

**STATE OF WISCONSIN**  
**WAUKESHA COUNTY**  
**VILLAGE OF BUTLER**

**ORDINANCE 23-04**

**Ordinance Amending Various Chapters and Sections of the Butler Municipal Code to Remove Barriers to Green Infrastructure**

**WHEREAS**, the Village Board of the Village of Butler seeks to be in compliance with the requirements for the Wisconsin Department of Natural Resources WPDES permit and thus seeks to remove barriers to green infrastructure;

**NOW, THEREFORE**, the Village Board of the Village of Butler, Waukesha County do ordain as follows:

**SECTION I**

The following Chapters and Sections of the Butler Municipal Code are amended to read as follows:

**Ch. 25 Article II. Sec. 28-25 - Industrial and Commercial Waste Collection. Paragraph (3)**

“(3) Dumpsters used for collection of all kinds of matter that may decay or spoil must be covered. Any dumpsters used for collection of other types of waste materials resulting from the manufacture or processing of products need not be covered, provide that the materials cannot spill or be blown from the dumpster. **Outdoor storage areas for dumpsters shall be graded and drained in manner that prevents contaminated runoff from reaching storm drains or surface waters.**”

**Ch. 30 Article II. Sec. 30-33 - Terrace areas. Paragraph (b)**

“(b) *Noxious weeds; paving.* All that part of residential terrace not covered by a sidewalk shall be kept free and clear of all noxious weeds and shall not be paved, surfaced or covered with any material which shall prevent the growth of plants and shall be maintained as a lawn **or amended soil area**, except in areas specifically approved by the village board or its designee. Basketball backstops, statuary, structures, flag poles and other objects shall not be placed in the terrace area.”

**Chapter 30 Article III. Sec. 30-63 - Obstruction of public ways by pedestrian or vehicle traffic. Paragraph (c)**

“(c) *Definitions.* The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Loiter* means to sit, stand, loaf, lounge, wander or stroll in an aimless manner or to stop, pause or remain in an area for no obvious reason.

*Nuisance* means unnecessary conduct which may tend to annoy, intimidate, threaten or otherwise disturb another in or about any public street, sidewalk, bridge or public ground which is offensive to the public morals or decency of the citizens of the village.

*Obstruct* means to interfere with unobstructed travel by any means, including but not limited to standing on the part of the walk that is fit for travel, or placing any object or vehicle whatsoever on the sidewalk.

**Planter box means a structure made of a durable material such as stone, brick, concrete, or wood designed to capture runoff and settle and filter out sediment and pollutants, to which runoff is piped, channeled, or directed to the surface of the planter box, where it is temporarily stored and then infiltrated or conveyed to another approved disposal point.**

**Chapter 30 Article III. Sec. 30-64 – Other obstructions and encroachments. Paragraph (b)**

“(b) *Exceptions.* The prohibition of subsection (a) of this section shall not apply to the following:

Temporary encroachments or obstructions authorized by permit under section 30-206 pursuant to Wis. Stats. § 66.0425.

(1) Building materials for the period authorized by the public works superintendent which shall not obstruct more than one-half of the sidewalk or more than one-third of the traveled portion of the street and which do not interfere with the flow in the gutters.

(2) Excavations and openings permitted under of article VI, divisions 2 and 3, of this chapter.

(3) Signs or clocks attached to buildings which project outward from properties not more than six feet from the face of any the building, unless otherwise approved and which do not extend below any point ten feet above the sidewalk, street or alley, unless otherwise approved by the village board.

(4) Awnings which do not extend below any point seven feet above the sidewalk, street or alley.

(5) Public utility encroachments authorized by state law or the village board.

(6) Goods, wares, merchandise or fixture being loaded or unloaded which do not extend more than three feet on the sidewalk, provided that the goods, wares, etc., do not

remain thereon for a period of more than four hours.

