

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES AT CHAPTER 34 (ENVIRONMENT), TO CREATE ARTICLE V (FLORIDA FRIENDLY FERTILIZER USE), SECTION 34-114 THROUGH SECTION 34-124 TO REQUIRE FLORIDA-FRIENDLY FERTILIZER PRACTICES IN THE APPLICATION OF FERTILIZER TO TURF AND LANDSCAPE PLANTS; PROVIDING FOR CERTIFICATION FOR COMMERCIAL APPLICATORS AND INSTITUTIONAL APPLICATORS OF FERTILIZER; PROVIDING FOR ENFORCEMENT; PROVIDING FOR CODIFICATION; PROVIDING A CONFLICTS AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

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 the City of West Palm Beach ; and

WHEREAS, surface water runoff and baseflow runoff leaves residential neighborhoods, commercial centers, industrial areas, and other lands of the City of West Palm Beach and enters into natural and artificial stormwater and drainage conveyances and natural water bodies of the City and the State of Florida; and

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 the City as "impaired" as a result of the presence of excess nutrients; and

WHEREAS, leaching and runoff of nutrients from improper or excess fertilization practices contributes to nitrogen and phosphorus loading in the City's stormwater conveyances and natural water bodies and thus to the overgrowth of algae and vegetation in these waterways; and

WHEREAS, the overgrowth of algae and vegetation in stormwater and drainage conveyances hinders the goal of flood prevention and proper water conduction; and algae blooms and accelerated growth of aquatic weeds in water bodies have heightened concerns about water quality and eutrophication of surrounding waters; and

WHEREAS, it is generally recognized that eastern Florida soils naturally have a suitable phosphorus content for most vegetative needs and that phosphorus is therefore rarely needed to create or maintain a vibrant landscape; and

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

ORDINANCE NO. 4432-12

WHEREAS, the United States Environmental Protection Agency ("EPA") issued its National Pollutant Discharge Elimination System ("NPDES") Permit No. FLS 000018 (with it and all such subsequent permits being hereinafter referred to as the "MS4 NPDES Permit") to approximately forty (40) governmental entities, including the City of West Palm Beach, designated as the Palm Beach County-Municipal Separate Storm Sewer System ("MS4"); and

WHEREAS, EPA has since delegated its regulatory and enforcement authority relating to the MS4 NPDES Permit to the Florida Department of Environmental Protection ("FDEP"); and

WHEREAS, FDEP recently renewed and re-issued the MS4 NPDES Permit, Permit No. FLS 000018-003; and

WHEREAS, both Sec. 403.9337, Florida Statutes, and the MS4 NPDES 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 of the requirements contained in the model ordinance; and

WHEREAS, this Ordinance is part of a regulatory program to address nonpoint sources of nutrient pollution, considering scientifically based data and economic and technical feasibility; and

WHEREAS, as a result of impairment to the City's surface waters caused by excessive nutrients, or, as a result of increasing levels of nitrogen in the surface and/or ground water within the aquifers within the boundaries of the City, the City Commission of the City of West Palm Beach has determined that the use of fertilizers on lands within the City contributes to adverse effects on surface and/or ground water, and that management measures contained in the most recent edition of the *"Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008,"* are necessary for the public health and well-being;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, THAT:

SECTION 1: Chapter 34 (Environment) of the Code of Ordinances of the City of West

Palm Beach, Florida, is hereby amended to create Article V (Florida Friendly Fertilizer

Use), Section 34-114 through 34-124 which shall read as follows:

ARTICLE V. FLORIDA FRIENDLY FERTILIZER USE

Sec. 34-114. - Definitions.

For the purpose of this article, the following terms shall have the meanings set forth by this section unless the context clearly indicates otherwise.

All words used in the present tense include the future; all words in the singular number include the plural and the plural the singular. Any word or term not interpreted or defined by this section shall be used with a common dictionary meaning of common or standard utilization.

Apply or application means the physical deposit, placement, or release of fertilizer upon soil or turf or landscape plants.

Applicator means any person who applies fertilizer.

Approved soil test means soil and tissue tests for phosphorus and/or nitrogen done by the University of Florida Institute of Food and Agricultural Sciences (UF/IFAS) or an accredited laboratory that regularly performs soil testing.

