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ORDINANCE NO. 19- 019

AN ORDINANCE OF THE CITY OF BOYNTON BEACH,
FLORIDA, AMENDING THE LAND DEVELOPMENT
REGULATIONS, CHAPTER 4, SITE DEVELOPMENT
STANDARDS, CREATING A NEW ARTICLE XII,
ENTITLED "FERTILIZER USE REGULATIONS";
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

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.

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

101 **COMMERCIAL FERTILIZER APPLICATOR** - Except as provided in section
102 482.1562(9), Florida Statutes (F.S.), any person who applies fertilizer for
103 payment or other consideration to property not owned by the person or firm
104 applying the fertilizer or the employer of the applicators.

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

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

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

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

Industries" training certificate prior to the business owner obtaining a business tax certificate.

Sec. 12. 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.

Sec. 13. 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

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

SECTION 7.

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

FIRST READING this 18 day of June, 2019.

SECOND, FINAL READING AND PASSAGE this 2 day of July, 2019.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor – Steven B. Grant	<u>✓</u>	<u> </u>
Vice Mayor – Justin Katz	<u>✓</u>	<u> </u>
Commissioner – Mack McCray	<u>✓</u>	<u> </u>
Commissioner – Christina L. Romelus	<u>✓</u>	<u> </u>
Commissioner – Ty Penserga	<u>✓</u>	<u> </u>

ATTEST:

5-0


Queenester Nieves
Deputy City Clerk

(Corporate Seal)

EXHIBIT B

Sec. 4. Standards.

The following standards shall be considered in order to ensure the protection of existing vegetation:

A. *General.* All proposed developments shall be designed to preserve, perpetuate, and improve the existing natural character of the site. Existing native trees and other landscape features shall, to the maximum extent possible, be preserved in their natural state; and additional landscape features shall be provided to enhance architectural features, to relate structural design to the site, and to conceal unattractive uses. In all instances the city's landscaping requirements and all other applicable regulations shall be fully complied with as minimum standards. No tree shall be removed from any city property, lands, public park, or any areas within a city right-of-way except in accordance with the provisions of this article.

High-quality areas placed in preservation shall be retained in entirety in their current or improved natural state, and protected in perpetuity regardless of ownership. This requirement may be negotiated to create contiguous preservation among plant communities. During the site plan review process, the applicant shall be required to prove that the highest ecologically valued land is being retained first. If the preservation of the highest ecological valued land produces undue burden on the development of the site, it shall be the applicant's responsibility to prove such hardship and provide an acceptable alternative for approval.

Rights-of-way and areas determined to be future rights-of-way in the Comprehensive Plan and utility or drainage easements shall not be allowed as designated set-aside areas.

B. Preservation Efforts.

1. **Beach Dunes.** The natural vegetative cover on beach dunes shall be preserved in an undisturbed state of growth as a fragile ecosystem. No beach dune vegetation, grass, sea grape, and tree development shall be altered, removed, or changed except in accordance with federal, state, county, and local regulations.

2. **Mangrove Areas.** Well-documented scientific research has established that mangrove areas are the ecological base of the biological food chain for many important species, including some species of fish that are important for sport and commercial fishing. Mangrove trees, which are of considerable aesthetic value, also serve as protection against storm surge as well as provide a habitat/shelter for birds and other wildlife. For these reasons, land development and construction thereon, shall be conserved to the maximum extent possible and only altered in accordance with federal, state, county, and local regulations.

3. **Specimen Tree Designation.** The Director of Development may, by written request to the City Manager, recommend from time to time the official designation of certain trees located within the city as specimen trees. If the City Manager approves such recommendation, the matter shall be presented to the City Commission for final determination. The city shall notify by certified mail the affected property owner of the proposed hearing. The City Commission

shall accept, modify or deny the staff recommendation. Any proposal to remove a specimen tree shall be mitigated in accordance with Section 2.C. below.

4. Environmentally Sensitive Lands.

a. General. The purpose and intent of this section is to preserve and protect the values and functions of environmentally sensitive lands from alterations that would result in the loss of these lands or significant degradation of their values and functions.

b. Applicability. This subsection applies to all properties that contain environmentally sensitive lands with an "A", "B", or "C" rating as pursuant to Table 2 of the Conservation Element of the Comprehensive Plan.

c. Standards. The following standards shall promote the preservation of natural resource sites:

(1) If the property proposed for development is greater than ten (10) acres, or is a portion of a larger tract containing ten (10) or more acres of environmentally sensitive lands designated as an "A" rated site, the developer shall be required to preserve a minimum of twenty-five percent (25%) of all native plant communities on the site in one (1) unified preserve. Habitat shall be preserved with intact canopy, understory and ground cover.

