

PROPOSED
ORDINANCE NO. 14-20

ORDINANCE NO. _____

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE CREATING CHAPTER 7-12 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA, REGULATING COMMERCIAL APPLICATION OF FERTILIZER FOR THE PROTECTION OF LOCAL WATER BODIES; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Department of Environmental Protection (FDEP) has classified a specific water body in the City of Pensacola as “impaired” as a result of the presence of excessive nutrients and further that the City has identified resource protection overlay districts in its Code; and

WHEREAS, because of this FDEP classification, on January 1, 2012, FDEP issued its Escambia County Municipal Separate Storm Sewer Permit No. FLS 000019 (“MS4 Permit”) to governmental entities operating within the incorporated and unincorporated areas of Escambia County, Florida, including the City of Pensacola, a municipality located within Escambia County; and

WHEREAS, Section 403.9337, Florida Statutes requires the City of Pensacola to adopt the Model Ordinance for Florida-Friendly Use of Fertilizer on Urban Landscapes published by FDEP; and

WHEREAS, the City of Pensacola finds that adopting the model ordinance will help protect the quality of surface water and groundwater resources in the City of Pensacola, and will accordingly advance the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Section 7-12-2 of the Code of the City of Pensacola, Florida, is hereby created to read:

Section 7-12-2. Use of Fertilizer on Urban Landscapes.

(a) Legislative Findings.

As a result of impairment to the City of Pensacola’s surface waters caused by excessive nutrients, or, as a result of increasing levels of nitrogen in the surface

and/or groundwater within the aquifers or springs within the boundaries of the City of Pensacola, the City of Pensacola City Council has determined that the use of fertilizers on lands within City of Pensacola limits creates a risk to contributing to adverse effects on surface and/or groundwater. Accordingly, the City of Pensacola City Council finds that management measures 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.

(b) Purpose and Intent.

This ordinance regulates the proper use of fertilizers by any applicator; requires proper training of Commercial and Industrial Fertilizer Applicators; establishes training and licensing requirements; establishes a Prohibited Application Period; and specifies allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones, and exemptions. 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 City of Pensacola's natural and constructed stormwater conveyances, rivers, creeks, canals, springs, estuaries, and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural, and economic well-being of the residents of the City of Pensacola 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.

(c) Definitions.

For this section 7-12, the following terms shall have the meanings set forth in herein unless the context clearly indicates otherwise.

"Administrator" means the City Administrator, or an administrative official of the City of Pensacola government designated by the City 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 the City of Pensacola.

"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 consideration, for improving water quality, conserving water supplies, and protecting natural resources.

“City of Pensacola Approved Best Management Practices Training Program” means the Florida Department of Environmental Protection’s recommended training program approved pursuant to Section 403.9338, Florida Statutes, or any more stringent requirements set forth in this section 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 City of Pensacola Administrator.

“Code Enforcement Officer, Official, or Inspector” means any designated employee or agent of the City of Pensacola whose duty it is to enforce codes and ordinances enacted by the City.

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

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

“Fertilizer” means any substance or mixture of substances that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides 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 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, flood warning, tropical storm watch, tropical storm warning, hurricane watch, or hurricane warning is in effect for any portion of the City of Pensacola, issued by the National Weather Service, or if rainfall greater than 2 inches in a 24-hour period 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 article, soils shall be considered saturated if standing water is present or the pressure of a person standing on the soil causes the release of free water.

“Slow Release,” “Controlled Release,” “Timed Release,” “Slowly-Available,” or “Water-Insoluble Nitrogen” means nitrogen in a form which delays the 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 Section 570.02, Florida Statutes.

SECTION 2. Section 7-12-2 of the Code of the City of Pensacola, Florida, is hereby created to read:

Section 7-12-1. 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.

SECTION 3. Section 7-12-3 of the Code of the City of Pensacola, Florida, is hereby created to read:

Section 7-12-3. 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 three (3) feet shall be maintained. If more stringent City of Pensacola 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 thirty (30) days after planting if needed to allow the plants to become well-established. Caution shall be used to prevent direct deposition of nutrients into the water.

SECTION 4. Section 7-12-4 of the Code of the City of Pensacola, Florida, is hereby created to read:

Section 7-12-4. 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 required to be installed at the landward edge of this low maintenance zone to capture and filter runoff. No mowed or cut vegetative material may be deposited or left remaining in this zone or deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products in this zone.

SECTION 5. Section 7-12-5 of the Code of the City of Pensacola, Florida, is hereby created to read:

Section 7-12-5. Fertilizer Content and Application Rates.

- (a) Fertilizers applied to turf within the City of Pensacola city limits 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 thirty (30) days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation (wildfire, etc.), or in accordance with the Stormwater Pollution Prevention Plan for that site.
- (c) Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in subsection 42-408(1) 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.

SECTION 6. Section 7-12-6 of the Code of the City of Pensacola, Florida, is hereby created to read:

Section 7-12-6. 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 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 possible.
- (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.

SECTION 7. Section 7-12-7 of the Code of the City of Pensacola, Florida, is hereby created to read:

Section 7-12-7. 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 possible.

SECTION 8. Section 7-12-8 of the Code of the City of Pensacola, Florida, is hereby created to read:

Section 7-12-8. Exemptions. The provisions set forth above in this Ordinance shall not apply to:

- (a) bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14, Florida Statutes;
- (b) other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock;
- (c) any lands used for bona fide scientific research, including, but not limited to, research on the effects of fertilizer use on urban stormwater, water quality, agronomics, or horticulture.

SECTION 9. Section 7-12-9 of the Code of the City of Pensacola, Florida, is hereby created to read:

Section 7-12-9. Training.

- (a) All commercial and institutional applicators of fertilizer within the City of Pensacola city limits 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 that is offered by the Florida Department of Environmental Protection through the University of Florida Extension "Florida-Friendly Landscapes" program, or an approved equivalent program.
- (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.

SECTION 10. Section 7-12-10 of the Code of the City of Pensacola, Florida, is hereby created to read:

Section 7-12-10. Licensing of Commercial Fertilizer Applicators.

- (a) Commercial Fertilizer Applicators within the City Limits of the City of Pensacola 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 that is offered by the Florida Department of Environmental Protection through the University of Florida Extension "Florida-Friendly Landscapes" program, or an approved equivalent program, prior to obtaining a license to do business in the City 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 Director of Public Works and Facilities or his designee at within thirty days of the effective date of this ordinance.
- (b) All Commercial Fertilizer Applicators within the City of Pensacola city limits shall have, and carry in their possession at all times when applying fertilizer, evidence of certification by the Florida Department of Agriculture and Consume Services as a Commercial Fertilizer Applicator per Rule 5E-14.117(18), Florida Administrative Code.
- (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 business license. Owners of any business

regulated by this section which may apply any fertilizer to turf and/or landscape plants shall provide proof of completion of the program to the Director of Public Works and Facilities or his designee.

SECTION 11. Section 7-12-11 of the Code of the City of Pensacola, Florida, is hereby created to read:

Section 7-12-11 Enforcement.

(a) The provisions of this section shall be enforced pursuant to the provisions of sections 13-1-1 through 13-1-12; 13-2-1 through 13-2-4 and section 1-1-8.

(b) Funds generated by penalties imposed under this section shall be used by the City of Pensacola for the administration and enforcement of Section 403.9337, Florida Statutes, and this section of the City Code, and to further water conservation and nonpoint pollution prevention activities.

SECTION 12. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

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

SECTION 14. This ordinance shall take effect on the fifth business day after adoption, unless otherwise provided, pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk