

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Jon Williams, Assistant City Manager – Public Services

Via: Mike Bollhoefer, City Manager

Date: March 7, 2019 **Meeting Date:** March 28, 2019

Subject: Ordinance No. 19-16 Amending Chapter 94 “Natural Resource Protection”
To Add a New Section 94-1 Governing Fertilizer Use Within the City.

Issue: The Winter Garden City Code currently contains no comprehensive regulations pertaining to fertilizer use within the City. It is in the best interests of the health, safety, and welfare of the residents of Winter Garden and the general public that the City adopt and authorize enforcement of the fertilizer regulations contained within the Orange County Code, Chapter 15, Article XVII, within the boundaries of the City.

The City enforcement is a requirement of the stormwater element of National Pollutant Discharge Elimination System (NPDES) Permit governed by the Florida Department of Environmental Protection. The City is a co-permittee with Orange County responsible for monitoring the stormwater discharges to major water bodies.

A copy of the Orange County Code, Chapter 15, Article XVII is attached hereto as Exhibit “A.”

Recommended Action:

Staff recommends adoption of Ordinance 19-16

Attachments/References:

Exhibit “A” – Article XVII – Fertilizer Management Ordinance

ORDINANCE NO. 19-16

**AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA;
AMENDING CHAPTER 94 “NATURAL RESOURCE PROTECTION” TO
ADD A NEW SECTION 94-1 GOVERNING FERTILIZER USE WITHIN
THE CITY; ADOPTING THE ORANGE COUNTY REGULATIONS
PERTAINING TO FERTILIZER USE AND AUTHORIZING COUNTY
AND CITY ENFORCEMENT THEREOF WITHIN THE CITY;
PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS,
AND AN EFFECTIVE DATE.**

WHEREAS, the Winter Garden City Code currently contains no comprehensive regulations pertaining to fertilizer use within the City; and

WHEREAS, the City finds that it is in the best interests of the health, safety, and welfare of the residents of Winter Garden and the general public that the City adopt and authorize enforcement of the fertilizer regulations contained within the Orange County Code, Chapter 15, Article XVII, within the boundaries of the City; and

WHEREAS, a copy of the Orange County Code, Chapter 15, Article XVII is attached hereto as Exhibit “A.”

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA:

SECTION 1. Recitals. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

SECTION 2. City Code Amendment. Article I of Chapter 94 of the City Code is hereby amended to add a new Section 94-1 thereof, to read as follows:

Sec. 94-1. – Fertilizer Regulations. Chapter 15, Article XVII of the Orange County Code governing fertilizer use shall apply within the boundaries of the City. Orange County and relevant personnel and agents thereof shall have the authority to enforce and administer Chapter 15, Article XVII of the Orange County Code within the boundaries of the City. The City and relevant personnel and agents thereof shall have the authority to enforce and administer Chapter 15, Article XVII of the Orange County Code within the boundaries of the City using any enforcement mechanism available under the City Code, County Code, or by law.

SECTION 3. Codification. This Ordinance shall be incorporated into the Winter Garden City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance and the City Code may be freely made.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, 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 ordinance.

SECTION 5. Conflicts. In the event of a conflict or conflicts between this Ordinance and any other ordinance or provision of law, this Ordinance controls to the extent of the conflict, as allowable under the law.

SECTION 6. Effective date. This ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Garden, Florida.

FIRST READING: _____, 2019

SECOND READING: _____, 2019

ADOPTED this _____ day of _____, 2019, by the City Commission of the City of Winter Garden, Florida.

CITY COMMISSION
CITY OF WINTER GARDEN

/S/
John Rees, Mayor/Commissioner

ATTEST:

/S/
Angela Grimmage, City Clerk

Exhibit "A"

ARTICLE XVII. - FERTILIZER MANAGEMENT ORDINANCE

Sec. 15-800. - Findings and purpose.

As a result of impairment to the county's surface waters, groundwater, and springs caused by excessive nutrients, the county has determined that the improper use of fertilizers on land creates a risk of contributing to adverse effects on surface and groundwater. This ordinance regulates the proper use and application of fertilizer, training requirements, and restricted application periods in the county.

