

ORDINANCE NO. 09- 34

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2
3 **AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF**
4 **LEON COUNTY, FLORIDA, AMENDING CHAPTER 10 OF THE CODE**
5 **OF LAWS OF LEON COUNTY, FLORIDA, BY ADDING A NEW**
6 **ARTICLE XIV, TO REGULATE THE USE OF FERTILIZER WITHIN**
7 **THE UNINCORPORATED AREAS OF THE COUNTY; PROVIDING**
8 **DEFINITIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES;**
9 **PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE**
10 **DATE.**

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13 WHEREAS, as a result of impairment to Leon County's surface waters caused by excessive
14 nutrients under the Florida Impaired Waters Rule, or, as a result of increasing levels of nitrogen
15 in the surface and/or ground water within the aquifers or springs within the boundaries of the
16 unincorporated areas of the county, the Leon County Board of County Commissioners has
17 determined that the improper use of fertilizers on lands within the unincorporated areas of the
18 county contributes to adverse effects on surface and/or groundwater. Accordingly, the Leon
19 County Board of County Commissioners find that additional measures than are otherwise
20 required by the most recent edition of the "*Florida Green Industries Best Management Practices*
21 *for Protection of Water Resources in Florida, June 2002*" may be required by this ordinance.
22 Furthermore, a violation of this ordinance is determined to be irreparable and irreversible.

23 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
24 COMMISSIONERS OF LEON COUNTY, FLORIDA:

25
26 **SECTION 1: Adding a new Article XIV to the Code of Laws of Leon County, Florida, as**
27 **follows:**
28

1 **ARTICLE XIV. FERTILIZER USE**

2 **Sec. 10-14.101. Purpose and Intent.**

3 This Article regulates the proper use of fertilizers by any fertilizer applicator; requires
4 proper training of commercial and institutional fertilizer applicators; establishes training and
5 licensing requirements; establishes a prohibited and restricted application period; specifies
6 allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones,
7 and exemptions. The Article requires the use of Best Management Practices that provide
8 specific management guidelines to minimize negative secondary and cumulative environmental
9 effects associated with the misuse of fertilizers. These secondary and cumulative effects have
10 been observed in and on the County’s natural and constructed stormwater and drainage
11 conveyances, creeks, canals, springs, lakes, ponds, and other water bodies. Collectively, these
12 water bodies are an asset critical to the environmental, recreational, cultural and economic well
13 being of the County’s residents and the health of the public. Overgrowth of algae and vegetation
14 hinder the effectiveness of flood attenuation provided by natural and constructed stormwater and
15 drainage conveyances. Regulation of nutrients contained in fertilizer will help improve and
16 maintain water and habitat quality.

17
18 **Sec. 10-14.102. Definitions.** The following words, terms and phrases, when used in this Article,
19 shall have the meanings ascribed to them in this Article, except where the context clearly
20 indicates a different meaning.

21 *Administrator* means the County Administrator, or designee.

22 *Application* or *apply* means the actual physical deposit of fertilizer to turf or landscape
23 plants.

1 Applicator means any person who applies fertilizer on turf and/or landscape plants in the
2 unincorporated areas of the county.

3 Best management practices under this Article means turf and landscape practices or
4 combination of practices based on research, field-testing, and expert review, determined to be the
5 most effective and practicable on-location means, including economic and technological
6 considerations, for improving water quality, conserving water supplies and protecting natural
7 resources.

8 County means the unincorporated areas of the county.

9 County approved best management practices training program means a training program
10 approved by the Administrator that includes at a minimum, a) the most current version of the
11 “Florida Green Industries Best Management Practices for Protection of Water Resources in
12 Florida, June 2002,” as revised and, b) all of the provisions and requirements of this Article; or
13 c) an alternative training program under Section 10-14.111 of this Article.

14 Code enforcement officer, official, or inspector means any authorized agent or employee
15 of the County whose duty it is to ensure code compliance.

16 Commercial fertilizer applicator means any person who applies fertilizer on turf and/or
17 landscape plants in the County in exchange for money, goods, services or other valuable
18 consideration.

19 Fertilize, fertilizing, or fertilization means the act of applying fertilizer to turf, specialized
20 turf, or landscape plants.

21 Fertilizer means any substance or mixture of substances that contains one or more
22 recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or
23 provides other soil enrichment, or provides other corrective measures to the soil.

