ORDINANCE NO. 1074


WHEREAS, the City is authorized by the Florida Constitution and Chapters 163, 166 and 403, Florida Statutes, to establish and administer programs for stormwater management including the control of pollutants entering the City’s stormwater system; and

WHEREAS, the United States Environmental Protection Agency pursuant to 40 C.F.R. §122.26, and the Florida Department of Environmental Protection, pursuant to 33 U.S.C. § 1342(b), have mandated through the issuance of a National Pollution Discharge Elimination System Generic Permit for discharges from Phase II Municipal Separate Storm Sewer Systems (MS4), that the City must establish legal authority to control discharges to the City’s municipal separate storm sewer system in order to control the quality of discharges from the City’s municipal separate storm sewer system to surface waters of the State; and

WHEREAS, the Florida Department of Environmental Protection has documented impairments, pursuant to §403.067, Florida Statutes, within the surface waters of Brevard County and has established pollutant load limits in the form of Total Maximum Daily Loads (TMDLs) which require the City to reduce pollutant loads discharged from the City’s stormwater system and;

WHEREAS, §403.9337, Florida Statutes, requires a county government or municipal government located within the watershed of a water body or water segment that is listed by the Department of Environmental Protection as impaired to adopt, at a minimum, the model ordinance “Florida Friendly Fertilizer Use on Urban Landscapes”; and
WHEREAS, the Florida Department of Environmental Protection will provide pollutant load reduction credit to the City toward meeting mandated Total Maximum Daily Load Program Reductions for adoption and enforcement of code provisions directed at reducing such loadings from the use of fertilizer; and

WHEREAS, the City Council of the City of Satellite Beach, Florida, hereby determines that the adoption of such an ordinance to reduce pollutant runoff into waterways located within the City serves the public, safety, health and welfare of its citizens.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF SATELLITE BEACH, BREVARD COUNTY, FLORIDA as follows:

SECTION 1. A new Article VI to Chapter 26, Satellite Beach City Code is hereby created to read as follows:

Chapter 26
ENVIRONMENT

ARTICLE VII. FERTILIZER USE ON URBAN LANDSCAPE

Section 26-105. Purpose and intent.

This Article regulates and promotes the proper use of fertilizers by any applicator; requires proper training of commercial and institutional fertilizer applicators; establishes training and licensing requirements; establishes prohibited application periods; specifies allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones; and exemptions. This Article 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 natural and constructed stormwater conveyances and surface waters located within the City. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of City of Satellite Beach residents and the health of the public in general. 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.

Section 26-106. Definitions.

For purposes of this Article, the following terms shall have the following meanings:
Administrator means city manager or designee authorized to administer and enforce the provisions of this Article.

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

Applicator means any person who applies fertilizer on turf and/or landscape plants in the City.

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.

Council means the City Council of the City of Satellite Beach, Brevard County, Florida.

City of Satellite Beach approved best management practices training program means a training program approved pursuant to §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.

Code enforcement officer, official, or inspector means any designated employee or agent of the City of Satellite Beach 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 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 tree, shrub, or groundcover (excluding turf).

Low maintenance zone means an area a minimum of ten (10) feet wide adjacent to surface waters 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 June 1 through September 30 and/or 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 Brevard County, 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 rapid or quick release product.

Surface waters as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) means waters on the surface of the earth, contained in bounds created naturally or artificially, including the Atlantic Ocean, bays, bayous, sounds, estuaries, lagoons, lakes, ponds, impoundments, rivers, streams, springs, creeks, branches, sloughs, tributaries, canals, and ditches.

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 §570.02, Florida Statutes.

Section 26-107. Applicability.

The provisions of this Article shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the city limits of Satellite Beach, unless such applicator is specifically exempted by the terms or regulatory provisions of this Article. The provisions of this Article shall be prospective only, and shall not impair any existing contracts.

Section 26-108. 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 26-109. Fertilizer free zone.

The direct deposit of nutrients into the water shall be prohibited. Fertilizer shall not be applied within ten (10) feet of any surface waters, pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) or within ten (10) feet from the top of a seawall. Newly planted turf and/or landscape plants may be fertilized in this Zone for a sixty (60) day period beginning thirty (30) days after planting if needed to allow the plants to become well established. The requirements of Section 26-108 above also apply to newly planted turf and landscape plants.

Section 26-110. Low maintenance zone.

