

Sponsored by: Hernstadt
Introduction Date: September 16, 2013
Public Hearing Dates: October 22, 2013
Enactment Date: November 12, 2013

**CITY OF MARATHON, FLORIDA
ORDINANCE 2014-XX**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA AMENDING CHAPTER 14, CREATING NEW ARTICLE V- "FLORIDA FRIENDLY FERTILIZER USE" OF THE CITY OF MARATHON CODE OF ORDINANCES, PROVIDING FOR LOCAL IMPLEMENTATION OF FLORIDA FRIENDLY FERTILIZER USE ON URBAN LANDSCAPES; PROVIDING DEFINITIONS; PROVIDING FOR FERTILIZER BEST MANAGEMENT PRACTICES; PROVIDING FOR EXEMPTIONS; PROVIDING FOR TRAINING AND LICENSING OF APPLICATORS; PROVIDING FOR THE APPLICABILITY OF THE ORDINANCE; PROVIDING FOR ENFORCEMENT OF THE ORDINANCE; PROVIDING FOR CODIFICATION OF THE ORDINANCE; PROVIDING FOR THE REPEAL OF ALL CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Florida Statutes, (F.S.), provides for comprehensive plan implementation through the enactment of certain ordinances; and

WHEREAS, pursuant to 403.067(4) F.S. and Chapter 62-303, Florida Administrative Code (F.A.C.), the Department of Environmental Protection (DEP) has adopted a verified list of impaired waters for Group 5, cycle 1 basins for which Total Maximum Daily Loads (TMDLs) shall be established; and

WHEREAS, the City of Marathon is located within a hydrologic unit found to be part of the verified list of impaired waters; and

WHEREAS, pursuant to Sections 403.9337, F.S., a municipal government located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to 403.067 F.S., shall, at a minimum, adopt the department's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.

WHEREAS, the Florida Watershed Restoration Act (403.067 F.S.) and the NPDES municipal stormwater permitting program require local governments to reduce pollutant loads discharged from their stormwater management systems to better protect and restore surface and ground waters; and

WHEREAS, the City of Marathon recognizes the inherent connection between urban land and water use practices, nearshore water quality and the health of coral reefs vital to the local economy; and

WHEREAS, the City of Marathon recognizes the need for the protection of water as a natural resource through the application of Florida-Friendly Landscape practices; and

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Florida Statutes, (F.S.), provides for comprehensive plan implementation through the enactment of certain ordinances; and

WHEREAS, it is the desire of the City of Marathon City Council to amend current ordinances in accordance with Sections 403.9337, F.S.; and

WHEREAS, the City of Marathon City Council hereby finds and declares that the adoption of this ordinance is appropriate, and in the public interest of this community.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. Chapter 14, Article 3, Section 22-50 of the Code of Ordinances, City of Marathon, Florida is hereby amended to read as follows:¹

(4) The normal application of fertilizer when released and applied in full compliance with Chapter 14, Article V -Fertilizer Use.

Section 3. Chapter 14, Article V, Section 14-200 of the Code of Ordinances, City of Marathon, Florida is hereby created to read as follows:²

14-200. 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 City Manager or his designee.

“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 the City of Marathon, Florida.

“Board or Governing Board” means the City Council of the City of Marathon Florida.

“Best Management Practices” means turf and landscape practices or combination of practices

1 / Additions to existing text are shown by underline and deletions are shown as ~~striketrough~~.

2 / Additions to existing text are shown by underline and deletions are shown as ~~striketrough~~.

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 the City of Marathon whose duty it is to enforce codes and ordinances enacted by the City of Marathon.

“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, including manmade canals, which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.

“Person” means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.

“Prohibited Application Period” means the time period during which a Flood Watch or Warning, or a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of the City of Marathon, issued by the National Weather Service, or if heavy rain is likely.

“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.

“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.

14-201. 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 the City of Marathon, 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.

14-202. 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.

14-203. 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. If more stringent City of Marathon 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 needed to allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water.

14-204. LOW MAINTENANCE ZONES

A ten (10) foot low maintenance zone is required 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 City of Marathon 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.

14-205. FERTILIZER CONTENT AND APPLICATION RATES

(a) Fertilizers labeled for sports turf at golf courses, parks and athletic fields shall:

1. Have directions for use 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", dated March 2007, which is hereby adopted and incorporated by reference into this rule. Copies may be obtained from the Soil and Water Science Department, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL 32611.

2. Have directions for use in accordance 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 January 2007.

(a) Fertilizers applied to turf within the City of Marathon shall be applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*.

(b) Fertilizer containing nitrogen or phosphorus 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.

14-206. 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.

14-207. 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, canals, conveyances, water bodies, wetlands, or sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable.

14-208. EXEMPTIONS

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

(a) 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.

14-209. TRAINING

(a) All commercial and institutional applicators of fertilizer within the incorporated area of City of Marathon 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 Landscapes” program, or an approved equivalent.

(b) Private, non-commercial applicators are highly encouraged to follow the recommendations of the University of Florida IFAS *Florida Yards and Neighborhoods* program when applying fertilizers.

14-210. LICENSING OF COMMERCIAL APPLICATORS

(a) Prior to 1 January 2014, all commercial applicators of fertilizer within the (un)incorporated area of City of Marathon , shall abide by and successfully complete training and continuing education requirements in the “Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries”, offered by the Florida Department of Environmental Protection through the University of Florida IFAS “Florida-friendly Landscapes” program, or an approved equivalent program, prior to obtaining a **City of Marathon Occupational License** for any category of occupation which may apply any fertilizer to turf and/or landscape plants. Commercial Fertilizer Applicators shall provide proof of completion of the program to the **City of Marathon** within 180 days of the effective date of this ordinance.

(b) After 31 December, 2013, all commercial applicators of fertilizer within the incorporated area of the City of Marathon 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.

(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 Monroe 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.*]

14-211. ENFORCEMENT

The enforcement of this chapter shall be governed by the provisions in Sections 1-7 and 10-9 of the Marathon Code. Law enforcement officials having jurisdiction in the area governed by this Ordinance are hereby authorized to enforce the provisions of this Ordinance.

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Section 3. The Provisions of the Code of Ordinances, City of Marathon, Florida and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections,

clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. It is the intention of the City Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

Section 6. This Ordinance shall be effective immediately upon enactment.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 10th DAY OF SEPTEMBER, 2014.

THE CITY OF MARATHON, FLORIDA

Dick Ramsey, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

City Attorney

DRAFT