1 Institutional fertilizer applicator means any person, other than a non-commercial, or
2 commercial applicator (unless such definitions also apply under the circumstances), that applies
3 fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional fertilizer
4 applicators shall include, but shall not be limited to, owners and managers of public lands,
5 schools, parks, athletic fields, religious institutions, utilities, industrial or business sites and any
6 residential properties maintained in condominium and/or common ownership.

7 Landscape Plant means any native or exotic tree, shrub, or groundcover (excluding turf).

8 Lawn has the same definition as turf.

9 Low maintenance zone means an area a minimum of six (6) feet wide adjacent to
10 watercourses, which is planted and managed in order to eliminate the need for fertilization and
11 minimize the need for watering, mowing, etc.

12 Non-commercial fertilizer applicator means any person other than a commercial fertilizer
13 applicator or institutional fertilizer applicator who applies fertilizer on turf and/or landscape
14 plants, such as an individual owner of a single-family residential unit.

15 Pasture means land used for livestock grazing that is managed to provide feed value.

16 Person means any natural person, business, corporation, limited liability company,
17 partnership, limited partnership, association, club, organization, and/or any group of people
18 acting as an organized entity.

19 Prohibited application period means the time period during which a flood watch or
20 warning, or a tropical storm watch or warning, or a hurricane watch or warning, or a 3-day cone
21 of uncertainty is in effect for any portion of Leon County, issued by the National Weather
22 Service, or if heavy rain is expected.

1 Readily available nitrogen means the water-soluble fraction of formulated fertilizer
2 determined by the sum of the percentage of Nitrate and Ammoniacal Nitrogen plus Other Water
3 Soluble Nitrogen and/or Urea Nitrogen in the guaranteed analysis section of the label.

4 Turf, sod, or lawn means a piece of grass-covered soil held together by the roots of the
5 grass.

6
7 **Sec. 10-14.103. Applicability.**

8 This Article shall be applicable to and shall regulate any and all applicators of fertilizer
9 and areas of application of fertilizer within the unincorporated areas of the county, unless such
10 applicator is specifically exempted by the terms of this Article. This Article shall be applicable
11 to and shall regulate any and all application of fertilizer within the unincorporated areas of the
12 county unless otherwise provided in Article IV of Chapter 10 of the Leon County Land
13 Development Code (LDC). In case of a conflict between the requirements in Article IV of
14 Chapter 10, LDC, and this Article, the provisions in Article IV of Chapter 10, LDC, shall prevail.
15 This Article shall be prospective only, and shall not impair any existing contracts.

16
17 **Sec. 10-14.104. Timing of fertilizer application.**

18 No applicator shall apply fertilizers to turf and/or landscape plants during the prohibited
19 application period.

20
21 **Sec. 10-14.105. Fertilizer content and application rates; irrigation with reclaimed**
22 **wastewater.**

1 (a) Fertilizers applied to turf and/or landscape plants within the unincorporated areas of
2 the county shall be formulated and applied in accordance with requirements and directions
3 provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban*
4 *Turf*. Fertilizer content in reclaimed wastewater used for irrigation shall be applied in
5 accordance with Section 10-14.105(d).

6 (b) Except as provided in Section 10-14.105(a), fertilizers shall be applied to turf and/or
7 landscape plants at the lowest rate necessary. Nitrogen shall not be applied at an application rate
8 greater than 0.7 lbs of readily available nitrogen per 1000 ft² at any one time based on the soluble
9 fraction of formulated fertilizer, with no more than 1 lb total N per 1000 ft² to be applied at any
10 one time and not to exceed the annual nitrogen recommendations in the Fertilization Guidelines
11 for Established Turfgrass Lawns set forth below for convenience:

12
13 **Fertilization Guidelines for Established Turfgrass Lawns within the unincorporated areas**
14 **of the county:**

<u>Species</u>	<u>Nitrogen recommendations</u> <u>(lbs N / 1000 ft² / year)</u>
<u>Bahia grass</u>	<u>2-3</u>
<u>Bermuda grass</u>	<u>3-5</u>
<u>Centipede grass</u>	<u>1-2</u>
<u>St. Augustine grass</u>	<u>2-4</u>
<u>Zoysia grass</u>	<u>3-5</u>

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28 (c) Nitrogen fertilizer may not be applied to turf or landscape plants except as provided
29 above unless a tissue deficiency has been verified by an approved test.

