

ORDINANCE 20-05

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH REPEALING ARTICLE V OF CHAPTER 14 OF THE CODE OF ORDINANCE OF THE FORT MYERS BEACH, AND ADOPTING A NEW ARTICLE V OF CHAPTER 14 ENTITLED "FERTILIZERS" REGARDING THE USE OF FERTILIZERS; PROVIDING FOR INCLUSION IN THE CODE AND SCRIVENER'S ERRORS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, there is documented evidence that indiscriminate application and use of fertilizers has a harmful effect on humans, animals and the environment, including nearshore waters; and

WHEREAS, the Town also recognizes that both its economy and the quality of life of its residents are enriched by a healthy environment and clean nearshore waters; and

WHEREAS, the Town desires to minimize the detrimental impact on its residents and environment by implementing a system of rules and regulations that reduces the amount of fertilizer used within the Town's jurisdiction and implementing an educational and training program regarding the proper application of fertilizers within its jurisdiction; and

WHEREAS, on January 21, 2020 the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on February 18, 2020 the Town Council held a second reading of this proposed Ordinance.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:¹

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

Section 2. Article V of Chapter 14 of the Code of Ordinances of the Town of Fort Myers Beach, a copy of which is attached hereto as Exhibit "A" is hereby repealed.

Section 3. A new Article V of Chapter 14 of the Code of Ordinances of the Town of Fort Myers Beach entitled "Fertilizers" is hereby adopted to read as follows:

CHAPTER 14 – ENVIRONMENT
ARTICLE V – FERTILIZER

Sec. ____ - Findings

As a result of impairment to the Town of Fort Myers Beach surface waters caused by excessive nutrients, the Town Council of the Town of Fort Myers Beach has determined that the use of fertilizers on lands within the Town of Fort Myers Beach creates a risk to contributing to adverse effects on surface water. Accordingly, the Town Council of the Town of Fort Myers Beach finds that adoption of additional 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," will assist the Town in improving the environment and nearshore waters.

Sec. ____ - Purpose and Intent

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. This Article further 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 the Town of Fort Myers Beach natural and constructed stormwater conveyances, canals, lakes, estuaries, wetlands and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of the Town of Fort Myers Beach 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.

Sec. ____ - Definitions

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

Administrator means the Town of Fort Myers Beach Manager, or an administrative official of Town of Fort Myers Beach government designated by the Town 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 Town of Fort Myers Beach.

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.

Code Enforcement Officer, Official, or Inspector means any designated employee or agent of Town of Fort Myers Beach whose duty it is to enforce codes and ordinances enacted by Town of Fort Myers Beach.

Commercial Fertilizer Applicator, except as provided in 482.1562(9) F.S., 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 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.

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

Heavy Rain means rainfall greater than or equal to 50 mm (2 inches) in a 24 hour period.

Institutional Applicator means any person, other than a private, non-commercial or a 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, managers or employees of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.

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

Rain, Likely means the National Weather Service forecasters have described a precipitation event to have a probability of precipitation or likelihood of occurrence to be 60-70% during a specified period of time at any given point in the forecast area.

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, etc.

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.

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 Town of Fort Myers Beach, issued by the National Weather Service, or if heavy rain is likely is the forecast area.

Town of Fort Myers Beach Approved Best Management Practices Training Program means a training program approved per 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 Town Manager.

Saturated Soil means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this Article, soils shall be 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, road 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 570.02., F.S.

Sec. _____ - 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 of Fort Myers Beach, unless such applicator is specifically exempted by the terms of this Article from regulation. This Article shall be prospective only, and shall not impair any existing contracts.

Sec. _____ - Timing of Fertilizer Application

(a) No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the Prohibited Application Period, or to saturated soils.

(b) Fertilizers containing nitrogen and/or phosphorus shall not be applied to turf and/or landscape plants during the rainy season (June 1 through September 30), unless specifically exempted by the terms of this Article from regulation.

Sec. _____ - Fertilizer Free Zones

Fertilizer shall not be applied within fifteen (15) 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. Newly planted turf and/or landscape plants may be fertilized in this Zone only for a sixty (60) day period beginning 30 days after planting if need to allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water.

Sec. _____ - 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. No mowed or cut vegetative material may 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.

Sec. _____ - Fertilizer Content and Application Rates

(a) Fertilizers applied to turf and landscape plants within Town of Fort Myers Beach shall be applied in accordance with requirements and directions provided by Rule 5E 1.003, Florida Administrative Code ~~be~~ limited to one (1) pound of total nitrogen per 1,000 square feet per application. No more than four pounds of total nitrogen per 1,000 square

feet shall be applied to any turf/landscape area in any calendar year. Fertilizers shall not be applied more than four times during any one calendar year to a single area.