**(7) Planter boxes approved by the village board for stormwater management and control, provided the planter box is no more than ten (10) feet in length and does not project more than three (3) feet on the sidewalk.**

**Chapter 30 Article IV Sec. 30-92 – Standard specifications for sidewalk. Paragraph (I)(2)**

“(I) Variances.

- (1) *Location.* Where the location of a sidewalk in accordance with the specifications established herein would conflict with the location of trees, or the root systems thereof, a written variance to the specifications may be issued by the public works superintendent permitting the sidewalk to be located so as to eliminate or reduce the conflict. No variance shall be issued if the public safety or welfare would be adversely affected thereby. No fee shall be charged for the variance.
- (2) *Material.* Where the property owner desires to use non-standard materials such as brick, aggregate ~~or~~ cobblestone, **or permeable surfacing**, in the construction of a sidewalk, a written variance to the specifications established herein may be issued by the village board to permit the use of the non-standard material. No variance shall be granted for any portion of a sidewalk which crosses or is part of a driveway, **except upon recommendation of the village engineer**, nor shall a variance be granted if the public safety or welfare would be adversely affected thereby. A condition of the granting of a variance under this subsection shall be the execution and recording of an indemnity agreement running with the land binding the property owner, his successors and assigns, holding the village harmless from any liability, loss or damage resulting from the use of the non-standard materials. An application fee as prescribed in the village fee schedule shall be paid at the time of applying for the variance.

**Chapter 30. Article VI Division 3. Sec. 30-191 – Pavement replacement. Paragraph (h)**

“(g) When a street is reconstructed, utility laterals shall also be installed, including sump pump laterals, even if not immediately needed.

(Code 2003, § 6-2-4 (g))

**(h) Specifications for permeable surfacing shall be consistent with the Wisconsin Department of Natural Resources Conservation Practice Standard 1008, as amended. The village engineer shall have the authority to review and approve specifications and plans for the installation and restoration of all permeable surfacing.**

**(Code 2003, § 6-2-4 (i))**

**Chapter 30. Article IX. Sec. 30-249 – Planting or removal of public area trees and shrubs.**

**Paragraph (b)(1)**

“(b) Street tree plan adopted.

- (1) Tree planting program. The village board shall develop and establish a plan for the orderly planting of trees in the terraces along village streets to reduce conflicts between trees and other public use of streets, to facilitate care of the village trees, and to make the village a more attractive community in which to live. The plan shall designate the species of tree for each street and shall take into consideration the mature size and requirements of the species, the width of the terrace, depth of setback of buildings, location of street lights, safety signals and signs, existing desirable trees, and any other site factors. The annual planting plan and any subsequent changes shall be approved by the village board. **Tree planting to promote stormwater infiltration and water quality improvement is furthermore encouraged in the development of tree planting plans.**

**Chapter 50 Article XII. Sec. 50-534 – Definitions.**

Agricultural facilities and practices has the meaning given in Wis. Stats. § 281.16(1).

**Amended soil area means a landscaped portion of a site where decomposed organic material has been incorporated into the soil to improve its performance for infiltration and vegetation growth, enabling the area to function as a vegetated stormwater control measure.**

**Chapter 50. Article XII Sec. 50-534 – Definitions.**

Best management practices or BMPs means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the state.

**Bioretention area or rain garden means an excavated area that is back-filled with a prepared or amended soil mixture, covered with a mulch layer and planted with a diversity of woody or herbaceous vegetation, to which storm water is directed to promote infiltration and evaporation. Also referred to as a “rain garden”.**

**Chapter 50. Article XII Sec. 50-534 – Definitions.**

Division of land means the creation from one parcel of two or more parcels or building sites of 1½ or fewer acres each in area where the creation occurs at one time or through successive partition within a five-year period.

**Downspout disconnection means the rerouting of rooftop drainage pipes to drain**

rainwater to rain barrels, cisterns, or permeable areas instead of the storm sewer.

