

# 15(a)  
# 6(b)**ORDINANCE NO. 2019-01**

**AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AUTHORIZING AN EXTENSION OF THE TEMPORARY MORATORIUM IMPOSED BY ORDINANCE NO. 2018-06 FOR AN ADDITIONAL 180 DAYS OR UNTIL A COMPREHENSIVE REVIEW OF THE IMPACT OF THE CITY'S ECOSYSTEM IS COMPLETED, PROHIBITING LAND APPLICATION ACTIVITIES OF CLASS B BIOSOLIDS; PROVIDING FOR STUDY AND POSSIBLE REGULATION OF CLASS B BIOSOLIDS APPLICATION ACTIVITIES; PROVIDING FOR RATIFICATION; EXTENSION OF TEMPORARY MORATORIUM; EXPIRATION OF TEMPORARY MORATORIUM; STUDY OF CLASS B BIOSOLIDS; EXHAUSTION OF ADMINISTRATIVE REMEDIES; AND PROVIDING FOR CONFLICT, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Section 2(b), Article VIII, of the Florida Constitution and Chapter 166, Florida Statutes, the City of Fellsmere is authorized and required to protect the public health, safety, and welfare of the residents of the City of Fellsmere and may exercise any power for a governmental purpose except when expressly prohibited by law, and, pursuant to this authority and Section 163.3202, Florida Statutes, the City of Fellsmere has enacted land development regulations consistent with its adopted Comprehensive Plan, which protect the quality of life in the City of Fellsmere; and

**WHEREAS**, the City Council of the City of Fellsmere ("Council") specifically determines that the enactment of this Ordinance is necessary to protect the health, safety, and welfare of the residents of the City of Fellsmere; and

**WHEREAS**, Class B Biosolids are solid, semi-solid, or liquid materials resulting from treatment of domestic sewage sludge from sewage treatment facilities that contain algae supporting nutrients such as phosphorus and nitrogen; and

**WHEREAS**, phosphorus and nitrogen pollution have been a long-term problem for surrounding estuaries and watersheds, as phosphorus and nitrogen promote algal blooms, fuel growth of noxious vegetation, and replace the unique natural ecosystem with one which is undesirable to humans and native wildlife; and

**WHEREAS**, the land application activities of Class B Biosolids was being conducted on property in Indian River County, in areas near waterbodies such as Blue Cypress Lake, which is adjacent to the City limits of the City of Fellsmere; and

**WHEREAS**, Blue Cypress Lake, the first lake along the St. Johns River, was and is classified by the Florida Department of Environmental Protection as a Class I surface water with a designated use for potable water supplies; and

**WHEREAS**, there was and is evidence of significant increases in phosphorus and nitrogen and incidences of harmful and potentially toxic algae blooms in Blue Cypress Lake; and

**WHEREAS**, there appeared to be a correlation between the increase of nutrients in Blue Cypress Lake and the land application of biosolids in the unincorporated area of Indian River County; and

**WHEREAS**, the land application of biosolids has been restricted in neighboring counties and ecosystems to the South, such as the St. Lucie River watershed and the Lake Okeechobee watershed, leaving Blue Cypress Lake and the St. Johns River watershed as the cheapest alternative for the disposal and land application of Class B Biosolids generated in South Florida; and

**WHEREAS**, in 2017, 73% of all the land applied Class B Biosolids were spread in Indian River, Osceola and Brevard Counties; and

**WHEREAS**, adding to the existing nutrient levels in the St. Johns River Basin may further inflict damage to the health, safety, and welfare of humans and wildlife in the City of Fellsmere, unincorporated area of Indian River County, and the State of Florida; and

**WHEREAS**, on July 9, 2018, Governor Rick Scott signed Executive Order No. 18-191 declaring a state of emergency in Glades, Hendry, Lee, Martin, Okeechobee, Palm Beach and St. Lucie Counties due to an increase in algae blooms in these counties because of discharges from Lake Okeechobee and directed the Florida Department of Environmental Protection to issue an Emergency Order directed at reducing the flow of water from Lake Okeechobee; and

**WHEREAS**, on July 17, 2018, the Indian River County Board of County Commissioners adopted Ordinance No. 2018-16, which imposed a temporary moratorium of 180 days on land applications of Class B Biosolids for a reasonable period of time to coordinate with the Florida Department of Environmental Protection (FDEP) and investigate the impacts of land application of Class B Biosolids upon the public health, safety and welfare and promulgate reasonable regulations relating to such activities; and

**WHEREAS**, to implement in part the Governor's Executed Order No. 18-191, the FDEP is conducting a watershed assessment that includes Blue Cypress Lake to better understand all potential nutrient sources in the watershed and possible connection to nutrient levels in the lake and additionally FDEP is creating a Biosolids Technical Advisory Committee to evaluate from a statewide perspective current management practices and potential opportunities for enhancements to better protect Florida's water resources, including within the St. John River Basin; and

**WHEREAS**, the City of Fellsmere's regulations did not and do not provide for regulating setbacks or for mandatory distances of Class B Biosolids from water bodies; and

**WHEREAS**, the City's Code of Ordinances/Land Development Code did not and do not contain any regulations regarding location and criteria for land application of Class B Biosolids; and

**WHEREAS**, in consideration of the foregoing, on August 16, 2018, the Council enacted Ordinance No. 2018-06, which, *inter alia*, imposed a moratorium beginning August 16, 2018, and

expiring February 12, 2019, upon all properties within the City of Fellsmere involved in land application of Class B Biosolids and upon all transportation activities by any person or entity that is engaged in the transportation of Class B Biosolids for land application with the City of Fellsmere; and

