

ORDINANCE 52-2009

ORDINANCE OF THE BOROUGH OF MADISON REGULATING FERTILIZER APPLICATION AND USE

BE IT ORDAINED by the Council of the Borough of Madison, in the County of Morris, and State of New Jersey, as follows:

SECTION 1: The Borough Code of the Borough of Madison shall be amended by the inclusion of new Chapter 97 to be entitled "Fertilizer Application and Use" and which shall read in its entirety as follows:

CHAPTER 97 FERTILIZER APPLICATION AND USE

Sections:

- 97-1 Purpose.**
- 97-2 Basis and Background.**
- 97-3 Definitions.**
- 97-4 Prohibited Conduct.**
- 97-5 Phosphorus Fertilizer Application.**
- 97-6 Enforcement.**
- 97-7 Violations and Penalties.**
- 97-8 Severability.**

§97-1 Purpose:

To regulate the outdoor application of fertilizer so as to reduce the overall amount of excess nutrients entering waterways, thereby helping to protect and improve surface water quality and also to prevent degradation of the environment. This chapter does not apply to fertilizer application on commercial farms.

§97-2 Basis and Background:

Elevated levels of nutrients, particularly phosphorus, in surface waterbodies can result in excessive and accelerated growth of algae and aquatic plants (eutrophication). Excessive plant growth can result in diurnal variations and extremes in dissolved oxygen and pH, which, in turn, can be detrimental to aquatic life. As algae and plant materials die off, the decay process creates a further demand on dissolved oxygen levels. The presence of excessive plant matter can also restrict use of the affected water for recreation and water supply.

Fertilizer applied immediately prior to a runoff-producing rainfall, outside the growing season or to impervious surfaces is most likely to be carried away by means of runoff without accomplishing the desired objective of supporting target vegetation growth. Therefore, the management of the type, amount and techniques for fertilizer application is necessary as one tool to protect water resources.

This ordinance does not apply to application of fertilizer on commercial farms, but commercial farmers are expected to implement best management practices in accordance with conservation

management plans or resource conservation plans developed for the farm by the Natural Resource Conservation Service and approved by the Soil Conservation District Board.

§97-3 Definitions:

For the purpose of this ordinance, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this Ordinance clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

Buffer - the land area, 25 feet in width, adjacent to any waterbody. However, in situations that warrant additional flexibility, such as where lot sizes are exceptionally small or where the 25 ft buffer constitutes the majority of the available property, the required buffer may be reduced to 10 feet in width, (with the additional requirement that a drop spreader be used for fertilizer application).

Commercial farm - a farm management unit producing agricultural or horticultural products worth \$2,500 or more annually.

Fertilizer - means a fertilizer material, mixed fertilizer or any other substance containing one or more recognized plant nutrients, which is used for its plant nutrient content, which is designed for use or claimed to have value in promoting plant growth, and which is sold, offered for sale, or intended for sale.

Impervious Surface - a surface that has been covered with a layer of material so that it is highly resistant to infiltration by water. This term shall be used to include any highway, street, sidewalk, parking lot, driveway, or other material that prevents infiltration of water into the soil.

Person - any individual, corporation, company, partnership, firm, association, or political subdivision of this State subject to municipal jurisdiction.

Phosphorus fertilizer - any fertilizer that contains phosphorus, expressed as P₂O₅, with a guaranteed analysis of greater than zero; except that it shall not be considered to include animal (including human) or vegetable manures, agricultural liming materials, or wood ashes that have not been amended to increase their nutrient content.

Soils Test - a technical analysis of soil conducted by an accredited soil-testing laboratory following the protocol for such a test established by Rutgers Cooperative Research and Extension.

Waterbody – A collection of or body of surface waters, such as a lake, river, stream, creek, pond, or any accumulation of or standing water.

§97-4 Prohibited Conduct:

No person may do or cause to occur any of the following:

- a) Apply fertilizer when a runoff producing rainfall is occurring or predicted and/or when soils are saturated and a potential for fertilizer movement off-site exists.

- b) Apply fertilizer to an impervious surface. Fertilizer inadvertently applied to an impervious surface must be swept or blown back into the target surface or returned to either its original or another appropriate container for reuse.
- c) Apply fertilizer within the buffer of any waterbody.
- d) Apply fertilizer more than 15 days prior to the start of or at any time after the end of the recognized growing season from and during March 1 to November 15.

§97-5 Phosphorus Fertilizer Application

- A. No person may do the following:
 - 1. Apply phosphorus fertilizer in outdoor areas except as demonstrated to be needed for the specific soils and target vegetation in accordance with a soils test and the associated annual fertilizer recommendation issued by Rutgers Cooperative Research and Extension.
- B. Exceptions
 - 1. Application of phosphorus fertilizer needed for
 - a. establishing vegetation for the first time, such as after land disturbance, provided the application is in accordance with the requirements established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. and implementing rules,
 - b. establishing or repairing a turf area in accordance with good soil practices.
 - 2. Application of phosphorus fertilizer that delivers liquid or granular fertilizer under the soils surface, directly to the feeder roots.
 - 3. Application of phosphorus fertilizer to residential container plantings, flowerbeds, or vegetable gardens.

§97-6 Enforcement:

This ordinance shall be enforced by the Borough Engineer, Police Department and/or other representatives or employees duly designated by the Borough of Madison.

§97-7 Violations and Penalties:

Any person(s) found to be in violation of the provisions of this chapter shall be subject to a fine not to exceed \$500 per violation, with each day or documented act or occurrence to be considered a separate violation.

§98-8 Severability:

Each section, subsection, sentence, clause and phrase of this Chapter 97 is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this chapter to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this chapter.

SECTION 2: This Ordinance shall take effect as provided by law.

Attest:

MARY-ANNA HOLDEN, Mayor

ELIZABETH OSBORNE, Acting Borough Clerk