



MIDDLETOWN
Rhode Island

PLANNING DEPARTMENT

TOWN OF MIDDLETOWN

350 East Main Road, Middletown, RI 02842
(401) 849-4027 | MiddletownRI.com

To: Paul Croce, Chair
Planning Board members

From: Ron Wolanski, Town Planner

Date: October 2, 2023

Re: Review and recommendation to the Town Council on draft fertilizer and pesticide use policy.

This item was continued to the October 11th Planning Board meeting in order to allow the staff and solicitor Marisa Desautel to provide ordinance or policy examples from other jurisdictions. The examples we have compiled are attached for your review. The Board also decided to proceed with considering a recommendation to the Town Council on a policy document, rather than an ordinance. Attached is "clean" version of the draft policy provided by Ms. Desautel for the September meeting. As noted during our discussion, the policy document contains many of the provisions that were included in the earlier draft ordinance, but as policies these would not be enforceable.

Once the Planning Board has reviewed the policy document, the Board might wish to solicit public input on the proposal, including hosting a public workshop meeting. If so, once the Board has considered public comment and made any necessary revisions to the draft, the proposal and the board's recommendation should be forwarded to the Town Council for consideration. The Town Council would then consider potential adoption.

Please feel free to contact me with any questions.

Cc: Town Administrator
Town Solicitor

POLICY 20. Fertilizer and Pesticide Use Policy

Effective Date: 01/01/2024

1.0 PURPOSE

The purposes of this Land Usage Policy Statement are to:

1. State the Town of Middletown's view regarding nutrient fertilizer and pesticide use.
2. Formulate policies and guidelines to assist the Town of Middletown develop a framework that achieves the following goals:
 - a. Encourage planting and maintenance of minimally managed turf areas;
 - b. Comply with the total daily maximum loads (TMDL) for the Town's water resources prescribes by the Rhode Island Department of Environmental Management;
 - c. Develop standards that will allow reasonable use of fertilizers and pesticides for the enhancement and maintenance of turf quality;
 - d. Conserve valuable waterways and other resources that increase property values, protect the unique environment vital to the Town's economy, and reduce the financial burden on taxpayers and property owners by regulating the outdoor application of nitrogen, phosphorus, and pesticides on turf;
 - e. Help achieve the goals of the Town of Middletown's Comprehensive Community Plan.
3. Encourage agricultural users that customarily utilize fertilizer and pesticides as well as public and private golf courses to participate in voluntary programs at the state level, including using fertilizers and pesticides in a manner consistence with best management practices (BMP)s, Good Agricultural Practices, etc.

2.0 SCOPE

This policy shall apply to all applications of nitrogen and phosphorus through fertilizer and applications of pesticides within the Town of Middletown, subject to the exemptions listed in Section 6.

3.0 FINDINGS AND GENERAL PRINCIPLES

There is sufficient scientific evidence demonstrating that excessive nutrient enrichment of and pesticide addition to water resources can have numerous and various, significant negative impacts. For example, public health risks from excessive loading of nutrients to water resources may include direct detrimental effects on drinking water sources by increased concentrations of nitrogen and phosphorus that can violate safe drinking water standards. Additionally, degradation of the quality of water resources can have significant negative impacts to the local and regional economy, and the fiscal well-being of the Town of Middletown. The Town of Middletown's soil characteristics mean that agronomic practices of soil fertilization and pesticide applications common in other parts of the region, state, and country may not always apply in the Town of Middletown, as these practices vary by soil type.

4.0 DEFINITIONS

For the purposes of this Policy Statement, the following definitions shall apply:

AGRICULTURE/AGRICULTURAL USE. Land uses normally associated with the production of food, fiber and livestock for sale. This includes farming in all its branches, generally as the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, floricultural, viticultural or horticultural commodities. For purposes of this chapter, such uses shall not include the development of land for the processing or sale of food and the manufacturing of agriculturally related products.

APPLICATOR. Any individual or entity that applies fertilizer or pesticides to turf or soils.

BEST MANAGEMENT PRACTICE ("BMP"). A structural device or a nonstructural practice for pollution management, which is deemed to provide the best available treatment or control of a pollution source such as stormwater. For purposes of this Chapter, BMP means the "Lawn and Landscape Turf Best Management Practices," from the University of Massachusetts Amherst Center for Agriculture, Food and the Environment, or the New England Regional Nitrogen and Phosphorus Fertilizer and Associated Management Practice Recommendations written by the University of Connecticut College of Agriculture and Natural Resource.

COMBINATION PRODUCTS. Sometimes colloquially referred to as "weed and feed," any product that, in combination with fertilizer, contains post-emergence herbicides, insecticides, other pesticides, or plant growth regulators.

COMMERCIAL APPLICATOR. Any individual or entity, including employees of any federal, state, country, or municipal agency, department, office, division, section, bureau board, or commission who applies or supervises the application of any pesticide or fertilizer for any purpose.

COMPOST or ORGANIC COMPOST. The biologically stable, humus-like material derived from composting or the aerobic, thermophilic decomposition of organic matter.

ENVIRONMENT. The water, air, land, and all plants and humans and other living animals in it, and the interrelationships which exist among these.

FERTILIZER. A substance that enriches the soil with elements essential for plant growth, such as nitrogen, phosphorus, potassium or other substances; fertilizer does not include those nutrients that are normally excluded from fertilizer such as chemicals that are part of horticultural gypsum, dolomite, limestone, lime, Jersey greensand, grass clippings, or compost topdressing.

HEAVY RAIN EVENT. A rainfall greater than 0.25 inches per hour, or a rainfall greater than one (1) inch total in a twenty-four (24) hour period.

IMPERVIOUS SURFACE. Any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes concrete, asphalt, paver blocks, gravel, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.

LABEL. The written, printed, or graphic matter on, or attached to, the pesticide or fertilizer or device or any of its containers and wrappers.

LICENSED COMMERCIAL APPLICATOR. Any commercial pesticide applicator who is licensed under RIGL §23-25-12 as authorized to use or supervise the use of any pesticide not classified for restricted use by the United States Environmental Protection Agency or limited use by RIDEM on land not owned or rented by the commercial pesticide applicator.

NITROGEN. An element essential to plant growth. For the purposes of this chapter, nitrogen may be available as slow-release, controlled-release, timed-release, slowly available, or water-insoluble nitrogen, which means nitrogen in a form that delays its availability for plant uptake and use after application and is not rapidly available to turf and other plants; and/or quick-release, water-soluble nitrogen which means nitrogen in a form that does not delay its availability for turf and other plant uptake and is rapidly available for turf and other plant uptake and use after application.

NONPOINT SOURCE POLLUTION. Pollution from any source that is not discernible, confined and discrete. Potential sources of nonpoint source pollution include, but are not limited to, stormwater runoff, agriculture, silviculture, mining, construction, septic systems and urban development.

NUTRIENT. Any of the following seventeen (17) elements needed for growth of a plant: the three non-mineral elements: carbon, hydrogen, and oxygen; the six macronutrients nitrogen, phosphorus, potassium, calcium, magnesium, and sulfur; and the eight micronutrients: boron, copper, iron, chlorine, manganese, molybdenum, nickel and zinc.

PESTICIDE. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and any substance or mixture of substances for use as a plant regulator, defoliant, or desiccant.

PHOSPHORUS. An essential plant nutrient, phosphorus fertilizers are used for replenishing phosphorus in soil, produced commercially from phosphate rock and apatites, including such organic substances as bone meal and manure and such phosphorus-rich industrial wastes as basic slag and Thomas slag.

RECHARGE. The replenishment of underground water reserves.

SATURATED GROUND. Soil soaked with moisture such that it cannot absorb any more liquid.

STORMWATER RUNOFF. Flow on the surface of the ground, resulting from precipitation.

TURF. Any non-crop land area that is covered by any grass species, excluding meadows, grasslands, flower or vegetable gardens, pasture, hay land, trees, shrubs, turf grown on turf farms or any form of agricultural production or use.

WETLAND. An area, as defined by RIGL §2-1-14 (Coastal Wetland) and RIGL §2-1-20 (Freshwater Wetland) and as determined by the Rhode Island Department of Environmental Management or the Coastal Resources Management Council, which is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

5.0 GUIDELINES

Performance Standards for Fertilizer Application

The care and maintenance of residential and commercial lawns, gardens, and other landscaped areas in the Town of Middletown can contribute to water quality degradation. Further, excessive amounts of fertilizers, inappropriate formulations, and poor timing of application can result in adverse impacts to stormwater.

1. The Town of Middletown encourages all uses and applications of fertilizer within the Town of Middletown to comply with the following best management practices:
 - a. All fertilizer applications shall follow and be performed in accordance with BMPs found either in the University of Massachusetts Extension's *Best Management Practices for Lawn and Landscape Turf*, the University of Connecticut College of Agriculture and Natural Resource's *New England Regional Nitrogen and Phosphorus Fertilizer and Associated Management Practice Recommendations*, or the New England Interstate Water Pollution Control Commission's *Regional Clean Water Guidelines for Fertilization of Urban Turf*.
 - b. All fertilizer applications shall follow and be performed in

accordance with the relevant criteria set forth in Rhode Island Department of Environmental Management's *Sustainable Turf Management for Landscaping*, including:

- i. Read and understand the product label instructions, information and warnings, including the timing and methods of application, safety precautions, restrictions; and any specific disposal procedures; and Apply, use, store and dispose of fertilizer in accordance with label instructions, information and warnings.
- ii. Conduct soil tests for nutrients. Phosphate fertilizers are used only if a soil test concludes its use is warranted. Follow guidelines in soil test analysis on how much phosphate soil to apply.
- iii. Use nitrogen fertilizers that contain 50% or more of the Total Nitrogen (TN) as Slow Release Nitrogen (SRN).
- iv. If soil testing is not used, apply no more than 1 lb. / 1000 sq. ft. of phosphate fertilizer to establish new turf.
- v. Fertilizer equipment is correctly calibrated prior to each use.
- vi. Fertilizers containing nitrogen or phosphorus should not be applied to turf closer than one hundred (100) feet to any water body or wetlands.
- vii. Fertilizers containing nitrogen or phosphorus should not be applied to saturated ground.
- viii. Fertilizers containing nitrogen or phosphorus should not be applied to paved or otherwise impervious surfaces. If these fertilizers are incidentally applied to impervious surfaces, any spillage should be immediately contained and removed to prevent run-off.
- ix. Before applying fertilizers containing nitrogen or phosphorus, the applicator should cover stormwater conveyances (including, but not limited to storm drains, ditches, and swales) with a tarp, drop-cloth, or similar covering.
- x. Fertilizers containing phosphorus should not be applied unless a soil test within twelve (12) months of application is conducted and reveals an available phosphorus deficiency or unless establishing new turf or re-establishing or repairing turf after substantial damage or land disturbance, in which case the application shall be in compliance with the BMP.
- xi. The fertilizer application requirements of this subsection shall apply with the same limitations to combination products as defined by this

ordinance.

- xii. Unused fertilizers containing nitrogen or phosphorus should not be over-applied to grass; dumped into storm drains, wetlands, or water bodies; or emptied into a toilet or sink.
- xiii. Lawn clippings fertilized with nitrogen or phosphorus fertilizers should not be allowed to collect on impervious surfaces; nor dumped into water bodies, storm drains, or wetlands.
- xiv. When applying fertilizer on turf adjacent to paved surfaces, contain and clean up any spills of fertilizers from paved surfaces to prevent run-off.
- xv. Never apply fertilizer to bare ground except for re-seeding.
- xvi. Apply no more than 3.25 lbs of total nitrogen/ 1000 sq. ft per year.
- xvii. Apply no more than 2.0 lbs of total nitrogen /1000 sq. ft. per year in environmentally sensitive areas.
- xviii. Use weather forecasts to determine fertilizer application times. Never apply within 48 hours of a heavy rain event.
- xix. Return any unused fertilizer to its original container after each use.
- xx. Do not apply fertilizer during summer dormancy.
- xxi. Do not apply fertilizer during winter months on frozen or partially frozen ground.
- xxii. Never apply fertilizer on turf adjacent to water bodies (wetlands).

Pesticide Application Control

As recognized in RIGL §23-25-3, pesticides may cause injury to people, or may cause unreasonable adverse effects on the environment if not properly used. The drifting or washing of pesticides into streams, lakes, and other bodies of water may cause appreciable damage to human life or animals, either by direct poisoning or gradual accumulation.

