

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE MIAMI BEACH CITY CODE, ENTITLED "ENVIRONMENT," TO CREATE ARTICLE IX THEREOF, TO BE ENTITLED "USE OF FERTILIZER," RELATING TO FLORIDA FRIENDLY FERTILIZER USE WITHIN THE CITY OF MIAMI BEACH, PROVIDING FOR DEFINITIONS, APPLICABILITY, TIMING OF FERTILIZER APPLICATIONS, FERTILIZER FREE ZONES, FERTILIZER CONTENT AND APPLICATION REQUIREMENTS, AND MANAGEMENT OF VEGETATIVE MATTER, OUTLINING CERTAIN EXEMPTIONS, REQUIRING TRAINING AND LICENSING, PROVIDING ENFORCEMENT AND PENALTIES; AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, Section 403.9337 Fla. Stat. provides that each municipality located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to Section 403.067 Fla. Stat., shall adopt a model Ordinance for Florida-Friendly Fertilizer use on Urban Landscapes or an equivalent as a mechanism for protecting local surface and groundwater quality; and

WHEREAS, the Florida Department of Environmental Protection has identified specific water bodies in the City of Miami Beach as "impaired" as a result of excess nutrients under the Florida Impaired Waters Rule set forth in Chapter 62-303 of the Florida Administrative Code; and

WHEREAS, the detrimental effects of nutrient-laden runoff are magnified in a coastal community such as Miami Beach, due to the proximity of stormwater and drainage conveyances to coastal waters; and

WHEREAS, as a result of impairment to the City of Miami Beach'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 City, the Mayor and the City Commission have determined that the use of fertilizers on lands within the City creates a risk to contributing to adverse effects on surface and/or ground water; and

WHEREAS, the Mayor and City Commission hereby find that it is in the best interest of the public health, safety, and welfare of the residents to regulate landscape management practices, including the application and use of fertilizers containing nitrogen and/or phosphorus within the City of Miami Beach; and

WHEREAS, the quality of our water channels, Biscayne Bay, and the Atlantic Ocean is critical to environmental, economic and recreational prosperity and to the health, safety and welfare of the citizens of the City of Miami Beach.

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

SECTION 1. Chapter 46 of the Code of the City Miami Beach is hereby amended to create Article IX thereof, to be entitled "Use of Fertilizer," as follows:

CHAPTER 46 ENVIRONMENT

* * *

Article IX . Use of Fertilizer.

Sec. 46-216. Purpose and Intent.

This Article regulates and promotes 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. The 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 secondary and cumulative effects have been observed in and on City of Miami Beach's natural and constructed stormwater conveyances and surface waters. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of the City's 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.

Section 46-217. Definitions.

For this Article, the following terms shall have the meanings set forth in this section unless the context clearly indicates otherwise.

Administrator means City Manager or his/her designee authorized to administer and enforce the provisions of this Article.

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

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

Board means the Board of Commissioners of the City of Miami Beach, Florida.

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.

City of Miami Beach approved best management practices training program means a training program approved pursuant to Section 403.9338, Fla. Stat., or any more stringent requirements set forth in this Article that includes the most current version of the Florida Department of Environmental Protection's "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008," as revised, and approved by the administrator.

Commercial fertilizer applicator, except as provided in 482.1562(9) Fla.Stat, 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, trees, 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.

Fertilizer-free zone means within twenty (20) feet of Biscayne Bay and any storm drain, pond, stream, waterway, lake, canal, or wetland, as defined by the Florida Department of Environmental Protection, or from the top of a seawall.

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

Impervious surfaces are mainly artificial structures—such as roads, sidewalks, driveways and parking lots, as well as industrial areas such as logistics and distribution centers, that are covered by impenetrable materials such as asphalt, concrete, brick, stone,—and rooftops.

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 on their properties. 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 surface waters which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.

Organic fertilizers are materials that are derived from living materials. Examples of organic fertilizers include animal manures, composted materials, and plant residues. Organic fertilizers are usually considered to be “slow-release” fertilizers because many of the nutrients must be broken down by soil microbes before they become available for plant uptake.

