

**ORDINANCE NO. O-14-02**

**AN ORDINANCE OF THE CITY OF SEBASTIAN, FLORIDA, PERTAINING TO ENVIRONMENTAL REGULATION; AMENDING THE CODE OF ORDINANCES OF THE CITY OF SEBASTIAN, CHAPTER 50 "HEALTH AND SANITATION" BY PROVIDING AN AMENDMENT TO SECTION 50-5 "FLORIDA-FRIENDLY FERTILIZER USE" BY AMENDING THE "PROHIBITED APPLICATION PERIOD" TO PROHIBIT THE APPLICATION OF CERTAIN FERTILIZER BETWEEN JUNE 1 AND SEPTEMBER 30 AND BY AMENDING SECTION 50-5 (h) REGULATING FERTILIZER CONTENT AND APPLICATION RATES; PROVIDING EXEMPTIONS; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Sebastian finds that misuse of fertilizers has a secondary and cumulative environmental effect on the Indian River Lagoon, and other surface water bodies in the City of Sebastian; 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 City of Sebastian that contribute to adverse impacts on the Indian River Lagoon and other surface water bodies; and

**WHEREAS**, in addition, the City of Sebastian 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 City Council of the City of Sebastian desires to adopt more stringent provisions to the Florida Department of Environmental Protection's August 2010 model ordinance for "Florida-Friendly Fertilizer Use on Urban Landscapes".

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

**SECTION 1. AMENDING SECTION 50-5 FLORIDA-FRIENDLY FERTILIZER USE ON URBAN LANDSCAPES.**

Section 50-5 of the Code of Ordinances entitled is hereby amended to read as follows:

**"Section 50-5. Florida-Friendly Fertilizer Use on Urban Landscapes.**

**(a) Findings.**

As a result of impairment to the City of Sebastian'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 the City of Sebastian, the City Council has determined that the use of fertilizers on lands within the City of Sebastian creates a contributing risk that adversely effects surface and/or ground water.

**(b) Purpose and Intent.**

This Section 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 Prohibition 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 the City of Sebastian's natural and constructed stormwater conveyances, rivers, creeks, canals, springs, lakes, estuaries and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of the City of Sebastian's 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.

**(c) Definitions.**

For this Chapter, the following terms shall have the meanings set forth in this section unless the context clearly indicates otherwise.

*"Administrator"* means the City Manager, or any other City official designated by the City 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 in the City of Sebastian.

*"Board"* or *"Governing Board"* means City Council of the City of Sebastian.

*"Best Management Practices"* means turf and landscape practices or combinations 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 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.

*"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, an/or any group of people acting as an organized entity.

*“Prohibited Application Period”* means June 1 through September 30 or the time period during which a Flood Watch or Warning, or a Tropical Storm Water or Warning, or a Hurricane Watch or Warning is in effect for any portion of the City of Sebastian, issued by the National Weather Service, or if heavy rainfall is likely.

*“Sebastian Approved Management Practices Training Program”* means a training program approved per 403.9338 F.S., or any more stringent requirements set forth in the this Chapter 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 purpose of this section, 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 right-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 F.S.”

**(d) Applicability.**

This Section shall be applicable to and shall regulate all applicators of fertilizer and areas of application of fertilizer within the City of Sebastian unless such applicator is specifically exempted by the terms of this Section from the regulatory provision of this Section. This Section shall be prospective only, and shall not impair any existing contracts.

**(e) 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.

**(f) 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 Sebastian 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 need to allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water.

**(g) 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 City of Sebastian 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.

**(h) Fertilizer Content and Application Rates.**

1. No fertilizer containing phosphorous shall be applied to turf or landscape plants in the City of Sebastian unless a soil or plant tissue deficiency is verified by a University of Florida, Institute of Food and Agriculture Sciences, approved testing methodology. In the case that a deficiency has been verified, the application of a fertilizer containing phosphorous shall be in accordance with the rates and directions for the Central Region of Florida as provided by Rule 5E-1.003(2), Florida Administrative Code. Deficiency verification shall be no more than two years old. However, recent application of compost, manure, or top soil shall warrant more recent testing to verify current deficiencies.

