

Town of Fort Myers Beach
ORDINANCE NO. 08-15

AN ORDINANCE REGULATING THE APPLICATION AND USE OF FERTILIZERS CONTAINING NITROGEN AND/OR PHOSPHORUS WITHIN THE TOWN OF FORT MYERS BEACH; PROVIDING FINDINGS; PROVIDING FOR PURPOSE AND INTENT; PROVIDING DEFINITIONS; PROVIDING FOR TIMING OF FERTILIZER APPLICATION, CONTENT AND APPLICATION RATE, BUFFER ZONES; PROVIDING FOR EDUCATIONAL PROGRAMS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR SOIL TESTS INFORMATION; PROVIDING FOR CERTIFICATION OF APPLICATORS; PROVIDING A PROCESS FOR ADMINISTRATIVE RELIEF; PROVIDING FOR ENFORCEMENT AND PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE, INCLUDING A 180 DAY IMPLEMENTATION PERIOD.

Whereas, the Town of Fort Myers Beach, Florida (Town) is a barrier island community and the water quality of bays, estuaries, wetlands, watercourses, lagoons, ponds, canals and the Gulf of Mexico is critical to the Town's environmental, economic, recreational prosperity and to the health, safety and welfare of residents of and visitors to the Town; and

Whereas, the Town finds that scientific literature has established that the use of residential and commercial fertilizers containing greater concentrations of nutrients nitrogen and phosphorous has substantially increased and such fertilizers have flowed into our waters as a result of storm runoff, leaching into the water table and from fresh water flows from Lake Okeechobee; and

Whereas, the Town finds that it has been established that in the past few decades, there has been a substantial increase in the eutrophication of phytoplankton, that has led to the accelerated growth in harmful and toxic micro and macro algae blooms; and

Whereas, the Town finds that harmful algae blooms including fish and plant killing, red tides and toxic red drift algae that accumulate on Town beaches have heightened Town concern about health and safety of residents and visitors as well concern for the future of Town beaches; and

Whereas, the Town finds that the Florida Department of Environmental Protection (FDEP) has identified Estero Bay as 'impaired' as a result of excess nutrients under the Florida Impaired Water Rule (§ 62-303 F.A.C.); and

Whereas, the Town finds there is a need to develop a stronger knowledge of the connection between human activities and the Town's natural bodies among all those who reside, work or visit the Town; and

Whereas, the Town finds that this connection is magnified on the Town's barrier island, as human activities may have a more rapid, if not immediate, effect in and on our surrounding waters; and

Whereas, the Town find that the high permeability of the Town's soils results in direct contact between rainfall and the water table; and

Whereas, the Town finds that this article is part of a multi-pronged effort by the Town to reduce nutrient leaching and runoff including, but not limited to, storm water management, water conservation, and public education; and

Whereas, the Town finds nutrients in fertilizers are essential elements for turf and plant growth,

that is commonly, used for lawns (Turf), specialized Turf and landscape application; and

Whereas, the Town finds leaching and runoff of nutrients from the improper or excess fertilizer practices including the over use of quick release fertilizers, especially products containing urea, can contribute to nitrogen and phosphorus pollution of the water resources. The effects of Quick Release fertilizer are short-lived requiring higher application rates. On sandy soils, high application rates combined with high irrigation and/or rainfall amounts may result in higher Nitrogen losses due to leaching or storm runoff; and

Whereas, the Town finds it has been recognized by soil science professionals that the use of slow release nitrogen sources act to minimize harmful nitrogen leaching and runoff. Nitrogen from slow release sources is more likely to be used by lawns (Turf) and plants and less likely to leach into the groundwater or wash away in storm water runoff; and

Whereas, the Town finds the amount of fertilizer applied should be the minimum necessary for the lawn (Turf), specialized turf and landscape to meet initial establishment and growth needs; and

Whereas, the Town finds that it is generally recognized that many Florida soils, including the Town's, are naturally high in phosphorous; and

Whereas, the Town finds that the amount of fertilizer applied, the method of application, and the number of applications of that fertilizer have the greatest impact on the potential for creating pollution; and

Whereas, the Town finds that the use of no phosphorus Fertilizer is strongly encouraged, as Florida soils typically contain sufficient phosphorus for a healthy native or manmade landscape.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. Incorporation of WHEREAS Clauses.

The above "Whereas" clauses are hereby incorporated by reference as findings of fact to support this ordinance.

Section 2 . Purpose and Intent.

A. The intent of this fertilizer ordinance is to help preserve and protect our near-shore waters in the Town's canals, Estero Bay and Watershed, and Gulf of Mexico by limiting the nutrient pollution caused by improper, excessive, and untimely fertilizer application.

B. The purpose of this Ordinance is to provide for the regulation of fertilizers containing nitrogen and/or phosphorus and to provide specific management guidelines for fertilization in order to meet Federal and State mandated water quality standards and to minimize the negative environmental effects said fertilizers have in and on the Town's bays, ponds, lagoons, canals, estuaries, wetlands, and the near shore waters of the Gulf of Mexico and other waters. Collectively these waterbodies are natural assets, that are critical to the environmental, recreational, cultural and economic well being of the Town and contribute to the general health and welfare of the public. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, entering the waterbodies in and around the Town is a crucial step towards improving and maintaining water and habitat quality.

