

ORDINANCE 2014-04

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADDING NEW ARTICLE III TO CHAPTER 7.5 OF THE CODE OF ORDINANCES OF THE TOWN RELATING TO THE REGULATION OF THE USE OF FERTILIZERS; PROVIDING FOR A SHORT TITLE, PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE REGULATION OF FERTILIZER USE AND APPLICATION; PROVIDING FOR EXEMPTIONS, TRAINING AND LICENSES; PROVIDING FOR PENALTIES; PROVIDING FOR APPEALS; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, REPEAL AND AN EFFECTIVE DATE.

WHEREAS, Impairment to the Town'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 or springs within the boundaries of the Town has a direct impact on the health, safety and welfare of the general public; and,

WHEREAS, the Town Council has determined that the use of fertilizers on lands within the Town creates a risk to contributing to adverse effects on surface and/or ground water; and,

WHEREAS, Section 403.9337 of the Florida Statutes provides for the adoption of an ordinance relating "Florida-Friendly Fertilizer Use on Urban Landscapes"; and,

WHEREAS, the Town Council finds 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 required by this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR as follows:

SECTION 1. A new Article III is hereby added to section 7.5 of the Code of Ordinances of the Town which shall read as follows:

"Art. III. Fertilizer Use and Application

Sec. 7.5-40. SHORT TITLE AND PURPOSE AND INTENT

These regulations shall be known as the "Town of Malabar Fertilizer Use and Application Code". These regulations regulate 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; specifies allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones, and exemptions. These regulations require 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 secondary and cumulative effects have been observed in and on the Town's natural and constructed stormwater conveyances, rivers, creeks, canals, springs, lakes, estuaries and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of the Town 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, will help improve and maintain water and habitat quality.

Sec. 7.5-41. DEFINITIONS

"Administrator" means the Town Administrator of the Town of Malabar, or an administrative official of the Town designated by the Town Administrator to administer and enforce the provisions of these regulations.

"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 Town.

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

"Board or Governing Board" means the Town Council of the Town.

"Code Enforcement Officer, Official, or Inspector" means any designated employee or agent of the Town whose duty it is to enforce codes and ordinances enacted by the Town.

"Commercial Fertilizer Applicator", except as provided in 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 applicator.

"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.

"Guaranteed Analysis" means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.

"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 exotic tree, shrub, or groundcover (excluding turf).

"Low Maintenance Zone" means an area a minimum of ten (10) feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.

"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, or a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of Brevard County, issued by the National Weather Service, or if heavy rain is likely.

"Restricted application period" means June 1 to September 30.

"Saturated soil" means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of these regulations, 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 plant longer than a reference rapid or quick release product.

"Surface waters" as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) means waters on the surface of the earth, contained in bounds created naturally or artificially, including , the Atlantic Ocean, bays, bayous, sounds, estuaries, lagoons, lakes, ponds, impoundments, rivers, streams, springs, creeks, branches, sloughs, tributaries, canals, and ditches.

"Town" shall mean the Town of Malabar.

"Turf," "Sod," or "Lawn" means a piece of grass-covered soil held together by the roots of the grass.

"World Meteorological Organization definition of heavy rain": Rainfall greater than or equal to 50 mm (2 inches) in a 24 hour period.

"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 in s. 570.02.

Sec. 7.5-42. APPLICABILITY These regulations shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the area of the Town, unless such applicator is specifically exempted by the terms of these regulations. These regulations shall be prospective only, and shall not impair any existing contracts.

Sec. 7.5-43. TIMING OF FERTILIZER APPLICATION

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

Sec. 7.5-44. 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 (Chapter 62-340, Florida Administrative Code) or from the top of a seawall. Newly planted turf and/or landscape plants may be fertilized in this Zone only for a sixty (60) day period beginning 30 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.

Sec. 7.5-45. LOW MAINTENANCE ZONE.

A voluntary ten (10) foot low maintenance zone is strongly recommended, but not mandated, from any surface waters, pond, stream, watercourse, lake, wetland or from the top of a seawall. A swale/berm system is recommended for installation at the landward edge of this low maintenance zone to capture and filter runoff. No mowed or cut vegetative material should 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.

Sec. 7.5-46. FERTILIZER CONTENT AND APPLICATION RATES

No fertilizer containing phosphorous shall be applied to turf or landscape plants in the Town of Malabar unless a soil or plant tissue deficiency is verified by a University of Florida, Institute of Food and Agriculture Sciences, approved testing methodology. In the case that a deficiency has been verified, the application of a fertilizer containing phosphorous shall be in accordance with the rates and directions provided by Rule 5E-1.003(2), Florida Administrative Code. Deficiency verification shall be no more than 2 years old. However, recent application of compost, manure, or top soil shall warrant more recent testing to verify current deficiencies.

