

**F. Consent Agenda - Natural Resources Management
ITEM 2.**



**AGENDA REPORT
April 23, 2019**

**Legislative Intent & Permission to Advertise - Amendment to Fertilizer Use
on Urban Landscape, District 4**

SUBJECT:

Legislative Intent & Permission to Advertise –Amendments to Article VIII – Entitled “Fertilizer Use on Urban Landscape” to require notice to consumer signage at retail outlets.

FISCAL IMPACT:

FY 19-20 The Board previously approved \$125,000 from the Save Our Indian River Lagoon Trust Fund (Fund 1260) for fertilizer education and outreach including working with retail outlets. This budget will cover the cost of sign development, printing and distribution. There is no cost to the General Fund.

FY 20-21 Continued collaboration and training for retail outlets is included in the Fund 1260 budget.

DEPT/OFFICE:

Natural Resources Management

REQUESTED ACTION:

It is requested that the Board approve Legislative Intent and permission to advertise amendments to Brevard County Code Chapter 46, Environment, Amending Article VIII, entitled “Fertilizer Use on Urban Landscape” to require notice to consumer signage at retail outlets.

SUMMARY EXPLANATION and BACKGROUND:

On October 17, 2013, in light of the 2012 Superbloom followed by unusual mortality events for dolphins, manatees and pelicans in 2013 in the Indian River Lagoon System, the Board unanimously directed staff to bring back the Fertilizer Use on Urban Landscape Ordinance to consider stronger elements that would further reduce the harmful impacts of excess fertilizer on the Lagoon.

On March 6 2014, the Board of County Commissioner's adopted Ordinance No. 14-10 amending the Ordinance to include stronger restrictions to further reduce the harmful impacts of excess fertilizer on the Indian River Lagoon.

Excess fertilizer use continues to contribute to water quality problems and harmful algal blooms in the Indian River Lagoon. Other cities and counties have found that compliance

with local fertilizer ordinances increases if consumers are notified of local requirements at the point of sale. At least the following jurisdictions nearby have adopted notice to consumer signage requirements: Alachua County, Martin County, Orange County, St. Lucie County, City of Jupiter, and City of Marco Island.

The proposed amendment (draft attached) would require retailers of fertilizer to display signs that aid the consumer with ordinance compliance when purchasing fertilizer. The sign will describe: 1) what fertilizers comply with local ordinances adopted to reduce the harmful effects of inappropriate fertilizer use, and 2) when fertilizer application is allowed.

Retailers county-wide would be required to install the signs where fertilizer is sold. Notice was sent to City Managers on April 15, 2019. Cities can opt out by adopting their own requirements.

The remaining Fertilizer Ordinance language will remain unchanged.

ATTACHMENTS:

Description

- ▢ **Proposed Fertilizer Ordinance Amendment**
- ▢ **Existing Fertilizer Ordinance**



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April 24, 2019

M E M O R A N D U M

TO: Virginia Barker, Natural Resources Management Director

RE: Item F.2., Legislative Intent and Permission to Advertise Amendment to Fertilizer Use on Urban Landscape

The Board of County Commissioners, in regular session on April 23, 2019, approved legislative intent and granted permission to advertise for an ordinance amending Chapter 46, Environment, Article VIII - Fertilizer Use on Urban Landscape, to require notice to consumer signage at retail outlets.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

cc: Finance
Budget

ORDINANCE 2019 -

AN ORDINANCE OF BREVARD COUNTY, FLORIDA AMENDING CHAPTER 46, ENVIRONMENT, ARTICLE VIII, FERTILIZER USE ON URBAN LANDSCAPE; SPECIFICALLY AMENDING SECTION 46-337 APPLICABILITY TO REQUIRE THAT FERTILIZER RETAILERS POST A NOTICE TO CONSUMERS ABOUT THE LIMITATIONS OF FERTILIZER USE; PROVIDING FOR COUNTYWIDE APPLICATION; PROVIDING FOR RESOLUTION OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR AREA ENCOMPASSED AND AN EFFECTIVE DATE.

WHEREAS, Section 403.9337, F.S. requires a county or municipal government located within the watershed of a water body or water segment that is listed by the Florida Department of Environmental Protection as impaired to adopt at a minimum the model ordinance "Florida Friendly Fertilizer Use on Urban Landscapes"; and

WHEREAS, since 2007, pursuant to Section 403.067, F.S., the Florida Department of Environmental Protection has included the Indian River Lagoon in Brevard County on the Verified List of Impair Waters and has established pollutant load limits in the form of Total Maximum Daily Loads (TMDLs) which require the County and municipalities to reduce pollutant loads discharged from their stormwater systems and;