1 (d) The use of water from a reclaimed wastewater system must be in accordance with an
2 approved reclaimed wastewater reuse nutrient management plan. The plan shall contain, at a
3 minimum, the frequency and volume of application, restricted periods of application (if any),
4 application rates and required best management practices. If fertilizer other than that contained
5 in the reclaimed water is to be applied, the nutrient management plan shall show that the
6 cumulative nutrient loading does not exceed those established in this Article.

7
8 **Sec. 10-14.106. Impervious surfaces.**

9 Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces.
10 Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any
11 impervious surface shall be immediately and completely removed to the greatest extent
12 practicable. Fertilizer released on an impervious surface must be immediately contained and
13 either legally applied to turf or any other legal site, or returned to the original or other
14 appropriate container. In no case shall fertilizer be washed, swept, or blown off impervious
15 surfaces into stormwater drains, ditches, conveyances, or water bodies.

16
17 **Sec. 10-14.107. Fertilizer free zones.**

18 Fertilizer shall not be applied within ten (10) feet of any pond, stream, watercourse, lake,
19 drainage ditch, or wetland as defined by the Florida Department of Environmental Protection
20 (Chapter 62-340, Florida Administrative Code) or from the top of a retaining wall associated
21 with any of these features. If more stringent County Code regulations apply, this provision does
22 not relieve the requirement to adhere to the more stringent regulations.

1 See Article IV of Chapter 10 of the Leon County Land Development Code. Newly planted turf
2 and/or landscape plants may be fertilized in this zone only for the first sixty (60)-day
3 establishment period.

4
5 **Sec. 10-14.108. Low maintenance zones.**

6 A voluntary six (6) foot low maintenance zone is strongly recommended, but not
7 mandated, from any pond, stream, water course, lake, wetland or from the top of a retaining wall
8 associated with any of these features. A properly permitted swale/berm system is recommended
9 for installation at the landward edge of this low maintenance zone to capture and filter runoff.
10 No mowed or cut vegetative material should be deposited or left remaining in this zone or
11 deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products
12 in this zone. If more stringent County regulations apply, this provision does not relieve the
13 requirement to adhere to the more stringent regulations. See Article IV of Chapter 10 of the
14 Leon County Land Development Code.

15
16 **Sec. 10-14.109. Mode of application.**

17 Spreader deflector shields are required when fertilizing via rotary spreaders. Deflectors
18 must be positioned such that fertilizer granules are deflected away from all impervious surfaces,
19 fertilizer-free zones and water bodies, including wetlands.

20
21 **Sec. 10-14.110. Exemptions.**

22 The provisions set forth above in this Article shall not apply to:

1 (a) Bona fide farm operations as defined in the Florida Right to Farm Act, Section
2 823.14, F.S., provided that fertilizers are applied in accordance with the appropriate Best
3 Management Practices Manual adopted by the Florida Department of Agriculture and Consumer
4 Services, Office of Agricultural Water Policy for the crop in question.

5 (b) Other properties not subject to or covered under the Florida Right to Farm Act that
6 have pastures used for grazing livestock provided that fertilizers are applied in accordance with
7 the appropriate Best Management Practices Manual adopted by the Florida Department of
8 Agriculture and Consumer Services, Office of Agricultural Water Policy for the crop in question.

9
10 **Sec. 10-14.111. Training and certification; presence on site of trained applicator during**
11 **application of fertilizer.**

12 (a) Within 180 days of the effective date of this Article and every three years thereafter,
13 all applicators of fertilizer within the unincorporated areas of the county, other than private
14 homeowners on their own property, shall abide by and successfully complete a County-approved
15 best management practices training program as defined in this Article. Upon successful
16 completion and compliance with the requirements in this Article, a certificate of completion and
17 a certification card valid for a period of three years will be provided by the entity providing the
18 training. Persons working as employees and under the direct and physical supervision of
19 commercial applicators that hold a current certificate of completion and certification card shall
20 be exempt from the requirement to complete a County-approved best management practices
21 training program.

22 (b) At least one person holding a current County-approved best management practices
23 training Certificate shall be present at all times on any job site while applying fertilizer is in
24 progress.

1 (c) Homeowners, and any other applicators not otherwise required to be certified are
2 encouraged to follow the requirements of this Article as well as the recommendations of the
3 University of Florida IFAS Florida Yards and Neighborhoods program when applying
4 fertilizers.