Section 3. Definitions.

The following words, terms, and phrases when used in this article will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicator - any Person who applies, in any manner, fertilizer to Turf and/or Landscape plants as defined in this Ordinance within the Town.

BMP - “Best-management practices” means practices or combinations of practices determined by research or field testing in representative sites to be the most effective and practicable methods of fertilization designed to meet nitrate groundwater quality standards, including economic and technological considerations.

Compost - “Compost” means a substance derived primarily or entirely from decomposition of vegetative or animal organic material, that is sold or offered for sale for the purpose of promoting or stimulating plant growth, and to which no inorganic fertilizer materials have been added other than to promote decomposition. Such products may not contain more than 12 percent total plant nutrients.

Fertilize, Fertilizing or Fertilization – the act of applying fertilizer to a lawn (Turf), specialized Turf or Landscape Plants.

Fertilizer – 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.

Guaranteed Analysis – the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a Fertilizer; the definition contained in Chapter 576 Florida Statutes is hereby also incorporated by reference.

Impervious Surface – a constructed surface such as, sidewalks, roads, parking lots or driveways – covered by impenetrable materials such as asphalt, concrete, brick, pavers, stone and/or highly compacted soils.

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

Quick Release, Water Soluble Fertilizer – nitrogen in a form that is readily available for plant uptake. Nitrogen becomes available as soon as water is applied to the turf. Forms of “*Quick Release, or Water Soluble Nitrogen*” include:

- 1) Ammonium nitrate
- 2) Calcium nitrate
- 3) Ammonium sulfate
- 4) Urea
- 5) Urea solutions
- 6) Same as below

Slow Release, Controlled Release, Timed Release, Slowly Available or Water Insoluble Fertilizer – nitrogen in a form that delays its availability for plant uptake and use after application or that extends its availability to the plant longer than a reference “Quick Release Nitrogen” product. Forms of “*Slow Release, Controlled Release, Slowly Available, or Water Insoluble Nitrogen*” include:

- 1) Isobutylidene diurea (IBDU).
- 2) Resin, Polymer, or Sulpher coated urea.
- 3) Biosolids or residuals from domestic wastewater treatment.

- 4) Urea formaldehyde.
- 5) Composted compost
- 6) Others as may be designated in writing by the Town Manager.

Specialized Turf – areas of grass used for athletic fields, activity fields, parks, golf course practice and play areas, and other similar areas.

Specialized Turf Manager – a Person responsible for fertilizer or directing the fertilization of a golf course or publicly owned ball field.

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

Waterbodies – bays, estuaries, ponds, wetlands, streams, watercourses, lakes, lagoons, canals and the Gulf of Mexico.

Wetlands – means those areas inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Examples of wetlands at Fort Myers Beach include mangroves forests, tidal marshes, and salt flats.

Section 4 Applicability.

This ordinance will be applicable to and will regulate any and all Applicators of Fertilizer within the Town, unless such Applicator is specifically exempted or excepted by the terms of this article from the regulatory provisions of this article.

Section 5. Timing of fertilizer application; content and application rate; impervious surfaces; buffer zones.

(a) **Timing of Application.** Fertilizers containing nitrogen and/or phosphorus must not be applied to Turf and/or Landscape Plants during the rainy season (June 1 – September 30), except as provided in Section 7.

(b) **Fertilizer Content and Application Rate**

- (1) Fertilizer that contains more than 2% phosphorous or other compounds containing phosphorous, such as phosphate, per guaranteed analysis label (as guaranteed analysis and label are defined by Chapter 576 Florida Statutes, such definition incorporated herein) must not be applied to Turf and/or Landscape Plants within the Town.
- (2) Fertilizer applied to Turf and/or Landscape Plants within the Town must contain no more than 20% total nitrogen, with no less than 50% total nitrogen content as Slow Release Nitrogen per guaranteed analysis
- (3) Fertilizers should be applied to Turf and/or Landscape Plants at the lowest rate necessary without exceeding the maximum weight per application. Fertilizer must not be applied at a rate greater than one (1) pound of total nitrogen per 1,000 square feet per application. No more than four (4) pounds of total nitrogen per 1,000 square feet may be applied to any Turf/Landscape area in any calendar year.

(c) **Total Yearly Applications.** While single fertilizer applications in the fall and spring will often suffice, fertilizers must not be applied more than four (4) times during any one (1) calendar year to a single area.

- (d) **Impervious Surface.** Fertilizer must not be applied, spilled or otherwise deposited on any impervious surfaces. Any fertilizer applied, spilled or deposited on any impervious surface must 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.** Fertilizer must not be applied within three (3) feet of any waterbody or any designated wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340).
- (f) **Mode of application.** Spreader deflector shields are required when fertilizing by use of any broadcast spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from all impervious surfaces, water bodies and wetlands.
- (g) **Voluntary Low Maintenance Zone.** A voluntary six (6) foot low maintenance zone from any pond, stream water course, lake, canal or any designated wetland or from the top of the seawall is encouraged. No vegetative material shall be deposited or left remaining in this zone and care should be taken to prevent the over spray of aquatic weed products in this zone.