WHEREAS, the Florida Department of Environmental Protection provides pollutant load reduction credit to the County and municipalities toward meeting mandated Total Maximum Daily Load Program Reductions for adoption and enforcement of code provisions directed at reducing such loadings from the use of fertilizer; and

WHEREAS, the Board of County Commissioners previously adopted Fertilizer Use on Landscapes Ordinance 2012-37 which bans the use of fertilizer containing nitrogen and phosphorus during the rainy season, from June 1st through September 30th; and

WHEREAS, Ordinance 2012-37 also bans the use of fertilizer containing

phosphorus year-round unless a deficiency is verified and outside of the rainy season requires nitrogen to contain at least 50% slow release; and

WHEREAS, the Save Our Indian River Lagoon Plan prioritizes the reduction of excess nutrients in the Lagoon from multiple sources, including fertilizer; and

WHEREAS, the Board finds that a countywide ordinance amendment which requires retailers to post a notification to consumers of the local fertilizer ordinance requirements will improve voluntary compliance, reduce pollutant runoff into Brevard County waterways and serve the public, safety, health and welfare of its citizens.

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

SECTION 1. Section 46-337. Applicability. Code of Ordinances of Brevard County, Florida is hereby amended to read:

Sec. 46-337. Applicability and notice to consumers.

(a) With the exception of subsection (b) below, tThis Ordinance shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the unincorporated areas of Brevard 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.

(b) Any business that sells fertilizer shall post a notice to consumers provided by the county stating that the use of lawn and landscape fertilizers everywhere in Brevard County is restricted by city or county fertilizer ordinances. Signs shall be posted at eye level attached to the shelving that holds lawn and landscape fertilizer. This notification requirement shall be applicable countywide throughout all of Brevard County, except in municipalities which have adopted an ordinance that directly conflicts with this notification subsection.

SECTION 2. Conflicting provisions. In the case of a direct conflict between any

provision of this Ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply. In the event of a direct conflict between this Ordinance and a municipal ordinance, the municipal ordinance shall prevail. Brevard County Charter, Section 1.7.

SECTION 3. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 4. Inclusion in code. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida; and that the sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 5. Area encompassed. This Ordinance amendment creating Section 46-337(b) shall take effect COUNTYWIDE, within the municipal and unincorporated areas of Brevard County, Florida.

SECTION 6. Effective date. A certified copy of this Ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This ordinance shall take effect upon adoption and filing as required by law. For retail establishments, signs must be posted within 14 calendar days of receipt of the signs provided by the county.

DONE, ORDERED AND ADOPTED in Regular Session, this _____ day of _____, 2019.

Attest:

BOARD OF COUNTY
COMMISSIONERS OF BREVARD
COUNTY, FLORIDA

Scott Ellis, Clerk

Kristine Isnardi, Chair

(As approved by the Board on _____ 2019)

CHAPTER 46, ARTICLE VIII

FERTILIZER USE ON URBAN LANDSCAPE

Section 46-335. Purpose and intent.

This Ordinance regulates and promotes the proper use of fertilizers by any applicator; requires proper training of commercial and institutional fertilizer applicators; establishes training and licensing requirements; establishes a prohibited application period; 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 Brevard County natural and constructed stormwater conveyances and surface waters. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of Brevard County residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, will help improve and maintain water and habitat quality.

Section 46-336. Definitions.

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

Administrator means county manager or designee authorized to administer and enforce the provisions of this Article.

Application or *apply* means the actual physical deposit of fertilizer to turf, specialized turf, or landscape plants.

Applicator means any person who applies fertilizer on turf and/or landscape plants in the County.

Board means the Board of Commissioners of Brevard County, Florida.

Best management practices mean 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.

Brevard County approved best management practices training program means a training program approved pursuant to Section 403.9338, F.S., or any more stringent requirements set forth in this Article that includes the most current version of the Florida Department of Environmental Protection's "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008," as revised, and approved by the administrator.

Code enforcement officer, official, or inspector means any designated employee or agent of Brevard County whose duty it is to enforce codes and ordinances enacted by Brevard County.

Commercial fertilizer applicator except as provided in Section 482.1562(9), F.S., 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.

County means the unincorporated areas of Brevard County, Florida

Fertilize, fertilizing, or fertilization means the act of applying fertilizer to turf, specialized turf, or landscape plants.

Fertilizer means any substance or mixture of substances that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.

Guaranteed analysis means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.

Institutional applicator means any person, other than a private, non-commercial or a commercial applicator (unless such definitions also apply under the circumstances), that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional Applicators shall include, but shall not be limited to, owners, managers or employees of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.

Landscape plant means any native or exotic tree, shrub, or groundcover (excluding turf).

Low maintenance zone means an area a minimum of fifteen (15) feet wide adjacent to surface waters which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.

Person means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.

