

ORDINANCE NO. 21-13

AN ORDINANCE OF THE TOWN COUNCIL THE TOWN OF JUPITER, FLORIDA, AMENDING CHAPTER 23, ENTITLED "LANDSCAPING", BY CREATING A NEW ARTICLE V ENTITLED "FLORIDA-FRIENDLY FERTILIZER USE"; 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 (the County) as "impaired" as a result of the presence of excessive nutrients; and

WHEREAS, Section 403.9337, Fla. Stat., requires that governmental entities located within the watershed of a water body or water segment that is listed as impaired

1 by nutrients pursuant to Section 403.067, Fla. Stat. adopt an ordinance for Florida-
2 Friendly™ fertilizer use on urban landscapes; and

3 **WHEREAS**, the FDEP on the 2nd day of March 2011, issued its Palm Beach
4 County Municipal Separate Storm Sewer System Permit No. FLS 000018-003
5 (hereinafter referred to as the "MS4 Permit") to 41 governmental entities including Town
6 of Jupiter; and

7 **WHEREAS**, the MS4 permit requires governmental entities within the watershed
8 of a nutrient impaired water body to adopt all of the requirements set forth in FDEP's
9 Model Ordinance for Florida Friendly Fertilizer Use on Urban Landscapes; and

10 **WHEREAS**, surface water runoff and base flow runoff leaves residential
11 neighborhoods, commercial centers, industrial areas, and other lands within the Town
12 and other areas of the County and enters into natural and artificial stormwater and
13 drainage conveyances and natural water bodies in the County; and

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

17 **WHEREAS**, the quality of streams, lakes, and wetlands is important to
18 environmental, economic, and recreational prosperity and to the health, safety, and
19 welfare of the residents of the County; and

20 **WHEREAS**, algae blooms and accelerated growth of aquatic weeds in the Town
21 and the County's water bodies have heightened community concerns about water
22 quality and eutrophication of surrounding waters; and

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

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

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

10 **WHEREAS**, in the process of adoption of this Ordinance, Town Council of the
11 Town of Jupiter has considered scientific information, including input from the
12 Department of Environmental Protection, the Department of Agriculture and Consumer
13 Services, and the University of Florida Institute of Food and Agricultural Sciences.

14 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF**
15 **JUPITER, FLORIDA, THAT**

16 **SECTION 1. Chapter 23 of the Town Code, entitled "Landscaping" is hereby**
17 **amended to create a new Article V, entitled Florida-Friendly Fertilizer Use, as**
18 **follows:**

19
20 **ARTICLE V. FLORIDA-FRIENDLY FERTILIZER USE**

1 **SEC. 23-88. Definitions.**

2 The following words, terms, and phrases, when used in this chapter, shall have
3 the meanings ascribed to them in this section, except where the context clearly
4 indicates a different meaning:

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

7 "Applicator" means any person who applies fertilizer on turf and/or landscape
8 plants in Town of Jupiter.

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

12 "Best Management Practices (BMP's)" means turf and landscape practices or
13 combination of practices based on research, field-testing, and expert review,
14 determined to be the most effective and practical site-specific means, including
15 economic and technological considerations, for improving water quality, conserving
16 water supplies and protecting natural resources.

17 "Commercial Fertilizer Applicator" except as provided in section 482.1562(9),
18 F.S., means any person who applies fertilizer for payment or other consideration to
19 property not owned by the person or firm applying the fertilizer or the employer of the
20 applicators.

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

1 "Fertilizer" means any substance or mixture of substances that contains one or
2 more recognized plant nutrients and promotes plant growth, or controls soil acidity or
3 alkalinity, or provides other soil enrichment, or provides other corrective measures to
4 the soil.

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

12 "Landscape Plant" means any native or non-native tree, shrub, or groundcover
13 (excluding turf).

14 "Pasture" means land managed for livestock grazing.

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

18 "Prohibited Application Period" means the time period during which a Flood
19 Watch or Warning, a Tropical Storm Watch or Warning, or a Hurricane Watch or
20 Warning is in effect for any portion of Town of Jupiter, issued by the National Weather
21 Service, or if heavy rain (2 inches or more within a twenty-four (24) hour period) is likely.

