

CITY OF SANIBEL

ORDINANCE NO. 12-\_\_\_

**AN ORDINANCE PERTAINING TO CHAPTER 14 OF THE SANIBEL CODE ENTITLED “BUILDINGS AND BUILDING REGULATIONS”, ARTICLE III, LICENSES, REGISTRATIONS AND CERTIFICATIONS, AMENDING DIVISION 3 – VEGETATION CONTRACTORS, SUBDIVISION I – IN GENERAL, SECTION 14-147, APPLICABILITY AND EXCEPTIONS, ADDING SUBSECTION (6); AMENDING SUBDIVISION II – CERTIFICATE OF COMPETENCY, SECTION 14-166, “APPLICATION; TESTING; ISSUANCE;” IN ORDER TO ESTABLISH SEPARATE CATEGORIES AND TESTING REQUIREMENTS FOR (1) CERTIFICATE OF COMPETENCY AS A VEGETATION CONTRACTOR, (2) CERTIFICATE OF COMPETENCY AS A VEGETATION CONTRACTOR WITH FERTILIZER ENDORSEMENT, AND (3) CERTIFICATE OF COMPETENCY – FERTILIZER ONLY; AMENDING SECTION 14-167, EXPIRATION AND RENEWAL; AMENDING SECTION 14-168, SUSPENSION OR REVOCATION; SUPERSEDING AND REPEALING ALL PRIOR ORDINANCES AND RESOLUTIONS INCONSISTENT HERewith; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Sanibel has been requested to amend the regulations relating to a Certificate of Competency to recognize that applicators who apply “fertilizer only” and do not plant, transplant, remove, prune, trim, cut or otherwise impact plants, trees or other vegetation should not be required to fulfill the same testing requirements applicable to a vegetation contractor; and

**WHEREAS**, the City’s Natural Resources Department recommends that separate categories and testing requirements be established for a (1) Certificate of Competency as a vegetation contractor, (2) Certificate of Competency as a vegetation contractor with fertilizer endorsement, and (3) Certificate of Competency – fertilizer only; and

**WHEREAS**, the City Council finds that such amendment to the City’s Code of Ordinances is appropriate and in the best interests of the public and the City’s vegetation programs;

**NOW, THEREFORE BE IT ORDAINED** by the City Council of the City of Sanibel, Florida:

**SECTION 1.** CHAPTER 14, BUILDING AND BUILDING REGULATIONS; ARTICLE III, Licenses, Registrations and Certifications, Division 3 – Vegetation Contractors, Subdivision I – In General, Section 14-147, Applicability; exceptions, adding Subsection 6; amending Subdivision II – Certificate of Competency, Section 14-166, “Application; testing; issuance;” in order to establish separate categories and testing requirements for (1) Certificate of Competency as a vegetation contractor, (2) Certificate of Competency as a vegetation contractor with fertilizer endorsement, and (3) Certificate of Competency – fertilizer only; amending Section 14-167, Expiration and renewal; amending Section 14-168, Suspension or revocation; of

the Sanibel Land Development Code and such Sanibel Land Development Code is hereby amended to read as follows, with additions indicated by underlining and deletions indicated by strikeout, to read as follows:

**Sec. 14-146. - Purpose.**

The purpose of this division is to preserve and protect the vegetative resources within the city from the improper planting, transplanting, removing, pruning, trimming, damaging or destroying of trees, plants or shrubs.

**Sec. 14-147. - Applicability; exceptions.**

The requirements and prohibitions contained in this division apply to all persons engaged in vegetation contracting in the city, except as follows:

- (1) Persons holding a federal or state license or registration covering the work defined in this division, to the extent that the federal or state license or registration preempts local regulation;
- (2) Persons working as employees and under the direct supervision of vegetation contractors who hold a current and valid vegetation certificate of competency;
- (3) Persons working for a governmental agency or a nonprofit organization dedicated to conservation or preservation of vegetative resources, and under the direct supervision of a person knowledgeable in the purposes and requirements of this division;
- (4) Persons engaged in vegetative contracting on property upon which such persons reside; or
- (5) Persons hired by and under the direct supervision of a person residing upon the property to engage in vegetative contracting on such property so long as that property does not exceed four family residential properties.
- (6) The applicability of this division (Sections 14-146 through 14-168) to a commercial fertilizer applicator or institutional applicator as defined in, and for the purposes of, Chapter 30, Article VI, Sections 30-141 through 30-150 of this Code, is specifically set forth herein where such applicator does not plant, transplant, remove, prune, trim, cut or otherwise impact plants, trees or other vegetation other than the commercial or institutional fertilization of turf and landscape plants (as defined in Section 30-142). In any instance where a commercial fertilizer applicator or institutional applicator also plants, transplants, removes, prunes, trims, cuts or otherwise impacts plants, trees or other vegetation (other than fertilization), then a certificate of competency as a vegetation contractor, including the fertilizer endorsement, shall be required as provided in Sections 14-146 through 14-168 of this division.