1. The Town of Middletown encourages all uses and applications of pesticides within the Town of Middletown to comply with the following performance standards:
 - a. All commercial pesticide uses and applications shall comply with the Rhode Island Department of Environmental Management's Rules and Regulations Relating to Pesticides, promulgated pursuant to Chapter 25 of Title 23 of the Rhode Island General Laws and Section and 40 CFR §171.5 (a), as applicable.
 - b. Any person applying pesticides must be eighteen (18) years of age or older.

- c. Any person engaged in the noncommercial application of pesticides shall:
 - i. Read and understand the label instructions, information and warnings, including the common name of pesticides applied, the pests to be controlled, the timing and methods of application, safety precautions, restrictions; and any specific disposal procedures; and
 - ii. Apply, use, store and dispose of pesticides in accordance with label instructions, information and warnings;
- d. All pest control equipment using pesticides and drawings water from the surface waters of the state or from a potable water supply shall have an effective, Rhode Island Department of Environmental Management approved anti-siphon device to prevent backflow.
- e. No pesticides shall be applied to public water supplies or their tributaries except by legally established water supply entities or their agents as authorized by the Rhode Island Department of Environmental Management.
- f. No person shall apply pesticides in such a manner that allow pesticides to drift or flow into water supplies.
- g. No application of pesticides shall be made by mechanically powered equipment at such times where wind velocity may cause the pesticide to drift beyond target area.
- h. Pesticide containers shall not be used for any purpose, other than the storage of pesticides, unless such purpose has been approved by the Rhode Island Department of Environmental Management.
- i. Only licensed or certified commercial applicators shall apply pesticides within any building or on the grounds of any school, and no pesticide shall be applied in any building or on the grounds of any school during regular school hours or during planned activities at the school. This subsection shall not apply to the use of germicides, disinfectants, sanitizers, deodorizers, antimicrobial agents, insecticide gels, non-volatile insect or rodent bait in a tamper resistant container, insect repellants, pesticides applied by public health officials during a state public health emergency, exempt pesticides under 40 CFR §152.25.

6.0 EXCEPTIONS

The following activities are exempt from this policy:

- (A) Agricultural land management activities, including application of fertilizers, carried out in accordance with a conservation management plan that has been approved by the Natural Resources Conservation Service;
- (B) Agricultural pesticide/herbicide applications that comply with RIDEM regulations and subject to any required permits;

- (C) Public and private golf courses within the Town of Middletown.

7.0 Public Education and Outreach

In Rhode Island there is a strong correlation between the amount of impervious area in a watershed and the waterbody within that watershed being listed as impaired by the RIDEM. Increased volume, temperature, and rate of runoff from impervious surfaces, and the concentration of pollutants in the runoff can cause changes in hydrology and impact water quality. Effective management of stormwater runoff offers a multitude of benefits, including protection of wetlands and aquatic ecosystems, improved quality of receiving waterbodies, conservation of water resources, protection of public health, and flood control. A public education and outreach program helps to promote a greater awareness within the community regarding the importance of minimizing storm water impacts as well as the personal responsibilities expected of them.

1. The Town of Middletown will engage in the following public education and outreach activities:
 - a. Implement a public education program to distribute educational materials in the community or conduct equivalent outreach activities regarding impacts and pollution prevention.
 - b. Enter into partnerships with other governmental or nongovernmental entities, as many may already have educational materials and perform outreach activities.
 - c. Use storm water educational materials provided by other entities instead of developing their own materials, but tailor program materials to address local situations and issues.
 - d. Address the viewpoints or concerns of a variety of audiences and communities, including minority and disadvantaged communities, as well as children. Direct materials or outreach programs toward specific groups of commercial, industrial, and institutional entities that may have significant storm water impacts.
2. The Town encourages those engaged in public education and outreach activities to use the following BMPs:
 - a. Use brochures or fact sheet to educate the general public or specific audiences about storm water related pollution and the importance of proper storm water practices;
 - b. Use recreational guides to educate groups such as golfers, hikers, paddlers, windsurfers, climbers, fisherman, and campers about storm water related pollution and the importance of proper storm water practices;
 - c. Use alternative information sources, such as web sites, bump stickers, refrigerator magnets, and posters at bus stops, for community and school groups;
 - d. Create a library of educational materials for community and school groups;
 - e. Engage volunteer citizen educators as staff for a public

education task force to educate the general public or specific audiences about storm water related pollution and the importance of proper storm water practices;

- f. Plan participation events with educational displays at home shows, community festivals, libraries and other public buildings educating the general public or specific audiences about storm water related pollution and the importance of proper storm water practices;
- g. Develop educational programs for school-age children educating them on storm water related pollution and what they can do to help;
- h. Implement economic incentives to citizens and businesses; and
- i. Use tributary signage to increase public awareness of local water resources

ARTICLE VII
Protection of Public Waters from Nutrient Pollution
[Added 9-14-2020 by Ord. No. 2020-17¹]

§ 148-35. Purpose.

The purpose of this Article VII, Chapter 148 of the Code of Ordinances is to conserve resources and protect our environment by regulating the outdoor application of nitrogen and phosphorus based fertilizers in order to reduce the overall amount of excess nitrogen and phosphorus entering the Town's public waters.

§ 148-36. Findings.

The Town Council hereby finds that:

- A. Barrington lies within the Barrington-Palmer-Warren Rivers watershed. The Town of Barrington has an area of approximately 15 square miles, seven square miles of which are surface waters. Well known water bodies in the Town include the Barrington, Palmer and Warren Rivers, upper Narragansett Bay, Bullock's, Allin's and Smith's Coves, Brickyard, Volpe, Bicknell, Tiffany's and Kent Street Ponds, Echo Lake, Mussachuck Creek and the various unnamed streams and pools that are found in every part of our Town.
- B. The public waters of the Town are a vital resource for ecological, historical, recreational, aesthetic, and economic reasons. Barrington's public waters are one of the defining features of our community.
- C. Barrington's estuarine waters are impaired in that they do not meet the water quality standards that are required to support the variety of uses to which the waters could beneficially be put.
- D. Important measures affecting water quality in Barrington have been implemented with success. Foresight and financial sacrifice by an earlier generation led to the Town-wide installation of sewers such that on-site wastewater treatment is virtually nonexistent in Barrington. The combined sewer overflow project has progressed to the point that previously common raw sewage discharges in rain events have been virtually eliminated. As a result, near weekly closures of Barrington Beach have become infrequent. While much of upper Narragansett Bay, and Barrington's saltwater rivers, remain closed to shell fishing, many shell-fishing beds between Nayatt and Rumstick Points have been open on a near constant basis while only 20 years ago these beds were almost constantly closed.
- E. Despite these improvements, activities carried out entirely within the Town of Barrington have resulted in substantial degradation of Barrington's public waters. For example, Brickyard Pond is on a short list of ponds identified by the Department of Environmental Management as suffering from eutrophication as a result of elevated phosphorus levels. Brickyard Pond is a Town-owned body of water that lies entirely within the borders of Barrington and is so remote from other sources of pollution that it is apparent any water quality impairment existing there is almost entirely the result of activities taking place within the Town.
- F. The completion of larger scale water quality improvement initiatives, which have yielded significant benefits, has resulted in circumstances where continued improvement in water quality requires incremental measures to address smaller scale causes of water body impairment.
- G. Reducing excess nitrogen and phosphorus in Barrington's public waters will protect and improve the

1. Editor's Note: This ordinance also changed the title of this chapter from "Public Waters, Use of," to "Public Waters, Use and Protection of."

§ 148-36 quality of important marine and freshwater habitat by reducing the frequency and severity of algal blooms. These algal blooms lead to eutrophication characterized by the reduction in water clarity and dissolved oxygen levels, fish and shellfish kills and habitat degradation. § 148-39

§ 148-37. Applicability.

This article shall apply to and regulate any and all applications of nitrogen and phosphorus through fertilizer within the Town of Barrington.

§ 148-38. Definitions.

As used in this article, the following terms shall have the meanings indicated:

AGRICULTURE — Farming in all its branches, generally as the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, floricultural, viticultural or horticultural commodities, and shell fishing, including preparations and delivery to storage or to market or to carriers for transportation to market.

CONTROLLED NUTRIENT — Phosphorus or nitrogen contained in fertilizer. For the purposes of the ordinance, controlled nutrients may be available as slow-release, controlled-release, timed-release, slowly available, or water insoluble nutrients, which means that such nutrients are in a form that delays availability for plant uptake and use after application and are not rapidly available to turf and other plants; and/or quick-release, water-soluble nutrients which means nutrients in a form that does not delay availability for turf and other plant uptake and are rapidly available for turf and other plant uptake and use after application.

FERTILIZER — A manufactured substance that enriches the soil with elements essential for plant growth, such as nitrogen, phosphorus, potassium or other substances; fertilizer does not include those nutrients that are normally excluded from fertilizer, such as chemicals that are part of dolomite, limestone, or lime.

IMPERVIOUS SURFACE — A surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water, including but not limited to a parking lot, driveway, roadway, sidewalk, or ice.

PUBLIC WATERS RESOURCE AREA — Any area within 100 feet of the Wetlands Overlay District as defined in § 185-171.

TURF — Grass-covered soil held together by the roots of the grass, also known as "sod" or "lawn."

§ 148-39. Application of controlled nutrients.

- A. The application of controlled nutrients is prohibited between October 31 and April 1, unless specifically approved in advance by the Town Council.
- B. No person shall cause controlled nutrients to be applied to, or otherwise be deposited on any impervious surface. Any controlled nutrients applied, spilled, and/or deposited on any impervious surface, either intentionally or accidentally, must be immediately and completely removed and contained and either legally applied to turf or any other legal site or returned to an appropriate container.
- C. No person shall apply controlled nutrients within 24 hours before or during a rain event forecasted by the National Weather Service to result in more than 0.5 inch of precipitation in a twenty-four-hour period.

§ 148-39

§ 148-44

D. The application of controlled nutrients is prohibited within 100 feet of public waters resource areas.

§ 148-40. Exemptions.

The following activities shall be exempt from § 148-39:

- A. Application of controlled nutrients for agriculture and horticulture uses.
- B. Application of fertilizer to golf courses, except that any application of controlled nutrients in public waters resource areas shall comply with the recommendations set forth in § 148-41, and shall use 85% or higher slow-release, water-insoluble controlled nutrients, in organic or inorganic form.
- C. Application of controlled nutrients to gardens, including vegetable and flower, trees, shrubs and indoor applications, including greenhouses.
- D. Application of controlled nutrients for the establishment of new vegetation in the first growing season, or repairing of turf in the first growing season following substantial damage.
- E. Yard waste compost or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil.

§ 148-41. Recommendations.

The Town of Barrington strongly recommends that controlled nutrients only be applied to turf and other plants at the lowest rate necessary. Any single application of controlled nutrients should not exceed 0.5 pounds of nitrogen per 1,000 square feet and 0.0 pounds of phosphorus per 1,000 square feet unless a soil test identifies a phosphorus deficiency. The annual aggregate total application of nitrogen should not exceed 1.0 pounds per 1,000 square feet. The application of any controlled nutrients should be of an organic, slow-release, water-insoluble form.

§ 148-42. Enforcement authority.

The enforcement officer shall be the Building Official who shall report to the Conservation Commission semiannually regarding enforcement actions taken and educational outreach provided in order to achieve the purposes of this chapter.

§ 148-43. Penalties for violations.

- A. Any person, corporation or unincorporated association violating the provisions of this article may be subject to the following fines:
 - (1) First offense: \$150.
 - (2) Second offense: \$300.
 - (3) Third offense: \$500.
- B. In the event that a contractor applies controlled nutrients in violation of this article the landowner for whom such contractor applied controlled nutrients may be fined pursuant to the provisions of this article if the landowner knowingly requested the application.

§ 148-44. Severability clause.

Should any section, part or provision of this article be deemed invalid or unconstitutional, such decision

§ 148-44 shall not affect the validity of the remaining terms of this article as a whole or any part thereof, other than the section, part or provision held invalid or unconstitutional. § 148-44

Chapter 119

FERTILIZER NUTRIENT CONTROL

[HISTORY: Adopted by the 11-17-2014 Fall Yearly Town Meeting, Art. 11. Amendments noted where applicable.]

GENERAL REFERENCES

Flooding — See Ch. 100.

Pollution — See Ch. 135.

Water — See Ch. 112.

Water betterment — See Ch. 171.

Illicit connections and discharges — See Ch. 115.

Wetlands protection — See Ch. 172.

