Date: 04/03/2014  AGENDA ITEM  Item: 42

[X] Ordinance  [] Resolution  [] Budget Resolution  [] Other

Department: Growth And Resource Management
Division: Environmental Management

Subject: Adoption of Ordinance 2014-06, establishing countywide regulation of fertilizer; and direction regarding seasonal ban.

Kelli McGee  
Director Growth and Resource Management

Legal
Jamie E. Seaman  
County Attorney

County Manager’s Office
Charlene Weaver, CPA, CFO
Deputy County Manager

Ginger Adair  
Director Environmental Services

Approved as to Form and Legality

Council Action:
Modification:

Account Number(s): NA  
Total Item Budget: NA

Staff Contact(s):
Kelli McGee
Ginger Adair

<table>
<thead>
<tr>
<th>Phone</th>
<th>Ext.</th>
</tr>
</thead>
<tbody>
<tr>
<td>386 822 5013</td>
<td>12000</td>
</tr>
<tr>
<td>386 736 5927</td>
<td>12059</td>
</tr>
</tbody>
</table>

Summary/Highlights:
On March 6, 2014, the county council directed advertisement of a public hearing at which it could adopt a countywide fertilizer ordinance consistent with the state model; ordered transmittal to state agencies of its intent to adopt a ban on phosphorus application without a documented deficiency and a requirement that at least 50% of nitrogen applied be in a slow-release form; and deferred discussion of a seasonal ban which in summer months would preclude application of any nitrogen or phosphorous, regardless of the deficiency which may exist. At the April 3, 2014, meeting, the county council may adopt the attached ordinance after conducting the noticed public hearing; and may transmit its intention to adopt a seasonal ban after a future public hearing.


Recommended Motion: Adoption of ordinance and direction whether to transmit to state agencies an intent to adopt a seasonal ban.
AN ORDINANCE OF THE COUNTY COUNCIL OF
VOLUSIA COUNTY, FLORIDA, AMENDING THE
CODE OF ORDINANCES OF THE COUNTY OF
VOLUSIA, CHAPTER 50, ENVIRONMENT, TO
CREATE ARTICLE VIII, FLORIDA-FRIENDLY
FERTILIZER USE; MAKING CERTAIN FINDINGS
AND DETERMINATIONS; PROVIDING
DEFINITIONS; PROVIDING FOR COUNTYWIDE
APPLICATION OF CHAPTER 50, ARTICLE VIII,
FLORIDA-FRIENDLY FERTILIZER USE;
PROVIDING FOR TIMING OF FERTILIZER
APPLICATION; PROVIDING FOR FERTILIZER
FREE ZONES; PROVIDING FOR FERTILIZER LOW
MAINTENANCE ZONES; PROVIDING FOR
FERTILIZER CONTENT AND APPLICATION
RATES; PROVIDING FOR 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 CONTINUING
EFFECT; PROVIDING FOR INCLUSION IN CODE;
PROVIDING FOR SEVERABILITY; PROVIDING FOR
CONFLICTING ORDINANCES; AND PROVIDING AN
EFFECTIVE DATE.

WHEREAS, the quality of our rivers, estuaries, streams, lakes and the
offshore waters of the Atlantic Ocean is critical to the health, safety and welfare
of the citizens of Volusia County; and

WHEREAS, nonpoint sources of pollution, including fertilizer runoff,
contribute significant amounts of nutrients to our water bodies; and
WHEREAS, runoff from improper use of fertilizer can contribute to nitrogen and phosphorus pollution in the county’s stormwater and drainage conveyances and natural water bodies; and

WHEREAS, pursuant to Section 403.9337(1), Florida Statutes, all local governments are encouraged to adopt and enforce the Florida Department of Environmental Protection’s Model Ordinance for Florida-Friendly Fertilizer Use (model ordinance), or an equivalent requirement as a mechanism for protecting local surface and groundwater quality; and

WHEREAS, pursuant to Section 403.9337(2), Florida Statutes, all local governments within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to Section 403.067, Florida Statutes, shall, at a minimum, adopt the model ordinance, and a local government may adopt additional or more stringent standards than the model ordinance if: (a) the local government has demonstrated, as part of a comprehensive program to address nonpoint sources of nutrient pollution which is science-based, and economically and technically feasible, that additional or more stringent standards than the model ordinance are necessary in order to adequately address fertilizer contributions to nonpoint source nutrient loading to a water body; and (b) the local government documents that it has considered all relevant scientific information, including input from the Department of Environmental Protection, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences (IFAS), if provided, on the need for
additional or more stringent provisions to address fertilizer use as a contributor to water quality degradation, and all supporting documentation is entered in the public record before adoption of the additional or more stringent standards; and

