

ORDINANCE NO. 2026- _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA AUTHORIZING AN EXTENSION OF TEMPORARY COUNTY-WIDE MORATORIUM FROM THE EFFECTIVE DATE; PROHIBITING THE LAND APPLICATION OF CLASS B BIOSOLIDS EXCEPT EXISTING PERMITTED ACTIVITIES; PROVIDING FOR EXHAUSTION OF ADMINISTRATIVE REMEDIES; AND PROVIDING FOR SEVERABILITY, REPEAL OF CONFLICTING PROVISIONS, RESOLUTION OF CONFLICTING PROVISIONS; AREA ENCOMPASSED AND AN EFFECTIVE DATE.

WHEREAS, as provided in Article VIII, Section 1 of the Florida Constitution and Chapter 125, Florida Statutes, counties have broad home rule powers to enact ordinances, not inconsistent with general or special law, for the purpose of protecting the public health, safety and welfare of the residents of the county; and

WHEREAS, Class B biosolids are solid, semi-solid, or liquid materials resulting from the treatment of domestic waste from sewage treatment facilities that contain nutrients such as phosphorus and nitrogen; and

WHEREAS, Elevated levels of phosphorus and nitrogen have been a point of concern for estuaries and watersheds across the state, as correlations have been observed between the land application of biosolids and elevated levels of phosphorus and nitrogen, algal blooms, and the growth of noxious vegetation; and

WHEREAS, the land application of biosolids has been identified as a potential explanation for toxic algae blooms that occurred in Blue Cypress Lake in 2018 and Lake Washington in 2019¹; and

WHEREAS, Lake Washington provides water supply for the City of Melbourne's potable water utility that supplies drinking water to approximately 170,000 residents in

¹ St. Johns Water Management District Update to the Biosolids Technical Advisory Committee, January 23, 2018. Patterns in Surface Water Phosphorus Concentrations and Biosolids Utilization in the Upper St. Johns River: January 2019 Update.

Melbourne, West Melbourne, Palm Shores, Satellite Beach, Indian Harbour Beach, Indialantic, Melbourne Beach and portions of unincorporated Brevard County; and

WHEREAS, analysis of available ambient water quality data by St. Johns River Water Management District indicates a strong relationship between the cumulative amount of phosphorus applied to land in biosolids and increasing phosphorus concentrations in downstream waters²; and

WHEREAS, analysis by St Johns River Water Management District of available ambient water quality data for watersheds with lower levels of biosolids application do not indicate similar trends of increasing phosphate concentrations³; and

WHEREAS, adding to the present nutrient levels in the St. Johns River Basin may further inflict damage to the local economy as well as the health, safety, and welfare of humans and wildlife in Brevard County and the State of Florida; and

WHEREAS, in 2018 the Department of Environmental Protection created a Biosolids Technical Advisory Committee to evaluate the current management practices and explore opportunities to better protect Florida's water resources and the Committee agreed to a list of recommendations in January 2019; and

WHEREAS, the new biosolids rules ratified by the Legislature in 2021 increase water quality protections but still allow more phosphorus to be land applied per year than the amount of phosphorus anticipated to be removed by the harvest of crops; and

WHEREAS, the Department of Environmental Protection issued Consent Agreement Order in OGC File No. 25-1282 requiring, by July 1, 2027, that biosolids land application rates at all applications zones in the Upper St. John's River watershed

² St. Johns Water Management District Update to the Biosolids Technical Advisory Committee, January 23, 2018. Patterns in Surface Water Phosphorus Concentrations and Biosolids Utilization in the Upper St. Johns River: January 2019 Update.

³ St. Johns Water Management District Update to the Biosolids Technical Advisory Committee, November 28, 2018. Patterns in Surface Water Phosphorus Concentrations and Biosolids Utilization in the Upper St. Johns River.

be compliant with the nutrient management plan land application rates and related requirements under the 2021 biosolids rules; and

WHEREAS, House Bill 1245, effective November 1, 2026, prohibits the land application of Class AA biosolids exceeding the agronomic rate needed for beneficial reuse; and

WHEREAS, Senate Bill 290, prohibits the land application of Class B biosolids by July 1, 2028; and

WHEREAS, the Board of County Commissioners (“Board”) finds that the proper regulation of the land application of Class B biosolids is necessary and appropriate to protect potable water supplies as well as guide the future use, development, and protection of the land and natural resources in Brevard County; and

