

ORDINANCE NO. 19-_____

AN ORDINANCE OF THE CITY OF BOYNTON BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS, CHAPTER 4, SITE DEVELOPMENT STANDARDS, ARTICLE I, ENVIRONMENTAL PROTECTION STANDARDS AND CHAPTER 1, ARTICLE II, DEFINITIONS; ESTABLISHING FERTILIZER USE REGULATIONS AND ASSOCIATED DEFINITIONS PURSUANT TO THE REQUIREMENTS OF FLORIDA STATUTES; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 303(d) of the federal Clean Water Act and the resulting Florida Impaired Waters Rule (Chapter 62-303, Florida Administrative Code [F.A.C.]), the Florida Department of Environmental Protection (FDEP) has classified specific water bodies in Palm Beach County as “impaired” as a result of the presence of excessive nutrients; and

WHEREAS, Florida Statute, Section 403.9337 requires local governments located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to Florida Statute, Section 403.067, adopt an ordinance for Florida-Friendly™ fertilizer use on urban landscapes; and

WHEREAS, the FDEP on the 8th day of September 2016, issued its Palm Beach County Municipal Separate Storm Sewer System Permit No. FLS 000018-004 (hereinafter referred to as the “MS4 Permit”) to forty (40) governmental entities including the City of Boynton Beach; and

WHEREAS, the MS4 permit requires local governments within the watershed of a nutrient impaired water body to adopt FDEP's Model Ordinance for Florida Friendly Fertilizer Use on Urban Landscapes or an Ordinance that includes all the requirements set forth in the Model Ordinance; and

WHEREAS, surface water runoff and base flow runoff leaves residential neighborhoods, commercial centers, industrial areas, and other lands of Palm Beach County and enters into natural and artificial stormwater and drainage conveyances and natural water bodies in Palm Beach County; and

WHEREAS, phosphorus and nitrogen, the primary nutrients associated with the degradation of surface water, are commonly the primary components of fertilizer for turf and landscape application; and

WHEREAS, the quality of streams, lakes, and wetlands is important to environmental, economic, and recreational prosperity and to the health, safety, and welfare of the residents of Palm Beach County; and

WHEREAS, algae blooms and accelerated growth of aquatic weeds in Palm Beach County's water bodies have heightened community concerns about water quality and eutrophication of surrounding waters; and

WHEREAS, it is generally recognized that Eastern Palm Beach County soils naturally have adequate phosphorus content for most vegetative needs and that additional phosphorus is therefore only occasionally needed to create or maintain a vibrant landscape; and

WHEREAS, it has been recognized that proper application of slow-release nitrogen sources is more efficiently used by plants and less likely to leach or runoff; and

WHEREAS, this Ordinance is part of a regulatory program to address nonpoint sources of nutrient pollution which is scientifically based, and economically and technically feasible; and

WHEREAS, in the process of adoption of this Ordinance, the City of Boynton Beach has considered scientific information, including input from the Department of Environmental Protection, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

SECTION 1. The foregoing whereas clauses are true and correct and are now ratified and confirmed by the City Commission.

SECTION 2. Chapter 1, Article II of the Land Development Regulations entitled “Definitions” is hereby amended as follows:

Definitions (LDR, Chapter 1, Article II):

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APPLICATION or APPLY - The actual physical deposition of fertilizer to turf or landscape plants.

APPLICATOR - Any person who applies fertilizer on turf and/or landscape plants in the City of Boynton Beach.

APPROVED TEST - A soil test from the University of Florida, government, or other commercial licensed laboratory that regularly performs soil testing and recommendations.

BEST MANAGEMENT PRACTICES (BMPs) - Turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined

to be the most effective and practical site-specific means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

COMMERCIAL FERTILIZER APPLICATOR - Except as provided in section 482.1562(9), Florida Statutes (F.S.), any person who applies fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicators.

COMMUNITY STANDARDS OFFICER, OFFICIAL, or INSPECTOR - Any designated employee or agent of the City of Boynton Beach whose duty it is to enforce codes and ordinances enacted by City of Boynton Beach.

FERTILIZER - Any substance or mixture of substances that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.

FERTILIZING or FERTILIZATION - The act of applying fertilizer to turf, specialized turf, or landscape plants.

INSTITUTIONAL APPLICATOR - Any person, other than a private, non-commercial or a Commercial Applicator (unless such definitions also apply under the circumstances), that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional Applicators shall include, but shall not be limited to, owners, managers, or employees of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.

LANDSCAPE PLANT - Any native or non-native tree, shrub, or groundcover (excluding turf).

PASTURE - Land managed for livestock grazing.

PROHIBITED APPLICATION PERIOD - The time period during which a Flood Watch or Warning, a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of City of Boynton Beach, issued by the National Weather Service, or if heavy rain (2 inches or more within a twenty-four (24) hour period) is likely.

