

LEE COUNTY ORDINANCE NO. 08-08

AN ORDINANCE REGULATING 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 LANDSCAPING BUSINESSES AND INSTITUTIONAL LANDSCAPERS; PROVIDING FOR MANDATORY BEST MANAGEMENT PRACTICES; PROVIDING FOR EXEMPTIONS TO LANDSCAPING BEST MANAGEMENT PRACTICES; PROVIDING EXEMPTIONS FOR AGRICULTURE, GOLF COURSES AND SPECIALIZED TURF; PROVIDING FOR ENFORCEMENT AND PENALTY; PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS; 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, basin management action planning, 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 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 water bodies 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 water bodies 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. BMP Trained Landscaper – any Person who has completed the proper training, obtained a Certificate of Completion and is qualified and responsible to provide lawn care and maintenance or landscaping in unincorporated Lee County.
- C. Certificate of Completion – the documentation evidencing completion of a Lee County approved BMP training course or any other future certification or licensing requirements mandated by the State of Florida.
- D. Division – the Division of Lee County Natural Resources.
- E. Fertilize, Fertilizing or Fertilization – the act of applying fertilizer to Turf, specialized Turf or Landscape Plants.
- F. 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.
- G. 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.
- H. 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.
- I. Landscape Plant – any native or exotic tree, shrub or groundcover (excluding Turf).
- J. Lawn Care and Maintenance or Landscaping (landscaping) - shall include, but not be limited to, mowing, trimming, pruning, edging, liming, fertilizing, mulching, seeding and aerating of turf and/or landscaping plants.

- K. 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.
- L. 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.
- M. 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.
- N. Rainy Season – June 1 through September 30 of each calendar year.
- O. 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.
- P. Specialized Turf – areas of grass used for athletic fields, activity fields, parks, golf course practice and play areas, cemeteries and other similar areas.
- Q. Specialized Turf Manager – a Person responsible for lawn care and maintenance or landscaping or directing the lawn care and maintenance or landscaping of a golf course or athletic field.
- R. Turf – a piece of grass-covered soil held together by the roots of the grass; sod; lawn.
- S. 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. Water body shall not include manmade structures such as pools and water fountains.

SECTION FOUR: APPLICATION

This Ordinance shall be applicable to and shall regulate any and all persons performing landscaping within unincorporated Lee County, unless such person or landscaping activity is specifically exempted or excepted by the terms of this Ordinance.

SECTION FIVE: REGISTRATION OF PROFESSIONAL LANDSCAPING BUSINESSES AND INSTITUTIONAL LANDSCAPERS

A. Professional Landscaping Businesses

1. All Professional Landscaping Businesses must register with the Division prior to performing landscaping in unincorporated Lee County. Any Professional Landscaping Business seeking to register and remain registered with the Division shall have at least one employee who is a Certified Professional Landscaper to qualify the Professional Landscaping Business.
2. All Professional Landscaping Businesses shall provide the Certificate of Completion of a Lee County approved BMP training program and/or future certification or license requirement mandated by the State of Florida from the qualifying employee to the Lee County Tax Collector's Office prior to obtaining a Lee County local business tax receipt.
3. Upon receipt of the current local business tax receipt, a current Certificate of Completion of the qualifying employee and payment of an initial 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.

4. In addition to the initial registration fee, Professional Landscaping Businesses shall pay an annual registration fee.
5. All Professional Landscaping Businesses shall ensure that at least one (1) BMP Trained Landscaper is on site while fertilizer is being applied.

B. Institutional Landscapers

1. All Institutional Landscapers must register with the Division prior to landscaping in unincorporated Lee County. Any Institutional Landscaper seeking to register and remained registered with the Division shall have at least one (1) employee who is a BMP Trained 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 PROFESSIONAL LANDSCAPING BUSINESSES AND INSTITUTIONAL LANDSCAPERS

- A. In addition to any current or future certification or licensing requirements mandated by the State of Florida or Lee County, any person seeking to register a Professional Landscaping Business with the Division under Section 5(A) above

shall first successfully complete training and receive a Certificate of Completion 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 and/or any future certification or licensing requirements mandated by the State of Florida.

- B. Any person seeking to register as an Institutional Landscaper with the Division under section 5(B) shall first successfully complete training and receive a Certificate of Completion in accordance with the *Florida Green BMPs*. The *Florida Green BMPs* training shall be obtained through a Lee County approved BMP training program.
- C. 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.
- D. Non-professional landscapers are strongly encouraged to participate in the University of Florida IFAS Florida Yards and Neighborhoods Outreach and Public Education Program available at the Lee County Cooperative Extension Service Office.

