



**MIAMI
WATERKEEPER®**

DEFENDING, PROTECTING, AND PRESERVING
MIAMI AND THE SURROUNDING WATERS
THROUGH CITIZENS INVOLVEMENT AND
COMMUNITY ACTION. MIAMI WATERKEEPER
WORKS TO ENSURE SWIMMABLE, DRINKABLE,
FISHABLE WATER FOR ALL.

June 14, 2019

Re: Implementing and Enforcing a Fertilizer Ordinance

Fertilizer Ordinances: Good for the Environment & Economy

South Florida's waterways are exquisitely sensitive to nutrients, and some have even been designated as "impaired" for nutrient pollution. Fertilizer ordinances that limit the time, extent, and type of fertilizer allowed to be applied within a municipality's borders offer a way to reduce the discharge of nutrients like nitrogen and phosphorus to water bodies where they may significantly degrade the water and lead to, among other things, algae blooms. In addition to their ecological damage, harmful algae blooms can have a devastating effect on Florida's coastal economy, leading to health care costs from hospital and doctor visits, losses in tourism revenue, and clean-up activities. Research compiled by the Florida Department of Health shows harmful algae blooms can cause millions of dollars in economic damages to affected Florida coastal communities. Enforcing fertilizer ordinances may be difficult in certain circumstances, particularly concerning private citizens on private property.

Miami Waterkeeper's model fertilizer ordinance proposes some key measures including, but not limited to:

- 1) A Summer black-out period for fertilizer application;
- 2) Limitations on the amount of fertilizer that can be applied outside the black-out period;
- 3) A mandatory set back zone for fertilizer applications on waterfront properties;
- 4) Commercial applicator education and registration provisions; and
- 5) Penalties for non-compliance.

Existing Municipal Fertilizer Ordinances in the State of Florida

Many counties and municipalities throughout the state have passed similar ordinances including: Alachua County, Bonita Springs, unincorporated Brevard County, Cape Canaveral, Cocoa Beach, Indian River, Indian Harbour Beach, Malabar, Melbourne Beach, Palm Bay, and Satellite Beach. A map of these municipalities is included below.



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This map illustrates municipalities, including counties and cities, throughout the state with existing ordinances controlling fertilizer application.

Fertilizer Ordinance Enforcement

Fertilizer ordinances are enforced just as other provisions of municipal code would be. The Fourth Amendment to the United States Constitution prohibits the government from engaging in “unreasonable” searches and seizures; in *Michigan v. Tyler*, 536 U.S. 499 (1978) the United States Supreme Court held that a warrant was required (absent limited urgent circumstances) from any governmental official and whatever their motive for entering onto the property. Fla. Stat. §933.21 allows for the application of inspection warrants to identify things like code violations on properties, though it exempts owner-occupied family residences from its provisions; for those properties, a search warrant is required under the more restrictive requirements of Fla. Stat. §933.07.

Therefore, focusing enforcement on commercial fertilizer applicators and properties in many cases would be a more efficient use of municipal resources, especially for those municipalities where most residents use commercial landscaping companies. Based on the actions of other municipalities, particularly Bonita Springs, FL, we can recommend the following enforcement or implementation mechanisms:

- (1) Require landscaping companies that apply fertilizer as part of their services register with the municipality and renew that registration annually. Registration should be contingent on all managers and employees involved with fertilizer application taking the Florida-Friendly Landscaping™ training offered by the University of Florida/Institute of Food and Agricultural Science Sciences (UF/IFAS), or an approved equivalent, as required by the ordinance. The UF/IFAS GI-BMP training is available online for free at: https://ffl.ifas.ufl.edu/professionals/BMP_overview.htm. Registrants would receive a decal with listed expiration date to display on their work vehicle or carry with them on the job.
- (2) Require all merchants within municipal boundaries who sell fertilizer to place placards conspicuously near fertilizer products setting forth the limitations in the ordinance (e.g. no use of fertilizers containing nitrogen or phosphorus from June 1-Sept. 30). The attached placard was developed by Bonita Springs and can be adapted for use by other municipalities based on the ordinance specifics.
- (3) Conduct periodic site audits for commercial applicators to ensure the company and its applicators are licensed and that ordinance requirements are being followed, i.e. at least one applicator on site has gone through UF/IFAS GI-BMP training and they are not violating the ordinance in terms of temporal limitations or fertilizer quantity or type.
- (4) Offer educational opportunities for residents that not only describe the fertilizer ordinance restrictions, but also explain its importance in addressing water quality issues in the municipality and offer a confidential channel for residents to report suspected ordinance violations.
- (5) Ensure that municipal code enforcement officers are trained to recognize possible unlawful fertilizer use, as well as possible environmental indicators of such use (localized algae blooms, fish kills, etc.).

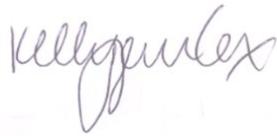
Conclusion

Miami Waterkeeper's model fertilizer ordinance is intended to be a tool for municipalities. Non-point source pollution like fertilizer runoff is difficult to trace and correlate to degraded water quality conditions. This ordinance is proposed as a first step in protecting nearshore water quality degradation, and should be just one tool in your municipality's environmental management toolkit. However, it is an important first step that dozens of other municipalities have implemented in an effort to address some of the lowest hanging fruit regarding nutrient loads to nearshore waters and their negative ecological and economic impacts.

Should you have any questions about this ordinance or Miami Waterkeeper's efforts to address land-based sources of pollution generally, please do not hesitate to contact us.

Thank you for your attention to this matter and for your dedication to swimmable, drinkable, fishable water for all of South Florida.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kelly Cox".

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