§ 119-1. Findings.

The Town of Brewster herein makes the following findings:

- A. There is sufficient scientific evidence demonstrating that excessive nutrient enrichment of the region's water resources can have numerous, significant negative impacts.
- B. Public health risks from excessive loading of nutrients to water resources may include direct detrimental effects on drinking water sources by increased concentrations of nitrates that can violate safe drinking water standards.
- C. Degradation of the quality of water resources can have significant negative impacts to the local and regional economy, and the fiscal well-being of the Town.
- D. The Town has significant amounts of glacially deposited coarse, sandy soils that are subject to rapid water infiltration, percolation, and leaching of nutrients.
- E. The Town's soil characteristics mean that agronomic practices of soil fertilization common in other parts of the region, state and country may not always apply in the Town, as these practices vary by soil type.
- F. Scientific literature demonstrates that a significant potential source of nutrient loading to water resources is from inappropriate and/or improper use of turf fertilizer.

§ 119-2. Purposes.

It is the overarching goal of the Town of Brewster to provide a regulatory framework that results in the planting and maintenance of minimally managed turf areas. Consistent with this goal, and based on the findings provided in § 119-1, the Town provides this bylaw to achieve the following purposes.

- A. To ensure application of fertilizer shall be performed in a manner consistent with best management practices (BMPs), which from time to time may undergo changes in response to scientific research.

- B. To provide a legal mechanism for enforcement against the inappropriate and/or improper use of fertilizer.
- C. To incorporate, by reference, the University of Massachusetts Extension's Turf Management BMPs as the primary standard for the content and application practices related to turf fertilizer.
- D. To provide a regulatory tool that will help Brewster to achieve compliance with the total daily maximum loads (TMDL) for the Town's water resources prescribed by the Commonwealth of Massachusetts.
- E. To provide standards that will allow reasonable use of fertilizers for the enhancement and maintenance of turf quality.
- F. To conserve valuable waterways and other resources that increase property values, protect the unique environment vital to our economy, and reduce the financial burden on taxpayers and property owners by regulating the outdoor application of nitrogen on turf.
- G. To help achieve the goals of the Brewster Water Protection DCPC, the Cape-Wide Fertilizer Management DCPC, and the Local Comprehensive Plan.

§ 119-3. Authority.

This bylaw is adopted by the Town of Brewster as implementing regulations pursuant to and as authorized by the Fertilizer Management District of Critical Planning Concern designation, Barnstable County Ordinance 13-07, and by Section 9 of Chapter 262 of the Acts of 2012.

§ 119-4. Applicability.

- A. This bylaw shall apply to and regulate any and all applications of nitrogen through fertilizer on managed turf areas within the Town of Brewster with the exception of public and private golf courses.
- B. Applications of fertilizer for agriculture and horticulture uses are exempt from the provision of this bylaw as they are regulated by the MDAR fertilizer regulations.
- C. Applications of fertilizer to vegetated areas that do not include managed turf areas are not subject to the provisions of this bylaw as they are regulated by the MDAR fertilizer regulations.

§ 119-5. Definitions.

For the purposes of this chapter, the following terms are defined as provided below:

AGRICULTURE/AGRICULTURAL USE — Includes farming in all its branches, generally as the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, floricultural, viticultural or horticultural commodities, and shellfishing, including preparations and delivery to storage or to market or to carriers for transportation to market.

BEST MANAGEMENT PRACTICES (BMP) — A sequence of activities designed to

limit a nonpoint pollution source. For the purposes of this bylaw, BMP means the "Best Management Practices for Soil and Nutrient Management in Turf Systems," prepared by University of Massachusetts Extension, Center for Agriculture, Turf Program. The version of this document that applies to this bylaw shall be that which was most recent at the time of the adoption of this bylaw or any subsequent versions that are adopted as an amendment to this bylaw through a majority vote at Town Meeting.

COMBINATION PRODUCTS — Sometimes known as "weed and feed," any product that, in combination with fertilizer, contains pre- or post-emergence herbicides, insecticides other pesticides or plant growth regulators.

COMPOST or ORGANIC COMPOST — The biologically stable, humus-like material derived from composting or the aerobic, thermophilic decomposition of organic matter.

ENFORCEMENT AUTHORITY — The party designated by the Select Board to oversee and enforce the provisions of this bylaw. **[Amended 11-13-2017 FYTM, Art. 13]**

FERTILIZER — A substance that enriches the soil with elements essential for plant growth, such as nitrogen, phosphorus, potassium or other substances; fertilizer does not include those nutrients that are normally excluded from fertilizer such as chemicals that are part of horticultural gypsum, dolomite, limestone, lime, Jersey greensand, grass clippings, or compost topdressing.

FERTILIZER APPLICATOR — Any person who applies fertilizer to turf and soils.

HEAVY RAIN — A rainfall greater than 0.25 inch per hour during a given twenty-four-hour period or a rainfall of greater than one inch total in the next twenty-four-hour period.

IMPERVIOUS SURFACE — Any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes concrete, asphalt, paver blocks, gravel, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.

LANDSCAPE PROFESSIONAL — A person, either as a sole proprietor or as part of a company, who, in exchange for money, goods, services, or other consideration, performs landscaping services. A landscape professional can include turf management staff at a private golf course operation or other private entity.

MANAGED TURF AREA — An area of turf that is periodically maintained through mowing, fertilizing, aerating, irrigation or other similar activities designed to maintain or enhance the health, functionality and/or aesthetic appeal of the turf.

MDAR FERTILIZER REGULATIONS — The most recent regulations of the "Plant Nutrient Application Requirements for Agricultural Land and Land Not Used for Agricultural Purposes," developed by the Massachusetts Department of Agricultural Resources (MDAR) pursuant to its authority under MGL c. 128, §§ 2(k) and 65(A), as amended by Chapter 262 of the Acts of 2012, 330 CMR 31.00.

MUNICIPAL APPLICATOR — A public employee of a town, the county, or the state or federal government (or an employee of a department of and within such public entity) who fertilizes and manages turf located on property owned or controlled by a town, the county, the state or federal government (including publicly owned golf courses and athletic fields) within the scope of their official public employment responsibilities.

NITROGEN — An element essential to plant growth. For the purposes of the bylaw, nitrogen may be available as slow-release, controlled-release, timed-release, slowly available, or water-insoluble nitrogen, which means nitrogen in a form that delays its availability for plant uptake and use after application and is not rapidly available to turf and other plants; and/or quick-release, water-soluble nitrogen which means nitrogen in a form that does not delay its availability for turf and other plant uptake and is rapidly available for turf and other plant uptake and use after application.

NUTRIENT — Any of the following 17 elements needed for growth of a plant: the three non-mineral elements: carbon, hydrogen, and oxygen; the six macronutrients: nitrogen, phosphorus, potassium, calcium, magnesium, and sulfur; and the eight micronutrients: boron, copper, iron, chloride, manganese, molybdenum, nickel and zinc.

SATURATED GROUND — Soil soaked with moisture so that it cannot absorb any more liquid.

TURF — Any non-crop land area that is covered by any grass species, excluding meadows, grasslands, flower or vegetable gardens, pasture, hay land, trees, shrubs, turf grown on turf farms or any form of agricultural production or use.

§ 119-6. Performance standards for fertilizer application.

All application of fertilizer to turf shall comply with the following standards:

- A. The application of fertilizer containing nitrogen is prohibited between November 15 and April 15 unless specifically permitted by the enforcement authority as set out below. Based on early spring or fall weather conditions, soil temperature and degree of turf emergence from dormancy, or other relevant condition, and using the guidelines of the BMP, the enforcement authority may permit earlier or later application of fertilizer containing nitrogen, in which case such extended period shall be announced by notice or publication. A working group may be established by the Select Board to assist in undertaking the duties referenced in this subsection. **[Amended 11-13-2017 FYTM, Art. 13]**
- B. Nitrogen from any fertilizer application shall not be applied to, or otherwise be deposited on, any impervious surface, including parking lot, driveway, roadway, sidewalk, frozen soil or ice. Any fertilizer applied, spilled, and/or deposited on any impervious surface, either intentionally or accidentally, must be immediately and completely removed and contained and either legally applied to turf or any other legal site or returned to an appropriate container.
- C. Fertilizer shall not be applied within 24 hours before or during a heavy rain event nor shall fertilizer be applied onto saturated ground.
- D. An application of fertilizer should be watered in with no more than 0.25 inch of irrigation or natural rain within the twenty-four-hour period following application. Where irrigation systems are used, the volume and rate of irrigation water applied shall be performed in a manner that reduces runoff to the greatest extent practicable. Where an irrigation system uses sprinkler heads or other similar spray devices, these devices shall direct irrigation water in a manner that reduces runoff to the greatest extent practicable.
- E. Unless the Town's existing laws and regulations, including its Wetland Bylaw or

Regulations,¹ contain a stricter standard or other enforcement or approval mechanism such as through the Town's Conservation Commission, which shall control, fertilizer shall not be applied closer than 100 feet to any water body, or within the Zone I of a public drinking water well (as defined in 310 CMR 22.02), unless permission is obtained through the enforcement authority set out in § 119-6A herein allowing such activity.

- F. Fertilizer that contains phosphorus shall not be used unless a soil test taken not more than three years before the proposed fertilizer application indicates that additional phosphorus is needed for growth of that turf, or unless establishing new turf or re-establishing or repairing turf after substantial damage or land disturbance, in which case the application shall be in compliance with the BMP.
- G. A single application of fertilizer that contains nitrogen shall not exceed 1.0 pound of actual nitrogen per 1,000 square feet, shall consist of at least 20% slow-release nitrogen fertilizer and the annual rate shall not exceed 2.0 pounds of actual nitrogen per 1,000 square feet. Single applications shall be done at intervals of no less than four weeks until the annual maximum is reached.
- H. The fertilizer application requirements of this subsection shall apply with the same limitations to combination products as defined by this bylaw.

§ 119-7. Noncriminal disposition; violations and penalties.

Whoever violates any provision of this regulation may be penalized by a noncriminal disposition process as provided in MGL c. 40, § 21D, and the Town's noncriminal disposition bylaw. If noncriminal disposition is elected, then any person who violates any provision of this regulation shall be subject to a penalty in the amount of \$300 per day for each day of violation, commencing 10 days following day of receipt of written notice from the enforcement authority. A warning in lieu of a fine or other enforcement action for the first offense can be issued at the discretion of the enforcement authority. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

§ 119-8. Other remedies.

The enforcement authority may enforce this bylaw or enjoin violations thereof through any lawful process, and the election of one remedy by the enforcement authority shall not preclude enforcement through any other lawful means.

§ 119-9. Education.

- A. The Town may rely on Cape Code Cooperative Extension to assist in maintaining a program of fertilizer and turf management education that is based on BMPs.
- B. The Town may rely on Cape Cod Cooperative Extension to assist with or administer an assessment to determine an applicator's proficiency of BMPs.
- C. Fertilizer education may consist of, but is not limited to, collaboration with retailers to post in-store information on Town fertilizer regulations, the BMP requirements;

1. Editor's Note: See Ch. 172, Wetlands Protection.

mailings and flyers for the general public concerning Town fertilizer regulations, the BMP requirements; and outreach to landscape professionals and municipal applicators concerning fertilizer-related laws and the BMP requirements.

§ 119-10. Severability.

Should any section, part or provision of this bylaw be deemed invalid or unconstitutional, such decision shall not affect the validity of the remaining terms of this bylaw as a whole or any part thereof, other than the section, part or provision held invalid or unconstitutional.

Florida Department of Environmental Protection

MODEL ORDINANCE FOR FLORIDA-FRIENDLY FERTILIZER USE ON URBAN LANDSCAPES

[alternate title: **MODEL ORDINANCE FOR
FLORIDA-FRIENDLY USE OF FERTILIZER ON URBAN LANDSCAPES**]
2015

[Note: Title revision for clarity. There is no defined Florida-Friendly fertilizer product, as timing, chemistry, grade, amount, site-specific conditions and application practices all affect “Florida-friendliness”.]