WHEREAS, this ordinance is part of a comprehensive program to address nutrient pollution, which includes, but is not limited to, stormwater management, surface water quality improvement, water conservation, septic tank management and abatement, public education, and land development standards; and

WHEREAS, more specifically regarding stormwater, the county has a strict stormwater ordinance and illicit discharge enforcement program; and

WHEREAS, the county has a sophisticated stormwater management program to address reduction of pollution from nonpoint sources; and

WHEREAS, to address target areas, the county develops stormwater master plans, including the Deep Creek Basin Stormwater Master Plan and the B-21 Watershed Management Plan; and

WHEREAS, the county actively identifies stormwater management projects for implementation with funding from a stormwater assessment and through grants from the Florida Department of Environmental Protection, the St. Johns River Water Management District and the United States Department of Agriculture Natural Resources Conservation Service; and

WHEREAS, more specifically regarding surface water quality, the county has an extensive surface water quality monitoring program to track and respond to changes in nutrient and other pollution levels; and

Page 3 of 17
Ordinance 2014-06
WHEREAS, the county initiates specific projects to improve surface water quality, including projects that have reduced street flooding, improved maintenance of drainage facilities, reduced erosion and sedimentation in canals and ditches, and improved the overall quality of water in our canals, lakes and aquifers; and

WHEREAS, the Florida Department of Environmental Protection has mandated total maximum daily loads (TMDLs) of nitrogen and phosphorus for water bodies deemed impaired in the county; and

WHEREAS, the Florida Department of Environmental Protection has estimated nutrient contributions from nonpoint source pollution, including fertilizer, in many of the county’s surface waters; and

WHEREAS, the final TMDL report “Nutrient TMDL for Halifax River, WBID 2363B” dated July 2013, estimates nonpoint source contributions of 475,261 pounds per year of total nitrogen and 33,349 pounds per year of total phosphorus; and

WHEREAS, the draft TMDL report “Nutrient TMDL for Tomoka River (Fresh Water), WBID 2634” dated March 2013, estimates nonpoint source contributions of 338,774 pounds per year of total nitrogen and 22,101 pounds per year of total phosphorus; and

WHEREAS, the final TMDL report “Nutrient and Dissolved Oxygen TMDLs for the Six Middle St. Johns River Segments between the Inlet of Lake Harney (WBID 2964A) and St. Johns River above Wekiva River (WBID 2893C)” dated
December 7, 2009, estimates nonpoint source contributions of 718,907 pounds per year of total nitrogen and 73,961 pounds per year of total phosphorus; and

WHEREAS, the final TMDL report “Nutrient and Dissolved Oxygen TMDLs for the Indian River Lagoon and Banana River Lagoon” dated March 2009, estimates nonpoint source contributions of 134,986 pounds per year of total nitrogen and 13,901 pounds per year of total phosphorus in the North Indian River Lagoon (WBID 2963F); and

WHEREAS, the final TMDL report “Dissolved Oxygen and Nutrient TMDL for Spruce Creek, WBID 2674A” dated April 2008, estimates nonpoint source contributions of 18,562 pounds per year of total nitrogen and 4,578 pounds per year of total phosphorus;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA AS FOLLOWS:

(Words in strike-through type are deletions; words in underscore type are additions)

SECTION I: The above recitals are true and correct and adopted as findings of fact in support of this ordinance. By this reference, they are hereby incorporated into the official record for the adoption of this ordinance.

SECTION II: Chapter 50, Article VIII, Florida-Friendly Fertilizer Use, of the Code of Ordinances of the County of Volusia, is hereby created to read as follows:

Sec. 50-511—50-519. Reserved.
Sec. 50-520. Findings.

As a result of impairment to surface waters caused by excessive nutrients, and as a result of increasing levels of nitrogen in the surface and ground water within the aquifers and springs, the county council hereby determines that the use of fertilizers creates a risk to contributing to adverse effects on surface and ground water. Accordingly, the county council hereby finds that management measures contained in the most recent edition of the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries are required.

Sec. 50-521. Purpose and intent.

This article 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, low maintenance zones, and exemptions. This article requires the use of best management practices, which 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 natural and constructed stormwater conveyances, rivers, creeks, canals, springs, lakes, estuaries and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of county residents.
and the health of the public in general. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both nitrogen and phosphorus contained in fertilizer, will help improve and maintain water and habitat quality.