**Chapter 50. Article XII Sec. 50-534 – Definitions.**

Governing body means the village board of trustees.

Green infrastructure means a stormwater runoff management system that uses vegetation, soils and natural processes to mimic nature’s ability to soak up and store stormwater. Examples of green infrastructure BMPs include but are not limited to downspout disconnection, rainwater harvesting, rain gardens, planter boxes, bioswales, permeable surfacing/pavements, green alleys and streets, green parking, green roofs, green walls, stormwater trees, amended soil areas, and land conservation.

Green parking, streets and alleys means integrating green infrastructure elements into the parking, street and/or alley design to store, infiltrate, and evapotranspire stormwater.

**Chapter 50. Article XII Sec. 50-534 – Definitions.**

Pervious surface means an area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests or other similar vegetated areas are examples of surfaces that typically are pervious.

Planter box means a structure made of a durable material such as stone, brick or concrete designed to capture runoff and settle and filter out sediment and pollutants, to which runoff is piped, channeled, or directed to the surface of the planter box, where it is temporarily stored and then infiltrated or conveyed to another approved disposal point.

Pocket or modular wetland means a small (typically under 1,000 SF in area) constructed wetland designed to reduce peak flows and runoff volumes, and remove pollutants via settling and bio-uptake.

**Chapter 50. Article XII Sec. 50-534 – Definitions.**

Public right-of-way means any road, alley, street, parking lot, sidewalk, plaza, mall, or pathway owned by or dedicated to a governmental unit.

Rain barrel means a structure for the collection of roof runoff in containers typically ranging from 50 to 100 gallons in size, designed for the subsequent release of water to landscaped areas. A rain barrel shall be securely covered, have an overflow discharge device sized to adequately convey overflow to the point of discharge and have a convenient and functional means of water withdrawal.

Rain garden. Please see “bioretention area”.

**Rainwater harvesting means the collection and storage of rainfall for later use, typically in a rain barrel or cistern.**

**Chapter 50. Article XII Sec. 50-534 – Definitions.**

Stormwater management system plan means a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.

**Stormwater tree means a tree or trees selected and installed (either with or without an engineered box structure) as an integral component of a site-specific stormwater management plan, sited at a point or location where the tree(s) will have the effect of increasing the coverage of tree canopies to provide stormwater interception and evapotranspiration, stormwater uptake, and increased infiltration.**

**Chapter 50. Article XII Sec. 50-534 – Definitions.**

Type II distribution means a rainfall type curve as established in the United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published in 1973.

**Vegetated stormwater management measure means a bioretention area, rain garden, amended soil area, pocket wetland, vegetated swale, or stormwater tree that is designed and intended to provide stormwater treatment and control, and to promote evapotranspiration and infiltration of stormwater by plant, tree and soil mechanisms. For purposes of the Municipal Code a “vegetated stormwater control measure” shall not include swales or depressed areas landscaped principally or exclusively with turf or other mowed grasses, and intended principally for stormwater**

**Vegetated swale means a stormwater conveyance system routing stormwater flows through vegetated areas, natural elongated depressions, or constructed channels. A vegetated infiltration swale differs from a conventional drainage channel or ditch in that it is constructed specifically to promote infiltration. Also referred to as a “bioswale”.**

**Chapter 50 Article XII Sec. 50-537 – Performance standards. Paragraph d(1)(d)**

- c. Off-site drainage. When designing BMPs, runoff draining to the BMP from off-site shall be taken into account in determining the treatment efficiency of the practice. Any impact on the efficiency shall be compensated for by increasing the size of the BMP accordingly.
- d. **Only green infrastructure BMPs that do not clog are permissible for achieving total suspended solids requirements.**