INTRODUCTION

This attached Model Fertilizer Use Ordinance is another tool to reduce sources of nutrients coming from urban landscapes to reduce the impact of nutrients on Florida’s surface and ground waters. Limiting the amount of fertilizer applied to the landscape will reduce the risk of nutrient enrichment of surface and ground waters, but effective nutrient management requires more comprehensive control measures. Such a comprehensive approach is needed that may include, but is not limited to, land planning and low-impact development, site plan design, landscape design, irrigation system design and maintenance, fertilizer application, landscape maintenance, and waste disposal. To assist local governments in improving their existing land development regulations, several “model” ordinances have been developed. These include:

- “Low Impact Design” ordinances which seek to reduce the impact of urbanization on our natural resources by stressing “source controls” that either minimize the generation of stormwater or minimize the pollutants that can get into stormwater. For example, promoting development designs that minimizes clearing of natural vegetation and the compaction of urban soils. A Model Springs Protection Code was developed by DCA, DEP, and other stakeholders that includes specific Land Development Regulation recommendations that promote Low Impact Design. This Model Code is available as Chapter 5 in *Protecting Florida's Springs: An Implementation Guidebook*. It is available at <http://www.dca.state.fl.us/fdcp/DCP/springs/index.cfm>.
- “Landscape Ordinances” because design, construction, and maintenance are major determinants in the amount of fertilizer and irrigation that is needed to maintain healthy urban landscapes and minimize adverse impacts on water resources. A model Landscape Ordinance entitled “Guidelines for Model Ordinance Language for Protection of Water Quality and Quantity Using Florida-Friendly Lawns and Landscapes” was developed by a group of agencies, industries, and interest groups over a two year period and published in 2003. It was fundamentally an adaptation of earlier water conservation ordinances revised to include water quality protections for compliance with Total Maximum Daily Load (TMDL) or stormwater NPDES permit requirements. The language focused on continuing education of lawn care and landscape professionals, proper planning and supervision during development and construction, and the use of best management practices, including the Florida-

Friendly Landscape Program. This model ordinance has been renamed “Florida-Friendly Landscaping™ Model Guidelines for Ordinance Language for Protection of Water Quality and Quantity,” updated in 2008 and 2010 and may be downloaded from: <http://www.dep.state.fl.us/water/nonpoint/pubs.htm>.

- Finally, the 2004 Florida Legislature directed Florida’s water management districts to work with interested parties to develop landscape irrigation and Florida-Friendly design standards for new construction (section 373.228, F.S.). Local governments are to use the standards and guidelines when developing landscape irrigation and Florida-Friendly ordinances. The Committee on Landscape Irrigation and Florida-Friendly Design Standards convened and developed the standards. They are published in a booklet called **Landscape Irrigation and Florida-Friendly Design Standards (December 2006)**. The 2009 Legislature has directed that it be revised in 2011. The current version of this document can be downloaded from: http://www.dep.state.fl.us/water/waterpolicy/land_irr.htm

**MODEL ORDINANCE FOR
FLORIDA-FRIENDLY USE OF FERTILIZER ON URBAN LANDSCAPES
(FEBRUARY 2015)**

1. FINDINGS

As a result of impairment to (MUNICIPALITY / COUNTY)'S surface waters caused by excessive nutrients, or, as a result of increasing levels of nitrogen in the surface and/or ground water within the aquifers or springs within the boundaries of (municipality/county), the governing body of (municipality / county) has determined that the use of fertilizers on lands within (municipality / county) creates a risk to contributing to adverse effects on surface and/or ground water. Accordingly, the governing board of (municipality/county) finds that management measures [Guidance: optional "additional management measures than are otherwise"] contained in the most recent edition of the "*Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008,*" may be required by this ordinance.

2. 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; specifies allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones, and exemptions. The Ordinance 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 (MUNICIPALITY / COUNTY)'s natural and constructed stormwater conveyances, rivers, creeks, canals, springs, lakes, estuaries and other water bodies. [Guidance: as appropriate] Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of (MUNICIPALITY / COUNTY) 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.

3. 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 (MUNICIPALITY / COUNTY) Administrator, or an administrative official of (MUNICIPALITY / COUNTY) government designated by the City/County Administrator 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 (MUNICIPALITY / COUNTY).

“Board or Governing Board” means the Board of City/County Commissioners of (MUNICIPALITY / COUNTY), Florida.

“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 (MUNICIPALITY / COUNTY) whose duty it is to enforce codes and ordinances enacted by (MUNICIPALITY / COUNTY).

“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.

“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).

“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 (CITY/COUNTY), issued by the National Weather Service, or if heavy rain¹ is likely.

“(MUNICIPALITY / COUNTY) 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 (MUNICIPALITY / COUNTY) Administrator.

"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. [Guidance: Some have questioned the enforceability of practical field definitions which should be considered before adoption.]

“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, 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 s. 570.02.

4. APPLICABILITY

This Ordinance shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the area of (MUNICIPALITY / COUNTY), unless such applicator 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.

[Guidance: In 403.9336, the Legislature further finds that local conditions, including variations in the types and quality of water bodies, site-specific soils and geology, and urban or rural densities and characteristics, may necessitate the implementation of additional or more stringent fertilizer

¹ World Meteorological Organization definition of heavy rain: Rainfall greater than or equal to 50 mm (2 inches) in a 24 hour period. <http://severe.worldweather.org/rain/>, and forecast keyword “likely”, http://www.wrh.noaa.gov/sew/MediaGuide/TermsOutlooks_Watches_Warnings.pdf.

management practices at the local government level. Local government may adopt additional or more stringent provisions to the model ordinance as provided in 403.9337(2). However, the local government should consider the disadvantages of confusing jurisdictional differences and should clearly demonstrate they meet the required criteria:

(2) Each county and municipal government located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to s. 403.067, shall, at a minimum, adopt the department's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. A local government may adopt additional or more stringent standards than the model ordinance if the following criteria are met:

- o (a) The local government has demonstrated, as part of a comprehensive program to address nonpoint sources of nutrient pollution which is science based, and economically and technically feasible, that additional or more stringent standards than the model ordinance are necessary in order to adequately address urban fertilizer contributions to nonpoint source nutrient loading to a water body.
- o (b) The local government documents that it has considered all relevant scientific information, including input from the department, the institute, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences, if provided, on the need for additional or more stringent provisions to address fertilizer use as a contributor to water quality degradation. All documentation must become part of the public record before adoption of the additional or more stringent criteria.]

[Guidance: Florida Statutes 125.568(3), 166.048(3), 373.185(3), 720.3075(4), and others provide that a local ordinance, deed restriction or covenant may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping on his or her land or create any requirement or limitation in conflict with any provision of part II of this chapter {373} or a water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to Chapter 373 part II.]

[Guidance: Florida Statutes 482.156 and 482.1562. Neither the Limited Commercial Landscape Maintenance Certification Program nor the Limited Certification for Urban Landscape Commercial Fertilizer Application allows landscape maintenance workers to make any kind of pesticide applications (including weed control and/or weed and feed products) to any turf areas.]

[Guidance: Florida Statutes 482.242, and 487.051 (2), F.S. Regulation of pest control businesses and applicators, and of pesticide use, is preempted to the Florida Department of Agriculture and Consumer Services (FDACS and suspected pesticide misuse should be reported to FDACS.

5. TIMING OF FERTILIZER APPLICATION

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.

[Guidance: One of the most controversial issues associated with recent fertilizer ordinances enacted by local governments is the definition of the Prohibited Application Period. Some ordinances have prohibited the application of fertilizer, even slow release formulations, during the summer rainy season, typically June 1 to September 30. The reasoning is that rain occurs frequently, saturating the soil, leading to more runoff. Saturated soils are prone to runoff or leaching with little or no additional water, and pose a higher than normal risk until soil moisture capacity is restored. Fertilizer management is largely about keeping the nitrogen and/or phosphorus in the root zone where it can be used by plants. Periods of heavy rainfall contribute to leaching, which is washing nutrients out of the root zone, and to runoff, especially in areas with compacted or bare soils and significant slope. Vegetative ground cover is important to minimizing

erosion, filtering particulates, and incorporating or promoting the biological transformation of potential pollutants. Many variables influence the relationship between fertilizer rates, vegetation health and nutrient enrichment of surface and ground waters. Accordingly, sound science and carefully reasoned judgment are recommended in determining how to define the Prohibited Application Period.]

6. FERTILIZER FREE ZONES

Fertilizer shall not be applied within ten (10) 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, unless a deflector shield, drop spreader, or liquid applicator with a visible and sharply defined edge, is used, in which case a minimum of 3 feet shall be maintained. If more stringent (MUNICIPALITY / COUNTY) Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. 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. [Guidance: This zone is a setback to prevent the applicator from inadvertently depositing fertilizer in the water while performing the application. It is not designed as a treatment buffer, and is to be adhered to as a fundamental environmental safety aspect of the applicator's job, regardless of the owner's desires. Some communities have existing residential setbacks of as little as 10 feet from water or seawall. Low maintenance zones, vegetated filter strips, and riparian buffers are strongly encouraged, but such activities are rightly a part of land use planning. Local governments are encouraged to implement these low-impact development practices where feasible.]

7. 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. If more stringent (MUNICIPALITY / COUNTY) Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. 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. [Guidance: Care must be taken to ensure erosion of the surface soil does not occur. Excessive erosion may be a greater pollution hazard than occasional proper applications of fertilizer.]

8. FERTILIZER CONTENT AND APPLICATION RATES

[Guidance: RULE 5E-1.003, F.A.C contains the following provisions for golf courses, parks and athletic fields. As such, no additional specific requirements are included for these types of urban turf. The appropriate Best Management Practices listed below must be followed on such sites for nutrient management activities:

These include not to exceed rates recommended in the document titled SL191 "*Recommendations for N, P, K and Mg for Golf Course and Athletic Field Fertilization Based on Mehlich I Extractant*", and to comply with the recommendations in "*BMP's for the Enhancement of Environmental Quality on Florida Golf Courses*", published by the Florida Department of Environmental Protection, dated 2012.

Note that this does not exempt applicators at these sites from the required basic Green Industry BMP training.

- (a) Fertilizers applied to turf within (MUNICIPALITY / COUNTY) shall be applied in accordance with requirements and directions provided by Rule 5E-1.003, Florida Administrative Code.
- (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 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. [Guidance: Soil and tissue tests for phosphorus are normally done by UF/IFAS or another accredited laboratory. IFAS recommendations are available from the County Extension service or http://solutionsforyourlife.ufl.edu/lawn_and_garden/]

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 all impervious surfaces, fertilizer-free zones and water bodies, including wetlands.
- 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.
- d. 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. In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

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 stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable.

11. 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.

[Guidance: Limited waivers for special cases such as botanical gardens, etc. should not be considered as less stringent for the purposes of the model as a minimum requirement.]

12. TRAINING

(a) All commercial and institutional applicators of fertilizer within the (un)incorporated area of (MUNICIPALITY / COUNTY), 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 “*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.

[Guidance: A local government may establish a certification/education program for the institutional or private application of fertilizers indicating the completion of an education program for special local requirements not covered in the above programs. It is up to the local government to set a continuing education or renewal provision for these applicators. Persons with statewide FDACS commercial fertilizer certification cannot be required to submit to additional local testing after obtaining the FDACS certificate.]

13. LICENSING OF COMMERCIAL APPLICATORS

All commercial applicators of fertilizer within the (un)incorporated area of (MUNICIPALITY / COUNTY), 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 5E-14.117(18) F.A.C.

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 prior to the business owner obtaining a Local Business Tax Certificate. 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 (Municipality/ County) Tax Collector’s Office. [Guidance: This is an example of an administrative enforcement mechanism. It may be modified to use other local mechanisms as appropriate].

14. ENFORCEMENT

[Guidance: Local governments should consider making penalties consistent with their other fines and penalties.]

Funds generated by penalties imposed under this section shall be used by (Municipality/ County) for the administration and enforcement of section 403.9337, Florida Statutes, and the corresponding sections of this ordinance, and to further water conservation and nonpoint pollution prevention activities.

TOWN OF HARWICH FERTILIZER AND NUTRIENT CONTROL REGULATION

POSTED ON: APRIL 1, 2021 - 10:32AM



TOWN OF HARWICH FERTILIZER AND NUTRIENT CONTROL REGULATION

FERTILIZER AND NUTRIENT CONTROL

I. Findings.

The Town of Harwich herein makes the following findings:

The Massachusetts Estuaries Project (MEP) has found that fertilizers account for an important portion of controllable nitrogen load in Cape Cod watersheds. Excessive nitrogen from fertilizers and other watershed sources leads to eutrophication of marine embayments. Other studies have demonstrated that phosphorus from fertilizers can lead to eutrophication in freshwater ponds.

Public health risks from excessive loading of nutrients to water resources may include direct detrimental effects on drinking water sources by increased concentrations of nitrates that can violate safe drinking water standards.

