

Ashley Hofecker

From: County Ordinances <CountyOrdinances@dos.myflorida.com>
Sent: Thursday, November 14, 2013 1:43 PM
To: Ashley Hofecker
Cc: County Ordinances
Subject: RE: Hernando County Ordinances
Attachments: Hernando 2013-34 - Ack.pdf

From: Ashley Hofecker [<mailto:ahofecker@co.hernando.fl.us>]
Sent: Thursday, November 14, 2013 11:40 AM
To: County Ordinances
Subject: Hernando County Ordinances

Sender Full Name:	Ashley Hofecker
Sender Phone number:	352-754-4716
County Name:	Hernando
Ordinance Number:	2013-34

Ashley Hofecker

Deputy Clerk
Hernando County Clerk of Circuit Court
20 N. Main Street, Room 131
Brooksville, FL 34601
(352) 754-4716
ahofecker@hernandocounty.us
www.hernandoclerk.com

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FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

November 14, 2013

Honorable Don Barbee Jr.
Clerk of the Circuit Court
Hernando County
Room 131, 20 North Main Street
Brooksville, Florida 34601-2800

Attention: Ms. Ashley Hofecker, Deputy Clerk

Dear Mr. Barbee:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Hernando County Ordinance No. 2013-34, which was filed in this office on November 14, 2013.

Sincerely,

Liz Cloud
Program Administrator

LC/elr

Enclosure

ORDINANCE NO. 2013-34

1
2
3 AN ORDINANCE AMENDING CHAPTER 28, CREATING
4 ARTICLE XII (FERTILIZER APPLICATION ORDINANCE),
5 REGULATING THE USE OF FERTILIZERS CONTAINING
6 NITROGEN AND/OR PHOSPHORUS WITHIN HERNANDO
7 COUNTY; PROVIDING FOR APPLICABILITY; PROVIDING FOR
8 SEVERABILITY; PROVIDING FOR CONFLICTING PROVISIONS;
9 PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE;
10 PROVIDING FOR INCLUSION IN THE CODE AND PROVIDING
11 FOR AN EFFECTIVE DATE.

12
13 **WHEREAS**, Hernando County is located on the "springs coast" in the heart of the
14 largest concentration of springs in the world and is home to at least 14 springs in
15 three major springs groups that contain geologic karst, cave and underground
16 streams systems found nowhere else in the world; and

17
18 **WHEREAS**, Hernando County contains one of only 33 first-magnitude Florida
19 Springs, the Weeki Wachee Main Spring, a highly valued resource due to its
20 widely recognized environmental, historical and cultural importance to Hernando
21 County and to the State of Florida; and

22
23 **WHEREAS**, Hernando County is concerned with the current and future impacts
24 of loading of excess nutrients, especially nitrogen and phosphorous compounds,
25 into these relatively low-nutrient adapted springs, rivers and coastal waters; and

26
27 **WHEREAS**, Studies conducted by the Southwest Florida Water Management
28 District, the Florida Department of Environmental Protection and others have
29 documented that the level of nitrogen in the water of Hernando County springs
30 (primarily Weeki Wachee) has nearly doubled since the 1920s; and

31
32 **WHEREAS**, The Weeki Wachee Spring and the Weeki Wachee Spring Run have
33 been listed as "verified impaired due to nutrients" by the Florida Department of
34 Environmental Protection (FDEP); and

35
36 **WHEREAS**, Studies conducted by the Southwest Florida Water Management
37 District, the Florida Department of Environmental Protection and others have
38 documented the primary contributor of nitrogen to the Weeki Wachee Spring is
39 likely applied landscape fertilizers (an inorganic nitrogen component) with onsite
40 sewage disposal systems (an organic nitrogen component) contributing a lesser
41 amount; and

42
43 **WHEREAS**, Hernando County has determined that lands within its boundaries
44 are located within the springshed recharge areas of springs groups located both
45 within and outside the County and further that lands within its boundaries are

DRAFT DOCUMENT: Note: additions/deletions = language proposed for addition/deletion to existing Code provisions.

