



**AGENDA ITEM:**


**14D**



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To: Honorable Mayor and Village Council

Date: June 7, 2021

From: Nick Marano, Village Manager 

Re: Florida-Friendly Fertilizer Use on Urban Landscape

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**A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA RELATING TO REGULATION OF FERTILIZER; ADOPTING THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S MODEL ORDINANCE FOR FLORIDA-FRIENDLY FERTILIZER USE FOR URBAN LANDSCAPES; PROVIDING FOR ADDITIONAL AND MORE STRINGENT STANDARDS THAN THE MODEL ORDINANCE, INCLUDING AN ANNUAL PERIOD DURING WHICH FERTILIZER APPLICATION GENERALLY WOULD BE PROHIBITED AND LIMITATIONS ON NITROGEN AND PHOSPHOROUS; PROVIDING ENFORCEMENT AUTHORITY TO BUILDING DEPARTMENT DIRECTOR; REQUESTING THAT THE VILLAGE MANAGER DIRECT COMMUNICATIONS DEPARTMENT TO CONDUCT AN EDUCATIONAL CAMPAIGN; AND PROVIDING SEVERABILITY, INCLUSION OF THE CODE, AND AN EFFECTIVE DATE. *(Sponsored by Administration)***

**BACKGROUND AND ANALYSIS:**

The Board of County Commissioners hereby finds that the use of fertilizers on urban landscapes within Miami-Dade County contributes to adverse effects on surface and ground waters within the County, by impairing surface waters with excessive nutrients and by impairing surface and groundwater aquifers with increased levels of nitrogen and phosphorus. Accordingly, the Board of County Commissioners finds it appropriate to regulate the use of fertilizer on urban landscapes as provided in this Chapter, including, but not limited to, those provisions that are stricter than those contained in the Florida Department of Environmental Protection's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.

It is the intent of this Resolution to establish minimum standards for the Village of Palmetto Bay to: regulate the proper use of fertilizers by any applicator; require proper training of commercial and institutional fertilizer applicators; establish training and licensing requirements; establish a prohibited application period; and specify allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones,

and exemptions, with the goal of minimizing the negative secondary and cumulative environmental effects associated with the misuse and overuse of fertilizers on urban landscapes. Secondary and cumulative effects related to excess nutrients, such as algal blooms and seagrass impacts have been observed in and on water bodies in Miami-Dade County. Collectively, these water bodies are an asset that is critical to the environmental, recreational, cultural, and economic well-being of Miami-Dade County residents and the health of the public. Overgrowth of algae and vegetation can also hinder the effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, will help improve and maintain water and habitat quality.

**RECOMMENDATION:**

Administration recommends the adaptation of the Florida-Friendly Fertilizer Use on Urban Landscape to parallel the decision made by Miami-Dade County.

**FISCAL IMPACT:**

No Fiscal impact.

**Attachments:**

- A. 403.9337, Florida Statute
- B. 403.067, Florida Statute
- C. Miami-Dade County Florida-Friendly Fertilizer Use Ordinance

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**WHEREAS**, the excessive and improper use of fertilizers can contribute to water quality issues and can lead to water quality degradation; and

**WHEREAS**, section 403.9337, Florida Statutes, requires county and municipal governments that are “located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to section 403.067,” Florida Statutes, to, at a minimum, adopt the State of Florida’s model ordinance for Florida-Friendly Fertilizer Use for Urban Landscapes to regulate the application of fertilizer “as a mechanism for protecting local surface and groundwater quality;” and

**WHEREAS**, section 403.9337, Florida Statutes, also expressly allows local governments to adopt additional or more stringent standards than the model ordinance after taking certain enumerated



1 actions, and many local governments throughout the state have done  
2 so; and  
3

4 **WHEREAS**, pursuant to section 403.9337, to adopt additional or  
5 more stringent standards than the model ordinance, a local government  
6 must (1) demonstrate, as part of a comprehensive program to address  
7 nonpoint sources of nutrient pollution that is science-based and  
8 economically and technically feasible, that additional or more stringent  
9 standards are necessary to adequately address urban fertilizer  
10 contributions to nonpoint source nutrient loading to a water body, and  
11 (2) consider all input received from various state agencies and other  
12 relevant scientific information; and  
13

14 **WHEREAS**, Miami-Dade County has met the requirements in  
15 section 403.9337 for the adoption of additional or more stringent  
16 standards than the model ordinance; and  
17

18 **WHEREAS**, this ordinance is stricter than the State of Florida's  
19 model ordinance in certain respects, as it:  
20 \* establishes an annual period between May 15<sup>th</sup> and September 30<sup>th</sup>  
21 during which fertilizer application generally would be prohibited;  
22 \* requires larger fertilizer-free zones next to bodies of water than the  
23 model provides;  
24 \* sets quantitative limits on using fertilizer containing nitrogen; and  
25 \* prohibits using fertilizer containing phosphorus unless a soil test  
26 shows a phosphorus deficiency at the particular location where it is to  
27 be applied; and  
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29 **WHEREAS**, currently, the County has a comprehensive program  
30 to address non-point sources of nutrient pollution that includes, but is  
31 not limited to, the following:

- 32 \* requiring property owners to connect to the sanitary sewer system as  
33 a condition of certain development approvals for property that is within  
34 a feasible distance to a sewer line, unless the property owner obtains a  
35 variance;  
36 \* regulating and enforcing the County's clean-up target levels for  
37 contaminants in soil and water, as provided in chapter 24 of the County  
38 Code;  
39 \* requiring review and approval by the Miami-Dade County Department

1 of Regulatory and Economic Resources' Division of Environmental  
2 Resources Management (DERM) prior to construction, installation, or  
3 alteration of outfalls or overflow systems discharging to waterbodies of  
4 Miami-Dade County; and

5 \* regulating activities involving dewatering of groundwater and surface  
6 water; and

7  
8 **WHEREAS**, a rigorous study conducted by DERM of the  
9 County's water quality and seagrass survey data and a review of  
10 relevant scientific literature and academic studies indicates that chronic,  
11 low-level nutrient loading; acute, pulsed nutrient loading; or a  
12 combination of both are likely linked to seagrass loss in Biscayne Bay,  
13 as cited in the County's January 28, 2019 Study on the Decline of  
14 Seagrass and Hardbottom Habitat (available online at:  
15 [http://www.miamidade.gov/mayor/library/memos-and-](http://www.miamidade.gov/mayor/library/memos-and-reports/2019/01/01.28.19-Report-on-the-Findings-of-the-Countys-Study-on-the-Dcline-of-Seagrass-and-Hardbottom-Habitat-in-Biscayne-Bay-Directive-No-171537.pdf)  
16 [reports/2019/01/01.28.19-Report-on-the-Findings-of-the-Countys-](http://www.miamidade.gov/mayor/library/memos-and-reports/2019/01/01.28.19-Report-on-the-Findings-of-the-Countys-Study-on-the-Dcline-of-Seagrass-and-Hardbottom-Habitat-in-Biscayne-Bay-Directive-No-171537.pdf)  
17 [Study-on-the-Dcline-of-Seagrass-and-Hardbottom-Habitat-in-](http://www.miamidade.gov/mayor/library/memos-and-reports/2019/01/01.28.19-Report-on-the-Findings-of-the-Countys-Study-on-the-Dcline-of-Seagrass-and-Hardbottom-Habitat-in-Biscayne-Bay-Directive-No-171537.pdf)  
18 [Biscayne-Bay-Directive-No-171537.pdf](http://www.miamidade.gov/mayor/library/memos-and-reports/2019/01/01.28.19-Report-on-the-Findings-of-the-Countys-Study-on-the-Dcline-of-Seagrass-and-Hardbottom-Habitat-in-Biscayne-Bay-Directive-No-171537.pdf)); and

19  
20 **WHEREAS**, urban fertilizers contribute some degree of nutrient  
21 loading to the County's watershed, and reducing all forms of avoidable  
22 nutrient loading is important to protect water resources; and

23  
24 **WHEREAS**, based on a rigorous study and review of scientific  
25 information by County staff, additional actions are needed to address  
26 nonpoint source nutrient loading to waterbodies in Miami-Dade County,  
27 including nutrients that may come from urban fertilizer, to protect water  
28 resources; and

