



To: Billy Urquia, City Clerk

From: Stephanie Throckmorton, Assistant City Attorney

Approved: Miriam S. Ramos, City Attorney 

RE: Legal Opinion Regarding Section 82-8 Application of Fertilizer

Date: June 9, 2021

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In February of 2021, the City Commission adopted Ordinance 2021-10 creating Section 82-8 “Application of Fertilizer” in the City Code. The City was one of the first municipalities in Miami-Dade County to adopt an ordinance regulating the application of fertilizer during the region’s rainy months and prohibiting the application of certain fertilizers near bodies of water. Following the City’s adoption of these regulations the Miami-Dade County Board of County Commissioners adopted Ordinance 21-26 in April of 2021. That ordinance establishes minimum standards for the County regarding regulation of the proper use of fertilizer, requires proper training of commercial and institutional fertilizer applicators, establishes training and licensing requirements, establishes a prohibited application period, and specifies allowable fertilizer application rates, among other regulations. The County’s ordinance, also known as the Miami -Dade County Ordinance for Florida-Friendly Fertilizer Use on Urban Landscape, is a minimum standard and applies to incorporated and unincorporated areas of the County. Any municipality may establish and enforce more stringent regulations as such municipality may deem necessary.

The City’s current regulations as codified in Section 82-8 of the City Code are not more stringent than the Miami-Dade County ordinance. The County requires additional education and registration of fertilizer applicators and expands the prohibited application period beyond what the City Commission adopted. As such, pursuant to the authority granted in Section 2-252(e)(9) of the City Code, and consistent with prior opinions, this office directs that Section 82-8 of the City Code be revised in the manner indicated below. The City Code grants the City Attorney the authority “to delete provisions [from the City Code and Zoning Code] that have been superseded or preempted by applicable law”. These changes will eliminate language from the City Code that is preempted. As mentioned above the Miami-Dade County ordinance applies County-wide and leaving the language in the City Code could mislead residents and applicators into believing that the County code provision does not apply in Coral Gables, though it does apply as a minimum standard.

As such, please direct the Municipal Code Corporation to amend the City’s Code as indicated below:

## **Sec. 82-8. Application of fertilizer. Water Quality Trust Fund.**

- ~~(a) *Prohibition.* No person shall apply fertilizers containing nitrogen or phosphorus to turf or landscape plants during the prohibited application period, which will run from June 1 to September 30 each year. In addition, no fertilizers containing nitrogen or phosphorous shall be applied to turf or landscape plants when a tropical storm or hurricane watch or warning is in effect for the city.~~
- ~~(b) *Exemptions.* This prohibition shall not apply to golf courses when fertilizers are applied by or under the direction of a professional with a valid certification from the golf course best management practice certification program and fertilizer must be applied following the Florida Department of Environmental Protection Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses. Golf course and athletic field managers shall provide proof of valid certification to the city prior to the prohibited application period, each year. This prohibition shall also not apply to: (i) any lands used for bona fide scientific research, including, but not limited to, botanical gardens, and research on the effects of fertilizer use on urban stormwater, water quality, agronomics and horticulture; (ii) Bona fide farm operations as defined in the Florida Right to Farm Act, F. S. § 823.14, provided that fertilizers are applied in accordance with the appropriate best management practices manual adopted by the Florida Department of Agriculture and Consumer Services, office of agricultural water policy for the crop in question; (iii) High impact areas in public parks and athletic fields. Specialized turf managers are required to follow the provisions of the "Florida Green Industries Best Management Practices for Protection of Water Resources in Florida, December 2008", as amended, for turf and landscape plants; (iv) Vegetable gardens, provided they are not within 15 feet of any water body and/or wetland; or (v) Fruit trees and shrubs, provided that fertilizer application rates do not exceed UF/IFAS recommendations.~~
- ~~(c) *Application area.* Outside of the prohibited application period, fertilizer containing nitrogen or phosphorus shall not be applied within 20 feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection or within 20 feet from the top of a seawall. In no case shall any type of fertilizer be dumped, broadcast, washed, swept, or blown into stormwater drains, ditches, conveyances or water bodies.~~
- ~~(d) *Low maintenance zones.* A voluntary 10 foot low maintenance zone is strongly recommended, but not mandated, from the top of a seawall or bank of any surface water of Biscayne Bay or any pond, stream, waterway, lake, canal, wetland or storm drain. 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 Miami Dade County Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. No mowed or cut vegetative material should be deposited or left remaining in the low maintenance zone or deposited in the water. Care should be taken to prevent the over spray of aquatic weed products in the low maintenance zone. Care must be taken to ensure erosion of the surface soil does not occur. Excessive erosion may result in additional pollution hazard.~~

- (e) ~~*Enforcement and penalties.* Given the serious threat to the public health, safety and welfare of violations of this section, along with the irreparable and irreversible nature of such violations, in accordance with Florida Statutes, no warning shall be given by a code enforcement officer prior to the issuance of a citation. Fines collected shall be deposited in the Coral Gables Water Quality Trust Fund dedicated to fulfilling the purposes of this section and protecting the health and water quality of water in the City of Coral Gables. Funds generated by penalties imposed under this section shall be used to further water conservation, and nonpoint pollution prevention activities, water quality improvements, and marine and coastal ecosystems enhancements that protect the city's water resources and Biscayne Bay.~~

~~If a code compliance officer finds a violation of this article, the code compliance officer shall issue a civil infraction notice. The notice shall inform the violator of the nature of the violation, and amount of fine for which the violator is liable. A violator who has been served with a civil infraction notice must pay the following civil fine:~~

- ~~(1) First violation within a 12 month period \$150.00~~
- ~~(2) Second violation within a 12 month period \$300.00~~
- ~~(3) Third or subsequent violation within a 12 month period \$500.00~~

- (f) *Water quality trust fund.*

- (1) *Creation of the water quality trust fund.* There is hereby created a city water quality trust fund, the purpose of which is to protect the health and water quality of water in the City of Coral Gables.
- (2) *Disbursement and maintenance of the water quality fund.* Funds generated by penalties imposed ~~under this section~~ by the City pursuant to Chapter 18C of the Code of Miami-Dade County shall be used to further water conservation, and nonpoint pollution prevention activities, water quality improvements, and marine and coastal ecosystems enhancements that protect the city's water resources and Biscayne Bay.

(Ord. No. 2021-10, § 2, 2-23-2021)

This opinion is issued pursuant to Section 2- 252(e)(1), (8), and (9) of the City Code.