

ORDINANCE NO. 2017-13

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA, AMENDING CHAPTER 27, "TREES AND SHRUBBERY," OF THE VILLAGE CODE OF ORDINANCES BY ADOPTING A NEW ARTICLE IV, "FERTILIZER FRIENDLY ORDINANCE;" PROVIDING FOR A TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR FINDINGS; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR APPLICABILITY; PROVIDING FOR TIMING OF FERTILIZER APPLICATIONS; PROVIDING FOR FERTILIZER FREE ZONES; PROVIDING FOR FERTILIZER CONTENT AND APPLICATION RATES; PROVIDING FOR FERTILIZER APPLICATION PRACTICES; PROVIDING FOR MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER; PROVIDING FOR EXEMPTIONS; PROVIDING FOR TRAINING; PROVIDING FOR LICENSING OF COMMERCIAL APPLICATORS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR APPEALS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; 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, Section 403.9337, Florida Statutes, requires that local governments 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, adopt an ordinance for Florida-Friendly™ fertilizer use on urban landscapes; and

WHEREAS, on March 2, 2011, FDEP issued its Palm Beach County Municipal Separate Storm Sewer System Permit No. FLS 000018-003 ("MS4 Permit") to forty-one (41) governmental entities, including the Village of North Palm Beach; 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 non-point 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 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 determines that the adoption of this Ordinance is in the best interests of the residents and citizens of the Village of North Palm Beach.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA as follows:

Section 1. The foregoing "Whereas" clauses are hereby ratified and incorporated herein.

Section 2. The Village Council hereby amends Chapter 27, "Trees and Shrubbery," of the Village Code of Ordinances by adopting a new Article IV, "Fertilizer-Friendly Use Ordinance," to read as follows (additional language underlined):

ARTICLE IV. FERTILIZER-FRIENDLY USE ORDINANCE

Sec. 27-71. Title.

This article shall be known as the village's fertilizer-friendly use ordinance.

Sec. 27-72. Definitions.

When used in this article, the following terms shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

Application or apply means the actual physical deposit of fertilizer to turf or landscape plants.

Applicator means any person who applies fertilizer on turf and/or landscape plants in the village.

Best management practices (BMP'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 the village whose duty it is to enforce codes and ordinances enacted by the village.

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.

Fertilize, 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).

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.

Saturated soil means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this article, 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 plant 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 horticultural plants. For the purposes of this section, agriculture has the same meaning as provided in section 570.02, Florida Statutes.

Sec. 27-73. 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 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 article.

Sec. 27-74. Purpose and intent.

This article regulates the proper use of fertilizers by any applicator; requires proper training of commercial and institutional fertilizer applicators; establishes training and licensing requirements; establishes the timing of fertilizer application; and specifies allowable fertilizer application rates and methods, fertilizer-free zones, and exemptions. This article requires the use of best management practices which provide specific management guidelines to minimize negative secondary and cumulative environmental effects associated with the misuse of fertilizers. 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 public health. Overgrowth of algae and vegetation hinders 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. 27-75. Applicability.

This article shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer to urban landscapes within the village, unless such application is specifically exempted by section 27-81 of this article. This article shall be prospective only, and shall not impair any existing contracts.

Sec. 27-76. Timing of fertilizer application.

No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the rainy period from June 1st through October 31st or at any time to saturated soils or during the time which a tropical storm or hurricane watch or warning has been issued by the national weather service or when heavy rain (greater than two (2) inches in a twenty-four (24) hour period) is forecast. This prohibition shall not apply to fertilizer used for sports turf at golf courses, parks and athletic fields provided that all requirements of section 27-78(d) below are met.

Sec. 27-77. Fertilizer free zones.

Fertilizer shall not be applied within ten (10) feet of any pond, stream, watercourse, lake, canal or wetland as defined by the Florida Department of Environmental Protection in Chapter 62-340, Florida Administrative Code, or from the top of a seawall or bulkhead, unless a deflector shield, drop spreader, or liquid applicator with a visible and sharply defined edge, is used, in which case a minimum of three (3) feet shall be maintained. 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 plants to become well established. Caution shall be used to prevent the direct deposit of nutrients into the water.

Sec. 27-78. Fertilizer content and application rates.

(a) Fertilizers applied to turf within the village 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) Fertilizer containing nitrogen 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 the site.

(c) 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.

(d) Fertilizer used for sports turf at golf courses, parks and athletic fields shall be applied in accordance with Rule 5E-1.003(3), Florida Administrative Code.

Sec. 27-79. Fertilizer application practices.

(a) 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.

(b) Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces.

(c) 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.

(d) 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.

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

Sec. 27-80. Management of grass clippings and vegetative matter.

In no case shall grass clippings, vegetative material, and/or vegetative debris be washed, swept, or blown on to 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.

Sec. 27-81. Exemptions.

The provisions of this article shall not apply to:

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

(b) Vegetable gardens provided that they are not located within fifteen (15) feet of a waterbody or wetland;

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

(d) 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;

(e) Specialized turf grasses such as Zoysia or Bermuda as part of a periodic dethatching process during the growing period, provided that best management practices for fertilizer application are followed;

(f) The use of reclaimed water for irrigation; and

(g) The application of yard waste compost, mulches or similar materials that are organic in nature and are applied to improve the physical condition of the soil.

Sec. 27-82. Training.

(a) All commercial and institutional applicators of fertilizer within the village 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) Private, non-commercial applicators are encouraged to follow the recommendations of the University of Florida/IFAS "Florida-Friendly Landscape Program" when applying fertilizers.

Sec. 27-83. Licensing of commercial applicators.

(a) All commercial applicators of fertilizer within the village 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.

(b) 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 a "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries" training certificate prior to the business owner obtaining a 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.

Sec. 27-84. Enforcement; penalties; appeals.

(a) Enforcement. The provisions of this article shall be enforced by the village's code enforcement special magistrate pursuant to the authority granted by Section 162.01, Florida Statutes, et seq., as may be amended, and the village through its authority to enjoin and fine any person violating its code. The village may pursue these or any other enforcement remedies available to the village under state law.

(b) Penalties. Failure to comply with the requirements of this article shall constitute a violation of this article and each new day the violation exists shall be considered a separate and distinct offense. Fines shall be determined by considering the factors set forth in Section 162.09, Florida Statutes, as may be amended, and shall not exceed the amounts authorized by state law.

(c) Disposition of penalty funds. Funds generated by penalties imposed pursuant to this article shall be used by the village for the administration and enforcement of Section 403.9337, Florida Statutes, and the corresponding sections of this article, and to further water conservation and non-point pollution prevention activities.

(d) Appeals. Appeals of administrative orders of the special magistrate shall be as provided under state law, and as further set forth in section 2-180 of the village code.

Section 3. The provisions of this Ordinance shall become and be made a part of the Code of the Village of North Palm Beach, Florida.

Section 4. If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this Ordinance.

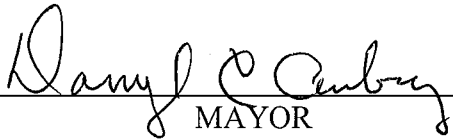
Section 5. All ordinances or parts of ordinances and resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 6. This Ordinance shall take effect immediately upon adoption.

PLACED ON FIRST READING THIS 24TH DAY OF AUGUST, 2017.

PLACED ON SECOND, FINAL READING AND PASSED THIS 28TH DAY OF SEPTEMBER, 2017.

(Village Seal)


MAYOR


ATTEST:


VILLAGE CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



VILLAGE ATTORNEY