The Town has significant amounts of glacially deposited coarse, sandy soils that are subject to rapid water infiltration, percolation, and leaching of nutrients.

Scientific literature demonstrates that a significant potential source of nutrient loading to water resources is from inappropriate and/or improper use of turf fertilizer.

II. Purposes.

It is the overarching goal of the Town of Harwich to provide a regulatory framework that results in reducing the nutrient loading from the application of fertilizers. Consistent with this goal, and based on the findings provided in Section I: Findings, the Board of Health provides this regulation to achieve the following purposes.

To ensure application of fertilizer shall be performed in a manner consistent with best management practices (BMPs), which from time to time may undergo changes in response to scientific research.

To provide a legal mechanism for enforcement against the inappropriate and/or improper use of fertilizer.

To incorporate, by reference, the University of Massachusetts Extension's Turf Management BMPs as the primary standard for the content and application practices related to turf fertilizer.

To provide a regulatory tool that will help Harwich to achieve compliance with the total daily maximum loads (TMDL) for the Town's water resources prescribed by the Commonwealth of Massachusetts.

To provide the standards that will allow reasonable use of fertilizers for the enhancement and maintenance of turf quality, found in Section VI of this regulation.

To help achieve the goals of the Harwich Wastewater Management Plan, the Cape-Wide Fertilizer Management DCPC, and the Local Comprehensive Plan.

III. Authority.

This regulation is adopted by the Town of Harwich Board of Health as implementing regulations pursuant to and as authorized by the Fertilizer Management District of Critical Planning Concern designation, Barnstable County Ordinance 13-07, and by Section 9 of Chapter 262 of the Acts of 2012.

IV. Applicability.

This Regulation allows for a reduction of nitrogen and phosphorus going into the Town's waters and wetlands by means of an organized system of education, standardization and regulation of practice. This Regulation is not intended to eliminate the use of fertilizer but only to eliminate excess amounts of phosphorus and nitrogen from reaching our surface water and groundwater. This Regulation adopts the Best Management Practices (BMP) as the normal operating procedures for turf management throughout the Town.

This regulation shall apply to and regulate any and all applications of nitrogen and phosphorus through fertilizer within the Town of Harwich.

Applications of fertilizer for agriculture and horticulture uses are exempt from the provision of this regulation as they are regulated by the MDAR Fertilizer Regulations.

V. Definitions.

For the purposes of this regulation, the following terms are defined as provided below:

AGRICULTURE/AGRICULTURAL USE — Includes farming in all its branches, generally as the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, floricultural, viticultural or horticultural commodities, and shellfishing, including preparations and delivery to storage or to market or to carriers for transportation to market.

BEST MANAGEMENT PRACTICES (BMP) — A sequence of activities designed to limit a nonpoint pollution source. For the purposes of this regulation, BMP means the "Best Management Practices for Soil and Nutrient Management in Turf Systems," prepared by University of Massachusetts Extension, Center for Agriculture, Turf Program. The version of this document that applies to this regulation shall be that which was most recent at the time of the adoption of this regulation or any subsequent versions that are adopted as an amendment to this regulation through a majority vote at Town Meeting.

ENFORCEMENT AUTHORITY — The party designated by the Board of Health to oversee and enforce the provisions of this regulation, including but not limited to designated agents of the Board of Health and Conservation Commission, Natural Resource Officer, Harbormaster, Police Officer.

FERTILIZER — A substance that enriches the soil with elements essential for plant growth, such as nitrogen, phosphorus, potassium or other substances; fertilizer does not include those nutrients that are normally excluded from fertilizer such as chemicals that are part of horticultural gypsum, dolomite, limestone, lime, Jersey greensand, grass clippings, or compost topdressing.

HEAVY RAIN — A rainfall greater than 0.25 inch per hour during a given twenty-four-hour period or a rainfall of greater than one inch total in the next twenty-four-hour period.

IMPERVIOUS SURFACE — Any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes concrete, asphalt, paver blocks, gravel, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.

MDAR FERTILIZER REGULATIONS — The most recent regulations of the "Plant Nutrient Application Requirements for Agricultural Land and Land Not Used for Agricultural Purposes," developed by the Massachusetts Department of Agricultural Resources (MDAR) pursuant to its authority under MGL c. 128, §§ 2(k) and 65(A), as amended by Chapter 262 of the Acts of 2012, 330 CMR 31.00.

NITROGEN — An element essential to plant growth. For the purposes of the regulation, nitrogen may be available as slow-release, controlled-release, timed-release, slowly available, or water-insoluble nitrogen, which means nitrogen in a form that delays its availability for plant uptake and use after application and is not rapidly available to turf and other plants; and/or quick-release, water-soluble nitrogen which means nitrogen in a form that does not delay its availability for turf and other plant uptake and is rapidly available for turf and other plant uptake and use after application.

PHOSPHORUS — Mineral and organic substances that contain phosphorous and that are used for improving the nutrition of plants.

TURF — Any non-crop land area that is covered by any grass species, excluding meadows, grasslands, flower or vegetable gardens, pasture, hay land, trees, shrubs, turf grown on turf farms or any form of agricultural production or use.

ZONE I — the 400 foot radius around a public water supply or wellfield as stated in 310 CMR 22.02.

VI. Performance standards for fertilizer application.

All application of fertilizer to turf shall comply with the following standards:

A. The application of fertilizer containing nitrogen is prohibited between November 15 and April 15 unless specifically permitted by the enforcement authority as set out below. Based on early spring or fall weather conditions, soil temperature and degree of turf emergence from dormancy, or other relevant condition, and using the guidelines of the BMP, the enforcement authority may permit earlier or later application of fertilizer containing nitrogen, in which case such extended period shall be announced by notice or publication.

Nitrogen and phosphorus from any fertilizer application shall not be applied to, or otherwise be deposited on, any impervious surface, including parking lot, driveway, roadway, sidewalk, frozen soil or ice. Any fertilizer applied, spilled, and/or deposited on any impervious surface, either intentionally or accidentally, must be immediately and completely removed and contained and either legally applied to turf or any other legal site or returned to an appropriate container.

Fertilizer shall not be applied within 24 hours before or during a heavy rain event nor shall fertilizer be applied onto saturated ground.

An application of fertilizer should be watered in with no more than 0.25 inch of irrigation or natural rain within the twenty-four-hour period following application. Where irrigation systems are used, the volume and rate of irrigation water applied shall be performed in a manner that reduces runoff to the greatest extent practicable. Where an irrigation system uses sprinkler heads or other similar spray devices, these devices shall direct irrigation water in a manner that reduces runoff to the greatest extent practicable.

Unless the Town's existing laws and regulations, including its Wetland Bylaw or Regulations, contain a stricter standard or other enforcement or approval mechanism such as through the Town's Conservation Commission, which shall control, fertilizer shall not be applied closer than 100 feet to any water body, or within the Zone I of a public drinking water well (as defined in 310 CMR 22.02), unless permission is obtained through the enforcement authority set out in VI herein allowing such activity.

Fertilizer that contains phosphorus shall not be used unless a soil test taken not more than three years before the proposed fertilizer application indicates that additional phosphorus is needed for growth of that turf, or unless establishing new turf or reestablishing or repairing turf after substantial damage or land disturbance, in which case the application shall be in compliance with the BMP.

A single application of fertilizer that contains nitrogen shall not exceed 1.0 pound of actual nitrogen per 1,000 square feet, shall consist of at least 20% slow-release nitrogen fertilizer and the annual rate shall not exceed 3.0 pounds of actual nitrogen per 1,000 square feet. Single applications shall be done at intervals of no less than four weeks until the annual maximum is reached.

VII. Education.

The Town may rely on the Cape Cod cooperative Extension to assist in maintaining a program of fertilizer and turf management education that is based on BMPs.

Fertilizer education may consist of, but is not limited to, collaboration with retailers to post in-store information on town fertilizer regulations, the BMP requirements; mailings and flyers for the general public concerning town fertilizer regulations; and outreach to Landscape Professional's fertilizer-related laws and the BMP requirements.

VIII. Noncriminal disposition; violations and penalties.

Whoever violates any provision of this regulation may be penalized by a noncriminal disposition process as provided in MGL c. 40, § 21 D, and the Town's noncriminal disposition bylaw. If noncriminal disposition is elected, then any person who violates any provision of this regulation shall be subject to a penalty in the amount of \$300 per day for each day of violation, commencing 10 days following day of receipt of written notice from the enforcement authority. A warning in lieu of a fine or other enforcement action for the first offense can be issued at the discretion of the enforcement authority. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

Severability.

Should any section, part or provision of this regulation be deemed invalid or unconstitutional, such decision shall not affect the validity of the remaining terms of this

regulation as a whole or any part thereof, other than the section, part of provision held invalid or unconstitutional.

Amendments.

Amendments to this Regulation may be adopted by Board of Health after a public hearing thereon, notice of the time, place and subject matter of which, sufficient for identification, shall be given by publishing in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than fourteen days prior to the date set for such hearing. Amendments shall also be subject to the procedures set out in Sections 10 and 11 of the Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended. Specifically, amendments must also be consistent with the Fertilizer Management District of Critical Planning Concern designation, Barnstable County Ordinance 13-07 and the Guidelines for Implementing Regulations set out therein, including the requirement for consistency with the BMP.

Effective Date.

The effective date of this Regulation shall be the publication date pursuant to G.L. c. 111, §31, provided further that the Regulation has been certified by the Cape Cod Commission as consistent with the Fertilizer Management District of Critical Planning Concern designation, Barnstable County Ordinance 13-07, and has been approved by the Attorney General pursuant to MGL Ch. 40, Sec. 32, if and as required.

Pesticide/Herbicide Ordinance – City of Burlington, VT

Sec. 17-9. Notification and posting of turf grass and landscape pesticide application.

(a) *Policy.* It is the policy of the city to take note of and respond to continuing concerns about health effects from toxic chemicals. Toxic chemicals classified as pesticides are designed to kill a variety of plants and animals; relatively little is known about their long-term effects upon humans and the environment. In light of this uncertainty, the city considers all pesticides detrimental to human health unless proven otherwise. In order to prevent unnecessary exposure to such chemicals, the city council, upon recommendation from the board of health, has enacted the following provisions.

(b) *Definitions.* As used in this section, the following terms are defined below:

Application of a pesticide: The placement for effect of any pesticide at or on the site where pest control or other response is desired.

Commercial applicator: Any person, certified or not, who uses or applies pesticides in the course of employment.

Landscape plants: Any ornamental and flowering shrubs and plants, shade trees, or plants designed and/or considered to add to the aesthetic environment.

Pesticide: Any substance produced or distributed for preventing, destroying or repelling any insects, weeds, rodents, fungi, nematodes, mites, spiders or other forms of plant or animal life or viruses (i.e., any herbicide, insecticide, fungicide, acaricide, nematocide or rodenticide) except viruses on or in living humans or other animals. This includes any fertilizer mixture which contains pesticides within it.

Resident: Any person who owns or manages the private property on which pesticides are applied.

Tributaries of Lake Champlain: Those streams and/or drainage systems that flow during the spring and early summer including the following:

- (1) Winooski River;
- (2) Centennial (Muddy Brook): being three (3) branches running north and east from the area of Bilodeau Court and the border with South Burlington, joining below UVM's retention pond, and then under Grove Street to the Winooski River;
- (3) Englesby Ravine: beginning east of UVM's Redstone Campus and running south and west through the "Hill Section," and then under Shelburne and Pine Streets to Lake Champlain;
- (4) The stream running westerly from North Avenue, bordered on the south by Little Eagle Bay and on the north by Lakewood Estates, and into Lake Champlain;
- (5) Appletree Point Stream: being two (2) branches running south from Appletree Point Lane into Lake Champlain;
- (6) North Beach Stream: beginning south of Institute Road running south to Lake Champlain;
- (7) Intervale: being the area bounded by the "Northern Connector," the Winooski River and the railroad right-of-way;
- (8) Reeves Brook: beginning at Trinity College running north to Reeves Pond (at Riverwatch) then under Riverside Ave. to the Winooski River.

Turf grass: A covering of mowed vegetation growing together with an upper soil stratum of intermingled roots and stems.

(c) *Commercial applicators contract requirements.* No outdoor application of pesticides to turf grass or landscape plants shall be made on single-or multifamily

residential properties, nor on public or private nonresidential properties, including, but not limited to, athletic fields, schoolyards, university greens, corporate lawns, parks and cemeteries, without the following provisions having been met:

(1) Prior to initial application by a commercial applicator, the applicator or her/his employer must enter into a written contract with the customer specifying the approximate date(s) of application(s), the number of applications and the posting required by this section.

