

4B

## REVISÉD

**Meeting Date:** October 16, 2012    ☐ Consent        ☐ Regular  
    ☐ Ordinance     ☒ Public Hearing

Submitted By: COOPERATIVE EXTENSION SERVICE

**Motion and Title:** **Staff recommends motion to postpone and readvertise for public hearing on October 30, 2012, at 10:30 a.m.:** An Ordinance of the Board of County Commissioners of Palm Beach County, Florida, Focusing on Excessive Nutrient Levels in Palm Beach County Water Bodies; Providing for Title; Providing for Definitions; Providing for Findings; Providing for Purpose and Intent; Providing for Applicability; Providing for Timing of Fertilizer Applications; Providing for Fertilizer Free Zones; Providing for Fertilizer Content and Application Rates; Providing for Fertilizer Application Practices; Providing for Management of Grass Clippings and Vegetable Matter; Providing for Exemptions; Providing for Training; Providing for Licensing of Commercial Applicators; Providing for Enforcement; Providing for Penalties; Providing for Appeal; Providing for Severability; Providing for Inclusion in the Code of Laws and Ordinances; Providing for Captions; and Providing for an Effective Date.

**Background and Policy Issues:** This Ordinance regulates the proper use of fertilizers by any applicator; requires proper training of commercial and institutional fertilizer applicators; establishes training and licensing requirements; establishes a prohibited application period; and specifies allowable fertilizer application rates and methods, fertilizer-free zones, and exemptions. This Ordinance requires the use of Best Management Practices to minimize negative environmental effects associated with excessive nutrients in Palm Beach County's water bodies. These environmental effects have been observed in and on Palm Beach County's natural and constructed stormwater conveyances, rivers, creeks, canals, lakes, estuaries and other water bodies. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, is anticipated to help improve and maintain water and habitat quality. This Ordinance shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer to urban landscapes within the area of unincorporated Palm Beach County. This Ordinance was approved on first reading on October 2, 2012.

## 1. Fertilizer Ordinance

Recommended by: Andrew R. Norman 10/11/2012  
Department Director Date

Approved By: Paul W. [Signature] 10/11/12  
County/Deputy/Assistant County Administrator Date

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	*	_____	_____	_____	_____
No. ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes \_\_\_\_\_ No \_\_\_\_\_  
Budget Account No.: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_  
Object \_\_\_\_\_ Reporting Category \_\_\_\_\_

### B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. **Departmental Fiscal Review:** \*The fiscal impact cannot be determined at this time. Fines and penalties associated with this Ordinance will be collected by the Code Enforcement section of PZB. The staffing will be existing staff from Code Enforcement. Any fines collected will be divided between Code Enforcement (75%) and Cooperative Extension Service (25%) per Section XV. 3. Of the Ordinance. Revenues received will be deposited in the Gen. Fund.

*Justice*

## III. REVIEW COMMENTS

### A. OFMB Fiscal and/or Contract Dev. and Control Comments:

*[Signature]* 9/27/2012 - *[Signature]* 10/2/12  
OFMB 9/27/12 - Contract Dev. and Control  
JB 9/26/12

### B. Legal Sufficiency:

*Anne Delgant* 10/9/12  
Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
Department Director

ORDINANCE NO. 2012-\_\_\_\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, FOCUSING ON EXCESSIVE NUTRIENT LEVELS IN PALM BEACH COUNTY WATER BODIES; PROVIDING FOR TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR FINDINGS; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR APPLICABILITY; PROVIDING FOR TIMING OF FERTILIZER APPLICATIONS; PROVIDING FOR FERTILIZER FREE ZONES; PROVIDING FOR FERTILIZER CONTENT AND APPLICATION RATES; PROVIDING FOR FERTILIZER APPLICATION PRACTICES; PROVIDING FOR MANAGEMENT OF GRASS CLIPPINGS AND VEGETABLE MATTER; PROVIDING FOR EXEMPTIONS; PROVIDING FOR TRAINING; PROVIDING FOR LICENSING OF COMMERCIAL APPLICATORS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR APPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, pursuant to Section 303(d) of the federal Clean Water Act and the resulting Florida Impaired Waters Rule (Chapter 62-303, Florida Administrative Code), the Florida Department of Environmental Protection (FDEP) has classified specific water bodies in Palm Beach County as "impaired" as a result of the presence of excessive nutrients; and

