

COUNCILMEMBER DONNELL

8/23/10
8/25/10
8/31/10
9/21/10
11/9/10
11/15/10

ORDINANCE 86 - 10

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 9, BY ESTABLISHING ARTICLE VI, USE OF FERTILIZER, SECTIONS 9-100 THROUGH 9-108, RELATING TO FLORIDA FRIENDLY FERTILIZER USE WITHIN THE CITY OF CAPE CORAL; PROVIDING DEFINITIONS; PROVIDING CERTAIN FINDINGS, PURPOSE AND INTENT; PROVIDING APPLICABILITY; PROVIDING FOR THE TIMING OF FERTILIZER APPLICATIONS, FERTILIZER FREE ZONES, FERTILIZER CONTENT AND APPLICATION REQUIREMENTS; PROVIDING FOR MANAGEMENT OF VEGETATIVE MATTER; OUTLINING CERTAIN EXEMPTIONS; REQUIRING TRAINING AND LICENSING; PROVIDING ENFORCEMENT AND PENALTIES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 2009-199, Laws of Florida, 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, Florida, 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;

WHEREAS, the Florida Department of Environmental Protection has identified specific water bodies in the City of Cape Coral as “impaired” as a result of excess nutrients under the Florida Impaired Waters Rule (Chapter 62-303, Florida Administrative Code); and

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

WHEREAS, the City Council of the City of Cape Coral finds 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 Cape Coral; and

WHEREAS, the quality of our bays, estuaries, streams, lakes, and the Gulf of Mexico is critical to environmental, economic and recreational prosperity and to the health, safety and welfare of the citizens of the City of Cape Coral .

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 9, Health and Sanitation, Article VI. Use of Fertilizer, is hereby established as follows:

CHAPTER 9: HEALTH AND SANITATION

ARTICLE VI: USE OF FERTILIZER

§ 9-100 Purpose and Intent.

(A) 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 a Prohibited Application Period; specifies allowable Fertilizer Application rates and methods, Fertilizer-Free Zones, low maintenance zones, and exemptions.

(B) 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 secondary and cumulative effects have been observed in and on the City of Cape Coral'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 City of Cape Coral'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 within the City of Cape Coral and vicinity.

§ 9-101 Definitions.

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

"Administrator" means the City Manager, or an administrative official of City of Cape Coral government designated by the City Manager to administer and enforce the provisions of this Article.

"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 City of Cape Coral

"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 Cape Coral Approved Best Management Practices Training Program" means a training program approved by the City of Cape Coral that includes at a minimum, 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 any more stringent requirements set forth in this Article.

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

"Commercial Fertilizer Applicator", except as provided in 482.1562(9) F.S., means any Person who applies Fertilizer on Turf and/or Landscape Plants in City of Cape Coral to property not owned by the person or firm applying the fertilizer or the employer of the applicator in exchange for money, goods, services or other valuable consideration.

"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.

"Fertilizer-Free Zone" means within ten (10) feet of any pond, stream, watercourse, lake, canal, or wetland, as defined by the Florida Department of Environmental Protection, or from the top of a seawall.

"Governing Body" means the City Council of the City of Cape Coral, Florida.

"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 non-commercial or Commercial Fertilizer 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 and managers of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.

"Impervious Surface" means hard surfaced areas which either prevent or severely restrict the entry of water into the soil mantle and/or cause water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas and other surfaces which similarly affect the natural infiltration or runoff patterns which existed prior to development.

"Landscape Plant" means any native or exotic tree, shrub, or groundcover, but excluding Turf.

"Local Business Tax Receipt" means the document that is issued by the local governing authority and evidences that the person in whose name the document is issued has complied with the provisions of Chapter 205, Florida Statutes, relating to the local business tax.

"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 September 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 Lee County, issued by the National Weather Service, or if heavy rain is likely.

"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.

"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 Florida Statute Section 570.02.

§ 9-103. 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 Cape Coral, 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.

§ 9-104. Timing of fertilizer application.

No applicator shall apply Fertilizers containing nitrogen and/or phosphorus to Turf and/or Landscape Plants during a Prohibited Application Period.

§ 9-105. Fertilizer-free zones.

(A) Except as provided in subparagraph (B) below, Fertilizer shall not be applied within any Fertilizer-Free Zone other than by hand dispersion which ensures that no fertilizer is dispersed into the water.

