

ORDINANCE NO. 2010 - 03

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, RELATING TO STORMWATER RUNOFF AND FERTILIZERS; CREATING SECTIONS 27-20 THROUGH 27-30, TOWN CODE OF ORDINANCES OF MELBOURNE BEACH; PROVIDING FINDINGS AND PURPOSE; SETTING FORTH DEFINITIONS; PROVIDING FOR APPLICABILITY AND TIMING OF FERTILIZER APPLICATION; PROVIDING FOR FERTILIZER FREE ZONES AND LOW MAINTENANCE ZONES; PROVIDING FOR FERTILIZER CONTENT AND APPLICATION RATES; SETTING FORTH APPLICATION PRACTICES; PROVIDING FOR THE MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER; SETTING FORTH EXEMPTIONS; PROVIDING FOR PROOF OF TRAINING OF COMMERCIAL APPLICATORS; PROVIDING FOR SEVERABILITY AND INTERPRETATION; PROVIDING FOR REPEAL OF PARTS OF ORDINANCES AND RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN ADOPTION SCHEDULE.

WHEREAS, Article II, Section 7(a) of the Florida Constitution states:

SECTION 7. Natural resources and scenic beauty.--

(a) It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources.; and

WHEREAS, Article II, Section 7(a) of the Florida Constitution requires abatement of water pollution and conservation and protection of Florida's natural resources and

scenic beauty; and

WHEREAS, the Florida Legislature has adopted Section 403.021, Florida Statutes, to support the foregoing constitutional provision, and Section 403.021 "declares that the public policy of the State is to conserve the waters of the State to protect, maintain, and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and other aquatic life, and for domestic, agricultural, industrial, recreational, and other beneficial uses. It also prohibits the discharge of wastes into Florida waters without treatment necessary to protect those beneficial uses of the waters"; and

WHEREAS, Congress, in Section 101(a)(2) of the Federal Water Pollution Control Act, as amended, declares that achievement by July 1, 1983, of water quality sufficient for the protection and propagation of fish, shellfish, and wildlife, as well as for recreation in and on the water, is an interim Federal governmental goal to be sought whenever attainable. Congress further states in Section 101(a)(3), that it is the national policy that the discharge of toxic pollutants in toxic amounts is to be prohibited; and

WHEREAS, one of the major sources of pollution in surface and ground water is from nutrients, such as phosphorous and nitrogen, from fertilizer; and

WHEREAS, toward that end, the Florida Department of Environmental Protection made a finding in Rule 62-302.300(13), Florida Administrative Code, that excessive nutrients (total nitrogen and total phosphorus) constitute one of the most severe water quality problems facing the State of Florida; and

WHEREAS, it is the policy of Florida Department of Environmental Protection to limit the introduction of man-induced nutrients into waters of the State, and particular consideration is to be given to the protection from further nutrient enrichment of waters which are presently high in nutrient concentrations or sensitive to further nutrient concentrations and sensitive to further nutrient loadings. See Rule 62-302.300(13), Florida Administrative Code; and

WHEREAS, pursuant to Rules 62.304.450 and 62-304.100(1), Florida Administrative Code, the waters of the Indian River Lagoon in and adjacent to the Town of Melbourne Beach have been designated as impacted by nutrients, most notably phosphorus and nitrogen. See also Rules 62-303.400 and 62-303.450, Florida Administrative Code; and

WHEREAS, pursuant to Section 403.067(4), Florida Statutes, the Florida Department of Environmental Protection has determined that the waters of the Indian River Lagoon adjacent to the Town of Melbourne Beach are "impaired by nutrients"; and

WHEREAS, to assist in reducing the amount of nutrients such as nitrogen and phosphorus being placed into water bodies such as the Indian River Lagoon, the Florida Department of Environmental Protection conducted research and prepared the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (herein: the "Model Ordinance"), the purpose of which is to reduce nutrients such as nitrogen and phosphorus from fertilizer being placed into Florida water bodies; and

WHEREAS, in 2009, the Florida Legislature adopted the "Protection of Urban and Residential Environments and Water Act," Sections 2 through 5, Chapter 2009-199, Laws of Florida, codified as Section 403.9335 *et seq.*, Florida Statutes (herein: the "Act"); and

WHEREAS, the Act in Section 403.9337(1), Florida Statutes, provides that "[a]ll county and municipal governments are encouraged to adopt and enforce the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes or an equivalent requirement as a mechanism for protecting local surface and groundwater quality"; and

WHEREAS, the Act in Section 403.9337(2), Florida Statutes, provides that "[e]ach county and municipal government located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to s. 403.067, shall, at a minimum, adopt the department's Model Ordinance for

Florida-Friendly Fertilizer Use on Urban Landscapes" (emphasis supplied); and

WHEREAS, the Town is required by Section 403.9337(2), Florida Statutes, to adopt the Model Ordinance; and

WHEREAS, the Town Commission has determined that the adoption of this Ordinance, which is based on the Model Ordinance, will promote the public health, safety, and welfare, by assisting in reducing pollution in the Indian River Lagoon and reducing polluted stormwater runoff.

