

ORDINANCE NUMBER 2013 - _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA, CREATING CHAPTER 42, ARTICLE IX, SECTIONS 42-401 THRU 42-414 OF THE ESCAMBIA COUNTY CODE OF ORDINANCES; ADOPTING THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S MODEL ORDINANCE FOR FLORIDA-FRIENDLY USE OF FERTILIZER ON URBAN LANDSCAPES, AS REQUIRED BY SECTION 403.9337, FLORIDA STATUTES; PROVIDING LEGISLATIVE FINDINGS, PURPOSE, AND INTENT; ESTABLISHING DEFINITIONS; DEFINING JURISDICTION; REGULATING THE TIMING OF FERTILIZER APPLICATION; ESTABLISHING FERTILIZER-FREE ZONES AND LOW MAINTENANCE ZONES; REGULATING FERTILIZER CONTENT, APPLICATION RATES, APPLICATION PRACTICES, AND MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER; PROVIDING EXEMPTIONS; REQUIRING TRAINING AND LICENSING FOR COMMERCIAL FERTILIZER APPLICATORS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 303(d) of the federal Clean Water Act and the resulting Florida Impaired Waters Rule (Chapter 62-303, Florida Administrative Code), the Florida Department of Environmental Protection (FDEP) has classified specific water bodies in Escambia County as "impaired" as a result of the presence of excessive nutrients; and

WHEREAS, because of this FDEP classification, on January 1, 2012, FDEP issued its Escambia County Municipal Separate Storm Sewer Permit No. FLS 000019-03 ("MS4 Permit") to governmental entities operating within the incorporated and unincorporated areas of Escambia County, Florida, including Escambia County, a political subdivision of the State of Florida; and

WHEREAS, Section 403.9337, Florida Statutes, and the MS4 Permit require local governments operating under an MS4 Permit to adopt FDEP's Model Ordinance for Florida-Friendly Use of Fertilizer on Urban Landscapes; and

WHEREAS, the Escambia County Board of County Commissioners therefore finds that adopting FDEP's model ordinance will help protect the quality of surface water and ground water resources in Escambia County, and will accordingly advance the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA:

SECTION 1. RECITALS

The aforementioned recitals are hereby incorporated into this ordinance as legislative findings rendered by the Board of County Commissioners in support of this ordinance and supplement those findings included under Section 2 of this ordinance.

SECTION 2. LEGISLATIVE FINDINGS

Chapter 42, Article IX, Section 42-401 of the Escambia County Code of Ordinances is hereby created to read as follows:

Sec. 42-401. Legislative Findings.

As a result of impairment to Escambia County's surface waters caused by excessive nutrients, or, as a result of increasing levels of nitrogen in the surface and/or ground water within the aquifers or springs within the boundaries of Escambia County, the Escambia County Board of County Commissioners has determined that the use of fertilizers on lands within Escambia County creates a risk to contributing to adverse effects on surface and/or ground water. Accordingly, the Escambia County Board of County Commissioners finds that management measures contained in the most recent

edition of the *Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008*, may be required by this ordinance.

SECTION 3. **PURPOSE AND INTENT**

Chapter 42, Article IX, Section 42-402 of the Escambia County Code of Ordinances is hereby created to read as follows:

Sec. 42-402. Purpose and Intent.

This Ordinance regulates the proper use of fertilizers by any applicator; requires proper training of Commercial and Industrial Fertilizer Applicators; establishes training and licensing requirements; establishes a Prohibited Application Period; and specifies allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones, and exemptions. 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 Escambia County's natural and constructed stormwater conveyances, rivers, creeks, canals, springs, lakes, estuaries, and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of Escambia County residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, will help improve and maintain water and habitat quality.

SECTION 4. DEFINITIONS

Chapter 42, Article IX, Section 42-403 of the Escambia County Code of Ordinances is hereby created to read as follows:

Sec. 42-403. 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 County Administrator, or an administrative official of Escambia 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 Escambia County.

“Board or Governing Board” means the Board of County Commissioners of Escambia County, Florida.

“Best management practices” means turf and landscape practices 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 consideration, for improving water quality, conserving water supplies and protecting natural resources.

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

“Commercial Fertilizer Applicator,” except as provided in Section 482.1562(9), Florida Statutes, means any person who applies fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicator.

