

What is a Weed?

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Dictionary Definitions of Weed

Webster's New Collegiate Dictionary (1973).

A plant of no value and use. Of rank growth: especially one that tends to overgrow or choke out more desirable plants.

Dictionary.com

1. A valueless plant growing wild, especially one that grows on cultivated ground to the exclusion or injury of the desired crop.
2. Any undesirable or troublesome plant, especially one that grows profusely where it is not wanted.

Disc. Inn, Inc. v. City of Chicago, 2015 U.S. App. LEXIS
17095 (7th Cir. Ill. Sept. 28, 2015)

Disc. Inn, Inc. v. City of Chicago, 2015 U.S. App. LEXIS 17095 (7th Cir. Ill. Sept. 28, 2015)

- “...any person who owns or controls property within the city must cut or otherwise control all weeds on such property so that the average height of such weeds does not exceed ten inches.”
- Regulation defines “weed” as “vegetation that is not managed or maintained by the person who owns or controls the property on which all such vegetation is located and which, on average, exceeds ten inches in height

Discount Inn

- Unmanaged invasive plant species are largely synonymous with “weeds.”
- A better definition of "weed" would be "a wild plant growing where it isn't wanted."

Shachter v. City of Chicago, 2011 IL App (1st) 103582

- With respect to his constitutional arguments, plaintiff first argued that the weed ordinance was "fatally unspecific because it does not give the citizenry notice of what is and what is not prohibited." Specifically, plaintiff argued that the ordinance did not "specify what a weed is."

Shachter v. City of Chicago, 2011 IL App (1st) 103582

- Appellate court still did not answer this question:

What is a weed?

- Two subsequent Rule 23 decisions with same parties are no help.

What Shachter does tell us

1. OK to have a trial by citation and pictures alone.
2. No need to issue subpoenas unless they will produce worthwhile evidence.
3. Aesthetics alone can be the basis for a weed ordinance.

What Shachter does tell us

4. Rational basis is the test to determine whether the ordinance is Constitutional.
5. Facial challenge as to vagueness will not be allowed because expression is not an issue.
6. Mulberry and elm tree saplings are weeds.

What Shachter does tell us

7. “All the plants on my land are growing exactly where I want them”

- still made them weeds.

Arlington Heights v. Schroeder, 28 Ill. App 3d 1 (1st Dist. 1975)

- “If for no other reason, since the Director would have to exercise discretion in determining whether a plant was a weed, his function cannot be considered ministerial.”

Asparagus



Statutory and Administrative Definitions

- 505 ILCS 100/1 Illinois Noxious Weed Law
- **505 ILCS 110/1 Illinois Seed Law**
- [8 Ill. Adm. Code 220.60](#) Noxious Weeds listed
- 8 Ill. Adm. Code § 230.20 Prohibited (Primary) Noxious Weed Seeds.
- 8 Ill. Adm. Code § 230.30 Restricted (Secondary) Weed Seeds

What to do?

1. Do not Define Weed
2. Borrow from Chicago regulation as per Discount Inn
3. List specific plants as per Noxious Weed and/or Illinois Seed Law

Queen Anne's Lace



Weeds and Liability

- Ordinance violation can be the basis for civil liability
- Tall weeds may provide defense as a natural condition
- Uncut weeds may be willful and wanton misconduct

Railroads are Exempt from Weed Laws

- Michigan Southern R.R. Co. v. City of Kendallville, 251 F. 3d 1152 (7th Cir. 2001).

Statutes Regarding Weeds for Municipalities

- 65 ILCS 5/11-20-6 Weed destruction (authority)
- 65 ILCS 5/11-20-7 Cutting and removal of neglected weeds, grass, trees, and bushes (means)
- (c) For the purpose of this Section:
“Removal of nuisance greenery” or “removal activities” means the cutting of weeds or grass, the trimming of trees or bushes, and the removal of nuisance bushes or trees.

Statutes Regarding Weeds for Municipalities

- **65 ILCS 5/11-20-15 Lien for removal costs**
- (d) The removal cost is not a lien on the underlying parcel unless a notice is personally served on, or sent by certified mail to, the person to whom was sent the tax bill for the general taxes on the property for the taxable year immediately preceding the removal activities. The notice must be delivered or sent after the removal activities have been performed, and it must: (i) state the substance of this Section and the substance of any ordinance of the municipality implementing this Section; (ii) identify the underlying parcel, by common description; and (iii) describe the removal activity.

Statutes Regarding Weeds for Municipalities

- **65 ILCS 5/11-31.1-1 Definitions**
- As used in this Division, unless the context requires otherwise:
 - (a) “Code” means any municipal ordinance, law, housing or building code or zoning ordinance that establishes construction, plumbing, heating, electrical, fire prevention, sanitation or other health and safety standards that are applicable to structures in a municipality or any municipal ordinance that requires, after notice, the cutting of weeds, the removal of garbage and debris, the removal of inoperable motor vehicles, or the abatement of nuisances from private property;

Statutes Regarding Weeds for Municipalities

- **65 ILCS 5/11-31.1-9 Defenses to code violations**
- It shall be a defense to a code violation charged under this Division if the owner, his attorney, or any other agent or representative proves to the hearing officer's satisfaction that:
 - (a) The code violation alleged in the notice does not in fact exist, or at the time of the hearing the violation has been remedied or removed;
 - (b) The code violation has been caused by the current property occupants and that in spite of reasonable attempts by the owner to maintain the dwelling free of such violations, the current occupants continue to cause the violations;
 - (c) An occupant or resident of the dwelling has refused entry to the owner or his agent to all or a part of the dwelling for the purpose of correcting the code violation.

Statutes Regarding Weeds for Municipalities

- **65 ILCS 5/1-2.2-10 Code hearing department**
- The code hearing department may adjudicate any violation of a municipal ordinance except for (i) building code violations that must be adjudicated pursuant to Division 31.1 of Article 11 of this Act [65 ILCS 5/11-31.1-1 et seq.] and (ii) ...

Trees

- **65 ILCS 5/11-20-12 Removal of infected trees**
- Dutch Elm or emerald Ash Borer
- Lien pursuant 65 ILCS 5/11-20-15
- Removal of trees not listed in 65 ILCS 5/11-31.1-1, unless considered a nuisance.
- CDBG \$ used in Normal
- 505 ILCS 90/35 Importation of Firewood –won't be enforced

Trees

- ISBA has on-line a citizen “hand-out” on tree rights
- ISBA “hand-out” uses the term “trespass”

Trees

- **220 ILCS 5/8-505.1 Non-emergency vegetation management activities**
- (a) Except as provided in subsections (b), (c), and (d), in conducting its non-emergency vegetation management activities, an electric public utility shall:
 - (1) Follow the most current tree care and maintenance standard practices set forth in ANSI A300 published by the American National Standards Institute and the most current applicable Occupational Safety and Health Administration regulations regarding worker safety....

Trees

- ANSI A300 Section 5.9.2.1.3 Trees directly under and growing into facility/utility space should be removed or pruned. Such pruning should be done by removing entire branches or by removing branches that have laterals growing into (or once pruned, will grow into) the facility/utility space.
- ANSI A300 Section 5/2.2.1.4 Trees growing next to, and into or toward facility/utility spaces should be pruned by reducing branches to laterals (5.3.3) to direct growth away from the utility space or by removing entire branches....