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 June 1st through November 30th, and, otherwise, 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 the City, issued by the National Weather Service, or if heavy rain is likely.

Rapid release or water-soluble nitrogen means any product containing:

- (1) Ammonium nitrate.
- (2) Ammonium sulfate.
- (3) Calcium nitrate.
- (4) Diammonium phosphate.
- (5) Monoammonium phosphate.
- (6) Potassium nitrate.
- (7) Sodium nitrate.
- (8) Urea (not in the form of slow release nitrogen).
- (9) Others as may be designated in writing by the administrator.

Saturated soil means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this ordinance, 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. Forms of slow release, controlled release, slowly available, or water insoluble nitrogen include:

- (1) Isobutylidene diurea ("IBUD").
- (2) Resin, polymer, or sulphur coated urea.
- (3) Biosolids or residuals from domestic wastewater treatment.
- (4) Ureaformaldehyde.
- (5) Composted animal manure.
- (6) Others as may be designated in writing by the administrator.

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.

Turf, sod, or lawn means a piece 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 in Section 570.02 Fla. Stat.

Sec. 46-218. Applicability.

This Article shall be applicable to and shall regulate any and all applications of fertilizer and areas of application of fertilizer within the City of Miami Beach, unless the applicator is specifically exempted by the terms of this Article from the regulatory provisions of this Article. This Article shall be prospective only and shall not impair any existing contracts.

Sec. 46-219. Timing of fertilizer application.

- (a) No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during a Prohibited Application Period.
- (b) Fertilizer shall only be applied to actively growing turf and plants.
- (c) 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 hydroseeding 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. 46-220. Fertilizer-free zones.

- (a) Except as provided in subsection (b) below, fertilizer shall not be applied within twenty (20) feet of Biscayne Bay or any pond, stream, waterway, lake, canal, wetland or storm drain, as defined by the Florida Department of Environmental Protection, or from the top of a seawall (Fertilizer-Free Zone).
- (b) Spreader deflector shields are required when fertilizing adjacent to fertilizer free zones or impervious surfaces.
- (c) Newly planted turf and landscape plants may be fertilized within a Fertilizer-Free Zone only for a sixty (60) day period beginning 30 days after planting, if needed, to allow the plants to become well established and caution is used to prevent direct deposition of nutrients into the water.

Sec. 46-221. Low maintenance zones.

A voluntary ten-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 this low maintenance zone to capture and filter runoff. If more stringent Miami-Dade County Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. No mowed or cut vegetative material should be deposited or left remaining in the low maintenance zone or deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products in the low maintenance zone. Care must be taken to ensure erosion of the surface soil does not occur. Excessive erosion may result in additional pollution hazard.

Sec. 46-222. Fertilizer content and application rates.

- (a) Fertilizers applied to athletic fields and public parks shall be formulated and applied in accordance with requirements and directions provided by Rule 5E-1.003(2)(d) Florida Administrative Code, as it may be amended.
- (b) Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in paragraphs (c) and (d) of this section or in University of Florida Institute of Food and Agriculture 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 containing nitrogen or phosphorous applied to turf and/or landscape plants within the City shall contain no less than 50 percent slow release, controlled release, timed

release, slowly available, or water insoluble nitrogen per guaranteed analysis label. Exemption to this provision will be when organic fertilizer is applied made of 100 percent organic matter. Caution should be used to prevent direct deposition of nutrients in the water.

- (d) Except as provided in paragraph (c) of this section, fertilizers applied to turf and landscape plants within the City shall be formulated and applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*, as it may be amended.
- (e) Fertilizer containing nitrogen or phosphorous 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 (salt-water floods, etc.) or in accordance with the Stormwater Pollution Prevention Plan for that site.
- (f) Fertilizers containing nitrogen or phosphorous should be applied to turf and/or landscape plants at the lowest rate recommended by the state. Fertilizers shall not be applied more than four times during any one calendar year to a single area. No more than four pounds of nitrogen per 1,000 square feet shall be applied to any turf or landscape area in any calendar year.
- (g) No more than one lb. of nitrogen per 1,000 square feet shall be applied to any turf or landscape area in one application when using slow release nitrogen.
- (h) No more than 1/2 lb. of nitrogen per 1,000 square feet shall be applied to any turf or landscape area in one application when using quick release nitrogen.
- (i) Liquid fertilizers containing nitrogen shall not be applied to turf and/or landscape plants within the city.
- (j) Phosphorus fertilizer shall not be applied to turf or landscape plants unless a soil or tissue deficiency has been verified by an approved test. Where a deficiency has been verified, phosphorous fertilizer shall not be applied at application rates that exceed 0.25 lbs of phosphorus per 1,000 square feet per application and not to exceed 0.50 lbs. of phosphorous per 1,000 square feet per year.
- (k) Where fertilizer application is not described in this article, fertilizer shall be applied in accordance with requirements and directions provided by Fla. Admin. Code R. 5E-1.003 for turf and as found in UF/IFAS recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs.

