

ORDINANCE NO. 2013-7

AN ORDINANCE OF THE CITY OF INDIAN HARBOUR BEACH, BREVARD COUNTY, FLORIDA; ADDING SECTIONS 107-13 THROUGH 107-20 TO CHAPTER 107 OF THE LAND DEVELOPMENT REGULATIONS OF THE CITY; ESTABLISHING REGULATIONS OF CONTRACTORS THAT PERFORM WORK ON IRRIGATION SYSTEMS; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR PENALTIES; ADDING SECTIONS 107-21 THROUGH 107-32 TO CHAPTER 107 OF THE LAND DEVELOPMENT REGULATIONS OF THE CITY; PROVIDING FOR A SHORT TITLE AND PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE REGULATION OF FERTILIZER APPLICATIONS; PROVIDING FOR EXEMPTIONS, TRAINING AND LICENSES; PROVIDING FOR PENALTIES; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, REPEAL AND AN EFFECTIVE DATE.

WHEREAS, Section 373.62, F.S. requires the proper installation, maintenance, and operation of technology that inhibits or interrupts the operation of automatic irrigation systems during periods of sufficient moisture, and encourages the adoption of ordinances enforcing such provisions; and,

WHEREAS, the City Council recognizes the need for the efficient use of water as a natural resource through the use of such technology on automatic irrigation systems; and,

WHEREAS, the City Council recognizes that water conservation in the landscape can be enhanced through the use of such technology on automatic irrigation systems; and,

WHEREAS, proper installation, maintenance and operation of such devices on automatic irrigation systems can save significant amounts of water to preserve local water resources; and,

WHEREAS, the cumulative benefits of irrigation control devices may reduce or postpone the need for a community to expand potable water supplies; and,

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

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

WHEREAS, the City 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.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF INDIAN HARBOUR BEACH as follows:

SECTION 1. New sections 107-13 through 107-20 are hereby added to Chapter 107 of the Land Development Regulations of the City to read as follows:

Sec. 107-13 SHORT TITLE

These regulations shall be known and may be referred to as the City of Indian Harbour Beach Regulations for Installation, Maintenance, and Operation of Sensing Devices on Automatic Landscape Irrigation Systems.

Sec. 107-14 ADMINISTRATIVE STANDARDS

Whenever, in the course of administration and enforcement of these regulations, it is necessary and desirable to make any administrative decision, then, unless other standards are in these regulations, the decision shall be made so that the result will not be contrary to the spirit and purpose of this ordinance or injurious to the surrounding neighborhood or the community at large.

Sec. 107-15 PURPOSE AND INTENT

These regulations requires the proper installation, repair, and operation of moisture sensing devices on automatic lawn and landscape irrigation systems by licensed contractors and property owners or managers, provides for licensing of contractors that work on such irrigation systems, and provides penalties.

Sec. 107-16 DEFINITIONS

1. “Licensed Contractor” shall mean any person licensed or registered under chapter 489, Florida Statutes, or authorized under any county or municipal license or tax certificate to design, install, repair, maintain, or adjust a landscape irrigation system within the jurisdiction of the City.
2. “Soil Moisture Sensor” means a soil-based device that assesses the available plant soil moisture in order to minimize the unnecessary use of water and optimize the effectiveness of an irrigation system.
3. “Rain Sensor” means a low voltage electrical or mechanical component placed in the circuitry of an automatic landscape irrigation system that is designed to restrict operation of a sprinkler controller when precipitation has reached a pre-set quantity.
4. “Evapotranspiration-based (ET) controller” means a controller that calculates soil moisture from known weather and related inputs. An ET-based controller:

- a. Receives and monitors weather data or on-site environmental conditions including, but not limited to, solar radiation, wind speed, temperature, relative humidity, rainfall, and soil moisture; and
- b. Calculates or determines the amount of moisture input to and moisture lost from the soil and plants; and
- c. Automatically creates or adjusts the irrigation schedule to apply only the amount of water that is necessary to maintain adequate soil moisture.

5. "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.

Sec. 107-17 APPLICABILITY

1. These regulations shall apply to all licensed contractors within the jurisdiction of the City who install or perform work on automatic irrigation systems regardless of when such installation or work is performed.

