

## ORDINANCE NO 508

**AN ORDINANCE OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA, PERTAINING TO ENVIRONMENTAL REGULATION; CREATING CHAPTER 101, "ENVIRONMENT," IN THE CODE OF THE TOWN OF INDIAN RIVER SHORES; ADDING SECTION 101.01, "FLORIDA-FRIENDLY FERTILIZER USE;" PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council of the Town of Indian River Shores finds that the misuse of fertilizers has had secondary and cumulative environmental effects on the Indian River Lagoon, and other surface water bodies in the Town of Indian River Shores; and

**WHEREAS**, the regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, is an important step in improving and maintaining water and habitat quality; and

**WHEREAS**, this ordinance provides for the enactment of such regulations governing the use of fertilizers on lands within the Town of Indian River Shores that contribute to adverse impacts on the Indian River Lagoon and other surface water bodies; and

**WHEREAS**, the Town of Indian River Shores is located within the watershed of the Indian River Lagoon, which water body is listed as impaired by nutrients pursuant to Section 403.067, Florida Statutes; and

**WHEREAS**, Section 403.9337(2), Florida Statutes, requires that each county and municipality located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to Section 403.067, Florida Statutes, shall, at a minimum, adopt the Florida Department of Environmental Protection's "Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes;" and

**WHEREAS**, as a result of the impairment of the Indian River Lagoon caused by excessive nutrients and the mandates of Section 403.067, Florida Statutes, the Town Council of the Town of Indian River Shores desires to adopt the Florida Department of Environmental Protection's August 2010 model ordinance for "Florida-Friendly Fertilizer Use on Urban Landscapes" which adoption may require additional 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;"

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA, THAT:**

### **SECTION 1. CREATION OF CHAPTER 101.**

Chapter 101, Environment, is hereby added to the General Regulations, Title IX, of the Code of Ordinances of the Town of Indian River Shores, Florida.

### **SECTION 2. ADDING SECTION 101.01 TO TITLE IX.**

Section 101.01 is hereby added to the General Regulations of the Code of Ordinances, with reservation as follows:

Secs. 101.02—101-100. Reserved.

## **ARTICLE I. FLORIDA-FRIENDLY FERTILIZER USE**

### **Sec. 101.01 Purpose and intent.**

This article regulates the proper use of fertilizers by any applicator; requires proper training of commercial and institutional fertilizer applicators; establishes training and permitting requirements; establishes a prohibited application period; specifies allowable fertilizer application rates and methods, fertilizer-free

zones, low maintenance zones, and exemptions. This article requires the use of best management practices (BMPs), 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 the Town's natural and constructed stormwater conveyances, canals, estuaries, creeks, and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of the Town 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.

### **Sec. 101-02. Definitions.**

As used in this article, the following words, phrases, and terms shall have the meanings set forth in this section unless the context indicates otherwise:

*Administrator* means the town manager or other official as may be designated by the town manager.

*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 within the Town limits.

*Board* or *governing board* means the town council.

*Best management practices* (BMPs) 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.

*Commercial fertilizer applicator*, except as provided in section 482.1562(9), Florida Statutes, means any person who applies fertilizer in exchange for payment or other consideration within the corporate limits of the Town to property not owned by the person or firm applying the fertilizer or the employer of the applicator.

*Department* means the Town Building Department.

*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 commercial fertilizer applicator (unless such definitions also apply under the circumstances), who applies fertilizer within the corporate limits of the Town 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, multiple-family projects, and any residential properties maintained in condominium and/or common ownership.

*Landscape plant* means any native or exotic tree, shrub, or groundcover, but excluding turf.

*Low-maintenance zone* means an area a minimum of 6 feet wide adjacent to water courses that is planted and managed in order to minimize the need for fertilization, watering, and mowing.

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

*Prohibited application period* means the time period during which a flood watch or warning, a tropical storm watch or warning, or a hurricane watch or warning is in effect for any portion of the Town, issued by the National Weather Service, or if rainfall equal to or greater than 2 inches in a 24-hour period is likely to occur within 24 hours of fertilizer application.

*Indian River Shores' approved best management practices training program* means a training program approved per section 403.9338, Florida Statutes, 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 administrator.

