

ORDINANCE NO. 1657

AN ORDINANCE OF THE CITY OF OVIEDO, FLORIDA RELATING TO THE PROPER USE OF FERTILIZERS AND REGULATING THE PROPER USE OF FERTILIZERS BY ANY APPLICATOR; PROVIDING FOR DEFINITIONS; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS SUCH AS THE ADOPTION OF RULES; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR ENFORCEMENT, PENALTIES AND REMEDIES; PROVIDING FOR A IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Title 33, United States Code, Section 1313(d) (part of the *Federal Clean Water Act*) and the resulting *Florida Impaired Waters Rule* (Chapter 62-303, *Florida Administrative Code*, 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, Article II, Section 7(a) of the *Constitution of the State of Florida* provides that:

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, the Seminole County National Pollutant Discharge (NPDES) Municipal Separate Storm Sewer System (MS4) Permit No. FLS000038, issued by the FDEP 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 FDEP's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes pursuant to Section 403.9337, *Florida Statutes*, by December 31, 2013 (the "Model Ordinance"), and the City has similar requirements imposed upon it as a unit of local government with significant stormwater drainage and environmental protection obligations and responsibilities; and

WHEREAS, Seminole County passed its Fertilizer Ordinance with an effective date of February 28, 2017, and enforcement of the County's ordinance will begin October 1, 2017; and

WHEREAS, Seminole County has taken action to comply with all applicable Total Maximum Daily Loads (TMDLs) and Basin Management Action Plans (BMAPs); and

WHEREAS, Seminole County has encouraged the City to enact an ordinance similar to the ordinance enacted by the County; and

WHEREAS, the City Council understands and recognizes the importance and significance of protecting the environment and the natural resources of the State and City; and

WHEREAS, although the provisions of this Ordinance are not a land development regulations the provisions of this Ordinance are consistent with the goals, objectives and policies of the *Comprehensive Plan of the City of Oviedo* and other controlling law; and

WHEREAS, this Ordinance is an exercise of the City of Oviedo's powers as a municipality under the provisions of Article VIII, Section 2 of the *Constitution of the State of Florida*; Chapter 163, *Florida Statutes*; Chapter 166, *Florida Statutes*, and other applicable and controlling law such as that referenced herein; and

WHEREAS, the City Council has taken all actions in accordance with the requirements and procedures mandated by State law and complied, in every respect, with the requirements of law.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF OVIEDO, FLORIDA, AS FOLLOWS:

SECTION 1. LEGISLATIVE FINDINGS AND INTENT. The City Council of the City of Oviedo finds and determines as follows:

- (a). The City staff report and City Council agenda memorandum relating to this matter are hereby adopted as if fully set forth herein.
- (b). The foregoing recitals (whereas clauses) are hereby adopted as the legislative findings of the City Council and are incorporated into this Ordinance as if set forth *in haec verba*.

SECTION 2. USE OF FERTILIZERS. The following provisions are added to the *Code of Ordinances of the City of Oviedo*:

Findings.

As a result of impairment to surface waters caused by excessive nutrients, and as a result of increasing levels of nitrogen in the surface and ground water within the aquifers and springs, the City Council hereby determines that the use of fertilizers creates a risk to contributing to adverse effects on surface and ground water. Accordingly, the City Council 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.

Purpose and Intent.

- (a). This Ordinance:
 - (1). regulates the proper use of fertilizers by any applicator;
 - (2). requires proper training of commercial and Institutional fertilizer applicators;
 - (3). establishes training and licensing requirements;
 - (4). establishes a prohibited application period; and

(5). specifies allowable fertilizer application rates and methods, fertilizer free zones, low maintenance zones, and exemptions.

(b). This Ordinance: 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 State, County and 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.

Definitions.

(a). For the purposes of this Ordinance, the following terms have the following meanings:

(1). *Application or Apply*. The actual physical deposit of Fertilizer to Turf, Landscape Plants, or both.

