

ORDINANCE NO. 2012 - 48

AN ORDINANCE OF THE CITY OF TAMPA, FLORIDA, AMENDING CITY OF TAMPA CODE OF ORDINANCES CHAPTER 21 ARTICLE V REGULATING THE USE AND SALE OF FERTILIZERS CONTAINING NITROGEN AND/OR PHOSPHORUS WITHIN THE CITY OF TAMPA; AMENDING THE CITY OF TAMPA CODE OF ORDINANCES, CHAPTERS 19 AND 23.5 TO PROVIDE ENFORCEMENT FOR THE REGULATION CONTAINED WITHIN CHAPTER 21; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on June 23, 2011 the City Council approved Ordinance No. 2011-74 enacting Article V of Chapter 21, City of Tampa Code which embodies the City's "Fertilizer Ordinance; and

WHEREAS, on November 3, 2011 the City Council approved revisions to Article V of Chapter 21, City of Tampa Code and directed staff to submit such revisions for its consideration; and

WHEREAS, it is necessary to include more specific revisions further authorizing the enforcement of Ordinance 2011-74 and the proposed revisions contained herein; and

WHEREAS, the revisions contained herein appropriately identify narrow exemptions from the application of Article V, Chapter 21, City of Tampa Code; and

WHEREAS, it is necessary to amend City of Tampa Code of Ordinances Chapters 19 and 23.5 to establish the provisions on which the enforcement of Chapter 21, Article V can be implemented; and

WHEREAS, the provisions of Article V and its revisions herein, are applicable only within the City of Tampa; and

WHEREAS, to ensure consistency with the rule on this same subject matter adopted by the Environmental Protection Commission of Hillsborough County (EPCHC), the City of Tampa intends that all provisions of the EPCHC rule shall remain in effect and enforceable within the City of Tampa by the EPCHC as the provisions within this ordinance are supplemental and more restrictive than that of the EPCHC rule; and

WHEREAS, it is the intent of the City Council that Ordinance 2011-74 adopted on June 23, 2011 remains valid and enforceable with the adoption of the amendments proposed herein in compliance with sections 570.07(41)(b) and 576.181(5)(b), Florida Statutes.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF TAMPA CITY COUNCIL:

SECTION 1. That City of Tampa Code of Ordinances Chapter 21 Article V; is amended as indicated below :

1 ARTICLE V. Regulation of the Use and Sale of Fertilizers Containing Nitrogen and/or
2 Phosphorus
3

4 Section 21-140. Purpose and Intent.
5

6 **This Article** regulates the proper use of fertilizers by any applicator and requires proper
7 training of commercial and institutional fertilizer applicators and landscape maintenance
8 companies. The Article requires the use of best management practices which provide
9 specific management guidelines to minimize negative secondary and cumulative
10 environmental effects associated with the misuse of fertilizers. These secondary and
11 cumulative effects have been observed in and on the City of Tampa's natural and artificial
12 stormwater and drainage conveyances, rivers, lakes, canals, estuaries, interior freshwater
13 wetlands, and Tampa Bay. Collectively, these water bodies are an asset critical to the
14 environmental, recreational, cultural and economic well-being of the City of Tampa and the
15 health of the public. Overgrowth of algae and vegetation hinder the effectiveness of flood
16 attenuation provided by natural and artificial stormwater and drainage conveyances.
17 Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, will
18 help improve and maintain water and habitat quality.
19
20

21 Section 21-141. Definitions.
22

23 For this Article, the following terms shall have the meanings set forth in this section unless
24 the context clearly indicates otherwise.
25

26 *Application* or *Apply* means the actual physical deposit of fertilizer to turf or landscape
27 plants.
28

29 *Applicator* means any person who applies fertilizer on turf and/or landscape plants in the
30 City of Tampa.
31

32 *Article* means Chapter 21, Article V of the City of Tampa Code of Ordinances, as amended,
33 unless otherwise specified.
34

35 *Best Management Practices* or *BMP* means turf and landscape practices which minimize the
36 negative environmental impacts of installation and maintenance of landscapes.
37

38 *Code Enforcement Officer, Official, or Inspector* means any employee or agent of the City
39 of Tampa who has been designated to enforce codes and ordinances enacted by the City of
40 Tampa City Council.
41

42 *Commercial Fertilizer Applicator* means any person or an agent or employee of a
43 commercial lawn or landscaping or commercial fertilizer company who applies fertilizer on
44 turf and/or landscape plants in the City of Tampa in exchange for money; goods, services or
45 other valuable consideration.
46

47 *Fertilize, Fertilizing, or Fertilization* means the act of applying fertilizer to turf, specialized
48
49
50

1 turf, or landscape plants.

