

**ORDINANCE NO. 2020 - 05**

**AN ORDINANCE OF THE CITY OF CLEWISTON, OF HENDRY COUNTY, FLORIDA, FOCUSING ON EXCESSIVE NUTRIENT LEVELS IN CITY OF CLEWISTON WATER BODIES; PROVIDING FOR TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR FINDINGS; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR APPLICABILITY; PROVIDING FOR TIMING OF FERTILIZER APPLICATIONS; PROVIDING FOR FERTILIZER-FREE ZONES, PROVIDING FOR FERTILIZER CONTENT AND APPLICATION RATES; PROVIDING FOR FERTILIZER APPLICATION PRACTICES; PROVIDING FOR MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER; PROVIDING FOR EXEMPTIONS; PROVIDING FOR TRAINING; PROVIDING FOR LICENSING OF COMMERCIAL APPLICATORS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR APPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Section 303(d) of the federal Clean Water Act and the resulting Florida Impaired Waters Rule (Chapter 62-303, Florida Administrative Code), the Florida Department of Environmental Protection (FDEP) has classified specific water bodies as "impaired" as a result of the presence of excessive nutrients; and

**WHEREAS**, Florida Statute, Section 403.9337 requires local governments located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to Florida Statute, Section 403.067, adopt an ordinance for Florida-Friendly fertilizer use on landscapes; and

**WHEREAS**, the FDEP on the 29 day of January, 2015, issued its Municipal Separate Storm Sewer System Permit No. FLR04E134 (hereinafter referred to as the "MS4 Permit"); and

**WHEREAS**, the MS4 permit requires local governments within the watershed of a nutrient impaired water body to adopt FDEP's Model Ordinance for Florida Friendly Fertilizer Use on Urban Landscapes or an Ordinance that includes all the requirements set forth in the Model Ordinance; and

**WHEREAS**, surface water runoff and base flow runoff leaves residential neighborhoods, commercial centers, industrial areas, and other lands in the City and enters into natural and artificial stormwater and drainage conveyances and natural water bodies; and

**WHEREAS**, phosphorus and nitrogen, the primary nutrients associated with the degradation of surface water, are commonly the primary components of fertilizer for turf and landscape application; and

**WHEREAS**, the quality of streams, lakes, and wetlands is important to environmental, economic, and recreational prosperity and to the health, safety, and welfare of the residents of Clewiston; and

**WHEREAS**, algae blooms and accelerated growth of aquatic weeds in nearby water bodies have heightened community concerns about water quality and eutrophication of surrounding waters; and

**WHEREAS**, it is generally recognized that soils present in Clewiston naturally have adequate phosphorus content for most vegetative needs and that additional phosphorus is therefore only occasionally needed to create or maintain a vibrant landscape; and

**WHEREAS**, it has been recognized that proper application of slow-release nitrogen sources is more efficiently used by plants and less likely to leach or runoff; and

**WHEREAS**, this Ordinance is part of a regulatory program to address nonpoint sources of nutrient pollution which is scientifically based, and economically and technically feasible; and

**WHEREAS**, in the process of adoption of this Ordinance, the City of Clewiston City Commission has considered scientific information, including input from the Department of Environmental Protection, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences.

**NOW, THEREFORE, BE IT ORDAINED BY THE City Commission of the City of Clewiston, FLORIDA, THAT:**

**SECTION I. TITLE.**

This Ordinance shall be known as the Fertilizer-Friendly Use Ordinance.

## **SECTION II. DEFINITIONS.**

For this Ordinance, 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 deposition of fertilizer to turf or landscape plants.
2. “Applicator” means any person who applies fertilizer on turf and/or landscape plants in the City of Clewiston.
3. “Approved Test” means a soil test from the University of Florida, government, or other commercial licensed laboratory that regularly performs soil testing and recommendations.
4. “Best Management Practices (BMP’s)” means turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined to be the most effective and practical site-specific means, including economic and technological considerations, for improving water quality, conserving water supplies, and protecting natural resources.
5. “Code Enforcement Officer”, “Official”, or “Inspector” means any designated employee or agent of the City of Clewiston whose duty it is to enforce codes and ordinances enacted by the City of Clewiston.
6. “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 applications.
7. “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.
8. “Fertilizer” or “Fertilization” means the act of applying fertilizer to turf, specialized turf, or landscape plants.
9. “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.
10. “Landscape Plant” means any native or non-native tree, shrub, or groundcover (excluding turf).

