

Town of Grant-Valkaria, Florida

ORDINANCE NO. 2014-01

AN ORDINANCE OF THE TOWN OF GRANT-VALKARIA, BREVARD COUNTY, FLORIDA; ADDING A NEW CODE PROVISION TO THE CODE OF ORDINANCES OF THE TOWN RELATING TO THE REGULATION OF THE USE OF FERTILIZERS; PROVIDING FOR A SHORT TITLE, PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE REGULATION OF FERTILIZER USE AND APPLICATION; PROVIDING FOR EXEMPTIONS, TRAINING AND LICENSES; PROVIDING FOR PENALTIES AND ENFORCEMENT; PROVIDING FOR CONFLICTS, SEVERABILITY, REPEAL AND AN EFFECTIVE DATE.

WHEREAS, Impairment to the Town’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 Town has a direct impact on the health, safety and welfare of the general public; and,

WHEREAS, the Town Council has determined that the use of fertilizers on lands within the Town creates a risk to contributing to adverse effects on surface and/or ground water; and,

WHEREAS, pursuant to Section 403.067(4), Florida Statutes, the Florida Department of Environmental Protection has determined that the waters of the Indian River Lagoon adjacent to the Town of Grant-Valkaria are “impaired by nutrients”; and,

WHEREAS, collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of the Town’s residents and the health of the public; and,

WHEREAS, Section 403.9337 of the Florida Statutes provides for the adoption of an ordinance relating “Florida-Friendly Fertilizer Use on Urban Landscapes”; and,

WHEREAS, the Town 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,*” are required by this ordinance; and,

WHEREAS, the Town Council has determined that the adoption of this ordinance will promote the public health, safety, and welfare of the citizens by assisting in reducing pollution in the Indian River lagoon and reducing polluted stormwater run-off.

NOW THEREFORE BE IT ordained by the Town Council of the Town of Grant-Valkaria, Brevard County Florida:

SECTION 1. A new code provision is hereby added to the code of Ordinances of the Town which new provision shall read as follows:

“Sec. 1. Findings.

As a result of impairment to the Town of Grant-Valkaria’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 Town of Grant-Valkaria, the Town Council has determined that the use of fertilizers on lands within the town creates a risk to contributing to adverse affects on surface and/or ground water. Accordingly, the Town 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.

Sec.2. Short Title and Purpose And Intent.

These regulations shall be known as the “Town of Grant-Valkaria Fertilizer Use and Application Code”. This ordinance 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 Prohibited Application Period; specifies allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones, and exemptions. This 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 Town’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 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. 3. 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 Town Administrator, or an administrative official of the Town government designated by the Town Administrator to administer to enforce the provisions of these regulations.

“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 Town.

“Board or Governing Board” means the Town Council of the Town.

“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.

“Town” shall mean the Town of Grant-Valkaria, Florida.

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

“Commercial Fertilizer Applicator”, except as provided in 482.1562(9) Florida Statute, 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. Provided; however, that yard waste, compost, mulches, or other similar organic materials that are primarily organic in nature and are applied to improve the physical condition of the soil shall not be considered fertilizer.

“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, 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 Town, issued by the National Weather Service, or if heavy rain (World Meteorological

Organization definition of heavy rain: Rainfall greater than or equal to 50 mm (2 inches) in a 24 hour period) is likely.

“Restricted application period” means June 1 to September 30.

“Town of Grant-Valkaria Approved Best Management Practices Training Program” means a training program approved per 403.9338 F.S., 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 Town Administrator.

"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.

Sec. 4. 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 Town, 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.

Sec. 5. 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. In addition, fertilizer containing nitrogen or phosphorus shall not be applied to turf or landscape plants during the Restricted Application Period

Sec. 6. Fertilizer Free Zones.

(a) Except as provided for in subsection (b) below, 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). If more stringent Town 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.

(b) Fertilizer shall not be applied within twenty five (25) feet of the Indian River Lagoon.

Sec. 7. 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 Town Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. 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.

Sec. 8. Fertilizer Content and Application Rates.

- a. No fertilizer containing phosphorous shall be applied to turf or landscape plants in the Town 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 provided by Rule 5E-1.003(2), Florida Administrative Code, as amended from time to time. Deficiency verification shall be no more than 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 Town shall contain at least 50% slow release nitrogen per guaranteed analysis label.
- c. Fertilizers applied to turf within the Town shall be formulated and 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*, as amended from time to time.
- 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.

Sec. 9. 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.

Sec. 10. 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 practicable.

Sec. 11. 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.

(d) Plants, trees and vegetables used for edible food, owned by individual property owners or a community, provided that fertilizer application rates do not exceed UF/IFAS recommendations or those from a County Extension Agent.

Sec. 12. Training.

(a) All commercial and institutional applicators of fertilizer within the incorporated area of 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 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.

Sec. 13. Licensing Of Commercial Applicators.

(a) All commercial applicators of fertilizer within the Town, 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 Town 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 Town within 180 days of the effective date of this ordinance.

(b) All commercial applicators of fertilizer within the Town 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 Town.

Sec. 14. Penalties and Enforcement.

Any person found in violation of these regulations shall be subject to a fine of not less than \$50.00 for a first offense, \$100.00 for a second offense, and \$250.00 for a third or subsequent offense.” In lieu of the above, the Town may also, use the provisions of Chapter 162 of the Florida Statutes for code enforcement or may proceed in civil court for any available legal and equitable relief.

Funds generated by penalties imposed under this section shall be used by the Town for the administration and enforcement of section 403.9337, Florida Statutes, and the corresponding sections of this ordinance, and to further water conservation and nonpoint pollution prevention activities.”

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

SECTION 3. Severability. If any subsection, clause, phrase, word or provision of this ordinance is, for any reason, held invalid or unconstitutional by any court of competence jurisdiction, such invalid unconstitutional portion shall be deemed a separate, distinct, and independent provision, in such holding shall not affect the validity of the remaining portions of this ordinance, providing the remaining portions effectuate the purpose and intent of this ordinance.

SECTION 4. Effective Date. This ordinance shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Grant-Valkaria, Brevard County, Florida, this 12th day of February, 2014.

(signature on file)

Del Yonts, Mayor

ATTEST:

(signature on file)

Susanne R. Krueger, MMC, IIMC
Town Clerk

First Reading: January 8, 2014
Second Reading: February 12, 2014

Roll Call Vote:	Del Yonts	<u>Aye</u>
	Jason Mahaney	<u>Nay</u>
	Lisette Kolar	<u>Aye</u>
	Dan Faden	<u>Aye</u>
	Cathy DeMott	<u>Absent</u>
	Pat Bryan	<u>Aye</u>
	Dan Robino	<u>Nay</u>