

ORDINANCE NO. 13-005

AN ORDINANCE RELATED TO FERTILIZER MANAGEMENT AND REGULATING THE APPLICATION OF FERTILIZER TO URBAN LANDSCAPES IN POLK COUNTY; PROVIDING FOR A SHORT TITLE, TO BE KNOWN AS THE "POLK COUNTY FERTILIZER MANAGEMENT ORDINANCE"; PROVIDING FOR A FINDING OF FACTS; ESTABLISHING APPLICABILITY; PROVIDING DEFINITIONS; ADDRESSING WEATHER RELATED RESTRICTIONS ON FERTILIZER APPLICATION; IDENTIFYING RESTRICTIONS ON THE FERTILIZER CONTENT AND THE RATE OF FERTILIZER APPLICATION; ESTABLISHING FERTILIZER FREE ZONES; PROVIDING LIMITATIONS TO THE MODE OF APPLICATION; ADDRESSING THE MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATERIAL/DEBRIS; ESTABLISHING TRAINING AND CERTIFICATION REQUIREMENTS FOR COMMERCIAL APPLICATORS OF FERTILIZER; PROVIDING FOR VARIANCES AND EXEMPTIONS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR SEVERABILITY AND INCLUSION INTO THE COUNTY CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA THAT:

ARTICLE I – GENERAL PROVISIONS

SECTION 1-1 SHORT TITLE:

This Ordinance shall be known as the Polk County Fertilizer Management Ordinance.

SECTION 1-2 FINDING OF FACTS:

Stormwater runoff from residential neighborhoods, commercial centers, industrial areas, and other lands transports pollutants through the drainage conveyances to the natural water bodies of Polk County. Phosphorus and nitrogen are the primary nutrients associated with the degradation of groundwater and surface water, and are the primary components of fertilizer used on urban landscapes. Improper fertilization practices contribute excess nitrogen and phosphorus to Polk County's water bodies through the drainage conveyances that regulate the flow of stormwater to prevent flooding. This reduces the drainage conveyances capacity to provide flood protection from the overgrowth of vegetation.

Pursuant to Section 303(d) of the federal Clean Water Act and Chapter 62-303 of the Florida Administrative Code, the Florida Department of Environmental Protection (FDEP) has classified specific water bodies in Polk County as "impaired" as a result of the presence of excess nutrients. In addition, the FDEP has issued a National Pollutant Discharge Elimination System

(NPDES) permit to Polk County requiring the adoption of an ordinance to limit the nutrient contributions from the fertilization of urban landscapes within the watershed of any nutrient impaired water bodies. The Board of County Commissioners of Polk County, Florida, therefore finds it necessary to adopt this ordinance to reduce nutrient leaching and runoff through improved fertilizer management in order to protect the quality of waters receiving stormwater discharges for the health, safety, and general welfare of the citizens of Polk County.

SECTION 1-3 APPLICABILITY:

The regulations herein set forth shall apply to the unincorporated areas of Polk County and the incorporated areas of those municipalities that have not adopted an ordinance regulating the application of fertilizer on the effective date of this Ordinance. This Ordinance shall not be applicable in the incorporated areas of those municipalities which adopt an ordinance regulating the application of fertilizer subsequent to the effective date of this Ordinance as of the effective date of the municipal ordinance.

All references to state or federal law, statute, or code shall include any amendment to or superseding law, statute, or code.

ARTICLE II - DEFINITIONS

SECTION 2-1 DEFINITIONS:

- A. *Administrator* means the County Manager, or an administrative official of Polk County government designated by the County Manager to administer and enforce this Ordinance.
- 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.
- D. *Board* or *Governing Board* means the Board of County Commissioners of Polk County, Florida.
- E. *Best Management Practices (BMPs)* 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 Polk County whose duty it is to enforce codes and ordinances enacted by Polk County.
- G. *Commercial 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.

- H. *Fertilize, Fertilizing, or Fertilization* means the act of applying fertilizer to turf, specialized turf, or landscape plants.
- I. *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 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 Private Non-commercial Applicator or Commercial Applicator, that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional Applicators shall include but not be limited to, owners, manager, 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.
- L. *Landscape Plant* means any native or exotic tree, shrub, or groundcover (excluding turf).
- M. *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 fertilizer, watering, mowing, etc.
- N. *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.
- O. *Private Non-commercial Applicator* means a person applying fertilizer to their own residence, or that of another, without financial gain.
- P. *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.
- 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. *Turf, Sod, or Lawn* means grass-covered soil held together by the roots of the grass.
- S. *Urban Landscape* means pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other non-agricultural lands that are planted with turf or horticultural plants.

