BEFORE THE TOWN COUNCIL OF
THE TOWN OF OCEAN BREEZE, FLORIDA

ORDINANCE No. 209-2014

AN ORDINANCE OF THE TOWN OF OCEAN BREEZE, FLORIDA PROVIDING FOR REGULATIONS REGARDING THE APPLICATION AND USE OF SOIL FERTILIZERS BY CERTAIN APPLICATORS; PROVIDING FOR THE PROPER MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR PENALTIES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

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WHEREAS, there is credible scientific evidence that leaching and runoff of nutrients from improper landscaping techniques, including excessive fertilization practices, contributes to nitrogen and phosphorus pollution in the Town’s storm water and drainage conveyances, in the ground water, and in the Indian River Lagoon and its tributaries; and

WHEREAS, nutrient-laden runoff promotes algae growth in the Indian River Lagoon and its tributaries; and

WHEREAS, the detrimental effects of nutrient-laden runoff are magnified in a coastal community.

WHEREAS, the water quality of the Indian River Lagoon and its tributaries is critical to environmental, economic and recreational prosperity of the area; and

WHEREAS, surface water and base flow runoff containing excess nutrients enters into natural and artificial storm water drainage conveyances and natural water bodies; and

WHEREAS, Florida Statutes support the use of guidance documents proposed by the 2010 Florida Department of Environmental Protection Model Fertilizer Ordinance as municipalities develop their own ordinance, and

WHEREAS, the Town Council finds that it is in the interest of the health, safety and welfare of Town residents to establish regulations for the proper use of fertilizers that result in the reduction of nitrogen and phosphorus infiltration into ground and surface waters.
NOW THEREFORE, be it ordained by the Town Council of the Town of Ocean Breeze Florida that, fertilizer regulations within the Town shall be as follows:

SECTION 1. Definitions.

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

*Applicator* means any person who applies fertilizer to turf and/or landscape plants within the Town of Ocean Breeze.

*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.

*Town of Ocean Breeze approved best management practices training program* means a training program approved per 403.9338(1)(b) F.S., or any more stringent requirements set forth in this Ordinance that includes at a minimum, 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.

*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 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.

*Fertilizer free zone* means an area where fertilizer shall not be applied within ten (10) feet of an adjacent seawall, river, lake, pond, creek, stream, canal, ditch, swale or other water course, and any water retention area or water detention area, wetland or preserve.

*Institutional applicator* means any person, other than a non-commercial or commercial applicator, that applies fertilizer for the purpose of maintaining turf 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 or common ownership.
Landscape plant means any native or exotic tree, shrub, or groundcover (excluding turf, sod, and lawn).

Non-commercial applicator means any person not defined as a commercial or institutional applicator who applies fertilizer on turf or landscape plants within the Town of Ocean Breeze who is also the owner, landlord or tenant of the real property upon which the fertilizer is applied.

Prohibited application period means the time period during which a hurricane watch, hurricane warning, tropical storm watch, tropical storm warning, flood watch, flood warning, severe thunderstorm watch, or severe thunderstorm warning is in effect for any portion of the Town of Ocean Breeze, issued by the National Weather Service, or if rainfall greater than or equal to two (2) inches in a twenty-four (24) hour period is likely.

Town Official means an official of the Town of Ocean Breeze designated by the Mayor to administer and enforce the provisions of this ordinance.

Saturated soil means a soil in which the voids are filled with water. Saturation does not require flow. 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.

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

SECTION 2. Applicability.

This ordinance shall apply to and shall regulate any and all applicators of fertilizer, and applications of fertilizer within the Town, unless such applicator or application is specifically exempted by the terms of this ordinance. Specific regulations herein apply to commercial and institutional applicators.

SECTION 3. Training.

(a) All commercial and institutional applicators who apply fertilizer within the Town shall abide by and successfully complete the six (6) hour training program entitled “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” offered by the Florida Department of Environmental Protection through the University of Florida Extension “Florida-Friendly Landscapes” program, or approved equivalent programs pursuant to section 403.9338(1)(b), F.S. Upon request commercial and institutional applicators shall provide proof of completion of the program to the Town Official prior to any commercial or institutional application of fertilizer within the Town.
(b) In accordance with section 482.1562(2) F.S., beginning January 1, 2014, any person applying commercial fertilizer must be certified by the Florida Department of Agriculture and Consumer Affairs.

