ORDINANCE NO. 2013-49042016-2087

AN ORDINANCE OF THE CITY COUNCIL OF NEW PORT RICHEY, FLORIDA, FOCUSING ON EXCESSIVE NUTRIENT LEVELS IN NEW PORT RICHEY WATER BODIES; PROVIDING FOR TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR FINDINGS; 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 APPEAL; 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.

WHEREAS, pursuant to Section 303(d) of the federal Clean Water Act and the resulting Florida Impaired Waters Rule (Chapter 62-303, Florida Administrative Code), the Florida Department of Environmental Protection (FDEP) has classified specific water bodies in the Springs Coast basin, which includes New Port Richey, as "impaired" as a result of the presence of excessive nutrients; and

WHEREAS, Florida Statute, Section 403.9337 requires that local governments located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to Florida Statute, Section 403.067, shall, at a minimum, adopt the
WHEREAS, the FDEP has prepared in 2009 and updated in 2010 a Model Ordinance for Florida Friendly Use of Fertilizer on Urban Landscapes; and

WHEREAS, surface water runoff and base flow runoff leaves residential neighborhoods, commercial centers, industrial areas, and other lands of New Port Richey and enters into natural and artificial stormwater and drainage conveyances and natural water bodies in New Port Richey; and

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

WHEREAS, the quality of streams, lakes, and wetlands is important to environmental, economic, and recreational prosperity and to the health, safety, and welfare of the residents of New Port Richey; and

WHEREAS, algae blooms and accelerated growth of aquatic weeds in New Port Richey's water bodies have heightened community concerns about water quality and eutrophication of surrounding waters; and

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

WHEREAS, this Ordinance is part of a regulatory program to address nonpoint sources of nutrient pollution which is scientifically based, and economically and technically feasible; and
WHEREAS, in the process of adoption of this Ordinance, the City Council of New Port Richey has considered scientific information, including input from the Department of Environmental Protection, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences (UF/IFAS).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF NEW PORT RICHEY, FLORIDA, that:

SECTION I. TITLE:

This Ordinance shall be known as the Florida-Friendly Use of Fertilizer on Urban Landscapes Ordinance.

SECTION II. DEFINITIONS:

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

1. "Administrator" means the New Port Richey City Manager, or an administrative official of New Port Richey government designated by the City Manager to administer and enforce the provisions of this Ordinance.

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

3. "Applicator" means any person who applies fertilizer on turf and/or landscape plants in New Port Richey.
4. "Approved Test" means a soil test from the University of Florida, government, or other commercial-licensed laboratory that regularly performs soil testing and recommendations.

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

6.5. "Code Enforcement Officer", "Official", or "Inspector" means any designated employee or agent of New Port Richey whose duty it is to enforce codes and ordinances enacted by New Port Richey.

7.6. "Commercial Fertilizer Applicator" except as provided in section 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 applicators.

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

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

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

10.11. "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.

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

12.13. "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.


14. "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.

15. "Prohibited Application Period" means the time period during which a Flood Watch or Warning, a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of Pasco County, issued by the National Weather Service, or if heavy rain is likely (2 inches or more within a twenty-four (24) hour period is advised as a 60% or more probability).
16. **"Saturated Soil"** means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this Ordinance, 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.

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

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

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

**SECTION III. FINDINGS:**

The City Council of New Port Richey has determined that the use of fertilizers on lands within New Port Richey creates a risk to contributing to adverse effects on surface and/or ground water. Accordingly, the governing board of New Port Richey finds that the best management practices contained in the most recent edition of the "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries" are required by this Ordinance.
SECTION IV. PURPOSE AND INTENT:

This Ordinance 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; and specifies allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones and exemptions. This Ordinance requires the use of Best Management Practices to minimize negative secondary and cumulative environmental effects associated with the misuse of fertilizers. These secondary and cumulative effects have been observed in and on natural and constructed stormwater conveyances, rivers, creeks, canals, springs, lakes, estuaries and other water bodies. Collectively, these water bodies are an asset important to the environmental, recreational, cultural and economic well-being of New Port Richey residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness of stormwater conveyance provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, is anticipated to help improve and maintain water and habitat quality.

