

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF GULF STREAM, PALM BEACH COUNTY, FLORIDA, FOCUSING ON EXCESSIVE NUTRIENT LEVELS IN PALM BEACH COUNTY WATER BODIES; PROVIDING FOR TITLE; 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 FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR CAPTIONS; AND PROVIDING FOR 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), 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 2nd day of March 2011, issued its Palm Beach County Municipal Separate Storm Sewer System Permit No. FLS 000018-003 (hereinafter referred to as the "MS4 Permit") to forty-one (41) governmental entities including the Town of Gulf Stream; 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

1 County and enters into natural and artificial stormwater and drainage conveyances and
2 natural water bodies in Palm Beach County; and

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

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

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

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

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

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

21 **WHEREAS**, in the process of adoption of this Ordinance, the Town Commission
22 of the Town of Gulf Stream has considered scientific information, including input from
23 the Department of Environmental Protection, the Department of Agriculture and
24 Consumer Services, and the University of Florida Institute of Food and Agricultural
25 Sciences.

26 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE**
27 **TOWN OF GULF STREAM, PALM BEACH COUNTY, FLORIDA, that:**

28 **SECTION I. TITLE**

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

30 **SECTION II. DEFINITIONS**

31 For this Ordinance, the following terms shall have the meanings set forth in this
32 section unless the context clearly indicates otherwise.

- 1 1. "Application" or "Apply" means the actual physical deposition of fertilizer to
2 turf or landscape plants.
- 3 2. "Applicator" means any person who applies fertilizer on turf and/or
4 landscape plants in the Town of Gulf Stream.
- 5 3. "Approved Test" means a soil test from the University of Florida,
6 government, or other commercial licensed laboratory that regularly performs soil testing
7 and recommendations.
- 8 4. "Best Management Practices (BMP's)" means turf and landscape
9 practices or combination of practices based on research, field-testing, and expert
10 review, determined to be the most effective and practical site-specific means, including
11 economic and technological considerations, for improving water quality, conserving
12 water supplies and protecting natural resources.
- 13 5. "Code Enforcement Officer", "Official", or "Inspector" means any
14 designated employee or agent of the Town of Gulf Stream whose duty it is to enforce
15 codes and ordinances enacted by the Town of Gulf Stream.
- 16 6. "Commercial Fertilizer Applicator" except as provided in section
17 482.1562(9), F.S., means any person who applies fertilizer for payment or other
18 consideration to property not owned by the person or firm applying the fertilizer or the
19 employer of the applicators.
- 20 7. "Fertilizing", or "Fertilization" means the act of applying fertilizer to turf,
21 specialized turf, or landscape plants.
- 22 8. "Fertilizer" means any substance or mixture of substances that contains
23 one or more recognized plant nutrients and promotes plant growth, or controls soil
24 acidity or alkalinity, or provides other soil enrichment, or provides other corrective
25 measures to the soil.
- 26 9. "Institutional Applicator" means any person, other than a private, non-
27 commercial or a Commercial Applicator (unless such definitions also apply under the
28 circumstances), that applies fertilizer for the purpose of maintaining turf and/or
29 landscape plants. Institutional Applicators shall include, but shall not be limited to,
30 owners, managers, or employees of public lands, schools, parks, religious institutions,
31 utilities, industrial or business sites and any residential properties maintained in
32 condominium and/or common ownership.

1 10. "Landscape Plant" means any native or non-native tree, shrub, or
2 groundcover (excluding turf).

3 11. "Pasture" means land managed for livestock grazing.

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

7 13. "Prohibited Application Period" means the time period during which a
8 Flood Watch or Warning, a Tropical Storm Watch or Warning, or a Hurricane Watch or
9 Warning is in effect for any portion of the Town of Gulf Stream issued by the National
10 Weather Service, or if heavy rain (2 inches or more within a twenty-four (24) hour
11 period) is likely.

