

MEMORANDUM

TO: The Honorable Chair and Members of City Council

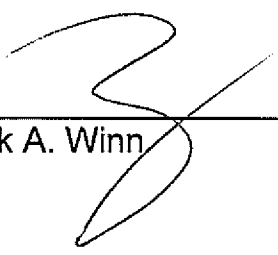
FROM: Mark A. Winn, Chief Assistant City Attorney

DATE: February 20, 2009

RE: Fertilizer Regulation Ordinances

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Attached for your consideration are two proposed ordinances that have been recommended by the Public Services & Infrastructure Committee which would regulate the use fertilizers containing nitrogen and/or phosphorus. The first ordinance contains more global regulations that will be enforced as recommendations and would not result in the issuance of any ordinance violations at this time. The second ordinance prohibits the retail sale of certain fertilizers during certain summer months and any violations would be enforced after the first two years the ordinance is in effect.



Mark A. Winn

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Attachments

ORDINANCE NO.

AN ORDINANCE MAKING FINDINGS REGARDING THE USE OF FERTILIZERS CONTAINING NITROGEN AND/OR PHOSPHORUS; PROVIDING RECOMMENDATIONS FOR CITIZENS REGARDING THE USE OF FERTILIZERS CONTAINING NITROGEN AND/OR PHOSPHORUS; PROVIDING FOR BEST MANAGEMENT PRACTICES FOR THE APPLICATION OF FERTILIZER; PROVIDING FOR EXEMPTIONS; PROVIDING FOR TRAINING AND LICENSING REQUIREMENTS; PROVIDING FOR ENFORCEMENT THROUGH EDUCATION FOR CERTAIN REGULATIONS; PROHIBITING THE SALE OF FERTILIZERS DURING CERTAIN MONTHS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, surface water runoff leaves residential neighborhoods, commercial centers, industrial areas, and other lands with low permeability soils; and

WHEREAS, base flow runoff flows from residential neighborhoods, commercial centers, industrial areas, and other lands with high permeability soils; and

WHEREAS, surface water and base flow runoff enter into natural and artificial stormwater and drainage conveyances and natural water bodies; and

WHEREAS, natural and artificial stormwater and drainage conveyances regulate the flow of stormwater to prevent flooding; and

WHEREAS, this ordinance is part of a multi-pronged effort to reduce nutrient leaching into runoff through such policies as, but not limited to, stormwater management, water conservation, conversion from septic systems to central sewage treatment, public education, and development standards as set forth in the Land Development Regulations; and

WHEREAS, the detrimental effects of nutrient-laden runoff are magnified in coastal communities due to the proximity of stormwater and drainage conveyances to coastal and estuarine waters; and

WHEREAS, nutrients are commonly found in various forms as a fertilizer for turf and landscape application and, if applied improperly, may contribute to pollution in natural water bodies; and

WHEREAS, nutrient-laden runoff containing nitrogen and phosphorous fosters undesirable plant and algae growth in natural water bodies resulting in poor water quality; and

WHEREAS, the quality of our streams, lakes, rivers, Tampa Bay and the Gulf of Mexico is critical to environmental, economic, and recreational prosperity and to the health, safety, and welfare of the citizens of the City of St Petersburg; and

WHEREAS, the amount of fertilizer applied should be the minimum necessary for the turf and landscape to meet initial establishment and subsequent growth needs; and

WHEREAS, it is generally recognized that many Florida soils are naturally high in phosphorus; and

WHEREAS, state and federal limits on the amount of nutrients permitted in designated impaired waters, including significant portions of the Tampa Bay ecosystem, may require local governments to make significant investments in water quality improvement projects.

THE CITY OF ST. PETERSBURG DOES ORDAIN:

SECTION 1. The St. Petersburg City Code is hereby amended by adding a new Section 8-6 to read as follows:

Section 8-6. Recommended Fertilizer Regulations.

(a) Findings of Fact. As a result of adverse impacts to the City's waters caused by excessive nutrients resulting from the incorrect or unnecessary application of fertilizers containing phosphorus and/or nitrogen, the City Council has determined that the lands and waters of the City are at particularly high risk for adverse effects to surface and ground water from such fertilizer containing phosphorus/nitrogen which is not applied in accordance with best management practices established by the Florida Department of Environmental Protection and the University of Florida Institute of Agricultural Sciences.

(b) Purpose and Intent. It is the intent of this Section to set forth guidelines for those persons interested in appropriate fertilizer application. At this time these provisions are educational, whether they are expressed as mandatory requirements or not, and persons not following these regulations will be not be penalized by the City at this time. This Section regulates the proper use of fertilizers by any applicator and requires proper training of Commercial and Institutional Fertilizer Applicators and establishes a Restricted Season for fertilizer application, fertilizer-free zones, low maintenance zones, exemptions, training and licensing requirements. This Section 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 City's natural and artificial stormwater and drainage conveyances, rivers, lakes, canals, estuaries, interior freshwater wetlands, and Tampa Bay. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and artificial stormwater and drainage conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, will help improve and maintain water and habitat quality.