SATURATED SOIL - A soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this Ordinance, soils shall be considered saturated if standing water is present or the pressure of a person standing on the soil causes the release of free water.

SLOW-RELEASE, CONTROLLED RELEASE, TIMED RELEASE, SLOWLY-AVAILABLE, or WATER INSOLUBLE NITROGEN - Nitrogen in a form which delays its availability for vegetative uptake and use after application, or which extends its availability to the vegetation longer than a reference rapid or quick release product.

TURF, SOD, or LAWN - An area of grass-covered soil held together by the roots of the grass.

URBAN LANDSCAPE - pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or landscape plants. For the purposes of this section, agriculture has the same meaning as provided in section 570.02, F.S.

SECTION 3. FINDINGS:

As a result of the Florida Department of Environmental Protection's determination that certain water bodies within Palm Beach County are impaired for excessive nutrient levels, the City of Boynton Beach finds that the best management practices contained in the most recent edition of the *"Florida-Friendly Best Management Practices for Protection*

of Water Resources by the Green Industries”, are required and are necessary to implement within the City as set forth herein.

SECTION 4. PURPOSE AND INTENT:

This Ordinance regulates the proper use of fertilizers by any applicator; requires proper training of commercial and institutional fertilizer applicators; establishes training and licensing requirements; establishes a prohibited application period; and specifies allowable fertilizer application rates and methods, fertilizer-free zones, and exemptions. This Ordinance requires the use of Best Management Practices to minimize negative environmental effects associated with excessive nutrients in our water bodies. These environmental effects have been observed in and on Palm Beach County's natural and constructed stormwater conveyances, rivers, creeks, canals, lakes, estuaries and other water bodies. Collectively, these water bodies are an asset important to the environmental, recreational, cultural and economic well-being of Palm Beach County residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, is anticipated to help improve and maintain water and habitat quality.

SECTION 5. APPLICABILITY:

This Ordinance shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer to urban landscapes within the City of Boynton Beach, unless such application is specifically exempted by Section 11 of this Ordinance. This Ordinance shall be prospective only, and shall not impair any existing contracts.

SECTION 6. TIMING OF FERTILIZER APPLICATIONS.

- A. No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the Prohibited Application Period or to saturated soils.
- B. Fertilizer containing nitrogen and/or phosphorus shall not be applied before seeding or sodding a site, and shall not be applied for the first thirty (30) days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation (wildfire, etc.), or in accordance with the Stormwater Pollution Prevent Plan for that site.

SECTION 7. FERTILIZER FREE ZONES:

Fertilizer shall not be applied within ten (10) feet, or three (3) feet if a deflector shield or drop spreader is used, of any pond, stream, water body, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340), F.A.C. or from the top of a seawall or lake bulkhead. Newly planted turf or landscape plants may be fertilized in this zone only for a sixty (60) day period beginning thirty (30) days after planting, if needed, to allow the vegetation to become well established. Caution shall be used to prevent direct deposition of fertilizer into the water.

SECTION 8. FERTILIZER CONTENT AND APPLICATION RATES:

- A. Fertilizers applied to turf within the City of Boynton Beach shall be applied in accordance with requirements and directions provided by Rule 5E-1.003(2), F.A.C., "*Labeling Requirements for Urban Turf Fertilizers*". Under Rule 5E-1.003(2), F.A.C., required application rate and frequency maximums, which vary by plant and turf types, are found on the labeled fertilizer bag or container.

- B. Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in subsection A. above for turf, or in UF/IFAS recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an approved test.
- C. Fertilizer used for sports turf at golf courses shall be applied in accordance with the recommendations in “Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses”, published by the Florida Department of Environmental Protection, dated January 2007, as may be amended. Fertilizer used at park or athletic fields shall be applied in accordance with Rule 5E-1.003(2), F.A.C.

SECTION 9. FERTILIZER APPLICATION PRACTICES:

- A. As required in Section 7 of this Ordinance, spreader deflector shields shall be used when fertilizing via rotary (broadcast) spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from all impervious surfaces, fertilizer-free zones and water bodies, including wetlands. Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable.
- B. Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or any other legal site, or returned to the original or other appropriate container.
- C. In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

D. Property owners and managers are encouraged to use an Integrated Pest Management (IPM) strategy as currently recommended by the University of Florida Cooperative Extension Service publications and to utilize the plant selection and landscape design standards of the UF/IFAS Florida-Friendly Landscape Program.

SECTION 10. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER:

In no case shall grass clippings, vegetative material, and/or vegetative debris intentionally be washed, swept, blown, or otherwise deposited onto or into stormwater drains, drainage ditches or conveyances, water bodies, wetlands, sidewalks or roadways. Any material that is accidentally deposited shall be immediately removed to the maximum extent practicable and disposed of in accordance with applicable codes and regulations.

