

Assembly Bill No. 2561

CHAPTER 584

An act to add Sections 1940.10 and 4750 to the Civil Code, relating to land use.

[Approved by Governor September 26, 2014. Filed with Secretary of State September 26, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2561, 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 backyard for personal agriculture.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) California industrial agriculture is at risk due to water shortages, soil degradation, pollution, environmental, and structural threats to the San Francisco Bay Delta, and the rising cost of oil. Providing Californians with the capacity to feed themselves and their communities would drastically improve local food security and mediate the risks of water, soil, environmental, or fuel-related crises.

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

(c) California is no exception to rising obesity and obesity-related diseases in the United States. Two-thirds of American adults and nearly one-third

of American children are obese or overweight, putting them at risk for developing chronic diseases, including diabetes, heart disease, or cancer. In California, one in every nine children, one in three teens, and over one-half of adults are already overweight or obese. This epidemic affects virtually all Californians. Many of these health conditions are preventable and curable through lifestyle choices that include consumption of healthy fresh foods.

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

(e) Many homeowners' associations have rules prohibiting homeowners from growing food in their yards or from selling food grown on the property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4750. (a) For the purposes of this section, “personal agriculture” has the same definition as in Section 1940.10.

(b) Any provision of a governing document, as defined in Section 4150, shall be void and unenforceable if it effectively prohibits or unreasonably restricts the use of a homeowner’s backyard for personal agriculture.

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

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

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

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