(2) With the written contract, the applicator or her/his employer must provide the customer with the following information, in writing:

- a. A list of the pesticide(s) to be applied, including brand and chemical names;
- b. Label warnings from all the listed pesticides;
- c. Name, address and phone number of the company or non-commercial facility providing service;
- d. EPA registration number(s) and if applicable applicator(s) certification number(s);
- e. Current fact sheets approved by the Burlington Board of Health that include relevant information from the Environmental Protection Agency (EPA) and/or the Government Accounting Office (GAO) and/or Material Safety Data Sheet(s) (MSDS) that identify potential health and environmental hazards.

(d) *Posting and notification:*

(1) Before beginning each application, the applicator(s) shall post signs on the treated property at intervals no greater than one hundred (100) feet along all public and private rights-of-way. All properties, regardless of size, must post a minimum of two (2) signs at conspicuous points of access to the property. The specifications of the sign shall be as follows:

- a. Shall be at least four (4) × five (5) inches, of sturdy, weather-resistant material;
- b. Shall be with contrasting colors using the indicated point type size;
- c. Shall display the following warning on the front of the sign:

CAUTION
PESTICIDE APPLICATION
CAUTION
KEEP OFF
WHILE POSTED
CUSTOMER:
PLEASE REMOVE
AFTER 24 HOURS.

Both the fluorescent green symbol commonly known as "Mr. Yuk" and the international slash in a circle superimposed upon representational figures of an adult, child and dog as well as instructions that signs must remain posted for at least twenty-four (24) hours;

- d. Shall be posted at least twelve (12) inches above the ground;
- e. Shall contain the date and time of application on the back of the sign;
- f. The back of the sign shall contain the emergency numbers for poison control and 911, the city health officer's number for complaints, the brand or chemical name and concentration, and the name of the applicator's company.

(2) All commercial outdoor pesticide applicators and all private outdoor applicators applying pesticides on an area greater than two hundred (200) square feet per property within the span of one year must give occupants of treated property and occupants of any

adjacent property notice of any pesticide application(s). The notice may be distributed up to ten (10) days but not less than twenty-four (24) hours in advance of the application. The notice shall indicate when the pesticide shall be applied, which shall be within a five-business-day timeframe set forth in the notice. This written notice, approved by the board of health, must include the same information described in subsection (c)(2). The two hundred (200) square foot exemption applies only to ground applications; any application to trees and shrubs requires both prenotification and posting as described. Any property with more than twenty (20) units, or any property required to notify residents of more than twenty (20) adjacent properties, has the option of proposing a notification plan, in lieu of individual notification, to the board of health for approval.

(3) Fenced, private nonresidential properties shall post written notices as described below in visitor reception areas and at all employee entrances.

a. The written notice shall contain information as specified under subsection (c)(2) as well as the specific location where each pesticide is to be applied.

b. The notices shall be posted at least twenty-four (24) hours prior to application and shall remain in place for at least twenty-four (24) hours after application.

c. Upon request, copies of any or all material listed under subsection (c)(2) shall be made available to any visitor or employee.

d. All adjacent property owners must be notified by the grounds superintendent or equivalent at least twenty-four (24) hours prior to pesticide application. Copies of all materials listed under subsection (c)(2) must be provided to all adjacent property owners.

(4) Pesticide applications made on golf course turf grass or landscape plants shall require posting of a written notice on the clubhouse bulletin board, in all locker rooms, and on the first and tenth tee. This notice shall be posted by the course superintendent or his/her designee.

a. The written notice shall contain information specified in subsection (c)(2) and shall include the specific location and number of each fairway, green, tee, driving area, etc., where pesticide is to be applied.

b. The notice shall be posted at least twenty-four (24) hours prior to application and must remain posted at all designated places for at least twenty-four (24) hours after application. Copies of the posted material shall be made available to any individual using or employed by the facility.

c. The golf course superintendent shall notify all adjacent property owners of her/his intent to apply pesticides at least twenty-four (24) hours prior to application. The superintendent shall provide all materials listed in subsection (c)(2) to all adjacent property owners.

(5) This regulation requires that those responsible for rights-of-way and utility applications of pesticides post described signs or submit an alternative posting plan to the board of health for its approval.

(6) No pesticides may be applied outdoors within five hundred (500) feet of Lake Champlain or any of its tributaries without specific approval from the board of health. Criteria for this approval are defined by the board of health's statutory authority to protect public health.

(7) No licensed child care center, registered day care home, preschool, primary or secondary school (K--12) may use any turf grass or landscape pesticide on its grounds without specific approval from the board of health.

(e) *Records.* Each applicator shall keep written records of the parties who have been notified pursuant to subsections (c) and (d) of this section. Such records shall be made available to the board of health upon request by the board or by the office of the city attorney.

(f) *Sign requirements and enforcement:*

(1) The department of public works (DPW) shall have signs available to applicators that meet the notification and posting requirements of this section. DPW may charge a fee for the issuance of the signs to cover its administrative costs. No fee shall be assessed against any city department.

(2) The applicator shall be the individual responsible for correctly posting the signs in accordance with the requirements of subsection (d) of this section.

(3) a. First offense. A first offense of any provision of this section during any twenty-four-month period shall be a civil ordinance violation punishable by a penalty of a minimum fine of two hundred dollars (\$200.00) to a maximum fine of five hundred dollars (\$500.00). The waiver penalty for a first offense shall be a fine of two hundred dollars (\$200.00).

b. Second offenses. A second offense during a twenty-four (24) month period shall be a civil offense and shall be punishable by a fine of five hundred dollars (\$500.00). The waiver penalty shall be a fine of three hundred dollars (\$300.00).

c. The third and any subsequent offense within a twenty-four (24) month period shall be a criminal offense punishable by a fine of five hundred dollars (\$500.00).

d. Any law enforcement or code enforcement officer may issue a municipal complaint ticket or criminal citation for offenses of this section.

(Ord. of 6-22-92; Ord. of 2-20-96; Ord. of 2-19-08(2), eff. 4-9-08)

http://library4.municode.com/default-test/home.htm?infobase=13987&doc_action=whatsnew

Order 110-17/18

Motion to postpone to December 18, 2017: 8-0 on 11/20/2017

Motion to postpone to January 3, 2018: 9-0 on 12/18/2017

Motion to amend Section 34-16 to make July 1, 2018 the start date for city-owned property except for athletic fields and golf courses: 8-1 (Strimling) on 1/3/2018

Motion to amend to add invasive plant applications as an exemption in Section 34-5(d): 8-1 (Batson) on 1/3/2018

Passage as amended: 9-0 on 1/3/2018

Effective 2/2/2018

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE
NEW CHAPTER 34 PESTICIDE USE**

WHEREAS, the City of Portland wishes to protect the quality of Casco Bay and other waterways that support the economic vitality of local fisheries and the working waterfront; and

WHEREAS, the City of Portland recognizes that healthy soils serve as the foundation for vibrant ecosystems and pest-resistant plant life; and

WHEREAS, the City of Portland wishes to promote land care practices that promote the development of healthy soils to minimize the need to apply pesticides to control unwanted pests; and

WHEREAS, the City of Portland also recognizes that there may still be a need to manage pests to protect public health and safety, wildlife, our environment and City assets; and

WHEREAS, many synthetic pesticides are harmful to humans, pets, wildlife, including threatened and endangered species, soil microbiology, plants, and natural ecosystems; and

WHEREAS, many citizens desire to be protected from exposure to pesticides in the air, water or soil that may result from chemical drift and contaminated runoff; and

WHEREAS, the use of pesticides has been known or suspected to cause serious health problems is not necessary to grow and maintain green lawns and ornamental landscapes,

given the availability of viable alternative practices and products; and

WHEREAS, a growing number of communities and municipalities including the City of Portland are embracing a precautionary approach to the use of pesticides in order to adequately protect people and the environment from their harmful effects; and

WHEREAS, the State of Maine allows municipalities, through their home rule authority, to enact ordinances dealing with municipal affairs pursuant to 30-A M.R.S. §3001;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND *That the Portland City Code is hereby amended by adding a Chapter, to be numbered Chapter 34, Sections 34-1 to 34-16, which said Sections read as follows:*

Chapter 34

PESTICIDE USE

Sec. 34-1. Title.

This chapter shall be known as the City of Portland Pesticide Use Ordinance (hereinafter, the "Ordinance").

Sec. 34-2. Purpose.

The purpose of this ordinance is to safeguard the health, safety and welfare of the residents of the City and to conserve and protect the City's waterways and natural resources by curtailing the use of pesticides for turf, landscape and outdoor pest management.

Sec. 34-3. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the following meaning:

Aggrieved party means an individual or entity that applies for but is denied a waiver from provisions of this ordinance as described in Section 34-6.

Broadcast application means the spreading of pesticides over an entire area.

Commercial Agriculture means the production of crops for sale, including crops intended for widespread distribution to wholesalers or retail outlets and any non-food crops.

Emergency means a serious, unexpected, and often dangerous situation requiring immediate action.

EPA means the United States Environmental Protection Agency.

FIFRA means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq.

Golf course means an area of land laid out for playing the game of golf with a series of 9, 18 or more holes. Mini-golf and disc golf courses are not considered golf courses.

High Use Athletic Facilities means the following playing fields located in the following parks as listed in Chapter 18, section 18-11: Fox Field, Quinn Field and Deering Oaks Baseball Field at Deering Oaks Park; Back Cove Park; and Payson A Field in Payson Park. It shall also include Presumpscot Field at Deering High School.

Repellant means a substance that deters insects or other pests from approaching or settling.

Invasive Species means a plant or insect that is not native to a particular ecosystem, and whose introduction does or is likely to cause economic or environmental harm or harm to human health. Invasive species include those plants listed under the Maine Department of Agriculture, Conservation and Forestry's Natural Areas Program as currently invasive, potentially or probably invasive, and highly likely but not currently invasive, as well as those insects listed by the Maine Forest Service as threats to Maine's forests and trees.

Natural, organic or "non-synthetic" means a substance that is derived from mineral, plant, or animal matter and does not undergo a "synthetic" process as defined in the Organic Foods Production Act, 7 U.S.C. § 6502(21), as the same may be amended from time to time.

Organic pest management means the act of managing or controlling pests through the use of mechanical, cultural, or, biological processes, or through the use of natural, organic, or non-synthetic substances.

Person means any individual natural person, partnership, joint venture, society, association, company, club, trustee, trust or corporation; or any officer, agent, employee, or personal representative of any thereof, in any capacity acting either for her or himself or for any other person under either personal appointment or pursuant to law.

Pest shall have the same meaning as the term set forth in 40 C.F.R. § 152.5, as the same may be amended from time to time.

Pest Management means the act of managing or controlling pests through the use of chemical, mechanical, cultural, biological, or genetic measures.

Pesticide means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. It does not include multicellular biological controls such as mites, nematodes, parasitic wasps, snails or other biological agents not regulated as pesticides by the EPA. Herbicides, fungicides, insecticides and rodenticides are considered pesticides.

Pests of significant public health importance means the pests listed by the EPA, in conjunction with the U.S. Department of Health and Human Services and the U.S. Department of Agriculture, as pests of significant public health importance.

Preemptive application means the application of pesticides as a measure against something possible, anticipated or feared, i.e., as a preventive or deterrent measure.

Public utility means any transmission and distribution utility, telephone utility, water utility, gas utility, or natural gas pipeline utility that is subject to the jurisdiction of the Maine Public Utilities Commission.

Restricted Entry Interval, also known as the re-entry interval or re-entry time, means the minimum amount of time that must pass after a pesticide is applied to an area before people or pets can safely go into that area. The labels on pesticides provide information about an individual pesticide's REI.

Synthetic means a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring sources, except that such term shall not apply to substances created by naturally occurring biological processes.

Water body means any great pond, river, stream or tidal area as those terms are defined in Chapter 14 of the Portland Code of Ordinances.

Wetland means a coastal or shoreland freshwater wetland as those terms are defined in the City's Zoning Ordinance, Chapter 14 of the Code of Ordinances.

Sec. 34-4. Applicability

The following provisions shall apply to all outdoor pest management activities conducted within the boundaries of the City of Portland (hereinafter, the "City"), on both public and private land.

