ORDINANCE NO. 14-03

AN ORDINANCE OF THE CITY OF FORT MEADE, FLORIDA; ADOPTING TEXT CHANGES TO THE CITY OF FORT MEADE'S CODE OF ORDINANCES; AMENDING DIVISION 3 OF ARTICLE III OF CHAPTER 24 OF THE CODE OF ORDINANCES; CREATING NEW SECTIONS IN ORDER TO ADOPT A STORMWATER MANAGEMENT SYSTEM – FERTILIZER ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR A COPY TO BE KEPT ON FILE, REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF FORT MEADE, FLORIDA, AS FOLLOWS:

SECTION 1. FINDINGS. In adopting this Ordinance, the City Commission of the City of Fort Meade (the "City Commission") hereby makes and expresses the following findings, purposes, and intent:

(1) The City Commission previously adopted Ordinance No. 93-3, The City of Fort Meade Code of Ordinances, as amended from time to time, addressing stormwater regulation.

(2) Polk County operates certain stormwater facilities pursuant to a National Pollutant Discharge Eliminate System ("NPDES") permit into which certain City stormwater flows enter.

(3) Polk County is required to comply with certain fertilizer regulations in order to maintain its NPDES permit and has requested that the City adopt certain regulations to enable the County to renew its NPDES permit.

(4) The City and Polk County have entered into an interlocal agreement that provides for the City and County to cooperate on NPDES permit issues.

(5) Pursuant to the interlocal agreement and for other reasons, Polk County is recommending and requiring that the City adopt a Stormwater Management System – Fertilizer Ordinance, regarding fertilizer management and regulating the application of fertilizer to urban landscapes in the City of Fort Meade.

(6) The Fort Meade City Commission, heard public input, considered all oral and written comments received during advertised public hearing(s).

SECTION 2. CREATION OF SECTIONS 24-138 THROUGH 24-150 OF THE CODE OF ORDINANCES OF THE CITY OF FORT MEADE, FLORIDA. Sections 24-138 through 24-150 of the Code of Ordinances of the City of Fort Meade is hereby created as follows:

Sec. 24-138. – Short title.

In exercise of its authority, the City Commission has determined it necessary and desirable to establish the stormwater management system fertilizer ordinance which shall hereafter be referred to as the City of Fort Meade Fertilizer Management Ordinance.

Sec. 24-139. – Findings of fact.

Stormwater runoff from residential neighborhoods, commercial centers, industrial areas, and other lands transports pollutants through the drainage conveyances to the natural water bodies of the City of Fort Meade. Phosphorus and nitrogen are the primary nutrients associated with the degradation of groundwater and surface water, and are the primary components of fertilizer used on urban landscapes. Improper fertilization practices contribute excess nitrogen and phosphorus to the City of Fort Meade's water bodies through the drainage conveyances that regulate the flow of

stormwater to prevent flooding. This reduces the drainage conveyances capacity to provide flood protection from the overgrowth of vegetation.

Pursuant to Section 303(d) of the Federal Clean Water Act and Chapter 62-303 of the Florida Administrative Code, the Florida Department of Environmental Protection (FDEP) has classified specific water bodies in Polk County as "impaired" as a result of the presence of excess nutrients. In addition, the FDEP has issued a National Pollutant Discharge Elimination System (NPDES) permit to the City of Fort Meade requiring the adoption of an Ordinance to limit the nutrient contributions from the fertilization of urban landscapes within the watershed of any nutrient impaired water bodies. The City Commission of the City of Fort Meade, Florida, therefore finds it necessary to adopt this Ordinance to reduce nutrient leaching and runoff through improved fertilizer management in order to protect the quality of waters receiving stormwater discharges for the health, safety, and general welfare of the citizens of the City of Fort Meade.

Sec. 24-140. – Applicability.

The regulations herein set forth shall apply to all the incorporated areas of the City.

Sec. 24-141. – Definitions and Rules of Construction.

A. *Administrator* means the City Manager, or his/her designee, to administer and enforce this Ordinance.

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

C. *Applicator* means any person who applies fertilizer on turf and/or landscape plants.

D. *Board or Governing Board* means the City Commission of the City of Fort Meade, Florida.

E. *Best Management Practices (BMPs)* means 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.

F. *Code Enforcement Officer, Official or Inspector* means any designated employee or agent of the City of Fort Meade whose duty is to enforce codes and ordinances enacted by the City of Fort Meade.

G. *Commercial Applicator, except as provided in Section 482.1562(9) Florida Statutes*, 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.

H. *Fertilize, Fertilizing, or Fertilization* means the act of applying fertilizer to turf, specialized turf, or landscape plants.

