ORDINANCE NO. 36-2013

AN ORDINANCE OF THE CITY OF TITUSVILLE, FLORIDA, ENACTING FERTILIZER APPLICATION REQUIREMENTS BY AMENDING CHAPTER 12 OF THE CODE OF ORDINANCES, CITY OF TITUSVILLE BY ADDING A SECTION TO BE NUMBERED 12-27 CONTAINING PURPOSE AND INTENT; DEFINITIONS; APPLICABILITY; FERTILIZER APPLICATION PROCEDURES; MANAGEMENT OF SAID PROCEDURES; EXEMPTIONS; ENFORCEMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Florida Statutes Section 403.9337, requires that each county and municipal government located within the watershed of a water body that is listed as impaired by nutrients pursuant to Section 403.067 shall, at a minimum, adopt the Florida Department of Environmental Protection's Model Ordinance for Florida Friendly Fertilizer Use on Urban Landscapes, and;

WHEREAS, the City of Titusville is located within the watershed of the Indian River Lagoon which the Florida Department of Environmental Protection has listed as impaired for nutrients, and;

WHEREAS, the Florida Department of Environmental Protection has established pollutant load limits in the form of Total Maximum Daily Loads which require the City to reduce pollutant loads discharged to the Indian River Lagoon from the City's stormwater system, and;

WHEREAS, the Florida Department of Environmental Protection will provide pollutant load reduction credit to the City toward meeting mandated Total Maximum Daily Load reductions for adoption and enforcement of code provisions directed at reducing such loadings from the use of fertilizer, and;

WHEREAS, the City of Titusville has a comprehensive program to address nonpoint sources of nutrient pollution which is science-based, and economically and technically feasible, and;

WHEREAS, additional or more stringent standards than the model ordinance are necessary to protect the water quality of the Indian River Lagoon, and;

WHEREAS, all relevant scientific information, including input from the Florida Department of Environmental Protection (FDEP), the Department of Agriculture and Consumer Services (DACS), and the University of Florida Institute of Food and Agricultural Sciences (IFAS)has been considered, and;

WHEREAS, the Titusville City Council has determined that it is in the best interest of all citizens of the City to create and establish standards and procedures for the application and use of fertilizer products to minimize their effect on stormwater run-off and algae growth in water bodies within the City;

NOW, THEREFORE, BE IT ENACTED by the City of Titusville, Florida:

That Chapter 12 of the Code of Ordinances of the City of Titusville is hereby amended by adding a section to be numbered 12-27, which said section reads as follows:

SECTION 12-27
FERTILIZER USE REQUIREMENTS

(a) Purpose and Intent

As a result of impairment to surface waters within the City of Titusville caused by excessive nutrients, the City of Titusville has determined that the use of fertilizers on lands within the City of Titusville creates a risk of contributing to adverse effects on surface and/or groundwater. Accordingly, the City of Titusville finds that management measures for the use of the fertilizers is required.

This Ordinance regulates the proper use of fertilizers by any applicator; requires proper training of commercial and institutional fertilizer applicators; establishes training and licensing requirements; establishes a prohibited application period; specifies allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones, and exemptions. The Ordinance requires the use of best management practices which provide specific management guidelines to minimize negative secondary and cumulative environmental effects associated with the misuse of fertilizers. These secondary and cumulative effects have been observed in and on Titusville's natural and constructed stormwater conveyances and surface

waters. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of Titusville's residents and the health of the public. Overgrowth of algae and vegetation 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.

(b) Definitions

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

"Administrator" means the City Manager or an administrative official of the City of Titusville designated by the City Manager to administer and enforce the provisions of this Article.

"Application" or *"Apply"* means the actual physical deposit of fertilizer to turf, or landscape plants.

"Applicator" means any person who applies fertilizer on turf and/or landscape plants in the City of Titusville.

"Best Management Practices" mean turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

"Best Management Practices Training Program" means a training program approved pursuant to Section 403.9338, F.S., or any more stringent requirements set forth in this Article that includes the most current version of the Florida Department of Environmental Protection's "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008," as revised, and approved by the administrator.

"Code Enforcement Officer, Official or Inspector" means any designated employee or agent of the City of Titusville whose

duty it is to enforce codes and ordinances enacted by the City of Titusville.

"Commercial Fertilizer Applicator", except as provided in F.S. § 482.1562(9), means any person who applies fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicator.

"Fertilize, Fertilizing, or F*ertilization"* means the act of applying fertilizer to turf, specialized turf, or landscape plants.

"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.

"Guaranteed Analysis" means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.

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

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

"Low Maintenance Zone" means an area a minimum of ten (10) feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.

"Person" means any natural person, business, corporation, limited liability company, partnership, limited partnership,

association, club, organization, and/or any group of people acting as an organized entity.

"Prohibited Application Period" means the time period during which a Flood Watch or Warning, or a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of the City of Titusville, issued by the National Weather Service, or if heavy rain[1] is likely.

"Restricted Application Period" means June 1 through September 30.

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

"Slow Release", "Controlled Release", "Timed Release", "Slowly Available", or *"Water Insoluble Nitrogen"* means nitrogen in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant longer than a reference rapid or quick release product.

"Surface Waters" as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) means water on the surface of the earth, contained in bounds created naturally or artificially, including the Atlantic Ocean, bays, bayous, sounds, estuaries, lagoons, lakes, ponds, impoundments, rivers, streams, springs, creeks, branches, sloughs, tributaries, canals, and ditches.

"Turf", "Sod", or *"Lawn"* means a piece of grass-covered soil held together by the roots of the grass.

