

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF ANN ARBOR BY ADDING A NEW CHAPTER WHICH NEW CHAPTER SHALL BE DESIGNATED AS CHAPTER 70 OF TITLE VI OF SAID CODE.

The City of Ann Arbor ordains:

Section 1: That Title VI of the Code of the City of Ann Arbor be amended by adding a new chapter, which shall be designated as Chapter 70 and shall read as follows:

CHAPTER 70
MANUFACTURED FERTILIZER

6:400. Title

This chapter shall be known as the “Manufactured Fertilizer Ordinance” of the City of Ann Arbor.

6:401. Intent and Purpose

- (1) City Council finds that certain compounds containing phosphorus, which are contained in manufactured fertilizer, when used in the City of Ann Arbor, enter into the City’s and neighboring communities’ water resources, including wetlands and watercourses, resulting in excessive and accelerated growth of algae and aquatic plants which is detrimental to these resources.
- (2) City Council finds that reduction of the use of manufactured fertilizers containing phosphorus will assist the City in reducing the amount of phosphorus that enters the City’s and neighboring communities’ water resources, which is required by the Michigan Department of Environmental Quality’s Total Maximum Daily Load (TMDL) limitation for the Middle Huron River and Associated Tributaries and related National Pollutant Discharge Elimination System (NPDES) permit limits pursuant to the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.), as amended, and the United States Environmental Protection Agency’s Water Quality Planning and Management Regulations (40 C.F.R. part 130), as amended.
- (3) City Council finds that most mature topsoil in the City has a sufficient level of phosphorus, which occurs naturally to promote adequate turf root growth.
- (4) It is the purpose and intent of this chapter to regulate the application of manufactured fertilizers only on turf areas and not on or in areas such as gardens, farms, or landscape amenities.

- (5) It is the further purpose and intent of this chapter to regulate the use and application of manufactured fertilizer and manufactured fertilizer containing phosphorus, to require the registration of commercial and institutional applicators of manufactured fertilizers within the City, and to require the distribution of informational literature to consumers about the use and effect of manufactured fertilizers and manufactured fertilizers containing phosphorus.

6:402. Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings described in this section:

- (1) *Applicator* means any person who applies manufactured fertilizer in the City including, but not limited to, homeowners, occupants of rental property, and property managers.
- (2) *Commercial applicator* means any person who applies manufactured fertilizer in the City in exchange for money, goods, services, or other valuable consideration.
- (3) *Commercial seller* means any person who sells or displays for sale any manufactured fertilizer in the City.
- (4) *Fertilizer Program Administrator* means the Environmental Coordinator, or other person designated to administer this chapter by the City Administrator.
- (5) *General turf* means nonagricultural land managed using turfgrasses including but not limited to home lawns, cemeteries, park areas as well as commercial, school, university and government grounds. General turf does not include vegetable and flower gardens, forage production, sod farms, or other agricultural use.
- (6) *Institutional applicator* means any person who applies manufactured fertilizer to general turf areas of more than one acre. Institutional applicators shall include but shall not be limited to, owners, operators and caretakers of public lands, parks, schools, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium or common ownership. Owners of individual parcels in single-family residential zoning districts shall not be considered institutional applicators.
- (7) *Manufactured fertilizer* means a commercially manufactured substance containing one or more recognized plant nutrients, which is used for its plant nutrient content and which is designed for use, or claimed to have value, in promoting plant growth. Fertilizer does not include unmanipulated animal and vegetable manures, marl, lime, limestone, and wood ashes.

- (8) *Soil test* means a set of scientific measurements that determine the basic texture of soil, the pH level of the soil, and the various nutrient levels of phosphorus, potassium, calcium and magnesium in soil, for the purpose of providing a fertilizer recommendation regarding the amount of nutrients and rate of application of nutrients for general turf growth.
- (9) *Soil testing service* means a company, organization, or City service unit designated by the Fertilizer Program Administrator to perform soil tests and recommend fertilizer application rates.