29  
30 **WHEREAS**, in particular, FDEP's 2008 "Florida-Friendly Best  
31 Management Practices for Protection of Water Resources by the Green  
32 Industries" (the "Florida-Friendly BMPs") specifically implicates  
33 phosphorus "as a cause of increased algae growth in surface water  
34 impoundments;" and

35  
36 **WHEREAS**, according to the Florida-Friendly BMPs, because  
37 "[m]any Florida soils are high in extractable P [phosphorus] and may  
38 never require P [phosphorus] fertilization for optimum turfgrass growth,"  
39 the Florida-Friendly BMPs "strongly recommends soil testing before"

1 phosphorus fertilization and recommends that phosphorus fertilization  
2 "always be based on reliable soil or tissue test recommendations;" and  
3

4 **WHEREAS**, similarly, for landscape plants, the Florida-Friendly  
5 BMPs generally recommend that "phosphorus content of the fertilizer  
6 should be zero unless a soil tissue test indicates a need for additional  
7 fertilizer;" and  
8

9 **WHEREAS**, in addition to considering FDEP's Florida-Friendly  
10 BMPs, the County has considered all relevant scientific information,  
11 including any other input provided by the FDEP, the Florida Department  
12 of Agriculture and Consumer Services, and the University of Florida  
13 Institute of Food and Agricultural Sciences, on the need for additional or  
14 more stringent provisions to address fertilizer use as a contributor to  
15 water quality degradation; and  
16

17 **WHEREAS**, the relevant scientific information that has been  
18 considered is on file with DERM and is available upon request; and  
19

20 **WHEREAS**, this ordinance provides for certain exemptions from  
21 its regulations, such as for bona fide farm operations; and  
22

23 **WHEREAS**, the Village of Palmetto Bay wishes to adopt these  
24 regulations related to fertilizer, which are consistent with and, where  
25 appropriate, add to or are stricter than, FDEP's model ordinance; and  
26

27 **WHEREAS**, the Village Council authorizes the Village Manager to  
28 provide enforcement authority to the Building Department, Code  
29 Compliance Division.  
30

31 **WHEREAS**, the Village Council request that the Village Manager  
32 direct the Communications Department to conduct an educational  
33 campaign to encourage compliance and better educate Village  
34 residents, property owners, and fertilizer applicators about the proper  
35 application of fertilizer and the importance thereof, together with  
36 environmentally-sound landscaping practices that may reduce or  
37 eliminate the need for fertilizer.  
38

1           **NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE**  
2 **OF PALMETTO BAY, FLORIDA, THAT:**

3  
4           **Section 1.** This chapter shall be applicable to and shall regulate  
5 any and all applicators and areas of application of fertilizer, unless such  
6 applicator or area is specifically exempted by the terms of this chapter.  
7 This chapter shall be prospective only, and shall not be construed to  
8 impair any existing contracts.

9  
10          **Section 2.** The provisions set forth in this chapter shall not apply  
11 to:

12           (a) Bona fide farm operations, as defined in the Florida Right to  
13 Farm Act, section 823.14, Florida Statutes, as may be amended;

14           (b) Other properties that are not subject to or covered by the  
15 Florida Right to Farm Act but that have pastures used for grazing  
16 livestock;

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

20  
21          **Section 3.** The provisions set forth in this chapter in subsection  
22 18C-4(A)(1) related to the restricted period, subsection 18C-4(C)(3)  
23 related to limitations on nitrogen, and subsection 18(C)-4(C)(4) related  
24 to limitations on phosphorus, shall not apply to:

25           (a) Vegetable gardens, defined as a plot of ground where herbs,  
26 fruits, flowers, or vegetables are cultivated for human ingestion, when  
27 located on residential properties;

28           (b) Yard waste compost, mulches, or other similar materials that  
29 are primarily organic in nature and are applied to improve the physical  
30 condition of the soil; or

31           (c) Tree trunk injection fertilization treatments that are performed  
32 by a certified arborist.

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34          **Section 4.** This Resolution shall become effective upon the date  
35 of its adoption.

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37           **PASSED AND ADOPTED this 7<sup>th</sup> day of June 2021.**

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2  
3 ATTEST:

4 Missy Arocha  
5 Village Clerk

6 Karyn Cunningham  
7 Mayor

8 **APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE**  
9 **USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:**  
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11  
12 John C. Dellagloria, Esq.  
13 Village Attorney  
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16 **FINAL VOTE AT ADOPTION:**

17 Council Member Patrick Fiore \_\_\_\_\_

18 Council Member Steve Cody \_\_\_\_\_

19 Council Member Marsha Matson \_\_\_\_\_

20 Vice-Mayor Leanne Tellam \_\_\_\_\_

21 Mayor Karyn Cunningham \_\_\_\_\_  
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[Title XXIX](#)  
PUBLIC HEALTH

[Chapter 403](#)  
ENVIRONMENTAL CONTROL

[View I](#)

**403.9337 Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.—**

(1) All county and municipal governments are encouraged to adopt and enforce the Model Ordinance for Fertilizer Use on Urban Landscapes or an equivalent requirement as a mechanism for protecting local water quality.

(2) Each county and municipal government located within the watershed of a water body or water impaired by nutrients pursuant to s. [403.067](#), shall, at a minimum, adopt the department's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. A local government may adopt additional or more stringent model ordinance if the following criteria are met:

(a) The local government has demonstrated, as part of a comprehensive program to address nonpoint source pollution which is science-based, and economically and technically feasible, that additional or more stringent model ordinance are necessary in order to adequately address urban fertilizer contributions to nonpoint source loading to a water body.

(b) The local government documents that it has considered all relevant scientific information, including from the department, the institute, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences, if provided, on the need for additional or more stringent provisions to address a contributor to water quality degradation. All documentation must become part of the public record and meet additional or more stringent criteria.

(3) Any county or municipal government that adopted its own fertilizer use ordinance before January 1, 2009, from this section. Ordinances adopted or amended on or after January 1, 2009, must substantively conform to the version of the model fertilizer ordinance and are subject to subsections (1) and (2), as applicable.

(4) This section does not apply to the use of fertilizer on farm operations as defined in s. [823.14](#) or on agricultural lands pursuant to s. [193.461](#).

[View I](#)

(5) **REMOVAL FROM LIST.**—At any time throughout the total maximum daily load process, surface water quality monitoring stations that are not evaluated or listed under this section shall be removed from the lists described in subsection (2) or subsection (3).



demonstration that water quality criteria are being attained, based on data equivalent to that required by subsection (3).

(6) CALCULATION AND ALLOCATION.—

(a) Calculation of total maximum daily load.

1. Prior to developing a total maximum daily load calculation for each water body or water body segment specified in subsection (4), the department shall coordinate with applicable local governments, water quality management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources to determine the appropriate methods of data collection and analysis, and quality control/quality assurance requirements. The department shall include mathematical water quality modeling using approved procedures and methods.

2. The department shall develop total maximum daily load calculations for each water body or water body segment described in subsection (4) according to the priority ranking and schedule unless the impairment of the water body is solely due to activities other than point and nonpoint sources of pollution. For waters determined to be impaired by factors other than point and nonpoint sources of pollution, no total maximum daily load will be required. A total maximum daily load may be required for those waters that are impaired predominantly due to activities other than point and nonpoint sources. The total maximum daily load calculation shall establish the amount of a pollutant that a water body segment may receive from all sources without exceeding water quality standards, and shall account for a margin of safety that takes into account any lack of knowledge concerning the relationship between pollutant load and water quality. The total maximum daily load may be based on a pollutant load reduction goal established in the water management district, provided that such pollutant load reduction goal is promulgated by the department with the procedural and substantive requirements of this subsection.