**WHEREAS**, Florida Statute Section 403.9337 requires local governments located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to Florida Statute Section 403.067 to adopt an ordinance for Florida-Friendly™ fertilizer use on urban landscapes; and

**WHEREAS**, FDEP, on the 2<sup>nd</sup> day of March 2011, issued its Palm Beach County Municipal Separate Storm Sewer System Permit No. FLS 000018-003 (hereinafter referred to as the "MS4 Permit") to forty-one (41) governmental entities including Palm Beach County; and

**WHEREAS**, the MS4 permit requires local governments within the watershed of an impaired water body to adopt FDEP's Model Ordinance for Florida Friendly Fertilizer Use on Urban Landscapes or an Ordinance that includes all the requirements set forth in the Model Ordinance; and

1           **WHEREAS**, surface water runoff and baseflow runoff leaves residential  
2 neighborhoods, commercial centers, industrial areas, and other lands of Palm Beach  
3 County and enters into natural and artificial stormwater and drainage conveyances and  
4 natural water bodies in Palm Beach County; and

5           **WHEREAS**, phosphorus and nitrogen, the primary nutrients associated with the  
6 degradation of groundwater and surface water, are commonly the primary components  
7 of fertilizer for turf and landscape application; and

8           **WHEREAS**, the quality of streams, lakes, and wetlands is critical to  
9 environmental, economic, and recreational prosperity and to the health, safety, and  
10 welfare of the residents of Palm Beach County; and

11           **WHEREAS**, algae blooms and accelerated growth of aquatic weeds in Palm  
12 Beach County's water bodies have heightened community concerns about water quality  
13 and eutrophication of surrounding waters; and

14           **WHEREAS**, it is generally recognized that Palm Beach County soils naturally  
15 have adequate phosphorus content for most vegetative needs and that additional  
16 phosphorus is therefore only occasionally needed to create or maintain a vibrant  
17 landscape; and

18           **WHEREAS**, it has been recognized that proper application of slow-release  
19 nitrogen sources is more efficiently used by plants and less likely to leach or runoff; and

20           **WHEREAS**, this Ordinance is part of a comprehensive plan to address nonpoint  
21 sources of nutrient pollution which is scientifically based, and economically and  
22 technically feasible; and

23           **WHEREAS**, in the process of adoption of this Ordinance, the Board of County  
24 Commissioners has considered all relevant scientific information, including input from  
25 the Department of Environmental Protection, the Department of Agriculture and  
26 Consumer Services, and the University of Florida Institute of Food and Agricultural  
27 Sciences.

28           **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**  
29 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

30 **SECTION I. TITLE:**

31           This Ordinance shall be known as the Florida Friendly Fertilizer Use Ordinance.

1     **SECTION II. DEFINITIONS:**

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

4             1.     "Application" or "Apply" means the actual physical deposition of fertilizer to  
5     turf or landscape plants.

6             2.     "Applicator" means any person, including but not limited to, residential  
7     homeowners, commercial and institutional applicators who apply fertilizer on turf and/or  
8     landscape plants in unincorporated Palm Beach County.

9             3.     "Approved Test" means a soil test from the University of Florida,  
10    government, or other commercial licensed laboratory that regularly performs soil testing  
11    and recommendations.

12            4.     "Best Management Practices (BMP's)" means turf and landscape  
13    practices or combination of practices based on research, field-testing, and expert  
14    review, determined to be the most effective and practical site-specific means, including  
15    economic and technological considerations, for improving water quality, conserving  
16    water supplies and protecting natural resources.

17            5.     "Code Enforcement Officer", "Official", or "Inspector" means any  
18    designated employee or agent of Palm Beach County whose duty it is to enforce codes  
19    and ordinances enacted by Palm Beach County.

20            6.     "Commercial Fertilizer Applicator" except as provided in section  
21    482.1562(9), F.S., means any person who applies fertilizer for payment or other  
22    consideration to property not owned by the person or firm applying the fertilizer or the  
23    employer of the applicators.