The nitrogen content of fertilizer applied to turf or landscape plants within Malabar shall contain at least 50% slow release nitrogen per guaranteed analysis label.

Fertilizers applied to turf within Malabar shall be applied at rates that are in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*.

Fertilizer containing nitrogen 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 Prevention Plan for that site.

Sec. 7.5-47. APPLICATION PRACTICES

a. Spreader deflector shields are required 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. 7.5-48. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER

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

Sec. 7.5-49. EXEMPTIONS

The provisions set forth above in this Ordinance 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;
- 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.
- d. athletic fields at Town of Malabar public parks that apply the concepts and principles embodied in the Florida Green BMPs, while maintaining the health and function of the specialized turf areas.

Sec. 7.5-50. TRAINING

All commercial and institutional applicators of fertilizer within the incorporated and unincorporated area of Brevard 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 Extension "Florida-Friendly Landscapes" program, or an approved equivalent.

Private, non-commercial applicators are encouraged to follow the recommendations of the University of Florida /FAS Florida Yards and Neighborhoods program when applying fertilizers.

Sec. 7.5-51. LICENSING OF COMMERCIAL / INSTITUTIONAL APPLICATORS

All commercial applicators of fertilizer within the incorporated area of the Town, shall abide by and have successfully completed training and continuing education requirements 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 / FAS "Florida- friendly Landscapes" program, or an approved equivalent program, prior to obtaining a business tax receipt for any category of occupation which may apply any fertilizer to turf and/or landscape plants. Commercial fertilizer applicators shall provide proof of

completion of the program to the Town and Brevard County's Tax Collector's office upon application or renewal of business tax receipt.

All commercial applicators of fertilizer within the incorporated area of Malabar, 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 pursuant to Rule 5E- 14.117(18), Florida Administrative Code.

Institutional Applicators who apply 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 Town and Brevard County's Tax Collector's Office.

Sec. 7.5-52. PENALTIES AND ENFORCEMENT

The provisions of this section may also be enforceable by proceedings before the Malabar Special Magistrate, or by suit for prohibitory or mandatory injunctive relief, or by any other lawful remedy existing at law or in equity for the enforcement of municipal ordinances. Funds generated by penalties imposed under this section shall be used by the Town for the administration and enforcement of Section 403.9337, F.S., and the corresponding sections of this ordinance, and to further water conservation and nonpoint pollution prevention activities.

Sec. 7.5-53. APPEALS

Appeals relating to any administrative decision or determination concerning implementation or application of the provisions of this Division shall be filed in writing within 30 calendar days after the decision is rendered by the Administrator. Requests for appeals will be considered by the Town Administrator. Any appeal of the decision of the Special Magistrate shall be pursuant to chapter 162 of the Florida Statutes."

SECTION 2. CONFLICTS AND RELATIONSHIP TO OTHER LAWS

Whenever regulations or restrictions imposed by this ordinance conflict with other ordinances or regulations, or are either more or less restrictive than regulations or restrictions imposed by any governmental authority through legislation, rule or regulation, the regulations, rules or restrictions which are more restrictive or which impose the highest standards or requirements shall govern.

SECTION 3. SEVERABILITY

This ordinance and the various parts, sections, subsections and clauses thereof, are hereby declared to be severable. If any part, sentence, paragraph, subsection, section, or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of the ordinance shall not be affected thereby. If any part, sentence, paragraph, subsection, section or clause be adjudged unconstitutional or invalid as applied to a particular property, building, or other structure, it is hereby provided that the application of such portion of the ordinance to other property, buildings, or structures shall not be affected thereby.

SECTION 4. CODIFICATION, SCRIVENERS ERRORS

The provisions of this ordinance shall become and be made a part of the Code of Ordinances of the Town. Sections of the ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "chapter", "article," or such other appropriate word or phrase in order to accomplish such intentions. Sections of this ordinance may require the correction of typographical errors which do not affect the intent. Such corrections may be authorized without need of a Public Hearing, by filing a corrected or recodified copy of same with the clerk of the Town.

SECTION 5. REPEAL

All ordinances, or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 6. EFFECTIVE DATE.

This ordinance shall take effect immediately upon its adoption.

This ordinance was moved for adoption by Council Member Acquaviva and was seconded by Council Member Abare and, upon being put to a vote, the vote was as follows:

- Council Member Jim Milucky Aye
- Council Member Wayne Abare Aye
- Council Member Steven (Steve) Rivet Aye
- Council Member Dick Korn Aye
- Council Member Marisa Acquaviva Aye

This ordinance was then declared duly passed and adopted this 7th day of April, 2014.

(seal)

TOWN OF MALABAR

By: Steve Rivet

Steve Rivet, Council Chair

ATTEST:

Debby Franklin
Debby K. Franklin, C.M.C.
Town Clerk/Treasurer

Approved as to form and content:

Karl W. Bohne
Karl W. Bohne, Jr., Town Attorney