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

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

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

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

15 **SEC. 23-89. FINDINGS:**

16 As a result of the Florida Department of Environmental Protection's (FDEP)
17 determination that certain water bodies within Palm Beach County are impaired for
18 excessive nutrient levels, the Town finds that the best management practices contained
19 in the most recent edition of the *"Florida-Friendly Best Management Practices for*
20 *Protection of Water Resources by the Green Industries"*, are required in this Ordinance.
21 Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation
22 provided by natural and constructed stormwater conveyances. Regulation of nutrients,

1 including both phosphorus and nitrogen contained in fertilizer, is anticipated to help
2 improve and maintain water and habitat quality.**SEC. 23-90 . PURPOSE AND**
3 **INTENT:**

4 These regulations are for the purposes of providing for the proper use of
5 fertilizers by any applicator; to require the training of commercial and institutional
6 fertilizer applicators; to establish training and licensing requirements; to establish a
7 Prohibited Application Period; and to specify allowable fertilizer application rates and
8 methods, fertilizer-free zones, and exemptions. It is also the intent and purpose of
9 these regulations to require the use of Best Management Practices to minimize negative
10 environmental effects associated with excessive nutrients in the Town's natural and
11 constructed stormwater conveyances, rivers, creeks, canals, lakes, estuaries and other
12 water bodies. Collectively, these water bodies are an asset important to the
13 environmental, recreational, cultural and economic well-being of the residents of the
14 Town and the County and the furtherance of the public's health, safety, and general
15 welfare.

16 **SEC. 23-91. APPLICABILITY:**

17 This regulations shall be applicable to and shall regulate any and all applicators
18 of fertilizer and areas of application of fertilizer to urban landscapes within the area
19 Town, unless such application is specifically exempted as provided for herein.
20

1 **SEC. 23-92. TIMING OF FERTILIZER APPLICATIONS.**

2 1. No applicator shall apply fertilizers containing nitrogen and/or phosphorus
3 to turf and/or landscape plants during the Prohibited Application Period or to saturated
4 soils.

5 2. Fertilizer containing nitrogen and/or phosphorus shall not be applied
6 before seeding or sodding a site, and shall not be applied for the first 30 days after
7 seeding or sodding, except when hydro-seeding for temporary or permanent erosion
8 control in an emergency situation (wildfire, etc), or in accordance with the Stormwater
9 Pollution Prevent Plan for that site.

10 **SEC. 23-93. FERTILIZER FREE ZONES:**

11 Fertilizer shall not be applied within 10 feet, or 3 feet if a deflector shield or drop
12 spreader is used, of any pond, stream, water body, lake, canal, or wetland as defined by
13 Chapter 62-340 of the Florida Administrative Code or from the top of a seawall or lake
14 bulkhead. Newly planted turf or landscape plants may be fertilized in this zone only for
15 a 60 day period beginning thirty 30 days after planting if needed to allow the vegetation
16 to become well established. Caution shall be used to prevent direct deposition of
17 fertilizer into the water.

18 **SEC. 23-94. FERTILIZER CONTENT AND APPLICATION RATES:**

19 1. Fertilizers applied to turf within Town shall be applied in accordance with
20 requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code,
21 *Labeling Requirements For Urban Turf Fertilizers.* Under Rule 5E-1.003(2), Florida

1 Administrative Code, the required application rate and frequency maximums, which vary
2 by plant and turf types, can be found on the labeled fertilizer bag or container.

3 2. Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape
4 plants except as provided above for turf, or in UF/IFAS recommendations for landscape
5 plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency
6 has been verified by an approved test.

7 3. Fertilizer used for sports turf at golf courses shall be applied in accordance
8 with the recommendations in "Best Management Practices for the Enhancement of
9 Environmental Quality on Florida Golf Courses", published by the FDEP, dated January
10 2007, as amended. Fertilizer used at park or athletic fields shall be applied in
11 accordance with Rule 5E-1.003(2), Florida Administrative Code.

12 **SEC. 23-95. FERTILIZER APPLICATION PRACTICES:**

13 1. Spreader deflector shields shall be used when fertilizing via rotary
14 (broadcast) spreaders. Deflectors must be positioned such that fertilizer granules are
15 deflected away from all impervious surfaces, fertilizer-free zones and water bodies,
16 including wetlands. Any fertilizer applied, spilled, or deposited, either intentionally or
17 accidentally, on any impervious surface shall be immediately and completely removed
18 to the greatest extent practicable.

19 2. Fertilizer released on an impervious surface shall be immediately
20 contained and either legally applied to turf or any other legal site, or returned to the
21 original or other appropriate container.

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

3 4. Property owners and managers shall use an Integrated Pest Management
4 (IPM) strategy as currently recommended by the University of Florida Cooperative
5 Extension Service publications.

6 **SEC. 23-96. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER:**

7 In no case shall grass clippings, vegetative material, and/or vegetative debris
8 intentionally be washed, swept, or blown on to or into stormwater drains, ditches,
9 conveyances, water bodies, wetlands, sidewalks or roadways. **SEC. 23-97,**

10 **EXEMPTIONS:**

11 The provisions set forth herein shall not apply to:

12 (a) bona fide farm operations as defined in the Florida Right-to-Farm Act,
13 Section 823.14, Florida Statutes.