Sec. 50-522. Definitions.

For the purposes of this article, the following terms shall have the meanings set forth in this section; words used in the singular shall include plural, and the plural, singular; words used in the present tense shall include future tense. The word “shall” is mandatory and not discretionary. The word “may” is permissive. Words not defined herein shall have the meaning given in other sections of this code and if not therein, shall have the meaning given by common and ordinary use:

Administrator means the county manager, or an administrative official designated by the county manager to administer and enforce the provisions of this article.

Application or Apply means the actual physical deposit of fertilizer to turf and/or landscape plants.

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

Approved Best Management Practices Training Program means a training program approved pursuant to Section 403.9338, Florida Statutes, or any more...
stringent requirements set forth in this article that includes the most current
version of the Florida Department of Environmental Protection’s Florida-Friendly
Best Management Practices for Protection of Water Resources by the Green
Industries, as may be amended.

Best Management Practices means turf and landscape practices or a
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.

Code Enforcement Officer, Official or Inspector means any designated
employee or agent whose duty it is to enforce codes and ordinances.

Commercial Fertilizer Applicator, except as provided in Section
482.1562(9), Florida Statutes, means any person who applies fertilizer for
payment or other consideration to property not owned by the person or firm
applying the fertilizer or the employer of the applicator.

Fertilize 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. Fertilizer does not include unmanipulated peat or compost
which make no claims as described in the preceding sentence.
**Guaranteed Analysis** means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.

**Institutional Fertilizer Applicator** means any person, other than a private, non-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 Fertilizer 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.

**Landscape Plant** means any native or exotic tree, shrub, or groundcover (excluding turf).

**Low Maintenance Zone** means an area a minimum of ten (10) feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.

**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 is in effect for any portion of the county, issued by the National...
Weather Service, or if heavy rain, as defined by the World Meteorological Organization, is likely.

*Saturated Soil* means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this article, 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.

*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.

*Turf*, *Sod*, or *Lawn* means a piece of grass-covered soil held together by the roots of the grass.

**Sec. 50.523. Applicability.**

This article shall apply and regulate any and all applicators of fertilizer and areas of application of fertilizer within the incorporated and unincorporated areas of the county, unless such applicator is specifically exempted by the terms of this article. This article shall be prospective only, and shall not impair any existing contracts.

**Sec. 50.524. Timing of fertilizer application.**

(a) 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.
(b) Fertilizer containing nitrogen 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, or in accordance with an adopted stormwater pollution prevention plan for that site.

Sec. 50.525. Fertilizer free zones.

(a) Fertilizer shall not be applied within ten (10) feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection Rule 62-340, Florida Administrative Code, or from the top of a seawall, unless a deflector shield, drop spreader, or liquid applicator with a visible and sharply defined edge, is used, in which case a minimum of three (3) feet shall be maintained. Newly planted turf and/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 plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water.

Sec. 50.526. Low maintenance zones.

(a) A voluntary ten (10) foot low maintenance zone is strongly recommended, but not mandated, from any pond, stream, water course, lake, wetland or from the top of a seawall. 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 may 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.

Sec. 50.527. Fertilizer content and application rates.

(a) Fertilizers applied to turf shall be applied in accordance with
requirements and directions provided by Rule 5E-1.003(2), Florida Administrative
Code, “Fertilizer Label Requirements for Urban Turf, Sports Turf or Lawns.”

(b) Nitrogen or phosphorus fertilizer shall not be applied to turf or
landscape plants except as provided in subsection (a) for turf, or in the University
of Florida/IFAS recommendations for landscape plants, vegetable gardens, and
fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an
approved test.

Sec. 50.528. Application practices.

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

(b) Fertilizer shall not be applied, spilled, or otherwise deposited on
any impervious surfaces.

(c) 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.
(d) 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.

(e) In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

Sec. 50.529. Management of grass clippings and vegetative matter.

(a) In no case shall grass clippings, vegetative material, and/or vegetative debris be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable.

Sec. 50.530. Exemptions.

This article shall not apply to:

(a) Bona fide farm operations as defined in Section 823.14, Florida Statutes, “Florida Right to Farm Act.”

(b) Other properties not subject to or covered under subsection (a) that have pastures used for grazing livestock.

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

(d) Golf courses, athletic fields and turf managed for active recreation, whose owners implement best management practices as described in Rule 5E-
1.003(2)(d), Florida Administrative Code, “Fertilizers Labeled for Sports Turf at Golf Courses, Parks and Athletic Fields.”

