

ORDINANCE 08-11972

AN ORDINANCE RELATING TO LAWN AND LANDSCAPE MAINTENANCE AND THE OUTDOOR APPLICATION OF FERTILIZERS TO LAWNS AND LANDSCAPED AREAS WITHIN THE CITY; CREATING A NEW ARTICLE VII OF CHAPTER 52 OF THE CITY OF NAPLES CODE OF ORDINANCES PROVIDING FOR: PURPOSE AND INTENT, DEFINITIONS, APPLICABILITY; TIMING OF APPLICATION, CONTENT AND APPLICATION RATE, IMPERVIOUS SURFACES; BUFFER ZONES, AND MODE OF APPLICATION; EXEMPTIONS; MANDATORY CERTIFICATION OF LAWN AND LANDSCAPE PROFESSIONALS, REQUIREMENTS; REQUIRING CITY-ISSUED CREDENTIALS FOR DISPLAY AND INSPECTION; REQUESTING POSTING OF NOTICES AND PROVIDING BROCHURES BY RETAIL SELLERS OF FERTILIZER; ENFORCEMENT AND PENALTIES; REPEALING RESOLUTION 06-11245; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, stormwater runoff is a major source of pollution for the waterbodies within and surrounding the City of Naples; and

WHEREAS, the Florida Department of Environmental Protection and the U.S. Environmental Protection Agency historically identified Naples Bay and the Gordon River as "impaired" as a result of the presence of excess nutrients under the Florida Impaired Waters Rule (§ 62-303 F.A.C.); and

WHEREAS, nitrogen, phosphorus, and heavy metals associated with fertilizer use within the City are a major source of pollution, occurring primarily from stormwater runoff; and

WHEREAS, phosphorus is not a necessary fertilizer ingredient for all sites and all locations within the City; and

WHEREAS, improper use of fertilizers containing nitrogen cause significant pollution due to the leaching and runoff of nitrogen, with the effect of impairing water quality and threatening the health of our estuarine system; and,

WHEREAS, nitrogen from slow release sources is less likely to run off the land and pollute natural waterbodies; and

WHEREAS, a significant portion of pollutant runoff reaches the waterbodies within and surrounding the City of Naples, and their associated riverine and estuarine ecosystems; and

WHEREAS, remedial actions are necessary in order to improve the water quality of the waterbodies within and surrounding the City of Naples, restore their estuarine ecosystems, and reduce the amounts and kinds of pollution flowing into these waterbodies through the city stormwater system as a result of landscape fertilizer applications; and

WHEREAS, this ordinance is part of a multi-pronged effort by the City of Naples to reduce nutrient leaching and runoff including, but not limited to, stormwater management, water conservation, and education; and

WHEREAS, nutrients are essential elements for plant growth and are commonly used in various forms as a fertilizer for lawn, specialized turf and landscape application; and

WHEREAS, the amount of fertilizer applied shall be the minimum amount for the lawn, specialized turf and landscape to meet plant needs; and

WHEREAS, said regulation would properly act to protect the health, safety, property, and welfare of the citizens and visitors to the City, by establishing standards and management guidelines for the use of fertilizers; and

WHEREAS, recent red tide blooms and accumulation of red drift algae on local beaches have heightened community concern about water quality and eutrophication of surrounding waters; and

WHEREAS, a significant portion of fertilizer-based pollution can be ameliorated by using the correct fertilizer and the correct application method;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NAPLES, FLORIDA:

Section 1: That the Code of Ordinances, City of Naples, Florida, is hereby amended by adding an article to be numbered Article VII of Chapter 52 which said article reads as follows:

Article VII. Lawn and Landscape Maintenance and Content of Fertilizer.

Sec. 52 - 181. Purpose and Intent.