Sec. 34-5 Permitted, prohibited, and exempt pesticides

Subject to the applicability dates set forth in Sec. 34-14 herein, the following provisions shall apply to all outdoor pest management activities in the City.

(a) Permitted Pest Management Activities and/or Materials, except as provided in (b) (3) below:

1. Organic Pest Management, except as provided in (b)2 below;
2. Use or application of Synthetic substances specifically listed as "allowed" on the U.S. Department of Agriculture's National List of Allowed and Prohibited Substances (the "National List"); and/or
3. Use or application of Pesticides determined to be "minimum risk pesticides" pursuant to the FIFRA and listed in 40 C.F.R. § 152.25(f)(1) or (2), as may be amended from time to time.

(b) Prohibited Pest Management Activities and/or Materials:

1. Use or application of Synthetic substances other than those described in (a)(2) above;
2. Use or application of Non-synthetic substances specifically listed as "prohibited" on the National List; and/or
3. The use or application of pesticides (whether natural, organic, "non-synthetic," synthetic or otherwise) within seventy five feet of a water body or wetland.

(c) Exempt Pest Management Activities and/or Materials. The following are exempt from the provisions of this ordinance (and therefore are allowed):

1. Use or application of Pest Management Activities and/or Materials in connection with Commercial agriculture;
2. Pet supplies, such as shampoos and tick and flea treatments, when used in the manner specified by the manufacturer;
3. Disinfectants, germicides, bactericides, miticides and virucides, when used in the manner specified by the manufacturer;
4. Insect repellents when used in the manner specified by the manufacturer;
5. Rat and rodent control supplies when used in the manner specified by the manufacturer;
6. Swimming pool supplies when used in the manner specified by the manufacturer; and/or
7. General use paints, stains, and wood preservatives, and sealants when used in the manner recommended by the manufacturer.

(d) Exempt Applications. The following applications are exempt from the provisions of this ordinance (and therefore are allowed):

1. Specific health and safety applications. Prohibited pesticides may be used to control plants that are poisonous to the touch, such as poison ivy, pests of significant health importance such as ticks and mosquitoes, and animals or insects that may cause damage to a structure, such as carpenter ants or termites;

2. Golf course applications. Prohibited pesticides may be used on golf courses provided that the course is designated through Audubon International as a Certified Audubon Cooperative Sanctuary;
3. Hadlock Field applications;
4. Treatments for Heritage Elms;
5. Applications on fields at High Use Athletic facilities (until January, 2021, unless this date is extended by the City Council);
6. Prohibited pesticides may be used to control the Emerald Ash Borer, Asian Longhorned Beetle, Hemlock Woolly Adelgid, Browntail Moth and other insects identified as invasive by the Maine Forest Service;
7. Right-of-way applications. Prohibited pesticides may be used by a public utility that maintains a right-of-way through the City; and/or
8. Invasive plant applications on city property. Applications to control plants categorized as currently considered invasive in Maine by the Maine Department of Agriculture, Conservation, and Forestry.

For any exempt applications by the City, disclosure shall be made in the annual report described in Section 34-9 of this ordinance.

(e) Exempt Uses. The following uses are exempt from the provisions of this ordinance (and therefore are allowed):

1. Any use of pesticides mandated by state or federal law or required by an order or decision from a court or state or federal board or agency.

Sec. 34-6. Pest Management Advisory Committee.

(a) The Pest Management Advisory Committee ("PMAC") is hereby established. The PMAC shall consist of seven (7) members as follows:

1. One (1) member of city staff, designated by the City Manager, who shall be accredited by the Northeast Organic Farming Association in Organic Land Care or shall receive such accreditation within a reasonable time frame;

2. One (1) practicing agronomist appointed by the City Council;
3. Two (2) Maine Board of Pesticides Control-licensed landscape professionals, at least one (1) of whom has experience in organic land care management and is accredited by the Northeast Organic Farming Association in Organic Land Care, each appointed by the City Council; and
4. Three resident or taxpayer representatives appointed by the City Council at least one of whom has experience in organic land care management.

(b) The terms of office of the six (6) PMAC members appointed by the City Council shall be three-year terms, except that the initial appointments after the establishment of the PMAC shall be such that the terms of office of no more than two (2) members shall expire in any single year. The term of office for the City employee PMAC member shall be for as long as the employee holds said employment position.

(c) The PMAC shall advise the City Council and the City's Sustainability Coordinator with respect to the following:

1. Advising the Sustainability and Transportation Committee and the City's Sustainability Coordinator of any problems encountered or amendments that may be required to achieve the full and successful implementation of this ordinance;
2. Reviewing and acting upon waiver applications when applicable;
3. Developing and implementing outreach and education as specified in Sec. 34-11 of this ordinance (in coordination with the Sustainability Coordinator);
4. Seeking the participation, advice and counsel of experts in the fields of organic turf and landscape management, maintenance of trees and shrubs, and organic pest protocol;
5. Encouraging broad community participation, from parents, schools, advocates, and local arboriculture and landscaping businesses, in the activities of the PMAC;
6. Reviewing annual data and issuing a summary report annually by March 31 to the Sustainability and Transportation Committee, or whatever committee is

assigned an oversight role by the City Council, which includes, among other things, a summary of its educational outreach; recommendations on any necessary amendments to this chapter; the number of waivers granted in the past year; and comprehensive data taken from the written documents provided by Applicators and/or Licensed Applicators about the use of pesticides within the City of Portland including, but not limited to:

- a. The amount of pesticides used on privately or publicly owned land in the City of Portland;
- b. The reasoning for such use of pesticides; and
- c. The specific pesticides that were used.

7. Any additional responsibilities as may be assigned and deemed necessary by the City Council.

(d) PMAC Officers, meetings and records.

1. The members shall annually elect a chair and a secretary from their membership;
2. All meetings of the PMAC shall be noticed and open to the public in accordance with the City's notice policies and Maine's Freedom of Access Act;
3. A quorum shall consist of four members;
4. The PMAC shall meet at least five (5) times annually;
5. Minutes shall be kept of all meetings and posted on the City web page; and
6. An annual report of the PMAC's activities shall be submitted to the Sustainability and Transportation Committee by March 31 of each year.

(e) Waiver Subcommittee:

1. A subcommittee of the PMAC shall be established annually and consist of the designated City staff member and one (1) other member of the PMAC designated by the Chair;
2. This subcommittee shall be authorized to review and decide waiver applications as described in section 34-7; and
3. The PMAC shall schedule meetings of the Waiver Subcommittee frequently enough to be responsive to

waiver requests. All meeting dates shall be posted in advance on the City calendar.

Sec. 34-7. Waivers.

(a) In situations that are an emergency, threaten the public health, safety or welfare, or for the control of invasive species that pose a threat to the environment, persons shall apply to the PMAC Waiver Committee for a waiver from the provisions of this ordinance prior to the use/application of a prohibited pesticide or prior to the conduct of a prohibited application.

(b) The waiver application shall be filed with the PMAC Waiver Committee, on a form prescribed by the Committee and shall include the following information: the reason for requesting the use/application of a prohibited pesticide; the proposed location(s) of the proposed application(s); details on the timing(s) of use, substance(s) and amounts to be applied; date(s) of application; management plan that excludes broadcast and preemptive applications; and a pest identification and threshold report. In order to approve a waiver application, the PMAC Waiver Committee must find that all of the following criteria are met:

1. A situation exists that: is an emergency; threatens the public health, safety and/or welfare; involves an invasive species;— that poses a threat to the environment; or requires a non-permitted pest management activity and/or material to protect buildings or structures from damage;
2. The applicant has carefully evaluated all alternative methods and materials including, but not limited to, non-pesticide management tactics, minimum risk pesticides, non-synthetic pesticides, and is choosing to use the minimum amount of the least toxic, most effective pesticide necessary;
3. The applicant will, to the greatest extent practical, minimize the impact of the application on abutting properties; and
4. To the maximum extent possible the grant of the waiver will not be detrimental to the public's health, safety or welfare.

(c) The Waiver Committee shall conduct a hearing on all complete waiver applications received within ten (10) business days of receipt of the complete application and shall seek to issue a written decision on the application within three (3) business days of reviewing an application.

(d) In approving any waiver application, the Waiver Committee may also prescribe conditions and safeguards as are appropriate to further the purposes of this ordinance. The waiver decision of the Waiver Committee shall be in writing, with copies provided to the applicant, the PMAC, and the Sustainability Coordinator, and the City Clerk.

(e) An Aggrieved Party may appeal a written decision of the PMAC Waiver Committee to the City Manager or his or her designee within five (5) business days of the issuance of the committee's decision. The appeal shall be in writing and shall state the basis for the appeal. The City Manager or his or her designee (who shall not be a member of the PMAC) shall act upon the appeal within five (5) business days of receipt of the appeal. The decision of the City Manager or designee shall be in writing, with copies provided to the aggrieved party, the PMAC Waiver Committee, and the Sustainability Coordinator. The decision of the City Manager or his or her designee shall be final.

Sec. 34-8. Reporting by State of Maine Licensed Applicators.

In addition to complying with the Maine Board of Pesticides Control rules regarding record keeping and reporting requirements as outlined in 01-026 C.M.R. Ch. 50, as amended from time to time, all State of Maine licensed applicators are required to submit to the PMAC an annual summary report on or before February 1st of each calendar year relating to the preceding calendar year. This report shall contain the following information for applications performed in the City in the prior calendar year: target site, pesticide brand name, EPA registration number, total undiluted formulation (in pounds or gallons), and total area treated as listed and as amended on the Commercial Applicator Annual Summary Report required by the Maine Board of Pesticides Control.

Sec. 34-9. Management plan and annual reporting for publicly owned parks and open spaces.

The City shall maintain a management plan for public open spaces that shall be posted on the City website. The City Manager or

his or her designee shall provide an annual report to the PMAC describing efforts to reduce the use of synthetic pesticides, a description of synthetic pesticides used during the previous year, the reason for their use, and the cost of such pesticide usage.

34-10. Public Notification.

Any person shall comply with the following posting requirements. For all prohibited pesticide uses or applications:

(a) A warning sign shall be posted on the privately or publicly owned land. These signs must be posted before application activities commence on the land and be left in place for at least forty-eight (48) hours after actual application or until expiration of the restricted entry interval indicated by the pesticide label, whichever is longer;

(b) All signs shall be at least five (5) inches high and four (4) inches wide in size. Signs shall be attached to the upper portion of a dowel or other supporting device so that the bottom of the sign is not less than 12" and the top of the sign is not more than 48" above the ground. The signs shall be of rigid, weather resistant material substantial enough to be easily read for the duration of the placement;

(c) All signs must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green). They shall have lettering that is conspicuous and clearly legible;

(d) The sign must include the following:

1. The word "CAUTION" in 72-point type;
2. The words "PESTICIDE APPLICATION" in 30-point type or larger;
3. The Maine Board of Pesticides Control designated symbol;
4. Any reentry precautions from the pesticide labeling;
5. The name and telephone number of the entity making the pesticide application;
6. The date and time of the application;
7. A date and/or time to remove the sign;
8. the chemical and trade name of the pesticide; and
9. the length of time to remain off the treated area as indicated by the pesticide label; and

(f) For licensed applicators, the requirements above are in addition to any requirements that may also apply to State of Maine licensed applicators subject to the Maine Board of Pesticides Control rules, as may be amended from time to time, regarding public notification.

Sec. 34-11. Outreach and Education.

(a) The Sustainability Coordinator or his or her designee shall publish notice of this ordinance in a newspaper of general circulation in the City upon adoption and shall attempt to provide information about it to identified retailers and lawn, garden, and tree-care providers serving the City of Portland, as well as to churches, schools, and other institutions in Portland.

(b) The PMAC shall prepare and publish materials designed to educate the community about the role of pesticides in the local environment and the benefits of organic pest management. This outreach may include: a community-based social marketing campaign targeting City households and businesses; promotion of professional education and training for State of Maine licensed applicators; distribution of information and news about City practices through Portland internet and web-based resources; public service announcements; news releases and news events; tax bill inserts; posters and brochures made available at City events and applicable locations that serve the public; workshops, trainings, and demonstration projects; targeted outreach to schools; and/or any additional methods deemed appropriate by the PMAC.