BE IT ENACTED by the Town of Melbourne Beach, Florida:

Section 1. That Appendix A of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 27-20, which said section reads as follows:

**Article II. Stormwater Runoff; Fertilizer**

**§27-20. FINDINGS AND PURPOSE.**

(a) Findings. As a result of impairment to Brevard County'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 town, the town commission has determined that the use of fertilizers on lands within the town creates a risk to contributing to adverse effects on surface and/or ground water. Accordingly, the town commission finds that management

measures contained in the most recent edition of the "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008," are required by this article.

(b) Purpose. 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. 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 Brevard County's natural and constructed stormwater conveyances, rivers, creeks, canals, springs, lakes, estuaries and other water bodies in and adjacent to the town. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of the town 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 2. That Appendix A of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 27-21, which said section reads as follows:

**§27-21. DEFINITIONS.**

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

(a) "Application" or "Apply" means the actual physical deposit of fertilizer to turf or landscape plants.

(b) "Applicator" means any Person who applies fertilizer on turf and/or landscape plants within the town.

(c) "Approved Best Management Practices Training Program" means a training program approved by the town manager that includes 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.

(d) "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.

(e) "Commercial Fertilizer Applicator" means any Person who applies fertilizer on turf and/or landscape plants within the town in exchange for money, goods, services or other valuable consideration.

(f) "Fertilize", "Fertilizing", or "Fertilization" means the act of applying fertilizer to turf, specialized turf, or landscape plants.

(g) "Fertilizer" means any substance or mixture of substances, except pesticide/fertilizer mixtures such as "weed and feed" products 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.

(h) "Guaranteed Analysis" means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.

(i) "Institutional Applicator" means any Person, other than a non-commercial or commercial 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.

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

(k) "Low Maintenance Zone" means an area consisting of a minimum of six (6) feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, mowing, and similar types of activities.

(l) "Pasture" means land used for livestock grazing that is managed to provide feed value.

(m) "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.

(n) "Prohibited Application Period" means 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 in any portion of the town, issued by the National Weather Service, or if heavy rain is likely.

(o) "Slow Release", "Controlled Release", "Times 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.

(p) "Town Manager" means the town manager of the town of Melbourne Beach, or an administrative official of the town government designated by the town manager to administer and enforce the provisions of this article.

(q) "Turf", "Sod", or "Lawn" means a piece of grass-covered soil held together by the roots o the grass.

Section 3. That Appendix A of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 27-22, which said section reads as follows:

**§27-22. APPLICABILITY.**

This article shall be applicable to and shall regulate any and all Applicators of Fertilizer and areas of Application of Fertilizer within the area of the town, unless such 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.

Section 4. That Appendix A of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 27-23, which said section reads as follows:

**§27-23. TIMING OF FERTILIZER APPLICATION.**

No Applicator shall apply Fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the Prohibited Application Period.

[DRAFTER'S COMMENT: The Model Ordinance provides guidance to the extent that it notes that one of the most controversial issues associated with recent fertilizer ordinances enacted by local governments is the Prohibited Application Period. Some ordinances have prohibited application of fertilizer, even slow release formulas, during the summer rainy season (typically June 1 to September 30). The reasoning is that the rain occurs frequently saturating the soil, leading to more runoff. Fertilizer management is largely about keeping the nitrogen and/or phosphorus in the root zone where it can be used by the turf. While periods of heavy rainfall contribute to washing fertilizer out of the root zone, the health of the turf grass is an equally important factor. Healthy turf grass with healthy roots and leaves is important to minimizing fertilizer movement. Because turf grass requires nitrogen throughout its growing period, its health can be negatively affected if nitrogen is deficient. Care should be taken with regards to the Prohibited Application Period until the science is better defined. Accordingly, sound science, common sense, and carefully reasoned judgment are recommended in

determining how to define the Prohibited Application Period.]

Section 5. That Appendix A of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 27-24, which said section reads as follows:

**§27-24. FERTILIZER FREE ZONES.**

Fertilizer shall not be applied within ten (10) feet, or three (3) feet if a deflector shield or drop spreader is used, of any pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (see Chapter 62-340, Florida Administrative Code) or from the top of a seawall. If more stringent town regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. Newly planted turf and/or landscape plants may be fertilized in this zone only for the first sixty (60) day establishment period, but caution shall be used to prevent direct deposition of nutrients into the water.

