

LOCAL LAW INTRO. NO. -2009

A Local Law adding a new Article XXVI to Chapter 863 of the Laws of Westchester County establishing regulations for lawn fertilizer application and sale within the County of Westchester.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. Article XXVI of Chapter 863 of the Laws of Westchester County is hereby added to read as follows:

ARTICLE XXVI

**RESTRICTIONS ON THE APPLICATION AND SALE OF
LAWN FERTILIZER WITHIN THE COUNTY OF WESTCHESTER**

- § 863.1301. Definitions.**
- § 863.1302. Regulation of the Use and Application of Lawn Fertilizer.**
- § 863.1303. Exemptions.**
- § 863.1304. Sale of Fertilizer Containing Phosphorus.**
- § 863.1305. Educational Requirement for Home Improvement Contractors.**
- § 863.1306. Public Education Campaign; Program Monitoring.**
- § 863.1307. Enforcement and Penalties.**
- § 863.1308. Reverse Preemption.**
- § 863.1309. Separability.**

§ 863.1301. Definitions.

- (1) “County” means the County of Westchester.
- (2) “Commercial fertilizer” means “any substances containing one or more recognized plant nutrients which is used for its plant nutrient content, and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal or vegetable manures, agricultural liming material, wood ashes, gypsum and other products exempted by regulation of the New York State Commissioner of Agriculture and Markets. Any biosolid-based product which is not subject to regulation as a ‘commercial fertilizer’ by the New York State Department of Agriculture and Markets is not subject to the provisions of this article.”
- (3) “Lawn fertilizer” means “a commercial fertilizer distributed primarily for non-farm use, such as lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries, and such other use as the commissioner may define by regulation. Lawn fertilizer does not include fertilizer products intended primarily for garden and indoor plant application.”
- (4) “Surface water” means “lakes, bays, sounds, ponds, impounding reservoirs, perennial streams and springs, rivers, creeks, estuaries, marshes, inlets, canals, and all other perennial bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private, but shall not include artificial ponds.”

§ 863.1302. Regulation of the Use and Application of Lawn Fertilizer.

- (1) No person shall apply any lawn fertilizer within the County that is labeled as containing more than 0% phosphorus or other compound containing phosphorus, such

as phosphate, except as provided in section 863.1303.

(2) No person shall apply lawn fertilizer between December 1st and April 1st.

(3) No person shall apply lawn fertilizer to any impervious surface including parking lots, roadways, and sidewalks. If such application occurs, the fertilizer must be immediately contained and either legally applied to turf or placed in an appropriate container.

(4) No person shall apply lawn fertilizer to any turf or lawn area on any real property within twenty (20) feet of any surface water, except that this restriction shall not apply where a continuous natural vegetative buffer, at least ten (10) feet wide, separates a turf or lawn area and surface water.

§ 863.1303. Exemptions.

The prohibition against the use of lawn fertilizer under section 863.1302(1) and (4) shall not apply to:

(1) Newly established turf or lawn areas during their first growing season.

(2) Turf or lawn areas that soil tests confirm the need for additional phosphorus application. The lawn fertilizer application shall not contain an amount of phosphorus exceeding the amount and rate of application recommended in the soil test evaluation.

(3) Agricultural uses, vegetable and flower gardens, or application to trees or shrubs.

§ 863.1304. Sale of Fertilizer Containing Phosphorus.

(1) No person located and/or doing business within the County of Westchester shall sell or offer for sale any lawn fertilizer within the County that is labeled as

containing more than 0% phosphorus, or other compound containing phosphorus, such as phosphate, except such fertilizer may be sold for use as provided in section 863.1303.

(2) No person located and/or doing business within the County of Westchester shall display for sale lawn fertilizer containing phosphorus. Signs may be posted advising customers that lawn fertilizer containing phosphorus is available upon request for uses permitted by section 863.1303.

(3) Any person located and/or doing business within the County of Westchester, which sells or offers for sale lawn fertilizer, shall be required, at the location where lawn fertilizers are sold, to post a sign, in the form provided by the Department of Weights and Measures, containing the regulations set forth in this Article and explaining the effects of phosphorus and nitrogen on water quality and Westchester County waters.

§ 863.1305. Educational Requirements for Home Improvement Contractors.

Every person who offers to provide or provides lawn or turf services, including, but not limited to, persons applying for a license to engage in a home improvement business pursuant to Article XVI of this Chapter, or applying for renewal of a license to engage in a home improvement business pursuant to such article, and who offer to provide or provide lawn or turf services in the operation of such home improvement business, shall provide proof of completion of a turf management course approved by the Sealer in consultation with the Commissioner of the Department of Planning and Westchester County Cornell Cooperative Extension. The Sealer, in consultation with the Commissioner of the Department of Planning and Westchester County Cornell Cooperative Extension, may require the participation of such persons at additional

informational seminars and/or courses at reasonable times but no more than once per year in order to ensure that all such persons are informed of developing issues, technologies, and laws which may impact the performance of services by such persons in Westchester County. The Sealer, in consultation with the Commissioner of the Department of Planning, shall have authority to adopt rules and regulations as may be deemed necessary for the administration and enforcement of this paragraph.

§ 863.1306. Public Education Campaign; Program Monitoring.

(1) The County of Westchester shall undertake a multi-faceted public education campaign, including the creation of an interactive webpage, aimed at the reduction of non-point source pollution in Westchester County waterways. Such public education campaign will include the development of best management practices for lawn and garden care, as well as other strategies for the reduction of nutrient pollution caused by human activity, and shall specifically address the impacts of nitrogen and phosphorous on water quality in and around Westchester County.

(2) The County Executive shall cause an evaluation of the effectiveness of the restrictions on fertilizers under this article to be undertaken and shall further cause an evaluation report to be provided to the County Board by December 31, 2015.

§ 863.1307. Enforcement and Penalties.

For the first violation of the provisions of this Article or any rule or regulation adopted pursuant to this Article, a civil penalty not exceeding fifty dollars (\$50.00) shall be imposed. For the second and succeeding violations, a civil penalty not exceeding one hundred fifty dollars (\$150.00) shall be imposed for each single violation. No civil

penalty shall be imposed as provided for herein unless the alleged violator has received notice of the charge against him or her and has had an opportunity to be heard.

§ 863.1308. Reverse preemption.

This chapter shall be null and void on the day that Federal or Statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Westchester. The County Board of Legislators may determine via mere resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions of this section.

§ 863.1309. Separability.

If any section, subsection, sentence, clause, phrase or portion of this local law is for any reason 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 portions hereof.

Section 2. This Local Law shall take effect immediately, provided that subdivisions (2), (3) and (4) of Section 863.1302, Section 863.1303 and Section 863.1307 shall take effect on the sixtieth (60th) day after enactment of this Local Law. Subdivision (3) of Section 863.1304 shall take effect on the one hundred twentieth (120th) day after the enactment of this Local Law. Section 863.1305 shall take effect on the one hundred eightieth (180th) day after the enactment of this Local Law. Subdivision (1) of Section

863.1302 and Subdivisions (1) and (2) of Section 863.1304 shall take effect on January 1, 2011.