

AMENDED IN ASSEMBLY APRIL 24, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2561**

---

---

**Introduced by Assembly Member Bradford**

February 21, 2014

---

---

An act to add Sections 1940.10 and ~~4356~~ 4750 to the Civil Code, and to add Article 2.10 (commencing with Section 65892) to Chapter 4 of Division 1 of Title 7 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 2561, as amended, Bradford. Personal and entrepreneurial agriculture: restrictions.

(1) Existing law regulates the terms and conditions of residential tenancies, and prohibits a landlord from interfering with a tenant's quiet enjoyment of the premises.

This bill would require a landlord to permit a tenant to participate in personal agriculture or entrepreneurial agriculture in portable containers in the tenant's private area, as defined, as long as specified conditions are met.

(2) Existing law, the Davis-Stirling Common Interest Development Act, defines and regulates common interest developments and authorizes the governing board of the homeowners' association that manages the development to adopt and amend the operating rules for the development.

This bill would make void any provision of the *a* governing documents *document* of a common interest development that ~~prohibits effectively prohibits or unreasonably restricts~~ the use of a homeowner's front or back yard for personal agriculture or ~~entrepreneurial agriculture or~~

~~prohibits a homeowner from the homeowner's off-site sale or donation of produce grown on the homeowner's property.~~

(3) The Planning and Zoning Law requires the legislative body of a city or county to adopt a comprehensive, long-term general plan that includes various elements, including a land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land.

This bill would provide that a city, county, or city and county may not prohibit personal agriculture, a community garden, or entrepreneurial agriculture, as defined, within its jurisdiction, ~~notwithstanding a zoning ordinance to the contrary, but may subject these activities to specified requirements~~ *but may, by ordinance, adopt specified restrictions*. This bill would also require each land use zone within a city, county, or city and county to be considered zoned for *personal, community, and* entrepreneurial agriculture *by right*, unless a local governmental agency, city council, or board of supervisors determines that growing plant crops for human consumption within a particular area within its jurisdiction would pose a significant public health risk. By increasing the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California industrial agriculture is at risk due to water
- 4 shortages, soil degradation, pollution, environmental, and structural
- 5 threats to the San Francisco Bay Delta, and the rising cost of oil.

1 Providing Californians with the capacity to feed themselves and  
2 their communities would drastically improve local food security  
3 and mediate the risks of water, soil, environmental, or fuel-related  
4 crises.

5 (b) Although California is the “bread basket” of the United  
6 States and has regions of climate and land ideal for agriculture, a  
7 significant amount of California’s food is grown hundreds or  
8 thousands of miles from where it is consumed. This results in high  
9 transportation costs, energy consumption, and lost economic  
10 opportunity for our state. Even food grown in the heart of  
11 California’s farming region is expensive to disperse to the rest of  
12 the state due to rising fuel costs.

13 (c) California is no exception to rising obesity and  
14 obesity-related diseases in the United States. Two-thirds of  
15 American adults and nearly one-third of American children are  
16 obese or overweight, putting them at risk for developing chronic  
17 diseases, including diabetes, heart disease, or cancer. In California,  
18 one in every nine children, one in three teens, and over one-half  
19 of adults are already overweight or obese. This epidemic affects  
20 virtually all Californians. Many of these health conditions are  
21 preventable and curable through lifestyle choices that include  
22 consumption of healthy fresh foods.

23 (d) One of every \$10 dollars spent on health care in the United  
24 States goes toward treating diabetes and its complications.  
25 Facilitating opportunities for California residents to grow and  
26 consume fresh, healthy foods will promote lifestyles and diets that  
27 benefit individuals and communities, as well as being a more  
28 effective use of public moneys.

29 (e) Many homeowners’ associations have rules prohibiting  
30 homeowners from growing food in front yards or from selling food  
31 grown on the property.

32 (f) ~~Additionally, 40~~ *Forty* percent of Californians live in  
33 residences that they do not own, and may, as a result of lease  
34 restrictions or disapproval by the landlord, face limitations on their  
35 ability to grow food on the land where they reside.

36 (g) Providing Californians with increased opportunity to  
37 participate in small-scale entrepreneurial agriculture will  
38 supplement incomes during times of high unemployment and  
39 underemployment and stimulate local economies.