(b) Allocation of total maximum daily loads. The total maximum daily loads shall include equitable allocations of the total maximum daily load between or among point and nonpoint sources in conjunction with other management and restoration activities, provide for the attainment of the pollutant load established pursuant to paragraph (a) to achieve water quality standards for the pollutant causing impairment. The department may establish the maximum amount of the water pollutant that may be discharged or released into the water body segment in combination with other discharges or releases. Allocations may also be made to individual basins or as a whole to all basins and sources or categories of sources of inflow to the water body or water body segment. The allocation of allowable pollutant loads among point and nonpoint sources may be developed as part of the total maximum daily load. However, in such cases, the detailed allocation to specific point sources and specific categories of sources shall be established in the basin management action plan pursuant to subsection (7). The initial and detailed allocations designed to attain the pollutant reductions established pursuant to paragraph (a) and shall be based on the following:

1. Existing treatment levels and management practices;
2. Best management practices established and implemented pursuant to paragraph (7)(c);
3. Enforceable treatment levels established pursuant to state or local law or permit;
4. Differing impacts pollutant sources and forms of pollutant may have on water quality;
5. The availability of treatment technologies, management practices, or other pollutant reduction strategies;
6. Environmental, economic, and technological feasibility of achieving the allocation;
7. The cost benefit associated with achieving the allocation;
8. Reasonable timeframes for implementation;
9. Potential applicability of any moderating provisions such as variances, exemptions, and mixing zones;
10. The extent to which nonattainment of water quality standards is caused by pollution sources or activities that have ceased, or alterations to water bodies prior to the date of this act.

(c) Adoption of rules. The total maximum daily load calculations and allocations established under subsection (b) for a water body or water body segment shall be adopted by rule by the secretary pursuant to ss. 120.536(1). Where additional data collection and analysis are needed to increase the scientific precision and accuracy of the total maximum daily load, the department is authorized to adopt phased total maximum daily loads that are subject to revision as additional data becomes available. Where phased total maximum daily loads are proposed, the department shall prepare a detailed statement of facts and circumstances justifying the rule, explain why the data are inadequate to establish the total maximum daily load. The rules adopted pursuant to this paragraph are not subject to approval by the Regulation Commission and are not subject to the provisions of s. 120.541(3). As part of the rule development process, the department shall hold at least one public workshop in the vicinity of the water body or water body segment for which the total maximum daily load is being developed. Notice of the public workshop shall be published not less than 30 days before the public workshop in a newspaper of general circulation in the county or counties containing the water body segments for which the total maximum daily load calculation and allocation are being developed.

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(a) Basin management action plans.—

1. In developing and implementing the total maximum daily load for a water body, the department in conjunction with a water management district, may develop a basin management action plan that addresses watersheds and basins tributary to the water body. Such plan must integrate the appropriate management strategies to the state through existing water quality protection programs to achieve the total maximum daily load. The plan must establish a schedule implementing the management strategies, establish a basis for evaluating the effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. Strategies may include regional treatment systems or other public works, when appropriate, and voluntary quality credits to achieve the needed pollutant load reductions.

2. A basin management action plan must equitably allocate, pursuant to paragraph (6)(b), pollutant load among individual basins, as a whole to all basins, or to each identified point source or category of nonpoint source. For nonpoint sources for which best management practices have been adopted, the initial requirement must be those practices developed pursuant to paragraph (c). When appropriate, the plan may take into account pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies, including best management practices, before the development of the basin management action plan. The plan must also identify the mechanisms that will address potential future increases in pollutant loading.

3. The basin management action planning process is intended to involve the broadest possible range of stakeholders with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing the plan, the department shall encourage the participation of all interested parties.

management action plan, the department shall assure that key stakeholders, including, but not limited to, governments, water management districts, the Department of Agriculture and Consumer Services, other agencies, local soil and water conservation districts, environmental groups, regulated interests, and others are invited to participate in the process. The department shall hold at least one public meeting in the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage participation to the greatest practicable extent. Notice of the public meeting must be published in a newspaper of general circulation in which the watershed or basin lies at least 5 days, but not more than 15 days, before the management action plan does not supplant or otherwise alter any assessment made under subsection (4) any calculation or initial allocation.

4. Each new or revised basin management action plan shall include:

a. The appropriate management strategies available through existing water quality protection programs, maximum daily loads, which may provide for phased implementation to promote timely, cost-effective implementation in s. 403.151;

b. A description of best management practices adopted by rule;

c. A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion of project;

d. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project, if applicable; and

e. A planning-level estimate of each listed project's expected load reduction, if applicable.

5. The department shall adopt all or any part of a basin management action plan and any amendments by secretarial order pursuant to chapter 120 to implement this section.

6. The basin management action plan must include milestones for implementation and water quality monitoring component sufficient to evaluate whether reasonable progress in implementation is being achieved over time. An assessment of progress toward these milestones shall be conducted every 5 years to the plan shall be made as appropriate. Revisions to the basin management action plan shall be made in cooperation with basin stakeholders. Revisions to the management strategies required for nonpoint source pollution control programs in subparagraph (c)4. Revised basin management action plans must be adopted pursuant to rule.

7. In accordance with procedures adopted by rule under paragraph (9)(c), basin management action plans may include pollution control programs under local, state, or federal authority as provided in subsection (4), may include sources that will achieve greater pollutant reductions than required by an adopted total maximum daily load allocation to generate, register, and trade water quality credits for the excess reductions to enable offset their allocation; however, the generation of water quality credits does not remove the obligation of a source to meet applicable technology requirements or adopted best management practices. Such plans must allocate NPDES permittees, and trading that may or may not involve NPDES permittees, where the generation or trading involves an entity or activity not subject to department water discharge permits whose owner voluntarily seeks department authorization for the generation and sale of credits.

8. The department's rule relating to the equitable abatement of pollutants into surface waters or water bodies or water body segments for which a basin management plan that takes into account future new discharges has been adopted under this section.

9. In order to promote resilient wastewater utilities, if the department identifies domestic wastewater or onsite sewage treatment and disposal systems as contributors of at least 20 percent of point source nutrient pollution or if the department determines remediation is necessary to achieve the total maximum daily load management action plan for a nutrient total maximum daily load must include the following:

a. A wastewater treatment plan developed by each local government, in cooperation with the department, water management district, and the public and private domestic wastewater treatment facilities within the jurisdiction of the local government, that addresses domestic wastewater. The wastewater treatment plan must:

(I) Provide for construction, expansion, or upgrades necessary to achieve the total maximum daily load applicable to the domestic wastewater treatment facility.

(II) Include the permitted capacity in average annual gallons per day for the domestic wastewater treatment facility, average nutrient concentration and the estimated average nutrient load of the domestic wastewater; the dates by which the construction of any facility improvements will begin and be completed and the operations of the improved facility will begin; the estimated cost of the improvements; and the identification of the responsible party.

The wastewater treatment plan must be adopted as part of the basin management action plan no later than July 1, 2025, by a local government that does not have a domestic wastewater treatment facility in its jurisdiction or a domestic wastewater treatment plan unless there is a demonstrated need to establish a domestic wastewater treatment facility in its jurisdiction to improve water quality necessary to achieve a total maximum daily load. A local government responsible for a private domestic wastewater facility's compliance with a basin management action plan may operate through a public-private partnership to which the local government is a party.

b. An onsite sewage treatment and disposal system remediation plan developed by each local government with the department, the Department of Health, water management districts, and public and private domestic wastewater treatment facilities.

(I) The onsite sewage treatment and disposal system remediation plan must identify cost-effective projects necessary to achieve the nutrient load reductions required for onsite sewage treatment and disposal systems, or that would remain on conventional onsite sewage treatment and disposal systems; and identify cost-effective and financially feasible projects for remediation of onsite sewage treatment and disposal systems; and

(A) Include an inventory of onsite sewage treatment and disposal systems based on the best information available;

(B) Identify onsite sewage treatment and disposal systems that would be eliminated through connection to future central domestic wastewater infrastructure in the jurisdiction or domestic wastewater service area of a local government, that would be replaced with or upgraded to enhanced nutrient-reducing onsite sewage treatment and disposal systems, or that would remain on conventional onsite sewage treatment and disposal systems;

(C) Estimate the costs of potential onsite sewage treatment and disposal system connections, upgrades, and replacements;

(D) Identify deadlines and interim milestones for the planning, design, and construction of projects;

(II) The department shall adopt the onsite sewage treatment and disposal system remediation plan no later than July 1, 2025, or as required for Outstanding Florida Springs under s. 403.151.