2
3 *Fertilizer* means any substance or mixture of substances that contains one or more
4 recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity,
5 or provides other soil enrichment, or provides other corrective measures to the soil.
6

7
8 *Granular* means composed of small grains or particles.

9
10 *Institutional Applicator* means any person, other than a non-commercial or commercial
11 applicator, that applies fertilizer for the purpose of maintaining turf and/or landscape plants.
12 Institutional applicators shall include, but shall not be limited to, owners and managers of
13 public lands, schools, parks, religious institutions, utilities, industrial or business sites and
14 any residential properties maintained in condominium and/or common ownership.
15

16 *Impervious Surface* means a surface that has been compacted or covered with a layer of
17 material so that it is highly resistant or prevents infiltration by stormwater. It includes
18 roofed areas and surfaces such as compacted sand, limerock, or clay, as well as
19 conventionally surfaced streets, sidewalks, parking lots, and other similar surfaces.
20

21
22 *Landscape Plant* means any native or exotic tree, shrub, or groundcover (excluding turf).

23
24 *Landscape Maintenance* means activities carried out to manage and maintain landscape
25 plants including but not limited to mowing, edging, and trimming.
26

27 *Person* means any human being, business, corporation, limited liability company,
28 partnership, limited partnership, association, club, organization, and/or any group of people
29 acting as an organized entity.
30

31
32 *Restricted Season* means June 1st through September 30th.

33
34 *Saturated soil* means a soil in which the voids are filled with water. Saturation does not
35 require flow. For the purposes of this Article, soils shall be considered saturated if standing
36 water is present or the pressure of a person standing on the soil causes the release of free
37 water.
38

39
40 *Site Supervisor* means the direct supervisor of landscape maintenance personnel.

41
42 *Slow or Controlled Release fertilizer* means a fertilizer containing a plant nutrient in a form
43 which delays its availability for plant uptake and use after application, or which extends its
44 availability to the plant significantly longer than a referenced "rapidly available nutrient
45 fertilizer."
46

47
48 *Specialized Turf* means areas of grass used for athletic fields, golf course practice and play
49 areas, and other similar activities.

50
Specialized Turf Manager means a person responsible for fertilizing or directing the

1 fertilization of specialized turf.
2

3 *Surface Water* means fresh, brackish, saline or tidal waters, including but not limited to
4 bays, rivers, lakes, streams, wetlands, springs, impoundments, as well as canals and other
5 artificial water bodies.
6

7 *Turf, Sod, or Lawn* means a piece of grass-covered soil held together by the roots of the
8 grass.
9

10 *Fruit and Vegetable Garden* means an area dedicated to the cultivation of edible plants.
11

12
13 Section 21-142. Applicability and Implementation.
14

15 The provisions of **this Article** shall govern any and all applicators of fertilizer and areas of
16 application of fertilizer **within the City of Tampa** unless such applicator or activity is
17 specifically exempted by the terms of this Article from the regulatory provisions of **this**
18 Article as indicated herein. The provisions of this Article shall be **implemented as of June 1,**
19 **2012 and no person shall act in a manner inconsistent with this Article after such date.**
20

21
22 Section 21-143. Weather and Seasonal Restrictions.
23

24 (a) No applicator shall apply fertilizers containing nitrogen and/or phosphorous to
25 turf and/or landscape plants during the restricted season from June 1 through
26 September 30 unless subject to an exemption indicated in **this Article.** .
27

28 (b) **No** commercial fertilizer applicator shall apply fertilizers containing nitrogen and/or
29 phosphorous to turf and/or landscape plants during the restricted season from June 1
30 through September 30 unless subject to an exemption indicated in **this Article.**
31
32

33
34 Section 21-144. Fertilizer Content and Application Rate.
35

36 (a) No fertilizer containing phosphorus shall be applied to turf and/or landscape plants in
37 the **City of Tampa**, except where phosphorus deficiency has been **demonstrated in the**
38 **soil underlying** the turf and/or landscape plants by a soil analysis test performed by a
39 **State of Florida**-certified laboratory. Any person who obtains such a soil analysis test
40 showing a phosphorus deficiency and who wishes to apply phosphorus to turf and/or
41 landscape plants shall mail a copy of the test results to **City of Tampa Department of**
42 **Public Works**, Stormwater Division: 306 E. Jackson Street, Tampa, FL 33602 prior
43 to the application of phosphorous.
44

45 (b) Granular fertilizers containing nitrogen applied to turf and/or landscape plants within
46 the **City of Tampa** shall contain no less than 50% slow release nitrogen per
47 guaranteed analysis label.
48
49
50

