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ORDINANCE
NUMBER 2011 –

AN ORDINANCE OF CHARLOTTE COUNTY, FLORIDA, PROVIDING THAT THE CODE OF LAWS AND ORDINANCES OF CHARLOTTE COUNTY, FLORIDA, BE AMENDED BY AMENDING CHAPTER 3-9, ZONING, SECTION 3-9-64.1, FERTILIZER REGULATIONS; PROVIDING FOR A BLACKOUT PERIOD; PROVIDING FOR REVISED FERTILIZER NITROGEN RATES; PROVIDING FOR SEVERABILITY; AND, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Charlotte County adopted Ordinance 2008-028 on March 18, 2008 which regulated fertilizer application within the County in order to address the leaching and runoff of nutrients from improper or excess fertilization practices can contribute to nitrogen and phosphorus pollution of the community's water resources; and

WHEREAS, Charlotte County now desires to revise Ordinance 2008-028 as part of continuing efforts and in coordination with our neighboring jurisdictions as part of the Charlotte Harbor National Estuary Program's Comprehensive Conservation and Management Plan to reduce nutrient leaching into runoff through such polices as, but not limited to public education and development of standards as set forth in this ordinance; and

WHEREAS, the provisions of this ordinance which revise Charlotte County's existing fertilizer ordinance have been submitted for comment to the Florida Department of Environmental Protection, the Florida Department of Agriculture and Consumer Services, and the University of Florida as required by Section 403.9337, Florida Statutes; and

WHEREAS, specific authority for the Board to adopt this Ordinance includes, but is not limited to, Article VIII, Florida Constitution of 1968, Section 125.01, Florida Statutes.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Charlotte County, Florida:

Section 1. Findings. The above "WHEREAS" are hereby deemed by the Charlotte County Board of County Commissioners to constitute findings for purposes of this Ordinance and are incorporated herein.

Section 2. Chapter 3-9 of the Code of Laws and Ordinances of Charlotte County, Florida is hereby amended by adding the underlined language and by ~~deleting the stricken~~ language to provide as follows:

1 **Sec. 3-9-64.1. Fertilizer Regulations.**
2

3 (a) *Purpose and intent.* The purpose and intent of this Section is to provide for
4 the regulation of Fertilizers containing nitrogen and/or phosphorus and to provide
5 specific management guidelines for its application in order to minimize the
6 negative environmental effects said Fertilizers have in and on Charlotte County's
7 canals, estuaries, interior wetlands, the near-shore waters of the Gulf of Mexico.
8 Collectively these water-bodies are a natural asset, which are critical to the
9 environmental, recreational, cultural and economic well-being of the County and
10 the surrounding areas and contribute to the general health and welfare of the
11 public. Recent red tide blooms, accumulation of red drift algae on local beaches
12 have heightened community concerns about water quality and eutrophication of
13 estuary, bay, river and coastal waters. Regulation of nutrients, including both
14 phosphorus and nitrogen contained in Fertilizer entering the water bodies in and
15 around Charlotte County is a crucial step towards improving and maintaining
16 water and habitat quality.

17
18 (b) *Definitions.* For this Section, the following terms shall have the meanings
19 set forth in this section unless context clearly indicates otherwise:
20

21 *Applicator:* Any Person who applies, in any manner, Fertilizer to Turf and/or
22 Landscape Plants in Charlotte County.
23

24 *Best Management Practices:* Turf and landscape practices which minimize the
25 negative environmental impacts of installation and maintenance of landscapes,
26 that includes training program approved by Charlotte County, that includes at a
27 minimum, the most current version of the "Florida Green Industries Best
28 Management Practices for Protection of Water Resources in Florida, June 2002,"
29 as revised and the more stringent requirements set forth in this Section.
30

31 *Code Enforcement Official:* Any designated employee or agent of Charlotte
32 County whose duty is to enforce the Code of Laws and Ordinances of Charlotte
33 County, Florida.
34

35 *Commercial Fertilizer Applicator:* Any Applicator who applies Fertilizer in
36 exchange for money, goods, services or other valuable consideration.
37

38 *Fertilizer:* Any substance or mixture of substances, including pesticide/fertilizer
39 mixtures such as "weed and feed" products, that contains one or more
40 recognized plant nutrients and promotes plant growth, or controls soil acidity or
41 alkalinity, or provides other soil enrichment, or provides other corrective
42 measures to the soil.
43

44 *Guaranteed Analysis:* The percentage of plant nutrients or measures of
45 neutralizing capability claimed to be present in a Fertilizer.
46

1 *Landscape Plant:* Any native or exotic tree, shrub, or groundcover (excluding
2 Turf).

3
4 *Low Maintenance Zone:* An area a minimum of six (6) feet wide adjacent to
5 water courses which is planted and managed in order to minimize the need for
6 fertilization, watering, and mowing.

