

ORDINANCE NO. 2020-01

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING CHAPTER 8, "ENVIRONMENT" OF THE VILLAGE CODE OF ORDINANCES BY CREATING ARTICLE IX, "FERTILIZER USE" RELATING TO THE USE OF FERTILIZERS WITHIN THE VILLAGE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne ("Village") is committed to environmental conscientiousness and leadership, and towards that end has previously adopted ordinances prohibiting the sale or use of polystyrene food service articles by Village contractors, special event permittees, and food service providers, and prohibiting the sale or distribution of single-use plastic straws; and

WHEREAS, the unregulated use of fertilizers can lead to the presence of excessive nutrients and increased levels of nitrogen in surface and ground waters, resulting in a detrimental effect on the Village's environment and waters; and

WHEREAS, the Village Council finds that additional management measures that are specified in this Ordinance, and are otherwise contained in the most recent edition of the "*Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2015*", are required to protect the waters in, under, and around the Village; and

WHEREAS, the Village finds that it is in the public interest, safety, and welfare to reduce pollutants on the lands and in the waters of the Village; and

WHEREAS, as such, the Village seeks to adopt regulations relating to the use of fertilizers; and

WHEREAS, the Village Council finds that this Ordinance substantially conforms to the requirements of Section 403.9337, Florida Statutes; and

WHEREAS, the Village Council finds that this Ordinance is necessary for the preservation and improvement of the environment, public health, safety and welfare of the Village's residents and visitors.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:¹

Section 1. Recitals. The above-stated recitals are true and correct and are incorporated herein by this reference.

¹ Coding: ~~Strikethrough~~ words are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with **highlighted** ~~double-strikethrough~~ and double underline.

Section 2. Amending Chapter 8 of the Village Code. That the Code of Key Biscayne, Florida is hereby amended by amending Chapter 8 to create Article IX, "Fertilizer Use," which Article shall read as follows:

Chapter 8 – ENVIRONMENT

ARTICLE IX. - FERTILIZER USE

Section 8-501. Purpose and Intent.

This Article 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. The Article requires the use of Best Management Practices 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 Village's natural and constructed stormwater systems, canals, lakes, and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of the Village's residents and the health of the public. Regulation of nutrients, including both phosphorous and nitrogen contained in Fertilizer, will help improve and maintain water and habitat quality.

Section 8-502. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning.

~~Administrator means the Village Manager, or an administrative official of the Village designated by the Village Manager to administer and enforce the provisions of this article.~~

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 Village.

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.

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.

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, 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.

~~*Miami-Dade County 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, 2015," as revised, and approved by the County.~~

Person means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organizations, 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 county, issued by the National Weather Service, or if heavy rain (two inches or more) is likely.

Restricted Application Period means June 1 to September 30.

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 means waters on the surface of the earth, including the Atlantic Ocean, bays, lakes, ponds, and canals.

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, institutional, rights-of-way, or other lands that are planted with turf or horticultural plants.~~

Section 8-503. Applicability.

This Article shall be applicable to and shall regulate any and all Applicators of Fertilizer and areas of Application of Fertilizer within the Village, unless such Applicator is specifically exempted by the terms of this Article.

Section 8-504. Timing of Fertilizer Application

- (a) No Applicator shall apply Fertilizers containing nitrogen and/or phosphorous to Turf and/or landscape plants during the Prohibited Application Period, or to Saturated Soils. In addition, Fertilizer containing nitrogen or phosphorous shall not be applied to Turf or Landscape Plants during the Restricted Application Period, ~~which is defined as June 1 to September 30.~~
- (b) Fertilizer shall only be applied to actively growing Turf that is not dormant, dead or unestablished.
- (c) Fertilizer containing nitrogen or phosphorous 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 hydroseeding for temporary or permanent erosion control in an emergency situation.

Section 8-505. Fertilizer Free Zones.

Fertilizer shall not be applied within fifteen (15) feet of any pond, lake, canal, or from the top of a seawall. If more stringent County 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 Fertilizer into the water.

Section 8-506. Low Maintenance Zones.

A voluntary ten (10) foot Low Maintenance Zone is strongly recommended, but not mandated, from any pond, lake, canal, 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 County 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.

Section 8-507. Fertilizer Content and Application Rates.