(c) Non-commercial applicators, including private property owners or occupants on their own residential property, are encouraged to familiarize themselves with the recommendations of the University of Florida IFAS Florida Yards and Neighborhoods program when applying fertilizers, and are encouraged to comply with the provisions of this ordinance, as applicable.

SECTION 4. Timing of fertilizer applications.

(a) No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the Prohibited Application Period, or to saturated soils.

(b) Prohibited Application Period – No fertilizer containing nitrogen or phosphorus shall be applied between June 1 and September 30. Additionally, no fertilizer shall be applied during a Flood Watch or Warning, or a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning, as issued by the National Weather Service, or if heavy rains (in excess of 2 inches in 24 hours) are expected.

SECTION 5. Exemptions.

The timing of applications, application rate provisions and other provisions set forth above shall not apply to:

(a) Vegetable gardens, provided they are not within ten feet of any water body and/or wetland;

(b) Yard waste compost, mulches or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil;

(c) Reclaimed, or irrigation quality (IQ) water used for irrigation (which may contain substantial amounts of nitrogen and phosphorus);

(d) Commercial applicators and institutional applicators shall maintain documentation to support said exemption(s).

(e) For all other specialized turf areas the managers shall use their best professional judgment to apply the concepts and principles embodied in the Florida Green BMPs, while maintaining the health and function of their specialized turf areas.
SECTION 6. Fertilizer free zones.

Fertilizer shall not be applied within a fertilizer free zone. Notwithstanding this provision, newly planted turf or landscape plants may be fertilized in a fertilizer free zone only for a first sixty (60) day period, beginning 30 days after planting if needed, to allow the plants to become established. Caution must be used by the applicator to prevent direct deposition of nutrients into the surrounding fertilizer free zone, including adjacent water bodies. No mowed or cut vegetative material should be deposited or left remaining in this zone or deposited in the water.

SECTION 7. Fertilizer content and application rates.

(a) Native soils in the Town are typically not Phosphorus deficient. Fertilizers containing Phosphorus shall not be used without first conducting a soil test indicating a Phosphorus deficiency. In the case of a deficiency, low Phosphorus fertilizers shall be used. The label of all fertilizers indicates its Nitrogen and Phosphorus content using a three digit numbering system printed on the label. The first number represents Nitrogen content and the second number represents the Phosphorus content. Applicators are encouraged to use a fertilizer where the ratio of nitrogen to phosphorus is at least 4 to 1. For example purposes only, an 8-2-10 bag of granular fertilizer would equal the 4 to 1 ratio.

(1) To demonstrate the 4 to 1, N to P ratio to be used for established turf, the applicator can calculate pounds of fertilizer to apply per 1000 square feet of turf using the following formula:

The following example assumes a 100 pound bag of 8-2-10 fertilizer, which is 8 parts N; 2 parts P; and 10 parts other products, usually potash:

Nitrogen:

100/8 (8 parts of N) = 12.5 pounds
Therefore, spreading 12.5 pounds of fertilizer product per 1000 sq ft equals 1 pound N/1000 sq ft.

Phosphorus:

Then, 12.5 pounds of product x 2% (2 parts of P) = 0.25 pounds P/1000 sq ft

(b) Non-commercial applicators shall follow the instructions on the fertilizer bag.
(c) Fertilizers applied to turf within the Town of Ocean Breeze shall be formulated and applied in accordance with requirements and directions provided by Sec. 5E-1.003(2), Florida Administrative Code.

(d) In accordance with Sec. 5E-1.003(2)(d), Florida Administrative Code, no more than 1.0 lb. of total N per 1000 square feet shall be applied at any one time, and no more than 0.5 lb. soluble N per 1000 square feet shall be applied in any one application, regardless of the fertilizer N source being applied.

(e) In accordance with Sec. 5E-1.003(2) Florida Administrative Code, the application rate for phosphorous shall not exceed 0.25 lbs. \( P_2O_5/1000 \text{ ft}^2 \) per application and not exceed 0.50 lbs. \( P_2O_5/1000 \text{ ft}^2 \) per year.

(f) In accordance with Sec. 5E-1.003(2)(b)(4)(a) Florida Administrative Code, the following recommendations for yearly Nitrogen application for established turf grass shall be used within the Town of Ocean Breeze.