5 (d) Persons holding a Certificate of Training issued in conjunction with the Florida Green
6 Industries Best Management Practices Program for protection of water resources in Florida; or,
7 other State approved certificate of training or, a certification issued by another local government,
8 that includes at a minimum “Florida Green Industries Best Management Practices for
9 Protection of Water Resources in Florida, June 2002,” or newer as the basis for instruction, may
10 obtain certification by the County after contacting the County’s Environmental Compliance
11 Division or designee and presenting proof of the currently active status of training as described
12 in paragraph (a) above, and attesting that he/she has received and read a copy of this Article.
13 The Environmental Compliance Division may adopt policies related to this exception, and shall
14 maintain a list of approved alternative training programs.

15
16 **Sec. 10-14.112. Enforcement**

17 It is the intent hereof that the administrative, civil, and criminal penalties imposed through
18 execution of this Article be of such amount as to ensure immediate and continued compliance
19 with this Article. This article shall be enforced by the Leon County Code Enforcement Board, as
20 set out in Chapter 6 of the Leon County Code of Laws, if the penalties in this subsection are not
21 collected within fourteen (14) days. A violation of this ordinance is determined to be irreparable
22 and irreversible, such that no action to cure the violation is possible and a penalty in the form of

1 a fine is warranted. Violation of any provision of this Article shall be subject to the following
2 penalties:

3
4 (a) First violation. Written notification and education.

5 (b) Second violation. Fifty dollars (\$50) for residential applicators applying fertilizer to
6 their own property and one hundred dollars (\$100) for commercial or institutional
7 fertilizer applicators.

8 (c) Third violation(s). One hundred dollars (\$100) for residential applicators applying
9 fertilizer to their own property and two hundred dollars (\$200) for commercial or
10 institutional fertilizer applicators.

11 (d) Fourth and subsequent violation(s). A minimum of one hundred dollars (\$100) for
12 residential applicators applying fertilizer to their own property and a minimum of two
13 hundred dollars (\$200) for commercial or institutional fertilizer applicators, not to exceed
14 one thousand dollars (\$1,000).

15 (e) Any applicator that violates the provisions of this Article may be responsible for the
16 County's costs of prosecution of any violation, including any costs to remedy or clean up
17 any environmental condition caused by an act, which constitutes a violation of this
18 Article:

19
20 **Sec. 10-14.113. Variances**

21 Any applicator of fertilizer regulated by the provisions of this Article may apply to the
22 Board of Adjustment and Appeals for a variance from the requirements of this Article.

23 (1) Standards and procedures. The applicant must identify the specific provisions of the
24 fertilizer regulations for which a variance is requested, and shall address the following:

1 (a) Whether, as a result of soil or tissue content at the point of the proposed application or
2 for other geographical, environmental or geological reasons or other circumstances, such person
3 should not be required to adhere to the strict provisions of this Article; and

4 (b) Whether such person is able and willing to use a less strict application method or
5 alternative materials or methods; and

6 (c) A plan for fertilizer application, including where the fertilizer will be applied, the
7 frequency of application, contents of fertilizer to be applied, and period of time for which the
8 variance is requested.

9 (2) Following receipt of the variance application, the Board of Adjustment and Appeals
10 shall, at a timely regularly scheduled meeting:

11 a. Approve the variance request or any portion thereof

12 b. Approve the variance request or any portion thereof subject to conditions

13 c. Disapprove the variance request, specifying the reasons therefore in writing; or

14 d. Continue consideration of the variance request to a time certain.

15 (3) Criteria for granting variance. The Board of Adjustment and Appeals may grant the
16 variance request if it determines that:

17 a. The applicant satisfactorily demonstrates that all practical alternatives have been
18 evaluated, and the soil or tissue content at the point of the proposed application is such that the
19 provisions of the fertilizer regulations create a hardship for the applicant; or

20 b. The applicant satisfactorily demonstrates that all practical alternatives have been
21 evaluated, and due to unique geographical, environmental or geological reasons or other unique
22 circumstances, the applicant should not be required to adhere to the strict provisions of the
23 fertilizer regulations; and

1 c. The applicant satisfactorily demonstrates that its plan for fertilizer application is
2 consistent with the purpose and intent of the fertilizer regulations to the greatest extent feasible
3 and that adverse impacts, if any, are appropriately mitigated.