“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 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 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.

“Institutional Applicator” means any person, other than a private, non-commercial or a 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, managers or employees 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 ten (10) feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.

“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.

“Prohibited Application Period” means the time period during which a Flood Watch or Warning, or a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of Escambia County, issued by the National Weather Service, or if heavy rain is likely.

“Escambia County Approved Best Management Practices Training Program” means a training program approved per Section 403.9338, Florida Statutes, or any more stringent requirements set forth in this Article that includes the most current version of the Florida Department of Environmental Protection’s *Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008*, as revised, and approved by the Escambia County Administrator.

“Saturated soil” means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this ordinance, soils shall be considered saturated if standing water is present or the pressure of a person standing on the soil causes the release of free water.

“Slow release,” “controlled release,” “timed release,” “slowly available,” or “water insoluble nitrogen” means nitrogen in a form which delays the availability for plant uptake and use after application, or which extends its availability to the plant longer than a reference rapid or quick release product.

“Turf,” “sod,” or “lawn” means a piece of grass-covered soil held together by the roots of the grass.

“Urban landscape” means pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or horticultural plants. For the purposes of this section, agriculture has the same meaning as in Section 570.02, Florida Statutes.

SECTION 5. **JURISDICTION**

Chapter 42, Article XI, Section 42-404 of the Escambia County Code of Ordinances is hereby created to read as follows:

Sec. 42-404. Jurisdiction.

This Ordinance shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the unincorporated area of Escambia County, Florida, unless such applicator of fertilizer 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 6. **TIMING OF FERTILIZER APPLICATION**

Chapter 42, Article IX, Section 42-405 of the Escambia County Code of Ordinances is hereby created to read as follows:

Sec. 42-405. Timing of Fertilizer Application.

No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the Prohibited Application Period, or to saturated soils.

SECTION 7. **FERTILIZER FREE ZONES**

Chapter 42, Article IX, Section 42-406 of the Escambia County Code of Ordinances is hereby created to read as follows:

Sec. 42-406. Fertilizer Free Zones.

Fertilizer shall not be applied within ten (10) feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) or from the top of a seawall, unless a deflector shield, drop spreader, or liquid applicator with a visible and sharply-defined edge is used, in which case a minimum of 3 feet shall be maintained. If more stringent Escambia County Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. Newly-planted turf and/or landscape plants may be fertilized in this Zone only for a sixty (60) day period beginning thirty (30) days after planting if needed to allow the plants to become well-established. Caution shall be used to prevent direct deposition of nutrients into the water.

SECTION 8. LOW MAINTENANCE ZONES

Chapter 42, Article IX, Section 42-407 of the Escambia County Code of Ordinances is hereby created to read as follows:

Sec. 42-407. Low Maintenance Zones.

A voluntary ten (10) foot low maintenance zone is strongly recommended, but not mandated, from any pond, stream, water course, lake, wetland or from the top a seawall. A swale/berm system is recommended for installation at the landward edge of this low maintenance zone to capture and filter runoff. If more stringent Escambia County Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. 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 the over-spray of aquatic weed products in this zone.

SECTION 9. **FERTILIZER CONTENT AND APPLICATION RATES**

Chapter 42, Article IX, Section 42-408 of the Escambia County Code of Ordinances is hereby created to read as follows:

Sec. 42-408. Fertilizer Content and Application Rates.

(a) Fertilizers applied to turf within the unincorporated area of Escambia County shall be applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*.

(b) Fertilizer containing nitrogen or phosphorus shall not be applied before seeding or sodding a site, and shall not be applied for the first thirty (30) days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation (wildfire, etc.), or in accordance with the Stormwater Pollution Prevention Plan for that site.

(c) Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in subsection 42-408(a) for turf, or in UF/IFAS recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an approved test.

SECTION 10. **APPLICATION PRACTICES**

Chapter 42, Article IX, Section 42-409 of the Escambia County Code of Ordinances is hereby created to read as follows:

Sec. 42-409. Application Practices.

(a) Spreader deflector shields are required when fertilizing via rotary (broadcast) spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from impervious surfaces, fertilizer-free zones and water bodies, including wetlands.

(b) Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces.

(c) Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent possible.

