

## **ORDINANCE NO. O-5-18**

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES, FLORIDA, AMENDING CHAPTER 78. VEGETATION. OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH SHORES AT ARTICLE III. LANDSCAPING. BY CREATING AN ENTIRELY NEW DIVISION 3 ENTITLED FLORIDA-FRIENDLY FERTILIZER USE; PROVIDING FOR DEFINITIONS; PROVIDING FOR FINDINGS; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR APPLICABILITY; PROVIDING FOR TIMING OF FERTILIZER APPLICATIONS; PROVIDING FOR FERTILIZER FREE ZONES; PROVIDING FOR FERTILIZER CONTENT AND APPLICATION RATES; PROVIDING FOR FERTILIZER APPLICATION PRACTICES; PROVIDING FOR MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER; PROVIDING FOR EXEMPTIONS; PROVIDING FOR TRAINING; PROVIDING FOR LICENSING OF COMMERCIAL APPLICATORS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR APPEAL; PROVIDING THAT EACH AND EVERY OTHER SECTION AND SUBSECTION OF CHAPTER 78. VEGETATION. SHALL REMAIN IN FULL FORCE AND EFFECT AS PREVIOUSLY ENACTED; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**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), 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, to adopt an ordinance for Florida-Friendly™ fertilizer use on urban landscapes; and

**WHEREAS**, the FDEP on September 8, 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 Town of Palm Beach Shores ("Town"); 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 Town Commission has considered scientific information, including input from the FDEP, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences; and



**WHEREAS**, the Town Commission has determined that such amendments to the Town's Code are in the best interests of the citizens of the Town of Palm Beach Shores.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES, FLORIDA, THAT:**

**Section 1:** Chapter 78. VEGETATION, of the Code of Ordinances of the Town of Palm Beach Shores is hereby amended at Article III. Landscaping. to create an entirely new Division 3 entitled Florida-Friendly Fertilizer Use to provide new definitions and regulations for fertilizer use within the Town; providing that Chapter 78, Article III, Division 3 shall hereafter read as follows:

**DIVISION 3. – FLORIDA-FRIENDLY FERTILIZER USE**

**Sec. 78-81. - Title.**

This Ordinance shall be known as the Florida-Friendly Fertilizer Use Ordinance.

**Sec. 78-82. - Definitions.**

The following terms shall have the meanings set forth below unless otherwise indicated:

Application or Apply means the actual physical deposition of fertilizer to turf or landscape plants.

Applicator means any person who applies fertilizer on turf and/or landscape plants in the Town.

Approved Test means a soil test from the University of Florida, government, or other commercial licensed laboratory that regularly performs soil testing and recommendations.

Best Management Practices means 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.

Code Compliance Officer, Official, or Inspector means any designated employee or agent of the Town whose duty it is to enforce codes and ordinances enacted by the Town.

Commercial Fertilizer Applicator, except as provided in section 482.1562(9), F.S., means 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.

Fertilizing or Fertilization means the act of applying fertilizer to turf, specialized turf, or landscape plants.

Fertilizer means 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.

Institutional Applicator means 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 means any native or non-native tree, shrub, or groundcover (excluding turf).

Pasture means land managed for livestock grazing.

Person means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.

Prohibited Application Period means 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 the Town, 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 means 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 means 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 means an area of grass-covered soil held together by the roots of the grass.

Urban Landscape means 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.

**Sec. 78-83. - 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 Town 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 in this Ordinance.

**Sec. 78-84. – 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.

**Sec. 78-85. – 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 area of the Town, unless such application is specifically exempted by Section 78-90 of this Ordinance. This Ordinance shall be prospective only, and shall not impair any existing contracts.

**Sec. 78-86. – 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.

**Sec. 78-87. – 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), Florida Administrative Code 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.

**Sec. 78-87. – Fertilizer Content and Application Rates.**

- (a) Fertilizers applied to turf within the Town shall be applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*. Under Rule 5E-1.003(2), Florida Administrative Code, 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 section (a) above for turf, or in University of Florida Institute of Food and Agricultural



Sciences 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), Florida Administrative Code.