(B) 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.

§ 9-106. Fertilizer content and application rates.

(A) Fertilizers applied to golf courses, parks, and athletic fields 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 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 applied to turf and/or landscape plants within the City of Cape Coral shall contain no less than 50% slow release nitrogen per guaranteed analysis label.

(D) Except as provided in paragraph (C) of this section, fertilizers applied to Turf and Landscape Plants within City of Cape Coral 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 (wildfire, etc.) or in accordance with the Stormwater Pollution Prevention Plan for that site.

(F) Fertilizers should be applied to turf and/or landscape plants at the lowest rate necessary. No more than 4 lbs. of nitrogen per 1000 ft² shall be applied to any turf/landscape area in any calendar year.

§ 9-107. 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.

§ 9-108. 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 accidentally so deposited shall be immediately removed to the maximum extent practicable.

§ 9-109. Exemptions.

(A) The provisions set forth in this Article shall not be applicable to:

1. Bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14, Florida Statutes.

2. Other properties not subject to or covered under the Florida Right to Farm Act that have Pastures used for grazing livestock.

3. 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.

4. All golf courses provided that landscaping is done within the provisions of the Florida Department of Environmental Protection Document, "Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses, 2007" (Florida Golf Course BMPs), as updated.

(B) The provisions set forth in Sections 9-104 and 9-106 of this Article shall not be applicable to:

1. 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

2. Vegetable gardens, provided they are not within fifteen (15) feet of any water body and/or wetland.

3. 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.

4. Reclaimed water used for irrigation (which may contain substantial amounts of nitrogen and phosphorus).

§ 9-110. 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.

§ 9-111. Licensing of Commercial Applicators.

(A) Prior to January 1, 2014, 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 Cape Coral Local Business Tax Receipt for any category of occupation which may apply any Fertilizer to Turf and/or Landscape Plants.

(B) Commercial Fertilizer Applicators shall provide proof of completion of the program certification to the Licensing Division of the City's Department of Community Development (CDC) or such other department as designated by the City Manager within 180 days of the effective date of this Article. Upon providing the information required under this section, the applicator will be issued vehicle decals which shall be affixed and maintained to exterior vehicles and trailers used for services performed within the City of Cape Coral.

(C) After December 31, 2013, 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 Federal Administrative Code Section 5E-14.117(18).

(D) 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 Local Business Tax Certificate.

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§ 9-111. Enforcement and Penalties.

(A) Any person, firm, company, corporation or other entity, who refuses to comply with or violates any section of this Article, shall be subject to the following penalties.

1. First Violation - \$100.00
2. Second Violation - \$250
3. Third violation and violations thereafter - \$500.00

Each non-compliance or violation, and each day thereof, shall constitute a separate offense.

(B) This ordinance may be enforced by any duly authorized law enforcement officers or City of Cape Coral Officials or Inspectors designated by the Director of the Department of Community Development.

(C) The designated City of Cape Coral Officials or Inspectors shall be authorized and empowered to make inspections at reasonable hours of all activities regulated by this Article in order to insure compliance with the provisions of this Article.

(D) Nothing contained herein shall prevent the City from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this Article. Such other lawful action shall include but shall not be limited to, any equitable action for injunctive relief or an action at law for damages.

(E) Any person, firm, company, corporation or other entity that violated this Article shall be responsible for the City's cost of prosecution of any violation of this Article, including any City costs to remedy or clean up any environmental condition caused by an act which constitutes a violation of this Article. In the event any such costs are incurred by the City, such person, firm,

company, corporation or other entity shall reimburse the City for all such costs within thirty (30) days of the City's invoice for such costs.

SECTION 2. Severability. In the event that any portion or section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance, which shall remain in full force and effect.

SECTION 3. Effective Date. This Ordinance shall take effect immediately upon its adoption by the Cape Coral City Council.

ADOPTED AT A REGULAR COUNCIL MEETING THIS _____ DAY OF _____, 2010.

JOHN J. SULLIVAN, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SULLIVAN _____
McCLAIN _____
BRANDT _____
DEILE _____
CHULAKES-LEETZ _____
KUEHN _____
McGRAIL _____
DONNELL _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2010.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:

GAIL G. ROBERTS
ASSISTANT CITY ATTORNEY

ord/Fertilizer