I. *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

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

K. *Institutional Applicator* means any person, other than a Private Non-commercial Applicator or Commercial Applicator, that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional Applicators shall include but not be limited to, owners, manager, or employees or public lands, schools, parks, religious institutions, utilities, industrial or business sites, and any residential properties maintained in condominium and/or common ownership.

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

M. *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 fertilizer, watering, mowing, etc.

N. *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.

O. *Private Non-commercial Applicator* means a person applying fertilizer to their own residence, or that of another, without financial gain.

P. *Saturated soil* means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this ordinance, 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.

Q. *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.

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

S. *Urban Landscape* means pervious areas of residential, commercial, industrial, institutional, highway rights-of-way, or other non-agricultural lands that are planted with turf or horticultural plants.

Sec. 24-142. – Weather Related Restrictions.

No fertilizer containing nitrogen or phosphorus shall be applied to urban landscapes during a period for which the National Weather Service has issued any of the following advisories for any portion of the City of Fort Meade: a severe thunderstorm warning or watch, flood warning or watch, tropical storm warning or watch, hurricane warning or watch, or heavy rain in likely to exceed two (2) inches in a 24 hour period.

Sec. 24-143. – Fertilizer Content & Application Rates.

a. All fertilizer applied to urban landscapes shall be labelled in accordance with Section 576.031, Florida Statutes, as it may be amended or superseded.

b. Applications to urban landscapes shall be in accordance with the requirements and directions provided by manufacturers label or as recommended for landscape plants, vegetable gardens, or fruit trees and shrubs by the University of Florida's Institute of Food and Agricultural Sciences (IFAS) unless a soil or tissue deficiency has been verified by an approved test by IFAS or an accredited laboratory.

c. No fertilizer shall be applied to turf at a rate that exceeds the range per plant species set forth in guidelines established in Rule 5E-1.003(2), Florida Administrative Code, or in the most recent publication of *Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries,* as stated below:

Annual Rates:

Bahia grass: 2-4 pounds of nitrogen per 1,000 square feet per year.

Bermuda grass: 4-6 pounds of nitrogen per 1,000 square feet per year.

Centipede grass: 2-3 pounds of nitrogen per 1,000 square feet per year.

St. Augustine grass: 2-5 pounds of nitrogen per 1,000 square feet per year.

Zoysia grass*: 2-5 pounds of nitrogen per 1,000 square feet per year.

*Newer cultivars of Zoysia grass, including Empire, will generally perform well with 1-1.5 pounds per 1,000 square feet less nitrogen annually (i.e., 2-3.5 lbs. per 1,000 sq. ft. per year).

Single Application Rates to turf areas shall not exceed 0.5 lbs. per 1,000 square feet for water soluble fertilizers, or as otherwise recommended in the most recent edition of the "Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries" as published by the Florida Department of Environmental Protection and the University of Florida – IFAS Extension. Slow release fertilizers shall not be applied at a rate in excess of 1.0 lb. per 1,000 square feet total nitrogen for a single application, unless otherwise indicated in the most recent edition of the "Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries".

d. The above listed application rates shall be reduced appropriately on properties where reclaimed wastewater is used for irrigation based on available nutrients in the reclaimed water.

e. Fertilizer containing nitrogen 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 emergency situation, such as wildfire, or in accordance with the Stormwater Pollution Prevention Plan for that site.

Sec. 24-144. – Fertilizer-free zones.

a. No fertilizer shall be applied within ten (10) feet of any lake, pond, stream, water body, water course or canal. Additionally, no fertilizer shall be applied within ten (10) feet of any wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code, as it may be amended or superseded).

b. No fertilizer shall be deposited, washed, swept, or blown off intentionally or inadvertently onto any impervious surface, public right-of-way, public property, stormwater drain, ditch or other stormwater conveyance, or directly to a water body. Any fertilizer spilled or deposited on an impervious surface shall be immediately and completely removed to the extent reasonably possible.

c. A low-maintenance zone is strongly recommended, though not required, for all areas within ten (10) feet of the water's edge of any lake, pond, stream, water body, water course or canal, or any wetland. Low-maintenance zones should be

planted and managed in such a way as to minimize the need for watering, mowing, and other active maintenance.

Sec. 24-145. – Mode of Application.

Broadcast spreaders used for applying fertilizers must be equipped with deflector shields positioned to deflect fertilizer from the Fertilizer Free Zones described in Sec. 24.5-106.

Sec. 24-146. – Grass clippings and vegetative material/debris.