(2) If the property proposed for development is greater than ten (10) acres and has been designated as a "B" or "C" rated site, the developer shall be required to preserve a minimum of twenty-five percent (25%) of all native plant communities on the site. The preserve areas may be separated into micro preserves. Habitat shall be preserved with intact canopy, understory and ground cover.

(3) Natural resource sites identified in Table 2 of the Conservation Element of the Comprehensive Plan and that exceeds ten (10) acres shall be subject to the twenty-five percent (25%) preserve area set aside notwithstanding subdivision into smaller parts.

(4) The specific location of the preservation area shall be determined during the review of a master plan or site plan. If no master plan or site plan is required, then such determination shall occur during the review of the proposed plat. The ultimate area to be preserved shall be indicated on the approved plan and any corresponding plat. In determining the most appropriate location for the preserve area within the site, the city shall consider factors, which include, but are not limited to the following: proximity of the preserve area to developed and undeveloped property; potential for immediate or future consolidation with environmentally sensitive lands on abutting properties; ability to maintain the preserve area based upon surrounding development and land uses; and the recommendations of staff or any consultants retained by the city. The preserve area shall be maintained in accordance with a city approved preserve area management plan.

C. *Mitigation of Existing Trees (Table 4-1 Mitigation of Existing Trees).* All existing trees that are not preserved in place or relocated on-site shall be mitigated in connection with a land development permit. The equivalent replacement for existing trees shall be based on caliper dimension or type of tree as indicated in the table below:

Type of Existing Tree	Type of Replacement Tree			
	Canopy Tree (< 24" Caliper)	Canopy Tree (> 24" Caliper)	Large Palm Tree ¹	Small & Medium Size Palm Trees
Canopy Tree (< 24" Caliper)	1 tree ²	1 tree ²	2 trees	3 trees ³
Canopy Tree (>24" Caliper)	1 tree ²	1 tree ²	4 trees	3 trees ³
Large Palm Tree	1 tree	1 tree	1 tree	3 trees
Small & Medium Size Palm Trees	1 tree	1 tree	1 tree	1 tree

¹ Large palm trees are those species, such as Florida Royal, Canary Island Date, or any other palm species determined by staff to provide similar or greater shading compared to a canopy tree.

² The cumulative caliper inches of existing trees to be removed shall be replaced on-site with an equal or greater number of caliper inches of a replacement canopy tree or trees.

³ A cluster of three (3) small or medium size palm trees shall be the equivalent replacement of one (1) canopy tree up to a size of 24 caliper inches. One additional cluster of palm trees shall be required for each increment of four (4) caliper inches (the common mathematical rule of rounding shall be used when tabulating partial increments). For canopy trees having a trunk size equal to or greater than 24 caliper inches, no more than 50% of the caliper inches of the replaced canopy tree shall be substituted with palm species.

D. Forestry Practices and Procedures.

1. General. The Director of Planning and Zoning or designee shall use "The Urban Forestry Manual (L)-Trees and Construction", United States Department of Agriculture Forest Service, 2005 edition or latest supplement thereof as the arboricultural standard when determining which forestry practice or procedure to apply when reviewing the following types of activities: 1) any proposal to relocate, replace, or remove trees that are subject to the standards and permitting processes of this article; 2) any proposal where the grade of the site is to be raised or lowered around an existing plant; 3) where ditching for utilities, foundations, swimming pools, driveways or the like will severely cut root systems; 4) where large paved areas will delete the water supply and aeration necessary for the life of the tree or shrub; or 5) where a change in the grade or drainage of development will seriously harm natural areas to be retained.

2. Land Clearing and Construction.

a. Vegetation that is set aside for preservation shall be protected from all on-site construction. During the land clearing and construction stage of development, the developer shall erect and maintain protective barriers (to city requirements consistent with best management practices) around all trees or groups of trees to be protected. The developer shall not allow the

movement of equipment or the storage of equipment, materials, debris or fill to be placed within the protective barrier. Removal or re-grading of soils within preservation areas is prohibited. Any damaged vegetation located within the set-aside areas shall be replaced with vegetation equivalent to the vegetation destroyed.

b. During the construction stage of development, the developer shall not allow the cleaning of equipment or material within the drip line of any protected tree or groups of trees. Neither shall the developer allow the disposal of waste materials such as paint, oil solvents, asphalt, concrete, mortar, and the like within the drip line of any tree or groups of trees.

c. No attachments or wires other than those of a protective nature shall be attached to any tree.

d. If more than one (1) native terrestrial plant community is present on-site, areas representing all existing plant communities shall be preserved on-site unless preserving more of one (1) particular community is more ecologically beneficial.

