

ORDINANCE NO. 2259  
AN ORDINANCE TO CREATE SECTION 9.045 TO PERMIT CERTAIN PLANTINGS WITHIN  
THE CURB LAWN

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**WHEREAS**, the Common Council for the City of South Milwaukee has determined that permitting plantings within the curb lawn is in the best interest of the citizens of the City.

**NOW THEREFORE**, at a regular meeting of the Common Council for the City of South Milwaukee, held on the 19th day of March, 2024, a quorum of the members of the Common Council being present and a majority voting in favor thereof, the Common Council does hereby ordain as follows:

SECTION 1. Section 9.045 of the Municipal Code is hereby created to read:

**9.045 - PLANTINGS IN THE CURB LAWN.**

**(1) Purpose.** The purpose of this Section is to establish criteria for private plantings and landscaping features within the curb lawn portion of the public right-of-way. This ordinance will allow for the permissive use of the curb lawn without the need for additional permits or a privilege in street, provided such use does not interfere with the public's use of the space. Uses inconsistent with this Section may be subject to penalty hereunder, or may require approval under other Sections of these Ordinance. Uses consistent with this Section are an exception to the privilege in street requirements as they are being permitted by general ordinance affecting the whole public as allowed for under Wis. Stat. § 66.0425(1).

**(2) Definitions.** For the purposes of this section, the following definitions apply:

(a) "Curb lawn" is that portion of the public right-of-way in between the curb or roadway and the adjoining lot line, whether or not the area is occupied by a sidewalk or multi-use path.

(b) "Occupant" is any person who legally resides in a residential property immediately adjacent to a curb lawn, including any individual condominium owner within a condominium development.

(c) "Owner" is the person who has legal title to a property immediately adjacent to a curb lawn, and, for multi-unit properties, includes condominium associations.

(d) "Permissible plantings" are those plants, other than trees and shrubs, and landscape features that have been deemed permissible plantings under subsection (3).

**(3) Permissible Plantings.** The owner of a property may plant, maintain and cultivate, or allow an occupant or tenant of the property to plant, maintain and cultivate, certain plants and landscaping features within the curb lawn adjoining the owner's property if said plantings and landscaping features are consistent with the requirements of this subsection. Any plantings or landscape features must incorporate a 12-inch setback from any abutting sidewalks, curbs, roadway or driveway. Plantings and landscape features are permissible plantings under this subsection if the following conditions are met:

(a) Approved Plantings. Any non-woody plantings, under 18 inches in height, that are commonly found in vegetable gardens, flower gardens or landscaping are allowed. Any plant species that are deemed invasive or regulated under Wis. Admin. Code ch. NR 40, or elsewhere in these ordinances, are prohibited.

(b) Landscaping Features. Landscaping features meant to protect approved plantings, such as mulch, small rocks or other similar features, shall be allowed provided the materials are stable, do not create any potential public safety hazard, and are easily removable. Temporary wire fencing, lattices, vegetable cages and the like, are permissible landscaping features if necessary to assist the establishment of approved plantings, but must be removed at the end of the growing season. Pots, concrete planters, irrigation equipment and the like, are not landscaping features subject to this subdivision.

(c) Maintenance of Approved Plantings and Landscaping Features. Approved plantings and landscaping features shall be maintained in a safe and orderly manner, free of any unapproved planting or landscaping feature and in the areas allowed under this Section.

(d) Under no circumstances shall an approved planting or landscaping feature obstruct, encroach or endanger the public's use of a roadway, sidewalk or other right-of-way, and all approved plantings and landscaping features shall be maintained so as not to interfere with the public's right of travel over these areas, or the visibility required to exit private driveways.

(e) Responsibility. The owner or occupant responsible for the permissible plantings accepts full responsibility for the care and maintenance of the permissible plantings, and understands that permissible plantings in the curb lawn are made at their own risk, and that they may be removed at any time by the City without notice or compensation. Areas of the curb lawn that are damaged due to utility work or snowplowing will be restored with dirt and grass seed. The owner or occupant seeking to place permissible plantings in the curb lawn is responsible for contacting Digger's Hotline to identify and mark any underground utilities prior to digging within the right-of-way.

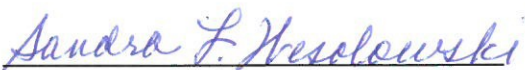
**(4) Planting of Shrubbery Prohibited**. No person shall plant or maintain or cause to be planted or maintained on any curb lawn between the sidewalk and curb on any street in the City of South Milwaukee any plant or shrub in excess of eighteen (18) inches in height. Any plants or shrubbery planted or maintained on any curb lawn contrary to the provisions of this ordinance shall be removed. The enforcement of this ordinance shall be under the supervision of the Police Department and the Building Inspector. Upon default of any person ordered to remove said plants or shrubbery, the Building Inspector may cause said plants or shrubbery to be removed. The cost of removal shall be assessed against the lot adjoining the curb lawn upon which the plants or shrubbery were located. Prosecution under this section shall not bar the City from causing the plants or shrubbery to be removed, nor shall the City's removal of the plants or shrubbery bar prosecution hereunder.

**(5) Penalty**. Any person who plants, maintains and/or cultivates plants and landscaping features within the curb lawn adjoining the owner's property inconsistent with the requirements of this section shall be subject to a forfeiture of not less than \$25 nor more than five hundred dollars (\$500). Each day such violation continues shall be considered a separate offense.

SECTION 2. 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 3. This charter ordinance shall take effect upon its passage and publication.  
Passed and Adopted by the Common Council of the City of South Milwaukee March 19, 2024.

  
James Shelenske, Mayor

  
Sandra Wesolowski, City Clerk

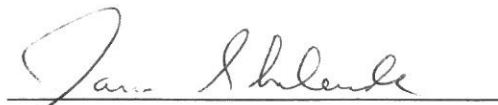
Date published:  
March 27, 2024

SECTION 2. 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 3. This charter ordinance shall take effect sixty (60) days after its passage and publication unless within such sixty (60) days a referendum petition shall be filed as provided by Wis. Stat. §66.0101 of the Wisconsin Statutes, in which this ordinance shall not take effect until submitted to a referendum and approved by a majority of the electors voting thereon as provided by Wis. Stat. § 66.0101 of the Wisconsin Statutes.

Passed and Adopted by the Common Council of the City of South Milwaukee

March 19, 2024.

  
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James Shelenske, Mayor

  
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Sandra Wesolowski, City Clerk

Date published: March 27, 2024