

ORDINANCE NO. 08-35

AN ORDINANCE REGULATING THE USE OF FERTILIZERS CONTAINING NITROGEN AND / OR PHOSPHORUS WITHIN MARION COUNTY; ESTABLISHING FINDINGS OF FACT; PROVIDING SHORT TITLE; PROVIDING PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR APPLICABILITY WITHIN UNINCORPORATED MARION COUNTY BUT ALLOWING MUNICIPALITIES TO ADOPT SAME PROVISIONS; SPECIFYING FERTILIZER CONTENT AND APPLICATION RATE; PROHIBITING FERTILIZER ON IMPERVIOUS SURFACES; PROHIBITING FERTILIZER APPLICATION IN FERTILIZER FREE ZONES; RECOMMENDING VOLUNTARY LOW MAINTENANCE ZONES; SPECIFYING MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATERIAL; PROVIDING FOR EXEMPTIONS; REQUIRING TRAINING, REGISTRATION AND LICENSING OF FOR HIRE COMMERCIAL APPLICATORS; PROVIDING FOR ENFORCEMENT AND PENALTY; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE, INCLUDING AN IMPLEMENTATION PERIOD.

WHEREAS, this ordinance is part of a multi-pronged effort by Marion County to reduce nutrient runoff to surface waters and leaching into ground water 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 Marion County Land Development Regulations; and

WHEREAS, the detrimental effects of nutrient-laden runoff and leaching are magnified in a springshed community such as Marion County, due to the proximity of stormwater and drainage conveyances to ground water ; and

WHEREAS, leaching and runoff of nutrients from improper or excess fertilization and/or irrigation practices can contribute to nitrogen and phosphorus pollution in the Marion County stormwater and drainage conveyances, springs, and other natural water bodies; and

WHEREAS, nitrogen-laden leaching and runoff foster excessive plant and algae growth; and

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

WHEREAS, the quality of our springs, streams and lakes are critical to the environmental, economic, and recreational prosperity and to the health, safety, and welfare of the citizens of Marion County; and

WHEREAS, the Florida Department of Environmental Protection has identified specific water bodies in Marion 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 leaves residential neighborhoods, commercial centers, industrial areas, and other lands of Marion County with low permeability soils; and

WHEREAS, baseflow runoff flows from residential neighborhoods, commercial centers, industrial areas, and other lands of Marion County with high permeability soils or high water tables; and

WHEREAS, surface water and baseflow runoff enter into natural and constructed stormwater and drainage conveyances and natural water bodies in Marion County; and

WHEREAS, Marion County's natural and constructed 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, nutrients are commonly found in various forms as a fertilizer for turf and landscape application; and

WHEREAS, the type of chemical and physical fertilizer characteristics, amount applied, timing of application, and the method of application of that Fertilizer have a large impact on the potential for creating pollution; and

WHEREAS, the amount of fertilizer applied should be the minimum necessary for the turf and landscape to meet initial establishment and maintenance needs; 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 may minimize harmful nitrate leaching under certain conditions; and

WHEREAS, nitrogen from slow release sources is more likely to be used by plants and less likely to leach or wash away in stormwater runoff from heavy rainfall events or over-irrigation, now therefore.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MARION COUNTY, FLORIDA:

Section 1. SHORT TITLE

This ordinance shall be known and may be referred to as the Marion County Ordinance for Florida Friendly Fertilizer Use on Urban Landscapes.

Section 2. AUTHORITY

This ordinance is adopted by Marion County, Florida under its home rule powers, its police powers to protect the public health, safety, and welfare, and under powers pursuant to the authority granted by Section 125.568, (Counties) and 166.048 (Cities) Florida Statutes, in order to implement and enforce the standards, rules, and regulations set forth herein.