1 (h) Lawncare is resource intensive, at no nutritional gain. Lawns  
 2 are the largest irrigated crop in the United States. In the urban areas  
 3 in the United States, 30 to 60 percent of residential water is used  
 4 for watering lawns. In arid and semiarid regions, this figure can  
 5 reach up to 75 percent. Annually, 67 million pounds (33,500 tons)  
 6 of synthetic pesticides are used on lawns in the United States.  
 7 Furthermore, lawnmowers use 580 million gallons of gasoline  
 8 yearly. These resources could be allocated to more productive  
 9 activities, including growing food, thus increasing access to healthy  
 10 options for low-income individuals.

11 (i) Gardens and agriculture on public lands help communities  
 12 increase their access to fresh fruits and vegetables, enhance urban  
 13 landscapes, motivate healthier eating, and connect neighborhoods.

14 ~~(j) Potential civil liability for misuse of community garden  
 15 facilities makes some public entities cautious about devoting public  
 16 lands to community gardens or about expanding existing gardens  
 17 to include fruit trees.~~

18 *(j) It is the policy of the state to promote and remove obstacles  
 19 to increased community access to fresh fruit and vegetables and  
 20 encourage the practice of homeowners growing food in their  
 21 private yard space for personal use or for donation to others.*

22 *(k) These findings are all matters of statewide concern. The  
 23 Legislature recently identified the importance of small-scale,  
 24 neighborhood-based food enterprises throughout California in  
 25 achieving common, statewide economic, health, and environmental  
 26 goals. The Legislature acted upon this by enacting Chapter 415  
 27 of the Statutes of 2012 governing cottage food operations and the  
 28 Urban Agriculture Incentive Zones Act (Chapter 406 of the Statutes  
 29 of 2013). Legalizing the growing of produce throughout California  
 30 will enhance the positive impacts of such previous legislation.*

31 SEC. 2. Section 1940.10 is added to the Civil Code, to read:

32 1940.10. (a) For the purposes of this section, the following  
 33 ~~terms are defined as follows: definitions shall apply:~~

34 (1) “Common area” means an area of the property that is shared  
 35 with other tenants.

36 (2) “Private area” means an *outdoor* area of the property that is  
 37 for the exclusive use of a tenant.

38 (3) “*Personal agriculture*” means a use of land where an  
 39 individual cultivates edible plant crops for personal use or  
 40 donation.

1 (4) “*Plant crop*” means any crop in its raw or natural state,  
2 which comes from a plant. It shall not include marijuana or any  
3 unlawful crops or substances.

4 (b) A landlord shall permit a tenant to participate in personal  
5 agriculture ~~or entrepreneurial agriculture~~ in portable containers in  
6 the tenant’s private area as long as the following conditions are  
7 met:

8 (1) The tenant regularly removes any dead plant material and  
9 weeds, unless the landlord and tenant have a preexisting or separate  
10 agreement regarding garden maintenance where the tenant is not  
11 responsible for removing dead plant material and weeds.

12 (2) The placement of the containers does not interfere with any  
13 tenant’s parking spot.

14 (3) The placement of the containers does not create a  
15 trip-and-fall hazard, block doorways, or block access to utility  
16 panels.

17 (4) The placement of the containers does not cause water or  
18 other damage to the property.

19 (c) If the containers are to be placed on top of grass, a landlord  
20 may require the tenant to replant grass prior to vacating the  
21 property.

22 (d) The cultivation of ~~food~~ *plant crops* on the rental property  
23 other than that which is contained in portable containers shall be  
24 subject to approval from the landlord.

25 (e) A landlord may prohibit ~~the cultivation~~ *personal agriculture*  
26 of any sort by tenants on common areas.

27 (f) With the exception of container plants on paved areas, a  
28 landlord may choose to require an additional security deposit to  
29 ensure that all landscaping is restored after the tenant vacates the  
30 property or ceases to engage in ~~food cultivation~~ *personal*  
31 *agriculture*. The security deposit shall not exceed the cost of  
32 anticipated restoration costs in the event that the tenant does not  
33 restore the landscaping.

