

ORDINANCE 79 - 21

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 9, "HEALTH AND SANITATION", ARTICLE VI, "USE OF FERTILIZER", SECTIONS 9-100 THROUGH 9-111, PERTAINING TO THE USE OF FERTILIZER IN THE CITY OF CAPE CORAL; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, §403.9337, Florida Statutes, provides that each municipality located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to §403.067, Florida Statutes, shall, at a minimum, adopt the state's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes 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 Cape Coral as "impaired" as a result of excess nutrient under the Florida Impaired Waters Rule (Chapter 62-303, Florida Administrative Code) and 33 U.S.C. §1313(d); and

WHEREAS, the Florida Department of Environmental Protection has worked with the City to undertake and continue reductions in the discharge of pollutants and achieve the established Total Maximum Daily Loads (TMDL) for these water bodies; and

WHEREAS, as a result of impairment to the City's surface waters, groundwater, and water bodies caused by excessive nutrients, the City finds that the improper use of fertilizer on land creates a risk of contributing to adverse effects on surface and groundwater; and

WHEREAS, per §403.9337, Florida Statutes, the City may adopt additional or more stringent standards than the Model Ordinance if: (a) the City has demonstrated, as part of a comprehensive program to address nonpoint sources of nutrient pollution which is science-based, and economically and technically feasible, that additional or more stringent standards than the Model Ordinance are necessary in order to adequately address urban fertilizer contributions to nonpoint source nutrient loading to a water body, and (b) the City documents that it has considered all relevant scientific information, including input from the Department of Environmental Protection, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences, if provided, on the need for additional or more stringent provisions to address fertilizer use as a contributor to water quality degradation; and

WHEREAS, the City of Cape Coral, the self-described "Waterfront Wonderland", has over 400 miles of residential canals and lakes, connecting to bays, estuaries, streams, and the Gulf of Mexico; and

WHEREAS, the Cape Coral City Council has determined that the lands and waters of Cape Coral are at particularly high risk for adverse effects to surface and groundwater; and

WHEREAS, the quality of the City's 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 residents of the City of Cape Coral and the surrounding areas; and

WHEREAS, the City of Cape Coral Comprehensive Plan recognizes the City's duty as a major population center to minimize the impact of stormwater runoff on estuarine water; and

WHEREAS, the regulation of nutrients, including both Phosphorus and Nitrogen contained in fertilizer, entering the waterbodies in and around the City of Cape Coral is a crucial step towards improving and maintaining water and habitat quality. The overuse and improper application of these nutrients create surface water quality issues, including algae blooms and other excessive plant growth. Unrestrained growth of algae and vegetation hinders the effectiveness of flood attenuation provided by natural and artificial stormwater and drainage conveyances. These secondary and cumulative effects have been observed in and on Cape Coral's stormwater and drainage conveyances, lakes, the Caloosahatchee River and nearshore waters of the Gulf of Mexico. Red tide blooms, blue-green algae blooms, and accumulation of red drift algae on local beaches heighten community concerns about water quality and eutrophication of surrounding waters; 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. Communities using reclaimed water for irrigation have significantly greater Phosphorus in groundwater, surface water and stormwater runoff. Low to no-Phosphorus fertilizer and slow release

Nitrogen fertilizer, along with proper utilization, results in better absorption by plants and reduces nutrients concentrations in runoff reaching the water bodies within and surrounding the City of Cape Coral and its watershed, protecting groundwater; and

WHEREAS, the City's Environmental Resources Division has demonstrated to the City Council that, as part of a comprehensive program to address nonpoint sources of nutrient pollution which is science-based, and economically and technically feasible, this Ordinance contains additional or more stringent standards than those in the Florida Department of Environmental Protection's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (2015), which are necessary to adequately address urban fertilizer contributions to nonpoint source nutrient loading to water bodies; and

WHEREAS, in the process of the adoption of this Ordinance, the City Council has considered all relevant scientific information, including input from the Department of Environmental Protection, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences, to the extent provided, on the need for additional or more stringent provisions to address fertilizer as a contributor to water quality degradation; and such information is part of the public record; and

WHEREAS, the Cape Coral City Council 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 or Phosphorous within the City.

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, Article VI, Sections 9-100 through 9-111, are hereby amended to read as follows:

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-~~restricted~~ 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~~ use 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 ~~p~~Phosphorus and ~~n~~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.

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CITY OF CAPE CORAL APPROVED BEST MANAGEMENT PRACTICES TRAINING PROGRAM. 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 2015,*" as revised and any more stringent requirements set forth in this article.