(d) 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) In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

SECTION 11. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER

Chapter 42, Article IX, Section 42-410 of the Escambia County Code of Ordinances is hereby created to read as follows:

Sec. 42-410. Management of Grass Clippings and Vegetative Matter.

In no case shall grass clippings, vegetative material, and/or vegetative debris be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent possible.

SECTION 12. EXEMPTIONS

Chapter 42, Article IX, Section 42-411 of the Escambia County Code of Ordinances is hereby created to read as follows:

Sec. 42-411. Exemptions.

The provisions set forth above in this Ordinance shall not apply to:

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

(b) other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock;

(c) any lands used for bona fide scientific research, including, but not limited to, research on the effects of fertilizer use on urban stormwater, water quality, agronomics, or horticulture.

SECTION 13. TRAINING

Chapter 42, Article IX, Section 42-412 of the Escambia County Code of Ordinances is hereby created to read as follows:

Sec. 42-412. Training.

(a) All commercial and institutional applicators of fertilizer within the unincorporated area of Escambia County shall abide by and successfully complete the six-hour training program in the *Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries* that is offered by the Florida Department of Environmental Protection through the University of Florida Extension “Florida-Friendly Landscapes” program, or an approved equivalent program.

(b) Private, non-commercial applicators are encouraged to follow the recommendations of the University of Florida IFAS *Florida Yards and Neighborhoods* program when applying fertilizers.

SECTION 14. LICENSING OF COMMERCIAL FERTILIZER APPLICATORS

Chapter 42, Article IX, Section 42-413 of the Escambia County Code of Ordinances is hereby created to read as follows:

Sec. 42-413. Licensing of Commercial Fertilizer Applicators.

(a) Prior to January 1, 2014, Commercial Fertilizer Applicators within the unincorporated area of Escambia County shall abide by and successfully complete training and continuing education requirements in the *Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries* that is offered by the Florida Department of Environmental Protection through the University of Florida Extension "Florida-Friendly Landscapes" program, or an approved equivalent program, prior to obtaining an Escambia 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 the program to the Escambia County Tax Collector's Office within one-hundred eighty (180) days of the effective date of this ordinance.

(b) After December 31, 2013, all Commercial Fertilizer Applicators within the unincorporated area of Escambia County shall have, and carry in their possession at all times when applying fertilizer, evidence of certification by the Florida Department of Agriculture and Consumer Services as a Commercial Fertilizer Applicator per Rule 5E-14.117(18), Florida Administrative Code.

(c) All businesses applying fertilizer to turf and/or landscape plants (including, but not limited to, residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that at least one employee has a *Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries* training certificate prior to the business owner obtaining a Local Business Tax Certificate. Owners for any category of occupation which may apply any fertilizer to turf and/or landscape plants shall provide proof of completion of the program to the Escambia County Tax Collector's Office.

SECTION 15. **ENFORCEMENT.**

Chapter 42, Article IX, Section 42-414 of the Escambia County Code of Ordinances is hereby created to read as follows:

Sec. 42-414. Enforcement.

(a) The provisions of this section shall be enforced pursuant to those methods prescribed by Chapter 162, Florida Statutes, and Chapter 30, Escambia County Code of Ordinances.

(b) Funds generated by penalties imposed under this section shall be used by Escambia County for the administration and enforcement of Section 403.9337, Florida Statutes, and this section of the Escambia County Code of Ordinances, and to further water conservation and nonpoint pollution prevention activities.

SECTION 16. **SEVERABILITY**

If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 17. INCLUSION IN CODE

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall be codified as required by F.S. § 125.68 (2011); and that the sections, subsections and other provisions of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 18. EFFECTIVE DATE

This Ordinance shall become effective upon filing with the Department of State.

DONE AND ENACTED this _____ day of _____, 2013.

BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA

BY: _____
Lumon J. May, Chairman

ATTEST: PAM CHILDERS
CLERK OF THE CIRCUIT COURT

By: _____
Deputy Clerk

(SEAL)

ENACTED:

FILED WITH DEPARTMENT OF STATE:

EFFECTIVE:

This document approved as to form and legal sufficiency.

By: *BY*

Title: ASSF. COUNTY ATTORNEY

Date: OCT. 30, 2013