Section 3. FINDINGS

As a result of impairment to Marion County's surface waters caused by excessive nutrients under the Florida Impaired Waters Rule, 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 Marion County the Board of County Commissioners of Marion County, Florida, has determined that the use of fertilizers on lands within Marion County create a particularly high risk to contributing to adverse effects on surface and/or ground water. Accordingly, the Marion County Board of County Commissioners finds that more restrictive measures than are otherwise required by the most recent edition of the "*Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002*," shall be required by this ordinance.

Section 4. PURPOSE AND INTENT

This Ordinance regulates the proper use of Fertilizers by any Applicator; requires proper training of Commercial and Institutional Fertilizer Applicators; establishes training and licensing requirements; 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 Marion County's natural and constructed stormwater and drainage 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 Marion 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 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. DEFINITIONS

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

- (a) "Administrator" means the Marion County Administrator, or an administrative official of Marion County government designated by the Marion County Administrator to administer and enforce the provisions of this Article.
- (b) "Application" or "Apply" means the actual physical deposit of Fertilizer to Turf or Landscape Plants.
- (c) "Applicator" means any Person who applies Fertilizer on Turf and/or Landscape Plants in Marion County, Florida.
- (d) "Board or Governing Board" means the Board of County Commissioners of Marion County, Florida.
- (e) "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 considerations, for improving water quality, conserving water supplies and protecting natural resources.
- (f) "Code Enforcement Officer, Official, or Inspector" means any designated employee or agent of Marion County whose duty it is to enforce codes and ordinances enacted by Marion County.
- (g) "Commercial Fertilizer Applicator" means any Person who applies Fertilizer on Turf and/or Landscape Plants in Marion County in exchange for money, goods, services or other valuable consideration.
- (h) "Fertilize", "Fertilizing", or "Fertilization" means the act of applying Fertilizer to

Turf, specialized Turf, or Landscape Plant.

- (i) "Fertilizer" means any substance or mixture of substances, except 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.
- (j) "Guaranteed Analysis" means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a Fertilizer.
- (k) "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.
- (l) "Landscape Plant" means any native or exotic tree, shrub, or groundcover (excluding Turf).
- (m) "Low Maintenance Zone" means an area a minimum of six (6) feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.
- (n) "Pasture" means land used for livestock grazing that is managed to provide feed value.
- (o) "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.
- (p) "Marion County approved Best Management Practices Training Program" means a training program approved by the Marion County Administrator that includes at a minimum, the most current version of the Florida Department of Environmental Protection's "Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002," as revised and any more stringent requirements set forth in this Article.
- (q) "Slow Release," "Controlled Release," "Timed Release," "Slowly Available," or "Water Insoluble Nitrogen" means nitrogen in a form which delays its 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.

- (r) "Specialized Turf Manager" means a Person responsible for Fertilizing or directing the Fertilization of a golf course or athletic field.
- (s) "Turf," "Sod," or "Lawn" means a piece of grass-covered soil held together by the roots of the grass.

Section 6. APPLICABILITY

This Ordinance shall be applicable to and shall regulate any and all Applicators of Fertilizer and areas of application of Fertilizer within the area of Marion 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. FERTILIZER CONTENT AND APPLICATION RATES

- (a) Fertilizers Applied to Turf and/or Landscape Plants within Marion County shall be applied in accordance with directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements for Urban Turf Fertilizers*.
- (b) Fertilizers should be applied to Turf and/or Landscape Plants at the lowest rate necessary. Nitrogen shall not be applied at an application rate greater than 0.7 lbs of readily available nitrogen per 1,000 square feet at any one time based on the soluble fraction of formulated fertilizer, with no more than 1 pound total nitrogen per 1,000 square feet applied at any one time, and not to exceed the nitrogen recommendations set forth below on an annual basis:

<u>Grass Species</u>	<u>Maximum N Application Rate (Lbs/1,000 ft²/ Year)</u>
Bahiagrass:	3
Bermudagrass:	4
Centipedegrass:	2
St. Augustinegrass:	3
Zoysiagrass:	4

- (c) For new turf or landscape plants that are being installed or established, a one-time use of starter fertilizer as described in Rule 5E-1.003 shall be allowed at an application rate not to exceed 1.0 pounds of phosphorus (P₂O₅) per 1,000 square feet.
- (d) No phosphorus Fertilizer shall be Applied to existing Turf and/or Landscape Plants within Marion County at application rates which exceed 0.25 pounds phosphorus per 1,000 square feet per application nor exceed 0.50 pounds phosphorus per 1,000 square feet per year.

