

ORDINANCE NO. 2020-17

**AN AMENDMENT TO CHAPTER 148
OF THE ORDINANCES OF THE TOWN OF BARRINGTON**

Change Chapter Name:

Chapter 148

Public Waters, Use and Protection of

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Add new article:

Article VII

Protection of Public Waters from Nutrient Pollution

§ 148-35 Purpose.

The purpose of this Article VII, Chapter 148 of the Code of Ordinances is to conserve resources and protect our environment by regulating the outdoor application of nitrogen and phosphorus based fertilizers in order to reduce the overall amount of excess nitrogen and phosphorus entering the Town's public waters.

§ 148-36 Findings.

The Town Council hereby finds that:

(a) Barrington lies within the Barrington-Palmer-Warren Rivers watershed. The Town of Barrington has an area of approximately fifteen square miles, seven square miles of which are surface waters. Well known water bodies in the Town include the Barrington, Palmer and Warren Rivers, upper Narragansett Bay, Bullock's, Allin's and Smith's Coves, Brickyard, Volpe, Bicknell, Tiffany's and Kent Street Ponds, Echo Lake, Mussachuck Creek and the various unnamed streams and pools that are found in every part of our Town.

(b) The public waters of the town are a vital resource for ecological, historical, recreational, aesthetic, and economic reasons. Barrington's public waters are one of the defining features of our community.

(c) Barrington's estuarine waters are impaired in that they do not meet the water quality standards that are required to support the variety of uses to which the waters could beneficially be put.

(d) Important measures affecting water quality in Barrington have been implemented with success. Foresight and financial sacrifice by an earlier generation led to the town-wide installation of sewers such that on-site wastewater treatment is virtually non-existent in Barrington. The Combined Sewer Overflow project has progressed to the point that previously

common raw sewage discharges in rain events have been virtually eliminated. As a result, near weekly closures of Barrington Beach have become infrequent. While much of upper Narragansett Bay, and Barrington's saltwater rivers, remain closed to shell fishing, many shell-fishing beds between Nayatt and Rumstick Points have been open on a near constant basis while only 20 years ago these beds were almost constantly closed.

(e) Despite these improvements, activities carried out entirely within the Town of Barrington have resulted in substantial degradation of Barrington's public waters. For example, Brickyard Pond is on a short list of ponds identified by the Department of Environmental Management as suffering from eutrophication as a result of elevated phosphorus levels. Brickyard Pond is a Town owned body of water that lies entirely within the borders of Barrington and is so remote from other sources of pollution that it is apparent any water quality impairment existing there is almost entirely the result of activities taking place within the Town.

(f) The completion of larger scale water quality improvement initiatives, which have yielded significant benefits, has resulted in circumstances where continued improvement in water quality requires incremental measures to address smaller scale causes of water body impairment.

(g) Reducing excess nitrogen and phosphorus in Barrington's public waters will protect and improve the quality of important marine and freshwater habitat by reducing the frequency and severity of algal blooms. These algal blooms lead to eutrophication characterized by the reduction in water clarity and dissolved oxygen levels, fish and shellfish kills and habitat degradation.

§ 148-37 Applicability.

This ordinance shall apply to and regulate any and all applications of nitrogen and phosphorus through fertilizer within the Town of Barrington.

§ 148-38 Definitions.

(a) Agriculture mean farming in all its branches, generally as the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, floricultural, viticultural or horticultural commodities, and shell fishing, including preparations and delivery to storage or to market or to carriers for transportation to market.

(b) Fertilizer means a manufactured substance that enriches the soil with elements essential for plant growth, such as nitrogen, phosphorus, potassium or other substances; fertilizer does not include those nutrients that are normally excluded from fertilizer such as chemicals that are part of dolomite, limestone, or lime.

(c) Impervious Surface means a surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water, including but not limited to a parking lot, driveway, roadway, sidewalk, or ice.

(d) Controlled Nutrient means phosphorus or nitrogen contained in Fertilizer. For the purposes of the ordinance, Controlled Nutrients may be available as slow-release, controlled-release, timed-release, slowly available, or water insoluble nutrients, which means that such nutrients are in a form that delays availability for plant uptake and use after application and are not rapidly available to turf and other plants; and/or quick-release, water-soluble nutrients which means nutrients in a form that does not delay availability for turf and other plant uptake and are rapidly available for turf and other plant uptake and use after application.

(e) Public Waters Resource Area means any area within 100 feet of the Wetlands Overlay District as defined in § 185-171.

(f) Turf means grass-covered soil held together by the roots of the grass, also known as “sod” or “lawn.”

§ 148-39 Application of Controlled Nutrients.

(a) The application of Controlled Nutrients is prohibited between October 31 and April 1, unless specifically approved in advance by the Town Council.

(b) No person shall cause Controlled Nutrients to be applied to, or otherwise be deposited on any Impervious Surface. Any Controlled Nutrients applied, spilled, and/or deposited on any Impervious Surface, either intentionally or accidentally, must be immediately and completely removed and contained and either legally applied to Turf or any other legal site or returned to an appropriate container.

(c) No person shall apply Controlled Nutrients within 24 hours before or during a rain event forecasted by the National Weather Service to result in more than .5” of precipitation in a 24 hour period.

(d) The application of Controlled Nutrients is prohibited within 100 feet of Public Waters Resource Areas.

§ 148-40 Exemptions.

The following activities shall be exempt from § 148-39:

(a) Application of Controlled Nutrients for agriculture and horticulture uses.

(b) Application of fertilizer to golf courses, except that any application of Controlled Nutrients in Public Waters Resource Areas shall comply with the recommendations set forth in § 148-41, and shall use 85% or higher slow-release, water-insoluble Controlled Nutrients, in organic or inorganic form.

(c) Application of Controlled Nutrients to gardens, including vegetable and flower, trees, shrubs and indoor applications including greenhouses.

(d) Application of Controlled Nutrients for the establishment of new vegetation in the first growing season, or repairing of turf in the first growing season following substantial damage.

(e) Yard waste compost or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil.

§ 148-41 Recommendations.

The Town of Barrington strongly recommends that Controlled Nutrients only be applied to turf and other plants at the lowest rate necessary. Any single application of Controlled Nutrients should not exceed 0.5 pounds of nitrogen per 1,000 square feet and 0.0 pounds of phosphorus per 1,000 square feet unless a soil test identifies a phosphorus deficiency. The annual aggregate total application of nitrogen should not exceed 1.0 pounds per 1,000 square feet. The application of any Controlled Nutrients should be of an organic, slow-release, water-insoluble form.

§ 148-42 Enforcement authority.

The enforcement officer shall be the Building Official who shall report to the Conservation Commission semiannually regarding enforcement actions taken and educational outreach provided in order to achieve the purposes of this chapter.

§ 148-43 Penalties for violations.

(a) Any person, corporation or unincorporated association violating the provisions of this article shall be subject to the following fines:

- First Offense - \$150
- Second Offense - \$300
- Third Offense - \$500.

(b) In the event that a contractor applies Controlled Nutrients in violation of this article the landowner for whom such contractor applied Controlled Nutrients may be fined pursuant to the provisions of this article if the landowner knowingly requested the application.

§ 148-44 Severability clause.

Should any section, part or provision of this ordinance be deemed invalid or unconstitutional, such decision shall not affect the validity of the remaining terms of this ordinance as a whole or any part thereof, other than the section, part or provision held invalid or unconstitutional.

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