

ORDINANCE NO. 2013 - 012

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, AMENDING THE CODE OF INDIAN RIVER COUNTY TO ESTABLISH A NEW CHAPTER 316, ENTITLED "FERTILIZER AND LANDSCAPE MANAGEMENT;" ADOPTING THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S MODEL ORDINANCE FOR FLORIDA-FRIENDLY USE OF FERTILIZER ON URBAN LANDSCAPES, WITH MODIFICATIONS; MAKING FINDINGS AND PROVIDING FOR SEVERABILITY, CODIFICATION; DIRECTING COUNTY ATTORNEY'S OFFICE TO POST SUMMARY ON COUNTY WEBSITE, AND AN EFFECTIVE DATE.

WHEREAS, as a result of impairment to Indian River 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 canals within the boundaries of Indian River County, the Board of County Commissioners has determined that the use of fertilizers on lands within Indian River County creates a risk of contributing to adverse effects on surface and/or ground water; and

WHEREAS, in order to address this risk, the Board of County Commissioners has determined that it is not only critical to adopt the Florida Department of Environmental Protection's Model Ordinance for Florida-Friendly Use of Fertilizer on Urban Landscapes, but that as part of Indian River County's science-based, and economically and technically feasible, comprehensive program to address nonpoint sources of nutrient pollution, additional and more stringent standards are necessary in order to adequately address urban fertilizer contributions to nonpoint source nutrient loading to the surface and/or ground water of Indian River County; and

WHEREAS, this ordinance regulates the proper use of fertilizers by any applicator; requires proper training of Commercial Fertilizer Applicators and Institutional 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 Indian River County's natural and constructed stormwater conveyances, rivers, creeks, canals, lakes, estuaries and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of Indian River 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,

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NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, THAT:

Section 1. Enactment Authority.

Article VIII, §1 of the Florida Constitution and Chapter 125, Florida Statutes vest broad home rule powers in counties to enact ordinances, not inconsistent with general or special law, for the purpose of promoting the public health, safety and welfare of the residents of the county. The Board specifically determines that the enactment of this ordinance is consistent with general or special law, and is necessary and appropriate to promote the health, safety and welfare of the residents of Indian River County.

Section 2. Findings.

The Board finds that the above “Whereas” clauses are true and correct, and hereby incorporates such clauses as findings of the Board.

Section 3. Adoption of Chapter 316 of the Code of Indian River County (the “Code”).

Chapter 316 of the Code is hereby adopted, as follows (new language is indicated by underline):

Section 316.1. Title.

This chapter shall be known as the “Indian River County Fertilizer and Landscape Management Ordinance.”

Section 316.2. Definitions.

For the purposes of this chapter, the following terms shall have the following meanings:

“Administrator” shall mean the County Administrator, or an administrative official of the County designated by the County Administrator to administer and enforce the provisions of this chapter.

“Application” or “apply” shall mean the actual physical deposit of fertilizer to turf or landscape plants.

“Applicator” shall mean any Person who applies fertilizer on turf and/or landscape plants in Indian River County.

“Board” shall mean the Indian River County Board of County Commissioners.

“Best Management Practices” shall mean turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined to be the most effective

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and practicable on-location means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

“Chapter 85-427” shall mean The Indian River County Environmental Control Act, Chapter 85-427, Special Acts, Laws of Florida.

“Code Enforcement Officer shall mean any designated employee or agent of Indian River County whose duty it is to enforce codes and ordinances enacted by Indian River County.

“Commercial Fertilizer Applicator,” except as provided in §482.1562(9), Florida Statutes, shall mean 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.

“Code” shall mean The Code of Indian River County.

“Environmental Control Officer” shall mean the Indian River County Environmental Control Officer appointed by the Board pursuant to Chapter 85-427, and Chapter 303 (Part I) of this Code, and his or her designees.

“Fertilize,” “fertilizing,” or “fertilization” shall mean the act of applying fertilizer to turf, specialized turf, or landscape plants.

“Fertilizer” shall mean 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.

“Heavy rain” shall mean rainfall greater than two inches in a 24 hour period.