24            7.     "Fertilizing", or "Fertilization" means the act of applying fertilizer to turf,  
25    specialized turf, or landscape plants.

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

30            9.     "Institutional Applicator" means any person, other than a private, non-  
31    commercial 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 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.

10. "Landscape Plant" means any native or non-native tree, shrub, or groundcover (excluding turf).

11. "Pasture" means land managed for livestock grazing.

12. "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.

13. "Prohibited Application Period" means the time period during which a Flood Watch or Warning, a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of Palm Beach County, issued by the National Weather Service, or if heavy rain (2 inches or more within a twenty-four (24) hour period) is likely.

14. "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.

15. "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.

16. "Turf", "Sod", or "Lawn" means an area of grass-covered soil held together by the roots of the grass.

17. "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 provided in section 570.02, Florida Statutes.

1     **SECTION III. FINDINGS:**

2             As a result of the Florida Department of Environmental Protection's determination  
3     that certain water bodies within Palm Beach County are impaired for excessive nutrient  
4     levels, the Board of County Commissioners of Palm Beach County finds that the best  
5     management practices contained in the most recent edition of the *"Florida-Friendly Best  
6     Management Practices for Protection of Water Resources by the Green Industries"*, are  
7     required in this Ordinance.

8     **SECTION IV. PURPOSE AND INTENT:**

9             This Ordinance regulates the proper use of fertilizers by any applicator; requires  
10    proper training of commercial and institutional fertilizer applicators; establishes training  
11    and licensing requirements; establishes a Prohibited Application Period; and specifies  
12    allowable fertilizer application rates and methods, fertilizer-free zones, and exemptions.  
13    This Ordinance requires the use of Best Management Practices to minimize negative  
14    environmental effects associated with excessive nutrients in our water bodies. These  
15    environmental effects have been observed in and on Palm Beach County's natural and  
16    constructed stormwater conveyances, rivers, creeks, canals, lakes, estuaries and other  
17    water bodies. Collectively, these water bodies are an asset critical to the  
18    environmental, recreational, cultural and economic well-being of Palm Beach County  
19    residents and the health of the public. Overgrowth of algae and vegetation hinder the  
20    effectiveness of flood attenuation provided by natural and constructed stormwater  
21    conveyances. Regulation of nutrients, including both phosphorus and nitrogen  
22    contained in fertilizer, is anticipated to help improve and maintain water and habitat  
23    quality.

24    **SECTION V. APPLICABILITY:**

25             This Ordinance shall be applicable to and shall regulate any and all applicators of  
26    fertilizer and areas of application of fertilizer to urban landscapes within the area of  
27    unincorporated Palm Beach County, unless such application is specifically exempted by  
28    Section XI of this Ordinance. This Ordinance shall be prospective only, and shall not  
29    impair any existing contracts.

1       **SECTION VI. TIMING OF FERTILIZER APPLICATIONS.**

2           1.       No applicator shall apply fertilizers containing nitrogen and/or phosphorus  
3       to turf and/or landscape plants during the Prohibited Application Period or to saturated  
4       soils.

5           2.       Fertilizer containing nitrogen and/or phosphorus shall not be applied  
6       before seeding or sodding a site, and shall not be applied for the first thirty (30) days  
7       after seeding or sodding, except when hydro-seeding for temporary or permanent  
8       erosion control in an emergency situation (wildfire, etc), or in accordance with the  
9       Stormwater Pollution Prevent Plan for that site.

10       **SECTION VII. FERTILIZER FREE ZONES:**

11           Fertilizer shall not be applied within ten (10) feet, or three (3) feet if a deflector  
12       shield or drop spreader is used, of any pond, stream, water body, lake, canal, or  
13       wetland as defined by the Florida Department of Environmental Protection (Chapter 62-  
14       340), Florida Administrative Code) or from the top of a seawall or lake bulkhead. Newly  
15       planted turf or landscape plants may be fertilized in this zone only for a sixty (60) day  
16       period beginning no sooner than thirty (30) days after planting if needed to allow the  
17       plants to become well established. Caution shall be used to prevent direct deposition of  
18       nutrients into the water.

