

LEE COUNTY ORDINANCE NO. _____

AN ORDINANCE REGULATING PROFESSIONAL LANDSCAPE MANAGEMENT PRACTICES INCLUDING THE APPLICATION AND USE OF FERTILIZERS CONTAINING NITROGEN AND/OR PHOSPHORUS WITHIN UNINCORPORATED LEE COUNTY; PROVIDING FINDINGS; PROVIDING FOR PURPOSE AND INTENT; PROVIDING DEFINITIONS; PROVIDING FOR APPLICATION; PROVIDING FOR REGISTRATION OF PROFESSIONAL LANDSCAPING BUSINESSES AND INSTITUTIONAL LANDSCAPERS; PROVIDING FOR TRAINING AND CERTIFICATION OF PROFESSIONAL LANDSCAPERS; PROVIDING FOR BEST MANAGEMENT PRACTICES; PROVIDING FOR EXEMPTIONS TO BEST MANAGEMENT PRACTICES; PROVIDING FOR SOIL TEST INFORMATION; PROVIDING AN EXEMPTION FOR FARM AND AGRICULTURAL USE; PROVIDING FOR ENFORCEMENT AND PENALTY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS OF LAW; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE, INCLUDING ONE YEAR IMPLEMENTATION PERIOD.

WHEREAS, the Florida Department of Environmental Protection has identified specific water bodies in Lee County as “impaired” as a result of excess nutrients under the Florida Impaired Waters Rule (Chapter 62-303, Florida Administrative Code); and

WHEREAS, surface water runoff containing excess nutrients leaves residential neighborhoods, farms, commercial centers, industrial areas and other lands of Lee County with low permeability soils; and

WHEREAS, base-flow runoff containing excess nutrients flows from residential neighborhoods, farms, commercial centers, industrial areas, and other lands of Lee County with high permeability soils; and

WHEREAS, surface water and baseflow runoff containing excess nutrients enters into natural and artificial stormwater and drainage conveyances and natural water bodies in Lee County; and

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

WHEREAS, nutrient-laden runoff fosters plant and algae growth; and

WHEREAS, the quality of our bays, estuaries, streams, lakes, and the Gulf of Mexico is critical to environmental, economic and recreational prosperity and to the health, safety and welfare of the citizens of Lee County; and

WHEREAS, recent red tide blooms, accumulation of red drift algae on local beaches and blue-green algae blooms in our freshwater systems have heightened community concerns about water quality and eutrophication of surrounding waters; and

WHEREAS, leaching and runoff of nutrients from improper landscaping or excess fertilization practices upstream of as well as within Lee County can contribute to nitrogen and phosphorus pollution in the County's stormwater and drainage conveyances and natural water bodies; and

WHEREAS, nitrogen and phosphorus pollution in the County's stormwater and drainage conveyances and natural water bodies leads to the overgrowth of vegetation in these waterways; and

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

WHEREAS, the overgrowth of vegetation in stormwater and drainage conveyances hinders the goal of flood prevention; and

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

WHEREAS, it has been recognized by soil science professionals that the use of slow release nitrogen sources minimizes harmful nitrate leaching; and

WHEREAS, nitrogen from slow release sources is more likely to be used by plants and less likely to leach out or wash away in stormwater runoff; and

WHEREAS, the Florida Department of Environmental Protection will mandate total maximum daily loads for "impaired" water bodies in Lee County; and

WHEREAS, this ordinance is part of a multi-pronged effort by Lee County to meet these total maximum daily loads and reduce nutrient loading into runoff through such policies as, but not limited to, stormwater management, water conservation, management of septic systems, public education, and development standards as set forth in the Lee County Land Development Code.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS FOR LEE COUNTY, FLORIDA, that:

SECTION ONE: FINDINGS

The above "WHEREAS" clauses are hereby deemed by Lee County to constitute findings of Lee County for purposes of this Ordinance and are incorporated herein as if fully set forth in this section.