(c) The PMAC shall also develop a program to work directly with retailers that sell pesticides in the City of Portland to:

1. Provide educational training for all retail store employees who recommend and sell pesticides for use in the home and garden, highlighting the following:
 - a. federal, state, and local pesticide regulations;
 - b. principles of organic pest management;
 - c. pesticide toxicity and health and environmental concerns;
 - d. proper pesticide display and storage; and

- e. the role of personal protective equipment, pesticide poisoning symptoms, and emergency procedures in case of spills; and
2. Implement a toolkit consisting of educational materials and signage (i.e., posters, signs, stickers) that can be customized, printed, and placed in stores to help consumers understand this ordinance and alternatives to prohibited pesticides.

Sec. 34-12. Violations.

Any person violating any of the provisions of this ordinance or failing, neglecting or refusing to obey any order or notice of the City Manager or his or her designee issued hereunder shall be subject to enforcement action as provided in §34-13.

Sec. 34-13. Enforcement and Remedies.

(a) This ordinance may be enforced by the City Manager or his or her designee;

(b) The City Manager or his or her designee shall have the authority to enact rules and regulations in order to implement the provisions of this ordinance; and

(c) Any violation of this chapter shall constitute a civil violation subject to the penalties contained in Portland City Code, Chapter 1, § 1-15.

Sec. 34-14. Severability.

If any section, paragraph, sentence, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court, such decision shall not affect the validity of the remaining provisions of this ordinance.

Sec. 34-15. Conflicts with Other Ordinances.

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation or statute, the more restrictive chapter, article or ordinance of the Portland City Code shall control.

Sec. 34-16. Effective date; Applicability dates.

In order to allow time for residents and businesses to become familiar with the requirements of this ordinance, the prohibitions on the use of certain products and/or applications (and the related public notification, signage and reporting requirements) shall be effective as follows:

(a) Phase One: Commencing no later than July 1, 2018, the provisions set forth in Sec. 34-5 on outdoor pest management activities shall apply to City-owned property (but not to high use athletic fields or golf courses);

(b) Phase Two: Commencing no later than January 1, 2019, the provisions set forth in Sec. 34-5 on outdoor pest management activities shall apply to private property (but not high use athletic fields or golf courses); and

(c) Phase Three: Commencing no later than January 1, 2021, the provisions set forth in Sec. 34-5 on outdoor pest management activities with respect to high use athletic fields shall apply to public or private property, except that the City Manager or his or her designee may request that the City Council extend this applicability date if he or she determines more time is necessary to transition to organic management practices for these properties and facilities.

Chapter 14.28

RESTRICTED LAWN CARE PESTICIDES

Sections:

- 14.28.010 Declaration of policy.
- 14.28.020 Definitions.
- 14.28.030 Outreach and education.
- 14.28.040 Register of restricted pesticides.
- 14.28.050 Prohibited applications.
- 14.28.060 Exceptions.
- 14.28.070 Waiver.
- 14.28.080 Administration.

14.28.010 Declaration of policy.

The application of certain pesticides, including the use of certain pesticides approved for use by the Federal, State, or County governments, in manners and by persons allowed by those governments to apply them, nonetheless present an unacceptable risk of harm to public and animal health, the environment, and the region's watershed.

The City of Takoma Park prioritizes education of property owners and the businesses that serve them on the demonstrated and potential dangers posed by the use of certain pesticides for lawn care purposes, and on alternative, effective, safe means of promoting healthy lawns.

Education is important, but education alone is insufficient to protect the health of Takoma Park residents and visitors and the integrity of our environment and the region's watershed from the harm posed by the use of certain pesticides for the purposes of maintaining the cosmetic appearance of lawns. Certain pesticides are harmless to humans and non-pest species, and certain applications of potentially harmful pesticides may be justified by the need to eradicate invasive species and restore the environment. However, the desire to control purported pests such as clover, grubs, and black spot to maintain a homogenous lawn does not merit the use of harmful pesticides.

This chapter accordingly establishes public education requirements and phases in restrictions on the use of harmful pesticides for lawn care on public and private property within the City. It establishes an administrative framework for the implementation of educational steps, restrictions, and enforcement. (Ord. 2013-28 § 1, 2013)

14.28.020 Definitions.

As used in this chapter:

“Commercial pesticide applicator” means any person that performs pesticide application for hire.

“Infestation” means the presence of a pest in numbers or quantities large enough to be harmful.

“Lawn” means an area of grass or other vegetation of at least 25 square feet that is kept mowed.

“Pest” means any undesirable insect, animal, plant, fungi, bacteria, virus, or microorganism.

“Pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, including insecticides, herbicides, and fungicides.

“Restricted pesticide” means a pesticide identified in the register of restricted pesticides developed under Section 14.28.040. (Ord. 2013-28 § 1, 2013)

14.28.030 Outreach and education.

A. The City shall identify or prepare, and then periodically disseminate, materials designed to educate the community about the role of pesticides in our local environment, compliance with restrictions imposed by the Safe Grow Act, and earth-friendly practices and alternatives to the use of harmful pesticides.

1. Education may take the form of pamphlets and brochures, whether produced and distributed on paper or electronically, and classes and seminars, involving City staff, non-City governmental agencies, community and advocacy groups, and other resources.
2. Materials shall include information about and links to the U.S. Environmental Protection Agency's list of minimum risk pesticides. The City Manager shall publish the EPA's list of minimum risk pesticides on or before March 1st of each year and ensure that the publication reflects any changes to the EPA's list during the preceding 12 months.

B. The City Manager shall publish notice of this chapter and a list of restricted pesticides and alternative, less environmentally damaging, products and cultural practices or methods of pest control and provide periodic notice regarding this chapter to local lawn and garden retailers and contractors, and businesses, churches, schools, and other institutions located in the City, upon adoption of administrative regulations pursuant to Section 14.28.080 and subsequently every two years or more frequently. (Ord. 2013-28 § 1, 2013)

14.28.040 Register of restricted pesticides.

A. The City Manager shall create and issue, by March 1, 2014, a register of restricted pesticides.

1. The register shall identify restricted pesticides.
2. Persons applying pesticide products are responsible for determining whether the product contains a restricted pesticide.

B. The register of restricted pesticides shall include the following pesticides:

1. Any pesticide classified as "Carcinogenic to Humans" or "Likely to Be Carcinogenic to Humans" by the U.S. Environmental Protection Agency;
2. Any pesticide classified by the U.S. Environmental Protection Agency as a "Restricted Use Product";
3. Any pesticide classified as a "Class 9" pesticide by the Ontario, Canada, Ministry of the Environment;
4. Any pesticide classified as a "Category 1 Endocrine Disruptor" by the European Commission; and
5. Any pesticide containing a chemical designated by the Maryland Department of Agriculture as belonging to the neonicotinoid class of chemicals.

C. The City Manager shall publish an updated version of the register of restricted pesticides that reflects any changes to the classifications in subsection (B) of this section on or before March 1st of each year that will remain in effect for one year. (Ord. 2017-51 § 1, 2017/Ord. 2013-28 § 1, 2013)

14.28.050 Prohibited applications.

A. Use by City Agents and Employees. City agents or employees shall not use restricted pesticides for lawn care in the performance of their duties unless the City Manager determines, after considering the pertinent criteria developed for waiver decisions pursuant to Section 14.28.070, that the restricted use of a pesticide is necessary to promote the public interest.

B. Use by Other Government Entities. The City of Takoma Park shall inform governmental entities that own or control land within the City of its policy regarding restricted pesticides and encourage voluntary compliance with the pesticide use restrictions and notice requirements.

C. Use on Private Property and Public Rights-of-Way.

1. Commercial Pesticide Applicators.
 - a. Commencing March 1, 2014, it shall be illegal for a commercial pesticide applicator to apply restricted pesticides for lawn care purposes on private property or public rights-of-way in the City.

b. Commencing March 1, 2014, a commercial pesticide applicator applying a pesticide for lawn care purposes must post a written notice, readable and visible from the public right-of-way at the point closest to the area of application, providing information as specified in administrative regulations. The notice shall remain in place for at least two days following application.

c. Penalties.

i. From March 1, 2014, through June 30, 2014, the City shall issue a written warning to a commercial pesticide applicator that violates subsection (C)(1)(a) or (b) of this section.

ii. Commencing July 1, 2014, each prohibited application of a restricted pesticide for lawn care purposes is a violation and shall be a Class D municipal infraction for the initial offense and shall be a Class B municipal infraction for the second offense. The third and any subsequent offenses shall be repeat Class B offenses.

iii. Commencing July 1, 2014, failure to post and maintain the written notice required under subsection (C)(1)(b) of this section is a violation and shall be a Class G municipal infraction.

2. Property Owners and Tenants.

a. After July 1, 2014, the City shall distribute educational materials developed under Section 14.28.030 to all landlords, single-family homes, duplexes, and townhouses in the City.

b. Commencing January 1, 2015, it shall be illegal for a property owner or tenant to apply restricted pesticides for lawn care purposes on private property or public rights-of-way in the City.

c. Commencing January 1, 2015, a property owner or tenant applying a pesticide for lawn care purposes must post written notice. The notice shall be readable and visible from the public right-of-way at the point closest to the area of application, providing information as specified in administrative regulations. The property owner or tenant shall maintain the notice for at least two days following application.

d. Penalties.

i. From January 1, 2015, to June 30, 2015, the City shall issue a written warning to a property owner or tenant that violates the pesticide application restrictions and posting requirements of subsections (C)(2)(b) and (c) of this section.

ii. Commencing July 1, 2015, each prohibited application of a restricted pesticide for lawn care purposes is a violation and shall be a Class D municipal infraction for an initial offense and shall be a Class B municipal infraction for the second offense. The third and any subsequent offenses shall be repeat Class B offenses.

iii. Commencing July 1, 2015, failure to post and maintain a written notice as required by subsection (C)(2)(c) of this section is a violation and shall be a Class G municipal infraction. (Ord. 2013-28 § 1, 2013)

14.28.060 Exceptions.

A. The City encourages the use of cultural, physical, biological, and mechanical methods of pest control, instead of restricted pesticide use, but this chapter does not prohibit the use of restricted pesticides for the purposes set forth in subsection (C) of this section.

B. Any person using a restricted pesticide for lawn care purposes pursuant to an exception set forth below must post a written notice readable and visible from the public right-of-way at the point closest to the area of application that states the address of the pesticide application, substance applied, and date of application, and the exception under which the pesticide is being applied. The property owner or tenant shall maintain the notice for at least two days following application.

- C. Restricted pesticides may be applied for the following purposes:
1. Noxious Growths. The control of plants identified in Section 12.08.040, Noxious growths, including poison ivy (*Rhus radicans* or *Toxicodendron radicans*), poison oak (*Rhus toxicodendron* or *Toxicodendron quercifolium*), poison sumac (*Rhus vernix* or *Toxicodendron vernix*), ragweed (*Ambrosia artemisiifolia*), bamboo, kudzu-vine (*Pueraria lobata*), non-native honeysuckle, wisteria, and multiflora rose (*Rosa multiflora*).
 2. Noxious Weeds. The control of noxious weeds as defined in Section 9-401 of the Agriculture Article of the Maryland Code, including thistles belonging to the asteraceae or compositae family, such as Canada, musk, nodding, plumeless, and bull thistle, johnsongrass (*Sorghum halepense*) or hybrids that contain johnsongrass as a parent, and shatter cane and wild cane (*Sorghum bicolor*).
 3. Invasive Species. The control of invasive species that may be detrimental to the environment, in accordance with a license issued by the City of Takoma Park or Montgomery County.
 4. Mandatory Applications. Use of pesticides mandated by State or Federal law.
 5. Health and Safety. The control of insects that are venomous or disease carrying. (Ord. 2013-28 § 1, 2013)

14.28.070 Waiver.

A. Persons that have exhausted all reasonable alternatives to the use of restricted pesticides for lawn care may request a waiver from the City Manager allowing the use of one or more of the restricted pesticides under this chapter. In deciding waiver requests, the City Manager shall balance the need for the use of restricted pesticides against the risks of such use.

B. Posting Requirements. Persons granted a waiver must post a written notice readable and visible from the public right-of-way at the point closest to the area of application, providing information specified in administration regulations. The property owner or tenant shall maintain the notice for at least two days following application. (Ord. 2013-28 § 1, 2013)

14.28.080 Administration.

A. The City Manager shall promulgate regulations for the implementation and enforcement of this chapter. The regulations shall include the following:

1. Procedures and criteria for notices; and
2. Procedures and criteria for waiver applications.

B. The City Manager may recommend to the Council one or more methods of assessing the effectiveness of this chapter, which may include the development of metrics on volume and types of use of pesticides in the City or testing of local waters for pesticide contamination. (Ord. 2013-28 § 1, 2013)