

August 23, 2023

To: Carleton Grant, Executive Director, Municipal Licensing & Standards, City of Toronto

Cc: Mayor Olivia Chow, Deputy Mayor Jennifer McKelvie and all City Councillors (listed below)

Cc: Patricia Landry (City of Toronto Horticulturist, Parks Program Officer)

Cc: David Donnelly, Barrister & Solicitor, Donnelly Law

Cc: Lorraine Johnson, Rhonda Teitel-Payne, Peter Ewins, Douglas Counter, Carly Murphy, Sam Benvie, Joe Salemi, Jonas Spring, Jode Roberts, Jean-Marc Daigle, Colleen Cirillo

INQUIRY LETTER Re: Enforcement of Toronto's Municipal Code, Chapter 489 Turf Grass and Prohibited Plants

Greetings,

We write to you as a group of the Subject Matter Experts who advised the City on the update of the Chapter 489 of the Municipal Code to address the problems arising from the terms “weeds” and “natural gardens”.

As you will recall, in July 2021 (and in effect on January 1, 2022) the City revised and updated Chapter 489, formerly known as the “Long Grass and Weeds” bylaw. The revised chapter of the code is now renamed [Turf Grass and Prohibited Plants](#) bylaw (herein called “the bylaw”). Summarized [here](#) on the City's website, the bylaw no longer contains a “natural garden exemption” and allows property owners to grow the plants of their choice, provided that defined turfgrasses are kept mowed to 20cm (but notably, not wildflowers, sedges, forbs, or other native perennial species), plants do not obstruct sidewalks or drivers' sightlines, and that none of the plants are among the [10 species of “prohibited plants” listed in Schedule A](#).

Despite the clarity in the bylaw, the Subject Matter Experts undersigned in this letter have documented a number of property owners who have received vague and arbitrary Notices of Violation and/or Advisory Notices that range from threats of forced mowing of native plants (e.g. goldenrods, asters, milkweeds etc.) to demands to mow unspecified “weeds” to 20cm in gardens that contain no prohibited plants. Such gardens should be permitted as-of-right and are constitutionally protected, see *Bell v Toronto (City)*.

Furthermore, the advisory and violation notices we received from these property owners reference “weeds” and “local weeds,” vague terms that are not used on the City's website where the bylaw is explained to the public. The term “weeds” is a subjective judgment and an undefined term, and we wonder why the term “weeds” is being used in Advisory Notices and Notices of Violation? The name of the bylaw uses the term “prohibited plants”; to introduce vague and arbitrary terms in advisory and violation notices creates uncertainty and confusion for both enforcement officers and community members.

On our review of the current bylaw, we find a surprising and worrisome contradiction: a new clause was added in October 2021, after the bylaw had been passed by Council. This clause is **489-4 Exemptions: “Nothing in this chapter shall affect... B: “The application and enforcement of the *Weed Control Act* with respect to noxious weeds growing on land, including within a natural garden”** (emphasis added).

Aside from the lack of transparency in adding this clause (October 2021) after the bylaw was approved by Council (July 2021), we note two immediate and obvious problems with this additional clause, including, but not limited to:

1. why are “natural gardens” referenced at all, as this term is undefined and was removed from the revised bylaw. The goal of the 2021 bylaw update was to add clarity and create the same rules for all gardens. The term has no place in the revised bylaw and the addition here creates obfuscation, and may result in continued arbitrary and vague enforcement.
2. OMAFRA, which administers the Weed Control Act, has been clear that the Noxious Weed List applies *only to agricultural lands and does not apply to urban areas and cities*. To reference the Weed Control Act (and by extension, the Noxious Weed List) in the revised bylaw creates further confusion and a lack of clarity – and thereby exacerbates the very problems the revised bylaw was intended to fix.

Thus, it appears to us that the City is not in fact enforcing its own bylaw according to the [10 species of “prohibited plants” listed in Schedule A](#) but is instead, selectively and arbitrarily enforcing the (provincial) Weed Control Act.