**Chapter 50 Article XII Sec. 50-537 – Performance standards. Paragraph d(2)(d)(5)**

4. For the one percent/100-year, 24-hour design storm, BMPs shall be designed to achieve a runoff release rate that is less than or equal to either:(i)0.5 cubic feet per second per acre; or(ii)A rate determined for the individual site that distributes runoff over the critical time sufficient to comply with subsection (d)(2)a of this section.
5. **Green infrastructure BMPs including vegetated stormwater management measures are permissible means for achieving peak discharge requirements.**

**Chapter 50 Article XII Sec. 50-537 – Performance standards. Paragraph d(3)(a)**

- a. *Best management practices.* BMPs shall be designed, installed, and maintained to infiltrate runoff in accordance with the following or to the maximum extent practicable, **in accordance with Wis. Adm. Code NR §151.124**

**Chapter 50 Article XII Sec. 50-537 – Performance standards. Paragraph d(3)(a)(4)**

3. High imperviousness. For development with more than 80 percent connected imperviousness, such as commercial strip malls, shopping centers, and commercial downtowns, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than two percent of the post-construction site is required as an effective infiltration area.
4. **Green infrastructure BMPs are permissible means for achieving infiltration requirements.**

**Chapter 50 Article XII Sec. 50-537 – Performance standards. Paragraph d(4)(c)(3)**

2. Where land disturbing construction activity occurs within a protective area, adequate sod or self-sustaining vegetative cover of 70 percent or greater shall be established and maintained where no impervious surface is present. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat, and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion such as on steep slopes or where high velocity flows occur.

3. BMPs such as **green infrastructure BMPs**, filter strips, swales, or wet detention ponds, that are designed to control pollutants from non-point sources, may be located in the protective area.

**Chapter 50 Article XII Sec. 50-537 – Performance standards. Paragraph d(7)**

**(7) Snow Storage Areas. Site plans shall designate snow storage areas. Snow storage shall be prohibited upon green infrastructure BMPs and prohibited upon all areas used for runoff infiltration.**

**Chapter 50 Article XII Sec. 50-537 – Performance standards. Paragraph e**

- (e) General considerations for stormwater management measures. The following considerations shall be observed in on-site and off-site runoff management:
- (1) Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.
  - (2) Emergency overland flow for all stormwater facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.
  - (3) **Private Drainage Easements: Private easements shall overlay all private storm sewers, ditches, and swales. All private drainage easements shall be labeled as “Private Drainage Easements” on plats of survey, site plans, and as-builts drawings.**
  - (4) **Public Drainage Easements: Public easements shall overlay all public storm sewers, ditches, and swales not situated in Village-owned right-of-way. All public drainage easements shall be labeled as “Public Drainage Easements” on plats of survey, site plans, and as-built drawings.**

**Chapter 52. Article III. Sec. 52-82 – Required improvements. Paragraph d(2)**

- (d) Streets and utilities. Before the final plat of a subdivision located within the village limits will be approved, the subdivider shall provide the following facilities, give satisfactory proof that he has contracted to install the facilities, or file a performance bond insuring that the facilities will be installed within the time required by the village board:
- (1) Water and sanitary sewer mains, and laterals to the lot line.



- (2) Streets graded to full width and the roadway graded to subgrade. After installation of the water and sewer facilities, the roadway shall be surfaced with six inches of crushed gravel and a seal coat applied, **unless a permeable surfacing material is used in which case the roadway shall be surfaced as directed by the village.**

**SECTION II**

The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

**SECTION III**

All ordinances or parts of ordinances contravening the terms of this ordinance are hereby to that extent repealed.

**SECTION IV**

This ordinance shall take effect and be in full fore upon its passage and the day after its publication.

**PASSED** and **ADOPTED** by the Village Board of the Village of Butler, Waukesha County, Wisconsin, this the 15<sup>th</sup> day of *August*, 2023.

VILLAGE OF BUTLER

By: \_\_\_\_\_  
Paul Kasdorf, President

ATTEST:

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Benjamin Hubrich, Village Administrator/Clerk