10. When identifying wastewater projects in a basin management action plan, the department may cost option if it achieves the same nutrient load reduction as a lower cost option. A regulated entity may cost option if it complies with the pollutant reduction requirements of an adopted total maximum daily load if the pollution reduction requirement of the original project.

(b) *Total maximum daily load implementation.*—

1. The department shall be the lead agency in coordinating the implementation of the total maximum daily load existing water quality protection programs. Application of a total maximum daily load by a water management district consistent with this section and does not require the issuance of an order or a separate action pursuant to s. 120.54 for the adoption of the calculation and allocation previously established by the department. It may include, but are not limited to:

- a. Permitting and other existing regulatory programs, including water-quality-based effluent limits;
- b. Nonregulatory and incentive-based programs, including best management practices, cost sharing, pollution prevention, agreements established pursuant to s. 403.061(22), and public education;
- c. Other water quality management and restoration activities, for example, surface water improvement plans approved by water management districts or basin management action plans developed pursuant to s. 120.54;
- d. Trading of water quality credits or other equitable economically based agreements;
- e. Public works including capital facilities; or
- f. Land acquisition.

2. For a basin management action plan adopted pursuant to paragraph (a), any management strategy for pollutant reduction requirements associated with a pollutant of concern for which a total maximum daily load has been established, including effluent limits for a discharger subject to NPDES permitting, if any, must be included in a total maximum daily load permit or permit modifications for that discharger. The department may not impose a total maximum daily load in an NPDES permit until the permit expires, and the permit is reopened pursuant to an adopted basin management action plan.

a. Absent a detailed allocation, total maximum daily loads must be implemented through NPDES permits. In such instances, a facility's NPDES permit must allow time for the adoption of the basin management action plan. The time allowed for the issuance of an order adopting the plan, upon issuance of an order adopting the plan, the permit must be reopened or renewed, as necessary, conditions consistent with the plan must be established. Notwithstanding the other provisions of this section, upon request by an NPDES permittee, the department as part of a permit issuance, renewal, or modification must allocate the total maximum daily load before the adoption of a basin management action plan.

b. For holders of NPDES municipal separate storm sewer system permits and other stormwater source permits, a total maximum daily load or basin management action plan must be achieved, to the maximum extent practicable, the use of best management practices or other management measures.

c. The basin management action plan does not relieve the discharger from any requirement to obtain or abide by other requirements of the permit.

d. Management strategies in a basin management action plan to be implemented by a discharger shall be completed pursuant to the schedule in the basin management action plan. The schedule may extend beyond the 5-year term of an NPDES permit.

e. Management strategies and pollutant reduction requirements in a basin management action plan of concern are not subject to challenge under chapter 120 at the time they are incorporated, in an NPDES permit or subsequent NPDES permit or permit modification.

f. For nonagricultural pollutant sources not subject to NPDES permitting but permitted pursuant to local water quality programs, the pollutant reduction actions adopted in a basin management action plan shall be to the maximum extent practicable as part of those permitting programs.

g. A nonpoint source discharger included in a basin management action plan must demonstrate pollutant reductions established under subsection (6) by implementing the appropriate best management practices pursuant to paragraph (c) or conducting water quality monitoring prescribed by the department or a water management district. A nonpoint source discharger may, in accordance with department rules, supplement the implementation of best management practices with water quality credit trades in order to demonstrate compliance with the plan established under subsection (6).

h. A nonpoint source discharger included in a basin management action plan may be subject to enforcement by the department or a water management district based upon a failure to implement the responsibilities in subsection (6).

i. A landowner, discharger, or other responsible person who is implementing applicable management strategies in an adopted basin management action plan may not be required by permit, enforcement action, or other management strategies, including water quality credit trading, to reduce pollutant loads to levels established pursuant to subsection (6) and shall be deemed to be in compliance with this section. This section does not limit the authority of the department to amend a basin management action plan as specified in subsection (c).

(c) *Best management practices.*—

1. The department, in cooperation with the water management districts and other interested parties, shall develop suitable interim measures, best management practices, or other measures necessary to achieve the pollutant reduction established by the department for nonagricultural nonpoint pollutant sources in allocations adopted pursuant to subsection (6) and this subsection. These practices and measures may be adopted by rule by the department or by water management districts and, where adopted by rule, shall be implemented by those parties responsible for nonpoint source pollution.

2. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to s. 120.54 suitable interim measures, best management practices, or other measures necessary to achieve the pollutant reduction established by the department for agricultural pollutant sources in allocations developed pursuant to subsection (6) and this subsection or for programs implemented pursuant to paragraph (12)(b). These practices and measures may be implemented by those parties responsible for agricultural pollutant sources, and the department, the Department of Agriculture and Consumer Services shall assist with the implementation of these practices and measures. The Department of Agriculture and Consumer Services shall consult with the department, the Department of Agriculture and Consumer Services, representatives from affected farming groups, and environmental group representatives to develop and adopt rules for interim measures, best management practices, or other measures. The Department of Agriculture and Consumer Services must also incorporate provisions for a notice of intent to implement the practices and a system to assure the practices, including site inspection and recordkeeping requirements.



3. When interim measures, best management practices, or other measures are adopted by rule, the practices in achieving the levels of pollution reduction established in allocations developed by the department pursuant to subsection (6) and this subsection or in programs implemented pursuant to paragraph (12)(b) must be verified by the department. The department shall use best professional judgment in making the initial verification. Management practices are reasonably expected to be effective and, when applicable, shall notify the management district or the Department of Agriculture and Consumer Services of its initial verification rule proposed pursuant to this paragraph. Implementation, in accordance with rules adopted under this paragraph, shall provide a presumption of compliance with state water quality standards and release those pollutants addressed by the practices, and the department is not authorized to institute proceedings of the source of pollution to recover costs or damages associated with the contamination of surface waters caused by those pollutants. Research projects funded by the department, a water management district, Agriculture and Consumer Services to develop or demonstrate interim measures or best management practices, a presumption of compliance with state water quality standards and a release from s. 376.307(5). The compliance and release is limited to the research site and only for those pollutants addressed by the interim management practices. Eligibility for the presumption of compliance and release is limited to research the owner or operator of the research site and the department, a water management district, or the Department of Agriculture and Consumer Services have entered into a contract or other agreement that, at a minimum, specifies the cost-share responsibilities of the parties, and a schedule that details the beginning and ending date.

4. When water quality problems are demonstrated, despite the appropriate implementation, operation of best management practices and other measures required by rules adopted under this paragraph, the management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a reevaluation of the best management practice or other measure. If the reevaluation determines the management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require implementation of the modified practice within a reasonable time period as specified in the rule.

5. Subject to subparagraph 6., the Department of Agriculture and Consumer Services shall provide information obtained pursuant to subparagraph (d)3.

6. Agricultural records relating to processes or methods of production, costs of production, profits, information held by the Department of Agriculture and Consumer Services pursuant to subparagraphs 3 to any rule adopted pursuant to subparagraph 2. are confidential and exempt from s. 119.07(1) and s. 119.07(2). Upon request, records made confidential and exempt pursuant to this subparagraph shall be maintained by the department or any water management district provided that the confidentiality specified by this subparagraph is maintained.

7. Subparagraphs 1. and 2. do not preclude the department or water management district from requiring compliance with water quality standards or with current best management practice requirements in any applicable regulation authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are not intended to conflict with any rules adopted by the department that are necessary to maintain or approved program.

(d) *Enforcement and verification of basin management action plans and management strategies.*—

1. Basin management action plans are enforceable pursuant to this section and ss. 403.121, 403.14 and 403.141. Management strategies, including best management practices and water quality monitoring, are enforceable pursuant to this chapter.

2. No later than January 1, 2017:

a. The department, in consultation with the water management districts and the Department of Agriculture and Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of water quality monitoring and implementation of best management practices or other measures pursuant to subparagraph (b)2.g.

b. The department, in consultation with the water management districts and the Department of Agriculture and Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of nonagricultural interim management practices, or other measures adopted by rule pursuant to subparagraph (c)1.; and

c. The Department of Agriculture and Consumer Services, in consultation with the water management district, shall initiate rulemaking to adopt procedures to verify implementation of agricultural interim management practices, or other measures adopted by rule pursuant to subparagraph (c)2.

