

AMENDED IN ASSEMBLY MAY 7, 2014

AMENDED IN ASSEMBLY APRIL 24, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2561**

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**Introduced by Assembly Member Bradford**

February 21, 2014

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An act to add Sections 1940.10 and 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 in portable containers in the tenant's private area, as defined, as long as specified *if certain* 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 *directors 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 a governing document of a common interest development that effectively prohibits or unreasonably restricts the use of a homeowner's front or back yard for

personal agriculture or a ~~homeowner's~~ *homeowner from the* off-site 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, 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-no*. State-mandated local program: *yes-no*.

*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.
- 6 Providing Californians with the capacity to feed themselves and

1 their communities would drastically improve local food security  
2 and mediate the risks of water, soil, environmental, or fuel-related  
3 crises.

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

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

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

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

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

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

39 (h) Lawncare is resource intensive, at no nutritional gain. Lawns  
40 are the largest irrigated crop in the United States. In the urban areas

1 in the United States, 30 to 60 percent of residential water is used  
 2 for watering lawns. In arid and semiarid regions, this figure can  
 3 reach up to 75 percent. Annually, 67 million pounds (33,500 tons)  
 4 of synthetic pesticides are used on lawns in the United States.  
 5 Furthermore, lawnmowers use 580 million gallons of gasoline  
 6 yearly. These resources could be allocated to more productive  
 7 activities, including growing food, thus increasing access to healthy  
 8 options for low-income individuals.

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

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

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

25 SEC. 2. Section 1940.10 is added to the Civil Code, to read:  
 26 1940.10. (a) For the purposes of this section, the following  
 27 definitions shall apply:

28 (1) "Common area" means an area of the property that is shared  
 29 with other tenants.

30 (2) "Private area" means an outdoor area of the property that is  
 31 for the exclusive use of a tenant.

32 (3) "Personal agriculture" means a use of land where an  
 33 individual cultivates edible plant crops for personal use or donation.

34 (4) "Plant crop" means any crop in its raw or natural state, which  
 35 comes from a plant. It shall not include marijuana or any unlawful  
 36 crops or substances.

37 (b) A landlord shall permit a tenant to participate in personal  
 38 agriculture in portable containers in the tenant's private area-as  
 39 long as if the following conditions are met:

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

5 (2) The placement of the containers does not interfere with any  
6 tenant's parking spot.

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

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

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

15 (d) The cultivation of plant crops on the rental property other  
16 than that which is contained in portable containers shall be subject  
17 to approval from the landlord.

18 (e) A landlord may prohibit personal agriculture of any sort by  
19 tenants on common areas.

20 (f) With the exception of container plants on paved areas, a  
21 landlord may choose to require an additional security deposit to  
22 ensure that all landscaping is restored after the tenant vacates the  
23 property or ceases to engage in personal agriculture. The security  
24 deposit shall not exceed the cost of anticipated restoration costs  
25 in the event that the tenant does not restore the landscaping.

26 (g) A landlord may require the tenant to enter into a written  
27 agreement regarding the payment of any excess water and waste  
28 collection bills arising from the tenant's personal agriculture  
29 activities.

30 (h) A landlord has a right to periodically inspect any area where  
31 the tenant is engaging in personal agriculture to ensure compliance  
32 with this section.

33 (i) A landlord may not prevent tenants from the off-site donation  
34 of plant crops derived from personal agriculture authorized under  
35 this section.

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

39 SEC. 3. Section 4750 is added to the Civil Code, to read:

1 4750. (a) Any provision of a governing document, as defined  
2 in Section 4150, shall be void and unenforceable if it does either  
3 of the following:

4 (1) Effectively prohibits or unreasonably restricts the use of a  
5 homeowner’s front or back yard for personal agriculture.

6 (2) Effectively prohibits or unreasonably restricts a homeowner  
7 from the off-site donation of produce grown on the homeowner’s  
8 property.

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

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

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

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

23 (e) For the purposes of this section, the following definitions  
24 shall apply:

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

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

30 ~~SEC. 4. Article 2.10 (commencing with Section 65892) is~~  
31 ~~added to Chapter 4 of Division 1 of Title 7 of the Government~~  
32 ~~Code, to read:~~

33

34 ~~Article 2.10. Personal, Community, and Entrepreneurial~~  
35 ~~Agriculture~~  
36

37 ~~65892. (a) For purposes of this article, the following definitions~~  
38 ~~shall apply:~~

39 ~~(1) “Community agriculture” means a use of land managed by~~  
40 ~~a public entity, nonprofit organization, person, or group of~~

1 individuals to cultivate edible plant crops for donation or for  
2 personal use by those cultivating the land.

3 (2) ~~“Entrepreneurial agriculture” means a use of land managed~~  
4 ~~by a public entity, nonprofit organization, business entity,~~  
5 ~~individual, or group of individuals to cultivate edible plant crops~~  
6 ~~for the purpose of sale or donation.~~

7 (3) ~~“Personal agriculture” means a use of land where an~~  
8 ~~individual cultivates edible plant crops for personal use or donation.~~

9 (4) ~~“Plant crop” means any crop in its raw or natural state, comes~~  
10 ~~from a plant. It shall not include marijuana or any unlawful crops~~  
11 ~~or substances.~~

12 (b) ~~A city, county, or city and county shall not prohibit personal~~  
13 ~~agriculture, community agriculture, or entrepreneurial agriculture~~  
14 ~~within its jurisdiction. However, a city, county, or city and county~~  
15 ~~may, by ordinance, adopt the following restrictions on any of these~~  
16 ~~agricultural activities in a residential or commercial zone:~~

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

21 (2) ~~Restrictions on the cultivation and placement of plants that~~  
22 ~~may interfere with a public sidewalk.~~

23 (3) ~~Restrictions on structures for community gardening that do~~  
24 ~~not meet the same building standards applicable to accessory~~  
25 ~~structures within the zone.~~

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

35 (5) ~~Restrictions on odor, noise, and dust caused by growing~~  
36 ~~produce and that cause a nuisance.~~

37 (e) ~~Each land use zone within a city, county, or city and county~~  
38 ~~shall be considered zoned for personal, community, and~~  
39 ~~entrepreneurial agriculture by right, unless a local governmental~~  
40 ~~agency, city council, or board of supervisors determines that~~

1 ~~growing plant crops for human consumption in a particular area~~  
2 ~~within its jurisdiction would pose a significant public health risk.~~  
3 ~~If growing crops in a particular area is determined to present a~~  
4 ~~public health risk, this area shall be clearly delineated on a map~~  
5 ~~and the public health risk specific to that area shall be documented.~~  
6 ~~The map and documentation of any specific public health risk shall~~  
7 ~~be available to the general public.~~  
8 SEC. 5. ~~If the Commission on State Mandates determines that~~  
9 ~~this act contains costs mandated by the state, reimbursement to~~  
10 ~~local agencies and school districts for those costs shall be made~~  
11 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
12 ~~4 of Title 2 of the Government Code.~~