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

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

19 **SEC. 23-98. TRAINING:**

20 1. All commercial and institutional applicators of fertilizer within the Town
21 shall abide by and successfully complete the six-hour training program in the "*Florida-*
22 *Friendly Best Management Practices for Protection of Water Resources by the Green*

1 *Industries*" offered by the FDEP through the University of Florida/Palm Beach County
2 Cooperative Extension Service "Florida-Friendly Landscapes" program or an approved
3 equivalent program.

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

8 **SEC. 23-99 . LICENSING OF COMMERCIAL APPLICATORS:**

9 1. All businesses applying fertilizer to turf or landscape plants (including, but
10 not limited to, residential lawns, golf courses, commercial properties, and multi-family
11 and condominium properties) must ensure that the business owner or his/her designee
12 holds the appropriate *"Florida-Friendly Best Management Practices for Protection of*
13 *Water Resources by the Green Industries"* training certificate prior to the business
14 owner obtaining a Local Business Tax Certificate. Owners for any category of
15 occupation which may apply any fertilizer to Turf and/or Landscape Plants shall provide
16 proof of completion of the program to the Town's Business Registration Office. It is the
17 responsibility of the business owner to maintain the *"Florida-Friendly Best Management*
18 *Practices for Protection of Water Resources by the Green Industries"* certificate to
19 receive their Business Tax Receipt annually.

20 2. After December 31, 2013, all commercial applicators of fertilizer within
21 Town , shall have and carry in their possession at all times when applying fertilizer,
22 evidence of certification by the Florida Department of Agriculture and Consumer

1 Services as a Commercial Fertilizer Applicator per Rule 5E-14.117(18), Florida
2 Administrative Code.

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

10 **SEC. 23-100. ENFORCEMENT**

11 The provisions of this Ordinance shall be enforced by the Town's Code
12 Enforcement Board or Special Magistrate pursuant to the authority granted by Section
13 162.01 et. seq., Fla. Stat., as amended and Chapter 8 of the Town Code, as amended.

14 1. Non-corporate residential property owners shall be given a "Courtesy
15 Notice" explaining the violation. Non-corporate residential property owners can receive
16 up to two (2) "Courtesy Notices" before a Notice of Violation is issued.

17 2. Failure to comply with these regulations shall constitute a violation and
18 shall be a separate violation for each new day the violation continues to exist.

19 **SECTION 2. SEVERABILITY**

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

1 **SECTION 3. CODIFICATION**

2 The provisions of this Ordinance shall become and be made a part of the Town
3 of Jupiter Code. The sections of this Ordinance may be renumbered or relettered to
4 accomplish such, and the word "ordinance" may be changed to "section", "article", or
5 other appropriate word.

6 **SEC. 4. EFFECTIVE DATE**

7 The provisions of this Ordinance shall become effective upon adoption.
8
9

Upon First Reading this 21st day of May, 2013, the foregoing Ordinance was offered by Councilor Todd R. Wodraska, who moved its adoption. The motion was seconded by Councilor Jim Kuretski, and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
MAYOR KAREN J. GOLONKA	X	
VICE-MAYOR WENDY HARRISON	ABSENT	
COUNCILOR ILAN KAUFER	X	
COUNCILOR JIM KURETSKI	X	
COUNCILOR TODD R. WODRASKA	X	

Upon Second Reading this 18th day of June, 2013, the foregoing Ordinance was offered by Councilor Todd R. Wodraska, who moved its adoption. The motion was seconded by Vice-Mayor Wendy Harrison, and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
MAYOR KAREN J. GOLONKA	X	
VICE-MAYOR WENDY HARRISON	X	
COUNCILOR ILAN KAUFER	X	
COUNCILOR JIM KURETSKI	X	
COUNCILOR TODD R. WODRASKA	X	

The Mayor thereupon declared Ordinance 21-13

duly passed and adopted this

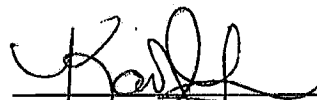
18th day of June, 2013.

TOWN OF JUPITER, FLORIDA

ATTEST:

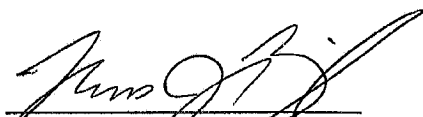
BY:


SALLY M. BOYLAN, MMC
TOWN CLERK


KAREN J. GOLONKA
MAYOR

(TOWN SEAL)




THOMAS J. BAIRD, ESQ.
Approved as to form and
legal sufficiency