The rules required under this subparagraph shall include enforcement procedures applicable to the other responsible person required to implement applicable management strategies, including best management practices and water quality monitoring as a result of noncompliance.

3. At least every 2 years, the Department of Agriculture and Consumer Services shall perform on-site verification of agricultural producer that enrolls in a best management practice to ensure that such practice is being implemented. Such verification must include a collection and review of the best management practice documentation required by rules adopted pursuant to subparagraph (c)2., including, but not limited to, nitrogen fertilizer application records, which must be collected and retained pursuant to subparagraphs (c)3., 4 and 5. The Department of Agriculture and Consumer Services shall initially prioritize the inspection of agricultural basin management action plans for Lake Okeechobee, the Indian River Lagoon, the Caloosahatchee River and the Silver Springs.

(e) *Cooperative agricultural regional water quality improvement element.*—

1. The department, the Department of Agriculture and Consumer Services, and owners of agricultural land within a basin shall develop a cooperative agricultural regional water quality improvement element as part of a basin management action plan only if:

a. Agricultural measures have been adopted by the Department of Agriculture and Consumer Services pursuant to subparagraph (c)2. and have been implemented and the waterbody remains impaired;

b. Agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges;

c. The department determines that additional measures, in combination with state-sponsored regional management strategies included in the basin management action plan, are necessary to achieve the water quality goals.

2. The element will be implemented through the use of cost-sharing projects. The element must include a technically and financially practical cooperative regional agricultural nutrient reduction projects that

private properties on a site-specific, cooperative basis. Such cooperative regional agricultural nutrient include land acquisition in fee or conservation easements on the lands of willing sellers and site-specific improvement or dispersed water management projects on the lands of project participants.

3. To qualify for participation in the cooperative agricultural regional water quality improvement e must have already implemented and be in compliance with best management practices or other measu Department of Agriculture and Consumer Services pursuant to subparagraph (c)2. The element may be management action plan as a part of the next 5-year assessment under subparagraph (a)6.

4. The department may submit a legislative budget request to fund projects developed pursuant to allocating funds for projects funded pursuant to this paragraph, the department shall provide at least : appropriation for projects in subbasins with the highest nutrient concentrations within a basin manage

(f) *Data collection and research.*—

1. The Department of Agriculture and Consumer Services, in cooperation with the University of Flo and Agricultural Sciences and other state universities and Florida College System institutions that have programs, shall annually develop research plans and legislative budget requests to:

a. Evaluate and suggest enhancements to the existing adopted agricultural best management pract runoff;

b. Develop new best management practices that, if proven effective, the Department of Agricultur may adopt by rule pursuant to subparagraph (c)2.; and

c. Develop agricultural nutrient runoff reduction projects that willing participants could implemen cooperative basis, in addition to best management practices. The department may consider these proj basin management action plan. These nutrient runoff reduction projects must reduce the nutrient imp operations on water quality when evaluated with the projects and management strategies currently in management action plan.

2. To be considered for funding, the University of Florida Institute of Food and Agricultural Science universities and Florida College System institutions that have agricultural research programs must subn department and the Department of Agriculture and Consumer Services by August 1, 2021, and each Ma

3. The department shall work with the University of Florida Institute of Food and Agricultural Scier entities to consider the adoption by rule of best management practices for nutrient impacts from golf best management practices are subject to the requirements of paragraph (c).

(8) *WATER QUALITY CREDIT TRADING.*—

(a) Water quality credit trading must be consistent with federal law and regulation.

(b) Water quality credit trading must be implemented through permits, including water quality cre other authorizations, or other legally binding agreements as established by department rule.

(c) The department shall establish the pollutant load reduction value of water quality credits and i authorizing their use.

(d) A person who acquires water quality credits ("buyer") shall timely submit to the department ar buyer and the credit generator ("seller"), disclosing the term of acquisition, number of credits, unit cr state funding received for the facilities or activities that generate the credits. The department may nc establishment of credit prices.

(e) Sellers of water quality credits are responsible for achieving the load reductions on which the c complying with the terms of the department authorization and any trading agreements into which they

(f) Buyers of water quality credits are responsible for complying with the terms of the department

(g) The department shall take appropriate action to address the failure of a credit seller to fulfill i as necessary, deeming the seller's credits invalid if the seller cannot achieve the load reductions on wh based in a reasonable time. If the department determines duly acquired water quality credits to be in thereby causing the credit buyer to be unable to timely meet its pollutant reduction obligations under department shall issue an order establishing the actions required of the buyer to meet its obligations b a reasonable schedule for completing the actions. The invalidation of credits does not, in and of itself, the buyer's water discharge permit.

(h) The department may authorize water quality credit trading in adopted basin management actic water quality credit trading is entirely voluntary. Entities that participate in water quality credit trade the department the prices for credits, how the prices were determined, and any state funding receive activities that generated the credits. The department may not participate in the establishment of cred

(i) Land set-asides and land use modifications not otherwise required by state law or a permit, incl wetlands or other water quality improvement projects, that reduce nutrient loads into nutrient impair be used under this subsection.

(9) *RULES.*—The department may adopt rules for:

(a) Delisting water bodies or water body segments from the list developed under subsection (4) pu under subsection (5).

(b) Administering of funds to implement the total maximum daily load and basin management acti

(c) Water quality credit trading among the pollutant sources to a water body or water body segmer provide for the following:

1. The process to be used to determine how credits are generated, quantified, and validated.

2. A publicly accessible water quality credit trading registry that tracks water quality credits, trad paid for credits.

3. Limitations on the availability and use of water quality credits, including a list of eligible polluti minimum water quality requirements and, where appropriate, adjustments to reflect best managemen uncertainties and water-segment-specific location factors.

4. The timing and duration of credits and allowance for credit transferability.

5. Mechanisms for determining and ensuring compliance with trading procedures, including recordi reporting, and inspections.

At the time of publication of the draft rules on water quality credit trading, the department shall sub States Environmental Protection Agency for review.

(d) The total maximum daily load calculation in accordance with paragraph (6)(a) immediately upc this act, for those eight water segments within Lake Okeechobee proper as submitted to the United St



Protection Agency pursuant to subsection (2).

(e) Implementation of other specific provisions.

(10) APPLICATION.—The provisions of this section are intended to supplement existing law, and may alter any applicable state water quality standards or as restricting the authority otherwise granted to the water management district under this chapter or chapter 373. The exclusive means of state implementation of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq. shall be in accordance with the identification, calculation and allocation, and implementation provisions of this section.

(11) CONSTRUCTION.—This section does not limit the applicability or consideration of any mixing zone exemption, site specific alternative criteria, or other moderating provision.

(12) IMPLEMENTATION OF ADDITIONAL PROGRAMS.—

(a) The department may not implement, without prior legislative approval, any additional regulation pursuant to paragraph (7)(c) of the Clean Water Act or 40 C.F.R. part 130, if such implementation would result in water quality regulation of activities not currently subject to regulation.

(b) Interim measures, best management practices, or other measures may be developed and voluntarily implemented pursuant to paragraph (7)(c) for any water body or segment for which a total maximum daily load or allocation has been established. The implementation of such pollution control programs may be considered by the department made pursuant to subsection (4).

(13) RULE CHALLENGES.—In order to provide adequate due process while ensuring timely development of rules, proposed rules and orders authorized by this act are ineffective pending resolution of a suit pursuant to s. ~~120.562~~, or s. ~~120.57~~ administrative proceeding. However, the department may go forward prior to the administrative proceedings with subsequent agency actions authorized by subsections (2)-(6) if the department can substantiate those actions using the underlying bases for the rules or orders without the benefit of any favoring, or in deference to, the challenged rules or orders.