SECTION TWO: PURPOSE AND INTENT

The purpose and intent of this Ordinance is to provide for the regulation of professional landscape management practices and the application of fertilizers containing nitrogen and/or phosphorus and to provide specific guidelines for landscaping and fertilization in order to meet Federal and State mandated water quality standards and to minimize the negative environmental effects said fertilizers have in and on Lee County's lakes, canals, estuaries, interior freshwater wetlands, the Caloosahatchee River and nearshore waters of the Gulf of Mexico. Collectively these waterbodies are a natural asset, which are critical to the environmental, recreational, cultural and economic well being of Lee County and the surrounding areas and contribute to the general health and welfare of the public. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, entering the waterbodies in and around Lee County is a crucial step towards improving and maintaining water and habitat quality.

SECTION THREE: DEFINITIONS

The following words, terms, and phrases when used in this Ordinance shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- A. Best Management Practices (BMPs) – a 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.
- B. Certificate of Completion – the documentation evidencing completion of a Lee County approved BMP training course.
- C. Certified Professional Landscaper – any Person who has completed the proper training and is qualified and responsible to provide lawn care and maintenance or landscaping in unincorporated Lee County.
- D. Damage or Damaged – Turf or Landscape Plants that have been deleteriously affected by environmental or biotic stress. Environmental stresses are a result of prolonged exposure to shade, drought, nutrient deficiency, the effects of vehicle and foot traffic, salinity and occasional cold temperatures. Biotic stresses result from living organisms such as insects, diseases or nematodes.
- E. Division – the Division of Lee County Natural Resources.
- F. Fertilize, Fertilizing or Fertilization – the act of applying fertilizer to Turf, specialized Turf or Landscape Plants.
- G. Fertilizer – any substance 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.
- H. Impervious surfaces - a constructed surface such as, sidewalks, roads, parking lots or driveways - covered by impenetrable materials such as asphalt, concrete, brick, pavers, stone and/or highly compacted soils.
- I. Institutional Landscaper – any Person, other than a Professional Landscaping Business or Non-Professional Landscaper (unless such definitions also apply under the circumstances), that performs lawn care or

maintenance. Institutional Landscapers 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.

- J. Landscape Plant – any native or exotic tree, shrub or groundcover (excluding Turf).
- K. Lawn Care and Maintenance or Landscaping - shall include, but not be limited to, mowing, trimming, pruning, edging, liming, fertilizing, mulching, seeding and aerating of turf and/or landscaping plants.
- L. Non-Professional Landscaper – any Person other than a Professional Landscaper or Institutional Landscaper who performs lawn care and maintenance on Turf and/or Landscape Plants in Lee County, such as an individual owner of a single-family residential unit.
- M. Person – any natural person and shall also mean any business, corporation, association, club, organization and/or any group of people acting as an organized entity.
- N. Professional Landscaping Business - means any person, sole proprietor, partnership, corporation, business trust, joint venture, or other legal entity that engages in the business of providing lawn care and maintenance or landscaping in exchange for money, goods, services or other valuable consideration.
- O. Rainy Season – July 1 through September 30 of each calendar year.
- P. Slow Release, Controlled Release, Timed Release, Slowly Available or Water Insoluble Nitrogen – means a fertilizer containing a plant nutrient in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant significantly longer than a referenced “rapidly available nutrient fertilizer” such as ammonium nitrate or urea, ammonium phosphate or potassium chloride.
- Q. Specialized Turf – areas of grass used for athletic fields, activity fields, parks, golf course practice and play areas, cemeteries and other similar areas.
- R. Specialized Turf Manager – a Person responsible for fertilizer or directing the fertilization of a golf course or publicly owned or operated athletic field.
- S. Turf – a piece of grass-covered soil held together by the roots of the grass; sod; lawn.

- T. Water Body or Water Bodies - any visible, standing or open body of water. This shall include, but not be limited to: municipal or private storm sewer systems (including inlets, conveyances and structures), ditches, swales, canals, creeks, rivers, streams, tidal waters, lakes, ponds, ponded water, standing water, marshes, swamps or any other body of permanent or temporary standing or visible water whether or not the water body is natural or man-made or contained by impervious surfaces on the bottom or sides.

