

September 12, 2011

ORDINANCE NO. 2011-\_\_\_\_\_

AN ORDINANCE OF THE (INSERT NAME – BOARD OR COUNCIL OF THE MUNICIPALITY) 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 VEGETATIVE 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 ENFORCEMENT; 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

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1 by nutrients pursuant to Florida Statute, Section 403.067, adopt an ordinance for  
2 Florida-Friendly™ fertilizer use on urban landscapes; and

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

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

11 **WHEREAS**, surface water runoff and base flow runoff leaves residential  
12 neighborhoods, commercial centers, industrial areas, and other lands of Palm Beach  
13 County and enters into natural and artificial stormwater and drainage conveyances and  
14 natural water bodies in Palm Beach County; and

15 **WHEREAS**, phosphorus and nitrogen, the primary nutrients associated with the  
16 degradation of surface water, are commonly the primary components of fertilizer for turf  
17 and landscape application; and

18 **WHEREAS**, the quality of streams, lakes, and wetlands is important to  
19 environmental, economic, and recreational prosperity and to the health, safety, and  
20 welfare of the residents of Palm Beach County; and

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

4           **WHEREAS**, it is generally recognized that Eastern Palm Beach County soils  
5 naturally have adequate phosphorus content for most vegetative needs and that  
6 additional phosphorus is therefore only occasionally needed to create or maintain a  
7 vibrant landscape; and

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

10           **WHEREAS**, this Ordinance is part of a regulatory program to address nonpoint  
11 sources of nutrient pollution which is scientifically based, and economically and  
12 technically feasible; and

13           **WHEREAS**, in the process of adoption of this Ordinance, (Insert Name – Board  
14 or Council of the Municipality) has considered scientific information, including input from  
15 the Department of Environmental Protection, the Department of Agriculture and  
16 Consumer Services, and the University of Florida Institute of Food and Agricultural  
17 Sciences.

18           **NOW, THEREFORE, BE IT ORDAINED BY THE (INSERT NAME – BOARD OR**  
19 **COUNCIL OF THE MUNICIPALITY), FLORIDA, that:**

20           **SECTION I. TITLE:**

21           This Ordinance shall be known as the Fertilizer-Friendly Use Ordinance.  
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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 who applies fertilizer on turf and/or  
7 landscape plants in **(Insert Name – Municipality)**.

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

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

16            5.     “Code Enforcement Officer”, “Official”, or “Inspector” means any  
17 designated employee or agent of **(Insert Name – Municipality)** whose duty it is to  
18 enforce codes and ordinances enacted by **(Insert Name – Municipality)**.

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

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1           7.     “Fertilizing”, or “Fertilization” means the act of applying fertilizer to turf,  
2 specialized turf, or landscape plants.

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

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

14          10.    “Landscape Plant” means any native or non-native tree, shrub, or  
15 groundcover (excluding turf).

16          11.    “Pasture” means land managed for livestock grazing.

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

20          13.    “Prohibited Application Period” means the time period during which a  
21 Flood Watch or Warning, a Tropical Storm Watch or Warning, or a Hurricane Watch or  
22 Warning is in effect for any portion of **(Insert Name – Municipality)**, issued by the

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1 National Weather Service, or if heavy rain (2 inches or more within a twenty-four (24)  
2 hour period) is likely.

3 14. “Saturated Soil” means a soil in which the voids are filled with water.  
4 Saturation does not require flow. For the purposes of this Ordinance, soils shall be  
5 considered saturated if standing water is present or the pressure of a person standing  
6 on the soil causes the release of free water.

7 15. “Slow-Release”, “Controlled Release”, “Timed Release”, “Slowly-  
8 Available”, or “Water Insoluble Nitrogen” means nitrogen in a form which delays its  
9 availability for vegetative uptake and use after application, or which extends its  
10 availability to the vegetation longer than a reference rapid or quick release product.

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

13 17. “Urban Landscape” means pervious areas on residential, commercial,  
14 industrial, institutional, highway rights-of-way, or other nonagricultural lands that are  
15 planted with turf or landscape plants. For the purposes of this section, agriculture has  
16 the same meaning as provided in section 570.02, Florida Statutes.

17 **SECTION III. FINDINGS:**

18 As a result of the Florida Department of Environmental Protection’s determination  
19 that certain water bodies within Palm Beach County are impaired for excessive nutrient  
20 levels, the **(Insert Name – Board or Council of Municipality)** finds that the best  
21 management practices contained in the most recent edition of the *“Florida-Friendly Best*  
22 *Management Practices for Protection of Water Resources by the Green Industries”*, are  
23 required in this Ordinance.

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

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

17 **SECTION V. APPLICABILITY:**

18 This Ordinance shall be applicable to and shall regulate any and all applicators of  
19 fertilizer and areas of application of fertilizer to urban landscapes within the area **(Insert**  
20 **Name – Municipality)**, unless such application is specifically exempted by Section XII  
21 of this Ordinance. This Ordinance shall be prospective only, and shall not impair any  
22 existing contracts.

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

1. 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.

2. Fertilizer containing nitrogen and/or phosphorus shall not be applied before seeding or sodding a site, and shall not be applied for the first thirty (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 Prevent Plan for that site.

