

---

with our natural environment. What follows is a history of the laws and the direction progressive communities are taking in the regulation of "weeds."

In the beginning, there were no "weed laws" other than state regulation of plants noxious to agriculture. However, post-World War II suburban migration led to laws promoting and protecting lawns. The first generation, and most onerous, laws banned "weeds" above an arbitrary height. Chicago's ordinance is a prime example of such an ill-founded and unworkable regulation: it flatly outlawed "any weeds in excess of an average height of 10 inches." At this point it is appropriate to ask, "What is a 'weed' and how do we measure average height?"

With the publication of *Silent Spring* and the environmental awareness of the 1960s, homeowners began, in small numbers, to question the wisdom of maintaining a traditional suburban lawn. They began to plant alternative landscapes, including wildflowers and native grasses. These practices collided with the rigid view of what was "proper" groundcover for a home. Some municipalities prosecuted those who chose native landscapes in cases like *Rockville MD v. Steward*, *College Station TX v. Baker*, *New Berlin WI v. Hager*; and *Little Rock AR v. Allison*. Sometimes local governments ignored the practice, or owners discontinued their natural landscaping after being threatened with prosecution.

Madison, Wisconsin initiated the second generation of weed laws by becoming the first major city to recognize the legitimacy of natural landscapes when it enacted an ordinance validating them. The Madison ordinance requires a homeowner to file an application for a natural landscape and obtain approval from a majority of his or her neighbors. The ordinance represented a significant first step in the process of reversing the widespread "mandate" that we all have turf lawns. The ordinance has two flaws: the neighbor veto and the application/approval process. These requirements lead to a process of ad hoc "permission" to establish native plants and grasses. Furthermore, the premise of the ordinance is counter-intuitive. Why should natural landscapes be singled out as requiring permis-

sion when other perhaps more "harmful" landscapes, such as introductions of alien plants, cultivars, and foreign ecotypes, remain unregulated?

The third generation of weed laws remedied the failings of the Madison ordinance by allowing natural landscaping without neighbor approval or city "permission." These laws retain the traditional prohibition of growing "weeds" but include a modification that safeguards native landscapes.

One type of "modified weed law" is an ordinance requiring a setback from either the front or the perimeter of the lot. The vegetation within the area may not exceed a certain height, such as 10 or 12 inches, while the vegetation behind the setback remains unregulated. Distances range from 20 feet in rural areas to 2 or 3 feet for city lots. These laws have several important advantages and represent a good working compromise between the interests of local government, the homeowner, and neighbors. Primarily, setback ordinances allow for the unregulated growing of vegetation on a majority of the lot and create a "tended" margin that satisfies neighbor/government concerns. Such ordinances also solve some practical problems, such as those created by large plants lopping over into neighbors yards or across sidewalks. These ordinances are easy to understand and enforce because they are clear and simple — an important but often overlooked goal of law-making. The fact that a portion of the yard is rendered off-limits for certain types of plants is a small price to pay for an otherwise fair law.

The success of the setback ordinance is demonstrated by the City of White Bear Lake, Minnesota, which originally had a permit procedure applicable to native lawns, but abandoned that approach in 1990. According to a city official, the ordinance is a "success." No complaints have been received about homeowners with natural landscapes who have complied with the setback rule. Other Twin Cities suburbs have adopted or are considering a similar type of ordinance.

The other "modified weed laws" are those that have broad exceptions for "native plant-

## WEED LAWS: A HISTORICAL REVIEW AND RECOMMENDATIONS

**Bret Rappaport, Attorney**  
20 South Clark, Suite 1100  
Chicago, Illinois 60603-1803

In certain areas, weed laws have been used to prosecute homeowners and prohibit natural landscapes. Unfortunately, the use of such laws in this manner reflects a fundamental misunderstanding of our place within nature.

I represent five natural landscapers engaged in a David and Goliath battle with the City of Chicago over its weed law (*Schmidling v. Chicago*, 91 C 3506). In the course of that litigation, I have learned about weed laws that work to satisfy the concerns of neighbors and local officials yet promote an environmentally beneficial alternative to the traditional suburban lawn. An examination of the four "generations" of weed laws demonstrates where we are and how far we need to go before returning, at least our yards, to a harmonious relationship

---

ings,” “wildlife plantings,” and other environmentally beneficial landscapes. These laws, enacted in Boone County and Harvard, Illinois expressly protect natural landscapers from prosecution under weed laws. They are simple to understand and balance the interests of the owner and neighbors.

The fourth generation of weed laws is represented by no laws at all, coupled with proactive measures — policies and laws to encourage the use of native plant landscapes. Long Grove, Illinois is a good example of a community with this type of policy. Long Grove has no law regulating plant height. The village requires developers to include in their subdivisions 100-foot scenic easements between homes and major streets; the easements are to be planted with native plants, wildflowers, and grasses. Long Grove city government has a naturalist on staff to advise developers and homeowners on cultivation and maintenance of natural landscapes and sells native plants and seed mixes to residents. It also has a committee to review prairie restoration projects.

Slowly, cities and villages are moving from repressive first-generation weed laws to more progressive third- and fourth-generation attitudes. The progress is all too slow, and far too often efforts to change “weed laws” are met with opposition and misunderstanding. Many government officials and citizens believe natural landscapes exacerbate pollen, fire, and vermin problems. The brief filed by the National Wildlife Federation in the *Schmidling v. Chicago* case refutes these misconceptions.

The following guidelines are recommended for use in crafting new weed ordinances that balance the interests of neighbors and village officials with the desires of those residents who wish to plant environmentally beneficial natural landscapes:

1. The ordinance should protect the fundamental right of residents to choose their own landscaping.
2. The ordinance should ideally apply equally to all residents, whether in a city, county, or state.
3. Any restrictions should have a rational basis such as a legitimate health or safety interest.
4. The ordinance must not legislate conformity or aesthetics nor allow residents to exercise control over their neighbors’ landscapes.
5. The ordinance should not require the filing of an application, statement of intent, or management plan. There should be no review/approval process, nor fees assessed against residents who intend to engage in legitimate natural landscaping.
6. To avoid harassment of natural landscapers, “weed commissioners” who enforce ordinances should be able to distinguish between those people growing permitted natural landscapes and those with unpermitted growth.
7. Enforcement of the ordinance should be undertaken through due process of law, which guarantees individuals the right to a fair adjudication of their rights.
8. The ordinance should address the problems of environmental degradation brought about by proliferation of high-maintenance monocultural landscapes. It should encourage the preservation and restoration of diverse, biologically stable, natural plant communities and environmentally sound practices. This will reduce the use of pesticides and fertilizers, will reduce pollutants and noise, and will reduce water consumption and the accumulation of yard waste.