- (e) Nitrogen or phosphorus Fertilizer may not be applied to turf or landscape plants except as provided above unless a soil or tissue deficiency has been verified by an approved test by UF/IFAS Extension Soil Testing Laboratory or other accredited laboratory.

Section 8. IMPERVIOUS SURFACES

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 water bodies.

Section 9. FERTILIZER FREE ZONES

- (a) Fertilizer shall not be applied to turf grass within the following areas:
 - (1) Within seventy five (75) feet of the ordinary high water line of a water body for which an Environmentally Sensitive Overlay Zone (ESOZ) has been established by Marion County.
 - (2) Fifteen (15) feet from the top of the bank of any drainage retention area, canal, wetland or other water body.
 - (3) One hundred feet of a sinkhole or other karst feature that has an opening at the surface.
 - (4) Within seventy five (75) feet of the ordinary high water line of Silver Springs, Silver Run, Rainbow Springs or Rainbow River.
- (b) In the event an area is included in one or more of the areas described in subsection (a) above, the more restrictive provision (i.e., the larger distance) shall apply.
- (c) No Fertilizer shall be applied to any non-turf area within thirty (30) feet of any pond, stream, water course, lake, canal, or wetland as defined in Chapter 62-340, Florida Administrative Code.
- (d) Notwithstanding the foregoing provisions, newly planted or renovated turf or landscaping may be fertilized for the first sixty (60) days after being planted or renovated, provided fertilizer application complies with *Florida Green Industries Best Management Practices for Protection of Water Resources in*

Florida, June 2002, as amended.

Section 10. LOW MAINTENANCE ZONES

A voluntary six (6) foot low maintenance zone is strongly recommended, but not mandated, from any pond, stream, water course, lake, wetland or from the top of 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 County regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. No mowed or cut vegetative material shall 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 11. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER

Grass clippings and/or other vegetative debris shall not be piled or disposed of in a stormwater system, water body, or wetland. Lawn clippings discharged onto a road or curb shall be swept, blown, or otherwise removed and disposed of in a manner consistent with this code.

Section 12. EXEMPTIONS

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

- (a) Golf courses and athletic fields. 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 amended, shall be followed when applying Fertilizer to golf courses. All other Specialized Turf Managers shall use their best professional judgment to apply the concepts and principles embodied in the "*Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002*", as amended, and the instructions in *Rule 5E-1.003(2), Florida Administrative Code*, while maintaining the health and function of their Turf and Landscape Plants.
- (b) Bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14, Florida Statutes, provided that fertilizers are applied in accordance with the appropriate Best Management Practices Manual adopted by the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy for the crop in question.
- (c) Other properties not subject to or covered under the Florida Right to Farm Act that have Pastures used for grazing livestock provided that fertilizers are

applied in accordance with the appropriate Best Management Practices Manual adopted by the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy for the crop in question.

