ORDINANCE NO. 2017-6 **SEMINOLE COUNTY, FLORIDA**

AN ORDINANCE AMENDING CHAPTER 270, "WATER AND SEWER", SEMINOLE COUNTY CODE, BY ADDING PART 12, "PROPER USE OF FERTILIZERS"; REGULATING THE PROPER USE OF FERTILIZERS BY ANY APPLICATOR; PROVIDING LEGISLATIVE FINDINGS; PROVIDING DEFINITIONS: PROVIDING FOR APPLICABILITY WITHIN SEMINOLE COUNTY; ESTABLISHING A PROHIBITED APPLICATION PERIOD; SPECIFYING ALLOWABLE FERTILIZER APPLICATION RATES AND METHODS, FERTILIZER-FREE ZONES, LOW MAINTENANCE ZONES, AND EXEMPTIONS; REQUIRING 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 WHICH HAVE BEEN OBSERVED IN AND ON SEMINOLE COUNTY'S NATURAL AND CONSTRUCTED STORMWATER CONVEYANCES, RIVERS, CREEKS, CANALS, SPRINGS, LAKES AND OTHER WATERBODIES; REQUIRING PROPER TRAINING OF COMMERCIAL AND INSTITUTIONAL FERTILIZER APPLICATORS; ESTABLISHING TRAINING AND LICENSING REQUIREMENTS; PROVIDING FOR ENFORCEMENT AND PENALTIES; AMENDING CHAPTER 53, "CODE ENFORCEMENT", SEMINOLE COUNTY CODE, TO PROVIDE FOR PENALTIES; PROVIDING FOR CODIFICATION IN THE SEMINOLE COUNTY CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to 33 U.S.C. § 1313(d) (2016) of the Federal Clean Water Act and the resulting Florida Impaired Waters Rule, Chapter 62-303, Florida Administrative Code (2016), the Florida Department of Environmental Protection ("FDEP") has classified specific waterbodies in Seminole County as "impaired" as a result of the presence of excess nutrients; and

WHEREAS, the Seminole County National Pollutant Discharge (NPDES) Municipal Separate Storm Sewer System (MS4) Permit No. FLS000038, issued by the Florida Department of Environmental Protection under authority delegated to it by the United States Environmental Protection Agency, mandates the adoption of a fertilizer ordinance that includes all of the requirements set forth in the Florida Department of Environmental Protection's Model Ordinance

CERTIFIED COPY - GRANT MALOY
CLERK OF THE CIRCUIT COURT
AND COMPTROLLER
SEMINOLE COUNTY, FLORIDA
BY Terri Porter DEPUTY CLERK

for Florida-Friendly Fertilizer Use on Urban Landscapes pursuant to Section 403.9337, Florida Statutes (2016), by December 31, 2013 (the "Model Ordinance"); and

WHEREAS, the Florida Department of Environmental Protection has informally extended the time for Seminole County to adopt the subject ordinance with the understanding that Seminole County will adopt the ordinance as soon as practical; and

WHEREAS, it is the intent of the Board of County Commissioners to adopt the instant Ordinance consistent with the terms of the Model Ordinance and the principle purposes of the instant Ordinance are to receive credits and otherwise comply with all applicable Total Maximum Daily Loads (TMDLs) and Basin Management Action Plans (BMAPs),

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA:

Section 1. Chapter 270, "Water and Sewer", Seminole County Code is hereby amended by the addition of Part 12, "Proper Use of Fertilizers", which reads as follows:

PART 12. PROPER USE OF FERTILIZERS

Sec. 270.461. Findings. As a result of impairment to surface waters caused by excessive nutrients, and as a result of increasing levels of nitrogen in the surface and ground water within the aquifers and springs, the Board of County Commissioners hereby determines that the use of Fertilizers creates a risk to contributing to adverse effects on surface and ground water. Accordingly, the county commission hereby finds that management measures contained in the most recent edition of the *Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries* are required.

Sec. 270.462. Purpose and Intent. This Part 12: (a) regulates the proper use of Fertilizers by any Applicator; (b) requires proper training of commercial and Institutional Fertilizer Applicators; (c) establishes training and licensing requirements; (d) establishes a Prohibited

Application Period; and (e) specifies allowable Fertilizer Application rates and methods, Fertilizer free zones, Low Maintenance Zones, and exemptions. This Part 12 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 natural and constructed stormwater conveyances, rivers, creeks, canals, springs, lakes, and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural, and economic well-being of county residents and the health of the public in general. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both nitrogen and phosphorus contained in Fertilizer, will help improve and maintain water and habitat quality.