ARTICLE III – FERTILIZER MANAGEMENT

SECTION 3-1 WEATHER RELATED RESTRICTIONS:

No fertilizer containing nitrogen or phosphorus shall be applied to urban landscapes during a period for which the National Weather Service has issued any of the following advisories for any portion of Polk County: a severe thunderstorm warning or watch, flood warning or watch, tropical storm warning or watch, hurricane warning or watch, or heavy rain is likely to exceed two (2) inches in a 24 hour period.

SECTION 3-2 FERTILIZER CONTENT & APPLICATION RATES:

(a) All fertilizer applied to urban landscapes shall be labeled in accordance with Section 576.031, Florida Statutes, as it may be amended or superseded.

(b) Applications to urban landscapes shall be in accordance with the requirements and directions provided by the manufacturers label or as recommended for landscape plants, vegetable gardens, or fruit trees and shrubs by the University of Florida's Institute of Food and Agricultural Sciences (IFAS) unless a soil or tissue deficiency has been verified by an approved test by IFAS or an accredited laboratory.

(c) No fertilizer shall be applied to turf at a rate that exceeds the range per plant species set forth in guidelines established in Rule 5E-1.003(2), Florida Administrative Code, or in the most recent publication of Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries, as stated below:

Annual Rates:

Bahiagrass: 2-4 pounds of nitrogen per 1,000 square feet per year.

Bermudagrass: 4-6 pounds of nitrogen per 1,000 square feet per year.

Centipedegrass: 2-3 pounds of nitrogen per 1,000 square feet per year.

St. Augustinegrass: 2-5 pounds of nitrogen per 1,000 square feet per year.

Zoysiagrass*: 2-5 pounds of nitrogen per 1,000 square feet per year.

*Newer cultivars of Zoysiagrass, including Empire, will generally perform well with 1-1.5 pounds per 1,000 square feet less nitrogen annually (ie.2-3.5 lbs. per 1,000 sq. ft. per year).

Single Application Rates to turf areas shall not exceed 0.5 lbs. per 1,000 square feet for water soluble fertilizers, or as otherwise recommended in the most recent edition of the "Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries" as published by the Florida Department of Environmental Protection and the University of Florida – IFAS Extension. Slow release fertilizers shall not be applied at a rate in excess of 1.0 lb. per 1,000 square feet total nitrogen for a single application, unless otherwise indicated in the most recent edition of the "Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries".

(d) The above listed application rates shall be reduced appropriately on properties where reclaimed wastewater is used for irrigation based on available nutrients in the reclaimed water.

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

SECTION 3-3 FERTILIZER-FREE ZONES:

(a) No fertilizer shall be applied within ten (10) feet of any 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 or other stormwater conveyance, or directly to a water body. Any fertilizer spilled or deposited on an impervious surface shall be immediately and completely removed to the extent reasonably possible.

(c) A low-maintenance zone is strongly recommended, though not required, for all areas within ten (10) feet of the water's edge of any lake, pond, stream, water body, water course or canal, or any wetland. Low-maintenance zones should be planted and managed in such a way as to minimize the need for watering, mowing, and other active maintenance.

SECTION 3-4 MODE OF APPLICATION:

Broadcast spreaders used for applying fertilizers must be equipped with deflector shields positioned to deflect fertilizer from the Fertilizer Free Zones described in Section 3-3.

SECTION 3-5 GRASS CLIPPINGS AND VEGETATIVE MATERIAL/DEBRIS:

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 extent reasonably possible.

ARTICLE IV – TRAINING AND CERTIFICATION

SECTION 4-1 TRAINING REQUIREMENTS

(a) All Commercial and Institutional Applicators of fertilizer 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*” offered by the Florida Department of Environmental Protection through the UF/IFAS Florida-Friendly Landscaping™ program, or an approved equivalent per Section 403.9338 Florida Statutes.

(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 4-2 CERTIFICATION OF COMMERCIAL APPLICATORS:

(a) Prior to January 1, 2014, all Commercial Applicators shall obtain and maintain certification by successfully completing training and continuing education requirements in the “*Florida Friendly Best Management Practices for Protection of Florida Water Resources by the Green Industries*” offered by the UF/IFAS Florida-Friendly Landscaping™ program. Certification may be obtained through a County Extension Service Office, or an approved equivalent program.

(b) All businesses applying fertilizer to turf and landscape plants on their own property (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 Florida Water Resources by the Green Industries” training certificate.

(c) After December 31, 2013, all Commercial Applicators of fertilizer shall have, and carry in their possession at all times when in the possession of fertilizer, a Florida Department of Agriculture and Consumer Services Limited Certification for Urban Landscape Commercial Fertilizer as required per 5E-14.117(18) Florida Administrative Code.

ARTICLE V – VARIANCES AND EXEMPTIONS

SECTION 5-1 VARIANCES (Reserved):

SECTION 5-2 EXEMPTIONS:

(a) Section 3-2 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*.