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COMMERCIAL FERTILIZER APPLICATOR. Except as provided in F.S. §482.1562(9), Florida Statutes, any person who applies fertilizer on turf ~~and/or~~ landscape plants in the City of Cape Coral to property not owned by the person or firm applying the fertilizer, or and the employer of the applicator in exchange for money, goods, services or other valuable consideration.

...

FERTILIZER-RESTRICTED FREE-ZONE. Within ~~ten~~ fifteen 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.

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PROHIBITED APPLICATION PERIOD. June 1 through September 30 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: Notwithstanding the foregoing, the City Manager is authorized to extend the prohibited application period for an additional period of one month from May 1 through May 31 as provided in §9-103.

SLOW RELEASE, CONTROLLED RELEASE, TIMED RELEASE, SLOWLY AVAILABLE, or WATER INSOLUBLE NITROGEN. 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. An area piece of grass- covered soil held together by the roots of the grass, including, but not limited to, sod or lawn.

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§ 9-102 - 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 or property is specifically exempted by the terms of this article ~~from the regulatory provisions of this article by §9-108.~~ This article shall be prospective only; and shall not impair any existing contracts.

§ 9-103 - Timing of fertilizer application.

No applicator shall apply fertilizers containing ~~n~~Nitrogen ~~and/or~~ ~~p~~Phosphorus to turf ~~and/or~~ landscape plants during a prohibited application period. The City Manager is authorized to extend the prohibited application period for an additional period of one month from May 1 through May 31, if it is in the best interest of the public health, safety, and welfare, including, but not limited to, permit requirements associated with public projects.

If the City Manager extends the prohibited application period as provided herein, the City Manager shall inform the City Council of the reasons for the extension prior to the extension. Upon the extension of the prohibited application period, the City Manager, or the City Manager's designee, shall post a written notice of such extension at conspicuous place(s) in the Cape Coral City Hall. The City Manager, or his designee, shall also notify the local media, city employees, businesses, and residents as soon as possible and in the manner most practicable and expeditious.

§ 9-104 - Fertilizer-free restricted zones.

(a) ~~—~~ Except as provided in ~~subparagraph (b) below~~ §9-108, fertilizer shall not be applied within any fertilizer-~~restricted~~ ~~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 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.~~

§ 9-105 - Fertilizer content and application rates practices.

- (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. Fertilizers applied to turf or landscape plants within the City of Cape Coral shall be applied in accordance with requirements and directions provided by Rule 5E-1, 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. The application of fertilizers containing Phosphorus is prohibited within the City of Cape Coral unless a soil test conducted within the last 2 years indicates a Phosphorus deficiency. Unless such soil test shows a Phosphorous deficiency, fertilizer containing 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. The soil test method and limits shall be those recommended by the University of Florida/Institute of Food and Agricultural Sciences (UF/IFAS). Notwithstanding the foregoing, no person shall apply fertilizer containing Phosphorous to turf or landscape plants during a prohibited application period.~~
- (c) ~~Fertilizers applied to turf and/or landscape plants within the City of Cape Coral shall contain no less than 50% slow release nNitrogen per guaranteed analysis label. No more than four pounds of Nitrogen per 1,000 square feet shall be applied to any turf/landscape area in any calendar year.~~
- (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. No person shall apply fertilizer containing Nitrogen to turf or landscape plants during a prohibited application period.~~
- (e) ~~Fertilizer containing nNitrogen 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~~ shall be applied to turf and/or landscape plants at the lowest rate necessary. No more than four pounds of nitrogen per 1,000 ft² shall be applied to any turf/landscape area in any calendar year.~~
- (g) ~~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-restricted zones and water bodies, including wetlands.~~
- (h) ~~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 to the greatest extent practicable. 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. Notwithstanding the foregoing, in no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, swales, ditches, conveyances, or water bodies, including wetlands.~~

§ 9-106 - ~~Application practices~~ Educational materials.

- (a) ~~No person shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the prohibited application period. The City Manager, or the City Manager's designee, shall prepare a notice stating that the use of fertilizer in the City shall be applied in accordance with Chapter 9, Article VI, Cape Coral Code of Ordinances. The City will distribute copies of such notice to all retail establishments selling fertilizer in the~~

City. The City encourages that all retail establishments selling fertilizer in the City post such notice in a conspicuous location at the establishment in order to educate residents.

- ~~(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. The City shall provide on the City website a voluntary educational program for residents regarding the use of fertilizer.~~
- ~~(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.~~

§ 9-107 - 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, swales, 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.

