

ORDINANCE 2013-04

AN ORDINANCE BY THE TOWN COMMISSION OF THE TOWN OF MELBOURNE VILLAGE, BREVARD COUNTY, FLORIDA, CREATING SECTION 21.5, FERTILIZER USE ON URBAN LANDSCAPE, PROVIDING FOR EXPIRATION OF CERTAIN PROVISIONS UNLESS RENEWED, AND PROVIDING FOR SEVERABILITY, FOR CONFLICTS, AND FOR AN EFFECTIVE DATE.

WHEREAS, The Town of Melbourne Village recognizes the need to regulate Fertilizer use on Urban Landscapes for the safety, health, well-being, and comfort of the residents of the Town, the tributary waterways and Indian River Lagoon,

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF MELBOURNE VILLAGE AS FOLLOWS:

SECTION 1. That new Chapter 21.5 of the Town of Melbourne Village Code of Ordinances be created as follows:

SECTION 21.5 FERTILIZER USE ON URBAN LANDSCAPE

Section 21.5-1 Purpose and intent.

This Section regulates and promotes 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 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 natural and constructed stormwater conveyances and surface waters within the local Stormwater system to which Town Stormwater flows. 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 constructed stormwater conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, will help improve and maintain water and habitat quality.

Section 21.5-2 Definitions.

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

Administrator means Mayor or designee authorized to administer and enforce the provisions of this article.

Application or *apply* means the actual physical deposit of fertilizer to turf, specialized turf, or landscape plants.

Applicator means any person who applies fertilizer on turf and/or landscape plants in the Town.

Board means the Board of Town Commissioners of Melbourne Village, Florida.

Best management practices mean 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.

Approved best management practices training program means a training program approved pursuant to F.S. § 403.9338, or any more stringent requirements set forth in this article that includes the most current version of the Florida Department of Environmental Protection's "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008," as revised, and approved by the administrator.

Code enforcement officer, official, or inspector means any designated employee or agent of the Town of Melbourne Village whose duty it is to enforce codes and ordinances enacted by the Town of Melbourne Village.

Commercial fertilizer applicator, except as provided in § 482.1562(9) Florida Statutes, means any person who applies fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicator.

Fertilize, fertilizing, or fertilization means the act of applying fertilizer to turf, specialized turf, or landscape plants.

Fertilizer 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.

Institutional applicator means any person, other than a private, non-commercial or a commercial applicator (unless such definitions also apply under the circumstances), who 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).

Low maintenance zone means an area a minimum of ten (10) feet wide adjacent to surface waters 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 county, issued by the National Weather Service, or if heavy rain is likely.

Restricted application period means June 1 to September 30.

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.

Surface waters as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code (FAC)) means waters on the surface of the earth, contained in bounds created naturally or artificially, including, the Atlantic Ocean, bays, bayous, sounds, estuaries, lagoons, lakes, ponds, impoundments, rivers, streams, springs, creeks, branches, sloughs, tributaries, canals, and ditches.

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

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

Section 21.5-3 Applicability.

This article shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the Town of Melbourne Village, unless such applicator is specifically exempted by the terms of this article from the regulatory provisions of this article. This article shall be prospective only, and shall not impair any existing contracts.

Section 21.5-4 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) Fertilizer containing nitrogen or phosphorus shall not be applied to turf and/or landscape plants during the restricted application period, defined as June 1 to September 30.

Section 21.5-5 Provisions For Review

At the end of a three (3) year period from the effective date of this ordinance the Town Commission shall revisit this issue and review these provisions in light of their effectiveness and then-current practices, and shall either continue them, repeal them, or amend them.

Section 21.5-6 Fertilizer content and application rates.

- (a) Only "no phosphate fertilizer" as defined in Rule 5E-1.003(2) FAC may be applied to turf or landscape plants within the Town of Melbourne Village without a soil or plant tissue deficiency as verified by a University of Florida, Institute of Food and Agriculture Sciences (UF/IFAS), approved testing methodology. In the case that a deficiency has been verified, the application of a fertilizer containing phosphorous shall be in accordance with the rates and directions provided by UF/IFAS recommendations. Deficiency verification shall be no more than two years old. However, recent application of compost, manure, or top soil shall warrant more recent testing to verify current deficiencies.

(b)

The nitrogen content of fertilizer applied to turf or landscape plants within the Town of Melbourne Village shall contain at least fifty percent (50%) slow release, controlled release, timed release, slowly available, or water insoluble nitrogen per guaranteed analysis label. Caution shall be used to prevent direct depositing of nutrients in the water.

(c)

Fertilizers applied to turf within the Town of Melbourne Village shall be applied at rates that are in accordance with requirements and directions provided by Rule 5E-1.003(2), F.A.C., *Labeling Requirements For Urban Turf Fertilizers*, with the modification that they be at least fifty percent (50%) slow release, controlled release, timed release, slowly available, or water insoluble nitrogen per guaranteed analysis label.

Fertilizers applied to landscape plants within Melbourne Village shall be applied at rates as provided in UF/IFAS recommendations with the modification that the nitrogen content of fertilizer shall contain at least fifty percent (50%) slow release, controlled release, timed release, slowly available, or water insoluble nitrogen per guaranteed analysis label.