(a) *Purpose and Intent.*

(1) The purpose and intent of this ordinance is to provide for the regulation of fertilizers containing nitrogen or phosphorous and to provide specific management guidelines for fertilizer application in order to minimize the negative environmental effects said fertilizers have in and on the waterbodies within and surrounding the City of Naples. Stormwater runoff is a major source of pollution for our natural waters, and in order to improve the water quality of the waterbodies within and surrounding the city and restore their estuarine ecosystem, the amount and kinds of pollution flowing into these waterbodies must be reduced. Collectively these natural waters are an asset that is critical to the environmental, recreational, cultural, and economic well-being of Naples and the surrounding areas and contribute to the general health and welfare of the public. Therefore, regulation of nutrients, including both nitrogen and phosphorous, contained in fertilizer entering the above-referenced waterbodies is crucial. Reducing the negative effects of nutrient pollution combined with lawn and landscape maintenance professional certification will be an essential step towards improving and maintaining water and habitat quality. The use of low phosphorous and slow release nitrogen fertilizers is strongly encouraged as Florida soils typically contain sufficient phosphorous for a

healthy native or man-made landscape and nitrogen can quickly and easily run off landscapes. Certification will result in increasing the knowledge of lawn and landscape maintenance professionals, and their residential and business customers, of:

- a. The effects of pesticides, fertilizers and overwatering on the environment;
- b. Ways to reduce the amount of fertilizers and pesticides utilized; and
- c. Methods to limit water use on lawns and landscapes thus potentially lowering the impacts of nonpoint source pollution on local waterbodies.

- (2) Nitrogen and phosphorous are essential ingredients for plant growth; however, overuse and improper application of these nutrients create water quality issues and pollute our treasured natural waters. They promote algae blooms and other excessive plant growth. Low to no phosphorus fertilizer and slow release nitrogen fertilizer, along with proper utilization, result in absorption by plants and lower levels of nutrients reaching the waterbodies within and surrounding the City of Naples and their associated watersheds.

(b) *Scope.*

- (1) A program aimed at moderating the impacts of nutrient runoff from lawns and landscaped areas within the watersheds of the waterbodies within and surrounding the City of Naples is hereby established whereby persons will be certified by the city to perform lawn and landscape work upon exhibiting a professional level of knowledge.
- (2) A program aimed at reducing the levels of nutrients reaching our natural waterbodies as a result of improper application and content of fertilizer applied throughout the city is hereby instituted since most soils already have enough phosphorous present and nitrogen from slow release sources is less likely to run off the land and pollute natural waterbodies.

Sec. 52-182. Definitions.

The following words, terms, and phrases when used in this Ordinance shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application:

Applicator means any person who applies, in any manner, fertilizer to turf or landscape plants within the city as defined in this ordinance.

Commercial Fertilizer Applicator means any person who applies fertilizer on turf or landscape plants within the city in exchange for money, goods, services, or other valuable consideration.

Fertilize, fertilizing, or fertilization means the act of applying fertilizer to a lawn (turf), specialized turf, or landscape plant.

Fertilizer means any substance 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.

Wetlands means those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soils [See 62-340 F.A.C.].

Impervious surface means a constructed surface, such as a sidewalk, road, parking lot, or driveway, covered by impenetrable materials such as asphalt, concrete, brick, pavers, stone, or highly compacted soils.

Institutional Applicator means any person, other than a non-commercial or commercial applicator who applies fertilizer for the purpose of maintaining turf 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 or common ownership.

Landscape Plant means any native or exotic tree, shrub, or groundcover (excluding turf).

Leaching means the process by which soluble constituents are dissolved and filtered through the soil by a percolating fluid.

Non-Commercial Applicator means any person other than a commercial fertilizer applicator or institutional applicator who applies fertilizer on turf or landscape plants in the city, such as an individual owner of a single-family residential unit.

Person means any natural person and shall also mean any business, corporation, association, club, organization, and/or any group of people acting as an organized entity.

Rainy season means June 1 through September 30 of each calendar year.

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 city manager.

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 release nitrogen" product. Forms of *slow release, controlled release, slowly available, or water insoluble nitrogen* include:

- (1) Isobutylidene diruea (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 city manager.

Turf means a piece of grass-covered soil held together by the roots of the grass; sod; lawn.

Sec. 52-183. Applicability.