Orange County's Environmental Protection Division will provide to the board of county commissioners a summary of data collected and current research related to excessive nutrients for evaluation and consideration of ordinance revisions on or before December 31, 2019.

(Ord. No. 2017-14 , § 2, 6-20-17)

Sec. 15-801. - Definitions.

Apply or *application* means the physical deposit, placement, or release of fertilizer upon soil, turf, or landscape plants.

Applicator means any person who applies fertilizer.

Article means chapter 15, article XVII, of the Orange County Code of Ordinances, as amended, unless otherwise specified.

Best management practices (BMPs) means the practice or 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.

Commercial applicator means any person who applies fertilizer in exchange for money, goods, services or other valuable consideration and who is required by law, ordinance, or regulation to obtain an Orange County local business tax certificate.

Fertilizer means any substance or mixture of substances, excluding pesticides, organic composts, and fertilizer derived from biosolids, that contains one (1) 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 means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.

Golf course means any public or private area of land designed and used exclusively for playing or practicing golf, including tees, fairways, greens, rough areas, hazards and driving ranges (stand-alone ranges or those associated with a golf course). A golf course shall also include the following uses if they are accessory to the above uses: clubhouses, and all facilities adjacent to and associated with the daily operations of the above-referenced areas. Golf-related structures or features on residentially zoned private land shall not constitute a golf course.

Groundcover means plants used in mass as alternative to turf or lawn and/or to create variety in landscape; usually not having a mature height over two (2) feet tall.

Landscape plants means any shrub, tree, or groundcover, excluding turf and vegetable gardens.

Person means any person, natural or artificial, individual, firm, association, organization, partnership, business trust, corporation, company, agent, employee, or any other legal entity, the United States of America, and the State of Florida and all political subdivisions, regions, districts, municipalities, and public agencies.

Restricted season means the period from June 1 through September 30.

Slow release means nitrogen in a form which delays its availability for plant uptake and use for an extended period after application, or which extends its availability to the plant longer than a readily available, rapid or quick-release product. This definition includes the terms "controlled release," "timed release," "slowly available," and "water insoluble."

Turf, sod , or lawn means a mat layer of monocotyledonous plants, including but not limited to, Bahia, Bermuda, Centipede, Paspalum, St. Augustine, or Zoysia.

(Ord. No. 2009-26 , § 1, 10-6-09; Ord. No. 2017-14 , § 3, 6-20-17)

Sec. 15-802. - Applicability.

- (a) Consistent with section 704 of the Orange County Charter, this ordinance shall be applicable throughout all of Orange County, except in municipalities that have minimum standards for the regulation of fertilizer application that are no less strict than those in this article.
- (b) Any business that sells fertilizer shall post a notice provided by the county stating that the use of lawn and landscape fertilizers in the county is restricted in accordance with this chapter.

(Ord. No. 2009-26 , § 1, 10-6-09; Ord. No. 2017-14 , § 4, 6-20-17)

Sec. 15-803. - Weather and seasonal restrictions.

- (a) No fertilizer containing nitrogen or phosphorus shall be applied to turf or landscape plants during a period for which the National Weather Service has issued any of the following advisories for any portion [of] the county: a severe thunderstorm warning or watch, flood warning or watch, tropical storm warning or watch, or hurricane warning or watch.
- (b) No person, except applicators certified pursuant to section 15-809 herein, shall apply fertilizer containing nitrogen or phosphorus to turf or landscape plants during the restricted season from June 1 through September 30.

(Ord. No. 2009-26 , § 1, 10-6-09; Ord. No. 2017-14 , § 5, 6-20-17)

Sec. 15-804. - Fertilizer content; application rate.