SECTION 11. EXEMPTIONS:

The provisions set forth above in this Ordinance shall not apply to:

(a) bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14 F.S.;

(b) other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock;

(c) any lands used for bona fide scientific research, including, but not limited to, research on the effects of fertilizer use on urban stormwater, water quality, agronomics, or horticulture.

SECTION 12. TRAINING:

A. All commercial and institutional applicators of fertilizer within the City of Boynton Beach shall abide by and successfully complete the six-hour training

program in the *“Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries”* offered by the Florida Department of Environmental Protection through the University of Florida/Palm Beach County Cooperative Extension Service “Florida-Friendly Landscapes” program or an approved equivalent program.

- B. Non-commercial and non-institutional applicators not otherwise required to be certified, such as private citizens on their own residential property, are encouraged to follow the recommendations of the University of Florida/IFAS “Florida-Friendly Landscape Program” and label instructions when applying fertilizers.

SECTION 13. LICENSING OF COMMERCIAL APPLICATORS:

- A. All businesses applying fertilizer to turf or landscape plants (including, but not limited to, residential lawns, golf courses, commercial / industrial properties, and multi-family and condominium properties) must ensure that the business owner or his/her designee holds the appropriate *“Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries”* training certificate prior to the business owner obtaining a Local Business Tax Certificate. Owners for any category of occupation which may apply any fertilizer to Turf and/or Landscape Plants shall provide proof of completion of the program to the City of Boynton Beach Business Tax Office. It is the responsibility of the business owner to maintain the *“Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries”* certificate to receive their Business Tax Receipt annually.

- B. After March 31, 2019, all commercial applicators of fertilizer within the City of Boynton Beach shall have and carry in their possession at all times when applying fertilizer, evidence of certification by the Florida Department of Agriculture and Consumer Services as a Commercial Fertilizer Applicator per Rule 5E-14.117(18), F.A.C.
- C. All businesses applying fertilizer to turf and/or landscape plants (including, but not limited to, residential lawns, golf courses, commercial / industrial properties and multi-family and condominium properties) must ensure that at least one (1) employee has an appropriate “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” training certificate prior to the business owner obtaining a business tax certificate.

SECTION 14. ENFORCEMENT:

The provisions of this Ordinance shall be enforced by (1) the City of Boynton Beach Code Enforcement Board or Special Master pursuant to the authority granted by Section 162.01 et. seq., F.S., as may be amended and the City of Boynton Beach Code of Ordinances, as may be amended, or (2) the City of Boynton Beach through its authority to enjoin and restrain any person violating the City of Boynton Beach Code of Ordinances through the prosecution of violations in the name of the State of Florida pursuant to the authority granted by Section 125.69, F.S., as may be amended. The City of Boynton Beach may also pursue any other enforcement remedies available at law or in equity.

SECTION 15. PENALTIES:

- A. Failure to comply with the requirement of this Ordinance shall constitute a violation of this Ordinance and shall be punishable by a fine not to exceed \$250

per incident for the violation or a fine not to exceed \$500 per incident for a repeat violation, and, in addition, may include all costs of repairs and remediation including administrative costs. Each new day the violation exists it is considered a separate incident.

- B. In determining the amount of fines that should be imposed, the Code Enforcement Board or Special Master shall consider the following factors: (1) the gravity of the violation; (2) Any actions taken by the violator to correct the violation; and (3) Any previous violations committed by the violator. If determined the violation is irreparable or irreversible in nature, a fine not to exceed \$15,000 per violation may be imposed.

SECTION 16. APPEAL:

An aggrieved party, including the City of Boynton Beach, may appeal a final administrative order of the Code Enforcement Board or Special Master to the circuit court. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the Board or Special Master. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

SECTION 17.

Each and every other provision of the Code of Ordinances not herein specifically amended, shall remain in full force and effect as originally adopted.

SECTION 18.

All laws and ordinances applying to the City of Boynton Beach in conflict with any provisions of this ordinance are hereby repealed.

SECTION 19.

Should any section or provision of this Ordinance or any portion thereof be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the remainder of the Ordinance.

SECTION 20.

Authority is hereby given to codify this Ordinance.

SECTION 21.

This Ordinance shall become effective immediately upon approval on second reading.

FIRST READING this ____ day of _____, 2019.

SECOND, FINAL READING AND PASSAGE this ____ day of _____, 2019.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor –	_____	_____
Vice Mayor –	_____	_____
Commissioner –	_____	_____
Commissioner –	_____	_____
Commissioner –	_____	_____

ATTEST:

Judith A. Pyle, CMC

City Clerk

(Corporate Seal)