11. "Pasture" means land managed for livestock grazing.
12. "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.
13. "Prohibited Application Period" means the time period during which a Flood Watch or Warning, a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning, is in effect for any portion of the City of Clewiston, issued by the National Weather Service, or if heavy rain (2 inches or more within a twenty-four (24) hour period) is likely.
14. "Saturated Soil" means a soil in which the voids are filled with water. Saturation does not require flow. For the purpose of this section, 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.
15. "Slow-Release", "Controlled Release", "Timed Release", "Slowly-Available", or "Water Insoluble Nitrogen" means nitrogen in a form which delays its availability for vegetative uptake and use after application, or which extends its availability to the vegetation longer than a reference rapid or quick release product.
16. "Turf", "Sod" or "Lawn" means an area of grass-covered soil held together by the roots of the grass.
17. "Urban Landscape" means pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or landscape plants. For the purposes of this section, agriculture has the same meaning as provided in F.S. § 570.02.

### **SECTION III. FINDINGS.**

As a result of the Florida Department of Environmental Protection's determination that certain water bodies are impaired for excessive nutrient levels, the City Commission of the City of Clewiston finds that the Best Management Practices contained in the most recent edition of the "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries", are required and imposed by this ordinance.

### **SECTION IV. PURPOSE AND INTENT.**

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; and specifies allowable fertilizer application rates and methods, fertilizer-free zones, and exemptions. This Ordinance requires the use of Best Management Practices to minimize negative environmental effects associated with

excessive nutrients in our water bodies. These environmental effects have been observed in and on Clewiston's natural and constructed stormwater conveyances, rivers, creeks, canals, lakes, estuaries and other water bodies. Collectively, these water bodies are an asset important to the environmental, recreational, cultural and economic well-being of Clewiston 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, is anticipated to help improve and maintain water and habitat quality.

**SECTION V. APPLICABILITY.**

This Ordinance shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer to urban landscapes within the area of the City of Clewiston unless such application is specifically exempted by Section XI of this Ordinance. This Ordinance shall be prospective only.

**SECTION VI. TIMING OF FERTILIZER APPLICATIONS.**

- (a) No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the Prohibited Application Period or to saturated soils.
- (b) Fertilizer containing nitrogen and/or phosphorus shall not be applied before seeding or sodding a site, and shall not be applied for the first (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 Prevent Plan for that site.

**SECTION VII. FERTILIZER-FREE ZONES.**

Fertilizer shall not be applied within ten (10) feet, or three (3) feet if a deflector shield or drop spreader is used, of any pond, stream, water body, 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 or lake bulkhead. Newly planted turf or landscape plants may be fertilized in this zone only for a sixty (60) day period beginning (30) days after planting if needed to allow the vegetation to become well established. Caution shall be used to prevent direct deposition of fertilizer into the water.

**SECTION VIII. FERTILIZER CONTENT AND APPLICATION RATES.**

- (a) Fertilizers applied to turf within the City of Clewiston shall be applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements for Urban Turf Fertilizer*. Under Rule 5E-1.003(2), Florida

Administrative Code, required application rate and frequency maximums, which vary by plant and turf types, are found on the labeled fertilizer bag or container.

(b) Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in section (a) above for turf, or in UF/IFAS recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an approved test.

(c) Fertilizer used for sports turf at golf courses shall be applied in accordance with the recommendations in "Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses", published by the Florida Department of Environmental Protection, dated January 2007, as may be amended. Fertilizer used at park or athletic fields shall be applied in accordance with Rule 5E-1.003(2), Florida Administrative Code.

**SECTION IX. FERTILIZER APPLICATION PRACTICES.**

(a) As required in Section VII of this Ordinance, spreader deflector shields shall be used 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. 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.

(b) Fertilizer released on an impervious surface must be immediately contained and either legally applied to the turf or any other legal site, or returned to the original or other appropriate container.

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

(d) Property owners and managers are encouraged to use an Integrated Pest Management (IPM) strategy as currently recommended by the University of Florida Cooperative Extension Service publications.

**SECTION X. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER.**

In no case shall grass clippings, vegetative material, and/or vegetative debris intentionally be washed, swept, or blown on to or into stormwater drains, ditches, conveyances, water bodies, wetlands, sidewalks or roadways. Vegetative material may be placed within the roadway right-of-way, but not over the storm drains, for pickup by the municipality's vegetative waste hauler.

**SECTION XI. EXEMPTIONS.**

The provisions set forth above in this ordinance shall not apply to the following:

- (a) bona fide, farm operations as defined in the Florida Right-to-Farm Act, Section 823.14, Florida Statutes;
- (b) other properties not subject to or covered under the Florida Right-to-Farm Act, 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.

**SECTION XII. TRAINING.**

- (a) All commercial and institutional applicators of fertilizer within the City of Clewiston shall abide by and successfully complete the six-hour training program in the *"Florida-Friendly Best Management Practices for Protection for Water Resources by the Green Industries"* offered by the Florida Department of Environmental Protection through the University of Florida program or an approved equivalent program.
- (b) Non-commercial and non-institutional applicators not otherwise required to be certified, such as a private citizens on their own residential property, are encouraged to follow the recommendations of the University of Florida/IFAS *"Florida-Friendly Landscape Program"* and label instructions when applying fertilizers.

**SECTION XIII. LICENSING OF COMMERCIAL APPLICATORS.**

- (a) All businesses applying fertilizer to turf or landscape plants (including, but not limited to, residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that the business owner or his/her designee holds the appropriate *"Florida-Friendly Best Management Practices for Protection of Water Resources the Green Industries"* training certificate prior to the business owner obtaining a Local Business Tax Certificate. 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 of Clewiston Code Enforcement Department. It is the responsibility of the business owner to maintain *the "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries"* certificate to receive their Business Tax Receipt annually.
- (b) After the date of adoption of this ordinance, all commercial applicators of fertilizer within the City of Clewiston 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 per Rule 5E-14.117(18), Florida Administrative Code.

(c) All business applying fertilizer to turf and/or landscape plants (including, but not limited to, residential lawns, golf courses, commercial properties and multi-family and condominiums properties) must ensure that at least one (1) employee has an appropriate "*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. Standard Business Tax Receipt (BTR) and transaction fees shall apply.

**SECTION XIV. ENFORCEMENT.**

The provisions of this ordinance shall be enforced by the City of Clewiston's Special Magistrate pursuant to the authority granted by Section 162.01, et. seq., Florida Statutes, as may be amended, and the City of Clewiston through its authority to enjoin and fine any person violating its Code of Ordinances. The City of Clewiston Code Compliance Officer or designee may pursue these or any other enforcement remedies available to and applicable to the City of Clewiston under applicable law.

**SECTION XV. PENALTIES.**

(a) Failure to comply with the requirements of this ordinance shall constitute a violation of this ordinance and shall be punishable by a fine not to exceed \$250.00 per incident for the violation or a fine not to exceed \$500.00 per incident for a repeat violation, and, in addition, may include all costs of repairs and remediation including administrative costs. Each new day the violation exists is considered a separate incident.

(b) In determining the amount of fines that should be imposed, the Special Magistrate shall consider the following factors: (1) the gravity of the violation; (2) any actions taken by the violator to correct the violation; and (3) any previous violations committed by the violator. If the Special Magistrate finds the violation is irreparable or irreversible in nature, a fine not to exceed \$15,000 per violation may be imposed.

(c) Funds generated by penalties imposed under this ordinance shall be used by the City of Clewiston for the administration and enforcement of Section 403.9337, Florida Statutes, and the corresponding Sections of this ordinance, and to further water conservation and nonpoint pollution prevention activities.

**SECTION XVI. APPEALS.**

An aggrieved party, including the City of Clewiston, may appeal a final order of a special magistrate to the Circuit Court. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the order to be appealed.



**SECTION XVII. SEVERABILITY.**

If any section, paragraph, sentence, clause, phrase or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this ordinance.

**SECTION XVIII. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.**

The provisions of this ordinance shall become and be made a part of the City of Clewiston Code. The sections of this ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "article" or other appropriate word.

**SECTION XIX. CAPTIONS.**

The captions, section headings, and section designations used in this ordinance are for convenience only and shall have no effect on the interpretation of the provisions of this ordinance.

**SECTION XX. EFFECTIVE DATE.**

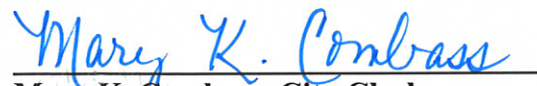
The provisions of this ordinance shall become effective upon its adoption.

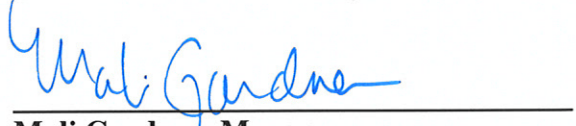
**PASSED** on first reading by the City Commission on September 21, 2020.

**PASSED AND ADOPTED** on second and final reading by the City Commission on October 19, 2020.

**ATTEST:**

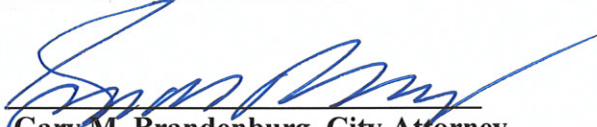
**CITY OF CLEWISTON, FLORIDA**

  
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Mary K. Combass, City Clerk

  
\_\_\_\_\_  
Mali Gardner, Mayor

(MUNICIPAL SEAL)

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

By:   
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Gary M. Brandenburg, City Attorney