

ORDINANCE NO. 28-24

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH CODE OF ORDINANCES CHAPTER 4, "ZONING REGULATIONS," ARTICLE 4.6, "SUPPLEMENTAL DISTRICT REGULATIONS," SECTION 4.6.16, "LANDSCAPE REGULATIONS," SUBSECTION (I), "MINIMUM MAINTENANCE REQUIREMENTS," TO REMOVE EXISTING FERTILIZER USE REGULATIONS AND TO CREATE A NEW SUBSECTION (J), "FERTILIZER MANAGEMENT," TO ESTABLISH NEW FERTILIZER USE REGULATIONS AND ASSOCIATED DEFINITIONS PURSUANT TO THE REQUIREMENTS OF FLORIDA STATUTES; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the City of Delray Beach (the "City") as set forth in Article VIII, Section 2, of the Constitution of the State of Florida, Chapter 166, Florida Statutes (F.S.), and other applicable controlling laws; and

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

WHEREAS, in 2016, the FDEP classified Lake Ida as an impaired waterbody based on failing bioassessments and nutrients; and

WHEREAS, Section 403.9337, Florida Statutes (F.S.), requires local governments within the watershed of a water body or water segment listed as impaired by nutrients pursuant to Section 403.067, F.S., to adopt an ordinance regulating fertilizer use on urban landscapes; and

WHEREAS, the FDEP issued Palm Beach County Municipal Separate Storm Sewer System Permit No. FLS 000018-004 (the "MS4 Permit") to forty (40) governmental entities including the City; 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 leave residential neighborhoods, commercial centers, industrial areas, and other lands and enter natural and artificial stormwater and drainage conveyances and natural water bodies; 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, this Ordinance adopts best management practices to minimize negative environmental effects associated with excessive nutrients in Palm Beach County's natural and constructed stormwater conveyances, rivers, creeks, canals, lakes, estuaries and other water bodies, by regulating the proper use of fertilizers by any applicator; requiring proper training of commercial and institutional fertilizer applicators; establishing training and licensing requirements; establishing a prohibited application period; and specifying allowable fertilizer application rates and methods, fertilizer-free zones, and exemptions; and

WHEREAS, the City Commission deems approval of this Ordinance to be in the best interest of the health, safety, and welfare of the residents and citizens of the City of Delray Beach and the public at large.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The recitations set forth above are incorporated herein.

Section 2. Chapter 4, "Zoning Regulations," Article 4.6, "Supplemental District Regulations," Section 4.6.16, "Landscape Regulations," Subsection (I), "Minimum Maintenance Requirements," of the Land Development Regulations of the City of Delray Beach, Florida, is hereby amended as follows:

(I) ***Minimum maintenance requirements.***

(1) - (2) (These subsections shall be in full force and effect as adopted.)

~~(3) ***Fertilizer management.***~~

~~(a) Spreader deflector shields are required when fertilizing via rotary 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) Fertilizers shall not be applied, spilled or otherwise deposited on any impervious surfaces. Any fertilizers that are spilled, whether intentionally or accidentally, shall be immediately and completely removed.~~

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

~~(34)~~ ***Pesticide management.***

- (a) All landscape applications of pesticides, including Weed and Feed products, should be made in accordance with State and Federal Law and with the most current version of the Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries.
  - (b) Property owners and landscape management companies performing pesticide control within the City are strongly encouraged to use Integrated Pest Control (IPC). Biological control is a natural and effective means of eradicating unwanted pests within a landscape. It has relatively little impact on the environment and prevents the unnecessary use of chemicals.
  - (c) When using pesticides, all label instructions are state and federal law and must be adhered to.
- (45) ***Pruning of trees.*** Maintenance pruning of trees is to allow for uniform healthy growth. Trees shall be allowed to attain their normal size, and at a minimum attain a 20-foot spread of canopy, prior to any pruning except in conjunction with the removal of diseased limbs, or to remove limbs or foliage that present a hazard to power lines or structures. Lower branches and suckers must be selectively removed to provide a minimum of six feet of clear trunk. Severely cutting back lateral branches and canopy, or "hatracking" is expressly prohibited. Trees may be periodically thinned in order to reduce the leaf mass in preparation for tropical storms. All pruning shall be accomplished in accordance with the National Arborist's Standards. A tree's habit of growth must be considered before planting to prevent conflicts with view or signage and such a conflict shall not of itself necessarily permit the pruning or removal of a tree.

Section 3. Chapter 4, "Zoning Regulations," Article 4.6, "Supplemental District Regulations," Section 4.6.16, "Landscape Regulations," of the Land Development Regulations of the City of Delray Beach, Florida, is hereby amended to adopt a new Subsection (J), "Fertilizer Management," as follows:

(J) ***Fertilizer Management.***

- (1) ***Purpose and intent.*** The Florida Department of Environmental Protection has determined that certain water bodies within Palm Beach County are impaired by excessive nutrient levels associated with improper Fertilizer use. This section adopts Best Management Practices for Fertilizer use from the most recent edition of the "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries" in compliance with Section 403.067, Florida Statutes.
- (2) ***Applicability.*** These regulations shall be applicable to and shall regulate any and all Applicators of Fertilizer and areas of Application of Fertilizer to Urban Landscapes within the City of Delray Beach, unless such Application is specifically exempted by Subsection (9).
- (3) ***Definitions.*** The following definitions apply to Section 4.6.16(J):

*Application, Apply, or Applying.* The actual physical deposit of Fertilizer to Turf or Landscape Plants.