E. *Seeding and Mulching.* Properties shall be seeded with drought tolerant grass or other Florida-Friendly landscape material, and mulched within thirty (30) days after any clearing, grubbing, excavating, or filling activity, or prior to request for inspection to close out the land development permit, whichever occurs first, or subsequent to other major building demolition or site work. In the case where other site work is to occur and seeding and mulching will not be performed, the other site precautions, such as silt or erosion control fencing as deemed appropriate, protection of storm drains, etc., shall be immediately implemented. Staff shall inspect the seeded and mulched areas to ensure that adequate ground coverage has been obtained. Repeated seeding and mulching may be required until the satisfactory coverage is accomplished.

(Ord. 10-025, passed 12-7-10; Am. Ord. 11-019, passed 8-2-11; Am. Ord. 12-016, passed 10-2-12)

Sec. 5. Fertilizer Regulations.

A. *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.

B. *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.

C. *Timing of Fertilizer Application.*

1. 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.
2. 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.

D. *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.

E. *Fertilizer Content and Application Rates.*

1. 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.
2. 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.
3. 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.

F. *Fertilizer Application Practices.*

1. As required herein, 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.
2. 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
3. In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.
4. 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.

G. 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.

H. Exemptions.

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

- (1) bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14 F.S.;
- (2) other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock;
- (3) 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.

I. Training.

1. 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.

2. 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.

J. Licensing of Commercial Applicators.

1. 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.
2. After July 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.
3. 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.

K. Enforcement. These provisions 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.

L. Penalties.

1. 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.

2. 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.

M. Appeals. 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.

Sec. 56. Hazardous or Diseased Trees.

Any dying or dead tree the city determines poses a threat, hazard, or danger to the public shall be removed without delay by the property owner, without the need for obtaining a permit, provided the subject tree is removed under the supervision of a certified arborist in accordance with the standards of the International Society Arboriculture (ISA). This provision shall include diseased trees or those in a condition that could potentially contaminate other trees, such as the lethal yellowing of coconut palm trees.

(Ord. 10-025, passed 12-7-10)

Sec. 67. Prohibited Trees, Exotic, and Invasive Species.

A. *General.* Plants classified as a Category I species on the current prohibited list published by the Florida Exotic Pest Plant Council (FLEPPC) are not allowed within the city.

B. *Tree Removal and Mitigation.* Any tree classified as a prohibited species under this subsection shall be removed at the expense of the property owner prior to commencement of construction in accordance with the following:

1. **Vacant and Undeveloped Property.**

- a. **Less than Two (2) Acres.** If the parcel of property is less than two (2) acres, no permit or review by the city is required to remove the exotic tree species listed above. A courtesy inspection and identification of exotic species may be performed by staff, at no cost to the property owner, upon request of the property owner.

- b. **Two (2) Acres or Greater.** If the parcel of property is equal to or greater than two (2) acres, a land development permit shall be required in accordance with the procedures set forth in Chapter 2, Article III, Section 3 to remove exotic and invasive species, except where exempt under the provisions of Section 1.E. above.

2. **Developed Property.** On properties that have valid site plan (landscape plan) approval, no land development permit shall be required to remove exotic or invasive trees unless the subject trees were previously approved as part of, or contribute to landscape buffering, or to

otherwise comply with the standards of Chapter 2, Article II, Landscape Design and Buffering Standards. In these instances, the removal of all such trees shall be subject to the mitigation requirements of Section 3.C. above at the expense of the property owner. For the purpose of this section, the term "site plan" is construed to include master site plan and technical site plan applications, and to ultimately mean the process by which a landscape plan is approved.

(Ord. 10-025, passed 12-7-10; Am. Ord. 11-019, passed 8-2-11)

Sec. 78. Appeals.

A. *General.* Any aggrieved person may appeal a decision of an administrative official in accordance with Chapter 1, Article VIII, Section 1.

B. *Environmentally Sensitive Lands.* When appealing the provisions of Section 3.B.4. above, the appellant shall address the following:

1. Whether the subject property is an environmentally sensitive land or contains endangered, threatened, and rear species and/or species of special concern in accordance with the definitions in Chapter 1, Article II; and

2. Whether the conditions placed on the development application are reasonable and represent sound environmental practices necessary to mitigate possible harmful impacts upon the subject property and are necessary in order to protect the health, safety, and welfare of the citizens of the city.

(Ord. 10-025, passed 12-7-10)

Sec. 89. Penalties.

The city or any other legal authority shall enforce any violation of this article pursuant to the penalty provisions contained in Chapter 1, Article I, Section 7 of these Land Development Regulations, or as otherwise defined herein. In addition, the removal of each tree shall constitute a separate offense under this article.