

ORDINANCE NO. 07- 2013

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2
3 **AN ORDINANCE OF THE TOWN COMMISSION OF THE**
4 **TOWN OF LAKE PARK, FLORIDA, AMENDING**
5 **CHAPTER 32, ENTITLED “UTILITIES”, BY CREATING A**
6 **NEW ARTICLE IV ENTITLED “FLORIDA-FRIENDLY**
7 **FERTILIZER USE” AND ESTABLISHING REGULATIONS**
8 **TO ADDRESS STORMWATER RUNOFF WITH**
9 **EXCESSIVE NUTRIENT LEVELS IN WATER BODIES;**
10 **PROVIDING FOR DEFINITIONS; PROVIDING FOR**
11 **PURPOSE AND INTENT; PROVIDING FOR**
12 **APPLICABILITY; PROVIDING FOR TIMING OF**
13 **FERTILIZER APPLICATIONS; PROVIDING FOR**
14 **FERTILIZER FREE ZONES; PROVIDING FOR**
15 **FERTILIZER CONTENT AND APPLICATION RATES;**
16 **PROVIDING FOR FERTILIZER APPLICATION**
17 **PRACTICES; PROVIDING FOR MANAGEMENT OF**
18 **GRASS CLIPPINGS AND VEGETATIVE MATTER**
19 **PROVIDING FOR EXEMPTIONS; PROVIDING FOR**
20 **TRAINING; PROVIDING FOR LICENSING OF**
21 **COMMERCIAL APPLICATORS; PROVIDING FOR**
22 **ENFORCEMENT; PROVIDING FOR PENALTIES;**
23 **PROVIDING FOR SEVERABILITY; PROVIDING FOR**
24 **INCLUSION IN THE CODE OF LAWS AND**
25 **ORDINANCES; PROVIDING FOR ENFORCEMENT;**
26 **PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN**
27 **EFFECTIVE DATE.**
28

29 **WHEREAS**, pursuant to Section 303(d) of the federal Clean Water Act and the resulting
30 Florida Impaired Waters Rule (Chapter 62-303, Florida Administrative Code), the Florida
31 Department of Environmental Protection (FDEP) has classified specific water bodies in Palm
32 Beach County (the County) as “impaired” as a result of the presence of excessive nutrients; and

33 **WHEREAS**, Section 403.9337, Fla. Stat., requires those governmental entities located
34 within the watershed of a water body or water segment that is listed as impaired by nutrients
35 pursuant to Section 403.067, Fla. Stat. to adopt regulations to implement Florida-Friendly™
36 fertilizer use on urban landscapes; and

Town of Lake Park
Ordinance 07-2013

1 **WHEREAS**, the FDEP on the 2nd day of March 2011, issued its Palm Beach County
2 Municipal Separate Storm Sewer System Permit No. FLS 000018-003 (hereinafter referred to as
3 the “MS4 Permit”) to 41 governmental entities including Town of Lake Park; and

4 **WHEREAS**, the MS4 permit requires all of the 41 governmental entities (including Lake
5 Park) which are within the watershed of a nutrient impaired water body to adopt all of the
6 requirements set forth in the FDEP’s Model Ordinance for Florida Friendly Fertilizer Use on
7 Urban Landscapes; and

8 **WHEREAS**, surface water runoff and base flow runoff leaves residential neighborhoods,
9 commercial centers, industrial areas, and other lands in the Town and the County enters into
10 natural and artificial stormwater and drainage conveyances and natural water bodies within the
11 Town and the County; and

12 **WHEREAS**, phosphorus and nitrogen, the primary nutrients associated with the
13 degradation of surface water, are commonly the primary components of fertilizer for turf and
14 landscape application; and

15 **WHEREAS**, the quality of streams, lakes, and wetlands is important to environmental,
16 economic, and recreational prosperity and to the health, safety, and welfare of the residents of the
17 Town and County; and

18 **WHEREAS**, algae blooms and accelerated growth of aquatic weeds in the Town’s and
19 the County’s water bodies have heightened community concerns about water quality and
20 eutrophication of surrounding waters; and