(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 shall not be applied to turf or landscape plants except as provided in (a) above for turf, or in 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.

(c) No fertilizer containing phosphorus may be applied 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 Florida Administrative Code Rule. This subsection (c) controls over any inconsistent provisions in subsections (a) and (b) above regarding phosphorus.

(d) Fertilizers containing nitrogen applied to turf or landscaping plants within the Town of Fort Myers Beach must contain no less than fifty percent (50%) Slow Release Nitrogen per Guaranteed Analysis Label. If the necessary product is available 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 this date. This subsection (e) controls over any inconsistent provisions in subsections (a) and (b) above regarding nitrogen.

(e) The above referenced application rates shall be reduced appropriately on properties where reclaimed wastewater is used for irrigation based on available nutrients in the reclaimed water as reported by the provider of the reclaimed water.

Sec. _____ - 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.

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. _____ - Licensing of Commercial Applicators

(a) All commercial applicators of fertilizer within the incorporated area of Town of Fort Myers Beach, 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 Rule 5E-14.117(18), Florida Administrative Code.

(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 a “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” training certificate.

Sec. _____ - Enforcement and Penalties

(a) Any violation of this article may be prosecuted in accordance with the provisions set out in section 1-5 and Chapter 2, article V of the Land Development Code.

(b) This article may be enforced by any duly authorized law enforcement officer, town code enforcement officer or town designee.

(c) The law enforcement officer, town code enforcement officer or town designee is 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. Any person who violates any provision of this chapter, or of any regulation or guideline that implements this chapter, shall be ordered immediately to stop all work.

(d) Any person who takes any action or omission in violation of any provision of this Article and fails to cure such violation after proper notice is provided, shall be subject to a fine of up to \$250 per day per violation for initial violations, and \$500 per day per violation for repeat violations. All penalties incurred as a result of violation of this Article shall continue to accrue until such violations are cured.

(e) Nothing contained herein will prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy

any refusal to comply with, or violation of, this article. Such other lawful action will include, but will not be limited to, an equitable action for injunctive relief or an action at law for damages.

Section 4. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 5. Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 6. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

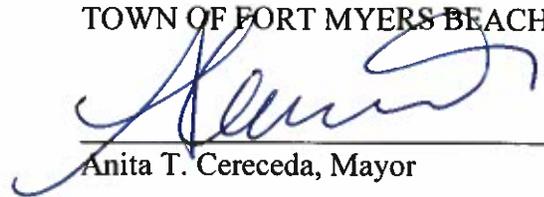
Section 7. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Councilmember Shamp and seconded by Vice Mayor Murphy and upon being put to a roll call vote, the result was as follows:

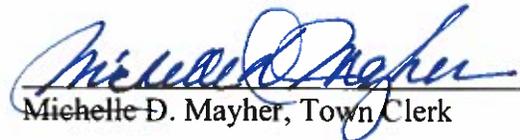
Anita Cereceda, Mayor	aye
Ray Murphy, Vice Mayor	aye
Joanne Shamp, Councilmember	aye
Rexann Hosafros, Councilmember	aye
Bruce Butcher, Councilmember	aye

ADOPTED this 18th day of February, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

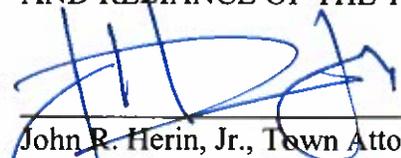
TOWN OF FORT MYERS BEACH


Anita T. Cereceda, Mayor

ATTEST:


Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:


John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 3rd day of March 2020.

EXHIBIT "A"

ARTICLE V. ~~FERTILIZERS~~⁽⁴⁾

Footnotes:

~~(4)~~

~~State Law reference~~— Model ordinance for Florida-friendly fertilizer use on urban landscapes, F.S. § 403.9337; agricultural fertilizers, F.S. ch. 576.

Sec. 14-116. ~~Definitions.~~

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

~~Applicator~~ means any person who applies, in any manner, fertilizer to turf and/or landscape plants as defined in this article within the town.

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

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

~~Fertilize, fertilizing or fertilization~~ means the act of applying fertilizer to a lawn (turf), specialized turf or landscape plants.

~~Fertilizer~~ means any substance that:

- ~~(1)~~— Contains one or more recognized plant nutrients and promotes plant growth;
- ~~(2)~~— Controls soil acidity or alkalinity;
- ~~(3)~~— Provides other soil enrichment; or
- ~~(4)~~— 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. The term "guaranteed analysis" is as defined in F.S. ch. 576 and is hereby incorporated by reference.