(2). *Applicator* means any person who applies fertilizer on turf, landscape plants, or both.

(3). *Approved Best Management Practices Training Program* means a training program approved pursuant to Section 403.9338, *Florida Statutes*, as this statute may be amended from time-to-time, or any more stringent requirements set forth in this Ordinance 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*, as this document may be amended from time-to-time.

(4). *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.

(5). *Code Enforcement Officer, Official or Inspector* means any designated employee or agent who has the duty to enforce codes and ordinances.

(6). *Commercial Fertilizer Applicator* 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, except as provided in Section 482.1562(9), *Florida Statutes*, as this statute may be amended from time-to-time.

(7). *Fertilize* means the act of applying fertilizer to turf, specialized turf, or landscape plants.

(8). *Fertilizer* means 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. Fertilizer does not include un-manipulated peat or compost that make no claims as described in the preceding sentence.

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

(10). *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, landscape plants, or both, institutional fertilizer applicators 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.

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

(12). *Low Maintenance Zone* means an area a minimum of 10' wide adjacent to water courses that is planted and managed in order to minimize the need for fertilization, watering, mowing, and related activities.

(13). *Person* means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, or any other group of people acting as an organized entity.

(14). *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, issued by the National Weather Service, or if heavy rain, as defined by the World Meteorological Organization as rainfall greater than or equal to 2" in a 24 hour period, is likely.

(15). *Reclaimed Water* means a high quality alternative water source that has received at least secondary treatment and is reused after being discharged from a domestic wastewater treatment facility. Moreover, there are some constituents, such as nitrogen and phosphorus found in recycled water. These constituents are beneficial for plant growth, and will serve as an additional fertilizing source.

(16). *Saturated Soil* means soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this Ordinance, 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.

(17). *Slow Release, Controlled Release, Timed Release, Slowly Available, or Water Insoluble Nitrogen* means 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 rapid or quick release product.

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

(b). Words not defined in this Ordinance have the meaning as provided in other Sections of the *City Code*, and otherwise have the meaning provided by a definition in the *Florida Statutes*, the *Florida Administrative Code* or common and ordinary use.

Applicability. This Ordinance applies to and regulates any and all applicators of fertilizer and areas of application of fertilizer within the City, unless such applicator is specifically

exempted by the terms of this Ordinance. This Ordinance operates prospectively only and does not impair any existing contracts.

Timing of Fertilizer Application.

- (a). It is prohibited and unlawful for an applicator to apply fertilizers containing nitrogen, phosphorus, or both to turf, landscape plants, or both during the prohibited application period, or to saturated soils.
- (b). It is prohibited and unlawful for fertilizer containing nitrogen or phosphorus to be applied before seeding or sodding a site or to 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, or in accordance with an adopted stormwater pollution prevention plan for that site.
- (c). It is prohibited and unlawful for fertilizer containing nitrogen or phosphorus to be applied to turf or landscape plants from June 1 through September 30 of each year.

Fertilizer Free Zones.

It is prohibited and unlawful to apply fertilizer within fifteen feet (15') of any pond, stream, watercourse, lake, canal, or wetland as defined by the Rule 62-340, *Florida Administrative Code*, as this regulation may be amended from time-to-time, or from the top of a seawall. Newly planted turf, landscape plants, or both 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 must be used to prevent direct deposition of nutrients into the water.

Low Maintenance Zones.

A voluntary low maintenance zone, ten feet (10') in width, is strongly recommended 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. 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.

Fertilizer Content and Application Rates.

