

BCC Mtg. Date: June 20, 2017

EFFECTIVE DATE: June 30, 2017

ORDINANCE NO. 2017-14

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.

Orange County's Environmental Protection Division will provide to the Board of County Commissioners a summary of data

collected and current research related to excessive nutrients for evaluation and consideration of ordinance revisions on or before December 31, 2019.

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

Sec. 15-801. Definitions.

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

Applicator means any person who applies fertilizer.

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

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

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

~~*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. 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 County Environmental Protection Division will maintain a publicly available list of approved training programs.~~

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

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

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

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

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

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

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

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

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

Section 4. Amending Section 15-802. Section 15-802 (“Applicability.”) is amended to read as follows.

Sec. 15-802. Applicability.

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

(b) Any business that sells fertilizer shall post a notice provided by the County stating that the use of lawn and landscape fertilizers in Orange County is restricted in accordance with this chapter.

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 Mercy Drive, Orlando, Florida 32808~~ within thirty (30) days of receipt of results. ~~In addition, phosphorus 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.~~

(c) No fertilizer containing nitrogen shall be applied ~~to turf~~ unless at least fifty (50) percent of its nitrogen content is slow release as indicated on the Guaranteed Analysis label, with no more than one (1) pound total nitrogen per one thousand (1,000) square feet of area per application. This requirement shall change to at least sixty-five (65) percent slow release if the product is readily available on the local commercial market by July 1, 2020.

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

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

Plant Species/Nitrogen limit:

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

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

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

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

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

Section 7. Amending Section 15-805. Section 15-805 (“Fertilizer-free zones.”) is 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 15-807 (“Grass clippings and vegetative material/debris.”), which shall remain unchanged.

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

Grass clippings and/or vegetative material/debris shall not be deposited, washed, swept, or blown off, intentionally or inadvertently, onto any impervious surface, public right-of-way, stormwater drain, ditch, conveyance, or water body.

Section 10. Amending Section 15-808. Section 15-808 (“Exemptions; exceptions.”) is amended to read as follows:

Sec. 15-808. Exemptions; exceptions.

(a) Sections 15-805 through 15-810 of this article shall not apply to golf courses; provided, however, fertilizer shall not be applied to golf courses in excess of the provisions of the Florida Department of Environmental Protection (“FDEP”) document, 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.

(b) This article shall not apply to any bona fide farm operation that Orange County is without authority to regulate with regard to fertilizer application pursuant to the Florida Right to Farm Act, F.S. (2007~~2016~~) § 823.14 et seq., or other applicable state law.

(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 requirements; proof of compliance.”) is amended to read as follows:

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

(a) No commercial applicator shall cause fertilizer to be applied, except at his or her own residence, without ~~proof of successful completion of a county approved best management practices training program within the previous three (3) years,~~ unless he or she is under the direct physical supervision of a person who has proof of successful completion of such a training program a valid limited certification for urban landscape commercial fertilizer application from the Florida Department of Agriculture and Consumer Services, as specified in section 15-809(c).

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

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

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

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

Section 12. Amending Section 15-810. Section 15-810 ("Commercial applicators; business tax certificate.") is amended to read as follows:

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

Prior to obtaining or renewing an Orange County local business tax certificate for a business that provides landscape services, each commercial applicator shall provide proof of successful completion from a county-approved best management 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 such certificate of completion to the Orange County Tax Collector's office no later than March 1, 2010.~~ Possession of a valid limited certification for urban landscape commercial fertilizer application from the Florida Department of Agriculture and Consumer Services or the Florida Department of Environmental Protection's *Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries* training by UF/IFAS shall suffice as evidence of completion of a county-approved best management practices training program.

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.

Section 14. Amending Section 15-812. Section 15-812 ("Enforcement and penalty.")

is amended to read as follows:

Sec. 15-812. Enforcement and penalty.

(a) It shall be unlawful for any person to violate any provision of this article, except section 15-802(b), or any provision of any resolution enacted pursuant to the authority of this article. Every code enforcement officer is authorized to enforce the provisions of this article. Any person who violates any provision of this article, except section 15-802(b), or any provision of any resolution enacted pursuant to the authority of this article, shall be subject to the following penalties:

- (1) First violation: Written notice.
- ~~(2) Second violation: Written notice.~~
- (3) ~~Second~~ Third violation: Fine of fifty dollars (\$50.00), except for commercial applicators it shall be five hundred dollars (\$500.00).
- (4) ~~Third~~ Fourth and subsequent violations: Fine of one hundred dollars (\$100.00), except for commercial applicators it shall be seven hundred fifty dollars (\$750.00).

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

incurred by the county in connection with enforcing this article, or any resolution enacted pursuant to the authority of this article including, but not limited to, attorney's fees.

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

ADOPTED THIS 20th DAY OF June, 2017.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

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

By: *Kate Smith*
Deputy Clerk

