

LOCAL LAW NO. 5-09  
CHAUTAUQUA COUNTY  
(Print 2)

A LOCAL LAW RESTRICTING THE APPLICATION AND SALE OF  
LAWN FERTILIZER WITHIN THE COUNTY OF CHAUTAUQUA

BE IT ENACTED, by the County Legislature of the County of Chautauqua, New York,  
as follows:

- §1. Definitions.
- §2. Regulation of the Use and Application of Lawn Fertilizer.
- §3. Exemptions.
- §4. Sale of Fertilizer Containing Phosphorus.
- §5. Public Education Campaign; Program Monitoring.
- §6. Enforcement and Penalties.
- §7. Reverse Preemption.
- §8. Separability.

§1. Definitions.

- (1) “County” means the County of Chautauqua.
- (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, 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, ponds, impounding reservoirs, perennial streams and springs, rivers, creeks, marshes, canals, and all other perennial bodies of surface water, natural or artificial, public or private, but shall not include artificial ponds.”

§2. 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 3.
- (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.

§3. Exemptions.

The prohibition against the use of lawn fertilizer under Section 2(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, green houses and nurseries, or application to trees or shrubs.

§4. Sale of Fertilizer Containing Phosphorus.

(1) No person located and/or doing business within the County of Chautauqua 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 3.

(2) No person located and/or doing business within the County of Chautauqua 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 3.

(3) Any person located and/or doing business within the County of Chautauqua, 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 Health, containing the regulations set forth in this Article and explaining the effects of phosphorus and nitrogen on water quality and Chautauqua County waters.

§5. Public Education Campaign; Program Monitoring.

(1) The County of Chautauqua 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 Chautauqua 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 Chautauqua County. The education campaign shall be designed to include lawn care contractors who provide lawn fertilizing services.

(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 Legislature by December 31, 2015.

§6. 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.

§7. 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 Chautauqua. The County Legislature 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.

§8. Separability.

(1) 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.

(2) This Local Law shall take effect immediately, provided that subdivisions (2), (3) and (4) of Section 2, Section 3 and Section 6 shall take effect on the sixtieth (60th) day after enactment of this Local Law. Subdivision (3) of Section 4 shall take effect on the one hundred twentieth (120th) day after the enactment of this Local Law. Subdivision (1) of Section 2 and Subdivisions (1) and (2) of Section 4 shall take effect on January 1, 2011.

Mailed: 8/14/09

Amended in Leg. 8/26/09

Adopted by Leg. 9/23/09

Public Hearing: 10/13/09

Mailed to State: 10/26/09

Adopted as LL 5-09