- (a) No fertilizer shall be used unless labeled in accordance with state law.
- (b) No fertilizer containing phosphorus shall be applied to turf or landscape plants. Provided, however, where phosphorus deficiency has been demonstrated in the soil by a soil analysis test performed by a laboratory using University of Florida's Institute of Food and Agricultural Sciences ("UF/IFAS") approved methodology, phosphorus may then be applied at a rate no greater than one-quarter (0.25) of one (1) pound of phosphorus per one thousand (1,000) square feet per application, not to exceed one-half (0.5) pound of phosphorus per one thousand (1,000) square feet per year. Any person who obtains such a soil analysis test showing a phosphorus deficiency may apply phosphorus and shall provide the test results to the Orange County Environmental Protection Division, Attention: Manager within thirty (30) days of receipt of results.
- (c) No fertilizer containing nitrogen shall be applied unless at least fifty (50) percent of its nitrogen content is slow release as indicated on the Guaranteed Analysis label, with no more than one (1) pound total nitrogen per one thousand (1,000) square feet of area per application. This requirement shall change to at least sixty-five (65) percent slow release if the product is readily available on the local commercial market by July 1, 2020.
- (d) Notwithstanding subsection 15-804(c), commercial applicators may apply fertilizer at a rate that does not exceed one-half (0.5) of one (1) pound of readily available nitrogen per one thousand

(1,000) square feet of area, provided, however, that any application that exceeds one-half (0.5) of one (1) pound of nitrogen shall conform to subsection 15-804(c).

- (e) Notwithstanding any other provision of this section 15-804, fertilizers applied to turf must follow the guidelines found in Rule 5E-1.003, F.A.C., as it may be amended.

(Ord. No. 2009-26 , § 1, 10-6-09; Ord. No. 2017-14 , § 6, 6-20-17)

Sec. 15-805. - Fertilizer-free zones.

- (a) No fertilizer shall be applied within fifteen (15) feet of any wetland or surface waters, including but not limited to a lake, pond, stream, water body, water course, or canal.
- (b) No fertilizer shall be deposited, washed, swept, or blown off, intentionally or inadvertently, onto any impervious surface, public right-of-way, public property, stormwater drain, ditch, conveyance, or water body. 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 or landscape plants or any other legal site, or returned to the original or other appropriate container.
- (c) A low-maintenance zone is strongly recommended, though not required, for all areas within ten (10) feet of the normal high water elevation of any lake, pond, stream, water body, water course or canal, or any wetland, excluding permitted stormwater ponds. Low-maintenance zones should be planted and managed in such a way as to minimize the need for watering, mowing, and other active maintenance. 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 over-spray of aquatic weed control products in this zone.

(Ord. No. 2009-26 , § 1, 10-6-09; Ord. No. 2017-14 , § 7, 6-20-17)

Sec. 15-806. - Mode of application.

Broadcast spreaders applying fertilizers must be equipped with deflector shields positioned to deflect fertilizer from all impervious surfaces, rights-of-way, stormwater drains, ditches, conveyances, and water bodies.

(Ord. No. 2009-26 , § 1, 10-6-09)

Sec. 15-807. - Grass clippings and vegetative material/debris.

Grass clippings and/or vegetative material/debris shall not be deposited, washed, swept, or blown off, intentionally or inadvertently, onto any impervious surface, public right-of-way, stormwater drain, ditch, conveyance, or water body.

(Ord. No. 2009-26 , § 1, 10-6-09)

Sec. 15-808. - Exemptions; exceptions.

- (a) Sections 15-805 through 15-810 of this article shall not apply to golf courses; provided, however, fertilizer shall not be applied to golf courses in excess of the provisions set forth in Rule 5E-1.003(3), F.A.C., as it may be amended.

- (b) This article shall not apply to any bona fide farm operation that the county is without authority to regulate with regard to fertilizer application pursuant to the Florida Right to Farm Act, F.S. (2016) § 823.14 et seq., or other applicable state law.
- (c) This article shall not apply to sports turf areas at parks and athletic fields.

(Ord. No. 2009-26 , § 1, 10-6-09; Ord. No. 2017-14 , § 10, 6-20-17)

Sec. 15-809. - Training requirements; proof of compliance.

