

ORDINANCE NO. 22-2018

AN ORDINANCE OF THE TOWN OF PALM BEACH IN PALM BEACH COUNTY, FLORIDA, FOCUSING ON EXCESSIVE NUTRIENT LEVELS IN PALM BEACH COUNTY WATERBODIES; PROVIDING FOR TITLE; PROVIDING FOR DEFINITIONS; 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 to Florida Statute, Section 403.067, adopt an Ordinance for Florida-Friendly™ Fertilizer Use on urban landscapes; and

WHEREAS, the FDEP on the 8<sup>th</sup> 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 Town of Palm Beach; and

1           **WHEREAS**, the MS4 Permit requires local governments within the watershed of a nutrient  
2   impaired waterbody to adopt FDEP's Model Ordinance for Florida Friendly Fertilizer Use on  
3   Urban Landscapes or an Ordinance that includes all the requirements set forth in the Model  
4   Ordinance; and

5  
6           **WHEREAS**, surface water runoff and base flow runoff leaves residential neighborhoods,  
7   commercial centers, industrial areas, and other lands of the Town of Palm Beach, and enters into  
8   natural and artificial storm water, drainage conveyances, and natural water bodies in Palm Beach  
9   County; and

10  
11          **WHEREAS**, phosphorus and nitrogen, the primary nutrients associated with the  
12   degradation of surface water, are commonly the primary components of fertilizer for turf and  
13   landscape application, and

14  
15          **WHEREAS**, the quality of streams, lakes, and wetlands is important to environmental,  
16   economic, and recreational prosperity, and to the health, safety, and welfare of the residents of the  
17   Town Palm Beach; and

18  
19          **WHEREAS**, algae blooms and accelerated growth of aquatic weeds in Palm Beach  
20   County's waterbodies have heightened community concerns about water quality and  
21   eutrophication of surrounding waters; and

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

5       **WHEREAS**, it has been recognized that proper application of slow-release nitrogen  
6     sources is more efficiently used by plants and less likely to leach or runoff; and  
7

8       **WHEREAS**, this Ordinance is part of a regulatory program to address non-point sources  
9     of nutrient pollution, which is scientifically based, economically, and technically feasible; and  
10

11       **WHEREAS**, in the process of adoption of this Ordinance, the Town of Palm Beach has  
12     considered scientific information, including input from the Department of Environmental  
13     Protection, the Department of Agriculture and Consumer Services, and the University of Florida  
14     Institute of Food and Agricultural Sciences.  
15

16       **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF PALM BEACH,**  
17     **FLORIDA, that**

18     **SECTION I. TITLE:**

19       This Ordinance shall be known as the Fertilizer-Friendly Use Ordinance.  
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21     **SECTION II. DEFINITIONS:**

22       For this Ordinance, the following terms shall have the meanings set forth in this Section,  
23     unless the context clearly indicates otherwise.

1           1.     “Application” or “Apply” means the actual physical deposition of fertilizer to turf  
2 or landscape plants.

3           2.     “Applicator” means any person who applies fertilizer on turf and/or landscape  
4 plants in the Town of Palm Beach.

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

7           4.     “Best Management Practices (BMP’s)” means turf and landscape practices or  
8 combination of practices based on research, field-testing, and expert review, determined to be the  
9 most effective and practical site-specific means, including economic and technological  
10 considerations, for improving water quality, conserving water supplies, and protecting natural  
11 resources.

12          5.     “Code Enforcement Officer”, “Official”, or “Inspector” means any designated  
13 employee or agent of the Town of Palm Beach whose duty is to enforce codes and ordinances  
14 enacted by the Town of Palm Beach.

15          6.     “Commercial Fertilizer Applicator” except as provided in Section 482.1562(9),  
16 F.S. means any person who applies fertilizer for payment or other consideration to property, not  
17 owned by the person or firm applying the fertilizer or the employer of the applicators.

18          7.     “Fertilizing” or “Fertilization” means the act of applying fertilizer to turf,  
19 specialized turf, or landscape plants.

20          8.     “Fertilizer” means any substance or mixture of substances that contains one or  
21 more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity,  
22 or provides other soil enrichment, or provides other corrective measures to the soil.

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

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

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

12          12.   "Prohibited Application Period" means the time period during which a flood watch  
13    or warning, a tropical storm watch or warning, or a hurricane watch or warning is in effect for any  
14    portion of the Town of Palm Beach issued by the National Weather Service.

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

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

1           15.     “Turf”, “Sod”, or “Lawn” means an area of grass-covered soil held together by  
2 the roots of the grass.

3           16.     “Urban Landscape” means pervious areas on residential, commercial, industrial,  
4 institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or  
5 landscape plants. For the purposes of this Section, agriculture has the same meaning as provided  
6 in Section 570.02, Florida Statutes.

7  
8     **SECTION III. FINDINGS:**

9           As a result of the Florida Department of Environmental Protection’s determination that  
10 certain waterbodies within Palm Beach County are impaired for excessive nutrient levels, the  
11 Town of Palm Beach finds that the best management practices contained in the most recent edition  
12 of the *“Florida-Friendly Best Management Practices of Water Resources by the Green*  
13 *Industries”*, are required in this Ordinance.

14  
15     **SECTION IV. PURPOSE AND INTENT:**

16           This Ordinance regulates the proper use of fertilizers by any applicator, requires proper  
17 training of commercial and institutional fertilizer applicators, establishes training and licensing  
18 requirements, establishes a Prohibited Application Period, and specifies allowable fertilizer  
19 application rates and methods, fertilizer-free zones and exemptions. This Ordinance requires the  
20 use of Best Management Practices to minimize negative environmental effects associated with  
21 excessive nutrients in our waterbodies. These environmental effects have been observed in and on  
22 Palm Beach County’s natural and constructed stormwater conveyances, rivers, creeks, canals,  
23 lakes, estuaries and other waterbodies. Collectively, these waterbodies are an asset important to

1 the environmental, recreational, cultural, and economic well-being of Palm Beach County  
2 residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness  
3 of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of  
4 nutrients, including both phosphorus and nitrogen contained in fertilizer, is anticipated to help  
5 improve and maintain water and habitat quality.

6  
7 **SECTION V. APPLICABILITY:**

8 This Ordinance shall be applicable to, and shall regulate any and all applicators of fertilizer  
9 and areas of application of fertilizer to urban landscapes within the Town of Palm Beach, unless  
10 such applicator is specifically exempted by Section XI of this Ordinance. This Ordinance shall be  
11 prospective only, and shall not impair any existing contracts.

12  
13 **SECTION VI. TIMING OF FERTILIZER APPLICATIONS**

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

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

20  
21 **SECTION VII. FERTILIZER FREE ZONES:**

22 Fertilizer shall not be applied within ten (10) feet, or three (3) feet if a deflector shield or  
23 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.

**SECTION VIII. FERTILIZER CONTENT AND APPLICATION RATES:**

1. Fertilizers applied turf within the Town of Palm Beach 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.

2. Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in Section (1) 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 September 2012, 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.

1    **SECTION IX. FERTILIZER APPLICATION PRACTICES:**

2           1.       As required in Section VII of this Ordinance, spreader deflector shields shall be  
3   used when fertilizing via rotary (broadcast) spreaders. Deflectors must be positioned such that  
4   fertilizer granules are deflected away from all impervious surfaces, fertilizer-free zones, and  
5   waterbodies, including wetlands. Any fertilizer applied, spilled or deposited, either intentionally or  
6   accidentally, on any impervious surface shall be immediately and completely removed to the  
7   greatest extent practicable.

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

11          3.       In no case shall fertilizer be washed, swept, or blown off impervious surfaces into  
12   stormwater drains, ditches, conveyances, or waterbodies.

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

16  
17   **SECTION X. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER:**

18          In no case shall grass clippings, vegetative material, and/or vegetative debris be washed,  
19   swept, or blown on to or into stormwater drains, ditches, conveyances, water bodies, wetlands,  
20   sidewalks or roadways. Any material that is accidentally so deposited shall be immediately  
21   removed to the maximum extent practicable. Vegetative material may be placed within the  
22   roadway rights-of-way, but not over the storm drains, for pickup by the municipality's vegetative  
23   waste hauler.

1    **SECTION XI. EXEMPTIONS:**

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

3           (a)    Bona-fide farm operations as defined in the Florida Right-to-Farm Act, Section  
4    823.14, Florida Statutes.

5           (b)    Any lands used for bona-fide scientific research, including, but not limited to,  
6    research on the effects of fertilizer, use on urban stormwater, water quality, agronomics, or  
7    horticulture.

8  
9    **SECTION XII. TRAINING:**

10          1. All commercial and institutional applicators of fertilizer within Palm Beach County shall  
11    abide by, and successfully complete, the six (6) hour training program in the “*Florida-Friendly*  
12    *Best Management Practices for Protection of Water Resources by the Green Industries*” offered  
13    by the Florida Department of Environmental Protection through the University of Florida/Palm  
14    Beach County Cooperative Extension Service “*Florida-Friendly Landscapes*” program or an  
15    approved equivalent program.

16          2. Non-commercial and non-institutional applicators, not otherwise required to be certified,  
17    such as private citizens on their own residential property, are encouraged to follow the  
18    recommendations of the University of Florida/FAS “*Florida-Friendly Landscape Program*” and  
19    label instructions when applying fertilizers.