This Ordinance shall be applicable to and shall regulate any applicators of fertilizer within the city unless such applicator is specifically exempted or excepted by the terms of this ordinance from the regulatory provisions of this ordinance. This section shall apply to retail businesses within the city selling fertilizer.

Sec. 52-184. Timing of fertilizer application; content and application rate; impervious surfaces; buffer zones; and mode of application.

- (a) *Timing of Application.* No applicator shall apply fertilizers containing nitrogen or phosphorous to turf or landscape plants during the rainy season.
- (b) *Fertilizer Content and Application Rate.*
 - (1) No fertilizer shall be applied to turf or landscape plants within the city that contains more than 2 percent phosphorous or other compounds containing phosphorous, such as phosphate, per guaranteed analysis label as guaranteed analysis and label are defined in chapter 576 Florida Statutes.
 - (2) Fertilizer applied to turf or landscape plants within the city must contain no less than 50 percent slow release nitrogen per guaranteed analysis label as guaranteed analysis and label are defined in chapter 576 Florida Statutes.
 - (3) Fertilizers should be applied to turf or landscape plants at the lowest rate necessary without exceeding the maximum rate per application. Fertilizer shall not be applied at a rate greater than 1 pound of nitrogen per 1000 square feet per application. No more than 4 pounds of nitrogen per 1000 square feet shall be applied to any turf or landscape area in any calendar year.
- (c) *Total Yearly Applications.* Fertilizers shall not be applied more than 4 times during any one calendar year to a single area.

- (d) *Impervious surfaces.* Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces. Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed. 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) *Buffer Zones.* No fertilizer shall be applied within 10 feet of any pond, stream, water course, lake, canal, wetland, or other waterbody.
- (f) *Mode of Application.* Spreader deflector shields are required when fertilizing adjacent to buffer zones or impervious surfaces. The shields must be positioned such that fertilizer granules are deflected away from all impervious surfaces and buffer zones.

Sec. 52-185. Exemptions.

- (a) The timing of applications, fertilizer content, application rate provisions, and other provisions set forth above in subsections 52-184 of this ordinance shall not apply to:
 - (1) Newly established turf or landscape plants for the first 60 days after installation or planting, provided documentation for newly established turf or landscape plants is maintained to support this exemption;
 - (2) Areas where soil tests confirm, and such tests are confirmed and approved by the natural resources manager or designee, that phosphorous levels are below 10 parts per million. This is equivalent to a "very low" designation for phosphorous set forth in the University of Florida Institute of Food and Agricultural Science Extension Soil Testing Laboratory Procedures Training Manual (Circular 1248, September 2002);
 - (3) Vegetable gardens;
 - (4) 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.
- (b) For all golf courses, the provisions of the Florida Department of Environmental Protection document, "*Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses, 2007*", as updated, shall be followed when applying fertilizer to golf course practice and play areas.

Sec. 52-186. Lawn and Landscape Maintenance-Mandatory Certification Requirements.

- (a) *Certification of Lawn and Landscape Professionals.* The provisions contained in this section shall constitute the

requirements for certification of lawn and landscape maintenance professionals by the city.

- (b) *General Requirements.* No commercial or institutional applicator shall apply fertilizer without first obtaining a city certification as a lawn and landscape maintenance professional.
- (c) *Certification.* To obtain city certification as a lawn and landscape maintenance professional, a person shall demonstrate competency through successful completion of a best management practices course, the curriculum of which will be approved by, provided by, or under the supervision of, the City and which will include at a minimum, the following general standards of competency:
 - 1. Effects on the environment from sediment, nutrients, and pesticides moving off site through surface or ground water.
 - 2. Site design and plant selection that enhances the natural environment.
 - 3. Rates and methods of applying fertilizer and irrigation that minimize negative environmental consequences.
 - 4. Utilization of integrated pest management to both minimize pests and decrease chemical applications.
- (d) *Specific standards of Competency.* In addition to the general standards of competency, a person seeking lawn and landscape maintenance certification shall provide evidence of having completed a course of study with at least 6 hours of instruction in the areas identified under the general standard of competency.
- (e) *Certification.* The city will provide a person who has satisfied the general and specific standards of competency set forth in this section, with a state certificate and landscape certification card indicating that the person is a certified lawn and landscape maintenance professional for the specified duration.
- (f) After obtaining city certification as stated above, all certificate holders shall annually enroll in and successfully complete a refresher course.
- (g) *Administration.* The program shall be administered by the city manager through the city's natural resources division. The city manager is authorized to determine the qualifications of any applicant or any person performing lawn and landscape maintenance and to enforce this article as provided herein. The determination of qualifications of an applicant by the city manager may be appealed to the city council by filing of an appeal within 14 days after receipt of determination. The city council will conduct a hearing within 30 days, or will appoint a special magistrate within 60 days. The time periods may be waived by consent of the applicant and the city manager. The

