

TOWNSHIP OF BERKELEY HEIGHTS, UNION COUNTY

ORDINANCE No. 3-2010

**AN ORDINANCE AMENDING CHAPTER 13.17 OF THE CODE
OF THE TOWNSHIP OF BERKELEY HEIGHTS TO RESTRICT
APPLICATION OF FERTILIZERS FOR STORMWATER
MANAGEMENT PURPOSES**

Section 1. WHEREAS, N.J.A.C. 7:15-5.8(a)(1) empowers the New Jersey Department of Environmental Protection ("NJDEP") to require each municipality to adopt ordinances regulating environmental standards for storm water pursuant to N.J.A.C. 7:15-5.25(g); and

Section 2. WHEREAS, NJDEP requires that each municipality adopt an ordinance governing the outdoor application of fertilizer for the purposes of protecting and improving surface water quality by reducing the overall amount of excess nutrients entering waterways; and

Section 3. WHEREAS, elevated levels of nutrients, particularly phosphorus, in surface waterbodies can result in excessive and accelerated growth of algae and aquatic plants (eutrophication) leading to diurnal variations and extremes in dissolved oxygen and pH, which, in turn, can be detrimental to aquatic life and can restrict use of the affected water for recreation and water supply; and

Section 4.

WHEREAS, improper or excess application of fertilizers applied to the land can cause stormwater to transport nutrients to nearby waterways, contributing to the problematic growth of excessive aquatic vegetation; and

Section 5.

WHEREAS, the timing and placement of fertilizer application is critical to avoid transport of nutrients to waterways through stormwater runoff because 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; and

Section 6.

WHEREAS, the Township Council has determined that Chapter 13.17 of the Code of the Township of Berkeley Heights, governing stormwater control in the Township, should be amended to include restrictions on the use of fertilizer to protect the waterbodies of the Township;

Section 7.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, that Article IX is created in Chapter 13.17 of the Code of the Township of Berkeley Heights as follows:

Article IX. Fertilizer Application.

13.17.440 Title.

This article shall be known as and may be cited as the "Fertilizer Application and Management Ordinance of the Township of Berkeley Heights."

13.17.450 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 article 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.

A. "Buffer" means the land area, 25 feet in width, adjacent to any waterbody.

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

C. "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.

D. "Impervious surface" means 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.

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

F. "Phosphorus fertilizer" means any fertilizer that contains phosphorus, expressed as P_2O_5 , 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.

G. "Soils Test" means 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.

H. "Waterbody" means a surface water feature, such as a lake, river, stream, creek, pond, lagoon, bay or estuary.

13.17.460 Prohibited conduct.

No person may:

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; or

D. Apply fertilizer more than 15 days prior to March 1, the start of the recognized growing season, or at any time after November 15, the end of the recognized growing season, for the Township in Zone 6B as found in the Standards for Soil Erosion and Sediment Control in New Jersey, July 1999.

13.17.470 Phosphorus fertilizer application.

A. No person may apply phosphorus fertilizer in outdoor areas unless 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. Notwithstanding any prohibition of this article restricting application of phosphorus fertilizer, phosphorus fertilizer may be applied:

(1) For the purposes of:

(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; or

(b) Re-establishing or repairing a turf area; or

(2) That delivers liquid or granular fertilizer under the soil surface, directly to the feeder roots; or

(3) To residential container plantings, flowerbeds, or vegetable gardens.

13.17.480 Enforcement.

This ordinance shall be enforced by the code enforcement official or the township engineer of the Township of Berkeley Heights.

13.17.490 Violations and penalties.

Any person or persons, firm or corporation, who shall violate any of the provisions of this article shall be subject to:

(1) a written warning for a first violation; or

(2) a fine not to exceed the sum of fifty dollars (\$50.00) for the second violation; or

(3) a fine not to exceed the sum of one hundred dollars (\$100.00) for the third or any subsequent violation; and

upon default in the payment of any fine under this section, to imprisonment in the county jail for a period not exceeding thirty (30) days, in the discretion of the magistrate before whom such conviction may be had.