WHEREAS, the Board has determined that the temporary moratorium on new or expanding biosolids application is needed to protect water quality in Lake Washington, the St. Johns River watershed and surrounding water bodies, from adverse impacts potentially caused by the land application of Class B biosolids; and

WHEREAS, the Board enacted Ordinance 2019-20 imposing a 180-day temporary moratorium on any new Class B biosolids applications on October 8, 2019; and

WHEREAS, Section 403.0855(6), Florida Statutes (2020) allows for the extension of a county ordinance, regulation, resolution, rule, moratorium, or policy, relating to land application of Class B biosolids, and which was adopted prior to November 1, 2019, until the ordinance, regulation, rule, moratorium, or policy is repealed by the county; and

WHEREAS, the Board enacted Ordinance 2020-05 imposing a 180-day extension of the temporary biosolids moratorium on April 7, 2020; and

WHEREAS, the Board enacted Ordinance 2020-18 imposing a 180-day extension of the temporary biosolids moratorium on October 6, 2020; and

WHEREAS, the Board enacted Ordinance 2021-07 imposing a 180-day extension of the temporary biosolids moratorium on March 9, 2021; and

WHEREAS, the Board enacted Ordinance 2021-20 imposing a 180-day extension of the temporary biosolids moratorium on August 24, 2021; and

WHEREAS, the Board enacted Ordinance 2022-04 imposing a 180-day extension of the temporary biosolids moratorium on February 8, 2022; and

WHEREAS, the Board enacted Ordinance 2022-19 imposing a 365-day extension of the temporary biosolids moratorium on August 2, 2022; and

WHEREAS, the Board enacted Ordinance 2023-13 imposing a 365-day extension of the temporary biosolids moratorium on July 11, 2023; and

WHEREAS, the Board enacted Ordinance 2024-11 imposing a 365-day extension of the temporary biosolids moratorium on July 9, 2024; and

WHEREAS, the Board enacted Ordinance 2025-06 imposing a 365-day extension of the temporary biosolids moratorium on May 6, 2025; and

WHEREAS, the Board specifically finds that this extension to the temporary moratorium on the land application of Class B biosolids is necessary and appropriate to protect the public health, safety and welfare of the citizens of Brevard County and shall become effective on and after July 8, 2026.

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

Section 1. Recitals Adopted

Each of the recitals set forth above is hereby adopted and incorporated herein.

Section 2. Enactment Authority.

Article VIII, Section 1 of the Florida Constitution and Chapter 125, Florida Statutes, vest broad home rule powers in counties to enact ordinances, not inconsistent with general or special law, for the purpose of protecting the public health, safety and welfare of the residents of the County. The Board specifically determines that the enactment of this Ordinance is necessary to protect the health, safety and welfare of the residents of Brevard County.

Section 3. Temporary Moratorium.

Beginning on the effective date of this Ordinance, a moratorium is hereby imposed upon all properties within Brevard County on the land application of Class B biosolids, excepting existing permit holders and where determined to be preempted by state law or regulation.

Section 4. Expiration of Temporary Moratorium.

Pursuant to Section 403.855(6), Florida Statutes, as may be amended, the temporary moratorium imposed by Section 3 of this Ordinance may be repealed by adoption of an ordinance or resolution of the Brevard County Board of County Commissioners.

Section 5. Exhaustion of Administrative Remedies.

A property owner claiming that this Ordinance, as applied, constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights shall not pursue such claim in court unless all administrative remedies have been exhausted.

Section 6. Severability.

If any part of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected by such holding and shall remain in full force and effect.

Section 7. Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 8. Resolution of Conflicting Provisions.

In the case of a direct conflict between any provision of this Ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulations, the more restrictive shall apply.

Section 9. Area Encompassed.

This Ordinance shall take effect COUNTYWIDE, within the municipal and unincorporated areas of Brevard County, Florida.

Section 10. Effective Date.

This Ordinance shall be effective on and after July 8, 2026, after adoption by the Board of County Commissioners and filing with the Department of State. A certified copy of the Ordinance shall be filed with the State, within ten days of enactment.

Section 11. Non-Inclusion in Code of Ordinances.

This Ordinance shall not be codified or made a part of the Brevard County Code of Ordinances.

DONE, ORDERED AND ADOPTED in Regular Session, this 5th day of May, 2026.

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Rachel M. Sadoff, Clerk

Thad Altman, Chair

(As approved by the Board on May 5, 2026)