SECTION FOUR: APPLICATION

This Ordinance shall be applicable to and shall regulate any and all Professional Landscaping Businesses and Institutional Landscapers within unincorporated Lee County, unless such Business or Landscaper is specifically exempted or excepted by the terms of this Ordinance from the regulatory provisions of this Ordinance. This Ordinance shall not apply to Non-Professional Landscapers.

SECTION FIVE: REGISTRATION OF PROFESSIONAL LANDSCAPING BUSINESSES AND INSTITUTIONAL LANDSCAPERS

A. Professional Landscaping Businesses

1. All Professional Landscaping Businesses shall obtain and hold a local business tax certificate issued by Lee County and shall register with the Division prior to performing lawn care and maintenance or landscaping. Any Professional Landscaping Business seeking to register and remained registered with the Division shall provide a copy of its current local business tax receipt and have at least one employee who is a Certified Professional Landscaper to qualify the Professional Landscaping Business.

2. Upon receipt of the current local business tax receipt, a current Certificate of Completion of the qualifying employee and payment of a registration fee, the Professional Landscaping Business shall be registered with the Division and be issued vehicle decals identifying the Professional Landscaping Business. Professional Landscaping Businesses shall affix and maintain a decal on the exterior of all vehicles and trailers used in connection with the Professional Landscaping Business.
3. In addition to the initial registration fee, Professional Landscaping Businesses shall pay an annual registration fee.
4. All Professional Landscaping Businesses shall ensure that at least one (1) Certified Professional Landscaper is on site while fertilizer is being applied.

B. Institutional Landscapers

1. All Institutional Landscapers must register with the Division prior to performing lawn care and maintenance or landscaping. Any Institutional Landscaper seeking to register and remained registered with the Division shall have at least one (1) employee who is a Certified Professional Landscaper to qualify the Institutional Landscaper.
2. Upon receipt of the Certificate of Completion of the qualifying employee and payment of a registration fee, the Institutional Landscaper shall be registered with the Division.
3. In addition to the initial registration fee, Institutional Landscapers shall pay an annual registration fee.

SECTION SIX: TRAINING AND CERTIFICATION OF LANDSCAPERS

- A. Any person seeking to register a Professional Landscaping Business or an Institutional Landscaper with the Division under Section Five above shall first successfully complete training in accordance with the “*Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002*”, as revised (*Florida Green BMPs*). The *Florida Green BMPs* training shall be obtained through a Lee County approved BMP training program.
- B. The Division in cooperation with University of Florida Lee County Extension Service Urban Horticulture and Natural Resource Educators or other Lee County Extension Service approved organizations will schedule and conduct all training.
- C. Upon successful completion, a Certificate of Completion will be provided. Each Certificate of Completion is valid for three (3) years from the date of issuance. Certificates must be renewed every three (3) years. It is the certificate holder’s responsibility to seek renewal. The County is not obligated to furnish the certificate holder with a reminder notice that renewal is necessary.

SECTION SEVEN: BMPs FOR PROFESSIONAL LANDSCAPING BUSINESSES AND INSTITUTIONAL LANDSCAPERS: TIMING OF APPLICATION; FERTILIZER CONTENT AND APPLICATE RATE; TOTAL YEARLY APPLICATIONS; IMPERVIOUS SURFACE; BUFFER ZONES; MODE OF APPLICATION; MANAGEMENT OF GRASS CLIPPINGS AND VEGETATION MATERIAL

A. TIMING OF APPLICATION

No Professional Landscaping Business or Institutional Landscaper shall apply fertilizers containing nitrogen and/or phosphorus to Turf and/or Landscape Plants during the rainy season.

B. FERTILIZER CONTENT AND APPLICATION RATE

1) Phosphorus Content

Fertilizers applied in unincorporated Lee County shall be “No Phosphate” or “Low Phosphate” as established by the Florida Department of Agriculture and Consumer Services Rules, unless otherwise exempted under this Ordinance.

2) Slow Release Fertilizer

Professional Landscaping Businesses and Institutional Landscapers are encouraged to use Slow Release Fertilizer in order to lessen nitrate leaching and runoff.