**WHEREAS**, Jones Edmunds Associates, an engineering consulting firm for Indian River County, has since identified a relationship between the increase in land applied biosolids in the Blue Cypress Lake watershed and an increase in phosphorus levels in Blue Cypress Lake when analyzing historic St. Johns River Water Management District data; and

**WHEREAS**, on November 29, 2018, at a public meeting of the FDEP Biosolids Technical Advisory Committee (“FDEP TAC”), the St. Johns River Water Management District staff presented information that showed a strong correlation of increased phosphorus levels where land applied biosolids were spread at FDEP permitted sites within the Upper St. Johns River basin; and

**WHEREAS**, the FDEP TAC has not yet provided a response to the information provided by St. Johns River Water Management District staff; and

**WHEREAS**, additional time is necessary for the FDEP TAC to issue a response and then for Indian River County, St. John River Water Management District, and the City of Fellsmere to review, analyze, and reply to the FDEP TAC’s response when provided; and

**WHEREAS**, at a public meeting of the Indian River County Board of County Commissioners held on December 11, 2018, the Board of County Commissioners unanimously voted to direct staff to exercise the necessary logistics to extend the temporary moratorium it imposed by Ordinance No. 2018-16 on July 17, 2018, an additional 180 days; and

**WHEREAS**, the Council has determined at a duly advertised public hearing that the extension of the temporary moratorium enacted in Ordinance No. 2018-06 is needed to further review, consider, and study the effects that the disposal and land application of Class B Biosolids has on the water resources of the City of Fellsmere and to protect water quality in the St. Johns River watershed, Blue Cypress Lake, and surrounding water bodies, from adverse impacts potentially caused by the land application of Class B Biosolids; and

**WHEREAS**, this extension of the moratorium is being enacted in good faith, without unjust discrimination, and in reliance in part upon the decision of *WCI Cmtys, Inc. v. City of Coral Springs*, 885 So. 2d 912 (Fla. App. Fourth District).

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AS FOLLOWS:**

**SECTION 1. RATIFICATION.** The above recitals are hereby ratified, adopted and incorporated herein as legislative findings of the City Council.

**SECTION 2. EXTENSION OF TEMPORARY MORATORIUM.** Beginning on the

effective date of this Ordinance, the moratorium imposed by Ordinance No. 2018-06 is hereby extended for a period of 180 days and shall continue to apply to all properties within the City of Fellsmere involved in land application of Class B Biosolids, except where determined to be inconsistent with or preempted by state law or regulation or for testing per section 4 below as approved by the Florida Department of Environmental Protection. In addition, the moratorium shall continue to apply to all transportation activities by any person or entity that is engaged in the transportation of Class B Biosolids for land application with the City of Fellsmere, except where determined to be inconsistent with or preempted by state law or regulation. All currently approved septage/grease haulers as well as haulers contracted by Indian River County of domestic wastewater sludge for treatment at the Indian River County Residual Dewatering Facility and disposal at the Indian River County landfill are not transporting Class B Biosolids for land application purposes and thus are not affected by this Ordinance or moratorium.

**SECTION 3. EXPIRATION OF TEMPORARY MORATORIUM.** The temporary moratorium imposed by Ordinance No. 2018-06 and extended by Section 2 of this Ordinance expires 180 days from the effective date of this Ordinance. The moratorium may be extended or terminated early by adoption of an ordinance or resolution of the City Council of the City of Fellsmere.

**SECTION 4. STUDY OF CLASS B BIOSOLIDS.** The City of Fellsmere staff shall continue to coordinate with Indian River County and the Florida Department of Environmental Protection and study in depth and report the findings of and any recommendations concerning Class B Biosolids land application activities and its potential adverse effect within 180 days after the effective date of this Ordinance.

**SECTION 5. 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 administrative remedies.

**SECTION 6. CONFLICT.** All previous ordinances or parts of ordinances, resolutions, or motions of the City which conflict with the provisions of this Ordinance are hereby repealed to the extent of conflict.

**SECTION 7. CODIFICATION.** The provision of this Ordinance may be incorporated into the Code of Ordinances of the City of Fellsmere, Florida and the word “ordinance” may be changed to “section”, “article” or other appropriate word, and the sections of the ordinance may be re-titled, re-numbered or re-lettered, to accomplish such codification.

**SECTION 8. SEVERABILITY.** If any section, part of a sentence, phrase or word of this Ordinance is for any reason held to be unconstitutional, inoperative or void, such holdings shall not affect the remaining portions hereof and it shall be construed to have been the legislative intent to pass this ordinance without such unconstitutional, invalid or inoperative part.

**SECTION 9. EFFECTIVE DATE.** This Ordinance shall become effective immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council Member \_\_\_\_\_ . The motion was seconded by Council Member \_\_\_\_\_ and, upon being put to a vote, the vote was as follows:

Mayor, Joel Tyson	_____
Council Member Fernando Herrera	_____
Council Member Inocensia Hernandez	_____
Council Member Sara J. Savage	_____
Council Member Jessica Salgado	_____

The Mayor thereupon declared this Ordinance fully passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF FELLSMERE, FLORIDA

**ATTEST:**

\_\_\_\_\_  
Joel Tyson, Mayor

\_\_\_\_\_  
Deborah C. Krages, CMC, City Clerk

I HEREBY CERTIFY that Notice of the public hearing on this Ordinance was published in the Press Journal, as required by State Statute, that the foregoing Ordinance was duly passed and adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, and the first reading was held on the 10<sup>th</sup> day of January, 2019, and that the second and final reading and public hearing was held on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Deborah C. Krages, CMC, City Clerk