

AMENDED IN SENATE JULY 1, 2014
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

Introduced by Assembly Member Bradford
(Coauthor: Senator Lara)

February 21, 2014

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 ~~back yard~~ *backyard*

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 their yards or from selling food
3 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) According to a 2011 United States Census Bureau report,
9 California has the highest poverty rate in the United States. Giving
10 California residents the right to grow food where they live will
11 help reduce food costs and the overall burden of poverty for
12 low-income Californians.

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

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

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

30 (k) These findings are all matters of statewide concern. The
31 Legislature recently identified the importance of small-scale,
32 neighborhood-based food enterprises throughout California in
33 achieving common, statewide economic, health, and environmental
34 goals. The Legislature acted upon this by enacting Chapter 415 of
35 the Statutes of 2012 governing cottage food operations and the
36 Urban Agriculture Incentive Zones Act (Chapter 406 of the Statutes
37 of 2013). Legalizing the growing of produce throughout California
38 will enhance the positive impacts of such previous legislation.

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

1 1940.10. (a) For the purposes of this section, the following
2 definitions shall apply:

3 (1) “Private area” means an outdoor backyard area that is on
4 the ground level of the rental unit.

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

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

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

13 (1) The tenant regularly removes any dead plant material and
14 weeds, with the exception of straw, mulch, compost, and any other
15 organic materials intended to encourage vegetation and retention
16 of moisture in soil, unless the landlord and tenant have a preexisting
17 or separate agreement regarding garden maintenance where the
18 tenant is not responsible for removing or maintaining plant crop
19 and weeds.

20 (2) The plant crop will not interfere with the maintenance of
21 the rental property.

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

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

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

31 (d) A landlord may prohibit the use of synthetic chemical
32 herbicides, pesticides, fungicides, rodenticides, insecticides, or
33 any other synthetic chemical product commonly used in the
34 growing of plant crops.

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

39 (f) Subject to the notice required by Section 1954, a landlord
40 has a right to periodically inspect any area where the tenant is

1 engaging in personal agriculture to ensure compliance with this
2 section.

3 ~~(g) A landlord may not prevent tenants from the off-site donation~~
4 ~~of plant crops derived from personal agriculture authorized under~~
5 ~~this section.~~

6 ~~(h)~~

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

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

11 4750. (a) For the purposes of this section, ~~the following~~
12 ~~definitions shall apply:~~

13 (1) ~~“Personal~~ “*personal* agriculture” has the same definition as
14 in Section 1940.10.

15 (2) ~~“Plant crop” has the same definition as in Section 1940.10.~~

16 (b) Any provision of a governing document, as defined in
17 Section 4150, shall be void and unenforceable if it ~~does either of~~
18 ~~the following:~~

19 (1) ~~Effectively~~ *effectively* prohibits or unreasonably restricts the
20 use of a homeowner’s ~~back yard~~ *backyard* for personal agriculture.

21 (2) ~~Effectively~~ prohibits or unreasonably restricts a homeowner
22 from the off-site donation of produce grown on the homeowner’s
23 property.

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

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

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

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