

NATIVE LANDSCAPING ORDINANCES

June 2013

A NEW GENERATION OF PLANT ORDINANCES

Municipalities across the Midwest seek to incorporate native landscaping in an effort to conserve resources, purify air and water, enhance aesthetics and preserve a high quality of life. However, native landscaping goals often conflict with existing nuisance laws, and require additional staff time to review proposed landscaping plans. To address these challenges, a new generation of weed and plant ordinances is being structured to overcome these regulatory hurdles.

Newer regulations help communities achieve native landscaping objectives by providing clear and scientifically sound landscape restrictions. These newer regulations also eliminate or shorten approval processes to allow greater freedom in landscape design.



LEGALITY

Older nuisance laws were founded with good intentions to protect public health, welfare and safety. However, weed ordinances that restrict natural landscaping have become increasingly outdated as a result of the growing evidence that native landscapes do not contribute to fire risk, vermin, mosquitos or pollen proliferation (10). In addition, nuisance ordinances that fail to define a particular vegetation to be controlled have been ruled unconstitutionally vague by some courts (10). The new generation of plant ordinances helps local governing bodies address potential constitutional and common law violations that result from restrictions over individual landscaping choices that do not serve a public benefit.

ORDINANCES

Most weed laws currently regulate landscaping based on broad physical plant characteristics. For

instance, restrictions on brush, seed-bearing plants, and plants capable of large growth may make natural landscaping unlawful. Another obstacle is an ordinance provision that restricts plant growth beyond a specified height (1)(11).

In the 1990s, municipalities began adopting a new generation of ordinances or code amendments to protect native plants. Some revisions include the addition of a section in the nuisance ordinance that is titled “Managed Natural Landscapes” or “Planned Natural Landscapes.” These ordinance revisions exempt areas designated by the landowner from the weed ordinance (9). Other revisions redefine ordinance terms to distinguish intentional plant growth from unmanaged turf grass growth (3).

DEFINING PLANTS

Generally, newer plant ordinances are distinguished by precise definitions and clear restrictions. This can be accomplished by listing, by binomial name, plants that are unauthorized at any stage of maturity (such as noxious and invasive plants) and those that must be kept below a specified height (such as turf grasses). In this strategy, all other non-listed plants are allowed. Many plant ordinances reference noxious or invasive plant lists from other knowledgeable public agencies such as the USDA, natural resource departments or state statutes to avoid the need to reopen the ordinance each time a plant list is revised. In some cases, the definition of a turf weed limits the height of non-regulated plants to the turf grass height limit when found among turf grass (3).

In addition to listing unauthorized plants, some municipalities list plants that are authorized. For instance, a municipality may allow only native species to exceed the vegetation height limit. With this approach however, difficulties may arise in defending the absence of plants not found on the authorized list.

APPROVAL PROCESSES

Approval processes are sometimes used by local governments to establish a degree of oversight on landscaping with native plants. Unfortunately, these well-intended measures may require the submission of onerous applications, sometimes even by a licensed professional, consisting of site plans, schedules, a statement of intent, descriptions of the plant species to be used, their locations and other information (5). Furthermore, this information may be required to be submitted annually. Other review processes may condition municipal approval on certification that more than 50 percent of an applicant's neighbors approve the applicant's landscaping plan. These cumbersome stipulations are likely to severely inhibit the adoption of native landscaping and force individuals to conform their landscaping to the aesthetic values of their neighbors without regard to actual, justifiable nuisance conditions.

Municipalities without an approval process are

finding that education and enforcement of a well-drafted ordinance is sufficient to ensure compliance. The absence of an approval process reduces the need for government management while increasing the likelihood that citizens will landscape with native plants.

SETBACKS

Some municipalities require exempted landscaping — such as in a Managed Landscape Area — to be set back from the property line. A setback frames exempted landscapes, making them appear managed and intentional (3)(4). This may appease neighbors who feel uneasy about the landscape's more natural appearance. Setbacks are also used to keep exempted landscape growth from entering neighboring yards, and to maintain sight distance for vehicle travel.