19       **SECTION VIII. FERTILIZER CONTENT AND APPLICATION RATES:**

20           1.       Fertilizers applied to turf within unincorporated Palm Beach County shall  
21       be applied in accordance with requirements and directions provided by Rule 5E-  
22       1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf*  
23       *Fertilizers*. Under Rule 5E-1.003(2), Florida Administrative Code, required application  
24       rate and frequency maximums, which vary by plant and turf types, are found on the  
25       labeled fertilizer bag or container.

26           2.       Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape  
27       plants except as provided in section (1) above for turf, or in UF/IFAS recommendations  
28       for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or  
29       tissue deficiency has been verified by an approved test.

30           3.       Fertilizer used for sports turf at golf courses shall be applied in accordance  
31       with the recommendations in "Best Management Practices for the Enhancement of

1 Environmental Quality on Florida Golf Courses”, published by the Florida Department of  
2 Environmental Protection, dated January 2007, as may be amended. Fertilizer used at  
3 park or athletic fields shall be applied in accordance with Rule 5E-1.003(2), Florida  
4 Administrative Code.

5 **SECTION IX. FERTILIZER APPLICATION PRACTICES:**

6 1. As required in Section VII of this Ordinance, spreader deflector shields  
7 shall be used when fertilizing via rotary (broadcast) spreaders. Deflectors must be  
8 positioned such that fertilizer granules are deflected away from all impervious surfaces,  
9 fertilizer-free zones and water bodies, including wetlands. Any fertilizer applied, spilled,  
10 or deposited, either intentionally or accidentally, on any impervious surface shall be  
11 immediately and completely removed to the greatest extent practicable.

12 2. Fertilizer released on an impervious surface must be immediately  
13 contained and either legally applied to turf or any other legal site, or returned to the  
14 original or other appropriate container.

15 3. In no case shall fertilizer be washed, swept, or blown off impervious  
16 surfaces into stormwater drains, ditches, conveyances, or water bodies.

17 Property owners and managers are encouraged to use an Integrated Pest Management  
18 (IPM) strategy as currently recommended by the University of Florida Cooperative  
19 Extension Service publications.

20 **SECTION X. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER:**

21 In no case shall grass clippings, vegetative material, and/or vegetative debris  
22 intentionally be washed, swept, or blown on to or into stormwater drains, ditches,  
23 conveyances, water bodies, wetlands, sidewalks or roadways. Any material that is  
24 accidentally so deposited shall be immediately removed to the maximum extent  
25 practicable.

26 **SECTION XI. EXEMPTIONS:**

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

28 (a) bona fide farm operations as defined in the Florida Right-to-Farm Act,  
29 Section 823.14, Florida Statutes.

30 (b) other properties not subject to or covered under the Florida Right-to-Farm  
31 Act that have pastures used for grazing livestock.

1 (c) any lands used for bona fide scientific research, including, but not limited  
2 to, research on the effects of fertilizer use on urban stormwater, water quality,  
3 agronomics, or horticulture.

4 **SECTION XII. TRAINING:**

5 1. All commercial and institutional applicators of fertilizer within Palm Beach  
6 County shall abide by and successfully complete the six-hour training program in the  
7 "*Florida-Friendly Best Management Practices for Protection of Water Resources by the*  
8 *Green Industries*" offered by the Florida Department of Environmental Protection  
9 through the University of Florida/Palm Beach County Cooperative Extension Service  
10 "Florida-Friendly Landscapes" program or an approved equivalent program.

11 2. Non-commercial and non-institutional applicators not otherwise required to  
12 be certified, such as private citizens on their own residential property, are encouraged to  
13 follow the recommendations of the University of Florida/IFAS "Florida-Friendly  
14 Landscape Program" and label instructions when applying fertilizers.

15 **SECTION XIII. LICENSING OF COMMERCIAL APPLICATORS:**

16 1. All businesses applying fertilizer to turf or landscape plants (including, but  
17 not limited to, residential lawns, golf courses, commercial properties, and multi-family  
18 and condominium properties) must ensure that the business owner or his/her designee  
19 holds the appropriate "*Florida-Friendly Best Management Practices for Protection of*  
20 *Water Resources by the Green Industries*" training certificate prior to the business  
21 owner obtaining a Local Business Tax Certificate. Owners for any category of  
22 occupation which may apply any fertilizer to Turf and/or Landscape Plants shall provide  
23 proof of completion of the program to the Palm Beach County Tax Collector's Office. It  
24 is the responsibility of the business owner to maintain the "*Florida-Friendly Best*  
25 *Management Practices for Protection of Water Resources by the Green Industries*"  
26 certificate to receive their Business Tax Receipt annually.