21 **WHEREAS**, it is generally recognized that Eastern Palm Beach County soils naturally
22 have adequate phosphorus content for most vegetative needs and that additional phosphorus is
23 therefore only occasionally needed to create or maintain a vibrant landscape; and

1 **WHEREAS**, it has been recognized that proper application of slow-release nitrogen
2 sources is more efficiently used by plants and less likely to leach or runoff; and

3 **WHEREAS**, this Ordinance is part of a larger regulatory program to address nonpoint
4 sources of nutrient pollution which is scientifically based, and economically and technically
5 feasible; and

6 **WHEREAS**, in the process of adoption of this Ordinance, Town Commission has
7 considered scientific information, including input from the Department of Environmental
8 Protection, the Department of Agriculture and Consumer Services, and the University of Florida
9 Institute of Food and Agricultural Sciences.

10 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF**
11 **LAKE PARK, FLORIDA, that:**

12 **SECTION 1. Chapter 32 of the Town Code, entitled “Utilities” is hereby amended to**
13 **create a new Article IV, entitled Florida-Friendly Fertilizer Use, as follows:**

14 **ARTICLE IV. FLORIDA-FRIENDLY FERTILIZER USE**

15 **SEC. 32-80 . Definitions.**

16 The following words, terms, and phrases, when used in this chapter, shall have the
17 meanings ascribed to them in this section, except where the context clearly indicates a different
18 meaning:

19 “Application” or “Apply” means the actual physical deposition of fertilizer to turf or
20 landscape plants.

21 “Applicator” means any person who applies fertilizer on turf and/or landscape plants in
22 Town of Lake Park.

Town of Lake Park
Ordinance 07-2013

1 “Approved Test” means a soil test from the University of Florida, government, or other
2 commercial licensed laboratory that regularly performs soil testing and recommendations.

3 “Best Management Practices (BMP’s)” means turf and landscape practices or
4 combination of practices based on research, field-testing, and expert review, determined to be the
5 most effective and practical site-specific means, including economic and technological
6 considerations, for improving water quality, conserving water supplies and protecting natural
7 resources.

8 “Commercial Fertilizer Applicator” except as provided in section 482.1562(9), F.S.,
9 means any person who applies fertilizer for payment or other consideration to property not
10 owned by the person or firm applying the fertilizer or the employer of the applicators.

11 “Fertilizing”, or “Fertilization” means the act of applying fertilizer to turf, specialized
12 turf, or landscape plants.

13 “Fertilizer” means any substance or mixture of substances that contains one or more
14 recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or
15 provides other soil enrichment, or provides other corrective measures to the soil.

16 “Institutional Applicator” means any person, other than a private, non-commercial or a
17 Commercial Applicator (unless such definitions also apply under the circumstances), that applies
18 fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional Applicators
19 shall include, but shall not be limited to, owners, managers, or employees of public lands,
20 schools, parks, religious institutions, utilities, industrial or business sites and any residential
21 properties maintained in condominium and/or common ownership.

22 “Landscape Plant” means any native or non-native tree, shrub, or groundcover
23 (excluding turf).

Town of Lake Park
Ordinance 07-2013

1 "Pasture" means land managed for livestock grazing.

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

5 "Prohibited Application Period" means the time period during which a Flood Watch or
6 Warning, a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for
7 any portion of Town of Lake Park, issued by the National Weather Service, or if heavy rain (2
8 inches or more within a twenty-four (24) hour period) is likely.

9 "Saturated Soil" means a soil in which the voids are filled with water. Saturation does
10 not require flow. For the purposes of this Ordinance, soils shall be considered saturated if
11 standing water is present or the pressure of a person standing on the soil causes the release of
12 free water.

13 "Slow-Release", "Controlled Release", "Timed Release", "Slowly-Available", or
14 "Water Insoluble Nitrogen" means nitrogen in a form which delays its availability for vegetative
15 uptake and use after application, or which extends its availability to the vegetation longer than a
16 reference rapid or quick release product.

17 "Turf", "Sod", or "Lawn" means an area of grass-covered soil held together by the roots
18 of the grass.