“Institutional Fertilizer Applicator” shall mean any person, other than a private, non-commercial applicator or a Commercial Fertilizer Applicator (unless such definitions also apply under the circumstances), that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional Fertilizer 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” shall mean any native or exotic tree, shrub, or groundcover (excluding turf).

“Low maintenance zone” shall mean an area a minimum of ten feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.

“Person” shall mean 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.

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“Restricted Season” shall mean June 1 through September 30.

“Saturated soil” shall mean a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this chapter, 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 Nitrogen” shall mean 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.

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

“Urban landscape” shall mean 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 §570.02, Florida Statutes.

Section 316.3. Timing of fertilizer application.

No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the Restricted Season, to saturated soils, or during a period in 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 Indian River County, issued by the National Weather Service, or if heavy rain is likely.

Section 316.4. Fertilizer-free zones.

Fertilizer shall not be applied within ten 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. If more stringent Indian River 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 60-day period beginning thirty days after planting if needed to allow the plants to become well established. Caution shall be used to prevent nutrients from being directly deposited into the water.

Section 316.5. Low maintenance zones.

A voluntary ten 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 Indian River County Code regulations apply, this provision

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does not relieve the requirement to adhere to the more stringent regulations. Notwithstanding the voluntary nature of the above sentences, 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 overspray of aquatic weed products in this zone.

Section 316.6. Fertilizer content and application rates.

(a) No fertilizer containing phosphorous shall be applied to turf or landscape plants in Indian River County unless a soil or plant tissue deficiency is verified by a University of Florida, Institute of Food and Agriculture Sciences, approved testing methodology. In the case that a deficiency has been verified, the application of a fertilizer containing phosphorous shall be in accordance with the rates and directions for the Central Region of Florida as provided by Rule 5E-1.003(2), Florida Administrative Code. Deficiency verification shall be no more than 2 years old. However, recent application of compost, manure, or top soil shall warrant more recent testing to verify current deficiencies.

(b) The nitrogen content of fertilizer applied to turf or landscape plants within Indian River County shall contain at least 50% slow release nitrogen per guaranteed analysis label.

(c) Fertilizers applied to an urban lawn or turf within Indian River County shall be applied in accordance with requirements and directions set forth on the label or tag for packaged fertilizer products, or in the printed information accompanying the delivery of bulk fertilizer products, as provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*. All packaged and bulk fertilizer products sold in Indian River County shall be sold in packages with labels or tags, or, if sold in bulk, be accompanied by printed information, which complies with the requirements of Rule 5E-1.003(2), Florida Administrative Code.

(d) 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 (wildfire, etc.), or in accordance with the Stormwater Pollution Prevention Plan for that site.

Section 316.7. 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 all 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 practicable.

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(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 316.8. Management of grass clippings and vegetative materials.

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 practicable.

Section 316.9. Exemptions.

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

(a) bona fide farm operations as defined in the Florida Right to Farm Act, § 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.;

(d) golf courses when landscaping is performed within the provisions of the Florida Department of Environmental Protection document, “Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses”, these provisions shall be followed when applying fertilizer to golf course practice and play areas;

(e) athletic fields at public parks and school facilities that apply the concepts and principles embodied in the Florida Green BMPs, while maintaining the health and function of their specialized turf areas;

(f) vegetable gardens owned by individual property owners or a community, and trees grown for their edible fruit.

Section 316.10. Training.

(a) Within the time period set forth in section 316.12 of this Chapter, all Commercial Fertilizer Applicators and Institutional Fertilizer Applicators within Indian River County shall abide by and successfully complete the six-hour training program in the “Florida-friendly Best

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Management Practices for Protection of Water Resources by the Green Industries” offered by the Florida Department of Environmental Protection through the University of Florida Extension “Florida-Friendly Landscapes” program, or an approved equivalent.

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

Section 316.11. General education program.

The Public Works Department shall have an employee who shall address issues pertaining to this Chapter. This employee shall implement a program to inform the general public of the requirements of this chapter, which program shall include, among other things, informative postings on the County website, printing and distributing informative brochures and other print materials, and speaking engagements at community associations, civic organizations, etc. The program shall also include, to the extent practicable, use of any materials from the Be Floridian program and coordination and collaboration with University of Florida Institute of Food and Agriculture Sciences educational activities. Any claimed or alleged deficiency in the County’s general education program shall not constitute a defense to any action brought to enforce the provisions of this chapter.

Section 316.12. Licensing of commercial fertilizer applicators.

(a) No later than December 31, 2013, all Commercial Fertilizer Applicators within Indian River 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,” offered by the Florida Department of Environmental Protection through the University of Florida Institute of Food and Agriculture Sciences “Florida-friendly Landscapes” program, or an approved equivalent program, prior to obtaining an Indian River 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 Indian River County Tax Collector’s Office within 180 days of the effective date of this ordinance.

(b) After December 31, 2013, all Commercial Fertilizer Applicators within Indian River 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

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occupation which may apply any fertilizer to turf and/or landscape plants shall provide proof of completion of the program to the Indian River County Tax Collector's Office.

Section 316.13. Enforcement.

This chapter may be enforced by the Code Enforcement Officer in the Public Works Department who is devoted to issues pertaining to this Chapter, pursuant to Chapter 162, Florida Statutes, and §103.07 of this Code. In addition, this chapter may be enforced by the Environmental Control Officer pursuant to Chapter 85-427, Special Acts, Laws of Florida, and §303.14 of this Code. Penalties and remedies for violations shall be as set forth in §100.05 of this Code, and, to the extent applicable, Chapter 85-427, Special Acts, Laws of Florida. Funds generated by penalties imposed under this section shall be used by Indian River County for the administration and enforcement of §403.9337, Florida Statutes, and the corresponding sections of this chapter, and to further water conservation and nonpoint pollution prevention activities.

Section 316.14. References to state law.

Any references in this chapter to Florida Statutes, rules or regulations shall refer to such statutes, rules or regulations, as amended from time to time.

Section 316.15. Applicability.

This chapter shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the area of Indian River County, unless such applicator is specifically exempted; provided, however, that this chapter shall not apply within the limits of any municipality which has adopted an ordinance regulating the same subject matter. This chapter shall be prospective only, and shall not impair any existing contracts.

Section 4. Severability.

If any part of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected by such holding and shall remain in full force and effect.

Section 5. Codification.

It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made part of the Indian River County Code, and that the sections of this ordinance may be renumbered or re-lettered and the word ordinance may be changed to section, article or such other appropriate word or phrase in order to accomplish such intention.

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Section 6. Directing County Attorney's Office to Post Summary on County Website.

The County Attorney's Office is directed to post a summary of this ordinance on the County's website within 15 days of the filing of this ordinance with the Florida Department of State.

Section 7. Effective Date.

This ordinance shall become effective 45 days after the filing of the ordinance with the Florida Department of State.

This ordinance was advertised in the Vero Beach Press Journal, on the 8th day of July, 2013, for a public hearing to be held on the 18th day of July, 2013, and on the 10th day of August, 2013 for an additional public hearing to be held on the 20th day of August, 2013, at which time it was moved for adoption by Commissioner Solari, seconded by Commissioner O'Bryan, and adopted by the following vote:

Chairman Joseph E. Flescher	<u>AYE</u>
Vice Chairman Wesley S. Davis	<u>AYE</u>
Commissioner Peter D. O'Bryan	<u>AYE</u>
Commissioner Bob Solari	<u>AYE</u>
Commissioner Tim Zorc	<u>AYE</u>

The Chairman thereupon declared the ordinance duly passed and adopted this 20th day of August, 2013.



**BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA**

By: Joseph E. Flescher
Joseph E. Flescher, Chairman

ATTEST: Jeffrey R. Smith, Clerk of Court
and Comptroller

By: Jeffrey R. Smith
Deputy Clerk

Approved as to form and legal sufficiency:

Dylan Reingold
Dylan Reingold, County Attorney

EFFECTIVE DATE: This ordinance was filed with the Florida Department of State on the ____ day of _____, 2013.