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

Restricted Application period means June 1 to September 30

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

Slow release, controlled release, timed release, slowly available, or water insoluble nitrogen means nitrogen in a form which delays 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.

Surface waters as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) means waters on the surface of the earth, contained in bounds created naturally or artificially, including , the Atlantic Ocean, bays, bayous, sounds, estuaries, lagoons, lakes, ponds, impoundments, rivers, streams, springs, creeks, branches, sloughs, tributaries, canals, and ditches.

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

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

Section 46-337. Applicability.

This Ordinance shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the unincorporated areas of Brevard 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 46-338. Timing of fertilizer application.

No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the prohibited application period, or to saturated soils. In addition no fertilizer containing nitrogen or phosphorus shall be applied to turf or landscape plants during the restricted application period, defined as June 1 to September 30.

Section 46-339. Fertilizer free zone.

Fertilizer shall not be applied within fifteen (15) feet of any surface waters, pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) or within 15 feet from the top of a seawall. Newly planted turf and/or landscape plants may be fertilized in this Zone for a sixty (60)

day period beginning 30 days after planting if needed to allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water. The requirements of Section 46-338 above also apply to newly planted turf and landscape plants.

Section 46-340. Low maintenance zone.

A voluntary fifteen (15) foot low maintenance zone is strongly recommended, but not mandated, from any surface waters, pond, stream, watercourse, 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. No mowed or cut vegetative material should 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 46-341. Fertilizer content and application rates.

- a. Only "No Phosphate Fertilizer" as defined in Rule 5E-1.003(2) may be applied to turf or landscape plants in the County without a soil or plant tissue deficiency as 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 provided by Rule 5E-1.003(2), Florida Administrative Code. Deficiency verification shall be no more than two (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 the County shall contain slow release, controlled release, timed release, slowly available, or water insoluble nitrogen per guaranteed analysis label of not less than 50%. Caution shall be used to prevent direct deposition of nutrients in the water.
- c. Unless otherwise stipulated herein fertilizers applied to turf within the County shall be applied at rates that are in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*.
- 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 46-342. 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, surface waters 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 and either legally applied to turf or any other legal site, or returned to the original or other appropriate container.
- d. In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

Section 46-343. Management of grass clippings and vegetative matter.

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

Section 46-344. Exemptions.

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

- a. Bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14, Florida Statutes;
- b. Any lands used for scientific research supported by an accredited institution of higher learning or a government entity, including, but not limited to, research on the effects of fertilizer use on urban stormwater, water quality, agronomics, or horticulture.
- c. Where golf courses, parks and athletic fields are subject to and implementing Best Management Practices as prescribed in Rule 5E-1003(2)(d) F.A.C., they shall be exempt from this Ordinance.

Section 46-345. Training.

- a. Prior to January 1, 2014, all commercial and institutional applicators of fertilizer within the County, shall abide by and successfully complete the six-hour training program in the *"Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries"* 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 IFAS Florida Yards and Neighborhoods program when applying fertilizers.

Section 46-346. Commercial and institutional applicators.

- a. After December 31, 2013, all commercial applicators of fertilizer within the County, shall abide by and have successfully completed 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 IFAS "Florida-friendly Landscapes" program, or an approved equivalent program, prior to obtaining a business tax receipt 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 Brevard County's Tax Collector's office upon application or renewal of business tax receipt.
- b. After December 31, 2013, all commercial applicators of fertilizer within the unincorporated area of Brevard 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 pursuant to Rule 5E-14.117(18), Florida Administrative Code.
- c. Institutional Applicators who apply 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 business tax receipt. Owners for any category of occupation which may apply any fertilizer to turf and/or landscape plants shall provide proof of completion of the program to the Brevard County's Tax Collector's Office.

Section 46-347. Enforcement and monitoring.

Fines collected shall be deposited in a trust dedicated to fulfill the purposes of this section. Funds generated by penalties imposed under this section shall be used by the County for the administration and enforcement of Section 403.9337, F.S., and the corresponding sections of this ordinance, and to further water conservation and nonpoint pollution prevention activities.

Section 46-348. Penalty; additional remedies.

Penalties for violations of this division shall be as specified in Section 125.69, F.S., Chapter 162, F.S., section 1-7, Code of Ordinances of Brevard County, Florida, or any other appropriate remedy provided by law. The County may seek enforcement action against both the owner of record and any person or entity responsible for carrying out any prohibited action. The provisions of this section are an additional and supplemental means of enforcing County codes and ordinances. Nothing in this section shall prohibit the County from enforcing this Code by injunctive relief, or by any other means provided by law.

Section 46-349. Appeals.

Appeals relating to any administrative decision or determination concerning implementation or application of the provisions of this Division shall be filed in writing within 30 calendar days after the decision is rendered by the Administrator. Requests for appeals will be considered by the county manager.