#### **Sec. 78-88. – Fertilizer Application Practices.**

(a) As required in Section 78-87 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 strategy as currently recommended by the University of Florida Cooperative Extension Service publications.

#### **Sec. 78-89. – Management of Grass Clippings and Vegetative Matter.**

In no case shall grass clippings, vegetative material, and/or vegetative debris intentionally be washed, swept, or blown on to or into stormwater drains, ditches, conveyances, water bodies, wetlands, sidewalks or roadways.

#### **Sec. 78-90. – 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.

#### **Sec. 78-91. – Training.**

(a) All commercial and institutional applicators of fertilizer within the Town of Palm Beach Shores 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 Institute of Food and Agricultural Sciences “Florida-Friendly Landscape Program” and label instructions when applying fertilizers.

#### **Sec. 78-92. – Licensing of Commercial Applicators.**

(a) All businesses applying fertilizer to turf or landscape plants (including, but not limited to, residential lawns, golf courses, commercial 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 Business Tax Receipt. 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 Town Hall as part of their Business Tax Receipt application or renewal. 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) All commercial applicators of fertilizer within the Town 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), Florida Administrative Code.

(c) All businesses applying fertilizer to turf and/or landscape plants (including, but not limited to, residential lawns, golf courses, commercial 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 Receipt. Standard Business Tax Receipt and transaction fees shall apply.

**Sec. 78-93. – Enforcement.**

The provisions of this Ordinance shall be enforced by the Town’s Special Magistrate pursuant to the authority granted by Chapter 162, Florida Statutes, as may be amended and Chapter 2, Article III, Division 2 of the Town Code, as may be amended. In addition, the Town may enforce the requirements of this ordinance by any other means available by law or equity.

**Sec. 78-94. – Penalties.**

Failure to comply with the requirements of this Ordinance shall constitute a violation of this Ordinance and may be punished by a fine in accordance with Section 2-73 of the Town Code. In addition, any other punishment available by law or in equity, as appropriate, may be imposed upon a violator. Funds generated by penalties imposed from violations of this Ordinance shall be used by the Town for the administration and enforcement of Section 403.9337, Florida Statutes, and the corresponding Sections of this Ordinance, and to further water conservation and nonpoint pollution prevention activities in the Town.

**Sec. 78-95. – Appeals.**

An aggrieved party, including the Town, may appeal a final administrative order of a Special Magistrate in accordance with Section 2-74 of the Town Code.

**Section 2:** Each and every other article, section and subsection of Chapter 78. VEGETATION. of the Code of Ordinances of the Town of Palm Beach Shores, shall remain in full force and effect as previously enacted.

**Section 3:** All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

**Section 4:** Should any section or provision of this ordinance or any portion thereof, any paragraph, sentence or word be declared by a Court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this ordinance.

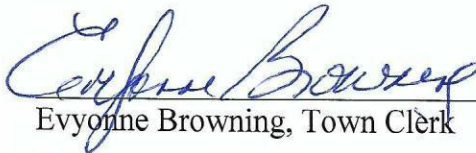
**Section 5:** Specific authority is hereby granted to codify and incorporate this ordinance into the existing Code of Ordinances of the Town of Palm Beach Shores.


FIRST READING this 16<sup>th</sup> day of July 2018.

SECOND AND FINAL READING this 20<sup>th</sup> day of August 2018.

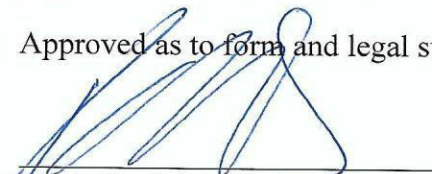
APPROVED this 20<sup>th</sup> day of August 2018.

ATTEST:

  
Evyonne Browning, Town Clerk

  
Myra Koutzen, Mayor  
(Seal)

Approved as to form and legal sufficiency.

  
Keith Davis, Town Attorney