*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-soluble 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 article, agriculture has the same meaning as in section 570.02, Florida Statutes.

**Sec. 101-03. Applicability.**

This article shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the corporate limits of the Town, unless the applicator is specifically exempted by the terms of this article. This article shall be prospective only, and shall not impair any existing contracts.

**Sec. 101-04. Timing of fertilizer application.**

No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during a prohibited application period, or to saturated soils.

**Sec. 3101-05. Fertilizer free zones.**

(a) Fertilizer shall not be applied within 10 feet of any pond, stream, watercourse, lake, canal, or wetland, as defined by the Florida Department of Environmental Protection in 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 regulations of this Code apply, the more stringent provisions shall prevail.

(b) Newly planted turf and/or landscape plants may be fertilized within a fertilizer free zone only for a 60 day period beginning 30 days after planting if needed to allow the plants to become well established.

**Sec. 101-06. Low maintenance zones.**

(a) A voluntary 10 foot low maintenance zone is required unless using a deflector shield, with which the low-maintenance zone would then be a minimum of 3 feet 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 regulations of this Code apply, the more stringent provisions shall prevail.

(b) No mowed or cut vegetative material shall be deposited or left remaining in a low maintenance zone or deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products in the low maintenance zone.

**Sec. 101-07. Fertilizer content and application rates.**

(a) Fertilizers applied to golf courses, parks, and athletic fields shall follow the appropriate best management practices set forth in Rule 5E-1.003(2)(d), Florida Administrative Code.

(b) Fertilizers applied to turf within the Town shall be formulated and applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*, as it may be amended from time to time.

(c) 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 (i.e., wildfire) or in accordance with the approved stormwater pollution prevention plan for that site.

(d) Fertilizer or phosphorus shall not be applied to turf or landscape plants except as provided in (c) 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.

(e) Applicators are strongly encouraged to apply fertilizers to turf and/or landscape plants within the Town that contain at least 50 percent of their nitrogen in a slow-release form.

(f) The manufacturer's label on the fertilizer container shall be prima facie evidence as to the content and analysis of the substance in or used from such container for purposes of enforcement of this article.

**Sec. 101-08. 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, any 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 from impervious surfaces into stormwater drains, ditches, conveyances, or water bodies, including wetlands.

**Sec. 101-09. Management of grass clippings and vegetative matter.**

In no case shall grass clippings, vegetative material and/or vegetative debris, either intentionally, accidentally, or incidental to grounds maintenance, be washed, swept, or blown into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks or roadways. Any material that is so deposited shall be immediately removed to the maximum extent practicable.

**Sec. 101-10. Exemptions.**

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, shall be exempt from the provisions of this article to the extent required for such research.

### **Sec. 101-11. Training.**

(a) All commercial and institutional applicators, before applying fertilizer within the Town, 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 equivalent training approved by the administrator.

(b) In the case of commercial fertilizer applicators, each person who applies fertilizer for hire or in the course of employment shall be required to successfully complete the training program in (a) above.

(c) In the case of institutional applicators, at least one employee of the organization or business shall be required to successfully complete the training program in (a) above.

(d) Private, non-commercial applicators not otherwise required to be certified, such as private citizens on their own residential property, are encouraged to follow the recommendations of the University of Florida IFAS “*Florida Yards and Neighborhoods*” program when applying fertilizers.

### **Sec. 101-12. Licensing of commercial applicators.**

(a) *Permit required.* After the effective date of this ordinance, the following shall apply:

- (1) Prior to 1 January 2014, all commercial applicators of fertilizer within the incorporated area of Indian River Shores 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 an Indian River Shores Local Business Tax Certificate for any category of occupation which may apply any fertilizer to turf and/or landscape plants. Commercial Fertilizer Applicators shall provide proof of completion of the program to the Indian River Shores Building Department.
- (2) After December 31, 2013, all commercial applicators of fertilizer within the incorporated area of Indian River Shores 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) Florida Administrative Code.
- (3) All businesses applying fertilizer to turf and/or landscape plants (including but not limited to residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that at least one 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 Indian River Shores Building Department.

