

ORDINANCE 20, 2011

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM BEACH GARDENS, FLORIDA AMENDING CHAPTER 34. ENVIRONMENT AT ARTICLE II. POLLUTION CONTROL BY ADOPTING NEW SECTIONS 34-33 – 34-46 IN ORDER TO ADDRESS EXCESSIVE NUTRIENT LEVELS IN PALM BEACH COUNTY WATER BODIES BY ADOPTING DEFINITIONS, MAKING LEGISLATIVE FINDINGS, OF PURPOSE AND INTENT, PROVIDING FOR APPLICABILITY, TIMING OF FERTILIZER APPLICATIONS; DESIGNATING FERTILIZER-FREE ZONES; PROVIDING FOR THE REGULATION OF FERTILIZER CONTENT, APPLICATION RATES, AND APPLICATION PRACTICES; PROVIDING FOR MANAGEMENT OF GRASS CLIPPINGS AND VEGETABLE MATTER; PROVIDING FOR EXEMPTIONS; PROVIDING FOR TRAINING; PROVIDING FOR LICENSING OF COMMERCIAL APPLICATORS; PROVIDING FOR ENFORCEMENT; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, pursuant to Section 303(d) of the Federal Clean Water Act and the resulting Florida Impaired Waters Rule (Chapter 62-303, Florida Administrative Code), the Florida Department of Environmental Protection has classified specific water bodies in Palm Beach County as "impaired" as a result of the presence of excessive nutrients; and

WHEREAS, Chapter 403.9337, *Florida Statutes*, requires local governments located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to Chapter 403.067, *Florida Statutes*, adopt an ordinance for Florida-Friendly™ fertilizer use on urban landscapes; and

WHEREAS, the Florida Department of Environmental Protection (FDEP) on March 2, 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 City of Palm Beach Gardens; and

WHEREAS, the MS4 permit requires local governments within the watershed of an 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

1 **WHEREAS**, surface water runoff and baseflow runoff leaves residential
2 neighborhoods, commercial centers, industrial areas, and other lands of Palm Beach
3 County and enters into natural and artificial stormwater and drainage conveyances and
4 natural water bodies in Palm Beach County; and
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6 **WHEREAS**, phosphorus and nitrogen, the primary nutrients associated with the
7 degradation of groundwater and surface water, are commonly the primary components
8 of fertilizer for turf and landscape application; and
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10 **WHEREAS**, the quality of streams, lakes, and wetlands is critical to
1 environmental, economic, and recreational prosperity and to the health, safety, and
2 welfare of the residents of Palm Beach County; and
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4 **WHEREAS**, algae blooms and accelerated growth of aquatic weeds in Palm
5 Beach County's water bodies have heightened community concerns about water quality
6 and eutrophication of surrounding waters; and
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8 **WHEREAS**, it is generally recognized that Palm Beach County soils naturally
9 have adequate phosphorus content for most vegetative needs and that additional
10 phosphorus is therefore only occasionally needed to create or maintain a vibrant
1 landscape; and
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3 **WHEREAS**, it has been recognized that proper application of slow-release
4 nitrogen sources is more efficiently used by plants and less likely to leach or run off; and
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6 **WHEREAS**, this Ordinance is part of a comprehensive plan to address nonpoint
7 sources of nutrient pollution, which is scientifically based and economically and
8 technically feasible; and
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10 **WHEREAS**, in the process of adoption of this Ordinance, the City Council of the
1 City of Palm Beach Gardens has considered all relevant scientific information, including
2 input from the Department of Environmental Protection, the Department of Agriculture
3 and Consumer Services, and the University of Florida Institute of Food and Agricultural
4 Sciences; and
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6 **WHEREAS**, the City Council deems approval of this Ordinance to be in the best
7 interests of the health, safety, and welfare of the residents and citizens of the City of
8 Palm Beach Gardens and the public at large.
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10 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY**
1 **OF PALM BEACH GARDENS, FLORIDA** that:
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SECTION 1. Chapter 34. Environment of the Code of Ordinances of the City of Palm Beach Gardens is hereby amended at Article II. Pollution Control by adopting new Section 34-33., which shall be entitled "Title."; providing that Section 34-33. of Chapter 34. Environment shall hereafter read as follows:

Sec. 34-33. Title.

Sections 34-33. – 34-55. of this chapter shall be known as the "Fertilizer Ordinance".

SECTION 2. Chapter 34. Environment of the Code of Ordinances of the City of Palm Beach Gardens is hereby amended at Article II. Pollution Control by adopting new Section 34-34., which shall be entitled "Definitions"; providing that Section 34-34. of Chapter 34. Environment shall hereafter read as follows:

Sec. 34-34. Definitions.