SECTION V. APPLICABILITY:

This Ordinance shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer to urban landscapes within New Port Richey, unless such application is specifically exempted by the terms of this Ordinance from the regulatory provisions of this Ordinance. This Ordinance shall be prospective only, and shall not impair any existing contracts.
SECTION VI. TIMING OF FERTILIZER APPLICATIONS.

1. 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.

1.2. Prohibited Application Period of fertilizer, even in slow release formulations, during the summer rainy season typically June 1 to September 30.

2.3. Fertilizer containing nitrogen and/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 Prevent Plan for that site.

SECTION VII. FERTILIZER FREE ZONES:

Fertilizer shall not be applied within ten (10) feet of any pond, stream, water body, 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 or lake bulkhead, unless a deflector shield, drop spreader, or liquid applicator with a visible and sharply defined edge, is used, in which case a minimum of three (3) feet shall be maintained. Newly planted turf or landscape plants may be fertilized in this zone only for a sixty (60) day period beginning thirty (30) days after planting if needed to allow the vegetation to become well established. Caution shall be used to prevent direct deposition of fertilizer into the water.
SECTION VIII. LOW MAINTENANCE ZONES

For new construction or reconstruction projects, 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.

SECTION IX. FERTILIZER CONTENT AND APPLICATION RATES:

1. Fertilizers applied to turf within New Port Richey shall be formulated and applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, Labeling Requirements for Urban Turf Fertilizers. Under Rule 5E-1.003(2), Florida Administrative Code, required application rate and frequency maximums, which vary by plant and turf types, are found on the labeled fertilizer bag or container.

1.2. 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 any emergency situation (wildfire, etc.), or in accordance with the Stormwater Pollution Prevention Plan for that site.
2.3. Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in section (1) above for turf, or in UF/IFAS recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an approved test.

3.4. Fertilizer used for sports turf at golf courses shall be applied in accordance with the recommendations in "Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses", published by the Florida Department of Environmental Protection, dated January 2007, as may be amended. Fertilizer used at golf courses, parks and/or athletic fields shall be applied in accordance with Rule 5E-1.003(2)(d), Florida Administrative Code.

SECTION X. FERTILIZER APPLICATION PRACTICES:

1. 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.

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

3. 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.
4. 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.

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

6. Property owners and managers are encouraged to use an Integrated Pest Management (IPM) strategy as currently recommended by the University of Florida Cooperative Extension Service publications.

SECTION XI. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER:

In no case shall grass clippings, vegetative material, and/or vegetative debris intentionally be washed, swept, or blown on to or into stormwater drains, ditches, conveyances, water bodies, wetlands, sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable. Vegetative material may be placed within the roadway right-of-way, but not over the storm drains, for pickup by the City’s Streets and Right-of-Ways Department and/or private waste haulers.

SECTION XII. EXEMPTIONS:

The provisions set forth above in this Ordinance shall not apply to:

(a) bona fide farm operations as defined in the Florida Right-to-Farm Act, Section 823.14, Florida Statutes;
(b) other properties not subject to or covered under the Florida Right-to-Farm Act that have pastures used for grazing livestock;

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

SECTION XIII. TRAINING:

1. All commercial and institutional applicators of fertilizer practicing within New Port Richey shall abide by and successfully complete the six-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 Service "Florida-Friendly Landscapes" program, or an approved equivalent program.

2. Private, non-commercial and non-institutional applicators not otherwise required to be certified, such as private citizens on their own residential property, are encouraged to follow the recommendations of the University of Florida IFAS "Florida Yards and Neighborhoods" program and label instructions when applying fertilizers.

