



## Frequently Asked Questions: Natural Gardens & Bylaws for Biodiversity

This FAQ is offered to help people understand how municipal property standards bylaws work and to identify some common barriers such bylaws may pose to natural gardens. This FAQ also offers advice on how to respond to bylaw enforcement constructively. Answers are based on research our Lab has conducted across many municipalities across Ontario, Canada and the US. It is not intended as legal advice. Please refer to the Toolkit for Planners and the Model Bylaw for further information.

### What to do when a Bylaw Officer visits your property:

*\* A bylaw officer came to visit my property. What should I do?*

Bylaw officers deal with various property issues and are rarely trained to identify plants. We recommend you take an advocacy and education approach: use the opportunity to politely share the benefits of your garden with the bylaw officer, and explain what you have planted and why. In particular, emphasize the importance of the garden to you. If you don't have turf grass, say so, and point out how and why your garden is not a "lawn". You can also ask why the office is visiting. Ask if any health and safety issues have been identified and ask the officer to be specific about these concerns. If someone has complained, ask about the nature of the complaint. If the complaint concerns "weeds", ask the officer to specifically identify which weeds are offending and ask them to point them out. If the complaint is about appearance or aesthetics (and the officer uses words such as "messy", "overgrown", "unkempt", "neglected" etc) you can respond that bylaw enforcement is restricted to matters of health and safety and re-direct to those issues. Take notes and ask for the officer's card.

Most importantly, follow up with an email after the visit and emphasize that your garden is intentional, environmental and natural. Following up provides an opportunity to indicate if you are addressing any health and safety issues and, if necessary, ask for clarification on these concerns. Similarly, if the officer raised the presence of weeds as an issue, address those species specifically and note if the officer was unable to identify the offending plants. Indicate if the officer noted aesthetic concern by making comments on your garden's appearance, you can be clear that these are arbitrary judgments and bylaw enforcement must be about matters that are measurable, specific and confined to health and safety. By-law enforcement should not be based on aesthetics. You may also wish to emphasize that you are aware you have a constitutional right to express your environmental values through your garden, see *Bell v. Toronto (City)* below.

*\* I have been issued a Notice of Violation. How can I fight it?*

See above and start with an email to the bylaw enforcement unit. Further, David Donnelly from Donnelly Law says:

First, you should resist. Write a letter to the city saying you don't accept the charges. That you'll contest them in court. A copy of the letter written by Donnelly Law that you can paraphrase and send to your city can be found [here](#). This resource refers to the Justice Fairgrave and the Bell decision that outlines the unconstitutionality of a bylaw that restricts the expression of environmental values through naturalized gardens.

The media is also a powerful tool of resistance. Reaching out to local organizations and news outlets to express concern and share your story is a strategy of holding the attention of your municipality.

### Natural Gardens and Municipal Bylaws:

*\* What is a bylaw? What is property standards bylaw? What is a Weeds and Grass Bylaw?*

Bylaws are the rules a municipality sets to govern the way lands and properties are managed and used. A property standards bylaw will vary by municipality. It is a set of rules determined by the city for acceptable maintenance of buildings and private properties. Some municipalities have specific bylaws for property maintenance that refer to weeds and grass. For example, the Toronto property standards bylaw outlines that grass cannot exceed 20cm and that shrubs should not be 'overgrown'. Property owners may be threatened with fines and legal action for violating these bylaw standards.

*\* Do I have to cut my grass?*

This depends on how "grass" is defined, and what types of grasses you are growing in your garden. In fact, most municipalities don't define "grass" and this is problematic because there are more than 12,000 species of grasses (or graminoids to use the botanical term). Most property standards bylaws and/or grass and weeds bylaws refer to "grass" generically, and we can assume this applies to turfgrasses, which are those species used for lawns and which are meant to be kept short and clipped to create an even "turf". But few are this specific. Most bylaws include maximum height requirements for grasses grown as a lawn. The exact height requirements for grass can differ based on the specific bylaws of your city. It is common to see municipalities require that grass height must be kept below a maximum height of 20cm or 8 inches.



If your garden even in part has an intentional turf lawn it can be assumed that these grasses are meant to be maintained clipped short and even. However, if your garden does not have a lawn, or you have naturalized your lawn to become a meadow with deliberately grown longer grasses, then you can explain this to anyone who asks. Meadows for example, are not “neglected lawns”; they are specific habitats of mixed species of longer grasses and flowering plants and they do not require regular mowing.

*\* Can I grow a natural garden?*

Growing a natural garden is a great way to enhance and support native species and urban biodiversity. In 1996, the court case *Bell v. Toronto (City)* found below set a precedent that naturalized gardens are an expression of personal environmental beliefs and values that are protected under the Charter. Therefore, naturalized gardens have become an acceptable form of self-expression, and individuals may be exempt from municipal bylaws around yard maintenance and those that refer to weeds and grass. The revised (2022) Toronto bylaw has recognized the constitutional right to grow naturalized gardens and no longer requires an exemption from the bylaw to do so. However, some municipalities do require those who want “natural gardens” to apply for a “natural garden exemption”. Requirements for the exemption vary by municipality and usually involve filling out a form and explaining your intentions and maintenance plans.