7
8 *Pasture:* Land used for livestock grazing that is managed to provide feed value.
9

10 *Person:* Any natural Person, business, corporation, Limited Liability Company,
11 partnership, association, club, organization, and/or any group of people acting as
12 an organized entity.

13
14 *Slow Release Nitrogen:* Nitrogen in a form which delays its availability for plant
15 uptake and use after application, or which extends its availability to the plant
16 longer than a reference rapid or quick release product.

17
18 *Turf:* A piece of grass-covered soil held together by the roots of the grass, sod,
19 or lawn.
20

21 (c) *Applicability.* This Section shall be applicable to and shall regulate any and
22 all Applicators of Fertilizer and areas of application of Fertilizers within
23 unincorporated area of Charlotte County, unless such Applicator is specifically
24 exempted by the terms of this Section.
25

26 (d) *Fertilizer content and application rate, impervious surfaces, and buffer and*
27 *low maintenance zones:*
28

29 (1) *Fertilizer content and application rate.* Fertilizer containing phosphorus
30 shall not be applied to Turf and/or Landscape Plants within Charlotte County at
31 application rates which exceed 0.25 pounds P_2O_5 / 1,000 square feet per
32 application nor exceed 0.50 pounds P_2O_5 / 1,000 square feet per year.
33

34 a. Fertilizers Applied to Turf and/or Landscape Plants within Charlotte
35 County shall contain no less than 50% Slow Release Nitrogen per Guaranteed
36 Analysis label.
37

38 b. Fertilizers should be applied to Turf and/or Landscape Plants at the
39 lowest rate necessary.
40

41 c. Nitrogen Content: Applicators shall follow and not exceed Florida
42 Department of Agriculture and Consumer Services, Urban Turf Fertilizer Rule 5E-
43 1.003 Labels or Tags' Fertilization Guidelines for Established Turf-grass Lawns
44 South Region Nitrogen Recommendations for Nitrogen pounds per 1,000 square
45 feet total per year:

- (i) Bahia-grass: 2 to 4 pounds
- (ii) Bermuda-grass 5 to ~~4~~7 pounds
- (iii) Centipede-grass 2 to 3 pounds
- (iv) St. Augustine-grass 4 to ~~6~~ pounds.

(2) *Impervious surface.* Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces. 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, Landscape Plants and/or any other legal site, or returned to the original or other appropriate container. In no case shall Fertilizer be washed, swept, or blown off impervious surfaces into storm water rains, ditches, conveyances, or water bodies.

(3) *Buffers and low maintenance zones.* Fertilizer shall not be applied within ten (10) feet, or three (3) feet if a deflector shield is used, of any pond, stream, water course, lake, canal or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) or from the top of a seawall.

a. A voluntary six (6) foot Low Maintenance Zone is strongly recommended, but not mandatory, from any pond, stream, water course, lake, or canal or any designated wetland or from the top of a seawall. Additionally, care should be taken to prevent the over spray of aquatic weed products in this zone.

b. In no case shall grass clippings, vegetative material, and/or vegetative debris either intentionally or accidentally, be deposited or discharged into storm water drains, ditches, conveyances, water bodies or roadways.

(e) *Mode of application.* Spreader deflector shields are required when applying Fertilizer via broadcast spreaders. Deflectors must be positioned such that Fertilizer granules are deflected away from all impervious surfaces, buffer zones and water bodies, including wetlands.

(f) *Restricted Season.* No Applicator shall apply fertilizers containing nitrogen or phosphorous to Turf or Landscape Plants between June 1st through September 30th.

(fg) *Exemptions.* The provision of this Section shall not apply to:

(1) *Golf courses:* For all golf courses, the provisions of the Florida Department of Environmental Protection [FDEP] document, "BMPs for the Enhancement of Environmental Quality on Florida Golf Courses, January 2007," as updated, shall be followed when applying Fertilizer to golf courses.

1
2 (2) *Athletic fields*: For athletic fields Applicators are encouraged to apply the
3 concepts and principles embodied in the “Florida Green Industries Best
4 Management Practices for Protection of Water Resources in Florida, June 2002”
5 while maintaining the health and function of their Turf and Landscape Plants.
6

7 (3) *Agricultural operations*: Bona fide farm operations as defined in the
8 Florida Right to Farm Act, Section 823.14, Florida Statutes. Additionally, this
9 Section shall not apply to other properties not subject to or covered under the
10 Florida Right to Farm Act that have Pastures used for grazing livestock.
11

12 (4) *Turf and/or Landscape Plants*: Shall be exempt from the requirements of
13 this Section during the first 60 days after installation or planting, provided
14 documentation for newly established Turf and/or Landscape Plants is maintained
15 to support this exemption. Pursuant to this exemption, newly planted Turf and/or
16 Landscape Plants may be fertilized in the buffer zone identified in (c)(4) of this
17 Section during the sixty (60) day establishment period.
18