- (a) Fertilizers applied to Turf and/or landscape plants within the Village shall be applied in accordance with directions provided by Rule 5E-1.003(2), Florida Administrative Code, Labeling Requirements for Urban Turf Fertilizers.
- ~~(b) Nitrogen or phosphorous Fertilizer shall not be applied to Turf or landscape plants except as provided in (a) above for Turf, or in UF/IFAS recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an approved test.~~

- (c) Fertilizer shall be applied to Turf and/or landscape at the lowest rate necessary. Nitrogen shall not be applied at an application rate greater than 0.57 lbs of readily available nitrogen per one thousand (1,000) square feet at any one time based on the soluble fraction of formulated fertilizer, with no more than four (4) pounds of nitrogen per one thousand (1,000) square feet applied in any calendar year.

~~one (1) pound total nitrogen per one thousand (1,000) square feet applied at any one time, and not to exceed the nitrogen recommendations set forth below on an annual basis:~~

Grass species	Maximum N application rate (lbs/1,000 sq ft/Year)
Bahiagrass	4
Bermudagrass	7
Centipedegrass	3
St. Augustinegrass	6
Zoysia	4.5

- (d) ~~No phosphorous Fertilizer shall be applied to existing Turf and/or landscape plants within the Village at application rates which exceed 0.25 pounds phosphorous per one thousand (1,000) square feet per Application nor exceed 0.50 pounds phosphorous per one thousand (1,000) square feet per year.~~ No fertilizer containing phosphorus shall be applied to turf and/or landscape plants in the Village, except where a phosphorus deficiency has been demonstrated in the soil underlying the turf and/or landscape plants by a soil analysis test performed by a State of Florida certified laboratory. Any person who obtains a soil analysis test showing a phosphorus deficiency and who wishes to apply phosphorus to turf and/or landscape plants shall provide a copy of the test results to the Village prior to the application of phosphorus.
- (e) The nitrogen content of Fertilizer applied to Turf or landscape plans within the Village shall contain at least 50% slow release, 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.

Section 8-508. 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 systems or water bodies.

Section 8-509. 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.

Section 8-510. Exemptions.

The provisions set forth above in this Article shall not apply to:

(a) A property owner who seeks and is granted a waiver of the provisions of this Article for the personal, non-commercial Application of non-conforming Fertilizer to the property the individual is occupying. In considering a request for a waiver of the enforcement of this Section, the Village may will consider, without limitation, the care of newly planted landscaping, the requirements of ornamental and/or other specialty plants, and/or any special individual landscaping needs of a given property. This waiver may be granted administratively upon application to the Village Manager. Such a waiver shall be valid for 12 months and may be renewed upon application to the Village.

Section 8-511. Training.

(a) ~~All commercial and institutional applicators of fertilizer within the Village's jurisdiction 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 LandscapeTM" program, or an approved equivalent.~~

(b) Private, non-commercial Applicators are required to follow the recommendations of the University Florida IFAS *Florida Yards and Neighborhoods* program when applying Fertilizers.

Section 8-512. Licensing of Commercial Applicators.

(a) All Commercial Applicators of Fertilizer within the Village's jurisdiction 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.

(b) Prior to a All businesses applying Fertilizer to Turf and/or landscape plants (including but not limited to residential lawns, commercial properties, and multi-family and condominium properties), the business 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 obtained upon successful completion of 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 LandscapeTM" program, or an approved equivalent. ~~Owners for any category of occupation which may apply~~

~~any fertilizer to Turf and/or Landscape Plants~~ Upon request, a business shall provide proof of completion of the program to the Village Manager or designee.

Section 8-513. Enforcement; Penalties.

- (a) Following adoption of this Article, the Village shall engage in public education efforts to inform the public of the provisions of this Article.
- (b) Beginning ~~March~~ May 1, 2020, the Village's Code Enforcement Department shall enforce all provisions of this Article.
- (c) Penalties for violations of the provisions of this Article shall be enforced through Chapter 2 of the Village Code. In addition, the Village Police Department may enforce the provisions of this ~~Section~~ Article.
- (d) In addition to any Applicator, Commercial Fertilizer Applicator, or Institutional Applicator, the owner of any real property upon which any Fertilizer regulated herein is applied shall be responsible for compliance with this Article to the same extent as the Applicator, Commercial Fertilizer Applicator, or Institutional Applicator.
- (e) The provisions of this Article shall not apply to Village owned, leased, or maintained athletic fields until September 30, 2020.