1 also located within the watersheds of the Withlacoochee River and coastal
2 estuaries and waters of the Gulf of Mexico; and

3
4 **WHEREAS**, Hernando County has determined that the use of fertilizers on lands
5 within its boundaries creates a risk contributing to adverse effects on surface and
6 ground waters that eventually impact springs, estuaries and riverine systems;
7 and

8
9 **WHEREAS**, Florida Statutes 403.9337 requires local governments "located
10 within the watershed of a water body or water segment that is listed as impaired
11 by nutrients...shall, at a minimum, adopt the department's [model ordinance]."

12
13 **NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY**
14 **COMMISSIONERS OF HERNANDO COUNTY, FLORIDA:**

15
16 **SECTION I. AMENDING CHAPTER 28, CREATING ARTICLE XII**
17 **(FERTILIZER APPLICATION ORDINANCE).**

18
19 Chapter 28, Article XII (Fertilizer Application Ordinance) is created to read as
20 follows, with underlined language added and strike through language deleted:

21
22 **Article XII. Regulation of the Use of Fertilizers Containing Nitrogen**
23 **and/or Phosphorus.**

24
25 **Sec. 28-505. Purpose and Intent.**

26
27 This Ordinance regulates the proper use of fertilizers by any applicator;
28 requires proper training of Commercial and Institutional Fertilizer
29 Applicators; establishes training and licensing requirements; establishes a
30 Prohibited Application Period; specifies allowable fertilizer application
31 rates and methods, fertilizer-free zones, low maintenance zones, and
32 exemptions. The Ordinance requires the use of Best Management
33 Practices which provide specific management guidelines to minimize
34 negative secondary and cumulative environmental effects associated with
35 the misuse of fertilizers. These secondary and cumulative effects have
36 been observed primarily in and on Hernando County's springs, and also in
37 and on Hernando County's natural and constructed stormwater
38 conveyances, rivers, creeks, canals, lakes, estuaries and other water
39 bodies. Collectively, these water bodies are an asset critical to the
40 environmental, recreational, cultural and economic well-being of Hernando
41 County residents and the health of the public. Overgrowth of algae and
42 vegetation also hinders the effectiveness of flood attenuation provided by
43 natural and constructed stormwater conveyances. Regulation of nutrients,
44 including both phosphorus and nitrogen contained in fertilizer, will help
45 improve and maintain water and habitat quality.

1
2 **Sec. 28-506. Definitions.**
3

4 Application or Apply: The actual physical treatment of turf or
5 landscape plants with fertilizer for the purpose of supplying chemical
6 components for healthy growth.

7
8 Applicator: Any Person who applies fertilizer on turf and/or
9 landscape plants.

10
11 Best Management Practices (BMPs) or Green Industry Best
12 Management Practices (GI-BMPs): Turf and landscape practices or
13 combination of practices based on research, field-testing, and expert
14 review, determined to be the most effective and practicable on-location
15 means, including economic and technological considerations, for
16 improving water quality, conserving water supplies and protecting natural
17 resources. Best Management Practices for Florida fertilizer application
18 that are especially applicable to Hernando County are those developed
19 and promulgated by the University of Florida Institute of Food and
20 Agricultural Sciences (IFAS) and the Florida Department of Environmental
21 Protection (FDEP) including, but not limited to, the most current version of
22 FDEP's "Florida-Friendly Best Management Practices for Protection of
23 Water Resources by the Green Industries," and, "Best Management
24 Practices for the Enhancement of Environmental Quality on Florida Golf
25 Courses."

26
27 Bank: In reference to a waterbody, the slope immediately bordering
28 the normal expanse of water in the applicable body. The top-of-bank is
29 the top of the slope.

30
31 Commercial Fertilizer Applicator, or Commercial Fertilizer
32 Application: Any person, except as provided in 482.1562(9), Florida
33 Statutes, who applies fertilizer, or the act of applying fertilizer, for payment
34 or other consideration to property not owned by the person or firm
35 applying the fertilizer or the employer of the applicator.

36
37 Fertilize, Fertilizing or Fertilization: Means the application of
38 fertilizer.