(b) *Application.* Any commercial or institutional applicator of fertilizer requesting issuance of a fertilizer applicator permit shall complete and submit an application to the Department in a form prescribed by the administrator accompanied by a nonrefundable fee in the amount established by the Town Council to defray the cost of processing the application. Such completed application shall include proof of the successful completion of the training and education requirements in section 101-11. No permit application fee shall be required. A separate permit application shall be required for each commercial applicator, including individuals of the same firm or business that apply any fertilizer to turf and/or landscape plants. For institutional applicators the owner or appropriate representative of the organization applying for the permit

shall include the name of the person who has successfully completed the training and education as required by section 101-11.

(c) *Application denial.* A completed permit application shall be denied if any of the information provided in the application, including the proof of training as required under (b) above, is found to be materially false or inaccurate and the applicant fails to cure the deficiency within 10 days of written notice by the administrator.

(d) *Issuance of permit.* The department shall issue the permit within 2 working days of submittal of a fully complete application, if no information is found to be materially false or inaccurate.

(e) *Permit conditions and requirements.* Each permit issued pursuant to this article shall be subject to and conditioned upon the following:

- (1) Except as provided in (2) below, a fertilizer applicator permit shall remain in effect for a term of one (1) year, thereafter the permit shall be subject to renewal in the same manner that permits are issued initially as set forth above.
- (2) The permit holder shall notify the department in writing within 30 days of any change in the permit holder's situation that may adversely affect compliance with the provisions of this article.
- (3) Failure to notify the Department as required in (2) or failure to comply with the provisions of this article may result in suspension or revocation of a fertilizer applicator permit. A permit issued under this article may be suspended or revoked by the administrator if, after notice to the applicator of the grounds for suspension or revocation and expiration of a reasonable time in which to correct such grounds, adequate corrective action has not been taken as determined by the administrator. Any revocation or suspension shall be appealable as provided in the general appeal provisions of this Code, but shall remain in effect during the course of said appeal.

### **Sec. 101-13. Enforcement.**

For any violation of this ordinance, the Town Code Enforcement Officer may issue a citation identifying the violation and requiring correction. The citation shall be served in person or by mail:

- (a) To the landowner and/or the agent of the landowner;
- (b) To the person doing the work.

Correction shall be taken within thirty (30) calendar days of the citation, with notice of correction and reasonable proof of correction being filed with the office of the Town Manager.

In the event the violation is not corrected within the time period allocated, the Code Enforcement Officer may request a hearing before the Code Enforcement board. Upon receiving a request for hearing, the Code Enforcement Board shall proceed with action as provided in Sections 30.80 to 30.82, Code of Ordinances of the Town of Indian River Shores.

If the required correction action is not taken within the time allowed, the Town may use any available civil or criminal remedies to secure compliance, including revoking any permit issued for fertilizer application.

As an alternative to and in addition to action by the Code Enforcement Board as set forth above, the Town may enforce the provisions of this Code by such civil and criminal remedies in law and equity as may be necessary to ensure compliance with this Code, including injunctive relief to enjoin and restrain any person from violating the provisions of this Code, and to recover such damages as may have been incurred to implement any corrective actions. All costs of enforcement, including attorney fees, shall be borne by the violator.

**SECTION 3. CONFLICT AND SEVERABILITY.**

In the event any provision of this ordinance conflicts with any provision of the Code or any other ordinance or resolution of the Town of Indian River Shores on the subject matter of this ordinance, the more strict provision shall apply and supersede. If any provision of this ordinance is held to be invalid, unconstitutional, or unenforceable for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this ordinance, which shall be deemed separate, distinct, and independent provisions enforceable to the fullest extent possible.

**SECTION 4. EFFECTIVE DATE.**

This ordinance shall become effective upon final adoption by the Town Council.

1<sup>st</sup> Reading Passed: March 22, 2012 Published in Newspaper: April 13, 2012  
Posted on Website & Bulletin Board: February 2012 in draft, March 26, 2012 as read

I HEREBY CERTIFY that the foregoing Ordinance was finally passed by the Town Council of the Town of Indian River Shores, Florida, on the 26<sup>th</sup> day of April, 2012.

/s  
Thomas W. Cadden, Mayor

Attest:

/s  
Laura Aldrich, Town Clerk