



ITEM NO. ORD-2016-6

DATE: 06/07/2016

AGENDA REQUEST

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TO: Board of County Commissioners

PRESENTED BY: Daniel S. McIntyre, County Attorney

SUBMITTED BY: County Attorney

SUBJECT: Stop Gap Ordinance - Commercial Composting Facilities

BACKGROUND:

At the Board's January 12, 2016 informal meeting the Board generally discussed the issue of regulating the location and use of commercial composting facilities. The Board requested that the County staff study the issue and develop regulations as appropriate to be presented to the Board upon completion of the study. Attached is a draft Ordinance which, if adopted, would postpone the issuance of development permits for commercial composting facilities for the earlier of 1) a period of three hundred thirty (330) days from the adoption of the Stop Gap Ordinance or 2) the effective date of the adoption of regulations resulting from the study. This Ordinance is not intended to affect backyard composting by residential homeowners on their own property.

On February 9, 2016, the Board granted permission to advertise the draft ordinance. On March 17, 2016, the Planning and Zoning Commission/Local Planning Agency ("P&Z/LPA") held a public hearing on the proposed ordinance and voted 6-0 to recommend that the Board of County Commissioners approve the proposed ordinance. P&Z/LPA members were concerned about the definition of "compost" and potential impacts on agricultural operations which purchase organic materials from landscapers and lawn service contractors to compost for use on their own grove and fields. In response to this concern, County staff added Subsection 2.C.3, which clarifies that the ordinance does not apply to normal farming operations. Subsection 2.C.3 defines "normal farming operations" to mean the composting of certain wastes that are generated on a farm, or brought onto a farm, for use on the farm.

This item has already been issued an ordinance number in the event that the Board votes to approve the draft ordinance.

PREVIOUS ACTION:

On May 3, 2016, the Board held the first public hearing on the draft ordinance. Notice of the June 7, 2016 public hearing was published in the Tribune on May 25, 2016.

FINANCIAL IMPACT:

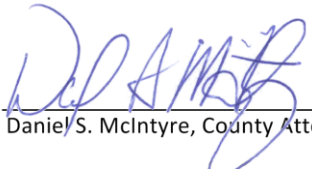
N/A

RECOMMENDATION:

Staff recommends that the Board adopt Ordinance No. 16-006 as drafted.

COMMISSION ACTION:

Coordination/Signatures



Daniel S. McIntyre, County Attorney

4/13/2016



1 of 14 DOCUMENTS

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*** This document reflects changes through March 16, 2016 ***

TITLE 62 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 DIVISION 62 DEPARTMENTAL
 CHAPTER 62-709 CRITERIA FOR ORGANICS PROCESSING AND RECYCLING FACILITIES

62-709.305, F.A.C. (2016)

62-709.305 Exemptions.

The following activities do not require a permit or registration under this chapter provided no public nuisance or any condition adversely affecting the environment or public health is created and the activity does not violate other state or local laws, ordinances, rules, regulations, or orders.

- (1) Backyard composting and the resulting compost.
- (2) Normal farming operations. For purposes of this chapter, the following will be considered normal farming:
 - (a) Composting or anaerobic digestion of wastes generated on the farm, as part of agronomic, horticultural or silvicultural operations, for use on the farm, as part of agronomic, horticultural or silvicultural operations;
 - (b) Composting of wastes generated on the farm, as part of agronomic, horticultural or silvicultural operations, for sale or use off the farm; although no permit is required, the generator must meet the requirements of *Rules 62-709.530* through *.600*, F.A.C., for any compost that is sold for use by persons other than the generator;
 - (c) Composting or anaerobic digestion of yard trash, manure, or vegetative wastes generated from off the farm, for use on the farm, as part of agronomic, horticultural or silvicultural operations;
 - (d) Composting of yard trash, manure, or vegetative wastes generated from off the farm, for sale or use off the farm; although no permit is required, the generator must meet the requirements of *Rules 62-709.530* through *.600*, F.A.C., for any compost that is sold for use by persons other than the generator. For this exemption to apply, the yard trash, manure, or vegetative wastes brought to the farm must be necessary to optimize composting of the yard trash or manure generated on the farm, as part of agronomic, horticultural or silvicultural operations (e.g., bringing in yard trash as a source of carbon and pile structure) to optimize composting of manure generated on the farm). Yard trash, vegetative wastes, or manure which is brought to the farm solely to increase the amount of compost produced is not considered to be part of the agronomic, horticultural or silvicultural operations at the farm and is not covered by this exemption, except as provided for in paragraph (e) below; and
 - (e) Manure management operations that are regulated under Chapter 62-670, F.A.C., as concentrated animal feeding operations (CAFO) or animal feeding operations (AFO). If the facility is permitted, this includes manure received from off-site as well as generated on-site when the facility permit addresses these waste streams.
- (3) Composting of solid waste generated on-site or off-site, when there is no more than 100 cubic yards on site at any one time of solid waste to be composted or undergoing the composting process and finished compost being stored for use.