To be clear, the following plants (identified as “weeds” in various enforcement activities and notices) do not pose *any risk* in the City and should not be the subject of enforcement: goldenrods, asters, milkweeds and other native flowering perennials, nor indeed *any* plant that is not already on the [10 species of “prohibited plants” listed in Schedule A](#).

To address these issues of concern we hereby request three responses:

1. ***an explanation of the added clause 489-4 to the bylaw following Council’s approval;***
2. ***a resolution to the contradiction between Clause 489-4 and Schedule A Prohibited Plants List; and***
3. ***a clear explanation of the intentions regarding current enforcement.***

We urge you to resolve the confusion this update to the bylaw is causing, including the arbitrary and vague interpretations arising. We await your explanation and look forward to a timely resolution.

Yours truly, [signed via email]

Nina-Marie Lister, Professor of Urban Planning & Director, Ecological Design Lab, Toronto Metropolitan University
Lorraine Johnson, Author (*The New Ontario Naturalized Garden; Grow Wild; 100 Easy-to-Grow Native Plants; Tending the Earth; A Garden for the Rusty-Patched Bumblebee*; among other books) and Native Plant Expert
Rhonda Teitel-Payne, Co-Coordinator, Toronto Urban Growers
Peter Ewins, Steering Committee, Project Swallowtail

Douglas Counter, co-applicant in *Counter v. Toronto* (2002), which ruled that natural gardening on public property is expression protected by Section 2(b) of the Charter

Carly Murphy, Policy Planner

Sam Benvie, Academic Coordinator, Landscape Design for Climate Resilience, Toronto Metropolitan University

Joe Salemi, CAE, Executive Director, Landscape Ontario Horticultural Trades Association

Jonas Spring, Board Member, Landscape Ontario (Toronto Chapter); founder of Ecoman and Toronto Plant Market

Jode Roberts, Senior Strategist & Manager, Rewilding Communities, David Suzuki Foundation

Jean-Marc Daigle, Landscape Architect, Co-author of *A Guide to Naturalizing Ontario Parks and Greenspace*

Colleen Cirillo, Steering Committee, Project Swallowtail

Dawn Bazely, York University Professor, Department of Biology

CC: as above and all City Councillors:

Deputy Mayor Jennifer McKelvie

Councillor Vincent Crisanti

Councillor Stephen Holyday

Councillor Amber Morley

Councillor Gord Perks

Councillor Frances Nunziata

Councillor James Pasternak

Councillor Anthony Perruzza

Councillor Mike Colle

Councillor Alejandra Bravo

Councillor Ausma Malik

Councillor Dianne Saxe

Councillor Josh Matlow

Councillor Chris Moise

Councillor Paula Fletcher

Councillor Jaye Robinson

Councillor Jon Burnside

Councillor Shelley Carroll

Councillor Lily Cheng

Councillor Brad Bradford

Councillor Michael Thompson

Councillor Nick Mantas

Councillor Jamaal Myers

Councillor Paul Ainslie

FOLLOW-UP:

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Cc: Patricia Landry (City of Toronto Horticulturist, Parks Program Officer)

Cc: Giney Adey, Director, Policy & Strategic Support

Cc: David Donnelly, Barrister & Solicitor, Donnelly Law

Cc: Lorraine Johnson, Rhonda Teitel-Payne, Peter Ewins, Douglas Counter, Carly Murphy, Sam Benvie, Joe Salemi, Jonas Spring, Jode Roberts, Jean-Marc Daigle, Colleen Cirillo, Dawn Bazely

FOLLOW-UP LETTER Re: Enforcement of Toronto's Municipal Code, Chapter 489 Turf Grass and Prohibited Plants

Dear Carleton Grant,

Thank you for your letter and for the invitation to continue our conversation. Your letter clarifies some of the issues. We'd like to follow up on a number of outstanding points. **We'd appreciate a response to these specific points below.**