Sec. 270.463. Definitions. For the purposes of this Part 12, the following terms have the meanings set forth in this Section. Words not defined in this Part 12 have the meaning as provided in other Sections of this Code, and otherwise have the meaning provided by common and ordinary use:

Application or *Apply.* The actual physical deposit of Fertilizer to Turf, Landscape Plants, or both.

Applicator. Any Person who Applies Fertilizer on Turf, Landscape Plants, or both.

Approved Best Management Practices Training Program. A training program approved pursuant to Section 403.9338, *Florida Statutes* (2016), as this statute may be amended from time to time, 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,* as this document may be amended from time to time.

Best Management Practices. Turf and landscape practices or a 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.

Code Enforcement Officer, *Official* or *Inspector.* Any designated employee or agent who has the duty to enforce codes and ordinances.

Commercial Fertilizer Applicator. 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, except as provided in Section 482.1562(9), *Florida Statutes* (2016), as this statute may be amended from time to time.

Fertilize. The act of Applying Fertilizer to Turf, specialized Turf, or Landscape Plants.

Fertilizer. 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. *Fertilizer* does not include unmanipulated peat or compost that make no claims as described in the preceding sentence.

Guaranteed Analysis. The percentage of plant nutrients or measures of neutralizing capability claimed to be present in a Fertilizer.

Institutional Fertilizer Applicator. Any Person, other than a private, non-commercial or a Commercial Fertilizer Applicator (unless such definitions also apply under the circumstances), that Applies Fertilizer for the purpose of maintaining Turf, Landscape Plants, or both. *Institutional Fertilizer Applicators* include, but are not 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 or other form of common ownership.

Landscape Plant. Any native or exotic tree, shrub, or groundcover (excluding Turf).

Low Maintenance Zone. An area a minimum of ten (10) feet wide adjacent to water courses that is planted and managed in order to minimize the need for Fertilization, watering, mowing, and related activities.

Person. Any natural Person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, or any other group of people acting as an organized entity.

Prohibited Application Period. 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 County, issued by the National Weather Service, or if heavy rain, as defined by the World Meteorological Organization as rainfall greater than or equal to two (2) inches in a twenty-four (24) hour period, is likely.

Reclaimed Water. A high quality alternative water source that has received at least secondary treatment and is reused after being discharged from a domestic wastewater treatment facility. Moreover, there are some constituents, such as nitrogen and phosphorus found in recycled water. These constituents are beneficial for plant growth, and will serve as an additional "Fertilizing" source.

Saturated Soil. A soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this Part 12, soils are 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.* Nitrogen in a form that delays its availability for plant uptake and use after Application or that extends its availability to the plant longer than a reference rapid or quick release product.

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

Sec. 270.464. Applicability. This Part 12 applies to and regulates any and all Applicators of Fertilizer and areas of Application of Fertilizer within the unincorporated areas of the County, unless such Applicator is specifically exempted by the terms of this Part 12. This Part 12 operates prospectively only, and does not impair any existing contracts

Sec. 270.465. Timing of Fertilizer Application.

(a) No Applicator may Apply Fertilizers containing nitrogen, phosphorus, or both to Turf, Landscape Plants, or both during the Prohibited Application Period, or to Saturated Soils.

(b) Fertilizer containing nitrogen or phosphorus may not be Applied before seeding or sodding a site, and may 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, or in accordance with an adopted stormwater pollution prevention plan for that site.

(c) Fertilizer containing nitrogen or phosphorus may not be Applied to Turf or Landscape Plants from June 1 through September 30 of each year.

Sec. 270.466. Fertilizer Free Zones. Fertilizer may not be Applied within fifteen (15) feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection Rule 62-340, *Florida Administrative Code* (2016), as this regulation may be amended from time to time, or from the top of a seawall. Newly planted Turf, Landscape Plants, or both may be Fertilized in this zone only for a sixty (60) day period beginning thirty (30) days after planting if needed to allow the plants to become well established. Caution must be used to prevent direct deposition of nutrients into the water.