62-709.305, F.A.C.

(4) Land application of processed yard trash for beneficial use is not considered disposal, and is not regulated under department solid waste regulations, providing the yard trash has been size-reduced so that it will pass through a 6-inch sieve.

(5) Land application of unprocessed yard trash or other use of yard trash, manure, or vegetative waste, if it is beneficial use that is not expected to pose a significant threat to public health or the environment. The following information could be submitted to the Department's District office to help provide assurance that this activity is beneficial use:

(a) A description of the property, including street mailing address, property identification number used by the county property appraiser's office, where on the property the land application will occur, and topography on which the material will be deposited. A map showing the location of the property and identifying water bodies, wetlands and wells to be avoided is also required. The property description must indicate any water bodies or wetlands to be avoided. The Department retains the authority to inspect this operation to assure that the waste is being properly managed.

(b) Documentation that the person either owns the land where the material will be deposited, or has legal authorization from the property owner to deposit the material there in the manner proposed.

(c) An explanation of the proposed project and why the person believes it qualifies for this exemption. The explanation should include a description of the benefit obtained from the project, any specifications or requirements for the incoming material, a description of any processing that will take place on-site before the material is used, and the amount of material required to complete the project. This should include the total amount and a per-acre application rate. The total amount and per-acre application rate shall be in tons or cubic yards. An estimated bulk density in pounds per cubic yards shall also be provided.

(d) An operation plan describing how the material will be received onto the site, how site access will be controlled, what equipment will be used to process or spread it, and how the material will be stored prior to use.

(e) A contingency plan explaining the procedures for dealing with emergencies such as a fire, natural disaster or equipment failure, or receipt of any unacceptable material.

(f) A description of how any vegetative waste or unstabilized manure will be processed within 48 hours.

(g) A demonstration that the proposed project is not expected to create any significant threat to public health or the environment.

AUTHORITY: Rulemaking Authority *403.061, 403.704, 403.7043 FS.*
Law Implemented *403.7043, 403.707 FS.*

HISTORY

New 2-15-10.

The St. Lucie County Board of County Commissioners proposes to adopt the following Ordinance:

ORDINANCE NO. TBD

AN ORDINANCE OF ST. LUCIE COUNTY, FLORIDA, (THE "COUNTY"), PROVIDING FOR POSTPONEMENT OF ISSUANCE OF CERTAIN COMPREHENSIVE PLAN AMENDMENTS AND DEVELOPMENT ORDERS WITHIN UNINCORPORATED ST. LUCIE COUNTY CONCERNING DEVELOPMENT WHICH INVOLVES COMMERCIAL COMPOSTING FACILITIES DURING A SPECIFIED TERM; PROVIDING FOR WAIVER, VESTED RIGHTS, APPEALS, EXHAUSTION OF ADMINISTRATIVE REMEDIES; PROVIDING FOR CONFLICTING PROVISION SEVERABILITY AND APPLICABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE; PROVIDING FOR AN EFFECTIVE DATE AND ADOPTION

A PUBLIC HEARING on the proposed Ordinance will be held before the St. Lucie County Board of County Commission on Tuesday, May 3, 2016, at 6:00 p.m. or as soon thereafter as the matter may be heard in the St. Lucie County Commission Chambers at the St. Lucie County Administration Building Annex, 2300 Virginia Avenue, Fort Pierce, Florida. Matters affecting your personal and property rights may be heard and acted upon. All interested persons are invited to attend and be heard. Written comments received in advance of the hearing will also be considered.

The purpose of this public hearing is to postpone the processing and issuance of certain Comprehensive Plan amendments to the Official Zoning Atlas and development orders which concern commercial composting facilities during a specified term.

Copies of the proposed ordinance may be obtained from the Planning and Development Services Department, St. Lucie County Administration Building Annex, 2300 Virginia Avenue, Fort Pierce, Florida, 34982. Amendments to the Ordinance may be made at the public hearing.

The St. Lucie County Board of County Commissioners has the power to receive and grant any applications within their area of responsibility. If it becomes necessary, a public hearing may be continued to a date certain.

If any person decides to appeal any decision made with respect to any matter considered at the meetings or hearings of any board, committee, commission, agency, council or advisory group, that person will need a record of the proceedings and that, for such purpose, may need to ensure that a verbatim record of proceedings is made, which record should include the testimony and evidence upon which the appeal is to be based. Upon the request of any party to proceedings, individuals testifying during a hearing will be sworn in. Any request to the proceeding will be granted an opportunity to cross-examine any individual testifying during a hearing upon request.

Anyone with a disability requiring accommodation to attend this meeting should contact George Landry, Employee Safety and Risk Manager, at (772) 462-1711 or T.D.D. (772) 462-1428, at least forty-eight (48) hours prior to the meeting.

THIS NOTICE DATED AND EXECUTED this 20th day of April 2016.

BOARD OF COUNTY COMMISSIONERS
ST. LUCIE COUNTY, FLORIDA
/S/ KIM JOHNSON, CHAIRMAN
PUBLISH DATE: April 20, 2016

Attachment 9.A.2.b: BOCC AD - Stop Gap Ordinance - May 3, 2016 (ORD-2016-6 : Stop Gap Ordinance - Commercial

NOTICE OF ESTABLISHMENT OR CHANGE OF REGULATIONS AFFECTING THE USE OF LAND

9.A.2.c

The St. Lucie County Board of County Commissioners proposes to adopt the following Ordinance:

ORDINANCE 16-006

AN ORDINANCE OF ST. LUCIE COUNTY, FLORIDA, (THE "COUNTY"), PROVIDING FOR POSTPONEMENT OF ISSUANCE OF CERTAIN COMPREHENSIVE PLAN AMENDMENTS AND DEVELOPMENT ORDERS WITHIN UNINCORPORATED ST. LUCIE COUNTY CONCERNING DEVELOPMENT WHICH INVOLVES COMMERCIAL COMPOSTING FACILITIES DURING A SPECIFIED TERM; PROVIDING FOR WAIVER, VESTED RIGHTS, APPEALS, EXHAUSTION OF ADMINISTRATIVE REMEDIES; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND APPLICABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE; PROVIDING FOR AN EFFECTIVE DATE AND ADOPTION

A PUBLIC HEARING on the proposed Ordinance will be held before the St. Lucie County Board of County Commissioners on Tuesday, June 7, 2016, at 2:00 p.m., or as soon thereafter as the matter may be heard in the St. Lucie County Commission Chambers at the St. Lucie County Administration Building Annex, Third Floor, 2300 Virginia Avenue, Fort Pierce, Florida. Matters affecting your personal and property rights may be heard and acted upon. All interested persons are invited to attend and be heard. Written comments received in advance of the public hearing will also be considered.

The purpose of this public hearing is to postpone the processing and issuance of certain Comprehensive Plan amendments to the Official Zoning Ordinance and development orders which concern commercial composting facilities during a specified term.

Copies of the proposed ordinance may be obtained from the Planning and Development Services Department, St. Lucie County Administration Building Annex, 2300 Virginia Avenue, Fort Pierce, Florida, 34982. Amendments to the Ordinance may be made at the public hearing.

The St. Lucie County Board of County Commissioners has the power to review and grant any applications within their area of responsibility. If necessary, a public hearing may be continued to a date certain.

If any person decides to appeal any decision made with respect to any matter considered at the meetings or hearings of any board, committee, commission, agency, council or advisory group, that person will need a record of the proceedings and that, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record should include the testimony and evidence upon which the appeal is to be based. Upon the request of any party to the proceedings, individuals testifying during a hearing will be sworn in. Any party to the proceeding will be granted an opportunity to cross-examine any individual testifying during a hearing upon request.

Anyone with a disability requiring accommodation to attend this meeting should contact George Landry, Employee Safety and Risk Manager, at 462-1783, or T.D.D. (772) 462-1428, at least forty-eight (48) hours prior to the meeting.

THIS NOTICE DATED AND EXECUTED this 25th day of May 2016.

BOARD OF COUNTY COMMISSIONERS
ST. LUCIE COUNTY, FLORIDA
/S/ KIM JOHNSON, CHAIRMAN
PUBLISH DATE: May 25, 2016

Packet Pg. 397

Attachment 9.A.2.c: BOCC AD - Stop Gap Ordinance - June 7, 2016 (ORD-2016-6 : Stop Gap Ordinance - Commercial

ORDINANCE NO. 16-006

AN ORDINANCE OF ST. LUCIE COUNTY, FLORIDA (THE "COUNTY"), PROVIDING FOR POSTPONEMENT OF ISSUANCE OF CERTAIN COMPREHENSIVE PLAN AMENDMENTS AND DEVELOPMENT ORDERS WITHIN UNINCORPORATED ST. LUCIE COUNTY CONCERNING DEVELOPMENT WHICH INVOLVES COMMERCIAL COMPOSTING FACILITIES DURING A SPECIFIED TERM; PROVIDING FOR WAIVER, VESTED RIGHTS, APPEALS, EXHAUSTION OF ADMINISTRATIVE REMEDIES; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND APPLICABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE; PROVIDING FOR AN EFFECTIVE DATE AND ADOPTION

WHEREAS, the Board of County Commissioners ("Board") of St. Lucie County ("County"), Florida, presently is working with its staff and professional consultants to prepare comprehensive plan amendments and land development regulations that will govern the location and development of commercial facilities in the unincorporated County that will process solid waste or biosolids (domestic wastewater residuals) to produce compost; and

WHEREAS, the Board finds that the regulation of commercial composting facilities is necessary and appropriate to guide the future use and development of land in the unincorporated County, and to protect the public health, welfare and safety, including but not limited to the environmental resources of the County and surrounds areas; and

WHEREAS, the Board wishes to ensure that all amendments to the County's comprehensive plan, amendments to the County's Official Zoning Atlas, and the issuance of development orders concerning commercial composting facilities are temporarily postponed until the County has a reasonable opportunity to complete its analysis of the relevant issues, and complete the formulation and implementation of the necessary amendments to the County's comprehensive plan, zoning code, and other land development regulations (collectively, the "Regulations"); and

WHEREAS, the County's Local Planning Agency has reviewed the provisions in this Ordinance and determined that these provisions are consistent with the applicable provisions in the County's Comprehensive Plan.

NOW THEREFORE, BE IT ORDAINED by the Board of County Commissioners of St. Lucie County, Florida as follows:

Section 1. RECITALS ADOPTED.

Each of the recitals set forth above is hereby adopted and confirmed.

Section 2. TEMPORARY POSTPONEMENT OF CERTAIN COUNTY ACTIONS; APPLICABILITY.

A. During the time that this Ordinance is in effect, as specified in Section 3 below, no application for a comprehensive plan amendment, amendments to the Official Zoning Atlas, or development order (as defined in Section 163.3164, Florida Statute) concerning the development of a commercial composting facility on property in unincorporated St. Lucie County shall be processed, granted, or otherwise approved. All such applications shall be held in abeyance by the County, until the end of the term of this Ordinance, as described in Section 3, below.

B. For the purposes of this Ordinance, a “commercial composting facility” shall mean a facility that uses composting techniques or technology to process solid waste, biosolids (i.e., domestic wastewater residuals), or other organic matter as part of a commercial business or venture. Processing includes but is not limited to physical turning, windrowing, aeration, and other means of mechanically handling solid waste, biosolids, or other organic matter to produce compost.

C. Notwithstanding anything else contained herein this ordinance shall not apply to:

1. A public purpose project, if the applicant is a governmental entity and the applicant demonstrates to the County’s satisfaction that the public interest would be significantly and adversely affected if the application for the proposed project is delayed by the requirements of this Ordinance; or

2. A development that is protected from a change in county ordinances, to the extent provided by Section 163.3233, Florida Statutes, for those statutory development agreements that already have been entered into.

3. Normal farming operations, which are defined as follows: (a) composting or anaerobic digestion of wastes generated on the farm, as part of agronomic, horticultural or silvicultural operations, for use on the farm, as part of agronomic, horticultural or silvicultural operations; and (b) composting or anaerobic digestion of yard trash, manure, or vegetative wastes generated from off the farm, for use on the farm, as part of agronomic, horticultural or silvicultural operations.

Section 3. TERM OF THIS ORDINANCE.

The County shall move forward expeditiously with the development, adoption, and implementation of the Regulations concerning commercial composting facilities. This Ordinance shall remain in effect only for so long as is reasonably necessary for the Board to adopt such Regulations and for those Regulations to take effect. Accordingly, the term of this Ordinance shall expire, and this Ordinance shall have no further force or effect, after the date when the Regulations take effect, or three hundred thirty (330) days after the date of the adoption of this Ordinance, whichever occurs first, unless the term of this Ordinance is extended by the Board. The Board may extend the term of this Ordinance for up to an additional thirty (30) days by resolution, if the Board

finds that the extension is necessary and in the public interest.

Section 4. WAIVERS.

Notwithstanding the provisions in Section 2 above, an applicant for the development of property within the unincorporated County may apply to the Board for a waiver of the requirements in Section 2.A, above, so that the applicant's application may be reviewed without delay. In such cases, the Board shall consider the request for a waiver at a public meeting, which shall be held within 45 days after the County receives the applicant's request. At the public meeting, the applicant shall have the burden of demonstrating to the Board's satisfaction that: (a) granting the applicant's request for a waiver will not detrimentally affect the preparation and implementation of the Regulations; (b) the proposed project will be compatible with surrounding land uses; and (c) the proposed project will not adversely affect the public health, safety or welfare. If the applicant carries its burden of proof, the Board may grant a waiver and thus allow the applicant's application to be submitted, reviewed and processed concurrently with the Regulations. However, a development order shall not be issued for such application until the necessary comprehensive plan amendments are in effect and the application is found to be consistent with adopted land development regulations.

Section 5. VESTED RIGHTS.

A. Nothing in this Ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development where the property owner demonstrates each of the following:

1. A government act of development approval was obtained prior to the effective date of this Ordinance; and
2. The property owner has detrimentally relied, in good faith, on the governmental approval by making a substantial change in position or incurring extensive obligations and expenses; and
3. It would be highly inequitable to deny the property owner the right to complete the development.

B. Any property owner claiming to have vested rights under this Section 5 must file an application with the Board for a vested rights determination within 30 days after the effective date of this Ordinance. The application shall be accompanied by a fee of \$1,500.00 and shall contain a sworn statement as to the facts upon which the vested rights are asserted, together with any documentary evidence supporting the claim. The Board shall hold a public hearing on the application and, based upon the evidence submitted, shall make a determination as to whether or not the property owner has established vested rights. To the extent that a property owner demonstrates vested rights, the prohibitions established in Section 2.A of this Ordinance shall not

apply.

Section 6. APPEALS.

Any appeal from a final decision by the Board under Section 4 or Section 5 of this Ordinance shall be pursued by filing a Petition for Certiorari in the Circuit Court of the 19th Judicial Circuit, in and for St. Lucie County, in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial rulings of local government agencies.

Section 7. EXHAUSTION OF ADMINISTRATIVE REMEDIES.

A property owner claiming that this Ordinance, as applied, constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights shall not pursue such claim in court unless he or she has first exhausted the administrative remedies provided in this Ordinance.

Section 8. CONFLICTING PROVISIONS.

Special acts of the Florida legislature applicable only to unincorporated areas of St. Lucie County, County ordinances and County resolutions, or parts thereof, in conflict with this ordinance are hereby superseded by this ordinance to the extent of such conflict.

Section 9. SEVERABILITY.

If any portion of this ordinance is for any reason held or declared to be unconstitutional, inoperative, or void, such holding shall not affect the remaining portions of this ordinance. If this ordinance or any provision thereof shall be held to be inapplicable to any person, property, or circumstance, such holding shall not affect its applicability to any other person, property, or circumstance.

Section 10. APPLICABILITY OF ORDINANCE.

This ordinance shall be applicable in the unincorporated area of St. Lucie County.

Section 11. FILING WITH THE DEPARTMENT OF STATE.

The Clerk is hereby directed forthwith to send a certified copy of this ordinance to the Bureau of Administrative Code and Laws, Department of State, The Capitol, Tallahassee, Florida 32304.

Section 12. EFFECTIVE DATE.

This Ordinance shall be effective upon filing with the Department of State.

Section 13. ADOPTION.

After motion and second, the vote on this ordinance was as follows:

Kim Johnson, Chairman	XXX
Chris Dzadoovsky, Vice Chairman	XXX
Commissioner Tod Mowery	XXX
Commissioner Paula A. Lewis	XXX
Commissioner Frannie Hutchinson	XXX

PASSED AND DULY ADOPTED this _____ day of _____, 2016.

ATTEST:

Deputy Clerk

**BOARD OF COUNTY COMMISSIONERS
ST. LUCIE COUNTY, FLORIDA**

BY: _____
Chairman

**APPROVED AS TO FORM AND
CORRECTNESS:**

BY: _____
County Attorney