39
40 Fertilizer: Any substance that contains one or more recognized
41 plant nutrients and promotes plant growth, controls soil acidity or alkalinity,
42 provides other soil enrichment, or, provides other corrective measures to
43 the soil.
44

1 Fertilizer Free Zone: An area a minimum of ten (10) feet wide
2 adjacent to any pond, stream, watercourse, lake, canal, or wetland as
3 measured from the top-of-bank or the face of the seawall.
4

5 Heavy Rain: Rainfall events that have occurred, are occurring, or
6 are forecast as likely to occur within the ensuing 24 hours with a total
7 accumulation of 2 inches or more for any portion of Hernando County.
8

9 Institutional Applicator. Any person private, non-commercial, or a
10 Commercial Fertilizer Applicator who applies fertilizer for the purpose of
11 maintaining turf and/or landscape plants to areas other than individual
12 private residential properties. Institutional Applicators shall include, but
13 shall not be limited to, owners, managers or employees of public lands,
14 governmental entities, utilities, schools, parks and golf courses, religious
15 institutions, hospitals, community organizations, industrial or business
16 sites and any residential areas maintained in condominium and/or
17 common ownership. Institutional Applicators that are also Commercial
18 Fertilizer Applicators must meet the applicable requirements of this
19 ordinance for Commercial Fertilizer Applicators.
20

21 Landscape Plant: Any native or exotic tree, shrub, or groundcover
22 (excluding turf).
23

24 Limited Certification for Urban Landscape Commercial Fertilizer
25 Application: A certification issued by the Florida Department of Agriculture
26 and Consumer Services to a commercial applicator that certifies
27 successful completion of required training and testing in University of
28 Florida IFAS Green Industry Best Management Practices (GI-BMPs)
29 pursuant to the requirements of Florida Statutes 482.1562.
30

31 Prohibited Application Period: The time period during which
32 application of fertilizers containing nitrogen and/or phosphorus to turf
33 and/or landscape plants is prohibited.
34

35 Saturated Soil: A soil in which the voids are filled with water.
36 Saturation does not require flow. For the purposes of this ordinance, soils
37 shall be considered saturated if standing water is present or the pressure
38 of a person standing on the soil causes the release of free water.
39

40 Slow or Controlled Release Fertilizer. Nitrogen in a form which
41 delays its availability for plant uptake and use after application, or which
42 extends its availability to the plant significantly longer than a referenced
43 "rapidly available nutrient fertilizer" such as ammonium nitrate or urea.
44

1 Turf, Sod, or Lawn: A piece of grass-covered soil held together by
2 the roots of the grass.

3
4 Urban Landscape: Pervious areas on residential, commercial,
5 industrial, institutional, highway rights-of-way, or other nonagricultural
6 lands that are planted or maintained with turf or landscape plants. For the
7 purposes of this section, agriculture has the same meaning as in section
8 570.02, Florida Statutes.

9
10 **Sec. 28-507. Applicability.**

11
12 This Ordinance shall be applicable to and shall regulate any and all
13 applicators of fertilizer and areas of application of fertilizer to urban
14 landscapes within the unincorporated area of Hernando County, unless
15 such applicator or application is specifically exempted by the terms of this
16 Ordinance from the regulatory provisions of this Ordinance. This
17 Ordinance shall be prospective only, and shall not impair any existing
18 contracts.

19
20 **Sec. 28-508. Timing of Fertilizer Application.**

21
22 (a) No applicator shall apply fertilizers containing nitrogen and/or
23 phosphorus to turf and/or landscape plants during any of the
24 following Prohibited Application Periods:

25 (1) during the time period when a Flood Watch or Warning, or a
26 Tropical Storm Watch or Warning, or a Hurricane Watch or
27 Warning issued by the National Weather Service is in effect
28 for any portion of Hernando County, or, the time period
29 during which heavy rain is occurring, imminent, or forecast
30 as likely by the National Weather Service for any portion of
31 Hernando County.

32 (2) prior to seeding or sodding a site, and for the first 30 days
33 after seeding or sodding, except when hydro-seeding is used
34 to accomplish immediate erosion control measures of a
35 temporary or permanent nature on slopes (e.g., highway
36 slopes, stormwater structure slopes, wildfire slopes, etc).
37 Planting of sprigs in turf is exempted from this requirement.

