

AMENDED IN ASSEMBLY MAY 28, 2014

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, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 2561, as amended, Bradford. Personal 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 *approved by the landlord* in the tenant's private area, as defined, if certain conditions are met.

(2) Existing law, the Davis-Stirling Common Interest Development Act, defines and regulates common interest developments and authorizes the board of directors of the 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 from the off-site donation of produce grown on the homeowner's property.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: 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  
7 their communities would drastically improve local food security  
8 and mediate the risks of water, soil, environmental, or fuel-related  
9 crises.

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

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

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

1 (e) Many homeowners' associations have rules prohibiting  
2 homeowners from growing food in ~~front~~ *their* yards or from selling  
3 food grown on the property.

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

8 ~~(g) Providing Californians with increased opportunity to~~  
9 ~~participate in small-scale entrepreneurial agriculture will~~  
10 ~~supplement incomes during times of high unemployment and~~  
11 ~~underemployment and stimulate local economies.~~

12 *(g) According to a 2011 United States Census Bureau report,*  
13 *California has the highest poverty rate in the United States. Giving*  
14 *California residents the right to grow food where they live will*  
15 *help reduce food costs and the overall burden of poverty for*  
16 *low-income Californians.*

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

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

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

34 (k) These findings are all matters of statewide concern. The  
35 Legislature recently identified the importance of small-scale,  
36 neighborhood-based food enterprises throughout California in  
37 achieving common, statewide economic, health, and environmental  
38 goals. The Legislature acted upon this by enacting Chapter 415 of  
39 the Statutes of 2012 governing cottage food operations and the  
40 Urban Agriculture Incentive Zones Act (Chapter 406 of the Statutes

1 of 2013). Legalizing the growing of produce throughout California  
2 will enhance the positive impacts of such previous legislation.

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

4 1940.10. (a) For the purposes of this section, the following  
5 definitions shall apply:

6 ~~(1) “Common area” means an area of the property that is shared  
7 with other tenants.~~

8 ~~(2)~~

9 (1) “Private area” means an outdoor area of the property that is  
10 for the exclusive use of a tenant. *backyard area that is on the  
11 ground level of the rental unit.*

12 ~~(3)~~

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

15 ~~(4)~~

16 (3) “Plant crop” means any crop in its raw or natural state, which  
17 comes from a plant *that will bear edible fruits or vegetables*. It  
18 shall not include marijuana or any unlawful crops or substances.

19 (b) A landlord shall permit a tenant to participate in personal  
20 agriculture in portable containers *approved by the landlord* in the  
21 tenant’s private area if the following conditions are met:

22 (1) The tenant regularly removes any dead plant material and  
23 weeds, *with the exception of straw, mulch, compost, and any other  
24 organic materials intended to encourage vegetation and retention  
25 of moisture in soil*, unless the landlord and tenant have a preexisting  
26 or separate agreement regarding garden maintenance where the  
27 tenant is not responsible for removing ~~dead plant material~~ *or  
28 maintaining plant crop* and weeds.

29 (2) *The plant crop will not interfere with the maintenance of  
30 the rental property.*

31 ~~(2)~~

32 (3) The placement of the *portable* containers does not interfere  
33 with any tenant’s parking spot.

34 ~~(3) The placement of the containers does not create a  
35 trip-and-fall hazard, block doorways, or block access to utility  
36 panels.~~

37 ~~(4) The placement of the containers does not cause water or  
38 other damage to the property.~~

1 ~~(e) If the containers are to be placed on top of grass, a landlord~~  
2 ~~may require the tenant to replant grass prior to vacating the~~  
3 ~~property.~~

4 *(4) The placement and location of the portable containers may*  
5 *be determined by the landlord. The portable containers may not*  
6 *create a health and safety hazard, block doorways, or interfere*  
7 *with walkways or utility services or equipment.*

8 ~~(d)~~

9 (c) The cultivation of plant crops on the rental property other  
10 than that which is contained in portable containers shall be subject  
11 to approval from the landlord.

12 ~~(e) A landlord may prohibit personal agriculture of any sort by~~  
13 ~~tenants on common areas.~~

14 ~~(f) With the exception of container plants on paved areas, a~~  
15 ~~landlord may choose to require an additional security deposit to~~  
16 ~~ensure that all landscaping is restored after the tenant vacates the~~  
17 ~~property or ceases to engage in personal agriculture. The security~~  
18 ~~deposit shall not exceed the cost of anticipated restoration costs~~  
19 ~~in the event that the tenant does not restore the landscaping.~~

20 *(d) A landlord may prohibit the use of synthetic chemical*  
21 *herbicides, pesticides, fungicides, rodenticides, insecticides, or*  
22 *any other synthetic chemical product commonly used in the*  
23 *growing of plant crops.*

24 ~~(g)~~

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

29 ~~(h) A~~

30 *(f) Subject to the notice required by Section 1954, a landlord*  
31 *has a right to periodically inspect any area where the tenant is*  
32 *engaging in personal agriculture to ensure compliance with this*  
33 *section.*

34 ~~(i)~~

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

38 ~~(j)~~

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

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

5 4750. (a) ~~Any~~ For the purposes of this section, the following  
6 definitions shall apply:

7 (1) "Personal agriculture" has the same definition as in Section  
8 1940.10.

9 (2) "Plant crop" has the same definition as in Section 1940.10.

10 (b) Any provision of a governing document, as defined in Section  
11 4150, shall be void and unenforceable if it does either of the  
12 following:

13 (1) Effectively prohibits or unreasonably restricts the use of a  
14 homeowner's ~~front or~~ back yard for personal agriculture.

15 (2) Effectively prohibits or unreasonably restricts a homeowner  
16 from the off-site donation of produce grown on the homeowner's  
17 property.

18 ~~(b)~~

19 (c) (1) This section does not apply to provisions that impose  
20 reasonable restrictions on the use of a homeowner's yard for  
21 personal agriculture.

22 (2) For purposes of this section, "reasonable restrictions" are  
23 restrictions that do not significantly increase the cost of engaging  
24 in personal agriculture or significantly decrease its efficiency.

25 ~~(c)~~

26 (d) This section applies only to yards that are designated for the  
27 exclusive use of the homeowner.

28 ~~(d)~~

29 (e) This section shall not prohibit a homeowners' association  
30 from applying rules and regulations requiring that dead plant  
31 material and weeds, with the exception of straw, mulch, compost,  
32 and other organic materials intended to encourage vegetation and  
33 retention of moisture in the soil, are regularly cleared from the  
34 front yard.

35 ~~(e) For the purposes of this section, the following definitions~~  
36 ~~shall apply:~~

37 ~~(1) "Personal agriculture" means a use of land where an~~  
38 ~~individual cultivates edible plant crops for personal use or donation.~~

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

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