34 (g) A landlord may require the tenant to enter into a written  
35 agreement regarding the payment of any excess water and waste  
36 collection bills ~~stemming from the garden~~. *arising from the tenant’s*  
37 *personal agriculture activities*.

38 (h) A landlord has a right to periodically inspect ~~the garden area~~  
39 *any area where the tenant is engaging in personal agriculture* to  
40 ensure compliance with ~~the above rules~~ *this section*.

1 (i) A landlord may not prevent tenants from ~~selling or donating~~  
2 ~~products derived from this gardening at an off-site location. the~~  
3 ~~off-site donation of plant crops derived from personal agriculture~~  
4 ~~authorized under this section.~~

5 (j) *This section shall only apply to residential real property that*  
6 *is improved with, or consisting of, a building containing not more*  
7 *than two units that are intended for human habitation.*

8 SEC. 3. Section ~~4356~~ 4750 is added to the Civil Code, to read:  
9 ~~4356.~~

10 4750. (a) ~~Notwithstanding any other law, a provision of any~~  
11 ~~of the governing documents of a common interest development~~  
12 ~~Any provision of a governing document, as defined in Section 4150,~~  
13 shall be void and unenforceable if it does either of the following:

14 (1) ~~Prohibits, or includes conditions that have the effect of~~  
15 ~~prohibiting, Effectively prohibits or unreasonably restricts~~ the use  
16 of a homeowner’s front or back yard for personal agriculture ~~or~~  
17 ~~entrepreneurial agriculture.~~

18 (2) ~~Prohibits, or includes conditions that have the effect of~~  
19 ~~prohibiting, Effectively prohibits or unreasonably restricts~~ a  
20 homeowner from the off-site ~~sale or~~ donation of produce grown  
21 on the homeowner’s property.

22 (b) (1) *This section does not apply to provisions that impose*  
23 *reasonable restrictions on the use of a homeowner’s yard for*  
24 *personal agriculture.*

25 (2) *For purposes of this section, “reasonable restrictions” are*  
26 *restrictions that do not significantly increase the cost of engaging*  
27 *in personal agriculture or significantly decrease its efficiency.*

28 (b)

29 (c) This section applies only to yards that are designated for the  
30 exclusive use of the homeowner.

31 (e) ~~This section shall not prohibit a homeowners’ association~~  
32 ~~from applying rules and regulations restricting on-site sale of~~  
33 ~~agricultural products.~~

34 (d) ~~This section shall not prohibit a homeowners’ association~~  
35 ~~from applying rules and regulations restricting the hours of~~  
36 ~~operation and the number of visitors to gardens within the~~  
37 ~~homeowners’ association. These rules and regulations shall be~~  
38 ~~reasonable and not undermine the ability of the homeowner to~~  
39 ~~operate the personal agriculture or entrepreneurial agriculture to~~  
40 ~~operate efficiently. Rules and regulations that restrict the hours of~~

1 operation, number of visitors, and the frequency of visits shall not  
2 be substantially different from similar restrictions affecting hours  
3 of operation, or visitors to homeowner activities, such as outdoor  
4 birthday parties or recreational activities.

5 (e)

6 (d) This section shall not prohibit a homeowners’ association  
7 from applying rules and regulations requiring that dead plant  
8 material and weeds, with the exception of straw, mulch, compost,  
9 and other organic materials intended to encourage vegetation and  
10 retention of moisture in the soil, are regularly cleared from the  
11 front yard.

12 (e) For the purposes of this section, the following definitions  
13 shall apply:

14 (1) “Personal agriculture” means a use of land where an  
15 individual cultivates edible plant crops for personal use or  
16 donation.

17 (2) “Plant crop” means any crop in its raw or natural state,  
18 which comes from a plant. It shall not include marijuana or any  
19 unlawful crops or substances.

20 SEC. 4. Article 2.10 (commencing with Section 65892) is  
21 added to Chapter 4 of Division 1 of Title 7 of the Government  
22 Code, to read:

23

24 Article 2.10. Personal and Entrepreneurial, Community, and  
25 Entrepreneurial Agriculture  
26

27 65892. (a) For purposes of this article, the following definitions  
28 shall apply:

29 (1) “Community-garden” agriculture” means a use of land  
30 managed by a public entity, nonprofit organization, person, or  
31 group of individuals to cultivate edible plant crops for donation  
32 or for personal use by those cultivating the land.

