



INSTITUTE FOR JUSTICE

June 1, 2026

**Via Electronic Mail**

Chief Alan Hucke  
Village of Millstadt Police Department  
108 West White Street  
Millstadt, IL 62260

Re: Threatened Enforcement Action against Ms. Laura Schaefer, Report No. 2026-1310

Dear Chief Hucke:

We write to you in connection with a code-violation warning, Report No. 2026-1310, issued to Ms. Laura Schaefer by Officer Mitchell Ettl on May 26, 2026. The Institute for Justice (“IJ”) is a national, non-profit, public interest law firm that advocates on behalf of individuals and property owners nationwide. As part of its practice, IJ specializes in property-rights defense on behalf of homeowners fighting *ultra vires* and unconstitutional municipal code provisions restricting homeowners’ rights to use and enjoy their properties. In that capacity, IJ represented Miami Shores, FL homeowners Hermine Ricketts and Tom Carroll in a legal challenge to their town’s ban on front-yard vegetable gardens.<sup>1</sup> In the wake of that case, IJ led the campaign to pass a statewide reform in Florida protecting the right of all residential property owners to grow food on their properties—as Americans have done on their land since time immemorial. That protection has since been enshrined in Florida law, and it is now generally known as the Vegetable Garden Protection Act. *See* Fla. Stat. § 604.71.

In 2021, Illinois similarly recognized the vital right to grow one’s own food on one’s own property with the passage of the Illinois Vegetable Garden Protection Act (“Garden Act”).<sup>2</sup> The Act expressly states that the people of Illinois have the “[r]ight to cultivate vegetable gardens,” and “any person may cultivate vegetable gardens on their own property, or on the private property of another with the permission of the owner, in any county, municipality, or other political subdivision of this state.”<sup>3</sup> And the Act explicitly defines “vegetable garden” as inclusive of “vegetables, herbs, fruits, flowers, pollinator plants, leafy greens, or other edible plants.”<sup>4</sup> Ms. Schaefer’s gardens, therefore, are fully protected by the express terms of the Garden Act.

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<sup>1</sup> <https://ij.org/case/flveggies/>

<sup>2</sup> *See* 505 ILCS 87.

<sup>3</sup> 505 ILCS 87/15.

<sup>4</sup> 505 ILCS 87/10.



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While the Act does not categorically preclude a “regulation or local ordinance of general nature,” it explicitly prohibits a regulation or ordinance that “specifically regulate[s] vegetable gardens.”<sup>5</sup> The threatened code-enforcement action referenced above and the underlying ordinance<sup>6</sup> not only violate Illinois’s Garden Act, but they also present serious due process and takings concerns under both the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 2 and 15 of the Illinois Constitution.

First, the Village’s threatened action violates the Garden Act. As noted above, the Garden Act provides any person a statutory right to “cultivate vegetable gardens on their own property,”<sup>7</sup> and it prohibits any regulation or local ordinance that purports to “specifically regulate vegetable gardens.”<sup>8</sup> However, section 98.01 of the Millstadt Code of Ordinances defines “weeds” to include “rank vegetable growth over one-foot in height,” which the code then prohibits under section 98.02.<sup>9</sup> By singling out the growth of vegetables specifically, the ordinance directly contravenes the plain text of the Garden Act.<sup>10</sup> As such, any attempted enforcement of section 98.02, insofar as it pertains to vegetable growth, also directly violates the Act.<sup>11</sup>

Second, the Village’s ordinance and its threatened enforcement present serious due process concerns under the Fourteenth Amendment to the United States Constitution<sup>12</sup> and Article I, § 2 of the Illinois Constitution<sup>13</sup> by purporting to allow the Village to irrevocably destroy Ms. Schaefer’s property, **without a hearing**, despite the obvious fact that her gardens pose no harm to any Millstadt resident. At a minimum, the federal Constitution requires that a person must have a meaningful opportunity to be heard before they may be deprived of their property.<sup>14</sup> Illinois similarly recognizes that notice and an opportunity to be heard are fundamental

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<sup>5</sup> 505 ILCS 87/25.

<sup>6</sup> Millstadt Code Ord. §§ 98.01 *et seq.*

<sup>7</sup> 505 ILCS 87/15.

<sup>8</sup> 505 ILCS 87/25.

<sup>9</sup> Millstadt Code Ord. §§ 98.01–02.

<sup>10</sup> *See* 505 ILCS 87/20.