Within this chapter, the following terms shall have the meanings set forth in this section unless the context clearly indicates otherwise.

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

"Applicator" means any person who applies fertilizer on turf and/or landscape plants in the City of Palm Beach Gardens.

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

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

"Code enforcement officer", "Official", or "Inspector" means any designated employee or agent of the City of Palm Beach Gardens whose duty it is to enforce codes and ordinances enacted by the City of Palm Beach Gardens.

"Commercial fertilizer applicator" except as provided in section 482.1562(9), Florida Statutes, means any person who applies fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer, or the employer of the applicators.

1 *"Fertilizing" or "fertilization"* means the act of applying fertilizer to turf, specialized
 2 turf, or landscape plants.
 3

4 *"Fertilizer"* means any substance or mixture of substances that contains one or
 5 more recognized plant nutrients and promotes plant growth, or controls soil acidity or
 6 alkalinity, or provides other soil enrichment, or provides other corrective measures to
 7 the soil.
 8

9 *"Institutional applicator"* means any person, other than a private, noncommercial or a
 0 commercial applicator (unless such definitions also apply under the circumstances), that
 1 applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional
 2 applicators shall include, but shall not be limited to, owners, managers, or employees of
 3 public lands, schools, parks, religious institutions, utilities, industrial or business sites,
 4 and any residential properties maintained in condominium and/or common ownership.
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6 *"Landscape plant"* means any native or non-native tree, shrub, or groundcover
 7 (excluding turf).
 8

9 *"Pasture"* means land managed for livestock grazing.
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1 *"Person"* means any natural person, business, corporation, limited liability
 2 company, partnership, limited partnership, association, club, organization, and/or any
 3 group of people acting as an organized entity.
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5 *"Prohibited application period"* means the time period during which a Flood
 6 Watch or Warning, a Tropical Storm Watch or Warning, or a Hurricane Watch or
 7 Warning is in effect for any portion of the City of Palm Beach Gardens, issued by the
 8 National Weather Service, or if heavy rain (two inches or more within a twenty-four-
 9 hour period) is likely.
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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.
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6 *"Slow-release", "controlled release", "timed release", "slowly available", or "water
 7 insoluble nitrogen"* means nitrogen in a form which delays its availability for plant uptake
 8 and use after application, or which extends its availability to the plant longer than a
 9 reference rapid or quick release product.
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1 *"Turf", "sod", or "lawn"* means an area of grass-covered soil held together by the
 2 roots of the grass.
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1 "Urban landscape" means pervious areas on residential, commercial, industrial,
2 institutional, highway rights-of-way, or other nonagricultural lands that are planted with
3 turf or horticultural plants. For the purposes of this section, agriculture has the same
4 meaning as provided in section 570.02, Florida Statutes.
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6 **SECTION 3.** Chapter 34. Environment of the Code of Ordinances of the City of
7 Palm Beach Gardens is hereby amended at Article II. Pollution Control by adopting new
8 Section 34-35. to be entitled "Legislative Findings."; providing that Section 34-35. of
9 Chapter 34. Environment shall hereafter read as follows:
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1 **Sec. 34-35. Legislative findings.**
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3 As a result of the Florida Department of Environmental Protection's determination
4 that certain water bodies within Palm Beach County are impaired by excessive nutrient
5 levels, the City Council of the City of Palm Beach Gardens finds that the best
6 management practices contained in the most recent edition of the *"Florida-Friendly Best
7 Management Practices for Protection of Water Resources by the Green Industries"*, are
8 required and are necessary to implement within the City as set forth herein.
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0 **SECTION 4.** Chapter 34. Environment of the Code of Ordinances of the City of
1 Palm Beach Gardens is hereby amended at Article II. Pollution Control by adopting new
2 Section 34-36., which shall be entitled "Purpose and intent"; providing that Section 34-
3 36. of Chapter 34. Environment shall hereafter read as follows:
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5 **Sec. 34-36. Purpose and intent.**
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7 This Ordinance regulates the proper use of fertilizers by any applicator; requires
8 proper training of commercial and institutional fertilizer applicators; establishes training
9 and licensing requirements; establishes a prohibited application period; and specifies
0 allowable fertilizer application rates and methods, fertilizer-free zones, and exemptions.
1 This Ordinance requires the use of Best Management Practices to minimize negative
2 environmental effects associated with excessive nutrients in our water bodies. These
3 environmental effects have been observed in and on Palm Beach County's natural and
4 constructed stormwater conveyances, rivers, creeks, canals, lakes, estuaries, and other
5 water bodies. Collectively, these water bodies are an asset important to the
6 environmental, recreational, cultural, and economic well-being of Palm Beach County
7 residents and the health of the public. Overgrowth of algae and vegetation hinder the
8 effectiveness of flood attenuation provided by natural and constructed stormwater
9 conveyances. Regulation of nutrients, including both phosphorus and nitrogen
0 contained in fertilizer, is anticipated to help improve and maintain water and habitat
1 quality.
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3 **SECTION 5.** Chapter 34. Environment of the Code of Ordinances of the City of
4 Palm Beach Gardens is hereby amended at Article II. Pollution Control by adopting new
5 Section 34-37., which shall be entitled "Applicability."; providing that Section 34-37. of
6 Chapter 34. Environment shall hereafter read as follows:
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Sec. 34-37. Applicability.