19 "Urban Landscape" means pervious areas on residential, commercial, industrial,
20 institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or
21 landscape plants. For the purposes of this section, agriculture has the same meaning as provided
22 in section 570.02, Florida Statutes.

1 **SEC. 81. FINDINGS:**

2 As a result of the Florida Department of Environmental Protection’s (FDEP)
3 determination that certain water bodies within Palm Beach County are impaired for excessive
4 nutrient levels, the Town finds that the best management practices contained in the most recent
5 edition of the “*Florida-Friendly Best Management Practices for Protection of Water Resources*
6 *by the Green Industries*”, should be implemented by this Ordinance. Overgrowth of algae and
7 vegetation hinder the effectiveness of flood attenuation provided by natural and constructed
8 stormwater conveyances. Regulation of nutrients, including both phosphorus and nitrogen
9 contained in fertilizer, is anticipated to help improve and maintain water and habitat quality.

10 **SEC. 82. PURPOSE AND INTENT:**

11 These regulations are intended to provide for the proper use of fertilizers by any
12 applicator; to require the training of commercial and institutional fertilizer applicators; to
13 establish training and licensing requirements; to establish a Prohibited Application Period; and to
14 specify allowable fertilizer application rates and methods, fertilizer-free zones, and exemptions.
15 It is also the intent and purpose of these regulations to require the use of Best Management
16 Practices to minimize negative environmental effects associated with excessive nutrients in the
17 Town’s natural and constructed stormwater conveyances, rivers, creeks, canals, lakes, estuaries
18 and other water bodies. Collectively, these water bodies are an asset important to the
19 environmental, recreational, cultural and economic well-being of the residents of the Town and
20 Palm Beach County and the furtherance of the public’s health, safety, and general welfare.

21 **SEC. 83. APPLICABILITY:**

1 This regulation shall be applicable to and shall regulate any and all applicators of
2 fertilizer and areas of application of fertilizer to urban landscapes within the area Town, unless
3 such application is specifically exempted as provided for herein.

4 **SEC. 84. TIMING OF FERTILIZER APPLICATIONS.**

5 1. No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf
6 and/or landscape plants during the Prohibited Application Period or to saturated soils.

7 2. Fertilizer containing nitrogen and/or phosphorus shall not be applied before
8 seeding or sodding a site, and shall not be applied for the first 30 days after seeding or sodding,
9 except when hydro-seeding for temporary or permanent erosion control in an emergency
10 situation (wildfire, etc), or in accordance with the Stormwater Pollution Prevent Plan for that
11 site.

12 **SEC. 85. FERTILIZER FREE ZONES:**

13 Fertilizer shall not be applied within 10 feet, or 3 feet if a deflector shield or drop
14 spreader is used, of any pond, stream, water body, lake, canal, or wetland as defined by Chapter
15 62-340 of the Florida Administrative Code or from the top of a seawall or lake bulkhead. Newly
16 planted turf or landscape plants may be fertilized in this zone only for a 60 day period beginning
17 thirty 30 days after planting if needed to allow the vegetation to become well established.
18 Caution shall be used to prevent direct deposition of fertilizer into the water.

19 **SEC. 86. FERTILIZER CONTENT AND APPLICATION RATES:**

20 1. Fertilizers applied to turf within Town shall be applied in accordance with
21 requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code,
22 *Labeling Requirements For Urban Turf Fertilizers.* Under Rule 5E-1.003(2), Florida

1 Administrative Code, the required application rate and frequency maximums, which vary by
2 plant and turf types, can be found on the labeled fertilizer bag or container.

3 2. Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants
4 except as provided for hereinabove, or in UF/IFA recommendations for landscape plants,
5 vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified
6 by an approved test.

7 3. Fertilizer used for sports turf at golf courses shall be applied in accordance with
8 the recommendations in “Best Management Practices for the Enhancement of Environmental
9 Quality on Florida Golf Courses”, published by the FDEP, dated January 2007, as amended.
10 Fertilizer used at park or athletic fields shall be applied in accordance with Rule 5E-1.003(2),
11 Florida Administrative Code.

