

ORDINANCE NO. 2017-08

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS, SEMINOLE COUNTY, FLORIDA; AMENDING CHAPTER 19 OF THE WINTER SPRINGS CITY CODE AND CREATING A NEW ARTICLE IX THEREOF, “PROPER USE OF FERTILIZERS”; REGULATING THE PROPER USE OF FERTILIZERS BY ANY APPLICATOR; PROVIDING FOR APPLICABILITY WITHIN WINTER SPRINGS; ESTABLISHING A PROHIBITED APPLICATION PERIOD; SPECIFYING ALLOWABLE FERTILIZER APPLICATION RATES AND METHODS, FERTILIZER-FREE ZONES, LOW MAINTENANCE ZONES, AND EXEMPTIONS; REQUIRING 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 WHICH HAVE BEEN OBSERVED IN AND ON WINTER SPRINGS’ NATURAL AND CONSTRUCTED STORMWATER CONVEYANCES, RIVERS, CREEKS, CANALS, SPRINGS, LAKES AND OTHER WATERBODIES; REQUIRING PROPER TRAINING OF COMMERCIAL AND INSTITUTIONAL FERTILIZER APPLICATORS; ESTABLISHING TRAINING AND LICENSING REQUIREMENTS; PROVIDING FOR ENFORCEMENT AND PENALTIES; AMENDING CHAPTER 2 OF THE WINTER SPRINGS CITY CODE TO PROVIDE FOR PENALTIES; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City is granted the authority, under § 2(b), Art. VIII of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, pursuant to 33 U.S.C. § 1313(d) (2016) of the Federal Clean Water Act and the resulting Florida Impaired Waters Rule, Chapter 62-303, Florida Administrative Code (2016), the Florida Department of Environmental Protection (“FDEP”) has classified specific waterbodies in Seminole County as “impaired” as a result of the presence of excess nutrients; and

WHEREAS, the Seminole County National Pollutant Discharge (NPDES) Municipal Separate Storm Sewer System (MS4) Permit No. FLS000038, issued by the Florida Department of Environmental Protection under authority delegated to it by the United States Environmental Protection Agency, mandates the adoption of a fertilizer ordinance that includes all of the requirements set forth in the Florida Department of Environmental Protection’s Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes pursuant to Section 403.9337, Florida Statutes (2016), by December 31, 2013 (the “Model Ordinance”); and

WHEREAS, the Florida Department of Environmental Protection has informally extended the time for the City of Winter Springs to adopt the subject ordinance with the understanding that the City would adopt the ordinance as soon as practical; and

WHEREAS, it is the intent of the City Commission to adopt this Ordinance consistent with the terms of the Model Ordinance, and the principal purposes of the instant Ordinance are to receive credits and otherwise comply with all applicable Total Maximum Daily Loads (TMDLs) and Basin Management Action Plans (BMAPs); and

WHEREAS, the City Commission of the City of Winter Springs, Florida, hereby finds this ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Winter Springs.

NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS HEREBY ORDAINS, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are hereby fully incorporated herein by reference as legislative findings of the City Commission of Winter Springs.

Section 2. Code Amendment. The City of Winter Springs Code of Ordinances, Chapter 19, is hereby amended as follows (underlined type indicates additions and ~~strikeout~~ type indicates deletions, while asterisks (* * *) indicate a deletion from the Ordinance of text existing in Chapter 19. It is intended that the text in Chapter 19 denoted by the asterisks and set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this ordinance):

Chapter 19 – UTILITIES

* * *

ARTICLE IX. – PROPER USE OF FERTILIZERS

Sec. 19-310. – Findings.

As a result of impairment to the City of Winter Springs’ surface waters caused by excessive nutrients, or, as a result of increasing levels of nitrogen in the surface and ground water within the

aquifers and springs within the boundaries of the City of Winter Springs, the Winter Springs City Commission hereby determines that the use of Fertilizers on lands within the City of Winter Springs creates a risk of contributing to adverse effects on surface and ground water. Accordingly, the City Commission hereby 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* are required.

Sec. 19-311. – Purpose and Intent.

This Article IX: (a) regulates the proper use of Fertilizers by any Applicator; (b) requires proper training of commercial and Institutional Fertilizer Applicators; (c) establishes training and licensing requirements; (d) establishes a Prohibited Application Period; and (e) specifies allowable Fertilizer Application rates and methods, Fertilizer free zones, Low Maintenance Zones, and exemptions. This Article IX 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 natural and constructed stormwater conveyances, rivers, creeks, canals, springs, lakes, and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural, and economic well-being of city residents and the health of the public in general. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both nitrogen and phosphorus contained in Fertilizer, will help improve and maintain water and habitat quality.

Sec. 19-312. – Definitions.

For the purposes of this Article IX, the following terms have the meanings set forth in this Section unless the context clearly indicates otherwise.

