

ORDINANCE NO. 08-O-72AA

AN ORDINANCE OF THE CITY OF TALLAHASSEE, FLORIDA AMENDING CHAPTER 9, ENVIRONMENT, OF THE CITY OF TALLAHASSEE CODE OF GENERAL ORDINANCES TO REGULATE THE USE OF FERTILIZER WITHIN THE CITY; PROVIDING DEFINITIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, as a result of impairment to the City of Tallahassee's surface waters caused by excessive nutrients under the Florida Impaired Waters Rule, or, as a result of increasing levels of nitrogen in the surface and/or ground water within the aquifers or springs within the boundaries of the City, the City Commission of the City of Tallahassee has determined that the improper use of fertilizers on lands within the City contributes to adverse effects on surface and/or ground water. Accordingly, the City Commission of the City of Tallahassee finds that additional measures than are otherwise required by the most recent edition of the "*Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002*" may be required by this ordinance.

NOW, THEREFORE, BE IT ORDAINED by the People of the City of Tallahassee, Florida as follows:

SECTION 1. Chapter 9, Environment, of the City of Tallahassee Code of General Ordinances is amended to create Article V, Fertilizer Use, as follows:

ARTICLE V. FERTILIZER USE

Sec. 9-120. Purpose and Intent.

This Article regulates the proper use of fertilizers by any fertilizer applicator; requires proper training of commercial and institutional fertilizer applicators; establishes training and licensing requirements; establishes a prohibited and restricted application period; specifies

allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones, and exemptions. The Article requires the use of Best Management Practices that 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 the City's natural and constructed stormwater and drainage conveyances, creeks, canals, springs, lakes, ponds, and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well being of the City's residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater and drainage conveyances. Regulation of nutrients contained in fertilizer will help improve and maintain water and habitat quality.

Sec. 9-121. Definitions. The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Article, except where the context clearly indicates a different meaning.

Administrator means the City Manager of the City, or his/her designee.

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

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

Best management practices under this Article means 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.

City means the corporate limits of the City of Tallahassee.

City approved best management practices training program means a training program approved by the Administrator that includes at a minimum, a) the most current version of the “Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002,” as revised and, b) all of the provisions and requirements of this Article; or c) an alternative training program under Section 9-130 of this Article.

Code enforcement officer, official, or inspector means any designated City employee or agent whose duty it is to enforce the City’s codes and ordinances pursuant to Article V of Chapter 2 of this Code.

Commercial fertilizer applicator means any person who applies fertilizer on turf and/or landscape plants in the City in exchange for money, goods, services or other valuable consideration.

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.

Institutional fertilizer applicator means any person, other than a non-commercial, or commercial 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 and managers of public lands,

schools, parks, athletic fields, 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).

Lawn has the same definition as *turf*.

Low maintenance zone means an area a minimum of six (6) feet wide adjacent to water courses which is planted and managed in order to eliminate the need for fertilization and minimize the need for watering, mowing, etc.

Non-commercial fertilizer applicator means any person other than a commercial fertilizer applicator or institutional fertilizer applicator who applies fertilizer on turf and/or landscape plants, such as an individual owner of a single-family residential unit.

Pasture means land used for livestock grazing that is managed to provide feed value.

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, or a 3-day cone of uncertainty is in effect for any portion of Leon County, issued by the National Weather Service, or if heavy rain is expected.

Readily available nitrogen means the water soluble fraction of formulated fertilizer determined by the sum of the percentage of Nitrate and Ammoniacal Nitrogen plus Other Water Soluble Nitrogen and/or Urea Nitrogen in the guaranteed analysis section of the label.

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

Sec. 9-122. Applicability.

This Article shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the City, unless such applicator is specifically exempted by the terms of this Article. This Article shall be applicable to and shall regulate any and all application of fertilizer within the City unless otherwise provided in Chapter 5 of the Tallahassee Land Development Code (LDC). In case of a conflict between the requirements of Chapter 5, LDC, and this Article, the provisions of Chapter 5, LDC, shall prevail. This Article shall be prospective only, and shall not impair any existing contracts.

Sec. 9-123. Timing of fertilizer application.

No applicator shall apply fertilizers to turf and/or landscape plants during the prohibited application period.

Sec. 9-124. Fertilizer content and application rates; irrigation with reclaimed wastewater.

(a) Fertilizers applied to turf and/or landscape plants within the City shall be formulated and applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf*. Fertilizer content in reclaimed wastewater used for irrigation shall be applied in accordance with Section 9-124(d).

(b) Except as provided in Section 9-124(a), fertilizers shall be applied to turf and/or landscape plants at the lowest rate necessary. Nitrogen shall not be applied at an application rate greater than 0.7 lbs of readily available nitrogen per 1000 ft² at any one time based on the soluble fraction of formulated fertilizer, with no more that 1 lb total N per 1000 ft² to be applied at any one time and not to exceed the annual nitrogen recommendations in the Fertilization Guidelines for Established Turfgrass Lawns set forth below for convenience:

Fertilization Guidelines for Established Turfgrass Lawns within Tallahassee

<u>Species</u>	<u>Nitrogen recommendations (lbs N / 1000 ft²/ year)</u>
<u>Bahia grass</u>	<u>2-3</u>
<u>Bermuda grass</u>	<u>3-5</u>
<u>Centipede grass</u>	<u>1-2</u>
<u>St. Augustine grass</u>	<u>2-4</u>
<u>Zoysia grass</u>	<u>3-5</u>

(c) Nitrogen fertilizer may not be applied to turf or landscape plants except as provided above unless a tissue deficiency has been verified by an approved test.