~~Impervious surface~~ means a constructed surface such as, sidewalk, roads, parking lots or driveways that is covered by impenetrable materials such as asphalt, concrete, brick, pavers, stone and/or highly compacted soils.

~~Quick release, water soluble fertilizer~~ means nitrogen in a form that is readily available for plant uptake. Nitrogen becomes available as soon as water is applied to the turf forms of quick release, or water soluble nitrogen including:

- ~~(1)~~— Ammonium nitrate.
- ~~(2)~~— Calcium nitrate.

- (3) — Ammonium sulfate.
- (4) — Urea.
- (5) — Urea solutions.
- (6) — Others, as may be designated in writing by the town manager.

Slow release, controlled release, timed release, slowly available or water insoluble fertilizer 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 quick release nitrogen product. Forms of slow release, controlled release, slowly available, or water insoluble nitrogen including:

- (1) — Isobutylidene diurea (IBDU).
- (2) — Resin, polymer or sulphur coated urea.
- (3) — Biosolids or residuals from domestic wastewater treatment.
- (4) — Urea formaldehyde.
- (5) — Composted compost.
- (6) — Others, as may be designated in writing by the town manager.

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

Specialized turf manager means a person responsible for fertilizer or directing the fertilization of a golf course or publicly owned ball field.

Turf means a piece of grass covered soil held together by the roots of the grass, sod, and/or lawn.

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

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

(Ord. No. 08-15, § 3, 12-15-2008)

Sec. 14-117. — Enforcement and penalty.

- (a) — Any violation of this article may be prosecuted in accordance with the provisions set out in chapter 2, article V of the Land Development Code.
- (b) — This article may be enforced by any duly authorized law enforcement officer or town designee.
- (c) — The town designee will be authorized and empowered to make inspections at reasonable hours of all activities regulated by this article in order to ensure compliance with the provisions of this article.
- (d) — Nothing contained herein will prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article. Such other lawful action will include, but will not be limited to, an equitable action for injunctive relief or an action at law for damages.
- (e) — Any person that violates this article will be responsible for the town's cost of prosecution of any violation of this article, including any town costs to remedy or clean up any environmental condition caused by an act that constitutes a violation of this article. In the event any such costs are incurred by the town, such person must reimburse the town for all such costs within 30 days of the town's invoice for such costs.

~~(Ord. No. 08-15, § 10, 12-15-2008)~~

~~Sec. 14-118. Purposes and intent.~~

- ~~(a) The intent of this article is to help preserve and protect our near shore waters in the town's canale, Estero Bay and watershed, and Gulf of Mexico, by limiting the nutrient pollution caused by improper, excessive and untimely fertilizer application.~~
- ~~(b) The purpose of this article is to provide for the regulation of fertilizers containing nitrogen and/or phosphorus and to provide specific management guidelines for fertilization in order to meet federal and state mandated water quality standards and to minimize the negative environmental effects said fertilizers have in and on the town's bays, ponds, lagoons, canals, estuaries, wetlands and the near shore waters of the Gulf of Mexico and other waters. Collectively these waterbodies are natural assets, that are critical to the environmental, recreational, cultural and economic well-being of the town and contribute to the general health and welfare of the public. The regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, entering the waterbodies in and around the town is a crucial step towards improving and maintaining water and habitat quality.~~

~~(Ord. No. 08-15, § 2, 12-15-2008)~~

~~Sec. 14-119. Applicability.~~

~~This article will be applicable to and will regulate any and all applicators of fertilizer within the town, unless such applicator is specifically exempted or excepted by the terms of this article from the regulatory provisions of this article.~~

~~(Ord. No. 08-15, § 4, 12-15-2008)~~

~~Sec. 14-120. Timing of fertilizer application; content and application rate; impervious surfaces; buffer zones.~~

- ~~(a) *Timing of application.* Fertilizers containing nitrogen and/or phosphorus must not be applied to turf and/or landscape plants during the rainy season (June 1 through September 30), except as provided in section 14-122.~~
- ~~(b) *Fertilizer content and application rate.*
 - ~~(1) Fertilizer that contains more than two percent phosphorous or other compounds containing phosphorous, such as phosphate, per guaranteed analysis label (as guaranteed analysis and label are defined by F.S. ch. 576, such definition incorporated herein) must not be applied to turf and/or landscape plants within the town.~~
 - ~~(2) Fertilizer applied to turf and/or landscape plants within the town must contain no more than 20 percent total nitrogen, with no less than 50 percent total nitrogen content as slow release nitrogen per guaranteed analysis~~
 - ~~(3) Fertilizers should be applied to turf and/or landscape plants at the lowest rate necessary without exceeding the maximum weight per application. Fertilizer must not be applied at a rate greater than one pound of total nitrogen per 1,000 square feet per application. No more than four pounds of total nitrogen per 1,000 square feet may be applied to any turf/landscape area in any calendar year.~~~~
- ~~(c) *Total yearly applications.* While single fertilizer applications in the fall and spring will often suffice, fertilizers must not be applied more than four times during any one calendar year to a single area.~~
- ~~(d) *Impervious surface.* Fertilizer must not be applied, spilled or otherwise deposited on any impervious surfaces. Any fertilizer applied, spilled or deposited on any impervious surface must be immediately~~