Section 6. Education programs fertilizer application

- (a) The Town will establish an educational outreach program to educate the public on the use of slow release fertilizer products in lieu of quick release products; to educate the public on the harmful effects that the over use of fertilizers can have on the environment; to provide instructional aids in application of fertilizers; and to encourage the public to move away from excessive reliance on Turf in their landscapes by promoting the use of mulch, stones and native plants and trees.
- (b) The educational outreach program may include “Dear Neighbor” mailings, instructional DVD’s and workshops on the Florida Yards and Neighborhoods program from the University of Florida Extension Service.

Section 7. Exemptions to applicators’ BMPs

- (a) The timing of applications, application rate provisions, and other provisions set forth above in Section 5 will not apply to:
 - (1) Newly established Turf and/or Landscape Plants for the first sixty (60) days after installation or planting, provided documentation for newly established Turf and/or Landscape Plants is maintained to support this exemption;
 - (2) Areas where soil tests confirm, and such tests are confirmed and approved by the Department of Community Development’s Director or designee that phosphorous levels are below ten (10) parts per million. This is equivalent to a “very low” designation for phosphorus set forth in the University of Florida – Institute of Food and Agricultural Sciences (UF-IFAS) Extension Soil Testing Laboratory Analytical Procedures Training Manual (Circular 1248, September 2002);
 - (3) Vegetable gardens or potted plants, provided they are not within three (3) feet of any waterbody or wetland;

(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; and

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

Section 8. Certification of commercial applicators.

The Town Manager will establish a program for certification for commercial applicators, who will not apply fertilizer without a certification. The Town will consider certification revocation for more than three violations of this ordinance and, in addition, the violator must pay all costs and expenses involved in prosecuting the case.

Section 9. Administrative relief

- (a) Any Applicator may apply for administrative relief from the Director, or designee upon a written showing that such Person is able and willing to use a less strict application method or alternative materials or methods as required by the Director, or designee.
- (b) If the administrative relief is deemed factually supported by the Director in his/her discretion, the Director may grant relief as the Director deems appropriate, including but not limited to the name of the party entitled to the administrative relief, the location or locations to which the relief applies, the length of time granted for such relief and any specific conditions of the Director, or designee, applicable to such relief.
- (b) In the event that administrative relief is denied in whole or in part to an applicant for such relief, an appeal may be taken to the Towns Manager, or designee. The Town Manager or designee will review the supporting documentation of all arguments, and hold an informal conference with the applicant and the Town staff involved, upon at least ten (10) days' prior notice. The Town Manager or designee will issue a written opinion to the applicant and staff regarding the merits of such appeal within twenty (20) days of the conference.

Section 10. Enforcement and penalty.

- A. Any violation of this ordinance may be prosecuted in accordance with the provisions set out in Chapter 2, Article V of the Fort Myers Beach Land Development Code.
- B. This Ordinance may be enforced by any duly authorized law enforcement officer or Town designee.
- C. The Town designee will be authorized and empowered to make inspections at reasonable hours of all activities regulated by the Ordinance in order to insure compliance with the provisions of this Ordinance.
- D. Nothing contained herein will prevent the Town 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 Ordinance. Such other lawful action will include but will not be limited to, and equitable action for injunctive relief or an action at law for damages.
- E. Any person, firm, company, corporation or other entity that violates this Ordinance will be responsible for the Town's cost of prosecution of any violation of this Ordinance, including any Town costs to remedy or clean up any environmental condition caused by an act that constitutes a violation of this Ordinance. In the event any such costs are incurred by the Town, such person, firm, company, corporation or other entity must

reimburse the Town for all such costs within thirty (30) days of the Town's invoice for such costs.

Section 11. Conflicts of Law.

Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirement will apply.

Section 12. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion or application will be deemed a separate, distinct and independent provision and such holding will not affect the validity of the remaining portion or application hereof.

Section 14. Effective Date.

This Ordinance will be effective immediately upon adoption provided, however, that a one hundred eighty (180) day implementation period is hereby established for implementation of provisions regarding all Applicators of Fertilizer as set forth in this Ordinance to become familiar with the provisions of this Ordinance, and to provide a reasonable period for compliance with the terms of this Ordinance. Therefore, although this Ordinance will become effective immediately upon adoption, no citations, notices to appear, code enforcement notice of violations or other enforcement procedures will be instituted until the 180-day implementation period has passed.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Babcock and seconded by Councilmember List and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor	<u>aye</u>	Herb Acken, Vice Mayor	<u>aye</u>
Tom Babcock	<u>aye</u>	Jo List	<u>aye</u>
Bob Raymond	<u>aye</u>		

DJULY PASSED AND ENACTED by the Council of the Town of Fort Myers Beach, Florida, this 15th day of December, 2008.

ATTEST:

TOWN OF FORT MYERS BEACH

Michelle D. Mayher, Town Clerk

BY: _____
Larry Kiker, Mayor

Approved as to legal sufficiency by:

Anne Dalton, Esquire
Town Attorney