**Sec. 50.531. Training.**

(a) All commercial and institutional fertilizer applicators shall abide by and successfully complete the six-hour training program in the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries offered by the Florida Department of Environmental Protection through the University of Florida/IFAS Florida-Friendly Landscapes program, or an approved equivalent.

(b) Private, non-commercial applicators are encouraged to follow the recommendations of the University of Florida/IFAS Florida Yards and Neighborhoods program when applying fertilizers.

**Sec. 50.532. Licensing of commercial fertilizer applicators.**

(a) By September 30, 2014, all commercial fertilizer applicators shall abide by and successfully complete training and continuing education requirements in the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, offered by the Florida Department of Environmental Protection through the University of Florida/IFAS Florida-Friendly Landscapes program, or an approved equivalent program. Commercial fertilizer applicators shall provide proof of completion of the program prior to obtaining a new Local Business Tax Receipt for any category of occupation which may apply any fertilizer to turf and/or landscape plants. Commercial fertilizer applicators
with an existing Local Business Tax receipt for any category of occupation which
may apply any fertilizer to turf and/or landscape plants shall provide proof of
completion of the program within thirty (30) days after completing the program
and prior to September 30, 2014.

(b) After September 30, 2014, all commercial fertilizer applicators shall
have and carry in their possession at all times when applying fertilizer, evidence
of certification by the Florida Department of Agriculture and Consumer Services
as a commercial fertilizer applicator pursuant to Rule 5E-14.117(18), Florida
Administrative Code.

(c) By September 30, 2014, all businesses applying fertilizer to turf
and/or landscape plants (including but not limited to residential lawns,
commercial properties, and multi-family and condominium properties) shall
ensure that at least one employee has a Florida-Friendly Best Management
Practices for Protection of Water Resources by the Green Industries training
certificate. Business owners for any category of occupation which may apply any
fertilizer to turf and/or landscape plants shall provide proof of completion of the
program by at least one employee prior to the business owner obtaining a new
Local Business Tax Receipt. Business owners for any category of occupation
which may apply any fertilizer to turf and/or landscape plants with an existing
Local Business Tax Receipt shall provide proof of completion of the program by
at least one employee within thirty (30) days after completing the program and
prior to September 30, 2014.
Sec. 50-534. Enforcement; declaration.

(a) The county council hereby finds and declares that a violation of this article presents a serious threat to the public health, safety and welfare and is irreparable or irreversible in nature. No violator of this article shall be entitled to an opportunity to correct a violation prior to the levy of a civil penalty in accordance with any of the enforcement methods prescribed in Sections 1-7, 2-392, or other applicable section of this code. The civil penalty shall be $50.00 for each violation. However, if the person has been previously found through a code enforcement board or any other quasi-judicial or judicial process to have violated, or who has admitted violating, this article within five years prior to the violation, the civil penalty shall be $100.00 for a second violation, $250.00 for a third violation and $500.00 for a fourth or subsequent violation, notwithstanding the violations occurring at different locations.

SECTION III: CONTINUING EFFECT - Except as amended herein, the provisions of the Code of Ordinances of the County of Volusia remain in full force and effect.

SECTION IV: AUTHORIZING INCLUSION IN CODE - The provisions of this ordinance shall be included and incorporated into the Code of Ordinances of the County of Volusia, as additions or amendments thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the code.
SECTION V: SEVERABILITY - Should any word, phrase, sentence, subsection or section be held by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional, then that word, phrase, sentence, subsection or section so held shall be severed from this ordinance and all other words, phrases, sentences, subsections, or sections shall remain in full force and effect.

SECTION VI: CONFLICTING ORDINANCES - All ordinances, or parts thereof, in conflict herewith are, to the extent of such conflict, repealed.

SECTION VII: EFFECTIVE DATE – A certified copy of this ordinance shall be filed with the Department of State by the County Manager within ten (10) days after enactment by the County Council. This ordinance shall take effect upon filing.

ADOPTED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE COUNCIL CHAMBERS AT THE THOMAS C. KELLY ADMINISTRATION CENTER, 123 WEST INDIANA AVENUE, DELAND, FLORIDA THIS 3RD DAY OF APRIL, 2014.

COUNTY COUNCIL

ATTEST: COUNTY OF VOLUSIA, FLORIDA

_________________________  ____________________________
JAMES T. DINNEEN   JASON P. DAVIS
COUNTY MANAGER   COUNTY CHAIR