlands, springs, impoundments, canals and other artificial water bodies.

"Turf," "Sod," or "Lawn" means a piece of grass-covered soil held together by the roots of the grass.

SECTION 6. Section No. _____ of the Clean Water County Code is hereby amended to read as follows:

SECTION _____. Applicability.

This Ordinance shall be applicable to and shall regulate any and all applicators of Fertilizer and areas of application of Fertilizer within the jurisdiction of Clean Water County, unless such applicator is specifically exempted by the terms of this Ordinance from the regulatory provisions of this Ordinance. This Ordinance shall be prospective only, and shall not impair any existing contracts.

SECTION 7. Section No. _____ of the Clean Water County Code reads as follows:

SECTION _____. Timing of Application.

No applicator shall Apply Fertilizers containing nitrogen and phosphorous to Turf and/or Landscape Plants during the Restricted Season.

SECTION 8. Section No. _____ of the Clean Water County Code reads as follows:

SECTION _____. Fertilizer Content and Application Rate.

(a) It is recommended that no fertilizer containing phosphorus be applied to Turf and/or Landscape Plants within Clean Water County at any time unless a soil test conducted by a licensed professional demonstrates a phosphorus deficiency and the type of landscape material that is intended to be planted require phosphorus.

(b) No nitrogen fertilizer shall be applied on newly established turf for the first 30 days.

(c) Fertilizers should be applied to turf and/or landscape plants at the lowest rate necessary, following the recommendations contained in the *Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002*.

SECTION 9. Section No. _____ of the Clean Water County Code hereby reads as follows:

SECTION _____. Impervious Surface

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Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces. 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 any other legal site, or returned to the original or other appropriate container. In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or surface waters.

SECTION 10. Section No. _____ of the Clean Water County Code is hereby amended to read as follows:

SECTION _____. Fertilizer-Free Zones.

Fertilizer shall not be applied within ten (10) feet of any surface water, or from the top of a seawall. If more stringent Clean Water County Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations.

SECTION 11. Section No. _____ of the Clean Water County Code is hereby amended to read as follows:

SECTION _____. Low Maintenance Zone.

A voluntary six (6) foot low-maintenance, “no-mow” zone is strongly encouraged, but not mandated, from any above-described surface water or from the top of a seawall to reduce the potential for fertilizer residue entering such water bodies and wetlands. If more stringent Clean Water County Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. No vegetative material shall be deposited or left remaining in this zone or water. Care should be taken to prevent the overspray of aquatic weed products in this zone.

SECTION 12. Section No. _____ of the Clean Water County Code reads as follows:

SECTION _____. Management of Grass Clippings and Vegetative Material

In no case shall grass clippings, vegetative material, and/or vegetative debris either intentionally or accidentally, be washed, swept, or blown off into stormwater drains, ditches, conveyances, surface waters, or roadways.

SECTION 13. Section No. _____ of the Clean Water County Code reads as follows:

SECTION _____. Exemptions.

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The provisions set forth above in Section Nos. 54-1025 through 54-1031 of this Ordinance shall not apply to:

(a) Golf courses. For all golf courses, the provisions of the Florida Department of Environmental Protection (FDEP) document, *"BMPs for the Enhancement of Environmental Quality on Florida Golf Courses, January 2007,"* as updated, shall be followed when applying fertilizer to golf courses. All other Specialized Turf Managers shall apply the concepts and principles embodied in the *"Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002"* while maintaining the health and function of their turf and landscape plants; and

(b) bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14, Florida Statutes.

(c) The provisions set forth above in Section 54-1025 through 54-1031 of this Article shall not apply to other properties not subject to or covered under the Florida Right to Farm Act that have Pastures used for grazing livestock.

SECTION 14. Section _____ of the Clean Water County Code reads as follows:

SECTION _____. Certification and Training.

(a) All Site Supervisors and managers of professional lawn care companies, as well as government and institutional landscape supervisors, shall abide by and successfully complete a County approved Best Management Practices training program within one-hundred eighty (180) days of adoption of this ordinance. This training shall include the most current version of the *"Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002,"* as revised and shall include the more stringent requirements set forth in Sections _____ through _____ of this Article. Upon successful completion, a Certificate of Completion will be provided. A list of approved training programs shall be maintained by County on the County Fertilizer Management website.

(b) Employees of lawn and landscape maintenance companies who are not site supervisors or managers shall also be trained in the above-referenced BMPs by the company or a contractor of the company within ninety (90) days of being employed by the company; the training shall include but not be limited to, proper mowing, proper fertilization practices, mulching, and debris removal. Such training may be provided by a BMP-certified site supervisor or manager employed by the company. Training shall be required of all personnel of such companies within six (6) months of the adoption of new or revised BMPs or local ordinance requirements.

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(c) A vehicle decal issued by Clean Water County indicating that the company is in compliance with the training and certification requirements herein shall be affixed and maintained on the exterior of all vehicles and/or trailers used by the company in connection with the application of Fertilizer within the area regulated by this Article. The vehicle and trailer decals shall be provided by Clean Water County upon submittal of demonstration of compliance of the company with the requirements herein.

(d) Certifications issued to employees of lawn and landscape maintenance companies by other Tampa Bay communities with equivalent fertilizer ordinances will be recognized in Clean Water County as meeting the certification and training requirements herein.

(e) The County strongly encourages the establishment of training programs using Spanish-speaking certified BMP trainers.

(d) Private homeowners are encouraged to be familiar with and to utilize the recommendations of the University of Florida IFAS *Florida Yards and Neighborhoods* program when applying fertilizer.

SECTION 15. Section _____ of the Clean Water County Code is hereby renumbered to _____ and amended to read as follows:

SECTION 15. Licensing of Commercial Applicators.

