

Senate Bill 437

Sponsored by Senator HAYDEN (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows production of food in planned community by lot owners and their tenants.

A BILL FOR AN ACT

Relating to producing food in planned communities; amending ORS 94.779.

Whereas people need to have access to safe, reliable sources of food; and

Whereas the COVID-19 pandemic has shown how easily our supply of fresh foods can be disrupted, causing shortages and spiking food prices; and

Whereas people have a right to be self-reliant in providing for the needs of themselves, their families, their neighbors and their communities; and

Whereas city and county governments, run by leaders elected locally from within their communities, have the right to pass regulations and ordinances for the management of their communities and have passed, or may in the future pass, regulations and ordinances that relate to local food production in residential neighborhoods; and

Whereas property owners and their tenants, with regard to the right to subsist, should be afforded the ability to participate to the fullest extent of the law in their own self-determination without restriction from property associations or restrictive covenants; now, therefore,

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 94.779, as amended by section 3, chapter 86, Oregon Laws 2022, is amended to read:

94.779. (1) A provision of a planned community's governing document or landscaping or architectural guidelines that imposes irrigation requirements on an owner or the association is void and unenforceable while any of the following is in effect:

(a) A declaration by the Governor that a severe, continuing drought exists or is likely to occur in a political subdivision within which the planned community is located;

(b) A finding by the Water Resources Commission that a severe, continuing drought exists or is likely to occur in a political subdivision within which the planned community is located;

(c) An ordinance adopted by the governing body of a political subdivision within which the planned community is located that requires conservation or curtailment of water use; or

(d) A rule adopted by the association under subsection (2) of this section to reduce or eliminate irrigation water use.

(2) Notwithstanding any provision of a planned community's governing documents or landscaping or architectural guidelines imposing irrigation requirements on an owner or the association, an association may adopt rules that:

(a) Require the reduction or elimination of irrigation on any portion of the planned community.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) Permit or require the replacement of turf or other landscape vegetation with xeriscape on
 2 any portion of the planned community.

3 (c) Require prior review and approval by the association or its designee of any plans by an
 4 owner or the association to replace turf or other landscape vegetation with xeriscape.

5 (d) Require the use of best practices and industry standards to reduce the landscaped areas and
 6 minimize irrigation of existing landscaped areas of common property where turf is necessary for the
 7 function of the landscaped area.

8 **(3) A provision of a planned community’s governing documents or landscaping or archi-**
 9 **tectural guidelines is void and unenforceable to the extent that it prohibits or restricts an**
 10 **owner, or a tenant of an owner with the approval of the landlord, from producing food pro-**
 11 **ducts on the owner’s lot, through methods including gardening, hen-keeping or beekeeping.**
 12 **This subsection does not prevent an association from enforcing regulations requiring that**
 13 **the food production be performed in a competent and proficient manner or consistent with**
 14 **laws and ordinances applicable to the food production.**

15 [(3)] (4) Except as provided in subsections [(4) and] (5) and (6) of this section, if adopted on or
 16 after January 1, 2018, the following provisions of a planned community’s governing document are
 17 void and unenforceable:

18 (a) A provision that prohibits or restricts the use of the owner’s unit or lot as the premises of
 19 an exempt family child care provider participating in the subsidy program under ORS 329A.500; or

20 (b) If the unit does not share a wall, floor or ceiling surface in common with another unit, a
 21 provision that prohibits or restricts the use of the owner’s unit or lot as a certified or registered
 22 family child care home pursuant to ORS 329A.250 to 329A.450.

23 [(4)] (5) Subsection [(3)] (4) of this section does not prohibit a homeowners association from
 24 adopting or enforcing a provision of the planned community’s governing document that regulates
 25 parking, noise, odors, nuisance, use of common property or activities that impact the cost of insur-
 26 ance policies held by the planned community, provided the provision:

27 (a) Is reasonable; and

28 (b) Does not have the effect of prohibiting or restricting the use of a unit or lot as the premises
 29 of an exempt family child care provider participating in the subsidy program under ORS 329A.500
 30 or as a certified or registered family child care home pursuant to ORS 329A.250 to 329A.450.

31 [(5)(a)] (6)(a) Subsection [(3)] (4) of this section does not apply to planned communities that
 32 provide housing for older persons.

33 (b) As used in this subsection, “housing for older persons” has the meaning given that term in
 34 ORS 659A.421.

35 [(6)] (7) A provision in a planned community’s governing document that restricts or prohibits the
 36 installation or use of a portable cooling device, as defined in section 2 (1), chapter 86, Oregon Laws
 37 2022, is void and unenforceable, unless:

38 (a) The installation or use of the device would:

39 (A) Violate building codes or state or federal law; or

40 (B) Violate the device manufacture’s written safety guidelines for the device; or

41 (b) The restrictions are only to require that the device be removed from October 1 through April
 42 30.