19 (g) *Training and enforcement*. All Commercial Applicators of Fertilizer within
20 the unincorporated area of Charlotte County shall abide by and successfully
21 complete a Charlotte County approved Best management Practices training
22 program. Persons working as employees and under the direct and physical
23 supervision of Commercial Applicators who hold a current Certificate of
24 Completion shall be exempt from the requirement to complete a Charlotte County
25 training program.
26

27 (1) The training program shall include the most current version of the “Florida
28 Green Industries Best Management Practices for Protection of Water Resources
29 in Florida, June 2002” as revised and shall include the requirement set forth in
30 Sections: Timing of Application, Fertilizer Content, Application Rates, Impervious
31 Surfaces, Buffers and Low Maintenance Zones; and Mode of Application.
32

33 (2) A list of approved training programs shall be maintained by Charlotte
34 County and the Charlotte County web site, and the County Extension Services
35 UF/IFAS offices.
36

37 (3) Upon successful completion and compliance with the requirements in this
38 Section and payment of any application fee established by Charlotte County, a
39 Certificate of Completion and a vehicle decal will be provided by the County’s
40 Environmental and Extension Services Department.
41

42 (4) The vehicle decal shall be affixed and maintained on the exterior of all
43 vehicles [lower right corner of back glass and trailers [right side of trailer tongue]
44 used in connection with the application of Fertilizers within the area regulated by
45 this Section.
46

1 (5) Other Applicators, such as private homeowners, are encouraged to utilize
2 the recommendations of the University of Florida IFAS Florida Yards and
3 Neighborhoods programs

4
5 (6) It is the intent hereof that the administrative, civil, and criminal penalties
6 imposed herein be of such amount as to ensure immediate and continued
7 compliance with this Section.

8
9 (7) Any and all enforcement inspections or observations pursuant to this
10 Section shall be made only from areas accessible to the general public, unless
11 specific permission is granted by a property owner to come on their property, or a
12 search warrant is obtained from a court of competent jurisdiction.

13
14 (8) Accordingly, any Code Enforcement Official may enforce the provisions
15 of this Section provided that the violation is personally observed by the Official in
16 regards to an Applicator in relation to a particular parcel or property. Upon finding
17 a violation the Code Enforcement Official may issue a verbal warning and may
18 require the Applicator to undergo other corrective actions necessary to remedy
19 the violation. However, nothing contained herein shall prevent Charlotte County
20 from taking such other lawful action in any court of competent jurisdiction as is
21 necessary to prevent or remedy any refusal to comply with, or violation of, this
22 Section. Such other lawful action shall include but shall not be limited to, an
23 equitable action for injunctive relief or an action at law for damages. Further,
24 nothing contained herein shall prevent the County from instituting and pursuing
25 Code Enforcement proceedings.

26
27 (9) Additionally, any Applicator that violates the provisions of this Section
28 shall be responsible for Charlotte County's costs of prosecution of any violation,
29 including any costs to remedy or clean up any environmental condition caused by
30 an act which constitutes a violation of this Section.

31
32 (h) *Administrative relief.* Any Applicator of Fertilizer regulated by the provisions
33 of this Section may apply for an administrative variance from the Zoning Official,
34 or designee, upon a written request, factually supported, showing that:

35
36 (1) As a result of soil content at the point of the proposed application or for
37 other geographical, environmental or geological reasons or other circumstances,
38 such Person should not be required to adhere to the strict provisions of this
39 Section; and/or

40
41 (2) Such Person is able and willing to use a less strict application method or
42 alternative materials or methods as required by the Zoning Official or designee;

43
44 Such administrative relief deemed appropriate shall be granted in writing
45 specifically setting forth the party entitled to the administrative relief, the location
46 or locations to which the relief applies, the length of time granted for such relief

1 and any specific conditions applicable to such relief.

2
3 **Section 3.** Severability. In the event that any portion of this Ordinance is
4 for any reason held invalid or unconstitutional by any court of competent
5 jurisdiction, such portion shall be deemed a separate, distinct and independent
6 provision, and such holding shall not affect the validity of the remaining portions
7 of this Ordinance.

8
9 **Section 4.** Effective Date. This Ordinance shall take effect upon its filing
10 with the Office of the Secretary of State, State of Florida. Notwithstanding, an
11 implementation period from the effective date of this Ordinance shall be in effect
12 before the enforcement of the Ordinance shall begin in order to educate and
13 prepare the public. The enforcement of this Ordinance shall begin January 1,
14 2012.

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[Signature Page Follows]

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PASSED AND DULY adopted this _____ day of _____, 2011.

BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA

By: _____
Robert J. Starr, Chairman

Attest:
Barbara T. Scott, Clerk of Circuit
Court and Ex-officio Clerk of the
Board of County Commissioners

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Janette S. Knowlton, County Attorney