

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: October 30, 2012 [] Consent [] Regular
[] Ordinance [X] Public Hearing

Department: COOPERATIVE EXTENSION SERVICE

Submitted By: COOPERATIVE EXTENSION SERVICE

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: 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.

Summary: 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, adopt an ordinance for Florida-Friendly™ fertilizer use on urban landscapes. 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. This Ordinance complies with the requirements of Florida Statute, Sections 403.9337 and 403.067. Department staff will review this ordinance in three years to ensure it complies with all statutory requirements, and update the BCC as to its compliance. Unincorporated (AH)

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.

- Attachments:**
1. Fertilizer Ordinance

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

Approved By: [Signature]
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.

Jean N. McGee

III. REVIEW COMMENTS

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

<p><i>Susan Neary</i> 10/11/12 _____ OFMB 10/11/12</p>	<p><i>Dr. J. Jacobson</i> 10/12/12 _____ Contract Dev. and Control 10-12-12 BCD/whl</p>
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B. Legal Sufficiency:

Anne Delgent 10-15-12

 Assistant County Attorney

C. Other Department Review:

 Department Director

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

1 under the circumstances), that applies fertilizer for the purpose of maintaining turf
2 and/or landscape plants. Institutional Applicators shall include, but shall not be limited
3 to, owners, managers, or employees of public lands, schools, parks, religious
4 institutions, utilities, industrial or business sites and any residential properties
5 maintained in condominium and/or common ownership.

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

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

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

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

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

21 15. "Slow-Release", "Controlled Release", "Timed Release", "Slowly-
22 Available", or "Water Insoluble Nitrogen" means nitrogen in a form which delays its
23 availability for plant uptake and use after application, or which extends its availability to
24 the plant longer than a reference rapid or quick release product.

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

27 17. "Urban Landscape" means pervious areas on residential, commercial,
28 industrial, institutional, highway rights-of-way, or other nonagricultural lands that are
29 planted with turf or horticultural plants. For the purposes of this section, agriculture has
30 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.
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31

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 accidently 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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APPROVED and ADOPTED by the Board of County Commissioners of Palm
Beach County, Florida, on this the ____ day of _____, 2012.

**SHARON R. BOCK, CLERK &
COMPTROLLER**

**PALM BEACH COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Shelley Vana, Chair

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: Anne Delgent
County Attorney