(d) The use of water from a reclaimed wastewater system must be in accordance with an approved reclaimed wastewater reuse nutrient management plan. The plan shall be approved by the City's Water Resources Engineering Division; and it shall contain, at a minimum, the frequency and volume of application, restricted periods of application (if any), application rates and required best management practices. If fertilizer other than that contained in the reclaimed water is to be applied, the nutrient management plan shall show that the cumulative nutrient loading does not exceed those established in this Article.

Sec. 9-125. Impervious surfaces.

Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces. Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable. 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. In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

Sec. 9-126. Fertilizer free zones.

Fertilizer shall not be applied within three (3) feet of any pond, stream, water course, lake, drainage ditch, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) or from the top of a retaining wall associated with any of these features. If more stringent City Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. See Chapter 5 of the Tallahassee Land Development Code. Newly planted turf and/or landscape plants may be fertilized in this zone only for the first sixty (60) day establishment period.

Sec. 9-127. Low maintenance zones.

A voluntary six (6) foot low maintenance zone is strongly recommended, but not mandated, from any pond, stream, water course, lake, wetland or from the top of a retaining wall associated with any of these features. 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. If more stringent City regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. See Chapter 5 of the Tallahassee Land Development Code.

Sec. 9-128. Mode of application.

Spreader deflector shields are required when fertilizing via rotary spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from all impervious surfaces, fertilizer-free zones and water bodies, including wetlands.

Sec. 9-129. Exemptions.

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

(a) Bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14, F.S., provided that fertilizers are applied in accordance with the appropriate Best Management Practices Manual adopted by the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy for the crop in question.

(b) Other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock provided that fertilizers are applied in accordance with the appropriate Best Management Practices Manual adopted by the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy for the crop in question.

Sec. 9-130. Training and certification; presence on site of trained applicator during application of fertilizer.

(a) Within 180 days of the effective date of this Article and every three years thereafter, all applicators of fertilizer within the City, other than private homeowners on their own property, shall abide by and successfully complete a City-approved best management practices training program as defined in this Article. Upon successful completion and compliance with the requirements in this Article, a certificate of completion and a certification card valid for a period of three years will be provided by the entity providing the training. Persons working as employees and under the direct and physical supervision of commercial applicators that hold a current certificate of completion and certification card shall be exempt from the requirement to complete a City-approved best management practices training program.

(b) At least one person holding a current City-approved best management practices training Certificate shall be present at all times on any job site while work applying fertilizer is in progress.

(c) Homeowners, and any other applicators not otherwise required to be certified are encouraged to follow the requirements of this Article as well as the recommendations of the University of Florida IFAS *Florida Yards and Neighborhoods* program when applying fertilizers.

(d) Persons holding a Certificate of Training issued in conjunction with the Florida Green Industries Best Management Practices Program for protection of water resources in Florida; or, other State approved certificate of training or, a certification issued by another local government, that includes at a minimum “*Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002,*” or newer as the basis for instruction, may obtain certification by the City after contacting the City’s Water Resources Engineering Division and presenting proof of the currently active status of training as described in paragraph (a) above, and attesting that he/she has received and read a copy of this Article. The Water Resources Engineering Division may adopted policies related to this exception, and shall maintain a list of approved alternative training programs.

Sec. 9-131. Enforcement

This Article shall be enforced as provided in Chapter 2 of this Code.

(a) It is the intent hereof that the administrative, civil, and criminal penalties imposed herein be of such amount as to ensure immediate and continued compliance with this Article.

(b) Any applicator that violates the provisions of this Article may be responsible for the City's costs of prosecution of any violation, including any costs to remedy or clean up any environmental condition caused by an act, which constitutes a violation of this Article.

Sec. 9-132. Variances

Any applicator of fertilizer regulated by the provisions of this Article may apply to the Environmental Variance/Code Board pursuant to the requirements in Chapter 2, Administration, of this Code and in Section 5-126, Environmental Variances, of the Tallahassee Land Development Code for a variance from the requirements of this Article. In addition to the requirements in Sections 2-197 and 2-198 of this Code and in Section 5-126 of the Land Development Code, the applicant must submit the following information:

(a) Whether, as a result of soil or tissue content at the point of the proposed application or for other geographical, environmental or geological reasons or other circumstances, such person should not be required to adhere to the strict provisions of this Article; and

(b) Whether such person is able and willing to use a less strict application method or alternative materials or methods; and

(c) A plan for fertilizer application, including where the fertilizer will be applied, the frequency of application, contents of fertilizer to be applied, and period of time for which the variance is requested.

SECTION 2. SEVERABILITY AND CONFLICT: If any portion of this ordinance is declared by a Court of competent jurisdiction to be invalid or unenforceable such declaration shall not be deemed to affect the remaining portions of this ordinance. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.

SECTION 3. EFFECTIVE DATE: This ordinance shall be effective immediately upon passage.

INTRODUCED in the City Commission on the 10th day of December, 2008.

PASSED by the City Commission on the 28th day of January, 2009.

CITY OF TALLAHASSEE

By: _____
John R. Marks, III
Mayor

ATTEST:

APPROVED AS TO FORM:

By: _____
Gary Herndon
City Treasurer-Clerk

By: _____
James R. English
City Attorney