## Miami-Dade Legislative Item

### File Number: 201934

[Printable PDF Format](#)


**File Number:** 201934      **File Type:** Ordinance      **Status:** In Committee  
**Version:** 0      **Reference:**      **Control:** Pending Commissioner Assignment  
**File Name:** RELATING TO REGULATION OF FERTILIZER **Introduced:** 9/22/2020  
**Requester:** NONE      **Cost:**      **Final Action:**  
**Agenda Date:** 10/6/2020 **Agenda Item Number:** 4A

**Notes:** SEE SUB. **Title:** ORDINANCE RELATING TO REGULATION OF FERTILIZER; CREATING  
 202429 CHAPTER 18C OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA;  
 6wks/4wks REGULATING FERTILIZER APPLICATION AND USAGE IN THE  
 Required INCORPORATED AND UNINCORPORATED AREAS; ADOPTING THE  
 FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S MODEL  
 ORDINANCE FOR FLORIDA-FRIENDLY FERTILIZER USE FOR URBAN  
 LANDSCAPES; PROVIDING FOR ADDITIONAL AND MORE STRINGENT  
 STANDARDS THAN THE MODEL ORDINANCE, INCLUDING AN ANNUAL  
 PERIOD DURING WHICH FERTILIZER APPLICATION GENERALLY  
 WOULD BE PROHIBITED AND LIMITATIONS ON NITROGEN AND  
 PHOSPHORUS; PROVIDING ENFORCEMENT AUTHORITY TO  
 DEPARTMENT DIRECTOR; AMENDING SECTION 8CC OF THE CODE;  
 PROVIDING FOR ENFORCEMENT BY CIVIL PENALTY; DIRECTING THE  
 COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO CONDUCT AN  
 EDUCATIONAL CAMPAIGN; PROVIDING SEVERABILITY, INCLUSION OF  
 THE CODE, AND AN EFFECTIVE DATE

**Indexes:** FERTILIZERS AND PESTICIDES **Sponsors:** Daniella Levine Cava, Co-Prime Sponsor  
 REGULATIONS Eileen Higgins, Co-Prime Sponsor  
 Danielle Cohen Higgins, Co-Sponsor

**Sunset Provision:** No      **Effective Date:**      **Expiration Date:**  
**Registered Lobbyist:** None Listed

### Legislative History

Acting Body	Date	Agenda Item	Action	Sent To	Due Date	Returned	Pass/Fail
Infrastructure & Capital Improvements Committee	12/8/2020	1G1	Deferred				P

**REPORT:** The foregoing proposed ordinance was deferred to no date certain during consideration of changes to today's

(12/8) agenda.

Office of the Chairperson	12/7/2020	Deferrals		
<b>REPORT:</b>	The Prime Sponsor is requesting a deferral to no date certain.			
Board of County Commissioners	10/14/2020	Municipalities notified of public hearing	Infrastructure & Capital Improvements Committee	12/8/2020 10/6/2020
Board of County Commissioners	10/6/2020	Tentatively scheduled for a public hearing	Infrastructure & Capital Improvements Committee	12/8/2020
Board of County Commissioners	10/6/2020	4A	Adopted on first reading	12/8/2020 P
<b>REPORT:</b>	County Attorney Abigail Price-Williams read into the record the title of the foregoing proposed ordinance. Hearing no comments or objections, the members of the Board proceeded to take a roll call vote. The foregoing proposed ordinance was adopted on first reading and set for public hearing before the Infrastructure and Capital Improvement (ICI) Committee meeting on December 8, 2020 at 2 p.m.			
Board of County Commissioners	9/29/2020	Requires Municipal Notification	Infrastructure & Capital Improvements Committee	12/8/2020
County Attorney	9/22/2020	Assigned	Abbie N. Schwaderer	9/29/2020

## Legislative Text

### TITLE

ORDINANCE RELATING TO REGULATION OF FERTILIZER; CREATING CHAPTER 18C OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REGULATING FERTILIZER APPLICATION AND USAGE IN THE INCORPORATED AND UNINCORPORATED AREAS; ADOPTING THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S MODEL ORDINANCE FOR FLORIDA-FRIENDLY FERTILIZER USE FOR URBAN LANDSCAPES; PROVIDING FOR ADDITIONAL AND MORE STRINGENT STANDARDS THAN THE MODEL ORDINANCE, INCLUDING AN ANNUAL PERIOD DURING WHICH FERTILIZER APPLICATION GENERALLY WOULD BE PROHIBITED AND LIMITATIONS ON NITROGEN AND PHOSPHORUS; PROVIDING ENFORCEMENT AUTHORITY TO DEPARTMENT DIRECTOR; AMENDING SECTION 8CC OF THE CODE; PROVIDING FOR ENFORCEMENT BY CIVIL PENALTY; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO CONDUCT AN EDUCATIONAL CAMPAIGN; PROVIDING SEVERABILITY, INCLUSION OF THE CODE, AND AN EFFECTIVE DATE

### BODY

WHEREAS, the excessive and improper use of fertilizers can contribute to water quality issues and can lead to water quality degradation; and

WHEREAS, the excessive and improper use of fertilizer can also be economically inefficient, for example by leading property owners and residents to waste money by applying too much fertilizer or by applying fertilizer



during periods of heavy rain, when it will be washed away; and

WHEREAS, section 403.9337, Florida Statutes, requires county and municipal governments that are “located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to section 403.067,” Florida Statutes, to, at a minimum, adopt the State of Florida’s model ordinance for Florida-Friendly Fertilizer Use for Urban Landscapes to regulate the application of fertilizer “as a mechanism for protecting local surface and groundwater quality;” and

WHEREAS, the Florida Department of Environmental Protection (FDEP) has confirmed that Miami-Dade County is located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to section 403.067, Florida Statutes, and therefore Miami-Dade County is required to, at a minimum, adopt the State’s model ordinance; and

WHEREAS, section 403.9337, Florida Statutes, also expressly allows local governments to adopt additional or more stringent standards than the model ordinance after taking certain enumerated actions, and many local governments throughout the state have done so; and

WHEREAS, pursuant to section 403.9337, to adopt additional or more stringent standards than the model ordinance, a local government must (1) demonstrate, as part of a comprehensive program to address nonpoint sources of nutrient pollution that is science-based and economically and technically feasible, that additional or more stringent standards are necessary to adequately address urban fertilizer contributions to nonpoint source nutrient loading to a water body, and (2) consider all input received from various state agencies and other relevant scientific information; and

WHEREAS, the County has met the requirements in section 403.9337 for the adoption of additional or more stringent standards than the model ordinance; and

WHEREAS, this ordinance is stricter than the State of Florida’s model ordinance in certain respects, as it:

- \* establishes an annual period between May 15 and September 30 during which fertilizer application generally would be prohibited;

- \* requires larger fertilizer-free zones next to bodies of water than the model provides;

- \* sets quantitative limits on using fertilizer containing nitrogen; and

- \* prohibits using fertilizer containing phosphorus unless a soil test shows a phosphorus deficiency at the particular location where it is to be applied; and

WHEREAS, currently, the County has a comprehensive program to address non-point sources of nutrient pollution that includes, but is not limited to, the following:

- \* requiring property owners to connect to the sanitary sewer system as a condition of certain development approvals for property that is within a feasible distance to a sewer line, unless the property owner obtains a variance;

- \* regulating and enforcing the County’s clean-up target levels for contaminants in soil and water, as provided in chapter 24 of the County Code;

- \* requiring review and approval by the Miami-Dade County Department of Regulatory and Economic Resources’ Division of Environmental Resources Management (DERM) prior to construction, installation, or alteration of outfalls or overflow systems discharging to waterbodies of Miami-Dade County; and

- \* regulating activities involving dewatering of groundwater and surface water; and

WHEREAS, a rigorous study conducted by DERM of the County’s water quality and seagrass survey data and a review of relevant scientific literature and academic studies indicates that chronic, low-level nutrient loading; acute, pulsed nutrient loading; or a combination of both are likely linked to seagrass loss in Biscayne Bay, as cited in the County’s January 28, 2019 Study on the Decline of Seagrass and Hardbottom Habitat (available online at: <http://www.miamidade.gov/mayor/library/memos-and-reports/2019/01/01.28.19-Report-on-the-Findings-of-the-Countys-Study-on-the-Dcline-of-Seagrass-and-Hardbottom-Habitat-in-Biscayne-Bay-Directive-No-171537.pdf>); and

