

CITY OF MADISON, WISCONSIN

AN ORDINANCE _____

PRESENTED July 21, 2009 _____

REFERRED COE; Board of Health _____

Amending Sec. 7.48 of the Madison General Ordinances to update the City phosphorus fertilizer ban pursuant to 2009 Wis. Act 9 (newly enacted Wis. Stat. § 94.643).

RULES SUSPENSION _____

PUBLIC HEARING _____

Drafted by: Doran Viste

Date: October 19, 2009

SPONSORS: Ald. Palm

DRAFTER'S ANALYSIS: This Ordinance amends various provisions of Sec. 7.48 of the Madison General Ordinances to update the language of the City phosphorus fertilizer ban to reflect the provisions of 2009 Wis. Act 9, which has created Wis. Stat. § 94.643 (effective April 1, 2010). This amendment incorporates the new statewide regulation by updating the language in the City ordinance to eliminate references to "turf and lawn" fertilizer, and expanding the ban from fertilizer containing "more than a trace" amount of phosphorus to fertilizer containing any amount of phosphorus or available phosphate. By updating the language to make the Ordinance consistent with the newly enacted State law, the City ban will be as strict as State law and make the obligations upon City residents, businesses, and retailers more clear. The effective date of this Ordinance is set for April 1, 2010, the date Wis. Stat. § 94.643 becomes effective. Prior to that date, the phosphorus fertilizer ban as currently set forth will remain in effect.

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 7.48 entitled "Regulation of the Sale, Application and Use of Fertilizers" of the Madison General Ordinances is hereby amended to read as follows:

"7.48 REGULATION OF THE SALE, APPLICATION AND USE OF FERTILIZERS.

(1) Purpose. The Common Council finds that the Madison lakes are natural assets which enhance the environmental, recreational, cultural and economic resources of the Madison area and contribute to the general health and welfare of the public. The Common Council further finds that Madison lake water quality may be maintained and improved if the City is able to regulate the amount of nutrients and contaminants including phosphorus contained in fertilizer entering the Madison lakes as a result of runoff from lawns and turf. The purpose of this ordinance is to set forth regulations which will enable the City to protect its water resources for the health, safety, and welfare of the public without detracting from the natural beauty of homeowners' lawns and gardens.

(2) Definitions.
"Distribute" has the meaning specified under Wis. Stat. § 94.64(1)(d).
"Fertilizer" has the meaning specified under Wis. Stat. § 94.64(1)(e).
"Imperious surface" means a highway, street, sidewalk, parking lot, driveway, or other material that prevents infiltration of water into the soil.
"Lawn and Turf Fertilizer" has the meaning specified under sec. 94.64(1)(e), Wis. Stats., except the manufacturer has designated the product to be used for the promotion of lawn and turf growth.
"Turf" has the meaning specified under Wis. Stat. § 94.643(1)(b).

Approved as to form:

- (3) It shall be unlawful for any person to apply to turf within the City any ~~lawn and turf~~ fertilizer, liquid or granular, that ~~contains more than a trace of~~ is labeled as containing phosphorus or ~~other compound containing phosphorus, such as~~ available phosphate.
- (4) It shall be unlawful for any person to apply or deposit any fertilizer on an impervious surface. If such application occurs, the fertilizer must be immediately contained and either legally applied to turf or any other lawful site, or returned to the original or other appropriate container.
- (5) Time of Application. It shall be unlawful for a person to apply ~~lawn and turf~~ fertilizer when the ground is frozen or when conditions exist which promote or create runoff.
- (6) It shall be unlawful for any person to display or distribute for retail sale ~~lawn and turf~~ fertilizer labeled as containing more than a trace of phosphorus or available phosphate. This prohibition shall apply to the fertilizer content of a product that combines fertilizer with a pesticide. Signs may be posted advising customers that ~~lawn and turf~~ fertilizer containing phosphorus or available phosphate is available upon request for uses permitted by sub. (7)(a). A sign containing the regulations set forth in this section and the effects of phosphorus on Dane County's waters must be prominently displayed where ~~lawn and turf~~ fertilizers are sold.
- (7) Exceptions.
 - (a) Subsection (3) shall not apply when:
 - 1. a tissue, soil or other test by UW-Extension Laboratory or another state-certified soil-testing laboratory and performed within the last three years indicates that the levels of available phosphorus in the soil is insufficient to support healthy turf growth, as determined by the University of Wisconsin Extension Service, provided that the proposed ~~lawn and turf~~ fertilizer application shall not contain an amount of phosphorus or available phosphate exceeding the amount and rate of application recommended in the soil test evaluation;
 - 2. the property owner or an agent of the property owner is first establishing or re-establishing turf via seed or sod procedures, and only during the first growing season.
 - (b) Any person who applies a ~~lawn and turf~~ fertilizer containing phosphorus or available phosphate pursuant to the aforementioned exceptions shall, consistent with the product label instructions, water such ~~lawn and turf~~ fertilizer into the soil where it is immobilized and generally protected from loss by runoff.
 - (c) Subsection (6) regarding the prohibition of the distribution of ~~lawn and turf~~ fertilizer containing phosphorus shall not apply when the customer states:
 - 1. a tissue, soil or other test by UW-Extension Laboratory or another state-certified soil-testing laboratory and performed within the last three years indicates that the levels of available phosphorus in the soil is insufficient to support healthy turf growth, as determined by the University of Wisconsin Extension Service;
 - 2. the property owner or an agent of the property owner is first establishing or re-establishing turf via seed or sod procedures, and only during the first growing season.
- ~~(8) Severability. Any provision of this section which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.~~
- ~~(9)(8) Penalty. Any person who violates this ordinance shall pay a forfeiture of not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300) for each offense.~~
- ~~(10) Effective Date. The provisions of this ordinance shall become effective January 1, 2005."~~

2. This Ordinance shall become effective on April 1, 2010.