A voluntary ten (10) foot low maintenance zone is strongly recommended, but not mandated, from any surface waters, pond, stream, watercourse, 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. No mowed or cut vegetative material should 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 26-111. Fertilizer content and application rates.

a. Only "No Phosphate Fertilizer" as defined in Rule 5E-1.003(2), Florida Administrative Code, may be applied to turf or landscape plants in the City of Satellite Beach without a soil or plant tissue deficiency as 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
provided by Rule 5E-1.003(2), Florida Administrative Code. Deficiency verification shall be no more than two (2) years old. However, recent application of compost, manure, or top soil shall warrant more recent testing to verify current deficiencies.

b. The nitrogen content of fertilizer applied to turf or landscape plants within the City of Satellite Beach shall contain at least 50% slow release nitrogen, controlled release, timed release, slowly available, or water insoluble nitrogen per guaranteed analysis label. Caution shall be used to prevent direct deposition of nutrients in the water.

c. Fertilizers applied to turf within the City of Satellite Beach shall be applied at rates that are in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, Labeling Requirements For Urban Turf Fertilizers.

d. 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.

Section 26-112. 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, surface waters 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 and either legally applied to turf or any other legal site, or returned to the original or other appropriate container.

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

Section 26-113. Management of grass clippings and vegetative matter.

Grass clippings, vegetative material, and/or vegetative debris shall not be washed, swept, or blown off into surface waters, stormwater drains, ditches, conveyances, watercourses,
water bodies, wetlands, sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable.

**Section 26-114. Exemptions.**

The provisions of this Article shall not apply to:

a. Bona fide farm operations, as defined in the Florida Right to Farm Act, §823.14, Florida Statutes;

b. Any lands used for scientific research supported by an accredited institution of higher learning or a government entity, including, but not limited to, research on the effects of fertilizer use on urban stormwater, water quality, agronomics, or horticulture;

c. 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;

d. Vegetable gardens owned by individual or community property owners and trees grown for their edible fruit.

**Section 26-115. Training.**

a. Prior to January 1, 2014, all commercial and institutional applicators of fertilizer within the incorporated area of Satellite Beach, 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 encouraged to follow the recommendations of the University of Florida IFAS Florida Yards and Neighborhoods program when applying fertilizers.

**Section 26-116. Commercial and institutional applicators.**

a. After December 31, 2013, all commercial applicators of fertilizer within the incorporated area of Satellite Beach, shall abide by and have successfully completed 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 business tax receipt 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 Satellite Beach clerk’s office upon application or renewal of business tax receipt.

b. After December 31, 2013, all commercial applicators of fertilizer within the incorporated area of Satellite Beach, 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 pursuant to Rule 5E-14.117(18), Florida Administrative Code.

c. Institutional Applicators who apply 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 tax receipt. 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 City of Satellite Beach clerk’s office.

Section 26-117. Enforcement and monitoring.

Fines collected for violations of this Article shall be deposited in a trust fund dedicated to fulfill the purposes of this Article. Funds generated by penalties imposed under this section shall be used by the City for the administration and enforcement of §403.9337, Florida Statutes, and the corresponding sections of this Article, and to further water conservation and nonpoint pollution prevention activities.

Section 26-118. Penalty; additional remedies.

Penalties for violations of this Article shall be as specified in Section 125.69, F.S., Chapter 162, F.S., Article VIII, Ch. 2, Satellite Beach City Code, Section 1-13, Satellite Beach City Code or any other appropriate remedy provided by law. The City may seek enforcement action against both the owner of record, any person in actual or constructive possession and any person or entity responsible for carrying out any prohibited action. The provisions of this section are an additional and supplemental means of enforcing City codes and ordinances. Nothing in this section shall prohibit the City from enforcing this Code by injunctive relief, or by any other means provided by law.

Sec. 26-119. Appeals.

Appeals relating to any administrative decision or determination concerning implementation or application of the provisions of this Article shall be filed in writing within
30 calendar days after the decision is rendered by the Public Works Director and/or Building Official. Requests for appeals will be considered by the city manager.

SECTION 2. Conflicting Provisions. In the case of a direct conflict between any provision of this Ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

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 thereby; and it will be presumed that the City Council for the City of Satellite Beach 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 and unconstitutional provision thereby causing said remainder to remain in full force and effect.

SECTION 4. Inclusion in code. It is the intention of the City Council of Satellite Beach that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Satellite Beach, Florida; and that the sections of this ordinance may be renumbered or re-lettered and that the word “ordinance” may be changed to “section,” “article,” or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 5. Effective date. This Ordinance shall become effective immediately upon its adoption. However, compliance for commercial and institutional applicators shall be as provided in Sections 26-115 and 26-116. Enforcement of all other provisions of this Ordinance shall begin six months after the effective date to facilitate implementation of and education about this Ordinance.

SECTION 6. This Ordinance was duly passed on first reading at a regular meeting of the City Council on the 16th day of October, 2013 and adopted on the second and final reading at the regular meeting of the City Council on the 6th day of November, 2013.

FRANK P. CATINO, MAYOR

ATTEST:

LEONOR OLEXA, CMC, CITY CLERK