WHEREAS, urban fertilizers contribute some degree of nutrient loading to the County’s watershed, and reducing all forms of avoidable nutrient loading is important to protect water resources; and

WHEREAS, based on a rigorous study and review of scientific information by County staff, additional actions are needed to address nonpoint source nutrient loading to water bodies in Miami-Dade County, including nutrients that may come from urban fertilizer, to protect water resources; and

WHEREAS, in particular, FDEP’s 2008 “Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries” (the “Florida Friendly BMPs”) specifically implicates phosphorus “as a cause of increased algae growth in surface water impoundments;” and

WHEREAS, according to the Florida Friendly BMPs, because “[m]any Florida soils are high in extractable P [phosphorus] and may never require P [phosphorus] fertilization for optimum turfgrass growth,” the Florida Friendly BMPs “strongly recommends soil testing before” phosphorus fertilization and recommends that phosphorus fertilization “always be based on reliable soil or tissue test recommendations;” and WHEREAS, similarly, for landscape plants, the Florida Friendly BMPs generally recommend that “phosphorus content of the fertilizer should be zero unless a soil tissue test indicates a need for additional fertilizer;” and WHEREAS, in addition to considering FDEP’s Florida Friendly BMPs, the County has considered all relevant scientific information, including any other input provided by the FDEP, the Florida Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences, on the need for additional or more stringent provisions to address fertilizer use as a contributor to water quality degradation; and WHEREAS, the relevant scientific information that has been considered is on file with DERM and is available upon request; and

WHEREAS, this ordinance provides for certain exemptions from its regulations, such as for bona fide farm operations; and

WHEREAS, this Board wishes to adopt these regulations related to fertilizer, which are consistent with and, where appropriate, add to or are stricter than, FDEP’s model ordinance; and

WHEREAS, this Board also wishes to direct the County Mayor or County Mayor’s designee to conduct an educational campaign to encourage compliance and better educate County residents, property owners, and fertilizer applicators about the proper application of fertilizer and the importance thereof, together with environmentally-sound landscaping practices that may reduce or eliminate the need for fertilizer,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. The foregoing recitals are incorporated into this ordinance and are approved.

Section 2. Chapter 18C of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

>>Chapter 18C – Miami-Dade County Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes

Sec. 18C-1. - Short Title and Applicability.

(A) This chapter shall be known and may be cited as the "Miami-Dade County Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes."

(B) Applicability; Exemptions.

(1) This chapter shall be a minimum standard and shall apply to both the incorporated and unincorporated areas. In the unincorporated areas, this chapter shall be enforced by the County, and in the incorporated areas, this chapter shall be enforced by the municipalities. Any municipality may establish and enforce more stringent regulations as such municipality may deem necessary. It is provided, however, that if the provisions herein are not enforced within a municipality, the County may enforce such provisions. The penalties in chapter 8CC for violations of this chapter shall also be a minimum standard and shall apply to both the incorporated and unincorporated areas. Notwithstanding anything stated to the contrary in this chapter, subsections (A) and (B) of section 18C-8 shall not constitute required minimum standards for municipalities when municipalities are enforcing this chapter, nor shall municipalities be authorized to exercise the enforcement authority cited in those subsections.

(2) This chapter shall be applicable to and shall regulate any and all applicators and areas of application of fertilizer, unless such applicator or area is specifically exempted by the terms of this chapter. This chapter shall be prospective only, and shall not be construed to impair any existing contracts.

(3) The provisions set forth in this chapter shall not apply to:

(a) Bona fide farm operations, as defined in the Florida Right to Farm Act, section 823.14, Florida Statutes, as may be amended;

(b) Other properties that are not subject to or covered by the Florida Right to Farm Act but that have pastures used for grazing livestock; and

(c) Any lands used for bona fide scientific research, including, but not limited to, research on the effects of

fertilizer use on urban stormwater, water quality, agronomics, or horticulture.

(4) The provisions set forth in this chapter in subsection 18C-4(A)(1) related to the restricted period, subsection 18C-4(C)(3) related to limitations on nitrogen, and subsection 18(C)-4(C)(4) related to limitations on phosphorus, shall not apply to:

- (a) Vegetable gardens, defined as a plot of ground where herbs, fruits, flowers, or vegetables are cultivated for human ingestion, when located on residential properties;
- (b) Yard waste compost, mulches, or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil; or
- (c) Tree trunk injection fertilization treatments that are performed by a certified arborist.

## Sec. 18C-2. Legislative Intent, Findings, and Purpose.

(A) The Board of County Commissioners hereby finds that the use of fertilizers on urban landscapes within Miami-Dade County contributes to adverse effects on surface and ground waters within the County, by impairing surface waters with excessive nutrients and by impairing surface and groundwater aquifers with increased levels of nitrogen and phosphorus. Accordingly, the Board of County Commissioners finds it appropriate to regulate the use of fertilizer on urban landscapes as provided in this chapter, including, but not limited to, those provisions that are stricter than those contained in the Florida Department of Environmental Protection's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.

(B) It is the intent of this chapter to establish minimum standards for Miami-Dade County to: regulate the proper use of fertilizers by any applicator; require proper training of commercial and institutional fertilizer applicators; establish training and licensing requirements; establish a prohibited application period; and specify allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones, and exemptions, with the goal of minimizing the negative secondary and cumulative environmental effects associated with the misuse and overuse of fertilizers on urban landscapes. Secondary and cumulative effects related to excess nutrients, such as algal blooms and seagrass impacts have been observed in and on water bodies in Miami-Dade County. Collectively, these water bodies are an asset that is critical to the environmental, recreational, cultural, and economic well-being of Miami-Dade County residents and the health of the public. Overgrowth of algae and vegetation can also hinder the effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, will help improve and maintain water and habitat quality.

## Sec. 18C-3. - Definitions.

For this chapter, the following terms shall have the meanings set forth in this section unless the context clearly indicates otherwise:

- (1) "Application" or "apply" means the actual physical deposit of fertilizer to turf, landscape plants, or the ground.
- (2) "Applicator" means any person who applies fertilizer on turf, landscape plants, or the ground in Miami-Dade County.
- (3) "Commercial fertilizer applicator" means any person who applies fertilizer for payment or other consideration to property not owned by the person applying the fertilizer or the employer of the applicator. It is provided, however, that, in accordance with section 482.1562(9), Florida Statutes, this classification shall not apply to yard workers who apply fertilizer only to individual residential properties using fertilizer and equipment provided by the residential property owner or resident.
- (4) "Department" means the Miami-Dade County Division of Environmental Resources Management of the

Department of Regulatory and Economic Resources or the successor department responsible for environmental regulation.

(5) "Fertilize," "fertilizing," or "fertilization" means the act of applying fertilizer to turf, specialized turf, or landscape plants.

(6) "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.

(7) "Institutional applicator" means any person, other than a private, non-commercial or commercial applicator (unless such definitions also apply under the circumstances), that applies fertilizer for the purpose of maintaining turf or landscape plants. Institutional 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 or other common ownership.

(8) "Landscape plant" means any native or exotic tree, shrub, or groundcover, excluding turf.

(9) "Person" means any natural person and any business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and any other group of people acting as an organized entity.

(10) "Saturated soil" means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this chapter, soils shall be considered saturated if standing water is present or if the pressure of a person standing on the soil causes the release of free water.

(11) "Slow release nitrogen" means nitrogen in a form that delays its availability for plant uptake and use after application, or that extends its availability to the plant longer than a reference rapid or quick release product, and may also be referred to as controlled release nitrogen, timed release nitrogen, slowly available nitrogen, or water insoluble nitrogen.

(12) "Turf" means a piece of grass-covered soil held together by the roots of the grass, and may also be referred to as sod or lawn.

(13) "Urban landscape" means a pervious area on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural land that is planted with turf or landscape plants, including horticultural plants, within Miami-Dade County.