20  
21   **SECTION XIII. LICENSING OF COMMERICAL APPLICATORS:**

22          1. All businesses applying fertilizer to turf or landscape plants (including, but not limited to,  
23    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 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 Town of Palm Beach Building Department. 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. All commercial applicators of fertilizer within the Town of Palm 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), Florida Administrative Code.

3. 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 Local Business Tax Certificate. Standard Business Tax Receipt (BTR and transaction fees shall apply).

#### **SECTION XIV. ENFORCEMENT:**

The provisions of this Ordinance shall be enforced by (1) the Town of Palm Beach Code Enforcement Officer pursuant to the authority granted by Section 162.01 et. Seq., Florida Statutes, as may be amended, and Article 10 of the United Land Development Code, as may be amended,

1 (2) the Town of Palm Beach through its authority to enjoin and restrain any person violating the  
2 Unified Land Development Code, or (3) the Town of Palm Beach, through the prosecution of  
3 violations in the name of the State of Florida pursuant to the authority granted by Section 125.69,  
4 Florida Statutes, as may be amended. The Code Enforcement official may pursue these or any  
5 other enforcement remedies available to, and applicable to, the Town of Palm Beach.

6  
7 **SECTION XV. PENALTIES:**

8 1. Failure to comply with the requirement of this Ordinance shall constitute a violation of this  
9 Ordinance and shall be punishable by a fine not to exceed \$250 per incident for the violation, or a  
10 fine not to exceed \$500 per incident for a repeat violation, and, in addition, may include all costs  
11 of repairs and remediation including administrative costs. Each new day the violation exists, it is  
12 considered a separate incident.

13 2. In determining the amount of fines that should be imposed, the Code Enforcement Official  
14 shall consider the following factors: (1) the gravity of the violation; (2) any actions taken by the  
15 violator to correct the violation; and (3) any previous violations committed by the violator. If the  
16 Code Enforcement Official finds the violation is irreparable or irreversible in nature, a fine not to  
17 exceed \$15,000 per violation may be imposed.

18  
19 **SECTION XVI. APPEAL:**

20 An aggrieved party, including the Town of Palm Beach, may appeal a final administrative  
21 order of the Code Enforcement Official to the circuit court. Such an appeal shall not be a hearing  
22 de novo, but shall be limited to appellate review of the record created before the Code Enforcement

1 Official. An appeal shall be filed within thirty (30) days of the execution of the order to be  
2 appealed.

3  
4 **SECTION XVII. SEVERABILITY:**

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

8  
9 **SECTION XVIII. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

10 The provisions of this Ordinance shall become, and be made a part of, the Town of Palm  
11 Beach Code. The Sections of this Ordinance may be renumbered or relettered to accomplish such,  
12 and the word "Ordinance" may be changed to "Section", "Article", or other appropriate word.

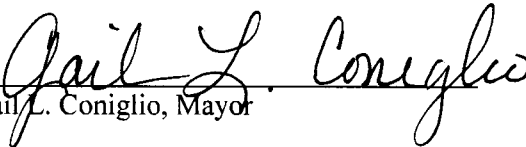
13  
14 **SECTION XIX. CAPTIONS:**

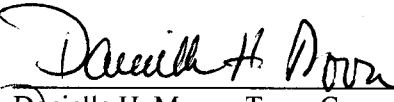
15 The captions, section headings, and section designations used in this Ordinance are for  
16 convenience only, and shall have no effect on the interpretation of the provisions of this Ordinance.

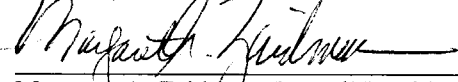
**SECTION XXI. EFFECTIVE DATE:**

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE  
TOWN OF PALM BEACH, FLORIDA:**

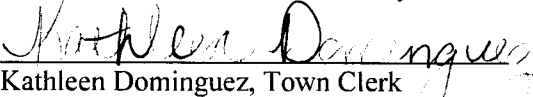
**PASSED AND ADOPTED** in a regular, adjourned session of the Town Council of the  
Town of Palm Beach on first reading this 11th day of December, 2018, and for second and  
final reading on this 9th day of January, 2019.

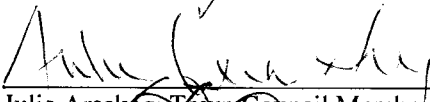
  
Gail L. Coniglio, Mayor


  
Danielle H. Moore, Town Council President

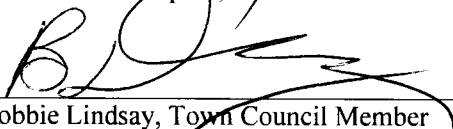
  
Margaret A. Zeidman, Council President Pro Tem

ATTEST:

  
Kathleen Dominguez, Town Clerk

  
Julie Araskog, Town Council Member

  
Lewis S.W. Crampton, Town Council Member

  
Bobbie Lindsay, Town Council Member