Sec. 270.467. Low Maintenance Zones. A voluntary ten (10) foot Low Maintenance Zone is strongly recommended, but not mandated, from any pond, stream, water course, 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. No mowed or cut

vegetative material may be deposited or left remaining in this zone or deposited in the water. Care must be taken to prevent the over-spray of aquatic weed products in this zone.

Sec. 270.468. Fertilizer Content and Application Rates.

(a) Fertilizers Applied to Turf must be Applied in accordance with requirements and directions provided by Rule 5E-1.003, *Florida Administrative Code,* "Fertilizer Label Requirements for Urban Turf, Sports Turf or Lawns" (2016), as this regulation may be amended from time to time.

(b) Nitrogen or phosphorus Fertilizer may not be Applied to Turf or Landscape Plants except as provided in subsection (a) for Turf, or in the University of Florida/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. Soil and tissue tests for phosphorus are normally done by UF/IFAS or another accredited laboratory. IFAS recommendations are available from the County Extension Service or http://solutionsforyourlife.ufl.edu/lawn_and_garden/.

(c) No Fertilizer containing phosphorus may be Applied to Turf, Sod, Lawns, or Landscape Plants unless a soil or plant tissue deficiency is verified by a testing methodology approved by the University of Florida, Institute of Food and Agricultural Sciences. If a deficiency is verified, the Application of Fertilizer containing phosphorus must adhere to the rates and directions for the appropriate Region of Florida, as adopted by Florida Administrative Code Rule. This subsection (c) controls over any inconsistent provisions in subsections (a) and (b) above regarding phosphorus.

(d) Fertilizers containing nitrogen Applied to Turf or landscaping plants within Seminole County must contain no less than fifty percent (50%) Slow Release Nitrogen per Guaranteed Analysis Label. If the necessary product is available on the local commercial market on March 1, 2020, then this requirement will increase to no less than sixty-five percent (65%) Slow

Release Nitrogen effective on this date. This subsection (d) controls over any inconsistent provisions in subsections (a) and (b) above regarding nitrogen.

(e) The above referenced Application rates must be reduced appropriately on properties where reclaimed wastewater is used for irrigation based on available nutrients in the Reclaimed Water as reported by the provider of the Reclaimed Water.

Sec. 270.469. Application Practices.

(a) Spreader deflector shields are required when Fertilizing by rotary or 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.

(b) Fertilizer must not be Applied, spilled, or otherwise deposited on any impervious surfaces.

(c) Any Fertilizer Applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface must be immediately and completely removed to the greatest extent practicable.

(d) 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.

(e) In no case may Fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

Sec. 270.470. Management of Grass Clippings and Vegetative Matter. In no case may grass clippings, vegetative material, vegetative debris, or any combination of them be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks, or roadways. Any material that is accidentally so deposited must be immediately removed to the maximum extent practicable.

Sec. 270.471. Exemptions. This Part 12 does not apply to:

(a) Bona fide farm operations as defined in Section 823.14, *Florida Statutes* (2016), "Florida Right to Farm Act", as this statute may be amended from time to time.

(b) Other properties not subject to or covered under subsection (a) above that have pastures used for grazing livestock.

(c) Any lands used for bona fide scientific research, including, but not limited to, research on the effects of Fertilizer use on stormwater, water quality, agronomics, or horticulture.

(d) Golf courses, athletic fields and Turf managed for active recreation, whose owners implement Best Management Practices as described in Rule 5E-1.003(2)(d), *Florida Administrative Code,* "Fertilizers Labeled for Sports Turf at Golf Courses, Parks and Athletic Fields" (2016), as this regulation may be amended from time to time.

(e) Any fruit or vegetable gardens, provided they are not within fifteen (15) feet of any waterbody or wetland.

Sec. 270.472. Training.

(a) All commercial and Institutional Fertilizer Applicators shall abide by and successfully complete the six-hour training program 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.

(b) Private, non-commercial Applicators are encouraged to follow the recommendations of the University of Florida/IFAS *Florida Friendly Landscapes* program when Applying Fertilizers.

Sec. 270.473. Licensing of Commercial Fertilizer Applicators.