Some municipalities have instituted setbacks of up to 20 feet (5). This extreme distance might upset the setback's framing effect, and leave owners of smaller properties with little or no land on which they are allowed to grow exempted plants.

ENFORCEMENT

Since the new generation of plant ordinances explicitly defines plant species, any municipality using such an ordinance should be able to identify the difference between authorized and unauthorized plants. Urban foresters or field biologists on staff are likely capable of distinguishing between lawful and unlawful growth. Cities that rely on code enforcement officers need to ensure proper staff education on plant species before enforcement action is taken.



Image courtesy of David Dods

EXAMPLES

Minneapolis, Minn.

In 2011, in order to safeguard natural landscaping, Minneapolis altered its noxious plant ordinances to make a simple three-category distinction between noxious weeds (defined by existing state statutes), unmaintained growth, and intentional growth called “Managed Natural Landscapes” (9). These landscapes are defined as “planned, intentional and maintained plantings of native and non-native plants.” Plants that fall in this category are allowed to exceed the 8-inch height limit for grasses, as long as they are absent of noxious weeds and the plants do not constitute a health, safety or fire risk. This ordinance does not include setback requirements, and no government or neighborhood review process is necessary.

Cincinnati, Ohio

Similar to Minneapolis, Cincinnati’s “Weed Control” ordinance was updated in 2011 to include exceptions for natural landscaping. Plants in a “Managed Natural Landscape Area” are allowed to exceed the weed and turf grass height restriction of 10 inches provided they are “self-sustaining with minimal resort to artificial methods of plant care.” A 3-foot setback is required, but does not apply to fenced property lines. A unique provision in the Cincinnati ordinance allows only properties containing homes or the adjacent property owned by the same homeowner, to be covered by the ordinance.. This provision was added to prevent land speculators from using the ordinance to excuse unmanaged growth.

Chesterfield, Mo.

Chesterfield’s nuisance ordinance defines four types of plants: noxious, invasive, nuisance and native (3). The ordinance references a plant species list from the U.S. Department of Agriculture for noxious weeds and the Missouri Department of Conservation for invasive and native plants. Native plantings are allowed as long as they are free of turf weeds and grasses, nuisance plants, invasive plants, and noxious weeds. Native plantings are subject to a 4-foot setback from property boundaries and must not impair sight distance or constitute a hurt, injury, or inconvenience or danger to the health, safety or welfare of the public. Similar to the above ordinances, no application is necessary.

Lee’s Summit, Mo.

The city of Lee’s Summit makes an exception to its weed control regulations for a “Planned Natural Landscape,” which the city defines as “an intended, managed landscape... all or part of which consists of the planting and cultivating of native plant species” (8). This ordinance only applies to land zoned for industrial or commercial uses. It requires the submission of a plan that is endorsed by a recognized horticulture authority or landscape architect. Both of these provisions make the ordinance much more prohibitive to individuals than the examples from Minneapolis, Cincinnati, or Chesterfield. Since the ordinance only allows native species, a species list is provided. Applicants may apply to use native plants not found on the native plant lists. These applications are reviewed by the director of codes administration.

NUISANCE ORDINANCE SCALE

Most Prohibitive <-----> Least Prohibitive

<p>All "weeds" over an arbitrary height are restricted. Natives are not distinguished from weeds.</p>	<p>Homeowner's natural landscape is approved once application is approved by a majority of neighbors or by governing body. (Green Bay, Wis.) (Lee's Summit, Mo.) (Gladstone, Mo.)</p>	<p>Modifying clause in nuisance ordinance grants permission for native landscapes without application approval by neighborhood or governing body. (Lawrence, Kan.)</p>	<p>The use of native landscapes is actively promoted and no application is required for native plantings. (Minneapolis, Minn.) (Cincinnati, Ohio) (Chesterfield, Mo.)</p>	<p>Native landscapes are actively promoted while non-native vegetation is restricted.</p>
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WORK CITED

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