The regulations set forth herein shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer to urban landscapes within the area of the City of Palm Beach Gardens, unless such application is specifically exempted by Section 34-44. These regulations shall be prospective only and shall not impair any existing contracts.

SECTION 6. Chapter 34. Environment of the Code of Ordinances of the City of Palm Beach Gardens is hereby amended at Article II. Pollution Control by adopting new Section 34-38., which shall be entitled "Timing of fertilizer applications."; providing that Section 34-38. of Chapter 34. Environment shall hereafter read as follows:

Sec. 34-38. Timing of fertilizer applications.

(a) No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the Prohibited Application Period or to saturated soils.

(b) Fertilizer containing nitrogen and/or phosphorus shall not be applied before seeding or sodding a site, and shall not be applied for the first thirty days after seeding, 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.

SECTION 7. Chapter 34. Environment of the Code of Ordinances of the City of Palm Beach Gardens is hereby amended at Article II. Pollution Control by adopting new Section 34-39., which shall be entitled "Fertilizer-free zones."; providing that Section 34-39. of Chapter 34. Environment shall hereafter read as follows:

Sec. 34-39. Fertilizer-free zones.

Fertilizer shall not be applied within ten feet, or three feet if a deflector shield or drop spreader is used, of any pond, stream, water body, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340), Florida Administrative Code, or from the top of a seawall or lake bulkhead. Newly planted turf or landscape plants may be fertilized in this zone only for a sixty-day period beginning thirty days after planting if needed to allow the plants to become well-established. Caution shall be used to prevent direct deposition of nutrients into the water.

SECTION 8. Chapter 34. Environment of the Code of Ordinances of the City of Palm Beach Gardens is hereby amended at Article II. Pollution Control by adopting new Section 34-40., which shall be entitled "Fertilizer content and application rates"; providing that Section 34-40, of Chapter 34. Environment shall hereafter read as follows:

Sec. 34-40. Fertilizer content and application rates.

(a) Fertilizers applied to turf within the City of Palm Beach Gardens shall be formulated and applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*. Under Rule 5E-1.003(2), Florida Administrative Code, required application rate and frequency maximums, which vary by plant and turf types, are found on the labeled fertilizer bag or container.

(b) Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants, except as provided in section (a) above for turf, or in 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.

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

SECTION 9. Chapter 34. Environment of the Code of Ordinances of the City of Palm Beach Gardens is hereby amended at Article II. Pollution Control by adopting new section 34-41., which shall be entitled "Fertilizer application practices"; providing that Section 34-41. of Chapter 34. Environment shall hereafter read as follows:

Sec. 34-41. Fertilizer application practices.

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

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

(c) In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

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

SECTION 10. Chapter 34. Environment of the Code of Ordinances of the City of Palm Beach Gardens is hereby amended at Article II. Pollution Control by adopting new Section 34-42., which shall be entitled "Management of grass clippings and vegetative matter"; providing that Section 34-42. of Chapter 34. Environment shall hereafter read as follows:

Sec. 34-42. Management of grass clippings and vegetative matter.

In no case shall grass clippings, vegetative material, and/or vegetative debris intentionally be washed, swept, or blown onto or into stormwater drains, ditches, conveyances, water bodies, wetlands, sidewalks, or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable.

SECTION 11. Chapter 34. Environment of the Code of Ordinances of the City of Palm Beach Gardens is hereby amended at Article II. Pollution Control by adopting new Section 34-43. which shall be entitled "Exemptions."; providing that Section 34-43. of Chapter 34. Environment shall hereafter read as follows:

Sec. 34-43. Exemptions.

The provisions set forth hereinabove shall not apply to:

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

SECTION 12. Chapter 34. Environment of the Code of Ordinances of the City of Palm Beach Gardens is hereby amended at Article II. Pollution Control by adopting new Section 34-44., which shall be entitled "Training."; providing that Section 34-44. of Chapter 34. Environment shall hereafter read as follows:

Sec. 34-44. Training.

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

(b) Noncommercial and noninstitutional 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.