12 **SEC. 87. FERTILIZER APPLICATION PRACTICES:**

13 1. Spreader deflector shields shall be used when fertilizing via rotary (broadcast)
14 spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from all
15 impervious surfaces, fertilizer-free zones and water bodies, including wetlands. Any fertilizer
16 applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall
17 be immediately and completely removed to the greatest extent practicable.

18 2. Fertilizer released on an impervious surface shall be immediately contained and
19 either legally applied to turf or any other legal site, or returned to the original or other
20 appropriate container.

21 3. In no case shall fertilizer be washed, swept, or blown off impervious surfaces into
22 stormwater drains, ditches, conveyances, or water bodies.

1 4. Property owners and managers shall use an Integrated Pest Management (IPM)
2 strategy as currently recommended by the University of Florida Cooperative Extension Service
3 publications.

4 **SEC. 88. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER:**

5 In no case shall grass clippings, vegetative material, and/or vegetative debris intentionally
6 be washed, swept, or blown on to or into stormwater drains, ditches, conveyances, water bodies,
7 wetlands, sidewalks or roadways.

8 **SEC. 89. EXEMPTIONS:**

9 The provisions set forth above shall not apply to:

10 (a) bona fide farm operations as defined in the Florida Right-to-Farm Act, Section
11 823.14, Florida Statutes.

12 (b) other properties not subject to or covered under the Florida Right-to-Farm Act
13 that have pastures used for grazing livestock.

14 (c) any lands used for bona fide scientific research, including, but not limited to,
15 research on the effects of fertilizer use on urban stormwater, water quality, agronomics, or
16 horticulture.

17 **SEC. 90. TRAINING:**

18 1. All commercial and institutional applicators of fertilizer within the Town shall
19 abide by and successfully complete the six-hour training program in the *“Florida-Friendly Best
20 Management Practices for Protection of Water Resources by the Green Industries”* offered by
21 the FDEP through the University of Florida/Palm Beach County Cooperative Extension Service
22 *“Florida-Friendly Landscapes”* program or an approved equivalent program.

1 2. Non-commercial and non-institutional applicators not otherwise required to be
2 certified, such as private citizens on their own residential property, are encouraged to follow the
3 recommendations of the University of Florida/IFAS “Florida-Friendly Landscape Program” and
4 label instructions when applying fertilizers.

5 **SEC. 91. LICENSING OF COMMERCIAL APPLICATORS:**

6 1. All businesses applying fertilizer to turf or landscape plants (including, but not
7 limited to, residential lawns, golf courses, commercial properties, and multi-family and
8 condominium properties) must ensure that the business owner or his/her designee holds the
9 appropriate “*Florida-Friendly Best Management Practices for Protection of Water Resources by*
10 *the Green Industries*” training certificate prior to the business owner obtaining a Local Business
11 Tax Certificate. Owners for any category of occupation which may apply any fertilizer to Turf
12 and/or Landscape Plants shall provide proof of completion of the program to the Town’s
13 Business Registration Office. It is the responsibility of the business owner to maintain the
14 “*Florida-Friendly Best Management Practices for Protection of Water Resources by the Green*
15 *Industries*” certificate to receive their Business Tax Receipt annually.

16 2. After December 31, 2013, all commercial applicators of fertilizer within Town,
17 shall have and carry in their possession at all times when applying fertilizer, evidence of
18 certification by the Florida Department of Agriculture and Consumer Services as a Commercial
19 Fertilizer Applicator per Rule 5E-14.117(18), Florida Administrative Code.

20 3. All businesses applying fertilizer to turf and/or landscape plants (including, but
21 not limited to, residential lawns, golf courses, commercial properties and multi-family and
22 condominium properties) must ensure that at least one employee has an appropriate “Florida-
23 Friendly Best Management Practices for Protection of Water Resources by the Green Industries”

1 training certificate prior to the business owner obtaining a Local Business Tax Certificate.
2 Standard Business Tax Receipt (BTR and transaction fees shall apply).

3 **SEC. 92. ENFORCEMENT:**

4 The provisions of this Ordinance shall be enforced by the Town's Code Enforcement
5 Board or Special Magistrate pursuant to the authority granted by Section 162.01 et. seq., Fla.
6 Stat., as amended and the Town Code, as amended.