(b) This Ordinance shall not apply to sports turf areas at parks and athletic fields for which fertilizer is applied in accordance with the applicable provisions of Rule 5E-1.003(2)(d) FAC.

(c) This Ordinance shall not apply to any bona fide farm operation as defined in the Florida Right to Farm Act, Section 823.14, *et seq.*, Florida Statutes.

(d) This Ordinance shall not apply to any lands classified as agricultural lands pursuant to Section 193.461 Florida Statutes, including without limitation, other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock.

(e) This Ordinance shall not apply to 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.

ARTICLE VI – ORDINANCE ADMINISTRATION

SECTION 6-1 ENFORCEMENT:

(a) If a violation of this Ordinance occurs within a municipality, the violation shall be enforced by the municipality in accordance with the ordinance or ordinances governing prosecution of ordinance violations within the municipality in which the violation occurs.

(b) If a violation of this Ordinance occurs in unincorporated Polk County, the enforcement provisions and procedures contained in the Polk County Code Enforcement Special Magistrate Ordinance, as it may be amended or superseded, are incorporated herein by reference and will apply.

(c) Nothing contained herein shall prevent Polk County or a municipality from taking such other lawful action in law and equity as may be necessary to remedy any violation of any part of this Ordinance, including but not limited to:

1. Pursuit of injunction and/or declaratory relief in a court of competent jurisdiction;
2. Utilizing any other action or enforcement method permitted by law; or
3. Prosecution as a misdemeanor with a fine not exceeding Five Hundred Dollars (\$500.00) or by imprisonment for a term not exceeding sixty (60) days or by both fine and imprisonment.

(d) Funds generated by penalties imposed under this section shall be used by Polk County or the municipality for the administration and enforcement of Section 403.9337, Florida Statutes, this ordinance, and to further nonpoint pollution prevention activities.

SECTION 6-2 SEVERABILITY:

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.

SECTION 6-3 INCLUSION IN THE POLK COUNTY CODE OF ORDINANCES:

It is the intention of the Board of County Commissioners hereby provided that the provisions of this ordinance shall be made a part of the Polk County Code of Ordinances; that the sections of this ordinance may be renumbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section," "article," or other appropriate designation.

SECTION 6-4 EFFECTIVE DATE:

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

ADOPTED THIS 19th DAY OF March, 2013.

POLK COUNTY, FLORIDA

Polk County Board of County Commissioners

By: Mary M Bell
Chairman P.23



ATTEST: Stacy M. Butterfield, Clerk

By: Kim Hancock
Deputy Clerk



Stacy M. Butterfield

*Clerk of the Circuit Court & County Comptroller
Polk County, Florida*

330 West Church Street
Post Office Box 988
Bartow, FL 33831-0988

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CLERK AND COMPTROLLER TO THE BOARD

March 21, 2013

Ms. Liz Cloud, Program Administrator
Administrative Code
Florida Department of State
R.A. Gray Building
500 South Bronough Street, Room 101
Tallahassee, Florida 32399-0250

Dear Ms. Cloud,

Enclosed are copies of certified Polk County Ordinances,
that were adopted by the Polk County Board of County
Commissioners in regular session, March 19, 2013

Ordinance 2013-004

Ordinance 2013-005

Ordinance 2013-006

Please direct the official filing notification letter to:

Alison Prevatt, Deputy Clerk
Finance and Accounting
PO Box 988
Bartow, Florida 33831-0988

Thank you for your assistance.

Stacey M. Butterfield
Clerk of Courts

By: Alison Prevatt,
Deputy Clerk

The Mission of the Office of Clerk of the Circuit Court is to function as a team dedicated to our customers by preparing and maintaining accurate records, furnishing assistance in an understanding and compassionate manner, and providing services with competence, professionalism, and courtesy in compliance with laws, rules and regulations.

STATE OF FLORIDA)
)
COUNTY OF POLK)

I Stacy M. Butterfield, County Clerk and Comptroller for Polk County, Florida, hereby certify that the foregoing is a true and correct copy of Ordinance No.13-004 adopted by the Board on March 19th, 2013.

WITNESS my hand and official seal on this 21st day of March, 2013.

STACY M. BUTTERFIELD, CLERK

By: Alison Prevatt
Alison Prevatt
Deputy Clerk





FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

March 26, 2013

Ms. Alison Prevatt
Deputy Clerk
Finance and Accounting
Post Office Box 988
Bartow, Florida 33831-0988

Dear Ms. Prevatt:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated March 21, 2013 and certified copies of Polk County Ordinance Nos. 13-004 through 2013-006, which were filed in this office on March 26, 2013.

Sincerely,

A handwritten signature in cursive script that reads "Liz Cloud".

Liz Cloud
Program Administrator

LC/elr

RECEIVED

4/2/13 *Alison Prevatt*
Clerk Of The Board