12 14. "Saturated Soil" means a soil in which the voids are filled with water.
13 Saturation does not require flow. For the purposes of this Ordinance, soils shall be
14 considered saturated if standing water is present or the pressure of a person standing
15 on the soil causes the release of free water.

16 15. "Slow-Release", "Controlled Release", "Timed Release", "Slowly-
17 Available", or "Water Insoluble Nitrogen" means nitrogen in a form which delays its
18 availability for vegetative uptake and use after application, or which extends its
19 availability to the vegetation longer than a reference rapid or quick release product.

20 16. "Turf", "Sod", or "Lawn" means an area of grass-covered soil held together
21 by the roots of the grass.

22 17. "Urban Landscape" means pervious areas on residential, commercial,
23 industrial, institutional, highway rights-of-way, or other nonagricultural lands that are
24 planted with turf or landscape plants. For the purposes of this section, agriculture has
25 the same meaning as provided in section 570.02, Florida Statutes.

26 **SECTION III. FINDINGS**

27 As a result of the Florida Department of Environmental Protection's determination
28 that certain water bodies within Palm Beach County are impaired for excessive nutrient
29 levels, the Town Commission of the Town of Gulf Stream finds that the best
30 management practices contained in the most recent edition of the *"Florida-Friendly Best*
31 *Management Practices for Protection of Water Resources by the Green Industries"*, are
32 required in this Ordinance.

1 or deposited, either intentionally or accidentally, on any impervious surface shall be
2 immediately and completely removed to the greatest extent practicable.

3 2. Fertilizer released on an impervious surface must be immediately
4 contained and either legally applied to turf or any other legal site, or returned to the
5 original or other appropriate container.

6 3. In no case shall fertilizer be washed, swept, or blown off impervious
7 surfaces into stormwater drains, ditches, conveyances, or water bodies.

8 4. Property owners and managers are encouraged to use an Integrated Pest
9 Management (IPM) strategy as currently recommended by the University of Florida
10 Cooperative Extension Service publications.

11 **SECTION X. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER**

12 In no case shall grass clippings, vegetative material, and/or vegetative debris
13 intentionally be washed, swept, or blown on to or into stormwater drains, ditches,
14 conveyances, water bodies, wetlands, sidewalks or roadways. . Vegetative material
15 may be placed within the roadway right-of-way, but not over the storm drains, for pickup
16 by the municipality's vegetative waste hauler.

17 **SECTION XI. TRAINING**

18 1. All commercial and institutional applicators of fertilizer within Palm Beach
19 County shall abide by and successfully complete the six-hour training program in the
20 "*Florida-Friendly Best Management Practices for Protection of Water Resources by the*
21 *Green Industries*" offered by the Florida Department of Environmental Protection
22 through the University of Florida/Palm Beach County Cooperative Extension Service
23 "Florida-Friendly Landscapes" program or an approved equivalent program.

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

28 **SECTION XII. LICENSING OF COMMERCIAL APPLICATORS**

29 1. All businesses applying fertilizer to turf or landscape plants (including, but
30 not limited to, residential lawns, golf courses, commercial properties, and multi-family
31 and condominium properties) must ensure that the business owner or his/her designee
32 holds the appropriate "*Florida-Friendly Best Management Practices for Protection of*

1 *Water Resources by the Green Industries*" training certificate prior to the business
2 owner obtaining a Local Business Tax Certificate. Owners for any category of
3 occupation which may apply any fertilizer to Turf and/or Landscape Plants shall provide
4 proof of completion of the program to the Town of Gulf Stream Tax Collector's Office. It
5 is the responsibility of the business owner to maintain the *"Florida-Friendly Best
6 Management Practices for Protection of Water Resources by the Green Industries"*
7 certificate to receive their Business Tax Receipt annually.

8 2. After December 31, 2013, all commercial applicators of fertilizer within the
9 Town of Gulf Stream shall have and carry in their possession at all times when applying
10 fertilizer, evidence of certification by the Florida Department of Agriculture and
11 Consumer Services as a Commercial Fertilizer Applicator per Rule 5E-14.117(18),
12 Florida Administrative Code.