<table>
<thead>
<tr>
<th>Fertilization Guidelines for Established Turfgrass Lawns in Three Regions of Florida</th>
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<tr>
<td><strong>Nitrogen recommendations</strong></td>
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<td>(Lbs N / 1000 ft²/year)*</td>
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<td><strong>Species</strong></td>
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<td>Bahia grass</td>
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<td>Centipede grass</td>
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<td>St. Augustine grass</td>
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<td>Zoysia grass</td>
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*North Florida is north of Ocala. Central Florida is defined as south of Ocala to a line extending from Vero Beach to Tampa. South Florida includes the remaining southern portion of the state.
(g) Fertilizer containing N or P 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 the site.

(h) All fertilizers applied to turf and/or landscape plants within the Town of Ocean Breeze shall contain at least 50% of their nitrogen in slow release form.

SECTION 8. Soil testing by commercial applicators.

In February and September of each year, commercial applicators operating under a Town contract shall collect a minimum of one (1) soil sample from each application site they service for the Town. Samples shall be tested by a qualified professional laboratory for nutrient profile that will include pH and Phosphorus analyses. All commercial applicators under contract with the Town, that apply fertilizer to land owned or maintained by the Town of Ocean Breeze, shall be responsible for following the recommendations of the laboratory report and for purchasing and applying any and all soil conditioners required, and shall be applied in accordance with requirements in Sec. 20-165 of this ordinance. Laboratory test results shall be submitted to the Director of Public Works no later than ten (10) days after receipt of the test results by the commercial applicator. Fertilization records must be maintained by commercial applicators under Town contract and may be subject to inspection at any time at the discretion of the Town Official.


(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 deposited on any impervious surfaces. Any fertilizer applied, spilled, or deposited, whether intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable, and must be either re-applied in a lawful manner, or re-deposited into an appropriate container.

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

(d) Fertilizer shall not be applied by any person during a prohibited application period.

(e) Fertilizer shall not be applied by any person to saturated soil.
SECTION 10. Management of grass clippings and vegetative matter.

No person shall wash, sweep or mechanically blow grass clippings, vegetative material, or vegetative debris into stormwater drains, ditches, water bodies, wetlands, sidewalks, gutters or roadways. Any material that is intentionally or accidently so deposited shall be immediately removed to the maximum extent possible.

SECTION 11. Exemption: farms.

The provisions set forth above in this ordinance shall not apply to bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14, Florida Statutes.

SECTION 12. Violations and penalties.

(a) Any person who violates this ordinance, except as provided in subsection (b) below, shall be guilty of a civil infraction, punishable for a 1st offense by a fine of up to $50; for a 2nd offense by a fine of $100; for a 3rd offense by a fine of $200; and for any additional offenses by a fine of up to $500 for repeat violations. Each violation is subject to administrative costs, as otherwise provided elsewhere in this code, and in sec. 162.09, Florida Statutes.

(b) Any commercial or institutional applicator who willfully violates this ordinance shall be guilty of a 2nd degree misdemeanor, punishable by a fine of up to $500, or imprisonment of up to 60 days in jail, or both a fine and imprisonment.

SECTION 13. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 14. If any section, sentence, clause, phrase or word of this ordinance is for any reason declared to be unconstitutional, inoperative or void, such holding shall not affect the remaining portions of this ordinance and the remaining portions shall be deemed and held to be valid.

SECTION 15. This ordinance shall take effect immediately upon adoption.

Passed on first reading this 12th day of May 2014.

Adopted on second reading this 14th day of July, 2014

Council Member [De Angeles] offered the foregoing ordinance and moved approval on the second reading. The motion was seconded by Council member [Kagdis].
and upon being put to a roll call vote, the vote was as follows:

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JAMES L. WALKER, PRESIDENT
ANN KAGDIS, VICE PRESIDENT
PATRICIA RUGE, COUNCIL MEMBER
EARLENE CAIRNS, COUNCIL MEMBER
JERRY COLLINS, COUNCIL MEMBER
KEN DE ANGELES, COUNCIL MEMBER

ATTEST:

PAM ORR
TOWN CLERK

JAMES L. WALKER
PRESIDENT

APPROVED AS TO FORM:

WILLIAM F. CRARY, II
TOWN ATTORNEY

DAVID MYERS
MAYOR