SECTION XIV. LICENSING OF COMMERCIAL APPLICATORS:

1. Prior to January 1, 2014, all commercial applicators of fertilizer within the incorporated area of New Port Richey, shall abide by and successfully complete the 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 an approved equivalent, prior to obtaining a New Port Richey Local Business Tax Certificate 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 New Port Richey Tax Collector’s Office within 180 days of the effective date of this Ordinance. It is the responsibility of the business owner to provide the "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” certificate to receive their Business Tax Receipt annually.

2. **After December 31, 2013, all** commercial applicators of fertilizer within New Port Richey, 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.

3. 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 (1) employee has an appropriate "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” training certificate prior to the business owner obtaining a Local Business Tax Certificate.

**SECTION XV. ENFORCEMENT:**
The provisions of this Ordinance shall be enforced by (1) the New Port Richey Code Enforcement Department pursuant to the authority granted by New Port Richey, (2) the New Port Richey City Council through its authority to enjoin and restrain any person violating this Ordinance, or (3) New Port Richey through the prosecution of violations in the name of the State of Florida pursuant to the authority granted by Section 425.69, Chapter 162, Florida Statutes, as may be amended. The Code Enforcement Officer may pursue these or any other enforcement remedies available to and applicable to New Port Richey.

SECTION XVI. PENALTIES:

1. Failure to comply with the requirement of this Ordinance shall constitute a violation of this Ordinance and shall be punishable by a fine not to exceed $250 per incident per day the violation exists, or a fine not to exceed $500 per incident per day the violation exists for a repeat violation, and, in addition, may include all costs of repairs and remediation including administrative costs.

2. In determining the amount of fines that should be imposed, the Code Enforcement Officer, a Special Magistrate, Code Enforcement Board, County Court or other City enforcement mechanism shall consider the following factors: (1) the gravity of the violation; (2) Any actions taken by the violator to correct the violation; and (3) Any previous violations committed by the violator. If the Code Enforcement Officer, a Special Magistrate, Code Enforcement Board, County Court or other City enforcement mechanism finds
the violation is irreparable or irreversible in nature, a fine not to exceed $15,000 per violation may be imposed.

3. Funds generated by penalties imposed under this Ordinance shall be used by New Port Richey for the administration and enforcement of Section 403.9337, Florida Statues, and the corresponding Sections of this Ordinance, and to further water conservation and nonpoint pollution prevention activities.

SECTION XVII. APPEAL:

An aggrieved party, including New Port Richey, may appeal a final administrative order of a Special Magistrate, Code Enforcement Board, County Court or other City enforcement mechanism Special-Master to the circuit court. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the Special Magistrate, Code Enforcement Board, County Court or other City enforcement mechanism Special-Master. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

SECTION XVIII. SEVERABILITY:

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

SECTION XIX. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:
The provisions of this Ordinance shall become and be made a part of the New
Port Richey Land Development Code. The sections of this Ordinance may be
renumbered or re-lettered to accomplish such, and the word “ordinance” may be
changed to “section”, “article”, or other appropriate word.

SECTION XX. CAPTIONS:
The captions, section headings, and section designations used in this Ordinance
are for convenience only and shall have no effect on the interpretation of the provisions
of this Ordinance.

SECTION XXI. EFFECTIVE DATE:

The above and foregoing Ordinance was read and approved on first reading at a
duly convened meeting of the City Council of the City of New Port Richey, Florida, the
7th day of November, 2016.

The above and foregoing Ordinance was read and enacted on second reading at
a duly convened meeting of the City Council of the City of New Port Richey, Florida, this
20th day of November, 2016.

CITY OF NEW PORT RICHEY, FLORIDA

[Signature]
Rob Marlowe
Mayor-Councilmember
ATTEST:

Doreen Summers, CAP-OM
City Clerk

Judy Meyers
Interim City Clerk

APPROVED AS TO LEGAL FORM AND CORRECTNESS:

By: [Signature]
Title: City Attorney