6:403. Regulation of the use and application of manufactured fertilizer

- (1) Manufactured fertilizer shall not be applied prior to April 1 or after November 15 in any year due to the inability of frozen soil to absorb nutrients, unless the soil temperature at a depth of 2 inches is greater than ??° Fahrenheit.
- (2) Manufactured fertilizers shall not be applied or stored uncontained on driveways, parking lots, streets, sidewalks, or other impervious surfaces, unless removed within one hour of application or storage.
- (3) Manufactured fertilizer shall not be applied in any natural features open space as defined in Chapter 55, or within 25 feet of any wetland, watercourse, or storm water retention or detention basin.

6:404. Regulation of the use and application of manufactured fertilizer containing phosphorus

- (1) Manufactured fertilizer that contains any amount of phosphorus or a compound containing phosphorus, such as phosphate, shall not be applied to general turf within the City, except under one or both of the following conditions:
 - a. Application of manufactured fertilizer to an area where general turf is being established from seed or sod, during the first growing season of the seed or sod.
 - b. Application of manufactured fertilizer that is exempt under section 6:405 of this chapter.
- (2) Manufactured fertilizer containing any amount of phosphorus or a compound containing phosphorus shall be watered into the soil within 14 hours of application so that the fertilizer is immobilized and prevented from loss by runoff.

6:405. Exemption for the use and application of manufactured fertilizer containing phosphorus

- (1) The prohibition against the application of manufactured fertilizer containing any amount of phosphorus or a compound containing phosphorus in section 6:404 shall not apply to general turf areas where a soil test completed within the last three years has indicated that the level of phosphorus in the soil is insufficient to support turf growth.
- (2) A level of phosphorus in a soil test that is less than or equal to 10 parts per million indicates that the level of phosphorus in the soil is insufficient to support turf growth.
- (3) The application of manufactured fertilizer allowed under this section shall not exceed the amount or rate of application of phosphorus or a compound containing phosphorus recommended by the soil test.

6:406. Soil testing

- (1) A soil sample or samples shall be taken from the general turf area on which an applicator is proposing to apply manufactured fertilizer containing phosphorus or a compound containing phosphorus, following the procedure required by the soil testing service.
- (2) The applicator shall submit the soil sample to the soil testing service, following the procedure required by the soil testing service.
- (3) The soil testing service shall determine the rate and application of manufactured fertilizer containing phosphorus based on the results of the soil test and the requirements of this ordinance.
- (4) The results of the soil test shall be maintained for a period of three years following receipt of the test by the applicator.
- (5) The applicator shall provide a copy of the soil test results to the Fertilizer Program Administrator within 48 hours of a written request for the test results by the Fertilizer Program Administrator or other persons designated to enforce this chapter.

6:407. Registration and reporting requirements and procedures for commercial and institutional applicators

- (1) All commercial and institutional applicators shall register with the City prior to applying manufactured fertilizer on any general turf in the City in any calendar year.

- (2) Registration under this chapter shall be valid until expiration. Registration shall begin on January 1 and shall expire on December 31 of each calendar year.
- (3) Commercial and institutional applicators shall submit a complete registration application to the Fertilizer Program Administrator on forms furnished by the City Clerk, along with the registration fee according to the schedule established by resolution of City Council. The fee shall be calculated to include the cost of registration application review and periodic field inspection.
- (4) The following information shall be included in a complete application for registration:
 - a. The legal name of the commercial or institutional applicator, any other names used, the address, telephone number and contact person for the applicant.
 - b. The product name, type of use, and the percentage weight and ratio of elemental phosphorus for every manufactured fertilizer to be used on general turf.
 - c. For institutional applicators, the address or addresses where manufactured fertilizer will be applied.
 - d. A notarized, sworn statement signed by an owner or duly authorized representative of a commercial or institutional applicator indicating that the applicator will comply with the requirements of the Manufactured Fertilizer Ordinance of the City throughout the registration period, including, but not limited to, completing soil tests prior to applying manufactured fertilizer containing phosphorus and applying manufactured fertilizer at rates required by soil tests, where applicable.
 - e. All other information requested on the application.
- (5) The Fertilizer Program Administrator shall approve a registration if the application is complete, the applicator has complied with the previous year's reporting requirement, and the use of manufactured fertilizer complies with this chapter.
- (6) The application for registration shall be approved or denied within 21 days by the Fertilizer Program Administrator.
- (7) The Fertilizer Program Administrator shall maintain a current list of all registered commercial and institutional applicators.