#### Sec. 18C-4. - Regulations on applying fertilizer on urban landscapes

##### (A) Restrictions on timing of fertilizer application.

(1) Restricted period from May 15 to September 30 of each year. No applicator shall apply fertilizers containing nitrogen or phosphorus to turf or landscape plants during the period each year beginning on May 15 and ending on September 30 (the "restricted period").

(2) Additional restrictions outside of the restricted period. No applicator shall apply fertilizers containing nitrogen or phosphorus:

(a) During any period for which the National Weather Service has issued any of the following advisories for any portion of Miami-Dade County:

- (i) A flood watch or warning, a tropical storm watch or warning, or a hurricane watch or warning; or
- (ii) Rain greater than or equal to two inches in a 24-hour period is forecasted.

(b) Before seeding or sodding a site.

(c) For the first 60 days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation, such as a wildfire, or in accordance with the Stormwater Pollution Prevention Plan for that site.

(B) Restrictions on location of fertilizer application.

(1) No applicator shall apply fertilizers containing nitrogen or phosphorus to:

- (a) Saturated soil; or
- (b) Turf that is dead or not actively growing.

(2) Fertilizer-free zones.

(a) In addition to the foregoing restrictions, fertilizer shall not be applied within 25 feet of any of the following, which area shall be referred to as a "fertilizer-free zone":

- (i) any pond, stream, watercourse, lake, or canal;
- (ii) any wetland as defined by the Florida Department of Environmental Protection in accordance with chapter 62-340 of the Florida Administrative Code; or
- (iii) from the top of a seawall.

(3) Voluntary low-maintenance zones.

(a) A "low-maintenance zone" is a 10-foot zone around any pond, stream, water course, lake, canal, wetland, or top of a seawall that is planted and managed to eliminate the need for fertilization and minimize the need for watering or mowing.

(b) Each property owner is encouraged, but not required, to:

- (i) maintain a low-maintenance zone;
- (ii) not deposit or leave any mowed or vegetative material in the low-maintenance zone;
- (iii) install a swale or berm system at the landward edge of the low-maintenance zone, to capture and filter runoff; and
- (iv) take care to prevent the overspray of aquatic weed products within a low-maintenance zone.

(C) Fertilizer Content and Application Rates. Application of fertilizer, where and when permitted in accordance with subsections (A) and (B), is subject to the following additional provisions.

(1) Lowest recommended rates. For turf and landscape plants, applicators are encouraged to only apply fertilizer at the lowest recommended rate according to the Florida Department of Environmental Protection's 2008 "Florida Green Industries Best Management Practices for Protection of Water Resources in Florida," as may be amended.

(2) Fertilizer label instructions. Applicators shall not apply fertilizer in violation of fertilizer label directions. This shall not be construed to authorize an applicator to violate any other provision of this ordinance.

(3) Limitations on nitrogen. It shall be a violation of this section to apply fertilizers containing nitrogen to turf or landscape plants in concentrations, rates, or frequencies inconsistent with the following:

- (a) No more than two pounds of nitrogen per 1,000-square-foot area per calendar year; and
- (b) No more than one-half pound of nitrogen per 1,000-square-foot area per application; and
- (c) Granular fertilizers containing nitrogen shall contain no less than 65 percent slow-release nitrogen per guaranteed analysis label.

(4) Limitations on phosphorus. No fertilizer containing phosphorus shall be applied to turf or landscape plants, except where a phosphorus deficiency has been demonstrated in the soil underlying the respective turf and landscape plants by a soil analysis test performed by a State of Florida certified laboratory. Any person who obtains a soil analysis test showing a phosphorus deficiency and who wishes to apply phosphorus to turf or landscape plants shall provide a copy of the test results to the Department prior to the application of phosphorus. Phosphorus shall not be applied in excess of the amount needed to correct the deficiency as indicated by said test results.



(5) Additional limitations on fertilizer content. Unless a soil or tissue deficiency has been verified by an approved test, nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in the University of Florida Institute of Food and Agricultural Sciences (UF/IFAS) recommendations for turf, landscape plants, vegetable gardens, and fruit trees and shrubs.

(6) Fertilizers labeled for sports turf at golf courses, parks, and athletic fields shall:

(a) Have directions for use to not exceed the rates recommended in the document titled SL191 "Recommendations for N, P, K and Mg for Golf Course and Athletic Field Fertilization Based on Mehlich I Extractant," dated March 2007; and

(b) Have directions for use in accordance with the recommendations in "BMPs for the Enhancement of Environmental Quality on Florida Golf Courses," published by the Florida Department of Environmental Protection, dated October 2012.

(D) Application practices and handling of spills on impervious surfaces.

(1) 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.

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

(3) 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.

(4) Fertilizer released on an impervious surface must be immediately contained and either legally applied, in a manner consistent with this chapter, to turf or any other legal site, or returned to the original or other appropriate container.

(5) No fertilizer shall be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or waterbodies.

#### Sec. 18C-5. - Management of grass clippings and vegetative matter.

Grass clippings, vegetative material, vegetative debris, and any mowed material shall not be washed, swept, deposited or blown off into stormwater drains, ditches, conveyances, water bodies, canals, ponds, streams, water courses, lakes, wetlands, sidewalks, or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable.

#### Section 18C-6. – Training for applicators.

(A) By March 1, 2021, each commercial and institutional applicator shall successfully complete and abide by 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 Extension "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.

#### Section 18C-7. - Licensing of commercial applicators.

(A) All commercial applicators shall 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, prior to obtaining or renewing a Local Business Tax Certificate or equivalent for any category of occupation which may apply Fertilizer to turf or landscape plants. The provisions of this paragraph shall apply to Local Business Tax Certificates that are obtained or renewed after March 1, 2021.

(B) By March 1, 2021, all commercial 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 in accordance with Rule 5E-14.117(18) of the Florida Administrative Code. In addition, commercial applicators shall have at least one employee present onsite during fertilizer application who has a “Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries” training certificate.

(C) As of March 1, 2021, each business in any category of occupation that may apply fertilizer to turf or landscape plants, which includes, but is not limited to, residential lawns, golf courses, commercial properties, and multi-family and condominium properties, shall have at least one employee with a “Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries” training certificate prior to the business owner obtaining a Local Business Tax Certificate. The owner of each such business shall be responsible for providing proof of completion of the program to the Tax Collector’s Office at the time of obtaining a Local Business Tax Certificate.

#### Sec. 18C-8. - Enforcement.

(A) The Department Director may execute any and all powers provided in chapter 24, including but not limited to the authority to issue orders to cease and desist, and orders to restore the air, waters, ground and property, including animal, plant and aquatic life, of the County in accordance with the provisions of chapter 24.

(B) Violations of this chapter may be punished by fines in accordance with chapter 8CC and may be addressed by any penalties or remedies provided in section 1-5, chapter 8CC, and chapter 24, as applicable.

(C) Failure to comply with the provisions of this chapter shall constitute a violation. All matters enumerated and prohibited herein shall be independent of each other, and the violation of any one of the provisions of this chapter shall be a separate violation of this chapter.

(D) Pursuant to section 8CC-3, each municipality shall have the authority to designate code inspectors to issue civil violation notices for violations of this chapter.

(D) All funds available to or recovered by the County from enforcement and damage actions and claims pursuant to this chapter shall be deposited into the Biscayne Bay Environmental Enhancement Trust Fund, and disbursements of said monies may only be made in accordance with section 24-40(4).

#### Sec. 18C-9. Conflicts with other ordinances or regulations.

If this chapter conflicts with other ordinances or regulations, the more stringent limitation or requirement shall govern or prevail to the extent of the conflict.<<

Section 3. Section 8CC-10 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:  
Sec. 8CC-10. Schedule of civil penalties.

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended.

\* \* \*

Code Section Description of Violation Civil?

Penalty?

\* \* \*

>>Ch. 18C

All chapter 18C violations

50.00<< \* \* \*

Section 4. Educational campaign required. This Board hereby directs the County Mayor or County Mayor's designee to conduct an educational campaign for residents, property owners, and any individuals and businesses that work with fertilizer in the County, to educate and inform them as to the policies and regulations contained within this ordinance, together with environmentally sound landscaping practices that may support the policies and regulations contained within this ordinance.

Section 5. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 6. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 7. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

1 Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

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