SECTION SEVEN: MANDATORY BMPs: TIMING OF APPLICATION; FERTILIZER CONTENT AND APPLICATION RATE; IMPERVIOUS SURFACE; BUFFER ZONES; MODE OF APPLICATION; LOW MAINTENANCE ZONES; MANAGEMENT OF GRASS CLIPPINGS AND VEGETATION MATERIAL

A. TIMING OF APPLICATION

No person shall apply fertilizers containing nitrogen and/or phosphorus to Turf

and/or Landscape Plants during the rainy season (June 1 through September 30 of each calendar year).

B. FERTILIZER CONTENT AND APPLICATION RATE

1. No phosphorus Fertilizer shall be applied to Turf and/or Landscape Plants within Lee County at application rates which exceed 0.25 lbs. P₂O₅/1,000 ft² per application nor exceed 0.50 lbs. P₂O₅/1,000 ft² per year.
2. Fertilizers Applied to Turf and/or Landscape Plants within Lee County shall contain no less than fifty percent (50%) Slow Release Nitrogen per Guaranteed Analysis Label.
3. Fertilizers should be applied to Turf and/or Landscape Plants at the lowest rate necessary. No more than four (4) lbs. of nitrogen per 1000 ft² shall be applied to any Turf/landscape area in any calendar year.

C. 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.

D. BUFFER ZONES

No fertilizer shall be applied in or within ten (10) feet from the top of bank of any water body, seawall, designated wetland or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340).

E. MODE OF APPLICATION

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

F. 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/bern system is recommended for installation at the landward edge of this low maintenance zone to capture and filter runoff. If more stringent Lee County Code 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 the zone or deposited in the water.

G. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATERIAL

In no case shall any person wash, sweep or blow off grass clippings and/or vegetative material into stormwater drains, ditches, conveyances, water bodies, roadways or other impervious surfaces.

SECTION EIGHT: EXEMPTIONS TO LANDSCAPING BMPs

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

1. Newly established 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. Vegetable gardens, provided they are not within fifteen (15) feet of any water body and/or wetland.
3. 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.
4. Reclaimed water used for irrigation (which may contain substantial amounts of nitrogen and phosphorus).

SECTION NINE: EXEMPTIONS: AGRICULTURE; GOLF COURSES; SPECIALIZED TURF

The provisions set forth 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, provided that fertilizers are applied in accordance with the appropriate Best Management Practices Manual adopted by the Department of Agricultural and Consumer Services (DACS), Office of Agricultural Water Policy for the crop in question.
- B. 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 DACS, Office of Agricultural Water Policy for the crop in question.

- C. All golf courses provided that landscaping is done within the provisions of the Florida Department of Environmental Protection document, "*Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses, 2007*"(*Florida Golf Course BMPs*), as updated. *Florida Golf Course BMPs* shall be followed when performing landscaping on golf course practice and play areas. If *Florida Golf Course BMPs* are not adhered to, Lee County may take enforcement action in accordance with Section 10 of this Ordinance.
- D. When performing landscaping on all other specialized turf, 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 TEN: 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 ELEVEN: 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 TWELVE: 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 THIRTEEN: 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 FOURTEEN: 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.

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

ROBERT P. JANES	<u>AYE</u>
BRIAN BIGELOW	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
TAMMARA HALL	<u>AYE</u>
FRANK MANN	<u>AYE</u>

DULY PASSED AND ADOPTED THIS 13th day of May, 2008.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BY: Marcia Wilson
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: Ray Judah
Chairman



APPROVED AS TO FORM:)

BY: [Signature]
Office of the County Attorney



FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

KURT S. BROWNING
Secretary of State

May 20, 2008

Honorable Charlie Green
Clerk of Court
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attention: Marcia Wilson, Deputy Clerk

Dear Mr. Green:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated May 15, 2008 and certified copies of Lee County Ordinance Nos. 08-07 and 08-08, which were filed in this office on May 16, 2008.

Sincerely,

[Handwritten signature: Liz Cloud]

Liz Cloud
Program Administrator

LC/srd

2008 MAY 23 PM 12:59
RECEIVED BY
LEE CO. ATTORNEY

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MINUTES OFFICE

2008 MAY 23 AM 8:20

DIRECTOR'S OFFICE

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