2. These regulations shall also apply to any person who purchases, installs or operates an automatic landscape irrigation system on their property. For purposes of this subsection 2, these regulations shall only apply when a person purchases, installs or operates an automatic irrigation system after January 1, 2014 on their property. This subsection also applies to any person which replaces an existing automatic irrigation system on their property after January 1, 2014. For purposes of this subsection 2 the term "replaces" means the removal and installation of more than fifty percent (50%) of an existing automatic irrigation system.

Sec. 107-18 GENERAL PROVISIONS

1. In accordance with section 373.62(1), Florida Statutes, devices, such as soil moisture sensors, evapotranspiration-based controllers or rain sensors, shall be required on automatic irrigation systems to prevent irrigation during periods of sufficient moisture. Any person who purchases, installs or operates an automatic landscape irrigation system after January 1, 2014 on their property must properly install, maintain, and operate, in accordance with manufacturer specifications, technology that inhibits or interrupts operation of the system during periods of sufficient moisture. This subsection also applies to any person which replaces an existing automatic irrigation system on their property after January 1, 2014.

2. In accordance with section 373.62(2), Florida Statutes, a licensed contractor who installs or performs work on an automatic landscape irrigation system must test for the correct operation of each inhibiting or interrupting device or switch on the system. If such devices are not installed, or are not functioning properly, the contractor must install new devices or repair the existing ones and insure that each is operating properly before completing other work on the system.

3. In accordance with section 373.62(3) (a) and (b), Florida Statutes, a licensed contractor performing work on an automatic landscape irrigation system shall report

systems that are not in compliance with section 373.62, Florida Statutes, to the City's Building Official. Failure of a contractor to report non-compliant systems within five business days is punishable by fines as specified in the Violations and Penalties section of these regulations. A system that is repaired by the contractor is brought into compliance and need not be reported.

4. In accordance with section 373.62(3)(b), Florida Statutes, regular maintenance and replacement of worn or broken moisture sensing equipment, such as soil moisture or rain sensors, is not a violation of section 373.62, Florida Statutes, or these regulations if such repairs are made within thirty days from the time non-compliance is noted.

Sec. 107-19 LICENSING OF CONTRACTORS PERFORMING WORK ON IRRIGATION SYSTEMS

All contractors performing work on irrigation systems within the incorporated area of the City, shall be licensed or registered under chapter 489, Florida Statutes, or hold a county or municipally-issued license or business tax certificate that permits work on irrigation systems.

Sec. 107-20 VIOLATIONS AND PENALTIES

Failure of a licensed contractor to report to the City's Building Official automatic landscape irrigation systems that are not in compliance with these regulations and section 373.62, Florida Statutes, which requires properly operating devices to inhibit or interrupt the operation of the irrigation system during periods of sufficient moisture, shall be subject to a fine of not less than \$25.00 for a first offense, \$50.00 for a second offense, and \$100.00 for a third or subsequent offense. Funds generated by penalties imposed under this section shall be used by the City for the administration and enforcement of section 373.62, Florida Statutes, and the corresponding sections of these regulations, and to further water conservation activities.

SECTION 2. New sections 107-21 through 107-32 are hereby added to Chapter 107 of the Land Development Regulations of the City to read as follows:

Sec. 107-21. SHORT TITLE AND PURPOSE AND INTENT

These regulations shall be known as the "City of Indian Harbour Beach Fertilizer Application Regulations". These regulations regulate 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. These regulations require 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 City'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 City 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. 107-22. DEFINITIONS

1. "Administrator" means the City's City Manager, or an administrative official of the City designated by the City Manager to administer and enforce the provisions of these regulations.
2. "Application" or "Apply" means the actual physical deposit of fertilizer to turf or landscape plants.
3. "Applicator" means any Person who applies fertilizer on turf and/or landscape plants in the City.
4. "Board or Governing Board" means the City Council of the City.
5. "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.
6. "City" shall mean the City of Indian Harbour Beach.
7. "Code Enforcement Officer, Official, or Inspector" means any designated employee or agent of the City whose duty it is to enforce codes and ordinances enacted by the City.
8. "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.
9. "Fertilize," "Fertilizing," or "Fertilization" means the act of applying fertilizer to turf, specialized turf, or landscape plants.
10. "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.
11. "Guaranteed Analysis" means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.
12. "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.