**SECTION VII. FERTILIZER FREE ZONES:**

Fertilizer shall not be applied within ten (10) feet, or three (3) feet if a deflector shield or drop spreader is used, of any pond, stream, water body, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340), Florida Administrative Code or from the top of a seawall or lake bulkhead. Newly planted turf or landscape plants may be fertilized in this zone only for a sixty (60) day period beginning thirty (30) days after planting if needed to allow the vegetation to become well established. Caution shall be used to prevent direct deposition of fertilizer into the water.

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

1. Fertilizers applied to turf within **(Insert Name – Municipality)** shall be applied in accordance with requirements and directions provided by Rule 5E-1.003(2),

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1 Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*. Under  
2 Rule 5E-1.003(2), Florida Administrative Code, required application rate and frequency  
3 maximums, which vary by plant and turf types, are found on the labeled fertilizer bag or  
4 container.

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

9 3. Fertilizer used for sports turf at golf courses shall be applied in accordance with  
10 the recommendations in "Best Management Practices for the Enhancement of  
11 Environmental Quality on Florida Golf Courses", published by the Florida Department of  
12 Environmental Protection, dated January 2007, as may be amended. Fertilizer used at  
13 park or athletic fields shall be applied in accordance with Rule 5E-1.003(2), Florida  
14 Administrative Code.

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

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

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

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

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

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

10           In no case shall grass clippings, vegetative material, and/or vegetative debris  
11 intentionally be washed, swept, or blown on to or into stormwater drains, ditches,  
12 conveyances, water bodies, wetlands, sidewalks or roadways. . Vegetative material  
13 may be placed within the roadway right-of-way, but not over the storm drains, for pickup  
14 by the municipality's vegetative waste hauler.

15     **SECTION XI. EXEMPTIONS:**

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

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

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

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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 **(Insert Name – Municipality)** Tax Collector’s

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1 Office. It is the responsibility of the business owner to maintain the “*Florida-Friendly*  
2 *Best Management Practices for Protection of Water Resources by the Green Industries*”  
3 certificate to receive their Business Tax Receipt annually.

4 2. After December 31, 2013, all commercial applicators of fertilizer within  
5 **(Insert Name – Municipality)**, shall have and carry in their possession at all times  
6 when applying fertilizer, evidence of certification by the Florida Department of  
7 Agriculture and Consumer Services as a Commercial Fertilizer Applicator per Rule 5E-  
8 14.117(18), Florida Administrative Code.

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

16 **SECTION XIV. ENFORCEMENT:**

17 The provisions of this Ordinance shall be enforced by (1) the **(Insert Name –**  
18 **Municipality)** Code Enforcement Board or Special Master pursuant to the authority  
19 granted by Section 162.01 et. seq., Florida Statutes, as may be amended and Article 10  
20 of the Unified Land Development Code, as may be amended, (2) the **(INSERT NAME –**  
21 **BOARD OR COUNCIL OF THE MUNICIPALITY)** through its authority to enjoin and  
22 restrain any person violating the Unified Land Development Code, or (3) **(Insert Name**

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1 **– Municipality**) through the prosecution of violations in the name of the State of Florida  
2 pursuant to the authority granted by Section 125.69, Florida Statutes, as may be  
3 amended. The Code Enforcement Director may pursue these or any other enforcement  
4 remedies available to and applicable to **(Insert Name – Municipality)**.

5 **SECTION XV. PENALTIES:**

6 1. Failure to comply with the requirement of this Ordinance shall constitute a  
7 violation of this Ordinance and shall be punishable by a fine not to exceed  
8 \$250 per incident for the violation or a fine not to exceed \$500 per incident for  
9 a repeat violation, and, in addition, may include all costs of repairs and  
10 remediation including administrative costs. Each new day the violation exists  
11 it is considered a separate incident.

12 2. In determining the amount of fines that should be imposed, the Special  
13 Master shall consider the following factors: (1) the gravity of the violation; (2)  
14 Any actions taken by the violator to correct the violation; and (3) Any previous  
15 violations committed by the violator. If the Special Master finds the violation is  
16 irreparable or irreversible in nature, a fine not to exceed \$15,000 per violation  
17 may be imposed.

18 3. Funds generated by penalties imposed under this Ordinance shall  
19 be used by (Insert Name – Municipality) for the administration and  
20 enforcement of Section 403.9337, Florida Statutes, and the  
21 corresponding Sections of this Ordinance, and to further water  
22 conservation and nonpoint pollution prevention activities.

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1     **SECTION XVI. APPEAL:**

2             An aggrieved party, including **(Insert Name – Municipality)**, 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 XVII. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

12            The provisions of this Ordinance shall become and be made a part of the **(Insert**  
13    **Name – Municipality)** Code. The sections of this Ordinance may be renumbered or  
14    relettered to accomplish such, and the word “ordinance” may be changed to “section”,  
15    “article”, or 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.

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**SECTION XXI. EFFECTIVE DATE:**

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the (Insert Name – Board or Council of Municipality), Florida, on this the \_\_\_\_ day of \_\_\_\_\_, 2011.

(Insert Name)  
(Insert Title)

(Insert Name – Board or Council of Municipality)

By: \_\_\_\_\_  
(Insert Name and Title)

By: \_\_\_\_\_  
(Insert Name and Title)

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
(Insert Name of Municipality Attorney)

**EFFECTIVE DATE:** Filed with the Department of State on the \_\_\_\_ day of \_\_\_\_\_, 2011.