

ORDINANCE
NUMBER 2008 -

AN ORDINANCE OF CHARLOTTE COUNTY, FLORIDA, PROVIDING THAT THE CODE OF LAWS AND ORDINANCES OF CHARLOTTE COUNTY, FLORIDA, BE AMENDED BY CREATING A NEW SECTION 3-9-64.1; PROVIDING FOR THE REGULATION OF FERTILIZERS; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR APPLICABILITY; PROVIDING FOR THE LOCATION, CONTENT, RATES, AND METHODS OF FERTILIZER APPLICATION; PROVIDING FOR EXEMPTIONS; PROVIDING FOR CERTIFICATION AND TRAINING; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR ADMINISTRATIVE RELIEF; PROVIDING FOR CONFLICT WITH OTHER ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, surface water and base flow runoff enters into natural and artificial storm water and drainage conveyances and natural water bodies in Charlotte County; and

WHEREAS, leaching and runoff of nutrients from improper or excess fertilization practices can contribute to nitrogen and phosphorus pollution of the community's water resources; and

WHEREAS, the amount of Fertilizer applied should be the minimum necessary for the lawn (Turf), specialized Turf and landscape to meet initial establishment and growth needs; and

WHEREAS, nutrients are essential elements for plant growth and are commonly used in various forms as a Fertilizer for lawn (Turf), specialized Turf and landscape application; and

WHEREAS, the amount of Fertilizer applied and the method of application of that Fertilizer have the greatest impact on the potential for creating pollution;

WHEREAS, this ordinance is part of Charlotte County efforts to reduce nutrient leaching into runoff through such polices as, but not limited to public education and development of standards as set forth in this ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Charlotte County, Florida that:

Section 1. Findings. The above "WHEREAS" clauses are hereby deemed by the Charlotte County Board of County Commissioners to constitute findings for purposes of this Ordinance and are incorporated herein as if fully set forth in this Section.

Section 2. Chapter 3-9 of the Code of Laws and Ordinances of Charlotte County, Florida (the "County Code") is hereby amended to create a new Section 3-9-64.1, as follows:

Sec. 3-9-64.1 Fertilizer regulations.

(a) *Purpose and intent.* The purpose and intent of this Section is to provide for the regulation of Fertilizers containing nitrogen and/or phosphorus and to provide specific management guidelines for its application in order to minimize the negative environmental effects said Fertilizers have in and on Charlotte County's canals, estuaries, interior wetlands, the near-shore waters of the Gulf of Mexico. Collectively these water-bodies are a natural asset, which are critical to the environmental, recreational, cultural and economic well being of the County and the surrounding areas and contribute to the general health and welfare of the public. Recent red tide blooms, accumulation of red drift algae on local beaches have heightened community concerns about water quality and eutrophication of estuary, bay, river and coastal waters. Regulation of nutrients, including both phosphorus and nitrogen contained in Fertilizer entering the water bodies in and around Charlotte County is a crucial step towards improving and maintaining water and habitat quality.

(b) *Definitions.* For this Section, the following terms shall have the meanings set forth in this section unless context clearly indicates otherwise:

Applicator: Any Person who applies, in any manner, Fertilizer to Turf and/or Landscape Plants in Charlotte County.

Best Management Practices: Turf and landscape practices which minimize the negative environmental impacts of installation and maintenance of landscapes, that includes training program approved by Charlotte County, that includes at a minimum, the most current version of the "Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002," as revised and the more stringent requirements set forth in this Section.

Code Enforcement Official: Any designated employee or agent of Charlotte County whose duty is to enforce the Code of Laws and Ordinances of Charlotte County, Florida.

Commercial Fertilizer Applicator: Any Applicator who applies Fertilizer in exchange for money, goods, services or other valuable consideration.

Fertilizer: Any substance or mixture of substances, including pesticide/fertilizer mixtures such as "weed and feed" products, that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.

Guaranteed Analysis: The percentage of plant nutrients or measures of neutralizing capability claimed to be present in a Fertilizer.

Landscape Plant: Any native or exotic tree, shrub, or groundcover (excluding Turf).

Low Maintenance Zone: An area a minimum of six (6) feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, and mowing.

Pasture: Land used for livestock grazing that is managed to provide feed value.

Person: Any natural Person, business, corporation, Limited Liability Company, partnership, association, club, organization, and/or any group of people acting as an organized entity.

Slow Release Nitrogen: 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.

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

(c) *Applicability*. This Section shall be applicable to and shall regulate any and all Applicators of Fertilizer and areas of application of Fertilizers within unincorporated area of Charlotte County, unless such Applicator is specifically exempted by the terms of this Section.

(d) *Fertilizer content and application rate, impervious surfaces, and buffer and low maintenance zones*:

(1) *Fertilizer content and application rate*. Fertilizer containing phosphorus shall not be applied to Turf and/or Landscape Plants within Charlotte County at application rates which exceed 0.25 pounds P_2O_5 / 1,000 square feet per application nor exceed 0.50 pounds P_2O_5 / 1,000 square feet per year.

a. Fertilizers Applied to Turf and/or Landscape Plants within Charlotte County shall contain no less than 50% Slow Release Nitrogen per Guaranteed Analysis label.

b. Fertilizers should be applied to Turf and/or Landscape Plants at the lowest rate necessary.

c. Nitrogen Content: Applicators shall follow and not exceed Florida Department of Agriculture and Consumer Services, Urban Turf Fertilizer Rule 5E-1.003 Labels or Tags' Fertilization Guidelines for Established Turf-grass Lawns South Region Nitrogen Recommendations for Nitrogen pounds per 1,000 square feet total per year:

- (i) Bahia-grass: 2 to 4 pounds
- (ii) Bermuda-grass 5 to 7 pounds
- (iii) Centipede-grass 2 to 3 pounds
- (iv) St. Augustine-grass 4 to 6 pounds.