- (8) A registered applicator shall notify the Fertilizer Program Administrator in writing of any change in the information in the application for registration within 7 days of any such change.
- (9) Commercial and institutional applicators shall submit a report regarding the application of manufactured fertilizer containing phosphorus and compounds containing phosphorus, to the Fertilizer Program Administrator by December 15 of the year following the end of the fertilizer season. The report shall contain the addresses or block locations (e.g., 100 block of North Fifth) of all general turf areas where manufactured fertilizer containing phosphorus or a compound containing phosphorus were applied, the date of application, the phosphorus content of the fertilizer and the date and results from soil tests where required by section 6:405 of this ordinance.

6:408. Inspections for commercial and institutional applicators

- (1) A commercial or institutional applicator of manufactured fertilizer shall provide a 5 ounce sample of any manufactured fertilizer used by the commercial or institutional applicator in the city upon request by the Fertilizer Program Administrator or other persons designated by the City to enforce this chapter.
- (2) A commercial or institutional applicator of manufactured fertilizers shall immediately provide soil test results for a general turf area where the applicator has applied manufactured fertilizer containing phosphorus or compounds containing phosphorus within 48 hours of a written request for the test results by the Fertilizer Program Administrator or other persons designated by the City to enforce this chapter.
- (3) The Fertilizer Program Administrator, or other persons designated by the City to enforce this chapter, shall have the right to inspect property on which manufactured fertilizer has been applied by a registered applicator.
- (4) It shall be a violation of this chapter if a manufactured fertilizer sample provided by a commercial or institutional applicator is found to contain phosphorus and the application of the fertilizer is not in compliance with section 6:404 or 6:405 of this chapter.
- (5) Commercial and institutional applicators are subject to civil infraction penalties of this chapter.

6:409. Information regarding manufactured fertilizer

- (1) The City shall prepare an informational pamphlet that includes, at a minimum, the following information:
 - a. A summary, or the complete text, of this chapter.

- b. Facts regarding the environmental benefit of phosphorus reduction.
 - c. A description of the penalties for violation of this chapter.
 - d. A city phone number, and website address where additional information will be available.
- (2) A copy of the informational pamphlet shall be made available to commercial applicators and commercial sellers no later than March 1 of each year. Commercial applicators and sellers may make reasonable facsimiles or copies of the informational pamphlet for distribution.

6:410. Required distribution of information regarding manufactured fertilizer

- (1) A commercial applicator shall provide at least one copy of the informational pamphlet to the owner or occupant of each address where the commercial applicator applies manufactured fertilizer prior to the application of fertilizer for that calendar year, except only one informational pamphlet is required to be provided for multiple addresses on one parcel of land with the same ownership, such as apartments.
- (2) A commercial seller shall display the informational pamphlet, and have copies of the informational pamphlet available to customers, adjacent to the display of any manufactured fertilizer for sale.

6:411. Penalty

Each violation of this chapter will be a civil infraction punishable by a fine of up to \$1,000.00. The fine for each violation of this chapter shall be no less than \$250. The fine for each violation of this chapter by a commercial applicator, an institutional applicator, or a commercial seller shall be no less than \$500.

6:412. Effective date

This chapter shall be effective on _____, 200_.