Administrator means the City Manager, or an administrative official of the City of Winter Springs designated by the City Manager to administer and enforce the provisions of this Article.

Application or *Apply* means the actual physical deposit of Fertilizer to Turf or Landscape Plants.

Applicator means any Person who Applies Fertilizer on Turf and/or Landscape Plants in the City of Winter Springs.

Approved Best Management Practices Training Program means a training program approved per section 403.9338, F.S., or any more stringent requirements set forth in this Article that includes 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 approved by the Administrator.

Best Management Practices means turf and landscape practices or a 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.

Code Enforcement Officer, Official or Inspector means any designated employee or agent who has the duty to enforce codes and ordinances enacted by the City of Winter Springs.

Commercial Fertilizer Applicator, except as provided in Section 482.1562(9), Florida Statutes, means any Person who Applies Fertilizer for payment or other consideration to property not owned by the Person or firm Applying the Fertilizer or the employer of the Applicator.

Fertilize, Fertilizing or Fertilization means the act of Applying Fertilizer to Turf, specialized Turf, or Landscape Plants.

Fertilizer. Any substance or mixture of substances that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.

Guaranteed Analysis means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a Fertilizer.

Institutional Fertilizer Applicator means any Person, other than a private, non-commercial or a Commercial Fertilizer Applicator (unless such definitions also apply under the circumstances), that Applies Fertilizer for the purpose of maintaining Turf and/or Landscape Plants. Institutional Fertilizer Applicators shall include, but are not limited to, owners, managers or employees of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium or other form of common ownership.

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

Low Maintenance Zone means an area a minimum of ten (10) feet wide adjacent to water courses which is planted and managed in order to minimize the need for Fertilization, watering, mowing, and related activities.

Person means any natural Person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any other group of people acting as an organized entity.

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 for any portion of the City of Winter Springs, issued by the National Weather Service, or if heavy rain, as defined by the World Meteorological Organization as rainfall greater than or equal to two (2) inches in a

twenty-four (24) hour period, is likely.

Saturated Soil means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this Article IX, soils are considered saturated if standing water is present or the pressure of a Person standing on the soil causes the release of free water.

Slow Release, Controlled Release, Timed Release, Slowly Available, or Water Insoluble Nitrogen means nitrogen in a form which delays its availability for plant uptake and use after Application or which extends its availability to the plant longer than a reference rapid or quick release product.

Turf, Sod, or Lawn means a piece of grass-covered soil held together by the roots of the grass.

Urban Landscape means pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or horticultural plants. For the purposes of this section, agriculture has the same meaning as in s. 570.02.

Sec. 19-313. – Applicability.

This Article IX applies to and regulates any and all Applicators of Fertilizer and areas of Application of Fertilizer within the jurisdictional limits of the City of Winter Springs, unless such Applicator is specifically exempted by the terms of this Article IX. This Article IX operates prospectively only, and does not impair any existing contracts.

Sec. 19-314. – Timing of Fertilizer Application.

No Applicator may Apply Fertilizers containing nitrogen, phosphorus, or both to Turf and/or Landscape Plants during the Prohibited Application Period, or to Saturated Soils.

Sec. 19-315. – Fertilizer Free Zones.

Fertilizer may not be Applied within ten (10) feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) or from the top of a seawall, unless a deflector shield, drop spreader, or liquid applicator with a visible and sharply defined edge, is used, in which case a minimum of 3 feet shall be maintained. If more stringent Winter Springs City Code regulations apply, this provision does not relieve the requirements to adhere to more stringent regulations. Newly planted Turf and/or Landscape Plants may be Fertilized in this zone only for a sixty (60) day period beginning thirty (30) days after planting if needed to allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water.

Sec. 19-316. – Low Maintenance Zones.

A voluntary ten (10) 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 Winter Springs City Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. No mowed or cut vegetative material may be deposited or left remaining in this zone or deposited in the water. Care must be taken to prevent the over-spray of aquatic weed products in this zone.

Sec. 19-317. – Fertilizer Content and Application Rates.

(a) Fertilizers Applied to Turf shall be Applied in accordance with requirements and directions provided by Rule 5E-1.003, Florida Administrative Code.

(b) Fertilizer containing nitrogen 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.

(c) Nitrogen or phosphorus Fertilizer may not be Applied to Turf or Landscape Plants except as provided in subsection (a) for Turf, or in the University of Florida/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.

Sec. 19-318. – 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 must 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 may Fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

Sec. 19-319. – Management of Grass Clippings and Vegetative Matter.

In no case may grass clippings, vegetative material and/or vegetative debris be washed, swept, or blown off into stormwater drains, 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.

Sec. 19-320. – Exemptions.

This Article IX does not apply to:

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

(b) Other properties not subject to or covered under subsection (a) above that have pastures used for grazing livestock.

(c) 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.