(c) Definitions. For this Section, the following terms shall have the meanings set forth in this section unless the context clearly indicates otherwise.

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

"Applicator" means any person who applies fertilizer to turf or landscape plants.

"Approved Best Management Practices Training Program" means a training program approved by the POD that includes at a minimum, the *"Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002,"* as revised and the more stringent requirements set forth in this Section. Any reference in this Section to the *Florida Green Industries Best Management Practices for Protection of Water Resources in Florida* shall be considered to be a reference to the most current version thereof.

"Best Management Practices" or "BMPs" means turf and landscape practices which minimize the negative environmental impacts of installation and maintenance of landscapes.

"Commercial Fertilizer Applicator" means any person who applies fertilizer to turf or landscape plants in exchange for money; goods, services or other valuable consideration.

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

"Fertilizer" means any substance or mixture of substances, including pesticide/fertilizer mixtures such as "weed and feed" products, that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.

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

"Person" has the definition set forth in Chapter 1.

"Professional lawn care companies" means those entities that have a business tax license and perform lawn or landscape maintenance or installation activities for commercial purposes.

"Restricted Season" means June 1st through September 30th.

"Surface Water" means fresh, brackish, saline or tidal waters, including but not limited to bays, rivers, lakes, streams, wetlands, springs, impoundments, canals and other artificial water bodies.

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

(d) Applicability. This Section shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application, unless such applicator is specifically exempted by the terms of this Section.

(e) Timing of Application. No applicator shall apply fertilizers containing nitrogen and phosphorous to turf or landscape plants during the restricted season. If a nitrogen or phosphorus deficiency is verified by University of Florida IFAS through a tissue deficiency or soil testing result or through a soil test conducted by another qualified, licensed professional, a one-time application of 11b / 1,000 ft² of nitrogen or 0.25lbs P₂O₅ / 1,000 ft² will be allowed during the restricted season.

(f) Fertilizer Content and Application Rate.

(1) It is recommended that no fertilizer containing phosphorus be applied to turf or landscape plants at any time unless a soil test conducted by a qualified, licensed professional demonstrates a phosphorus deficiency and the type of landscape material requires phosphorus.

(2) No nitrogen fertilizer shall be applied on newly established turf for the first 30 days.

(3) Fertilizers should be applied to turf or landscape plants at the lowest rate necessary, following the BMPs contained in the *Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002*.

(4) Fertilizers applied to turf or landscape plants shall contain no less than 50% slow release nitrogen per guaranteed analysis label.

(f) Impervious Surface. Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces. 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. Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or landscape plants, or returned to the original or other appropriate container. In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or surface waters.

(g) Fertilizer-Free Zones. Fertilizer shall not be applied within ten (10) feet of any surface water or from the top of a seawall

(h) Low Maintenance Zone. A six (6) foot low-maintenance, “no-mow” zone is strongly encouraged, but not mandated, from any above-described surface water or from the top of a seawall to reduce the potential for fertilizer residue entering such water bodies and wetlands. This zone should be planted with non-turf grass vegetation and managed in order to minimize the need for fertilization, watering, mowing, etc. No dead vegetative material shall be deposited or left remaining in this zone or the surface water. Care should be taken to prevent the overspray of aquatic weed products in this zone.

(i) Grass clippings, vegetative material, and other vegetative debris shall not be intentionally or accidentally washed, swept, or blown into stormwater drains, ditches, water conveyances, surface waters, or roadways.

(j) Exemptions. The provisions set forth above in subsections (e) and (f) shall not apply to golf courses or athletic fields. For all golf courses, the provisions of the Florida Department of Environmental Protection (FDEP) document, "*BMPs for the Enhancement of Environmental Quality on Florida Golf Courses, January 2007*," as updated, shall be followed when applying fertilizer to golf courses. For all athletic fields, the provisions of the "*Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, June 2002*" as updated, shall be followed when applying fertilizer to athletic fields.

(k) Certification and Training.

(1) All Site Supervisors and managers of professional lawn care companies, as well as government and institutional landscape supervisors, shall abide by and successfully complete an Approved Best Management Practices Training Program within one-hundred eighty (180) days of adoption of this ordinance (March __, 2009). Upon successful completion of the program by a person, a Certificate of Completion will be provided to that person by the program. A list of approved training programs shall be maintained by the POD.

(2) Employees of professional lawn care companies who are not site supervisors or managers shall also be trained in the above-referenced BMPs by the company within ninety (90) days of being employed by the company. The training shall include but not be limited to, proper mowing, fertilization practices, mulching, and debris removal. Such training may be provided by a BMP-certified site supervisor or manager employed by the company. Upon successful completion of the training by a person, a Certificate of Completion will be provided to that person by the company. When new BMPs are adopted, new training shall be required for all personnel of such companies within six (6) months of the adoption thereof.

(3) Certifications issued to employees of professional lawn care companies by other Tampa Bay communities with equivalent fertilizer ordinances will be recognized as meeting the certification and training requirements herein.

(4) The City strongly encourages the establishment of training programs using Spanish-speaking certified BMP trainers.

(5) Private homeowners are encouraged to be familiar with and to utilize the recommendations of the University of Florida IFAS *Florida Yards and Neighborhoods* program when applying fertilizer.