(d)

Fertilizer containing nitrogen or phosphorus shall not be applied before seeding or sodding a site, and shall not be applied for the first thirty (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.

(e)

Where parks and athletic fields are subject to and implementing best management practices as prescribed in Rule 5E-1003(2)(d) F.A.C., they shall be exempt from this section.

Section 21.5-7 Fertilizer free zone.

Fertilizer shall not be applied within ten feet of any surface waters, pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340 F.A.C.). Newly planted turf and/or landscape plants may be fertilized in this zone for a sixty (60)-day period beginning thirty (30) days after planting if needed to allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water. The requirements of Section 21.5-4 above also apply to newly planted turf and landscape plants.

Section 21.5-8 Low maintenance zone.

A voluntary ten(10)-foot low maintenance zone is strongly recommended, but not mandated, from any surface waters, pond, stream, watercourse, lake, or wetland. 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 should 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.

Section 21.5-9 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 such surfaces or areas.

(b)

Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces.

(c)

Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable and either legally applied to turf or any other legal site, or returned to the original or other appropriate container.

(d)

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

Section 21.5-10 Management of grass clippings and vegetative matter.

In no case shall grass clippings, vegetative material, and/or vegetative debris be washed, swept, or blown off into surface waters, stormwater drains, ditches, conveyances, watercourses, water bodies, wetlands, sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable. Grass clippings may be left *in situ* as cut.

Section 21.5-11 Exemptions.

The provisions set forth above in this article, except those of section 21.5-4 (a), shall not apply to:

- (1)
Bona fide farm operations as defined in the Florida Right to Farm Act, § 823.14 Florida Statutes.
- (2)
Any lands used for scientific research supported by an accredited institution of higher learning or a government entity, including, but not limited to, research on the effects of fertilizer use on urban stormwater, water quality, agronomics, or horticulture.
- (3)
Plants, trees and vegetables used for edible food, owned by individual property owners or a community, provided that fertilizer application rates do not exceed UF/IFAS recommendations or those from a County Extension Agent.
- (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.

The provisions of section 21.5-4 (a) shall apply to the entire area of the Town of Melbourne Village.

Section 21.5-12 Training.

- (a)
Prior to January 1, 2014, all commercial and institutional applicators of fertilizer within the incorporated and unincorporated area of the county, are required to 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 Extension "Florida-Friendly Landscapes" program, or a State-approved equivalent.
- (b)
Private, non-commercial applicators are encouraged to follow the recommendations of the UF/IFAS Florida Yards and Neighborhoods program when applying fertilizers.

Section 21.5-13 Commercial and institutional applicators.

(a)

After December 31, 2013, all commercial applicators of fertilizer within the incorporated and unincorporated area of the county, are required to abide by and have successfully completed 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 UF/IFAS "Florida-friendly Landscapes" program, or an approved equivalent program, prior to obtaining a business tax receipt for any category of occupation which may apply any fertilizer to turf and/or landscape plants. Commercial fertilizer applicators shall provide proof of completion of the program to the county's tax collector's office upon application or renewal of business tax receipt.

(b)

After December 31, 2013, all commercial applicators of fertilizer within the Town of Melbourne Village 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 pursuant to Rule 5E-14.117(18), F.A.C.

(c)

Institutional applicators who apply fertilizer to turf and/or landscape plants (including but not limited to residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that at least one employee has a "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries" training certificate prior to the business owner obtaining a business tax receipt. Owners for any category of occupation which may apply any fertilizer to turf and/or landscape plants shall provide proof of completion of the program to the county's tax collector's office.

Section 21.5-14 Enforcement and monitoring.

Fines collected shall be deposited in the General Fund of the Town of Melbourne Village and shall be used for any lawful purpose.

Section 21.5-15 Penalty; additional remedies.

Penalties for violations of this division shall be as specified in any appropriate remedy provided by law. The Town of Melbourne Village may seek enforcement action against both the owner of record and any person or entity responsible for carrying out any prohibited action. The provisions of this section are an additional and supplemental

means of enforcing Town codes and ordinances. Nothing in this section shall prohibit the Town of Melbourne Village from enforcing this Code by injunctive relief, or by any other means provided by law.

Section 21.5-16 Appeals.

Appeals relating to any administrative decision or determination concerning implementation or application of the provisions of this article shall be filed in writing within thirty (30) calendar days after the decision is rendered by the administrator. Requests for appeals will be considered by the Board of Adjustment sitting as the Town Board of Appeals.

SECTION 2 Severability. In the event that a court of competent jurisdiction shall hold or determine that any part of this Ordinance is invalid or unconstitutional, the remainder of the ordinance shall not be affected and it shall be presumed that the Town Commission of the Town of Melbourne Village did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Commission would have enacted the remainder of this Ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 3 Conflicts. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 4 Effective Date. This Ordinance shall go into effect following its final passage and adoption.

PASSED AND ADOPTED by the Town Commission of the Town of Melbourne Village on the First Reading this 4th day of September, AD 2013,

AND on this the 17th day of December, following the Second Reading on the 23rd day of October, AD 2013,

ATTEST:

Robert E. Downey
Mayor

Gail E. Griswold
Town Clerk/Treasurer