3) Application Rate

Fertilizers should be applied to Turf and/or Landscape Plants at the lowest amount or rate necessary to correct or prevent nutrient deficiencies without exceeding the maximum per application rate specified on the label. Fertilizer shall not be applied at a rate greater than the application rate established by the Florida Department of Agriculture and Consumer Services Rule (5E-1.003). Landscapers shall be responsible for maintaining a record of the pounds of nitrogen and phosphorus expressed as pounds per 1,000 square feet of land applied to each site during the year.

C. TOTAL YEARLY APPLICATIONS

While single fertilizer applications in the fall and spring will often suffice, fertilizers shall not be applied more than the Fertilization Guidelines for the Southern

Region of Florida under the Florida Department of Agriculture and Conservation Services Rule (5E-1.003) during any one (1) calendar year to a single area.

D. IMPERVIOUS SURFACE

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. 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.

E. BUFFER ZONES

No fertilizer shall be applied in or within ten (10) feet from the edge of any water body or seawall or in any designated wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340), unless a spreader deflector shield is used during application. If a spreader deflector shield is used no fertilizer shall be applied in or within three (3) feet of the edge of any water body, seawall, or designated wetland.

F. MODE OF APPLICATION

Spreader deflector shields are required when fertilizing by use of any broadcast spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from all impervious surfaces and waterbodies, including wetlands.

G. MANAGEMENT OF GRASS CLIPPINGS AND VEGETAION MATERIAL

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

SECTION EIGHT: EXEMPTIONS TO LANDSCAPING BMPs

A. The timing of applications, application rate provisions and other provisions set forth above in Subsections 7(A)-(C) of this Ordinance shall not apply to:

- 1) Newly established Turf and/or Landscape Plants for the first sixty (60) days after installation or planting, provided documentation for newly established Turf and/or Landscape Plants is maintained and *Florida Green BMPs* are followed to support this exemption;
- 2) Damaged Turf and/or Landscape Plants for a period of sixty (60) days and only on the damaged areas, provided documentation for damaged Turf and/or Landscape Plants is maintained to support this exemption;
- 3) Areas where soil tests confirm, and such tests are confirmed and approved by the Division, that phosphorous levels are below ten (10) parts per million. This is equivalent to a “very low” designation for phosphorus set forth in the University of Florida – Institute of Food and Agricultural Sciences (UF-IFAS) Extension Soil Testing Laboratory Analytical Procedures Training Manual (Circular 1248, September 2002);
- 4) Vegetable gardens, provided they are not within fifteen (15) feet of any waterbody and/or wetland;

- 5) Yard waste compost, mulches or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil; and/or
- 6) Reclaimed water used for irrigation (which may contain substantial amounts of nitrogen and phosphorus).
- 7) If applying Fertilizer in accordance with Section 8(A)(1) and/or (2), Professional Landscaping Businesses and Institutional Landscapers shall maintain documentation to support said exemption(s). If applying Fertilizer in accordance with Section 8(A)(3), Professional Landscaping Businesses and Institutional Landscapers shall also possess a record of the soil test indicating the amount of phosphorus present. Said records shall be kept in the Professional Landscaping Businesses and Institutional Landscaper's possession or vehicle(s) and available for inspection by County staff during all business hours or while a Certified Professional Landscaper is working onsite.
- 8) Professional Landscaping Businesses and Institutional Landscapers shall permit the County to obtain a sample of any Fertilizer applied or to be applied within the County. If the sample analysis shows that nitrogen and/or phosphorus content does not comply with the levels permitted by this Ordinance, enforcement action may be taken in accordance with Section 11 of this Ordinance, and the cost of analyzing Fertilizer samples taken from Professional Landscaping Businesses or Institutional

Landscapers shall be reimbursed by said Business or Landscaper to the County within thirty (30) days after invoicing.

- B. For all golf courses, the provisions of the Florida Department of Environmental Protection document, *“Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses, 2007”*, as updated, shall be followed when applying fertilizer to golf course practice and play areas. All other Specialized Turf Managers shall use their best professional judgment to apply the concepts and principles embodied in the *Florida Green BMPs*, while maintaining the health and function of their Specialized Turf areas.