13 3. All businesses applying fertilizer to turf and/or landscape plants (including,
14 but not limited to, residential lawns, golf courses, commercial properties and multi-family
15 and condominium properties) must ensure that at least one (1) employee has an
16 appropriate *"Florida-Friendly Best Management Practices for Protection of Water
17 Resources by the Green Industries"* training certificate prior to the business owner
18 obtaining a Local Business Tax Certificate. Standard Business Tax Receipt (BTR and
19 transaction fees shall apply).

20 **SECTION XIII. ENFORCEMENT**

21 The provisions of this Ordinance shall be enforced by (1) the Town of Gulf
22 Stream Special Master pursuant to the authority granted by Section 162.01 et. seq.,
23 Florida Statutes, as may be amended and Article 10 of the Unified Land Development
24 Code, as may be amended, or (2) by the Town Commission of the Town of Gulf Stream
25 through its authority to enjoin and restrain any person violating the Unified Land
26 Development Code. The Town may pursue these or any other enforcement remedies
27 available to and applicable to the Town of Gulf Stream.

28 **SECTION XIV. PENALTIES**

29 1. Failure to comply with the requirements of this Ordinance shall constitute
30 a violation of this Ordinance and shall be punishable by a fine not to exceed \$250 per
31 incident for the violation, or a fine not to exceed \$500 per incident for a repeat violation,
32 and, in addition, may include all costs of repairs and remediation, including

1 administrative costs. Each new day the violation exists shall be considered a separate
2 incident. If the Special Master finds the violation to be irreparable or irreversible in
3 nature, it may impose a fine not to exceed \$5,000.00 per violation.

4 2. Funds generated by penalties imposed under this Ordinance shall be used
5 by the Town of Gulf Stream for the administration and enforcement of Section
6 403.9337, Florida Statutes, and the corresponding Sections of this Ordinance, and to
7 further water conservation and nonpoint pollution prevention activities.

8 **SECTION XV. APPEAL**

9 An aggrieved party, including the Town of Gulf Stream, may appeal a final
10 administrative order of a Special Master to the circuit court. Such an appeal shall not be
11 a hearing de novo, but shall be limited to appellate review of the record created before
12 the Special Master. An appeal shall be filed within thirty (30) days of the execution of
13 the order to be appealed.

14 **SECTION XVI. SEVERABILITY**

15 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is
16 for any reason held by a Court of competent jurisdiction to be unconstitutional,
17 inoperative, or void, such holding shall not affect the remainder of this Ordinance.

18 **SECTION XVII. INCLUSION IN THE CODE OF LAWS AND ORDINANCES**

19 The provisions of this Ordinance shall become and be made a part of the Town
20 of Gulf Stream Code. The sections of this Ordinance may be renumbered or relettered
21 to accomplish such, and the word "ordinance" may be changed to "section", "article", or
22 other appropriate word.

23 **SECTION XVIII. CAPTIONS**

24 The captions, section headings, and section designations used in this Ordinance
25 are for convenience only and shall have no effect on the interpretation of the provisions
26 of this Ordinance.

27 **SECTION XIX. EFFECTIVE DATE**

28 The provisions of this Ordinance shall become effective upon filing with the
29 Department of State.

1 PASSED AND ADOPTED in a regular, adjourned session on first reading this
2 13th day of January, 2012, and for a second and final reading on this 10th
3 day of February, 2012

4 William F Koch
5 Mayor

6 Jim K. Gettman
7 Vice Mayor

8 W. Scott Ay
9 Commissioner

10 Dr. John Anderson
11 Commissioner

12 Frank P. ...
13 Commissioner

14 ATTEST:
15 Rita L. Taylor
16 Clerk

17 APPROVED AS TO FORM AND
18 LEGAL SUFFICIENCY

19 By: [Signature]
20 Town Attorney

21 EFFECTIVE DATE: Filed with the Department of State on the 10th day of
22 Feb., 2012.