As per our initial letter, the Weed Control Act (WCA) applies only to Noxious Weeds impacting agricultural land and lands under horticultural production. This is spelled out in the Act ("Exception: 22 Sections 3, 13, 16 and 18 do not apply to noxious weeds or weed seeds that are far enough away from any land used for agricultural or horticultural purposes that they do not interfere with that use. R.S.O. 1990, c. W.5, s. 22."). Your letter notes that "if" the WCA applies, municipal legislation cannot supersede provincial legislation. We are aware of this. However, since the WCA specifically applies only to impacts on agricultural lands and lands under horticultural production, **under what circumstances would the WCA apply in the City of Toronto?** Inclusion of a clause regarding WCA in Toronto's bylaw creates needless uncertainty and confusion for the public (and, indeed, for 311, as per a recent inquiry to 311). Surely Toronto yards are "far enough away from any land used for agricultural or horticultural purposes that they do not interfere with that use," thus rendering the WCA irrelevant to Toronto's bylaw. **Please advise on the City's intent here.**

We reiterate that the inclusion of the term "natural garden" in the revised bylaw goes against Council's directive to remove the term in the revised bylaw. **Please advise how the inclusion of the (undefined) term aligns with Council's intentions.**

Your letter notes that recently issued Advisory Notices were specific to the height/length of turfgrass and no instances of prohibited plants were identified. **Attached below are photos of two gardens that recently received Advisory Notices.** As you can see, neither garden includes turfgrass or areas of lawn, so it is unclear how these Advisory Notices were specific to the height/length of turfgrass. **Please explain.**

We are reassured to hear that enforcement is **prioritized according to health and safety**. Our expectation is that this information is emphasized to bylaw officers and we will advise our networks accordingly.

We are also reassured that the language of the Advisory Notices will be improved and updated, and that the terms "weeds" and "local weeds" **will be removed**. We note an additional problem with the current Advisory Notices which include the phrase "*if you have complied with the above-mentioned violation.*" We object to the use of this phrase as it is prejudicial: it clearly implies that the property **is in violation**, but without evidence that a violation has been confirmed. Our legal counsel David Donnelly has affirmed he will contest this language in court. We urge you to remove this phrase, as it implies a conviction and can lead to the removal or cutting of perfectly legal plants. **Please advise.**

We appreciate your plans for staff training which is essential for bylaw officers to carry out their duties legally and fairly. We urge you to restrict and focus your training on health and safety issues (e.g. unobstructed sightlines and sidewalks), identification of the 10 Prohibited Plants in the bylaw, and on turfgrass identification (specifically as distinguished from ornamental grasses). Please note that there should be NO mention of "natural gardens" in the training materials or advisory notices as this term is not used in the bylaw and it remains undefined. It simply adds confusion and is extraneous to enforcement of the bylaw. **Please confirm your intentions with the training.**

We support your efforts to enhance public education around complainants identifying their specific concerns when contacting 311. We consider this a crucial aspect of enforcement. Identifying specific concerns is an important tool to ensure that complaints about non-prohibited plants are "weeded out" before the City's very limited resources are wasted on yards that contain no Prohibited Plants and that do not threaten public health or safety.

Sincerely yours,

Nina-Marie Lister, Professor of Urban Planning & Director, Ecological Design Lab, Toronto Metropolitan University

Lorraine Johnson, Author (*The New Ontario Naturalized Garden; Grow Wild; 100 Easy-to-Grow Native Plants; Tending the Earth; A Garden for the Rusty-Patched Bumblebee*; among other books) and Native Plant Expert

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Dawn R. Bazely, York University Professor, Department of Biology, Faculty of Science

CC: as above and to all City Councillors

Photos referenced are attached below (courtesy of Lorraine Johnson)

Advisory Notice 1:



Advisory Notice 2:

