ORDINANCE NO. 2024-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA AUTHORIZING AN EXTENSION OF THE TEMPORARY MORATORIUM FOR AN ADDITIONAL 1 YEAR, OR UNTIL A COMPREHENSIVE REVIEW OF THE IMPACT ON THE COUNTY'S ECOSYSTEM IS COMPLETED, WITHIN THE UNINCORPORATED AREAS OF INDIAN RIVER COUNTY PROHIBITING LAND APPLICATION ACTIVITIES OF CLASS B BIOSOLIDS; PROVIDING FOR ADDITIONAL STUDY AND POSSIBLE REGULATION OF CLASS B BIOSOLIDS APPLICATION ACTIVITIES; PROVIDING FOR EXHAUSTION OF ADMINISTRATIVE REMEDIES; AND PROVIDING FOR SEVERABILITY, REPEAL OF CONFLICTING PROVISIONS, 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, the Indian River County Board of County Commissioners ("Board") specifically determines that the enactment of this ordinance is necessary to protect the health, safety and welfare of the residents of Indian River County; and

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

WHEREAS, phosphorus and nitrogen pollution have been a long term problem for surrounding estuaries and watersheds, as phosphorus and nitrogen promote algal blooms, fuel growth of noxious vegetation, and replace the unique natural ecosystem with one which is undesirable to humans and native wildlife; and

WHEREAS, the Board finds that the proper regulation of the land application of Class B biosolids is necessary and appropriate to guide the future use, development, and protection of the land and natural resources in the unincorporated areas of Indian River County and within drainage areas potentially affecting conservation lands and the Indian River Lagoon; and

WHEREAS, the land application activities of Class B biosolids were being conducted on property in Indian River County, in areas near waterbodies such as Blue Cypress Lake; and

WHEREAS, Blue Cypress Lake, the first lake along the St. Johns River, is classified by the Florida Department of Environmental Protection as a Class I surface water with a designated use for potable water supplies; and

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WHEREAS, in 2018 there were *Mycrosystis* blooms at Blue Cypress Lake; and

WHEREAS, Jones Edmunds Associates, after analyzing historic St. Johns River Water Management District data, identified a relationship between the increase in land applied biosolids in the Blue Cypress Lake watershed and an increase in phosphorus levels in Blue Cypress Lake; and

WHEREAS, on November 29, 2018 at the Florida Department of Environmental Protection Biosolids Technical Advisory Committee, the St. Johns River Water Management District staff presented information that showed a clear correlation of increased phosphorus levels where land applied biosolids were spread at FDEP permitted sites within the Upper St. Johns River basin; and

WHEREAS, the land application of biosolids has been restricted in neighboring counties and ecosystems to the south, such as the St. Lucie River watershed and the Lake Okeechobee watershed, leaving Blue Cypress Lake and the St. Johns River watershed as the cheapest alternative for the disposal and land application of Class B biosolids generated in South Florida; and

WHEREAS, in 2017, 73% of all the land applied Class B biosolids were spread in Indian River, Osceola and Brevard Counties; and

WHEREAS, adding to the present nutrient loading in the St. Johns River Basin may further inflict damage to the health, safety, and welfare of humans and wildlife in Indian River County and the State of Florida; and

WHEREAS, Indian River County has existing zoning regulations pertaining to the practice of “sludge spreading” as provided in Chapter 971.08(10) of the Indian River County Code with codified criteria for sludge spreading such as designated setbacks, reporting requirements, and the need for obtaining approvals; and

WHEREAS, however, the existing Indian River County requirements do not provide for regulatory setbacks or for mandatory distances of Class B biosolids from waterbodies; and

WHEREAS, on July 17, 2018, the Board determined that a temporary moratorium was needed to study the effects that the disposal and land application of Class B biosolids has on the water resources of Indian River County and to protect water quality in the St. Johns River watershed, Blue Cypress Lake, and surrounding water bodies, from adverse impacts potentially caused by the land application of Class B biosolids; and

WHEREAS, the Board has approved ordinances extending the temporary moratorium on land application of Class B biosolids activities, which moratorium will expire on January 1, 2025; and

WHEREAS, per section 403.0855, Florida Statutes, Indian River County is authorized to enforce and extend such moratorium; and

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WHEREAS, the purpose of this ordinance is to extend the temporary moratorium on land application of Class B biosolids activities, as defined herein, for an additional 1 year, beginning January 1, 2025, except where such regulation of such activities is determined to be preempted to the state, for a period of time reasonably necessary for Indian River County to coordinate with the Florida Department of Environmental Protection and investigate the impacts of land application activities upon the public health, safety, and welfare, to promulgate reasonable regulations relating to such activities if deemed advisable by the Board, and to assess their impact to Indian River County;

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

Section 1. Recitals Adopted

Each of the recitals set forth above is hereby adopted, re-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 Indian River County.

Section 3. Temporary Moratorium.

Beginning on the effective date of this ordinance and continuing for a period of 1 year, or less if provided by an ordinance by the Indian River County Board of County Commissioners, a moratorium is hereby imposed and extended upon all properties within the unincorporated areas of Indian River County involved in land application of Class B biosolids, beginning January 1, 2025, except where determined to be inconsistent with or preempted by state law or regulation or for testing per section 5 below as approved by the Florida Department of Environmental Protection. In addition, the moratorium is hereby imposed and extended upon all transportation activities by any person or entity that is engaged in the transportation of Class B biosolids for land application within Indian River County, except where determined to be inconsistent with or preempted by state law or regulation. All currently approved septage/grease haulers as well as Indian River County contracted haulers of domestic wastewater sludge for treatment at the Indian River County Residual Dewatering Facility and disposal at the Indian River County landfill are not transporting Class B biosolids for land application purposes and thus are not affected by this ordinance or moratorium.

Section 4. Expiration of Temporary Moratorium.

The temporary moratorium imposed by Section 3 of this ordinance expires 1 year from the moratorium effective date set forth in this ordinance, January 1, 2026. The moratorium may be extended or terminated early by adoption of an ordinance or resolution of the Indian River County Board of County Commissioners.

Section 5. Study of Class B Biosolids.

The Indian River County Board of County Commissioners directs the County Administrator to continue to coordinate with the Florida Department of Environmental Protection and the St. Johns River Water Management District and to continue to study in depth and report findings of and any recommendations concerning Class B biosolids land application activities and its potential adverse effect within 1 year after the effective date as set forth in this ordinance.

Section 6. 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 he or she has first exhausted administrative remedies.

Section 7. 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 8. Conflict.

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

Section 9. Effective Date. This ordinance shall become effective upon adoption by the Board of County Commissioners and filing with the Department of State.

This ordinance was advertised in the Indian River Press Journal on the 19th day of November, 2024, for a public hearing to be held on the 17th day of December, 2024, at which time it was moved for adoption by Commissioner _____, seconded by Commissioner _____, and adopted. The vote on this ordinance was as follows:

Chairman Joseph E. Flescher	_____
Vice Chairman Deryl Loar	_____
Commissioner Susan Adams	_____
Commissioner Joseph H. Earman	_____
Commissioner Laura Moss	_____

The Chairman thereupon declared the Ordinance duly passed and adopted this 17th day of December, 2024 with an effective date of January 1, 2025.

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BOARD OF COUNTY OMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

By: _____
Joseph E. Flescher, Chairman

ATTEST: Ryan L. Butler, Clerk of
Circuit Court and Comptroller

By: _____
Deputy Clerk

By: _____
John A. Titkanich. Jr.
County Administrator

Approved as to form and legal sufficiency:

By: _____
Christopher A. Hicks
Assistant County Attorney

This Ordinance was filed with the Department of State on the ____ day of _____, 2024.