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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

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

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

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

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

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

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

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

52 **WHEREAS**, as a result of the Florida Department of Environmental Protection’s
53 determination that certain water bodies within Palm Beach County are impaired for
54 excessive nutrient levels, the City of Boynton Beach finds that the best management
55 practices contained in the most recent edition of the *“Florida-Friendly Best
56 Management Practices for Protection of Water Resources by the Green Industries”*,
57 are required and are necessary to implement within the City as set forth herein; and

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

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

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

66 **SECTION 2.** Chapter 4 of the Land Development Regulations shall be amended by
67 creating a new Article XII entitled “Fertilizer Use Regulations” as follows:

68

69 **ARTICLE XII. FERTILIZER USE REGULATIONS**

70 **Sec. 1. General.**

71 A. This article shall be known and may be cited as “Fertilizer Use Regulations.”

72 B. Purpose and Intent. This Ordinance regulates the proper use of fertilizers by
73 any applicator; requires proper training of commercial and institutional fertilizer
74 applicators; establishes training and licensing requirements; establishes a

75 prohibited application period; and specifies allowable fertilizer application rates
76 and methods, fertilizer-free zones, and exemptions. This Ordinance requires
77 the use of Best Management Practices to minimize negative environmental
78 effects associated with excessive nutrients in our water bodies. These
79 environmental effects have been observed in and on Palm Beach County's
80 natural and constructed stormwater conveyances, rivers, creeks, canals, lakes,
81 estuaries and other water bodies. Collectively, these water bodies are an asset
82 important to the environmental, recreational, cultural and economic well-being
83 of Palm Beach County residents and the health of the public. Overgrowth of
84 algae and vegetation hinder the effectiveness of flood attenuation provided by
85 natural and constructed stormwater conveyances. Regulation of nutrients,
86 including both phosphorus and nitrogen contained in fertilizer, is anticipated to
87 help improve and maintain water and habitat quality.

88 **Sec. 2. Definitions.**

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

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

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

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

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

111 **COMMERCIAL FERTILIZER APPLICATOR** - Except as provided in section
112 482.1562(9), Florida Statutes (F.S.), any person who applies fertilizer for
113 payment or other consideration to property not owned by the person or firm
114 applying the fertilizer or the employer of the applicators.

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

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

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

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

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

123 **PASTURE** - Land managed for livestock grazing.

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

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

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

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

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

144

145 **Sec. 3. Applicability.**

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

151 **Sec. 4. Timing of Fertilizer Applications.**

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

160 **Sec. 5. Fertilizer Free Zones.**

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

167 vegetation to become well established. Caution shall be used to prevent direct
168 deposition of fertilizer into the water.

169 **Sec. 6. Fertilizer Content and Application Rates.**

170 A. Fertilizers applied to turf within the City of Boynton Beach shall be applied in
171 accordance with requirements and directions provided by Rule 5E-1.003(2),
172 F.A.C., “Labeling Requirements for Urban Turf Fertilizers”. Under Rule 5E-
173 1.003(2), F.A.C., required application rate and frequency maximums, which
174 vary by plant and turf types, are found on the labeled fertilizer bag or
175 container.

176 B. Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape
177 plants except as provided in subsection A. above for turf, or in UF/IFAS
178 recommendations for landscape plants, vegetable gardens, and fruit trees
179 and shrubs, unless a soil or tissue deficiency has been verified by an
180 approved test.

181 C. Fertilizer used for sports turf at golf courses shall be applied in accordance
182 with the recommendations in “Best Management Practices for the
183 Enhancement of Environmental Quality on Florida Golf Courses”, published
184 by the Florida Department of Environmental Protection, dated January 2007,
185 as may be amended. Fertilizer used at park or athletic fields shall be applied
186 in accordance with Rule 5E-1.003(2), F.A.C.