determination by city council will constitute final agency action.

(h) *Procedure for Application for Certification.*

1. A person requesting certification by the city as a lawn and landscape maintenance professional shall obtain an application for certification from the city that requires proof of completion of a course of instruction in the areas identified under the standards of competency.

2. The initial application fee and annual renewal fee shall be set forth in the city's fee schedule, Appendix A, and will be used to defray the costs of the program, including without limitation, record keeping associated with the certification credentials, production of certificates and landscape certification cards, and all aspects of the written and verbal communications concerning the educational requirements.

(i) Lawn and landscape maintenance shall be performed only by those businesses that have at least one supervisor and a minimum of 10 percent of their field operations staff certified by the city as lawn and landscape professionals.

Sec. 52-187. City-issued credentials required for display and inspection.

The city-issued lawn and landscape maintenance professionals certificate must be displayed on the premises of any venue that makes use of at least one institutional applicator or commercial fertilizer applicator and those institutions that employ at least one lawn and landscape maintenance professional.

The city-issued lawn and landscape maintenance professionals decal shall be displayed on every state-licensed motor vehicle used by a commercial fertilizer applicator or institutional applicator, and on those state-licensed motor vehicles utilized by lawn and landscape maintenance professionals, when performing services within the city limits. The decal shall be displayed prominently and in such a manner as not to be obstructed.

At least one licensed lawn and landscape maintenance professional shall be present at a location where lawn or landscape maintenance is taking place.

Sec. 52-188. Sale of Fertilizer.

Retail businesses within the city selling fertilizer are requested:

(a) to post a notice in a conspicuous location near the fertilizer notifying customers of the limitation on the use of fertilizer containing greater than 2% phosphorous and the 50% minimum slow release nitrogen requirement in the city; and

(b) to provide a city-approved surface and groundwater protection brochure to all customers purchasing fertilizer products.

Such notice and brochure will be developed, produced at the city's cost, and issued by the city to such retail businesses.

Sec. 52-189. Enforcement and Penalties.

The violation of any provision of this article shall subject the violator to any enforcement procedure and to the penalties provided in Section 1-15 of this code. This article may be enforced against any person actually committing the infraction and any owner or person in control of the property upon which the violation occurs or condition exists. Each day of violation shall constitute a separate offense.

Section 2. Resolution 06-11245 is hereby repealed, except that the fees contained in said Resolution are hereby ratified and incorporated into this Ordinance.

Section 3. If any word, phrase, clause, subsection or section of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this ordinance.

Section 4. All sections or parts of sections of the Code of Ordinances, City of Naples, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

Section 5. This ordinance shall take effect immediately upon adoption at second reading. The certification requirements contained in section 52-186 shall become effective 180 days after adoption.

APPROVED AT FIRST READING THIS 20TH DAY OF FEBRUARY, 2008.

PASSED AND ADOPTED AT SECOND READING AND PUBLIC HEARING IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA THIS 5TH DAY OF MARCH, 2008.

Bill Barnett, Mayor

Attest:

Approved as to form and legality:

Tara A. Norman, City Clerk

Robert D. Pritt, City Attorney

M:\REF\COUNCIL\ORD\2008\08-11972

Date filed with City Clerk: _____