Section 3. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

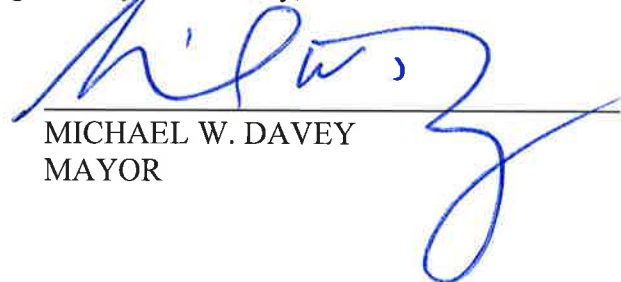
Section 4. Codification. That it is the intention of the Village Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Village's Code of Ordinances, and that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word.

Section 5. Conflicts. That all ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 6. Effective Date. That this Ordinance shall become effective immediately upon final adoption on second reading.

PASSED on first reading on the 19th day of November, 2019.

PASSED AND ADOPTED on second reading 11th day of February, 2020.


MICHAEL W. DAVEY
MAYOR

ATTEST:

JM *Jennifer Medina*
JENNIFER MEDINA, CMC
VILLAGE CLERK



APPROVED AS TO FORM AND LEGALITY:

Hayden
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
VILLAGE ATTORNEY

MIAMI DAILY BUSINESS REVIEW

Published Daily except Saturday, Sunday and
Legal Holidays
Miami, Miami-Dade County, Florida

**STATE OF FLORIDA
COUNTY OF MIAMI-DADE:**

Before the undersigned authority personally appeared GUILLERMO GARCIA, who on oath says that he or she is the DIRECTOR OF OPERATIONS, Legal Notices of the Miami Daily Business Review f/k/a Miami Review, a daily (except Saturday, Sunday and Legal Holidays) newspaper, published at Miami in Miami-Dade County, Florida; that the attached copy of advertisement, being a Legal Advertisement of Notice in the matter of

VILLAGE OF KEY BISCAYNE - ORDINANCE - AMENDING CHAPTER 8, "ENVIRONMENT" - JAN. 28, 2020

in the XXXX Court,
was published in said newspaper in the issues of

01/17/2020

Affiant further says that the said Miami Daily Business Review is a newspaper published at Miami, in said Miami-Dade County, Florida and that the said newspaper has heretofore been continuously published in said Miami-Dade County, Florida each day (except Saturday, Sunday and Legal Holidays) and has been entered as second class mail matter at the post office in Miami in said Miami-Dade County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

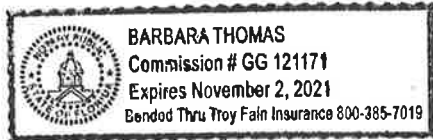
Guillermo Garcia

Sworn to and subscribed before me this
17 day of JANUARY, A.D. 2020

Barbara Thomas

(SEAL)

GUILLERMO GARCIA personally known to me



**VILLAGE OF KEY BISCAYNE
OFFICE OF THE VILLAGE CLERK
PUBLIC NOTICE**

Notice is hereby given that the following ordinance will be considered on Second Reading by the Village Council of the Village of Key Biscayne at a meeting to be held on Tuesday, January 28, 2020 at 6:00 p.m., in the Council Chamber, located at 560 Crandon Boulevard, Key Biscayne, Florida:

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING CHAPTER 8, "ENVIRONMENT" OF THE VILLAGE CODE OF ORDINANCES BY CREATING ARTICLE IX, "FERTILIZER USE" RELATING TO THE USE OF FERTILIZERS WITHIN THE VILLAGE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

The proposed Ordinance may be inspected by the public at the Office of the Village Clerk. Interested parties may appear at the Public Hearing and be heard with respect to the proposed Ordinances. Any person wishing to address the Village Council on any item at this Public Hearing is asked to register with the Village Clerk prior to that item being heard.

In accordance with the Americans With Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this proceeding because of that disability should contact the Office of the Village Clerk, 88 West McIntyre Street, Suite 220, Key Biscayne, Florida 33149, telephone number (305) 365-5506, not later than two business days prior to such proceeding.

Should any person desire to appeal any decision of the Village Council with respect to any matter to be considered at this meeting, that person shall insure that a verbatim record of the proceedings is made including all testimony and evidence upon which any appeal may be based (F.S. 286.0105).

Comments of any interested party relative to this matter may be submitted in writing and or presented in person at the public hearing.

Jennifer Medina, CMC
Village Clerk
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