*\* What does the Toronto bylaw say? What about smaller municipalities ?*

In January 2022, the Toronto Bylaw was updated and the new Turfgrass & Prohibited Plants Bylaw outlines that:

- Turfgrass must be cut when the growth exceeds 20 centimeters;
- Land must be kept free of prohibited plants (noxious and invasive species) listed under the bylaw;
- Plants cannot obstruct sidewalks or roadways;
- Plants cannot restrict driver and pedestrian sight lines at intersections, driveways, sidewalks, walkways, or visibility to all traffic control devices; and,
- The bylaw does not require an exemption to cultivate a naturalized garden.

The Grass and Weeds Bylaw in Fredericton states that:

“A yard shall (a) be properly graded to ensure rapid drainage of storm water therefrom to prevent ponding therein or the entry of water into a basement or cellar; (b) be kept reasonably clean and free from rubbish or other debris and from objects, holes, excavations or other conditions that might create a health, fire or accident hazard; and (c) be maintained free of rag weed, poison ivy, poison sumac and other noxious plants.”



Within the town of [Smith Falls](#) a section of their property standards bylaws pertaining to yards states

“(1) Yards shall be maintained in a neat and tidy condition and free of:

- (a) rubbish, garbage, brush, waste, litter and debris.
- (b) growth of grass or weeds in excess of 20 cm (8");
- (c) dead, decayed or damaged trees or other growth and the branches and limbs thereof which create an unsafe condition;”

These vague use of the terms like grass, weeds and debris leave lots of room for subjective interpretation by bylaw officers and council. See the violation served by this municipality to the natural garden of Beth and Craig Sinclair and how these passionate gardeners resisted [here](#).

\* *What are Noxious Weeds?*

Noxious weeds are defined in law, specifically under the Ontario Weed Control Act. The [Schedule of Noxious Weeds](#) is a list of 25 plants identified by the Ministry of Agriculture, Food and Rural Affairs, which:

- Are difficult to manage on agricultural land and may hinder crop yields;
- Negatively affect the health and well-being of livestock; or
- Poses a risk to the health and well-being of agriculture workers.

Familiar examples of noxious weeds on the current list include; poison ivy, poison hemlock and ragweed. The Ministry of Agriculture, Food and Rural Affairs occasionally will update the list according to the latest evidence using current science. For example, common milkweed (Asclepias) was removed from the list in 2015 as it is recognized as an important host plant for the monarch butterfly. See OMAFRA’s [updates and questions](#).

\* *Can I grow a natural garden on my boulevard?*

Boulevards are municipal-owned land, however, a legal precedent was set protecting Douglas Counter's naturalized boulevard garden establishing the right to cultivate public land under the Charter. This decision was upheld by the Ontario Court of Appeals, on the basis of protecting the rights of citizens to express their environmental values on public boulevards. Planting on public land requires certain municipal permissions and assurance that the site will not interfere with underground utility lines. Gardeners of boulevards must be mindful of maintaining lines of sight, keeping fire hydrants unobstructed and removing all designated noxious weeds. If there are areas maintained as turfgrass or lawn on boulevards, the municipality’s height provisions for lawns, often maximum height of 20cm, will apply.



*\* Do I need to mow a buffer strip between my natural garden and the sidewalk?*

This answer will vary based on your municipality and the plants in your garden. Some municipalities do not differentiate between the allowance of the entire yard and the piece of property buffering the sidewalk. Other municipalities, like Chatham-Kent, require a mown buffer strip between a naturalized yard and the sidewalk. This mown buffer strip applies to all plants, not just turfgrass. The allowances for buffer strips may vary across municipalities and have different standards for the type of vegetation abutting the sidewalk.

*\* Does the bylaw only apply to front yards, or does it apply to back yards as well?*

Municipal bylaws on property standards apply to all private property, including the front as well as back yards.

*\* Are dandelions allowed?*

Yes. For example, Toronto's list of prohibited plants is restricted to noxious or invasive species and dandelions do not belong to either of these categories. A dandelion is simply perennial flowering plant.

*\* Are goldenrods allowed?*

Yes. Goldenrod is an important native plant for pollinators and is not listed as a prohibited plant on Ontario's Noxious Weeds List. (Unfortunately, many people mistakenly think that goldenrod causes hayfever, but it doesn't. Ragweed, in bloom at the same time, does). See an informative brochure on goldenrods written by Lorraine Johnson with the City of Toronto on how this native plant promotes the thriving of urban ecosystems [here](#).

*\*How can someone start a naturalized garden?*

There are many great resources to help direct new gardeners about what to plant, where and how to promote pollinator habitat in your own yard. Some of these resources are below:

[Toolkit on Natural Gardens](#)

[Ontario Invasive Plant Council](#)

[Pollinator Partnership: Canada Planting Guides](#)

[Planting For Pollinators](#)

[Carolinian Canada – Gardening Guide](#)

[In the Zone – Your Garden Can Help Native Species Thrive](#)

[A Garden for the Rusty-Patched Bumblebee: Creating Habitat for Native Pollinators](#)

[Can Plant](#)

[Healthy Yards](#)

[North American Native Plant Society](#)

[Lorraine Johnson – Brochures and Reports](#)

[Bell v. Toronto \(City\) case](#)