1 Section 21-145. Exemptions.
2

3 The provisions set forth above in Sections 21-143 and 21-144 of this Article shall not apply
4 to:
5

- 6 (a) Golf courses. For all golf courses, the provisions of the Florida Department of
7 Environmental Protection (FDEP) document, "BMPs for the Enhancement of
8 Environmental Quality on Florida Golf Courses, January 2007," are required and
9 shall be followed when applying fertilizer to golf courses.
10
- 11 (b) Specialized turf. Specialized turf managers are required to follow the Best
12 Management Practices embodied in the "Florida Friendly Best Management Practices
13 for Protection of Water Resources by the Green Industries," December 2008.
14
- 15 (c) Bona fide farm operations as defined in the Florida Right to Farm Act, Section
16 823.14, Florida Statutes.
17
- 18 (d) Fruit and vegetable gardens, owned by individual property owners or a community,
19 provided that fertilizer application rates do not exceed UF IFAS recommendations per
20 SP 103 Florida Vegetable Gardening Guide, December 2008.
21
- 22 (e) Yard waste compost, mulches, or other similar materials that are primarily organic in
23 nature and are applied to improve the physical condition of the soil.
24
- 25 (f) Tree trunk injection fertilization treatments that are performed by a certified arborist.
26
- 27 (g) Theme park or entertainment complex as defined in s. 509.13 that: operates pursuant
28 to a National Pollution Discharge Elimination System (NPDES) permit; complies
29 with the requirements of the "Best Management Practices identified in the "Florida
30 Friendly Best Management Practices for the Protection of Water Resources by the
31 Green Industries," dated December 2008 and as revised or amended thereafter and
32 whose applicators are certified pursuant to this ordinance.
33
- 34 (h) Retail or wholesale fertilizer sellers may sell products containing nitrogen and/or
35 phosphorus to specialized turf managers, theme parks or entertainment complexes as
36 defined in s. 509.13 and (g) above or to operators of bona fide farms operations
37 during the restricted period for use only on specialized turf, within theme parks or
38 entertainment complexes, or for use at bona fide farm operations, respectively.
39
40
41
42

43 Section 21-146. Certification and Training.
44

- 45 (a) All commercial applicators and their supervisors, as well as government and
46 institutional applicators, site supervisors and managers of professional landscape
47 maintenance companies, government and institutional landscape supervisors, and any
48 employee of a lawn and landscape maintenance company performing fertilizer
49 application shall comply with the Rule Chapter 1-15 of the EPCHC. To be in
50 compliance with the provisions of this Article, a copy of the appropriate certificate

1 indicating the completion of the training and certification as required by Chapter 1-15
2 referenced herein shall be with an applicator at all times and provided to the City of
3 Tampa representative such as a code enforcement officer or Public Works
4 Department Stormwater Division staff upon request.
5

- 6 (b) A vehicle decal issued by the EPCHC Executive Director or other authorized
7 organization indicating that the company is in compliance with the training and
8 certification requirements of Chapter 1-15 of the EPCHC shall be affixed and
9 maintained on the exterior of all vehicles used by the company in connection with
10 landscape maintenance activities and/or the application of fertilizer within the area
11 regulated by this Article.
12
13

14 Section 21-147. Retail Sale of Fertilizer Containing Nitrogen or Phosphorous.
15

16 No person, firm, corporation, franchise, or commercial establishment shall sell, at retail, any
17 lawn or landscape fertilizer, liquid or granular, within the City of Tampa that contains any
18 amount of nitrogen or phosphorous during the restricted season from June 1 -September 30
19 unless subject to an exemption indicated in this Article.
20

- 21 (a) Granular fertilizers containing nitrogen sold at retail within the City of Tampa shall
22 contain no less than 50% slow release nitrogen per guaranteed analysis label.
23
24 (b) Displays of lawn and landscape fertilizers containing nitrogen or phosphorous shall
25 not be allowed on the sales area of the retail store during the restricted season.
26
27 (c) Retailers shall post a notice provided by the City stating that the use of lawn and
28 landscape fertilizers in the City of Tampa is restricted in accordance with this Article.
29
30 (d) Fertilizers sold within the City of Tampa shall meet the requirements set forth in Rule
31 5E- 1.003(2), Florida Administrative Code, Labeling Requirements For Urban Turf
32 Fertilizers.
33
34

35 Section 21-148. Enforcement and Penalty.
36

- 37 (a.) Violations of this Article may be enforced as provided for in Chapter 1 Section 1-6
38 and Chapter 23, Section 23.5-5 of the City of Tampa Code of Ordinances.
39
40 (b) A violation of this Article is deemed an irreversible or irreparable violation and will
41 result in an immediate civil citation or notice to appear.
42
43

44 **SECTION 2.** That City of Tampa Code of Ordinances Section 19-4 is amended as
45 indicated below:
46

47 Sec. 19-4. Department of Code Enforcement; duties and scope of authority of the director.
48

- 49 (a) The director shall have all powers, duties and responsibilities to administer and enforce
50 the following City Code chapters or sections: The director shall be deemed to be an officer

1 for the purpose of enforcing the provisions of this chapter under authority provided in
2 Chapter 14 of this Code.

