

ORDINANCE NO. 2012-19

AN ORDINANCE OF THE VILLAGE OF PALM SPRINGS, FLORIDA, AMENDING CHAPTER 34, LAND DEVELOPMENT, ARTICLE III, LANDSCAPING, BY ADDING AN ENTIRELY NEW DIVISION TO BE ENTITLED "DIVISION V." "FERTILIZER FRIENDLY USE REGULATIONS" TO PROVIDE FOR NEW FERTILIZER USE AND APPLICATION REGULATIONS 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 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, PENALTIES, AND APPEALS, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; 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 Village of Palm Springs; 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 County and enters into natural and artificial stormwater and drainage conveyances and natural water bodies in Palm Beach County; and

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

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

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

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

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

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

WHEREAS, in the process of adoption of this Ordinance, the Village Council of the Village of Palm Springs has considered scientific information, including input from the Department of Environmental Protection, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences; and

WHEREAS, the Village Council of the Village of Palm Springs has determined that the approval of the Fertilizer Friendly Use Regulations contained herein serve a valid public purpose.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF PALM SPRINGS, FLORIDA THAT:

Section 1. Chapter 34, Land Development, Article III, Landscaping, is hereby amended by Adding Division 5, Fertilizer Friendly Use Ordinance, as follows:

DIVISION 5. FERTILIZER FRIENDLY USE ORDINANCE

Sec. 34-241. Title

This Division shall be known as the "Fertilizer-Friendly Use Ordinance" which is required to be adopted by Section 403.9337, *Florida Statutes (2011)*, for any municipality located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to Section 403.067, *Florida Statutes (2011)*. Other related regulations concerning water quality and discharge adopted in furtherance of the Village's NPDES MS4 permit are set forth at Chapter 34-1354, Surface Water Management, of the Village Code of Ordinances.

Sec. 34-242. Definitions.

For this Division, 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 Village of Palm Springs.

"*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 CBMP's*" 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 Village of Palm Springs whose duty it is to enforce codes and ordinances enacted by the Village of Palm Springs.

"*Commercial Fertilizer Applicator*", "*Commercial Applicator*", except as provided in Section 482.1562(9), F.S. 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.

"*fertilizing*" or "*fertilization*" means the act of applying fertilizer to turf specialized turf or landscape plants.

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

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

"landscape plant" means any native or non-native tree, shrub, or groundcover (excluding turf).

"pasture" means land managed for livestock grazing

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

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

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

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

"turf", "sod" or "lawn" means an area of grass-covered soil held together by the roots of the grass.

"urban landscape" means pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or landscape plants. For the purposes of this section, agriculture has the same meaning as provide in Section 570.02, *Florida Statutes (2011)*.

Sec. 34-243. Findings.

As a result of the Florida Department of Environmental Protection's determination that certain water bodies within Palm Beach County are impaired for excessive nutrient levels, the Village Council of the Village of Palm Springs finds that the best management practices contained in the most recent edition of the *"Florida-Friendly Best Management*

Practices for Protection of Water Resources by the Green Industries", are required in this Division.

Sec. 34-244. Purpose and Intent.

This Division 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 Division 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.

Sec. 34-245. Applicability.

This Division 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 Village of Palm Springs unless such application is specifically exempted by Sec. 34-251, of this Division. This Division shall be prospective only, and shall not impair any existing contracts.

Sec. 34-246. 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 (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 Prevention Plan for that site.

Sec. 34-247. 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 at 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 in the water.

Sec. 34-248. Fertilizer Content and Application Rates.

(a). Fertilizers applied to turf within the Village of Palm Springs 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.

(b). 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.

(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*.

Sec. 34-249. Fertilizer Application Practices.

(a). As required in Section. 34-247 of this Division, 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 blow off impervious surfaces into stormwater drains, ditches, conveyances or water bodies.

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

Sec. 34-250. 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 on to or into stormwater drains, ditches, conveyances, water bodies, wetlands, sidewalks or roadways. Vegetative material may

be placed within the roadway right-of-way, but not over the storm drains, for pickup by the appropriate vegetative waste hauler.

Sec. 34-251. Exemptions.

The provisions set forth above in this Division shall not apply to the following:

(a) bona fide farm operations as defined in the Florida Right-to-Farm Act, Section 823.14, *Florida Statutes (2011)*;

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

(c) 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.

Sec. 34-252. 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). 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.

Sec. 34-253. 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 Receipt. 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 Village of Palm Springs. 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.

(b). After December 31, 2013, all Commercial Applicators of fertilizer within the Village of Palm Springs 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 (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 Receipt, Palm Beach County Tax Receipt CBTR and transaction fees shall apply.

Sec. 34-254. Enforcement; Penalties; Appeal.

(a). *Enforcement.* The provisions of this Division shall be enforced by the Village of Palm Springs Special Magistrate pursuant to the authority granted by Section 162.01 et. seq., *Florida Statutes*, as may be amended, and the Village of Palm Springs through its authority to enjoin and fine any person violating its Code of Ordinances as provided at Article V. of Chapter 2. Administration. The Village Land Development Director, or designee, may pursue these or any other enforcement remedies available to and applicable to the Village of Palm Springs under applicable law.

(b). *Penalties.* Failure to comply with the requirements of this Division shall constitute a violation of this Division by either the applicable land owner or the Applicator. Each application which violates this Division shall constitute a separate and distinct violation.

(c). *Disposition of Penalty Funds.* Funds generated by penalties imposed under this Division shall be used by the Village of Palm Springs for the administration and enforcement of Section 403.9337, *Florida Statutes (2011)*, and the corresponding Sections of this Division, and to further water conservation and nonpoint pollution prevention activities.

(d). *Appeals.* Appeals of administrative order of the Special Magistrate shall be as provided under state law, Section 162.11, *Florida Statutes (2011)*.

Sec. 34-255. – 34-340. Reserved

Section 2. Codification. The provisions of this Ordinance shall become and be made part of the Code of Laws and Ordinances of the Village of Palm Springs.

Section 3. Repeal of Conflicting Ordinances. All Ordinances, Resolutions or parts of Ordinances and Resolutions in conflict herewith are hereby repealed.

Section 4. Severability. If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this Ordinance.

Section 5. Effective Date. This Ordinance shall become effective immediately upon adoption.

Council Member Escalada, offered the foregoing Ordinance, and moved its adoption. The motion was seconded by Council Member Gunther, and upon being put to a vote, the vote was as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
BEV SMITH, MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JONI BRINKMAN, VICE MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PATTI WALLER, MAYOR PRO TEM	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DOUG GUNTHER, COUNCIL MEMBER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SERGIO ESCALADA, COUNCIL MEMBER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The Mayor thereupon declared this Ordinance approved and adopted by the Village Council of the Village of Palm Springs, Florida, on second reading, the 28th day of JUNE, 2012.

VILLAGE OF PALM SPRINGS, FLORIDA

BY: 

BEV SMITH, MAYOR

First Reading: 6-14-12

Second Reading: 6-28-12

ATTEST:

BY: 

VIRGINIA M. WALTON, VILLAGE CLERK

REVIEWED FOR LEGAL FORM AND SUFFICIENCY

BY: 

GLEN J. TORCIVIA, VILLAGE ATTORNEY

