

## **Chapter 27 Storm Water Management .Article IV Fertilizer**

Sec. 27-62. Short title.

This article shall be known and may be cited as "The City of Melbourne Fertilizer Ordinance."

*(Ord. No. 2013-09, § 2, 3-26-13)*

Sec. 27-63. 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 a prohibited 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 City of Melbourne natural and constructed storm water conveyances and surface waters. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of the City of Melbourne and Brevard County residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed storm water conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, will help improve and maintain water and habitat quality.

*(Ord. No. 2013-09, § 2, 3-26-13)*

Sec. 27-64. Definitions.

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

*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 of Melbourne.

*Best management practices* mean 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.

*Brevard County approved best management practices training program* means a training program approved pursuant to F.S. § 403.9338, 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 Melbourne whose duty it is to enforce codes and ordinances enacted by the City of Melbourne.

*Commercial fertilizer applicator*, except as provided in F.S. § 482.1562(9), 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 (1) 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 native or exotic 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 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 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 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.

*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 F.S. § 570.02.

*(Ord. No. 2013-09, § 2, 3-26-13)*

Sec. 27-65. Applicability.

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

*(Ord. No. 2013-09, § 2, 3-26-13)*

Sec. 27-66. 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.

*(Ord. No. 2013-09, § 2, 3-26-13)*

Sec. 27-67. Fertilizer free zone.

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. If a deflector shield, drop spreader, or liquid applicator with a visible and sharply defined edge is used in these areas, a minimum of three (3) feet shall be maintained. 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. Caution shall be used to prevent direct deposition of nutrients into the water. The requirements of [section 27-66](#) also apply to newly planted turf and landscape plants.

*(Ord. No. 2013-09, § 2, 3-26-13)*

Sec. 27-68. Low maintenance zone.

A voluntary ten-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.

*(Ord. No. 2013-09, § 2, 3-26-13)*

Sec. 27-69. Fertilizer content and application rates.

(a) Only "no phosphate fertilizer" or "low 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 Melbourne 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 Melbourne shall contain slow release, controlled release, timed release, slowly available, or water insoluble nitrogen per guaranteed analysis label. Newly planted turf and/or landscape plants may be fertilized with less than other rate of release products for a sixty-day period beginning thirty (30) days after planting if needed to allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients in the water.

(c)Fertilizers applied to turf within the City of Melbourne 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 thirty (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 storm water pollution prevention plan for that site.

(e)Where golf courses, parks and athletic fields are subject to and implementing Best Management Practices as prescribed in Rule 5E-1003(2)(d) Florida Administrative Code, they shall be exempt from this section.

*(Ord. No. 2013-09, § 2, 3-26-13)*

Sec. 27-70. 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 storm water drains, ditches, conveyances, or water bodies.

*(Ord. No. 2013-09, § 2, 3-26-13)*

Sec. 27-71. 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 surface waters, storm water 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.

*(Ord. No. 2013-09, § 2, 3-26-13)*

Sec. 27-72. Exemptions.

The provisions set forth in this article shall not apply to:

(1)Bona fide farm operations as defined in the Florida Right to Farm Act, F.S. § 823.14;

(2)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 storm water, water quality, agronomics, or horticulture.

*(Ord. No. 2013-09, § 2, 3-26-13)*

Sec. 27-73. Training.

(a)Prior to January 1, 2014, all commercial and institutional applicators of fertilizer within the incorporated and unincorporated area of Brevard County, 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.

*(Ord. No. 2013-09, § 2, 3-26-13)*

Sec. 27-74. Commercial and institutional applicators.

(a)After December 31, 2013, all commercial applicators of fertilizer within the City of Melbourne, 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 Melbourne Revenue Office upon application or renewal of business tax receipt.

(b)After December 31, 2013, all commercial applicators of fertilizer within the City of Melbourne, 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 (1) 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 Melbourne Revenue Office.

*(Ord. No. 2013-09, § 2, 3-26-13)*

Sec. 27-75. Use of penalty awards.

Any money recovered by the city in an action against any person who has violated this article or state law shall be used for storm water quality improvement projects in the City of Melbourne.

*(Ord. No. 2013-09, § 2, 3-26-13)*

Sec. 27-76. Penalty; additional remedies.

Penalties for violations of this article shall be two hundred dollars (\$200.00) per day, per occurrence.

The city may seek enforcement action against both the owner of record 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's 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.

*(Ord. No. 2013-09, § 2, 3-26-13)*

Sec. 27-77. 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 thirty (30) calendar days after the decision is rendered by the city engineer. Requests for appeals will be considered by the city engineer.

*(Ord. No. 2013-09, § 2, 3-26-13)*

Sec. 27-78. Conflicting provisions.

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