*Applicator.* Any person who Applies Fertilizer on Turf and/or Landscape Plants in the City of Delray Beach.

*Approved Test.* A soil test from the University of Florida or other commercial laboratory licensed to perform soil testing.

*Best Management Practices (BMPs).* 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.

*Commercial Fertilizer Applicator.* Except as provided in Section 482.1562(9), Florida Statutes, any person who Applies Fertilizer for money, goods, services, or other valuable consideration.

*Fertilizer.* Any substance or mixture of substances, except pesticide/fertilizer mixtures such as “weed and feed” products, 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 or Fertilization.* The act of Applying Fertilizer to Turf, specialized turf, or Landscape Plants.

*Institutional Applicator.* 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.* Any native or non-native tree, shrub, or groundcover (excluding Turf).

*Low Maintenance Zone.* A minimum ten (10) foot wide area adjacent to water courses that is planted and managed in order to minimize the need for Fertilization, watering, mowing, etc.

*Pasture.* Land managed for livestock grazing.

*Prohibited Application Period.* 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 the City of Delray Beach, 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.* Soil in which the voids are filled with water. Saturation does not require flow. 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.

*Turf or Lawn.* An area of grass-covered soil held together by the roots of the grass.

*Urban Landscape.* Pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with Turf or Landscape Plants. Agriculture has the same meaning as provided in Section 570.02, Florida Statutes.

(4) ***Timing of Fertilizer applications.***

(a) Fertilizer 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 erosion control in an emergency situation (wildfire, etc.), or in accordance with the stormwater pollution prevent plan for that site.

(b) No Applicator shall Apply Fertilizers containing nitrogen and/or phosphorus to Turf and/or Landscape Plants during a Prohibited Application Period or to Saturated Soils.

(5) ***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 60 day period beginning 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.

(6) ***Low Maintenance Zones.*** A voluntary ten (10) foot Low Maintenance Zone is strongly recommended, but not mandated, from any pond, stream, water course, lake, wetland or from the top of a seawall. A swale/berm system is recommended for installation at the landward edge of the Low Maintenance Zone to capture and filter runoff. If more stringent City of Delray Beach Code regulations apply, this Provision does not relieve the requirement to adhere to the more stringent regulations. No mowed or cut vegetative material may be deposited or left remaining in this Zone or deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products in this Zone.

(7) ***Fertilizer content and application rates.***

(a) Fertilizers Applied to Turf 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 Subsection (7)(a) above for Turf, or in the University of Florida Institute of Food and Agricultural Sciences (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) Fertilizers used 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. Fertilizers used at parks or athletic fields shall be Applied in accordance with Rule 5E-1.003(2), Florida Administrative Code.

(8) **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. 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 strategy as currently recommended by the University Of Florida Cooperative Extension Service Publications and to utilize the plant selection and landscape design standards of the UF/IFAS Florida-Friendly Landscape Program.

(9) **Management of grass clippings and vegetative matter.** In no case shall grass clippings, vegetative material, and/or vegetative debris intentionally be washed, swept, blown, or otherwise deposited onto or into stormwater drains, drainage ditches or conveyances, water bodies, wetlands, sidewalks or roadways. Any material that is accidentally deposited shall be immediately removed to the maximum extent practicable and disposed of in accordance with

applicable codes and regulations.

(10) **Exemptions.** The requirements in Section 4.6.16(J) shall not apply to:

- (a) Bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14 Florida Statutes;
- (b) Other properties not subject to or covered under the Florida Right to Farm Act that have Pastures used for grazing livestock; or
- (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.

(11) **Training.**

- (a) All commercial and Institutional Applicators of Fertilizer within the City of Delray Beach shall abide by and successfully complete the six-hour training program as described 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 equivalent program acceptable to the City.
- (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 UF/IFAS “Florida-Friendly Landscape Program” and label instructions when Applying Fertilizers.

(12) **Licensing of Commercial Applicators.**

- (a) All businesses Applying Fertilizer to Turf or Landscape Plants (including, but not limited to, residential Lawns, golf courses, commercial/industrial properties, and multi-family and condominium properties) must ensure that the business owner or 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 Delray Beach business tax 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 to receive their business tax receipt annually.
- (b) After December 31, 2024, all Commercial Applicators of Fertilizer within 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(11), Florida Administrative Code.

(c) All businesses Applying Fertilizer to Turf and/or Landscape Plants (including, but not limited to, residential Lawns, golf courses, commercial/industrial 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 business tax receipt.

(13) **Enforcement.** The requirements of this section shall be enforced by the City of Delray Beach Code Enforcement Board or Special Magistrate pursuant to the authority granted by Section 162.01, Florida Statutes, as may be amended, and the City of Delray Beach Code of Ordinances.

(14) **Penalties.** Violations of any of the provisions of this Section shall be punishable as set forth in Section 10.99 of this Code.

Section 4. All ordinances or parts of ordinances in conflict herewith be, and the same are, hereby repealed.

Section 5. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 6. Specific authority is hereby given to the City Clerk to codify this Ordinance.

Section 7. This Ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the \_\_\_\_ day of \_\_\_\_\_ 2024.

ATTEST:

\_\_\_\_\_  
Katerri Johnson, City Clerk

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Thomas F. Carney, Jr., Mayor

Approved as to form and legal sufficiency:

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Lynn Gelin, City Attorney

First Reading \_\_\_\_\_

Second Reading \_\_\_\_\_

DRAFT - NO LEGAL REVIEW