- (a). Fertilizers applied to turf must be applied in accordance with requirements and directions provided by Rule SE-1.003, *Florida Administrative Code*, "Fertilizer Label Requirements for Urban Turf, Sports Turf or Lawns", as this Rule may be amended from time-to-time and it is prohibited and unlawful to otherwise apply fertilizers.
- (b). It is prohibited and unlawful to apply nitrogen or phosphorus fertilizer to turf or landscape plants except as provided in subsection (a) for turf, or in the University of Florida/Institute of Food and Agricultural Sciences recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an approved test. Soil and tissue tests for phosphorus are normally accomplished by University of Florida/Institute of Food and Agricultural Sciences or another accredited laboratory. University of Florida/Institute of Food and Agricultural Sciences recommendations are available from the County Extension Service or http://solutionsforyourlife.ufl.edu/lawn_and_garden/.

(c). It is prohibited and unlawful to apply fertilizer containing phosphorus to turf, sod, lawns, or landscape plants unless a soil or plant tissue deficiency is verified by a testing methodology approved by the University of Florida/Institute of Food and Agricultural Sciences. If a deficiency is verified, the application of fertilizer containing phosphorus must adhere to the rates and directions for the appropriate region of Florida, as adopted by a Rule codified in the *Florida Administrative Code*. This subsection controls over any inconsistent provisions in other subsections above regarding phosphorus.

(d). It is prohibited and unlawful to apply fertilizers containing nitrogen to turf or landscaping plants containing no less than fifty percent (50%) slow release nitrogen per guaranteed analysis label. If the necessary product is determined to be available by the City Manager, or designee, by adoption of a rule, on the local commercial market on March 1, 2020, then this requirement will increase to no less than sixty-five percent (65%) slow release nitrogen effective on March 1, 2020. This subsection controls over any inconsistent provisions in subsections (a) and (b) regarding nitrogen.

(e). The above referenced application rates must be reduced appropriately, as maybe determined by rule adopted by the City Manager, or designee, on properties where reclaimed wastewater is used for irrigation based on available nutrients in the reclaimed water used as reported by the provider of the reclaimed water. It is prohibited and unlawful to otherwise apply fertilizers.

Application Practices.

(a). Spreader deflector shields are required when fertilizing by rotary or broadcast spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from an impervious surfaces, fertilizer free zones, and water bodies, including wetlands and it is prohibited and unlawful to otherwise fail to use spreader deflector shields.

(b). It is prohibited and unlawful to apply, spill or otherwise deposit fertilizers on any impervious surfaces. Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface must be immediately and completely removed to the greatest extent practicable and it is prohibited and unlawful fail to do so in a manner found acceptable by the City based upon sound professional and environmental practices and principles.

(c). Fertilizer released on an impervious surface shall be immediately contained and either legally applied to turf or any other legal site, or returned to the original or other appropriate container and it is prohibited and unlawful fail to do so in a manner found acceptable by the City based upon sound professional and environmental practices and principles.

(d). It is prohibited and unlawful to wash, sweep, or blow fertilizers off impervious surfaces into a stormwater drain, ditch, conveyance or water body.

Management of Grass Clippings and Vegetative Matter.

It is prohibited and unlawful to wash, sweep or blow grass clippings, vegetative material, vegetative debris, or any combination of them into a stormwater drain, ditch, conveyance, water body, wetland, sidewalk or roadway except for *de minimus* amounts of such materials

as found unintentionally deposited as determined acceptable by the City based upon sound professional and environmental practices and principles.

Exemptions.

(a). The provisions of this Ordinance do not apply to the following activities if conducted in accordance with controlling law:

(1). Bona fide farm operations as defined in Section 823.14, *Florida Statutes*, "Florida Right to Farm Act", as this statute may be amended from time-to-time.

(2). Other properties not subject to or covered under subsection (a) above 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 stormwater, water quality, agronomics, or horticulture.

(4). Golf courses, athletic fields and Turf managed for active recreation, whose owners implement Best Management Practices as described in Rule 5E-1.003(2)(d), *Florida Administrative Code*, "Fertilizers Labeled for Sports Turf at Golf Courses, Parks and Athletic Fields", as this regulation may be amended from time-to-time.

(5). Any fruit or vegetable gardens, provided they are not within 15' feet of any waterbody or wetland.

