

[City/County] of \_\_\_\_\_, Florida

Chapter \_\_\_\_.

EXAMPLE ORDINANCE FOR COMPOST AMENDING SOIL IN URBAN LANDSCAPING

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## ORDINANCE NUMBER 20\_\_ - \_\_

### LAND DEVELOPMENT CODE

AN ORDINANCE OF THE [CITY/COUNTY] OF \_\_\_\_\_ AMENDING [CITY/COUNTY] CODE CHAPTER \_\_\_\_\_ PROVIDING FOR AMENDMENTS TO ADOPT COMPOST-AMENDED SOIL REQUIREMENTS; PROVIDING FOR REPEAL OF ORDINANCES; PROVIDING FOR TERRITORY EMBRACED; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION INTO THE CODE OF ORDINANCES; PROVIDING FOR EFFECTIVE DATE.

#### SECTION \_\_\_\_-1. - BASIS OF ORDINANCE

##### Sec. \_\_\_\_-1.1. - Findings of Fact

**\*Whereas, the [City/County] of \_\_\_\_\_** recognizes that conventional construction and development practices commonly leave soils compacted, impeding root growth, reducing infiltration, and increasing runoff.<sup>1</sup>

**\*Whereas, the [City/County] of \_\_\_\_\_** recognizes that soil at the land surface following completion of construction is relatively inert, low in organic matter, water holding capacity, and nutrient retention, relative to pre-existing topsoil.<sup>2</sup>

**\*Whereas, the [City/County] of \_\_\_\_\_** recognizes that poor soil quality inhibits establishment of resilient landscape vegetation, increasing reliance on supplemental irrigation, fertilizers, and pesticides.

**\*Whereas, the [City/County] of \_\_\_\_\_** recognizes that the use of compost to amend soils has the purpose of enhancing the viability of new urban landscaping and reducing irrigation and fertilizer use.<sup>3</sup>

**\*Whereas, the [City/County] of \_\_\_\_\_** recognizes that improving soil quality in landscaped areas for all new construction improves the conservation of water resources.<sup>4</sup>

**\*Whereas, the [City/County] of \_\_\_\_\_** recognizes that the important public health, safety, and welfare objective of conserving valuable resources including water and soil will be served and advanced by the enactment of compost amended soils requirements.

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<sup>1</sup> See Eban Z. Bean, et al., *Effect of urban soil compaction on infiltration rate*, 61.3 J. SOIL & WATER CONSERVATION at 117–124 (2006), <https://www.jswnonline.org/content/61/3/117>; see also Eban Z Bean & Michael D. Dukes, *Effect of amendment type and incorporation depth on runoff from compacted sandy soils*, 141.6 AM. SOC'Y CIV. ENGINEERS J. (2015), <https://ascelibrary.org/doi/abs/10.1061/%28ASCE%29IR.1943-4774.0000840>.

<sup>2</sup> See Craig G. Cogger, *Potential compost benefits for restoration of soils disturbed by urban development*, 13.4 J. COMPOST SCI. & UTILIZATION at 243–51 (2005), <https://www.tandfonline.com/doi/abs/10.1080/1065657X.2005.10702248>; see also Bryant C. Scharenbroch, et al., *Distinguishing urban soils with physical, chemical, and biological properties*, 49.4 PEDOBIOLOGIA at 283–96 (2005), <https://www.sciencedirect.com/science/article/pii/S0031405605000077>.

<sup>3</sup> See Bean & Dukes, *supra* note 1; see also Cogger, *supra* note 2.

<sup>4</sup> See Melissa B. Haley, et al., *Residential irrigation water use in central Florida*, 133.5 J. IRRIGATION & DRAINAGE ENGINEERING at 427–34.

**\*Whereas, the [City/County] of \_\_\_\_\_** recognizes that by 2035 the State of Florida is expected to face a 400 Million gallon per day deficit in supply to meet demand; and <sup>5</sup>

**\*Whereas, the [City/County] of \_\_\_\_\_** recognizes that both its economy and the quality of life of its residents are enriched by a sustainable environment; and

**\*Whereas, the [City/County] of \_\_\_\_\_** desires to minimize the detrimental impact on water resources that comes from over pumping water and runoff from over reliance on irrigation and nutrient exports from the improper use of fertilizers.

*Guidance: These generic Findings of Fact are illustrative only. Some Findings of Fact should also relate to the specific context of the County or City adopting a compost amended soil Ordinance and may include data on the use of soil that has not been amended with compost as it compares to compost amended soil.*

NOW, THEREFORE, BE IT ORDAINED, BY THE [CITY COUNCIL/BOARD OF COUNTY] COMMISSIONERS OF THE [CITY/COUNTY] OF \_\_\_\_\_ ON THIS \_\_\_ DAY OF \_\_\_\_, 20\_\_.

**Sec. \_\_\_-1.2. - Title of Ordinance**

The [City/County] of \_\_\_\_\_ Ordinance for Compost Amending Soil in Urban Landscaping is hereby established.