13. "Landscape Plant" means any native or exotic tree, shrub, or groundcover (excluding turf).
14. "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.
15. "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.
16. "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 City, issued by the National Weather Service.
17. "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 City Manager or an administrative official of the City designated by the City Manager.
18. "Saturated soil" means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of these regulations, 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.
19. "Restricted Application Period" means June 1st to September 30th.
20. "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.
21. "Turf," "Sod," or "Lawn" means a piece of grass-covered soil held together by the roots of the grass.
22. "World Meteorological Organization definition of heavy rain": Rainfall greater than or equal to 50 mm (2 inches) in a 24 hour period.

23. "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. 107-23. APPLICABILITY

These regulations shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the area of the City, unless such applicator is specifically exempted by the terms of these regulations. These regulations shall be prospective only, and shall not impair any existing contracts.

Sec. 107-24. 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 of landscape plants during the Restricted Application Period.

Sec. 107-25. FERTILIZER FREE ZONES

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). 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 need to allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water.

Sec. 107-26. FERTILIZER CONTENT AND APPLICATION RATES

- (a) No fertilizer containing phosphorous shall be applied to turf or landscape plants in the City 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. Deficiency verification shall be no more than 2 years old.
- (b) The nitrogen content of fertilizer applied to turf or landscape plants within the City shall contain at least 50% slow release nitrogen per guaranteed analysis label.
- (c) Fertilizers applied to turf within the City 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.
- (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. 107-27. 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. 107-28. 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. 107-29. 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) Vegetable gardens owned by individual or community property owners and trees grown for their edible fruit.

Sec. 107-30. TRAINING

- (a) All commercial and institutional applicators of fertilizer within the incorporated area of the City, 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, 2008*” 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. 107-31. LICENSING OF COMMERCIAL APPLICATORS

(a) Prior to 1 January 2014, all commercial applicators of fertilizer within the City, 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, 2008*”, offered by the Florida Department of Environmental Protection through the University of Florida IFAS “Florida-10 friendly Landscapes” program, or an approved equivalent program, prior to obtaining a City 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 City within 180 days of the effective date of this ordinance.

(b) After 31 December, 2013, all commercial applicators of fertilizer within the City, 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, 2008*” 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 City.

Sec. 107-32. PENALTIES AND ENFORCEMENT

Any person found in violation of these regulations shall be subject to a fine of not less than \$25.00 for a first offense, \$50.00 for a second offense, and \$100.00 for a third or subsequent offense. Funds generated by penalties imposed under this section shall be used by the City 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 3. CONFLICTS AND RELATIONSHIP TO OTHER LAWS

Whenever regulations or restrictions imposed by this ordinance conflict with other ordinances or regulations, or are either more or less restrictive than regulations or restrictions imposed by any governmental authority through legislation, rule or regulation, the regulations, rules or restrictions which are more restrictive or which impose the highest standards or requirements shall govern.

SECTION 4. SEVERABILITY

This ordinance and the various parts, sections, subsections and clauses thereof, are hereby declared to be severable. If any part, sentence, paragraph, subsection, section, or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of the ordinance shall not be affected thereby. If any part, sentence, paragraph, subsection, section or clause be adjudged unconstitutional or invalid as applied to a particular property, building, or other structure, it is hereby provided that the application of such

portion of the ordinance to other property, buildings, or structures shall not be affected thereby.

SECTION 5. CODIFICATION, SCRIVENERS ERRORS

The provisions of this ordinance shall become and be made a part of the Land Development Regulations of the City. Sections of the ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "chapter", "article," or such other appropriate word or phrase in order to accomplish such intentions. Sections of this ordinance may require the correction of typographical errors which do not affect the intent. Such corrections may be authorized without need of a Public Hearing, by filing a corrected or recodified copy of same with the clerk of the City.

SECTION 6. REPEAL

All ordinances, or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 7. EFFECTIVE DATE

This ordinance shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF INDIAN HARBOUR BEACH, BREVARD COUNTY, FLORIDA, ON THIS ____ DAY OF, _____ 2014.

CITY OF INDIAN HAROUR BEACH
BREVARD COUNTY FLORIDA

Gene Newberry, Mayor

ATTEST:

Deborah Maliska, City Clerk

First Reading: December 10, 2013
Second Reading: January 14, 2014