38 (b) During the season of plant dormancy from January 1 through
39 March 31, only applicators trained, certified and registered under
40 the terms of this Ordinance shall apply fertilizer containing nitrogen
41 or phosphorus to turf. Only slow or controlled release fertilizer shall
42 be applied during this period of time. The applicator shall maintain,
43 and provide if requested, onsite verification of the slow or controlled
44 release product being used during the application.

1 **Sec. 28-509. Fertilizer Free Zones.**
2

3 Fertilizer shall not be applied within ten (10) feet of the top of bank of any
4 spring, pond, stream, watercourse, lake, canal, or wetland as defined by
5 the Florida Department of Environmental Protection (Chapter 62-340,
6 Florida Administrative Code) or from the top of a seawall unless a
7 deflector shield, drop spreader, or liquid applicator with a visible and
8 sharply defined edge, is used, in which case a minimum of 3 feet shall be
9 maintained. Newly planted turf and/or landscape plants may be fertilized
10 in this zone once beginning 30 days after planting if needed to allow the
11 plants to become well established. Caution shall be used to prevent direct
12 deposition of nutrients into the water. No mowed or cut vegetative
13 material may be deposited or left remaining in this zone or deposited in
14 the water. Care should be taken to prevent the over-spray of aquatic
15 weed products in this zone. If more stringent Hernando County Code
16 regulations apply, including those contained in Chapter 23, Article VI,
17 Riverine Protection and other applicable sections, this provision does not
18 relieve the requirement to adhere to the more stringent regulations.
19

20 **Sec. 28-510. Fertilizer Content and Application Rates.**
21

- 22 (a) Fertilizers applied to turf within Hernando County shall be applied in
23 accordance with requirements and directions provided by Rule 5E-
24 1.003, Florida Administrative Code, *Labels or Tags*, as amended
25 from time to time.
26 (b) Fertilizer containing nitrogen or phosphorus shall not be applied to
27 turf or landscape plants except as provided in (a) above for turf, or
28 in University of Florida IFAS recommendations for landscape
29 plants, vegetable gardens, and fruit trees and shrubs, unless a soil
30 or tissue deficiency has been verified by an approved test.
31

32 **Sec. 28-511. Application Practices.**
33

- 34 (a) Spreader deflector shields are required when fertilizing via rotary
35 (broadcast) spreaders. Deflectors must be positioned such that fertilizer
36 granules are deflected away from all impervious surfaces, Fertilizer Free
37 Zones and water bodies, including wetlands.
38 (b) Fertilizer shall not be applied, spilled, or otherwise deposited on any
39 impervious surfaces.
40 (c) Any fertilizer applied, spilled, or deposited, either intentionally or
41 accidentally, on any impervious surface shall be immediately and
42 completely removed to the greatest extent practicable.
43 (d) Fertilizer released on an impervious surface must be immediately
44 contained and either legally applied to turf or any other legal site, or
45 returned to the original or other appropriate container.

1 (e) In no case shall fertilizer be washed, swept, or blown off impervious
2 surfaces into stormwater drains, ditches, conveyances, or water bodies.

3 (f) Fertilizer shall not be applied to saturated soils or in saturated soil
4 conditions.

5
6 **Sec. 28-512. Management of Vegetative Matter.**

7
8 In no case shall grass clippings, vegetative material, and/or vegetative
9 debris be washed, swept, or blown off into stormwater drains, ditches,
10 conveyances, water bodies, wetlands, sidewalks or roadways. Any
11 material that is accidentally so deposited shall be immediately removed to
12 the maximum extent practical.

13
14 **Sec. 28-513. Exemptions.**

15
16 The provisions set forth above in this Ordinance shall not apply to:

17 (a) bona fide farm operations as defined in the Florida Right to Farm
18 Act, Section 823.14 Florida Statutes;

19 (b) other properties not subject to or covered under the Florida Right to
20 Farm Act that have pastures used for grazing livestock;

21 (c) any lands used for bona fide scientific research, including, but not
22 limited to, research on the effects of fertilizer use on urban
23 stormwater, water quality, agronomics, or horticulture.