Sec. 19-321. – Training.

(a) All commercial and Institutional Fertilizer Applicators shall abide by and successfully complete the six-hour training program in the “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” offered by the Florida Department of Environmental Protection through the University of Florida Extension “Florida-Friendly Landscaping” program, or an approved equivalent.

(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.

Sec. 19-322. – Licensing of Commercial Fertilizer Applicators.

All commercial applicators or fertilizer within the City, shall have and carry in their possession at all times when applying fertilizer, evidence of certification by the Florida Department of Agriculture and Consumer Services as a Commercial Fertilizer Applicator per 5E-14.117(18) F.A.C.

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 a “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” training certificate prior to the business owner obtaining a Local Business Tax Certificate. Owners for any category of

occupation which may apply any fertilizer to Turf and/or Landscape Plants shall provide proof of completion of the program to the City Tax Collector's Office

Sec. 19-323. – Enforcement, Penalties, and Legal Proceedings.

(a) Any Person found to be in violation of the provisions of this Article IX may be subject to any applicable civil enforcement mechanisms available to the City, including, but not limited to: injunctive relief; referral to the City's Code Enforcement Board or Code Enforcement Magistrate; or issuance of a citation pursuant to Section 2-69 of this Code.

(b) Violations of this Article IX can present a serious threat to public welfare and are potentially irreparable or irreversible. Therefore, pursuant to Section 2-69.1 of this Code and Section 162.21(3)(b), Florida Statutes (2016), as these provisions may be amended from time to time, a City Code Enforcement Officer may immediately issue a citation to any Person in violation of this Article IX if the Code Enforcement Officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

(c) Each incidence of violation under this Article IX constitutes a separate violation and offence and a separate offence will be deemed committed on each day during or on which a violation occurs or continues.

(d) In addition to the other remedies provided in this Section, the City is authorized to make application in a court of appropriate jurisdiction for an injunction restraining any person from violating, or continuing to violate any provisions of this Article IX. Further, the City may avail itself of any other legal or equitable remedy available to it in the enforcement of any provision of this Article IX or any provision of any resolution enacted pursuant to this Article IX.

(e) The City may elect to take any or all of the above remedies concurrently, and the pursuit of one does not preclude the pursuit of another.

(f) Funds generated by penalties imposed under this section shall be used by the City for the administration and enforcement of section 403.9337, Florida Statutes, and the corresponding sections of this Article IX, and to further water conservation and nonpoint pollution prevention activities.

Section 3. Code Amendment. The City of Winter Springs Code of Ordinances, Chapter 2, is hereby amended as follows (underlined type indicates additions and strikeout type indicates deletions, while asterisks (* * *) indicate a deletion from the Ordinance of text existing in Chapter 2. It is intended that the text in Chapter 2 denoted by the asterisks and set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this ordinance):

Chapter 2 – ADMINISTRATION

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DIVISION 2. – CODE ENFORCEMENT

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Subdivision B. – Citations

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Sec. 2-69.4. - Schedule of Violations.

(a) Violation of the following city codes or ordinances is a civil infraction for which a citation may be issued:

Chpt. 19. Article IX

Improper Use of Fertilizers

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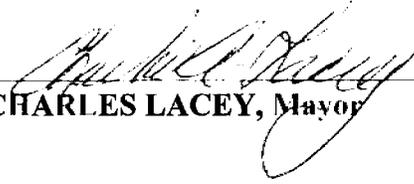
Section 4. Repeal of Prior Inconsistent Ordinances and Resolutions. All prior inconsistent ordinances and resolutions adopted by the City Commission, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

Section 5. Incorporation Into Code. This Ordinance shall be incorporated into the Winter Springs City Code and any section or paragraph, number or letter, and any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and like errors may be corrected and additions, alterations, and omissions, not affecting the construction or meaning of this Ordinance and the City Code may be freely made.

Section 6. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 7. Effective Date. This Ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Springs, Florida, and pursuant to the City Charter; provided, however, no citations, notices to appear, notices of violation or other enforcement procedures may be instituted until October 1, 2017.

ADOPTED by the City Commission of the City of Winter Springs, Florida, in a regular meeting assembled on the 14th day of August, 2017.

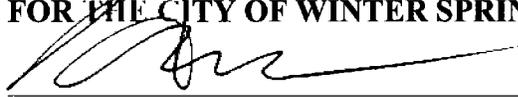


CHARLES LACEY, Mayor

ATTEST:

ANDREA LORENZO-LUACES
City Clerk

**APPROVED AS TO LEGAL FORM AND SUFFICIENCY
FOR THE CITY OF WINTER SPRINGS ONLY.**



ANTHONY A. GARGANESE
City Attorney

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| First Reading: | July 10, 2017 |
| Legal Ad Published: | August 3, 2017 |
| Effective Date: | August 14, 2017 |