<sup>11</sup> *See id.*

<sup>12</sup> U.S. CONST. amend. XIV, § 1 (“No state shall . . . deprive any person of life, liberty, or property, without due process of law.”).

<sup>13</sup> Ill. CONST. art. I, § 2 (“No person shall be deprived of life, liberty or property without due process of law . . .”). The Supreme Court of Illinois has also explained that while it may look to the federal Constitution for guidance when interpreting the Illinois Constitution’s due-process guarantees, the Court has found that the Illinois Constitution at times provides even greater due process protections than the federal Constitution. *Hope Clinic for Women, Ltd. v. Flores*, 991 N.E.2d 745, 765 (Ill. 2013).

<sup>14</sup> *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The three factors are (1) the private interest at stake; (2) the risk of erroneous deprivation and value of additional safeguards; and (3) the government’s interest, including any burdens posed by requiring additional safeguards. *Id.*



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requirements of due process.<sup>15</sup> In *Mathews v. Eldridge*, the United States Supreme Court supplied a three-factor test to determine the constitutional adequacy of procedural protections that must be afforded before the government may deprive a person of their property.<sup>16</sup> With respect to sections 98.05 and 98.06,<sup>17</sup> the ordinance fails on each of the three factors.

With respect to the first factor, Ms. Schaefer has a clear private interest in the cultivation and maintenance of vegetable gardens on her property. As to the second factor, the Village issued this code-violation warning without sufficient investigation and without providing Ms. Schaefer the opportunity to present evidence against this purported violation, resulting in a significant risk of erroneous deprivation of her private property. Regarding the third and final factor, the Village's interest in enforcing its weed ordinance is minimal at best, given that the ordinance does not implicate any imminent health or safety concerns, and Ms. Schaefer's vegetable gardens present no such concerns. Even if such an example could be identified, a meaningful opportunity to be heard would still be required in all but the rarest of circumstances.

In sum, though a written warning might constitute adequate notice, any government action to deprive Ms. Schaefer of her property under Millstadt Code Ord. § 98, without first providing a meaningful opportunity to be heard, violates the federal and state Constitutions.

Third, enforcement of this ordinance may constitute a taking under the Fifth and Fourteenth Amendments to the federal Constitution<sup>18</sup> and Article I, § 15 of the Illinois Constitution.<sup>19</sup> The Supreme Court of Illinois “has defined a taking as a physical invasion of private property or the radical interference with a private property owner’s use and enjoyment of the property.”<sup>20</sup> Thus, the Village’s destruction of private vegetable gardens for the purported purpose of enforcing its constitutionally and statutorily defective weed ordinance would likely constitute a taking without just compensation. The Supreme Court of Illinois has also explained that the remedy for the uncompensated taking or damage of private property is damages.<sup>21</sup>

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<sup>15</sup> *Passalino v. City of Zion*, 237 Ill.2d 118, 124 (Ill. 2010).

<sup>16</sup> *See Mathews*, 424 U.S. at 335.

<sup>17</sup> Millstadt Code Ord. §§ 98.05 & 98.06

<sup>18</sup> U.S. CONST. amend. V (“[N]or shall private property be taken for public use, without just compensation.”).

<sup>19</sup> Ill. CONST. art. I, § 15 (“Private property shall not be taken or damaged for public use without just compensation as provided by law.”).

<sup>20</sup> *Hampton v. Metro. Water Reclamation Dist. of Greater Chicago*, 57 N.E.3d 1229, 1238–39 (Ill. 2016).

<sup>21</sup> *Id.* at 1240. *See also* 740 ILCS 23/5(c)(2) (“Upon motion, a court shall award reasonable attorneys’ fees and costs, including expert witness fees and other litigation expenses, to a plaintiff who is a prevailing party in any action brought to enforce a right arising under the Illinois Constitution.”).



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In light of the above, we strongly encourage you to consider carefully the threatened enforcement of Millstadt Code Ord. § 98.01 against Ms. Schaefer as described in Report No. 2026-1310, as well as any future applications of that or other related subsections under Millstadt Code Ord. § 98 as they pertain to the cultivation and maintenance of vegetable gardens. We stand by ready to discuss with you—prior to any enforcement action—whatever concerns you may have regarding Ms. Schaefer’s vegetable gardens and to identify possible resolutions that will not violate the statutory and constitutional rights of Ms. Schaefer or other Millstadt residents.

Sincerely,

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Senior Attorney  
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Benjamin Marsh  
Litigation Fellow  
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