(a) In addition to any current or future training or education requirements mandated by the State of Florida and/or County, all Commercial Fertilizer Applicators shall obtain a Certificate of Completion from a County approved Best Management Practices training program prior to obtaining a Clean Water County Local Business Tax Certificate for any category of occupation which may apply any fertilizer to turf and/or landscape plants. Commercial Fertilizer Applicators shall provide proof of completion of an approved training program to the County Tax Collector's office within 180 days of the effective date of this ordinance.

(b) All Commercial Fertilizer Applicators applying for a new or holding an existing Local Business Tax Certificate shall ensure that all Applicators employed under the Tax Certificate receive the necessary training in accordance with Section _____ of this Article and abide by all provisions of this Article. All new employees serving as Applicators shall receive the necessary training in accordance with Section _____ of this Article within 90 days of employment and during this 90-day period shall work under the physical supervision of an applicator who has successfully completed a County approved Best Management Practices training program.

SECTION 16. Sale of Fertilizer Containing Nitrogen or Phosphorous

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(a) Effective one-hundred eighty (180) days from adoption of this ordinance, no person, firm, corporation, franchise, or commercial establishment shall sell at retail any lawn or landscape fertilizer, liquid or granular, within Clean Water County that contains any amount of nitrogen or phosphorous during the Restricted Season.

(b) Displays of lawn and landscape fertilizers containing nitrogen or phosphorous shall not be permitted on the sales floor or the exterior of the store during the Restricted Season.

(c) It is recommended that retailers post a notice stating that the use of lawn and landscape fertilizers in Clean Water County is restricted in accordance with this ordinance.

SECTION 17. Reclaimed Water Use

It is strongly encouraged that application of fertilizer for properties using reclaimed water service be reduced in accordance with the nutrient level contained in the reclaimed water. This information is available through the Clean Water County Utilities Department.

SECTION 18. Enforcement and Penalty.

It is the intent hereof that the administrative and civil penalties imposed through execution of this Article be of such amount as to ensure immediate and continued compliance with this Article.

(a) Clean Water County has the authority to enforce any provision of this Article per Chapter ____, Article ____ of the Clean Water County Code of Ordinances and per provisions of Chapter 162, Florida Statutes. Each day of any such violation shall constitute a separate and distinct offense.

(b) The Code Enforcement Officer or designated inspectors shall be authorized and empowered to make inspections at reasonable hours of all land uses or activities regulated by this Article in order to insure compliance with the provisions of this Article. The Code Enforcement Officer or designated inspector shall make all observations during their inspections from areas accessible by the public, unless specific permission is granted by a property owner to come on their property, or a search warrant is obtained from a court of competent jurisdiction.

(c) A Code Enforcement Officer is authorized to issue a Citation to a Person when, based upon personal investigation, the Officer has reasonable cause to believe that the Person has violated this Article. Prior to issuing a Citation, a Code Enforcement Officer may provide a Warning Notice to the Person. If the Person has been previously issued a Warning Notice or Citation for the same prohibited activity, the Code Enforcement Officer may immediately issue a Citation.

(e) After issuing a Citation to an alleged violator, the Code Enforcement Officer shall deposit the original Citation and one copy of the Citation with the Clerk of the Court.

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(f) The Person issued the Citation may contest the Citation by contacting the Clerk of the Court within 30 calendar days of the Citation date and requesting a hearing. The Clerk shall then schedule a hearing in the County Court and shall provide written notice of the hearing to the Person and to the Code Enforcement Officer.

(g) If the Person issued the Citation elects not to contest the Citation, the person shall pay the applicable civil penalty to the Clerk of the Court within 30 days after issuance of the Citation.

(h) If the Person issued the Citation neither pays the civil penalty within the time allowed nor requests a hearing to contest the Citation, the Person shall be deemed to have waived their right to contest the Citation and judgment may be entered against the Person for an amount up to the maximum civil penalty.

(j) The civil penalty for a civil infraction shall not exceed \$500.00 per violation.

(k) By resolution the Board shall amend, as needed, the amount of any civil penalty for a civil infraction.

(l) Notwithstanding any other provisions of this Article for enforcement or penalties, the Board may also enforce this Article by actions at law or in equity for damages and injunctive relief. In the event the Board prevails in any such action, the Board shall be entitled to an award of its costs.

(m) The County may seek a lien on the property when the Person cited for a violation fails to pay the amount entered as a judgment.

SECTION 19. Section No. _____ of the Clean Water County Code is hereby renumbered to _____ as follows:

SECTION 20. Codification.

This ordinance shall be deemed an amendment to the Clean Water County Code of Ordinances.

SECTION 21. Section No. _____ of the Clean Water County Code is hereby renumbered to _____ as follows:

SECTION 22. Severability Clause.

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

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SECTION 23. Section No. _____ of the Clean Water County Code is hereby renumbered to _____ and amended to read as follows:

SECTION 24 . Effective Date.

This Ordinance shall be effective immediately upon filing with the Office of the Secretary of State of Florida. However, a one-hundred eighty (180) day implementation period is hereby established in order to accomplish the following:

(a) The establishment of a Clean Water County approved list of Best Management Practices training programs.

(b) For Commercial Fertilizer Applicators, Institutional Applicators and other users and Applicators of Fertilizer as set forth in this Ordinance to become familiar with the provisions of this Ordinance, provide a reasonable period for compliance with the terms of this Ordinance. No Citations, Notices to Appear, Code Enforcement Notice of Violations or other enforcement procedures shall be instituted until a one-hundred eighty (180) day implementation period has passed; however, Warning Notices may be issued during the implementation period.

PASSED AND DULY ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF
CLEAN WATER COUNTY, FLORIDA, THIS _____ DAY OF , A.D.