24
25 **Sec. 28-514. Applicator Training.**

26
27 (a) All commercial applicators of fertilizer within Hernando County shall
28 abide by and successfully complete the University of Florida IFAS
29 "Florida-Friendly Best Management Practices for Protection of
30 Water Resources by the Green Industries," training program or an
31 approved equivalent. Successful completion shall be evidenced by
32 issuance of a training certificate and a Limited Certification for
33 Urban Landscape Commercial Fertilizer Application to the
34 applicator.

35 (b) All institutional applicators of fertilizer within Hernando County shall
36 ensure that at least one employee has completed the training
37 program specified in subsection (a) of this Section and received a
38 training certificate. The employee or employees shall complete the
39 training for the purpose of ensuring that fertilizer application
40 practices are planned and carried out in compliance with this
41 ordinance and with Green Industry Best Management Practices.

42 (c) Private, non-commercial, non-institutional applicators are
43 encouraged to follow the recommendations of the University of
44 Florida IFAS to assist them in complying with the fertilizer
45 application standards of this Ordinance.

1
2 **Sec. 28-515. Applicator Licensing and Certification.**
3

- 4 (a) By January 1, 2014, all Commercial Fertilizer Applicators within
5 Hernando County shall have and carry in their possession at all
6 times when applying fertilizer, a Limited Certification for Urban
7 Landscape Commercial Fertilizer Application or other approved
8 evidence of certification by the Florida Department of Agriculture
9 and Consumer Services as a commercial applicator per 5E-
10 14.117(18) Florida Administrative Code.
11 (b) By January 1, 2014, all Institutional Applicators shall be supervised
12 on site during the application of fertilizer by at least one Institutional
13 Applicator who shall have and carry in their possession at all times
14 when applying fertilizer, a University of Florida IFAS "Florida-
15 Friendly Best Management Practices for Protection of Water
16 Resources by the Green Industries" training certificate.
17

18 **Sec. 28-516. Registration of Commercial Fertilizer Applicators and**
19 **Institutional Applicators.**
20

- 21 (a) By June 1, 2014, all Commercial Fertilizer Applicators shall register
22 with Hernando County prior to performing professional landscaping
23 in unincorporated Hernando County. Commercial Fertilizer
24 Applicators must present an active "Limited Certification for Urban
25 Landscape Commercial Fertilizer Application" to successfully
26 complete registration. Commercial Fertilizer Applicators shall
27 renew their Hernando County registration concurrent with renewal
28 of their "Limited Certification for Urban Landscape Commercial
29 Fertilizer Application."
30 (b) By June 1, 2014, all Institutional Applicators of fertilizer shall
31 register with Hernando County prior to applying fertilizer in
32 unincorporated Hernando County. Any Institutional Applicators
33 seeking to register and remain registered with the County shall
34 have at least one (1) employee who holds an active University of
35 Florida IFAS "Florida-Friendly Best Management Practices for
36 Protection of Water Resources by the Green Industries" training
37 certificate. Institutional Applicators shall renew their registration
38 every four years with presentation of an updated training certificate
39 showing the completion of Continuing Education Units (CEUs) that
40 meet state standards.
41 (c) Hernando County may assess initial and annual registration fees
42 sufficient to cover the cost of administration of the registration
43 program.
44
45

1 **Sec. 28-517. Violations.**
2

- 3 (a) Any person applying fertilizers in violation of any stipulation or
4 performance standard contained herein shall be subject to the
5 remedies and/or penalties as provided for in this article.
6

7 **Sec. 28-518. Enforcement; Remedies; and Penalties.**
8

- 9 (a) Personnel of the County in the performance of their assigned duties
10 or functions to enforce the provisions of this Article may enter upon
11 any property during normal work hours of the County and make
12 examination to determine code compliance that do not occasion
13 damage or injury to private property or otherwise impair private
14 property or personal rights.

15 (b) Remedies:

- 16 (1) Personnel of the County in the performance of their assigned
17 duties or functions may issue notice to all violators of this
18 fertilizer ordinance and shall order that such violations
19 cease.

- 20 (2) If necessary, the governing body, or any appropriate official
21 of the governing body, may institute appropriate action in a
22 court of competent jurisdiction to enjoin any violation of the
23 county's land development regulations and/or this zoning
24 ordinance.