Commercial applicator means, except as provided in F.S. § 482.1562(9), any person who applies fertilizer in exchange for money, goods, services or other valuable consideration to property not owned by the person or firm applying the fertilizer.

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.

Fertilizing means the act of applying fertilizer to soil, turf, specialized turf or landscape plants.

Institutional Applicator means any person, other than a private non-commercial or commercial applicator (unless such definitions also apply under the circumstances) that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institution Applicators shall include, but shall not be limited to, owners, manager 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, bush or groundcover plant, excluding turf.

Person means any person, natural or artificial, individual, firm, association, organization, partnership, business trust, corporation, company, 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, or a tropical storm watch or warning, or a hurricane watch or warning, or a 3-day cone of uncertainty is in effect for any portion of the city, issued by the National Weather Service.

Saturated soil means soil in which the voids are filled with water. Saturation does not require flow. For the purpose of this ordinance, soil 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 means nitrogen in a form which delays its availability for landscape plant or turf uptake and use for an extended period after application, or which extends its availability to the landscape plant or turf longer than a readily available, rapid or quick-release product. This definition includes the terms "controlled release," slow release," "slowly available," and "water insoluble".

Turf, sod, or lawn means an area of grass-covered soil held together by the roots of the grass, including but not limited to, Bahia, Bermuda, Centipede, Paspalum, St. Augustine, and Zoysia, or other grass groundcover.

Sec. 34-115. - 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 course, 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 and/or landscape plants may be fertilized in this zone only for a 60 day establishment period beginning 30 days after planting, if needed to allow the plants to become established. Caution shall be used to prevent direct application of fertilizer into the water.

Sec. 34-116. - Fertilizer Application Restrictions.

(a) No applicator shall apply fertilizers containing nitrogen and/or phosphorus to saturated soil or to turf and/or landscape plants on saturated soil.

(b) No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during any prohibited application period, including any period for which the National Weather Service has issued any of the following advisories for any portion of the City: flood warning or watch, tropical storm warning or watch, hurricane warning or watch, or a three-day cone of uncertainty.

(c) Fertilizers containing nitrogen and/or phosphorus shall not be applied before seeding or sodding a site, and shall not be applied for the first 30 days after seeding or sodding, except when hydro-seeding for temporary or permanent erosions control in an emergency situation (wildfire, etc.,) or in accordance with the stormwater pollution prevention plan for that site.

Sec. 34-117. - Fertilizer Content and Application Rates.

(a) All fertilizer to be applied shall be labeled in accordance with state law.

(b) Fertilizers applied to turf and/or landscape plants within the City shall be applied in accordance with directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*, and shall not exceed the application rates and frequency maximums, which vary by plant and turf type, found on the labeled fertilizer bag or container.

(c) Unless a soil or tissue deficiency has been verified by an approved soil test:

(i) nitrogen or phosphorus fertilizer shall be applied to turf in accordance with the rates and frequency requirements of subsection (b) above; and

(ii) nitrogen or phosphorus fertilizer shall be applied to landscape plants in accordance with the rates and frequency requirements of subsection (b) above, or in accordance with the University of Florida/Institute of Food and Agricultural Sciences recommendations for landscape plants, vegetable gardens and fruit trees and shrubs.

Sec. 34-118. - Mode of Application.

Spreader deflector shields are required when fertilizing via broadcast spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from all impervious surfaces, fertilizer free zones, water bodies including wetlands, and saturated soil.

Sec. 34-119. - Impervious Surfaces.

Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces. 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. 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. In no case shall fertilizer be washed, swept, or

blown off impervious surfaces into stormwater drains, ditches, conveyances, fertilizer free zones or water bodies including wetlands.

Sec. 34-120. – Management of Grass Clippings and Vegetative Matter.

In no case shall grass clippings, plant material, vegetative debris and/or yard and garden waste, intentionally be washed, swept, or blown onto or into stormwater drains, ditches, conveyances, fertilizer free zones, water bodies, wetlands, sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable. Yard and garden waste material may be placed for pick up, in accordance with the city code, within the swale, parkway or street, but not in such a manner which may block or wash into the storm drains.

Sec. 34-121. - Exemptions.

The provisions of this article shall not apply to:

- (a) bona fide farm operations or other properties that have pastures used for grazing livestock, which are covered under the Florida Right to Farm Act, F.S. § 823.14.
- (b) 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. 34-122. – Commercial Applicators.