2. The nitrogen content of fertilizer applied to turf or landscape plants within the City of Sebastian shall contain at least 50% slow release nitrogen per guaranteed analysis label.

3. Fertilizers applied to an urban lawn or turf within the City of Sebastian shall be applied in accordance with requirements and directions set forth on the label or tag for packaged fertilizer products, or in the printed information accompanying the delivery of bulk fertilizer products, as provided by Rule 5E-1.003(2), Florida Administrative Code, Labeling Requirements For Urban Turf Fertilizers. All packaged and bulk fertilizer products sold in the City of Sebastian shall be sold in packages with labels or tags, or, if sold in bulk, be accompanied by printed information, which complies with the requirements of Rule 5E-1.003(2), Florida Administrative Code.

4. 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.

**(i) Application Practices.**

1. 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, include wetlands.

2. Fertilizer shall not be applied, spilled or otherwise deposited on any impervious surfaces.

3. 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.

4. 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.

5. In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

**(j) Management of Grass Clipping 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.

**(k) Exemptions.**

The provisions set forth in the Chapter shall not apply to:

1. Bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14, F.S.;
2. Other Properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock;
3. 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.
4. Golf courses when landscaping is performed within the provisions of the Florida Department of Environmental Protection document, "Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses", these provisions shall be followed when applying fertilizer to golf course practice and play areas;
5. Athletic fields at public parks and school facilities that apply the concepts and principles embodied in the Florida Green BMPs, while maintaining the health and function of their specialized turf areas;
6. Vegetable gardens owned by individual property owners or a community, and trees grown for their edible fruit.

**(l) Training.**

1. All commercial and institutional applicators or fertilizer within the City of Sebastian, 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.
2. Private, non-commercial applicators are encouraged to follow the recommendations of the University of Florida IFAS Florida Yards and Neighborhoods program when applying fertilizers.

**(m) Licensing of Commercial Applicators.**

1. Prior to January 1, 2014, all commercial applicators of fertilizer within the City of Sebastian, 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 Sebastian Local Business Tax Receipt for any category of occupation which may apply any fertilizer to turf and/or landscape plants.
2. After December 31, 2013, all commercial applicators of fertilizer within the City of Sebastian, 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.

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 Receipt. Owners for any category of occupation which may apply and fertilizer to turf and/or landscape plants shall provide proof of completion of the program to the City of Sebastian.

**(n) Enforcement.**

The provisions of this Section may be enforced pursuant to any method provided for by the Code or Ordinances or general law."

**SECTION 2. CONFLICT.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 3. SEVERABILITY.**

In the event a court of competent jurisdiction shall hold or determine that any part of this Ordinance is invalid or unconstitutional, the remainder of the Ordinance shall not be affected and it shall be presumed that the City Council of the City of Sebastian did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the City Council would have enacted the remainder of this Ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

**SECTION 4. EFFECTIVE DATE.**

This Ordinance shall take effect immediately upon its adoption by the City Council.

The foregoing Ordinance was moved for adoption by Councilmember Coy. The motion was seconded by Councilmember Gillmor and, upon being put to a vote, the vote was as follows:

Mayor Bob McPartlan  
Vice-Mayor Jim Hill  
Councilmember Jerome Adams  
Councilmember Andrea B. Coy  
Councilmember Richard Gillmor

Aye  
Nay  
Aye  
Aye  
Aye

The Mayor thereupon declared this Ordinance duly passed and adopted this 26<sup>th</sup> day of March, 2014.

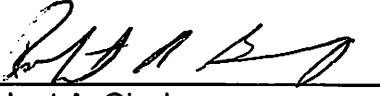
ATTEST:

Sally A. Maio  
Sally A. Maio, MMC  
City Clerk

**CITY OF SEBASTIAN, FLORIDA**

By: Bob McPartlan  
Bob McPartlan, Mayor

Approved as to form and Legality for  
Reliance by the City of Sebastian only:

A handwritten signature in black ink, appearing to read 'R. A. Ginsburg', written over a horizontal line.

Robert A. Ginsburg  
City Attorney