(a) By September 30, 2014, all Commercial Fertilizer Applicators were required by state law to 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 program. Commercial Fertilizer Applicators shall provide proof of completion of the program prior to obtaining a new Local Business Tax Receipt for any category of occupation which may Apply any Fertilizer to Turf, Landscape Plants, or both. Commercial Fertilizer Applicators with an existing Local Business Tax receipt for any category of occupation which may Apply any Fertilizer to Turf, Landscape Plants, or both shall provide proof of completion of the program within thirty (30) days after completing the program as required by state law prior to September 30, 2014.

(b) After September 30, 2014, all Commercial Fertilizer Applicators were required by state law to 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* (2016), as this regulation may be amended from time to time.

(c) By September 30, 2014, all businesses Applying Fertilizer to Turf, Landscape Plants, or both (including but not limited to residential Lawns, commercial properties, and multi-family and condominium properties) were required by state law to ensure that at least one employee has a *Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries* training certificate. Business owners for any category of occupation which may Apply any Fertilizer to Turf, Landscape Plants, or both shall provide proof of completion of the program by at least one employee prior to the business owner obtaining a new Local Business

Tax Receipt. Business owners for any category of occupation which may Apply any Fertilizer to Turf, Landscape Plants, or both with an existing Local Business Tax Receipt shall provide proof of completion of the program by at least one employee within thirty (30) days after completing the program and prior to September 30, 2014.

Sec. 270.474. Enforcement, Penalties and Legal Proceedings.

(a) Any Person found to be in violation of the provisions of this Part 12 may be subject to any applicable civil enforcement mechanisms available to the County, including, but not limited to: injunctive relief; referral to the Seminole County Code Enforcement Board or Code Enforcement Magistrate; or issuance of a citation pursuant to Section 53, Part 2, of this Code.

(b) Violations of this Part 12 can present a serious threat to public welfare and are potentially irreparable or irreversible. Therefore, pursuant to Section 53.29(b) of this Code and Section 162.21(3)(b), Florida Statutes (2016), as these provisions may be amended from time to time, a County Code Enforcement Officer may immediately issue a citation to any Person in violation of this Part 12 if the Code Enforcement Officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

(c) Each incidence of violation under this Part 12 constitutes a separate violation and offence and a separate offence will be deemed committed on each day during or on which a violation occurs or continues.

(d) In addition to the other remedies provided in this Section, the County is authorized to make application in a court of appropriate jurisdiction for an injunction restraining any person from violating, or continuing to violate any provisions of this Part 12. Further, the County may avail itself of any other legal or equitable remedy available to it in the enforcement of any provision of this Part 12 or any provision of any resolution enacted pursuant to this Part 12.

(e) The County may elect to take any or all of the above remedies concurrently, and the pursuit of one does not preclude the pursuit of another.

(f) Any fines or other funds received as a result of enforcement under this Part 12 which are not used for specific purposes set forth in this Part 12, as it may be amended from time to time, must be deposited in the General Fund of the County in the penalty, fine and forfeiture account.

Section 2. Chapter 53, "Code Enforcement," of the Seminole County Code is hereby amended to read as follows:

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Section 53.32. Schedule of Violations and Penalties.

(a) Civil infractions of County codes and ordinances for which citations may be issued include, but are not limited to:

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(13) S.C.C. Chapter 270, Part 12 Improper Use of Fertilizers.

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Section 3. Codification. It is the intention of the Board of County Commissioners that the provisions of this Ordinance will become and be made a part of the Seminole County Code, and that the word "ordinance" may be changed to "section", "article", or other appropriate word or phrase and the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; providing, however, that the Sections 3, 4 and 5 of this Ordinance will not be codified.

Section 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid or is subject to a state moratorium, it is the intent of the

Board of County Commissioners that such invalidity or state moratorium will not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are declared severable.

Section 5. Effective date. This Ordinance takes effect upon filing a copy of this Ordinance with the Department of State by the Clerk of the Board of County Commissioners; provided, however, no citations, notices to appear, notices of violation or other enforcement procedures may be instituted until October 1, 2017.

BE IT ORDAINED by the Board of County Commissioners of Seminole County, this 28th day of Feb, 2017.

ATTEST:

GRANT MALOY
Clerk to the Board of
County Commissioners of
Seminole County, Florida

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

JOHN HORAN, Chairman

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