- 25 (3) In addition, any violation hereunder may be prosecuted as
26 described in Chapter 2, Article III of the Hernando County
27 Code of Ordinances, as amended or renumbered from time
28 to time.

29 (c) Penalties: Any violation of the County's fertilizer ordinance may be
30 prosecuted as follows:

- 31 (1) Whenever in the County's fertilizer ordinance any act is
32 prohibited, or is made or declared to be unlawful, or an
33 offense; or whenever in such ordinance the doing of any act
34 is required, or the failure to do any act is declared to be
35 unlawful, then such act or failure to act shall be deemed a
36 misdemeanor for the purposes of this fertilizer ordinance.

- 37 (2) Each violation hereunder shall be deemed a separate
38 offense and a separate offense shall be deemed committed
39 on each day during or on which a violation occurs or
40 continues. In assessing fines hereunder, the special master
41 may consider whether the violator has been convicted of or
42 pleaded guilty to prior violations of the County's fertilizer
43 ordinance.

- 44 (3) If any of the fines or penalties enumerated herein are
45 invalidated by a court of competent jurisdiction such

1 invalidation shall be severable from the rest of the provisions
2 in this fertilizer ordinance and such invalidity shall not extend
3 to any other provision of this fertilizer ordinance including the
4 statutory penalty for violation of County ordinances.

5 (4) If any of the fines or penalties enumerated herein are
6 invalidated, then the statutory penalty for violation of County
7 ordinances shall be deemed to automatically apply to any
8 violation of this fertilizer ordinance and in any event the court
9 shall have the absolute right and discretion to impose the
10 fines or penalties, or both, provided for in the statutory
11 provision for violation of County ordinances instead of the
12 fines and penalties provided for herein.

13
14 **Secs. 28-519 – 28-599. Reserved.**

15
16 **SECTION II. SEVERABILITY.** It is declared to be the intent of the Board of
17 County Commissioners that if any section, subsection, clause, sentence, phrase,
18 or provision of this Ordinance is for any reason held unconstitutional or invalid,
19 the invalidity thereof shall not affect the validity of the remaining portions of this
20 ordinance.

21
22 **SECTION III. CONFLICTING PROVISIONS.** Special acts of the Florida
23 Legislature applicable only to unincorporated areas of Hernando County,
24 Hernando County ordinances, County resolutions, or parts thereof, in conflict with
25 this Ordinance are hereby superseded by this Ordinance to the extent of such
26 conflict except for ordinances concerning either adoption or amendment of the
27 Comprehensive Plan, pursuant to Chapter 163, Part II, Florida Statutes.

28
29 **SECTION IV. FILING WITH THE DEPARTMENT OF STATE.** The clerk shall be
30 and is hereby directed forthwith to send a certified copy of this Ordinance to the
31 Bureau of Administrative Code, Department of State, R.A. Gray Bldg., Room
32 101, 500 S. Bronough Street, Tallahassee, FL 32399-0250.

33
34 **SECTION V. INCLUSION IN CODE.** It is the intention of the Board of County
35 Commissioners of Hernando County, Florida, and it is hereby provided, that the
36 provisions of this Ordinance shall become and be made a part of the Code of
37 Ordinances of Hernando County, Florida. To this end, any section or subsection
38 of this Ordinance may be renumbered or re-lettered to accomplish such intention,
39 and the word "ordinance" may be changed to "section," "article," or other
40 appropriate designation. Section II through Section VI shall not be codified.

41
42 **SECTION VI. EFFECTIVE DATE.** This Ordinance shall take effect immediately
43 upon filing with the Department of State.
44
45

DRAFT DOCUMENT: Note: additions/deletions = language proposed for addition/deletion to existing Code provisions.

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DULY PASSED AND ADOPTED IN REGULAR SESSION THIS 12th
DAY OF November, 2013

**BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY, FLORIDA**

Attest: Sherry L. Crum, Deputy By: David D. Russell, Jr.
DONALD C. BARBEE JR. DAVID D. RUSSELL, JR.
CLERK CHAIRMAN



**Approved as to Form and
Legal Sufficiency**

By: [Signature]
County Attorney's Office