~~and completely removed. Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or any other legal site, or returned to the original or other appropriate container.~~

- ~~(e) *Buffer zones.* Fertilizer must not be applied within three feet of any waterbody or any designated wetland as defined by the state department of environmental protection, F.A.C. ch. 62-340.~~
- ~~(f) *Mode of application.* Spreader deflector shields are required when fertilizing by use of any broadcast spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from all impervious surfaces, water bodies and wetlands.~~
- ~~(g) *Voluntary low maintenance zone.* A voluntary six foot low maintenance zone from any pond, stream watercourse, lake, canal or any designated wetland or from the top of the seawall is encouraged. No vegetative material shall be deposited or left remaining in this zone and care should be taken to prevent the over spray of aquatic weed products in this zone.~~

~~(Ord. No. 08-15, § 5, 12-15-2008)~~

~~Sec. 14-121. Education programs fertilizer application.~~

- ~~(a) The town will establish an educational outreach program:
 - ~~(1) To educate the public on the use of slow release fertilizer products in lieu of quick release products;~~
 - ~~(2) To educate the public on the harmful effects that the over use of fertilizers can have on the environment;~~
 - ~~(3) To provide instructional aids in application of fertilizers; and~~
 - ~~(4) To encourage the public to move away from excessive reliance on turf in their landscapes by promoting the use of mulch, stones and native plants and trees.~~~~
- ~~(b) The educational outreach program may include "Dear Neighbor" mailings, instructional DVDs and workshops on the Florida Yards and Neighborhoods program from the University of Florida Extension Service.~~

~~(Ord. No. 08-15, § 6, 12-15-2008)~~

~~Sec. 14-122. Exemptions to applicators' BMPs.~~

~~The timing of applications, application rate provisions, and other provisions set forth in section 14-120 will not apply to:~~

- ~~(1) Newly established turf and/or landscape plants for the first 60 days after installation or planting, provided documentation for newly established turf and/or landscape plants is maintained to support this exemption;~~
- ~~(2) Areas where soil tests confirm, and such tests are confirmed and approved by the department of community development's director or designee that phosphorous levels are below ten parts per million. This is equivalent to a very low designation for phosphorus set forth in the University of Florida Institute of Food and Agricultural Sciences (UF-IFAS) Extension Soil Testing Laboratory Analytical Procedures Training Manual (Circular 1248, September 2002);~~
- ~~(3) Vegetable gardens or potted plants, provided they are not within three feet of any waterbody or wetland;~~
- ~~(4) Yard waste compost, mulches or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil; and~~

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

~~(Ord. No. 08-15, § 7, 12-15-2008)~~

~~Sec. 14-123. Certification of commercial applicators.~~

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

~~(Ord. No. 08-15, § 8, 12-15-2008)~~

~~Sec. 14-124. Administrative relief.~~

- ~~(a) Any applicator may apply for administrative relief from the department of community development director or designee upon a written showing that such person is able and willing to use a less strict application method or alternative materials or methods as required by the director or designee.~~
- ~~(b) If the administrative relief is deemed factually supported by the director in his discretion, the director may grant relief as the director deems appropriate, including, but not limited to:~~
- ~~(1) The name of the party entitled to the administrative relief;~~
 - ~~(2) The locations to which the relief applies;~~
 - ~~(3) The length of time granted for such relief; and~~
 - ~~(4) Any specific conditions of the director or designee, applicable to such relief.~~
- ~~(c) In the event that administrative relief is denied in whole or in part to an applicant for such relief, an appeal may be taken to the town manager or designee. The town manager or designee will review the supporting documentation of all arguments, and hold an informal conference with the applicant and the town staff involved, upon at least ten days' prior notice. The town manager or designee will issue a written opinion to the applicant and staff regarding the merits of such appeal within 20 days of the conference.~~

~~(Ord. No. 08-15, § 9, 12-15-2008)~~

~~Secs. 14-125—14-150. Reserved.~~