7 1. Failure to comply with these regulations shall constitute a violation and shall be a
8 separate violation for each new day the violation continues to exist.

1 **SECTION 2. SEVERABILITY:**

2 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
3 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such
4 holding shall not affect the remainder of this Ordinance.

5 **SECTION 3. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

6 The provisions of this Ordinance shall become and be made a part of the Town of Lake
7 Park Code. The sections of this Ordinance may be renumbered or relettered to accomplish such,
8 and the word “ordinance” may be changed to “section”, “article”, or other appropriate word.

9 **SECTION 4. EFFECTIVE DATE:**

10 The provisions of this Ordinance shall become effective upon adoption.

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Upon First Reading this 15 day of May, 2013, the foregoing Ordinance was offered by Vice-Mayor Glas-Castro, who moved its approval. The motion was seconded by Commissioner Flaherty and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR JAMES DUBOIS	<u>/</u>	_____
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>/</u>	_____
COMMISSIONER ERIN FLAHERTY	<u>/</u>	_____
COMMISSIONER MICHAEL O'ROURKE	<u>/</u>	_____
COMMISSIONER KATHLEEN RAPOZA	<u>/</u>	_____

PUBLISHED IN THE PALM BEACH POST THIS 26 DAY OF May, 2013

Upon Second Reading this 5 day of June, 2013, the foregoing Ordinance, was offered by Commissioner O'Rourke, who moved its adoption. The motion was seconded by Commissioner Flaherty and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR JAMES DUBOIS	<u>/</u>	_____
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>/</u>	_____
COMMISSIONER ERIN FLAHERTY	<u>/</u>	_____
COMMISSIONER MICHAEL O'ROURKE	<u>/</u>	_____
COMMISSIONER KATHLEEN RAPOZA	<u>/</u>	_____

The Mayor thereupon declared **Ordinance No.** 07-2013 duly passed and adopted this 5 day of June, 2013.

TOWN OF LAKE PARK, FLORIDA
 BY: James DuBois
 Mayor, James DuBois

ATTEST:
Vivian Mendez
 Town Clerk, Vivian Mendez
 (Town Seal)
 TOWN OF LAKE PARK
 FLORIDA

Approved as to form and legal sufficiency:
Thomas J. Baird
 Town Attorney, Thomas J. Baird

Palm Beach Post, The

05/26/2013

Miscellaneous Notices

LEGAL NOTICE OF
PROPOSED ORDINANCE
TOWN OF LAKE PARK

Please take notice that on Wednesday, June 5, 2013 at 6:30 p.m. or soon thereafter the Town Commission, of the Town of Lake Park, Florida in a regular session to be held in the Commission Chambers, Town Hall, 535 Park Avenue, Lake Park, Florida will consider the following Ordinances on second reading and proposed adoption thereof:

ORDINANCE NO. 07-2013

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 32 ENTITLED "UTILITIES", BY CREATING A NEW ARTICLE IV ENTITLED "FLORIDA-FRIENDLY FERTILIZER USE" AND ESTABLISHING REGULATIONS TO ADDRESS STORMWATER RUNOFF WITH EXCESSIVE NUTRIENT LEVELS IN WATER BODIES; PROVIDING FOR DEFINITIONS; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR APPLICABILITY; PROVIDING FOR TIMING OF FERTILIZER APPLICATIONS; PROVIDING FOR FERTILIZER FREE ZONES; PROVIDING FOR FERTILIZER CONTENT AND APPLICATION RATES; PROVIDING FOR FERTILIZER APPLICATION PRACTICES; PROVIDING FOR MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER PROVIDING FOR EXEMPTIONS; PROVIDING FOR TRAINING; PROVIDING FOR LICENSING OF COMMERCIAL APPLICATORS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

If a person decides to appeal any decision made by the Town Commission with respect to any hearing, they will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. For additional information, please contact Vivian

Mendez, Town Clerk at 561-881-3311.

Vivian Mendez, CMC, Town Clerk

Town of Lake Park, Florida

PUB: The Palm Beach Post

5-26/ 2013 #87863