27 2. After December 31, 2013, all commercial applicators of fertilizer within  
28 Palm Beach County, shall have and carry in their possession at all times when applying  
29 fertilizer, evidence of certification by the Florida Department of Agriculture and  
30 Consumer Services as a Commercial Fertilizer Applicator per Rule 5E-14.117(18),  
31 Florida Administrative Code.

1           3. All businesses applying fertilizer to turf and/or landscape plants (including,  
2 but not limited to, residential lawns, golf courses, commercial properties and multi-family  
3 and condominium properties) must ensure that at least one (1) employee has an  
4 appropriate "Florida-Friendly Best Management Practices for Protection of Water  
5 Resources by the Green Industries" training certificate prior to the business owner  
6 obtaining a Local Business Tax Certificate. Standard Business Tax Receipt (BTR and  
7 transaction fees shall apply).

8           **SECTION XIV. ENFORCEMENT:**

9           The provisions of this Ordinance shall be enforced by the Palm Beach County  
10 Code Enforcement Special Master pursuant to the authority granted by Section 162.01  
11 et. seq., Florida Statutes, as may be amended and Article 10 of the Unified Land  
12 Development Code, as may be amended. The County may also pursue these or any  
13 other enforcement remedies available to and applicable to Palm Beach County.

14           **SECTION XV. PENALTIES:**

15           1. Failure to comply with the requirements of this Ordinance shall constitute  
16 a violation of this Ordinance and shall be punishable by a fine not to exceed \$1,000 per  
17 day for the violation or a fine not exceed \$5,000 per day for a repeat violation, and, in  
18 addition, may include all costs of repairs including, but not limited to, administrative,  
19 enforcement and Special Master Procedure costs. If the Special Master finds the  
20 violation is irreparable or irreversible in nature, a fine not to exceed \$15,000 per  
21 violation may be imposed.

22           2. In determining the amount of fines that should be imposed, the Special  
23 Master shall consider the following factors: (1) the gravity of the violation; (2) any  
24 actions taken by the violator to correct the violation; and (3) any previous violations  
25 committed by the violator.

26           3. Funds generated by penalties imposed under this Ordinance shall be  
27 divided between Palm Beach County Cooperative Extension Service and the Code  
28 Enforcement Division, at a rate of 25% for the Cooperative Extension Service and 75%  
29 for the Code Enforcement Division, for the administration and enforcement of this  
30 Ordinance, and to further water conservation and nonpoint pollution prevention  
31 activities.

1     **SECTION XVI. APPEAL:**

2             An aggrieved party, including Palm Beach County, may appeal a final  
3 administrative order of a Special Master to the circuit court. Such an appeal shall not be  
4 a hearing de novo, but shall be limited to appellate review of the record created before  
5 the Special Master. An appeal shall be filed within thirty (30) days of the execution of  
6 the order to be appealed.

7     **SECTION XVII. SEVERABILITY:**

8             If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is  
9 for any reason held by a Court of competent jurisdiction to be unconstitutional,  
10 inoperative, or void, such holding shall not affect the remainder of this Ordinance.

11    **SECTION XVIII. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

12            The provisions of this Ordinance shall become and be made a part of the Palm  
13 Beach County Code. The sections of this Ordinance may be renumbered or relettered  
14 to accomplish such, and the word "ordinance" may be changed to "section", "article", or  
15 other appropriate word.

16    **SECTION XIX. CAPTIONS:**

17            The captions, section headings, and section designations used in this Ordinance  
18 are for convenience only and shall have no effect on the interpretation of the provisions  
19 of this Ordinance.

20    **SECTION XX. EFFECTIVE DATE:**

21            The provisions of this Ordinance shall become effective upon filing with the  
22 Department of State, with the exception of Section XIV, Enforcement, which shall  
23 become effective on January 1, 2014.

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25                            (REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)  
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