*Guidance: The City or County is free to and should tailor the name of the Ordinance in its own code accordingly.*

**Sec. \_\_\_-1.3. - Ordinance Purpose and Objectives**

The purpose of this Ordinance is to improve the function and health of soils post-construction, promote water conservation by reducing landscape irrigation and to protect water quality by improving soil health, reducing runoff, enhancing ecosystem services, and retaining nutrients in soils in urban landscaping in the [City/County] of \_\_\_\_\_.

The objective of the Ordinance is to decrease the amount of irrigation needed for urban landscaping and reduce potential contributions of fertilizer to pollution by ensuring that new urban landscaping projects require the use of soil that has been amended with compost. In furtherance of this objective, this Ordinance is also designed to promote environmental education and extension for residents in the [City/County] of \_\_\_\_\_ on the benefits of amending soils.

**Sec. \_\_\_-1.4. - Definitions<sup>6</sup>**

1. **Compost amended soil:** Compost amended soil has the meaning set forth in Section \_\_\_-3 of this Ordinance.

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<sup>5</sup> OFFICE OF ECON. & DEMOGRAPHIC RES., ANN. ASSESSMENT OF FLA. WATER RESOURCES & CONSERVATION LANDS at 120, tbl. 3.2.2 (2018), [http://edr.state.fl.us/Content/natural-resources/LandandWaterAnnualAssessment\\_2018Edition.pdf](http://edr.state.fl.us/Content/natural-resources/LandandWaterAnnualAssessment_2018Edition.pdf).

<sup>6</sup> Defined terms should closely follow those created by UF/IFAS in the Model Florida-Friendly Landscaping Contract (2018), [https://ffl.ifas.ufl.edu/materials/Florida\\_Friendly\\_Landscaping\\_Maintenance\\_Contract\\_2018.pdf](https://ffl.ifas.ufl.edu/materials/Florida_Friendly_Landscaping_Maintenance_Contract_2018.pdf).

2. **Irrigable area:** Any area where soil is disturbed in order to install landscaping associated with new construction, and could be irrigated using the typical equipment, means, and quantity of water available to any resident or commercial entity of [City/County].<sup>7</sup>

*Guidance:* Jurisdictions may expand or limit the scope of an irrigable area as they see fit.

3. **Landscape:** The public or private areas of land to be modified with vegetation and ground covers in order to create visual features and aesthetic such as: lawns, gardens, community common areas, and parks.
4. **Landscaping:** Modifying the visible features of an area of land, including seeding grass or laying sod; installing or planting flora and other visual elements; gardening; or the art and craft of growing plants with a goal of creating aesthetic.
5. **New construction:** Any structure for which the start date of construction begins on or after the effective date of this Ordinance. New construction includes any redevelopment or modification for which the start date of construction begins on or after the effective date of this Ordinance.

*Guidance:* Some local governments may wish to apply this Ordinance more broadly. Further, the definition for “new construction” should follow what the City or County’s building code defines as new construction. If the City or County wishes to include this Ordinance in a building code, the definition of new construction should be in accordance with those permitting requirements.

6. **Soil Preparation:** Soil preparation has the meaning set forth in Section \_\_\_-3 of this Ordinance.

## SECTION \_\_\_-2. - APPLICABILITY

The provisions of this Ordinance apply to all irrigable areas within landscapes of new construction within the [County/City] of \_\_\_\_\_. The provisions of this Ordinance apply to irrigable landscape areas of 4,000 square feet (0.092 acres) or greater.

*Guidance:* Some local governments may wish to apply this Ordinance more broadly to “new” or “replacement” landscaping and to identify specific zoning or other land use categories. The area of 4,000 square feet is used as an example of a reasonable area—local governments should feel free to increase or decrease the covered area in accordance with their individual needs.

## SECTION \_\_\_-3. - COMPOST AMENDED SOIL REQUIREMENTS

Owners of the areas specified in Section \_\_\_-2 above shall perform soil preparation, which is to incorporate compost into the soil within landscapable areas of new construction projects to a depth of at least 4 inches and average of 6 inches at a rate of 4 cubic yards per 1,000 square feet, or whatever the current guidance from the University of Florida Institute of Food and Agriculture Sciences (UF/IFAS) provides prior to installing landscaping material.

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<sup>7</sup> See, e.g., Model Florida-Friendly Landscaping™ Contract (2018), [https://ffl.ifas.ufl.edu/materials/Florida\\_Friendly\\_Landscaping\\_Maintenance\\_Contract\\_2018.pdf](https://ffl.ifas.ufl.edu/materials/Florida_Friendly_Landscaping_Maintenance_Contract_2018.pdf) (defining “irrigated landscape area” as: any outdoor area that has a permanent irrigation system).

*Guidance:* Description and justification. Could be subject to the individual County or City's discretion.

Owners shall use compost certified by the U.S. Composting Council where available.

Where certified compost is not available, amended soil shall conform to the following descriptive criteria:

- (1) The amended soil shall have an organic matter content of greater than two (2) percent and a pH between 5.5 and 8.0, and shall be free from noxious weeds and roots, salts, clay lumps, any non-soil materials such as rock, concrete, brick chips, or building materials, foreign matter, and any chemical, biological or radiological contaminants. The amendments shall have dry weight content equal or less than 2.0% nitrogen and 0.8% phosphorus. The quality of amended soil should be in accordance with the current guidance provided by UF/IFAS.

*Guidance:* The local government may alter the amendment quality language based on scientific research or expert recommendations. Local governments may also choose to include specific alternative amendments such as, but not limited to, topsoil scraped and retained from grading, on-site muck soils, or on-site native peat.

## **SECTION \_\_\_-4. - COMPLIANCE AND ENFORCEMENT PROCEDURES**

### **Sec. \_\_\_-4.1. - Enforcing Officer**

A position, known as the [City/County] of \_\_\_\_\_ Enforcing Officer, is hereby established.

*Guidance:* Local governments may choose to identify someone already on staff, such as a code enforcement officer or building inspectors, for the position. Local governments may also choose to provide for a soil amendment provision in an existing building code or water use code. It is most important that the designated individual receive appropriate training.

The [City/County] Manager shall appoint the Enforcing Officer. The Enforcing Officer must have the necessary training and technical knowledge to enable them to effectively carry on the duties of this office. The Enforcing Officer shall inspect all new construction within the jurisdictional boundaries of the [City/County] of \_\_\_\_\_, prior to occupancy, in order to determine the extent of compliance with this Ordinance. The Enforcing Officer may request soil samples, construction of an observation hole, or other measures to verify compliance.

*Guidance:* In some jurisdictions, the enforcing official may be able to undertake these activities as part of the construction approval process. The Enforcing Officer may not enter a site to ensure compliance without the owner's consent, an administrative search warrant, or an inspection warrant issued pursuant to the Florida Statutes. Thus, it would be practical to tie the enforcement of this ordinance to an existing permitting process or an incentive program created by the municipality.<sup>8</sup>

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<sup>8</sup> See Re: Local Gov't Code Enforcement Boards Act—Entry on certain premises by local code inspector without consent or inspection or search warrant authorized, 84-32 Op. Fla. Att'y Gen. (Apr. 2, 1984) <http://www.myfloridalegal.com/ago.nsf/Opinions/486093F9C929D04A85256583006C8F9C> 9 (last visited Nov. 9, 2020); see also CODE PUBLISHING.COM, BAINBRIDGE ISLAND WASH. MUNICIPAL CODE § 1.16, <https://www.codepublishing.com/WA/BainbridgeIsland/html/BainbridgeIsland01/BainbridgeIsland0116.html#:~:text=If%20the%20building%20or%20property,the%20inspection%2C%20and%20request%20entry> (last visited Nov. 9, 2020) (providing further guidance on obtaining entry to private property for inspection).

It shall be unlawful for any person to interfere with, or in any manner hinder, the Enforcing Officer, or any of the Enforcing Officer's assistants, while in the discharge of their duties under the terms of this Ordinance.

**Sec. \_\_\_-4.2. - Public Education**

The [City/County] shall coordinate public education and extension with or through new or existing programs for landscaping or builder professionals and homeowners. Information shall be provided to new homeowners about their compost amended soil and facilitate the continuation of water and nutrient conservation when existing homes are sold.

**Sec. \_\_\_-4.3. - Notice of Violation**

Upon finding any violation of this Ordinance, the Enforcing Officer shall deliver a written notice of the violation of this Ordinance to the property owner. The notice shall direct the property owner to promptly address soil preparation not in compliance with this Ordinance.

The notice shall state the time allowed for properly amending the soil. Should the responsible party neglect or refuse to address the violation within the time stated in the notice, the responsible party shall be penalized as provided in Subsection \_\_\_-4.4 of this Ordinance.

**Sec. \_\_\_-4.4. - Penalties**

Any person who violates any portion of this Ordinance without an exception or variance granted by [City/County] commits a civil infraction and is subject to the penalty provisions of [City/County] Code.

*Guidance: Penalties should be in accordance with this City or County's local requirements.*

**SECTION \_\_\_-5. - OTHER CLAUSES**

**Sec. \_\_\_-5.1. - Conflict with Other Ordinances**

If this Ordinance conflicts with any other Ordinance or requirement of the [City/County] of \_\_\_\_\_, then the provisions of this Ordinance govern. Deviations from this Ordinance for the health, safety, and welfare are subject to the variance procedures as established by this [City/County].

**Sec. \_\_\_-5.2. - Severability**

If any Section or Subsection of this Ordinance is invalidated for any reason, [City/County] may eliminate or modify the invalidated portion in order to correct it. [City/County] shall not eliminate or modify the invalidated portion if doing so will materially alter or negate the Ordinance Goals.

**Sec. \_\_\_-5.3. - Effective Date**

The [City/County] of \_\_\_\_\_ Ordinance for Amending Soil in Urban Landscaping becomes effective upon recommendation by \_\_\_\_\_ and approval by the \_\_\_\_\_.

This Ordinance is effective in [City/County] as of [mm/dd/yyyy].