- 3 (1) Chapter 14 Articles III and IV;
- 4 (2) Chapter 19;
- 5 (3) Chapter 20.5;
- 6 (4) Chapter 21 Article V;
- 7 (5) Chapter 27.

8
9
10 (b) Any action to be taken by the director pursuant to this chapter in regard to the
11 enforcement of any section hereof shall be considered cumulative and in addition to
12 penalties and to other remedies provided elsewhere by ordinance or law.

13
14 (c) It shall be unlawful for any person to oppose, obstruct or resist the director or his
15 authorized agents, assistants, employees and independent contractors in the discharge of his
16 duties as provided in this chapter.

17
18 **SECTION 3.** That City of Tampa Code of Ordinances Section 23.5-5 is amended as
19 indicated below:

20
21 Sec. 23.5-5. Schedule of violations and penalties.

22
23 (a) Violations of the following sections of the Tampa City Code are considered Class I
24 violations and will carry a fine of:

- 25 For a first offense . . . \$75.00
- 26 For a second offense . . . 150.00
- 27 For a third offense . . . 300.00
- 28 For a fourth or subsequent offense . . . 450.00

29
30 City Code Section:

31	3-40	19-56	19-231(10)	19-235
32	3-41(a)	19-76	19-231(11)	19-236
33	16-46	19-77	19-231(12)	19-237
34	19-26	19-135	19-231(13)	19-238
35	19-27	19-136	19-231(15)	<u>21-143(a)</u>
36	19-46	19-137	19-231(17)	22-11
37	19-47	19-138	19-231(18)	27-129
38	19-49	19-231(6)	19-232	27-148
39	19-50	19-231(9)	19-233	27-272 (Vendor-All Types)

40
41 Provided, however, that in lieu of the fines specified above the court may impose
42 community service hours to be performed by the defendant as directed by the court, to
43 be credited at the then applicable minimum wage rate specified by 29 U.S.C. §
44 206(a)(1).

45
46 (b) Violations of the following sections of the Tampa City Code are considered Class II
47 violations and will carry a fine of:

- 48 For a first offense . . . \$150.00

1 For a second offense . . . 300.00
2 For a third or subsequent offense . . . 450.00

3 City Code Section:

4 19-52 19-231(1) 19-231(5)
5 19-54(a) 19-231(2) 19-231(7)
6 19-57 19-231(3) 19-231(8)
7 19-79 19-231(4) 19-231(16)
8 25-182

- 9
10 (c) Violations of the following sections of the Tampa City Code are considered Class III
11 violations and will carry a fine of:

12 For a first offense . . . \$300.00
13 For a second or subsequent offense . . . 450.00

14 City Code Section:

15 19-54(b) 22-58(d) 22-155 22-230
16 19-55 22-116 22-156 22-234
17 21-143(b) 22-135 22-211 25-48(d)
18 22-8 22-154 22-224

- 19
20 (d) Violations of the following sections of the Tampa City Code are considered Class IV
21 violations and will carry a fine of four hundred fifty dollars (\$450.00) [for] each and
22 every offense.

23 City Code Section:

24 13-43 21-147(b) 22-58(b) 25-48(a) 27-220
25 13-45 21-147(c) 22-58(c) 25-48(c) 27-521
26 19-48 21-147(d) 22-60 25-61
27 19-53 22-9 22-101 25-63
28 21-147(a) 22-58(a) 22-191 27-194

- 29
30 (e) Violations of 26-97 as well as any subsequent emergency or other amending ordinances
31 related to irrigation and other outdoor water use are considered Class W violations and
32 will carry a fine of:

33 For a first violation . . . \$100.00
34 For a second violation . . . 200.00
35 For a third or subsequent violation . . . 450.00
36
37

38 **SECTION 4. Severability Clause.**

39
40 If any section, sentence, clause, phrase, or word of this Article is, for any reason, held or
41 declared to be unconstitutional, inoperative or void, such holding or invalidity shall not
42 affect the remaining portions of this Article, and it shall be construed to be the legislative
43 intent to pass this Article without such unconstitutional, invalid or inoperative part therein.
44 Moreover, it is the intent that Ordinance 2011-74 adopted on June 23, 2011, remains valid
45 and enforceable with the adoption of the amendments proposed herein in compliance with
46 sections 570.07(41)(b) and 576.181(5)(b), Florida Statutes. In the event that a court of
47 competent jurisdiction determines that the amendments contained herein in any way render
48 Ordinance 2011-74 unenforceable, it the City's intent that these amendments be stricken so
49 that Ordinance 2011-74 remains in effect and enforceable.
50