- (a) Effective January 1, 2014, all commercial applicators applying fertilizer within the municipal boundary of the city shall provide evidence of successfully completion of training in the requirements of 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 IFAS “Florida-Friendly Landscapes” program, or an approved equivalent program, prior to obtaining or renewing a certificate of use and/or obtaining a business tax receipt for any category of occupation which may apply any fertilizer to turf and/or landscape plants.
- (b) Effective January 1, 2014, all commercial applicators applying fertilizer within the municipal boundary of the city 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.

Sec. 34-123. – Institutional Applicators.

Effective January 1, 2014, all institutional applicators which apply, or cause to be applied, fertilizer on the institutional applicator's property within the municipal boundary of the city shall provide evidence that at least one employee of the institutional applicator has successfully completed 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 or the Palm Beach County Cooperative Extension Service "Florida-Friendly Landscapes" program, or an approved equivalent program, prior to obtaining or renewing a certificate of use and/or obtaining a business tax receipt.

Sec. 34-124. - Enforcement; Fines and Penalties; Appeal; Use of Funds.

(a) The following civil fines shall be imposed for violations of this chapter:

- (i) First offense, \$250.00 fine.
- (ii) Second offense (within one year of the first offense) and each offense thereafter, \$500.00 fine.

For purposes of this section, "offense" shall mean a notice of violation that has not been contested timely or a finding of violation by a special magistrate. A person may receive a separate notice of violation once every hour if a violation has occurred at any time within that period. Each notice of violation shall constitute a separate offense for which a separate fine may be imposed.

(b) A violator who has been served with a notice of violation shall elect either to:

- (1) Pay the civil fine in the manner indicated on the notice; or
- (2) Request an administrative hearing before a special magistrate to appeal the decision of the code inspector that has resulted in the issuance of the notice of violation, in accordance with chapter 26 of this code.

(c) The named violator shall request an administrative hearing before the special magistrate by filing a written request for hearing with the special magistrate's office within ten days of the date of the notice of violation.

(d) If the named violator after notice fails to pay the civil fine or fails to timely request an administrative hearing before a special magistrate, the special magistrate shall be informed of such failure by report from the code enforcement officer. Failure of the named violator to appeal the notice of violation within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special magistrate. A waiver of the right to an administrative hearing shall be treated as an admission of the violation and penalties may be assessed accordingly.

(e) Any party aggrieved by the decision of a special magistrate may appeal that decision to a court of competent jurisdiction as provided in F.S. § 162.11.

(f) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines. A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After three months from the filing of any such lien that remains unpaid, the city may foreclose or otherwise execute on the lien. A violator may be subject to the reinspection provisions of chapter 26 of this code.

(g) As an alternative or additional means of enforcement, the city may institute proceedings to revoke or suspend the certificate of use of any commercial applicator or institutional applicator, or seek injunctive relief. As a further alternative or additional means of enforcement, the city may employ the alternative code enforcement procedures for a civil infraction described in chapter 26, article III of this code. The provisions of chapter

Sec. 34-124. – Use of Funds

Funds generated by fines and penalties imposed under this article shall be used by the city for the administration and enforcement of F.S. § 403.9337 and this article, and to further water conservation and nonpoint pollution prevention activities.

SECTION 2: Specific authority is hereby granted to codify this Ordinance.

SECTION 3: All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 4: Should any section or provision of this Ordinance or any portion, paragraph, sentence or word hereof be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder as a whole, or any other part, of this Ordinance.

SECTION 5: This Ordinance shall take effect in accordance with law; provided, however, no notices of violation or other enforcement procedures shall be issued prior to

ORDINANCE NO. 4432-12

October 1, 2012. This Ordinance shall be prospective only and shall not impair any existing contracts.

FIRST READING THIS 6th DAY OF August, 2012.

SECOND READING AND FINAL PASSAGE THIS 20th DAY OF August, 2012.

(CORPORATE SEAL)

**CITY OF WEST PALM BEACH
BY ITS CITY COMMISSION**

ATTEST:

Seraldine P. Nixon
PRESIDING OFFICER

Debra J. Burch
DEPUTY CITY CLERK

CITY ATTORNEY'S OFFICE
Approved as to form and legality
By: WJH

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