Section 13. TRAINING FOR FERTILIZER APPLICATORS

- (a) All persons applying fertilizer as part of landscape maintenance services for hire shall abide by and be trained in the Florida Yards and Neighborhoods Environmental Landscape Management Course and the *"Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002"*, as amended, by January 1, 2010. New employees who will apply fertilizer shall obtain training by the date of the next available approved training course. Persons who apply fertilizer to lawns or specialized turf for hire will obtain a Certificate of Completion upon successful completion of the course. Certification is good for four years and must be taken again at the conclusion of the fourth year from issuance. As an alternative to taking such training course, a person may meet the educational requirement by providing proof that a minimum of four (4) Continuing Education Credits (CEU's) were received from an approved training organization in principles of Florida Friendly Landscape Management within the previous 24 months. The County shall maintain a list of approved training organizations.
- (b) No person for hire shall apply fertilizer to any lawn or specialized turf unless such person is registered with the County as having met compliance with the training requirements under subp. (a) above. Registrants will pay a registration management fee and will receive an authorization certificate, registration cards for individual employees, vehicle decals, and a copy of the *"Florida Green Industries Best Management Practices for the Protection of Water Resources in Florida, June 2002"*, as amended. Renewal registration shall be required biennially, prior to September 30 in each odd calendar year thereafter. It is a violation of this Section for any Commercial Fertilizer Applicator to fertilize any lawn without having been first duly registered, or for any employee of a Commercial Fertilizer Applicator to fertilize any lawn after the date of the next available training course following the date of hire, without having a Certificate of Completion from such training. A vehicle decal, when available from the County, shall be affixed and maintained to the exterior of all vehicles and trailers used in connection with the application of fertilizer within the unincorporated area of the County.
- (c) Commercial Fertilizer Applicators shall maintain adequate records that demonstrate compliance with the fertilization limits in this Section. Invoices and account histories may be required for inspection by the County upon request and shall be made available at the place of business during normal working hours.

- (d) Private homeowners are required to follow the recommendations of the University of Florida IFAS *Florida Yards and Neighborhoods* program when applying fertilizers, except to the extent this Ordinance provides more stringent requirements.

Section 14. ENFORCEMENT

Every code enforcement officer shall, in connection with all other duties imposed by law, be authorized to enforce the provisions of this Ordinance. In addition, the county administrator may also delegate enforcement responsibility for this Ordinance to agencies and departments of Marion County government, in accordance with state and local law.

Section 15. PENALTIES

Violation of any provision of this ordinance shall be subject to the following penalties:

- (a) First violation: Written Notification and Education.
- (b) Second violation: Written Notification and Education.
- (c) Third violation: Fifty dollars (\$50).
- (d) Forth and subsequent violation(s): One Hundred dollars (\$100).

Each day in violation of this Ordinance within a 365-day period, beginning the date of the first violation, shall constitute a separate offense. The Board may take any other appropriate legal action, including but not limited to emergency injunctive action, to enforce the provisions of this Ordinance.

Section 16. INCLUSION IN CODE

It is the intention of the Board of County Commissioners of Marion County, Florida, and it is hereby provided that the provisions of this ordinance shall become and be made a part of the Code of Marion County, Florida, that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section", "article" or other appropriate designation.

Section 17. ORDINANCES REPEALED

All Ordinances or parts of Ordinances which are in conflict with the Ordinance are hereby repealed.

Section 18. SEVERABILITY CLAUSE

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 19. EFFECTIVE DATE

A certified copy of this Ordinance as enacted shall be filed by the Clerk of the Board with the Office of the Secretary of State of the State of Florida within ten (10) days after enactment, and this Ordinance shall take effect one hundred eighty (180) days from the date of adoption, in accordance with Section 125.66(2), Florida Statutes. However, a one hundred eighty (180) day implementation period following the effective date is hereby established in order to accomplish the following:

- (a) The establishment of a Marion County approval 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, 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 the 180 day implementation period has passed; however, Warning notices may be issued during the implementation period.

DULY ADOPTED this 4th day of November 2008.

**BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, FLORIDA**


CHARLIE STONE, CHAIRMAN

ATTEST:



DAVID R. ELLSPERMANN, CLERK

RECEIVED NOTICE FROM SECRETARY
OF STATE ON NOVEMBER 19, 2008 THAT
ORDINANCE WAS FILED ON NOVEMBER
13, 2008.