**Sec. 14-166. - Application; testing; issuance.**

- (a) Any person desiring (1) a certificate of competency as a vegetation contractor, (2) a certificate of competency as a vegetation contractor with fertilizer endorsement, or (3) a certificate of competency – fertilizer only, shall present to the city manager a completed application, the fee prescribed in section 14-191, and evidence of passing the applicable test for certification or recertification. The application shall provide, at a minimum, for the applicant's name, address, telephone number, form and nature of business entity, and firm name.
- (b) The applicant shall establish in the application that the applicant:
- (1) Has not, within the previous two years, been convicted of, pled no contest to, or been found to have been in violation of, a federal, state, or city law or regulation pertaining to environmental or vegetation matters; or been adjudicated guilty of a similar violation by the city code enforcement board;
  - (2) Is not in violation of any city ordinance or regulation pertaining to the business of vegetation contracting or the application of fertilizer within the city; and
  - (3) Is not in default of any obligations to the city.
- (c) One or more members of the city vegetation committee shall develop and administer the test for certification or recertification for the following certificate of competency categories:
- (1) Certificate of competency as a vegetation contractor.
    - (1) (i) A written test, covering, as a minimum, city ordinance requirements and vegetation standards; and
    - (2) (ii) A field identification test, covering, as a minimum, examples of the most common native and exotic vegetation, exotics termed noxious or undesirable, and vegetation deserving special protection in the city.
  - (2) Certificate of competency as a vegetation contractor with fertilizer endorsement.
    - (i) A written test, covering, as a minimum, city ordinance requirements and vegetation standards;

- (ii) A field identification test, covering, as a minimum, examples of the most common native and exotic vegetation, exotics termed noxious or undesirable, and vegetation deserving special protection in the city; and
- (iii) A written test covering the City of Sanibel fertilizer ordinance requirements with a passing score of 90% or higher required.

(3) Certificate of competency – fertilizer only.

- (i) Attendance at the vegetation contractor class including the field identification portion of the class, however no test shall be required for the vegetation contractor class; and
  - (ii) A written test covering the City of Sanibel fertilizer ordinance requirements with a passing score of 90% or higher required.
- (d) The city manager shall ensure that the test is valid, that it is administered fairly and properly, and that reasonable accommodations are made for individuals with disabilities and individuals who are unable to read the English language.
- (e) Upon review of the application and evidence of passing the test, the city manager shall either issue ~~the vegetation certificate of competency~~ (1) a certificate of competency as a vegetation contractor, (2) a certificate of competency as a vegetation contractor with fertilizer endorsement, or (3) a certificate of competency – fertilizer only, as applicable, or deny the application. If the application is denied, the city manager shall give the applicant written notice of the reason. The applicant may challenge the decision by notifying the city manager in writing within 30 days after the date of the mailing of the notice of denial. The city manager shall provide an opportunity for an informal hearing to determine whether the application should have been denied, after which the city manager shall issue a final order.

**Sec. 14-167. - Expiration and renewal.**

- (a) All ~~vegetation certificates of competency~~ (1) certificates of competency as a vegetation contractor, (2) certificates of competency as a vegetation contractor with fertilizer endorsement, or (3) certificates of competency – fertilizer only, as applicable shall be renewed during the month of September of each year, and they shall expire on September 30 of each year.
- (b) Each ~~vegetation contractor~~ Certificate of Competency holder shall be required to take and pass a recertification test by September 30 of the fifth year after the original certificate of competency becomes null and void.

**Sec. 14-168. - Suspension or revocation.**

- (a) The city manager may suspend or revoke any ~~vegetation certificate of competency~~ (1) certificate of competency as a vegetation contractor, (2) certificate of competency as a vegetation contractor with fertilizer endorsement, or (3) certificate of competency – fertilizer only, as applicable for up to two years upon a finding that the holder has knowingly, recklessly, or with reckless indifference, violated the provisions of this article or of laws or regulations provided in federal, state or city regulations providing for protection of vegetative resources or relating to the application of fertilizer within the city.
  
- (b) Prior to instituting this remedy, the city shall provide notice of the violation and an opportunity for an informal hearing before the city manager. Review shall be vested in the city construction industry regulation board.

**SECTION 2. All prior resolutions and ordinances relating to the above sections are superceded.**

All prior ordinances and resolutions are hereby repealed and superceded to the extent of any conflict herewith.

**SECTION 3. Codification.**

This ordinance shall be deemed an amendment to the Code of Ordinances of the City of Sanibel and the Sanibel Code of Ordinances is hereby amended.

**SECTION 4. Effective Date.**

This Ordinance shall be effective immediately upon adoption.

**DULY PASSED AND ENACTED** by the Council of the City of Sanibel, Florida, this 2nd day of October, 2012.

**AUTHENTICATION:**

\_\_\_\_\_  
Kevin Ruane, Mayor

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Pamela Smith, City Clerk

**APPROVED AS TO FORM:**

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Kenneth B. Cuyler, City Attorney      Date

Vote of Council Members:

Ruane \_\_\_\_\_  
Denham \_\_\_\_\_  
Congress \_\_\_\_\_  
Harrity \_\_\_\_\_  
Jennings \_\_\_\_\_

Date Filed with City Clerk: \_\_\_\_\_