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

Sec. 24-147. – Training Requirements.

a. All Commercial and Institutional Applicators of fertilizer 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 UF/IFAS Florida-Friendly Landscaping™ program, or an approved equivalent per Section 403.9338 Florida Statutes.

b. Private Non-Commercial Applicators are encouraged to follow the recommendations of the University of Florida IFAS *Florida Yards and Neighborhoods* program when applying fertilizers.

Sec. 24-148. – Certification of commercial applicators.

a. Prior to June 1, 2014, all Commercial Applicators shall obtain and maintain certification by successfully completing training and continuing education requirements in the *"Florida Friendly Best Management Practices for Protection of Florida Water Resources by the Green Industries"* offered by the UF/IFAS Florida Friendly Landscaping™ program. Certification may be obtained through a County Extension Service Office, or an approved equivalent program.

b. All businesses applying fertilizer to turf and landscape plants on their own property (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 Florida Water Resources by the Green Industries" training certificate.

c. After May 31, 2014, all Commercial Applicators of fertilizer shall have, and carry in their possess at all times when in the possession of fertilizer, a Florida Department of Agriculture and Consumer Services Limited Certification for Urban landscape Commercial Fertilizer as required per 5E-14.117(18) Florida Administrative Code.

Sec. 24-149. – Exemptions.

a. Section 24-143 shall not apply to golf courses; provided, however, fertilizer shall not be applied to golf courses in excess of the provisions of the Florida Department of Environmental protection ("FDEP") document, *BMPs for the Enhancement of Environmental Quality on Florida Golf Courses, January, 2007.*

b. This ordinance shall not apply to sports turf areas at parks and athletic fields for which fertilizer is applied in accordance with the applicable provisions of Rule 5E-1.003(2)(d) Florida Administrative Code.

c. This ordinance shall not apply to any bona fide farm operation as defined in the Florida Right to Farm Act, Section 823.14, *et seq.*, Florida Statutes.

d. This ordinance shall not apply to any lands classified as agricultural lands pursuant to Section 193.461 Florida Statutes, including without limitation, other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock.

e. This ordinance shall not apply to 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.

Sec. 24-150. - Enforcement.

a. If a violation of this Ordinance occurs within unincorporated Polk County, the violation shall be enforced by Polk County in accordance with the ordinance or ordinances governing prosecution of ordinance violations within unincorporated Polk County in which the violation occurs.

b. If a violation of this ordinance occurs within the corporate city limits of Fort Meade, the enforcement provisions and procedures contained in the City of Fort Meade Code Enforcement Special Magistrate Ordinance, as it may be amended or superseded, are incorporated herein by reference and will apply.

c. Nothing contained herein shall prevent the City of Fort Meade or Polk County from taking other lawful action in law and equity as may be necessary to remedy any violation of any part of this ordinance, including but not limited to:

1. Pursuit of injunction and/or declaratory relief in a Court of competent jurisdiction;
2. Utilizing any other action or enforcement method permitted by law; or
3. Prosecution as a misdemeanor with a fine not exceeding Five Hundred Dollars ($500.00) or by imprisonment for a term not exceeding sixty (60) days or by both fine and imprisonment.

d. Funds generated by penalties imposed under this Section shall be used by the City of Fort Meade or Polk County for the administration and enforcement of Section 403.9337, Florida Statutes, this ordinance, and to further non-point pollution prevention activities.

SECTION 3. UPDATING THE CODE OF ORDINANCES. This Ordinance shall be codified and made part of the official Code of Ordinances of the City of Fort Meade. The City's staff is directed to update the Code of Ordinances to insert the revisions reflected herein.

SECTION 4. REPEAL OF CONFLICTING ORDINANCES; RATIFYING UNAMENDED PROVISIONS OF THE CODE OF ORDINANCES. All ordinances or parts of ordinances in conflict herewith (including but not limited to Ordinance No. 93-3) are hereby repealed and, all provisions in the Code of Ordinances shall remain unamended and are hereby ratified and confirmed.

SECTION 5. SEVERABILITY. If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full effect.

SECTION 6. EFFECTIVE DATE. This ordinance shall become effective immediately upon its passage and approval as a non-emergency ordinance at two regular meetings of the City Commission.

PASSED ON FIRST READING this 11th day of February, 2014.

PASSED ON SECOND READING this 11th day of March, 2014.

CITY OF FORT MEADE, FLORIDA

Robert Elliott, Mayor

ATTEST:

Melissa Newman, Deputy City Clerk
as Asst. Deputy City Clerk

APPROVED:

Fred Hilliard, City Manager

APPROVED AS TO FORM AND LEGALITY:

Thomas A. Cloud, Esquire
City Attorney