"Urban Landscape" means pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or horticultural plants. For the purposes of this section, agriculture has the same meaning as in F.S. § 570.02.

[1] World Meteorological Organization definition of heavy rain: Rainfall greater than or equal to 50mm (2 inches) in a 24 hour period.

(c) Applicability

This Ordinance shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the City of Titusville, unless such applicator is specifically exempted by the terms of this Ordinance from the regulatory provisions of this Ordinance. This Ordinance shall be prospective only, and shall not impair any existing contracts.

(d) Timing of Fertilizer Application

(1) No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the Prohibited Application Period, during the Restricted Application Period, or to saturated soils.

(e) Fertilizer Free Zone

(1) Fertilizer shall not be applied within ten (10) feet of any pond, stream, watercourse, 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. If more stringent City Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. Newly planted turf and/or landscape plants may be fertilized in this zone for a sixty (60) day period beginning thirty (30) days after planting if needed to allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water.

(2) Fertilizer shall not be applied within twenty-five (25) feet of the shoreline of the Indian River Lagoon.

(3) A voluntary fertilizer free zone of ten (10) feet shall be encouraged, through educational outreach, on each side of streets without storm water retention that drain to the Indian River Lagoon.

(4) Planting native vegetation that does not require mowing or fertilization along the shoreline of the Indian River Lagoon shall be encouraged.

(f) Low Maintenance Zone

A voluntary ten (10) foot low maintenance zone is strongly recommended, but not mandated, from any surface waters, pond, stream, watercourse, lake, wetland or from the top of a seawall. A swale/berm system is recommended for installation at the landward edge of this low maintenance zone to capture and filter runoff. If more stringent City Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. No mowed or cut vegetative material should be deposited or left remaining in this zone or deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products in this zone.

(g) Fertilizer Content and Application Rates

(1) No fertilizer containing phosphorous shall be applied to turf or landscape plants in the City of Titusville unless a soil or plant tissue deficiency is verified by a University of Florida, Institute of Food and Agriculture Sciences, approved testing methodology. In the case that a deficiency has been verified, the application of a fertilizer containing phosphorous shall be in accordance with the rates and directions provided by Rule 5E, Florida Administrative Code. Deficiency verification shall be no more than 2 years old. However, recent application of compost, manure, or top soil shall warrant more recent testing to verify current deficiencies.

(2) The nitrogen content of fertilizer applied to turf or landscape plants within the City of Titusville shall contain at least 50% slow release nitrogen per guaranteed analysis label.

(3) Fertilizers applied to turf within the City of Titusville shall be applied at rates that are in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers.*

(4) Fertilizer containing nitrogen or phosphorus shall not be applied before seeding or sodding a site, and shall

not be applied for the first thirty (30) days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation (wildfire, etc.), or in accordance with the stormwater pollution prevention plan for that site.

(h) Application Practices

(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, surface waters 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 to turf or any other legal site, or returned to the original or other appropriate container.

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

(i) Management of Grass Clippings and Vegetative Matter

In no case shall grass clippings, vegetative material, and/or vegetative debris be washed, swept, or blown off into surface waters, stormwater drains, ditches, conveyances, watercourses, water bodies, wetlands, sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable.

(j) Exemptions

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

(1) Bona fide farm operations as defined in the Florida Right to Farm Act, F.S. § 823.14.

(2) Other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock;

(3) 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) Golf courses, athletic fields, and parks that apply fertilizer in accordance with the rates and directions provided by Rule 5E, Florida Administrative Code.

(k) Training

(1) After December 31, 2013, all commercial and institutional applicators of fertilizer within the City of Titusville, shall abide by and 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.

(2) Private, non-commercial applicators are encouraged to follow the recommendations of the University of Florida IFAS Florida Yards and Neighborhoods program when applying fertilizers.

(l) Licensing of Commercial Applicators

(1) After December 31, 2013, all commercial applicators of fertilizer within the City of Titusville, shall abide by and have successfully completed 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 a business tax receipt for any category of occupation which may apply any fertilizer to turf and/or landscape plants. Commercial fertilizer applicators shall provide proof of completion of the program to the City upon application or renewal of a business tax receipt.

(2) After December 31, 2013, all commercial applicators of fertilizer within the City, 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 pursuant to Rule 5E-14.117(18), Florida Administrative Code.

(3) All businesses applying fertilizer to turf and/or landscape plants (including but not limited to residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that at least one employee has a "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries" training certificate prior to the business owner obtaining a business tax receipt. Owners for any category of occupation which may apply any fertilizer to turf and/or landscape plants shall provide proof of completion of the program to the City.

(m) Enforcement

Funds generated by penalties imposed under this section shall be used by the City for the administration and enforcement of F.S. § 403.9337, and the corresponding sections of this article, and to further water conservation and nonpoint pollution prevention activities.

(n) Conflict and Severability

In the event this ordinance conflicts with any other ordinance of the City of Titusville or other applicable law, the more restrictive shall apply. If any phrase or portion of the Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

(o) Inclusion in the Code of Laws and Ordinances

The provisions of this Ordinance shall become and be made a part of the City of Titusville Code of Ordinances. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article" or any other appropriate word.

(p) Effective Date

This ordinance shall be effective upon filing with the Department of State. The City Council expressly reserves the right to amend, modify or repeal this ordinance at any time by subsequent action of the City Council.

PASSED AND ADOPTED this _____

_____
James H. Tulley, Jr., Mayor

ATTEST:

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Wanda F. Wells, Clerk