4 (4) Time periods for variances. Any Board of Adjustment and Appeals order approving
5 a variance request to the fertilizer regulations shall establish an expiration date for the variance.

6
7 **SECTION 2.** Conflicts. All ordinances or parts of ordinances in conflict with the provisions of
8 this Ordinance are hereby repealed to the extent of such conflict, as of the effective date of this
9 Ordinance, except to the extent of any conflicts with the Tallahassee-Leon County
10 Comprehensive Plan, as amended, which provisions shall prevail over any parts of this
11 Ordinance which are inconsistent, either in whole or in part, with the Comprehensive Plan.

12
13 **SECTION 3.** Severability. If any section, subsection, sentence, clause, phrase or portion of this
14 article is for any reason held invalid or unconstitutional by any court of competent jurisdiction,
15 such portion shall be deemed a separate, distinct, and independent provision and such holding
16 shall not affect the validity of the remaining portions of this Ordinance.

17
18 **SECTION 4.** Effective date. This ordinance shall be effective according to law.

1 DULY PASSED AND ADOPTED BY the Board of County Commissioners of Leon County,
2
3 Florida, this 13 day of October, 2009.



LEON COUNTY, FLORIDA

BY: _____

Bryan Desloge
BRYAN DESLOGE, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS

12 ATTEST:

13 BOB INZER, CLERK OF THE COURT
14 LEON COUNTY, FLORIDA

15
16 BY: _____

17
18
19 APPROVED AS TO FORM:
20 LEON COUNTY ATTORNEY'S OFFICE

21
22 BY: _____

Herbert W.A. Thiele
HERBERT W.A. THIELE, ESQ.
COUNTY ATTORNEY



FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

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Secretary of State

October 20, 2009

Mr. Bob Inzer
Clerk of the Circuit and County Courts
Leon County
Post Office Box 726
Tallahassee, Florida 32303

ATTN: Rebecca L. Vause, Deputy Clerk

Dear Mr. Inzer:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated October 20, 2009 and certified copies of Leon County Ordinance Nos. 09-33 and 09-34, which were filed in this office on October 20, 2009.

Sincerely,

Liz Cloud
Program Administrator

LC/srd

RECEIVED
09 OCT 20 PM 4:40
FINANCE DIVISION
BOB INZER
CLERK CIRCUIT COURT

DIRECTOR'S OFFICE

R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
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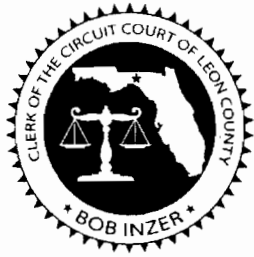
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Bob Inzer
Clerk of Circuit Court
WWW.CLERK.LEON.FL.US

Clerk of Courts ❖ Clerk of County Commission ❖ Auditor ❖ Treasurer ❖ Recorder ❖ Custodian of County Funds

October 20, 2009

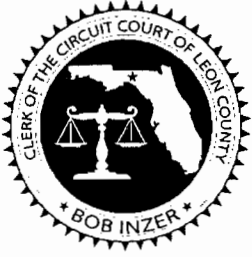
Florida Department of State
Bureau of Administrative Code
R.A. Gray Building #101
500 South Bronough Street
Tallahassee, FL 32399-0250

This is to certify that the person signing below received a true certified copy of Leon County Ordinance 09-33 and 09-34.

Date Received: Oct 20, 2009
Time Received: 4:23
Person Receiving: SD / VM

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DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

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Clerk of Courts ❖ Clerk of County Commission ❖ Auditor ❖ Treasurer ❖ Recorder ❖ Custodian of County Funds

October 20, 2009

Ms. Liz Cloud
Florida Department of State
Bureau of Administrative Code
R.A. Gray Building #101
500 South Bronough Street
Tallahassee, FL 32399-0250

Re: Leon County Ordinances
09-33, 09-34

Dear Ms. Cloud:

Pursuant to Section 125.66, Florida Statutes, enclosed please find a true certified copy of Ordinance 09-33 and 09-34, as adopted by the Board of County Commissioners of Leon County, at a regular meeting held on Tuesday, October 13, 2009.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Rebecca Vause".

Rebecca L. Vause
Deputy Clerk

Attachments