33 (2) “Entrepreneurial agriculture” means a use of land managed  
34 by a public entity, nonprofit organization, business entity,  
35 individual, or group of individuals to cultivate edible plant crops  
36 for the purpose of sale or donation.

37 (3) “Personal agriculture” means a use of land where an  
38 individual cultivates edible plant crops for personal use or donation  
39 as an accessory or a primary use of property.

1 (4) “Plant crop” means any crop in its raw or natural state, which  
 2 comes from a plant. It shall not include marijuana or any other  
 3 unlawful crops or substances.

4 (b) A city, county, or city and county shall not prohibit personal  
 5 agriculture, ~~a community garden, agriculture,~~ or entrepreneurial  
 6 agriculture within its ~~jurisdiction, notwithstanding a zoning~~  
 7 ~~ordinance to the contrary.~~ *jurisdiction.* However, a city, county,  
 8 or city and county may, by ordinance, adopt the following  
 9 restrictions on any of these agricultural activities in a residential  
 10 or commercial zone:

11 (1) Reasonable restrictions pertaining to the presence of dead  
 12 plant material in a front yard, except that a city, county, or city  
 13 and county shall not restrict the use of dead plant material to be  
 14 used as ground cover, mulch, or compost.

15 (2) Restrictions on the cultivation and placement of plants that  
 16 may interfere with a public sidewalk.

17 (3) Restrictions on structures for community gardening that do  
 18 not meet the same building standards applicable to accessory  
 19 structures within the zone.

20 ~~(4) Retail sales at the site where plant crops are grown and all~~  
 21 ~~other public use of the site or number of retail visitors. The~~  
 22 ~~restrictions on hours of retail sales operation shall be reasonable~~  
 23 ~~and not undermine the ability of the community garden,~~  
 24 ~~entrepreneurial agriculture, or personal agriculture to operate~~  
 25 ~~efficiently. Rules and regulations that restrict the number of retail~~  
 26 ~~visitors, and the frequency of these visits, shall not be substantially~~  
 27 ~~different from similar restrictions affecting the number of visitors~~  
 28 ~~to other on-site activities, such as garage sales or holiday picnics.~~

29 ~~(5) Restrictions on commercial deliveries and pickups that may~~  
 30 ~~be limited to no less than once per day. On-site sales shall not be~~  
 31 ~~considered commercial pickups.~~

32 *(4) Retail sales at the site of the place where plant crops are*  
 33 *grown and all other public use of the site may be limited by certain*  
 34 *hours or days of operation or numbers of visitors on the premises.*  
 35 *Such hours or days of retail sales operation shall be reasonable*  
 36 *and not undermine the ability of the site to operate efficiently.*  
 37 *Rules and regulations that restrict the number of retail visitors,*  
 38 *and the frequency of such visits, shall not be substantially different*  
 39 *from similar restrictions affecting number of visitors to site*  
 40 *activities such as garage sales or holiday picnics.*

1     ~~(6)~~  
2     (5) Restrictions on odor, noise, and dust caused by growing  
3 produce and that affect home occupancy or cause a nuisance.

4     (c) Each land use zone within a city, county, or city and county  
5 shall be considered zoned for *personal, community, and*  
6 *entrepreneurial agriculture by right*, unless a local governmental  
7 agency, city council, or board of supervisors determines that  
8 growing plant crops for human consumption ~~with~~ *in* a particular  
9 area within its jurisdiction would pose a significant public health  
10 risk. If growing crops in a particular area is determined to present  
11 a public health risk, this area shall be clearly delineated on a map  
12 and the public health risk specific to that area shall be documented.  
13 The map and documentation of any specific public health risk shall  
14 be available to the general public.

15     SEC. 5. If the Commission on State Mandates determines that  
16 this act contains costs mandated by the state, reimbursement to  
17 local agencies and school districts for those costs shall be made  
18 pursuant to Part 7 (commencing with Section 17500) of Division  
19 4 of Title 2 of the Government Code.