SECTION 13. Chapter 34. Environment of the Code of Ordinances of the City of Palm Beach Gardens is hereby amended at Article II. Pollution Control by adopting new Section 34-45., which shall be entitled "Licensing of commercial applicators."; providing that Section 34-45. of Chapter 34. Environment shall hereafter read as follows:

Sec. 34-45. Licensing of commercial applicators:

(a) All businesses applying fertilizer to turf or landscape plants (including, but not limited to, residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that the business owner or his/her designee holds the appropriate "*Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries*" training certificate prior to the business owner obtaining a 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 Palm Beach Gardens Business Services 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 in order to receive his/her/its Business Tax Receipt annually. Additionally, commercial applicators of fertilizer who are not required to obtain a Business Tax Receipt from the City of Palm Beach Gardens shall be required to register with the City pursuant to Sec. 66-37(b) of the City Code of Ordinances.

(b) After December 31, 2013, all commercial applicators of fertilizer within the City of Palm Beach Gardens shall have and carry in their possession at all times when applying fertilizer evidence of certification by the Florida Department of Agriculture and Consumer Services as a commercial fertilizer applicator per Rule 5E-14.117(18), Florida Administrative Code.

(c) All businesses applying fertilizer to turf and/or landscape plants (including, but not limited to, residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that at least one 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 or prior to registering with the City pursuant to Sec. 66-37(b) of the City Code of Ordinances. Standard Business Tax Receipt (BTR) and/or standard transaction fees shall apply.

SECTION 14. Chapter 34. Environment of the Code of Ordinances of the City of Palm Beach Gardens is hereby amended at Article II. Pollution Control by adopting new Section 34-46., which shall be entitled "Enforcement."; providing that Section 34-46. of Chapter 34. Environment shall hereafter read as follows:

1 **Sec. 34-46. Enforcement.**

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3 (a) The provisions of this Ordinance shall be enforced by (1) the City of Palm
4 Beach Gardens code enforcement special magistrate pursuant to the authority granted
5 by Section 162.01, et. seq., *Florida Statutes*, as may be amended, and Chapter 2 of the
6 City Code of Ordinances, as may be amended; or (2) the City of Palm Beach Gardens
7 through its authority to enjoin and restrain any person violating the City Code of
8 Ordinances. The City of Palm Beach Gardens may pursue these or any other
9 enforcement remedies available under the law.

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1 (b) Any violation of this Ordinance is hereby deemed to be irreversible and
2 irreparable in accordance with Section 162.01, et. seq., *Florida Statutes*.

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4 **SECTION 15.** Each and every other section and subsection of Chapter 34.
5 Environment shall remain in full force and effect as previously enacted.

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7 **SECTION 16.** All ordinances or parts of ordinances in conflict herewith be and
8 the same are hereby repealed.

9
0 **SECTION 17.** Should any section or provision of this Ordinance or any portion
1 thereof, any paragraph, sentence, or word be declared by a court of competent
2 jurisdiction to be invalid, such decision shall not affect the validity of the remainder of
3 this Ordinance.

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5 **SECTION 18.** Specific authority is hereby granted to codify this Ordinance.

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7 **SECTION 19.** This Ordinance shall become effective upon filing with the
8 Department of State.


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PASSED this 1ST day of DECEMBER, 2011, upon first reading.


PASSED AND ADOPTED this 5TH day of JANUARY, 2012, upon second and final reading.

CITY OF PALM BEACH GARDENS**FOR****AGAINST****ABSENT**


BY:


 David Levy, Mayor

✓


 Robert G. Premuroso, Vice Mayor

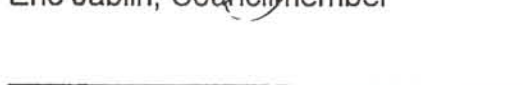
✓


 Joseph R. Russo, Councilmember

✓


 Eric Jablin, Councilmember

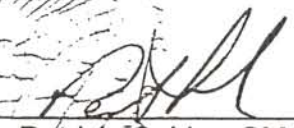
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 Marcie Tinsley, Councilmember

✓

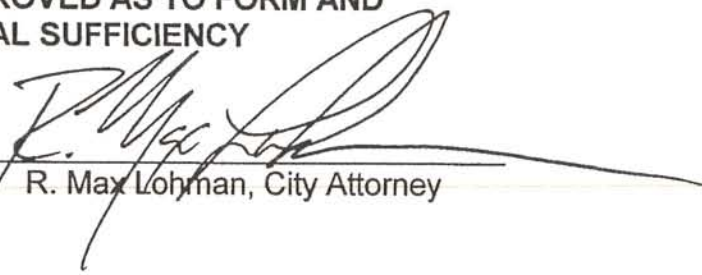
ATTEST:

BY:


 Patricia Snider, CMC, City Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

BY:


 R. Max Lohman, City Attorney