Sec. 46-223. Application Practices.

- (a) No person shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the Prohibited Application Period.
- (b) 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, any Fertilizer-Free Zones and water bodies, including wetlands.

- (c) Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces.
- (d) 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.
- (e) 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.
- (f) In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies including wetlands.
- (g) In no case shall fertilizer be washed, swept, or blown off or around trunks of palms or tree wells or in tree pits.

Sec. 46-224. Management of grass clippings and vegetative matter.

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

Sec. 46-225. Exemptions.

- (a) The provisions set forth in this Article shall not be applicable to:
 - 1. Golf courses.
 - 2. 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.
 - 3. Newly established landscape plants for, for a sixty (60) day period beginning 30 days after planting, if needed to, allow the plants to become well established.
 - 4. Vegetable gardens provided they are not within fifteen (15) feet of any water body and/or wetland.
 - 5. Fruit trees and shrubs provided that fertilizer application rates do not exceed UF/IFAS recommendations.
 - 6. Yard waste compost, mulches or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil.
 - 7. Tree trunk injection fertilization treatments that are performed by a certified arborist.
 - 8. Reclaimed water used for irrigation (which may contain substantial amounts of nitrogen and phosphorus).

Sec. 46-226. Training.

(a) All commercial and institutional applicators of fertilizer within the City 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. Completion of this training program shall be repeated a minimum of once every five (5) years.

(b) Private, non-commercial applicators are encouraged to follow the recommendations of the University of Florida IFAS Florida Yards and Neighborhoods program when applying fertilizers.

Sec. 46-227. Licensing of Commercial Applicators.

(a) All commercial applicators of fertilizer within the City shall abide by and successfully complete 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 IFAS "Florida-Friendly Landscapes" program prior to obtaining a City of Miami Beach Business Tax Receipt for any category of occupation which may apply any fertilizer to turf and/or landscape plants.

(b) All commercial applicators of fertilizer within the City shall always have in their possession when applying fertilizer, evidence of certification by the Florida Department of Agriculture and Consumer Services as a commercial fertilizer applicator per Florida Administrative Code Section 5E-14.117(11).

(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 employee has an appropriate "Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries" training certification prior to the business owner obtaining a Business Tax Receipt.

Sec. 46-228. Enforcement and penalties.

Fines collected shall be deposited in a trust dedicated to fulfilling the purposes of this section. Funds generated by penalties imposed under this section shall be used by the City for the administration and enforcement of Section 403.9337, Fla. Stat., and the corresponding sections of this ordinance, and to further water conservation and nonpoint pollution prevention activities.

(a) If a code compliance officer finds a violation of this article, the code compliance officer shall issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

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

(1) pay the following civil fine:

(a) First violation within a 12-month period.....\$150.00;

(b) Second violation within a 12-month period.....\$300.00;

(c) Third or subsequent violation within a 12-month period....\$500.00;
or

(2) request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.

(c) Failure to pay the civil fine, or to timely request an administrative hearing before a special master, shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.

(d) A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After three months following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien for the amount of the lien plus accrued interest.

(e) The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation. The special master shall not have discretion to alter the penalties prescribed in this article. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the

Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the ____ day of _____, 2020.

PASSED AND ADOPTED this ____ day of _____, 2020.


ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

(sponsored by Commissioner Michael Gongora)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney
et

9/14/2020
Date