- (a) No commercial applicator shall cause fertilizer to be applied, except at his or her own residence, without a valid limited certification for urban landscape commercial fertilizer application from the Florida Department of Agriculture and Consumer Services, as specified in section 15-809(c).
- (b) Each commercial applicator shall ensure that each applicator he or she employs has a valid limited certification for urban landscape commercial fertilizer application from the Florida Department of Agriculture and Consumer Services prior to the application of fertilizer.
- (c) Possession of a valid limited certification for urban landscape commercial fertilizer application from the Florida Department of Agriculture and Consumer Services or the Florida Department of Environmental Protection's *Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries* training by UF/IFAS shall suffice as evidence of completion of a county-approved best management practices training program.
- (d) Non-commercial applicators shall provide proof on an annual basis of successful completion of the online training "Orange County Fertilizer Application Education Course for Citizens" on the Orange County fertilizer web page.
- (e) Certified applicators must show proof of training on all vehicles used during applications.

(Ord. No. 2009-26 , § 1, 10-6-09; Ord. No. 2017-14 , § 11, 6-20-17)

Editor's note— Ord. No. 2017-14 , § 11, adopted June 20, 2017, amended § 15-809 and in so doing changed the title of said section from "Commercial training requirements; proof of compliance" to "Training requirements; proof of compliance," as set out herein.

Sec. 15-810. - Commercial applicators; business tax certificate.

Prior to obtaining or renewing an Orange County local business tax certificate for a business that provides landscape services, each commercial applicator shall provide proof of successful completion from county-approved best management practices training programs within the previous three (3) years. Possession of a valid limited certification for urban landscape commercial fertilizer application from the Florida Department of Agriculture and Consumer Services or the Florida Department of Environmental Protection's *Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries* training by UF/IFAS shall suffice as evidence of completion of a county-approved best management practices training program.

(Ord. No. 2009-26 , § 1, 10-6-09; Ord. No. 2017-14 , § 11, 6-20-17)

Sec. 15-811. - Variances.

- (a) All requests for a variance(s) from the requirements of this article shall be made in writing to the Manager of the Orange County Environmental Protection Division. The manager may require the applicant for a variance to provide such information as necessary to carry out the purpose of this article. The manager may approve, approve with conditions or deny requests for variances. A

variance may be granted if strict application of the Orange County Fertilizer Management Ordinance would lead to unreasonable or unfair results in particular instances, provided that the applicant demonstrates with particularity that compliance will result in a substantial economic, health or other hardship on the applicant requesting the variance or those served by the applicant.

- (b) Variances may be issued by the manager only upon satisfaction of the following:
 - (1) A showing of good and sufficient cause by the applicant and that the cause is not self-imposed, and
 - (2) A determination by the manager that the variance is the minimum necessary to afford relief, and
 - (3) A determination by the manager that failure to grant the variance would result in a practical difficulty or a physical hardship affecting the applicant's economic use of the property, and
 - (4) A determination by the manager that the granting of the variance will not result in threats to the health, safety and welfare of the residents of the county or conflict with existing local laws or ordinances.
- (c) Any person aggrieved by the decision of the manager may appeal pursuant to the provisions of section 15-38.

(Ord. No. 2009-26 , § 1, 10-6-09)

Sec. 15-812. - Enforcement and penalty.

- (a) It shall be unlawful for any person to violate any provision of this article, except section 15-802(b), or any provision of any resolution enacted pursuant to the authority of this article. Every code enforcement officer is authorized to enforce the provisions of this article. Any person who violates any provision of this article, except section 15-802(b), or any provision of any resolution enacted pursuant to the authority of this article, shall be subject to the following penalties:
 - (1) First violation: Written notice.
 - (2) Second violation: Fine of fifty dollars (\$50.00), except for commercial applicators it shall be five hundred dollars (\$500.00).
 - (3) Third and subsequent violations: Fine of one hundred dollars (\$100.00), except for commercial applicators it shall be seven hundred fifty dollars (\$750.00).
- (b) In addition to the enforcement provisions provided, the county may avail itself of any other legal or equitable remedy available to it including, without limitation, injunctive relief, in the enforcement of any provision of this article or any provision of any resolution enacted pursuant to the authority of this article. Any person violating this article shall be held liable for all costs incurred by the county in connection with enforcing this article, or any resolution enacted pursuant to the authority of this article including, but not limited to, attorney's fees.

(Ord. No. 2009-26 , § 1, 10-6-09; Ord. No. 2017-14 , § 14, 6-20-17)

Secs. 15-813—15-819. - Reserved.