§ 9-108 - 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, F.S. §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 Rule 5E-1, Florida Administrative Code, and 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 both~~ may be amended.
- ~~(b) The provisions set forth in §§ 9-103 and 9-105 of this article shall not be applicable to:~~
 - (15) ~~Newly established landscape plants for a 60-day period beginning 30 days after planting if needed to allow the plants to become well established.~~ All athletic fields and parks, provided that landscaping is done within the provisions of Rule 5E-1, Florida Administrative Code, as may be amended.
 - (26) Vegetable gardens, provided they are not within 15 feet of any water body and/or wetland.
 - (37) 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.

- (48) Reclaimed water used for irrigation (which may contain substantial amounts of ~~n~~Nitrogen and ~~p~~Phosphorus).
- (9) Except during a prohibited application period, fertilizer containing Nitrogen may be applied to newly planted turf and landscape plants within a fertilizer-free zone only for a 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, provided such fertilizer is applied in accordance with Rule 5E-1, Florida Administrative Code, as may be amended.
- (10) Except during a prohibited application period, if a soil test conducted within the last 2 years shows a Phosphorous deficiency, fertilizer containing Phosphorous may be applied to newly planted turf and landscape plants within a fertilizer-free zone only for a 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, provided such fertilizer is applied in accordance with Rule 5E-1, Florida Administrative Code, as may be amended. The soil test method and limits shall be those recommended by the University of Florida/Institute of Food and Agricultural Sciences (UF/IFAS).
- (11) 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.

§ 9-109 - Training.

- (a) All commercial fertilizer applicators and institutional applicators ~~of fertilizer working~~ within the ~~e~~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 (FDEP) through the University of Florida Extension "Florida-Friendly Landscapes" program or other FDEP-approved training program, pursuant to Section 403.9338, Florida Statutes, as amended. Completion of this training program shall be repeated a minimum of once every ~~five~~ four 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.

§ 9-110 - Licensing of commercial fertilizer applicators.

- (a) ~~Prior to January 1, 2014, all commercial applicators of fertilizer within the eCity 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~~ Commercial fertilizer applicators working within the City shall obtain, and renew every four years, a Limited Urban Commercial Fertilizer Applicator Certification from the Florida Department of Agriculture and Consumer Services (FDACS), pursuant to Section 482.1562, Florida Statutes, as amended, prior to the business owner or the employer 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 working within the City shall provide proof of ~~completion of the program certification~~ their Limited Urban Commercial Fertilizer Applicator Certification to the Licensing Division of the ~~e~~City's Department of Community Development (DCD), or such other department as designated by the City Manager, within 180 days of the effective date of this article. Such certification shall be dated no more than 4 years prior to submittal to DCD. 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 eCommercial fertilizer applicators of fertilizer working within the eCity shall have and carry in their possession at all times when applying fertilizer, evidence of certification by proof of their Limited Urban Commercial Fertilizer Applicator Certification from the Florida Department of Agriculture and Consumer Services as a commercial fertilizer applicator per Federal Administrative Code Section 5E-14.117(18) FDACS, dated no more than 4 years prior.~~
- (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.~~

§ 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;
 - (2) Second violation - \$250;
 - (3) Third violation and violations thereafter - \$500.

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

- (b) This article 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~~ code enforcement officer.
- (c) ~~The designated City of Cape Coral officials or inspectors~~ Code enforcement officers shall be authorized and empowered to make inspections at reasonable hours of all activities regulated by this article in order to ~~ensure compliance with the provisions of this article. Upon consent of the property owner or person in control of the fertilizer tank or spreader, samples may be taken from spray tanks or fertilizer spreaders and analyzed at the City's expense in order to ensure compliance with the provisions of this article.~~
- (d) Nothing contained herein shall prevent the eCity 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 eCity's cost of prosecution of any violation of this article, including any eCity 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 eCity, such person, firm, company, corporation or other entity shall reimburse the eCity for all such costs within 30 days of the eCity'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 become effective on February 1, 2022.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS 10th DAY OF October, 2021.



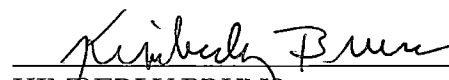
JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

GUNTER aye
TATE aye
SHEPARD aye
HAYDEN aye

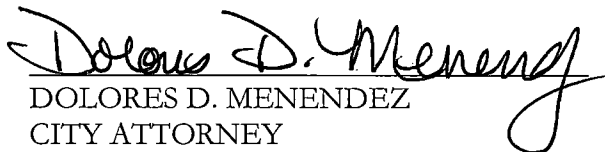
NELSON aye
WELSH aye
LONG aye
COSDEN aye

ATTESTED TO AND FILED IN MY OFFICE THIS 14th DAY OF October, 2021.



KIMBERLY BRUNS
CITY CLERK

APPROVED AS TO FORM:



DOLORES D. MENENDEZ
CITY ATTORNEY
ord/Fertilizer
10/6/21