SECTION NINE: SOIL TESTS INFORMATION

The UF-IFAS Extension Soil Testing Laboratory in Gainesville, Florida offers a variety of tests for mineral soils, container media and irrigation water. The “Landscape and Vegetable Garden Producer Test” is recommended for both private and commercial clients fertilizing plants on the landscape, primarily home horticulture.

A soil sampling bag, one bag for each soil sample, and a shipping box in which to send samples to the US-IFAS Extension Soil Testing Laboratory can be obtained free of charge from the Lee County Cooperative Extension Service Office, 3406 Palm Beach Boulevard, Fort Myers, Florida 33916 (239-461-7513). To determine the availability and cost of Soil Fertility Tests contact the Lee County Cooperative Extension Service Office. A PDF version of the Landscape and Vegetable Garden Test Submission Form can be obtained at <http://soilslab.ifas.ufl.edu/pds%20files/SS18700.pdf> or from the County's Department of Natural Resources.

SECTION TEN: FARM AND AGRICULTURAL USES

Nothing in this Ordinance shall be construed to regulate or limit fertilizing for farm and commercial agricultural uses.

SECTION ELEVEN: ENFORCEMENT AND PENALTY

A. Any Person, firm, company, corporation or other entity, who refuses to comply with or violates any section of this Ordinance, shall be subject to the following penalties.

1. First violation - \$100.00
2. Second violation - \$250.00
3. Third violation and violations thereafter - \$500.00

Each non-compliance or violation, and each day thereof, shall constitute a separate offense.

B. This Ordinance may be enforced by any duly authorized law enforcement officers or Lee County Officials or Inspectors designated by the Director.

C. The designated Lee County Officials or Inspectors shall be authorized and empowered to make inspections at reasonable hours of all activities regulated by the Ordinance in order to insure compliance with the provisions of this Ordinance.

D. Nothing contained herein shall prevent the County from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this Ordinance. Such other lawful action shall include but shall not be limited to, and equitable action for injunctive relief or an action at law for damages.

E. Any Person, firm, company, corporation or other entity that violates this Ordinance shall be responsible for the County's cost of prosecution of any violation of this Ordinance, including any County costs to remedy or clean up any environmental condition caused by an act which constitutes a violation of this Ordinance. In the event any such costs are incurred by the County, such Person, firm, company, corporation or other entity shall reimburse the County for all such costs within thirty (30) days of the County's invoice for such costs.

SECTION TWLEVE: CODIFICATION AND SCRIVENER'S ERRORS

The Lee County Board of County Commissioners intends that this Ordinance will be made part of the Lee County Code; and that sections of this Ordinance can be renumbered or relettered and the word "Ordinance" can be changed to "Section," "Article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered or relettered and typographical errors and clarification of ambiguous wording that do not affect the intent can be corrected with the authorization of the County Manager or his designee, without the need for public hearing.

SECTION THIRTEEN: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirement will apply.

SECTION FOURTEEN: SEVERABILITY

The provisions of this Ordinance are severable and it is the legislative intention to confer upon the whole or any part of the Ordinance the powers herein provided for. If

any provision of this Ordinance shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of the Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such unconstitutional provision not been included herein.

SECTION FIFTEEN: **EFFECTIVE DATE**

This Ordinance shall take effect immediately upon receipt of notice from the Florida Department of State of its filing with that office, however, that a one (1) year implementation period from the effective date is hereby established. During this implementation period, no citations, notices to appear or other enforcement actions will be taken by the County.

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Commissioner _____ made a motion to adopt the foregoing Ordinance,
seconded by Commissioner _____. The vote was as follows:

ROBERT P. JANES	_____
BRIAN BIGELOW	_____
RAY JUDAH	_____
TAMMARA HALL	_____
FRANK MANN	_____

DULY PASSED AND ADOPTED THIS _____ day of _____, 2007.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Chairman

APPROVED AS TO FORM:

BY: _____
Office of the County Attorney