(2) *Impervious surface*. 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, Landscape Plants and/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 storm water rains, ditches, conveyances, or water bodies.

(3) *Buffers and low maintenance zones*. Fertilizer shall not be applied within ten (10) feet, or three (3) feet if a deflector shield is used, of any pond, stream, water course, 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.

a. A voluntary six (6) foot Low Maintenance Zone is strongly recommended, but not mandatory, from any pond, stream, water course, lake, or canal or any designated wetland or from the top of a seawall. Additionally, care should be taken to prevent the over spray of aquatic weed products in this zone.

b. In no case shall grass clippings, vegetative material, and/or vegetative debris either intentionally or accidentally, be deposited or discharged into storm water drains, ditches, conveyances, water bodies or roadways.

(e) *Mode of application.* Spreader deflector shields are required when applying Fertilizer via broadcast spreaders. Deflectors must be positioned such that Fertilizer granules are deflected away from all impervious surfaces, buffer zones and water bodies, including wetlands.

(f) *Exemptions.* The provision of this Section shall not apply to:

(1) *Golf courses:* For all golf courses, the provisions of the Florida Department of Environmental Protection [FDEP] document, "BMPs for the Enhancement of Environmental Quality on Florida Golf Courses, January 2007," as updated, shall be followed when applying Fertilizer to golf courses.

(2) *Athletic fields:* For athletic fields Applicators are encouraged to apply the concepts and principles embodied in the "Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002" while maintaining the health and function of their Turf and Landscape Plants.

(3) *Agricultural operations:* Bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14, Florida Statutes. Additionally, this Section shall not apply to other properties not subject to or covered under the Florida Right to Farm Act that have Pastures used for grazing livestock.

(4) *Turf and/or Landscape Plants:* Shall be exempt from the requirements of this Section during the first 60 days after installation or planting, provided documentation for newly established Turf and/or Landscape Plants is maintained to support this exemption. Pursuant to this exemption, newly planted Turf and/or Landscape Plants may be fertilized in the buffer zone identified in (c)(4) of this Section during the sixty (60) day establishment period.

(g) *Training and enforcement.* All Commercial Applicators of Fertilizer within the unincorporated area of Charlotte County shall abide by and successfully complete a Charlotte County approved Best management Practices training program. Persons working as employees and under the direct and physical supervision of Commercial Applicators who hold a current Certificate of Completion shall be exempt from the requirement to complete a Charlotte County training program.

(1) The training program shall include the most current version of the "Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002" as revised and shall include the requirement set forth in Sections: Timing of Application, Fertilizer Content, Application Rates, Impervious Surfaces, Buffers and Low Maintenance Zones; and Mode of Application.

(2) A list of approved training programs shall be maintained by Charlotte County and the Charlotte County web site, and the County Extension Services UF/IFAS offices.

(3) Upon successful completion and compliance with the requirements in this Section and payment of any application fee established by Charlotte County, a Certificate of Completion and a vehicle decal will be provided by the County's Environmental and Extension Services Department.

(4) The vehicle decal shall be affixed and maintained on the exterior of all vehicles [lower right corner of back glass and trailers [right side of trailer tongue] used in connection with the application of Fertilizers within the area regulated by this Section.

(5) Other Applicators, such as private homeowners, are encouraged to utilize the

recommendations of the University of Florida IFAS Florida Yards and Neighborhoods programs

(6) 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 Section.

(7) Any and all enforcement inspections or observations pursuant to this Section shall be made only from areas accessible to the general public, unless specific permission is granted by a property owner to come on their property, or a search warrant is obtained from a court of competent jurisdiction.

(8) Accordingly, any Code Enforcement Official may enforce the provisions of this Section provided that the violation is personally observed by the Official in regards to an Applicator in relation to a particular parcel or property. Upon finding a violation the Code Enforcement Official may issue a verbal warning and may require the Applicator to undergo other corrective actions necessary to remedy the violation. However, nothing contained herein shall prevent Charlotte County from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this Section. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. Further, nothing contained herein shall prevent the County from instituting and pursuing Code Enforcement proceedings.

(9) Additionally, any Applicator that violates the provisions of this Section shall be responsible for Charlotte County'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 Section.

(h) *Administrative relief.* Any Applicator of Fertilizer regulated by the provisions of this Section may apply for an administrative variance from the Zoning Official, or designee, upon a written request, factually supported, showing that:

(1) As a result of soil 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 Section; and/or

(2) Such Person is able and willing to use a less strict application method or alternative materials or methods as required by the Zoning Official or designee;

Such administrative relief deemed appropriate shall be granted in writing specifically setting forth the party entitled to the administrative relief, the location or locations to which the relief applies, the length of time granted for such relief and any specific conditions applicable to such relief.

Section 3. Conflict with Other Ordinances. The provisions of this article shall supersede any provisions of existing ordinances or resolutions in conflict herewith to the extent of said conflict.

Section 4. Severability. In the event that any portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the

validity of the remaining portions of this article.

Section 5. Effective date. An implementation period of 180 days from the effective date of this Ordinance shall be in effect before the enforcement of the Ordinance shall begin in order to educate and prepare the public. This Ordinance shall take effect upon its filing in the Office of the Secretary of State, State of Florida.

PASSED AND DULY ADOPTED this ____ day of _____, 2008.

BOARD OF COUNTY COMMISSIONERS OF
CHARLOTTE COUNTY, FLORIDA

By: _____
Thomas C. D'Aprile, Chairman

ATTEST:
Barbara T. Scott, Clerk of
Circuit Court and Ex-Officio
Clerk to the Board of County
Commissioners

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: _____
Janette S. Knowlton, County Attorney