(l) Licensing of Commercial Applicators.

(1) In addition to any current or future training or education requirements mandated by the State of Florida, all Commercial Fertilizer Applicators shall obtain a Certificate of Completion from an Approved Best Management Practices Training Program prior to obtaining

a Local Business Tax Certificate for any category of occupation which may apply any fertilizer to turf or landscape plants.

(2) All Commercial Fertilizer Applicators applying for a new or holding an existing Local Business Tax Certificate shall ensure that all applicators employed under the Tax Certificate receive the required training. All new employees serving as applicators shall receive the necessary training within 90 days of employment and during this 90-day period shall work under the physical supervision of an applicator who has a current Certificate.

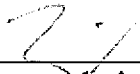
(m) Reclaimed Water Use. It is strongly encouraged that application of fertilizer for properties using reclaimed water service be reduced in accordance with the nutrient level contained in the reclaimed water. This information is available through the City's Water Resources Department.

(n) Enforcement and Penalty. The regulations set forth in this Section are considered to be recommendations to the citizens of the City. Enforcement will be through education. At this time the City will not penalize any person for failure to comply with the provisions of this section.

SECTION 2. Severability Clause. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason, held or declared to be unconstitutional, inoperative, or void, such holding of invalidity shall not affect the remaining portions of this ordinance; and it shall be construed to have been the intent to adopt this ordinance without such unconstitutional, invalid, or inoperative part therein; and the remainder of this ordinance, after the exclusion of such part or parts, shall be deemed to be held valid as if such part or parts had not been included herein.

SECTION 3. Effective Date. In the event this ordinance is not vetoed by the Mayor in accordance with the City Charter, it shall become effective after the fifth business day after adoption unless the Mayor notifies the City Council through written notice filed with the City Clerk that the Mayor will not veto the ordinance, in which case the ordinance shall take effect immediately upon filing such written notice with the City Clerk. In the event this ordinance is vetoed by the Mayor in accordance with the City Charter, it shall not become effective unless and until the City Council overrides the veto in accordance with the City Charter, in which case it shall become effective immediately upon a successful vote to override the veto.

Approved as to form and content:



City Attorney or designee

ORDINANCE NO.

AN ORDINANCE MAKING FINDINGS REGARDING THE USE OF FERTILIZERS CONTAINING NITROGEN AND/OR PHOSPHORUS; PROHIBITING THE SALE OF SUCH FERTILIZERS DURING CERTAIN MONTHS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, surface water runoff leaves residential neighborhoods, commercial centers, industrial areas, and other lands with low permeability soils; and

WHEREAS, base flow runoff flows from residential neighborhoods, commercial centers, industrial areas, and other lands with high permeability soils; and

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WHEREAS, nutrients are commonly found in various forms as a fertilizer for turf and landscape application and, if applied improperly, may contribute to pollution in natural water bodies; and

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WHEREAS, the quality of our streams, lakes, rivers, Tampa Bay and the Gulf of Mexico is critical to environmental, economic, and recreational prosperity and to the health, safety, and welfare of the citizens of the City of St Petersburg; and

WHEREAS, the amount of fertilizer applied should be the minimum necessary for the turf and landscape to meet initial establishment and subsequent growth needs; and

WHEREAS, it is generally recognized that many Florida soils are naturally high in phosphorus; and

WHEREAS, state and federal limits on the amount of nutrients permitted in designated impaired waters, including significant portions of the Tampa Bay ecosystem, may require local governments to make significant investments in water quality improvement projects.

THE CITY OF ST. PETERSBURG DOES ORDAIN:

SECTION 1. The St. Petersburg City Code is hereby amended by adding a new Sections 8-7 to read as follows:

Section 8-7. Required Regulations concerning the Sale of Fertilizer Containing Nitrogen or Phosphorous.

(a) No person, firm, corporation, franchise, or commercial establishment shall sell at retail any lawn or landscape fertilizer, liquid or granular, that contains any amount of nitrogen or phosphorous during the restricted season (June 1 thru September 30).

(b) Displays of lawn and landscape fertilizers containing nitrogen or phosphorous shall not be permitted on the sales floor or the exterior of the store during the Restricted Season.

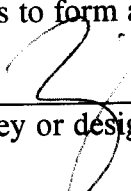
(c) It is recommended that retailers post a notice stating that the use of lawn and landscape fertilizers is restricted in accordance with City Codes.

(d) This Section 8-6 shall be a recommendation prior to May 1, 2011 and shall be enforced as a requirement on and after May 1, 2011. Any person violating this section after that date may be punished as provided in Section 1-7, City Code.

SECTION 2. Severability Clause. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason, held or declared to be unconstitutional, inoperative, or void, such holding of invalidity shall not affect the remaining portions of this ordinance; and it shall be construed to have been the intent to adopt this ordinance without such unconstitutional, invalid, or inoperative part therein; and the remainder of this ordinance, after the exclusion of such part or parts, shall be deemed to be held valid as if such part or parts had not been included herein.

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Approved as to form and content:



City Attorney or designee