Section 8.

This Ordinance shall take effect twenty days after final passage and approval by the Mayor and after proper publication in accordance with the law.

Section 10.

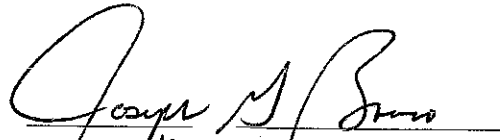
All Ordinances of the Township of Berkeley Heights that are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

Section 11.

If any section, subsection, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

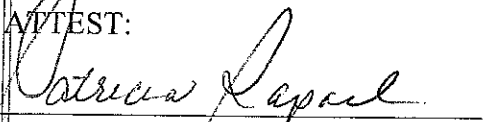
INTRODUCED the 9th day of March, ~~2009~~ 2010.

ADOPTED the 23rd day of March, ~~2009~~ 2010.



Mayor

ATTEST:



Patricia Rapach, Clerk

**NOTICE OF
INTRODUCTION**

Ordinance -2010

“AN ORDINANCE AMENDING CHAPTER 13.17 OF THE CODE OF THE TOWNSHIP OF BERKELEY HEIGHTS TO RESTRICT APPLICATION OF FERTILIZERS FOR STORMWATER MANAGEMENT PURPOSES” (Explanation: This Ordinance amends the Township Code to conform with the NJDEP regulations on fertilizers)

I, Patricia A. Rapach, Township Clerk of the Township of Berkeley Heights , do hereby certify that the foregoing Ordinance was introduced on First Reading at a meeting of the Township Council of the Township of Berkeley Heights, County of Union and State of New Jersey, on March 9, 2010 and that said Ordinance shall be submitted for consideration and final passage at the Public Hearing to be held on March 23, 2010, at 7:00 p.m. or as soon thereafter, as practical, same can be considered, at the Municipal Building, 29 Park Avenue, Berkeley Heights, NJ, at which time and place all persons interested therein or affected thereby will be given an opportunity to be heard concerning the same. During the week prior to and up to the time of Public Hearing, copies of said Ordinance will be available in the Municipal Clerk’s office in said Municipal Building, to the members of the general public who shall request the same.

Patricia Rapach
Township Clerk

ROLL CALL:	AYE	NAY	ABSTAIN	ABSENT
BONACCI				
BRUNO	✓			✓
HALL	✓			
NELSON		✓		
PASTORE	✓			
PERNA	✓			
TIE:				
MAYOR COHEN				

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

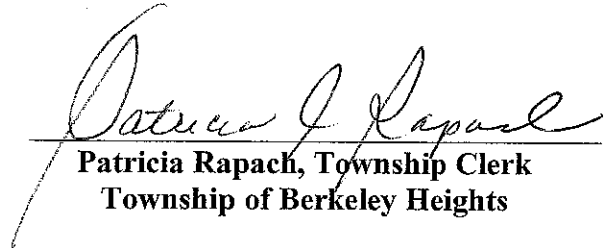
NOTICE OF FINAL ADOPTION

Public Hearing and Final Adoption of Ordinance Introduced on March 9, 2010:

**“AN ORDINANCE AMENDING CHAPTER 13.17 OF THE
CODE OF THE TOWNSHIP OF BERKELEY HEIGHTS TO
RESTRICT APPLICATION OF FERTILIZERS FOR
STORMWATER MANAGEMENT PURPOSES”**

(Explanation: This Ordinance amends the Township Code to conform with the NJDEP regulations on fertilizers)

I, Patricia Rapach, Township Clerk of the Township of Berkeley Heights, County of Union, State of New Jersey, hereby certify that the above entitled Ordinance was adopted on Final Passage by the Township Council of the Township of Berkeley Heights at its meeting held on March 23, 2010.


**Patricia Rapach, Township Clerk
Township of Berkeley Heights**

ROLL CALL:	AYE	NAY	ABSTAIN	ABSENT
BONACCI		✓		
BRUNO	✓			
HALL	✓			
NELSON		✓		
PASTORE	✓			
PERNA	✓			
TIE:				
MAYOR				