Section 6. That Appendix A of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 27-25, which said section reads as follows:

**§27-25. LOW MAINTENANCE ZONE.**

A voluntary six (6) 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 regulations are adopted by the town and 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 this zone or deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products in this zone. Care must be taken to ensure erosion of the surface soil does not occur. Excessive erosion may be a greater pollution hazard than occasional proper applications of fertilizer.

Section 7. That Appendix A of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 27-26, which said section reads as follows:

**§27-26. FERTILIZER CONTENT AND APPLICATION RATES.**

The appropriate Best Management Practices listed below must be followed on the following sites for nutrient management activities:

(a) Fertilizers labeled for sports turf at golf courses, parks and athletic fields shall:

(1) Have directions for use not to exceed rates recommended in the document titled SL191 "Recommendations for N, P, K and Mg for Golf Course and Athletic Field Fertilization based on Mehlic 1 Extractant", dated March 2007, which is hereby adopted and incorporated by reference into this rule.

Copies may be obtained from the Soil and Water Science Department, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL 32611 or the following website:

<http://edis.ifas.ufl.edu/SS404>.

(2) Have directions for use in accordance with the recommendations in "EMP's for the Enhancement of Environmental Quality on Florida Golf Courses", published by the Florida Department of Environmental Protection, dated January 2007. Copies may be down-loaded from <http://www.dep.state.fl.us/water/nonpoint/pubs.htm>.

(3) Note that this does not exempt applicators at these sites from the required basic Green Industry Best Management Practices training.

(b) Fertilizers applied to turf and/or landscape plants with the town shall be formulated and applied in accordance with Rule 5E-1.003(2), Florida Administrative Code.

(c) Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in (a) above unless a soil or tissue deficiency has been verified by an approved test.

[**DRAFTER'S COMMENT:** The Model Ordinance provides guidance that soil and tissue tests for phosphorus are normally done by UF/IFAS or another accredited laboratory. FDEP has sponsored research ]ca. 2007-2008) to compare several retail home test kits to IFAS extension lab results for a wide variety of Florida soils. This may allow more convenient testing by homeowners, although enforcement may be more difficult without written test results.]

Section 8. That Appendix A of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 27-27, which said section reads as follows:

**§27-27. APPLICATION PRACTICES.**

(a) 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, fertilizer-free zones and water bodies, including wetlands.

(b) Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces.

(c) 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.

(d) 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) In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

Section 9. That Appendix A of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 27-28, which said section reads as follows:

**§27-28. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER.**

In no case shall grass clippings, vegetative material, and/or vegetative debris either intentionally or accidentally, be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks or roadways.

Section 10. That Appendix A of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 27-29, which said section reads as follows:

**§27-29. EXEMPTIONS.**

The provisions set forth above in this article shall not apply to:

(a) bona fide farm operations as defined in Florida Right to Farm Act, Section 823.14, Florida Statutes; provided, that fertilizers are applied in accordance with the appropriate best management practices manual adopted by the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy for the crop in question.

(b) Non-commercial Applicators not otherwise required to be certified, such as private citizens on their own residential property, are encouraged to follow the recommendations of the University of Florida IFAS Florida Yards and Neighborhoods program when applying fertilizers.

Section 11. That Appendix A of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 27-30, which said section reads as follows:

**§27-30. PROOF OF TRAINING OF COMMERCIAL APPLICATORS.**

(a) All Commercial Applicators of Fertilizer making Fertilizer Applications within the town, 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, by not later than August 16, 2010.

(b) 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 certificate by not later than August 16, 2010 (approximately 180 days after the effective date of this article).

Section 12. Severability/Interpretation.

(a) In the event that any term, provision, clause, sentence or section of this Ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable or invalid for any reason whatsoever, any such invalidity, illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

(b) In interpreting the provisions of this Ordinance, the following rules and symbols shall apply:

(1) Words underlined are additions to existing text.

(2) Words ~~stricken through~~ are deletions from existing text.

(3) Asterisks (\* \* \*) indicates a deletion from the Ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinance denoted by the asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

Section 13. Ordinances and Resolutions in Conflict. All ordinances or resolutions or parts thereof that may be determined to be in conflict herewith, except portions of the Comprehensive Plan, are hereby repealed.

Section 14. Effective Date. The provisions within this Ordinance shall take effect immediately upon the enactment of this Ordinance.

Section 15. Adoption Schedule. This Ordinance was PASSED by the Town Commission of the Town of Melbourne Beach on first reading on the 20th day of January, 2010, and ADOPTED by the Town Commission of the Town of Melbourne Beach, Brevard County, Florida, on second and final reading on the 17th day of

February, 2010.

TOWN OF MELBOURNE BEACH, FLORIDA,  
A Florida Municipal Corporation

ATTEST:

By: \_\_\_\_\_  
Rita Karpie, Mayor

\_\_\_\_\_  
Christina Hoffkins, CMC  
Town Clerk

(TOWN SEAL)