(b). This Ordinance shall be construed, interpreted and enforced in a manner that is not inconsistent with controlling State law.

Training.

(a). All commercial and institutional fertilizer applicators shall abide by and successfully complete the six (6)-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/Institute of Food and Agricultural Sciences *Florida-Friendly Landscapes* program or a City-approved equivalent.

(b). Private, non-commercial Applicators are encouraged to follow the recommendations of the University of Florida/Institute of Food and Agricultural Sciences *Florida Friendly Landscapes* program when Applying Fertilizers.

Licensing of Commercial Fertilizer Applicators.

(a). All commercial fertilizer applicators were required by controlling State law to, by September 30, 2014, 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/Institute of Food and Agricultural Sciences *Florida-Friendly Landscapes* program, or an approved equivalent program. Commercial fertilizer applicators shall provide proof of completion of the program prior to obtaining a new local business tax receipt for any category of occupation which may apply any fertilizer to turf, landscape plants, or both. commercial fertilizer applicators with an existing local business tax

receipt for any category of occupation which may apply any fertilizer to turf, landscape plants, or both shall provide proof of completion of the program within thirty (30) days after completing the program as required by state law prior to September 30, 2014.

(b). After September 30, 2014, all commercial fertilizer applicators were required by controlling State law to 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 pursuant to Rule SE-14.117(18), *Florida Administrative Code*, as this regulation may be amended from time-to-time.

(c). By September 30, 2014, all businesses applying fertilizer to turf, landscape plants, or both (including, but not limited to, residential lawns, commercial properties, and multi-family and condominium properties) were required by controlling State law to ensure that at least one of their employees has obtained a *Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries* training certificate. Business owners for any category of occupation which may apply any fertilizer to turf, landscape plants, or both shall provide proof of completion of the program by at least one employee prior to the business owner obtaining a new local business tax receipt. Business owners for any category of occupation which may apply any fertilizer to turf, landscape plants, or both with an existing local business tax receipt shall provide proof of completion of the program by at least one employee within 30 days after completing the program and prior to September 30, 2014.

SECTION 3. SAVINGS. The prior actions of the City of Oviedo relating to the regulation of landscaping, as well as any and all related matters pertaining thereto, to include, but not be limited to, environmental and natural resource protection, are hereby ratified and affirmed.

SECTION 4. IMPLEMENTING ADMINISTRATIVE ACTIONS. The City Manager is hereby authorized and directed to take such actions as he may deem necessary and appropriate in order to implement the provisions of this Resolution. The City Manager may, as deemed appropriate, necessary and convenient, delegate the powers of implementation as herein set forth to such City employees as deemed effectual and prudent.

SECTION 5. CODIFICATION.

(a) Section 2 of this Ordinance shall be codified in the *Code of Ordinances of the City of Oviedo* and all other sections shall not be codified.

(b) The sections, divisions and provisions of this Ordinance may be renumbered or re-lettered as deemed appropriate by the Code codifier.

SECTION 6. SCRIVENER'S ERRORS. Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Manager, or designee, without the need for a public hearing.

SECTION 7. CONFLICTS. All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed; provided, however, that any code or ordinance that provides for an

alternative process to effectuate the general purposes of this Ordinance shall not be deemed a conflicting code or ordinance.


SECTION 8. SEVERABILITY. If any section, sentence, phrase, word, or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Ordinance not otherwise determined to be invalid, unlawful, or unconstitutional.

SECTION 9. EFFECTIVE DATE. This Ordinance shall become effective immediately upon enactment.

FIRST READING: _____ September 7, 2017 _____

SECOND READING: _____ September 18, 2017 _____

PASSED AND ADOPTED this 18th day of September, 2017.



DOMINIC PERSAMPIERE
MAYOR of the City of Oviedo, Florida

ATTEST:



BARBARA J. BARBOUR
CITY CLERK