187 **Sec. 7. Fertilizer Application Practices.**

188 A. As required in Section 7 of this Ordinance, spreader deflector shields shall
189 be used when fertilizing via rotary (broadcast) spreaders. Deflectors must

190 be positioned such that fertilizer granules are deflected away from all
191 impervious surfaces, fertilizer-free zones and water bodies, including
192 wetlands. Any fertilizer applied, spilled, or deposited, either intentionally or
193 accidentally, on any impervious surface shall be immediately and completely
194 removed to the greatest extent practicable.

195 B. Fertilizer released on an impervious surface must be immediately contained
196 and either legally applied to turf or any other legal site, or returned to the
197 original or other appropriate container.

198 C. In no case shall fertilizer be washed, swept, or blown off impervious surfaces
199 into stormwater drains, ditches, conveyances, or water bodies.

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

205
206 **Sec. 8. Management of Grass Clippings And Vegetative Matter.**

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

213 **Sec. 9. Exemptions.**

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

215 (a) bona fide farm operations as defined in the Florida Right to Farm Act, Section

216 823.14 F.S.;

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

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

222 **Sec. 10. Training.**

223 A. All commercial and institutional applicators of fertilizer within the City of
224 Boynton Beach shall abide by and successfully complete the six-hour
225 training program in the “Florida-Friendly Best Management Practices for
226 Protection of Water Resources by the Green Industries” offered by the
227 Florida Department of Environmental Protection through the University of
228 Florida/Palm Beach County Cooperative Extension Service “Florida-Friendly
229 Landscapes” program or an approved equivalent program.

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

235 **Sec. 11. Licensing Of Commercial Applicators.**

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

249 B. After March 31, 2019, all commercial applicators of fertilizer within the City
250 of Boynton Beach shall have and carry in their possession at all times when
251 applying fertilizer, evidence of certification by the Florida Department of
252 Agriculture and Consumer Services as a Commercial Fertilizer Applicator
253 per Rule 5E-14.117(18), F.A.C.

254 C. All businesses applying fertilizer to turf and/or landscape plants (including,
255 but not limited to, residential lawns, golf courses, commercial / industrial
256 properties and multi-family and condominium properties) must ensure that
257 at least one (1) employee has an appropriate “Florida-Friendly Best
258 Management Practices for Protection of Water Resources by the Green

259 Industries” training certificate prior to the business owner obtaining a
260 business tax certificate.

261 **Sec. 12. Enforcement.**

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

271 **Sec. 13. Penalties.**

272 A. Failure to comply with the requirement of this Ordinance shall constitute a
273 violation of this Ordinance and shall be punishable by a fine not to exceed
274 \$250 per incident for the violation or a fine not to exceed \$500 per incident for
275 a repeat violation, and, in addition, may include all costs of repairs and
276 remediation including administrative costs. Each new day the violation exists
277 it is considered a separate incident.

278 B. In determining the amount of fines that should be imposed, the Code
279 Enforcement Board or Special Master shall consider the following factors: (1)
280 the gravity of the violation; (2) Any actions taken by the violator to correct the
281 violation; and (3) Any previous violations committed by the violator. If

282 determined the violation is irreparable or irreversible in nature, a fine not to
283 exceed \$15,000 per violation may be imposed.

284 **Sec. 14. Appeal.**

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

291 **SECTION 3.**

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

294 **SECTION 4.**

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

297

298 **SECTION 5.**

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

302 **SECTION 6.**

303 Authority is hereby given to codify this Ordinance.

304

305 **SECTION 7.**

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

308 FIRST READING this _____ day of _____, 2019.

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

310

311 CITY OF BOYNTON BEACH, FLORIDA

312

313 YES NO

314

315 Mayor – Steven B. Grant _____

316

317 Vice Mayor – Justin Katz _____

318

319 Commissioner – Mack McCray _____

320

321 Commissioner – Christina L. Romelus _____

322

323 Commissioner – Ty Penserga _____

324

325 ATTEST:

326

327

328

329 _____

330 Queenester Nieves

331 Deputy City Clerk

332

333

334 (Corporate Seal)